

**THE STUDY OF LAW AS A FOUNDATION OF
LEADERSHIP AND COMMAND:
THE HISTORY OF LAW INSTRUCTION AT THE UNITED
STATES MILITARY ACADEMY AT WEST POINT***

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I never discussed the Constitution very much, and I
never made many speeches upon it, but I have
done a good deal of fighting for it.

—Lt. Gen. Philip Sheridan¹

The study of law at the U.S. Military Academy is almost as old as the Academy itself. Fourteen years after Congress established the school at West Point in 1802, Academy regulations prescribed that “a course in Ethics shall include Natural and Political Law.”² Two years later, Congress passed a statute providing for “one Chaplain stationed at the Military Academy at West Point who shall be Professor of Geography, History and Ethics, with the pay and emoluments allowed a Professor of Mathematics.”³ The resulting Department of Geography, History, and Ethics, headed by the Chaplain, the Reverend Doctor Thomas Picton, became the fourth established academic department, following the Departments of Philosophy, Mathematics, and Engineering.⁴ Since those early days when the Chaplain was charged with teaching natural and political law, the Academy has maintained required courses in the study of law as an essential part of the preparation and education of future officers.

Early Subjects and Texts

Although the newly established department began teaching geography, history, and ethics in 1818, there is no record that any law instruction was actually given before 1821, when Monsieur De Vattel’s *The Law of Nations*,⁵ a treatise on international law, was adopted as a textbook.⁶ An 1823 Military Academy Regulation prescribed that First Class cadets (seniors) would attend four hours of this instruction every week.⁷ The Chaplain and the other officers who assisted him, although not lawyers, also taught moral philosophy, the origin of civil society, principles of civil liberty, modes of civil government, and constitutional law, in addition to the law of nations.⁸ The study of natural and political law was intended to

foster the intellectual and cultural growth of the cadets, as well as to develop their reasoning ability and instill in them the basic principles of a society based on the rule of law.⁹

As the study of law evolved in West Point's early years, cadets studied a variety of topics and read from multiple sources. From 1821 to 1842, the various chaplains and professors adopted the Reports of the United States Supreme Court as addenda to the textbooks.¹⁰ The study of American constitutional law replaced natural law (which emphasized international law) in 1827, but by 1838 the course of study in law provided for instruction in both constitutional and international law.¹¹ During this period, William Rawle's *A View of the Constitution of the United States of America*¹² may have been studied by some cadets in the late 1820s, but it was never officially adopted as a textbook.¹³ Rawle's treatise concluded that a state has a legal right to secede from the Union, and this was most likely the basis for the post-Civil War argument that West Point had taught "secession" for decades and thus was responsible for many West Point graduates fighting for the Confederacy.¹⁴ Although it is impossible to know the precise extent of Rawle's influence, his ideas had a profound effect on at least some cadets. Gen. Robert E. Lee, Class of 1829, confided in Bishop Joseph Wilmer of Virginia that, if he had not read Rawle's work as a cadet, he would never have left the Union.¹⁵

Rawle's book was in use for less than two years before James Kent's well-known *Commentaries on American Law* replaced it in 1828.¹⁶ The latter volume, covering both international and constitutional law, remained in use as a textbook at the Academy for over 30 years.¹⁷ Rather than arguing that the states had a right to secede, Kent concluded that the distinguishing feature of the U.S. Constitution was to bind the states in union with each other. In this regard America's constitutional system differed markedly from the political system that prevailed under the Articles of Confederation, which allowed states to effectively veto proposals or ignore policies of the central government.¹⁸ Ever since constitutional law was introduced into the curriculum in 1827, it has been a required course and an essential part of the professional education of cadets who upon commissioning swear to support and defend the Constitution. Hence, except for a brief period during which a secessionist viewpoint appeared in a book available to cadets, the Academy's law curriculum was unequivocal in

emphasizing the legitimacy of the Constitution and the inviolability of the Union.

The Antebellum Period and the Civil War

Although the Academy emphasized law instruction during its first 50 years, unfortunately none of the teachers were lawyers. Had lawyers been available, the instruction certainly would have been better, but there were simply not enough lawyers in the Army to justify assigning them to the faculty. Tellingly, the same Act of 16 March 1802 that established the U.S. Military Academy abolished the position of Judge Advocate of the Army.¹⁹ When the Army needed judge advocates, Congress would periodically pass statutes providing for their inclusion in the force structure, but from 1821 until 1849, there were no statutory enactments related to judge advocates and no full-time lawyers in the Army.²⁰ When judge advocates were needed for courts-martial, the Army typically would appoint line officers to fill the duty temporarily.²¹ Congress finally reestablished the position of Judge Advocate of the Army in 1849; 13 years later, as the Army expanded to fight the Civil War, Congress enacted legislation creating the Judge Advocate General's Corps.²²

The Military Academy worked hard to refine the law curriculum despite the unavailability of Army lawyers as instructors. With so few judge advocates in the Army, the need for line officers to understand and apply the principles of law became even more apparent. In 1858, the Academy instituted the study of military law, which included the Rules and Articles of War, criminal law, and evidentiary procedures for courts-martial.²³

Nine years later, the Academic Board discontinued instruction in the subjects of geography, history, and ethics and directed the Chaplain to focus solely on the teaching of international, constitutional, and military law.²⁴ During this period, the instruction emphasized the relation of law to moral values, as well as philosophical aspects of international and constitutional law.²⁵ Military law, a subject of great professional interest to future Army officers, included study of War Department General Order 100 of 1863, in which Francis Lieber codified, for the first time in history, a compilation of the Laws of War.²⁶

As the American military became more professional in the mid 19th century, the benefits of understanding military law were clear. There were never enough qualified Army lawyers in the field, and line officers there-

fore assumed greater responsibility in meeting legal requirements and in courts-martial. To help address the legal needs of the Army, the Board of Visitors of the Military Academy recommended in 1849, and again in 1858, that a separate Department of Law be established.²⁷ Congress finally acted on those recommendations in 1874, over 50 years after the start of law instruction at West Point.

The Department of Law, 1874–1908

The establishment of the Department of Law reflected the Army's priority on improving the officer corps's legal skills. The 1874 statute authorized the Secretary of War to "assign one of the senior Judge Advocates of the Army to be Professor of Law."²⁸ This was a significant step, considering that the Congress had passed another law that year which reduced the Judge Advocate General's Corps from a total of eight officers to four.²⁹ The latter law was part of a major compilation of U.S. statutory law that included a reorganization of the Army Staff, revision of the Articles of War of 1806, and reduction in the size of the Army to 25,000 men.³⁰ Additionally, the law authorized a new type of wartime court-martial, known as the field officer's court and run by commissioned officers.³¹ These statutory innovations underscored the importance of continued and improved instruction in law at West Point, and they may have significantly influenced the decision to assign 25 percent of the Judge Advocate General's Corps to the Academy.³²

The *Army and Navy Journal*, a leading service publication, called the law "a step in the right direction" and summed up the rationale for its unanimous passage:

The study of the general principles of law . . . and the study of the Constitution of the United States and of the administration of justice in the Army . . . have, since the Rebellion, become matters of primary importance [for] every individual holding a military commission.³³

The Civil War and Reconstruction highlighted the need for commissioned officers to be savvy practitioners of military law. They had to be able to enforce court processes while protecting civil liberties, as well as to understand rules of evidence, courts-martial procedures, and military criminal

justice. In light of these requirements, the *Journal* concluded, “The necessity for such a department seems to have been long felt.”³⁴

