

Army Lawyer

U.S. Army Judge Advocate General's Corps

Issue 3 • 2025

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25

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AROUND THE CORPS

Then-1LT Matthew Schaefer participates in a Norwegian Foot March while attending the 227th Officer Basic Course in Charlottesville, VA. (Photo courtesy of MAJ Aimee Rippeon)

Army Lawyer

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Issue 3 • 2025

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Cover: Then-CPT Matthew S. Doyle conducts a battlefield tour and briefs fellow Soldiers from the 101st Airborne Division (Air Assault) near the Easy Company foxholes outside the town of Foy, Belgium, to commemorate the eightieth anniversary of the Battle of the Bulge and honor the heroes and veterans who fought there. (Credit: Joshua Joyner)

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U.S. Army Judge Advocate General's Corps Strategy

Building a Future-Ready JAG Corps, Inspired by a Legacy of Service

JAG CORPS MISSION: Provide timely expert legal advice and services to the total Army, strengthening readiness and maximizing the warfighter's operational capacity across the competition continuum in support of our Nation's strategic interests.



ARMY MISSION: Deploy, fight and win our Nation's wars by securing ready, prompt and sustained land dominance by Army Forces across the full spectrum of conflict as part of the Joint Force.

Court Is Assembled

The JAG Corps Strategy Building a Future-Ready JAG Corps, Inspired by a Legacy of Service

By Members of the JAG Corps Strategy Development OPT¹

The essence of institutional strategy lies in making hard choices²

An effective institutional strategy has multiple components and purposes. It needs to convey a broad, easily understandable outline of the long-term goals of the organization, supported by a detailed plan for how to achieve those goals. It should simultaneously project an inspiring vision for the future that provides its people purpose with enough concrete specificity to be actionable and produce tangible results.

For an Army organization like the Judge Advocate General's (JAG) Corps, its strategy must support the greater Army strategy, while accounting for the current and anticipated operating environment. Resourcing, capability, and doctrinal gaps must be identified and either mitigated or overcome to transform the JAG Corps of today into the desired Corps of tomorrow. Inevitable changes in the assumptions and variables that formed the foundational planning factors of a strategy can render the best strategy documents outdated in a surprisingly short amount of time.

It was within this context that the JAG Corps Strategy Development Operational Planning Team (OPT) first convened in November of 2024 to review and revise the 2022 JAG Corps Strategy. Although only two years had passed, JAG Corps leadership understood the opportunity to capture feedback on that foundational effort and incorporate profound changes in the operating

and legal environment into an updated strategy and detailed campaign plan. As the pace and scale of change accelerated in the beginning of 2025, there were even questions about whether effective strategic planning was possible at all. Ultimately, this same uncertainty that could have potentially paused strategy development instead reinforced the importance of having an updated strategy in unpredictable times. In a volatile, uncertain, complex, and ambiguous (VUCA) environment, both the guiding vision of a strategy and synchronized efforts of a supportive campaign plan are vital to maintaining sight of our long-term goals while providing the day-to-day legal support that our Army needs now and in the future.

This article provides a brief overview of the planning team's approach to developing the JAG Corps Strategy, the ongoing work, and the future endeavors needed to synchronize strategic efforts and assist our leaders in making difficult decisions on how best to guide our Corps during continuous transformation efforts in a persistently complex, uncertain, and resource-constrained environment. The OPT has striven over nine months to deliberately assess the greatest needs of our Corps and chart a path forward. In a world defined by change, the goal was to create a strategy that provides a rudder to guide us through dynamic waters.

At the beginning of the process, the The Judge Advocate General (TJAG) provided key strategic planning guidance to move away from a time-horizon construct; nest with Army priorities; address innovation and transformation, culture, and climate; and speak to personnel across the entire Judge Advocate Legal Services footprint.

The OPT looked to well-established operational art and design doctrine and the Army Design Methodology (ADM) for approaching complex problem sets. The ADM consists of framing the operational environment, framing the problem, developing an operational approach, and developing the plan.³ The approach to this strategic initiative was further guided by the TJAG-approved JAG Corps Strategic Initiative Planning process—initiate, assess, plan, implement. Using these methodologies, the OPT labored to deliberately assess the greatest needs of our Corps and establish guidelines on how to close those gaps.

The OPT first analyzed the 2022 JAG Corps Strategy against overarching Army and Department of War strategic guidance, priorities, and guidance. The OPT reviewed existing organizational strategies and processes and regularly consulted with strategists from the Department of the Army Plans and the University of Virginia Strategic Initiatives Offices to understand best practices for strategy development and implementation. The



Members of the JAG Corps Strategy Development OPT review Strategy documents. (Credit: Billie J. Suttles)

inaugural 2022 strategy analysis revealed that it was well-written and thoughtfully outlined the breadth and importance of the JAG Corps's mission support to the Army, but lacked specific implementing objectives or a mechanism to systematically guide institutional transformation and measure progress. To understand the entire Corps's needs and recommendations, the OPT solicited feedback from across the Corps's organizations, cohorts, and components—from the field to the institutional level. The OPT regularly worked together over Teams, emails, and an in-person planning onsite supported by JAG Corps subject matter experts, an Army strategist, and the U.S. Army War College. This deliberate, iterative process produced the current JAG Corps Strategy, published on 12 September 2025.

At first glance, you will notice that this

plan is succinct, going from eight typed pages in the 2022 Strategy to just one detailed chart with a short introductory preamble. The goal was not just to be concise but also conceptually straightforward in understanding and execution. The accompanying overview graphic preceding this article depicts an abbreviated version of the strategy and how it supports the Army's enduring campaign plan.

The strategy consists of three lines of effort (LOEs),⁴ each consisting of three strategic objectives⁵ designed to help the JAG Corps reach the desired end state⁶ published within.⁷ As the strategy overview graphic outlines, our Corps's primary needs continue to align with the Army's long-term campaign plan priorities. While the Army's campaign plan is revised, some language will change; however, the JAG Corps's three

LOEs (People, Transformation, and Readiness) will remain nested with the Army's LOEs as depicted in the enclosed graphic. These LOEs are not new for the JAG Corps or Army, which helps guide the long-term aligned interests.

Given full license to conclude whether the updated strategy should be "evolutionary or revolutionary," the OPT concluded that the vast majority of the institutional needs were evolutionary in nature from the previous strategy. The new strategy carries forward the categorical LOEs, and while articulating strategic objectives and establishing a campaign planning process are critical improvements, they are mostly evolutionary in that they build upon efforts already being undertaken within the JAG Corps. However, one capability gap clearly emerged as in need of a revolutionary approach—our

“Strategy is both an iterative process and a product—the reflective synergy of art and science creating a coherent bridge from the present to the future, enabling the translation of ideas into action to get what you want while addressing potential risks to the Nation.”¹²

information technology and knowledge management. The team concluded that not only did that warrant its own strategic objective, but that it would be infused across all nine objectives and the entire strategy because it implicates everything that we do as professionals.

So, what do we do with this strategy? The greatest benefit of an implemented strategy will be the establishment of a systematic, deliberate approach to modernization that integrates with the Army and synchronizes efforts and prioritizes JAG Corps resourcing. In a persistently constrained resource environment, there must be a way to prioritize how much energy and resources we apply to efforts. Consultations with the Army’s strategic planning subject matter experts revealed that in order to have an impactful strategy, we needed to also have an effective campaign plan and implementing governance process to “translat[e] strategy into outcomes.”⁸ Our campaign plan will become the primary way that we design and monitor all significant ongoing strategic efforts, including approving programs, assigning responsibility, and allocating limited resources.

The U.S. Army War College *Campaign Planning Handbook* emphasizes that all important efforts must be included in the campaign plan, and those efforts not aligned with stated objectives should be considered for elimination.⁹ To operationalize the strategy and campaign plan, each strategic objective is led and resourced with leaders across the Corps, including a senior leader champion (general officer or senior executive

service official) to guide efforts, a tactical lead (colonel or GS-15) to direct work, and an OPT to develop each objective.

What is the next step and how can you contribute? If you feel like you missed your opportunity to contribute, do not despair, because we are still at the beginning of this enduring effort. The strategy is published, but it is not just a product—it is an ongoing process.¹⁰ Campaigning is the most important part of this strategic effort, and it is just beginning. The benefit of a strategy and campaigning is the process—more of a journey than a destination. The course may vary and the road will have curves, but we will keep going in the right direction toward the distant horizon. The principal leaders of this process—strategic objective tactical leads—have the road map, a core working group, and are actively planning. Your ideas and input are valuable and crucial to our Corps’s success. Please share your thoughts directly with the tactical leads, through the OPT members, or with the Future Concepts Directorate in the Legal Center as we periodically update the Strategy and continuously develop the campaign plan.¹¹ We eagerly anticipate your contributions! **TAL**

Notes

1. The JAG Corps Strategy Development Operational Planning Team consists of senior JAG Corps leaders from all components and cohorts, supported by The Judge Advocate General’s Legal Center and School Future Concepts Directorate Team.

2. U.S. DEP’T OF ARMY, INSTITUTIONAL STRATEGY:

ARMY STRATEGY NOTE 4 (1 Apr. 2022).

3. U.S. DEP’T OF ARMY, DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS para. 2-89 & fig. 2-4 at 2-17 (31 July 2019).

4. Line of Effort: “Links, tasks, and effects to achieve objectives.” JOINT CHIEFS OF STAFF, JOINT PUB. 5-0, JOINT PLANNING, at III-31 (1 July 2025).

5. Objective: “The clearly defined, decisive, and attainable goal toward which an operation is directed.” *Id.* at III-20, GL-8.

6. End state: “The set of required conditions that defines achievement of the commander’s objectives.” JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, JOINT CAMPAIGNS AND OPERATIONS, at GL-9 (18 June 2022).

7. The strategy can be found at *U.S. Army JAG Corps Strategy*, U.S. ARMY JAG CORPS, <https://www.jagcnet.army.mil/Home/public/jagcStrategyInDepth.html> [<https://perma.cc/7TFQ-H6UM>] (last visited Dec. 3, 2025).

8. CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3100.01F, JOINT STRATEGIC PLANNING SYSTEM, at A-2 fig. 1 (29 Jan. 2024).

9. DEP’T OF MIL. STRATEGY, PLANNING, & OPERATIONS, U.S. ARMY WAR COLL., CAMPAIGN PLANNING HANDBOOK: ACADEMIC YEAR 2026, at 48 (2025).

10. See JOINT CHIEFS OF STAFF, DOCTRINE NOTE 2-19, STRATEGY, at I-1 (10 Dec. 2019).

11. The Strategy, points of contact, and suggestions can be viewed on the JAG Corps Strategy website on JAGC-Net or by contacting the Future Concepts Directorate at <https://tjagcls.army.mil/center/fcd>.

12. JDN 2-19, *supra* note 9, at I-1.

News & Notes



Photo 1

Members of the 2nd Mobile Brigade Legal Office run through the jungle outside of Schofield Barracks, HI, on their way to train on the Air Assault obstacle course. (Credit: MAJ Ian P. Smith)

Photo 2

SPC Wyatt M. Weckman completes the sprint-drag-carry during the 2025 11th Airborne Division's Paralegal Warrior Competition at Fort Wainwright, AK (Credit: SSG Angel W. Rodriguez)

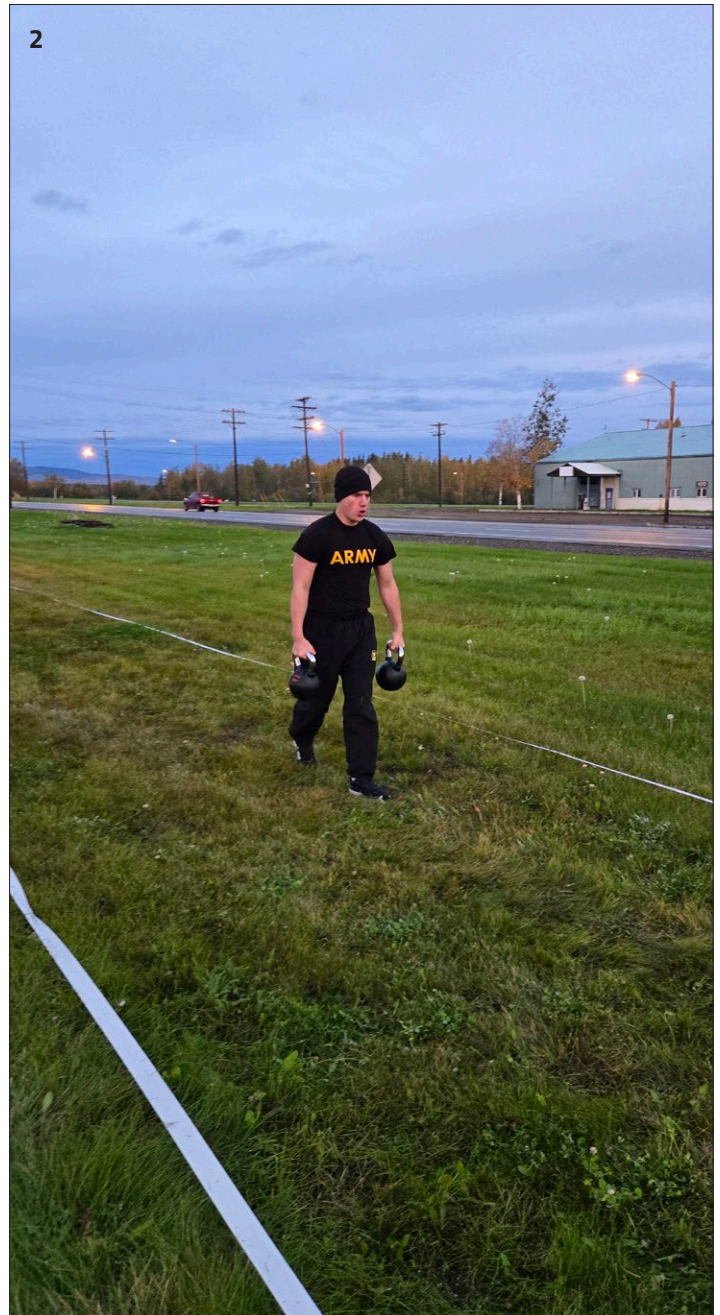


Photo 3

SGT Gunnar Gransbery, a paralegal specialist assigned to the 71st Theater Information Operations Group with the Texas Army National Guard, participates in training during exercise Cyber Shield 2025 in Virginia Beach, VA. (Credit: Jasmine McCarthy)

Photo 4

229th Judge Advocate Officer Basic Course. (Credit: Billie Suttles, TJAGLCS)







Photo 5

MAJ Jayne Leemon, Brigade Judge Advocate, 1st Stryker Brigade Combat Team, 4th Infantry Division, applies camouflage as a convoy of brigade headquarters staff prepares to move early in the morning at the Joint Readiness Training Center at Fort Polk, LA. (Credit: Parker Seibold, The Colorado Springs Gazette, reprinted with permission)

Photo 6

SSG Prince Page participates in the 139th Legal Operations Detachment annual training at Fort Campbell, KY. (Credit: SFC Jessica Nolan)





Photo 7

Interns at the 82nd Airborne Division Office of the Staff Judge Advocate, rode along with members of the 3d Brigade Combat Team, 82d Airborne Division, legal office during an airborne operation at St. Mere-Eglise Drop Zone, Fort Bragg, NC. From left to right: MAJ Andrew E. Nist, Ms. Quinn MacRae, Mr. Reid Hauenstein, and CPT Cal L. Burton. (Credit: LTC Brian D. Lohnes)

Photo 8

MAJ Alexander E. Hernandez (seated, second from right), Brigade Judge Advocate, 2nd

Infantry Brigade Combat Team (Airborne), 11th Airborne Division (2/11 IBCT(A)), supports assault command post operations on the move with his 2/11 IBCT(A) teammates during a Joint Pacific Multinational Readiness Center rotation in Hawaii. (Photo courtesy of MAJ Alexander E. Hernandez)

Photo 9

SPC Vincent Valadez, Paralegal, 307th Division Engineer Battalion, pulls security in a freshly dug foxhole during Operation Panther Avalanche, Fort Bragg, NC. (Photo courtesy of MAJ Andrew E. Nist)

Photo 10

CPT David A. Estes, a judge advocate with U.S. Army Southern European Task Force, Africa, teaches a class on targeting principles to soldiers from the Tunisian Armed Forces during rule of law academics in Bouficha, Tunisia, during African Lion 25. The exercise brought together over forty nations, including seven NATO allies and 10,000 troops to conduct realistic, dynamic and collaborative training in an austere environment that intersects multiple geographic and functional combatant commands. (Credit: Tunisian Armed Forces)



From left to right: CPT Ian Barron, CPT Brenda Lin, CPT Jessica Hayashida, CPT Lauren Carlile, and PVT2 Brian Nyborg at their Airborne School graduation at Fort Benning, GA. (Photo courtesy of author)

Pivotal Perspective

Prosecutor or Paratrooper?

By Captain Brenda Lin

“What do you want to be?”
 “Airborne!”
 “What do you truly want to be?”
 “Super, duper Paratrooper!”
 “What are you right now?”
 “Dirty, nasty leg.”¹

You learn this call and response on day one of the Army’s Airborne School. As I drove seven and a half hours from Fort Bragg, North Carolina, to Fort Benning, Georgia, I resolved to document my experiences and reflect upon the differences between those of Airborne School to those as a first-term trial counsel.

I have always wanted to try skydiving. I will try anything once. I told myself, “Well,

if the Army will let me go for free, I might as well go through the Army.” It was not always something I felt compelled to pursue, but I was grateful when presented with the opportunity. I could say the same for becoming a trial counsel and going to trial. I never thought of myself as a litigator, but I knew that if given the opportunity, I would make the most of it. The nerves surrounding jumping out of an airplane must be on par with those that come with going to trial; getting yelled at by the cadre must feel a lot like being admonished by a judge; and training in the 95-degree Georgia heat can’t be that different than enduring the the marathon of sleepless nights and long days in court, right?

I was excited. I had patiently waited almost two and a half years at XVIII Airborne Corps to go to Airborne School. Once I finally got my slot, I had little time to react. I was due to report to the school in three days. This quick turnaround is similar to when our Trial Defense Service teammates file a late-notice motion, sometimes just days before trial, and you spend what little time you have left to prepare for trial focused on the motions. I spent those three days haphazardly packing, finding and preparing coverage for all my work, and settling my affairs.²

You might think that after nine years in the Army I would know what to expect at Airborne School, but I did not. Some colleagues sent encouraging texts, comparing it to a three-week-long vacation. Others advised me to keep my feet and knees together. Like a trial, you do everything possible to get ready, but nothing will prepare you for how your body will respond as you fling yourself out of a door in the sky.

We spent the first day outdoors learning about harnesses, then wearing them, learning how to walk on an aircraft, and then jumping out of mock aircraft doors on the ground. We wore our advanced combat helmets (ACHs) and ran from the company footprint

to the training area, which at times required all-out sprints. We sprinted to the training areas right after breakfast and lunch. The cadre ridiculed those who fell out during the 400-meter sprint. At the end of day one, my appreciation for full-time paratroopers deepened, and I felt grateful for my day job. I slapped some BioFreeze on my calves and went to bed early.

On day two, we jumped out of thirty-four-foot towers and applied what we learned the previous day. We learned to trust the cadre because our lives were in their hands. I spent the morning on a detail assisting other students with their harnesses. I spoke with all types of Soldiers: a noncommissioned officer (NCO) who played a mini tuba in the 282d Army Band at Fort Jackson, a motivated private who had to jump a dozen times because he made a mistake every try, and a trauma surgeon who needed to get stitches after one of his jumps. The surgeon was okay! After a few hours' absence, he was back to training to finish jumping out of the towers.

At the end of day two, spirits were high. As trial counsel, we often encounter Soldiers during some of the most difficult moments of their careers. I did not realize how much that perspective weighed on me until I had the opportunity to meet some of my classmates at Airborne School. Everyone volunteered to be there, and some had waited years to be there. One NCO told me that Airborne School was his school of choice for winning NCO of the Year. I also developed a tremendous respect for the cadre running the school. There is something to be said about a handful of staff sergeants training 400 students through the towers, grading, and ensuring each student jumps at least five times satisfactorily.

The rest of week one consisted of learning how to perform a proper parachute landing fall (PLF) from a stationary position, a standing position, from two- to four-foot walls, and finally from a moving apparatus. This type of training took a deliberate, structured approach, employing a crawl-walk-run method.

Week two consisted of mass jumps out of the towers again and using the improved swing-landing trainer (ISLT). The ISLT was intimidating, and I sustained my first injury when the risers slipped out of my hands so quickly they tore the skin off. The cadre

were generous and put a Band-Aid on my finger. There are certainly fewer injuries in a courtroom, and they are mostly metaphorical and only to my ego and pride.

During jump week, week three, we spent hours in the harness shed with our main parachute (thirty-eight pounds) and reserve parachute (fifteen pounds) while waiting for our turn to jump out of a C-130. When the moment came, I shuffled to the ramp of the plane. I was parched because once we were rigged up and checked by a jumpmaster, we couldn't use the latrines. Luckily, adrenaline kicked in once we began boarding the plane. The C-130 took off, and within a few minutes, we were already over the drop zone. We jumped out consecutively in groups of fifteen before the plane turned around for another pass.

By now, we had practiced jumping out of mock doors for two weeks. I heard the prefatory commands: "Ten minutes," "Get ready," "Hook up," "Check equipment," "Sound off for equipment check," "One minute," "Thirty seconds," "Standby," and "Go." This time, I could barely make out the commands over the sound of the wind rushing from the open aircraft door and the noise from the aircraft. Even so, I knew it was coming.

I saw one after another of my classmates hand their static line to the jumpmaster and jump out of the door, and I knew my turn was quickly approaching. I repeated the correct body position for a proper exit in my head: chin tucked, elbows tight to the body, eyes on the horizon, feet and knees together, and a good up six inches, out thirty-six inches exit from the aircraft. All of the reps, gear, and training felt worthwhile as my body knew what to do and I landed safely on the ground.

Looking back, the entire two weeks leading up to jump week focused on training two key skills: proper exit from an aircraft and proper landing fall. If you drill these two things enough, you significantly reduce the risk of severe injury. Many paratroopers may go their entire careers without needing to exercise the more advanced techniques, which require reacting when collisions, entanglements, or malfunctions occur while in the air. However, the actions to take are all textbook and do not change.



Soldiers train on the tower during their second week of Airborne School. (Credit: SGT Danielle Hendrix)

Ultimately, trial and jumping out of planes are different experiences, connected perhaps by the surge of adrenaline. While the physical and mental demands of trial and Airborne School differ, judge advocates in Airborne units just might get the unique opportunity to experience both. Whether airborne or in the courtroom, I've learned that success relies on trusting the process, making the most of the opportunity presented, and ensuring you are prepared when it's your turn to "go." **TAL**

CPT Lin is the Brigade Judge Advocate for the 38th Air Defense Artillery Brigade at Sagami General Depot, Japan.

Notes

1. For extra effect, the cadre instructed the students to look down at their boots when they said "dirty, nasty leg" and to sound unmotivated.
2. This primarily meant finding someone to care for my dog for three weeks.



CPT Rozema competes on the U.S. Army Warrior Fitness Team at Wodapalooza in Miami, FL. (Photo courtesy of U.S. Army Warrior Fitness)

The obstacle in the path becomes the path.¹

Captain (CPT) Jack Rozema's story is one of hard work, discipline, and perseverance. In 2024, Jack qualified for the CrossFit² Games—an annual competition where elite athletes from around the planet compete in a series of high-intensity workouts to determine the “Fittest on Earth.”³ Despite a somber atmosphere following the tragic loss of a fellow competitor on the first day, Jack completed all events and secured an impressive twenty-fifth place overall.⁴ Just a year later, Jack placed eighteenth at the 2025 Games in Albany, New York.

Jack is not just a rising international star in the sport of CrossFit, but also an accomplished attorney and active-duty Army officer. As a contract and fiscal law attorney at the U.S. Army Recruiting Command at Fort Knox, Kentucky, Jack balances his passion for fitness and a demanding career with raising two young daughters with his wife. In this Q&A, we explore his journey as a father, judge advocate (JA), and professional athlete and share some of Jack's insights and strategies for resiliency.⁵

Q: What was your upbringing like and how did it shape the person you are today?

A: My parents raised my brother and me to value hard work and determination. My family had a blue-collar background, and my parents made sure we knew that no job was beneath us. They set high expectations for us in school and sports, and pushed us to excel, but never made our worth dependent on success. Their example now guides my own approach to parenting.

Q: What is your athletic background?

A: Growing up, I competed in football, baseball, soccer, and wrestling. When I was about eleven, my dad, brother, and I started weight training in our basement. My dad not only taught us about physical techniques, but also the mental toughness that weight training demanded. From an early age, I really loved competing and hated losing.

What's It Like?

A Q&A with Captain Jack T. Rozema

By Major Daniel D. Ray and Major Joseph A. Deflorio



CPT Rozema (left) wrestling for Ohio State University. (Photo courtesy of MAJ Daniel D. Ray)

I continued playing sports through high school before focusing on wrestling after arriving at Ohio State University (OSU).

Q: Did you have any specific athletic goals in high school? Did you aspire to play sports at a collegiate or professional level?

A: Yes. In high school, I wanted to make the state playoffs in football and become a state champion in wrestling. I didn't meet these goals. Additionally, I wanted to play quarterback at West Point, but I ultimately didn't get accepted.

Q: Can you describe what it was like not getting accepted to West Point? How did you handle that situation?

A: I was incredibly distraught when I did not get accepted to West Point. I had put all my eggs in that basket, and the application process is long and complex. I felt like a failure for not reaching the one thing I worked so hard to attain. However, within the same week of getting that denial letter, I was asked to "walk on" to the OSU wrestling team and was accepted to the school. I did not have an athletic scholarship, but I managed to obtain an Army Reserve Officers' Training Corps

(ROTC) scholarship.

Q: What was wrestling at OSU like, and how did it shape your college experience?

A: Wrestling was tough and became a galvanizing experience. I was a seventeen-year-old kid who had never really left Michigan, and I immediately found myself competing against some of the best wrestlers in the world. Big Ten wrestling is really the pinnacle of the sport in America. In short, it was sink or swim. Those five years taught me what an elite-level effort looked like. I learned the importance of curiosity, resilience, emotional and mental toughness, and I became coachable.

Q: Did you encounter any obstacles when wrestling at OSU? What were they and how did you respond?

A: During my freshman year, I fractured my orbital bone and cheekbone after taking a knee to the face in practice. I needed surgery and ended up with a small titanium plate and three screws in my face. This was bad timing because the redshirt year is critical for development, especially for walk-ons. Also, just the level of competition on the team

was an obstacle. You practically had to be an All-American to start on the team. My learned response to these challenges was just to control what you can, focus on small wins, and approach every day with gratitude.

Q: After earning your undergraduate degree at OSU, you went directly to law school. What made you decide to pursue the law?

A: I wanted to become a professional in something and was not interested in the medical route. The more I researched what lawyers do I thought, "I could do that well," and "I bet that would be pretty fun." It also seemed challenging and a career that would help me grow into a better, smarter, and tougher person.

Q: How, if at all, did your athletic background and experiences shape your law school experience?

A: Law school requires work ethic above anything else. It is a lot of reading, studying, writing, reassessing, and trying again. I think the values instilled in me by my upbringing assisted me in getting accepted to a good law school and doing well enough to pass the bar exam.

Q: What drove you to start your legal career in the U.S. Army as a JA?

A: The Judge Advocate General's Corps offered a unique experience. The idea of working in many different practice areas, advising on things like the law of armed conflict, and still being a Soldier appealed to me. Also, I felt called to serve as an Army officer. If I hadn't been picked up for law school and the Educational Delay Program, I planned to pursue the special operations route as the required physical demands seemed to align with my personal goals.

Q: How have the skills you have developed through your athletic pursuits aided you as a Soldier and attorney?

A: In my experience, the toughness, resilience, and consistency that come from high-level competition are applicable to the mental and physical challenges facing Army officers. I regularly draw upon my past



CPT Rozema outside The Ohio State Michael E. Moritz College of Law in Columbus, OH. (Photo courtesy of MAJ Daniel D. Ray)

experiences and the lessons I've accumulated over the years when operating as an attorney and leader. This enables me to positively influence and help my teammates.

Q: How did you get into CrossFit, and how long have you been doing it?

A: In 2017, I decided to do the CrossFit Open just for fun after watching the Games on ESPN in 2016. In 2018, when I officially finished with OSU wrestling, I began training more consistently and competing.

Q: What initially drew you to CrossFit, and how has the sport influenced your personal and professional life?

