

**THE FOURTEENTH HUGH J. CLAUSEN LECTURE IN  
LEADERSHIP<sup>1</sup>**MAJOR GENERAL (RET.) WALTER B. HUFFMAN<sup>2</sup>

It is so wonderful for my wife, Anne, and I to be back home, back in the Regimental home. As much as we have enjoyed our post-military career, nothing replaces the camaraderie, the fraternity, the esprit de corps, the friendships that you have in the military, regardless of branch; and, of course, our branch was the Army, but it's true of all branches, and it is something that when you sit around and talk to folks who got out after their first tour in the military or those who, like myself, retired after thirty years in the military, we all talk about the same things and that is how much we miss being in uniform because of those characteristics of the people in uniform that I just mentioned. So it's a great honor, a very warm feeling, and a wonderful opportunity for us to be back here; and it was an honor for me to be informed that I had been asked to give the Clausen Lecture this year, and I will tell you that if you look at the prior Clausen lecturers, and I hope you don't, I will tell you that there have been some really important people who have given this

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<sup>1</sup> This is an edited transcript of a lecture delivered by Major General (Ret.) Walter B. Huffman to members of the staff and faculty, their distinguished guests, and officers attending the 57th Judge Advocate Officer Graduate Course at The Judge Advocate General's School, Charlottesville, Virginia, on 19 November 2008. The Clausen Lecture is named in honor of Major General Hugh J. Clausen, who served as The Judge Advocate General, United States Army, from 1981 to 1985 and served over thirty years in the United States Army before retiring in 1985. His distinguished military career included assignments as the Executive Officer of The Judge Advocate General; Staff Judge Advocate, III Corps and Fort Hood; Commander, United States Army Legal Services Agency and Chief Judge, United States Army Court of Military Review; The Assistant Judge Advocate General; and finally, The Judge Advocate General. On his retirement from active duty, General Clausen served for a number of years as the Vice President for Administration and Secretary to the Board of Visitors at Clemson University.

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lecture. And, in fact, when I was Judge Advocate General, I was able to bring General Fred Franks and General Dick Cavazos in here to do the Clausen Lecture, and I don't even pretend to be spoken of in the same sentences with those great leaders of our Army, but we'll do the best we can.

And I do want to say, of course, first of all, that I, like General Chipman said, am honored by the fact that not only is General Clausen here with us today, but General Altenburg, my right-hand man, who carried me along for four hard years in the Pentagon; and for whatever success we had there, John Altenburg is the reason we had it, and it's so great to have him here and see him again. Major General Jeff Arnold, who it seems like I've known for an awful long time now, Jeff, so it's great to see you. Gil, congratulations; I didn't know you'd been selected for Brigadier General. It's always good to hear good news when we come back to the Corps, but that's a great thing; and, General Chipman, Colonel Burrell, it's an honor to be here and we thank all of you for this opportunity.

I was trying to get my notes arranged here just a little bit. Whenever I start to arrange my notes now—Adrienne Burrell last night when we were having dinner was kind enough to mention that she had seen me on the *Jim Lehrer NewsHour* a few months back, and I appreciated her mentioning that fact, but what I think about is when I look at my notes, I was on the *Jim Lehrer NewsHour* in the context of four cases that came out of Haditha, that most of you are probably better aware than I in some respects, dealt with allegations that some Marines had intentionally murdered civilians in some homes there in Haditha; and the counterpoint to my concept of the operation, which was the military justice system will do the right thing, was a former Iraqi ambassador who doubted that very much. And there were four trials that were being contemplated at that time, so I was trying to keep my notes straight. I was doing this from Lubbock, and so there was just a TV monitor there that was constantly on and I couldn't tell when it was picking me up. And, as I say, I had these four cases I was looking at and I was trying to stay straight so that I didn't get tripped up on the facts, so I guess the camera caught me with my head down looking at my notes. After this was all over, I have a seven year-old granddaughter down in Jacksonville, Florida, and she called me up and she said, "Gramps, I saw you on TV. Did you see me?" And I said, "Well, no, honey. It doesn't work that way," and she said, "Why did you have your head down?" And I said, "Honey, I'll tell you. I was praying to the good Lord to help me." And

she said, “Why didn’t he?” So whenever I get my notes together on something like this, I just can’t help but remember my granddaughter, Megan, and hope that this goes a little better than she thought that did.

