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THE SOLDIER-LAWYER: A SUMMARY AND ANALYSIS OF AN ORAL HISTORY OF MAJOR GENERAL MICHAEL J. NARDOTTI, JR., UNITED STATES ARMY (RETIRED) (1969-1997)¹

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[A] diligent concern for the rule of law, strong orientation toward the requirements of the military community they serve, and the standard of professional pride that is uniquely theirs. The Army lawyer has shown that the profession of law and the profession

1. Major Kevin M. Boyle & Major Michael J. McHugh, *An Oral History of Major General Michael J. Nardotti, Jr., United States Army (Retired) (1969-1997)* (May 2000) [hereinafter *Oral History*] (unpublished manuscript, on file with The Judge Advocate General's School Library, United States Army, Charlottesville, Virginia). The manuscript was prepared as part of the Oral History Program of the Legal Research and Communications Department at The Judge Advocate General's School, Charlottesville, Virginia. The oral history of Major General Nardotti is one of approximately two dozen personal histories on file with The Judge Advocate General's School Library. They are available for viewing through coordination with the School Librarian, Daniel Lavering, and offer a fascinating perspective on key leaders whose indelible influence continues to this day. This article also incorporates information provided by Major General Nardotti during an interview with the author. Interview with Major General Michael J. Nardotti, Jr. (Retired), in Washington, D.C. (Mar. 20, 2001) [hereinafter *Nardotti Interview*] (on file with author).

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of arms are complementary, not mutually exclusive. His is the deep personal satisfaction of dual achievement and dedicated public service.³

I. Introduction

On 6 December 1970, elements of the 1st Squadron, 9th Cavalry Regiment were conducting routine patrols in the III Corps area of operations in the southern “fishhook” region of Vietnam. By late afternoon, a dispatch arrived requesting support for an isolated four-man Ranger reconnaissance team under heavy enemy machine-gun and rocket fire. First Lieutenant Mike Nardotti, and seventeen soldiers from his “Blue” Platoon, Bravo Troop, were quick to respond. Under sporadic enemy fire, the young platoon leader and his point man were the first to rappel from a UH-1 helicopter to assist the Rangers. Shortly thereafter, all hell broke loose.⁴

With little warning, Bravo Troop and the Rangers suffered a sudden assault of rocket and machine-gun fire, which severely wounded the Ranger reconnaissance team leader and sent shrapnel shooting into the back and neck of Lieutenant Nardotti standing next to him.⁵ The young platoon leader was able to fight his way back to the perimeter for medical aid. The Ranger, suffering from a serious head injury, was not. As darkness fell, bleeding and only able to whisper, the lieutenant and another soldier crawled ten meters beneath a canopy of enemy fire to retrieve the severely injured man. On the return trip, Lieutenant Nardotti was again wounded, this time by an AK-47 tracer round that lodged in his left arm. In the face of continued enemy fire, they nonetheless continued to move the Ranger forward to the perimeter until they were close enough for others to assist. Severely wounded only three months after his arrival, Lieutenant

3. THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975, at 261 (1975). The Judge Advocate General's School Library contains several volumes of this out-of-print text, published by the Government Printing Office on the 200th anniversary of the Corps. It offers a rich and worthy account of the heritage of the Army Judge Advocate General's Corps and the corresponding development of military justice.

4. Oral History, *supra* note 1, at 29-30.

5. Nardotti Interview, *supra* note 1.

Nardotti's service in Vietnam was over. He would finish his tour in a Long Binh hospital.⁶

Lieutenant Mike Nardotti's extraordinary courage and selflessness under fire earned him the Silver Star for gallantry⁷ and helped define the personal philosophy and leadership character of an officer who would ultimately serve as the thirty-fourth Judge Advocate General of the Army. He was one of the last lions of his generation: that group of senior Army leaders who knew the reality of military combat, those who had sacrificed and endured. They were soldiers first, carrying their enthusiasm and understanding of military service with them beyond the battlefield and applying it throughout their professional lives.

This article is a summary and analysis of interviews conducted with the former Judge Advocate General of the Army in March 2000, interviews later transcribed and bound in *An Oral History of Major General Michael Nardotti (Retired)*, which is maintained at the library of The Judge Advocate General's School, United States Army, Charlottesville, Virginia. The article introduces Major General Nardotti by discussing his professional experience and accomplishments, while identifying the unique leadership qualities that contributed to his success. In particular, this article highlights his philosophy of the "soldier-lawyer" that became the hallmark of his remarkable institutional—and cultural—legacy for the Army Judge Advocate General's Corps.

II. The Early Years, 1947-1969

Mike Nardotti was born 30 April 1947 in Brooklyn, New York. A couple of years later, his family relocated to Hempstead, Long Island, where he grew up attending parochial and public schools in a competitive environment marked by cultural and ethnic diversity. It was here that he first demonstrated an aptitude for academics and athletics, excelling at both. The combination of the two earned him scholarship offers from Dartmouth and Lehigh. The influence of friends and his own assessment

6. Oral History, *supra* note 1, at 30-33.

7. Nardotti Interview, *supra* note 1.

of the quality education he might receive, however, also led him to consider the Military and Naval Academies.⁸

He applied to Dartmouth and Lehigh because of their excellent reputations and emphasis upon engineering, a field he seriously considered due to a strong background in mathematics. For the Naval Academy, he sought and received the assistance of United States Senator Jacob Javitz, leading to an alternate appointment to Annapolis. This alternate appointment, however, caused Nardotti's local congressmen to drop him from consideration for his first choice—the Military Academy—which interested him because of its all-around high standards. Undeterred, and with the assistance of the Academy's wrestling coach, he convinced West Point officials to place him into the pool of alternates for consideration by members of Congress who had not used their allotted slots.⁹

The necessary nomination finally came from an unexpected source, Congressman Adam Clayton Powell, 18th District of New York, a district that included Harlem in New York City. At the time, Congressman Powell was one of only a handful of African-Americans serving in Congress. Nardotti never forgot Powell's help, and he often reminded others that “[y]ou never know where your opportunity is going to come from.”¹⁰ Years later, he would be an enthusiastic supporter of initiatives that gave women and minorities access to career opportunities in the Judge Advocate General's Corps.¹¹

In 1965, the year Nardotti graduated from Uniondale High School, the escalation of the war in Vietnam had begun. While the military build-up in the region was supported by a majority of Americans, there was nonetheless a keen awareness that the conflict in Southeast Asia was real and that Americans were going to die. Young men entering the military academies knew—or should have known—that there was an expectation for their service in the growing conflict. Mike Nardotti was no different. While his father had served in World War II, there was no other military tradition to introduce him to the idea of selfless service. It came naturally.

8. Oral History, *supra* note 1, at 1-3.

9. *Id.* at 4.

10. *Id.* at 5.

11. *Id.* at 109.

I went [to West Point] with the full expectation that I would go to Vietnam and it was because I assumed that your duty was to go where you were needed. There were plenty in my class who felt the same way, but there were others who didn't . . . and to the extent they could avoid that duty, they did.¹²

There were many opportunities at West Point. Nardotti continued to excel in athletics and academics, just as he had at Uniondale. The adjustment to the rigors of a structured military regime came easily to him. He was an all-American wrestler throughout his time at West Point,¹³ he served as the secretary of the cadet honor committee, and he excelled in an academic curriculum concentrated in hard sciences and engineering. Leadership, not surprisingly, was another challenge the young cadet met and exceeded. By his fourth year, he was one of only ten permanent cadet captains—the highest rank among the Corps of Cadets—and had responsibilities as the Cadet Regimental Commander for the First Regiment of the Corps of Cadets.¹⁴

By his senior year, there was no doubt in the twenty-two year-old's mind that he wanted to be an infantryman. Much of the instruction and training at the Military Academy was geared toward basic Army and infantry skills. Infantry was Nardotti's first choice. "I guess I was really sold on the philosophy that the fundamental in combat is the individual fighting man and all the other functions are there to support what the infantry essentially does." By spring of his senior year, he had chosen the 1st Cavalry Division for his first assignment and had volunteered for Vietnam.¹⁵

III. Vietnam, 1969-1971

Nardotti received his Regular Army commission in the spring of 1969. Following graduation he successfully completed the U.S. Army Ranger School (the most challenging small unit tactics course available), Airborne School, and the Infantry Officer Basic Course at Fort Benning, Georgia. At the time, it was Army policy to send new Infantry officers to an interim developmental assignment to gain troop experience prior to entering combat in Southeast Asia. Accordingly, in February 1970, Nar-

12. *Id.* at 7-8. Eighteen classmates ultimately lost their lives in the fields of Vietnam.

