

The Army Lawyer

U.S. Army Judge Advocate General's Corps

Issue 1 • 2026



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SGT Quinton J. Overholser, paralegal noncommissioned officer with 4th Battalion, 1st Special Forces Group (Airborne), runs in a twelve-mile ruck march during the U.S. Army Pacific Best Paralegal Warrior Competition at Ford Island, HI. (Credit: SGT Egypt Johnson)

Army Lawyer

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Issue 1 • 2026

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The Army Lawyer (ISSN 0364-1287, USPS 490-330) is a Professional Bulletin published by Headquarters, Department of the Army, under the auspices of The Judge Advocate General's Legal Center and School, Charlottesville, Virginia, for the purpose of education and performance in legal responsibilities.

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The Army Lawyer articles are indexed in the *Index to Legal Periodicals*, the *Current Law Index*, the *Legal Resources Index*, and the *Index to U.S. Government Periodicals*. *The Army Lawyer* is also available in the Judge Advocate General's Corps electronic reference library and can be accessed at <https://tjaglcs.army.mil/tal>.

Articles may be cited as: [author's name], [*article title in italics*], *ARMY LAWYER*, no. [issue number], [year], at [first page of article], [pincite].

Cover: SGT AnnaRosa Allen completes events in the Medical Training Simulation Lane during the Paralegal of the Year Competition, Eighth U.S. Army, Second Infantry Division, 19th Expeditionary Sustainment Command at Camp Humphreys, Korea. (Credit: KSGT Jun Seok Kang (ROK))

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Court Is Assembled

Ready? Set. Go!

Readiness in Legal Training and Education Across the JAG Corps

By Colonel Keirsten H. Kennedy

Readiness is not a very controversial topic in and of itself: it's generally good to be ready, and it's bad to not be ready—especially if you're *supposed* to be ready. Overall, being ready has positive connotations in all aspects of life. There is even a certain playfulness when you ask someone if they're ready, or an anticipation when you're in the sprinter's blocks being told to get ready. Readiness in the realm of training and education should invoke that same kind of delight: learning is supposed to be fun, an activity you approach with anticipation.

The Army's storied history of combat readiness as a tagline dates back the full 250 years of our existence, with increasing popularity as operational tempos increased throughout American military history. Lately, "[i]t's a watchword of current U.S. military strategy, the subject of constant media attention, congressional deliberation and internal discussion among the armed forces and our allies."¹ So, for Judge Advocate Legal Services (JALS) personnel, what does it mean to be "ready"? And how do we, as members

of our profession of arms, maintain our requisite legal readiness?

Military readiness is so fundamental to U.S. foreign and domestic national security policy that Congress examined the issue more closely in the fall of 2020, noting that every year, the Department of War (DoW) “requests and Congress authorizes and appropriates billions of dollars in Operations and Maintenance (O&M) funding to support what the [DoW] calls readiness.”² Their report likens military readiness to a linear production line, listing three stages of building, increasing, and sustaining readiness to fight and win the Nation’s wars.³ Under provisions of U.S. Code Title 10, the DoW is required to maintain military readiness (Section 117)⁴ and report on its state of readiness (Section 118).⁵ It thus becomes pivotal to understand what kinds of “readiness” the Army requires of its Service members.

Kinds of Readiness

We are all familiar with the mandate for medical readiness, mainly through notifications of green/amber/red status alerts, which prompt us to obtain dental checks, annual physicals, inoculations, or other medical checkups the Army tracks to ensure deployability.⁶ The idea of personal readiness encompasses five pillars: physical, emotional, social, spiritual, and family.⁷ Being up to date and healthy in all five of those categories is essential to successful military service; however, the most often overlooked key to success as an attorney (judge advocate (JA) or civil servant), paralegal, paraprofessional, or warrant officer is readiness in training and education.

Of course, professional military education (PME) is the Army’s foundation for its military members to ensure the requisite baseline knowledge in our occupational specialties. This is the minimum required for training readiness. But JALS personnel must understand that PME is only part of one of three ways of ensuring training readiness. The three domains of learning occur at these levels: institutional, operational, and individual.⁸ An easy way to illustrate this three-level model is this: things I learned through schooling, things I learned while at my job, and things I sought out to learn on my own. That is the institutional domain,

Training and education as an endeavor is a large part of the readiness equation, and it makes a huge, qualitative difference in the expert level of your legal advice, reviews, and products.

the operational domain, and the self-development domain.⁹

Service members attend PME—institutional learning/training—mandatorily through Army policy,¹⁰ which ensures we receive the information and skills required to perform our near-term military legal duties. Essentially, the Army tells us to attend certain training at schools to successfully perform our anticipated duties. The Judge Advocate General’s Legal Center and School (TJAGLCS) also offers functional short courses (usually one week long) for institutional training in specific areas of law, like domestic operations, advocacy, contract law, labor law, legal leadership role preparation, paralegal studies, and many others. These non-PME short courses generally fall under the Judge Advocate General’s (JAG) Corps areas of legal practice: administrative, civil, contract, fiscal, criminal, and national security law.¹¹

At the operational level, we gather job experience and also participate in unit training through our specific assignments (e.g., leader professional development or other training our units may offer). Leaders in an Office of the Staff Judge Advocate (OSJA) design unit-level training to enhance their subordinates’ opportunities to learn more about how to perform well within their current jobs. As a national security law (NSL) attorney, the NSL chief within a division or corps may design a learning program leading up to a Warfighter exercise¹² or Command Post Exercise (CPX)¹³ using a weekly training program for the team.

Whether it is designed from TJAGLCS’s Training, Resources, and Publications (TRP) website,¹⁴ or using

TJAGLCS’s Center for Law and Military Operations (CLAMO) resources,¹⁵ leaders have ample resources to train their teams for specific upcoming legal missions. Staff judge advocates (SJAs) frequently rely on TJAGLCS’s Leadership Department training materials to implement their monthly Leader Development Programs (LDPs) to enhance leadership training within their OSJAs using web resources or the toolkit provided at TJAGLCS’s Key Leader Course (KLC). These unit-level training opportunities enhance training readiness for JALS personnel across the JAG Corps and complement the institutional training offerings to ensure the most timely, useful, accurate legal advice to Army Warfighters.

Lastly, individual training (also called self-development) consists of opportunities we seek and take advantage of on our own;¹⁶ this can encompass professional reading, instruction outside our current duties, or a course of study we design on our own for the joy of learning something new (perhaps related to or supporting our career paths). How much we engage in this training domain will usually set apart an attorney, paralegal, paraprofessional, and warrant officer from their peers. We have limited time to devote to self-development in our lives, as it competes with time we must make for other obligations related to health, family, and other personal pursuits. That is as it *should* be: the near-impossible task of “balancing” our lives when it comes to divvying up professional and personal time can be difficult.

As a humble suggestion for keeping up in this learning domain: among all the self-development activities you could choose to engage in, may I recommend you



(Credit: Stas Knop - pexels)

prioritize professional reading? And, even more specifically, I must admit I should call it “professional listening.” I am obsessed with filling my dog-walking, household chores, and gym workouts with listening to audiobooks available free of charge through the Morale, Welfare, and Recreation Libraries.¹⁷ I have found the easiest way to professionally develop yourself has got to be audiobooks and podcasts. Check out some TJAGLCS podcasts: *Hold My Reg* (Administrative & Civil Law Department); *CAAF Chats* (Criminal Law Department); *The FAR and Beyond* (Contract & Fiscal Law); *NSL Unscripted* (National Security Law Department); and *Mentorship Matters* (Leadership Department).¹⁸

In all of our readiness pursuits, for JALS personnel, training and education are certainly at the forefront when it comes to professional success in the JAG Corps. Beyond the baseline military requirements of readiness in terms of physical fitness, medical preparedness, and other personal health (e.g.,

mental, spiritual), readiness in the realm of training and education—across all three domains—is the best way we can support the Warfighter (our clients). The legal advice we give absolutely depends on the knowledge and experience we gain through training and education readiness. TJAGLCS is a big part of the institutional domain and even in supporting the operational training domain through standard training packages and learning program design templates; however, you decide on your participation and progress in the individual self-development domain.¹⁹ A great interest-paced learning resource that TJAGLCS has recently launched is the Leader’s Legal Library (LLL).²⁰ Designed specifically for non-JA leaders to better understand legal concepts, the landing page of LLL states:

This resource is designed to empower Army command teams and leaders at all levels with practical legal knowledge to support mission

success and help us stay *ready, agile, and lethal*. Each video and other posted resource offers clear, actionable guidance rooted in military law and policy as well as in real-world leadership experience.²¹

JALS personnel can easily navigate and share these videos and one-page references to learn and share with others.

In closing, and in acknowledgment that self-development is the most challenging of the three learning domains that undergird readiness, I offer this piece of advice as a person who has learned over time that she is perhaps a little bit lazy, sometimes feels swamped with everyday work, and is maybe a bit selfish when it comes to how she wants to allocate her free time: self-development can *also* be a team sport. Surround yourself with motivated, curious, energetic friends. Join that book club. Check out that French class with your buddy. Tag along with a non-legal friend to their unit LPD. Co-author



The Leader's Legal Library. (Source: tjaglcs.army.mil)

an article with your co-worker. Ask your colleagues about their jobs and what they're learning—join in! These are valid self-development pursuits that inevitably lead to achievements in that sometimes-illusory third learning domain of self-development.

Readiness is mandatory, in accordance with Army policy, as reflected in all the activities and checklists we are required (and encouraged) to pursue and complete throughout our military careers. Training and education as an endeavor is a large part of the readiness equation, and it makes a huge, qualitative difference in the expert level of your legal advice, reviews, and products. Many resources are readily available for institutional, operational, and individual learning domains, so pursue these with purpose—and spread the word on JAG Corps training and education opportunities. Conversely, sharing what you learn is a big part of training and education: you can submit legal lessons learned on the CLAMO website;²² teaching what you learn is a known way to solidify your own learning and knowledge.²³ Your stewardship, in training yourself and those you lead, will certainly be the most important contribution to the Army's mission success, all in line with being the JAG Corps the Army needs.²⁴ So, grab your curiosity and eagerness to know, and . . . Ready? Set. Go!

COL Kennedy is the Dean of The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

Notes

1. Steve Stark, Margaret C. Roth & Michale Bold, Army AL&T Magazine, *Readiness: More than a Concept*, U.S. ARMY (Oct. 17, 2017), https://www.army.mil/article/194782/readiness_more_than_a_concept [https://perma.cc/25CV-CUGK].
2. G. JAMES HERRERA, CONG. RSCH. SERV., R46559, THE FUNDAMENTALS OF MILITARY READINESS Summary (Oct. 2, 2020).
3. *Id.*
4. 10 U.S.C. § 117.
5. *Id.* § 118; see also U.S. DEP'T OF DEF, DIR. 7730.65, DoD READINESS REPORTING SYSTEM para. 1.2 (31 May 2023) (establishing policy for the Defense Readiness Reporting System).
6. U.S. DEP'T OF ARMY, REGUL. 40-502, MEDICAL READINESS paras. 1-1, 2-1 (27 June 2019).
7. *Army Ready and Resilient: Five Dimensions of Personal Readiness*, U.S. ARMY, <https://www.armyresilience.army.mil/ard/r2/Five-Dimensions-of-Personal-Readiness.html> [https://perma.cc/EV3H-UFR1] (last visited Mar. 26, 2026); see U.S. DEP'T OF ARMY, REGUL. 600-8-101, PERSONNEL READINESS PROCESSING (6 Mar. 2018).
8. See U.S. DEP'T OF ARMY, TRADOC PAM. 525-8-2, THE ARMY LEARNING CONCEPT FOR 2030-2040 para. 1-5(b) (12 Feb. 2024).
9. See *id.*
10. Military Professional Military Education (PME) is made mandatory through a framework of Federal law, department of War (DoW) issuances, and Service-specific regulations. Together, these authorities mandate PME for promotion and career progression. See 10 U.S.C. § 2152 (joint education); see also CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 1800.01G, OFFICER PROFESSIONAL MILITARY EDUCATION POLICY (15 Apr. 2024). For Army-specific regulatory guidance on PME, see U.S. DEP'T OF ARMY, REGUL. 350-1, ARMY TRAINING AND LEADER DEVELOPMENT (1 June 2025).
11. For a full offering of courses currently taught at The Judge Advocate General's Legal Center and School (TJAGLCS), see *Course Information*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., <https://tjaglcs.army.mil/Student-Services/course-information> [https://perma.cc/AH4W-GY4L] (last visited Mar. 26, 2026).

What's It Like? A View from the Forward Line of Own Troops, ARMY LAW., no. 3, 2024, at 15, 15.

12. See Major Uilison F. Tua et al., *What's It Like? A View from the Forward Line of Own Troops*, ARMY LAW., no. 3, 2024, at 15, 15.

13. See Captain Lawrence Robbins, *Judge Advocate Integration into Warfighter and Contracting Training Exercises*, U.S. ARMY (June 10, 2025), https://www.army.mil/article/286204/judge_advocate_integration_into_warfighter_and_contracting_training_exercises [https://perma.cc/C8E2-LJMM].

14. *Training Resources & Publications*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., <https://tjaglcs.army.mil/trp> [https://perma.cc/5C8E-PYET] (last visited Mar. 26, 2026).

15. *Center for Law and Military Operations (CLAMO)*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH. [hereinafter *CLAMO Website*], <https://tjaglcs.army.mil/center/clamo> [https://perma.cc/7X6F-LKAN] (last visited Mar. 26, 2026).

16. An inherent overlap exists between the domains of operational learning and self-development. See Sergeant First Class Andrew R. Roland, *Promoting Self-Development Through Unit Training*, NCO J. (Apr. 5, 2025), <https://www.armyupress.army.mil/Journals/NCO-Journal/Archives/2024/April/Promoting-Self-Development-Through-Unit-Training> [https://perma.cc/MP3H-NJV9].

17. DoD MWR LIBRS., <https://www.dodmwrlibraries.org/> [https://perma.cc/YFF3-TJR4] (last visited Mar. 27, 2026).

18. *The Quill & Sword (Series of Podcasts)*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., <https://tjaglcs.army.mil/thequillandsword> [https://perma.cc/EBD3-SPGQ] (last visited Mar. 26, 2026).

19. See Roland, *supra* note 16.

20. *Leader's Legal Library*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., <https://tjaglcs.army.mil/Leaders-Legal-Library> [https://perma.cc/M4QH-GB28] (last visited Mar. 27, 2026).

21. *Id.*

22. *CLAMO Website*, *supra* note 15.

23. Annie Murphy Paul, *Brilliant: The Science of Smart—The Protégé Effect*, TIME (Nov. 30, 2011), <https://ideas.time.com/2011/11/30/the-protege-effect> [https://perma.cc/WM8G-GSLZ].

24. See U.S. Army JAG Corps, *U.S. Army JAG Corps Strategy*, JAGCNET, <https://www.jagcnet.army.mil/Home/public/jagcStrategyInDepth.html> [https://perma.cc/7TFQ-H6UM] (last visited Mar. 26, 2026); Members of the JAG Corps Strategy Dev. OPT, *The JAG Corps Strategy: Building a Future-Ready JAG Corps, Inspired by a Legacy of Service*, ARMY LAW., no. 3, 2025, at 2.

News & Notes



Photo 1

PFC Damian B. Dundore (left), paralegal, 19th Expeditionary Sustainment Command, leads a squad element with SGT Preston D. Boasythong (middle-left), paralegal noncommissioned officer, Eighth Army, CPT Megan N. Legresley (middle-right), administrative law attorney, Eighth Army, and SGT S.H. Lim (ROK) (right), for a drill and ceremony event during the Paralegal of the Year Competition, Eighth U.S. Army, Second Infantry Division, 19th Expeditionary Sustainment Command at Camp Humphreys, Korea. (Credit: KSGT Jun Seok Kang (ROK))

Photo 2

The 74th Graduate Degree Program. (Source: TJAGLCS)

Photo 3

CPT Christopher Rentschler (left), a personnel recovery coordination cell director, 28th Infantry Division, and SGT Ana Cordova (right), a paralegal noncommissioned officer, 40th Infantry Division Headquarters and Support Battalion, engage in meaningful discussions while participating in a joint training exercise at Fort Hood, TX. (Credit: SPC Yancy Mendoza)



4



5





Photo 4

MAJ Julia Flores (left), military professor at the Stockton Center for International Law, stands aboard the USS *Blue Ridge* with fellow participants during the Navy's KEEN EDGE 2026 exercise, which provided a hands-on opportunity to practice joint interoperability. (Source: Stockton Center for International Law)

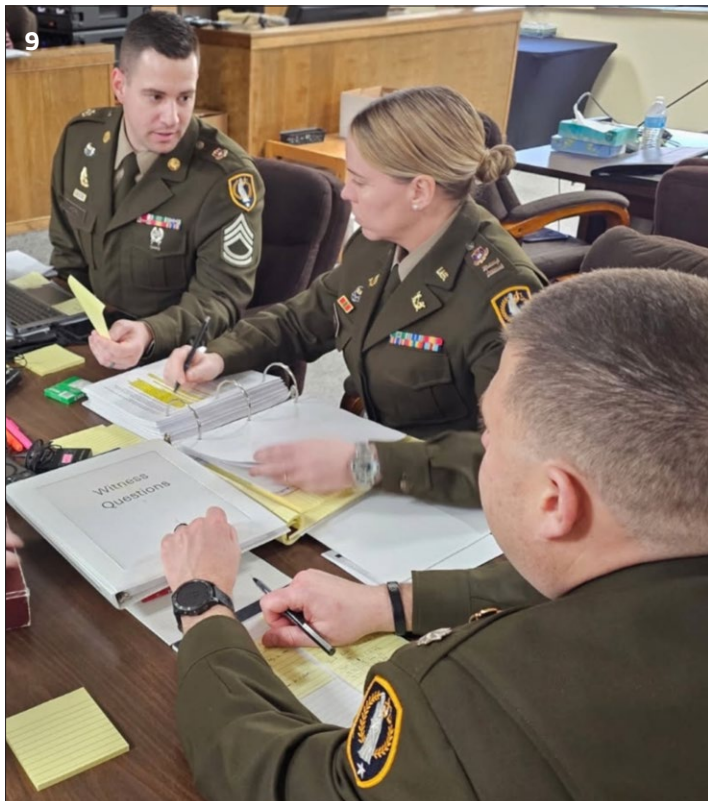
Photo 5

SPC Wyatt M. Weckman, paralegal specialist assigned to 2nd Infantry Brigade Combat Team (Airborne), 11th Airborne Division,

completes an Army Fitness Test during the U.S. Army Pacific Best Paralegal Warrior Competition at Ford Shafter, HI. (Source: 11th Airborne Division)

Photo 6

SGM Konrad Nikolao, U.S. Army Pacific command paralegal noncommissioned officer, delivers opening remarks at the U.S. Army Best Paralegal Warrior Competition winner announcement ceremony at Fort Shafter, Hawaii. (Credit: SGT Egypt Johnson)



**Photo 7**

Ambassador Jamieson Greer, U.S. Trade Representative, speaks to students at The Judge Advocate General's Legal Center and School in Charlottesville, VA. (Source: TJAGLCS)

Photo 8

SFC Benjamin Pasi, paralegal noncommissioned officer-in-charge with Joint Force Headquarters, Oregon National Guard,

sings the national anthem at a University of Oregon men's basketball game against UCLA. (Credit: MAJ Leslie Reed)

Photo 9

SFC Tyler B. Horl, special trial counsel noncommissioned officer (STC-NCO), 4th Circuit, marked a significant milestone by becoming the first STC-NCO to assist the Government at the prosecution table during a general court-martial at Fort

Leonard Wood, MO. (Source: JAGCNet)

Photo 10

Members of the 139th Legal Operations Detachment mobilize to support the 101st Airborne Division (Airborne) during exercise Operation Lethal Eagle. From left to right: MAJ Liyue Huang-Sigle, SGT Morgan Tunnell, SSG Prince Page, and 1LT Emily Cardo. (Credit: CPT Elizabeth Gruening)



U.S. Army Soldiers begin their day with an early morning formation at Fort Eustis, VA. (Credit: SSG Jeremy Hines)

Pivotal Perspective

In Defense of the Formation How Engaging with Your Unit Increases Lethality

By Captain Sarah Tate Chambers

We stumbled towards the field, eyes often matted, some of us sweaty from the commute in or the workout we just finished. Then, we lined up in ranks on a field—often audibly grumbling about what a pain it was. We are all familiar with this unifying experience of military service: the formation. While some may believe it has little place or purpose in today’s Army, would abandoning it be truly Soldier-care-centered?

Over the course of weeks and months, the small, casual interactions I had during formation fostered deep bonds. To this day, some of these friendships carry me through change, challenge, and everything in between.¹ Beyond the personal level, these informal bonds also reinforce collective resilience and readiness, which are especially relevant in high-stress or combat situations. While formations may seem archaic, they still play a crucial role in building

resilience, unit cohesion, and, ultimately, lethality.

Beyond the Office: Why Formation Matters for 27-Series Soldiers

Formations are one of the only organized, daily opportunities for 27-series Soldiers to get away from our computer and out of the office. Sometimes, we need a forcing function to pull ourselves away from our ever-growing to-do lists. Being siloed is not only a detriment to ourselves and the Corps; it is also a detriment to the unit. It will not be optional during the next near-peer conflict.² We must be prepared to be the only 27-series in the room and work seamlessly as a member of the collective team. We also need to be prepared to not have the technical support chain network that we rely on in garrison.³ Formations are an exercise for us to develop those muscles and build those bridges. Showing up to formation and engaging with teammates outside the legal office builds our capacity to lead and serve, and in doing so, we are truly caring for the Soldiers with whom we will go into battle.

The Mundane Is Not Minor

How, then, do we show up at formation? The seemingly trivial interactions that formation affords serve as preparatory exercises for communication, camaraderie, and, ultimately, combat readiness. In other words, chatting and yapping⁴ are important aspects of building unit cohesion.

At the risk of sergeants major rolling their eyes, chatting and yapping offer significant social and community benefits by fostering a sense of belonging and promoting emotional support. Informal conversations help individuals maintain and strengthen social bonds, which are crucial for a healthy sense of community.⁵ Regular social interactions, even in casual settings, have been shown to enhance trust and reciprocity among individuals.⁶ Casual conversations build “bridging” and “bonding” ties that connect individuals across diverse social groups and reinforce shared norms and trust within communities.⁷

Moreover, casual chatting provides an avenue for emotional support, which is essential in promoting mental well-being within communities.⁸ Studies have shown that individuals who engage in regular

Formation provides something increasingly rare in a busy operational environment: a predictable, shared space where Soliders from across sections simply stand together and interact. That small moment of proximity matters.

informal conversations experience lower levels of stress and higher levels of social satisfaction, which, in turn, strengthen communal ties and mutual support networks.⁹ This sense of support through community interchange is especially important in times of crisis or social instability because it helps to foster resilience and collective problem-solving.¹⁰ The first time we are practicing chatting and yapping among the ranks does not need to be while we are confronting our near-peer enemy. If we casually engage other sections—despite our initial discomfort—we prepare ourselves for the next fight as much as the following physical training (PT) does.

Changing Unit Dynamics and Performance

The impact of casual conversations reaches past the individual level and shapes the very culture of a unit. Stupid jokes and gentle questions can shift the atmosphere by building a sense of belonging and care that resonates throughout the team. When Soldiers feel genuinely supported by their peers and leadership, it cultivates a culture where resilience, trust, and motivation thrive.¹¹ Research underscores that Soldiers who experience strong social support are not only more resilient and less stressed but also more committed to their roles, elevating the unit’s overall performance.¹² Positive interactions encourage flexible, creative, and adaptive mindsets, which lead to increased resilience.¹³

In a unit culture rooted in trust and belonging, people are more likely to engage fully, commit to group goals, and support

each other.¹⁴ This foundation of cohesion and shared purpose transforms a unit from a collection of individuals into a unified, high-performing team.

Formation is not—and should not be—the only time these casual conversations occur. Strong units build connection in many places: on the obstacle course, over coffee before the duty day begins, and in the brief moments between tasks. But, formation provides something increasingly rare in a busy operational environment: a predictable, shared space where Soliders from across sections simply stand together and interact. That small moment of proximity matters. It creates a routine opportunity for the casual conversations that build familiarity, trust, and, ultimately, the cohesion upon which combat effectiveness depends.

Beyond Theory: Formations as a Frontline in Showing Up for Others

Beyond everyday exchanges and unit-level performance, formation provides the opportunity to observe and understand your peers on a deeper level. For instance, imagine a Soldier who normally jokes and smiles during formation. One morning, he shows up looking distracted and withdrawn. Over time, being in formation with this group has allowed you to notice this shift in his usual demeanor. This small observation could prompt you to check in with him: offering support or encouraging him to seek help if needed. It is true that he is not likely to be your Soldier in this situation. But, the only Army I want to be in is one where we *all* belong to one another and actively care for each

other. Do not underestimate the power of a kind word or simple smile. Without closing our eyes, most of us can recall the difference another Soldier made for us when we were at a low point. In these moments, the purpose of formation goes beyond accountability to fostering an environment where we look out for each other's well-being and ensure no one struggles in isolation.

Formations, despite criticisms, embody the Army value of loyalty and play an important role in generating a supportive, adaptive force ready for challenge. So much is made of the Army's community, and even something as simple as gathering for formation reinforces that bond.¹⁵ But formation goes beyond community-building; each one is a chance for us to shape the culture of our unit and set the tone for resilience and camaraderie. Every time we show up, we have the opportunity to be the leader and Soldier we want to be, and to influence and strengthen this institution to which we all belong. I cannot wait to stand next to you and hear all your bad jokes. I need them. I bet the Soldier on the other side of you does as well. **TAL**

CPT Chambers is a Reservist Appellate Attorney at the Defense Appellate Division at Fort Belvoir, Virginia. In her civilian capacity, she is a National Security Attorney for the Federal Government and a student in Brown University's Sc.M. in Cybersecurity program.

Notes

1. Admittedly, a Reservist advocating for formations after serving two Active Duty Operational Support (ADOS) tours, only one of which utilized formations, may draw the same denouncement that Henry David Thoreau receives for writing on solitude after spending only two years on Walden Pond. See, e.g., Kathryn Schulz, *Pond Scum: The Moral Judgments of Henry David Thoreau*, *NEW YORKER* (Oct. 19, 2015), <https://www.newyorker.com/magazine/2015/10/19/pond-scum> [<https://perma.cc/LV8S-U2TT>]. I readily acknowledge the burden formations place on families and Soliders. However, formations need not occur before physical training (PT) or at the start of the duty day. Historically (and presently, if one is attending CONUS Replacement Center (CRC) at Fort Bliss), formations occurred throughout the duty day. Thankfully, the Army grants commanders discretion in when and where to hold formations in order to serve the unit's and Soldiers' needs. This is an excellent opportunity for commanders to exercise creativity in determining the best time for formation.

2. Brigadier General R. Patrick Huston, *The Future JAG Corps*, *ARMY LAW.*, no. 1, 2019, at 2, 2 ("In future combat with a peer competitor we will likely face degraded communications, making our ability to advise the warfighter uniquely challenging."); Lieutenant

General Charles Pede & Colonel Peter Hayden, *The Eighteenth Gap: Preserving the Commander's Legal Maneuver Space on "Battlefield Next."*, *MIL. REV.*, May-June 2018, at 6, 8 ("Shifting to a full-up fight against the declared hostile forces of a near-peer adversary is an entirely different kettle of fish. . . . Such warfighting will look very different from the operations of the last twenty years."); Colonel Andrew M. McKee & Lieutenant Colonel Jason M. Elbert, *Embrace the Crucible Exercise: An Intentional Approach to Training Opportunities*, *ARMY LAW.*, no. 2, 2022, at 9, 10 (2022) ("JAG Corps doctrine requires readiness to provide legal support 'in austere conditions, to rapidly maneuvering and mobile unit headquarters, in a contested digital environment.' In order to provide principled counsel . . . JAs must have [law of armed conflict] fluency and challenge their understanding in realistic environments.").

3. U.S. DEP'T OF ARMY, *FIELD MANUAL 3-84, LEGAL SUPPORT TO OPERATIONS 3-43* (1 Sep. 2023).

4. While "yapping" used to hold a primarily negative connotation, Gen Z social media creators have redefined the term to refer generally to talking a lot and enthusiastically about "unimportant things." Jenna Jean Davis & Elaine Heredia, *What Does "Yapping" Mean? (And Why Is It Popular Now?)*, *WIKIHOW* (Apr. 18, 2025), <https://www.wikihow.com/Yapping-Meaning> [<https://perma.cc/W8BC-6ZS7>].

5. See Justine Coupland, *Small Talk: Social Functions*, 36 *RES. LANG. & SOC. INTERACTION* 1 (2003); Sean Lauer, Karen Lok Yi Wong & Miu Chung Yan, *Social Infrastructure, Community Organizations, and Friendship Formation: A Scoping Review*, 60 *COMMUNITY DEV. J.* 267 (2025).

6. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 19–21 (2000).

7. See *id.* at 22–25; see also THOMAS A. KOLDITZ, LEONARD WONG, RAYMOND A. MILLEN, & TERRENCE M. POTTER, *WHY THEY FIGHT: COMBAT MOTIVATION IN THE IRAQ WAR* (2003) (arguing that unit cohesion—the bonds between soldiers—remains as one of the primary purposes for why soldiers choose to fight).

8. See Charles E. Drebing, Edward J. Federman & James Graham, *Casual Social Contacts: A Qualitative Study of the Experience and Reaction*, *CUREUS, eCollection*, no. e79413 (Feb. 21, 2025); Sheldon Cohen & Thomas A. Wills, *Stress, Social Support, and the Buffering Hypothesis*, 98 *PSYCH. BULL.* 310 (1985).

9. See Barbara L. Fredrickson et al., *Open Hearts Build Lives: Positive Emotions, Induced Through Loving-Kindness Meditation, Build Consequential Personal Resources*, 95 *J. PERS. & SOC. PSYCH.* 1045, 1050 (2008).

10. See Bechir Mokline & Mohamed Anis Ben Abdallah, *The Mechanisms of Collective Resilience in a Crisis Context: The Case of the 'COVID-19' Crisis*, 23 *GLOB. J. FLEXIBLE SYS. MGMT.* 151 (2022).

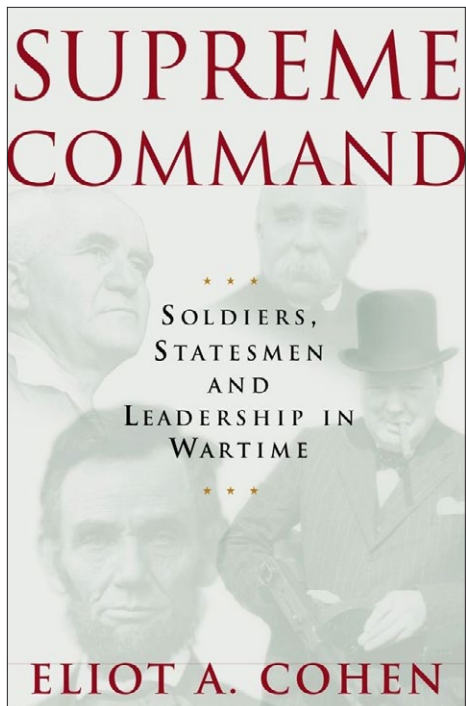
11. See Benjamin Schneider, Mark G. Ehrhart & William H. Macey, *Organizational Climate and Culture*, 64 *ANN. REV. PSYCH.* 361, 364–66 (2013).

12. *Id.*; See R. Eisenberger et al., *Perceived Organizational Support and Employee Diligence, Commitment, and Innovation*, 75 *J. APPLIED PSYCH.* 51, 53–54 (1990).

13. See Barbara L. Fredrickson, *The Role of Positive Emotions in Positive Psychology: The Broaden-and-Build Theory of Positive Emotions*, 56 *AM. PSYCH.* 218, 220 (2001).

14. See S.L. Blader, S. Patil, & D.J. Packer, *Organizational Identification and Workplace Behavior: More than Meets the Eye*, 37 *RSCH. ORG. BEHAV.* 19 (2017).

15. See EMILE DURKHEIM, *THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE* 46–50 (Karen E. Fields trans., Free Press 1995) (1912) (arguing that regular group gatherings, even for routine or symbolic purposes, reinforce social bonds and shared identity); see also PUTNAM, *supra* note 6, at 21–23 (discussing how communal activities, no matter how trivial, help maintain community cohesion and trust).



Book Review

Supreme Command The “Unequal Dialogue” of Civil-Military Relations

Review by Major Bradan T. Thomas

War, therefore, is an act of policy. . . . Policy, then, will permeate all military operations,

and, in so far as their violent nature will admit, it will have a continuous influence on them. It is clear, consequently, that war is not a mere act of policy but a true political instrument, a continuation of political activity by other means.¹

The American institution has long been cognizant and conscious of both the import and impact of civil-military relations in our democracy. From the Declaration of Independence² and the Constitution³ to modern legislation,⁴ jurisprudence,⁵ and policy,⁶ our national framework provides consistency in its insistency on civilian control of the military. Though such civilian supremacy is well accepted and affirmed,⁷ views diverge sharply on exactly how involved elected civilians should be in military matters.⁸ Departing from Samuel Huntington’s “normal” theory of civil-military relations, Eliot Cohen’s *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime*⁹ contributes to contemporary discourse by offering a timeless, and timely,¹⁰ exploration of the tenets and tensions of wartime civil-military relations.

Artfully presented through the extraordinary triumphs of four war statesmen—American President Abraham Lincoln, French Premier Georges Clemenceau, British Prime Minister Winston Churchill, and Israeli Prime Minister David Ben-Gurion—and their impactful modes of directive, communicative, and probing leadership, Cohen argues that Huntington’s “normal” theory (that is, a professionalized military thrives when insulated from politics and “subjective civilian control”)¹¹ is as flawed as it is frustrated. Indeed, the preponderance of *Supreme Command*’s chapters showcases the efficacy of involved, invested, and ingrained civilian control of military matters—a practice that challenges the normative view that Cohen argues is perhaps overly deferential to military decision-making.¹²

In breaking from Huntington’s long-held theory, Cohen posits that the continuous discussions between civilian and military leaders during war are necessarily “unequal dialogues.”¹³ This simple phrase encapsulates a powerful two-part concept that upends tradition: ongoing discourse between the soldier¹⁴ and the statesman is paramount

in responsible wartime decision-making, and the authority to make such wartime decisions unambiguously and unquestioningly lies with the statesman (informed, of course, by the advice and counsel of the soldier).¹⁵ Through its multinational quartet of political paragons, *Supreme Command* deftly expounds on our Nation’s bedrock principle of civilian control of the military,¹⁶ offering critical food for thought for all who live in and cherish a democracy.

Though steeped in historical examples, the substance of *Supreme Command* is as relevant now as ever to both civilian policymakers and military practitioners. Its coverage is especially applicable for today’s judge advocates (JAs), who often find themselves operating at the tripartite intersection of law, policy, and practice.¹⁷ Just as mastery of the law is non-negotiable for members of our Corps, so too is a foundational understanding of the legal landscape in which they practice, including how it informs their ability to provide principled counsel.¹⁸ Cohen’s invaluable contextualization of the arena in which JAs practice makes *Supreme Command* a must-read for all.

Huntington Sets the Stage

The “normal” view of modern civil-military relations that Cohen challenges emanates primarily from Huntington’s seminal book entitled *The Soldier and the State: The Theory and Politics of Civil-Military Relations*.¹⁹ Published in 1957, Huntington’s widely accepted position espouses a deep preference—indeed, a convictional reverence—for “objective civilian control” of the military, at the heart of which “is the recognition of autonomous military professionalism.”²⁰ Such professionalism, Huntington argues, is characterized by expertise, responsibility, and corporateness.²¹ Because the officer corps satisfies these criteria while specializing in the “management of violence,”²² Huntington asserts that the military should be left alone (that is, insulated from political matters and civilian meddling) to serve as a utilitarian tool of the state.

A practical analogue to Huntington’s view of proper civil-military relations is the relationship between a Soldier facing court-martial and their detailed defense counsel. In this context, the Soldier personally makes several major decisions regarding

fundamental components of their trial,²³ and the defense counsel is responsible for the tactical and strategic decisions to achieve the Soldier's objectives. Guided by Army Regulation 27-26's Rule of Professional Conduct 1.2(a), the defense counsel "shall *abide* by a client's decisions concerning the *objectives* of representation and . . . shall *consult* with the client as to the *means* by which they are to be pursued."²⁴ Though the "wide latitude" for strategic and tactical decision-making afforded to the defense counsel²⁵ falls short of Huntington's ideal of "autonomous military professionalism," the attorney-client dynamic parallels a Huntingtonian view of the military serving as an independent means to effectuate civilian policy.

While the symbiotic relationship between an accused and their defense counsel approaches the "normal" theory of civil-military relations, one cannot ignore the import of the context in which that joint enterprise exists. The defense attorney might very well pay no mind to the possibilities that an acquittal will further disrupt social circles in the Soldier's unit, that an assaultive cross-examination of an alleged victim will cause them lasting distress, or that they will zealously attack the arguments of their colleagues across the aisle. This luxury is afforded to the defense counsel because they work to serve and preserve the interests of only the particular individual they represent in that particular case.²⁶ Such simplicity does not exist for a nation's military or civilian leaders, who work to serve a complex, complete society that exists in a globally connected world. The comprehensive, multidisciplinary ramifications of wartime decision-making inject a level of complexity that Cohen appreciates and explains in describing what makes a successful statesman and a workable civil-military dynamic.²⁷

Cohen Steals the Show

In diverging from the established view of civil-military relations, Cohen's *Supreme Command* posits that civilian political leadership must engage in an enduringly interactive, almost intrusive role in military matters.²⁸ Policymakers' active involvement in the myriad facets, stages, and details of military planning and action, Cohen asserts, does not so much trample the might of a military as it does faithfully serve both the

democracy that military supports and the true ends of policy. This necessary entwinement of civilian policy and, by extension, military execution—which is not a novel concept, but one gleaned from centuries of warfare and theory²⁹—requires

that political leaders immerse themselves in the conduct of their wars no less than in their great projects of domestic legislation; that they must master their military briefs as thoroughly as they do their civilian ones; that they must demand and expect from their military subordinates a candor as bruising as it is necessary; that both groups must expect a running conversation in which, although civilian opinion will not usually dictate, it must dominate; and that that conversation will cover not only ends and policies, but ways and means.³⁰

Four exemplary case studies exemplify these principles, proving in various wartime contexts, political climates, and geographical regions that the active statesman succeeds through "querying, prodding, suggesting, arbitrating, and on rare occasions ordering their professional subordinates."³¹ While each of Cohen's subjects faced unique challenges in ensuring and imposing civilian control of military matters, all were united in their consummate competence in penetrating the veil of military autonomy to achieve success for their respective nations.

Supreme Command assesses wartime leadership over the course of nearly a century, during which the world evolved dramatically (going, for instance, from President Lincoln's 1860s plight to abolish slavery to President Harry Truman's 1948 order³² to desegregate the military). Lincoln desperately sought military leaders who understood and shared his virtue, vision, and values during the American Civil War.³³ Clemenceau, on the other hand, had to moderate and mediate for two successful and diametrically opposed generals near the end of World War I.³⁴ The ever-probing Churchill constantly questioned and spurred action in others to optimize results throughout World War II.³⁵ And Ben-Gurion completed the Sisyphean task of shepherding his nascent nation's

underprepared military force to be one postured to protect the fledgling state during the Arab-Israeli War of 1948.³⁶ These leaders devoted themselves entirely to their causes and treated their militaries as a facet of the national security strategies that they closely controlled, in opposition of Huntington's preference for an autonomous military.

Although their challenges differed, each statesman treated his role similarly and solemnly: "master the details of war,"³⁷ probe and challenge always,³⁸ and remain engaged (and dominant) in the "unequal dialogue."³⁹ While no statesman studied was a perfect military tactician or strategist,⁴⁰ all demonstrated their aptitude for excellence in marshalling vast amounts and varied types of information, eliciting necessary additional facts and data, and facilitating optimal results.

As a shining American example, Cohen details Lincoln's immersion in three subjects that enabled him to shape the Union's successful war effort: the development of magazine-fed rifles (which he personally tested and helped procure), the bolstering of the transcontinental railroad (which he used to facilitate logistics for his army), and the advent of the telegraph (which granted him near omnipresence throughout the country).⁴¹ Cohen makes clear that Lincoln's drive to "master the details of war" paired with his personal investment in developing and employing new technologies to form a complete sight picture of the Union's position, capabilities, and potential far exceeded what any career military officer might have had.⁴² Cohen's remaining exemplars demonstrated similar focuses on their respective areas of improvement that are no less impactful than Lincoln's. Indeed, each of the four statesmen exemplifies Cohen's metaphor that he was more than just the captain of a ship; rather, he was the captain at the helm of a complex sailing vessel with innumerable intricately counterbalanced systems while navigating uncharted, uncertain, and unforgiving seas on a moonless night.⁴³

Unflinching determination and unyielding purpose are among the leadership traits common to Cohen's protagonists. Each leader used his military (through its uniformed leaders) to assist in accomplishing his policy goals, ensuring great oversight to guarantee that all military action fit into

the political landscape of the day. With great conviction, each leader devoted every part of himself to his purpose, going so far as employing “ruthlessness” to achieve the task at hand.⁴⁴ All four statesmen’s ultimate dedication to purpose and willingness to engage in, and dominate, the “unequal dialogue” set them apart from unremarkable and unsuccessful leaders.⁴⁵ The actions and tactics of these four men form the core of Cohen’s theory that an informed, invested politician who unyieldingly seeks an optimal end state is best suited to make wartime military decisions.

Conclusion

Transcending time, culture, and conflict, generations of civilian philosophers⁴⁶ and military theorists⁴⁷ have pondered the ideal allocation of authority between civilian leaders and military executors. As illuminating as it is informative, *Supreme Command* contributes to the conversation by explaining the presupposition of “normal” civil-military relations, offering a cogent counter, and thoughtfully supporting its position with objectively successful historical demonstrations by renowned world leaders. JAs stand to benefit from analyzing Cohen’s work, as discussion continues today on the unsettled subject of civil-military relations.⁴⁸

To concretize the influence of civil-military relations on the modern practice of military law (and thus the prudence of its study), one need look no further than the National Defense Authorization Acts for Fiscal Years 2022⁴⁹ and 2023,⁵⁰ which jointly implemented sweeping, reformative changes to the military justice system. Through the establishment of the Office of Special Trial Counsel,⁵¹ civilian-borne changes have tempered commanders’ authority to administer military justice in the most serious of cases—an issue of first impression and significant concern for many of today’s commanders.⁵² Despite this fundamental change to the long-established practice of commander-driven disciplinary authority, the Armed Forces have fully committed to its implementation as good stewards of the principle of civilian control of the military.

While commanders expect their command counsel to explain the letter of the law, they will undoubtedly appreciate the coexistent ability to provide the underlying

basis, background, and context for such changes. Because this necessarily requires an understanding of civil-military relations and the “unequal dialogue” that governs, JAs should start (or continue) their study with *Supreme Command*’s meaningful message. Understanding and internalizing its arguments will enable practitioners to “embrace the challenge of change”⁵³ individually and “be the JAG Corps the Army needs”⁵⁴ collectively.