A lot of people when they talk to me say, “Isn’t it a lot different being the dean of a law school than it was being a general in the Army?” And as most of you might expect, the true answer to that question is, yes, it is quite a bit different being the dean of a law school than it was being a general in the Army. As I have said, being the dean of a law school is a little bit more akin to being a cemetery superintendent in that there’s still people under me but no one listens to what I say anymore. But it is an exciting time to be at Tech. We have had some pretty thrilling things that have happened in just the past little while. One of them is that just before I came up here we had Justice Scalia there to speak to our students and our school. He was the third Supreme Court justice we have had visit Texas Tech Law and our students really appreciate that opportunity to hear from justices of our Supreme Court, and it was an honor for us to have him there. But that excitement actually paled in comparison to the excitement that everyone felt when Michael Crabtree caught this pass with five seconds left to go in the Texas game and scored from about the five yard line; that’s what we call excitement at Texas Tech. And so I wanted to make sure that y’all had an opportunity to vote for either Michael Crabtree or Graham Harrell, our quarterback, for the Heisman Trophy. As you see we have a little campaign going on there that we call “Pass or Catch.” You can vote for either one of them for the Heisman Trophy that you want to; either one of them, I think, would do a really good job representing college football. So by now you’re all saying, “What exactly is this lecture going to be about?”

And the answer is, actually, that these two are the leaders of that football team, both the formal, that is to say, Graham Harrell, a senior, is a designated captain; and the informal, Michael Crabtree, being the best athlete on the field. People seem to flock around him, seek his advice, look up to him and respect him, and I think that that’s the way it is in all organizations. You have your formal leaders. It’s really important for formal leaders to understand who the informal leaders are; who those people in the organization whose technical skill is so great that they are admired, respected, their opinions are sought, because if you don’t understand as the formal leader of an organization who the informal leaders are, you will be missing a big bet and you may be in a little bit of trouble, as well.

They are the leaders of our team, and we're going to talk about leadership here today. Question: What is leadership? Sometimes it's a little bit hard to define leadership. Most of us think we know leadership when we see it. A lot of writers and scholars have gone to great lengths to tease apart concepts like, what's management? And what's leadership? You know, the old cliché about managers do things right; leaders do the right thing; all those sorts of attempts to articulate the differences between the two. I'm not going to do that today. That's not what I'm about today. We're going to focus on leadership, which includes management in my opinion, and we're going to take a look at, at least what I think is important, and since I have the podium what I think counts today. We're going to take a look at some of the imperatives that I believe exist for today's Army officer, you Judge Advocates, and I'm going to contrast a little bit the past with the present, to the extent that I can, and all of you can tell from looking at my hair that I'm well qualified to talk about the past and I've tried to give some study to the present so I'll try to speak on that as well. We're also going to take a look at the knowledge-based Army of today, where if the Soldiers are not true geeks, nevertheless every Soldier in today's Army, be they officer or enlisted, are awash in the multiple flows of information that come from all the IT [information technology] devices and the electronic tethering devices that are available today; and all of this knowledge that they have gives them a very different outlook on the hierarchy of traditional leadership. Stated differently, if leadership is based on the power that comes from knowledge—you know, the cliché, knowledge is power—but if everyone has the same level of knowledge or perhaps the led have even more knowledge because they are more attuned to the IT environment than the leaders, what happens then? We'll take a look at that.

But I will also tell you that I remain convinced that there are some immutable characteristics of leadership that apply whether we're talking about the Soldiers of even back probably to 1776 or the Soldiers of today, and one of those traits is that you have to take care of people. *You have to take care of people.* It's a tradition in the Army Officer Corps, and perhaps for the officers of other services as well. Officers eat last. You take care of your people in every respect. A perfect example we happen to have here today and the reason that I am so very proud to be selected for this particular lecture is the person after whom this lecture is named, Major General Hugh Clausen. And I just have to tell you one quick personal story. I will tell you several personal stories before we're through, but one that relates to this: taking care of people. There I was,

