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Articles

Share the Knowledge—Write On!

Lieutenant Colonel Eugene E. Baime

Refresher in Legal Citations

Captain Anita J. Fitch

Military Citation Guide

Managing a Claims Office

Colonel R. Peter Masterton

The Impact of *Ring v. Arizona* on Military Capital Sentencing

Major Mark A. Visger

Book Review

CLE News

Current Materials of Interest

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The Army Lawyer welcomes articles from all military and civilian authors on topics of interest to military lawyers. Articles should be

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Articles

Share the Knowledge—Write On! <i>Lieutenant Colonel Eugene E. Baime</i>	1
Refresher in Legal Citations <i>Captain Anita J. Fitch</i>	3
Military Citation Guide	7
Managing a Claims Office <i>Colonel R. Peter Masterton</i>	29
The Impact of <i>Ring v. Arizona</i> on Military Capital Sentencing <i>Major Mark A. Visger</i>	54

Book Review

<i>The Bonus Army: An American Epic</i> Reviewed by <i>Colonel Thomas D. Arnhold</i>	78
CLE News	81
Current Materials of Interest	102
Individual Paid Subscriptions to <i>The Army Lawyer</i>	Inside Back Cover

Share the Knowledge—Write On!

*Lieutenant Colonel Eugene E. Baime
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Director, Professional Writing Program*

Over the past few years, members of The Judge Advocate General's Corps (JAGC) have faced a litany of new legal challenges both domestically and abroad. With each passing day, smart members of the JAGC figure out new and unique ways to ensure that we as a corps provide the best possible legal advice to our clients. Although some of this outstanding legal thought is later captured in after-action reports, much of it is not shared with other members of the JAGC. I write this introduction asking each of you, no matter your rank or experience, to consider sharing your knowledge and practical advice with the entire military legal community.

Each month, The Judge Advocate General's Legal Center and School publishes an outstanding journal, which regularly provides updates on the law and the novel, and sometimes mundane, issues military attorneys face. *The Army Lawyer's* mission is to publish relevant and practical legal information in order to provide military attorneys more effective tools to better represent our clients. The journal's editorial staff needs your invaluable assistance to improve *The Army Lawyer's* ability to keep judge advocates in the field informed about the latest developments in our practice. The editors and the Dean's goal is to make every member of the legal community excited about reading each issue. In order to reach that goal, we need your help.

There are a few ways you can help make *The Army Lawyer* a more relevant and practical legal journal. First, you can write articles and submit them for publication. You can write on topics ranging from what members of the JAGC need to do before deploying to how to more effectively cut down post-trial processing time. I would love to publish more articles on how reserve Soldiers are effectively being integrated into legal offices in both garrison and deployed settings. The keys are to write on an issue that the military legal community needs to know about or to offer practical guidance on how to handle an issue related to our practice.

Second, you can let us know what you think is important and should be discussed in *The Army Lawyer*. We publish three theme issues a year, and each is devoted to either international and operational law, criminal law, or contract law. Our goal is to publish the most relevant information, without restriction to a certain area of the law, in the other nine issues. Our perspective from Charlottesville of what is important can sometimes be very different than your perspective from the field. I encourage you to contact us to let us know what is important to you.

Third, encourage your fellow JAGC members to read *The Army Lawyer*. Each month, every member of the JAGC can find at least one article, and probably many more, that is interesting and offers practical guidance that will help them become a better Soldier.

The editors are going to make it easier for you to publish relevant and informative articles. First, we are in the process of streamlining the approval process for submitted articles. In the past, a common complaint was that it took us too long to let authors know if we intended to publish their articles. Our current goal is to let authors know within forty-five days whether their article will be published. I would like to reduce that time to thirty days. Although it may take us a little time to reach that goal, we are diligently working to accomplish it.

Second, we are going to relax the rules as to when citations are required. We are going to transition to a journal that is more reflective of state bar journals, which offer practical guidance, but do not get bogged down on cites. If you take a look at them, you will notice that they usually cite a paragraph instead of a sentence or phrase. Quotes, of course, still need to be cited. To better assist you in effectively citing sources, Captain Anita Fitch wrote an article in this issue which provides guidance as to when citations are needed. Also, the *Military Citation Guide* is printed in this issue, and it provides guidance on how to cite military specific sources.

Third, in the past, we were hesitant to publish articles that discussed personal experiences without citation to published works. Now, we recognize that new and unique issues arise during the war on terror that nobody has ever seen before. You should document your experiences to ensure that other members of the military legal community can resolve the same or similar issues by utilizing your invaluable guidance.

I strongly encourage each of you to consider writing an article and submitting it for publication. Together, we can make *The Army Lawyer* a much more powerful legal tool than the superb journal it already is. You can submit articles to

ArmyLawyer@JAGC-SMTP.army.mil. Also, if you have any questions, concerns, or issues, please do not hesitate to contact me at eugene.baime@hqda.army.mil or (434) 971-3376.

Refresher in Legal Citations

Captain Anita J. Fitch
Chief, Publications

Introduction to Legal Citations

In all types of legal writing, it is necessary to accredit the source or authority that supports any assertions, statements of fact, propositions, positions, or legal arguments. This reference, whether to a case, statute, legal treatise, internet site, or newspaper article, is called a citation. “The central function of a legal citation is to allow the reader to efficiently locate the cited source.”¹ Citations to legal materials follow a standard format that makes it possible for the reader to find cited cases, statutes, regulations, or law review articles. Citations, however, serve additional purposes, including lending authority and credibility to the author’s work. As you write, it is important to develop systematic habits for collecting the necessary information on your source materials.

When searching for an answer to a citation question, you should first turn to the *The Bluebook: A Uniform System of Citation*.² Legal scholars and practitioners rely on the *Bluebook* as the “definitive” source of rules for citation in legal documents and law journals.³ During 2000, an alternative citation reference guide was published by the Association of Legal Writing Directors —*The ALWD Citation Manual*⁴—and has won considerable acceptance in law schools.⁵ The differences between both citation manuals are minor. You may, however, find one manual’s explanations and examples easier to use than the other’s. The editors of *The Army Lawyer* and the *Military Law Review* also publish *The Military Citation Guide (MCG)*, which is a citation guide consistent with the rules set forth in the *Bluebook* that provides citation formats for military-specific sources.⁶ Both *The Army Lawyer* and the *Military Law Review* follow the *Bluebook*’s and the *MCG*’s rules.

At times, trying to decipher a legal authority may feel as if it takes longer than writing the article itself. This article outlines the basic principles of legal citation, including the structure of the *Bluebook*, and provides examples for some of the most frequently cited sources in legal writing.

To Cite or Not to Cite

All submitted articles must be the author’s individual work. An author cannot present facts, propositions, positions, or legal arguments from another person’s work without properly attributing that work. Knowing when to cite, however, can be difficult at times. The George Washington University Law School’s writing policy, *Citing Responsibly: A Guide to Avoiding Plagiarism*, relies upon six basic rules first identified by legal scholar Robert Bills for determining when a citation should be included:

1. Cite sources for all direct quotations.
2. Cite sources for paraphrased or summarized language or ideas.
3. Cite sources for ideas or information that are common knowledge if: (a) the information or idea was not known to the author, or (b) the reader may find the information or idea unfamiliar.
4. Cite sources when they add relevant information to your particular topic or argument.
5. Cite sources for all specialized materials, such as letters, interviews, recordings, etc.
6. Cite only to the sources that *you* relied upon.⁷

¹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 2 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005) [hereinafter THE BLUEBOOK].

² *Id.*

³ *Id.* at 1.

⁴ ASS’N OF LEGAL WRITING DIRECTORS & DARBY DICKERSON, ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (2d ed. 2003).

⁵ See Ass’n of Legal Writing Directors, ALWD Citation Manual Adoptions, <http://www.alwd.org/cm/cmAdoptions.htm> (last visited Sept. 2, 2005) (listing over ninety law schools that have adopted the *ALWD Citation Manual*).

⁶ MILITARY CITATION GUIDE (10th ed. 2005) [hereinafter MCG].

⁷ THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL’S COMMITTEE ON ACADEMIC INTEGRITY, CITING RESPONSIBLY: A GUIDE TO AVOIDING PLAGIARISM 3 (2002) (citing Robert D. Bills, *Plagiarism: Close Resemblance of the Worst Kind?*, 31 SANTA CLARA L. REV. 103, 126-130 (1990) (outlining the six basic rules for when to cite sources)).

Authors should follow these rules when writing an article for publication in either *The Army Lawyer* or the *Military Law Review*.

Structure of the *Bluebook*

The *Bluebook* is composed of three distinct parts.⁸ The first part (rules 1 to 9) sets out the rules for basic structure and use of citations throughout all legal writing. The second part (rules 10 to 21) sets out specific citation formats for various sources and authorities. The final part (tables T.1 to T.17) includes tables to use when drafting a citation. A quick reference guide, which includes citation examples to a number of sources, is on the inside front and back covers.

Citations: The Basics

Citations are preceded by introductory signals.⁹ Introductory signals are divided into five types: (1) signals that indicate support; (2) signals that suggest a useful comparison; (3) signals that indicate contradiction; (4) signals that indicate background material; and (5) signals that act as verbs.¹⁰ In footnotes with multiple authorities, signals are separated according to type.¹¹ Cited authorities of the same signal type are separated by semicolons.¹² Introductory signals, when used within citation sentences¹³ or clauses,¹⁴ are italicized.¹⁵

When providing a citation, it is often useful to include additional information about the source or authority cited such as the source's relevance. Generally, this information can be enclosed in parenthesis and added to the basic citation.¹⁶ Explanatory parentheticals must begin with a present participle—arguing, explaining, holding, deciding—that is not capitalized.¹⁷

When writing a citation or listing a source in the text, you must pay particular attention to the typeface. Rules 2.1 and 2.2 of the *Bluebook* explain the different typefaces and when each are used.¹⁸ For example, case names are written in ordinary Roman type in full citations, but are italicized in the main text or short citation form.¹⁹ The *Bluebook* also contains rules for the use of typefaces for stylistic purposes—Rule 7.²⁰

Although the *Bluebook* is not intended to be a grammatical guide, it contains several rules governing a few basic writing principles (Rules 5 through 9).²¹ The *MCG* contains a brief section on basic grammatical rules for military writing and covers military-specific issues—abbreviations of military rank and use of the military date format.²² One unique style convention is the use of the word “Soldier,” which must be capitalized in text and footnotes.²³

⁸ See THE BLUEBOOK, *supra* note 1, I.1.

⁹ *Id.* R. 1.

¹⁰ *Id.* R. 1.2.

¹¹ *Id.* R. 1.3.

¹² *Id.* R. 1.3, 1.4.

¹³ See *id.* R. 1.1 (explaining that “authorities that support (or contradict) an entire footnote sentence are cited in a separate citation sentence immediately after the sentence they support (or contradict)”).

¹⁴ See *id.* (explaining that “authorities that support (or contradict) only part of a sentence within a footnote are cited in clauses, set off by commas, that immediately follow the proposition they support (or contradict)”).

¹⁵ *Id.* R. 2.1(d).

¹⁶ *Id.* R. 1.5.

¹⁷ *Id.*

¹⁸ *Id.* R. 2.1, 2.2.

¹⁹ *Id.* R. 2.1(a), 2.2(a).

²⁰ *Id.* R. 7 (providing that the following text may be italicized: words and phrases for emphasis, foreign words and phrases, letters representing hypothetical parties or places, the lowercase letter “I”, and equations).

²¹ *Id.* R. 5-9.

²² *MCG*, *supra* note 5, at 1.

²³ *Id.*

Basic Citation Forms

A basic citation to a case must include the name of the case,²⁴ the reporter or source where the case may be found,²⁵ a parenthetical indicating the court and jurisdiction,²⁶ the year or date of the decision,²⁷ and the subsequent history of the case, if any.²⁸ For example:

Haywood v. N. Am. Van Lines, 121 F.3d 1066 (7th Cir. 1997).

The case name must be abbreviated according to Rule 10.2.²⁹ The rules for abbreviation of case names in footnotes are more substantial than the rules for case names in text.³⁰ Rule 10 also contains rules for pending and unreported cases.³¹ The *MCG* provides numerous examples of the citation of military justice cases (including unreported or pending cases) and various administrative agency decisions such as Comptroller General decisions.³²

In addition to the *Bluebook's* rules covering the citation of constitutions³³ and statutes,³⁴ the *MCG* provides citation formats, including short form citations, for the Uniform Code of Military Justice, the Rules for Courts-Martial, and the Military Rules of Evidence.³⁵ The *MCG* also states how these documents should be referred to in the text of a document. For example: in the text, *Manual for Courts-Martial* should be italicized.³⁶ In a footnote, however, *Manual for Courts-Martial* is listed in large and small capitals.³⁷

MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 315 (2005) [hereinafter MCM].

The *MCG* also provides citation formats for various administrative materials, including Army regulations, Department of Defense directives, Army field manuals, memoranda, policy letters, and operations orders. For example, Army regulations are comparable to rules and regulations by an institutional author, which follow *Bluebook* Rule 14.2(d), and should be cited in the following standard format:³⁸

U.S. DEP'T OF ARMY, REG. XX, REGULATION TITLE page (xx date xxxx) [hereinafter AR XX].

The *Bluebook's* guidance for citation of books and periodicals is contained in Rules 15 and 16.³⁹ The *MCG* also contains citation formats for books and military periodicals.⁴⁰

²⁴ THE BLUEBOOK, *supra* note 1, R.10.2.

²⁵ *Id.* R.10.3.

²⁶ *Id.* R.10.4.

²⁷ *Id.* R.10.5.

²⁸ *Id.* R.10.7.

²⁹ *Id.* R.10.2.

³⁰ *See id.* R.10.2.2. Tables T-6 and T-11 in the back of the *Bluebook* list specific abbreviations that must also be used when abbreviating case names in citations. *Id.*

³¹ *Id.* R. 10.8.1.

³² *See, e.g.,* MCG, *supra* note 5, Quick Reference: Military Citation Formats, at inside front cover.

³³ THE BLUEBOOK, *supra* note 1, R. 11.

³⁴ *Id.* R.12.

³⁵ MCG, *supra* note 5, at 4-6.

³⁶ *Id.* at 4.

³⁷ *Id.* at 5.

³⁸ *See id.* at 8-9.

³⁹ THE BLUEBOOK, *supra* note 1, R. 15-16.

⁴⁰ MCG, *supra* note 5, at 11-13.

Citation of Internet Sources

With the rise of the internet and the vast amounts of information available on the World-Wide Web, more and more sources are internet websites. *Bluebook* Rule 18.2⁴¹ and the *MCG*, Section X,⁴² cover citation of on-line sources. *Bluebook* Rule 18.2.1 applies the general rules (1-9) to all internet citations.⁴³ In addition, the typeface applicable to the internet source's closest print analogue should be used.⁴⁴ An internet citation should include the following information: (1) available information about the authority cited⁴⁵ (e.g., author's first and last name and the title of the book); (2) the Uniform Resource Locator⁴⁶ (e.g., web site address); (3) a date;⁴⁷ and, (4) an explanatory parenthetical,⁴⁸ as necessary. Additional information, such as the service responsible for the internet cite, may also be required.⁴⁹ The following is an example of an internet citation (without a printed analogue):

See North Atlantic Treaty Organisation, NATO's Role in Relation to the Conflict in Kosovo,
<http://www.nato.int/kosovo/history.htm> (last visited July 30, 2005) [hereinafter NATO].

Miscellaneous Citation Formats

As military legal practitioners, much of our legal or background information may come from our experiences in the field. Thus, many people are at a loss for citing to information they learned while deployed or on a field exercise. While it is important to find the most authoritative source for your propositions, personal or professional experiences can be cited according to the following example:

This comment is based on the author's recent professional experiences while deployed to Kosovo from February through August, 2004 [hereinafter Professional Experiences].

Alternatively, it is also possible to cite to a specific interview, letter, or e-mail. The *Bluebook* Rules 17.1.4, 17.1.3, and 18.2.9, cover citations to these sources.⁵⁰ The *MCG* also lists several sample citation formats for these sources.⁵¹

Conclusion

The *Bluebook* and the *MCG* provide comprehensive guidance and instruction for citation of source material. Writing an authoritative and professional legal document requires a thorough understanding of these rules. Since legal citation requires thorough legal research, practitioners should record all the necessary information for a citation during the course of their research. This requires, however, an advance understanding of the basic elements of a citation. Armed with this information, practitioners should be able to follow the rules and organize the information into a precise citation.

⁴¹ THE BLUEBOOK, *supra* note 1, R. 18.2.

⁴² MCG, *supra* note 5, at 13-14.

⁴³ THE BLUEBOOK, *supra* note 1, R. 18.2.1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* R. 17.1.4, 17.1.3, and 18.2.9.

⁵¹ MCG, *supra* note 5, at Quick Reference: Bluebook Citation Formats, at inside back cover.

THE JUDGE ADVOCATE GENERAL'S
LEGAL CENTER & SCHOOL,
U.S. ARMY

MILITARY CITATION GUIDE

TENTH EDITION
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COMPILED BY THE EDITORS OF THE
Military Law Review AND *The Army Lawyer*

Quick Reference: Military Citation Formats

Military Justice Cases (*Military Citation, Part II*)

Court of Appeals for the Armed Forces (5 Oct. 1994-present):
Court of Military Appeals (1975-4 Oct. 1994):
Court of Military Appeals (1951-1975):

United States v. Faircloth, 44 M.J. 172 (1996).
United States v. Rexroat, 38 M.J. 292 (C.M.A. 1993).
United States v. Deller, 12 C.M.R. 165 (C.M.A. 1953).

Army Court of Criminal Appeals (5 Oct. 1994-present):
Army Court of Military Review (1975-4 Oct. 1994):
Army Court of Military Review (1968-1975):
Army Board of Review (1951-1968):

United States v. Ivey, 53 M.J. 685 (Army Ct. Crim. App. 2000).
United States v. Shelton, 27 M.J. 1114 (A.F.C.M.R. 1988).
United States v. Fortune, 45 C.M.R. 740 (A.C.M.R. 1972).
United States v. Callahan, 22 C.M.R. 443 (A.B.R. 1956).

Air Force Court of Criminal Appeals (5 Oct. 1994-present):
Air Force Court of Military Review (1975-4 Oct. 1994):
Air Force Court of Military Review (1968-1975):
Air Force Board of Review (1951-1968):

United States v. Scheffer, 41 M.J. 683 (A.F. Ct. Crim. App. 1995).
United States v. Diaz, 39 M.J. 1114 (A.F.C.M.R. 1994).
United States v. McBride, 50 C.M.R. 126 (A.F.C.M.R. 1975).
United States v. Opalka, 36 C.M.R. 938 (A.F.B.R. 1966).

Navy-Marine Court of Criminal Appeals (5 Oct. 1994-present):
Navy-Marine Court of Military Review (1975-4 Oct. 1994):
Navy-Marine Court of Military Review (1968-1975):
Navy-Marine Board of Review (1951-1968):

United States v. Plowman, 53 M.J. 511 (N-M. Ct. Crim. App. 2000).
United States v. Holloway, 36 M.J. 1078 (N.M.C.M.R. 1993).
United States v. Gettz, 49 C.M.R. 79 (N.M.C.M.R. 1974).
United States v. Day, 23 C.M.R. 651 (N.M.B.R. 1957).

Coast Guard Court of Criminal Appeals (5 Oct. 1994-present):
Coast Guard Court of Military Review (1975-4 Oct. 1994):
Coast Guard Court of Military Review (1968-1975):
Coast Guard Board of Review (1951-1968):

United States v. Padgett, 45 M.J. 320 (C.G. Ct. Crim. App. 1996).
United States v. Francis, 25 M.J. 614 (C.G.C.M.R. 1987).
United States v. Bush, 47 C.M.R. 532 (C.G.C.M.R. 1973).
United States v. Valente, 6 C.M.R. 476 (C.G.B.R. 1952).

Example of subsequent history: United States v. McCrimmon, 57 M.J. 469 (2002), *review granted*, 2003 CAAF LEXIS 227 (Mar. 3, 2003).
Unreported CAAF Case: United States v. Fisher, No. 03-0059, 2003 CAAF LEXIS 584 (June 17, 2003) *or Fisher*, 2003 CAAF LEXIS 584, at *4.
Unreported CCA Case: United States v. Billings, No. 99-00122, 2003 CCA LEXIS 142 (Army Ct. Crim. App. June 13, 2003).
Slip Opinion: United States v. Townes, No. 99-5004 (Mar. 8, 2000).
Unpublished, available on LEXIS: United States v. Morse, No. 33566, 2000 CCA LEXIS 233 (A.F. Ct. Crim. App. Oct. 4, 2000) (unpublished).
Unpublished, not available on LEXIS: United States v. Gable, No. 9701533 (Army Ct. Crim. App. Aug. 10, 1999) (unpublished).
Record of Trial: United States v. Ivey, No. 15254 (Headquarters, Fort Carson May 13, 1997).

Military Justice Sources (Parts III, IV)

UCMJ art. 134 (2005).

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 93c (2005) [hereinafter MCM].

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 1001 (2005) *or* MCM, *supra* note x, R.C.M. 1001.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 307(c)(3) discussion (C)(i) (2005) *or* MCM, *supra* note x, R.C.M. 307(c)(3) discussion (C)(i).

MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 803(2) (2005) *or* MCM, *supra* note x, MIL. R. EVID. 803(2).

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 604 analysis, at A21-31 (2005) *or* MCM, *supra* note x, R.C.M. 604 analysis, at A21-31.

U.S. DEP'T OF ARMY, PAM. 27-9, LEGAL SERVICES: MILITARY JUDGES' BENCHBOOK (15 Sept. 2002) [hereinafter BENCHBOOK].

1776 Articles of War, *reprinted in* WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 976 (2d ed. 1920 reprint).

Articles of War, 2 Stat. 359 (1806), *reprinted in* WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 976 (2d ed. 1920 reprint).

Contract Law—Cases and Administrative Decisions (Part V)

Federal Claims Court (1992-present):

McAfee v. United States, 46 Fed. Cl. 428 (2000).

U.S. Claims Court (1982-1991):

Bean Dredging Corp. v. United States, 19 Cl. Ct. 561 (1990).

Court of Claims (prior to 1982):

Shaw v. United States, 640 F.2d 1254, 1260 (Ct. Cl. 1981).

Armed Services Board of Contract Appeals:

Published in BCA:

Hensel Phelps Constr. Co., ASBCA No. 49716, 00-2 BCA ¶ 30,925.

Unpublished—available in LEXIS database:

Security Ins. Co. of Hartford, No. 51759, 2001 ASBCA LEXIS 121 (July 17, 2001).

Comptroller General Decisions:

Published only in CPD:

Aberdeen Technical Serv., Comp. Gen. B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46.

Published only in *Comp. Gen. Reports*:

Dep't of the Air Force—Reconsideration, 72 Comp. Gen. 241 (1993).

Published in CPD and *Comp. Gen. Reports*:

To Ernst-Theodore Arndt, 52 Comp. Gen. 145, 1972 CPD ¶ 83.

Unpublished—available in LEXIS database:

Vijaydimon Inc., B-286013, 2000 U.S. Comp. Gen. LEXIS 143 (Sept. 29, 2000).

Unpublished—not available in LEXIS database:

Carrol Gene Brewer, Comp. Gen. B-285484, Aug. 22, 2000.

Unpublished—not available in LEXIS database

but available at GAO website:

Dyncorp Technical Serv., Comp. Gen. B-284833.3, July 17, 2001, *available at* <http://www.gao.gov/decisions/bidpro/2848333.pdf>.

Contract Law Sources (Part VI)

GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 6.302 (July 2004) [hereinafter FAR].

U.S. DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 213.202 (Aug. 17, 1998) [hereinafter DFARS].

U.S. DEP'T OF ARMY, ARMY FEDERAL ACQUISITION REG. SUPP. pt. 13.9001(c) (Oct. 2001) [hereinafter AFARS].

FEDERAL OFFICE OF MANAGEMENT AND BUDGET, CIRCULAR NO. A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES (Aug. 4, 1983, Revised 1999)

[hereinafter OMB CIR. A-76].

Federal Acquisition Regulation; Elimination of the Standard Form 1417, 69 Fed. Reg. 59,699 (Oct. 5, 2004).

Regulations (Part VI.A.2)

U.S. DEP'T OF ARMY, REG. 25-50, PREPARING AND MANAGING CORRESPONDENCE para. 1-44 (3 June 2002) [hereinafter AR 25-50].
U.S. ARMY EUROPE, REG. 614-2, OFFICER USE AND MANAGEMENT para. 7.a (2 Mar. 2001).

Directives (Part VI.A.3)

U.S. DEP'T OF DEFENSE, DIR. 5100.77, DOD LAW OF WAR PROGRAM para. 3.1 (9 Dec. 1998) [hereinafter DOD DIR. 5100.77].

Instructions (Part VI.A.4)

U.S. DEP'T OF AIR FORCE, INSTR. 51-503, AIRCRAFT, MISSILE, NUCLEAR, AND SPACE ACCIDENT INVESTIGATIONS (5 Apr. 2000) [hereinafter AFI 51-503].
U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 12772.1, APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD 5 (1 Sept. 2000).

Marine Corps Orders (Part VI.A.5)

U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION para. 1001 (31 Aug. 1999).

General Orders (Part VI.B)

Headquarters, Dep't of Army, Gen. Orders No. 24 (31 Jan. 2001).

Forms (Part VI.C)

U.S. Dep't of Defense, DD Form 458, Charge Sheet (May 2000).
U.S. Dep't of Air Force, AF Form 1092, Court-Martial Findings Worksheet (1 Dec. 1999).

Memoranda (Part VI.D.1)

Memorandum, The Judge Advocate General, U.S. Army, to MACOM Staff Judge Advocates, subject: Judge Advocate Consultation Requirement for Homosexual Conduct Investigations (16 Mar. 2000).

Policy Letters (Part VI.D.2)

Policy Letter 670-014, Headquarters, U.S. Dep't of Army, subject: Beret Wear Policy (14 June 2001).

Messages (Part VI.D.3)

Message, 211230Z Nov 96, U.S. Central Command, subject: Guidance on Use of Deadly Force in Law Enforcement or Security Operations.

Operations Orders (Part VI.D.4) & FRAGOs

Arming Orders, in CALIFORNIA ARMY NATIONAL GUARD, OPERATION GARDEN PLOT 01-007, ANNEX E, RULES OF ENGAGEMENT para. 3 (19 Apr. 2001).
HEADQUARTERS, COMBINED JOINT TASK FORCE 7, FRAGMENTARY ORDER 865, REEMPHASIS OF CURRENT 1003V COMBAT ROE, PROTECTION OF CERTAIN DESIGNATED PROPERTY, AND MOSQUE OPERATIONS, TO OPORD 03-036 (21 Sept. 2003) [hereinafter CJTF7 FRAGO 865].

Opinions (Part VII)

Determination on Release of Personnel Claims Documents, Op. Admin. Law Div., OTJAG, Army, No. DAJA-AL/1338 (29 July 1997).
Request for Guidance—Business Cards, Op. JAG, Air Force, No. 1998/12 (4 Feb. 1998).

Published Reports (Part VIII.B)

CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, AFTER ACTION REPORT, OPERATION UPHOLD DEMOCRACY, 1994-1995, 62 (11 Dec. 1995) [hereinafter UPHOLD DEMOCRACY AAR].

Manuals (Part VIII.B, C.2) (see opposite page for the *Manual for Courts-Martial*)

U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS 5-21 (1 Mar. 2000) [hereinafter FM 27-100].
U.S. DEP'T OF AIR FORCE, MANUAL 51-203, RECORDS OF TRIAL 13 (1 Oct. 1999) [hereinafter AFMAN 51-203].
U.S. DEP'T OF NAVY, NAVAL MILITARY PERSONNEL MANUAL (18 May 2001) [hereinafter MILPERSMAN].

DA Pamphlets (Part VIII.C.1)

U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 1.14 (8 Aug. 2003) [hereinafter DA PAM. 27-162].

Joint Publications (Part VIII.C.3)

JOINT CHIEFS OF STAFF, JOINT PUB. 0-2, UNIFIED ACTION ARMED FORCES (UNAAF) III-5 (10 July 2001) [hereinafter JOINT PUB. 0-2].

TJAGLCS Publications (Part VIII.C.4)

ADMINISTRATIVE & CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 211, THE LAW OF FEDERAL LABOR-MANAGEMENT RELATIONS 25 (Sept. 2004).
INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2004).

Periodicals (Part IX)

Major Michael L. Smidt, *The International Criminal Court: An Effective Means of Deterrence?*, 167 MIL. L. REV. 156, 159 (2001).
Major David L. Willson, *An Army View of Neutrality in Space: Legal Options for Space Negation*, 50 A.F. L. REV. 175, 178 (2001).
Commander Byard Q. Clemmons & Major Gary D. Brown, *Rethinking International Self-Defense: The United Nations' Emerging Role*, 45 NAVAL L. REV. 217, 238 (1998).
Major John Siemietkowski, *To Infinity and Beyond: Expansion of the Army's Commercial Sponsorship Program*, ARMY LAW., Sept. 2000, at 24.
Major Tyler J. Harder, *Mark Bowden's Black Hawk Down*, 166 MIL. L. REV. 199 (2000) (book review).

CD-ROM

LIST OF ACRONYMS (The Judge Advocate General's Corps e-J.A.W.S. CD-ROM, Disk 9, rel. July 2004).

MILITARY CITATION

TABLE OF CONTENTS

Quick Reference: Military Citation Formats.....	inside front cover
Quick Reference: Bluebook Citation Formats.....	inside back cover
Preface to the Tenth Edition.....	i
I. General Conventions.....	1
A. Abbreviations.....	1
B. Numerals—Military Unit Designations.....	1
C. Dates	1
D. Capitalization—Specialized Court-Martial Terminology	1
II. Military Justice Cases.....	2
III. Uniform Code of Military Justice (UCMJ).....	4
IV. <i>Manual for Courts-Martial</i>	4
V. Contract Law Administrative Decisions	6
VI. Administrative Materials	8
VII. Opinions of the Judge Advocates General	11
VIII. Military Publications—Nonperiodic.....	11
IX. Military Publications—Periodical	12
X. Internet Sources	13
XI. Miscellaneous Sources.....	14

Preface to the Tenth Edition

This edition of the *Military Citation Guide*, like its predecessors, intends to provide the military legal scholar with a convenient citation guide that compliments *The Bluebook, A Uniform System of Citation* (18th ed. 2005). While the *Military Citation Guide* provides unique style conventions and citation formats to address military-specific sources, *The Bluebook* remains the primary citation reference for scholarly legal writing. When *The Bluebook* provides contrary guidance, however, military authors should follow the style conventions and citation formats found in the *Military Citation Guide* when preparing submissions for either the *Military Law Review* or *The Army Lawyer*. If neither *The Bluebook* nor the *Military Citation Guide* offer specific citation guidance for a particular source, the author should follow the most analogous provision from either of these two citation references.

Part I of this edition of the *Military Citation Guide* details military scholarship's few unique style conventions. Parts II through IX provide citation formats—both full and short form—for most military-specific sources. Part X attempts to add some precision to the citation format for Internet sources and Part XI provide examples of miscellaneous sources. Rule 18 of *The Bluebook* currently suggests a number of different formats. Military authors should simply follow the citation format appropriate to their military source, providing the required information for each citation element, and using the indicated font, spacing, and punctuation. To help visualize these citation formats, authors may refer to the examples found at the inside front and back cover.

For convenience, the inside back cover of this edition of the *Military Citation Guide* also contains examples of commonly used citations to sources that are military-related but not military-specific. These examples are intended only as a quick reference for military authors. Because most of the sources are not specifically addressed in the *Military Citation Guide*, the editors strongly encourage authors to consult the index of *The Bluebook*, followed by a careful reading of the applicable rules contained therein, before citing such materials.

Please forward suggestions for improving the next edition of the *Military Citation Guide* to the Technical Editor, *Professional Publications*, The Judge Advocate General's Legal Center & School, U.S. Army, 600 Massie Road, Charlottesville, Virginia 22903-1781.

I. General Conventions

A. Abbreviations. For more specific rules, see rule 6 in *The Bluebook*.

1. Military Rank.

a. **Text.** In textual sentences—whether in the main text or in a footnote—spell out a military rank the first time it is used and include a parenthetical containing its abbreviation. Abbreviate the rank in subsequent references, but *never* begin a sentence with an abbreviation. For example: “Major (MAJ) Smith led the way after MAJ Jones was hit by enemy fire. Major Jones was evacuated.”

b.. **Citations.** Abbreviate military rank in citations, except when introducing the author of an article.

c. **Standard Rank Abbreviations.** Follow the individual military service’s guidance.¹

2. **The United States.** United States may be abbreviated to “U.S.” only when used as an adjective. *E.g.* Because the United States has a fundamental interest in maintaining a free flow of interstate commerce, U.S. policy must properly safeguard the nation’s ports.

B. Numerals—Military Unit Designations (in Text or Citations).

1. **Armies.** Spell out the number identifying an Army, such as “Fifth Army.”

2. **Corps.** Use roman numerals for corps, such as “V Corps” or “XVIII Airborne Corps.”

3. **Divisions or Smaller.** Use Arabic numerals for organizations of division size or smaller, such as “1st Infantry Division” or “32d Army Air Defense Command.” Note: do *not* use a superscript font for ordinals, such as “1st” or “32^d.”

C. Dates.

1. **Text.** In textual sentences—whether in the main text or in a footnote—use the military date format of day-month-year and do not abbreviate the month.

2. **Citations.** Use the civilian date format of month-day-year *unless* the source material follows the military date format. Whether using the military or civilian date format in a citation, always abbreviate the month according to *Bluebook Table T.13*.

Jan.	July
Feb.	Aug.
Mar.	Sept.
Apr.	Oct.
May	Nov.
June	Dec.

D. Capitalization—Soldier & Specialized Court-Martial Terminology. Capitalize the words “Soldier,” “Sailor,” “Airman,” or “Marine.” Capitalize the words “charge” and “specification” when they refer to a numbered or specifically identified charge or specification, such as “Specification 3 of Charge II.” Otherwise do not capitalize these terms; for example, “There were several charges and specifications.”

¹ See, e.g., U.S. DEP’T OF ARMY, REG. 25-50, PREPARING AND MANAGING CORRESPONDENCE tbl. 6-1 (3 June 2002).

II. Military Justice Cases

A. Reported Military Justice Cases.

1. 1951 to 1968.

a. United States Boards of Review:

[Case Name], [vol] C.M.R. [page] (A.B.R. 19xx).

[Case Name], [vol] C.M.R. [page] (A.F.B.R. 19xx).

[Case Name], [vol] C.M.R. [page] (N.M.B.R. 19xx).

[Case Name], [vol] C.M.R. [page] (C.G.B.R. 19xx).

b. United States Court of Military Appeals:

[Case Name], [vol] C.M.R. [page] (C.M.A. 19xx).

2. 1968 to 1975.

a. United States Courts of Military Review:

[Case Name], [vol] C.M.R. [page] (A.C.M.R. 19xx).

[Case Name], [vol] C.M.R. [page] (A.F.C.M.R. 19xx).

[Case Name], [vol] C.M.R. [page] (N.M.C.M.R. 19xx).

[Case Name], [vol] C.M.R. [page] (C.G.C.M.R. 19xx).

b. United States Court of Military Appeals:

[Case Name], [vol] C.M.R. [page] (C.M.A. 19xx).

3. 1975 to 4 Oct. 1994.

a. United States Courts of Military Review:

[Case Name], [vol] M.J. [page] (A.C.M.R. 19xx).

[Case Name], [vol] M.J. [page] (A.F.C.M.R. 19xx).

[Case Name], [vol] M.J. [page] (N.M.C.M.R. 19xx).

[Case Name], [vol] M.J. [page] (C.G.C.M.R. 19xx).

b. United States Court of Military Appeals:

[Case Name], [vol] M.J. [page] (C.M.A. 19xx).

4. 5 Oct. 1994 to Present.

a. United States Courts of Criminal Appeals:

[Case Name], [vol] M.J. [page] (Army Ct. Crim. App. 20xx).²

[Case Name], [vol] M.J. [page] (A.F. Ct. Crim. App. 20xx).

[Case Name], [vol] M.J. [page] (N-M. Ct. Crim. App. 20xx).

[Case Name], [vol] M.J. [page] (C.G. Ct. Crim. App. 20xx).

b. United States Court of Appeals for the Armed Forces:

[Case Name], [vol] M.J. [page] (20xx).

B. Unreported Military Justice Cases.

1. Electronic Database as Source. If available in a commercial electronic database (LEXIS or Westlaw), cite to the database following the citation format of *Bluebook Rule 18.1.1*.

[Case Name], No. [xxx], 20xx CAAF LEXIS [xxx] (Dec. xx, 20xx).

[Case Name], No. [xxx], 20xx CCA LEXIS [xxx] (Army Ct. Crim. App. Dec. xx, 20xx).

[Case Name], No. [xxx], 20xx CCA LEXIS [xxx] (A.F. Ct. Crim. App. Dec. xx, 20xx).

[Case Name], No. [xxx], 20xx CCA LEXIS [xxx] (N-M. Ct. Crim. App. Dec. xx, 20xx).

[Case Name], No. [xxx], 20xx CCA LEXIS [xxx] (C.G. Ct. Crim. App. Dec. xx, 20xx).

2. Slip Opinion as Source. If not available in a commercial electronic database, cite to the slip opinion following the citation format of *Bluebook Rule 10.8.1(b)*.

[Case Name], No. [xxx] (Dec. xx, 20xx).³

3. Other Sources. If not available on either a commercial electronic database or in a slip opinion, cite to services, periodicals, or the Internet using *Bluebook Rules 19, 16, and 18.2.2*, respectively.

4. Subsequent History—Use of “review granted.” Use the explanatory phrase “*review granted*,” which covers all cases—whether it was by petition, certification by TJAG, or CAAF specifying an issue—in which review is granted.

² Although *The Bluebook* uses the abbreviation “A. Ct. Crim. App.,” the *Military Law Review* and *The Army Lawyer* follow the convention “Army Ct. Crim. App.” for greater specificity (LEXIS also spells out the term “Army” in its electronic database citations).

³ If the case was not decided by the Court of Appeals for the Armed Forces, use the appropriate abbreviation for the individual service court of appeal: Army Ct. Crim. App., A.F. Ct. Crim. App., N-M. Ct. Crim. App., or C.G. Ct. Crim. App.

C. Records of Trial for Military Justice Cases. Use the following format to cite a court-martial that has not been appealed to a service court of criminal appeals.

[Case Name], No. [xxx] ([Command Taking Action] [Date Sentence Adjudged]).

III. Uniform Code of Military Justice (UCMJ)

A. Overview. Although the UCMJ comprises §§ 801-946 of Title 10, U.S. Code, do not cite the specific section of the U.S. Code unless the legislation itself is of particular interest.

B. Text.

1. Initial Reference. “Article 15, Uniform Code of Military Justice (UCMJ).”

2. Subsequent References. “Article 15.”

C. Citations.

1. Manual for Courts-Martial as Source (preferred). If the citation is to the current UCMJ, use the year of the current *Manual for Courts-Martial*. Citations to historic UCMJ provisions should refer to the year of the *Manual for Courts-Martial* then in effect. If referring to the discussion of a punitive article (not the text of the article) under Part IV of the MCM, cite to Part IV of the MCM and not the UCMJ.

UCMJ art. [x] (20xx).

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶94c (2005)
[hereinafter MCM].

2. Electronic Database as Source.

UCMJ art. [x] (LEXIS 20xx).

or

UCMJ art. [x] (WESTLAW 20xx).

IV. Manual for Courts-Martial

A. Overview. The *Manual for Courts-Martial* includes, among other provisions, the UCMJ, the Rules for Courts-Martial, and the Military Rules of Evidence.

B. Text.

1. “*Manual for Courts-Martial*.”

2. “Rule for Courts-Martial (RCM)” the first time used; “RCM” thereafter.

3. “Military Rule of Evidence (MRE)” the first time used; “MRE” thereafter.

C. General Provisions.

1. Full citation.

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. [x], ¶ [x] (20xx) [hereinafter MCM].

2. Short form citation.

MCM, *supra* note [x], pt. [x], ¶ [x].

D. Rules for Courts-Martial.

1. Full citation.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. [xxx] (20xx) [hereinafter MCM].

2. Short form citation.

MCM, *supra* note [x], R.C.M. [xxx].

E. Military Rules of Evidence.

1. Full citation.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. [xxx] (20xx)
[hereinafter MCM].

2. Short form citation.

MCM, *supra* note [x], MIL. R. EVID. [xxx].