MAJ Thomas is a student in the Command and General Staff Officer Course at Fort Leavenworth, Kansas.

Notes

1. CARL VON CLAUSEWITZ, ON WAR 87 (Michael Howard & Peter Paret eds. & trans., 1976) (1832). Current U.S. Army doctrine enshrines Clausewitz’s view, providing that “[a]ll U.S. military operations share a common fundamental purpose—to achieve specific objectives that support attainment of the overall political purpose of the operation . . . set by national authorities.” U.S. DEP’T OF ARMY, DOCTRINE PUB. 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES para. 1-6 (31 July 2019).
2. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (submitting as a grievance that King George III had “affected to render the Military independent of and superior to the Civil power”). For a discussion of civil-military relations and the Declaration of Independence, see Major Adam T. Schultz, George Washington and the Establishment of Civil-Military Relations in Relation to the Declaration of Independence (June 12, 2015) (M.M.A.S. thesis), <https://apps.dtic.mil/sti/pdfs/ADA623955.pdf> [<https://perma.cc/KP7G-KLC5>].
3. U.S. CONST. art. I, § 8 (vesting in Congress the powers to raise, support, and regulate armed forces); *id.* art. II, § 2, cl. 1 (empowering the President as Commander in Chief of the forces Congress raises, supports, and regulates).
4. In its 1947 restructuring of the U.S. military, creation of the Air Force, and establishment of the civilian position of Secretary of Defense (now referred to as the Secretary of War), “it [was] the intent of Congress . . . to provide for the effective strategic direction of the armed forces and for their operation under unified civilian control” National Security Act of 1947, Pub. L. No. 80-253, § 2, 61 Stat. 495, 496. Such unified civilian control continues today, with the President appointing each military secretary “from civilian life.” 10 U.S.C. § 113 (civilian Secretary of War); *id.* § 7013 (civilian Secretary of the Army); *id.* § 8013 (civilian Secretary of the Navy); *id.* § 9013 (civilian Secretary of the Air Force). To further protect the requirement of civilian control, secretarial appointees must be at least seven years removed from any military service. There are, of course, exceptions to this rule, *e.g.*, Act of Jan. 22, 2021, Pub. L. No. 117-1, 135 Stat. 3 (excepting then-Secretary of Defense Lloyd Austin from this temporal requirement), and arguments against such exceptions, *e.g.*, 167 CONG. REC. S86–87 (daily ed. Jan. 21, 2021) (statements of Sens. Collins and Van Hollen).

5. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645–46 (1952) (Jackson, J., concurring) (“The purpose of lodging dual titles in one man was to insure that the civilian would control the military, not to enable the military to subordinate the presidential office.”).

6. *E.g.*, PRESIDENT JOSEPH R. BIDEN, JR., NATIONAL SECURITY STRATEGY 21 (2021) (“We will maintain our foundational principle of civilian control of the military, recognizing that healthy civil-military relations rooted in mutual respect are essential to military effectiveness.”).

7. For an unprecedented example of such subordination articulated by the Joint Chiefs of Staff, see Memorandum from Joint Chiefs of Staff to Joint Force, subject: Message to the Joint Force (12 Jan. 2021) (“As we have done throughout our history, the U.S. military will obey lawful orders from civilian leadership . . . and remain fully committed to protecting and defending the Constitution of the United States against all enemies, foreign and domestic.”).

8. *See, e.g.*, Lieutenant Colonel Kevin F. Krupski, *Who’s the Boss? Defining the Civil-Military Relationship in the Twenty-First Century*, MIL. REV., Jan.–Feb. 2023, at 26.

9. ELIOT A. COHEN, SUPREME COMMAND: SOLDIERS, STATESMEN, AND LEADERSHIP IN WARTIME (2002).

10. Cohen completed his manuscript on the heels of the September 11, 2001, terrorist attacks. *Id.* at 225. This serendipitously coincided with the United States’ recursion into the Middle East, beginning what some have labeled “World War IV.” NORMAN PODHORETZ, WORLD WAR IV: THE LONG STRUGGLE AGAINST ISLAMOFASCISM 9–15 (2007).

11. SAMUEL P. HUNTINGTON, THE SOLDIER AND THE STATE: THE THEORY AND POLITICS OF CIVIL-MILITARY RELATIONS 80–83 (1957). For Cohen’s analysis of civil-military relations, see COHEN, *supra* note 9, app.

12. It is noteworthy that, in focusing on results of decisions past, Cohen forsakes analysis of the military’s robust decision-making processes. Failure to consider the potential of today’s military decision-making processes is error. For comprehensive coverage of the breadth and depth of military planning in a joint environment, see JOINT CHIEFS OF STAFF, JOINT PUB. 5-0, JOINT PLANNING (1 Dec. 2020) (C1, 1 July 2024).

13. COHEN, *supra* note 9, at 12, 209.

14. The author adopts Cohen’s use of “soldier” to indicate military leaders generally, noting that Cohen’s analysis applies chiefly to strategic-level senior officers of all branches of the Armed Forces. Accordingly, the term is not capitalized.

15. *Id.* at 209. The concept of such advice and counsel is deeply embedded in our system of governance. For example, the Chairman of the Joint Chiefs of Staff is the principal military adviser to the President and Secretary of War. 10 U.S.C. § 151(b)(1). As a steward of the profession of arms, the Chairman “reinforces effective civilian control when [he] seeks clarification, raises questions about second- and third-order effects, and proposes alternatives that may not have been considered.” Ashton Baldwin Carter et al., *To Support and Defend: Principles of Civilian Control and Best Practices of Civil-Military Relations*, WAR ON THE ROCKS (Sep. 6, 2022), <https://warontherocks.com/2022/09/to-support-and-defend-principles-of-civilian-control-and-best-practices-of-civil-military-relations> [<https://perma.cc/7JRB-T57K>].

16. *E.g.*, THE FEDERALIST NO. 28 (Alexander Hamilton) (“Independent of all other reasonings upon the subject, it is a full answer to those who require a more peremptory provision against military establishments in time of peace, to say that the whole power of the proposed government is to be in the hands of the representatives of the people.”).

17. *See, e.g.*, Dan Maurer, *The Department of Defense’s in Extremis Legal Challenges During Modern Warfare*, ARTS. OF WAR (Apr. 24, 2024), <https://lieber.westpoint.edu/dod-extremis-legal-challenges-during-modern-warfare> [<https://perma.cc/WFN7-KTM9>].

18. *See* U.S. DEP’T OF ARMY, FIELD MANUAL 3-84, LEGAL SUPPORT TO OPERATIONS para. 1-4, 1-2 fig.1-1 (1 Sep. 2023) (defining the U.S. Army Judge Advocate General’s Corps constants as principled counsel, mastery of the law, servant leadership, and stewardship); Lieutenant General Stuart W. Risch & Lieutenant Colonel John E. Swords, *Lawyers as Leaders: Servant Leadership and Our Dual Profession*, ARMY LAW., no. 2, 2024, at 9, 12 (identifying principled counsel as our Corps’s “true north”).

19. HUNTINGTON, *supra* note 11, at 80–94. Interestingly, Cohen spent his formative years studying under and learning from Huntington, who served as Cohen’s senior honors thesis adviser, doctoral adviser, and lifelong mentor. Eliot A. Cohen, *My Formative Years*, ROBERT JERVIS INT’L SEC. STUD. F. (Dec. 7, 2021), <https://issforum.org/essays/PDF/E395.pdf> [<https://perma.cc/4DHD-TSWD>].

20. HUNTINGTON, *supra* note 11, at 83. Much has been written and said about the military as a profession. *E.g.*, U.S. DEP’T OF ARMY, DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION ch. 1 (31 July 2019) (C2, 6 Feb. 2025) [hereinafter ADP 6-22]; ARMY UNIVERSITY PRESS, *On Leadership: The Profession* (YouTube, May 20, 2022), <https://youtu.be/0t-KvW1rHM8> [<https://perma.cc/Z823-C3ZS>].

21. HUNTINGTON, *supra* note 11, at 8–12. This position contrasts starkly with Clemenceau’s view that “[t]here is no honor of the army . . . any more than there is an honor of farmers or cigar sellers. . . . The army is composed of civilians, clothed in a certain fashion and subordinated to a special regime for a certain purpose.” DAVID S. NEWHALL, CLEMENCEAU: A LIFE AT WAR 195 (1991), *quoted in* COHEN, *supra* note 9, at 58.

22. HUNTINGTON, *supra* note 11, at 11–12. Huntington minces no words in asserting that the *management* of violence is reserved to officers specifically while the *application* of violence is left to the enlisted who, in his opinion, “have neither the intellectual skills nor the professional responsibility of the officer.” *Id.* at 17–18. While Army doctrine recognizes the unique demands and expectations of its officers, *e.g.*, ADP 6-22, *supra* note 20, para. 1-110 (“Serving as an officer differs from other forms of Army leadership by the measure of responsibility attached, and in the magnitude of the consequences of inaction or ineffectiveness.”), the latter portion of Huntington’s view is misinformed, *e.g.*, The Judge Advoc. Gen. & Regimental Command Sergeant Major, U.S. Army, TJAG & RCSM Sends, vol. 41-17, In Recognition of National Paralegal Day (23 Oct. 2023) (“The training and steadfast devotion to continuous self-development exhibited by our [enlisted] military paralegals and paraprofessionals directly contribute to mission success. [Enlisted m]ilitary paralegals are highly trained professionals who are dual-hatted as technical experts and tactical Soldiers. This unique status requires them to be leaders and people of action.”).

23. These “major decisions” are case objectives, choice of counsel, forum, pleas, whether to testify, and settlements. U.S. DEP’T OF ARMY, REGUL. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS r. 1.2(a) (26 Mar. 2025) [hereinafter AR 27-26].

24. *Id.* (emphasis added). This rule’s second comment further clarifies that “a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives,” but that the

lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. . . . In questions of means, the lawyer should assume responsibility for technical, legal, and tactical matters, such as which witnesses to call, whether and how to conduct cross-examination, which court members to challenge, and what motions to make.

Id. cmt. 2. This parallels Huntington’s theory that military leaders should be left to dictate operations.

25. *See, e.g.*, Strickland v. Washington, 466 U.S. 668, 689 (1984) (explaining that no set of rules can satisfactorily govern a defense counsel’s decision-making, as such a scheme would “restrict the wide latitude counsel must have in making tactical decisions”); United States v. Gooch, 69 M.J. 353, 361 (C.A.A.F. 2011) (“This Court ‘will not second-guess the strategic or tactical decisions made at trial by defense counsel.’”) (quoting United States v. Mazza, 67 M.J. 470, 475 (C.A.A.F. 2009)).

26. *Compare* AR 27-26, *supra* note 23, para. 6 (describing an attorney’s responsibilities to a client), *with id.* r. 1.6(b) (permitting an attorney to reveal confidential client information for various reasons, including when defending against a client’s allegations against the attorney). While zealous advocacy is important, so too is stewardship of the profession.

27. COHEN, *supra* note 9, at 212–15.

28. *Id.* at 208–11.

29. *E.g.*, CLAUSEWITZ, *supra* note 1, at 605 (“Is not war merely another kind of writing and language for thought? It has, to be sure, its own grammar, but not its own logic.”).

30. COHEN, *supra* note 9, at 206.

31. *Id.* at 173.

32. Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 28, 1948).

33. COHEN, *supra* note 9, at 19–21.

34. *Id.* at 68–72, 76–79.

35. *E.g., id.* at 118–20.

36. *Id.* at 148–51.

37. COHEN, *supra* note 9, at 49–51.

38. *Id.* at 12.

39. *Id.* at 208–09. Though these tenets might seem as ubiquitous as they are foundational in modern military decision-making, Cohen dissects what their absence can produce through his analysis of the Vietnam and Gulf Wars. *See id.* at 173–207.

40. Acknowledging at the outset that he is subject to accusations of “hero-worship,” Cohen “makes no apology for not providing a comprehensive account of each leader’s efforts,” opting instead to focus on each statesman’s warcraft in the context of civil-military relations. *Id.* at xii–xiv.

41. *Id.* at 25–29.

42. *Id.* at 49–51. Today’s military commanders operate in much of the same way Lincoln did, skillfully leading and deciding while informed by a myriad of factors, information, and considerations. “Commanders use the operations process to drive the conceptual and detailed planning necessary to understand an operational environment (OE); visualize and describe the operation’s end state and operational approach; make and articulate decisions; and direct, lead, and assess operations.” U.S. DEP’T OF ARMY, FIELD MANUAL 5-0, PLANNING AND ORDERS PRODUCTION para. 1-7 (4 Nov. 2024).

43. COHEN, *supra* note 9, at 212.

44. *See id.* at 222–23 (sampling each statesman’s “deep, dark streak of willingness to do terrible things”).

45. Cohen explores those civilian leaders he considers unsuccessful in a chapter entitled “Leadership Without Genius.” *Id.* ch. 6.

46. *Cf.* PLATO, REPUBLIC 375b–c (C.D.C. Reeve trans.), *in* PLATO: COMPLETE WORKS 1014 (John M. Cooper & D.S. Hutchinson eds., 1997) (exploring the dual nature required of “guardians” to be aggressive toward enemies yet gentle toward civilians and the careful balance they must have in tempered force) (“Yet surely they must be gentle to their own people and harsh to the enemy. If they aren’t, they won’t wait around for others to destroy the city but will do it themselves first.”).

47. *E.g.*, CLAUSEWITZ, *supra* note 1.

48. *Compare, e.g.*, Carter et al., *supra* note 15 (reviewing, in an open letter penned by eight former Secretaries of Defense and five former Chairmen of the Joint Chiefs of Staff, “the core principles and best practices by which civilian and military professionals have conducted healthy American civil-military relations in the past—and can continue to do so, if vigilant and mindful”), *with* Charles J. Dunlap, Jr., *Return to Sender?: Analyzing the Senior Leader “Open Letter” on Civilian Control of the Military*, 15 HARV. NAT’L SEC. J. 77 (2023) (scrutinizing the open letter’s efficacy).

49. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, §§ 531–39C, 135 Stat. 1541, 1692–99 (2021).

50. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 541, 136 Stat. 2395, 2579–81 (2022).

51. § 531, 135 Stat. at 1692 (codified as amended at 10 U.S.C. § 824a).

52. *See generally* David A. Schlueter & Lisa Schenck, *This Is Not Your Grandparents’ Military Justice System*, ARMY LAW., no. 2, 2023, at 74 (surveying Congress’s recent military justice reform); David A. Schlueter & Lisa Schenck, *Transforming Military Justice: The 2022 and 2023 National Defense Authorization Acts*, 231 MIL. L. REV. 1 (2023) (examining the same in greater detail).

53. The Judge Advoc. Gen., U.S. Army, TJAG Sends, vol. 42-01, A Message from the 42nd Judge Advocate General (15 July 2024).

54. The Judge Advoc. Gen., U.S. Army, TJAG Sends, vol. 43-08, Army Legal Services Transformation Efforts (24 Feb. 2026).

Lore of the Corps

In Memoriam

Remembering the Recently Deceased Members of the Regiment

By Dr. Nicholas K. Roland, Ph.D.

The following members of our Regiment, in alphabetical order, passed away in 2025.

BACCUS, Charles (1951–2025). Lieutenant Colonel (LTC) (Retired) (Ret.) Charles W. Baccus passed away on 26 June 2025. He was seventy-three years old.

Charles William Baccus was born on 27 October 1951 in Toledo, Ohio, to Larrie and Mary Baccus. He graduated from Irving E. Macomber Vocational Technical High School in Toledo, Ohio, in 1969. Charles enlisted in the Air Force in 1970, served in Thailand as an integrated avionics specialist supporting operations in Vietnam, and was honorably discharged as a sergeant in 1974. He then received his bachelor's degree from Bowling Green State University in 1977, his juris doctor from Howard University in 1981, and his master of laws (LL.M.) from The Judge Advocate General's School (TJAGSA) in 1989.

LTC (Ret.) Baccus joined the Army as a judge advocate (JA) in 1982. He served as an assistant staff judge advocate (SJA) at Fort Hamilton, New York; trial defense counsel at Camp Casey, Republic of South Korea; assistant command legal counsel, U.S. Army Recruiting Command, Fort Sheridan, Illinois; legal office officer-in-charge (OIC), Göppingen, West Germany (Cooke Barracks); chief of claims, V Corps, Frankfurt, Germany; deputy SJA, Theater Army Area Command, Camp Walker, Korea; and command judge advocate, 743d Military Intelligence Battalion and 713th Military

Intelligence Group, Royal Air Force Menwith Hill, Harrogate, United Kingdom. He was a graduate of the Judge Advocate Officer Basic Course, the Judge Advocate Officer Graduate Course, and the Command and General Staff College. Among other decorations, he was awarded the Legion of Merit; the Meritorious Service Medal (x3); the Army Commendation Medal (x2); Overseas Service Ribbon (x3); the Vietnam Service Medal; the Republic of Vietnam Campaign Medal; and the Republic of Vietnam Gallantry Cross Unit Citation with Bronze Star.

Following the end of his military career in 1998, he accepted the job of assistant chief counsel for the Department of Homeland Security in Las Vegas, Nevada. While performing his duties and responsibilities in Las Vegas, he spent several years on cases that exposed war criminals from the Second World War and the Bosnian War. He received the Eleanor Roosevelt Human Rights Award from the Department of Homeland Security for "exemplary achievement in human rights litigation and unwavering dedication to bringing human rights abusers to justice" in Washington, D.C., in September 2011.

In retirement, he helped those in need with their taxes and other altruistic endeavors that made a real quality-of-life difference for others. He was blessed with two grandsons to whom he provided hands-on experiences and taught many things. For example, at ages three and five, he had his grandsons study how to change a set of vehicle brakes and then had them assist him with the job.



LTC (Ret.) Charles W. Baccus (right) and his wife, Gwendolyn Baccus (left). (Photo courtesy of Gwendolyn Baccus)

He regularly read to them and gave them experiences they retell today as they advise about what "Pop-po" would do or demand of us. His siblings actively respected him and loved him as a leader they could call on at any time for guidance and a listening ear. Whether it was hard, easy, or tremendously time-consuming, he gave his absolute best every day and in all endeavors.

LTC (Ret.) Baccus is survived by his wife, Gwendolyn, with whom he spent forty-nine years; his daughter, Rosiland Lizzette Baccus; his son, Brandon Jonathan Baccus; grandsons Kaiden Charles and Lexington Michael; sisters and brothers Wilbert, Verdell, Ruby, Larrie, Kenneth, Lennon, and Johnnie; and many other loving family members and friends.

BELL, Christopher (1991–2025). Sergeant First Class (SFC) Christopher Bell passed away on 22 February 2025 while serving as the senior court reporter for 1st Armored Division and Fort Bliss, Texas. He was thirty-three years old.

SFC Bell was born on 5 June 1991 in Chattanooga, Tennessee, and grew up in Puerto Rico. He enlisted in the U.S. Army on 1 July 2009. His military assignments included various paralegal positions at Camp

Carroll, Republic of South Korea; Fort Bliss, Texas; Fort Gordon, Georgia; and Fort Carson, Colorado. Prior to his assignment at Fort Bliss, he served as a recruiter in Dallas, Texas. SFC Bell earned an associate of arts degree in computer science, with a minor in philosophy and cyber security from the University of Maryland.

His military awards and decorations include the Joint Service Commendation Medal, Army Commendation Medal, Army Achievement Medal, Good Conduct Medal (x5), National Defense Service Medal, Afghanistan Campaign Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Noncommissioned Officer (NCO) Professional Development Ribbon (x3), Army Service Ribbon, Army Overseas Service Ribbon, NATO Medal, Joint Meritorious Unit Award, and Recruiter Badge.

SFC Bell is survived by his wife, Adriana; his son, Santiago; his parents, Philip and Lisa; his siblings, Joshua, Justin, David, Brandon, and Kamryon; and other family and friends.¹

BRICK, Samuel (1942–2025). Colonel (COL) (Ret.) Samuel “Sam” T. Brick Jr. passed away with his loving family by his side on 19 July in Blythewood, South Carolina. He was eighty-three years old.

COL (Ret.) Brick grew up in Roland Park, a Baltimore neighborhood that lived large in his memory for the rest of his life. He held fond memories of lively family parties at their home on University Parkway, where joy, music, and connection filled the house. He attended Loyola High School, where he excelled at lacrosse, a sport that would stay with him for life.

He went on to study at the University of Pennsylvania, graduating in 1964 with a degree in political science. At Penn, he played on the varsity lacrosse team, lived in the Little Quad and Delta Kappa Epsilon (DEKE) house, and was active in the Newman Club, Interfraternity Council, Phi Kappa Beta, Friars, and Dormitory Council. He also played rugby and proudly wore the evidence on his face for the rest of his life after a college match left his nose permanently altered.

After earning his law degree from the University of Maryland and passing the bar, COL (Ret.) Brick was drafted into the U.S.



COL (Ret.) Samuel Brick. (Photo courtesy of author)

Army and sent to advanced infantry training at Tigerland, Fort Polk, Louisiana. He applied for a commission as a JA and was reassigned to the local Judge Advocate General (JAG) office, where, after a month or two, he received a commission. He stayed at Fort Polk for about a year before receiving orders for Vietnam. Just before shipping out, the Army sent him to TJAGSA, including attendance at the first-ever Military Judge’s Course, newly created after Congress authorized JAs to sit as judges.

In Vietnam, he served as command judge advocate for the Saigon Headquarters Area Command, managing courts-martial from serious felonies to drug offenses. These experiences are chronicled in his fictionalized memoir, *Boots and the Law*.²

After returning stateside, COL (Ret.) Brick held legal roles at Fort Meade, Maryland, and across the Department of War, culminating in service as chief legislative counsel for the Army and later director of legislative reference for the Office of the Secretary of War General Counsel. He helped shape national legislative policy and worked closely with Congress to advance defense priorities.

He remained in uniform as a U.S. Army Reserve (USAR) officer, attaining the rank of colonel. During the Persian Gulf War, he

volunteered for active duty and served as SJA for U.S. Central Command Rear Headquarters under General Norman Schwarzkopf. His final assignment was as SJA for Headquarters, U.S. Army Europe. For his decades of distinguished service—including during his tenure at the Pentagon—he was awarded the Legion of Merit, an honor made all the more exceptional because it recognized his contributions as a Civilian Federal attorney, not just his military record.

In retirement, COL (Ret.) Brick continued to serve. He ran a military academy, returned to South Carolina to be closer to family, and became deeply involved in veterans’ advocacy. He was elected president of the South Carolina State Council of the Vietnam Veterans of America (VVA), and then chair, earning him a seat on the VVA’s National Board. He was also appointed Army Reserve Ambassador for South Carolina, a senior honorary role with the protocol of a major general. He remained active in the legal world, arguing pro bono cases, including some before the South Carolina Supreme Court.

But the roles COL (Ret.) Brick cherished most were husband, father, and coach. He was married to Mary Brick for forty-seven years, and together they raised four children—Morgan, Alex, Nathan, and Berin—in Mount Vernon, Virginia, during Sam’s years at the Pentagon. He was there on September 11, 2001, in offices adjacent to the quadrant where the plane struck.

He coached countless youth games in t-ball, basketball, and lacrosse, leading his children’s teams to area championships and earning the loyalty of players and families alike. He followed sports passionately, especially the Baltimore Orioles, the Washington Commanders, college athletics, and, most of all, lacrosse, which remained his favorite to watch. In the summers, he could be found at the beach in an army fatigue jacket, digging trenches in the sand for the kids.

In recent years, COL (Ret.) Brick was joyfully united with his daughter, Jennifer Jones, a wonderful surprise from his time in Basic Training. She and her family became a beloved part of the Brick family. COL (Ret.) Brick is survived by his wife, Mary Brick; his sister, Carole Potar; his five children, Morgan Brick (Tracy), Alex Brick (Renee), Nathan

Brick, Berin Watson (Ronnie), and Jennifer Jones (Matthew); and his seventeen grandchildren.³

CLAYTON, Kenneth (1960–2025). Mr. Kenneth A. Clayton passed away on 18 September 2025 while serving as a dedicated paralegal specialist with the Military Personnel Branch, Litigation Division, U.S. Army Legal Services Agency. He was sixty-five years old.

Mr. Clayton was born on 26 June 1960 in Boston, Massachusetts, to the late Laretta Clayton Jones and Jack Hunt. Mr. Clayton's commitment to service began early. He enlisted in the Army in March 1979, initially as a 31J, teletypewriter repairer, before transitioning to a 71D, legal clerk. His military career included assignments in Germany; Fort Monmouth, New Jersey; and Fort Sill, Oklahoma. He was honorably discharged in August 1989.

In August 1998, Mr. Clayton joined the Office of the Staff Judge Advocate for the 1st Armored Division in Baumholder, Germany, as a Civilian legal assistant. He then transitioned to the U.S. Army Legal Services Agency in June 2003. In total, Kenneth served in the Federal Government with distinction for more than forty years.

Mr. Clayton is survived by his beloved wife of more than forty-one years, Petra; his son, Kenneth, Jr. ("Junior"); his brothers, Donald (Charlotte) and Eric Clayton; and his sister, Patrice (Ronnie) Adams. He was preceded in death by his parents and his brother, Michael Wayne.⁴

CREAN, Thomas (1941–2025). COL (Ret.) Thomas Michael Crean passed away peacefully on 6 April 2025, surrounded by his loving family. He was eighty-three years old.

COL (Ret.) Crean was born on 6 June 1941 in the Bronx, New York, to Tom and Irene Crean. He was raised in New Jersey before attending Fordham University, where he attained both his undergraduate and law degrees. COL (Ret.) Crean dedicated his life to service. He spent twenty-eight years in the Army JAG Corps, where he honorably served his country with distinction and integrity. Following his military career, he continued his commitment to justice as an administrative law judge.



COL (Ret.) Thomas Crean. (Photo courtesy of author)

A devout Catholic, COL (Ret.) Crean's faith was central to his life. He found joy in life's simple pleasures, like reading the daily newspaper. He knew every answer on *Jeopardy!*, loved watching cop shows, and reveled in his Irish heritage. But his greatest happiness came from his family, whom he adored beyond measure. The feeling was mutual.

COL (Ret.) Crean is survived by his beloved wife of fifty-three years, Donna; his daughters, Kelly and Katie; sons-in-law, Richard and Dan; and six cherished grandchildren, who brought immense joy to his life. He is also survived by his sisters, Maureen Paul and Geraldine (John) Hughey; his brother, Billy (Pat) Crean, and many nieces and nephews and great-nieces and nephews.⁵

GIBSON, Kim (1948–2025). COL (Ret.) Kim Richard Gibson, loving father, grandfather, husband, brother, and friend, passed away peacefully on 30 May 2025 surrounded by his family. He was seventy-seven years old.

COL (Ret.) Gibson was born 29 May 1948 in Trenton, New Jersey, to the late James Russell and Eleanor Martha Gibson. He was preceded in death by his brother, William "Denny" Gibson. He is survived by his wife, Rebecca (Arbogast) Gibson; his brother, Jim; his children, Laura (Chad), Erin (George), Adam (Stacy), Matthew,

Sean (Yuko), and Connor (Katie); and his grandchildren, James, Peyton, Mia, Carmen, John Henry, Luke, and Dorothy.

COL (Ret.) Gibson devoted his entire adult life to serving his country and community. He graduated from the U.S. Military Academy at West Point in 1970. Upon being commissioned as a second lieutenant in the U.S. Army, COL (Ret.) Gibson took one of the hardest paths possible, completing both Airborne and Ranger training before serving as an armor officer on active duty until 1975.

COL (Ret.) Gibson attended the Penn State Dickinson School of Law, graduating magna cum laude in 1975, where he served as an editor of the *Dickinson Law Review*. He received his masters degree from TJAGSA, and he remained on active duty in the JAG Corps until 1978. He was recalled to active duty during Operation DESERT STORM in 1991. COL (Ret.) Gibson's service in the Army on active and Reserve duty extended for twenty-six years, and he retired as a colonel in the JAG Corps in 1996.

While COL (Ret.) Gibson was in solo practice in Somerset, Pennsylvania, he served as a public defender, as the solicitor for the Somerset School District, as counsel to the Office of Children and Youth Services, and as the solicitor for Somerset County. In 1997, he was elected by the voters of Somerset County to the Court of Common Pleas, serving in that role until joining the Federal bench in September 2003. He was honored and grateful to hold that position until his final illness. Outside of the court, he was an adjunct professor at and a member of the Board of Counselors for the Penn State Dickinson School of Law.

He was an active member of St. Peter's Catholic Church. In addition to coaching little league for many years, he enjoyed ballroom dancing, detective stories, and dressing well.⁶

HOLMES, Damon (1982–2025). Master Sergeant (MSG) Damon Holmes passed away on 30 May 2025 while serving as the chief paralegal at the U.S. Army Training Center at Fort Jackson, South Carolina. He was forty-two years old.

MSG Holmes was born on 10 June 1982 in Columbia, South Carolina, to Veronica Holmes. He enlisted in the U.S. Army on 19 October 2006. His military

assignments included various paralegal positions at Fort Bragg, North Carolina; Camp Casey, Republic of South Korea; and the Pentagon. He earned an associate of arts degree from Central Texas College in 2012 and a bachelor of science degree in legal studies from American Military University in 2016. MSG Holmes was a graduate of the Army's Master Leader Course and Airborne School.

His military awards and decorations include the Defense Meritorious Service Medal, Meritorious Service Medal (x2), Joint Service Commendation Medal, Army Commendation Medal (x3), Joint Service Achievement Medal, Army Good Conduct Medal (x6), National Defense Service Medal, Iraq Campaign Medal, Global War on Terrorism Service Medal, NCO Professional Development Ribbon (x4), Army Service Ribbon, Army Overseas Service Ribbon, Meritorious Unit Commendation, Superior Unit Award, Parachutist Badge, Marksman-ship Badge, and Driver and Mechanic Badge.

MSG Holmes is survived by his wife, Raven Holmes; his children, Ashleigh, Damon, Dylan, Noah, and Grace; his mother, Veronica Holmes; and his siblings, Lakila Holmes, Joseph Brunson, Earl and Karla Holness, and Andrew Jones.

He will be remembered as a dedicated leader and NCO, and a quiet professional who approached every challenge with determination and integrity. He had a remarkable ability to work through difficult issues and consistently uplifted and improved those around him.⁷

LATINO, Stephen (1978–2025). LTC Stephen “Steve” Latino passed away on 27 July 2025 while serving as the regional defense counsel for the Third Judicial Circuit (Mississippi Valley Region) at Fort Campbell, Kentucky. He was forty-six years old.

LTC Latino was born on 25 October 1978 in Boston, Massachusetts, to Rocco and Darlene Latino. He enlisted in the U.S. Army National Guard as an 11B infantryman in 1999, and then attended Purdue University on a Reserve Officers' Training Corps Scholarship, earning a bachelor of arts in 2001. He earned his law degree at the University of Dayton School of Law and was commissioned into the U.S. Army JAG Corps in 2004. His military assignments

include positions at Fort Campbell, Kentucky; Fort Belvoir, Virginia; Fort Bragg, North Carolina; Fort McNair, Virginia; Fort Leavenworth, Kansas; Fort Riley, Kansas; and Fort Huachuca, Arizona. Most recently, he served as the deputy staff judge advocate (DSJA) at Fort Huachuca, Arizona. LTC Latino was a graduate of Basic Training and Advanced Individual Training as an 11B, the Judge Advocate Office Basic Course, Airborne School, Air Assault School, the Judge Advocate Graduate Course, and Resident Intermediate Level Education.

His military awards and decorations include the Meritorious Service Medal (x5), Army Commendation Medal (x2), Army Achievement Medal (x2), National Defense Service Medal, Afghanistan Campaign Medal w/Bronze Service Star, Iraq Campaign Medal w/Bronze Service Star, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Army Service Ribbon, NATO Medal, Overseas Service Ribbon, Combat Action Badge, Parachutist Badge, Air Assault Badge, four Overseas Service Bars, and a Meritorious Unit Commendation (Army).

LTC Latino is survived by his loving wife of twenty years, Suzanne Bojko Latino; his children, Andrew, Emily, and Grayson; his father, Rocco, and his spouse, Carol Latino; his mother, Darlene Stefanowicz-Latino; his siblings, Nicholas, and his spouse, Alison Latino, Rocco, and his spouse, Lauren Latino, Mary, and her spouse, Derek Howard, and Stephanie, and her spouse, Charly Latino. Steve also leaves behind his loving dogs, Todd and Copper.⁸

LLOYD, Robert Jr. (1953–2025). The Reverend LTC (Ret.) Robert Bruce “Rob” Lloyd Jr. of Kailua, Hawaii, passed away after a courageous seven-year battle with Parkinson's disease. As a retired pastor in the United Methodist Church and a retired officer in the U.S. Army JAG Corps, LTC (Ret.) Lloyd's life was shaped not by rank or title but by a servant's heart.

Whether serving his fellow Soldiers as an Army officer, his congregants as a pastor, or his fellow believers through the “Walk to Emmaus” ministry, LTC (Ret.) Lloyd poured himself out in service to others. His life was dedicated to reflecting the love of Jesus Christ.

Born 14 December 1953, in Oberlin, Ohio, to Robert Bruce Lloyd Sr., a professor of classics, and Angela Davies (Pardington) Lloyd, a Latin teacher and dean, LTC (Ret.) Lloyd grew up in Lynchburg, Virginia. He graduated from E. C. Glass High School, where he met his future wife, Mary Lisa Anderson. They were married on 23 August 1975, at Court Street United Methodist Church in Lynchburg, and together built a life of love and shared calling.

LTC (Ret.) Lloyd earned his undergraduate degree in French from the College of William and Mary in 1975 and was commissioned as a second lieutenant in the U.S. Army's Transportation Corps that same year. He was selected for the Army Funded Legal Education Program and earned his law degree from the University of Richmond in 1981. He served with distinction in legal positions across South Korea, Germany, and the United States throughout his twenty-eight-year military career.

After retiring from the Army, LTC (Ret.) Lloyd earned a master of divinity from Wesley Theological Seminary in 2006. He was ordained as a Methodist pastor, serving congregations in Kentucky, Virginia, and Hawaii until stepping down from active ministry in 2020.

LTC (Ret.) Lloyd's ministry extended beyond the pulpit. He remained deeply involved in the Walk to Emmaus movement, offering guidance, love, and support through retreats and weekly reunion groups. Those dear friends continued ministering to him with great tenderness and care in his final years.

LTC (Ret.) Lloyd is survived by the love of his life, Lisa, his wife of nearly fifty years; their beloved children, Mary Angela Anderson Lloyd and Joseph Wesley (Kathleen “Katie”) Anderson Lloyd; and four cherished grandchildren, Kyle James, Elise Mary Kathleen, Sawyer Kathryn, and Miles Anderson. He is also survived by his siblings, Marshall, Johnny, and Celia, along with Lisa's siblings, Millard O. Anderson, Jr., Richard V. Anderson, and Julie A. Brennan. He was predeceased by his parents and his dearly loved in-laws, Millard Othello and Mary (Boettcher) Anderson.⁹

LOKEN, Rachael (1983–2025). MSG Rachael Loken passed away on 3 January 2025.

She was serving as the chief paralegal at Joint Special Operations Command at Fort Bragg, North Carolina. She was forty-one years old.

MSG Loken was born on 6 November 1983 in Charleston, South Carolina, to the late Brett and Michelle Mullen. She enlisted in the U.S. Army on 1 February 2007. Her military assignments included various paralegal positions at Heidelberg, Germany; Fort Hood, Texas; Fort Benning, Georgia; and Fort Bragg, North Carolina. MSG Loken earned a bachelor of arts in management and was a graduate of the Army's Senior Leader Course and Airborne School.

Her military awards and decorations include the Meritorious Service Medal, Army Commendation Medal (x9), Army Achievement Medal, Army Good Conduct Medal (x4), National Defense Service Medal, Afghanistan Campaign Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, NCO Professional Development Ribbon (x3), Army Service Ribbon, Overseas Service Ribbon (x3), NATO Medal, Parachutist Badge, and Driver and Mechanic Badge.

MSG Loken is survived by her husband, Chris Loken; her son, Nate Loken; and sister, Samantha Skeens. She was preceded in death by her son, Wyatt Alexander Loken, and her parents, Brett and Michelle Mullen.¹⁰

McKAY, James (1945–2025). COL (Ret.) James C. McKay passed away on 26 December 2025 after enduring amyotrophic lateral sclerosis (ALS/Lou Gehrig's Disease) with grace, resolve, and dignity. He was eighty years old.

COL (Ret.) McKay grew up in Bellingham, Washington. His father was Chairman of the Lummi Indian Tribe in Bellingham, and his mother was a member of the Shoshone Indian Tribe from Wind River, Wyoming.

After high school, COL (Ret.) McKay volunteered and joined the Army, including serving on active duty as a paratrooper in Vietnam from 1968 to 1969 in the 82d Airborne Division and the 1st Air Cavalry Division. COL (Ret.) McKay was highly decorated for his actions in service, including the Silver Star, Soldier's Medal, Bronze Star with Valor device, and Air Medal with Valor device and fourteen oak leaf clusters. He engaged in extremely dangerous missions,

including jumping from helicopters to rescue wounded Soldiers as part of a medevac unit, which has recently been recognized and awarded the Congressional Gold Medal.¹¹ COL (Ret.) McKay was also awarded the Vietnamese Cross of Gallantry with palm, the Vietnamese Civil Action Award with palm, and the Valorous Unit Award.¹²

After his military tour, COL (Ret.) McKay graduated from Seattle University, and subsequently from the New Mexico University School of Law, earning his law degree in 1978. He met his wife, Janet McKay, during their time together in law school. After law school, they moved to Santa Fe together, where he was admitted to the Bar and worked at the New Mexico Supreme Court, the New Mexico Attorney General's office, and the city of Santa Fe, where he served as City Attorney.

COL (Ret.) McKay continued his service with the Army National Guard when he moved to Santa Fe and, in 1992, he became general counsel for the New Mexico Army National Guard, and subsequently State Judge Advocate for the State of New Mexico. He retired from the Guard and moved with Janet to Scottsdale in 2016. Besides his combat awards, he was awarded the Meritorious Service Medal (x5), the Outstanding Volunteer Medal, and numerous other awards and decorations, including the State of New Mexico Distinguished Service Medal, the Medal of Merit, and the Outstanding Service Medal.¹³

COL (Ret.) McKay is among the most decorated New Mexico National Guardsmen and a New Mexico National Guard Hall of Honor inductee. His legacy of selfless service and leadership endures through the countless Soldiers he influenced and the lasting impacts of his work, including his instrumental role in establishing the State of New Mexico Servicemembers' Group Life Insurance (SGLI) reimbursement and the state income tax deduction for National Guard members.¹⁴

COL (Ret.) McKay's favorite activity was fly fishing New Mexico streams. He was also a lifelong Chicago Cubs fan, an inveterate collector of Christmas ornaments, and brave beyond telling. He was the first in his family to attend college and the first Wind River Shoshone to graduate from law school. COL (Ret.) McKay is survived by his wife, Janet, his children, of whom he was

immensely proud, sons Foster McKay and Andrew McKay, and daughter Elizabeth McKay Judd; and his three grandchildren.¹⁵

PHELPS, John (1950–2025). COL (Ret.) John Phelps passed away on 21 April 2025. He was seventy-four years old.

COL (Ret.) Phelps was born on 15 November 1950 and was the son of John and Wilma Phelps. His military career as a JA was long and distinguished, spanning thirty years. He served as a prosecutor, defense counsel, administrative law attorney, professor at the U.S. Army Judge Advocate General's Legal Center and School, deputy chairman of the International Law Department of the U.S. Naval War College, DSJA for the Military District of Washington, and the SJA at Fort Rucker, Alabama. Other staff assignments included serving in the Office of The Judge Advocate General, and as chief, U.S. Army Defense Appellate Division. COL (Ret.) Phelps also served as the chief legal advisor for Allied Forces Southern Europe (NATO) from 1999 to 2002, where he was responsible for legal advice affecting regional operations as well as NATO operations in Bosnia, Kosovo, Macedonia, and Afghanistan.

While deployed, COL (Ret.) Phelps was assigned as the legal advisor for detainee operations, Task Force 134, and Multi-National Forces Iraq.

COL (Ret.) Phelps held a bachelor of science from Ohio State University, a law degree from the University of Cincinnati College of Law, and a master of arts in national security and strategic studies from the U.S. Naval War College. His personal military decorations and awards include the Legion of Merit (x3), Bronze Star, Defense Meritorious Service Medal, Meritorious Service Medal (x4), Army Commendation Medal (x2), Army Achievement Medal (x2), Kosovo Campaign Medal, Iraq Campaign medal, and NATO Medal, as well as the Air Assault Badge, Parachutist Badge, and Army Staff Badge.

After retiring from active-duty service in 2008, COL (Ret.) Phelps continued his life of service when he joined the Defense Institute for International Legal Studies (DIILS) in Newport, Rhode Island, as a regional program director for North, Central, and South America. He was later assigned regional program director for the

Middle East and Central Asia, and additionally served as course director for the flagship DIILS resident course on the law of armed conflict and human rights.

COL (Ret.) Phelps is survived by his partner of more than twenty years, Elaine Cascio; his son, Brian; his daughter, Erin (Christopher Powers); and five grandchildren.¹⁶

SPENCER, Bryan (1932–2025). COL (Ret.) Bryan Stulting Spencer, of Austin, Texas, passed away on 21 December 2025. He was ninety-three years old.

COL (Ret.) Spencer was born in Beaumont, Texas, on 31 January 1932. He grew up in Galveston, Texas, where his family moved in 1937. He graduated from Ball High School in 1949, from Texas A&M in 1953, and from the University of Texas Law School in 1958. Upon his graduation from Texas A&M, Bryan entered the Army in the Army Security Agency. His last assignment with the agency was in Korea on the 38th parallel.

COL (Ret.) Spencer then returned to Texas, married Lucy Phillips, and entered law school. Following law school, he worked at the Texas Highway Department doing eminent domain right-of-way acquisition for the I-10 and I-35 interstate highways. He returned to the U.S. Army as a JA in 1960, where he served for twenty-eight years. He was the SJA to several general officers: two became Chief of Staff of the Army, two became Chairman of the Joint Chiefs of Staff, and one became U.S. Secretary of State. Duty stations included Fort Bliss, Texas; Mannheim, Germany; the Republic of Vietnam; Fort Carson, Colorado; Bangkok, Thailand; the Pentagon; Naples, Italy; Fort Leavenworth, Kansas; and Fort Sam Houston, Texas.

In retirement, COL (Ret.) Spencer served as the SJA for the Texas State Guard. He was active in the American Bar Association (ABA) and served on the Standing Committee on Legal Assistance to Military Personnel and on the editorial board for the ABA magazine. He was chairman of the Military Law Committee of the State Bar of Texas. He was awarded the Legion of Merit (x2), Bronze Star (x2), Defense Meritorious Service Medal, Meritorious Service Medal (x2), the Korean Service Medal, and the



COL (Ret.) Bryan Spencer. (Source: Legacy.com)

Vietnam Service Medal, among other numerous awards.