A: I liked the intensity, variety, and complexity it takes to master every skill. This mastery is never entirely possible, so it's always a journey of improvement. I carry this mindset

of "I can always get better at something" into my personal and professional life.

Q: How would you describe CrossFit for someone unfamiliar with the sport?

A: CrossFit consists of constantly varied functional movements performed at a relatively high intensity and across broad time and modal domains. The founder of CrossFit, Greg Glassman, concisely describes it in his "Fitness in 100 Words," which resonates with me.⁶ In short, improving in CrossFit requires you to take a holistic approach to training and lifestyle.

Q: What is one of your favorite CrossFit workouts?

A: My favorite CrossFit workout is probably Linda⁷ because it's 1) all barbell, and 2) based on the athlete's bodyweight.

Q: Given the physical and mental demands of CrossFit, how do you mentally prepare for competitions and grueling workouts?

A: Confidence comes through preparation and repetition. Both recent training and lifelong experiences can improve these. Knowing your "why" and how you define success, and then constantly repeating it to yourself. For me, I don't want to look back and see a bunch of stuff that I could have done better.

Q: Take us through a typical week of training in the lead-up to a competition. What are some of your workouts and your typical nutrition plan?

A: A week of intense training is typically two to three sessions per day for five days of the week, with an active recovery day in between there somewhere. Always a mixture of strength, longer cardio, skill work, etc. Whatever the goal of that week/cycle or current weaknesses are, the intent is to perform the absolute best at the upcoming competition. I try to keep nutrition simple, and I've improved it through trial and error. Hitting macronutrient goals and making sure I'm fueling with enough carbs on both ends of sessions are just the main themes. This is something that can vary greatly depending on the individual.

Q: Is there a difference between an average training week and an ideal training week for you? How would you compare these two?

A: There are certainly periods where training seems more "average" than "ideal," such as a deload week, more intense work commitments, or family events, travel, etc. So an "ideal" training week would just be hitting every single piece of programming, sandwiched with a proper warm-up and cool-down, and good sleep. This happens much less often than I'd like, but it's something I'm always striving for.

Q: In addition to training and working as a JA, you are also a father and husband. How do you maintain consistency in your training amid the challenges of a demanding profession and family life?

A: With respect to my family, I just want to be the best example for my daughters. This includes having grit and a competitive spirit, but also just being healthy. I want both of my girls to enjoy fitness because it's a culture they've always been around. I also want them to experience the mental, physical, and spiritual benefits that come from being a fit person.

I think there are a lot of factors that go into this idea of "balancing" areas of life. First, understanding that we must become experts at time management. If something is important to you, you'll make time for it. If it's not, you'll make an excuse. If you've loaded your plate with too many things to effectuate this, you must do an honest assessment about what to cut out and why.

Second, accepting that with some things, there can be "seasons" of intensity or imbalance. An example is the CrossFit season peaking in August with the Games. My family now knows that roughly April to July is probably a time when the training will ramp up and the days will seem less "balanced." The offseason is a time for rest and emphasis on other areas of life. We will reassess this yearly and determine if we're all happy and satisfied with the way things are going. Many successful people who are experts in their craft will say there is no such thing as true "balance."

Third, understanding the importance of good communication. I try to communicate with my wife as much as possible about the above and have honest discussions about how it's going.

As it relates to work, I have a similar approach—it comes down to prioritizing and executing to the best of your ability. Understanding that some seasons aren't going to have "balance." Having a great team and support system that you communicate with is also important.

Q: What role has your family played in supporting your career and personal ambitions?

A: I owe a ton to my parents for raising me the right way with good values. Currently, my wife is the foundation of our family, and I couldn't achieve anything without her support and the teamwork we've developed between us.

Q: What lessons from your athletic and military experiences do you aim to pass on to



The Rozema family. (Photo courtesy of CPT Jack T. Rozema)

your daughters?

A: Get used to doing hard things and treat discipline as a craft that you're perfecting. Enjoy the process, but begin with the end in mind. Be super open-minded and curious. Be tough-minded but tenderhearted. Surround yourself with people who know what you want to know and have experienced what you want to experience. Be humble because you will never know everything. Do the little things well. Win the morning, win the day . . . win the days with consistency, win the game of life. Reaching your fullest potential is a

duty. It's your assignment. And it's almost always beyond the edge of your current capacity and comfort level.

Q: With respect to lessons for members of our Corps, what advice would you give to others in the Corps on how to optimize their own fitness goals and excel on the Army Fitness Test (AFT)?

A: If you can, invest in a trainer or join a functional fitness gym. Otherwise, find a sport or physical activity that gets you excited and commit to it.

Q: What about recovery? Are there specific methods that you recommend or utilize?

A: Sleep is very important. For me, at a minimum, even with other things going on, I shoot for seven or more hours of sleep. When training volume is high, I go for as much sleep as humanly possible. Even with my limited knowledge and research, it's clear there is nothing more important to overall performance, or nothing that makes me feel "better" than getting enough sleep. If you're someone who sacrifices sleep to "do more" (i.e., getting approximately four to six hours so that you can "get up earlier"), I think you're stepping over dollars to pick up pennies. If possible, don't do this.

Other methods of recovery I find helpful include hot and cold therapies. Think sauna and ice baths. Another big one is mobility, and it's important to try to incorporate daily mobility/stretching for at least ten to twenty minutes. For this last point, if you watch TV in the evenings, you could sit on the floor and stretch for a bit while doing so. This can also help you relax and improve your sleep.

Q: If you had to recommend one exercise to someone, what would it be and why?

A: The deadlift. It's simple but also arguably the most "full-body" movement, and it trains the entire posterior chain, which happens to be heavily utilized during three of the five AFT events (the deadlift, the sprint-drag-carry, and the run). The deadlift also includes grip strength, which has been shown to be proportional to longevity in life. If you learn to deadlift with proper form—utilizing alignment, intra-abdominal pressure, and tension—and train the deadlift once per week, you can develop significant strength over time.

Q: From a nutritional standpoint, is there anything particular you focus on?

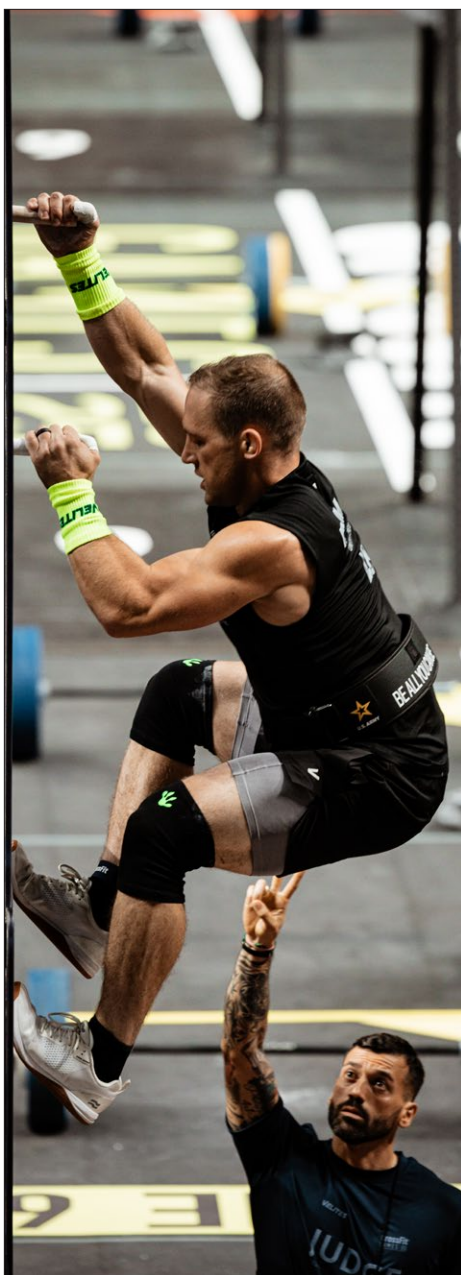
A: Anyone looking to improve fitness or body composition would do well to improve their nutrition. Practicing good habits over time enabled me to find and maintain an ideal competition weight. I then was able to determine the proper macronutrients to feel good while not carrying unnecessary fat. This



CPT Rozema participating in a CrossFit competition. (Photo courtesy of MAJ Daniel D. Ray)

can vary greatly based on genetics, body type, and performance goals. For me, each day I aim for my bodyweight in grams of protein, twice my bodyweight in grams of carbs (simple carbs immediately before and after training), and keeping fats under half my bodyweight in grams. Again, this is based on specific, high-level

CrossFit training, but can be generally applicable. If someone claims they "don't know where to start": do the above and then cut out alcohol, cut out caffeine after 1400, sleep seven to eight hours (or more), and drink half your bodyweight in ounces of water a day. Do this consistently, and the benefits will show up.



CPT Rozema participating in a CrossFit competition. (Photo courtesy of MAJ Daniel D. Ray)

Q: How do you work through and recover from injuries?

A: I've had some bad knee sprains, which I was able to overcome with rehabilitation, isometric strength accessories, and time. I'll also note that having a smart, strategic approach to strength training is a good prevention tool for most people. Listen to your body. In my view, obtaining sufficient sleep—typically seven to eight hours per night—plays a crucial role in promoting recovery and balancing hormones.

Q: What personal values guide your approach to life, especially as you juggle multiple demanding roles?

A: Personally, concepts such as consistent gratitude, humility, generosity, and discipline. I choose these because I'm extremely blessed with the gifts I've been given and feel a sense of duty to be a good steward of these things as a result. Additionally, CrossFit Mayhem (a well-known CrossFit gym that I train under) notes its core values as faith, family, fitness, and service. I have adopted these values as guideposts for making decisions and pursuing goals.

Q: What motivates you to maintain such a high level of performance across multiple disciplines?

A: Again, for me, it starts with my faith. I believe we're called to fulfill our God-given purpose and work heartily at whatever we're doing, so that we can be useful as salt and light to the world. And then it's a lot of things: inspiration from others, a competitive spirit, and the satisfaction that comes from doing and overcoming difficult things. Internally, we all want to be fulfilled and joyful, so I'm just consistently trying to chase that and be an example for my kids and others.

Q: What is an important lesson you have learned through your experiences as a CrossFit competitor and JA?

A: Failure is not an obstacle to avoid. Failure is the path you must take. Learning to embrace failure and fail better enables rapid growth and self-development. I firmly believe this to be true in physical and mental pursuits. **TAL**

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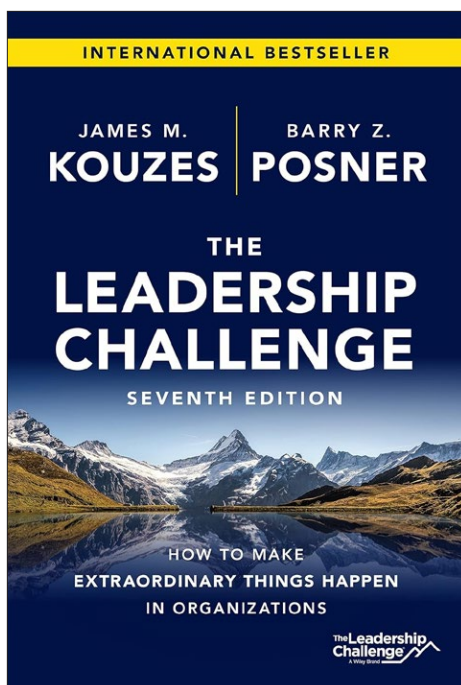
MAJ Ray is the Deputy Chief for the Trial Counsel Assistance Program with the U.S. Army Office of Special Trial Counsel at Fort Belvoir, Virginia.

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Attorney with the U.S. Army Recruiting Division at Fort Knox, Kentucky.

Notes

1. RYAN HOLIDAY, *THE OBSTACLE IS THE WAY: THE TIMELESS ART OF TURNING TRIALS INTO TRIUMPH* 7 (2014).
2. The views presented in this article are personal in nature and do not affirmatively or impliedly constitute any Department of War (DoW) official endorsement of CrossFit, CrossFit Games, CrossFit Open, CrossFit Mayhem, or any of its affiliates. See U.S. DEP'T OF DEF., JOINT ETHICS REGULATION para. 2-508(b) (15 May 2024).
3. CROSSFIT GAMES 2026, <https://games.crossfit.com> [<https://perma.cc/8XAJ-N8CM>] (last visited Sep. 30, 2025).
4. During the 2024 CrossFit Games, one of Jack's fellow competitors tragically drowned during the first event, which consisted of a 3.5 mile run followed by a half-mile swim. See Sean Leahy, *CrossFit Games Athlete Lazar Đukić Drowns During Swim Event in Fort Worth*, YAHOO! SPORTS (Aug. 9, 2024), <https://sports.yahoo.com/crossfit-games-athlete-lazar-%C4%91ukic-drowns-during-swim-event-in-fort-worth-183206259.html> [<https://perma.cc/GS27-72LF>].
5. Army Doctrine Publication 6-22 defines resiliency as "the product of work-life balance, effective time management, family and peer support systems, along with access to executive health programs and education about stressors." U.S. DEP'T OF ARMY, DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION para. 10-26 (31 July 2019) (C2, 6 Feb. 2025).
6. Greg Glassman, *What Is Fitness?*, CROSSFIT J., Oct. 2002, at 1.
7. Linda consists of ten rounds, for time, where the athlete performs the deadlift at 1.5 times bodyweight, bench press at bodyweight, and squat cleans at 3/4 bodyweight with the following repetitions: 10-9-8-7-6-5-4-3-2-1. While a good time for a novice is 28 minutes, any time under 13 minutes is considered elite. Jack's best time is 12 minutes, 45 seconds utilizing 315 pounds on the deadlift, 210 pounds on the bench press, and 165 pounds on the squat clean.



Book Review

A Challenge Accepted A Review of *The Leadership Challenge*, Seventh Edition

By Major Daniel J. Kator

Exemplary leaders focus more on others than on themselves. Success in leadership, work, and life is—and has always been—a function of how well people work and play together. Success

in leading is wholly dependent upon the capacity to build and sustain positive relationships. Any discussion of leadership must attend to the dynamics of this bond. Strategies, tactics, skills, and practices are empty without understanding the fundamental human aspirations that connect leaders and constituents.¹

The Leadership Challenge, the seventh edition of the book co-authored by James Kouzes and Barry Posner, gives the reader a framework for team leadership in the environment of today's public and private sector workplaces. Although not specifically targeted toward a military audience nor dedicated to leadership of and within military organizations, *The Leadership Challenge* provides military readers with a practical and user-friendly series of tools to use regardless of the type of unit to which they are assigned or the role in which they serve. The authors establish a system using "The Five Practices of Exemplary Leadership" and "The Ten Commitments of Exemplary Leadership"² that, with practice, can effectively be implemented in the leadership and management of a military team, particularly within offices of the staff judge advocate (OSJAs) and their practice divisions. As the Army "shift[s] from simply 'distributing personnel' to more deliberately managing the talents" of its personnel,³ the lessons the reader can learn from *The Leadership Challenge* will be ever more important in building cohesive teams, developing subordinates, and leading in complex environments and challenging scenarios.

Summary

The Leadership Challenge is not simply a how-to guide on leadership. Rather, the authors build on over thirty years of insights gained from their collection of over 5,000 "Personal Best Leadership questionnaire" surveys, "hundreds of in-depth interviews," "case studies," and "the Leadership Practices Inventory (LPI)," ultimately resulting in "a database that currently includes over 4.6 million people from more than 120 different countries."⁴ This data-driven approach, combined with anecdotes from leaders in the public and private sectors, allows the authors to illustrate leadership best practices for the reader in a concise and

easily digestible format. The breakdown of information by chapter and the plethora of relatable anecdotes allow the reader to relate to the information and apply it to their own leadership experiences. While, with few exceptions, the anecdotes and vignettes the authors describe do not specifically apply to leadership in either the legal field or within military service, military leaders and, in particular, judge advocates (JAs), stand to learn and benefit from reading *The Leadership Challenge* and putting its lessons to use.

Kouzes and Posner organized the book in a way to keep the reader engaged, with stories about leaders in various fields interspersed with quotes, charts, and bullet-point-style lists. The book is structured in twelve chapters, ten of which are based on the "Ten Commitments of Exemplary Leadership," with two commitments belonging to each of the "Five Practices of Exemplary Leadership."⁵ Each chapter focuses on and is named after one of the commitments, allowing the reader to tie the lessons in each chapter back to the practices and commitments.

"Model the Way"⁶

In the first practice, the authors emphasize the importance of understanding one's own values and beliefs and establishing a shared understanding of those values throughout the organization by leading by example. One method of establishing values in an organization that the authors discuss is the use of a leadership philosophy.⁷ The authors demonstrate that, based on data collected from their surveying, subordinates are far more likely to describe their supervisor as effective when the supervisor is clear about their leadership philosophy.⁸ The authors use an effective anecdote involving General H. Norman Schwarzkopf to demonstrate the importance of not only establishing values in an organization, but also setting the examples for others through one's own actions.

The authors tell the story of a commander who leads his unit on a five-mile run at a fast pace during the morning's physical training (PT), only to have multiple Soldiers fall out after failing to keep up.⁹ General Schwarzkopf takes this as an opportunity to discuss the importance of unit cohesion, one of his values, with the commander and how even something as simple as morning PT can

be used to reinforce it.

While many leaders might have passed up this chance encounter—after all, the morning run was mainly for exercise—Schwarzkopf recognized it as an opportune moment for the captain and the Soldiers to learn an important lesson about group cohesion. All that was required was his clarity of belief and understanding that he needed to be alert to opportunities for teaching

find strength by identifying and focusing on what sets them apart from other similarly situated individuals and organizations. They describe how employees at a call center who understood the *why* of their job as helping customers solve problems, as opposed to focusing on merely answering calls and trying to handle issues as quickly as possible, were able to better understand their mission and feel a better sense of connection to their

regional managers for coffee chains), any reader, regardless of what organization they lead, can take the lesson about innovation and creative thinking and apply it to themselves and their team. This illustrates Kouzes's and Posner's ability to speak to each reader, regardless of background, and convey their message.

Although not specifically targeted toward a military audience nor dedicated to leadership of and within military organizations, *The Leadership Challenge* provides military readers with a practical and user-friendly series of tools to use regardless of the type of unit to which they are assigned or the role in which they serve.

people about the importance of affirming shared values.¹⁰

In this section, the authors also discuss the importance of addressing serious issues as they arise and using them to help further entrench the leader's values in the organization. The authors argue that "[c]ritical incidents create important teachable moments. They offer leaders the occasion in real-time to demonstrate what's valued and what's not."¹¹ In articulating this point, the authors provide the reader with an important takeaway: sometimes the best way to demonstrate one's values and impart those same values to other members of an organization is to respond to a crisis or unscheduled occurrence and put those values on full display.

***"Inspire a Shared Vision"*¹²**

With the second practice, the authors touch on the importance of meaning and purpose within one's work and how leaders can capitalize on these to build better teams and accomplish their goals. In a process reminiscent of the concepts described by author Simon Sinek in his works *Start With Why*¹³ and *Finding Your Why*,¹⁴ Kouzes and Posner emphasize how leaders and teams can

team.¹⁵ Here, as with other places throughout the book, the authors rely on their own studies, as well as social science research conducted by other individuals in the field.

***"Challenge the Process"*¹⁶**

The authors write that "[c]hange is the work of leaders. In today's world, business-as-usual thinking is unacceptable, and exemplary leaders know that they must transform the way things are done."¹⁷ In this section, the authors describe how leaders must take the initiative and, at times, think outside the box to create innovative solutions to complex problems. They use the example of Starbucks developing the Frappuccino.¹⁸ Starbucks did not offer any frozen drinks, and one manager noticed that customers were going to her competitors to buy similar products.¹⁹ Despite Starbucks headquarters denying the manager's requests to offer a similar product, the manager went out on her own to resource and develop the Frappuccino, which the authors note "became the most successful launch in company history."²⁰

Although the anecdote the authors chose to use does not relate specifically to most readers' professions (few, if any, are

***"Enable Others to Act"*²¹**

The fourth section of the book focuses primarily on relationships. The authors emphasize the importance of collaboration and of empowering and developing others. A notable point from this section is that 77 percent of subordinates "strongly agree they are proud to tell others they work in their organization" when their leader very frequently or almost always gives people a great deal of freedom and choice in deciding how to do their work.²² Similar to the Army's concept of mission command, the authors describe how entrusting subordinates to get the job done and giving them the freedom to do it can result in optimal results.²³

***"Encourage the Heart"*²⁴**

In the final section of *The Leadership Challenge*, Kouzes and Posner describe the value of recognizing individuals for their work and building team cohesion. The authors note that "individual recognition increases the recipient's sense of worth and improves performance" and that "[public] celebrations also have this effect, and they add other lasting benefits for individuals that private individual recognition can't accomplish."²⁵ JAs will be familiar with this idea, conceptually, as award ceremonies and unit functions where individuals are recognized are the sort of public celebration Kouzes and Posner describe. In this final section, the authors focus on the importance of showing others that their leaders care about them and are personally invested in them and in their success.²⁶

Lessons from *The Leadership Challenge* for JAs

The Leadership Challenge is a good addition to any JA's professional reading list. The authors summarize many aspects of team leadership that can be applicable to organizations throughout the Judge Advocate General's Corps. In particular,

the authors' use of data acquired through years of their own research, combined with short anecdotes, allows the reader to see that the authors' claims are not just their own musings on leadership; rather, they are solid practices backed by real experiences from leaders and teams across a wide array of employment areas. Each chapter of *The Leadership Challenge* ends with a recap in the form of bullet points that could, should the reader wish, be used as a quick summary of the covered material and could make the book a useful addition to monthly leadership development program training. While the leaders' experiences, challenges, successes, and failures detailed in *The Leadership Challenge* are not analogous to those JAs and other military leaders will experience in the day-to-day leadership challenges presented in military service, commonalities can be applied and learned from regardless of the differences.

In particular, the authors discuss the importance of teams having and understanding their common purpose in their work.²⁷ They noted that one leader "found that there was 'immense value in creating meaning to the work that is being asked of people.'"²⁸ This lesson is arguably one of the most important for JAs to take away from *The Leadership Challenge*. The work that JAs do every day can be tedious and, at times, mundane. It requires extreme attention to detail and the ability to respond to last-minute changes. Understanding the *why* and the true *meaning* behind what is asked of JAs (to get justice for the victim, to ensure the company commander is able to do her job, etc.) is of immense value and may result in an increased sense of satisfaction and value with one's duties.

The authors of *The Leadership Challenge* also acknowledge that anyone can improve their abilities as a leader with the proper mindset.²⁹ They write that "[l]earning about leadership is not the same as leading. Deciding to be an exemplary leader is not the same as being one. Leading is doing, and you have to *do* leadership to be a leader."³⁰ They state that the starting point is making "leadership development a daily habit."³¹ JAs should take this to heart. Although they may not be assigned to what once may have been termed a "green tab" position, and they may not lead anyone but themselves, JAs can take

lessons from *The Leadership Challenge* and incorporate them into their own personal leadership development program, even if they are not in a position to lead others. Moreover, they can find or create learning opportunities from small tasks. The authors provide examples such as "facilitat[ing] a meeting, or lead[ing] a special task force, or present[ing] an important proposal, or chair[ing] a professional association conference."³² In an OSJA, this may be as simple as planning and leading PT one morning, running the Monday morning sync meeting, or planning a social event. The authors of *The Leadership Challenge* show that individuals seeking to improve their own leadership abilities should seek out these opportunities and, if none are available, make them.

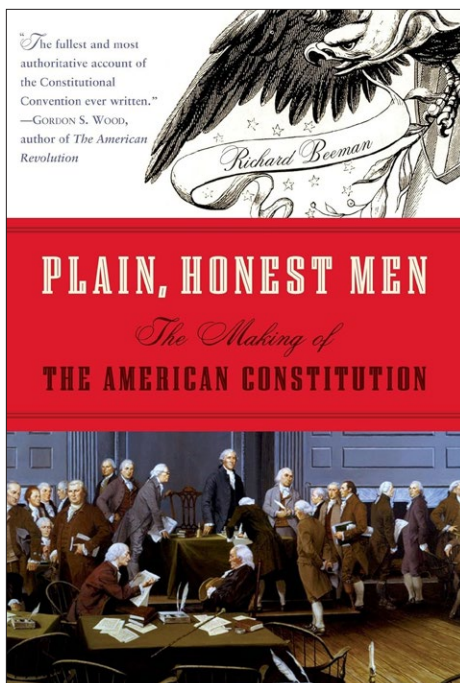
The Leadership Challenge does not contain all the answers for JAs or any other leaders to instantly become better leaders for their teams. However, it is a good starting point for discussions about leadership and further development as individual leaders and as teams. In addition to anecdotes from their own research, the authors cite numerous additional sources.³³ In doing so, they provide the reader with additional resources to develop themselves and others. This, in addition to the authors' own work, is invaluable. Ultimately, *The Leadership Challenge* is a stepping stone for JAs and other leaders who wish to better themselves to better lead and serve others. It offers a concise guide to team leadership with techniques backed by the authors' own research and by others' successes and failures. It is a worthy addition to any leader's bookshelf. **TAL**

MAJ Kator is the Chief of Military Justice for Combined Arms Support Command and Fort Lee at Fort Lee, Virginia.

Notes

1. JAMES M. KOUZES & BARRY Z. POSNER, *THE LEADERSHIP CHALLENGE: HOW TO MAKE EXTRAORDINARY THINGS HAPPEN IN ORGANIZATIONS* 19 (7th ed. 2023).
2. *Id.* at 13.
3. ARMY TALENT INNOVATION DIV., <https://talent.army.mil> [<https://perma.cc/J6SP-PBN7>] (last visited Sep. 30, 2025).
4. KOUZES AND POSNER, *supra* note 1, at 2–3.
5. *Id.* at 14.
6. *Id.* at 29.
7. *See id.* at 35.

8. *See id.* at 36, tbl. 2.1.
9. *See id.* at 73–74.
10. *Id.* at 74.
11. *Id.* at 76.
12. *Id.* at 85.
13. *See generally* SIMON SINEK, *START WITH WHY: HOW GREAT LEADERS INSPIRE EVERYONE TO TAKE ACTION* (2009) (describing how some organizations' success can be attributed to, in part, their unique culture, which sets them apart from competitors in the same field).
14. *See generally* SIMON SINEK, *FIND YOUR WHY: A PRACTICAL GUIDE FOR DISCOVERING PURPOSE FOR YOU AND YOUR TEAM* (2017) (describing the process by which individuals and organizations can identify their "why" or shared organizational purpose).
15. *See* KOUZES & POSNER, *supra* note 1, at 116–18.
16. *Id.* at 137.
17. *Id.* at 141.
18. *See id.* at 146.
19. *Id.*
20. *Id.* at 147 (citing H. SCHULTZ & D.J. YANG, *POUR YOUR HEART INTO IT* 205–10 (2019)).
21. *Id.* at 19.
22. *Id.* at 227 fig. 9.1.
23. *See* U.S. DEP'T OF ARMY, *DOCTRINE PUB. 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES* paras. 1-26 to 1-69 (31 July 2019).
24. KOUZES AND POSNER, *supra* note 1, at 247.
25. *Id.* at 280.
26. *Id.* at 290–91.
27. *See id.* at 101–06.
28. *Id.* at 106.
29. *See id.* at 313.
30. *Id.* at 322.
31. *Id.*
32. *Id.* at 316.
33. *See generally id.* at 325–66 (listing sources that the authors rely upon throughout the book).



Book Review

A Republic, If You Can Keep It¹

A Review of *Plain, Honest Men: The Making of the American Constitution*

By Major Michelle K. Lukomski

*It was one thing to declare independence. It was quite another to secure it.*²

On July 4th, I lay awake in bed hoping that the blasts of celebratory fireworks would not wake my two-month-old son. Fortunately, despite the enthusiasm and patriotism of my neighbors, he slept soundly. Exactly 237 years prior, George Washington was also trying to rest, though almost certainly less successfully than my son. He was enjoying a much-needed respite from the Constitutional Convention in Philadelphia, dining with friends and enjoying the festivities.³ However, the progress of the Convention, or lack thereof to that point, weighed heavily on his mind. Washington knew the magnitude of the Convention's undertaking, and though he remained dedicated to the cause, his optimism waned as the heat of summer and the obstinacy of the delegates steadily increased.

Plain, Honest Men: The Making of the American Constitution is an indispensable account of the Constitutional Convention, bringing illuminating detail to what was truly a second revolution. By presenting the Founding Fathers as characters⁴ in an epic saga, and exploring their personal and professional motivations, Richard Beeman creates a narrative that is both factually complete and refreshingly honest. The delegates were brilliant, yet flawed men.⁵ They established what is largely considered one of the greatest legal documents of all time, developing ideas of sovereignty that would underpin our democratic society and inspire governments around the world.⁶ And yet, they deliberately chose to consider an entire race as only three-fifths of a human.

