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A Justice Manager's Guide to Navigating High Profile Cases

Major Nathan J. Bankson

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Lore of the Corps

An Officer Candidate School for Army Lawyers? The JAG Corps Experience (1943–1946)

Fred L. Borch
Regimental Historian & Archivist

On 29 June 1943, the *Michigan Daily* featured a small article on eighty-three enlisted men attending the first-ever officer candidate school operated by the Judge Advocate General's Department (JAGD) on the campus of the University of Michigan.¹ This is the story of that officer candidate program—and its place as a unique educational episode in our Regiment's history.

Within days of the Japanese attack on Pearl Harbor, the JAGD began calling Reserve officers to active duty as the United States mobilized for war with the Axis powers. Initially, these lawyers received on-the-job training; however, Major General (MG) Myron C. Cramer, The Judge Advocate General (TJAG), quickly realized that this “slow process of apprenticeship” was “impractical” to meet the wartime demands and that the Army must establish a school for refresher training “to afford the proper orientation and indoctrination for bridging the gap between civil and Army life.”² The first class convened on 2 February 1942 at National University Law School,³ Washington, D.C., but it became apparent that larger facilities were required.⁴ The Judge Advocate General's School, U.S. Army (TJAGSA) was activated at the University of Michigan on 5 August 1942.

As the supply of Reserve judge advocates dwindled, the JAGD decided to directly commission civilian lawyers and enlisted personnel who were attorneys. The War Department, however, informed TJAG Cramer in early 1943 that it was curtailing the authority of all branches in the Army to offer direct commissions except in the rarest cases.⁵ Faced with this quandary, the JAGD decided to activate an officer candidate school so that qualified attorneys serving in

the enlisted ranks could enter the JAGD as judge advocates. As a result, the Secretary of War established the Judge Advocate General's Officer Candidate School (JAGOCS) on 24 March 1943. The Judge Advocate General received the “authority to accept or reject applicants” and “was further authorized to recommend fifty percent of the graduates . . . for immediate promotion to the grade of first lieutenant.” This promotion authority was unique: all other officer candidate programs in the Army commissioned their graduates as second lieutenants; only the JAGOCS program was allowed the immediate promotion of one half of a graduating class.⁶ The first JAGOCS candidates reported to the University of Michigan on 7 June 1943.

From the outset, the mission of JAGOCS “was to train officer candidates for service as judge advocates in tactical and administrative units of the Army. . .,”⁷ but exactly how to accomplish this mission was very much an open question. The JAGD had never operated an officer candidate program, and there was no time to experiment. The obvious solution was to model at least some parts of JAGOCS after other officer candidate schools already in operation, and this in fact occurred.

A more significant problem, however, was the limited number of instructors. By June 1943, TJAGSA had trained ten officer classes (consisting of more than 500 men) with an instructional staff of only seventeen men (fifteen judge advocates and two infantry officers) in ten months. Consequently, although very much overburdened with work, some of these TJAGSA instructors now also had to begin teaching JAGOCS classes when the first candidates arrived on 7 June 1943. Ultimately, the solution was to select JAGOCS graduates to become instructors—but this could be done only after several JAGOCS classes had graduated. To alleviate the shortage of instructors in the meantime, TJAGSA arrived at a practical solution: combining officer classes with officer candidate classes “for a substantial amount of instruction.”⁸ While some were concerned about the impact on good order and discipline that might result from “mixing” officers and enlisted personnel, the “similarity in background and ability of the officers and officer candidates” seems to have precluded any problems.⁹

¹ G. P. Forbes, *1st OCS Class in History of JAGD Is Training Here*, MICH. DAILY, June 29, 1943. First Lieutenant George P. Forbes, Jr., a graduate of The Judge Advocate General's School, U.S. Army's (TJAGSA), 10th Officer Course, was on TJAGSA faculty when he submitted this article for publication.

² Inzer B. Wyatt, *The Army's School for Its Lawyers*, 29 A.B.A. J. 135, 136 (1943).

³ *About GW Law*, GEO. WASH. UNIV. LAW SCHOOL, <http://www.law.gwu.edu/school/pages/history.aspx> (last visited July 31, 2012).

⁴ THE JUDGE ADVOCATE GEN.'S SCH., HISTORY OF MILITARY TRAINING OF OFFICER CANDIDATES—JUDGE ADVOCATE GENERAL'S DEPARTMENT, 24 MARCH 1943—30 JUNE 1944, at 2 (n.d.) [hereinafter HISTORY OF MILITARY TRAINING OF OFFICER CANDIDATES].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

As for the candidates, who was selected to attend JAGOCs? A civilian attorney who had voluntarily enlisted or had been drafted was eligible to apply for the officer candidate program at the University of Michigan, provided he “had attained his 28th birthday” and was “a graduate of a law school.” Additionally, “at least 4 years practice of law is desirable, but not essential.”¹⁰ Since certain states did not require law school as a prerequisite for being admitted to the practice of law, the JAGD waived this requirement for JAGOCs where the applicant had been a civilian attorney for a significant period of time or had otherwise demonstrated exceptional professional competence. Similarly, the four years of practice requirement was waived in exceptional cases. According to the *History of Military Training of Officer Candidates* published by TJAGSA in 1944, the age requirement was never waived.¹¹

To apply for JAGOCs, enlisted applicants had to be provisionally approved by the local command screening boards. Then, each application was sent to the Judge Advocate General’s Office, Military Personnel and Training Division (MPTD) (the forerunner of today’s Personnel, Plans and Training Office). The MPTD “screened the papers and made judgments as to the prima facie excellence and desirability of the applicant.”¹² When the “character and capability” of applicants were “deemed to be worthy of further consideration,” the MPTD then investigated each applicant by asking for letters from “lawyers, institutional and municipal officials, and others of recognized standing.”¹³ After passing this investigation, their files went to a “selection board composed of a general officer and other high ranking members” of the JAGD.¹⁴ This board then made selection recommendations to MG Cramer, “who personally passed on each applicant before he was [finally] selected.”¹⁵

Each JAGOCs class was seventeen weeks long (as compared to the TJAGSA officer class, which was twelve weeks in length). Each week consisted of sixty-two hours of education and training. There were thirty-five hours of classroom work and thirteen hours of military and physical training; the remaining fourteen hours were “night time supervised study.”¹⁶ It seems, however, that there was

considerable OCS candidates’ resistance to this regime; the cadre, “after some experimentation with the schedule,” decided that “best academic efficiency was obtained by not making assignments for study on Wednesday and Saturday nights.”¹⁷ Those who wanted to continue to review or study on their own were obviously free to do so, but it seems that most candidates found other activities in Ann Arbor to keep them engaged during these two nights.

Officer candidates studied to “perform all the duties of a staff judge advocate.”¹⁸ This made sense given that a combat division was authorized only one judge advocate during World War II. *The 1928 Manual for Courts-Martial* was the key classroom text, supplemented by TJAGSA books containing common forms and materials relating to military justice in the field. The Judge Advocate General’s School, U.S. Army also incorporated three training films in JAGOCs training, including a special film devoted to absence without leave and desertion.¹⁹

Officer candidates also studied administrative and civil law topics, including line of duty determinations, citizenship and naturalization, and claims. Government contracting was also an extremely important area of practice, which included the formation of contracts, bids and awards, modification, breach, implied contracts and disputes. In 1945, with the end of the war in sight, the contract law curriculum shifted from the War Department procurement to contract termination.²⁰

There was considerable study of the Law of War and the applicability of the Geneva Convention of 1929 relating to the treatment of prisoners of war, the status of U.S. military personnel in friendly countries, war crimes, the legal rights and duties arising out of a military occupation of foreign territory, and “the traditional problems arising out of the conduct of hostilities (Hague Conventions of 1899 and 1907).”²¹ Field Manual 27-10, *Rules of Land Warfare*, which had been published by the War Department on 1 October 1940, was especially helpful in the JAGOCs curriculum, as it was an easy-to-use reference that fit easily in a uniform pocket.

The 1929 conventions were relatively new, and there had been no major war since their ratification. Consequently, TJAGSA and JAGOCs cadre undertook a number of research projects and produced “definitive texts” on the Law of Land Warfare and the Law of Belligerent Occupation. The focus was on Italy, Germany and Japan, with “the emphasis on each decreasing or increasing as the war

¹⁰ U.S. DEP’T OF ARMY, REG. 625-5, OFFICER CANDIDATE SCHOOLS para. 33c(10) (26 Nov. 1942) (C6, 31 Mar. 1943), as reprinted in HISTORY OF MILITARY TRAINING OF OFFICER CANDIDATES, *supra* note 4, at 5.

¹¹ HISTORY OF MILITARY TRAINING OF OFFICER CANDIDATES, *supra* note 4, at 10.

¹² *Id.* at 9.

¹³ *Id.* at 10.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 12–13.

¹⁷ *Id.* at 13.

¹⁸ *Id.*

¹⁹ *Id.* at 14.

²⁰ *Id.* at 17–20.

²¹ *Id.* at 22.

progressed.” After Italy joined the Allies in September 1943, “background material” on that country ceased to be part of JAGOCS instruction.²²

Military training included instruction on “the development of military bearing, precision in marching, and the exercise of voice and command.”²³ There also were classes in map reading and defense against air, airborne and chemical attacks. Some hours also were “devoted to familiarization with various infantry weapons including assembly, disassembly, functioning, care, and cleaning of the U.S. Carbine caliber .30 M1, Browning Automatic Rifle, caliber .30, Browning Machine Gun, caliber .30, Thompson Submachine Gun, caliber .30, and the Automatic Pistol caliber .45.”²⁴

The first JAGOCS class graduated on 28 August 1943, when seventy-nine students took their oaths as either second or first lieutenants in the JAGD. What determined their rank? Those who graduated in the top half of the class were commissioned as first lieutenants; the remainder of the class was commissioned as second lieutenants. It was certainly an incentive to perform as well as one could. The newly commissioned judge advocates went to a variety of locations. First Lieutenant (ILT) Ralph E. Becker was assigned as an assistant staff judge advocate in an infantry division in Europe while 1LT Floyd Osborne was a part of a division “on the front” at Monte Casino, Italy. First Lieutenant Leo Bruck was in Teheran, Iran, with

Headquarters, Persian Gulf Command, while 1LT Richard Kent was with “a fighter command in England.” Kent found his Army Air Force assignment “most interesting. Aside from a little legal assistance, military justice is the bread and meat of my work . . . perform all the functions of a JA—reviewing charges and referring them to the proper court, trial judge advocate, law member, and reviewing the record of trial.”²⁵ Other JAGOCS graduates had similar experiences in Europe and the Pacific, while others were assigned to the Pentagon and other U.S. locations.

The second JAGOCS class was already underway before the first class had graduated (it had started on 26 July 1943 and all future OCS classes were staggered so that a class was always in session). By the time TJAGSA ceased operating in Michigan at the end of January 1946, a total of 15 JAGOCS classes had graduated, and more than one thousand enlisted Soldiers had been transformed into judge advocates. It had been an overwhelmingly successful episode in military legal education but, given the configuration of today’s Army and our Corps, is unlikely to be repeated again.

More historical information can be found at

The Judge Advocate General’s Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

<https://www.jagcnet.army.mil/8525736A005BE1BE>

²² *Id.* at 22–23.

²³ *Id.* at 24.

²⁴ *Id.*

²⁵ Notes, *1st Officer Candidate Class*, JUDGE ADVOCATE J., Sept. 15, 1944, at 50–51.

A Justice Manager's Guide to Navigating High Profile Cases

Major Nathan J. Bankson*

I. Introduction

Bang! Bang! Bang! You are an infantry platoon leader conducting a combat patrol receiving fire from the enemy. You must react now. Because you are a highly trained infantryman, you recall repeatedly practicing actions on contact¹ throughout your military career. In fact, you rehearsed this very scenario at your convoy brief. Now that the adrenalin is coursing through your veins, it is time to put your training into action—you must act with precision and without hesitation. You know exactly what to do and you neutralize the threat. Your subordinates and superiors alike are satisfied that you know how to do your job.

Stop day dreaming. That was back in the good old days. Now you are the chief of military justice (COJ) at pick-a-post and you receive a phone call from a Criminal Investigation Command (CID) special agent. You learn there has just been a serious shooting on post. Several are likely dead and the situation is chaotic. What do you do? It is time for action and you likely do not have an established plan for this. You have not trained for this, and your staff judge advocate (SJA) and deputy staff judge advocate (DSJA) have not trained for this. There is no field manual, pamphlet, or regulation on which you can rely. You turned your Manual for Courts-Martial inside and out, you have desk books from the basic course, the Trial Counsel Advocacy Program, the Criminal Law Advocacy Course, the Graduate Course, and the Military Justice Manager's Course lining the walls of your office, but you are pretty certain the answer is not in any of those books. To add to your growing stress—unlike the firefight you engaged in downrange that never

saw the front page of the newspaper—what is happening right now down the street will make international news before you can get the trial counsel to the scene. What do you do? As capable Soldiers, not wanting to appear reliant on others, the answer has traditionally been to make it up on the fly—in-house. A COJ may have called another COJ or the school house, but the response was not planned or rehearsed. Developing a plan from scratch as the situation evolves is no longer sufficient.

With the intense scrutiny on discipline in the force² and an unending stream of cases making headlines,³ the Army needs a cogent set of tactics, techniques, and procedures (TTPs) for managing high profile cases. This article addresses the gap in the Army's military justice practice in the field of high profile cases. It identifies certain types of cases the media is traditionally drawn to, identifies the major deficiencies in management of high profile cases, provides the relevant rules and regulations pertaining to those deficiencies, and incorporates lessons learned from the field. This article also offers TTPs for offices of the staff judge advocate (OSJAs) to consider or implement to either prevent a case from becoming high profile or minimize negative media perceptions on already high profile cases. Finally, this article provides a framework to assist the OSJAs in planning for or avoiding high profile cases along with a series of checklists for the practitioner as appendices.⁴ This is not a comprehensive analysis of every aspect of high profile cases, but it will put the reader in the right frame of mind to prepare for these cases. The first step is identifying those cases with a greater propensity to become high profile.

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¹ U.S. DEP'T OF ARMY, FIELD MANUAL 1-02, OPERATIONAL TERMS AND GRAPHICS 1-2 (21 Sept. 2004) (“A series of combat actions, often conducted simultaneously, taken upon contact with the enemy to develop the situation.”).

² See, e.g., Charles Hoskinson, *Army: Lack of Discipline Could Grow 'Cancerous,'* POLITICO (Oct. 15, 2011, 11:11:21 AM), <http://www.politico.com/news/stories/1011/65206.html> (quoting U.S. Army Europe Commanding General); Adam Ashton, *Platoon Lost to Lack of Discipline,* THE OLYMPIAN (Oct. 16, 2011), <http://www.theolympian.com/2011/10/16/1840223/platoon-lost-to-lack-of-discipline.html> (discussing 5-2 Stryker Brigade Combat Team stationed at Joint Base Lewis-McChord, Washington); U.S. ARMY, HEALTH PROMOTION, RISK REDUCTION, SUICIDE PREVENTION REPORT 3 (2010) [hereinafter SUICIDE REPORT] (“Crime is on the rise and discipline is seemingly going unchecked.”).

³ See, e.g., Marisa Taylor, *Army Probes Crime Lab Workers After Critical News Reports,* MCCLATCHY NEWS (Feb. 3, 2012), <http://www.mcclatchydc.com/2012/02/03/137846/army-probes-crime-lab-workers.html>; Mathew Barakat, *Lawmakers Question Pace of Arlington Probe,* ARMY TIMES (Feb. 3, 2012, 18:46:51 EST), <http://www.armytimes.com/news/2012/02/ap-arlington-cemetery-lawmakers-question-pace-probe-020312/>; Adam Ashton, *Army Drops Murder Charge Against Last Soldier Tied to “Kill Team” Cases,* THENEWSTRIEBUNE.COM (Feb. 3, 2012, 19:25 PST), <http://www.thenewstribune.com/2012/02/03/2011437/army-drops-murder-charge-against.html>; Associated Press, *Army Officer Orders Court-martial for WikiLeaks Suspect,* FOXNEWS.COM (Feb. 3, 2012), <http://www.foxnews.com/us/2012/02/03/army-officer-orders-court-martial-for-wikileaks-suspect/>.