The professors who headed the new Department of Law were distinguished scholars and soldiers who made significant contributions to the Academy and the nation. The first Professor of Law (and the first lawyer ever to teach law at the Military Academy) was Maj. Asa Bird Gardiner, appointed to the position on 29 July 1874.³⁵ An 1860 graduate of New York University Law School, he gave up his legal practice to fight for the Union in the Civil War.³⁶ He was wounded in an engagement at Carlisle, Pennsylvania, in 1863 and was awarded the Medal of Honor for action during the Battle of Gettysburg.³⁷ President Ulysses S. Grant appointed Gardiner as a major in the Judge Advocate General’s Corps in 1873; one year later, the Secretary of War named him Professor of Law.³⁸

Gardiner initiated numerous curricular changes. He sharpened the focus on military law and the law of war, including systematic study of the Lieber Code as a supplement to the course on international law.³⁹ His text on court-martial forms and procedures became the basis for teaching cadets the rudiments of the military court-martial system.⁴⁰ Gardiner discontinued the use of Kent’s *Commentaries*, which cadets had been using for 30 years, substituting a new work on constitutional law⁴¹ by respected scholar Professor John Norton Pomeroy.⁴²

Although his tenure lasted only four years, Gardiner’s contributions were significant. He had organized the new department, mentored instructors, taught cadets, designed courses, and wrote textbooks. He earned more enduring fame, however, for his work after he left the Department of Law. In 1881, he served as prosecutor in the memorable case of Cadet Johnson C. Whittaker, who claimed that he had been attacked and mutilated by masked assailants.⁴³ Academy leaders believed that Whittaker had faked the attack in an effort to avoid taking final examinations.⁴⁴ Gardiner’s skill as a prosecutor helped convince the court-martial to convict Whittaker, despite relatively ambiguous evidence.⁴⁵ Perhaps in recognition of that skill, Gardiner was selected in 1884 to prosecute charges brought against the Judge Advocate General of the Army, Brigadier General David Swaim, for fraud and conduct unbecoming an officer.⁴⁶ That prosecution also resulted in a conviction.⁴⁷

Maj. Guido Norman Lieber, son of Dr. Lieber, author of the Lieber Code, succeeded Gardiner in 1878.⁴⁸ Lieber graduated from Harvard Law School in 1858 and served with distinction during the Civil War. Besides

serving as aide-de-camp to the General-in-Chief, Gen. Henry Halleck, he received two brevet promotions for gallantry.⁴⁹ Following the war, he served tours as Judge Advocate for Army Departments and Divisions ranging from the Atlantic to the Dakotas.⁵⁰ As Professor of Law, Lieber introduced Rollin A. Ives's *A Treatise on Military Law*⁵¹ and replaced Pomeroy's text on constitutional law with a textbook by Judge Thomas M. Cooley⁵² that remained in use for almost 20 years.⁵³ After four years, Lieber left West Point to become the Assistant to the Judge Advocate General, Brig. Gen. Swain.⁵⁴ Following the latter's 1884 court-martial conviction, Lieber was appointed Acting Judge Advocate General in the rank of brigadier general and early the next year named Judge Advocate General.⁵⁵ He retired from the Army in 1901, after serving 16 years as the Judge Advocate General, the longest tenure of any of the 36 officers who have held that position.⁵⁶

Following the relatively uneventful tenure of Lt. Col. Herbert Curtis from 1882 to 1886, the Judge Advocate General appointed Lt. Col. William Winthrop as Professor of Law. Winthrop, an 1853 Yale Law School graduate, had served with distinction during the Civil War. Commissioned in the infantry, he was wounded several times and promoted to captain for gallantry before becoming a judge advocate.⁵⁷ Prior to his assignment as Professor of Law, he completed the revision of the 1806 Articles of War, which Congress approved in 1874. Additionally, he published *Military Law*,⁵⁸ the first major scholarly compilation of military law cases and principles of the United States.⁵⁹ When he served as Professor of Law from 1886 to 1890, *Military Law* was introduced as the cadet textbook on military law.⁶⁰ Winthrop returned to Washington after his tenure at West Point, where he served as deputy to Acting Judge Advocate General Lieber and ultimately as Assistant Judge Advocate General.⁶¹ Upon retirement in 1895, after almost 34 years service, Winthrop updated his treatise and renamed it *Military Law and Precedents*.⁶² That text became the most influential book ever written on military law, as it preserved and codified more than a century's worth of military jurisprudence and established a tradition of careful legal scholarship for military attorneys.⁶³ His text is still quoted in military law cases and has been cited many times in opinions of the United States Supreme Court. It was so authoritative that the War Department issued reprint editions in 1920 and 1942, despite the lapse in time since its first publication in 1886.⁶⁴

For more than a decade straddling the turn of the century, the Department of Law reunited with the discipline of history. In 1896, after the death of Professor (Chaplain) Postlethwaite, the Department of Geography, His-

tory, and Ethics was discontinued and the Chaplain no longer had academic duties.⁶⁵ The study of history moved to the newly named Department of Law and History until 1908, when it migrated anew to the Department of English and History.⁶⁶

Col. George B. Davis, West Point's most renowned Professor of Law, became department head in 1896. As an enlisted soldier and junior officer in the Civil War, Davis had distinguished himself in the Army of the Potomac, participating in more than 25 battles and engagements.⁶⁷ After the war, barely 18 years old, he entered West Point from the ranks, graduating in 1871 as the First Captain of the Corps of Cadets.⁶⁸ He fought the Apache Indians on the frontier before returning to West Point in 1883 for the first of three tours there that would total 16 years.⁶⁹ As a faculty member, his primary responsibility was to instruct on law, but he also taught Spanish, French, mineralogy, geology, history, ethics, and geography.⁷⁰

Colonel Davis greatly influenced law instruction at West Point. While Professor of Law, he wrote texts on military law and courts-martial, the basic elements of law, and the elements of international law.⁷¹ The latter two texts remained in use in the department for over 20 years.⁷² Cadets respected Davis for his ability to combine his vast knowledge of law with ample doses of practical experience as a soldier. His intellect, patience, and good humor could make any subject interesting.⁷³

Davis firmly established the core curriculum in law during his tenure. In their First Class year, cadets would take two courses of one semester each: Elementary and Constitutional Law in the first semester, and International and Military Law in the second.⁷⁴ Cadets attended those law classes for two hours each Monday, Wednesday, and Friday afternoon.⁷⁵ Davis's law curriculum, with occasional minor adjustments, remained in place for almost a century, until a reorganization of the curriculum in 1989.

In 1901, Colonel Davis left West Point with a promotion to brigadier general and an appointment as the Judge Advocate General of the Army, a position he held for nearly ten years.⁷⁶ During that time, he represented the United States as Delegate Plenipotentiary to the Geneva Conferences of 1903 and 1906, and the Hague Conference of 1907, all of which were landmarks in international agreements and codification of rules and laws for warfare.⁷⁷

The refinement of the law curriculum since the formal establishment of the Department of Law was showcased during the Spanish American

War and its aftermath. West Point graduates, relying in large part on the law instruction they received as cadets, successfully administered martial law, organized and conducted civil affairs, and facilitated the establishment of civil governments in Cuba, Puerto Rico, and the Philippines.⁷⁸ The Department of Law had proved its worth in helping West Pointers combine intellectual understanding of the principles of law with practical guidance that proved useful in confronting military legal issues.

