

Army Lawyer

U.S. Army Judge Advocate General's Corps

Issue 1 • 2022

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AROUND THE CORPS

The JAG Corps NCO Academy's guidon is displayed during a diagnostic ACFT after its official implementation in April 2022. (Credit: Jason Wilkerson, TJAGLCS)

Army Lawyer

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On the cover: CPT Hayley Boyd, Military Justice Advisor for 1st Brigade, 82d Airborne Division, provides a Rules for the Use of Force (RUF) brief to paratroopers at Fort Bragg prior to their deployment to Poland. (Photo courtesy of Colonel Jeffrey Thurnher)

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(Credit: airdone – stock.adobe.com)

Court is Assembled

Leadership That Empowers People

By Brigadier General Robert A. Borcharding, Colonel Eric W. Widmar, & Colonel Andrew K. Kernan

In his initial message to the Army team as the 40th Chief of Staff of the U.S. Army, General James C. McConville asserted, “People are always my #1 priority: Our

Army’s people are our greatest strength and our most important weapon system.”¹ His statement immediately reminded me of Colonel (COL) (Retired) Kevan “Jake”

Jacobson’s brilliant presentation on the principles of leadership during the 2014 Worldwide Continuing Legal Education forum.² If you truly believe in putting people first, take the fifty minutes to watch it, take notes, and incorporate his wisdom into how you lead. Beyond that unqualified endorsement, yet consistent with its core message, this article focuses on providing leadership that empowers our top priority—people. We hope the framework below gives you something to think about as you develop and adapt your own leadership approach.

In our view, leadership is about more than just maximizing the performance of your people toward mission accomplishment. It certainly is that, and there are undoubtedly times in our careers when the

gravity and exigency of a particular mission justifies a steely-eyed, utilitarian approach to leadership that measures success almost purely by client or commander satisfaction. The “Gets Results” block on our officer evaluation reports is there for a reason. However, your broader goal as a leader should be the creation of a professional environment your team looks forward to being in each day.

Enter the Empowering Leader. Most offices across the Judge Advocate General’s Corps are full of attorneys, paralegals, warrant officers, and paraprofessionals who are highly competent, motivated, and mission-oriented. The most impactful bosses are often those who seek not to boost their own profile, but rather to create an environment where their people feel empowered to innovate, make decisions, and represent the office. In other words, good leaders in high-functioning organizations set the conditions for success, trust their people to execute, and remain engaged in order to coach, teach, train, and mentor to ensure mission accomplishment and help those within their stewardship reach their full potential as both military and legal professionals. So what does it take to become an empowering leader?

1. Only Do What Only You Can Do

No, that’s not a typo, and you don’t need to say it five times fast. But it is a critical operating principle often overlooked by our most talented leaders who have succeeded based on their individual abilities. Fight the temptation to validate your awesomeness by stepping in and doing someone else’s job simply because you have done it before. Only do what only you can do (by position or authority). This will be uncomfortable at times, which is likely an indication you’re doing it right. As a leader of other aspiring superstars, your primary role is not to craft every argument, draft every memo, or build the most exquisite staff product—but to set the tone in the office and provide the resources necessary for others to learn and grow in their professional journey. Lieutenant General (Retired) Charles “Chuck” Pede was fond of quoting Rudyard Kipling’s timeless advice to “keep your head when all about you are losing theirs . . .”³ Being calm in the face of deadlines, crises, and

emotions from others is arguably the most empowering ingredient a leader can provide their team. By matching or amplifying fear or alarm, leaders fail to restore the group equilibrium that enables subordinates to focus and problem solve.

The other big “only leader” task is leading by example. We hear that often, but how do we do it? It’s the leader who has the focus of the entire team, and while people may hear what the leader says, they will more often understand by watching what the leader does. Actions do speak louder than words. Your actions will set the office’s

The most impactful bosses are often those who seek not to boost their own profile, but rather to create an environment where their people feel empowered to innovate, make decisions, and represent the office.

priorities and standards. If leaders want a physically-fit and motivated office, they should actively participate in office physical training every day possible. If subordinates leaving at a reasonable hour is a sustainability priority, the leader should not infrequently be the first one out the door at the end of the duty day.

2. Invest in People

Everyone has potential; your job is to help them fulfill it. With limited exceptions, you don’t get to pick the members of your team—the Army or Joint Force assigns them. Not every judge advocate is a future candidate to be The Judge Advocate General, or every paralegal a possible Regimental Command Sergeant Major, and that’s okay; we can only have one of each at a time. The best leaders make early investments in learning about their people, to include what best motivates them and how they best receive feedback, and then help to maximize their potential. Informed by both good and bad examples of mentorship throughout your career, invest in your people. And don’t give up on them even if you think they’ve given up on themselves. I have not always done this well.

Let me offer you a personal experience I had with COL Jacobson, the people-investor whose presentation I encouraged you to watch at the beginning of this article. This experience has left an indelible impression on me and reminds me of the kind of leader I strive to be. In the final days before his retirement, when he had so many things in his personal life to manage while making the transition to private life, COL Jacobson took the time to individually contact his adopted sons and daughters (as he called his teammates). Somehow he found the number for the only unclassified line in the

Joint Special Operations Command Joint Operations Center. He called it one night and asked the person who answered to find me. This was so unusual that I answered the call apprehensively, wondering if something was wrong. Turns out, he just wanted to talk to me one last time before calling it a career—and also to tell me that he was proud of me. Who does that?! Maybe more of us should.

3. Empower and Highlight Subordinates

Consistently seek to raise subordinates’ profiles with both their and *your* clients. As a leader, you are in your position at least in part because you’ve proven your ability to advise your commander or senior leader. Now it’s your turn to develop that competence and confidence in subordinates. For example, when a staff judge advocate (SJA) sits down for the first time with their commanding general (CG), it should not be their first time briefing a general court-martial convening authority. While serving as a senior trial counsel in the 21st Theater Sustainment Command, my SJA, COL Joe Frisk, took me to several CG appointments and even once let me brief

the CG. I appreciated the experience at the time, but not as much as I did seven years later. As a brand new deputy SJA at 1st Infantry Division and Fort Riley who was the acting SJA, I had a CG appointment two days after signing in. Yes, I had to quickly get up to speed on the substance of the actions—but if Joe Frisk hadn't shared his spotlight with me and showed me how to advise a CG years earlier, I would have stumbled my way through that experience far worse than I did.

face our teammates put on every day, most of us face emotional struggles from time to time. As such, empowering leaders create a culture of communication about life *outside of work*. They learn about their subordinates' family members, their hobbies and passions, and their priorities away from the office. While much of corporate America may frown upon discussing personal issues with subordinates, corporate America is not asked to make the sacrifices necessary to fight and win our nation's wars. We are.

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Our business is a human business, and people are generally more complex and multi-faceted than they appear to be.

4. Remind Them That Their Work Is Important

People will row hardest when they feel like it matters—not just in the bigger picture of the Army or the nation, but also in the more personal way of mattering to “the boss.” When people feel like their work doesn't matter, your average subordinates will gradually withdraw and decrease output—and your best people will accomplish the mission in quiet desperation. Both raise sustainability concerns. In this regard, we offer a few suggestions for the Empowering Leader. First, routinely ask subordinates what they're working on . . . and stick around long enough to hear (and remember) their answer. Relatedly, periodically ask them to brief you personally on an issue they are involved in. Subordinates understand that your time reflects your priorities; time spent with your teams—engaging personally and purposefully—speaks volumes. Finally, look for ways to incorporate their work into *your* higher reporting—whether in command or legal tech channels. Public acknowledgement is powerful.

5. Cultivate and Communicate Genuine Care for Their Well-Being

It's one thing to ensure your subordinates are motivated and dedicated to the mission. It's another thing to ensure they are motivated and dedicated to life itself. Our business is a human business, and people are generally more complex and multi-faceted than they appear to be. No matter the brave

As a starting point, we encourage having your folks complete an Article 6 “Facebook” page as part of their in-processing. Why wait until a senior leader visit is imminent to learn about your people? And don't just store these in a binder in your office. Use them as a foundation to go deeper—have appropriately-engaged leadership. On the flipside, nothing generates openness from subordinates like a leader willing to offer a certain level of transparency about their own life, to include their successes *and* challenges. Finally, empowering leaders carve out time in the business day for nothing but socializing. Whether you're an introvert or extrovert, get out of your office every day and connect with your team. Put it on your calendar if you need to!

Conclusion

Ultimately, an effective leader is one who truly cares about their people as people—and takes steps to ensure they know it! We all have important missions to accomplish. But amidst the grind of achieving results, leaders also need to view the emotional health and personal and professional development of their subordinates as co-top priorities. More than your impressive resume, evaluations, awards, or publications, the people you have the privilege to lead will be your legacy. Give them the leadership they deserve. People First! **TAL**

Notes

1. General James C. McConville, 40th Chief of Staff, U.S. Army, Initial Message to the Army Team (Aug. 12, 2019), <https://api.army.mil/e2/c/downloads/561506.pdf>.
2. Colonel Kevan Jacobson, Address at the Worldwide Continuing Legal Education Training: Principles of Leadership (2014), <https://tjagls.army.mil/principles-of-leadership>.
3. Rudyard Kipling, *If*, POETRY FOUND., <https://www.poetryfoundation.org/poems/46473/if---> (last visited Jan. 28, 2022).



News & Notes

Photo 1

On 10 November 2021, members of the 10th Mountain Division OSJA conducted the first annual “Gilmore Grinder.” The Gilmore Grinder is a “Hero Workout” designed by SFC Aaron Grubbs, 10th Combat Aviation Brigade, to commemorate the service and sacrifice of Regimental CSM Cornell Gilmore. On 7 November 2003, the JAG Corps lost CSM Gilmore and CW5 Sharon Swartworth when enemy fire erupted on their transport helicopter, killing them both, as well as the four other Service members on board. The Gilmore Grinder Hero Workout is dedicated to the

six fallen Service members and consists of six different exercises meant to represent each of the fallen warriors. In May 2022, the OSJA hopes to create a similar workout in memory of CW5 Swartworth.

Photo 2

Military Justice paralegals at Fort Gordon, Georgia, working hard to complete all the panel nominations from across the installation and put it into a workable format to ensure efficiency in this aspect of the justice process. Left to right: SPC Jonathan Padios, SSG Taneshia Burley, SGT Aaron Diamond, PFC Tabius Monroe.

Photo 3

On 1 April 2021, V Corps OSJA at Fort Knox, Kentucky, coordinated and led a Health and Welfare Training for its organic

batallion and assigned companies. The training model employed followed a format that sequentially Tested, Assessed, Taught/Trained, Re-Tested, and Re-Assessed. In addition to the OSJA personnel, personnel from the Military Working Dog Kennel Master, Military Police, Criminal Investigation Division, Cadet Command G4, and a host of other V Corps Command Teams and NCO Trainees contributed to this successful event. For the OPORD and CONOP template, and other training and execution guidance, please reach out to MSG Jerry White (jerry.w.white.mil@army.mil).

Photo 4

196th OBC classmates, Kyle Hoffmann, 1st SFG(A), and Alex Hernandez, 3d SFG(A), graduate the Basic Airborne Course at Ft. Benning, Georgia.



Photo 5

Congratulations to the winners of the 2022 USAR Legal Command Best Warrior Competition. SGT Michael Pulaski (3d LOD) was the NCO of the Year. SPC Helena Bockstadter (6th LOD) was the Soldier of the Year. The other three USARLC BWC Competitors were SFC Benjamin McCallum (7th LOD), SPC Michael Cranston (3d LOD), and PFC Anlycia Velazquez (78th LOD).



Photo 6

On 17 March 2022, SGT Belia Martinez, Joint Base Lewis-McChord Legal Assistance NCOIC, re-enlisted on board a Blackhawk. CPT Linda Ramirez, Legal Assistance OIC, swore SGT Martinez to her re-enlistment oath. SGT Martinez will take the reins as the Special Victim Prosecutor NCO for JBLM, continuing to provide outstanding support to the JAG Corps mission.

Photo 7

Arizona Army National Guard JAG Corps after completing the Grenade Assault Course at Fort Huachuca, Arizona, as part of the Inaugural JAG Corps field training exercise in March 2022. 1LT Jeremy Branch (back row, center) and SGT James Caryl (middle, second from right) were recognized as top officer and enlisted Soldier respectively.





The U.S. Army Advocacy Center The Corps's Newest Legal Training Institution

By Fred L. Borch

On 5 May 2022, Lieutenant General Stuart W. Risch officially opened the U.S. Army Advocacy Center. Located at Fort Belvoir, Virginia, the Center is the Corps's newest legal training institution, and it meets a long-standing need for members of our Corps to be better advocates at courts-martial and civil proceedings.

In the 1960s and 1970s, the large number of courts-martial being tried in the Army meant that it was relatively easy to develop courtroom advocacy skills. In 1970 alone, for example, Army lawyers tried some 48,000 special courts-martial.¹ The end of a draftee Army after the Vietnam War and the emergence of today's more disciplined and professional force, however, resulted in a significant drop in the number of trials: last year, the Army tried fewer than 575 courts-martial.² While this is a welcome development in terms of good order and discipline, it has meant that the days are over when one developed advocacy skills by prosecuting and defending courts-martial. The solution was obvious: create a training institution focused on developing and honing advocacy skills.

Modeled after the Justice Department's National Advocacy Center in Columbia, South Carolina, the nearly 9,300-square-foot, \$7 million facility has seven state-of-the-art courtrooms and a large training room with the newest audio-visual technology. The Advocacy Center's goal is to develop and enhance the advocacy skills of judge advocates, civilian attorneys, and paralegal specialists in support of military justice and civil litigation programs. This mission takes on even greater importance with the recent legislative changes to our legal practice.

Some of the Advocacy Center's courses are likely to adopt an interdisciplinary approach and invite attorneys and paralegals to train simultaneously. Other courses will be narrowly tailored for a specific litigation subject. The intent is for the Advocacy Center to be the primary destination for the Corps's post-Judge Advocate Officer Basic Course advocacy training programs. The Trial Counsel Assistance Program, the Defense Counsel Assistance Program, the Trial Defense Service, Trial and Appellate Judiciary, and the Special Victims' Counsel Program office, among others, will work closely with the

VIPs at the Advocacy Center opening on 5 May. Left to right are: Mr. Mike Mulligan, Director, Advocacy Center; Ms. Jessica D. Aber, U.S. Attorney for the Eastern District of Virginia; Ms. Carrie F. Ricci, Department of the Army General Counsel; Lieutenant General Stuart W. Risch, The Judge Advocate General.

Advocacy Center staff to develop a training calendar that incorporates course descriptions and the latest legal developments.³

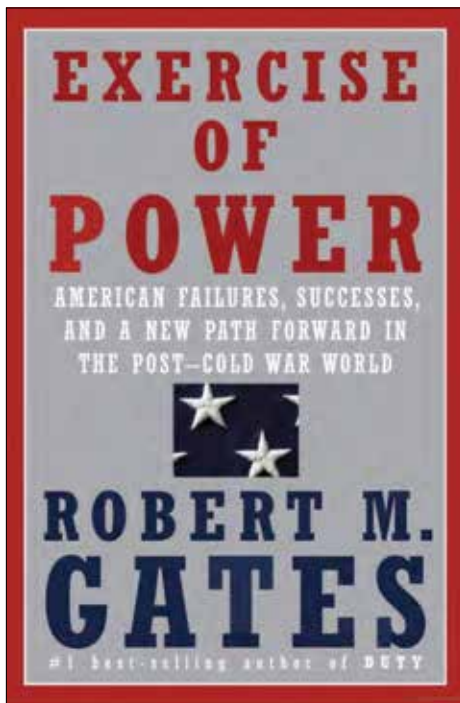
The Advocacy Center also intends to incorporate lessons learned from the field to better understand the use of the newest methods, practices, and technologies in our courtrooms. Ultimately, the Advocacy Center hopes to be acknowledged as the premier advocacy training facility in the Department of Defense and the lead proponent in ongoing efforts to increase advocacy skills across the services. Future courses, as well as photographs of the Center, are available now via the Advocacy Center's website on JAGCNet.⁴

Mr. Mike Mulligan, who leads the Advocacy Center, stresses that the new institution will not replace existing advocacy training. Rather, as he puts it, the Center "will change us from effective practitioners to expert practitioners . . . [the Center] will be the crown jewel of litigation and advocacy training" in the Defense Department.⁵ **TAL**

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

Notes

1. THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975, at 254-55 (1975).
2. E-mail from Jim Herring, Clerk of Ct., Army Ct. of Crim. Appeals, to author (May 23, 2022, 3:04 PM) (on file with author).
3. There is even a plan to host night classes for interested personnel to earn advanced degrees in national security and cybersecurity law or national security and U.S. foreign relations law from George Washington Law. U.S. Army JAG Corps, *GW Law Courses*, FACEBOOK (May 19, 2022), <https://www.facebook.com/ArmyJAGCorps/posts/pfbid0oVg2dR9TmZ-b8RUG84FMSK12vUHMjZYzPTCHPe4pu5PugQ-Vh8xyLKNyQNHGeNMxkl>.
4. *Advocacy Center*, U.S. ARMY JAG CORPS, <https://www.jagcnet2.army.mil/Sites/Advocacy.nsf/home.xsp> (last visited May 19, 2022).
5. Margaret Steele, *Army's First Advocacy Center Opens on Fort Belvoir*, DEF. VISUAL INFO. DISTRIB. SERV. (May 10, 2022), <https://www.dvidshub.net/news/420373/armys-first-advocacy-center-opens-fort-belvoir>.



Book Review

Exercise of Power American Failures, Successes, and a New Path Forward in the Post-Cold War World

Reviewed by Major Joseph D. Smith

*So we beat on, boats against the current, borne
back ceaselessly into the past.¹*

Much like the ominous last line of Fitzgerald's classic, *The Great Gatsby*, the United States finds itself struggling mightily against a current that stands to push it back into the mistakes and failures of the past. Like Fitz-

gerald's boat, citizens press forward against it nonetheless, hoping to move forward. The image is easy to visualize—the struggle, as old as time, to move forward and learn, paying homage to the past while struggling mightily not to relive it.

Former Secretary of Defense Robert M. Gates, in his 2019 *Exercise of Power*,² uses this juxtaposition in his follow-up work to *Duty*³ and examines military and nonmilitary power through a series of “interventions” by the United States. In doing so, and by understanding what led to decisions to use one, both, or neither, Gates offers a glimpse into a way forward, founded on the building blocks of national triumph, sorrow, abandonment, and salvation.

If the United States can learn from these, argues Gates, the country can survive the post-Cold War world and thrive as a democracy, worthy of international envy. More importantly, the country can gauge successes and failures against measuring sticks, such as China and Russia, who face the same challenges, and determine how the United States is truly faring.

The Symphony of Power

Secretary Gates compares a sovereign's exertion of power to a symphony. His symphony consists of the military and additional tools, ranging from traditional diplomacy, information, and economics to more nuanced instruments, such as cyber capabilities, nationalism, and religion. Just as important, the symphony requires synchronizing and directing these additional instruments—and it requires the president to act as a conductor.⁴

Gates's reflection on this power—and how the United States projects it—resonates throughout the book and rests on the important assumption that the United States' advocacy for those “struggling for liberty, for a more just and free society, is . . . as old as the republic and a source of our global influence and power.”⁵ Advocacy is, simply put, what makes Americans who they are, however aspirational it may sound.

As Gates relays in his concluding remarks, “our ideology is fundamental to America's role in the world, keeping alive the belief among the oppressed and unfree that *this country will use every nonmilitary instrument we have to advance the cause of freedom*

and democracy.”⁶ Abandoning this equates to an abandonment of American history and causes a loss of “our national soul.”⁷

Throughout the book, Gates is careful with words. His choices are deliberate and calculated, as expected from the former Secretary of Defense and Director of the Central Intelligence Agency. No mistake, then, is his assessment to use every *non-military* instrument to advance freedom. Military might is necessary, but it cannot always be the default. In this newest work, he thoughtfully argues that nonmilitary sources of power must be further explored; they need to be exercised.

Not surprisingly, this exercise of power comes in many forms. This exercise of power can arrive with fanfare, pomp, and circumstance—or it can scale a beachhead in the dark of night, unknown to anyone. It can be a promise made, or a promise broken. The exercise of power, when done correctly, defies definition. Regardless of form, however, the exercise of power requires commitment, and the force of the government—Gates's “symphony of power”—must stand behind it. “A threat by the president of the United States is a potent deterrent only if it is credible and the president is prepared to act upon it.”⁸ If, in exerting power, a president wants to draw a red line, then the symphony, at the behest of the conductor, must be ready to play when called upon.

In examining this symphony, Gates focuses on the United States' displays of power in fifteen different countries. He further examines the successes and failures in twelve of these countries in which the United States chose to intervene militarily, or at least contemplated doing so.⁹ What makes his observations so captivating throughout the book is his proximity to them—such a glimpse behind the decisions made at the national level is rare. Gates provides the reader with that insight, across multiple presidents and administrations. The book is apolitical in that sense—Secretary Gates recognizes the politics, but manages, rather deftly, to separate those from the exercise of power.

Power Misused Is Power Lost¹⁰

Gates uses the disaster in Mogadishu, Somalia, as an entrance to discuss the many failures the United States has experienced

and calls it an “enduring example” of the failure to exercise both military and non-military power.¹¹ The effort, which started out as a United Nations peace operation to deliver international relief to a war-torn country in crisis, quickly devolved into a kinetic military response.¹² Contrary to the approach to relations with Iran, where Gates laments a surprisingly restrained approach taken by more than one leader,¹³ Somalia represents a poor attempt to exert military power without a clear end state.

Elsewhere, Gates observes situations (such as that in Ukraine, referencing the time period before 2022 invasion by Russia) where the United States chose to exercise power but, arguably, selected the wrong tools in doing so. Instead of choosing covert operations, cyberattacks, or sabotage, the United States opted for purely economic sanctions, creating a backseat approach to diplomacy he calls “intervention-lite.”¹⁴

Gates is particularly hard on presidents in this area, and argues that interventions in Ukraine, Georgia, Libya, and Syria present a multitude of lessons for future presidents.¹⁵ He presents the motives, the stagnant and tired positions held, and the chronic indecisions as failures to impact a crisis in the most efficient way possible. He excoriates the decisions across party lines, even recognizing at times that he is one of the constants in the decision-making process.

A recurring point throughout the book, though, is overreliance on the military. Like Rosa Brooks,¹⁶ he senses a pattern of using the U.S. military as a broad solution to all of the world’s problems. Gates, quoting military historian Max Hastings, notes that a Soldier’s selling point is that they kill people. “It is too much to ask of most that they should resolve political and social challenges beyond their . . . experience, conditioning and resources.”¹⁷ The military, he argues, should not be the solution to everything.

This argument, as the reader can attest, is neither a new position, nor a novel basis for a work of non-fiction. What makes Gates’s book worth reading, however, is the way in which he then weaves this narrative into a need for, of all things, marketing. The United States consistently outpaces the world in virtually every category of hu-

manitarian aid and assistance, but habitually fails to receive the recognition due.

Gates is painfully consistent throughout his book on exposing the United States’ terrible promotion skills. To illustrate this point, Gates reminds readers that during the late 1990s, while North Korea was experiencing a severe famine that killed millions, the United States gave more food for relief in a four-year period (1997–2000) than China did.¹⁸ In 1999 alone, the United States donated more than the rest of the world combined, yet failed to publicize this assistance, and made little to no effort to let the North Koreans know who was feeding them.¹⁹

North Korea is one example, but the list is exhausting. Virtually every country, friend or foe, has received some benefit from American coffers. These are successes in a humanitarian sense, to be sure. The failure is that the country, in Gates’s estimation, is so bad at broadcasting the good it does year after year across nations, continents, cultures, religions, and governments. As the world’s largest benefactor, Gates argues eloquently, the United States fails to take credit for these actions, and, thus, fails to reap the benefits.

Qualified Success

In Gates’s estimation, U.S. involvement in Colombia stands as an unequivocal, albeit imperfect, example of a successful use of the symphony concept.²⁰ In his estimation, the “history of decisions and actions by both U.S. and Colombian leaders contributing to the success of Plan Colombia” has helped to explain failures elsewhere, serving as a model to replicate.²¹ To replicate this success, Gates focuses on six lessons that he believes are of enduring relevance.

First, he believes that a courageous and hardened leader—willing to use force against enemies but also work with all elements of society—is a precondition to success. In Colombia, then-President Álvaro Uribe exhibited both traits.²² Solving the world’s problems is impossible with a leader devoid of courage or diplomacy—it requires a “steel backbone.”²³

Gates misses an opportunity here to define the key differences between military and nonmilitary power. His observation that a leader “willing to use force” while working “with all elements of society” serves as the

crux of the book; however, this sentence, buried a quarter of the way into his work, is easily overlooked and inadequately highlighted. Make no mistake, however—the imperative encapsulates Gates’s argument succinctly and efficiently. Unfortunately, recognizing the argument is anticlimactic nestled among the six factors of success.

Second, Gates proposes that success needs foundation. In Colombia, that foundation existed in the form of a unified, well-established, and democratic institution.²⁴ In Afghanistan, it did not, or had not in decades. The absence of a foundation—something on which to build—cuts against a successful symphony of power. Often, this foundation is missing in many of the United States’ foreign humanitarian aid and other overseas projects.

Third, Gates attributes success to the fact that the military did not drive Colombia’s plan, and the country instead drew on nonmilitary instruments of power. Colombia’s Department of State took the lead while other government agencies filled supporting roles. The military and police were responsible for fighting rebels, and improvements in security were key, but U.S. assistance efforts were managed by civilians.²⁵ This was key, and remains an important lesson today: be there to assist those fighting, but do not conduct the fighting for them.

The next two keys to success involve Congress’ role in the exercise of power. For the most part, Gates focuses on the executive branch in discussing the symphony of power. When he does discuss the legislative branch, it is to upbraid their abdication to the executive. Here, however, he notes that the congressional limits on the size of the military and contractor presence in Colombia was critical and stands in contrast to a more traditional role, at least of late, where Congress has ceded its powers in foreign policy almost exclusively to the president.²⁶ Success demands that Congress be involved. Further, bipartisan support from that same Congress who imposed limits was key; it spanned fifteen years and three presidencies. This consistency allowed for the strategic goals of intervention to play out over time—a luxury not usually afforded to these types of long-term efforts.

Finally, Colombia wanted the United States’ help.²⁷ The United States never

invaded or occupied Colombia. For the most part, the U.S. presence was undetectable to Colombians, and this quiet exercise of power was a key to that success. Along this vein, Gates devotes an entire chapter to the continent of Africa, save Somalia, and labels U.S. efforts there a success—despite the incredible challenges the continent presents. Again, however, Gates attributes this success to the belief that the United States often preferred and implemented nonmilitary means when dealing with Africa. By no means was Africa a peaceful place, but, quoting former Secretary of State Madeleine Albright, “[t]he solution to these conflicts had . . . to be found through diplomacy, with outside force introduced rarely and selectively.”²⁸

It is in his discussion of Africa that Gates truly shines. After considering a detractor’s argument that humanitarian and diplomatic assistance to Africa yields little to no benefit to the United States, he encourages the reader to consider that even in great philanthropy, there are personal gains to be considered. Diplomacy and assistance in war-torn and famine-ravaged Africa might be the “right and moral things to do,” but that line of thinking is for idealists.²⁹ The United States helps others because doing so helps the United States. Such humanitarian support attacks pandemics, terrorism, and extremists at their points of origin and creates allies for a future time when the seemingly altruistic state may need them.³⁰

The American diplomatic and humanitarian policy approach to the continent of Africa ties Secretary Gates’s argument together. America must be willing to take on the hard tasks and must never shrink to a corner while the rest of the world struggles. Diplomacy and humanitarian assistance benefit the United States in untold ways, and for untold future generations. However, to capitalize on this, the country must not shirk from advertising its good deeds. Leaders must embrace them and hone them into something that projects the country’s power around the globe.

Lessons Learned

In his own words, Secretary Gates “saw, and was party to, both good and bad decisions. All of them cost lives. And [he] learned a lot.”³¹ He does not take this lightly, and he

honestly and openly discusses the role he had in many of these interventions. Often, using hindsight, he is able to pinpoint the failure or the turning point; not surprisingly, that failure is often laid at the president’s feet. Gates clearly adopts the belief that great power bestows great responsibility.

And responsibility is key here—the United States must take credit for and publicize nonmilitary efforts.³² The satisfaction of doing good works without fanfare “may be sufficient for religious orders,” but for governments engaged in the exercise of power, such silence serves no purpose.³³ Gates minces no words in this regard, calling American strategic communications inadequate and inept at times, leaving the magnitude of assistance provided to international crises virtually unknown to the entire world.³⁴

Credit notwithstanding, Gates asserts that the United States must define and understand the purposes and goals of American power beyond simply protecting national interests.³⁵ Gates argues the United States has not yet identified its approach to foreign policy, and he contemplates two distinct strategies to flush them out. Does the United States assume the role of making the world “safe for democracy,” as Woodrow Wilson said, or ought the country adopt John Quincy Adams’s ideal to be the “the well-wisher to freedom and independence of all,” but the “champion and vindicator of her own”?³⁶ The United States must react to each intervention, using lessons from the past. America must utilize the symphony of power in a way that is as unique as the problem itself. In this aspect alone, Gates’s book is refreshing and surprisingly optimistic.

One thing is certain for Secretary Gates: military forces are not trained to remedy the many political and economic problems in other countries. The Army and Marine Corps are not “the Peace Corps with guns.”³⁷ They are trained to kill. They, like any other exercise of power, must not be misallocated.

The exercise of military power must also have a clearly marked expiration date. The exercise of any instrument of power—but especially the military kind—must not be indefinite. It must be succinctly planned, funded, and executed. In his chapter on the

quagmire of the mission in Afghanistan, Gates recounts a 2009 meeting in which then-CIA Director Leon Panetta observed, “[w]e can’t leave, and we can’t accept the status quo.”³⁸ This line of thinking endures today with many military leaders.

Those words could have been uttered in 2020 and 2021, which speaks volumes to their truth. After twenty years of operating there, the U.S. military has left Afghanistan; yet the narrative remains unchanged. I and other contract and fiscal law attorneys saw the same issues crop up over and over again. And each time, it seemed like we were reinventing the wheel. Afghanistan tends to do that to otherwise powerful countries. By mid-1986, Soviet Union President Mikhail Gorbachev had told the Politburo that the Soviets needed “to get out of there.”³⁹ By January 1987, a Politburo member stated that the Soviets had “been defeated.”⁴⁰ Even the Defense Minister Sergei Sokolov admitted that the war could not be won militarily.⁴¹

Military intervention need not be the be-all and end-all. Diplomacy will not always work. Similarly, economic sanctions need not be the first choice in all situations. Gates argues that tools such as information operations, neutralizing or sabotaging leaders, cyberattacks and manipulation, security assistance and training, and expelling relatives from the United States are tools that are often available but unappreciated in their potential.⁴² He constantly reminds the reader, almost ad nauseum, that the only requirement is to consider, but not necessarily use, every tool.

All of that said, to Secretary Gates, some problems—like North Korea—can only be handled militarily.⁴³ To exercise the full spectrum of power, the United States must face that reality and be willing to accept the costs and casualties that come with such a course of action.⁴⁴ If those are unsavory options, then leaders should modify the strategy to meet goals that are palatable.

It is here, at this moment of the book, when Gates tires of rhetoric and discards his tweed and seersucker diplomacy collection of suits for the more practical military attire. Reminiscent of his Air Force officer days, and yearning for the full display of nationalistic hubris, Gates crowns military strength as the ultimate instrument of pow-

er and unabashedly compares the United States to distant but formidable foes like Russia and China.⁴⁵ He recognizes the United States and Russia as the current undisputed military powers, but sees China's rise as a dominant force in Asia as an achievable ambition.⁴⁶ With China, he notes their "long-range strategy" of competing with the United States (and the United States' lack of such a strategy) as their greatest nonmilitary instrument of power.⁴⁷ To talk about Russia's return to prominence and China's continual rise to power and not mention American superiority, it would seem, would be criminal. Gates does not disappoint.

The Nonmilitary Solution

Gates wraps up the book by discussing ways to fix nonmilitary instruments and, thus, create the symphony needed to counter threats like China and Russia. This requires the United States to move away from the model of a "nineteenth-century tricycle, with a giant front wheel (Defense) and tiny back wheels (everyone else)."⁴⁸ True to his past, he never suggests a degradation in military capabilities. Instead, the key is to sustain military might while strengthening the other powers, the greatest of which is the Department of State.⁴⁹ Gates is not overt in his predilection, but the message is clear—the United States can most certainly exercise military might at will. Preferably, however, this plays out with the exercise of nonmilitary powers.⁵⁰ Gates envisions that day coming, but only if lessons taught in the past are applied in the future. With a full symphony of power, led by a strong executive and guided by the right motives, there is no greater force on earth.

Russian General Valery Gerasimov wrote that the "role of nonmilitary means of achieving political and strategic goals has grown, and, in many cases . . . have exceeded the power of force of weapons in their effectiveness."⁵¹ To Secretary Gates, there are "few more succinct descriptions of the use of nonmilitary instruments of power and how they can be integrated with covert military operations than Gerasimov's."⁵²

Gates argues that friends and allies acquired and sustained through nonmilitary instruments of national power are vital in our "dangerous and unpredictable world."⁵³ The symphony of power he

describes demands that the orchestra work together, and solos are rare. One thing is certain, however—the Department of Defense should rarely sit first chair. This is a lesson the United States continues to learn. Because of the enormous Defense budget, there is always a desire to solve everything with that budget and with those affiliated resources. Fiscally, however, that approach is not supportable, and the military often cannot, either legally or practically, answer the call every time funds are needed.

Conclusion

Much like *Duty*, Gates's *Exercise of Power* is a must-read. His thoughtful meanderings across presidents, Congresses, and conflict through the decades are both insightful and entertaining. The visual he creates of a symphony is strong, and it holds the reader's attention throughout multiple successes and failures. This symphony is a collective of unmatched power, and his message refuses the pessimism often found in nonfiction works today. Gates's message is not dire, but rather illustrative. Leaders must be open to innovative ways to approach problems. The military must not be the first tool at the ready, but need not be the last resort, either. If the President offers the threat of the U.S. military, then the President must be willing to unleash it if necessary.