⁴ See *infra* apps.

II. Defining High Profile Cases

*[A]lmost every case . . . could have the potential for turning into a high profile case if enough public interest develops.*⁵

The first step in developing a contingency plan for high profile cases is defining what makes a case “high profile.” With a solid understating of the various types of high profile cases, the practitioner can more quickly identify and manage them. High profile cases are generally those cases receiving significant and persistent media attention. It could be any case, but some cases are more susceptible to attracting media attention than others. Knowing what to look for will help facilitate the implementation of prophylactic (offensive) measures or hasten remedial (defensive) actions based on the state of the case. Professor Thomas W. Taylor, who had advised seven Secretaries of the Army and seven Chiefs of Staff of the Army from 1982 to 2006 as a senior civilian attorney, formulated a categorization of cases, explained below, which helps accelerate that identification process.⁶

While not mutually exclusive, and frequently overlapping, high profile cases fall into two general categories.⁷ The first category includes cases with “facts and circumstances so compelling that [the legal advisor] will know immediately that the case will achieve high profile status.”⁸ Murder and cases involving national security generally occupy the first category. These are the cases that will gain media attention regardless of what the government does, but the government’s response can color the tone and intensity of the reporting. The second, and more challenging, category includes those cases “that begin with a somewhat random news story, grow under the radar for a while, and emerge full-blown as high profile cases.”⁹ This category appears to occupy the full spectrum of possible cases, but Professor Taylor further identifies specific types of cases that tend to gain more media traction than others.

⁵ Thomas W. Taylor, *The Fifteenth Hugh J. Clausen Lecture in Leadership: Leadership in High Profile Cases*, 204 MIL. L. REV. 343, 349 (2010).

⁶ *Id.* at 343 n.† (“Professor Taylor assumed his current position, teaching graduate students at Duke University’s Sanford School of Public Policy, upon retiring in June 2006 as the senior career civilian attorney in the Department of the Army. He served as the senior leader of the Army legal community during extended transition periods between successive political appointees. Professor Taylor provided legal and policy advice to seven Secretaries and seven Chiefs of Staff of the Army. During his twenty-seven years in the Pentagon, Professor Taylor addressed a wide variety of operational, personnel, and intelligence issues, including military support to civil authorities following the attacks on 11 September 2001, and during disaster relief operations.”).

⁷ *Id.* at 346–47.

⁸ *Id.* at 346.

⁹ *Id.* at 347.

First, suicides and friendly fire incidents are two types of cases with high profile potential.¹⁰ These can become high profile if the families are dissatisfied with the investigation or their treatment by officials, or they “suspect foul play, a conspiracy, or a cover-up.”¹¹ The friendly fire death of Pat Tillman, initially reported as a hostile fire death, is one example of this type of high profile case.¹²

Cases that “involve the abuse of a special relationship” are also common high profile candidates.¹³ In March 2010, members of the CID made national news when they allegedly “kidnapped a civilian, took him to a remote location on Fort Bragg and threatened to kill him.”¹⁴

The next two types of cases with high profile potential are those involving hate crimes and those implicating senior ranking officials.¹⁵ In the former category, there are cases like the suicide of Danny Chen, a nineteen year-old private allegedly hazed and bullied because he was Chinese.¹⁶ The court-martial of the commander of the 173d Airborne Brigade, Colonel Jim Johnson, illustrates the latter category.¹⁷ If a junior enlisted Soldier engaged in conduct similar to what Colonel Johnson engaged in, he would be disciplined, but it would likely not make the front page of the *Army Times*.¹⁸

¹⁰ *Id.* at 349; *see, e.g.*, Kirk Semple, *Army Charges 8 in Wake of Death of a Fellow G.I.*, N.Y. TIMES (Dec. 21, 2011), http://www.nytimes.com/2011/12/22/us/8-charged-in-death-of-fellow-soldier-us-army-says.html?_r=1. Private Danny Chen, nineteen, was allegedly bullied by members of his unit until he ultimately chose to take his own life and was found dead in a guard tower in Afghanistan with a gunshot wound to the head. *Id.*

¹¹ Taylor, *supra* note 5, at 349.

¹² Associated Press, *Documents Shed Light on Tillman’s Death*, MSNBC.COM (July 27, 2007, 8:21:05 PM EST), http://www.msnbc.msn.com/id/19984732/ns/us_news-military/t/new-documents-shed-light-tillmans-death/ (reporting on the death of Pat Tillman and subsequent investigations).

¹³ Taylor, *supra* note 5, at 350.

¹⁴ *Bragg CID Agents Suspended; FBI Investigating Kidnap Allegations*, FAYOBSERVER.COM (Apr. 1, 2010, 07:29 AM), <http://fayobserver.com/articles/2011/03/31/1083011?sac=Home>.

¹⁵ Taylor, *supra* note 5, at 350.

¹⁶ Jennifer Gonnerman, *The Life and Death of Pvt. Danny Chen*, N.Y. MAG. (Jan. 6, 2012), <http://nymag.com/news/features/danny-chen-2012-1/>; *see also* Ernesto Londoño & Christian Davenport, *8 U.S. Soldiers Charged in Death of Comrade in Afghanistan*, WASH. POST (Dec. 21, 2011), http://www.washingtonpost.com/world/8-us-soldiers-charged-in-death-of-comrade-in-afghanistan/2011/12/21/gIQAXmE380_story.html.

¹⁷ Henry Cuninghame, *Col. James H. Johnson III Spared Prison, Reprimanded, Ordered to Pay \$300,000 Fine at Court-martial Trial*, FAYOBSERVER.COM (June 20, 2012, 08:05 AM), <http://www.fayobserver.com/articles/2012/06/14/1184467?sac=fo.military>.

¹⁸ Jennifer Hlad & Steven Beardsley, *Outrage over Perceived Light Sentence for Convicted Colonel*, STARS & STRIPES (June 15, 2012), <http://www.stripes.com/news/outrage-over-perceived-light-sentence-for-convicted-colonel-1.180437>.

Taylor also includes “child custody issues during deployments and services for wounded warriors at home” as examples of potentially high profile cases.¹⁹ The treatment received by the Oregon National Guard upon redeployment from Iraq in 2010 is a very recent case where the Army’s alleged mishandling of National Guardsmen during medical out-processing quickly found its way into the press.²⁰ During medical out-processing at Joint Base Lewis-McChord, Washington, members of the Oregon National Guard perceived they were being treated as second class Soldiers and were not receiving proper medical attention prior to being released from active duty.²¹ The outcry was immediate and caught the attention of the Under Secretary of Defense and Chief of Staff of the Army.²²

The final type of cases Taylor identifies are those “that become high profile because of the way that [officials] may have handled or mishandled an otherwise-routine case that catches the public’s attention and sympathy.”²³ This type of case can be something as simple as a trial counsel being rude to a victim’s mother or a victim talking to a friend or relative about allegations she reported to criminal investigators. When those family members or friends have connections to senior ranking officials and or choose to contact the media, cases can quickly get attention.²⁴ Suddenly, the SJA is getting an email from the commanding general asking why the Chief of Staff of the Army is concerned about a particular case. Sexual assault cases often fall into this category as illustrated in ongoing civil litigation alleging the Department of Defense is turning a blind eye on sexual assaults.²⁵ Under this category, no one can accurately predict which case on the tracker will turn into a high profile case; however, good manners and adherence to the rules can prevent a seemingly routine case from becoming high profile on account of mismanagement or loss of public confidence.

When it comes to identifying and managing potential high profile cases, the key is to focus on what can be controlled—professionalism, adherence to rules and regulations, and preparation—because every case can

become a high profile case. Chances are high that the OSJA will be in reaction mode because there is very little a command can do to stop a Fort Hood shooting, for example.²⁶ The OSJA and the command, however, can have a plan in place to manage their reaction. With that in mind, the remainder of this article speaks generally to all types of high profile cases but focuses on the more easily identifiable version—those involving deaths.

III. Institutional Deficiencies in Managing High Profile Cases

*Since the Tailhook episode in 1991, the armed forces have faced a near- constant parade of high-profile criminal investigations and courts-martial . . . each a threat to morale and a public relations disaster.*²⁷

By addressing three frequently criticized areas of military justice practice, the resources available to improve those areas, and methods to employ those resources, the Army may be able to reduce the “public relations disaster[s]” the Cox Commission Report identified over a decade ago.²⁸ The Army is not going to stop the media from reporting on serious cases, but it can prepare for media coverage on cases likely to spark interest and it can take steps to avoid mistakes susceptible to criticism.

The Army does not have a comprehensive regulation, manual, or publication on how to manage high profile cases. The decisions on how to manage high profile cases are largely left to each OSJA. Understandably, the approaches vary as do the results. Without a plan, the Army is setting itself up for a negative press. The challenges associated with high profile cases are not novel. Practitioners have been writing on various aspects of high profile cases for over a decade.²⁹ In 1999, the Army held the first, and last, course

¹⁹ Taylor, *supra* note 5, at 351.

²⁰ Adam Ashton, *Defense Undersecretary Says Oregon Guard Soldiers Received Substandard Care at JBLM*, TACOMA NEWS TRIB. (Apr. 14, 2011, 11:35 PST), <http://blog.thenewtribune.com/military/2011/04/14/defense-undersecretary-says-oregon-guard-soldiers-received-substandard-care-at-jblm/>; see also Hal Bernton, *Army Chief of Staff Visits Lewis-McChord*, SEATTLE TIMES (June 11, 2010, 09:32 PST), http://seattletimes.nwsource.com/html/localnews/2012095116_casey12m.html.

²¹ Ashton, *supra* note 20.

²² Bernton, *supra* note 20.

²³ Taylor, *supra* note 5, at 351.

²⁴ In addition, cases can quickly spiral out of control when victims, Soldiers, or family members contact their elected officials. See *infra* Part IV.C.2.

²⁵ Ashley Parker, *Lawsuit Says Military is Rife with Sexual Abuse*, N.Y. TIMES, Feb. 15, 2011, <http://www.nytimes.com/2011/02/16/us/16military.html>.

²⁶ Arguably prohibiting all weapons, fully searching every vehicle and body entering the installation, and having metal detectors on every door could have prevented the death of twelve individuals and injury of 31 others, but those safeguards would have caused daily operations to grind to a halt. See, e.g., NBC & MSNBC.com, *Gunman Kills 12, Wounds 31 at Fort Hood*, NBCNEWS.COM (Nov. 5, 2009, 10:48:47 PM EST), http://www.msnbc.msn.com/id/33678801/ns/us_news-crime_and_courts/t/gunman-kills-wounds-fort-hood/ (reporting on incident).

²⁷ WALTER T. COX III ET AL., NAT’L INST. OF MILITARY JUSTICE, REPORT OF THE COMMISSION ON THE 50TH ANNIVERSARY OF THE UNIFORM CODE OF MILITARY JUSTICE (2001) [hereinafter COX COMMISSION REPORT].

²⁸ *Id.* at 3.

²⁹ See, e.g., Lieutenant Colonel Denise R. Lind, *Media Rights of Access to Proceedings, Information, and Participants in Military Criminal Cases*, 163 MIL. L. REV. 1 (2000) (providing comprehensive analysis of the rights of and role the media plays in military justice practice.); Lieutenant Commander Stephen C. Reyes, *Left Out in the Cold: The Case for a Learned Counsel Requirement in the Military*, ARMY LAW., Oct. 2010, at 5 (advocating for learned counsel requirement for capital courts-martial); Colonel Dwight H. Sullivan, *Killing Time: Two Decades of Military Capital*

on high profile cases at the Judge Advocate General's Legal Center and School.³⁰ Despite the occasional pushes to address various aspects of high profile case management, there is still no institutional plan.

Like the War Department appointing a committee to improve the military justice system after World War II³¹ and, to a far lesser, yet important, degree, like the Judge Advocate General of the Army creating a Special Victim Prosecutor program³² to address deficiencies in the sexual assault prosecutions, the Army needs to address systematic shortcomings in managing high profile cases. If the Army does not, it is possible that legislation similar to the one recently proposed by Congresswoman Speier—which, in part, removes a commander's authority to handle sexual assault cases—may actually become law and take military justice completely out of the hands of commanders and judge advocates (JA).³³

The first deficiency in managing high profile cases is the Army's public affairs response to cases from the lowest to the highest levels. The timing, type, and quality of Army's responses, at times, draw negative media coverage, reducing public trust in the military justice system. Second, the perceived or actual lack of experience in both trial and defense counsel draws regular criticisms. Third, the complexity and inconsistencies of the casualty notification and victim/witness liaison process cause unacceptable stress

Litigation, 189 MIL. L. REV. 1 (2006) (providing analysis of the preceding two decades of capital litigation).

³⁰ Lind, *supra* note 29, at 6 (noting “[t]he first Joint Service High Profile Case Management Course was held from 10–12 May 1999 at the Army Judge Advocate General's School in Charlottesville, Virginia.”). There is no record of this course being taught subsequently.

³¹ See, e.g., ARTHUR T. VANDERBILT ET AL., REPORT OF WAR DEPARTMENT ADVISORY COMMITTEE ON MILITARY JUSTICE (Dec. 13, 1946), http://www.loc.gov/tr/frd/Military_Law/pdf/report-war-dept-advisory-committee.pdf [hereinafter VANDERBILT REPORT] (stating that the committee was to “study the administration of military justice within the Army and the Army's courts-martial system, and to make recommendations to the Secretary of War as to changes in existing laws, regulations, and practices which the Committee considers necessary or appropriate to improve the administration of military justice in the Army”); see Selective Service Act of 1948, 62 Stat. 604, 627-44 (1948) [hereinafter the Elston Act] (implementing many of the Vanderbilt Report's recommendations).

³² Policy Memorandum 09-3, Office of the Judge Advocate General, U.S. Dep't of Army, subject: Special Victim Prosecutors-POLICY MEMORANDUM 09-3 (29 May 2009) [hereinafter Policy Memorandum 09-3] (establishing special victim prosecutors).

³³ Sexual Assault Training Oversight and Protection Act, H.R. 3435, 112th Cong. (2011). See also Press Release, Congresswoman Jackie Speier Proposes New Justice Process to Combat Sexual Assault Crisis in the Military, http://speier.house.gov/index.php?option=com_content&view=article&id=517:congresswoman-jackie-speier-proposes-new-justice-process-to-combat-sexual-assault-crisis-in-the-military&catid=1:press-releases&Itemid=14 (last visited Oct. 15, 2012) (discussing proposed legislation that “takes the reporting, oversight, investigation, and victim care of sexual assaults out of the hands of the military's normal chain of command and places jurisdiction in the newly created, autonomous Sexual Assault Oversight and Response Office comprised of civilian and military experts.”).

and confusion for the grieving victims and loved ones. As a result, the victims and witnesses turn to the media or their elected officials with negative impressions and pleas for help.

Once the media attaches to a case, for whatever reason, and elevates the case to a high profile status, the Army has an opportunity to change public perception about the military justice system rather than to simply absorb the blows from the public. By addressing the deficiencies through a uniform process, adaptable to the unique requirements of each set of facts, the Army can project the requisite level of preparation and professionalism required in all cases.

The media plays a large role in which cases become high profile. The facts or circumstances of each case drive the media's decision. Accordingly, this section first addresses the media and ways to minimize negative press.

A. Media Considerations

*The global information environment and continually evolving information communication technologies make it imperative that information and messages be consistent at all levels. The personal comments made by a deployed [S]oldier in a remote area of operations and the official statements released by [the Department of Defense] at the Pentagon must be mutually supporting.*³⁴

Staff synchronization is most critical when the media takes note and adds an extra layer of interest and criticism. With that said, a positive and persistent relationship between the command's public affairs office (PAO) and the OSJA can help send the right message to the public and address allegations, such as incompetence, corruption, or cover-up.