Shifts in Emphasis, 1908–1946

Gradual change characterized the law curriculum in the first quarter of the 20th century. Although course content varied little, instructor emphasis shifted gradually from the theoretical toward the more practical application of the law.⁷⁹ Additionally, whereas constitutional law continued to be a core course, the department dropped the subject of international law from required instruction, since it had less practical utility.⁸⁰ In place of the latter offering, the Department of Law in 1921 added instruction in criminal law and evidence, which provided cadets greater concentration of study in topics relevant to their military careers.⁸¹ Under the court-martial system, line officers had significant responsibilities as court members, prosecutors, and defense counsel, and their West Point law education helped to prepare them for those responsibilities.⁸²

The Department of Law coupled education with training. Beginning around 1915, it conducted military moot courts to enhance cadets' understanding of the roles they would have as officers in courts-martial.⁸³ The new officers had plenty of opportunities to use what they learned. Following World War II when occupied countries were under martial law, recent West Point graduates wrote to cadets advising them to save every book and pamphlet from the Department of Law and to memorize everything they were learning.⁸⁴ West Pointers typically were the "only officers with legal training to be found in a unit — especially in the occupied territories."⁸⁵ Lt. Gen. Frank S. Besson, Jr., a 1932 USMA graduate who served in both the European and Pacific Theaters during World War II, recalled the importance of his instruction in law:

A knowledge of the basic principles of law has been invaluable to me in my military service. I believe that in my day-to-day administrative problems, no single subject taught to me at the Military Academy with the exception of English has been more directly applicable.⁸⁶

Gen. Andrew J. Goodpaster, a member of the Class of 1939 who later served as Supreme Allied Commander, Europe, and as Superintendent of the Military Academy, had a similar perspective:

I have found over the years that my law course was of very great value to me. . . . [A]n understanding of the principal structure of law is essential equipment for an Army officer if he is to be effective within a unit, on higher staff, or as a military representative in the highest circles of government.⁸⁷

The reputation of the department among cadets and in the legal profession during this period continued to be excellent. Cadets noted that studying law developed the capacity to think logically, stimulated intellectual curiosity, imparted a sense of values, and taught the application of knowledge to practical problems.⁸⁸ The 1935 edition of the *Howitzer*, the cadet yearbook, noted:

The Law Department in setting its precedent did something at once radical and unique, something which causes the First Classman to wonder, to marvel, and then to rejoice. It allowed the cadet freedom of speech and freedom of thought such as no other department has ever done. The cadet became an individual not only in point of grading but also in point of mental action and self-expression. Response was spontaneous and profitable both to department and to cadet alike.⁸⁹

Reflective of the fine reputation of the Department of Law was the decision of the American Bar Association (ABA) in 1941 to recognize high-achieving cadets. The ABA award, presented annually to the graduating cadet with the highest standing in law, continues to this day.⁹⁰

Although all Professors of Law and some of the assistant professors were lawyers, a large part of the department's faculty still consisted of line officers. In an effort to ensure high standards of teaching, the Law Department began sending its officers who were not lawyers to receive training at law schools.⁹¹ Between 1915 and 1953, members of the department attended courses at Columbia, Georgetown, Virginia, Yale, and The Judge Advocate General's School in Charlottesville, Virginia.⁹² Many of these non-lawyer officers, benefiting from their experience teaching law, went on to serve the Army in significant leadership positions. Among them is Capt. Frederick Irving, a member of the West Point Class of April 1917, an infantry officer who taught in the department from 1922 to 1924.⁹³ From

1941 to 1942, Brigadier General Irving returned to West Point as the commandant of cadets, and, after serving as the 24th Infantry Division Commander in World War II and in other important leadership positions in the Army, he returned yet again to West Point as Major General Irving to serve as Superintendent of the Military Academy from 1951 to 1954.⁹⁴ Major General Irving is the only person in the history of West Point who has served as an instructor in an academic department, commandant, and superintendent.⁹⁵

Two former Professors of Law served with great distinction during World War I. In 1917, when General Pershing was chosen to command the American Expeditionary Force in France, he selected Col. Walter Bethel, Professor of Law from 1909 to 1914, to be his judge advocate.⁹⁶ Colonel Bethel held that position throughout the war, participating in the Meuse-Argonne offensive and receiving the Distinguished Service Medal; subsequently he served as The Judge Advocate General of the Army from 1923 to 1924.⁹⁷ Col. Edward Kreger, who had been awarded the Distinguished Service Cross for heroism in battle in the Philippines, followed Colonel Bethel as the Professor of Law, a position he held from 1914 to 1917, when he was assigned as the Judge Advocate General's representative to the American Expeditionary Force and received the Distinguished Service Medal for his outstanding service.⁹⁸ Following the war, Colonel Kreger supervised the writing of the 1921 *Manual for Courts-Martial* and was appointed The Judge Advocate General of the Army in 1928.⁹⁹

Continuation and Expansion, 1946–1989

From the time the Department of Law was established in 1874, the Professor and Department Head was an officer of the Judge Advocate General's Corps detailed to the Academy for a regular tour of duty.¹⁰⁰ As was the case for all Army lawyers, his assignment and tour length were determined by the Judge Advocate General of the Army.¹⁰¹ A change came in 1946 when Congress authorized a permanent Professor of Law at West Point; henceforth the Head of the Law Department would be a tenured professor equivalent in academic rank to the heads of the other academic departments.¹⁰² Moreover, selection of Professors of Law would follow the same statutory and regulatory procedures as those for other department heads. Once the Senate confirmed the selection, the Professor of Law would leave the Judge Advocate General's Corps and become part of the Corps of Professors.¹⁰³ Like other tenured professors, Professors of Law may remain on active duty until their 64th birthday and, at the discretion

of the President, may retire in the grade of brigadier general in recognition of "long and distinguished" service.¹⁰⁴

Col. Charles W. West, who had served as Professor of Law since 1943, was selected as the first permanent Professor in 1946 and served in that position until his retirement in 1962.¹⁰⁵ His 19 years as Professor of Law is the longest tenure of any officer who has held that position. Colonel West enhanced the professional competence of the faculty by mandating, with the concurrence of the Judge Advocate General, that all officers serving in the Law Department be fully qualified lawyers and members of the Judge Advocate General's Corps.¹⁰⁶ In 1953, 79 years after Congress authorized the Secretary of War to appoint an Army lawyer to head the Department of Law, all instructors were members of the bar for the first time in the history of the department.¹⁰⁷

The Department of Law adjusted its curriculum in the early 1950s to keep pace with Congressionally mandated changes in the military judicial system. The 1951 Manual for Courts-Martial, promulgated after Congress passed the Uniform Code of Military Justice, included significant military justice roles for line officers. Because they would be involved in investigating, processing, prosecuting, and defending cases at courts-martial, law instruction placed heavy emphasis on familiarizing cadets with the framework of the military justice system.¹⁰⁸ By 1953, the law faculty (now consisting of the Professor of Law, an associate professor, an assistant professor, and nine instructors¹⁰⁹) taught First Class cadets a two-semester course centered on the subjects of constitutional law, criminal law and evidence, and military law.¹¹⁰

A decade later, as the Academy looked for ways to revise the curriculum, in part to find room for elective courses, the Academic Board considered reducing the instruction in law.¹¹¹ In 1963, the Superintendent, Maj. Gen. William C. Westmoreland, ordered a review of the law curriculum. He formed an ad hoc committee and directed its members to analyze three options: maintain the curriculum as currently structured; increase the emphasis on legal training while reducing the emphasis on legal education; or provide minimal law instruction during the academic year under the supervision of the USMA Staff Judge Advocate with supplemental training during summer training periods.¹¹² Although the orders appointing the committee directed that they make no specific recommendations,¹¹³ the

committee report stated, "It would not be in the best interest of the United States Military Academy to reduce the current coverage of law."¹¹⁴

During their study, committee members had sought the advice of prominent military officers familiar with the program of law instruction. Maj. Gen. Charles Decker, a 1931 USMA graduate serving as The Judge Advocate General of the Army, was unequivocal in his support for a strong law curriculum:

I am convinced that the study of law at West Point *does* contribute to the graduate's overall education and cultural background and *does* materially assist him in solving the military and administrative problems he encounters throughout his military service. If a poll were taken of any group of West Point graduates I believe there would be few dissenting voices. . . . While I believe the [law] course at West Point is essential for other reasons, its inclusion in the curriculum can be justified for its scholarly and intellectual values alone.¹¹⁵

Decker noted other benefits of studying law in an increasingly complex and dangerous world. Army officers, he observed, are increasingly drawn "into the legislative and administrative fields of government, international relations, procurement involving . . . billions . . . of dollars, and the direction of large numbers of men and women both in and out of the service."¹¹⁶ In virtually every field of professional endeavor, a solid grounding in legal education and training would assist Army officers in meeting their responsibilities.