Field Artillery Captain Huffman back from Vietnam. The Army all of a sudden has this new program, the FLEP [Funded Legal Education] Program, where twenty-five officers are going to be selected to go to law school at government expense. I am going to get out of the Army and go to law school, but I am informed about this program and encouraged to apply by the then-Staff Judge Advocate of III Corps and Fort Hood, where I was stationed after Vietnam, then-Colonel Hugh Clausen. And that was very nice of him and I appreciated that, but then I started looking at the new statutory requirements for this FLEP program, and one of them that impacted me significantly was that you could not have more than six years of active duty. I started out as an enlisted man, went to OCS at Fort Sill, so I was very close to that six-year mark, but I was accepted to Texas Tech's Law School, and as it turned out, law school at Texas Tech started three days before my six years ran out. So I walked over and I talked to Colonel Clausen about that, and here I am, I'm a field artillery officer. He doesn't know me. He certainly doesn't owe me anything, but while I'm standing there, he picked up the phone, called our personnel office, PP&TO for those of you in the Army, and told them, "This fellow's application's coming in, and if you just look at it, it's going to look like he's not eligible, but I'm telling you he is by three days. So be sure he's considered." Taking care of people. He didn't have to do that. He didn't know me. He didn't owe me. He was just a great leader, taking care of people, and obviously I wouldn't be standing here today but for the fact that Hugh Clausen was willing to interrupt his day as the Staff Judge Advocate of III Corps and make a phone call on behalf of a captain. I can't give you any better example of taking care of people. And it is, again, why I'm so honored to be here today, giving this particular lecture. Thank you again, General Clausen, for the great opportunity that you gave me.

It is also critical that leaders be role models: people whose traits, whose characteristics, whose attributes others seek to emulate. If you're not that, you will never garner respect. And we'll talk a little bit more about that later. There are a lot of people to whom I could point. Some of the people I just talked about a little earlier here in the introductions, I could point to them as role models, but the reason I don't have a picture up here for role models is we have the person here that I'd like to point out to you as a role model. And I'd like to ask Betty Clausen to stand up for just a second. Here, ladies and gentlemen, if you want to see a role model, this is what a role model looks like. I do not know anyone who knows Betty Clausen—and this certainly includes my wife—who doesn't regard her and her characteristics as the epitome of what everyone would

like to be like if they could. And you have done so much for our Corps and so much for so many people. As I say, if you want to know a role model, there is one. Thank you very much, Betty Clausen.

A wonderful couple, the Clausens; great leaders; great leaders for our nation and our Corps; and the truth of the matter is if I stopped right now and just let you all hang out with the Clausens for a couple hours instead of listening to me, you would learn a lot more about leadership than anything I'm going to say to you will teach you. But unfortunately, again, that is not your option.

So let's take a quick look at the leadership role Judge Advocates had back in 1977, when I went to the 7th Infantry Division at Fort Ord. Now as Karen Chipman pointed out, when you just say, "Fort Ord," you've already dated yourself. There is no Fort Ord. In fact, there is no 7th Infantry Division, but there was a 7th Infantry Division at Fort Ord, California, when I went to my first JAG assignment in 1977. An interesting patch; I think they called it the Bayonet Division. [*showing slide*] See the bayonets there. Some people called it the Black Widow Division because it has the reverse hour glass insignia of a black widow spider if the red were black and the black were red. All the Soldiers referred to it, of course, as the Crushed Beer Can Division. But that was there in 1977, and you may find this hard to believe as Judge Advocates today, but in 1977 Judge Advocates assigned to this infantry division were not issued TA-50 or weapons. We only wore boots and fatigues one day a month, when we ran with the division. That's right; we ran in boots, on pavement. I have the splintered Achilles' tendon to prove that. But the rest of the time we wore our Class Bs, or Class As when we were in court, and we were in court a lot because this was the post-Vietnam Army, still a draft Army, lots of desertion cases, AWOLs, drugs. We were in court a lot. We worked hard then as now. We had excellent lawyers in the JAG Corps in 1977, but our relationship with the rest of the Army was much like that of physicians and chaplains to a certain extent, which is, if you have a problem, Mr. Commander, in our area of technical expertise, then come to our office and see us. Otherwise, maybe we'll see you at the Officers' Club. Suffice to say, it would have never crossed the mind of a brigade commander in the 7th Infantry Division to take a JAG with him on a field training exercise—never crossed their mind to do that. And I assure you it would have been a mind-boggling concept to a Judge Advocate if they had thought they were going to have to go to the field on a field training exercise. Not to say we didn't have great leaders in the JAG Corps in 1977; we did,

