

THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY  
SUPERPOWER CAN'T GO IT ALONE<sup>1</sup>

REVIEWED BY MAJOR JOHN HYATT<sup>2</sup>

*America will continue to be number one, but . . . number one ain't gonna be what it used to be.*<sup>3</sup>

To nearly every American, the above quotation is both heartening and vaguely troubling. Americans like the idea that the United States will continue to be the most powerful country on Earth. Yet, if this is so, Americans wonder why some problems seem insoluble and that the United States' vulnerabilities seem to be increasing. What costs, compromises, and sacrifices must America *really* make to secure its future.

In *The Paradox of American Power*, James S. Nye, Jr., explains the sources and condition of America's power and gives his audience a prescription for maintaining and even extending the country's might. Nye's voice merits considerable attention. He is currently the Dean of the Kennedy School of Government at Harvard, formerly served as an assistant secretary of defense in the Clinton Administration, and is a frequent contributor to numerous prestigious periodicals.<sup>4</sup> Furthermore, his track record for understanding America's global position is solid. In 1989, in his book *Bound to Lead*,<sup>5</sup> Nye took the unfashionable position (recall the enormous budget deficits and seemingly unstoppable rise of Japan) that America was poised to soar to new heights.<sup>6</sup> Of course, readers should not take Nye's word as gospel. While his credentials and track record are impres-

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1. JOSEPH S. NYE, JR., *THE PARADOX OF AMERICAN POWER* (Oxford University Press 2002).

2. United States Army. Written while assigned as a student, 51st Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. NYE, *supra* note 1, at 171.

4. *Id.* (dust jacket).

5. JOSEPH S. NYE, JR., *BOUND TO LEAD: THE CHANGING NATURE OF AMERICA'S POWER* (1989).

6. See Martin Walker, *Safety in Numbers*, WASH. POST, Mar. 3, 2002, at T4 (construing Nye's argument in *Bound to Lead*, *supra* note 5)

sive, Nye is unmistakably a Democratic partisan, and his audience should view his work in that light.<sup>7</sup>

The essence of Nye's argument in *Paradox* is that the United States is on course to maintain its leading position in the world, but to do so it must acknowledge and take advantage of global changes elevating the importance of so-called "soft" power and diminishing the importance of more traditional "hard" power. *Hard* power, as Nye uses this term, is a nation's ability to coerce or force a change through sources such as military might and economic strength. It does not have to be negative; a nation can exercise such power through inducements as well as threats. *Soft* power, on the other hand, refers to a nation's ability to get other countries to want what that nation wants, to co-opt, rather than coerce.<sup>8</sup> If other countries respect, admire, and want to be like a nation, they will likely work for outcomes favorable to that nation. The reason "number one ain't gonna be what it used to be," and why Nye describes America's position vis-à-vis its global power as a "paradox," is that the very process of acknowledging and harnessing soft power requires the United States to refrain from unilateral, "arrogant" policies—in short, to give up some of the benefits of being number one.

Nye does not argue that soft power is more important than hard power. Rather, he argues that soft power is gaining in importance because America cannot solve many of the problems it faces today, at acceptable cost, by resort to hard power alone.<sup>9</sup> For instance, imagine the difficulty of solving any of the following problems without the cooperation of other states: the spread of infectious disease, the flow of illegal migrants, international industrial pollution, habitat destruction, drug smuggling, or terrorism. The list could continue, but the point is that even America, with the most powerful military and the strongest economy in the world, needs the cooperation of other states to address many significant issues it faces. Therefore, America must pay heed to the opinions, concerns, and perceptions of other countries and peoples in the conduct of its affairs.

Nye begins his analysis with a comprehensive exploration and evaluation of the current distribution of global power. In very clear and persuasive terms, he demonstrates that the United States is by far the most powerful country in the world. Nye's comparative analysis devotes sev-

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7. See Max Frankel, *Sound of One Saber Rattling*, N.Y. TIMES, May 26, 2002, at 16.

8. NYE, *supra* note 1, at 8.

9. *Id.* at 40.

eral pages each to China, Japan, Russia, India, a combined Europe, and several of their possible combinations. He provides a wide range of factors bearing on a country's power, including the number of nuclear warheads, defense budget, personal computers per 1000 residents, Gross Domestic Product, population, high-tech exports, manufacturing capacity, and several others.<sup>10</sup> Nye includes a helpful chart that summarizes and displays the relationships.<sup>11</sup>

Next, Nye shows how the various factors interrelate. In Nye's view, power is a multifaceted and comprehensive concept, which he explains using the metaphor of a three-level chessboard. Military power occupies the top chessboard. At this level of power, the world is unipolar. The "United States is the only country with both intercontinental nuclear weapons and large, state-of-the-art air, naval, and ground forces capable of global deployment."<sup>12</sup> Economic power resides on the second, multipolar chessboard, upon which Europe and Japan can already balance the United States, and China will probably become a significant power early this century. The bottom chessboard is the realm of "non-state actors as diverse as bankers electronically transferring sums larger than most national budgets, at one extreme, and terrorists carrying out attacks and hackers disrupting Internet operations, at the other."<sup>13</sup> Here, power is widely dispersed, rendering any discussion of polarity obsolete.

Nye then explores and explains two macro-trends that he believes are increasing the importance of soft power such that the United States must embrace this concept. The first trend is the "Information Revolution."<sup>14</sup> Nye offers some "gee-whiz" statistics to create a sense of the magnitude of the information explosion that has occurred over the past years. The growth in Web pages, e-mail messages, and gigabytes of stored data is so vast, it defies practical comprehension: "If the price of automobiles had fallen as quickly as the price of semiconductors, a car today would cost \$5."<sup>15</sup> Fortunately, Nye's statistical onslaught is relatively short, and it

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10. *Id.* at 18-35.

11. *See id.* at 37, tbl.1.2.

12. *Id.* at 39.

13. *Id.*

14. *Id.* at 41.

15. *Id.* at 42.

makes the point that the information revolution is objectively and measurably happening and therefore undeniable.

No one can seriously dispute the existence of the information revolution; however, the impacts Nye ascribes to this global development are debatable. First, Nye argues that the information revolution will result in the decentralization of information, power, and authority. Other scholars point out that previous waves of technological innovation have tended to have a centralizing effect and that for much of the past century, national governments have grown dramatically.<sup>16</sup> Although arguing for the reversal of a historical trend is difficult, Nye convincingly answers this criticism by highlighting a crucial difference between the information revolution and all previous rounds of technological innovation.

According to Nye, the information revolution has made very inexpensive “many-to-many” communications possible for the first time.<sup>17</sup> Telephones and telegraphs have long allowed cheap “one-to-one” communications, and radio and television have allowed affordable “one-to-many” communication. But the Internet, like nothing before it, allows many-to-many communication at very low cost and on a global scale. Virtual communities in cyberspace claim the attention and loyalties of citizens across geographical boundaries.<sup>18</sup>

Nye cites a variety of examples to illustrate this point: Transnational corporations exert a great deal of control over the flow of capital, the location of factories, and the provision of goods;<sup>19</sup> ordinary consumers have access to information once the exclusive preserve of the world’s top-tier militaries, such as global positioning systems and high-resolution satellite photos;<sup>20</sup> and a Vermont-based grass roots activist mobilized international support and ultimately succeeded in the creation of an international convention banning anti-personnel land mines over the opposition of the Pentagon, the most powerful bureaucracy in the most powerful country on Earth.<sup>21</sup>

The most convincing illustration of Nye’s decentralization argument is the growth in the power of human rights activists. Activists have been

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16. *Id.* at 45.

17. *Id.* at 52.

18. *Id.* at 54.

19. *Id.* at 56.

20. *Id.* at 65.

21. *Id.* at 41.

able to mobilize enough support within sovereign states to get those states to mount certain attacks on the concept of sovereignty itself. The North Atlantic Treaty Organization's intervention in Kosovo, the British arrest and extradition of General Augusto Pinochet, and a French magistrate's effort to summon a former U.S. Secretary of State to Paris to testify in a trial about Chile all exemplify the global influence human rights activists can exert.<sup>22</sup>

The second impact that Nye credits to the information revolution is a fundamental change to the prerequisites for effectively communicating any message. Too much information creates a "paradox of plenty."<sup>23</sup> In an information age in which virtually any voice can have a global reach, power does not flow merely from the ability to broadcast information; rather, to communicate effectively, the audience must believe your message over various competing voices. Thus, power flows from credibility. Nye concludes that to enhance the credibility necessary to take advantage of this trend, countries must emphasize liberalism and autonomy and have access to multiple channels of communication.<sup>24</sup>

Nye's reasoning on this point is seductive, but he does not adequately support his conclusion. Despite a robust democracy, an aggressively free press, a lengthy record as the foremost champion of the ideals cited by Nye, and lots of access to communications channels, the United States suffers from a profound lack of credibility in certain parts of the world, in particular among Islamic countries. The proposition that ideals that generate soft power in one culture may undercut it in another is certainly understandable, but even this allowance does not rescue Nye. One could certainly expect Nye's ideals that America exhibits to resonate in France and Germany; however, France's continuous effort to balance the United States diplomatically, and Gerhard Schroeder's complete reversal of his political fortunes in Germany's recent elections by rejecting American claims about the danger posed by Iraq,<sup>25</sup> clearly illustrate that factors beyond Nye's analysis powerfully influence people's beliefs.

The second macro-trend Nye identifies as propelling the rise of soft power is globalization. Globalization does not refer only to economic interdependence, although that is an important component. Rather, Nye

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22. *Id.* at 58.

23. *Id.* at 68.

24. *Id.* at 67-69.

