

## Foreword: Administrative Law Is Not for Sissies!<sup>1</sup>

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Administrative and civil law can be one of the most challenging and diverse areas for the Judge Advocate (JA) practitioner. For the first time in many years, this edition of *The Army Lawyer (TAL)* exclusively focuses on the legal topics from The Judge Advocate General's Legal Center and School's Administrative and Civil Law Department. While administrative law is the interpretation of the rules, regulations, and statutes that administer how government agencies operate, the function of civil law is "to provide a legal remedy to solve problems. Sometimes civil law is based on a state or federal statute; at other times civil law is based on a ruling by the court."<sup>3</sup>

The Administrative and Civil Law Department is responsible for a broad range of legal topics from environmental law, employment law, federal litigation, income tax and estate planning, family and consumer law, immigration, and servicemembers rights, to military investigations, standards of conduct, government information practices, professional responsibility, and military personnel law. This *TAL* edition will provide our readers with relevant perspectives in our areas of practice covering last year's numerous developments in the areas of legal assistance and claims, civil law, and general administrative law.

Legal assistance practitioners should be aware of the significant developments in our Wounded Warrior Program, in consumer and family law, and in estate planning and income tax. In the May 2007 *TJAG Sends*, Lieutenant General Black challenged us all to support and provide guidance to wounded warriors and their Families.<sup>4</sup> He stated, "No Soldier is more deserving of our best efforts than a Soldier wounded in combat."<sup>5</sup> Consistent with this challenge, our Corps created a new Senior Executive Service-level Director, Soldier and Family Legal Services position with a charter to focus in on the needs of Soldiers and their Families.<sup>6</sup> In this vein, the Army has hired nineteen new civilian attorneys and nineteen new civilian paralegals to serve at those installations that house Warrior Transition Units.<sup>7</sup> The civilian attorneys, known as Medical Evaluation Board (MEB) Outreach Counsel, are being trained to provide legal assistance to all clients, but also to provide specialized assistance to Soldiers going through the Physical Disability Evaluation System (PDES) at its earliest stages.<sup>8</sup> They join forces with Soldiers Counsel, specialized legal assistance attorneys who represent Soldiers going through the Physical Evaluation Board (PEB) stage of the PDES.<sup>9</sup>

Since 2007, Congress, the Department of Defense (DoD), and the Department of the Army (DA) have overhauled the PDES on several levels.<sup>10</sup> The health care law discipline remains ever-changing, and both the DoD and the Department of Veterans Affairs (DVA) continue to work to provide just outcomes for servicemembers and veterans alike. The DoD pilot program seeks to integrate the confusing and oftentimes disparate disability ratings conducted separately by the DoD and the DVA, to the end of providing consistency and understanding for Wounded Warriors who have been found unfit for continued

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<sup>1</sup> Antonin Scalia, *Judicial Deference to Administrative Interpretation of Law*, DUKE L.J. 511, 511 (1989).

<sup>2</sup> All members of the Administrative and Civil Law faculty have provided input for this foreword. For questions in a particular subject matter, a list of professors and the areas of specialty is included.

<sup>3</sup> Civics Library of The Missouri Bar, *What is Civil Law?*, <http://members.mobar.org/civics/WhatisCivilLaw.htm> (last visited Nov. 25, 2008).

<sup>4</sup> *Reaching Out to Wounded Soldiers*, 37-14 TJAG SENDS (May 2007).

<sup>5</sup> *Id.*

<sup>6</sup> *Director, Soldier & Family Legal Services*, TJAG SPECIAL ANNOUNCEMENT 37-16 (2 Oct. 2008).

<sup>7</sup> Interview with Lieutenant Colonel Martha Foss, Office of the Judge Advocate General Legal Assistance Policy Branch, Rosslyn, Va. (Sept. 16, 2008).

<sup>8</sup> *Id.*

<sup>9</sup> These changes came about when the substandard living conditions for Wounded Warriors at Walter Reed Army Medical Center gained notoriety in the spring of 2007. See Dana Priest & Anne Hull, *Soldiers Face Neglect, Frustration at Army's Top Medical Facility*, WASH. POST, Feb. 18, 2007, at A01 available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701172.html>.

