

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

**MOTION FOR LEAVE TO FILE OUT
OF TIME AND ATTACH DEFENSE
APPELLATE EXHIBIT D**

Appellee

v.

Docket No. ARMY 20210092

Private (E-1)

KELVIN T. WINFIELD ,

United States Army

Appellant

Tried at Fort Bragg, North Carolina, on 20 October and 29 December 2020, and 2-3 March 2021, before a general court-martial appointed by the Commander, Headquarters, Fort Bragg, Colonel Fansu Ku, Military Judge, presiding.

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

COME NOW the undersigned appellate defense counsel, pursuant to Rule 23(b) of this court's Rules of Appellate Procedure, and move this court to attach the following to the record:

TJAG Memorandum 22-08: Court Reporter Regionalization, and its attached business rules.


The above appellate exhibit provides the Judge Advocate General of the Army's (TJAG) standards for the court reporter regionalization program and the processing of courts-martial. It was published approximately three months before the post-trial processing memorandum contained within the record was dated. (Post-Trial Processing Memorandum). It became apparent during oral argument

that this memorandum may be of interest to the court in its determination of the issue at bar.

WHEREFORE, appellate defense counsel respectfully request that this court grant this motion to file out of time and attach and consider the matters presented.

PANEL NO. 1

MOTION TO FILE OUT OF TIME

GRANTED:  _____

DENIED: _____

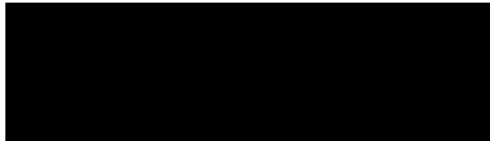
DATE: 27 April 2023

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT D

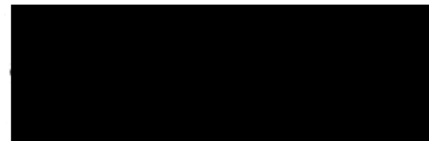
GRANTED:  _____

DENIED: _____

DATE: 27 April 2023



Rachel P. Gordienko
Major, Judge Advocate
Branch Chief
Defense Appellate Division



Jonathan F. Potter
Senior Appellate Capital Counsel
Defense Appellate Division

DEFENSE APPELLATE EXHIBIT

D



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL



DAJA-ZA

1 MAR 2022

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICE PERSONNEL

SUBJECT: **POLICY MEMORANDUM 22-08** – Court Reporter Regionalization

1. The regionalization of U.S. Army court reporters was done in order to maximize the efficient use of our court reporter talent.
2. Court reporter capacity is consolidated in five geographic regions: East, Central, West, Pacific, and Europe. A senior court reporter within each region manages the region's court reporter requirements, and a senior staff judge advocate (SJA) within each region is the final authority for decisions related to court reporter task prioritization. Staff judge advocates assigned court reporters remain responsible for the supervision of their offices' court reporters.
3. All SJAs will apply the regionalization of court reporters in accordance with the enclosed business rules. The OSJAs within each region will specifically consider procedures for resolving disagreements that may arise in this process. The Assistant Judge Advocate General for Military Law and Operations supervises court reporter regionalization and is delegated the authority to approve any exception to the business rules, which will be determined on a case-by-case basis.
4. To capture lessons learned through the implementation of court reporter regionalization, the managing regional senior court reporters and the senior SJA within each region will provide periodic reports as prescribed by the Office of The Judge Advocate General.
5. This policy supersedes Policy Memorandum 19-02 and is effective immediately.
6. Proponent. The Office of The Judge Advocate General is the proponent for this policy. The point of contact is the Chief, Criminal Law Division at [REDACTED]



Encl

STUART W. RISCH
Lieutenant General, USA
The Judge Advocate General



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL

DAJA-CL

Court Reporter Regionalization

SUBJECT: Court Reporter Regionalization Business Rules

1. Overview. Court reporter regionalization provides a mechanism to cross-level court-martial transcription duties and other court reporter requirements across geographically situated court reporters. In order to optimize Army court reporter talent while maintaining staff judge advocate supervision over court reporters pursuant to Army Regulation 27-10, para. 25-6, regionalization places management responsibility of court reporter capacity in a single senior court reporter (SCR) in each of five regions.