F. Changes to the *Manual for Courts-Martial*

1. Citation of a provision that has been changed.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. [xxx] (20xx)
(current version at MIL. R. EVID. [xxx] (C[x], xx Dec. 20xx)).

2. Citation of a change still in effect.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. [xxx] (20xx)
(C[x], xx Dec. 20xx).

3. Citation of a change no longer in effect.

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. [xxx] (C[x], xx Dec. 20xx)
(current version at R.C.M. [xxx] (C[x], xx Dec. 20xx)).

or

G. Older Manuals for Courts-Martial.

1. Full citation.

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. [x], ¶ [x] (19xx)
[hereinafter 19xx MCM].

2. Short form citation.

19xx MCM, *supra* note [x], pt. [x], ¶ [x].

V. Contract Law Administrative Decisions

A. Overview. *The Bluebook* offers practitioners little guidance for citing administrative agency decisions. In the specialized field of contract and fiscal law, the rules are nearly silent (see, for example, *Bluebook Rules 14.3* and *19*). For this reason, *Military Citation* generally follows the citation conventions found in the American Bar Association's *Public Contract Law Journal*. In rare instances, where the *Public Contract Law Journal* contains conflicting citation formats, *Military Citation* adopts a single citation format for consistency. *Military Citation* also applies the rules for case name abbreviations found in *Bluebook Rule 10* and *Bluebook Table T.6* for brevity.

B. Board of Contract Appeals Decisions. These decisions are published in the Commerce Clearing House's *Board of Contract Appeals Decisions* (BCA).

1. Published in BCA.

a. Full citation.

[Appellant's Name], ASBCA No. [xxxxx⁴], [vol] BCA ¶ [xx,xxx].

b. Short form citation.

[*Appellant's Name*⁵], [vol] BCA ¶ [xx,xxx] at [xxx,xxx⁶].

⁴ The ASBCA docket number; note that no comma is used.

⁵ Or an unambiguous reference to the appellant.

⁶ The specific page reference.

2. Unpublished⁷ but Available in the LEXIS Electronic Database.

- a. Full citation.

[Appellant's Name], No. [xxxxxx], 20xx ASBCA LEXIS [xxx] (Dec. xx, 20xx).

- b. Short form citation.

[*Appellant's Name*], 20xx ASBCA LEXIS [xxx], at *[page]⁸.

C. Comptroller General Decisions.

1. Published *Only* in Federal Publication's *Comptroller General Procurement Decisions* (CPD). The page number for citations to a Government Accountability Office (GAO) decision in the CPD will be the same as the Adobe Acrobat version of the Comptroller General decision on the GAO website.

- a. Full citation.

[Decision Name⁹], Comp. Gen. B-[xxxxxx], Dec. xx, 20xx, [vol] CPD ¶ [xx].

- b. Short form citation.

[*Decision Name*¹⁰], [vol] CPD ¶ [xx], at [page].

2. Published *Only* in the *Comptroller General Reports*.

- a. Full citation.

[Decision Name], [vol] Comp. Gen. [page] (20xx).

- b. Short form citation.

[*Decision Name*], [vol] CPD, at [page].

3. Published in CPD and in *Comp. Gen. Reports*.

- a. Full citation.

[Decision Name], [vol] Comp. Gen. [page], [vol] CPD ¶ [xx].

- b. Short form citation.

[*Decision Name*], [vol] Comp. Gen. at [page], [vol] CPD ¶ [xx], at [page].

⁷ To include decisions not yet published.

⁸ When citing to specific page numbers within LEXIS, an asterisk always precedes the page number.

⁹ Assigned by the Government Accounting Office.

¹⁰ Or an unambiguous reference to the decision name.

4. Unpublished but Available in the LEXIS Electronic Database.

- a. Full citation.

[Decision Name], B-[xxxxxx], 20xx U.S. Comp. Gen. LEXIS [xxx] (Dec. xx, 20xx).

- b. Short form citation.

[*Decision Name*], 20xx U.S. Comp. Gen. LEXIS [xxx], at *[page].

5. Unpublished and Not Available in the LEXIS Electronic Database.

- a. Full citation.

[Decision name], Comp. Gen. B-[xxxxxx], Dec. xx, 20xx.

- b. Short form citation.

[*Decision name*], Comp. Gen. B-[xxxxxx], at [page].

VI. Administrative Materials

A. Regulations, Directives, Instructions, and Orders.

1. Overview. Regulations, directives, instructions, and orders are cited as nonperiodic materials produced by institutional authors. While citation formats for administrative materials are generally found in *Bluebook Rule 14*, *Rule 14.2(d)* provides that “rules and regulations” by institutional authors are cited according to *Rule 15.1.3*. For that reason, the “large and small capitals” typeface (as in “U.S. DEP’T OF ARMY”) is used in citations to these sources. Citations to other administrative materials use the ordinary roman typeface (as in “U.S. Dept. of Navy”).

2. Regulations.

- a. Full citation.

[INSTITUTIONAL AUTHOR¹¹], REG. [xx], [REGULATION TITLE¹²] para.¹³ x (xx Dec. 20xx)
[hereinafter AR¹⁴ [xx]].

- b. Short form citation.

¹¹ For example, “U.S. DEP’T OF ARMY” or “U.S. DEP’T OF AIR FORCE.”

¹² Include “UPDATE” in the title, if applicable.

¹³ Use “para. [x]” or “sec. [x],” if applicable. To conform with *Bluebook Rule 15*, there is no comma between the title and the page, paragraph, or section reference.

¹⁴ Use “AFR,” “USAREUR Reg.,” or “TRADOC Reg.” if applicable.

AR [xx], *supra* note [x¹⁵], para. ¹⁶ x.

c. **Text.** In text, when referring to a specific Army regulation, refer to “*Army Regulation*” the first time used; “*AR*” thereafter.

3. Directives.

a. Full citation.

[INSTITUTIONAL AUTHOR], DIR. [xx], [DIRECTIVE TITLE] [page] (xx Dec. 20xx)
[hereinafter DOD DIR.¹⁷ [xx]].

b. Short form citation.

DOD DIR. [xx], *supra* note [x], at [page].

4. Instructions.

a. Full citation.

[INSTITUTIONAL AUTHOR], INSTR. [xx], [INSTRUCTION TITLE] [page] (xx Dec. 20xx)
[hereinafter AFI¹⁸ [xx]].

b. Short form citation.

AFI [xx], *supra* note [x], at [page].

5. Marine Corps Orders.

a. Full citation.

U.S. MARINE CORPS, ORDER [xx], [ORDER TITLE] [page] (xx Dec. 20xx)
[hereinafter MCO [xx]].

b. Short form citation.

MCO [xx], *supra* note [x], para. [x].

6. Changes, Interim Changes, or Supplements. If the citation refers to a change (“C”), interim change (“IC”), or supplement (“Supp.”), indicate that information parenthetically after the initial date of the source; for example, “(15 June 1998) (C1, 21 Aug. 2001).”

¹⁵ Always refers back to the first (and only) footnote number where the source was cited in full.

¹⁶ The “at” is only used with a page reference, not with “para.,” “sec.,” or other subdivision references.

¹⁷ Use “AFPD” if applicable.

¹⁸ Use “JCS INSTR.,” “SECNAV INSTR.,” or “OPNAV INSTR.” if applicable.

B. General Orders and Court-Martial Orders.

1. Full citation.

[Issuing Authority], Gen. Orders¹⁹ No. [xx] (xx Dec. 20xx) [hereinafter Gen. Order No. [xx]].

2. Short form citation.

Gen. Orders No. [xx], *supra* note [x], para. [x].

C. Forms.

1. Full citation.

[Issuing Authority], Form²⁰ [xx], [Form Title] (xx Dec. 20xx) [hereinafter Form [xx]].

2. Short form citation.

Form [xx], *supra* note [x], at [x].

D. Memorandums, Policy Letters, Messages and Operations Orders.

1. Memorandums.

a. Full citation.

Memorandum²¹, [Issuing Authority], to [Recipient], subject: [Memo Subject Line] (xx Dec. 20xx) [hereinafter [Subject]²² Memo].

b. Short form citation.

[Subject] Memo, *supra* note [x], para. [x].

2. Policy letters.

a. Full citation.

Policy Letter²³ [xx], [Issuing Authority], subject: [Policy Letter Subject Line] (xx Dec. 20xx) [hereinafter [Subject] Policy Letter].

¹⁹ Use "Gen. Court-Martial Order," "Special Court-Martial Order," or "Summary Court-Martial Order" if applicable.

²⁰ Use "DD Form," "DA Form," "AF Form," "OPNAV Form," "NAVMC Form," "OF," or "SF" if applicable.

²¹ Use "Command Policy Memorandum" if applicable.

²² An unambiguous reference to the subject can also be used.

²³ Use "Letter" if so designated by the issuing authority.

b. Short form citation.

[Subject] Policy Letter, *supra* note [x], para. [x].

3. Messages.

a. Full citation.

Message, [Zulu Date-Time Group²⁴], [Issuing Authority], subject: [Message Subject Line] [hereinafter [Subject] Message].

b. Short form citation.

[Subject] Message, *supra* note [x], para. [x].

4. Operations Orders.

a. Full citation.

[*Title of Section*], in [ISSUING AUTHORITY, TITLE OF OPERATIONS ORDER, ANNEX XX, TITLE OF ANNEX] [paragraph, if any] (Date of Order).

b. Short form citation.

[*Title of Section*], *supra* note [x], para. [x].

VII. Opinions of The Judge Advocate General²⁵

A. Full citation.

[Title of Opinion], Op. [Issuing Authority], No. [xx], para. [x], (xx Dec. 20xx) [hereinafter [Issuing Authority] Op. No. [xx]].

B. Short form citation.

[Issuing Authority] Op. No. [xx], *supra* note [x], para. [x].

VIII. Military Publications—Nonperiodic

A. Overview. Like military administrative materials, discussed in Part VI, nonperiodic military publications generally follow the citation conventions of *Bluebook Rule 15.1.3(a), Institutional Authors*. For that reason, the “large and small capitals” typeface (as in “U.S. MARINE CORPS”) is used in citations to these sources. Citations to other administrative materials use the ordinary roman typeface (as in “U.S.

²⁴ Format: [date-time[Z]] [month] [year], as in “250600Z Dec 2001.”

²⁵ For citations to the once important but now infrequently used digests of opinions of The Judge Advocate General, see THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, MILITARY CITATION 22-23 (6th ed. 1997).

Dept. of Air Force”). Examples of nonperiodic military publications include manuals, pamphlets, joint publications, service school publications, handbooks, and published reports.

B. Standard Citation Format.

[INSTITUTIONAL AUTHOR], [NONPERIODIC PUBLICATION TYPE²⁶] [xx], [TITLE OF PUBLICATION] (xx Dec. 20xx).

C. Specific Nonperiodic Publications.

1. DA Pamphlets.

- a. Full citation. U.S. DEP’T OF ARMY, PAM. [xx], [TITLE OF PAMPHLET] (xx Dec. 20xx) [hereinafter DA PAM. [xx]].
- b. Short form citation. DA PAM. [xx], *supra* note [x], para. [x].

2. Field Manuals.

- a. Full citation. U.S. DEP’T OF ARMY, FIELD MANUAL [xx], [TITLE OF FIELD MANUAL] (xx Dec. 20xx) [hereinafter FM [xx]].
- b. Short form citation. FM [xx], *supra* note [x], at [page].

3. Joint Publications.

- a. Full citation. JOINT CHIEFS OF STAFF, JOINT PUB. [xx], [PUBLICATION TITLE] (xx Dec. 20xx) [hereinafter JOINT PUB. [xx]].
- b. Short form citation. JOINT PUB. [xx], *supra* note [x], at [page].

4. TJAGSA Publications.

- a. Full citation.

[INSTITUTIONAL AUTHOR²⁷], THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, JA [xxx], [TITLE OF TJAGSA PUBLICATION] (xx Dec. 20xx) [hereinafter JA [xxx]].

- b. Short form citation. JA [xxx], *supra* note [x], at [page].

IX. Military Publications—Periodical

A. Overview. With one exception, periodicals published by the military follow the citation conventions found in *Bluebook Rule 16., Periodical Materials*. The exception adds the military author’s unabbreviated

²⁶ Such as “MANUAL,” “FIELD MANUAL,” “NAVAL PERSONNEL MANUAL,” “PAM.,” or “JOINT PUB.”

²⁷ Use “ADMINISTRATIVE & CIVIL LAW DEP’T,” “CONTRACT & FISCAL LAW DEP’T,” “CRIMINAL LAW DEP’T,” “INT’L & OPERATIONAL LAW DEP’T,” or “CENTER FOR LAW & MILITARY OPERATIONS” as applicable.

rank before their name in the citation to an article published in a military periodical, such as *The Army Lawyer*, the *Military Law Review*, the *Naval Law Review*, or the *Air Force Law Review*.

B. Full Citation for Journals and Magazines.

[Author's Name Including Unabbreviated Rank], [*Article Title*], [ABBREVIATED JOURNAL NAME²⁸], [Dec. 20xx], at [page²⁹].

C. Full Citation for Law Reviews.

[Author's Name Including Unabbreviated Rank], [*Article Title*], [vol] [ABBREVIATED JOURNAL NAME³⁰] [page] (20xx).

D. Short Form Citation for All Periodicals.

[*Author's Last Name*], *supra* note [x], at [page].

X. Internet Sources

A. Overview. Periodicals published by the military follow the citation conventions found in *Bluebook Rule 18, Electronic Media and Other Nonprint Sources*. As noted in *Bluebook Rule 18*, authors must seek traditional printed sources first, unless the source is obscure or unavailable in a printed source, or when citing to a webpage substantially improves access to the information contained in the traditional source. The specific rules and examples in the *Bluebook*, however, are not always clear or consistent. Internet citations should be formatted by analogy. Generally, an Internet citation should consist of the following components, some of which may not be available: author (if citing a document or article), institution maintaining the webpage (if not apparent from the Uniform Resource Locator (URL)), page or article title, date (date of the document or article, date the webpage was last updated, or the date you last visited the website), and the URL (the web address)³¹. Typeface conventions should correspond to the most analogous conventions for similar print sources. Since formats for webpages vary greatly, the rules of citation for on-line sources should be applied flexibly to maximize precision and clarity while avoiding awkward citations. As such, authors should provide sufficient detail about the actual website address used to access the information on the Internet.

B. Citation for Published Books (difficult to find or as a parallel source).

1. Full Citation.

²⁸ Use abbreviations found in *Bluebook Table T.14*, such as "ARMY LAW.," or the citation format provided by the source, as with "THE REPORTER," an Air Force journal.

²⁹ The page number indicates where the cited information is found, not the first page of the article (although the two may correspond).

³⁰ Use abbreviations found in *Bluebook Table T.14*, such as "A.F. L. REV." and "MIL. L. REV.," or the citation format provided by the source, as with "NAVAL L. REV."

³¹ Provide the complete URL if the address links directly to the document cited.

[FIRST AND LAST NAME OF AUTHOR, IF ANY], [TITLE OF BOOK] [page] (INSTITUTION MAINTAINING THE WEB PAGE), (Jan. XX, 20xx), *available at* [Web address] [hereinafter ABBREVIATED TITLE].

2. Short Citation.

AUTHOR, *supra* note x. - or - [ABBREVIATED TITLE], *supra* note x.

C. Citation for Published Periodic Sources (difficult to find or parallel source).

1. Full Citation.

[First and Last Name of Author, if any], [Title of Article], [PERIODIC PUBLISHER], Jan. XX, 20xx, at [page, if available], *available at* [Web address] [hereinafter *Abbreviated Title*].

2. Short Citation.

Author, *supra* note x. - or - *Abbreviated Title*, *supra* note x.

D. Citation for Webpages (unpublished Sources—available only on the Internet, without an analogue).

1. Full Citation.

[First and Last Name of Author, if any], [Institution Maintaining the Webpage], [Title of Webpage] (date, if available), [Web address] (last visited Jan. XX, 20xx, if no other date listed) [hereinafter *Abbreviated Title*].

North Atlantic Treaty Organisation, NATO's Role in Relation to the Conflict in Kosovo, <http://www.nato.int/kosovo/history.htm> (last visited July 30, 2004) [hereinafter NATO].

Military Rifles in the Age of Transition, Lee-Metford Mark I, Mark I* (1888) and Mark II (1890), <http://www.militaryrifles.com/Britain/Metford.htm> (last visited Oct. 20, 2004).

2. Short Citation.

[Institution], Title of Webpage, *supra* note x. - or - *Abbreviated Title*, *supra* note x.

XI. Miscellaneous Sources - Examples

A. Equal Employment Opportunity Commission decisions

Cadle v. Veneman, No. 01997044, 2002 EEOPUB LEXIS 3402, 5 (EEOC June 3, 2002).

B. International Sources

1. The Hague Convention

Hague Convention No. IV Respecting the Laws and Customs of War on Land art. 22, Oct. 18, 1907, 36 Stat. 2277, T.S. 539 [hereinafter Hague IV].

2. United Nations Security Council Resolutions

S.C. Res. 1160, U.N. SCOR, 53rd Sess., 3836th mtg., U.N. Doc. S/RES/1160 (1998).

3. Geneva Conventions

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 2, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter GWS]

C. Professional Experience. When the source or authority that supports an assertion, statement of fact, or position is based upon your own observation or experience, you may cite to your professional experience. This cite, however, should be used sparingly as it lends little credibility to the author's work.

This assertion is based on the author's recent professional experiences as the Regional Defense Counsel for Region I, United States Army Trial Defense Service, from 10 June 2002 to 15 July 2004 [hereinafter Professional Experiences].

Quick Reference: Bluebook Citation Formats

FULL CITATION	SHORT FORM CITATION	SHORT FORM RESTRICTIONS
		Note: <i>id.</i> may be used to refer to ANY source material.
Cases (Rule 10) United States v. Scheffer, 523 U.S. 303 (1998).	<i>Scheffer</i> , 523 U.S. at 305.	Use short form only if cited in full or in short form within the previous five footnotes (Within Five Rule).
Nat'l Ass'n Gov't Employees, Inc. v. Barrett, 968 F. Supp. 1564 (N.D. Ga. 1997).	<i>Barrett</i> , 968 F. Supp. at 1570.	NEVER use <i>supra</i> with cases!
Constitutions (Rule 11) U.S. CONST. art. I, § 9, cl. 2.	None	Do not use (other than "<i>id.</i>").
Statutes (Rule 12) National Defense Authorization Act for Fiscal Year 2000, 41 U.S.C. § 403(12)(E) (2000). or 41 U.S.C.S. § 403(12)(E) (LEXIS 2000). or 41 U.S.C.A. § 403(12)(E) (WEST 2000).	41 U.S.C. § 403(12)(E). 41 U.S.C.S. § 403(12)(E). 41 U.S.C.A. § 403(12)(E).	Follow <i>Within Five Rule</i>.
UCMJ art. 134 (2000).	UCMJ art. 134.	
Legislative Materials (Rule 13) H.R. 4897, 106th Cong. (2000).	H.R. 4897.	Follow <i>Within Five Rule</i>.
H.R. REP. NO. 106-162 (1999).	H.R. REP. NO. 106-162, at 316-17.	
123 CONG. REC. 17,147 (1977).	123 CONG. REC. 17,147.	
143 CONG. REC. H5865 (daily ed. July 28, 1997).	143 CONG. REC. H5865.	
Administrative and Executive Materials (Rule 14) Foreign Assets Control Regulation, 31 C.F.R. pt. 500 (2000).	31 C.F.R. pt. 500.	Follow <i>Within Five Rule</i>.
Application of Labor Laws to Government Acquisitions, 65 Fed. Reg. 14,403 (Mar. 16, 2000).	65 Fed. Reg. at 14,403.	
Exec. Order No. 13,089, 3 C.F.R. 193 (1998).	Exec. Order No. 13,089.	
Exec. Order No. 13,150, 65 Fed. Reg. 24,613 (Apr. 26, 2000).	Exec. Order No. 13,150.	
Non-Periodic Materials (Rule 15) MARK BOWDEN, BLACK HAWK DOWN (1999).	BOWDEN, <i>supra</i> note x, at 5.	None; the <i>supra</i> always refers back to the one footnote where the full cite appears.
2 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 14.7 (1999).	ROTUNDA & NOWAK, <i>supra</i> note x, § 14.9.	
DOCUMENTS ON THE LAWS OF WAR 195 (Roberts & Guelff eds., 3d ed. 2000).	DOCUMENTS ON THE LAWS OF WAR, <i>supra</i> note x, at 7.	
M. Cherif Bassiouni, <i>The Penal Characteristics of Conventional International Criminal Law</i> , in INTERNATIONAL CRIMINAL LAW AND PROCEDURE 27 (John Dugard & Christine van den Wyngaert eds., 1996).	Bassiouni, <i>supra</i> note x, at 28.	
Periodic Materials (Rule 16) Major Joanne P.T. Eldridge, <i>Stalking and the Military: A Proposal to Add an Anti-Stalking Provision to Article 134, Uniform Code of Military Justice</i> , 165 MIL. L. REV. 116 (2000).	Eldridge, <i>supra</i> note x, at 120 n.6.	None; the <i>supra</i> always refers back to the one footnote where the full cite appears.
Barton Gellman, <i>U.S. Spied on Iraq via U.N.</i> , WASH. POST, Mar. 2, 1999, at A1.	Gellman, <i>supra</i> note x, at A6.	

Unpublished Sources (Rule 17)

Article: Major Mary Bradley, Calling for a Truce on the Military Divorce Battlefield: A Proposal to Amend the USFSPA (2001) (unpublished LL.M. thesis, The Judge Advocate General's Legal Center & School, U.S. Army) (on file with The Judge Advocate General's Legal Center & School Library).

Interview: Interview with Patricia Keane, Editor-in-Chief, UCLA Law Review, in Los Angeles, Cal. (Mar. 2, 2000) [hereinafter Keane Interview].

Letters (Rule 17.1.3) Letter from MAJ Gary P. Corn, Student, 50th Judge Advocate Officer Graduate Course, to Charles J. Strong, Technical Editor, The Judge Advocate General's Legal Center & School, U.S. Army (Dec. 25, 2001) (on file with author).

Electronic Media [Internet Cites] (Rule 18)

Parallel Citation Source is available in a traditional print medium, but a parallel citation to an Internet source substantially improves access to the material. Parallel cite should be introduced by the explanatory phrase "available at."

Internet Only The source is found exclusively on the Internet (e.g., on-line journals and webpages). Format citation by analogy, when possible. The URL is appended directly to the end of the citation (not introduced by "available at").

Commercial Electronic Databases (Rule 18.1) [LEXIS and WESTLAW]

Unreported Case: Von Flowers v. Leean, No. 99-2999, 2000 U.S. App. LEXIS 9617, at *3 (7th Cir. May 3, 2000).

Statute: VA. CODE ANN. § 62-1 (LEXIS 2000).

Secondary Source: Bob Graham, *Milosovic: I Won't Be Taken Alive*, SUNDAY MIRROR, Apr. 1, 2001, at 4, available at [Parallel Internet Cite] LEXIS, All Sources: News.

Secondary Source: G. Robert Hillman, *Bush Offers Regrets for Loss of Chinese Pilot as U.S. Works for Release of Plane's Crew*, DALLAS MORNING NEWS, Apr. 6, 2001, LEXIS, News Group File. [Only via Internet]

Internet Sources (Rule 18.2)

Traditional source: Press Release, U.S. Small Business Administration, SBA and GSA Enter Into Partnership Agreement to Increase 8(a) [Parallel Internet Cite] Contracting Opportunities (June 13, 2000), available at <http://ftp.sbaonline.sba.gov/news/current00/00-58.pdf>.

Legislative source: 145 CONG. REC. H8876 (daily ed. Sept. 28, 1999) (statement of Rep. Gibbons), available at <http://thomas.loc.gov>. [Parallel Internet Cite]

On-line Journal: Michael Guth, *An Expert System for Curtailing Electric Power*, 3 W. VA. J.L. & TECH. 2, 7 (1999), [Only via Internet] <http://www.wvjolt.wvu.edu/v3i2/guth.html>.

Unpublished News Article: Noor Khan, *Clash with Taliban Suspects Kills 47*, ASSOCIATED PRESS NEWSWIRE, June 4, 2003, [Only via Internet] <http://story.news.yahoo.com/news>.

Internal Revenue Service, *New Tax Law Means Extra Cash for Some Families This Summer*, <http://www.irs.gov/newsroom/article/0,,id=109816,00.html> (last visited June 4, 2003) [hereinafter IRS Tax Law].

Website with no analogous traditional citation form: International Committee for the Red Cross, International Humanitarian Law, <http://www.icrc.org/ihl> (last visited Feb. 21, 2001) (listing state parties and signatories to the Geneva Conventions).

E-mail (Rule 18.2.9) E-mail from LTC Eugene Baime, Professor, The Judge Advocate General's Legal Center & School, U.S. Army, to COL Gregory Block, Academic Dean, The Judge Advocate General's School, U.S. Army (10 Aug. 2005) (on file with author).

Foreign Materials (Rule 20) (See Bluebook Table T.2 for Specific Countries)**International Materials (Rule 21) (See Bluebook Tables T.3 (Intergovernmental Organizations), T.4 (Treaty Sources), and T.11 (Geographical Terms))**

Treaties [official sources]: North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 2244, 34 U.N.T.S. 243, 246.
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Field art. 2, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

Treaty [unofficial source]: Montreal Protocol on Substances That Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan. 1, 1989).

Other International Agreement: Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts art. 46, June 8, 1977, U.N. Doc. A/32/144, Annex I [hereinafter Protocol II].

International Cases: Prosecutor v. Tadic, Case No. IT-94-1-AR72, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995).
Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27).

U.N. Charter: U.N. CHARTER pmbl.

U.N. Official Records: G.A. Res. 832, U.N. GAOR, 9th Sess., Supp. No. 21, at 19, U.N. Doc. A/2890 (1954).
S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. at 2, U.N. Doc. S/RES/827 (1993).
Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808, U.N. SCOR, 48th Sess., U.N. Doc. S/2507 (1993).

Managing a Claims Office

Colonel R. Peter Masterton*

Introduction

The claims office is the most visible section in an Army legal office. Nearly all Soldiers and civilian employees ship household goods, hold baggage, or a vehicle when they move to a new duty station. Most of these new arrivals contact the claims office, either to be counseled on the claims process, to report damage to their shipments, or to file a claim. A good experience at the claims office can improve morale; a bad experience can result in discontent and complaints. Because so many people have contact with the claims office, the service they receive can make or break the reputation of the entire legal office. For this reason it is critical for staff judge advocates to properly manage their claims offices.

Fortunately, most claims offices are run well by dedicated and experienced claims professionals. Even when a claims office is running well, however, it is important to monitor claims operations and to provide claims professionals the support they need. Even a well-run claims office can deteriorate through poor management or neglect.

The purpose of this article is to provide an overview of claims office operations and to provide staff judge advocates and other Army law office leaders tips on managing a claims office. Since no two claims offices are alike, the advice in this article should be tailored to suit each office's needs.

Office Management

Evaluating the Office

Before deciding how to manage a claims office, staff judge advocates should evaluate the office to determine its strengths and weaknesses. If the office is well run, staff judge advocates can provide general guidance and let the claims professionals manage the details. Offices with problems may require more active supervision.

Staff judge advocates should first speak with the attorney in charge of claims¹ and the senior claims examiner to get their opinion of office strengths and weaknesses. Many claims offices have experienced professionals that have worked in claims for a number of years; these people can provide invaluable insight on office operations. After speaking with the claims office leaders, staff judge advocates should review customer satisfaction surveys and speak with commanders and other community leaders to get an idea of how the public perceives the office. Staff judge advocates can also speak with claims professionals at the U.S. Army Claims Service (USACS), Fort Meade, Maryland—the individuals responsible for the technical supervision of claims offices.² The Chief of the Personnel Claims and Recovery Division can tell staff judge advocates how well their office processes personnel claims. The “Area Action Officers” in the Tort Claims Division can provide insight on how effectively an office processes tort and affirmative claims.³ Overseas staff judge advocates can speak with the head of the appropriate command claims service.⁴ In the European Command this person is the Chief of the USACS, in Mannheim, Germany; in the Pacific Command this is the Commander of the USACS, in Seoul, Korea.⁵ In addition, staff judge advocates should review the most recent office application for The Judge Advocate General's Excellence in Claims Award.⁶ Whether the office won the award or not, the application will provide details on the office's strengths and weaknesses.

* Presently assigned as Military Judge, 5th Judicial Circuit, Wuerzburg, Germany. Written while assigned as Chief, U.S. Army Claims Service, Europe.

¹ Either a judge advocate or a Department of Army civilian attorney may be delegated the authority to approve payment of claims. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS para. 1-5g(1) (1 July 2003) [hereinafter AR 27-20]; U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 1-6 (8 Aug. 2003) [hereinafter DA PAM. 27-162].

² AR 27-20, *supra* note 1, para. 1-9. The USACS provides technical supervision over all claims offices. *Id.* para. 2-4.

³ *Id.*; DA PAM. 27-162, *supra* note 1, para. 2-4.

⁴ Command claims services are responsible for technical oversight of claims within certain geographic areas overseas. *See* AR 27-20, *supra* note 1, para. 2-3; DA PAM. 27-162, *supra* note 1, para. 2-3.

⁵ DA PAM. 27-162, *supra* note 1, para. 1-1a(1).

⁶ This is an annual award that provides special recognition to claims offices that have performed exceptionally well during a particular fiscal year. *See* DA PAM. 27-162, *supra* note 1, para. 1-17. Applications for the award are submitted electronically to the USACS at Fort Meade, Maryland. The USACS announces the award application process on the Claims Forum of JAGCNet, which authorized users may access through <https://www.jagenet.army.mil> (follow the “Forums” link). These announcements are usually posted in January.

Standard Operating Procedure (SOP)

Each claims office should have an updated SOP.⁷ The SOP should contain sufficient detail on office procedures to enable new personnel to quickly learn their jobs. However, the SOP should not be so lengthy that it is never taken off the shelf. A two or three page summary of office procedures with enclosures containing sample claims forms and similar documents should be sufficient.

Staff judge advocates should ensure that the claims SOP has been updated in the last year.⁸ Updating the SOP gives claims personnel the opportunity to review their procedures to ensure they still make sense. This update is especially important when the installation receives new missions or Army-wide claims policies or transportation procedures change. Regular reviews of the office SOP also ensure that new claims personnel receive the most up-to-date guidance when they arrive.

Office Hours

Staff judge advocates should ensure that the claims office's hours of operation meet the needs of the local military community. Office hours should give customers convenient access to claims personnel and claims personnel sufficient uninterrupted time to process claims.

Most claims offices find that a combination of appointments and walk-in services is best. This combination allows claimants the option of scheduling an appointment in advance to minimize the amount of time they spend at the claims office or showing up unannounced during walk-in hours. Claims offices should be closed during a portion of the week to permit claims personnel uninterrupted time to adjudicate the more complex claims that they have received. Many claims offices close one morning each week to provide this uninterrupted time. Keeping the office open all day every day will not do any good if claims personnel never have the time to adjudicate the claims they receive.⁹

Claims personnel should always have the flexibility to see claimants with true emergencies immediately, even if they do not come in during normal office hours. Examples of true emergencies include claimants who are nearing the end of the seventy day deadline to turn in their Department of Defense Form 1840R¹⁰ (DD Form 1840R) (the pink form that notifies the carrier of damage during a government-sponsored move) or the two-year statutory deadline to turn in their claim.

Claims Offices Co-located With Legal Assistance Offices

Many claims offices are co-located with the installation legal assistance office. This may save space and reduce office personnel by allowing the claims and legal assistance offices to share a waiting area and a receptionist. Co-location, however, can create ethical problems unless the receptionist is properly trained.

Claims personnel represent the government; they are not permitted to represent individual claimants.¹¹ Legal assistance attorneys, on the other hand, can enter into an attorney-client relationship with customers who visit their office.¹² Claimants may mistakenly believe that claims examiners or attorneys "represent" them and that their conversations are protected by the attorney-client privilege. Staff judge advocates should ensure that procedures are implemented to avoid this misperception.

When the claims and legal assistance offices share a waiting area and a receptionist, each office should use separate sign-in sheets. The receptionist should ensure that claimants are not confused about the role of claims office personnel. Claims examiners and attorneys who meet with claimants should reinforce this role by explaining that they are not permitted to form attorney-client relationships with claimants.

⁷ See DA PAM. 27-162, *supra* note 1, para. 2-6; R. Kathie Zink & Lieutenant Colonel R. Peter Masterton, Personnel Claims Note: *Managing Personnel Claims*, ARMY LAW., Aug. 1999, at 74.

⁸ One of the criteria of The Judge Advocate General's Excellence in Claims Award is having an office Standard Operating Procedure (SOP) that has been updated in the last year. See *supra* note 6.

⁹ Zink & Masterton, *supra* note 7, at 77.

¹⁰ U.S. Dep't of Defense, Form 1840R, Notice of Loss or Damage (Jan. 1988).

¹¹ U.S. DEP'T OF ARMY, REG. 27-26, LEGAL SERVICES, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS R. 1.13 (1 May 1992).

¹² *Id.* R. 1-13(g).

Staff judge advocates should review the claims filing system to ensure it is efficient and user-friendly.¹³ Personnel claims, affirmative claims, and tort claims should all be filed separately since the processing of these claims is very different.¹⁴ To the extent possible, claims personnel should return all claims files to the filing cabinets at the end of the day; leaving files sitting on desks can lead to lost claims. The labels on the files should clearly identify the claim number and the claimant's name. The labels on the filing cabinet should clearly identify the type of claims filed and what stage the claims are in (such as "Personnel Claims Pending Adjudication").

Personnel claims should be filed based on the stage of the claim. For example, claims pending adjudication should be filed in one section while claims pending carrier recovery should be filed in another section. Claims pending adjudication should be further separated into small claims (those that can be settled for \$1,000 or less) and large claims.¹⁵ Create another section for claims awaiting documentation. Claims pending carrier recovery should be filed based on where the recovery action will be completed. Claims pending local recovery should be filed in one area while claims that need to be forwarded to higher headquarters for centralized recovery should be filed in another area.¹⁶ Claims personnel should hold claims that were entered into the old version of the personnel claims computer database for thirty days before forwarding them to the USACS for centralized recovery.¹⁷ Claims completed under the new personnel claims computer database should be forwarded for centralized recovery as soon as the appropriate copies and documents are prepared and the file has been organized as required.¹⁸

Claims personnel should file tort claims based on the type of claim involved or alphabetically. Files that are more than one-half inch thick should be filed in a six-sided file folder. The claim should be separated into the following sections within the folder: (1) chronology, (2) claim form and allied papers, (3) correspondence, (4) research, (5) liability, and (6) damages.¹⁹ If a tort claim is above the claims office's payment authority, claims personnel should periodically forward a mirror file of the claim documents to the USACS or appropriate command claims service overseas and annotate the master file when documents are forwarded.²⁰ In addition, the significant documents related to the claim should be scanned and uploaded in the Tort and Special Claims computer database.²¹

Claims personnel should file affirmative claims based on the type of claim involved and the current status of the claim. For example, medical care recovery claims should be filed separately from property damage claims, unless they arise from the same incident. Claims that will be compromised or waived in an amount above the office's authority must be forwarded to the USACS or appropriate command claims service.²² All affirmative claims should be entered into the affirmative claims computer database.²³

Staff judge advocates should ensure that claims-related information is not released to unauthorized personnel.²⁴ Requests for claims-related information under the Freedom of Information Act²⁵ and the Privacy Act²⁶ should be carefully

¹³ Zink & Masterton, *supra* note 7, at 77.

¹⁴ Compare DA PAM. 27-162, *supra* note 1, chs. 3-9, 10, 12 (tort claim procedures), *with id.* ch. 11 (personnel claim procedures) and *id.* ch. 14 (affirmative claim procedures).

¹⁵ AR 27-20, *supra* note 1, para. 11-10b.

¹⁶ Zink & Masterton, *supra* note 7, at 77.

¹⁷ See AR 27-20, *supra* note 1, para. 11-32 (requiring recovery files to be held for thirty days prior to forwarding for centralized recovery). The rationale for this rule is that the old version of the personnel claims computer database does not permit claims to be accepted by the USACS immediately because uploads are sent on a monthly basis from the field.

¹⁸ The rationale for holding files 30 days no longer exists under the new personnel claims computer database. See *infra* notes 31-33 and accompanying text for a description of the new personnel claims computer database.

¹⁹ DA PAM. 27-162, *supra* note 1, para. 2-14.

²⁰ *Id.* para. 2-15.

²¹ Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, <https://www.jagcnet.army.mil>. See *infra* notes 34-37 and accompanying text.

²² Generally, the head of an area claims office (ACO) may settle a claim for the full amount asserted regardless of the amount. The head of an ACO may compromise, terminate, or waive affirmative claims asserted for \$50,000 or less. AR 27-20, *supra* note 1, para. 14-4c; DA PAM. 27-162, *supra* note 1, para. 14-4.

²³ Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, available at <https://www.jagcnet.army.mil>. See *infra* notes 38-40 and accompanying text.

²⁴ AR 27-20, *supra* note 1, para. 1-19b(1).

scrutinized and promptly answered.²⁷ Requests from claimants for information in personnel claims files are usually granted. Requests from claimants for information in tort claims files are granted less frequently; attorney work product in such files is often not released.²⁸ Requests from third parties are also less likely to be granted, as a claimant's right to privacy often outweighs the need to release information.²⁹ Requests for claims information that is not releasable should be forwarded to the Commander of the USACS, who is the initial denial authority for such requests.³⁰ If claims files contain documents produced by other agencies (such as police reports), requests for these documents should be forwarded to the agency involved.

Automation

The USACS has fielded a number of computer programs to help process claims and track claims expenditures. Staff judge advocates should ensure that their claims offices are properly using these programs.

Personnel Claims Computer Database

In 2005, a new computer claims program is scheduled to be fielded that will enable Soldiers and Army civilian employees to file personnel claims through the Internet.³¹ The new program should revolutionize the way claims are processed, making the process much simpler for claimants. Claimants, however, will still have the option of filing their claims in person or by mail.

The program will be accessible from any computer with internet access. No special equipment or training will be required; the program contains instructions that guide claimants through the process of filing a claim. Soldiers and civilian employees will still be required to complete and turn in DD Form 1840R (the pink form that notifies the carrier of loss and damage to the shipment that was not noticed at delivery) within seventy days of the arrival of their household goods and hold baggage shipments. The new program, however, will allow Soldiers and civilian employees to complete and turn in the form through the internet. No special scanning equipment will be required; the program provides instructions for entering the requested information directly into a computer-generated copy of the form. Soldiers and civilian employees will still have the option of delivering a hard copy of this form to their nearest claims office. All of the current claims rules will continue to apply. Soldiers and civilian employees will still have two years after discovery of property loss or damage to file a claim.³²

The new database will replace the former Personnel Claims Management Program that was used to track the number of claims paid by each field claims office and the amounts paid. Tracking the numbers of claims and amounts paid is important because all personnel claims are paid from a central fund managed by the USACS.³³

Tort and Special Claims Database

Tort claims are tracked through the Tort and Special Claims Database.³⁴ This database enables supervisory claims offices and the USACS to monitor the investigation, negotiation, and payment of tort claims.

²⁵ 5 U.S.C. § 552 (2000); *see also* U.S. DEP'T OF ARMY, REG. 25-55, INFORMATION MANAGEMENT: RECORDS MANAGEMENT, THE DEP'T OF THE ARMY FREEDOM OF INFORMATION ACT PROGRAM (Nov. 1, 1997) [hereinafter AR 25-55].

²⁶ 5 U.S.C. § 552a; *see also* U.S. DEP'T OF ARMY, REG. 340-21, OFFICE MANAGEMENT, THE ARMY PRIVACY PROGRAM (5 July 1985).

²⁷ Requests for information under the Freedom of Information Act must be answered within ten working days. AR 25-55, *supra* note 25, para. 1-503.

²⁸ Requests from a claimant should be considered under both the Freedom of Information Act and the Privacy Act. AR 27-20, *supra* note 1, para. 1-19b(2)(a). *See* Personnel Claims Note, *Personnel Claims Files Releasable Under the Privacy Act*, ARMY LAW., Jan. 1998, at 135.

²⁹ AR 27-20, *supra* note 1, para. 1-19b(3)(c).

³⁰ *Id.* para. 1-19b(5).

³¹ *See* Posting of Chief Warrant Officer Three Larry Sexton to JAGCNet Claims Forum, subject: New PCMS (Last Minute Information), <http://www.jagcnet.army.mil/FORUMS> (Aug. 12 2005).

³² *See* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New PCMS—Training Schedule, <https://www.jagcnet.army.mil/FORUMS> (Feb. 15, 2005). AR 27-20, *supra* note 1, para. 11-7.