13. Nardotti Interview, *supra* note 1. He was ranked sixth in the nation for his respective weight-class in 1968.

14. Oral History, *supra* note 1, at 11.

15. *Id.* at 16.

dotti was sent to the 5th Infantry Division (Mechanized), Fort Carson, Colorado. There, he served as a Reconnaissance Platoon Leader and Headquarters Company Commander. Operationally, it was a distinctly unremarkable training experience for the young officer.¹⁶ The 5th Infantry Division had a motorized, Warsaw Pact mission thoroughly inconsistent with the realities of the war in Vietnam. Moreover, the resources demanded by the effort in Southeast Asia left unaffiliated units strapped for money and material, compromising even the best efforts to maintain minimum readiness.¹⁷ Nardotti recalls:

[I]t was . . . a disaster. We were not able—we were not permitted to take our vehicles up until July because of fuel shortages. We could not take vehicles out of the motor pool for any distance. Basically we tried to maintain vehicles by starting them up every day. . . . It was a disastrous way to try to maintain vehicles . . . [and] it showed.¹⁸

One distinct benefit of the training, however, was the immediate exposure to non-commissioned officers (NCOs). Like most young officers, Nardotti began his career under the watchful eye of experienced NCOs who taught him about the Army and the critical manner in which they keep it running. Nardotti's first sergeant at Fort Carson was a twenty-six year veteran with experience in World War II, Korea, and Vietnam.¹⁹ Indeed, on the day he was told he would receive a company command, Nardotti's senior officer was quick to remind him that "[b]efore you get too big a head, you just understand one thing—the only reason you're getting this opportunity is we have enough experienced NCOs in this organization to keep you out of trouble."²⁰ It was a lesson he never forgot.

16. *Id.* at 23. "I keep using that word—disasters. It [the training environment at the 5th Infantry Division] was not a very pleasant situation. In that respect, it was not worthwhile . . . [because] it did not prepare me operationally [for Vietnam]."

17. *Id.*

18. *Id.*

19. Nardotti Interview, *supra* note 1.

20. Oral History, *supra* note 1, at 21.

By the summer of 1970, his interim assignment in Colorado was over. Commensurate with the request he made the year before at West Point, he was assigned to B Troop, 1st Squadron, 9th Cavalry Regiment, 1st Cavalry Division, with duty in South Vietnam. Eager for the experience, he quickly sought and received a leadership position as the troop's "Blue" platoon leader.²¹

I want[ed] to be a platoon leader—Blue, Red, whatever you want to call it—I'll go. Over the next day or so . . . people would go (makes the sign of the cross). Apparently, the mortality rate of my predecessors was not very good. Or at least there was a series of people who held the job who didn't—who weren't in the job long before they were carried out on a stretcher.²²

The response from the others in the troop proved prescient.

A primary mission of B Troop was to locate the enemy using reconnaissance and attack helicopters, and then deploy the infantry element—Blue Platoon—for short, limited operations. The platoon was trained to rappel in when transport helicopters—UH-1 "Hueys"—were unable to land. Operations included support of Ranger reconnaissance missions and search and rescue of downed pilots.²³ The new platoon leader felt prepared as he could be under the circumstances, confident that his training at Ranger School had given him the tools he needed to succeed.

This included the ability to integrate into the unit, and to motivate and win the confidence of subordinates. One of the first tests involved wrestling. Early on, word of the new lieutenant's athleticism had gotten out and led one of the M60 gunners to challenge Nardotti to "mix it up" in a wrestling match. The challenge was quickly met and, moments after it had

21. *Id.* at 25. The official term was "platoon commander." The table of organization and equipment for B Troop included only one infantry officer billet; the rest of the officers were aviators.

22. *Id.* at 24.

23. *Id.* at 25-26.

The Rangers in those days . . . were in a recon role. They did not have a "make contact with the enemy" mission. They strictly were recon but occasionally, if they got in trouble . . . they would need reinforcement very quickly and that's where you'd have to send people in. That was the function of [the Blue Platoon].

begun, the young gunner found himself in the dirt, tied up in knots. As Nardotti aptly noted later, “this is where being able to do everything that your troops do, even to the point of being able to kick their ass if you need to, comes in handy.”²⁴

The lesson was not lost on his unit. Credentialed as the only Ranger-qualified officer in B Troop, Nardotti was willing and able to demonstrate the physical prowess expected of an infantryman and to act decisively in early firefights, earning him the respect of superiors and subordinates alike. He sought tough jobs without hesitation and proved he was a soldier. The fortitude displayed in those early days would find its greatest test only weeks later, when everything changed for Nardotti and his unit.

It was late afternoon on 6 December 1970, when a Ranger reconnaissance element radioed for help. Earlier that day, Blue Platoon completed two missions, rappelling in to pursue fleeing enemy troops. Despite an already active day, when the call came to “bounce the Blues,” B Troop responded without hesitation, loading six men each on three UH-1s, and flying off to assist the troubled four-man Ranger team.²⁵

The air-mobile insertion to assist the reconnaissance team occurred under sporadic enemy fire, but the link-up went without incident. Nardotti’s men helped set up a defensive perimeter and were preparing for the next phase of the operation when suddenly the enemy began a blistering assault involving rocket and .30 caliber fire. Nardotti was injured immediately, suffering shrapnel wounds to the neck and back as he was reaching for a radio headset to communicate with his troop commander circling in the air above. The shrapnel caused Nardotti’s neck to go numb and shattered his voice box; he thought he was going to choke.²⁶

Nardotti was positioned next to the reconnaissance team leader, who suffered a severe head wound in the initial assault. The two men were about ten meters forward of the perimeter. Nardotti was able to make it back to his medic for assistance. The injured Ranger team leader, however, was unable to follow. After quickly tending to his own situation, despite his wounds and the constant fire, Nardotti and another man went out to retrieve the wounded Ranger. As they were pulling him back, Nardotti was shot in the arm with a tracer round. Despite all that was happen-

24. *Id.* at 26.

25. *Id.* at 29-30.

26. *Id.* at 31.

ing, he never lost command or control of the situation. He coordinated for the unit to break contact with the enemy while another blue platoon from the 17th Cavalry deployed in support.

We started this at about four. This is about eight-thirty at night [when the break contact order was given] so it's dark. We got a guy critically wounded. My radio operator, when I first got hit, was in a mild panic. . . . The pilots told me later, they said they thought I was a goner because they said what was coming out over of the radio was [that I] was hit in the head and wasn't looking good. . . . [As] this was happening, before I was able to get on the radio and calm things down I told [Sergeant Monty Cates] what we needed to do and got the word out over the radio that we were going to break contact.²⁷

Nardotti forever recognized the role Sergeant Cates and the other young soldiers and NCO's played in the firefight, citing their professionalism and courage. He credits them with saving his life.²⁸

Nardotti and the Ranger team leader were eventually medically evacuated to an intermediate firebase, and then to the military hospital at Long Binh. After a two-week stay, Nardotti began a series of moves—to Camp Zama, Japan, and then to Walter Reed Army Medical Center, Washington—that finally returned him to New York and the Saint Albans Naval Hospital. His recovery would take more than six months of inpatient and outpatient care. He never regretted the decisions that lead him to Vietnam, however: “I was very proud of myself for going . . . [because it] was where I needed to be.”²⁹

The severely wounded Ranger whom Nardotti tried so desperately to save later died. The nineteen year-old had only nine days left in Vietnam, and his mother had already lost one son to the war. His commander kept him in the field over his mother's pleas because the soldier wanted it that way—to finish out his time as a soldier, doing his duty. It was a display of

27. *Id.* at 32.

28. Nardotti Interview, *supra* note 1.

29. Oral History, *supra* note 1, at 39.

courage and selfless service that Nardotti would never forget: a quality of character that those who avoided combat duty could never understand.³⁰

The fortitude and professionalism displayed by the soldiers Nardotti encountered before and during Vietnam was not lost on the young infantry officer. He credits much of his success to the lessons and mentoring he received early in his career by men of unusual experience and insight. He knew firsthand of the talent that resides in soldiers and NCOs, and the critical difference they make for an organization. It was a perspective that he carried throughout his military career.

The great words that I spoke frequently about NCOs, the importance of NCOs, were not because I read it in a book someplace and it's something nice to say. For me, the importance of NCOs and what they mean to the Army, and to soldiers and officers in particular, is what I learned early on.

....

As General Rogers pointed out one time, he said, "Its no coincidence that in the Army . . . we have our people who are least experienced in the officer ranks . . . paired with people with the most experience . . ." You learned early on that if you listen carefully, if you're not afraid to ask questions and don't worry about being embarrassed . . . if you're consistent and trustworthy and they know you have standards, you live by them and make others live by them, they're behind you solidly. . . . The fundamental lessons that you learn—again, you have to listen to your NCOs.³¹

IV. Return to West Point and Entry to the Judge Advocate General's Corps, 1971-1976

By May of 1971, Nardotti's injuries had healed sufficiently to allow him to leave Saint Albans Naval Hospital and begin a program of recovery. The Army decided two years after his graduation that the best place for him was to return to the Military Academy. There, during his rehabilitation, he

30. *Id.* at 34.