While Major General Decker could be expected to speak in favor of the law curriculum by virtue of his position, other prominent officers who were not lawyers did likewise. For example, General Goodpaster¹¹⁷ observed,

I am constantly interested to see that in important areas of the military profession, the fine points turn out to be the key points, and precision of thought is essential. Law certainly conditions and disciplines the mind in that direction. At the same time, an understanding of law in its relation to the Constitution, and hence to the process of self-government in its basic sense, is indispensable in the military profession within a democracy.¹¹⁸

In the end, no substantial changes were made in the law program. When Colonel West retired in 1962, he was succeeded by Col. Frederick C. Lough, West Point Class of 1938, who served in North Africa and Italy during World War II.¹¹⁹ That year the Department of Law consolidated its operations with those of the USMA Office of the Staff Judge Advocate and assumed the responsibility for providing all legal services to the West Point community.¹²⁰ Under Lough's tenure, the Law Department began to offer a small number of elective courses to complement the core course in Constitutional and Military Law. By 1974, the department offered electives in Public International Law as well as Business and Procurement Law. Also, for cadets of the First Class, a seminar in Military Aspects of International Law was presented.¹²¹

During the late 1960s and early 1970s, the Department of Law joined the other academic departments in recognizing the need for permanent military faculty beside the department head. In 1969, the Judge Advocate General established the first of two such positions in the Department to assist with continuity, long term projects, and Academy governance.¹²² Judge Advocate General's Corps officers filled these positions, with the intent that they would remain on the faculty until their mandatory retirement. In 1983, for a variety of reasons, a successor Judge Advocate General withdrew support for the permanent positions, with the apparent acquiescence of Col. Robert W. Berry,¹²³ who had succeeded Colonel Lough as Professor of Law in 1978.¹²⁴ The officers filling those jobs were reassigned, and the department head again became the sole permanent faculty member.

Around this time the law faculty, which had been exclusively white male Army officers, became more diverse with the gradual addition of women, minorities, and civilians. In 1979, Capt. Christine Czarnowsky became the first female officer to teach law at West Point, and in 1982 Maj. Nolan Goudeaux was the Law Department's first African-American officer. To assist and mentor military faculty members, to help evaluate the law program, and to reach out to other academic institutions involved in teaching law, the Department began to participate in the Academy's Visiting Professor program in 1979, hosting a visiting professor from a prominent law school or undergraduate institution for a year or semester.¹²⁵ The list of visiting professors includes such distinguished names as Prof. Daniel J. Meador of the University of Virginia, Prof. John F.T. Murray of the University of St. Louis, Professor and former Judge Advocate General of the Air Force Walter Reed of the University of South Dakota, Prof. Joseph Conboy of Texas Tech University, Prof. Donald Zillman of the Uni-

versity of Maine, Prof. Stephen Dycus of the University of Vermont, and Prof. Jonathan Lurie of Rutgers University.¹²⁶

The cadet cheating scandal erupting in the spring of 1976 had a significant impact on the Department of Law. Because the department had been consolidated with the Office of the Staff Judge Advocate, many law instructors had to serve as either prosecutors or defense counsel in cases involving cadet cheating.¹²⁷ The situation caused potential conflicts of interest, as some law instructors found themselves simultaneously serving the interests of two competing parties—the Academy and the cadets accused of honor violations. After resolution of the cases, the Secretary of the Army appointed a Special Commission on the United States Military Academy (known as the Borman Commission, named after the Commission's Chairman, Frank Borman, former astronaut and member of the Class of 1950).¹²⁸ The commission's mission was to study the problems that led to the cheating scandal and recommend ways to correct them. In the course of its deliberations, the commissioners noted the ill effects of using law instructors as military defense counsel: "The system of having the same officer teach law and act as defense counsel places him in the difficult position of appearing to attack the basic policies of the institution to which he owes allegiance is his role as a faculty member."¹²⁹ Accordingly, the Commission recommended that "judge advocates who defend cadets should have no teaching duties."¹³⁰ In 1977, coincident with the retirement of Colonel Lough and the selection of Colonel Berry as Professor of Law, the Law Department and the Staff Judge Advocate once again separated their functions and offices after 15 years of consolidated activities. The separation remains in effect today.¹³¹

The law curriculum at West Point has kept pace with changes in the military justice system. Reflecting legal reforms in the civilian sector, the Military Justice Act of 1968 and the subsequent Manual for Courts-Martial revision in 1969 included more legal safeguards for the accused. Henceforth military lawyers—not line officers—would act as prosecutors and defense counsel in virtually all courts-martial, and military judges would preside over the courts.¹³² Consequently, cadets no longer needed the heavy emphasis on criminal procedure and evidence that had been previously required to help prepare them to conduct courts-martial. Moreover, the moot courts that had been a part of law instruction since the early 1900s were discontinued by the mid 1970s.¹³³

Despite these changes, officers still played key roles in the military justice system. They needed to understand legal principles and procedures

that would be essential for duty as a company grade officer and commander.¹³⁴ The law curriculum adapted to this requirement by focusing on practical legal issues such as the rules for lawful searches and safeguards against self-incrimination. The department complemented this instruction with continued emphasis on constitutional law, an understanding of which is essential to officers in a democracy.

Although the instruction continued to emphasize military justice and constitutional law, the total number of lessons was reduced as the Academic Board revised the overall curriculum to create room for additional elective courses. In Academic Year 1978-79, the Academy reduced the core course in law from 80 lessons taught over two semesters to 62 lessons in one semester.¹³⁵ In 1985, the course once again became a two semester course, but only two lessons were added, for a total of 64.¹³⁶ In the early 1980s, electives in Environmental Law and in Constitutional Law were added to the existing electives in International Law and Business and Government Contracting Law, but the department discouraged cadets from taking more than two law electives.¹³⁷ In part, this was because the leadership of the department at that time believed that law courses and electives should supplement other academic areas and concentrations rather than comprise an independent field of study.¹³⁸

New Directions and Challenges, 1989–Present

In the early 1980s, the Academic Board initiated a major review and revision of the curriculum. Significant changes included a reduction in the number of courses required for graduation and the opportunity for in-depth study in academic areas of interest. For the first time, cadets could major in an academic discipline; those who preferred less work in a specific area than a major entailed still could concentrate in a “field of study.”

These changes directly affected the Department of Law. In 1989 the core course in law was reduced to 40 lessons in a single semester to allow cadets the opportunity to take an additional elective course.¹³⁹ Despite its curtailment, the core course retained a value of 3.5 credit hours instead of the normal 3.0 by virtue of 70-minute class periods (versus the normal 55 minutes). That is how the core course in Constitutional and Military Law is structured today, with essentially two-thirds of the course related to Constitutional Law, including how constitutional rights and authorities may be different in the military context. The remaining third of the course is devoted to criminal law and military justice, with a continuing emphasis

on the role of the officer and commander in a constitutional system based on the rule of law.