Judge advocates must first know where to look when assessing what can be done with respect to the media and then understand how to work with the media. Judge advocates studying acceptable media practices should start with the Office of the Judge Advocate General's Policy Memorandum 06-3, dated 10 January 2006.³⁵ From there, the JA will quickly realize that there are Privacy Act

³⁴ U.S. DEP'T OF ARMY, FIELD MANUAL 3-61.1, PUBLIC AFFAIRS TACTICS, TECHNIQUES AND PROCEDURES para. 2-1 (1 Oct. 2000) [hereinafter FM 3-61.1].

³⁵ Policy Memorandum 06-3, Office of the Judge Advocate General, U.S. Dep't of Army, subject: Relations with News Media—POLICY MEMORANDUM 06-3 (10 Jan. 2006) [hereinafter Policy Memorandum 06-3].

issues,³⁶ Freedom of Information Act issues,³⁷ Rules of Professional Conduct issues,³⁸ and issues with approval authorities for speaking to the press. A mistake in any of these areas could jeopardize the accused's right to a fair trial or have an adverse impact on the commander.³⁹

1. Acceptable Disclosures

*Among the goals of the government in military criminal cases are to secure justice, protect legitimate safety, personal privacy, national security, and fair trial interests, and to ensure that the public is accurately informed about, and confident in, the fair functioning of the military justice system.*⁴⁰

Knowing the disclosure rules will help the OSJA work with the PAO. As Policy Memorandum 06-3 states, the PAO should "answer all news media inquiries," but OSJA must "establish local procedures with the PAO for handling media inquiries concerning legal matters."⁴¹ If the PAO can authoritatively state, for example, "the law says we cannot release that information" versus "we are not going to release that information," the media has less room to attack the PAO and the command. Knowing the rules also helps to build credibility between the legal advisor and the PAO. Instead of saying "no" to the PAO, the legal advisor can explain what can be released and why something cannot be released.⁴²

³⁶ U.S. DEP'T OF ARMY, REG. 340-21, THE ARMY PRIVACY PROGRAM (5 July 1985) [hereinafter AR 340-21]. The Privacy Act of 1974 is codified at 5 U.S.C. § 552a (2012).

³⁷ U.S. DEP'T OF ARMY, REG. 25-55, DEPARTMENT OF THE ARMY FREEDOM OF INFORMATION ACT PROGRAM (1 Nov. 1997).

³⁸ U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS app. B, r. 3.6 (1 May 1992) [hereinafter AR 27-26] ("A lawyer shall not make an extra judicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.").

³⁹ See, e.g., Lind, *supra* note 29.

⁴⁰ *Id.* at 5.

⁴¹ Policy Memorandum 06-3, *supra* note 35.

⁴² Privacy Act of 1974, 5 U.S.C. § 552a(j) (2012) ("The [Army] may promulgate rules . . . to exempt any system of records within the agency from [almost] any part of this section . . . if the system of records is . . . maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage

Moving from TJAG guidance, the Army's Rule of Professional Conduct for Lawyers (RPC) Rule 3.6(b)⁴³ indicates what information may not be released and RPC Rule 3.6(c)⁴⁴ identifies general legal information acceptable for release subject to applicable law and regulation.

For Army personnel, Army Regulation (AR) 340-21 states "[a] Privacy Act request for access to records will be processed also as a Freedom of Information Act [(FOIA)] request."⁴⁵ Pursuant to FOIA, the AR broadly permits disclosure of a servicemember's "[n]ame, rank, date of rank, gross salary, present and past duty assignments, future assignments that are officially established, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, military and civilian educational level, and duty status at any given time."⁴⁶ Army Regulation 340-21, also exempts several types of records from disclosure.⁴⁷

Finally, JAs should look to the PAO's own regulations for limitations. For example, AR 360-1 states, "Public release of information on injured or deceased personnel (including names) will be made as soon as possible, within Privacy Act constraints, after the local casualty assistance officer has confirmed that the next of kin have been officially notified."⁴⁸ Publicly releasing a charge sheet before making casualty notifications can run afoul of this provision.

While it is the PAO's job to know the disclosure rules, the OSJA should also know them.⁴⁹ Knowing the rules is the first step. The next step is working with the PAO to send the right message to the media.

of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.").

⁴³ AR 27-26, *supra* note 38.

⁴⁴ *Id.*

⁴⁵ AR 340-21, *supra* note 36, para. 2-3.

⁴⁶ *Id.* para. 3-3.

⁴⁷ *Id.* para. 5-5 (listing examples such as Inspector General reports, prosecutorial files, and Criminal Investigator Accreditation files).

⁴⁸ U.S. DEP'T OF ARMY, REG. 360-1 THE ARMY PUBLIC AFFAIRS PROGRAM para. 5-20 (25 May 2011).

⁴⁹ The Office of the Staff Judge Advocate (OSJA) can identify an administrative law attorney as the subject matter expert on this area for the Chief of Justice (COJ) to consult with. The administrative law attorney should have a solid working knowledge of criminal law as well.

2. *Methods to Work with Media*⁵⁰

*[Y]our credibility increases when you achieve a reputation for reporting the bad news, as well as the good.*⁵¹

In practice, the OSJA should be intimately involved with the PAO on potential high profile cases. The OSJA can provide assistance on anything from press releases to media access to the courtroom. Training the PAO personnel in advance of a high profile case is one approach to ensure the media receives the proper message.⁵² Another technique is identifying a JA distinct from the trial team who can serve exclusively as the OSJA's media liaison for a particular high profile case.⁵³ With someone knowledgeable explaining the process, either a JA or a PAO representative, the command can better educate the press on the process. Such knowledge will result in a more accurate story and possibly avoid factual errors. As pointed out in the Public Affairs (PA) doctrine, "Army leaders at all levels need to educate media representatives and facilitate their efforts to provide an accurate, balanced and credible presentation of timely information."⁵⁴ The field manual states, "leaders do this by integrating public affairs into the planning process and synchronizing PA operations with other facets of the operation."⁵⁵ The brigade judge advocate and trial counsel have the opportunity to begin synchronizing and educating the PAO immediately; the OSJA does too. This partnership at the brigade and higher levels will help keep the message

accurate and consistent from the bottom to top, wherever the top may be for a particular case.⁵⁶

As a former corps level PA Officer and current member of the Army's Office of the Chief of Public Affairs (OCPA), Major Kathleen Turner advocates developing relationships early and to make sure that the command team, PAO, OSJA, the provost marshal and CID are all synchronized.⁵⁷ For example, if the OSJA knows of an upcoming preferral of charges on a case with potential of becoming high profile, the PAO should be notified in advance and given an opportunity to pre-position products to either respond to queries or to get ahead of the media.⁵⁸ This synchronized effort will enable the commander to see what could be reported and to notify the higher headquarters; it will force the OSJA and PAO to work on what language is proper—what is releasable and what should be released; and it will better facilitate accuracy and commonality of the message.⁵⁹ As a result, the command provides the media with one consistent message rather than several different messages.

The U.S. Army CID PAO will also play a part in media relations. As the agency responsible for felony investigations in the U.S. Army, CID is uniquely situated to collect information from agents, counsel, and PAOs in the field. More importantly, the CID PAO has situational awareness of where national media interests lay on a particular case. The keys for success, according to Mr. Chris Grey, the CID Chief of Public Affairs, are: (1) getting the information to the PAO as quickly as possible; (2) working with the Agents, CID commanders, and Army leadership to unify the

⁵⁰ At one point, the Air Force and the Army published a guide for media relations in high profile cases entitled, *MEDIA RELATIONS IN HIGH VISIBILITY COURT MARTIAL CASES, A PRACTICAL GUIDE* (Feb. 1998 and Nov. 1998 respectively). See Lind, *supra* note 29, at 5–6 ("Both the Air Force and the Army have developed manuals to guide lawyers and other military officials in media relations in high profile cases. These manuals provide media fact sheets on routine procedures in the military justice system. They also provide guidance on releasing information and how to interact effectively with the media. Prior to the publication of these manuals, no service had a singular source to assist attorneys and other military officials involved in criminal trials with media relations issues.") (internal citations omitted).

⁵¹ Taylor, *supra* note 5, at 356.

⁵² E-mail from Colonel Jeffrey C. McKittrick, Staff Judge Advocate, U.S. Forces Korea/Combined Forces Command/United Nations Command/Eighth Army, to author (Jan. 6, 2012, 02:26 EST) [hereinafter McKittrick e-mail] (on file with author).

⁵³ Telephone Interview with Colonel Stuart W. Risch, Staff Judge Advocate, III Corps and Fort Hood (Dec. 19, 2011) [hereinafter Risch Interview]. In the ongoing case of *United States v. Hasan*, Colonel (COL) Risch has employed two Majors to provide factual information regarding proceedings to the media. While the media, for example, had the opportunity to observe the Article 32, Uniform Code of Military Justice (UCMJ), Investigation and provide its own opinions, the judge advocates (JAs) provided a fact neutral statement of what occurred in the day's proceedings. This also enabled the command to create its own record in the event the media misstated something. McKittrick e-mail, *supra* note 52 (also suggesting using a JA if resources permit).

⁵⁴ FM 3-61.1, *supra* note 34, para. 1-2.

⁵⁵ *Id.* para. 1-3.

⁵⁶ McKittrick e-mail, *supra* note 52 (stressing importance of ensuring unity of message between all levels of command and the SJAs importance in that task. He also stressed keeping higher headquarters involved early on the chance higher may want to shape the message at its level.).

⁵⁷ Telephone Interview with Major Kathleen Turner, Pub. Affairs Officer, Office of the Chief of Pub. Affairs, Wash., D.C. (Oct. 18, 2011) [hereinafter Turner Interview]. Major Turner is currently a planner at the Office of the Chief of Public Affairs in Washington, D.C. Her previous assignment was as a Public Affairs Officer for I Corps at Joint Base Lewis-McChord, Washington, where she worked hand in hand with the OSJA through several high profile cases. Recent cases I Corps has managed include *United States v. Davila*; see, e.g., Luke Duecy, *Army Specialist Sentenced to Life in Prison for Double Murder*, KOMO NEWS (Aug. 24, 2010, 5:23 PM PST) <http://www.komonews.com/news/local/101436214.html> (story describing case); *United States v. Russell*; see e.g., Michelle Tan, *Sgt. Charged in Shooting Deaths of 5 at Liberty*, ARMY TIMES (May 12, 2009, 15:13:17 EDT), http://www.armytimes.com/news/2009/05/army_shooting_update3_051209w/ (story describing case); "Kill Team" cases out of 5th Stryker Brigade Combat Team, 2d Infantry Division, Adam Ashton, *Jury Finds Sergeant Guilty on all 'Kill Team' Charges*, THENEWSTRIEBUNE.COM (Nov. 11, 2011, 6:15 AM PST), <http://www.thenewstribune.com/2011/11/10/1900794/jury-finds-sergeant-guilty-on.html>; see also Adam Ashton, *Key Dates for Brigade that was Investigated*, THENEWSTRIEBUNE.COM (Oct. 16, 2011, 7:26 AM PST), <http://www.thenewstribune.com/2011/10/16/1866966/key-dates-for-brigade-that-was.html> (stories describing cases); McKittrick e-mail, *supra* note 52.

⁵⁸ Turner Interview, *supra* note 57.

⁵⁹ McKittrick e-mail, *supra* note 52.

message; and (3) being cognizant of what can and cannot be released.⁶⁰

Given the relative infrequency of high profile cases at a particular installation, the local PAO personnel may not have the experience to know what can and cannot be released. That lack of experience can be compounded if the agents or trial counsel provide unfiltered information to the PAO representative who then releases it to the media assuming that the information was releasable. This mistake can also create inconsistencies across the Army which can draw criticism.⁶¹ There is a balance, Mr. Grey says, between “transparency” and preserving the rights of the accused.⁶² The rights of the accused must come first and must always be considered.⁶³

By working together, the unit PAO, CID PAO, and the OSJA can provide as much detail as is prudent under the circumstances while at the same time protecting the rights of the accused and preserving the case for agents and counsel.⁶⁴ Ideally, the CID PAO, or an experienced unit PAO, can help remove an obstacle for both the agent and counsel by shielding them from the often incessant media queries, thereby allowing the counsel and agent to focus on the mission and possibly avoid making their own mistakes.⁶⁵

While building the relationship with the PAO, JAs should also consider the way information will flow and stress consistency and accuracy with each staff section or organization sending information to higher. The PAO develops and provides regular updates on high profile cases for higher commands and for release to the press. The updates will likely cover charges, procedural posture, recent rulings, court dates, and decisions—all information held by the OSJA. The PAO will (or should) send those updates to the commander first and then to higher through technical

channels for situational awareness before releasing to the public. The OSJA should be doing the same. The OSJA and the PAO do not want to send a conflicting message to the commander and to their higher counterparts. The information from different organizations ultimately consolidates at some level and it must match. Likewise, if the information is known by, and originates from, the commander’s unit, the commander should know about it before his higher headquarters does.⁶⁶ The only way to mitigate a disjointed message is to coordinate. To facilitate coordination, the OSJA can request the PAO for courtesy copy of any updates sent to the commander and higher.

Apart from releasing information to the media, the PAO supports the media logistically. While not directly relevant to the case, the professionalism and the competence in managing the logistics for the press may impact media perceptions. Some areas to consider include courtroom layouts, closed circuit television for overflow rooms, what the media can bring into the overflow rooms, management of physical security, and whether there will be live interviews.⁶⁷ An experienced team is going to know what works best for a particular location and a particular case, but inexperienced PAOs and JAs should be aware of these issues and work on a plan with the appropriate staff sections and the military judge.⁶⁸ Again, the media is going to find out at some point. The question is, does the commander—through his PAO and SJA—want to set the conditions and tell the story the way he wants or does the commander want to let the media fill in the blanks on its own and how it sees fit? The staff has an obligation to help the commander to do the former. If there is a plan in place for working with the media, even if it is restrictive, the command may avoid future criticism by the press.

Part of the III Corps SJA’s plan to work with the media in the aftermath of the Fort Hood shooting was—after complying with TJAG policy⁶⁹—to attend a lunch with the press where he explained, in general terms, the military justice process, the different levels of convening authorities, and the reason why the general court-martial convening authority (GCMCA) was not immediately taking direct action.⁷⁰ This media engagement helped avoid having to immediately train the unit PAO on the military justice

⁶⁰ Telephone Interview with Chris Grey, Chief of Pub. Affairs, U.S. Army Criminal Investigation Command (Nov. 18, 2011) [hereinafter Grey Interview].

⁶¹ If, for example, a national news agency reports on a case at post X and that the Public Affairs Office releases the charge sheet, and the next week that same news agency reports on a case at post Y and that PAO refuses to release the charge sheet, the news agency is going to want answers.

⁶² Grey Interview, *supra* note 60.

⁶³ *Id.*

⁶⁴ *Id.* The Criminal Investigation Command (CID) PAO is available to assist if local units need assistance or guidance. Mr. Grey has been involved in every recent high profile case to some degree or another for the last nine years of service as the CID PAO. *Id.* According to the III Corps SJA, Mr. Grey was on the ground shortly after the shooting at Fort Hood, Texas, and was integral to developing the Public Affairs message necessary to protect the rights of the eventual accused. Risch Interview, *supra* note 53.

⁶⁵ E-mail from Chief Warrant Officer Four William J. Tokash, Jr., Operations Officer 1002d Military Police Battalion (CID), to author (Jan. 19, 2012, 12:17 EST) [hereinafter Tokash e-mail] (Chief Tokash recalls the CID PAO assisting the local PAO with understanding what parts of the investigation could be released. This enabled the agents to focus exclusively on the case rather than take the time to explain the rules to the PAO.).

⁶⁶ Risch Interview, *supra* note 53.

⁶⁷ Turner Interview, *supra* note 57; see also MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 806 (2012) [hereinafter MCM] (permitting public trials and mechanics for access).

