

## FOREWORD

### *Acquisition and Fiscal Accountability: Between Iraq and a Hard Place*

In fiscal year (FY) 2004, the world saw the best that fast, flexible, discretion-friendly, rule-free (or nearly rule-free) acquisition can accomplish. The Commander's Emergency Response Program (CERP) in the newly liberated Iraq is a program liberated from the Federal Acquisition Regulation (FAR) and even liberated from most traditional fiscal law limitations. The CERP authorizes local military commanders to reconstruct Iraq and provide urgent humanitarian relief, "notwithstanding any other provision of law." In the aftermath of the invasion, commanders quickly contracted to repair roofs, schools, town halls, courthouses, and clinics; distribute food; purify water; maintain local governmental agencies; restore electricity (on small scales); re-open factories; and, restore communications systems. The procurement process was fast and effective.

On the other hand, in FY 2004, the world saw the worst that fast, flexible, discretion-friendly, rule-free (or nearly rule-free) acquisition can accomplish. Contract translators and interrogators, ordered through "efficient" federal supply schedules and multiple award contracts, were alleged to have participated in prisoner abuse at the detention center at Abu Ghraib. Many of these contractors were unsupervised; some were untrained. Further, the Army admitted that it had no effective way of tracking the growing number of contractors deployed with the military.

And sometimes, determined, devious individuals will cheat the system, regardless of layers of rules—witness the Darlene Druyun scandal.

This year's Contract and Fiscal Law Symposium, "Acquisition and Fiscal Accountability: Between Iraq and a Hard Place," took place from 7 until 10 December 2004 and confronted these issues head on. The *Year in Review* article is the Contract and Fiscal Law Department's\* annual attempt to capture and analyze the past fiscal year's most important, relevant, and occasionally eccentric cases and developments. Although the individual pieces do not directly address the Symposium theme, accountability is a motif that runs through many of the subjects covered.

Although we could not cover every new decision or rule, we have tried to discuss topics most relevant to our readers. In addition, we have tried to spot trends and put developments into context. I hope we have succeeded and that you find this article useful in your practice, thought provoking, and a "good read." We have made one technological improvement this year. In response to many requests over the years, we have added an index. If you have other comments or suggestions, please email them to [Contract-YIR@hqda.army.mil](mailto:Contract-YIR@hqda.army.mil).

Lieutenant Colonel Michael Benjamin.

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\* The Contract and Fiscal Law Department is composed of seven Judge Advocates (Lieutenant Colonel Michael Benjamin, Lieutenant Colonel Karl Kuhn, Major Bobbi Davis, Major Jim Dorn, Major Kevin Huyser (USAF), Major Andrew Kantner, and Major Steven Patoir) and our Secretary, Ms. Dottie Gross. Each officer has contributed sections to this work. Major Kevin Huyser deserves particular praise, as he has now edited the *Year in Review* two years running. Kevin's tremendous dedication, tenacity and attention to detail, are exceeded only by his steady, inspiring leadership. He is the ideal editor in chief. The Department would like to thank our outside contributing authors: Lieutenant Colonel Louis Chiarella, Major Kerry Erisman, Ms. Margaret Patterson, Lieutenant Colonel John Siemietkowski, and Major Katherine White. We greatly appreciate their expertise and contributions. Finally, the issue has benefited inordinately from diligent fine-tuning by the School's resident footnote guru, Mr. Chuck Strong. Thank you all!