The Academic Board's decision to establish a component of the curriculum devoted to disciplinary concentration significantly influenced the law program at West Point. At the same time the core course was shortened to one semester, the Department of Law shifted gears and decided to begin offering the electives necessary to support a 10-course field of study in the American Legal System. Col. Dennis R. Hunt,¹⁴⁰ who succeeded Colonel Berry as Professor and Department Head in 1987, oversaw creation of the new approach, including a cohesive elective program. In addition to electives in Business Law, Environmental Law, Constitutional Law, and International Law that had previously been offered, new or revised courses included a National Security Law Seminar, Jurisprudence, Introduction to the Legal Method, Special Topics in the Law, and Development of Military Law.

Just prior to Colonel Hunt's retirement in 1998, the Law Department took the next logical step by developing a 12-course academic major in the American Legal System. Up to then, Law had been the only department not to offer a major; upon receiving the Academic Board's approval in 1999, Law joined every other department in offering both a field of study and a major.¹⁴¹ The principle difference between the American Legal System field of study and the major, besides the two extra electives, is the requirement for majors to write a 30-page thesis on a narrow legal topic as part of a one-semester project. Cadets must conduct in-depth research and study to complete the thesis, and they must orally defend their work upon completion. Beginning with the Class of 2005, the thesis project will extend over both semesters of the First Class year.

For a number of years, part of what was dropped from the core course to fit it into one semester was made up as part of military science instruction during the two week period in January known as the Military Intersession. In conjunction with the Department of Military Instruction, the Department of Law taught First Class cadets some of the practical aspects of military law essential for company grade officers to know. The topics included such areas as nonjudicial punishment, administrative separations, reports of survey and other administrative actions, and law of war and rules of engagement.¹⁴² Because the requirement to teach approximately 1,000 cadets in a two week period was beyond the capability of the assigned law

faculty, the department relied on Army Reserve attorneys to assist in teaching Intersession subjects.

In 2002 the Superintendent, Lt. Gen. William J. Lennox, decided to eliminate the intersession and return all military science instruction to the academic year. The department therefore reincorporated some of the legal topics covered during the intersession, particularly those related to military justice and administrative actions, into the last third of the core course. Additionally, it assisted the Department of Military Science in designing lesson plans and teaching subjects related to the law of war and rules of engagement as part of the military science instruction for First and Second Classmen.

Even so, reductions in the core course in law and periodic decreases in the amount of time allocated to the Department of Law during the intersession created a significant gap. Cadets were not receiving adequate instruction in the Law of War (particularly the basic rules of the Geneva and Hague Conventions), or any appreciation for Operational Law, increasingly important because of frequent Army deployments. The department coordinated with the Department of Military Instruction and the Commandant to incorporate law-of-war instruction and law-related scenarios into the summer field training exercises for Third Classmen at Camp Buckner. The revised training program took effect for Operation Highland Warrior, the cadets' culminating field training exercise, in the summer of 2000.

Responding to Congressional direction, in the early 1990s the Military Academy began supplementing the military faculty with limited numbers of civilian professors. In 1992, Prof. Edward Hume became the first civilian faculty member to join the Department of Law.¹⁴³ When the department gained another position four years later, Prof. Gary Solis, a retired U.S. Marine Corps lieutenant colonel who had earned a Ph.D. in the Law of War at the London School of Economics, came aboard.¹⁴⁴ Professor Solis completely revamped the course in Development of Military Law to create a new elective, Law of War for Commanders, that became an essential part of the American Legal System program.

The Academic Board's approval of the American Legal System major in 1999 enabled cadets in the program to be eligible for recognition at the Superintendent's Award Convocation, held during graduation week. Through the generosity of Col. Ron Salvatore, U.S. Army ret., a former Law faculty member and current Academy Counsel, the Maj. Gen. John D.

Altenburg, Jr., Award was initiated with the Class of 2001 to recognize the graduating cadet who had the best academic record while majoring in the American Legal System.¹⁴⁵

As an adjunct to the classroom component of the American Legal System major, the Law Department developed an extensive intern program. The internships take place in the summer for up to three weeks; the fact that cadets often forgo their leave to take part in them suggests the quality and value of these experiences. In recent years cadets interns have served at the United States Supreme Court, the Department of Justice, the Office of the Army General Counsel, Staff Judge Advocate Offices throughout the Army, and the Office of The Judge Advocate General.¹⁴⁶ In the summer of 2002, additional internships became available at district attorney offices around the country, as well as at the American Embassy in Rome. An internship at the International Criminal Tribunal for the Former Yugoslavia was added in the summer of 2003.¹⁴⁷

The department has also embarked on several long-term initiatives designed to enrich the academic major in law. It has expanded its relations with other military academies, particularly in areas related to International Law and the Law of War. At the instigation of Professor Solis, the Law of War for Commanders elective conducted Law of Armed Combat written exercises, initially with cadets from the Air Force Academy. The exercises quickly expanded to include the Naval Academy, the Coast Guard Academy, and the Royal Military College (RMC) of Canada. These exercises were the impetus for the first-ever service academy competition in the Law of Armed Conflict, conducted in March 2002 at the International Institute for Humanitarian Law in San Remo, Italy.¹⁴⁸ Six West Point cadets, all majoring in the American Legal System, participated, along with representatives of all other U.S. service academies, RMC, and cadets from military academies in Russia, China, Ireland, Greece, and Belgium.¹⁴⁹

Members of the department were also instrumental in establishing the Consortium for Undergraduate Law and Justice Programs. In 2002 at Amherst College, representatives of the Department of Law met with faculty members from other schools having undergraduate legal programs. The group decided to create a formal non-profit consortium, which was founded in 2003. Moreover, they agreed that membership would be open to academic institutions instead of individuals, and that consortium meet-

ings would occur annually. In April 2004, the Department of Law hosted the first consortium conference, with the theme of Law and Terrorism.

The composition of the law faculty has continued to change in ways that only help strengthen the department. The current authorized strength of the law faculty is 16, including four civilian professors, one of whom is a visiting professor.¹⁵⁰ Five members of the faculty are rotating JAG Corps officers who typically serve a three-year tour primarily teaching the core law course. Another quarter of the faculty consists of rotating JAG Corps officers who report to the department after earning a Master of Laws (LL.M.) degree (this in addition to the earlier basic law degree qualifying them for commissioning in the JAG Corps) in one of four disciplines: Constitutional Law, Government Contract Law, International Law, or Environmental Law.¹⁵¹ These faculty members use their expertise in these areas to manage the associated elective courses offered by the Department of Law. Additionally, they and the other rotating military faculty bring to the classroom their expertise from the practice of law in the field.

Prior to 2001 (except for the period 1969-1983), the Law Department was the only academic department with no permanent military faculty members other than the Department Head. In contrast, no other department had fewer than five permanent military professors. Without additional permanent faculty, the Department of Law would lack continuity in important areas—in particular, curriculum development, course design, resource allocation, and Academy governance. The Judge Advocate General of the Army, Maj. Gen. Walter B. Huffman, recognizing this state of affairs as a disadvantageous aberration, therefore approved the conversion of two JAG Corps positions in the department to Academy Professor positions, beginning in the summer of 2001.¹⁵² After a hiatus of 18 years, the Department once again had the undeniable benefit of permanent military faculty. Academy Professors in the Law Department continue to be members of the JAG Corps, but they will remain permanently assigned to the law faculty until retirement.