COL (Ret.) Spencer was actively involved in the Boy Scouts of America, achieving the rank of Eagle Scout. His passion was Philmont Scout Ranch, where he first visited as a scout in 1947. He returned as a guide in 1949 and 1952. Despite the breadth and diversity of his military experience, Philmont was his favorite topic of conversation.

COL (Ret.) Spencer was preceded in death by his wife, Lucy Phillips Spencer, and his parents, Bryan and Lela Stulting Spencer. He is survived by his sons, David B. Spencer and Terrence P. Spencer; his sister, Patricia Spencer Maher; and his three grandchildren, Sarah Spencer, Grant Spencer, and Ansel Spencer.¹⁷

TROCHE, Joshua (1978–2025). MSG Joshua J. Troche passed away on 7 August 2025 while serving as the chief paralegal NCO the 63d Readiness Division, Mountain View, California. He was forty-seven years old.

MSG Troche was born on 23 May 1978 in Brooklyn, New York. He enlisted in the U.S. Army on 22 July 1999. MSG Troche initially served with the 246th Quartermaster Company in Aguadilla, Puerto Rico, as a mortuary affairs specialist. In 2002, he

reclassified to a combat engineer specialist and served with the 448th Engineer Battalion. Ultimately, he found his passion in the law and reclassified to a paralegal specialist in 2006. His military assignments included various paralegal positions of increasing responsibility at the 174th Legal Support Organization; 1st Armored Division; 1st Mission Support Command; 4th Sustainment Command (Expeditionary); 79th Theater Sustainment Command; and the 377th Theater Sustainment Command. MSG Troche deployed to Iraq with the 166th Regional Support Group in 2010. He earned a bachelor of science degree in criminal justice from Universidad Del Este and was a graduate of the Army's Advanced Leaders Course and Senior Leaders Course.

MSG Troche's military awards and decorations include the Meritorious Service Medal (x4), Joint Service Commendation Medal, Army Commendation Medal (x4), Army Achievement Medal (x2), Army Good Conduct Medal (x5), Army Reserve Components Achievement Medal (x3), National Defense Service Medal, Iraq Campaign Medal (with bronze star), Global War on Terrorism Service Medal, Armed Forces Service Medal, Military Outstanding Volunteer Service Medal, and the Army Forces Reserve Medal.

He is survived by his wife, Tatiana; his children, Jaden and Journey; his parents, Blanca and Jesse Sr.; and his brothers, Jesse Jr. and Jason. He will be remembered as a senior NCO who lived the Army Values, and a quiet professional who deeply cared for his fellow Soldiers. He brought immeasurable joy and light to all who were fortunate enough to know him.¹⁸

VANISON, Gregory (1980–2025). Major (MAJ) (Ret.) Gregory Vanison passed away on 12 June 2025, after a life of dedicated service to his country and community. He was forty-four years old.

MAJ (Ret.) Vanison began his military career in November 2001, enlisting in the U.S. Marine Corps. He deployed to Al Asad Air Base, Iraq, from 2004 to 2005, serving honorably during a pivotal time in the Global War on Terrorism. After completing his active-duty service with the Marine Corps in March 2008, he transitioned to the Georgia Army National Guard.

In December 2008, he earned his juris doctor degree from Florida Coastal School of Law. Shortly thereafter, MAJ (Ret.) Vanison commissioned as a JA in the South Carolina Army National Guard, where he served from November 2008 to November 2009. He then returned to the Georgia Army National Guard, where he held a variety of leadership roles, most notably as brigade judge advocate for the 648th Maneuver Enhancement Brigade during its deployment to Afghanistan in support of Operation Enduring Freedom from 2012 to 2013.

Following this deployment, MAJ (Ret.) Vanison accepted a challenging position as a full-time attorney with the Alaska National Guard, continuing his service in both legal and operational capacities. In 2016, he was selected to serve as defense counsel for the Office of Military Commissions at Guantanamo Bay, Cuba. He later moved to the National Capital Region, where he took on broader responsibilities within the National Guard Bureau's Office of the General Counsel. He retired from military service in 2021.

MAJ (Ret.) Vanison's military decorations reflect his exceptional service and include the Defense Meritorious Service Medal, Army Commendation Medal (x3), Global War on Terrorism Expeditionary Medal, Iraq Campaign Medal, Afghanistan Campaign Medal, and the Alaska National Guard Legion of Merit.

A proud Marine, Soldier, and JA, MAJ (Ret.) Vanison's legacy is marked by unwavering dedication, leadership, and service. He is survived by his beloved wife, Dusty; his children, Erika and Gregory; and his grandchildren, Alora and Adonis.¹⁹ **TAL**

Dr. Roland is the Regimental Historian, Archivist, and Professor of Legal History and Leadership at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

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Jacob J. Parker. (Photo courtesy of author)

Lore of the Corps

The Man Behind the SCOTUS Military Justice Case Names Warden Jacob J. Parker

By Mr. Dwight H. Sullivan

Two of the U.S. Supreme Court's most significant military justice decisions share a party's name. In both *O'Callahan v. Parker*¹ and *Parker v. Levy*,² the "Parker" was Warden Jacob J. Parker of the Federal penitentiary at Lewisburg, Pennsylvania. This article contributes to military justice heritage by providing a biography of Parker. Studying Parker's role in two landmark military justice cases also highlights a significant and ongoing shift in the Supreme Court's approach to review of court-martial cases resulting from the Military Justice Act of 1983.³

Jacob J. Parker's Background

Jacob Jordan Parker was born in Bloomington, Illinois, on 9 December 1923.⁴ A recent high school graduate, he was working for the Campbell Soup Company in Chicago when he enlisted in the Marine Corps on 29 July 1942—almost eight months after the "day that will live in infamy."⁵ His term of enlistment was "for the DURATION OF THE NATIONAL EMERGENCY."⁶ At the time, he was 5-feet-8.5-inches tall and weighed 153 pounds.⁷ He had light brown hair, blue eyes, and a "[r]uddy" complexion.⁸

Parker reported to Marine Corps Recruit Depot San Diego for basic training.⁹ He stayed put after completing the arduous program, serving as a drill instructor from September 1942 to June 1944.¹⁰ Then, as a corporal, he participated in the Marine Corps's Pacific island-hopping campaign. From 15 September through 28 October 1944, as a member of the newly formed 3d Armored Amphibian Battalion (Provisional), Amphibian Tractor Group, Fleet Marine Force, Pacific Troops, he engaged in combat operations against Japanese forces on Peleliu.¹¹

General Roy S. Geiger—who by the end of World War II commanded Fleet Marine Force, Pacific—called the battle for Peleliu the toughest in the Pacific campaign.¹² One veteran of the battle observed that the island's Japanese "defenders would delay the attacking Marines as long as they could, attempting to bleed them as heavily as possible."¹³ They did so by combining "the devilish terrain with the stubborn, disciplined, Japanese soldiers to relinquish Peleliu

at the highest cost to the invaders.¹⁴ As a result, what was expected to be a four-day battle dragged out into seventy-three days of close combat.¹⁵ U.S. casualties numbered 9,615, of whom 1,656 died.¹⁶ Almost all of Peleliu's Japanese garrison fought to the death; an estimated 10,900 Japanese service members were killed while only nineteen were captured during the operation.¹⁷

Parker took part in the operation from D-Day through D-plus 43.¹⁸ His battalion performed significant duties throughout that time. The unit's armored amphibian tractors—commonly called LVT(A)s or amphibian tanks—preceded the first wave during the initial assault.¹⁹ Their mission was to “[n]eutralize shore defenses by fire with particular attention to Flanks” and then, after “passing through the water line beach defenses,” render “immediate fire support for assault waves.”²⁰ Japanese resistance was heavy. By noon on D-Day—less than four hours into the operation—just forty-five of the battalion's seventy-three LVT(A)s remained operational.²¹

As the Marines slowly advanced inland over the following days, the amphibian tanks evacuated casualties and delivered ammunition, food, water, and other supplies to Marines on the frontline.²² The LVT(A)s' 75mm howitzers and mounted .50 caliber machine guns sometimes augmented infantry units' firepower.²³ But Parker's battalion was mostly employed on reef-patrol duty to protect against Japanese counter-landings.²⁴ Utilizing their amphibious capability, the LVT(A)s also executed special direct-fire missions against targets best approached from offshore.²⁵ On 28 September (D-plus 13), thirty-five of the battalion's LVT(A)s led an amphibious assault against Ngesebus—an adjacent island.²⁶ The Marines completed their seizure of the island the following day.²⁷

Like the other U.S. Service members on Peleliu, amphibian tank crews performed their duties in sweltering heat and humidity.²⁸ On most days, the temperature reached 105 degrees, sometimes spiking to as high as 115.²⁹ The U.S. Service members on Peleliu were also plagued by ubiquitous blowflies. As one member of Parker's battalion later recalled:

Flies were everywhere. They covered your clothing and it didn't do any



Three LVT(A)s assault Ngesebus during the battle for Peleliu. (Photo courtesy of author)

good to brush them off, because they were right back at you. What was really bad was trying to eat. If you opened a can of jam, the top would be instantly covered with flies. Try as you might, you could not get a cracker with jam into your mouth without a few flies included.

No wonder so many men got deathly sick on Peleliu. These flies had a perfect dinner on Marines and Japanese dead that lay bloated and black in the tropical sun. When you ate one, you didn't know which kind of body they had just finished working on.³⁰

As the battle progressed and the need for amphibious vehicles waned, many members of Parker's unit were reassigned to infantry duties.³¹ Their primary mission was to support a clearing operation against a heavily defended Japanese cave complex.³² Later, many of the battalion's Marines became stretcher bearers.³³

The battalion began reboarding U.S. transport ships on 25 October (D-plus 40).³⁴ Parker left Peleliu on 29 October 1944—a little more than a week after the Marine Corps relinquished command of the operation to the Army's 81st Infantry Division.³⁵ His 819-member battalion suffered roughly 15 percent casualties during the Peleliu campaign.³⁶

A month-and-a-half after withdrawing from Peleliu, Parker was transferred to an officer training program.³⁷ Assigned to study at the University of Southern California, he did not last long.³⁸ Parker washed out of the program, displaying what we would now recognize as symptoms of post-traumatic stress disorder³⁹—probably resulting from the horrific combat at Peleliu. He was honorably discharged, having served in the Marine Corps for three years and seventeen days.⁴⁰

Following his military service, Parker studied at the University of Notre Dame.⁴¹ He probably used his GI Bill benefits to attend.⁴² While still an undergraduate, Parker became engaged to Hedy Klein of Evergreen Park, Illinois.⁴³ At that time, she worked as an executive secretary at Inland Steel Corporation.⁴⁴ They would go on to marry and have eight children.⁴⁵ Parker graduated with a degree in social studies in 1949.⁴⁶ The following year, he received a master's degree in criminal justice, also from Notre Dame.⁴⁷

Parker began his career in the Federal prison system in March 1950 as a tower guard at the Terre Haute, Indiana, penitentiary.⁴⁸ He rose quickly. After sixteen months as a correctional officer, he became a case worker and then a classification officer.⁴⁹ In 1959, he was elevated to associate warden in charge of treatment at the McNeil Island Federal penitentiary in Washington State.⁵⁰ Five years later, he was transferred to the

Atlanta Federal penitentiary, where he held the same position.⁵¹ After just one year in Georgia, Parker was selected as warden of the U.S. Federal Penitentiary, Lewisburg, Pennsylvania.⁵²

Parker as Lewisburg's Warden

Parker was forty-one years old when he became Lewisburg's warden on 4 October 1965.⁵³ Built in an Italian Renaissance architectural style, Lewisburg (originally named the Northeastern Penitentiary) was designed as a model correctional facility that would emphasize rehabilitation of inmates.⁵⁴ When it opened on 15 November 1932, it was considered "the world's most modern penal institution in operation."⁵⁵ The facility's 1,000-acre grounds included both the medium-security penitentiary and a minimum-security farm camp.⁵⁶ The prison staff numbered approximately 300.⁵⁷ About 1,400 inmates were confined at the facility.⁵⁸ Roughly 250 to 350 more were located at the minimum-security Allenwood Camp, which also fell under Parker's authority.⁵⁹

Consistent with the guiding concept for the Lewisburg penitentiary's establishment, Parker's penological philosophy emphasized rehabilitation.⁶⁰ An oft-repeated saying of his was, "These men are committed as punishment, not for punishment."⁶¹

The position as Lewisburg's warden came with certain perquisites. The warden's official residence was "a fifteen-room house resting on a very ample plot of land atop a hill."⁶² Three prisoners served year-round as "houseboys" at the residence, where they would "clean house, polish floors, wash, hang, and iron the clothes, cook the food, and wash the dishes—as well as do the baby sitting."⁶³ From spring through fall, another three prisoners tended the warden's garden.⁶⁴ The warden and his staff also enjoyed a clubhouse operated by inmate labor.⁶⁵

Parker received considerable newspaper coverage in 1967 resulting from the arrival of a new inmate: Jimmy Hoffa. In 1964, the Teamsters Union president was convicted in two separate Federal trials of jury tampering and fraud related to his union's pension fund; he was sentenced to two consecutive terms of confinement totaling thirteen years.⁶⁶ Following aggressive but ultimately unsuccessful efforts to overturn his convictions,⁶⁷ Hoffa arrived at Lewisburg on 7

March 1967 to begin serving his sentence.⁶⁸ Upon the Teamster president's incarceration, Parker was widely quoted as saying the high-profile inmate would be treated like any other prisoner.⁶⁹ While confined at Lewisburg, Hoffa played a role in Parker's name becoming associated with one of the Supreme Court's most significant military justice rulings.

O'Callahan v. Parker

Victor Rabinowitz—who earlier in his career had co-founded the National Lawyers' Guild—was friendly with Hoffa.⁷⁰ The union leader had previously retained Rabinowitz to represent two local Teamster officials charged with mail fraud.⁷¹ During one of Rabinowitz's visits with Hoffa at Lewisburg, the Teamster chief introduced him to James F. O'Callahan.⁷² O'Callahan was a former Army sergeant who had been convicted at a 1956 general court-martial of attempted rape, assault with intent to commit rape, and housebreaking.⁷³ His convictions arose from his unlawful entry into a Honolulu hotel room, where he accosted a fourteen-year-old girl.⁷⁴ O'Callahan battered the girl's face, gagged her, and bound her wrists before she managed to flee from the room.⁷⁵ The court-martial sentenced him to confinement for ten years, a dishonorable discharge, and forfeiture of all pay and allowances.⁷⁶ The entire contested case, including sentencing, lasted less than seven hours; the parties were on the record for less than four hours.⁷⁷ Remarkably, the trial counsel began his closing argument by telling the members that the "prosecution has taken an unusually long time in presenting its case,"⁷⁸ suggesting that general courts-martial of the era tended to be rather cursory.

After the convening authority approved the sentence,⁷⁹ the Army Board of Review affirmed the findings and sentence⁸⁰ and the Court of Military Appeals denied review.⁸¹ O'Callahan was initially confined at the Branch United States Army Disciplinary Barracks, Lumpoc, California.⁸² In March 1958, he was transferred to Federal civilian custody at Lewisburg.⁸³ From there, in May 1960, he was paroled.⁸⁴ Two years later, he was convicted in Massachusetts state court of rape, leading Federal officials to revoke his parole.⁸⁵ After completing his state prison sentence in 1966, O'Callahan returned to

Lewisburg to serve the remainder of his court-martial confinement.⁸⁶

Rabinowitz disliked O'Callahan but believed his case presented a compelling legal issue: the constitutionality of applying the Uniform Code of Military Justice (UCMJ) to an offense unconnected to military service.⁸⁷ Rabinowitz later recalled that "O'Callahan had no money for legal fees, but Jimmy [Hoffa], very generous with my time, quickly talked me into taking the case and talked O'Callahan into assigning to me the substantial back pay he would get if he won his case."⁸⁸ Rabinowitz added, "I didn't think the assignment was worth anything, but I couldn't resist the legal issue and Jimmy's blandishments."⁸⁹ He thought O'Callahan's case would probably go before the Supreme Court.⁹⁰ Rabinowitz's view was that "when I get paid for arguing an issue at the Supreme Court level, I regard it as gravy. The argument itself is compensation enough."⁹¹

Until Hoffa talked Rabinowitz into taking on the case, O'Callahan had been representing himself.⁹² Both the U.S. District Court for the Middle District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit had already ruled against O'Callahan, who had also failed to persuade the Court of Military Appeals to grant habeas relief.⁹³ But Rabinowitz secured a fresh look from the Third Circuit, which again ruled against O'Callahan.⁹⁴ A little more than three months after that decision, the Federal Bureau of Prisons transferred O'Callahan from Lewisburg to Federal Correctional Institution (FCI) Sandstone, Minnesota.⁹⁵ His prison record explains that he was transferred because "he was the suspected leader of a strike at Lewisburg for the purpose of demanding more Industries pay and better working conditions."⁹⁶

Rabinowitz had been right when he predicted that O'Callahan's case would interest the Supreme Court. On 14 October 1968, the Court granted certiorari to consider whether a court-martial has "jurisdiction to try a member of the Armed Forces who is charged with commission of a crime cognizable in a civilian court and having no military significance, alleged to have been committed off-post and while on leave."⁹⁷ After hearing oral argument, a 6-3 majority of Supreme Court justices initially voted to uphold O'Callahan's conviction.⁹⁸ Justice Harlan



Jimmy Hoffa enters the U.S. Federal Penitentiary in Lewisburg, PA. (Photo courtesy of author)

circulated a draft opinion for the Court that would have rejected the argument that the Constitution forbids “the military trial and punishment of a soldier for a purely civilian offense.”⁹⁹ Two days later, Justice Douglas circulated a draft dissent that began:

The Court’s opinion leaves me aghast.

The sweep of power of the Pentagon over members of the Armed Forces is now broad and seemingly limitless, save and unless the Pentagon exercises its discretion to let a civilian authority take over the prosecution. Anything, however, which a soldier, sailor, or marine does apparently reflects on the image of the Pentagon and the Pentagon may move to vindicate its interests.¹⁰⁰

The day after Justice Douglas circulated that draft dissent, Justice Fortas sent a memorandum to Justice Harlan, with copies to

the other Justices.¹⁰¹ Although Justice Fortas had voted with the majority in conference, he informed Justice Harlan that “I cannot go along with your draft.”¹⁰² He proposed that the Court

remand to require the military to prove—and to give them an opportunity to prove that this court-martial, rather than civil trial, served a substantial purpose with respect to “the Government and Regulation” of the Armed Forces (Art. I, § 8, cl. 14) *in terms of* the performance of their military functions.¹⁰³

Justice Harlan responded on 14 April, rejecting Justice Fortas’s proposed disposition.¹⁰⁴ He circulated a memorandum arguing against a “status” test for court-martial jurisdiction.¹⁰⁵ He also opposed a remand, noting that the court-martial had occurred more than a decade earlier. “I doubt that either the respondent or petitioner can

now garner relevant information as to the circumstances of, and military interests affected by, petitioner’s crime,” he observed.¹⁰⁶

Amid the Supreme Court’s deliberations on *O’Callaban*, on 15 May 1969, President Nixon accepted the resignation of Justice Fortas, who was under an ethical cloud.¹⁰⁷ On that same day, his chambers circulated a never-to-be-published, detailed, twenty-one-page draft dissenting opinion in *O’Callaban*.¹⁰⁸

By 19 May, Justice Harlan had lost the majority. Justice Douglas circulated a draft opinion of the Court setting aside O’Callaban’s court-martial conviction.¹⁰⁹ With some minor revisions, that became the opinion of the Court issued on 2 June 1969.¹¹⁰ The final ruling was 5-3, with Chief Justice Warren and Justice Brennan having reversed their initial votes to deny habeas relief.¹¹¹ The landmark ruling held that a court-martial did not have subject-matter jurisdiction to try a Service member for an offense unconnected to military service.¹¹² Because there “was no connection—not even the remotest



CPT Howard B. Levy. (Photo courtesy of author)

one—between [O’Callahan’s] military duties and the crimes in question,” the Supreme Court set aside his convictions under its newly announced service-connection test.¹¹³ But it was not Warden Parker whose resulting duty it was to release O’Callahan from confinement. Because of O’Callahan’s transfer the previous year, that responsibility fell on FCI Sandstone’s warden.¹¹⁴

While Rabinowitz had the satisfaction of prevailing at the Supreme Court, he obtained no monetary recompense. After the Supreme Court’s decision, the U.S. Court of Claims ruled that O’Callahan was entitled to back pay only until 8 March 1961, the date his enlistment would have expired had he not been dishonorably discharged.¹¹⁵

Although the Court of Claims rejected Rabinowitz’s argument that O’Callahan was entitled to back pay through his release from confinement in 1969, O’Callahan still received what Rabinowitz characterized as “quite a tidy sum for back pay and allowances lost—money he had assigned to us for legal fees.”¹¹⁶ But, contrary to the fee agreement Jimmy Hoffa had brokered, Rabinowitz received none of O’Callahan’s back pay. Nor did his client provide him with “even a ‘thank you.’”¹¹⁷ Rabinowitz added, “A year or so later, I did hear from him again—he was in trouble in Massachusetts, and he asked me for help. This time I declined.”¹¹⁸

After eighteen years of *O’Callahan’s* service-connection test, the Supreme Court

renounced it. In its 1987 *Solorio v. United States* decision, the Court overruled *O’Callahan*, holding that “the requirements of the Constitution are not violated where, as here, a court-martial is convened to try a serviceman who was a member of the Armed Services at the time of the offense charged.”¹¹⁹

Justice Douglas’s opinion for the Court in *O’Callahan* referred to another Lewisburg inmate with whose name Parker’s is indelibly linked. In his disquisition on the evils of the military justice system, Douglas cited an article titled *Justice and Captain Levy*.¹²⁰

Parker v. Levy

Captain Howard B. Levy’s case was the subject of an extraordinary volume of litigation, much of it bearing Parker’s name.

Levy was assigned as the chief of the Dermatological Service of the U.S. Army Hospital, Fort Jackson, South Carolina, from July 1965 until his court-martial in 1967.¹²¹ He opposed the United States’ military operations in Vietnam.¹²² One of his duties was to provide dermatology training to Special Forces medics.¹²³ In the summer of 1966, the hospital’s commander determined that the training Levy was providing was “totally unsatisfactory.”¹²⁴ Believing that “strong corrective action was demanded,” he gave Levy a written order to conduct the training.¹²⁵ Levy “read the order, acknowledged that he understood it, but stated that he would not obey it because he did not feel that obedience of it would be consistent with his sense of medical ethics.”¹²⁶ The hospital commander replied that Levy must nevertheless obey the order.¹²⁷ When Levy thereafter failed to conduct the training, “the order was in essence repeated.”¹²⁸ Levy nevertheless “persisted in his refusal to obey, frequently remarking to associates and enlisted subordinates during this period that he had received the order but that he would not obey it, and in fact, he did not.”¹²⁹ When his enlisted subordinates offered to conduct the training in his place, Levy “ordered them not to, and accompanied his order with a threat of punishment.”¹³⁰

Levy also made statements to enlisted personnel expressing his opposition to the war in Vietnam. For example, he stated that he would not go to Vietnam if ordered, that Black Soldiers should refuse to fight because they are subjected to discrimination, and that Special Forces personnel are “thieves and

killers of peasants and murderers of women and children.”¹³¹ He also told some Special Forces enlisted personnel that “I hope when you get to Vietnam something happens to you and you are injured.”¹³²

Levy was charged with violating Article 90, UCMJ, by willfully disobeying an order to establish and operate a dermatology training program for Special Forces medics; violating Article 134, UCMJ, by promoting “disloyalty and disaffection among the troops”; and violating Article 133, UCMJ, by making “[i]ntemperate, defamatory, provoking, and disloyal statements.”¹³³ At the conclusion of a fifteen-day general court-martial, the members found him guilty and sentenced him to a dismissal, forfeiture of all pay and allowances, and confinement at hard labor for three years.¹³⁴

Before his court-martial, Levy engaged in extensive—although ultimately unsuccessful—litigation in Article III courts to prevent his trial.¹³⁵ After Levy’s conviction, the convening authority and the Secretary of the Army declined his requests to defer confinement while the case was under review.¹³⁶ The Court of Military Appeals rejected Levy’s request that it intercede.¹³⁷ Levy then unsuccessfully asked Article III courts to order his release on bail pending disposition of his appeal.¹³⁸ Justice Douglas dissented from the Supreme Court’s denial of certiorari to review the Fourth Circuit’s rejection of Levy’s bail request.¹³⁹

The Army Board of Review affirmed the findings and sentence on 29 August 1968 and the Court of Military Appeals denied review on 6 January 1969.¹⁴⁰ Following completion of the direct appeal process, military officials executed Levy’s dismissal on 20 January 1969.¹⁴¹ Eleven days later, Levy was transferred from the U.S. Disciplinary Barracks to the Lewisburg Federal penitentiary.¹⁴² Levy spent most of his time there assigned to the minimum-security farm camp.¹⁴³ Charles Morgan of the American Civil Liberties Union filed a habeas petition for Levy on 19 April 1969.¹⁴⁴ That petition named Levy’s immediate custodian—Warden Jacob J. Parker—as the first respondent.¹⁴⁵

On the same day they filed the habeas petition, Levy’s legal team also asked the district court to grant him bail.¹⁴⁶ The district court denied that request on 7 May 1969.¹⁴⁷

The Third Circuit similarly denied bail on 2 June 1969.¹⁴⁸ Levy’s counsel then applied to Justice William J. Brennan—the Third Circuit justice—for bail on 3 July 1969.¹⁴⁹ Five days later, Justice Brennan denied the request.¹⁵⁰ Undeterred, Levy’s counsel submitted a new bail application to Justice Douglas on 19 July.¹⁵¹

On 2 August 1969—exactly two months after issuance of his opinion for the Court in *O’Callahan* mentioning Levy’s case—Justice Douglas ordered Levy’s release from confinement on bail.¹⁵² Justice Douglas acknowledged that the application to him “carries a special burden, for we very seldom grant an order that has been denied by the Circuit Justice,” as Levy’s had.¹⁵³ The normal practice in such an instance “is to refer such renewed application to the full Conference of this Court.”¹⁵⁴ But, Justice Douglas rationalized, “We are now in recess and widely scattered; hence referral to the Conference is not immediately possible.”¹⁵⁵ Justice Douglas suggested that relief was appropriate given questions about whether Article 134 of the UCMJ is unconstitutionally vague and because some of Levy’s convictions presented the issue of the extent to which First Amendment rights apply in the military.¹⁵⁶ He ordered Levy released on bail of \$1,000.¹⁵⁷ The order was captioned *Levy v. Parker*.¹⁵⁸

Levy was freed on the evening of 5 August—just nine days before his confinement was set to expire.¹⁵⁹ Newspapers quoted Warden Parker as saying, “He left no forwarding address.”¹⁶⁰ The year after his release, Levy co-authored a book with an anti-Vietnam War protestor convicted of burning his draft card about their experiences in the prison system.¹⁶¹ The book referred to Warden Parker by name in only one passage; the reference was not favorable.¹⁶²

In October 1969, the Supreme Court left in place Justice Douglas’s order granting Levy bail.¹⁶³ Although the full Court’s published order did not indicate any dissents, a handwritten note in Justice Douglas’s papers recorded the vote as four-to-three.¹⁶⁴

Almost a year after Levy’s release on bail, Parker left Lewisburg. In July 1970, Parker became the warden at the Federal correctional facility at McNeil Island in Washington State.¹⁶⁵ Levy’s collateral

challenge to his court-martial convictions continued.

After being denied habeas relief at the district court level, Levy appealed to the Third Circuit.¹⁶⁶ Parker’s name remained on the case, even though it should not have. Federal Rule of Appellate Procedure 43(c)(1) then provided:

When a public officer is a party to an appeal or other proceeding in the court of appeals in his official capacity and during its pendency . . . ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party¹⁶⁷

Thus, Marvin R. Hogan—Lewisburg’s warden at the time of the Third Circuit’s proceedings in the case—should have been substituted for Parker. The Supreme Court’s landmark decision in the case should be known as *Hogan v. Levy*. But, for whatever reason, Jacob Parker’s name remained.

In 1973, the Third Circuit concluded that “Articles 133 and 134 are void for vagueness.”¹⁶⁸ The court also expressed concern that those articles would “chill protected speech.”¹⁶⁹ The court held that Captain Levy’s findings of guilty for violating those statutes were constitutionally infirm.¹⁷⁰

The Supreme Court heard argument in the case on 20 February 1974.¹⁷¹ It was a clash of legal titans. Solicitor General Robert Bork argued the case for Parker and the other petitioners.¹⁷² Charles Morgan Jr.—then the regional director of the American Civil Liberties Union’s Atlanta office—had represented Levy at his court-martial and ever since.¹⁷³ He once again appeared on the doctor’s behalf.¹⁷⁴ Bork prevailed.

Four months after hearing oral argument, in a landmark 5-3 ruling, the Court rejected Levy’s vagueness and overbreadth challenges to Articles 133 and 134.¹⁷⁵ Justice Rehnquist’s opinion for the Court emphasized the unique military needs of discipline and obedience to orders:

While the members of the military are not excluded from the protection granted by the First



Jacob J. Parker (left) walks alongside U.S. Attorney General Nicholas Katzenbach, 1965. (Photo courtesy of author)

Amendment, the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.¹⁷⁶

Following that decision, Levy was not required to return to confinement to serve the few remaining days of his sentence.¹⁷⁷

According to Shepard's Citations Service, as of 1 March 2026, *Parker v. Levy* had been cited by 1,786 court decisions. For comparison purposes, the cases that appeared in *United States Reports* immediately before and after it had been cited by 251 and 319 court decisions.¹⁷⁸ One of the myriad cases that cited *Parker v. Levy* was *Solorio v. United States*—the Supreme

Court decision that overturned *O'Callahan v. Parker*.¹⁷⁹

Parker's Post-Warden Career

Parker was no longer a warden when the Supreme Court issued its decision in Levy's case. Following his transfer to the McNeil Island Federal Penitentiary, he remained for only seventeen months.¹⁸⁰ His tenure there was tempestuous, including an extended strike by a large portion of the inmate population.¹⁸¹ Upon leaving the McNeil Island facility, Parker became a correctional program advisor for the Law Enforcement Assistance Administration.¹⁸²

In 1975, he made another career change. Parker left the Federal Government for a position as coordinator and instructor for the criminal justice program at Tacoma Community College.¹⁸³ In April 1980, Washington's governor appointed him to the state's Board of Prison Terms and Paroles.¹⁸⁴ But when a new governor assumed office in January 1981, he replaced Parker on the board.¹⁸⁵ After retiring from his position at

Tacoma Community College in 1993, Parker volunteered with Tacoma Crime Stoppers.¹⁸⁶

Parker died in 2009 at the age of eight-five.¹⁸⁷ A touching obituary published in a Tacoma newspaper noted that during Parker's career with the U.S. Federal Bureau of Prisons, he and his wife "nurtured their eight children and as of today, none of them have had to do hard time in the joint."¹⁸⁸

Supreme Court Military Justice Direct Appeals Supplanting Supreme Court Military Justice Habeas Decisions

O'Callahan v. Parker being overturned by a case captioned *Solorio v. United States* reflected a profound change in how military justice cases typically reach the Supreme Court. For roughly a century, the Supreme Court periodically reviewed court-martial cases by means of reviewing lower Article III courts' rulings on habeas petitions.¹⁸⁹ But since the passage of the Military Justice Act of 1983, which established the Supreme Court's certiorari jurisdiction over most

cases decided by the U.S. Court of Military Appeals¹⁹⁰ (later renamed the U.S. Court of Appeals for the Armed Forces¹⁹¹), the Supreme Court has not heard a single court-martial case via review of a habeas petition.¹⁹² In that same period, it has given plenary consideration to ten court-martial cases via writ of certiorari to the Court of Military Appeals/Court of Appeals for the Armed Forces—an option that did not exist before passage of the Military Justice Act of 1983.¹⁹³

The National Defense Authorization Act for Fiscal Year 2024 greatly expanded the Supreme Court’s jurisdiction over military justice cases, broadening the right to seek certiorari to any case in which review or extraordinary relief was *sought* from the Court of Appeals for the Armed Forces, regardless of whether that court granted the petition.¹⁹⁴ Before that legislation, the Supreme Court had no statutory certiorari jurisdiction over cases in which the Court of Appeals for the Armed Forces denied a petition for grant of review or a petition for extraordinary relief.¹⁹⁵

The existence of the direct review option has two important implications compared to the pre-Military Justice Act of 1983 regime. First, it allows the United States to challenge a ruling issued by the Court of Appeals for the Armed Forces; before adoption of the Military Justice Act of 1983, the United States had no practical means to seek further judicial review of an adverse decision by the Court of Military Appeals.

Second, the certiorari route allows for more searching review of Court of Appeals for the Armed Forces decisions compared to the habeas route, in which review is constrained by the Supreme Court’s *Burns v. Wilson* standard.¹⁹⁶ Under the Supreme Court’s plurality opinion in *Burns*, “when a military decision has dealt fully and fairly with an allegation raised in [a habeas petition], it is not open to a Federal civil court to grant the writ simply to re-evaluate the evidence.”¹⁹⁷ Only if “the military courts manifestly refused to consider” a claim is a Federal civilian court “empowered to review” it de novo.¹⁹⁸ Although there has been some disagreement across and even within the Article III courts of appeals as to the precise scope of review under *Burns*,¹⁹⁹ that standard is unquestionably more constrained than that which the Supreme Court applies

when reviewing court-martial cases on direct review.

Despite the availability of review of military justice cases on direct appeal, perhaps we have not seen the last of Supreme Court military justice cases bearing a warden’s name. There is currently a significant habeas challenge on appeal before the Fourth Circuit raising the question of military retirees’ susceptibility to court-martial jurisdiction.²⁰⁰ And a habeas petition raising significant challenges in a military capital case is currently pending before the U.S. District Court for the District of Kansas.²⁰¹ Either of those cases could conceivably become the first habeas challenge to a court-martial conviction to obtain Supreme Court review in half a century. But notwithstanding such a possibility, the prospect of another warden’s name being affixed to two significant Supreme Court military justice decisions is remote. Jacob J. Parker’s feat will probably remain unrivaled.

Mr. Sullivan is a Senior Counsel at the Air Force Appellate Defense Division at Joint Base Andrews, Maryland.

Notes

1. O’Callahan v. Parker, 395 U.S. 258 (1969).
2. Parker v. Levy, 417 U.S. 733 (1974).
3. Military Justice Act of 1983, Pub. L. No. 98-209, 97 Stat. 1393.
4. Certificate of Birth, Jacob Jordan Parker (on file with Nat’l Pers. Rec. Ctr., St. Louis, Mo., Jacob Jordan Parker Official Military Personnel File, Serial No. 425864) [hereinafter Parker OMPF], <https://perma.cc/LJ5X-EET9>.
5. Enlistment contract, *in* Parker OMPF, *supra* note 4; Occupational Qualification Record *in* Parker OMPF, *supra* note 4.
6. Enlistment contract, *in* Parker OMPF, *supra* note 4.
7. *Id.*
8. *Id.*
9. Professional and Conduct Record of Parker, Jacob Jordan, *in* Parker OMPF, *supra* note 4.
10. Ratings as Specialist and Special Duty Details, *in* Parker OMPF, *supra* note 4.
11. Expeditions, Engagements, Distinguished Service, *in* Parker OMPF, *supra* note 4. Parker was a member of the battalion’s headquarters and service company. LARRY L. WOODARD, BEFORE THE FIRST WAVE: THE 3D ARMORED AMPHIBIAN TRACTOR BATTALION—PELELIU & OKINAWA 200 (1994); *see also* FRANK O. HOUGH, THE ASSAULT ON PELELIU 30 (1950) (discussing the battalion’s formation).
12. HOUGH, *supra* note 11, at 1.
13. GORDON D. GAYLE, BLOODY BEACHES: THE MARINES AT PELELIU 4 (1996).

14. *Id.*

15. HOUGH, *supra* note 11, at 35, 178.

16. GAYLE, *supra* note 13, at 48.

17. *Id.* Another thirty-three Japanese naval personnel who had been hiding in a Peleliu cave complex surrendered on 21 April 1947—more than nineteen months after Japan’s formal surrender ended hostilities in World War II. *Id.* at 44–45.

18. Expeditions, Engagements, Distinguished Service, *in* Parker OMPF, *supra* note 4.

19. Gayle, *supra* note 13, at 1; HOUGH, *supra* note 11, at 30, 36–37.

20. WOODARD, *supra* note 11, at 1–3 (quoting Operation Plan 1-44, First Marine Division).

21. *Id.* at 19.

22. HOUGH, *supra* note 11, at 41, 75; WOODARD, *supra* note 11, at 125.

23. WOODARD, *supra* note 11, at 103–04; HOUGH, *supra* note 11, at 66, 78, 87.

24. HOUGH, *supra* note 11, at 101, 105.

25. *Id.* at 101.

26. *Id.* at 123–26; WOODARD, *supra* note 11, at 106–09.

27. WOODARD, *supra* note 11, at 109; HOUGH, *supra* note 11, at 126.

28. HOUGH, *supra* note 11, at 94.

29. *Id.*

30. WOODARD, *supra* note 11, at 99–100 (quoting Henry Harris, a private first class assigned as a gunner on one of the battalion’s LVT(A)s, *id.* at 13, 204–05).

31. *Id.* at 109–10; HOUGH, *supra* note 11, at 101.

32. WOODARD, *supra* note 11, at 110–13.

33. *Id.* at 118.

34. *Id.*

35. Expeditions, Engagements, Distinguished Service, *in* Parker OMPF, *supra* note 4; HOUGH, *supra* note 11, at 172–75.

36. WOODARD, *supra* note 11, at 200–14.

37. Memorandum from Commanding Officer, Third Armored Amphibian Battalion (Provisional), Amphibian Tractor Group, to Corporal Jacob Jordan Parker, Jr., subject: Orders to Officer Candidates’ Battalion, Camp Lejeune, North Carolina, for assignment to College Training Program (12 Dec. 1944), *in* Parker OMPF, *supra* note 4.

38. Transfer Order (2 May 1945), *in* Parker OMPF, *supra* note 4.

39. Navy V-12 Program Separation Report (2 May 1945); Report of Medical Survey, U.S. Naval Hospital, Long Beach, California, Name PARKER, Jacob Jordan Jr. (18 June 1945); Memorandum from Commanding Gen., Marine Corps Base, San Diego, to Commanding Officer, First Separation Co., subject: Discharge of enlisted men, order for, modification of (23 July 1945); all *in* Parker OMPF, *supra* note 4. *See generally* AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 301–03, 305–12 (5th ed., text rev. 2022) (discussing post-traumatic stress disorder and its symptoms).

40. Honorable Discharge, United States Marine Corps, Jacob J. Parker, Jr. (15 Aug. 1945), *in* Parker OMPF,

supra note 4.

41. *Evergreen Park Engagement*, CHI. SUNDAY TRIB., Apr. 6, 1947, at pt. 3, 3; *Jacob Parker*, NEWS TRIB. (Tacoma, Wash.), Feb. 15, 2009, at B4 [hereinafter *Parker Obituary*].

42. See Servicemen's Readjustment Act, Pub. L. No. 78-346, § 400, 58 Stat. 284, 287-90 (1944) (popularly known as the GI Bill). See generally Keith W. Olson, *The G.I. Bill and Higher Education: Success and Surprise*, 25 AM. Q. 596 (1973) (discussing G.I. Bill benefits and their usage).

43. *Evergreen Park Engagement*, *supra* note 41.

44. *Hedy G. Parker*, NEWS TRIB. (Tacoma, Wash.), Dec. 30, 1995, at B4.

45. *Parker Obituary*, *supra* note 41.

46. *New Warden Assesses Lewisburg Challenge*, SUNBURY DAILY ITEM, Aug. 21, 1965, at 3.

47. *Id.*; *Parker Obituary*, *supra* note 41.

48. *New Warden at Lewisburg*, TIMES-LEADER (Wilkes-Barre, Pa.), July 30, 1965, at 20; *Parker Obituary*, *supra* note 41.

49. *New Warden Assesses Lewisburg Challenge*, *supra* note 46.

50. *New Warden at Lewisburg*, *supra* note 48.

51. *Id.*

52. *Id.*

53. *US Pen Inmates to Be Permitted Home Visitations*, SUNBURY DAILY ITEM, Oct. 6, 1965, at 1.

54. John W. Roberts, *The Origins of USP Lewisburg, in THE HISTORY OF THE FEDERAL PENITENTIARY AT LEWISBURG* 125, at 6, 9 (M. Lois Huffines ed., 2005) [hereinafter *HISTORY OF THE FEDERAL PENITENTIARY*].

55. *Id.* at 13.

56. Diana Medina Lasansky, *The Architecture of Redemption: The Federal Prison at Lewisburg*, in *HISTORY OF THE FEDERAL PENITENTIARY*, *supra* note 54, at 20, 21; Lee Linder, *Justice Department Says 'Untrue' to Charges Against Federal Prison System*, GREENVILLE NEWS, Mar. 8, 1969, at 1; BUREAU OF PRISONS, U.S. PENITENTIARY LEWISBURG, PA. 1 (1958) [hereinafter *U.S. PENITENTIARY LEWISBURG, PA.*].

57. U.S. PENITENTIARY LEWISBURG, PA., *supra* note 56, at 2.

58. BUREAU OF PRISONS, FEDERAL BUREAU OF PRISONS STATISTICAL REPORT FISCAL YEAR 1966, at 22 (1966) [hereinafter 1966 BOP REPORT]; BUREAU OF PRISONS, FEDERAL BUREAU OF PRISONS STATISTICAL REPORT FISCAL YEARS 1969 AND 1970, at 22 (1970) [hereinafter 1969 & 1970 BOP REPORT].

59. 1966 BOP REPORT, *supra* note 58, at 22; 1969 & 1970 BOP REPORT, *supra* note 58, at 22; Linder, *supra* note 56, at 1; *New Warden Assesses Lewisburg Challenge*, *supra* note 46.

60. *New Warden Assesses Lewisburg Challenge*, *supra* note 46.

61. Patrick J. Owens, *No. 33298 at Lewisburg (That's Hoffa) Sorts Shoes*, EVENING NEWS (Harrisburg, Pa.), Mar. 24, 1967, at 3 (quoting Parker).

62. HOWARD LEVY & DAVID MILLER, *GOING TO JAIL: THE POLITICAL PRISONER* 209 (1970).

63. *Id.*

64. *Id.*

65. *Id.*

66. WALTER SHERIDAN, *THE FALL AND RISE OF JIMMY HOFFA* 352-55, 376-77 (1972). See generally *United States v. Hoffa*, 437 F.2d 11 (6th Cir. 1971); *United States v. Hoffa*, 436 F.2d 1243 (7th Cir. 1970) (providing background of Hoffa's prosecutions and convictions).