To Gates, a symphony composed of many instruments is a thing of beauty. He offers many warnings to the reader, but all is not lost. To Gates, this power defeated authoritarianism twice in the twentieth century, and stands ready to do so again.⁵⁴ **TAL**

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Notes

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2. ROBERT M. GATES, *EXERCISE OF POWER: AMERICAN FAILURES, SUCCESSSES, AND A NEW PATH FORWARD IN THE POST-COLD WAR WORLD* (2019).
3. ROBERT M. GATES, *DUTY: MEMOIRS OF A SECRETARY AT WAR* (2014).
4. GATES, *supra* note 2, at 57.
5. *Id.* at 274.
6. *Id.* at 413 (emphasis added).
7. *Id.*

8. *Id.* at 306.
9. *Id.* at 396.
10. *Id.* at 141.
11. *Id.* at 122.
12. *Id.* at 118.
13. *Id.* at 77.
14. *Id.* at 320.
15. *Id.* at 321.
16. ROSA BROOKS, *HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING: TALES FROM THE PENTAGON* (2016).
17. GATES, *supra* note 2, at 394.
18. *Id.* at 332.
19. *Id.*
20. *Id.* at 162.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* at 163.
26. *Id.* at 408.
27. *Id.* at 163.
28. *Id.* at 233.
29. *Id.* at 243.
30. *Id.*
31. *Id.* at 397.
32. *Id.* at 248.
33. *Id.*
34. *Id.* at 311.
35. *Id.* at 8.
36. *Id.* at 9 (quoting John Quincy Adams).
37. *Id.* at 126.
38. *Id.* at 185.
39. *Id.* at 168.
40. *Id.*
41. *Id.*
42. *Id.* at 323.
43. *Id.* at 351.
44. *Id.*
45. *Id.* at 364.
46. *Id.* at 365.
47. *Id.* at 386.
48. *Id.* at 400.
49. *Id.* at 401.
50. *Id.*
51. *Id.* at 289 (quoting Russian General Valery Gerasimov).
52. *Id.*
53. *Id.* at 243.
54. *Id.* at 11.



PT with OBC: Leaders at The Judge Advocate General's Legal Center and School perform physical training with Judge Advocate Officer Basic Course students to help prepare them for the ACFT. (Photo courtesy of author)

Azimuth Check

Would You Rather Stewarding Our People Is More Important Than Any Other Type of Legacy

By Command Sergeant Major Joshua Quinton

“Would you rather” is a game that, in its simplest of forms, stimulates conversation among people unfamiliar with each other. At times, effective leadership requires that one play this game. My hope is that you will have genuine conversations with your teammates where the exchange of ideas, opinions, and reasoning can break down barriers, build trust, and even lead to laughter and surprise. Such conversations will give you a better understanding of what is important to them, and, in turn,

you can share what is important to you. It is through these communications that we, as leaders, build the foundation that enables us to best take care of our people.

If leadership is leading by example, perhaps you will allow me to start. Would you rather leave a superficial, self-aggrandizing legacy, or be a steward of your profession? Would you rather be known as a leader who directed the development of a new uniform, or would you rather make a lasting impact on the people closest to

you? As young Soldiers begin to develop, perhaps these ideas are not at the forefront of their minds. Promotions, training, a dream assignment, or perhaps preparing for life after service are the priorities of our younger people in uniform. The impact they leave behind is not. According to Army Doctrine Publication 6-22, leaders whose subordinates are seeking advancement need support for their developmental opportunities.¹ Providing young Soldiers opportunities to advance (even if at the expense of your personal gain) is stewardship. A young infantryman improving their foxhole before moving to another operating post so their replacement has a more secure fighting position is stewardship. One could argue that the foxhole left behind is that infantryman's legacy, as it is something “handed down from the past,” or from a predecessor.² However, I believe there is greater weight and well-intended thought given to providing a sincere effort toward being a good steward.

The Army defines stewardship as the “act of improv[ing] the organization beyond [your] own tenure.”³ Some may think that this happens only at the most senior of levels. However, in my view, it should happen at every level. Improving your foxhole is one analogy I have used since I was a young infantryman. It is one of the most basic forms of stewardship taught at the first level of institutional training. All Soldiers at all levels should be encouraged to improve their literal and figurative foxholes. Whether it is conducting routine maintenance on their assigned vehicle every week, or ensuring they notify their first-line leader that the refrigerator in their barracks room is no longer working, that is stewardship.

As we progress through our careers, we gain experience and our responsibilities increase; our foxholes become larger and more complex. We need to be able to fit more into it, and there are intricate details that should be addressed. We can dig grenade sumps, add more camouflage, and improve the details on our range cards. We

can improve our office spaces the same way by adding books to the shelf, painting the walls, or displaying personal items that spur conversation with fellow Service members. As we progress in our careers, our spheres of influence grow, and the potential for larger long-term returns is exciting. However, the most important facet of stewardship is selflessness. That is the tipping point between legacy and stewardship. It is an investment in those who will come after us, a paying forward to others who we may never meet, but who will nevertheless reap the benefits of our efforts.

“Improving the organization for the long-term is deciding and taking action to manage people or resources when the benefits may not occur during a leader’s tour of duty with an organization.”⁴ In other words, knowing the benefits of your actions may not occur during your tenure speaks to the selfless nature of stewardship. As leaders develop from the direct level of leadership to organizational and then strategic leadership, the opportunities to make more significant impacts arise. However, this does not mean that there needs to be an earth-shattering new innovation for somebody to improve the organization beyond their tenure. Many remember General Eric Shinseki, 34th Army Chief of Staff, for establishing the black beret for wear for regular Army Soldiers. His official portrait in the halls of the Pentagon depict him holding his black beret in his right hand. This was not the most popular uniform change among Soldiers in recent history. It was especially disappointing for the 75th Ranger Regiment, who had worn the black beret to distinguish themselves from regular Army Soldiers.⁵

However, it is not fair or accurate to limit the contributions of a career Soldier to a uniform item. The black beret may be his legacy from a shortsighted point of view, but what about his example of showing honesty, truth to power, and personal integrity under extreme pressure? When asked by the Senate Armed Services Committee about how many troops were necessary for a successful invasion of Iraq, General Shinseki gave an experience-based response of “several hundred thousand.”⁶ His response was not taken well by the Department of Defense,⁷ but forward-thinking

General Shinseki attempted to “prevent the loss of effectiveness” into the future after the successful invasion of Iraq by giving an honest assessment.⁸ Rather than being remembered for his legacy decision of implementing the black beret, his consistent effective communication may have assisted General Shinseki in completing his Army career in a way that highlighted his selfless approach to advising senior leaders.

In addition to working to improve the organization, a good leader who is stewarding the profession understands that the benefit of consistent communication through counseling even at the most senior levels is vitally important. Effective counseling is the best method to instill the tenets of stewardship in the Army. Leaders can successfully assess developmental needs of others through communication, observation, and feedback; leaders are able to facilitate their Soldiers’ ongoing development by communicating, observing, and providing timely feedback.⁹ Timely feedback ties in to selflessness as the counselor is placing their subordinate’s development above their own. Leaders at every echelon should counsel to accomplish these goals. Without counseling, leaders are unable to garner an honest assessment of their subordinates’ abilities and needs and to then take appropriate steps to develop those abilities and meet those needs. Without counseling, leaders’ hands are tied when it is time to provide an honest officer or noncommissioned officer evaluation. Honest evaluations improve the organization for the long-term by ensuring evaluation and promotion boards have a clear picture of who is being evaluated and their potential for future ascension into positions of increased responsibility. Counseling provides the leader multiple perspectives regarding the pulse of the organization which can identify potential pitfalls in successful team building. Leaders must learn which method(s) of communication they should utilize that will best resonate with the Soldiers in their charge. Leaders must spend time getting to know their Soldiers, and learn how best to communicate with them. Soldiers will learn from your successes as well as your failures. In turn, they will counsel their subordinates when the time comes if they have learned those best practices from you.

So, back to the original question, reader. Would you rather be a good steward of your people or leave a self-serving legacy? Would you rather impart a lasting impression on a young Soldier’s life that will resonate throughout their career and beyond, or would you rather focus on yourself, leaving your and your subordinates’ foxholes in disrepair? Selflessness must inspire our drive to improve the organization into the future and beyond. **TAL**

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Notes

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2. *Legacy*, DICTIONARY.COM, <https://www.dictionary.com/browse/legacy> (last visited Jan. 28, 2022).
3. ADP 6-22, *supra* note 1, para. 6-76.
4. *Id.*
5. See generally *The Saga of the Black Beret*, CHI. TRIB. (Aug. 26, 2001), <https://www.chicagotribune.com/news/ct-xpm-2001-08-26-0108260232-story.html>.
6. Nicolaus Mills, *The General Who Understood Iraq from the Start*, DISSENT (Apr. 25, 2008), https://www.dissentmagazine.org/online_articles/the-general-who-understood-iraq-from-the-start.
7. See generally *id.*
8. See ADP 6-22, *supra* note 1, para. 6-15 (providing that a leader who stewards the profession “actively engage in sustaining full military readiness and preventing the loss of effectiveness as far into the future as possible”).
9. *Id.* tbl.6-4.



The Bergdoll home in Philadelphia. (Photo courtesy of author)

Lore of the Corps

Not Bergdahl, But Bergdoll The Court-Martial of “America’s Most Notorious Draft Dodger”¹

By Fred L. Borch III

While many readers will have heard of Sergeant Bowe Bergdahl, who was court-martialed for desertion and misbehavior before the enemy in Afghanistan,² few know about the court-martial of a Soldier with a strikingly similar surname—Grover C. Bergdoll. What follows is the story of why this Bergdoll (apparently no kin to Bergdahl) was court-martialed not once, but twice for desertion in World War I—a unique prosecution that lasted twenty years and cost millions of dollars.

Born to a wealthy family in Philadelphia in 1893, Grover Cleveland Bergdoll³ was the youngest of five children; he had one sister and three brothers. The source of the Berg-

doll fortune was beer, and the huge Bergdoll Brewery made thousands and thousands of dollars by providing beer to some 1,400 taverns and saloons in Pennsylvania.⁴

To say that Grover was a spoiled brat is an understatement. After his father died when he was three years old, his mother, Emma Bergdoll, took over the business. She bought her youngest son whatever he wanted and spent thousands of dollars on racing automobiles, which Grover raced with his brother, Erwin. In 1912, she also gave Grover the money to purchase a Wright Brothers biplane. At the controls of this contraption, Grover “terrorized the Philadelphia community . . . dive-bombing

roof tops, racing locomotives, and chasing frightened bathers down the beaches of Atlantic City.”⁵

When the United States declared war on Germany in April 1917, Grover Cleveland Bergdoll was one of the first young men to register for the newly-instituted draft. On 15 August 1917, he received a notice from the Army that he was to report for a physical examination. But Bergdoll’s mother had been born in Germany and maintained close ties with her native country. Consequently, she convinced Grover—or he allowed himself to be persuaded—that he should not report for his draft physical.⁶

As the war got underway, anti-German sentiment increased greatly. High schools stopped teaching the German language.⁷ Richard Wagner’s music was no longer performed. Dachshunds were now called “liberty puppies.”⁸ German measles were “liberty measles.”⁹ Sauerkraut was “liberty cabbage.”¹⁰ While as many as 160,000 young men ultimately would evade conscription, Bergdoll’s wealth and German heritage made him stand out as a “draft dodger.” When his mother offered the head of the local draft board \$1,000 if he would exempt her son from the draft, the situation only got worse for Grover.¹¹ Later, when Grover disappeared from public view, his mother falsely informed the local media that he had fled to Mexico and was on his way to Spain. In fact, Bergdoll had not left the country, but was living part of the time in a house in Maryland.

Emma Bergdoll’s public pronouncements did have one important result: agents with the Department of Justice¹² now began searching for Grover and, in July 1918, the U.S. Attorney for the Eastern District of Pennsylvania printed posters announcing that Grover was “Wanted” as a “serious offender against the laws of the United States” and calling upon members of the public to aid law enforcement in apprehending him.¹³

While the U.S. authorities tried to find Bergdoll, they were unable to locate him until January 1920 when a raid on the family home in Philadelphia revealed that Grover Bergdoll had been hiding there for months.

He was taken into custody by the police and turned over to military authorities.¹⁴

Imprisoned in a cell in Castle William on Governor's Island, New York, Bergdoll's general court-martial for desertion under the 58th Article of War began on 4 March 1920. The government's theory was that it had *in personam* jurisdiction because, when the Army's Adjutant General notified Bergdoll that he must report for his physical examination, he "was automatically inducted" when he failed to report for that exam. He also had failed to return a questionnaire to the Army as required by the Selective Service Act, and this was a second basis for Bergdoll's automatic induction into the Army.¹⁵

While one might think that this was a tenuous basis for court-martial jurisdiction, the trial judge advocate, Lieutenant Colonel Charles C. Cresson, insisted that it was sufficient. Bergdoll's two civilian attorneys, Harry Weinberger and D. Clarence Gibboney, attempted to quash the court-martial's jurisdiction by filing a writ of habeas corpus in U.S. District Court, but the federal judge dismissed the writ. Bergdoll's general court-martial for desertion would proceed.¹⁶

With jurisdiction established, the outcome was not surprising. Bergdoll was found guilty of desertion and sentenced to five years' confinement at hard labor. His punishment also included forfeiture of all pay and allowances and a dishonorable discharge.¹⁷

Now confined at Fort Jay on Governor's Island, Bergdoll hatched an escape plan that seems farfetched today but apparently was not so viewed in 1920. He hired Brigadier General Samuel T. Ansell, who had served as Acting Judge Advocate General in World War I, to assist in working for his "release" from prison. While presumably this meant that Ansell would work to have Grover's court-martial conviction reversed or set aside, Ansell also wrote a letter to Major General P.C. Harris, the Army Adjutant General, in which he asked Harris to permit Bergdoll to leave confinement for a most curious reason: to recover \$105,000 in gold coins.¹⁸

In an 11 May 1920 letter to Harris, Ansell explained that his client had buried these coins in "a metallic container" in "lonely spot on a mountainside."¹⁹ Bergdoll

was now very much afraid that someone would find this treasure and steal it from him. Consequently, Ansell requested that Bergdoll be permitted to leave Fort Jay to recover these gold coins, after which he would promptly return to prison.²⁰

Amazingly, the War Department granted the request that Bergdoll be let out of his cell in Castle William to dig up the buried gold. Although Ansell and his law partner, Colonel Edward S. Bailey, had promised that one of them would accompany Bergdoll and his military guard, the two former Army lawyers decided at the last minute that they were too busy to join Bergdoll. As a result, on 20 May 1920, Grover Bergdoll left his prison cell in the company of two sergeants. The two non-commissioned officers were instructed to escort Bergdoll "somewhere" and then bring him back. When the two sergeants suggested that Bergdoll should be handcuffed while in their custody, they were told that there would be no handcuffs as these might "humiliate the prisoner."²¹

Bergdoll never went to Maryland to dig up buried gold. Instead, the next day, he slipped away from his two guards and escaped. Despite a frantic search by local, state, and federal authorities, Bergdoll could not be found. While there was a report that he had disguised himself by dressing as a woman, and might have fled to Canada, the truth was that Bergdoll managed to board a passenger ship to Liverpool, England. After a few days in London, he crossed the English Channel and took the train to Germany, where he arrived on 24 July 1920.²²

Bergdoll now set up house in a hotel in the village of Eberbach, located on the edge of the Black Forest. He chose Eberbach because it was his mother's hometown, and Emma still had many relatives in the town. Grover's "easy smile, firm handshake, and ready use of the German language"—he was fluent—quickly made him a local hero.²³ He was, in the view of the residents of Eberbach, a "wronged martyr" who deserved their protection.²⁴

If Bergdoll thought he could live a peaceful life in an idyllic village, he was mistaken. On the evening of 26 January 1921, six men in an automobile came to a stop next to the car in which Bergdoll was a passenger. The men got out of their vehicle.



Bergdoll claimed to have \$105,000 in U.S. \$20 gold coins. (Photo courtesy of author)

Then, the individual nearest Grover pointed a revolver into the window of Bergdoll's car and aimed at Bergdoll's head. The man ordered Bergdoll to turn off the car's engine or he would shoot him dead. Grover, however, had other plans. He lunged at the gunman, and shoved the weapon away. At the same time, the driver of Bergdoll's vehicle stepped on the gas pedal and the car sped away. The gunman fired at the fleeing Bergdoll but missed him. A young woman who had just been married, however, was shot in the arm.²⁵

Local authorities quickly captured the assailants. Two were Americans, and one of them was an Army sergeant assigned to the American occupation forces in Koblenz, located some 200 miles away. The other four were Germans who had been hired by the Americans to kidnap Bergdoll, bring him across the Rhine into the U.S.-occupied territory, and turn him over to American authorities there. Presumably, Bergdoll would be returned to U.S. soil to stand trial. The plan to bring Bergdoll to justice, however, now triggered an international incident. United States citizens had entered Germany, committed the crimes of attempted kidnapping and aggravated assault, and wounded an innocent woman on her wedding day. Major General Henry T. Allen, the commander of U.S. forces in Koblenz, immediately apologized for the attack and insisted that the American government had nothing to do with it.²⁶

A little more than two years later, Bergdoll's freedom was again in jeopardy



Attorney Harry Weinberger represented Bergdoll at this second trial by courts-martial. After the proceedings were over, Weinberger sued Bergdoll for failing to pay him his \$75,000 legal fee. In this 15 April 1940 photograph, Bergdoll (right, in dark coat) leaves the Supreme Court in New York City, where he had appeared to answer Weinberger's lawsuit. (Photo courtesy of author)

when Army Lieutenant Corliss H. Griffis arrived by ship in France and then traveled to Germany. The purpose of Griffis's trip: kidnap Bergdoll and return him to the United States for punishment. As Griffis later explained, he was outraged that Bergdoll "was living on the fat of the land while hundreds of American soldiers were lying under crosses" in cemeteries in France.²⁷ To carry out his plot, Griffis hired a car and driver, as well as a Swiss citizen named Karl Schmidt who had been employed in a Paris detective agency. But the Griffis plan went awry, too. On 11 August 1923, when Schmidt and an accomplice named Sperber broke into Bergdoll's hotel room to kidnap him, Bergdoll fought back. He bit Sperber's thumb off of his hand and then managed to reach for a pistol—and put a bullet in Schmidt, who died moments later.²⁸ Lieutenant Griffis would later be tried by the German authorities for attempted kidnapping and breach of the peace. He insisted that Bergdoll had "insulted America, and it was every American's duty to punish

him."²⁹ The German judge hearing the case was not persuaded. He found Griffis guilty and sentenced him to eighteen months' imprisonment.³⁰

Bergdoll now settled into a quieter existence. He married a local woman, Berta. His first child, a boy named Alfred, was born in July 1927. The following year, Grover and Berta had a second child, whom they named Emma (after Grover's mother). While apparently happy in Germany, Grover decided that he should return to America in June 1929. It seems that he was worried about the state of the economy, and the increasingly speculative New York Stock Exchange. Consequently, Bergdoll decided it was time to slip back into the United States to collect the \$105,000 in gold coins that he had hidden—not in the ground, but in his home in Philadelphia. It had been nearly ten years since Bergdoll had been in the United States.³¹

Berta and the two children sailed directly to the United States from Germany. Grover, however, took a more circuitous route. Under an alias, he traveled first to Montreal before taking the train to New York City and then Philadelphia. Since he was using an alias—and since his face no longer appeared in newspapers—no one recognized him.³²

Once home, Bergdoll quickly located the gold coins, which were "in a closet on top in the wall and which was cemented shut."³³ After using an axe to break through the cement, Grover gathered up the gold. But life in Philadelphia was difficult; Bergdoll was afraid to be seen in public. As a result, he hid in the home for the next four years; only Berta and his children ventured outside. In 1934, with Berta's visa now expired (she was still a German citizen), the Bergdoll family decided that they all should return to Eberbach. Shortly after arriving in Germany, Berta gave birth to a fourth child (she and Grover had had a third child while in Philadelphia).³⁴

Germany had changed for the worse during the Bergdolls' absence. Adolf Hitler and the National Socialists had come to power, and Grover quickly decided that the Nazis were not to his liking. On the contrary, Bergdoll was now convinced that he wanted his children to grow up "in the freedom of America."³⁵ Berta returned to

the United States—alone—to advocate for clemency for her husband. Bergdoll himself wrote a letter to President Franklin D. Roosevelt, requesting that he be given lenient treatment. The answer from Roosevelt's Attorney General, however, was: "No Clemency."³⁶ Bergdoll would have to return to U.S. soil and take his chances.³⁷ Rather than making an open and public return, however, Bergdoll decided once more to secretly enter the United States. In late 1935, using yet another alias, he traveled from Germany to England, and then took a ship from Southampton to Quebec. After arriving by train in Philadelphia, Grover Bergdoll went into hiding once again at his family home in Philadelphia.³⁸

Three years later, in 1938, Bergdoll finally realized that if he were ever to have any freedom, he would have to surrender to the U.S. authorities. But he had to return to Germany so that he could legally enter the United States under his own name. As it was, he was in the United States on a false passport and a false identity. Consequently, Bergdoll returned to Germany in late 1938.³⁹

In January 1939, Bergdoll's attorney notified the U.S. Secretary of State that his return to America was imminent and that he intended to surrender. In April, as Bergdoll's lawyer was requesting guidance from the Army as to how and where Bergdoll should surrender, events took an unexpected course: Congressman Forrest A. Harness introduced a bill in the House that would preclude "any person convicted of desertion . . . who has heretofore proceeded to a foreign country to escape punishment" from being admitted to the United States.⁴⁰ The import of this bill was clear to all: were it to be enacted, Bergdoll could never return to American soil.⁴¹

While some commentators—and Bergdoll's attorney—insisted that this legislation was ill-advised, if not unconstitutional, Harness's bill *unanimously* passed the House on 15 May 1939. For Grover, time was now very much of the essence. On 25 May, the same day that Harness's legislation reached the U.S. Senate, Bergdoll arrived in New York City as a passenger on the German liner *S.S. Bremen*. He was immediately taken into custody.

On 5 October 1939, a thirteen officer court-martial panel found Bergdoll guilty of

desertion in time of war. He was sentenced to three years' confinement at hard labor and a dishonorable discharge. The entire trial had taken only three hours.⁴²

Bergdoll was transferred from a cell on Governor's Island to the prison at Leavenworth, Kansas. While confined there, and after the United States entered World War II, Bergdoll offered to enlist in the Army Air Forces. He almost certainly thought that his prior experience as a pilot might make him useful to the war effort. Not surprisingly, however, Bergdoll's offer to serve was refused.⁴³

Grover Cleveland Bergdoll was released from prison on 7 February 1944. He and Berta and their children lived for a time on a 260-acre farm near Philadelphia. Within a matter of months, however, Bergdoll suffered a mental breakdown. Berta sold the farm, and the family moved to Virginia. In 1962, Grover was committed to the Westbrook Psychiatric Hospital in Richmond, Virginia. He died there of "chronic degenerative brain disease" on 27 January 1962.⁴⁴ He was 68 years old.

So ends the remarkable story of the Soldier who was twice convicted of desertion during World War I. Emma Bergdoll, who perhaps loved her son too much and had provided the financial means for him to have a life in Germany, lived to see Grover released from prison. But she died only a few months later. And the Bergdoll fortune? It was gone. Prohibition had ended the days of the Bergdoll family's brewery in 1920, and it never reopened after the Eighteenth Amendment was repealed in 1933. **TAL**

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Notes

1. ROBERTA E. DELL, *THE UNITED STATES AGAINST BERGDOLL* 9 (1977).

2. In 2009, Sergeant Bowe Bergdahl "walked off a U.S. military outpost in eastern Afghanistan and spent the next five years in enemy captivity." Alex Horton, *Bergdahl Avoids Prison Time for Deserting Post*, WASH. POST, Nov. 4, 2017, at A1. After being freed and returning to the United States, Bergdahl was prosecuted for desertion and misbehavior before the enemy. In November 2017, he was sentenced to a dishonorable discharge at proceedings held at Fort Bragg, North Carolina. *Id.*

Then-President Donald J. Trump, who had earlier described Bergdahl as a "traitor," called the punishment a "complete disgrace." *Id.*

3. While the Bergdolls were not related to President Grover Cleveland, it was fashionable in the nineteenth century to name children after well-known politicians. Cleveland had just been elected to a second term as U.S. President in 1893, so it made sense for Bergdoll's parents to name their newly-born son after him. As immigrants from Germany, the Bergdoll parents may also have wanted to highlight their ties to the United States by naming their son after Grover Cleveland. My great-great-grandfather, Dewitt Clinton Wamsley (1843–1927), for example, was named after New York governor and U.S. Senator DeWitt Clinton (1769–1828).

4. DELL, *supra* note 1, at 19.

5. *Id.*

6. *Id.* at 28.

7. *Id.* at 30.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 30, 67.

12. At this time, the Department of Justice had "special agents" who conducted investigations as part of the Office of the Chief Examiner. The modern Federal Bureau of Investigation (FBI) did not exist until J. Edgar Hoover "drastically restructured and expanded" the organization in the 1920s. *This Day in History, July 26, 1908, FBI Founded*, HISTORY, www.history.com/this-day-in-history/fbi-founded (July 23, 2021). Only in 1935 was the bureau designated as the "Federal Bureau of Investigation." *Id.* For more on the birth of the modern FBI, see DAVID GRANN, *KILLERS OF THE FLOWER MOON* (2017).

13. DELL, *supra* note 1, at 37.

14. *Id.* at 48–49.

15. *Id.* at 68.

16. *Id.* at 69.

17. *Id.* at 75.

18. *Id.* at 80.

19. *Id.* at 82.

20. *Id.* at 81–82.

21. *Id.* at 85–86.

22. *Id.* at 117. The U.S. House of Representatives held lengthy hearings into Bergdoll's escape, and the culpability of various individuals, including Brigadier General Ansell and Colonel Bailey. Not surprisingly, the investigation concluded that Bergdoll had fooled more than a few individuals in planning his escape. H. SELECT COMM. TO INVESTIGATE ESCAPE OF GROVER C. BERGDOLL, ESCAPE OF GROVER CLEVELAND BERGDOLL, H.R. REP. NO. 67-354 (1st Sess. 1921).

23. Dell, *supra* note 1, at 131.

24. *Id.*

25. *Id.* at 133.

26. *Id.* at 133–34.

27. *Id.* at 176.

28. *Id.* at 180–81.

29. *Id.* at 192.

30. *Id.* at 190, 194–95.

31. *Id.* at 208–09.

32. *Id.* at 210–11.

33. *Id.* at 211.

34. *Id.* at 214.

35. *Id.*

36. *Id.* at 215.

37. *Id.*

38. *Id.* at 218–19.

39. *Id.* at 219.

40. *Id.* at 221.

41. *Id.*

42. *Id.* at 244–45.

43. *Id.* at 247.

44. *Id.* at 253.

In Memoriam

Remembering Recently Departed Members of the Regiment

By Fred L. Borch III

The following members of our Regiment, in alphabetical order, passed away in 2021.

Jessy J. Branham (1973–2021)

Chief Warrant Officer Four (CW4) Jessy James Branham died on 3 October 2021. He was 47 years old.

Born on 23 November 1973, he enlisted in the Army after high school as a paralegal specialist (MOS 71D). He subsequently received an appointment as a Warrant Officer 1 Legal Administrator. Jessy served in a variety of locations, including Fort Bragg, Fort Campbell, and Fort Leavenworth. He also served overseas in Germany. He retired as a CW4.

Chief Branham is survived by his three children.¹

Jon C. Cieslak (1949–2021)

Jon Chester Cieslak died from complications of spinal surgery on 11 October 2021. He was 72 years old.

Born in Minneapolis, he graduated from Princeton University in 1971 and earned his law degree from Lewis and Clark Law School. Jon subsequently served on active duty as a judge advocate before transitioning to the Army National Guard. Before retiring as a lieutenant colonel, his last assignment was as the legal counsel to the Adjutant General of Minnesota.²

Dennis T. Chapman (1944–2021)

Dennis “Denny” Chapman, who served as a judge advocate at Fort Dix, New Jersey, from 1969 to 1975, died on 15 August 2021. He was 77 years old and was suffering from dementia and cancer at the time of his death.

Born in Nebraska in 1944, Denny graduated from Creighton’s law school in

1969 and returned to Nebraska after his active duty tour as a judge advocate. He then practiced law in private practice in Omaha before joining Blue Cross and Blue Shield of Nebraska in the early 1980s. He was the general counsel and corporate secretary for more than 25 years when he retired in 2007.³

Michael Downes (1935–2021)

Michael McCahan “Mike” Downes died of cancer on 12 May 2021. He had a distinguished career as an Army lawyer, including serving as the staff judge advocate for XVIII Airborne Corps, Fort Bragg, North Carolina, and the U.S. Army Signal Center, Fort Gordon, Georgia. Colonel Downes ended his active duty career as a trial judge at Fort Bragg.

Born in Philadelphia on 31 August 1935, Mike “graduated from the Peddie School, a college preparatory and boy’s boarding school in Hightstown, New Jersey.”⁴ He then attended the University of Georgia, where he received his undergraduate degree in 1957 and his law degree in 1959. Having participated in Army Reserve Officers’ Training Corps (ROTC) at the University of Georgia, Mike was commissioned as an infantry second lieutenant. He went on active duty in 1960 after passing the bar exam, and subsequently completed the Airborne, Ranger, and Pathfinder schools at Fort Benning.

After transferring from the infantry to the Judge Advocate General’s (JAG) Corps in 1963, Colonel Downes served in various assignments and locations, including Germany, Korea, and Vietnam. After retiring from active duty in January 1990, Mike joined Westinghouse Savannah River Company, which managed the Savannah River Site nuclear facility in South Carolina.



Then-Major Michael Downes. (Photo courtesy of Mike Downes Jr.)

In this job, he created an ethics program for contractors that became a model for others Department of Energy facilities.

Colonel Downes was 85 years old at the time of his death. He was predeceased by his wife, Barbara. His son, Michael Jr., and daughter, Samantha Poehlman, survive him, along with four grandchildren.⁵

Joseph A. Dudzik, Jr. (1931–2021)

Colonel Joseph A. “Joe” Dudzik, Jr. died on 7 June 2021. He was 89 years old.

Born on 19 July 1931, he graduated from Fordham University School of Law in 1956 and then served as an enlisted legal clerk in the 1st Armored Division at Fort Polk before transferring to JAG Corps. Joe Dudzik subsequently served in a variety of assignments and locations in the Corps, including the Procurement Law Division, Office of The Judge Advocate General, from 1960 to 1963, and the Procurement Law Division (today’s Contract and Fiscal Law Division) at The Judge Advocate General’s School, from 1966 to 1969. That year, he deployed to Vietnam, where he was the head of the Army Procurement Office in Saigon until 1970.

After retiring from active duty, Colonel Dudzik settled in Oklahoma, where he engaged in the private practice of law.⁶



Then-Chief Warrant Officer 2 Jeffrey S. Forman. (Photo courtesy of Jeff Forman)

Jeffrey S. Forman (1963–2021)

Chief Warrant Officer Four Jeffrey Stephen “Jeff” Forman died on 9 August 2021. He was 58 years old.

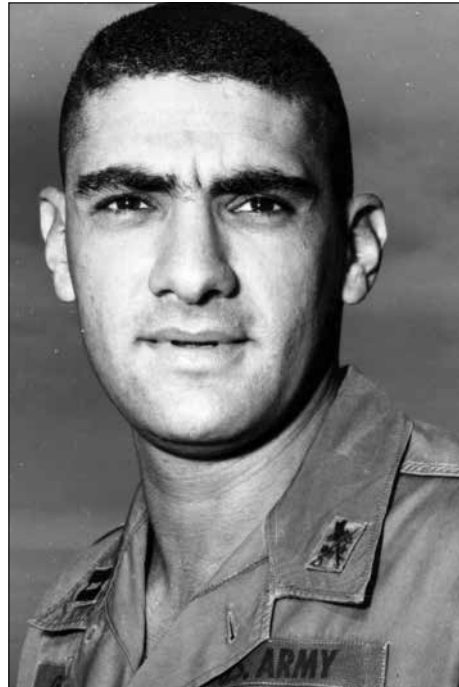
Born in Denver, Colorado, on 7 July 1963, Chief Forman enlisted in the Army Reserve as an infantryman in 1985. Five years later, he transferred to the Corps as an MOS 27D paralegal specialist and served with the 87th Legal Operations Detachment. In 1998, he was appointed as a Warrant Officer 1 and served as a legal administrator in 2007 in Afghanistan. He also deployed to Iraq, where he was the senior warrant officer in the Law and Order Task Force at Forward Operating Base Shield.⁷

Peter A. Garcia (1961–2021)

Lieutenant Colonel Peter A. Garcia died on 3 August 2021 at the hospital of the University of Pennsylvania. He was 60 years old.

Born on 25 June 1961, Pete graduated from Rutgers University and earned his law degree from Widener University Law School. He subsequently served 29 years as an Army lawyer in both the active component and Army Reserve, from which he retired as a lieutenant colonel.

Pete Garcia’s assignment included service as the deputy command judge advocate



Then-Captain Herbert Green. (Photo courtesy of author)

at the 314th Civil Affairs Brigade. He later served as the deputy staff judge advocate at the 153d Legal Operations Detachment. Lieutenant Colonel Garcia also served two tours of duty in Afghanistan.

“As a civilian attorney, [Garcia] worked in both the private and public sector.”⁸ He was an Assistant Counsel to the Governor of New Jersey and also served as Acting Public Defender for New Jersey. Pete Garcia is survived by his wife, Diane, and a son and daughter.⁹

Herbert Green (1941–2021)

Colonel Herbert Green, who served as an Army lawyer in Vietnam and retired from active duty while serving as a trial judge, died at his home in Texas on 27 December 2021. He was 80 years old.

Born on 11 December 1941, Herb graduated from Queens College in 1963 and the University of Texas Law School in 1966. He then worked briefly as a staff attorney at the Federal Communications Commission before entering the Army as a judge advocate in October 1966. Colonel Green subsequently served 27 years on active duty. He had eleven assignments in the United States and three overseas tours in Germany. Then-Captain Green also served in Vietnam as an

Army lawyer with II Field Force; his time in that assignment was featured in an American Bar Association article.¹⁰

Colonel Green’s expertise was in criminal law. He taught at The Judge Advocate General’s School and “served as a trial judge for sixteen years, culminating his military judicial career as Chief Judge, 3d Judicial Circuit, Fort Hood, Texas.”¹¹

After retiring from active duty in 1994, Herb Green “began a second career as an Administrative Law Judge for the Social Security Administration. He retired from that position in January 2019.”¹²

His wife, Mary, survives him, as well as a daughter and two granddaughters.¹³

Robert Dean Hamel (1937–2021)

Colonel Dean Hamel died in Windcrest, Texas, on 26 December 2021. He was 84 years old.