2. Regions. An installation is designated as the lead installation for the purpose of court reporter regionalization for each of the five geographic regions. A staff judge advocate (SJA) and an SCR from that installation will be designated as the final authority on court reporter matters and regional manager, respectively. The locations within the regions listed below are not all inclusive of Army installations but rather reflect the locations of U.S. Army court reporters within each region. OSJAs without organic court reporter support will contact the regional manager of the region within which the installation is located, per Enclosure 1, if the need for court reporter support arises. An asterisk (*) indicates the assignment of Department of the Army Civilian court reporter(s) to that installation.

a. East:

- (1) Fort Bragg, North Carolina*
- (2) Fort Drum, New York*
- (3) Fort Stewart, Georgia*
- (4) West Point, New York
- (5) Fort Jackson, South Carolina
- (6) Fort Benning, Georgia*
- (7) Fort Gordon, Georgia
- (8) Fort Lee, Virginia*
- (9) Fort Belvoir, Virginia*
- (10) Joint Base Langley-Eustis, Virginia*
- (11) Aberdeen Proving Ground, Maryland*

b. Central:

- (1) Fort Hood, Texas*
- (2) Fort Riley, Kansas*
- (3) Fort Campbell, Kentucky*
- (4) Fort Knox, Kentucky
- (5) Fort Polk, Louisiana*
- (6) Joint Base San Antonio - Fort Sam Houston, Texas*
- (7) Fort Leonard Wood, Missouri*
- (8) Fort Leavenworth, Kansas*
- (9) Fort Sill, Oklahoma
- (10) Fort Rucker, Alabama*

c. West:

- (1) Joint Base Lewis-McChord, Washington*
- (2) Fort Huachuca, Arizona
- (3) Fort Bliss, Texas*
- (4) Fort Carson, Colorado*
- (5) Fort Irwin, California
- (6) Presidio of Monterey, California*

d. Europe:

- (1) Kaiserslautern, Germany*
- (2) Wiesbaden, Germany
- (3) Vilseck, Germany
- (4) Grafenwoehr, Germany
- (5) Baumholder, Germany
- (6) Vicenza, Italy

e. Pacific:

- (1) Fort Shafter, Hawaii
- (2) Schofield Barracks, Hawaii
- (3) Camp Humphreys, Korea
- (4) Fort Wainwright, Alaska
- (5) Fort Richardson, Alaska*
- (6) Camp Zama, Japan*

f. Court reporters assigned to the following installations or commands do not fall within any region and are not available for tasking by a regional manager:

- (1) Office of the Judge Advocate General, Criminal Law Division
- (2) The Judge Advocate General's Legal Center and School
- (3) Office of Military Commissions
- (4) Department of the Army Inspector General's Office

g. Pursuant to Army Regulation 27-10, para. 25-7, Reserve Component court reporters may perform court reporting duties in support of Active Duty installations. Regional managers must coordinate with the Legal Command Court Reporter Manager/Senior Paralegal to request U.S. Army Reserve court reporter support. This position will perform the duties for the Reserve Component similar to those duties of a regional manager by coordinating with Reserve Component units to link available court reporter capacity with requesting Active Army OSJAs.

3. Responsibilities and Authorities.

a. The following SJAs are designated as the senior SJA for the purpose court reporter regionalization and have final authority over court reporter management, utilization, and priorities within their regions.

