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U.S. Army Judge Advocate General's Corps

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## AROUND THE CORPS

LTC Sean Mahoney, a judge advocate currently serving as an exchange officer to the British Army Legal Services, presented remarks in Hinckley Memorial Garden, United Kingdom, on behalf of the U.S. Army to honor the lives of three U.S. Army Soldiers from the 82d Airborne Division on the eighty-second anniversary of their deaths. The three Soldiers died in Hinckley while training for the D-Day invasions. (Source: JAGCNet)

# The Army Lawyer

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Cover: LTC Earl Wilson, deputy staff judge advocate, 82d Airborne Division, stands in the Paratroop Door scanning for reference points ahead of the 2026 Law Day Airborne Operation over Fort Bragg, N.C. (Photo courtesy of SSG Landon Carter, USASOC)

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V Corps Warfighter 26-03. From left to right: CPT Conrad Sewinski (V Corps Forward); Capt Konrad Szczepański (Polish Legal Advisor); MAJ John Cooper (91st LOD); Capt Florean-Leonardo Stefan (Romanian Legal Advisor); LTC Nick Hurd (V Corps) (Photo courtesy of author).

# Court Is Assembled

## Warfighter 26-3: Warfighters Assemble

### Building a Multi-Component, Multi-National, Warfighting Team of Legal Professionals to Sharpen the Legal Edge in Large-Scale Combat Operations

*By Lieutenant Colonel Nicholas E. Hurd*

*"[W]hat matters most: advising commanders in the fight, on operations [and] in deployed environments where seconds and minutes count . . . . [A] focus on warfighting, military justice, operational law, the law of armed conflict, deployed contracting, intelligence law, and cyberspace . . . . Everything that sharpens the edge in large-scale combat." – Secretary of War Pete Hegseth*[1]

In March of 2026, V Corps, the only permanently forward-deployed Corps in the U.S. Army, completed Warfighter Exercise 26-3 (WFX 26-3). With the goal of increasing readiness and enhancing interoperability, WFX 26-3 tested V Corps's ability to fight in coordination with its higher headquarters and allied nations to certify the Corps as a warfighting headquarters ready for large-scale combat operations (LSCO) in the European theater.[2] WFX 26-3 ensured the Corps staff was trained and validated in the operations process and prepared to fight and win in a multinational environment against peer or near-peer threats. In the real world and in exercises, V Corps is uniquely positioned to enhance interoperability, rapid response capabilities, and fight as one team from multiple locations. For WFX 26-3, V Corps and its downtrace divisions pushed the boundaries of LSCO by operating in over six different locations around the world, which included the two primary V Corps staff locations, main command post (MCP) located in Poznań, Poland, at Camp Kościuszko (Camp K), and the rear command post (RCP) located at Fort Knox, Kentucky.[3]

The V Corps team consisted of judge advocates (JAs) and paralegals from all three components (COMPOs)—the active-duty Army teammates were from the V Corps Office of the Staff Judge Advocate (OSJA), its organic brigades (41st Fires Artillery Brigade, 2d Cavalry Regiment, and 12th Combat Aviation Brigade), its rotational division (3rd Infantry Division), and its downtrace units from 1st Armored Division and 1st Infantry Division. A large contingent of COMPO 2 teammates from the Alabama and Kentucky National Guards (NGs) joined the V Corps main at Fort Knox, Kentucky, and a JA from the Pennsylvania NG provided support to the 1st Lithuanian Division in Grafenwoehr, Germany. We also had the great support of our COMPO 3 teammates from the 91st Legal Operations Detachment (LOD) based out of Darien, Illinois. In addition, we had phenomenal support from military legal advisors (LEGADs) from the North Atlantic Treaty Organization (NATO) nations of Poland, Romania, and the United Kingdom (UK).

Each member of the WFX 26-3 team brought a unique perspective and breadth of experience to unite all members fighting as one team from two primary locations across the world, making the WFX 26-3 V Corps legal team truly exceptional.[4] The warfighting challenges the team faced and the legal solutions the team provided all simulated legal warfighters advising commanders in the fight under stress and urgency in a Europe-focused LSCO environment. Establishing a truly talented and effective team like the V Corps WFX 26-3 team required a great deal of planning, preparation, and training. We hope to provide you with some meaningful insight as to how to best assemble, train, and onboard your next warfighting team. This article also seeks to share lessons learned from the fight to sharpen the edge for future LSCO and any future LSCO fight involving multinational partners and allies.

> *The Judge Advocate General's (JAG) Corps Strategy Line of Effort – Readiness: "prioritizing our legal practice in support of warfighter readiness, improving integration and synchronization across JAG Corps components, and enhancing training and education for all [Judge Advocate Legal Services] members."*[5]

## Assembling the Team

Winning the before is key to warfighter success. Assembling the team began six months prior to WFX 26-3. With a strong relationship already established between the 91st LOD and the V Corps OSJA, our 91st LOD teammates were ready to engage in the preparation for WFX 26-3.[6] Six members of the 91st LOD augmented the V Corps OSJA for WFX 26-3. Three members fought from the RCP at Fort Knox and three fought from the MCP in Poland. Over the years, we have come to know many of our 91st LOD teammates well as they join us in exercises, training, and warfighters. Several have become well-known and beloved advisors among the corps staff, especially in the Joint Targeting Effects Cell (JTEC). In addition to the 91st LOD, NG team members were added to legal team early in the team formation process.[7] Having all three COMPOs together training and preparing for WFX 26-3 and then fighting together as one seamless team was a unique experience that truly demonstrated the strength of our JAG Corps's exceptional talent, expertise, and experience when integrated, synchronized and united in effort.

From our NATO allies, we had the privilege of working with three LEGADs from the UK, Poland, and Romania. Our LEGAD from the UK joined from the 3rd UK Division—the "Iron Division." Our Polish LEGAD joined as an advisor to the 2nd Polish Corps, observing V Corps legal operations during WFX-26-3. Unlike many other 2nd Polish Corps WFX 26-3 officers who were observing WFX 26-3, our Polish LEGAD trained, prepared, and actively served as a vital member of the V Corps legal team. We also had the opportunity to have a Romanian LEGAD work alongside us in support of our operations. With our very diverse and talented team assembled, we focused on ensuring our team was prepared and ready by providing extensive onboarding sessions and foundational training.

## Training

How do you train a team of legal professionals from all three COMPOs and LEGADs, all with different steady state assigned responsibilities, civilian employment schedules, divergent time zones, geographic locations, and system access? By providing predictable, thorough, and conveniently accessible training sessions. The V Corps OSJA National Security Law (NSL) section focused on the connectivity and flexibility that Microsoft Teams provided. A shared WFX 26-3 Microsoft Teams page was created that contained administrative announcements, documents, and resources such as a tailored legal rucksack organized by warfighting functions: sustainment, protection, fires and effects, and command and control. Microsoft Teams allowed all team members the ability to access resources on their schedule by bridging the time, schedule, and location considerations.

The V Corps OSJA NSL team's preparation for WFX 26-3 was constant and included independent education, training sessions, and other corps and higher-level exercises, with full-scale focus beginning two months prior. The preparation process began with the assignment of roles and responsibilities to all incoming team members, including their operational location. Team members were provided the ability for self-education before the fight began using the resources provided in the digital legal rucksack and their assigned role. Next, professional development sessions tailored to a NATO LSCO environment were conducted on a weekly basis. The training series included foundational basics on areas such as LOAC for a JA operating in a JTEC. Guest speakers from the Supreme Headquarters Allied Powers Europe (SHAPE) supported our efforts by providing an overview of NATO and how


In March 2026, V Corps conducted Warfighter 26-03 at Fort Knox, KY. Back row, from left to right: PFC Eric Ohm (310 ESC); MSG Devin White (V Corps); SPC(P) Kyle Strouse (V Corps); MAJ Lucas Beaty (ALNG); LTC David Callan (V Corps); SGT Justus Williams (V Corps); SGT Charles Herring (V Corps); SGM Ian Northrup (V Corps); MAJ Curtis Sherwood (KYNG); LTC Roger Wright (KYNG); CPT Robert Kudlicki (91st LOD); 1LT Trevor Knapp (91st LOD); CPT John Bradley (ALNG); SFC Cherly Gordon (ALNG); CPT Jacob Smith (V Corps); MAJ Jason Miller (310 ESC); MAJ Phil Tonseth (V Corps). Front row, from left to right: SSG Sandy Perez (91st LOD); CPT Jacob Haavisto (V Corps); CPT Scott Dezouche (ALNG); LTC Daniel Curley (V Corps); COL Tonya Blackwell (V Corps); LTC Stephanie Bankson (310 ESC); CW3 Beatriz Hendricks (V Corps); CW2 Edgell Ratliff (V Corps) (Photo courtesy of author).

to operate as a NATO legal officer. We also had sessions to introduce teammates to the operating system they would be working on during WFX 26-3, specifically, the Maven Smart System (MSS).[8] All training sessions were recorded to ensure all COMPOs and LEGADs could complete the training as their schedule permitted or rewatch specific sections to prepare for the exercise. The recorded sessions also allowed downtrace legal units and legal personnel the opportunity to learn. For WFX 26-3, the five downtrace divisions and multiple other downtrace units were given access to and trained on all the products created by the V Corps OSJA NSL team. Using the digital tools created by V Corps, all members of the WFX 26-3 legal team had the training necessary to prepare to win the fight before the exercise occurred.

## Onboarding

After assembling and training the team, the next challenge was ensuring they were onboarded and prepared to fight. Many of our COMPO 2 and 3 and LEGAD team members arrived less than thirty-six hours before the start of WFX 26-3. The ability to engage and fight within a few days or hours of arrival demanded a razor-sharp, focused onboarding program. As would be expected in LSCO, our COMPO 2 and 3 teammates would quickly come in to support the mission at various locations—preparing units to deploy on the ground at Fort Knox and forward throughout Eastern Europe. They came ready to prepare and advise Soldiers and the command and staff with "dead-on legal advice that enables decisive action" upon arrival.[9]

Prior to the start of WFX 26-3, each member of the team was assigned a role and legal portfolio. All inbound augmentees were also provided a list of requirements they had to complete during the onboarding phase to ensure they were properly trained and fully informed of potential WFX 26-3 legal issues and our PACE plan—our system of communication and coordination among the V Corps OSJA team, the five downtrace divisions, and multiple other downtrace units. Requirements that were essential for the team to complete included viewing all eight recorded Leader Professional Development sessions (LPDs) and reading materials assigned by the V Corps chief of staff; the V Corps OSJA's welcome packet; the V Corps OSJA's COMPO 2 and 3 Smart Book; and all folders in the V Corps OSJA's digital legal rucksack.[10]

As our teammates completed their self-certification, the V Corps NSL team worked closely with each individual to orient them to their environment, the OSJA leadership, and key staff members. They also ensured each member had access to all operating systems and personalized instruction for each operating system, with a heavy focus on the MSS.[11] Our COMPO 2 and 3 teammates did not have access at their home station to the Army's Mission Partner Environment (MPE) network; thus, network and system access requirements were requested, staffed, and managed by the V Corps paralegal team ahead of arrival. Network access was critical because if they could not access networks or systems, they could not fight.[12] Finally, to drive home the "one team two locations" mindset, during

In March 2026, V Corps conducted Warfighter 26-03 at Camp Kościuszko, Poland. From left to right: CPT Conrad Sewinski (V Corps Forward); CPT Rachel Rosen (V Corps Forward); SSG Andrew Taylor (91st LOD); MAJ Jason Vogler (91st LOD); MAJ John Cooper (91st LOD); MAJ Ralph Williams (41st FAB); LTC Nick Hurd (V Corps Forward); Capt Konrad Szczepański (Polish Legal Advisor); MAJ Camilla Gane (UK DIV); SSG Conner Ruskey (V Corps Forward); MAJ Marissa Dominguez (V Corps); Capt Florean-Leonardo Stefan (Romanian Legal Advisor) (Photo courtesy of author).

the onboarding process, all members of the MCP and RCP gathered for a meet and greet video call to introduce themselves and get to know one another in preparation for WFX 26-3, which was scheduled to begin in just a matter of hours.

## Execution

Our assembled multi-component, multinational warfighting team successfully advised the command at echelon in a complex simulated fight under the high stress and unrelenting urgency of a LSCO environment in Europe. V Corps's unique fighting structure optimized personnel talent among the staff across two locations, with each site focusing on different warfighting functions. The MCP at Camp K focused on fires and effects and command and control, while the RCP at Fort Knox focused on sustainment and protection. We also had several team members sitting at various locations throughout the area of operations (AO). Each team member possessed a distinct role and portfolio aligned with the warfighting functions at their location, and each was expected to be situationally aware of all the warfighting functions. They also had to understand the interplay between the functions to properly understand the battlefield framework and current and future operations to properly advise the OSJA leadership and the command and staff. The team leveraged knowledge sharing using the MSS chat and chat group features, and multiple legal syncs and touchpoints throughout the twenty-four-hour battle rhythm. This deliberate synchronization and full-spectrum overview of the warfighting functions from both locations unified the geographically dispersed team as "one team, two locations" and ensured V Corps's success by providing accurate, principled, and swift legal advice to the command and staff.

## Challenges

Some challenges to working with multi-component and multinational legal professionals arose during WFX 26-3. First, with a lack of access to the MPE network at their home stations prior to arrival, teammates from COMPOs 2 and 3 and several LEGADs had to read, examine, and understand classified source documents such as the operation orders, fragmentary orders, and rules of engagement once they arrived at the MCP or the RCP. The lack of immediate familiarity with the classified source documents limited their full-spectrum understanding before the start of the exercise. We attempted to overcome this challenge through the onboarding phase by guiding them through the pertinent source documents, allowing time to digest and understand the material, and allowing team members to ease into their roles and responsibilities during the start of the exercise. Future considerations to overcome this challenge would include advanced system access at the home stations, which would allow source documents to be viewed and discussed during the training phase. Additionally, V Corps OSJA team members and COMPO 2 and 3 teammates could meet during a battle assembly weekend or temporary duty trip to discuss and view source documents in a secure setting prior to their arrival at the exercise.

In LSCO, all legal team members, including LEGADs, must provide legal advice in accordance with the customs, laws, treaties, and policies established by their


V Corps Warfighter 26-03. Capt Florean-Leonardo Stefan (Romanian Legal Advisor) (left) and MAJ John Cooper (91st LOD) (right). (Photo courtesy of author).

own country. During the execution phase, while working with multinational LEGAD teammates, we were challenged by their limited ability to advise on anti-personnel mine issues if their country was a signatory to the Ottawa Convention.[13] For WFX 26-3, our UK LEGAD served as the night shift current operations (CUOPS) attorney at the MCP. If an issue regarding the use of anti-personnel mines arose, it would flow through the CUOPS station either on the MSS legal chats or in-person to the CUOPS attorney from other V Corps staff members, such as the engineers. Due to the UK being a signatory to the Ottawa Convention, the UK LEGAD informed the MCP V Corps legal team that she could not advise on anti-personnel mine issues. We overcame the conflict by first identifying the issue prior to the exercise and by directing all anti-personnel mine issues to the RCP CUOPs attorney or other team members at the MCP. While this challenge was related to mines, it sheds light on other topics or legal issues that embedded LEGADs could be prevented from advising on based on their country's current position or view. Prior to the fight, legal teams must understand all team members' capabilities and the scope of their permissible legal advice in order to effectively provide legal support in a dynamic LSCO environment.

## Legal Interoperability

While the V Corps staff and the V Corps OSJA executed WFX 26-3 from the MCP and the RCP, WFX 26-3 was much larger than V Corps. For WFX 26-3, V Corps was the higher headquarters for five divisions: two from the United States and one each from Poland, Lithuania, and Germany. Mission accomplishment for WFX 26-3 depended on the ability of allies to integrate, effectively and efficiently, to achieve tactical, operational, and strategic objectives. In other words, mission accomplishment depended on interoperability.[14] To assess interoperability, V Corps used the four Army-recognized levels of interoperability: Level 0 (not interoperable); Level 1 (deconflicted); Level 2 (compatible); and Level 3 (integrated).[15] Our legal mission necessitated Level 3 legal integration for WFX 26-3. This integration required all three dimensions of legal interoperability: the legal technical dimension, the legal procedural dimension, and the legal human dimension.[16]

For WFX 26-3, with V Corps and its downtrace divisions operating in six different locations around the world, legal technical interoperability revolved around the use of MSS.[17] The V Corps Chief of Staff, Colonel (COL) Kevin Jackson, stated, "From those locations [V Corps was] able to integrate and have a common operating picture utilizing . . . the Maven Smart System technology that we integrated into [all V Corps] operations. . . . This is the first time in four years that I've seen this happen across U.S. Army Europe and Africa (USAREUR-AF), where all of the commanders, all five divisions, and the corps were operating on a common operating picture."[18]

This technical interoperability and use of MSS also included legal operations and provided a common legal operating picture to the V Corps Staff, the V Corps OSJA, and all of the downtrace units. Our V Corps OSJA MSS legal platform, which contained the ROE matrix and ROE briefing products, was a method of communicating, discussing, and disseminating critical legal information to all downtrace legal personnel, and was the primary system to collect and track all legally significant events, such as potential law of armed conflict violations. Using MSS allowed the V Corps OSJA and all downtrace personnel to have visibility on significant events occurring in the entire AO, to collectively access legal resources updated in real time, and to communicate a common understanding of legal issues to their respective commands. Our use of and integration with MSS produced legal technical interoperability with all downtrace legal units and enabled timely command action. When referencing mission command integration, COL Jackson stated, "Our commander was able to make timely decisions based on everybody having that same sight picture."[19] The legal technical interoperability of MSS that enabled a common legal operating picture also dovetailed with legal procedural interoperability for the OSJA during WFX 26-3.

Legal procedural interoperability addresses processes and procedures that support and organize activities among allies to minimize confusion, misunderstandings, and hesitation.[20] In preparation for and during WFX 26-3, the V Corps OSJA established processes and procedures to create a legal common operating picture to increase legal procedural interoperability. The procedural systems for communication and collaboration that the V Corps OSJA established included the PACE communication plan; daily internal V Corps legal syncs built into the battle rhythm; daily external legal syncs with V Corps and downtrace units to capture unit legal priorities and to provide V Corps SJA guidance; and an authorities working group to process requests from downtrace units or requests to higher headquarters. The standardized common processes and drills that V Corps established were a legal annex that spelled out requirements and methods for reporting

V Corps Warfighter 26-03. Capt Konrad Szczepański (Polish Legal Advisor) (left) and MAJ Camilla Gane (UK DIV) (right) (Photo courtesy of author).


V Corps Warfighter 26-03. LTC Nick Hurd (V Corps) (left) and Capt Konrad Szczepański (Polish Legal Advisor) (right). (Photo courtesy of author).

legally significant events and established battle drills for all legal teams. The systems, processes, and procedures were disseminated, presented, and tested with all downtrace legal teams during the lead up to WFX 26-3. This allowed the procedures to be refined and tuned to meet both the needs of the multinational downtrace units and the intent of the V Corps OSJA leadership. The systems increased procedural interoperability, allowed the V Corps OSJA and downtrace units to integrate effectively and efficiently, and minimized confusion and hesitation during the exercise.

WFX 26-3 tested the V Corps OSJA, downtrace U.S. legal teams, and allied-nation legal teams to increase legal readiness and enhance legal interoperability. Human interoperability concerns mutual trust and understanding achieved by strengthening relationships in training and on operations.[21] The legal human dimension addresses human-based activities that develop shared understanding with an ally.[22] WFX 26-3 increased human interoperability by building mutual trust and understanding among the V Corps OSJA, other U.S. legal teams, and the multinational legal teams throughout the training lead-up and exercise execution.

Executing WFX 26-3 with U.S. and multinational legal teams established and strengthened the necessary relationships and established familiarity and understanding for all legal stakeholders to build upon in the future. COL Jackson stated, "As we look at the future, and what our continued operation activities and investments are with all the NATO Corps and divisions across Europe, I think we will continue to lead the way as America's only forward-deployed Corps."[23]

### Future Considerations

Forecasting what legal support is necessary in future LSCO is an enduring project focused on identifying potential gaps, proposing and implementing solutions, and capturing lessons learned. When we must engage in LSCO, we will be ready; we will keep the legal sword sharp and strengthen the profession by sharing ideas, engaging in debate, and ensuring our lessons learned are generously shared up, down, adjacent, and at echelon.[24]

During WFX 26-3, we identified three LSCO gaps and developed solutions to share them with the greater legal community to further sharpen our legal sword. Though WFX 26-3 simulated the EUCOM AOR, the lessons learned apply to any future LSCO fight involving multi-component teammates and multinational partners and allies.

***Increasing Host-Nation Expertise***

LSCO will most likely involve multinational allies, partners, and host nations (HNs).[25] Each HN is sovereign and has its own state laws, international agreements, protected property or infrastructure, national defense plans, and military forces, which are just a few of the factors that contribute to understanding agreements about how U.S. forces operate in the HN.[26] Operating in a HN during LSCO may require U.S. forces to coordinate with and obtain HN consent for certain operations or effects.

Imagine a LSCO event where a corps or division is operating in multiple HNs. The legal teams will have to advise command and staff on U.S.-based operational and national security law, but they will also have to incorporate into the legal recommendations the HN laws, rules, concerns, and national caveats of multiple HNs.[27] As USAREUR-AF Judge Advocate, Colonel Andrew M. McKee, mentioned in *Mastering Multinational Integration with a Winning Mindset*,

> A JALS professional in a multinational setting is expected to contribute an appropriate level of expertise in U.S. law and the customs, courtesies, and procedures of the U.S. Army. However, those personnel lack the same level of expertise in host-nation law, customs, courtesies, procedures, history, and culture.[28]

There will be a knowledge gap among U.S. legal teams with respect to the HN laws, and humility must be displayed.[29] This knowledge gap and the challenge of establishing team awareness may be overcome by embedding a HN LEGAD at the corps level or higher to develop deliberate and engaged awareness and humility throughout the mission.

Embedding HN legal officers with the legal team bridges information gaps that may exist between a HN and the legal team. The HN LEGAD's level of expertise regarding HN domestic and military laws and policies, customs, courtesies, and procedures, combined with the experience and expertise of the legal team regarding operational and national security law, provides effective and efficient operational legal advice to command and staff operating in a HN.

For WFX 26-3, V Corps had a Polish LEGAD officer embedded at the MCP. Our Polish LEGAD provided clarity on Polish civilian and military procedures, laws, and policies for the team, and ultimately, to the V Corps staff. Our Polish LEGAD also gained invaluable insight on how the V Corps OSJA advises the command and staff during LSCO, which he can use with his Polish legal team to prepare for future trainings and operations.[30] Having an embedded HN LEGAD increases legal team expertise with HN laws, policies, and procedures and prepares NATO LEGADs for a future expanded role in NATO operations.

***Human Interoperability with Multinational Downtrace Units***

While having an embedded HN LEGAD addresses HN challenges, the same concerns and potential legal knowledge gap regarding HN sovereignty, laws, international agreements, national caveats, and military forces are also present for our teams supporting non-U.S. units under the authority of U.S. units.[31] Our teams may potentially lack the same level of expertise as a LEGAD from that non-U.S. unit regarding the non-U.S. unit's organic procedures, non-NATO doctrinal references, steady-state operating processes, and common understanding through country-specific languages. The best way to address this gap is to increase human interoperability by having a LEGAD from the same country as the downtrace non-U.S. unit embedded with the corps OSJA or, alternatively, having a legal team member embedded with the non-U.S. unit.

During WFX 26-3, V Corps and NATO LEGADs at the downtrace divisions addressed the information gap by embedding legal personnel at V Corps and the downtrace divisions. This ensured the legal team could appreciate and understand the customs, courtesies, nuances, rules, and procedures of our non-U.S. downtrace divisions. Our Polish LEGAD who embedded with us knew the customs, courtesies, nuances, rules, and procedures of the 18th Mechanized Polish downtrace division and could coordinate with their legal team regarding significant events during the exercise, which was tremendously helpful.[32]

Alternatively, the downtrace 1st Lithuanian Division had one of our NG teammates embedded with the Lithuanian LEGAD team and staff to establish open communication and collaboration between the two legal teams and decrease fragmentary information from non-legal staff sections. The embedded attorney helped communicate queries from the V Corps OSJA and staff about significant events.[33] Having an embedded LEGAD from the non-U.S. downtrace unit with a corps OSJA or, alternatively, having a U.S. attorney embedded with the non-U.S. downtrace unit decreases the knowledge gap, builds trust and understanding, and strengthens legal interoperability for legal teams operating in a multinational environment.

***Leveraging COMPOs 2 and 3 through Repetition and Expertise***

Holistic integration with our COMPO 2 and 3 teammates is the only way we will be successful in an LSCO environment. The legal COMPOs triad—leveraging COMPOs 2 and 3 in repeated training opportunities with COMPO 1—establishes a foundation of trust and familiarity and develops expertise and confidence in readiness among all team members. Our JAG Corps Strategy mandates we "prioritiz[e] our legal practice in support of warfighter readiness, improv[e] integration and synchronization across JAGC components, and enhanc[e] training and education for all JALS members."[34] The V Corps OSJA and team members from the NG and 91st LOD established strong bonds of trust and familiarity through WFX 26-3. At the conclusion of the exercise, the assembled team knew they were synced and prepared to operationally advise the command and staff in LSCO. To truly sharpen the edge of our sword, we must make repeated training across COMPOs the standard in all we do.

Unified repeated training among the COMPOs creates greater trust, familiarity, confidence, and expertise to function as one team of legal professionals for future LSCO. A great example of our strong relationship with the 91st LOD is its investment in their attorneys and paralegals who regularly participate in our training sessions and exercises.

The 91st sends its team to training, exercises, and operational law courses to prepare them to advise commanders in the fight. Two attorneys from the 91st LOD who served as JTEC attorneys with V Corps in previous exercises again were members of the team for WFX 26-3. A 91st LOD major once again was assigned to the JTEC and was seamlessly integrated into the mission and had the trust of the JTEC commander due to his familiarity with the mission and the team. A captain from the 91st who had participated in prior V Corps exercises was assigned to CUOPS at the RCP, a position requiring expanded staff coordination and increased legal visualization. His prior exercise experience in the JTEC role permitted a faster transition to the new CUOPS role and a greater awareness of staff processes for this teammate. A third 91st LOD JA—who worked for the Defense Intelligence Agency in his civilian capacity, where he became familiar with the MSS and attended training courses on LOAC and targeting—was also assigned to the JTEC and performed phenomenally due to his civilian expertise and the skills he developed prior to the exercise.

All three attorneys serve as examples of effectively leveraging the COMPOs: the first JA based on repetition, familiarity, and trust; the second based on repetition, familiarity, and new responsibilities; and the third based on civilian expertise. Engaged participation and commitment to training and fighting together are the keys to success. While repetition is always a key factor in unit training, identifying and developing COMPO 2 and 3 expertise based on civilian experience and expertise or prior military experience will always lead to greater success as one integrated and unified team in LSCO.

## Conclusion

The V Corps OSJA's approach in assembling, training, and onboarding the warfighting legal team for WFX 26-3, along with lessons learned for future considerations, sharpens the edge for future LSCO and applies to any future LSCO fight involving multinational partners and allies. The V Corps OSJA assembled an exceptional multi-component, multinational, legal warfighting team that successfully executed WFX 26-3 by advising the command in the simulated fight under stress and urgency in a Europe-focused LSCO environment. The successful execution and mission accomplishment for the assembled team depended on legal integration and the three dimensions of legal interoperability: technical, procedural, and human.

We must keep sharpening the legal sword to strengthen the profession by sharing ideas, engaging in debate, and learning together; doing so will ensure solutions and lessons are captured and further refined as we pursue excellence in all that we do as members of the JAG Corps advising the warfighter on the ground at echelon. The challenge for all OSJAs is to use these lessons, experiences, and challenges from WFX 26-3 and improve in every phase: assembling, training, onboarding, execution, and interoperability. With reflection, refinement, and repetition, we can prepare to advise the commander in the LSCO fight. It will be done! Victory! **TAL**

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## Notes

1. Video posted by Secretary of War Pete Hegseth (@secwar), Instagram (Mar. 11, 2026), https://www.instagram.com/reel/DVwsg6zAVIB/?igsh=cHptYnJ-3d2I2OGVk [https://perma.cc/8CEN-L88B]. *See also* Mathew Olay, *Hegseth Calls for Assessment, Alignment of DOW Legal Functions, Operations*, U.S. Dep't of War (Mar. 11, 2026), https://www.war.gov/News/News-Stories/Article/Article/4431680/hegseth-calls-for-assessment-alignment-of-dow-legal-functions-operations [https://perma.cc/A3H4-G62P].

2. The divisions that participated in WFX 26-3 with V Corps consisted of 10th Panzer Division, the 1st Lithuanian Division, the 18th Polish Mechanized Division, 1st Infantry Division (U.S.), and 3rd Infantry Division (U.S.). 310th Expeditionary Sustainment Command (ESC) from Indianapolis, Indiana, also participated. Each downtrace division and the 310th ESC had their own legal team made up of judge advocates (JAs) and paralegals from all three components or North Atlantic Treaty Organization (NATO) legal advisors (LEGADs).

3. V Corps operated from two primary locations—the MCP and the RCP; 10th Panzer Division and the 1st Lithuanian Division operated from Grafenwoehr, Germany; 18th Polish Mechanized Division operated from Siedlce, Poland; 1st Infantry Division (U.S.) operated from Fort Riley, Kansas; and 3rd Infantry Division (U.S.) operated from Bolesławiec, Poland.

4. "Leadership is the activity of influencing people by providing purpose, direction, and motivation to accomplish the mission and improve the organization" U.S. Dep't of Army, Doctrine Pub. 6-22, Army Leadership and the Profession para. 1-74 (31 July 2019) (C2, 6 Feb. 2025). "One Team Two Locations" was the motto used among the V Corps OSJA team during WFX 26-3. The motto was adopted during Avenger Triad 2025 (AVT25) to unify purpose, direction, and motivation for a team working in two different locations separated by six time zones.

5. The Judge Advoc. Gen., Deputy Judge Advoc. Gen., JAG Corps Sr. Civ., Chief Warrant Officer of the Corps & Regimental Command Sergeant Major, Leadership Sends, vol. 43-05, The JAG Corps Strategy (12 Sep. 2025) [hereinafter Leadership Sends] ("The Strategy provides a blueprint for how we will continuously transform to maintain a total legal force postured and prepared to deliver timely expert legal advice and services to the Army. The Strategy is informed by a comprehensive analysis of the critical areas where we must innovate and adapt to best enhance lethality through principled legal support to the Army during large-scale combat operations."). *See also* The Judge Advoc. Gen.'s Corps, U.S. Army, U.S. Army JAG Corps Strategy (12 Sep. 2025) (providing the full JAG Corps Strategy).

6. The V Corps OSJA and 91st LOD have an established relationship built upon trust and readiness. Over the last four years, we have worked closely with the 91st LOD in training and preparation for LSCO. The 91st LOD invests in its team, ensuring members are given the opportunity to join V Corps for exercises, prepared for the exercise by attending operational law courses, and stewards the profession by capturing lessons from teammates' experiences and teaching the entire 91st LOD. Familiarity between both units has been built during the training, preparation, and execution of multiple military exercises with 91st LOD teammates joining with the V Corps OSJA both at the MCP and RCP. This established relationship and investment by the 91st LOD prepares both V Corps and 91st LOD JAs and paralegals to be ready for exercises and, should the need arise, to provide real-world LSCO legal support from a forward or rear location.

7. For WFX 26-3, the Kentucky and Alabama NG attorneys and paralegals joined the V Corps OSJA team at the RCP at Fort Knox. The Pennsylvania NG attorney joined the 1st Lithuanian Division in Grafenwoehr, Germany.

8. Over the course of eight weeks, the team created weekly training materials that were presented by the V Corps OSJA personnel and guest speakers. The topics were (1) Initial Orientation; (2) LOAC and Targeting; (3) JALS Roles and Responsibilities in the Corps during WFX 26-3; (4) SHAPE and NATO; (5) NATO ROE and National Caveats; (6) the Road to War; (7) Maven Smart System (MSS); and (8) the V Corps PACE plan. The MSS is an artificial intelligence-enabled, cloud-based software as a service command and control platform that integrates, analyzes, and acts on massive volumes of defense sensor data (drones, satellites, radar) in real-time. "It is the Department of Defense's most visible artificial intelligence tool, designed to process imagery and full-motion video from drones. Maven combines sensors, artificial intelligence and machine learning to modernize battlefield operations, including targeting, logistics planning and predicting supply needs for deployed troops." Tish Williamson, *Contracting Personnel Use AI, Maven Smart System Simulation During Warfighter Exercise*, Army.mil (Mar. 3, 2025), https://www.army.mil/article/283473/contracting_personnel_use_ai_maven_smart_system_simulation_during_warfighter_exercise [https://perma.cc/G97Z-9QYL].

9. Olay, *supra* note 1 (quoting Secretary of War Pete Hegseth).

10. The required LPD videos were the same eight discussed above. The V Corps chief of staff required readings consisted of (1) an Eastern Flank Deterrence Initiative primer, (2) Third Infantry Div., Fighting the Armored Division of 2030 (13 June 2022), and (3) V Corps, V Corps Tactical Standard Operating Procedures (2 Dec. 2024).

11. Our check on access and overview of operating systems for our team focused on MPE, Outlook, Maven Systems, Cisco Jabber, CMS rooms, OneNote, the V Corps OSJA SharePoint, and the PACE plan.

12. The V Corps paralegal team managed many logistical hurdles to get system access for the COMPO 2, 3, and LEGAD personnel. The certificates and documents needed included security clearance verification, DD 2875s System Authorization Access Request Forms for the EUR NIPR, Enterprise MPE, and, if allowed, STRAT SIPR systems, Cyber Awareness, derivative classification, information security program training, annual awareness managing personnel with clearances access to classified information, and the U.S. Army Threat Awareness and Reporting Program. Planning should start early for system access.

13. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sep. 18, 1997, 2056 U.N.T.S. 211.

14. "Interoperability is the ability to act together coherently, effectively, and efficiently to achieve tactical, operational, and strategic objectives." U.S. Dep't of Army, Regul. 34-1, Interoperability para. 1-6(a) (9 Apr. 2020) [hereinafter AR 34-1]. *See also* N. Atl. Treaty Org. [NATO], *Allied Joint Doctrine,* AJP-01 (ed. F, ver. 1, Dec. 2022) [hereinafter AJP-01] ("Specifically, interoperability enables forces, units and/or systems to operate together, allowing them to communicate and to share common doctrine and procedures, along with each other's infrastructure and bases. Interoperability reduces duplication, enables pooling of resources and produces synergies among all Allies, and whenever possible with partner countries.").

15. AR 34-1, *supra* note 14, para. 1-5; *see also* The Judge Advoc. Gen.'s Legal Ctr. & Sch., Best Practices of Multinational Legal Interoperability Smartbook, at A-3 (2024) [hereinafter Smartbook] ("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 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 and legal personnel between their formations.").

16. Legal interoperability is "the achievement of sharing understanding of respective authorities, permissions, restrictions, obligations, and interpretations of international and domestic law and policy that enables the Combined Force to act together lawfully, coherently, effectively and efficiently to achieve tactical, operational and strategic objectives." Smartbook, *supra* note 15, at A-3 (providing the three legal dimensions of interoperability); *see also* AJP-01, *supra* note 14, para. 3.65 ("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 a common doctrine, procedures and terminology. Human Interoperability concerns mutual trust and understanding achieved by strengthening relationships in training and on operations"); *see also* Colonel Matthew A. Kopetski & Lieutenant Colonel Grzegorz Janiszewski, *Strengthening Legal Interoperability: The Urgent Need to Sustain Mil-to-Mil Legal Engagements Across NATO*, Army Law., no. 1, 2026, at 37 (discussing legal interoperability and its application at length and offering a framework for its assessment).

17. Legal technical interoperability "addresses the establishment, operation, and maintenance of the legal network hardware, services, and applications that support the exchange of data and information between allies." Smartbook, *supra* note 15, para. 1-27.

18. Specialist Hector Blanco, *V Corps Validates the Future of European Defense During Warfighter Exercise 26-03*, Army.mil (Apr. 7, 2026), https://www.army.mil/article/291643/v_corps_validates_the_future_of_european_defense_during_warfighter_exercise_26_03 [https://perma.cc/PFN3-TM37].

19. *Id.*

20. "The legal procedural dimension of interoperability addresses processes and procedures that support and organize activities among allies to minimize confusion, misunderstandings, and hesitation. It builds on trust, purpose, and unity of effort." Smartbook, *supra* note 15, para. 1-26.

21. AJP-01, *supra* note 14, para. 3.65.

22. Smartbook, *supra* note 15, at A-3.

23. Blanco, *supra* note 18.

24. Lieutenant General Milford "Beags" Beagle, Jr., Lieutenant General Joseph B. Berger & Lieutenant Colonel Jack D. Einhorn, *Lethal Force, Risk, and LSCO: Preparing for Permissive Rules of Engagement in Large-Scale Combat Operations,* Mil. Rev.: Online Exclusive, Jan. 2025, at 1, 3 (citing Letter from Michael R. Weimer, Randy A. George & Christine E. Wormuth, subject: Message to the Army Team (26 Oct. 2023)).

25. Host nation (HN) refers to a friendly or neutral nation in which U.S. forces are operating. Enemy territory or states should be distinguished from HNs for this proposal.

26. NATO nations are sovereign and have defense plans that NATO and each troop contributing nation (TCN) must harmonize. AJP-01, *supra* note 14, para. 3.49. "All forces operating in a multinational construct have two chains of command. The first is the chain of command constructed either by the Alliance or a coalition. The other is a national chain of command that extends back to the national government of each participating military. National sovereignty can be a difficult issue . . . ." *Id.* para. 4.24. In addition, each HN has its own national customs, courtesies, procedures, history, and culture that must be understood by U.S. Forces.

27. Colonel Andrew M. McKee, *Mastering Multinational Integration with a Winning Mindset*, Army. Law., no. 1, 2025, at 2.

28. *Id.* at 3.

29. COL McKee offered three traits that members of the JAG Corps can adopt to successfully approach multinational integration: openness, humility, and fearlessness. *Id.* at 3–4. "Approaching the multinational environment with a full awareness of one's knowledge gaps and a willingness to learn from others regardless of expertise in other legal domains will prevent alienating allies and contribute to building comfort and trust." *Id.* at 3.

30. "[The] broad policy for Europe should prioritize . . . [e]nabling Europe to stand on its own feet and operate as a group of aligned sovereign nations, including by taking primary responsibility for its own defense . . . ." The White House, National Security Strategy of the United States of America 27 (Nov. 2025). "Our NATO allies are therefore strongly positioned to take primary responsibility for Europe's conventional defense." U.S. Dep't of War, 2026 NDS: National Defense Strategy 11 (23 Jan. 2026).

31. In the NATO context, this is done under the Transfer of Authority (TOA) process. *See* N. Atl. Treaty Org. [NATO], *Allied Joint Doctrine for the Conduct of Operations*, AJP-3 (ed. D, ver. 1, Aug. 2025).

32. During WFX 26-3, when one significant event regarding a potential enemy LOAC violation occurred, the embedded Polish LEGAD directly contacted his counterpart at the Polish Division and, within minutes, helped us understand the status of the event and how it was being processed.

33. The U.S. team member embedded with the Lithuanian unit was not only a liaison for the legal team but also for the V Corps staff. During WFX 26-3, a legal issue that demanded a complete picture of the supply constraints faced by the Lithuanian unit was accurately resolved in a timely manner based on the information the Lithuanian Division provided through the embedded personnel to the V Corps staff.

34. Leadership Sends, *supra* note 5 ("The Strategy provides a blueprint for how we will continuously transform to maintain a total legal force postured and prepared to deliver timely expert legal advice and services to the Army. . . . The Strategy is informed by a comprehensive analysis of the critical areas where we must innovate and adapt to best enhance lethality through principled legal support to the Army during large-scale combat operations.").

# News & Notes


**Photo 1**
The 117th Legal Operations Detachment, which supports New Mexico, Arizona, and Nevada for the Army Reserve JAG Corps, conducted Annual Training at Fort Huachuca, AZ. The unit slept in field tents, completed an AFT, and ran an M4 and an M17 range. (Source: JAGCNet)

**Photo 2**
The 231st Judge Advocate Officer Basic Course. (Source: TJAGLCS)

**Photo 3**
The 4th Psychological Operations Group (Airborne), 1st Special Forces Command (Airborne) legal office was flown from Pope Army Airfield via Osprey to Okracoke Beach, NC, to celebrate SPC Arika L. DuClos's reenlistment. The office was escorted by her father, MGySgt DuClos, USMC, which also commemorated the last flight of his career. (Source: JAGCNet)

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**Photo 4**
The U.S. Army Pacific (USARPAC) and Center for Law and Military Operations (CLAMO) hosted Paralegal Employment in Large-Scale Combat Operations (PELSCO) at Schofield Barracks, HI. This four-day course was designed to educate paralegals with the knowledge, doctrine, and tools to effectively integrate in and contribute to the tactical staff. Twenty-four paralegals across theatre successfully completed the course with sixteen noncommissioned officers receiving trainer certificates. (Source: JAGCNet)

**Photo 5**
MAJ Julia Flores (center), military professor at the Stockton Center for International Law, stands with fellow presenters and facilitators of the Stockton Center for International Law's Naval Warfare Academy in Lisbon, Portugal, an event that brought experts from across the world together to educate international military and civilian personnel on key topics in naval warfare. (Source: Stockton Center for International Law)

**Photo 6**
Six members of the 25th Infantry Division and U.S. Army Hawai'i Office of the Staff Judge Advocate earned the Expert Soldier Badge following a demanding three-week course, with fewer than 400 of 1,200 Soldiers successfully completing all requirements. From left to right: CPT Brianna Heller, CPT Corey Granko, SSG Josephine Embola, CPT Kristen Coppock, MAJ Kevin Miller, and MAJ Ian Smith. (Credit: SGM Rodney Cabrera)


**Photo 7**
Members of the 3d Cavalry Regiment Brave Rifles legal shop successfully completed their Spur Ride at Fort Hood, TX, and were awarded the Order of the Spur. From left to right: PV2 Erick Loyo, PFC Michael Hamby, CPT Charles Carter Lorant, and MAJ Joshua Dimkoff. (Source: JAGCNet)

**Photo 8**
Judge advocates, paralegals, and Soldiers interested in law from Task Force Guardian, Joint Task Force - Southern Border toured the U.S. District Court by the U.S.-Mexico border in Laredo, TX. Comprised of various National Guard and Reserve units, the group observed hearings and met with Magistrate Judge Christopher dos Santos and U.S. Attorney's Office representatives, Federal Public Defenders, and U.S. Marshals. (Source: JAGCNet)

**Photo 9**
1LT Lorenzo Cortezano, a FLEP Select from 1ABCT, 1CD, graduated from the Sabalauski Air Assault School at Fort Campbell, KY. The 101st OSJA showed up in force to support. From left to right: 1LT Daniel Jenkins, CPT Abigail Gill, 1LT Cortezano, CPT Julius Brittman, and CPT Seth Corley. 1LT Cortezano will attend Villanova Law School this fall. (Source: JAGCNet)

**Photo 10**
MSG Amanda Corbitt, chief paralegal of the 4th ESC, San Antonio, TX, completed the 130th Boston Marathon. The Boston Marathon concluded her World Marathon Major (WMM) six-star journey, which she started at the 2014 NYC Marathon. The original six Abbott WMM races consist of Boston, Chicago, New York City, London, Tokyo, and Berlin. (Source: JAGCNet)

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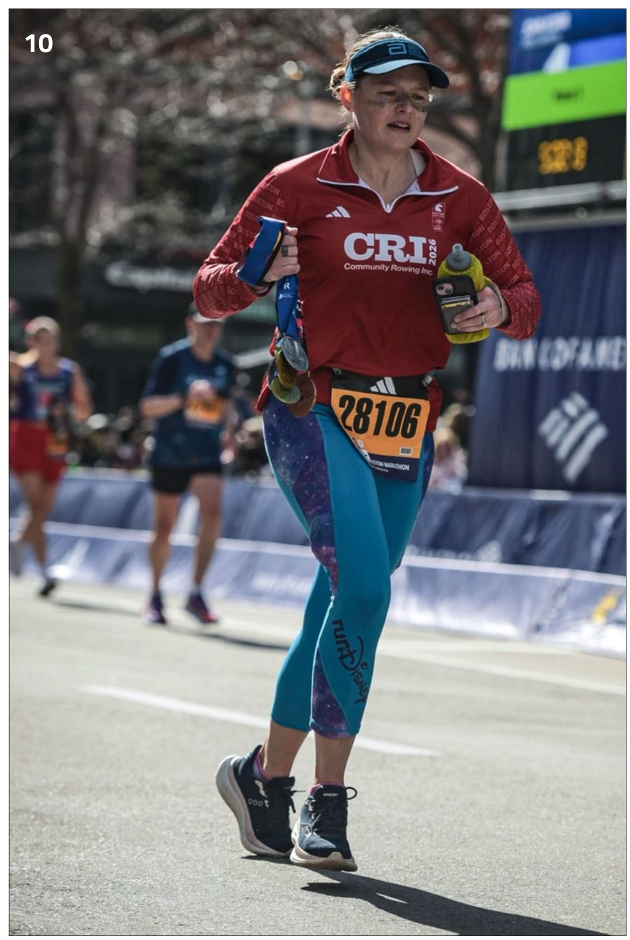


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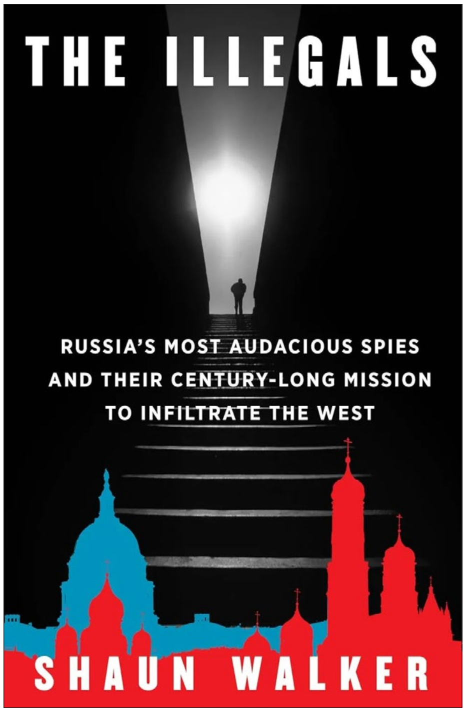


# Book Review

# The Illegals:

## Russia's Most Audacious Spies and Their Century-Long Mission to Infiltrate the West

*Reviewed by Major Christian P. Woo*

*We are engaged in war with the Soviet Union. This war does not for the moment involve men in arms; it involves information.*[1]

Beginning in ancient times, countries have utilized spies and saboteurs to secretly gather intelligence and obtain advantages over their adversaries.[2] British journalist and author Shaun Walker provides a timely, in-depth look into how Russia, one of America's greatest strategic competitors,[3] has employed spies against the United States in his book, *The Illegals: Russia's Most Audacious Spies and their Century-Long Mission to Infiltrate the West*.[4] Released on 17 April 2025, *The Illegals* is not just a must-read for fans of *The Americans*,[5] *Bridge of Spies*,[6] or any other book, film, or TV series of the spy-fiction genre. It offers judge advocates (JAs) entering U.S. European Command (USEUCOM), the Intelligence Community (IC), or Special Operations Forces (SOF) a comprehensive history of Russia from the early 1900s to the present day, as well as a glimpse into the types of complex legal issues that are inherent to the practice of intelligence law in great power competition.

Based on hundreds of interviews that he personally conducted with former Russian spies, their descendants, and members of the American IC,[7] Walker provides a riveting account of Russia's "illegals" directorate, which he describes as "the most secret part of one of the world's most secretive organizations."[8] The term "illegal" was first used by Vladamir Lenin, Soviet Russia's first head of state, in the lead-up to the Bolshevik Revolution.[9] During that time, Lenin differentiated "legal" work that could be done overtly by individuals using their real names, from illegal work, which—in this context—refers to clandestine activities executed by Russians who "disguised their real purpose and often their real identities too."[10]

From start to finish, *The Illegals* provides a comprehensive history of Russia through anecdotes of select illegal operatives employed in various capacities throughout the country's history.[11] Assuming that the illegals program is still active today, its operatives undergo years of training[12] and are, at times, assigned a prearranged spouse.[13] Once they are deemed ready for the field, these individuals are then sent into foreign countries under deep cover to extract intelligence from sources;[14] report on current events and the political climate;[15] seduce or blackmail individuals for information or placement and access;[16] and, at times, assassinate perceived political rivals.[17]

Ultimately, Walker questions whether the benefits of Russia's secretive program are worth the costs considering the resources needed, the toll it takes on operatives, and the program's failures.[18] Since Russia often embellishes operatives' successes[19] and all the reports are heavily classified, it is unlikely anyone outside of the highest levels of Russian government will ever truly know. Nevertheless, *The Illegals* provides several takeaways for JAs who will advise clients within the Department of War (DoW) on secretive intelligence operations (INTOPS).[20] First, the book serves as a case study on the "logistical marathons"[21] required to successfully employ deep cover today. Second, the book illustrates how countries like Russia have adapted to today's new virtual environment.[22] Finally, the book highlights several legal and risk-based issues that JAs should be aware of when advising in this area of the law.

### Deep Cover: "Logistical Marathons"[23] Required

First, if there is any takeaway from *The Illegals*, it is that there is an immense amount of training and supporting infrastructure required to successfully conduct deep cover operations.[24] Despite years of preparation by the Russian government and individual operatives, many illegals were ultimately caught, put on trial, and deported back to Russia.[25] Given significant advances in ubiquitous technical surveillance (UTS) technologies that have occurred following the major events described in *The Illegals*, Walker's point that "logistical marathons"[26] are required to deploy a deep-cover operative will only become more true over time.

While Walker highlights a number of illegal operatives throughout the program's history, the last two he covered extensively were Andrei Bezrukov and Elena Vavilova.[27] Andrei and Elena were two illegals who secretly lived in the United States as "Don Heathfield" and "Ann Foley," respectively.[28] Well before "Don" and "Ann" arrived in the United States, Russia conducted extensive research to discover that the *real* Don Heathfield and Ann Foley were Canadian citizens born close in time to Andrei and Elena, but died as infants—making them prime identities for the spies to assume.[29]

In order to effectively "become" Don and Ann, Andrei and Elena underwent years of training where they "mold[ed] their language, mannerisms, and identities into those of an ordinary Canadian couple."[30] Once their training was complete, Andrei and Elena staged a meeting in Canada, "wed" as Don and Ann, and eventually had two sons—neither of whom knew their parents were secretly spies.[31] In spite of all of this, Don and Ann were eventually arrested by the Federal Bureau of Investigation (FBI)[32] after the United States flipped a Russian illegal support officer who gave them up.[33] Based on the support officer's tip, the FBI subsequently bugged Don and Ann's phones, went through their trash, and found a set of photographic negatives in a safe-deposit box at a local bank that linked them to the Soviet Union.[34]

Don and Ann's arrest occurred in 2010.[35] Since then, many countries' surveillance capabilities have significantly improved, due in large part to the rise of UTS.[36] This UTS threat is perhaps best articulated in a U.S. Department of Justice (DoJ) Office of the Inspector General (OIG) report, in which the FBI defines UTS as "the widespread collection of data and application of analytic methodologies for the purpose of connecting people to things, events, or locations."[37] A prominent example of an adversary's UTS capability is China's facial recognition software and extensive closed-circuit television (CCTV) network,[38] which Chinese state media claims is capable of "scanning the faces of China's 1.4 billion citizens in just one second."[39] Another is Russia's new biometric data collection procedures for individuals entering the country.[40]

Given the new, pervasive ways to track individuals and the increased scrutiny on travelers today, it is likely that Don, Ann, and some of the other illegals in Walker's book would have been caught much sooner in today's UTS environment. It is also likely that the *James Bond*-esque practices of donning disguises and using alias passports are now relics of the past. The takeaway for JAs is that the employment of deep cover by the United States and its adversaries will inevitably become more difficult and require more resources as UTS capabilities continue to rapidly evolve and improve over time.

**Despite only a few mentions of U.S. intelligence agencies, *The Illegals* should nevertheless be required reading for JAs assigned to USEUCOM, the IC, and SOF, as it illustrates to the difficulty of employing deep cover today and presents several legal and non-legal issues to consider when advising commanders and staff on these high-risk, low-visibility operations against strategic competitors.**

### The Rise of Virtual Illegals[41]

Following his recounting of the arrest of Don and Ann, Walker briefly dedicates one chapter to Russia's use of virtual illegals (fake online personas and social media accounts) to influence American elections.[42] Although never explicitly stated by Walker, the virtual illegals are a natural consequence of decades' worth of failures of Russia's deep-cover illegals program. Given the "logistical marathons"[43] required to deploy a deep-cover operative today, as well as the increased use of smartphones and social media,[44] the United States may continue seeing more of these online personas in the virtual domain, and perhaps less of the traditional illegals in the future.

If the "logistical marathons"[45] required for deep cover are the first takeaway from *The Illegals*, a close second is the continued failures of the program—which were largely due to the emotional and psychological tolls that living a double-life took on individual operatives.[46] While Walker does highlight *some* early success stories,[47] the book is replete with examples of operatives who abandoned their posts,[48] became double-agents who turned on Russia,[49] morally struggled with infidelity and lying,[50] and questioned whether their sacrifice had been worth it after returning to Moscow.[51] Even Dmitry Bystrolyotov, who was deemed the "greatest of the Great Illegals,"[52] once said, "Working in intelligence not only disfigures your life and soul; it does the same to strangers who are forced to become involved in it."[53] In a plea to Moscow while actively serving in the field, Dmitry separately wrote, "I no longer have any joy in successes or love for the work; I just have the recurring thought that it would be good to go to bed at night and never wake up again."[54]

Although Walker does briefly note that the Internet made it "easy to create virtual illegals,"[55] the deeper conclusion is that the virtual illegals program utilized in 2016 was a natural evolution away from the troubles of traditional illegals. Because virtual illegals are just ordinary Internet "trolls" operating out of Russia,[56] they do not have to complete the years-long training pipeline or endure any of the heartache or stress that deep-cover illegal operatives in the field do. As a result, these online trolls are at significantly less risk of alcoholism, burnout, depression, divorce, and otherwise succumbing to the pressures of being a spy that was the undoing of so many illegals who operated exclusively in the shadows of the human domain before them.

The use of virtual illegals is not without tradeoffs. Regarding effectiveness, Walker fairly notes that "[m]easuring the real-world impact of these troll-illegals is difficult"[57]—a similar criticism of DoW military information support operations (MISO) and information operations (IO) writ large.[58] However, Walker claimed that many modern-day illegals like Andrei and Elena were simply reporting back on potential leads or the political climate in the United States;[59] they were not carrying out any assassination attempts or elaborate sabotage missions like their predecessors were. If it is true that Russia's deep-cover illegals truly "were not up to much that would trouble U.S. national security interests"[60] and were only engaging in activities that could be done just as effectively in the online domain (i.e., spotting and assessing bloggers who take pro-Russian positions or monitoring American discourse on social media platforms), then perhaps America *may* see a continued rise of these virtual illegals and less of a reliance on traditional illegals in the future. For JAs serving at the U.S. Army Counterintelligence Command (USACIC) who are involved in the prosecution of U.S. espionage cases, an understanding of this new virtual threat is critical.

## Legal (and Non-Legal) Considerations for JAs

Although *The Illegals* predominantly focuses on Russia's Directorate S and only sparingly mentions U.S. agencies such as the Office of Strategic Services (OSS),[61] the Central Intelligence Agency (CIA),[62] and the FBI,[63] it is impossible for JAs not to wonder about the legalities and inherent risks involved if these operations were carried out by DoW personnel. JAs who are new to the practice of national security law or intelligence law may wonder if the DoW possesses the capability to conduct these types of secretive operations, and if so, which agencies are responsible for doing so. Moreover, they may wonder what authorities would be needed, and whether they would be able to effectively advise commanders and staff on these types of activities.

At the outset, it is crucial for JAs to know that a number of DoW entities, such as the Defense Intelligence Agency (DIA),[64] National Security Agency (NSA),[65] and elements within U.S. Special Operations Command (USSOCOM), conduct secretive operations.[66] Of note for JAs, these operations are generally executed under either Title 10[67] or Title 50[68] of the U.S. Code. The authorities used will ultimately drive the approval process.[69] To the extent that Title 10 authorities are utilized, specific pots of money are tied to these types of operations. These include Defense Intelligence and Counterintelligence Expense (DICE) funds,[70] Clandestine Operational Preparation of the Environment (COPE) funds,[71] and programs specific to the use of sources and surrogates to conduct irregular warfare (IW).[72] These activities are also generally coordinated and deconflicted with relevant stakeholders within the IC.[73] JAs entering an intelligence assignment must understand the various authorities that can be utilized, as well as "who's who" in the IC, to ensure unity of effort against strategic competitors like Russia.

Finally, it is important for JAs to be able to identify risk areas and assess how much risk a commander may be assuming. To highlight just a few of the risks presented in *The Illegals*, there is always the possibility of operatives being arrested or captured and turned into a double agent for employ against the United States.[74] With regard to the former, JAs must know which status of forces agreements (SOFAs) are in place in the event of an incident involving U.S. personnel in another country. Moreover, if an individual is caught spying in another country and put on trial for espionage, this would inevitably erode trust between the two states and potentially lead to increased scrutiny on U.S. tourists traveling abroad. In addition to requiring a mastery of the law, Army Field Manual 3-84, *Legal Support to Operations*[75] directs Army JAs to provide principled counsel to commanders.[76] Doing so requires effectively advising on legal and non-legal risks. JAs must be able to properly distinguish between legitimate legal issues and decisions on risk that are within the purview of the commander's decision space and advise accordingly.

## Conclusion

In closing, *The Illegals* provides readers with a unique history of Russia through accounts of several illegal spies operating "in the grey" during pivotal moments in the country's history. While Walker's skepticism of the illegals program is supported by many of the program's failures, only the Russian government knows the true extent of the program's successes and whether those successes warrant its continuation. Despite only a few mentions of U.S. intelligence agencies, *The Illegals* should nevertheless be required reading for JAs assigned to USEUCOM, the IC, and SOF, as it illustrates to the difficulty of employing deep cover today and presents several legal and non-legal issues to consider when advising commanders and staff on these high-risk, low-visibility operations against strategic competitors. **TAL**

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## Notes

1. Bridge of Spies, Prime Video (DreamWorks Pictures 2015).

2. *See* Sun Tzu, The Art of War ch. XIII (Lionel Giles trans., Luzac & Co. 1910) (n.d.).

3. *See generally* U.S. Dep't of War, 2026 NDS: National Defense Strategy 18–19 (23 Jan. 2026) (describing the threat posed by Russia).

4. Shaun Walker, The Illegals: Russia's Most Audacious Spies and Their Century-Long Mission to Infiltrate the West (2025).

5. The Americans (FX, 2013–2018).

6. Bridge of Spies, *supra* note 1.

7. Walker, *supra* note 4, at 11.

8. *Id.*

9. *Id.* at 18.

10. *Id.*

11. *See generally id.* (telling the history of Russia from before the Bolshevik Revolution to a recent prisoner swap that occurred in 2024).

12. *See id.* at 153–72 (describing the recruitment and training of Yuri Linov, an "illegal" operative).

13. *See id.* at 173–81 (describing Yuri's prearranged marriage to his wife, Tamara).

14. *See id.* at 36–37 (describing how Dmitry Bystrolyotov, the "greatest of the Great Illegals," was engaged to a twenty-nine-year-old secretary at a French embassy to exploit her for information, only to dump her once his handlers no longer needed what she was supplying).

15. *See id.* at 329 (describing a request for information from the "Center" on "[then-President] Obama's goals as well as for intel on what arguments or enticements his team planned to use to 'lure' Russia into cooperation").

16. *See id.* at 44–45 (describing how Dmitry was "prepared to give Ernest Oldham another nasty shock," but later slept with Ernest's wife, Lucy).

17. *See id.* at 80–86 (describing how an "illegal" infiltrated Leon Trotsky's villa in Mexico City and killed him with an ice pick).

18. *Id.* at 350–51 ("But the available evidence suggests that, for all the ambition, the program routinely failed to deliver. For every illegal who achieved something useful for Moscow, there were a dozen living frustrated lives that bore little espionage fruit.").

19. *Id.* at 349 ("In the new environment of forced patriotism, these inconvenient historical facts were simply

rewritten. All illegals were now portrayed as heroes, and their achievements wildly exaggerated, whether they were long since retired or more recent returns.").

20. Joint Chiefs of Staff, Joint Pub. 2-0, Joint Intelligence, at GL-15 (26 May 2022) (C2, 5 July 2024) (defining "intelligence operations" as "[t]he variety of intelligence and counterintelligence tasks that are carried out by various intelligence organizations and activities within the intelligence process.").

21. Walker, *supra* note 4, at 351 ("The logistical marathons required to conjure illegals into life were often wildly at odds with the modest returns the operatives provided after deployment.").

22. *Id.* at 337–45 (describing the use of "virtual illegals" during the 2016 U.S. presidential election).

23. *Id.* at 351.

24. *Id.* at 153–72.

25. *Id.* at 332–36 (describing the arrest of Andrei and Elena and how they pled guilty with eight other illegals before being returned to Russia).

26. *Id.* at 351.

27. *Id.* at 283–336 (describing the recruitment, training, and eventual arrest of Andrei and Elena).

28. *Id.*

29. *Id.* at 292.

30. *Id.* at 5.

31. *Id.* at 332 ("Alex was sure this was a case of mistaken identity . . . he remained certain it was all a terrible mistake.").

32. *Id.*

33. *Id.* at 314–18.

34. *Id.* at 317–18.

35. *Id.* at 6.

36. *See Ubiquitous Technical Surveillance Demands Broader Data Protections*, Glob. Cyber Sec. Rep. (July 25, 2025) [hereinafter Global Cyber Sec. Rep.], https://globalcybersecurityreport.com/strategy-threats/2025/07/25/ubiquitous-technical-surveillance-demands-broader-data-protections [https://perma.cc/7HJG-2FTX].

37. Off. of Inspector Gen., U.S. Dep't of Just., 25-065, Audit of the Federal Bureau of Investigation's Efforts to Mitigate the Effects of Ubiquitous Technical surveillance 1 (June 2025) [hereinafter DoJ OIG Report].

38. Global Cyber Sec. Rep., *supra* note 36.

39. Dave Davies, *Facial Recognition and Beyond: Journalist Ventures Inside China's 'Surveillance State,'* NPR (Jan. 5, 2021, 12:50 ET), https://www.npr.org/2021/01/05/953515627/facial-recognition-and-beyond-journalist-ventures-inside-chinas-surveillance-sta [https://perma.cc/Z7BR-J7ML].

40. Global Cyber Sec. Rep., *supra* note 36.

41. Walker, *supra* note 4, at 337.

42. *Id.* at 337–45.

43. *Id.* at 351.

44. Fabio Duarte, *Time Spent Using Smartphones (2026 Statistics)*, Exploding Topics (Jan. 9, 2026), https://explodingtopics.com/blog/smartphone-usage-stats [https://perma.cc/P3QJ-SDUG].

45. Walker, *supra* note 4, at 351.

46. *Id.* at 347–48 (stating that the "toll that illegal work took on so many operatives was simply glossed over," describing a specific instance where one illegal operative and his wife were "forced to leave their newborn baby at home with a grandparent when they set out for their first mission abroad," and that his wife soon began having "terrible headaches" and was "withdrawn from service").

47. *Id.* at 118–37 (describing the successes of Iosif Grigulevich, an illegal who successfully maintained a cover as "Teodoro Castro," a Costa Rican diplomat).

48. *Id.* at 302 ("Some [illegals] decided to pack up and go home. . . . In 1991, they had simply gone dark, and the agency, consumed with reorganization, had forgotten all about them.").

49. *Id.* at 314–36, 335 (describing how Alexander Poteyev's betrayal of Russia "decimated the SVR's illegal networks, and not only in the United States").

50. *Id.* at 53 (stating "how the cheating and lying gnawed at [Dmitry Bystrolyotov's] conscience").

51. *Id.* at 63 (stating that Dmitry was subsequently imprisoned in Russia for being a "double illegal," and "sentenced to twenty years of hard labor. When he was eventually released, in 1954, he emerged disillusioned and broken . . . .").

52. *Id.* at 32–53.

53. *Id.* at 53.

54. *Id.*

55. *Id.* at 342–43.

56. *Id.* at 342.

57. *Id.*

58. *See* Christopher Paul Jessica Years, Colin P. Clarke, & Miriam Matthews, RAND, Assessing and Evaluating Department of Defense Efforts to Inform, Influence, and Persuade (Apr. 17, 2025), https://www.rand.org/pubs/research_reports/RR809z1.html [https://perma.cc/9259-Q89B].

59. *See* Walker, *supra* note 4, at 323 (describing Andrei sending reports back to Moscow on potential sources).

60. *Id.* at 330.

61. *Id.* at 110 (briefly noting that the Office of Strategic Services (OSS), "America's first dedicated foreign intelligence agency," collected intelligence and executed covert operations).

62. *Id.* at 415–16 (listing all mentions of the Central Intelligence Agency (CIA) throughout the book).

63. *Id.* at 417–18 (listing all mentions of the Federal Bureau of Investigation (FBI) throughout the book).

64. *See The Role of Intelligence in the Department of Defense: Hearing Before the Subcomm. on Intelligence, Emerging Threats and Capabilities of the H. Comm. on Armed Servs.*, 113th Cong. 15 (2013) (statement of Lieutenant General Michael T. Flynn) ("DIA gains vital information from our highly specialized overt and clandestine human intelligence (HUMINT) activities.").

65. Joanna Walters, *NSA 'Hacking Unit' Infiltrates Computers Around the World – Report*, The Guardian (Dec. 29, 2013, 2:41 PM ET), https://www.theguardian.com/world/2013/dec/29/der-spiegel-nsa-hacking-unit-tao [https://perma.cc/23BT-R9G9].

66. *The Future of U.S. Special Operations Forces: Ten Years After 9/11 and Twenty-Five Years After Goldwater-Nichols, Hearing Before the Subcomm. on Emerging Threats and Capabilities of the H. Comm. on Armed Servs.*, 112th Cong. 62 (2011) (statement of Michael D. Lumpkin, Assistant Sec'y of Def.) ("USSOCOM and the CIA currently coordinate, share, exchange liaison officers and operate side by side in the conduct of DoD overt and clandestine operations and CIA's covert operations.").

67. *See, e.g.*, 10 U.S.C. § 164 (describing authorities of combatant commanders).

68. *See, e.g.*, 50 U.S.C. § 3093 (describing approvals for covert action; often referred to as the "Covert Action Statute").

69. *Contrast id*. (requiring a presidential "finding" for each covert action), *with* 10 U.S.C. § 164 (providing combatant commanders with the authority to carry out missions assigned to their respective commands).

70. 10 U.S.C. § 429a.

71. *Id.* § 127f.