Although the Department of Law is unique in several ways, it has evolved in parallel with the development of the academic program at West Point. Despite the many organizational and curricular changes, however, the purpose for law instruction has remained constant. When the department was created more than 125 years ago, the *Army and Navy Journal* noted that the study of law and the Constitution was of primary importance for any commissioned officer.¹⁵³ The Department of Law exists to educate future officers about their Constitutional rights and duties, including protection of the rights of all citizens, and to familiarize cadets with the mili-

tary justice system and the criminal law process. The Constitution requires commissioned officers to swear an oath to support and defend its principles. Those officers must understand the meaning of that oath, their essential role in protecting the liberty of all citizens, and their duty to uphold and enforce the law in a society and country based on the rule of law. For more than 200 years the Military Academy has accomplished this mission, and the Department of Law has played a major role in that success.

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¹ General Sheridan's response to the Toast to the Army made at the Constitution Centennial Celebration in Philadelphia, PA, in September 1887. At the time, General Sheridan, USMA Class of 1853, was Commander in Chief of the Army.

² Regulations of the United States Military Academy, 10 July 1816.

³ Act of April 1, 1818, ch. 61, 3 Stat. 426.

⁴ Keith L. Sellen, "The United States Military Academy Law Department—Yesterday and Today: Purpose—Challenge—Reward," *Federal Bar News and Journal* 37 (May 1990): 231. See also George B. Davis, "The Department of Law," in *The Centennial of the United States Military Academy at West Point, New York, 1802-1902*, Volume I (New York: Greenwood Publishers, 1902), 367.

⁵ Monsieur de Vattel, *The Law of Nations; or Principles of the Law of Nature applied to the Conduct and Affairs of Nations and Sovereigns*, 4th American Edition (Philadelphia: Nicklind and Johnson, 1823), reprinted from London edition of 1797.

⁶ Charles W. West, "Department of Law, U.S.M.A.," *Assembly XII* (April 1953): 3.

⁷ Department of Law Information Pamphlet (1987), 1.

⁸ Sellen, "Law Department," 231.

⁹ *Ibid.*

¹⁰ Information Pamphlet, 1.

¹¹ Preliminary Inventory of the Records of the U.S. Military Academy, prepared by the Academy Archives in 1976, 21. See also Frederick C. Lough, "The Centennial of the USMA Department of Law," *Assembly XXXII* (March 1974): 8.

¹² William Rawle, *A View of the Constitution of the United States of America* (Philadelphia: Carey and Lea, 1825).

¹³ *The Howitzer*, Class of 1928, 46.

¹⁴ *Ibid.*

¹⁵ Richard O'Connor, *Thomas, Rock of Chickamauga* (New York: Prentice-Hall, Inc., 1948), 66; Wilbur Thomas, *General George H. Thomas* (New York: Exposition Press, 1964), 63. See also Douglas S. Freeman, *R.E. Lee: A Biography* (New York: Scribner's Sons, 1943), I, 78-79. Although Jefferson Davis graduated from West Point a year before Lee, he stated that he did not use the Rawle text but was taught using Kent's *Commentaries*. Freeman, *R.E. Lee*, 78-79. For a further discussion of this issue, see John W. Brinsfield, "The Military Ethics of General William T. Sherman: A Reassessment." *Parameters: Journal of the U.S. Army War College* XII, no. 2 (June, 1982): 38. In contrast to Lee and others, Gen. William Tecumseh Sherman, an 1840 USMA graduate, whose favorite textbook in the Chaplain's course was Kent's *Commentaries*, left his position as Superintendent of the Lou-

isiana State Seminary and Military Academy to return to the Union Army when the Civil War started. Sherman stated that he would fight for the Union “as long as a fragment” of the “Old Constitution” remained. *Ibid.*, 39-40.

¹⁶ James Kent, *Commentaries on American Law* (New York: G. Halstead, 1826).

¹⁷ Davis, “Department of Law,” 367-68.

¹⁸ Kent, *Commentaries*, 353-54.

¹⁹ *The Army Lawyer: A History of The Judge Advocate General’s Corps, 1775-1975* (Washington, DC: U.S. Government Printing Office, [1976], 27).

²⁰ *Ibid.*, 35.

²¹ *Ibid.*

²² By Act of 4 July 1862, Congress created the foundation for the Judge Advocate General’s Corps. *Ibid.* at 49-50. By Act of 2 March 1829, Congress re-authorized appointment of a Judge Advocate of the Army. *Ibid.* at 42.

²³ Lough, “Centennial,” 8; Information Pamphlet, 1-2.

²⁴ Davis, “Department of Law,” 368-69. The main objection to geography, history, and ethics was that they competed with the supposedly more important courses in mathematics, science, and engineering. Law instruction remained in the curriculum because of its relevancy to the missions that cadets would perform upon graduation. The experiences of graduates during the Civil War and during Reconstruction dramatized the need for a thorough grounding in constitutional law and the military justice system. Much of the information in this note was provided by Dr. Stephen Grove, USMA Historian.

²⁵ Lough, “Centennial,” 8.

²⁶ *Ibid.* Known as the Lieber Code, this first codification of the rules and laws of war served as the basis for much of the developing law of war. Variations of the Lieber Code were adopted in several European countries and many of its provisions were later incorporated into the Geneva and Hague Conventions.

²⁷ *The Howitzer* (1928), 46. General Sherman, who had enjoyed his courses on law and ethics at West Point, believed in the utility of knowing the law as an Army officer. In fact, he studied the law intermittently from 1839 to 1859 and eventually became a practicing attorney. Brinsfield, “Ethics of General Sherman,” 37-38. Many Southerners might doubt Sherman’s adherence to legal principles based on his Civil War campaigns in the South. Chaplain Brinsfield’s article explains how Sherman attempted to reconcile his belief in the law with the death and destruction of war. Sherman’s interest in the law continued after the Civil War. The curriculum at Fort Leavenworth’s School of Application included law at his personal direction. Robert W. Berry, “The Department of Law, USMA,” *Assembly XLIII* (December 1984), 17.

²⁸ Act of June 6, 1874, ch. 217, 18 Stat. 60.

²⁹ *The Army Lawyer*, 72.

³⁰ Act of June 23, 1874, ch. 458, 18 Stat. 244. See also *The Army Lawyer*, 71-72; Sellen, “Law Department,” 232.

³¹ *The Army Lawyer*, 72.

³² Sellen, “Law Department,” 232.

³³ *Army and Navy Journal*, 4 July 1874, 745.

³⁴ *Ibid.*

³⁵ Sellen, “Law Department,” 233; Preliminary Inventory of USMA Records, 21.

³⁶ Sellen, “Law Department,” 233; Lough, “Centennial,” 8.

³⁷ *The Army Lawyer*, 83.

³⁸ *Ibid.*

³⁹ Davis, “Department of Law,” 369.

⁴⁰ Sellen, “Law Department,” 233.