⁶⁸ McKittrick e-mail, *supra* note 52. Along with the PAO, media access will necessarily involve, among others, the military judge for approval of media access, assistance from the communications section to wire closed circuit television, the intelligence section to assess the level of force protection required, the supply section to procure any required equipment and supplies, the unit comptroller to find the money, and the provost marshal to actually run the security.

⁶⁹ Policy Memorandum 06-3, *supra* note 35.

⁷⁰ UCMJ art. 22 (2012).

system, and it helped to illustrate the fairness of the system by explaining some of its intricacies.⁷¹ Additionally, because the government is strictly limited to providing facts, the OSJA referred the media to the National Institute of Military Justice,⁷² a nonprofit organization familiar with military justice system, if the media sought factual and neutral analysis or comment regarding the case.⁷³ Providing the media with an outlet familiar with military justice for editorial comments and information relieved some of the pressure for information from the command.⁷⁴

To assess public interest and the effects of PAO efforts in Korea, the Eighth Army's PAO scans internet chat rooms, blogs, and local media outlets.⁷⁵ If press releases are creating more interest or confusion, the PAO can adjust the message accordingly. This proactive assessment and engagement helps the PAO and the command to either avoid creating a high profile event out of a case that would not otherwise receive media attention or to respond properly to a case which is gaining public interest.

The PAO has excellent regulations, manuals, and pamphlets providing solid guidance for working with the media. What the PAO lacks is legal experience. By preparing fact sheets on the basics of military justice ahead of time, by helping the PAO draft press releases, and by integrating with the PAO personnel before a high profile case, the OSJA will help the PAO best serve the commander and best assist in getting timely and accurate facts in front of the media.

If the OSJA or command insists on withholding information from the press, it is possible a small issue can become a big issue, thereby causing the commander to redirect his or her focus from something critical (such as the mission) to something that could have been easily handled with a simple press release to the local media.⁷⁶ As Professor Taylor indicates, giving the good news as well as the bad will help those farther from the fight feel confident in the direction the case is going.⁷⁷

Understanding the rules pertaining to releasing information and how the PAO and the media fit into the military justice process can help SJAs keep the trial counsel focused in the right area and help the commander properly inform the media. By taking these actions, the command opens the door for the public, beginning the process of building public's confidence in the military justice system. Building confidence also requires adjustments to the systems behind the door.

B. Managing Trial Counsel

*The Army's military justice (MJ) system suffers from a lack of experienced practitioners.*⁷⁸

*Inadequate counsel is a serious threat to the fairness and legitimacy of a capital courts-martial, made worse at court-martial by the fact that so few military lawyers have experience in defending capital cases.*⁷⁹

Staff judge advocates and COJs should expect their new trial counsel (TC) to know little to nothing about military justice practice generally and high profile cases specifically. From that position, a COJ or a senior trial counsel (STC) should focus on training the fundamentals. Simultaneously, from that position, the OSJA leadership should also plan to leverage outside talent to handle high profile cases. Even if some of the TC are military justice experts, others will be new. To combat the criticism surrounding the TC's competence, the OSJA leadership must identify those experienced practitioners and help the less experienced TC achieve the requisite competency. While this is an area frequently under attack, the criticism may be misplaced given how high profile cases have been handled in the past and are currently managed. Nevertheless, the successes are not publicized as well as the criticisms. The following statistics illustrates the systemic issues faced by the Judge Advocate General's (JAG) Corps.

To assess the experience level of military justice practitioners, in 2009, Major (MAJ) Derrick Grace conducted a survey, receiving 107 responses.⁸⁰ Relevant to what COJs and SJAs will likely encounter, the survey revealed that "54% of TC tried less than ten total cases; 78% prosecuted less than five contested courts-martial."⁸¹ Also relevant is the experience level of the defense counsel (DC). As Major Grace found, "[43%] of [DC] responding to the

⁷¹ Risch Interview, *supra* note 53.

⁷² See NAT'L INST. OF MIL. JUST., <http://nimj.org/nimjblog/> (last visited Oct. 17, 2012) ("The National Institute of Military Justice (NIMJ) is a District of Columbia non-profit corporation organized in 1991 to advance the fair administration of military justice and foster improved public understanding of the military justice system. The NIMJ is not a government agency. NIMJ's boards of directors and advisers include law professors, private practitioners, and other experts.").

⁷³ Risch Interview, *supra* note 53.

⁷⁴ *Id.*

⁷⁵ McKittrick e-mail, *supra* note 52.

⁷⁶ *Id.*; Grey Interview, *supra* note 60.

⁷⁷ Taylor, *supra* note 5, at 356; McKittrick e-mail, *supra* note 52.

⁷⁸ Major Derrick W. Grace, *Sharpening the Quill and Sword: Maximizing Experience in Military Justice*, ARMY LAW., Dec. 2010, at 24.

⁷⁹ COX COMMISSION REPORT, *supra* note 27, at 10.

⁸⁰ Grace, *supra* note 78, at 24 n.3.

⁸¹ *Id.* at 25.

survey have less than one year of [military justice] experience; 39% have tried fewer than five total courts-martial; and 62% have less than five contested cases (81% have less than 10).⁸² This lack of experience is not a new phenomenon. In 1994, then MAJ Lawrence Morris, in his primer on military justice, premised his paper by asserting “[a 69%] drop in courts-martial [between 1980 and 1992], accompanied by an [11%] increase in the size of the JAG Corps, translates into a Corps with markedly less trial experience.”⁸³

If the SJA and COJ know the experience level of available TC, they can prepare for high profile cases accordingly. And, as is often the case, the high profile case will strike during the unending process of educating TC and while the office is fully engaged in other important matters.⁸⁴

Chiefs of justice do not always get to pick their lineup for trying cases. Generally, the unit’s TC tries the unit’s cases. But, the dynamics can change in high profile cases. When needed, the JAG Corps does put together specialized teams to try cases.⁸⁵ The pending court-martial of MAJ Hasan is but one case where this is evident.⁸⁶ In *United States v. Hasan*, the III Corps SJA requested two counsel inorganic to III Corps from the Personnel Plans and Training Office (PP&TO).⁸⁷ The trial team was not constructed from “above” but, upon request, PP&TO made the experienced counsel available for the SJA to detail.⁸⁸ Similarly, the SJA detailed his COJ to the case rather than deploy him with the rest of the OSJA.⁸⁹

⁸² *Id.* at 26.

⁸³ Lieutenant Colonel Lawrence J. Morris, *Keystones of the Military Justice System: A Primer for Chiefs of Justice*, ARMY LAW., Oct. 1994, at 15 (addressing military justice practice in general from panel selection to advising commanders).

⁸⁴ Chiefs of Justice have a wealth of resources available to train trial counsel. In addition to traditional school house courses and the Trial Counsel Assistance Program, the Criminal Law Department of The Judge Advocate General’s Legal Center and School has a Facebook account at <https://www.facebook.com/#!/pages/Criminal-Law-Department-Army-JAG-School/215084825230386>, a Twitter feed at www.twitter.com/#tjaglcsad and access to advocacy training video through Stetson University for COJs to continue training advocates in the field.

⁸⁵ Interview with Colonel Michael Mulligan, Chief, Gov’t Appellate Div., U.S. Army Legal Servs. Agency, in Fort Belvoir, Va. (Dec. 19, 2011) [hereinafter Mulligan Interview] (revealing that XVIII Airborne Corps built a team to prosecute the case of *United States v. Akbar* and later *United States v. Hennis* and that the III Corps built a team to try the *Abu Graib* cases and currently the case of *United States v. Hasan*).

⁸⁶ CBS & Associated Press, *Lead Prosecutor Named in Fort Hood Case*, CBSNEWS.COM (Dec. 12, 2009, 03:13 PM), <http://www.cbsnews.com/stories/2009/12/12/national/main5972078.shtml>.

⁸⁷ Risch Interview, *supra* note 53. Prior to being detailed to the case, COL Mulligan was deployed to Iraq and Lieutenant Colonel Steven Henricks was the Deputy Staff Judge Advocate at Fort Sill, Oklahoma.

⁸⁸ *Id.*; Mulligan Interview, *supra* note 85.

⁸⁹ Risch Interview, *supra* note 53.

By calling PP&TO, the SJA had the opportunity to select TC from a larger pool. More importantly, the SJA recognized the need for experienced DC to represent the accused. With that in mind, the SJA contacted the chief of the Army’s Trial Defense Service and offered his support to help the defense meet its personnel and logistical needs.⁹⁰

Building trial teams to prosecute and defend the toughest cases does not address the criticism surrounding the lack of experience in the TC generally, but it does mitigate arguments that these trial teams are inexperienced or unable. The real issue is ensuring the JAG Corps maintains and improves opportunities for junior counsel to obtain the training and exposure to step into the shoes of the current experts.⁹¹

The III Corps SJA ensures company grade JAG officers are exposed to the handling of the case to develop their broad base of experience.⁹² The SJA also requires these officers to observe hearings and become familiar with the case. While these captains may not argue a motion or call any witnesses, they are exposed to the process and complexities of a high profile case.⁹³

Other OSJAs find success in pairing experienced counsel with more junior counsel.⁹⁴ Similar to how the special victim prosecutors work with unit counsel to try sexual assault cases, the more experienced counsel can coach, train and mentor the junior counsel as they work on the case together.⁹⁵ The Trial Counsel Assistance Program (TCAP)⁹⁶ is another option for the OSJA when the unit has a high profile case not necessarily requiring a full time team but requiring specialized skills.

The JAG Corps may not have enough experienced counsel with exposure to high profile cases, but it does have incredibly capable counsel. The pressing challenge is developing systems which enable supervisors to provide junior counsel with the requisite skills and find avenues to

⁹⁰ *Id.*; Interview with Colonel Mark Cremin, Chief, U.S. Army Trial Defense Service at Fort Belvoir, Va. (Feb. 3, 2012) [hereinafter Cremin Interview].

⁹¹ McKittrick e-mail, *supra* note 52; Risch Interview, *supra* note 53; e-mail from Colonel Walter M. Hudson, Legal Advisor, Int’l Security Assistance Force Joint Command, to author (Dec. 16, 2011, 05:51 EST) [hereinafter Hudson e-mail] (stating that all in favor of using organic resources when possible to ensure junior counsels have the opportunity to gain experience).

⁹² Risch Interview, *supra* note 53.

⁹³ *Id.*

⁹⁴ Hudson e-mail, *supra* note 91.

⁹⁵ Interview with Major Larry Babin & Major Dan Kicza, Students, 60th Graduate Course, The Judge Advocate Gen.’s Legal Ctr. & Sch., in Charlottesville, Va. (Jan. 11, 2012) (Both served as Special Victim Prosecutors and emphasized the importance of pushing junior counsel to learn how to prosecute cases with their support and guidance.). *See also* Policy Memorandum 09-3, *supra* note 32.

⁹⁶ *See infra* Part. IV.C.

expose counsel to complex and high profile cases. Finally, the OSJA must put the right counsel on the cases.

C. Victim/Witness Responsibilities

*Without the cooperation of victims and witnesses, the system would cease to function effectively.*⁹⁷

The interaction with victims and witnesses is one of the most sensitive areas of a military justice practitioner's craft. An uncooperative witness can be worse than no witness at all. A reticent victim could jeopardize the case completely.⁹⁸ Moreover, the practitioner's job becomes much more difficult when a disgruntled victim or witness elevates the matter to higher headquarters or goes to the media. This area of military justice practice is a potential weak link that can quickly attract media attention. A strong victim witness program and casualty notification apparatus will mitigate possible negative media attention and public criticism.

In most cases, the victim is easily identifiable—the one reporting the offense. In death cases, it can also include the deceased's spouse, offspring, or parent. In many high profile cases, however, the victim pool can expand beyond what the Army recognizes as primary and secondary next of kin.⁹⁹ Accordingly, the COJ must look to AR 27-10 for a complete definition of "victim."¹⁰⁰ With more victims involved, they are likely to be geographically, socioeconomically, intellectually, and culturally diverse and may require varying degrees of assistance. The victim/witness liaison (VWL) must not only identify the victims but must also provide necessary services with sensitive to such diversity.¹⁰¹ In addition, in death cases, the VWL will frequently not be the first government representative the victim or witness encounters. Accordingly, the TC should know the unit's

⁹⁷ U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE para. 17-2 (2 Oct. 2011) [hereinafter AR 27-10].

⁹⁸ Sexual assault cases are the primary area where this becomes an issue. If the victim is not committed to reliving the trauma at an Article 32, UCMJ, investigation and/or at a court-martial, the government may be unable to prove its case. The victim/witness liaison (VWL) can assist in these cases by nurturing the victim and providing appropriate support.

⁹⁹ U. S. Dep't of Def., DD Form 93, Record of Emergency Data (Jan. 2008), see also U.S. DEP'T OF ARMY, REG. 600-8-1, ARMY CASUALTY PROGRAM paras. 5-1, 5-3, and 5-4 (30 Apr. 2007) [hereinafter AR 600-8-1] (explaining line of succession and how to identify and notify primary and secondary next of kin (NOK)).

¹⁰⁰ AR 27-10, *supra* note 97, para. 17-5a (defining "victim" as "[a] person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DOD components").

¹⁰¹ *Id.* para. 17-7c.3. One source of accurate information is the casualty assistance office. Because the CAO will be required to make notification with the next of kin, the CAO will have verified contact information for the VWL.

casualty notification process and its main actors, understand their roles, and know when to meaningfully insert the VWL.

1. Identify or Develop the Victim/Witness Liaison Program

*The role of the VWL is one of facilitator and coordinator. The VWL will act as a primary point of contact through which victims and witnesses may obtain information and assistance in securing valuable victim/witness services.*¹⁰²

Many, if not most, installations have outstanding Victim/Witness Assistance Programs. Others may need improvement, and all may find their capabilities insufficient to handle a major high profile case with multiple victims and witnesses.¹⁰³ Staff judge advocate offices need to assess the quality of their programs before an imminent need arises. This is an area the OSJA can control through training the existing VWL(s) and planning for contingencies.¹⁰⁴ Chapter 17 of AR 27-10 details what each general court-martial jurisdiction should have for VWL support and what the OSJA must do to support that mission.¹⁰⁵

As a starting point, the incoming COJ or SJA can review the VWLs' written appointment orders, assess all VWLs' level of training and experience, and review the nature of their duties.¹⁰⁶ If the VWLs have not been trained, the Office of The Judge Advocate General (OTJAG) Criminal Law Division (CLD) provides formal training for VWLs.¹⁰⁷ In addition, the SJA should review the existing relationships with the federal, state, and local agencies with respect to victim/witness liaison and cultivate necessary interagency relationships where they are lacking through interagency agreements.¹⁰⁸ If deploying, it is important to train deploying Soldiers to serve as VWLs. If already

¹⁰² *Id.* para. 17-7c.

¹⁰³ Mulligan Interview, *supra* note 85 (stating that the Army VWL system was not equipped to handle the volume of victims and witnesses in the Fort Hood shooting); see also Telephone Interview with Lieutenant Colonel Steve Henricks, Trial Counsel, Fort Hood, Tex. (Jan. 6, 2012) [hereinafter Henricks Interview]; see also Telephone Interview with Mr. Charles Cosgrove, Chief, Programs Branch, Dep't of the Army, Office of The Judge Advocate Gen. (Jan. 6, 2012) [hereinafter Cosgrove Interview].

¹⁰⁴ Cosgrove Interview, *supra* note 103 (stating many victim witness liaisons perform VWL tasks as additional duties meaning the VWLs focus is not solely dedicated to VWL duties. In addition, at present there is no instruction on interactions with the casualty assistance office or on how to manage death cases).

¹⁰⁵ AR 27-10, *supra* note 97, ch. 17.

¹⁰⁶ *Id.* para. 17-7a. Victim witness liaison duties are frequently additional duties performed along with the employees primary mission. See also Cosgrove Interview, *supra* note 103.

¹⁰⁷ AR 27-10, *supra* note 97, para. 17-7a.-b.