<sup>10</sup> From providing a relook at veterans who were separated with disability ratings below the 30% required for disability retirement, to increased emphasis on legal representation at all stages of the PDES, to heightened training requirements for PEB liaison officers, to the initiation of a pilot program in 2007 that has recently been expanded to even more installations. See Patient Administration Branch, The Cornerstone of Concerned Health Care, <http://ameddcs.army.mil/APDES/purpose.aspx> (last visited Dec. 8, 2008).

service. Working closely with the Office of the Judge Advocate General Legal Assistance Policy Branch and the Army's Office of Soldiers Counsel, this department has integrated and emphasized training and education in this area, which is of particular importance during the ongoing Global War on Terrorism.

Traditional areas of substantive legal assistance continue to evolve as well. In the area of family law, increased deployments have brought special challenges to servicemember-parents with custody of minor children. Across the country, parents have found that their ability to stave off challenges to custodial arrangements by an invocation of a Servicemembers Civil Relief Act (SCRA) stay have fallen on the deaf ears of family court judges.<sup>11</sup> Those judges, weighing their mandate to make custody decisions pursuant to a child's "best interests" against a servicemembers federal SCRA protection, have largely held that the SCRA is incompatible in this regard.<sup>12</sup> Congress contemplated amending the SCRA in each of the past two years; however, family law is constitutionally the province of the states. States have taken it on themselves to fill this gap, but they have done it in myriad ways. This *TAL* edition includes an article written by the department's vice-chair and one of last year's summer interns, which outlines and provides a reference for these state measures.<sup>13</sup>

The area of child support continues to evolve as well, especially with regard to international child support issues. The Uniform Interstate Family Support Act (UIFSA) is at the core of the establishment, modification, and enforcement of not only child support across state lines, but with its 2001 amended version, is also affecting issues across international borders.<sup>14</sup> This *TAL* edition also includes an article that outlines these new developments in UIFSA case law.<sup>15</sup>

Cases from around the country continue to address the divisibility of military retired pay under the Uniformed Services Former Spouses Protection Act.<sup>16</sup> States are starting to reconcile federal legislation affecting the receipt of both disability pay and military retired pay,<sup>17</sup> as well as how they handle separation agreements that address the divisibility of non-vested retirement benefits.<sup>18</sup>

In consumer law, with the recent economic downturn, creditors and third party debt collectors have become more aggressive in pursuing consumers. Nearly 71,000 people filed complaints with the Federal Trade Commission last year and more than 14,000 complained to the Better Business Bureau.<sup>19</sup> This is roughly double the numbers from 2003.<sup>20</sup> Thousands more people lodged grievances with state and city officials.<sup>21</sup> The questionable and often times illegal practices used by these collectors give rise to the need for greater emphasis on consumer advocacy by JAs. Continued development of subject matter expertise on the Fair Debt Collection Practices Act,<sup>22</sup> the Fair Credit Reporting Act,<sup>23</sup> and the Truth in Lending Act<sup>24</sup> will enable our Corps to better serve its client base.

Finally, legal assistance practitioners should be alert for pending legislation on credit card reform. While the \$700 billion Treasury bailout and presidential election have dominated the news, the U.S. House passed a major bill dealing with credit card reform legislation. The Credit Cardholders' Bill of Rights Act of 2008 passed the House on 23 September 2008 by a vote of 312-112 (nine members not voting).<sup>25</sup> The bill, which still needs to pass the Senate before heading to the White

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<sup>11</sup> *In re Grantham*, 2005 Iowa Sup. Lexis 75 (Iowa 2005); *Lenser v. McGowan*, 2004 Ark. Lexis 490 (Ark. 2004).

<sup>12</sup> *In re Grantham*, 2005 Iowa Sup. Lexis 75; *Lenser* 2004 Ark. Lexis 490.

<sup>13</sup> Lieutenant Colonel Jeffrey P. Sexton & Jonathan Brent, *Child Custody and Deployments: The States Step In to Fill the SCRA Gap*, *infra* at 9.

<sup>14</sup> UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 255 (Supp. 2001); *see* R.12.8.4.