³³ *See* DA PAM. 27-162, *supra* note 1, para. 13-11.

³⁴ Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, <https://www.jagcnet.army.mil>.

The database permits the upload of claims forms, police reports, and similar documents, making it simpler to share these documents between the local claims office, supervisory offices, and the USACS. The Standard Form 95,³⁵ documentary evidence supporting a claim, letters to claimants, and other important documents must be uploaded to the database as they are submitted.³⁶ Uploading these documents, however, does not relieve field claims offices of the requirement to create mirror files.

Currently, medical records may not be uploaded to the database because the requirements of the Health Insurance Portability and Accountability Act are not satisfied.³⁷

Affirmative Claims Database

The Affirmative Claims Management Program tracks affirmative claims.³⁸ All affirmative claims, including potential claims, should be logged into this computer database.³⁹ This database enables claims personnel and supervisory claims offices to monitor the collection of claims.⁴⁰ This database also can warn claims personnel of the claims that are approaching the statute of limitations and claims that will need to be referred for litigation.

Claims Forum

Claims personnel should check the Claims Forum on JAGCNet every day.⁴¹ The Claims Forum contains e-mails from claims professionals around the world and is monitored by the USACS. The Claims Forum enables claims professionals to ask questions and obtain up-to-date guidance on critical claims issues.⁴²

Publicity

Staff judge advocates should ensure their claims personnel provide claims information to the local military community.⁴³ Most offices do this by publishing articles in the local military newspaper. Many offices also have a website that contains claims information.⁴⁴ Other offices distribute claims information to the community through flyers, newsletters, or by e-mail. These articles, flyers, and information papers should contain basic information such as claims office hours and locations. They also should contain information on the rules for the most common claims, such as shipment claims, property loss at quarters, vehicle damage, and tort claims.⁴⁵

Before the summer moving season begins, a claims office should publish an article providing advice on shipment claims. The article should include advice on photographing or videotaping property to document its pre-move condition, tips on handling jewelry and other high-value items that are easily stolen, and advice on reviewing the property inventory. After the summer moving season, a claims office should publish a follow-on article providing advice on turning in the DD Form

³⁵ U.S. Dep't of Justice, Standard Form 95, Claim for Damage, Injury, or Death (nd).

³⁶ Posting of George R. Westerbeke to JAGCNet Claims Forum, subject: Scanning Key Tort Claim Documents: Now Required, <http://www.jagcnet.army.mil/FORUMS> (Feb. 17, 2004); Posting of George R. Westerbeke to JAGCNet Claims Forum, subject: Uploading Scanned Documents to the Torts Database, <https://www.jagcnet.army.mil/FORUMS> (May 24, 2004).

³⁷ 42 U.S.C. § 201 (2000); *see also* 45 C.F.R. pts. 160 and 164 (2004).

³⁸ Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, *available at* <https://www.jagcnet.army.mil>.

³⁹ DA PAM. 27-162, *supra* note 1, para. 14-19c.

⁴⁰ This is especially important when claims personnel want to compromise, waive, or terminate an affirmative claim above their settlement authority. AR 27-20, *supra* note 1, para. 14-4.

⁴¹ Authorized users can access the Claims Forum at <https://www.jagcnet.army.mil/FORUMS>.

⁴² One of the criteria for the Judge Advocate General's Excellence in Claims Award is logging onto the Claims Forum on a daily basis. *See supra* note 6.

⁴³ Zink & Masterton, *supra* note 7, at 77; DA PAM. 27-162, *supra* note 1, para. 11-21d.

⁴⁴ *See, e.g.*, Office of the Staff Judge Advocate, Headquarters, XVIII Airborne Corps and Fort Bragg, Claims, <http://www.bragg.army.mil/SJA/Claims.htm> (last visited Aug. 29, 2005); Office of the Staff Judge Advocate, Fort Carson, Claims Division, <http://www.carson.army.mil/LEGAL/FortCarsonClaims.htm> (last visited Aug. 29, 2005).

⁴⁵ One of the criteria of the Judge Advocate General's Excellence in Claims Award is publishing claims information to the local community. *See supra* note 6.

1840R (the pink form that provides notice to the carrier of loss or damage after delivery) and tips on filing a claim. In areas where monsoons or hurricanes are prevalent, claims offices should publish articles advising the community how to protect property from these hazards (such as keeping refrigerators shut when the power goes out) and the rules for documenting and filing a claim if these efforts fail (such as photographing spoiled food before disposing of it). In areas subject to blizzards and ice storms, offices should publish similar articles on these hazards.

Briefings

Claims personnel should regularly brief incoming and outgoing personnel on claims issues.⁴⁶ These briefings should provide not only basic information on how to file a claim, but should also include tips on protecting property and documenting ownership to make it easier to file a claim if the property is lost or damaged.⁴⁷

Claims professionals should participate in in-processing briefings to ensure incoming personnel receive claims office phone numbers and are familiar with the requirements for reporting loss or damage to personal property shipments. In particular, incoming personnel should be advised of the importance of turning in the DD Form 1840R (the pink form that notifies the carrier of damage during a government-sponsored move) within seventy days of delivery of household goods or hold baggage.⁴⁸ If an installation is subject to flooding in the summer or ice storms in the winter, the briefings should include information on how to protect property from these hazards and how to document loss or damage.

Claims professionals should participate in out-processing briefings as well. Briefings for outgoing personnel should include tips on documenting ownership and condition of personal property prior to shipment by photographing or videotaping it. The briefings should also include tips on what not to ship as household baggage or hold baggage. For example, personnel should be advised to hand-carry or mail receipts and other evidence of ownership and to hand-carry jewelry, cash and other items that are easily stolen.⁴⁹

Claims professionals should also contact the local transportation office to ensure that they are providing adequate claims information to incoming and departing personnel. The transportation office should be provided with updated claims flyers that include the telephone number of the claims office.

Fiscal Integrity

It is essential for staff judge advocates to check on the fiscal controls used in the claims office.⁵⁰ The claims office routinely deals with large amounts of money. Checks routinely come into the claims office and vouchers authorizing payment of claims are routinely sent out of the office. Staff judge advocates should monitor how checks are accounted for and secured and how vouchers are prepared and tracked.

Most claims offices receive checks from two sources: carrier recoveries and affirmative claims. When a claims office pays a personnel claim for shipment loss or damage, the office will initiate a recovery action against the carrier responsible for the loss or damage.⁵¹ While the USACS handles some recovery actions centrally, most large claims offices handle recoveries under \$1,000 and recoveries involving local moves.⁵² When government personnel are injured through another's negligence, the claims office will assert an affirmative claim against the negligent party for the cost of government provided medical care to the injured person and for lost wages.⁵³ When government property is damaged through negligence, the

⁴⁶ Zink & Masterton, *supra* note 7, at 78.

⁴⁷ One of the criteria of the Judge Advocate General's Excellence in Claims Award is providing briefings to incoming and outgoing personnel. *See supra* note 6.

⁴⁸ DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

⁴⁹ *See* DA PAM. 27-162, *supra* note 1, para. 11-15 (explaining that claimants should be briefed that "jewelry and other small expensive items should be hand-carried").

⁵⁰ *See id.* para. 11-21i; Zink & Masterton, *supra* note 7, at 79.

⁵¹ AR 27-20, *supra* note 1, para. 11-23.

⁵² *See* DA PAM. 27-162, *supra* note 1, para. 11-32a; Posting of Joseph Goetzke, to JAGCNet Claims Forum, subject: New Delegation of Recovery Claim Authority, <https://www.jagcnet.army.mil/FORUMS> (June 22, 2001).

⁵³ AR 27-20, *supra* note 1, para. 14-10.

claims office will also assert an affirmative claim against the person responsible or his or her insurance company.⁵⁴ In each of these cases, the claims office may receive checks to settle these actions.⁵⁵ Checks from carrier recoveries and affirmative claims should be promptly locked in a safe or other locked container; they should not be left unsecured in the claims files.⁵⁶ Checks should be deposited or returned within thirty days. The claims office SOP should describe the manner of securing and depositing checks and staff judge advocates should track compliance with these procedures.

All claims offices prepare vouchers for the payment of claims within their settlement authority. These payments must be properly tracked on the appropriate computer database to ensure that there are sufficient funds to make payment. The USACS centrally manages the accounts used to pay personnel claims and most tort claims.⁵⁷ Staff judge advocates should ensure that their claims offices keep track of their claims expenditures to make certain that there are sufficient funds to pay claims.

Because of the importance of fiscal integrity, staff judge advocates should periodically conduct audits to ensure the claims office is handling checks and funds properly. Periodically inspect claims files and the office safe to ensure that checks are properly safeguarded. Review claims reports and periodically ask for the status of the office Claims Expenditure Allowance⁵⁸ to ensure that the office is properly tracking claims and updating the USACS on the expenditure of funds.

Surveying Performance

Staff judge advocates should ensure that their claims office obtains feedback from customers.⁵⁹ The Personnel Claims Act is designed to improve the morale of Soldiers and civilian employees.⁶⁰ If most people who file personnel claims are dissatisfied with their experience at the claims office, this statutory intent is not fulfilled. While a claims office cannot satisfy every claimant, the office should make every effort to provide good service. Being courteous, properly explaining the claims process, and paying claims promptly will go a long way to satisfy most customers.

Claims offices should routinely provide claimants with customer satisfaction surveys and a simple way to return them—either in a drop-box located in the claims office or through the mail. The claims office can also participate in the automated Interactive Customer Evaluation program, a computer-based customer satisfaction survey that covers all Army installations.⁶¹ In addition, the claims judge advocate should periodically call claimants to determine if they were satisfied with their visit to the claims office. These telephone calls may reveal issues that other types of surveys would never uncover.

Training

All claims professionals should attend training to enhance their knowledge of the claims regulations and improve their proficiency in processing different types of claims and recovery actions. The USACS offers a number of superb courses specifically designed for Army claims professionals. These courses are announced on the Claims Forum of JAGCNet.⁶²

For claims professionals overseas, regional command claims services periodically host local claims conferences. The USACS, Europe, offers a weeklong claims conference every year (usually held in the late fall) and a three-day workshop for

⁵⁴ *Id.* para. 14-7.

⁵⁵ DA PAM. 27-162, *supra* note 1, para. 14-19b.

⁵⁶ AR 27-20, *supra* note 1, para. 11-24b(3).

⁵⁷ DA PAM. 27-162, *supra* note 1, para. 13-11.

⁵⁸ The Claims Expenditure Allowance is a financial target that the USACS issues to each field claims office on a monthly basis. AR 27-20, *supra* note 1, para. 13-12.

⁵⁹ Zink & Masterton, *supra* note 7, at 79.

⁶⁰ *See infra* note 72.

⁶¹ *See* Interactive Customer Evaluation, <http://ice.disa.mil/index.cfm>.

⁶² DA PAM. 27-162, *supra* note 1, para. 1-15a(2). Authorized users can access the Claims Forum of JAGCNet through <https://www.jagcnet.army.mil> (follow the “Forums” link). Information on such courses is also available at the USACS Internet site, <http://www.jagcnet.army.mil/JAGCNETINRANET/JAGCDATABASES/CLAIMS/USARCS.NSF>.

new claims professionals twice a year.⁶³ The U.S. Armed Forces Claims Service, Korea, offers a weeklong conference for experienced claims professionals every year (usually held in the early fall).⁶⁴

Office Facilities and Resources

Staff judge advocates should ensure that their claims offices have adequate facilities and resources to accomplish the mission.⁶⁵ The office should be easily accessible to the Soldiers and civilian employees it supports and have a professional appearance and adequate space. In addition, office personnel will need the necessary hardware and software—computers, color printers, digital scanners, and digital cameras—to run the claims software and to investigate claims.

The Judge Advocate General's Excellence in Claims Award

Every claims office should apply for the Judge Advocate General's Excellence in Claims Award.⁶⁶ Even if the office does not win the award, the application process will give claims professionals and staff judge advocates an excellent picture of the strengths and weaknesses of the office.

The award application process and the criteria for grading award applications are announced annually on the Claims Forum of JAGCNet.⁶⁷ The criteria ensure that claims offices are providing good service to claimants, properly investigating claims, promptly adjudicating and paying claims, properly using claims computer programs, providing claims information to the local community, and preparing for disaster claims operations.

The award measures an office's performance from October through September of the prior fiscal year. The application is usually due on February of the following year and must be entered electronically using the application available on JAGCNet.⁶⁸ The award is very competitive; only a small percentage of the offices that apply will receive the award.⁶⁹

Personnel Claims

The majority of claims processed by an Army legal office are personnel claims.⁷⁰ Personnel claims are paid under the Personnel Claims Act, which permits military personnel and civilian employees compensation for loss or damage to their property sustained incident to service.⁷¹ The Act is designed to improve morale of Soldiers and civilian employees.⁷² Staff judge advocates should ensure that their claims office is satisfying this statutory intent by adjudicating and paying personnel claims promptly and informing claimants of the rationale for payments.

⁶³ See United States Army Claims Service Europe, <https://claimseurope.hqusareur.army.mil> (providing information on all courses offered by the USACS, Europe).

⁶⁴ See United States Armed Forces Claims Service, Korea, <http://8tharmy.korea.army.mil/ClaimsSvc> (providing information on all courses offered by the USACS, Korea).

⁶⁵ Zink & Masterton, *supra* note 7, at 80.

⁶⁶ See DA PAM. 27-162, *supra* note 1, para. 1-17.

⁶⁷ The application process for the fiscal year 2004 award was announced on the Claims Forum on 11 January 2005. Posting of Chief Warrant Office Three Larry W. Sexton to JAGCNet Claims Forum, subject: The Judge Advocate General's Excellence in Claims Award for FY 04, <https://www.jagcnet.army.mil/FORUMS> (Jan 11, 2005). The criteria for grading award applications were announced on 1 February 2005. See Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Excellence in Claims Awards—PC&R Scoring, <https://www.jagcnet.army.mil/FORUMS> (Feb. 1, 2005); see also Claims Management Note, *The Judge Advocate General's Excellence in Claims Award*, ARMY LAW., Nov. 1998, at 68.

⁶⁸ The link to get to the electronic award application is contained in the award announcement posted on the Claims Forum of JAGCNet.

⁶⁹ See Lieutenant Colonel R. Peter Masterton, *Winners of the 1998 Excellence in Claims Award*, ARMY LAW., Sept. 1999, at 40.

⁷⁰ Zink & Masterton, *supra* note 7, at 74.

⁷¹ 31 U.S.C. § 3721 (2000).

⁷² Zink & Masterton, *supra* note 7, at 80.

Some personnel claims must be reviewed personally by the staff judge advocate.⁷³ When reviewing these claims the staff judge advocate should ensure that the office properly analyzed and paid the claim. This review provides an excellent opportunity to ask claims personnel questions about the claim and examine their adjudication procedures.

Payable Claims

The Personnel Claims Act limits payment of claims to \$40,000. The limit, however, is raised to \$100,000 for claims arising from an emergency evacuation or from “extraordinary circumstances.”⁷⁴ The statute requires substantiation of the claim, and a determination that the employee’s possession of the property was “reasonable and useful under the circumstances,” and that the loss was not caused by a negligent or wrongful act by the claimant.⁷⁵ The claim must also be presented in writing within two years after it accrues.⁷⁶

The term “incident to service” is defined in *Army Regulation 27-20* and *Department of Army Pamphlet 27-162*.⁷⁷ Chapter 11 of both of these publications defines several types of property losses that are considered “incident to service” and, therefore, payable under the Personnel Claims Act.⁷⁸ The most common type of property loss incident to service is a loss occurring during a government-sponsored shipment.⁷⁹ Another common type of personnel claim involves loss of property stored at government quarters or other authorized places resulting from “fire, flood, hurricane, or other unusual occurrence,” or “theft or vandalism.”⁸⁰

Vehicle losses at government quarters or on a military installation are also considered “incident to service” if the claimant can prove that the loss actually occurred at government quarters or on the installation.⁸¹ Vehicle losses off the installation are only payable if claimants can prove that the loss is clearly related to their military service.⁸² The Army may also pay claims for vehicle losses if the Soldier or civilian employee used the vehicle for military duty.⁸³ Special rules apply to losses to rental cars used for official duty. Although these losses are not payable under the Personnel Claims Act,⁸⁴ the rental car company may be responsible for covering the loss if the vehicle was rented under the government central contract.⁸⁵ Special exclusions apply in each of these situations, so it is important to carefully read both the claims regulation and pamphlet before concluding that a claim is payable.

Shipment Losses and the DD Form 1840R

Staff judge advocates should verify that incoming personnel are informed of the importance of the DD Form 1840R. Claimants are required to submit this document to the claims office within seventy days of receipt of a household goods or hold baggage shipment.⁸⁶ If they fail to do so, they may not be able to recover for their loss or damage.⁸⁷

⁷³ Denials of personnel claims, waivers of maximum allowances, and requests for reconsideration must all be acted on personally by the head of an Area Claims Office. See AR 27-20, *supra* note 1, para. 11-2f. The head of an ACO is the senior judge advocate in the office. *Id.* para. 1-5e.

⁷⁴ 31 U.S.C. § 3721(b)(1); see also Personnel Claims Note, *Increase in Amount Payable Under the Personnel Claims Act*, ARMY LAW., Oct. 1996, at 47.

⁷⁵ 31 U.S.C. § 3721(f).

⁷⁶ *Id.* § 3721(g).

⁷⁷ AR 27-20, *supra* note 1, para. 11-5; DA PAM. 27-162, *supra* note 1, para. 11-5.

⁷⁸ *Id.*

⁷⁹ See generally AR 27-20, *supra* note 1, para. 11-5e.

⁸⁰ *Id.* para. 11-5d.

⁸¹ *Id.* para. 11-5h(3); see Personnel Claims Note, *Policy Changes to be Published in New Regulation*, ARMY LAW., Feb. 1998, at 54.

⁸² For example, evidence that a Soldier’s vehicle is vandalized by being spray painted with the phrase “soldiers kill babies,” may be sufficient to demonstrate that the vandalism was caused because of the Soldier’s association with the military. See AR 27-20, *supra* note 1, para. 11-6h(5); DA PAM. 27-162, *supra* note 1, para. 11-5h(4); see also Claims Report, *Vehicle Theft and Vandalism Off-Post*, ARMY LAW., Feb. 1999, at 49.

⁸³ AR 27-20, *supra* note 1, para. 11-5h(1); Claims Report, *Use of Privately Owned Vehicles (POVs) for the “Convenience of the Government,”* ARMY LAW., Feb 1999, at 49.

⁸⁴ 31 U.S.C. § 3721 (2000).

⁸⁵ The centralized contract is managed by the Surface Deployment and Distribution Command. Additionally, vehicles rented using a government VISA card are covered by insurance. See generally Foreign Tort Claims Note, *Damage to Rental Cars*, ARMY LAW., Dec. 2002, at 30; Foreign Tort Claims Note, *Government Owned Vehicles Collide With Rental Cars—Who Pays for the Damage?*, ARMY LAW., Sept. 2004, at 53.

⁸⁶ DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

When household goods or hold baggage shipments are delivered, the carrier must provide a DD Form 1840⁸⁸ (usually pink in color) to the person receiving the shipment. The reverse side of this form is the DD Form 1840R, which is used to list damage or loss discovered after delivery.⁸⁹ The DD Form 1840R contains bold letters stating that it must be turned in to the claims office within seventy days of delivery.⁹⁰ The claims office has another five days to dispatch the form to the carrier.⁹¹ When the claims office pays a claim for loss or damage during shipment, it attempts to recover the amount paid to the claimant from the carrier responsible for the loss.⁹² If the form is not dispatched to the carrier within seventy-five days, the carrier is not liable for the loss.⁹³

If the claimant fails to list lost or damaged items on the DD Form 1840R, or fails submit the form within the required time period, the claims office ordinarily will not pay for the lost or damaged items involved due to inadequate proof that the items were actually lost or damaged in shipment.⁹⁴ There are limited exceptions authorizing the claimant to submit the form late, such as hospitalization or temporary duty for a significant period of the notice period.⁹⁵

Claims Instructions

Staff judge advocates should ensure that the written instructions provided to claimants are clear and user-friendly.⁹⁶ For shipment-related claims, instructions are typically given to claimants upon submission of the DD Form 1840R. For other claims, written instructions are provided by claims personnel when the claimant initially contacts the claims office. If the claims office has an internet website, claims personnel should ensure instructions are posted on the site.

The instructions should contain all of the necessary forms to file a personnel claim. These forms include the DD Form 1842,⁹⁷ which is the signed assertion of a personnel claim, and the DD Form 1844,⁹⁸ which contains a list of all of the property lost or damaged.⁹⁹

For shipment related claims, the instructions should tell claimants to submit all of the shipment documents in their possession, such as the DD Form 1840R, which is the notice of loss or damage made to the carrier, and the property inventory and the Government Bill of Lading.¹⁰⁰ The instructions should also tell the claimant what substantiation is required. Generally, the claimant will need to establish ownership, loss or damage, and the value of the property claimed.¹⁰¹ For shipment claims, ownership is generally established by the inventory¹⁰² and loss or damage is established by the DD Form 1840 and DD Form 1840R.¹⁰³ The claimant can establish the value of the loss using estimates of repair or replacement costs.¹⁰⁴ The instructions should include a list of local repair firms and resources for finding replacement costs.¹⁰⁵ The

⁸⁷ AR 27-20, *supra* note 1, para. 11-21a(3).

⁸⁸ U.S. Dep't of Defense, Form 1840, Joint Statement of Loss or Damage at Delivery (Jan. 1988), reproduced in DA PAM. 27-162, *supra* note 1, fig. 11-8A.

⁸⁹ See U.S. Dep't of Defense, Form 1840R, Notice of Loss or Damage (Jan. 1988), reproduced in DA PAM. 27-162, *supra* note 1, fig. 11-8B.

⁹⁰ See *id.*

⁹¹ DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

⁹² AR 27-20, *supra* note 1, para. 11-24.

⁹³ DA PAM. 27-162, *supra* note 1, para. 11-21(g).

⁹⁴ *Id.*, para. 11-14i.

⁹⁵ *Id.*; see also Personnel Claims Note, *Checking for the DD Form 1840R*, ARMY LAW., Nov. 1997, at 57 (stating that when a claimant fails to turn in the DD Form 1840R within seventy days, but turns in a claim within the deadline, it may be appropriate to waive the deduction for potential carrier recovery); Personnel Claims Note, *Dispatch of DD Form 1840R After the Seventy-Five Day Limit*, ARMY LAW., Sept. 1998, at 57.

⁹⁶ Zink & Masterton, *supra* note 7, at 75.

⁹⁷ U.S. Dep't of Defense, DD Form 1842, Claim for Loss of or Damage to Personal Property Incident to Service (May 2000).

⁹⁸ U.S. Dep't of Defense, DD Form 1844, List of Property and Claims Analysis Chart (May 2000).

⁹⁹ AR 27-20, *supra* note 1, para. 11-8.

¹⁰⁰ See DA PAM. 27-162, *supra* note 1, para. 11-24a. Shipment documents may also be obtained from the transportation office. *Id.*

¹⁰¹ See AR 27-20, *supra* note 1, para. 11-11; DA PAM. 27-162, *supra* note 1, para. 11-14b, h.

¹⁰² DA PAM. 27-162, *supra* note 1, para. 11-14h(1)(a).

¹⁰³ *Id.* para. 11-21g. Some items, such as compact discs, pose special problems because they are expensive and easily pilferable. It is best for claimants to take pictures of such items before the move as further proof that they were actually shipped. See Personnel Claims Note, *Empty Compact Disc Cases*, ARMY LAW., Sept. 1998, at 58.

instructions should also ensure that the claimant provides evidence needed for the claims office to recover against the carrier who caused the loss. For example, for damaged electronic items the claims office will need a personalized statement from the claimant describing why he or she believes the item was damaged in shipment and a specialized estimate of repair describing why the repairman believes the damage was shipment related.¹⁰⁶

Filing a Claim

Staff judge advocates should ensure that claims are properly date stamped and logged upon receipt. Any written demand for compensation constitutes a claim, even if no specific sum is mentioned.¹⁰⁷ Only a Soldier or civilian employee, or his or her authorized agent or survivor, may present a claim.¹⁰⁸ The claim must be received at a U.S. military installation within two years after it accrues.¹⁰⁹ A claim accrues on the date of the incident causing the loss or damage or when the claimant knew or should have known of the loss or damage.¹¹⁰ For personal property shipments, a claim accrues on the date of delivery, *not* the date the Soldier or civilian employee submits the DD Form 1840R.¹¹¹

Adjudication

Adjudication is the most important part of the claims process. If the adjudication is fair and speedy, the claimant will usually be satisfied; adjudications that are slow, poorly explained, or inconsistent with other adjudications will often lead to complaints.

Small claims (those which can be paid for \$1,000 or less) should be processed separately. Because small claims usually do not require extensive investigation, they should be processed as quickly as possible. The claims adjudicator may relax the evidentiary requirements slightly and use agreed cost of repairs and loss of value as the measure of damage, rather than requiring the claimant to obtain estimates of repair.¹¹² If possible, these claims should be adjudicated on the spot while the claimant is still in the office.¹¹³

Claims personnel should inspect damaged items, if possible.¹¹⁴ Repair estimates are necessary for repairable items.¹¹⁵ If an item can not be repaired, the claimant should be awarded the replacement cost, minus depreciation¹¹⁶ and salvage value (if any).¹¹⁷ Some items may require extensive investigation to determine appropriate replacement costs. Claims personnel can

¹⁰⁴ DA PAM. 27-162, *supra* note 1, para. 11-14e, f.

¹⁰⁵ *See id.* para. 11-14f.

¹⁰⁶ *Id.* para. 11-14d(3); *see* Personnel Claims Note, *Carrier Industry Requests*, ARMY LAW., Aug. 1998, at 56; Personnel Claims Note, *The Importance of Repair Estimates for Electronic Items*, ARMY LAW., Aug. 1996, at 36.

¹⁰⁷ AR 27-20, *supra* note 1, para. 11-8(a).

¹⁰⁸ *Id.* para. 11-4; *see* Personnel Claims Note, *A Comparison of the Authority to Ship Household Goods Versus Filing a Claim*, ARMY LAW., June 1996, at 77.

¹⁰⁹ AR 27-20, *supra* note 1, para. 11-7a. This is a statutory requirement and may not be waived, even if the claimant relies on bad advice from claims personnel. The only exceptions are for claims accruing during time of war or armed conflict when good cause is shown or when the claimant is a prisoner of war. *Id.* para. 11-7b. Receipt is measured by the date a claim is received at a military establishment, not the date it is postmarked. *Id.* para 11-7a; DA PAM. 27-162, *supra* note 1, para. 11-7a(1).

¹¹⁰ AR 27-20, *supra* note 1, para. 11-7a.

¹¹¹ *Id.* para. 11-7; DA PAM. 27-162, *supra* note 1, para. 11-7b(2).

¹¹² DA PAM. 27-162, *supra* note 1, para. 11-10b.

¹¹³ Zink & Masterton, *supra* note 7, at 76.

¹¹⁴ *See* Personnel Claims Note, *Claims Office Inspections*, ARMY LAW., July 1998, at 89.

¹¹⁵ DA PAM. 27-162, *supra* note 1, para. 11-14d; Mr. Lickliter, Personnel Claims Note, *Compensation for Repairable Porcelain Figurines*, ARMY LAW., June 1999, at 51.

¹¹⁶ AR 27-20, *supra* note 1, para. 11-14d.

¹¹⁷ *Id.* para. 11-14e.

check on the Internet or seek help through the Claims Forum to obtain replacement costs for obscure items.¹¹⁸ Claims personnel should document their research on the chronology sheet on the left side of the claims file.¹¹⁹

The Allowance List Depreciation Guide, which is reproduced in the Army claims pamphlet, sets “maximum allowances” on the amount that can be paid for certain types of property.¹²⁰ The staff judge advocate can waive the maximum allowance based on good cause.¹²¹ The staff judge advocate may only waive the maximum if the claimant provides clear and convincing evidence that he owned the property, that the property was lost or damaged as alleged, that the property had the value claimed, and that the property was not held for use in a business.¹²²

When a loss is covered by private insurance, the claimant is generally required to file with his insurance company before the claim can be paid.¹²³ An exception to this requirement can be made for good cause.¹²⁴ The USACS has waived this requirement for all claims involving loss or damage during shipment or storage of personal property.¹²⁵

Claims that appear to involve fraud should be adjudicated with special care. As a general rule, claims personnel should presume claimants are honest.¹²⁶ If a claimant has clearly engaged in fraud, claims personnel can deny either the line item tainted by fraud or the entire claim.¹²⁷

Properly explaining the adjudication will help ensure the claimant’s satisfaction with the final payment. If possible, explain the adjudication while the claimant is still in the office.¹²⁸ If this is not possible, send the claimant an explanation describing why the claimant was not paid the full amount claimed.¹²⁹ The Army claims pamphlet contains sample explanations.¹³⁰

Requests for Reconsideration

Requests for reconsideration provide staff judge advocates the opportunity to review personnel claims on a regular basis. The staff judge advocate must personally act on these requests.¹³¹ When reviewing these requests, staff judge advocates should determine whether their claims personnel properly applied the relevant claims rules and how well they explained these rules to the claimant.

Claimants who are not satisfied with the amount they are paid have the right to request reconsideration within sixty days.¹³² Claims attorneys can always reconsider claims they settle if the original adjudication was incorrect.¹³³ Claims

¹¹⁸ Authorized users can access the Claims Forum at <https://www.jagcnet.army.mil/FORUMS>. See Personnel Claims Note, *Claims for Russian Boxes*, ARMY LAW., Sept. 1996, at 61.

¹¹⁹ DA PAM. 27-162, para. 11-10f. See Personnel Claims Note, *Initials No Longer Permitted on Chronology Sheet*, ARMY LAW., Aug 1998, at 56.

¹²⁰ DA PAM. 27-162, *supra* note 1, tbl. 11-1.

¹²¹ AR 27-20, *supra* note 1, para. 11-14b.

¹²² *Id.*; see Personnel Claims Note, *Policy Changes to be Published in New Regulation*, ARMY LAW., Feb. 1998, at 54, 56; Personnel Claims Note, *Staff Judge Advocates Must Personally Approve and Disapprove Waivers of Maximums*, ARMY LAW., Oct. 1998, at 68.

¹²³ AR 27-20, *supra* note 1, para. 11-21a(2). When adjudicating a claim that involves an insurance payment, the calculations can become very complex since the insurance payment must be compared to the claim payment on a line-by-line basis. See Personnel Claims Note, *Posting Payments to Claims Involving Insurance Payments*, ARMY LAW., June 1999, at 51.

¹²⁴ AR 27-20, *supra* note 1, para. 11-21a(2); see *Posting Payments to Claims Involving Insurance Payments*, *supra* note 123 at 51.

¹²⁵ Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Policy on Private Insurance, <https://www.jagcnet.army.mil/FORUMS> (May 14, 2003).

¹²⁶ DA PAM. 27-162, *supra* note 1, para. 11-6(f).

¹²⁷ AR 27-20, *supra* note 1, para. 11-6f; DA PAM. 27-162, *supra* note 1, para. 11-6f; see also Personnel Claims Note, *New Rules on Denial of Claims for Fraud*, ARMY LAW., July 1998, at 90.

¹²⁸ DA PAM. 27-162, *supra* note 1, para. 11-10a(3)(a).

¹²⁹ Personnel Claims Note, *Unclear Correspondence*, ARMY LAW., Mar. 1997, at 36.

¹³⁰ DA PAM. 27-162, *supra* note 1, figs. 11-2A, 11-2B.

¹³¹ AR 27-120, *supra* note 1, para. 11-2f.

¹³² *Id.* para. 11-20. This sixty-day time limit can be waived by the head of an area claims office (usually a staff judge advocate) in exceptional cases. *Id.*

¹³³ *Id.* para. 11-20a.

personnel must reconsider a claim if the claimant submits a written request.¹³⁴ The claims attorney must forward denials of such requests to the staff judge advocate. Staff judge advocates make the final decision on most requests for reconsideration when the amount in dispute is \$1,000 or less, when there are no new facts supporting the request, or when the request was submitted after the sixty day time limit.¹³⁵ Requests that the staff judge advocate cannot resolve should be forwarded to the USACS or the appropriate command claims service overseas, along with a memorandum of opinion containing a summary of the facts and an appropriate recommendation.¹³⁶

Carrier Recovery

Carrier recovery is an important part of the claims process. Once a claimant has been paid for loss or damage during a personal property shipment, the Army attempts to recover the amount of the loss from the responsible carrier.¹³⁷ This carrier recovery program generates millions of dollars in revenue every year; most of these funds are placed directly back into the claims budget to pay claims. Staff judge advocates should ensure their office is diligently assisting in this effort.

Claims personnel must document the reasons for the amount paid to the claimant to ensure that the Army's recovery efforts are successful. The substantiation needed for a successful recovery is the same as that needed to pay the claimant—the Army will need to establish that the item was given (tendered) to the carrier for shipment, that the item was lost or damaged during shipment, and that the loss or damage was of the amount alleged.¹³⁸ The Army can establish tender of the item for shipment by showing that the item is listed on the inventory.¹³⁹ Loss or damage during shipment can usually be established through the DD Form 1840, where the claimant notes loss or damage at delivery, or the DD Form 1840R, where the claimant notes loss or damage within seventy days after delivery.¹⁴⁰ The value of the loss is established by estimates of repair for damaged items and replacement costs for lost or destroyed items.¹⁴¹ In some cases, such as when the claim includes items that are not specifically listed on the inventory¹⁴² or when electronic items sustain only internal damage,¹⁴³ the claimant must submit special statements. Claims personnel should obtain all of this documentation during adjudication of the claim. The recovery process involves organizing this documentation and preparing a demand packet, which is forwarded to the appropriate carrier.¹⁴⁴

¹³⁴ *Id.* para. 11-20b.

¹³⁵ *Id.* para. 11-20d; *Policy Changes to be Published in New Regulation*, *supra* note 122, at 54, 55; Personnel Claims Note, *Staff Judge Advocate (SJA) Denial of Requests for Reconsideration*, ARMY LAW., Feb. 1999, at 50.

¹³⁶ AR 27-20, *supra* note 1, para. 11-20e; Personnel Claims Note, *Requests for Reconsideration*, ARMY LAW., Aug. 1997, at 46. Field claims personnel should also ensure that all of the required forms are in the file when it is forwarded to the USACS. *See generally* Personnel Claims Note, *Inclusion of Proper Forms in Claims Files*, ARMY LAW., Oct. 1998, at 68.

¹³⁷ AR 27-20, *supra* note 1, para. 11-24.

¹³⁸ DA PAM. 27-162, *supra* note 1, para. 11-23c.

¹³⁹ Tender generally requires that an item be identified by number as it appears on the inventory. In the case of an item missing from a packed carton, a reasonable and logical relationship between the stated contents of the carton and the missing item must be shown. A personal account of the packing procedure in the claimant's own words may be required if there is a question on tender. *See* DA PAM. 27-162, *supra* note 1, para. 11-23c(1); *see also id.* para. 11-25d; Personnel Claims Note, *Missing High Value Items*, ARMY LAW., Feb. 1997, at 51-52; Personnel Claims Note, *An Inventory Containing Fifty-Seven Garage Items*, ARMY LAW., Dec. 1997, at 48-49; Personnel Claims Note, *Listing Titles of Missing Video Cassette Tapes*, ARMY LAW., Sept. 1998, at 57. *See generally* Lieutenant Colonel Philip L. Kennerly, *Enhancing Recovery - A Claims Primer*, ARMY LAW., June 1997, at 3.

¹⁴⁰ *See* DA PAM. 27-162, *supra* note 1, para. 11-21g, h; Personnel Claims Note, *Checking Items Off the Inventory*, ARMY LAW., Dec. 1996, at 39. The damage alleged on the 1840 or 1840R need not be the same as alleged in the claim, as long as some damage is noted. *See* Personnel Claims Note, *Recovery for Items Not Listed on the DD Form 1840/1840R*, ARMY LAW., Mar. 1998, at 45. The DD Form 1840R must be sent to the carrier within seventy-five days; the dispatch date stamped on the form determines when it is dispatched. *See* Personnel Claims Note, *Dispatch Date Determines Timeliness of Notice of Loss and Damage*, ARMY LAW., Oct. 1997, at 53. Other documents can substitute for the DD Form 1840R, such as a government inspection report or letter from the claimant that has been sent to the carrier. *See* Personnel Claims Note, *What Constitutes Timely Notice?*, ARMY LAW., June 1997, at 59.

¹⁴¹ DA PAM. 27-162, *supra* note 1, para. 11-23c(3); *see also* Personnel Claims Note, *Pursuing Carrier Recovery for the Cost of Reupholstering a Matched Set of Furniture When Items Within the Set Are Damaged*, ARMY LAW., June 1996, at 77-78.

¹⁴² DA PAM. 27-162, *supra* note 1, para. 11-25d(2); Kennerly, *supra* note 139, at 6.

¹⁴³ DA PAM. 27-162, *supra* note 1, para. 11-25d(4); Kennerly, *supra* note 139, at 9.

¹⁴⁴ DA PAM. 27-162, *supra* note 1, para. 11-28a. *See* Personnel Claims Note, *Preparation of Recovery Documents*, ARMY LAW., Apr. 1997, at 164-65.

In preparing the demand packet, claims personnel must calculate the total amount to be recovered. This calculation may be somewhat complicated because depreciation rates applied to the carrier differ from the rates applied to the claimant.¹⁴⁵ Claims personnel must ensure that the recovery documents are properly completed and legible.¹⁴⁶

Special rules apply to recovery actions relating to personally owned vehicles. The USACS or the appropriate command claims service will handle most of these recovery actions.¹⁴⁷

Claims offices must sometimes take additional action related to carrier recovery. For example, the carrier has the right to inspect damaged household goods; claims personnel may need to assist in this effort.¹⁴⁸ The carrier also has the right to take possession of destroyed items when the claimant has been paid the depreciated replacement cost; claims personnel must sometimes assist in this process as well.¹⁴⁹ Carriers will occasionally submit estimates of repair to the claims office in an effort to limit their liability; claims personnel may be required to consider these estimates.¹⁵⁰ In addition, when items are lost or destroyed in shipment, the claims office must process an “unearned freight” letter to ensure the carrier does not receive payment for transporting that item.¹⁵¹

Some recovery actions are completed at the local office; others are completed centrally. Within the United States, most field offices are authorized to complete routine recovery actions under \$1,000. Recovery actions over this amount are sent the USACS for centralized recovery.¹⁵² Claims entered into the old version of the personnel claims computer database should be held thirty days prior to forwarding for centralized recovery. Claims filed under the new personnel claims database should be sent immediately after the adjudication is complete and the recovery packet is prepared, unless there is a reasonable expectation that the claimant will file a request for reconsideration.¹⁵³

Changes in Personal Property Shipment Process

Staff judge advocates should keep track of major changes in personal property shipment procedures. These changes can have a huge impact on claims operations.

The military has undertaken a number of efforts to modernize or “reengineer” the process of packing and shipping household goods and hold baggage. An initial effort, developed by the Army, was fielded in 1997 and applied to shipments

¹⁴⁵ See DA PAM. 27-162, *supra* note 1, tbls. 11-1, 11-4. These carrier depreciation tables have been supplemented by the Revised Joint Military/Industry Depreciation Guide, effective 1 April 2000. Posting of Nola J. Shollenberger to JAGCNet Claims Forum, subject: Addendum to Joint Military/Industry Depreciation Guide, <https://www.jagcnet.army.mil/FORUMS> (Apr. 11, 2000); see also Personnel Claims Note, *Depreciation on Compact Discs*, ARMY LAW., Sept. 1996, at 61. The calculation is further complicated by the fact that the maximum liability rate varies depending on the type of shipment. AR 27-20, *supra* note 1, para. 11-27. For most shipments the liability will be 1.25 times the net weight of the shipment, which means that the military can recover the full amount paid on most claims. See Personnel Claims Note, *Carrier Liability Rates*, ARMY LAW., June 1998, at 33-34.

¹⁴⁶ See Personnel Claims Note, *Importance of Purchase Amount on DD Form 1844*, ARMY LAW., July 1997, at 48-49; Personnel Claims Note, *Clarity of Documents*, ARMY LAW., Nov. 1997, at 57.

¹⁴⁷ See generally AR 27-20, *supra* note 1, para. 11-31a; DA PAM. 27-162, *supra* note 1, para. 11-31; Personnel Claims Note, *Recovery Under the Point to Point POV Pilot Program*, ARMY LAW., Feb. 1998, at 52-54.