31. *Id.* at 34-36.

was assigned to the Physical Education Department where he taught and coached wrestling. In June 1971, he was promoted to captain.³²

The return to West Point was a positive experience that allowed Nardotti to mentor young cadets while he recovered from his injuries.³³ It also gave him the time to seriously consider a career in law. Generally, his experience with judge advocates had been mixed. Many, in his view, were simply not predisposed toward the military.

There was something about the people that were coming in [as judge advocates]. Their focus was not on the Army as an institution they wanted to stay with or soldiers generally being a population of clients they wanted to hang around. . . . [A number of them] were not sympathetic with the Army as an institution.³⁴

This led Nardotti to think that his own unique military experience—as a Military Academy graduate, platoon and company commander, and combat veteran—might bring a valuable perspective to the services provided by judge advocates. In particular, he felt that his experience as a line officer gave him an insight to commanders that was lacking in many of the young lawyers he had dealt with:

I thought that there was an element of experience that I would bring . . . that was not there in the vast majority of judge advocates at the time, the overwhelming majority. I thought it would be a plus. I thought I could add an element that would be of benefit to commanders that I knew, and to soldiers.³⁵

32. *Id.* at 40-41.

33. *Id.* at 40.

I was glad to be there but it was because of very unusual circumstances. . . . [T]he fact that I knew some of the cadets, I had not been there too long before, [and that] I was severely wounded and . . . was in the process of recovery—there was a dose of realism there for cadets.

Id.

34. *Id.* at 42.

35. *Id.* at 43.

It was this early belief in the notion and value of the soldier-lawyer that ultimately led Nardotti to apply in 1972 for the Excess Leave Program to attend law school. He married his wife, Susan, the same year. By January 1973, he was accepted to Fordham University Law School, and thereafter was granted the excess leave he had requested, entering law school the following fall. In 1974, he was picked up under the newly created Funded Legal Education Program (FLEP). He graduated in 1976, formally left the infantry, and began his remarkable career in the Judge Advocate General's Corps.³⁶

V. 3d Armored Division, Butzbach, Germany, 1977-78

Consistent with their request, the Nardottis' first assignment following the Judge Advocate Officer Basic Course was with the 3d Armored Division, in Butzbach, Germany.³⁷ His first supervisor was Lieutenant Colonel John Fugh.³⁸ The Butzbach office supported the largest armored brigade in the Army,³⁹ and it provided the young officer with excellent opportunities as a trial counsel and, later, as Officer In Charge of a branch office.⁴⁰ The trial experience in a troubled post-Vietnam Army is what Nardotti remembers most:

You had serious disciplinary problems among troops. . . . It was great trial work. But what's good for the JAG Corps is not good for the Army . . . [and] was a reflection of the problems commanders had to deal with. . . . [I]t was just terrible . . . I think I tried about 80 cases, probably 50 GCMs, half of those contested cases before GCMs, most [of them with] juries. I think the 3d Armored Division was trying about 350 cases per year. It was very substantial.⁴¹

As in all military assignments, the work is only part of the experience. The people represent the other part. The Nardottis were welcomed with open arms and a generosity of spirit they have never forgotten. Another judge advocate provided the Nardotti family, now with two young chil-

36. *Id.* at 44-45.

37. *Id.* at 47.

38. The Judge Advocate General of the Army, 1991-93. *Id.* at 52.

39. 1st Brigade, 3d Armored Division. Nardotti Interview, *supra* note 1.

40. Captain John D. Altenburg, later The Assistant Judge Advocate General of the Army, 1997-2001, succeeded him. *Id.*

41. Oral History, *supra* note 1, at 48.

dren, lodging in his home and a car to get around in the early days of the new assignment. “I asked one of the officers, ‘How do [I] repay what you’ve given us?’ He said, ‘just pass it on. That’s the way it’s done.’”⁴² The Fughs also displayed an uncommon kindness and attention toward the junior officers and their families.

[T]he Fughs, John and June Fugh, were wonderful people to have as SJA and the SJA’s wife. They were very close to, very attentive to all the captains. June Fugh was kind of like the mother for all the . . . bachelor captains . . . [It] was a good lesson for us early on about what are the things you need to do as an SJA—you need to take care of your people, and he did. He looked out for them.⁴³

In addition to his high standards for taking care of military families, Lieutenant Colonel Fugh inspired lasting impressions for the way he stood on principal in defense of his people, and for what he believed was right—values of leadership that did not go unnoticed by the young judge advocates who worked for him.⁴⁴

Among his peers, Nardotti was among the precious few with any prior military background, as most were direct appointees. The enormous demands created by heavy case loads literally required young judge advocates to hit the ground running. This frustrated any effort on the part of leaders to train new judge advocates in basic soldiering skills or to impress upon them an appreciation for what their clients did for a living. As a result, many judge advocates genuinely considered themselves lawyers first, but did little to change the perception that they lacked key military sensitivities and training. “Quite frankly,” Nardotti reflected, “[commanders’] impression of JAG officers was not necessarily favorable and the expectation wasn’t that they were going to find people who were soldiers in the JAG ranks. They were going to be lawyers, [because] that’s what they do.”⁴⁵

42. *Id.* at 49.

43. *Id.* at 49-50.

44. *Id.* at 51.

45. *Id.* at 54.

Nardotti clearly recognized the importance of achieving a balance between the two. He saw that commanders appreciated officers who were effective advocates well-versed in the law, but who were also able to perform and advise in demanding environments. “[Y]ou may be soldiers—you’ve got to be soldiers—but you’ve got to be a damned good lawyer as well. That’s what always made the difference.”⁴⁶ He recognized that the ability to develop rapport with commanders created valuable relationships, particularly for defense counsel who were able to tap that resource on behalf of their clients.⁴⁷

Few exemplified the balance between soldier and lawyer better than the young Vietnam veteran fresh out of law school. Obtaining that balance is not always easy, however. There is no doubting that Army culture, then as now, lends great deference to accomplishment in military schools, challenging jobs, and combat. Perhaps rightly so. It would be a mistake, however, to think that the soldiering emphasis facilitated by Nardotti in any way diminished the fundamental responsibility of judge advocates to provide timely and efficient legal counsel.

We’re not pushing being a soldier first—that was never my thought in this idea of the importance of being a soldier—you’re not there to relive the glory days as an infantryman or anything else. What we tried to foster was the understanding that you’re going to be a better lawyer, you’re going to know your client better, and you’re going to be able to keep up with your client.

....

If you can’t do the things that soldiers need to do, you’re not going to be there when your commander needs you. If you don’t know what it is like to be a soldier, you’re not going to understand what the commander is thinking, feeling, doing, when he’s on the verge of making an important decision or what that particular soldier may have been thinking or feeling at the time of something that went on. It gives you the ability to empathize with the client that would otherwise not be there.⁴⁸

46. *Id.*

47. *Id.* at 55.

48. *Id.* at 56.

The importance of caring for Army families and the notion of the soldier-lawyer were perhaps the greatest lessons garnered from Nardotti's two years with the 3d Armored Division. He saw soldiering as integral to the practice of military law, and he recognized that successful judge advocates could not simply be lawyers to the exclusion of broader responsibilities of officership. What was needed was a marriage of the two. A third lesson taken from the 3d Armored Division evolved from the relationship between government and defense counsel, who both worked for the SJA at that time. While "never doubting the vigor with which [both sides] represented clients," he observed the need to avoid letting litigation become personal.⁴⁹

Let me put it this way—I don't believe you serve the best interests of your clients when you get into that mode. If it gets to be personal, you better back away. . . . Sooner or later you're going to make a decision which is not in the client's interest, whether it's [on behalf of] the government or as the defense counsel.⁵⁰

It was an important lesson about conducting litigation, which served him well in future assignments.

VI. The Graduate Course and U.S. Army Litigation Division, 1979-1985

Because of his seniority—he was selected for promotion to major his second year in Germany—the Judge Advocate Officer Graduate Course came early for Nardotti. It was, for several reasons, one of the two best years of his military life.⁵¹ The Graduate Course provided time to step back from the Army and into an academic environment. "I think that's one of the reasons for the success of the Army, because at regular intervals you have the opportunity to reflect, whether it's an advanced course, CGSC, the War College. You need to reflect on where you've been and where you are going."⁵²

49. *Id.* at 58.

50. *Id.*

51. *Id.* at 61, 63 (He considered his year at the Army War College to be the best year).

52. *Id.* at 61.