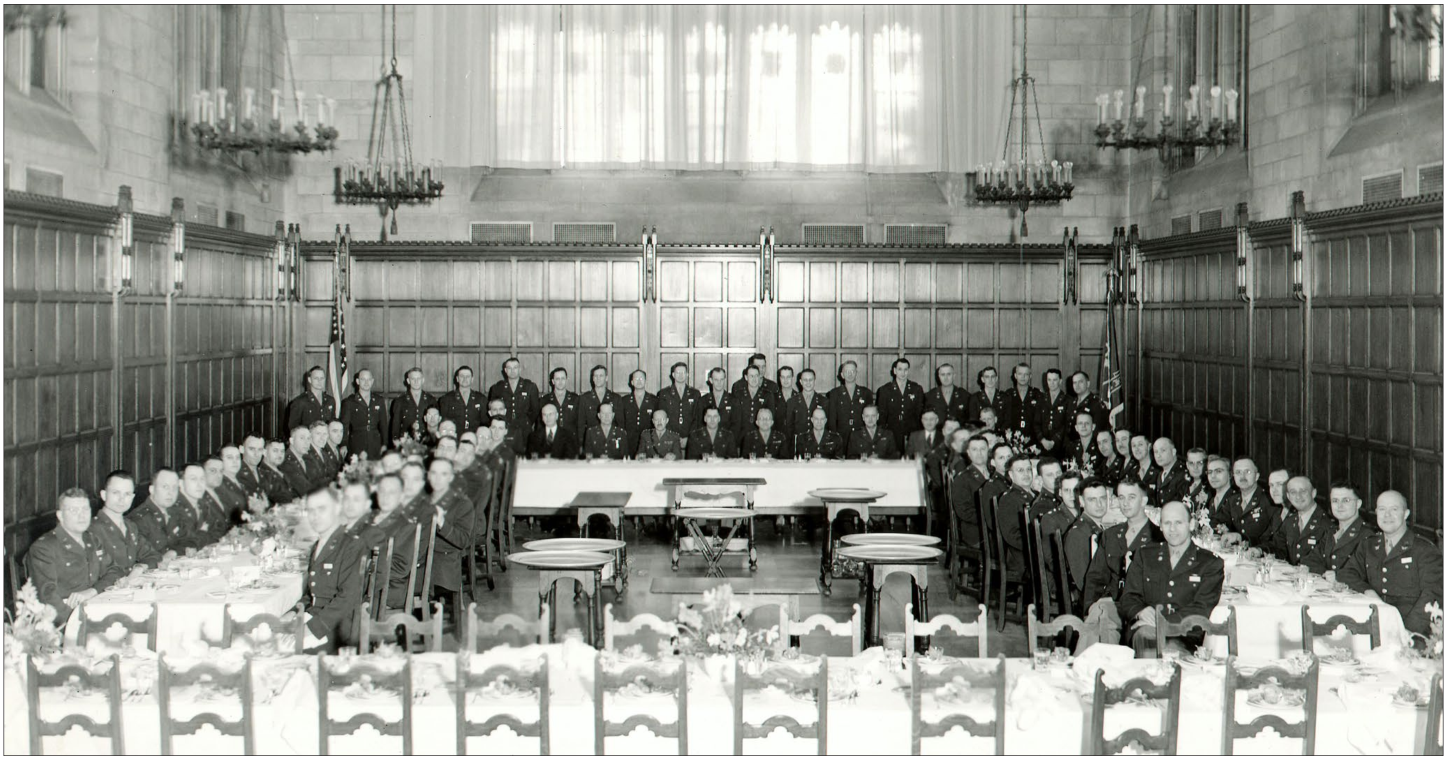
72. *Id.* § 127d.

73. *See* Intel. Cmty. Directive 304, Human Intelligence (9 July 2009) (partially redacted copy on file with author).

74. Walker, *supra* note 4, at 314–36 (describing how Poteyev's betrayal as a double-agent led to Andrei and Elena's arrests).

75. U.S. Dep't of Army, Field Manual 3-84, Legal Support to Operations (1 Sep. 2023).

76. *Id.* para. 1-4.



Graduation of the ninth class of The Judge Advocate General's School in Ann Arbor, Michigan, in April 1943. (Source: Bentley Historical Library: Bentley Image Bank)

# Lore of the Corps

## Silk Stockings or the Danger Zone: The World Wars, SAGEBRUSH, and the Past, Present, and Future of USAR Legal Support

### Part I: Mobilizing People, Industry, and the Law. Reserve Judge Advocates at War

*By Sergeant Major (Retired) Stephen W. Minyard*

The history of legal support from the Judge Advocate General's (JAG) Corps U.S. Army Reserve (USAR) elements, as the largest pool of reserve legal support on the planet, provides a rich tapestry of wisdom as the Army transforms for tomorrow's near-peer, high-end fight. For over 100 years, citizen-Soldiers have answered the call to mobilize and join their Active Component (AC) brothers and sisters, from War Department offices in Washington, D.C., through caves and prison camps in the Philippines, mobilizations throughout the Cold War, to Operations DESERT SHIELD, DESERT STORM, ENDURING FREEDOM and IRAQI FREEDOM. With our

Soldiers arrive at the S.A. Woods Machine Company in August 1942. Then-MAJ Charles Burnett accompanied these armed troops as they enforced Government efforts to quickly expand war material production. (Source: Boston Public Library)

rucksacks facing tomorrow and boots firmly planted in today, this four-part series examines citizen-Soldiers' service and the remarkable history of USAR JAG Corps units through the past century. Part I, below, explores the USAR through the World Wars. Part II will explore the same during the Cold War, and Part III, the post-Cold War era and the creation of the U.S. Army Reserve Legal Command. The series will then conclude with Part IV, which will glean how we may prepare for large-scale combat operations (LSCO) and the challenges facing the Army in decades to come. Far more stories remain to be told here; the following is only a rough mantle upon which to post the deeds of thousands of Reserve legal Soldiers in our Regiment.

## The Beginning: The Judge Advocate General's Reserve Corps

On 3 June 1916, President Woodrow Wilson signed the National Defense Act of 1916.[1] The act created the Officer Reserve Corps (ORC), and authorized the accession of specialty branch officers, such as judge advocates (JAs), directly into the new organization. While the Army Reserve traces its establishment to 23 April 1908, it was primarily a medical officer corps; in 1916, JAs joined its ranks and immediately wrote themselves into our Regiment's history.

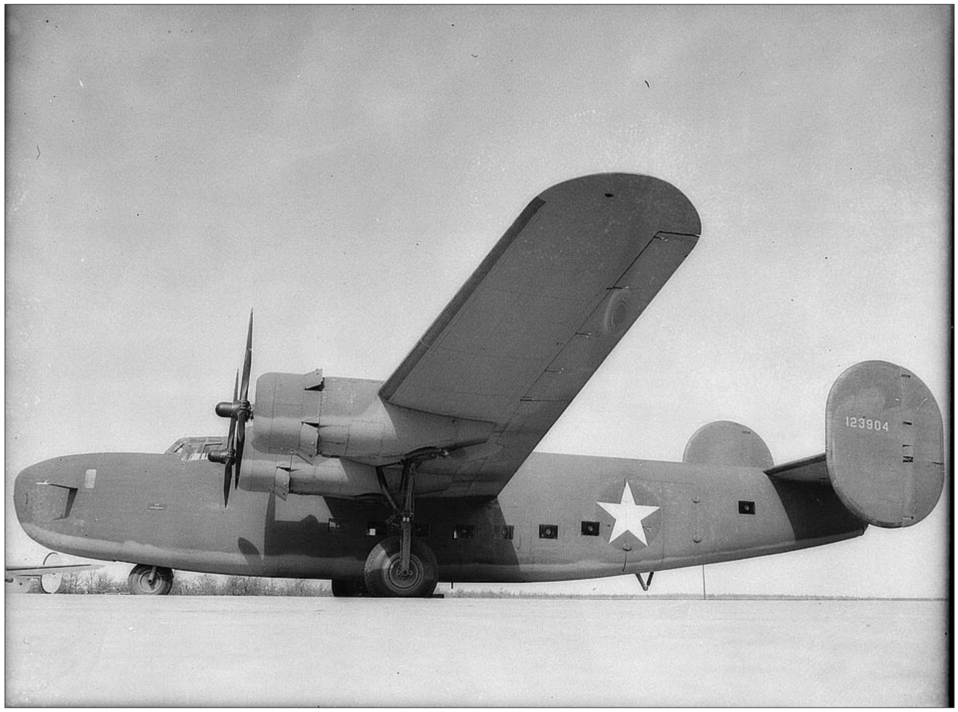
The first twenty ORC JAs were commissioned as majors, among over 21,000 other members of the ORC. In announcing these new Soldiers, the War Department emphasized that legal branch commissions were by no means "silk stocking," rear detachment jobs; rather, they would be in the "danger zone," likely to suffer the same casualty rates as doctors fighting in France.[2] By the end of 1917, fifty-six JAs had been commissioned into what The Judge Advocate General (TJAG) dubbed the "Judge Advocate General's Reserve Corps."[3] Forty-seven of these ORC JAs were activated, and assigned both to the Judge Advocate General's Office (today's OTJAG), and to field units to assist divisions and ports of embarkation with "wills and other legal instruments" for a rapidly expanding Army.[4] Former Regimental Historian Fred Borch's excellent *Judge Advocates in the Great War, 1917-1922* recounts the experiences of these first Reserve JAs in combat.[5]

## The Organized Reserve: Service Between World Wars

The Reserve Officer and Enlisted Reserve Corps were amorphous pools of Soldiers awaiting activation and orders for training before and just after World War I (WWI). The experience of the war's mobilizations drove Congress to comprehensively reform the Army's non-active forces via the National Defense Act of 1920.[6] Both groups of Soldiers were merged and structured into divisions and lower echelon units like the Regular Army force structure and reported to active-duty corps headquarters that in turn had responsibility over geographic regions across the country.

Active-duty officers were detailed as cadre for the various Organized Reserve divisions to serve a similar purpose as the Active Guard/Reserve (AGR) program today, although no JAs appear to have been detailed for this purpose.[7] These divisions and their OSJAs were largely formations bloodied in Europe then inactivated shortly after the armistice; they form the lineage of the vast majority of USAR embedded units and some AC divisions today.[8] JAs could go years between periods of summer training active duty. With no Reserve Centers, inactive training was held in civilian offices or municipal buildings, and until 1941, the Reserve divisions were almost exclusively officer-manned organizations, so enlisted clerks to assist Organized Reserve officers during summer training were probably nonexistent.[9]

As the lean years of the 1930s ended, the world once again faced global war. Japan, raging through China and creeping toward French possessions in modern-day Vietnam, seemed poised to strike British, Dutch, or American forces in the Pacific, and Germany sparked war in Europe in September 1939. On 27 August 1940, Congress authorized the President to mobilize both the Organized Reserve Divisions and the National Guard for up to twelve months.[10] This was no division-level mobilization though; senior commanders across the country drafted lists ranking JAs who were ready, truly needed, and whose absence would not cripple their local community.[11] In September 1940, Congress authorized conscription, adding another mission Reserve JAs happily filled.



A C-87 "Liberator Express," the type of aircraft COL Charles Burnett traveled in across the Pacific on his ill-fated secret mission in 1944. (Source: Library of Congress)

## The First Mobilizations: America Prepares for War

In Washington, D.C., the Judge Advocate General's Department (JAGD) (not yet renamed the JAG Corps) enthusiastically called for volunteers, with a voracious appetite for attorneys. Three lines of effort dominated the JAGD's requirements: legal support to the Selective Service, navigating War Department control of vast swaths of American industry, and providing JAs to training camps swelling with draftees and volunteers across the Nation.[12] Any mobilization requires people and equipment, and the Regiment was deeply involved in getting both ready for war. Through the spring and summer of 1941, mobilization warnings flowed to Reserve JAs, some with frustrating delay. A few departed directly for far-flung outposts in the Philippines or Hawaii; some traveled to Washington, D.C., for a few weeks of training, and others simply waited. Captain (CPT) Charles Burnett, Jr., a Seattle attorney and Reserve JA, said farewell to friends and family several times in May 1941, awaiting final orders. He knew only he would join dozens of JAs in Washington, D.C., but had no idea when.[13]

When he finally mobilized and reported for active duty, Burnett quickly made an impression on JAGD staff as an officer with a talent for navigating new territory for the Regiment. In August 1942, then-Major (MAJ) Burnett, accompanied by 200 armed Soldiers, found himself in South Boston, taking control of the S.A. Woods Machine Company Plant. The factory Burnett had to help manage ran twenty-four hours a day to produce vital war materials, but it refused to abide by wartime labor laws enforced by President Roosevelt. The President, in turn, ordered the Army to occupy the company's grounds.

While Burnett and other Reserve JAs helped balance the rule of law with the needs of industrial mobilization, MAJ Troy W. Lewis mobilized in 1941 to help the massive conscription bureaucracy. An Arkansas native, he stayed close to home, working in the Selective Service's Arkansas headquarters. He, like dozens of other Reserve and Guard JAs through the war, reviewed requests for conscientious objection and other deferments from military service and assignments of men for non-military "work of national importance" at camps around the country.

The War Crimes Group's Apprehension and Clearance Section. Reserve JAs formed the core of this massive, JA-led effort to bring war criminals to justice. (Source: Library of Congress)

He and JAs throughout the Selective Service system balanced the massive need for immediate manpower with fairness and other strategic manpower requirements. Future LSCO could place the same demands on the JAG Corps.[14]

The massive influx of Reserve JAs, some of whom may have never had more than a few weeks of on-the-job training in military law, drove the JAGD to institute a refresher training course in Washington, D.C. Started just three months into the war in February 1942 at National University's Law School, the course provided a basic, specialized, and refresher curriculum for JAs before shipping out for duty. By the middle of 1942, most officers in the JAGD were from the Organized Reserve. Of 771 total officers assigned, 435, or 56 percent of the force, were Reserve officers, with another 53 mobilized from the National Guard.[15] The small active-duty nucleus of the JAGD would remain just a fraction of JA strength throughout the war.[16]

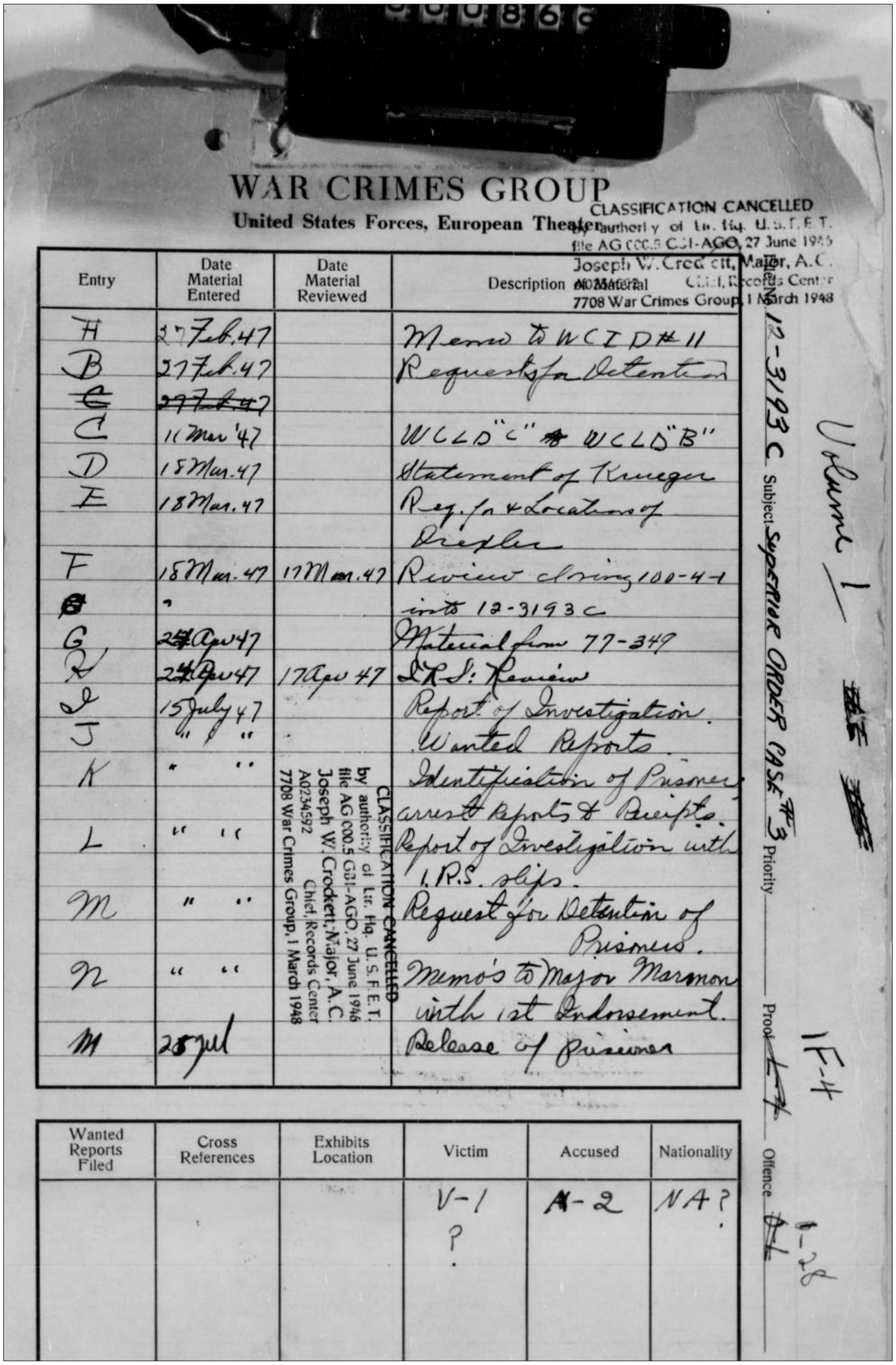
## Fighting in Europe, the Pacific, and One Last Mission for the JAG Reserve

Although the Organized Reserve was a division-based organization, pre-war piecemeal mobilizations gutted most of their officer staff and leadership. Thus, by the time full divisions did mobilize, they were cobbled together with conscripted men; retiree recalls; a smattering of Guard, Reserve and active-duty veterans; and new Reserve officers brought directly into the JAGD.

Nicholas E. Allen, an attorney working for the U.S. Department of Labor in 1942, was one such reservist commissioned as a second lieutenant and sent, like many new JAs, to work in the JAGD's War Department offices in Washington, D.C. He attended one of the first classes of The Judge Advocate General's School in Ann Arbor, Michigan, in 1943, and he joined the vast flotillas of Soldiers and machinery sailing for England in January 1944. While in England, he reviewed records of trial through the massive invasion of D-Day in June 1944; but, he finally got his chance to join a Reserve division heavily engaged in combat in August 1944: the 82d Airborne Division.[17] Allen served in the division through Operation Market Garden, the Battle of the Bulge, and the eventual surrender of German forces in May 1945. Allen stayed a Reserve officer after the war, transferred to the new U.S. Air Force Reserve in 1949, and retired as a brigadier general.[18]

By 1943, Reserve JA Charles Burnett was still in Washington, where promoted again to lieutenant colonel (LTC). He was working in the War Department's Civil Affairs Division and planning for the liberation of Europe. Once again handed a thorny legal issue, he drafted the Department's policy on the preservation of artistic treasures, monuments, and museums during what promised to be a bitter fight.[19]

The war in the Pacific, however, drew Burnett into a dangerous, secret mission




One of thousands of case records supported by the work of Straight and Fratcher, within the JA-led War Crimes Group. (Source: National Archives)

in July 1944. Promoted once more to colonel, Burnett boarded a C-87—a B-24 "Liberator" bomber outfitted for passenger travel—en route to Amberly Field in Australia. War still raged across the South Pacific, and Burnett was likely dispatched by the War Department with plans of coming offensives as General Douglas MacArthur's troops fought north to the Philippines and into Japan itself. On 26 July 1944, as Burnett's long journey to Australia was nearly complete, his aircraft disappeared. A frantic search found a recently burned patch of jungle about 30 miles north of Guadalcanal, the plane's next stop, and a search party confirmed the deaths of all aboard.[20] He was just thirty-nine years old.

Four of the eight JAs serving in the Philippines at the outset of the war were mobilized reservists, and they would comprise the majority of the JAGD casualties suffered during the war. Three of the four—LTC Arch M. McKeever, MAJ Frank G. Aigrisse, and MAJ Samuel L. Heisinger Jr.—would die in Japanese captivity. For more on the ordeal of the JAs of the Philippine Department, see this author's Lore of the Corps article in issue 3, 2025, of *The Army Lawyer*.[21]

Reserve JAs continued to serve around the world, helping the Federal Government rally millions of men, women, and American industrial might to the front lines. As early as 1942, however, signs emerged of one final, gargantuan mission for them and our Regiment: the prosecution of those who flaunted the laws of war. On 7 October 1942, President Roosevelt declared his intent to join with Great Britain and other European nations to establish a United Nations Commission for Investigation of War Crimes. This commission would ensure "just and sure punishment" for those who, according to the President, "violated every tenet of the Christian faith."[22] In 1941, most Reserve JAs were captains with a few weeks of active duty; by 1945, they were field-grade officers, fluent in international law and keen to help with one final World War II mission.

Two Reserve JAs, COL William F. Fratcher and LTC Clio Straight, played pivotal roles in war crimes trials, lending their expertise to the Corps while hundreds wearing the quill and sword demobilized and went home. Fratcher mobilized first as a Cavalry officer in 1941 and, holding a law degree from the University of Michigan, transferred into the JAGD in November of that year.[23] By the end of the war, Fratcher was the chief, War Crimes Branch, Legal Division, Office of Military Government for Germany. He was responsible for carrying out Roosevelt's charge to hold the German military, and civilian population (notably those who beat or killed Allied fliers) to justice. In 1948, Fratcher wrote an extraordinary first-hand account of this massive undertaking and the toll it took on the JAs working within one of the Regiment's finest hours.[24]

LTC Clio Straight was a Reserve JA and attorney in Sioux City, Iowa, at the beginning of the war, but he activated in February 1942. He spent most of the war in Washington, D.C., working contract law across the Pacific, and assisting in the gathering of evidence for war crime prosecutions in Europe.[25] At the conclusion of the war, Straight returned to Washington as deputy chief of the War Crimes Branch of the JAGD, overseeing the JAGD's role in trials in Germany.[26]

In this role, he had the unfortunate duty of reviewing the record of trial of Ilse Koch, the "belle" of Buchenwald prison camp, for whom he recommended a reduction in sentence from life to just four years due to a lack of "credible evidence." His recommendation, and the Army's perceived lack of candor in publicizing the recommendation, created a firestorm for the Army and President Truman. Nevertheless, Straight continued a fruitful post-war career; he retired as a brigadier general in 1961 and died in 1991 at the age of ninety-six.[27]

## Looking to the Future: Legal Units

The system Straight and Fratcher worked in was so enormous, and required so many distinct resources, that the Army created an entire command dedicated to the mission, the 7708 War Crimes Group, with Straight serving as its commanding officer.[28] This novel JA-led unit was dissolved as the trials wound down in the late 1940s, but this foray into a unit of lawyers and legal personnel created an impression across the Regiment.

Just a year after Straight returned from Europe to Washington, D.C., in 1949, TJAG convened a conference at Camp Edwards, Massachusetts, to discuss the best means of keeping his large number of Reserve JAs trained. The Soviet Union was no longer the close ally it had been during the war, and a completely new system of military justice, borne of lessons during World War II, was on the way: the Uniform Code of Military Justice. TJAG's proposed solution was to form "JAG Training Units" across the country in areas where twelve or more JAs resided. The UCMJ and the Korean War would intervene with this plan, but by the mid-1950s, the Regiment dove into creating the largest Reserve pool of military legal expertise in history.[29] **TAL**

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

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## Notes

1. National Defense Act of 1916, Pub. L. No. 64-85, 39 Stat. 166.

2. James Brown Scott, *Judge Advocates in the Army*, 11 Am. J. of Int'l L. 650, 651 (1917).

3. U.S. War Dep't, War Department Annual Reports, 1917, at 215 (Nov. 20, 1917); Fred L. Borch, *Lore of the Corps: Judge Advocates in the Great War*, Army Law., Nov./Dec. 2018, at 10, 11.

4. U.S. War Dep't, *supra* note 3, at 215. The War Department's 1917 report has repeated entries demanding better staffing, pay, and permanent assignment of clerks within our Corps, including an unknown private who did the work of "three clerks" for the JA assigned to the punitive expedition into Mexico. *Id.*

5. Frederic L. Borch, Judge Advocates in the Great War, 1917-1922 (2021). *Judge Advocates in the Great War, 1917-1922* is available for download from the Library of Congress at *Judge Advocates in the Great War, 1917-1922*, Lib. of Cong., https://www.loc.gov/item/2020415102 [https://perma.cc/4T4P-KLQ2] (last visited May 7, 2026).

6. National Defense Act of 1920, Pub. L. No. 66-242, 41 Stat. 759. For analysis of the act's sweeping reforms, see Comm'n on the Nat'l Guard & Reserve, Final Report to Congress and the Secretary of Defense, at E-4 (Jan. 31, 2008).

7. Off. of the Adjutant Gen., Army List and Directory 38 (Oct. 1935). The 82d Division, for example, assigned to Fourth Corps, had a mere ten officers detailed to its South Carolina headquarters in 1935. You read that right: the 82d was a Reserve division, not active duty, until World War II.

8. Reserve divisions, for example, included the 81st, 82d, 83d, 84th, and 85th Divisions, whose patches are today worn reflected in USAR major commands (81st, 83d, 84th, and 85th) and, of course, the 82d Airborne Division.

9. David W. Moore Jr., Justin B. Eddington & Emily T. Payne, Dep't of Def. Legacy Res. Mgmt. Program, Blueprints for the Citizen Soldier: A Nationwide Historic Context Study of United States Army Reserve Centers 14–15 (2008).

10. *See* S.J. Res. 286, 76th Cong. (Aug. 27, 1940), *reprinted in* War Dep't, Supplement I to the Military Laws of the United States, Edition of 1939, at 289 (1941). Congress's 27 August 1940 legislation also included some of the first protections and benefits in Federal law to Reserve Soldiers, such as a clothing allowance and extension of the WWI-era Soldiers and Sailors Civil Relief Act to all Reserve and National Guard personnel.

11. Richard B. Crossland & James T. Currie, Twice the Citizen 64 (1984).

12. *See, e.g.*, Army Directory: Reserve and National Guard Officers on Active Duty (July 31, 1941) [hereinafter Army Directory]. At this early point in the war, the JAGD seemed well-prepared to mobilize dozens of JAs, indicating a prudent level of planning well before events came to a crisis.

13. *Parting Is Such...*, Seattle Star, May 16, 1962, at 11.

14. Army Directory, *supra* note 12, at 705; *See, e.g.*, Memorandum from Major Troy W. Lewis, Chief, Legal Div., subject: Shelby Lawrence Lenox (Dec. 17, 1942) (on file with the Nat'l Archives and Recs. Amin., Record Group 147, Microfilm Reel 33).

15. William F. Fratcher, *Notes on the History of the Judge Advocate General's Department, 1775-1941*, 1 Judge Advoc. J. 13 (1944).

16. The Army Lawyer: A History of the Judge Advocate General's Corps, 1775-1975, at 186 (1975).

17. Organized Reserve divisions of the day included the 80th, 81st, 83d, 84th, and 85th Divisions, all with lineage today to divisions or major commands within the U.S. Army Reserve—save for the 82d Airborne Division.

18. Fred L. Borch, *The 82nd Airborne's "Jumping JAG": The Incredible Wartime Career of Nicholas E. Allen*, Prologue, Summer 2007, at 21.

19. Henry L. Coles & Albert K. Weinberg, Civil Affairs: Soldiers Become Governors 89 (1986).

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22. Franklin D. Roosevelt, Statement on War Crimes (Oct. 7, 1942), *reprinted in* United Nations War Crimes Comm'n, History of the United Nations War Crimes Commission and the Development of the Laws of War 111 (1948), https://unwcc.org/wp-content/uploads/2022/11/UNWCC-history.pdf [ https://perma.cc/79BV-WSZL].

23. War Dep't, Official Army Register, Volume I: 1 January 1946, at 237 (1946) [hereinafter Official Army Register].

24. William F. Fratcher, *American Organization for Prosecution of German War Criminals*, 13 Mo. L. Rev 45 (1948).

25. Official Army Register, *supra* note 23, at 661.

26. *Sioux City Colonel Honored for Work on Trials of Nazis*, Sioux City Sunday J., Jan. 6, 1946, sec. 3-7.

27. *Obituaries: General Clio Straight*, San Francisco Chron., Apr. 26, 1991, at B6.

28. Report of the Deputy Judge Advocate for War Crimes, European Command, June 1944 to July 1948, at 2 (1948).

29. *TJAG Conducts Reserve Training Conference*, Judge Advoc. J., Oct. 1949, at 21.

U.S. Soldiers with Bravo Company, 1st Battalion, 112th Infantry Regiment, 56th Stryker Brigade Combat Team ruck march near the Cambridge Springs Readiness Center during their IDT in Cambridge Springs, PA. (Credit: SSG Jonathan Campbell)

## Practice Notes

# Saturday Night Jurisdiction over Reserve Soldiers, Part II

*By Colonel T. Scott Randall*

It is well-settled law that Reserve Soldiers are subject to the Uniform Code of Military Justice (UCMJ) between consecutive periods of inactive-duty training (IDT) (e.g., the Saturday evening of a typical battle assembly weekend).[1] However, the Court of Appeals for the Armed Forces (CAAF) has recently constricted the Military Services' ability to exercise jurisdiction over Reserve Component (RC) Service members.[2] In *United States v. Taylor*, CAAF found that while Congress had explicitly expanded UCMJ jurisdiction over RC personnel to include "intervals between consecutive periods of IDT on consecutive days," it had not broadened the Services' ability to order such Service members to active duty for courts-martial purposes.[3] This ruling effectively nullifies the jurisdictional expansion provided by Congress in 2017 and places the Military Services in the same uncertain position regarding UCMJ jurisdiction as they were prior to 2017.[4]

### UCMJ Jurisdiction over Reserve Soldiers Prior to the Military Justice Act of 2016

As detailed in the seminal article in *The Army Lawyer* on this issue, *Saturday Night Jurisdiction over Reserve Soldiers*, there are two categories of duty to which personal jurisdiction attaches to RC Soldiers.[5] The first is active duty. For RC Soldiers, UCMJ jurisdiction attaches "*from the dates* when they are required by the terms of the call or order to obey it."[6] Courts have interpreted this provision to attach UCMJ jurisdiction immediately after midnight on the date the active-duty order begins.[7] Therefore, an RC Soldier issued an annual training order, active-duty for training order, or active-duty for operational support order would be subject to the UCMJ at one minute (or, technically, one second) past midnight on the date their order begins.[8] This time-based rule was in effect prior to 2017 and remains the law concerning RC Soldiers under active-duty orders.[9]

The second category of duty for RC Soldiers subject to UCMJ jurisdiction is IDT.[10] Prior to 2017, an RC Soldier was subject to the UCMJ "*while on inactive-duty training*, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service."[11] In *United States v. Wolpert*, the Army Court of Criminal Appeals found no jurisdiction under UCMJ Article 2(a)(3) when a Reserve Soldier was accused of sexual assault that occurred on a Saturday evening after battle assembly in Government-provided lodging.[12] It held that "[t]he military judge's finding that the IDT period ended when appellee signed out of the second [unit training assembly] on Saturday at 1700 . . . is not clearly erroneous . . . [and thus] we conclude there was not jurisdiction under Article 2(a)(3)."[13] The court reasoned that the four-hour IDT period performed by the appellant on Saturday afternoon, which concluded by his signing out of the unit for pay purposes, was the discrete period during which he was subject to UCMJ jurisdiction under Article 2(a)(3).[14] Therefore, following sign-out, the Soldier was no longer "on IDT" within the meaning of Article 2(a)(3) even though the Soldier received the benefit of Government-funded lodging.

Importantly, the *Wolpert* court did not foreclose the possibility of jurisdiction extending beyond four-hour IDT periods.[15] The court emphasized that it was not clearly erroneous for the trial court to find that the act of signing out constituted the end of the IDT period for jurisdictional purposes.[16] The court reasoned that under the unit's drill schedule in *Wolpert*, "a reservist would have no additional duties the rest of the duty day after signing out" as the salient fact extinguishing jurisdiction.[17] This finding intimates that a later sign-out time and/or additional duties could extend the IDT period for jurisdictional purposes beyond its minimum four hours of duration.

The Air Force Court of Criminal Appeals took up this same issue in *United States v. Hale*, a case decided in January of 2018.[18] Because the misconduct at issue occurred before the effective date of the Military Justice Act of 2016's changes to the UCMJ, the jurisdictional analysis still focused on the meaning of "while on inactive-duty training."[19] The court noted that "unlike other types of reserve duty, an IDT is not a tour but a block of time. Specifically, it is a designated 'four-hour period of training, duty or instruction.'"[20] In finding no jurisdiction for the primary offense, the court reasoned that Hale received pay and points solely for the IDT blocks he was authorized to complete and nothing more.[21] Therefore, the periods outside of these IDT blocks were not eligible for UCMJ jurisdiction.[22]

While acknowledging Hale's entitlement to reimbursement for lodging the evenings following the performance of IDT, the court stated that such an entitlement does not confer jurisdiction.[23] The court concluded, "We now squarely address jurisdiction over conduct occurring outside a block of IDTs and agree with our sister court's interpretation in *Wolpert*" that a Service member is not *on IDT* outside of these four-hour periods.[24]

While appearing authoritative on the issue of whether UCMJ jurisdiction can extend beyond four-hour IDT periods, the Air Force regulation cited in *Hale* is very different from the Army's regulation on this issue.[25] Under Air Force Instruction (AFI) 36-2254V1, *Reserve Personnel Participation*, IDT is "a 4-hour period of training, duty, or instruction . . . [that] can be longer . . . under unusual circumstances."[26] In contrast, Army Regulation (AR) 140-1, para. 3-4(b) states that a unit training assembly (UTA) (a unit's normal form of IDT on a battle assembly weekend) is a "scheduled training assembly of at least 4 hours, including roll call and rest periods."[27] Therefore, four hours is the minimum amount of time for an IDT period under AR 140-1.[28]

Unlike the regulation at issue in *Hale*, AR 140-1 contemplates IDT periods extending beyond the minimum four-hour block of time, especially when units are training in a field environment where overnight bivouacking is part of the training.[29] Hence, much like *Wolpert*, *Hale* does not foreclose the ability to extend UCMJ jurisdiction for IDT beyond four-hour blocks of time. It does, however, call for some additional military duties (albeit under unusual circumstances) to require the extension of time.