25. See *Germany Speaks*, N.Y. TIMES, Sept. 24, 2002, at 26 (linking Schroeder's resurgence to his stand against the United States on Iraq).

uses globalization as a rubric for the entire range of intercourse between countries, peoples, and regions, including infectious disease, drug smuggling, global warming, habitat destruction, terrorism, immigration, tourism, and trade.<sup>26</sup> While globalization is not new, the information revolution has served to “quicken and thicken it.”<sup>27</sup> As the preceding list illustrates, globalization is clearly a “mixed bag.” But even if a government chooses to forego the economic benefits associated with this trend, many of the negative consequences would persist.<sup>28</sup>

The vast expansion of transnational contacts and intercourse puts a continually increasing number of “issues up for grabs internationally.”<sup>29</sup> Private actors now heavily influence regulations and practices once the exclusive preserve of national governments, “ranging from pharmaceutical testing to accounting and product standards to banking regulation.”<sup>30</sup> For instance, if a transnational corporation raises the minimum age of its factory workers in response to pressure brought by international nongovernmental organizations, that corporation’s decision may countermand that of a sovereign, elected government, such as India’s.<sup>31</sup> Another example is large pharmaceutical companies deciding not to pursue lawsuits over infringement of their patents on AIDS drugs in South Africa.<sup>32</sup> Finally, supranational organizations, such as the World Health Organization, the World Trade Organization, and the United Nations, increasingly exert influence over sovereign states.<sup>33</sup>

Globalization by its very nature creates issues beyond the reach of any single country, even the United States. Furthermore, globalization, at least its detrimental aspects, is virtually unstoppable. To Nye, the implication of these two points is straightforward: the United States must not withdraw to isolationism, nor may it resort to unilateral action to attack international problems. Either approach would undercut America’s soft power by alienating or offending countries and international groups whose cooperation the United States needs. Rather, Nye urges the United States to use

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26. NYE, *supra* note 1, at 77-93.

27. *Id.* at 85.

28. *Id.*

29. *Id.* at 89.

30. *Id.*

31. *Id.* at 107.

32. *Id.* at 106.

33. *Id.* at 107-09.

its preeminence to engage governmental and nongovernmental international players to shape international norms and institutions.<sup>34</sup>

Quibbling with Nye over the fact and effects of globalization is impossible; however, his assertion that unilateral action will undercut America's soft power is an overgeneralization. Certainly some unilateral actions could improve America's image and enhance its soft power. Without admitting it, Nye concedes as much at other points in the book when he lauds unilateral actions taken by the British in the nineteenth century, such as eradicating piracy and enforcing open-trade standards, as the creation of "public goods."<sup>35</sup> Why Nye does not consider the eradication of terrorism or the enforcement of nuclear nonproliferation (especially among totalitarian states such as Iraq and North Korea) similarly as public goods worthy of unilateral action is uncertain.

After completing his analysis of America's potential competitors and the changing environment the United States faces, Nye focuses on America itself. In the fourth chapter, "The Home Front," Nye examines a wide range of issues and indicators that he believes either enhance or undercut America's soft power. This chapter is particularly well-written and persuasive. Nye does an excellent job quantifying and explaining notoriously slippery issues such as whether America suffers from cultural and moral decay,<sup>36</sup> whether American's are losing confidence in their societal institutions,<sup>37</sup> America's immigration policy,<sup>38</sup> and the fundamental health and attractiveness of the American economy.<sup>39</sup> Nye does indulge in some partisan sniping; for example, he casts America's approach to gun control,<sup>40</sup> capital punishment,<sup>41</sup> and "income inequality"<sup>42</sup> in a negative light. But this does not distract much from the thrust of his message.

In his concluding chapter, entitled "Redefining the National Interest," Nye delivers his prescription for America. Addressing an audience apparently ranging from President Bush to the common voter, Nye's ambitious hope is to impact both American foreign and domestic policy. This is the

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34. *Id.* at 110.

35. *Id.* at 144.

36. *Id.* at 112.

37. *Id.* at 119.

38. *Id.* at 116.

39. *Id.* at 124.

40. *Id.* at 116.

41. *Id.*

42. *Id.* at 132.

most overtly partisan chapter of the book; at one point Nye calls upon Congress to put “[America’s] own house in order in economics, environment, criminal justice, and so forth.”<sup>43</sup> But Nye does make some good points, and he provides some interesting strategies for American engagement with the rest of the world. Unfortunately, Nye’s prescription ultimately falls short and ends up looking like a recipe for a long, slow slide in American power and the maintenance of a dismal status quo for the less fortunate peoples of the world.

Nye’s failure lies in his inability to rebut persuasively his critics’ argument. Nye summarizes their position as follows:

Some unilateralists advocate an assertive damn-the-torpedoes approach to promoting American values. . . . [A] principal aim of American foreign policy should be to bring about a change of regime in undemocratic countries such as Iraq, North Korea, and China. Unilateralists believe that [America’s] intentions are good, [and that] American hegemony is benevolent.<sup>44</sup>

Nye’s uninspired response is that Americans are not immune to hubris and do not have all the answers.<sup>45</sup> Such platitudes are a hollow dodge of the hard questions Nye’s intellectual adversaries are attempting to answer: Would the aggressive promotion of American values such as liberty, autonomy, and human dignity be a good thing? Should the world have a place for totalitarian regimes, such as Iraq and North Korea, that seem to exist solely for the pleasure and aggrandizement of their rulers? Before America leads, must it wait for others to follow?

Nye’s unfortunate failure to address the unilateralists convincingly in the final chapter undermines the potency of his prescription and overshadows some of his truly insightful ideas. Nonetheless, *The Paradox of American Power* is a worthwhile read. Nye’s approach is thoughtful, thorough, and well-researched,<sup>46</sup> and he does a very good job educating his audience on a topic of current significance. No matter your political viewpoint, there is wisdom in this book, even if it lacks inspiration.

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43. *Id.* at 134.

44. *Id.* at 154.

45. *Id.* at 155.

46. The book contains over thirty pages of endnotes. See *id.* at 173-207.



WINNING AT THE MERIT SYSTEMS PROTECTION BOARD: A STEP-BY-STEP HANDBOOK FOR FEDERAL AGENCY SUPERVISORS, MANAGERS, LAWYERS, AND PERSONNEL OFFICIALS<sup>1</sup>

REVIEWED BY RICHARD W. VITARIS<sup>2</sup>

In 1998, Harold Ashner wrote a handbook on Merit Systems Protection Board (MSPB or Board) practice and procedure called *Representing the Agency Before the Merit Systems Protection Board*.<sup>3</sup> That book provided the equivalent of an introductory training course on MSPB practice for the advocate. It took the mystery out of adverse action appeals by explaining in plain English concepts such as nexus, the *Douglas* factors,<sup>4</sup> and the performance improvement period.<sup>5</sup>

While invaluable to the inexperienced agency representative, *Representing the Agency* was just an introductory primer on Board practice, not a treatise or comprehensive deskbook. A reader with more than a basic legal question about the Board had to look either to Board case law itself, or to the mammoth treatise by Peter Broida, *A Guide to Merit Systems Protection Board Law and Practice*,<sup>6</sup> a tome of some 3892 pages. A supervi-

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1. HAROLD J. ASHNER, WINNING AT THE MERIT SYSTEMS PROTECTION BOARD: A STEP-BY-STEP HANDBOOK FOR FEDERAL AGENCY SUPERVISORS, MANAGERS, LAWYERS, AND PERSONNEL OFFICIALS (Dewey Publications 2002) [hereinafter ASHNER, WINNING AT THE MSPB], available at <http://www.deweypub.com>.

2. LL.M. Labor Law, The George Washington University National Law Center; J.D., with highest honors, Rutgers University School of Law; B.A., Georgetown University. The author is an administrative judge with the U.S. Merit Systems Protection Board, Atlanta Regional Office. Before his appointment as an administrative judge, the author served as both a civilian attorney with the Department of the Army and as an active duty Army judge advocate. The views expressed are solely those of the author and do not purport to reflect the position of the Merit Systems Protection Board.

3. HAROLD J. ASHNER, REPRESENTING THE AGENCY BEFORE THE MERIT SYSTEMS PROTECTION BOARD: A HANDBOOK ON MSPB PRACTICE AND PROCEDURE (Dewey Publications 1998) [hereinafter ASHNER, REPRESENTING THE AGENCY].

4. When an employee challenges an adverse action (for example, discharge) in the ordinary course by initiating MSPB review, the government, to have the action upheld, must establish: (1) that the charged conduct occurred; (2) that there is a nexus between that conduct and the efficiency of the service; and (3) that the penalty imposed is reasonable. See *Pope v. U.S. Postal Srv.*, 114 F.3d 1144, 1147 (Fed. Cir. 1997).

5. Before initiating an action for unacceptable performance under 5 U.S.C. § 4303, an agency must give the employee a reasonable opportunity to demonstrate acceptable performance. See *Smith v. Dep't of Health & Human Srvs.*, 35 M.S.P.R. 101, 104 (1987).

6. PETER BROIDA, A GUIDE TO MERIT SYSTEMS PROTECTION BOARD LAW AND PRACTICE (Dewey Publications 2002).

sor or personnel specialist with a practical question on Board practice could turn only to agency regulations or to a few superficial 50-100 page guidebooks available from a number of publishers.<sup>7</sup> Everyday, how-to-proceed guidance was not available in written form anywhere.

With *Winning at the MSPB*, Mr. Ashner has now written a comprehensive deskbook on MSPB Practice which strikes a near perfect balance between the unwieldy Broida treatise, which tells the typical user more than she needs to know, and the superficial guidebooks, which tells her far too little. *Winning at the MSPB* gives all agency employees involved in the disciplinary process—managers, personnelists, and representatives—a clear, detailed roadmap on how to take and win an adverse action before the Board, including comprehensive advice both on the law and on everyday practice.