Born in Hays, Kansas, Dean graduated from high school at age 17 and then earned a degree from Fort Hays State University before earning his law degree from Washburn Law School in 1961. While in law school, Hamel “worked at the Boys Industrial School, a youth correctional institution. He considered this one of the highlights of his life because . . . it taught him a great deal about human nature”—and the experience helped him later in life when he was prosecuting and defending soldiers at courts-martial.¹⁴

Colonel Hamel entered the Army in January 1962 and served in a variety of locations as a judge advocate, including Fort Carson, Fort Leonard Wood, and Fort Sam Houston. During his career as an Army lawyer, Hamel served as a trial and defense counsel, and as a procurement and claims attorney.

After retiring from active duty in August 1990, Dean was the chief of Acquisition Law, Fort Sam Houston Medical Command. He retired as an Army civilian in August 2000.

Colonel Hamel is survived by two sons, one daughter, twelve grandchildren, and one great grandchild.¹⁵

Walter Henderson (1931–2021)

Colonel Walter Henderson, who served as an infantry and Special Forces officer, and as a civilian attorney in the Army General

Counsel's office, died in Washington, D.C., on 25 May 2021. He was 89 years old.

Born Walter Turner Chandler III in Kansas, City, Missouri, on 14 July 1921, Walter Henderson took his stepfather's surname after his mother remarried Army officer Morris King Henderson. Walter Henderson grew up in a military family and, after graduating from Yokohama High School in post-war Japan, he entered West Point in 1949.

Commissioned in the infantry in 1953, he completed both Airborne and Ranger training and then served in the Old Guard and 25th Infantry Division. Henderson left active duty in the late 1950s to work for General Electric. He completed law school at night at George Washington University and graduated in 1961.

After working briefly for a law firm, Henderson joined the Army General Counsel's office as a legal advisor. He subsequently served in the Office of the Secretary of Defense, where he worked as an analyst in defense acquisition and procurement policy.

While serving as an Army civilian attorney, Henderson remained in the Army Reserve and later became Special Forces qualified. He retired from the Army Reserve as a colonel in 1983. Walter Henderson is survived by a brother, daughter, and two sons, as well as grandchildren and one great grandchild. He will be interred in Arlington National Cemetery.¹⁶

W. Hays Parks (1941–2021)

William Hays Parks, who was the first Marine Corps lawyer to serve on the faculty at The Judge Advocate General's School, and who later served as a civilian attorney in the Office of The Judge Advocate General, died after suffering a stroke on 11 May 2021. He was 80 years old.

Born in Jacksonville, Florida, Hays was commissioned in the Marine Corps after graduating from Baylor University's law school in 1963. He subsequently served in a variety of locations and assignments, including Vietnam, before leaving active duty. In 1979, Hays was appointed Special Assistant to Army Judge Advocate General for Law of War Matters. In this position, "he regularly represented the United States in law of war negotiations in Geneva, Vienna, and The Hague, as well as in Washington and New York."¹⁷ He also repeatedly

testified as a law of war expert in U.S. and international criminal trials.

In 2003, Hays left the Army to join the International Affairs Division, Office of the General Counsel, Department of Defense (DoD). In that job, he chaired the DoD's Law of War Working Group until his retirement in October 2010. He had earlier retired as a colonel in the Marine Corps Reserve.¹⁸

Hays is survived by his wife, Maria Lopez-Otin.

Denise Johnson (1953–2021)

Jane Denise Johnson, a long-time civilian employee in the Office of the Staff Judge Advocate, Fort Stewart, Georgia, died on 24 January 2021. She was 67 years old and admired and respected by all who knew her.

Born on 26 November 1953, Denise Johnson lived in Hinesville at the time of her death. Her Army civilian career spanned 35 years, and included service as the legal clerk for the U.S. Army Trial Defense Service, legal library technician, victim witness liaison, and special victims witness liaison. Ms. Johnson's excellence was recognized with the Army Civilian Achievement Medal and the Commander's Award for Civilian Service.

Denise Johnson is survived by three children and twelve grandchildren.¹⁹

Gary Lockwood (1935–2021)

Colonel Gary Lockwood, who served as both an active duty and Army National Guard judge advocate, died on 29 July 1921. He was 85 years old and suffering from Parkinson's disease at the time of his death.

Born in Medford, Oregon, on 1 October 1935, Gary earned his undergraduate and law degrees from Willamette University. He then entered the Army as a judge advocate, and served active duty assignments at Fort Riley, Kansas, and Fort Wainwright, Alaska.

After leaving active duty, Gary returned to Oregon, where he was an attorney in private practice, a civilian judge, and a judge advocate in the Oregon National Guard. Lockwood would later serve as Oregon's selective service officer.

Colonel Lockwood is survived by his wife, two daughters, and four grandchildren.²⁰

Clarence D. Long III (1943–2021)

Lieutenant Colonel Clarence D. "Hugh" Long III, who was decorated with the Silver Star, Soldier's Medal, Bronze Star Medal, and two Purple Hearts while serving as an infantry officer in Vietnam, and who finished his active duty career as a judge advocate, died on 28 October 2021. He was 78 years old.

Born on 7 February 1943 in Princeton, New Jersey, Hugh graduated from Johns Hopkins University in 1965. After finishing Airborne and Ranger training, then-Lieutenant Long commanded a Long-Range Reconnaissance Platoon in the 502d Infantry Regiment, 101st Airborne Division. On 31 December 1966, "he bravely exposed himself to enemy fire in order to rescue a wounded soldier from an unprotected position and carry him to safety."²¹ Long would "later be awarded the Silver Star for his heroism that day."²²

After leaving active duty, Hugh attended law school and graduated in 1971. Four years later, he returned to the Army as a judge advocate. He first served at the 82d Airborne Division before joining the Army Contract Appeals Division. After retiring from active duty in 1992, Lieutenant Colonel Long took a position as a civilian attorney in the Air Force Office of General Counsel.

Hugh Long is survived by his wife, JoAlice, and five children from his first marriage. He was living in Warrenton, Virginia, at the time of his death.²³

Heather A. Masten (1964–2021)

Lieutenant Colonel Heather Ann Masten died on 2 November 2021. She was 56 years old.

Born on 27 December 1964 in Grand Island, Nebraska, Heather enlisted in the Army after graduating from high school. She married Kelly Stahlnecker in 1984 and had a son, Dustin Dakota Stahlnecker, in 1987.

In 1993, Heather graduated from Creighton University's law school and began a career as an active duty and reserve judge advocate. She served in a variety of assignments and locations, including deploying to Afghanistan as part of Operation ENDURING FREEDOM.

In 1996, Heather met "her soulmate,"²⁴ Nancy Williams. They were married in Canada in 2006 and lived together in Colorado, Texas, and Germany.

In 2000, Heather and Nancy settled in San Antonio, Texas, where Heather subsequently obtained a position as a civilian attorney at U.S. Army Medical Command, Fort Sam Houston.

Heather Masten is survived by her wife, Nancy, son Dustin, and granddaughter, Analeese. Her father, mother, and brother also survive her.²⁵

Toby McCoy (1970–2021)

Toby D. McCoy died at his home in Tomah, Wisconsin, on 31 July 2021. He was 50 years old at the time of his death.

Born on 25 October 1970 in Huntington, West Virginia, Toby graduated first in his high school class in 1988. He subsequently earned both his undergraduate and law degree (Order of the Coif) from Washington and Lee University. Colonel McCoy served in the Corps for approximately twenty-six years, and retired as a colonel. At the time of his death, he was the deputy director, Civilian Personnel, Human Resources Agency, Fort McCoy, Wisconsin.

Colonel McCoy is survived by his wife and two sons. His parents also survive him.²⁶

Edith M. “Edyie” Rob (1959–2021)

Known to all her friends and colleagues as “Edyie,” Colonel (retired) Rob was killed on 2 July 2021 when she was struck by an automobile while biking with her husband, Sam, in the countryside near her home in Boiling Springs, Pennsylvania. She was 61 years old.

Born in Chicago on 18 November 1959, Colonel Rob was commissioned as a Military Police (MP) Corps second lieutenant after graduating from Campbell University in 1981. She served in an MP battalion at Fort Ord, California, before being selected for the Funded Legal Education Program. After completing her law degree at Notre Dame, Edyie served in a variety of assignments and locations including: 2d Infantry Division (trial counsel); CID (legal advisor) Special Assistant US Attorney; PPTO (plans officer); 82d Airborne Division (chief of justice; deputy staff judge advocate); Government Appellate Division (branch chief; deputy chief); Office of the Inspector General (deputy legal advisor); and U.S. Army Recruiting Command (staff judge advocate). She retired in 2005.

Following her husband’s retirement from active duty in 2010, the Robs moved

to Boiling Springs, Pennsylvania. While Sam served as the civilian contract/fiscal law attorney at the Army War College at Carlisle Barracks, Edyie served as the Boiling Springs High School debate coach, a member of the school board, and in a multitude of other volunteer capacities that made her a pillar of the community. The Robs raised two sons, Samuel and Jacob, who both graduated with honors from Princeton University (Samuel also graduated with honors with a master’s degree from the University of Oxford) and are now serving as commissioned officers on active duty in the Army. 1LT(P) Sam Rob is an engineer officer and 2LT Jake Rob is an infantry officer.

Edyie Rob was admired and loved by many, and she is greatly missed by those who knew her. In 2022, in her memory, the Edyie M. Rob Memorial Scholarship was established at Boiling Springs High School and the Colonel Edyie M. Rob Award for Mentorship was established by The Judge Advocate General’s School. She is interred in Arlington National Cemetery (Section 81; Grave 1023).²⁸

Samuel Robles (1983–2021)

First Sergeant (1SG) Samuel Robles died on Christmas day after being struck and killed by a motor vehicle in Prescott Valley, Arizona. He had only recently retired from the Corps and was 38 years old at the time of his death.

Born in Edmonds, Washington, on 8 February 1983, Sam Robles enlisted in the Army as a paralegal specialist after graduating from high school in 2001. He subsequently served in the Ranger Regiment and took part in ten combat deployments while in that assignment. Then-Staff Sergeant Robles was the 2008 recipient of the Sergeant Eric L. Coggins Award for Excellence. In 2009, he joined the Noncommissioned Officers Academy as its operations non-commissioned officer (NCO). Three years later, Sam Robles moved to Camp Smith, Hawaii, where he assumed duties as the command paralegal NCO for Special Operations Command Pacific. He subsequently served as a senior paralegal NCO and senior military justice operations NCO in the 82d Airborne Division. In 2017, 1SG Robles assumed duties as the top NCO in the MOS 27D Advanced Individual Training Company, Juliet Company, at Fort Lee, Virginia. He completed his JAG Corps career as the



Then-Major Edyie Rob (right). (Photo courtesy of Colonel Sam Rob)

chief paralegal NCO for First Army, Rock Island Arsenal, Illinois.

After retiring in late 2021, 1SG Robles and his family relocated to Prescott Valley, Arizona, to be near family. There he began a new career as bailiff with the Yavapai County Juvenile Justice Center.

First Sergeant Robles is survived by his wife, Stephanie, and two children, Jackson and Tristan. His mother, father, and other family members also survive him.²⁹

Charles W. Schiesser (1933–2021)

Colonel Charles William “Charlie” Schiesser died on 14 November 2021. He was 88 years old.

Born on 28 October 1933 in Fergus Falls, Minnesota, Charlie was the youngest of nine children. After graduating from the University of Minnesota’s law school in 1958, he joined the Army as a judge advocate. Colonel Schiesser subsequently served in a variety of assignments and locations, including Germany, Hawaii, and Vietnam.

After retiring in 1978, Schiesser settled in Austin, Texas. He initially engaged in the private practice of law but ultimately became first the chief of staff and then the deputy commissioner of the Texas Rehabilitation Commission. After retiring a second time, Charlie Schiesser continued to work pro bono as a lawyer, “advocating for the

rights of veterans and fighting to secure disability benefits on their behalf.³⁰

Colonel Schiesser is survived by his wife, Shubh, four children, and four grandchildren.³¹

Irving Starr (1932–2021)

Lieutenant Colonel Irving Starr died on 16 May 2021 after a long struggle with pancreatic cancer. Born in New York City on 13 October 1932, Starr moved to Uruguay when he was two years old. He moved back to New York when he was 16 years old and, despite having to learn English, he graduated from high school. He then graduated from Brooklyn College in 1955 and Boston College of Law in 1965.³²

J. Rodman Steele, Jr. (1941–2021)

J. Rodman Steele, Jr., who served as a judge advocate in Vietnam and, after leaving active duty, emerged as a leading expert in patent, trademark, and copyright matters, died at his home in West Palm Beach, Florida, on 13 January 2021. He was 79 years old.

Born in 1941, Rod Steele graduated from Pennsylvania State's Dickinson School of Law and entered the Corps as a judge advocate captain. He deployed to Vietnam for a twelve-month tour of duty and, after returning home, was assigned to the Pentagon. On his own initiative, Steele earned a Master of Laws in Patent Law and Trademark Regulation from The George Washington University.

After leaving active duty, Rod went into private practice. He co-founded the law firm of Steele, Gould and Fried. With offices in Philadelphia, West Palm Beach, and Miami, the firm built an international law practice in patent, trademark, and copyright matters.

An avid triathlete, Rod Steele was a member of the U.S. National Team and competed in the triathlon in four overseas World Championships. He is survived by his wife, Karen, two sons, and three grandchildren.³³

Jonathan Tomes (1945–2021)

Lieutenant Colonel Jonathan P. Tomes, who was decorated with the Silver Star for gallantry in action prior to entering the Corps, died on 20 January 2021. He was 75 years old.

Born in Chicago on 24 October 1945, Jon graduated from the University of Cincinnati. Having participated in Army ROTC, he

was commissioned as a Military Intelligence second lieutenant. Tomes then served in Vietnam, where he was decorated with the Silver Star, Bronze Star Medal, and Air Medal. Then-Captain Tomes was serving in Germany when he was accepted into the Funded Legal Education Program. After earning his law degree at the Oklahoma City University's law school, Jon Tomes served in a variety of assignments and locations, including trial judge at Fort Knox, Kentucky; Command and General Staff College instructor at Fort Leavenworth, Kansas; and attorney at the Army Claims Service at Fort Meade, Maryland. Lieutenant Colonel Tomes retired from active duty in 1988.

He "then joined the faculty of the Illinois Institute of Technology Chicago-Kent College of Law in Chicago, where he was the Dean of Students and taught legal writing, military law, health law, and criminal procedure, among others."³⁴ Tomes also was a prolific writer of both fiction and non-fiction. Among his many articles and books is *JAGC-Off: A Politically Incorrect Memoir of the Real Judge Advocate General's Corps*,³⁵ which he self-published in 2010. It is written in a style similar to that of John Mortimer's *Rumpole of the Bailey* stories.³⁶

Lieutenant Colonel Tomes is survived by his wife, two children, and one grandchild.³⁷

Kyle C. Van de Water (1980–2021)

Major Kyle Christian Van de Water died on 7 September 2021. He was 41 years old and serving in the Army Reserve at the time of his death.

Born in Rhinebeck, New York, on 9 January 1980, Kyle graduated from the University of Massachusetts-Amherst and Albany law School. He subsequently served active duty assignments in the JAG Corps at Fort Leonard Wood, Missouri; the U.S. Military Academy (USMA) in West Point, New York; and Joint Base Lewis-McChord, Washington. Major Van de Water also deployed to Afghanistan, where he served as a contract and fiscal law attorney. After transitioning to the Army Reserve in 2014, Kyle served as the senior defense counsel at Fort Hamilton with the 16th Legal Operations Detachment. Most recently, he was an individual mobilized augmentee for USMA.

As a civilian lawyer, Van de Water worked for Corbally, Garland and Rapp-

yea LLP. He was a Republican candidate for New York's 19th Congressional District Seat in 2020, but was defeated in the election by the incumbent. Kyle Van de Water is survived by his wife and four children.³⁸

Richard S. Walker (1951–2021)

Sergeant First Class Richard Stoddard "Pops" Walker died on 21 October 2021. He was 70 years old.

Born on 13 June 1951 in Jacksonville, Florida, Walker served as a medic before reclassifying as an MOS 71D Legal Specialist. He subsequently served in a variety of locations, including Fort Bragg, North Carolina, and Hawaii. Sergeant First Class Walker also taught as an MOS 71D instructor at Fort Benjamin Harrison, Indiana, and was the administrative NCO in the Office of The Judge Advocate General during the tenures of Sergeants Major John Nicolai, Howard Metcalf, and Cornell Gilmore.

An accomplished singer and songwriter, Pops Walker devoted his years after retiring from active duty to the music profession. He is survived by his wife Bobbi and son Zach Walker.³⁹

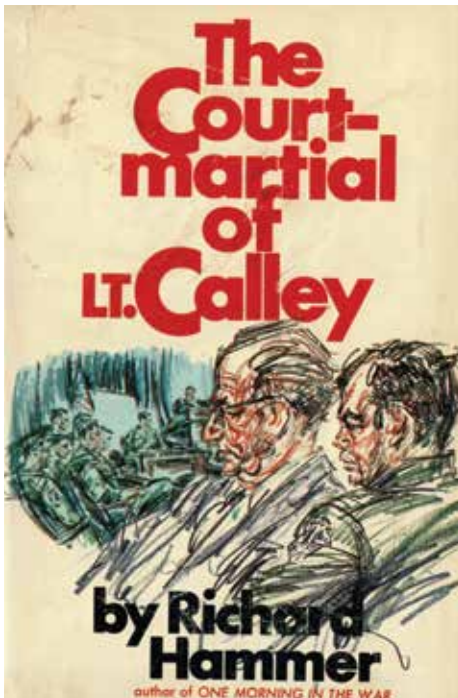
Riggs L. Wilks Jr. (1946–2021)

Colonel Riggs Louis Wilks Jr. died on 6 December 2021. He was suffering from Alzheimer's disease at the time of his death.

Born in Tennessee on 25 May 1946, Riggs earned his undergraduate degree from Trinity University. Having participated in Army ROTC, he was commissioned as a Regular Army armor lieutenant in 1968. Riggs subsequently was selected as one of twenty-five officers to attend law school under the newly created Funded Legal Education Program.

After graduating from St. Mary's University School of Law, Colonel Wilks entered the JAG Corps. His first assignment was in Germany at the 8th Infantry Division. Riggs subsequently served in a variety of assignments, including: chief, Contract Law, U.S. Army, Europe; SJA, Fort Eustis and U.S. Army Transportation Center, Virginia; and chief, Contract Appeals Division, Office of The Judge Advocate General, Washington, D.C.

After retiring from active duty, Colonel Wilks worked in the Office of General Counsel, Defense Logistics Agency until he



The Court-Martial of Lt. Calley by Richard Hammer. (Photo courtesy of author)

retired in 2011. Riggs is survived by his wife, Pamela, two sons, and five grandchildren.⁴⁰

Of Note

Richard Hammer (1928–2021)

Richard Hammer, an award-winning author whose book *The Court-Martial of Lt. Calley* was praised as “an honest, penetrating account of a crucially significant military trial,”⁴¹ died in a hospice facility in the Bronx on 17 October 2021. Hammer was 93 years old. The cause of death was heart failure, according to Hammer’s son.

Born in Connecticut in 1928, Hammer was a former reporter and editor at *The New York Times*. He won two Edgar Allan Poe Awards from the Mystery Writers of America for “best fact crime book.”⁴² Hammer also was awarded an Oscar for “best documentary, short subject” for his film, *Interviews with My-Lai Veterans*.⁴³

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

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Practice Notes

Preventing Burnout in a Post-COVID-19 World

By Major Rebecca Blood, Ph.D.

The last two years have brought on a never-before-seen era. We transitioned from seeing colleagues daily in the office to occasional meetings on Zoom: a new reality that was likely welcomed by some and hated by others. This shift was dramatic—we all learned new skills to manage our home office (*errr* dining room) situations. Courtroom proceedings were likely delayed, completed virtually, or awkwardly accomplished in large conference rooms, with chairs and tables placed six feet apart. Some families dealt with the added stress of home-schooling their children while grieving for those whose health was affected by COVID-19. On top of the global pandemic, this nation witnessed never-before-seen events, to include protests

against racially-motivated police violence, and, generally, a level of social unrest that has not been witnessed in this country for decades. Particularly poignant for Service members was the decision to formally and finally withdraw forces from Afghanistan—a decision that was welcomed by some and unwanted by others.

As attorneys and paraprofessionals, you work in an incredibly difficult and stressful environment—notwithstanding a global pandemic or national unrest. Success is often measured in work hours, a metric that is established early during law school. Therefore, it is only natural to put in long work hours in a high-pressure environment. Attorneys are asked to carry the burden of emotion-

ally-driven clients and situations, while also appearing to be unwavering and invulnerable to stress. Even as a staff judge advocate, you are the rock to your commander, often providing difficult and urgent recommendations to the command team. There are insurmountable and unique pressures on each attorney across the Judge Advocate General's (JAG) Corps, no matter the specialty—trial defense, special victim counsel, special victim prosecutor, or trial counsel.

We are all human, and as such, we all have individual and personal reactions and opinions about the pandemic, vaccine, protests, and withdrawal from Afghanistan. As consultants and advisors to your clients (to include the command), at times, it may have been difficult to separate your personal reactions from the task at hand. You are asked to provide legal guidance to your commanders as a neutral party, adhering to the law. This can be a challenging task, as stifling personal reactions can add to overall stress and feelings of incongruence and job dissatisfaction.

Pre-pandemic, attorney burnout was a constant concern.¹ The pandemic likely increased the already existing potential for burnout. Unlike the majority of the world, the Army continued to roll along. The Army continued to move Soldiers and families to new locations and, in many offices, did not implement teleworking in order to keep the courses and schoolhouses graduating new Soldiers and qualified Rangers, jumpmasters, and operators. Of course, the pandemic made some of these more routine events slightly more complicated. The pandemic also created a social isolation situation for some individuals. For Soldiers who moved during the pandemic, they may have found themselves struggling with logistics and experiencing a loss of personal connections that are typically found in joining a new office. Most hail and farewells were nixed in an attempt to keep large group gatherings at a minimum.

When we talk about burnout, it should be emphasized that burnout is not just working long hours. It is a combination—an imbalance of sorts—of working hard, having increased job demands, not having control, and not feeling rewarded.² In some ways, the pandemic only reinforced this burnout equation. Leadership has asked

Soldiers to still work hard (either remotely or in person), and for the most part, units have erased all of the “positive” reward-type activities (organizational days, hail and farewells, etc.). As mentioned, part of the burnout equilibrium includes a feeling of low control. Decision latitude is a measure of control and involves the amount of real or perceived options an employee has while completing their work.³ Lawyering is a deadline-driven profession, you often have demanding clients (for the military, that could include commanders or defense or legal assistance clients), and you have little autonomy to complete your work.

Another layer to this combined challenge of COVID-19 and burnout is having children at home due to remote learning or closed child care centers. Now that many children have returned to in-person school, there is still the interruptive, occasional remote learning due to a classmate testing positive to COVID-19. Finding time to work uninterrupted may mean working late at night when the children are sleeping or dipping into personal or relationship time. Reducing this personal time to attend to work matters can often lead to feelings of being overwhelmed, anxiety, and ultimately, burnout. Also, while this might seem counterintuitive, not having a daily commute to and from the office can also contribute to loss of boundaries (between work and home) and feelings of being overwhelmed. Many individuals use the commute as a time to decompress or unwind from the work day. Without this, the transition time is lost.

The American Bar Association (ABA) recently conducted a survey during the pandemic. Approximately 40 percent of attorneys reported that the pandemic itself added to their overall work-related stress.⁴ Research shows us though, that females and racial minorities may have been impacted differently. For females, they experienced greater disruption in work than males (52 percent compared to 34 percent, respectively), as females were more likely to report the following: increased frequency of work disrupted by family and household obligations, feeling that it was hard to keep work and home separate, and feeling overwhelmed with all of the tasks they had to do.⁵ The authors also found that persons

of color reported having greater difficulty taking time off from work and were more likely to think the day never ended.⁶

The key to managing all of these stressors: do not allow the stress to get out of hand. I know this is more easily said than done. Mitigation is the goal. I love using this example with the JAG officer basic course students, and despite all of the eye rolling and laughing, I think it effectively illustrates the point of mitigation: When the check engine light on the car comes on, that is the warning to you that something out of character is happening with your car. Our bodies give us the same warning, but it is up to us to pay attention to it and address it. Insight is essential for mitigation. Without insight, you are powerless to make any changes; however, even further, without change, insight is useless.

Having open dialogue regarding the challenges facing attorneys via dedicated education and presentations is an effective tool to support your office. Facilitating personal connections is another way for offices to support their Soldiers. If you are unable to connect in person or in large groups, scheduling a virtual hail and farewell, happy hour, or other gathering could be just as effective. Additionally, encouraging collaboration is a way for Soldiers to develop relationships that may not otherwise occur.

In addition to taking steps for education about burnout prevention, good self-care practices should be emphasized. As long as you are interacting with clients and practicing law, you will be exposed to stressful situations that may lead to instances, episodes, or seasons of burnout. This is not to say that being an attorney is a hopeless endeavor; rather, it is intended to acknowledge and normalize this as part of one's career. Preventing and mitigating burnout involves using a set of skills that are practiced over time.

Attorneys should develop habits of self-monitoring and engage in a continuous cycle of self-assessment. Some attorneys may find clients with trauma to be the most stressful, while others may find testimony about domestic violence events to be stressful. Everyone will respond and react differently. It is common for responses to ebb and flow over time, which may mean scheduling time annually or biannually to attend to



(Credit: Josie Elias – stock.adobe.com)

self-care, instead of waiting and addressing these issues only in crisis moments. During the moments of crisis, attorneys should already be aware of the resources available to them—for example, engaging in mindfulness techniques, going to a specific place that feels calming, engaging in physical activities aimed at releasing tension, or reaching out to a trusted colleague.

Cultivating a support team can also be beneficial: individuals from whom they may not only seek support but who they know will speak honestly and openly with them if their behavior changes. One of the most precarious situations is an attorney who has started to show symptoms of burnout that endangers ethical responsibilities but has not yet behaved in a way that has come to the attention of the disciplinary bar. Other attorneys could use this as an opportunity to speak up or confront the attorney, because if the behavior goes unchecked, it may escalate or create further problems for the colleague.

Research found that attorneys report using a variety of strategies to manage stress—staying physically active, spending time with spouse and family, hobbies, traveling, and participating in local communities.⁷ Regardless of the activity though, attorneys emphasized the importance of stepping away from their legal work, if only for a short time. These strategies may even contribute to being a better attorney, as they can help restore life balance, increasing efficiency.

For the past two years, the issues of JAG Corps burnout and wellness have been at the forefront of discussions at the highest levels of leadership. Wellness programs that target these specific issues of burnout are in the process of being constructed in the near future for the JAG Corps. Until those programs come to fruition, best practices include the steps identified above, and ensuring that individually, and as leaders, you are constantly re-assessing your general

health and well-being, while also actively engaging your junior Soldiers in discussions that normalize symptoms of burnout and encourage prevention and treatment. **TAL**

MAJ Blood is a licensed psychologist (clinical and forensic) and serves as the forensic consultant for the Army Regional Health Command-Atlantic. She is currently assigned to the Military Advisor Training Academy at Fort Benning, Georgia. She has been a guest speaker for both the U.S. Army Trial and Defense Counsel Advocacy Programs, as well as the Judge Advocate General's Corps's training programs more than twenty times on the issues of alcohol and memory, false confessions, vicarious traumatization, counterintuitive victim behavior, and attorney burnout.

Notes

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On 10 March 2022, Major General Joseph Berger, Deputy Judge Advocate General, and his team engaged with the 1st Special Forces Command (Airborne) Office of the Staff Judge Advocate during the special operations forces Article 6.

Practice Notes

Holistic Leadership

A New Approach to an Age-Old Responsibility

By Chaplain (Major) Joshua A. Chittim & Major Zeke Cleek

Leadership is the activity of influencing people by providing purpose, direction, and motivation to accomplish the mission and improve the organization.¹

While the degree may vary, leading subordinates is one of the most important missions of any Service member. That said, effective leaders must balance this effort with ensuring the mission is accomplished, as “[m]ission accomplishment takes priority over everything else”² The means used to accomplish the mission are our nation’s most precious commodity: its sons and daughters.³ For this (and countless other reasons), the care for and wellness of our teammates is paramount to ensuring mission accomplishment and the overall success of our Army. Applying a holistic leader-

ship approach can help leaders effectively meet their demanding missions while fostering an environment where growth and wellness flourish. The desire to improve wellness can leave leaders with many questions. Two of the most common questions include what is “wellness” and how can leaders best set the conditions for improving and sustaining the wellness of their subordinates? This article seeks to bring insight to these two questions.

This article first discusses how the Army has begun to redefine its wellness efforts with a common premise that wellness is holistic

in nature and imperative to mission accomplishment. This shift is more than simply using new vocabulary—it is changing the mindset of our culture to understand and appreciate that human wellness is a fusing of the emotional, spiritual, physical, family, and social dimensions.⁴ Holistic leadership introduces a new way to incorporate the Army's understanding of wellness and assists leaders with providing the highest quality care for their people. After establishing the need for a more comprehensive appreciation for holistic wellness, we can then focus on how leaders can better care for their subordinates.

The Army's Understanding of Wellness

In 2008, the Army established the Comprehensive Soldier Fitness (CSF) program as a means for Soldiers to build wellness and resiliency.⁵ Comprehensive Soldier fitness is built upon the foundation of physical, emotional, spiritual, social, and family strength. Later in 2014, the Army published Army Regulation 350-53, *Comprehensive Soldier and Family Fitness*, as the foundational document used to define the elements which comprise human wellness. Comprehensive Soldier and Family Fitness (CSF2) is comprised of five separate dimensions: “physical, emotional, social, spiritual, and family.”⁶ These dimensions are described as the “Five Dimensions of Strength.”⁷ To improve resiliency and strength, Soldiers need to continually develop each of these five areas. Through this developmental process, Soldiers can become the best version of themselves and more effectively contribute to overall mission success.

There have been many positive outcomes attributed to the principles described in AR 350-53 and the CSF2 concepts. The most important outcome is that the Army recognizes that human nature is complex, with multiple essential qualities. Greater understanding of the complexities of human wellness has led the Army to develop numerous programs which address the dimensions noted above.⁸ One area where CSF2 is arguably lacking is in its development and articulation of the interplay between the Five Dimensions of Strength. Because these dimensions are described as “comprehensive,” the Army has painted the

picture that each pillar is disconnected from the others. The result has been that many of the wellness initiatives that the Army has instituted have focused on individual dimensions, often without any holistic connection.⁹

It can be argued that the comprehensive approach to wellness instituted by the CSF2 campaign has resulted in “conceptual fragmentation” between the development and sustainment of wellness and readiness initiatives.¹⁰ Most significantly, this fragmentation is seen in the lack of understanding of the holistic connection between the dimensions of wellness. For Army leaders, this can be particularly challenging as wellness issues will be isolated to the attending problem without any regard to the holistic well-being of the person as a whole.

A prime example of what can occur when leaders take a segmented view to wellness is the story of the fictional Major (MAJ) Sanchez.¹¹ Major Sanchez was a superb officer. He was mentally and physically fit with exceptional technical knowledge and unparalleled communication skills. He attended West Point and was a below-the-zone select for promotion to major. While assigned as a battalion executive officer, he began to experience some personal problems at home. He and his wife were estranged and he was constantly worried about their children. It was not long before MAJ Sanchez began to lash out angrily at his staff. To cope with his marital problems, MAJ Sanchez began to drink heavily and often overslept and missed physical training. This once-devout Roman Catholic stopped attending mass and started to move away from any type of spiritual discipline. His battalion commander soon began receiving multiple complaints about MAJ Sanchez from officers and noncommissioned officers across the formation. He was also contacted by MAJ Sanchez's mother, who expressed deep concern for the well-being of her son. Based on these factors, and the marked decrease in MAJ Sanchez's performance, the battalion commander brought MAJ Sanchez in for counseling.

The example above illustrates how emotional stress resulting from MAJ Sanchez's home situation soon began to impact other areas of his life. He was not able to compartmentalize what was happening in

his family dimension. As a result, his social, spiritual, physical, and emotional dimensions all began to deteriorate. A leader's attempt to merely isolate MAJ Sanchez's issues would invariably lead to a “fragmented approach” to his healing and limit his further development.¹² Simply telling MAJ Sanchez to get anger management training or get help for his drinking would only treat those specific symptoms and do little to heal him holistically. If MAJ Sanchez's leadership truly wanted to help him, they would need to understand the holistic nature of his situation. Fortunately, the Army seems to have recognized the perceived limitations of CSF2 and is finding more effective ways to support Soldiers like MAJ Sanchez. Accordingly, the Army is evolving to a new understanding and approach to wellness as outlined in Field Manual (FM) 7-22, *Holistic Health and Fitness*.

In October 2020, the Army published FM 7-22. This FM marks a noticeable shift in how wellness is perceived within the Army: “[Field Manual 7-22] represents a cultural shift from the industrial scale approaches of the past where massed formations received the same training in a one-size-fits-all approach”¹³ The Army has recognized that all Soldiers are not the same and all Soldier issues cannot effectively be treated in isolation. The importance of this shift is significant in that FM 7-22 redefines how wellness is perceived. It also expresses the connection and interdependence between the Five Dimensions of Strength. Instead of looking at wellness like a house supported by five separate pillars, a holistic view of wellness treats each pillar as a part of a web of interconnected elements, each continuously interacting and affecting the other.

This holistic approach is seen most significantly in the way FM 7-22 describes the interplay between “physical domains” and “nonphysical domains.”¹⁴ In order for Soldiers to reach their top performance, they must have integrated physical training with nonphysical disciplines such as proper nutrition and sleep hygiene. Along with adequate sleep and a healthy diet, FM 7-22 also outlines that a person must also develop and sustain a strong spiritual life¹⁵: “Spiritual readiness is the ability to endure and overcome times of stress, hardship,

and tragedy by making meaning of life experiences. Individuals find meaning as they exercise beliefs, principles, ethics, and morals arising from religious, philosophical, and human values.¹⁶ The physical domains are directly impacted by the nonphysical domains, and vice versa.