67. See generally SHERIDAN, *supra* note 66, at 377-413 (discussing Hoffa's various efforts to overturn his convictions). Hoffa ultimately served less than five years of his term of confinement. On 23 December 1971, President Richard M. Nixon granted Hoffa a conditional commutation that resulted in his release from the Lewisburg penitentiary. Fred P. Graham, *Nixon Commutes Hoffa Sentence, Curbs Union Role*, N.Y. TIMES, Dec. 24, 1971, at 1; see generally Hoffa v. Saxbe, 378 F. Supp. 1221 (D.D.C. 1974) (discussing President Nixon's partial commutation of Hoffa's sentence and rejecting Hoffa's challenge to conditions on that commutation). Three years and seven months later, Hoffa disappeared, presumably murdered at the direction of an organized crime boss. See generally John Wisely, *Hoffa 40 Years Gone, the Mystery Never Dies*, DETROIT FREE PRESS, July 30, 2015, at A1 (discussing Hoffa's disappearance and competing theories as to his fate).

68. David R. Jones, *Hoffa, Manacled, Is Led into Prison*, N.Y. TIMES, Mar. 8, 1967, at 1.

69. E.g., *Warden at Lewisburg Rules Out Special Privileges for Hoffa*, WILKES-BARRE TIMES LEADER, Mar. 8, 1967, at 1.

70. VICTOR RABINOWITZ, *UNREPENTANT LEFTIST: A LAWYER'S MEMOIR* 290 (1996). For a biographical sketch of Rabinowitz, see Marjorie Cohn, *Peace Profile: Victor Rabinowitz*, 20 PEACE REV. 398 (2008); see also Douglas Martin, *Victor Rabinowitz, 96, Leftist Lawyer, Dies*, N.Y. TIMES, Nov. 20, 2007, at B7 (obituary of Rabinowitz).

71. RABINOWITZ, *supra* note 70, at 290. The case against the two Teamster local officials resulted in an acquittal. *Id.* at 291; *Teamster Cleared of Fraud*, MIAMI HERALD, Dec. 3, 1965, at 31-A.

72. RABINOWITZ, *supra* note 70, at 291.

73. Record of Trial of O'Callahan, James F., RA 11 221 278, Sergeant, Field Station (8605) APO 957, by General Court-Martial Appointed by the Commanding General, United States Army, Pacific, Tried at Fort Shafter, T.H., APO 958 on 11 October 1956, Case No. 393590 (on file with Nat'l Pers. Rec. Ctr., St. Louis, Mo.) [hereinafter *O'Callahan ROT*], <https://perma.cc/BJ5Y-ZYWU>.

74. *Id.* Pros. Exs. 1, 5.

75. *Id.* Pros. Exs. 1, 5.

76. *Id.*, Trial Tr. 67.

77. *Id.*, Trial Tr. 1-67.

78. *Id.*, Trial Tr. 49.

79. *Id.*, Action of the Officer Exercising General Court-Martial Jurisdiction (Nov 6, 1956).

80. The Army Board of Review affirmed the findings and sentence in a one-sentence decision on 4 January 1957. *United States v. O'Callahan*, CM 393590 (A.B.R. Jan. 4, 1957), in *O'Callahan ROT*, *supra* note 73.

81. The Court of Military Appeals denied review on 1 March 1957. *United States v. O'Callahan*, 7 C.M.A. 800 (1957) (mem.).

82. General Court-Martial Order No. 168 (28 Mar. 1957), in *O'Callahan ROT*, *supra* note 73; Admission Classification Summary, O'Callahan, James F. (28 Mar. 1957) (on file with Nat'l Pers. Rec. Ctr., St. Louis, Mo., James F. O'Callahan Official Military Personnel File, Service No. RA 11221278) [hereinafter *O'Callahan OMPF*], <https://perma.cc/926B-QX6X>. For information about the Branch United States Army Disciplinary Barracks, Lompoc, California, see, e.g., Jerry S. Price, *History of the United States Disciplinary Barracks, 1875-Present*, Student Study Project #4016, USACGCS, Ft. Leavenworth, Kan. 37 (7 May 1978), <https://apps.dtic.mil/sti/pdfs/ADA437867.pdf> [<https://perma.cc/4CT6-PN8J>]; U.S. DEP'T OF JUST. & U.S. DEP'T OF DEF., *REPORT TO CONGRESS PURSUANT TO SECTION 20413 OF THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994, CONVERSION OF CLOSED MILITARY INSTALLATIONS INTO FEDERAL PRISON FACILITIES*, at I-2, app. B-3 (Feb. 1995), https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Other/BRAC/Conversion_of_Closed_Military_Installations_into_Federal_Prison_Facilities_749.pdf [<https://perma.cc/4F9M-635H>].

83. *O'Callahan v. Parker*, Respondents' Return and Answer to Petition, app. at 16, *O'Callahan v. Parker*, 395 U.S. 258 (1969) (No. 646) [hereinafter *O'Callahan Appendix*].

84. *Id.*

85. *Id.*

86. *Id.* First the U.S. District Court for the District of Massachusetts and then the U.S. Court of Appeals for the First Circuit rejected O'Callahan's argument that the Federal civilian parole board had no authority to parole him as a military prisoner, and thus his confinement time had continued to run since his release from Lewisburg in 1960. *O'Callahan v. Att'y Gen.*, 230 F. Supp. 766 (D. Mass.), *aff'd*, 338 F.2d 989 (1st Cir. 1964); see also *O'Callahan v. Att'y Gen.*, 351 F.2d 43 (1st Cir. 1965) (per curiam) (ruling against O'Callahan's claim that it was unconstitutional to deny him confinement credit for time spent on parole); *accord O'Callahan v. United States*, 293 F. Supp. 122 (D. Minn. 1968). The judge in the Minnesota case aptly referred to O'Callahan's "litigative life." *O'Callahan*, 293 F. Supp. at 122.

87. RABINOWITZ, *supra* note 70, at 292-93.

88. *Id.* at 293.

89. *Id.*

90. *Id.* at 292.

91. *Id.* *O'Callahan* was one of nine cases Rabinowitz argued at the Supreme Court. See Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 684 (1976); *First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 760 (1972); *Samuels v. Mackell*, 401 U.S. 66, 66 (1971); *O'Callahan*, 395 U.S. at 259; *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 399 (1964); *Yellin v. United States*, 374 U.S. 109, 110 (1963); *Silber v. United States*, 370 U.S. 717, 717 (1962) (per curiam); *Harmon v. Brucker*, 355 U.S. 579, 579 (1958) (per curiam); *Am. Comm'ns Ass'n v. Douds*, 339 U.S. 382, 384 (1950). He prevailed in five of them: *O'Callahan*, *Banco Nacional de Cuba v. Sabbatino*, *Yellin*, *Silber*, and *Harmon*.

92. RABINOWITZ, *supra* note 70, at 292; Petition for Writ of Habeas Corpus, No. 756 (M.D. Pa. 1966), in *O'Callahan Appendix*, *supra* note 83, at 3-12; Petitioner's Traverse, No. 756 (M.D. Pa. 1966), in *O'Callahan Appendix*, *supra* note 83, at 21-26.

93. O'Callahan v. Parker, 256 F. Supp. 679 (M.D. Pa. 1966), *aff'd*, 372 F.2d 136 (3d Cir. 1967); United States v. O'Callahan, 16 C.M.A. 568, 37 C.M.R. 188 (1967).
94. United States *ex rel.* O'Callahan v. Parker, 390 F.2d 360 (3d Cir. 1968).
95. Notice of Change – Military Prisoner, O'Callahan, James F. (June 19, 1968), in O'Callahan OMPF, *supra* note 82.
96. Current Data for Restoration, Clemency and Parole Review, O'Callahan, James F. (5 Mar 1969), in O'Callahan OMPF, *supra* note 82.
97. O'Callahan v. Parker, 393 U.S. 822 (1968) (mem.). The issue statement erroneously averred that O'Callahan's court-marital was "held under the Articles of War" rather than the UCMJ. *Id.*
98. The majority consisted of Chief Justice Warren and Justices John Marshall Harlan II, William J. Brennan, Potter Stewart, Byron White, and Abe Fortas. Justice William O. Douglas's conference notes include a cautionary caveat: "but AF [Fortas] is dubious – at least says authority is very narrow." The dissent consisted of Justices Douglas, Hugo L. Black, and Thurgood Marshall. Conference January 24, 1969, No. 646 – O'Callahan v. Parker (on file with Lib. of Cong., Manuscript Div., William J. Brennan, Jr. Papers [hereinafter Brennan Papers]); Box I:180, "Case File O.T. 1968, Administrative File, Dockets, 68-601 to 68-800" Folder; Lib. of Cong., Manuscript Div., William O. Douglas Papers [hereinafter Douglas Papers], Box 1450, "No. 646(d) O'Callahan v. Parker MISC. MEMOS, CERT MEMOS, VOTE OF CT" Folder.
99. O'Callahan v. Parker opinion circulated Apr. 8, 1969, at 10, in Brennan Papers, *supra* note 98, Box I:197, Case File No. 68-646 (1 of 2).
100. O'Callahan v. Parker dissent circulated Apr. 10, 1969, in Brennan Papers, *supra* note 98, Box I:197, Case File No. 68-646 (2 of 2). Justice Douglas omitted Airmen and Coast Guardsmen from his list of those subject to the UCMJ.
101. A.F. to Mr. Justice Harlan, Re: O'Callahan v. Parker, No. 646 (Apr. 11, 1969), in Brennan Papers, *supra* note 98, Box I:197, Case File No. 68-646 (2 of 2).
102. *Id.*
103. *Id.* (emphasis adjusted from underline to italics).
104. J. M. H. to Mr. Justice Fortas (Apr. 14, 1969), in Brennan Papers, *supra* note 98, Box I:197, Case File No. 68-646 (1 of 2).
105. *Id.*
106. *Id.*
107. Fred P. Graham, *Fortas Quits the Supreme Court, Defends Dealings with Wolfson; Liberal Majority May Be Curbed*, N.Y. TIMES, May 16, 1969, at 1; see also *The Texts of Letters and Statements Involving the Resignation of Justice Fortas*, N.Y. TIMES, May 16, 1969, at 20 (reprinting statements of Chief Justice Earl Warren and the Justice Department and correspondence from Justice Fortas concerning his resignation). See generally LAURA KALMAN, ABE FORTAS: A BIOGRAPHY 322–25, 359–78 (1990) (describing ties between Justice Fortas and financier Louis Wolfson, who was convicted of Federal offenses, and Fortas's resulting resignation).
108. O'Callahan v. Parker dissenting opinion ("May —, 1969") (on file with Lib. of Cong., Manuscript Div., Earl Warren Papers [hereinafter Warren Papers], Box 565, "No. 646 – O'Callahan v. Parker" Folder); Chambers of Justice Abe Fortas, Memorandum for the Conference (May 15, 1969), in Warren Papers, *supra*, Box 565, "No. 646 – O'Callahan v. Parker" Folder ("Mr. Justice Fortas thought the members of the Court might like to see the dissent which he prepared in No. 646 – O'Callahan v. Parker.").
109. O'Callahan v. Parker opinion circulated May 19, 1969, in Brennan Papers, *supra* note 98, Box I:197, Case File No. 68-646 (1 of 2).
110. O'Callahan v. Parker, 395 U.S. 258 (1969).
111. Compare *id.*, with *supra* note 98.
112. O'Callahan, 395 U.S. at 272–74.
113. *Id.* at 273.
114. See *supra* notes 95–96 and accompanying text.
115. O'Callahan v. United States, 451 F.2d 1390 (Cl. Ct. 1971).
116. RABINOWITZ, *supra* note 70, at 293.
117. *Id.*
118. *Id.*
119. Solorio v. United States, 483 U.S. 435, 450 (1987).
120. O'Callahan v. Parker, 395 U.S. 258, 266 (1969) (citing Ira Glasser, *Justice and Captain Levy*, 12 COLUM. FORUM 46 (1969)).
121. United States v. Levy, 39 C.M.R. 672, 675 (A.B.R. 1968), *petition denied*, 18 C.M.A. 627 (1969); Parker v. Levy, 417 U.S. 733, 736 (1974).
122. Levy, 417 U.S. at 736–37.
123. Levy, 39 C.M.R. at 675.
124. *Id.*
125. *Id.*
126. *Id.* at 675–76.
127. *Id.* at 676.
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.* at 674.
132. *Id.* at 673–75.
133. *Id.* at 675.
134. *Id.* at 673, 675. The convening authority approved the sentence as adjudged. *Id.* at 675.
135. See, e.g., Levy v. Corcoran, 387 U.S. 915 (1967); Levy v. Corcoran, 389 F.2d 929 (D.C. Cir.) (per curiam), *cert. denied*, 389 U.S. 960 (1967).
136. Robert N. Strassfeld, *The Vietnam War on Trial: The Court-Martial of Dr. Howard B. Levy*, 1994 WIS. L. REV. 839, 949 n.482.
137. Levy v. Resor, 17 C.M.A. 135, 37 C.M.R. 399 (1967) (per curiam).
138. Levy v. Resor, 384 F.2d 689 (4th Cir. 1967), *cert. denied*, 389 U.S. 1049 (1968).
139. Levy v. Resor, 389 U.S. 1049 (1968) (mem.).
140. United States v. Levy, 39 C.M.R. 672 (A.B.R. 1968), *petition denied*, 18 C.M.A. 627 (1969).
141. *Move for Howard Levy*, KAN. CITY STAR, Jan. 31, 1969, at 4.
142. *Id.*
143. See generally HOWARD LEVY & DAVID MILLER, GOING TO JAIL: THE POLITICAL PRISONER (1970) (discussing, *inter alia*, Levy's conditions of confinement at the USDB and Lewisburg).
144. Levy v. Parker, No. 1057, Petition for Writ of Habeas Corpus (M.D. Pa. Apr. 19, 1969), *reprinted in* App. at 12–21, Parker v. Levy, 417 U.S. 733 (1974) (No. 73-206) [hereinafter Levy Appendix].
145. *Id.* at 1, *reprinted in* Levy Appendix, *supra* note 144, at 12. The other respondent was Secretary of the Army Stanley R. Resor. *Id.*
146. Levy Appendix, *supra* note 144, at 1.
147. *Id.*
148. Memorandum for the Respondents in Opposition 2, Levy v. Parker 396 U.S. 1204 (1969), in Douglas Papers, *supra* note 98, Box 1468, "App. For Bail – Levy v. Parker O.T. 69" Folder.
149. Application for Bail Addressed to the Honorable William J. Brennan, Jr., As Circuit Justice for the Third Circuit, Levy v. Parker (received 3 July 1969), in Douglas Papers, *supra* note 98, Box 1468, "App. For Bail – Levy v. Parker O.T. 69" Folder.
150. *Id.* (handwritten note on petition).
151. Application for Bail Addressed to the Honorable William O. Douglas, Associate Justice of the Supreme Court (received 19 July 1969), in Douglas Papers, *supra* note 98, Box 1468, "App. For Bail – Levy v. Parker O.T. 69" Folder.
152. Levy v. Parker, 396 U.S. 1204 (1969) (Douglas, J., chambers opinion).
153. *Id.* at 1204–05.
154. *Id.* at 1205.
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.* at 1204.
159. Phil Gailey, *Levy Says GI Dissent Prods Volunteer Army*, ATLANTA CONST., Aug. 7, 1969, at 16-A.
160. E.g., *Dr. Levy Leaves Prison; Refused to Train Medics*, INDIANAPOLIS STAR, Aug. 7, 1969, at 72.
161. LEVY & MILLER, *supra* note 143.
162. *Id.* at 65–66 ("At Lewisburg there was recently a horrendous newspaper article posted on the Jaycee bulletin board. Two inmates, a bank robber and a dope pusher, were photographed while attending a Jaycee convention some distance away from the institution. They were reported as saying that prison was tough but that the Jaycees gave new hope and Warden Parker was as helpful as he could be. Warden Parker, they said, would give prisoners any possible break. This was sheer propaganda.").
163. Levy v. Parker, 396 U.S. 804 (1969).
164. Justice Thurgood Marshall did not participate in the case and there was a vacant seat on the Court at the time. The note in Justice Douglas's papers indicated that Chief Justice Warren Burger and Justices Byron White and Potter Stewart voted to vacate the order granting bail while Justices Douglas, Brennan, Hugo Black, and John Marshall Harlan II voted to continue the order granting bail. Levy v. Parker, Application for bail pending habeas, in Douglas Papers, *supra* note 98, Box 1468, "App. For Bail – Levy v. Parker O.T. 69" Folder.
165. *Reassign Warden at Lewisburg Pen*, TRIBUNE (Scranton, Pa.), July 7, 1970, at 9.
166. Levy v. Parker, 478 F.2d 772, 778 (3d Cir. 1973).

167. FED. R. APP. P. 43(c)(1); Federal Rules of Appellate Procedure with Conforming Amendments to Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure, 43 F.R.D. 61, 105–06 (1968). A similar provision is included in the current FED. R. APP. P. 43(c)(2).

168. *Levy*, 478 F.2d at 795. Future U.S. District Judge Royce C. Lamberth—then a captain in the Office of the Judge Advocate General of the Army—was among the counsel for the respondents before the Third Circuit. *See id.* at 776.

169. *Id.* at 794.

170. *Id.* at 796. In addition to setting aside Levy’s convictions for the violating Articles 133 and 134, the Third Circuit held that the finding of guilty to the Article 90 charge may have been influenced by evidence the court-martial would not have heard but for the constitutionally infirm charges. *Id.* at 796–99. The court, therefore, granted relief as to the Article 90 conviction as well. *Id.* at 799. Chief Judge Seitz dissented from the portion of the opinion setting aside the Article 90 conviction. *Id.* at 808–13 (Seitz, C.J., concurring in part, dissenting in part).

171. *Levy*, 417 U.S. at 733. That same day, the Court heard oral argument in *Secretary of the Navy v. Avrech*. Sec’y of Navy v. Avrech, 418 U.S. 676, 676 (1974) (per curiam). In *Avrech*, the United States Court of Appeals for the District of Columbia—in an opinion by United States Supreme Court Justice Tom C. Clark sitting by designation—had held Article 134, UCMJ, unconstitutionally vague. *Avrech v. Sec’y of Navy*, 477 F.2d 1237 (D.C. Cir. 1973). The Supreme Court would ultimately reverse that ruling. *Avrech*, 418 U.S. at 676–77.

172. *Levy*, 417 U.S. at 735. *See generally* Steven G. Calabresi, *In Memoriam: Robert H. Bork*, 36 HARV. J.L. & PUB. POL’Y 1235 (2013) (discussing Bork’s legal career); Ethan Bronner, *A Conservative Whose Supreme Court Bid Set the Senate Afire*, N.Y. TIMES, Dec. 20, 2012, at A1 (same).

173. Don McKee, *Jury Trial Sought in Army Case*, BURLINGTON TIMES-NEWS, Apr. 23, 1969, at 15-A.

174. *Levy*, 417 U.S. at 735.

175. *See id.* at 758.

176. *Id.*

177. CHARLES MORGAN, ONE MAN, ONE VOICE 149 n.* (1979).

178. *Bangor Punta Operations v. Bangor & A.R. Co.*, 417 U.S. 703 (1974); *Florida Power & Light Co. v. International Brotherhood of Elec. Workers*, 417 U.S. 790 (1974).

179. *See Solorio v. United States*, 483 U.S. 435, 448 (1987).

180. *See supra* note 165 and accompanying text; *McNeil Bids Its Warden 2 Goodbyes*, TACOMA NEWS TRIB., Jan. 8, 1972, at 2.

181. *See generally There’s Trouble at McNeil Island*, WASH. STATE BAR NEWS, May 1971, at 5 (discussing prisoner strike at the McNeil Island Federal Penitentiary and litigation in Federal district court over conditions of confinement there); Dwight Jarrell, *McNeil ‘Normal,’ but Prisoners Can’t Tell Story*, NEWS TRIBUNE (Tacoma, Wash.), Mar. 11, 1971, at A-1 (reporting on an interview with Warden Parker concerning the prisoner strike).

182. Win Anderson, *Warden in Line for Adviser Post*, TACOMA NEWS TRIB., Dec. 10, 1971, at A-3; *McNeil*

Bids Its Warden 2 Goodbyes, *supra* note 180, at 2; William F. Powers, *The Law Enforcement Assistance Administration, An Administrative History* (D.P.A. dissertation, Nova University), <https://www.ojp.gov/pdffiles1/Photocopy/153696NCJRS.pdf> [<https://perma.cc/63NM-PJJC>].

183. *Former Warden Turns Teacher*, NEWS TRIB. (Tacoma, Wash.), July 25, 1975, at A-4.

184. *Ex-Warden Named to Parole Board*, SPOKANE DAILY CHRONICLE, Apr. 15, 1980, at 10.

185. Adele Ferguson, *City Attorney Named to Parole Board Post*, BREMERTON SUN, Jan. 28, 1981, at 2.

186. *Parker Obituary*, *supra* note 41.

187. *Id.*

188. *Id.*

189. “[T]he Supreme Court did not review a court-martial habeas case until 1879.” Santucci v. Commandant, 66 F.4th 844, 853 (10th Cir. 2023). Significant Supreme Court military justice decisions arising from habeas petitions starting in that year include *Ex parte* Reed, 100 U.S. 13 (1879); *Ex parte* Mason, 105 U.S. 696 (1881); *In re* Grimley, 137 U.S. 147 (1890); *Johnson v. Sayre*, 158 U.S. 109 (1895); *Carter v. Roberts*, 177 U.S. 496 (1900); *Carter v. McClaughry*, 183 U.S. 365 (1902); *McClaughry v. Deming*, 186 U.S. 49 (1902); *Givens v. Zerst*, 255 U.S. 11 (1921); *Kahn v. Anderson*, 255 U.S. 1 (1921); *Collins v. McDonald*, 258 U.S. 416 (1922); *Billings v. Truesdell*, 321 U.S. 542 (1944); *United States ex rel. Hirshberg v. Cooke*, 336 U.S. 210 (1949); *Humphrey v. Smith*, 336 U.S. 695 (1949); *Wade v. Hunter*, 336 U.S. 684 (1949); *Hiatt v. Brown*, 339 U.S. 103 (1950); *Gusik v. Schilder*, 340 U.S. 128 (1950); *Whelchel v. McDonald*, 340 U.S. 122 (1950); *Burns v. Wilson*, 346 U.S. 137 (1953); *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955); *Kinsella v. Krueger*, 351 U.S. 470 (1956); *Jackson v. Taylor*, 353 U.S. 569 (1957); *Fowler v. Wilkinson*, 353 U.S. 583 (1957); *Reid v. Covert*, 354 U.S. 1 (1957); *Lee v. Madigan*, 358 U.S. 228 (1959); *McElroy v. United States*, 361 U.S. 281 (1960); *Kinsella v. United States*, 361 U.S. 234 (1960); *Grisham v. Hagan*, 361 U.S. 278 (1960); *Noyd v. Bond*, 395 U.S. 683 (1969); *Relford v. Commandant, U.S. Disciplinary Barracks*, 401 U.S. 355 (1971); *Gosa v. Mayden*, 413 U.S. 665 (1973); and *Middendorf v. Henry*, 425 U.S. 25, 29–30 (1976) (noting that the case originated as a “class action seeking habeas corpus (release from confinement), an injunction against future confinement resulting from uncounseled summary court-martial convictions, and an order vacating the convictions of those previously convicted”). Military justice cases have also sometimes reached the Supreme Court on review of other forms of collateral challenges to court-martial convictions. *E.g.*, *McLucas v. De Champlain*, 421 U.S. 21 (1975) (reviewing a Federal district court’s injunction precluding proceeding with a court-martial); *Schlesinger v. Councilman*, 420 U.S. 738, 744 (1975) (presuming that “the District Court found jurisdiction under 28 U.S.C. § 1331, which grants subject-matter jurisdiction of civil actions where the matter in controversy exceeds \$ 10,000 ‘and arises under the Constitution, laws, or treaties of the United States’”); *United States v. Augenblick*, 393 U.S. 348 (1969) (reviewing Court of Claims’ ruling on collateral challenge to court-martial conviction); *Mullan v. United States*, 212 U.S. 516 (1909) (same); *United States v. Brown*, 206 U.S. 240 (1907) (same); *United States v. Smith*, 197 U.S. 386 (1905) (same); *Swain v. United States*, 165 U.S. 553 (1897) (same); *Ide v. United States*, 150 U.S. 517 (1893) (same); *United States v. Fletcher*, 148 U.S. 84 (1893) (same); *United States v. Page*, 137 U.S. 673

(1891) (same); *Runkle v. United States*, 122 U.S. 543 (1887) (same); *Smith v. Whitney*, 116 U.S. 167 (1886) (reviewing Supreme Court of the District of Columbia’s denial of petition for writ of prohibition to stop a naval court-martial); *Keyes v. United States*, 109 U.S. 336 (1883) (reviewing Court of Claims’ ruling on collateral challenge to court-martial conviction); *Dynes v. Hoover*, 61 U.S. 65 (1857) (reviewing collateral challenge to a naval court-martial conviction brought as an action for assault and battery and false imprisonment against the marshal of the District, who confined Dynes as a result of a court-martial conviction).

190. Military Justice Act of 1983, Pub. L. No. 98-209, § 10, 97 Stat. 1393, 1405.

191. Congress gave the court its present name in 1994. *See* National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 924, 108 Stat. 2663, 2831 (1994); *see also* Special Session for Court Name Change, 41 M.J. LIII (C.A.A.F. 1994) (marking the change of the court’s name); Notice of Court Name Change, 42 M.J. 9 (C.A.A.F. 1994) (same).

192. On the other hand, the Court did hear a challenge to the military commission system via review of lower Article III courts’ rulings on a habeas petition. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 567 (2006).

193. *Solorio v. United States*, 483 U.S. 435 (1987); *Weiss v. United States*, 510 U.S. 163 (1994); *Davis v. United States*, 512 U.S. 452 (1994); *Ryder v. United States*, 515 U.S. 177 (1995); *Loving v. United States*, 517 U.S. 748 (1996); *Edmond v. United States*, 520 U.S. 651 (1997); *United States v. Scheffer*, 523 U.S. 303 (1998); *United States v. Denedo*, 556 U.S. 904 (2009); *Ortiz v. United States*, 585 U.S. 427 (2018); *United States v. Briggs*, 592 U.S. 69 (2020). The Supreme Court engaged in plenary review of another case via writ of certiorari to the Court of Appeals for the Armed Forces that involved not a court-martial, but rather the President’s action in dropping an officer from the rolls. The Supreme Court held that the Court of Appeals for the Armed Forces had exceeded its jurisdiction by granting extraordinary relief in that case. *See Clinton v. Goldsmith*, 526 U.S. 529 (1999).

194. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533, 137 Stat. 136, 261 (2023). That expansion applies to cases in which a petition for grant of review was filed on or after 22 December 2024. *Id.* § 533(b), 137 Stat. at 261.

195. *See* 10 U.S.C. § 867a (2018); 28 U.S.C. § 1259 (2018).

196. *Burns v. Wilson*, 346 U.S. 137 (1953).

197. *Id.* at 142.

198. *Id.*

199. *See, e.g.*, Santucci v. Commandant, 66 F.4th 844, 855 (10th Cir. 2023) (“[O]ur interpretation of ‘the language in *Burns*’—as expressed in our post-*Burns* decisions—‘had been anything but clear.’” (quoting *Dodson v. Zelez*, 917 F.2d 1250 (10th Cir. 1990))), *cert. denied*, 144 S. Ct. 191 (2023). *See generally* Clara D. Crenshaw, Note, *Habeas Review of Courts-Martial: Revisiting the Burns Standard*, 99 TEX. L. REV. 787, 797–802 (2021) (surveying various circuits’ application of *Burns*).

200. *Bork v. Infante*, C/A No. 9:23-CV-01073/JFA, 2024 U.S. Dist. LEXIS 9288 (D.S.C. Jan. 17, 2024), *appeal filed*, No. 24-6218 (4th Cir. Mar. 8, 2024).

201. *Gray v. Curtis*, No. 5:18-cv-03305-EFM (D. Kan.). The case is before the district court on remand from the U.S. Court of Appeals for the Tenth Circuit. *See Gray v. Gray*, 645 F. App’x 624 (10th Cir. 2016) (per curiam).



Military personnel from Romania, the United States, France, and the Republic of Moldova gather during the Romanian Land Forces and the United States' 2024 multinational conference on international and operational law in Sinaia, Romania. (Photo courtesy of COL Kopetski)

Practice Notes

Strengthening Legal Interoperability The Urgent Need to Sustain Mil-to-Mil Legal Engagements Across NATO

By Colonel Matthew A. Kopetski and Lieutenant Colonel Grzegorz Janiszewski, Polish Army

Scene Setter

On 26 November 1941, six Japanese aircraft carriers departed from the Kuril Islands and began their voyage to Hawaii.¹ The flotilla arrived about a week later, having completed their voyage undetected by American patrols.² In the early morning of 7 December, the carrier-based aircraft took off and launched their attack on the U.S. Naval Base at Pearl Harbor.³ Although most Americans are familiar with this “date which will live in infamy,”⁴ not as many consider the importance of the attack from a military-technology perspective, as it marked the end of the era in naval warfare dominated by the

battleship.⁵ In addition, the Japanese military industrial base deserves significant credit for developing shallow water torpedoes that enabled the tactical success of this mission.⁶

Those considerations aside, the important questions that we as legal professionals should consider include, “At which point along this operation’s timeline could the United States have invoked its inherent right of self-defense under international law to stop this attack?” Another pertinent question one may ask is, “To what extent does technological capability shape the legal answer to this question?”



Attendees gather at the 9th African Accountability Colloquium in Cotonou, Benin. The colloquium was co-hosted by the Benin Defense Force and U.S. Africa Command. Commanders and legal advisers from more than thirty African countries attended this bi-annual meeting to discuss issues related to the commander/legal adviser relationship. JAs and legal professionals from U.S. Army Southern European Task Force - Africa, U.S. Africa Command, U.S. Army Europe and Africa, the National Guard Bureau, and the North Dakota National Guard all participated in this event. (Photo courtesy of COL Kopetski)

In 1972, President Nixon authorized Operation Linebacker I, an aerial bombing campaign against North Vietnam.⁷ As part of this campaign, on 10 June, American F-4s struck the Lang Chi hydroelectric facility located approximately sixty miles up the Red River Valley from Hanoi.⁸ The Soviet Union-built, 122,500-watt installation had the capacity to supply up to 75 percent of the electricity for Hanoi's industrial and defense needs.⁹

At the same time, U.S. Air Force planners estimated that breaching the dam could kill as many as 23,000 civilians.¹⁰ Upon execution, the strike force dropped 12 Mk-84 laser-guided bombs through the 50-by-100-foot roof of the main building at the base of the dam.¹¹ The strike succeeded in destroying the dam's turbines and generators, which shut down the power plant without causing a breach.¹² Today, U.S. and North

Atlantic Treaty Organization (NATO) forces plan, and, when necessary, employ precision-guided "smart munitions" as a routine component of warfare.¹³ However, the Vietnam War marked the first entry of laser-guided munitions in combat.¹⁴ Another question that we as legal professionals should ask is, "To what extent did the advent of precision-guided munitions render this attack compliant with the law of armed conflict (LOAC)?"

In September 2022, Ukraine launched the "I want to live" project.¹⁵ In simple terms, "I want to live" employs a complex system of chatbots and drones to facilitate the surrender of Russian soldiers to the Ukrainian armed forces.¹⁶ In November 2022, Ukraine released video footage of a surrendering Russian soldier being guided by a drone to waiting Ukrainian soldiers. We should examine the legal ramifications

that the development of drone technology and social media has on a party to an armed conflict's duty to accept the surrender of enemy forces.

In response to Hamas's 7 October 2023 attack against Israel, the Israeli Defense Force used the "Gospel" and "Lavender" software systems as part of their target-identification processes.¹⁷ Gospel "compiles, fuses, and cross-references layers of information from different datasets to generate suggestions for intelligence analysts regarding objects that have the potential to qualify as a military objective."¹⁸

Lavender serves a similar function for the purpose of identifying potential members of Hamas or other armed groups.¹⁹ Both Gospel and Lavender rely on pre-existing datasets that are regularly updated. What structures must a state put in place to use software such as Gospel and Lavender to

ensure that military operations relying on this information comply with LOAC?

These examples illustrate how technological advancement shapes combat operations. At the same time, they demonstrate the need for judge advocates (JAs) active in the national security law space to keep current on how the incorporation of new technologies into our weapon systems influences the legal analysis of operational planning. Additionally, JAs must remain cognizant of the fact that our Army and country do not fight alone and, therefore, we must have some understanding of the legal perspective of our allies and partners. Would a legal advisor representing Belgium, Denmark, Estonia, France, Finland, Germany, Lithuania, the Netherlands, Poland, Romania, Spain, Turkey, or Ukraine share the same interpretation as the United States? To what extent is that position shaped by the technological and military capabilities of that nation's armed services? Working through these questions explains why JAs need to proactively and continuously work with our allied and partner nation counterparts to build and sustain a compatible shared understanding of the legal rules governing military operations.

Introduction

As the United States and its allies shake off the counterinsurgency mindset and prepare for large-scale combat operations (LSCO), JAs, along with our allied legal advisors (LEGADs), need to prepare our commanders for the legal complexities of a NATO fight on European territory. Such a fight will entail massive and complex enabling, shaping combat operations that will originate from, transit through, be conducted with, and have effects in the national territories of several allied powers, all of which will retain their sovereignty. In addition to bringing their combat power to the fight, each ally will operate under its own legal and bureaucratic regime that will shape how it employs such force.

As legal professionals, our ability to support our commanders will require us to work intimately with our legal counterparts across the combined force. Fortunately, as complex and as challenging as this task may seem, the NATO allies did it in the past and achieved victory and, if necessary, will do so again.

This article draws on many of the lessons our Corps has learned to enhance allied legal interoperability in Europe in the post 24 February 2022 environment. The authors hope that this article will motivate staff judge advocates (SJAs) and their allied counterparts to sustain these efforts to consolidate and build upon the gains achieved. To that end, this article will first clarify the concept of legal interoperability, then delve into its incorporation within legal operations, and conclude by offering a framework for its assessment.

Clarifying Legal Interoperability as a Concept

Legal Interoperability: The Legal Basis

The successful implementation of Articles 3 and 5 of the North Atlantic Treaty²⁰ demands effective legal interoperability across the alliance and those forces operating in a NATO formation. Article 3 requires that the allies “maintain and develop their individual and collective capacity to resist armed attack.”²¹ In the event an armed attack against a NATO ally occurs, Article 5 demands that all allies “assist the Party or Parties so attacked by taking . . . individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force.”²² The development of a collective capacity to resist an armed attack and executing that task requires continuous dialogue and training across the allied legal community on how the allies interpret LOAC and the relevant rules that shape how they operate and meet those requirements.

In particular, the allied legal corps need to discuss, identify, and test the seams of how each ally incorporates LOAC into their force structures and maximizes the effectiveness of such collective action. Not only does this ensure legal interoperability, but it also facilitates unity of effort across the allied formations, efficient resource allocation, and enhances operational effectiveness.²³ In addition, it requires a robust corps of JAs and legal advisors that train and practice with a legal interoperability mindset.

Fortunately, the U.S. Army and NATO have established statutory and regulatory frameworks that support the implementation of Articles 3 and 5 of the North Atlantic

Treaty and build interoperability across the alliance. By statute, 10 U.S.C. §§ 331 and 346 both contain language explicitly supporting the enhancement of interoperability with friendly countries.²⁴ By regulation, U.S. Army Regulation (AR) 34-1, *Interoperability*, states that it is the Army's policy to “develop interoperability to enhance readiness in support of U.S. national defense and strategic goals, including operating effectively with [unified action partners (UAP)] across the [range of military operations (ROMO)].”²⁵ The Army adopted AR 34-1 understanding that it “will have only days . . . to integrate with UAPs Therefore, interoperability must become a fundamental condition of how the Army plans to fight tonight and tomorrow”²⁶ Although most people look to these sources from a materiel and operational viewpoint, one should note that the broad language they utilize captures the legal domain as well.

Legal Interoperability: The Concept

The U.S. Army, to include the Judge Advocate General's (JAG) Corps, and NATO agree that (legal) interoperability has three core components: technical, procedural, and human.²⁷ Although AR 34-1 does not define these components, NATO's Allied Joint Doctrine 01²⁸ (AJP 01) contains some helpful definitions. AJP 01 provides the following:

- **Technical Interoperability** concerns systems and equipment, such as communication and information systems, and their ability to operate together.
- **Procedural Interoperability** is based on measures such as common doctrine, procedures and terminology.
- **Human Interoperability** concerns mutual trust and understanding achieved by strengthening relationships in training and on operations.²⁹

In addition, AJP-01 links its definitions to Articles 3 and 5 of the North Atlantic Treaty by stating that interoperability depends on the ability of “NATO, other political departments, agencies and, when appropriate, forces of partner nations to act together coherently, effectively and efficiently to achieve Allied tactical, operational and strategic objectives.”³⁰

Recognizing the ever-growing complexity in combined military operations and the consequent need to build legal interoperability across the NATO allies, the U.S. Army Judge Advocate General's Legal Center and School (TJAGLCS) published *Multinational Legal Interoperability*³¹ in 2021. The evolution in the discussion over legal interoperability caused TJAGLCS to update the publication in 2024 and change the title to *Best Practices of Multinational Legal Interoperability Smartbook*.³² Although this publication recognized the enduring challenge of building legal interoperability, arguably its most significant achievement is that it adapts the AR 34–1 levels of interoperability construct to the military practice of law. These are:

Level 0 – Not Legally Interoperable: The ally or partner has no demonstrated legal interoperability. The legal personnel of allies and partners operate independently from U.S. Army legal personnel, formations, and operations; and do not have knowledge of the legal or policy issues of their allies or partners.

Level 1 – Legally Deconflicted: The ally or partner has very limited demonstrated legal interoperability. U.S. Army legal personnel and legal personnel of allies and partners do not interact. Requires alignment of legal capabilities and procedures to establish operational norms, enabling allies, partners, and the Army to complement each other's operations.

Level 2 – Legally Compatible: The ally or partner has some demonstrated legal interoperability. U.S. Army legal personnel and legal personnel of allies and partners are able to interact with each other; are trained on the legal regimes and operational freedoms and constraints of allied and partner nations, incorporating them into their own policies and procedures; and are able to operate in the same geographic area in pursuit of a common

goal. Nations at this level, however, are unable to utilize interoperable personnel of a different nationality within their own task organization.

Level 3 – Legally Integrated: The ally or partner has substantially complete legal interoperability. Allies and partners are able to integrate into the task organization upon arrival into theater; are knowledgeable about the legal regimes and operational freedoms and constraints of other allies and partners and incorporate them into their own policies and procedures; and regularly and seamlessly exchange legally relevant information (security classification permitting) and legal personnel between their formations.³³

In 2022, the Center for Law and Military Operations (CLAMO) published the *U.S.-UK Interoperability Handbook*,³⁴ the first manual focusing on establishing legal interoperability with an individual ally. In 2024, CLAMO published the *Tactical Legal Polish / United States Interoperability Handbook*.³⁵

Incorporating Legal Interoperability into Legal Operations

“Legal interoperability begins with a handshake.” – Lieutenant General (Retired) Charles N. Pede

In 2017, NATO put forward that “[t]he effectiveness of Allied forces in peace, crisis or in conflict, depends on the ability of the forces provided to operate together coherently, effectively, and efficiently. Allied joint operations should be prepared for, planned, and conducted in a manner that makes the best use of the relative strengths and capabilities of the forces which members offer for an operation.”³⁶ In response to Russia's 2022 invasion of Ukraine, the NATO allies' armies have undertaken significant effort to strengthen their collective capability to fight together in a coherent, effective, and efficient manner.³⁷

NATO's December 2022 update of Allied Joint Doctrine serves as the doctrinal underpinning of this effort. Here, NATO

elevated interoperability to one of three force multipliers that enhance the Alliance's fighting power. In the background, the legal corps of the NATO allies, including the U.S. Army's JAG Corps, have contributed to this effort through combined participation in hundreds of training events, exercises, and conferences.³⁸

2023 through 2025 brought a high-water mark for JA-to-LEGAD dialogue. In 2022 and 2023, Romania's Land Forces held a bilateral conference with the United States on international and operational law. In 2024, Romania expanded this conference to include participation from the United States, France, and Moldova.³⁹ The presence of two Romanian general officers at this event, which their national television covered, signified the growing importance this engagement has taken on.

In 2024 and 2025, Bulgaria held bilateral legal conferences with the United States. In 2024, at least seventeen NATO allies sent LEGADs to the first European Multinational Judge Advocate General's Interoperability Symposium (MJIS) hosted by U.S. Army Europe & Africa (USA-REUR-AF) Office of the Judge Advocate (OJA). This conference included more NATO members in 2025.

In 2023, the NATO Joint Warfare Centre held the first iteration of the “Sword of Justice” legal exercise.⁴⁰ U.S. Air Forces Europe & Africa co-hosted with Spain the second iteration of this event in 2024. In addition to these events, JAs and LEGADs from Belgium, France, Italy, Lithuania, Romania, and the United Kingdom have participated in numerous exchanges as part of tactical training events. Although each of these events included important substantive components, one cannot understate the importance these interactions had on strengthening the human component of legal interoperability.

One should note, these events did not “just happen.” They happened because of initiatives taken by one (or several) JAs and allied LEGADs who worked together to build the event. The thirty-two sovereign members of NATO each have a separate legal culture within their armed services. NATO allies lack the organizational structure and resources that we benefit from in the U.S. Army. As a result, it often falls on



COL Jason Coats, Chief of Administrative and International Law, Office of the Chairman of the Joint Chiefs of Staff, speaks to attendees during the Romanian Land Forces and the United States' 2024 bilateral conference on international and operational law in Sinaia, Romania. (Credit: Victor Sandu)

the Army JA to initiate the lawyer-to-lawyer contact. Initiating the contact that leads to the first handshake constitutes the most important element in building legal interoperability with an allied or coalition partner. This contact, which is usually referred to as “an engagement,” establishes the foundation of the whole relationship and frames expectations about future cooperation.

“Engagement” serves as the catchall term when meeting with an ally or partner LEGAD.

In general, they seek to:

- Enhance understanding of the legal, policy, and doctrinal frameworks that shape each participating ally or partner nation’s land forces;
- Enhance understanding of each ally or partner nation’s framework for applying LOAC;
- Enhance understanding of the legal, policy, and doctrinal frameworks each ally or partner nation employs to ensure compliance with established international norms governing human rights;
- Enhance understanding of the legal, policy, and doctrinal frameworks each ally or partner nation employs to protect the rule of law; and
- Enhance the ability of the parties to provide mutual support during their combined operation.

Typically, an engagement occurs in one of four formats. These are:

- **Senior Leader Outreach (SLO):** SLOs consist of a meeting between the SJA and their peer from the allied or partner nation. These engagements typically establish a framework and timeline for future cooperation.