¹⁰⁸ *Id.* para. 17-9a.

deployed and without a VWL, OTJAG CLD can provide the OSJA with a list of all VWLs from nearby GCMCAs.¹⁰⁹ In a high profile case, it may be necessary to reach out to OTJAG CLD even if the GCMCA has a robust VWL program.¹¹⁰ In other cases, the OSJA may need to reach outside the Army to find the necessary support.

In the case of the Fort Hood shooting, the trial team, with the Department of Justice's assistance, obtained a volunteer to manage the case's victim witness needs.¹¹¹ By working with professional victim services specialists from the federal, state, or local level, the OSJA can better address the victims' needs: each U.S. Attorney has at least one victim/witness specialist; the FBI has highly trained crisis intervention teams; and local prosecutors, along with the state's attorney general's office, may also have highly trained experts available to assist.¹¹² If the VWL is not already familiar with the federal, state, or local victim/witness services, the OSJA can facilitate VWL's access to these services and resources through key leader engagements with these agencies.¹¹³ At a minimum, the OSJA and VWLs can learn about useful techniques and resources available from outside agencies.

In addition to encouraging the VWL to identify available resources outside of the Army, the OSJA should involve the VWL in the pending cases early.¹¹⁴ An informed

VWL can keep families up to date and prepared for potential press coverage and prevent breaks in support between the various agencies.

Along with clear lines of communication between trial counsel and VWLs for every case, death cases require the VWL to coordinate with the multiple organizations providing various services to the victims. The organizations responsible for providing next of kin (NOK) services are likely to make contact before the VWL, so the OSJA and VWL must understand how the notification process works, the services the victim/witness will receive, and who to contact to integrate into that process. If the victim/witness transition from agency to agency goes smoothly, the victim's experience will be more positive and perhaps avoid critical media involvement highlighting avoidable mistakes.

2. Next of Kin Notifications

*The Army's requirement to provide timely and accurate information [regarding the death of a service member] is often at odds with synchronizing the diverse set of organizations working worldwide under a high operational tempo.*¹¹⁵

Victim witness liaisons will have to understand the Army casualty notification process to effectively assist victims in death cases. By regulation, within sixteen hours of discovering a death, a casualty notification officer (CNO) makes the formal notification to the next of kin.¹¹⁶ The CNO then notifies the primary next of kin (PNOK) that a casualty assistance officer (CAO) will "contact them as soon as possible to provide assistance."¹¹⁷ The Casualty Assistance Center (CAC) "having responsibility for the geographical area in which the PNOK or [person authorized to direct disposition] resides will appoint a CAO from trained and certified active duty personnel."¹¹⁸ The CAO will "[c]all the NOK within 4 hours (but not between 10 p.m. and 6 a.m.) following initial notification to schedule an appointment to visit the PNOK."¹¹⁹ The CAO has a host of responsibilities from "[d]etermining the immediate needs or problems"¹²⁰ to helping the family obtain a "copy of any fatality or

¹⁰⁹ *Id.* para. 17-7a.

¹¹⁰ *Id.* para. 17-8b.

¹¹¹ Risch Interview, *supra* note 53; Mulligan Interview, *supra* note 85. See also Telephone Interview with Mrs. Mary Jo Speaker, Victim Witness Specialist, U.S. Attorney's Office, E. Dist. Okla. (Jan. 10, 2012) [hereinafter Speaker Interview]. Based on prior experience with a U.S. Attorney Victim Witness Specialist, COL Mulligan knew to reach out to the Department of Justice Victim Witness Specialists again. He was directed to Mrs. Speaker with whom he had also worked with many years earlier. Upon a request from the SJA, Mrs. Speaker, with the consent of her supervisor, volunteered to provide her nearly thirty years of victim witness experience to the Fort Hood shooting case.

¹¹² Speaker Interview, *supra* note 111. According to Mrs. Speaker, these federal, state, and local offices are trained on how to open family assistance centers, that can serve as a one-stop location to receive information about the case, information about available resources, and any necessary care. The Army VWL program is not equipped to perform these functions. As a result, victims suffer. Mrs. Speaker also noted that victims have far more rights in the federal system under the Crime Victims Act of 2004, 18 U.S.C. § 3771(2011). See also OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL GUIDELINES ON VICTIM AND WITNESS ASSISTANCE (2011 ed., rev. May 2012), available at http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf.

¹¹³ One excellent resource is the Department of Justice's Office for Victims of Crime. Dep't of Justice, Office for Victims of Crime, <http://www.ojp.usdoj.gov/ovc/> (last visited Jan. 11, 2012). The FBI also has a website dedicated to Victim Assistance. Victim Assistance, FED. BUREAU OF INVESTIGATION, http://www.fbi.gov/stats-services/victim_assistance (last visited Jan. 11, 2012).

¹¹⁴ Telephone Interview with Mrs. Ginny Clausen, Victim Witness Liaison, Joint Base Lewis McChord, Wash. (Jan. 5, 2012) [hereinafter Clausen Interview] (Mrs. Clausen stressed the importance of keeping the VWL informed early and often because the families call the VWL and the VWL does not want to give incorrect information. Moreover, the VWL can help

soften any bad press that may come from actions taken by counsel. In her opinion, communication between VWL and trial counsel would help the VWL keep the victims informed and avoid much of the anxiety.).

¹¹⁵ SUICIDE REPORT, *supra* note 2, at 195.

¹¹⁶ AR 600-8-1, *supra* note 99, para. 3-17 ("The [initial] casualty report is submitted . . . within 12 hours of the incident."), para. 5-2 ("[M]ake notification to the NOK within 4 hours of receipt of the [initial] casualty report . . .").

¹¹⁷ *Id.* para. 5-2h.

¹¹⁸ *Id.* para. 6-3a.

¹¹⁹ *Id.* para. 6-7a(2).

¹²⁰ *Id.* para. 6-7a(5).

investigative report pertaining to the death of the Soldier.”¹²¹ In practice, the CAO will tailor his level of involvement to the NOK’s needs.

The VWL, or members of the OSJA, frequently become involved with the victim/witness through the CAO who can prove invaluable to the prosecution team in assessing the victim/witness’s desire or willingness to discuss relevant issues.¹²² Knowing some background about the victim’s notification experience will help the VWL and prosecution team approach the victim/witness.¹²³ For example, the CAO is going to have information on the victim’s personality and state of mind. If the TC and VWL know this information in advance, they can better tailor their approach to the victim and start the relationship in the most positive manner.

Reaching out to CAOs before high profile cases through briefings at CAO training or periodic interaction can help CAOs understand the importance of access to victims.¹²⁴ If each OSJA consistently trained the CAOs at their respective installations, conceptually all CAOs would understand why and how to involve VWLs and TC in the process regardless of where the crime occurred or which CAO was closest to the victim.¹²⁵

If the CAO does not introduce the VWL to the victim, the next most likely introduction will occur after CID appoints a casualty liaison officer (CLO).¹²⁶ The CID battalion commander in charge of the investigating or reporting field element will appoint the CLO.¹²⁷ The CLO is generally the special agent in charge (SAC) or the

detachment commander at the location of the incident.¹²⁸ The CLO will “contact the CAO within five calendar days of the date CID received notification of the death in order to establish initial contact with the NOK.”¹²⁹ This coordination assists in maintaining consistency of message between the “government” and the victim/witness and reducing stresses on the victim/witness. Once coordinated, the CLO is responsible for “briefing the NOK on the progress and result of [the] death investigation[] . . . and procedures to follow to obtain the final [report of investigation] under the [Freedom of Information Act].”¹³⁰

In at least one instance, the CLO-NOK relationship turned an already emotionally charged case into a high profile event. In January of 2008, Staff Sergeant Ryan Maseth was “electrocuted while taking a shower at the Radwaniyah Palace Complex in Iraq.”¹³¹ The CLO in that case sent an e-mail to the deceased’s mother indicating that the cause of death was “negligent homicide” and that KBR was at fault.¹³² While the ensuing news article cited a miscommunication,¹³³ this episode illustrates how one inartfully crafted e-mail to a NOK can trigger massive political and media attention.¹³⁴ Since that time, CID has amended its internal regulation—CID Regulation 195-1—to read, “All CID responses (e.g., periodic case updates, answers to specific questions, etc.) to the NOK via e-mail must be forwarded through CID channels (battalion) and approved by the group commander following a legal sufficiency review by the Group Judge Advocate.”¹³⁵

In criminal death investigations, the CLO’s mission officially continues until “the investigation is finalized and forwarded to the supporting legal office for disposition of the offender.”¹³⁶ Only then will “the CLO [relinquish] all responsibilities for that particular investigation to the legal

¹²¹ *Id.* para. 6-7a(19).

¹²² Clausen Interview, *supra* note 114 (The VWL at JBLM developed a relationship with the casualty assistance officer (CAO) by chance and indicated she had never been trained or advised to develop that relationship. She ranks her relationship with the CAO as the most important key to success when dealing with high profile death cases.).

¹²³ Geoff Ziezulewicz, *Military’s Casualty Notification System Often Frustratingly Uneven for Families*, STARS & STRIPES, Aug. 5, 2010, <http://www.stripes.com/military-s-casualty-notification-system-often-frustratingly-uneven-for-families-1.113548> (explaining inconsistencies in casualty notification process).

¹²⁴ The Legal Assistance Office can, if it is not already, begin teaching portions of the CAO course on post. In addition, the COJ and Chief of Administrative Law can sit in on the CAO training to find out what information is being delivered.

¹²⁵ Henricks Interview, *supra* note 103 (In one instance during LTC(P) Henricks’ victim briefing process, a CAO filed a complaint regarding contact between the trial counsel and the victim and demanded all communication be cleared through the CAO.)

¹²⁶ ALCID Memorandum 011-11, U.S. Army Criminal Investigation Command, U.S. Dep’t of the Army, subject: ALCID Memorandum 011-11, Casualty Liaison Officer para. 16-8a (14 Apr. 2011) [hereinafter ALCID 011-11].

¹²⁷ *Id.*

¹²⁸ *Id.* para. 16-8b. *See also id.* para. 16-8k (In some cases there may be a need for a casualty liaison officer (CLO) elsewhere as in the case where the incident occurred overseas and the NOK is located in the United States.).

¹²⁹ *Id.* para. 16-8i.

¹³⁰ *Id.* para. 16-8e.

¹³¹ Press Release, Senator Robert P. Casey Jr., Casey Presses Pentagon on Maseth Electrocution Investigation (June 22, 2009), available at <http://casey.senate.gov/newsroom/press/release/?id=ddd5e94d-28bf-45bd-8cb5-8b57711f2f3b>.

¹³² Jeff Schogol, *CID Disputes Death Finding*, STARS & STRIPES, Jan. 24, 2009, <http://www.stripes.com/news/cid-disputes-death-finding-1.87475>.

¹³³ *Id.*

¹³⁴ Lisa M. Novak, *Army Continues Criminal Probes into Iraq Electrocutions*, STARS & STRIPES, Oct. 4, 2009, <http://www.stripes.com/news/army-continues-criminal-probes-into-iraq-electrocutions-1.95354> (explaining how Maseth electrocution led to deeper investigation into electrocution cases).

¹³⁵ ALCID 011-11, *supra* note 126, para. 16-8h(2).

¹³⁶ *Id.* para. 16-8q.

office's [VWL]."¹³⁷ This, however, does not contemplate a criminal death investigation remaining open for an extended period of time or the need for the VWL to begin coordination before the end of the case.¹³⁸ Practically, the CLO should work with the CAO and involve the VWL at the earliest opportunity. To ensure proper communication, the TC should inquire with the servicing SAC to identify the CLO and determine if the CLO has made contact. If the CLO has made contact, the TC should encourage the CLO to coordinate with the VWL as soon as possible.

Adding to the list of organizations required to contact victims, the Armed Forces Medical Examiner (AFME) is statutorily required to notify the decedent's family of the forensic pathology investigation as soon as practicable, and promptly report the results to the official responsible for the death investigation.¹³⁹

Finally, the victim's unit should maintain contact with the family throughout the entire process. This is generally done by immediate supervisors, commanders, and the unit's family support group. The VWL and TC can reach out to the unit, just as they do with the CAO and CLO, to assess the victim's state of mind and also to ensure the victim's well being.

As the 2010 *Army Health Promotion Risk Reduction Suicide Prevention Report* concluded, "A revision to the current next-of-kin notification process is required to effectively coordinate and synchronize communications among reporting organizations."¹⁴⁰ Each representative has a vital role in providing important, but different, information and services to the victim/family member—information and services the family member is entitled to. But, with each representative comes a different personality and different agenda. Judge advocates must understand this dynamic in order to effectively interact with the various representatives and set the right tone with the victim/witness. They must review the current OSJA VWL program and then assess how the installation or command manages notifications. Finally, the OSJA must consider how to handle a case that will overwhelm the organic capacity by reaching out to federal, state, and local victim assistance resources in advance of the need. If the victim and witnesses are informed and educated on the state of the case, they may be less inclined to go to the press and complain—right or wrong—about government neglect.

¹³⁷ *Id.* See also U.S. DEP'T OF ARMY, REG. 190-45, LAW ENFORCEMENT REPORTING para. 6-3a(3) (30 Mar. 2007) (explaining law enforcement officials "must ensure individuals are notified about . . . [p]rocedures to contact the staff judge advocate victim/witness liaison office for additional assistance.").

¹³⁸ Tokash e-mail, *supra* note 65 (recalling the OSJA and CID agreeing to allow the OSJA to handle NOK briefings instead of having the CLO conduct them).

¹³⁹ 10 U.S.C. § 1471(e)(3), (e)(5) (2012).

¹⁴⁰ SUICIDE REPORT *supra* note 2, at 197.

IV. Identifying Assets Available to Address Deficiencies

*Th[e] intense focus on military justice places great demands on judge advocates . . . but with proper training, mentorship, and access to superior resources, JAs can excel in this challenging environment.*¹⁴¹

Knowing where to turn will be the single most challenging aspect of managing a high profile case. Everything is happening all at once and these types of cases are not part of daily operations. Once identified, fully leveraging every relevant asset is critical. The friction comes when the case requires other agencies that are not under the OSJA's control to commit time and effort to the case. Thankfully, outside agencies will readily assist when approached with the right attitude and proper request. If that does not work, the SJA should request support from the commander and his chief of staff who can help motivate the staff or elevate the request for assistance. Chiefs of justice should not be afraid to use the resources identified below and get them involved early.

The OSJA cannot and should not do it all, but it must know where to turn. The remainder of this article addresses the resources available to address the three deficiencies discussed above, as well as ways to leverage those assets based on recent experiences in the field. Finally, it will propose suggestions for managing these cases.

A. Cooperating with Law Enforcement

Cooperating with law enforcement on a daily basis is the most effective way to build the right kind of relationship with a necessary—and indispensable—partner in justice. If counsel and law enforcement have a working relationship before serious cases arise, they can better respond to the immediate situation and potentially avoid missteps and subsequent media criticism. OSJAs must begin developing relationships with military and civilian law enforcement and prosecutors before high profile cases occur.¹⁴²

With a positive working relationship as the foundation, the next step is early engagement with law enforcement upon notification of a high profile case.¹⁴³ On the day of the

¹⁴¹ Colonel Charles N. Pede, *Military Justice, The Judge Advocate and The 21st Century*, ARMY LAW., Apr. 2011, at 32.

¹⁴² Federal, state, and local law enforcement frequently participate in serious cases that become high profile in addition to military law enforcement. Reaching out to those agencies at the outset of an assignment will avoid awkward introductions at the crime scene.

¹⁴³ Tokash e-mail, *supra* note 65 ("It was very beneficial to be able to immediately contact or coordinate with other agencies/departments with which we had worked in the past. At the same time, agencies/departments with which we had minimal contact previously were very responsive and didn't hesitate to contribute to the overall effort.").