Organized chronologically from the start of the Convention to the end, the author's incorporation of contemporary writings and the personal histories of the delegates creates a comprehensive and thoughtful picture of the momentous events of the Convention, as well as the era within which they took place. Readers looking for a deep analysis of theories of constitutional interpretation or conclusions about specific controversial clauses will be disappointed; the author chooses instead to focus on the process of creating a legal document that would turn thirteen

provincial states into a unified national government.⁷

The author's honest assessment of the delegates and thorough account of the Convention allow for legal professionals, historians, and all Americans to consider the Constitution in a new way and set this book apart from other writings on the Convention.⁸ By focusing on the motivations—economic, political, and moral—of the delegates as they navigated their daunting task, the author highlights qualities of leadership and selfless service, but also of immorality. In this way, the author gives the reader permission to simultaneously admire the intelligence and innovation of these plain, honest men and to acknowledge, but not excuse, their shortcomings.

E Pluribus Unum?

When a small group of Americans, including James Madison and Alexander Hamilton among others, resolved not just to amend the Articles of Confederation, but to start over entirely, they were embarking on a kind of “second revolution.”⁹ They were proposing to completely scrap what was effectively a treaty among thirteen sovereign territories and replace it with a truly federal government. Unsurprisingly, those thirteen sovereign territories were less than receptive for fear of losing the sovereignty that they had just fought an entire war to achieve.¹⁰

The nuances of sovereignty affected almost every debate at the Constitutional Convention. Delegates representing their states' interests wanted to know, “was this a government created by people acting in their capacity as citizens of the individual states, or was it created by people acting in their capacity as citizens of a new entity, a nation called the United States?”¹¹ In balancing the need for a centralized federal government with the preservation of states' rights, the delegates maintained that “a true constitution was and could only be created by a sovereign act of the people themselves.”¹² They were ultimately acknowledging a “third” sovereignty: the federal government would be a sovereign power, not just a “league” created by a treaty among states; the states would also be sovereign, maintaining significant political power; and the people would exercise their own version of sovereignty through popular ratification of the Constitution.¹³

But even as the Constitution began to truly take shape in September 1787, after months in the stifling heat of the Philadelphia State House,¹⁴ debate continued regarding the true source of sovereignty in the newly created democratic republic.¹⁵ Much of the balance of sovereignty and

regarding sovereignty, and its inevitable role in the Civil War, is impressive. As impressive is the fact that delegates not only debated these complex ideas in 1787 but also innovated on existing political philosophy and, in many ways, created new paradigms for how we understand sovereignty.²⁰ Sovereignty

viewed through a modern lens. The author's well-researched discussion of the sovereignty and representation debates includes a suggestion that conflict between the North and South was inevitable.²⁷ But the delegates seemed to have no such understanding. While it might seem that the

Many practitioners might be haunted by memories of constitutional law classes and see the Constitution as arcane, complex, and unwieldy in application to modern problems. The narrative nature of this book portrays the Constitution as the product of patriotic aspirations, dogged advocacy, and admirable compromise. In this way, it makes the Constitution more tangible to all readers and encourages them to experience the saga of its creation with intellectual scrutiny and even excitement.

political power was the product of extensive compromise and concessions. On one side of the debate were delegates who viewed the states as "districts of people comprising one political society," while on the other side, delegates "insisted on the states as distinct political societies."¹⁶ The latter group generally included delegates of Southern states who wanted to ensure they would be able to govern without federal interference, namely on the issue of slavery.¹⁷

William Paterson, a delegate of New Jersey, insisted that both concepts could exist simultaneously. He argued, with a somewhat ominous reference to military might, that "while the states did indeed 'exist as political societies,' and therefore deserved to be 'armed with some power of self-defence' [sic], it was equally the case that the people of the nation as a whole deserved to be recognized as an entity with power and legitimacy of their own."¹⁸ Here, Beeman notes the irony that failing to reach complete clarity on the issue of sovereignty, "with the cloud of slavery hovering on the far horizon," may have "contributed to the [Civil War] by distorting the sectional balance of power . . . and by allowing both sides of the war to portray their political claims to sovereignty as legitimate."¹⁹

The author's synthesis of complex ideas

underscores much of military law practice, from procedural limitations of criminal law to principles of the law of armed conflict.²¹ This book encourages military lawyers to appreciate where our modern concept of sovereignty began. It also invites readers to see how the conflict of state sovereignty with the newly created federal government was apparent from the outset and suggests that the sovereignty debates were a harbinger of constitutional crisis and secession of Southern states.²²

The Sins of the Fathers

"There are no moral heroes to be found in the story of slavery and the making of the American Constitution."²³ The controversial "three-fifths clause," declaring that enslaved persons would count as three-fifths of a free person for purposes of population and representation, was "fundamentally, about states' individual interests, not the morality of slavery."²⁴ What it truly amounted to was concern, from both Northerners and Southerners, about power.²⁵ Regardless, there was a marked "absence of a moral component to the delegates' infighting."²⁶

The paradox of a group of individuals creating a government where all men are equal while simultaneously allowing slavery to continue is confounding when

nation was at this point already careening towards a constitutional crisis and unprecedented bloodshed, the delegates did not see war on the horizon. Regrettably, the debates at this time were focused on property and power, rather than the morality of slavery.²⁸

The author masterfully addresses the failures of the Founding Fathers, demonstrating an ability to celebrate their brilliance while also not excusing their flaws. "If we should be reluctant to assign blame to particular individuals, we cannot avert our eyes from the magnitude of the evil sanctioned by the Founding Fathers."²⁹ Indeed, the author challenges the assertion of historian Jack Rakove that the three-fifths formula "was neither an explicit endorsement of a racial hierarchy nor a precursor to the militant proslavery ideology" that was to come, but rather a means to protect property rights.³⁰ Instead of accepting this explanation, one which mitigates the delegates' ethical culpability, the author looks for evidence of consideration of morality. He finds it from at least one delegate, Delaware's John Dickinson, who ponders in his private notebook, "what will be said of this new principle of founding a right to govern freemen on a power derived from slaves, . . . [who are] themselves incapable of governing yet giving to others what they have not?"³¹

The effectiveness of the book is in the author's ability to turn facts into a story, to create a cast of characters that the reader is invested in, and to weave a narrative of a true adventure. With any good adventure story, the reader is tempted to look for a hero and a villain. Within the context of slavery,

if there is a villain in this story it is the collective *indifference* of the Founding Fathers to the inhumanity of the institution to which they gave sanction. It was an indifference born both of their sense of innate superiority over African Americans and of their preoccupation with protecting *property rights*, even if that meant accommodating themselves to a "necessary evil."³²

This story's hero is harder to find. It is tempting, and often occurs in other writings on the Convention, to allow the fog of moral failure to overwhelm the success of the Founders.³³ Here, the author laments the deficiencies of the Founders, but tactfully recognizes the brilliance of the legal document they created. While he does not go as far as elevating any of the delegates to the status of hero, the product of their diligence and patriotism may be commended and celebrated despite their individual flaws.

Service Above Self

With the variety of personal, political, and moral motivations of the delegates, it is unsurprising that the Convention was a slow-moving slog, with progress snagged on the barbs of ego and obstinacy at almost every step. The interdependent nature of nearly every debate created a unique challenge because reaching any form of resolution on one issue almost always required the resolution of another.³⁴ In light of the resulting one step forward, two steps back kind of progress, it would have been easy for the delegates to succumb to the torpor, especially given the personalities of the individuals involved.

Indeed, as Benjamin Franklin observed, the delegates were a group with the "advantage of their joint wisdom," but also a group subject to "their prejudices, their passions, their errors of opinion, their local interests, and their selfish views."³⁵

Franklin's role in the Convention was more of a senior diplomatic advisor than a full participant.³⁶ He provides examples of selfless service and leadership that are the logical byproduct of a life of diplomacy. He acknowledged, "[T]he older I grow the more apt I am to doubt my own judgment and pay more respect to the judgment of others," and he implored his fellow delegates who still had objections to the Constitution at the Convention's end to "doubt a little of his own infallibility—and to make manifest our unanimity—by putting his name to this instrument."³⁷

Compromise and collaboration are necessary foundations of the deliberative process, and military leaders certainly understand how dissenting opinions can often result in innovative solutions.³⁸ This book details the dedication with which many of the delegates, namely James Madison, pursued their task, and in doing so, demonstrates how they put the success of their mission paramount to all else.³⁹

Perhaps inherent in this kind of selfless service is an understanding of, and humility regarding, one's role in the larger mission. This book provides a profile of George Washington during a unique time in his life—after his successful military leadership during the Revolutionary War and before he was elected as the first President of the United States. He is reserved, restrained even, because he is ever aware of the effect that his words and actions have on others.⁴⁰ Washington knew that he likely had more influence over the politics of the fledgling country than any other man, but as he explained to his friend General Henry Lee, "influence is not government."⁴¹

Military leaders and lawyers in almost all circumstances can glean an important lesson on emotional intelligence from Washington. His restraint allowed debates to proceed without the undue influence of his stature. He played the role of arbiter at times, but seldom offered his own opinion on a given issue.⁴² His true contribution was "not merely his prestige and gravitas, but, just as importantly, his calm and deliberative leadership."⁴³ Washington's self-awareness and steadfast belief in the endurance of republican liberty made him the leader that the Convention needed—not an abstract folk hero, but a responsible and resolute guide to realizing a "more perfect union."⁴⁴

Conclusion

For attorneys, especially those in the military, the Constitution is at the core of their practice. Certainly, the more attorneys appreciate its origins, the better they can interpret and apply it every day. Many practitioners might be haunted by memories of constitutional law classes and see the Constitution as arcane, complex, and unwieldy in application to modern problems. The narrative nature of this book portrays the Constitution as the product of patriotic aspirations, dogged advocacy, and admirable compromise. In this way, it makes the Constitution more tangible to all readers and encourages them to experience the saga of its creation with intellectual scrutiny and even excitement.

Today, most Americans likely do not associate Independence Day fireworks with George Washington's mental tempest and sleepless nights in 1787; my son was clearly unbothered by such a parallel as he slept peacefully. But if at some point in the future he should find himself looking to gain a deeper understanding of what a handful of imperfect, yet dedicated individuals are capable of, I would encourage him to look to the deeds of these plain, honest men and the revolutionary document they created. **TAL**

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Notes

1. RICHARD BEEMAN, PLAIN, HONEST MEN: THE MAKING OF THE AMERICAN CONSTITUTION 412 (2009) (quoting 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 85 (Max Ferrand ed., rev. ed., reprinted 1966) [hereinafter THE RECORDS]). Reportedly, at the close of the Convention, in response to being asked if the delegates had succeeded in creating a republic, Benjamin Franklin responded, "a republic, if you can keep it." *Id.*
2. BEEMAN, *supra* note 1, at 7.
3. *Id.* at 196.
4. *See id.* at xviii–xxii. The author even lists the principal actors of the Convention as "characters" and provides brief descriptions of each, reminiscent of cast biographies in a play. *See id.*
5. *See id.* at 423 (concluding that the Constitution is an "extraordinary document of the Founding Fathers," deserving of "veneration" but that it is imperfect and can be considered "just a step" in "securing the blessings of liberty promised by the Revolution of 1776").
6. *See, e.g.,* Jorge A. Vargas, *Enforcement of Judgments and Arbitral Awards in Mexico*, 5 U.S.-MEX. L.J. 137, 142 (1997) (finding that articles in the Mexican constitution were inspired by the Supremacy Clause of the U.S. Constitution); Russell L. Weaver et al., *Defamation*

Law and Free Speech: Reynolds v. Times Newspapers and the English Media, 37 VAND. J. TRANSNAT'L L. 1255, 1259 (2004) (stating that Australia's constitution was based on the U.S. Constitution); Alberto F. Garay, *A Doctrine of Precedent in the Making: The Case of the Argentine Supreme Court's Case Law*, 25 SW. J. INT'L L. 258, 262 (2019) (drawing a connection between the Argentinian constitution and the U.S. Constitution).

7. See *id.* at 270. The author's references to constitutional theories are limited to the context of debates among the delegates. For example, Edmund Randolph, a delegate of Virginia, was responsible for an initial draft of the Constitution, and put forth two principles to guide the text. See *id.* The first principle essentially espouses a "living constitution" theory that the text should be interpreted "in light of changing times and circumstances." *Id.* The second, conversely, is reminiscent of modern "originalist" theory, which focuses on "the precise words of the Constitution in a manner in which they would have been understood by eighteenth-century Americans." *Id.* As the author points out, "one cannot help but be impressed by the extent to which the framers remained true to those two principles," despite their apparent dichotomy. *Id.*

8. See, e.g., JOSEPH J. ELLIS, *THE QUARTET: ORCHESTRATING THE SECOND AMERICAN REVOLUTION, 1783–1789* (2016) (lauding the accomplishments of specific Founders—George Washington, Alexander Hamilton, John Jay, and James Madison—without extensive discussion on the immorality of continuing the practice of slavery); JILL LEPORE, *THESE TRUTHS: A HISTORY OF THE UNITED STATES* (2018) (presenting a more sobering and at times admonishing account the Convention).

9. BEEMAN, *supra* note 1, at 21.

10. *Id.*

11. *Id.* at 348.

12. *Id.* at 246.

13. *Id.* at 246 (quoting 2 THE RECORDS, *supra* note 1, at 92–93).

14. *Id.* at 61–62.

15. *Id.* at 348. For example, the preamble to the Constitution was drafted towards the end of the Convention, and rather than serve as just a stylistic opening to the document, it was intended to convey the idea of sovereignty espoused in the rest of the document. See *id.* A deliberate decision was made to "place the authority for establishing the new government . . . in the hand of the 'the people of the United States,'" rather than the people of the individual states. *Id.* (quoting 2 THE RECORDS, *supra* note 1, at 590).

16. *Id.* at 224 (quoting 1 THE RECORDS, *supra* note 1, at 461–62).

17. *Id.* at 222.

18. *Id.* at 224 (quoting 1 THE RECORDS, *supra* note 1, at 461–62).

19. *Id.* at 225.

20. See *id.* at 25, 66. Madison's time at Princeton included extensive study of both moral philosophy and political philosophy, namely that of Adam Smith and David Hume. *Id.* at 25. The latter's discussion of an "extended republic" would influence Madison's later thoughts on an American republic. *Id.* at 25–26. Many of the delegates were educated at prestigious schools that would have included philosophy in their course of study. See *id.* at 66.

21. Sovereignty is critical to analyzing issues of double jeopardy in the context of criminal prosecutions. See U.S. CONST. amend. V. Sovereignty is also a bedrock principle of international law and informs international humanitarian law and the law of armed conflict. See U.N. Charter art. 2, ¶¶ 3, 4; OFF. OF GEN. COUNS., U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL § 1.11.3 (12 June 2015) (C1, 31 July 2023).

22. See BEEMAN, *supra* note 1, at 225.

23. *Id.* at 333.

24. *Id.* at 214.

25. *Id.*

26. *Id.*

27. See *id.* at 320. During debates on the issue of slavery, Luther Martin, a Maryland delegate, went as far as saying that the question was "whether the Southern states shall or shall not be parties to the Union." *Id.* (quoting 2 THE RECORDS, *supra* note 1, at 364); see also *id.* at 55 (explaining Madison's understanding that debates would center around relative political power of Northern and Southern States); *id.* at 107 (detailing Madison's realization that representation based on "free inhabitant" would alienate slave-owning Southerners); *id.* at 205–09 (summarizing contentious debate on representation and role of property, including slaves, in determining representation).

28. *Id.* at 214.

29. *Id.* at 334.

30. *Id.* at 214.

31. *Id.* at 214–15 (quoting SUPPLEMENT TO MAX FARRAND'S THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 158 (James H. Hutson, ed., Yale Univ. Press 1987)).

32. *Id.* at 334 (emphasis added) (quoting THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 51 (Adrienne Koch and William Peden eds., Mod. Lib. 1944)).

33. See sources cited *supra* note 8.

34. See, e.g., BEEMAN, *supra* note 1, at 239 (emphasizing the "challenge of finding the proper balance between independence and excessive power" in the context of executive powers because the delegates had yet to agree on the "character of the American presidency" and the President's relationship to the people and other branches of government).

35. *Id.* at 360 (quoting 2 THE RECORDS, *supra* note 1, at 641–43).

36. See *id.* at 36–40 (identifying Franklin as a delegate that, despite his advanced age and poor health, "would embody the spirit of compromise necessary if the thirteen independent states were to come together in an effective and durable union.").

37. *Id.* at 361 (quoting 2 THE RECORDS, *supra* note 1, at 641–43).

38. See U.S. DEP'T OF ARMY, DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS para. 2-92 (31 July 2019) (describing the military decision-making process, including the development of various courses of action and subsequent analysis and comparison of those courses of action).

39. See, e.g., BEEMAN, *supra* note 1, at 90, 234. Madison showed a willingness to change his opinion dramatically regarding the relationship between the executive and legislative branches. See *id.* Where he originally proposed

and advocated for an executive that was indirectly elected by the legislature, he later advocated for a complete separation of the branches. *Id.*

40. See *id.* at 6–7 (describing Washington's thoughtful approach to addressing officers of the Continental Army about their grievances); *id.* at 17 (detailing Washington's response to General Henry Lee's proposition that Washington should use his influence to bring order in Massachusetts after Shay's Rebellion); *id.* at 362 (demonstrating Washington's restraint during debates on representation in the legislature, stating that his speech "was neither eloquent nor forceful").

41. *Id.* at 17.

42. See *id.* at 362 (discussing Washington's role in the representation debates).

43. *Id.* at 40.

44. U.S. CONST. pmbl.



The Cine Corregidor, Officers' Barracks prior to the 1942 Japanese attack on Corregidor Island, Philippines. (Source: Corregidor Historic Foundation)

Lore of the Corps

The Battling JAGs of the Philippines

Reserve Officers as Soldiers, Lawyers, and Prisoners of the Rising Sun

By Sergeant Major (Retired) Stephen W. Minyard

Since the summer of 1916, Reserve Component members of the Judge Advocate

General's (JAG) Corps have left their civilian jobs, gathered around their friends and

families, and announced their plans to volunteer for active duty. From the early years of World War I through support to the Civilian Conservation Corps (CCC) in the 1930s, another World War, Cold War mobilizations, and decades of operations in the Middle East, citizen-Soldiers have raised their hands in defense of national security and the rule of law. In the summer of 1940, four National Guard and Reserve judge advocates (JAs) answered the call from President Franklin D. Roosevelt, said goodbye to loved ones for what was initially a single-year tour, and departed together from California for the Philippines. Three never returned. Theirs is a story of duty, professionalism, and our Regiment's unyielding search for justice and our Nation's dedication to bringing every fallen warrior home.

Reserve Component service in 1940 was vastly different than it is today. The mobilization experience of World War I drove Congress to comprehensively reform the Army's non-active forces via the National Defense Act of 1920.¹ The act created an Organized Reserve (the forerunner of today's Army Reserve) with a state-based National Guard. Soldiers were structured into divisions and lower echelon units like the Regular Army force structure and reported to Active Component (AC) corps headquarters that, in turn, had responsibility over geographic regions across the country. Active-duty officers and enlisted Soldiers were detailed as cadre for the various Organized Reserve Divisions to serve a similar purpose as the Active Guard/Reserve (AGR) program today.² These divisions and their offices of the staff judge advocate (OSJAs) were largely formations bloodied in Europe and then inactivated shortly after the armistice. They form the lineage of the vast majority of Army Reserve (USAR) embedded units and some AC divisions today.³

The interwar period was characterized by lean funding and minimal training. Soldiers in the Organized Reserve's divisions were obligated to serve up to fifteen days a year for training (or longer if they consented), but were not paid for anything beyond their active-duty service; standardized

“drill” pay for federal Reserve forces would not come for another thirty years.⁴ Officers could also receive pay for mileage to and from their duty station, but neither enlisted nor officers serving in the JAG Department were afforded anything like a potential retirement or other benefits received today. While the appointment of JAs was still handled by the JAG Department in Washington, D.C., the nine Regular Army corps headquarters were responsible for recruiting enlisted Soldiers into the Reserve divisions in their areas of responsibility.⁵ Training for these new Organized Reserve Soldiers, between their annual periods of active duty, could be a combination of lectures, correspondence courses, or “actual drill” (1920-era terminology for today’s Inactive Duty Training), depending on resources available.⁶

The United States once again began to prepare for international conflict as war enveloped Europe in 1939 and Japan’s military raged across China and the South Pacific. On 27 August 1940, Congress authorized the President to mobilize both the Organized Reserve divisions and the National Guard for up to twelve months. In the next ten months, more than 100 JAs mobilized for this effort, including then-Majors (MAJs) Carlos McAfee of Oklahoma City, Oklahoma; Arch McKeever, mobilized from his private practice in Seattle, Washington; Frank Aigrisse of Maumee, Ohio; and then-Captain (CPT) Samuel Heisinger, of the California National Guard, all ordered to serve in the Philippines in April 1941.⁷

Initial active-duty tours were for a single year, and most Reserve officers assumed this would be the duration of their overseas duty. These intrepid JAs traveled to San Francisco first before boarding the SS *Washington* for travel to the Philippines. CPT Heisinger, a Bay Area native, gathered his family together for a final photograph in full uniform on 21 April 1941, while he awaited departure.⁸ En route to Manila, McKeever, Aigrisse, McAfee, and Heisinger made each other’s acquaintance and gathered for another memorable photo on the decks of the *Washington* as relations between Japan and the United States deteriorated.⁹ They sailed with other activated Soldiers to support the defense of the Philippines that would focus U.S. and Philippine forces on the narrow, jungle-covered peninsula of Bataan should Japan

EXACT COPY

AG 321.4 (3-3-42)

FROM FT MILLS

TO AGWAR

NO 407 3RD

RECOMMEND COL EMIL C RAWITZER JAGD PAREN NAUGHT DASH FIVE
ONE SEVEN EIGHT PAREN AS ASSISTANT JUDGE ADVOCATE GENERAL
STOP DEPENDENCE ON ARRIVAL COLONEL BURT AS SUGGESTED
URAD ONE ONE ZERO ZERO DATED FEBRUARY TWENTY SEVENTH NOT
REPEAT NOT CONSIDERED PRACTICABLE STOP FOLLOWING OFFICERS
RECOMMENDED MEMBERS BOARD OF REVIEW COLON LIERT COL
ALBERT SVIHRA JAGD PAREN NAUGHT DASH ONE FOUR NINE TWO
SEVEN PAREN COMMA CAPT SAMUEL L HEISINGER JR JAGD PAREN
NAUGHT THREE FIVE EIGHT ONE FOUR TWO PAREN COMMA CAPT
PETER KOSTER JAGD STOP LATTER APPOINTED CAPTAIN JAGD
ARMY OF UNITED STATES FEBRUARY TWENTY EIGHTH NINETEEN
FORTY TWO SERIAL NUMBER PAREN NAUGHT DASH EIGHT NINE
NAUGHT FOUR NAUGHT FOUR PAREN FROM CHIEF WARRANT OFFICER
IS FORMER CAPTAIN JAGD RESERVE

MACARTHUR

EXACT ACTION COPY TO: OFFICERS' DIVISION CY NO 1

EXACT INFORMATION COPIES TO: A C OF S G-2 CY NO 2
A C OF S MPD CY NO 3

BJS/EL
March 3, 1942
11:53 AM

DECLASSIFIED

Authority NW 48901

making of an exact copy of this message is forbidden. Only
the original message is to be used. This copy will be destroyed
when the original is destroyed. This copy will be returned to the
sender. A G O, without delay.

Radiogram from GEN MacArthur requesting designation of an “Assistant Judge Advocate General” and Board of Review from among the completely isolated JAs in the Philippines. (Source: National Archives)

invade. The U.S. military’s plan for war in the Pacific envisioned Army forces holding out on Bataan and the fortified island of Corregidor until the Navy’s battleships and carriers drove Japan from the island nation.¹⁰ Confidence in the plan was not high in 1941; the Navy believed they would need two years to fight their way back to the Philippines if Japan struck, while the Army assumed their garrisons, if attacked, could hold out for possibly six months before eventually falling.¹¹

Three Regular Army JAs were already in the Philippines, so Roosevelt’s mobilization order would more than double the JAG

Department’s presence there.¹² Then-Lieutenant Colonel (LTC) Emil Rawitser, a former Tennessee National Guard officer with twenty years in the JAG Department, was the senior JA in the theater in early 1940. He was soon joined by then-LTC Thomas Lynch, who lived in the Philippines after retiring from the Regular Army but was activated under the same legislation as the general Reserve mobilization.¹³ Lynch was considerably senior to then-LTC Rawitser; in the 1920s, then-MAJ Lynch had served in the JAG Department with the Philippine Scouts, so he brought tremendous local knowledge

82.

I, CHESTER SANDERS, CAPT. USA RETIRED, SER. NO. R-6021942, ON OATH, DEPOSE AND SAY AS FOLLOWS: THAT I BELIEVE OSCAR MITCHELL, DEAD BODY OF ROBERT E. PFC. QMC, FT. STATSENBURG, NEGRO, SCHMIDTMAN, 1ST SGT. USMC. TO BE DEAD BECAUSE WHEN I LEFT SER. NO. 240257, WHO DIED OF HIM ON APRIL 9, 1942 AT THE 92ND GARAGE, CORREGIDOR, P.I. HE WAS INSANE FROM BOMBINGS AND FIGHT ANYONE THAT CAME NEAR HIM, THAT THE JAPANESE MOVED IN THAT DAY AND SINCE THEN, AFTER A THOROUGH AS POSSIBLE CHECK, MITCHELL HAS NOT BEEN SEEN OR HEARD OF.

Robert B. Moore
ROBERT B. MOORE
CAPTAIN, USMC.

Chester Sanders
CHESTER SANDERS, OF THE PHILIPPINE ISLANDS, SWORN TO, AND SUBSCRIBED BEFORE ME THIS 25TH DAY OF July 1943 AT MILITARY PRISON CAMP NO. 1, OF THE PHILIPPINE ISLANDS, CABANATUAN, PROVINCE OF NUEVA ECITA, P.I.

Peter Koster
PETER KOSTER
MAJOR, JAGD.

Two of the over 200 accounts of casualties captured by MAJ Koster from mid-1943 to the beginning of 1944. The "92d Garage Area" noted here was the first collection point for Corregidor's survivors in May 1942. (Source: National Archives)

to the JAG team. Finally, then-MAJ Albert Svihra, a recent transfer from field artillery after graduating from the University of Virginia in 1939, brought his family and car to the Philippines.¹⁴ He would provide a rich, detailed diary of his time both before the war and later in captivity.¹⁵

Signs of war came quickly to the seven JAs in the Philippines. Just two months after the reservist JAs' arrival, on 27 July 1941, then-Lieutenant General Douglas MacArthur was recalled from retirement into active service and appointed commander of the U.S. Army Forces in the Far East (USAFPE).

The USAFFE's establishment signaled that the Philippines needed an operational command to consolidate control over all forces in the region, and resulted in the eventual assignment of JAs to posts outside of the main headquarters at Fort McKinley.

On 8 December 1941, hours after the attack at Pearl Harbor, Japan initiated airstrikes in the northern Philippines and bombed Fort McKinley the next day. Then-MAJ Svihra recalled running in a gown and slippers and scrambling to find a hole or depression, "for we had heard that this was one method of protection against bursting

bombs."¹⁶ Caught unprepared, the fort staff began building shelters the same day.¹⁷ Two weeks later, MacArthur ordered execution of operational plans for the defense of the Philippines, declared Manila an open city, and moved his headquarters and staff to Corregidor. The last vestiges of a quiet tour for the JAs there vanished, although they did gain a new colleague. On Christmas Eve, 1941, Chief Warrant Officer Peter Koster, aged fifty-one with a wife and two daughters in San Francisco, California, was appointed from among Bataan and Corregidor's defenders into the JAG Department. He



Photograph of "Fifth Avenue," a main walkway at Cabanatuan, depicting typical living quarters and dress for the camp's JAs. The rectangular platform in the background supported a screen for occasional movies and Japanese propaganda. (Source: National Archives)

remained "Chief" until appointed to captain in February 1942 and again, later, to major.¹⁸

From roughly January to April 1941, Lynch, Rawitser, Svihra, Heisinger, and Koster appear to have been on Corregidor and intermittently assisting operations on Bataan. MAJ McKeever was called on to lead a replacement depot briefly in Bataan, then dispatched to provide legal support to the 20,000-strong Visayan-Mindanao Force on the southernmost Philippine island.¹⁹ MAJ Carlos McAfee was assigned to the Philippine Division tasked with Bataan's defense. In March 1942, General MacArthur

departed the Philippines for Australia. He left Major General (MG) Jonathan Wainwright as the islands' senior commander and then-LTC Lynch as his legal advisor to what was now the U.S. Forces in the Philippines (USFIP).²⁰

The JAs of the USFIP continued to serve the Regiment and the force's general defenses as Japan relentlessly attacked the utterly isolated American and Philippine troops. Even as Lynch and Rawitser's office was bombarded in Corregidor, McKeever's forces on Mindanao continued to require legal support on a host of issues. Radiograms to

MacArthur's headquarters requested clarification on the duty status and pay entitlements of officers in the more remote command since 7 December; MacArthur bluntly replied they were in a "field status" and no longer TDY.²¹ Another transmission from MacArthur to his southern command urged a "caution to all agencies" to strictly adhere to international law in the treatment of Japanese prisoners of war (POWs).²² MacArthur retained direct control over McKeever's Mindanao forces when he left, instead of MG Wainwright, no doubt complicating the authorities McKeever worked with as he advised his commander in

the last days of fighting.