¹⁴⁸ The carrier has the right to inspect damaged shipments within forty-five days of dispatch of the DD Form 1840R; the government is required to assist with these inspections. DA PAM. 27-162, *supra* note 1, para. 11-21f(6); Personnel Claims Note, *Carrier Inspection Rights*, ARMY LAW., Oct. 1996, at 47; Personnel Claims Note, *Don't Throw It Out*, ARMY LAW., Mar. 1997, at 35. See generally Kennerly, *supra* note 139, at 11.

¹⁴⁹ DA PAM. 27-162, *supra* note 1, para. 11-21f(8); Personnel Claims Note, *Turn-In of IRV Shipment Items with Salvage Value*, ARMY LAW. Sept. 1996, at 61; Personnel Claims Note, *The Military-Industry Memorandum of Understanding on Salvage*, ARMY LAW., Nov. 1998, at 68.

¹⁵⁰ Military claims offices must consider a carrier's estimate of repair if it is received within 45 days of delivery or before adjudication of the claim. In these situations, the claims office must use the carrier's estimate if it is the lowest estimate and the repair firm can perform the repairs for the price stated. See Personnel Claims Note, *When to Use (and How to Reject) a Carrier's Estimate*, ARMY LAW., Dec. 2002, at 27.

¹⁵¹ AR 27-20, *supra* note 1, para. 11-24a(7); DA PAM. 27-162, *supra* note 1, para. 11-37.

¹⁵² Increased released valuation shipments (which is the method of valuation for government shipments picked up on or after 1 October 1995) will be forwarded to the USACS for centralized recovery when the government bill of lading carrier's liability exceeds the field claims office's baseline authority. For most offices this is \$1,000, although some offices have been delegated higher authority by the Commander, USARCS. Recovery actions involving liability of more than one third party and claims involving payment by a private insurer, claims for mobile home shipments, claims involving bankrupt carriers and claims involving single incidents that result in damage to more than one shipment (such as a warehouse fire) should also be forwarded for centralized recovery. See DA PAM. 27-162, *supra* note 1, para. 11-32a; Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Delegation of Recovery Claim Authority, <https://www.jagcnet.army.mil/FORUMS> (June 22, 2001).

¹⁵³ See *supra* notes 17-18 and accompanying text.

originating from Hunter Army Airfield in Georgia.¹⁵⁴ A second effort, developed by the Military Traffic Management Command (MTMC), was initially fielded in January 1999 and applied to shipments originating from North Carolina, South Carolina, and Florida.¹⁵⁵ An expanded MTMC program was fielded in January 2001 and applied to shipments originating from Georgia and the National Capital Region.¹⁵⁶ All of these programs were discontinued because they were too expensive.¹⁵⁷

The latest effort to reengineer personal property shipments is being developed by the Military Surface Deployment and Distribution Command (SDDC).¹⁵⁸ This program is called "Families First" and is scheduled to begin on 1 February 2006.¹⁵⁹ Under the Families First program, carriers will be selected on a "best value" approach focusing on performance, rather than lowest cost.¹⁶⁰ Customers will have the opportunity to complete a web-based customer satisfaction survey to measure the performance of the carrier handling their shipment.

The new program will encourage Soldiers and civilian employees to settle claims directly with the carrier responsible for the shipment. Claims will be filed directly with carriers using SDDC's web-based claim filing process. Carriers will either replace lost or damaged items with a comparable used item or provide claimants with the current replacement value without any deductions for depreciation.¹⁶¹ The maximum liability for claims filed directly with the carrier will be \$50,000.¹⁶²

If no settlement is reached within thirty days, a claimant may file a claim with the nearest military claims office.¹⁶³ Such claims are subject to the normal rules applicable to personnel claims, including deductions for depreciation. The latest information on the Families First program is located on the SDDC Internet site.¹⁶⁴

Tort Claims

Staff judge advocates should carefully review their office's tort claims operations. Although the number of tort claims received by most offices is normally less than the number of personnel claims received, tort claims often involve a great deal of work and large amounts of money. They may also involve intense interest by the media and the command.

¹⁵⁴ This effort was developed by the Army Office of the Deputy Chief of Staff of Logistics. See Lieutenant Colonel R. Peter Masterton, *Reengineering Household Goods Shipments: Personnel Claims Implications*, ARMY LAW., Nov. 1997, at 15; Personnel Claims Note, *Reengineering Update*, ARMY LAW., Sept. 1999, at 39 [hereinafter *Reengineering Update*].

¹⁵⁵ *Id.*

¹⁵⁶ *Reengineering Update*, *supra* note 154, at 39; Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Full Service Move Project, <http://www.jagcnet.army.mil/FORUMS> (Oct. 4, 2000); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Personal Property Shipping Program—FSMP, <https://www.jagcnet.army.mil/FORUMS> (Feb. 7, 2001); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New HHG Shipping Program—FSMP, <https://www.jagcnet.army.mil/FORUMS> (Sept. 10, 2001); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: More on Reengineering Program Claims, <https://www.jagcnet.army.mil/FORUMS> (Sept. 10, 2001).

¹⁵⁷ See Posting of Joseph Goetzke, to JAGCNet Claims Forum, subject: Early end of FSMP, <https://www.jagcnet.army.mil/FORUMS> (Oct. 2, 2001).

¹⁵⁸ The Military Traffic Management Command was renamed the Surface Deployment and Distribution Command on 1 January 2004. *Focused Support to the Warfighter Captured in Major Army Command Name Change*, TRANSLOG, Fall 2003, at 6, available at http://www.sddc.army.mil/EXTRACONTENT/Translog/Fall_2003/Translog_Fall_2003.pdf.

¹⁵⁹ Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: PC Claims—Delay in Family Friendly Program for Shipment of HHG, <https://www.jagcnet.army.mil/FORUMS> (June 29, 2005).

¹⁶⁰ LaWanda York, *Families First Will Transform Service Members' Moves*, USTRANSCOM News Serv., July 14, 2005, <http://www.transcom.mil/pa/body.Cfm?relnumber=050714-1>.

¹⁶¹ The full replacement value will not apply to certain items such as boats, ultralight aircraft, pianos, musical organs, firearms, art objects, all-terrain vehicles, and snowmobiles. *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Surface Deployment and Distribution Command, About the Families First Program, <http://www.sddc.army.mil/frontDoor/0,1865,OID=4--7319---,00.html>.

Types of Claims

Federal Tort Claims Act

Congress has enacted a number of statutes that permit persons to file claims against the United States based on tort theories of liability. The most commonly used statute in the United States is the Federal Tort Claims Act.¹⁶⁵ This statute makes the United States liable, to the same extent a private person would be, for death, personal injury or property damage caused by negligent or wrongful acts of the United States or its employees acting within the scope of employment.¹⁶⁶ There are many exceptions to liability under the Act. The Federal Tort Claims Act does not permit recovery for negligence that occurs in a foreign country and for certain willful torts.¹⁶⁷ Case law prohibits recovery under the Act for death, injury, or property loss by members of the Armed Forces arising incident to service,¹⁶⁸ or for death or personal injury of federal employees that are covered by workman's compensation statutes.¹⁶⁹ Claimants who are not satisfied with the settlement offered by the government may file suit against the United States within six months of final action on the claim.¹⁷⁰

Military Claims Act

Like the Federal Tort Claims Act, the Military Claims Act¹⁷¹ permits recovery for death, personal injury, and property loss caused by the negligence of U.S. military personnel and civilian employees acting in the scope of employment.¹⁷² The Military Claims Act, however, also permits recovery for injury and damage incident to the "noncombat activities" of the armed services.¹⁷³ Noncombat activities include practice firing of weapons and other uniquely military activities.¹⁷⁴ Because the Military Claims Act applies overseas, it is the primary means to recover for injury or death of family members of U.S. military personnel caused by the U.S. military overseas.¹⁷⁵ There is no right to file suit if a claimant is not satisfied with the settlement of a claim under the Military Claims Act, but a denial of a claim or a final settlement offer may be appealed to the next higher settlement authority.¹⁷⁶

National Guard Claims Act

The National Guard Claims Act¹⁷⁷ authorizes the settlement of claims for damages caused by National Guard Soldiers in certain limited circumstances. The Act only applies when National Guard personnel are under state control, but being paid with federal funds, such as when they are performing full-time National Guard duties or are on inactive duty training.¹⁷⁸ The Federal Tort Claims Act also applies to these situations and, in most cases, is used instead of the National Guard Claims

¹⁶⁵ 28 U.S.C. §§ 2671-80 (2000).

¹⁶⁶ AR 27-20, *supra* note 1, para 4-2. *See also* Tort Claims Note, *In-Scope Privately Owned Vehicle (POV) Collisions*, ARMY LAW., Sept. 1999, at 39 (stating that the Federal Tort Claims Act is the exclusive remedy when a government driver causes damages in the scope of employment).

¹⁶⁷ *See* 28 U.S.C. § 2680; AR 27-20, *supra* note 1, para. 2-39d(8), (11).

¹⁶⁸ *See* AR 27-20, *supra* note 1, para. 2-39b. This exclusion is based on *Feres v. United States*, 340 U.S. 135 (1950). Property loss incurred incident to service may be payable under the Personnel Claims Act, 31 U.S.C. § 3721. If property loss is not payable under this statute, it may be payable under the Military Claims Act, 10 U.S.C. § 2733 or the National Guard Claims Act, 32 U.S.C. § 715.

¹⁶⁹ A federal employee's personal injury or wrongful death claim payable under the Federal Employees Compensation Act or the Longshore and Harbor Worker's Compensation Act is not payable under the Federal Tort Claims Act. AR 27-20, *supra* note 1, para. 2-39c.

¹⁷⁰ 28 U.S.C. § 2401(b).

¹⁷¹ 10 U.S.C. § 2733.

¹⁷² AR 27-20, *supra* note 1, para. 3-2a(1). Such claims in the United States may also implicate the Federal Tort Claims Act. If such a claim is denied it should be denied under both statutes. Tort Claims Note, *Denials Under Both the FTCA and MCA*, ARMY LAW., Mar. 2001, at 50.

¹⁷³ AR 27-20, *supra* note 1, para. 3-2a(2).

¹⁷⁴ *Id.* glossary, sec. II.

¹⁷⁵ *Id.* para. 3-2a. Such claims are generally not payable under the Federal Tort Claims Act, because it does not apply to negligence occurring in foreign countries. *Id.* para. 2-39d(11).

¹⁷⁶ 10 U.S.C. § 2735; AR 27-20, *supra* note 1, paras. 2-57c, 2-58; *see* Tort Claim Note, *Finality of Military Claims Act Decisions*, ARMY LAW., June 1999, at 49.

¹⁷⁷ 32 U.S.C. § 715.

¹⁷⁸ AR 27-20, *supra* note 1, para. 6-2a(2).

Act.¹⁷⁹ The National Guard Claims Act does not apply to National Guard Soldiers when they are under federal command and being paid with federal funds, such as when they are activated for federal duty; in this situation they are covered solely by the Federal Tort Claims Act or the other claims statutes applicable to active duty soldiers.¹⁸⁰ The National Guard Claims Act also does not apply when National Guard Soldiers are under state control and being paid with state funds, such as when they are on state active duty. In this situation, state claims statutes may apply.¹⁸¹

Foreign Claims Act

The Foreign Claims Act¹⁸² permits the settlement of claims arising outside the United States and submitted by foreign governments and inhabitants of foreign countries.¹⁸³ The Foreign Claims Act is the authority for settlement of claims submitted by local nationals in Iraq,¹⁸⁴ Afghanistan, Kosovo, and Bosnia-Herzegovina.¹⁸⁵ The Foreign Claims Act permits recovery for “noncombat activities”¹⁸⁶ and negligent or wrongful acts by U.S. military personnel and employees.¹⁸⁷ There is no requirement that the negligent or wrongful acts occur within the scope of employment. Therefore, the Foreign Claims Act is frequently used by foreign inhabitants to recover for damage caused by off-duty military personnel in traffic accidents and similar incidents.

Claims under this statute are paid by “Foreign Claims Commissions.” These commissions are comprised of either one or three members¹⁸⁸ and typically include a commissioned officer or civilian claims attorney.¹⁸⁹ Claimants who are not satisfied with the settlement of their claims do not have the right to file suit under the Foreign Claims Act but may request reconsideration of the settlement.¹⁹⁰

Non-Scope Claims Act

As its name implies, the Non-Scope Claims Act¹⁹¹ permits claimants to recover for actions by government personnel not acting in the scope of employment. The Act permits payment of claims for personal injury, death, and property loss caused by military personnel and civilian employees incident to the use of a government vehicle or other U.S. property. This statute should only be used when there is no other basis for paying a claim, because the maximum amount payable is only \$1,000 for an out-of-pocket loss.¹⁹² Dissatisfied claimants have no right to sue under the Non-Scope Claims Act.¹⁹³

¹⁷⁹ *Id.* para. 6-2c; see also Tort Claims Note, *Claims Arising from the Performance of Duties by Members of the National Guard*, ARMY LAW., Aug. 2001, at 24.

¹⁸⁰ AR 27-20, *supra* note 1, para. 6-2a(1).

¹⁸¹ *Id.* para. 6-2a(3).

¹⁸² 10 U.S.C. § 2734.

¹⁸³ AR 27-20, *supra* note 1, para. 10-2a.

¹⁸⁴ Captain Karin Tackaberry, *Center for Law & Military Operations (CLAMO) Note from the Field, Judge Advocates Play a Major Role in Rebuilding Iraq: The Foreign Claims Act and Implementation of the Commander's Emergency Response Program*, ARMY LAW., Feb. 2004, at 39.

¹⁸⁵ Major Jody M. Prescott, *Operational Claims in Bosnia-Herzegovina and Croatia*, ARMY LAW., June 1998, at 1.

¹⁸⁶ Noncombat activities include practice firing of weapons and other uniquely military activities. AR 27-20, *supra* note 1, glossary, sec. II.

¹⁸⁷ *Id.* para. 10-3a.

¹⁸⁸ *Id.* para. 10-7.

¹⁸⁹ *Id.* para. 10-8; see also Captain Christopher M. Ford, *The Practice of Law at the Brigade Combat Team (BCT): Boneyards, Hitting for the Cycle, and All Aspects of a Full Spectrum Practice*, ARMY LAW., Dec. 2004, at 22, 33.

¹⁹⁰ 10 U.S.C. § 2735 (2000); AR 27-20, *supra* note 1, para. 10-6f.

¹⁹¹ 10 U.S.C. § 2737.

¹⁹² AR 27-20, *supra* note 1, para. 5-2a.

¹⁹³ 10 U.S.C. § 2735.

SOFA Claims

In countries where the United States has negotiated a Status of Forces Agreement (SOFA), this agreement forms the basis for settlement of claims by most local nationals.¹⁹⁴ The United States has concluded such agreements with all of the North Atlantic Treaty Organization and Partnership for Peace nations in Europe.¹⁹⁵ The United States has also concluded a SOFA agreement with Korea¹⁹⁶ and Japan.¹⁹⁷

Article 139 Claims

Article 139 of the Uniform Code of Military Justice¹⁹⁸ provides a special procedure to file claims directly against service members. The statute permits anyone to file a claim against a service member who has willfully damaged or wrongfully taken the claimant's property.¹⁹⁹

Article 139 claims may be submitted orally or in writing within ninety days of the incident giving rise to the claim.²⁰⁰ The claim is forwarded to the service member's court-martial convening authority, who appoints an investigating officer and, takes action on the claim following conclusion of the investigation.²⁰¹ Article 139 claims should not be delayed pending disciplinary action of the service member; the result of such action is irrelevant, since the standard of proof for the claim is different from the disciplinary standard of proof.²⁰²

Receipt of Claims

Staff judge advocates should ensure that their claims office is properly documenting the receipt of tort claims. Most tort claims should be submitted on a Standard Form 95, Claim for Damage, Injury or Death.²⁰³ However, any written notification of the incident giving rise to the claim containing a demand for a sum certain that is signed by the claimant or an authorized representative constitutes a valid claim.²⁰⁴ Most claims statutes have a two-year statute of limitations.²⁰⁵ A properly filed claim will stop the running of the applicable statute of limitations.²⁰⁶

¹⁹⁴ AR 27-20, *supra* note 1, ch. 7.

¹⁹⁵ Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, June 19, 1951, U.S., 4 U.S.T. 1792, T.I.A.S. No. 2846, available at <http://www.nato.int/docu/basicxt/b510619a.htm>.

¹⁹⁶ Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, July 9, 1966, U.S.-S. Korea, 17 U.S.T. 1677, T.I.A.S. No. 6127, available at <http://8tharmy.korea.army.mil/ClaimsSvc/>.

¹⁹⁷ Agreement Under Article VI of the Treaty of Mutual Cooperation and Security: Facilities and Areas and the Status of United States Armed Forces in Japan, Jan. 19, 1960, U.S.-Japan, 11 U.S.T. 1652, available at <http://8tharmy.korea.army.mil/ClaimsSvc/>. See generally Tort Claims Note, *Foreign Claims—Not Just for Overseas Offices*, ARMY LAW., Oct. 1998, at 69.

¹⁹⁸ UCMJ art. 139 (2002) (10 U.S.C. § 939).

¹⁹⁹ AR 27-20, *supra* note 1, para. 9-4. Damaging property while driving may give rise to an Article 139 claim if the servicemember shows reckless and wanton disregard for the property rights of others. *Id.* para. 9-4a; Claims Report, *Evidence of Driving Under the Influence (DUI) in an Article 139 Claim*, ARMY LAW., Feb. 1999, at 50. Theft of services, on the other hand, will not give rise to an Article 139 claim, because theft of services is not property damage. Personnel Claims Note, *Theft of Services Not Cognizable Under Article 139*, ARMY LAW., July 1997, at 48. The claimant can only recover direct damages related to the property damages, not consequential damages. Personnel Claims Note, *Direct v. Consequential Damages Under Article 139*, ARMY LAW., May 1997, at 79.

²⁰⁰ AR 27-20, *supra* note 1, para. 9-7a. If the claim is submitted orally, it must be reduced to writing within ten days. These time limits may be waived for good cause. See *id.*

²⁰¹ The investigating officer is appointed by the special court-martial convening authority. *Id.* para. 9-7. The special court-martial convening authority may take final action on the claim if it can be approved for \$5,000 or less. The general court-martial convening authority can approve claims up to \$10,000. Claims over this amount are forwarded to the Commander of the USACS at Fort Meade. *Id.*

²⁰² See Personnel Claims Note, *The Effect of Disciplinary Action on Article 139 Claims*, ARMY LAW., Mar. 1998, at 44.

²⁰³ AR 27-20, *supra* note 1, para. 2-7b; U.S. Dep't of Justice, SF 95, Claim for Damage, Injury, or Death (nd).

²⁰⁴ AR 27-20, *supra* note 1, para. 2-7a; see also Tort Claim Note, *What Constitutes A Proper Tort Claim?* ARMY LAW. Mar. 1999, at 45.

²⁰⁵ 28 U.S.C. § 2401b (2000); see Captain Julie Long, Litigation Division Note, *Sometimes It Pays to Be Ignorant*, ARMY LAW., June 2003, at 26.

²⁰⁶ AR 27-20, *supra* note 1, para. 2-12a.

The claims office should date stamp all claims to indicate when they are received.²⁰⁷ The claims office should contact the claimant by telephone, in writing, or in person, to acknowledge receipt of the claim.²⁰⁸ Claims personnel should enter the claim into the Tort and Special Claims Database and assign the claim a number.²⁰⁹ Each claims office has a geographic area of responsibility; if the claim arose in another office's area of responsibility, claims personnel should transfer the claim to the correct office.²¹⁰ If the claim is above the office's payment authority, claims personnel should prepare a mirror copy of the claim file and forward a copy to the USACS.²¹¹

Investigating Claims

Staff judge advocates should ensure that tort claims are investigated promptly and thoroughly.²¹² It is the claimant's responsibility to provide sufficient information to permit an investigation.²¹³ Once the claimant has submitted this information, claims personnel should gather all of the relevant documentary evidence and interview the relevant witnesses.

Military or local police will investigate traffic accidents. Claims investigators should coordinate with these agencies and obtain their reports prior to conducting an independent investigation.²¹⁴ In many cases it may be appropriate to hire an expert consultant or appraiser to assist with a claims investigation. If the claims office does not have sufficient funds to hire such experts, a request for funding can be forwarded to the USACS.²¹⁵

Medical malpractice cases require special consideration. Claims personnel will need to interview the claimant and any health care providers who treated the claimant and to obtain copies of the claimant's medical records. In addition, claims personnel may need to interview other health care providers in the relevant practice area to determine whether there was a breach of the standard of care.²¹⁶ Contractor health care providers pose special problems. They may be government employees or independent contractors; the latter are not covered by the Federal Tort Claims Act unless strictly controlled by the government.²¹⁷

Environmental claims also require special care. Such claims may be complicated by non-tort liability based on environmental regulations and statutes. Investigations of these claims should be coordinated with the installation environmental law specialist.²¹⁸

Liability

One of the primary goals of a tort claims investigation is to determine whether the claim is payable. This determination involves a careful application of the applicable law to the facts discovered during the investigation.

Most tort claim statutes depend on local law to determine liability. This generally means there must be a finding that the United States owed the claimant a duty of care, the United States breached that duty, and the breach was the proximate cause

²⁰⁷ DA PAM. 27-162, *supra* note 1, para. 2-8b(2).

²⁰⁸ *Id.* para. 2-8b(1); AR 27-20, *supra* note 1, para. 2-8.

²⁰⁹ AR 27-20, *supra* note 1, para. 2-12b.

²¹⁰ *Id.* para. 2-12c. A list of these areas of responsibility is contained in DA PAM. 27-162, *supra* note 1, tbl. 2-1. If the claim should have been filed with another federal agency, the claim will be forwarded to the proper agency and the claimant should be notified of this. AR 27-20, *supra* note 1, para. 2-16.

²¹¹ AR 27-20, *supra* note 1, para. 2-15.

²¹² *Id.* para. 2-33.

²¹³ *Id.* para. 2-35a.

²¹⁴ DA PAM. 27-162, *supra* note 1, para. 2-34e.

²¹⁵ AR 27-20, *supra* note 1, para. 2-36.

²¹⁶ Tort Claims Note, *Standard of Care in Medical Malpractice Cases*, ARMY LAW., Aug. 1996, at 34; Tort Claims Note, *Investigating a Suicide Case—Is the Health Care Facility Liable? A Practical Approach*, ARMY LAW., Nov. 1996, at 72.

²¹⁷ Tort Claims Note, *Are Contractor Health Care Providers "Employees of the Government"?*, ARMY LAW., Dec. 2000, at 25.

²¹⁸ Tort Claims Note, *Problems with Settling Environmental Claims*, ARMY LAW., Mar. 1997, at 36.

of the claimant's loss.²¹⁹ Federal law will be used to establish certain issues, such as who is a federal employee or member of the armed forces and whether the statute of limitations has run.²²⁰

Some statutes do not rely on local law to determine liability. For example, Military Claims Act claims based on wrongful or negligent acts are evaluated based on general principles of law applicable to private individuals in the majority of American jurisdictions.²²¹ Military Claims Act claims arising from noncombat activities do not rely on tort theories of liability and require only proof of causation.²²²

Under most tort claims statutes, claims are payable only if based on acts or omissions of members of the U.S. forces or civilian employees acting in the scope of employment.²²³ Scope of employment, however, is not a requirement for claims under the Non-Scope Claims Act and the Foreign Tort Claims Act.²²⁴

In determining liability, the existence of certain threshold exclusions should be considered. The most common exclusion is the "incident to service" doctrine—claims by members of the armed forces injured incident to service are not payable.²²⁵ Similarly, claims by federal employees injured in the course of employment are barred by workmen's compensation laws.²²⁶ Other exclusions include claims for violations of the Federal Constitution,²²⁷ claims based upon the exercise of a discretionary function,²²⁸ claims for certain intentional torts such as assault and battery,²²⁹ and claims arising out of combat activities.²³⁰

Damages

If a claim is payable, determining the appropriate measure of damages is critical. In many cases determination of damages is the most important part of the investigation.

The applicable law for measuring damages will depend on the tort claim statute involved. Under the Federal Tort Claims Act, the law of the place where the incident giving rise to the claim occurred will apply.²³¹ The law of the place where the injury or death occurred may not be relevant.²³² Under the Military Claims Act, specific rules and limitations on the assessment of damages are spelled out in the Army claims regulation.²³³ Under the Foreign Claims Act, damages will be

²¹⁹ AR 27-20, *supra* note 1, para. 2-38a.

²²⁰ *Id.* para. 2-38d, e.

²²¹ *Id.* para. 3-5a(1). Contributory negligence, however, is determined based on local law. *Id.*

²²² *Id.* para. 3-5a(2).

²²³ *Id.* para. 2-40c.

²²⁴ *Id.* paras. 5-3, 10-3a.

²²⁵ See *Feres v. United States*, 340 U.S. 135 (1950); AR 27-20, *supra* note 1, para. 2-39b.

²²⁶ AR 27-20, *supra* note 1, para. 2-39c. Personal injury and wrongful death actions of federal employees are covered by the Federal Employees Compensation Act, 5 U.S.C. § 8116 (2000) and the Longshore and Harbor Workers Compensation Act, 33 U.S.C. § 901-950 (2000). The Federal Employees Compensation Act can cover people not traditionally thought of as federal employees, such as ROTC cadets. See Tort Claims Note, *Reserve Officer Training Corps (ROTC) Cadet Training Injuries*, ARMY LAW., Mar. 1999, at 47.

²²⁷ AR 27-20, *supra* note 1, para. 2-39a.

²²⁸ *Id.* para. 2-39d(2); 28 U.S.C. § 2680(c); see Lieutenant Commander Clyde A. Haig, *Discretionary Activities of Federal Agents Vis-a-Vis the Federal Tort Claims Act and the Military Claims Act: Are Discretionary Activities Protected at the Administrative Adjudication Level, and to What Extent Should They Be Protected?*, 183 MIL. L. REV. 110 (2005); Tort Claims Note, *Overflight Claims*, ARMY LAW., Aug. 1996, at 32; Captain Kurt G. Larkin, *The "Discretionary Function" and Assault and Battery" Exceptions to the Federal Tort Claims Act (FTCA): When They Apply and How They Work Together*, ARMY LAW., Dec. 2002, at 13; Major Steven L. Schooner, *The FTCA Discretionary Function Exception Nullifies \$25 Million Malpractice Judgment Against the DCAA: A Sigh of Relief Concludes the DIVAD Contract Saga*, ARMY LAW., Mar. 1999, at 17. See generally Tort Claims Note, *Most Common Exceptions to the FTCA*, ARMY LAW., July 1996, at 37 [hereinafter *Most Common Exceptions to the FTCA*].

²²⁹ AR 27-20, *supra* note 1, para. 2-39d(8); 28 U.S.C. § 2680(h); see *Most Common Exceptions to the FTCA*, *supra* note 228, at 37; Larkin, *supra* note 228, at 15.

²³⁰ AR 27-20, *supra* note 1, para. 2-39d(10); 28 U.S.C. § 2680(j).

²³¹ AR 27-20, *supra* note 1, para. 2-41a.

²³² *Id.*; see also Tort Claims Note, *Damages in Wrongful Death Claims*, ARMY LAW., June 1996, at 76.

²³³ AR 27-20, *supra* note 1, para. 3-5a(3).

measured under local law, subject to the limitations of the Army claims regulation.²³⁴ In most foreign countries, the amount of damages will be significantly less than in the United States.

Settlement

Staff judge advocates should ensure that their claims personnel are settling meritorious tort claims promptly and fairly.²³⁵ Claims personnel should be fair in negotiating with claimants and attempt to settle claims reasonably quickly. Only an attorney should negotiate a claim when the claimant is represented by an attorney. When a claimant is not represented, a nonattorney claims professional may conduct the negotiations.²³⁶

In some cases a structured settlement may be appropriate. Such a settlement involves periodic future payments and may involve setting up a trust for the claimant. Claims professionals should consider a structured settlement when the claimant is a minor or incompetent, when funds will be needed for future medical care, or when an injured party's life expectancy cannot be reasonably determined.²³⁷

A claimant's acceptance of an award constitutes full and final settlement of the claim.²³⁸ A settlement agreement is required before the settlement of all tort claims, whether the claim is paid in full or in part.²³⁹

Tort claims payments come from several sources. For most tort claims, payments of \$2,500 or less come out of a central Army fund managed by the USACS at Fort Meade, Maryland.²⁴⁰ Claim payments over this amount generally come out of the United States Judgment Fund.²⁴¹ Claims involving negligence of the Army and Air Force Exchange Service and other Nonappropriated Fund Instrumentalities will be paid out of Nonappropriated Funds.²⁴²

Affirmative Claims

When Army property is damaged due to the negligence of others, Army claims offices pursue recovery against the responsible parties. These recoveries fall into two major types: (1) recovery for the cost of property damage caused by the negligence of others and (2) recovery for the cost of medical care and lost wages provided to Soldiers injured through the negligence of others. These recovery actions generate millions of dollars in revenue each year, much of which is returned to military medical treatment facilities and local installations.²⁴³ Staff judge advocates should monitor recoveries to ensure they are aggressively pursued. Staff judge advocates should also highlight this good news to the command by including affirmative claims statistics in legal office briefings.

Property Claims

When Army property is damaged through the negligence of others, the Army is authorized to pursue recovery under the Federal Claims Collection Act.²⁴⁴ If Soldiers or Army employees cause the damages, the report of survey system, rather than the affirmative claims procedure, should be used to collect for the damage.²⁴⁵

²³⁴ *Id.* para. 2-41c.

²³⁵ *Id.* para. 2-47.

²³⁶ *Id.* para. 2-48.

²³⁷ *Id.* para 2-46a; DA PAM. 27-162, *supra* note 1, para. 2-83; see Tort Claims Note, *Use of Annuities for Claims Arising in Foreign Countries*, ARMY LAW., Mar. 2001, at 49.

²³⁸ AR 27-20, *supra* note 1, para. 2-56a(1).

²³⁹ *Id.*; DA PAM 27-162, *supra* note 1, para. 2-93a.

²⁴⁰ AR 27-20, *supra* note 1, para. 2-63b; DA PAM 27-162, *supra* note 1, para. 2-100b.

²⁴¹ *Id.*

²⁴² AR 27-20, *supra* note 1, para. 2-63e; DA PAM 27-162, *supra* note 1, para. 2-100h.

²⁴³ See, e.g., Affirmative Claims Note, *1995 Affirmative Claims Report*, ARMY LAW., Aug. 1996, at 37.

²⁴⁴ 31 U.S.C. § 3711 (2000); see AR 27-20, *supra* note 1, para. 14-1.

²⁴⁵ See AR 27-20, *supra* note 1, para. 14-6b; see U.S. DEP'T OF ARMY, REG. 735-5, POLICIES AND PROCEDURES FOR PROPERTY ACCOUNTABILITY (28 Feb. 2005).

Funds recovered on affirmative property damage claims are deposited in several places, depending on the type of property involved. Funds recovered for damage to real property are deposited in the installation account available for the repair of the property.²⁴⁶ Funds recovered for damage to other property are generally deposited into a special centralized account.²⁴⁷ Funds recovered for damage to Nonappropriated Fund Instrumentality property are returned to the organization involved.²⁴⁸ The Army may also accept repair or replacement of property in lieu of payment of a claim.²⁴⁹

Medical Care and Lost Wages Claims

Several statutes give the Army the authority to recover for medical care and lost wages for Soldiers injured due to the negligence of others. The Federal Medical Care Recovery Act²⁵⁰ permits the Army to recover for medical care furnished by the United States under circumstances creating tort liability of a third person. The Federal Medical Care Recovery Act also permits the Army to recover for lost pay provided to a Soldier injured by the tortious act of another.²⁵¹ Section 1095 of Title 10 of the United States Code²⁵² permits medical treatment facilities to recover for health care services from health insurance companies. This broad statutory authority provides Army claims offices with another avenue to recover against insurance companies for medical treatment provided as a result of the negligent or wrongful act of another.²⁵³ The statute also provides authority to recover against the injured party's own insurance company; however, claims offices usually do not become involved in these recoveries.

Funds recovered for medical care should be deposited into the Operations and Maintenance Account of the Medical Treatment Facility that provided the care.²⁵⁴ Funds recovered for lost wages should be deposited into the Operations and Maintenance Account of the unit to which the Soldier was assigned at the time of the injury.²⁵⁵

Processing Affirmative Claims

A field claims office may accept full payment on an affirmative claim in any amount.²⁵⁶ However, the authority to terminate, waive, or compromise such claims is more limited. Most large claims offices have the authority to settle such claims up to \$50,000; above this amount the claims must be sent to the USACS at Fort Meade.²⁵⁷ When forwarding a claim, the field office should prepare a memorandum that includes an assessment of the case, a recommended disposition, and, when the claim involves medical care, a medical care worksheet.²⁵⁸ Staff judge advocates should review these memorandums to ensure they are properly prepared.

Staff judge advocates should periodically inspect affirmative claims operations to ensure these claims are being properly pursued and that funds are being deposited correctly. Staff judge advocates should review the procedures used to discover affirmative claims to ensure that claims personnel are not missing potential sources of recovery. Military police blotters and

²⁴⁶ AR 27-20, *supra* note 1, para. 14-19c(1); *see also* Affirmative Claims Note, *Change in Deposit Procedures for Recoveries for Damaged Real Property Under 10 U.S.C. § 2782*, ARMY LAW., Oct. 1996, at 47.

²⁴⁷ AR 27-20, *supra* note 1, para. 14-19c(2).

²⁴⁸ *Id.* para. 14-19c(3).

²⁴⁹ *Id.* para. 14-8.

²⁵⁰ 42 U.S.C. § 2651-53 (2000).

²⁵¹ *See* AR 27-20, *supra* note 1, para. 14-1a(2); *see also* Affirmative Claims Note, *Lost Wages Under the Federal Medical Care Recovery Act*, ARMY LAW., Dec. 1996, at 38.

²⁵² 10 U.S.C. § 1095.

²⁵³ AR 27-20, *supra* note 1, para. 14-1a(3); *see also* Affirmative Claims Note, *Medical Payments Coverage and 10 U.S.C. § 1095*, ARMY LAW., Dec. 1996, at 37.

²⁵⁴ AR 27-20, *supra* note 1, para. 14-19e.

²⁵⁵ *Id.* para. 14-19d.

²⁵⁶ AR 27-20, *supra* note 1, para. 14-4.

²⁵⁷ The head of an area claims office generally has the authority to (1) compromise up to \$50,000 of a claim asserted for 50,000 or less; (2) terminate collection action on claims asserted for \$50,000 or less when further collection efforts are not feasible; and (3) waive medical care claims asserted for \$50,000 or less when collection will result in undue hardship to the injured party. *Id.* para. 14-4c.

²⁵⁸ *Id.* para. 14-16d; DA PAM. 27-162, *supra* note 1, para. 14-16c, figs. 14-3, 14-4; *see also* Affirmative Claims Note, *Medical Care Recovery Worksheets*, ARMY LAW., Sept. 1997, at 60.

military treatment facility records are common sources of affirmative claim information, which should be reviewed by claims personnel.²⁵⁹ Staff judge advocates should also ensure that office deposit records are reconciled with those of the servicing finance office to verify that funds are being credited to the proper accounts.²⁶⁰

Deployment Claims

Claims aspects of deployments are becoming increasingly important.²⁶¹ Staff judge advocates should ensure their deployed judge advocates are familiar with claims procedures and have the appropriate appointment orders to pay claims.

Foreign Claims Act

Many deployed judge advocates are appointed as Foreign Claims Commissions with the authority to make payments under the Foreign Claims Act.²⁶² Claims are payable under the Foreign Claims Act when loss or injury is caused by the negligence or wrongful acts of U.S. military personnel or when it results from the noncombat activities the U.S. military.²⁶³ Loss or injury caused by combat is not payable under the Foreign Claims Act.²⁶⁴ Defining what constitutes “combat” and what constitutes “noncombat” activities or negligent acts can be difficult. For example, when a U.S. truck crashes into a local national’s vehicle, this accident may be considered a payable negligent act or a nonpayable combat activity depending on the circumstances. In making this decision, claims personnel should look at the mission involved, the threat situation, and the circumstances of the accident.²⁶⁵

Real Estate Claims

Real estate claims are also an issue often dealt with by claims personnel. These are not claims in the traditional sense, but are rather requests for reimbursement for the use (or lease) of land. Although claims personnel may review these actions, they are adjudicated by the Corps of Engineers.²⁶⁶

Solatia

Solatia are payments made in accordance with local custom to express remorse or sympathy.²⁶⁷ These are not claims payments and can be made without regard to fault or liability.²⁶⁸ Solatia procedures permit commanders to make payments from appropriated funds to express sympathy for a death, injury, or property loss in which U.S. forces were involved. Solatia payments are not an admission of liability. The U.S. military in Korea has adopted a solatia regulation that permits payment of approximately \$5,000 for cases involving death or critical injury, approximately \$1,000 for serious injury, and approximately \$500 for other injuries or property damage.²⁶⁹ Solatia payments are also authorized in Iraq, where

²⁵⁹ AR 27-20, *supra* note 1, para. 14-12c.

²⁶⁰ *Id.* para. 14-19f.

²⁶¹ Tackaberry, *supra* note 184, at 39.

²⁶² Ford, *supra* note 189, at 33.

²⁶³ AR 27-20, *supra* note 1, para. 10-3a.

²⁶⁴ *Id.* para. 2-39d(10); Ford, *supra* note 189, at 35.

²⁶⁵ In Iraq it is assumed that loss or injury relates to combat when coalition forces fire weapons. Tackaberry, *supra* note 184, at 40.

²⁶⁶ U.S. DEP’T OF ARMY, FIELD MANUAL 100-10-2, CONTRACTING SUPPORT ON THE BATTLEFIELD para. 2-7 (15 Apr. 1999); *see* Ford, *supra* note 189, at 35.

²⁶⁷ AR 27-20, *supra* note 1, para. 10-10.

²⁶⁸ *Id.*

²⁶⁹ U.S. FORCES KOREA, REG. 526-11, UNITED STATES FORCES KOREA, RELATIONS WITH KOREAN NATIONALS, CONDOLENCE VISITS AND SOLATIUM PAYMENTS (19 May 2004), *available at* <http://8tharmy.korea.army.mil/claimssvc/>. The regulation permits the payment of Won 5,000,000 (\$4,932.85) for cases involving death or critical injury, Won 1,000,000 (\$986.57) for serious injury, and Won 500,000 (\$493.29) for other injuries or property damage. *See id.* The conversions were based on the exchange rate for 24 March 2005 and were obtained from the Universal Currency Converter, <http://www.xe.com/ucc/convert.cgi>.

commanders are authorized to pay up to \$2,500 for cases involving death, \$1,000 for serious injury, and \$500 for property damage.²⁷⁰

Commander's Emergency Response Program

Another alternative to making payments under the Foreign Claims Act is the Commander's Emergency Response Program. This program originated in Iraq where seized assets were used to provide funds to respond to the emergency needs of the Iraqi people. Congress subsequently authorized the use of appropriated funds for this initiative in both Iraq and Afghanistan. The program gives commanders in these countries the financial means to take immediate action to assist with recovery and rebuilding efforts.²⁷¹

Personnel Claims

Most deployment-related personnel claims issues arise before and after the deployment, rather than during the deployment. Staff judge advocates should ensure their claims personnel are involved in planning for every deployment.

Most Soldiers are entitled to store personally owned vehicles during deployments.²⁷² The best way to store vehicles during a deployment is to contract for commercial storage. If commercial storage is not possible, the vehicles may be stored in a secured lot on the installation. In this case, commanders should ensure that joint inventories are prepared, which include a list of preexisting damage to the vehicle. In either case, the vehicles are covered by a \$20,000 maximum amount allowable. If Soldiers chose to park their vehicles at their assigned quarters during the deployment, they are only covered by a \$3,000 maximum.²⁷³ Soldiers are not required to maintain private insurance on the vehicle during storage if an installation commander or provost marshal has authorized them to cancel their insurance.²⁷⁴ Soldiers may want to leave their insurance in effect, however, as it provides additional protection above the military claims system. Soldiers who do so are not required to file with their private insurance before filing a damage claim with the government.²⁷⁵

Commanders often decide to pack and store personal property of deploying Soldiers who live in the barracks. Moving deploying Soldiers out of the barracks permits commanders to use the barracks for other Soldiers who backfill the unit. If commanders decide to do this, the best option is to obtain the funds for commercial storage. If commercial storage is not possible, the property may have to be packed by other Soldiers and stored at a government facility. Commanders should make every effort to use the same procedures used by commercial firms—the Soldiers packing the goods should be provided with packing material and should complete a detailed inventory of the property being stored.²⁷⁶ The storage facility should be properly secured. If commanders decide to “preposition” personal property so it will be immediately available when Soldiers return from deployment, the property should be properly secured. The convenience of having immediate access to personal property will be worthless if returning Soldiers find that their property has been stolen or lost.