- ⁴¹ John Norton Pomeroy, *Introduction to the Constitutional Law of the United States* (Boston: Houghton, Mifflin, 1886).
- ⁴² Davis, "Department of Law," 369.
- ⁴³ *The Army Lawyer*, 77. See chap. 8 of the present volume [*West Point: Two Centuries and Beyond* (Lance Betros ed., 2004)] for a more detailed discussion of the Whittaker case.
- ⁴⁴ *Ibid.*, 77-78.
- ⁴⁵ Sellen, "Law Department," 233.
- ⁴⁶ *The Army Lawyer*, 79.
- ⁴⁷ Sellen, "Law Department," 233.
- ⁴⁸ *The Army Lawyer*, 85.
- ⁴⁹ *Ibid.*; Lough, "Centennial," 8.
- ⁵⁰ Sellen, "Law Department," 233.
- ⁵¹ Rollin A. Ives, *A Treatise on Military Law* (New York: D. Van Nostrand, 1879).
- ⁵² Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* (Boston: Little, Brown, 1880).
- ⁵³ Davis, "Department of Law," 369.
- ⁵⁴ *The Army Lawyer*, 86.
- ⁵⁵ *Ibid.*
- ⁵⁶ *Ibid.*
- ⁵⁷ *Ibid.*, 96-97.
- ⁵⁸ William Winthrop, *Military Law* (Washington, DC: W. H. Morrison, 1886).
- ⁵⁹ *Ibid.*, 98.
- ⁶⁰ Davis, "Department of Law," 370.
- ⁶¹ *The Army Lawyer*, 99.
- ⁶² *Ibid.* William Winthrop, *Military Law and Precedents* (Boston: Little, Brown, 1896).
- ⁶³ *Ibid.*, 99-100.
- ⁶⁴ *Ibid.*, 99; Lough, "Centennial," 9.
- ⁶⁵ *The Howitzer* (1928), 46; Preliminary Inventory of USMA Records, 21.
- ⁶⁶ *Ibid.*
- ⁶⁷ Sellen, "Law Department," 233; *The Army Lawyer*, 101.
- ⁶⁸ Lough, "Centennial," 9.
- ⁶⁹ *Ibid.*; Sellen, "Law Department," 233.
- ⁷⁰ Lough, "Centennial," 9.
- ⁷¹ George B. Davis, *A Treatise on the Military Law of the United States: Together with the Practice and Procedure of Courts-Martial and other Military Tribunals* (New York: J. Wiley & Sons, 1898); George B. Davis, *The Elements of Law: An Introduction to the Study of the Constitutional and Military Law of the United States* (New York: J. Wiley, 1904); George B. Davis, *The Elements of International Law: With an Account of its Origin, Sources, and Historical Development* (New York and London: Harper & Brothers, 1900). See also Sellen, "Law Department," 233; Davis, "Department of Law," 370.
- ⁷² Sellen, "Law Department," 233. Colonel Davis wrote the International Law text the same year he graduated from law school. It was used as a text at West Point even before he was Professor of Law. *Ibid.*, 238, n. 64.
- ⁷³ *Ibid.*, 233-34.
- ⁷⁴ Lough, "Centennial," 9.
- ⁷⁵ *Ibid.* On Tuesdays and Thursdays, the cadets received two hours of history instruction from their law professors.
- ⁷⁶ *The Army Lawyer*, 102.
- ⁷⁷ *Ibid.*
- ⁷⁸ Sellen, "Law Department," 231.

⁷⁹ Lough, "Centennial," 9.

⁸⁰ Information Pamphlet, 3.

⁸¹ Lough, "Centennial," 9.

⁸² Sellen, "Law Department," 236.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, 236, 239, n.13.

⁸⁵ *Ibid.*, 231 (quoting from the 1947 edition of *The Howitzer*).

⁸⁶ United States Military Academy Report of the Superintendent's Ad Hoc Committee on the Coverage of Law at the Military Academy (1963), Letter to the Committee from Lt. Gen. F. S. Besson, Jr., 67. At the time he wrote the letter, Besson commanded the Army Materiel Command.

⁸⁷ Report of Ad Hoc Committee, Letter from Maj. Gen. Andrew J. Goodpaster, 80. When he wrote the letter, Goodpaster was serving as Assistant to the Chairman of the Joint Chiefs of Staff. After retiring from the Army following his assignment as SACEUR, Gen. Goodpaster was recalled to active duty as Superintendent of the Military Academy in 1977.

⁸⁸ *The Howitzer*, Class of 1941, 53. "The Academic Board has come to realize that the study of Law has special training values particularly useful to military men—the development of powers of analysis and a sense of relative values. These developed faculties furnish an officer a sound basis for his 'Estimate of the situation,' so important in a successful military career."

⁸⁹ *The Howitzer*, Class of 1935, 43.

⁹⁰ West, "Department of Law," 5.

⁹¹ Sellen, "Law Department," 232.

⁹² *Ibid.*

⁹³ Information Pamphlet, 3.

⁹⁴ Berry, "The Department of Law," 18.

⁹⁵ *Ibid.* Another distinguished alumnus of the Department of Law is Lt. Gen. Paul Caraway, an infantry officer who taught law at USMA from 1938 to 1942. Caraway, a 1929 USMA graduate, earned a law degree from Georgetown Law School while stationed in Washington, DC, but never served in The Judge Advocate General's Corps. He worked for Gen. George C. Marshall during World War II and participated in almost every significant postwar conference, including Yalta and Bretton Woods. Caraway later served as a special Vice Presidential aide to Richard Nixon and culminated his military career as Commanding General and High Commissioner of the Ryukyu Islands.

⁹⁶ Lough, "Centennial," 9.

⁹⁷ *The Army Lawyer*, 139.

⁹⁸ Lough, "Centennial," 9.

⁹⁹ *The Army Lawyer*, 149.

¹⁰⁰ West, "Department of Law," 4.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*; Information Pamphlet, 4.

¹⁰³ Congress enacted legislation establishing permanent professors of the Military Academy. *U.S. Code*, Vol. 10, section 4336 (1956). Once selected and approved, the officer becomes a Professor, United States Military Academy, (PUSMA) which is its own military branch, the smallest in the Army. This statutory position is a separate category from Academy Professors, who remain in their basic branch but are assigned to the faculty until they retire.

¹⁰⁴ As an exception to other statutes governing retirement based on age or years of service, *U.S. Code*, Vol. 10 section 1251 (1980) permits a permanent professor of the Military Academy to retire "on the first day of the month following the month in which he becomes 64

years of age.” *U.S. Code*, Vol. 10, section 3962 (1956) permits retirement as a brigadier general, at the discretion of the President. The Secretary of the Army may, at his discretion, retire any permanent professor who has more than 30 years commissioned service. *U.S. Code*, Vol. 10, section 3920 (1956).

¹⁰⁵ Information Pamphlet, 4.

¹⁰⁶ *Ibid.*

¹⁰⁷ Sellen, “Law Department,” 232.

¹⁰⁸ Information Pamphlet, 3-4.

¹⁰⁹ West, “Department of Law,” 4.

¹¹⁰ *Ibid.*, 3.

¹¹¹ Report of Ad Hoc Committee, 1-3.

¹¹² Report of Ad Hoc Committee, 39-40.

¹¹³ *Ibid.*, 40.

¹¹⁴ *Ibid.*, 34.

¹¹⁵ *Ibid.*, 71 (Letter from Maj. Gen. Charles L. Decker).

¹¹⁶ *Ibid.*, 73.

¹¹⁷ See note 87 above and accompanying text.

¹¹⁸ Report of Ad Hoc Committee, 80 (Letter from Major General Goodpaster). Goodpaster’s West Point classmate, Col. Julian J. Ewell, serving as Executive to the Chairman, Joint Chiefs of Staff, wrote “A well educated man, particularly in public service, must understand the part that the law plays in both civil and military pursuits. There is also an aspect of the law which is even more intangible. This is the philosophical, historical, and cultural understanding which the regular officer, the professional soldier, and the temporary citizen soldier should bring to their role as a citizen in our democracy. I have in mind here the duties of each citizen as a voter, a taxpayer, a soldier.” *Ibid.*, 58 (Letter from Col. Julian J. Ewell). Ewell later commanded the 9th Infantry Division in Viet Nam, served as Military Representative to the Viet Nam Peace Talks Delegation in France, and retired from the Army as a lieutenant general.