The second benefit of the Graduate Course was the opportunity to develop lasting relationships with his peers. “You can’t keep the mask up very long in that environment. Your classmates . . . get to know you.”⁵³ The year in Charlottesville was a chance to build personal and professional associations that lasted throughout his career and beyond. He found the shared experience of his classmates was the key collateral benefit of the course.⁵⁴

The Graduate Course was also a tremendous opportunity for objective learning. Like so many others, Nardotti was impressed with the genuine talent and accessibility of the faculty at The Judge Advocate General’s School, which remains among the best in the Army. “You never get that kind of comprehensive treatment of the law, ever, unless you took a year off and went to a [civilian] graduate course, but even then, you can’t do that and get the things that you need for your profession as a judge advocate.”⁵⁵

Following the Graduate Course, Nardotti began a relatively long and remarkable tenure at the U.S. Army Litigation Division, although it was not the obvious assignment for him. Throughout the Graduate Course, he had focused heavily—with considerable success—on government contracts in anticipation of a follow up assignment to the Contract Appeals Division. As he later admitted, however, Federal Litigation was the only course he almost failed.

I took from [the decision to assign him to Litigation Division] that they looked at my work . . . and said, “Well, he’s got the contract stuff down so we’re not going to waste our time sending him there. Let’s send him to Litigation Division. He didn’t get this stuff the first time. Maybe he’ll learn it in Washington.”⁵⁶

He arrived at Litigation Division in June of 1980, where he was assigned to the Military Personnel Branch located in the Pentagon.⁵⁷ His first supervisor was Lieutenant Colonel Scott Magers.⁵⁸ Like Lieutenant Colonel Fugh before him, Magers was a superb mentor who actively engaged his subordinates both personally and professionally. In particular, he recognized the importance of striking a balance between the heavy

53. *Id.* at 62.

54. *Id.* at 63.

55. *Id.*

56. *Id.* at 65.

57. *Id.*

58. Later promoted to Brigadier General. *Id.* at 149.

demands of litigation and the needs of the individual and the family. “It was important for my supervisor to tell me you need to make sure you are taking care of yourself. That was a lesson I never forgot, and he [Magers] was good about it.”⁵⁹

Among his first cases to litigate was a challenge to the constitutionality of the Army chaplaincy. The case was started by “a couple of Harvard law students . . . on a theory that any expenditure of public funds for religious institutions like the chaplaincy violated the First Amendment, notwithstanding the military need.”⁶⁰ The district court and the Court of Appeals for the Second Circuit largely sustained the government’s position in the case, which was ultimately settled. It was just one of several interesting and challenging cases—including a massive number of actions arising from flawed officer promotion and selection boards—that occupied his time at Litigation Division during the early 1980s.⁶¹

The diversity of casework, and the dynamic environment of a litigation practice, was the “spice of life” that led Nardotti to spend nearly five years at Litigation Division.⁶² He observed many outstanding young officers come and go during that period, armed with plenty of valuable experience that made the transition to civilian practice easy, if not inviting. In later years, this would help him to develop guiding principles for the JAG Corps and what, he believed, should be its offering to young attorneys.

You don’t sell the JAG Corps primarily on the idea that it’s good experience. You sell it on the concept that there is honor in service, it’s important to serve, and whether you stay three years, four years, or twenty years, the time you spend in uniform serving soldiers will be something that you look back on with great satisfaction. You’ll be glad you did it.⁶³

During his time at Litigation Division, Nardotti maintained a balanced and realistic view of where the JAG Corps fit in the larger scheme of the Army. While recognizing the value of time spent working in Wash-

59. *Id.* at 67-68.

60. *Id.* at 69.

61. *Id.* at 74.

62. *Id.* at 78.

63. *Id.* at 76.

ington, D.C., he never lost focus on the importance of the people at the other end of the proverbial spear.

[W]hen you are in this [headquarters] environment for a length of time, what you have to guard against is the inclination to think too much like a headquarters person. You must always remember that your reason for existence is to serve soldiers and to take care of the Army in the field.⁶⁴

VII. 1st Cavalry Division, Fort Hood, Texas, 1985-1988

Following completion of the six-month course of study at the Armed Forces Staff College,⁶⁵ Nardotti left Washington for Fort Hood, Texas, where he became the Staff Judge Advocate for the 1st Cavalry Division. At that time, the division was a two-brigade organization with approximately 13,000 troops. The SJA office consisted of twelve judge advocates, eleven enlisted personnel, and a warrant officer, who together provided core legal services—military justice, routine administrative law, and soldier services. The move from Washington to the field held exciting new challenges for the young SJA. Nardotti encountered enhanced leadership responsibilities and the higher status afforded lieutenant colonels at the division level, a point his predecessor at Fort Hood tried to emphasize: “You have to understand something. Being a lieutenant colonel—lieutenant colonels take out their own trash in the Pentagon, but being a lieutenant colonel in a division is a big deal. Be ready for that.”⁶⁶

Colonel Tom Crean, who as a captain at the Personnel, Plans and Training Office (PP&TO) twelve years earlier had introduced Nardotti to the FLEP program, was the III Corps SJA.⁶⁷ Colonel Crean was a superb mentor to the junior SJAs at Fort Hood, and in particular, was admired by

64. *Id.* at 72-73.

65. *Id.* at 89. Major General Nardotti opted, for family reasons, to attend the Armed Forces Staff College in Norfolk, Virginia, rather than the Command and General Staff College at Fort Leavenworth, Kansas. *Id.*

66. *Id.* at 123-24 (quoting Colonel John Wallace).

67. *Id.* at 95-96.

Nardotti for his talent of winning the trust and confidence of a demanding Commanding General.⁶⁸

Tom Crean as the SJA—I tell you, standing back and watching him, it really was a great credit to the JAG Corps because . . . [most] of the other staff sections did not have the rapport with the CG that Tom Crean had. Other staff members . . . looked with great admiration, that this guy who didn't always have good news for the boss had a good rapport with [him] and basically could go in and tell him the hard truths when he had to hear them. I was impressed by that, and it was a great source of pride . . . a real credit to the JAG Corps.⁶⁹

It was also one of the first lessons Nardotti had as an SJA: the value and importance of developing a counselor relationship with senior officers, to leverage the unique role of the judge advocate into something more than just another staff officer.⁷⁰

For his part, being an SJA was also Nardotti's first real opportunity to think about how he might focus and shape the training for his junior officers. Unlike the environment in Germany, where the breathtaking volume of misconduct often precluded other types of training, crime did not occupy as much time for the state-side Army in the mid-1980s. There was an opportunity to do more than just criminal law, and this allowed Nardotti to focus his subordinates on the division's war-fighting, operational mission. So, he sent them to the field.⁷¹

Nardotti began by challenging himself and his subordinates to carefully consider their place in the organization, and to seek out opportunities to "add value" in an operational context.⁷² He was convinced that judge advocates could be—and should be—a force multiplier for commanders. This would be accomplished where judge advocates earned their seat at the

68. Lieutenant General Crosbie Saint. Nardotti Interview, *supra* note 1.

69. Oral History, *supra* note 1, at 97.

70. *Id.* at 98.

71. *Id.* at 99.

72. *Id.* at 100. Major General Nardotti mentions an early anecdote where, during a command post exercise, there was no plan for a judge advocate to be in the command post or anywhere else in the field headquarters.

commander's table by using their experience and analytical training to assist the command.

You need to understand where you fit into the mission and how you can help. . . . [I]t's a matter of education. There are issues that you will see that they will not see. . . . It's a matter of looking at the issues from the perspective that you deal from . . . and just apply the insights that you have—based on your training as a judge advocate—to see where there may be problems that you are getting paid to anticipate and, if you can, make them go away before they become problems.⁷³

Nardotti's objective was nothing short of changing the way commanders viewed judge advocates and the way judge advocates viewed themselves. He wanted to move away from the "obstructionist" image that many in the field still attributed to Army lawyers, and away from the "never leave the office" orientation of many young judge advocates.⁷⁴ Implicit in this was a fundamental change in the way judge advocates conducted business. Rather than a reactive practice—waiting for the crime or crisis to come to the SJA office, Nardotti focused on pushing his young lawyers forward to integrate them early and often with their clients.

[J]ust as the logistics people are supposed to be anticipating what the problems are going to be in their area and they come up with solutions, you have got to do the same thing for those issues that fall into the lap of the judge advocate. You don't wait until it happens. You get in there and look at it and figure out how you can add value early rather than later . . . to demonstrate [that judge advocates] . . . can be problem-solvers. They are team players. They are soldiers.⁷⁵

Under Nardotti's leadership and initiative, 1st Cavalry Division began sending young judge advocates to the field with unprecedented frequency. "You go into that environment and just the fact that you show up out there with your LBE on correctly, looking like a soldier, makes a big difference . . . [and shows that] you are out there to learn." He would tell his young

73. *Id.* at 100-01.

74. *Id.* at 101.