- (1) East: XVIII Airborne Corps SJA, Fort Bragg, North Carolina
- (2) Central: III Corps SJA, Fort Hood, Texas
- (3) West: I Corps SJA, Joint Base Lewis-McChord, Washington
- (4) Europe: U.S. Army Europe (USAREUR) SJA, Wiesbaden, Germany
- (5) Pacific: 25th Infantry Division SJA, Schofield Barracks, Hawaii

b. Senior Court Reporter. Certain OSJAs have an MTOE or TDA position of SCR. The SCR provides leadership to all subordinate military court reporters within the OSJA or court reporting

cell. The SCR maintains accountability of the junior enlisted court reporters and monitors productivity with respect to providing verbatim transcripts of court-martial proceedings. The SCR details court reporters to court-martial proceedings on behalf of the SJA and ensures efficient completion of courts-martial records. The SCR is responsible for the training of military court reporters within their OSJA or court reporter cell to ensure they are in compliance with AR 27-10 standards. Senior court reporters amend/reject work not meeting established standards; give corrective instructions to court reporters; and provide on-the-job training to newly assigned court reporters and paralegals pending attendance at the Basic Court Reporter Course.

c. Regional Manager. The SCR with the additional duty of regional manager is responsible for oversight of the court reporting responsibilities within a region. Regional managers track the productivity of the region's court reporters to maximize the efficient use of court reporting assets in the region. Regional managers also have detailing authority over all military court reporters within a region for the purpose of ensuring court reporter support to GCMCAs without an assigned court reporter. The following court reporters are designated as regional managers and have tasking authority over all court reporters, for the purpose of cross-leveling court reporter requirements, within their regions. Positions marked with an asterisk (*) indicate positions that will be upgraded to a Sergeant First Class billet and manned in order to align the CONUS Corps SJAs with regional managing SCRs.

- (1) East: SCR*, XVIII Airborne Corps, Fort Bragg, North Carolina
- (2) Central: SCR*, III Corps, Fort Hood, Texas
- (3) West: SCR*, I Corps, Joint Base Lewis-McChord, Washington
- (4) Europe: Designation delegated to USAREUR SJA
- (5) Pacific: SCR, 25th Infantry Division, Schofield Barracks, Hawaii

4. Court Reporter Management Procedures.

a. Upon any arraignment, the detailed court reporter (or the detailed court reporter's SCR, if applicable) will notify the regional manager of the pendency of a court-martial. The regional manager will begin tracking court reporting requirements at that point. The detailed court reporter or another court reporter within the OSJA from which the case originated will work on the transcription and assembly of the record on a continual basis and should, as practicable, transcribe Article 39(a) sessions and other proceedings as they occur. Court reporters or their SCRs will immediately notify the regional manager upon adjournment of a case.

b. OSJAs without organic court reporter support will contact their regional manager (see Enclosure 1) upon referral of a case to a special or general court-martial to request support. OSJAs should coordinate with the regional manager earlier than upon referral to inform trial counsel's docketing requests. The regional manager will detail a court reporter from within the region to support the case and notify that court reporter's military justice operations noncommissioned officer of the detailing. The supported OSJA will pay for any required temporary duty costs.

c. Ordinarily, a court reporter from the GCMCA from which a court-martial originates will be detailed by the originating OSJA, and a court reporter from that OSJA will perform all duties

associated with that court-martial. Regional managers will only reassign transcription duties in excess of the capacity of an installation or OSJA in the judgment of the regional court reporter, with proper coordination with the originating and supporting OSJAs. Regional managers must account for approved leave, schooling, deployment, and other absences of court reporters when assigning responsibilities based on the information reported to regional managers in accordance with the report referenced in para. 5f, below. Court reporting duties take priority over locally assigned additional duties (e.g., OSJA platoon sergeant; Admin NCO; etc.), in accordance with Army Regulation 27-10, para. 5-5. All requests for transcription assistance external to an installation or OSJA must be made to the regional manager.

d. In addition to the authority to assign transcription duties to court reporters within the region, regional managers are authorized to detail court reporters to cases arising at installations or GCMCAs that lack organic court reporter resources. Regional managers may detail court reporters to cases arising from GCMCAs with organic court reporter resources on a case-by-case basis upon coordination with the supporting and supported OSJAs.

e. Regional managers are authorized to communicate directly with, and assign court reporting duties to, individual military court reporters at installations within their regions.