- **Mission Support Engagements (MSE):** MSEs are operationally focused meetings typically geared toward addressing a legal/regulatory/policy-related friction points that inhibit the successful execution of a tactical exercise or operation.
- **Legal Conferences and Continuing Legal Education (CLE):** These events focus on exchanging information and perspective on legal topics of common interest. In addition, they usually offer networking opportunities to facilitate mil-2-mil cooperation in training and operational environments.
- **Table-Top Exercise Participation (TTX):** TTXs are events focused on developing the operational law skills of JAs and LEGADs assigned to tactical formations. These events typically involve a combination of classroom instruction followed by scenario presentation to facilitate issue spotting and discussion

on LOAC compliance by the training audience. In 2023 and 2024, Romania's Land Forces held TTXs attended by U.S. JAs and French LEGADs.

The most important takeaway from the above is that building legal interoperability does not just happen; it requires effort, and most often, the SJA must make legal interoperability a priority. Fortunately, that initial effort generally entails little more than sending a friendly and professional email requesting to schedule a meeting to discuss activities, resources, and interests. JAs should strive to approach these meetings from the positive perspective of, "What can we discuss and work on that will mutually benefit our commands?"

Part 3: Assessing Legal Interoperability

"Interoperability is often considered to be a desired, but unattainable, goal rather than a condition that can be quantified."⁴¹ – Michael Leite, PE

As JAs and military professionals, we have an intrinsic desire to focus our professional energies on the pursuit of activities that seek to achieve a defined outcome. In the legal interoperability context, this characteristic translates into a natural desire to develop programs with an ally or partner that, when completed, will lead to establishing Level 3 legal integration. At the same time, we recognize that establishing full legal integration with our thirty-two NATO allies is impossible. To reconcile this tension, we should satisfy ourselves by appreciating the fact that the trans-Atlantic alliance will remain successful at deterring aggression by concerted effort among the allies to achieve Level 3 integration, but, at the same time, in the legal context, will remain satisfied by sustaining a high-degree of Level 2 legal compatibility. Of course, the challenge remains: "Who decides where our Army sits on this spectrum vis-à-vis its NATO Allies?" And, "What is the assessment criteria?"

During my service at USAREUR-AF, I have created, seen, and helped develop several tools for assessing legal interoperability. After each engagement with an allied or partner



COL Kopetski (left) receives a plaque from COL Sorin Chiper (right), Legal Advisor to Romania's Chief of Defense, commemorating the Romanian Land Forces and the United States' 2024 bilateral conference on international and operational law in Sinaia, Romania. (Photo courtesy of COL Kopetski)

nation, the team leader would submit a trip report that documented the most important meeting outcomes. In addition to recording the key topics of discussion, the leader also suggested discussion topics at a future meeting. The purpose behind this was to recognize that our allied and partner interlocutors change positions much less frequently than we do; therefore, we wanted to solidify any gains made at one conversation and maximize the opportunity to advance issues at another meeting. During the two and a half years I served at USAREUR-AF, we built a robust repository of these engagements. Among allies with whom the USAREUR-AF OJA has steady and robust dialogue, such as Romania, these reports show an iterative progression of mutual understanding of each other's legal approach to a range of issues, including LOAC.

More recently, OJA and its subordinate units have begun to create "legal interoperability matrices" during the planning phases of combined exercises. Here, the National Security Law Division hosts regular planning calls with U.S., allied, and NATO counterparts to discuss aspects in the planning documents that contain legal issues. The legal office of each formation participating in the exercise participates in these calls and has the opportunity to articulate its legal position with respect to those issues. Also, they may raise other issues they have identified. These discussions have removed a significant amount of friction that, if left undiscovered until the actual event, could have hampered the achievement of multiple training objectives. Furthermore, as a result of OJA's continuous pursuit of legal interoperability, USAREUR-AF has become much

more comfortable integrating into NATO command structures.

Conclusion

The rapid pace of technological innovation and its direct impact on LSCO demands that JAs continuously create and seek opportunities to work with their NATO and allied counterparts to sustain an operationally comfortable level of legal interoperability.

The handshake is the most important tool in achieving this, but such encounters mark the beginning of cooperative engagement. JAs and their NATO counterparts should also explore exercises and other projects described above. Joint exercises are particularly important, as they allow JAs and LEGADs not only to test the differences between legal systems in practice and seek ways to resolve them, but also to solidify personal contacts.

The continued development and refinement of tactical interoperability manuals, both at the NATO level as a whole and for individual countries, would also be of practical help. This would greatly facilitate the work of JAs and LEGADs, especially those who have not had much experience in working with allied counterparts or operating in forward areas. It is also important to continuously assess the level of interoperability, draw conclusions in this regard, and implement them in practice. Over the course of several years, these activities will raise legal interoperability to a level that allows for conflict-free and smooth cooperation between the armed forces of different allied countries on legal issues. **TAL**

COL Kopetski is the Staff Judge Advocate for the 88th Readiness Division at Fort McCoy, Wisconsin. Prior to this assignment, he served as the Deputy Judge Advocate for Operations at the Office of the Judge Advocate, U.S. Army Europe & Africa in Wiesbaden, Germany, where he led the office's legal interoperability program.

LTC Janiszewski is a Lecturer of Military Law and Law of Armed Conflict at the Military University of Land Forces in Wrocław, Poland. Prior to this assignment, he served as Poland's Military Personnel Exchange Program (MPEP) officer at the Center for Law and Military Operations

(CLAMO) in Charlottesville, Virginia. At CLAMO, he helped draft the Polish – United States Tactical Legal Interoperability Handbook.

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AROUND THE CORPS

SFC Desmond H. Bradley Jr., senior military justice operations noncommissioned officer, Second Infantry Division, demonstrates proper execution of the reverse climb during the Paralegal of the Year Competition, Eighth U.S. Army, Second Infantry Division, 19th Expeditionary Sustainment Command at Camp Humphreys, Korea. (Credit: KSGT Jun Seok Kang (ROK))



Roman soldiers aid one another in building walled fortifications, as depicted on Trajan's Column in Rome, a monument completed in AD 113. (Source: University of Chicago)

Practice Notes

*Quis custodiet ipsos custodes?*¹ Appointment of Guardians for Incompetent Soldiers

By Mr. Daniel C. Brown

*With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan*²

Members of the Army are typically understood to be strong, fit, healthy, and able to care for themselves, and the Army's medical accession and retention standards are designed to ensure that this is the case.³ For a variety of reasons, however, this can cease to be the case for some Soldiers. Whether as a result of combat injuries, stroke, traumatic brain injury, mental disorder, or some other cause, Soldiers may become so severely disabled that they are unable to direct their own health care. Ordinarily, in such circumstances, either the Soldier or their family member has made the necessary arrangements to allow

medical decisions to be made (most often by way of a durable power of attorney for health care, other equivalent document, or an order of guardianship from a state court).

In some cases, however, no prior arrangements exist, no guardian is appointed, and no family member is willing or able to undertake this responsibility. In such cases, the Service department bears the responsibility of ensuring that one or more suitable persons are appointed as guardians, if necessary, to properly direct the medical care of its members. This article will demonstrate that this unique

responsibility rests on commanders; it will address the means and methods of seeking such arrangements; and, finally, it will discuss direct litigation of guardianship in the event it becomes necessary.

Establishing Guardianship as a Command Responsibility and Its Challenges

The Baseline: Commanders Bear a Moral, Statutory, and Regulatory Obligation for Their Soldiers' Healthcare

As this article's introductory quote demonstrates, President Lincoln's second inaugural address recognizes the obligation of the Nation to care for its Soldiers, Sailors, and Marines.⁴ Whether they have been wounded in battle, in training, or by other means, members of the Armed Forces have offered their lives to defend this Nation, and the Nation, in return, owes them a duty to care for them. For as long as a Soldier falls within our ranks, commanders and leaders at every level in the Army bear a responsibility to their subordinates that was described by one court as "quite unique"⁵ "to protect the health, safety, and welfare of the personnel assigned to" them.⁶ This responsibility is recognized by statute:

All commanding officers and others in authority in the Army are required . . . to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, *the physical well-being*, and the general welfare of the officers and enlisted persons under their command or charge.⁷

This relatively recent statute⁸ merely reflects and codifies an understanding of the Nation's responsibility that dates at least to 1865.

This responsibility is further clarified in Army Regulation 600-20, *Army Command Policy*.⁹ That regulation establishes the responsibility of "commanders at all levels" to care "for the health of their command," including preventative medicine, medical readiness, provision of necessary medical care, and evaluation of Soldiers' mental health.¹⁰

Moreover, this obligation is repeatedly and explicitly stated in Army doctrine on leadership.¹¹ Representative statements include that Army professionals "safeguard the health and welfare of their Soldiers;"¹² "[c]ommand also includes responsibility for *health, welfare*, morale, and discipline of assigned personnel;"¹³ and that "[h]aving genuine concern for subordinate health and welfare . . . is the right thing to do."¹⁴

The Challenge: Lack of Authority to Direct Care

Notwithstanding commanders' broad responsibility for their subordinates' health and welfare described above, explicit authority to make medical decisions on behalf of those subordinates is limited. AR 600-20 authorizes commanders to direct, with or without a Soldier's consent, emergency medical care, immunizations, isolation and quarantine, detention for medical care, limited care for behavioral disorders, diagnostic and other examinations, and for obtaining evidence.¹⁵ Conspicuously absent is general authority for a commander to direct a Soldier's medical care.

A Soldier's Incapacitation Does Not Grant This Authority

Taking this challenge a step further, no law, policy, or legal precedent yet exists directly addressing the question of commanders' authority to direct the medical care of an incompetent member of their command. The closest analogy in existing law is in the context of inmates who have been found mentally incompetent to stand trial, specifically in the context of a state seeking to administer antipsychotic drugs to render such an inmate competent to stand trial or for other reasons. The most recent Supreme Court decision on this question is *Sell v. United States*.¹⁶

Sell opens its analysis by addressing prior precedent. It notes, "In [*Washington v. Harper*], this Court recognized that an individual has a 'significant' constitutionally protected 'liberty interest' in 'avoiding the unwanted administration of antipsychotic drugs.'"¹⁷ The *Harper* Court in turn held that "the Due Process Clause permits the state to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, *if the inmate is dangerous to*

himself or others and the treatment is in the inmate's medical interest."¹⁸

Sell next addressed *Riggins v. Nevada*, in which "the Court repeated that an individual has a constitutionally protected liberty 'interest in avoiding involuntary administration of antipsychotic drugs'—an interest that only an 'essential' or 'overriding' state interest might overcome."¹⁹ The *Riggins* Court similarly held that such treatment would have been appropriate if it "was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins' *own safety or the safety of others*."²⁰

Sell's analysis recognizes that individuals have a liberty interest in avoiding involuntary administration of medical treatment—an interest so great that only an "essential" or "overriding" government interest may overcome it. While treating an inmate for his own safety or that of others would likely reach that level, it "may be rare" that the interest of rendering a defendant competent to stand trial will rise to that level.²¹

While Soldiers accept limitations on their constitutional rights, it cannot be the case that they possess "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men"²² to a lesser degree than an inmate in a state mental hospital. Therefore, it seems improbable that the Army would have greater latitude in administering or directing medical care without their consent than a state mental hospital would. Moreover, should the Army assert military necessity as a basis for providing medical treatment without a Soldier's consent (perhaps pursuant to AR 600-20, para. 5-4g(5)²³), and thus that its judgment is entitled to deference, this position is likely to be met with skepticism by the courts. Courts have historically accorded substantial deference to the executive agencies' positions, and particularly the military departments.²⁴ However, "Although courts accord substantial deference to an agency's final action and presume it valid, the rational basis standard 'does not reduce judicial review to a rubber stamp of agency action.'"²⁵

What to Do? The Path to Identifying or Establishing a Guardian

It is anticipated that Soldiers so severely disabled as to be unable to make medical decisions on their own behalf will soon

undergo disability separation. As a result, the commander's responsibility in this regard will be relatively short-lived. However, "relatively" is an essential qualification in the preceding sentence; the Department of War target is to complete the disability evaluation process within 180 days from referral into that process,²⁶ and all of the Services routinely exceed that target.²⁷ Moreover, referral into the disability process is not immediate, and the lack of an individual with the ability or authority to direct the Soldier's medical care may delay it. As a result, a commander may well be responsible for such a Soldier for a year or more. The Soldier's condition may warrant transfer to a Soldier Recovery Unit, but such a transfer merely moves the problem from one commander to another.²⁸

Appointment of a legal guardian is not necessary for a Soldier to proceed through disability processing; Army regulations authorize the next of kin to make decisions on the Soldier's behalf throughout that process, even if not formally appointed or qualified as a guardian under applicable state law.²⁹ But while such a family member may make administrative decisions on the Soldier's behalf throughout the disability process, their family status does not, in itself, authorize them to direct the Soldier's medical care, and any Soldier in this situation is almost certain to require extensive ongoing medical care during and after the separation process. While the Soldier's post-separation medical care is not the commander's concern, the commander remains responsible for the Soldier's medical care while in service.

Determine Whether an Authorized Person Already Exists

The commander's first step would naturally be to ascertain whether the Soldier has already executed a durable power of attorney for health care, an advance directive, or an equivalent document, giving some other person the power to make medical decisions on that Soldier's behalf in the event of that Soldier's incapacitation. If the commander is able to identify an authorized person and validate that that person has been named in an appropriate document, the commander's responsibility is satisfied in this regard. The suggestions below may assist the commander in locating an authorized person.

Ask the Soldier

At the risk of stating the obvious, if possible, the commander should ask the Soldier whether the Soldier has designated another person to make medical decisions; if so, by what means; and the location of any relevant documents. This, of course, depends on the Soldier being willing and able to communicate, and having sufficient presence of mind to answer these questions accurately; either or both of these may well be in question given the Soldier's condition. However, it is often the case that a Soldier may have periods of lucidity in which these questions may be answered.

Consult with Next of Kin, If Any

If the Soldier cannot answer these questions, the commander's next step would be to consult with the Soldier's next of kin, determined by means of the Department of Defense Form 93³⁰ if otherwise unknown. The commander may also ask any known friends or associates of the Soldier if they know whether the Soldier named an individual to manage such affairs.

Consult with the Installation Legal Assistance Office

Installation legal assistance offices routinely prepare healthcare powers of attorney, advance directives, and other such documents on behalf of Soldiers and dependents.³¹ If the commander has been unable to determine from the Soldier or the Soldier's family or friends whether such a document exists, contacting the installation legal assistance office (and, perhaps, the legal assistance offices of prior installations at which that Soldier served) could be the next step. Legal assistance offices are required to record these services in Client Information System. As a result, the office should be able to easily determine whether it has prepared such a document for the Soldier. If so, the office may have an electronic copy from which the commander could learn whom to contact.

Determine Whether the Soldier Can Validly Name Someone

The requisite mental capacity to execute a durable power of attorney may not be the same as that to be deemed mentally competent to make medical decisions. This

distinction is explicit in the Uniform Health-Care Decisions Act of 1993,³² as enacted by New Mexico: "A determination of lack of capacity under the Uniform Health-Care Decisions Act shall not be evidence of incapacity under the provisions of Article 5 of the Uniform Probate Code."³³ Under this uniform act, capacity "means an individual's ability to understand and appreciate the nature and consequences of proposed healthcare, including its significant benefits, risks and alternatives to proposed healthcare and to make and communicate an informed healthcare decision."³⁴ Under its 2023 revision, mental capacity to appoint an agent under a healthcare power of attorney requires only that the Soldier "recognize[] the identity of the individual being appointed or identified and understand[] the general nature of the relationship."³⁵ These standards are markedly different, and it may be the case that a Soldier lacks the former capacity while still possessing the latter.

The above are illustrative examples; as the relevant subjects are questions of state law, the standards for mental capacity in each context will vary from state to state. If the Soldier meets the latter standard but not the former, a healthcare power of attorney, advance directive, or other suitable document can be prepared on that Soldier's behalf. Determining whether this possibility is viable will require careful consideration of the Soldier's condition and a thorough analysis of the relevant state statutes. It should be undertaken by experienced legal assistance personnel. The attorney representing the Soldier in question should carefully document the circumstances leading the attorney to believe the Soldier possesses the necessary mental capacity, and should consider requesting the presence of a witness, such as a paralegal, during client meetings. Should the validity of the instrument, or the Soldier's capacity to execute it, be questioned in the future, that witness may provide evidence supporting the Soldier's capacity.

Seek to Assist a Willing Family Member

Suppose no appointing document is found, and the Soldier is unable or unwilling to appoint an agent. In that case, the commander should consult with the Soldier's next of kin, if possible, to determine whether that individual or some other family member or



Team members prepare life-saving equipment at Belvoir Hospital, which contains a Warrior Pavilion for wounded and ill Service members. (Credit: Reese Brown)

friend is willing to seek an appointment as a guardian. In this case, while the commander cannot directly act to appoint the individual in question, that individual can be directed to various resources to assist in that process.

A family member or other person willing to act in this capacity may consult with the installation legal assistance office, the Department of Social Work (DSW) at the relevant Military Treatment Facility (MTF), and/or the appropriate state agency for assistance if needed. The individual will often be eligible for legal assistance under Army Regulation 27-3, para. 2-4(a)(6)³⁶ as a dependent, and should first be directed to the installation legal assistance office. That office can then engage other resources (including DSW and/or the appropriate state agency) as required. Legal assistance may also be able to refer the individual to local counsel

on a pro-bono or reduced-fee basis, as it is likely that services beyond the appointment of a guardian will be needed.

Subject to resource constraints and local policy, installation legal assistance offices may be authorized to represent eligible family members under the Expanded Legal Assistance Program, potentially including representation in court.³⁷ This would, if available, eliminate or mitigate the need for outside local counsel.

Engage an Appropriate State Agency

“Every State provides avenues through which, for example, a doctor or institution can seek appointment of a guardian with the power to make a decision authorizing medication—when in the best interests of a patient who lacks the mental competence to make such a decision.”³⁸ Many of those

states have established agencies to assist with such matters (e.g., the Georgia Department of Human Services³⁹); the commander, in consultation with the servicing judge advocate (JA) (and, in most cases, the DSW at the relevant MTF), should attempt to engage their services when possible or relevant.

Most states serve as “public guardians,” or guardians of last resort.⁴⁰ “Public guardians are last resort guardians to incapacitated persons subject to what is already a last resort legal mechanism (guardianship) when no suitable alternative options are available to address the person’s needs.”⁴¹ “The latest comprehensive study [conducted in 2005] shows that every state except Nebraska and Wyoming, and the District of Columbia, has some form of public guardianship.”⁴² That study defined public guardianship as “the appointment and responsibility of a public



Patient pods at an emergency alternate care facility near Joint Base Elmendorf-Richardson, Alaska. (Credit: Rachel Napolitan)

official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.”⁴³ “[T]he overwhelming majority of state statutes provide services to incapacitated individuals who are determined to be in need of a guardian under the adult guardianship law but have no person or private entity qualified and willing to serve.”⁴⁴

A combination of the above mechanisms should resolve any case. Ordinarily, the appointment of an individual known to (and, if possible, chosen by) the Soldier would be preferred; if this is not possible, the state can and should operate as the guardian of last resort. Should all of these fail, however, the guidance below will be relevant.

Commence Guardianship Proceedings

If all of the above fail, the commander, through the servicing JA, may need to

commence guardianship proceedings. This is believed to be a novel suggestion; no cases or secondary materials have been found addressing this possibility. However, should the state fail to act in accordance with its obligation as a public guardian, or should the Soldier’s case not fall within the parameters of that program, this provides the commander with an avenue of last resort to see to the Soldier’s care.

Jurisdiction and Applicable Law

While guardianship is ordinarily the province of state law and thus state courts, the U.S. Government is constitutionally unable to subject itself to the jurisdiction of a state court: “It seems plain, therefore, that the government could not, in the absence of congressional authorization, intervene as a party to the action in the state court; *no officer of the government being clothed with authority to subject it to the jurisdiction of a state tribunal.*”⁴⁵ Therefore, rather than

commencing the action in state court, the Army would be required to institute proceedings in a U.S. District Court. Such courts “have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof,” unless otherwise provided by statute, and thus would have jurisdiction over the proposed action.⁴⁶

Under the *Erie* doctrine,⁴⁷ as no Federal common law or statute governs guardianship,⁴⁸ the substantive law of the relevant state will apply to this guardianship action. This will ordinarily be the law of the state where the Soldier is located.

Standing

As with any question of state law, significant variation exists among jurisdictions. However, typical state statutes provide that “any interested party,”⁴⁹ “any interested person,”⁵⁰ or “a person interested in the individual’s welfare”⁵¹ may petition a court

for the appointment of a guardian. While no litigation on the question has been found, the commander's responsibility for the Soldier's healthcare would appear to constitute such an interest.

Procedure

When any Army activity is considering commencing a civil action, including an action for guardianship, the servicing JA should immediately contact and coordinate with Litigation Division. The chief of Litigation Division is responsible for supervising litigation in which the Army is interested, acting for The Judge Advocate General on litigation issues, and serving as the primary contact with the Department of Justice on litigation.⁵² The servicing JA in such cases should prepare a litigation report and forward it to Litigation Division.⁵³ Litigation Division will then engage with the local U.S. Attorney's office to commence the action in the appropriate district court.

Conclusion

Commanders bear a statutory, regulatory, and moral obligation to ensure their Soldiers' medical care, all the more so when those Soldiers are so severely disabled as to be unable to make decisions on their own behalf. Awareness of this potential issue will ensure that JAs can advise their commanders appropriately to fulfill this responsibility as long as their Soldiers remain in the service. **TAL**

Mr. Brown is a Soldiers' Disability Evaluation System Counsel with the Office of Soldiers' Counsel, U.S. Army Legal Services Agency at Fort Stewart, Georgia.

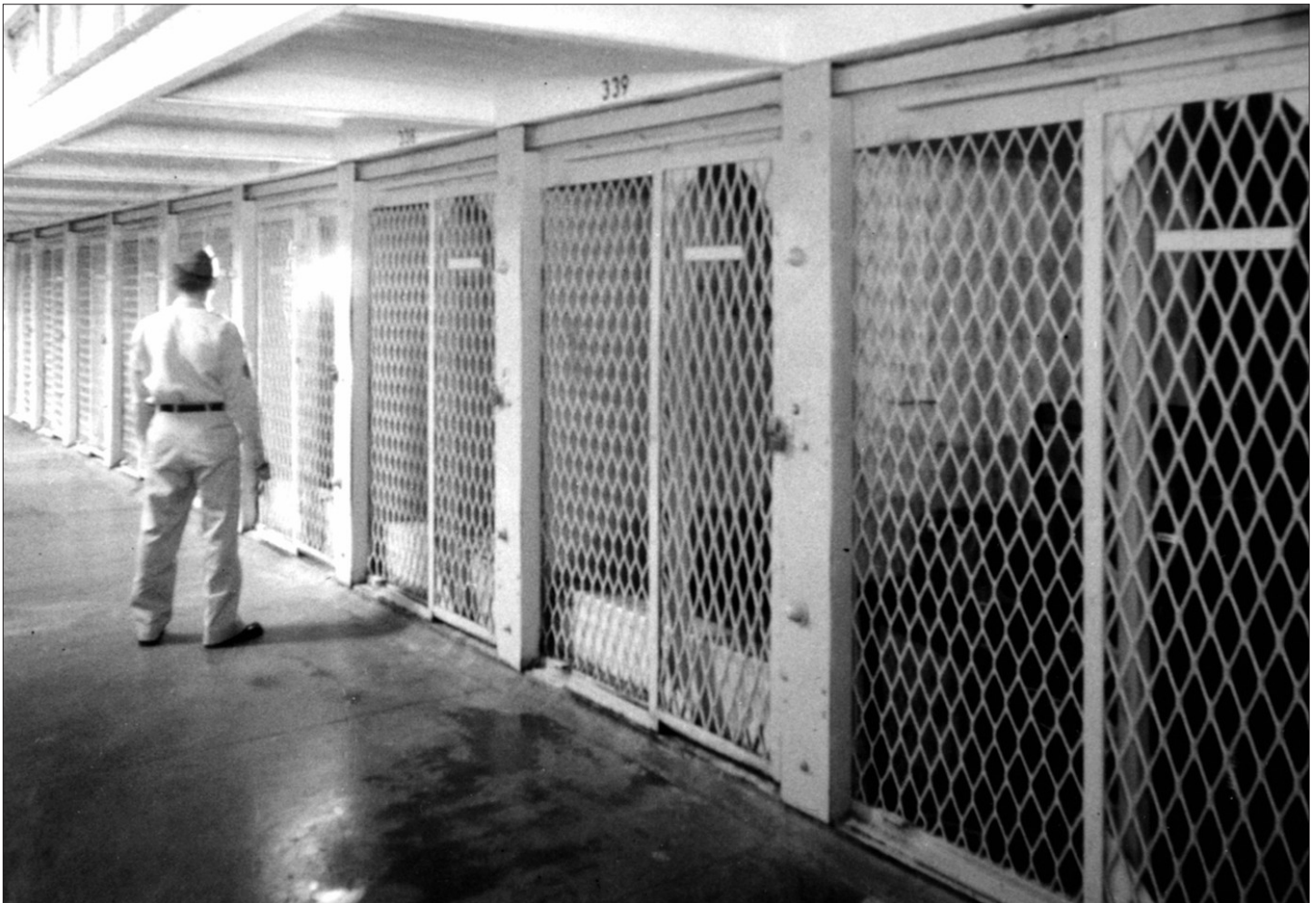
Notes

1. A phrase from the Roman poet Juvenal, literally translated to: "Who will guard the guards themselves?" David Isenberg, *Quis Custodiet Ipsos Custodes?*, CATO INSR. (May 31, 2010), <https://www.cato.org/publications/commentary/quis-custodiet-ipsos-custodes> [<https://perma.cc/SJD7-WM6B>].
2. President Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865) [hereinafter Second Inaugural Address], reprinted by LIB. OF CONG., <https://www.loc.gov/resource/mal.4361300/?st=text&r=-0.027,-0.323,1.111,1.336,0> [<https://perma.cc/Y2S9-BY3X>] (emphasis added).
3. See generally U.S. DEP'T OF ARMY, REGUL. 40-501, STANDARDS OF MEDICAL FITNESS chs. 2-3 (27 June 2019) [hereinafter AR 40-501] (regulating "Physical Standards for Enlistment, Appointment, and

Induction," and "Medical Fitness Standards for Retention and Separation, Including Retirement").

4. See Lincoln, *supra* note 2. Airmen and Guardians, of course, were not a factor in 1865.
5. United States v. Thomas, 50 C.M.R. 114, 116 (N.C.M.R. 1975).
6. *Id.*
7. 10 U.S.C. § 7233(4) (emphasis added). Virtually identical requirements apply within the Departments of the Air Force and Navy. See 10 U.S.C. §§ 8167, 9233.
8. It was enacted by the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105-85, § 507(a)(1), 111 Stat. 1629 (1997).
9. U.S. DEP'T OF ARMY, REGUL. 600-20, ARMY COMMAND POLICY (6 Feb. 2025) [hereinafter AR 600-20].
10. *Id.* para. 5-4.
11. See U.S. DEP'T OF ARMY, DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION (21 July 2019) [hereinafter ADP 6-22].
12. *Id.* para. 1-68.
13. *Id.* para. 1-95 (emphasis added).
14. *Id.* para. 5-38.
15. AR 600-20, *supra* note 9, para. 5-4(g).
16. Sell v. United States, 539 U.S. 166 (2003).
17. *Id.* at 178 (quoting Washington v. Harper, 494 U.S. 210, 221 (1990)).
18. Harper, 494 U.S. at 227 (emphasis added); accord Sell, 539 U.S. at 177.
19. Sell, 539 U.S. at 178-79 (quoting Riggins v. Nevada, 504 U.S. 127, 134-35 (1992)).
20. Riggins, 504 U.S. at 135; accord Sell, 539 U.S. at 178.
21. Sell, 539 U.S. at 180.
22. Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).
23. AR 600-20, *supra* note 9, para. 5-4(g)(5).
24. See Chevron U.S.A. v. Nat. Res. Def. Council, 467 U.S. 837 (1984), overruled by Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024). The full extent of the effects of Loper Bright is as yet unknown, but it will undoubtedly reduce deference to military departments.
25. Wilkins v. Austin, 745 F. Supp. 3d 375, 388 (E.D. Va. 2024) (quoting Ergon-West Va. v. United States EPA, 896 F.3d 600, 609 (4th Cir. 2018)).
26. See U.S. DEP'T OF DEF., 1332.18, DISABILITY EVALUATION SYSTEM MANUAL: PROCESS para 1.2(d) (24 Feb. 2023).
27. See, e.g., U.S. Dep't of Def., IDES Performance Report (Dec. 2025) (on file with author) (noting that only 55 percent of cases met this goal across Services, with the Army slightly better at 57 percent).
28. The discussion *infra* refers repeatedly to the Soldier's commander. Ordinarily the commander will have appointed one or more individuals within the command to take any necessary action; "commander" thus includes any personnel acting on the commander's behalf.
29. See U.S. DEP'T OF ARMY, REGUL. 635-40, DISABILITY EVALUATION FOR RETENTION, RETIREMENT, OR SEPARATION para. 4-12 (19 Jan. 2017) [hereinafter AR 635-40].

30. U.S. Dep't of Def., DD Form 93, Record of Emergency Data (12 Feb. 2026).
31. This assistance is authorized by U.S. DEP'T OF ARMY, REGUL. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-4(e) (1 May 2024) [hereinafter AR 27-3].
32. The Uniform Act itself could not be located; it has been replaced by a revised edition in 2023, and the Uniform Law Commission's website does not appear to have an archive of previous versions of its uniform laws. It was adopted (as discussed *infra*) by relatively few states. Citations are therefore to the Act as enacted by one of those few states.
33. N.M. STAT. ANN. § 24-7A-11 (2024). The description of this act as "uniform" is a misnomer; while prepared and promulgated by the Uniform Law Commission and recommended for adoption by all states, only seven states have adopted the 1993 act, and one (Delaware) has adopted its 2023 revision. See *Enactment History: 2023 | Health-Care Decisions Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=3df274d6-776b-4780-8e4e-018a850ef44e> [<https://perma.cc/2YGG-WAMP>] (last visited Mar. 4, 2026).
34. N.M. STAT. ANN. § 24-7A-1(C) (2024).
35. UNIF. HEALTH-CARE DECISIONS ACT § 3 (UNIF. L. COMM'N 2023).
36. AR 27-3, *supra* note 31, para. 2-4(a)(6).
37. See *id.* para. 4-2(a).
38. Sell v. United States, 539 U.S. 166, 182 (2003) (citing ALA. CODE §§ 26-2A-102(a), 26-2A-105, 26-2A-108 (Michie 1992); ALASKA STAT. §§ 13.26.105(a), 13.26.116(b) (2002); ARIZ. REV. STAT. ANN. §§ 14-5303, 14-5312 (West 1995); ARK. CODE ANN. §§ 28-65-205, 28-65-301 (1987)).
39. See GA. CODE ANN. 29-4-3(b.1) (2024).
40. See Hailey M. Hanners, *Comment: Who Wants the Ward? The State's Role in Adult Guardianship Proceedings*, 11 TEX. TECH. EST. PLAN. COM. PROP. L.J. 359, 365 (2019).
41. *Id.*
42. *Id.* (citing Pamela B. Teaster et al., *Wards of the State: A National Study of Public Guardianship*, 37 STETSON L. REV. 193, 205 (2007)).
43. Teaster et al., *supra* note 42, at 205.
44. *Id.* at 207.
45. United States v. Inaba, 291 F. 416, 418 (E.D. Wash. 1923) (emphasis added).
46. See 28 U.S.C. § 1345.
47. See Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
48. See *In re Rackley*, 502 B.R. 615, 628 (Bankr. N.D. Ga. 2013).
49. E.g., OHIO REV. CODE ANN. § 2111.02 (2024).
50. E.g., GA. CODE ANN. § 29-4-10 (2024).
51. E.g., MINN. STAT. ANN. § 524.5-303 (2024).
52. See U.S. DEP'T OF ARMY, REGUL. 27-40, LITIGATION para. 1-4(d) (19 Sep. 1994).
53. See *id.* paras. 5-4(a), 3-9.



Cells in the original U.S. Disciplinary Barracks, known as the "Castle." (Source: U.S. Army)

Practice Notes

From Soldier to "Condemned Prisoner" A Review of Modern Military Death Sentence Procedure

By Major Alexandria J. Altimas and Major Allyson J. Montgomery

In September 2025, Secretary of War Pete Hegseth requested President Donald Trump to sign the death warrant approving and ordering the execution of Major (MAJ) Nidal Hasan.¹ The military has not carried out a death sentence since 1961, when U.S. Army Private John Bennett was executed by hanging at the gallows of the U.S. Disciplinary Barracks (USDB) in Fort Leavenworth, Kansas.² Since John Bennett's execution over sixty years ago, there have been many changes in the rules and procedures related to the military death penalty. In light of the recent request for presidential action, all judge advocates have a renewed need to understand modern

military death sentence procedure from referral of charges through post-execution.

Today, four prisoners sit on the military's death row.³ In late 1986, in Fayetteville, North Carolina, while stationed at Fort Bragg, North Carolina, Specialist (SPC) Ronald A. Gray murdered two women, attempted to murder a third, and raped all three.⁴ After his arrest, he was tried and convicted at a general court-martial and sentenced to death.⁵ In March 2003, while stationed in Kuwait on the eve of Operation Iraqi Freedom, Sergeant (SGT) Hasan K. Akbar stole four fragmentation hand grenades and three incendiary

grenades from a High Mobility Multipurpose Wheeled Vehicle (HMMWV).⁶ SGT Akbar then switched off the generator to Pad 7 and proceeded to throw the grenades into the tents where Soldiers were sleeping.⁷ After utilizing the grenades, SGT Akbar waited outside and used his M-4 rifle to shoot at the fleeing occupants of the tents.⁸ That night, SGT Akbar murdered two officers and attempted to murder sixteen other officers.⁹ In 2005, a general court-martial convicted SGT Akbar and sentenced him to death.¹⁰

In 1985, in Fayetteville, North Carolina, Master Sergeant (MSG) Timothy B. Hennis entered the home of an Air Force captain who was away on temporary duty, raped his wife, and murdered her and their two young daughters.¹¹ In 2010, a general court-martial convicted and sentenced MSG Hennis to death.¹² Finally, in the early morning hours of 5 November 2009, at Fort Hood, Texas, MAJ Nidal M. Hasan, an Army psychiatrist, opened fire on the Soldier Readiness Processing Center with a semiautomatic handgun, murdering thirteen people and attempting to murder another thirty-two people, many of whom were fellow Service members.¹³ In 2013, MAJ Hasan was convicted at a general court-martial of officers and sentenced to death.¹⁴

Pretrial Procedure in Capital Courts-Martial

There can be no doubt that the right to life is a fundamental right. It is found in the Fifth Amendment of the Constitution: “No person shall be . . . deprived of life, liberty, or property without due process of law”¹⁵ Since at least 1972, the Supreme Court of the United States (SCOTUS) has consistently reinforced the proposition that, because of its severity and irrevocability, the death penalty is qualitatively different from any other punishment.¹⁶ “Death is a different kind of punishment,” thereby entitling a capital defendant to a higher standard of due process and the strictest scrutiny before being upheld.¹⁷

In addition to continuously upholding the concept that “death is different,” SCOTUS has also consistently narrowed the category of crimes for which people may face the death penalty, and it has widened mitigating factors that preclude application of the death penalty.¹⁸ Therefore, for the military

to deprive an accused of their life, there must be appropriate procedural protections and guarantees of due process.

The *Manual for Courts-Martial (MCM)* prescribes the rules that apply in all military capital cases. A capital case can only be referred to a general court-martial.¹⁹ First, the alleged offense must authorize death as an applicable punishment either under Part IV of the *MCM* or under the law of war.²⁰ Additionally, a capital offense cannot be assimilated or tried as an Article 134 offense.²¹ Second, the Government must notify the accused, in writing, that the case will be tried as a capital case and what aggravating factors the Government intends to prove.²² For death to be adjudged, the Government must prove beyond a reasonable doubt an aggravating factor, listed in Rule for Court-Martial 1004(c).²³ One of the most frequently applied aggravating factors, as highlighted by the four prisoners on military death row, is that the accused intentionally killed more than one person in the same course of conduct.²⁴

Third, in a capital court-martial, a conviction and death sentence require the twelve-member panel²⁵ to unanimously determine: (1) beyond a reasonable doubt that the accused committed the charged offense(s) that has death as an authorized punishment; (2) beyond a reasonable doubt that at least one of the aggravating factors exists; (3) any extenuating or mitigating circumstances are substantially outweighed by the aggravating circumstances; and, (4) that death is the appropriate sentence.²⁶

When a death sentence is adjudged in the U.S. Army, the staff judge advocate (SJA) must notify the Criminal Law Division of the Office of the Judge Advocate General (OTJAG), Government Appellate Division, Defense Appellate Division, and OTJAG Personnel, Plans & Training Office that the Record of Trial (ROT) has been completed. This notification is required before the ROT is forwarded to the Army Court of Criminal Appeals (ACCA) clerk of court.²⁷

Post-Trial Procedure in Capital Courts-Martial

After the conclusion of a court-martial that adjudged a death sentence as punishment, The Judge Advocate General (TJAG) forwards the record of trial to the Court

of Criminal Appeals (CCA) for automatic review in accordance with Article 66(b)(3) of the Uniform Code of Military Justice (UCMJ).²⁸ Article 66 provides the CCAs with jurisdiction over all courts-martial in which the judgment includes a sentence of death.²⁹ Unlike cases in which death is not adjudged, an appellant with an adjudged death sentence is prohibited from waiving their right to appeal their case.³⁰

The appellate process does not conclude with the CCA’s review of a death sentence, as the Court of Appeals for the Armed Forces (CAAF) conducts an automatic review following the CCA’s review of the case.³¹ Just as Article 61 of the UCMJ prohibits a death-sentence appellant from waiving their appellate rights, Article 70(c) of the UCMJ prohibits a death-sentence appellant from proceeding pro se on their appeal at either the CCA or CAAF if the Government is represented by counsel.³² The practical impact of this is unclear, as in accordance with *The Joint Rules of Appellate Procedure*, TJAG is required to designate appellate military counsel to represent the parties when the CCAs have received notice of an appeal pursuant to UCMJ Article 48, 56(d), 62, 66, 69(d), or 73.³³ Appellate litigation for capital cases is a direct appeal under Article 66 of the UCMJ.³⁴

After CAAF conducts its review of the case, a death sentence appellant may petition for a writ of certiorari to SCOTUS.³⁵ If SCOTUS grants the petition for a writ of certiorari, the appeal moves forward, but if not, then the death sentence appellant’s appellate review is complete. The completion of appellate review constitutes final judgment and signifies a transition from the appellate procedure to the post-appellate procedure for the death sentence appellant.³⁶ This transition is memorialized by the clerk of court for the ACCA, who certifies that the appellate process is complete.³⁷

Post-Appellate Procedure in Capital Courts-Martial: The Transition from Prisoner to “Condemned Prisoner”

Once a prisoner’s case reaches final judgment, their sentence becomes ripe for presidential review of the adjudged death sentence pursuant to Article 57 of the UCMJ.³⁸ In accordance with Article 57, the President is the only authority who

In tracing the progression of an accused's status from Soldier to condemned prisoner, the military death penalty process reveals a system both deeply procedural and profoundly complicated.

can approve a sentence of death.³⁹ At the point of review, the President may approve, commute, or remit a Service member's death sentence.⁴⁰ If the President approves a death sentence, the process for carrying it out begins. If the President disapproves a Service member's death sentence, they may grant clemency in the form of a commutation or remission of the sentence.⁴¹ Such commutation may include reducing the death sentence to a confinement for a term of years.⁴²

Though the President is the single authority for approving and ordering the execution of a death sentence, they do not initiate the review. Instead, final judgment triggers a waterfall of responsibilities for the Secretary of the Army, TJAG, and the commandant of the USDB.⁴³ Through these senior leaders' actions, the death sentence makes its way to the President for review.⁴⁴

The initial procedural responsibility lies with TJAG.⁴⁵ TJAG collects the prisoner's record of trial, the appellate records, including the certification of completion of appellate review, and any clemency petition for submission to the Secretary of the Army.⁴⁶ TJAG provides these records, along with their recommendation on the sentence, to the Secretary of the Army for review and routing to the President for action.⁴⁷

After TJAG provides the complete record of documents and their advice to the Secretary of the Army, the Secretary of the Army's procedural responsibilities begin. The Secretary of the Army serves as the executive agent for Department of War-wide Level III Corrections, to include the administration of death sentences.⁴⁸ In this role, the Secretary of the Army provides the President with the relevant materials for review and effectuates the President's

action on the death sentence. If the President approves the death sentence and orders the prisoner executed, then the Secretary of the Army moves forward with their procedural responsibilities.⁴⁹

First, the Secretary of the Army designates the method of execution.⁵⁰ Though previous versions of regulatory guidance prescribed lethal injection as the method of execution, today, there is no designated method of execution.⁵¹ Since 1951 and the inception of the original UCMJ,⁵² the U.S. military has carried out ten executions, all by hanging.⁵³ President Dwight D. Eisenhower approved the first nine executions, while President John F. Kennedy approved the last, PVT John A. Bennett in 1961.⁵⁴ The first four executions were carried out by the military at Kansas State Penitentiary in Lansing, Kansas, with the remaining six occurring at the USDB.⁵⁵

Currently, of the twenty-seven states that authorize the death penalty, twenty-three provide lethal injection as the only or primary method of execution.⁵⁶ However, in the two most recent executions in 2025, the prisoners were allowed to choose the method of execution employed: South Carolina employed a firing squad, while Alabama used nitrogen hypoxia.⁵⁷ For Federal executions, the method of execution is prescribed by the law of the state in which the sentence was imposed, and if no death penalty exists in that state, the judge chooses which state is responsible for the execution.⁵⁸

Second, the Secretary of the Army selects the date of execution.⁵⁹ The date of execution must fall within 60 to 150 days from the date the President approved the death sentence.⁶⁰ After deciding on the method and date of execution, the Secretary of the

Army selects the location of the execution.⁶¹ Though the USDB is often thought of as the single facility for the administration of military death sentences, the Secretary of the Army selects the location after receiving advice from the Provost Marshal General.⁶² One available location is the U.S. Penitentiary in Terre Haute, Indiana, which is the location used for executions of Federal prisoners.⁶³ By agreement with the Bureau of Prisons, military executions may take place at Terre Haute.⁶⁴ The Secretary of the Army memorializes the location, date, and method of execution and transmits the memorandum, along with the signed Presidential death warrant, through the Provost Marshal General to the commandant of the USDB. This transmission triggers the commandant's procedural responsibilities.