*Winning at the MSPB* is a complete rewrite and major expansion of Ashner's earlier book, *Representing the Agency*. Ashner expands his scope from simply representing the agency to how to create the successful adverse action charge itself. He adds a major section, Building a Winning Case,<sup>8</sup> which teaches how to get the facts by asking the right questions, conducting an investigation, and documenting a potential adverse action. This makes *Winning at the MSPB* not only an important reference for representatives, but for managers and personnel specialists as well.

Managers often feel intimidated by the disciplinary process, and are themselves worried about ending up on the blame line for an action gone bad since a finding of discrimination or retaliation against a manager may ruin a career. With the passage of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,<sup>9</sup> known as the "No FEAR" legislation, a federal manager's fears will be even more acute since federal agencies must now pay for settlements or judgments against them in whistleblower and discrimination cases from the agency's own budget, and can no longer resort to the Judgment Fund.<sup>10</sup> Given this environment, many managers will not even consider bringing an adverse action charge

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7. For example, FPMI Communications, Inc., offers a series of guidebooks for supervisors in the \$19-29 price range, with such titles as *Federal Managers's Guide to Discipline* and *RIF and the Federal Employee, What You Need to Know*.

8. ASHNER, *WINNING AT THE MSPB*, *supra* note 1, pt. II.

9. Pub. L. No. 107-174 (2002).

10. *Id.* § 201(b) (federal agencies must reimburse the judgment fund for any payment made from the fund for retaliation or discrimination in violation of 5 U.S.C. § 2303(b)(8)-(9)).

against an employee without a high degree of confidence that it is the right thing to do and that the action will stick.

Reading *Winning at the MSPB* will give federal managers the confidence they might otherwise lack to take an appropriate disciplinary action. It provides managers with practical advice on how to deal with union representatives,<sup>11</sup> and how to react when an employee asserts his *Weingarten* rights<sup>12</sup> or refuses to cooperate in an investigation by asserting the Fifth Amendment. Importantly, *Winning at the MSPB* makes clear that it is not a substitute for legal advice, and advises its readers when to seek legal counsel from its Staff Judge Advocate or Office of General Counsel. For example, Ashner explains that an employee may be given immunity through *Kalkines* warnings,<sup>13</sup> but appropriately cautions federal managers against doing so except upon advice of counsel.<sup>14</sup>

*Winning at the MSPB* contains a lengthy glossary, putting into plain English most of the “terms of art” of federal personnel, such as “competitive level”<sup>15</sup> and “prohibited personnel practice,” to help novice representatives. It provides an equal number of entries to help managers and

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11. In addition to *Weingarten* rights, see *infra* note 12, the book discusses the union’s right to participate in formal discussions and the union representative’s role at interviews. See ASHNER, WINNING AT THE MSPB, *supra* note 1, at 166-69.

12. *Weingarten* rights, which involve a private sector employee’s right to request union representation at an investigatory interview that the employee reasonably believes might result in disciplinary action, *NLRB v. Weingarten, Inc.*, 420 U.S. 251, 260 (1975), are comparable to the federal sector provision found at 5 U.S.C. § 7114(a)(2)-(3).

13. An employee may be removed for not replying to questions in an investigation by an agency if he is adequately informed both that he is subject to discharge for not answering and that his replies and their fruits cannot be employed against him in a criminal case. See, e.g., *Kalkines v. United States*, 473 F.2d 1391, 1393 (1973); *Ashford v. Dep’t of Justice*, 6 M.S.P.R. 458, 465-66 (1981). The right to remain silent, however, attaches only when there is a reasonable belief that the elicited statements will be used in a criminal proceeding. *Ashford*, 6 M.S.P.R. at 466.

14. See ASHNER, WINNING AT THE MSPB, *supra* note 1, at 159-60.

15. For example, the glossary defines competitive level as

For reduction-in-force purposes, all positions in the competitive area and in the same grade or occupational level that are sufficiently alike in qualification requirements, duties, responsibilities, pay schedules, and working conditions that an agency may readily assign the incumbent of one position to any of the other positions without changing the terms of his or her appointment or unduly interrupting the work program. *Compare with* competitive area.

*Id.* at 886.

personnelists understand Board litigation, such as “affirmative defense,” and “official notice.”<sup>16</sup>

*Winning at the MSPB* is also an indispensable tool for employee relations specialists. Unlike *Representing the Agency*,<sup>17</sup> Ashner’s new book provides comprehensive guidance on how to draft adverse action charges.<sup>18</sup> It teaches when an agency should use a specific charge versus a general charge,<sup>19</sup> and most importantly, it explains how to determine what the elements are.<sup>20</sup> Ashner also advises how to avoid overcharging without undercharging—a fine skill for an employee relations specialist to glean.

*Winning at the MSPB* includes a detailed chapter on performance-based actions under 5 U.S.C. chapter 43, identifying all of the potential pitfalls for the unwary. For example, Ashner discusses the adequacy of performance standards, including a discussion of prohibited absolute standards and “backwards” or “negative standards.”<sup>21</sup> He counsels how to modify performance standards in the performance improvement plan (PIP) letter appropriately,<sup>22</sup> and how to monitor the adequacy of the PIP period

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16. For example, the glossary defines official notice as “A process whereby the Administrative Judge, on his or her own motion, or on the motion of a party, may accept as true matters of common knowledge or matters that can be readily verified. Official notice of any fact satisfies a party’s burden of proving that fact.” *Id.* at 893.

17. Mr. Ashner’s earlier book did little to explain the complexity of charging before the MSPB, except to lay out some bare-boned boilerplate. Richard W. Vitaris, Book Review, 161 MIL. L. REV. 216, 219 (1999) (reviewing ASHNER, REPRESENTING THE AGENCY, *supra* note 3). It did not discuss the pros and cons of whether to charge an employee with a specific label charge, that is, theft of government property, versus using a generic charge, that is, conduct unbecoming a federal employee, or even using no label for the charge at all. *Id.* These topics are now thoroughly discussed in Ashner’s new book. See ASHNER, WINNING AT THE MSPB, *supra* note 1, ch. 10.

18. ASHNER, WINNING AT THE MSPB, *supra* note 1, at 243-85.

19. *Id.* at 257-58.

20. *Id.* at 251-52.

21. *Id.* at 335-37. An absolute performance standard is one under which a single incident of poor performance will result in an unsatisfactory rating as to a critical element of a position. *Hurd v. Dep’t of Interior*, 53 M.S.P.R. 107, 111 (1992). An absolute standard generally constitutes an abuse of discretion unless death, injury, breach of security, or great monetary loss could result from a single failure to meet the standard. *Sullivan v. Dep’t of Navy*, 44 M.S.P.R. 646, 652 (1990).

A “backwards” or “negative” standard describes unacceptable rather than acceptable performance and, thus, fails to inform the employee what she had to do to attain acceptable performance. See *Eibel v. Dep’t of Navy*, 857 F.2d 1439, 1443-44 (Fed. Cir. 1988); *Ortiz v. Dep’t of Justice*, 46 M.S.P.R. 692, 695 (1991).

to ensure that the employee receives adequate time and assistance, and that obstacles to improvement are avoided. Finally, Ashner guides the employee relations specialist on how to decide whether to take a performance-based action under 5 U.S.C. chapter 43 or under 5 U.S.C. chapter 75.<sup>23</sup>

*Winning at the MSPB* also includes a chapter on veterans appeals under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA),<sup>24</sup> and the Veterans Employment Opportunities Act of 1998 (VEOA).<sup>25</sup> This chapter is especially important since many agency management officials are not even aware that Congress has afforded new appeal rights to veterans. It is not uncommon, for example, for agency representatives to respond to a USERRA or VEOA appeal involving a nonselection by moving to dismiss the appeal for lack of jurisdiction, citing well-established precedent that a nonselection is not an action appealable to the Board,<sup>26</sup> but entirely overlooking the fact that a nonselection based upon discrimination over military status<sup>27</sup> or a nonse-

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22. ASHNER, WINNING AT THE MSPB, *supra* note 1, at 333-34. An agency may give content to an employee's written performance standards, thereby correcting certain deficiencies in the standards, by informing the employee of the specific requirements and application of the standards to her work situation through oral counselings, performance improvement plans, and the evaluation process. *Williams v. Dep't of Health & Human Svcs.*, 30 M.S.P.R. 217, 220 (1986). An agency may not, however, orally change a written performance standard under the guise of giving content to it. *Id.* An agency may not prove an employee's unacceptable performance of the critical element without regard to the written performance standard for that critical element. *See Blumenson v. Dep't of Health & Human Svcs.*, 27 M.S.P.R. 259, 261 (1985).

23. ASHNER, WINNING AT THE MSPB, *supra* note 1, at 344-46. Chapter 75 may be used to effect actions entirely or partially performance-based. *See Lovshin v. Dep't of Navy*, 767 F.2d 826, 843 (Fed. Cir. 1985) (en banc). An agency may not, however, process an action under chapter 43 and then change the theory of its case to chapter 75 after hearing, by which point it has determined that it has not complied with all chapter 43 requirements. *See Ortiz v. U.S. Marine Corps*, 37 M.S.P.R. 359, 363 (1988). In addition, conduct which can also be characterized as misconduct under 5 U.S.C. chapter 75 may be the basis of an action under 5 U.S.C. chapter 43. *See Gilbert v. Dep't of Interior*, 27 M.S.P.R. 605, 606 n.\* (1985).

24. 38 U.S.C. §§ 4301-4333 (2000) (granting the Board jurisdiction to hear appeals by individuals who claim they have been discriminated against in their employment due to their prior or current service in the military at 38 U.S.C. §§ 4311(a), 4324).

25. The VEOA, codified at 5 U.S.C. § 3330a, grants preferences to veterans who seek federal employment. If the employing agency rejects the veteran's request for preference employment, the VEOA vests the veteran with the right to challenge that rejection before the Board. 5 U.S.C. § 3330a(d)(1) (2000). However, the Board may review that challenge only after the veteran first seeks relief from the Department of Labor. *Id.*

26. *See, e.g., Polen v. Dep't of Defense*, 72 M.S.P.R. 1, 4 (1996).