(1) For OSJAs assigned an SCR, the regional managers will coordinate tasking assignments for court reporters within that OSJA or consolidated court reporter cells with the SCR.

(2) Regional managers have tasking authority over all Soldiers and non-commissioned officers in the grade of E7 and below within their region that are qualified and designated with the C5 additional skill identifier, regardless of their duty position. Before a regional manager details a non-court reporter paralegal specialist who has a C5 skill identifier, the regional manager will notify the region's designated senior staff judge advocate, who will coordinate the detailing with the SJA of the paralegal specialist.

(3) For installations with a supervisory Department of the Army Civilian court reporter and do not have a military SCR, the Civilian court reporter will be considered a SCR for the purpose of this rule.

f. Senior court reporters and court reporters without a supervising SCR will provide a weekly status report to the regional manager using the report template in Enclosure 2. This report allows for standardization of data amongst the court reporters Army-wide. Senior court reporters and court reporters without a supervising SCR will maintain a daily productivity log in accordance with AR 27-10, para. 25-4, that outlines daily activities. Senior court reporters and regional managers are expected to regularly inform and brief their supporting chiefs of justice and SJAs of information contained in these reports.

g. Transcription Priority.

(1) Transcription priority of cases assigned by the regional manager from one installation or OSJA to another is on a first-in, first-out basis. First-in is determined by date of adjournment, not the date an assignment is received by the installation.

(2) For cases not reassigned to a different installation or OSJA by the regional manager, the staff judge advocate or designee of the originating GCMCA determines priority. However, if

the installation or OSJA is assigned cases from another installation or OSJA from within the region, the first-in, first-out priority rule limits this discretion.

(3) Transcriptions required for the filing of an appeal by the United States pursuant to Article 62, UCMJ, transcriptions of post-trial Article 39(a) sessions, and transcriptions required to comply with an order by a military judge are exempt from the first-in, first-out rule and will be prioritized at the regional manager's discretion.

(4) SJAs retain the discretion to utilize their assigned court reporters for other transcription tasks requiring a court reporter. Examples include transcribing investigations and preliminary hearings. SJAs, in coordination with the designated senior SJAs, will set the priority of these additional tasks. Designated senior SJAs may address such prioritization in regional standard operating procedures (addressed in subparagraph j, below). Senior court reporters will report any additional court reporter-assigned tasks to regional managers. Regional managers will account for additional court reporter-assigned tasks when making detailing decisions.

h. Assembly, accuracy, certification, and timeliness of the record of trial remain the responsibility of the OSJA of the GCMCA from which the court-martial originated and the military judge on the case, in accordance with Rule for Courts-Martial 1112 and Enclosure to Army Directive 2018-28, dated 1 January 2019 (Interim Army Regulation 27-10), para. 5-56, and Appendix J. However, supporting OSJAs are responsible for ensuring court reporters meet performance standards and will conduct a quality review of court reporters' transcriptions in support of other GCMCAs prior to releasing transcriptions to the supported GCMCA. Performance standards are promulgated at Interim Army Regulation 27-10, para. 25-5a(1)(a-c) and a(2).

i. Regional managers will not directly assign any court reporting requirement to a Department of the Army Civilian court reporter. Regional managers will direct court reporting assignments through the Civilian court reporter's chief of military justice. No person will direct Civilian court reporters to perform any duty not required or authorized by the employee's position description.

j. The SJAs listed in paragraph 3a will promulgate supplemental standard operating procedures to facilitate court reporter utilization management in a manner not inconsistent with these rules. Senior SJAs may delegate responsibility for compliance with these rules to a member of the SJA's staff (e.g., chief of military justice).