<sup>15</sup> *See* Major John S. Frost, *New Developments in Child Support: Enforcement Orders Under the 2001 Amendments to the Uniform Interstate Family Support Act*, *infra* at 15.

<sup>16</sup> 10 U.S.C. § 1408 (2000).

<sup>17</sup> *See, e.g., In re Marriage of Michael*, 2008 Wash. App. Lexis 1644 (Wash. 2008).

<sup>18</sup> *See, e.g., Hodge v. Hodge*, 2008 Okla. Civ. App. 96 (Okla. 2008).

<sup>19</sup> Assoc. Press, *Complaints Surge as Bill Collectors Get Tough*, CNN.com, Oct. 30, 2008, available at <http://www.cnn.com/2008/US/10/30/debt.collectors.ap>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. § 1692 (2000) (as amended by Pub. L. No. 109-351, §§ 801, 802, 120 Stat. 1966 (2006)).

<sup>23</sup> Fair Credit Reporting Act, 15 U.S.C. § 1681-1681u (2000).

<sup>24</sup> Truth in Lending Act, Pub. L. No. 90-321, 82 Stat. 146 (1968).

<sup>25</sup> Credit Cardholders' Bill of Rights Act of 2008, H.R. 5244, 110 Cong.

House, would have a major impact on everything from how credit card issuers apply cardholder payments, to outstanding debt, to limits on interest rate increases.<sup>26</sup>

There are also changes in estate planning and tax. Congress passed legislation that will affect individual income tax returns for the 2008 tax filing season. Among those changes are extensions of expired deductions and credits, new deductions, resurrection of provisions related to Hurricane Katrina, increase in phase-out thresholds, and provisions specifically for servicemembers. These changes are discussed in the tax law note in this issue.<sup>27</sup>

Estate planning for servicemembers has been affected by the National Defense Authorization Act for Fiscal Year 2009 (NDAA 2009)<sup>28</sup> as well as in previous NDAA's 2007 and 2008<sup>29</sup> and new legislation such as the Heroes Earnings Assistance and Relief Tax Act of 2008<sup>30</sup> and the Veterans Benefits Improvement Act of 2008.<sup>31</sup> This legislation affects the various components of survivor benefits such as Dependency and Indemnity Compensation,<sup>32</sup> Survivor Benefit Plan annuity,<sup>33</sup> Death Gratuity,<sup>34</sup> and the Servicemembers Group Life Insurance program.<sup>35</sup> The survivor benefits update in this issue highlights these changes.<sup>36</sup>

Finally, beginning 1 January 2009, the estate tax exemptions amount and unified credit will increase as well as an increase in the gift tax exclusion amount. Currently, the estate tax exemption amount is \$2 million with a unified credit of \$780,800.<sup>37</sup> On 1 January 2009, that estate tax exemption amount will increase to \$3.5 million with a unified credit of \$1,455,800.<sup>38</sup> Also on 1 January 2009, the gift tax exclusion will increase to \$13,000 from the current \$12,000.<sup>39</sup> However, the unified credit for gifts will remain \$1,000,000 with a unified credit of \$345,800.<sup>40</sup> Advise clients accordingly and discuss with them the possible sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 in 2011 in which the estate tax exemption amount is reduced to \$1 million and the unified credit is once again unified at \$345,800.<sup>41</sup>

Servicemembers and Families should also see improvement in the handling of personal property claims resulting from household (HHG) shipments. This edition includes an article which explains the new Families First Program introduced by DoD this year.<sup>42</sup> Families First is intended to "revolutionize" how service members file claims and the process for handling the same.<sup>43</sup>

Moving away from legal assistance and claims practice, other traditional areas of military civil law practice also witnessed significant developments. Employment law and environmental law practitioners are constantly affected by regulatory and statutory changes in these areas. Likewise, federal civil litigation practitioners in all areas of practice have been reviewing cases in several disciplines.

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<sup>26</sup> *Id.*

<sup>27</sup> See Major Dana J. Chase, TJAGLCS Practice Note, Tax Law Note, *Update for 2008 Federal Income Tax Returns*, *infra* at 73.

<sup>28</sup> Pub. L. No. 110-417, 122 Stat. 4356 (2008).