## UCMJ Jurisdiction over Reserve Soldiers After the Military Justice Act of 2016

In the National Defense Authorization Act of 2017 (which implements the Military Justice Act of 2016), Congress expanded jurisdiction over RC Service members to resolve the jurisdictional challenges identified in cases like *Wolpert* and *Hale*.[30] It added three subgroups to Article 2(a)(3) of the UCMJ, and it removed the phrase "while on inactive-duty training" altogether.[31] Jurisdiction over RC Service members now includes: (1) members traveling to and from the IDT training site; (2) intervals between consecutive periods of IDT on the same day, pursuant to orders or regulations; and (3) intervals between IDTs on consecutive days, pursuant to orders or regulations.[32]

This jurisdictional expansion placed UCMJ jurisdiction over IDTs much closer to the jurisdictional approach to tours of active duty, with some caveats.[33] Commanders now have jurisdictional authority over Soldiers from the moment Soldiers travel to battle assembly to the moment they return home at the end of a battle assembly weekend.[34] The clear difference with active duty is that IDT jurisdiction does not begin after midnight on the date the Soldier has duty. Rather, it begins upon a Soldier's departure for battle assembly.[35] Conversely, jurisdiction concludes over a period of IDT when the Soldier returns home from battle assembly, while jurisdiction concludes for periods of active duty at midnight on the last day of a Soldier's order.[36] Therefore, in those two instances, the exact moments when UCMJ jurisdiction begins and ends remains a question of fact even after the statutory changes.

### *United States v. Taylor*

With the jurisdictional landscape over RC Service members becoming untrammeled by the Military Justice Act of 2016, CAAF altered the jurisdictional landscape once again with its holding in *United States v.*

U.S. Army California National Guard Soldiers from the 1-160th Infantry Battalion conduct weapon qualification at the range during their IDT at Camp Roberts, CA. (Credit: SSG Chau Le)

*Taylor*.[37] In this case, Taylor's Reserve unit conducted battle assembly on Saturday and Sunday, 7 and 8 December 2019.[38] On Saturday evening, Taylor attended a party at a Service member's home.[39] During this party, he allegedly sexually assaulted another Service member.[40] Because the alleged assault occurred between IDT periods on consecutive days (Saturday evening), the Air Force exercised personal jurisdiction over the Airman under UCMJ Article 2(a)(3) and ordered him to active duty for court-martial purposes.[41] For the order to active duty, UCMJ Article 2(d)(1) provides in relevant part that a "member of a Reserve component . . . may be ordered to active duty involuntarily for the purpose of . . . trial by court-martial."[42]

However, on appeal, Taylor argued the Air Force was precluded from ordering him to active duty under Article 2(d)(1) because he was not "on active duty or on inactive-duty training" at the time of the alleged offense.[43] This fact became salient because Article 2(d)(2) limits the ability to order an RC Service member to active duty for courts-martial purposes.[44] It states, "A member of a Reserve component may not be ordered to active duty under [Article 2(d)(1)] except with respect to an offense committed while the member was on active duty; or *on inactive-duty training*."[45] Therefore, Taylor argued that the Air Force could not exercise the expanded personal jurisdiction provided in Article 2(a)(3) because Congress had not amended Article 2(d)(2) to allow the Air Force to order him to active duty for court-martial purposes unless he was alleged to have committed the act while on IDT.[46] Here, he is alleged to have assaulted a Service member during the interval between periods of IDT.[47]

CAAF agreed. It reasoned that the plain language of Article 2(d)(2) precluded the Air Force from ordering Taylor to active duty in this case.[48] It stated that Congress could have amended Article 2(d)(2) to cover intervals between consecutive IDT periods, but it chose not to do so.[49] The court rejected the Air Force's argument that Article 2(a)(3) changed the meaning of IDT to include the periods a Service member is performing IDT and the intervals in between, i.e., that IDT had become a term of art that contains both of these time periods.[50] However, the court found no ambiguity in the meaning of IDT and rejected the argument that Article 2(a)(3) had expanded the meaning of the term.[51]

The court further rejected the Air Force's argument that a plain reading of Article 2(d)(2) would lead to the absurd result of Congress expressly expanding jurisdiction in Article 2(a)(3) but then limiting this expansion by another provision.[52] The court found that the absurdity doctrine did not apply in this case because the result was not so shocking to the general or moral common sense as to become absurd.[53] It stated that "an 'unintentional drafting gap' is insufficient to warrant judicial correction; correction is the province of Congress in cases where an admittedly 'anomalous' result 'may seem odd, but . . . is not absurd.'"[54] Therefore, in the aftermath of *Taylor*, the state of jurisdiction over RC Service members has essentially returned to its pre-Military Justice Act of

2016 condition. A military Service may only exercise personal jurisdiction over a Service member with respect to IDT when the Service member is on IDT, and not during periods in between.[55]

## Conclusion

UCMJ jurisdiction over RC Service members has returned to a less-settled state. Although the Military Services may have personal jurisdiction over an RC Service member in the interval(s) between IDT periods under Article 2(a)(3), they must be able to show that the RC Service member was conducting IDT in this interval to be able to order them to active duty for court-martial purposes.[56] For the Military Services, this means they would need to eliminate the interval between IDT periods altogether to be able to exercise jurisdiction. This elimination could be achieved by not conducting a sign-out on Saturday afternoon and ordering Soldiers to a specific lodging while maintaining the indicia of military authority over these Soldiers. The task would be to make battle assembly look more like field training, where Service members are clearly conducting duties and are under military control. Courts are hesitant to recognize UCMJ jurisdiction over RC Service members when there is a question of statutory interpretation.[57] Therefore, it is up to the commanders on the ground to come as close as possible to actual training and related activities to establish jurisdiction. **TAL**

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## Notes

1. *See* UCMJ art. 2(a)(3) (2024). A multiple unit training assembly (MUTA) weekend is typically referred to as a battle assembly (BA) weekend, during which Reserve Soldiers earn one retirement point and one day of pay for each UTA (a UTA is a form of inactive-duty training (IDT)) period performed. *See* T. Scott Randall, *Saturday Night Jurisdiction over Reserve Soldiers*, Army Law., June 2013, 31, 31 n.2. Units typically perform two UTA periods per day. *See id.*

2. *See* United States v. Taylor, 86 M.J. 1 (C.A.A.F. 2025).

3. *Id.* at 12–13.

4. *Id.* This expansion of Reserve Component jurisdiction was part of a broad set of UCMJ changes found in The Military Justice Act of 2016. *See* 2016 Military Justice Act, Pub. L. No. 114-328, sec. 5102, 130 Stat. 2000, 2921.

5. *See generally* Randall, *supra* note 1 (analyzing UCMJ jurisdiction over RC Soldiers between two IDT periods).

6. UCMJ art. 2(a)(1) (2024).

7. *See* United States v. Cline, 29 M.J. 83 (C.M.A. 1989); United States v. Phillips, 56 M.J. 843 (A.F. Ct. Crim. App. 2002).

8. *See* Randall, *supra* note 1, at 32–33.

9. *See* UCMJ art. 2(a)(1) (2024).

10. *See id.* art. 2(a)(3).

11. *Id.*

12. *See* United States v. Wolpert, 75 M.J. 777 (A. Ct. Crim. App. 2016).

13. *Id.* at 781.

14. *Id.*

15. *See* U.S. Dep't of Army, Regul. 140-1, Army Reserve Mission, Organization, and Training para. 3-4b (20 Jan. 2004) [hereinafter AR 140-1]. AR 140-1 mandates that troop program unit Soldiers (TPUs) (these are the typical RC Soldiers who serve one weekend per month and two weeks per year) conduct IDT in the form of unit training assemblies (UTAs). *Id.* A TPU Soldier who satisfactorily completes an entire UTA may earn at least one day's pay or one retirement point or both. *Id.* A TPU may not conduct more than two UTAs of equal duration per day, regardless of the number of hours of training actually conducted. *Id.* para. 3-4(c). Therefore, each UTA period is a minimum of four hours in duration and a maximum of twelve hours in duration when performing two UTAs in one day. *Id.* para. 3-4.

16. *See Wolpert*, 75 M.J. at 781.

17. *Id.*

18. *See* United States v. Hale, 77 M.J. 598 (A.F. Ct. Crim. App. 2018). This case was appealed to the U.S. Court of Appeals for the Armed Forces on different grounds. *See United States v. Hale*, 78 M. J. 268 (C.A.A.F. 2019).

19. *Hale*, 78 M.J. at 604.

20. *Id.*

21. *Id.*

22. *Id.* at 605.

23. *Id.*

24. *Id.* at 605 n.4.

25. *See* U.S. Dep't of Air Force, Instr. 36-2254V1, Reserve Personnel Participation (26 July 2011) [hereinafter AFI 36-2254V1]; AR 140-1, *supra* note 15.

26. AFI 36-2254V1, *supra* note 25, para. 4.1.

27. AR 140-1, *supra* note 15, para. 3-4(b). A MUTA weekend is typically referred to as a BA weekend. *Id.*

28. *Id.*

29. *Id.*

30. *See* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, sec. 5102, 130 Stat. 2000, 2921 (2016).

31. *See id.*; UCMJ art. 2(a)(3) (2024).

32. UCMJ art. 2(a)(3) (2024).

33. *Id.*

34. *Id.* This analysis does not take into account the frolic and detour doctrine, which may foreclose jurisdiction when an RC Soldier deviates from his destination. However, there has been no case law on this issue with respect to jurisdiction. *But see* Bissell v. McElligott, 369 F.2d 115 (8th Cir. 1966) (holding Missouri state law concerning respondeat superior applicable in its finding of no liability for the actions of an Airman on a frolic under the Federal Tort Claims Act).

35. *See* UCMJ art. 2(a)(3) (2024).

36. *Id.*

37. United States v. Taylor, 86 M.J. 1, 12–13 (C.A.A.F. 2025).

38. *Id.* at 3.

39. *Id.*

40. *Id.*

41. *See* UCMJ art. 2(d)(1) (2024).

42. *Id.*

43. *See id*. The complete text of Article 2(d)(1)-(2), UCMJ, is as follows:

> (d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—
>
> (A) a preliminary hearing under section 832 of this title (article 32);
>
> (B) trial by court-martial; or
>
> (C) nonjudicial punishment under section 815 of this title (article 15).
>
> (2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—
>
> (A) on active duty; or (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard.

*Id*. art. 2(d)(1)–(2).

44. *Id.* art. 2(d)(2).

45. *Id.*

46. *See* United States v. Taylor, 86 M.J. 1, 12-13 (C.A.A.F. 2025).

47. *Id.* at 3–4.

48. *Id.* at 12.

49. *Id.*

50. *Id.* at 12–13.

51. *Id.* at 13.

52. *See id.* at 13–15.

53. *Id.*

54. *Id.* at 14–15.

55. *Id.* at 12–15.

56. *See* UCMJ art. 2(d)(2) (2024).

57. *See Taylor*, 86 M.J. at 13–15.

(Source: Chief DIgital & Artificial Intelligence Office, U.S. Department of War)

Practice Notes

# Artificial Intelligence as a Judge Advocate's Force Multiplier

*By Captain Bridget R. Reineking*

The commanders whom Army lawyers advise are increasingly making decisions at machine speed, in domains shaped by adversaries who themselves use artificial intelligence (AI). The judge advocates (JAs) who cannot keep pace with that tempo do not remain neutral observers of the technology; they become a brake on operations. This is the practical meaning of the Secretary of War's January 2026 directive that the Army become an "AI-first" warfighting force, emphasizing speed, experimentation, and operator-level adoption.[1] The mandate does not frame AI as a future aspiration or a niche technical capability.[2] It casts AI as a present operational reality—one that demands bold, informed, and creative adaptation.[3]

This institutional posture matters for Army lawyers. JAs do not operate outside the tempo of modern warfare; they advise within it. As operational timelines compress and commanders confront increasingly complex environments and directives to employ disruptive technologies, their counselors must keep pace. AI—and large language models (LLMs) in particular—offer a means of increasing legal speed, consistency, and analytical depth.[4] With training and willingness (and a certain degree of self-study), members of the Corps *can* and *will* develop the competence to employ AI deliberately and responsibly. In this environment, abstention is not neutrality. It is a decision to fall behind.

The institutional architecture for that engagement is already in place. The Department of War (DoW) has approved AI tools for use in Government environments,[5] and the Judge Advocate General's (JAG) Corps Interim Artificial Intelligence Governance Policy declares that the Corps "*will* exploit AI responsibly," encouraging Army JAs to engage with authorized LLMs as a matter of professional competence.[6] This policy direction reflects a clear strategic vision: properly deployed, LLMs are force multipliers.[7] For supervisory attorneys in particular, authorized AI systems offer a means to scale legal judgment across dispersed formations without diluting individual responsibility or accountability. The task ahead is not to automate legal judgment but to augment it, freeing JAs to focus cognitive resources on the analysis, counsel, and advocacy that remain irreducibly human.[8] But policy permission and a force-multiplier framing are not, by themselves, competence. Using these tools well—and avoiding failures that have already embarrassed lawyers in civilian practice[9]—starts with understanding what they are.

**The JAG Corps Interim AI Governance Policy is not an invitation to experiment. It is a professional imperative. LLMs offer JAs a means to multiply effectiveness without compromising the judgment, ethics, and accountability that separate trusted counselors from legal processors—but tools require mastery.**

### Master Your Tool: LLMs and How They Function

Like any professional instrument, LLMs reward users who understand both their capabilities and their limitations. An LLM is a type of "foundation model"—an AI model trained on vast amounts of data that can be adapted to various tasks and applications.[10] Foundation models encompass multimodal systems like Google's Gemini (which processes text, images, and audio),[11] specialized generative models such as OpenAI's DALL-E (which focuses on text-to-image generation),[12] in addition to LLMs. An LLM can "recognize, summarize, translate, predict, and generate text and other forms of content based on knowledge gained from massive datasets."[13] These models can be general-purpose or fine-tuned for specialized tasks, including in domains like law and medicine.[14]

Many readers familiar with ChatGPT may not understand the underlying foundation model (an LLM created by OpenAI) or its information processing mechanisms. Unlike search engines, traditional LLMs do not retrieve specific information from existing databases.[15] Instead, these algorithms are "trained" to identify linguistic patterns by processing billions of pages of text, generating responses based on statistical probabilities rather than direct retrieval.[16] After an LLM is trained on a sufficiently large and diverse body of works—hundreds of billions to trillions of tokens[17] derived from pages of news reports, books, essays, stories, and similar documents—the model has encountered a given word so often, across so many contexts, that it can predict statistically likely word sequences in response to prompts.[18] Many (but not all) modern LLMs now also incorporate retrieval-augmented generation (RAG), which lets the model pull accurate, up-to-date information from curated sources when generating a response, improving factual accuracy while preserving fluent text generation.[19]

Two characteristics of this architecture matter for attorneys. First, LLMs do not "know" facts in the human sense.[20] An LLM does not reason deductively, form intent, or understand truth.[21] Instead, it generates language that resembles expert discourse because it has been trained on large volumes of expert discourse. When asked to operate beyond reliable context, it may confidently invent citations or misstate facts—the phenomenon referred to as "hallucination," which is a predictable consequence of probabilistic text generation rather than a flaw unique to AI.[22] Second, an LLM's output is bounded in large degree by what was in its training data and shaped by the quality of a prompt.[23] The structure, specificity, and framing of a prompt determine the usefulness of the output.[24] A model that has seen many appellate opinions will draft persuasively in that genre; a model that has seen relatively little of, say, the Defense Federal Acquisition Regulation Supplement, will draft less reliably in that domain.

For members of the Army JAG Corps, that second point has particular force. With few exceptions, as of this writing, JAs are not currently positioned to *train* LLMs or other AI models for daily operations. But JAs may leverage authorized models available through the Department of War's GenAI.mil platform (GenAI) and the Army Enterprise LLM Workspace, which is powered in part by Ask Sage.[25] The practical levers available to all JAs, therefore, are (i) prompts themselves and (ii) supporting material uploaded with a given prompt. Both function as a form of in-context conditioning: they tell the model not only what to do but also, by supplying authoritative context, narrow the statistical space from which it draws.[26] This is why an uploaded regulation or policy memo can dramatically improve output quality over an unsupported question.

It is worth pausing on a contrary view. Certain industry commentary suggests that prompt design matters less than it once did, because newer models infer user intent more reliably.[27] That observation describes the experience of users running general-purpose queries on the most advanced commercial models. JAs operate on a constrained set of authorized platforms and cannot fine-tune the models they use. In that environment, careful prompting becomes more important.

Critically, these limitations do not displace the supervisory role of lawyers; they reinforce it. JAs are already trained to verify authorities, assess relevance, and exercise professional judgment under conditions of uncertainty, all while supervising subordinate work product.[28] Properly used, LLMs accelerate those functions by reducing the administrative and cognitive burden associated with information synthesis, drafting, and organization. The question, then, is not whether these systems can replace legal judgment—they cannot—but how they can be employed tactically across the demands of military legal practice.

## Five Tactical Applications Across JA Billets

For JAs, that tactical employment occurs in the daily friction of practice, as time constraints, operational tempo, and dispersed formations shape legal support. The following applications illustrate how LLMs can be employed *right now* across common JA roles to amplify speed and analytical efficiency in a manner that is consistent with application guidance and limitations on currently available platforms.[29]

### *Continuity Books Between Transitioning JAs*

One of the most persistent challenges in military legal practice is continuity. Frequent personnel rotations disrupt institutional memory, particularly in complex billets where local practice, commander preferences, and recurring legal issues matter. Traditional continuity books—often static binders or shared drives—rarely capture nuance or remain current.

LLMs offer a means to transform continuity from a static artifact into a living knowledge base. Outgoing JAs can use approved AI tools to create clear, searchable products with substantially less effort than building traditional continuity binders. Incoming JAs can then query this material to understand not only what tasks exist, but how and why they are performed. The work lies in selecting the most helpful and timely authorities, and redacting, as necessary, precedent legal reviews or legal products. Below are examples of prompts a JA can input into GenAI.

> *Create with Prompt on GenAI:* Review the attached continuity materials and redacted legal products. Generate a structured continuity guide for the incoming administrative law attorney organized into the following sections: (1) Recurring Legal Issues (with frequency and resolution patterns); (2) Commander Decision-Making Preferences (including risk tolerance and preferred briefing formats); (3) Common Pitfalls and Lessons Learned; (4) Key Points of Contact and Their Roles; and (5) Seasonal or Cyclical Legal Requirements. Use only information explicitly contained in the provided materials—do not infer, extrapolate, or add context. Flag any areas where the provided materials are incomplete or unclear.

*Augment with Workbook on Ask Sage:* Use the same prompt (above) and then save the output as a memo titled "Core Continuity Guide." Create the Workbook on Ask Sage, classify it as CUI, and add the continuity memo and all the reference materials (redacted as necessary). An incoming attorney can open the Workbook and can leverage it to ask continuity questions ("how does this command typically handle first-time DUI offenses?") or ("what deadlines should I expect this quarter?").

Used this way, LLMs preserve institutional knowledge and allow continuity to scale beyond individual personalities, reducing friction during transitions and improving legal support without substituting for human judgment.

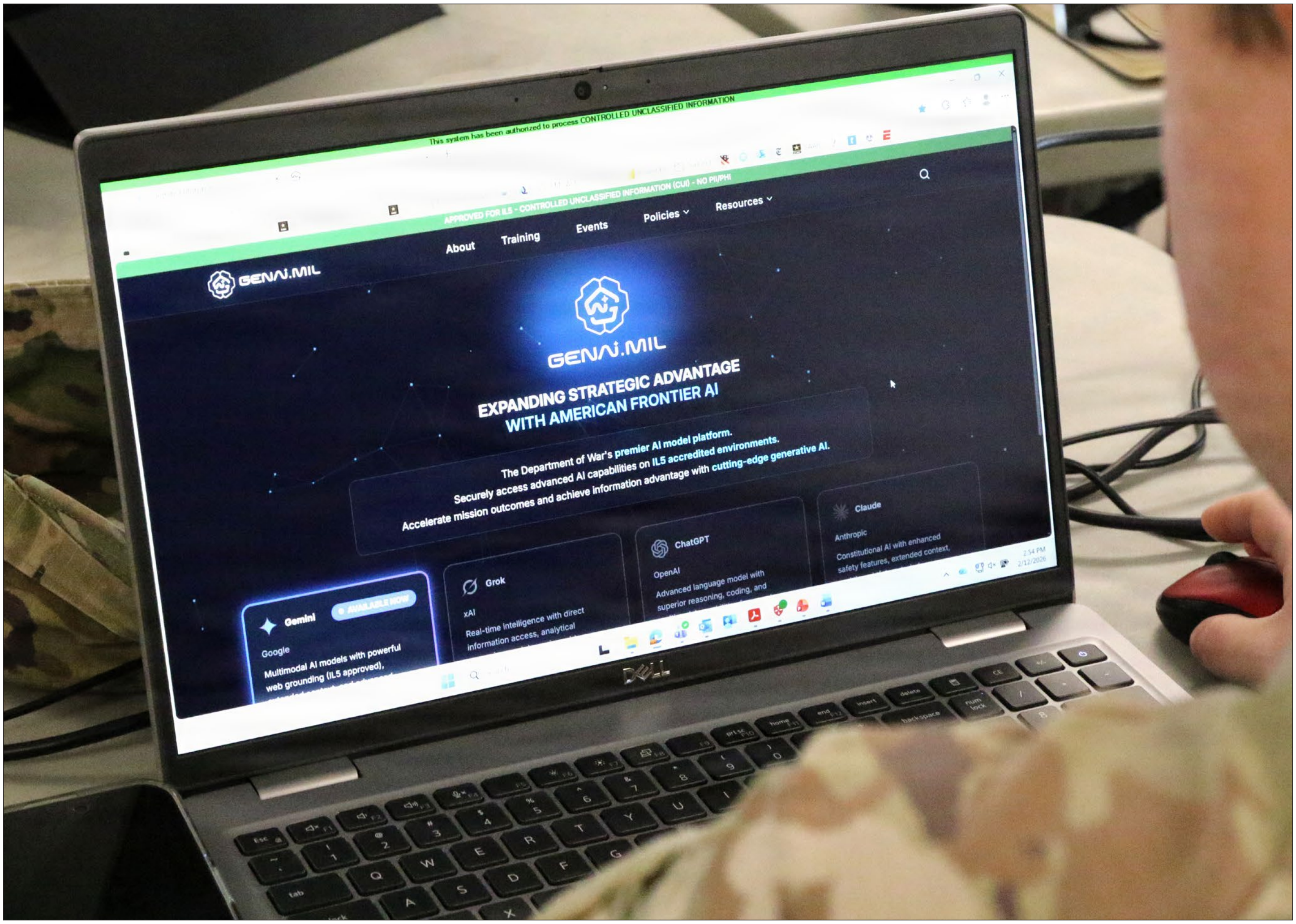
### *Quick-Turn Staff Judge Advocate Support*

Command-advising attorneys are frequently asked to provide a "quick take" on changes (or proposed changes) to policies or regulations, synthesizing long documents or comparing expansive policy memos under time pressure—sometimes with only minutes before an office call. For instance, a JA may be asked, "How does this new policy change our PT requirements?" or "What are our obligations under this new drone acquisition regulation?" LLMs can assist quickly: upload one or multiple documents and, within seconds, the model will identify changes in authorities, structure them in a readable format, and even frame discussion points.

Rather than drafting final advice, the model functions as an analytical amplifier; it helps the attorney prepare calmly for a meeting in lieu of frenetic speed-reading. Any outputs by the LLM would, naturally, require verification, but being prepared with a 90 percent solution and a solid "I'll follow up to confirm after verifying a few points more thoroughly" is preferable to arriving empty-handed.

> *Example Safe Prompt 1:* Compare the original policy document (Document X) with the revised policy document (Document Y). Provide: (1) A line-by-line identification of all substantive changes, noting the specific section/paragraph where each appears; (2) Changes categorized by type (new requirements, deleted provisions, modified standards, clarified language); (3) Potential rationales for each major change based solely on the text itself; (4) Questions or ambiguities created by the changes that may require clarification; and (5) Areas where the revised policy creates new decision points for commanders. Present findings in a table format for quick reference. Do not make recommendations or draw legal conclusions.

> *Example Safe Prompt 2:* Analyze the following proposed command social media policy against AR




A Soldier integrates AI into military workflows. (Credit: SFC Shane Smith).

600-20 (Army Command Policy), DoDI 1325.06 (Handling Dissident and Protest Activities), and First Amendment considerations as applied to Service members. The proposed policy includes three provisions: (1) mandatory command approval before posting photos in uniform; (2) prohibition on political commentary while identifying as a Service member; and (3) mandatory disclosure of personal social media accounts to the chain of command.

For each provision, provide: (1) Relevant regulatory citations and legal standards; (2) Potential legal issues or conflicts with existing guidance; (3) Precedent from military appellate courts addressing similar restrictions; (4) A compliance analysis framework organized by: (a) regulatory authority, (b) First Amendment limitations, (c) narrow tailoring requirements, and (d) less-restrictive alternatives. Identify which provisions appear most legally defensible and which present elevated risk. Do not provide a final recommendation, but structure the analysis so I can advise the commander on risk levels and potential modifications.

Note the precision in each prompt. Counter-intuitively, slowing down to craft careful inputs saves time.[30] A rushed prompt often generates unhelpful outputs.[31] The appropriate mental model is that the attorney is tasking a literal-minded junior attorney who will do exactly what you say and nothing more. Specify what you need, why it matters, and how to structure the output.

### *Terminology and Issue Spotting*

In the cyber domain and elsewhere, our clients are leveraging disruptive technologies and using schemes of maneuver that are jargon-heavy and require advanced degrees to fully comprehend. LLMs allow lawyers to dual-hat as technologists. These models—in the operational space, many of which are classified at the TS level and higher—allow JAs to review concepts of operation (CONOPs) and other proposals carefully. They enable a JA to catch legal triggers early because only in fully understanding an exploit, technical modification, or scheme of maneuver can a JA properly conduct a LOAC review, for example, or advise how some modification to a unit's drone can be financed.

> *Example Safe Prompt:* Review the following technical description of a cyber capability: [INSERT DESCRIPTION]. Translate this into plain language that explains: (1) What the capability does in functional terms; (2) What systems or networks it affects; (3) What the intended operational effect is; and (4) Any potential unintended or collateral effects mentioned. Use analogies to physical-world actions where helpful (e.g., "this is like cutting a phone line" rather than "this disrupts packet routing").

Here, the model accelerates awareness without replacing analysis. To verify this output, a JA can have an informed client conversation.

### *Contract Law: Solicitation Document Review*

Installation JAs review numerous contract actions, including construction projects, service contracts, and supply acquisitions. The Federal Acquisition Regulation (FAR) and its supplements create a dense web of requirements that JAs must accurately navigate to manage these actions. Contracting officers can leverage LLMs to identify potential issues before solicitation release.

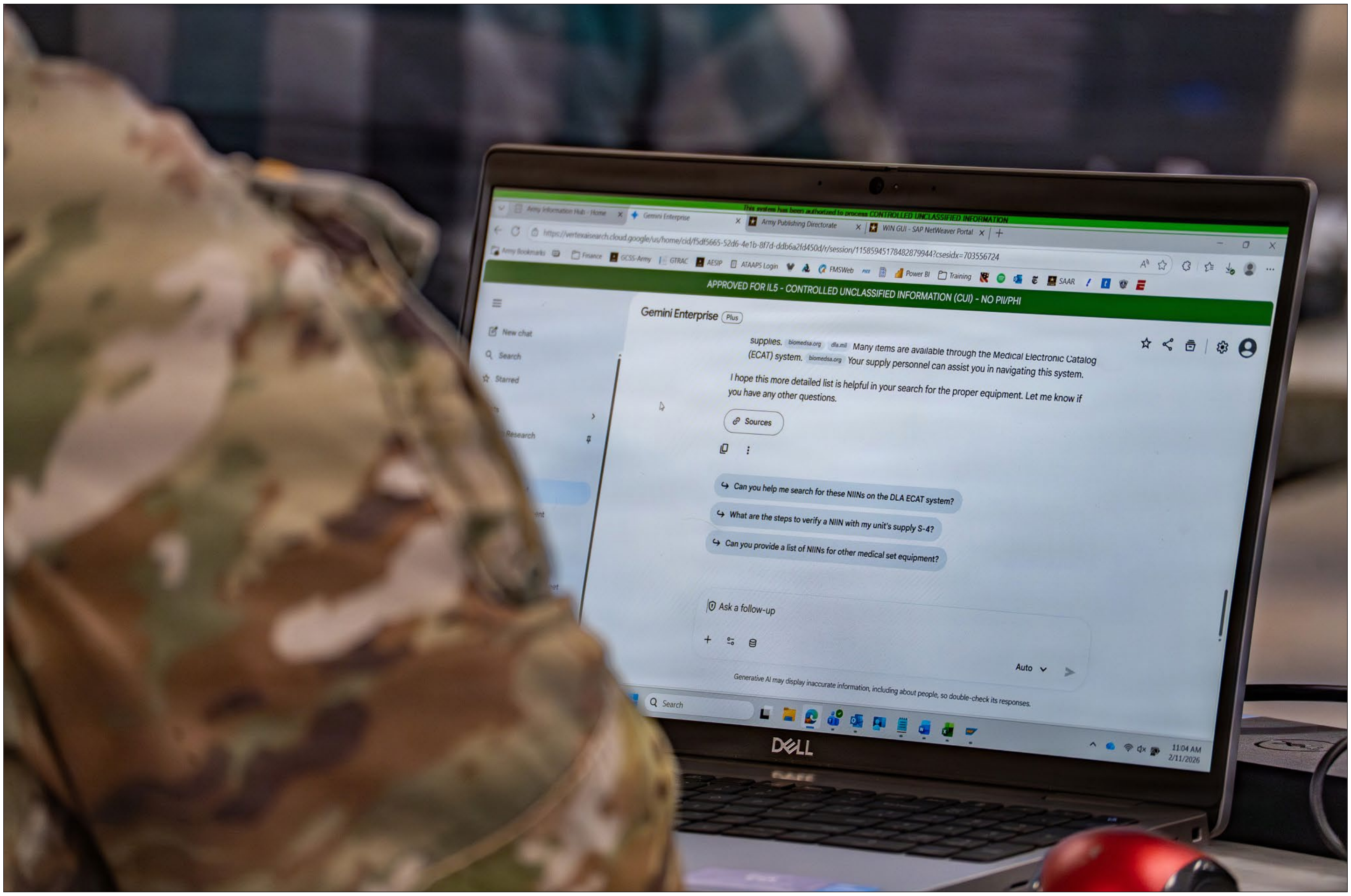
The models can perform initial compliance checks against standard FAR provisions, though attorneys must verify current regulatory language, assess agency-specific requirements, and redact information as necessary before the LLM's review.

> *Sample Prompt:* Review the following draft statement of work (SOW) for a base maintenance services contract with these parameters:
>
> - Services: janitorial, grounds maintenance, HVAC repair, pest control
> - Estimated value: $2.3M annually
> - Contract structure: 5-year base period with two 1-year option years
> - Acquisition type: Service contract subject to FAR Part 37
>
> Analyze the SOW and provide:
>
> 1. Language Issues:
>
> - Ambiguous or vague performance standards that lack objective measurements
> - Conflicting requirements between different SOW sections
> - Terms that are undefined or could be interpreted multiple ways
> - Missing performance metrics or quality assurance surveillance plan references
>
> 2. Required FAR Clauses (cite by number and title):
>
> - Mandatory clauses for service contracts over simplified acquisition threshold
> - Service Contract Labor Standards (formerly Service Contract Act) provisions
> - Clauses specific to multi-year contracts with options
> - Any specialized clauses for HVAC work, pest control, or safety-sensitive services
>
> 3. Labor Standards Compliance:
>
> - Wage determination requirements under 41 U.S.C. § 6707
> - Compliance with FAR 22.10 (Service Contract Labor Standards)
> - Health and safety requirements for service employees on Federal property
> - Potential prevailing wage issues
>
> 4. Risk Areas for Disputes:
>
> - Scope creep vulnerabilities between the base period and option years
> - Insurance and liability provisions (identify what's missing)
> - Performance standards that may be impossible to measure objectively
> - Government-furnished property or equipment issues
> - Transition-in/transition-out requirements
>
> Organize findings by priority: Critical (must fix before solicitation), Important (should fix to reduce protest risk), and Advisory (best practice improvements). Provide specific SOW section references for each issue identified. Here is the SOW text: [INSERT TEXT, redacting content as necessary].

Once again, the mindful scoping and framing of the prompt will shape the usefulness of the output. Based on the carefully crafted prompt, the LLM can review the SOW and flag vague performance standards, missing safety requirements for HVAC work, the need for Service Contract Labor Standards[32] provisions, wage determination requirements, potential conflicts between base year and option year scopes, and insurance requirements, to name a few. The attorney can then verify these observations against current FAR provisions, check DFARS supplements, consult recent GAO protest decisions, and provide the contracting officer with verified recommendations. The LLM handles the initial document review; the attorney applies professional expertise to confirm and refine.

### *"Legalese" Translators for Commanders and Staff*

After JAs spend significant time analyzing law, they often need to translate legal concepts into language commanders can use to make decisions. A fifteen-page memo on the First Amendment implications of restricting Soldiers' social media use lacks usefulness if the brigade commander needs a two-minute brief before a meeting with staff. The translation itself may require time and several iterations to be distilled into actionable guidance. But in a pinch, a JA can use the LLM as a "translation engine."