Since Soldiers generally do not have the authorization to ship personal property during a deployment, property losses in deployed locations should be minimal. Many Soldiers, however, purchase property during a deployment, which may become lost or damaged. Such losses are generally compensable, as long as it is reasonable to have the property in the deployed

²⁷⁰ Memorandum, Department of Defense Office of General Counsel, to Staff Judge Advocates, U.S. Central Command, subject: Solatia (24 Nov. 2004); Ford, *supra* note 189, at 36.

²⁷¹ Lieutenant Colonel Mark Martins, *No Small Change of Soldiering: The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan*, ARMY LAW., Feb. 2004, at 1; Tackaberry, *supra* note 184, at 39;

²⁷² Personnel Claims Note, *Claims Implications of the New POV Storage Entitlement*, ARMY LAW., Dec. 1997, at 47.

²⁷³ The maximum allowable amount for vehicle loss or damage during shipment \$20,000; \$3,000 is the maximum allowable amount for loss or damage to vehicles located on the installation or at quarters. DA PAM. 27-162, *supra* note 1, tbl. 11-1; *see also* Memorandum, Joseph Goetzke, Deputy Chief, Personnel Claims and Recovery Division, subject: POV Storage During Deployments-Claims, *in* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Additional Guidance on POV Deployment Storage Claims, <https://www.jagcnet.army.mil/FORUMS> (Feb. 13, 2003).

²⁷⁴ *Id.*

²⁷⁵ Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Private Insurance on Claims for POVs Stored on Post, <https://www.jagcnet.army.mil/FORUMS> (Oct 29, 2003),

²⁷⁶ Memorandum, Joseph Goetzke, Deputy Chief, Personnel Claims and Recovery Division, subject: Operational Deployments – Protecting Soldiers—Inventories and Securing Property, *in* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Deployment—Storage and Inventories of Soldiers Property, <https://www.jagcnet.army.mil/FORUMS> (Sept. 3, 2004).

location and it was properly secured.²⁷⁷ Claims personnel should not hold Soldiers to the same standards of securing their property in deployed locations as they are held to at home station.²⁷⁸

Conclusion

All staff judge advocates should monitor their claims offices by reviewing claims reports, office SOPs, and customer satisfaction surveys. When staff judge advocates review claims, they should do more than simply check for typographical errors; they should ask claims personnel to explain the adjudication.

Staff judge advocates should encourage claims personnel to apply for the Judge Advocate General's Excellence in Claims Award every February. The application process will give both the office leadership and the claims personnel an opportunity to see how well the office is doing. Periodically inspect the claims office operations to ensure that backlogs are not developing, files are properly maintained, funds are properly tracked, and incoming checks are properly secured. Finally, staff judge advocates must ensure that claims personnel have the necessary resources and are getting the necessary training.

A properly run claims office can significantly improve morale in the local military community and boost the reputation of the legal office. Staff judge advocates should provide the support and supervision necessary to ensure this happens.

²⁷⁷ If Soldiers can purchase an item in theatre or have it shipped through the Internet, it is generally considered reasonable and useful to possess. *Id.*

²⁷⁸ *Id.*

The Impact of *Ring v. Arizona* on Military Capital Sentencing

Major Mark A. Visger*

Introduction

The Supreme Court recently embarked upon a major redefinition of several core constitutional concepts that apply to criminal cases. Beginning in *Jones v. United States*,¹ the Court redefined what constitutes elements of a criminal offense and, in the process, greatly expanded constitutional protections impacting key constitutional rights²—the Sixth Amendment right to a trial by jury, the Fifth Amendment right to a grand jury indictment in federal cases, the Fifth Amendment Due Process right of proof beyond a reasonable doubt, and the Sixth Amendment right to notice of the offense.³ The Court harkened back to a historical understanding of these rights to expand the universe of facts subject to these guarantees.⁴ “any fact that increases the penalty for a crime beyond the prescribed statutory maximum.”⁵ This change prompted significant changes to both federal and state criminal justice systems: it struck down both state⁶ and federal⁷ sentencing guidelines; it changed the indictment requirements for federal capital cases;⁸ and most significantly, it invalidated several states’ capital sentencing procedures.⁹

In *Ring v. Arizona*, the Supreme Court held that a jury, not a judge, must find beyond a reasonable doubt any aggravating factors that are necessary in order for a defendant to be eligible for the death penalty.¹⁰ This holding served as a significant departure from the prior understanding of capital jurisprudence as it overruled a prior Supreme Court opinion upholding the Arizona capital sentencing procedure.¹¹ Aggravating factors are no longer mere “sentencing considerations,” as *Walton v. Arizona* held.¹² Instead, under *Ring*, aggravating factors are now “functional equivalents to an element,” subject to the same constitutional guarantees that extend to elements of the offense.¹³ The Supreme Court first adopted the concept, “functional equivalent to an element,” in *Ring* and *Apprendi v. New Jersey*.¹⁴ The introduction of this new concept resulted in confusion as to the degree to which a “functional equivalent to an element” should be treated as an actual element (i.e., alleged in the charging document and proven at the trial on the merits).¹⁵

The military also has a capital system that utilizes aggravating factors the government must prove beyond a reasonable doubt in order for a capital accused to be eligible for the death penalty.¹⁶ Rule for Courts-Martial (RCM) 1004 outlines these

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¹ 526 U.S. 227 (1999).

² While the Court specifically disavowed that the principles established in these cases were new or novel, *id.* at 252 n.11, the *Jones* dissenters accurately predicted that the principles espoused would radically alter criminal practice: “the Court’s sweeping constitutional discussion casts doubt on sentencing practices and assumptions followed not only in the federal system but also in many states.” *Id.* at 254 (Breyer, J., dissenting). As future events demonstrated, the *Jones* dissent proved accurate.

³ See *id.* at 243 n.6.

⁴ E.g., *Apprendi v. New Jersey*, 530 U.S. 466, 478-80 (2000) (expounding on, *inter alia*, the English common law practice at the time of the writing of the U.S. Constitution, Joseph Story’s *Commentaries on the Constitution of the United States*, and Blackstone’s *Commentaries on the Laws of England*).

⁵ *Id.* at 490.

⁶ See *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

⁷ See *United States v. Booker*, 125 S. Ct. 738 (2005).

⁸ See, e.g., *United States v. Higgs*, 353 F.3d 281, 298 (8th Cir. 2003) (holding that *Jones* and *Ring* require federal indictments to now include capital aggravating factors), *cert. denied*, 125 S. Ct. 627 (2004).

⁹ *Ring v. Arizona*, 536 U.S. 584 (2002).

¹⁰ *Id.*

¹¹ *Id.* at 608 (overruling *Walton v. Arizona*, 497 U.S. 639 (1990)).

¹² *Walton*, 497 U.S. at 648.

¹³ *Ring*, 536 U.S. at 609 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 494 n.19 (2000)).

¹⁴ *Apprendi*, 530 U.S. at 494 n.19.

¹⁵ See *Schriro v. Sumner*, 124 S. Ct. 2519, 2523-24 (2004) (holding that *Ring* did not substantively change the elements of the underlying offense but was instead a procedural ruling).

¹⁶ MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 1004 (2002) [hereinafter MCM].

aggravating factors and the procedures by which death is adjudged in a court-martial.¹⁷ Already, this rule has come under challenge in light of *Ring*. One accused whose death sentence is pending presidential approval has moved for a writ of *coram nobis* at the Court of Appeals for the Armed Forces (CAAF), claiming that *Ring* renders his death sentence illegal based on two narrow grounds.¹⁸ Of even greater importance are the larger systematic issues raised by *Ring*. Specifically, the primary question raised is the extent to which the phrase “functional equivalent to an element,” as applied to capital aggravating factors at courts-martial, changes the legal foundation for aggravating factors and the applicable procedures. In order to answer this question, this article examines several aspects of the development of law in this area: (1) the *Ring* jurisprudence—both the precursor Supreme Court cases that outlined the new rule applied in *Ring* and also the subsequent cases that further developed the law surrounding “functional equivalents to an element;” (2) the impact of *Ring* on federal and state capital practice; and (3) the military capital jurisprudence—*United States v. Matthews*,¹⁹ which served as the foundation for current military capital practice, and RCM 1004, which governs the sentencing procedures that apply to capital courts-martial. Finally, this article addresses whether *Ring* requires any changes to RCM 1004. Some changes are warranted as a policy matter in order to mirror changes in federal practice, but this article argues that *Ring* does not render the current treatment of capital aggravating factors unconstitutional.

Foundation for Change: The *Ring* Line of Cases

In order to place the *Ring* holding in its proper context, this section examines the complete line of decisions that established and implemented the concept of “functional equivalents of an element.” The *Ring* holding was not a surprise, two significant cases served as a precursor to the ultimate *Ring* holding and subsequent cases also have shed light on *Ring*’s applicability. It is necessary to examine each case prior to discussing *Ring*’s applicability to military capital courts-martial.²⁰

Jones v. United States

The first case did not focus on constitutional guarantees, but addressed the relatively mundane issue of statutory interpretation. In *Jones v. United States*,²¹ the Supreme Court granted certiorari to decide whether the federal carjacking statute established three separate offenses or one offense with a choice of three separate penalties. The federal carjacking statute states the following:

Whoever, possessing a firearm as defined in section 921 of this title, takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall –

- (1) be fined under this title or imprisoned not more than 15 years, or both,
- (2) if serious bodily injury (as defined in section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and
- (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.²²

The government indicted Jones for violating this provision, but the indictment did not mention any of the sentence aggravating factors listed in the statute, and the judge advised Jones at arraignment that the maximum punishment was confinement for fifteen years.²³ A jury subsequently found Jones guilty of the charged offense.²⁴ Despite this procedural

¹⁷ *Id.*

¹⁸ Brief Accompanying Petition for Writ of *Coram Nobis*, *Loving v. United States*, 58 M.J. 249 (2003) (No. 03-8007/AR) (ordering the government to show cause why the relief should not be granted). In his writ, *Loving* argues that the President had no authority to promulgate RCM 1004 in light of *Ring* and argues that the requirement that extenuating and mitigating circumstances must be substantially outweighed by the aggravating circumstances must be found beyond a reasonable doubt. *Id.* These issues are pending decision and this article will not substantively address them.

¹⁹ 16 M.J. 354 (C.M.A. 1983) (holding the military death penalty unconstitutional and prescribing measures to fix military capital sentencing).

²⁰ The Supreme Court also applied the *Apprendi* rule to strike down state and federal sentencing guidelines. See *United States v. Booker*, 125 S. Ct. 738 (2005); *Blakely v. Washington*, 124 S. Ct. 2531 (2004). Because these guidelines established a baseline statutory maximum punishment with increased sentences based on various aggravating factors, the Court ruled that the guidelines violated *Apprendi*. *Booker*, 125 S. Ct. at 749-51; *Blakely*, 124 S. Ct. at 2537-38. While these rulings significantly changed the use of sentencing guidelines, the application of the *Apprendi* rule in these cases was relatively straightforward and sheds little light on the issue addressed in this article. As a result, this article will not substantively address *Booker* and *Blakely*.

²¹ 526 U.S. 227, 229 (1999).

²² 18 U.S.C. § 2119 (2000).

²³ *Jones*, 526 U.S. at 230-31.

²⁴ *Id.* at 231.

history, the presentencing report recommended a sentence of confinement for twenty-five years because the victim suffered a perforated eardrum, with numbness and permanent hearing loss, as a result of the carjacking, thus constituting “serious bodily injury” as defined by the statute.²⁵ The defense objected to the presentencing report, arguing that serious bodily injury was an element of the offense requiring indictment and proof to the jury.²⁶ The district court disagreed, stating that serious bodily injury was a sentencing consideration and not an element of the offense.²⁷ Accordingly, the judge found serious bodily injury by a preponderance of the evidence and sentenced Jones to twenty-five years for this offense.²⁸ The Ninth Circuit affirmed the conviction.²⁹

The Supreme Court engaged in a lengthy analysis of whether Congress intended the statute to establish three separate offenses, with the aggravating factors serving as additional elements of a greater offense; or one offense, with the aggravating factors serving as mere sentence enhancers.³⁰ The Court believed that the former interpretation was correct, but recognized that the issue was not clear: “While we think the fairest reading of § 2119 treats the fact of serious bodily harm as an element, not a mere enhancement, we recognize the possibility of the other view.”³¹ The Court chose the former interpretation in order to avoid “grave and doubtful constitutional questions.”³²

“[G]rave and doubtful constitutional questions” existed because the latter interpretation tended to violate due process and jury trial guarantees.³³ The Court found fault with the trial judge sentencing Jones to additional confinement based on facts not alleged in the indictment and not proven to a jury beyond a reasonable doubt.³⁴ The Court recognized that there was no explicit case law explicitly prohibiting such a practice, but dictated an expansive new principle “suggested” by prior case law:

[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury and proven beyond a reasonable doubt.³⁵

This principle, established in footnote six of the majority opinion, served as the foundation for subsequent decisions.³⁶

The majority set forth this principle after discussing several cases affirming the basic constitutional requirement that the government prove to a jury all elements of a criminal offense beyond a reasonable doubt.³⁷ The opinion, however, failed to link the cases to the principle the Court expounded. In fact, one of these cases, *Almendarez-Torres v. United States*,³⁸ presented a large hurdle because the case held that a prior conviction, which served to increase the maximum sentence, was not required to be stated in an indictment. The *Jones* majority distinguished *Almendarez-Torres* because tradition and historical practice allowed for treating recidivism in such a fashion.³⁹ In response, the dissent effectively argued that *Almendarez-Torres* and other case law effectively *rejected* the principle expounded in footnote six.⁴⁰ In sum, *Jones* laid the

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 232-39.

³¹ *Id.* at 239.

³² *Id.* (quoting *United States ex rel. Attorney Gen. v. Delaware & Hudson Co.*, 213 U.S. 366, 406 (1909)).

³³ *Id.*

³⁴ *Id.* at 244.

³⁵ *Id.* at 243 n.6.

³⁶ See *infra* notes 48-51 and accompanying text.

³⁷ *Jones*, 526 U.S. at 240-43 (discussing *Patterson v. New York*, 432 U.S. 197 (1977); *Mullaney v. Wilbur*, 421 U.S. 684 (1975); and *In re Winship*, 397 U.S. 358 (1970)).

³⁸ 523 U.S. 224 (1998).

³⁹ *Jones*, 526 U.S. at 249.

⁴⁰ *Id.* at 265, 268 (Kennedy, J., dissenting). Justice Kennedy cited to *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), which had upheld the imposition of mandatory minimum punishments based on the trial judge’s determination that the defendant had visibly possessed a firearm during commission of the offense. *Jones*, 526 U.S. at 265. Regarding *McMillan*, Justice Kennedy stated “[t]he opinion made clear that we had already ‘rejected the claim that whenever a State links the ‘severity of punishment’ to ‘the presence or absence of an identified fact’ the State must prove that fact beyond a reasonable doubt.’” *Id.* (quoting *McMillan*, 477 U.S. at 85 (internal citation omitted)). Similarly, Justice Kennedy discussed *Almendarez-Torres v. United States*, 523

foundation for a new rule that was not entirely grounded in prior case law. In dissent, Justice Kennedy predicted that this new rule would have significant consequences: “it is likely [that the holding] will cause disruption and uncertainty in the sentencing systems of the States.”⁴¹ As subsequent cases soon demonstrated, this prediction proved correct.

Apprendi v. New Jersey

The principle suggested in *Jones* was fully established and applied in *Apprendi v. New Jersey*.⁴² In *Apprendi*, the defendant pleaded guilty to two counts of second-degree possession of a firearm for an unlawful purpose and one count of unlawful possession of an antipersonnel bomb.⁴³ As part of the plea agreement, Apprendi faced a maximum of ten years of confinement for each of the firearm counts.⁴⁴ Additionally, the prosecutor reserved the right to request a sentence enhancement on one of the firearm counts because the crime was motivated by racial bias.⁴⁵ After an evidentiary hearing on the issue of motive, the trial judge found by a preponderance of the evidence that one of the firearm counts was motivated by racial bias.⁴⁶ As a result of this finding, the judge sentenced Apprendi to twelve years’ confinement for that offense.⁴⁷

The Supreme Court applied the principle suggested in *Jones* and held that the New Jersey procedure violated the due process right of proof beyond a reasonable doubt and the right to a jury trial.⁴⁸ The Court adopted the principle suggested in footnote six of *Jones*,⁴⁹ stating: “Fourteenth Amendment *commands* the same answer in this case involving a state statute.”⁵⁰ In essence, the Court established an expansive new rule through a “Texas two-step” maneuver.⁵¹ In *Jones*, the Court examined broad, seminal cases on the due process right and right to a jury trial and stated that these cases “suggested” this principle. Shortly thereafter in *Apprendi*, the Court established this new rule as a command.

Of even greater importance, the Court introduced the concept of “the functional equivalent of an element.”⁵² This concept applied to facts that increased the maximum sentence.⁵³ The test for determining whether a fact constituted a “functional equivalent of an element” was solely based on whether the fact served to increase the maximum sentence: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.”⁵⁴ The Court adopted this phrase because of the historical practice: “Put simply, facts that expose a defendant to a punishment greater than that otherwise legally prescribed were by definition ‘elements’ of a separate legal offense.”⁵⁵ Such facts were considered *actual elements* in historical practice, and the Court henceforth would require the same constitutional procedural protections given to elements.⁵⁶ This

U.S. 224 (1998), which had upheld an increase in the maximum punishment based on evidence of a prior conviction. *Jones*, 526 U.S. at 268. Justice Kennedy stated: “In *Almendarez-Torres*, we squarely rejected the petitioner’s argument that ‘any significant increase in a statutory maximum sentence would trigger a constitutional ‘elements’ requirement’; as we said, the Constitution ‘does not impose that requirement.’” *Id.* at 268 (quoting *Almendarez-Torres*, 523 U.S. at 247.).

⁴¹ *Jones*, 526 U.S. at 271 (Kennedy, J., dissenting).

⁴² 530 U.S. 466 (2000).

⁴³ *Id.* at 469-70.

⁴⁴ *Id.* at 470. The agreement also provided that the sentence for the bomb count would run concurrently with the firearm offenses. *Id.*

⁴⁵ *Id.* If the prosecution succeeded in establishing this motive, Apprendi faced a maximum of twenty years’ confinement for the offense. *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 477.

⁴⁹ See *supra* note 35 and accompanying text.

⁵⁰ *Apprendi*, 530 U.S. at 476 (emphasis added).

⁵¹ See *id.* at 524 (O’Connor, J., dissenting) (“Today, in what will surely be remembered as a watershed change in constitutional law, the Court imposes as a constitutional rule the principle it first identified in *Jones*.”).

⁵² *Id.* at 494 n.19.

⁵³ *Id.*

⁵⁴ *Id.* at 490.

⁵⁵ *Id.* at 483 n.10.

⁵⁶ See *id.* at 484.

We do not suggest that trial practices cannot change in the course of centuries and still remain true to the principles that emerged from the Framers’ fears “that the jury right could be lost only by gross denial, but by erosion.” But practice must at least adhere to the basic

concept, adopted in a footnote, served to greatly expand the set of facts subject to constitutional guarantees such as due process, notice, and the right to a jury trial.

Ring v. Arizona

While *Apprendi* represented a significant change for states that had enhanced sentencing schemes similar to New Jersey, a greater impact occurred when the Supreme Court applied the *Apprendi* principle to invalidate capital sentencing procedures in *Ring v. Arizona*.⁵⁷ In *Ring*, the Court extended the *Apprendi* rule to aggravating factors required as a prerequisite to a death sentence.⁵⁸ Under Arizona law, the factfinder was required to find the existence of at least one aggravating circumstance in order to render a defendant eligible for the death penalty.⁵⁹ In *Ring*, the trial judge found the aggravating factor in question and sentenced the accused to death.⁶⁰ The Supreme Court overruled precedent that previously upheld Arizona's capital sentencing scheme and ruled that *Apprendi* applied to aggravating factors that served as a prerequisite for imposition of the death penalty.⁶¹ The Court stated that such aggravating factors in a capital case "operate as 'the functional equivalent of an element of a greater offense.'"⁶² The *Ring* decision invalidated capital punishment schemes in Arizona and in four other states whose procedures authorized judges to find the necessary aggravating factors, and opened the door for 168 prisoners then on death row in these states to challenge their sentences.⁶³

United States v. Cotton

In *United States v. Cotton*,⁶⁴ the Supreme Court shed further light on *Ring* and *Apprendi* in a plain error review of an *Apprendi* violation. In *Cotton*, the government indicted and convicted multiple defendants for conspiracy to distribute, distribution, and possession with intent to distribute "a detectible amount" of cocaine and cocaine base, which provided for a maximum sentence of twenty years' confinement.⁶⁵ Another part of the statute increased the maximum penalty to imprisonment for life if the offense involved at least fifty grams of cocaine base.⁶⁶ Because of this latter provision, the court sentenced two of the defendants to confinement for thirty years and the remainder of the defendants to confinement for life even though the indictment and conviction were for the lesser period of confinement. While their appeals were pending, the Supreme Court decided *Apprendi*.

Due to the change in the law occasioned by *Apprendi*, the defendants advanced two arguments on appeal. First, they claimed jurisdictional error—that the failure of the indictment to include the facts necessary to increase the sentence rendered the district court without jurisdiction to increase the sentence.⁶⁷ Second, they claimed that the violation of the right to a jury trial and the Indictment Clause constituted plain error that mandated reversal.⁶⁸ The Court unanimously rejected both arguments, providing an instructive plain error analysis. Under the plain error standard, the error must "seriously affect the

principles undergirding the requirements of trying to a jury all facts necessary to constitute a statutory offense and proving those facts beyond reasonable doubt.

Id. (citation omitted).

⁵⁷ 536 U.S. 584 (2002).

⁵⁸ *Id.* at 597.

⁵⁹ *Id.* at 593.

⁶⁰ *Id.* at 595.

⁶¹ *Id.* at 588-89.

⁶² *Id.* at 609 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 494 n.19 (2000)).

⁶³ *Id.* at 620-21 (O'Connor, J., dissenting) (noting the states which had the same system as Arizona which would be invalidated and stating that the *Ring* ruling called into question capital sentencing in four states which have hybrid state sentencing systems where the jury renders an advisory verdict but the judge decides the ultimate sentence); see also Casey Laffey, Note, *The Death Penalty and the Sixth Amendment: How Will the System Look after Ring v. Arizona*, 77 ST. JOHN'S L. REV. 371, 382-91 (2003) (evaluating the impact of *Ring* on the different state capital sentencing systems).

⁶⁴ 535 U.S. 625 (2002).

⁶⁵ *Id.* at 628 (citing 21 U.S.C. § 841(b)(1)(C) (2000)).

⁶⁶ *Id.* (citing 21 U.S.C. § 841(b)(1)(A)).

⁶⁷ *Id.* at 629.

⁶⁸ *Id.* at 631. The defendants failed to object at trial, thereby requiring the defendants to meet the plain error test. *Id.* at 628.

fairness, integrity, or public reputation of the judicial proceedings.”⁶⁹ The Court ruled that, because the evidence as to the amounts of cocaine involved was “overwhelming” and “essentially uncontroverted,” there was no basis for concluding that the error “seriously affected the fairness, integrity or public reputation of the judicial proceedings.”⁷⁰

Harris v. United States

In *Harris v. United States*,⁷¹ the Court addressed the next logical extension of the *Apprendi* rule—whether the same procedural protections should apply to facts resulting in a mandatory minimum sentence. Prior to *Apprendi*, *McMillan v. Pennsylvania* held that facts resulting in a mandatory minimum sentence were not elements of the offense and not subject to the same protections.⁷² In *Harris*, the defendant claimed that courts should extend the logic of *Apprendi* to facts that result in mandatory minimum sentences—overruling *McMillan*.⁷³ The Court declined to adopt such a position.⁷⁴ In *Harris*, the Court affirmed the distinction between facts constituting “sentencing factors” and facts increasing the maximum authorized sentence.⁷⁵

The *Harris* decision was based primarily on historical practice. In a plurality opinion,⁷⁶ the Court described *Apprendi* as a decision based on historical practice: “Any ‘fact that . . . exposes the criminal defendant to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone,’ the Court concluded [in *Apprendi*], would have been, under the prevailing historical practice, an element of an aggravated offense.”⁷⁷ The traditional practice existed, according to *Apprendi*, “because the function of the indictment and jury had been to authorize the State to impose punishment.”⁷⁸ The same reasoning did not apply to mandatory minimum punishments for two reasons. First, there was no comparable historical practice for mandatory minimum sentences.⁷⁹ Second, the rationale of the *Apprendi* rule does not apply because a mandatory minimum sentence is, by definition, a lesser sentence than the authorized maximum sentence.⁸⁰ Once the government observes all of the procedural guarantees, the Court noted, “the Government has been authorized to impose any sentence below the maximum.”⁸¹

In *Harris*, the Court reiterated that the *Apprendi* rule applies only to facts that increase the maximum authorized punishment. While logic or fairness may have dictated that facts triggering mandatory minimums be afforded the same protections as *Apprendi*, the Court would strictly rely on historical practice in its application of *Apprendi*.

Schriro v. Sumerlin

The last case relevant to the *Ring* decision is *Schriro v. Sumerlin*.⁸² In this case, the Supreme Court granted certiorari to determine whether *Ring* should apply retroactively to invalidate death sentences that had already completed final appellate review. Under *Teague v. Lane*, new rulings apply retroactively only if they involve substantive rules of criminal law or if the

⁶⁹ *Id.* at 631-32 (quoting *Johnson v. United States*, 520 U.S. 461, 467 (1997)).

⁷⁰ *Id.* at 633.

⁷¹ 536 U.S. 545 (2002).

⁷² 477 U.S. 79 (1986).

⁷³ *Harris*, 536 U.S. at 556.

⁷⁴ *Id.* at 568-69.

⁷⁵ *Id.* at 559-62.

⁷⁶ *Id.* at 548. Justice Breyer, who dissented in *Apprendi*, wrote an opinion concurring in the judgment. He stated: “I cannot easily distinguish *Apprendi v. New Jersey* from this case in terms of logic.” *Id.* at 569 (citation omitted). Justice Breyer declined to overrule *McMillan*, stating: “And because I believe that extending *Apprendi* to mandatory minimums would have adverse practical, as well as legal, consequences, I cannot yet accept its rule.” *Id.*

⁷⁷ *Id.* at 563 (citations omitted).

⁷⁸ *Id.* at 564.

⁷⁹ *Id.* at 563 (“There was no comparable historical practice of submitting facts increasing the mandatory minimum to the jury, so *Apprendi* rule did not extend to those facts.”).

⁸⁰ *Id.* at 565.

⁸¹ *Id.*

⁸² 124 S. Ct. 2519 (2004).

ruling is procedural and constitutes a “watershed rule[] of criminal procedure.”⁸³ The *Schiro* Court applied the *Teague* framework and determined that *Ring* does not apply retroactively.⁸⁴

The Court first addressed whether the *Ring* ruling substantively modified the elements of the offense of capital murder in Arizona.⁸⁵ The Ninth Circuit ruled that *Ring* did modify the elements of the offense, stating that *Ring* “reposition[ed] aggravating factors as elements of the separate offense of capital murder and reshap[ed] the structure of Arizona murder law.”⁸⁶ The Supreme Court disagreed, noting that the conduct punishable by death remained the same after *Ring*.⁸⁷ In sum, the Court found that *Ring* “did not alter the range of conduct Arizona law subjected to the death penalty.”⁸⁸ Instead, the Court focused on the procedural protections that should be attached: “*Ring* held that, because Arizona’s statutory aggravators restricted (as a matter of state law) the class of death-eligible defendants, those aggravators effectively were elements for federal constitutional purposes, and so were subject to the procedural requirements the Constitution attaches to trial of elements.”⁸⁹

The Court further ruled that *Ring* did not constitute a “watershed rule of criminal procedure.”⁹⁰ The Court framed this analysis by examining “whether judicial factfinding so ‘seriously dimishe[s]’ accuracy that there is an ‘impermissibly large risk’ of punishing conduct the law does not reach.”⁹¹ According to the majority, a judge-alone trial was not inherently unfair and did not render inherently inaccurate verdicts.⁹² While the right to a jury trial was a significant constitutional guarantee, it was not so significant to justify re-trial of capital defendants whose trials and appeals had already been finalized.⁹³ As a result, the Court declined to give retroactive effect to this procedural rule change.

Beyond *Schiro*’s holding that *Ring* was not retroactive, the case also served to further clarify the meaning of “functional equivalent to an element.” The *Schiro* Court confirmed that the substantive law of the offense remained unchanged and different procedural rules could apply to “functional equivalents to an element” so long as the rules met the minimum constitutional requirements.⁹⁴ Instead of being actual elements of the offense, facts that increased the maximum penalty simply triggered the same federal constitutional protections that apply to elements.⁹⁵ As such, *Schiro* indicated that *Ring* should be treated as a procedural ruling only.

Synthesis and Summary

The Court’s jurisprudence contains aspects that are clearly understood and others that are less clearly defined. On one hand, what constitutes the “functional equivalent to an element” is clearly defined—any fact which is a necessary predicate for an increase in the maximum punishment. On the other hand, the procedural protections that “functional equivalents to an element” warrant is less clear and undefined. At the very least, such facts require the following: (1) proof to a jury pursuant to the Sixth Amendment jury trial right, (2) proof beyond a reasonable doubt pursuant to the Fifth or Fourteenth Amendments’ due process guarantee, (3) notice to an accused in a grand jury indictment pursuant to the Fifth Amendment Indictment Clause (in federal prosecutions only). For non-federal cases, *dicta* also indicate that Sixth Amendment notice guarantees extend to functional equivalents of an element. The amount of notice, however, has not been clearly defined. For example, the following questions remain unanswered: whether the government must provide notice of aggravating factors in the charging document; whether the government must provide notice prior to trial or prior to the sentencing hearing; or

⁸³ 489 U.S. 288, 311 (1989).

⁸⁴ *Schiro*, 124 S. Ct. at 2524-25.

⁸⁵ *Id.* at 2523.

⁸⁶ *Summerlin v. Stewart*, 341 F.3d. 1082, 1105 (9th. Cir. 2003), *rev’d*, 124 S. Ct. 2519 (2004).

⁸⁷ *Schiro*, 124 S. Ct. at 2524.

⁸⁸ *Id.* at 2523.

⁸⁹ *Id.*

⁹⁰ *Id.* at 2526.

⁹¹ *Id.* at 2525 (quoting *Teague v. Lane*, 489 U.S. 288, 312-13 (1989)).

⁹² *Id.*

⁹³ *Id.* at 2525-26 (quoting *DeStefano v. Woods*, 392 U.S. 631 (1968)).

⁹⁴ *Id.* at 2524.

⁹⁵ *Id.*

whether the sentencing factors contained in the relevant statutes provide sufficient constructive notice. In addition to the notice issue, also left unanswered is whether any additional constitutional protections, not specified in these cases, apply.

Ring's Impact on Capital Cases in Civilian Practice

Introduction

The ruling that capital aggravating factors are “functional equivalents to an element” raised significant issues for the federal government and states with the death penalty. Previously, the Supreme Court held that jury sentencing in capital cases was not constitutionally required, and a judge could sentence a defendant to death.⁹⁶ *Ring* curtailed this holding in that a jury now must make any necessary factfinding in order to render a defendant eligible for death.⁹⁷ This ruling invalidated five states’ capital sentencing systems and brought into question several states that had a “hybrid” system where a jury rendered an advisory opinion, but the judge decided on the ultimate sentence.⁹⁸

In addition, *Ring* raised questions about the method by which the government charges a defendant with a capital offense and notifies him of the capital aggravating factors the government intends to prove. Prior to *Ring*, courts treated aggravating factors as mere sentencing considerations and not elements to an offense.⁹⁹ Aggravating factors were a recent creation, created in large part to meet the Supreme Court’s Eighth Amendment jurisprudence.¹⁰⁰ Accordingly, jurisdictions have enacted different procedures for notifying a capital accused of the aggravating factors upon which the government intends to rely.¹⁰¹ Because the *Ring* line of cases also specifies that the Fifth Amendment Indictment Clause and the Sixth Amendment Notice Clause apply to “functional equivalents to an element,”¹⁰² the notice requirements applicable to capital aggravating factors should be re-examined. This section examines the notice requirements applicable to civilian jurisdictions, with a focus on the extent to which *Ring* requires increased notice of capital aggravating factors.

Sixth Amendment Notice Generally

The basic concept of notice of the offense is central to the American criminal justice system.¹⁰³ In *Russell v. United States*, the Supreme Court invalidated a conviction because the indictment failed to provide sufficient notice.¹⁰⁴ In that case, the indictment stated that Russell failed to answer pertinent questions before a congressional subcommittee.¹⁰⁵ The indictment was found deficient because it failed to notify the defendant of the subject matter under investigation during the subcommittee meeting, thus rendering it impossible for Russell to defend himself by claiming that the questions were not pertinent to the matter under investigation.¹⁰⁶

In establishing basic notice requirements, the *Russell* Court reviewed the notice protections noted in nineteenth century case law and applied the same principles to modern practice.¹⁰⁷ According to the Court, notice provides two well-known

⁹⁶ *Harris v. Alabama*, 513 U.S. 504 (1995) (holding that the trial judge alone may impose a capital sentence and that the state is not required to specify how much weight to accord a jury’s advisory verdict).

⁹⁷ *Ring v. Arizona*, 536 U.S. 584, 607-09 (2002).

⁹⁸ *Id.* at 620-21 (O’Connor, J., dissenting) (noting the states that had the same system as Arizona, which would be invalidated, and stating that the *Ring* ruling called into question four states’ hybrid capital sentencing systems); see also Laffey, *supra* note 63, at 382-91 (evaluating the impact of *Ring* on the different state capital sentencing systems).

⁹⁹ See *Walton v. Arizona*, 497 U.S. 639, 647-49 (1990) (discussing cases).

¹⁰⁰ See *Gregg v. Georgia*, 428 U.S. 153, 162-68 (1976) (outlining the Georgia death penalty statute, including the aggravating factors which the government must establish, which was amended after *Furman v. Georgia*, 408 U.S. 238 (1972)).

¹⁰¹ See *infra* notes 118-42 and accompanying text.

¹⁰² See, e.g., *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999).

¹⁰³ *In re Oliver*, 333 U.S. 257, 273-74 (1948) (“A person’s right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence . . .”).

¹⁰⁴ 369 U.S. 749, 768-72 (1962).

¹⁰⁵ *Id.* at 752.

¹⁰⁶ *Id.* at 771-72. While the Court decided the issue based on a deficient indictment in violation of the Fifth Amendment Indictment Clause, *id.* at 760, the Court stated that the Fifth Amendment Due Process Clause and the Sixth Amendment Notice Clause were both “brought to bear” on the issue. *Id.* at 761.

¹⁰⁷ *Id.* at 765-66.

functions: (1) it “apprises the defendant of what he must be prepared to meet,”¹⁰⁸ and (2) it protects an accused against a second prosecution for the same offense, in violation of double jeopardy.¹⁰⁹ The Court then reiterated several foundational principles in establishing what constitutes sufficient notice: (1) the notice must contain more than a mere definition of the statutory terms of the offense;¹¹⁰ (2) the notice must give the defendant “reasonable certainty of the nature of the accusation against him[;]”¹¹¹ (3) the notice should “set forth all the elements of the offense intended to be punished[;]”¹¹² and (4) the notice “must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description [under the statute], with which he is charged.”¹¹³ The Court specifically indicated that these ancient principles applied in modern practice, noting that “these basic principles of fundamental fairness retain their full vitality under modern concepts of pleading.”¹¹⁴

The same notice principles apply to military practice. Rule for Courts-Martial 307(c)(2) requires specifications to contain “a plain, concise and definite statement of the essential acts charged,” and to “allege[] every element of the charged offense expressly or by necessary implication.”¹¹⁵ Similarly, modern military notice cases cite to *Russell* as the basis for the Sixth Amendment right to notice.¹¹⁶ As a result, the notice issues raised by *Ring* in the civilian context also apply to courts-martial.

Notice Requirements for Death and Capital Aggravating Factors in State Courts Prior to *Ring*

While case law clearly requires notice of the essential elements of the offense, less clear is the amount of notice necessary to apprise a capital defendant that the government is seeking the death penalty and which aggravating factors the government intends to prove. These aggravating factors were established in order to meet the Eighth Amendment requirement that the death penalty be imposed in a rational manner.¹¹⁷ Because aggravating factors are generally necessary to render a defendant eligible for the death penalty,¹¹⁸ they fall under *Ring*'s purview. As a result, the same Sixth Amendment notice requirement that applies to elements of the offense arguably also applies to aggravating factors that serve as “functional equivalents to an element.” Prior to *Ring*, no reported case classified aggravating factors as elements of an offense such that they would have to be alleged in the charging document. In fact, state practice varied widely both on the issue of notice of the state’s intent to seek the death penalty and on notice of the aggravating factors that the government intends to prove.

The state system with the least notice prior to *Ring* was Illinois.¹¹⁹ Under the Illinois system, the government, *after* it obtained a conviction for first-degree murder, requested a separate sentencing hearing to determine whether death should be imposed.¹²⁰ At that hearing the state must prove at least one statutory aggravating factor in order to render a defendant

¹⁰⁸ *Id.* at 763 (citations omitted).

¹⁰⁹ *Id.* at 764.

¹¹⁰ *Id.* at 765 (citing *United States v. Cruikshank*, 92 U.S. 542, 558 (1876)).

¹¹¹ *Id.* (quoting *United States v. Simmons*, 96 U.S. 360, 362 (1878)).

¹¹² *Id.* (quoting *United States v. Carl*, 105 U.S. 611, 612 (1882)).

¹¹³ *Id.* (quoting *United States v. Hess*, 124 U.S. 483, 487 (1888)).

¹¹⁴ *Id.* at 765-66.

¹¹⁵ MCM, *supra* note 16, R.C.M. 307(c)(2).

¹¹⁶ *United States v. Bryant*, 30 M.J. 72, 73 (C.M.A. 1990) (citing *Russell*, 369 U.S. at 763-64 and *Wong Tai v. United States*, 273 U.S. 77, 80-81 (1927)) (reading specification with “maximum liberality” to meet notice requirements where accused pleaded guilty and did not challenge the specification until his appeal); *United States v. Watkins*, 21 M.J. 208, 209 (C.M.A. 1986) (citing *Russell v. United States*, 369 U.S. 749 (1962)) (affirming conviction where specification could be construed to imply all elements of the offense, the accused pleaded guilty, the accused did not challenge the specification at trial, and the accused was not misled).

¹¹⁷ See *United States v. Matthews*, 16 M.J. 354, 377 (C.M.A. 1983) (reviewing Supreme Court precedent and concluding that the law requires that the sentencing authority identify aggravating circumstances to support the imposition of the death penalty and the purpose of additional procedures in capital cases is to “ensure that the death penalty is not meted out arbitrarily or capriciously”).

¹¹⁸ See *Tuilaepa v. California*, 512 U.S. 967, 971-72 (1994) (noting the requirement that aggravating factors be established to render a defendant eligible for the death penalty).

¹¹⁹ Daniel S. Reinberg, Comment, *The Constitutionality of the Illinois Death Penalty Statute: The Right to Pretrial Notice of the State’s Intention to Seek the Death Penalty*, 85 NW. U.L. REV. 272, 274-75 (1990).

¹²⁰ ILL. REV. STAT. ch. 38, para. 9-1 (1989).

eligible for the death penalty.¹²¹ The state was not required to notify the defendant of the aggravating factors that the state intended to prove, although the statute listed only eight possible aggravating factors.¹²² As a result, a defendant could go to trial on a first degree murder charge without knowing whether the state intended to seek the death penalty. Prior to *Ring*, the Seventh Circuit upheld the statute's constitutionality against a claim that the statute provided insufficient notice.¹²³ In *Silagy v. Peters*, the court rejected a claim that this lack of notice resulted in ineffective assistance of counsel and a violation of procedural due process.¹²⁴ The court noted that an indictment for first degree murder under Section 9-1 of the *Illinois Criminal Code* constituted "constructive notice" that the defendant is eligible for death because that section also contains the statutory provisions for death sentencing proceedings.¹²⁵ Similarly, such a defendant is afforded additional peremptory challenges at a capital trial.¹²⁶ The court stated that the "sentencing authority's decision to impose a sentence of death under the Illinois statute clearly requires notice to the accused."¹²⁷ The notice provided by the state, albeit post-trial, was sufficient to meet these requirements.¹²⁸

One year after the Seventh Circuit decided *Silagy*, the Supreme Court addressed the minimum notice requirements for capital cases in *Lankford v. Idaho*.¹²⁹ In *Lankford*, the prosecutor stated on the record that the state would not seek the death penalty and no arguments were made on the appropriateness of a death sentence.¹³⁰ The trial judge, however, sentenced Lankford to death.¹³¹ The Court reversed because the defendant did not have notice that death was a possible punishment.¹³² The Court's analysis focused on Lankford's counsel's lack of opportunity to address the factual and legal issues surrounding whether Lankford should receive the death penalty.