k. In the event of disagreement regarding court reporter priorities, the regional manager will attempt to resolve the issue with the assigned unit or installation's SCR, military justice operations NCOIC, chief of military justice, or command paralegal NCO. Leadership of OSJAs are encouraged to handle problems and challenges at the lowest level. If attempting to resolve a disagreement at the lowest level fails, the SJA of the supporting court reporter will contact the designated SJA for the region to seek resolution. Designated SJAs have wide latitude to resolve issues and disagreements about court reporting requirements.

l. In the event of a long-term absence or limited availability of a regional manager, the duty of regional manager will pass to another SCR within the region selected by the SJA with final authority over the region upon consultation with the SJAs of the eligible SCRs.

m. Court reporter regionalization has no effect on the rating scheme of any person. However, supervisors of regional managers may comment on the appointed duty of an SCR as a regional manager. Regional managers and military judges may provide a letter of input to the supervisor of any court reporter, as applicable.

5. Effect of Deployment on Regionalization.

a. The deployment of an OSJA or any part thereof does not affect the assigned region of the OSJA for the purpose of court reporter regionalization. However, a deployed court reporter will not be assigned court reporting duties from other installations within the deployed OSJA's region without the approval of the deployed SJA or SJA's designee.

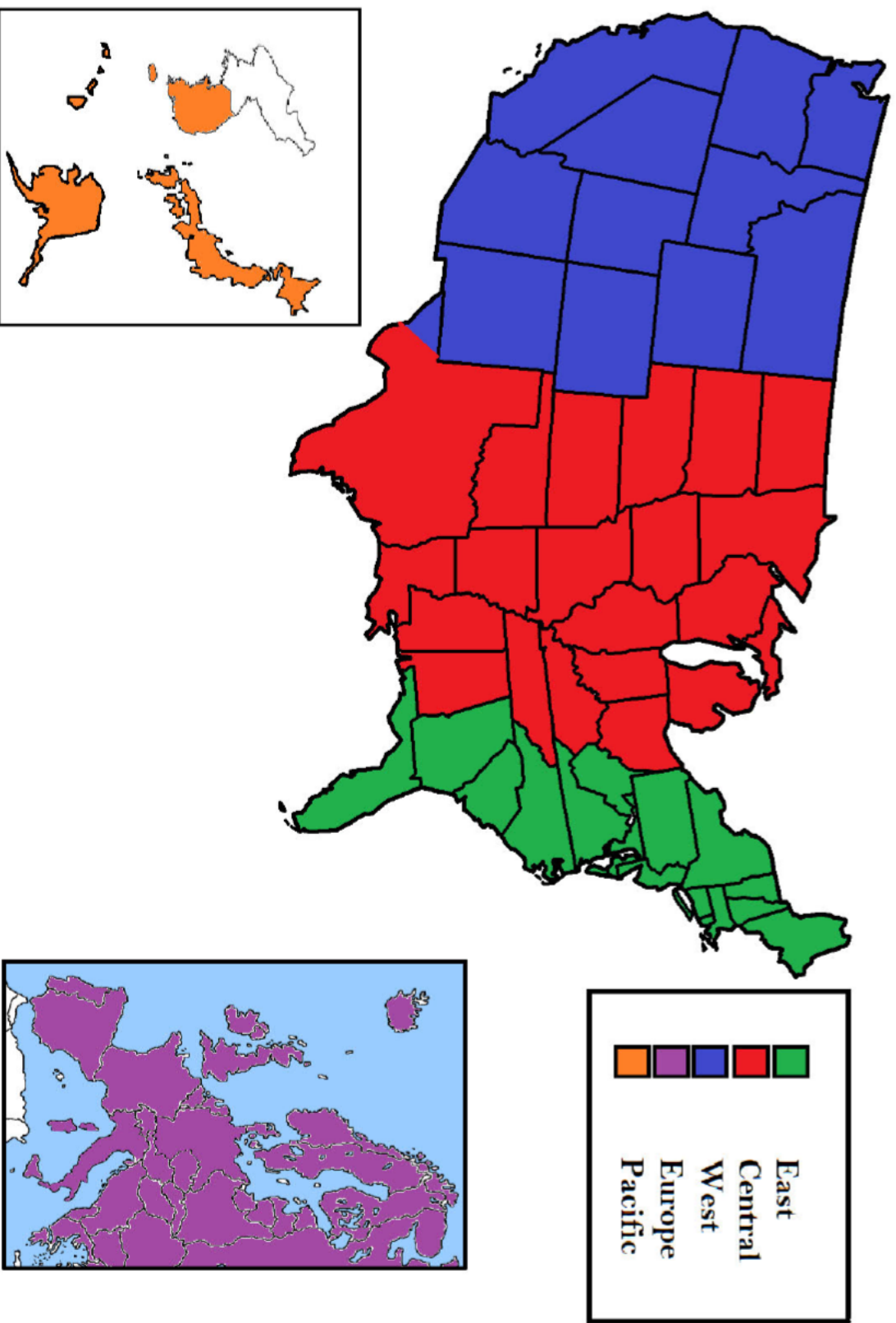
b. In the event of the deployment of a regional manager, the duty of regional manager will pass to another SCR within the region selected by the SJA with final authority for the region's court reporter priorities upon consultation with the SJAs of the eligible SCRs.