A Soldier integrates AI into military workflows. (Credit: SGT Kayden Bedwell).

> *Sample Prompt*: I've completed a legal analysis on whether National Guard forces in Title 32 status can conduct vehicle checkpoints in support of a counter-drug operation. My analysis concludes they can, but only under specific conditions. Below is my legal reasoning [PASTE YOUR ANALYSIS—no names, no operational details, just the legal framework]. Generate three versions of this analysis: (1) Executive Summary (3 bullet points)—Bottom-line answer for the commander who has 60 seconds; (2) Decision Brief Format (1 page, formatted for a PowerPoint slide)—Issue, applicable law, analysis, recommendation, and risk factors; (3) Talking Points (5-7 points)—What I should say during a stand-up brief to explain this to the commander or his staff, anticipating likely questions. Keep all versions at a college reading level. Use active voice. Maintain legal accuracy while improving accessibility.

Bear in mind that a prompt like this can be stored and, with only small changes, reused by copying and pasting into an LLM, with an uploaded legal memo, for quick output. The JA can master oral delivery of the bottom line up front (BLUF) while already prepared to handle the nuanced questions that may follow.

## Protocols for Safe and Professional Use

Safe use of LLMs within Government-approved platforms ultimately rests on four principles: (1) data discipline, (2) task alignment, (3) verification, and (4) transparency. As highlighted in the JAG Corps Interim Artificial Intelligence Governance Policy, JAs should never input classified or privileged information into unauthorized systems.[33] Commercial tools like ChatGPT, Claude, or Gemini—while powerful—are inappropriate for Government work absent specific approval. These platforms may retain user inputs for training purposes, potentially exposing sensitive information.[34]

Even on approved platforms, attorneys must exercise classification and privacy discipline, sanitizing, as appropriate, personally identifiable information or operational details that could compromise security if disclosed.[35] When drafting prompts, consider anonymizing facts: replacing real names with generic identifiers, substituting specific locations with broader geographic references, modifing dates and times while preserving relevant temporal relationships, and removing unit designations and operational details.

At all times, prompts should align with tasks the model is suited to perform rather than final judgment.

## Output Verification and Professional Responsibility

Every JA remains professionally responsible for all work product, regardless of AI assistance.[36] An LLM is analogous to a highly capable but fallible research assistant.[37]

Ideally, verification steps include: independently verifying all statutory and regulatory citations against current codifications, cross-checking factual assertions against reliable sources, assessing whether legal analysis reflects current law and recent developments, and evaluating whether the output fully addresses the legal question posed.

JAs would be advised to maintain documentation of AI-assisted work. It is best practice to note which tasks involved LLM assistance, preserve the prompts used to generate outputs, record the verification steps performed, and be prepared to explain the AI's role if questioned. Some jurisdictions require disclosure of AI use in court filings.[38] While military practice generally lacks such requirements, transparency is prudent.

Competence and diligence obligations also require staying current with AI developments. As these tools evolve rapidly, JAs should participate in available AI training programs, experiment with approved platforms in low-stakes contexts to build proficiency, monitor emerging guidance from the American Bar Association, state bars, and military authorities, and share best practices with colleagues to elevate collective competence.[39]

Finally, members of the Corps must recognize what AI cannot do. LLMs lack human judgment. They cannot read confusion on a commander's face, assess witness credibility in real-time, weigh equities, sense a commander's risk tolerance, or recognize when pushing a legal argument will cost you a client relationship. AI enhances human capabilities—it does not substitute for professional expertise that separates competent advocates from exceptional ones. The attorney who grasps this distinction harnesses AI's power while avoiding its most catastrophic failures.

## Conclusion

The JAG Corps Interim AI Governance Policy is not an invitation to experiment. It is a professional imperative. LLMs offer JAs a means to multiply effectiveness without compromising the judgment, ethics, and accountability that separate trusted counselors from legal processors—but tools require mastery. A generation from now, military legal historians will scrutinize whether the Corps led the AI transformation or was dragged through it. The answer depends on decisions made today, in every office, by every member of the Corps. **TAL**

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## Notes

1. Memorandum from Sec'y of War to Sr. Pentagon Leadership et al., subject: Artificial Intelligence Strategy for the Department of War 1, 6 (Jan. 9, 2026) [hereinafter SecWar Memo].

2. *See id.*

3. *See id.* at 4–5.

4. *See generally* Thomson Reuters Inst., 2025 Generative AI Professional Services Report (2025) (describing that generative AI accelerates repetitive tasks and allows for deeper research into proprietary, trusted content in the legal profession).

5. SecWar Memo, *supra* note 1, at 2-3; C. Todd Lopez, *Hegseth Introduces Department to New AI Tool,* U.S. Dep't of War (Dec. 9, 2025), https://www.war.gov/News/News-Stories/Article/Article/4355797/hegseth-introduces-department-to-new-ai-tool [https://perma.cc/XS2N-U7WW].

6. Pol'y Memorandum from Deputy Judge Advoc. Gen., U.S. Army, to Judge Advoc. Legal Servs. Pers., subject: DJAG Policy Memorandum 26-01 – *Interim* Artificial Intelligence Governance Policy, para. 1 (Feb. 10, 2026) [hereinafter DJAG Pol'y Memo 26-01].

7. *See id.*; 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, 4.

8. *See* Howard, *supra* note 7, at 9 ("AI should be treated as a cognitive teammate, performing tasks it excels at: collecting, analyzing, synthesizing, and drafting with speed and consistency.").

9. *See, e.g.*, Emily Preston, *AI Hallucination Sanctions Grow as Judges Get Punitive*, Bloomberg L. (Apr. 7, 2025), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-ai-hallucination-sanctions-grow-as-judges-get-punitive [https://perma.cc/8TJU-DHTF]; Mike Scarcella, *US Appeals Court Fines Lawyers $30,000 in Latest AI-Related Sanction*, Reuters (Mar. 16, 2026), https://www.reuters.com/legal/litigation/us-appeals-court-fines-lawyers-30000-latest-ai-related-sanction-2026-03-16 [https://perma.cc/338E-W3RX].

10. *See generally* Rishi Bommasani et al., *On the Opportunities and Risks of Foundation Models*, arXiv, Cornell Univ., no. 2108.07258 (2021), https://arxiv.org/abs/2108.07258 [https://doi.org/10.48550/arXiv.2108.07258] (describing creation of foundation models and uses); Jon Schmid et al., RAND Corp., Evaluating Natural Monopoly Conditions in the AI Foundation Model Market (2024) (describing foundation models as a class of AI models "trained on large and diverse datasets and capable of performing many tasks").

11. Sundar Pichai & Demis Hassabis, *Introducing Gemini: Our Largest and Most Capable AI Model*, Google (Dec. 6, 2023), https://blog.google/technology/ai/google-gemini-ai [https://perma.cc/CZL9-NAPR].

12. *See DALL·E: Creating Images from Text*, OpenAI (Jan. 5, 2021), https://openai.com/research/dall-e [https://perma.cc/M6NX-SHH2] (last visited Apr. 16, 2026).

13. Angie Lee, *What Are Large Language Models Used For?*, NVIDIA (Jan. 26, 2023), https://blogs.nvidia.com/blog/2023/01/26/what-are-large-language-models-used-for [https://perma.cc/B79L-YQJT].

14. *See* Paul Ohm, *Focusing on Fine-Tuning: Understanding the Four Pathways for Shaping Generative AI*, 25 Colum. Sci. & Tech. L. Rev. 214, 216 (2024).

15. *See* Murray Shanahan, *Talking About Large Language Models,* Commc'ns of the ACM, Feb. 2024, at 68; Matthew Burtell & Helon Toner, *The Surprising Power of Next Word Prediction: Large Language Models Explained, Part 1*, Ctr. for Sec. & Emer. Tech. (Mar. 8, 2024), https://cset.georgetown.edu/article/the-surprising-power-of-next-word-prediction-large-language-models-explained-part-1 [https://perma.cc/H49F-QJWD].

16. *See* Shanahan, *supra* note 15.

17. *See* Tom B. Brown et al., *Language Models Are Few-Shot Learners*, arXiv, Cornell Univ., no. 2005.14165 (2020), https://arxiv.org/abs/2005.14165 [https://doi.org/10.48550/arXiv.2005.14165]; Alex Hughes, *ChatGPT: Everything You Need to Know About OpenAI's GPT-4 Tool,* BBC: Sci. Focus (Sep. 25, 2023), https://www.sciencefocus.com/future-technology/gpt-3 [https://perma.cc/ZL83-PKLT].

18. *See* Burtell & Toner, *supra* note 15.

19. *See* Patrick Lewis et al., *Retrieval-Augmented Generation for Knowledge-Intensive NLP Tasks*, arXiv, Cornell Univ., no. 2005.11401 (2021), https://arxiv.org/abs/2005.11401 [https://doi.org/10.48550/arXiv.2005.11401]; Raghav, *Beyond ChatGPT: How Retrieval-Augmented Generation (RAG) Is Shaping the Future of AI Applications*, Medium (July 29, 2024), https://medium.com/@raghav_47115/beyond-chatgpt-how-retrieval-augmented-generation-rag-is-shaping-the-future-of-ai-applications-f1564a620020 [https://perma.cc/QK8J-MMJJ].

20. *See* Luciano Floridi et al., *What Kind of Reasoning (If Any) Is an LLM Actually Doing? On the Stochastic Nature and Abductive Appearance of Large Language Models*, arXiv, Cornell Univ., no. 2512.10080 (2025), https://arxiv.org/abs/2512.10080 [https://doi.org/10.48550/arXiv.2512.10080] ("LLMs produce plausible hypotheses, simulate commonsense reasoning,

and provide explanatory answers without grounding them directly in truth, semantics, verification, or understanding, and without any abductive reasoning.").

21. *See id.*

22. Olga Zern, *Hallucination in Large Language Models: A Friendly Insight,* Medium (Feb. 1, 2024), https://medium.com/@olga.zem/hallucination-in-large-language-models-a-friendly-insight-49abe22a3d77 [https://perma.cc/3887-BKPD].

23. *See, e.g.*, Melanie Sclar, Yejin Choi, Yulia Tsvetkov & Alane Suhr, *Quantifying Language Models' Sensitivity to Spurious Features in Prompt Design,* arXiv, Cornell Univ., no. 2310.11324 (2024), https://arxiv.org/abs/2310.11324 [https://doi.org/10.48550/arXiv.2310.11324]; *Strategies for Managing Prompt Sensitivity and Model Consistency*, PromptHub (Oct. 23, 2025), https://www.prompthub.us/blog/strategies-for-managing-prompt-sensitivity-and-model-consistency- [https://perma.cc/9TJ3-XDSV]; *see* Bommasani et al., *supra* note 10, at 3 (observing that "any flaws in the model are blindly inherited by all adapted models," and discussing how downstream task performance is shaped by, and limited by, the underlying training data).

24. *See generally* Federico Errica, Giuseppe Siracusano, Davide Sanvito & Roberto Bifulco, *What Did I Do Wrong? Quantifying LLMs' Sensitivity and Consistency to Prompt Engineering*, arXiv, Cornell Univ., no. 2406.12334 (2024), https://arxiv.org/abs/2406.12334 [https://doi.org/10.48550/arXiv.2406.12334].

25. *Army Launches Army Enterprise LLM Workspace, the Revolutionary AI Platform That Wrote This Article*, Army.mil (May 15, 2025), https://www.army.mil/article/285537/army_launches_army_enterprise_llm_workspace_the_revolutionary_ai_platform_that_wrote_this_article [https://perma.cc/4V33-VZUW]; *The War Department Unleashes AI on New GenAI.mil Platform*, Dep't of War (Dec. 9, 2025), https://www.war.gov/News/Releases/Release/Article/4354916/the-war-department-unleashes-ai-on-new-genaimil-platform [https://perma.cc/RA26-DTN6].

26. *See* Brown et al., *supra* note 17 (demonstrating that LLMs can adapt their outputs based on context supplied in the prompt without modification to model weights—the property commonly described as "in-context learning").

27. *See, e.g.*, Bernard Marr, *Why Prompt Engineering Isn't The Most Valuable AI Skill In 2026,* Forbes (Mar. 10, 2026), https://www.forbes.com/sites/bernardmarr/2026/03/10/why-prompt-engineering-isnt-the-most-valuable-ai-skill-in-2026 [https://perma.cc/5A5T-XMNT]; *Prompt Engineering Is Mostly Dead in 2026. Here's What Replaced It.,* Dev Comm. (Apr. 18, 2026), https://dev.to/gabrielanhaia/prompt-engineering-is-mostly-dead-in-2026-heres-what-replaced-it-433b [https://perma.cc/U397-PUB9].

28. *See* U.S. Dep't of Army, Regul. 27-26, Rules of Professional Conduct for Lawyers rr. 5.1, 5.3 (26 Mar. 2025) [hereinafter AR 27-26].

29. JAG Corps personnel must not upload CUI, PII, PHI, or privileged material, client information, or sensitive/classified data into any GenAI tool unless the platform is explicitly authorized for that type of data. As of this writing, and consistent with DJAG Policy Memorandum 26-01, very few JAG Corps personnel have access to models to which they can upload client information in a secure manner or upload classified data; GenAI is authorized for CUI but not yet clearly authorized for the input of privileged information. *See* DJAG Pol'y Memo 26-01, *supra* note 6, para. 4.

30. *See, e.g.*, Alara W, *How a Good Prompt Could Save Time, Energy, and $$$—The Efficiency Tricks Not Discussed Often*, Medium (Jan. 6, 2026), https://pub.towardsai.net/how-a-good-prompt-could-save-time-energy-and-the-efficiency-tricks-not-discussed-often-ef5280fd38e6 [https://perma.cc/6EP6-AVAY].

31. *See id.*

32. *See* FAR pt. 22.10 (2026).

33. DJAG Pol'y Memo 26-01, *supra* note 6, para. 4.b.

34. *See, e.g.*, *Terms & Policies*, OpenAI, https://openai.com/policies [https://perma.cc/A2CP-SE5X] (last visited May 27, 2026) (prompts are retained to "improve and train" models).

35. *See generally* U.S. Dep't of Def., 5200.01, DoD Information Security Program: Overview, Classification, and Declassification, vol. 1 (Jan. 17, 2025) [hereinafter DoDM 5200.01] (classification and handling requirements); 5 U.S.C. § 552a (Privacy Act). In October 2023, the Chief Digital and Artificial Intelligence Officer issued his "Interim Guidance on the Use of Generative Artificial Intelligence." The memo is marked CUI and not publicly available, but relevant Government personnel should seek it before utilizing commercial AI.

36. *See* Model Rules of Pro. Conduct r. 1.1 (A.B.A. 2020) (competence); *id.* r. 5.1 (responsibilities of partners, managers, and supervisory lawyers); *id*. r. 5.3 (responsibilities regarding nonlawyer assistance); DJAG Pol'y Memo 26-01, *supra* note 6, para. 4(a).

37. *See* Howard, *supra* note 7, at 8 ("[AI] cannot possess a professional ethic; it does not have moral principles or values that guide behavior. The introduction of autonomous [AI] systems will heighten, not reduce, the moral obligations of human lawyers.").

38. *See, e.g*., Local Civ. R. N.D. Tex., LR 7.2(f) (requiring disclosure of generative AI use in briefs).

39. *See* AR 27-26, *supra* note 28, r. 1.1 cmt. 7 ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.").


MAJ Andrew E. Nist (right), then-brigade judge advocate, 3d Brigade Combat Team, 82d Airborne Division, pre-briefs investigating officers prior to conducting a Joint Forcible Entry–Airborne (JFE-A) during a rotation at the Joint Readiness Training Center, Fort Polk, LA. (Photo courtesy of author)

### Practice Notes

# Preparing a Brigade Legal Section for a CTC Rotation During Decisive Action:

## A Brigade Judge Advocate's Guide for Success in a LSCO Environment at the Army's Combat Training Centers

*By Major Michael D. Winn*

Preparing a brigade legal section (BLS) for a combat training center (CTC) rotation[1] is a lot like preparing yourself, physically and mentally, for the Army Fitness Test (AFT). Like the AFT tests physical preparedness for battle, a CTC rotation tests how ready a brigade, and thus a BLS, is for ground combat.[2] Just as you would not wait until the week before the AFT to begin exercising your muscles, a BLS should start exercising its tactical systems and processes *at least* six months in advance of the rotation.[3] Furthermore, while agonizing over any performance event can be detrimental to results, a little bit of eustress can go a long way toward maximizing potential.[4] Finally, just as reaching a personal best in the AFT demands readiness in five distinct events,[5] achieving success during a CTC rotation requires the BLS to prepare along five lines of effort (LOEs): (1) manpower utilization within the brigade combat team (BCT) headquarters (HQ) command nodes; (2) paralegal employment apart from BCT HQ; (3) an in-depth communications plan; (4) comprehensive fighting products, including a robust legal running estimate; and (5) effective training of the force on legally related topics.

This article, written from the perspective of a senior operational-law observer–coach/trainer (OC/T), discusses each of these points in turn. Nonetheless, it is not intended to be the only resource on the subject. Read this article in conjunction with two other published commentaries on preparing a BLS for a CTC rotation. The first, *Building National Security Law Readiness Through Combat Training Center Rotations*, by Lieutenant Colonels (LTCs) Tim Davis and Jason Young, appears in issue 2, 2022, of *The Army Lawyer*.[6] LTCs Davis and Young explain how CTCs function, how they prepare BCTs for large-scale combat operations (LSCO) and multi-domain operations (MDO), and what to do in the lead-up to a CTC rotation.[7] The second, *Preparing for Success at the Combined Training Centers: an OC/T Perspective*, was published in volume 23-3 of *The National Security Law Quarterly*.[8] This article, penned in 2023 by Major (MAJ) Tyler Gattermeyer and the senior judge advocate (JA) OC/Ts of the three "dirt" CTCs, LTCs Andrew Browell, Timothy Davis, and Jason Young, offers seven keys for success at a CTC rotation.[9]

The article that follows, along with its appendix, *Top 5 Considerations for OPLAW in LSCO*, is a guide intended for the BCT brigade judge advocate (BJA). It builds on the sage advice of the two articles mentioned above while discussing five practical LOEs on which you—as the BJA—should focus your efforts.

## LOE 1: Manpower Utilization Within the BCT HQ

Like a baseball manager filling out a line-up card for an upcoming game, you need to know who exactly is going to be on your team so you can put them in the right spot. But before you can assign players to the batting order, you need to know how the game is structured.

First, to fill out the roster for the BLS, you must identify what the BCT command nodes will look like. In preparation for LSCO, recent CTC rotations have featured small, mobile command posts (CPs) which emphasize speed and survivability, sometimes at the expense of capability.[10] Brigades typically have a tactical operations center (TOC) or current-operations (CUOPS) node, which controls the "current fight," and a future-operations (FUOPS) node, which plans for everything from the deliberate prosecution of targets to detainee operations. These cells are often styled as the main command post (MCP) and rear command post (RCP), respectively,[11] and are often placed "one terrain feature" (at least several hundred meters) away from each other to enhance survivability.[12]

Furthermore, there often will be a tactical command post (TAC) that "pushes out" from the MCP with perhaps only a vehicle or two, carrying the BCT commander, the S2 intelligence officer, and the S3 operations officer, ready to control the fight in certain situations, such as when the MCP displaces, or "jumps," from one location to another. Yet another node may exist "over the horizon" at a mission-support site (MSS).[13] Speak with the S3 well before the rotation to find out how the BCT intends to set up its physical footprint.[14]

Once you have identified how the BCT will array its CPs, start planning how to staff them. The gold standard is for the BLS to include you, of course, plus two company-grade attorneys and the senior paralegal noncommissioned officer (NCO).[15] Presumably, one of the junior attorneys will be the administrative/operational-law (ADLAW/OPLAW) attorney who serves the BCT.[16] You may need to request that the staff judge advocate (SJA) augment the team with an additional company-grade attorney, or perhaps two, if the BCT does not have an organic ADLAW/OPLAW attorney.[17]

The BCT senior paralegal NCO should be well-versed in operational law issues, including the law of armed conflict (LOAC) and rules of engagement (ROE). Because the senior paralegal NCO will spend most of the time in one of the BCT HQ nodes, that individual will need to be able to spot issues pertaining to the fires and protection warfighting functions (WfFs) and relay those issues to the servicing attorney, should advice be needed. Furthermore, prior to the rotation, the senior paralegal NCO will play a critical role in training paralegals from subordinate battalions (BNs) in operational law and the conduct of administrative investigations, as discussed in LOE 2 below. Consider sending the senior paralegal NCO to attend the Battle Staff NCO course,[18] the Paralegal Employment in LSCO (PELSCO) course managed by the Center for Law and Military Operations (CLAMO),[19] and perhaps the National Security and Law of Armed Conflict (NSLOAC) course at The Judge Advocate General's Legal Center and School, well in advance of the BCT's validation exercise (VALEX).[20]

Once you identify the players on your BLS starting roster, consider how to array them among the BCT HQ command nodes. Assuming two other attorneys will attend, plus a senior paralegal NCO, the best course of action is for two attorneys to staff the MCP in twelve-hour shifts, while another attorney and the senior paralegal NCO cover the RCP. Except for "fight nights," fewer legal issues typically arise from the MCP than the RCP, so place the two most junior attorneys there. The more experienced among those two should cover the night shift, as the Army often conducts more combat operations under the cover of darkness than in broad daylight.[21]

Typically, as the BJA, you will add the most value by serving in the RCP, advising the targeting cell in planning deliberate targets, assisting the protection and fires cells with ROE-change requests,[22] and participating in the Military Decision-Making Process (MDMP) as a member of the BCT battle staff.[23] You are the best-positioned officer to help the staff understand the commander's level of risk tolerance with regard to collateral damage during deliberate targeting.[24] That said, under certain circumstances, it may be better for you to man the MCP personally. For example, if you are new to the team and the BCT commander plans to spend significant time in the MCP, your presence there will give you a vital opportunity to build that relationship in stressful situations.

The senior paralegal NCO can assist the attorney in the RCP by maintaining

**Just like with training for an AFT, success at a CTC will come only by preparing well in advance. Whether it be positioning people in the BLS in the appropriate spots, preparing paralegals to maximize value to their BNs, planning for breakdowns in communications, developing effective fighting products, or training the force correctly, you will get out of the CTC experience what you put into it.**

communications with paralegals at subordinate BNs. Furthermore, the senior paralegal NCO can cover battle-rhythm events the RCP attorney misses,[25] such as when the attorney is called away to meet with a representative of the International Committee of the Red Cross or visit the U.S. consulate in the host-nation capital with members of the civil affairs team.[26]

However, incorporating three highly capable attorneys into the BLS will be of only limited value if they are not properly integrated with the staff. Building relationships with members of the fires and protection WfFs is especially important.[27] In the RCP, staff integration starts with getting to know the officer who will be running the MDMP for the BCT; this is often the brigade executive officer (XO) or S3 operations officer, but it is sometimes a staff captain.[28] Help this officer (often known as the "plans chief") understand the contributions the BLS can make to the MDMP.[29] Early integration with the planning staff will help you "bake in" legal considerations to the planning process.[30]

Although the RCP legal advisor is often positioned to provide more legal advice to the BCT, it is still essential for the BCT to have an attorney present in the MCP. Expect this attorney to be the only person in the BCT who is actively monitoring the fight to confirm that the actions of subordinate BNs comply with the LOAC and ROE. For example, if a subordinate BN intended unilaterally to destroy a bridge, that action might not be permissible under the ROE. The legal representative in the MCP is best poised to catch that issue and point out to the BCT staff any disconnect with the ROE, thereby mitigating risk to the BCT commander and the brigade's mission.

Despite the importance of the MCP legal advisor, the current era of ever-shrinking CPs may limit the ability to maintain a dedicated legal presence there. One potential way to maintain a consistent presence in the MCP is by taking on a collateral duty within the cell. For example, during a recent rotation, a BLS found success in maintaining its position within a small MCP by also managing the digital and analog common operating picture (COP) for the BCT. The BLS was already planning to have a twenty-four-hour presence in the MCP, so managing the COP did not pose an additional burden. In fact, performing this collateral duty helped MCP legal personnel stay alert and actively track the battle, thereby increasing their effectiveness in advising BCT staff.[31]

What should you do, however, if you cannot meet the gold standard of three attorneys and a senior paralegal NCO?[32] Even when a BCT is resourced with only one attorney in addition to the BJA, success remains possible. Consider sending the junior attorney to cover the night shift in the MCP while the senior paralegal NCO takes the day shift. This arrangement would require the senior paralegal NCO to listen closely for legally related issues and engage you in the RCP when legal advice becomes necessary.

There may come a time when, despite advocating for a legal presence and successfully integrating with the staff during pre-rotational exercises,[33] MCP configurations exclude a legal advisor. In such a case, you would need to work doubly hard in advance of the rotation to train the battle staff on the LOAC and ROE and how to spot other legally significant events (LSEs) that may require investigation, such as fratricide and civilian casualties.[34]

### LOE 2: Paralegal Employment Apart from the BCT HQ

Paralegal employment in LSCO, known as PELSCO, is about maximizing the contributions of paralegal specialists in a combat environment, where BN commanders and their staffs face existential threats daily. Although these senior officers are closely familiar with how junior-enlisted paralegals support the BN's mission in garrison—primarily in military justice—senior officers may not be as familiar with BN paralegals' capabilities in a LSCO setting, where the LOAC, ROE, and administrative investigations dominate the legal space. To best empower paralegals in this arena, CLAMO has identified PELSCO as an area of emphasis, and it offers a course dedicated entirely to it.[35] Several articles addressing the topic have also been published recently in the *National Security Law Quarterly*.[36]

PELSCO shifts the role of the 27D paralegal specialist beyond its roots as a legal clerk[37] to one of an *educator*. In many BNs, the paralegal enters the investigation process only once it has been approved and the commander, with an attorney's advice, has already decided how to dispose of the misconduct. In LSCO, however, junior paralegals will need to get involved with administrative investigations under AR 15-6[38] far left of boom, i.e., as soon as the investigating officer (IO) has been appointed.[39]

Expect a higher threshold in LSCO than in other contexts for triggering investigations of certain types of incidents. For example, in garrison and even during combat deployments in low-intensity conflict, every death of a Service member must be investigated.[40] Such stringent investigatory requirements may not endure in LSCO, given the expected high fatality rates in such a conflict.[41] Nevertheless, certain events, even in LSCO, will require an administrative investigation, no matter how high-intensity the conflict.

For example, a civilian-casualty (CIVCAS) or fratricide incident would likely require an investigation. For practical reasons, these investigations must be initiated and completed quickly—the appointing authority will want lessons learned to prevent such incidents in the future, and at a CTC, the rotation lasts only a couple of weeks, so time is of the essence. Furthermore, BCTs sometimes experience real-world LSEs, such as when an entire pallet of frozen food is left to melt on a sunny loading dock in the staging area. For these reasons, you must be poised to support investigations, both scenario-driven and real-world, quickly and thoroughly.

Nevertheless, the systems and processes that work for the BLS to support investigations in garrison often turn moribund in "the box" (the combat training area at a CTC). For example, attorneys likely will not be able to track down IOs to in-brief them and hand them the IO toolkit. Attorneys at the BLS often fail to appreciate how immobile they will be, unable to leave the BCT HQ tents.[42] The BLS may not have its own vehicle, or if it does, there may be a force-protection requirement that each vehicle leaving the BCT HQ footprint be escorted.[43] Additionally, attorneys may simply lack the time to conduct battlefield circulation, and communications to reach IOs who are not located at the BCT main may be unreliable.[44]

For these reasons, it is essential to prepare every paralegal to support administrative investigations. As a starting point, each paralegal should carry into the box a hard-copy IO toolkit with multiple copies of "fill in the blank" appointment orders, sworn-statement forms, rights-advisement forms, and even blank paper for IOs to use.[45] Beyond carrying

The High Mobility Multipurpose Wheeled Vehicle (HMMWV) assigned to the senior operational-law observer–coach/trainer (OC/T) for Joint Readiness Training Center sits poised for dispatch alongside other OC/Ts' tactical vehicles at Fort Polk, LA. (Photo courtesy of author)

The calm before the storm: The Geronimo drop zone at Fort Polk, LA, appears placid on the afternoon before a JFE-A by 3d Brigade Combat Team, 82d Airborne Division, during a rotation at the Joint Readiness Training Center, Fort Polk, LA, in September 2024. (Photo courtesy of author)

the forms, however, paralegals should be prepared to in-brief IOs, walk them through the investigation as needed, and examine the finished product once complete. This level of support constitutes administrative, not legal, advice, and thus is appropriate for a paralegal to offer.[46] Nonetheless, such assistance is beyond what most paralegals do daily in garrison. Accordingly, start preparing 27Ds early by giving them opportunities at home station to conduct in-briefings and advise IOs well in advance of the CTC rotation.

Another way BN paralegals can add value to their units' missions as educators is by training their formations on the LOAC prior to the VALEX. Not only is such training a practical necessity for Soldiers heading into a CTC rotation, it is required for Soldiers in modified table of organization and equipment (MTOE) units under Army Regulation 350-1.[47] With the relevant commander's consent, you may employ a junior-enlisted paralegal to assist you, the ADLAW/OPLAW attorney, or the paralegal NCO in delivering LOAC training at the Soldier level.[48] The three of you would have to work hard to ensure each paralegal is "trained to train"; however, like with support to investigations, getting paralegals ready to actively assist in training the LOAC can begin even a year in advance of the rotation. The benefit to involving BN paralegals in conducting LOAC training is the relationship of trust they may build with their respective BN S3 sections—a relationship which, once cemented, may provide the paralegals access to decision-makers as the BN transitions to combat operations.

Paralegals can also provide LOAC education within the BN CP itself. In the same way that in-briefing IOs and checking their work for formatting and completeness are perfectly acceptable tasks for a paralegal, so is talking through LOAC issues with the BN commander and staff—short of providing legal advice, of course. Some issues may be simple, such as fielding a question on the approval authority to crater a main supply route. Other questions may be more complex, such as those that relate to kinetic fires in a populated area. Regardless, the BN paralegal should always be able to point commanders and staff to the proper authority, whether in law, regulation, or policy.

Paralegals may act as sounding boards for commanders and staff. Rather than giving a definitive opinion on a subject, which would constitute legal advice, they might shape the conversation by asking questions. For instance, if a maneuver BN were considering mortar fires into a village, a 27D might ask, "Have you considered the principles of distinction and proportionality?" The paralegal could then explain what those targeting principles comprise. "Legal advice" is not

explicitly defined in Army regulation, so it is difficult to determine its exact boundaries.[49] Nonetheless, asking pointed questions and engaging in discussion about the LOAC is within the purview of *all* Soldiers, not just attorneys,[50] so it is completely appropriate for a paralegal to have these conversations with BN leaders, as long as all concerned understand the paralegal is not giving legal advice.[51]

As discussed above, properly educated junior paralegal specialists can add significant value to a BN in aspects that matter to LSCO. Therefore, the BN paralegal must maintain access to the BN CP. Battalion CPs across the Army continue to grow smaller, more mobile, and, thus, more survivable.[52] As a result, a dedicated paralegal seat in a BN CP is rare. To mitigate the effects of this evolution, work with the senior paralegal NCO to prepare, well in advance of the VALEX, to ensure a paralegal presence in each BN CP. A variety of options exist to help paralegals maintain placement in or near the BN CP, all with two goals in mind: (1) maintain access to information that will allow the paralegal to support BN operations (as discussed above), and (2) preserve the ability to communicate with BLS personnel at the BCT HQ cells.

One course of action is for the paralegal to get trained as a radio telephone operator (RTO) and then apply that training as a dedicated RTO within the BN CP. That way, the paralegal will maintain access to both information and communications.[53] Another approach is for the paralegal to get assigned as the driver for the BN commander or command sergeant major. The paralegal would then have access to relevant information as well as communications equipment inside the vehicle.

For maneuver BNs, a recent rotation at the Joint Readiness Training Center demonstrated the effectiveness of proactive BJA involvement. The BJA coordinated with the BN S1 officer-in-charge (OIC) to align paralegal support—the S1 OIC could integrate the paralegal into BN operations, and the paralegal was permitted twice-daily access to the BN CP to gain situational awareness of the battle and report digitally to the BLS.[54] The S1 OIC assigned the paralegal to conduct perimeter security around the BN CP for most of each day, and the paralegal gained twice-daily access to information and communications. In this way, the BN paralegal identified and relayed to the BLS two LSEs that had not reached the BCT HQ through operational channels.[55]

One creative option is for a paralegal at a brigade support battalion (BSB) to nest with the Role 1 medical station or the S1 personnel section.[56] Assigning the paralegal to work on casualty tracking or reconstitution packets would allow swift access to information on any mass-casualty event, which could perhaps indicate a fratricide.

The discussion above assumes each BN has an organic paralegal who will actually participate in the CTC rotation. Should that assumption be incorrect, examine the impact on each BN of not having paralegal

SPC Jacob D. Cosmas served in many roles as a battalion paralegal specialist for 4th Battalion, 9th Infantry Regiment, 1st Stryker Brigade Combat Team, 4th Infantry Division, during a rotation at the Joint Readiness Training Center, Fort Polk, LA. Earning the trust of his battalion while embedded with them, SPC Cosmas assisted with area security during a lull in legal actions. (Photo courtesy of author)

support. Consider asking the SJA to attach a non-organic paralegal specialist to the BCT for the rotation.[57] Conversely, think long and hard about where and how to assume risk by leaving one or more BNs without legal support.

### LOE 3: Communications

> *If an attorney sends an e-mail in the forest, and there is no one with a suitable device to read it, is it still communication?*

Although this question sounds like a glib take on a classic thought experiment,[58] it underscores the essence of communication: There must be a sender, a recipient, a message, and a means of transmitting that message.[59] It is on that last element, the means of transmission, that BLS often stumble.