27. *See Sheehan v. Dep't of Navy*, 240 F.3d 1009, 1015 (Fed. Cir. 2001).

lection based upon failure to afford veterans preference<sup>28</sup> are now appealable to the Board.

As valuable as *Winning at the MSPB* is, adding a section on representing appellants could greatly improve its use. Ashner's preface acknowledges that his target audience is federal agencies, but he states he "hopes it will prove useful to many other audiences as well."<sup>29</sup> The book is certainly useful to private attorneys, union representatives, and pro se appellants as a reference, but it is not nearly as useful as it could be. A chapter with practical tips on successfully representing appellants would broaden the book's appeal to another large target audience and would help the federal agency audience as well.

For example, a surprisingly successful advocacy tactic for appellant's representatives—although one that can only be used once against the same adversary—is to waive hearing shortly before the hearing date and request that the Board adjudicate the appeal on the basis of the written submissions. A discussion of this option in a chapter on representing appellants would benefit both sides. Most appellants are unaware of the tactic, and most agencies are not practiced in proving its case on the record. Agency representatives are frequently blindsided when the agency receives the appellant's written submission without having had the opportunity to cross-examine or otherwise challenge its assertions. Indeed, because many agencies do not engage in discovery, the agency may even be unaware of the appellant's defense theories until it is too late to rebut them. In sum, a chapter of tips for appellants and their representatives would be instructive for agency readers as well.

*Winning at the MSPB* contains appendices consisting of sample pleadings and forms, Board regulations, and relevant statutes.<sup>30</sup> They are especially useful for managers who will not have ready access to a library, and to new representatives who have not yet developed their own boilerplate submissions. Appendix II contains a sample motion to compel and a sample objection thereto.<sup>31</sup> While this appendix also contains a few sample discovery requests,<sup>32</sup> this is one area for possible expansion. Too many agency representatives fail to use discovery, assuming—often incor-

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28. See *Sherwood v. Dep't of Veterans Affairs*, 88 M.S.P.R. 208, 209 (2001).

29. ASHNER, *WINNING AT THE MSPB*, *supra* note 1, at v.

30. See *id.* app. II, at 707-59 (sample pleadings and forms), app. III, at 761-880 (statutes and regulations).

31. *Id.* at 756.

32. *Id.* at 751-52.

rectly—that since the agency took the adverse action, the agency already knows the relevant facts and need not use discovery. Adding some additional sample discovery requests, such as a motion for production of a document, would make *Winning at the MSPB* even more useful. Now, the novice representative has to hunt in standard federal practice form books for specific examples.

*Winning at the MSPB* also has a short appendix of research tools, identifying books, computer research tools, Web sites, and other information.<sup>33</sup> While helpful, this appendix could also benefit from expansion. While Ashner refers readers to the Broida treatise as a source of additional information, the appendix omits mention of other valuable reference books in the field, such as the superb treatise by Renn Fowler and Sam Vitaro on MSPB charges and penalties,<sup>34</sup> and Renn Fowler and Joseph Kaplan's new handbook on trial advocacy in federal sector employment litigation.<sup>35</sup> These omissions are surprising because, like the Broida treatise and the new Ashner handbook, they are also published by Dewey Publications. Finally, the appendix should have a list of Web site links, to include private organizations such as the major federal employee unions and public advocacy groups that represent employees before the Board; for example, the Government Accountability Project,<sup>36</sup> the Project on Liberty and the Workplace,<sup>37</sup> and Judicial Watch.<sup>38</sup>

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33. *See id.* app. I, at 701-06.

34. RENN C. FOWLER & SAM VITARO, *MSPB CHARGES AND PENALTIES* (Dewey Publications 1999).

35. RENN C. FOWLER & JOSEPH V. KAPLAN, *LITIGATING FEDERAL SECTOR EMPLOYMENT AND LABOR LAW DISPUTES: A PRACTITIONERS' HANDBOOK* (Dewey Publications 2002).

36. "The [Government Accountability Project] (GAP) is the nation's leading whistleblower organization. [The] GAP promotes government and corporate accountability by advocating occupational free speech, litigating whistleblower cases, publicizing whistleblower concerns, and developing policy and legal reforms of whistleblower laws." Government Accountability Project, *About Gap*, at <http://www.whistleblower.org/getcat.php?cid=24> (last visited Feb. 22, 2003).

37. "[The Project on Liberty and the Workplace] (Project LAW) is a public interest law firm devoted to advancing and defending the civil rights and liberties of individuals and community groups that are threatened by powerful institutions." Project on Liberty and the Workplace, *The Organization*, at <http://www.projectlaw.org> (last visited Feb. 22, 2003).

38. Judicial Watch, Inc., is a public interest group "which serves as an ethical and legal 'watchdog' over our government, legal, and judicial systems to promote a return to ethics and morality in our nation's public life." Judicial Watch, *Mission*, at <http://www.judicialwatch.org/about.shtml> (last visited Feb. 22, 2003).

Harold Ashner's *Winning at the MSPB* is a superb deskbook for any federal agency official involved in employee discipline. It teaches how to take a proper adverse action and make it stick, and provides the answers to all the frequently asked questions about the process. It is an indispensable reference for agency managers, personnel specialists, and representatives, and a helpful reference for appellants and appellant representatives. Readers of *Winning at the MSPB* will feel confident when they approach the Board. This new book will be a mainstay for those in the federal personnel business for years to come.



## PRESIDENT BUSH'S DREAM TEAM GOES TO WAR

LIEUTENANT COLONEL DAVID WALLACE<sup>1</sup>*Introduction*

I recommend that you read *Bush at War*<sup>2</sup> by Bob Woodward. Few books in recent times have received as much intense scrutiny and public attention during their early release as Woodward's latest work. Woodward, a well-known nonfiction author and assistant managing editor for the *Washington Post*, has been captivating readers with vivid accounts of contemporary historical events and national decision makers in action for over a quarter century.<sup>3</sup> *Bush at War* chronicles the inner workings and internal debates of the Bush Administration's national security team during the first 100 days following the 11 September 2001 terrorist attacks on the United States. Woodward takes readers from the excitement of the early crisis on September 11th through various key war planning strategy sessions.

This review discusses three aspects of the book. First, it addresses Woodward's unique methodology for writing contemporary histories.

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1. Judge Advocate General's Corps, United States Army. Presently assigned as an Academy Professor, Department of Law, United States Military Academy. 1995 LL.M., The Judge Advocate General's School, United States Army, Charlottesville, Virginia; 1993 M.S.B.A., Boston University, Germany; 1989 J.D., Seattle University, Tacoma, Washington; 1983 B.A., Carnegie-Mellon University, Pittsburgh, Pennsylvania. Previously assigned as Deputy Staff Judge Advocate, Office of the Staff Judge Advocate, Fort Bliss, Texas (2000-2001); Student, Command and General Staff College, Fort Leavenworth, Kansas (1999-2000); Vice-Chair and Associate Professor, Contract and Fiscal Law Department, The Judge Advocate General's School, United States Army (1999); Assistant Professor, Contract and Fiscal Law Department, The Judge Advocate General's School, United States Army (1996-1999); Trial Attorney, Contract Appeals Division, United States Army Legal Services Agency, Arlington, Virginia (1993-1995); Trial Counsel, Legal Assistance and Claims Attorney, 3d Infantry Division, Kitzingen, Germany (1990-1993). I would like to thank LTC Ritz Ryan, LTC Mike Sainsbury, and Robyn Scopteuolo for their comments on this review. They made it immeasurably better.

2. BOB WOODWARD, *BUSH AT WAR* (2002).

3. Bob Woodward has authored or coauthored eight number one nonfiction best sellers. His books include: *The Choice* (1996), *The Agenda: Inside the Clinton White House* (1994), *The Commanders* (1991), *Veil: The Secret Wars of the CIA: 1981-1987* (1987), *Wired: The Short Life and Fast Times of John Belushi* (1984), *The Brethren* (1979), and *All the President's Men* (1974).

Second, the review highlights how Woodward masterfully sets the stage for his story. Finally, it provides some specific highlights about the book for military lawyers.

*Woodward's Methodology*

If *access* is the coin of the realm for reporters in Washington, D.C., Bob Woodward is certainly one of the richest. Other reporters must envy Woodward's ability to get the inside track to the key decision makers in all branches of the United States government. For *Bush at War*, Woodward interviewed more than 100 people who planned and executed the earliest phases of the war on terror, including the President, key war cabinet members,<sup>4</sup> White House staffers, senior State and Defense Departments officials, and high ranking agents in the CIA. Woodward supplemented these personal accounts with notes taken from more than fifty National Security Council meetings as well as numerous internal documents and memoranda. Clearly, Woodward did his homework, and he did it well. His exhaustive and thorough research gives readers the sense that they are a "fly on the wall" during some of the most important discussions and debates in our time.

Some critics contend, however, that Woodward produced a "systematically biased" and flawed book because it was the product of journalistic blackmail; that is, "[t]alk to me, spill your share of secrets—or at least your personal, touchy-feely confidences—or I will cast you as the villain."<sup>5</sup> Woodward generally paints individuals who were "cooperative sources,"<sup>6</sup> such as Secretary of State Colin Powell, Director of the Central Intelligence Agency (CIA) George Tenet, National Security Advisor Condoleezza Rice, and President Bush, in a favorable light in *Bush at War*. Conversely, Secretary of Defense Donald Rumsfeld reportedly did not provide Woodward the same level of access.<sup>7</sup> Woodward portrays Rumsfeld

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4. Even critics of President Bush would concede that he assembled an extraordinarily talented and experienced group of national security advisors who have collectively nearly 100 years of full-time experience handling national security issues. WOODWARD, *supra* note 2, at 75.