Whether petitioner would ultimately prevail on this argument is not at issue at this point; rather, the question is whether inadequate notice concerning the character of the hearing frustrated counsel's opportunity to make an argument that might have persuaded the trial judge to impose a different sentence, or at least to make different findings than those he made.¹³³

Lankford had no impact on Illinois practice. Shortly after *Lankford*, the Seventh Circuit denied a petition for *habeas corpus* seeking to overrule *Silagy* based on *Lankford*.¹³⁴ The court reiterated that the post-trial notice combined with the separate sentencing hearing was sufficient notice to meet due process requirements.¹³⁵ Similarly, the Illinois Supreme Court also interpreted *Lankford* narrowly, holding that *Lankford* only requires notice that the state is seeking the death penalty and that post-trial notice was sufficient.¹³⁶ The Illinois Supreme Court also rejected the argument that *Lankford* requires actual notice of the aggravating factors upon which the state intends to rely.¹³⁷

Like Illinois, *Lankford* had little impact on other states' practice. Most states either had specific provisions for notifying an accused that the state was seeking the death penalty or provided for an automatic sentencing hearing upon conviction for a

¹²¹ *Id.* para. 9-1(g).

¹²² *Id.* para. 9-1(b).

¹²³ *Silagy v. Peters*, 905 F.2d 986 (7th Cir. 1990).

¹²⁴ *Id.* at 994-97.

¹²⁵ *Id.* at 995.

¹²⁶ *Id.*

¹²⁷ *Id.* at 996.

¹²⁸ *Id.*

¹²⁹ 500 U.S. 110 (1991).

¹³⁰ *Id.* at 115-16.

¹³¹ *Id.* at 117.

¹³² *Id.* at 127.

¹³³ *Id.* at 124.

¹³⁴ *Williams v. Chrans*, 945 F.2d 926, 938-39 (7th Cir. 1991) (holding that the Illinois procedure provides sufficient notice to a capital defendant).

¹³⁵ *Id.*

¹³⁶ *People v. Henderson*, 662 N.E.2d 1287, 1296 (Ill. 1996) (distinguishing *Lankford* because the defendant had actual notice that the state was seeking the death penalty).

¹³⁷ *People v. Brown*, 661 N.E.2d 287, 303-04 (Ill. 1996) (rejecting defendant's argument that *Lankford* requires the state to notify him of the aggravating factors on which the state intends to rely).

capital offense.¹³⁸ Only one reported case reversed a death penalty for lack of notice for aggravating factors.¹³⁹ In *Smith v. Commonwealth*, the Kentucky Supreme Court ruled that six-days notice prior to trial that the state is seeking the death penalty was inadequate notice for both the guilt and penalty phases of the trial.¹⁴⁰ Relying on *Lankford*, the court noted that six-days notice is inadequate to allow counsel to prepare for the guilt phase and the sentencing phase.¹⁴¹ Similarly, the Utah Supreme Court construed *Lankford* to require the government to allege aggravating circumstances be alleged in order for the defendant to prepare a defense.¹⁴² The Utah capital murder statute, however, includes the aggravating circumstances as elements of the capital offense,¹⁴³ which would arguably mandate that aggravating circumstances be alleged notwithstanding *Lankford*. Only three other state courts have considered challenges based on *Lankford* and each has narrowly construed *Lankford*.¹⁴⁴

Notice of Aggravating Factors after *Ring* in the States

While *Ring* placed states on clear notice that a jury must find capital aggravating factors beyond a reasonable doubt, state courts have grappled with the issue of what notice protections also apply. State courts have considered arguments both under the Indictment Clause and under the Sixth Amendment notice guarantee. All states except one ruled that an indictment need not include aggravating factors.¹⁴⁵ The only state court to rule that the indictment must allege aggravating factors, the New Jersey Supreme Court, based its ruling on the New Jersey Constitution.¹⁴⁶ The remaining state courts relied on two rationales for ruling that indictments were not required for capital aggravating factors. First, several courts noted that *Ring* did not present an Indictment Clause issue, because *Ring* was based solely on the jury trial right.¹⁴⁷ This rationale, however, is problematic in light of the *dicta* in the other cases that extended constitutional guarantees to “functional equivalents to an element.”¹⁴⁸ Second, several courts noted that the Indictment Clause did not apply to the states.¹⁴⁹ In addition, many courts

¹³⁸ See Reinberg, *supra* note 119, at 274-75 (noting the state practices).

¹³⁹ *Smith v. Commonwealth*, 845 S.W.2d 534, 537-38 (Ky. 1993).

¹⁴⁰ *Id.* at 537-38.

¹⁴¹ *Id.*

¹⁴² *State v. Lovell*, 984 P.2d 382, 391 (Utah 1999).

¹⁴³ UTAH CODE ANN. § 76-5-202 (2004); see *Andrews v. Shulsen*, 802 F.2d 1256, 1261 (10th Cir. 1986) (interpreting the Utah statute).

¹⁴⁴ *People v. Dist. Court, Gilpin County*, 825 P.2d 1000, 1002-03 (Colo. 1992) (stating that notice received forty-one days prior to trial of intent to seek death penalty sufficient); *Connecticut v. Johnson*, No. CR 970135375, 1999 Conn. Super. LEXIS 3530, *4-5 (Conn. Super. Ct. 1999) (stating that the pretrial notice was sufficient and denying a request for a bill of particulars); *State v. Clark*, 920 P.2d 187, 189 (Wash. 1996) (“Due process in sentencing requires only adequate notice of the possibility of the death penalty.”).

¹⁴⁵ See *McKaney v. Foreman*, 100 P.3d 18, 20-21 (Ariz. 2004) (stating that *Ring* and *Apprendi* do not implicate Fifth Amendment grand jury right and grand jury guarantee does not apply to states; concluding that “the only federal mandate applicable to McKaney in the context of the instant case is the Fourteenth Amendment due process requirement that a defendant receive adequate notice of the charges against him”); *Terrell v. State*, 572 S.E.2d 595, 602-03 (Ga. 2002) (holding that written notice of statutory aggravating factors several months prior to trial was sufficient notice and rejecting argument that indictment required for capital aggravating factors because *Ring* did not extend to indictments and Indictments Clause only applies to federal prosecutions); *People v. Schrader*, Ill. App. 3d, 684, 694-95 (Ill. App. Ct. 2004) (following *McClain* analysis); *People v. McClain*, 799 N.E.2d 322, 336 (Ill. App. Ct. 2003) (affirming extended sentence based on aggravating factors, holding that indictment need not allege aggravating factor, and noting that the defendant received written notice of intent to seek an extended sentence prior to trial, which was reasonable notice under Sixth Amendment); *Soto v. Commonwealth*, 139 S.W.3d 827, 842-43 (Ky. 2004) (holding that indictment on aggravating factors is not required, instead, all that is required is timely, formal notice of the intent to seek death and of the aggravating circumstances upon which government is relying); *Stevens v. State* 867 So. 2d 219, 227 (Miss. 2003) (holding that indictment on aggravating factors not required), *cert. denied*, 125 S. Ct. 222 (2004); *State v. Edwards* 116 S.W.3d 511, 543-44 (Mo. 2003) (stating that, according to death penalty statute, the state must give pretrial notice of statutory aggravating factors and that such notice is sufficient in lieu of charging in information or indictment), *cert. denied*, 540 U.S. 1186 (2004); *State v. Tisius*, 92 S.W.3d 751, 766 (Mo. 2002) (rejecting argument that murder plus aggravating factors constituted a greater offense for which indictment was required); *State v. Hunt*, 582 S.E.2d 593, 604 (N.C. 2003) (holding that capital aggravating factors need not be alleged in indictment, noting that “[t]he only possible constitutional implication that *Ring* and *Apprendi* may have in relation to our capital defendants is that they must receive reasonable notice of aggravating circumstances, pursuant to the Sixth Amendment’s notice requirement”), *cert. denied*, 539 U.S. 1151 (2004); *Primeaux v. State*, 88 P.3d 893, 899-00 (Okla. Crim. App.) (stating that *Ring* does not apply to indictments), *cert. denied*, 125 S. Ct. 371 (2004); *State v. Oatney*, 66 P.3d 475, 487 (Or. 2003) (rejecting argument based on *Ring* that indictment must include aggravating factors on the basis that *Ring* did not rule on indictments), *cert. denied*, 540 U.S. 1151 (2004); *State v. Edwards*, 810 A.2d 226, 234 (R.I. 2002) (ruling that notice of aggravating factors necessary for life without parole that the government served on defense within twenty days of the arraignment was sufficient notice—there is no requirement for indictment on aggravating factors); *Moeller v. Weber*, 689 N.W.2d 1, 20-22 (S.D. 2004) (stating that aggravating factors were not elements that the government must allege in indictment and holding that there was sufficient notice where the government gave formal notice of statutory aggravators and written notice of intent to seek the death penalty eight months prior to trial).

¹⁴⁶ *State v. Fortin*, 843 A.2d 974 (N.J. 2004).

¹⁴⁷ See *McKaney*, 100 P.3d at 20-21; *Terrell*, 572 S.E.2d at 602-03; *Stevens*, 867 So. 2d at 227; *Hunt*, 582 S.E.2d at 603; *Primeaux*, 88 P.3d at 899-900; *Oatney*, 66 P.3d at 487; *Edwards*, 810 A.2d at 234; *Moeller*, 689 N.W.2d at 20-22.

¹⁴⁸ See *supra* notes 21-56 and accompanying text.

specifically held that the pretrial notice for capital aggravating factors complied with Sixth Amendment notice requirements.¹⁵⁰ The Mississippi Supreme Court, however, denied a claim that *Ring* required notice of aggravating factors.¹⁵¹ The court followed a rationale similar to the Illinois notice cases discussed above,¹⁵² reasoning that a charge of capital murder puts a capital defendant on notice of the statutory aggravating factors that the state may use against him.¹⁵³ Finally, because Illinois placed a moratorium on the death penalty, the Illinois statute has not been substantively examined in light of *Ring*.¹⁵⁴

Even more problematic is Florida's capital sentencing scheme, which contains significant weaknesses in light of *Ring*. In Florida, the trial judge is the sentencing authority, but the jury must render an advisory verdict as to the following: (1) whether "sufficient [enumerated] aggravating factors exist[.]" (2) whether sufficient mitigating circumstances exist which outweigh the aggravating factors; and (3) whether, based on the aggravating circumstances and mitigating circumstances, the defendant should be sentenced to life imprisonment or death.¹⁵⁵ The advisory verdict is decided by a majority vote.¹⁵⁶ The statute, however, does not specify a standard of proof.¹⁵⁷ After the advisory verdict, the trial judge makes the ultimate sentencing decision. If the judge imposes death, he or she must issue written findings that "sufficient aggravating circumstances exist as enumerated in subsection (5)," and that "there are insufficient mitigating circumstances to outweigh the aggravating circumstances."¹⁵⁸ This system is clearly suspect in many respects after *Ring*, particularly because a judge could find aggravating factors after the jury failed to do so.¹⁵⁹ The Florida Supreme Court summarily denied a challenge to this system in a wholly unsatisfactory opinion in *Kormondy v. State*.¹⁶⁰ In *Kormondy*, the court summarily distinguished *Ring* because "the trial court and the jury are cosentencers under our capital scheme."¹⁶¹ The court also summarily denied a defense challenge to the notice provisions by simply noting: "While *Ring* makes *Apprendi* applicable to death penalty cases, *Ring* does not require either notice of the aggravating factors that the State will present at sentencing or a special verdict form indicating the aggravating factors found by the jury."¹⁶² The court seemed to rely on the Supreme Court's upholding of the Florida capital sentencing system prior to *Ring* and the Supreme Court's denial of certiorari on two Florida capital cases on the same day *Ring* was decided.¹⁶³

In contrast to Florida, the New Jersey Supreme Court applied the *Ring* line of cases to the maximum extent possible to the New Jersey death penalty statute. In *State v. Fortin*,¹⁶⁴ the New Jersey Supreme Court concluded that the New Jersey constitutional indictment guarantee required that capital aggravating factors be alleged in the indictment. The court extensively reviewed *Ring*, consistently stating that aggravating factors now constitute elements of a capital offense.¹⁶⁵ On

¹⁴⁹ See *McKaney*, 100 P.3d at 20-21; *Terrell*, 572 S.E.2d at 602-03; *McClain*, 799 N.E.2d at 336; *Soto*, 139 S.W.3d at 842; *Hunt*, 582 S.E.2d at 603; *Moeller*, 689 N.W.2d at 21-22.

¹⁵⁰ See *Edwards*, 116 S.W.3d at 543-44; *Hunt*, 582 S.E.2d at 604.

¹⁵¹ *Stevens*, 867 So. 2d at 227.

¹⁵² See *supra* notes 119-26 and accompanying text.

¹⁵³ *Stevens*, 867 So. 2d at 227.

¹⁵⁴ See Diana L. Kanon, Note, *Will the Truth Set Them Free? No, But the Lab Might: Statutory Responses to Advancements in DNA Technology*, 44 ARIZ. L. REV. 467, 470 (2002) (explaining that the moratorium was announced in response to exonerations of death-row inmates by DNA testing).

¹⁵⁵ FLA. STAT. ch. 921.141(2) (2004).

¹⁵⁶ *Id.* ch. 921.141(3).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See Robert Baley, *Sentencing: Taking Florida Further into "Apprendi-Land,"* FLA. B.J., Feb. 2003, at 26 (noting problems with Florida capital sentencing after *Ring*).

¹⁶⁰ 845 So. 2d 41 (Fla. 2003), *cert. denied*, 540 U.S. 1151 (2004).

¹⁶¹ *Id.* at 54. In contrast, Alabama has a very similar system as Florida and now requires that the jury find at least one aggravating factor beyond a reasonable doubt. *Ex parte Waldrop*, 859 So. 2d 1181 (Ala. 2002).

¹⁶² *Kormondy*, 845 So. 2d at 54.

¹⁶³ *Id.* (citing *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002) and *King v. Moore*, 831 So. 2d 143 (Fla. 2002)). The Supreme Court stayed the execution in both cases while *Ring* was pending. *Bottoson*, 833 So. 2d at 694; *King*, 831 So. 2d at 144. On the day the Court decided *Ring*, the Court lifted the stays and summarily denied *certiorari* in both cases. See *Bottoson v. Moore*, 123 S. Ct. 657 (2002); *King v. Moore*, 123 S. Ct. 657 (2002). The Florida Supreme Court recited this history and then summarily concluded that *Ring* was not applicable to the Florida system, noting that the Supreme Court previously upheld the constitutionality of the Florida capital system. See *Bottoson*, 833 So. 2d at 694; *King*, 831 So. 2d at 144.

¹⁶⁴ 843 A.2d 974 (N.J. 2004).

¹⁶⁵ See, e.g., *id.* at 1027 ("[W]e can see no principled reason for our continued adherence to the notion that aggravating factors are not elements of capital murder."); *id.* at 1031 ("[A]ggravating factors ... are deemed elements that must be tried to a jury and proven beyond a reasonable doubt."); *id.* at 1036 ("In light of *Ring*, federal constitutional law now clearly defines elements of capital murder in a way that is fatally at odds with [prior case law].").

the other hand, the court specified different procedures for the guilt-phase and penalty-phase and indicated that capital aggravating factors were to be tried at sentencing.¹⁶⁶ The *Fortin* court stated that the aggravating factors on the indictment should not be read to the jury unless the aggravating factors also constitute an element of the offense or unless the same jury will decide the ultimate sentence.¹⁶⁷ As a result, the *Ring* decision resulted in substantial changes in New Jersey capital procedure.

In sum, state courts seem loathe to impose new additional requirements in light of *Ring*. The one state that decided to require indictment on aggravating factors did so on the parallel state constitutional indictment provision. Most state courts summarily denied *Ring*-based claims and many expressly held that current notice provisions are sufficient. Indeed, no post-*Ring* state court found insufficient notice of aggravating factors, and all but one state has maintained the status quo with regard to notice and indictments.

The Federal Death Penalty Act Notice Provisions

The Federal Death Penalty Act of 1994 (FDPA) is the current law for the death penalty in the federal criminal system.¹⁶⁸ Under the FDPA, death may be adjudged for espionage, treason, specified homicides, and specified drug offenses.¹⁶⁹ Further, death may be adjudged only if the government establishes, beyond a reasonable doubt,¹⁷⁰ at least one of the specified aggravating factors.¹⁷¹ The government must provide notice of the following prior to trial: the government's belief that a death sentence is justified, the government intention to seek the death penalty, and the aggravating factor or factors upon which the government intends to rely.¹⁷² The government is not limited to the aggravating circumstances specified in the FDPA and may present evidence of other aggravating factors relevant to the offense, including "the effect of the offense on the victim and the victim's family, . . . a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information."¹⁷³ These aggravating circumstances, called nonstatutory aggravating factors, are relevant only in determining whether death is justified after the prosecution establishes a statutory aggravating factor.¹⁷⁴ The FDPA does not establish strict time limits for government notice of intent to seek death, except that the notice must occur "a reasonable time before trial or before acceptance by the court of a plea of guilty."¹⁷⁵ Importantly, the FDPA does not include a provision for including aggravating factors in the indictment and the practice prior to *Ring* was not to include the aggravating factors in the indictment.

In pre-*Ring* FDPA practice, there were minimal issues regarding notice. Because the FDPA contained provisions for pretrial notice, the *Lankford* holding was not applicable to the federal system. Several capital defendants argued that the indictment should include the aggravating factors, but the courts consistently rejected this argument.¹⁷⁶ Some courts, however, did rule that the government's pretrial notice of intent to seek death and the aggravating factors upon which it

¹⁶⁶ *Id.* at 1037-38.

¹⁶⁷ *Id.* at 1038 (emphasis added). Under New Jersey procedure, different juries could be empanelled for the guilt phase and penalty phase of the trial. *Id.* If the same jury sat for both phases, the jurors were informed of the aggravating factors without reference to the indictment in order to voir dire prospective jurors. *Id.*

¹⁶⁸ 18 U.S.C. § 3591-3598 (2000).

¹⁶⁹ *Id.* § 3591(a) & (b).

¹⁷⁰ *Id.* § 3593(c).

¹⁷¹ *Id.* § 3593(d).

¹⁷² *Id.* § 3593(a).

¹⁷³ *Id.*

¹⁷⁴ *Id.* § 3593(e). The sentencing authority is required to:

consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death.

Id.

¹⁷⁵ *Id.* § 3593(a).

¹⁷⁶ *United States v. Plaza*, 179 F. Supp. 2d 444, 453 (E.D. Pa. 2001); *United States v. Miner*, 176 F. Supp. 2d 424, 444 (W.D. Pa. 2001); *United States v. Kee*, No. S1 98 CCR 778 (DLC), 2000 U.S. Dist. LEXIS 8785, *31-35 (S.D.N.Y. 2000); *United States v. Spivey*, 958 F. Supp. 1523, 1527-28 (D.N.M. 1997).

would rely was not reasonable and prohibited the government from seeking the death penalty on this basis.¹⁷⁷ Other challenges to the sufficiency of pretrial notice, which were otherwise in compliance with the statute, were summarily denied.¹⁷⁸

The FDPA Notice Provisions after *Ring*

After *Ring*, federal capital practice changed because of the indictment requirement previously stated in *Jones*. The government already had the burden of proving capital aggravating factors to a jury beyond a reasonable doubt,¹⁷⁹ so the FDPA already met the *Ring* standard. While *Ring* did not specifically hold that the indictment must allege the capital aggravating factors; *Ring*, read in conjunction with *Jones*, clearly indicate that this is required. Accordingly, every federal court addressing this issue ruled that the indictment must specify a statutory aggravating factor.¹⁸⁰ Similarly in homicide prosecutions, the indictment must also specify the minimum specific intent required under the FDPA.¹⁸¹ In fact, the government generally did not contest this requirement and sought superseding indictments that included all facts necessary for death.¹⁸² These superseding indictments usually included the statutory aggravating factors, the requisite specific intent (for homicide cases), and a statement that the accused was over eighteen years old at the time of the offense.¹⁸³ This last fact also falls within the *Ring* and *Jones* protections because the FDPA provides that no person who was less than eighteen years-old at the time of the offense may be sentenced to death.¹⁸⁴

After *Ring*, federal capital defendants attacked both the structure of the FDPA and the specific notice provisions. The most significant attack on the structure of the FDPA involved the FDPA's failure to provide for indictment on the capital aggravating factors. Specifically, capital defendants have argued that the FDPA is unconstitutional because it provides for notice of the statutory aggravating factors in the government's pretrial notice of intent to seek the death penalty and not in an indictment.¹⁸⁵ In essence, the defendants argue that, because the FDPA does not provide for indictment on statutory aggravating factors and *Ring* now requires indictment on these factors, the FDPA must explicitly authorize the government practice of seeking indictment on aggravating factors. All courts who have considered this argument have universally rejected it and upheld the FDPA.¹⁸⁶

¹⁷⁷ *United States v. Hatten*, 276 F. Supp. 2d 574, 579 (S.D.W.Va. 2003) (holding that thirty-six days' pretrial notice of intent to seek death and aggravating factors was objectively unreasonable where other factors indicated that notice was unreasonable); *United States v. Colon-Miranda*, 985 F. Supp. 31, 35-36 (D.P.R. 1997) (holding pretrial notice unreasonable); *see also United States v. Ferebe*, 332 F.3d 722, 737 (4th Cir. 2003) (establishing framework for analyzing objective reasonableness of government's pretrial notice).

¹⁷⁸ *United States v. Edelin*, 134 F. Supp. 2d 59, 71-72 (D.D.C. 2001) (noting the court's previous holding that the pretrial notice "meets the applicable constitutional and statutory notice requirements"); *Kee*, 2000 U.S. Dist. LEXIS 8785, at *17-20 (summarily rejecting the argument that pretrial notice "is so vague that it fails to provide the notice of the aggravating factors the Government intends to prove, in violation of the Fifth and Sixth Amendments and 18 U.S.C. § 3593(a)").

¹⁷⁹ 18 U.S.C. § 3592(c) (2000).

¹⁸⁰ *United States v. Barnette*, 390 F.3d 775, 784-85 (4th Cir. 2004); *United States v. Higgs*, 353 F.3d 281, 298 (4th Cir. 2003), *cert. denied*, 125 S. Ct. 627 (2004); *United States v. Jackson*, 327 F.3d 273, 284 (4th Cir. 2003), *cert. denied*, 540 U.S. 1019 (2003); *United States v. Quinones*, 313 F.3d 49, 53 n.1 (2d Cir. 2002); *United States v. Williams*, No. S1 00 Cr. 1608 (NRB), 2004 U.S. Dist. LEXIS 25644, *37-38 (S.D.N.Y. 2004); *United States v. Mikos*, No. 02 CR 137-1, 2003 U.S. Dist. LEXIS 16044, *13 (N.D. Ill. 2003); *United States v. Haynes*, 269 F. Supp. 2d 970, 978 (W.D. Tenn. 2003); *United States v. Sampson*, 245 F. Supp. 2d 327, 332 (D. Mass. 2003); *United States v. Regan*, 221 F. Supp. 2d 672, 679 (E.D. Va. 2002); *United States v. O'Driscoll*, No. 4:CR-01-00277. 2002 U.S. Dist. LEXIS 25864, *6 (M.D. Pa. 2002).

¹⁸¹ *Higgs*, 353 F.3d at 298; *Haynes*, 269 F. Supp. 2d at 978-79; *Sampson*, 245 F. Supp. 2d at 332; *see* 18 U.S.C. § 3591(a)(2) (establishing intent prerequisites for capital homicide).

¹⁸² *Quinones*, 313 F.3d at 53 (noting that government obtained superseding indictment); *Williams*, 2004 U.S. Dist. LEXIS 25644, at *38 n.19 (describing government concession); *Sampson*, 245 F. Supp. 2d at 332 ("[T]he government does not dispute [claim that indictment must allege aggravating factors]."); *O'Driscoll*, 2002 U.S. Dist. LEXIS 25864, at *6-7 (noting that the government notified the court of intent to seek a superseding indictment in light of *Ring*); *United States v. Lentz*, 225 F. Supp. 2d 672, 678 (E.D. Va. 2002) (agreeing with the government argument that the superseding indictment containing aggravating factors and mens rea requirements was sufficient).

¹⁸³ *Williams*, 2004 U.S. Dist. LEXIS 25644, at *39; *United States v. Acosta-Martinez*, 265 F. Supp. 2d 181, 184 (D.P.R. 2003) (superseding indictment with "notice of special findings"); *Haynes*, 269 F. Supp. 2d at 973 (superseding indictment with "notice of special findings"); *United States v. Davis*, No. 01-282 Section "R"(1), 2003 U.S. Dist. LEXIS 5745, *16 (E.D. La. 2003) (superseding indictment with requisite mens rea and two aggravating factors).

¹⁸⁴ 18 U.S.C. § 3591(a); *see Regan*, 221 F. Supp. 2d at 679 n.3 (noting that the age provision is also subject to indictment requirement and that the superseding indictment properly alleged that the defendant was at least eighteen years-old).

¹⁸⁵ *See, e.g., United States v. Cuong Gia Le*, 327 F. Supp. 2d 601, 609 (E.D. Va. 2004) (outlining defense argument).

¹⁸⁶ *United States v. Barnette*, 390 F.3d 775, 790 (4th Cir. 2004); *Williams*, 2004 U.S. Dist. LEXIS 25644, at *39-43; *Cuong Gia Le*, 327 F. Supp. 2d at 609; *Acosta-Martinez* 265 F. Supp. 2d at 185; *Haynes*, 269 F. Supp. 2d at 982-83; *United States v. Battle*, 264 F. Supp. 2d 1088, 1104-05 (N.D. Ga. 2003); *Davis*, 2003 U.S. Dist. LEXIS 5745, at *16-21; *Sampson*, 245 F. Supp. 2d at 330-38; *United States v. Mikos*, No. 02 CR 137-1, 2003 U.S. Dist. LEXIS 16044, *16-17 (N.D. Ill. 2003); *Regan*, 221 F. Supp. 2d at 680; *Lentz*, 225 F. Supp. 2d at 680-81.

More significant are defense attempts to expand the universe of facts subject to indictment. While the statutory aggravating factors and the minimum specific intent requirements clearly fall under the *Ring* and *Apprendi* framework, capital defendants argue for the expansion of facts subject to the indictment requirement. Many capital defendants have argued that the indictment should also allege the nonstatutory aggravating factors, an argument the courts universally reject because nonstatutory aggravating factors are not a prerequisite for the death penalty.¹⁸⁷ Courts also rejected defense arguments that the grand jury was required to allege the mitigating factors and state that the aggravating factors outweighed the mitigating factors.¹⁸⁸ In denying this argument, one district court noted that only the government's intent and the statutory aggravating factors rendered a defendant eligible for the death penalty; the sentencing authority used these remaining "selection factors" to determine if an accused should actually receive the death penalty.¹⁸⁹ Similarly, the indictment need not contain specific notice that the government intends to seek the death penalty; rather, notice of the statutory aggravating factors are sufficient for the indictment.¹⁹⁰

Conclusion

While there has been much sound and fury regarding the impact of *Ring* on capital cases, little has changed. The additional jury trial and requirement of proof beyond a reasonable doubt altered a few states' trial procedure, but the pretrial notice provisions remain unchanged. The jurisdictions that now require indictment on aggravating factors—the federal system and New Jersey—did so on the basis of their respective indictment clauses, which are expressly inapplicable to the military. This new indictment requirement in New Jersey and the federal system has not resulted in overturned death sentences. The New Jersey Supreme Court in *Fortin* announced that this requirement would apply prospectively.¹⁹¹ For federal death sentences pending when the Court decided *Ring*, all courts except one ruled either that the deficient indictment was harmless and affirmed the death sentence; or that the indictment actually included at least one of the necessary aggravating factors.¹⁹² Courts have denied all other challenges to pretrial notice based on *Ring*.

The Military Capital Process

In order to apply *Ring* to capital courts-martial, it is necessary to review the basis for the procedural protections that are incorporated into RCM 1004.¹⁹³ Rule for Courts-Martial 1004 incorporated capital procedures in order to comply with Supreme Court decisions requiring procedural protections for capital defendants in accordance with the Eighth Amendment prohibition against cruel and unusual punishment.¹⁹⁴ These same protections apply to service members through Article 55, Uniform Code of Military Justice (UCMJ),¹⁹⁵ which grants service members more protection against cruel and unusual punishment than the Eighth Amendment.¹⁹⁶ This section first discusses the case that established the framework for minimum capital procedural protections, *United States v. Matthews*, and then outlines the capital procedures established by the President in RCM 1004.

¹⁸⁷ *United States v. Higgs*, 353 F.3d 281, 298-99 (4th Cir. 2003), *cert. denied*, 125 S. Ct. 627 (2004); *Jackson*, 327 F.3d at 287; *Mikos*, 2003 U.S. Dist. LEXIS 16044, at *18; *Regan*, 221 F. Supp. 2d at 680-81; *Lentz*, 225 F. Supp. 2d at 681-82.

¹⁸⁸ *Haynes*, 269 F. Supp. 2d at 979-80 (mitigating factors and balancing); *Regan*, 221 F. Supp. 2d at 681 n.4 (mitigating factors); *Lentz*, 225 F. Supp. 2d at 682 n.4 (mitigating factors).

¹⁸⁹ *Haynes*, 269 F. Supp. 2d at 980.

¹⁹⁰ *United States v. Davis*, No. 01-282 Section "R"(1), 2003 U.S. Dist. LEXIS 5745, *22-*24 (E.D. La. 2003).

¹⁹¹ *State v. Fortin*, 843 A.2d 974, 1037-38 (N.J. 2004).

¹⁹² *United States v. Barnette*, 775 F.3d 775, 784-86 (4th Cir. 2004); *United States v. Lee*, 374 F.3d 637, 651 (8th Cir. 2004); *United States v. Higgs*, 353 F.3d 281, 304-07 (4th Cir. 2003), *cert. denied*, 125 S. Ct. 627 (2004). One court reversed a federal death sentence based on a deficient indictment, but the ruling was vacated and the case is pending *en banc* review at the Eighth Circuit Court of Appeals. *See United States v. Allen*, 357 F.2d 745 (8th Cir.), *vacated and reh'g en banc granted*, 2004 U.S. App. LEXIS 9190 (8th Cir. May 11, 2004).

¹⁹³ MCM, *supra* note 16, R.C.M. 1004.

¹⁹⁴ *Id.* R.C.M. 1004 analysis, at A21-73.

¹⁹⁵ UCMJ art. 55 (2002). Article 55 reads, in relevant part: "Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a court-martial or inflicted upon any person subject to this chapter." *Id.*

¹⁹⁶ *United States v. Matthews*, 16 M.J. 354, 368 (C.M.A. 1983) (quoting *United States v. Wappler*, 9 C.M.R. 23, 26 (C.M.A. 1953)).

United States v. Matthews: What Is Required in a Capital Court-Martial?

The seminal case for modern military capital jurisprudence is *United States v. Matthews*.¹⁹⁷ *Matthews* was the first military capital case to implement the Supreme Court's ruling in *Furman v. Georgia*, which reinstated the death penalty but required additional procedural protections prior to imposing death.¹⁹⁸ As a preliminary matter, the *Matthews* court stated that a service member is entitled to protection from cruel and unusual punishment under the Eighth Amendment, but also that Article 55, UCMJ, grants service members even greater protection than the Eighth Amendment.¹⁹⁹ The *Matthews* court then exhaustively reviewed *Furman*, including each concurring and dissenting opinion, and the eleven subsequent decisions that applied *Furman*.²⁰⁰ After this review, the *Matthews* court distilled the Supreme Court's rulings into five procedural protections necessary under the Eighth Amendment in capital cases:

1. A Bifurcated Sentencing Procedure Must Follow the Finding of Guilt Of a Potential Capital Offense;
2. Specific Aggravating Circumstances Must Be Identified To the Sentencing Authority;
3. The Sentencing Authority Must Select and Make Findings On the Particular Aggravating Circumstances Used As a Basis For Imposing the Death Sentence;
4. The Defendant Must Have Unrestricted Opportunity To Present Mitigating and Extenuating Evidence, and
5. Mandatory Appellate Review Must Be Required To Consider the Propriety Of the Sentence As To the Individual Offense and Individual Defendant and To Compare the Sentence To Similar Cases Statewide.²⁰¹

The court then found the military capital procedures defective because they did not require the court members to "specifically identify the aggravating factors upon which they have relied in choosing to impose the death penalty."²⁰² As a result, "meaningful appellate review" was "impossible."²⁰³ Not only did the court hold the procedure to be unconstitutional, the court specified means by which the defects could be remedied. The court recognized that Congress could correct this problem through an amendment to the UCMJ, but suggested that the President could also remedy the problem under Articles 36 and 56, UCMJ, which allows the President to promulgate rules of procedure and establish limits for sentences.²⁰⁴

RCM 1004

Shortly after *Matthews*, the President promulgated RCM 1004, which was drafted and submitted for public comment prior to *Matthews*.²⁰⁵ Rule for Courts-Martial 1004 added several procedural protections. First, an accused is eligible for the death penalty only if the members agree unanimously that he is guilty of a death-eligible offense.²⁰⁶ Second, the government must prove, beyond a reasonable doubt, one of the aggravating factors enumerated in RCM 1004(c).²⁰⁷ In addition, if death is adjudged, the panel president must announce which aggravating factors the panel found beyond a reasonable doubt.²⁰⁸ Third, during sentencing, the accused is accorded "broad latitude to present evidence in extenuation and mitigation."²⁰⁹ Fourth, the members are required to unanimously "concur that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances . . ."²¹⁰ and all members must actually vote to adjudge the death penalty.²¹¹

¹⁹⁷ *Id.* at 368.

¹⁹⁸ 408 U.S. 238 (1972).

¹⁹⁹ *Matthews*, 16 M.J. at 368 (quoting *United States v. Wappler*, 9 C.M.R. 23, 26 (C.M.A. 1953)). The Court did note that military necessity might limit the applicability of procedural rules for offenses committed during combat conditions or for violations of the law of war. *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 377.

²⁰² *Id.* at 379.

²⁰³ *Id.* at 380.

²⁰⁴ *Id.* (citing UCMJ arts. 36 & 56 (1969)).

²⁰⁵ MCM, *supra* note 16, R.C.M. 1004 analysis, at A21-73.

²⁰⁶ *Id.* R.C.M. 1004(a)(2).

²⁰⁷ *Id.* R.C.M. 1005(b)(4)(B).

²⁰⁸ *Id.* R.C.M. 1004(b)(8).

²⁰⁹ *Id.* R.C.M. 1004(b)(3).

²¹⁰ *Id.* R.C.M. 1004(b)(4)(C).

²¹¹ *Id.* R.C.M. 1004(b)(7), 1006(d)(4)(A).

Finally, the rules also provide for mandatory appellate review, including a proportionality review of the death sentence at the service-level court of appeals²¹² and mandatory review by the CAAF.²¹³

Three aspects of RCM 1004 are significant in light of *Ring*. First, capital aggravating factors appear to meet the *Ring* test and constitute the “functional equivalent to an element.” According to RCM 1004(c), “[d]eath may be adjudged only if the members find, beyond a reasonable doubt, one or more of the following aggravating factors”²¹⁴ This statement clearly places the capital aggravating factors within the *Ring* and *Apprendi* rule. Second, the President placed the rule in Chapter X of the Rules for Courts-Martial, Sentencing, and clearly indicated that the procedures necessary to adjudge death should apply to the sentencing phase of the trial. Indeed, the *Matthews* court specifically stated that the Eighth Amendment and Article 55 required procedural protections during the pre-sentencing phase of the trial.²¹⁵ Third, the President established specific notice procedures for the RCM 1004 aggravating factors that the government intends to prove. The trial counsel is not required to allege the capital aggravating factors in the capital specification. Instead, the trial counsel must give written notice prior to arraignment of the aggravating factors the prosecution intends to prove.²¹⁶ As a result, capital aggravating factors merit the similar procedural protections as elements of a military offense (i.e., proof beyond a reasonable doubt to a panel). On the other hand, the procedural rules clearly imply that capital aggravating factors are not treated as actual elements because the rules specifically do not require the government to charge capital aggravating factors at preferral or prove them during the trial on the merits.

Applicability of *Ring* to Capital Courts-Martial

Despite the sweeping language in the *Ring* and *Apprendi* rule, the actual impact of the *Ring* holding in the military appears to be minimal. Rule for Courts-Martial 1004 already incorporates many of the procedural guarantees established in *Ring*. The government must prove capital aggravating factors beyond a reasonable doubt, thereby satisfying the *Ring* Fifth Amendment due process requirement. Even though the right to a jury trial does not extend to the military as a matter of constitutional law,²¹⁷ *Ring*'s jury trial requirement is met because the panel must unanimously agree that an aggravating factor exists.²¹⁸ Finally, similar to the states, the grand jury right is expressly inapplicable to the military by the very terms of the Fifth Amendment.²¹⁹ One military capital appellant used *Ring* to attack the weighing conducted by the members by arguing that the decision must be made beyond a reasonable doubt and to also attack the authority of the President to promulgate capital aggravating factors as a violation of the separation of powers.²²⁰ This case is pending decision at CAAF and this article will not substantively discuss the issues raised in that case.

The notice question that confronts civilian courts, however, also has potential applicability in the military: does RCM 1004 comply with the Sixth Amendment notice requirement? Currently, RCM 1004 only requires that the trial counsel notify an accused in writing of the relevant aggravating factors prior to arraignment.²²¹ Capital aggravating factors are not alleged in the charge sheet, investigated at an Article 32 investigation, referred to court-martial by the convening authority, nor found at the trial on the merits. This practice is contrary to the standard practice for aggravating factors in non-capital courts-martial. Aggravating factors in non-capital courts-martial are treated as elements of the offense, which means that the aggravating factor must be alleged in the charge sheet, investigated at an Article 32 investigation, and found beyond a reasonable doubt at trial. Because RCM 1004 aggravating factors are properly considered “functional equivalents to an

²¹² *Id.* R.C.M. 1201(b)(1).

²¹³ *Id.* R.C.M. 1204(a)(1).

²¹⁴ *Id.* R.C.M. 1004(c).

²¹⁵ *United States v. Matthews*, 16 M.J. 354, 377 (C.M.A. 1983).

²¹⁶ MCM, *supra* note 16, R.C.M. 1004(b)(1). The rule also provides that the trial counsel can notify an accused *after* arraignment and would only be barred from doing so if the defense proves specific prejudice as a result of the late notice which a continuance or a recess cannot remedy. *Id.*

²¹⁷ *Ex parte Quirin*, 317 U.S. 1, 40 (1942) (noting that the Sixth Amendment right to a jury trial do not extend to military members). While the right to a jury trial does not extend to a service member as a matter of constitutional law, many provisions in the UCMJ and Rules for Courts-Martial extend similar jury trial protections. *See, e.g.*, UCMJ art. 25 (2002) (establishing requirements for court-martial panels); MCM, *supra* note 16, R.C.M. 502(a) (establishing qualifications and duties of courts-martial members).

²¹⁸ MCM, *supra* note 16, R.C.M. 1004(c).

²¹⁹ U.S. CONST. amend. V (“No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War, or public danger . . .”).

²²⁰ Brief Accompanying Petition for Writ of *Coram Nobis*, *Loving v. United States*, 58 M.J. 249 (2003) (No. 03-8007/AR) (ordering the government to show cause why the relief should not be granted).

²²¹ MCM, *supra* note 16, R.C.M. 1004(b)(1).

element” under *Ring*, the question arises whether RCM 1004 aggravating factors should be treated the same as non-capital aggravating factors. This section reviews the legal principles that apply to non-capital aggravating factors and then examines the extent to which these principles should apply to RCM 1004 aggravating factors.