The articles mentioned above by LTCs Davis and Young and by MAJ Gattermeyer et al. describe the value of having a communications plan at the BLS level.[60] Specifically, the BLS plan must spell out the primary, alternate, contingency, and emergency (PACE) ways of communicating, with the expectation that periods of degraded communications are the norm at CTC rotations.[61]

While degraded comms are sometimes caused by enemy action, they are often due simply to the friction of bringing a large volume of high-tech systems into an austere environment. Regardless, as with the other points of CTC preparation, it is essential for you and the senior paralegal NCO to start planning well in advance for how to establish and execute an effective PACE plan.[62]

Once you have determined how legal support to the BCT HQ and BN command cells will be arrayed and who will staff each (discussed in LOEs 1 and 2 above), you are ready to start planning how BLS members will communicate with each other. First, talk with the brigade S6 and S3 to learn which communications platforms will predominate throughout the BCT.[63] Then, identify which platforms the attorneys and paralegals will have access to at each node; this includes not only devices but networks as well.[64]

For example, if you intend to bring laptop computers to operate on a tactical secure Internet protocol router network (TAC SIPRNet) in the MCP, confirm with the BCT S6 signal section you will have access to a SIPRNet "red line." Assuming you have access to both a TAC SIPRNet machine and network in the MCP, verify you will have the same access in the RCP, and ensure the BN paralegals have access to that hardware and network in their respective CPs as well.

If all BLS personnel have access, even borrowed access, to TAC SIPRNet, you can include it on the BLS PACE plan. If not, however, you may still choose to bring your TAC SIPRNet computer to communicate with higher headquarters (HHQ), assuming that mode of communication in on the HHQ PACE plan. But, of course, you will need to find other comms platforms to use in the BLS PACE plan.

Within the BCT, you may need to field calls from BN commanders and staff and even leaders at the company level. Before entering the box, ensure these leaders know how to reach the BLS. When briefing BN- and company-level leaders on the ROE, consider informing them of your PACE plan and of any brigade-level requirements to report LSEs.[65]

Furthermore, as discussed above with LOE 2, consider delegating IO in-briefings and investigation formatting advice to the BN paralegals. Still, IOs may need to reach an attorney at BCT HQ for legal counsel. Therefore, all BN paralegals should know the BLS PACE plan as well as you do, to ensure they can put someone in touch with you at any time.

The PACE plan is just one element of an effective comms plan. In addition to PACE, make sure all members of the BLS are trained on all platforms. For example, if WebMC—the laptop-based way to access the Joint Battle Command–Platform (JBC-P)—is on the PACE plan, even the most junior paralegal must know how to use it. Furthermore, establish (and enforce) a daily legal sync to drive communications. Sometimes the junior paralegals may not have anything to say, but they still need to hear from you and the senior paralegal NCO frequently.

Finally, make sure the BN paralegals know it is their responsibility to work the PACE plan proactively. If the primary comms platform is unavailable and the alternate method is causing trouble, the paralegal needs to (1) get help from another Soldier who knows how to use the comms platform, (2) find a Soldier who can relay a message to you, or (3) proceed to the contingency or emergency forms of communication. The BN paralegals must understand how often they are expected to check in and that the comms exchange is not complete until they receive an acknowledgment.[66]

## LOE 4: Effective Fighting Products

A fighting product is simply "a tool that aids in the accomplishment of a task."[67] Such a tool may be graphical or documentary.[68] All WfFs create and use fighting products, which include templates, matrices, map overlays, prioritized lists, and more.[69]

For any staff section or WfF, the heart of the fighting products is the running estimate. Per Army doctrine, "A running estimate is the continuous assessment of the current situation used to determine if the current operation is proceeding according to the commander's intent and if planned future operations are supportable."[70] Each section's running estimate includes facts, assumptions, an assessment of current operations, and recommendations for the future, among other elements.[71] Running estimates, if kept up to date and accurate, enable the commander and staff to understand the operating environment and, thus, make effective decisions.[72]

Leverage the legal running estimate to analyze BLS operations and how effectively they are supporting other staff sections and the BCT as a whole.[73] The legal running estimate may also help with analyzing the level of legal risk the commander is assuming, along with facts, assumptions, and issues involved with legal support.[74] The commander may never ask to see the legal running estimate, but the analysis that goes into building and maintaining it is essential to your ability to contribute meaningfully to the operations process.[75]

The legal running estimate is especially helpful during planning. Entering the MDMP with a draft legal running estimate will enable meaningful contributions to the planning process. As soon as the BCT receives a warning order from HHQ, start updating the legal running estimate to reflect the new mission.[76] Then, with each step of the MDMP, update the running estimate based on the new legally related dimensions of the operating environment.[77] The running estimate should go beyond the "what," informing the "so what," and shaping the "therefore."

Field Manual 3-84, *Legal Support to Operations*, provides a template of a legal running estimate.[78] This example incorporates trackers for investigations, BCT orders, and other legally related data.[79] Many BLS at recent CTC rotations have chosen to produce trackers and graphic organizers that are distinct from the basic legal running estimate. BLS fighting products typically include an LSE tracker, an ROE-change tracker, a BCT-orders tracker, and an authorities matrix,[80] among others, that may be helpful to you and the greater staff.[81] Regardless of the format, though, doctrinally, these trackers all nest within the legal running estimate.[82]

It is never too early to start developing a legal running estimate. In fact, Army doctrine encourages keeping a running estimate updated even during garrison operations.[83] At the latest, create it in the lead-up to the VALEX. The VALEX is the opportunity to confirm the legal running estimate is in the right format while you still have time to make any necessary improvements before the CTC rotation, and of course, before a real-world mission.[84]

Incorporating the running estimate into a broader BLS standard operating procedure (SOP) has worked for some legal sections.[85] As MAJ Gattermeyer et al. point out, such an SOP could include not only the running estimate and any attached trackers or matrices, but also packing lists, shift-change briefing agendas, BLS-specific information requirements, wake-up criteria, and doctrinal references.[86] Get junior attorneys and paralegals involved in the run-up to the rotation by delegating the responsibility for developing most or all of these products.

Although most BLS are accustomed to working primarily in the digital space, it is essential to carry the SOP, running estimate, and associated trackers in analog format as well. For one reason, computers break, networks fail, and the electricity goes out. As LTCs Davis and Young point out, "In a degraded information environment due to jamming, lack of power, cyberattack, or other enemy means, JALS personnel will learn the importance of planning for such situations."[87] In such an environment, analog fighting products will become essential for you and the BLS to maintain "shared understanding."[88] Additionally, consider posting hard copies of the ROE authorities matrix and key trackers in conspicuous places in command nodes to help other staff sections maintain awareness of legal issues when the BLS is busy or elsewhere.

Leverage the experience of the BLS of any sister BCTs that have gone through a CTC rotation recently.[89] Speak with your counterparts to find out which fighting products worked well and which needed refinement. Senior paralegal NCOs ought to do the same with their counterparts. In addition to providing advice, the sister BLS may be able to furnish valuable templates that could subtract hours from the time required to produce the legal running estimate and BLS SOP.

On the subject of documents, you are responsible for producing the legal-support tab, commonly known as the "legal annex." This document is appended to the BCT operations order, Annex F (Sustainment), Appendix 2 (Personnel Service Support), Tab C (Legal Support).[90] Although not a fighting product, *per se*, this supplement explains to the BCT how the BLS will provide legal support to commanders, staff, and warfighters alike.[91] Delegate the first draft of the legal-support tab, as well as the authorities matrix and other products, to an NCO or junior attorney as a valuable developmental experience.

## LOE 5: Training the Force

In the half-century since the end of the Vietnam War and the initiation of the Department of Defense Law of War Program in the mid-1970s, the legal advisor in the brigade CP has gone from being non-existent to being as normal as green spots on camouflage.[92] In fact, the United States recognizes as customary international law the requirement that a legal advisor be made available to every operational commander.[93] During the two decades of the Global War on Terrorism (GWOT), it was typical for a commander above the BN level to have a JA present, and even concurring, every time the commander authorized a lethal kinetic strike.[94] The constant presence of the CP legal advisor was due to the demand for near-perfect decisions in counterinsurgency or counterterrorism environments[95] and the fact that our enemies in the GWOT usually were unable to target our CPs, thereby allowing for spacious working environments.[96]

Such luxuries will not exist in LSCO.[97] As noted above in LOE 1, there may be times when space limitations keep legal advisors out of the MCP. Nonetheless, a BLS at a recent CTC facing this reality still found success in setting the table for principled, LOAC-driven decisions on the part of commanders and staff.

Proximity alone does not equal influence, as MAJ Dane Rockow and CPT Karolyn Kerwin have pointed out.[98] And that is a good thing, because in LSCO, it is inevitable that commanders and staff members at the brigade level will need to apply the LOAC on their own without steady legal advice to guide them.[99] Preparing the BCT for LSCO, therefore, requires training the entire team on the LOAC and the ROE before entering the fight.[100] The BLS can multiply itself and extend its influence exponentially by *equipping* commanders and staff members within the BCT with practical knowledge of the LOAC and ROE they can apply without legal counsel in real time.[101]

In preparing for decisive action, distinguish between two training audiences: trigger-pullers and shot-callers. The LOAC is for everyone, including trigger-pullers; thus, every Soldier in an MTOE unit needs to be trained on it,[102] and certainly before the VALEX and CTC rotation. The principles of LOAC are relatively static and set the foundational ground rules for the ethical application of lethal force in combat.[103]

Network early and often with the BCT S3 section and the corresponding S3 sections of the subordinate BNs. Get on their training calendars months ahead of the VALEX to reach the maximum audience with the LOAC message. As discussed above with LOE 2, you and the senior paralegal NCO should empower the BN paralegals with the LOAC expertise required to deliver these briefings at the BN and company level effectively.

That said, LOAC training will have its greatest effect when the BCT commander emphasizes its importance and uses the training to convey command philosophy and tolerance for risk on the battlefield to the BCT staff and subordinate commanders.[104] The Judge Advocates General of the Army in recent years have emphasized the importance of vignette-based training, driven by the commander, to help subordinates think through how the LOAC applies in a variety of settings.[105] Such training is important not only to help these commanders and staff members understand the BCT commander's appetite for risk, but also to give them the confidence to shoot when the situation requires it.[106]

The full ROE, on the other hand, need to be briefed only to the shot-callers, i.e., the decision-makers, in LSCO. The ROE contextualize the LOAC, turning static principles into dynamic, policy-driven rules for the application of force.[107] In LSCO, ROE inform commanders and staff members *who* (what level of command) may approve the use of *which* weapon systems and the engagement of *what* kinds of targets.

Although the ROE are rooted in the LOAC, they constitute policy, so you will not be able to train the shot-callers on the ROE until you receive them from HHQ.[108] For a CTC rotation, that opportunity likely will not come until you have arrived at the CTC. Nonetheless, begin planning as early as you can to identify a time to brief the shot-callers on the ROE before entering "the box," i.e., the maneuver training area. The target audience should include BCT and BN commanders and staff members, as well as company commanders and first sergeants.

To bring the discussion full circle with LOE 1, do not neglect to train your own "force," i.e., the BLS, on finer points of the LOAC that will apply during the CTC rotation. By serving as the BCT's subject-matter experts on the LOAC, attorneys and paralegals will foster a specialized skillset that will help them integrate into the staff. Begin by opening up Field Manual 6-27, *The Commander's Handbook on the Law of Land Warfare*,[109] and assigning it to the

BLS as required reading. Branch into other topics such as the distinction between the United States and international legal regimes surrounding cluster munitions (such as the dual-purpose improved conventional munition, or DPICM), landmines, and command-detonated devices like the M18 Claymore and M7 Spider.[110] Help the attorneys and paralegals understand the legal framework for the treatment and detention of captured persons,[111] and make sure they grasp the basics of the targeting process.[112]

## Conclusion

As COL Kristy Radio and her co-authors state, "It's hard to overprepare for LSCO."[113] Preparing along the five LOEs described above, however, is a good start toward getting ready for a CTC rotation.

Just like with training for an AFT, success at a CTC will come only by preparing well in advance. Whether it be positioning people in the BLS in the appropriate spots, preparing paralegals to maximize value to their BNs, planning for breakdowns in communications, developing effective fighting products, or training the force correctly, you will get out of the CTC experience what you put into it.

The "real world," with its justice actions, investigations, and ethics opinions, always beckons. But just as you need to do PT several times a week to prepare for an AFT, you need to *make* time for CTC preparation. Although a rotation may not feel "real" when it is still several months out, the more prepared you are upon arrival, the more effectively the CTC will prepare you, the BLS, and the whole BCT for the day when the mission itself is "real world." **TAL**

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## Notes

1. This article focuses on preparation for the maneuver, or "dirt," CTCs, including the Joint Readiness Training Center (JRTC) at Fort Polk, Louisiana, the National Training Center (NTC) at Fort Irwin, California, and the Joint Multinational Readiness Center (JMRC) in Hohenfels, Germany. The Mission Command Training Program, based at Fort Leavenworth, Kansas, represents a different type of CTC that trains divisions, corps, and other Army and joint units. *See* U.S. Dep't of Army, Regul. 350-50, Combat Training Center Program para. 1-5(e) (2 May 2018).

2. A well-known shift in focus away from counterinsurgency and counterterrorism, toward large-scale combat operations (LSCO), makes the division "the Army's principal tactical warfighting formation." U.S. Dep't of Army, Field Manual 3-0, Operations para. 2-98 (21 Mar. 2025) [hereinafter FM 3-0]. Nonetheless, the brigade combat team (BCT) remains "the Army's primary combined arms, close-combat maneuver force." *Id.* para. 2-99. Although dirt CTCs conduct "division in the dirt" rotations occasionally, their most-frequent training audience, by far, remains the BCT. For that reason, this article focuses on a BCT-level rotation.

3. Ideally, as the brigade judge advocate (BJA), you would start exercising tactical systems and processes as soon as you take the seat.

4. *Stress, Anxiety and Arousal*, Eduqas, https://resource.download.wjec.co.uk/vtc/2015-16/15-16_30/eduqas/05-heat-of-the-moment/Component5-stress.html [https://perma.cc/VA6M-CLBY] (last visited Apr. 9, 2026).

5. *See* U.S. Dep't of Army, Dir. 2025-06, Army Fitness Test para. 4(b) (17 Apr. 2025).

6. Major Timothy A. Davis & Major Jason D. Young, *Building National Security Law Readiness Through Combat Training Center Rotations*, Army Law., no. 2, 2022, at 15.

7. *See id.*

8. Captain Tyler Gattermeyer, Major Andrew J. Browell, Major Jason Young & Major Tim Davis, *Preparing for Success at the Combined Training Center: an OC/T Perspective*, Nat'l Sec. L.Q., no. 3, 2023, at 4.

9. *See id.*

10. "Army command posts can and must become more flexible, agile, and resilient while not sacrificing effectiveness. Otherwise, our command posts will be a place our leaders go to die." Lieutenant General Milford Beagle Jr., Brigadier General Jason C. Slider & Lieutenant Colonel Matthew R. Arrol, *The Graveyard of Command Posts: What Chornobaivka Should Teach Us about Command and Control in Large-Scale Combat Operations,* Mil. Rev., Mar. 2023, at 10, 13.

11. This article uses the term "MCP" to refer to the TOC or CUOPS cell, and "RCP" to refer to the FUOPS cell.

12. Current Army doctrine, now four-to-five years old, reserves the term RCP for the division and corps level, while affording BCTs only an MCP and a tactical CP (TAC). *See* U.S. Dep't of Army, Field Manual 6-0, Commander and Staff Organization and Operations para. 7-29, tbl. 7-1 (16 May 2022); U.S. Dep't of Army, Field Manual 3-96, Brigade Combat Team paras. 4-42, 4-227 (19 Jan. 2021) [hereinafter FM 3-96]. Nonetheless, doctrine allows the BCT CDR flexibility in structuring CPs "to meet changing situations," with "CP survivability . . . vital to the success of the BCT mission." FM 3-96, *supra*, paras. 4-41, 4-225. CTCs have routinely seen BCTs fight with an RCP or FUOPS cell in addition to a small MCP and TAC. Compared to 2021–2022, when FMs 6-0 and 3-96 were released, BCTs are favoring smaller, more dispersed nodes to keep their staffs alive.

13. *See* U.S. Dep't of Army, Techs. Pub. 6-0.5, Command Post Organization and Operations para. 1-23 (1 Mar. 2017) [hereinafter ATP 6-0.5]. Some BCTs staff a fourth node, the administrative and logistics center (ALOC), which is dedicated to sustainment support and is typically located further to the rear than the RCP. Resist being placed in the ALOC. Although legal support is doctrinally part of the sustainment Warfighting Function (WfF), the BLS has a role in all six WfFs in a way most staff sections do not. *See* U.S. Dep't of Army, Field Manual 3-84, Legal Support to Operations para. 2-54 (1 Sep. 2023) [hereinafter FM 3-84]. A recent CTC rotation demonstrated that when the BJA and other BLS members were relegated to the ALOC, they were disconnected from the fight, which limited their ability to advise on BCT operations.

14. *See* FM 3-84, *supra* note 13, para. 3-61.

15. *See* Gattermeyer et al., *supra* note 8, at 5. Recent CTC experience shows that bringing three attorneys (including you, the BJA) increases the total training value. With three attorneys, each has more flexibility to integrate with and learn from the planning staff and digest the information they are learning about the operations process. Furthermore, with three attorneys present, they have more opportunities to engage with enablers, such as civil affairs and psychological operations, on legally related issues arising from their respective activities. If you arrive with only one other attorney, however, you may find yourselves struggling to keep your heads above water.

16. *See* FM 3-84, *supra* note 13, para. 3-27.

17. As Gattermeyer et al. advise, get the SJA involved early in a manning problem. *See* Gattermeyer et al., *supra* note 8, at 8. Help the SJA see the long-term value to the division and the greater JAG Corps to sending a third attorney. *See id.*; *see also* Colonel Andrew McKee & Lieutenant Colonel Jason Elbert, *Embrace the Crucible Experience: An Intentional Approach to Training Opportunities*, Army Law., no. 2, 2022, at 9 (explaining why division SJAs should engage early in preparing for a CTC rotation) ("[L]eaders within the JAG Corps must approach training requirements such as . . . [CTC] rotations and Warfighter Exercises (WfX) with intentionality, devoting serious thought and their own time into ensuring every member of the team gets the most they can out of these opportunities. . . . [SJA] preparation for these events should start well in advance of execution.").

18. *See* FM 3-84, *supra* note 13, para. 3-28.

19. *See* Sergeant First Class William W. Angle III, *Leading Organizations Through Change: Paralegal Employment in Combat Operations*, Nat'l Sec. L.Q., no. 2, 2024, at 24, 29–30.

20. A VALEX is a BCT-level exercise at home station that serves as a final rehearsal before the CTC rotation. It is typically controlled by the division staff, with the division chief of national security law playing the division SJA. As its name implies, the VALEX is where the BCT staff, including the BLS, seeks to validate its systems and processes prior to traveling to the CTC.

21. The term "fight night" refers to a period of intense combat activity, typically at night. During a CTC rotation, expect the BCT to face at least one "fight night" on defense and one on offense.

22. For example, the ROE may withhold the authority to employ a certain weapon system to the division commander. If the BCT commander wants that authority, the BCT staff must prepare an ROE-change request with your advice and then route it to the division commander through operational channels.

23. *See* FM 3-84, *supra* note 13, paras. 3-49 to 3-51.

24. Davis & Young, *supra* note 6, at 18 ("BLS and OSJAs can do a couple of things to posture for success: 1) set the dial on risk tolerance and LOAC compliance in the targeting process; 2) advocate for physical space and staffing; and 3) develop training objectives aligned with the BLS state of readiness, OSJA guidance, and any follow-on mission with redundant and analog fighting products to ensure readiness for an austere environment."); *see* Chairman, Joint Chiefs of Staff, Instr. 3160.01D, No Strike and Collateral Damage Estimation Methodology glossary (21 May 2021) (defining collateral damage).

25. *See* FM 3-84, *supra* note 13, tbl. 3-2 (listing battle-rhythm events requiring legal support).

26. These engagements may be part of the exercise.

27. Recent articles in *The National Security Law Quarterly* (NSLQ) emphasize the importance of staff integration and how to accomplish it. Some articles are written from the division perspective, but their concepts transfer easily to the BCT level. *See* Colonel Kristy Radio, Major Wesleigh Cochrane, Captain Javier Diaz, & Captain Jason Vickers, *LOAC in LSCO: Transitioning a Division in the Dirt*, Nat'l Sec. L.Q., no. 1, 2025, at 37 (discussing how to integrate with the staff WfFs); Major Uilisone Tua, *The Role of the Judge Advocate in Division Fires During LSCO*, Nat'l Sec. L.Q., no. 4, 2024, at 28 (describing the role of the legal advisor in supporting deliberate and dynamic targeting); Captain Trevor Deakin, *Earn Your Seat*, Nat'l Sec. L.Q., no. 1, 2025, at 44 (highlighting the importance of engaging outside the legal practice area and not bunching up in one command node).

28. *See* U.S. Dep't of Army, Field Manual 5-0, Planning and Orders Production para. 5-10 (4 Nov. 2024).

29. *See* FM 3-84, *supra* note 13, paras. 3-25, 3-50.

30. *See* Radio et al., *supra* note 27, at 41; McKee & Elbert, *supra* note 17, at 9–10 (underscoring the importance of integrating with the battle staff very early and "baking in" LOAC considerations). "In combat, the pace of battle will move too quickly for on-the-spot legal advice. Success will require LOAC considerations during planning, a deep understanding of the commander's targeting philosophy, and iterative war game discussions that involve legal considerations." McKee & Elbert, *supra* note 17, at 9.

31. The notion of JAs taking on collateral duties outside their legal responsibilities may be controversial, for, at first blush, the practice appears to be prohibited by AR 27-1. The regulation states, "JAs will perform only professional legal duties for which they are trained. They should not perform any nonlegal duties." U.S. Dep't of Army, Regul. 27-1, Judge Advocate Legal Services para. 3-6(c) (24 Jan. 2017) [hereinafter AR 27-1]. Nonetheless, fulfilling a collateral duty within the MCP to maintain a seat there does not create a conflict of interest, and, as explained above, doing so may actually enhance your ability to provide legal advice. *See id.* para. 3-4(a). Therefore, do not fear accepting collateral duties, but accept only those that enable or enhance your ability to perform core legal functions.

32. *But see* Davis & Young, *supra* note 6, at 17 ("Failing to fully staff a CTC rotation with legal personnel sends an implicit message that providing legal services in LSCO is not as important as our home-station mission, undercutting an effort to show the importance of legal personnel regardless of the type of conflict.").

33. *See* Gattermeyer, *supra* note 8, at 6.

34. *See* Major Dane Rockow & Captain Karolyn Kerwin, *Judge Advocates on the Loop*, Nat'l Sec. L.Q., no. 1, 2025, at 29, 31 ("JAs will add the most value before conflict by educating commanders and understanding how the unit intends to fight. This allows for anticipation of legal issues and resolving those issues in advance . . . .") *See also* Radio et al., *supra* note 27, at 40–43 (highlighting the importance of "heavy judge advocate presence and engagement—early on . . . to 'bake LOAC into our targeting process'").

35. Angle, *supra* note 19, at 29–30.

36. *See, e.g.*, *id.*; Staff Sergeant Michael N. Furio, *Essential Tips for Paralegals in Division Operations during LSCO*, Nat'l Sec. L.Q., no. 4, 2024, at 40; Sergeant First Class Eric Tuel, *Paralegal Utilization: Best Practices and Lessons Learned*, Nat'l Sec. L.Q., no. 3, 2024, at 38.

37. *See* Fred L. Borch, *Lore of the Corps: From Legal Clerks to Paralegal Specialists*, Army Law., no. 3, 2019, at 10, 10.

38. U.S. Dep't of Army, Regul. 15-6, Procedures for Preliminary Inquiries, Administrative Investigations, and Boards of Officers (22 June 2025).

39. A paralegal serving a remote BN may even need to assist the commander in drafting appointment orders.

40. U.S. Dep't of Army, Regul. 385-10, The Army Safety and Occupational Health Program paras. 3-9(a), 3-19(e)(1) (24 July 2023); *see* U.S. Dep't of Def., Instr. 1300.18, DoD Personnel Casualty Matters, Policies, and Procedures paras. 4.2.1, 4.5 (8 Jan. 2008) (C2, 29 Mar. 2023).

41. *See* Lieutenant General Mary Krueger Izaguirre et al., *To Conserve Fighting Strength in Large-Scale Combat Operations*, Mil. Rev. Online Exclusive 1 (Mar. 2025) https://www.armyupress.army.mil/Portals/7/military-review/Archives/English/Online-Exclusive/2025/Conserve-Fighting-Strength-in-LSC/conserve-fighting-strength-UA.pdf [https://perma.cc/T36J-PNS4].

42. *See* FM 3-84, *supra* note 13, para. 3-70 ("Operations often occur in fluid, chaotic, and dangerous environments in which mobility is constrained.").

43. *See id.* para. 3-72 (discussing mobility considerations).

44. *See supra* Section titled LOE 3 for more on this topic.

45. Blank paper is at the highest premium for units conducting an airborne insertion.

46. *See* AR 27-1, *supra* note 31, para. 3-8(c). Also consider in-briefing likely IOs in advance, perhaps *en masse*.

47. *See* U.S. Dep't of Army, Regul. 350-1, Army Training and Leader Development tbl. C-2 (1 June 2025) [hereinafter AR 350-1]. Every BCT is presumably a modified table of organization and equipment (MTOE) unit. *See* Ctr. for Army Lessons Learned, Handbook No. 15-01, Command Deployment Discipline Program: Version 2 (3 Apr. 2017). Commanders of MTOE units train their Soldiers on LOAC as needed, and certainly prior to every combat deployment. *See* AR 350-1, *supra*, tbl. C-2.

48. The 2017 version of AR 350-1 specifically allowed that a paralegal NCO could train on the law of war once certified by a JA. *See* U.S. Dep't of Army, Regul. 350-1, Army Training and Leader Development tbl. F-2 (10 Dec. 2017). Nonetheless, the 2025 edition of the regulation gave total discretion on such training to "SJA," presumably referring to you for training at the BCT level. AR 350-1, *supra* note 47, tbl. C-2.

49. *See generally* U.S. Dep't of Army, Regul. 27-26, Rules of Professional Conduct for Lawyers (26 Mar. 2025) (providing no definition of "legal advice").

50. *See* Lieutenant General Milford Beagle Jr., Lieutenant General Joseph B. Berger III, & Lieutenant Colonel Jack D. Einhorn, *Lethal Force, Risk, and LSCO: Preparing for Permissive Rules of Engagement in Large-Scale Combat Operations*, Mil. Rev. Online Exclusive 3 (Jan. 2025), https://www.armyupress.army.mil/Journals/Military-Review/Online-Exclusive/2025-OLE/Lethal-Force-Risk-and-LSCO [https://perma.cc/93ZY-S6WS] ("Commanders must be confident in their ability to conduct a LOAC analysis without a JA and have confidence that their subordinates can do the same. This confidence can only be achieved by engaging in debates about the LOAC and sharing ideas *up*, *down*, and *across echelon*.").

51. Although paralegal specialists are not authorized to practice law, they are *expected* "to primarily perform duties of a legal nature," which may include discussions about what the law means and requires. FM 3-84, *supra* note 13, para. 3-29.

52. *See* Beagle, Berger, & Einhorn, *supra* note 50, at 15; FM 3-0, *supra* note 2, para. 8-11; FM 3-84, *supra* note 13, para. 3-44.

53. *See* Gattermeyer et al., *supra* note 8, at 7–8.

54. This agreement meant the paralegal could not be pushed out to the BN forward line of own troops (FLOT).

55. In contrast to this experience at JRTC, a reported trend at NTC is that paralegals are assigned to BN S1 sections in combat trains command posts (CTCPs), which are usually 10-20 km back from the forward line of own troops (FLOT), closer to the brigade support area. This practice generally makes it impossible for paralegals to have much involvement in the fight. For this reason, work to keep paralegals out of CTCPs.

56. *See* FM 3-84, *supra* note 13, para. 3-29 ("Battalion paralegal Soldiers are assigned to the S-1 section of each subordinate battalion.").

57. Bear in mind, however, if you face an uphill battle convincing BNs to allow their own paralegals to perform legally related duties in LSCO, the struggle will be even harder to get them to employ non-organic paralegals on anything but perimeter security or basic Soldier tasks.

58. *See If a Tree Falls in a Forest and No One Is Around to Hear It, Does It Make a Sound?,* Wikipedia (Mar. 7, 2026), https://en.wikipedia.org/wiki/If_a_tree_falls_in_a_forest_and_no_one_is_around_to_hear_it,_does_it_ make_a_sound%3F [https://perma.cc/822F-27FL].

59. Richard Nordquist, *The Basic Elements of Communication*, ThoughtCo. (June 4, 2024), https://www.thoughtco.com/what-is-communication-process-1689767 [https://perma.cc/9XG7-487L].

60. *See* Davis & Young, *supra* note 6, at 18; Gattermeyer et al., *supra* note 8, at 7–8; *see also* FM 3-84, *supra* note 13, para. 3-69 ("The ability to communicate—sending and receiving information—represents JAG Corps personnel's primary materiel requirements to deliver timely legal support in garrison and the deployed environment.").

61. Gattermeyer et al., *supra* note 8, at 7.

62. Consider starting work on the BLS PACE plan at least a couple of months in advance of the VALEX.

63. A recent trend is that BCTs have been moving away from SIPRNet-based systems, toward a "secure but unclassified–encrypted" (SBU-E) environment. *See* Lauren C. Williams, *The Army's Dream of Vastly Simplified Networking Is Starting to Come True*, Def. One (Oct. 18, 2024), https://www.defenseone.com/defense-systems/2024/10/armys-dream-vastly-simplified-networking-starting-come-true/400365 [https://perma.cc/5HPH-P663].

64. *See* FM 3-84, *supra* note 13, para. 3-70.

65. See *infra* Section titled LOE 5 for more on the ROE briefing.

66. An example from a recent rotation is typical of comms challenges: A BN paralegal was unable to use an assigned comms platform. He found a buddy in the BN S4 section and climbed into his truck. The paralegal duly borrowed the Soldier's Joint Battle Command–Platform (JBC-P) device to send a message to the BLS at the BCT HQ. The BLS did not have its own JBC-P device, but another BCT HQ staff member relayed the message to the BLS several minutes later. Nevertheless, by the time the BLS was able to respond to the BN S4's user name, the paralegal had already climbed out of the truck. The BN S4 Soldier either did not know whom the message was intended for or did not want to be bothered, so the communication failed, and neither the BLS nor the paralegal knew what had happened until the final after-action review.

67. Sean Leary, *Planning to Win the Tactical Level Fights: How Simple Operations Products Enable Synchronized Success*, From the Green Notebook (Sep. 6, 2022), https://fromthegreennotebook.com/2022/09/06/planning-to-win-the-tactical-level-fights-how-simple-operations-products-enable-synchronized-success [https://perma.cc/8BE4-KJCQ] (citing ATP 6-0.5, *supra* note 13, app. D).

68. *Id.*

69. ATP 6-0.5, *supra* note 13, app. D.

70. U.S. Dep't of Army, Doctrine Pub. 5-0, The Operations Process para. 1-54 (31 July 2019) [hereinafter ADP 5-0].

71. *See id.* paras. 1-55, 1-56, 5-12.

72. *Id.* paras. 1-31, 1-33.

73. *See id.* para. 1-54, 1-55.

74. FM 3-84, *supra* note 13, para. 3-54.

75. *See* ADP 5-0, *supra* note 70, para. 1-54; *see also id.* para. 1-58 ("[A] commander may need a running estimate at any time."). The operations process comprises the steps of planning, preparation, and execution, with continual assessment built into each step. FM 3-0, *supra* note 2, para. 8-28, fig. 8-1.

76. ADP 5-0, *supra* note 70, para. 1-58.

77. FM 3-84, *supra* note 13, tbl. 3-1; ADP 5-0, *supra* note 70, para. 1-58.

78. FM 3-84, *supra* note 13, tbl. D-1.

79. *See id.*

80. An authorities matrix is a chart that describes what level of command may engage certain targets (like low-water crossings) or authorize the use of various weapons (like forty-eight-hour landmines).

81. FM 3-84, *supra* note 13, para. D-1.

82. *Id.*

83. ADP 5-0, *supra* note 70, para. 1-58.

84. *See* Gattermeyer et al., *supra* note 8, at 7.

85. *Id.* at 6.

86. *Id.* at 6–7.

87. Davis & Young, *supra* note 6, at 17.

88. *Id.*

89. Gattermeyer et al., *supra* note 8, at 8; Rockow & Kerwin, *supra* note 34, at 34.

90. FM 3-84, *supra* note 13, para. 3-52.

91. *Id.*

92. *See* Craig Jones, *Legal Advice in Modern Aerial Warfare*, Arts. of War (Nov. 22, 2021), https://lieber.westpoint.edu/legal-advice-modern-aerial-warfare [https://perma.cc/46H2-8K7K], *cited in* Lieutenant General Stuart W. Risch & Colonel Ryan B. Dowdy, *Multi-Domain Operations: Judge Advocate Legal Services' Role in MDO and Bridging the Eighteenth Capability Gap*, Army Law., no. 4, 2022, at 90, 97 n.67; Frederic L. Borch, Judge Advocates in Combat 30–31, 51, 319–20 (2001).

93. Risch & Dowdy, *supra* note 92, at 97, n.69 (citing Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 82, June 8, 1977, 1125 U.N.T.S. 3). The United States considers Article 82 of Additional Protocol I to be customary international law. Michael Matheson, Deputy Legal Advisor to U.S. Dep't of State, 6th Annual American Red Cross-Washington College of Law Conference on International, Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U. J. Int'l L. & Pol'y 419, 428 (1987), *reprinted in* Nat'l Sec. L. Dep't, The Judge Advocate Gen.'s Legal Ctr. & Sch., U.S. Army, Law of Armed Conflict Documentary Supplement 249–50 (2022).