5. Edward N. Luttwak, *Gossip from the War Room*, L.A. TIMES, Dec. 1, 2002 (book review), <http://www.calendarlive.com/books/bookreview/cl-bk-eluttwak1dec01.story>.

6. James Rubin, *Credulous Woodward a Fly on N.S.C. Wall in New Bush Book*, N.Y. OBSERVER, Dec. 12, 2002, at 1 (book review), <http://www.observer.com/pages/story.asp?ID=6668>.

7. *Id.*

as an ill-tempered egomaniac who regularly verbally embarrasses and abuses senior military leaders.<sup>8</sup>

If one were to ask most Americans post-September 11th for their impression of Secretary Rumsfeld, it would most likely be favorable. During his regular briefings at the Pentagon, Rumsfeld appears very witty, calm, and insightful. Some have even characterized him as a “pop hero” because of his captivating performances in front of the national media.<sup>9</sup> Undoubtedly, Woodward’s portrayal of Secretary Rumsfeld is far more critical; however, the reader will have to draw his own conclusion about whether Rumsfeld is a victim of journalistic blackmail or simply an unpleasant individual.

For the most part, Woodward’s journalistic technique is valid, albeit not ideal. In writing a contemporary historical account, direct input from the primary figures is very helpful. Such authorities can provide insights into events and decisions, taking the author well beyond merely relying upon chronologies or reading some third party notes. As Woodward himself said, “[*Bush at War*] is an inside account, largely the story as the insiders saw it, heard it and lived it.”<sup>10</sup>

It should come as no surprise that those individuals who provided their input to Woodward generally characterized their actions in a positive light; that is human nature. Woodward’s audience should simply keep that criticism in the back of their minds as they read the book. Furthermore, the fact that *Bush at War* is principally a factual account of the first 100 days after September 11th at least partially moots this criticism. It is not an ana-

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8. WOODWARD, *supra* note 2, at 64. One interesting anecdote from the book relates to an incident in which the Secretary of Defense found out that a mid-level officer at the National Military Command Center contacted the White House to confirm whether President Bush wanted a fighter escort accompanying Air Force One. According to Woodward, “Rumsfeld went nuts. ‘Somebody in my building is talking to the White House without my knowledge or permission.’” *Id.* at 64.

9. See, e.g., Phillip Smucker, *A History of the Afghan War, 10 Minutes Later*, CHRISTIAN SCI. MON., Dec. 19, 2002 (book review), <http://www.csmonitor.com/2002/1219/p15s01-bogn.html>.

10. WOODWARD, *supra* note 2, at xii.

lytical work in which Woodward offers his own insights and commentary. Readers are left to draw their own conclusions from the story.

*11 September 2001—Setting the Tone*

Woodward cleverly draws readers into the story by stepping into the lives of the principal characters on the morning of September 11th; a beautiful pre-Fall day on the East Coast with temperatures in the 70s. Woodward introduces us to the President and his national security “principals”<sup>11</sup> by placing them within the historical context of their routine events on that fateful morning before the attack. For example, Secretary of State Colin Powell was in Lima, Peru, attending an Organization of American States meeting. Secretary of Defense Donald Rumsfeld was at the Pentagon receiving his daily briefings.<sup>12</sup>

Meanwhile, at the time of the attack on the World Trade Center, President Bush was reading to second graders at the Emma E. Booker Elementary School in Sarasota, Florida. Seared in our collective memory is the look on President Bush’s face as his Chief of Staff, Andrew H. Card, whispered in the his right ear that “[a] second plane has hit the second tower. America is under attack.”<sup>13</sup>

Woodward captures for posterity the immediate actions of President Bush, from the impromptu appearance before television cameras to denounce the attack, to the hurried motorcade ride to Sarasota Bradenton International Airport, and finally to the cross-country odyssey of Air Force One. Amidst the chaos and confusion of the first few hours after the attack, Woodward’s account leaves the reader with the distinct impression that President Bush is a strong leader, firmly in control of the reins of the government.<sup>14</sup> For some, this is a rather different impression than what they

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11. The “Principals” include: Vice President Richard Cheney; Secretary of State Colin Powell; Secretary of Defense Donald Rumsfeld; Assistant to the President for National Security Affairs, Condoleezza Rice; Director of the Central Intelligence Agency, George Tenet; Chairman of the Joint Chiefs of Staff, General Richard Myers, United States Air Force; and White House Chief of Staff, Andrew H. Card, Jr. *Id.* at xvii.

12. *Id.* at 9-10.

13. *Id.* at 14.

14. *See id.* at 17-20. This impression comes from his actions as well as his demeanor and attitude. For example, upon the recommendation of Vice President Cheney, Bush unhesitatingly gave American fighter pilots an order to shoot down any commercial airlines controlled by terrorists. *Id.* at 18.

may recall from September 11th. For example, when the President spoke from Barksdale Air Force Base in Louisiana several hours after the attack, his 219-word statement was not reassuring. As Woodward notes, “[President Bush] spoke haltingly, mispronouncing several words as he looked down at his notes.”<sup>15</sup>

Another almost surreal example involves the CIA Director, George Tenet,<sup>16</sup> a well-respected hold-over from the Clinton Administration. Tenet was having breakfast with former Oklahoma Senator David L. Boren<sup>17</sup> in a hotel three blocks north of the White House when he learned of the attack. Interestingly, before learning of the attack, Boren asked Tenet what was worrying him the most in the world. Tenet told Boren it was Osama bin Laden (commonly referred to as “UBL”), the terrorist leader of the al Qaeda network.<sup>18</sup>

Woodward did an excellent job setting the tone for his book. In a few short minutes, the world for all Americans was changed forever. Woodward takes readers from benign to horrified, from ordinary to extraordi-

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15. *Id.* at 19.

16. Although not as well known as most of the other principals, George Tenet played a critical role during the first 100 days after September 11th. According to his official biography, Mr. Tenet served as the Director of the CIA since President Clinton appointed him on 11 July 1997. Before that appointment, he

served as Deputy Director of Central Intelligence, having been confirmed in that position in July 1995. . . . [Beginning] in December 1996, he served as Acting Director. Mr. Tenet previously served as Special Assistant to the President and Senior Director for Intelligence Programs at the National Security Council. While at the NSC, he coordinated Presidential Decision Directives on “Intelligence Priorities,” “Security Policy Coordination,” “U.S. Counterintelligence Effectiveness,” and “US Policy on Remote Sensing Space Capabilities.” He also was responsible for coordinating all interagency activities concerning covert action. Before serving at the National Security Council, he served on President Clinton’s national security transition team. In this capacity, he coordinated the evaluation of the US Intelligence Community. Mr. Tenet also served as Staff Director of the Senate Select Committee on Intelligence for over four years under the chairmanship of Senator David Boren. In this capacity he was responsible for coordinating all of the Committee’s oversight and legislative activities including the strengthening of covert action reporting requirements, the creation of a statutory Inspector General at CIA, and the introduction of comprehensive legislation to reorganize US intelligence.

Central Intelligence Agency, *George J. Tenet: The Director of Central Intelligence*, at <http://www.cia.gov/cia/information/tenet.html> (last updated Feb. 23, 2003).

nary, from peace to war. Senior government officials, like the rest of this country, were in the midst of their normal daily routines when the unthinkable happened. Everyone knows where they were the morning of September 11th. Woodward's audience now knows where America's leadership was, too. It is a great technique for drawing the reader into the book.

*Highlights for the Military Reader*

Most of *Bush at War* involves the reconstruction of meetings, debates, and internal struggles among the principals. What makes *Bush at War* such a captivating read, at times, is that readers feels like they are in the war room or at Camp David while the President and the principals are formulating and executing a response to the September 11th attacks.

The good news: there are some very interesting pieces of information for the military reader. For example, one may not appreciate the important role the CIA played in formulating the nation's response to the September 11th attacks. Of all the principals, George Tenet was the most impressive. Like some bureaucrats, Tenet's response could have been retrenchment—circle the wagons. Let's face it, America was hit hard by a known international threat. Osama bin Laden, his top lieutenants, and the al Qaeda network of terrorists have been on America's intelligence radar screen for quite some time. America's intelligence services had been unable either to

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17. Boren, a Rhodes Scholar, was "elected as a Democrat to the United States Senate in 1978[. He] was re-elected in 1985 and again in 1990[. He] served from January 3, 1979 until November 15, 1994, when he resigned[.]" Biographical Directory of the United States Congress, *BOREN, David Lyle*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000639> (last visited Feb. 23, 2003). He also served as the chairman of the Select Committee on Intelligence for fifteen years, and was the Governor of Oklahoma. He is currently the President of the University of Oklahoma. *Id.*

Interestingly, Boren thought that Tenet had developed an "unhealthy obsession" about bin Laden. WOODWARD, *supra* note 2, at 4. In fact, two years earlier Tenet had warned Boren not to travel or appear at New Year's Eve/Day events because he believed bin Laden would stage an attack. *Id.* at 4.

18. WOODWARD, *supra* note 2, at 3.

find him or thwart his actions.<sup>19</sup> By any measure, the CIA would be an easy scapegoat for this failure.

Instead, Tenet took the offensive.<sup>20</sup> He was the first to propose a bold, aggressive game plan. Arguably, Tenet filled a vacuum left by the military. Shortly after the attack, President Bush met with a half-dozen principals following a National Security Council meeting.<sup>21</sup> President Bush pressed Secretary Rumsfeld on what the United States military could do immediately. “Very little, effectively,” replied Secretary Rumsfeld.<sup>22</sup> United States Central Command (CENTCOM) Commander General Tommy Franks told Rumsfeld that it would take months to get forces into Afghanistan and plan a major assault.<sup>23</sup> Bush and Rumsfeld wanted something done much sooner.