Fort Hood shooting, 5 November 2009, the SJA recalls the SAC calling the COJ as the incident was occurring.¹⁴⁴ Special Agent Donald Hardison recalls seeing the III Corps COJ in the CID office working through the investigation almost immediately after the incident.¹⁴⁵

Strong working relationships between CID and the OSJA were likewise critical in 2009, when five service members were gunned down at the combat stress clinic at Camp Liberty, Iraq.¹⁴⁶ The accused's servicing JA was not located on the same installation as the incident¹⁴⁷ but within two days she was able to secure an office in the CID detachment and begin assisting the investigators.¹⁴⁸

The TC should provide an objective perspective to case agents from the outset. In over twenty-five years of investigating cases and working with TC, the common theme for success, in Mr. Hardison's experience, is the "partnership between the case agent and the TC well before trial."¹⁴⁹ He acknowledged, however, what most practitioners already know—"it takes a crisis to do what should have been done with every case."¹⁵⁰

Having a TC on the scene or in the CID office enables the counsel to provide guidance and suggestions.¹⁵¹ Just as a

¹⁴⁴ Risch Interview, *supra* note 53.

¹⁴⁵ Telephone Interview with Special Agent Donald Hardison, Assistant Operations Officer/Supervisory Criminal Investigator, 11th Military Police Battalion, Fort Hood, Tex. (Oct. 26, 2011) [hereinafter Hardison Interview] (Special Agent Hardison has twenty-five years of investigative experience. He joined CID in 1976, graduating from the "CID Basic Course" in 1977. He retired as a chief warrant officer five as the Battalion Operations Chief at the 11th Military Police Battalion located at Fort Hood, Texas. He came back onto Civilian Federal Service as the Assistant Operations Officer/Supervisory Criminal Investigator in 2005.); Risch Interview, *supra* note 53 (noting upon learning of the incident he sent the COJ and a team of trial counsel to the CID office to begin coordination efforts, draft warrants and search authorizations, and manage other legal issues).

¹⁴⁶ Timothy Williams, *U.S. Soldier Kills 5 of His Comrades in Iraq*, N.Y. TIMES, May 11, 2009, <http://www.nytimes.com/2009/05/12/world/middle-east/12iraq.html> (reporting on incident).

¹⁴⁷ The trial counsel, Captain Lisa Corcoran, was headquartered with the 555th Engineer Brigade at Joint Base Balad, Iraq. The incident took place at Camp Liberty, Iraq.

¹⁴⁸ This assertion is based on the author's recent professional experience as the Chief of Military Justice for I Corps and Multi-National Corps-Iraq from March 2009 to January 2010 [hereinafter Professional Experiences].

¹⁴⁹ Hardison Interview, *supra* note 145.

¹⁵⁰ *Id.*

¹⁵¹ Tokash e-mail, *supra* note 65 ("[The COJ and I] had developed a close working relationship and I had kept him informed of several other incidents in the past with positive results. Not only would [the COJ] keep the SJA informed, but he would send Trial Counsel's to advise at the onset of those other investigations if needed. I am a firm believer that if CID and Trial Counsels work closely together from the onset of an investigation it saves time and creates a better product for commanders."). In the Combat Stress Clinic Shooting case, the trial counsel also reviewed statements as they were generated and provided feedback on the agents' investigative plan. Without the trial counsel's persistence in requesting additional investigation, it is likely the agents would have closed the case prematurely.

TC may take certain things for granted and make a logical leap when questioning a witness or when making a closing argument, agents may overlook collecting a certain piece of evidence because what happened is "obvious" to them.

Once involved with the agents, counsel have a unique ability to serve as force multipliers in high profile investigations by removing obstacles for case agents. In the aftermath of the Fort Hood shooting, jurisdiction was initially unsettled between the Department of Justice and the Army but the investigation continued with participation from CID, the FBI, the Killeen Police Department, and other local law enforcement entities.¹⁵² With the size and nature of the crime scene, halting the investigation until the dust settled was inconceivable. At that moment, it was critical for the leadership to provide clear and unequivocal guidance to the case agents.¹⁵³

Trial counsel must help agents maintain the integrity of the investigation.¹⁵⁴ From the law enforcement perspective, Hardison emphasized the importance of the OSJA reviewing the press releases before public release, for example.¹⁵⁵ Prematurely releasing information taints the witnesses and makes the agent's job much more challenging. By properly vetting the press releases, the OSJA can provide the agents with some coverage and help preserve the evidence—

¹⁵² In light of the possible but eventually unfounded terrorist conspiracy aspect of the Fort Hood shootings, CID took the role of lead investigative agency, with the FBI taking a supporting role to CID. See U.S. DEP'T OF DEF., INSTR. 5525.07, IMPLEMENTATION OF THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CERTAIN CRIMES (18 June 2007) (jurisdictional question is made locally whenever possible). See also AR 27-10, *supra* note 97, ch. 2-1 to 2-2 (referencing U.S. DEP'T OF DEF., DIR. 5525.7, IMPLEMENTATION OF THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CERTAIN CRIMES (22 Jan. 1985) (rescinded by Instruction cited above).

¹⁵³ Hardison Interview, *supra* note 145. According to Hardison, the OSJA's assistance in writing search authorizations while the Assistant U.S. Attorney (AUSA) at the Waco Field Office worked with the FBI to obtain search warrants was very helpful. While a search authorization pursuant to Military Rule of Evidence (MRE) 315 may be acceptable to a military judge, the AUSA may have a different format or requirements in his jurisdiction. When jurisdiction is unsettled, the OSJA can work with the AUSA to satisfy both requirements and assist the investigators on the ground in so doing.

¹⁵⁴ Counsel for the government and defense can also turn to CIDs legal advisors for assistance. The servicing Group Judge Advocate (GJA) will monitor high profile cases and provide analysis to his or her commanders and agents. Coordination with that GJA can help settle procedural issues the agents may be hung up on and speed up the process. As the agents' legal advisor, the GJA can resolve disputes and assist the trial counsel.

¹⁵⁵ Hardison Interview, *supra* note 145. As mentioned Part III.A, above, with respect to the PAO function, there is a fine balance between releasing the bad news along with the good to get in front of the story, and at the same time preserving the integrity of a criminal investigation.

namely witnesses. As Hardison made clear, “the goal for CID is the truth, regardless of who benefits.”¹⁵⁶

Once COJs and TC understand that cases belong to the investigators while under investigation, the relationship between law enforcement and the OSJA will improve and all cases will benefit. The counsel are most effective when providing guidance, suggestions, and recommendations, while at the same time empowering agents to take charge. As one experienced agent notes, “the sooner [TC] engage and advise, the less likely there will be issues down the road. Their legal advice early on can prevent issues that may arise later on during prosecution.”¹⁵⁷

B. Interacting with Higher Echelons

*Your bosses will be receiving calls from the senior Pentagon leadership, the Hill, and the media asking what is going on. They need information to help ensure that others will have confidence in your investigation and disposition of the allegations.*¹⁵⁸

High profile cases can quickly catch the attention of senior Army officials, the executive branch, and members of Congress. Keeping them informed with timely and accurate information can help prevent a bad case from becoming worse. Along with pushing factual information up, OSJAs can leverage the capabilities of higher headquarters and obtain needed assistance.¹⁵⁹ In so doing, the OSJA can avoid issues with the media, counsel, and victim notification and support. Knowing which organizations to contact, and what those organizations are looking for, will help OSJAs provide the required information, instill confidence, and perhaps avoid excessive interference.

¹⁵⁶ *Id.* The agents do not want to interview a witness influenced by inaccurate reporting. That does not help the agent and it does not help the justice system. In addition, once the media interviews a witness, the likelihood for inconsistent statements increases.

¹⁵⁷ Tokash e-mail, *supra* note 65.

¹⁵⁸ Taylor, *supra* note 5, at 356.

¹⁵⁹ Mulligan Interview, *supra* note 85 (cautioning high profile cases can draw “unhelpful” help as well—namely meetings. He recommends dedicating one JA to serve as the face of the case and attend the meetings while allowing the trial team to focus on the case.); *see also* Risch Interview, *supra* note 53 (noting the Office of the Chief of Public Affairs (OCPA) sent a brigadier general to Fort Hood after the Fort Hood shootings and his presence greatly assisted the unit PAO. The unit PAO focused on day to day operations and the general focused on addressing questions from higher headquarters.)

1. Office of the Judge Advocate General Criminal Law Division (OTJAG CLD)

Staff judge advocates seeking assistance for high profile cases can turn to the OTJAG CLD. The CLD is responsible for insulating field elements from inquiries from the Army staff, the executive branch, and Congress.¹⁶⁰ The office is also responsible for providing policy and guidance to the field.¹⁶¹ When notifying TJAG of a potentially high profile case, the SJA’s technical chain runs straight to TJAG through TJAG’s executive officer (XO). Once notified, the XO informs TJAG and forwards the notification onto the CLD for action.¹⁶² The CLD then requests information from the field and responds to questions from higher headquarters.¹⁶³ By proactively working with CLD, the SJA can focus on the mission at hand and allow higher headquarters to focus efforts up and out.¹⁶⁴ The CLD assistance could include requesting more victim/witness support, preparing press releases for OCPA, or asking PP&TO to find DC or TC qualified to handle the case.

The CLD also works to improve military justice practices and procedures by developing programs and policy like the special victim prosecutors and highly qualified experts, the Best Practices in Military Justice for SJAs course, and a published handbook for SJAs.¹⁶⁵ These CLD initiatives emphasize the importance of military justice and equip SJAs with the tools to train, mentor, and lead judge advocates.

2. Office of the Congressional Legislative Liaison

Sharing information about high profile cases early on, and regularly thereafter, with congressional oversight committees . . . gives our congressional oversight community a heads-up about a subject that will eventually be on their radar screens anyway . . . [Y]ou can either take the initiative and give the members and staff a chance to prepare a

¹⁶⁰ Telephone Interview with Colonel Charles N. Pede, Chief, Criminal Law Div., Office of the Judge Advocate Gen. (Jan. 12, 2012) [hereinafter Pede Interview].

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* There is no policy or regulatory requirement to notify the Criminal Law Division (CLD), but practically, OSJAs should simultaneously notify the CLD and Executive Officer as the CLD will be fielding questions and providing assistance.

¹⁶⁴ Pede Interview, *supra* note 160 (noting the magnitude of the situation or the time sensitivity of the information requested can impact the flow of information, but he stressed the CLD’s role is to absorb that mission and interface with higher commands and/or outside agencies thereby reducing the demands upon the unit in the field).

¹⁶⁵ *Id.* *See also* Pede, *supra* note 141, at 34.

*hopefully-supportive statement about a case, or, instead, you can wait until they call and complain about being blindsided about a case that falls within their jurisdiction.*¹⁶⁶

The Office of the Congressional Legislative Liaison (OCLL) has a significant role in managing the tone of high profile cases for members of Congress. Keeping OCLL reasonably informed will mitigate members' overreactions or reliance on potentially incorrect facts from the media and constituents. When the communication is clear from the crime scene through the respective chain of command and up to OCLL, the Army JA at OCLL can help the unit on the ground shape the message and better guarantee members of Congress have the right facts and perhaps avoid the case from gaining the wrong type of press. Conversely, if the unit with the facts is not satisfying Congress's need for information, members of Congress may turn to less reliable or less informed sources, causing more problems for the commander and the staff. Working with OCLL will ultimately help the commander and the OSJA focus on managing high profile cases. Leveraging OCLL first requires an understanding of OCLL's mission and explanation on how the process is supposed to work.

The OCLL both gathers information from the field to give to Congress and briefs the field on relevant action coming out of Congress. In short, the Chief of Legislative Liaison has "sole directive authority for [Department of the Army] congressional affairs to include formulating, coordinating, and supervising policies and programs on the Army's relations with Congress."¹⁶⁷ As the official single point of information collection and dissemination between the Department of the Army and Congress, OCLL can enhance "the Army's ability to provide a coordinated, consistent message."¹⁶⁸ In high profile cases, OCLL becomes involved in one of two ways. It will either receive a congressional request for information pertaining to the high profile case, or the field will notify OCLL of the high profile case likely to affect the members of Congress.¹⁶⁹ Knowing OCLL is responsible for funneling information to Congress, the next step is determining how OCLL gathers information, and how the field is supposed to assist.

When Congress submits a request for information to OCLL, the regulatory, and preferred, course of action in that situation is to provide a response. The regulation states "[s]pecial attention will be given to those inquiries in a compassionate or time-sensitive category such as: death, injury or sickness or other grave circumstances relating to service personnel or members of their families."¹⁷⁰ And, when the matter is of a sensitive nature, the response or initial notification to Congress will be expedited.¹⁷¹ In high profile cases, the facts and circumstances will probably not be fully developed by the time Congress wants a response.¹⁷² If that is the case, the unit may submit an interim report containing "as much information as is available at the time . . . and set a specific time for a final response."¹⁷³

In practice, when a congressional inquiry comes to the attention of OCLL, the OCLL representative will contact OTJAG or possibly the OSJA directly to request information. The OCLL representative will request an executive summary of the pertinent facts and then develop a product to provide to the relevant party. One effective technique in a recent high profile case was to submit an initial executive summary and update that summary periodically. As the III Corps SJA and the lead TC in the Hasan case stress, send the five "W's" to OCLL, OCPA, and OTJAG simultaneously, send it in a releasable fashion, and, if the initial information is wrong, correct it as soon as possible because the initial report will be widely circulated.¹⁷⁴

C. Trial Counsel Assistance Program

*The TCAP's mission is to provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by trial counsel.*¹⁷⁵

As mentioned above, in light of the relative inexperience of TC, OSJAs may need to turn to outside resources to properly manage complex or high profile cases. The TCAP can supplement the resources on hand at an

¹⁶⁶ Taylor, *supra* note 5, at 360.

¹⁶⁷ U.S. DEP'T OF ARMY, REG. 1-20, LEGISLATIVE LIAISON para. 1-4a (20 Jan. 2004) [hereinafter AR 1-20].

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* para. 1-4a(7); *see also id.* para. 6-1a (relating to requests from Congress, "[t]he Army Policy is to make information promptly available to Members, congressional committees and their staff."); *id.* para. 7-1 (relating to notifying Congress, "[t]he Army policy is to provide Members and congressional committees with timely information on significant developments involving Army policies, programs, operations, and developments.").

¹⁷⁰ *Id.* para. 6-3e.

¹⁷¹ *Id.* para. 6-3f.

¹⁷² *Id.* para. 6-3f (requiring an expedited report—presumably as fast as possible); *id.* para. 6-3i(2) (requiring suspense date of five working days after receipt); *id.* para. 6-3l(1-4) (timelines for telephone congressional inquiries range from two working days (five working days if overseas), the same day for "threatened suicide, abuse, violence, or threat to life," or shorter if OCLL needs it faster).

¹⁷³ *Id.* para. 6-3j.

¹⁷⁴ Mulligan Interview, *supra* note 85; Risch Interview, *supra* note 53.

¹⁷⁵ AR 27-10, *supra* note 97, para. 21-2.

OSJA through training, periodic publications, and technical assistance.¹⁷⁶

Staff judge advocates have capitalized on the benefits of TCAP in every recent high profile case.¹⁷⁷ For example, TCAP counsel assisted the I Corps OSJA with the 5-2 Striker Brigade Combat Team “kill team” cases and the case of *United States v. Davila*,¹⁷⁸ and III Corps availed itself of TCAP assistance in the Fort Hood shooting case.¹⁷⁹ While calling TCAP appears reflexive presently, there has been a stigma associated with requesting TCAP assistance throughout the years.¹⁸⁰ Colonel Mulligan, however, contends that at least since the cases of *United States v. Akbar*,¹⁸¹ and the Abu Graib¹⁸² cases, the reluctance to ask for help has diminished.¹⁸³ First, when Brigadier General (Retired) Dunn was serving as the XVIII Airborne Corps SJA, she requested assistance from TCAP to prosecute *United States v. Akbar*.¹⁸⁴ When Major General Tate was the III Corps SJA, he requested TCAP assistance to prosecute the Abu Graib cases.¹⁸⁵ Colonel Mulligan suggests the personalities and reputations of both SJAs dispelled the myth that asking for help was a sign of weakness, and, instead, highlighted the wisdom of asking for help when needed.¹⁸⁶ Asking for and receiving help did not prevent intense media scrutiny, but it did demonstrate the Army’s commitment to justice. By using this asset, the OSJA can identify and avoid issues that could cause the case to draw negative publicity.