Non-Capital Aggravating Factors

As part of the President’s authority to establish maximum sentences for an offense, the President has established certain facts that aggravate an offense and increase the maximum punishment.²²² The President has the authority to establish such aggravating factors as part of his authority to establish maximum sentences for UCMJ violations.²²³ Another foundation for the President’s authority is Article 36, UCMJ, which provides that the President may prescribe “[p]retrial, trial and post-trial procedures, including modes of proof.”²²⁴ The President listed aggravating factors as elements of the relevant offenses in Part IV of the *Manual for Courts-Martial* (the *Manual*) and included aggravating factors in the model specifications of the offense.²²⁵

For all intents and purposes, these aggravating factors are elements of the offense. They are listed as elements in Part IV of the *Manual* and are included in the model specifications.²²⁶ Further, RCM 307(c)(3) states that a specification is sufficient “if it alleges every element of the charged offense.”²²⁷ The discussion accompanying this provision states that “[a]ggravating circumstances which increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment.”²²⁸ These statements reflect early UCMJ case law that required aggravating factors that increased the maximum authorized punishment to be “(1) alleged in the specification, (2) covered by instructions, and (3) established as part of the government’s case beyond a reasonable doubt.”²²⁹ There are many early cases that state this requirement, but these cases cite no statutory or constitutional foundation for this statement of law.²³⁰ Each of these cases cite back to prior case law, not constitutional or statutory authority.²³¹ The earliest cases cited as authority for this proposition are two pre-UCMJ decisions by the Army Board of Review.²³² These two cases, *United States v. Lyle*,²³³ and *United States v. Toy*,²³⁴ provide no further insight as both cases simply cite earlier cases for this proposition.²³⁵ As a result, non-capital aggravating factors are treated as elements of the offense as a matter of common usage and case law and not pursuant to a specific statutory or constitutional requirement.

²²² *United States v. Flucas*, 49 C.M.R. 449, 450 (C.M.A. 1975) (holding that the President has the authority to establish aggravating factors and that aggravating factors are treated as elements of the offense).

²²³ UCMJ art. 56 (2002). Article 56 states: “The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.” *Id.*

²²⁴ *Id.* art. 36.

²²⁵ *See, e.g.*, MCM, *supra* note 16, pt. IV, ¶ 35 (establishing physical injury as an additional aggravating element for drunken or reckless operation of a vehicle, aircraft, or vessel and increasing the maximum punishment from six months’ confinement, total forfeiture of pay and allowances, and a bad-conduct discharge to eighteen months’ confinement, total forfeiture of pay and allowances, and a dishonorable discharge if physical injury is established).

²²⁶ *Id.*

²²⁷ *Id.* R.C.M. 307(c)(3).

²²⁸ *Id.* R.C.M. 307(c)(3) discussion (C)(ix).

²²⁹ *United States v. Nickaboine*, 11 C.M.R. 152, 155 (C.M.A. 1953).

²³⁰ *See, e.g.*, *United States v. Lovell*, 22 C.M.R. 235, 238 (C.M.A. 1956) (“If the punishment for an offense depends upon aggravating matter, such matter must be both alleged and established beyond a reasonable doubt by the evidence.” (citations omitted)); *United States v. Beninate*, 15 C.M.R. 98 (C.M.A. 1954) (“Punishment for a desertion terminated by apprehension requires appropriate allegation in the specification and proof beyond a reasonable doubt in the record of trial.” (citations omitted)); *Nickaboine*, 11 C.M.R. at 155 (“Yet to justify the imposition of the greater punishment provided in such a case, it is necessary under service authorities that this fact be (1) alleged in the specification, (2) covered by instructions, and (3) established as part of the Government’s case beyond a reasonable doubt.” (citations omitted)); *United States v. Grossman*, 9 C.M.R. 36, 41 (C.M.A. 1953) (“A sentence is limited by the facts alleged in the specification and the personal injuries should not have been considered to increase the severity of the sentence.” (citations omitted)).

²³¹ *See* cases cited *supra* note 230.

²³² *Nickaboine*, 11 C.M.R. at 155 (citing *United States v. Lyle*, 74 B.R. 367, 368 (A.B.R. 1947); *United States v. Toy*, 4 B.R.-J.C. 73, 74 (A.B.R. 1949)); *Grossman*, 9 C.M.R. at 41.

²³³ 74 B.R. at 368.

²³⁴ 4 B.R.-J.C. at 74.

²³⁵ *Toy*, 4 B.R.-J.C. at 74 (citing *United States v. Lyle*, 74 B.R. 367 (A.B.R. 1947); *United States v. Cote*, 74 B.R. 359 (A.B.R. 1947)); *Lyle*, 74 B.R. at 368 (citing *United States v. Cote*, 74 B.R. 359 (A.B.R. 1947)).

Another case shedding further light on the legal status of aggravating factors is *United States v. Flucas*.²³⁶ In that case, Flucas was charged with two specifications of assault upon a noncommissioned officer (NCO), but the government presented no evidence that Flucas knew the status of one of the victims, as required by the *Manual*, and the panel was not instructed on this knowledge requirement for either of the victims, who were both NCOs.²³⁷ On appeal, the government argued that lack of knowledge was an affirmative defense instead of an element because the President does not have the power to establish elements of an offense.²³⁸ The court rejected this argument with an instructive analysis:

True, as we have many times held, the President has no authority to prescribe in the Manual matters of substantive law, his powers in connection with the Code being generally limited to the promulgation of modes of proof and rules of procedure. Nevertheless, the Manual provision is valid, for the “element” of knowledge in each assault is expressly provided as part of an aggravating factor increasing the maximum permissible punishment “when the victim has a particular status or is performing a special function.” In addition to his power under Article 36 to prescribe rules of procedure and modes of proof, the President also has authority to prescribe maximum limits of punishment for offenses under the Code when the Code itself does not prescribe a particular sentence. He may provide for increased punishment upon allegation, proof and instructions regarding an aggravating factor.²³⁹

In essence, the *Flucas* decision was a precursor to the *Ring* and *Apprendi* concept of “functional equivalent to an element.” Congress did not establish the aggravating factors as elements in the UCMJ, but because the President established them in order to increase the maximum sentence, they served as elements as a functional matter in that they had to be alleged, instructed upon, and proven beyond a reasonable doubt.

Capital Aggravating Factors versus Non-capital Aggravating Factors: Are They Distinguishable?

The question that follows from the analysis of non-capital aggravating factors is whether the same rationale applies to aggravating factors under RCM 1004. At first glance, it appears that capital aggravating factors and non-capital aggravating factors operate in the same fashion: the government must prove both beyond a reasonable doubt in order to subject an accused to the greater punishment. Similarly, the same statutory bases exist for the President to establish capital aggravating factors as non-capital aggravating factors. On the other hand, the Eighth Amendment establishes a higher procedural standard during sentencing proceedings in order to adjudge the death penalty.²⁴⁰ Another differentiating factor is that the President has established specific rules of procedure for capital aggravating factors that are distinct from non-capital aggravating factors.²⁴¹ This section examines the similarities and differences between the two aggravating factors, in light of the rule that capital aggravating factors now qualify as “functional equivalents to an element.” Based on these similarities and differences, this section determines whether the rules that apply to non-capital aggravating factors should also apply to capital aggravating factors.

After the President promulgated RCM 1004, capital defendants challenged his authority, claiming that Congress did not delegate the authority for the President to establish capital aggravating factors. Prior to RCM 1004, the *Matthews* court stated that Articles 36 and 56, UCMJ, and the President’s inherent constitutional authority as commander-in-chief gave the President the authority to correct the defects that rendered capital punishment unconstitutional.²⁴² According to the *Matthews* court, the defect was an issue of sentencing procedure: “The great breadth of the delegation of power to the President by Congress with respect to court-martial procedures and sentences grants him the authority to remedy the present defect in the court-martial sentencing procedure for capital cases.”²⁴³ After the President promulgated RCM 1004, both the Court of Military Appeals (COMA) and the Supreme Court upheld the President’s promulgation authority, holding that Congress actually delegated this authority to the President.²⁴⁴ Both courts cited Articles 18, 36, and 56, UCMJ, as the basis for this

²³⁶ 49 C.M.R. 449 (C.M.A. 1975).

²³⁷ *Id.* at 450-51.

²³⁸ *Id.* at 450.

²³⁹ *Id.* (citations omitted).

²⁴⁰ See *supra* notes 196-204 and accompanying text.

²⁴¹ MCM, *supra* note 16, R.C.M. 1004.

²⁴² *United States v. Matthews*, 16 M.J. 354, 380-81 (C.M.A. 1983).

²⁴³ *Id.* at 381.

²⁴⁴ *United States v. Loving*, 517 U.S. 748, 769-71 (1996); *United States v. Curtis*, 32 M.J. 252, 261-63 (C.M.A.), *set aside and remanded on other grounds*, 33 M.J. 101 (C.M.A. 1991).

delegation.²⁴⁵ In addition, both courts cited to Article 106a, UCMJ, passed in 1985, as illustrative.²⁴⁶ Article 106a prohibited espionage, authorized the death penalty for espionage, established aggravating factors necessary to sentence an accused to death for espionage, and specifically stated that the President may promulgate additional capital aggravating factors pursuant to Article 36, UCMJ.²⁴⁷ The Supreme Court in *Loving* seemed doubtful that Article 36, standing alone, was sufficient, but relied on Congress passing Article 106a, to ratify the promulgation of RCM 1004.²⁴⁸ The Court concluded: “Whether or not Article 36 would stand on its own as the source of delegated authority, we hold that Articles 18, 36, and 56 together give clear authority to the President for the promulgation of RCM 1004.”²⁴⁹

In essence, the authority for both capital and non-capital aggravating factors is the same. Both the *Flucas* and *Matthews* courts cite to Articles 36 and 56 as the primary source of the President’s authority for establishing both aggravating factors.²⁵⁰ *Curtis* and *Loving* add Article 18 as a source of authority for the promulgation of RCM 1004, but the language of Article 18 also applies to non-capital aggravating factors: “general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter.”²⁵¹ In fact, the *Curtis* court stated that Articles 18 and 56 provide the authority for non-capital aggravating factors, such as desertion terminated by apprehension and driving while drunk resulting in death.²⁵²

Notwithstanding their functional similarity, the primary difference with capital aggravating factors is that the President specified procedures for capital aggravating factors, which include notice prior to trial and findings on the aggravating factors at sentencing.²⁵³ The President, however, has not established specific procedures for non-capital aggravating factors although the fact that they are listed as elements of the offense indicates that the President intends for the procedures established through case law to apply.²⁵⁴ On the other hand, the President established the RCM 1004 aggravating factors in order to meet the heightened procedural requirements for the death sentence pursuant to Article 55, UCMJ, and the Eighth Amendment.²⁵⁵ Indeed, the *Matthews* court specifically indicated that new rules were needed to remedy “defects in sentencing procedure”²⁵⁶ because “[the Supreme] Court considers that the death penalty is unique and that the procedure used to impose it requires a greater degree of judicial scrutiny.”²⁵⁷ Despite their functional similarity to non-capital aggravating factors, the President established different procedural rules for RCM 1004 aggravating factors. Simply because both non-capital aggravating factors and capital aggravating factors are in the same category of “functional equivalents to an element,” it does not follow that both should be treated the same procedurally. Instead, the procedural rules for RCM 1004 aggravating factors should meet the basic procedural guarantees established in *Ring*.²⁵⁸

²⁴⁵ *Loving*, 517 U.S. at 770; *Curtis*, 32 M.J. at 261-62.

²⁴⁶ *Loving*, 517 U.S. at 770; *Curtis*, 32 M.J. at 262.

²⁴⁷ UCMJ art. 106a (2002). Article 106a(c) states:

A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

...

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (Article 36).

Id.

²⁴⁸ *Loving*, 517 U.S. at 770.

²⁴⁹ *Id.*

²⁵⁰ *United States v. Matthews*, 16 M.J. 354, 380-81 (C.M.A. 1983); *United States v. Flucas*, 49 C.M.R. 449, 450 (C.M.A. 1975).

²⁵¹ UCMJ art. 18.

²⁵² *United States v. Curtis*, 32 M.J. 252, 261 (C.M.A.), *set aside and remanded on other grounds*, 33 M.J. 101 (C.M.A. 1991).

²⁵³ *See MCM, supra* note 16, R.C.M. 1004(b) (establishing procedures for adjudging death in a capital case).

²⁵⁴ *See supra* notes 229-36 and accompanying text.

²⁵⁵ *See supra* notes 205-10 and accompanying text.

²⁵⁶ *Matthews*, 16 M.J. at 380.

²⁵⁷ *Id.* at 377.

²⁵⁸ As a matter of logic, it follows that the procedural guarantees for capital aggravating factors should be at least as great as the procedural guarantees for non-capital aggravating factors, especially because the Supreme Court no longer differentiates between capital and non-capital aggravating factors. Nevertheless, *Ring* establishes the minimum procedural requirements for capital aggravating factors. As a result, RCM 1004 must meet the *Ring* standards.

Does RCM 1004 Provide for Sufficient Notice?

Even though *Ring* does not mandate that RCM 1004 capital aggravating factors be treated as actual elements (i.e., alleged in charge sheet, investigated, and proven at trial on the merits), the RCM 1004 aggravating factors must meet the same procedural guarantees extended to elements of the offense. While RCM 1004 meets many of the constitutional requirements,²⁵⁹ there is a question about whether the rules provide sufficient notice in order to comply with the Sixth Amendment. The primary function of notice of RCM 1004 factors is to provide an opportunity for the accused to prepare a defense because the underlying offense alleged in the charge sheet provides sufficient defense against double jeopardy.²⁶⁰ Notice of aggravating factors at arraignment does have the potential to place a capital accused at a disadvantage because, even though aggravating factors are found at sentencing, the panel can find that an aggravating factor exists based on evidence introduced at the trial on the merits.²⁶¹ This fact could theoretically lead to a trial with very short notice of the aggravating factors that the government intends to prove. Not one military capital accused, however, has challenged the notice provisions on appeal. The only reported instance of an issue surrounding notice of RCM 1004 aggravating factors is in the CAAF opinion in *United States v. Loving*, in which the court rejected a challenge to the lack of notice of “aggravating circumstances” introduced pursuant to RCM 1001(b)(4) in the government’s sentencing case.²⁶² Even though there is the potential for trial with little notice of the aggravating factors, the rules afford a capital accused substantial pretrial rights, including broad discovery rights²⁶³ and an Article 32 pretrial investigation,²⁶⁴ which would assist defense counsel in identifying potential aggravating circumstances. Similarly, the military judge is given broad authority to grant continuances “for reasonable cause.”²⁶⁵ Given these procedural protections, it is unlikely that the rules would apply to deprive a capital accused of sufficient time to prepare a defense against the RCM 1004 aggravating factors. Further, the rule provides more notice than some state statutes discussed earlier.²⁶⁶ The COMA in *Curtis* concluded: “as we construe RCM 1004, it not only complies with due process requirements but also probably goes further than most state statutes in providing safeguards for the accused.”²⁶⁷

Even If Not Legally Required, Should the Military Alter Its Practice?

Even though many constitutional provisions do not apply to the armed services, additional sources of protection exist that often exceed the rights afforded to civilian defendants.²⁶⁸ These protections are generally established through the UCMJ and the RCM, as well as by regulation.²⁶⁹ While not constitutionally required, these protections are considered essential to maintaining a good public perception of the military justice system and upholding morale in an all-volunteer military.

Similarly, Article 36, UCMJ, states that the procedural rules established by the President “shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.”²⁷⁰ Under the current system, a capital indictment must allege aggravating factors in order for a federal capital defendant to be eligible for the death penalty.²⁷¹ There is no similar procedural requirement for military capital

²⁵⁹ See *supra* text accompanying notes 217-17.

²⁶⁰ See *supra* notes 103-12 and accompanying text.

²⁶¹ MCM, *supra* note 16, R.C.M. 1004(b)(5).

²⁶² *United States v. Loving*, 41 M.J. 213, 267 (1994), *aff’d*, 517 U.S. 748 (1996). The aggravating circumstances are different from the RCM 1004 aggravating factors. Aggravating circumstances are admitted pursuant to RCM 1001(b)(4) and may be considered, once an aggravating factor has been found, in determining whether the extenuating and mitigating circumstances are substantially outweighed by the aggravating circumstances. MCM, *supra* note 16, R.C.M. 1004(b)(4)(C).

²⁶³ See MCM, *supra* note 16, R.C.M. 701 (outlining discovery rules).

²⁶⁴ See *id.* R.C.M. 405 (outlining procedural rules for the pretrial investigation). The Discussion to Rule 405 states that the investigation “also serves as a means of discovery.” *Id.* R.C.M. 405(a) discussion.

²⁶⁵ UCMJ art. 40 (2002). Article 40 states: “The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.” *Id.*

²⁶⁶ See *supra* notes 119-64 and accompanying text.

²⁶⁷ *United States v. Curtis*, 32 M.J. 252, 269 (C.M.A.), *set aside and remanded on other grounds*, 33 M.J. 101 (C.M.A. 1991).

²⁶⁸ See Colonel Francis A. Gilligan, *The Bill of Rights and Service Members*, ARMY LAW., Dec. 1987, at 3 (discussing the broad rights afforded to service members).

²⁶⁹ *Id.*

²⁷⁰ UCMJ art. 36.

cases.²⁷² The question remains, then, whether the military should, as a matter of policy, alter its current practice by requiring aggravating factors be charged at preferral and be subject to investigation at an Article 32 pretrial investigation.

Ring changed the current federal capital procedure only in that statutory aggravating factors are now alleged in the indictment—aggravating factors are not litigated at trial and are still litigated during the sentencing proceedings.²⁷³ Several federal courts have upheld this procedure.²⁷⁴ Federal prosecutors commence capital prosecutions by including a “notice of special findings” in the indictment that alleges the aggravating factors.²⁷⁵ This change to federal indictments accords additional procedural protections only to the extent that the capital defendant has additional advance notice that the government is seeking the death penalty and notice of the specific aggravating factors upon which the government intends to rely. The other protection intended by the grand jury indictments clause is to “provid[e] for a body of citizens that acts as a check on prosecutorial power.”²⁷⁶ While this aspect of the grand jury requirement channels and limits prosecutorial discretion, however, it does not provide a substantive trial right. Given these facts, it is not surprising that no court has overturned an adjudged federal death penalty because of an indictment that fails to allege the aggravating factors. Most courts have either held any adjudged error to be harmless²⁷⁷ or have interpreted the indictment liberally to find that it contained an allegation of one of the statutory aggravating factors.²⁷⁸ As a result, the change in federal practice adds a substantial additional layer of procedure, but the procedure affords little additional protections for an accused.

The military criminal justice system, however, now lacks a procedural protection that exists in the federal system. While the grand jury right does not extend to the military, the Article 32 pretrial investigation is designed to add similar protections and function as a rough parallel to the grand jury.²⁷⁹ In fact, the Article 32 pretrial investigation affords substantially more rights to an accused than the federal grand jury.²⁸⁰ The additional step of alleging RCM 1004 aggravating factors and investigating them at the Article 32 investigation would create a minimal additional burden on the government, especially because the government routinely follows the same practice for non-capital aggravating factors.²⁸¹ Such a procedural change would not limit the government’s decision to seek death because the government would not be required to proceed on a capital prosecution because it alleged and investigated the capital aggravating factors. As a result, a change to comport with federal practice would appear to be a minimal burden on the military and the President could issue such a rule in accordance with the principles established in Article 36, UCMJ.²⁸² Unless a substantial reason exists not to change military procedure to allow similar protections, the military procedure should be altered to require aggravating factors to be alleged in the charge sheet and investigated at the Article 32 pretrial investigation. Such a practice would bring the military criminal justice

²⁷¹ While a federal capital indictment includes one or more aggravating factors necessary to impose death, these aggravating factors continue to be litigated during the sentencing proceedings and not during the guilt phase of the trial. *Cf.* *United States v. Fell*, 217 F. Supp. 2d 469 (D. Vt. 2002) (holding FDPA unconstitutional because relaxed evidentiary standard used for aggravating factors during sentencing), *rev’d*, 360 F.3d 135 (2nd Cir.), *cert. denied*, 125 S. Ct. 369 (2004).

²⁷² *United States v. Turner*, No. NCMC 854044, 1986 CMR LEXIS 2275 (N.M.C.M.R. 1986) (holding that investigation of capital aggravating factors at the Article 32 pretrial investigation is not required), *rev’d on other grounds*, 25 M.J. 324 (C.M.A. 1987).

²⁷³ See 18 U.S.C. § 3593(b) (2000) (requiring separate sentencing hearing for capital cases).

²⁷⁴ *Fell*, 360 F.3d at 145-46 (stating that aggravating factors properly adjudicated at sentencing hearing); *United States v. Haynes*, 269 F. Supp. 2d 970, 983-84 (W.D. Tenn. 2003) (stating that relaxed evidentiary standards at sentencing hearing for aggravating factors does not render FDPA unconstitutional for lack of due process); *United States v. Johnson*, 239 F. Supp. 2d 924, 938, 942 (N.D. Iowa 2003) (stating that *Ring* does not prohibit bifurcated proceedings where aggravating factors are found at sentencing and FDPA clearly mandates a bifurcated proceeding for aggravating factors); *United States v. Regan*, 221 F. Supp. 2d 672, 678-79 (E.D. Va. 2002) (stating that *Ring* does not create a greater offense which must be found at trial); *United States v. Lentz*, 225 F. Supp. 2d 672, 682-83 (E.D. Va. 2002) (same); *accord*, *State v. Fortin*, 843 A.2d 974, 1037-38 (N.J. 2004) (mandating similar rule for New Jersey sentencing procedures).

²⁷⁵ See *Fortin*, 843 A.2d at 1034 (noting federal practice and citing to federal cases).

²⁷⁶ *United States v. Cotton*, 535 U.S. 625, 634 (2002).

²⁷⁷ *United States v. Barnette*, 390 F.3d 775, 786 (4th Cir. 2004) (holding alternatively that alleged error in indictment was harmless beyond a reasonable doubt); *United States v. Lee*, 374 F.3d 637, 651 (8th Cir. 2004) (holding that failure to allege aggravating factors was not plain error because the deficiency “did not seriously affect the fairness and integrity of judicial proceedings”); *United States v. Higgs*, 353 F.3d 281, 304-07 (4th Cir. 2003) (holding alternatively that alleged error in indictment was harmless beyond a reasonable doubt), *cert. denied*, 125 S. Ct. 627 (2004).

²⁷⁸ See, e.g., *Barnette*, 390 F.3d at 784-86; *United States v. Jackson*, 327 F.3d 273, 289 (4th Cir.).

²⁷⁹ E.g., *United States v. Loving*, 41 M.J. 213, 267 (1994) (noting that Article 32, UCMJ, was “intended to provide a substitute for the grand jury”), *aff’d*, 517 U.S. 748 (1996).

²⁸⁰ E.g., *Loving*, 41 M.J. at 297 (outlining the additional rights afforded an accused at an Article 32 investigation, including: right to appear; right to counsel; right to cross-examine the witnesses against him; right to examine the evidence against him; and right to present matters in defense, extenuation or mitigation).

²⁸¹ See *supra* text accompanying notes 222-27.

²⁸² UCMJ art. 36 (2002).

practice in line with the federal criminal practice. A proposed amendment to the rules to accomplish this change is located in the Appendix. At the very least, until the appellate courts rule definitively on this issue, military prosecutors are well advised to allege capital aggravating factors in the capital charge sheet and ensure that the aggravating factors are investigated at the Article 32 investigation.

Conclusion

The broad new concepts and language found in *Ring* and its progeny are troubling in their potential applicability to military capital procedures, but upon closer review there is minimal impact. This is largely because the military already affords substantial legal procedural protections to capital accused. Also significant is that while the term “functional equivalent to an element” seems very broad in theory and implies that any such fact should be treated as an element of the offense, subsequent cases and practice have limited the applicability of the term. While RCM 1004 aggravating factors are “functional equivalents to an element,” this classification only requires that the same constitutional procedural protections apply. Because RCM 1004 already mandates the procedural protections *Ring* required, *Ring* does not add any new requirements. As a result, while the President should reconsider RCM 1004 as a policy matter, the current system meets all constitutional mandates.

Appendix

R.C.M. 307(c) shall be amended to add the following subsection:

(5) *Capital Offenses*. If a specification alleges an offense punishable by death, the specification shall also allege the relevant aggravating factors listed in R.C.M. 1004(c) in order to permit the death penalty. The aggravating factors alleged in the specification shall be established in accordance with the procedure in R.C.M. 1004.

R.C.M. 1004(b)(1) shall be amended by striking the lined-through language and adding the underlined language.

(1) *Notice*. ~~Before arraignment, trial counsel shall give the defense written notice of which aggravating factors under subsection (c) of this rule the prosecution intends to prove. Failure to provide timely notice under this subsection (c) of this rule shall not bar later notice and proof of such additional aggravating factors unless the accused demonstrates specific prejudice from such failure and that a continuance or a recess is not an adequate.~~ Death may be adjudged only if the government establishes at least one aggravating factor which has been alleged in the specification pursuant to R.C.M. 307(c)(5) and investigated pursuant to R.C.M. 405. Changes to the charge and specification are authorized subject to the procedures in R.C.M. 603.

Book Review

THE BONUS ARMY: AN AMERICAN EPIC¹

REVIEWED BY COLONEL THOMAS D. ARNHOLD²

After every American war, one or more crises affect the veterans of that war. Often, the problems the veterans face are widespread and galvanizes the public in their favor. Paul Dickson and Thomas B. Allen detail an epic story of poverty-stricken World War I veterans and their quest to obtain a service bonus to which they felt entitled. In early 1924, Congress finally passed a bonus for these veterans of \$1 per day for each day served and \$1.25 for each day served overseas, but the bonus was only redeemable, with interest, in 1945.³ President Calvin Coolidge promptly vetoed the bill, but the Senate overrode his decision.⁴ The authors devote only a few short pages to the history of the original bonus legislation, but do briefly discuss the lobbying influence of the American Legion and the Veterans of Foreign Wars in obtaining passage of the bill.⁵

The Bonus Army consisted of World War I veterans, many of whom were accompanied by their family members. The Bonus Army did not form until after the Great Depression began. Many of the veterans began lobbying the President and Congress for early payment of the bonus for a variety of reasons. The Bonus Army later declared that they would not leave Washington D.C. until legislation was passed granting them an immediate payment of their bonus. The veterans were supported by the American Legion and the Veterans of Foreign Wars and had a champion in Congressman Wright Patman of Texas. Dickson and Allen explain how the confluence of the Great Depression, Prohibition, media coverage, and organized veterans with vibrant leadership made the Bonus Army an organized political force. Eventually, many veterans from all parts of the United States converged on Washington, D.C. to occupy parts of the city. They did not intend to leave until Congress passed and the President signed a bill immediately granting them their bonuses. Many of the veterans were joined by their families, and at one point there were over 20,000 veterans and family members in the city. The Bonus Army issued its own newspaper with a circulation of 50,000.⁶ Dickson and Allen effectively mix interesting short biographies of historical figures that played an important role in the Bonus Army. Refreshingly, the authors do not denounce those who opposed the bonus demanded by the veterans, but rather explain why those opposed to the bonus viewed it as ill-advised.

II. Analysis

The authors present the history of the bonus bill and the Bonus Army in a chronological fashion that is easy to follow. First, the authors relate several interesting factual situations that took place in World War I, which later had a direct impact on the Bonus Army. One ironic twist involves Major (MAJ) George S. Patton, Jr., who was wounded in World War I, but saved by his aide, Sergeant (SGT) Joe Angelo.⁷ Later, SGT Angelo walked from New Jersey to Washington, D.C. to join the Bonus Army,⁸ and Patton, his former commander, assisted in evicting the Bonus Army from the city.⁹ In one of the saddest moments relayed in the book, MAJ Patton later denied knowing SGT Angelo, the aide who earlier saved his life.¹⁰

The book tells of a variety of historical characters with many different motivations, including President Hoover, who was adamantly opposed to granting the veterans an immediate bonus, and his successor, President Franklin Roosevelt, who also was a surprising opponent of advancing the bonus. The authors also detail the meteoric rise of Walter W. Waters, a former sergeant and World War I veteran. Waters, from Portland, Oregon, led a small group to Washington, D.C. and eventually

¹ PAUL DICKSON & THOMAS B. ALLEN, *THE BONUS ARMY: AN AMERICAN EPIC* (2004).

² U.S. Army. Currently the Staff Judge Advocate, 35th Infantry Division (Mechanized).

³ DICKSON, *supra* note 1, at 29.

⁴ *See id.*

⁵ *See id.* at 28.

⁶ *See id.* at 133.

⁷ *See id.* at 17.

⁸ *See id.* at 35.

⁹ *See id.* at 176.

¹⁰ *See id.* at 194.

became the undisputed leader of the Bonus Army.¹¹ Eventually, Waters flirted with fascism¹² and disappeared into history with no other noteworthy achievements.

Particularly compelling figures are Pelham D. Glassford and Evalyn Walsh McLean. Glassford was a brigadier general in World War I who became the police chief of Washington, D.C.¹³ Although responsible for keeping order during the Bonus Army's occupation of Washington D. C. and actively participating in their later eviction, Glassford donated large sums of his personal money to assist the veterans.¹⁴ McLean was the wife of the owner of *The Washington Post*, which came out against advancing the bonus for veterans. McLean, however, urged the Red Cross to help the Bonus Army, and at one point purchased 1,000 sandwiches and coffees from a local café to distribute to hungry veterans.¹⁵

The authors expertly describe the historical backdrop of the times. Dickson and Allen describe the effect of the Great Depression on the veterans seeking to receive their bonus immediately. They also relate how the fear of communism, fascism, and rebellion caused American political leaders to condemn the Bonus Army and what it stood for.¹⁶ In fact, only a few members of the Bonus Army were communists or fascists. The authors patiently explain that most of the veterans just wanted the bonus money to pay bills or start new businesses.

Dickson and Allen do not lose sight of the real story—the veterans. They vividly describe the dire plight of the veterans and their families. Reading about the staging of boxing matches between the children of the veterans in order to raise money for food makes one sympathetic to the veterans' plight. While camped in Washington, D.C., the veterans built shelters out of anything they could find. One veteran built a home out of an old chicken coop.¹⁷ Another lived in an oil drum filled with grass.¹⁸ One pleasant side effect of the Bonus Army was the inadvertent integration of black and white veterans. United by a common cause, they lived and ate side by side. One veteran, Charles Green, recalled, "You could see blacks and whites, and they were living as a unit."¹⁹

Eventually, the Hoover administration decided to evict the Bonus Army from Washington, D.C. First, a carrot was used to entice the veterans to leave: a \$100,000.00 fund was available to veterans who wanted to return home.²⁰ Few veterans accepted, however, and in July, 1932, President Hoover used force to evict the veterans. At the time, police counted 11,698 veterans in twenty-four camps, not including family members.²¹ Not with sadness, but in a matter-of-fact manner, Dickson and Allen describe how Soldiers, many of them veterans of World War I themselves, evicted the Bonus Army using rifles, machine guns, pistols, and tanks.²² Many members of the Bonus Army were cut by sabers in a cavalry attack by the unit commanded by MAJ Patton.²³

The authors also describe how the Roosevelt Administration was just as opposed to granting the veterans an immediate bonus as the Hoover Administration. While Roosevelt created many new programs to put people back to work and end the Great Depression, he was adamantly opposed to advancing the Bonus Army and the bonus they so sorely sought. Roosevelt vetoed several bills passed by Congress granting the veterans their bonus.²⁴ Several famous political figures, including the controversial Father Charles E. Coughlin, urged the passage of an immediate bonus bill.²⁵ At one point, Father Coughlin held

¹¹ See *id.* at 56.

¹² See *id.* at 135.

¹³ See *id.* at 43.

¹⁴ See *id.* at 136.

¹⁵ See *id.* at 98.

¹⁶ See *id.* at 7.

¹⁷ *The Human Side of the Bonus Army*, LITERARY DIG. 28 (June 25, 1932).

¹⁸ DICKSON & ALLEN, *supra* note 1, at 108.

¹⁹ *Id.* at 118.

²⁰ *Id.* at 143.

²¹ See *id.* at 158.

²² See *id.* at 230.

²³ See *Coughlin's Bonus Plea*, N.Y. TIMES, May 6, 1935.

²⁴ See DAVID M. KENNEDY, FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929-1945, at 791 (N.Y. Oxford Univ. Press 1999), and DAVID MCCULLOUGH, TRUMAN 200 (N.Y.: Simon and Schuster 1992).

²⁵ See DICKSON & ALLEN, *supra* note 1, at 245.

a rally at Madison Square Garden in New York City, which was attended by 23,000 people, to attack Roosevelt's veto.²⁶ Loyal to his fellow veterans, Senator Harry S Truman broke with his future running mate and voted for the bonus.²⁷

The history of the Bonus Army did not end with the eviction of the veterans from Washington, D.C. Dickson and Allen explain that many veterans of World War I and later the Bonus Army went to work in federal work programs established by President Roosevelt. They did so because the Great Depression had not ended, and they needed to serve. The authors devote an entire chapter describing how many veterans sent to a camp in the Florida Keys were killed in a hurricane.²⁸ Famed author Ernest Hemingway criticized the deaths of these 259 veterans as unnecessary, faulting the Roosevelt Administration for not giving the veterans proper warning of the impending hurricane.²⁹ While the chapter about the Florida Keys disaster is interesting, the authors appear to blame this tragedy on the veterans' eviction from Washington, D.C. and the government's failure to provide them their bonus immediately. This attempted nexus is far-fetched, but illustrates the pathetic plight of the World War I veterans.

In the book's epilogue, Dickson and Allen discuss the origin of the GI Bill, which they attribute, in large part, to the shabby treatment of the World War I veterans. During World War II, many of the congressional proponents of the Bonus Army pushed for some type of legislation to provide long term assistance for veterans. By the end of 1943, 243 bills were pending before Congress that would give veterans some type of benefits.³⁰ On 8 June 1944, the GI Bill passed Congress, with D-Day being the deciding factor. Until then, a southern congressmen blocked the bill, fearing it would assist in educating black veterans.³¹ Finally, on 22 June 1944, due to overwhelming public support, President Roosevelt signed the GI Bill.³²

III. The Thesis and Its Application

Dickson and Allen are experts at detailing an interesting and perhaps largely unknown part of U.S. history. Their epilogue tells how the Bonus Army's efforts eventually led to the GI Bill's passage. After each conflict, American Veterans face problems and issues unique to their war. After Vietnam, many veterans faced Post-Traumatic Stress Syndrome and Agent Orange disabilities. After the Gulf War, former Soldiers had difficulty convincing military leaders they suffered from Gulf War Syndrome. In all of these instances, the Soldiers, media, veterans' organizations, and influential, sympathetic citizens mobilized political action to aid the veterans. The lesson to be learned from this book is that veterans of war will struggle financially, socially and psychologically, and the U.S. government must take care of its military veterans. Through the actions of the Bonus Army, treatment of veterans became a political issue. By banding together, members of the Bonus Army became a political force to be reckoned with, and were an example to future generations of veterans.

IV. Conclusion

The Bonus Army is an excellent read. It has a sufficient mix of facts, figures, personal recollections, and historical tales to be interesting and relevant. Some non-fiction books can be read only a few pages at a time before the reader must put the book down in order to digest what has been read or to keep from falling asleep. This was not one of those books. By reading this book, Soldiers and civilians will understand the political basis for the passage of legislation such as the Soldier's and Sailor's Civil Relief Act, and other veterans' legislation. The reader will also come to an understanding that members of the Bonus Army suffered tremendously, and did so not because it was a noble cause, but because they were trying to eke out a living for themselves and their families.

²⁶ See Ernest Hemingway, *Who Murdered the Vets?*, NEW MASSES, Sept. 17, 1935, at 9.

²⁷ See DICKSON & ALLEN, *supra* note 1, at 253.

²⁸ See *id.* at 224-51.

²⁹ See *id.* at 245.

³⁰ See *id.* at 269.

³¹ See *id.* at 270.

³² See *id.* at 274.