In comparison, Tenet offered a plan that envisioned using CIA paramilitary teams, U.S. Special Forces, sophisticated technology, and lots of money to invigorate the Northern Alliance in Afghanistan.<sup>24</sup> Because of its familiarity with the region and warring factions, the CIA recognized

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19. *Id.* at 34. About a week before President Bush took office, Tenet briefed him on the tremendous threat posed by bin Laden and his network. Tenet told the President that bin Laden and his network would undoubtedly come after America again. It was just not clear when and how. *Id.*

20. *Id.* at 78. In all fairness to the other agencies, the CIA had been working aggressively against terrorism for years. The CIA had done extensive target development and network analysis. *Id.* All they needed was more money, greater flexibility, and the broad authority to move quickly.

21. *Id.* at 43. The book does not make the date of the meeting entirely clear, but it appears to be 12 September 2001. *See id.*

22. *Id.*

23. *Id.* at 79-80. On Saturday, 15 September 2001, the war cabinet met at Camp David. General Hugh Shelton briefed the President on three quickly devised military options. Option One was a strike with cruise missiles from Navy ships or Air Force planes from hundreds of miles away. The targets included al Qaeda’s training camps. No one supported this option, in part, because it appeared to be very similar to former President Clinton’s actions. Option Two was only slightly different. It involved the use of cruise missiles and manned bombers. General Shelton left the most robust option for last. Option Three involved the use of not only cruise missiles and manned bombers, but also the use of elite Special Forces soldiers and marines on the ground. Some military planners were thinking “outside of the box.” One two-star special operations general was prepared to brief the President on a military option that included poisoning the food supply in Afghanistan. Senior staffers screened out the proposal before it got to the President. *Id.* at 100.

24. *Id.* at 75-76. In addition to action in Afghanistan, the plan called for an attack on al Qaeda’s financial resources, including clandestine computer surveillance and electronic eavesdropping to locate assets hidden and laundered among various charitable fronts and nongovernmental organizations. *Id.* at 76.

that al Qaeda and the Taliban were “joined at the hip,” so both would have to be engaged.<sup>25</sup> Central Intelligence operatives told the President that they could get to Afghanistan quickly and that they could accomplish their mission within weeks. This was quite a contrast from the military that talked in terms of months to establish a presence in the theater of operations. Needless to say, President Bush said, “I was impressed by [the CIA’s] knowledge of the area. We’ve had assets there for a long period of time. They had worked, had been through things.”<sup>26</sup> On 17 September 2003, President Bush announced that he was approving every one of Tenet’s recommendations. Additionally, he directed Secretary Powell to issue an ultimatum to the Taliban to turn over bin Laden, or suffer the consequences.<sup>27</sup>

In addition to the CIA operations in Afghanistan, the President and his advisers also initially considered attacking Iraq.<sup>28</sup> Such a plan had some appeal. Unlike Afghanistan, where the enemy was elusive and fanatical with a track record of stymieing outside forces, Iraq was a “brittle” oppressive regime that might break easily. Ultimately, President Bush’s national security team unanimously recommended against initially attacking Iraq because of the impact such an attack would have on the growing coalition.<sup>29</sup> Plus, there was hardly a direct nexus between the September 11th terrorist attack on the United States and Iraq. At least initially, an attack against Iraq was off the table. Obviously, this topic has been overcome by recent events.

A rather surprising related point is how long it actually took the military to get its Special Forces teams on the ground in Afghanistan. The CIA’s first paramilitary team, led by a fifty-nine year-old CIA operative, “Gary,”<sup>30</sup> arrived in northern Afghanistan on 26 September 2001. The ten-man CIA team—codenamed “Jawbreaker”—arrived with communications gear and \$3 million in cash. In contrast, the first U.S. Special Forces

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25. *Id.* at 52.

26. *Id.* at 53.

27. *Id.* at 98.

28. *Id.* at 49.

29. *Id.* at 87.

30. Gary had been an officer in the CIA’s Directorate of Operations for thirty-two years. He had previously worked undercover in Tehran and Islamabad. *Id.* at 139-40.



A-team, 555 (or Triple Nickel), arrived in Afghanistan on 19 October 2001.<sup>31</sup>

Now, the book makes it clear that once the Special Forces were actually engaged in theater, they made key contributions that resulted in a change of fortune for the Northern Alliance. The A-teams directed devastating fire from the air at the Taliban and al Qaeda forces. The precision and size of munitions had an overwhelming impact on the Taliban and al Qaeda, resulting in the destruction of hundreds of their vehicles and bunkers. Thousands of Taliban and al Qaeda fighters were killed, were captured, or fled.<sup>32</sup>

Also, Woodward details the “shotgun wedding”<sup>33</sup> between the military and the CIA. Who was actually running the show, the military or the CIA? Was the operation in Afghanistan a covert or military operation? The CIA hatched the plan and had its paramilitary teams in theater first. But, this was a “war” on terrorism, and war is the domain of the military. Department of Defense and CIA operations created the classic problem of the lack of unity of command. Well into the operation, Woodward portrays Secretary Rumsfeld as tentative about the nature of the relationship between the military and the CIA. In a private conversation with National Security Advisor Rice, he expressed concern that he didn’t want to be seen as usurping what the CIA was trying to do. According to Rumsfeld, “It’s also George’s [Tenet] operation.”<sup>34</sup>

Rice emphatically told Secretary Rumsfeld that it was a military operation and that he had to be in charge; one person had to be running the show.<sup>35</sup> This was easier said than done. The situation was more complicated than a hand-off from the CIA to the military because the CIA was going to remain engaged. From the CIA’s perspective, however, the military teams worked for the regional combatant commander, General Franks.

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31. *Id.* at 249.

32. *Id.* at 301.

33. *Id.* at 244.

34. *Id.* at 245.

35. *Id.* at 245.

Some operatives at the CIA believed that the only person who didn't understand the chain of command was Rumsfeld.<sup>36</sup>

*Highlights for Lawyers*

Another theme easily recognizable in the book is that certain senior administration officials seem to see lawyers and lawyering as an impediment to war fighting. For example, in an effort to get "exceptional authorities" for his agents to carry out the war on terrorism, CIA Director Tenet noted that the current process involved "too much time, lawyering, reviews and debates."<sup>37</sup> President Bush, reflecting upon his actions during the first 100 days, noted:

I also had the responsibility to show resolve. I had to show the American people the resolve of a commander in chief that was going to do whatever it took to win. No yielding. No equivocation. No, you know, lawyering this thing to death, that we're after 'em. And that was not only for domestic, for the people at home to see. It was also vitally important for the rest of the world to watch.<sup>38</sup>

Secretary Rumsfeld, commenting about lawyers, said, "Reduce the number of lawyers. They are like beavers—they get in the middle of the stream and dam it up."<sup>39</sup> Will the Bush Administration marginalize the role of lawyers in the war on terrorism because they are seen as an impediment to

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36. *Id.* at 247.

37. *Id.* at 76.

38. *Id.* at 96. President Bush has been particularly critical of trial lawyers within the context of medical care in the United States. For example, he made the following remarks about lawyers at the Medical College of Wisconsin: "We should be serving the interest of patients, not the self-interest of trial lawyers." President George Bush, Remarks at the Medical College of Wisconsin (Feb. 11, 2002), <http://membership.hiaa.org/pdfs/fact022002.pdf>.

39. Donald Rumsfeld, *quoted in Brainy Quote*, at <http://www.brainyquote.com/quotes/quotes/d/q135978.html> (last visited Feb. 23, 2003).

progress? We will certainly know better when a more complete history of the times unfolds.

### *Summary*

Woodward's new book is worth the read for the military lawyer. Because of his access to the key decision makers, the book provides some new insights beyond what one typically hears from the talking heads on MSNBC or CNN. As a testament to the sensitivity and accuracy of the information in the book, Senator Trent Lott of Mississippi remarked at a Senate Select Intelligence Committee Hearing on National Security Threats on 11 February 2003, that he learned more about what was happening with the intelligence community in Afghanistan from *Bush at War* than he did from any classified intelligence briefing. He made the remark to Director Tenet who was testifying before the committee. Lott's comment was not a compliment.<sup>40</sup>

*Bush at War* is by no means perfect. At times, it is tedious and choppy. Even meetings involving important national figures on profound issues can be a little dry and repetitive. But the book does give the reader a good sense of the historic events. The book would benefit from including more of Woodward's own analysis of events. It would also benefit from omitting some of the more tedious meetings and discussions that do not seem to add much value to one's overall appreciation for events during the first 100 days after September 11th. Even with those mild criticisms, I highly recommend that you read it.

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40. CSPAN, *Senate Select Intelligence Committee Hearing on National Security Threats* (television broadcast Feb. 11, 2003), available at [http://video.c-span.org:8080/ramgen/kdrive/ter021103\\_threats.rm](http://video.c-span.org:8080/ramgen/kdrive/ter021103_threats.rm) (last visited Feb. 12, 2003). Lott believed that the book released too much classified material. *See id.*

*Whose War Is It Anyway?*SUPREME COMMAND<sup>1</sup>REVIEWED BY MAJOR JEFF SPEARS<sup>2</sup>

*Warfare is the greatest affair of state, the basis of life and death, the Way to survival or extinction. It must be thoroughly pondered and analyzed.*

—Sun Tzu<sup>3</sup>

*Supreme Command* by Eliot Cohen is a study of the relationship between the political leadership and the high military command of modern democracies during wartime.<sup>4</sup> Moreover, it is a study of civilian leadership during wartime. Cohen's work is built upon a critical analysis of the modern consensus that the "normal" civil-military relationship is one in which the civilian leadership should define the objective followed by military operations planned and executed with minimal or no political intervention.<sup>5</sup> Cohen develops his thesis by examining the leadership style of those he considers the four greatest democratic wartime leaders of the modern era: Abraham Lincoln, Georges Clemenceau, Winston Churchill, and David Ben-Gurion. Cohen's thesis is clear: the great democratic wartime

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1. ELIOT A. COHEN, *SUPREME COMMAND* (2002).