<sup>29</sup> Pub. L. No. 109-364, 120 Stat. 2083; Pub. L. No. 110-181, 122 Stat. 3.

<sup>30</sup> Pub. L. No. 110-245, 122 Stat. 1624.

<sup>31</sup> Pub. L. No. 110-389, 122 Stat. 4145.

<sup>32</sup> 38 U.S.C.S. §§ 1301-1323 (LexisNexis 2008).

<sup>33</sup> 10 U.S.C.S. §§ 1447-1460B (LexisNexis 2008) [hereinafter EGTRRA].

<sup>34</sup> *Id.* § 1478.

<sup>35</sup> 38 U.S.C.S. §§ 1965-1980.

<sup>36</sup> See Major Dana J. Chase, *Survivor Benefits Update*, *infra* at 20; see also Major Dana J. Chase & Major Daniel J. Sennott, *State Survivor Benefits: An Overview*, *infra* at 25.

<sup>37</sup> The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, 115 Stat. 38.

<sup>38</sup> *Id.*; see also INTERNAL REVENUE SERVICE PUB. 950, INTRODUCTION TO ESTATE AND GIFT TAXES (2008).

<sup>39</sup> I.R.C. § 2503(b)(1); Rev. Proc. 2008-66.

<sup>40</sup> EGTRRA, *supra* note 33.

<sup>41</sup> *Id.*

<sup>42</sup> Major Daniel J. Sennott, *Families First and the Personnel Claims Act*, *infra* at 44.

<sup>43</sup> *Id.*

On 26 September 2008, the DoD and the Office of Personnel Management jointly issued Final Enabling regulations for the National Security Personnel System (NSPS).<sup>44</sup> The NSPS was originally authorized by the NDAA 2004<sup>45</sup> and amended by NDAA 2008.<sup>46</sup> Congress made significant changes to the underlying NSPS statute, voiding Subpart G—Adverse Actions; Subpart H—Appeals; and Subpart I—Labor-Management Relations.<sup>47</sup> The final regulations became effective sixty days after publication, consistent with the provisions of the Congressional Review Act.<sup>48</sup>

The core features of NSPS remain essentially intact, including the pay banding and classification structure, compensation flexibilities, and the pay for performance system.<sup>49</sup> The NSPS retains the core values of the civil service, including merit system principles and veterans' preference, and allows employees to be paid and rewarded based on performance results and local market considerations.<sup>50</sup> Therefore, the DoD will continue operating under the government-wide authorities governing adverse actions, appeals, and labor-management relations.

Environmental law practitioners should be aware that with the NDAA 2009 came authority for the Army to participate in conservation banking programs.<sup>51</sup> Likewise, environmental law practitioners should keep a watchful eye on the Environmental Protection Agency's (EPA) impending decision on the regulation of perchlorate.<sup>52</sup> The EPA initially decided not to regulate perchlorate in drinking water at a national level, but has extended its public comment period in response to numerous requests.<sup>53</sup> A decision by the EPA to regulate perchlorate would likely affect U.S. Army installations because of the Army's use of the substance as an oxidizer in rockets, missiles, and pyrotechnics dating back to the 1940s.<sup>54</sup>

While administrative law practitioners should be mindful of environmental protection, in the area of government information, practitioners should keep in mind that the Freedom of Information Act (FOIA) centers on the release of government information. On 31 December 2007, President Bush signed the OPEN Government Act of 2007.<sup>55</sup> This amendment to the FOIA implements several important changes. In addition to modifying annual reporting requirements, defining "news media representative" for purposes of fee waivers, and clarifying when the Agency's time to respond to a request begins, the OPEN Government Act implements significant changes regarding the awarding of attorney's fees. Attorney fees are now awarded if a FOIA plaintiff's lawsuit was the "catalyst" for an agency's subsequent release of information.<sup>56</sup> This legislatively repealed *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources*.<sup>57</sup> Probably more significant, however, is the requirement to pay an award of attorney fees (the only relief, other than the court-ordered release of records, under the FOIA) from an agency's operating budget rather than the U.S. Judgment Fund.<sup>58</sup> Whether this award will be paid by DoD, the DA, or by the installation from where the records came, has not yet been determined.<sup>59</sup>

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<sup>44</sup> National Security Personnel System; Final Rule, 5 C.F.R. § 9901 (2008).