General Clausen among them. And we had people in Vietnam as Judge Advocates who practiced the law in some very difficult and, in fact, some very dangerous circumstances. And those of you who know your JAG history know that in prior conflicts, in World War II, for example, and Korea, we had Judge Advocates who actually had combat commands; true leadership as it were in those days. But generally speaking, the requirements for Judge Advocates to be leaders in the same way other branch officers are required to be leaders only began to materialize, at least in my opinion, when Judge Advocates were integrated into the command and control mission orientation of the Army during Operations Desert Shield and Desert Storm, in 1990 and 1991. [showing slide] This is the erstwhile VII Corps leadership. Some of you might recognize Colonel, Judge, Denise Lind over there on the left; then-Captain Denise Lind. I brought this picture, though, primarily because many of you may recognize Cal Lewis, the second person there in line between me and Captain Lind, and then-Major Lewis, my Chief of Criminal Law at the time, who is now a professor and associate dean of mine at Texas Tech University School of Law. He asked me to make sure I brought his picture to show to you when I came.

Those other two, just for those of you who may know them, Colonel Retired Charles Trant, my deputy in VII Corps, as deployed, and Lieutenant Colonel Retired George Thompson, my Chief of International and Operational Law. John Altenburg, since he's here I'd have to point out, was one of the first ones to realize that in that legally intensive environment and with CNN cameras over every commander's shoulder to see whether that commander was doing the right thing, it would be important to integrate Judge Advocates into the combat commands. And I think, perhaps, the first person that John sent with a brigade across the line of departure was Colonel Tara Osborn. But that concept of bringing Judge Advocates into the fold really began then, I think. And, of course, you have to understand, these commanders wanted Judge Advocate advice and they understood how important Judge Advocates could be in that legally intensive environment, that ambiguous environment to a certain extent, but they couldn't afford to give space in a command track to, quote, "only a lawyer." They wanted that lawyer, but they wanted a lawyer who was an officer; who could perform the functions that other officers performed; who could stand radio watch in G-3; who could be an officer of the guard; who could do all the other things expected of staff officers in that brigade. And thus, again, John Altenburg being the originator of this, the new mantra of the JAG Corps became after Desert Storm: "Soldiers first; lawyers always." Not second; lawyers always, as

General Altenburg explained to us. But that was a sea change from what Judge Advocates did in the 7th Infantry Division in 1977. And, of course, as all of you know far better than I, no brigade commander would deploy today without a Judge Advocate. And, in fact, under the BCT system, we have embedded Judge Advocate teams into these brigade combat units and that is the way it will be from now until the end of time, but you need to understand that that is a very different thing from the standard mission of Judge Advocates in 1977.

You all know that, of course, but the point is that the leadership requirements and obligations imposed on Judge Advocates today are much different than they were even on us as we started out in Desert Storm. [*showing slide*] And these are all the SJAs who served in Desert Storm. General Altenburg, easily recognized as Lieutenant Colonel Altenburg of the 1st Armored Division, there on the real far right; Colonel John Burton, just below him. And the reason I point out those two in particular and me over on the far left is you'll notice that we are all in green uniforms. Everybody else has on their desert camouflage. Why? We came from Germany to Desert Storm. Foolishly, and remember the Cold War was still going on then, we thought we were already deployed, to Germany. We didn't know that we could be further deployed to the sands of Saudi Arabia, Kuwait, and Iraq, but we were; and I'm not sure whether this—today I'm still not sure whether this was a public relations ploy, a logistical foul-up, or what it was, but the story that I'm going to start telling about why they left us in our green uniforms in the middle of the desert was that it was to strike fear into the hearts of the enemy because we were those Soldiers who had been chosen to face the Russians in Germany. We were the best that the U.S. Army had and, therefore, they should surrender immediately when they saw these green uniforms. I tend to think this is the story the quartermaster started because they simply couldn't get us desert uniforms, but nonetheless, that was the story and that's why we were wearing green uniforms after our arrival from Germany and throughout the war, for that matter.