c. In the event of the deployment of the SJA with final authority for court reporter priorities, the SJA may, at the SJA's discretion, designate another officer (e.g., a rear detachment SJA or another SJA within the region) to perform final authorities duties or continue to perform this duty while deployed.

6. The point of contact for these business rules is the Court Reporter Program Manager, Criminal Law Division, Office of the Judge Advocate General.

3 Encls

1. Court Reporting Regions Map
2. Court Reporter Report Template
3. Court Reporter Regionalization Vignettes



Installation: Fort Bragg

[illegible]

COURT REPORTER REGIONALIZATION VIGNETTES

Vignette 1 – Resourcing an OSJA with no organic court reporting assets

The U.S. Army Special Operations Command refers a case. Upon referral, the USASOC Chief of Military Justice (or designee) will contact the East Region regional manager to notify him/her of the referred case. Because USASOC has no organic court reporting assets, the regional manager will detail a court reporter from within the East Region to the USASOC court martial. Upon adjournment, the regional manager will also assign transcription duties.

Vignette 2 – Civilian Court Reporter

Same facts as vignette 1, but the case will involve TS SCl material. The regional manager will ask a Chief of Military Justice to detail a Civilian court reporter who has the requisite clearance to the case if no military court reporter is available within the East Region.

Vignette 3 – Resourcing an OSJA with court reporting assets but cases exceed capacity

The XVIII Airborne Corps refers a case. Upon referral, the USASOC Chief of Military Justice (or designee) will contact the East Region regional manager to notify him/her of the referred case. XVIII Airborne Corps has two cases in excess of 120-day post trial processing time and the current case will exceed its transcription capacity. XVIII ABC will detail a court reporter to the case from its organic assets. Assets organic to the XVIII ABC will also transcribe Art. 39(a) sessions on a rolling basis. Upon adjournment, the XVIII Airborne Corps Chief of Military Justice (or designee) will notify the regional manager of the adjournment. The regional manager will assign transcription duties to a court reporter within the East Region at an installation operating below capacity.

Vignette 4 – Court reporting requirements internally resourced

U.S. Army Combined Arms Support Command at Fort Lee refers a case. Upon referral, the CASCOM Chief of Military Justice (or designee) will contact the East Region regional manager to notify him/her of the referred case. Fort Lee is assigned one court reporter. Fort Lee details that court reporter to the case. Because Fort Lee is below capacity, Fort Lee will resource all court reporting requirements internally, but will still notify the regional manager upon adjournment for tracking purposes.

Vignette 5 – First in, first out

The 82d Airborne Division refers a case. The regional manager for the East Region is the senior court reporter for the 82d Airborne Division, and will detail on behalf of the SJA a court reporter to the case. Upon adjournment on 9 October 2019, the regional manager reviews his/her log and determines that the court reporter at Fort Lee has capacity, but the Fort Lee court reporter is already transcribing a case that adjourned on 1 October 2019. The regional manager may elect to have the Fort Lee court reporter

transcribe the 82d Airborne Division's case, but the Fort Lee case adjourned on 1 October 2019 takes priority (first in, first out).