On 6 May 1941, LTG Wainwright surrendered all American and Philippine military forces to the commander-in-chief, Imperial Japanese Forces, in the Philippines. LTC McKeever's Visayan-Mindanao Force was still nominally controlled by MacArthur, not Wainwright, so a written order to surrender "to the proper Japanese Officer" was conveyed to the force's command and staff.²³ Wainwright added that failure to fully surrender would have "only the most disastrous results."²⁴ The same day and into the morning of 8 May, the JAs of the Corregidor garrison (all JAs in the Philippines except for McKeever and McAfee) gathered what items they could carry and moved from the stifling, dusty tunnels of the island fortress to a ten-acre field used by U.S. forces as a motor pool. This area, known as the 92d Garage Area, with little shelter or food, an overused but reliable source of water, and swarming with flies and the stench of nearby latrines, would be their home for nearly two weeks.²⁵

Life at the 92d Garage Area was miserable, bringing scorching heat, two meals a day of rice, issued by their Japanese captors, bloated, decomposing bodies, and the ever-present threats of dysentery, malaria, and skin diseases. To combat boredom and overwhelming uncertainty, many officers volunteered to supervise enlisted work parties, often accompanied by the boasting of their captors that Australia and Honolulu were next to fall.²⁶ These excursions back to the tunnels of Corregidor typically involved pulling every conceivably useful item, like canned goods and machinery, out of storage for shipment to Japanese warehouses in Manila. Occasionally, work party members could keep a can or two of rations for themselves to supplement the meager but welcome rice rations. On 23 May, this dismal lull ended when the Japanese loaded the American and Filipino captives onto ships for transport through Manila to more permanent camps near the town of Cabanatuan.²⁷

The other two Reserve JAs, McKeever and McAfee, were captured with their assigned forces, with McKeever eventually joining the Corregidor JAs in Cabanatuan a few months later. McAfee, captured first in April 1942, endured the notorious Bataan Death March and remained in the Philippines seven months as a POW; he was the

first sent to mainland Japan for the war's duration on 6 November 1942.²⁸

As prisoners of Imperial Japan, the eight JAs would have every reason to sink to mere self-preservation. Instead, they continued to serve the Army as officers and leaders, and as lawyers charged with assisting camp discipline and order. Each camp had a senior officer commander, who in turn had appointed staff to include JAs. Investigations into misconduct or dereliction continued, as did courts-martial proceedings (with punishments ultimately approved by the senior Japanese officer for each camp).²⁹ One such investigation, into maltreatment by the camp's hospital, remains in our National Archives, complete with appointment orders, findings and recommendations of the panel, and summarized testimony from LTC Svihra (who praised his "excellent" medical care while hospitalized with a ruptured appendix).³⁰ Then-LTC McAfee, alone as a JA in the Japanese homeland for most of the war, was at times the most senior officer in his camp, but deferred in light of his duties to a line officer as senior POW.³¹ Our Regiment's heroes performed these duties amid rampant disease and diminished rations, but they quietly also served a far greater cause while in captivity.

The concept of the rule of law, both within our Army and across nations during international conflict, forms a bedrock of the JAG Corps's mission; it also mightily drove our imprisoned JAs to acts of incredible bravery. In early 1942, just a few months into captivity, then-LTC Rawitser compiled a roster of POWs and illegal orders issued by his captors, as well as the words of "protest songs" under the guise of service as the camp's librarian.³² MAJ Koster, while imprisoned at Philippine Prison Camp I, spent parts of 1943 and 1944 swearing Soldiers to sworn statements that both detailed the names and service numbers of Soldiers killed in Bataan and while in captivity, and gave vivid descriptions of atrocities against American Soldiers.³³ These statements, handwritten in a notebook that survived the war, provided family members with the final moments of loved ones killed in the conflict and paint a damning record of Imperial Japan's flaunting of international law. Interestingly, the notebook is largely in another's handwriting, but bears little evidence of who

else helped MAJ Koster in his efforts.³⁴ Both COL Rawitser and MAJ Koster's actions speak of the power of our Regiment's ideals and their gallantry as an excellent example of principled counsel and selfless service.

As the war progressed, Lynch and Rawitser were transferred with more senior officers to mainland China. Aigirsse, McKeever, Koster, Svihra, and Heisinger remained in the Philippines, and McAfee transferred among a handful of camps in Japan. Some received short Christmas telegrams from home but depended on rumors, occasionally functioning clandestine radios, and new prisoners for information on how the war was progressing.

Two and a half years after boarding a PT boat on Corregidor, McArthur returned to liberate the Philippines. On 1 September 1944, American forces began tactical air strikes to soften Japan's Philippine defenses; on 20 October, McArthur began the islands' amphibious assault. Facing a naval blockade, Japan started a months-long transport of POWs to the Japanese homeland in the fall of 1944 that would prove deadly amid the chaotic air, sea, and ground battlefield.³⁵ The first casualty was the Active Army JA, LTC Albert Svihra. He, along with hundreds of other POWs, was crowded into the transport *Arisan Maru*, only to be torpedoed and sunk by a prowling American submarine in the South China Sea on 24 October 1944.³⁶

Japan continued the transport of POWs from Manila despite the dangers and likelihood of attack. U.S. forces controlled the seas and air at this point throughout most of the Pacific Theater, and little to no effort was made to properly mark ships transporting POWs. On 12 December 1944, more than 1,600 American POWs, including Aigirsse, McKeever, Heisinger, and Koster, who were told to pack their belongings for evacuation. Their transport from Manila to Japan, via Formosa (Taiwan), was the *Oryoku Maru*, captained by Shin Kajiyama and under the military supervision of Captain Junsaburo Toshino. As each left the Bilibid Prison to board the ship, their names were written with brief notes into a log later copied by an American officer who remained behind; McKeever's entry reads:

*Lt. Col. McKeever, JAGD-Res; practiced law in Seattle, Wash.*³⁷

(Proceedings of B/O , cont-d.)

bottles full of water or eight ounces.

The board then, at 4:15 o'clock P.M. on July 4, 1944, adjourned to meet at 12:45 o'clock PM on July 5, 1944.

Peter Koster
PETER KOSTER,

Major, J.A.G.D., Recorder.

Military Prison Camp No. 1 of the Philippine Islands,
Cabanatuan, N.E., P.I., July 5, 1944.

The board met, pursuant to adjournment, at 12:45 PM, all its personnel being present.

Pvt. 1cl. Charlie Writebol, 6579885, Med. Dept., was duly sworn by Major Peter Koster, J.A.G.D., and, after being advised by him that if the answer to any question asked him would incriminate or tend to incriminate him or degrade him he did not have to give it but that if he did give it and later he was brought to trial for any offense growing out of this investigation such answer could and probably would be used against him, testified as follows: I deny that I made any rice flour into bread or cake on or about Christmas time, 1943. I have never sold rice to Pvt. 1cl. Noyes or to Sgt. Fields. I deny any knowledge of a deal involving the sale of corn to Sgt. Fields. Likewise, I deny ever giving cooked rice or squash to Sgt. Fields. I admit that I have used cooking oil from the Mess on four or five occasions but this was sanctioned by the Mess Officer. I never sold any rice, oil or anything else belonging to the Hospital Mess or in any otherwise made any unauthorized disposition of it.

The board then, at 1:10 PM, took a recess until 3:50 PM, at which time its members resumed their seats.

2nd Lieut. Abe Schwartz, O-890089, Army of the United States, was duly sworn by Major Peter Koster, J.A.G.D., was duly advised by him that if the answer to any question asked him would incriminate or tend to incriminate him or degrade him he did not have to give it but that if he did give it and he was brought to trial later for any offense growing out of the matters under investigation such answer could and probably would be used against him, and testified as follows: Pvt. Noyes never at any time sold me any rice. About seven weeks ago, Pvts. 1cl. Writebol and Noyes and myself cooked and ate pancakes together but the flour for them was furnished by Pvt. 1cl. Noyes who stated at that time that he had purchased the rice from which the flour was made in the upper area of the camp. I have no knowledge of any sale of rice by Pvt. 1cl. Noyes to any one. I am not well acquainted with Pvt. 1cl. Writebol and do not know whether he has ever sold any food from the Mess. About eight weeks ago, I furnished papaya and saccharin for a pie which was made up by Pvt. Washturn, Pvt. Jenkins and myself. I have no personal knowledge of any irregularities at the Hospital Mess.

The certificate of the Camp Commissary Officer, showing that no cooking oil has been received and sold to individuals in the camp since December 18, 1943, was then received in evidence and is attached hereto as Exhibit 4.

The testimony of nineteen witnesses who had testified in the matter now under investigation before Major Clarence H. White, M.C., while he was functioning as board appointed by the Commanding Officer of the Camp Hospital for the investigation of the same matter, was then received in evidence and is hereto attached (in two pages) as Exhibit 5. In receiving this testimony in evidence, the board was guided by the provisions of law stated in par. 117b, M.C.M., as follows: "The testimony of a witness who has testified at a former trial by court-martial may be proved by the record of the former trial or by a duly certified copy of so much of such record as contains the desired testimony"

The board then, at 4:35 PM on July 5, 1944, adjourned to meet at 2:30 o'clock PM on July 7, 1944.

Peter Koster
PETER KOSTER,

Major, J.A.G.D., Recorder.

PRISONER'S IDENTIFICATION

DECLASSIFIED

NND 88208



At top center, the transport *Oryoku Maru* carrying hundreds of American POWs, sinks in Subic Bay after multiple attacks from planes of the USS *Hornet*. The surviving JAs, MAJs Samuel Heisinger and Frank Aigrisse, swam from the sinking ship to the beach just to the south of the ship's burning hull. (Source: Naval History and Heritage Command, Washington, D.C.)

This would be the last record of the Reserve JA alive.

Japanese Imperial Army Soldiers and civilians were loaded into the ship's main cabins and upper decks, while the POWs were herded into the ship's four stifling hot, unventilated cargo holds.³⁸ Anti-aircraft weapons were arrayed on the ship's decks, giving the ship all the appearance of an armed warship. Rice and seaweed, but no water, were served into the cargo holds on 13 December as the ship left Manila. The already malnourished POWs were packed so closely the first night they could barely breathe and

"went crazy, cut and bit each other through the arms and legs," from dehydration and heat, according to one survivor.³⁹ The next morning opened to anti-aircraft fire against an American observation plane, followed by dive bombers from the USS *Hornet*. Attacks from above arrived throughout the day, strafing and damaging but not sinking the ship, and the second night in cargo holds proved even worse than the first. An unknown number of Americans were killed by the dive bombers, subsequent flooding, and Japanese soldiers firing into the cargo holds to prevent escape. Some fifty Americans were estimated

to have died from suffocation on the night of 14 December. This likely took MAJ Koster's life as the ship listed in Subic Bay.⁴⁰ Throughout the second night in the holds, as men lay dying in the flooding, stale-air-filled ship, some went "maniacal," murdering their fellow Soldiers and leaving another forty dead the next morning.⁴¹ On 15 December, the ship was abandoned as POWs, including the last two JAs on the ship, MAJ Aigrisse and MAJ Heisinger, flooded out of the holds and swam to a nearby shore. McKeever was still in one of the ship's holds as American planes returned and sank the ship later that day. In all, an estimated 300 American Soldiers lost their lives in the attacks.⁴²

The last year of the war would continue to claim the lives of Philippine Department JAs. MAJs Aigrisse and Heisinger and the *Oryoku Maru* survivors, many wounded and ill from deprivation, were herded back onto transports in the days following the *Hornet's* attacks. Heisinger would survive less than a month, killed in another bombing in a ship's hospital ward on 12 January 1945.⁴³ MAJ Aigrisse perished as a POW in Moji, Japan, on 4 February 1945, according to his Japanese "Death Identification Record," with "unknown" as the cause of death.⁴⁴ A post-war report provided more details: at some point, MAJ Aigrisse was wounded in a bombing and transported to the hospital camp at Moji, where he succumbed to his wounds and dysentery.⁴⁵

Three JAs would survive captivity. MAJ Carlos McAfee, the first captured and only Philippine Department Reserve JA to live through the war, was imprisoned outside of Osaka in the war's last days. On 22 August 1945, the camp commandant notified the senior American officers that Japan had surrendered, and immediately left the Americans to virtually fend for themselves. U.S. flags, hidden the entire war by two officers, were raised on the camp's grounds, but food and other supplies were desperately low. After ten days of uncertainty, American B-29s dropped supplies on the camp, and on 8 September 1945, elements of the 1st Cavalry Division arrived to formally liberate McAfee and his fellow POWs. On his last day of captivity, he posed in a white T-shirt, bold and defiant, for a group photo of fellow Oklahoma-native POWs taken by his liberators.⁴⁶ McAfee remained on active duty

for another fourteen years before retiring as a colonel. He passed away 24 November 1991, and is buried in Arlington National Cemetery.⁴⁷ COL Rawitser and COL Lynch both also survived war, as did MG Wainwright, liberated from the Mukden, Manchuria (China), prison camp in 1945.

COL Rawitser added an act of undeniable leadership and concern for his fellow JAs to this story. From 1945 to 1947, the War Department sought an accounting both of deaths in the Philippine Department and evidence of war crimes via questionnaires mailed to survivors across the Nation. COL Rawitser received one while at home in Memphis, Tennessee, shortly after the war. At some point since his liberation, he was provided a trove of information from a MAJ A.C. Peterson, 60th Coastal Artillery, Philippine Coast Artillery Command. The first JA Rawitser noted as a casualty was MAJ Koster. Rawitser wrote Koster's date and cause of death and service information on the form, then provided the same information for McKeever, Heisinger, and Aigrisse, all with MAJ Peterson as the information's source. He then filled the form's margins with additional Soldier casualty information, in all giving closure to ten families who had not seen their loved ones for four years or more. Hundreds of these forms no doubt were sent by the War Department, but the Army's Casualty Branch singled out his and a dozen or so other responses for archiving the fate of Soldiers killed during the POW transports of December 1944 to January 1945.⁴⁸ As America was piecing together the inhumanity of the war's costs, COL Rawitser provided servant leadership and vital information to our Regiment's families across all three components.

World War II was over, but the JAG Department and its Reserve officers concluded a powerful postscript of justice for Svihra, Aigrisse, Heisinger, Koster, and McKeever. In 1947, the Eighth Army OSJA facilitated a series of courts-martial for several officers and civilians responsible for the treatment of "hell ship" POWs. One of the most significant cases, styled *United States vs. Toshino et al.*, tried Junsaburo Toshino, the senior officer on the *Oryoku Maru*. Toshino was charged with, and found guilty of, causing "intense mental and physical suffering, impairment of health and death," during

the two-day period in which both McKeever and Koster perished.⁴⁹ Toshino was also found guilty of abusing survivors, including MAJ Heisinger. The court's charges, specifications, and sentences were reviewed by LTC Winston L. Field, a former Reserve officer.⁵⁰ Toshino was hanged for his crimes and Field would go on to serve a pivotal role for Reserve JAs as the first Reserve Activities and Plans Department director at The Judge Advocate General's School.

As of March 2025, the Defense Prisoner of War/Missing in Action Accounting Agency (DPAA) lists LTCs Koster, McKeever, and Heisinger as "Unaccounted For."⁵¹ However, in 2023, DPAA embarked on an anticipated eight-year project to identify remains in two locations from the Philippine campaign. All three fallen JAs appear on the DPAA's list of Soldiers who could one day be "accounted for," bringing closure to their families and our Regiment; DPAA began reporting the first identifications from this project in February 2025.⁵²

The story of these JAs who served in the Philippines during World War II is one of extraordinary courage, resilience, and dedication to duty. These men faced unimaginable hardships as prisoners of war, yet continued to uphold the principles of justice and leadership even in captivity. Their actions—whether documenting atrocities, maintaining discipline, or providing closure to families—reflect the enduring values of the JAG Corps and the profound commitment to making the rule of law an equal partner of violence on the battlefield. As efforts continue to account for the fallen and honor their sacrifices, their story serves as a powerful reminder of the strength of the human spirit and the unwavering pursuit of justice, even in the darkest of times. **TAL**

SGM (Ret.) Minyard retired as the Senior Enlisted Advisor to the Assistant Secretary of Defense for Manpower and Reserve Affairs on 1 August 2025. He served the JAG Corps in a variety of roles, including as an instructor at The Judge Advocate General's Legal Center and School and Command Paralegal, U.S. Army Reserve Command.

Notes

1. National Defense Act of 1920, Pub. L. No. 66-242, 41 Stat. 759. For analysis of the act's sweeping reforms,

see COMM'N ON THE NAT'L GUARD AND RESERVE, FINAL REPORT TO CONGRESS AND THE SECRETARY OF DEFENSE E-4 (Jan. 31, 2008).

2. OFF. OF THE ADJUTANT GEN., ARMY LIST AND DIRECTORY 38 (Oct. 1935). The 82nd Division, for example, assigned to Fourth Corps, had a mere ten officers detailed to its South Carolina headquarters in 1935. You read that right—the 82nd was a Reserve division, not active duty, until World War II.
3. Reserve divisions, for example, included the 81st, 82nd, 83rd, 84th and 85th Divisions, whose patches are today worn in USAR major commands (81st, 83d, 84th, and 85th) and, of course, the 82nd Airborne Division.
4. National Defense Act of 1920, sec. 35, § 55b, 41 Stat. at 780.
5. John E. Harris, *The Organized Reserves: Their Relation to the Military Policy of the United States*, MIL. ENG'G, Jan-Feb. 1922, at 34.
6. *Id.* at 36.
7. *Id.*; WAR DEP'T, ARMY DIRECTORY: RESERVE AND NATIONAL GUARD OFFICERS ON ACTIVE DUTY 31 JULY 1941, at 9, 162, 523, 769, 790 (1941); see WAR DEP'T, SUPPLEMENT I TO THE MILITARY LAWS OF THE UNITED STATES, EDITION OF 1939, at 289 (1941). Congress's 27 August 1940 legislation also included some of the first protections and benefits in Federal law to Reserve Soldiers, such as a clothing allowance and extension of the World War I-era Soldiers and Sailors Civil Relief Act to all Reserve and National Guard personnel.
8. DUANE HEISINGER, FATHER FOUND: LIFE AND DEATH AS A PRISONER OF THE JAPANESE IN WWII 73 (2003).
9. *Id.* at 82.
10. GERALD ASTOR, CRISIS OF THE PACIFIC: THE BATTLES FOR THE PHILIPPINE ISLANDS BY THE MEN WHO FOUGHT THEM: AN ORAL HISTORY 19 (1996).
11. LUIS MORTON, CENTER FOR MILITARY HISTORY, THE FALL OF THE PHILIPPINES 64 (1953).
12. A report of investigation signed "Robert G. Phelps, CPT, JAGD" was included in the USFFE Quartermaster Report after the war looking into the use of civilian vehicles by Army personnel. However, no officer of that name can be found either in the Active or Reserve directories of the Army for 1941.
13. WAR DEP'T, ARMY DIRECTORY 38, 112 (1941) [hereinafter ARMY DIRECTORY].
14. See 84 CONG. REC. 5895 (1939) (Appointments by Transfer in the Regular Army).
15. See ASTOR, *supra* note 10, at 15 (providing excerpts of then-MAJ Svihra's diary).
16. *Id.* at 49.
17. U.S. WAR DEP'T, THE ADJUTANT GEN.'S OFF., REPORT OF OPERATIONS OF US FORCES IN THE FAR EAST, PHILIPPINE DIVISION 10 (1946) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Box 1487, Entry 1113).
18. HEADQUARTERS, UNITED STATES FORCES IN THE FAR EAST, APPOINTMENTS EFFECTIVE 23-24 DECEMBER 1941, at 12 (Dec. 24, 1941) (on file with the Nat'l Archives and Records Admin., Record Group 407, Philippines Archive Collection, Box 9).
19. U.S. FORCES IN THE PHILIPPINES, HEADQUARTERS VISAYAN-MINDANAO FORCES IN THE FIELD ROSTER OF STAFF OFFICERS FORCE HEADQUARTERS (May 1, 1942) (on file with the Nat'l Archives & Recs.

Admin., Record Group 407, Philippine Archive Collection, Entry 1063).

20. U.S. WAR DEP'T, THE ADJUTANT GEN.'S OFF., REPORT OF OPERATIONS OF US FORCES IN THE FAR EAST, USFIP STAFF (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1113).

21. Headquarters, Visayan-Mindanao Forces Radiogram to Commanding General, USAFFE (Feb. 8, 1942); Headquarters, USAFFE, Radiogram to Commander, Visayan-Mindanao Forces (Feb. 8, 1942); Radiogram from Commander, USFFE, to Visayan-Mindanao Forces (Jan. 18, 1942) [hereinafter USFFE Commander Radiogram] (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1058, Box 17).

22. USFFE Commander Radiogram, *supra* note 21.

23. Memorandum from Lieutenant Gen. J.M. Wainwright to Major Gen. William F. Sharp, Commanding Visayan-Mindanao Forces, subject: Surrender, United States Force in the Philippines, Headquarters (May 7, 1942).

24. *Id.*

25. E. BARTLETT KERR, SURRENDER AND SURVIVAL: THE EXPERIENCE OF AMERICAN POWS IN THE PACIFIC 1941-1945, at 72 (1985).

26. ASTOR, *supra* note 10, at 170-71 (quoting Svihra's diary).

27. KERR, *supra* note 25, at 77-78.

28. Roster Alphabetically Listing of Army and Navy Personnel and Disposition, G-N-, Cabanatuan Camp (1942-1945) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1064).

29. See Memorandum from Lieutenant Colonel Curtis T. Beecher, Commander, War Prison Camp Number One, for Courts-Martial Proceedings and Sentencing Requests for Disciplinary Action, Cabanatuan P.O.W. Camp, 1942-1944 (n.d.) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Box 402, Entry 1064).

30. Testimony of Lieutenant Colonel Albert Svihra, Investigation into Conditions Past and Present In Hospital Under the Administration of Lieutenant Colonel Jack W. Schwartz (Dec. 10, 1942) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1070). The similarity of this report of investigation, mostly typed and well organized, to current practice under Army Regulation 15-6 is astonishing, given the participants' conditions and situation early in the war.

31. See K.C. EMERSON, GUESTS OF THE EMPEROR 52-53 (1977). This account details the plight of officers captured in Bataan and is self-published, available at no cost. See *Guest of the Emperor, K.C. Emerson*, KIPDF, https://kipdf.com/guest-of-the-emperor-k-c-emerson_5aac75c01723dd5d283c504d.html [https://perma.cc/3MKH-PFF6] (last visited Sep. 29, 2025).

32. See Peter S. Wainwright, *Remembering the Defenders of Bataan and Corregidor, Their Commanding General, Jonathan Wainwright IV, and His Weapons*, AM. SOC'Y OF ARMS COLLECTORS, Bull. 76, 1997, at 2. An image of COL Rawitser's forbidden roster in the article has handwriting in a style closely matching that on his later report to the War Department on war casualties within the JAG Department. See *id.* at 8 fig. 7.

33. See Death Reports, Bilibid POW Camps (1943-1944) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1072). For then-MAJ Koster's fascinating handwritten notebook statements, see Unsigned Book, Death Reports Signed Affidavits (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Box 1659, Microform Reel 43, Adjutant General's Recovery Section, Sep. 26, 1945).

34. The Army didn't record how the notebook was found or who ultimately provided it, but the information it contains would have required at least two or more scribes to record the testimony, all of whom were risking their lives if the notebook was discovered. The notebook has the handwriting of two or more individuals, and is rife with notes from lectures and suggestions of books for the camp's small library that indicate its owner was well-read and a fan of English prose and poetry.

35. HAMLIN CANNON, CTR. FOR MIL. HIST., LEYTE: THE RETURN TO THE PHILIPPINES 60 (1993).

36. Personnel Lost at Sea as Result of Ship Sinkings during WWII, List No. 87, Arisan Maru, Adjutant General's Department (1945) (on file with the Nat'l Archives & Recs. Admin., Philippine Archive Collection, Record Group 407, Entry 1069).

37. LTC David Fardie Notebook: Transport En Route to Japan 14 December 1944, at 4 (1945) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1064). LTC Fardie copied Japanese records of prisoner transfers from Bilibid Prison into his own University of the Philippines notebook shortly after learning of the attack on the *Oryoku Maru*. He provided the notebook to the War Department, who then compiled a full typed version of the list, both of which have LTC McKeever listed as a casualty.

38. Lloyd Stinson, Typed Notes on Oryoku Maru Casualties 2-3 (Mar. 1, 1948) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1069).

39. Lee A. Gladwin, *American POWs on Japanese Ships Take a Voyage Into Hell*, PROLOGUE MAG., Winter 2003, <https://www.archives.gov/publications/prologue/2003/winter/hell-ships-1.html> [https://perma.cc/YP5Y-T9W8].

40. Interview of Ensign George Karl Petritz, U.S. Navy Reserve, by Vice Admiral A. W. Fitch at 2 (Feb. 14, 1945) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Entry 1069). COL Rawitser's casualty report gives suffocation as the cause of death, witnessed by a MAJ Arthur C. Peterson, matching Petritz's record of deaths on 14 December.

41. Sworn Statement of Lieutenant Colonel Jack W. Schwartz 1-2 (Sep. 14, 1945) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1069). Notes on LTC Schwartz's harrowing statement indicate it was sent both to the Army's Casualty Branch and the "War Crimes Office," another testament to our Regiment's reach in this story.

42. *Oryoku Maru* Roster, WEST-POINT.ORG, https://www.west-point.org/family/japanese-pow/Erickson_OM.htm, [https://perma.cc/FE4L-3E5G] (last visited Sep. 29, 2025) (detailing both JAs' fates and travel together).

43. War Department Screening Questionnaire, Colonel Emil Rawitser (n.d.) (on file with the Nat'l Archives &

Recs. Admin., Record Group 407, Philippine Archive Collection, Entry 1069).

44. Death Identification Record, Frank Aigrisse (Oct. 24, 1945) (on file with the Nat'l Archives & Recs. Admin., Record Group 407, Adjutant General's Recovered Personnel Section, Microform Reel 87)

45. War Department Screening Questionnaire *supra* note 43.

46. EMERSON, *supra* note 31, at 130. Emerson's account of captivity with MAJ McAfee is fascinating in its glimpse into Japan's efforts to meet at least some of its obligations under international law, such as a final offer of payment for labor to the prisoners in late August 1945.

47. *Obituary of Colonel Carlos E. McAfee*, THE OKLAHOMAN (Nov. 25, 1991), <https://www.oklahoman.com/story/news/1991/11/25/col-carlos-e-mcafee/62510031007> [https://perma.cc/74HN-4PU3].

48. War Department Screening Questionnaire, *supra* note 43. Peterson would stay on active duty after surviving the *Oryoku Maru* ordeal, retiring as a colonel.

49. Review of the Staff Judge Advocate, United States v. Toshino et al., No. 154, Headquarters, Eighth Army, at 3 (May 4, 1948), http://www.mansell.com/pow_resources/IMTFE_Case_154-TOSHINO_et_al.pdf [https://perma.cc/57CP-5PDT].

50. ARMY DIRECTORY, *supra* note 13, at 375.

51. *WWII Accounting*, DEF. POW/MIA ACCOUNTING AGENCY, <https://dpaa-mil.sites.crmforce.mil/dpaaFamWebWWII> [https://perma.cc/TFT4-4LF3] (last visited Sep. 29, 2025). Koster and McKeever are listed as "Unaccounted For," while Heisinger's status, as of 13 March 2025, is blank, but in DPAA's "Active Pursuit" category. *Id.* Heisinger perished in the later *Enoura Maru* attacks, and all three positive identifications made by DPAA from Hell Ship casualties are from the *Enoura Maru*, indicating he is the most likely JA to be identified and brought home.