2. United States Army. Written while assigned as a student, 51st Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. SUN TZU, *THE ART OF WAR*, in *THE SEVEN MILITARY CLASSICS OF ANCIENT CHINA* 157, 157 (Ralph D. Sawyer ed., 1993).

4. COHEN, *supra* note 1, at xi.

5. *Id.* at 4-7. Cohen derives his consensus from a review of literature from military and civilian academic circles, public opinion, and popular culture. Further, Professor Cohen brings a wealth of experience to the analysis of this topic. He currently serves as a professor of Advanced International Studies at Johns Hopkins University and has served in the Department of Defense (DOD) in both civilian and uniformed status. He has published numerous articles on foreign policy and defense related matters. *Id.* (inside dust cover). Of recent note is his article on DOD reinvention under Secretary of Defense Donald Rumsfeld. See Eliot A. Cohen, *A Tale of Two Secretaries*, 81 *FOREIGN AFF.* 33 (2002).

leaders violate this normal relationship and succeed because of it, not in spite of it.<sup>6</sup>

Cohen's argument is as well-developed as it is provocative. But is he correct? Can a lawyer, medical doctor, high school underachiever, or bookish intellectual<sup>7</sup> who arrives at the helm of a democracy preparing for war presume to meddle in military matters perhaps best left to a class of military professionals? Or should the most important affair of the state remain in the hands of those who have spent their careers studying the art and practice of war? This review focuses upon: (1) whether Cohen's argument that great democratic wartime leaders *should* meddle in martial matters is correct; (2) if so, how this affects the validity of the "normal" civil-military relationship; and (3) what insights future civilian and military leaders can gain from this framework.<sup>8</sup>

#### *Whose War Is It Anyway?*

The men that Cohen selected for his analysis all faced struggles of national survival.<sup>9</sup> Further, they all operated in an environment transformed by the power of near real-time communications on the battlefield. This often permitted them to review timely reports from battles and cam-

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6. Cohen confined his selection of leaders to a period of less than one hundred years. He notes that while technological improvements were made during this period, the leaders all operated in an environment that Cohen refers to as "industrialized warfare." COHEN, *supra* note 1, at 5. Perhaps more importantly, however, Cohen notes that none of the leaders were faced with the overarching issue of the potential use of strategic nuclear weapons. *See id.* Although Cohen makes this distinction from the nuclear reality that modern civilian leaders must face, he does not use this fact to further develop his thesis directly. It is the reviewer's opinion that as the continued proliferation of weapons of mass destruction becomes a reality, it will require that the civilian leadership play an increasing role in the management of conflict.

7. Abraham Lincoln, Georges Clemenceau, Winston Churchill, and David Ben-Gurion, respectively. *See generally id.* at 21, 57, 102, 134. Professor Cohen only makes an oblique reference to Churchill's undistinguished youth. For a balanced discussion of the young Churchill's academic shortcomings, see Celia Sandys, *The Young Churchill*, Address Before the International Churchill Society (Sept. 23, 1994), available at <http://www.winstonchurchill.org/p94sandys.htm>.

8. Early in American history, Alexis deTocqueville formed an interesting perspective on the officer corps of professional armies in democracies. While seeing the private soldier as, in essence, a civilian in uniform, deTocqueville viewed an officer as a man who "breaks all the ties attaching him to civilian life . . . [and] may perhaps eagerly desire war . . . at the very moment when the nation most longs for stability and peace." ALEXIS DETOQUEVILLE, *DEMOCRACY IN AMERICA* 652 (George Lawrence trans., Harper 1988) (1839).

paigns over a large geographical area. The information transformation that began in the American Civil War and continues through today serves to provide civilian command authorities with an increasing ability to invade the traditional sphere of the field commander.

Unlike Roman commanders who were free “from constant interference from the home government,”<sup>10</sup> modern technology has brought civilian leadership into the commander’s operations to a varying degree since the invention of the telegraph. Cohen cites the telegraph as the technology that permitted Lincoln to immerse himself in the day-to-day conduct of a war waged on many fronts. Even during the opening battle of the Civil War, Lincoln was able to receive and read real-time reports coming from First Bull Run at the rate of one “every ten or fifteen minutes.”<sup>11</sup> The impact of this technological transformation is clear. The most notable battle of the previous war fought on United States soil, the War of 1812, occurred a month after the Treaty of Ghent concluded hostilities with England.<sup>12</sup>

Like the other great leaders studied by Cohen, Lincoln embraced new technologies, and the telegraph gave him a platform upon which to collect information on his field commanders to ensure they executed the war consistently with his orders and political mandates. And like Clemenceau, Lincoln further projected his presence on the battlefield by regularly visiting the front. Lincoln also placed spies with suspect commanders to measure their competence and to monitor compliance with his war aims.<sup>13</sup> Similarly, Cohen notes that Churchill and Ben-Gurion both demanded feedback from their military subordinates regarding how and when their subordinates had complied with their directives.<sup>14</sup> But was this appropriate?

Many scholars regard any intermeddling by civilian leaders into military matters as antithetical.<sup>15</sup> Notwithstanding, such conduct is not only

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9. Abraham Lincoln was the President during the American Civil War, Georges Clemenceau was the Prime Minister of France during World War I, Winston Churchill was the Prime Minister of Great Britain during World War II, and David Ben-Gurion served to secure the State of Israel as an independent nation in the face of British and Arab opposition. COHEN, *supra* note 1, at 18, 52, 95, 135-37.

10. F.E. ADCOCK, *THE ROMAN ART OF WAR UNDER THE REPUBLIC* 84 (B&N reprint 1995) (1940).

11. See COHEN, *supra* note 1, at 27.

12. PAUL JOHNSON, *THE BIRTH OF THE MODERN* 41 (1991) (referring to General Andrew Jackson’s defeat of the British at the Battle of New Orleans).

appropriate for civilian leaders, but as Cohen effectively argues, an absolute necessity.<sup>16</sup> In a democracy, the popularly elected executive, not his uniformed commanders, ultimately will face the political ramifications of warfare, as President Lyndon Johnson learned in the election of 1968. Further, and as Cohen notes,<sup>17</sup> warfare is increasingly fought as part of multi-

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13. President Lincoln seized upon the telegraph to extend his influence onto the battlefield. COHEN, *supra* note 1, at 18-20. When necessary, he would visit the battlefield to ensure that his orders were carried out. *See id.* at 42. Cohen notes that Lincoln used men on various stated missions to report regularly, if not daily, on some of his key commanders in the field. Notably, Lincoln dispatched such spies to look into the day-to-day affairs of General William Rosecrans of the Army of the Cumberland because of suspected incompetence and General Ulysses S Grant because of his known tendency to binge drink. *See id.* at 43-45.

Perhaps it is this oversight that lead to the politicized court-martial of lawyer turned Brigadier General James G. Spears who was sent to trial and convicted for disrespect to the President. Although Lincoln's Vice President, Andrew Johnson, had originally recommended Spears for his appointment, the staunch unionist began to question Lincoln's personal war aims. Letter from Andrew Johnson to Secretary of War E.M. Stanton (Apr. 17, 1862), *reprinted in* 10 SERIES I OFFICIAL RECORDS OF THE WAR OF REBELLION 110-11 (1884). Brigadier General Spears engaged in a series of conversations with peers and subordinates that included comments deemed "disloyal" to the President and speculation that President Lincoln was delaying the ultimate defeat of the Confederacy to provide a basis for a more radical abolitionist platform. At the time of his court-martial, there was no specific offense for prosecuting comments disloyal or disrespectful to the President, so Spears was tried under a theory that the disloyal language was "prejudicial to good order and military discipline." He was convicted and sentenced to be dismissed from the service. The convening authority, Major General Schofield, disapproved the conviction because he found that the offense was not a proper charge under the Articles of War. Perhaps out of his own sense of self-preservation, he forwarded the record to President Lincoln with the recommendation that the President disapprove Spears's court-martial, but that he dismiss General Spears nonetheless. President Lincoln followed this recommendation and "summarily dismissed" General Spears on 17 August 1864. Trevor K. Plante, *The Shady Side of the Family Tree: Civil War Union Court-Martial Case Files*, 30 NARA PROLOGUE 4 (1998) (citing General Court-Martial Orders, No. 267, War Department (1864)).

14. *See* COHEN, *supra* note 1, at 153.

15. Cohen thoroughly examines works that criticize excessive civilian management of warfare. His examination relies heavily on works written in response to the Vietnam War. *See id.* ch. 6.

16. For an excellent work that provides a thesis in conflict to Cohen's, see Harry Summers, *ON STRATEGY: A CRITICAL ANALYSIS OF THE VIETNAM WAR* (1982). As discussed herein, this reviewer concludes that the "normal" civil-military relationship must be dictated by the circumstances—the degree of civilian involvement driven primarily by the larger political questions related to the conflict coupled with the demonstrated ability of the senior military commanders to conduct effective operations consistent with the executive's desires.

17. *See* COHEN, *supra* note 1, at 115-18.

national coalitions. The civilian leadership, not the military command, is in the best position to ensure that the necessary level of popular support for modern warfare can be maintained at both home and abroad.

Great military and civilian leaders make certain their subordinates understand their commands and through various methods ensure compliance with their directives. Furthermore, few competent military officers would send their subordinates on an important mission without taking appropriate steps to confirm that the junior leader had a plan for execution. And if one accepts Sun Tzu's maxim on warfare—that warfare is the “greatest affair of state”—a democratically elected executive simply stating a war aim and walking away is both irresponsible and unrealistic.