Field Manual 7-22's overarching point of emphasis is that a Soldier cannot perform at their highest level with physical training alone. A Soldier needs to develop other skills and habits which—when coupled with physical fitness—will elevate them to achieve peak performance levels. This is not a difficult model to conceptualize. It seems almost common sense that a person who eats healthy food, gets enough sleep, has a strong moral and ethical compass, and maintains proper motivation is more likely to perform at a high level. Field Manual 7-22 does a great job of beginning the conversation about the reality of holistic health. In order to have a clear picture of what it means to be a healthy human being, a more holistic approach is needed: there is a need to incorporate all the dimensions of wellness.

The effect of the impact to each of the above domains resulted in a myriad of negative consequences and decreased overall wellness.¹⁷

Holistic Leadership

Stated most simply—wellness matters. A Soldier who is well is a more effective teammate and helps ensure mission accomplishment. As the Army gains a better understanding of the holistic web connecting the Five Dimensions of Strength that make a well Soldier, the manner in which we lead Soldiers must meet this understanding. With increased understanding, Army leaders have a new challenge: how to lead and care for Soldiers in light of a more holistic approach to wellness. Holistic leadership does not require new leadership tools. Rather, leaders must ensure they are applying the proper, existing tools in the correct manner.

The Army Leadership Requirements Model (LRM) has three competencies and three attributes all Army leaders must possess.¹⁸ Each of these competencies and attributes significantly contribute to improving and sustaining wellness and a

healthy force capable of successfully accomplishing the Army's mission. The competencies are leads, develops, and achieves.¹⁹ The attributes are character, presence, and intellect.²⁰ Each is important to leading Soldiers in a manner that incorporates their holistic wellness.

However, the scope of the second half of this article focuses only on selected portions of the leads competency and the character attribute. It will explore how leads and character provide the direction leaders need to ensure the holistic wellness of each subordinate. Specifically, the article focuses on a leader's ability to identify when their subordinate has an issue adversely impacting their holistic wellness, i.e., recognizing there is a problem. Further, it briefly discusses two important concepts for leaders to consider in helping subordinates address their wellness issue, i.e., resolving the problem.

Leads—Recognizing There Is a Problem

"Leads" is made up of five competencies.²¹ Applying three of the competencies—leads others, communicates, and builds trust—provides key doctrinal principles in providing holistic wellness as a leader. The three competencies are interrelated and, when applied together, set the conditions for a leader to 1) recognize there is a problem, or 2) enable the subordinate come to them and disclose their situation.

Leads Others

Successful leaders depend on a blend of compliance and commitment as a foundation for leading others.²² While both are necessary in leadership, commitment is deeper and actually gets to the attitude and behavior of the subordinate.²³ Obtaining commitment from subordinates is pivotal for leaders to build the foundation necessary to identify issues in a subordinate's holistic wellness.

For subordinates to move from compliance to commitment, it is important for leaders to connect with their subordinates on a personal level.²⁴ Connecting on a personal level and moving subordinates towards commitment creates a two-pronged, second order effect that helps leaders recognize issues adversely impacting a Soldier's holistic wellness. First, if a Soldier

has a personal connection with their leader, the Soldier will be more likely to approach the leader and discuss an issue. Second, connecting on a personal level "helps leaders to anticipate and understand individual circumstances and needs."²⁵ For example, if a Soldier does not voluntarily come to their leader to discuss issues impacting the Soldier's holistic wellness, a leader who has connected with the Soldier is more likely to identify the issue without the Soldier volunteering the information.

Communicates

While connecting with subordinates on a personal level is the first step in obtaining commitment, communication is the first step in creating a personal connection: "Taking adequate time to communicate when forming relationships is important to setting the right conditions . . ."²⁶ Moreover, "[o]pen communication . . . shows leaders care about those they work with . . ."²⁷ Open communication requires leaders to get out of the office and personally interact with their people: "The most effective leaders are the ones who are mobile and visible throughout the building."²⁸ If you want a personal connection that transforms Soldiers from just compliance to commitment, it starts with open communication.

Builds Trust

"Relationships built on trust enable . . . open communication."²⁹ As the doctrinal layers build, the interrelationship between these three competencies becomes more evident. Trust furthers open communication, open communication enables personal connections, and personal connections move people from compliance to commitment. The culminating effect is a leadership environment where subordinates willingly discuss their wellness issues, and, if they do not, the leaders will likely notice there is a wellness issue based on the Soldier's behavior.

While this sounds rather simple, it unfortunately requires a great deal of effort and attention for most leaders. Unfortunately, leaders fail at this over and over again. The overlooked lynchpin to this entire process is time: "Taking adequate time to communicate . . . is important to setting the right conditions . . ."³⁰ Too often we

invest our time in email, research, unnecessary meetings, and the next task at the expense of taking care of those we lead.

Character—Resolving the Problem

Character has five attributes that have specific relevance to Army leaders: Army values, empathy, warrior ethos and service ethos, discipline, and humility.³¹ Empathy is a key component of holistic wellness.

Empathy

Once a problem is identified, empathy is key to resolving it. As seen with MAJ Sanchez, leaders must exercise empathy: “Army leaders show empathy when they relate to another person’s situation Empathy [provides] a realization that leads to a deeper understanding [and] allows the leader to anticipate what others are experiencing and feeling.”³² Because empathy provides both a deeper understanding of another’s situation and allows the leader to anticipate experiences and feelings, leaders must practice empathy to better understand, care for, and improve their Soldiers’ holistic wellness. If a leader identifies the existence of a problem, but, through lack of empathy, fails to understand the root cause of the problem, they will often fall short in helping their Soldier resolve the situation.

Conclusion

Holistic leadership is not a new way to lead. Rather, it is a refocused and more complete form of leadership. This refocused leadership acknowledges that the Five Dimensions of Strength are interwoven and not fragmented pillars. By viewing holistic health as an interconnected web, leaders can avoid the pitfalls of treating Soldier wellness as merely shoring up minor cracks in a foundation of any particular pillar. Instead, leaders will be more equipped to help their Soldiers deal with immediate issues at hand without having rippling effects to other aspects of their health. Understanding that one issue can directly impact all five pillars enables a holistic leader to more effectively resolve problems and help identify the root issue, rather than merely addressing the obvious symptoms. The ability to effectively communicate and understand leadership holistically—through the pillars of the Five Dimensions of Strength—will

help both the leader and subordinate operate at their highest levels. A holistic leader is better prepared to take care of their people, lead effectively, and ensure mission accomplishment. **TAL**

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Notes

1. U.S. DEP’T OF ARMY, DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION para. 1-74 (31 July 2019) (C1, 25 Nov. 2019) [hereinafter ADP 6-22].
2. *Id.* para. 7-2.
3. *Id.* para. 6-36.
4. Army Regulation 350-53 uses the term “dimension” to describe the elements which comprise wellness. U.S. DEP’T OF ARMY, REG. 350-53, COMPREHENSIVE SOLDIER AND FAMILY FITNESS *passim* (19 June 2014) [hereinafter AR 350-53]. Field Manual 7-22 uses the term “domain.” U.S. DEP’T OF ARMY, FIELD MANUAL 7-22, HOLISTIC HEALTH AND FITNESS *passim* (1 Oct. 2020) (C1, 8 Oct. 2020) [hereinafter FM 7-22]. The terms seem to be synonymous and thus this article will primarily use the term “dimension.”
5. Jaqueline M. Hames, *Comprehensive Soldier Fitness*, U.S. ARMY (July 23, 2009), https://www.army.mil/article/24837/comprehensive_soldier_fitness.
6. AR 350-53, *supra* note 4, para. 2-1.
7. *Id.* para. 2-1.
8. This assertion is based on the author’s professional experiences as an Army Chaplain and conducting numerous Strong Bonds events with the specific intent to strengthen the family and social dimension.
9. Stephanie L. Smith, *Could Comprehensive Soldier Fitness Have Iatrogenic Consequences? A Commentary*, 40 J. BEHAV. HEALTH SERVS. & RSCH. 242, 244 (2013).
10. Paul T. Berghaus & Nathan L. Cartegena, *Developing Good Soldiers: The Problem of Fragmentation Within the Army*, 12 J. MIL. ETHICS 287, 293 (2013).
11. The story of Major Sanchez is a composite of many encounters the author has had with Army leaders during his time as an Army chaplain.
12. Berghaus & Cartegena, *supra* note 10.
13. FM 7-22, *supra* note 4, at xiii.
14. *Id.* para. 1-1.
15. *Id.* para. 1-5.
16. *Id.* para. 3-21.
17. An example is the dramatic rise in suicides during the COVID-19 pandemic as referenced in the compelling article by Haley Britzky, *The Active Duty Army Is Facing a Record Suicide Rate. Leaders Have No Idea How to*

Fix It, TASK & PURPOSE, <https://taskandpurpose.com/news/army-suicide-rate-2020/> (Oct. 14, 2021, 1:25 PM).

18. ADP 6-22, *supra* note 1, para. 1-82.
19. *Id.* para. 1-82.
20. *Id.* fig.1-3.
21. *Id.* para. 5-1.
22. *Id.* para. 5-7. See also *id.* para. 5-9 for the enumerated nine methods of influence. These methods can be implemented based on the commitment, compliance, or a combination of the two the leader has from their subordinates.
23. *Id.* para. 5-8.
24. See generally *id.* para. 5-40.
25. *Id.*
26. *Id.* para. 5-76.
27. *Id.* para. 5-80.
28. JON GORDON & MIKE SMITH, YOU WIN IN THE LOCKER ROOM FIRST: THE 7 C’S TO BUILD A WINNING TEAM IN BUSINESS, SPORTS, AND LIFE 59 (2015).
29. ADP 6-22, *supra* note 1, para. 5-46.
30. *Id.* para. 5-76.
31. *Id.* para. 2-3.
32. *Id.* para. 2-23.

one seemed to be genuinely remorseful for having harmed someone.

Major Smith attended required professional military education,⁴ military justice-specific short courses during assignments as a trial counsel and defense counsel,⁵ and many informal leadership development programs (LDPs),⁶ but felt like he was never prepared for exposure to trauma or armed to process his exposure.⁷ Familiar with the symptoms of post-traumatic stress disorder (PTSD)⁸ through his work with crime victims and preparing mitigating evidence for accused clients, MAJ Smith felt confused to confront those same symptoms himself, thinking he lived a life without any source of serious trauma.

Years later, MAJ Smith is still troubled by intrusive thoughts from his time practicing military justice: images of children being sexually abused; a father who braced himself to lose his child in combat, not in the passenger seat of a drunk Soldier's vehicle; a military spouse confiding that she would not testify about years of abuse so as to not risk financial insecurity for her family; the list goes on. In reviewing images and videos of child abuse and questioning victims about the assaults perpetrated on them, MAJ Smith feels complicit in some of the crimes he prosecuted,⁹ and often worries that these same crimes will befall his family.¹⁰ However, he keeps this to himself, refusing to believe he could be so affected by events that happened to other people, feeling that his experience—far removed from combat—could not be truly “traumatic.”¹¹

Judge Advocate General's (JAG) Corps personnel¹² may experience trauma¹³ and moral injury¹⁴ directly or indirectly. Over the last two decades of military conflict in Iraq and Afghanistan, JAG Corps personnel have been directly exposed to traumatic events in combat operations.¹⁵ In contrast, JAG Corps personnel involved in military justice, removed from direct exposure to trauma, are intimately involved in others' trauma.

The effect of the trauma of others—secondary trauma—is the focus of this article. Military prosecutors, defense attorneys, and paralegals can experience secondary trauma through interviewing crime victims, listening to them recount their most traumatic moments, and by reviewing trau-

matic material, such as child abuse images¹⁶ or blood-soaked crime scenes. Special victims' counsel work directly for victims of traumatic crimes, guiding them through the military justice system and advocating for their rights and interests.¹⁷ Military judges, court reporters, and other judicial personnel are also affected by the trauma experienced in trial.¹⁸ Personnel not highly engaged in trial activity, such as military justice advisors, paralegal support staff, and appellate attorneys, are not immune to the effects of secondary stress.¹⁹

Major Smith's problems are not unique to legal personnel in the JAG Corps community. Burnout, dissatisfaction with work, and stress are problems that affect a large percentage of both lawyers and law students.²⁰ Similarly, other professionals who assist victims, investigate and prosecute crimes, and those who work to rehabilitate offenders—such as first responders, investigators, and mental health professionals—suffer from their exposure to others' trauma.²¹ But judge advocates face unique stressors due to their status as military members, lack of opportunity to select cases, frequent interactions with sex-crime victims, and frequent exposure to traumatic events and material.²²

Over the last two decades of continuous combat, the Army has invested time and effort to demystify and destigmatize mental health struggles that result from trauma—decentralizing mental health professionals, removing questions from security clearance applications, and educating Service members about the availability of treatment.²³ The civilian legal community has, over the last decade, invested a great deal of time, money, and effort studying the causes and effects of secondary trauma on their practitioners.²⁴ Although the Army's Criminal Investigation Division created a wellness program in 2019 to directly address secondary trauma in their personnel, the JAG Corps has not similarly emphasized or prioritized the effect and impact of a mission that exposes our personnel to secondary trauma.²⁵

The JAG Corps must invest in the well-being of our personnel by directly focusing on secondary trauma. These efforts should start in initial officer and enlisted member training to prepare personnel for

what they might experience.²⁶ Secondary trauma, its symptoms, and the effects of those symptoms should be incorporated into informal training at the unit and office level, and leaders in our Corps should be able to recognize the effects of secondary trauma in their personnel. Open, honest, and frank discussions by JAG Corps leaders about their experiences with secondary trauma may help members of our Corps readily identify when they are suffering from secondary trauma, and seek help at an early stage.

Secondary Trauma, Burnout, and Compassion Fatigue

Secondary trauma, also known as secondary traumatic stress and vicarious traumatization, occurs when professionals develop symptoms of trauma exposure or PTSD as a result of exposure to the trauma of others.²⁷ Other examples of secondary trauma are burnout and compassion fatigue.²⁸ Compassion fatigue refers particularly to the development of post-traumatic stress symptoms when working with victims of sexual assault.²⁹ Burnout is “a response to the interpersonal stress of work with people who are in emotionally demanding situations.”³⁰

In attorneys, secondary stress symptoms can cause attorneys to “react defensively by avoiding cases with traumatic content”; “downplay[] a case's degree of severity”; “rationaliz[e] the case's destructive impact”; attempt to rescue a client, and become overly-involved as a manifestation of defensive reactions; and/or fail to maintain professional boundaries.”³¹ These symptoms can have a direct impact on the ability of JAG Corps personnel to carry out their assigned duties.

The Effect on the Corps

In a 2016 study of 13,000 American attorneys, between 21 and 36 percent qualified as problem drinkers, 28 percent struggled with depression, 19 percent with anxiety, and 23 percent struggled with stress.³² Numbers among law student were similarly alarming, with a large number of the 3,300 studied reporting binge drinking, severe anxiety, and depression, and 6 percent reporting serious thoughts of suicide.³³ One-quarter of those students were in a risk category for alcoholism.³⁴ It is likely that some of these

law students and lawyers, interviewed for the study six years ago, are now officers in the JAG Corps. It is also likely that the JAG Corps's uniformed attorneys struggle with these same problems.

Members of the JAG Corps are at increased risk of developing secondary stress symptoms due to their status as Service members, inability to select their own career field (military justice, administrative law, etc.), and general inability to select their own cases.³⁵ Military trials often deal with sex crimes—prosecutors, defense counsel, SVCs, judges, court reporters, and paralegals are often exposed to voluminous amounts of traumatic and difficult material.³⁶ Judge advocates are less likely than other Soldiers to seek behavioral health services.³⁷

Secondary trauma, compassion fatigue, and burnout directly affect the JAG Corps's mission to provide premier legal services by reducing the effectiveness of our personnel, which impacts their ability to do their jobs and motivation to remain in the military. Trauma affects individuals and their relationships with coworkers and their families.³⁸ It can alter memories, decrease concentration, and lead to numbing, avoidance of the source of trauma, detachment, and estrangement.³⁹

In the workplace, secondary trauma can have a deleterious effect on the Army's ability to administer justice. A senior prosecutor, suffering from the effects of secondary trauma, might feel like the world is less safe, have nightmares about accused Soldiers committing crimes against their own children, and withhold exculpatory evidence in an effort to lock up offenders and protect their family.⁴⁰ A defense counsel representing a client pleading guilty to possession of child pornography may avoid the detailed examination required to ascertain if charged images meet the definition of the offense.⁴¹ Defense counsel are particularly at risk, as they alone are charged with having privileged communication with perpetrators, sometimes learning about additional misconduct, the motivations behind why their clients commit crimes, and knowing some of their clients lack a scintilla of the remorse they might later act out during sentencing testimony.⁴²

Special victims' counsel with compassion fatigue may blame a client for the

Secondary trauma, compassion fatigue, and burnout directly affect the JAG Corps's mission to provide premier legal services by reducing the effectiveness of our personnel,

crime perpetrated against them and treat the client as if they deserved the crime.⁴³ A military magistrate, avoiding a source of previous secondary trauma, might authorize a search without reviewing the evidence supporting the search. Studies have shown that judges suffering from secondary trauma may blame victims, fail to logically apply legal rules, exclude evidence to protect jurors, and administer severe punishments in reaction to their own previous trauma.⁴⁴

Secondary trauma may also impact the ability of the JAG Corps to retain qualified personnel. Judge Advocate General's Corps personnel experiencing secondary trauma may have difficulty with authority, feel hopeless, have little work satisfaction, question their own competence, and feel disillusioned about work.⁴⁵ On top of family stresses inherent in military service, secondary trauma introduces emotional distress, avoidance, angry outbursts, fatigue, negative thinking, and compromised parenting into the Service member's home.⁴⁶

In the wake of the *Report of the Fort Hood Independent Review Committee*, sexual assault investigations and subsequent trials are receiving even more attention and scrutiny.⁴⁷ The current political climate inevitably places additional pressure and stress on attorneys who are litigating these cases.⁴⁸ Trial counsel may feel compelled to push cases forward to court-martial, while defense counsel may believe that they are operating within a shattered justice system. Systemic constraints only serve to further prime attorneys to experience symptoms from vicarious trauma and burnout.

Leadership and Education

Early intervention is important in confronting secondary stress in the JAG Corps.⁴⁹ Although it will probably not prevent traumatic reactions to difficult material and situations, JAG Corps personnel should be prepared to confront such material, and the Corps as a whole should

evaluate how to minimize unnecessary exposure.⁵⁰ The curriculum for paralegals and officers in initial training and military justice short courses should devote time to clearly explain burnout, compassion fatigue, secondary traumatic stress and their symptoms, and how JAG Corps personnel can get help for those symptoms. Instructors should be open and frank about their own experiences in traumatic situations. Judge advocates, legal administrators, and paralegal Soldiers should be aware of secondary stress risk factors, how to practice self-care, seek help when required, and how to work with clients who are victims of trauma.⁵¹

Mental health stigma in the military is a long-standing barrier to help-seeking behavior.⁵² Adding to the difficulty of seeking care is the pressure to be "strong" for clients and victims, as attorneys often carry the burden of their client's angst.⁵³ There is a demand, often unspoken, to present as a solid foundation or source of support for the client.⁵⁴ Also noteworthy, as the term "trauma" is discussed, it is usually not a momentous event experienced; rather, the typical progression is one that builds over time.⁵⁵ Vicarious trauma is often a quiet, creeping decline over time, an accumulation of witnessing difficult material and events. It is the hundreds of child sexual abuse images viewed over years, the multiple sexual assault cases, the numerous victim and child abuse testimonies. It is not typically a single, noticeable event. Education should include discussions about the gradual introduction of symptoms over time.

Chiefs of justice and other senior members in military justice shops should set aside time with new personnel before assigning them to their first case in which they interview alleged sexual assault victims or review child sexual abuse images.⁵⁶ Quarterly or informal counseling sessions should be used to check in on subordinates' well-being and addressing early identifiers of secondary stress: changes in mood, such as anger or crying; changes in behavior,

such as frustration, impatience, or increased alcohol consumption; overreaction, such as angry outbursts in court or at home; and decreased trust in others.

At the local office of the staff judge advocate, LDPs should address forms of secondary trauma and resources available to cope with the stressors that lead to trauma. When developing LDPs, leaders can coordinate with the uniformed and civilian mental health professionals employed by the Army to conduct classes on stress, secondary trauma, burnout, and coping mechanisms. Additionally, if leaders are open about their difficulties in handling traumatic material, subordinates may be more likely to discuss their struggles. Open door policies are only effective if subordinates use them.

In conclusion, we, as leaders in the JAG Corps, should directly address secondary trauma. It will affect our personnel—their work and home life—and the JAG Corps's ability to carry out its mission and retain qualified personnel. We should prepare judge advocates and paralegals to experience others' trauma and for the resulting burnout, compassion fatigue, and secondary trauma that may result from that experience. Through preparation, our personnel can recognize the symptoms of secondary trauma, and hopefully seek help or treatment for those symptoms early, before the secondary trauma has a permanent and lasting impact on the lives of our officers, Soldiers, and their Families. **TAL**

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Notes

1. *Law & Order: Special Victims Unit* (NBC 1999–).
2. See, e.g., Major Matthew Forst, *Restoring Due Process and Strengthening Prosecutions: Making the Article 32, UCMJ, Hearing Binding*, 229 MIL. L. REV. 481, 500 (2021) (“Of the 235 cases [in a recent Congressional report on courts-martial] that went to verdict, 144 (61.3%) cases resulted in acquittal of the penetrative offenses.”).
3. Testimony of Michelle Collins, Vice President, Exploited Child. Div. & Assistant to the President of the Nat'l Ctr. for Missing & Exploited Child., Before the U.S. Sentencing Commission: Federal Child Pornography Offenses 4–5 (Feb. 15, 2012) (“Of the identified victims whose images were frequently submitted by law enforcement . . . [76%] of these images depict

the abuse of prepubescent children, of which 10% are infants and toddlers; and 24% depict pubescent children. . . . [Fifty-two percent] of the series depict the use of foreign objects; 44% . . . depict bondage and/or sadomasochism; 20% . . . depict urination and/or defecation; and 4% . . . depict bestiality. [Seventy-nine percent of] child victims identified by law enforcement . . . were victimized by an adult they knew and trusted—a parent/guardian (22%) . . .”).

4. See OFF. OF THE JUDGE ADVOC. GENERAL, JUDGE ADVOC. LEGAL SERVS. PUB. 1-1, PERSONNEL POLICIES ch. 7 (2022).

5. U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE paras. 6-6, 21-4 (20 Nov. 2020).

6. U.S. DEP'T OF ARMY, FIELD MANUAL 6-22, LEADER DEVELOPMENT ch. 2 (30 June 2015).

7. Yael Fischman, *Secondary Trauma in the Legal Professions, a Clinical Perspective*, 18 TORTURE 107, 109 (2008) (“[L]awyers are not traditionally trained to address work-related emotions or acknowledge the potentially traumatic impact that their work may have on them and, by extension, their clients.”).

8. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 (5th ed. 2013).

9. See Ateret Gewirtz-Meydan et al., *The Complex Experience of Child Pornography Survivors*, 80 CHILD ABUSE & NEGLECT 238, 239 (2018) (“For children in [child pornography] images . . . the abuse is ongoing, with no definable end . . . [V]ictims were continually traumatized when they thought about who might be viewing the images . . .”); United States v. Barker, 77 M.J. 377, 382 (C.A.A.F. 2014) (“Child pornography is a continuing crime: it is ‘a permanent record of the depicted child’s abuse, and the harm to the child is exacerbated by [its] circulation.’” (quoting Paroline v. United States, 572 U.S. 434, 440 (2014))).

10. Major Evan R. Seamone, *Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals*, 11 OHIO ST. J. CRIM. L. 487 (2014) (a common worry for those who work with child abuse cases is that their own children will be similarly abused).

11. See, e.g., E.M. Liddick, *No Legal Objection, Per Se*, WAR ON THE ROCKS (Apr. 21, 2021), <https://warontherocks.com/2021/04/no-legal-objection-per-se/>.

12. In this article, Judge Advocate General's Corps personnel refers to officers, warrant officers, enlisted Soldiers, and civilians assigned to the Judge Advocate Legal Services. See U.S. DEP'T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES para. 3-1 (24 Jan. 2017).

13. Fischman, *supra* note 7, at 108 (“Psychological trauma refers to an experience that is emotionally painful, distressful, or shocking. It creates a psychological wound that may lead to substantial negative impact to a person’s physiological, psychosocial and family systems.”).

14. Brett T. Litz et al., *Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy*, 29 CLINICAL PSYCH. REV. 695, 700 (2009) (moral injury is caused by “perpetrating, failing to prevent, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations[,] . . . participating in or witnessing inhumane or cruel actions, failing to prevent the immoral acts of others, as well as engaging in subtle acts or experiencing reactions that, upon reflection, transgress a moral code[,] . . . and bearing witness to the aftermath of violence and human carnage . . .”).

15. See, e.g., Sergeant First Class Steven Day, *In Memoriam: Corporal Sascha Struble*, ARMY LAW., Apr. 2006, at 1, 3 (“Good friends are hard to find, harder to leave and impossible to forget. Sascha was a great man and even better friend to us all. My wife and I will miss you. Life will not be the same where ever we go; we will surely miss you. Until we meet again, the foot prints you left on my heart will be felt for the rest of my days.” (quoting Sergeant Jeremy Campbell)); Liddick, *supra* note 11 (“I will never know whether I could have altered fate or prevented the loss of innocent lives had I only done more, had I only spoken up, had I only insisted on something—anything—different. This is the punishment for my crimes—an agonizing purgatory of eternal remorse and what-ifs. Befitting the job, it’s a lonely place indeed.”).

16. “Child pornography” is the term used by the Uniform Code of Military Justice and other criminal statutes. See, e.g., MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 95 (2019); 18 U.S.C. § 2252A; VA. CODE ANN. § 18.2-374.1:1 (2020). *But see* Ateret Gewirtz-Meydan et al., *supra* note 9, at 238 n.1 (“We recognize that many professionals and researchers in the field prefer to use the term child abuse images due to concerns that the term ‘child pornography’ may imply victim compliance or understate the harm to the victims.”).

17. U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 7-5 (26 Mar. 2020).

18. Jennie Cole-Mossman et al., *Reducing Judicial Stress through Reflective Practice*, 54 COURT REV. 90, 90 (2018).

19. Seamone, *supra* note 10, at 503.

20. NAT'L TASK FORCE ON LAW. WELL BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR CHANGE (2017).

21. Shiloh A. Catanese, *Traumatized by Association: The Risk of Working Sex Crimes*, FEDERAL PROB. J., Sept. 2010, at 60, 62 (“At a minimum, six people are professionally exposed to one sexual offender’s crime.”).

22. Major Rebecca A. Blood, *Preventing Burnout in the JAG Corps*, ARMY LAW., no. 6, 2019, at 39.

23. Major Cara-Ann M. Hamaguchi, *A Precarious Balance: Managing Stigma, Confidentiality, and Command Awareness in the Mental Health Arena*, 222 MIL. L. REV. 156, 156 (2014).

24. See, e.g., Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946 (2011); NAT'L TASK FORCE ON LAW. WELL BEING, *supra* note 20.

25. Lieutenant Colonel Aimee M. Bateman, *People First, Including You: The Importance of Self-Care*, ARMY LAW., no. 6, 2019, at 35, 36 (the Army Criminal Investigation Division (CID) has created a “Wellness Program,” consisting of embedded wellness teams at the CID battalion level, which “grew out of the acknowledgment that ‘repeated exposure to traumatic investigative situations and associated investigative material can significantly affect psychological well-being, as well as cause strain to family relationships, reduce resilience, and negatively impact readiness.’”) (quoting U.S. Army Crim. Investigation Div. Command, Information Paper, subject: CIDC Wellness Program para. 2 (11 June 2019)); Blood, *supra* note 22. *But see* The Judge Advoc. Gen. & Deputy Judge Advoc. Gen., U.S. Army, TJAG & DJAG Sends, Vol. 41-06, JAG Corps Wellness Survey (16 Nov. 2021) (“[T]his survey will help guide and shape broader efforts across our Corps to ensure

we are taking better care of all of our people. . . . [and] provide an improved understanding of the JAG Corps' wellness and allow us to develop initiatives and provide resources responsive to the needs of all our personnel.”).

26. The Judge Advocate Officer Basic Course currently has a one-hour block of instruction, “Identifying Burnout & Secondary Trauma,” taught by a unformed behavioral health specialist, and a one-hour block of instruction, “Special Victims (DV) & Empathy.” The Judge Advoc. Gen.’s Legal Ctr. & Sch., 216th Officer Basic Course Curriculum (2022) (on file with author).

27. Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, 34 A.B.A. CHILD L. PRAC. 129, 130 (2015).

28. Blood, *supra* note 22

29. *Id.*

30. *Id.* at 39.

31. Seamone, *supra* note 10, at 509–10 (quoting Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965, 988 (2007)).

32. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48 (2016).

33. SPECIAL COMM. ON LAW. WELL-BEING, VA. STATE BAR, *THE OCCUPATIONAL RISKS OF THE PRACTICE OF LAW* 5 (2019).

34. *Id.*

35. Blood, *supra* note 22, at 40.

36. *Id.* This assertion is also based on the author’s experience as trial counsel and trial defense counsel from January 2015 to July 2019, wherein he reviewed tens of thousands of images and videos of child sexual assault, interviewed victims of domestic violence and sexual crimes, and represented Soldiers convicted of homicide, assault, rape, and sexual crimes against children [hereinafter Professional Experiences].

37. Blood, *supra* note 22, at 40.

38. Fischman, *supra* note 7, at 108.

39. *Id.*

40. Seamone, *supra* note 10 (describing how lawyers often have thoughts and nightmares where their family members are victims of crimes the lawyers have experienced at work, and people who work with crime victims and in the criminal justice system often feel like the world is less safe. Other professionals who work with traumatic material do not allow their children to have cell phones, sleep over at friends’ houses, or even play in their own yards.).

41. Professional Experiences, *supra* note 36. Inexperienced prosecutors—confronted with horrendous images of child sexual abuse and exploitation—often tend to overcharge in cases involving child pornography, failing to make a detailed analysis of sometimes hundreds or thousands of images and videos to determine if they each meet the elements of the offense (for example, an image of a very young nude child, obviously created and distributed for the intent of sexual gratification, that depicts a lascivious exhibition of the genitals or pubic area of that child). *Id.*

42. *Id.*; Seamone, *supra* note 10, at 506.

43. Seamone, *supra* note 10, at 490 (“Victim-blaming is sadly a common response in professionals who work with victimized persons.”).

44. *Id.* at 512–13. *See also* Kiley Tilby & James Holbrook, *Secondary Traumatic Stress Among Lawyers and Judges*, 32 UTAH BAR J. 20, 22 (2019) (a risk factor for secondary stress is an “expect[ation] to hear about others’ traumatic events without showing emotion, judgment, or being noticeably affected . . .”).

45. Blood, *supra* note 22, at 40; Tilby & Holbrook, *supra* note 44, at 22.

46. Tilby & Holbrook, *supra* note 44, at 22.

47. Lolita C. Baldor, *Army Under Fire from Congress over Fort Hood Response*, AP NEWS (Mar. 16, 2021), <https://apnews.com/article/criminal-investigations-army-sexual-assault-crime-violent-crime-01f74af-3f2e8498685c57237bf3e4615>.

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49. Blood, *supra* note 22, at 41.

50. *See, e.g.*, Major Nicole A. Rimal, *Omitting Child Pornography from Guilty Pleas*, ARMY LAW., no. 1, 2022, at 44.

51. Tilby & Holbrook, *supra* note 44, at 22.

52. Terri Tanielian et al., *Barriers to Engaging Service Members in Mental Health Care Within the U.S. Military Health System*, 67 PSYCHIATRIC SERVS. 718 (2016).

53. Seamone, *supra* note 10, at 492.

54. SPECIAL COMM. ON LAW. WELL-BEING, *supra* note 33, at 31 (“The first, and perhaps the most dangerous, of the risks associated with representing the interests of others is also the noblest aspect of the legal profession: the attorney’s role as champion for his or her client. Lawyers necessarily shoulder the legal burdens of others, assuming the responsibility (and related stressors) of each case.”).

55. *Id.* at 31.

56. The author spoke with several judge advocates who have had a similar trial counsel experience of being detailed to their first case involving child pornography and going to the installation Criminal Investigation Division office to review the evidence, and later realized how unprepared they were to witness images of minors being raped and sexually exploited. Professional Experiences, *supra* note 36.



Cadets with Auburn University Army ROTC and Tuskegee University Army ROTC programs work together to conquer an obstacle course during their field training exercise at Fort Benning, Georgia. (Credit: 1LT Stephanie Snyder, U.S. Army)

Practice Notes

Resolving Military Extremism Through Inclusion

By Chief Warrant Officer 5 Ron E. Prescott

After the January 6th insurrection, there were clamors for the Department of Defense (DoD) to prevent individuals with extremist views from joining the military and to identify and rid military ranks of individuals who held extremist ideologies. While an exclusionary framework may be an adequate strategy for eradicating extremism when it's identified, a superior strategy would message the benefits of diversity and inclusion to organizational cohesion and expose the incompatibility of extremism to military service. As such, military leaders could be charged to positively shape the thinking of Service members by reinforcing inclusion principles inherent in establishing effective teams. By so doing, leaders would interrupt and disrupt ideological and exclusionary frameworks misaligned with military service before extremist ideas could compel Service members to carry out extremist acts.

As Americans contemplate the events of January 6th, we recognize that there is a significant possibility that an insurrection would not have occurred, or would have been less likely to have occurred, except for the year of COVID-19. Identifying COVID-19 as a contributor to the storming of the Capitol on January 6th, 2021, is not intended to obscure the role of people who peddled the false narrative of a stolen election that created the conditions for the insurrection. Without the information silos that the COVID-19 environment fostered, however, a stolen election narrative would have been unlikely to take hold and cultivate the groundswell of individuals who marched on the Capitol.

This article first explains the process of online radicalization and offers an example of how it has happened within the U.S. Army. Next, the article acknowledges and discusses the necessity

of addressing threats inside our ranks, and suggests that current law and policy requires updating to best and truly serve the needs of the force. Finally, the article proposes that inclusivity is the most effective way to combat that threat.