52. DPAA Report on the *Enoura Maru* Project (n.d.) (on file with author). For an overview of the Defense POW/MIA Accounting Agency's efforts, see Dr. Gregory Hupsky, Def. POW/MIA Accounting Agency, The *Enoura Maru* Project (n.d.), <https://www.dpaa.mil/Portals/85/WWII%20Hellship%20Losses.pdf> [https://perma.cc/TFT4-4LF3].



(Credit: Kevin Schneider - pixabay)

Practice Notes

Financial Light in the Darkness

Leveraging the HEART Act Conversion to Build Generational Wealth for Surviving Military Spouses

By Major Wesley J. Cochrane

Few life events are more devastating than losing a spouse. For surviving military spouses, the days and weeks that follow are marked by profound grief, disorientation, and an overwhelming list of decisions. Some of those decisions can carry long-term impact, including financial impact—offering a path in the darkness toward stability, growth, and even financial legacy. One often overlooked opportunity is the Heroes Earnings Assistance and Relief Tax (HEART) Act Conversion, which gives surviving military spouses the potential to fully fund their retirement accounts, invest for their children’s college, or both, overnight.

Signed into law by President George W. Bush on 17 June 2008, the HEART Act of 2008¹ provides surviving military spouses with a benefit unavailable to any other citizen of the United States. Specifically, section 109 of the HEART Act offers the ability to invest up to \$600,000² in a Roth individual retirement account (IRA), a Coverdell education account, or both, in one fell swoop.³ This practice note delves into section 109 of the HEART Act and offers actionable advice on what Service members can do to prepare their spouses to maximize this unique benefit should the worst occur.

That preparation begins with understanding the HEART Act and educating Service members and spouses on its merits; it also includes the short-term, modest financial commitment all Service members should consider—supplemental term life insurance.

Roth IRA 101

Before Service members can appreciate the magnitude of the HEART Act Conversion, it is helpful to get a refresher on the Roth IRA—a type of IRA available to many Service members. The Roth IRA is a smart investment vehicle for retirement for several reasons, but the most significant is the fact that one's contributions (i.e., investments one regularly makes to the account) grow, *tax free*, and can be (although they do not have to be)⁴ withdrawn, *tax free*,⁵ after age fifty-nine-and-a-half.⁶ This helps investors build wealth that outpaces inflation and provides a steady income (or supplement to a pension) in retirement. A Roth IRA does, however, have annual contribution limits.⁷ As of 2025, the contribution limit is \$7,000.00.⁸ For individuals aged fifty or older, the limit is \$8,000.00.⁹ While contributions generally can be withdrawn without tax penalty, *earnings* cannot be withdrawn prior to becoming fifty-nine-and-a-half years old without paying income tax and a potential 10 percent tax penalty.¹⁰

As a retirement account, a Roth IRA is merely a vessel with certain tax implications. In other words, there are many ways one's contributions can be invested *within* the Roth IRA. That said, a prudent,¹¹ tried-and-true approach is to invest most, if not all, of one's contributions (especially when retirement is decades away), into index funds like the Standard & Poor's (S&P) 500, which is a stock index that tracks the share prices of the largest U.S. companies¹² and has earned a historical average annual rate of return of between 10 and 10.5 percent since its inception in 1957.¹³

Besides the regular contributions mentioned above, other ways of funding a Roth IRA include "qualified rollover contributions."¹⁴ Before Congress passed the HEART Act in 2008, there were only a small handful of available qualified rollover contributions (e.g., moving amounts from one Roth IRA to another or, subject to some limits, converting a non-Roth IRA to a Roth



A Soldier prepares his will with the support of a legal assistance attorney. (Credit: CPT Nancy Drapeza)

IRA).¹⁵ Section 109 of the HEART Act changed this.

Now, surviving spouses of Service members covered by 10 U.S.C. § 1475 (i.e., on active duty generally, among other circumstances) or 10 U.S.C. § 1476 (i.e., having been discharged from active duty or other specific circumstances within 120 days) can treat the \$100,000.00 military death gratuity¹⁶ and the \$500,000.00 Service Member Group Life Insurance (SGLI) payment as a "qualified rollover contribution."¹⁷ In short, a surviving spouse can invest up to \$600,000.00, at one time, into a Roth IRA, where it will grow tax-free into a significant retirement "nest egg."¹⁸

A few other aspects of section 109 are worth noting. First, a surviving spouse must make the qualified rollover contribution

within one year after receiving the qualifying funds.¹⁹ Second, that spouse can invest up to the entire death gratuity and SGLI payout or nothing at all.²⁰ Third, section 109 of the HEART Act also provided for some or all of the qualifying funds to be invested (again, within that one-year period) into a Coverdell education savings account.²¹ Whatever is invested into a Roth IRA reduces the amount available to be invested into a Coverdell education savings account, and vice versa.²² The Coverdell education savings account functions similarly to a Roth IRA in that contributions grow tax-free and withdrawals for qualifying education expenses can be made tax-free.²³ Like the Roth IRA, non-qualifying education expenses are subject to income tax and an additional tax penalty.²⁴

Power of a Lump Sum Investment in the Roth IRA

Before shifting to discussing some practical ways to optimize estate planning to make the most of the HEART Act Conversion, consider Figure 1 below, which illustrates the power of taking advantage of the HEART Act to contribute some, or all, of the combined SGLI and death gratuity to a Roth IRA.

financial needs, in the immediate future, beyond the other monthly survivor benefits (e.g., consumer debt, mortgage/rent, utilities, childcare, car replacement, car maintenance, bills, clothing, food, college expenses, etc.)?” Resoundingly, yes. This is where supplemental term life insurance comes into the equation. For a relatively modest amount of money per month, Service members can

policy active.²⁹ The younger and healthier someone is (particularly non-smokers), the more affordable the premiums are (no more than the cost of YouTube TV, internet, or cellphone plans, depending on the term and the amount).³⁰ For instance, a thirty-year-old male, who does not use nicotine products, can secure a thirty-year, term life insurance policy for \$1,000,000.00 for anywhere between \$51 and \$128 per month, depending on health history.³¹

Unquestionably, everyone’s budget looks different, and for some, adding another line item in addition to the existing cost of SGLI might seem daunting. That said, the reality is that securing a million-dollar supplemental life insurance policy for one’s spouse and children is *entirely realistic*—not something for the privileged few.

Setting the Conditions: Next Steps for Service Members on Active Duty

Service members interested in taking advantage of the HEART Act Conversion should consider taking these next steps.

- Immediately move to get a term life insurance quote on a thirty-year policy between \$500,000.00 and \$1,000,000.00 (as much as you can reasonably afford).
- Establish a Roth IRA for your spouse through a trusted financial institution or advisor.
- Have a candid conversation with your spouse about a financial vision for your life in general, but especially for a scenario in which you die while serving on active duty or within 120 days of discharge. Explain the *power* of the lump-sum investment of the SGLI and Death Gratuity into a Roth IRA. Discuss how the supplemental term life insurance policy is designed to free up the SGLI and death gratuity to do the yeoman’s work of growing, compounding, and providing a future nest egg for your spouse and children (really, the potential to build or maintain generational wealth).
- Leverage free military-provided legal assistance³² to update your legal will (also known as a last will and testament) to draw your spouse’s and/or personal representative’s attention to benefits like the 2008 HEART Act *within the will*, emphasizing your desire that the Death

Rollover Contribution at Age 30	Account Balance at Age 60 (Inflation-Adjusted)	Account Balance at Age 65 (Inflation-Adjusted)	Account Balance at Age 70 (Inflation-Adjusted)
\$600,000	\$4,869,898.00	\$6,903,690.00	\$9,786,846.00
\$500,000	\$4,058,248.00	\$5,753,075.00	\$8,155,705.00
\$300,000	\$2,434,949.00	\$3,451,845.00	\$4,893,423.00
\$200,000	\$1,623,299.00	\$2,301,230.00	\$3,262,282.00
\$100,000	\$811,649.00	\$1,150,615.00	\$1,631,141.00

Figure 1. Approximate values in today’s dollars. Assumes NO further contributions, as well as an average annual growth rate of 10 percent and an average annual inflation rate increase of 3 percent. *U.S. Inflation Rate 1960-2024*, MACROTRENDS, <https://www.macrotrends.net/countries/USA/united-states/inflation-rate-cpi> [<https://perma.cc/4MZA-WK5L>] (last visited Sep. 22, 2025) (showing that the historical inflation rate of increase in the United States is between 3–4 percent annually).

In the scenario above, the generational wealth that can be built by taking advantage of this benefit—a one-time, roughly half-million-dollar investment into a Roth IRA—is self-evident. Even with a more conservative rate of return of 7 percent, a surviving spouse (age thirty) who maximizes the HEART Act conversion will still have accumulated nearly \$2.5 million by age sixty-five (inflation-adjusted), all without ever contributing another dime to the Roth IRA. In other words, a surviving spouse can build a multi-million-dollar retirement nest egg without having to account for monthly contributions in their budget year after year.

Combining the HEART Act Conversion and Term Life Insurance

A glaring question remains: “Won’t the surviving spouse have numerous other

purchase sizeable supplemental life insurance policies.²⁵ Should tragedy arise, and a Service member dies on active duty, this policy will be paid out immediately and will be available for those day-to-day financial needs (even significant ones), thus freeing the SGLI and death gratuity to be invested exclusively for the future benefit of the surviving spouse and children. Term life insurance guarantees payment of a specified death benefit (i.e., lump sum) if the covered individual dies during the predetermined term (e.g., ten years, twenty years, thirty years, etc.).²⁶ The covered individual is the one whose death triggers the life insurance payment.²⁷ When someone purchases term life insurance, they purchase a life insurance policy.²⁸ Purchasing the policy begins a (typically) monthly insurance premium that must be paid to keep the

Gratuity and SGLI be invested into your spouse's Roth IRA. This language will be precatory (i.e., not legally binding or controlling—rather, just expressing a desire), but it will at least serve to emphasize and reiterate a financial course of action you have, hopefully, already discussed with your spouse.

Conversations about premature death are not fun. However, there is no reason for a surviving spouse to be left in the dark when it comes to the generous survivor benefits that Congress has provided for military families. The HEART Act is an unprecedented survivor benefit that every Service member and spouse should be aware of—if anything, for its power to be a financial light in the darkness of tragic loss. **TAL**

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Notes

1. Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. 110-245, 122 Stat. 1624 (codified as amended at 26 U.S.C. § 408A(e)(2)).
2. See *infra* notes 16, 17 and accompanying text.
3. See sec. 109, 122 Stat. at 1631–33.
4. See, e.g., *Retirement Plan and IRA Required Minimum Distributions FAQs*, INTERNAL REVENUE SERV., <https://www.irs.gov/retirement-plans/retirement-plan-and-ira-required-minimum-distributions-faqs> [https://perma.cc/EE5A-KZSJ] (last visited Sep. 22, 2025) (noting that, unlike the Roth IRA, a traditional IRA, for example, is subject to a required minimum distribution (RMD) starting at age seventy-three, which makes the traditional IRA a less advantageous wealth transfer mechanism compared to the Roth IRA); but see *id.* (explaining that “beneficiaries of Roth IRAs and Designated Roth accounts are subject to RMD rules”).
5. See 26 U.S.C. § 408A(d)(1) (noting that qualified distributions are not included in gross taxable income).
6. *Id.* § 408A(d)(2)(A).
7. *Retirement Topics—IRA Contribution Limits*, INTERNAL REVENUE SERV., <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits> [https://perma.cc/TZ5L-2NYC] (last visited Sep. 22, 2025).
8. *Id.*
9. *Id.*
10. See 26 U.S.C. § 408A(d); *id.* § 72(t) (discussing 10 percent additional tax on early distributions from qualified retirement plans—like the Roth IRA—and certain exceptions to this rule).
11. See Paul R. La Monica, *Warren Buffett Says He Can't Beat the S&P 500*, CNN (Feb. 25, 2019, 14:07



(Credit: Nick Youngson)

- ET), <https://www.cnn.com/2019/02/25/investing/warren-buffett-sp-500-stocks/index.html> [https://perma.cc/Z442-DSE4].
12. Kat Tretina & Benjamin Curry, *What Is the S&P 500? How Does It Work?*, FORBES (July 30, 2024, 20:10 ET), <https://www.forbes.com/advisor/investing/what-is-sp-500> [https://perma.cc/QR6U-4BQJ].
 13. J.B. Maverick, *What Is the Average Annual Return for the S&P 500?*, INVESTOPEDIA (Sep. 22, 2025), <https://www.investopedia.com/ask/answers/042415/what-average-annual-return-sp-500.asp> [https://perma.cc/6VN9-9ENE].
 14. 26 U.S.C. § 408A(e)(1).
 15. See INTERNAL REVENUE SERV., NOTICE 2010-15, MISCELLANEOUS HEART ACT CHANGES 22 (Apr. 12, 2010), <https://www.irs.gov/pub/irs-drop/n-10-15.pdf> [https://perma.cc/W2J6-6JCA].
 16. See 10 U.S.C. § 1478 (providing that the death gratuity shall be \$100,000.00).
 17. See 26 U.S.C. § 408A(e)(2) (providing that up to the sum of the amounts received under 10 U.S.C. § 1477 (Death Gratuity) and 38 U.S.C. § 1967 (SGLI) may be treated as a “qualified rollover contribution”).
 18. *Nest Egg*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/nest%20egg> [https://perma.cc/RH68-SQ82] (last visited Sep. 22, 2025) (defining nest egg as: (1) “a natural or artificial egg left in a nest especially to induce a hen to continue to lay there” and (2) “a fund of money accumulated as a reserve”).
 19. 26 U.S.C. § 408A(e)(2)(A).
 20. *Id.* § 408A(e)(2)(A)(i).
 21. Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. sec. 109(b), 110-245, 122 Stat. 1624, 1632; see also 26 U.S.C. § 530(d)(9) (including Coverdell education savings account contributions as qualified rollover contributions).
 22. See 26 U.S.C. § 408A(e)(2)(A).
 23. See 26 U.S.C. § 530(d)(2); *Topic No. 310, Coverdell*

Education Savings Accounts, INTERNAL REVENUE SERV., <https://www.irs.gov/taxtopics/tc310> [https://perma.cc/N5F8-7GD9] (last visited Sep. 22, 2025).

24. See 26 U.S.C. § 530(d)(2).
25. Service members need to research supplemental life insurance carefully to confirm that any coverage they elect will cover the same (or substantially similar) circumstances as SGLI (e.g., deployments, combat, flight duty, other hazardous duty, etc.).
26. Julia Kagan, *Term Life Insurance*, INVESTOPEDIA (Nov. 26, 2024), <https://www.investopedia.com/terms/t/term-life.asp#toc-what-is-term-life-insurance> [http://perma.cc/2NEQ-Z4XN].
27. See *id.*
28. See *id.*
29. See *id.*
30. *5 Term Life Insurance Mistakes to Avoid*, RAMSEY SOLUTIONS (Apr. 15, 2025), https://www.ramseysolutions.com/insurance/5-term-life-insurance-mistakes?int_cmpgn=pf_2018&int_dept=lampo_split_bu&int_lctn=No_Specific_Location&int_fmt=text&int_dscpn=pf_term_life_lp-term_life_insurance_mistakes_blog_link [https://perma.cc/KWY8-KX94] (scroll down the page past “Mistake #5,” where you will see a free, term life insurance quote calculator that will provide a monthly estimate of the cost of your policy).
31. See *id.* (calculating the monthly estimate using the factors provided).
32. Service members and their spouses are entitled to free legal assistance by law and policy. See 10 U.S.C. §§ 1044–1044d; see also U.S. DEP’T OF DEF., INSTR. 1350.04, LEGAL ASSISTANCE MATTERS (3 Feb. 2022) (implementing 10 U.S.C. §§ 1044–1044d); U.S. DEP’T OF ARMY, REGUL. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 4-8 (1 May 2024) (covering military legal documents produced by legal assistance offices, including military testament instruments).



While the system of bells that keeps time on ships is unchanging from generation to generation, the speedy-trial clock saw a major update in 1991. (Credit: Mark C. Olsen)

Practice Notes

It's Not Too Late to Start Doing Speedy Trial Right

By Lieutenant Commander Gabriel Bradley, U.S. Navy

There is a common fallacy regarding the speedy-trial clock under Rule for Courts-Martial (RCM) 707. Many believe that for a requested period of pre-referral delay to be excluded from the RCM 707 period, the delay must be both: (1) approved by the convening authority or preliminary hearing officer (PHO), and (2) classified as “excludable” by the convening authority or PHO. This view is so widespread that it has been suggested in dicta by the U.S. Navy-Marine Corps Court of Criminal Appeals.¹ However, it “just ain’t so.”²

All pre-referral delay approved by the convening authority or PHO—to whom the convening authority may delegate approval authority³—is excluded from the RCM 707 period. Regardless of who requests the delay or for what reason the delay is requested, a convening authority or PHO cannot simultaneously approve a delay and classify that same delay as being included in the RCM 707 period.⁴ Let me explain.

RCM 707 gives the Government 120 days to bring the accused to trial.⁵ Some periods of delay are automatically excluded from the 120-day period, such as when the accused is absent without authority.⁶ Also, the rule says, “All other pretrial delays approved by . . . the convening authority shall be similarly excluded.”⁷ The text of the rule contains only one limitation on the convening authority’s power to approve delay—it must be done prior to referral of charges.⁸ (After referral, it is the military judge who decides whether to approve delay.⁹) Case law also requires that the delay be for a reasonable time.¹⁰

Because “[a]ll . . . delays approved by . . . the convening authority shall be . . . excluded”¹¹ from the RCM 707 period, it makes no difference which party requested the delay. Nor does it matter why the delay was requested. All that matters is whether the convening authority (or PHO) approved the delay.¹²

In days gone by, under a prior version of RCM 707, pretrial delay attributable to the Government was included in the 120-day period, while pretrial delay attributable to the defense was excluded.¹³ This often led to protracted litigation seeking to attribute responsibility for any and all delay. In *United States v. Dies*, the Court of the Appeals for the Armed Forces described such litigation:

What resulted often were pathetic side-shows of claims and counter-claims, accusations and counter-accusations, proposed chronologies and counter-proposed chronologies, and always the endless succession of witnesses offering hindsight as to who was responsible for this minute of delay and who for that over the preceding months. The military judge then had to sift through this minutiae and make factual determinations regarding events long passed and often vaguely indicated. Regularly, the record of these collateral matters exceeded in length that of the merits and the sentencing phases combined.¹⁴

Does that sound familiar? If so, that is probably because the habit of seeking to attribute responsibility for delay persists, even though that framework was eliminated from RCM 707 in the early 1990s.¹⁵

In a recent case, when defense counsel requested a continuance of the preliminary hearing, trial counsel responded that the Government “does not oppose this continuance request provided the PHO deems the delay between 18 June and 15 July excluded for [RCM] 707 purposes.”¹⁶ The proviso is unnecessary; if the PHO approves the delay, it is perforce excluded. For the same reason, a trial counsel requesting or agreeing to pre-referral delay cannot accept that delay as being included in the RCM 707 period.¹⁷ Approved delay is excluded even if the trial counsel asked for the delay or would agree to it being included.

In another case, the PHO appointing order read, like many others,

Authority to grant continuances in this matter pursuant to [RCM 707]

of up to thirty days from the dates in this letter is delegated to the [PHO]. . . . Pursuant to [RCM 707], you are also authorized to make a finding of excludable delay for any requests for delay; this finding must be in writing and included in your report.¹⁸

The “also” language incorrectly suggests that an approval of delay is not already sufficient to exclude the delay from the RCM 707 period.

specifically granted the authority to grant one continuance for a reasonable duration up to three weeks in the subject case and, where appropriate, exclude the time from the Government’s R.C.M. 707 speedy trial clock.”²² The phrase “where appropriate” misleadingly suggests that the question whether to approve delay is distinct from the question whether the delay should be excluded from the RCM 707 period, which, as discussed above, it is not. The same publication includes a sample PHO order

Since *all* approved pre-referral delay is excludable, any litigation seeking to attribute responsibility for approved delay is pointless, and any so-called “finding” by the convening authority or PHO purporting to attribute responsibility for approved delay is irrelevant in determining excludable delay under RCM 707.

In that same case, defense counsel requested seven days of delay, writing, “The Defense respectfully objects to excludable delay for this requested one-week continuance.”¹⁹ The defense request went on to allege a number of dilatory acts by the Government that supposedly justified the PHO approving delay while also ruling that the same delay was included in the RCM 707 period. Rather than simply point out that all approved pre-referral delay is excludable, trial counsel proclaimed her own diligence and argued that the requested delay should be excluded from the RCM 707 period because the “existence of a 4-day-long gap between the Government’s request for counsel package and detailing of defense counsel is beyond the Government’s control.”²⁰ So we see that the “claims and counter-claims” that pervaded under the old rule have not fully gone away, notwithstanding that the legal basis for making such arguments was eliminated long ago.²¹

Why do military attorneys continue to argue under a rule that has not applied for over thirty years? Apparently some new lawyers are still being trained that way. A sample PHO appointing letter published by the Naval Justice School reads, “You are

approving delay, which reads, “This delay is requested by and therefore attributable to the defense.”²³ This language suggests that attribution of responsibility for the delay is somehow relevant to the RCM 707 calculation, but there has been no support for such a notion in RCM 707 since 1991.

To be sure, any party requesting delay should state the reasons for the request.²⁴ And the best practice is for the convening authority or PHO to make a written record of the reasons why delay was approved.²⁵ But since *all* approved pre-referral delay is excludable, any litigation seeking to attribute responsibility for approved delay is pointless, and any so-called “finding” by the convening authority or PHO purporting to attribute responsibility for approved delay is irrelevant in determining excludable delay under RCM 707.

How about after referral? Can the military judge look back and retroactively decide that some of the approved pre-referral delay should be included in the RCM 707 period? No, not really. Whether to approve pre-referral delay is within the “sole discretion” of the convening authority.²⁶ And when the convening authority’s power to approve delay has been delegated



Litigation seeking to attribute responsibility for delay is often a waste of time because all approved pre-referral delay is excluded from the RCM 707 period, regardless of who requests the delay or for what reason. (Credit: AIC Albert Morel)

to the PHO, the PHO enjoys the same discretion.²⁷ A military judge will revisit the issue only if the convening authority or PHO abused its discretion by approving the delay.²⁸ As the abuse-of-discretion standard is the classic expression of deference,²⁹ and that standard will be satisfied in only the most egregious cases, the decision of the convening authority or PHO will almost always be final.

Of course, there is not just one speedy-trial right; there are several.³⁰ RCM 707 is merely a rule of criminal procedure. The U.S. Constitution also guarantees a speedy trial.³¹ So too does Article 10 of the Uniform Code of Military Justice for an accused in pretrial confinement.³² Yet the constitutional and statutory speedy-trial rights do not operate by a precise “clock” in the same way RCM 707 does.

In determining whether a constitutional or statutory speedy-trial violation has occurred, a court is guided by the four factors established by the U.S. Supreme Court in *Barker v. Wingo*: (1) length of the delay, (2) reasons for the delay, (3) whether the accused objected, and (4) prejudice to the accused.³³ In conducting this analysis, the military judge will sit as the factfinder and will make any legal determinations de novo.³⁴

De novo review is the classic expression of no deference.³⁵ In determining “the reasons for the delay” under *Barker*,³⁶ the military judge may consider the reasons stated by a party in a request for delay. The military judge may also consider the reasons stated by the convening authority or PHO in a grant of delay. The military judge might be persuaded by such a statement of reasons,

but a military judge will not *defer* to the convening authority or PHO regarding the reasons for the delay. As an independent factfinder, the military judge will make up their own mind about what the reasons for the delay were. So outside the RCM 707 context, it makes even *less* sense for the convening authority or PHO to make a “finding” that attributes responsibility for delay. A contemporaneous statement of reasons may be probative, but a mere conclusion is unlikely to be helpful in the military judge’s analysis.

Armed with a clear-eyed understanding of RCM 707, there are several ways military justice practitioners can tighten things up. The staff judge advocate (SJA) preparing a written grant of pre-referral delay for signature by the convening authority can omit misleading language purporting to attribute

a period of delay to one party or another. When preparing a PHO appointing order for signature by the convening authority, the SJA can omit misleading language encouraging the PHO to make a finding as to whether a period of approved delay is excludable. Counsel requesting delay can simply state the reasons why delay is needed, without also presenting arguments and evidence as to whether the requested delay should be “excludable” or “not excludable.” Likewise, counsel responding to a request for delay can simply inform the convening authority or PHO of any facts germane to whether the delay should be approved, without being provoked into an exchange of “accusations and counter-accusations” about which attorney has dragged their feet more.³⁷

Most importantly, the convening authority or PHO, when considering a request for delay, should do so unburdened by the fallacious notion that they have the option of including approved delay in the speedy-trial clock.

The fact that a misconception about a basic rule of procedure has been uncritically adopted by so many lawyers for so long is a stark reminder of the danger of giving in to the inertia of the way things have always been done. There is no substitute for consulting primary sources. Although it is tempting to simply imitate more senior counsel, based on the assumption that they doing things correctly, military justice is a dynamic and ever-changing practice area, and it can be a struggle to stay current on the law. But the good news is, it is not too late to start doing speedy trial right. **TAL**

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Notes

1. The court noted that if defense counsel’s request to delay the preliminary hearing by twenty days was “approved as excludable delay” then there would be no RCM 707 violation. *United States v. Aguilar*, No. 202300092, 2024 CCA LEXIS 398, at *6 (N-M. Ct. Crim. App. Sep. 30, 2024). At a pretrial hearing, the Government “presented only evidence that the delay had been requested, not that it had been approved or classified as excludable.” *Id.* Later, the Government provided an affidavit from the PHO attesting that he had granted the continuance request “along with the Government’s request that the [twenty] days be excludable.” *Id.* at *7.

2. “T’ain’t what a man don’t know that hurts him; it’s what he knows that just ain’t so.” Mark Twain is sometimes credited with authoring this and similar quips, but that too just ain’t so. *See* Alex Shephard, “*It Aint What You Don’t Know that Gets You into Trouble, Which Must Be Why The Big Short Opens with a Fake Mark Twain Quote*,” *NEW REPUBLIC* (Dec. 29, 2015), <https://newrepublic.com/minutes/126677/it-aint-dont-know-gets-trouble-must-big-short-opens-fake-mark-twain-quote> [https://perma.cc/Y94W-J695] (identifying the misquote and attributing a similar quote to Josh Billings); RALPH KEYES, *THE QUOTE VERIFIER* 94, 229–30 (2016) (attributing the quote to Abe Martin).

3. *MANUAL FOR COURTS-MARTIAL, UNITED STATES*, R.C.M. 707(c)(1) (2024) [hereinafter MCM].

4. *United States v. Lazauskas*, 62 M.J. 39, 41–42 (C.A.A.F. 2005).

5. MCM, *supra* note 3, R.C.M. 707(a)–(b). Subsection (a) of the rule reads: “(a) *In general*. The accused shall be brought to trial within 120 days after the earlier of: (1) Preferral of charges; (2) The imposition of restraint under R.C.M. 304(a)(2)–(4); or (3) Entry on active duty under R.C.M. 204.” *Id.* R.C.M. 707(a). Subsection (b) details the calculation of that 120-day period. *See id.* R.C.M. 707(b).

6. *Id.* R.C.M. 707(c).

7. *Id.*

8. *Id.* R.C.M. 707(c)(1).

9. *Id.*

10. *See United States v. Guyton*, 82 M.J. 146, 151 (2022).

11. MCM, *supra* note 3, R.C.M. 707(c).

12. *See United States v. Lazauskas*, 62 M.J. 39, 41–42 (C.A.A.F. 2005).

13. *See MANUAL FOR COURTS-MARTIAL, UNITED STATES* R.C.M. 707(c)(4) (1984) (listing in the exclusions “[a]ny period of delay resulting from a failure of the defense to provide notice, make a request, or submit any matter in a timely manner as otherwise required by this Manual”).

14. *United States v. Dies*, 45 M.J. 376, 377–78 (C.A.A.F. 1996).

15. Exec. Order No. 12767, sec. 1(g), 56 Fed. Reg. 30289–90 (July 1, 1991) (amending RCM 707).

16. E-mail from Trial Counsel to author (June 13, 2024) (on file with author).

17. *But cf.* E-mail from Trial Counsel to author (Jan. 29, 2025) (on file with author) (asking PHO to exclude only a portion of approved pre-referral delay).