<sup>45</sup> National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat. 1392 (2003).

<sup>46</sup> National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 326, 122 Stat. 3, 63.

<sup>47</sup> National Security Personnel System; Final Rule, 5 C.F.R. § 9901 (2008).

<sup>48</sup> Congressional Review Act of 1996, Pub. L. No. 104-121, § 801, 110 Stat. 857-74.

<sup>49</sup> National Security Personnel System; Final Rule, 5 C.F.R. § 9901 (2008).

<sup>50</sup> *Id.*

<sup>51</sup> Conservation banking is a "biological bank account" that involves the permanent protection of "privately or publicly owned lands that are managed for endangered, threatened, and other at-risk species." See U.S. Fish & Wildlife Serv., Conservation Banking, *available at*, [http://www.fws.gov/endangered/fact\\_sheets/banking\\_7\\_05.pdf](http://www.fws.gov/endangered/fact_sheets/banking_7_05.pdf). "Instead of money, the bank owner has habitat or species credits to sell." *Id.* The U.S. Fish and Wildlife Service manages the conservation banking process and "approves habitat or species credits based on the natural resource values on the bank lands. In exchange for permanently protecting the bank lands and managing them for listed and other at-risk species, conservation bank owners may sell credits to developers or others who need to compensate for the environmental impacts of their projects." *Id.*

<sup>52</sup> U.S. Environmental Command, Newsroom, <http://aec.army.mil/usaec/newsroom/index.html> (last visited Dec. 2, 2008).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 5 U.S.C. § 552 (2000) (as amended by Pub. L. No. 110-175, 121 Stat. 2564 (2007)).

<sup>56</sup> *Id.*

<sup>57</sup> See 532 U.S. 598 (2001) (stating that no attorney fees unless court orders agency to change its position or approves a consent decree).

<sup>58</sup> 5 U.S.C. § 552 (as amended by Pub. L. No. 110-175, 121 Stat. 2564 (2007)).

<sup>59</sup> See Lieutenant Colonel Craig E. Merutka, *Street FOIA 101: Nuts, Bolts, and Loose Change*, *infra* at 49.

In other areas of federal civil litigation, there are multiple decisions that impact the military and could affect military decision-making in both the short and long term. In May 2008, the Ninth Circuit Court of Appeals ruled in *Witt v. Department of the Air Force*<sup>60</sup> that, in light of *Lawrence v. Texas*,<sup>61</sup> the Air Force must satisfy intermediate level scrutiny under substantive due process when making decisions under the “Don’t Ask, Don’t Tell” homosexual policy.<sup>62</sup> The Ninth Circuit held that *Lawrence* raised the standard of review in such cases from rational basis and that the Government must overcome this heightened scrutiny on a case-by-case basis by showing impact on morale, unit cohesion, or the order and discipline of the unit resulting from the specific homosexual acts of the person discharged.<sup>63</sup> It remanded the case back to the district court for additional fact-finding.<sup>64</sup>

The military’s homosexual conduct policy is not the only issue under attack in federal court. Also at risk is the military’s discretion in conscientious objector (CO) cases. In January 2008, the U.S. Court of Appeals for the First Circuit affirmed a district court’s ruling that the Army’s decision to deny the CO application for Captain (CPT) Mary Hanna was arbitrary and capricious.<sup>65</sup> On 23 December 2005, CPT Hanna filed an application for discharge as a CO.<sup>66</sup> Despite favorable recommendations that the application be approved by most of CPT Hanna’s chain of command and most of those who interviewed her pursuant to applicable regulations, the DA CO Review Board (DACORB) denied CPT Hanna’s application.<sup>67</sup> The district court held, and the First Circuit affirmed, that there was no basis in fact for the DACORB denial and reversed the decision.<sup>68</sup> While these cases are always emotionally-charged and intensely personal in nature, the First Circuit’s holding will undoubtedly open the door to more challenges to negative decisions by the DACORB.