Online Radicalization

In a pandemic-free environment, most Americans would have been more likely to encounter perspectives that differed from their own, or that contrasted with those with whom they regularly communicated. The pandemic caused limitations on social interactions, family gatherings, workplace attendance, and reduced travel, all of which placed Americans in echo chambers that reinforced and intensified their beliefs. Much of the information that Americans consumed during the pandemic came from social media platforms (e.g., Facebook, Instagram, Twitter, or TikTok), which saw a 32 percent increase in U.S. usage in March 2020 during the start of the lockdowns.¹ To better engage users, social media sites use algorithms to provide “interesting” user-content similar to or aligned with previous content with which a user has positively interacted. As such, previous user-content interactions through, for example, “likes,” “loves,” or “shares” influence what is prioritized in users’ feeds. Consequently, previous “likes” or “shares” of a particular political candidate’s message, or contributions to a candidate’s campaign based on a Facebook advertisement, for example, are used to curate the social media experience.

Accordingly, supporters of political candidates or parties would have seen their information apertures narrowed based on their political inclinations, which could have led supporters of President Donald Trump, for example, to believe the election was stolen from him. By having less diverse media sources, or by relying on the curated feeds of social media platforms, fewer opportunities existed for Americans to disrupt and interrupt incorrect information, which, by January 6th, likely played a role in their radicalization (i.e., “the process by which people come to support terrorism and violent extremism and in some cases, then join terrorist groups”).² The radicalized behavior that we observed on January 6th indeed resembles some of the behaviors

that our intelligence communities witnessed after September 11th, and during the subsequent Global War on Terror, where as many as 28,000 foreign fighters, some of whom were radicalized online, fought on behalf of the Islamic State in Iraq and Syria

commit acts of terror at home has received significant focus. The lone-wolf attack of Major Nidal Hasan, for example, has figured prominently in conversations about what compels certain persons to act against the very people and institutions that they

The pandemic caused limitations on social interactions, family gatherings, workplace attendance, and reduced travel, all of which placed Americans in echo chambers that reinforced and intensified their beliefs.

(ISIS).³ A 2013 RAND study that examined the radicalization of fifteen terrorists in the United Kingdom found, similar to the men and women who stormed the Capitol on January 6th, that “the internet had been a key source of [their] information, communication, and propaganda . . .”⁴ In sum, the internet acted like an echo chamber that confirmed the existing beliefs of radicalized men and women involved in the Capitol Riot, some of whom were military personnel, and facilitated their adopting, internalizing, and acting on a political ideology to challenge the status quo.

Preconditions, Proximal Events, and Precipitants

Although the January 6th insurrection might not meet the definition of terrorism given that violence on that day may have been spontaneous and it was a mass participation event,⁵ media outlets and federal investigators have found evidence suggesting that insurrectionists were following plans and had made preparations to storm the Capitol.⁶ Scholar Martha Crenshaw’s conceptual framework for analyzing possible circumstances that set the stage for terrorism could be used to understand how certain conditions may have led to the day’s outcomes. According to Crenshaw, “factors that set the stage for terrorism over the long run,” are characterized as preconditions, and proximal events, which immediately precede the terrorist act, are precipitants.⁷

Since the September 11th attacks, the radicalization of individuals willing to

swore to defend. Nidal Hasan was an Army psychiatrist who, on November 5th, 2009, killed thirteen people (twelve Soldiers and one civilian) and wounded thirty-two others at a Fort Hood deployment mobilization site.⁸ Subsequent discussions about Hasan’s radicalization focused on his increased religiosity following his mother’s death, his connectedness or lack thereof to people and society, and the influence of radical Islamic scholars and the religious cleric Anwar al-Awlaki, whose sermons Hasan obsessively consumed and with whom Hasan interacted online.⁹

I compare Nidal Hasan’s terrorist actions on Fort Hood with those of the insurrectionists because, similar to 20 percent of the insurrectionists charged who had served or were serving in the military,¹⁰ Hasan violated his oath to the Constitution and the insurrectionists abandoned principles they once swore to uphold. Analyzing Hasan’s actions in accordance with Crenshaw’s framework suggests that Hasan’s increased religiosity following his mother’s death and his eventual online radicalization were the preconditions that laid the foundations for his violent actions, while his unanticipated deployment orders to Afghanistan were the proximal event or precipitant. In the case of the insurrectionists, preconditions could have been partly set by an extremely divisive political climate, frustrations surrounding COVID-19 lockdowns, job losses, social isolation, and the communication bubbles or information echo chambers in which many Americans found themselves in 2020. The failure to acknowledge an

election defeat, which produced a cascade or cavalcade of events designed to undo the election's results leading up to a "Stop the Steal" rally at the Capitol could be proposed as the precipitating proximal event.

Extremism in the Ranks

Having been assigned to III Corps and Fort Hood and engaged in deployment preparation at the mobilization site days prior to Hasan's attack, I was profoundly impacted, as many Soldiers were, by the Fort Hood Massacre. Many of us assigned to Fort Hood then were somewhat concerned about potential "enemies" in our ranks rather than solely focused on our enemies abroad. A similar sentiment was felt by Service members after the January 6th insurrection because of concerns that extremists had infiltrated military ranks.¹¹ In February

I was, however, reassured by the thoughts of Lieutenant General Charles Pedo, the 40th Judge Advocate General, who, during the training, noted that extremism must be countered from the middle of the field, or the moral mid-field. In his view, one with which I agreed, countering extremism was not about learning how close one could get to the boundary. Rather, combatting extremism required active engagement to dissuade extremist behavior well before any line was crossed, interrupting extremist messaging that could lead to radicalization, and replacing extremist messaging with ideas that promoted the military's ideals of respect, diversity, and inclusivity inherent in effective military teams.

As leaders, it is our duty to provide our subordinates with a better vision than

leaders who were best-equipped to interrupt messaging that could lead to extremist conduct likely felt restricted from doing so.

Further, given the definition of partisan political activity as outlined in DoD Directive 1344.10 (i.e., "[a]ctivity supporting or relating to candidates [or] issues not specifically identified with, national or State political parties")¹⁶ and the fact that many social issues which are not inherently political in nature have been staked out by political parties, leaders have become more wary of addressing issues that could be interpreted through a partisan lens. One can see this reflected in the issues of, for example, support for the Second Amendment, or the Black Lives Matter movement, which are political lightning rods. The intersection between socio-political and partisan issues have restrained leaders' desires to address issues for fear that their comments could be deemed partisan. As a consequence, reduced leader engagement in subordinates' lives has created leadership vacuums in the idea arena, which are easily filled by social media.

extremism must be countered from the middle of the field, or the moral mid-field.

2021, to address extremism in the military, Secretary of Defense Lloyd Austin directed Service members to conduct "stand-down" training.¹² The stand-down training's goals were to reinforce military values associated with Service members' oath to the constitution and to understand "our" experiences with extremism.¹³ I participated in extremism stand-down training as a member of the Office of The Judge Advocate General. The bulk of our "Combating Extremism Training: Impermissible Behaviors and Reporting Requirements" focused on defining the boundaries detailed in Army Regulation 600-20, paragraph 4-12b, which Soldiers should not cross lest they face "the full range of statutory and regulatory sanctions, both criminal (UCMJ), and administrative."¹⁴ During the training, I thought its purpose was to install behavioral fence posts rather than working towards actively disrupting, interrupting, or eradicating extremist beliefs from our ranks. I felt an opportunity to communicate the superiority of the Army's inclusive organizational values over extremist rhetoric peddled on social media was being missed.

the ones they receive via memes on social media. Instead of employing an exclusionary approach, success could be achieved by highlighting the merits of inclusion, which are already apparent in units large and small. The goal of leader engagement is to shift the thinking of individuals who hold extremist perspectives through immersive inclusion designed to build strong bonds that forms cohesive teams.

Returning the discussion to the information silos that influenced the events of January 6th, one recognizes that reduced access to divergent or contrary information had a contributory impact on the day. Military personnel involved in the Capitol riot likely did not receive or heed divergent messaging from military leaders, who themselves might have been concerned about violating DoD Directive 1344.10, directing members on active duty not to engage in partisan political activity, and if not on active duty, to "avoid inferences that their political activities imply or appear to imply official sponsorship, approval or endorsement . . . of . . . a partisan political party, candidate, or cause."¹⁵ Consequently,

Recommendations

To ensure leaders do not feel unduly inhibited from providing experienced perspectives—to the extent that a partisan activity could devolve into extremism—it should be made clearer in law or policy that military leaders have the ability to refocus Service members on their responsibilities to the Constitution. The current language of DoD Directive 1344.10 is not written in basic terms that any commander or Service member can readily understand; while there should be room for maneuver, the current language is too ambiguous to provide good guidance to our leaders on their left and right limits. This ambiguity has led to the perhaps unintended consequence of stifling good and productive discussions. To ensure that our leaders better understand the parameters of discussions of socio-political issues and that a fair exchange of ideas are not perceived as partisan, the language in DoD Directive 1344.10, paragraph 4.1.1.1., should be changed from

"A member of the Armed Forces on active duty may: Register, vote, and express a personal opinion on politi-

we have to promote the military message of inclusion and teamwork so that we can disrupt, interrupt, and eradicate extremist ideologies before they take hold.

cal candidates and issues, but not as a representative of the Armed Forces.”¹⁷

to

“A member of the Armed Forces on active duty may register, vote, and express a personal opinion on socio-political issues, but may not specifically endorse a partisan political activity or candidate as a representative of the Armed Forces.”

Additionally, the intentionally ambiguous paragraph 4.1.5. of the Directive should be deleted.¹⁸ If there are concerns about the partisan nature of certain activities, then those activities should be expressly prohibited rather than relying on the spirit or intent of the policy to limit conduct. Although DoD Directive 1344.10 is written to easily convey permissible and prohibited activities, the construction of the directive does not allow nuance, and has produced a situation where leader engagement on socio-political rather than partisan issues may be viewed as intolerable.

Conclusion

To combat extremism, leaders cannot cede the information space or relinquish leadership on consequential socio-political issues to social media companies. Moreover, we cannot foster an inclusive organizational environment by installing behavioral fence posts that serve to identify how far individuals can go before they go too far. Instead we have to promote the military message of inclusion and teamwork so that we can disrupt, interrupt, and eradicate extremist ideologies before they take hold. Furthermore, we must highlight the merits of inclusion and replace extremist views with the military values of respect, selfless service, and integrity. And finally, we must communicate the superiority of inclusion, echo the sentiments of cohesion, and deride ideological and exclusionary frameworks that are

misaligned with military service to rid and keep extremism from our ranks. **TAL**

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12. Memorandum from Sec'y of Def. to Senior Pentagon Leadership & Def. Agency and DoD Field Activity Dirs., subject: Stand-Down to Address Extremism in the Ranks (5 Feb. 2021).

13. C. Todd Lopez, *Extremism Stand Downs Focus on Oath, Not Data Collection*, U.S. DEP'T OF DEF. (Mar. 30, 2021), <https://www.defense.gov/Explore/News/Article/Article/2555883/extremism-stand-downs-focus-on-oath-not-data-collection/>.

14. U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 4-12b (24 July 2020).

Soldiers are prohibited from the following actions in support of extremist organizations or activities. . . . (1) Participating in public demonstrations or rallies. (2) Attending a meeting or activity with the knowledge that the meeting or activity involves an extremist cause when—

- (a) Whether on or off duty.
 - (b) Whether in or out of uniform.
 - (c) In a foreign country (whether on or off-duty or in or out of uniform).
 - (d) It constitutes a breach of law and order.
 - (e) It is likely to result in violence.
 - (f) In violation of off limits sanctions.
 - (g) In violation of commander's order.
- (3) Fundraising activities. (4) Recruiting or training members (including encouraging other Soldiers to join). (5) Creating, organizing, or taking a visible leadership role in such an organization or activity. (6) Distributing literature . . . the primary purpose and content of which concerns advocacy or support of extremist causes, organizations, or activities (7) Receiving financial assistance from a person or organization who advocates terrorism, the unlawful use of force or violence to undermine or disrupt U.S. military operations, subversion, or sedition. . . . (g) Browsing or visiting internet Web sites . . . when on duty, without official sanction, that promote or advocate violence directed against the U.S. or DOD

Id. para. 4-12 b, h(2)(g).

15. U.S. DEP'T OF DEF., DIR. 1344.10, POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES paras. 4, 4.1.2.3 (19 Feb. 2008).

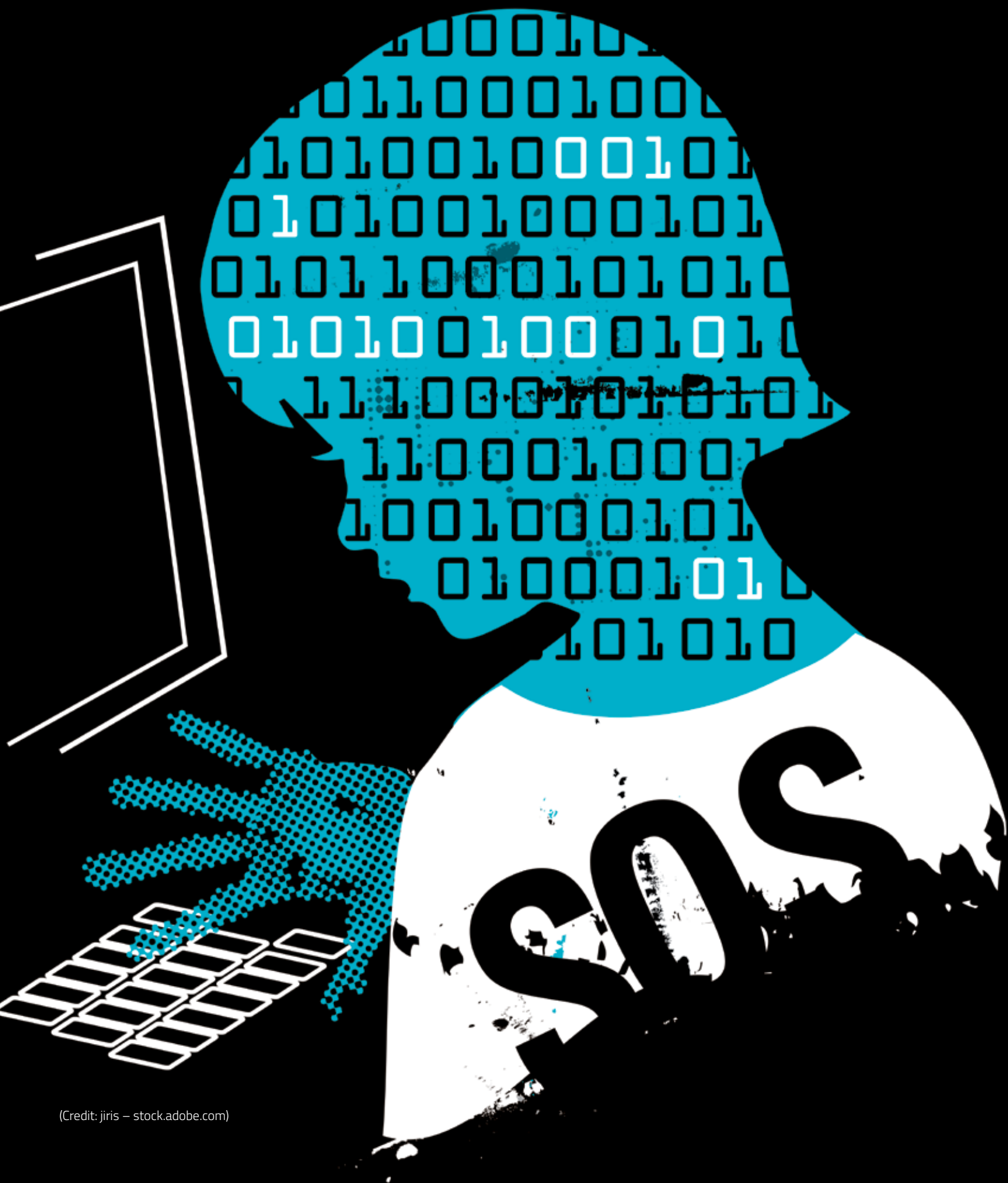
16. *Id.* para. E2.4.

17. *Id.* paras. 4.1.1., 4.1.1.1.

18. Department of Defense Directive 1344.10, paragraph 4.1.5. provides:

Activities not expressly prohibited may be contrary to the spirit and intent of this Directive. Any activity that may be reasonably viewed as directly or indirectly associating the Department of Defense or the Department of Homeland Security (in the case of the Coast Guard) or any component of these Departments with a partisan political activity or is otherwise contrary to the spirit and intention of this Directive shall be avoided.

Id. para. 4.1.5.



(Credit: jiris – stock.adobe.com)

No. 1

Omitting Child Pornography from Guilty Pleas

By Major Nicole A. Rimal

The Military Justice Act of 2016 (MJA-16) made significant changes to the Uniform Code of Military Justice (UCMJ) and the practice of military justice. As attorneys and legal professionals continue to adjust their practice in a post-MJA-16 world, many unnecessary litigation habits continue to persist. This article analyzes one such persistent habit: trial counsel continue to attach evidence of child pornography to guilty plea records as a matter of course rather than necessity. Practitioners should stop the unnecessary inclusion of child pornography evidence in guilty pleas because it is not required by case law, it produces a more complicated record to transport, and it negatively impacts both the child(ren) depicted and fellow military justice practitioners.

To better understand and challenge this practice, this article provides an overview of current case law on the issue, examines some of the concerns with attaching child pornography evidence to the record, and suggests practical application tips to clean up the record while still ensuring the findings and sentence are affirmed on appeal. While practitioners are certainly permitted to introduce evidence to support a guilty plea,¹ practical and policy reasons strongly support only doing so when necessary.

Case Law Overview

Court of Appeals for the Armed Forces

The Court of Appeals for the Armed Forces (CAAF) has repeatedly held there is no requirement that any witness be called or any independent evidence be produced to establish the factual predicate for a guilty plea.² Rather, the “factual predicate is sufficiently established if ‘the factual circumstances as revealed by the accused himself objectively support that plea’”³

This is equally true in child pornography cases. In *United States v. James*, a guilty plea for possessing and transporting child pornography in interstate commerce, the appellant argued “no definite proof exists in his case that the pictures at issue showed actual minors.”⁴ The CAAF affirmed his convictions relying upon the appellant’s providence inquiry and the photographs attached to the record.⁵ However, the court also held that “in the guilty-plea context, the Government does not have to introduce evidence to prove the elements of the charged offense beyond a reasonable doubt; instead, there need only be ‘factual circumstances’ on the record ‘which “objectively” support’ the guilty pleas”⁶ Following in line with CAAF, no service court of criminal appeals has required extrinsic evidence be introduced in a guilty plea.

Courts of Criminal Appeals

Army Court of Criminal Appeals

The Army Court of Criminal Appeals (ACCA) leads the service courts of criminal appeals in taking the strongest stance, repeatedly “remind[ing] counsel that admission of child pornography into the record during a guilty plea is not necessary.”⁷

In *United States v. Guy*, the court explained the practical and policy implications as to why child pornography does not need to be attached to the record in a guilty plea.⁸ The court explained that attaching evidence does not necessarily make a plea factually

exhibits against the privacy interests of the victims when deciding to seek the admission of the exhibits [in a guilty plea].¹⁵

The court recommended that, instead of introducing the contraband in the record, counsel write a stipulation of fact where the “words could express the nature of the images without further intruding into the privacy rights of the victims.”¹⁶ Holding the inadvertent omission of images of child pornography in the record for review on appeal insubstantial, the court went on to “question the need to attach contraband images in a case with a pretrial agreement which requires a stipulation of

(1) considers an adequate descriptive stipulation of fact supporting each charge; and/or (2) elicits from the accused during the providence inquiry a sufficient verbal description of the child pornography supporting each charge . . . ; and (3) the stipulation of fact and/or providence inquiry make clear that the images in question do depict images of *actual* identifiable minors engaging in sexually explicit conduct, as opposed to virtual or morphed images.²²

While not as direct as the ACCA or AFCCA on the issue, the NMCCA lays out a road map for a provident guilty plea that omits child pornography evidence.

Case law makes clear that nothing requires the Government to submit photographic evidence to establish the factual predicate for a guilty plea. The inclusion of child pornography in the record of guilty pleas is seldom necessary for or helpful to appellate review when a legally-sound providence inquiry and detailed stipulation of fact establish the necessary facts.

“child pornography involves real people who are done no great service when images of their rape as a child are needlessly included in a record for strangers to review.”

provident where it would otherwise not.⁹ Moreover, adding evidence can undermine the conviction on appeal by creating a substantial factual basis for a court to set aside the plea.¹⁰ That being said, the court found the most compelling reason to stop the practice is the effect it can have on victims: “child pornography involves real people who are done no great service when images of their rape as a child are needlessly included in a record for strangers to review.”¹¹ Despite the ACCA’s clarity that such evidence is not required—or wanted—by the court, practitioners continue to attach the evidence to guilty plea records.¹²

Air Force Court of Criminal Appeals

Similar to the Army, the Air Force Court of Criminal Appeals (AFCCA) also finds that including child pornography in the record is not necessary in a guilty plea.¹³ In *United States v. Monarch*, the appellant pleaded guilty, amongst other charges, to indecent acts and possession of child pornography.¹⁴ The AFCCA addressed the issue of counsel including evidence of child pornography as aggravating evidence in sentencing at a guilty plea. The court “call[ed] upon trial counsel and staff judge advocates to weigh the probative value of [illicit photograph]

fact.”¹⁷ Drawing upon examples of wrongful use guilty pleas, the court explained “[a] plea to the possession of contraband does not require the contraband to be attached in order to be provident”¹⁸

Navy and Marine Corps Court of Criminal Appeals

While the Navy and Marine Corps Court of Criminal Appeals (NMCCA) has not been as direct in discussing this subject as its sister courts, it has implicitly approved of omitting child pornography evidence at guilty pleas. In a series of merit submissions involving guilty pleas with child pornography specifications where the child pornography was not introduced into the record, the court issued summary dispositions affirming the findings and sentence.¹⁹

In *United States v. Santarini*, the appellant pleaded guilty to possessing child pornography but argued that the military judge failed to establish “whether children were actually used to produce the explicit images.”²⁰ The Government was unable to produce the compact disc (CD) that contained the child pornography.²¹ Nevertheless, the court affirmed the convictions and held the absence of child pornography in the record is not fatal where the military judge:

Handling the Record

The additional difficulty in transporting records containing child pornography and the inherent risk of inadvertent disclosure of the evidence support removing the evidence from the record in guilty pleas. Typically, the child pornography images or videos are reduced to password-protected CDs or DVDs, sealed by the military judge, and transported as sealed material.²³ Federal law requires child pornography to “remain in the care, custody, and control of either the Government or the court.”²⁴ This limits the methods of transporting records to military couriers or by the United States Postal Service (USPS).²⁵ In light of these procedural safeguards, the record can be sent from the field to the appellate courts either 1) as a complete record using USPS or military courier; or, 2) if permitted by the service court, as two shipments—with the sealed material transported via authorized government carrier and the remainder of the unsealed record transported via normal delivery methods.²⁶

Despite these procedural safeguards, human error in handling records persists.

While transporting records from trial to appellate courts, instances where the Government mishandled, lost, or caused individuals to unnecessarily view images of child pornography are documented.²⁷ Each time the evidence is transported, it represents another instance for possible human error or inadvertent disclosures. Removing the evidence from the record eliminates the risk of inadvertent disclosure and complications associated with transporting child pornography.

The Impact of Child Pornography on Victims and Military Justice Practitioners

Victims of child pornography can suffer in ways distinct and more prolonged than victims of other types of sexual abuse. Victims suffer from the initial sexual abuse inflicted when the child pornography was produced; they then also suffer with the unique knowledge that there is a permanent record of their sexual abuse. When these images migrate to the internet, the re-victimization of the children depicted continues in perpetuity.²⁸

In the legal system, introduction of child pornography in the record represents another loss of control by the victim as the number of persons viewing the image(s) expands.²⁹ Both the victim, as well as the individuals required to review the disturbing images of child sexual exploitation, are negatively impacted. For example, there is the risk of secondary traumatic stress, also known as vicarious trauma, which “generically describes the manner in which a person can be traumatized simply from hearing or being exposed to someone else’s trauma or implementations that caused it.”³⁰ Practitioners that have to review the evidence as part of their professional duties are susceptible to suffering from secondary traumatic stress.³¹ The symptoms of such stress may manifest in sleep disturbance and nightmares; PTSD symptoms, such as intrusive thoughts and memories; emotional distress; irritability; angry outbursts; inability to focus; and negative thinking.³²

The re-victimization of the children and serious negative consequences to fellow military justice practitioners lends support to finding methods that avoid unnecessarily putting the evidence in the guilty plea

Any loss of aggravating evidence by not including the contraband in the record can be made up in part by including a robust word picture of the child pornography in a stipulation of fact and providence inquiry

record.³³ As discussed later, when weighing the “necessity” of the child pornography evidence, practitioners can reconcile the desire for a provident plea and sufficient aggravating evidence by ensuring there is a robust providence inquiry and detailed stipulation of fact.

Practical Application

Practitioners should consider the following trial junctures when omitting child pornography evidence from the guilty plea record. While fairly straightforward, a defect in the charge sheet, plea agreement, or plea inquiry can have detrimental consequences for the Government, the accused, and the victim on appeal.

Charging Decision

The charging decision may be the most important decision a trial counsel makes in a case. This is especially so in cases involving child pornography where cases frequently result in a guilty plea. The work upfront of using specificity instead of generalities on a charge sheet can be especially helpful for information flow to the factfinder or for review on appeal.³⁴

For example, in the case of wrongful possession of child pornography, the specification could include a description of the device where the contraband was found and a sampling of file names that contain the most aggravating images or videos.³⁵ With the file names included in the specification, a description of the general nature of the image or video would be appropriate and relevant in a stipulation of fact and during the providence inquiry. Any loss of aggravating evidence by not including the contraband in the record can be made up in part by including a robust word picture of the child pornography in a stipulation of fact and providence inquiry—made possible by a more detailed charge sheet.

Drafting the Plea Agreement

At a minimum, a well-drafted plea agreement includes 1) an unconditional guilty plea; 2) a “waive all waivable motions” provision; and 3) a written stipulation of fact. To address concerns about the loss of aggravating evidence, the convening authority may negotiate a minimum punishment—including a minimum period of confinement.³⁶ The provisions of the plea agreement and the stipulation of fact will be critical to help the military judge accept a knowing and voluntary plea, ensuring the conviction survives appeal.

Conditional guilty pleas should be avoided whenever possible. An unconditional guilty plea waives all non-jurisdictional defects at earlier stages of the proceedings.³⁷

A “waive all waivable motions” provision in a plea agreement precludes an appellant from raising waivable issues on appeal.³⁸ Except where explicitly prohibited, an accused may knowingly and voluntarily waive any non-constitutional right in a plea agreement.³⁹ While an unconditional guilty plea waives appellate review of all non-jurisdictional defects, an explicit waiver provision is a much stronger tool to argue waiver on appeal. If there are known issues or motions litigated at trial, an inquiry by the military judge with the accused on their knowing and voluntary waiver of each issue or motion will generally waive the issue on appeal. The general “waive all waivable motions” provision combined with a specific inquiry into the waiver on the record will help ensure any non-jurisdictional defect in the accused’s case is waived.

A detailed stipulation of fact is an invaluable aide in a guilty plea during the providence inquiry and on appeal in assessing the providence of the plea. A stipulation of fact should include, at a minimum, a breakdown and discussion of every element of every specification to which the accused



(Credit: TimeStopper – stock.adobe.com)

pleads guilty. This will help satisfy the *Care* inquiry.⁴⁰ Depending on the case—and the wording of the charge sheet—a stipulation of fact may also include: 1) the total number of images and videos; 2) the total length of the videos; 3) the total number of victims; 4) whether the images and videos were synced across multiple devices or uploaded to the internet/online cloud; 5) whether the accused was viewing, sharing, or storing the images; and 6) a general description of the images and videos.⁴¹

An accused does not have the right to personally review the child pornography that forms the basis of the charge against him to prepare for a guilty plea.⁴² However, the trial defense counsel should be afforded ample opportunity to review the evidence in order to help advise and prepare their client.⁴³ By reviewing the evidence, counsel can ensure the alleged child pornography is in fact child pornography, and the review

can assist in drafting a detailed stipulation of fact and help prepare the accused for the providence inquiry.

As a general rule, novel plea agreement provisions should be avoided whenever possible as they receive heightened scrutiny at trial and on appeal. Each service's trial counsel assistance program normally has model plea agreement templates for counsel to utilize. These templates have been reviewed by many legal eyes, and the risk for error when using one of these templates is far less than when drafting a novel provision.⁴⁴

Protect the Record

At a guilty plea, the military judge is responsible for *inter alia*, ensuring the accused's plea is made voluntarily and knowingly and that there is an adequate basis in law and fact to support the plea.⁴⁵ During the guilty plea, the military judge should: 1)

conduct a thorough providence inquiry of every element of each offense, 2) ensure the providence inquiry is reopened for additional examination if any facts are presented that raise the possibility of a defense or a matter inconsistent with the pleas, and 3) inquire whether the trial defense counsel had the opportunity to review the child pornography in question.

Conducting a Thorough Providence Inquiry

A thorough providence inquiry requires preparation with an accused. The military judge is responsible for ensuring the accused admits to every element of each offense in the accused's own words, not mere legal conclusions.⁴⁶ It is not uncommon for an accused to struggle to describe in detail the images of child pornography—sometimes because of the sheer number of images discovered or, perhaps, because the

accused is ashamed of the offensive nature of the material. Regardless, the trial defense counsel should prepare the accused accordingly to ensure there is no preventable failure to get through a providence inquiry. Trial defense counsel can help prepare their client by running through practice providence inquiries with the accused with another member of the defense team playing the role of the military judge conducting the *Care* inquiry.

Resolving Inconsistencies and Addressing Possible Defenses

If an accused makes an irregular pleading, sets up a matter inconsistent with their pleas, or enters pleas of guilty improvidently, Article 45(a), UCMJ, requires the military judge to reject their pleas of guilty.⁴⁷ A matter may be inconsistent with a plea of guilty if it raises the possibility of a defense.⁴⁸ Where any facts during a providence inquiry or pre-sentencing present the possibility of a defense or a matter inconsistent with the pleas, counsel should request the military judge reopen providency to inquire further. While the military judge bears ultimate responsibility for accepting a guilty plea, the trial counsel and trial defense counsel are active participants in ensuring a successful guilty plea and should flag potential issues for the military judge.⁴⁹ Failure to do so risks having a finding of guilt overturned on appeal.

Opportunity for Defense Counsel to Review the Evidence

While not required, a record is more insulated from attack on appeal if the military judge inquires as to whether the trial defense counsel had the opportunity to review the relevant child pornography in the Government's possession. This ensures a member of the defense team was provided the opportunity to verify the Government's evidence before the accused enters pleas. As discussed below, this inquiry will help protect the record from claims of ineffective assistance of counsel on appeal.

Surviving Appeal

On appeal, the appellate courts review the entire record of cases before it. If child pornography evidence was admitted at trial, the court will review the evidence and make

its own determination about whether the images are legally sufficient. If the evidence of child pornography conflicts with the guilty plea, it provides the court with a substantial basis in fact to question the plea, set aside the conviction, and authorize a rehearing.⁵⁰

Alternatively, if photographic evidence of child pornography is omitted, appellate courts will still consider the "full context" of the plea inquiry, including the stipulation of fact.⁵¹ Appellate courts review challenges to guilty pleas in terms of providence of the plea, not sufficiency of the evidence.⁵² An accused's unconditional plea of guilty

court could order a *DuBay* hearing to help resolve the issue raised by materials in the record,⁵⁷ which may include producing and considering the previously omitted child pornography.⁵⁸

The most likely error to be alleged on appeal in a guilty plea involving child pornography is ineffective assistance of counsel. For example, an appellant may claim ineffective assistance of counsel where the trial defense counsel never reviewed the child pornography and an appellant is adamant the material was not actually child pornography. If this were the case, depending on the circumstances

While the military judge bears ultimate responsibility for accepting a guilty plea, the trial counsel and trial defense counsel are active participants in ensuring a successful guilty plea

waives any objection relating to factual issues of guilt.⁵³ When an appellant alleges factual insufficiency of a guilty plea, courts analyze the question presented in terms of providence of an appellant's plea, not sufficiency of the evidence.⁵⁴ So long as there is a provident plea inquiry, the actual evidence of child pornography is irrelevant.

If an issue arises on appeal from a guilty plea where the child pornography has been omitted from the record, appellate courts have tools at their disposal to resolve the issue. Hypothetically, an appellate court could find an issue has been raised in a case where child pornography was omitted from the record that cannot be fully resolved by the material in the record. In *United States v. Jessie*, the court reiterated the general rule that the courts of criminal appeals "may not consider anything outside of the 'entire record' when reviewing a sentence under Article 66(c), UCMJ."⁵⁵ However, CAAF discussed three categories of precedent that allow for supplementing the record—the second category of cases dealt with issues raised by materials in the record, but not fully resolvable by those materials.⁵⁶ In the hypothetical mentioned above, the

presented in the record and as hypothesized above, the court of criminal appeals may order production of the material to review on appeal as a matter not resolvable by the current record.⁵⁹ In order to avoid litigation on this issue, this emphasizes the need to get on the record that trial defense counsel had ample opportunity to review the evidence against the accused.

Conclusion

The reasons for counsel wanting to admit evidence of child pornography in the record at guilty pleas is varied. Yet, for practical and policy reasons, counsel generally do not need to include the evidence in the record. Practically, case law does not require the evidence for a provident guilty plea nor on appeal to affirm the findings or sentence. The record also becomes more cumbersome in its limited transportation methods. From a policy perspective, introducing the evidence re-victimizes the children depicted in the images and can cause vicarious trauma to the counsel and staff that review the evidence.

Mindful prosecution throughout a case—especially at major junctures and with an eye toward appeal—will help ensure

the findings and sentence are affirmed on appeal. Standard practice for guilty pleas should include a robust providence inquiry, a detailed stipulation of fact, and ample opportunity for trial defense counsel to review the evidence. With few exceptions, practitioners should omit evidence of child pornography in guilty pleas. **TAL**

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Notes

1. See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 910(a)(1)(D) discussion (“A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation.”) [hereinafter MCM]. See also *id.* R.C.M. 1001(b)(4).

2. See, e.g., *United States v. Ferguson*, 68 M.J. 431, 434 (C.A.A.F. 2010) (holding that, unless the appellant pleaded guilty to conduct that was not criminal, the court should only review to ensure that the appellant did not set up matter inconsistent with his plea); *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996); *United States v. Davenport*, 9 M.J. 364, 366 (C.M.A. 1980).

3. *Faircloth*, 45 M.J. at 174 (quoting *Davenport*, 9 M.J. at 367).