18. Letter from Convening Authority to author (Apr. 20, 2023) (on file with author) (emphasis omitted).

19. Letter from Defense Counsel to author (Apr. 25, 2023) (on file with author).

20. E-mail from Trial Counsel to author (Apr. 26, 2023) (on file with author).

21. *United States v. Dies*, 45 M.J. 376, 377 (C.A.A.F. 1996).

22. *NAVAL JUST. SCH., THE ARTICLE 32 PRELIMINARY HEARING OFFICER’S GUIDE* encl. 1 at 2 (2019).

23. *Id.* encl. 3b at 1.

24. MCM, *supra* note 3, R.C.M. 707(c)(1).

25. *Id.* R.C.M. 707(c)(1) discussion.

26. *Id.*

27. *United States v. Lazauskas*, 62 M.J. 39, 41 (C.A.A.F. 2005).

28. *Id.* at 42.

29. *See Abuse of Discretion*, *BLACK’S LAW DICTIONARY* (12th ed. 2024) (“1. An adjudicator’s failure to exercise sound, reasonable, and legal decision-making; specif., a decision-maker’s use of power in a way that denies justice or deprives someone of a substantial right, as when it is based on a misunderstanding of the law. 2. An arbitrary, fanciful, or manifestly unreasonable exercise of authority. 3. An outcome or decision that is without rational explanation, inexplicably departs from established policies or practices, or is based on insupportable conclusions. 4. An appellate tribunal’s standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence.”).

30. *Lazauskas*, 62 M.J. at 41.

31. U.S. CONST. amend. VI.

32. UCMJ art. 10 (2016).

33. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

34. *See United States v. Wilder*, 75 M.J. 135, 138 (2016).

35. *De Novo*, *BLACK’S LAW DICTIONARY* (12th ed. 2024) (“When a court engages in de novo review of a legal issue, it makes an independent determination without deference to any earlier analysis about the matter. It is treated as if no previous decision had been made: there is no presumption of the correctness or validity of any prior finding, recommendation, or conclusion.”).

36. *Barker*, 407 U.S. at 530.

37. *United States v. Dies*, 45 M.J. 376, 377 (C.A.A.F. 1996).



Questions?

AROUND THE CORPS

MAJ Joshua G. Dimkoff, then-Chief of Military Law, Office of the Staff Judge Advocate, Fort Jackson, SC, speaks to C.C. Pinckney Elementary School students. (Credit: Robert Timmons)



Soldiers from 2nd Battalion, 23rd Infantry Regiment, 1st Stryker Brigade Combat Team, 4th Infantry Division, serve meals to elderly residents during a People to People International (PTPI) wellness event in Pocheon, South Korea. (Credit: 1LT Jonathan Sauls)

Practice Notes

Uniforms and Unity

Sowing Trust Through Community Outreach Activity with Non-Federal Entities

By Major Jacob R. Shaffer

Military lawyers, including judge advocates (JAs), must be ready to advise leaders at echelon on the relevant ethical authorities when engaging with non-Federal entities (NFEs) in both official and personal capacities, while also understanding permissible levels of official support. Military leaders will act and engage with the community.¹ In fact, Department of War (DoW) policy requires it.² Even with the best intentions, these same leaders will then suffer the consequences of violating law and policy if unprepared or ill-advised.³ These leaders, with support and cogent advice from their legal advisors, must understand the rules related to NFE engagement to effectively navigate this mandate.

In considering how—not if—to engage in relations with NFEs in the context of community outreach activities,⁴ DoW policy requires leaders to ensure several objectives are met.⁵ Community outreach activities must “[i]ncrease public awareness, trust, and understanding of the [DoW],”⁶ “inspire patriotism,”⁷ “preserve new and enduring overseas relationships,”⁸ “maintain a reputation as a good neighbor within communities at home and abroad,” “[s]upport . . . personnel recruiting and retention,”¹⁰ and “[e]ngage, educate, and empower the public . . . to support the [DoW].”¹¹ The analysis does not stop here, though. When evaluating these potential community outreach activities as part of a public affairs plan,¹² military leaders

must ensure those activities are of common interest to the community¹³ and there is a positive return on investment for resources used.¹⁴

These are all honorable goals that many service-driven leaders in the military would be glad to pursue, but these are not small tasks. To the contrary, in addition to their primary warfighting mission,¹⁵ these same leaders have the weighty assignment of effectively and ethically engaging the community.¹⁶ This intersection of overlapping obligations should highlight the lawyer's role as a key resource for leaders to balance these dual responsibilities.

Military lawyers must affirmatively assist leaders to engage in lawful community outreach activities, as part of any public affairs team,¹⁷ and comply with the ethical principles required of all employees within any executive branch agency.¹⁸ All military members, not just leaders of organizations, must remember that public service is a public trust and that public office is not meant as a method for private gain.¹⁹ Similarly, when engaging with NFEs, there are heightened concerns of improper endorsement by public officials,²⁰ impartiality, preferential treatment,²¹ and the proper use of official time and Government resources.²²

With these ethical principles in mind, the DoW charge to engage in community outreach activities is critical to strengthening the public's trust in military institutions.²³ How does a military leader manage an organization's primary warfighting mission, community outreach obligations, and ethical requirements? The answer is through careful education of unit personnel and active involvement of military lawyers in planning.²⁴

This article will detail the primary authorities governing NFE engagement by military personnel—highlighting situations where ethical issues arise—with a specific focus on Army policy. With their lawyers at the ready, military leaders will meet their obligations while maintaining the ethical footing that makes the public trust the DoW's currency. The first part of this article will set forth a training vignette highlighting certain common scenarios associated with NFE engagement. The next will explain in depth the relevant authorities governing NFE engagement, emphasizing community outreach activities. The final part will then



A Soldier hugs a student goodbye during a community holiday toy drive in Powidz, Poland. (Credit: SPC Julian Winston)

apply these rules to our training vignette and conclude with recommendations to enable military lawyers to deliver principled counsel to our clients.²⁵

Scenario

You have recently arrived as the brigade judge advocate (BJA) for 1st Brigade Combat Team at Fort Swampy and are excited for this new opportunity. The brigade executive officer (XO) comes by and tells you about some upcoming events that the brigade commander wants to prioritize. After the past few years

of tumultuous off-post incidents, the new brigade commander is eager to rebuild the unit's image with the community. The XO asks about any "legal issues" with these outreach opportunities.

The brigade commander is a member of the Infantry Officer Hooah Association (IOHA), a nonprofit organization consisting of current and former infantry officers that highlights developments in infantry tactics, discusses veteran issues, and hosts esprit de corps events. After he took command, he mentioned that members of IOHA were

nominating him to serve as the organization's president. He is excited about the opportunity and told the XO that he plans to brief all the new infantry platoon leaders in the brigade about the many benefits of IOHA at an upcoming unit training meeting. The XO also heard the brigade commander mention to the brigade operations officer (S3) that he will give any interested infantry officers an optional pass next Tuesday to attend an IOHA lunch meeting where he will be giving a speech on leadership.

Next, a local Fort Swampy heritage group, known as the Swampy Descendants, has emailed the brigade commander asking for his support in providing a few tactical trucks and Soldiers for a display at an annual unit and installation history celebration parade and barbecue. The Soldiers and trucks would serve as a static display and be a part of the "meet and greet" at the celebration. The event organizer also wants the brigade commander to make a few remarks. Lastly, the Swampy Descendants organizer promises that the Soldiers will be "well fed" for their efforts.

Finally, the brigade commander told the XO that a famous pastry chef, also a proud military supporter, messaged him on social media asking if the unit's Soldiers and families would be interested in a free dinner and complimentary baking lessons from the chef and his team. The chef indicated his team would provide the food, utensils, and training personnel, but he would need a space to host the event. The chef also wants to confirm if he and his team can tour the installation and unit training areas to show his support for the Soldiers.

Overview of Relations with NFEs

The rules governing participation in NFE activities and official support to NFEs can seem daunting. The analysis starts, however, by defining and identifying an NFE and then moving to evaluating the involvement or support requested.

NFEs are everywhere, and the definition is broad. An NFE is a "self-sustaining non-Federal person or organization, established, operated, and controlled by an individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government."²⁶ NFEs can range from major defense

contractors to state governments and local nonprofit organizations. The definition is intentionally comprehensive to ensure the Federal Government remains impartial in its interactions with both the public and private sectors.²⁷

Once the NFE is identified, it is essential to remember that not all NFEs are treated the same.²⁸ For example, Congress has enumerated certain NFEs that may receive specific forms of official support or have official participation by DoW personnel in their management or operations.²⁹ Another significant subset of NFEs are private organizations (POs) that are authorized to operate on military installations and have additional support available to them.³⁰ Therefore, classifying the NFE involved is a critical first step to determining authorized levels of DoW participation and support.

Participation in NFEs by DoW Personnel

DoW personnel's lawful participation with NFEs initially hinges on whether they are acting in an official or personal capacity.³¹ This is consistent with ensuring that the Federal Government's employees are not operating NFEs while they should be performing Government work. Although not expressly defined, a member of the DoW is in their official capacity when performing assigned duties or work with a clear benefit to the DoW's mission and in direct support of their official responsibilities.³² Personal, volunteer participation with an NFE, by contrast, is not affiliated with the DoW member's status.

The next step is to evaluate the desired level of involvement in the NFE's activities, including hosted events or operations. In some situations, DoW personnel in both official and personal capacities can engage with NFEs consistent with community outreach objectives. A proper understanding of the ethical limits of both the type and level of DoW personnel participation with NFEs is critical to military leaders so they can make informed decisions on how, if at all, their organizations can support these NFE events. Education by military leaders of their personnel is also key to ensuring only authorized participation—either officially or personally—is provided to NFEs.³³

Official Capacity Participation (The Boss Tells You Where to Go)

While acting in an official capacity, participation in NFE business or operations is strictly controlled. DoW personnel in their official capacity may not endorse, solicit, or fundraise for an NFE with limited exceptions.³⁴ The most notable exceptions for Army personnel are those for the Combined Federal Campaign (CFC),³⁵ Army Emergency Relief (AER),³⁶ and "By Us, For Us" nonprofit private organizations.³⁷

Similarly, DoW personnel may not typically manage³⁸ or engage in the day-to-day operations of an NFE while in their official capacity.³⁹ A more likely scenario for official capacity participation is attendance at NFE events to speak, observe a meeting,⁴⁰ or represent the DoW in a liaison role.⁴¹ Although restricted from management or control of the NFE, if properly approved,⁴² the DoW liaison can attend meetings or functions to represent the DoW's views when there is a "significant and continuing [DoW] interest" in that attendance.⁴³ In either situation, DoW personnel may not receive a salary or compensation for performing official DoW duties at these NFE engagements.⁴⁴ Both situations require certain levels of authorization, but they present viable options for leaders to send DoW personnel to NFE organizational meetings or events.⁴⁵

Personal Capacity Participation (You Just Want to Help)

While official capacity participation in NFE events is highly restricted, personal capacity participation is generally permissive within some general parameters. DoW personnel have different restrictions on their personal participation in NFEs based on their role in the NFE. On a sliding scale, mere attendance in a personal capacity is rarely an issue, whereas management of NFEs comes with heightened concerns.

DoW personnel are normally permitted to engage in outside employment or volunteer activities as long as it is consistent with the conflict of interest statutes⁴⁶ and other service-specific regulatory authorities related to outside activities from employment.⁴⁷ This would include attending meetings, serving in organizational positions, and even advising the NFE on matters, as long as it



Three U.S. Air Force helicopters fly over Audi Field in Washington, D.C., during a pregame ceremony at a D.C. United vs. Inter Miami Major League Soccer match. (Credit: SrA Gianluca Ciccopiedi)

is clearly known to the NFE that the DoW employee is acting outside the scope of their official position.⁴⁸ DoW personnel serving in positions or advising the NFE must be cautious of a potential conflict of interest with their official duties and any perception of endorsement that can sometimes spring from that involvement and bleed over into official duties. Subject to the same caution, management of NFEs is also permissible with certain additional rank and position restrictions that serve as prohibitions.⁴⁹

A Special Consideration: NFE

Participation and Use of Titles and Ranks

DoW personnel may use their official titles and position when engaging with an NFE in an official capacity,⁵⁰ but they need to exercise caution when they are participating with an NFE in a personal capacity.⁵¹

There is some tension in the policy about permissible limits when having official titles, ranks, or positions listed while conducting activities in a personal capacity. On the one hand, DoW personnel are authorized to use general terms of address, such as military rank or military service, in connection with a personal activity,⁵² but use of military rank or reference to service is prohibited when “it could in any way discredit [the DoW] or give the appearance of [DoW] sponsorship, sanction, or endorsement.”⁵³

The Joint Ethics Regulation (JER) authorizes the use of titles and ranks when engaged in teaching, speaking, and writing activities,⁵⁴ but prohibits the use of official titles, photographs, and positions in connection with most other activities.⁵⁵ Although these DoW-affiliated descriptors may be used, military leaders should exercise

caution consistent with the guiding ethical principles to avoid even the appearance of Federal Government endorsement of NFEs.

There is no area where engagement with NFEs collides with the restrictions on use of titles, position, and images more than social media accounts.⁵⁶ DoW personnel can—and often do—have a combination of official and personal social media accounts.⁵⁷ DoW personnel may use their titles and reference positions or Government employment on social media.⁵⁸ When these titles are used, however, social media accounts for DoW personnel create additional concerns for the appearance of Government sanction of communications, disclosure of nonpublic information, and preferential treatment with NFEs.⁵⁹ Disclaimers are often used to mitigate these concerns for both official and personal accounts.⁶⁰



Soldiers volunteer with the Salvation Army in Yakutat, AK, during Operation Santa Claus, a community outreach program that provides gifts and supplies to children in remote Alaskan communities. (Credit: SSG Seth LaCount)

Although both official and personal social media accounts give rise to similar concerns of improper endorsement when engaging with NFEs, an official account is easier to manage. Official social media accounts are subject to established policies for operation, and these accounts are considered official public affairs outlets managed by trained personnel.⁶¹ Personal social media accounts raise more ethical issues. These accounts are more common, can sometimes blur the line between official and personal,⁶² and more frequently engage with NFEs in a less supervised manner.⁶³ Even those accounts that use disclaimers can run afoul of the standards of conduct rules, because a disclaimer is not always sufficient.⁶⁴ In fact, the DoW takes the position that an official Government photograph on a personal social

media account increases the likelihood of an appearance of an official Government account and, therefore, Government sanction of posted content.⁶⁵

When these quasi-personal social media accounts masquerade as official accounts and then engage with NFEs, it can lead to several problems. The most relevant issue would be damaging community outreach objectives or engaging in unauthorized endorsements that are contrary to the military leader's public affairs obligations. To avoid these prohibitions that may erode public trust,⁶⁶ military leaders and their lawyers must affirmatively take steps to educate their DoW personnel on these social media account limitations. Even if a military title could be used, the guiding executive branch ethical principles would prohibit it if doing so would lead to improper endorsement

concerns or confuse the public.

With this proper understanding of the types and levels of NFE participation by DoW personnel—and associated restrictions—in mind, this article will next address the methods by which official support can be provided to NFEs.

Official Support to NFEs⁶⁷

The authority and capacity to provide official DoW support to NFEs⁶⁸ are inherently limited to official or authorized purposes.⁶⁹ Appropriated funds may only be used for the specific purpose for which Congress appropriated them under 31 U.S.C. § 1301(a), known as the Purpose Statute.⁷⁰ The two primary methods of official support are congressionally-directed support relationships⁷¹ and community outreach activities.⁷²

*Support Authorized by Statute
(Congress Says “Go for It”)*

Congress has determined that official support to certain NFEs is specifically authorized.⁷³ These NFEs range from civic and youth organizations⁷⁴ to national military associations (NMAs).⁷⁵ Importantly, these specific statutory relationships have identified parameters of support that should be carefully observed.⁷⁶ The support authorized can be broad in scope and range depending on the organization authorized to receive it.⁷⁷ For example, support to NMAs may be specific for personnel and equipment for national conferences.⁷⁸ At the same time, other statutory schemes may only authorize opportunities for access to military installations for Veterans Service Organizations (VSOs) or the National Red Cross.⁷⁹ In all of it, these are still NFEs, and any endorsement and official support needs to be narrowly tailored to the statutory authority to avoid ethical violations.⁸⁰

*Incidental Support for Community
Outreach Activities (Bread and Butter)*

Suppose there is no specific statutory authorization to provide official support to an NFE. The DoW may still support NFE-sponsored or hosted events when there is a valid community outreach purpose and the support is incidental.⁸¹ Any attempt to use community outreach authorities must follow the policies in Department of Defense Instruction (DoDI) 5410.19.⁸² Since it was issued in 2021, DoDI 5410.19 is the controlling authority for community outreach activities in the DoW, as further highlighted in the 2024 revision to the JER.⁸³

Public affairs officials are essential in this process and must lead the operation to access this authority. Practically, requests for support from NFEs to provide speakers, equipment, or even facilities should be channeled through the command's public affairs team.⁸⁴ Military leaders and their public affairs teams should require that all requests be submitted on the DD Form 2535 or DD Form 2536, depending on the type of support desired,⁸⁵ and then evaluate each request using the standardized decision worksheet found in DoDI 5410.19, volume 1, appendix 6A.⁸⁶ The authorities relating to different types of DoW resources are widespread, but the decision worksheet is a helpful way to

analyze each request that a unit receives.⁸⁷ The remainder of this section will highlight some key parts of the analysis in making this decision on NFE engagement, but not cover everything from the standardized decision worksheet.

In analyzing any request for support to an NFE event, before even considering the specific resource requested, the public affairs team and legal advisor must evaluate the character and nature of the NFE and event. The DoW has made clear that organizations requesting support with restricted admission, membership, and access,⁸⁸ or posturing to stage controversies, must be scrutinized.⁸⁹ In most cases, these organizations or events are not entitled to support, with limited exceptions.⁹⁰ Therefore, the public affairs team and legal advisor should initially screen the requesting organizations to determine if any support is possible.⁹¹

After vetting the organization and potential event, the analysis turns to whether the request is for logistical support, consistent with the criteria in DoDI 5410.19, volume 2, paragraph 3.2(a),⁹² or speaker support, in accordance with DoDI 5410.19, volume 2, paragraph 5.9.⁹³ Stated plainly, the NFE may want things, and perhaps the people to operate the things (i.e., logistical support), or the NFE may want DoW personnel to serve as presenters or speakers (i.e., speaker support) at their event.⁹⁴ Although each category of support has some of its own specific requirements, DoDI 5410.19 provides the overarching principle that all support to an NFE event must be incidental.⁹⁵

Incidental support to an NFE event for community outreach purposes is not a new concept—but it has seen significant changes. Prior to the 15 May 2024 revisions to the JER, the incidental support language served as a restriction when there was a cost of admission to the supported event and the cost was above the “reasonable amount” threshold.⁹⁶ The incidental support language was interpreted as meaning that no more than twenty percent of speakers or other support to the event could be provided by DoW.⁹⁷ If the cost for the supported event was under the “reasonable amount” threshold, then support could be more than incidental, but still limited.⁹⁸ All of this changed, however, when the 15 May 2024 revisions to the JER

were published. The revised 2024 JER has effectively eliminated its old section related to support to NFEs and directed that all support to NFEs be handled under DoDI 5410.19.⁹⁹

Unlike the pre-15 May 2024 JER's distinctions related to incidental or limited support based on admission fees to events, DoDI 5410.19 provides that all NFE event support must be incidental.¹⁰⁰ This is a dramatic departure from prior practice, especially considering that DoDI 5410.19 does not provide percentage-of-support guideposts like the pre-15 May 2024 JER, as interpreted by the DoW Standards of Conduct Office (SOCO).¹⁰¹ Rather, DoDI 5410.19 relies solely on the incidental support language and definition as the limiting factor.

Under DoDI 5410.19, incidental support is defined as providing DoW personnel¹⁰² or resources to support community outreach activities when the “total [DoW] support or participation does not constitute the main component of the planning, scheduling, functioning, or audience draw of the event.”¹⁰³ Despite this limitation, DoW support may still “add significant programmatic value or improve the perceived quality, audience draw, or similar aspects of the event or activity.”¹⁰⁴ As long as the NFE event is able “to proceed and function” based on the non-DoW aspects, then the DoW support is likely to be considered incidental.¹⁰⁵ The July 2025 update to DoDI 5410.19, volume 1, also contains helpful new factors in evaluating whether DoW support is incidental.¹⁰⁶ Importantly, incidental support is the standard regardless of whether an admission fee is charged for the event.¹⁰⁷ If the event does charge an admission fee, however, the DoW participation cannot be the primary attraction or used to promote ticket sales, with some limited exceptions for military academy athletic events, band performances, or aerial displays.¹⁰⁸

There are additional considerations when the requested support comes for official speakers at events, especially senior leaders.¹⁰⁹ It is DoW policy to encourage qualified personnel to speak in their official capacity at events of public interest.¹¹⁰ These speeches can be authorized to express an official DoW position or in support of a DoW community outreach program.¹¹¹ Both

require appropriate supervisory approval, and the remarks must address a subject in the official knowledge or duties of the speaker.¹¹² Although, generally, the speaker support must be incidental to the NFE event, there is a notable exception related to NFE events where, among other things, DoW speaker support would primarily benefit the DoW.¹¹³ This particular exception seems directed at NMA events and has multiple requirements, including DoW or military Service-level public affairs authorization.¹¹⁴

Lastly, another critical aspect of the NFE support analysis for public affairs teams and legal advisors to work through is being a supplier of last resort.¹¹⁵ DoW support must generally not be provided to NFEs when the support could be “provided reasonably by commercially available resources and services.”¹¹⁶ Although this criterion is unlikely to play a major role in speaker support because of the unique position of DoW personnel, it could serve as a significant hurdle when it comes to other personnel (e.g., public affairs cameramen) and equipment (e.g., audio equipment or tents). In looking to provide support to an NFE event, public affairs teams and legal advisors must be able to identify whether similar resources are commercially available.

DoW personnel engagement with and support to NFEs will continue to be rife with ethical concerns that demand careful maneuvering by military leaders. Military lawyers must be ready to advise these same leaders proactively to allow for strong community relations. This principled counsel will help mitigate impairment to the DoW’s warfighting mission through avoidable, prolonged investigations and discipline for ethical missteps.

Conclusion

After the ethics refresher training, how does the new BJA at Fort Swampy navigate these NFE issues from our scenario? First, there is no objection to the brigade commander’s personal participation in IOHA, and he may speak at the future lunch in his personal capacity, but he may want to consider declining the role of president. It appears he was only nominated based on his new official position, and leading that NFE could lead to concerns of preferential treatment among NFEs or the appearance of endorsement.



U.S. Army 1LT Alma Cooper, an intelligence officer and 2025 Miss USA, performs the ceremonial “First Shot” before a Denver Nuggets vs. Philadelphia 76ers game at Ball Arena, Denver, CO. (Credit: Natalie Bratty)

He can certainly let the new platoon leaders informally know about IOHA, but he cannot give them authorized absences to attend the luncheon and should not brief the topic during the official unit training meeting. These actions would give the impression of endorsement and could lead the platoon leaders to believe that joining IOHA or attending the upcoming lunch is mandatory.

Second, the brigade commander can likely support the Swampy Descendants’ request to provide personnel and equipment,

assuming it meets the criteria for limited logistical support and is consistent with the unit’s public affairs plan. The brigade commander can also make remarks consistent with community outreach. The BJA may need more information about the scale of the event to determine if the support is incidental. Still, it appears to be a proper community outreach activity that could be supported. The BJA would also want to confirm that the Soldiers would not perform prohibited menial or demeaning tasks. He further needs

to perform a gift analysis and determine the cost of the food being offered to ensure it is an appropriate amount to be accepted as an exception to the gift prohibition.

Lastly, the brigade commander cannot accept this offered gift of food and baking lessons as a personal gift or gift to the unit. He can propose that the pastry chef speak with the installation's military welfare and recreation (MWR) office, however, about potentially accepting the gift under Army Regulation 215-1, *Military Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities*.¹¹⁷ This would require a detailed gift analysis by the installation's legal counsel, but it could be an event that the MWR may sponsor or co-sponsor with the pastry chef. Even if MWR may accept the gift, the unit and MWR must be concerned with potential improper endorsement and be prepared to offer similar support (i.e., facility space) to other NFEs if requested. If consistent with the unit's public affairs plan and assuming it meets the criteria for limited logistical support, an open house or installation tour may be given to the pastry chef and his team.

Due to the BJA's competent advice, the brigade commander is elated that he can take a step forward in rebuilding his unit's reputation in the community. As seen in this example, a practical method to improve community trust in the military is to openly engage it at each camp, post, or station within the permissible limits. The DoW has public affairs and community relations assets to help educate the community on DoW operations and allow the public to understand the important work that military leaders do daily. To accomplish this mission, legal advisors must understand these authorities and advise their leaders accordingly.

The key to military lawyer success in this area is both educating personnel within the organization and integrating with the relevant staff officers for organizational planning efforts. Importantly, the training must be engaging and include real-life situations or practical vignettes on emerging topics like social media and endorsements. A "train the trainer" model is recommended because legal assets, including paralegal support, can be limited, as it will enable the information to flow to the lowest levels of command.

Similarly, integration in the staff planning process must include early involvement by the legal advisor in engagement working groups or even informal staff syncs where new ideas come about. It is obvious, but a close working relationship with the unit's public affairs official should be a priority when arriving at a new organization. A legal advisor armed with these recommendations and the above-discussed authorities will positively contribute to their organization's success. **TAL**

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Notes

1. See, e.g., U.S. DEP'T OF ARMY, REGUL. 360-1, THE ARMY PUBLIC AFFAIRS PROGRAM paras.1-6a to 1-6d (8 Oct. 2020) [hereinafter AR 360-1] (providing that the Army will communicate with its own members, the public, and foreign publics and that commanders must then task organize and prioritize communications into all phases of mission planning).
2. See U.S. DEP'T OF DEF, DIR. 5122.05, ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS (ATSD(PA)) para. 5.1 (7 Aug. 2017) [hereinafter DoDD 5122.05] ("It is the policy of the Department of [War] to make available timely and accurate information so that the public, Congress, and the news media may assess and understand the facts about national security and defense strategy."); see also U.S. DEP'T OF DEF, INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: POLICY OVERVIEW AND EVALUATION PROCEDURES vol. 1, para. 3.1 (29 Sep. 2021) (C2, 29 July 2025) [hereinafter DoDI 5410.19-V1] (establishing policy and guidelines for determining event eligibility for DoW support and addressing specific requests for DoW support and materials); U.S. DEP'T OF DEF, INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: OSD OUTREACH PROGRAMS, SPEAKING ENGAGEMENTS, AND SUPPORT TO NON-DoD ORGANIZATIONS vol. 2, para. 1.2c (29 Sep. 2021) (C2, 7 Aug. 2025) [hereinafter DoDI 5410.19-V2] ("[DoW] will seek to develop and maintain good relations with communities at home and abroad . . .").
3. See STANDARDS OF CONDUCT OFF., U.S. DEP'T OF DEF, ENCYCLOPEDIA OF ETHICAL FAILURES 92–93 (Jan. 2025) (a senior executive service employee improperly used his title on an NFE website leading to a negative counseling); *id.* at 93–94 (seven senior military officers, including four generals, improperly appeared in uniform for an NFE promotional video).
4. "Community outreach activity" is a term of art when discussing engagement with NFEs. Specifically, it is "an officially planned program, sequence or series of events, or individual action by a [DoW] Component, unit or person designed to conduct community outreach. Community outreach activities are conducted at all levels of command, both in the United States and overseas, on or off military installations." DoDI 5410.19-V1, *supra* note 2, Glossary at 55.
5. See *id.* para. 3-1.

6. *Id.* para. 3.1(a).
7. *Id.* para. 3.1(b).
8. *Id.* para. 3.1(c).
9. *Id.* para. 3.1(d).
10. *Id.* para. 3.1(e).
11. *Id.* para. 3.1(f).

12. Annually, the Assistant to the Secretary of War for Public Affairs (ATSW(PA)), must oversee and publish a DoW Public Affairs Community Engagement Plan that "consolidates the goals of the Military Departments and [Combatant Commands], identifies key events and observances that support a broad [DoW] outreach mission, and establishes overall outreach measurements for the [DoW] Components to determine their return on investment on community outreach efforts." *Id.* para. 2.1(j).

13. Notably, the "common interest" to the community requirement can be defined quite broadly, and military lawyers should evaluate the exact community to which their unit is appealing. See *id.* para. 3.4 ("Community outreach support must be confined to those activities that are of common interest and benefit to a local, [s]tate, regional, national, or broadly representational community . . .").