The commandant, USDB, serves as the execution officer responsible for the administration of the prisoner's death sentence.⁶⁵ In this role, the commandant formally notifies the Service member of the President's decision ordering their execution.⁶⁶ This formal notification completes an individual's transition from prisoner to "condemned prisoner," which will remain their status until they are executed.⁶⁷ During notification, the commandant, USDB, is accompanied by a chaplain and the prisoner's Trial Defense Service (TDS) or civilian counsel.⁶⁸ The commandant is also responsible for developing an Execution Plan, establishing the Execution Watch Team (EWT), and arranging for the procurement of any materials or equipment necessary to conduct the method of execution selected by the Secretary of the Army.⁶⁹

The notification of presidential approval of a death sentence not only begins the administrative process of preparing for a military execution, but it also allows a post-appellate death sentence prisoner to seek habeas corpus through the Federal court system.⁷⁰ Latin for "you have the body," habeas corpus allows a Federal court to analyze whether a prisoner's continued confinement is warranted.⁷¹ Like state and Federal prisoners, a post-appellate death sentence military prisoner can file a petition of habeas corpus challenging the legality of their imprisonment.⁷²

This challenge is different from a challenge on direct appeal, as a petition for habeas corpus provides post-appellate death

sentence prisoners an avenue to attack their conviction based upon alleged violations of their constitutional rights.⁷³ As part of their petition for habeas corpus, a prisoner with a presidentially-approved death sentence may request a stay of execution.⁷⁴ If a Federal judge issues a stay of execution, it may last until the conclusion of the habeas corpus proceedings, thereby preventing the military from executing the prisoner.⁷⁵ Habeas corpus proceedings may result in relief in the form of vacation of conviction or sentence, but if the proceedings result in no relief, the prisoner's stay of execution is lifted and they remain condemned to death.⁷⁶

Receipt of a presidentially signed death warrant also entitles the condemned prisoner to certain regulatory rights related to their execution. They may request pre-execution visitation of family and non-family members, in accordance with Army Regulation 190-47.⁷⁷ The condemned prisoner may request chaplain support, legal assistance related to the execution and their final legal affairs, and medical assistance and counseling services.⁷⁸ Further, they may request counsel of record and members of their family to be present at their execution.⁷⁹

Once the execution date arrives, the EWT is responsible for the care, custody, and transportation of the condemned prisoner.⁸⁰ The EWT will move the condemned prisoner from their cell to the execution area, leaving as little time between the movement and the execution as possible.⁸¹ After the condemned prisoner arrives at the execution area, the EWT will escort the authorized witnesses to the viewing area. Witnesses include the commandant, USDB, the prisoner's counsel, the victim or one relative of the victim's family, representatives from the condemned prisoner's family, and members of the media.⁸² At the time of execution, the commandant, USDB, will read aloud the charge or charges, the findings and sentence of the court-martial, and information from the execution order.⁸³ The commandant will next ensure the condemned prisoner is discharged from the Army.⁸⁴ Finally, the commandant will order the execution team to begin the execution process.⁸⁵ The medical personnel assigned to the EWT will monitor the condemned prisoner and announce their death.⁸⁶ After the pronouncement of death, the commandant will announce that the



This electric chair, once installed at the original U.S. Disciplinary Barracks, was never used. When the old barracks was demolished, the chair was moved to the Military Police Museum at Fort Leonard-Wood, Mo., where it still remains. (Source: U.S. Army)

execution is complete and dismiss all persons other than the EWT from the execution area.⁸⁷

Conclusion

In the aftermath of the Secretary of War's request for President Trump to sign MAJ Nidal Hasan's death warrant approving and ordering his execution, it is important to understand that this step, which appears final, does not take the case out of the courts completely. In tracing the progression of an accused's status from Soldier to condemned prisoner, the military death penalty process reveals a system both deeply procedural and profoundly complicated. The military justice system has built-in pre-trial safeguards, post-trial protections, appellate reviews, and ultimately habeas petitions, which may slow but not necessarily prevent an execution.

As is known and often cited throughout all stages of capital litigation, death is different. It is different in its finality. The complicated maze of capital courts-martial and the push for an accelerated timeline in MAJ Hasan's case illustrates the intersection between the procedural process and the ultimate executive power of the President. As the country waits with bated breath to hear whether the President will approve MAJ Hasan's death sentence, the legal community understands this change in status to condemned prisoner may just be the beginning. **TAL**

MAJ Altimas is an Associate Professor in the Criminal Law Department at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

MAJ Montgomery is an Associate Professor in the Criminal Law Department at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

Notes

1. Filip Timotija, *Hegeseth Seeking Death Penalty for Convicted Fort Hood Shooter*, THE HILL (Sep. 24, 2025, 19:06 ET), <https://thehill.com/policy/defense/5520696-fort-hood-shooting-justice> [https://perma.cc/4YSP-TFL7].
2. Ashley Fantz, *A Look at the Last U.S. Soldier Executed by the Military*, CNN (July 28, 2013, 16:15 ET), <https://www.cnn.com/2013/07/28/justice/military-execution-soldier-profile> [https://perma.cc/CB3E-RCAY].
3. Blake Stilwell, *The Only 4 Inmates on the US Military's Death Row*, WE ARE THE MIGHTY (Feb. 23, 2024, 14:16 ET), <https://www.wearthemighty.com/>

mighty-history/true-crime-military-death-row [https://perma.cc/4KX5-3KES].

4. See *United States v. Gray*, 51 M.J. 1, 9, 26 (C.A.A.F. 1999).
5. In 1988, Specialist Ronald A. Gray was convicted of two specifications of premeditated murder, in violation of Article 118(1), Uniform Code of Military Justice (UCMJ), one specification of attempted premeditated murder, in violation of Article 80, UCMJ, three specifications of rape, in violation of Article 120, UCMJ, two specifications of robbery, in violation of Article 122, UCMJ, and two specifications of forcible sodomy, in violation of Article 125, UCMJ, one specification of burglary, in violation of Article 121, UCMJ, and one specification of larceny of property of another person, in violation of Article 129, UCMJ. *United States v. Gray*, 37 M.J. 730, 733 (A.C.M.R. 1992). In July 2008, then-President George W. Bush signed and approved Ronald Gray's death warrant. Barbara Barrett, *Bush Approves Execution of Soldier, First in 50 Years*, MCCLATCHY DC (July 28, 2008, 21:46 ET), <https://www.mcclatchydc.com/news/article24493630.html> [https://perma.cc/SB8Y-WYUX]. The U.S. Army scheduled Gray's execution for 10 December 2008; however, on 26 November 2008, the U.S. District Court for the District of Kansas entered a stay of execution. A new execution date has not been set. *First US Military Execution Since 1961 Scheduled for December*, DEATH PENALTY INFO. CTR. (Mar. 14, 2025), <https://deathpenaltyinfo.org/first-us-military-execution-since-1961-scheduled-for-december> [https://perma.cc/65BS-TLLP].
6. *United States v. Akbar*, No. 20050514, 2012 WL 2887230, at *1–2 (A. Ct. Crim. App. July 13, 2012).
7. *Id.*
8. *Id.*
9. *Id.*
10. SGT Akbar, at a general court-martial with members, was convicted of two specifications of premeditated murder, in violation of Article 118(1), UCMJ, and three specifications of attempted premeditated murder, in violation of Article 80, UCMJ. *United States v. Akbar*, 74 M.J. 364, 371 (C.A.A.F. 2015).
11. *United States v. Hennis*, 79 M.J. 370, 374 (C.A.A.F. 2020). In 1986, MSG Hennis was convicted and sentenced to death in North Carolina for the three murders. *Id.* However, after issues raised on appeal, his case was overturned and retried, which resulted in a hung jury. See *id.* In 2006, as a result of scientific advancements, the spermatozoa found in the rape victim's vagina was tested and matched to MSG Hennis. *Id.* After recalling MSG Hennis to active duty, he was convicted at a general court-martial with enlisted members, of three specifications of premeditated murder, in violation of Article 118(1), UCMJ. *Id.*
12. *Id.*
13. *United States v. Hasan*, 80 M.J. 682, 691–92 (C.A.A.F. 2020).
14. MAJ Nidal M. Hasan was convicted of thirteen specifications of premeditated murder, in violation of Article 118(1), UCMJ, and thirty-two specifications of attempted premeditated murder, in violation of Article 80, UCMJ. *Id.*
15. U.S. CONST. amend. IV.
16. See William W. Berry, III, *Individualized Sentencing*, 76 WASH. & LEE L. REV. 13, 18–19 (2019).
17. *Gardner v. Florida*, 430 U.S. 349, 357–58 (1977); accord *Akbar*, 74 M.J. at 425 (Baker, J., dissenting).

18. *Coker v. Georgia*, 433 U.S. 584 (1977).

19. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 201(f)(1)(iii) (2024) [hereinafter MCM]. An offense punishable by death may be referred noncapital to either a general or special court-martial except when there is a prescribed mandatory punishment beyond the punitive power of a special court-martial, like a violation of Article 118(1) or Article 118(4) where life or life without parole is mandated as punishment. *Id.* R.C.M. 201(f)(2)(A), R.C.M. 201(f)(2)(C)(i).
20. *Id.* R.C.M. 1004(a)(1).
21. *Id.* pt. IV, ¶ 95(a), (c)(5)(b).
22. *Id.* R.C.M. 1004(a)(2).
23. *Id.* R.C.M. 1004(a)(4).
24. See *id.* R.C.M. 1004(c)(7)(J) (“The accused has been found guilty in the same case of another violation of Article 118.”).
25. The accused may also plead guilty to an offense authorized to adjudge death, in which the military judge alone would convict the accused. See *id.* R.C.M. 1004(a)(3)(B). The sentencing portion of the trial would still require a twelve-member panel to unanimously find: (1) the aggravating factor(s) exist; (2) any extenuating or mitigating circumstances substantially outweigh any aggravating circumstances; and, (3) death is the appropriate sentence. *Id.* R.C.M. 1004(a)(4)–(6). However, in accordance with Article 45, an accused cannot plead guilty to an offense when the death penalty is mandatory. UCMJ art. 45 (2016).
26. See MCM, *supra* note 19, R.C.M. 1004(a)(4)–(6). In capital courts-martial, the panel must consist of twelve-members. UCMJ art. 25a (2016).
27. U.S. DEP'T OF ARMY, REGUL. 27-10, MILITARY JUSTICE, para. 28-2(f) (8 Jan. 2025) [hereinafter AR 27-10].
28. UCMJ art. 66 (2022).
29. *Id.*
30. *Id.* art. 61(c) (2022).
31. *Id.* art. 67(a)(1) (2021).
32. *Id.* art. 70(c) (2016).
33. See THE JOINT RULES OF APPELLATE PROCEDURE FOR COURTS OF CRIMINAL APPEALS r. 11(a) (1 Jan. 2019) (C1, 17 May 2024).
34. UCMJ art. 66(a)(3) (2022).
35. *Id.* art. 67a (2021).
36. *Id.* art. 57(c)(2) (2016).
37. AR 27-10, *supra* note 27, para. 5-65.
38. UCMJ art. 57(a)(3) (2016).
39. See *id.*
40. *Id.*
41. UCMJ art. 57(a)(3) (2016).
42. See Executive Grant of Clemency (Dec. 23, 2024), <https://www.justice.gov/pardon/media/1382291/dl?inline> [https://perma.cc/2G7Q-E7VB].
43. See U.S. DEP'T OF ARMY, REGUL. 190-55, U.S. ARMY CORRECTIONS SYSTEM: PROCEDURES FOR MILITARY EXECUTIONS para. 1-4 (30 Oct. 2023) [hereinafter AR 190-55].
44. See *id.*
45. See *id.* para. 2-1(a).

46. *Id.*
47. *Id.*; AR 27-10, *supra* note 27, para. 5-65.
48. AR 190-55, *supra* note 43, para. 1-4.
49. *See id.* para. 1-4(a).
50. *Id.* para. 1-4(a)(2).
51. *See id.* para. 3-2.
52. MANUAL FOR COURTS-MARTIAL, UNITED STATES (1951).
53. *Military Legal Resources, Uniform Code of Military Justice (1946-1951)*, LIB. OF CONG. <https://www.loc.gov/collections/military-legal-resources/articles-and-essays/military-law-and-legislative-histories/uniform-code-of-military-justice-1946-to-1951> [<https://perma.cc/WY9U-MXJR>] (last visited Mar. 4, 2026); *Historic Military Executions*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/military/historic-military-executions> [<https://perma.cc/63QS-VAJ7>] (last visited Mar. 4, 2026); MICHAEL R. WILSON, LEGAL EXECUTIONS IN NEBRASKA, KANSAS AND OKLAHOMA INCLUDING THE INDIAN TERRITORY: A COMPREHENSIVE REGISTRY 93-97 (2012).
54. WILSON, *supra* note 53, at 93-97.
55. *Id.*
56. *Authorized Methods by State*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/executions/methods-of-execution/authorized-methods-by-state> [<https://perma.cc/D6WQ-RWEY>] (last visited Mar. 4, 2026).
57. Oxygen contains seventy-eight percent nitrogen. *Nitrogen vs. Oxygen*, THIS VS. THAT, <https://thisvsthat.io/nitrogen-vs-oxygen> [<https://perma.cc/KFC4-5PQT>] (last visited Mar. 4, 2026). The process of death by nitrogen hypoxia involves requiring the prisoner to breathe 100 percent nitrogen through a full-face mask until they lose consciousness from lack of oxygen and die. *Execution Method Descriptions*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/executions/methods-of-execution/description-of-each-method> [<https://perma.cc/V2WE-YEPT>] (last visited Mar. 4, 2026). On 23 October 2025, in Alabama, it took prisoner Anthony Todd Boyd approximately fifteen minutes to die from nitrogen hypoxia. Hayley Bedard, *Alabama Execution Witnesses Report 'Violent Thrashing' of Prisoner and More than 225 Agonized Breaths' in Nitrogen Gas Execution*, DEATH PENALTY INFO. CTR. (Oct. 27, 2025), <https://deathpenaltyinfo.org/news/alabama-execution-witnesses-report-violent-thrashing-of-prisoner-and-more-than-225-agonized-breaths-in-nitrogen-gas-execution> [<https://perma.cc/5TVA-2HC3>]. Alabama has successfully employed this method of execution eight times since its inception in January 2024. Brandon Moseley, *Alabama Executes Anthony Todd Boyd*, ALABAMA GAZETTE (Oct. 26, 2025), <https://www.alabamagazette.com/story/2025/10/26/news/alabama-executes-anthony-todd-boyd/8647.html> [<https://perma.cc/9V67-QG5Z>].
58. 18 U.S.C. § 3596.
59. AR 190-55, *supra* note 43, para. 1-4(a)(4).
60. *Id.*
61. *Id.* para. 1-4(a)(3).
62. *See id.* para. 1-4(c)(7).
63. LISA N. SACCO, CONG. RSCH. SERV., IN11474, THE FEDERAL DEATH PENALTY I (Dec. 1, 2020).
64. In the case of SPC Ronald Gray, President George W. Bush approved his death sentence on 28 July 2008, scheduling his execution by lethal injection for 10 December 2008, at the Federal Correctional Complex in Terre Haute, Indiana. Paul Boyce, *Army Schedules Date for Execution of Pvt. Ronald A. Gray*, U.S. ARMY (Nov. 20, 2008), https://www.army.mil/article/14393/army_schedules_date_for_execution_of_pvt_ronald_a_gray [<https://perma.cc/5NPH-45VY>]. This location was based on an agreement with the Bureau of Prisons. *Id.*
65. AR 190-55, *supra* note 43, para. 1-4(j)(1).
66. *Id.* para. 2-1.
67. *Id.* para. 2-1(i).
68. *Id.* para. 2-1.
69. *Id.* para. 1-4(j).
70. *See* 28 U.S.C. § 2241.
71. *Habeas Corpus*, U.S. COURTS, <https://www.uscourts.gov/glossary-legal-terms/habeas-corpus> [<https://perma.cc/ZY9A-3LDQ>] (last visited Feb. 11, 2026).
72. Dwight Sullivan, *A Matter of Life and Death: Examining the Military Death Penalty's Fairness*, 45 FED. LAW. 38, 41 (June 1998).
73. *See* CHARLES DOYLE, CONG. RSCH. SERV., RL33391, FEDERAL HABEAS CORPUS: A LEGAL OVERVIEW (Oct. 1, 2024). For example, a military death sentence prisoner may seek habeas corpus relief on the theory that military courts lack jurisdiction to capitally prosecute any Service member for crimes committed in the continental United States during peacetime in violation of the Fifth, Sixth, and Eighth Amendments or that the military death penalty violates the evolving standards of decency in violation of the Eighth Amendment. *See* Brief for Appellee at 6-10, *Gray v. Horton*, No. 18-03305-EFM (D. Kan. June 4, 2021).
74. DOYLE, *supra* note 73, at 23.
75. *See id.*
76. Sullivan, *supra* note 72, at 41; *What Happens When a Writ of Habeas Corpus Is Denied*, LEGAL CLARITY (June 26, 2025), <https://legalclarity.org/what-happens-when-a-writ-of-habeas-corpus-is-denied> [<https://perma.cc/V22C-2HJ8>]; CONG. RSCH. SERV., RS22432, FEDERAL HABEAS CORPUS: AN ABRIDGED SKETCH (2024).
77. AR 190-55, *supra* note 43, para. 2-4; U.S. DEP'T OF ARMY, REGUL. 190-47, THE ARMY CORRECTIONS SYSTEM (17 Mar. 2023).
78. AR 190-55, *supra* note 43, para. 2-7.
79. *Id.* para. 2-5.
80. *Id.* para. 1-4.
81. *Id.* para. 3-2.
82. *Id.* para. 2-5.
83. *Id.*
84. *Id.* para. 2-1.
85. *Id.* para. 3-2(b)(2)(b).
86. *Id.* para. 3-2(b)(2)(d).
87. *Id.*



Landscape with Father Time and Personification of Craft and Labor. Crijpin van de Passe, Cologne 1589-1611. (Source: Rijks Museum)

Practice Notes

Father Time Is Undefeated Intelligence, and How a Judge Advocate Can Prepare for Its Inevitable Decline

By Major Jonathan M. Harrar

Father Time remains undefeated. So it's not him you should be angling to beat. It's that gnawing cry for purpose that will eat straight through you if you let it.¹

The human mind, like the body, experiences deleterious effects while aging.² As individuals mature, they will have an inevitable decline in certain cognitive abilities tethered to their intelligence.³ While harsh, denying this inevitability will lead to frustration, anger,

and lack of satisfaction, while eating away at one's sense of purpose.⁴ Yet that decline does not necessarily signal the end of a successful and fulfilling career. Thankfully, intelligence is multifaceted. To thrive in the latter half of one's professional career, it will be crucial to focus

on leveraging crystallized intelligence.⁵ This article explores the concepts of fluid and crystallized intelligence, discusses the research establishing that an inevitable decline is coming, and analyzes the potential implications of these topics for a military legal career. Ultimately, this article also offers some practical recommendations to prepare for the back half of one's professional legal career.

First, a "Brief" Discussion on Intelligence

The formal study of intelligence (sometimes referred to as cognitive science) dates back to the late 1800s.⁶ In the early part of the twentieth century, debates about how to accurately measure intelligence sans cultural or subjective bias gained popularity.⁷ Initially the "measuring scale of intelligence" was comprised of a series of thirty brief cognitive tests intended mostly for school-aged children.⁸ This "measuring scale of intelligence" was utilized from 1905 through the 1930s via the *Wechsler-Bellevue* intelligence test, which was well-suited to measuring intelligence in adults and included both verbal and performance measurements without memorization.⁹ Without memorization, the test could not be "gamed," so it was a more accurate measurement of natural abilities.¹⁰

Unsurprisingly, the U.S. Army had a vested interest in testing potential recruits and their natural intelligence.¹¹ After a few more years, researchers still criticized the IQ tests as relying too much on acquired skills rather than intelligence *per se*.¹² They believed the forty-four different types of intelligence tests available at the time still focused too heavily on verbal material, had cultural biases, and suffered from poor reliability.¹³ Researchers wanted tests that were "culture-free" and were designed with non-verbal instructions and instead simply utilized "work it out" examples.¹⁴ It was amidst this backdrop that theories on how intelligence actually worked and could be quantified gained popularity.

Initially, some researchers considered intelligence to be a measurement of one's verbal, spatial, numerical, and mechanical skills quantified as their "g-factor" (general intelligence).¹⁵ Others posited that intelligence boiled down to one's combination of analytical, creative, and practical intelligence.¹⁶ Still others tried to capture all of the

"primary mental abilities" beneath the umbrella term of "intelligence" by simply listing the skills that included verbal comprehension, verbal fluency, number facility, spatial visualization, perceptual speed, memory, and inductive reasoning.¹⁷ Later, Howard Gardner compiled his own list dubbed the "multiple intelligences" comprised as linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, interpersonal, and intrapersonal, and naturalist intelligence.¹⁸ More recently, emotional intelligence has also been added to the intelligence lexicon and adds further layers to the discussion.¹⁹ As with most scientific endeavors, disagreement and debate arose.

While the literature failed to deftly define intelligence or how to objectively test for the same, Raymond Cattell offered a now widely accepted theory of intelligence that synthesized the previous works. He theorized that intelligence tends to come in two classes or dimensions: fluid and crystallized.²⁰ During Cattell's critique of culturally biased intelligence tests, he first proposed the distinction between fluid and crystallized intelligence.²¹ He opined that "fluid ability has the character of a purely general ability to discriminate and perceive relations between any fundamentals, new or old. It increases until adolescence and then slowly declines."²²

Furthermore, fluid intelligence captures the ability to reason, think flexibly, and solve novel problems in a novel way.²³ It allows humans to perceive and draw inferences about relationships among variables to conceptualize abstract information, which ultimately aids in solving a problem.²⁴ If you have ever had the pleasure of undertaking a test filled with ostensibly unrelated patterns, photos, or picture sets, you are endeavoring in a fluid intelligence exercise. Without rules and without context, the test determines if you can choose the correct answer without help, context clues, or experience. While these may appear as simple childhood games, the same fluid intelligence skills apply in life. Confronted with a new job, new human relationships, new software, and new acronyms (of which the Army has many), those with higher fluid intelligence figure it out faster.

Conversely, crystallized intelligence represents a person's knowledge gained via learning and experiences.²⁵ The SAT²⁶ and Law School Admission Test (LSAT) can be

"gamed" with tutoring, courses, practice, and time—exactly what the fluid intelligence tests were attempting to isolate away from.²⁷ Importantly, while fluid intelligence diminishes with age, crystallized intelligence relies on accumulated knowledge and skills and can be utilized to great effect.²⁸ Knowing the rules can be quite the advantage to a lawyer, and utilizing them to great effect separates the novice from the expert. Cattell also described "[c]rystallized intelligence as the ability consist[ing] of discriminatory habits long established in a particular field, originally through the operation of fluid ability, but no longer requiring insightful perception for their successful operation."²⁹ As one grows older, the accumulation of knowledge increases crystallized intelligence.³⁰ In Cattell's theory, fluid and crystallized intelligence interplay with one another as we age; while fluid intelligence drops off, crystallized intelligence can continue to grow.³¹

More on Fluid Intelligence

Fluid intelligence is not easy to quantify. This begs the question: what exactly are we losing as we age? What is clear is that fluid intelligence includes the ability to reason, think flexibly, and solve novel problems.³² It is much higher in one's early adulthood and diminishes steadily in one's thirties and forties.³³ Fluid intelligence also refers to "reasoning and novel problem-solving ability."³⁴ Some more examples of fluid intelligence are solving puzzles, constructing strategies or processes to deal with a novel problem, seeing ostensibly unrelated patterns in data, and speculative philosophical reasoning.³⁵

Fluid intelligence can also be directed to any problem—math, science, law, music, language, etc.³⁶ It "appears to operate whenever the sheer perception of complex relations is involved. It thus shows up in tests where borrowing from stored, crystallized, judgmental skills bring no advantage."³⁷ Obviously, it does not function in a vacuum. Complicated problems will necessarily utilize crystallized intelligence too, but you simply have less of a knowledge base at a younger age.

The endeavor of law school may serve as an example of the marriage of crystallized and fluid intelligence to illustrate both. Most students matriculate in with above-average reading comprehension skills, writing skills,

and a base of study practices, discipline, and habits from which to approach the study of the law (i.e., crystallized intelligence). However, the 1L year introduces novel concepts like intent, causation, counterintuitive property concepts, common law case law, how it all meshes with model statutes, and, of course, legal writing.³⁸ Fluid intelligence is working overtime during that 1L year.

Now, imagine going to law school in your forties or fifties with all other variables remaining the same. Would you advise the student who has lost some of their fluid intelligence to approach it the same way? Of course not. Recognizing that there is a difference is crucial for both students to succeed. The reality is that the student whose fluid intelligence has begun to dip should approach the problem differently.³⁹ Approaching it the same way, despite the disparate abilities, would be foolhardy. This thought experiment should reveal Cattell's theory—humans lose their fluid intelligence as they age and rely more heavily on crystallized, contextualized knowledge.⁴⁰

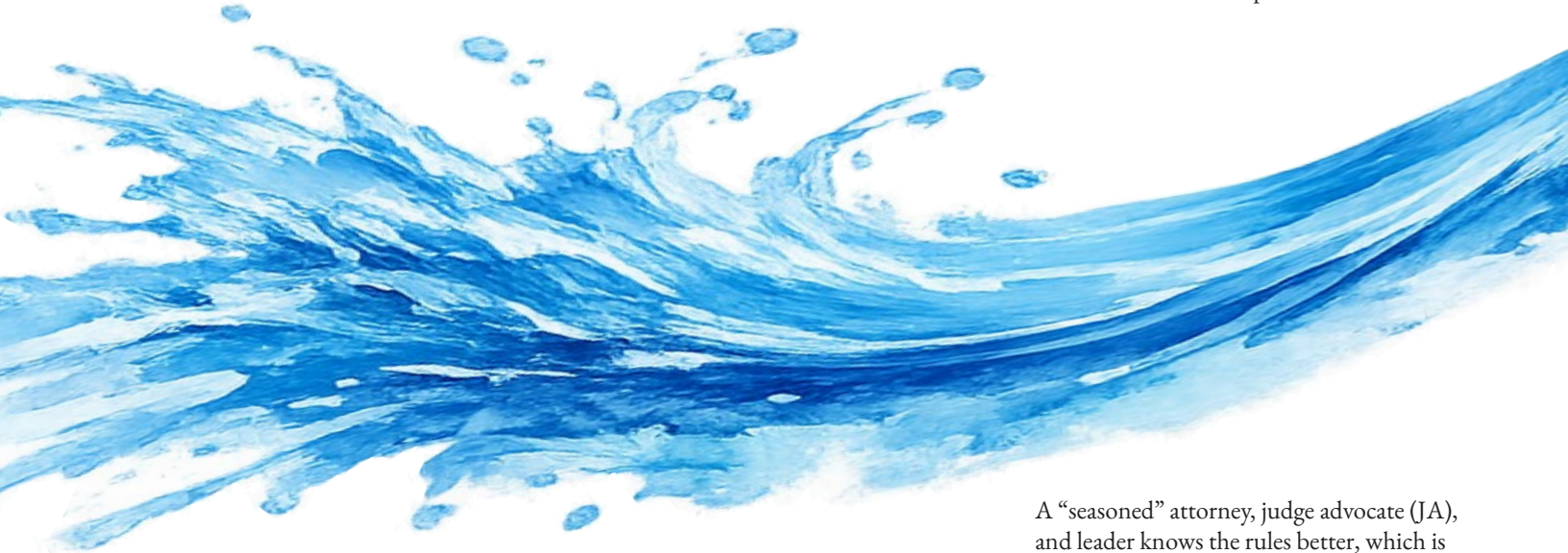
Unfortunately, some researchers suggest fluid intelligence may diminish even earlier. “Fluid intelligence has long been thought to peak during the late twenties before beginning to decline gradually.”⁴¹ As you age,

crystallized intelligence.⁴³ Not only is the prefrontal cortex the last part of your brain to develop after childhood, it is the first to decline in adulthood.⁴⁴

While the academic literature is dense, some anecdotes may also be persuasive. Charles Darwin was in his mid-twenties when he developed the ideas of natural selection and evolution, though he waited until he was older to publish his findings.⁴⁵ Albert Einstein, the paradigmatic genius, was just twenty-six when he proposed his groundbreaking special theory of relativity.⁴⁶ Some of the current largest companies in the world were started by young adults. Mark Zuckerberg started Facebook at nineteen years old,⁴⁷ Bill Gates began Microsoft at twenty years old,⁴⁸ and Steve Jobs co-founded Apple at just twenty-one.⁴⁹ Even the United States' founders were relatively young when they suggested the bold (and novel) idea that the people, not the government or a monarch, should manage themselves. Thomas Jefferson was thirty-three, James Madison was twenty-five, and Alexander Hamilton was just nineteen years old.⁵⁰ George Washington was downright geriatric at forty-four years old in 1776.⁵¹ However, with age comes wisdom, experience, context, and saliently crystallized intelligence.

knowledge, and skills can be obtained. While “[f]luid intelligence is conceptualized as the decontextualized ability to solve abstract problems . . . crystallized intelligence represents a person's knowledge gained during life by acculturation and learning.”⁵³ Mercifully, crystallized intelligence builds and compounds.⁵⁴

Learning a language is a great example of obtaining crystallized knowledge we take for granted as adults. It starts with learning letters, the sounds of those letters, how those letters go together to form individual words, then simple sentences, complex paragraphs, stories, books, and so on. Fluid intelligence may help initially in appreciating the abstract nature of what the letters represent, but eventually, the crystallized intelligence takes over until the words themselves introduce and implicate novel concepts that fluid intelligence addresses. Relevantly, crystallized intelligence tends to rise gradually and stably throughout adulthood and does not begin to decline until one's sixties.⁵⁵ Said another way, crystallized intelligence provides context. A seasoned prosecutor knows what a case is worth; a contracts attorney can pull from their rolodex of previous disputes to resolve a “new” problem; and a leader can rely on prior experiences and myriad relationships with others to address personnel concerns.



there are structural changes in the brain that likely explain this spiral.⁴² Theories about why differ greatly, with some attributing it to decreased blood flow, cellular changes, or atrophy as a result of more reliance on

More on Crystallized Intelligence

Crystallized intelligence, the ability to apply previously obtained information, increases as we age.⁵² This is intuitive because the older we are, the more prior education, experience,

A “seasoned” attorney, judge advocate (JA), and leader knows the rules better, which is why the accumulation of crystallized intelligence creates the oft sought-after wisdom.

Like with fluid intelligence, many examples exist of those who have thrived utilizing their crystallized intelligence in the latter half of their career. The professorial archetype is

the grey-haired, older, wiser person who has likely forgotten more information than their students currently know. Their proverbial rolodex of information is exponentially larger by sheer volume. Many professions take advantage of those with vast crystallized intelligence stores, such as professors. The average age of current Supreme Court Justices, for example, is sixty-five years old.⁵⁶ Historians necessarily utilize crystallized intelligence to digest and contextualize troves of information. The author David McCullough wrote his Pulitzer Prize-winning biography on John Adams when he was sixty-eight years old.⁵⁷ He continued to write, publish, and teach until his death at eighty-nine.⁵⁸ Philosophers too, sometimes defer their final theories until later in life. Immanuel Kant published his *Critique of Reason* when he was fifty-seven years old.⁵⁹ Unlike the fluid intelligence breakthroughs of the youth leaders, historians and deep thinkers successfully navigate their professional lives well into their elder years using their gained wisdom.

Wisdom is the zenith of crystallized intelligence. One group of researchers noted that as a “psychological trait, wisdom refers to a global psychological quality that engages intellectual ability, prior knowledge, and experience in a way that integrates virtue and wit, and is acquired through life experience and continued practice.”⁶⁰ Wisdom seems to marry the best of fluid and crystallized intelligence.

For JAs, the combination of experience, judgment, and troves of information is certainly a large factor in their success, as fluid intelligence sans experience would not create sage advice/guidance. As JAs age, however, they must think about when to shift

toward more focus or reliance on crystallized intelligence so as to not get left in a fluid intelligence-based mindset or role and lag behind the abilities of their younger selves.

From Strength to Strength

Arthur Brooks discussed this exact predicament in his book *From Strength to Strength: Finding Success, Happiness, and Deep Purpose in the Second Half of Life*.⁶¹ Brooks briefly synthesizes the above research concerning

fluid and crystallized intelligence and offers that riding “the wave” of crystallized intelligence following the diminishing fluid intelligence wave will prove far more beneficial than attempting to accomplish the same feats later in life with diminished capacities.⁶² Moreover, he suggests the latter will no doubt lead to frustration, bitterness, bad health, stress, and generally negative outcomes.⁶³ Instead, if a hard-charging, striving, dedicated, and driven professional were able to recognize the inevitability of the dip in the fluid intelligence curve and “jump” onto the still-increasing crystallized intelligence curve, their potential remains limitless.⁶⁴

Given that one’s fluid intelligence dips at some point in their life/career, reliance only on the same in the latter half of one’s professional career would be unwise.⁶⁵ Yet the crystallized intelligence curve is still progressing steadily upwards and only begins to dip much later in life.⁶⁶ Recognizing this reality, preparing for this eventuality, and taking the

jump from reliance on fluid intelligence to crystallized intelligence will be critical not only to objective success but also to subjective happiness. This is not a blind leap of faith; rather, it is a conclusion grounded in Cattell’s research and findings.

Brooks argues that relying less on innovation and more on instruction will play more to one’s crystallized strengths.⁶⁷ Brooks bolsters his argument to jump the curve by quoting the ancient Roman philosopher Cicero, who wrote to his son that as we age, we should (1) be dedicated to service; (2) use wisdom to enrich others; and (3) counsel, mentor, advise, and teach.⁶⁸ The existence of the second curve should be welcome news. Even after certain skill sets that may have propelled one to success diminish, the same individual can attain even higher heights by jumping to the second curve/wave.⁶⁹

Brooks warns that fighting against this reality will bring pain.⁷⁰ He suggests most successful people do not know that fluid intelligence declines and even more do not realize that crystallized intelligence can still grow.⁷¹ Brooks acknowledges that it can also be unnerving to deviate from what one has always done that led to their success. Fret not, Brooks would say. By shifting to different strengths, the back half of one’s career can be as fulfilling and rewarding as the first. If the latter stages of one’s career are devoted to serving others with hard-fought wisdom, the transition will be far less perilous.⁷²



These career decision points present themselves often for all JAs, but most notably for those at the field grade ranks. There are options to teach, supervise, become subject matter experts, or deviate entirely from previous professional experiences. Appellate litigation, contract disputes, ethics, and policy advising are all jobs generally reserved for more senior-ranking officers. Of course, there is always the option to stay the course and double down on previously obtained skills. A prosecutor or defense attorney who has practiced criminal justice their entire career can now continue specializing with the advent of the Office of the Special Trial Counsel and complex litigators. Even among those specializations, Arthur Brooks would likely recommend that practitioners begin to rely more heavily on a new strength.

Army Doctrine and JAG Corps Policy Seem to Agree

Greg Maddux, one of the greatest pitchers of all time, threw a baseball 95 mph when he was drafted in 1984.⁷³ To anyone who followed his career, this may come as a surprise. When he retired at forty-three years old after twenty-three seasons, he threw absolute junk.⁷⁴ He was known more at that point for his command, off-speed pitches, and baseball IQ than speed.⁷⁵ That fastball pitcher adapted to the reality that he could not throw heat forever, and he adapted his game despite the massive change. JAs, like MLB players, are “drafted” at a young age. The skills that made them excellent accession candidates may not be the same ones that make them great field-grade officers in the Judge Advocate General’s (JAG) Corps. Like Maddux, they need to learn to throw different pitches.

Along the fastest track, a JA obtains their undergraduate degree at twenty-two years old, finishes law school roughly three years later at twenty-five, commissions into the Army shortly thereafter, and pins on their major rank rarely younger than thirty-three years old.⁷⁶ Thus, even the youngest JAG Corps majors are well on their way to needing to embrace the crystallized intelligence curve. In sports parlance, they need to learn to throw different pitches. Or, as Brooks aptly described it, they need to shift from one strength to another strength. By either coincidence or design, the Army

and JAG Corps seem to recognize this need to change strengths.

Field grade officers are often urged to shift away from their past successes as action officers and “doers” and instead focus more on leadership.⁷⁷ Leadership, by doctrine, mostly concerns relationships with people.⁷⁸ This doctrinal focus on relationships nests well with Cicero’s advice to teach, coach, and mentor. Understandably, this may send humbling chills through any JA who has spent the bulk of their career primarily performing legal work. Telling someone who has spent their entire professional career brute-forcing knowledge into their brain, achieving results, and outputting at extremely high levels to now pivot to different strengths and skillsets is a large ask. To many, this may prove difficult. They may have achieved promotion and relative success through reliance primarily on their creativity, fluid intelligence, and innate raw smarts. While some may hope that will continue to work as they rank up, it may not, according to Cattell and Brooks.⁷⁹ But thankfully, there is a second curve.

Leadership is not just about having authority; it is about supporting and influencing others to achieve a common goal.⁸⁰ Army Doctrine Publication 6-22, *Army Leadership and the Profession*, outlines three types of leadership: *direct* (individuals and small groups), *organizational* (organizations), and *strategic* (overall direction and development), with different responsibilities of each.⁸¹ To be effective, an officer must be able to operate effectively at each level, even at the same time. While these leadership skills may have only been nominally used as an action officer, particularly for JAs, the wisdom, experience, and ever-growing crystallized intelligence gained during that time means that senior JAs entering new roles may have more to offer immediately coming into positions than they might think. JAG Corps policy certainly agrees.

The current JA career model states that during a JA’s first years, they are meant to develop as an officer, gain competence across legal functions, identify legal interests and aptitudes, and eventually “develop leadership baseline skills.”⁸² As their careers progress, JAs are expected to increase their legal expertise, lead and develop their teams, manage offices, and eventually advise Army senior leaders.⁸³ In addition, the JAG Corps

recently modified its internal personnel policies to allow senior leaders to specialize in a legal functional area.⁸⁴ The new JA career model now allows for senior JAs to act as “specialists in a legal functional area, serve as command counsel, or both.”⁸⁵ Previously, the Corps focused on training JAs to be broadly skilled lawyers, having some level of knowledge in various fields, but rarely were they specialists *per se*.⁸⁶ Prior iterations of internal policies required JAs to “combine the versatility to practice in every legal function . . . [as] versatility will remain essential throughout a [JA’s] career” and that all JAs “must be competent to practice in any area.”⁸⁷

The ability to now specialize is a big change, and it potentially makes heeding Brooks’s warning to shift to a different strength feel less intuitive. Nonetheless, doing so is critical for success. Greg Maddux was wise; he pivoted to throwing junk after his fastball slowed and, in doing so, he continued to have success. JAs in the back half of their careers should similarly look for different pitches to throw (though not necessarily “junk”).

Considerations for Your Consideration

Ignore the Science at Your Own Peril

Raging against reality is dangerous, especially for lawyers, who already face the unique stressors that inherently come with a legal career.⁸⁸ Older JAs should not ignore the science by simply bearing down, throwing more hours at tasks, or undermining their own success with too much hubris. It would be downright Sisyphean to expect the same outputs as one’s younger self utilizing the same manner and methods, and, as Brooks notes, attempting to do so in this case will just cause frustration, bitterness, bad health, and stress.⁸⁹

A senior JA is “rapidly” losing their fluid intelligence.⁹⁰ Maybe that mental degradation is already happening, or maybe it remains deferred; but be assured it is coming for everyone. Obviously, humans and their talents and intelligence exist on a spectrum, but overall, it would be prudent to at least prepare for this eventuality. Like Pascal’s wager,⁹¹ the worst-case scenario would be that you obtained new skills that you can layer on

top of your fluid intelligence. Nothing is lost, but much could be gained.

Thankfully, lawyers in the JAG Corps can rely on crystallized intelligence to be extremely successful in either leadership roles or performing as specialists leading teams of legal professionals. A profession that requires crystallized intelligence might have its practitioners peak later but thrive longer. What are lawyers if not moonlighting historians? A direct- or cross-examination is not very different from simply teaching a jury or judge about something that already happened. JAs, particularly aging ones, are able to absorb new information and place it into its historical context. New statutes, regulations, case law, and, of course, practical lived experiences inform their judgment and learned counsel. Those with experience paired with a catalog of relevant and useful information come closest to being wise. An experienced lawyer's judgment is their currency. Do not fret about the oncoming reality; embrace it.

Coach from the Sideline, Not the Field

Few things are sadder than watching a formally formidable superstar athlete attempt to play their sport too long. They step onto the field, court, ice, or ring a mere shell of their former self.⁹² Muhammad Ali fought well past his prime and suffered the debilitating effects as a result.⁹³ Michael Jordan, the greatest basketball player the world has ever seen,⁹⁴ held on admirably in the last two years of his career with the Washington Wizards but could not affect the game like he once could.⁹⁵ At best, it is awkward; at worst, it is dangerous. They could have been working toward becoming coaches, business owners, team consultants, part of their respective alumni programs, or transition into broadcasting, but instead, they held on too long. The opportunity cost of insisting on staying in the game is unknowable but self-inflicted. Additionally, the cost to that player aside, they also took up a slot on the team. It was arguably a bit selfish, a bit self-centered, and short-sighted. Following Brooks's advice, one might suggest: Don't be like Mike.⁹⁶

Senior JAs should rely on the vibrancy of their more junior, creative, fluid thinkers for the minutia, brute forcing, and fluid intelligence-based skills. They are the backbone of the law firm's work product. Senior leaders are editors, synthesizers, and

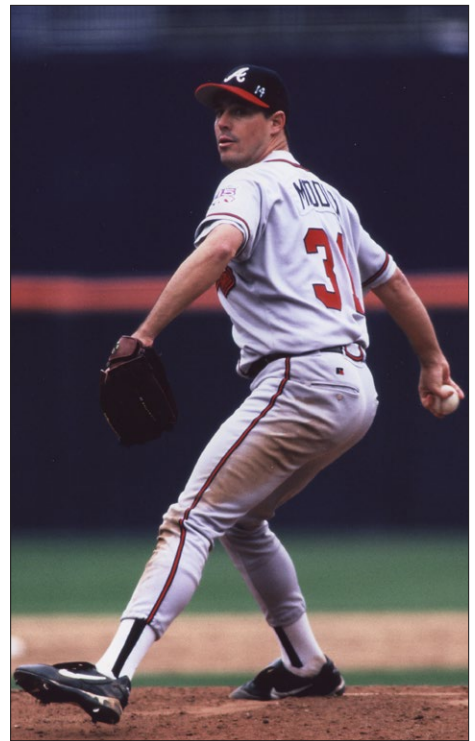
context creators. They are the teachers, the mentors, the literal coaches of the more junior attorneys in the firm. These skills are invaluable and not to be shortchanged. Waiting too long to transition to the next phase of one's career could undermine the mission and come at opportunity costs to the organization.

For example, AI is changing legal research, the presentation and review of evidence, how legal briefs are written and edited, and it is revolutionizing how legal documents are drafted.⁹⁷ It is changing everything. Perhaps the junior JA, rich in fluid intelligence, is the best suited to identify best practices in applying AI to our respective fields of practice. Cattell's theory may explain why, as the novel problem-solvers are the new employees who are far more adept at adapting than the more senior lawyers.⁹⁸ Senior JAs knowing themselves, their people, and the strengths and weaknesses of both will be immensely important in focusing the efforts of any legal team. Trusting subordinates to embrace new technologies, new law, and doing the raw work is critical. After all, it empowers them, and they are still rising on the fluid intelligence curve, but they need their leaders' guidance and crystallized intelligence. As Cicero said, teach. Senior JAs should devote the back end of their professional career to serving others with their hard-fought wisdom. They will only excel with them, not in spite of them or instead of them.⁹⁹

Jump the Curve!