¹⁷⁶ *Id.* paras. 21-4 to 21-5; see also *id.* para. 21-5b (“Counsel for TCAP are available for on-site assistance in unique or difficult cases. . . . The Chief, TCAP, and the requesting SJA will coordinate such assistance to include the specific involvement of TCAP counsel.”).

¹⁷⁷ E-mail from Lieutenant Colonel Jay Morse, Chief, Trial Counsel Assistance Program, Gov’t Appellate Div., U.S. Army Legal Serv. Agency, to author (Jan. 17, 2012, 2:53 PM EST) (As of the writing of the email all four action officers and the deputy at TCAP were detailed to ongoing courts-martial around the Army—clear evidence of both TCAPs value, and the field’s acknowledgment that asking for help is acceptable.) (on file with author).

¹⁷⁸ Hudson e-mail, *supra* note 91. See Duecy, *supra* note 57 (describing *United States v. Davila*); see also Ashton, *supra* note 57 (describing “kill team” cases).

¹⁷⁹ Mulligan Interview, *supra* note 85; Risch Interview, *supra* note 53.

¹⁸⁰ Mulligan Interview, *supra* note 85.

¹⁸¹ See, e.g., Neil A. Lewis, *A NATION AT WAR; Soldier Accused of 2 Murders with Grenade*, N.Y. TIMES, Apr. 5, 2003, <http://www.nytimes.com/2003/04/05/us/a-nation-at-war-soldier-accused-of-2-murders-with-grenade.html?ref=hasankakbar> (providing a story on the incident).

¹⁸² See, e.g., Seymour M. Hersh, *Torture At Abu Ghraib*, NEW YORKER (May 10, 2004), http://www.newyorker.com/archive/2004/05/10/040510fa_fact (providing a story on the Abu Ghraib incident).

¹⁸³ Mulligan Interview, *supra* note 85.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

D. United States Army Criminal Investigation Laboratory

Much like the JAG Corps has an organization dedicated to assisting TC in the field, the law enforcement community has a highly trained support system in the U.S. Army Criminal Investigation Laboratory (USACIL) waiting to assist agents and counsel.

The USACIL is the department under the USACIDC¹⁸⁷ responsible for “provid[ing] forensic laboratory assistance to U.S. Army investigative elements, other DoD investigative agencies, and Federal law enforcement agencies as appropriate.”¹⁸⁸ Chiefs of justice are likely familiar with USACIL in the realm of DNA testing, but USACIL operations are much broader in scope and its services can greatly assist units in the field.

As the organization responsible for servicing DoD law enforcement operations, the Forensic Analysis Division of USACIL created deployable crime scene teams to assist in particularly complicated cases.¹⁸⁹ These teams are able to perform sophisticated crime scene reconstruction, advise agents on taking forensic photographs, and advise on how to collect particular items for subsequent trace evidence examination.¹⁹⁰ USACIL is available around the clock to provide assistance to agents and counsel alike.¹⁹¹

As an example, in 2009, one of USACIL’s crime scene teams deployed to Iraq to preserve the combat stress clinic where five service members were killed.¹⁹² The TC, familiar with the capabilities of USACIL from a prior case, requested USACIL’s presence.¹⁹³ In turn, the field agents sent up a

¹⁸⁷ U.S. DEP’T OF ARMY, REG. 195-2, CRIMINAL INVESTIGATION ACTIVITIES para. 2-1 (15 May 2009) (RAR, 6 Sept. 2011) [hereinafter AR 195-2].

¹⁸⁸ *Id.* para. 6-1.

¹⁸⁹ Telephone Interview with Mr. Mike Hill, Operations Chief, USACIL Forensic Analysis Div. (Jan. 6, 2012) [hereinafter Hill Interview] (Mr. Hill has over thirty years of law enforcement experience as an MP, CID Special Agent, and U.S. Army Criminal Investigation Laboratory (USACIL) employee. He has served as the Operations Chief at the Forensic Analysis Division since 2009.).

¹⁹⁰ *Id.* (The forensic examiners all have civilian education. Additionally, examiners at USACIL undergo a rigorous training program at USACIL before beginning casework because there is no institutional curriculum in most forensic examinations or forensic photography, for example.).

¹⁹¹ *Id.*

¹⁹² Professional Experiences, *supra* note 148.

¹⁹³ *Id.*

formal request for USACIL assistance.¹⁹⁴ Within days, USACIL deployed to Iraq and preserved the scene.¹⁹⁵

The USACIL is eager to assist, and can help both DC and TC analyze evidence, but COJs and senior defense counsel (SDC) cannot automatically expect agents to independently request assistance from specialized units such as the deployable crime scene teams. Nor should COJs or SDC expect their attorneys to know of the specialized assets available. As the justice manager, and the leader in these cases, the COJ should start asking those questions before the need arises.

The OSJA can consult four main sources to learn of USACIL capabilities. First, USACIL has a twenty-four hour phone line for fielding questions and consulting with law enforcement and counsel the field.¹⁹⁶ Second, CID special agents trained as Forensic Science Officers (FSO) are either located at the local CID unit or service every installation remotely.¹⁹⁷ These agents are trained to identify situations requiring more specialized casework and are required to coordinate with USACIL to obtain assistance.¹⁹⁸ Third, the TCAP and the Defense Counsel Assistance Program receive training at USACIL on USACIL capabilities.¹⁹⁹ Finally, whenever USACIL agents testify in court, they are instructed to make contact with the local CID office and offer training.²⁰⁰ In those situations, the TC or DC calling the USACIL examiner can request training as well.²⁰¹

¹⁹⁴ See AR 195-2, *supra* note 187, para. 6-5 (Once the OSJA identifies the need, the triggering mechanism to obtain support is simple—“[w]hen particular expertise is required to process crime scenes, the presence of laboratory examiners may be requested by USACIDC supervisors from the Director, USACIL.”).

¹⁹⁵ As of 30 November 2012, the case of *United States v. Russell* has not gone to trial. On 18 December 2011, all U.S. troops withdrew from Iraq. See, e.g., Tim Arango & Michael Schmidt, *Last Convoy of American Troops Leaves Iraq*, N.Y. TIMES, Dec. 18, 2011, <http://www.nytimes.com/2011/12/19/world/middleeast/last-convoy-of-american-troops-leaves-iraq.html?pagewanted=all>. In light of the logistical hurdles to enter Iraq, the 3D recreation of the crime scene could prove invaluable as demonstrative evidence. *Id.* Such a recreation also helps if trial counsel change out. Understanding the scene can help provide perspective to new counsel unfamiliar with the scene or facts. *Id.*

¹⁹⁶ Hill Interview, *supra* note 189.

¹⁹⁷ *Id.*; U.S. DEP’T OF ARMY, CRIMINAL INVESTIGATION COMMAND, REG. 195-1, CRIMINAL INVESTIGATION OPERATIONAL PROCEDURES para. 23-4d (22 Mar. 2010) [hereinafter CIDR 195-1].

¹⁹⁸ Hill Interview, *supra* note 189; see also CIDR 195-1, *supra* note 197 para. 23-4d (FSOs are responsible for, in part, “providing assistance to the crime scene processing team(s) . . . serv[ing] as the unit sex crimes expert . . . [r]eview[ing] investigative reports . . . to assure applicable forensic techniques are used . . . and [p]roved[ing] training to supported agents, SJA and installation Medical Treatment Facility personnel on forensic capabilities of CID, including USACIL.”).

¹⁹⁹ Hill Interview, *supra* note 189.

²⁰⁰ *Id.*

²⁰¹ *Id.*

E. Contracting Officer

The OSJA can expect defense requests for experts in many high profile cases. If done improperly, contracting for experts can have an adverse impact on the swift administration of justice. Also, if the high profile case has the potential to be referred as a capital case, a mitigation expert will be among the DC’s requests.²⁰² Therefore, understanding the contracting basics can help prepare for the requests in advance. Knowing the contracting procedures, contracting officials, and basic rules of contracting will help the COJ and TC explain to DC how the OSJA will process the request. By managing expectations with the DC, the OSJA builds a positive working relationship and can avoid unnecessary delay by obtaining all necessary information up front.

Understanding the convening authority cannot unilaterally contract for a particular expert is the most important point of contracting for experts.²⁰³ Even though the standard request goes from the DC through the OSJA to the convening authority for approval, the convening authority is merely acknowledging his agreement that the defense has met its burden under Rules for Courts-Martial (RCM) 703(d) for establishing a need for the expert.²⁰⁴ The rule indicates the convening authority is authorizing employment and fixing compensation,²⁰⁵ but his contracting officer will be creating the contract.²⁰⁶ That contracting process begins after the convening authority approves the expert request.

In general, contracting for services requires full and open competition.²⁰⁷ The Federal Acquisition Regulation (FAR), however, provides an exception for expert requests.²⁰⁸ Once the government agrees to a particular

²⁰² See generally MCM, *supra* note 67, R.C.M. 1004. See also *United States v. Kreutzer*, 61 M.J. 293, 305 (C.A.A.F. 2005) (“While the services of a mitigation specialist are commonly used in sentencing, in the appropriate case this expert assistance may be necessary to the defense on findings as well. As the Commentary to ABA Death Penalty Counsel Guideline 4.1 states, the mitigation specialist is an ‘indispensable member of the defense team throughout all capital proceedings.’”). Chiefs of Justice can ask local AUSAs and state prosecutors who they use as experts. From there the COJ can assess the services provided by those contacts, the costs of using those resources, and ultimately make an informed recommendation to the SJA and convening authority when the defense makes its request.

²⁰³ See FAR pt. 6.000 (2012) (stating that only warranted contracting officer’s can enter into contracts on behalf of the government) .

²⁰⁴ MCM, *supra* note 67.

²⁰⁵ *Id.* R.C.M. 703(d).

²⁰⁶ As soon as the government receives a defense request, someone from the OSJA must contact the contracting officer to start the process. There is no reason to wait for a signed approval from the convening authority to get the contracting office preparing the paperwork.

²⁰⁷ See FAR pt. 6.000 (Jan. 2012).

²⁰⁸ *Id.* pt. 6.302-3.

expert, the convening authority's contracting officer can enter into a contract with that expert.²⁰⁹

The unit's comptroller or G8²¹⁰ will be able to assist once the convening authority indicates his approval of the defense request. If not provided for in the initial request to the convening authority, the DC must provide specific details regarding the anticipated costs to the comptroller.²¹¹

Along with expert requests, high profile cases can require extensive travel and other logistical expenses which can quickly add up.²¹² With resource intensive cases, the OSJA will need to identify someone in the office who can research fiscal law issues and develop relationships with those personnel on the installation who can provide funding for whatever requirements arise.²¹³ The OSJA can save a great deal of time by identifying an action officer (and alternate) in the OSJA and requiring that action officer (and alternate) become, or at least find, the expert on fiscal issues before the high profile case arises.²¹⁴

V. Developing a Plan for High Profile Cases

Tactics always require judgment and adaptation to the unique circumstances of a specific situation. Techniques and procedures are established patterns that can be applied repeatedly with little or no

²⁰⁹ *Id.* pt. 6.302(a)(2)(iii) ("Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order . . . [t]o acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.").

²¹⁰ U.S. DEP'T OF ARMY, FIELD MANUAL 1-06, FINANCIAL MANAGEMENT OPERATIONS, at vii (4 Apr. 2011) ("The individual with singular responsibility for [financial management] at the theater Army, corps, and division level is the G-8, who consults with the Financial Management Center (FMC."); *see also* U.S. DEP'T OF ARMY, FIELD MANUAL 5-0, THE OPERATIONS PROCESS para. B-125 (18 Mar. 2011) [hereinafter FM 5-0] (The G-8 is also known as the Assistant Chief of Staff for Financial Management or Deputy Chief of Staff for Resource Management.).

²¹¹ For example, the expert will need to provide the amount of hours he or she expects to work, the hourly rate, and if that rate includes travel costs, lodging costs, and or meals. Another concern is going over budget. The expert and defense counsel must keep the government informed of anticipated budget shortfalls in order to allow time to get more money. Chiefs of Justice can remind defense counsel periodically to monitor the situation. Failure to do so can result in unnecessary delays.

²¹² Telephone Interview with Chief Warrant Officer Two Phyllis King, Legal Admin., Fort Hood, Tex. (Jan. 9, 2012) [hereinafter King Interview].

²¹³ *Id.* Chief Warrant Officer Two King has used funds from funds controlled by Garrison, funds controlled by the Chaplain and funds from higher headquarters. She credits her success in funding projects to the relationships she has developed at Fort Hood and her persistence in finding solutions.

²¹⁴ *Id.* Chief Warrant Officer Two King has no prior training in fiscal law and was able to learn enough to successfully accomplish her mission. This is an ideal task for the legal administrator to perform. The SJA should assess the legal administrator's ability to perform this mission early on and encourage training if the legal administrator is not already proficient.

*judgment in a variety of circumstances. Tactics, techniques, and procedures (TTP) provide the tactician with a set of tools to use in developing the solution to a tactical problem. The solution to any specific problem is a unique combination of these TTP or the creation of new ones based on a critical evaluation of the situation. The tactician determines his solution by a thorough mastery of doctrine and existing TTP, tempered and honed by experience gained through training and operations. He uses his creativity to develop solutions for which the enemy is neither prepared, nor able to cope.*²¹⁵

Treat high profile cases like any other military operation—develop TTPs. If the COJ knows what tools are at his disposal before a high profile case presents itself and knows how to use them (techniques and procedures), he can quickly employ those tools to the high profile case (tactical problem) rather than leaping into the fight with an ad hoc approach. The remainder of the article will suggest additional methods for addressing high profile cases using the resources mentioned above.

When setting the stage for his discussion on high profile cases, Professor Taylor argues that the practitioner should "begin with the presumption that the normal rules will prevail."²¹⁶ While this is sound advice, and a good starting point when considering the applicable rules and regulations, these cases are not "normal." The very fact the case has become high profile signifies something has taken the case beyond the routine. With a routine case, "normal" may mean preparing the SJA to brief the division commander. In a high profile case, "normal" may mean preparing TJAG to brief the Chief of Staff of the Army or a congressional committee. In a routine case, "normal" may mean calling the local CID office to photograph a crime scene before releasing it. In a high profile case, "normal" might mean fencing off the area for months.²¹⁷ The law does not change, nor do the regulations, but high profile cases incorporate additional laws, regulations, and resources.

A. Managing Expectations

No matter how the force makes contact, seizing the initiative is the overriding imperative. Prompt execution of battle

²¹⁵ U.S. DEP'T OF ARMY, FIELD MANUAL 3-90, TACTICS para. 1-2 (4 July 2001) [hereinafter FM 3-90].

²¹⁶ Taylor, *supra* note 5, at 351.

²¹⁷ Hardison Interview, *supra* note 145 (The CID has no intention of releasing the crime scene at Fort Hood, Texas, where Major Hasan allegedly killed and wounded several individuals.).

*drills at platoon level and below, and standard actions on contact for larger units can give that initiative to the friendly force.*²¹⁸

The first objective for the COJ or the SJA is to ensure commanders and leaders within the entire organization understand that military justice operations are no different than movement to contact in the infantry world. The infantryman's mission is "to close with the enemy by means of fire and maneuver to defeat or capture him, or to repel his assault by fire, close combat, and counterattack."²¹⁹ The JA's mission is to provide "proactive legal support on all issues affecting the Army and the joint force, and deliver[] quality legal services to Soldiers, retirees, and their families."²²⁰ With respect to military justice, "[t]he purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."²²¹

While the JAs mission is unique, there is no reason why JAs cannot plan and train for high profile cases much like that infantryman plans and trains for movement to contact. The challenge is making sure the commander is just as prepared for mobilizing assets for the high profile case as he is with sending a unit on patrol. Servicing JAs can assist in giving the initiative to the commander by explaining the process in advance of contact.