14. See *id.* para. 3.5. There is substantial discretion here for military leaders, but public affairs officials are given a number of key areas for measurement for a return on investment. Specifically, "physical audience demographics and reach; fiscal value of media coverage, when available; and social media analytics." *Id.*

15. See, e.g., U.S. DEP'T OF ARMY, DOCTRINE PUB. 1, THE ARMY para. 1-1 (31 July 2019) ("The primary responsibility of our Army is to conduct prompt and sustained land combat as part of the joint force.").

16. See generally *supra* note 2 (identifying DoW polices requiring community engagement).

17. See U.S. DEP'T OF ARMY, FIELD MANUAL 3-84, LEGAL SUPPORT TO OPERATIONS para. 4-3 (1 Sep. 2023) [hereinafter FM 3-84] (identifying a key task for judge advocates as providing legal support to public affairs and command messaging).

18. See generally 5 C.F.R. § 2635.101 (2024) (describing the general principles of ethical conduct for all executive branch employees); see also U.S. DEP'T OF DEF., JOINT ETHICS REGULATION (JER) para. 2-101 (15 May 2024) [hereinafter JER] (extending applicability of 5 C.F.R. § 2635 to the National Guard and enlisted members of the military).

19. See 5 C.F.R. §§ 2635.101(b)(1)-(7) (2024).

20. See *id.* § 2635.702.

21. See *id.* § 2635.101(b)(8).

22. See *id.* § 2635.101(b)(9).

23. See, e.g., Mohamed Younis, *Confidence in U.S. Military Is Lowest in Over Two Decades*, GALLUP (July 31, 2023), <https://news.gallup.com/poll/509189/confidence-military-lowest-two-decades.aspx> [<https://perma.cc/4AW9-KJ39>] (highlighting a Gallup poll from June 2023 where public trust in the military is the lowest in over twenty years); Luke West, *Closing the U.S. Military's Public Trust Deficit*, MODERN WAR INST. (Nov. 11, 2024), <https://mwi.westpoint.edu/closing-the-us-militarys-public-trust-deficit> [<https://perma.cc/BC3A-ARYQ>] (noting the 2023 Reagan National Defense Survey results showing that public trust in the military had dropped to only 45 percent and identifying

potential efforts, including new community engagement strategies, to increase public trust in the military).

24. Education of personnel within a unit's command is paramount to ensuring the DoW is regarded with integrity and fairness. *See* 5 C.F.R. § 2638.103 (2024) ("Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials.") In particular, the authorities related to personal participation in NFEs must be explained and taught to every new member of the DoW and refresher training should be taken seriously to avoid even the perception of a conflict of interest. The unit's lawyer should be leaned on heavily in this effort.

25. *See* The Judge Advoc. Gen. & Deputy Judge Advoc. Gen., U.S. Army, TJAG & DJAG Sends, Vol. 40-16, Principled Counsel—Our Mandate as Dual Professionals (9 Jan. 2020); *see also* FM 3-84, *supra* note 17, at 1-3 & fig. 1-1 (describing the four constants of legal practice).

26. DoDI 5410.19-V1, *supra* note 2, Glossary at 60; *accord* JER, *supra* note 18, app. at A-3.

27. *See* 5 C.F.R. § 2635.101(a) (2024) ("To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee must respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations."); *see also* DoDI 5410.19-V2, *supra* note 2, para. 3.2 ("The potential for creating the perception that the [DoW] is not being a good steward of taxpayers' dollars must also be considered before providing support [to an NFE].").

28. *See* DoDI 5410.19-V2, *supra* note 2, para. 3.6(a), 9 tbl. 1; U.S. DEP'T OF DEF. INST. 1000.15, PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS encl. 3 (24 Oct. 2008) [hereinafter DoDI 1000.15].

29. *See* DoDI 5410.19-V2, *supra* note 2, 9 tbl. 1 (listing various specific statutory authorities and references for support from or to various NFEs).

30. *See* DoDI 1000.15, *supra* note 28, encl. 2; *see also generally* U.S. DEP'T OF ARMY, REGUL. 210-22, SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DEPARTMENT OF THE ARMY INSTALLATIONS (12 May 2022) [hereinafter AR 210-22]. POs operating on DoW installations do not receive special privileges or official support like military relief societies do, but they are granted authorization to operate in areas that other NFEs do not, so it can be perceived that they are receiving support if proper steps are not taken. POs are common and are granted certain benefits simply by being allowed to operate on installations.

31. *Compare* JER, *supra* note 18, para. 3-100(a)(1)–(2) (prohibiting DoW personnel from holding membership or participating in an NFE in their official capacity unless there is a specific exception), *with id.* para. 3-200 (permitting DoW personnel in their personal capacity to volunteer with NFEs or have outside employment as long as those actions are consistent with other conflict of interest statutes and other ethical requirements).

32. *See* 5 C.F.R. § 2635.705(a) (2024) ("Unless authorized in accordance with law or regulations to use such time for other purposes, employees must use official time in an honest effort to perform official duties."); JER, *supra* note 18, para. 2-300 ("[DoW] personnel may use Federal Government resources, including personnel, equipment, and property, for official

purposes only, except as otherwise permitted in the JER or other applicable authority."); *id.* para. 2-302 ("[DoW] personnel . . . may not be used to support the unofficial activity of other [DoW] personnel whether in support of an individual or [an NFE] . . ."); *id.* para. 2-302(a) ("Work performed by [DoW] personnel must have an obvious benefit to [DoW]'s mission and operations and be in direct support of official responsibilities."). For a thorough discussion on the related topic of using Government property when determining if an event is official, *see* Yolanda A. Schillinger, *Fielding Requests for Use of Government Resources: Is the Event Official or Unofficial?*, ARMY LAW., Apr. 2015, at 5.

33. All new DoW civilian personnel and active-duty officers must receive initial ethics training within thirty days of appointment. *See* JER, *supra* note 18, para. 9-200. Active-duty and Reserve enlisted personnel and Reserve officers must receive initial ethics training within 180 days of joining service. *Id.*

34. *See* JER, *supra* note 18, para. 2-400 (related to fundraising); *id.* para. 2-508 (related to endorsement); *id.* para. 3-102d; U.S. DEP'T OF ARMY, REGUL. 1-10, FUNDRAISING WITHIN THE DEPARTMENT OF THE ARMY para. 1-8 (16 Dec. 2022) [hereinafter AR 1-10]; 5 C.F.R. § 2635.702 (2024).

35. *See* 5 C.F.R. § 2635.808(b) (2024) (authorizing official capacity fundraising when permitted by statute or other regulation and giving specific mention to the CFC); *see* JER, *supra* note 18, para. 2-400(a).

36. JER, *supra* note 18, para. 2-400(c).

37. *Id.* para. 2-400(f). The "By Us, For Us" organizations are those composed primarily of DoW personnel and family members when the fundraising is among their own members for the benefit of the organization's members. *See id.*; AR 1-10, *supra* note 34, paras. 1-8 to 1-12.

38. There is a limited management exception in circumstances specified by statute for certain officers to serve in these roles for designated military relief agencies and organizations that regulate athletics for Service academies, but it requires Service department secretary authorization, among other things. *See, e.g.*, 10 U.S.C. §§ 1033(b), 1589; *see also* JER, *supra* note 18, para. 3-100(b). There is a specific process for being designated as such an entity for management support listed in the JER. *See* JER, *supra* note 18, para. 3-101.

39. JER, *supra* note 18, para. 3-100.

40. A supervisor may authorize attendance in an official capacity when there is an official purpose. *See* 5 C.F.R. § 2635.705 (2024). The official purpose may be community or public relations, assuming attendance is consistent with the organization's public affairs mission or plan. The approval for attendance at an NFE event in an official capacity is the method by which many community outreach activities can be authorized as long as they comply with other ethical requirements. In evaluating additional ethics hurdles, it would largely depend on the scope and purpose of employee's attendance. Mere attendance by itself, however, only requires supervisor approval for an official purpose.

41. *See* JER, *supra* note 18, para. 3-100(c).

42. In order for a liaison to be approved, the appointment must be in writing by the "Head of the [DoW] Organization" with the interest, after consultation with an ethics official. *Id.* para. 3-100(c)(1). The "Head of the [DoW] Organization" is "[a] commander, commanding officer, or other military or civilian [DoW] official who exercises command authority or has overall

responsibility for managing a command or organization within a [DoW] Component." *Id.* app. A-3.

43. *Id.* para. 3-100(c). The liaison's representation is strictly construed in accordance with their appointment letter and the liaison may only represent the DoW in discussions related to those areas of appointment. *Id.* These liaisons must also make general disclaimers to NFEs that their opinions are non-binding on the DoW. *Id.* para. 3-100(c)(1). The JER specifically identifies the contents of the authorization letters and additional restrictions on liaison officers. *See id.* paras. 3-100(c)(1)–(2).

44. *See id.* para. 3-100(a)(3); *see also* 18 U.S.C. § 209 (prohibiting Federal employees from being paid by an entity other than the U.S. Government for performing work duties).

45. When sending DoW personnel in an official capacity to an NFE event pursuant to one of these authorities, additional attention by the ethics official should be given to the potential for other standards of conduct issues. These range from gifts of free attendance and a conflict of interest related to covered matters by the attendee to concerns about NFE restricted membership.

46. *See generally* 18 U.S.C. §§ 201-209 *et seq.* (codifying criminal conflict of interest laws).

47. *See* JER, *supra* note 18, para. 3-200; *see also* 5 C.F.R. §§ 2635.801–809 (2024); 5 C.F.R. § 3601.106 (2024) (DoW supplement on outside activities by employees).

48. *See* JER, *supra* note 18, paras. 3-200, 3-201.

49. *Id.* para. 3-202. Regular active-duty officers in the grade of O-7 to O-10 may not serve on the board of directors of entities that do business with the DoW or focus their business efforts on military personnel. *Id.* paras. 3-202(a)–(b). There are different restrictions for Reserve officers in these grades. *See id.* paras. 3-202(a)–(d). Additionally, active-duty officers in the grade of O-6 or noncommissioned officers in the grade of E-9 that serve in installation leadership positions similarly have restrictions on serving on boards of directors, unless a waiver is granted. *Id.* para. 3-202(e).

50. Even with the use of titles in official capacity participation with an NFE, DoW personnel must be vigilant about the appearance of endorsement of NFEs. *See id.* para. 2-508(b) ("[DoW] personnel are prohibited from using their official position to either affirmatively endorse an NFE . . . or by implying [DoW] endorsement through the individual's unauthorized use of their official position or public office."); 5 C.F.R. § 2635.101(b)(8) (2024) ("Employees shall act impartially and not give preferential treatment to any private organization or individual.").

51. *See* 5 C.F.R. § 2635.702(b) (2024).

52. *Id.* § 2635.702(e).

53. *See* JER, *supra* note 18, para. 3-200(b).

54. *Id.* para. 3-200(a); 5 C.F.R. § 2635.807(b) (2024). In an effort to mitigate concerns of endorsement when titles and positions are used with regard to teaching, speaking, and writing activities, "reasonably prominent disclaimers" must be given. *See* 5 C.F.R. §§ 2635.807(b) (2), 3601.105 (2024).

55. *See* JER, *supra* note 18, para. 3-200(a).

56. *See generally* U.S. DEP'T OF DEF. INSTR. 5400.17, OFFICIAL USE OF SOCIAL MEDIA FOR PUBLIC AFFAIRS PURPOSES (12 Aug. 2022) (C2, 14 Feb. 2025) [hereinafter DoDI 5400.17] (requiring clear distinctions between official and personal social media accounts and providing warnings against personal accounts that reference official titles and positions); *see*

also Memorandum from Gen. Counsel, Office of Gov't Ethics, to Designated Agency Ethics Officials, subject: The Standards of Conduct as Applied to Personal Social Media Use (9 Apr. 2015) [hereinafter OGE Advisory 15-03] (explaining the applicability of the standards of conduct as applied to personal social media accounts); Memorandum from Dir., Off. of Gov't Ethics, to Designated Agency Ethics Officials, subject: The Standards of Conduct and 18 U.S.C. § 208 as Applied to Official Social Media Use (30 Jan. 2023) [hereinafter OGE Advisory 23-03] (explaining the applicability of the standards of conduct as applied to official social media accounts); Memorandum from Acting Dir., Off. of Gov't Ethics, to Designated Agency Ethics Officials, subject: Ethics Guidance on Use of Professional Networking Platforms and Monetizing Social Media Activity (28 Sep. 2023) [hereinafter OGE Advisory 23-13] (discussing monetization of social media accounts); Memorandum from DoD Standards of Conduct Off., subject: Application of Standards of Conduct to Personal Social Media Accounts (5 May 2023) [hereinafter SOCO Advisory 23-03] (specifically discussing DoW official and personal social media accounts and providing illustrative examples).

57. A personal account is defined as a “[n]on-[DoW]-controlled electronic messaging services account intended for personal use and not associated with official [DoW] functions.” DoDI 5400.17, *supra* note 56, Glossary at 28. These electronic messaging services are broadly defined and include social media accounts or other websites. *See* U.S. DEP’T OF DEF, INSTR. 8170.01, ONLINE INFORMATION MANAGEMENT AND ELECTRONIC MESSAGING Glossary at 36 (2 Jan. 2019) (C2, 12 Mar. 2025) (defining electronic messaging services as “[o]nline communication capabilities, including websites, electronic mail, texting, chat, and related online communications methods.”). It is DoW policy that “[DoW] personnel must ensure that all personal social media accounts are clearly identifiable as personal accounts.” *See* DoDI 5400.17, *supra* note 56, para. 8(a)(1).

58. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56; OGE Advisory 23-13, *supra* note 56; OGE Advisory 23-03, *supra* note 56.

59. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56.

60. Generally, disclaimers may look different for either official or personal accounts, but serve the same purpose. For official accounts, the disclaimer may say “likes” or “reposts” are not endorsements, whereas for personal accounts, that “views are my own and not those of the DoW” and nothing should be considered an endorsement. *See* OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56; OGE LA 23-03, *supra* note 56.

61. *See* DoDI 5400.17, *supra* note 56, para. 6.1 (“All [Establishing an Official Presence] and their content represent [DoW], reflect the values of the Department, and serve as official communication platforms to the general public, the news media, and internal audiences of [the DoW].”). Official social media accounts are still rife with ethical concerns, in particular related to use of Government resources (e.g., the social media account is Government property) and a potential conflict of interest (e.g., a covered matter can arise when a decision-maker for paid subscription services for social media also owns stock in certain social media companies). *See* OGE Advisory 23-03, *supra* note 56; DoDI 5400.17, *supra* note 56, sec. 8.

62. A personal social media account that contains

references to the owner’s Government title and position and also posts some official business-related content does not likely cross the line of official Government sanction. *See* OGE Advisory 23-03, *supra* note 56. But, if the bulk of those postings on that same social media account are official, business-related posts, there is likely a greater chance that it would be considered Government endorsement. *See id.* Conducting official business on a personal social media account is also prohibited. *See* DoDI 5400.17, *supra* note 56, para. 8(c).

63. A growing concern addressed by the Office of Government Ethics and DoW Standards of Conduct Office relates to the monetization of social media accounts by members of the Federal Government when those accounts make reference to Government service or use official titles. *See* JER, *supra* note 18, para. 2-508; OGE Advisory 23-13, *supra* note 56; SOCO Advisory 23-03, *supra* note 56. Although those opinions are aimed at Government employees who are earning money as for-profit “brand ambassadors” or the like, it is equally probable that DoW personnel could champion any type of NFE, including those in line with community outreach objectives, and imply Government endorsement of them through their personal social media accounts.

64. Disclaimers are not always sufficient and a multifaceted, content-based analysis is used to determine whether a particular employee’s reference to official titles or positions on a social media account rises to the level where a reasonable person would consider it Government-sanctioned communication. OGE Advisory 15-03, *supra* note 56; SOCO Advisory 23-03, *supra* note 56. Specifically, those factors are:

- Whether the employee states that they are acting on behalf of the Government;
- Whether the employee refers to their connection to the Government as support for the employee’s statements;
- Whether the employee prominently features their agency’s name, seal, uniform or similar items on the employee’s social media account or in connection with specific social media activities;
- Whether the employee refers to their Government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee’s official duties;
- Whether other circumstances would lead a reasonable person to conclude that the Government sanctions or endorses the employee’s social media activities.

OGE Advisory 15-03, *supra* note 56.

65. *See* SOCO Advisory 23-03, *supra* note 56.

66. The DoW Social Media Policy amplifies this concept by providing, in part, “If social media is mismanaged or mishandled, the U.S. Government’s reputation with the American public; relationships with interagency, international, State, local, and tribal entities; military operations; and reputation for a high ethical and professional standard may be compromised.” DoDI 5400.17, *supra* note 56, para. 3.1.

67. Although not covered in this article, it is recommended that military lawyers are mindful of commercial sponsorships and the role that those NFEs have on military installations. Commercial sponsorships certainly fall within the category of relations with NFEs and play a significant part of any installation or garrison operations. It is key, however, to realize there is a specific regulatory

scheme governing relations with these NFEs. *See generally* U.S. DEP’T OF DEF, INSTR. 1015.10, MILITARY MORALE, WELFARE, AND RECREATION (MWR) PROGRAMS (6 July 2009) (C1, 6 May 2011) [hereinafter DoDI 1015.10] (establishing and implementing policy and procedures for operating MWR programs). In particular, “Commercial sponsorship is authorized only for support of the [DoW] MWR programs . . .” *Id.* encl. 11, para. 1(a); *see also generally* U.S. DEP’T OF ARMY, REGUL. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES (24 Sep. 2010) [hereinafter AR 215-1] (providing the Army’s implementing guidance for MWR activities).

68. Official support to NFE fundraisers will not be discussed in this article. Although many of the principles are generally the same, there is some nuance when speaker or logistical support is requested for an NFE-sponsored event that is also a fundraiser. For a thorough discussion on this issue, albeit with some outdated references, *see* Teresa A. Smith, *Everything You Always Wanted to Know about Official Support to Non-Federal Entity Fundraisers*, ARMY LAW., Feb. 2000, at 1 (offering a five-step model for analyzing official support to NFE fundraisers).

69. *See* JER, *supra* note 18, para. 3-102(a).

70. The Purpose Statute provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” 31 U.S.C. § 1301(a); *see also* Michael J. Davidson, *Article: Putting the Genie Back in the (Muddy) Bottle: Curing the Potential ADA Violation*, 78 A.F.L. REV. 27, 29 (2018) (describing in more detail the Purpose Statute and the ramifications for violating it). It is beyond the scope of this article for a detailed discussion on fiscal constraints of Government procurement.

71. *See infra* Section titled “Support Authorized by Statute (Congress Says ‘Go for It’)” (identifying some, but not all, of the specific statutory authorities where Congress has provided DoW authority to support to NFEs).

72. *See* JER, *supra* note 18, para. 3-102(b); *see also generally* DoDI 5410.19-V1, *supra* note 2 (providing general policy and identifying additional specific guidance on particular community outreach activities and requirements for each type).

73. *See, e.g.*, 10 U.S.C. § 2012 (authorizing military departments to provide support incidental to military training to certain governmental entities and youth organizations, but not for community outreach); 10 U.S.C. § 2551 (authorizing military departments to provide cots, bedding, and supplies to support state and national conventions or national youth athletic or recreational tournaments); 10 U.S.C. §§ 2554–55 (authorizing support to the Boy Scouts and Girl Scouts of America for national and international events); 10 U.S.C. § 2606 (authorizing military departments to assist scouting organizations with support outside the United States); 10 U.S.C. § 2558 (authorizing military departments to provide support to designated national military associations for annual national conferences); 32 U.S.C. § 508 (authorizes the National Guard to provide support for certain youth and charitable organization).

74. *See* 10 U.S.C. §§ 2551, 2554, 2555.

75. *See* 10 U.S.C. § 2558; *see also* DoDI 1000.15, *supra* note 28, encl. 3; JER, *supra* note 18, para. 2-400 (providing a more robust list of those authorized specific support).

76. See, e.g., 10 U.S.C. § 2558 (relating to military department support to NMA national conferences, specific types of support are listed, including security and transportation).

77. See DoDI 5410.19-V2, *supra* note 2, sec. 3.6.

78. See 10 U.S.C. § 2558.

79. See 10 U.S.C. §§ 2670, 2602; see also AR 210-22, *supra* note 30, paras. 2-5, 6-1.

80. See JER, *supra* note 18, para. 3-102(a) (noting that official DoW support to NFEs may only be provided for an official or authorized purposes consistent with 5 C.F.R. § 2635, Subpart G, relating to misuse of positions and resources); JER, *supra* note 18, para. 3-102(d) (highlighting its punitive nature and that DoW personnel may not officially endorse or give preferential treatment to an NFE, except as authorized by statute or regulation).

81. See DoDI 5410.19-V1, *supra* note 2, para. 4.8; DoDI 5410.19-V2, *supra* note 2, para. 3.2(a).

82. See DoDI 5410.19-V1, *supra* note 2, para. 3.1 (stating the overarching outreach guidelines).

83. The 2024 revision to the JER directs that any “support provided to NFEs must be authorized in accordance with the criteria set forth in the [DoW] Community Outreach Activities Instruction, DoDI 5410.19.” JER, *supra* note 18, para. 3-102(b).

84. DoDI 5410.19-V1, *supra* note 2, sec. 6 (discussing the procedure for evaluating outreach support).

85. The DD Form 2535 is specific for requests for aerial support, whereas the DD Form 2536 is for general support requests.

86. DoDI 5410.19-V1, *supra* note 2, para. 6.1(a).

87. It is noteworthy that there is a significant number of specific rules and authorities related to use of ceremonial color guards, aerial assets, and military bands. In fact, an entire volume of DoDI 5410.19 is dedicated to these three categories of resources. See generally U.S. DEP’T OF DEF. INSTR. 5410.19, COMMUNITY OUTREACH ACTIVITIES: CEREMONIAL, MUSICAL, AND AERIAL EVENT SUPPORT vol. 4 (29 Sep. 2021) [hereinafter DoDI 5410.19-V4]. In addition to DoW guidance, the Army also has specific guidance governing these resources in Army Regulation 360-1, which governs Army public affairs, Army Regulation 95-1, which governs flight and aviation assets, and Army Regulation 220-90, related to Army bands. See generally AR 360-1, *supra* note 1; U.S. DEP’T OF ARMY, REGUL. 95-1, FLIGHT REGULATIONS (22 Mar. 2018); U.S. DEP’T OF ARMY, REGUL. 220-90, ARMY BANDS (9 Nov. 2016). These authorities must be consulted when evaluating these requests for support.

88. DoDI 5410.19-V1, *supra* note 2, sec. 4.

89. See *id.* para. 3.7(a) (“Community outreach is not authorized if it is in support of, or participation in, events or programs in which public confrontation is planned or likely, or where the apparent purpose is to stage controversy.”).

90. *Id.* (prohibiting support if the NFE event is meant to stage controversy). One notable exception to policy would allow support to events sponsored by organizations with restricted membership when (a) the primary beneficiary of the event is the community as a whole, (b) there is no other community organization with a non-restrictive membership policy for DoW to effectively engage with, (c) the likelihood of disturbances is minor, and (d) participation will not bring discredit on the DoW. *Id.* para. 4-2(a). However, this is a narrow

exception to a broad rule generally prohibiting support to these types of organizations and events.

91. See *id.* paras. 4.1–4.3 (support options are generally prohibited if admission, seating, or membership are restricted based on race, color, national origin, religion, age, disability, sex, or sexual orientation).

92. DoDI 5410.19-V2, *supra* note 2, para. 3.2(a). In order to provide this support, all of the following criteria must be met:

(1) The logistical support does not interfere with performing other official duties and does not detract from readiness.

(2) [DoW] community outreach with the immediate community or other legitimate [DoW] [public affairs] or military training interests are served by the support.

(3) Associating with the event is in the [DoW]’s best interest.

(4) The event is of interest and benefit to: (a) The local civilian community as a whole. (b) The [DoW] Component providing the support or any other part of the [DoW].

(5) An admission fee, beyond what will cover the reasonable costs of sponsoring the event, will not be charged for the portion of the NFE event receiving [DoW] logistical support.

(6) The [DoW] Component is able and willing to provide similar support to comparable events sponsored by similar NFEs when the events meet the criteria in Paragraphs 3.2a(1) through 3.2a(5).

(7) Logistical support generally must not be provided to NFEs when the support could be provided reasonably by commercially available resources and services. In most instances, the [DoW] must be considered the supplied of last resort. Some exceptions are identified in Table 1.

(8) Logistical support must not be provided to events or programs where the real or apparent purpose is to stage controversy or confrontation.

Id. paras. 3.2(a)(1)–(8). Specifically, for logistical support, all eight requirements must be satisfied and any support must be consistent with the JER and other DoW guidance related to NFEs. *Id.* para. 3.2(a) (requiring compliance with the JER, DoDI 1000.15, *supra* note 28, and U.S. DEP’T OF DEF., DIR. 1000.26E, SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS (2 Feb. 2007) (C2, 30 Nov. 2022)).

93. DoDI 5410.19-V2, *supra* note 2, para. 5-1.

94. The stark distinction drawn here was not always so clear. In prior versions of both the JER and DoDI 5410.19, there were situations where requested speaker support was evaluated under the logistical support requirements of paragraph 3.2(a) of DoDI 5410.19, volume 2. This often led to confusion as to the proper regulatory framework for evaluating requests for speaker support. In the August 2025 revisions of DoDI 5410.19, this distinction was clarified.

95. DoDI 5410.19-V1, *supra* note 2, para. 4.8.

96. See U.S. DEP’T OF DEF., 5500.7-R, JOINT ETHICS REGULATION (JER) para. 3.211(a)(7) (30 Aug. 1993) (C7, 17 Nov. 2011) [hereinafter Expired

JER]; Memorandum from Dep’t of Def. Standards of Conduct Off., subject: Advisory 09-03 (23 Mar. 2009) [hereinafter SOCO Advisory 09-03].

97. See SOCO Advisory 09-03, *supra* note 96.

98. See Expired JER, *supra* note 96, para. 3-211(a); SOCO Advisory 09-03, *supra* note 96.

99. See JER, *supra* note 18, para. 3-102(b).

100. DoDI 5410.19-V1, *supra* note 2, para. 4.8.

101. See *id.* para. 4.8, Glossary at 58; see also SOCO Advisory 09-03, *supra* note 96 (interpreting that no more than 20 percent of speakers or other support to the event could be provided by DoW).

102. DoW personnel in support of community outreach activities cannot be given demeaning or menial tasks while in uniform. DoDI 5410.19-V1, *supra* note 2, para. 4.6. For example, DoW personnel cannot be ushers, parking lot attendants, or escorts at beauty pageants in support of these types of outreach events. See *id.* paras. 4.6(a)(1)–(2).

103. *Id.* Glossary at 58.

104. *Id.* para. 4.8(c).

105. *Id.*

106. The instruction provides that all relevant factors should be considered, including the following:

(1) The event’s overall nature.

(2) Prominence of [DoW] support featured in event promotional materials.

(3) Percentage of total event participants comprised of [DoW] personnel.

(4) Percentage of total event agenda time comprised of [DoW] speakers, musical units, ceremonial units, and equipment demonstrations.

(5) The amount of apparent reliance on [DoW] support for the event or activity to proceed.

Id.

107. See DoDI 5410.19-V1, *supra* note 2, para. 4.8.

108. *Id.* para. 4.8(b).

109. See Memorandum from Dep’y Sec’y of Def. to Sec’y of Mil. Dep’ts et al., subject: Department of Defense Senior Leader Attendance at Outside Events (31 Jan. 2018).

110. DoDI 5410.19-V2, *supra* note 2, para. 5.1.

111. *Id.* para. 5.1(a).

112. DoDI 5410.19-V2, *supra* note 2, para. 5.3(b).

113. *Id.* para. 5(j).

114. *Id.*

115. *Id.* para. 3.2(a)(7).

116. *Id.*

117. AR 215-1, *supra* note 67.

Soldiers conduct a foot march along the border of Camp Grafton Training Center in Devils Lake, ND. (Credit: SFC Brett Miller)



Feature

Like a Good Neighbor

Dealing with the Foreign Adversary Next Door

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... [G]reat-power competition stands as the foremost security challenge confronting the United States, with China emerging as the primary pacing threat. Adversaries persist in their endeavors to gather intelligence, engage in espionage, and pilfer critical information through any available means.¹

If someone were asked to think of pressing national security issues, it is unlikely that real estate transactions would be the first thing to come to their mind. But recent transactions—primarily involving Chinese government-backed land purchases adjacent to or near domestic U.S. military installations—are just that. These acquisitions introduce homeland security concerns, such as espionage and sabotage against the U.S. military, and have been the topic of discussions in the national security space. Adversaries at or near installation gates pose security risks to both military missions and personnel.