Now Judge Advocates are totally integrated into everything that the unit does, and you understand that. A lot more is required of you in your role as officers first, lawyers always than was required in 1977. [*showing slide*] The Army you must lead and the Soldiers who are in it—and this is the best picture I could find of a modern courtroom with military people in it—but what I tried to portray here is that everybody's got a computer. Again, this highly technological environment in which



you operate; very different from the “Middle Ages” in 1977, when if there was one form of communication, it was with the commander and his radio operator, if the radio worked; now we have e-mail, and every other kind of linkage; very different. And leading this essentially knowledge-based Corps of lawyers, and for that matter leading our very technologically astute paralegals, presents a lot of different challenges than the days when a commander could simply issue an edict and expect that edict to be followed. True authoritarian power, while it might still create some superficial adherence to the leader’s directive, does not equate to leadership of a group who, generally speaking, if asked at a social event what they do will say, “I’m a lawyer,” not “I’m in the Army.” And this is not because they are not proud of the Army and not proud of their role in the Army, but their self-identification is with their technical profession. They are lawyers.

And I certainly don’t pretend to know all the unique attributes of Soldiers in our high-tech, knowledge-based Army, but I had done some study on it, as I mentioned earlier, and I’m going to share a few things that I learned with you in the hope that they may be of some benefit to you, and I really do hope they are. First, this cohort that’s bombarded by information from all sides and by all manner of devices is best able to function at peak efficiency when everything makes sense. When they understand the mission, when they understand the vision and the values of the overall organization and they can articulate their role in that organization, they become both motivated and productive. So, again, the old days, you know, “They call ‘em orders ‘cause they’s orders.” I said, “Do it, and the reason that you do it is because I said do it.” That worked fine, actually, in 1977, in the infantry. It doesn’t work today. Communication is so vitally important for today’s leader, and I know those of you in this graduate course are having communication drilled into you incessantly and that’s a good thing. These bright and knowledgeable young people that you’re going to lead—and I know that y’all are young compared to me, but you’re going to lead people who are even younger than you—also have apparently a very, finely, exquisitely tuned hypocrisy detector built into them, so it’s vitally important that the leader in doing these communications—in providing this stream of information that’s necessary to motivate and make productive these folks—the leader must make it clear that he or she follows the same vision and goals, the same criteria, the same organizational values that are expected of those he or she expects to lead. Stated succinctly, a boss says, “Go.” A leader says, “Let’s go.” An oversimplification, perhaps, but a very important difference. And as you stream this information to

this group, you will better facilitate their individual efforts, and facilitation is very important as a leader for this particular group, because they have lots of knowledge and lots of creativity and they are looking for a leader to facilitate what they do.

In addition to facilitating what they do individually, through communication and facilitation you will also develop trust and respect for your leadership role. Respect—not fear, not friendship, not favors granted—but respect for the leader as a person. And no leader is endowed with respect. Let me say that again. No leader is endowed with respect. You have to earn it, and you have to earn it every day if you wish to be an effective leader. And you do it by taking care of people, and by being a role model.

And raising one more timeless trait—it seems especially important to this cohort we’re talking about today—a leader must stay positive all the time. Many things can go wrong in an organization; many things can threaten mission accomplishment, personal accomplishment. It’s easy to see clouds hanging over an organization, be they resource-based or personnel-based. You all have been around long enough to understand that there are a lot of things that can threaten mission accomplishment and the well-being of an organization. And in this generation, this cohort we’re talking about, that has been shielded, to a large extent, from disappointment and from difficulty—this cohort where the substitute on the soccer team that won no games still gets a trophy—they are not quite so good at handling adversity and difficulty. They need a leader with unbounded enthusiasm for the organization and an eternally positive attitude that says to all, “No matter what happens, no matter what happens, we are not only going to survive, we’re going to succeed.” And that may be the most important attribute that you can have. And this positive attitude, of course, is especially important when you’re deployed because then things can not only go wrong for the organization, they can get downright dangerous for the organization. NCOs seem to understand, inherently understand, this need for positive leadership in an organization for that leadership to be able to—for that organization to be able to succeed, for people to be able to stay at the task. NCOs seem to understand that. All of you, I hope, have seen the movie or read the book, or both, *We Were Soldiers Once . . . and Young*,<sup>3</sup> by Lieutenant General Hal Moore, about his time as a battalion commander in the Ia

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<sup>3</sup> HAROLD G. MOORE & JOSEPH GALLOWAY, *WE WERE SOLDIERS ONCE . . . AND YOUNG: IA DRANG—THE BATTLE THAT CHANGED THE WAR IN VIETNAM* (1992).