4. *United States v. James*, 55 M.J. 297, 300 (C.A.A.F. 2001).

5. *Id.* at 301.

6. *Id.* at 300.

7. *United States v. Britt*, ARMY 20190290, 2020 CCA LEXIS 127, at *5 n.3 (A. Ct. Crim. App. Apr. 17, 2020). See, e.g., *United States v. Guy*, ARMY 20180292, 2019 CCA LEXIS 129, at *1 (A. Ct. Crim. App. Mar. 21, 2019) (per curiam); *United States v. Simon*, ARMY 20160312, 2017 CCA LEXIS 405, at *6–8 (A. Ct. Crim. App. June 16, 2017) (summary disposition), *petition denied*, USCA Dkt. No. 17-0472/AR (C.A.A.F. July 28, 2017); *United States v. Rominger*, 2009 CCA LEXIS 315, at *4–5 (A. Ct. Crim. App. June 8, 2009).

8. *Guy*, 2019 CCA LEXIS 129, at *1.

9. In *Guy*, the Army Court of Criminal Appeals stressed that “if the accused fails to properly admit that he is guilty of possessing child pornography, the inclusion in the record of a government exhibit which is child pornography will not necessarily save the plea.” *Id.* at *3.

10. “[When] the government introduces a picture in sentencing that on appeal a court concludes is *not* child pornography, the government can create a substantial factual basis for [a court] to set aside the plea. . . . Such a scenario represents a bipartite failure by the government (in charging a non-offense in the first instance)

and the defense (in advising the accused to plead guilty).” *Id.* at *3 n.3 (citation omitted).

11. *Id.* at *4.

12. *Britt*, 2020 CCA LEXIS 127, at *5 n.3.

13. See, e.g., *United States v. Monarch*, ACM 38585, 2015 CCA LEXIS 428, at *18 & *18 n.5 (A.F. Ct. Crim. App. Oct. 14, 2015).

14. *Id.* at *2.

15. *Id.* at *13.

16. *Id.* at *13–14.

17. *Id.* at *18 & *18 n.5.

18. *Id.* at *18 n.5.

19. See, e.g., *United States v. McTigue*, No. 202100052, 2021 CCA LEXIS 316 (N-M. Ct. Crim. App. June 29, 2021) (per curiam); *United States v. Mestuzzi*, No. 202000004, 2021 CCA LEXIS 189 (N-M. Ct. Crim. App. Apr. 21, 2021) (per curiam); *United States v. Kuhns*, No. 202000203 (N-M. Ct. Crim. App. Feb. 19, 2021) (per curiam).

20. *United States v. Santarini*, No. 200201454, 2004 CCA LEXIS 103, at *9–10 (N-M. Ct. Crim. App. Apr. 30, 2004).

21. *Id.* at *14.

22. *Id.* at *14–15, *24 (citing *United States v. Washburne*, No. 200300123, 59 M.J. 866, 871 (N-M. Ct. Crim. App. Apr. 9, 2004), *rev'd on other grounds*, 60 M.J. 396 (C.A.A.F. 2004) (affirming conviction where the United States intentionally did not introduce child pornography images at a guilty plea)). See also *United States v. Henthorn*, 58 M.J. 556, 559–60 (N-M. Ct. Crim. App. Jan. 23, 2003) (finding omission of child pornography photographs attached to stipulation of fact as part of a guilty plea but not included in the record did not result in prejudice where the guilty plea is not questioned and the general nature of the photographs is described in the record); *United States v. Payne*, 2012 CCA LEXIS 898, at *2–4 (A.F. Ct. Crim. App. Dec. 19, 2012) (finding omission of child pornography to stipulation of fact as part of the guilty plea but not included in the record as insubstantial because the appellant specifically described the types of child pornography he viewed, agreed that the disc attached to the stipulation of fact contained the images he viewed, and the contents of the disc are described in the stipulation).

23. See U.S. DEP’T OF NAVY, JAGINST 5800.7G, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) ch.1, sec. 0157(h) (2022) [hereinafter JAGMAN].

24. 18 U.S.C. § 3509(m)(1). 18 U.S.C. § 3509(m)(1) (Adam Walsh Child Protection and Safety Act of 2006), applies to courts-martial because the purpose of the law is consistent with protecting the victims involved in child pornography courts-martial; and, there is no potentially contradictory military purpose. While CAAF has never specifically addressed whether 18 U.S.C. § 3509(m) applies to courts-martial, the CCAs have directly and implicitly touched on § 3509(m)’s applicability to courts-martial. See *United States v. Guy*, ARMY 20180292, 2019 CCA LEXIS 129, at *4–5 (A. Ct. Crim. App. Mar. 21, 2019) (applying 18 U.S.C. § 3509(m)(1) to military courts transporting records on appeal); *United States v. Lambert*, 2014 CCA LEXIS 101, at *11–12 (A.F. Ct. Crim. App. Feb. 24, 2014) (finding unconditional guilty plea waived appellant’s assignment of error alleging violation of § 3509(m)); *United States v. Jones*, No. 200602320, 2009 CCA LEXIS 356, at *13 n.3 (N-M. Ct. Crim. App. Oct.

27, 2009) (referencing § 3509(m) as applying to child pornography discovery). See also U.S. DEP’T OF NAVY, JAGINST 5800.7G, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) ch. 1, sec. 0155(h)(1) (15 Jan. 2021) (making clear counsel shall apply the protections and procedural safeguards outlined in § 3509(m)).

25. See *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 744 (2004) (establishing the U.S. Postal Service as part of the executive branch).

26. While this may not be an additional burden for some trial offices, there are many trial offices that normally utilize commercial carriers, like FedEx, to transport records to appellate offices.

27. See, e.g., *United States v. Donoho*, No. ACM 39242, 2018 CCA LEXIS 545, at *8 n.7 (A.F. Ct. Crim. App. Nov. 19, 2018) (“[W]e are greatly troubled at the Government’s mishandling of child pornography. The images of [the victim] were not just omitted from the record; they were lost.”); *United States v. Monarch*, ACM 38585, 2015 CCA LEXIS 428, at *14–15 (A.F. Ct. Crim. App. Oct. 14, 2015) (describing the government’s inability to produce on appeal the certified child pornography evidence that was attached to the stipulation of fact at trial); *United States v. Santarini*, No. 200201454, 2004 CCA LEXIS 103, at *15 (N-M. Ct. Crim. App. Apr. 30, 2004) (expressing “displeasure” over the government’s handling of child pornography where the government was unable to produce the child pornography introduced at trial, the military judge reviewed child pornography that was not used during the guilty plea, and the original evidence was destroyed).

28. *Child Pornography*, U.S. DEP’T OF JUST., www.justice.gov/criminal-ceos/child-pornography (May 28, 2020).

29. MCM, *supra* note 1, R.C.M. 1113(b) outlines the individuals that may be authorized to review sealed material pre-referral, post-referral, and reviewing and appellate authorities and counsel. Even assuming there is no inadvertent disclosures during processing or transportation of the record, at a minimum, the military judge, appellate counsel, and appellate judges will also review the evidence.

30. Evan R. Seamone, *Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals*, 11 OHIO ST. J. CRIM. L. 487, 493 (2014).

31. This risk is significant. Research shows lawyers, especially those working with victims and criminal defendants, are more likely to be affected by secondary traumatic stress than therapists and social workers. Kiley Tilby & James Holbrook, *Secondary Traumatic Stress Among Lawyers and Judges*, 32 UTAH BAR J. 20, 21 (2019).

32. *Id.* at 22.

33. Seamone, *supra* note 30, at 493, 536–40 (describing how secondary traumatic stress, especially when stemming from viewing child pornography, can negatively impact military attorneys personally and professionally).

34. Specificity in the charge sheet is best achieved after an investigation is complete. Drafting specific charges in an ongoing investigation can potentially lead to later-discovered evidence not being relevant to the specific charges or admissible.

35. This can be done even where the images at issue are not especially aggravating. The images can be omitted by having a general description of the image

in the charge sheet and later detailed in the stipulation of fact.

36. MCM, *supra* note 1, R.C.M. 705(d)(1)(B).

37. *See id.* R.C.M. 910(j); *United States v. Bradley*, 68 M.J. 279, 281 (C.A.A.F. 2010).

38. *See United States v. Nye*, No. 201600362, 2018 CCA LEXIS 13, at *4 (N-M. Ct. Crim. App. Nov. 18, 2018) (citing *United States v. Murphy*, No. 201000262, 2010 CCA LEXIS 774, at *3–4 (N-M. Ct. Crim. App. Nov. 23, 2010)).

39. *See United States v. Gladue*, 67 M.J. 311, 314 (C.A.A.F. 2009).

40. *United States v. Care*, 40 C.M.R. 247, 253 (1969).

41. In the absence of visual images this information can help the military judge better understand the aggravating aspects of the case.

42. In *United States v. Jones*, 69 M.J. 294, 295 (C.A.A.F. 2011), the appellant challenged the providency of his plea because the military judge refused to allow him the opportunity to review the evidence before he pleaded guilty. *Id.* at 295–96. The Court of Appeals for the Armed Forces affirmed the appellant’s conviction, holding the military judge’s ruling did not violate the appellant’s Sixth Amendment right since he “did not seek to review the evidence to prepare a defense” *Id.* at 296.

43. *See* 18 U.S.C. § 3509(m)(2)(A)–(B) (requiring the Government make evidence of child pornography “reasonably available to the defendant” which means the Government provides “ample opportunity for inspection, viewing, and examination at a Government facility . . .”).

44. If counsel want to include a novel provision in a plea agreement, they are encouraged to reach out to their respective service trial counsel assistance program or appellate government counsel office early to receive advice on enforceability of the provision.

45. *See United States v. Inabinette*, 66 M.J. 320, 321–22 (C.A.A.F. 2008). *See generally* MCM, *supra* note 1, R.C.M. 910.

46. *See United States v. Price*, 76 M.J. 136, 138 (C.A.A.F. 2017).

47. UCMJ art. 45(a) (2016). *See also United States v. Zachary*, 63 M.J. 438, 444 (C.A.A.F. 2006) (quoting *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996)); *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007).

48. *United States v. Hayes*, 70 M.J. 454, 458 (C.A.A.F. 2012). *See also United States v. Goodman*, 70 M.J. 396, 399–400 (C.A.A.F. 2011) (requiring a mistake of fact defense to be “reasonably raised” before it can create an inconsistency in a guilty plea).

49. *United States v. Partin*, 7 M.J. 409 (C.M.A. 1979) (military judge must police terms of pretrial agreements). *See generally* MCM, *supra* note 1, R.C.M. 910(f).

50. *United States v. Riley*, 72 M.J. 115, 122 (C.A.A.F. 2013) (“The remedy for finding a plea improvident is to set aside the finding based on the improvident plea and authorize a rehearing.”). *But see United States v. Atchak*, 75 M.J. 193, 196 (C.A.A.F. 2016) (ordering a rehearing is matter of discretion). *See, e.g., United States v. Rapp*, No. 201200303, 2013 CCA LEXIS 355, at *24 (N-M. Ct. Crim. App. Apr. 30, 2013) (overturning appellant’s conviction after the appellate court con-

cluded certain purported images of child pornography did not meet the definition of child pornography).

51. *Goodman*, 70 M.J. at 399 (citation omitted).

52. *See United States v. Ferguson*, 68 M.J. 431, 434 (C.A.A.F. 2010); *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996); *United States v. Davenport*, 9 M.J. 364, 366 (C.M.A. 1980).

53. *United States v. Smith*, 60 M.J. 985, 986 (N-M. Ct. Crim. App. Dec. 17, 2004). Moreover, for all offenses committed after 5 January 2021, appellants are no longer guaranteed a factual sufficiency review. *See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, Pub. L. No. 116-283, § 542(e)(2), 134 Stat. 3388, 3612–3613 (2021). Courts of criminal appeals will only conduct a factual sufficiency review upon the appellant making a “specific showing of a deficiency in proof.” UCMJ art. 66(d)(1)(B)(i). If such a showing is made, then the court may review the evidence and give relief if “clearly convinced that the finding of guilty was against the weight of the evidence” *Id.* art. 66(d)(1)(B)(iii). The shift from a beyond a reasonable doubt standard to a clear and convincing standard reduces the likelihood an appellant might receive appellate relief under a factual insufficiency claim.

54. *Smith*, 60 M.J. at 986 (citing *Faircloth*, 45 M.J. at 174); *accord United States v. Forbes*, 77 M.J. 765, 768 n.3 (N-M. Ct. Crim. App. 2018); *United States v. Salguero*, No. ACM 38767, 2016 CCA LEXIS 5, at *4–5 n.3 (A.F. Ct. Crim App. Jan. 16, 2016).

55. *United States v. Jessie*, 79 M.J. 437, 441 (C.A.A.F. 2020) (citation omitted).

56. *Id.* at 445.

57. A *Dubay* hearing occurs when a military court of appeals sends a case back to a trial-level judge for a specific fact-finding hearing on a matter that is being considered on appeal. *See United States v. Dubay*, 37 C.M.R. 411 (C.M.A. 1967).

58. *See* UCMJ art. 66(f)(3) (2021); *Jessie*, 79 M.J. at 442. *See also United States v. Parker*, 36 M.J. 269, 271–72 (C.A.A.F. 1993) (listing examples of issues *DuBay* hearings have been ordered to resolve).

59. The author is not aware of any service court ordering production of child pornography evidence not introduced at trial. However, under *Jessie*, it seems like it would theoretically be possible depending on the issue the court sought to resolve.

Major Oluwaseye (Mary) Awoniyi (right), 25th Infantry Division, conducts a quarterly counseling session with Specialist Cameron Smith (left), at Schofield Barracks, Hawaii. (Credit Specialist Lelia Contee)



No. 2

Counseling—It's Not Just a Negative Thing

How an Effective Counseling Program Benefits Leaders, Subordinates, and the Corps

By Major Jonathon M. Wood

It was the fourteenth week of a twenty-six week deployment in Kuwait when Specialist (SPC) Smith's platoon sergeant, Sergeant First Class (SFC) Jones, received a frantic phone call from SPC Smith's girlfriend.¹ She stated that she was upset that she had allowed SPC Smith to make a video of them having intercourse, and now that they are breaking up, SPC Smith has threatened to put the video on the internet for the world to see.

To the leaders reading this article, pause for a second and think about what you would do if you were the leader receiving this phone call about one of your Soldiers.

Within two hours of receiving the phone call from SPC Smith's girlfriend, SFC Jones had SPC Smith report to his office for a formal² event-oriented³ counseling. Sergeant First Class Jones handed the typed counseling to SPC Smith and told him to read it. The counseling stated in part, "SPC Smith, you will not post any videos showing sexual intercourse without the consent of the other party in the video or you may face UCMJ action." When SPC Smith finished reading, SFC Jones continued to try to impress upon SPC Smith the repercussions he could face if he posted the video.

The above scenario is based on a true story that is, unfortunately, all too common for Soldiers and leaders to see on deploy-

ments. Too often, members of the Judge Advocate General's (JAG) Corps read about these happenings in a law enforcement report, prompting them to interview the chain of command to clarify the efforts they put in to counseling after the event occurred. Judge advocates also do this to clarify what the accused actually said and heard, in order to assist the trial team with potentially admitting those statements at later adverse proceedings.

Here, though, SPC Smith's story never made it to the courtroom. Sergeant First Class Jones told Major (MAJ) Knight, the battalion supply officer (S4), about the event and how he had handled it. Major Knight immediately found SPC Smith, pulled him into an empty conference room, and closed the door. Major Knight started by asking what happened.⁴ Specialist Smith did not respond, instead opting to look at the floor. Major Knight then stated he heard SPC Smith and his girlfriend are breaking up and what SPC Smith threatened to do.

Major Knight then asked, "You know if you posted that video it would be wrong, right?" Specialist Smith continued to stare at the floor. Major Knight continued, "I know you know it would be wrong, but you want to do it because you're hurting." Specialist Smith interrupted with a defensive tone, "Nope; I'm pissed." Major

**most successful leaders work on building relationships
in the good times to solidify the commitment that
will sustain them through the rough times.**

Knight responded, “I understand what you are going through. I have been in your shoes when someone I cared a lot about did something that hurt me. I know what it feels like, to feel that pain and want to do something to the other person so they feel pain as well.” Specialist Smith kept looking at the floor.

After a few seconds of silence, MAJ Knight continued to share his experience of being hurt in a romantic relationship. Major Knight suggested SPC Smith reach out to someone he trusts or to behavioral health, and be honest with what is going on before ending the conversation with, “I’m here for you if you trust me.” After a long pause, SPC Smith started to cry. He tried to talk but he could not quite make out words. Major Knight consoled him and stated, “It’s alright, man; I’ve been there.”

About a week later, SPC Smith stopped MAJ Knight in the hall and told him that he has never felt as much a part of a team as he did on that team. As far as the Army knows, SPC Smith never posted any video of his now-ex-girlfriend online.

This article highlights how an effective counseling program can help a leader better accomplish the mission and improve the organization as a whole. An effective counseling program works toward these goals by establishing a meaningful relationship and enhancing two-way feedback for mission success and personal growth. Accordingly, most successful leaders work on building relationships in the good times to solidify the commitment that will sustain them through the rough times.⁵ These considerations nest within the Army’s “people first” campaign, which leaders should keep in mind when reflecting and developing their leadership style.⁶

For leaders in the field to have the kind of effect MAJ Knight had in the vignette, they should build relationships early so that similar counselings will be more effective.⁷ There will always be struggles in the workplace, ranging from being overworked to

personal issues. A strong relationship with subordinates will help a leader be more effective with either problem set, and a fortified counseling program is one way to help establish that relationship at the outset. A counseling program is not the only way that a leader can establish a relationship, but this article discusses how a counseling program can improve that relationship.

An effective counseling program can be a skeleton or structured plan for a leader to build relationships deliberately with each subordinate and not just rely on individuals being naturally willing to follow the leader or to be self-motivated to work hard and accomplish the mission.⁸ The structure of this plan should include informal initial counseling, initial counseling, quarterly counseling, end-of-rated period counseling, and event-oriented counseling. The counseling program will help establish a relationship between the leader and subordinate, assist a leader to provide purpose, direction, and motivation to the subordinate, allow for meaningful feedback between the parties, and ensure that a subordinate can predict how to be successful and not be surprised by their annual evaluation report. In helping leaders improve, this article addresses the purpose of an effective counseling program and then provides some practical tips.

The Purpose of an Effective Counseling Program

“Before you are a leader, success is all about growing yourself. When you become a leader, success is all about growing others.”⁹

While Army leaders believe they *should* counsel, many fail to *do* it.¹⁰ An effective counseling program will enable a leader to build relationships with subordinates and provide purpose, direction, and motivation.¹¹ Put more succinctly, “counseling is the secret sauce of leadership”¹² that “can

also serve as an individual’s professional development plan.”¹³

The doctrinal definition of counseling is “the process used by leaders to guide subordinates to improve performance and develop their potential.”¹⁴ Counseling will usually occur between a leader and their direct subordinate.¹⁵ Formal counseling has a written component; informal counseling does not.

At the very minimum, leaders should complete quarterly counseling sessions with their subordinates for two reasons. First, the Army mandates that rating supervisors provide four counseling sessions per year to certain subordinates.¹⁶ Second, a good counseling program can provide the foundation and structure for a leader to become more dynamic in their role.

The Army Mandates Counseling

Army Regulation (AR) 623-3 states, “counseling *will* be conducted within 30 days after the beginning of the rating period, and quarterly thereafter, for NCOs, WO1s, chief warrant officers two (CW2s), lieutenants (LTs) (includes first lieutenants (1LTs) and second lieutenants (2LTs)), and captains (CPTs).”¹⁷ In reality, many Soldiers do not receive quarterly counseling.¹⁸ Even though it is required by Army regulation, leaders who fail to counsel their subordinates face virtually no repercussions for not doing so. If a leader meets the mission, their evaluation will rarely reflect whether or not they dedicated time to develop their subordinates. Additionally, rated Soldiers cannot appeal an unfavorable evaluation based solely on the contention that the subordinate was never counseled.¹⁹ In order to emphasize mandated counseling, the Army needs to reevaluate and change this aspect of leading personnel.

Leaders have two ways they can personally effect this change: 1) they can show the value of an effective counseling program, or 2) they can mandate junior leaders to have a counseling program. Leaders should show their subordinate leaders how an effective counseling program can be a powerful tool to enhance that subordinate to in-turn be a more effective leader. If the junior leaders cannot see the value in an effective counseling program, senior leaders should hold subordinates to the Army

standard—their failure to counsel should be reflected on their evaluation. Senior leaders should inform their junior leaders of this requirement in their counseling sessions so they know what is expected of them.

Counseling Is a Great Tool to Be a Dynamic Leader

Counseling enables a leader to build meaningful relationships with their subordinates, improves transparency by setting expectations and communicating observations during the rated period, enables two-way communication, enables a leader to provide purpose, and enables a leader to conduct mentoring activities.²⁰ Additionally, establishing a structured counseling program helps a leader ensure they are not only focused on a subset of their subordinates, whether that subset includes those to whom the leader is naturally drawn or those who are low performers that demand attention. A structured counseling program ensures the leader spends one-on-one time with each of their subordinates.

Counseling Enables Leaders to Build Meaningful Relationships with Their Subordinates

Relationships are core to your job. If you think you can [fulfill your responsibilities as a manager] without strong relationships, you are kidding yourself. I'm not saying that unchecked power, control, or authority can't work. They work especially well in a baboon troop or a totalitarian regime.²¹

Having a structured counseling program prioritizes a leader's time to get to know²² and develop their subordinates. The time dedicated to one-on-one conversations should always have a relationship-building aspect to it. It may seem obvious, but the first step in building a relationship with a subordinate is for a leader to actually care about a subordinate and want them to succeed.²³ This interest in subordinates must be genuine and not perfunctory.

Building a meaningful relationship with a subordinate is no different than building a friendship.²⁴ The leader should be curious about the people they work with,²⁵ talk with them, and find common interests. To establish the relationship, a leader sim-

ply has to care about their subordinate and their success and well-being.²⁶

By taking time to address a subordinate's development, the leader sends the message to each individual subordinate that the leader prioritizes taking care of each subordinate and is interested in their individual growth and development. When a subordinate understands that their leader genuinely cares for their success, it will build the subordinate's trust in the leader. When a subordinate trusts their supervisor, they will follow them and commit to that leader, not just look out for themselves.²⁷ This commitment to the leader, and the team as a whole, increases team-wide productivity.²⁸

A meaningful relationship between subordinate and leader is vital to individual development and overall mission success. Establishing strong relationships will improve communication and increase the effectiveness of feedback.²⁹ Providing clear feedback is an essential role of any leader in an organization.³⁰ If a relationship is already built, and the subordinate trusts the leader, the feedback will be better received and more impactful.³¹

Meaningful relationships are also important for leaders because they help leaders motivate their subordinates. In order to motivate a person, a leader has to understand that person. Soldiers are dedicated members of the profession of arms, but they are also "smart, creative, freethinking individuals—human beings."³² Counseling is a great opportunity to provide individual attention in a one-on-one setting. It also enables a leader to learn what is important to their subordinates. After a leader has an understanding of a Soldier, they can better tailor their leadership style to help foster the growth of that Soldier. Additionally, if a leader knows an individual enjoys doing certain tasks, a leader can assign those tasks to that individual.³³

A practical tip for improving relationships is to maintain a leader's notebook. Not every leader will have a knack for remembering all names, dates, and activities that are important to a subordinate. But when a leader does remember a specific detail about a subordinate, it makes the subordinate feel like the leader actually cares about them.³⁴

Therefore, a leader should put some effort into remembering the details.

Counseling Improves Transparency by Setting Expectations and Communicating Observations During the Rated Period³⁵

Soldiers want to be successful and be seen as successful by their leaders. Therefore, a leader should clearly communicate to their subordinates what it means to be successful from the leader's perspective.³⁶ If a leader can make it clear what success looks like, it will provide direction to the subordinate regarding where to focus their efforts.³⁷

Throughout the rated period, a counseling program ensures both the leader and rated Soldier agree, or are at least aware, of how their performance is measuring up. A leader should record the progress and discuss their observations in the counseling sessions and then make a record for both parties to reference after the counseling session.³⁸ This practice will ensure that a Soldier never feels surprised when they receive their evaluation.³⁹

The ultimate job of a leader in an organization is to help a subordinate develop and better accomplish the mission.⁴⁰ A meaningful relationship between subordinate and leader is vital, as it will increase the effectiveness of given feedback.

Counseling Enables a Leader to Facilitate Two-Way Communication

If a leader has a meaningful relationship with a subordinate and has clearly communicated what the subordinate can expect from their leader, one-on-one interactions can be a two-way communication where both parties grow. The ultimate goal of leadership in the Army is to "accomplish the mission and improve the organization."⁴¹ This includes developing and improving the leader, as well as their subordinate.

The subordinate's feedback is irreplaceable as they have real-time information about how the leader is managing and may have ideas on how to improve the organization. If a leader can get an exchange of ideas from the subordinate, this will help improve the organization and increase the buy-in from the subordinate to accomplish the mission.⁴² Subordinates are more likely

Even more motivating than working in an organization where an individual *believes* in its purpose is *doing work* that coincides with one's own sense of purpose.

to give such suggestions in one-on-one counseling sessions after they feel comfortable with the leader.⁴³

Counseling Enables a Leader to Provide Purpose

When an individual understands the purpose for their team, it gives them motivation⁴⁴ and empowers them to act without micromanagement. It is incumbent on the leader to provide this purpose to their team.⁴⁵ The purpose, or the “why,” is the overarching reason for the team’s existence based on the mission that needs to be accomplished. An individual that knows why they are doing something is more likely to buy in to that mission, know how to act with less direction, and meet the commander’s intent more often.⁴⁶

Simply stated, before a leader can communicate the purpose of their section, a leader must know and understand the purpose of their section. If a leader needs clarity or inspiration of the team’s purpose, there are several great sources that can assist the leader.⁴⁷ For example, a leader can ask their direct supervisor to explain the purpose of the team. A leader can talk to their predecessor or peers who hold a similar position. A leader can also study the history of the unit/team they are joining and find purpose in the great things the unit has accomplished.⁴⁸

At a minimum, an effective leader should know the purpose of the U.S. Army, their organization, their team, and how each of these nests within the other. The purpose of the U.S. Army is “[t]o deploy, fight, and win our Nation’s wars by providing ready, prompt, and sustained land dominance by Army forces across the full spectrum of conflict as part of the Joint Force.”⁴⁹ No matter which Army organization a leader finds themselves serving with, the organization’s purpose must further the Army’s overall purpose. Accordingly, the team’s purpose should also further that organization’s purpose.

The more narrowly tailored a purpose is to the team’s direct work, the more helpful and meaningful it will be to the individuals on that team. Adopting the Army’s mission is a good fallback plan, but a leader should strive to make the purpose more personal and closer to subordinates’ daily efforts. To “fight and win the Nation’s wars” does not help a battalion paralegal know what to do in the absence of direction on a day-to-day basis. However, if the leader provides a narrower purpose by pointing out that it is “because of criminal justice professionals—those in law enforcement, corrections, and courts—we can trust that we can travel home, to work, and/or out in public, safely and securely,”⁵⁰ the same battalion paralegal will be able to apply this purpose when they are in a new situation absent direct guidance. It shows how the paralegal matters and is part of a bigger picture.

The more meaningful the purpose is to the leader, the more meaningful it will be to the subordinate. When a leader provides the purpose to his team, a leader needs to be consistent with their messaging. It is easier to be consistent with the purpose if the leader has taken time to think about it and truly believes in it.

Unless the focus of a counseling session is on relationship building, all counseling sessions should include, to some extent, the purpose of the team. If a member of your team does not know the answer to the question, “What is the purpose behind your team?” they have not internalized the purpose. Consequently, it will not help guide them in the absence of direct instruction, and it will not motivate them to complete the mission.

Even more motivating than working in an organization where an individual *believes* in its purpose is *doing work* that coincides with one’s own sense of purpose. One-on-one counseling provides an opportunity for a leader to find out a subordinate’s personal purpose. Knowing what drives a subordinate can help a leader realign their duties to

fit the purpose. If a leader does this, their subordinates will often work harder and enjoy their work more.

Counseling Enables a Leader to Conduct Mentoring Activities

Leaders should take time to get to know their subordinates’ career histories and individual goals and, ultimately, assist their subordinates to progress toward those goals.⁵¹ When a leader can align an individual’s long-term goals to short-term tasks, that person will be more motivated to complete those tasks.⁵² Additionally, when a leader takes the time to address career goals, this sends a clear message the leader is not just interested in how the subordinate can help the leader’s evaluation, but that the leader also wants the subordinate to succeed in ways that are important to the subordinate.

Mentors traditionally hold the role of giving counsel for professional and personal growth.⁵³ Mentoring activities are those activities for which a leader “applies experience . . . shares knowledge, provides challenges, and addresses questions” through “conversation on a personal level” that focuses on the “professional or personal growth” of a subordinate.⁵⁴ Because mentorship is a voluntary relationship, counseling alone should not be considered mentorship.⁵⁵ However, a leader should still perform mentoring activities because the leader should care about their subordinates’ long-term goals and help them achieve those goals.

Leaders must engage in these mentoring activities as a part of their counseling program with all their subordinates. Doing so can help reduce possible perceived biases within the team that are often created when a subordinate naturally seeks out a mentoring relationship with that leader outside of counseling. Naturally, some subordinates will reach out to the supervisor as a mentor. If a leader fails to conduct these mentorship activities with everyone, subordinates may perceive favoritism.⁵⁶ By conducting mentoring activities with all subordinates, a leader removes this possibility and supports the entire team.

A Suggested Structure for Effective Counseling

A leader who wants to meet all of the above objectives might wonder how to best struc-



(Credit: Gajus – stock.adobe.com)

ture their counseling program. This section provides general guidance and recommendations for counseling sessions in some of the most common counseling scenarios. The scenarios include the first informal initial, formal initial, quarterly, end-of-rated-period, informal periodic, and negative event-oriented counseling sessions.

General Tips for Counseling Sessions

There are several tips that can help a leader be more effective in counseling sessions. This section covers four quick tips of which a leader must always be cognizant. A leader must 1) always ensure there is enough time allotted for the counseling session, 2) be aware of the subordinate's time, 3) be fully present and not distracted during the counseling, and 4) for performance-related counseling, a leader should also understand what type of evaluation report their subordinate will be receiving to help set the subordinate up for success.

With all counseling sessions, the leader must make time for the interactions. A subordinate will not make a connection with a leader if they feel like they are inconveniencing

the leader or have inconvenienced them in the past. A best practice is to put the counseling on the calendar and, if it must be rescheduled, ensure the subordinate knows the counseling is a priority and will be rescheduled as soon as possible. A good rule of thumb is that a counseling session should not take more than an hour.⁵⁷ A leader should expect to clear their schedule for at least an hour for each counseling session.⁵⁸

It is important that counseling sessions do not keep a subordinate after hours or during lunch.⁵⁹ Developing subordinates is a part of a leader's job, so schedule it during the workday. If a leader schedules a counseling session too close to the end of the day and the subordinate has to stay late, they are going to be distracted.

It is important that a leader is fully present during all counseling sessions.⁶⁰ A leader should turn away from their computer, face the subordinate, and ensure they can focus on the task.⁶¹ If there are other obligations that are going to be distracting, it is important that the leader remove those distractions.

A leader must understand the various evaluation reports their subordinates will receive.⁶² A leader must be familiar with the differences between an officer evaluation report⁶³ and a noncommissioned officer evaluation report.⁶⁴ Leaders must also understand the difference between evaluation types for junior and senior noncommissioned officers and commissioned officers. Similarly, a leader must understand the differences in the associated support forms.⁶⁵ A leader must be aware of these differences during routine counseling in order to best set their subordinates up for success.

Tips for Each Type of Counseling Session

Informal Initial Counseling

The first counseling session any leader should have is an informal initial counseling focusing on establishing a relationship.⁶⁶ This should be the first of many positive counseling sessions between leader and subordinate. This meeting should be informal and should not have a written component. The leader should find out about the individual's family situation, names, and ages of

A leader should prepare for quarterly counseling sessions with the same diligence they would prepare for a meeting with a commander or other senior leader.

their children; why they joined the Army; why they chose their profession; hobbies and interests; and other personal information that assists the leader in building a working relationship. This will start to build a meaningful relationship between the parties and sends the message to the subordinate that the leader cares about them as an individual.⁶⁷ There should be little to no talk about work.

A leader should have a system to remember details because details matter. Whether it is keeping a leader's book, personnel file for every person, a mnemonic device, etc., a leader should choose a system that works for them so that they can remember details later. This will help further relationships and help a leader relate to their subordinates better.⁶⁸

If the subordinate has just moved to the location, give the individual time to settle their family and ensure the subordinate knows that, though the leader is looking forward to working with them, work can wait. No one can focus and be their best self at work when their family is not taken care of at home. Usually the mission will not fail because a leader authorized a few extra days for a new teammate to get acclimated. If the team was able to stay afloat the week prior to the new Soldier arriving, they can survive a little longer.

Formal Initial Counseling

Usually a short time after the informal initial counseling, a leader should conduct the formal initial counseling. This should be the second positive counseling session between a leader and subordinate. The initial counseling is where the leader gives an outline of what the individual's job is, how they fit into the team, and what to expect from the leader.⁶⁹ Without this clarity, an individual may try their best to do a job they think they are supposed to do, and the leader may get frustrated that the individual is not doing the job the leader expects them to do. Therefore, it is the responsibility of

the leader to clarify their expectations and intent during the initial counseling.

The leader must clearly communicate the purpose of the team. The Army practices mission command,⁷⁰ which only works if subordinates can make decisions in the absence of micromanagement. If a subordinate understands the purpose of the team and the mission, they are able to act in the absence of direct guidance.

The subordinate should leave the counseling with a document that summarizes everything discussed and a copy of the leader's evaluation support form. It is important the subordinate leaves with a copy of everything so they have something to reference during the rated period as required. It is also important they leave with the leader's support form so they can better understand what the leader's job and focus is and nest their own focus accordingly.

Quarterly Counseling

After conducting the initial counseling, leaders should use the quarterly counseling sessions to refine an individual's role, set objective goals, and discuss the individual's performance. A majority of the time, this should be an overall positive counseling session between the leader and the subordinate. Between quarterly counseling sessions, a leader should take notes in preparation for the upcoming sessions.⁷¹ This enables the leader to discuss concrete examples of sustains and improves during later counseling sessions.⁷² Additionally, writing these events down will help the leader eventually draft the end-of-year evaluation.