75. *Id.*

brigade trial counsel, “This is an opportunity for you to go out and see what your clients do.”⁷⁶

It is important to note that this was not a singular effort. Colonel Crean, the III Corps SJA, and the two succeeding 2d Armored Division SJAs, Lieutenant Colonel Jim Smizer and Lieutenant Colonel Gary Leeling, together were working to move the JAG Corps forward in this regard. They were each “fighting the same battle, which was to ‘show . . . relevance.’”⁷⁷

What is it that you will do that will add value? Rightly or wrongly, my view was you don’t expect others to tell you how you can be important. Figure that out. That’s what you get paid to do. You get to determine in some respects your own destiny. How important do you want to be?⁷⁸

For Nardotti, it was not a difficult answer. He was determined to broaden the role of judge advocates from an operational and, indeed, an institutional perspective. The end-state was the same: more efficient, timely, and effective delivery of legal services. He wanted judge advocates at their commanders’ sides, offering counsel as a valued member of the staff while anticipating problems, staying actively engaged, and understanding the operation.⁷⁹

It was never Nardotti’s intent for judge advocates to assume a role outside their area of expertise, but rather to strengthen the role already given them. In doing so, he proved that Army lawyers could be fully vested members of the brigade or division staff. This was not lost on his own commanding general, who was so impressed with Nardotti that he asked him to serve as the senior officer of the division forward location during a REFORGER exercise.⁸⁰ This was a long way from the first exercise, where the division SJA was not even part of the headquarters set up—not so much as a table or chair—and proved the validity of what Nardotti and the other SJAs at Fort Hood were trying to accomplish.

76. *Id.* at 103-04.

77. *Id.* at 104.

78. *Id.*

79. *Id.*

80. Return of Forces to Germany. *Id.* at 106-07. The exercise involved the deployment of 20,000 troops from Fort Hood, Texas. Nardotti Interview, *supra* note 1.

By getting judge advocates out of the office and into the field, these SJAs eroded the myth that Army lawyers lack the personal fortitude and resourcefulness ingrained in combat arms officers. Certainly, judge advocates were not going to be taking any hills, but they would be at the commander's side throughout the operation to assist with planning, targeting, refugees, and whatever other issues arose with a nexus to the law. If nothing else, they would be a presence, someone "willing to take the shift on the radio from three to five o'clock in the morning to let them know that you are ready to do what they need to do."⁸¹ In this way they were combat multipliers facilitating the commander's mission, and their own.

You are going to be out there in the rain, in the mud, doing all that stuff. You are part of the team. It is going to help you establish a rapport . . . [Back in garrison, the commander knows this] isn't some guy who wears Class A's all the time and goes to court and comes down to see me about Article 15s. He is somebody who was out in the mud with me last week, and I'll talk to him, or I'll talk to her.⁸²

One of the benefits of the soldier-lawyer emphasis was the integration of women into previously all-male environments. Nowhere was this more apparent than in the combat battalions and brigades. The Fort Hood division SJAs never made any distinction between male and female officers. Captains Jan Charvat and Amy Frisk were among the few—if not the very first—women to integrate into these units. "That was breaking new ground, getting women into that. [T]hey demonstrated that they could be soldiers too, that they could do the things that needed to be done. They would meet all the requirements and they were great lawyers."⁸³

It was clear, however, that the vanguard effort by Fort Hood to get judge advocates out to the field and integrated into operational staffs was not fully appreciated by all members of the senior leadership of the JAG Corps. Certainly, the leadership was not thinking about the kinds of doc-

81. Oral History, *supra* note 1, at 109.

82. *Id.*

83. *Id.*

trinal training changes that came later with the introduction of judge advocates at the national training centers.⁸⁴

At least one of the . . . one-stars at the time, I was led to believe, did not share the view that we had at Fort Hood about inserting ourselves. He took a more traditional view about how JAGs ought to be employed. If you need to go out there and try cases, that's one thing, but certainly not to use JAGs for performing functions that the operators ought to perform.⁸⁵

Undeterred, Nardotti, Leeling, and Smizer continued to raise the profile of their efforts to get judge advocates into the field. In truth, it was not a radical idea or one without precedent. In the early 1940s, under the leadership of Colonel Edward Hamilton "Ham" Young, a West Point graduate and former infantry officer, the curriculum of The Judge Advocate General's School: "taught 'soldiering' as well as 'lawyering.'" With great stress upon military discipline, military science and tactics included close order drill, interior guard, map reading, chemical warfare, staff functions, signal communications, weapons, and similar subjects designed to prepare students for duty as staff officers."⁸⁶ The Fort Hood initiative was simply a modern take on an old idea that officership is inseparable from soldiering.

VIII. U.S. Army Infantry Center, Fort Benning, Georgia, 1988-1990

The final SJA assignment of Nardotti's career was with the "Home of the Infantry" at Fort Benning, Georgia. It was like going home for the former infantryman. Indeed, his prior service as a line officer contributed to his getting the job. The two star commanding general at the time was a hardened infantryman who was unimpressed with the JAG Corps' plan to send a lieutenant colonel to the colonel's billet, and felt underserved by the Corps. Knowing this, the Chief of PP&TO, Colonel Walter Huffman,⁸⁷

84. *Id.* at 114.

85. *Id.*

86. THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975, *supra* note 3, at 188-89. Nardotti also credits Major General Ken Hodson, The Judge Advocate General, 1967-71, for appreciating that soldiering skills are fundamental to officership. Nardotti Interview, *supra* note 1.

87. The Judge Advocate General of the Army, 1997-2001. Nardotti Interview, *supra* note 1.

asked Nardotti to interview for the job, and advised him to “[m]ake sure you’re wearing everything (awards, decorations, and badges).”⁸⁸

This was unusual. By statute, The Judge Advocate General has the responsibility to assign SJAs as he deems appropriate.⁸⁹ As a matter of policy, two star commanders and below have little say in the matter; three and four star commanders have veto power.⁹⁰ But in this case, the experience Nardotti had as a combat officer was precisely what the JAG Corps, and the gaining commander, were looking for. “The drill was to send down somebody who has all the infantry [credentials]. . . . It’s the foot in the door. . . . [I]n terms of the background that I had, it was a perfect fit”⁹¹ The commanding general was on the phone before Nardotti made it out of the building. He had the job.⁹²

The Nardotti’s arrived at Fort Benning in May 1988. He was selected by the colonels’ board that met that summer, and pinned on a year later in June 1989. It was the first time he was “the colonel.” For the first year prior to his promotion, “[t]here [were] no other JAG colonels in sight. . . . [T]here were two lieutenant colonels in the office. One was the deputy and one was the chief of claims,” both of whom were senior to Nardotti. He managed the potentially awkward situation by valuing both men for who they were and what they were able to bring to the organization. “It’s nothing any more special than treating people with the kind of respect and dignity that you would expect in similar circumstances.”⁹³

Following on an effort begun by his predecessor, Colonel Earl Lassiter, one of Nardotti’s first objectives at Fort Benning was to upgrade and refurbish the SJA Office at Winship Hall.⁹⁴ The changes were dramatic: carpeting, dropped ceilings, better lighting, central air conditioning, landscaping, and new paint. Everyone painted their own offices, including the SJA, all in time for Major General William Suter’s Article 6 visit.⁹⁵ During

88. Oral History, *supra* note 1, at 121-22.

89. 10 U.S.C. § 3037 (2000).

90. Nardotti Interview, *supra* note 1.

91. Oral History, *supra* note 1, at 122-23.

92. *Id.*

93. *Id.* at 126.

94. Named after Major General Blanton Winship, The Judge Advocate General, 1931-33, holder of the Distinguished Service Cross for heroism and the Silver Star for gallantry for action during World War I. *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775-1975*, *supra* note 3, at 149-51.

95. UCMJ art. 6 (2000).

the office tour, Nardotti observed that Suter “did the best job [he] had ever seen of going through the office and . . . engaging people in a way that made every person . . . feel important.” It was a lesson he would later seek to emulate.⁹⁶

Although the soldiering at Fort Benning, a Training and Doctrine Command installation, was very different from the kind he experienced at Fort Hood, the importance of officers with soldiering skills continued to have a vitally important place for Nardotti. Following the death of a student at the Ranger Training Brigade, Nardotti sent an administrative law attorney with soldiering skills to advise the investigating officer, a brigade commander.

[T]hey went out tromping the turf where [the accident] happened, and the fact that he had a guy who was a good soldier, a JAG who happened to be a good soldier, was really important. He didn’t need to come up to speed on any of the issues about what was going on in this training setting. That came very quickly to him, and [the investigating officer] appreciated that.⁹⁷

One of the most difficult events at Fort Benning during this period was a double murder that occurred prior to Nardotti’s arrival, reopened in part due to the diligence of the father of one of the victims. The case involved “a lieutenant and his girlfriend who had been murdered, bodies mutilated. . . . [I]t was a . . . horrendous crime.”⁹⁸ Nardotti recognized the opportunity for the office to become emotionally involved in the case, but he was careful not to allow such emotions to affect his judgment. In particular, he was keenly aware of the need to retain objectivity, and to defer any personal feelings about capital punishment in order to guarantee the integrity of the advice his commander would need. It was a lesson he had learned at Litigation Division.