CLE News

1. Resident Course Quotas

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

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

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

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

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

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

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

2. TJAGSA CLE Course Schedule (June 2005 - September 2007) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

ATRRS No.	Course Title	Dates
GENERAL		
5-27-C22	54th Graduate Course	15 Aug 05 – thru 25 May 06
5-27-C22	55th Graduate Course	14 Aug 06 – thru 24 May 07
5-27-C22	56th Graduate Course	13 Aug 07 – thru 23 May 08
5-27-C20	168th Basic Course	13 Sep – 7 Oct 05 (Phase I – Ft. Lee) 7 Oct – 15 Dec 05 (Phase II – TJAGSA)
5-27-C20	169th Basic Course	3 Jan – 27 Jan 06 (Phase I – Ft. Lee) 27 Jan – 7 Apr 06 (Phase II – TJAGSA)
5-27-C20	170th Basic Course	30 May – 23 Jun 06 (Phase I – Ft. Lee) 23 Jun – 31 Aug 06 (Phase II – TJAGSA)
5-27-C20	171st Basic Course	12 Sep – 6 Oct 06 (Phase I – Ft. Lee) 6 Oct – 14 Dec 06 (Phase II – TJAGSA)
5-27-C20	172d Basic Course	2 Jan – 2 Feb 07 (Phase I – Ft. Lee) 2 Feb – 6 Apr 07 (Phase II – TJAGSA)
5-27-C20	173d Basic Course	29 May – 22 Jun 07 (Phase I – Ft. Lee) 22 Jun – 30 Aug 07 (Phase II – TJAGSA)
5-27-C20	174th Basic Course	11 Sep – 5 Oct 07 (Phase I – Ft. Lee) 5 Oct – 14 Dec 07 (Phase II – TJAGSA)

5F-F70	37th Methods of Instruction Course	30 May – 2 Jun 06
5F-F70	38th Methods of Instruction Course	29 May – 1 Jun 07
5F-F1	188th Senior Officers Legal Orientation Course	12 – 16 Sep 05
5F-F1	189th Senior Officers Legal Orientation Course	14 – 18 Nov 05
5F-F1	190th Senior Officers Legal Orientation Course	30 Jan – 3 Feb 06
5F-F1	191st Senior Officers Legal Orientation Course	27 – 31 Mar 06
5F-F1	192d Senior Officers Legal Orientation Course	12 – 16 Jun 06
5F-F1	193d Senior Officers Legal Orientation Course	11 – 15 Sep 06
5F-F1	194th Senior Officers Legal Orientation Course	13 – 17 Nov 06
5F-F1	195th Senior Officers Legal Orientation Course	5 – 9 Feb 07
5F-F1	196th Senior Officers Legal Orientation Course	26 – 30 Mar 07
5F-F1	197th Senior Officers Legal Orientation Course	11 – 15 Jun 07
5F-F1	198th Senior Officers Legal Orientation Course	10 – 14 Sep 07
5F-F3	12th RC General Officers Legal Orientation Course	25 – 27 Jan 06
5F-F3	13th RC General Officers Legal Orientation Course	24 – 26 Jan 07
5F-F52	36th Staff Judge Advocate Course	5 – 9 Jun 06
5F-F52	37th Staff Judge Advocate Course	4 – 8 Jun 07
5F-F52-S	9th Staff Judge Advocate Team Leadership Course	5 – 7 Jun 06
5F-F52-S	10th Staff Judge Advocate Team Leadership Course	4 – 6 Jun 07
5F-F55	2006 JAOAC (Phase II)	8 – 20 Jan 06
5F-F55	2007 JAOAC (Phase II)	7 – 19 Jan 07
5F-JAG	2005 JAG Annual CLE Workshop	3 – 7 Oct 05
5F-JAG	2006 JAG Annual CLE Workshop	10 – 13 Oct 06
JARC-181	2006 JA Professional Recruiting Seminar	11 – 14 Jul 06
JARC-181	2007 JA Professional Recruiting Seminar	17 – 20 Jul 07
ADMINISTRATIVE AND CIVIL LAW		
5F-F21	4th Advanced Law of Federal Employment Course	19 – 21 Oct 05
5F-F21	5th Advanced Law of Federal Employment Course	25 – 27 Oct 06
5F-F22	59th Law of Federal Employment Course	17 – 21 Oct 05
5F-F22	60th Law of Federal Employment Course	23 – 27 Oct 06
5F-F23	57th Legal Assistance Course	31 Oct – 4 Nov 05
5F-F23	58th Legal Assistance Course	15 – 19 May 06
5F-F23	59th Legal Assistance Course	30 Oct – 3 Nov 06
5F-F23	60th Legal Assistance Course	14 – 18 May 07
5F-F24	30th Admin Law for Military Installations Course	13 – 17 Mar 06
5F-F24	31st Admin Law for Military Installations Course	26 Feb – 2 Mar 07
5F-F28	Tax Year 2005 Basic Income Tax CLE	12 – 16 Dec 05
5F-F28	Tax Year 2006 Basic Income Tax CLE	11 – 15 Dec 06
5F-F280	1st Advanced Income Tax CLE	14 – 16 Dec 05
5F-F29	24th Federal Litigation Course	31 Jul – 4 Aug 06
5F-F29	25th Federal Litigation Course	30 Jul – 3 Aug 07

5F-F202	4th Ethics Counselors Course	17 – 21 Apr 06
5F-F202	5th Ethics Counselors Course	16 – 20 Apr 07
5F-F23E	2005 USAREUR Legal Assistance CLE	17 – 21 Oct 05
5F-F23E	2006 USAREUR Legal Assistance CLE	23 – 27 Oct 06
5F-F24E	2005 USAREUR Administrative Law CLE	12 – 15 Sep 05
5F-F24E	2006 USAREUR Administrative Law CLE	11 – 14 Sep 06
5F-F24E	2007 USAREUR Administrative Law CLE	10 – 13 Sep 07
5F-F26E	2005 USAREUR Claims Course	28 Nov – 2 Dec 05
5F-F26E	2006 USAREUR Claims Course	27 Nov – 1 Dec 06
5F-F28E	Tax Year 2005 USAREUR Basic Income Tax CLE	5 – 9 Dec 05
5F-F28E	Tax Year 2006 USAREUR Basic Income Tax CLE	4 – 8 Dec 06
5F-F28H	Tax Year 2005 Hawaii Basic Income Tax CLE	9 – 13 Jan 06
5F-F28OE	1st USAREUR Advanced Income Tax CLE	7 – 9 Dec 05
5F-F28P	Tax Year 2005 PACOM Basic Income Tax CLE	3 – 6 Jan 06
5F-F28P	Tax Year 2006 PACOM Basic Income Tax CLE	8 – 12 Jan 07
CONTRACT AND FISCAL LAW		
5F-F10	156th Contract Attorneys Course	17 – 28 Jul 06
5F-F10	157th Contract Attorneys Course	23 Jul – 3 Aug 07
5F-F11	2005 Government Contract Law Symposium	6 – 9 Dec 05
5F-F11	2006 Government Contract Law Symposium	5 – 8 Dec 06
5F-F12	73d Fiscal Law Course	24 – 28 Oct 05
5F-F12	74th Fiscal Law Course	1 – 5 May 06
5F-F12	75th Fiscal Law Course	30 Oct – 3 Nov 06
5F-F12	76th Fiscal Law Course	30 Apr – 4 May 07
5F-F13	2d Operational Contracting Course	10 – 14 Apr 06
5F-F13	3d Operational Contracting Course	12 – 16 Mar 07
5F-F14	18th Comptrollers Accreditation Course (Ft. Bragg)	21 – 24 Feb 06
5F-F101	7th Procurement Fraud Course	31 May – 2 Jun 06
5F-F102	6th Contract Litigation Course	16 – 20 Apr 07
5F-F103	7th Advanced Contract Law	12 – 14 Apr 06
5F-F15E	2006 USAREUR Contract & Fiscal Law CLE	28 – 31 Mar 06
5F-F15E	2007 USAREUR Contract & Fiscal Law CLE	27 – 30 Mar 07
N/A	2006 Maxwell AFB Fiscal Law Course	6 – 9 Feb 06
N/A	2007 Maxwell AFB Fiscal Law Course	5 – 8 Feb 07
CRIMINAL LAW		
5F-F31	12th Military Justice Managers Course	21 – 25 Aug 06
5F-F31	13th Military Justice Managers Course	20 – 24 Aug 07

5F-F33	49th Military Judge Course	24 Apr – 12 May 06
5F-F33	50th Military Judge Course	23 Apr – 11 May 07
5F-F34	24th Criminal Law Advocacy Course	12 – 23 Sep 05
5F-F34	25th Criminal Law Advocacy Course	13 – 24 Mar 06
5F-F34	26th Criminal Law Advocacy Course	11 – 22 Sep 06
5F-F34	27th Criminal Law Advocacy Course	12 – 23 Mar 07
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07
5F-F35	29th Criminal Law New Developments Course	29 Nov – 2 Dec 05
5F-F35	30th Criminal Law New Developments Course	14 – 17 Nov 06
5F-301	9th Advanced Advocacy Training	16 – 19 May 06
5F-301	10th Advanced Advocacy Training	15 – 18 May 07
INTERNATIONAL AND OPERATIONAL LAW		
5F-F42	85th Law of War Course	30 Jan – 3 Feb 06
5F-F42	86th Law of War Course	10 Jul – 14 Jul 06
5F-F42	87th Law of War Course	29 Jan – 2 Feb 07
5F-F42	88th Law of War Course	16 – 20 Jul 07
5F-F44	1st Legal Aspects of Information Operations Course	26 – 30 Jun 06
5F-F44	2d Legal Aspects of Information Operations Course	25 – 29 Jun 07
5F-F45	5th Domestic Operational Law Course	24 – 28 Oct 05
5F-F45	6th Domestic Operational Law Course	30 Oct – 3 Nov 06
5F-F47	45th Operational Law Course	27 Feb – 10 Mar 06
5F-F47	46th Operational Law Course	31 Jul – 11 Aug 06
5F-F47	47th Operational Law Course	26 Feb – 9 Mar 07
5F-F47	48th Operational Law Course	30 Jul – 10 Aug 07
LEGAL ADMINISTRATORS COURSES		
7A-270A1	17th Legal Administrators Course	19 – 23 Jun 06
7A-270A1	18th Legal Administrators Course	18 – 22 Jun 07
7A-270A2	7th JA Warrant Officer Advanced Course	10 Jul – 4 Aug 06
7A-270A2	8th JA Warrant Officer Advanced Course	9 Jul – 3 Aug 07
7A-270A0	13th JA Warrant Officer Basic Course	30 May – 23 Jun 06
7A-270A0	14th JA Warrant Officer Basic Course	29 May – 22 Jun 07
PARALEGAL AND COURT REPORTING COURSES		
512-27DC4	10th Speech Recognition Training	17 – 28 Oct 05
512-27DC4	11th Speech Recognition Training	23 Oct – 3 Nov 06
512-27DC5	18th Court Reporter Course	1 Aug – 30 Sep 05
512-27DC5	19th Court Reporter Course	30 Jan – 31 Mar 06
512-27DC5	20th Court Reporter Course	24 Apr – 23 Jun 06
512-27DC5	21st Court Reporter Course	31 Jul – 29 Sep 06
512-27DC5	22d Court Reporter Course	29 Jan – 30 Mar 07
512-27DC5	23d Court Reporter Course	23 Apr – 22 Jun 07
512-27DC5	24th Court Reporter Course	30 Jul – 28 Sep 07

512-27DC6	6th Court Reporting Symposium	31 Oct – 4 Nov 05
512-27DC6	7th Court Reporting Symposium	30 Oct – 3 Nov 06
512-27D/20/30	17th Law for Paralegal NCOs Course	27 – 31 Mar 06
512-27D/20/30	18th Law for Paralegal NCOs Course	26 Mar – 6 Apr 07
512-27DCSP	2d Combined Sr. Paralegal NCO Course	12 – 16 Jun 06
512-27DCSP	3d Combined Sr. Paralegal NCO Course	11 – 15 Jun 07

3. Navy Justice Schooland FY 2006 Course Schedule

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

Naval Justice School Newport, RI		
CDP	Course Title	Dates
0257	Lawyer Course (010)	17 Oct – 16 Dec 05
0257	Lawyer Course (020)	17 Jan – 17 Mar 06
0257	Lawyer Course (030)	5 Jun – 4 Aug 06
0257	Lawyer Course (040)	7 Aug – 6 Oct 06
NA	BOLT (010)	11 – 14 Oct 05 (NJS)
NA	BOLT (020)	9 – 13 Jan 06 (NJS)
NA	BOLT (010)	20 – 24 Mar 06 (USMC)
NA	BOLT (030)	7 – 11 Aug 06 (NJS)
961F	Coast Guard Judge Advocate Course (010)	11 – 14 Oct 05
0259	Legal Officer Course (010)	6 -24 Feb 06
0259	Legal Officer Course (202)	12 – 30 Jun 06
900B	Reserve Lawyer Course (010)	1 – 5 May 06
900B	Reserve Lawyer Course (020)	11 – 15 Sep 06
914L	Law of Naval Operations (010)	8 – 12 May 06
914L	Law of Naval Operations (020)	18 – 22 Sep 06
850T	SJA/E-Law Course (010)	30 May – 9 Jun 06
850T	SJA/E-Law Course (020)	24 Jul – 4 Aug 06
786R	Advanced SJA/Ethics (010)	27 – 31 Mar 06 (San Diego)
786R	Advanced SJA/Ethics (020)	24 – 28 Apr 06 (Norfolk)
850V	Law of Military Operations (010)	12 – 23 Jun 06
961D	Military Law Update Workshop (Officer) (010)	20 – 21 May 06 (East)
961D	Military Law Update Workshop (Officer) (020)	17 – 18 Jun 06 (West)
961M	Effective Courtroom Communications	5 – 9 Dec 05 (Norfolk)
961M	Effective Courtroom Communications	27 – 31 Mar 06 (San Diego)
961J	Defending Complex Cases (010)	17 – 21 Jul 06

525N	Prosecuting Complex Cases (010)	10 – 14 Jul 06
4048	Estate Planning (010)	14 – 18 Aug 06
7487	Family Law/Consumer Law (010)	22 – 26 May 06
7485	Litigation National Security (010)	6 – 8 Mar 06 (Washington, DC)
748K	National Institute of Trial Advocacy (010)	24 – 28 Oct (Camp Lejeune)
748K	National Institute of Trial Advocacy (020)	30 Jan – 3 Feb 06 (San Diego)
748K	National Institute of Trial Advocacy (030)	22 – 26 May 06 (Hawaii)
748B	Naval Legal Service Command Senior Officer Leadership (010)	21 – 25 Aug 06
2205	Defense Trial Enhancement (010)	9 – 13 Jan 06
3938	Computer Crimes (010)	3 – 7 Apr 06
0258	Senior Officer (NewPort) (010)	31 Oct – 4 Nov 05
0258	Senior Officer (NewPort) (020)	23 – 27 Jan 06
0258	Senior Officer (NewPort) (030)	13 – 17 Mar 06
0258	Senior Officer (NewPort) (040)	8 – 12 May 06
0258	Senior Officer (NewPort) (050)	10 – 14 Jun 06
0258	Senior Officer (NewPort) (060)	14 – 18 Aug 06
0258	Senior Officer (NewPort) (070)	25 – 29 Sep 06
2622	Senior Officer (Fleet) (010)	11 – 14 Oct 05 (Pensacola)
2622	Senior Officer (Fleet) (020)	24 – 28 Oct 05 (Pensacola)
2622	Senior Officer (Fleet) (030)	12 – 16 Dec 05 (Pensacola)
2622	Senior Officer (Fleet) (040)	13 – 17 Feb 06 (Pensacola)
2622	Senior Officer (Fleet) (050)	27 – 31 Mar 06 (Camp Lejeune)
2622	Senior Officer (Fleet) (060)	3 – 7 Apr 06 (Quantico)
2622	Senior Officer (Fleet) (070)	17 – 21 Apr 06 (Pensacola)
2622	Senior Officer (Fleet) (080)	8 – 12 May 06 (Pensacola)
2622	Senior Officer (Fleet) (090)	10 – 14 Jul 06 (Pensacola)
2622	Senior Officer (Fleet) (100)	28 Aug – 1 Sep 06 (Pensacola)
7878	Legal Assistance Paralegal Course (010)	22 – 26 May 06
3090	Legalman Course (010)	17 Jan – 17 Mar 06
932V	Coast Guard Legal Technician Course (010)	11 – 22 Sep 06
846L	Senior Legalman Leadership Course (010)	24 – 28 Jul 06
049N	Reserve Legalman Course (Phase I) (010)	10 – 21 Apr 06
056L	Reserve Legalman Course (Phase II) (010)	24 Apr – 5 May 06
846M	Reserve Legalman Course (Phase III) (010)	8 – 19 May 06
5764	LN/Legal Specialist Mid-Career Course (010)	17 – 28 Oct 05
5764	LN/Legal Specialist Mid-Career Course (020)	24 Apr – 5 May 06
961G	Military Law Update Workshop (Enlisted) (010)	TBD
961G	Military Law Update Workshop (Enlisted) (020)	TBD

4040	Paralegal Research & Writing (010)	20 – 31 Mar 06 (Newport)
4040	Paralegal Research & Writing (020)	24 Apr – 5 May 06 (Norfolk)
4040	Paralegal Research & Writing (030)	17 – 28 Jul 06 (San Diego)
4046	SJA Legalman (020)	30 May – 9 Jun 06 (Newport)
627S	Senior Enlisted Leadership Course (010)	1 – 3 Nov 05 (Yokosuka)
627S	Senior Enlisted Leadership Course (020)	8 – 10 Nov 05 (Okinawa)
627S	Senior Enlisted Leadership Course (030)	15 – 17 Nov 05 (San Diego)
627S	Senior Enlisted Leadership Course (040)	30 Nov – 2 Dec 05 (Norfolk)
627S	Senior Enlisted Leadership Course (050)	10 – 12 Jan 06 (Pendleton)
627S	Senior Enlisted Leadership Course (060)	11 – 13 Jan 06 (Jacksonville)
627S	Senior Enlisted Leadership Course (070)	21 – 23 Feb 06 (San Diego)
627S	Senior Enlisted Leadership Course (080)	22 – 24 Feb 06 (Norfolk)
627S	Senior Enlisted Leadership Course (090)	21 – 23 Mar 06 (Hawaii)
627S	Senior Enlisted Leadership Course (100)	4 – 6 Apr 06 (Bremerton)
627S	Senior Enlisted Leadership Course (110)	12 – 14 Apr 06 (Naples)
627S	Senior Enlisted Leadership Course (120)	2 – 4 May 06 (San Diego)
627S	Senior Enlisted Leadership Course (130)	22 – 24 May 06 (Norfolk)
627S	Senior Enlisted Leadership Course (140)	19 -21 Jul 06 (Millington)
627S	Senior Enlisted Leadership Course (150)	1 – 3 Aug 06 (San Diego)
627S	Senior Enlisted Leadership Course (160)	16 – 18 Aug 06 (Norfolk)
627S	Senior Enlisted Leadership Course (170)	12 – 14 Sep 06 (Pendleton)
Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (010)	17 Oct – 4 Nov 05
0376	Legal Officer Course (020)	30 Jan – 17 Feb 06
0376	Legal Officer Course (030)	6 – 24 Mar 06
0376	Legal Officer Course (040)	24 Apr – 12 May 06
0376	Legal Officer Course (050)	5 – 23 Jun 06
0376	Legal Officer Course (060)	24 Jul – 11 Aug 06
0376	Legal Officer Course (070)	11 – 29 Sep 06
0379	Legal Clerk Course (010)	17 – 28 Oct 05
0379	Legal Clerk Course (020)	5 – 16 Dec 05
0379	Legal Clerk Course (030)	23 Jan – 3 Feb 06
0379	Legal Clerk Course (040)	6 -17 Mar 06
0379	Legal Clerk Course (050)	3 – 14 Apr 06
0379	Legal Clerk Course (060)	5 – 16 Jun 06
0379	Legal Clerk Course (070)	31 Jul – 11 Aug 06
0379	Legal Clerk Course (080)	11 – 22 Sep 06
3760	Senior Officer Course (010)	14 – 18 Nov 05
3760	Senior Officer Course (020)	12 – 16 Dec 05
3760	Senior Officer Course (030)	9 – 13 Jan 06 (Jacksonville)
3760	Senior Officer Course (040)	27 Feb – 3 Mar 06
3760	Senior Officer Course (050)	15 -19 May 06
3760	Senior Officer Course (060)	26 – 30 Jun 06
3760	Senior Officer Course (070)	17 – 21 Jul 06 (Millington)
3760	Senior Officer Course (080)	28 Aug – 1 Sep 06
4046	Military Justice Course for SKA/Convening Authority/Shipboard Legalman (030)	10 – 21 Jul 06

Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (010)	3 – 21 Oct 05
947H	Legal Officer Course (020)	28 Nov – 16 Dec 05
947H	Legal Officer Course (030)	17 Jan – 3 Feb 06
947H	Legal Officer Course (040)	27 Feb – 17 Mar 06
947H	Legal Officer Course (050)	8 – 26 May 06
947H	Legal Officer Course (060)	12 – 30 Jun 06
947H	Legal Officer Course (070)	14 Aug – 1 Sep 06
947J	Legal Clerk Course (010)	3 – 14 Oct 05
947J	Legal Clerk Course (020)	28 Nov – 9 Dec 05
947J	Legal Clerk Course (030)	6 – 17 Feb 06
947J	Legal Clerk Course (040)	27 Feb – 10 Mar 06
947J	Legal Clerk Course (050)	17 – 28 Apr 06
947J	Legal Clerk Course (060)	8 – 19 May 06
947J	Legal Clerk Course (070)	12 – 23 Jun 06
947J	Legal Clerk Course (080)	14 – 25 Aug 06
3759	Senior Officer Course (010)	31 Oct – 4 Nov 05 (Yokosuka)
3759	Senior Officer Course (020)	7 – 10 Nov 05 (Okinawa)
3759	Senior Officer Course (030)	9 – 13 Jan 06 (Pendleton)
3759	Senior Officer Course (040)	13 – 17 Feb 06 (San Diego)
3759	Senior Officer Course (050)	3 – 7 Apr 06 (Bremerton)
3759	Senior Officer Course (060)	24 – 28 Apr 06 (San Diego)
3759	Senior Officer Course (070)	5 – 9 Jun 06 (San Diego)
3759	Senior Officer Course (080)	24 – 28 Jul 06 (San Diego)
3759	Senior Officer Course (090)	11 – 15 Sep 06 (Pendleton)
2205	CA Legal Assistance Course (010)	6 – 10 Feb 06 (San Diego)
4046	Military Justice Course for SJA/Convening Authority/Shipboard Legalmen (010)	17 – 27 Jan 06

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

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

Air Force Judge Advocate General School Maxwell AFB, AL	
Course Title	Dates
Federal Employee Labor Law Course, Class 06-A	3 – 7 Oct 05
Paralegal Apprentice Course, Class 06-A	3 Oct – 16 Nov 05
Paralegal Craftsman Course, Class 06-A	11 Oct – 18 Nov
Judge Advocate Staff Officer Course, Class 06-A	11 Oct – 15 Dec 05
Advanced Environmental Law Course, Class 06-A (Off-Site Washington, DC)	24 – 25 Oct 05

Deployed Fiscal Law & Contingency Contracting Course, Class 06-A	28 Nov – 2 Dec 05
Senior Reserve Forces Paralegal Course, Class 06-A	5 – 9 Dec 05
Paralegal Apprentice Course, Class 06-B	9 Jan – 22 Feb 06
Trial & Defense Advocacy Course, Class 06-A	9 – 20 Jan 06
Total Air Force Operations Law Course, Class 06-A	20 – 22 Jan 06
Homeland Defense Workshop, Class 06-A	23 – 27 Jan 06
Environmental Law Course, Class 06-A	23 – 27 Jan 06
Claims & Tort Litigation Course, Class 06-A	30 Jan – 3 Feb 06
Reserve Forces Judge Advocate Course, Class 06-A	6 – 10 Feb 06
Legal Aspects of Sexual Assault Workshop, Class 06-A	8 – 10 Feb 06
Fiscal Law Course (DL) , Class 06-A	13 – 17 Feb 06
Judge Advocate Staff Officer Course, Class 06-A	13 Feb – 14 Apr 06
Paralegal Craftsman Course, Class 06-B	22 Feb – 31 Mar 06
Paralegal Apprentice Course, Class 06-C	3 Mar – 14 Apr 06
Accident Investigation Board Legal Advisors' Course, Class 06-A	19 – 21 Apr 06
Advanced Trial Advocacy Course, Class 06-A	24 – 28 Apr 06
Military Judges' Seminar, Class 06-A	25 – 28 Apr 06
Paralegal Apprentice Course, Class 06-D	24 Apr – 6 Jun 06
Military Justice Administration Course, Class 06-A	1 – 5 May 06
Reserve Forces Judge Advocate Course, Class 06-B	8 – 12 May 06
Advanced Labor & employment Law Course, Class 06-A	8 – 10 May 06
Operations Law Course, Class 06-A	15 – 25 May 06
Negotiation & Appropriate Dispute Resolution Course, Class 06-A	22 – 26 May 06
Air National Guard Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Air Force Reserve Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Staff Judge Advocate Course, Class 06-A	12 – 23 Jun 06
Law Office Management Course, Class 06-A	12 – 23 Jun 06
Paralegal Apprentice Course, Class 06-E	19 Jun – 1 Aug 06

Environmental Law Update Course, Class 06-A	28 – 30 Jun 06
Computer Legal Issues Course, Class 06-A	10 – 14 Jul 06
Legal Aspects of Information Operations Law Course, Class 06-A	12 – 14 Jul 06
Reserve Forces Paralegal Course, Class 06-A	17 – 28 Jul 06
Judge Advocate Staff Officer Course, Class 06-C	17 Jul – 15 Sep 06
Paralegal Craftsman Course, Class 06-C	1 Aug – 26 Sep 06
Paralegal Apprentice Course, Class 06-F	14 Aug – 8 Sep 06
Trial & Defense Advocacy Course, Class 06-B	18 – 29 Sep 06

5. Civilian-Sponsored CLE Courses

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

- AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225
- 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
(850) 561-5600

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

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

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

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

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

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

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

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

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

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

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

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

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

If you have any additional questions, contact Jeffrey Sexton, commercial telephone (434) 971-3357, or e-mail Jeffrey.Sexton@hqda.army.mil

7. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

State	Local Official	CLE Requirements
Alabama**	Director of CLE AL State Bar 415 Dexter Ave. Montgomery, AL 36104 (334) 269-1515 http://www.alabar.org/	-Twelve hours per year. -Military attorneys are exempt but must declare exemption. -Reporting date: 31 December.
Arizona	Administrative Assistant State Bar of AZ 111 W. Monroe St., Ste. 1800 Phoenix, AZ 85003-1742 (602) 340-7328 http://www.azbar.org/AttorneyResources/mcle.asp	-Fifteen hours per year, three hours must be in legal ethics. -Reporting date: 15 September.
Arkansas	Secretary Arkansas CLE Board Supreme Court of AR 120 Justice Building 625 Marshall Little Rock, AR 72201 (501) 374-1855 http://courts.state.ar.us/clerules/htm	-Twelve hours per year, one hour must be in legal ethics. -Reporting date: 30 June.
California*	Director Office of Certification The State Bar of CA 180 Howard Street San Francisco, CA 94102	-Twenty-five hours over three years, four hours required in ethics, one hour required in substance

(415) 538-2133
<http://calbar.org>

abuse and emotional distress, one hour required in elimination of bias.

-Reporting date/period:
Group 1 (Last Name A-G) 1 Feb 01-31 Jan 04 and every thirty-six months thereafter)
Group 2 (Last Name H-M) 1 Feb 00 - 31 Jan 03 and every thirty-six months thereafter)
Group 3 (Last Name N-Z) 1 Feb 02 - 31 Jan 05 and every thirty-six months thereafter).

Colorado
Executive Director
CO Supreme Court
Board of CLE & Judicial Education
600 17th St., Ste., #520S
Denver, CO 80202
(303) 893-8094
<http://www.courts.state.co.us/cle/cle.htm>

-Forty-five hours over three year period, seven hours must be in legal ethics.
-Reporting date: Anytime within three-year period.

Delaware
Executive Director
Commission on CLE
200 W. 9th St., Ste. 300-B
Wilmington, DE 19801
(302) 577-7040
<http://courts.state.de.us/cle/rules.htm>

-Twenty-four hours over two years including at least four hours in Enhanced Ethics. See website for specific requirements for newly admitted attorneys.
-Reporting date: Period ends 31 December.

Florida**
Course Approval Specialist Legal Specialization and Education
The FL Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5842
<http://www.flabar.org/newflabar/memberservices/certify/blse600.html>

-Thirty hours over a three year period, five hours must be in legal ethics, professionalism, or substance abuse.
-Active duty military attorneys, and out-of-state attorneys are exempt.
-Reporting date: Every three years during month designated by the Bar.

Georgia
GA Commission on Continuing Lawyer Competency
800 The Hurt Bldg.
50 Hurt Plaza
Atlanta, GA 30303

-Twelve hours per year, including one hour in legal ethics, one hour

	(404) 527-8712 http://www.gabar.org/ga_bar/frame7.htm	professionalism and three hours trial practice. -Out-of-state attorneys exempt. -Reporting date: 31 January.
Idaho	Membership Administrator ID State Bar P.O. Box 895 Boise, ID 83701-0895 (208) 334-4500 http://www.state.id.us/isb/mcle_rules.htm	-Thirty hours over a three year period, two hours must be in legal ethics. -Reporting date: 31 December. Every third year determined by year of admission.
Indiana	Executive Director IN Commission for CLE Merchants Plaza 115 W. Washington St. South Tower #1065 Indianapolis, IN 46204-3417 (317) 232-1943 http://www.state.in.us/judiciary/courtrules/admiss.pdf	-Thirty-six hours over a three year period (minimum of six hours per year), of which three hours must be legal ethics over three years. -Reporting date: 31 December.
Iowa	Executive Director Commission on Continuing Legal Education State Capitol Des Moines, IA 50319 (515) 246-8076	-Fifteen hours per year, two hours in legal ethics every two years. -Reporting date: 1 March.
Kansas	Executive Director CLE Commission 400 S. Kansas Ave., Suite 202 Topeka, KS 66603 (785) 357-6510 http://www.kscle.org	-Twelve hours per year, two hours must be in legal ethics. -Attorneys not practicing in Kansas are exempt. -Reporting date: Thirty days after CLE program, hours must be completed in compliance period 1 July to 30 June.
Kentucky	Director for CLE KY Bar Association 514 W. Main St. Frankfort, KY 40601-1883 (502) 564-3795 http://www.kybar.org/clerules.htm	-Twelve and one-half hours per year, two hours must be in legal ethics, mandatory new lawyer skills training to be taken within twelve months of admissions. -Reporting date: June 30.
Louisiana**	MCLE Administrator	-Fifteen hours per

	<p>LA State Bar Association 601 St. Charles Ave. New Orleans, LA 70130 (504) 619-0140 http://www.lsba.org/html/rule_XXX.html</p>	<p>year, one hour must be in legal ethics and one hour of professionalism every year. -Attorneys who reside out-of-state and do not practice in state are exempt. -Reporting date: 31 January.</p>
Maine	<p>Administrative Director P.O. Box 527 August, ME 04332-1820 (207) 623-1121 http://www.mainebar.org/cle.html</p>	<p>-Eleven hours per year, at least one hour in the area of professional responsibility is recommended but not required. -Members of the armed forces of the United States on active duty; unless they are practicing law in Maine. -Report date: July.</p>
Minnesota	<p>Director MN State Board of CLE 25 Constitution Ave., Ste. 110 St. Paul, MN 55155 (651) 297-7100 http://www.mbcle.state.mn.us/</p>	<p>-Forty-five hours over a three-year period, three hours must be in ethics, every three years and two hours in elimination of bias. -Reporting date: 30 August.</p>
Mississippi**	<p>CLE Administrator MS Commission on CLE P.O. Box 369 Jackson, MS 39205-0369 (601) 354-6056 http://www.msbar.org/meet.html</p>	<p>-Twelve hours per year, one hour must be in legal ethics, professional responsibility, or malpractice prevention. -Military attorneys are exempt. -Reporting date: 31 July.</p>
Missouri	<p>Director of Programs P.O. Box 119 326 Monroe Jefferson City, MO 65102 (573) 635-4128 http://www.mobar.org/mobaracle/index.htm</p>	<p>-Fifteen hours per year, three hours must be in legal ethics every three years. -Attorneys practicing out-of-state are exempt but must claim exemption. -Reporting date: Report period is 1 July - 30 June. Report must be filed by 31</p>

		July.
Montana	MCLE Administrator MT Board of CLE P.O. Box 577 Helena, MT 59624 (406) 442-7660, ext. 5 http://www.montana.org	-Fifteen hours per year. -Reporting date: 1 March.
Nevada	Executive Director Board of CLE 295 Holcomb Ave., Ste. A Reno, NV 89502 (775) 329-4443 http://www.nvbar.org	-Twelve hours per year, two hours must be in legal ethics and professional conduct. -Reporting date: 1 March.
New Hampshire**	Asst to NH MCLE Board MCLE Board 112 Pleasant St. Concord, NH 03301 (603) 224-6942, ext. 122 http://www.nhbar.org	-Twelve hours per year, two hours must be in ethics, professionalism, substance abuse, prevention of malpractice or attorney-client dispute, six hours must come from attendance at live programs out of the office, as a student. -Reporting date: Report period is 1 July - 30 June. Report must be filed by 1 August.
New Mexico	Administrator of Court Regulated Programs P.O. Box 87125 Albuquerque, NM 87125 (505) 797-6056 http://www.nmbar.org/mclerules.htm	-Fifteen hours per year, one hour must be in legal ethics. -Reporting period: January 1 - December 31; due April 30.
New York*	Counsel The NY State Continuing Legal Education Board 25 Beaver Street, Floor 8 New York, NY 10004 (212) 428-2105 or 1-877-697-4353 http://www.courts.state.ny.us	-Newly admitted: sixteen credits each year over a two-year period following admission to the NY Bar, three credits in Ethics, six credits in Skills, seven credits in Professional Practice/Practice Management each year. -Experienced attorneys: Twelve credits in any category, if registering

		<p>in 2000, twenty-four credits (four in Ethics) per biennial reporting period, if registering in 2001 and thereafter.</p> <p>-Full-time active members of the U.S. Armed Forces are exempt from compliance.</p> <p>-Reporting date: every two years within thirty days after the attorney's birthday.</p>
North Carolina**	<p>Associate Director Board of CLE 208 Fayetteville Street Mall P.O. Box 26148 Raleigh, NC 27611 (919) 733-0123 http://www.ncbar.org/CLE/MCLE.html</p>	<p>-Twelve hours per year including two hours in ethics/or professionalism; three hours block course every three years devoted to ethics/professionalism.</p> <p>-Active duty military attorneys and out-of-state attorneys are exempt, but must declare exemption.</p> <p>-Reporting date: 28 February.</p>
North Dakota	<p>Secretary-Treasurer ND CLE Commission P.O. Box 2136 Bismarck, ND 58502 (701) 255-1404 No web site available</p>	<p>-Forty-five hours over three year period, three hours must be in legal ethics.</p> <p>-Reporting date: Reporting period ends 30 June. Report must be received by 31 July.</p>
Ohio*	<p>Secretary of the Supreme Court Commission on CLE 30 E. Broad St., FL 35 Columbus, OH 43266-0419 (614) 644-5470 http://www.sconet.state.oh.us/</p>	<p>-Twenty-four hours every two years, including one hour ethics, one hour professionalism and thirty minutes substance abuse.</p> <p>-Active duty military attorneys are exempt.</p> <p>-Reporting date: every two years by 31 January.</p>
Oklahoma**	<p>MCLE Administrator OK Bar Association P.O. Box 53036 Oklahoma City, OK 73152 (405) 416-7009 http://www.okbar.org/mcle/</p>	<p>-Twelve hours per year, one hour must be in ethics.</p> <p>-Active duty military attorneys are exempt.</p> <p>-Reporting date:</p>

15 February.

Oregon	MCLE Administrator OR State Bar 5200 S.W. Meadows Rd. P.O. Box 1689 Lake Oswego, OR 97035-0889 (503) 620-0222, ext. 359 http://www.osbar.org/	-Forty-five hours over three year period, six hours must be in ethics. -Reporting date: Compliance report filed every three years, except new admittees and reinstated members - an initial one year period.
Pennsylvania**	Administrator PA CLE Board 5035 Ritter Rd., Ste. 500 P.O. Box 869 Mechanicsburg, PA 17055 (717) 795-2139 (800) 497-2253 http://www.pacle.org/	-Twelve hours per year, including a minimum one hour must be in legal ethics, professionalism, or substance abuse. -Active duty military attorneys outside the state of PA may defer their requirement. -Reporting date: annual deadlines: Group 1-30 Apr. Group 2-31 Aug. Group 3-31 Dec.
Rhode Island	Executive Director MCLE Commission 250 Benefit St. Providence, RI 02903 (401) 222-4942 http://www.courts.state.ri.us/	-Ten hours each year, two hours must be in legal ethics. -Active duty military attorneys are exempt. -Reporting date: 30 June.
South Carolina**	Executive Director Commission on CLE and Specialization P.O. Box 2138 Columbia, SC 29202 (803) 799-5578 http://www.commcle.org/	-Fourteen hours per year, at least two hours must be in legal ethics/professional responsibility. -Active duty military attorneys are exempt. -Reporting date: 15 January.
Tennessee*	Executive Director TN Commission on CLE and Specialization 511 Union St. #1630 Nashville, TN 37219 (615) 741-3096 http://www.cletn.com/	-Fifteen hours per year, three hours must be in legal ethics/professionalism. -Nonresidents, not practicing in the state, are exempt. -Reporting date: 1 March.
Texas	Director of MCLE State Bar of TX P.O. Box 13007	-Fifteen hours per year, three hours must be in legal ethics.

	<p>Austin, TX 78711-3007 (512) 463-1463, ext. 2106 http:// www.courts.state.tx.us/</p>	<p>-Full-time law school faculty are exempt (except ethics requirement). -Reporting date: Last day of birth month each year.</p>
Utah	<p>MCLE Board Administrator UT Law and Justice Center 645 S. 200 East Salt Lake City, UT 84111-3834 (801) 531-9095 http://www.utahbar.org/</p>	<p>-Twenty-four hours, plus three hours in legal ethics every two years. -Non-residents if not practicing in state. -Reporting date: 31 January.</p>
Vermont	<p>Directors, MCLE Board 109 State St. Montpelier, VT 05609-0702 (802) 828-3281 http://www.state.vt.us/ courts/</p>	<p>-Twenty hours over two year period, two hours in ethics each reporting period. -Reporting date: 2 July.</p>
Virginia	<p>Director of MCLE VA State Bar 8th and Main Bldg. 707 E. Main St., Ste. 1500 Richmond, VA 23219-2803 (804) 775-0577 http://www.vsb.org/</p>	<p>-Twelve hours per year, two hours must be in legal ethics. -Reporting date: 31 October.</p>
Washington	<p>Executive Secretary WA State Board of CLE 2101 Fourth Ave., FL 4 Seattle, WA 98121-2330 (206) 733-5912 http://www.wsba.org/</p>	<p>-Forty-five hours over a three-year period, including six hours ethics. -Reporting date: 31 January.</p>
West Virginia	<p>MCLE Coordinator WV State MCLE Commission 2006 Kanawha Blvd., East Charleston, WV 25311-2204 (304) 558-7992 http://www.wvbar.org/</p>	<p>-Twenty-four hours over two year period, three hours must be in legal ethics, office management, and/or substance abuse. -Active members not practicing in West Virginia are exempt. -Reporting date: Reporting period ends on 30 June every two years. Report must be filed by 31 July.</p>
Wisconsin*	<p>Supreme Court of Wisconsin Board of Bar Examiners Tenney Bldg., Suite 715 110 East Main Street Madison, WI 53703-3328 (608) 266-9760</p>	<p>-Thirty hours over two year period, three hours must be in legal ethics. -Active members not practicing in</p>

[http:// www.courts.state.wi.us/](http://www.courts.state.wi.us/)

Wisconsin are exempt.

-Reporting date:
Reporting period ends
31 December every
two years. Report
must be received by 1
February.

Wyoming

CLE Program Director
WY State Board of CLE
WY State Bar
P.O. Box 109
Cheyenne, WY 82003-0109
(307) 632-9061
<http://www.wyoming.bar.org>

-Fifteen hours per
year, one hour in
ethics.
-Reporting date: 30
January.

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

**Must declare exemption.

Current Materials of Interest

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

5-6 Nov 05	Topeka, KS Washburn School of Law	Civil Law, Legal Assistance, Operational Law, Criminal Law	MAJ Fran Brunner (785) 274-1027 Fran.brunner@ks.ngb.army.mil
19-20 Nov 05	New York, NY 77th RRC	ADA/ADI	MAJ John Dupon (718) 352-5654 john.dupon@us.army.mil
13-15 Jan 06	New Orleans, LA 2d LSO	ADI/ADC	MAJ Nick Lorusso (504) 282-6439 (504) 593-6529 nlorusso@cox.net
28-29 Jan 06	Seattle, WA 70th RRC	ADA/ADK	LTC Lloyd Oaks (253) 301-2392 lloyd.d.oaks@us.army.mil
11-12 Feb 06	Orlando, FL 174th LSO/12th LSO	ADA/ADC	MSG Timothy Stewart (305) 779-4022 tim.stewart@usar.army.mil
25-26 Feb 06	Draper, UT 115th En Grp UTARNG/ 87th LSO	ADA/ADC	CPT Daniel K. Dygert (115th En Grp) (435) 787-9700 (435) 787-2455 (fax) daniel.k.dygert@us.army.mil SFC Matthew Neumann (87th LSO) (801) 656-3600 (801) 656-3603 (fax) matthew.neumann@us.army.mil
4-5 Mar 06	Fort Belvoir, VA 10th LSO	ADC/ADA	CPT Eric Gallun (202) 514-7566 frederic.gallun@usdog.gov
11-12 Mar 06	San Francisco, CA 75th LSO	ADK/ADA	LTC Burke Large (213) 452-3954 burke.s.large@us.army.mil
18-19 Mar 06	Cincinnati, OH 9th LSO	ADA/ADK	MAJ Charles Ellis (973) 865-6800 charles.ellis@us.army.mil
18-19 Mar 06	Fort McCoy, WI WIARNG	ADI/ADK	CW3 Ty Letto (608) 261-2292 (608) 242-3082 (fax) tyrone.letto@doa.state.wi.us
22-23 Apr 06	Indianapolis, IN INARNG	ADI/ADK	COL George Thompson (DSN) 369-2491 george.thompson@in.ngb.army.mil
22-23 Apr 06	Boston, MA 94th RRC	ADI/ADK	MAJ Angela Horne (978) 784-3940 angela.horne@usar.army.mil
29-30 Apr 06	Oakbrook, IL 91st LSO	ADA/ADI	COL John Matthews (847) 402-2627 john.matthews@usar.army.mil
6-7 May 06	Mobile, AL 81st RRC	ADK/ADI	MAJ Timothy Harner (205) 795-1575

			timothy.harner@usar.army.mil CW2 Jonee' Spence (205) 795-1980 jonee.spence@us.army.mil
19-21 May 06	Kansas City, MO 8th LSO/89th RRC	ADC/ADK	COL Meg McDevitt SFC Larry Barker (402) 554-4400, ext. 227 mmcdevitt@bqlaw.com larry.r.barker@us.army.mil

2. The Judge Advocate General's School, U.S. Army (TJAGSA) Materials Available through the Defense Technical Information Center (DTIC)

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

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

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

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

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7,

\$12, \$42, and \$122. The DTIC also supplies reports in electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

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

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

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

Contract Law

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

Legal Assistance

- AD A384333 Soldiers' and Sailors' Civil Relief Act Guide, JA-260 (2000).
- AD A333321 Real Property Guide—Legal Assistance, JA-261 (1997).

AD A326002 Wills Guide, JA-262 (1997).

AD A346757 Family Law Guide, JA 263 (1998).

AD A384376 Consumer Law Deskbook, JA 265 (2004).

AD A372624 Legal Assistance Worldwide Directory, JA-267 (1999).

AD A360700 Tax Information Series, JA 269 (2002).

AD A350513 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (1998).

AD A350514 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).

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

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

AD A360704 Uniformed Services Former Spouses' Protection Act, JA 274 (2002).

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

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

Administrative and Civil Law

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

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

AD A255346 Reports of Survey and Line of Duty Determinations, JA-231 (2004).

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

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

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

AD A332865 AR 15-6 Investigations, JA-281 (1997).

Labor Law

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

AD A360707 The Law of Federal Labor-Management Relations, JA-211 (1999).

Criminal Law

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

AD A302674 Crimes and Defenses Deskbook, JA-337 (1994).

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

International and Operational Law

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

* Indicates new publication or revised edition.

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

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

b. Access to the JAGCNet:

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

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

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

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

(d) FLEP students;

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

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

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

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

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

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

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

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

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

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

4. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information of TJAGSA Publications Available Through the LAAWS XXI JAGCNet, see the March 2005 issue of *The Army Lawyer*.

5. TJAGLCS Legal Technology Management Office (LTMO)

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

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS personnel are

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

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

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

6. The Army Law Library Service

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

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

By Order of the Secretary of the Army:

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

Official:



SANDRA L. RILEY
Administrative Assistant to the
Secretary of the Army
0524126

Department of the Army
The Judge Advocate General's School
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