There are many other areas where military decisions or actions are being challenged in federal courts, including cases involving contractors in Iraq, challenges about religious freedom, medical maltreatment claims, and myriad discrimination allegations. This *TAL* edition includes an article specifically addressing the Military Whistleblower Protection Act and its effect on military members.<sup>69</sup>

As with legal assistance and civil law, the general administrative law areas of practice such as military investigations, standards of conduct, military personnel law, and, morale, welfare, and recreation have also witnessed change over the last year.

In April 2008, the DoD adopted the Army’s multiple investigation approach to friendly fire mishaps in Change 1 to DoD Instruction 6055.07, *Accident Investigation, Reporting, and Record Keeping*.<sup>70</sup> The change requires all Services to conduct both a legal and a safety investigation into all incidents of friendly fire.<sup>71</sup> Both investigations have been required under Army regulations (AR) for quite some time. The instruction now states that “[t]he Combatant Commander, or his or her designee,” must convene the legal investigation,<sup>72</sup> and the “Service whose forces suffer the preponderance of loss or injury will conduct [the] safety investigation.”<sup>73</sup>

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<sup>60</sup> 527 F.3d 806 (9th Cir. 2008). In *Witt*, a female Air Force reserve component nurse was honorably discharged from the military after evidence of her sexual relationship with a civilian woman came to light. *Id.*

<sup>61</sup> 539 U.S. 558 (2003).

<sup>62</sup> 10 U.S.C. § 654 (2000). “Don’t ask, Don’t tell” was instituted during the first Clinton Administration for the Department of Defense.

<sup>63</sup> *Witt*, 527 F.3d at 817–21.

<sup>64</sup> *Id.* at 822.

<sup>65</sup> *Hanna v. Sec’y of the Army*, 513 F.3d 4 (1st Cir. 2008). Captain Hanna joined the Army in 1997 as a member of the Army Health Professions Scholarship Program (HPSP) and thereafter attended medical school. *Id.* at 5. In exchange for financial assistance with medical school, CPT Hanna promised to serve on active duty in the Army for four years and to remain in the Army Reserve for an additional four years. *Id.* After CPT Hanna finished medical school, the Army deferred her active duty obligation for four years while she completed a residency in anesthesiology. *Id.* On 20 October 2005, the Army sent CPT Hanna a letter directing her to report for active duty in August 2006. *Id.* Hanna was later scheduled to report to William Beaumont Army Medical Center in El Paso, Texas. *Id.*

<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Id.* at 7–11.

<sup>68</sup> *Id.* at 17.

<sup>69</sup> Major William E. Brown, *Whistleblower Protection for Military Members*, *infra* at 58.

<sup>70</sup> U.S. DEP’T OF DEFENSE, INSTR. 6055.7, ACCIDENT INVESTIGATION, REPORTING, AND RECORD KEEPING (3 Oct. 200) (C1, 24 Apr. 2008).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* sec. E.4.3.

<sup>73</sup> *Id.* sec. E.7.1.

As of the writing of this article, the Central Command commander has not yet identified who his designee will be but it is anticipated that it will be the service component commanders. This does not change, therefore, the current policy that only the highest level commanders may convene and approve friendly fire mishap investigations.<sup>74</sup> Judge Advocates should consult Change 1 to DoDI 6055.07 for more information and, in accordance with The Judge Advocate General policy and review the fifteen minute friendly fire mishap presentation located on Judge Advocate General University prior to deploying.<sup>75</sup> This presentation outlines the changes to the instruction and describes the current Army guidance for friendly fire reporting and investigation.

Other significant regulatory changes have also impacted military personnel law in the area of Soldier separations.<sup>76</sup> First, with the release of the revised AR 600-20 in March 2008, when commanders initiate an administrative separation action on any Soldier, for any reason (voluntary or involuntary), the packet must include documentation that positively identifies the Soldier as having been, or not having been, a victim of sexual assault.<sup>77</sup> Commanders must decide if separation of a victim under the circumstances is in the best interest of the Soldier and of the Army.<sup>78</sup> The Army also continues to withhold separation authority from lieutenant colonel-level commanders to the special court-martial convening authority.<sup>79</sup> Originally, announced in 2005, the Army continues this elevation of separation authority in view of the overall positive reduction the change has had on first-term attrition rates.<sup>80</sup> Recent changes have also affected reserve component separations. Now, U.S. Army Reserve Command general officer commanders with full-time JA support, have been delegated separation authority under AR 135-178 for Army Reserve Troop Program Unit enlisted Soldiers.<sup>81</sup>