A leader should add structure and thought to quarterly counseling sessions by sending an email with expectations of the counseling session and topics to be discussed. This action helps alleviate some of the stress for the subordinate and sets the tone for a positive interaction. For example, a leader could say, "we are going to talk about three things you think you are doing well

at work, three things you want to improve at work, one thing you want to improve in your personal life, and three ways I (the leader) can improve."⁷³ Though the wording of the email puts the onus on the subordinate, the leader should have notes on all topics as well. Another option leaders have used in the field is to conduct quarterly counseling using the annual evaluation report to guide the discussion.⁷⁴ If that is the case, the leader should send an email and tell the subordinate to be prepared to discuss what was accomplished in each portion of the evaluation report and what goals are for the remainder of the evaluation period.

A leader should prepare for quarterly counseling sessions with the same diligence they would prepare for a meeting with a commander or other senior leader. The leader should take written notes during the counseling session and send a synopsis of those notes to the subordinate to ensure both individuals are clear on what the counseling session covered and any due-outs. Giving this level of attention and detail will communicate to the subordinate how important the counseling process is and set the tone for future counseling sessions.

End-of-Rated-Period Counseling

Prior to the end-of-rated-period counseling, the leader should send the subordinate their draft evaluation report.⁷⁵ If a leader has done a good job counseling throughout the rated period, this counseling will not surprise the subordinate and can be a positive counseling session where the parties discuss the accomplishments of the rated period and how the subordinate can continue to grow. In order for this to happen, the subordinate has to submit their final evaluation report support form in a timely manner. It is important that the leader send the draft evaluation to the subordinate so they have the opportunity to read the evaluation before the counseling. This enables the subordinate to provide input and discuss any requested changes they are asking to be made.⁷⁶ If no changes are requested, the leader should discuss the important points of the evaluation and how the subordinate can continue to develop in the organization during this counseling.

Informal Periodic Counseling

Throughout the time a leader has a subordinate in their charge, it is important the leader periodically check in with them. These check-ins should all be seen as small, positive counseling sessions, building on the meaningful relationship between the parties. Checking in with individuals on a regular basis is essential for a leader to understand what normal is for each person and to be accessible to their subordinates. Some leaders walk around their office daily and ensure that they speak to every person. To develop more meaningful relationships, some leaders will elect to have longer conversations with different people each day.

These check-ins should range from stopping by the subordinate's work area, to asking a subordinate to stop by the leader's office. At a minimum, a leader should stop by their Soldier's work area periodically to gain a better understanding of the work environment and use these visits as an opportunity to publicly praise their subordinate, when appropriate. These visits should be personal in nature and topics could range from asking about their children, to commenting on their exceptional effort at physical training that morning. However, if the conversation will likely be more in-depth or personal in nature, a leader should ask the subordinate to drop by their office to have those conversations. These bigger events could range from a subordinate going to a promotion board to having their first child.⁷⁷ Each of these events should be acknowledged by the leader and talked through with the subordinate.

Another way to think about the importance of ongoing counseling: "You can think of it in the negative. If you want to regret not seeing the signs that a Soldier is struggling and have to live with survivor's guilt, then don't have a counseling program."⁷⁸ Suicide and other negative, life-altering decisions occur too often among Soldiers in the Army.⁷⁹ If a leader walks around and has a feeling for what normal is for their subordinates, they may be able to notice when something is abnormal and ask to talk with them in their office.

Regular check-ins with individuals and teams further relationship building with each person. The regular check-ins will help the leader to further develop meaning-

ful relationships and will facilitate the two-way conversations a leader should strive for in an effective counseling program. When doing the periodic check-ins, ensure to relate to individuals and ask about things that are important to them (which could have been learned in the initial informal counseling or follow-on counseling sessions).

Negative Event-Oriented Counseling

Negative, event-oriented⁸⁰ counseling is, unfortunately, common in the Army.⁸¹ If this is the only counseling a leader does and there is no meaningful relationship between the parties, this will likely be seen as a negative counseling experience and the counseling will likely not be as effective and could even be a barrier to a meaningful relationship. However, if there is a meaningful relationship between the parties, the counseling session may be seen as a positive interaction between the parties as the subordinate could be grateful that the leader is trying to help.⁸²

Depending on the severity of the issue, negative feedback should build from a short conversation about an issue, to a longer conversation, to a written counseling if the issue continues. If a leader goes directly to written counseling, it may place a subordinate on the defensive and can deter them from taking risks in the future. Of course, a leader will have to decide if the severity of the issue warrants quicker escalation to a written counseling.

When addressing the issue, it is important that the feedback focuses on how to get better and not on punishment.⁸³ Additionally, the focus should be on the behavior and not the character of the individual receiving the feedback.⁸⁴ If their character is attacked, an individual will often get defensive and the feedback may unnecessarily harm the relationship.

When giving feedback, asking the subordinate questions will often lead them to discuss what the issue was and a way to solve it (being mindful not to violate the Soldier's Article 31, UCMJ, rights).⁸⁵ This technique is particularly effective because it can help reduce the perception the leader is attacking the subordinate and makes the process more collaborative.⁸⁶ Simultaneously, the leader is still addressing the issue.

Conclusion

A counseling session can be a positive experience for the leader or the subordinate. Counseling sessions, if done correctly, can enable a leader to build a meaningful relationship with their subordinate, improve transparency by setting expectations and communicating observations during the rated period, facilitate two-way communication, provide purpose, and conduct mentoring activities. When a counseling program is executed correctly, it can help develop relationships, stimulate growth, increase mission accomplishment, and leaders and subordinates become more effective. In short, counseling enables leaders to better care for their Soldiers—to have the same type of effect MAJ Knight had on SPC Smith. **TAL**

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Notes

1. The names, dates, locations, and other immaterial facts have been changed to protect the identity of the individuals.
2. "Formal" refers to a counseling session that is recorded by a writing in some fashion, traditionally on a DA Form 4856. See U.S. Dep't of Army, Form 4856, Developmental Counseling Form (July 2014).
3. U.S. DEP'T OF ARMY, TECH. PUB. 6-22.1, THE COUNSELING PROCESS para. 1-5 (1 July 2014) [hereinafter ATP 6-22.1] ("Event-oriented counseling involves a specific event or situation.")
4. This article will not discuss the possible evidentiary and UCMJ Article 31(b) issues raised in this vignette.
5. Simon Sinek, *How to Discover Your "Why" in Difficult Times*, TED (Apr. 2021), https://www.ted.com/talks/simon_sinek_how_to_discover_your_why_in_difficult_times?rss=172BB350-0207 ("It's very hard to start building those relationships in the moment of crisis. And I think it's a lesson for leadership, quite frankly. Which is, you can't judge the quality of a crew by how a ship performs in calm waters. You judge the quality of a crew by how a ship performs in rough waters. But the time in calm waters is when you're building relationship and trust . . .").
6. U.S. DEP'T OF ARMY, THE ARMY PEOPLE STRATEGY 12 (2019) [hereinafter THE ARMY PEOPLE STRATEGY] ("Amplify the positive behaviors that align with our vision of cohesive teams: civility and positive relationships; diversity, equity and inclusion; honor and respect; empathy; and care for Soldier and Civilian well-being.")
7. Major (MAJ) Knight had not established much of a relationship with Specialist (SPC) Smith prior to the introductory vignette. However, since the event, SPC Smith has viewed MAJ Knight as a mentor and has reached out several times after the time they worked together.

8. ATP 6-22.1, *supra* note 3, para. 1-21 (“Documentation of this [personal growth counseling] results in an individual development plan. Each individual development plan will vary as every person’s needs and interests are different.”).
9. Andrea Serio, *What “Leadership” Means to JWMI Alumni*, JACK WELCH MGMT. INST. (Dec. 13, 2019), <https://jackwelch.strayer.edu/winning/meaning-of-leadership/> (quoting Jack Welch).
10. 14 *Simple Ways to Connect with Your People*, MIL. LEADER, <https://themilitaryleader.com/14-simple-ways-to-connect-with-your-people/> (last visited Sept. 16, 2021) (“If there’s a personal activity that military leaders routinely fail at, it’s counseling.”).
11. ATP 6-22.1, *supra* note 3, para. 1-1 (“Army leaders must understand that effective counseling helps achieve desired goals and effects, manages expectations, and improves the organization. . . . Regular counseling provides leaders with opportunities to: Demonstrate genuine interest in subordinates. . . .”).
12. Colonel Terri Erisman, Exec. Officer to The Judge Advoc. Gen., U.S. Army, Address to the 70th Graduate Course at The Judge Advocate General’s Legal Center and School: Emotional Intelligence (Sept. 29, 2021) [hereinafter Colonel Erisman Address].
13. Telephone Interview with Major (Promotable) Brandon Bergmann, prior Group Judge Advoc. of the 7th Group Special Forces Command (Oct. 22, 2021) [hereinafter Major Bergmann Interview].
14. U.S. DEP’T OF ARMY, DOCTRINE PUB. 6-22, ARMY LEADERSHIP AND THE PROFESSION para. 6-53 (31 July 2019) (C1, 25 Nov. 2019) [hereinafter ADP 6-22]. See also ATP 6-22.1, *supra* note 3, at 1-1 (“Counseling is the process used by leaders to review with a subordinate the subordinate’s demonstrated performance and potential.”).
15. An individual does not have to be rated by a leader to be counseled by that leader. However, it is best practice if an individual is going to have a formal, written counseling session with an individual, it is approved first by the rating supervisor.
16. U.S. DEP’T OF ARMY, REG. 623-3, EVALUATION REPORTING SYSTEM para. 1-8e (14 June 2019) [hereinafter AR 623-3].
17. *Id.* para. 1-8e (emphasis added).
18. This assertion is based on the author’s professional experiences as a noncommissioned officer and company grade officer for over eighteen years in the Army Reserve, Army National Guard, and Active Component of the U.S. Army, and the Chief, International & Operational Law for U.S. Army Special Forces Command (Airborne) from 9 June 2009 to 8 June 2011 [hereinafter Professional Experiences].
19. AR 623-3, *supra* note 16, para. 4-11e (“In addition, no appeal may be filed solely based on the contention that the appellant was never counseled.”).
20. See ATP 6-22.1, *supra* note 3, para. 1-1, for a more exhaustive list of possible reasons to counsel a subordinate.
21. KIM SCOTT, RADICAL CANDOR: HOW TO GET WHAT YOU WANT BY SAYING WHAT YOU MEAN, at xiii-xiv (2019).
22. Telephone Interview with Colonel Nathan Bankson, Staff Judge Advoc., U.S. Army Cadet Command & Fort Knox (Nov. 30, 2021) [hereinafter Colonel Bankson Interview] (“I always talk first about something about that individual. What is going on with your mom? How is the wood working going? I ask because I want to know more about the individual.”).
23. Telephone Interview with Colonel Toby Curto, Staff Judge Advoc., First Infantry Div. & Fort Riley (Nov. 12, 2021) [hereinafter Colonel Curto Interview] (“The core to being on a team is showing up to work and caring about the people around you as people, and wanting them to succeed.”).
24. *Id.* (“A lot of this comes from upbringing and trainings as a kid. I treat my subordinates the way I want to be treated as a friend, a brother, a professional, and a teammate.”).
25. *Id.* (“I want to know more about the people that work for me, because they are people that are literally right next to me for a large part of my life. I am interested in what makes them tick, what makes them unique.”).
26. NCO Creed, U.S. ARMY, <https://www.army.mil/values/nco.html> (last visited Mar. 8, 2022) (“I know my Soldiers and I will always place their needs above my own.”).
27. SCOTT, *supra* note 21, at 9 (“[W]hen people trust you and believe you care about them, they are much more likely to . . . embrace their role on the team.”).
28. ADP 6-22, *supra* note 14, para. 5-7 (“The best leaders generate a sense of commitment that causes subordinates to go beyond achieving the bare minimum. Compliance to legal and ethical orders, directives, and instructions is always required. Willing and eager agreement is commitment.”).
29. SCOTT, *supra* note 21, at 10 (“Care Personally [Is the] First Dimension of Radical Candor”).
30. ADP 6-22, *supra* note 14, paras. 1-73, 1-75 (“The ability to influence others is a central component of leadership. . . . Influencing is persuading people do what is necessary. Influencing entails more than simply passing along orders. Through words and personal example, leaders inspire purpose, provide direction, and when required motivation.”).
31. Telephone Interview with Colonel Terri Erisman, Exec. Officer to The Judge Advoc. Gen., U.S. Army (Oct. 26, 2021) [hereinafter Colonel Erisman October 26 Interview] (“By the time you have to give a negative counseling, you should have already built up trust. This way the subordinate knows the leader is not out to get them, only there to help them.”). See also SCOTT, *supra* note 21, at 21 (“[she was] careful not to ‘personalize,’ not to make it about some essential trait. She said I ‘sounded’ stupid rather than I was stupid.” [internal italics omitted]). See also Colonel Erisman Address, *supra* note 12, (“When you start saying someone is like that, you are attacking them; stop that, focus on the behavior.”).
32. JOCKO WILLINK & LEIF BABIN, EXTREME OWNERSHIP: HOW U.S. NAVY SEALs LEAD AND WIN 12 (2d ed. 2017).
33. Colonel Curto Interview, *supra* note 23 (“Everyone is good at something, and if I have an opportunity to give projects to an individual I know will be successful at it, they will enjoy doing that work more and the product will be better.”).
34. *Id.* (“I believe when someone hears that a leader remembers important facts or personal facts, it shows that the leader actually cares about them as a person.”).
35. Colonel Bankson Interview, *supra* note 22 (“If I do not tell a subordinate what I expect, how can I expect they will complete it? Counseling helps hold both the leader and subordinate accountable for their roles, it increases transparency.”).
36. Interview with Command Sergeant Major Joshua Quinton, The Judge Advoc. Legal Ctr. & Sch. Command Sergeant Major & Noncommissioned Officers’ Academy Commandant, in Charlottesville, Va. (Nov. 18, 2021) [hereinafter Command Sergeant Major Quinton Interview] (“As a leader I owe it to my Soldiers to make it clear what “exceeds standard” means to me in their current role.”)
37. Colonel Bankson Interview, *supra* note 22 (“We have a pie and each of us own a piece of that pie. Counseling crystallizes what portion of the pie I expect one of my people to eat.”).
38. ATP 6-22.1, *supra* note 3, para. 2-45 (“Documentation serves as a ready reference for the agreed-upon plan of action and helps the leader track the subordinate’s accomplishments, personal preferences, or issues. A good record of counseling enables the leader to make proper recommendations for professional development, promotions, and evaluations.”).
39. Colonel Erisman October 26 Interview, *supra* note 31 (“One goal of a good counseling program is to ensure the rated Soldier is not surprised by their rating.”).
40. See source cited *supra* note 30.
41. ADP 6-22, *supra* note 14, para. 1-74.
42. Telephone Interview with Colonel Luis Rodriguez, Dir., Off. of Diversity, Equity, & Inclusion, U.S. Army Judge Advoc. Gen.’s Corps (Nov. 26, 2021) [hereinafter Colonel Rodriguez Interview] (“If a leader can get input from a Soldier on a better way to do something, this helps in two ways. First, it may be a solution the leader could not have thought of on his own. Second, the Soldier will feel empowered and more invested in the mission and mission success.”).
43. Major Bergmann Interview, *supra* note 13 (“I implemented several suggestions I [received during one-on-one counseling sessions]. Having that one-on-one time breaks down a barrier.”).
44. SIMON SINEK, START WITH WHY: HOW GREAT LEADERS INSPIRE EVERYONE TO TAKE ACTION 95 (2009) (“Companies with a strong sense of WHY are able to inspire their employees. Those employees are more productive and innovative. . . .”).
45. ADP 6-22, *supra* note 14, para. 1-74.
46. *Id.* para. 1-76 (“Subordinates who understand why they are doing something difficult and discern the higher purpose are more likely to do the right thing when leaders are not present to direct their every action.”).
47. *About the Army*, U.S. ARMY, <https://www.goarmy.com/about.html> (last visited Mar. 8, 2022) (“Soldiers protect America’s freedoms while serving at home and abroad, and they are always prepared to defend the nation in times of need.”).
48. Command Sergeant Major Quinton Interview, *supra* note 36 (“I like to know my customer. If I am going to the 10th Mountain, I will find out the history of the 10th Mountain and all the awesome things they have done throughout their history.”).
49. THE ARMY PEOPLE STRATEGY, *supra* note 6, at 2.
50. *The Importance of the Criminal Justice System and Today’s Professionals*, GOODWIN UNIV. (Aug. 25, 2020), <https://www.goodwin.edu/news/importance-of-the-criminal-justice-system/#:~:text=The%20criminal%20justice%20system%20is%20designed%20>

to%20deliver,In%20other%20words%2C%20it%20keeps%20our%20citizens%20safe.

51. ATP 6-22.1, *supra* note 3, para. 1-21 (“As part of professional growth counseling, the leader and subordinate may choose to develop a pathway to success with short- and long-term goals and objectives. The discussion includes opportunities for civilian or military schooling, future duty assignments, special programs, available training support resources, reenlistment options, and promotion opportunities and considerations.”).

52. Colonel Bankson Interview, *supra* note 22 (“If I know what someone’s long-term goals are, and I can give them jobs that help them reach those goals, it will improve their motivation. Even if the person wants to get out of the military, I can still give them work that helps set them up for success.”).

53. ADP 6-22, *supra* note 14, para. 6-56 (“The following generally characterize[s] mentorship: . . . [giving] advice and counsel over time to aid professional and personal growth.”).

54. “Mentoring activities” is not a term found in doctrine, but is only used in this primer to discuss some activities that, by doctrine, are done by mentors. See ADP 6-22, *supra* note 14, tbl.6-3.

55. *Id.* para. 6-56 (defining mentorship as “the voluntary developmental relationship that exists between a person of greater experience and a person of lesser experience that is characterized by mutual trust and respect.”).

56. Colonel Jim Thomas & Lieutenant Colonel Ted Thomas, *Mentoring, Coaching, and Counseling: Toward a Common Understanding*, MIL. REV., July–Aug. 2015, at 50, 52.

57. ATP 6-22.1, *supra* note 3, para. 2-29 (“The scheduled time for counseling should also be appropriate for the complexity of the issue at hand. Generally, counseling sessions should last less than an hour.”).

58. Colonel Bankson Interview, *supra* note 22 (“Counseling sessions usually take about an hour, to do them right.”).

59. ATP 6-22.1, *supra* note 3, para. 2-29 (“When possible, leaders should formally counsel a subordinate during the duty day. Counseling after duty hours may be rushed or perceived as unfavorable.”).

60. *Id.* paras. 2-8 to 2-9 (“To be effective, counselors must . . . [listen] thoughtfully and deliberately to capture the nuances of the subordinate’s language.”).

61. Colonel Bankson Interview, *supra* note 22 (“When counseling, I ensure I am not distracted: I turn off my cell phone, I leave the phone off the hook, I have a dedicated hour to the counseling session, and I try to move away from my desk, so there are no barriers between us.”).

62. Command Sergeant Major Quinton Interview, *supra* note 36 (“One tip I would give to all commissioned officers evaluating noncommissioned officers, is understand the noncommissioned officers evaluation report.”). See also AR 623-3, *supra* note 16.

63. U.S. Dep’t of Army, Form 67-10-1, Company Grade Plate (O1–O3; WO1–CW2) Officer Evaluation Report (1 Mar. 2019). See also U.S. Dep’t of Army, Form 67-10-2, Field Grade Plate (O4–O5; CW3–CW5) Officer Evaluation Report (1 Mar. 2019).

64. See U.S. Dep’t of Army, Form 2166-9-1, NCO Evaluation Report (SGT) (1 Nov. 2015); U.S. Dep’t of Army, Form 2166-9-2, NCO Evaluation Report

(SSG-1SG/MSG) (1 Nov. 2015); U.S. Dep’t of Army, Form 2166-9-3, NCO Evaluation Report (CSM/SGM) (1 Nov. 2015).

65. See U.S. Dep’t of Army, Form 67-10-1A, Officer Evaluation Report Support Form (1 Mar. 2019); U.S. Dep’t of Army, Form 2166-9-1A, NCO Evaluation Report Support Form (1 Nov. 2015).

66. Major General David J. Bligh, Staff Judge Advoc. to the Commandant of the Marine Corps, U.S. Marine Corps, Address to the 70th Graduate Course at The Judge Advocate General’s Legal Center and School (Nov. 3, 2021) [hereinafter Major General Bligh Address] (“For your first meeting [with a subordinate] you should allow thirty minutes to meet. Talk nothing about tasks, nothing about any work, just talk about the individual. Then they will think their leader cares about them.”).

67. *Id.*

68. *Id.* (“If you learn someone enjoys a certain football team, you can talk some about that football team and a similar issue the team is facing. Then you could segue into the harder conversation. For example, the quarterback this weekend did not seem to plan, just like our team doesn’t seem to plan.”).

69. ATP 6-22.1, *supra* note 3, para. 1-9, additionally recommends that a leader use this time to discuss other area-specific and some work-specific issues, for example “organizational history, structure.”

70. U.S. DEP’T OF ARMY, DOCTRINE PUB. 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES para. 1-14 (31 July 2019) (“Mission command is the Army’s approach to command and control that empowers subordinate decision making and decentralized execution appropriate to the situation.”).

71. ATP 6-22.1, *supra* note 3, para. 2-1 (“To be effective, counseling must be a shared effort. Leaders assist their subordinates in identifying strengths and weaknesses and creating plans of action.”).

72. ATP 6-22.1, *supra* note 3, para. 1-17 (“Performance counseling is the review of a subordinate’s duty performance during a specified period.”).

73. Colonel Erisman October 26 Interview, *supra* note 31.

74. Command Sergeant Major Quinton Interview, *supra* note 36 (“I use the Evaluation Report as the guide for all my quarterly counseling sessions.”).

75. Colonel Bankson Interview, *supra* note 22 (“I always send a draft evaluation report. I will never send a completed evaluation report and ask them to sign. I send a draft report so we can have a discussion about what I wrote before the rated Soldier is asked to sign.”).

76. *Id.*

77. ATP 6-22.1, *supra* note 3, para. 1-5 (“Event-oriented counseling involves a specific event or situation. It may precede events such as participating in promotion boards . . .”).

78. Command Sergeant Major Quinton Interview, *supra* note 36 (responding to the question, “If you have to convince somebody who does not think counseling is worth their time as a leader what would you tell them?”).

79. Danielle DeSimone, *Military Suicide Rates Are at an All-Time High; Here’s How We’re Trying to Help* (Sept. 1, 2021), <https://www.uso.org/stories/2664-military-suicide-rates-are-at-an-all-time-high-heres-how->

were-trying-to-help (“Suicide rates among active-duty military members are currently at an all-time high since record-keeping began after 9/11 and have been increasing over the past five years at an alarmingly steady pace.”).

80. ATP 6-22.1, *supra* note 3, para. 1-7 (“Leaders should always counsel subordinates who do not meet the standard.”)

81. This assertion is based on the author’s recent professional experiences as the senior trial counsel for U.S. Army Cadet Command from 15 July 2019 to 15 July 2021.

82. Colonel Erisman October 26 Interview, *supra* note 31 (“By the time you have to give a negative counseling, you should have already built up trust. This way the subordinate knows the leader is not out to get them, only there to help them.”).

83. *Id.* (“Event-oriented counseling should look at the view of development, I want to address this issue to help make you better, to ensure you understand how this affects your credibility.”).

84. ATP 6-22.1, *supra* note 3, para. 1-7 (“Address and explain the specific behavior or action-do not address the subordinate’s character.”).

85. Telephone Interview with Colonel Terri Erisman, Exec. Officer to The Judge Advoc. Gen., U.S. Army (Nov. 19, 2021) (“The best way I found to address an issue is to first try to ask questions and get the subordinate to identify the issue. Then ask questions to come up with ways to avoid these issues in the future.”).

86. *Id.*



One of the two B-29 Superfortresses that still actively fly today soars over Whiteman Air Force Base, Missouri. The B-29 is a four-engine propeller-driven heavy bomber designed by Boeing and flown primarily by the United States during World War II and the Korean War. (Credit: Staff Sgt. Kayla White, U.S. Air Force)

No. 3

Managing to Innovate

By Major Clayton J. Cox

We must embrace and invest in innovation, creativity, and change—a charge that applies not only to the systems we procure in the future but also to the ends, ways, and means that we command and control them.¹

Flying through the air, carried by engines that splattered oil in their faces and by wings with a tendency to peel off mid-flight—few have courted innovation like American World War I fighter pilots.² These brave souls plied the skies during turbulent times and against some formidable foes, including Manfred von Richthofen (“The Red Baron”) and his Flying Circus.³ They put their lives on the line piloting what can best be described as “cantankerous, unreliable, finicky, altogether dangerous aircraft,” literally flying by the seats of their pants.⁴ In the end, the tenacity of the Army Air Corps converted a budding technological system—the airplane—into a powerful instrument of war.⁵

These pilots were not the first warriors to innovate—or the last. Innovation has been, and will always be, vital to military success. New challenges arise, and innovation lifts us to meet and overcome them. Similar to when the Allies took to the skies over Europe over a hundred years ago, the United States faces conflict in new, unfamiliar battlespaces. Now comfortable in the air, the nation must figure out how to operate in the space and cyber domains. Furthermore, new styles of warfighting—such as terrorist tactics and China’s use of missiles and artificial islands—have required the United States to reexamine tried-and-true strategies and weapon systems from yesteryear.⁶ On top of that, new technologies such as hypersonics, artificial intelligence (AI), unmanned aerial vehicles (UAVs), digital prototyping, and directed energy all have the potential to change how we go about preparing for and waging wars.⁷ If all this was not enough, the military spent months

on end hobbled by COVID-19—a foe 1,000 times smaller than a grain of sand⁸—that impacted normal operations, constraining and diverting resources to other needs. Similar to the nascent Army Air Corps facing off with the German Flying Circus,⁹ the modern United States military has worthy, contemporary adversaries to overcome. As General Charles “CQ” Brown, Air Force Chief of Staff, has warned: “[If] [w]e don’t change, if we fail to adapt, we risk losing. We risk losing in a great power competition, risk losing in a high-end fight, we risk losing quality Airmen, losing budget dollars, our credibility and aspects of our national security.”¹⁰

In addition to these enterprise-wide challenges, every installation, unit, and individual now faces, or will soon face, challenges of their own. The Judge Advocate General’s (JAG) Corps of the various services have plenty. Administrative and military justice system overhauls address concerns relating to sexual assault,¹¹ racial disparities,¹² and extremism.¹³ National security advisors must be prepared to opine on the use of new warfighting technologies.¹⁴ Acquisitions professionals must wrestle with new authorities and ways of interacting with industry, from modifications to the Federal Acquisition Regulations (FAR) to increased leveraging of FAR alternatives¹⁵ and intellectual property.¹⁶ With all these variables and challenges, “[t]here are too many possible futures for us to pick one and build a force that’s geared to defeat it.”¹⁷

As problems and threats change our world, the need to innovate undergirds everything done within the military and the various JAG Corps. To adjust to change, we will often have to fly

by the seats of our pants—or even build our airplanes midflight. As we develop and employ our own “cantankerous, unreliable, finicky, altogether dangerous”¹⁸ systems against our Flying Circus equivalents, how can we promote innovation—or even embed it in our culture—to facilitate victory?

This article addresses that question, and it will do so by discussing scalable theories of innovation that legal advisors and leaders can apply to discrete units, entire services, or even their individual lives.¹⁹ Beginning with the need to focus on effective innovation, this article provides theories helpful to creating environments that cultivate innovation, and it flags potential pitfalls that threaten creativity and productive change. In the end, it shows the ways in which judge advocates (JA)—as leaders and legal advisors—can understand and embrace a changing world while managing to innovate.

Focus on Effective Innovation, Not Just Change

As military leaders who are concerned about maintaining U.S. military superiority call for change at “the speed of relevance,”²⁰ innovation has become a battle cry and a buzzword. In its most generic sense, innovation means “a new idea, method, or device” or “the introduction of something new.”²¹ In other words, all it takes for something to qualify as an innovation is newness. However, as anyone familiar with the overabundance of “good idea fairies”²² in the military knows, not all innovations and changes are created equal. Newness alone will not secure America’s future.

The innovation needed to advance our varied causes will almost certainly not arise out of aimless change for change’s sake; it will not arise from simply doing something differently than it has been done before, nor will it arise from change aimed at glowing performance reports—although the seeds of innovation can exist even in these changes.²³ To have meaningful impact, innovations must improve some process or outcome—they must advance an individual or organization toward mission success. In other words, innovation must help bridge capability gaps, getting us from where we are to where we need to be.²⁴ To highlight the importance of this sort of innovation

over generic innovation and change, this article refers to this type of innovation as “effective innovation.”

By focusing on effective innovation, military attorneys will ensure that innovation is a tool for growth and problem resolution—not just an end of its own. Carefully, intentionally seeking effective innovation over innovation generally is vital because simply pushing for innovation “can easily become a grab bag of much-touted best practices” that accomplish little.²⁵

Approach Problems Using Theories, Not Checklists

Even when understanding that the goal is effective innovation, the natural tendency is to want a checklist or guide that, if followed, will guarantee success. However, effective innovation is not that simple. There is no one-size-fits-all way to effectively innovate. Although each organization must come up with an innovation strategy, what is required to induce innovation will vary somewhat from one organization to the next. After all, “[t]here are no quick fixes for the fundamental problems of life,” and different organizations face different fundamental problems.²⁶ Instead of looking for a guide dictating *what* to think about problems, it is better to learn *how* to think about problems—to have useful theories for grappling with novel situations and devising ways to overcome them.²⁷

Fortunately, useful theories for effective innovation abound, in and out of the military. The need to innovate to survive and thrive is not just a requirement of the JAG Corps or the military at large—businesses also require innovation to survive. Furthermore, unlike the military, which spends more time preparing for war than actually fighting it, businesses are engaged in a never-remitting struggle for survival.²⁸ For businesses, failure to adapt means financial and institutional death. In the military, the same mistakes are institutionally survivable—unless the nation itself is defeated—but they can lead to individual tragedy or set a nation up for future defeat. Although the stakes are lower in business-on-business battles than the world’s nation-on-nation conflicts, keys to innovation that business leaders have embraced translate well into military settings.

For example, during President Bill Clinton’s administration, then-Secretary of Defense William Cohen asked to meet with a Harvard Business School professor, Clayton M. Christensen, about Christensen’s research into disruptive innovation.²⁹ Christensen had earlier shaken up the business world with his new theory on disruptive innovation, and senior military leaders wanted to learn more.³⁰ Christensen did not fully understand why he was summoned to present his research, but he agreed to meet. He presented “how the mini-mills had undermined the traditional steel industry”—not typically a subject one would expect the Secretary of Defense, the Joint Chiefs of Staff, or the Secretaries of the Army, Navy, and Air Force to have interest in.³¹ Christensen recounted later:

General Hugh Shelton, then the chairman of the Joint Chiefs of Staff, stopped me. “You have no idea why we are interested in this, do you?” he queried. Then he gestured to the mini-mill chart. “You see the sheet steel products at the top of the market?” he asked. “That was the Soviets, and they’re not the enemy anymore.” Then he pointed to the bottom of the market—rebar—and said, “The rebar of our world is local policing actions and terrorism.” Just as the mini-mills had attacked the massive integrated mills at the bottom of the market and then moved up, he worried aloud, “Everything about the way we do our jobs is focused on the high end of the problem—what the USSR used to be.”

Once I understood why I was there, we were able to discuss what the result of fighting terrorism from within the existing departments would be, versus setting up a completely new organization. The Joint Chiefs later decided to go down the route of forming a new entity, the Joint Forces Command, in Norfolk, Virginia. For more than a decade, this command served as a “transformation laboratory” for the United States military to develop and deploy strategies to combat terrorism around the world.³²

Although the military has again shifted its attention to new, top-of-the-market enemies—as evidenced by Russia’s 2022 assault on Ukraine—this example demonstrates how a good innovation theory, applied effectively to global military problems, can spark key change—even when that theory originated in the business sector.

By learning innovation theories that have been tried and tested in conjunction with commercial and military problems, military leaders and legal advisers will better prepare themselves and their teams to innovate. Applying those theories in practice will empower leaders to confront next-generation problems in ways checklists never will.

Cultivate an Innovation-Friendly Environment

In order to benefit from effective innovation, leaders should cultivate an appropriate environment. In both the military and business, effective innovation does not generally arise out of nothing,³³ and it especially struggles to occur within bureaucracies—including military bureaucracies. “[I]n bureaucracies the absence of change is the rule, the natural state”; bureaucracies are designed not to change.³⁴ This is partly because bureaucracies overflow with managers, and “many of the best tools that good managers employ to make ongoing businesses strong[] can be inimical to innovation.”³⁵ Many managerial tools focus on short-term wins, but they often neglect long-term goals or fail to recognize critical shifts in a need or mission. To effect change and effectively innovate for long-term goals or especially perplexing problems, military leaders must actively cultivate an innovation-friendly environment.

This section discusses theories that relate to priming an environment for innovation. It first addresses the need to remain attuned to the problem or need being addressed—the job to be done.³⁶ Then, it explores the relationship between the job to be done and metrics. After addressing that relationship, it describes the need for training innovative teams by expanding worldviews and creating technical experts with the knowhow required for effective innovation. Finally, it covers the need to create a culture of trust.

Focus on the Job To Be Done

Before effective innovation can take place, the first step to take is identifying the job that needs to be done. In military parlance, this could be referred to as the mission, but it really goes deeper than that. “The job to be done” speaks to the underlying need the mission seeks to satisfy—the mission’s *raison d’être*.