*Abnormal Civil-Military Relationships, or Same Relationship, New Name?*

Professor Cohen's position that the civilian leadership must maintain constant engagement in the conduct of war is correct; but, are his thoughts “abnormal?” His argument that great civilian wartime leaders must direct, challenge, and when necessary, overrule and fire their military commanders may annoy adherents of the normal civil-military relationship. His analysis of the Vietnam War, however, might rouse some to anger.

Contrary to the notion held by many that the Vietnam War stands as an example of conflict gone awry at the hands of micromanaging and meddling civilian overlords,<sup>18</sup> Cohen argues that the civilian leadership failed to engage themselves in the minutia of the prosecution of the war. Cohen marshals an exhaustive list of solid primary and secondary resources to support his proposition while deconstructing many of the arguments developed by traditional adherents of the normal model. Most significantly, Cohen notes that transcripts of conversations between the senior military and civilian leadership reflect a lack of a clearly defined strategy by senior military advisors. This was coupled with an apparent unwillingness of the

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18. See, e.g., H.R. McMASTER, DERELICTION OF DUTY: LYNDON JOHNSON, ROBERT McNAMARA, THE JOINT CHIEFS OF STAFF, AND THE LIES THAT LED TO VIETNAM (1997); DOUGLAS KINNARD, THE WAR MANAGERS (1985); SUMMERS, *supra* note 16.



Johnson Administration to challenge their military subordinates in the face of vague planning.<sup>19</sup>

To Cohen, much of the blame for the failings in Vietnam rests with the Johnson Administration's failure to demand from military leaders the formation of a grand strategy for victory. Cohen further states that the Administration failed to ensure the armed forces were placed in the hands of the most competent flag officers, as opposed to those most politically acceptable.<sup>20</sup>

Cohen's argument for active civilian involvement is sound. A cursory review of modern history reveals that the normal state of affairs in armed conflict includes heavy involvement of the civilian executive, be it a President, Prime Minister, or King.<sup>21</sup> The difference between the involvement of the executive in 1800 and today is the speed at which information flows from the modern battlefield. This technological advancement empowers civilian leadership with the information necessary to formulate questions or dictate the conduct of their military commanders. Increasingly, new

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19. See COHEN, *supra* note 1, at 177-80.

20. *Id.* at 180.

21. The same applies to a lesser extent in antiquity. A Roman legion far from home would win or lose a campaign long before news of the fates of war reached the Senate. Notwithstanding, Roman commanders were not free of the political control of the elected officials. Under the Roman Republic, popularly elected magistrates oversaw military operations within the various theaters, and many of the general officers in the Roman Army were former magistrates. See ADCOCK, *supra* note 10, at 101. In the years before telegraphy, the executive could ensure adherence with its desires by dispatching diplomats on diplomatic missions, accompanied by other subordinates capable of executing military operations if necessary, with the executive's authority vested with them.

The dispatch of Sir Hyde Parker by George III to Copenhagen in 1801 to break their "unnatural" alliance with Russia is such an example. In the event military operations became necessary, Admiral Horatio Nelson accompanied Sir Hyde. When negotiations broke down, Sir Hyde, also a British Admiral, directed Nelson to prepare battle plans for execution. Although Nelson was tasked with the execution of the operation, supreme command of the operation remained with Sir Hyde. Sir Hyde observed the execution of the battle from the rear and became fearful of excessive losses. Through the use of flag signals, he ordered Admiral Nelson to disengage. Although Nelson received the order, and many ships to his rear disengaged, Nelson disobeyed and routed the Danish, ultimately attaining the stated objective of the Crown. Although Sir Hyde considered punishing Nelson, news of the great victory reached George III through the press before news of Nelson's great disobedience. See DAVID HOWARTH & STEPHEN HOWARTH, NELSON: THE IMMORTAL MEMORY 243-60 (1999). The potential for celebrity status of successful military commanders is one factor that Cohen correctly cites as part of the grander political equation in wartime confronted by popularly elected civilian leaders. See COHEN, *supra* note 1, at 215-16.

technology provides the ability to obtain information from progressively smaller operational units or even an individual.

In light of history and the relationship of civilian leaders and their military commanders in wartime, the nature of the relationship espoused by Cohen appears to be less of a departure from the norm than it is an extension of the normal relationship. This is especially true in more recent history with technological advancements, primarily in the field of telecommunications. These advancements permit civilian leaders to learn of events from the front simultaneously with their generals in the same way it permits a commander to lead from another continent. Similarly, technological advancements have given rise to some scenarios that require far fewer soldiers, sailors, airmen, and marines to obtain victory at the decisive point and to hold ground thereafter.<sup>22</sup> This further extends the ability of civilian leaders to monitor progress, ensure compliance with their directives, and for better or worse, direct operations in real time of smaller units of action.

Notwithstanding the accuracy of Professor Cohen's thesis that civilian leaders must remain engaged in the conduct of war, close scrutiny of his analysis of the Vietnam War reveals a weakness in his reasoning. Cohen effectively deconstructs the arguments of those seeking to blame a micromanaging executive for the military shortcomings of Vietnam. The shortcomings Cohen illustrates, however, provide little insight into the nature of the appropriate civil-military relationship. To the contrary, they reveal the disastrous consequences that flow from weak wartime civilian leadership coupled with military leadership that history has shown lacked the will and ability to formulate a grand strategy for victory. These deficiencies serve more to emphasize the need for both strong military and civilian leadership committed to leveraging their collective strength in furtherance of the nation's objectives.

While Cohen's analysis of the Vietnam War does little to support his thesis, his discussion of the Persian Gulf War provides valuable insight into the nature of the appropriate civil-military relationship. The Gulf War is often cited as an example of the normal civil-military relationship in which the political objective is translated into military action with minimal intermeddling by civilians once action begins.<sup>23</sup> Cohen effectively can-

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22. For another provocative work that focuses on the appropriate force structures for American forces facing future foes, see Douglas A. MacGregor, *BREAKING THE PHALANX* (1997).

vasses a variety of sources, including the writings of the conflict's principal military and civilian leaders, to demonstrate that civilian leaders remained heavily engaged in the planning and prosecution of the war.<sup>24</sup> Of note, then Secretary of Defense Dick Cheney quietly surveyed more junior flag officers within the Pentagon regarding their war planning insights.<sup>25</sup>

History reveals that the civil-military relationship must be one characterized by active engagement by civilians coupled with competent planning and execution by military leaders. Failure on one side of the equation will severely damage any war effort, while failure on both sides, as Vietnam teaches, will bring disaster.

*Lessons for Students of the Civil-Military Relationship*

Regardless of whether one accepts Professor Cohen's thesis in *Supreme Command*, technological advancements serve to bring the civilian leadership as close to the battlefield as the military leaders tasked with the execution of the war.<sup>26</sup> Civilian leaders in democratic societies should use this technology in ways Cohen argues Lincoln, Clemenceau, Churchill, or Ben-Gurion would. Military commanders should have their assumptions challenged, their plans questioned, and their methods of warfare subjected to executive scrutiny. This does not mean, however, that the civilian leader should take on the role of a general. To the contrary, the complexity of modern military operations, ranging from the deployment of advanced weapons systems to the sustainment of troops and equipment in the field, requires those well-trained in military operations to direct and

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23. See *supra* note 18 and accompanying text.

24. See COHEN, *supra* note 1, at 188-99.

25. *Id.* at 190-92. Professor Cohen does not see the Persian Gulf War as an ideal model for students of the civil-military relationship. He cites the Bush Administration's limited battlefield objectives as a symptom of a lack of political leadership driven by an over reliance on the military's reluctance to invade and occupy Baghdad. See *id.* at 198-99. One can make the contrary argument that President Bush limited the military's objectives because of his need to maintain the coalition and political support for the war aims. Ironically, this interpretation of events is more consistent with Cohen's thesis.

26. For example, Central Command, headquartered in Florida, directed the War in Afghanistan. See United States Army Central Command, *About CENTCOM*, at <http://www.centcom.mil/aboutus/centcom.htm>. The President in Washington, D.C. is geographically closer to the theater of operations than Florida. While this fact alone means little, it does serve to further highlight the technological revolution underway that permits the Four-Star Combatant Commanders (previously known as Commanders in Chief or CINCs) or national executives to direct military operations from a world away in real time.

highly trained professionals to execute; however, as Cohen argues, and most would agree, making certain that warfare is conducted consistently with national objectives, to include maintaining often fragile alliances while ensuring popular support for military operations on the home front, is clearly the purview of the civilian leadership in a democracy.

Technology draws this relationship ever closer, creating challenges for civilian and military leaders. Military professionals have to accept the increasing presence of senior civilian leaders as operations unfold. Likewise, while close scrutiny of military operations continues to be the norm, civilian leaders must refrain from micromanaging military operations simply because technology facilitates it. Further, civilian war leaders must look to the examples of the great leaders of history and develop their own competencies in war. They must ensure their civilian leadership has the expertise necessary to walk the tightrope between effective and sometimes tough oversight, and unnecessary and potentially destructive operational micromanagement.

Thus, a close analysis of the “normal” civil-military relationship reveals that the relationship Cohen advocates is closer to historical reality than the notion of an executive that issues a directive and simply waits for results. In a democratic society, civilian leadership must remain engaged and must ensure that the nation’s military forces work to execute the national policy of the country by warfare when necessary. Likewise, senior military commanders must be prepared to confront their civilian leaders when their directives are militarily flawed or otherwise imprudent.

Cohen’s thesis is provocative and will become the subject of much debate. Regardless of one’s acceptance of his underlying premise, *Supreme Command* is an excellent treatise on both the civil-military relationship and leadership of the highest order. The leaders Cohen examines demanded much from their military subordinates and at times treated them roughly, but they all successfully met their national strategic objectives under the most difficult of circumstances. This fact alone supports the need to examine closely the approach to the civil-military relationship in the face of “the greatest affair of state.” Consequently, I recommend reading this book.

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