This issue is not raised by one or two isolated events; this is a growing trend near domestic military installations. From 2010 to 2020, the Chinese Communist Party (CCP) increased its farmland holdings in the United States twenty-three-fold through CCP-affiliated corporations,² with holdings near or adjacent to military bases.³ According to the U.S. Department of Agriculture (USDA), in 2021,

China owned 383,935 acres of land in the United States,⁴ which, in aggregate, is about double the size of New York City.⁵ In a 2022 letter to the then-Secretary of Defense, then-Secretary of the Treasury, and then-Secretary of Agriculture, fifty-one members of Congress said that the “presence of a CCP-affiliated corporation near a military installation potentially undermines the integrity of our high-capability military bases, jeopardizing our strategic interests.”⁶

In June 2024, the *New York Post* published a map of farmland that Chinese companies own next to nineteen “strategically important” military installations across the United States, raising concerns of Chinese espionage and sabotage.⁷ It is not the land ownership alone that causes concern; it is also what the landowners can do with and from the land. For example, “landowners could set up reconnaissance sights, install tracking technology, use radar and infra-red scanning



Drones fly above the National Training Center, Fort Irwin, CA. (Credit: PVC Nathaniel W. Garrett)

to view bases or attempt to fly drones over them as ways to surveil military sites.”⁸ Such abilities would allow foreign adversaries to study how the military works, observe troop movements, and create counter-strategies against the United States.⁹

By outlining case studies, surveying state and Federal responses, and analyzing available command and legal authorities, this article provides judge advocates (JAs) and military leaders with a foundational understanding of the options—and constraints—available when foreign adversaries establish themselves in close proximity to U.S. military installations. It begins with specific examples of recent land purchases by CCP-affiliated entities. Along with the increase in land purchases near installations comes a discussion of collateral security incidents affecting installations. This article then discusses different state efforts to combat these national security risks and highlights some of the legal challenges associated with those efforts. An exploration of Federal mechanisms to respond and the role of the Committee on

Foreign Investment in the United States (CFI-US) follows. Lastly, this article briefly surveys available command authorities to address foreign adversaries right outside the gate.

Case Studies

The examples that follow highlight recent instances of CCP-related land acquisitions and the local and Federal responses that followed. Related incidents of unauthorized access and drone incursions also illustrate some of the types of threats that a co-located adversary can pose to an installation’s security.

The Wyoming Purchase

In June 2022, MineOne Partners Ltd. (MineOne), a Chinese-backed cryptocurrency mining firm, acquired real estate within a mile of Francis E. Warren Air Force Base, a nuclear missile base in Cheyenne, Wyoming, to conduct cryptocurrency mining operations.¹⁰ Just months later, CFIUS, an interagency committee authorized to review foreign investment in the United States,¹¹ received a public tip of the transaction, and, as

discussed in more detail below, the committee exercised its jurisdiction to investigate the matter.¹² Wyoming Governor Mark Gordon and U.S. Senator Cynthia Lummis of Wyoming also publicly expressed their concerns that the site posed national security risks.¹³

CFIUS agreed, and in May 2024, then-President Joseph Biden issued the eighth presidential order in CFIUS history to prohibit a transaction.¹⁴ The order demanded that MineOne divest its land and classified the company as a risk to national security.¹⁵ The White House noted that MineOne’s foreign-sourced equipment in Wyoming was potentially capable of surveillance and espionage activities within one mile of a U.S. Air Force arsenal of Minuteman III intercontinental ballistic missiles.¹⁶

The North Dakota Purchase

Less than one year before the MineOne purchase occurred in Wyoming, Fufeng USA, an American subsidiary of a China-based company, announced its plans to build a corn mill directly outside of Grand Forks Air



Force Base in North Dakota by purchasing land directly from the city of Grand Forks.¹⁷ Grand Forks Air Force Base is “home to some of the Nation’s most sensitive military drone technology.”¹⁸ The base is also home to a space networking center, which a North Dakota senator said handles “the backbone of all U.S. military communications across the globe.”¹⁹ Though the community initially welcomed the investment and jobs that Fufeng USA would generate for their local economy, concerns surrounded the national security risk of potential spying on the nearby base.²⁰

The parties to the deal sought CFIUS approval of the transaction, but unlike in the Wyoming example above and as discussed in more detail below, CFIUS determined that it did not have the jurisdiction to review the matter.²¹ Without the ability to exercise jurisdiction over the Fufeng USA transaction,²² CFIUS was unable to conduct a national security review, use its mitigation authorities, or request presidential intervention over the transaction.²³

Although Federal action was limited,

state and local authorities were able to move forward with protection measures. Assistant Secretary of the Air Force Andrew Hunter wrote to the state’s senators to highlight the national security risks of the project being located so close to the base.²⁴ After hearing the Air Force’s concerns, the Grand Forks mayor changed his stance from the project bringing more jobs to the community.²⁵ In January 2023, he cited the Federal Government’s national security concerns regarding the project and opposed it and any future permits that Fufeng USA filed with the city.²⁶ In April 2023, two years after the project began, the city terminated the deal with Fufeng USA.²⁷

Unauthorized Installation Access and Incursions

The rise in foreign land purchases near sensitive locations has coincided with a series of unsettling security incidents involving unidentified drones. For example, in December 2023, Langley Air Force Base, home to a number of F-22 Raptors, reported that a swarm of unknown drones appeared in restricted airspace

and flew towards Naval Station Norfolk, the world’s largest naval port and home to the U.S. Navy’s SEAL Team Six.²⁸

Months later, in July 2024, a Chinese citizen studying in the United States pleaded guilty to violating the Espionage Act for taking photos of U.S. Navy ships with a drone in Virginia.²⁹ He was sentenced to six months in jail.³⁰ Less than a year after that, another Chinese national was sentenced to four months in Federal custody and deportation for flying a drone over Vandenberg Space Force Base, as well as other U.S. locations.³¹

In November 2024, New Jersey residents reported a number of unidentified drones the size of bicycles or small cars.³² Sightings were reported by the U.S. Coast Guard over one of its vessels and Picatinny Arsenal, a U.S. military research facility.³³ The Federal Bureau of Investigation (FBI) led an investigation to identify these mysterious drones.³⁴ Despite the subsequent announcement that the flights were authorized,³⁵ confusion still surrounds some of the flights’ sources and level of threat.³⁶ “Repeat incidents have occurred at critical

locations, including an intelligence center in Key West, Florida, and adjacent to missile ranges near White Sands National Park.”³⁷ Congressional testimony has reported “over 350 detections of drones at 100 different military installations” in 2024 alone.³⁸

The concerns surrounding unidentified drones and foreign land purchases are further amplified by on-the-ground breaches at U.S. military installations.³⁹ In September 2023, U.S. officials described how “Chinese nationals, sometimes posing as tourists, have accessed military bases and other sensitive sites in the United States as many as 100 times in recent years,” describing the incidents as a “potential espionage threat.”⁴⁰ Just months ago, two Chinese nationals were arrested for acting as agents of the CCP without proper notification and gathering intelligence about U.S. Navy Service members and bases.⁴¹ Collectively, these incidents underscore the growing convergence of physical and technological threats that foreign adversaries pose on U.S. soil.

State Responses

The interplay between Federal and state responsibility complicates efforts to address the risks associated with foreign land ownership. On one hand, states can rely on the Tenth Amendment to the Constitution to address the matter, which provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁴² On the other hand, foreign affairs and national security are roles reserved for the Federal Government.⁴³

Absent a clear Federal solution to the matter, states have introduced their own bills to limit foreign adversaries from purchasing U.S. real estate. In the past two years, most states have introduced laws to limit foreign real estate investments within their borders; just in 2023, eighty-one bills related to the issue were introduced in thirty-three states.⁴⁴ This patchwork of state-specific laws across the country has led to unintended inconsistencies. The brief survey that follows offers a glimpse at current state efforts and demonstrates how they are not tailored to complement Federal efforts.⁴⁵

The Alabama Law

The Alabama Property Protection Act limits the ownership of agricultural property and real property within ten miles of a military installation, among other locations, by “foreign principals” from “China, Iran, North Korea, and Russia.”⁴⁶ But, because the law only applies to these specific “foreign countr[ies] of concern” and their principals,⁴⁷ it leaves room for foreign nationals and companies from those countries to make the same purchases.

The law was introduced after Alabama representative Scott Stadhagen saw a National Association of Realtors report that showed China leading the U.S. residential dollar volume at \$6.1 billion in 2022.⁴⁸ While no specific real estate transaction within Alabama was cited as prompting the legislation,⁴⁹ Stadhagen introduced the act as a preventative measure to keep “communist China [from purchasing] Alabama land and resources” for their purposes.⁵⁰

The Indiana Law

In another example, in 2022, Indiana passed a law that blocks “foreign business entities” from purchasing farmland for crop farming and timber production.⁵¹ On 30 June 2023, an amendment was passed that expanded prohibitions to acquisitions that are “directly adjacent to a military installation.”⁵² Then in March 2024, Indiana again amended the law to apply to real property transactions within a ten-mile radius of a military installation.⁵³

Indiana Representative Kendell Culp, author of the March 2024 amendment, said that he introduced the bill to protect national security and the food supply.⁵⁴ Though no specific Indiana real estate transaction was identified as the trigger for the measure, Culp cited a USDA report showing that in 2022, foreign entities owned more than 438,000 acres of Indiana land.⁵⁵

Indiana’s restrictions apply to “citizen[s] of China, Iran, North Korea, Russia, or a country designated as a threat to critical infrastructure by the governor.”⁵⁶ In contrast to Alabama’s law, this restriction applies directly to individual citizens of these countries or companies owned by citizens of these countries, and it gives the governor of Indiana more authority to add more countries to its list.⁵⁷

The Florida Law

While Florida’s legislative approach differs slightly from both Alabama’s and Indiana’s, the implications of the legal challenges that have followed it extend beyond the state’s borders. In May 2023, Florida passed Senate Bill 264 to amend a statute that restricts any foreign national from seven countries from directly or indirectly owning “real property on or within [ten] miles of any military installation or critical infrastructure facility in the state.”⁵⁸ No specific Florida real estate transaction was identified as the trigger for the legislation, though the 2022 USDA report that inspired Representative Culp states that foreigners owned more than 1.4 million acres of Florida agricultural land.⁵⁹

In addition to China, the prohibition applies to “the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, [and] the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.”⁶⁰ The statute goes on to mandate additional requirements solely related to China.⁶¹ They include a registration requirement for acquired land and harsher penalties for violating the statute.⁶² In addition to carving out additional provisions for China, this statute is unique in that the punishment is more than just divestment. Violators face fines that increase daily and the placement of liens on the property in question.⁶³

The Florida Lawsuit

Shortly after Senate Bill 264 was enacted, four Chinese nationals with legal status to reside in the United States and a Chinese real estate investment company challenged the law in *Shen v. Simpson*.⁶⁴ Among the individual plaintiffs, three were legal immigrants with valid non-immigrant visas and one had a pending asylum application.⁶⁵ The plaintiffs sought a preliminary injunction against Florida’s statute using three main arguments: it violates the Fourteenth Amendment’s Equal Protection Clause, it is preempted by or otherwise violates the Fair Housing Act by denying real estate to a protected class, and it is preempted by Federal law restricting certain transactions involving foreign nationals.⁶⁶

The Northern District of Florida denied



(Credit: Department of Homeland Security)

the plaintiff's injunction.⁶⁷ While the appeal is still pending, the Eleventh Circuit did partially grant the plaintiff's motion for a preliminary injunction in favor of two of the individual plaintiffs (who had real estate transactions pending).⁶⁸

Federal Responses

While, as mentioned above, many states have exercised their right to pass laws concerning real estate transactions, "[p]roperty law is not merely a domestic concern, especially in the case of foreign investors."⁶⁹ Issues involving national security and foreign adversaries are

elevated beyond state lines and into the Federal Government's realm of responsibility, and, despite constitutional constraints, it has several tools at its disposal.

CFIUS is currently the Government's biggest resource. If faced with extreme risks to national security, the Government can also explore exercising eminent domain, and existing authorities also permit the military to support state and local law enforcement activities to combat the physical and technological threats posed by the foreign adversary's proximity and activity. Each option is outlined below.

CFIUS

In 1975, Executive Order 11858 established CFIUS, a committee currently composed of the heads of the Department of State, Department of War (DoW), Department of Commerce, Department of Energy, Department of Justice, Department of Homeland Security, Office of Science and Technology Policy, an Office of U.S. Trade Representative, and chaired by the Department of the Treasury.⁷⁰ Their primary responsibility is to monitor "the impact of foreign investment in the United States . . . and [to] coordinat[e] the implementation of United States policy on such investment."⁷¹ Through amendments over the years, today, CFIUS can make recommendations to the President to suspend or prohibit transactions that the committee deems a national security risk.⁷²

The President's authority to suspend or prohibit transactions was provided by the 1988 Exon-Florio Amendment to the Defense Production Act, which added § 721 to the law.⁷³ This amendment requires credible evidence that a foreign interest in the acquisition might impair national security.⁷⁴ The Foreign Investment and National Security Act of 2007⁷⁵ expanded that authority, and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)⁷⁶ broadened the type of transactions CFIUS covers.⁷⁷ Prior to FIRRMA, CFIUS could only review transactions that resulted in foreign "control" of a U.S. business.⁷⁸ The law extended CFIUS's reach to include real estate transactions near sensitive U.S. military installations and other national security sites.⁷⁹

However, this reach was not unlimited. CFIUS's review of the Fufeng transaction in North Dakota brought attention to some of its limitations when the committee issued its letter stating that it did not have jurisdiction over the matter.⁸⁰

For background, the relevant portions of title 31 of the Code of Federal Regulations (C.F.R.) that bring the Defense Production Act into action include both parts 800 and 802.⁸¹ Part 800 regulates "covered transactions," which, generally speaking, encompass transactions falling within CFIUS's traditional jurisdiction—those that could result in foreign control of a U.S. business.⁸² In contrast, part 802 regulates the scope of transactions that



A Soldier scans identification cards at the Gregg Gate, Fort Gregg-Adams, VA. (Credit: Chad Menegay)

FIRRMA's expansion incorporated—"covered real estate transactions" by a foreign person in the United States.⁸³

Although the Fufeng transaction involved real estate, CFIUS reviewed the matter under 31 C.F.R. part 800, not 802.⁸⁴ While CFIUS's deliberations and decisions are not publicly disclosed, a review of 31 C.F.R. part 802 reveals why its provisions were likely excluded in these deliberations. Part 802 includes definitions of what can be considered a covered real estate transaction.⁸⁵ At the time, the relevant definition of "covered real estate" narrowly defined "military installations" to include specific category descriptions.⁸⁶ The regulation also provides an explicit list identifying these military installations and other sites in an appendix to the regulation, and Grand Forks Air Force Base was not included at the time.⁸⁷

It is worth noting here that this is where the facts in the Wyoming purchase and North Dakota purchase examples above diverge. In MineOne's Wyoming purchase, F.E. Warren Air Force Base *was* included in the regulation's list of military installations at the time that CFIUS was investigating that transaction.⁸⁸ Consequently, in that case, CFIUS was able to exercise its full authority to investigate that transaction and make the recommendation to the President that ultimately led to a divestment order.⁸⁹ In contrast, although the Fufeng North Dakota property was also in close proximity to a U.S. military installation and was being acquired by a "foreign person" as defined by the regulation, because that installation was not included in the appendix to 31 C.F.R. part 802, it did not trigger that provision's oversight.

With only part 800 in play, CFIUS likely determined it lacked jurisdiction because Fufeng purchased undeveloped land, which does not meet the regulatory criteria related specifically to transactions with a U.S. business.⁹⁰ This explanation is supported by an example provided in the regulation of an *excepted real estate transaction*:

Example 3. Corporation A, a foreign person, seeks to purchase from Corporation X an empty warehouse located in close proximity to a military installation identified in part 2 of appendix A to this part. Assuming no other relevant facts, the purchase of the covered real estate is *not* a covered transaction subject to part 800 of this chapter *because Corporation A has not acquired a U.S. business . . .*⁹¹

Although the illustration involves a military installation that is listed in the regulation, the analysis of the real estate in question is still applicable to the Fufeng situation. Without meeting the specific criteria listed in 31 C.F.R. § 800.213, it fell outside CFIUS's grasp.

Reactions to the Fufeng Decision and CFIUS Rule Changes

As a result of the Fufeng project falling directly through these regulatory cracks, some states took matters into their own hands.

As mentioned above, thirty-three states proposed legislation to restrict foreign land purchases in 2023.⁹² For instance, in neighboring South Dakota, the government called for a review of its own state's investments, and the governor expressed support for legislation that created a "Committee on Foreign Investment in the United States for South Dakota" (CFIUS-SD), which would examine investments within the state avoid the definitional challenges that CFIUS faced.⁹³

It is not far-fetched to assume that if states and industry leaders were noticing CFIUS's jurisdictional limitations, foreign adversaries were doing the same. In May 2023, the Congressional Research Service reported that members of Congress were saying that some foreign investments "require a more proactive and strategic approach . . . [as they] may evade or fall outside current authorities."⁹⁴

In the same month that report was published, the Department of the Treasury was working with fellow CFIUS members to close gaps in CFIUS's coverage. The DoW, as a member of CFIUS, states that it "regularly assesses its military installations and the geographic scope around them to ensure appropriate application in light of national security considerations."⁹⁵

On 5 May 2023, the Department of the Treasury proposed a rule that amended the definition of "military installation" in 31 C.F.R. § 802.227 and added eight military installations to the regulation's list, including South Dakota's Grand Forks Air Force Base.⁹⁶ The final rule came into effect in September of that year.⁹⁷ Just over a year later, an additional amendment came into effect that once again adjusted the definition of "military installation" and added fifty-nine more installations to the list.⁹⁸ The DoW says

it "will continue to assess its military installations on an ongoing basis to ensure the sites listed are appropriate."⁹⁹

Despite this significant broadening of the rule's applicability, some lawmakers believe more needs to be done, and legislation to expand CFIUS continues to be introduced.¹⁰⁰ The White House has also expressed intent to further expand CFIUS's jurisdiction. The President declared the following in a February 2025 memorandum regarding the Nation's investment policy:

The United States will use all necessary legal instruments, including CFIUS, to restrict [People's Republic of China]-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors. My Administration will protect United States farmland and real estate near sensitive facilities. It will also seek, including in consultation with the Congress, to strengthen CFIUS authority over "greenfield" investments, to restrict foreign adversary access to United States talent and operations in sensitive technologies (especially artificial intelligence), and to expand the remit of "emerging and foundational" technologies addressable by CFIUS.¹⁰¹

Legislators have also introduced laws to expand Federal reach in this area outside of CFIUS's purview. For example, in January 2025, U.S. Senator Tom Cotton reintroduced the Not One More Inch or Acre Act,¹⁰² which requires the President to take actions to prohibit the purchase of U.S. real estate by the CCP or any individual acting on its behalf, among others, and to force the sale of the property owned by these individuals or entities if it "poses a national security risk."¹⁰³ Senator Cotton initially introduced the bill in March 2023, but it was not brought to a vote.¹⁰⁴ Senator Cotton argues that for "decades, the [CCP] has been gobbling up American farmland and real estate."¹⁰⁵ Senator Katie Britt, one of the legislation's co-sponsors, expressed that the "CCP's strategic acquisition of farmland, particularly near our military installations, isn't just a national security risk, it is a threat to our economic and food security."¹⁰⁶

If passed, real estate at issue will presumably move directly to the President's desk for action. The President may utilize the assistance of department heads, including the DoW, to help identify real estate that falls within this category and exercise the law's authority to order its divestment.

Eminent Domain

One might wonder if the easiest solution to the problems posed by adversary-owned property would be for the Federal Government to repossess the land. While the Federal Government's power of eminent domain is well established, it is an extraordinary remedy and is subject to extensive legal and procedural safeguards.¹⁰⁷ To avoid violating the Takings Clause of the Constitution, the Government can only take private property for public use and must provide just compensation.¹⁰⁸ The power should be reserved for situations where other remedies have been exhausted and the national security risks cannot be addressed through existing legal or cooperative means.

While undoubtedly a last resort, the Service Secretaries have statutory authority to acquire real estate necessary for national defense.¹⁰⁹ Specifically, 10 U.S.C. § 2663 lists the military's land acquisition authorities, which include condemnation, purchase, and separate guidance for the "acquisition of interests in land when need is urgent."¹¹⁰ Under this provision,

(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that-

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.¹¹¹

Implementing regulations, such as 32 C.F.R. § 522.33, further prescribe proce-

dures for the military to acquire property interests.¹¹² While § 2663(d) provides the ability to expedite an acquisition in exigent circumstances, in order not to violate the Fifth Amendment, the Federal Government would need to compensate the owners of the suspected land with fair market value, which could be an expensive endeavor.

These robust procedures and constitutional protections make clear that eminent domain is not a routine tool for managing foreign land ownership, but it remains a viable tool when no other resources are available to combat the security threat that an adversary-controlled property presents.

Coordination with States

As discussed above, property ownership is primarily regulated at the state level, and many states have already enacted restrictions on land ownership by foreign adversaries.¹¹³ Nonetheless, Federal military authorities can support and coordinate with these state efforts within existing constitutional boundaries.

One constraint that prevents military leaders from enforcing laws beyond the perimeter of the installation is the Posse Comitatus Act (PCA).¹¹⁴ Under 18 USC § 1385, the military is prohibited from using Title 10 personnel as “posse comitatus” to directly participate in law enforcement activities.¹¹⁵ This becomes an issue if, for instance, the Federal response to a threat posed by Chinese-company-owned real estate is to independently enforce civilian laws against foreign landowners.

However, exceptions exist. Department of Defense Instruction (DoDI) 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, provides a framework under which military forces can support law enforcement activities in narrowly defined circumstances.¹¹⁶ Specifically, the DoDI identifies exceptions to PCA limitations when action is “taken for the primary purpose of furthering a [DoW] or foreign affairs function of the United States,” such as:

(c) Investigations and other actions related to a commander’s inherent authority to maintain law and order on a [DoW] installation or facility.

(d) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(e) Protection of [DoW] personnel, equipment, and official guests.

(f) Such other actions that are undertaken primarily for a military or foreign affairs purpose.¹¹⁷

Responding to national security threats posed by a foreign adversary’s actions within such close proximity to a military sensitive location falls squarely within this exception.

Moreover, through 10 U.S.C. § 271, the Secretary of War can share information collected “during the normal course of military training or operations.”¹¹⁸ Information provided by the military can help local law enforcement investigate and bring espionage charges (or other criminal charges, such as trespass, identity theft, and financial fraud) against foreign actors near military bases. In addition to providing information to civilian law enforcement, 10 U.S.C. § 272 allows the Secretary of War to provide military equipment to civilian law enforcement officials for law enforcement purposes,¹¹⁹ along with the personnel to maintain and operate such equipment.¹²⁰

By leveraging state-level authorities in tandem with tailored Federal support, the DoW can enhance the protection of its installations without overstepping constitutional or statutory limits.

Command Authority to Respond to Installation Security Posture

While state or Federal pursuits to address the matter are ongoing, commanders retain broad authority to protect their installations. Installation commanders can exclude individuals from entry, conduct enhanced identity verification, and restrict “trusted traveler privileges as force protection conditions (FPCONs) increase.”¹²¹ Commanders can also take defensive steps to mitigate the risks of a hostile neighbor’s observation, such as erecting physical barriers to obstruct lines of sight, adjusting patrol patterns, and requesting counterintelligence support.¹²² These au-

thorities are well established, and courts have recognized that “the commanding officer of a military base has wide discretion as to whom he will exclude from the base, which will be disturbed only upon a showing that the grounds for exclusion were patently arbitrary or discriminatory.”¹²³

However, the risks posed by an adversary next door present unique challenges because much of the activity of concern occurs outside the fence, beyond the commander’s direct jurisdiction. This leaves commanders reliant on a complex and layered set of operational tools, one of which is discussed briefly below.

Airspace Protection

As mentioned above, in late 2023, unidentified drones swarmed Langley Air Force Base.¹²⁴ On multiple occasions in 2024, unidentified drone swarms were also spotted near Edwards Air Force Base in Los Angeles.¹²⁵ Overseas, in November 2024, drones were spotted over three Royal Air Force bases in the United Kingdom that host the U.S. Air Force and serve as key installations for U.S. military operations in Europe.¹²⁶ In the Pacific, three Chinese students were recently investigated for flying drones and filming U.S. aircraft carriers docked at the Busan Naval Operations Command in South Korea.¹²⁷

In addition to espionage concerns, unmanned aerial systems (UAS) present a safety hazard in military airspace as a threat to manned aircraft.¹²⁸ Congress has authorized limited counter-UAS authority for the DoW under 10 U.S.C. § 130i to detect, monitor, and, in some circumstances, neutralize drones posing a credible threat to mission personnel.¹²⁹

While a full treatment of these authorities is beyond the scope of this article, they remain constrained and require coordination with the Federal Aviation Administration (FAA), which helps regulate military airspace.¹³⁰ Though the FAA may issue permits and threaten users with permit revocations or criminal penalties,¹³¹ that deterrent is only effective if authorities can obtain the drone or identify the operators.

While commanders have robust authority inside the gates of a military installation, their tools for directly addressing potential threats from adversary-owned land remain limited. These limitations underscore the

importance of coordinating with state and Federal entities to protect military operations and personnel.

Conclusion

The growing trend of foreign adversary real estate acquisitions near U.S. military installations illustrates how the great power competition plays out in unconventional domains. Land acquisitions that appear routine in a commercial context can, when tied to an adversarial actor, create enduring national security vulnerabilities by enabling surveillance, espionage, or sabotage from just outside the fence.

Responses to this challenge have been numerous but uneven. States have experimented with restrictions on foreign ownership, producing a patchwork of legal authorities across the country with varying scopes and vulnerabilities to constitutional challenges. At the Federal level, CFIUS provides a powerful tool for addressing covered transactions, but it faces jurisdictional limits when acquisitions do not involve a U.S. business or fall outside the regulation's specific definitions of covered transactions.

Beyond CFIUS and state measures, additional, but imperfect, options exist. Eminent domain offers the Federal Government (and its military departments) a constitutional mechanism to acquire property that poses a national security risk, though its use is rare, costly, and politically volatile. At the installation, commanders maintain their strong authority to secure their bases, regulate access, and, to a certain extent, share information with law enforcement.

Taken together, these tools reveal both the adaptability of existing law and the limits and complexities of current frameworks. Foreign adversary land acquisitions converge property law issues with national security, federalism, and installation defense. For JAs and military leaders, understanding the interplay between state restrictions, Federal review mechanisms, eminent domain, and command authority is essential for navigating these challenges if a foreign adversary tries to, or does successfully, move into the neighborhood. **TAL**

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109.

The just compensation clause of the fifth amendment to the Constitution was built upon this concept of a moral obligation to pay for governmental interference with private property . . . No provision for the power of eminent domain appears in the Federal Constitution. The Supreme Court, however, has said that the power of eminent domain is an incident of Federal sovereignty and an “offspring of political necessity.” The Court has also noted that the Fifth Amendment’s limitation on taking private property is a tacit recognition that the power to take private property exists.

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112. E.g., 32 C.F.R. 552.33 (2024) (covering the Department of the Army’s available methods of land acquisition).

113. See *supra* section titled “State Responses.”

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116. U.S. DEP’T OF DEF. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (Feb. 27, 2013) (C1, Feb. 8, 2019).

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118. 10 U.S.C. § 271(a). While outside the scope of this article, limitations do exist. For example, heightened scrutiny applies when collection involves U.S. persons’ information, which includes U.S. corporations or subsidiaries. See U.S. DEP’T OF DEF., 5240.01, PROCEDURES GOVERNING THE CONDUCT OF DoD INTELLIGENCE ACTIVITIES para. G.2 (Aug. 8, 2016) (“USPI. Information that is reasonably likely to identify one or more specific U.S. persons. USPI may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific U.S. persons.”).

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120. 10 U.S.C. § 274.

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AROUND THE CORPS

COL Jeffrey Thurnher, Staff Judge Advocate, U.S. Army Reserve Command, addresses attendees at the 2025 Legal Active Guard Reserve Workshop at Fort Bragg, NC. (Credit: CPT Gary Grantham)



AROUND THE CORPS

A judge advocate completes land navigation during Direct Commission Course 003-25 on Fort Benning, GA. (Photo courtesy of Echo Company, 3rd Battalion, 11th Infantry Regiment)



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