[Y]ou look at the circumstances of that crime, you look at an agonizing parent, and you have got to be careful that that’s not what is driving your decision [to recommend a capital case]. . . . [I]f I felt that I had moral compunctions against capital punishment, then I should not be in a position [to advise] someone who makes decisions in that area. . . . [I]f you cannot give the deci-

96. Oral History, *supra* note 1, at 133.

97. *Id.* at 127.

98. *Id.* at 135.

sion-maker the full range of options, if your personal viewpoint is going to affect that, it is something you better think about in continuing to occupy that position as an advisor.⁹⁹

The case was tried capital, and it ultimately resulted in a life sentence for the accused.

IX. Army War College, Carlisle Barracks, Pennsylvania, 1990-1991

Without hesitation, Nardotti considered his next year in residence at the Army War College his best year in the Army. Personally and professionally, the academic setting of the Carlisle community was a rewarding experience for the Nardotti family. The program of instruction emphasized seminars populated by an accomplished group of highly experienced senior officers, which afforded the unique opportunity to share and discuss perspectives on everything from leadership to military history.¹⁰⁰

The diverse student body also offered its own unique challenges. The War College, like the other senior service schools, is a place where judge advocates are peered with combat and support services officers. Rather than attempt to rely upon his former combat arms experience, Nardotti again integrated into the community of combat arms with a systemic, lawyerly approach—he listened.

I paid attention, I listened a lot and as lawyers, your analytical abilities are going to be as good as anybody's It is like anything else—in any environment, if people perceive that you are someone who will listen to them, value their opinion, and factor it in in a deliberate and considered way, you're listened to. . . . [I]f your mission in life is to work with the operators in the division . . . if you handle [it] in the right way, they are going to value your opinion, they are going to seek your opinion. . . . They are going to treat you as another member of the team, another soldier.¹⁰¹

99. *Id.* at 136.

100. *Id.* at 92-93, 138-39.

101. *Id.* at 94-95.

Being a member of the team came easily for Nardotti, in part, because he never shied away from the challenge. He understood the important contribution a judge advocate could make in any staff environment, so long as the effort was genuine and consistent. At no time did he attempt to cloak himself in the shroud of the “special services” which presumes an inability to be a force multiplier. He was engaged, and combined the analytical skills of an attorney with the mission-orientation of an infantryman.¹⁰²

A Judge Advocate General’s Corps general officers’ board met in the summer of 1991, following Nardotti’s graduation from the War College. At that time, he was preparing for his follow-on assignment as the Chief, Contract Appeals Division. With roughly two years in grade, Nardotti did not consider himself a likely choice.

[W]hen senior commanders say things like, “this person should be a general officer,” you have done what you need to do. You have satisfied the customer, you have demonstrated your competence, but there are plenty of people that can fill that position. You should never delude yourself into thinking that you are getting close, because . . . [t]he system doesn’t work that way.¹⁰³

He was wrong. Nardotti’s selection to brigadier general was announced shortly thereafter.

X. Assistant Judge Advocate General for Civil Law and Litigation, 1991-1993

At the time of his selection to brigadier general, Nardotti had only two years in grade as a colonel—one year at Fort Benning and one year in residence at the Army War College. He was “genuinely shocked” at his selection.¹⁰⁴

I looked around, [and] I was looking at these guys who were in Desert Storm—Walt Huffman, who I had known for years and respected. . . [as well as] Ray Ruppert [and] Mack Squires. . . I thought [the board would select] Fred Green. . . [and that] I would be competitive . . . after the next job.¹⁰⁵

102. *See id.*

103. *Id.* at 145.

104. *Id.*

Indeed, Nardotti was selected early by most any standard, over and ahead of “sixty or seventy colonels” with senior dates of rank.¹⁰⁶

I really felt at that point I wasn't ready. I thought I had more to do—I knew I had more to do as a colonel to be ready. . . . I will say that there was not a little bit of anxiety about that, about how that was going to sit with my fellow colonels, who know how junior I was. If there was some bad feeling about it out there, I never got a hint of it.¹⁰⁷

It should surprise no one that what distinguished the young colonel was his proven leadership experience. The timing was perfect. “As [Brigadier General] Scott [Magers] said, ‘The decision has been made because they needed somebody with real leadership ability. That was the reason. [T]he Chief of Staff was talking to the president of the board and saying, ‘Get me a soldier. Get me a leader.’”¹⁰⁸ Nardotti's years of dedicated service as a soldier-lawyer had been recognized as precisely what was needed at the time, proof that the balance he had worked so hard to achieve was valued by the Army leadership. Still, he understood how fortunate he was and answered the call with humility. Recalling the opening day of the general officer's orientation course, he took heart at being reminded not to “get too big a head because for every one of you standing out there, there are probably ten more of your contemporaries that [could] be standing in your shoes.”¹⁰⁹

Nardotti assumed duties as the Assistant Judge Advocate General for Civil Law and Litigation. Perhaps the two greatest challenges during this period were the down-sizing of the military and the Clinton Administration's new homosexual policy. He considered the first the greater challenge of the two, and credited then Department of Defense (DOD) General Counsel Jamie Gorelick with foresight in supporting a sustained judge advocate manpower structure.¹¹⁰

[Gorelick] came in, and as we were talking through the issues . . . of reduction in force, reductions in the strength levels in all the services and all the associated problems that were going to come,

105. *Id.* at 151.

106. *Id.* at 152.

107. *Id.*

108. *Id.* at 153.

109. *Id.*

110. *Id.* at 156-57.

. . . she said, “This is the time we really should be increasing your legal assets to be able to deal with those with the idea that any drawdown in the JAG strength . . . will come after you have settled the rest of the organization down.” [With the] multitude of problems that [were] going to be associated with the drawdown, it made no sense to her that they threw the lawyers into the same basket as everybody else.¹¹¹

This critical support assisted the Corps in affecting the officer strength at a time of increased deployments, expanded responsibilities, and the difficult political environment of reductions in the overall force following the end of the Cold War.¹¹² The efforts of Nardotti, the JAG leadership, and the dedicated efforts of plans officers at PP&TO and SJAs in the field, along with the support of key allies like Ms. Gorelick, are largely the reason the Corps exists as it does today.¹¹³

In addition, one of the collateral issues that arose during the manpower realignment was the role of the National Guard and U.S. Army Reserves. “Desert Shield/Desert Storm demonstrated how dedicated members of the Guard and Reserves are and how much value added they can bring to the organization.”¹¹⁴ The challenge for the active component was to find ways to effectively integrate these officers and NCOs into the overall mission. This was a priority for Nardotti, and he worked hard to establish training programs and a culture of inclusion that helped make the Guard and Reserve components fully enfranchised members of the Corps. The vital role these units have played in the Balkans is a testament to the importance, success, and foresight of this effort.¹¹⁵

Issues arising from the new homosexual policy were given to Nardotti because they had their origins in litigation.¹¹⁶ It was a concern that followed him through his tenure as The Judge Advocate General. At its core, the furor surrounding the policy arose from a philosophical difference of

111. *Id.*

112. *Id.*

113. Nardotti Interview, *supra* note 1.

114. Oral History, *supra* note 1, at 157.

115. *Id.* at 158-62.

116. *Id.* at 181.

opinion between members of Congress, the military establishment, and the new, inexperienced Clinton administration.¹¹⁷

The difficulty for the Clinton administration coming in, and the [Chiefs of Staff], was the difference between what the President believed he could do, number one, and what he thought he had the authority to do, number two; what in theory looked like a good idea, that is, “[w]hy not let homosexuals . . . serve, and just put them out if they engage in conduct,” verses the Chiefs’ concern about the consequences, without making any moral judgments about homosexuality . . . that we are dealing with this from a unit cohesion standpoint, the unit morale standpoint, [and looking at] the practicalities of putting someone who is attracted to another person of the same sex in this environment.¹¹⁸

Nardotti observed that the absence of experienced military advisors contributed to the failure of the new President to fully appreciate the implications of what the Administration was trying to accomplish. “To say there was not an overabundance of people with military experience in the Clinton Administration early on would be silliness. There was a virtual absence of people with military experience, certainly with people who were sympathetic to the views of the Chief or the Army”¹¹⁹ This inexperience led to the Administration’s attempted policy-by-decree for a liberalized homosexual policy, and drew heavy opposition from Congress and the Chiefs of Staff.¹²⁰

[The Administration’s] expectation was that they were going to go in and be confronted by some out-of-touch, arch-conservative military people who would not be able to compellingly articulate a position as to why [the existing] policy ought to be maintained. What they got was just the opposite. . . . [They discovered] the Chiefs’ collective position was not the result of random thought processes or homophobic biases.¹²¹

The final policy fairly represented the position of the military leadership, and it was strongly influenced by efforts of Ms. Gorelick, the Chiefs of Staff, and the service Judge Advocates General.¹²² It preserved and

117. *Id.* at 182-83.