Drang Valley of Vietnam in the early days of the war, surrounded by a superior force of North Vietnamese, and his sergeant major, Basil Plumley. Then-Lieutenant Colonel Moore, somewhat downhearted, encircled by a superior enemy, says to Sergeant Major Plumley, “Now I know how Custer must have felt.” Sergeant Major Plumley says, “It’s a bad analogy. You are a much better man than Custer was.” That’s not really what he said, but translated from “the NCO” to this audience for polite purposes, that’s what he meant. He understood that the whole organization was going to fail if that commander didn’t stay positive, and he was going to make that commander positive.

I actually had a very similar experience with an NCO myself in Vietnam. [*showing slide*] This is a much younger version of myself as an artillery battery commander. Our battery was up on the DMZ about 1 click from North Vietnam. Every day we took 122-millimeter rocket fire, and every day we had to fire in support of our infantry that was out there engaging North Vietnamese troops on the border. It was important that our people stay to the guns despite this incoming rocket fire. It’s a story I haven’t told to anyone other than my wife and maybe my kids, but I think it makes this point here. On this particular day, the rocket attack starts. My first sergeant and I start from the command track to the fire direction center track, and all of a sudden, we hear this 122-millimeter rocket coming in screaming; we can tell it’s going to be close. We dive into a crater created by a previous rocket. We hit the ground. The rocket explodes. Something cuts my cheek right there. Was it a rock, a piece of shrapnel? I don’t know. I say to the first sergeant, “I think I’ve been hit. I’m going to get a Purple Heart.” First sergeant says, “Sir, the men are scared. As long as you’re walking around unhurt, as long as they think you can’t be hurt, they’ll stay to those guns and they’ll be okay, so my suggestion to you is that we put a Band-Aid on that and you tell people that you cut yourself shaving if anybody asks.” And so that’s what I did. And he was right. The men had to stay to those guns despite those incoming rockets, and they needed a positive leader out there. This story is not about me, you understand; it’s about that NCO who understood what was really important to that unit that day, and it was that the Soldiers believed that they had a positive role model going around there and that they were going to not only survive, they were going to succeed.

Well, I can’t pretend to cover all aspects of leadership, either today, yesterday, times past, times future. I’m sure there are those of you in the audience, I know there are those of you in the audience, who know more

about leadership and could say more about leadership than I can. One thing in my life, I've never gotten mad at people who know more than I do. It's not their fault, you know. And even the best leaders, it's true, sometimes wonder whether they're being followed or whether they're being chased. But, quite seriously, leadership is critical. It's a challenge; a challenge that varies to a certain extent over time, although we have noted, at least in my opinion, that there are certain immutable characteristics of leaders that stand the test of time; that you take care of people. A leader must be a role model, personally and professionally, personally and professionally, that others seek to emulate. And perhaps most important, a leader must always stay positive, and the more dire and difficult the situation facing the organization is, the more positive that leader must be. It happens at Texas Tech. It will happen in your unit. You must stay positive if your organization is going to function effectively under your leadership. And you'll notice that I've used verbs up there. And that's because if you don't hear anything else I say today, hear this: Leadership is action, not a position. It's action, not a position.

And for the final minutes of this presentation,—what I'd like for you to consider is and what I'd like for us to consider together is, why does it matter? Why does it matter? Why is it that what the JAG Corps does is important enough that the issue of leadership for our troops is worthy of our discussion at all? And an answer to that question I will tell you that from my vantage point as a retired Judge Advocate now eight years removed from active duty that what the JAG Corps does, what you do, has never been more important to our Army or our nation. And in a nutshell, what you do is important because the JAG Corps has demonstrated both at home and abroad that Judge Advocates are our nation's foremost advocates for and guardians of the rule of law that is the very bedrock of our democracy, and of all aspiring democracies in this world, for that matter.