Based on decades of research, business experts have developed this theory—focusing on the job to be done—to guide product development.³⁷ They use it “to home in on . . . the progress that the customer is trying to make in a given circumstance—what the customer hopes to accomplish” rather than simply making guesses based on interesting correlations derived from mountains of data, blindly pressing forward on a comment made at a staff meeting, or impulsively responding to sensational assertions in recent headlines.³⁸ In other words, these experts identify and focus on the capability gaps their customers confront, and they seek ways to meet those needs. Approaching business in this way keeps the innovative focus on helping the customer complete a desired job, which leads to creating a product or service that meets actual needs.³⁹

To illustrate this point, here is a story about milkshakes. A group of business advisors worked with a fast-food restaurant in an effort to increase milkshake sales.⁴⁰ The company had wrestled with the issue for a long time, gathering data from its customers.⁴¹ Focusing on distinct features of the product, they made the milkshakes chocolate, chunkier, and cheaper—but sales did not go up and profits did not increase.⁴²

Under the advice of the business advisors, the company started asking customers a different question: What job are you hiring that milkshake for?⁴³ Asking this odd question focused on the customer’s underlying needs, and it led to some interesting information:

When they’d struggle to answer this question, we’d help them by asking, “Well, think about the last time you were in this same situation, needing to get the same job done—but you didn’t come here to hire that milkshake. What did you hire?” The answers

were enlightening: Bananas. Doughnuts. Bagels. Candy bars. But the milkshake was clearly their favorite.⁴⁴

In the end, the purpose of the milkshake for the majority of morning customers had little to do with chocolate, cost, or chunks—customers were looking for something to eat on a long, boring commute to help stave off looming hunger, and the milkshake did that job best.⁴⁵

Although milkshakes have yet to be weaponized, the “job to be done” theory translates easily into the military. Even though military product development differs from what occurs in business, we have jobs that need to be done. What is crucial, however, is remembering that missions must be focused on needs—on figuring out what is the job our “customers” need to have done.

Moving beyond milkshakes, here is another example of this principle in action, this time with a military backdrop. During World War II, the British needed to keep merchant vessels safe from German U-boats.⁴⁶ In response to this threat, the British Navy used antisubmarine patrols that actively hunted these furtive foes.⁴⁷ As more British ships sank, “[t]he reaction of the Admiralty was to redouble its demands for active patrolling of the areas in which submarines were thought to be operating, patrols that had not provided the necessary protection for merchant ships.”⁴⁸ This decision to double down on patrols led to more lost ships, which led to even more patrols.⁴⁹

It turned out that the mission needed to get the job done—the one that the merchant ships required—was convoying, not patrols. Previous to World War II, France and Scandinavia had successfully implemented convoys, and some Royal Naval officers had endorsed the idea as well.⁵⁰ However, “convoying had been rejected [by the British] before World War I, [and] it was not an established mission.”⁵¹ By failing to home in on the job that actually needed to be done, and instead clinging to an already-established mission, the British Navy nearly set the stage for “defeat by starvation.”⁵² In other words, they tinkered with an established military product, but failed to see what their nation’s leaders and its people actually needed

These two examples—milkshakes and protection from U-boats—show how crucial it is for effective innovation and mission creation to understand what the job to be done is. Blind changes to milkshakes without really understanding why customers bought them were fruitless, as were new plans to protect merchant ships by increasing patrols. However, understanding the job to be done set the stage for effective innovation: morning commuters got improved food for the road, and merchant ships made it more frequently to their ports of destination.

In the legal community, we have our own customers with needs—ranging from individuals to entire agencies to the Constitution, all of which are frequently represented by the commanders we work for. When a staff attorney advises on the drafting of an other transaction agreement or an adverse action, what governs their recommendations? When a captain looks at improving the process for non-judicial punishment, what guides them in making the implemented changes? When an attorney forging new policy recommends changes to the Uniform Code of Military Justice, what influences the nature of those suggestions? In order to ensure that the changes influenced by attorneys constitute effective innovation, the influence exerted must be focused on the job the customers need done rather than other driving factors. Without that focus, the advice and recommended changes will not likely accomplish what needs to be done.

Mind Your Metrics

Understanding the importance of pinning down the job to be done, the next issue to discuss is both friend and foe: metrics. Metrics, for better and for worse, will never leave us. Managers, especially those in the middle of the chain in large bureaucracies, tend to love them.⁵³ After all, metrics provide snapshots of information that many rely on to measure the success and health of far-flung and complex organizations.⁵⁴

Despite managerial affection for metrics, they have a dark side. Professor James Griesemer,⁵⁵ a distinguished professor of science and technology studies at the University of California, Davis, warns:

Practices and policies that use metrics as standards turn work performance . . . into a game in which the goal is to exceed the standard rather than perform the work that was to be measured. In other words, compliance with the standard becomes the goal rather than a side effect of a policy imposing a standard.⁵⁶

As metrics will likely be used to one degree or another because they can provide value,⁵⁷ those relying on them need to understand their impact on innovation. When a metric is given, individuals will perform—and innovate—to meet the metric, often at the expense of the job to be done.

The Soviet Union experienced this effect in its centrally-managed economy.⁵⁸ Soviet authorities provided key metrics to Russian factories, focusing on total weight or quantity of products produced.⁵⁹ Plant managers worked to meet those metrics in order to obtain the associated bonuses, caring little for anything else.⁶⁰ As one researcher noted, “[b]onuses were paid to factories and workers for overfulfilling production quotas; as a result, managers lobbied for low quotas so as to exceed the goals more easily, or they falsified reports of actual output.”⁶¹ As a result, innovation happened, but it focused on meeting metrics rather than the true end goals of production, making the managerial creativity ineffective—or even counterproductive.

To show this is not an issue unique to Soviet production, here is a manifestation of the same problem in corporate America. Years ago, SonoSite, a company that made ultrasound equipment, had two kinds of handheld products, the Titan and the iLook.⁶² The Titan was the size of a laptop and was three times more expensive than the iLook, which was half the Titan’s size.⁶³ Although the Titan was more powerful and garnered more revenue per sale than the iLook, the iLook was more portable and it had room to grow, especially in future markets.⁶⁴

SonoSite’s president and chief executive officer, Kevin Goodwin, worried that if it did not sell the iLook, a competitor would create a similar product and disrupt SonoSite’s sales of the Titan, threatening the entire company’s future.⁶⁵ To better

understand the market, Goodwin joined one of his company’s top salespeople on a sales call.⁶⁶ He listened as the salesperson pitched the Titan to the customer, never referencing the iLook or even pulling it out of his bag.⁶⁷ Even after Goodwin personally instructed the salesman to show the potential customer the iLook several times, the salesman ignored him, focusing exclusively on selling the Titan.⁶⁸

This experience taught Goodwin an invaluable lesson: the metric for success provided to the salesperson—selling the product with the highest rate of return—overrode even Goodwin’s insistence that the salesman show the less valuable product so he could measure the customer’s interest in it. As one business expert has pointed out, “The problem was, the salespeople were all on commission, and success for them was defined by the total value of their sales and gross margin dollars. It was much easier for Goodwin’s best salesman to sell one of the laptop-sized ultrasound machines than it was to sell five of the little products.”⁶⁹ Goodwin’s concerns about the long-term growth and profitability of SonoSite as a company were overcome by short-term sales metrics.

This story highlights the power of metrics, and it also points out some of the negative impact they can have on effective innovation. How actions and people are measured matters; human beings will innovate to meet those metrics. When an action or a person is measured on short-term value, such as a sale or a flashy line on a performance report, resource allocation and innovation will focus on accomplishing, or even gamifying, those short-term objectives. Even if leadership preaches long-term strategy and the big picture, the short-term metrics that promise personal success sermonize as well—and often more persuasively. Ultimately, research shows that short-termism, or “focusing on current profits over long-run innovativeness,” correlates negatively with effective innovation.⁷⁰ The end result is that “[i]nappropriate strategic measures of effectiveness [a.k.a. ineffective metrics] may lead an organization to mistakenly increase its efforts, in a vicious cycle, at a time when increasing the effort put into the old methods only draws the organization deeper into failure.”⁷¹

This is not to say that metrics should be done away with. Rather, the lesson is that metrics need to be carefully calibrated to line up with the jobs that need to be done.⁷² Furthermore, those expected to meet a metric should be empowered to know why the metric exists and encouraged to speak up if compliance detracts from mission accomplishment. When a metric leads people to accomplish the mission, it provides value. However, when a metric becomes an end of its own, or when it fails to lead to effective innovation, it needs to be rethought or even purged. As long as ineffective metrics remain as measuring sticks for success, people will innovate to meet those standards; no matter what else is said—they will win the metric battle even if it means losing the war.

The acquisitions community has learned lessons in this area over the years. This field of practice has harnessed the value of commercial innovation by telling contractors what the end state should look like—i.e., the job to be done—rather than telling them how to do the job. Focusing on what the end result should be rather than on how to do the job gives contractors flexibility to come up with their own plans, methods, and approaches to meet the stated need. For this reason, the FAR expresses a predilection for “performance-oriented” specifications rather than “design-oriented” specifications.⁷³ As contractors create solutions and compete to solve a stated problem, the government becomes the beneficiary of cultivated, effective innovation.

Those seeking to cultivate innovation in their organizations can follow the acquisitions approach. They can pay careful attention to the use of metrics and look for instances where the metric leads to less-effective, or even undesirable, innovation. They can find ways to help subordinates envision the desired end state rather than blindly follow checklists. By doing so, they can ensure that metrics serve the job to be done instead of supplanting it.

Train Innovative Teams

Aspiring to effectively innovate can be daunting, but it does not have to be done alone. In fact, “[t]he problems we face today are far too complex to be solved by a lone genius working in isolation.”⁷⁴ Innovation is

at its best when it is played as a team sport and it is not just a leadership mantra. Good leaders will cultivate subordinates that can join in the effective innovation fray. Although there is no guaranteed curriculum that will make leaders and subordinates innovators, there are certain areas of focus that will make it more likely, including the following: broadening worldviews, creating and using technical experts, and establishing a culture of trust in our organizations.

Broaden Worldviews

An easy and helpful catalyst for innovation, individually and collectively, is actively expanding our worldview. In relation to business innovation, Dr. Christensen has pointed out the following:

Innovators’ abilities to see new opportunities to innovate will be greatly enhanced when they simply stand in a different place—when they ask, “How would a small start-up company implement this idea? How does it look to opinion leaders pushing the leading edge of practice? To unsophisticated customers at the bottom of the market?” And when innovators do not simply ask these questions, but are willing to *crawl inside these various environments* and *empathetically observe and understand* how these people use products to do their work and make their money, the innovators will be able to develop much more creative products than would be possible had they simply remained within their context.⁷⁵

Christensen further points out that “while creativity may occasionally result from random strokes of genius, creative insight often comes simply from standing in a different place, where the innovator can observe something that may not be visible from other vantage points.”⁷⁶

Lieutenant General Paul K. Carlton Jr.’s experience at the Pentagon on September 11, 2001 is a good example of this principle in action—and its tremendous impact. General Carlton, then the U.S. Air Force Surgeon General, had the Pentagon uniquely prepared for the terrorist strikes as he had established what were likely the

first mass-casualty exercises at the Pentagon earlier that year.⁷⁷ What prompted him to conduct this sort of training and preparation? He recounted, “I had decided when I became the medical boss that if I were a terrorist, I would hit New York City—and I would hit Washington, D.C.”⁷⁸ Furthermore, he and a colleague, now-retired Colonel John Baxter, had previously discussed the possibility of a plane crashing into the Pentagon earlier in 2001.⁷⁹ The combination of General Carlton’s willingness to “crawl inside” the terrorist mind, and his reflection on the possibility of an airplane crashing into the Pentagon, led to better preparation for when an unimaginable attack became gritty reality.

Expanding worldviews can happen individually, as was the case with General Carlton contemplating where terrorists would strike, and it can also happen by creating diverse teams, as demonstrated by the conversation he had with Colonel Baxter. After *The Wall Street Journal* researched the impact of diversity and inclusion among S&P 500 companies, its findings “join[ed] an ever-growing list of studies by economists, demographers, and research firms confirming that socially diverse groups are more innovative and productive than homogenous groups.”⁸⁰ Diversity among teammates can come from native characteristics, such as gender or race, and it can also come from acquired experience, such as educational training, experience working in a foreign country, previous career experience, and so on.⁸¹

Military attorneys should look for ways to look at issues from new vantage points and to enhance their legal advice. Reading about African cultures’ views about justice may shed light onto ways to approach victim inputs or even principles of economic restitution as seasoned professionals look at issues from new vantage points.⁸² Government contract attorneys making an effort to better understand contracting officers or industry counsel will see beyond the law and their legal foxhole and gain new insight to the acquisition system at large. Furthermore, taking steps to increase diversity within a team will also bolster new thoughts and ideas. Overall, effective innovation will occur more frequently when military attorneys step away from their

comfortable context and try to see with new eyes and from new angles.

Create (and Use) Technical Experts

While broadening our worldviews is a valuable tool, military legal counsel should not stop there. Effective innovation, especially in fields facing disruption, requires “technical personnel with outstanding track records”⁸³ The business world has learned that technical experts are crucial to identifying disruptive innovation—leaders can trust technical experts to navigate change where other sources that are often used for guidance, such as key customers and marketing and financial staff, are not as reliable.⁸⁴

Furthermore, technical expertise, which is typically created in the field by those getting their hands dirty, is crucial to effective innovation, both strategically and tactically. Higher-level commanders, even if they previously had been technical experts in the field, “suffer from their remote perspective”⁸⁵ Failure to recognize this and failure to include current technical experts “stifle[s] initiative, induce[s] delay, move[s] decision authority away from execution expertise, and [breeds] excessive caution and risk aversion,” all of which is inimical to necessary change.⁸⁶

To supplement the in-field experience, training that leads to know-how—how to get novel jobs done—is also needed. Unfortunately, training in the military and the JAG Corps sometimes merely meets a training-requirement metric or simply focuses on checklist adherence. This approach is problematic because individuals that rely on pre-created checklists or examples are less successful at adapting to new situations and effectively innovating than those who learn the fundamental rules undergirding the checklist.⁸⁷ For teams that wish to innovate, members of the team must “develop the skill to identify foundational concepts and their key building blocks and to sort new information based on whether it adds to the larger structure and one’s knowledge or is extraneous and can be put aside.”⁸⁸ The ability to accumulate foundational principles and apply them to a wide range of unique situations is knowhow, and knowhow allows for better prediction of and preparation

for desired outcomes—and the innovation needed to bridge capability gaps.⁸⁹

Establish a Culture of Trust

Once technical experts have been developed, establishing a culture of trust serves as a catalyst for effective innovation. In his book, *The Speed of Trust*, Stephen M. R. Covey makes the compelling argument that trust is something that can and should be consciously cultivated in all kinds of relationships, from the most personal ties between family members to giant corporations’ obligations to society.⁹⁰ His thesis is simple: trust can be developed—create it and then reap the benefits.⁹¹ One of those benefits is improved innovation. He points out that “innovation and creativity demand a number of important conditions to flourish, including information sharing, an absence about caring about who gets the credit, a willingness to take risks, the safety to make mistakes, and the ability to collaborate. And all of these conditions are the fruits of high trust.”⁹²

So how can you create a culture of trust beneficial to effective innovation? Trust has two vital ingredients: character and competence.⁹³ The character half of trust “includes your integrity, your motive, your intent with people,” while the competence half “includes your capabilities, your skills, your results, your track record.”⁹⁴ So in order to cultivate innovation, leaders must intentionally develop the character and competence of themselves and of those they work with.

Developing trustworthy character is no small feat, and it is generally not a quick fix, especially when trying to restore trust that has been lost or when working in a profession infused with skepticism.⁹⁵ It will take more than reciting service values; it will demand leaders to practice introspection and selflessness. However, it is worth the effort. When leaders focus on behaviors that induce trust, such as transparency, loyalty, accountability, respect, and extending trust to others, trust will increase.⁹⁶ As trust increases, those higher levels of trust will bring increases in speed—including in areas of innovation—and decreases in cost, both of which are in high demand in our current operating environment.⁹⁷ As long as it continues to be developed and harnessed,

this increased trust will continue to foster innovation as individuals work with each other, share ideas, and take risks as they look to solve vexing problems.

The competence component of trust grows through the generation of technical experts, as addressed in a previous section. Being competent at a job is a prerequisite for trust. However, creating technical experts with trustworthy characteristics is only the first step: they have to actually be trusted to add their real value. A key principle of military innovation is that “men on the firing line will learn of the need for innovation first, and given the ability to act independently, will innovate more quickly than if they had to wait for orders from above,” but this can only happen when they “can collect all the relevant data themselves and can execute the innovation”⁹⁸ Allowing this kind of independence requires maximum trust—especially in sensitive, kinetic operations—but it also provides maximum potential for effective innovation.⁹⁹ Leaders need to be willing to wisely, appropriately extend that level of trust.

Despite its value to innovation, extending trust is an area that will require special effort by many attorneys. After years in practice, trusting others often makes legal counsel squeamish. Covey illustrates this problem through the following anecdote about a conversation he had after one of his training programs:

At the end of one program, a man who was retiring as general counsel of a company came up to me and said, “My legal training and experience have given me a propensity to not trust. At times, this has served me well, but much of the time it has created huge problems. It’s gotten me bogged down in expensive and time-consuming legal relationships, and it has hurt me enormously in personal relationships as I have extended my professional mind-set into my personal life. Now I’m beginning a new career, and I’m inspired by this idea of starting with a propensity to trust. I don’t know what the results will be, but I am convinced that this is the front edge. It’s a better place to start.”¹⁰⁰

Fortunately, the key to extending trust wisely incorporates an attribute common among attorneys: a high degree of analysis before extending trust.¹⁰¹ Combining “the propensity to trust with the analysis to manage risk wisely” leads to appropriate extensions of trust.¹⁰² There is no requirement to trust everyone, and there are times where extending trust is inappropriate, but when you have well-trained teammates with trustworthy character, failing to trust them risks quenching effective innovation. Or, to paraphrase Senate language from the National Defense Authorization Act for Fiscal Year 2018, “any such risk [caused by trusting those led] must be viewed as lesser than the risks of stymieing innovation”¹⁰³

Avoid Pitfalls to Innovation

In addition to all the positive steps to take toward innovation, there are also pitfalls to avoid. “History is in fact full of examples of armies and navies that were defeated and went on being defeated because they did not innovate.”¹⁰⁴ Although there are many reasons and explanations as to why some organizations fail to innovate, this section provides two examples of pitfalls military legal advisors and leaders should keep in mind: creating the cavalry club and patching the wrong holes. This section also highlights some of the principles already discussed, although there are more ways that the theories provided can be used to analyze these cases than this article can capture.

Pitfall 1: Keeping the Cavalry Club

For nearly a millennium, the cavalry reigned supreme on the battlefield,¹⁰⁵ and it has occasionally even been used in our modern military.¹⁰⁶ However, after centuries of dominance, the development of new weapons undermined the cavalry’s effectiveness. As summarized by the American Museum of Natural History:

The [cavalry’s] last hurrah came with World War I. At the beginning of that war, in 1914, cavalry charges, in which thousands of soldiers on horseback rode into battle together, were still seen as a major offensive tactic. But trench warfare, barbed wire, machine gun[s], and other modern developments effectively brought such

charges to a dead halt. By the war’s end, horses were still used behind the lines to transport guns and supplies, but their role in leading the attack had become a thing of the past.¹⁰⁷

In the end, millions of horses died during the war, and most of the cavalry’s chargers were converted into pack animals by the end of the conflict.¹⁰⁸

However, the riders fared much better than the average warhorse, at least in terms of prestige and tactical influence. According to historians, being in the cavalry meant membership to an exclusive, well-connected club, even after World War I.¹⁰⁹ The culture and tradition surrounding the horse cavalry led to it remaining a mainstay in European armies long after World War I obviated the need for such warriors.¹¹⁰ This means that cavalry units continued to consume resources and influence military operations even though they “rarely had to go to war and so rarely had to test [their] romantic ideas against military realities.”¹¹¹ And, although the presence and prestige could have had some positive impact on recruiting officers to this military club, it did not cultivate effective innovation for the current jobs to be done.¹¹²

Although no one in the military is petitioning Congress to clone extinct destriers¹¹³ for future combat missions, all military organizations—including the various services’ JAG Corps—need to be mindful of prominent positions or roles that may no longer be necessary. The future is going to have hard questions to answer: What will become of pilots in an era of unmanned aircraft, lasers, and cheap, expendable drones?¹¹⁴ What legal roles could—or even should—be supplanted by algorithms and artificial intelligence?¹¹⁵ As technology and warfare advance, sustaining cavalry-like positions distracts from the jobs that actually need doing and squelches innovation by those on the actual firing line. The military services cannot allow modern-day cavalry equivalents to hinder the growth of the kinds of warfighters the nation needs. Effective innovation sometimes means abandoning old ways and means.

Pitfall 2: Patching the Wrong Holes

Moving from the “War to End All Wars” to its 1940s sequel, the United States again found itself locked in military conflict against powerful enemies. As Allied aircraft got peppered by enemy bullets and flack, military officers concerned about efficiency wanted better-armored planes.¹¹⁶ Observing planes returning from missions, they paid attention to where the planes had bullet holes in them.¹¹⁷ Understanding that concentrating the armor on the parts getting hit most rather than over the entire plane would maintain maneuverability and consume less fuel, they approached Abraham Wald of the Statistical Research Group wanting to know how much armor belonged on the most damaged parts of the aircraft.¹¹⁸ Wald’s response surprised them: the planes needed armor where there were fewer holes—on their engines.¹¹⁹

Wald understood that “[t]he reason planes were coming back with fewer hits to the engine is that planes that got hit in the engine weren’t coming back.”¹²⁰ Where others saw an opportunity to protect against the very-visible-but-less-significant damage to future planes, he thought deeper and saw the critical need to prevent future planes from sustaining the fatal-but-unseen wounds suffered by lost planes.

This story demonstrates the need to focus resources—time, manpower, money, and brainpower—on the right causes of problems, not the superficial ones. Innovation that fixes superficial problems is good, but it is less effective. Leaders need to make sure they are patching the right holes, rather than just responding to what merely appears to be important and urgent.

There are plenty of metaphorical planes—across all legal domains—that need fixing. A recent example of a problem needing deep, careful attention is the disappearance and death of Specialist Vanessa Guillén at Fort Hood, Texas. After she was murdered by a fellow Soldier, the Army—and the military as a whole—has been bombarded by news articles lambasting the military action and inaction associated with her murder.¹²¹ As Major General Gene LeBoeuf acknowledged, “We as an Army failed to protect Vanessa Guillén.”¹²²

Now, like engineers looking at bullet-riddled airplanes, the military needs to



B-17 Flying Fortresses assigned to the 97th Bombardment Group fly into formation during World War II. (Photo courtesy of Airman Air Museum)

decide where to place the armor to prevent future Guillén-like catastrophes. Much like principles of aerodynamics limited how much armor could shield World War II airplanes, defendants' constitutional rights and other principles limit military justice reformation. With those limitations in mind, what systemic changes can be made to save future members from Specialist Guillén's tragic fate? Are proposed solutions—such as firing individuals involved or creating a new awareness program—protecting military engines, or are they merely patching holes in the wings? Furthermore, are there other ways to approach this problem, such as how the services recruit and screen potential Service members or how the military can cultivate respect for fellow human beings, which the organizations should leverage?

This article will not answer these questions or solve the issues resulting in the loss of Specialist Guillén—or the myriad of other difficult problems the military currently faces in various areas of the law—and it does not intend to. That said, it is crucial to remember that to solve complex problems, leaders and their legal advisors must endeavor to patch the right holes, which are not necessarily the obvious or easy ones.

Conclusion

With future conflicts on the horizon, filled with foes as agile and capable as at any time in history, the ability to effectively innovate will make the difference between victory and defeat. Effective innovation will not flow from checklists or rigid formulas for success. However, if leaders focus on effective innovation, embrace and invest in theories that lead to effective innovation, and

train and trust their subordinates to do the same, we will build a force adaptive enough to defeat whatever comes our way. **TAL**

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81. *Id.*
82. VIVIANE SALEH-HANNA, *COLONIAL SYSTEMS OF CONTROL: CRIMINAL JUSTICE IN NIGERIA 395–414* (2008).
83. CHRISTENSEN, *supra* note 33, at 19.
84. *Id.*
85. Deptula, *supra* note 1, at 9.
86. *Id.*
87. PETER C. BROWN ET AL., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 157* (2014).
88. *Id.* at 154.
89. *Id.* at 161.
90. STEPHEN M. R. COVEY & REBECCA R. MERRILL, *THE SPEED OF TRUST: THE ONE THING THAT CHANGES EVERYTHING 1–2* (2008).
91. *Id.*
92. *Id.* at 255.
93. *Id.* at 30.
94. *Id.*
95. *Id.* at 300–15.
96. *Id.* at 230–32.
97. *Id.* at 13–17.
98. ROSEN, *supra* note 28, at 39 (emphasis added).
99. *See id.* at 130–47. Mr. Rosen discusses the transformation of American submarine tactics in World War II, shifting from targeting the Japanese military fleet to targeting merchant shipping, a change prompted by “an organization with a radically decentralized command structure and good intelligence about the enemy.” *Id.* at 130.
100. COVEY & MERRILL, *supra* note 90, at 298.
101. *Id.* at 290.
102. *Id.*
103. S. REP. NO. 115-125, at 190 (2017).
104. ROSEN, *supra* note 28, at 9.
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108. *Id.*
109. ROSEN, *supra* note 28, at 2–3.
110. *Id.* at 2.
111. *Id.* at 3.
112. *Id.*
113. *See generally Destrier*, BRITANNICA, <https://www.britannica.com/animal/destrier> (last visited Apr. 20, 2022).
114. Rachel S. Cohen, *“The Fighter Jet Era Has Passed,”* A.F. MAG., Apr. 2020, at 20 (providing arguments for and against the continued use of manned fighter jets). *See also* Kyle Mizokami, *Elon Musk Says the Fighter Jet Is Dead*, POPULAR MECHS. (Mar. 3, 2020), <https://www.popularmechanics.com/military/aviation/a31194615/elon-musk-fighter-jet-dead/> (asserting that new technology will make it safer and more effective for fighter jets to be remotely piloted).
115. Neil Sahota, *Will A.I. Put Lawyers Out of Business?*, FORBES (Feb. 9, 2019, 10:43 AM), <https://www.forbes.com/sites/cognitiveworld/2019/02/09/will-a-i-put-lawyers-out-of-business/?sh=791080d431f0>; *but see* Vazquez, *supra* note 7 (discussing the need for increased attorney involvement in the design of weapon systems utilizing artificial intelligence).
116. JORDAN ELLENBERG, *Abraham Wald and the Missing Bullet Holes*, in *HOW NOT TO BE WRONG* (2014), <https://medium.com/@penguinpress/an-excerpt-from-how-not-to-be-wrong-by-jordan-ellenberg-664e708cfd3d>.
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. Dave Phillips, *Military Missteps Allowed Soldier Accused of Murder to Flee, Report Says*, N.Y. TIMES (Apr. 30, 2021), <https://www.nytimes.com/2021/04/30/us/vanessa-guillen-fort-hood-aaron-robinson.html>; Courtney Kube, *Slain Soldier Vanessa Guillen Had Reported Sexual Harassment but Leadership Did Nothing*, NBC NEWS (Apr. 30, 2021, 3:49 PM), <https://www.nbcnews.com/news/military/slain-soldier-vanessa-guillen-had-reported-sexual-harassment-leadership-did-n1266023>; Karli Goldenberg, *“I Am Vanessa Guillén Act” Praised as Calls for Removing COs from Sexual Assault Prosecutions Mount*, MILITARY.COM (May 25, 2021), <https://www.military.com/daily-news/2021/05/25/i-am-vanessa-guillen-act-praised-calls-removing-cos-sexual-assault-prosecutions-mount.html>.
122. Phillips, *supra* note 121.

AROUND THE CORPS

25th Infantry Division "Tropic Lightning" Military Justice maintained tactical proficiency at the M4 qualification range. Pictured are SPC Lelia Contee and CPT Rachel Rose.





(Credit: Staff Sgt. Chad Trujillo, U.S. Air Force)

Closing Argument

People First

Care—Wellness—Resilience

By Colonel Carol Brewer

“People First” can be a slogan or a call to action. If we want “people first” to be more than words, we need effort, plans, and action. The Judge Advocate General’s (JAG) Corps is working on the planning effort to

develop a Corps-wide action plan devoted to the improvement of our overall wellness.

Many of us received a survey aimed to identify the wellness needs specific to our service.¹ The Corps’s operational planning

group has reviewed the survey’s data and has developed ideas for the resources and programs that would improve wellness across our Corps. Nevertheless, while that process continues, the rest of us must take action to support wellness for ourselves and our teams.

The tricky part about wellness is that it means different things to different people. In fact, wellness can mean different things to the same person at different times in life. This is not a one-size-fits-all or one-size-fits-always solution. Like all relationships, as leaders, our relationship to our teams and their wellness takes work. And, like other relationships, sometimes we will fail—hopefully less often than we succeed. By truly caring, we build our team’s wellness, and the team that remains focused on wellness will be resilient. These concepts come together when we are building teams, caring for our teams, and caring for our Soldiers in need.

Team Building

While the various offices to which we are assigned look different and have different missions, we want them all to feel like cohesive and resilient teams. But, not every team has the same needs and we are all different leaders. In fact, we have all had the experience of a leader who is trying some new-fangled leadership technique or team-building exercise that seems awkward, ill-fitted, and perhaps even insincere. Ultimately, the new technique or exercise may not be effective—but, it sends the message that, at the very least, the leader is trying.

While I hate to disagree with Yoda, I think trying counts.² Trying sends the message that the team is worth the leader’s time and effort. It shows the leader cares enough to try something new—sharing personal stories (of success and failure) and investing the leader’s time in the team. So, whatever the guidebook, game, or guest speaker, time spent focused on building the team is worth it—even when the event flops. The effort builds cohesion. And, being part of a cohesive team is a great source for support and wellness for our Soldiers.

Team Breaks Send a Message

We often ask our teams to do more with less. We acknowledge that certain jobs just come with the expectation of long hours and rare breaks. Leaders can fuel the mindset that working ourselves to the point of exhaustion is how we show diligence. When we reward the long hours with public praise and end the comments with a “get back to work,” we may not realize the negative message we send. On the other hand, when we set aside time for the entire office to get a break, we can send a positive message about wellness and balance. When even the busy trial counsel must show up for the picnic or help out for office clean-up day, that sends the message that the break, like the work, is important.

I am a fan of the office project. While we’re not relaxing, we are working on a non-legal project as a team. My last office clean-up day in Korea had Soldiers paired with people they did not normally work with to accomplish tasks—from reorganizing or shredding to repainting and scrubbing. We got a break from the grind, got to know our team in a new way, and then got to enjoy the fruit of our efforts as we got back into the grind. Whatever the type of break, its real benefit is seeing your team away from their desks and getting to know them better. The better we know our teams, the more likely we will be to notice the small changes that might indicate larger wellness needs.

Crisis as an Opportunity

When we think of wellness, we often focus on those programs—like Army Wellness Centers—that are designed to build improved health and wellness over time. However, leaders must also stand ready for those emergencies when their teams need immediate intervention. I have walked teammates to therapy and to an in-patient treatment facility. These were opportunities to build trust and resiliency with that Soldier—and the team by showing support for that Soldier—by not treating them like their challenge is contagious, by recognizing their strengths, and by continuing to value their role within the team.

When a Soldier needs to switch positions because of their health, we should move them and support them. When we

decide the Soldier is now too vulnerable, fragile, or unreliable because they sought help and then move them, we send a clear message that asking for help may be a career-ending decision. Leaders must guard against this. We must always make decisions *with* our Soldiers in need—not *for* them. We must ask what they need and not provide what we alone decide or think they need. This empowers our Soldiers and shows we trust and value them.

The message we send when addressing these critical needs is heard by the Soldier in crisis and the team around them. In this way, we message that asking for help is acceptable. We also message how others should treat that Soldier in crisis and how they should treat future Soldiers in need.

My last team was wonderfully junior; almost any task they were given was new to them. While some view this as a negative, we decided to view this as an opportunity. We got to show these Soldiers what right looked like every day and on every topic. How we treated people in need was an important lesson for us to demonstrate. With new Soldiers living in Korea during a pandemic, there were needs. But, we offered support and appreciation for them trusting us with their challenges. As a result, Soldiers never stopped coming to us. I accepted their trust as a gift and did my best to support them and value them as they worked through challenges.

Wellness is a challenge that does not necessarily track with the stereotypes we have for tough Army folks. However, JAG Corps and Army leadership have identified time and again that our strength is our people.³ If we acknowledge that, and truly mean it, we need to value and send consistent messages about the importance of their wellness, including both their physical and mental health.

In my time in the Army, I have cried on my friends’ shoulders (and once up against a tree at Fort Benning), and have held friends, Soldiers, and clients as they cried. Being there when someone is at their lowest can be the greatest gift in that moment—just being there and listening has considerable value. However, that moment in time may not support their overall wellness in the long run. It is when we come

back a week later to check in that we may need to offer longer term resources.

The tools available from our Army and our Corps continue to grow and improve. When we learn about these resources and champion them, we are sending a healthy message. When we also care for ourselves and proudly access these resources we send the message loudly and ensure we’re in the best position to care for and build our team. Take care of yourselves and your teams. **TAL**

COL Brewer is the chief of the Special Victims’ Counsel Program, Office of The Judge Advocate General, at the Pentagon in Washington, D.C.

Notes

1. The Judge Advoc. Gen. & Deputy Judge Advoc. Gen., U.S. Army, TJAG and DJAG Sends, Vol. 41-06, Wellness Survey (16 Nov. 2021) [hereinafter TJAG and DJAG Sends, Vol. 41-06].
2. *Star Wars’ Yoda’s* famously said, “No. Try not. Do or do not. There is no try.” *STAR WARS: EPISODE V—THE EMPIRE STRIKES BACK* (Lucasfilm 1980).
3. See, e.g., TJAG & DJAG Sends, Vol. 41-06, *supra* note 1 (“The most important resource in the JAG Corps is our people.”); General James C. McConville, *People First: Insights from the Army’s Chief of Staff*, U.S. ARMY (Feb. 16, 2021), https://www.army.mil/article/243026/people_first_insights_from_the_armys_chief_of_staff (“People are the United States Army’s greatest strength and most important weapon system”); Major George S. Patton, Jr., *Mechanized Forces*, *CAVALRY J.*, Sept. 1933, at 3, 8 (“Wars may be fought with weapons, but they are won by [Soldiers].”).



AROUND THE CORPS

Specialist Mariah Fualau, Paralegal Specialist of 40th ESB & USAICoE, took a break from Military Justice to experience the USAF Thunderbirds up close and personal. She listened to cockpit radio as the Thunderbirds practiced over the skies of southern Arizona.



AROUND THE CORPS

Students and faculty at The Judge Advocate General's Legal Center and School came together in April 2022 to conduct a diagnostic ACFT. (Credit: Jason Wilkerson, TJAGLCS)

A person in a U.S. Army uniform is sitting at a desk, writing in a notebook. The person is wearing a camouflage uniform with a "U.S. ARMY" patch on the chest. They are holding a black pen and writing on a lined notebook with a green cover. The desk is dark wood, and there is a lamp to the right. The background is a brick wall.

U.S. ARMY

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