¹¹⁹ Lough, “Centennial,” 8.

¹²⁰ *Ibid.*, 9.

¹²¹ *Ibid.*

¹²² Department of Law Historical Files and Personnel Records. The first officer selected was [then] Lt. Col. Thomas Oldham, who served from 1969 to 1975. The second Permanent Associate Professor, as they were then designated, was [then] Maj. Daniel Shimek, who began in that position in 1974. When Col. Oldham retired in 1975, he was replaced by [then] Lt. Col. Hugh Henson.

¹²³ Colonel Berry, a Harvard Law School graduate, served as an enlisted soldier during World War II and as an officer in the Korean War, prior to completing law school. Although he did not serve on active duty in the JAG Corps before selection as Professor of Law, he had a long prior association with the Military Academy and served as the General Counsel of the Army from 1971 to 1974.

¹²⁴ Memorandum of Maj. Gen. Hugh J. Clausen, The Judge Advocate General, for the Deputy Chief of Staff for Personnel, US Army (10 February 1982), Subject: Permanent Associate Professors of Law at USMA. Although the precise reasons for eliminating these positions is not clear from the historical record, Colonel Berry did not believe (and still does not) that permanent military faculty positions were good for the Department of Law. In addition, he and Colonel Henson had differing views of how the department should operate. That conflict was almost certainly exacerbated by the fact that Colonel Henson, the senior Permanent Associate Professor who served as Acting Head of the Department for the year preceding Colonel Berry’s arrival, also contended for the Professor of Law position for

which Berry was selected. The Judge Advocate General, Major General Clausen, did not approve of some actions that the other Permanent Associate Professor, Lieutenant Colonel Shimek, had taken while serving as the Staff Judge Advocate for USMA during a period when the Department of Law was responsible for both teaching and rendering legal advice to the USMA leadership. Exercising his statutory authority over assignments of all officers in the JAG Corps, Clausen reassigned Henson and Shimek.

¹²⁵ Sellen, "Department of Law," 232.

¹²⁶ *Ibid.*; Law Records.

¹²⁷ Information Pamphlet, 5.

¹²⁸ The cheating scandal, the most widespread in Academy history, resulted in a comprehensive review of many of the policies and procedures at West Point. The Secretary of the Army asked Col. (retired) Frank Borman to head the review commission because of his reputation for integrity, clear thinking, and common sense.

¹²⁹ Information Pamphlet, 5.

¹³⁰ *Ibid.*

¹³¹ Berry, "The Department of Law," 17.

¹³² The Military Justice Act of 1968 and the 1969 *Manual for Courts-Martial* essentially removed line officers from court-martial roles other than as court members or witnesses. Henceforth the prosecution and defense functions were assigned to members of the bar; moreover only qualified attorneys could be military judges. This revision was part of a continuing effort to make courts-martial fairer for accused soldiers and to more closely align the military justice system with the federal criminal court system.

¹³³ Sellen, "Department of Law," 236.

¹³⁴ Berry, "The Department of Law," 17.

¹³⁵ Memorandum of Colonel Dennis R. Hunt to Curriculum Reduction Study Committee (1 May 1989), 1.

¹³⁶ *Ibid.*

¹³⁷ Berry, "The Department of Law," 17.

¹³⁸ Col. (ret) Daniel Shimek, interview by author, 5 February 2004.

¹³⁹ Colonel Hunt memorandum, 1-2; Law Records.

¹⁴⁰ Colonel Hunt, a Harvard Law School graduate, had served as the Chair of the Criminal Law Department, The Judge Advocate General's School, and as Staff Judge Advocate, 24th Infantry Division, Fort Stewart, GA, prior to his selection as Professor of Law. He retired as a brigadier general in 1998 and currently teaches law at the University of Southern Mississippi.

¹⁴¹ Because she was able to adjust her schedule to meet the additional requirements for a major, Cadet Erin Scheu, Class of 2000, became the first graduate to major in the American Legal System.

¹⁴² *Tools of the Profession: The Leader's Legal Role*, Department of Law Reference Book New York: McGraw-Hill [2001]).

¹⁴³ Department of Law Records.

¹⁴⁴ Professor Solis brought favorable notice to the department throughout his five years at West Point and was a frequent national commentator on law of war and military law issues. He devised a new elective on Law of War for Commanders that has become an essential part of the American Legal System program. He received his law degree from The University of California-Davis and served two tours in Viet Nam as a Marine platoon leader and company commander. His book *Son Thang: An American War Crime*, is an excellent study of the application of the law of war and the operation of the military justice system during wartime. It is now a required supplemental text for cadets who major in the American Legal System. When Solis departed in 2001, Lt. Col. (ret.) Mark Welton, who had just

completed his second teaching assignment in the department, was hired as a civilian to replace him. In addition to a law degree from Georgetown University and two master's degrees, Professor Welton has earned both an LL.M. and a Doctor of Juridical Science (S.J.D.) degree from the University of Virginia School of Law. While on active duty, in addition to teaching assignments at West Point and the International Law Department of the Judge Advocate General's School, he served as Chief of International Law for US Army, Europe, and as Deputy Staff Judge Advocate, US European Command. Professor Welton not only has a wealth of experience in International Law, he is also one of the United States' leading experts on Islamic law. Two additional civilian faculty members, hired in the summer of 2000 (Prof. Tim Bakken) and the summer of 2001 (Prof. Margaret Stock) also brought specialized expertise, particularly important as the department increased the depth and breadth of law instruction for an expanding number of cadets who major in the American Legal System.

¹⁴⁵ Major General Altenburg culminated a distinguished military career that included service in Viet Nam and the Gulf War with a four-year assignment as The Assistant Judge Advocate General, from 1997 to 2001. Throughout his career, he was a strong supporter of teaching law and of the Department of Law. He has a son and daughter who are both members of the West Point Class of 1995.

¹⁴ Department of Law Pamphlet, "American Legal System Academic Individual Advanced Development Program, Summer 2002."

¹⁴⁷ *Ibid.*

¹⁴⁸ The San Remo Institute is a world renowned organization that teaches law of war, international law, and humanitarian law courses to military officers and other interested individuals from around the world.

¹⁴⁹ Patrick Murphy, "West Point Cadets Receive Top Honors," *Pointer View* 59 (12 April 2002): 1. The competition has continued annually, with the Department of Law providing cadet teams and instructors each year.

¹⁵⁰ The number of faculty is the smallest of any academic department by an order of magnitude—the next smallest department is twice the size. All military members of the Law Department are in the same branch of the Army—the Judge Advocate General's Corps—while cross sections of all other branches are represented in the other departments.

¹⁵¹ The Academic Board approved significant changes to the curriculum beginning with the Class of 2005. As a result, the Department of Law will offer a new elective in Comparative Law, particularly useful as the Army deploys to many areas of the world. To assist in devising and teaching that course, one of the LL.M.s for faculty positions was shifted from Environmental Law to Comparative Law, effective the summer of 2003. The first faculty member to specialize in that subject will complete his LL.M. at the London campus of the University of Notre Dame Law School in the summer of 2004.

¹⁵² Memorandum of Maj. Gen. Walter B. Huffman to Professor and Head, Department of Law, Subject: Academy Professors, Department of Law, USMA, dated 24 October 2000. After the application and selection process, the Academic Board approved the nominations of Lt. Col. Maritza Ryan (USMA Class of 1982) and Lt. Col. David Wallace as the first Academy Professors in the Department of Law.

¹⁵³ See notes 33-34 above and accompanying text.