Now "rule of law" is a phrase that's thrown around a lot. A lot of people who use it don't know what it means; they don't understand its true meaning for sure. And it is sometimes kind of hard to articulate. I think it's often easier to articulate, for these purposes, what it's not; what the rule of law is not. And what the rule of law is not, of course, is the rule of man; that's its exact opposite. For most of human history, the history that the founders of our nation knew, the ruler and the law were synonymous. The king could not break the law because the king *was* the law; that was the rule of man. This is Charles I. He had sort of an unfortunate ending, as some of you may know. He was beheaded, so,

you know, sometimes it doesn't even work out when you're the king. But nonetheless, he seems like a fairly nice looking fellow here, but when you think about the rule of man in the context of Hitler, and Stalin, and Saddam Hussein, you get a lot better idea of why the rule of man is not the right answer and why the rule of law is. And as Thomas Paine said in his 1776 pamphlet, *Common Sense*,<sup>4</sup> "In America, the law is king," and "the cause of America is, in a great measure," he said, "the cause of all mankind." The world would seek to emulate what we did with our rule of law, and the reason he felt so strongly that that would be true was that the rule of law, he said, is an inherently moral notion. *It's an inherently moral notion.* Now I know all of you know about natural law and this and that and the other, but in this context I think the fact that it's an inherently moral notion means really that the basic values of due process and equal access and all of those things that make up justice would apply to every person; that every person is equal in the eye of the law and that all people are entitled to the liberties and the protections that the law provides. All people, if you stand for the rule of law, okay. And where persons do not have those rights, where they have no access to a fair legal system in which people can address their grievances, as we found out in Somalia in 1992 when I was at Central Command, people will still address their grievances; they'll address them with a rifle if there is no rule of law. And unfortunately in Somalia that is still true today, although I must say on behalf of our Central Command Judge Advocates, we even had a Somalia-American Bar Association started up before the UN got involved and sort of changed mission to a nation building orientation and everything we had begun was thwarted, but we understood that the only way that Somalia could ever exist as a democracy of any kind was to have the rule of law. And since that time, the JAG Corps has adopted as part of its mission when deployed to these failed or failing nation-states the establishment of the rule of law. [showing slide] I could have put a lot of pictures of Judge Advocates deployed to a lot of different places, but I happen to like Marc Warren a lot; don't y'all? So I just thought I'd put him up here because he's certainly worked hard, as have many of you, to establish the rule of law as part of the JAG mission in Iraq.

Now as you also know, this is often an unstated JAG mission because the statute says this is a mission for the State Department, the reestablishment of judiciaries, the reestablishment of court systems and

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<sup>4</sup> THOMAS PAINE, COMMON SENSE (1776), available at [http://publicliterature.org/books/common\\_sense/xaa.php](http://publicliterature.org/books/common_sense/xaa.php) (last visited Jan. 20, 2009).

legal systems; State Department responsibility by statute. But as all of you have already figured out, I'm sure, when the bullets are flying and the critical work has to be done, the State Department isn't there, so it falls to Judge Advocates to do their part to try to reestablish the rule of law in these legally intensive combat environments in which we find ourselves today. And you've done a wonderful job, you've done a wonderful job, and I tell everyone who asks me, "How is it going do you think?" I tell them you Judge Advocates are doing a wonderful job by ensuring our own forces follow the rule of law, thus enhancing mission accomplishment in so many different ways in these legally intensive environments. And, in fact, assisting the efforts of these countries to rebuild their legal systems will allow the rule of law to flourish. You've done it a lot of places, in the Balkans, in Bosnia, in Iraq, and in Afghanistan. [*showing slide*] You're looking at that slide saying, "What is that?" It's a mirror. I thought that would be appropriate for this particular graduate course, because I know there are few, if any of you, who haven't been deployed at least once to one of these operational theaters in Iraq and Afghanistan, so that's a picture of you and the work that you've done. These are works in progress, to be sure, and perfect solutions may be unreachable, but the positive difference that you have made is undeniable and our world is better for it, and I hope you're all proud of that, because I'm proud of you for it.