Even within the Corps's shift toward allowing JAs to specialize in an area of law, the reality is that focusing on leading, teaching, mentoring, and utilizing one's crystallized intelligence more than fluid intelligence later in a JA's career offers the widest path to success. With increased rank comes increased responsibility for people, macro-level missions, and the health of the organization as a whole. We become stewards of the practice and profession, and none of us, even the specialists, operate in a vacuum, despite how much one may try. JAs, like any officers in the Army, function within a larger ecosystem that is, in many respects, self-managing.

Even the specialists lead, so JAs should not and cannot allow themselves to think that they are not a leader or that their



Greg Maddux. (Source: George Bush Presidential Library)

areas of law are so niche that they need not broaden their skill sets.¹⁰⁰ This article simply suggests treading carefully in deciding how to approach your chosen career path. Heed Cicero's letter to his son that teaching, coaching, and mentoring are not quitting. Instead, it is shifting from one strength to the next and, in the long run, can benefit you and the organization equally.

Conclusion

JAs are not getting dumber as they age. Such a suggestion is not the thesis of this article. They are, however, relying more and more on their life experience, education, and crystallized knowledge as their careers progress. Thankfully, lawyers are not professional athletes (at least, not most of us¹⁰¹). Father Time's clock need not run out as quickly as it might for a physical profession. While knees, backs, and shoulders give out for professional athletes, JAs can utilize their brains far beyond the joints of their bodies. However, like an athlete who loses a step on the basketball court or football field, JAs need to adjust their game and eventually turn more heavily toward coaching instead of playing to extend their professional career. Focus on embracing a different strength, one that builds off your

previous strengths, instead of fighting against Father Time. Embrace this reality, prepare for it, and ride the crystallized intelligence wave as long as you can. That will provide a purpose Father Time cannot take away . . . at least not yet. **TAL**

MAJ Harrar is a Complex Defense Litigator with the Great Plains Region Fort Carson, Colorado.

Notes

1. CAR F. ROMERO, *THE EL CAMINO: A NOVEL* (2023).
2. See Julie M. Bugg et al., *Age Differences in Fluid Intelligence: Contributions of General Slowing and Frontal Decline*, *BRAIN & COGNITION*, Apr. 2006, at 9, 10.
3. See generally *id.* at 10 (discussing the various hypotheses for age-related decline in intelligence).
4. See ARTHUR BROOKS, *FROM STRENGTH TO STRENGTH: FINDING SUCCESS, HAPPINESS, AND DEEP PURPOSE IN THE SECOND HALF OF LIFE* 22 (2022).
5. See *id.* at 41–67.
6. See generally RAYMOND B. CATTELL, *INTELLIGENCE: ITS STRUCTURE, GROWTH AND ACTION* at 2–4 (1987) (outlining the history about ideas concerning intelligence in his seminal work, starting first with Plato and Aristotle, followed by Thomas Aquinas dubbing a new word “intelligence” before the “brilliant” contributions made by scientists at the beginning of the 1900s). In over 600 pages, Cattell masterfully expounds on the history of intelligence, the methods used to measure it, nature vs. nurture, and, of course, the discovery of fluid and crystallized intelligence.
7. See generally *id.* at 4 (discussing the advent of “the testing age.”). See also *id.* at 43 (discussing the “culture-fair Intelligence Test” created by himself in the 1940’s).
8. Richard E. Brown, *Hebb and Cattell: The Genesis of the Theory of Fluid and Crystallized Intelligence*, *FRONTIERS IN HUM. NEURO SCI*, Dec. 2016, art. 606, at 1.
9. See *id.* at 1.
10. CATTELL, *supra* note 6, at 26.
11. Brown, *supra* note 8, at 1. Eerily, this research into intelligence bloomed because of the contemporary research into various mental “deficienc[ies] and abnormalit[ies].” *Id.*
12. *Id.* at 2.
13. *Id.* at 2 (citing Raymond B. Cattell, *The Measurement of Adult Intelligence*, 40 *PSYCH. BULL.* 153 (1943); Raymond B. Cattell, *Theory of Fluid and Crystallized Intelligence: A Critical Experiment*, 54 *J. EDUC. PSYCH.* 1 (1963)).
14. *Id.* at 2.
15. See generally C. Spearman, “General Intelligence” Objectively Determined and Measured, 15 *AM. J. PSYCHOL.* 201, 206 (1904) (laying out the history of research surrounding “General Intelligence” as of 1904).
16. See generally ROBERT J. STERNBERG, *BEYOND IQ: A TRIARCHIC THEORY OF HUMAN INTELLIGENCE* (1985) (providing a more up to date review of theories surrounding intelligence in 1985 via the an analysis of the explicit and implicit theories).
17. L.L. THURSTONE, *PRIMARY MENTAL ABILITIES* (1938).
18. See HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (2011) (1983).
19. See John D. Mayer et al., *Emotional Intelligence Meets Traditional Standards for an Intelligence*, 27 *INTELLIGENCE* 267, 267 (1999). Emotional Intelligence adds self-awareness, self-management, social awareness, and relationship management to the conversation on intelligence. See *id.*
20. See CATTELL, *supra* note 6, at 26 (explaining that Spearman’s basic approach “leads to the conclusion that in fact we have to deal with two broad or general ability factors, fluid and crystallized”).
21. See *id.* at 87–120.
22. See *id.* at 178.
23. See Brown, *supra* note 8, at 1.
24. Ayesha Perera, *Fluid vs Crystallized Intelligence In Psychology*, *SIMPLY PSYCH.* (Feb. 1, 2024), <https://www.simplypsychology.org/fluid-crystallized-intelligence.html> [<https://perma.cc/D9YX-C4J3>].
25. See Brown, *supra* note 8, at 2. Table 1 discusses how “environmental variables such as cultural knowledge and training” can vary the scores on general ability tests. *Id.*
26. “Today, ‘SAT’ has no meaning as an acronym. The SAT acronym originally stood for ‘Scholastic Aptitude Test,’ but as the test evolved, the acronym’s meaning was dropped.” *What’s the Difference Between the PSAT-Related Assessments and the SAT?*, *COLLEGE BD.* (Mar. 13, 2024), <https://blog.collegeboard.org/difference-between-sat-and-psat> [<https://perma.cc/8J4D-LYHC>].
27. Robert Sanders, *Intense Prep for Law School Admission Test Alters Brain Structure*, *BERKELEY NEWS* (Aug. 22, 2012), <https://news.berkeley.edu/2012/08/22/intense-prep-for-law-school-admissions-test-alters-brain-structure> [<https://perma.cc/3WZ4-Q3CQ>].
28. BROOKS, *supra* note 4, at 27–28 (applying Cattell’s distinction into his own recommendation to “jump the curves”).
29. Raymond B. Cattell, *The Measurement of Adult Intelligence*, 40 *PSYCH. BULL.* 153, 178 (1943).
30. See CATTELL, *supra* note 6, at 519.
31. See generally *id.* at 315–25 (explaining the distinction between fluid and crystallized intelligence and noting that fluid intelligence peaks in early adulthood and declines thereafter).
32. See Brown, *supra* note 8, at 1.
33. See generally Peng Peng et al., *A Meta-Analysis on the Relation Between Fluid Intelligence and Reading/Mathematics: Effects of Tasks, Age, and Social Economics Status*, 145 *PSYCH. BULL.* 189, 194 (2019) (discussing the research concluding that fluid intelligence peaks in ones 20’s and 30’s while crystallized intelligence stays stable throughout adulthood until the 60’s).
34. See Bugg et al., *supra* note 2, at 10.
35. See generally Nash Unsworth et al., *Working Memory and Fluid Intelligence: Capacity, Attention Control, and Secondary Memory Retrieval*, 71 *COGNITIVE PSYCH.* 1 (2014) (analyzing working memory and its relationship to fluid intelligence).
36. See CATTELL, *supra* note 6, at 97.
37. See *id.* at 115.
38. See *What Is Law School Like: First-Year Curriculum*, *PRINCETON REV.*, <https://www.princetonreview.com/law-school-advice/first-year-curriculum> [<https://perma.cc/JZ5M-U5H6>] (last visited Jan. 7, 2026). Who could forget the rules against perpetuities.
39. This realization is what informs the recommendations discussed *infra* in Section titled “Considerations for Your Consideration.”
40. See CATTELL, *supra* note 6, at 178
41. See Perera, *supra* note 24 (citing JOHN T. CACIOPPO & LAURA A. FREBERG, *DISCOVERING PSYCHOLOGY: THE SCIENCE OF THE MIND* (2012)).
42. See Bugg et al., *supra* note 2, at 10 (citations omitted) (discussing the prefrontal cortex theory, the decrease in volume of the frontal lobe theory, cell morphology changes theory, and blood flow theory all seeking to explain why there is a decline but not disputing that there is in fact a decline).
43. See *id.*
44. See BROOKS, *supra* note 4, at 13 (citations omitted).
45. See Adrian J. Desmond, *Charles Darwin*, *ENCYCLOPEDIA BRITANNICA* (Feb. 15, 2026), <https://www.britannica.com/biography/Charles-Darwin> [<https://perma.cc/CKT9-LM23>]. Darwin published *On the Origin of Species*, his seminal work, when he was fifty years old; however his ideas were sparked in his thirties after a voyage around the world on the HMS *Beagle* in 1831. *Id.*
46. See Pedro Ferreira, *General Relativity: Einstein’s Insight*, *NEW SCIENTIST* (June 30, 2010), <https://www.newscientist.com/article/mg20727671-900-general-relativity-einsteins-insight> [<https://perma.cc/UG7U-U6PF>].
47. See *Profile: Mark Zuckerberg*, *FORBES*, <https://www.forbes.com/profile/mark-zuckerberg> [<https://perma.cc/8PE2-8QE9>] (last visited Jan. 12, 2026).
48. See Tom Huddleston Jr., *What Microsoft Billionaire Bill Gates Was Doing at 20 Years Old*, *CNBC* (Mar. 29, 2018), <https://www.cnbc.com/2018/03/29/what-microsoft-billionaire-bill-gates-was-doing-at-20-years-old.html> [<https://perma.cc/V4G3-6XK9>].
49. See Matt Weinberger & Avery Harmans, *Steve Jobs’ Life and Apple Career from Cofounder, to Exile, to CEO*, *BUS. INSIDER* (Jan. 16, 2024), <https://www.businessinsider.com/steve-jobs> [<https://perma.cc/28G2-8LVN>].
50. See Todd Andriuk, *Ages of Revolution: How Old Were They on July 4, 1776*, *J. OF THE AM. REVOLUTION* (Aug. 8, 2013), <https://allthingsliberty.com/2013/08/ages-of-revolution-how-old-1776> [<https://perma.cc/4VF3-RC8F>].
51. See *id.*
52. Nancy Lovering, *How We Use Fluid vs. Crystallized Intelligence*, *PSYCH. CENT.* (Dec. 19, 2021), <https://psychcentral.com/health/fluid-vs-crystallized-intelligence#crystallized-intelligence> [<https://perma.cc/PYU7-3U6Y>].
53. See BROOKS, *supra* note 4, at 27 (quoting Cattell’s protégé, J.L. Horn).
54. See CATTELL, *supra* note 6, at 115 (“Crystallized ability expressions . . . though of a judgmental, discriminatory, and reasoning nature, operate in areas where the judgments have been taught systematically or experienced before.”).
55. See generally Bugg et al., *supra* note 2 (offering the “when” and “what” regarding fluid intelligence appears

more obviously than the “why”).

56. See *Biographies of the Justices*, THE SUPREME CT. OF THE U.S., <https://www.supremecourt.gov/about/biographies.aspx> [<https://perma.cc/32Y6-N96M>] (last visited on Jan. 13, 2026). At the time of publication, Chief Justice John Roberts is seventy-one, Justice Clarence Thomas is seventy-seven, Justice Samuel A. Alito is seventy-five, Justice Sonia Sotomayor is seventy-one, Justice Elena Kagan is sixty-five, Justice Neil Gorsuch is fifty-eight, Justice Brett Kavanaugh is sixty-one, Justice Ketanji Brown Jackson is fifty-five, and the youngest on the court, Justice Amy Coney Barrett, is fifty-four. See *id.* Though they no doubt rely heavily on the fluid intelligence of their younger clerks, it is the synthesizing of annals of law, cases, coupled with their judgment they bring to bear in opining on cases and resolving disputes. After all, they are called “judges” for a reason.

57. McCullough, who was born in 1933, published *John Adams* in 2001. See David McCullough, *ACAD. OF ACHIEVEMENT* (June 6, 2023), <https://achievement.org/achiever/david-mccullough> [<https://perma.cc/UW6S-DBG6>].

58. See *id.* McCullough was quoted as saying, “I would pay to do what I do . . . how could I have a better time than doing what I am doing,” as he was known to write daily in his studio behind his house. *Id.*

59. See Immanuel Kant, *BIOGRAPHY* (Aug. 9, 2023), <https://www.biography.com/scholars-educators/immanuel-kant> [<https://perma.cc/4883-RWC6>].

60. See generally Kaili Zhang et al., *Wisdom: Meaning, Structure, Types, Arguments, and Future Concerns*, CURRENT PSYCH. (Jan. 27, 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC8817649/pdf/12144_2022_Article_2816.pdf [<https://perma.cc/J3T6-R9V5>] (explaining that “wisdom is a complex, multicomponent psychological trait that necessarily has a neurobiological basis that includes neuroanatomy, neurotransmitters, and neural circuits.”). The authors do a laudable job at attempting to grasp several prior definitions of wisdom while offering their own sub-categories of “humane wisdom” and “natural wisdom” that are not quite relevant for this article. See *id.*

61. BROOKS, *supra* note 4. Brooks’s book inspired this primer. His thesis became wildly relevant during the Graduate Degree Program and seemed to align with what has been taught throughout—namely, that we must shift from being an action officer to a leader/supervisor.

62. See *id.* at 40.

63. See *id.* at 33.

64. See *id.* at 28.

65. See *id.*

66. See *id.*

67. See *id.*

68. See *id.* at 30 (citing MARCUS TULLIUS CICERO, *DE OFFICIIS* (n.d.), written in the last year of Cicero’s life, approximately 44 BC).

69. See *id.* at 32.

70. See generally *id.* at 22 (suggesting that a cognitive decline for over achievers is a “triple whammy” because trying to “stay even” becomes more difficult leading to dissatisfaction, ones abilities continue to declines, and its places further stress on meaningful relationships).

71. See *id.* at 33. Something about the mind protects itself from realizing this reality until it is too late. Call

it ego, confidence, or even a useful trait adapted for survival, but either way, the conscious fights back.

72. See *id.* at 40.

73. See generally J.J. Cooper, *Did Greg Maddux Ever Throw Hard?*, *BASEBALL AM.*, (May 16, 2024), <https://www.baseballamerica.com/stories/did-greg-maddux-ever-throw-hard> [<https://perma.cc/FD45-6XMN>].

74. “Junk” in baseball terminology refers to “[t]he assortment of slower and softer pitches characterized by erratic and deceptive movement, as opposed to the standard fastballs and curveballs. . . . Something of a misnomer, junk can be as effective as the faster stuff.” *Junk – Baseball Dictionary*, *BASEBALL ALMANAC*, <https://www.baseball-almanac.com/dictionary-term.php?term=junk> [<https://perma.cc/F2VB-RWAL>] (last visited Feb. 26, 2026).

75. See Cooper, *supra* note 73.

76. This assertion is based on the author’s recent professional experience as a college student, law student, then JA. Selfishly, the author is forty-two years old as of the writing of this article; hence the immediate relevance on recognizing when to “jump the curve.” As suggested by Brooks, the author wanted to share this information with others.

77. This assertion is based on the author’s recent professional experiences as a Graduate Degree Program student at The Judge Advocate General’s Legal Center and School in Charlottesville, Virginia. Numerous presenters used this exact language.

78. See U.S. DEP’T OF ARMY, *DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION* para. 3-1 (31 July 2019) (C2, 6 Feb. 2025) [hereinafter ADP 6-22]. The word “relationship” is used over fifty times throughout the publication. See *id. passim*.

79. See BROOKS, *supra* note 4, at 32–40.

80. See ADP 6-22, *supra* note 78, para. 10-10.

81. See *id.* paras. 1-124 to 1-132.

82. JUDGE ADVOCATE LEGAL SERVS., U.S. DEP’T OF ARMY, *PUB. 1-1, PERSONNEL POLICIES* 19 fig. 5-2 (31 Jan. 2025) [hereinafter JALS PUB. 1-1].

83. See *id.*

84. See *id.*

85. See *id.*

86. See JUDGE ADVOCATE LEGAL SERVS., U.S. DEP’T OF ARMY, *PUB. 1-1, PERSONNEL POLICIES* 26 (20 May 2019).

87. See JUDGE ADVOC. LEGAL SERVS., U.S. DEP’T OF ARMY, *PUB. 1-1, PERSONNEL POLICIES II* (Feb. 2022).

88. See generally Patrick Krill et al., *Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk*, 11 *HEALTHCARE* 536 (2023) (discussing the unique stressors surrounding a legal career and the life-threatening risks associated with them); Christina Rainvill, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, *AM. BAR ASS’N* (Sep. 1, 2025), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma-a-guide-for-lawyers-working-with [<https://perma.cc/PL5F-YFAU>] (describing the prevalence of secondary trauma in the legal profession).

89. See *supra* note 63 and accompanying text.

90. See *supra* note 33 and accompanying text.

91. Pascal’s wager is “the argument put forth by Blaise Pascal that it is in one’s best interest to believe in the existence of God, as it is a rational assumption and does no harm, and the possibility of eternal punishment in hell outweighs any advantage of believing otherwise.” *Pascal’s Wager*, *DICTIONARY.COM*, <https://www.dictionary.com/browse/pascals-wager> [<https://perma.cc/DFY4-J356>] (last visited Feb. 26, 2026).

92. See Chris Mueller, *Superstar Athletes Whose Careers Ended with a Whimper*, *YARDBARKER* (Jan. 19, 2025), https://www.yardbarker.com/general_sports/articles/superstar_athletes_whose_careers_ended_with_a_whimper/s1__28430153 [<https://perma.cc/X9P2-MZCL>].

93. *Id.*

94. Not debatable, in this author’s opinion.

95. Mueller, *supra* note 92.

96. A popular marketing slogan in the early 1990s recommended drinkers of Gatorade (an electorate drink) could “Be like Mike” (Michael Jordan). Darren Rovell, *Famed ‘Be Like Mike’ Gatorade Ad Debuted 25 Years Ago*, *ESPN* (Aug. 8, 2016), https://www.espn.com/nba/story/_/id/17246999/michael-jordan-famous-mike-gatorade-commercial-debuted-25-years-ago-monday [<https://perma.cc/Z9LD-92GM>].

97. See Colonel Ryan A. Howard, *Forging the Bimodal Judge Advocate: Human-Machine Integration and the Future of the JAG Corps*, *ARMY LAW.*, no. 4, 2025, at 2.

98. The idiom “You cannot teach an old dog new tricks” may be based in Cattell’s science and the frontal lobe atrophy theories discussed *supra* Section titled “First, a ‘Brief Discussion on Intelligence.’” There is certainly nuance and variation for each individual. Yet for everyone, some decline is coming—it is not a matter of if, just when. As far as the changes coming to the legal career field, AI is not the only disruptor. New software, application, areas of law—essentially anything new and novel—will by definition be easier to grasp by those whose fluid intelligence faculties have yet to diminish.

99. See BROOKS, *supra* note 4, at 40.

100. See JALS PUB. 1-1, *supra* note 82, para. 5-26 (“Every member of the [JAG Corps] and JALS community serves as both a leader and a subordinate. Being a good subordinate is integral to being an effective leader. [JAG Corps] and JALS personnel are standard bearers of the legal profession and must have a fundamental understanding of leadership to meet the needs of today’s Army and continue to develop throughout a military career.”).

101. Cf. Major Daniel D. Ray & Major Joseph A. Deflorio, *A Q&A with Captain Jack T. Rozema*, *ARMY. LAW.*, no. 3, 2025, at 14 (discussing the professional CrossFit career of Captain Jack T. Rozema, an active-duty JA).

A U.S. Army Green Beret assigned to 1st Special Forces Group (Airborne) demonstrates an air assault task to Royal Thai Army soldiers in Lopburi, Thailand. (Credit: SPC Paul Blythe)



Feature

Irregular Warfare Is More Than Just SOF

The Need for Statutory Authority for Conventional Forces to Support IW Operations

By Major Joshua R. Hall

On 2 October 2020, the Department of War¹ (DoW) published the *Summary of the Irregular Warfare Annex to the 2018 National Defense Strategy*² (*IW Annex*). The *IW Annex* emphasizes the need to leverage conventional force capabilities to be successful in the irregular warfare (IW) fight. “Conventional forces have, and always will have, a role in IW across a variety of missions and a range of military activities.”³ In the age of great power competition, this role will likely be training and equipping foreign and irregular forces engaged in IW operations. However, as with any military activity, the unit must have both the operational and fiscal authority to lawfully execute such activity.⁴ For U.S. Special Operations Forces (SOF), the recently codified 10 U.S.C. § 127d (formerly section 1202 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018⁵) provides SOF with such fiscal authority to train and equip foreign and irregular forces engaged in IW.⁶ As it currently stands,

this statute is a SOF-specific fiscal authority. In fact, there is presently no overt statutory authority that authorizes U.S. conventional forces to support foreign or irregular forces engaged in IW.

While conventional forces have executed and supported IW campaigns in the past, many of the more recent operations consisted of foreign internal defense (FID) or stability operations as opposed to training and equipping foreign forces.⁷ Moreover, after the Vietnam War, Congress began to slowly but severely limit the DoW’s discretionary funding for foreign assistance.⁸ Fast forward to the present, and IW remains a capability that exists not only within special operations but also conventional forces.⁹ However, in the age of great power competition, U.S. conventional forces lack the necessary fiscal authority to provide support to foreign forces, irregular forces, groups, and individuals engaged in IW operations.

This article will address this gap and advocate for a legislative proposal to provide conventional forces with the necessary fiscal authority to successfully complement SOF and contribute to the IW fight. First, it provides a brief history of IW and conventional forces' execution of IW in previous campaigns. Next, it outlines the existing and most commonly utilized operational and fiscal authorities for training, equipping, and supporting foreign forces. Finally, it advocates for a legislative proposal to fill the existing statutory gap in fiscal authority for conventional forces conducting IW.

History of Irregular Warfare and the Use of Conventional Forces

U.S. military doctrine generally recognizes two forms of warfare: "conventional[/traditional,] and irregular."¹⁰ Until recently, there was no agreed-upon definition of IW.¹¹ Currently, IW is defined as "[a] form of warfare where states and non-state actors campaign to assure or coerce states or other groups through indirect, non-attributable, or asymmetric activities."¹² Generally, the specific IW categories can be classified into five mission sets: unconventional warfare, stabilization, foreign internal defense, counterterrorism, and counterinsurgency.¹³ Despite the recency of an approved DoW definition, the concept of IW is far from new.¹⁴ In fact, IW can be traced as far back as the 1800s with the U.S. Navy's engagements against the Barbary Pirates.¹⁵ From there, the U.S. military's history of conducting IW is seen in almost every major military campaign, from Vietnam and the Cold War to the campaigns in Iraq, Afghanistan, and Syria.¹⁶ More importantly, these IW campaigns were not limited to SOF and involved conventional forces either leading the mission or enabling SOF units on the ground.¹⁷

One may ask, if conventional forces conducted IW in the past, why is there a need for such authority now? The answer is two-fold. The first involves a significant increase in congressional oversight of the President's and, thereby, DoW's discretionary spending for foreign assistance post-Vietnam War.¹⁸ In 1961, Congress passed the Foreign Assistance Act (FAA).¹⁹ With it, the President was able to use the FAA's contingency fund so long as the use was "in the national interest."²⁰ One can only imagine the potential for abuse

with such a sweeping provision. "As was said during a 1906 debate in Congress, creating such an untethered fund 'is like giving a child more money than he wants for a trip uptown and back; he will surely spend the balance of it before he gets home.'"²¹ Thus, the President heavily relied on these contingency funds within the FAA to provide military aid to foreign forces both during Vietnam and the Cold War.²² In an effort to curtail such unfettered discretion, Congress, over a period of roughly twenty years, would exercise its power of the purse through a series of restrictive appropriations and defense authorizations.²³ Therefore, the seemingly unlimited funds to train and equip foreign forces are a thing of the past for the DoW.

Second, not all IW missions involve training and equipping foreign forces. As mentioned earlier, IW can be categorized into five mission sets.²⁴ One such mission set is stability operations.²⁵ Many of the more recent IW campaigns executed by conventional forces involved stability operations as opposed to training and equipping foreign forces typically seen in unconventional warfare.²⁶ Thus, there was no need for conventional forces to have a train and equip authority at the time. Nevertheless, as we continue to navigate through the age of great power competition, our conventional forces will undoubtedly require the authority to train and equip our foreign partners in order to deter our global competitors. Before addressing the authority gap head-on, it is important to understand a brief history of conventional forces conducting IW throughout prior military operations.

Vietnam

One of the first notable IW campaigns was carried out by both conventional forces and SOF during the Vietnam War.²⁷ General Paul Harkins, commander of Military Assistance Command Vietnam (MACV), was tasked to advise and assist the South Vietnamese Army.²⁸ While the term had yet to be coined, his unit was engaging in what we now refer to as "Foreign Internal Defense" (FID).²⁹ FID is defined as "participation by civilian agencies and military forces of a government or international organization in any of the programs and activities taken by a host nation government to free and protect its society from subversion, lawlessness,

insurgency, violent extremism, terrorism, and other threats to its security."³⁰ This FID mission was essentially a "whole-of-government approach" to strengthen the South Vietnamese Army to defend against the insurgent Viet Cong guerrillas.³¹ In keeping with the whole-of-government approach, civilian villagers were recruited to expand this defense network.³² These entities would later be named "Civilian Irregular Defense Groups."³³

In terms of support, U.S. forces, including both conventional and special operations, helped train, equip, and operate with hundreds of thousands of these irregular forces.³⁴ For example, the U.S.- and South Vietnamese-backed Civil Operations and Revolutionary Development Support (CORDS) program aimed to support local forces to root out the Viet Cong from the villages.³⁵ The U.S. military advisors attached to the CORDS program mentored and assisted their South Vietnamese counterparts in creating a self-sufficient security force in the villages.³⁶ Eventually, this IW campaign would shift toward a conventional large-scale combat operation (LSCO) in which U.S. forces fought against the North Vietnamese Army.³⁷

The lessons learned from Vietnam underscore some of the main points addressed in the *IW Annex*.³⁸ Specifically, "[s]uccessful military contributions to [IW] require a deliberate and sustained integration of conventional and special operations capabilities."³⁹ The Vietnam War presented a hybrid warfare theater in which U.S. forces had to fight the guerrilla forces of the Viet Cong in a counterinsurgency campaign as well as the conventional forces of the North Vietnamese Army.⁴⁰ Moreover, there was no clear transition between irregular and conventional warfare; rather, the shift was dictated by the operational environment.⁴¹ While the success of counterinsurgency in Vietnam is certainly debatable, the lesson gleaned is that IW neither is nor should be the sole responsibility of SOF.⁴² Following the Vietnam War, much of the focus shifted away from IW;⁴³ however, conventional forces still played a role in IW efforts during the Cold War.

Cold War

Looking back at an example of strategic competition, IW played a prominent role during



Lieutenant Andrew Sterrett leaves schooner *Enterprise* to board the *Tripoli*, 1 August 1801 during the First Barbary War, which was one of the United States' first engagements in IW. Oil on canvas by Rodolfo Claudu, 1951. (Source: U.S. Naval Academy Museum Collection)

the Cold War between the United States and the Soviet Union.⁴⁴ Rather than engage in direct conflict between the two nations, the United States and Soviet Union trained and equipped irregular foreign forces, many of which were located in Central America.⁴⁵ Battles were fought through these proxy forces, and the two nations avoided escalation to a nuclear war.⁴⁶

Nicaragua

In 1981, President Ronald Reagan ceased any further economic support to Nicaragua and pointed to the country's support of communist insurgencies in El Salvador.⁴⁷ Specifically, the Sandinista government of Nicaragua, with support from the Soviet Union and others, secretly provided aid to these insurgents in El Salvador.⁴⁸ In response, President Reagan turned his efforts to training and equipping a clandestine group of fighters (irregular/

guerilla forces) called the "Contras" or "counterrevolutionaries."⁴⁹

The Reagan administration moved swiftly and openly operated training camps in Florida, California, and parts of the Southwest to train these anti-Sandinista paramilitary groups.⁵⁰ Additionally, President Reagan authorized the Central Intelligence Agency (CIA) to create a paramilitary force in Honduras.⁵¹ What began as a so-called "covert" operation quickly escalated as the CIA-led recruitment and training of the contras grew from 500 to 15,000 by 1984.⁵² Simultaneously, the U.S. military was engaged in "joint military maneuvers in Honduras and in naval 'exercises' off both Nicaraguan Coasts."⁵³ President Reagan was successful in funding these operations largely without an overt appropriation from Congress.⁵⁴ Instead, President Reagan was able to use a CIA contingency fund as well as DoW funds to support the Contras.⁵⁵

El Salvador

The civil war in El Salvador dates back decades, but tensions escalated in 1980 when radical groups within El Salvador aligned with the Faribundo Marti National Liberation Front (FMLN).⁵⁶ The combined group consisted of guerrilla forces of roughly 12,000 fighters.⁵⁷ President Reagan feared that the Soviet Union would see the potential overthrow of the government in El Salvador as an opportunity to spread communism throughout Central America.⁵⁸

Thus, as the events were unfolding in Nicaragua during the early 1980s, the United States deployed a mix of Army Special Forces and conventional forces as military advisors to train and equip El Salvadoran forces.⁵⁹ This IW mission set was twofold: counter-insurgency and foreign internal defense.⁶⁰ Mainly, the advisors were tasked to train the El Salvadoran forces in order to combat the insurgents within their country and ultimate-



Soldiers from 40th Engineer Battalion, 2d Brigade Combat Team, 1st Armored Division, Task Force Eagle, prepare an explosive charge to destroy a confiscated Serbian Army BOV-VP Wheeled Armored Personnel Carriers (APC) on 19 October 1996 during Operation Joint Endeavor. (Source: National Archives)

ly prevent the country's collapse.⁶¹ What became known as the Military Advisory Group consisted of both SOF and conventional forces, which were broken down into functional areas.⁶² For example, the small unit training teams provided garrison support for the Salvadoran quick-reaction force, while the mobile training teams provided administrative and logistical support to the group.⁶³ Overall, the Military Advisory Group helped reshape the Salvadoran forces into a professional force, which was able to combat the insurgent forces of the FMLN and prevent the overthrow of its government.⁶⁴

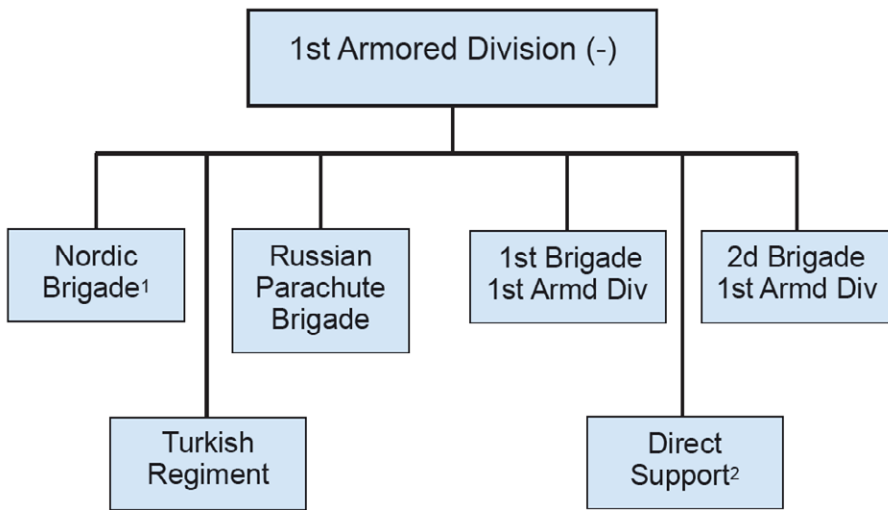
While the U.S. military was able to train, advise, and assist foreign forces in Central America, President Reagan's seemingly discretionary use of CIA and DoW contingency funds would have consequential effects on the DoW in the aftermath of the Cold War.

The criticism of the foreign assistance efforts in South America was only heightened in both the national and international media, resulting in the infamous Iran-Contra scandal.⁶⁵ The ensuing congressional testimony revealed "the scope of the Administration's [apparent] deceit in circumventing the congressional ban on military aid to the contras."⁶⁶

Additionally, the scandal highlighted "how dangerous it can be when the Government seeks to avoid constitutional constraints by allowing a group of freewheeling private operatives to conduct a secret foreign policy with American weapons and funds."⁶⁷ In response, Congress would begin to severely limit the President's ability to use the DoW to fund foreign forces.⁶⁸ This began with appropriation restrictions known as the Boland Amendments, which initially

prohibited the use of DoW funds to "support any group or individual for the purpose of overthrowing the Sandinistas."⁶⁹ This was just the beginning of further congressional oversight and heightened scrutiny on DoW funding. The next several years would bring about more appropriation restrictions from Congress.⁷⁰ Thus, as alluded to earlier, the executive's previous ability to spend DoW funds with minimal oversight is a thing of the past. Now, in 2025, it would not be prudent to repeat past mistakes and act without positive authority from Congress. Doing so would only result in further congressional oversight and restrictions. After the sweeping restrictions from the Iran-Contra scandal were implemented, IW campaigns in the 1990s shifted from training and equipping foreign forces to conducting stability operations in Bosnia and Somalia.

Organization of Task Force Eagle



¹ Consisted of infantry, mechanized, military police, transportation, and engineer units from seven nations.

² Consisted of artillery, combat support, and combat service support units drawn mostly (but not exclusively) from the 1st Armored Division and spread between Bosnia and Hungary.

Source: R. CODY PHILLIPS, U.S. ARMY CTR. MIL. HIST., BOSNIA-HERZEGOVINA: THE U.S. ARMY'S ROLE IN PEACE ENFORCEMENT OPERATIONS 1995–2004, at 20 (2005).

Bosnia

Shifting from counterinsurgency and foreign internal defense, the peacekeeping mission in Bosnia in the 1990s serves as a prime example of U.S. conventional forces conducting stability operations, another key IW mission set.⁷¹ Stabilization in this context is defined as “an inherently political endeavor that requires aligning U.S. Government efforts—diplomatic engagement, foreign assistance, and defense—to create conditions in which locally legitimate authorities and systems can peacefully manage conflict and prevent violence.”⁷²

After the collapse of the Soviet empire, many republics opted to secede from the non-aligned Socialist Federal Republic of Yugoslavia.⁷³ Among these seceding republics was Bosnia-Herzegovina.⁷⁴ While these secessions were often met with violence, the greatest destruction occurred in Bosnia-Herzegovina during a civil war that lasted more than three years (1992–1995).⁷⁵ In response, a peace agreement was signed in December 1995 that allowed the North Atlantic Treaty Organization (NATO) to enforce peacekeeping operations in Bosnia-Herzegovina.⁷⁶ As part of this mission, the United States deployed

around 20,000 military personnel to conduct stability operations in the region.⁷⁷ The bulk of the U.S. forces consisted of the 1st and 2d Brigades of 1st Armored Division (see above chart).⁷⁸ Designated as Task Force Eagle, the forces would deploy in support of Operation

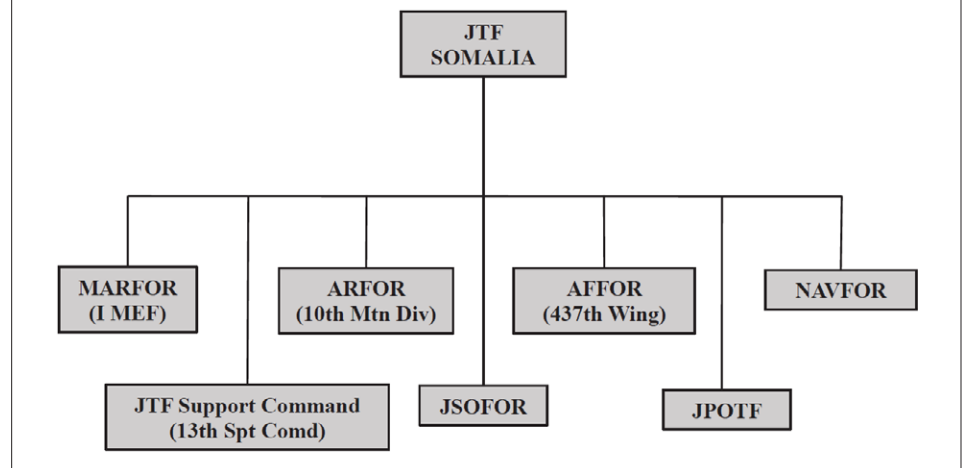
Joint Endeavor, the first of three stability and peacekeeping operations.⁷⁹

The initial task of Task Force Eagle was to “separate the former warring factions into their respective areas and establish a zone of separation.”⁸⁰ Once the zones were established, the task force set about on its peacekeeping mission by setting up checkpoints and patrolling through the designated zones.⁸¹ These peace enforcement operations were “atypical military campaigns.”⁸² As opposed to traditional armed conflict, “political and diplomatic issues significantly influenced the Army’s actions and created an inverted role in which the absence of fighting was the measurement of success.”⁸³ Overall, the stability operations were a success and largely led by the U.S. Army’s conventional forces throughout the entire campaign.

Somalia

During Operation Restore Hope, U.S. conventional forces were once again called to conduct stability operations in Somalia from 1992 to 1993.⁸⁴ As the organization chart depicts, Joint Task Force (JTF) Somalia consisted largely of conventional forces across the Services, including the U.S. Marine Corps’ I Marine Expeditionary Force (I MEF), the U.S. Army’s 10th Mountain Division (Light Infantry), the U.S. Air Force’s 437th Wing, and the U.S. Navy’s Ranger Carrier Battle Group.⁸⁵ The Unified Task Force (UNITAF) operation was conducted under a

Organization of JTF Somalia 1992-1993



Source: COLONEL GLENN M. HARNED (RETIRED), PEACEKEEPING & STABILITY OPERATIONS INST., STABILITY OPERATIONS IN SOMALIA 1992-1993: A CASE STUDY 33 (July 2016).

United Nations (U.N.) mandate, which was unprecedented.⁸⁶ The U.N. Security Council opted to intervene in another country's affairs without receiving any request from the country itself.⁸⁷

The call to action in Somalia can be attributed to the ongoing civil war between different factions and clans within the country, as well as a severe famine and drought.⁸⁸ All of this resulted in a war-torn country filled with violence and starvation.⁸⁹ In other words, a major humanitarian crisis that caught the attention of the U.N. and the United States.

Thus, on 5 December 1991, JTF Somalia received its operation order from U.S. Central Command.⁹⁰ The JTF was tasked with securing the major relief distribution sites in Somalia and providing security throughout the area of operations.⁹¹ This was to enable unimpeded relief operations by U.N. forces conducting humanitarian aid. Once secure relief efforts could be readily established, the U.S.-led task force would slowly transition the security effort to U.N. forces.⁹² By January 1993, the JTF commander declared that the task force had accomplished its mission.⁹³ Thus, on 4 May 1993, the United States transferred responsibility to the U.N.⁹⁴

Iraq

Operation Iraqi Freedom (OIF) provides a recent example of conventional forces conducting IW.⁹⁵ During OIF, U.S. forces earned a decisive victory over the Iraqi Army in what can properly be classified as a large-scale combat operation (LSCO).⁹⁶ After swiftly removing Saddam Hussein from power, these same conventional forces shifted their efforts to stability operations.⁹⁷ This transition is rooted in the U.S. Army doctrine of “transferring responsibility for security and governance to legitimate authorities.”⁹⁸ However, after the overthrow of Saddam Hussein, an insurgency quickly grew and once again shifted the nature of the fight.⁹⁹ Now, U.S. conventional forces were having to conduct counterinsurgency.¹⁰⁰ Counterinsurgency operations were something U.S. conventional forces had not engaged in since Vietnam. The former Vice Chief of Staff of the Army, General Jack Keane, highlighted this concern, noting,

I think we codified the major tenets of the counterinsurgency we learned and

it was in our memory up until 1975. When the [Vietnam] war ended we purged it from our lexicon and put the doctrine we had developed on the shelf and embraced war against the Warsaw Pact and Soviet Union.¹⁰¹

Moreover, conventional forces had to grapple with more than just counterinsurgency in Iraq. U.S. conventional forces were responsible for training and equipping the newly reformed Iraqi Army in what became known as “Security Force Assistance” (SFA).¹⁰² As discussed earlier, SFA is not a new concept for conventional forces, as seen in Vietnam and Central America. However, since that time, SOF have taken the lead on training and equipping foreign forces.¹⁰³ As noted by then-Secretary of Defense Robert M. Gates in an address to Army leaders, “The standing up and mentoring of indigenous arm[ies] and police—once the province of Special Forces—is now a key mission for the military as a whole.”¹⁰⁴ However, this task was not feasible for SOF to take on alone due to the size of the efforts in both Iraq and Afghanistan.¹⁰⁵ Thus, as noted in a report by John Nagl and Marshall Cooperman, “In Iraq and Afghanistan, the train, advise, and assist mission fell to the Regular Army for the first time in decades.”¹⁰⁶ As for funding, a key finding from Nagl and Cooperman’s report showed that “[m]uch of the SFA effort was conducted in an ad hoc manner, without sufficient funding or strategic prioritization.”¹⁰⁷ Thus, over the next several years, Congress would provide the DoW with various “ad hoc” fiscal authorities passed through “various annual authorizations.”¹⁰⁸

Train, Equip, and Support Foreign Forces: The Operational and Fiscal Authorities

“In order to fund any task, mission, or operation, the [DoW] (and the executing unit) must have the following: (1) operational authority, (2) funding authority, and (3) proper funds.”¹⁰⁹ Operational authority generally “flows” from the Combatant Commander’s (COCOM’s) authority in their area of responsibility.¹¹⁰ Specifically, 10 U.S.C. § 164 states that COCOMs are “directly responsible to the Secretary [of War] for the preparedness of the command to carry out missions assigned to the command.”¹¹¹ In

common practice, the President, through the Secretary of War (SecWar), authorizes the mission, which is later conveyed through the Chairman of the Joint Chiefs of Staff (CJCS) in an execute order (EXORD) to the relevant COCOM.¹¹² However, as noted above, operational authority is just one requirement prior to executing the mission. The mission must still be paid for, which means Congress must appropriate the funds for that particular purpose.¹¹³

The appropriations are what give Congress the necessary checks and balances on the executive and are traced back to the U.S. Constitution.¹¹⁴ Article 1 authorizes Congress to “provide for the common Defence and general Welfare of the United States.”¹¹⁵ Furthermore, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”¹¹⁶ Thus, before the President can direct troops to execute a given operation, the executive branch (e.g., President, DoW, etc.) must first point to a positive statutory authority (i.e., appropriation) before expending any funds. This is especially applicable to the often-muddled area of foreign assistance.