Vignette 6 – First in, first out

Same facts as Vignette 5, but the adjournment dates are reversed: the 82d Airborne Division's case adjourned on 1 October 2019 and the Fort Lee case adjourned on 8 October 2019. Even though Fort Lee is resourcing its court martial requirements internally, the 82d Airborne Division case takes priority because its adjournment date precedes the Fort Lee case adjournment date.

Vignette 7 – Interaction between senior court reporters

10th Mountain Division refers a case to court martial. Upon referral, the 10th Mountain Division Chief of Military Justice (or designee – likely the 10th Mountain Division senior court reporter) will contact the East Region regional manager to notify him/her of the referred case. The 10th Mountain Division senior court reporter, on behalf of the SJA, details a court reporter to the case. Upon adjournment, the 10th Mountain Division senior court reporter believes the OSJA is able to resource the transcription requirements of the case internally. The 10th Mountain Division senior court reporter notifies the regional manager that the transcription duties will remain with a 10th Mountain Division court reporter so that the regional manager can maintain the requirement on the log for regional visibility purposes.

Vignette 8 – Dispute resolution

Same facts as Vignette 7, but as time progresses the senior court reporter at the 10th Mountain Division realizes that the transcription of the case exceeds the capacity of the 10th Mountain Division court reporters. The case adjourned on 1 March 2019. The regional manager reassigns the transcription duties to a court reporter at Fort Benning. That court reporter is transcribing a case that adjourned on 1 August 2019 and is about halfway complete. Under the rules, the 10th Mountain Division case has priority, but the Chief of Military Justice at Fort Benning reasonably wants his/her court reporter to complete the Fort Benning case first. The leadership of the Fort Benning OSJA, the leadership of the 10th Mountain Division OSJA, and the regional manager will discuss the course of action. Pursuant to the flexibility built into AR 27-10, chapter 25, the leaders agree that the Fort Benning court reporter may finish the Fort Benning case before working on the 10th Mountain Division case in contravention of the normal first-in, first-out rule, or the regional manager may reassign the case if capacity is available elsewhere.

Vignette 9 – Dispute resolution

Same facts as Vignette 8, but the relevant leaders cannot agree on a way forward. If all attempts to negotiate a resolution between the leaders at the two installations and the regional manager fail, the 10th Mountain Division and Fort Benning SJAs contact the SJA, XVIII ABC, to resolve the problem. The XVIII ABC SJA has final authority and

wide latitude to solve disputes and may direct any number of remedies (e.g., reassignment to another court reporter, execution of the first-in first-out rule, prioritizing the Fort Benning case, or any other remedy as the SJA may direct). However, the intent is that subordinate leaders solve problems before a Corps SJA needs to get involved.

Vignette 10 – Reserve Support

The 3d Infantry Division refers a case to court martial. Upon referral, the 3d Infantry Division senior court reporter notifies the regional manager that a case has been referred and details, on behalf of the 3d Infantry Division SJA, a court reporter to the case. A court reporter from 3d Infantry Division begins transcribing Art. 39(a) sessions prior to adjournment. The case ends in a guilty plea and is relatively short in length. At adjournment, the 3d Infantry Division senior court reporter notifies the regional manager that the transcription requirements of the case exceed the available capacity of the 3d Infantry Division OSJA. The regional manager elects to call the USAR regional manager to request support. The USAR regional manager finds a court reporter conducting battle assembly and assigns the transcription requirements to that court reporter, who transcribes the case during battle assembly and returns the case to the Reserve regional manager, who returns the case to the regional manager and 3d Infantry Division senior court reporter.

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on January 25, 2023.



MICHELLE L.W. SURRATT
Paralegal Specialist
Defense Appellate Division