Perhaps equally most important, maybe more important in my mind, is the role of Judge Advocates as the foremost guardians and proponents of the rule of law here at home, here in the United States. All of you are aware of the principled stand our JAG leadership took against the initial proposals of the administration concerning the treatment of detainees in Guantanamo Bay. But what you may not fully understand is how that principled stand that the JAG leadership took in support of our Constitution and the rule of law has affected the view of Judge Advocates in the civilian community, the community in which I now live. I cannot really count the number of people who have come up to me knowing I'm a former JAG to tell me how proud they are that our lawyers in uniform stood up for our Constitution. In speeches by federal judges, bar leaders, and others, they've all commented on this courage, this moral courage, to stand up and be counted; to defend the fundamental precepts of our Constitution and the Geneva Conventions and by extrapolation our Soldiers, and I think in the minds of Americans to defend those core values that make our nation the great nation that it is. In simple terms, Judge Advocates knew, early on, before these administration proposals were ever implemented, that these issues

regarding the treatment of these detainees at Guantanamo Bay were not about how those detainees were going to be treated. It wasn't about them at all. It was about us. It was about us and our values. And people have said, "Well, you know, if the Iraqis or the Afghanis or someone captured our Soldiers, they wouldn't treat them as well as we're treating them; they'd murder us." So what? Is the proposition that we seek moral equivalency with terrorists? I don't think so. I think America is better than that. I think our Judge Advocate leadership understood that America is better than that, and of course, as all of you know for certain, the Supreme Court has validated the position that our JAG leadership took in case after case; in *Hamdan v. Rumsfeld*,<sup>5</sup> in *Rasul v. Bush*,<sup>6</sup> in *Boumediene v. Bush*,<sup>7</sup> that last case following the principle that sometimes bad facts make bad law, in my mind, is a bit of a stretch, but perhaps it can be explained by thinking back to what Thomas Paine said; his concept of the rule of law and its application to every person as an inherently moral notion. If you read that case in that context, that very American context, I think it may make more sense to you, even if you don't agree with the law. Again, as our JAG leadership understood, this was really all about us and our values.

However, another aspect of this whole Guantanamo Bay thing that our civilian brethren in the profession should extol, but do not fully understand, is the professionalism with which both former and current Judge Advocates took the decision of our nation's civilian leadership and executed the mission as best they could. They did what they were required to do under our Constitution's great concept of civilian control of the military; a very critical concept under our Constitution, and none of us would have it any other way. But what a wonderful example of the fact that we are the only Army in the world, so far as I know, that takes an oath to a legal document—to support and defend the Constitution of the United States, not the President, not the flag, not a piece of ground, the Constitution of the United States; that's our oath and it's unique in the world, so far as I know. What a great example, that our leadership stood up for the principles of the Constitution, as they saw it, and argued against the administration's initial proposals; and then when the final decision was made, when they had been heard, they accepted the decision of the civilian leadership and they undertook the mission. What a shining example of professionalism; unmatched in our history, in my

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<sup>5</sup> 548 U.S. 557 (2006).

<sup>6</sup> 542 U.S. 466 (2004).

<sup>7</sup> 553 U.S. \_\_\_, 128 S. Ct. 2229 (2008).

opinion. But who knows what opportunities and challenges the future may bring.

In closing I will tell you, regardless of what the future brings to us, one thing you should always remember is that we in our profession, lawyers, should never fear the future, because as lawyers and judges, we shape the future, as we have done since the founding of our country and the adoption of our Constitution. There's no doubt that the best way to predict the future is to create it. And so long as what we create adheres to the concept of the rule of law and the equally important concept of access to justice for all, then I confidently predict that our future in this great country and our democracy despite its inevitable flaws—and no one pretends that this country is perfect or ever will be—but the future of this country, our great democracy, will be great. And as the recent past has shown, and that I have just discussed with you, the values most central to our great nation, the ones that live here in the hearts of Americans, the values most central to our great nation will flourish as long as we have leaders in our profession who wear the uniform of our armed forces; people who believe in and live the concepts of honor and loyalty; people who are selfless in their service; patriots who represent all those really good things about America.

You know we often say, God bless America. God bless America. I will tell you God does bless America, and the best evidence I can give you today are those of you in this room, those of you in this room. I salute you. I thank you for your service. And I do ask that God bless you and those that you are leading.