Monetary cap increases in several areas have also brought noteworthy developments in 2008. The Family Readiness Group informal fund cap increased from \$5000 of annual income to \$10,000.<sup>82</sup> The foreign gift cap also increased from \$305 to \$335 (value of gift in U.S. dollar at the time of presentation).<sup>83</sup> Finally, Wounded Warriors may now accept gifts from prohibited sources of no more than \$335 per source, per occasion (no more than \$1000 per year from that same source).<sup>84</sup> This cap was increased from \$305 per source, per occasion (no more than \$1000 per year from the same source).<sup>85</sup>

This *TAL* edition ends with a relevant primer on problem areas in professional writing written by the Editor of the *Military Law Review*<sup>86</sup> and a book review on environmental planning for contingency operations written by our environmental law subject matter expert.<sup>87</sup> Both the primer and the book review are practice-focused and designed to give additional perspective to practitioners in the field.

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<sup>74</sup> *Id.*

<sup>75</sup> JAG University Homepage, <https://jag.learn.army.mil/webapps/portal/frameset.jsp> (follow "Mandatory Friendly Fire Training" hyperlink; then follow "Mandatory Friendly Fire Training Presentation" hyperlink) (last visited Dec. 8, 2008).

<sup>76</sup> *Id.*

<sup>77</sup> U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 8-5(o)(26) (18 Mar. 2008). Legal advisors should ensure that there is a memorandum, signed by either the Soldier or the commander initiating the separation, stating (a) if the Soldier was or was not a victim of sexual assault for which an unrestricted report was filed within the past twenty-four months; and, (b) if the Soldier was a victim, whether the Soldier does or does not believe that this separation action is a direct or indirect result of the sexual assault itself or of filing the unrestricted report. *Id.* para. 8-5(o)(27).

<sup>78</sup> *Id.*

<sup>79</sup> Message, 251355Z Aug 08, Pentagon Telecommunications Center, subject: Extend the Elevation of the Special Court-Martial Convening Authority (SPCMCA) for First-Term Attrition.

<sup>80</sup> *Id.*

<sup>81</sup> Memorandum from Headquarters, U.S. Army Reserve Command, to Commanders, USAR Major Subordinate Commands, subject: Delegation of Involuntary Separation Authority Under AR 135-178 (14 Oct. 2008).

<sup>82</sup> Memorandum from Sec'y of the Army to HQDA Principal Officials, subject: Army Directive 2008-01, Increase in Family Readiness Group Informal Fund Cap (7 Mar. 2008). This directive will be incorporated into the next revision of AR 608-1. U.S. DEP'T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE CENTER (19 Sept. 2007).

<sup>83</sup> 5 U.S.C. § 7342 (2000); U.S. DEP'T OF DEFENSE, DIR. 1005.13, GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS (19 Feb. 2002) (C1, 6 Dec. 2002); U.S. DEP'T OF DEFENSE, JOINT ETHICS REGULATION 2-300 (23 Mar. 2006) [hereinafter JER].

<sup>84</sup> JER, *supra* note 81, at 3-400; *see also* 41 C.F.R. ch. 102.

<sup>85</sup> JER, *supra* note 81, at 3-400; *see also* 41 C.F.R. ch. 102.

<sup>86</sup> Major Ann B. Ching, *For All "Intensive" Purposes: A Primer on Malapropisms, Eggcorns, and Other Rogue Elements of the English Language*, *infra* at 66.

<sup>87</sup> Major Jim Barkei, *Green Warriors: Army Environmental Considerations for Contingency Operations from Planning Through Post-Conflict*, *infra* at 86.

As we close out a busy 2008, we prepare for an even more interesting and challenging year ahead. As always, we are here as a source for you, the practitioner in the field. As such, the Appendix contains a list of ADA professors by subject areas of expertise. We hope you find these articles and materials helpful in your practice and, as always, welcome your questions and comments.