118. *Id.*

119. *Id.* at 183-84

120. *Id.* at 184.

121. *Id.* at 184-85.

strengthened the existing policy through a statutory mandate fairly representative of the Chiefs' perceived service interests.¹²³ The process of getting there, however, was rarely easy.

Nardotti observed two interesting forces at work. First, were the efforts by the Chiefs of Staff not to appear openly insubordinate to the President while at the same time exercising their statutory responsibility to assert the best interests of the military.¹²⁴ This was poorly understood both in and outside the government.¹²⁵

[T]he Chair—the Joint Chiefs—are in a different position than all other senior officers. . . . [A]ny member of the Joint Chiefs can raise an issue to Congress that that chief deems important to the national defense. . . . I don't think that was appreciated by the Administration early on. They had a very simplistic notion of "you're the Commander-in-Chief, these are your subordinates, you can tell them what to do and that's all there is to it." They learned a hard lesson.¹²⁶

A second observation was the peculiar manner in which the Administration appeared to seek input for the policy from outside the Pentagon, and politicize it further with apparent distrust of the expertise of the President's own military advisors.¹²⁷

Our views were not always heeded, and quite frankly we got the impression . . . that the Administration was talking to a number of different parties. When they gave the press conference announcing the policy, the actual policy that was written and discussed clearly had been in the hands of homosexual rights advocates. I remember one professor from Georgetown¹²⁸ who obviously had time to study and read and consider it, more time than we had, to see the final version. That was troubling.¹²⁹

122. *Id.* at 186.

123. *Id.* at 186-89.

124. *See* 10 U.S.C. § 151(f) (2000). The Chiefs of Staff have statutory authority and responsibility to bring to the attention of Congress matters of concern to the military. The only limitation is a notification requirement to the Secretary of Defense. *Id.*

125. Oral History, *supra* note 1, at 188-89.

126. *Id.*

127. *Id.* at 190.

128. Professor Chai R. Feldblum, Director, Federal Legislation Clinic, Georgetown University School of Law. Nardotti Interview, *supra* note 1.

The DOD homosexual policy, and preservation of the judge advocate manpower allocations, capped two productive years for Nardotti and prepared him for the challenges ahead. Both issues would follow him beyond his tenure as The Assistant Judge Advocate General.

XI. The Judge Advocate General of the Army, 1993-1997

Brigadier General Nardotti and Brigadier General Kenneth Gray were promoted to major general and sworn in, respectively, as The Judge Advocate General and The Assistant Judge Advocate General of the Army on 1 October 1993. Early on, the Vice Chief of Staff of the Army advised Nardotti of the ephemeral nature of his tenure, and suggested he focus on those issues of greatest importance to the Corps.¹³⁰ In particular, he emphasized that the time would go by quickly and that the new JAG Corps leadership should think about the direction they wanted to move the organization. Among the goals were: institutional healing following the Senate's failure to confirm Major General William Suter and Colonel John Bozeman; development of an operational law program with emphasis on the soldier-lawyer ethic; enhanced automation; compensating for the loss of criminal litigation experience; integration of the Guard and Reserves; and NCO development.¹³¹

A full and substantive discussion of the issues surrounding the Senate's failure to confirm Major General Suter as The Judge Advocate General, and its return of Colonel Bozeman's nomination to major general, are beyond the scope of this article and Major General Nardotti's Oral History. Briefly, in both cases the Senate was deeply concerned by allegations of unlawful command influence in the mid-1980s, resulting in the retrial of 250-300 courts-martial arising from the 3d Armored Division, Germany. The underlying issue was the legal advice provided to the Commanding General, Major General Gene Anderson, who publicly questioned the integrity of any officer who forwarded a case for a general court-martial and then testified on the accused's behalf in extenuation and mitigation. The chilling effect on an accused's ability to enter that testimony at trial was obvious. The issue ended Major General Anderson's career. Colonel Bozeman was his SJA. The issue erupted shortly after his nomination to brigadier general in 1989. The issue ultimately led the Senate to

129. Oral History, *supra* note 1, at 190.

130. *Id.* at 163.

131. *Id.* at 162-73.

return Colonel Bozeman's nomination, and impacted Major General Suter's nomination to be The Judge Advocate General of the Army.¹³²

The institutional repercussions echoed for years, and continued into the tenure of Major General Fugh in the early 1990s. Nardotti recognized the difficult environment Colonel Bozeman was in at the time, and the strong personalities that may have contributed to the mistakes that were made. He also recognized Bozeman as a fine and capable officer—a highly decorated veteran of Vietnam, Panama, and the Gulf War—who demonstrated true professionalism throughout the crisis. As part of the healing process, Nardotti actively reached out to retired judge advocates—those who knew and respected Colonel Bozeman and Major General Suter—to remind them that they were forever valued and respected members of the JAG community.¹³³

The next task for Nardotti was building on the lessons learned at Fort Hood to develop an operational expertise within the Corps. To accomplish this, he dedicated time and resources that enhanced the visibility and responsibility of judge advocates at the national training centers, which demonstrated to commanders that Army lawyers should be integrated into the organizational structure as fully vested members of the operational team.¹³⁴ This included “resuscitating” the Center for Law and Military Operations as the Army’s clearinghouse for operational law issues.¹³⁵ Critical to this effort was the integration of modern automation into the operational setting.

Our vision from the beginning was [that] we need to get to the point where you can send a small team . . . a couple of JAGs, a couple of NCOs in support [of an operation]. They have to be able to carry with them into any environment whatever they need to respond to the commander’s needs. . . . If the technology is there, why can’t a JAG, through the satellite connection, be able to reach back in and tap into . . . what they need to know? . . . [A]utomation was a big part of our long-term thought.¹³⁶

Nardotti and the JAG leadership were also concerned about the diminished level of expertise in criminal litigation that they observed

132. *Id.* at 115-16, 163-64.

133. *Id.* at 164.

134. *Id.* at 165.

135. *Id.* at 198.

136. *Id.* at 174-75.

throughout the Corps. The demise of the post-Vietnam Army had dramatically improved the quality of military personnel. This narrowed the opportunities for young judge advocates to develop the litigation skills necessary for more challenging cases and, ultimately, compromised their ability to carry on as chiefs of justice, deputies, and SJAs.¹³⁷ Nardotti was quick to recognize the institutional implications of the loss of critical skills for the military justice mission, and he struggled with ways to compensate for perceived weaknesses through training, incorporation of the litigation talent available in the Reserves, and other initiatives.¹³⁸

Recognizing the untapped potential in Guard and Reserve officers and NCOs, a renewed effort was underway to recognize the successes of SJAs who had made great and meaningful use of Reserve judge advocates. Nardotti made it clear, however, that equality within the force would move both ways, and that the Reservists had to meet the soldiering standards he expected of his judge advocates.

[W]e had to say to the Reserves, “We have the same expectations of you as we’ve got of the active force. You’re soldiers. You have got to be soldiers. You have got to be physically fit. You have got to look like soldiers. You have to know your soldier skills.” When they say, “You’re going to deploy,” they don’t give you an extra two days [for] the JAGs to get their act together. The JAGs [had] better be ready to go, ready to deploy and ready to do [the] mission.¹³⁹

In addition, Nardotti never forgot the lessons he had learned as a young lieutenant as to the importance of enlisted soldiers and NCOs. They were a vital part of his JAG Corps family. He emphasized this throughout his tenure as The Judge Advocate General.¹⁴⁰

Some would argue that the JAG Corps is just the officer [corps]. Well, if you look at the statute¹⁴¹ that defines that, there is a little bit of flexibility there in terms of other members as determined by the Secretary. . . . [M]y interpretation of that is that [it] encompasses not just the officers—we all know who judge advocates

137. *Id.* at 166.

138. *Id.* at 166-67.

139. *Id.* at 168.

140. *Id.*

141. 10 U.S.C. § 3072 (2000).

are—but when you talk about the JAG Corps, that’s the whole team. That includes enlisted people that are part of our force.¹⁴²

So much did Nardotti respect the role of enlisted members that, following a recommendation by Sergeant Major John Nicolai, he initiated a change to the regimental coin to reflect the vital role enlisted soldiers play in the success of the organization. Following his retirement, it was changed.¹⁴³ “I know they changed this after I left, and what it has in the front, I think it says, ‘The Army’s Advocates since 1775’ [suggesting a reference to judge advocates, not the enlisted].” It was simply Nardotti’s view that the statute, which states that, “The Judge Advocate General’s Corps consists of . . . members of the Army assigned thereto by the Secretary of the Army,” could easily accommodate enlisted personnel as well as judge advocates.¹⁴⁴ Acknowledging a deep and genuine regard of NCOs and soldiers, he felt the regimental coin ought to reflect their contribution to the JAG family.