94. Rockow & Kerwin, *supra* note 34, at 30.

95. *See* Beagle, Berger, & Einhorn, *supra* note 50, at 6; Rockow & Kerwin, *supra* note 34, at 35 (citing Off. of Gen. Couns., U.S. Dep't of Def., Department of Defense Law Of War Manual, § 2.2.3.3 (12 June 2015) (C1, 21 July 2023)) [hereinafter DoD Law of War Manual].

96. *See* Rockow & Kerwin, *supra* note 34, at 30.

97. *See* Beagle, Berger, & Einhorn, *supra* note 50, at 3.

98. Rockow & Kerwin, *supra* note 34, at 31.

99. *See* Beagle, Berger, & Einhorn, *supra* note 50, at 3. Soldiers often apply the LOAC without a JA nearby. For instance, military occupational specialty (MOS) 11C mortarmen may frequently send indirect fire into a populated area without ever speaking to a JA in the course of their duties.

100. Rockow & Kerwin, *supra* note 34, at 31.

101. As one brigade commander said to his BJA prior to a CTC rotation, "[I]f you do your job, I can't think of a single LOAC question I'll have for you during force on force." *Id.* at 33.

102. *See* AR 350-1, *supra* note 47, tbl. C-2.

103. U.S. Dep't of Army, Field Manual 6-27, The Commander's Handbook on the Law of Land Warfare paras. 1-18 to 1-22 (7 Aug. 2019) (C2, 21 May 2025) [hereinafter FM 6-27]. Of course, the LOAC informs much more than just targeting decisions; it encompasses detainee operations, treatment of civilians, the lawfulness of weapons, and more. *See generally id.* (detailing LOAC principles in each of these categories).

104. Beagle, Berger, & Einhorn, *supra* note 50, at 3, 5–6.

105. Risch & Dowdy, *supra* note 92, at 96; Beagle, Berger, & Einhorn, *supra* note 50, at 6–9. As discussed in the latter resource, JRTC has published a series of vignettes that may be helpful in training LOAC principles. *See* Joint Readiness Training Ctr., Ethical Bedrock Vignettes, Law of Armed Conflict in Large Scale Combat Operations (n.d.).

106. *See* Beagle, Berger, & Einhorn, *supra* note 50, at 2–3.

107. DoD Law of War Manual, *supra* note 95, § 1.6.5.

108. *See id.*

109. FM 6-27, *supra* note 103.

110. *See* DoD Law of War Manual, *supra* note 95, §§ 6.12–6.13, as a starting point.

111. *See id.* chs. VIII and IX. Another valuable and digestible resource is Gary D. Solis, The Law of Armed Conflict (3d ed. 2021).

112. *See generally* U.S. Dep't of Army, Field Manual 3-60, Army Targeting (11 Aug. 2023); U.S. Dep't of Army, Field Manual 3-09, Fire Support and Field Artillery Operations (12 Aug. 2024).

113. Colonel Kristy L. Radio, Lieutenant Colonel Michael E. Schauss, Lieutenant Colonel Matthew B. (Blake) Williams & Major Walter J. (Joey) Sepulvado, *LOAC 101 in New Operational Environments*, Army Law., no. 2, 2022, at 2, 3.

# TOP 5 CONSIDERATIONS FOR OPLAW IN LSCO

*Last Updated May 2026; Major Michael D. Winn*

## 1 MANPOWER UTILIZATION WITHIN BDE HQ

- Who is part of the team? How many attorneys will you have?
- How much knowledge and experience do the paralegals have WRT OPLAW?
- How will the BDE staff be arrayed—CUOPS vs. FUOPS, MCP vs. RCP, etc.?
- How will you advise the FUOPS staff? What are the battle-rhythm events that require your participation? How will you support each step of the MDMP?
- Will you have a dedicated seat in CUOPS/MCP?
  - If so, how will you man it?
  - If not, how will you demonstrate to your CDR the value of in-person legal advice to CUOPS/MCP, or conversely, mitigate your absence?

## 2 PARALEGAL EMPLOYMENT APART FROM BDE HQ

- How will you train BN paralegals to educate their respective BN CDRs and staff on LOAC and its application (short of providing legal advice)?
- How will you train BN paralegals to in-brief IOs, manage investigations, and ensure their timely completion (short of providing legal advice)?
- Will each subordinate BN have a paralegal with it? If not, what risk are you assuming by leaving one or more BNs uncovered?
- Will the BN paralegal have a seat in the BN CP? If not, have you considered:
  - The paralegal being trained to operate an FM radio and JBC-P?
  - The paralegal becoming the CSM's driver, to facilitate BFC and comms?
  - The paralegal being allowed in the BN CP twice daily for S.A. & comms?
  - The paralegal in a rear area nesting with another section to maintain awareness of casualties (which could indicate fratricide)?

## 3 COMMUNICATIONS

- What comms platforms will you (and each paralegal) carry with you?
- What comms platforms do you need IOT talk with HHQ OSJA, per HHQ PACE?
- Will you have the network access (SIPR line, NIPR line, Starshield) you need? (Do not assume that what works in your VALEX will work later on.)
- How will you communicate with CDRs & staff at subordinate BNs?
- How will you communicate with paralegals at subordinate BNs? If you relay them a message, will they be able to respond? Can they capture and relay to you reports of legally significant events (LSEs) such as CIVCAS & fratricide?
- How will you notify officers of their appointment as IOs and assist them with their investigations in a distributed environment with degraded comms?

## 4 FIGHTING PRODUCTS AND OTHER RESOURCES

- How will you organize your legal running estimate and keep it updated for use during shift-change briefings and daily syncs? The running estimate should include an LSE/investigations tracker, an ROE-change request tracker, and an authorities matrix, at a minimum.
- How will you utilize your fighting products during MDMP?
- What analog products will you use to prepare for a degraded environment?
- Who will manage analog investigation toolkits and provide them to IOs?
- Will you have hard-copy access to FM 6-27 and the OPLAW Handbook?

## 5 TRAINING THE FORCE

- How will you train all trigger-pullers on LOAC at home station? How will you involve the BN paralegals, to build their knowledge of LOAC?
- How will you train all shot-callers on the ROE once you receive them?
- How will you train subordinate units to report suspected LSEs?
- Can you streamline the administrative-investigation process, such as by pre-identifying and pre-briefing IOs? Can you leverage briefing opportunities to give paralegals experience with the conduct of investigations?


# AROUND THE CORPS

SSG Johnnie D. Luna, paralegal noncommissioned officer with the 11th Airborne Division Office of the Staff Judge Advocate, performs jump master duties before an airborne operation at Joint Base Elmendorf-Richardson, Alaska. (Photo courtesy of MAJ Alexander Hernandez)

An institutional hallway with two paths.
(Generated by ChatGPT)

Feature

# Mental Competence and Responsibility in Courts-Martial

## Evaluating Procedures and Proposing Refinements

*By Major Victoria J. Bell*

Mental health issues in courts-martial present a distinct set of procedural and substantive challenges that differ from other aspects of military justice.[1] When an accused's mental condition is at issue, two legally separate, but operationally intertwined, questions become relevant: whether the accused was mentally responsible at the time of the alleged offense and whether the accused is presently competent to stand trial. The Rules for Courts-Martial (RCM) provide mechanisms to navigate these questions, most notably through RCM 706 inquiries and RCM 909 competence determinations.[2]

RCM 706 governs the investigative process for appointed medical professionals to inquire into both an accused's mental responsibility and mental competence.[3] These inquiries are generally referred to as "sanity boards."[4] RCM 909 governs the judicial standard and process for protecting an accused's constitutional rights by ensuring they are mentally competent to stand trial and, if they are not, the procedures that follow.[5] Together, these rules are intended to safeguard an accused's constitutional rights[6] while allowing the court-martial process to proceed in a timely and orderly manner. However, their structure and sequencing can create unnecessary delay, duplicative processes, and uncertainty regarding how and when certain determinations should be made.

This article argues that targeted revisions to RCM 706 and RCM 909 would improve clarity and efficiency without altering their underlying purpose. Specifically, the current RCM 706 framework can better distinguish between mental competence and mental responsibility inquiries and streamline how those inquiries are conducted. The current RCM 909 framework can remove potentially problematic discretion throughout the process and clarify the procedural steps that follow a finding of incompetence. These changes would not diminish critical protections for an accused; rather, they aim to ensure those protections are applied in a more predictable and efficient manner.

To support this argument, this article proceeds in three parts. First, it outlines the legal distinctions between mental competence, mental responsibility, and partial mental responsibility, providing the doctrinal foundation necessary to understand how mental health issues arise in courts-martial. Second, it examines the current RCM 706 process, identifying areas where its structure may create inefficiencies or unnecessary overlap. Third, it analyzes the operation of RCM 909, focusing on how competence determinations are made and the procedural consequences that follow, and proposes revisions to clarify that process.

By clarifying the relationship between these rules and refining their procedural operation, the military justice system can more effectively address cases involving mental health issues while preserving both fairness and efficiency.

## Distinguishing Mental Competence and Mental Responsibility

Mental competence and mental responsibility are distinct legal concepts that serve different functions in the court-martial process. Understanding that distinction is essential to identifying which inquiries are appropriate in a given case and then properly appling the procedures set forth in RCMs 706 and 909. Mental competence focuses on the accused's present ability to understand the nature of the proceedings and assist in their own defense.[7] Mental responsibility, in contrast, addresses the accused's ability at the time of the crime to understand and appreciate the wrongfulness of their actions.[8] Even when the standard for proving lack of mental responsibility is not met, evidence of a mental condition may still be relevant to disprove the intent element of a crime via partial mental responsibility.[9]

### *Mental Competence Focuses on the Accused's Current Mental Capability*

Mental competence focuses on the accused's present ability to understand what is occurring and meaningfully assist in their own defense.[10] An accused is presumed competent unless the defense counsel brings evidence to the contrary.[11] Mental competence is essential because proceeding to trial with a mentally incompetent accused violates two critical constitutional protections afforded to every accused: due process and the right to a fair trial.[12] The defense has the burden of proving this by a preponderance of the evidence.[13]

The Fifth Amendment to the U.S. Constitution, in part, states, "No person shall be . . . deprived of life, liberty, or property, without due process of law."[14] The Sixth Amendment, in part, guarantees that the accused has the right "to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."[15] A mentally incompetent accused is not able to fully appreciate due process or to properly execute their right to confrontation because they can neither understand the current justice process nor assist their defense counsel.

Early on in battling the legal complexities surrounding mental competence, the courts were forced to clarify the standards for proving mental incompetence and the protections that should be afforded to the accused.[16] The courts have historically helped define a judge's duty to protect an incompetent accused's rights. In *Pate v. Robinson*, the Supreme Court held that the lower "court's failure to make such inquiry [into the inmate's competence to stand trial] deprived . . . [the inmate] of his constitutional right to a fair trial."[17] In *Drope v. Missouri*, the Supreme Court again examined the issue of trying incompetent clients and its constitutional implications.[18] They reiterated their ruling from *Robinson,* stating that "the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial."[19] They further clarified the ruling by stating that

> evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient. . . . [T]he question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.[20]

*Drope* displays the complications and the sliding scale of mental competence, which is ever-changing. No single piece of evidence or fact can always point to an individual's incompetence. This added complexity requires all parties involved in the process to analyze all the different facts as a whole to determine if there is a competency concern. This determination is very fact—and case—dependent, which makes identifying this issue a challenge for practitioners and judges.

The Supreme Court has defined this competence standard "as including both (1) 'whether' the defendant has 'a rational as well as factual understanding of the proceedings against him' and (2) whether the defendant 'has sufficient present ability *to consult with his lawyer* with a reasonable degree of rational understanding.'"[21] "The question is whether the accused is possessed of sufficient mental power, and has such understanding of his situation, such coherency of ideas, control of his mental facilities, and the requisite power of memory, as will enable him to testify in his own behalf, if he so desires, and otherwise to properly and intelligently aid his counsel in making a rational defense."[22] Examples of these factors may include an accused struggling to remember prior conversations, believing they are not facing court-martial, thinking their attorney is against them, or being unable to provide details to help in their own defense.

Moreover, just because an accused is competent one day does not mean that they are always competent, and attorneys and judges must constantly assess the current competence of the accused to protect their constitutional rights. Mental competence can impact the case at any point in the process, from investigation to sentencing. Nevertheless, the accused must be competent to ensure that justice is served and that convictions can survive appellate review.

### *Mental Responsibility Focuses on the Accused's Capability at the Time of the Crime*

While mental competence focuses on the accused's current mental state, mental responsibility focuses on the accused's mental state at the time of the commission of the offense.[23] Mental competence has constitutional implications, while mental responsibility is an affirmative defense.[24] The concept of mental responsibility originated in England in the early 1800s, where the M'Naghten (sometimes spelled McNaughten) rule was established.[25]

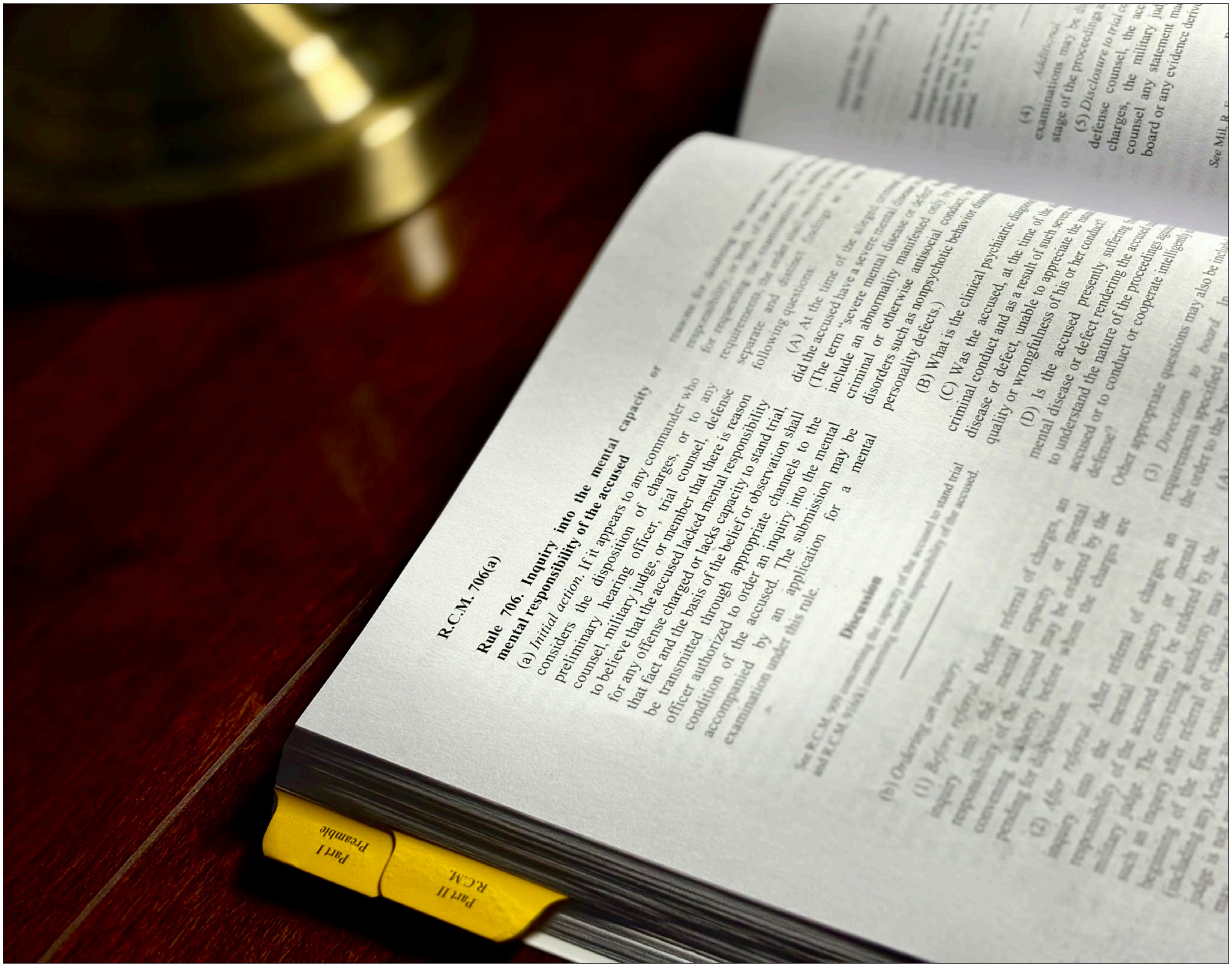
The M'Naghten rule arose from an 1843 case in England and offered the first legal test for criminal insanity.[26] In that case, the accused, Daniel M'Naghten, shot and killed the secretary to the prime minister (mistakenly believing the secretary was the prime minister) and claimed the murder was necessary because of a conspiracy against him.[27] The accused believed that if he did not commit this murder, he himself would be killed because of this alleged conspiracy.[28] The jury found M'Naghten not guilty "by reason of insanity," and the public outrage surrounding the verdict prompted the creation of a structured test for criminal insanity, known as the M'Naghten rule.[29] Under this test,

> all defendants are presumed to be sane unless they can prove that—at the time of committing the criminal act—the defendant's state of mind caused them to (1) not know what they were doing when they committed said act, or (2) that they knew what they were doing, but did not know that it was wrong.[30]

That test became the standard for determining insanity in the United States, where it continues to serve as the test for insanity in about half of the states.[31]


A portrait illustration of Daniel M'Naghten (here spelled McNaughten). (Source: Bethlem Museum of the Mind)

The *MCM* provides its own affirmative defense of lack of mental responsibility. It reads, "[A]t the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense."[32] Here, the burden rests solely on the defense to prove the lack of mental responsibility by clear and convincing evidence.[33] Before 1984, the burden rested on the Government to establish the accused's mental responsibility beyond a reasonable doubt.[34] An executive order in June 1987 significantly changed the 1984 *MCM*, including changing the standard to the accused being presumed mentally responsible, shifting the burden to the defense, and decreasing the standard of proof to that of any affirmative defense.[35]




RCM 706 in the 2019 edition of the *Manual for Courts-Martial.* (Credit: Katherine Hernandez)

Consequently, the presumption is that the accused is mentally responsible for their crimes,[36] and the factfinder determines if that is not the case.[37] The uphill battle any accused faces in proving a lack of mental responsibility is the objective standard that the factfinder applies to the analysis. This objective standard judges wrongfulness by societal standards, not by the accused's personal belief at the time of the wrongfulness of their acts.[38] Societal standards are based on those of people who are not suffering from a mental disease or defect. The defense must also pinpoint and prove that the accused was suffering from a severe mental disease or defect at the exact time the crime occurred; just proving it existed during the general period is not enough, and proving it existed before or after the crime occurred may be insufficient as well.[39]

Meeting this burden does not automatically render the accused not guilty. The rule allows the factfinder to consider three different findings: guilty, not guilty, or not guilty because of lack of mental responsibility.[40] The factfinder, therefore, can be presented with evidence for the defense of lack of mental responsibility but be unpersuaded and still find the accused guilty; the defense is not an automatic bar to conviction, even with some supporting evidence. However, a counsel's analysis on the subject should not stop just because a client's mental defect does not rise to the level of lack of mental responsibility. When this high threshold is not met, partial mental responsibility is still an available option that can assist counsel in disproving the intent element of a crime.

### *Partial Mental Responsibility*

As discussed above, lack of mental responsibility is an affirmative defense. However, if the accused has a mental disease or defect that does not meet the lack of mental responsibility standard, the defense can still use it to disprove an element of the crime. The U.S. Court of Appeals for the Armed Forces (CAAF) states the following regarding partial mental responsibility: "[A] mental condition not amounting to a lack of mental responsibility is not an affirmative defense, but may be admissible to determine whether [the accused] entertained the state of mind necessary to prove an element of the offense."[41] Such *mens rea* elements can include "premeditation, specific intent, knowledge, or willfulness."[42] While RCM 916, which covers defenses (including lack of mental responsibility), confirms that "[a] mental condition not amounting to a lack of mental responsibility . . . is not an affirmative defense,"[43] the discussion to this rule offers the same language as CAAF regarding admissibility.[44] The defense does not bear the burden of proof for partial mental responsibility.[45]

Partial mental responsibility is a lower standard than lack of mental responsibility. Partial responsibility occurs "[i]f admissible evidence suggests that the accused, for whatever reason, including mental abnormality, lacked *mens rea*, the factfinder must weigh it along with any evidence to the contrary."[46] Partial mental responsibility evidence is treated like any other evidence that the defense may provide in a trial to attack the Government's burden to prove that the accused is guilty beyond a reasonable doubt.[47] Military judges use Department of the Army Pamphlet 27-9, *Military Judges' Benchbook* (*Benchbook*), to determine the proper instructions to read to the panel.[48] Instruction 5-15 sheds some light on how to handle partial mental responsibility in a trial.[49] When evidence of partial mental responsibility is offered, the judge will instruct the factfinder that

> [t]his evidence was not offered to demonstrate or refute whether the accused is mentally responsible for (his) (her) conduct. Lack of mental responsibility, that is, an insanity defense, is not an issue in this case. (What is in issue is whether the Government has proven beyond a reasonable doubt that the accused had the ability to (act willfully) (entertain the (premeditated design to kill) (specific intent to __________)) (know that __________) (__________).).[50]

This instruction further sheds light on the Government's burden to prove guilt beyond a reasonable doubt.[51] *Benchbook* instruction 6-5 states:

> It is essential that you remember that the defense of lack of mental responsibility and the defense of partial mental responsibility are separate and distinct. For the defense of lack of mental responsibility, the burden is on the defense to prove, by clear and convincing evidence, the accused's lack of mental responsibility. On the other hand, any evidence of partial mental responsibility may be considered by you in deciding whether the Government has proven beyond a reasonable doubt that the accused had the required (state of mind) (specific intent) to commit the offense. The same evidence, however, may be considered with respect to both types of defenses.[52]

This instruction again establishes the Government's burden to prove guilt beyond a reasonable doubt.[53] These instructions highlight the intricacies of partial mental responsibility and the difficulties panel members face in making a complicated factual determination. Mental responsibility is very fact-dependent, and the factfinder must weigh all the evidence before determining guilt beyond a reasonable doubt.

Understanding these three distinct ways mental disorders can come into play throughout a case is vital to determining the appropriate procedural path to take, some of which begin with RCM 706.

## RCM 706: "Inquiry into the mental capacity[54] or mental responsibility of the accused"[55]

RCM 706 governs medical inquiries into the accused's mental state.[56] It authorizes convening a board of qualified professionals to evaluate whether a mental competence or lack of mental responsibility issue exists with the accused.[57] A board can be called at any point in the court-martial process,[58] and given the time necessary to complete one, it should be done as early as possible to prevent undue delay. If counsel waits until the case is referred, docket dates will likely change because the case will be halted pending the completion of the RCM 706 board.[59]

Requesting a board earlier in the process will ensure completion before any court dates are docketed. Understanding the purpose of RCM 706 and the history of an accused's mental health is necessary for counsel to determine whether an RCM 706 board is required, and, if it was conducted properly.

### *The Current RCM 706 Board Process*

The responsibility of raising the issue of an accused's competence or mental responsibility rests on all players in the court-martial process. RCM 706 states at the outset that, as an initial action,

> [i]f it appears to any commander who considers the disposition of charges, or to any preliminary hearing officer, trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, that fact and the basis of the belief or observation *shall* be transmitted through appropriate channels to the officer authorized to order an inquiry into the mental condition of the accused.[60]

Defense counsel, who, in practice, have the most insight regarding the accused, are typically expected to best know when an inquiry is necessary;[61] nonetheless, all parties have this duty. If the Government recognizes concerns surrounding either mental capacity or responsibility, it should initiate this request. As the appointing authorities' legal advisor, the Government has special access and trust that the defense counsel does not have, and is better suited to process the inquiry request.[62]

Previously, ordering an RCM 706 inquiry fell outside the military judge's purview until the referral of the case.[63] Now, the rule allows the convening authority or a judge to order an RCM 706 board pre-referral.[64] This allows a judge who understands the implications, process, and standard to act early and order an RCM 706 board, which helps protect the accused's rights and supports an efficient judicial system. Waiting until after referral can cause issues with the docket and significant delays in the proceedings.

Confusion surrounds the RCM 706 request process. In practice, before referral, the covening authority can deny an RCM 706 board request, necessitating a motion hearing for a judge to rule on whether an RCM 706 board is needed.[65] However, the courts have routinely determined "that a motion on behalf of an accused for a mental examination, made in good faith and not frivolous, must be granted."[66] While "the terms 'good faith' and 'frivolous,' in this setting, have not been defined in military law,"[67] the threshold is low. Unless no evidence exists to support a concern regarding the accused's mental state, a request should not be denied.[68] Caselaw reveals that appellate courts are reluctant to support denial.[69] Nonetheless, a denial was approved where a "request for a sanity board was a subterfuge for obtaining a delay in the trial to adequately defend his client."[70] Therefore, while these boards should not be used as a delay tactic, if requested in good faith, Government counsel should not oppose them.

A board is appointed once the RCM 706 appointment memo is sent to a medical office for processing.[71] Walter Reed National Military Medical Center is usually the designated medical office, and it will use that appointment memo to determine which personnel should be assigned to the case.[72] RCM 706 requires that "[e]ach member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist."[73] Routinely, the appointed members are with the Center for Forensic Behavioral Sciences at Walter Reed. This program is "the U.S. military's only postdoctoral forensic psychology fellowship, and it is the only two-year forensic psychology fellowship currently operated in the United States. It is also currently the only APA-accredited postdoctoral fellowship in forensic psychology."[74]

Routinely, a psychologist is appointed to this board, and a psychiatrist at Walter Reed is there to consult.[75] In practice, it takes, on average, about two months from the sanity board's appointment for it to render results.[76] The inquiry usually consists of an average of one day's worth of interviews with the accused, which occur after the board has reviewed the evidence of the court-martial and any relevant health records.[77] Additional medical referrals or testing, such as an MRI scan of the accused's brain, may be required.[78] If additional testing is required, it could lengthen the time needed to complete the RCM 706 board.

Once all evaluations are completed, two reports are composed: one that only answers the questions disclosed to the "officer ordering the examination, the accused's commanding officer, the preliminary hearing officer, if any, . . . and to all Government and defense counsel in the case, the convening authority, and, after referral, to the military judge."[79] The other is a long-form report given to the defense (and the commanding officer upon request) that includes the accused's statement and more details regarding their mental health.[80]

While these procedural steps may seem clear enough to follow, once someone understands the purpose of an RCM 706 board and looks closely at the rule's plain language, it becomes evident that the rule seems to consilidate mental competence and mental responsibility, making its requirements and purpose unclear.

### ***Proposed Changes to RCM 706***

*Ensuring Only Matters Relevant to the Inquiry Are Addressed*

Rule 706 contradicts itself. The first part of the rule seems to allow for flexibility: subsections (a), (b)(1)-(2), and (c)(2) permit the notifying party to specifically state in their RCM 706 order whether there is a mental competence issue, a mental responsibility issue, or both.[81] However, in every instance, the rule then requires the board to answer specific questions, which require determining *both* mental competence and mental responsibility.[82] RCM 706(c)(2) states,

> *Matters in inquiry*. When a mental examination is ordered under this rule, the order shall contain the reasons for doubting the *mental capacity or mental responsibility, or both*, of the accused, or other reasons for requesting the examination. In addition to other requirements, the order shall *require the board to make separate and distinct findings as to each of the following questions*:
>
> (A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)
>
> (B) What is the clinical psychiatric diagnosis?
>
> (C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?
>
> (D) Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense? Other appropriate questions may also be included.
>
> Other appropriate questions may also be included.[83]

By requiring the board to consider both issues every time in subsections (C) and (D) above, regardless of the actual concern of the requesting parties, the rule itself collapses the distinct meanings of mental capacity and mental responsibility.

RCM 706(a), which details the process for ordering a board, permits doing so when "there is reason to believe that the accused lacked mental responsibility for any offense charged *or* lacks capacity to stand trial."[84] Sebsections (b)(1) and (b)(2) state that "an inquiry into the mental capacity *or* mental responsibility of the accused may be ordered . . . ."[85] As noted above, subsection (c)(2) begins by stating, "When a mental examination is ordered under this rule, the order shall contain the reasons for doubting the mental capacity *or* mental responsibility, *or* both."[86]

However, as also quoted above, the rule then goes on to mandate that both matters of capacity and responsibility must be addressed by requiring the board to answer all questions listed in subsections (c)(2)(A)-(D).[87] In practice, this leads counsel and board members to believe that, regardless of the particular issue raised in the order, the board must address both every time.

Walter Reed Medical Center. (Source: Walter Reed - Tricare.mil)

To avoid this confusion, and to avoid the additional time and resources necessary to make irrelevant or unnecessary competence or responsibility determinations, RCM 706(c)(2) should be rewritten to clarify that the board needs to answer only those questions relevant to the actual concerns raised regarding the accused's mental state. In turn, it should also emphasize that the requestor must explicitly state what the board needs to evaluate: mental competence, mental responsibility, or both. If the parties disagree over which determination is needed, the opposing party should make a motion to the judge to determine what the order should contain. Empowering the requestor to identify which determinations are relevant and, therefore, required focuses the board members' time and resources and, in turn, increases the process's efficiency.

Under this proposed RCM 706(c)(2), when mental competence is the only matter requested for inquiry, the board should only be required to answer the questions listed in 706(c)(2)(B), identifying the clinical psychiatric diagnosis, and 706(c)(2)(D), which requires the determination of whether the accused is suffering from a mental disease or defect that makes them unable to understand the proceedings or assist their counsel in their defense.[88]

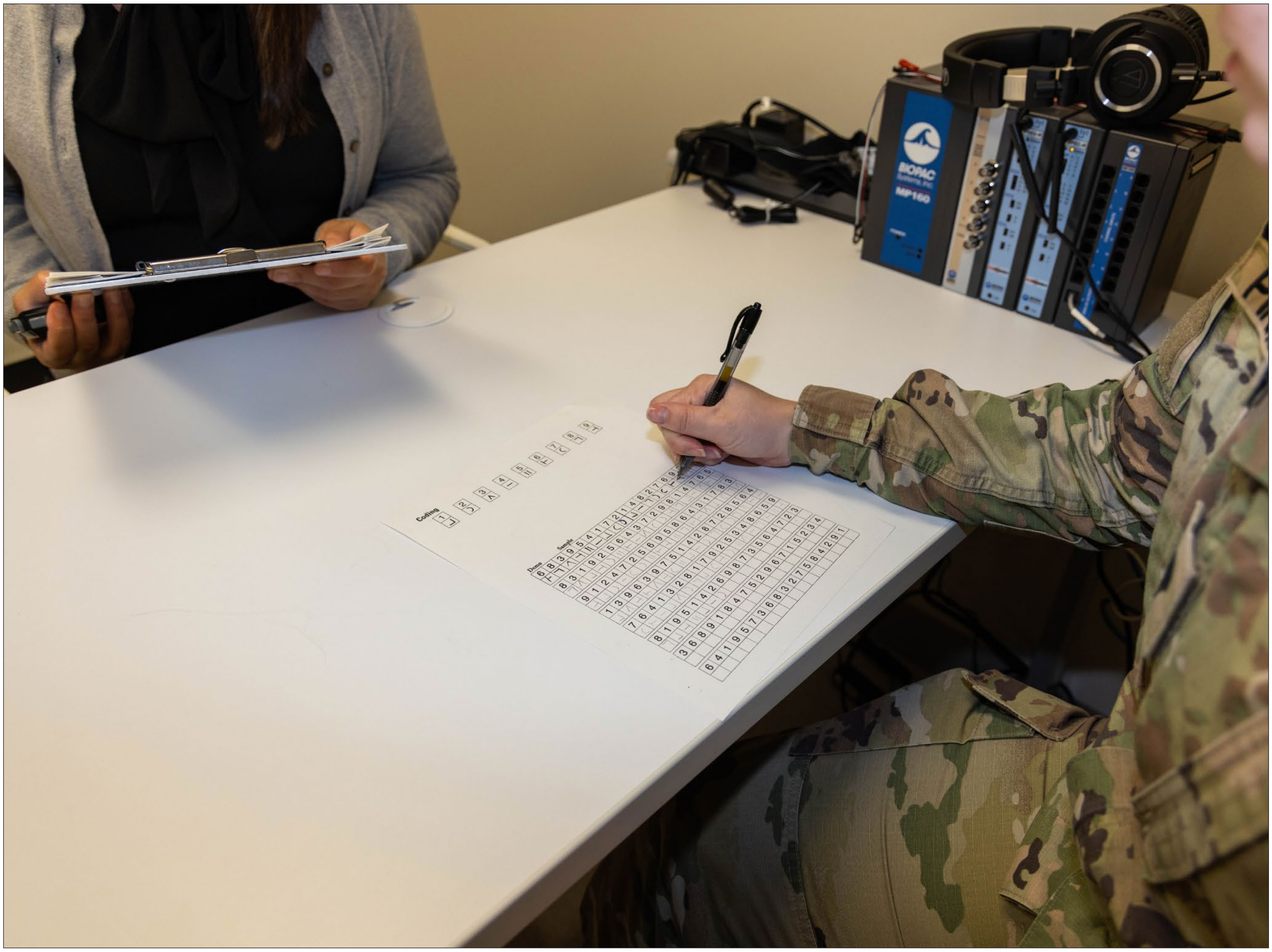
When mental responsibility is the only matter requested for inquiry, the board shall answer only the questions contained in RCM 706(c)(2)(A), (B), and (C); these questions address whether the accused suffered from a severe mental disease or defect at the time of the alleged wrongdoing, the clinical psychiatric diagnosis, and whether the accused was unable to appreciate the wrongfulness or nature of their actions.[89] Only when the requestor raises concerns regarding both mental competence and mental responsibility will the board answer all the questions laid out in RCM 706(c)(2).