The general rule is that foreign assistance falls within the purview of the Department of State (DoS).¹¹⁷ The Foreign Assistance Act of 1961 grants the DoS the primary responsibility and authority to conduct foreign assistance on behalf of the United States.¹¹⁸ However, there are two exceptions to this general rule: (1) interoperability, safety, and/or familiarization training (commonly referred to as “little t training”) or (2) pursuant to a specific statutory appropriation or authorization by Congress.¹¹⁹

“Little t” Training

“Little t” training is derived from prior Government Accountability Office (GAO) opinions.¹²⁰ From those opinions, the DoW is now allowed to use its Operations and Maintenance (O&M) funds to train foreign forces if the primary purpose of the training is “Interoperability, Familiarization, and Safety [interoperability training] of the foreign troops” operating with U.S. forces in advance of a combined exercise.¹²¹

The big shift began in 1984 when Representative William Alexander asked the Comptroller General of the GAO for its opinion after a major DoW exercise in Hon-



U.S. Army Advisors with Force Package 25-1, 54th Security Force Assistance Brigade, train alongside Albanian Armed Forces, Kosovo Security Force soldiers, and New Jersey National Guard Soldiers during Exercise Immediate Response 25 in Albania. (Credit: CPT Aaron Blevins)

durans.¹²² From 1983 to 1984, approximately 12,000 U.S. military personnel participated in this exercise in Honduras.¹²³ The primary concern of Rep. Alexander was that the DoW misused its O&M funds to pay for large-scale construction projects, humanitarian assistance, and extensive training with its Honduran counterparts.¹²⁴

In 1984, the Comptroller General issued an opinion stating that the DoW “clearly does not have unlimited discretion in determining which activities may be financed with O&M funds.”¹²⁵ The big takeaway from the opinion is that the DoW cannot simply train and equip foreign forces using its O&M funds unless it has specific statutory authorization from Congress or the training is informal (e.g., interoperability training).¹²⁶ For example, U.S. forces training a foreign country’s airborne qualified soldiers on a

specific type of parachute ahead of a combined exercise would likely be classified as interoperability/familiarization or “little t” training.¹²⁷ On the other hand, U.S. forces setting up a three-week airborne school to qualify foreign forces as paratroopers would likely be seen as foreign assistance or “big T” training.¹²⁸

Statutory Appropriation or Authorization

Four general categories of appropriations and/or authorizations for DoW-funded foreign assistance exist: “(1) Support to Security Cooperation and Foreign Partners; (2) Overseas Contingency Operations (OCO) and Authorities that Enable Operations; (3) Humanitarian Assistance; and (4) Special Payment Authorities.”¹²⁹ As it pertains to IW, the most relevant appropriations and

authorizations involve (1) and (2) respectively: Support to Security Cooperation and Foreign Partners and OCO/Authorities that Enable Operations.

Security Cooperation: Traditional Combatant Commander Activities

One of the most common Traditional Combatant Commander Activities (TCAs) involves U.S. military interaction with foreign military forces on behalf of the geographic combatant commander (GCC) in furtherance of their campaign plan.¹³⁰ These interactions are commonly referred to as military-to-military (M2M) contacts.¹³¹ This responsibility is nested within the responsibilities given to COCOMs in 10 U.S.C. § 164 and funded as traditional combatant command activities via Service component command O&M funds.¹³²



U.S. Army Green Berets assigned to 3rd Special Forces Group (Airborne) discuss future Joint Combined Exchange Training opportunities with Tunisian Army special operations soldiers at Camp Mackall, North Carolina. (Credit: PFC Edgar Martinez)

Security Cooperation: Training with Friendly Forces

One of the most commonly utilized fiscal authorities for both conventional forces and SOF is the authority for U.S. forces to conduct training in a friendly foreign country with that country’s foreign forces. In 1991, Congress authorized SOF the ability to train with foreign partners in a program called the Joint/Combined Exchange Training (JCET) Program.¹³³ Congress provided conventional U.S. forces with the same fiscal authority to train with the military forces of a friendly foreign country as part of section 1203 of the 2014 NDAA.¹³⁴ In an effort to consolidate and systematize these DoW foreign assistance authorities, Congress codified the “Training with Friendly Foreign Forces” authority as 10 U.S.C. § 321 for conventional forces and 10 U.S.C. § 322 for SOF and its JCETs.¹³⁵

The key word in the language of both statutes is training “with” friendly foreign forces. The intent behind the statutes is U.S.

military readiness and, thus, the purpose of both authorities is to train and benefit U.S. forces.¹³⁶ Therefore, these training plans are centered on the U.S. forces’ mission-essential tasks.¹³⁷ This does not preclude foreign forces from receiving an incidental benefit as part of the training, but the primary beneficiary must be U.S. forces in order to satisfy the purpose requirement.¹³⁸ The statutes permit the COCOM to pay for training the U.S. forces assigned to the command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country; expenses of deploying the U.S. forces for that training; and incremental expenses incurred by the friendly developing foreign country incurred because of the training.¹³⁹

Security Cooperation: Building Partner Capacity

The authority to build the partner capacity (BPC) of a foreign security force is a train and equip authority codified in

10 U.S.C. § 333 (commonly referred to as “Triple Three”).¹⁴⁰ Triple Three grants the DoW (both conventional forces and SOF) “the ability to ‘build the capacity’ of foreign military forces in support of Security Cooperation and Overseas Contingency Operations.”¹⁴¹ As a legislative constraint, Congress specifically enumerated nine purposes for which the DoW is permitted to build the capacity of a partner force.¹⁴²

Similarly, Leahy Vetting is required before DoW can support a partner force under the Triple Three Program.¹⁴³ Triple Threes are funded with O&M funds appropriated by Congress in the annual DoW appropriations law.¹⁴⁴ The approval authority for Triple Threes is SecWar, with Secretary of State concurrence and congressional notification at least fifteen days before implementation.¹⁴⁵

Triple Three funds are certainly a great step in allowing conventional forces to train and equip foreign forces, however, it has its limitations in an IW context. The

major restriction is that 10 U.S.C. § 333 limits funding to the country's "national security forces."¹⁴⁶ This limitation precludes conventional forces from training and equipping irregular forces, groups, and individuals, which are often the primary training audience in IW.¹⁴⁷ Furthermore, the training and equipping of these forces must meet one of the nine enumerated mission sets of the statute (e.g., counterterrorism, counter-weapons of mass destruction).¹⁴⁸ Thus, while Triple Three is applicable to conventional forces, the statute's limitations severely restrict conventional forces' ability to effectively contribute to IW. The authorities in the next two sections address authorizations and appropriations for OCO funds/authorities to enable operations. Of note, both of the authorities discussed next are limited to SOF.

SOF-Specific Authorities that Enable Operations: 10 U.S.C. § 127e

As part of section 1208 of the 2005 NDAA, Congress authorized SecWar to expend up to \$25,000,000 to "provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States [SOF] to combat terrorism."¹⁴⁹ This authorization came in response to the years-long frustration that SOF experienced at the early stages of the war in Afghanistan.¹⁵⁰

Shortly after the terrorist attacks on September 11, 2001, members of the U.S. Army Special Forces, commonly referred to as Green Berets, paired with members of the CIA in Afghanistan.¹⁵¹ While the Green Berets were tasked with an unconventional warfare campaign, their efforts were greatly frustrated due to a lack of fiscal authority to train and equip the Afghans.¹⁵² After years of legislating, the passage of this authority allowed SOF to train and equip the irregular/proxy forces in Afghanistan.¹⁵³ Due to the success of the program, in 2017, Congress codified section 1208 of the NDAA as 10 U.S.C. § 127e.¹⁵⁴ This removed the need for continual reauthorization and increased SecWar's funding limit to \$100,000,000 annually.¹⁵⁵ Since its passage, 10 U.S.C. § 127e has been used to combat terrorism by supporting irregular forces in Niger, Libya, and Syria, among many other countries across the globe.¹⁵⁶

SOF-Specific Authorities that Enable Operations: 10 U.S.C. § 127d

Similar to 10 U.S.C. § 127e, the recently codified 10 U.S.C. § 127d (formerly section 1202 of the FY 2018 NDAA) allows SOF to train and equip foreign irregular forces.¹⁵⁷ Unlike 127e, 127d is not connected to counterterrorism, but rather to provide "support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing and authorized [IW] operations by [SOF]"¹⁵⁸ The statute goes on to provide its own definition of IW: DoW activities "not involving armed conflict that support predetermined United States policy and military objectives conducted by, with, and through regular forces, irregular forces, groups, and individuals."¹⁵⁹

Just as SOF identified its lack of fiscal authority in the early days of Afghanistan, U.S. military leaders determined that a similar authority was needed in the era of great power competition. In 2016, Major General (MG) Mark Schwartz was the commander of Special Operations Command – Europe (SOCEUR), which oversaw all special operations in the European theater.¹⁶⁰ During this time, Russia was in conflict in eastern Ukraine.¹⁶¹ In an effort to assist irregular or proxy forces in the area, MG Schwartz and his staff identified a gap in fiscal authorities.¹⁶² Specifically, there was no statute that permitted SOF to train and equip these irregular forces in Ukraine.¹⁶³ The operation was not tied to counterterrorism; therefore, 10 U.S.C. § 127e was off the table. This led the SOCEUR staff to draft a legislative proposal, similar to 10 U.S.C. § 127e, but not tied to counterterrorism.¹⁶⁴

This proposal would eventually come to fruition, albeit with some modifications, as the authorization was approved in section 1202 of the FY 2018 NDAA.¹⁶⁵ The Senate Armed Services Committee report noted that "adversarial nations are becoming more aggressive in challenging U.S. interests and partnerships and destabilizing regional order through the use of asymmetric means that often fall below the threshold of traditional armed conflict, often referred to as the 'grey zone.'"¹⁶⁶ Thus, Congress recognized the growing need to fund these partnerships through asymmetric means in great power competition. Section 1202 would be codified as 10 U.S.C. § 127d in

December of 2023 with the passage of the FY24 NDAA.¹⁶⁷

Because 10 U.S.C. § 127d was modeled after 10 U.S.C. § 127e, it is not surprising that much of both statutes' language is similar. However, a big difference, aside from the IW-versus-counterterrorism language, is the type of conflict (or lack thereof) in which the funds can be used.¹⁶⁸ By the definition of IW in 10 U.S.C. § 127d, this authority only applies to "[DoW] activities not involving armed conflict."¹⁶⁹ Thus, if and when competition escalates to armed conflict, the United States will likely need additional authorization to continue to train and equip foreign forces.¹⁷⁰ That is a separate discussion and not the focus of this article. Regardless of the type of conflict, 10 U.S.C. § 127d still leaves conventional forces at the window looking in towards the IW fight.

Expansion of IW Fiscal Authority to Conventional Forces

As emphasized in the *IW Annex*, the DoW must "[s]ustain IW as a core competency for the entire Joint Force, not just [SOF]."¹⁷¹ However, in order to truly sustain IW as a core competency, Congress must provide conventional forces with similar authority to train and equip foreign and irregular forces as their SOF counterparts. Failing to do so will likely result in the overuse of SOF and, more importantly, "reinforce or create additional seams in U.S. capabilities to respond to the current and future operating environments."¹⁷²

In the age of great power competition, presence is essential.¹⁷³ However, the United States cannot sustain a prolonged presence in all areas of the world.¹⁷⁴ Such a measure requires cooperation and engagement with not only our partners and allies, but also the other irregular forces that will certainly be called upon to resist a near-peer threat.¹⁷⁵ These engagements can take many forms, with one being the training and provision of weapons and weapons systems to these foreign forces before conflict ensues.¹⁷⁶ However, these engagements cannot be a "SOF-centered endeavor."¹⁷⁷ As the former commander of Special Operations Command (SOCOM), General Richard Clarke, recently testified, "[T]he threats posed by violent extremism remain the primary focus of [SOF] (60 per-

cent of deployed forces) as opposed to [Great Power Competition (GPC)] (40 percent).¹⁷⁸ General Clarke further asserts that “[e]ven if [SOF] were 100 percent committed to GPC, their size and need for dwell time, for example, would not allow them to optimize U.S. engagement across these activities.”¹⁷⁹ Thus, conventional forces must also conduct IW to further these engagements.

Make no mistake, SOF will always play a key role in IW.¹⁸⁰ “Their training, experience, and capabilities will make them the forces of choice for sensitive activities, particularly when a light footprint and low-visibility approach are required.”¹⁸¹ However, in competition, not all of these engagements are low-visibility, nor should they be in many cases.¹⁸²

For example, China is the pacing threat to the United States.¹⁸³ As noted in the 2026 *National Defense Strategy*, “China is already the second most powerful country in the world—behind only the United States—and the most powerful state relative to us since the nineteenth century.”¹⁸⁴ Unlike many of the disparate terrorist organizations the United States fought in the Middle East, China’s influence encompasses much of the Indo-Pacific region.¹⁸⁵ Of the seven GCCs, the Indo-Pacific Command is by far the largest, comprising thirty-eight nations.¹⁸⁶

China’s historic military buildup maintains far-reaching capabilities that extend beyond the Western Pacific.¹⁸⁷ Thus, going back to General Clarke’s point, SOF alone cannot fully optimize the United States’ engagement and presence across this vast area of responsibility. Conventional forces will also need to conduct IW by training and equipping both regular and irregular forces of our allies in order to deter near-peer threats such as Russia and China. For example, this support could be in the form of sending a light infantry company to train with troops in Taiwan or the Philippines.¹⁸⁸

Regardless of the unit or operational mechanism employed, conventional forces require the necessary fiscal authority to conduct these IW operations now, in competition, to set the conditions for success in the event of conflict. This section thus provides several proposals for Congress to level the playing field and permit conventional forces to support their foreign partners in ongoing IW operations.

Amend the Existing 10 U.S.C. § 127d
One option is for Congress to simply amend 10 U.S.C. § 127d by removing the phrase “Special Operations” in subsection (a) and inserting “U.S. Forces.”¹⁸⁹ This would be the simplest fix, and a persuasive argument can be made for such a change. In fact, nowhere in the definition of IW, as defined within the statute itself, does it specifically mention special operations. Instead, IW is simply defined as “[DoW] activities not involving armed conflict that support predetermined United States policy and military objectives conducted by, with, and through regular forces, irregular forces, groups, and individuals.”¹⁹⁰

One concern with this approach is the potential conflict that such a broad authorization could create between conventional forces and SOF. Any experience in the military will quickly reveal the territorial nature that commanders, units, and organizations maintain within their area of operations.¹⁹¹ Terms such as “battlespace owner” and “subject-matter expert” give a glimpse into the potential friction that could develop when both forces are permitted to conduct IW in this context. One may argue that this is the precise reason we have specializations within the military.

Additionally, simply amending the statute as-is would leave it to the respective units (conventional and SOF) to de-conflict between themselves.¹⁹² One can foresee the logistical, administrative, and even operational headaches this would create if both units were able to operate in a vacuum. More importantly, this type of friction would run counter to the the *IW Annex*’s intent of seamlessly integrating conventional forces and SOF in IW.¹⁹³

Enact New Legislation for Conventional Forces to Support Foreign Forces in IW

Congress could pass a new statute permitting only conventional forces to conduct IW. In other words, Congress could enact a similar statute to 10 U.S.C. § 127d, but make it only applicable to conventional forces. Additionally, Congress would have the ability to place some limitations on conventional forces with a new statute. For example, Congress could limit the use of conventional forces to specific IW missions, such as stability operations, as opposed to counterinsurgency. On the other hand, Congress could limit the

particular foreign force that conventional units support (e.g., support to regular forces, but not irregular forces).

After all, Congress may have been very deliberate in tailoring 10 U.S.C. § 127d to apply only to SOF.¹⁹⁴ Therefore, amending the existing statute would go against Congress’s intent when it passed section 1202.¹⁹⁵ Again, by, with, and through activities are traditionally executed by SOF units.¹⁹⁶ Thus, Congress could enact new legislation in the IW realm that is specifically geared toward conventional forces and their capabilities.

However, this option also presents issues. Congress may be hesitant to pass new legislation for conventional forces to conduct IW on its own—a mission set historically considered to be within SOF’s purview and expertise.¹⁹⁷ There is some historical evidence to support this thinking in the legislative history of 10 U.S.C. § 127d.¹⁹⁸ In its report accompanying section 1202, the Senate Armed Services Committee noted that “the ability of U.S. SOF to conduct low-visibility, IW operations in politically sensitive environments make them uniquely suited to counter the malign activities of our adversaries in this domain.”¹⁹⁹

Additionally, in 10 U.S.C. § 321, the “Training with Friendly Foreign Forces” statute, Congress specifically limited U.S. conventional forces to train “only with the military forces of a friendly foreign country.”²⁰⁰ Congress placed no such limitation on SOF, which is permitted to train with either “the military forces or other security forces of a friendly foreign country.”²⁰¹ Thus, Congress may be unconvinced that conventional forces, on their own, can properly and effectively train and equip foreign forces in IW.

Draft a New Statute that Enables Conventional Forces to Train and Equip Foreign Forces, but Only when Accompanying or in Coordination with SOF

A third option would be to enact new legislation granting conventional forces the authority to support foreign forces, but with checks and balances by SOF units on the ground. Specifically, conventional forces would only be able to train and equip foreign and irregular forces when accompanying SOF. Further parameters can be added to



A U.S. Soldier (left), assigned to Logistics Company Advising Team 6640 of 6th Battalion, 54th Security Force Assistance Brigade, adjusts a day/night laser sight for a Djiboutian soldier (right), assigned to Bataillon d'Intervention Rapide Bataillon d'Intervention Rapide at Goubet Range, Djibouti. (Credit: SFC Shane Klestinski)

or substituted for the word “accompany,” such as “attached to” or “supporting.” By inserting the requirement that conventional forces must be accompanying, attached to, or otherwise supporting SOF, conventional forces would be limited from arbitrarily supporting any and all foreign forces or irregular forces during an IW operation.

From a logistical standpoint, conventional forces may not always be physically co-located with their SOF counterparts. Thus, the new legislation could add a notification and concurrence requirement to the pertinent SOF commander before conventional forces are allowed to execute. This notification is generally presented through a concept of operations (CONOP), which is staffed through the various echelons for review, concurrence, and ultimate approval.²⁰² This specific notification could go as high as the SOCOM Commander. On the other hand, the notification could go to a lower command level, such as the respective SOF component command (e.g., U.S. Army Spe-

cial Operations Command) or the relevant Theater Special Operations Command (e.g., Special Operations Command Pacific).

Regardless of the level of commander, the notification and concurrence requirement ensures that SOF is kept in the loop and has eyes on any such IW operation conducted by conventional forces. Furthermore, a notification and concurrence requirement is certainly not a novel concept. Many CONOPs require notification or concurrence from different levels of command or different stakeholders. For example, all proposed 10 U.S.C. § 333 (Triple Three) operations require the Secretary of State’s concurrence before execution.²⁰³ Moreover, SecWar must also coordinate with the Secretary of State on any proposed Triple Three program.²⁰⁴ Therefore, similar to the Triple Three program’s structure, Congress can impose safeguards with notification, concurrence, and coordination requirements between conventional forces and SOF prior to execution.

In review, the third option seems to strike the right balance of enabling conventional forces to support IW operations while providing oversight from the traditional, and often more experienced, IW actors in SOF. First, from a realistic viewpoint, it is unlikely that Congress would pass any new legislation or amend existing legislation giving conventional forces unlimited discretion to conduct IW. It is clear from the legislative history of 10 U.S.C. § 127d that Congress identified SOF as the right fit for training and equipping irregular forces due to its unique capabilities.²⁰⁵ While Congress might be amenable to giving conventional forces limited authority, it is doubtful they would grant this authority outright. Therefore, Congress is not likely to pass the first two options discussed.

Second, granting conventional forces this authority without any SOF oversight would likely be a rush to failure. This is not to say that conventional forces are not capable of training and equipping foreign forces

engaged in IW. History has shown that conventional forces have been successful in this endeavor.²⁰⁶ However, the issue is that those previous campaigns occurred decades ago (e.g., Vietnam, the Cold War).²⁰⁷ Conventional forces were not prepared to conduct SFA in Afghanistan and Iraq as this skill set had atrophied since the end of the Vietnam War.²⁰⁸ This responsibility was thrust onto the conventional units out of necessity, but they lacked the training and resources.²⁰⁹ Therefore, the third option would ensure that conventional forces are eased into this responsibility as they would work alongside and coordinate with SOF. There may be a point in time when conventional forces can execute this unilaterally. However, at least initially, it is best to take a phased approach, or in Army methodology, a “crawl, walk, run” method.²¹⁰

Conclusion

As history has shown, IW is not a novel concept. More importantly, IW is not solely the function of SOF. While SOF has often traditionally taken the lead in counterterrorism and unconventional warfare, these operations are not its “exclusive domain.”²¹¹ Conventional forces have regularly executed IW in past campaigns, whether unilaterally or in a support role to SOF.²¹² In the age of great power competition, which could escalate to conflict with near-peer adversaries, conventional forces will undoubtedly be called upon to execute IW. This will involve training and equipping our foreign partners to deter both internal and external threats. However, Congress must act swiftly to address the current gap in IW fiscal authority for our conventional forces. Failing to do so will place our conventional forces in the same position as our Green Berets during the early days of the war in Afghanistan.

Furthermore, this does not mean that conventional forces should be operating in a silo. As stated in the *IW Annex*, “Successful military contributions to [IW] require a deliberate and sustained integration of conventional and special operations capabilities.”²¹³ Thus, Congress should require close coordination between both forces to ensure that their respective capabilities are integrated and their efforts synchronized. Expanding the current authority will reinforce conventional forces’ longstanding role in supporting

and enabling SOF. After all, the fifth SOF Truth is that “most special operations require non-SOF support.”²¹⁴ Overall, Congress should enact new legislation that authorizes U.S. conventional forces to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing and authorized IW operations. **TAL**

MAJ Hall is a Student at the Command and General Staff College, United States Army, Fort Leavenworth, Kansas.

Notes

1. In September 2025, the President authorized “Department of War” as a secondary title to the Department of Defense. See Restoring the United States Department of War, Exec. Order No. 143457, 90 Fed. Reg. 43893 (Sep. 5, 2025). In accordance with this order and for the sake of clarity, all subsequent references to the department and secretary in this article will use Department of War (DoW), regardless of the historical period being discussed.
2. U.S. DEP’T OF DEF., SUMMARY OF THE IRREGULAR WARFARE ANNEX TO THE 2018 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA (2020) [hereinafter *IW ANNEX*], <https://media.defense.gov/2020/Oct/02/2002510472/-1/-1/0/Irregular-Warfare-Annex-to-the-National-Defense-Strategy-Summary.PDF> [<https://perma.cc/UGM8-NETP>].
3. *Id.* at 4.
4. See U.S. CONST. art. II, § 2, cls. 1–2; 10 U.S.C. §§ 113, 153, 164 (describing operational authority); see also U.S. CONST. art. I, § 9, cl. 7 (appropriations clause); 31 U.S.C. § 1301(a) (codifying what is known as the Purpose Statute governing appropriations); *United States v. MacCollom*, 426 U.S. 317, 321 (1976) (describing fiscal authority).
5. National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, sec. 1202, 131 Stat. 1283, 1639 (2017).
6. See National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, sec. 1201, 137 Stat. 136, 437 (2023) (codified as 10 U.S.C. § 127d (2023)).
7. See *IW ANNEX*, *supra* note 2, at 4 (providing a historical overview of conventional forces’ utilization in prior IW campaigns).
8. See Peter Raven-Hansen & William C. Banks, *From Vietnam to Desert Shield: The Commander in Chief’s Spending Power*, 81 IOWA L. REV. 79, 81–82 (1995).
9. See *IW ANNEX*, *supra* note 2, at 4 (“Conventional forces have executed, can execute, and even lead most IW missions.”).
10. JOINT CHIEFS OF STAFF, JOINT PUB. 1, VOLUME 1, JOINT WARFIGHTING, at vii (27 Aug. 2023) [hereinafter JP 1, VOL. 1].
11. ERIC V. LARSON ET AL., ASSESSING IRREGULAR WARFARE: A FRAMEWORK FOR INTELLIGENCE ANALYSIS 8 (2008) (“Until recently, DoD had no single approved definition of *irregular warfare*” (emphasis added)).

12. JOINT CHIEFS OF STAFF, DoD DICTIONARY OF MILITARY AND ASSOCIATED TERMS 98 (July 2024) (incorporating definition from JP. 1, VOL. 1, *supra* note 10).
13. See CATHERINE A. THEOHARY, CONG. RSCH. SERV., IF12565, DEFENSE PRIMER: WHAT IS IRREGULAR WARFARE? 1 (2024).
14. See *IW ANNEX*, *supra* note 2, at 4.
15. See *id.*; see also Captain B.J. Armstrong, *Counterinsurgency to the Shores of Tripoli*, PROCEEDINGS: U.S. NAVAL INST., no. 149 (Oct. 2023), <https://www.usni.org/magazines/proceedings/2023/october/counterinsurgency-shores-tripoli> (on file with The Army Lawyer) (discussing the U.S. Navy’s counterinsurgency campaign, short of full-scale armed conflict, against the Barbary corsairs at the start of the nineteenth century).
16. See *IW ANNEX*, *supra* note 2, at 4.
17. See *id.*
18. See Raven-Hansen & Banks, *supra* note 8, at 81–82.
19. Foreign Assistance Act of 1961, Pub. L. No. 87-195, sec. 451, 75 Stat. 424, 434 (codified as amended at 22 U.S.C. § 2151 *et seq.*).
20. Raven-Hansen & Banks, *supra* note 8, at 100; see Foreign Assistance Act of 1961, sec. 451, 75 Stat. at 434.
21. Raven-Hansen & Banks, *supra* note 8, at 99–100 (quoting 40 CONG. REC. 1283 (1906) (statement of Rep. Leonidas Livingston)).
22. See Major Christopher B. Rich, Jr. et. al., *By, with, and Through: Section 1202 and the Future of Unconventional Warfare*, 12 J. NAT’L SEC. L. & POL’Y 537, 566 (2022).
23. See Raven-Hansen & Banks, *supra* note 8, at 81–82.
24. See THEOHARY, *supra* note 13, at 1.
25. See *id.*
26. See *IW ANNEX*, *supra* note 2, at 4 (describing conventional forces executing stability operations in Bosnia and Somalia).
27. See Major Austin Wesley, *Bridging the Gap: Why Conventional Forces Need Irregular Warfare Training*, IRREGULAR WARFARE INITIATIVE (Oct. 10, 2024), <https://irregularwarfare.org/articles/bridging-the-gap-why-conventional-forces-need-irregular-warfare-training/> [<https://perma.cc/4GV8-FHLH>].
28. See Major Gregory P. Escobar, *A Strategy of Attrition: Why General Westmoreland Failed in 1967*, at 2 (2016) (Command & Gen. Staff Coll., Sch. of Advanced Mil. Stud.), <https://apps.dtic.mil/sti/tr/pdf/AD1021964.pdf> [<https://perma.cc/V4FE-DQ6P>].
29. Wesley, *supra* note 27.
30. JOINT CHIEFS OF STAFF, JOINT PUB. 3-22, FOREIGN INTERNAL DEFENSE, at I-1 (17 Aug. 2018) (Validated 2 Feb. 2021).
31. Wesley, *supra* note 27.
32. See Ismael Fournier, *Hybrid Warfare in Vietnam: The U.S. and South Vietnamese Success Against the Viet Cong Insurgency*, MARINE CORPS HIST., no. 1, 2021, at 64, 71.
33. MAJOR D.W. CARR, THE CIVILIAN IRREGULAR DEFENSE GROUP IN VIETNAM: CIVIL DEFENSE FORCES IN COUNTERINSURGENCY 3 (2019).
34. Wesley, *supra* note 27.
35. See Fournier, *supra* note 32, at 66.

36. *See id.*
37. *See* Wesley, *supra* note 27.
38. *See* IW ANNEX, *supra* note 2, at 4.
39. *Id.*
40. *See* Fournier, *supra* note 32, at 65.
41. *See* Wesley, *supra* note 27.
42. *See id.*
43. *See id.*
44. *See* Alexandra Chinchilla et al., *Irregular Warfare in Strategic Competition*, 24 DEFENCE STUD. 148, 149 (2024).
45. *See* Rich, Jr., et al., *supra* note 22, at 547.
46. *See* Chinchilla et al., *supra* note 44, at 149.
47. *See* THOMAS W. WALKER ET AL., REAGAN VERSUS THE SANDINISTAS: THE UNDECLARED WAR ON NICARAGUA 6 (1987).
48. *See* BUREAU OF PUB. AFFS., U.S. DEP'T OF STATE, SPECIAL REP. NO. 80, COMMUNIST INTERFERENCE IN EL SALVADOR I (Feb. 23, 1981).
49. *See* WALKER, *supra* note 47, at xiii.
50. *See id.* at 6.
51. *See id.*
52. *See id.* at 8.
53. *See id.*
54. *See* Raven-Hansen & Banks, *supra* note 8, at 92.
55. *See id.*; *see also* WALKER, *supra* note 47, at xiii (describing the different sources of funding to aid the contra forces).
56. *See* Major Paul P. Cale, *The United States Military Advisory Group in El Salvador, 1979-1992*, SMALL WARS J., 1996, at 1, 5, <http://archive.smallwarsjournal.com/documents/cale.pdf> [<https://perma.cc/HXQ3-M3U6>].
57. *See id.*
58. *See id.* at 7.
59. *See id.* at 12–13.
60. *See id.*; *see also* Rich, Jr., et al., *supra* note 22, at 547 (describing SOF's respective missions in Nicaragua and El Salvador).
61. *See* Cale, *supra* note 56, at 12–13.
62. *See id.*
63. *See id.*
64. *See id.* at 37–38.
65. George J. Church, *The Man Who Ran the Show*, TIME (May 18, 1987), <https://time.com/archive/6709232/the-man-who-ran-the-show> [<https://perma.cc/WY2R-4FZK>].
66. *Id.*
67. *Id.*
68. *See* Raven-Hansen & Banks, *supra* note 8, at 81–82.
69. *Id.* at 92; The Defense Appropriation Act for Fiscal Year 1983, Pub. L. No. 97-377, sec. 793, 96 Stat. 1830, 1865 (1982), provided that:
- None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras.
- Id.*
70. *See* Raven-Hansen & Banks, *supra* note 8, at 81–82.
71. *See* IW ANNEX, *supra* note 2, at 4.
72. U.S. DEP'T OF DEF., DIR. 3000.05, STABILIZATION para. 1.2(a) (Dec. 13, 2018); *accord* JOINT CHIEFS OF STAFF, JOINT PUB. 3-07, JOINT STABILIZATION ACTIVITIES para. 1(a) (11 Feb. 2022).
73. R. CODY PHILLIPS, U.S. ARMY CTR. MIL. HIST., BOSNIA-HERZEGOVINA: THE U.S. ARMY'S ROLE IN PEACE ENFORCEMENT OPERATIONS 1995–2004, at 3 (2005).
74. *See id.*
75. *See id.*
76. *See* JULIE KIM, CONG. RSCH. SERV., RL96-723, BOSNIA IMPLEMENTATION FORCE (IFOR) AND STABILIZATION FORCE (SFOR): ACTIVITIES OF THE 104TH CONGRESS I (1997).
77. PHILLIPS, *supra* note 73, at 16.
78. *Id.* at 19.
79. *See id.* at 3, 19.
80. *Id.* at 21.
81. *Id.*
82. *Id.* at 38.
83. *Id.*
84. *See* COLONEL GLENN M. HARNED (RETIRED), PEACEKEEPING & STABILITY OPERATIONS INST., STABILITY OPERATIONS IN SOMALIA 1992-1993: A CASE STUDY, at xi (July 2016).
85. *See id.* at 33.
86. *See id.*
87. *See id.*
88. *See id.* at 9–11.
89. *See* Stefano Recchia, *Pragmatism Over Principle: U.S. Intervention and Burden Shifting in Somalia, 1992-1993*, 43 J. STRATEGIC STUD. 341, 342–43 (Feb. 28, 2018).
90. *See* HARNED, *supra* note 84, at 33.
91. *See id.* at 37.
92. *See id.*
93. *See* Recchia, *supra* note 89, at 18.
94. *See id.* at 19.
95. Wesley, *supra* note 27.
96. *See* WALTER L. PERRY ET AL., OPERATION IRAQI FREEDOM: DECISIVE WAR, ELUSIVE PEACE, at xix (2015); *see also* Wesley, *supra* note 27 (describing OIF's genesis as a LSCO fight).
97. Wesley, *supra* note 27.
98. U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS para. 3-92 (21 Mar. 2025).
99. *See* PERRY ET AL., *supra* note 96, at xxv; *see also* Wesley, *supra* note 27 (discussing the insurgency's role in shifting the fight to counterinsurgency).
100. *See* PERRY, ET AL., *supra* note 96, at xxx; *see also* Wesley, *supra* note 27 (explaining how the insurgency disrupted stability operations).
101. Octavian Manea, An Interview with General Jack Keane, SMALL WARS J. (Apr. 5, 2011) [hereinafter General Keane Interview], <https://smallwarsjournal.com/2011/04/05/an-interview-with-general-jack-keane> [<https://perma.cc/PX4Z-3KHK>].
102. *See* John Nagl & Marshall Cooperman, *Advise, Assist, Enable: A Critical Analysis of the U.S. Army's Security Force Assistance Mission During the War on Terror*, FOREIGN POL'Y RSCH. INST., Sep. 17, 2024, at 7, 10; *see also* Wesley, *supra* note 27 (addressing how conventional forces were unprepared for the SFA mission).
103. *See* Nagl & Cooperman, *supra* note 102, at 7.
104. Robert M. Gates, U.S. Sec'y of Def., Address at the Kansas State University Landon Lecture Series (Nov. 26, 2007), <https://www.k-state.edu/landon/speakers/robert-gates/transcript.html> [<https://perma.cc/UB4A-52XK>].
105. *See* Nagl & Cooperman, *supra* note 102, at 7.
106. *Id.*
107. *Id.* at 6.
108. Rich, Jr., et al., *supra* note 22, at 561.
109. NAT'L SEC. L. DEP'T, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, OPERATIONAL LAW HANDBOOK 379 (2024) [hereinafter OPERATIONAL LAW HANDBOOK 2024].
110. *Id.*
111. 10 U.S.C. § 164.
112. Major Anthony V. Lenz, *Are We Allowed to Be There? Understanding Mission Authority in the Context of the Fatal Niger Ambush*, ARMY LAW., no. 2, 2019, at 38.
113. *See* U.S. CONST. art. I, § 9, cl. 7; *see also* 31 U.S.C. § 1301(a) (describing the appropriations clause); United States v. MacCollom, 426 U.S. 317, 321 (1976) (describing fiscal authority).
114. *See* Major Daniel W. Hancock, III., *Funding Surrogate Forces in the Fight Against Terrorism*, 228 MIL. L. REV. 22, 26 (2020).
115. U.S. CONST. art. I, § 8, cl. 1.
116. *Id.* art. I, § 9, cl. 7.
117. OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 379–80.
118. *See generally* Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 101, 75 Stat. 424, 434 (codified as amended in 22 U.S.C. § 2151 *et seq.*) (discussing the primary legislation governing U.S. foreign assistance programs and policies).
119. *See* OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 380.
120. *See generally* Propriety of Funding Methods Used by the Department of Defense in Combined Exercises in Honduras, B-213137, 63 Comp. Gen. 422 (1984) [hereinafter 1984 Alexander Opinion] (providing a comprehensive overview of DoW's improper use of operations and maintenance funds during a Honduran training exercise).
121. OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 380.
122. *See* 1984 Alexander Opinion, *supra* note 120, at 422–32.
123. *See id.*
124. *See id.*

125. *Id.* at 427.
126. *See id.*
127. *See* OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 380 (providing an example of “little t” and “big T” training).
128. *See id.*
129. *Id.* at 381.
130. *See* 10 U.S.C. § 164; OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 384.
131. *See* 10 U.S.C. § 164; *see also* 10 U.S.C. § 168 (2012) (repealed by National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, sec. 125, 130 Stat. 2000, 2033 (2016)) (original statute for M2M contacts).
132. 10 U.S.C. § 164.
133. *See* Rich, Jr., et al., *supra* note 22, at 560; *see also* 10 U.S.C. § 322 (authorizing SOF to train with friendly foreign forces).
134. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1203, 127 Stat. 672, 894 (2013).
135. *See* 10 U.S.C. §§ 311–352 (2018); *see also* Rich, Jr., et al., *supra* note 22, at 562 (explaining the codification of DoW’s foreign assistance authorities).
136. *See* 10 U.S.C. § 321; *see also* 10 U.S.C. § 322 (authorizing SOF to train with friendly foreign forces).
137. *See* 10 U.S.C. § 321; *see also* 10 U.S.C. § 322 (explaining the primary purpose of the statute is to train SOF).
138. *See* The Purpose Doctrine, 31 U.S.C. § 1301.
139. 10 U.S.C. §§ 321, 322.
140. *See id.* § 333.
141. OPERATIONAL LAW HANDBOOK 2024, *supra* note 109, at 386; 10 U.S.C. § 333.
142. *See* 10 U.S.C. § 333. Section 333 limits the type of operations to the following:
- (1) Counterterrorism operations;
 - (2) Counterweapons of mass destruction operations;
 - (3) Counter-illicit drug trafficking operations;
 - (4) Countertransnational organized crime operations;
 - (5) Maritime and border security operations;
 - (6) Military intelligence operations;
 - (7) Air domain awareness operations;
 - (8) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States;
 - (9) Cyberspace security and defensive cyberspace operations.
- Id.*
143. *See id.* (prohibiting assistance to units that have committed gross violations of human rights).
144. *Id.* § 333(g).
145. *Id.* § 333(a)-(b).
146. *See id.* § 333(a) (“The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries . . . for the purpose of building the capacity . . .”); *see also* 10 U.S.C. § 301(6) (defining national security forces as “[n]ational military and national-level security forces of the foreign country that have the functional responsibilities for which training is authorized in section 333(a)”).
147. *See id.*
148. *See id.*
149. National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, sec. 1208, 118 Stat. 1811, 2086 (2004).
150. *See* Hancock, III., *supra* note 114, at 24–25.
151. *See* Rich, Jr., et al., *supra* note 22, at 538.
152. *See* Hancock, III., *supra* note 114, at 25.
153. *See id.*
154. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, sec. 1203, 130 Stat. 2000, 2474 (2016) (codified as 10 U.S.C. § 127e (2018) and amended by National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, sec. 1031, 131 Stat. 1283, 1550 (2017)).
155. 10 U.S.C. § 127e.
156. *See* Rich, Jr., et al., *supra* note 22, at 564.
157. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, sec. 1201, 137 Stat. 136, 437 (2023) (codified as 10 U.S.C. § 127d).
158. 10 U.S.C. § 127d.
159. *Id.*
160. *See* SPECIAL OPERATIONS COMMAND EUROPE (USSOCOMEUR), <https://www.socom.mil/soceur> [https://perma.cc/6Q64-M3JA] (last visited Jan. 9, 2026).
161. *See* Victoria Butenko, Laura Smith-Spark & Diana Magnay, *U.S. Official Says 1,000 Russian Troops Have Entered Ukraine*, CNN (Aug. 29, 2014), <https://www.cnn.com/2014/08/28/world/europe/ukraine-crisis/index.html> [https://perma.cc/ME3A-UTH5].
162. *See* Rich, Jr., et al., *supra* note 22, at 566.
163. *See id.*
164. *See id.* at 566–67.
165. *See id.* at 567.
166. S. REP. NO. 115-125, at 257 (2017).
167. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, sec. 1201, 137 Stat. 136, 437 (2023) (codified as 10 U.S.C. § 127d).
168. *See* 10 U.S.C. § 127d; *see also id.* § 127e (explaining funding is limited to counterterrorism operations).
169. *Id.* § 127d.
170. *See* Rich, Jr., et al., *supra* note 22, at 577.
171. IW ANNEX, *supra* note 2, at 3.
172. Michael P. Noonan, *Not Just for SOF Anymore: Envisioning Irregular Warfare as a Joint Force Priority*, MOD. WARFARE INST. AT W. POINT (Apr. 21, 2021), <https://mwi.westpoint.edu/not-just-for-sof-anymore-envisioning-irregular-warfare-as-a-joint-force-priority> [https://perma.cc/X986-MBAH].
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*
183. *See* U.S. DEP’T OF WAR., 2026 NDS: NATIONAL DEFENSE STRATEGY 9–10 (2022) [hereinafter 2026 NDS].
184. *Id.* at 9.
185. *See id.* at 2.
186. U.S. INDO-PACIFIC COMMAND, <https://www.pacom.mil/About-USINDOPACOM/USPACOM-Area-of-Responsibility> [https://perma.cc/782Y-BH68] (last visited Jan. 9, 2026).
187. *See* 2026 NDS, *supra* note 183, at 9.
188. Noonan, *supra* note 172.
189. 10 U.S.C. § 127d.
190. *Id.*
191. JOINT CHIEFS OF STAFF, JOINT PUB. 1, VOL. 2, THE JOINT FORCE, at IV-7 to IV-14 (19 June 2020) (defining OPCON, TACON, ADCON, and general command relationship principles).
192. *See* 10 U.S.C. § 127d.
193. *See* IW ANNEX, *supra* note 2, at 4.
194. S. REP. NO. 115-125, at 257 (2017).
195. *See id.*
196. *See* IW ANNEX, *supra* note 2, at 3; *see also* Rich, Jr., et al., *supra* note 22, at 538 (describing one of SOF’s primary missions as by, with, and through activities).
197. *See* IW ANNEX, *supra* note 2, at 3.
198. S. REP. NO. 115-125, at 257 (2017).
199. *Id.*
200. 10 U.S.C. § 321(a)(2).
201. *Id.* § 322(a)(1).
202. JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, JOINT CAMPAIGNS AND OPERATIONS, at II-2 (18 June 2022).
203. *See* 10 U.S.C. § 333(b)(1) (“The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).”).
204. *See id.* § 333(b)(3).
205. *See* S. REP. NO. 115-125, at 257 (2017).
206. *See* IW ANNEX, *supra* note 2, at 4.
207. *See* Nagl & Cooperman, *supra* note 102, at 7.
208. General Keane Interview, *supra* note 101.
209. *See* Nagl & Cooperman, *supra* note 102, at 6–9.
210. U.S. DEP’T OF ARMY, FIELD MANUAL 7-0, TRAINING para. 3-4 (14 June 2021).
211. *See* Noonan, *supra* note 172.
212. *See* IW ANNEX, *supra* note 2, at 4.
213. *Id.*
214. *The SOF Truths*, U.S. SPECIAL OPERATIONS COMMAND, <https://www.socom.mil/about/sof-truths> [https://perma.cc/VRD2-7HE9] (last visited Feb. 10, 2026).



AROUND THE CORPS

PFC Nathaniel Wallace, completes the low crawl portion of the obstacle course during the Paralegal of the Year Competition, Eighth U.S. Army, Second Infantry Division, 19th Expeditionary Sustainment Command at Camp Humphreys, Korea. (Credit: KSGT Jun Seok Kang (ROK))



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