Throughout his tenure, Nardotti made a concerted effort to talk to enlisted personnel and recognize them for the tremendous contribution they make to the organization. “They will assume more responsibility if you let them [be part of the team] and they will also help accomplish the most difficult task that . . . SJA’s have, which is teaching new officers how to be soldiers.”¹⁴⁵ He valued NCOs for their leadership and repeatedly counseled young judge advocates to reach out and seek assistance from NCOs who could make the difference between success and failure.¹⁴⁶

Nardotti’s approach to leadership—high standards for professional competency, military bearing, and a focus on people—was wholly consistent with the style of his Chief of Staff, General Gordon Sullivan.¹⁴⁷ General Sullivan loved soldiers, and “in the midst of all the pressures he had to deal with . . . could go out, get two or three hours of sleep a night over a five-day period, and come back and look refreshed because he spent the time with troops.”¹⁴⁸ On one occasion, because of some remote litigation concerns, General Sullivan invited Nardotti along for a trip to the West

142. Oral History, *supra* note 1, at 168.

143. The old coin read, “Serving the Army Since 1775.” The current coin reads, “The Army’s Advocates Since 1775.”

144. Oral History, *supra* note 1, at 169 (quoting 10 U.S.C. § 3072 (5)).

145. *Id.* at 169.

146. *Id.* at 170.

147. *Id.* at 177.

148. *Id.*

Coast for the dedication of a park in memory of a soldier killed in a Blackhawk helicopter shot down over Iraq. In an emotional setting, General Sullivan met privately with the families and later volunteered to speak to the crowd that had gathered, making time to honor a fallen soldier and speaking openly with the public. “It was just a marvelous demonstration of leadership in action.”¹⁴⁹

Nardotti would work closely with General Sullivan and his successor, General Dennis Reimer, at the Army and DOD level on important issues ranging from the homosexual policy, the trial of The Sergeant Major of the Army, extremist activity, and the Aberdeen Proving Ground drill sergeant cases.¹⁵⁰ As to justice matters, it was important to remind the leadership that the Chief was not a convening authority—although the Secretaries of Defense and the Army were—and that every caution was required to prevent any appearance of command influence.¹⁵¹

This issue arose during the extremist cases at Fort Bragg which, had they been handled poorly, could have inflicted tremendous harm to the Army. Secretary of the Army Togo West, having been briefed by the XVIII Airborne Corps Commander, General Hugh Shelton, resisted the pressures of the Congressional Black Caucus to insert himself directly and “do something” about the allegations of racism. Instead, West correctly deferred all justice matters to the local command. To quiet the political storm, he also established a task force to investigate extremism throughout the Army, and thereby avoided any direct involvement in the cases and investigations ongoing at Fort Bragg. “That was a good lesson [that], even when a commander is doing the right thing, sometimes they need top cover in order for them to continue to do their jobs. Timely action at the right level by a senior leader can make a big difference.”¹⁵²

The Aberdeen drill sergeant cases were another instance where the Army leadership resisted the temptation to become directly involved in a high profile justice matter, thereby avoiding any appearance of command influence. The Aberdeen SJA¹⁵³ later recalled a presentation by Brigadier General John Altenburg on the subject of diminished military justice expertise. “He said, ‘You never know. You could be at some sleepy little post out there and all of a sudden all hell breaks loose in terms of a major

149. *Id.* at 178.

150. Nardotti Interview, *supra* note 1.

151. Oral History, *supra* note 1, at 200.

152. *Id.* at 201-02.

153. Lieutenant Colonel Edward “Buz” France. Nardotti Interview, *supra* note 1.

case that you are going to have to deal with.’ [The Aberdeen SJA] said he thought about that every day.”¹⁵⁴

For his part, Nardotti was concerned with the lack of understanding by most of the public and many members of Congress as to the differences between trainee and sexual abuse.¹⁵⁵ Otherwise, he let the Aberdeen SJA—who had done a superb job of keeping Nardotti informed—do his job, and he provided support only as requested.¹⁵⁶ Nardotti trusted his SJAs, but reminded them of the importance of tempered, judicious, and thoroughly reasoned action.

My advice under those circumstances to SJAs is that you have got to get it right before you do it fast. Just take your time. Do it right. If it is going right, it will become non-newsworthy very quickly. If you screw it up, you’ll be on the front page.¹⁵⁷

As to his accomplishments during four years as The Judge Advocate General, Nardotti forever credited the genuine camaraderie and teamwork of the Corps’ five general officers for the tenor and success of his tenure. Always eager to share praise and credit, the former infantryman valued his general officers for their individual talents, their commitment to excellence, and their cohesion and singular voice that they brought to the Corps. “[I]f in developing where you want to go you are doing it with your team, it’s not your legacy that you are developing or your philosophy, it is a philosophy that the collective leadership of the Corps has formulated.”¹⁵⁸ In particular, Nardotti valued the special relationship he had with Major General Ken Gray. Nardotti thought that he and Gray formed an effective partnership because they were ideal complements to one another. He relied upon Gray for his superb judgment, and he felt Gray set the highest possible standard as a soldier, a gentleman, and an officer.¹⁵⁹

Nardotti believed that the best way to emphasize his message of the soldier-lawyer was to lead by example and to remind judge advocates that the message is about “lawyering in a soldier environment.”¹⁶⁰ He recognized that the momentum for change was there at Fort Hood and Fort Ben-

154. Oral History, *supra* note 1, at 205.

155. *Id.* at 204.

156. *Id.* at 205.

157. *Id.* at 206.

158. *Id.* at 223.

159. Nardotti Interview, *supra* note 1.

160. Oral History, *supra* note 1, at 232.

ning, and that he could nurture and facilitate a Corps culture that valued officers who “looked like soldiers . . . understood soldiers, and by the way, [were] damn good lawyers.”¹⁶¹

XII. Private Citizen, 1997-Present

There was never any doubt when Major General Nardotti would leave the Army. The same letter from the General Officer Management Office that congratulated him on his promotion also reminded him of the effective date of his retirement, 30 September 1997.¹⁶² Despite some rumors that he had tried to remain on active duty longer—possibly as the Deputy Inspector General—that date was always clear to him “from the beginning and [he] never suggested to anybody otherwise.”¹⁶³ In fact, when the time finally came, he was more than ready. “[I] was tired. I enjoyed every minute of it but I ran hard and was ready to stop.”¹⁶⁴ Nardotti stopped, but only after twenty-eight years of remarkable and dedicated service, in the greatest tradition of the United States Army.

On 1 November 1997, he became a partner in the Washington, D.C., law firm of Patton Boggs, where he is a “member of the government contracts practice and works closely with the litigation and public policy groups, advises and represents clients in variety of commercial litigation, and on matters of defense and national security policy.”¹⁶⁵ He was warmly welcomed by the firm, and he easily made the adjustment to private practice owing to his love of the law, the chance to train and mentor young litigation associates, and the “spice” of a diverse practice that he so enjoyed in the military.¹⁶⁶ His humility, patience, and desire to learn tempered any sense of diminished status that one might expect of a retired major general.¹⁶⁷

[T]he generals who were making the transition expect life to be the same way. I had no illusions about that. I knew life was

161. *Id.* at 233.

162. *Id.* at 220.

163. *Id.* at 219-20.

164. *Id.* at 221.

165. The Patton Boggs Internet Web site may be viewed at <http://www.patton-boggs.com>. Information about Major General Nardotti's current areas of practice may be viewed at <http://www.pattonboggs.com/ourlawyers/a-z/mnardotti.html>.

166. Oral History, *supra* note 1, at 237.

167. *Id.* at 238.

going to change. I was ready for that. I knew in particular if I did private practice, and I came [to Patton Boggs] as a partner—there are gradations of partners—but I knew that I probably would do some things that in some respects would be more suitable for an associate, but I did them anyway because I really needed the education, I needed to learn. I was prepared for that. I knew I had to come in here and roll up my sleeves and get to work.¹⁶⁸

It is, in the end, still about soldiering for Mike Nardotti. Soldiers adapt quickly to new environment, shift when the targets move, and always seek the opportunity to press their advantage. Soldiers listen and they learn; they rarely act with haste. Soldiers look to improve others as they continually improve themselves and thrive in any environment that brings them new challenges. The fortitude Major General Nardotti demonstrated on the battlefield continues to carry him forward to meet the personal and professional challenges that have long become his hallmark. He was, and remains, the consummate soldier-lawyer.

168. *Id.*