*Ensuring Proper Board Composition*

The rule's language regarding the board's composition should also be revised to improve clarity, efficacy, and efficiency. Currently, RCM 706(c)(1) states,

> When a mental examination is ordered under subsection (b) of this rule, the matter shall be referred to a board consisting of one or more persons. Each member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist.[90]

First, it should remove any reference to a "physician" generally and replace it with a forensic psychiatrist or forensic psychologist. Using the umbrella term "physician" means clinical doctors with potentially little to no




A staff member at Walter Reed Army Institute of Research-West conducts a survey and timed response test on a Soldier. (Credit: Christopher Nititham, Hannah Covington)

experience with mental health disorders could be appointed to the board and satisfy RCM 706(c)(1) as written. Any primary care physician should not be permitted to determine whether an accused is mentally competent or responsible if it is outside the scope of that person's expertise. This change would ensure that only individuals who have the experience and qualifications to make RCM 706 determinations are on the board. Changing this would remove the need for the rule's vague statement that normally, it is a psychologist or psychiatrist who sits on the board. The rule should require having at least a forensic psychiatrist or, preferably, a forensic psychologist on the board. A forensic psychologist is preferred due to their ability to do a wide range of testing that a forensic psychiatrist cannot do.

As such, understanding the difference between psychiatrists and psychologists is helpful for counsel navigating this process. Psychiatrists "are medical doctors who can diagnose and treat mental health disorders through a combination of therapy, medication, and other medical interventions. . . . They have the authority to prescribe medications and perform medical procedures related to mental health."[91] On the other hand, psychologists "have advanced degrees in psychology . . . [and] are trained to diagnose and treat mental health disorders through various forms of therapy, including cognitive behavioral therapy, psychoanalytic therapy, and dialectical behavior therapy."[92]

Psychologists are generally better suited to diagnose diseases such as schizophrenia.[93] Psychologsists, unlike physchiatrists, are uniquely trained to administer IQ tests and other psychological and diagnostic examinations to help clarify diagnoses.[94] Psychologists are also specially trained in interviewing, which often yields better information from the accused.[95]

The rule should also explicitly permit expert consultants to satisfy the RCM 706 evaluation requirement. Doing so would allow the defense to utilize the expert consultant whose presence is already routinely required in these situations to diagnose the accused and expedite this lengthy process. While a misconception exists that a defense consultant would diagnose to benefit the accused, CAAF has observed time and again that doctors' opinions are not influenced by who employs them.[96] In *United States v. Best*, CAAF examined a possible conflict of interest among RCM 706 board members arising because two of the three members "had previously assessed [the accused's] mental condition."[97] The court ruled that

> because even an expansive interpretation of RCM 706 does not suggest such an intent by the drafters, we decline to read that rule so as to contain a per se exclusion from participation in examining boards of practitioners who have either treated or diagnosed the subject of such a board.[98]

In reaffirming the court's belief that military psychiatrists and psychologists can and do remain neutral in their professional assessments of the accused's mental conditions, the court reiterated that it is "certain that" military psychiatrists do not "shirk [their] professional responsibilities because they are employees of the United States."[99]

In that regard, an individual appointed by Walter Reed or a qualified expert consultant for the defense are all equally capable of making the factual determinations RCM 706 requires of the board. Thus, the rule should state that its requirements can be satisfied by a qualified, appointed defense expert consultant, so long as they answer the specific RCM 706(c)(2) questions relevant to the proponent's concerns and produce the short and long forms required by RCM 706(c)(3).

On the other hand, the accused's current mental health provider should not be permitted to satisfy the RCM 706(c)(3) requirement. Most of these individuals are not forensic psychologists and do not have the expertise to accurately make the relevant determinations. Rather, these providers are typically social workers or psychologists or psychiatrists who are not forensically qualified.

Rewriting the rule to tailor the requirements of the inquiry and both clarify and expand who is qualified to fulfill them will assist both counsel and board members in efficiently determining the accused's relevant mental state. It will also ensure that the rule does not unnecessarily conflate the important legal and procedural distinctions between mental competence and mental responsibility. Moreover, allowing expert consultants to satisfy the requirements of RCM 706 will streamline the process and enable competency hearings to occur faster.

## RCM 909: "Capacity of the accused to stand trial by court-martial"[100]

While RCM 706 is a tool to assess whether the accused is mentally competent, mentally responsible, or both, RCM 909 is a tool meant only for those accused who are potentially mentally incompetent.[101] The RCM 909 process protects the accused's constitutional rights to due process and to a fair trial and ensures that only those competent enough to stand trial are brought to a court-martial.[102] In an RCM 909 hearing, the judge makes a factual determination whether a client is incompetent and should be sent to inpatient treatment to gain competence.[103] The current RCM 909 states,

> No person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against them or to conduct or cooperate intelligently in the defense of the case.[104]

As a general starting point, courts presume that the accused has "the capacity to stand trial unless the contrary is established."[105] The rule requires that "the accused 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and . . . a rational as well as factual understanding of the proceedings against him.'"[106] Competence is a question of fact that the judge determines at this RCM 909 hearing.[107] If the accused is found incompetent, it does not mean that they will never regain competence; it simply means that, at this moment, they cannot be tried.

Understanding the importance of the RCM 909 hearing and its purpose in protecting the accused's constitutional rights is key to ensuring justice is properly served. In addition to knowing the parameters that trigger the need for an RCM 909 competency hearing and the process surrounding it, practitioners must have a strong grasp on the rule's procedures and requirements to ensure the judge is provided with all of the information needed to make a determination.

### *The Current RCM 909 Process*

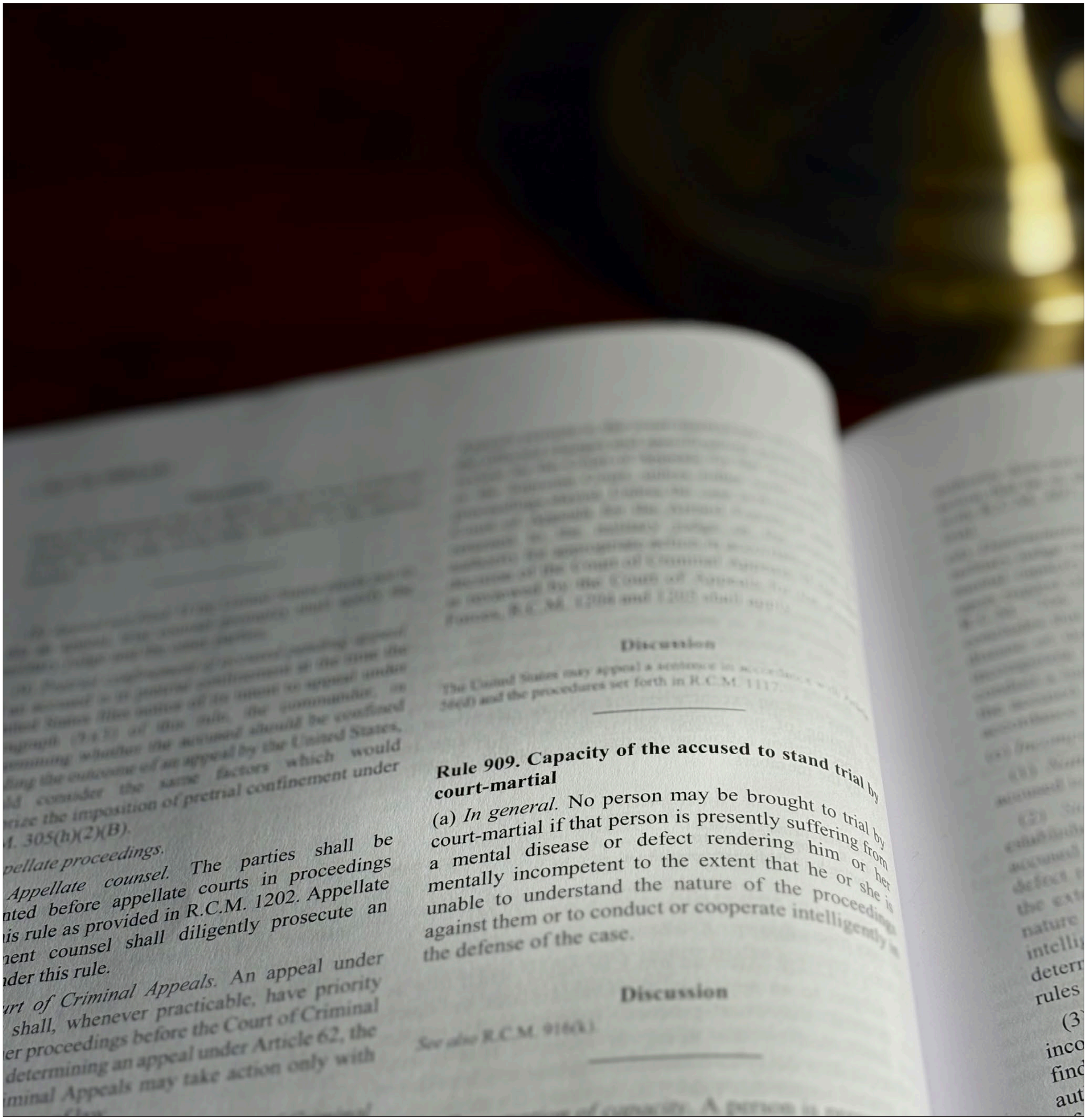
Mental competence determinations carry different procedural implications depending on whether they occur before or after referral. Pre-referral, the Government maintains discretion regarding the disposition of the case. Post-referral, this discretion is limited, and the military judge assumes authority over the subsequent proceedings.

If, pre-referral, an RCM 706 board concludes that an accused is mentally incompetent, "the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under RCM 401, including referral of the charges to trial."[108] If the special court-martial convening authority (SPCMCA) concurs with the RCM 706 incompentence determination, it "shall forward the charges to the general court-martial convening authority [(CGMCA)]."[109] If the GCMCA agrees that the accused is mentally incompetent, then it "shall commit the accused to the custody of the Attorney General."[110] If the GCMCA disagrees with the board's findings, it "may take any action that he or she deems appropriate in accordance with RCM 407, including referral of the charges to trial."[111]

The process is similar for cases that fall under the special trial counsel's (STC) purview.[112] If the STC has exercised its authority in that case and the GCMCA disagrees with the board's findings of incompetence, they must "notify special trial counsel who may take any action authorized under RCM 401A, including referral of charges."[113] However, if the GCMCA agrees with the board's findings, they "shall notify special trial counsel and commit the accused to the custody of the Attorney General."[114]

Thankfully, regardless of whether the case falls under the STC's authority, the rule allows the judge to step in at either party's request to "conduct a hearing to determine the mental capacity of the accused in accordance with RCM 309 and RCM 909(e) at any time prior to the referral."[115]

Pre-referral, the SPCMCA and the GCMCA have discretion in determining whether to agree with the board or to continue with the court-martial process. Without




RCM 909 in the 2019 edition of the *Manual for Courts-Martial*. (Credit: Katherine Hernandez)

any argument or evidence, this non-medical expert can make the decision to assume the risk, disagree with medical professionals, and continue with the referral of charges. Before referral, no trigger exists to force an RCM 909 hearing on the matter. This is concerning because the rule allows an unqualified non-medical individual whose interests conflict with those of the accused to unilaterally make a decision regarding competency and choose to move forward with the charges. Going against the board's findings potentially introduces issues to raise on appeal and further delays the process because once the case is referred, the defense will take time to bring this to the court's attention.

Post-referral, less leeway exists.[116] Note that an RCM 706 board is not a prerequisite to an RCM 909 hearing.[117] If an RCM 706 inquiry has not occurred, the judge has more discretion regarding whether to conduct an

RCM 909 board.[118] Unlike pre-referral RCM 909 determinations, the judge "may conduct a hearing to determine the mental capacity of the accused, either *sua sponte* or upon request of either party."[119] In the absence of an RCM 706 determination, deciding whether to conduct a hearing is at the judge's discretion. However, if an RCM 706 board concludes that an accused is mentally incompetent, "the military judge *shall* conduct a hearing to determine the mental capacity of the accused."[120]

Regardless whether the RCM 909 hearing occurs pre- or post-referral, the procedures and standards are the same. Similar to mental responsibility, mental competence is a question of fact.[121] This includes the judge's inquiry of the accused and their evaluation of the accused's actions during the court-martial process.[122] The standard is "preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case."[123] The judge starts with the presumption that the accused is competent.[124] The moving party, which is usually the defense, has the burden of proving by a preponderance of the evidence that the accused is incompetent.[125] This entails more than proving that the accused has been diagnosed with a mental disease.[126]

Suppose the judge determines that the accused is not competent by a preponderance of the evidence. In that case, the rule requires that "the judge shall report this finding to the general court-martial convening authority, who shall commit the accused to the custody of the Attorney General."[127] This allows the accused to be hospitalized per 18 U.S.C. § 4241(d).[128] Hospitalization is required regardless of whether there is a belief that treatment will change the accused's mental condition: "The plain meaning of this phrase is, and we hold it to be, that once a defendant is found incompetent to stand trial, a . . . judge has no discretion in whether or not to commit him."[129]

The duration of treatment is not defined clearly, but the RCM 909(f) discussion, referencing 18 U.S.C. § 4241(d), states that it "not exceed four months."[130] "However, in determining whether there is a substantial probability the accused will attain the capacity to permit the trial to proceed in the foreseeable future, the accused may be hospitalized for an additional reasonable period of time."[131] In practice, the Federal Bureau of Prisons will conduct an evaluation after four months of hospitalization to determine the accused's competence.[132] At this point, there is almost a burden shift, where "the burden is ultimately on the Government to come forward with evidence on the likelihood of the defendant's recovery."[133]

The time required to get the accused into a Federal facility to restore competence can further delay the court-martial process. Even though 18 U.S.C. § 4241 requires an assessment after four months, it usually takes much longer to transport the accused to the facility to begin the initial assessment.[134] This delays the process, risks a decline in the accused's mental health, and makes it hard for counsel to continue working on the case, as the accused cannot make any decisions regarding their case or assist in their defense.

If the accused is found incompetent or if the likelihood of regaining competence is determined to be low, a "dangerousness hearing" may occur.[135] In order to have a dangerousness hearing, charges must first be dismissed, and, "[i]f charges are dismissed solely due to the accused's mental condition, the accused is subject to hospitalization as provided in 18 U.S.C. § 4246."[136] 18 U.S.C. § 4246 would then require a hearing to "determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another."[137] The standard at this hearing is also a preponderance of the evidence.[138] If the burden is met, the accused will be once again released to the Attorney General.[139] This hospitalization has no timeline, and the accused will be released once another court hearing determines that they are no longer a threat to society.[140]

Being ruled incompetent but no longer a threat to society does not mean the accused gets to go home a free person; they could be involuntarily committed for a period much longer than the jail sentence they were facing. The process of restoring competence is not an exact science and depends on each individual's facts and circumstances. The lengthy process of restoration leaves the case in limbo, possibly for years, which emphasizes the importance of understanding the process and purpose of RCM 909.

### *Proposed Changes to RCM 909*

Competency issues make cases complicated, and clearer rules would benefit not only the judge and counsel, but also the parties and their pursuit of justice. The current rules give too much discretion to the convening authorities and STC to decide whether a competency hearing should occur if an RCM 706 board has determined that the accused is incompetent. If an RCM 706 board finds the accused incompetent, an RCM 909 hearing should be the next step. The rule is also unclear regarding whether an RCM 706 hearing is necessary after the hospital provides notice that the accused has regained competence; it should be required, as the Federal mental health facilities and the military have different methods of inquiry regarding competence.[141]

First, the wording regarding pre-referral determinations by the convening authority or STC should change to require a competency hearing when they disagree with the RCM 706 board's findings. Below is the current RCM 909(c) with proposed changes in bold and replaced language struck through:

> (1) For offenses over which special trial counsel has not exercised authority or has deferred, if an inquiry pursuant to RCM 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under RCM 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then the general court-martial convening authority shall commit the accused to the custody of the Attorney General. If the general

court-martial convening authority does not concur, that authority **shall direct the Government counsel to request a hearing in accordance with RCM 909(e)**. ~~may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.~~

(2) For offenses over which special trial counsel has exercised authority and has not deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the general court-martial convening authority may disagree with the conclusion and notify special trial counsel who **shall request a hearing in accordance with RCM 909(e).** ~~may take any action authorized under R.C.M. 401A, including referral of charges.~~ If the general court-martial convening authority concurs with the conclusion, that authority shall notify special trial counsel and commit the accused to the custody of the Attorney General.

(3) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with RCM 309 and RCM 909(e) at any time prior to referral.[142]

Since neither the STC nor the GCMCA is a medical provider, they should not be allowed to unilaterally disagree with the RCM 706 board and choose to refer the case anyway. They should be required to automatically send the action to the judge to hold an RCM 909 competency hearing, which this proposed revision ensures. This revision takes the discretion away from non-medical parties interested in a particular outcome and gives it directly to a non-biased expert: the military judge. RCM 909 hearings are not complex; their proceedings are based on the RCM 706 report and board members. Even if the RCM 909 hearing determines the accused is competent for trial despite the board determining otherwise, the time taken is worthwhile to protect both the process and the case on appeal. The risk of delay caused by a required RCM 909 hearing that may be deemed "unnecessary" is less than the risk of delay in denying the hearing just for the accused being found incompetent months later, after referral occurs. Of course, if the RCM 706 board determines the accused is competent, an RCM 909 hearing need not occur.

Second, the rule needs to clearly state the process to occur if the accused is found mentally incompetent and sent to regain competence. The current RCM 909(f) states:

*Hospitalization of the accused.* An accused who is found incompetent to stand trial under this rule shall be hospitalized by the Attorney General as provided in subsection 4241(d) of title 18, United States Code. If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. If, at the end of the period of hospitalization, the accused's mental condition has not so improved, action shall be taken in accordance with section 4246 of title 18, United States Code.[143]

The new RCM 909(f) should state:

(1) For an accused who is found incompetent to stand trial under this rule, the convening authority shall be hospitalized by the Attorney General as provided in subsection 4241(d) of title 18, United States Code.

(2) If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. Upon custody returning to the general court-martial convening authority, an inquiry pursuant to RCM 706 shall be conducted to verify the accused's current competence and address mental responsibility, if mental responsibility is at issue. If an inquiry pursuant to RCM 706 occurred prior to hospitalization, unless otherwise impractical, this RCM 706 board should be comprised of the same members who sat on the pre-hospitalization RCM 706 board.

The proposed RCM 909(f)(2) clarifies a point of confusion among practitioners on whether a new RCM 706 board should be conducted after the facility makes a finding of competence. An RCM 706 board is essential at this time to ensure the accused is competent under the RCM 706 standard, because, in practice, it has been this author's experience that in determining competence, Federal facilities answer a different set of questions than those required of the RCM 706 board.[144] Mandating a new RCM 706 board will also prevent delays in filing and arguing an RCM 706 motion, as it will be an automatic board with, when possible, the same members as the original RCM 706 board.

These changes should resolve the timing issues and confusion regarding incompetent clients under the rule.

## Conclusion

Cases that involve questions about an accused's mental health make managing an already complex legal process even more complicated and require careful navigation of both substantive law and procedural safeguards. The distinction between mental competence, mental responsibility, and partial mental responsibility provides the foundation for that process and informs how the RCM are applied in practice. When those distinctions are clearly understood, counsel and judges are better positioned to identify the appropriate inquiry and employ correct procedural tools at each stage of the case.

Once parties understand the issues at play in the case, they can proceed in utilizing the tools that RCM 706 and RCM 909 provide to protect the accused's constitutional rights while allowing the court-martial process to proceed. As currently structured, however, aspects of these rules can create inefficiencies or uncertainty in application, particularly with respect to the scope of RCM 706 inquiries and the procedural steps that follow competency concerns under RCM 909.

Refining RCM 706 to better align the scope of the inquiry with the specific issues raised—mental competence, mental responsibility, or both—would focus the evaluation process and reduce unnecessary duplication. Similarly, clarifying the procedural pathways under RCM 909 would provide greater predictability for counsel, convening authorities, and military judges, while ensuring that competency determinations are made through a consistent and transparent process.

Understanding the reasoning behind legal terms, rules, and their purpose is key to an efficient, knowledgeable, and fair military justice system. Cases involving mental health issues are fact-intensive and time-sensitive, and the procedural framework governing them should therefore support accuracy and efficiency. By clarifying how RCM 706 and RCM 909 operate individually and in concert, the system can better ensure that cases are resolved in a manner that is fair, legally sound, and procedurally efficient.

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## Notes

1. *See* Major Jeff A. Bovarnick & Captain Jackie Thompson, *Trying to Remain Sane Trying an Insanity Case:* United States v. Captain Thomas S. Payne, Army Law., June 2002, at 13, 13; Major David M. O'Dean, *Navigating the Restoration of Capcity and Civil Commitment of a Mentally Incomptent Accused*, Army Law., June 2013, at 3, 3.

2. Manual for Courts-Martial, United States, R.C.M. 706, 909 (2024) [hereinafter 2024 MCM].

3. *See id.* R.C.M. 706; *Criminal Law Deskbook, Chapter 23: Mental Responsibility and Competence*, The Judge Advoc. Gen.'s Legal Ctr. & Sch. [hereinafter *Criminal Law Deskbook*], https://tjaglcs.army.mil/criminallawdeskbook/topic/23_Mental_Responsibility_and_Competence [https://perma.cc/BZA6-Y4X6] (last visited May 7, 2026).

4. *See, e.g.*, Bovarnick & Thompson, *supra* note 1, at 14 ("Processing the Sanity Board Request: RCM 706 Matters in Inquiry"); United States v. Pattin, 50 M.J. 637, 640 (A. Ct. Crim. App. 1999) (referring to the partys' 706 inquiry request as a "request for a sanity board"); *Criminal Law Deskbook*, *supra* note 3 (titling its section on RCM 706 inquiries "The Sanity Board").

5. *See* 2024 MCM, *supra* note 2, R.C.M. 909.

6. *See* U.S. Const. amends. V, VI (rights to due process and a fair trial); *Criminal Law Deskbook*, *supra* note 3 (quoting Medina v. California, 505 U.S. 437, 453 (1992)) ("To try a mentally incompetent accused is a violation of due process.").

7. Pate v. Robinson, 383 U.S. 375, 388–89 (1966) (Harlan, J. & Black, H., dissenting) (citing other sources) ("In short, emphasis is on capacity to consult with counsel and to comprehend the proceedings, and lower courts have recognized that this is by no means the same test as those which determine criminal responsibility at the time of the crime.").

8. United States v. Mott, 72 M.J. 319, 323 (C.A.A.F. 2013) ("The affirmative defense of lack of mental responsibility requires the accused to prove, by clear and convincing evidence, that at the time of the offense, (1) the accused suffered from a 'severe mental disease or defect,' and (2) as a result of that mental disease or defect, the accused was 'unable to appreciate' either (a) the 'nature and quality' of his acts, or (b) the 'wrongfulness' of his acts.").

9. *See, e.g.*, United States v. Watkins, No. 20210638, 2023 CCA LEXIS 416, at *22 (A. Ct. Crim App. Sep. 27, 2023).

10. *Robinson*, 383 U.S. at 388.

11. 2024 MCM, *supra* note 2, R.C.M. 909(b).

12. U.S. Const. amends. V, VI.

13. 2024 MCM, *supra* note 2, R.C.M. 909(e)(2).

14. U.S. Const. amend. V.

15. *Id.* amend. VI.

16. *See, e.g.,* Pate v. Robinson, 383 U.S. 375, 376 (1966).

17. *Id.* at 385.

18. *See* Drope v. Missouri, 420 U.S. 162 (1975).

19. *Id.* at 172.

20. *Id.* at 180.

21. Indiana v. Edwards, 554 U.S. 164, 170 (2008) (citing Dusky v. United States, 362 U.S. 402 (1960) (per curiam)).

22. *Criminal Law Deskbook*, *supra* note 3 (quoting United States v. Lee, 22 M.J. 767, 769 (A.F.C.M.R. 1986).

23. 2024 MCM, *supra* note 2, R.C.M. 916(k)(1).

24. *Id.* R.C.M. 916(b)(2).

25. *See* Clark v. Arizona, 548 U.S. 735, 749 (2006).

26. *M'Naghten Rule*, Legal Info. Inst.,Cornell L. Sch., https://www.law.cornell.edu/wex/m%27naghten_rule [https://perma.cc/6T9C-9Q8E] (last visited Apr. 23, 2026).

27. *Id.*; M'Naghten's Case [1843] 8 Eng. Rep. 718 (HL) (appeal taken from Eng.).

28. *M'Naghten Rule*, *supra* note 26.

29. *Id.*

30. *Id.*

31. *Id.*

32. UCMJ art. 50a(a) (2016).

33. *Id.* art. 50a(b).

34. *See* Manual For Courts-Martial, United States ch. 24, para. 122(a) (1969) ("The burden of proving the sanity of the accused, like every other fact necessary to establish the offense alleged, is always on the prosecution, and when the sanity of the accused becomes an issue, the prosecution should introduce any available evidence tending to prove his sanity. If, in the light of all the evidence, including that supplied by the inference of sanity (138*a*(2)), a reasonable doubt as to the mental responsibility of the accused at the time of the offense (120*b*) remains, the court must find the accused not guilty of that offense.").

35. *See* Manual For Courts-Martial, United States, R.C.M. 916(k)(3)(A) (1984).

36. United States v. Estes, 62 M.J. 544, 548 (A. Ct. Crim. App. 2005).

37. *See* United States v. McGuire, 63 M.J. 678, 681–82 (A. Ct. Crim. App. 2006).

38. *See* United States v. Mott, 72 M.J. 319, 326 (C.A.A.F. 2013).

39. *See* United States v. Martin, 56 M.J. 97, 99 (C.A.A.F. 2001).

40. UCMJ art. 50a(c) (2016).

41. United States v. Watkins, No. 20210638, 2023 CCA LEXIS 416, at *22 (A. Ct. Crim App. Sep. 27, 2023).

42. United States v. Axelson, 65 M.J. 501, 514 (A. Ct. Crim. App. 2007).

43. 2024 MCM, *supra* note 2, R.C.M. 916(k)(2).

44. *Id.* R.C.M. 916(k)(2) discussion ("Evidence of a mental condition not amounting to a lack of mental responsibility may be admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense.").

45. *Axelson*, 65 M.J. at 514.

46. *Id.* at 515.

47. *See* U.S. Dep't of Army, Pam. 27-9, Military Judges' Benchbook para. 6-5 (29 July 2025) (C1, 15 Mar. 2026).

48. *See id.* para. 5-15.

49. *See id.*

50. *Id.*

51. *Id.*

52. *Id.* para. 6-5.

53. *Id.*

54. Note that "mental capacity" and "mental compentence" are used interchangeably throughout relevant doctrine to describe the same legal concept. *See, e.g.*, 2024 MCM, *supra* note 2, R.C.M. 706.

55. *Id.*

56. *See id.*

57. *Id.*

58. *See id.* R.C.M. 706(b), (c)(4).

59. *See id.* R.C.M. 706(c) discussion.

60. *Id.* R.C.M. 706(a) (emphasis added).

61. *See* Bovarnick & Thompson, *supra* note 1, at 14 ("Sanity board requests under Rule for Courts-Martial (RCM) 706 may be forwarded by a number of parties before or after referral. Practitioners, however, will likely see the majority of RCM 706 requests initiated by the defense pre-referral.").

62. *See id.* ("Defense counsel may serve the request directly on a commander; however, as a practical matter, the defense will usually serve it on the trial counsel.").

63. *See* Manual For Courts-Martial, United States, R.C.M. 706(b)(1) (2019) [hereinafter 2019 MCM] ("Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the convening authority before whom the charges are pending for disposition.").

64. 2024 MCM, *supra* note 2, R.C.M. 706(b)(1) ("Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by any applicable convening authority, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309.").

65. *Id.* R.C.M. 309(b)(7).

66. Wear v. United States, 218 F.2d 24, 27 (D.C. Cir. 1954).

67. United States v. Pattin, 50 M.J. 637, 639 (A. Ct. Crim. App. 1999).

68. See *id.*

69. *See Wear*, 218 F.2d 24; *Pattin*, 50 M.J. 637.

70. *Pattin*, 50 M.J. at 640.

71. *See* Email from Lieutenant Commander Jonathan M. Heller, Program Dir., Nat'l Capital Consortium Forensic Psychiatry Fellowship, to author (Sep. 6, 2024, 14:15 EST) (on file with author).

72. *See id.*

73. 2024 MCM, *supra* note 2, R.C.M. 706(c)(1).

74. *Forensic Psychology Post-Doctoral Fellowship*, Health.mil, https://health.mil/Education-and-Training/DHA-GME/Institutions/NCC/GAHE-Programs/forensicpsych [https://perma.cc/3HDP-GRSD] (last visited Apr. 29, 2026).

75. This assertion is based on the author's recent professional experiences as the Training Officer for the Defense Counsel Assistance Program from 30 June 2022 to 14 July 2024 [hereinafter Professional Experiences].

76. Email from Lieutenant Commander Jonathan M. Heller, Program Dir., Nat'l Capital Consortium Forensic Psychiatry Fellowship, to author (Jan. 28, 2025, 15:07 EST) (on file with author).

77. *Id.*

78. *Id.*

79. 2024 MCM, *supra* note 2, R.C.M. 706(c)(3)(A).

80. *See id.* R.C.M. 706(c)(3)(B), 706(c)(5).

81. *See id.* R.C.M. 706(a), (b)(1)–(2), (c)(2).

82. *Id.* R.C.M. 706(c)(2) (emphasis added).

83. *Id.*

84. *Id.* R.C.M. 706(a) (emphasis added).

85. *Id.* R.C.M. 706(b)(1)-(2) (emphasis added).

86. *Id.* R.C.M. 706(c)(2) (emphasis added).

87. *See id.*

88. *Id.* R.C.M. 706(c)(2)(B), (D).

89. *Id.* R.C.M. 706(c)(2)(A)–(C).

90. 2024 MCM, *supra* note 2, R.C.M. 706(c)(1).

91. Diane Sievert, *What Is the Difference Between a Psychologist and a Psychiatrist?*, UCLA David Geffen Sch. of Med. (May 22, 2023), https://medschool.ucla.edu/news-article/psychologist-vs-psychiatrist-what-is-the-difference [https://perma.cc/ARC5-Y9ZY].

92. *Id.*

93. *See id.*; *Psychology vs. Psychiatry: Learn About Their Differences*, Univ. of N.D. (Aug. 14, 2024), https://und.edu/blog/psychology-vs-psychiatry.html [https://perma.cc/8JMV-DNU5].

94. Email from Dr. Jamie Dickson, Psy. D, Forensic Specialty Grp., to author (Jan. 10, 2025, 19:20 EST) (on file with author).

95. *Id.*

96. *See* United States v. Best, 61 M.J. 376, 385 (C.A.A.F. 2005).

97. *Id.* at 377.

98. *Id.* at 387.

99. *Id.* at 385.

100. 2024 MCM, *supra* note 2, R.C.M. 909.

101. *See id.*

102. *See* U.S. Const. amends. V, VI.

103. *See* 2024 MCM, *supra* note 2, R.C.M. 909.

104. *Id.* R.C.M. 909(a).

105. *Id.* R.C.M. 909(b).

106. United States v. Proctor, 37 M.J. 330, 336 (C.M.A. 1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

107. 2024 MCM, *supra* note 2, R.C.M. 909(e)(1); United States v. Barreto, 57 M.J. 127, 130 (C.A.A.F. 2002).

108. 2024 MCM, *supra* note 2, R.C.M. 909(c)(1).

109. *Id.*

110. *Id.*

111. *Id.*

112. *See id.* R.C.M. 909(c)(2).

113. *Id.*

114. *Id.*

115. *Id.* R.C.M. 909(c)(3).

116. *See id.* R.C.M. 909(d).

117. *Id.*

118. *See id.*

119. *Id.*

120. *Id.*

121. *See id.* R.C.M. 909(e)(1).

122. United States v. Proctor, 37 M.J. 330, 336 (C.M.A. 1993).

123. 2024 MCM, *supra* note 2, R.C.M. 909(e)(2).

124. *Id.* R.C.M. 909(b).

125. *Id.* R.C.M. 909(e)(2).

126. *See id.*

127. *Id.* R.C.M. 909(e)(3).

128. *Id.* R.C.M. 909(f); 18 U.S.C. § 4241(d).

129. United States v. Shawar, 865 F.2d 856, 860 (7th Cir. 1989).

130. 2024 MCM, *supra* note 2, R.C.M. 909 discussion.

131. *Id.*; *see also* 18 U.S.C. § 4241(d) ("The Attorney General shall hospitalize the defendant for treatment in a suitable facility—(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and (2) for an additional reasonable period of time until—(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or (B) the pending charges against him are disposed of according to law; whichever is earlier. . . .").

132. 18 U.S.C. § 4241(d).

133. *Shawar*, 865 F.2d at 861.

134. Email from Dr. Jamie Dickson, Psy. D, Forensic Specialty Grp., to author. (Jan. 29, 2025, 01:05 EST) (on file with author).

135. *See generally* 18 U.S.C. § 4246(a) (discussing the circumstances surrounding and the standards for which a dangerousness hearing occurs).

136. 2024 MCM, *supra* note 2, R.C.M. 909 discussion.

137. 18 U.S.C. § 4246(a).

138. *Id.* § 4246(d).

139. *Id.*

140. *See id.* § 4246(e).

141. Professional experience, *supra* note 75.

142. 2024 MCM, *supra* note 2, R.C.M. 909(c) (alteration in original).

143. *Id.* R.C.M. 909(f).

144. Professional experience, *supra* note 75.

## AROUND THE CORPS

CPT Kristen Coppock (center), national security law/administrative law attorney, 2nd Mobile Brigade, 25th Infantry Division and U.S. Army Hawaii, helocasts during Jungle School in the Philippines while supporting Exercise Pathways 2025. (Photo courtesy of MAJ Ian P. Smith)

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