High profile cases generally carry large price tags and consume large quantities of time from nearly every staff section. The SJA can mentally prepare the commander for the costs in advance and ascertain where the commander is prepared to assume risk.²²²

In addition to financial and temporal costs, it is possible the commander, through his actions, may lose his ability to serve as a court-martial convening authority altogether. The demands of a commander to take care of his troops and serve as the face of the organization could lead to arguments that the convening authority is predisposed to a particular

outcome and therefore incapable of serving as a convening authority.²²³ One approach to mitigate this cost may be to encourage the commander to put the chief of staff or a deputy commander in charge of meetings and planning sessions pertaining to high profile cases to create some level of separation between the case and the commander until the case is at the right stage for the commander to make a recommendation as to disposition.²²⁴ Ultimately, this cost is a personal choice for the commander to make, but the SJA can help the commander make an educated and reasoned decision if done in advance of a high profile case.²²⁵

By managing expectations of commanders and their staffs and by preparing them for the requirements and pitfalls in high profile cases, the OSJA can spearhead the development of an effective plan for managing high profile cases with command support and involvement. That plan will have a mechanism for synchronizing the staff and for reaching out for additional assistance when necessary.

B. Synchronizing the Staff to Effectively Manage High Profile Cases

In the wake of draw downs and redeployments, the defining moments for many commanders will likely shift from prowess in combat to the ability to preserve good order and discipline at posts, camps, and stations while training for future operations. How the commander manages a high profile case—not necessarily the outcome in court—may make or break that commander's career. Hence, the OSJA must get the command and staff prepared for managing this fight.

1. Leader Development Program

First, servicing JAs should familiarize the command and staff with the concept of high profile cases through the commander's scheduled leader development programs (LDP).²²⁶ With a captive audience, the SJA can have the COJ provide a detailed explanation of a recent high profile

²¹⁸ FM 3-90, *supra* note 215, para. 4-3 (internal citation omitted).

²¹⁹ U.S. DEP'T OF ARMY, FIELD MANUAL 3-21.8, THE INFANTRY RIFLE SQUAD AND PLATOON para. 1-1 (28 Mar. 2007).

²²⁰ U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 1-1 (15 Apr. 2009).

²²¹ MCM, *supra* note 67, pt. I, ¶ 1.

²²² U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMED FORCES para. C-26 (Aug. 11, 2003) [hereinafter FM 6-0] ("Commanders always retain the ultimate responsibility for final decisions. Staff officers contribute to achieving the commander's intent by fulfilling their functional responsibilities within the authority the commander delegates to them. Effective staff officers provide commanders with correct and timely relevant information (RI) and well-analyzed recommendations.")

²²³ Risch Interview, *supra* note 53 (The General Court-martial Convening Authority (GCMCA) at the time of the Fort Hood shooting addressed the press almost immediately after the shooting. Had he remained the GCMCA at the time of referral, defense counsel may have challenged his impartiality. Discussing this possibility with convening authorities before an event can help the convening authority determine possible courses of action in advance.)

²²⁴ McKittrick e-mail, *supra* note 52.

²²⁵ The commander must be particularly mindful of comments made by leaders in the unit. While commanders must always exercise good judgment when speaking about pending legal matters, in high profile cases the pressure to make statements and the media's ability to shape statements can have negative consequences on the outcome of the trial. This applies to commanders as well as deputy commanders and sergeants major. All will have audiences and each can create unlawful command issues if not careful.

²²⁶ McKittrick e-mail, *supra* note 52.

case and walk the staff through their roles. From the PAO interacting with the media, the chaplain providing comfort to grieving victims, or the command surgeon assisting in coordinating medical evaluations for the subject, this is an opportunity to educate the staff on the magnitude of high profile cases.²²⁷ These classes will also provide the sponsor of the class (commanding general, chief of staff, SJA) an opportunity to emphasize commander's intent with respect to high profile cases.

2. Training Exercises and Battle Drills

More operational than LDPs, the SJA, chief of operational law, or the COJ can coordinate with the operations cell to develop scenarios suitable for training the subordinate commands and staff sections on high profile case management. Servicing JAs can easily develop high profile case scenarios and practice managing them just like any other training scenario.²²⁸ Exercise dependent, the scenarios could touch one or all of the staff sections. By incorporating high profile case scenarios into the training, the staff will begin to recognize the importance of advanced planning versus reaction. This exercise will also help build relationships between the OSJA and other staff sections and help the OSJA identify and correct deficiencies in staff coordination. Much like the LDP, preparing scenarios for training exercises will force the OSJA to learn the rules and understand how the staff sections work together. From this training, the staff can develop battle drills.²²⁹

3. Incorporating Staff into Routine Cases

Most courts-martial will not make the front page or require outside assistance, but the staff sections can still learn by observing the process in routine cases. By requesting the PAO write an article for the post newspaper about a routine case, the OSJA can help train the PAO on finer points of military justice before that PAO receives media inquiries for a complex or high profile case requiring

²²⁷ This will also require the SJA and his or her office to learn how each section fits into the process before teaching the staff.

²²⁸ McKittrick e-mail, *supra* note 52 (U.S. Forces Korea implements "Rocks Drills" to practice responding to a variety of scenarios.). See, e.g., Mathew Cole, Luis Martinez & Mark Schone, *Army Says Parents of Soldier Never Called Inspector General to Warn of Thrill Kills*, ABCNEWS.COM (Oct. 1, 2010), <http://abcnews.go.com/Blotter/army-parents-soldier-called-inspector-general-warn-thrill/story?id=11775374> (illustrating consequences of not planning). In this case, a non-commissioned officer (NCO) in the Joint Base Lewis-McChord command center spoke with a Soldier's parents about possible criminal activity—specifically, murders—in Afghanistan, but the NCO on duty did not raise the matter to a supervisor or higher level. Units can implement training to ensure everyone manning the phones, or standing watch, knows when to report matters and how to respond.

²²⁹ FM 5-0, *supra* note 210, para. 3-38 (stating, "[e]ach CP requires procedures to react to a variety of situations."); see also *id.* para A-38 (Those procedures "should be defined in its [standard operating procedures] and rehearsed during training and operations.").

immediate responses. Law enforcement could likewise observe the escorts and bailiff at a court-martial to better understand how to handle a potentially violent accused or how to manage crowds. By setting the conditions for training, the OSJA can avoid missteps down the road and slowly educate the staff for high profile cases.

Including high profile cases into the commander's critical information requirements (CCIRs)²³⁰ is another way to keep the staff engaged. By creating a CCIR, the commander alerts the staff and subordinates alike to watch out for such issues. Ultimately, a high profile case CCIR can help the staff identify issues early on and work to prevent negative press by resolving the matter with a collaborative effort. The COJ should also inform the SJA of any cases with high profile potential.²³¹

At the same time the SJA is focusing on getting staff sections familiar with military justice operations and inserting training opportunities into already-scheduled command training, the SJA must equip the OSJA for success.

C. Managing the OSJA During High Profile Cases

The SJA should sit down with her leadership team and branch chiefs to discuss internal OSJA expectations in these cases.²³² High profile cases will draw intense media scrutiny on the command, and the SJA will undoubtedly have more missions to perform for the commander than time to accomplish those tasks. In high profile cases, there are certain responsibilities the SJA cannot delegate because the commander will expect the SJA to directly participate.²³³ When the SJA is pulled from the office, the DSJA must pick up the slack and assume the role of SJA along with carrying out the routine deputy tasks. The DSJA must know what is going on at all times because high profile cases can spring up at any time.²³⁴ In addition to the DSJA assuming the SJA role, the entire office will have to prepare for high profile cases. The following are examples of where the OSJA can focus attention when thinking through how to prepare for high profile cases. The enclosed appendices provide comprehensive checklists to guide the OSJA.

²³⁰ FM 6-0, *supra* note 222, para. B-68 ("Commanders designate [commander's critical information requirements] to let their staffs and subordinates know what information they deem necessary for decision making. . . . In all cases, the fewer the CCIR, the better the staff can focus its efforts and allocate scarce resources."). It is also important to make sure the right staff members are on the CCIR distribution list—the SJA, for example, are on the distribution list.

²³¹ Risch Interview, *supra* note 53.

²³² *Id.*

²³³ McKittrick e-mail, *supra* note 52.

²³⁴ *Id.*

1. Litigation Cells

There is no disputing the value of providing counsel with time to focus solely on one case.²³⁵ How to accomplish that with finite resources and an active caseload has been a matter largely left to the discretion of the SJA.²³⁶ While there is no regulatory or policy guidance on how to build litigation cells or trial teams for high profile or complex cases, many OSJAs have developed teams on an ad hoc basis.²³⁷ Some SJAs emphasize the importance of keeping the COJ involved in the decision making process but also advocate bringing in specialized skill when necessary to augment local talent.²³⁸

The severity or technical complexity of the case will shape the ultimate makeup of a litigation cell on both the government and defense side. The personnel assigned to the OSJA will also change based on the normal assignments cycle, thus influencing the litigation cell make-up or requirements. Discussing the model in general and thinking through how the OSJA could create a litigation cell will nonetheless assist the OSJA in preparing for specific high profile cases.²³⁹ For example, if the OSJA identifies a weakness in a certain area of criminal law, it can look to the local Reserve component to see if there is a JA with experience in that particular area. That thought process will naturally lead to questions about how to identify an asset and how to mobilize that asset. The next step is answering those questions in advance of the need to avoid delay when the OSJA needs the resources.

High profile cases will consume the vast majority of the OSJA's resources and personnel. That does not mean, however, everything else can be placed on hold. The OSJA can prepare for the worst case scenario—full OSJA involvement—and also lesser degrees of involvement by predetermining which personnel will handle the case and who will handle day to day operations. Once the leadership team identifies the personnel capable of filling critical roles, it can then assess its weaknesses and better anticipate what outside assistance, if any, it will require. The OSJA can then develop a plan on how to fill those gaps in capabilities. Again, the key is to identify the processes to supplement organic talent ahead of time.

²³⁵ Hudson e-mail, *supra* note 91.

²³⁶ Pede Interview, *supra* note 160.

²³⁷ *Id.* The Office of the Judge Advocate General (OTJAG) CLD is in the process of developing a recommendation for The Judge Advocate General to consider regarding capital litigation in general. That proposal will include recommendations on staffing trial and defense teams and the mechanism to obtain support.

²³⁸ McKittrick e-mail, *supra* note 52; Hudson e-mail, *supra* note 91.

²³⁹ A possible model, based on recent cases, includes a senior ranking, experienced counsel, a second senior and experienced counsel, a third counsel capable of writing, a legal administrator, and dedicated paralegal support. The third attorney can also assist with press matters and administrative tasks.

2. Legal Reviews and Collateral Investigations

The OSJA's Administrative Law Division (ALD) will have a surge in requirements during high profile cases. From performing magistrate reviews of search authorizations to writing legal reviews for AR 15-6 investigations, and potentially serving as part of investigative teams, the ALD must anticipate the increased workload. One unforeseen complexity following the Fort Hood shooting was the receipt of donations from concerned citizens.²⁴⁰ In anticipation of a multiple casualty case like that at Fort Hood, the ALD should think through how to handle overwhelming generosity from the community in the form of gifts and the required ethics opinions.²⁴¹ With the SJA focused on assisting the commander, the DJSA focused on managing the office and personnel, and the COJ focused on the criminal aspects of the case, the chief of administrative law will need to have a plan in place to handle a surge in workload.

In high profile cases, the OSJA can expect collateral investigations. Apart from the criminal investigation, the Army and Congress will be looking to investigate what went wrong and what must be corrected to avoid a repeat occurrence. The media and public will also want to know. Based on the magnitude of the situation, the scope of those investigations will frequently expand beyond the local command level to higher commands or outside agencies.²⁴² In some cases, JAs will be called upon to assist to serve as members of the investigation team.²⁴³ The OSJA should also have a plan for managing the investigations or, at least, for preserving the criminal investigation.

In the Fort Hood shooting case, investigators coordinated investigative activity through the SJA.²⁴⁴ In the collateral investigation that took place after the shootings at

²⁴⁰ Risch Interview, *supra* note 53.

²⁴¹ *Id.* (Tracking and managing gifts can consume the administrative law division and ultimately if not properly controlled, can lead to mismanagement of the gifts. The SJA can recommend methods to handle potential gifts—for example, identifying a reputable private organization outside of the command to handle all donations.)

²⁴² *See, e.g.*, U.S. S. COMM. ON HOMELAND SEC. AND GOV'T AFFAIRS, A TICKING TIME BOMB COUNTERTERRORISM LESSONS LEARNED FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK 15 (Feb. 3, 2011). The purpose of the investigation was to "assess the information that the U.S. Government possessed prior to the attack and the actions that it took or failed to take in response to that information" and "to identify steps necessary to protect the United States against future acts of terrorism by homegrown violent Islamist extremists" *Id.*

²⁴³ In 2009, a general officer conducted a AR 15-6 investigation into the security of combat stress clinics and the adequacy of the mental health services in Iraq after Sergeant Russell allegedly killed five service members inside of a combat stress clinic. A JA was appointed to serve as a member of the investigative team.

²⁴⁴ Risch Interview, *supra* note 53 (emphasizing the commander must issue the guidance directly to the investigating officer on how the investigation is conducted).

the combat stress clinic in Baghdad, Iraq, the JA detailed to the investigative team coordinated all witness interviews through the COJ.²⁴⁵ Whatever safeguards the OSJA implements, the key is to obtain command buy in and command support to preserve the criminal investigation and potential court-martial.²⁴⁶

In preparation for the likely administrative investigation, the OSJA can consider how the ALD will handle advisory responsibilities, who in the OSJA will serve as the legal advisor, and who in the OSJA is a likely candidate to serve on the investigative team if necessary. The OSJA can also discuss with the higher command's OSJA about support in the event the local OSJA is unable to provide assistance.

3. Conflicts Checks

Upon identification of the subject or subjects in a high profile case, the entire OSJA must run a conflict of interest check.²⁴⁷ High profile cases can quickly become a total office mission. Accordingly, the SJA or DSJA must determine who can and who cannot take part. If any members of the OSJA do have a conflict of interest, the SJA can detail that JA to focus on issues outside of the high profile case.²⁴⁸ While preparing for high profile cases, the COJ can check to make sure TC are doing the same conflicts checks in their day-to-day operations.

The conflicts check cannot stop on the government's side. It is crucial, particularly when there are multiple accused, that the COJ or SJA contact the SDC or regional defense counsel (RDC) with an up front and honest assessment of the anticipated level of disposition for each accused so that the defense can plan accordingly with the limited resources available.²⁴⁹ Neglecting to provide this

information could result in the most experienced DC on the installation being detailed to the wrong case.²⁵⁰ Such neglect will delay the case while the defense bar finds another appropriately qualified counsel.

Each high profile case will present different requirements, but developing a general plan of attack in advance will provide the OSJA with a baseline to build from.

VI. Conclusion

When an infantry platoon leader reacted to contact, he was able to rely on established doctrine and the techniques and procedures developed out of that doctrine to determine the best way to approach the situation. He did not have to retreat from the enemy to learn what the doctrinal answer was and then spend time evaluating how that would work in the current situation. To do so would have resulted in mission failure. He was successful because he had baseline knowledge of the resources available and how they worked together before entering the fight.

Unlike the infantryman, however, the Army does not have a manual or single point of reference for training and managing high profile cases upon which the OSJA and command can refer to and adapt to the current situation. Each case is treated as one of first impression. That approach leads to inconsistency across the Army and subsequent criticism from the press because it looks like the Army does not have a plan. Although the Army and the JAG Corps should create a regulation covering the practice of high profile cases, there are steps that commands and OSJAs can take in the interim to prepare a consistent installation level plan thereby preventing an ad hoc approach for at least that OSJA.

Each OSJA should begin training with high profile cases in mind. Through this training, the OSJA can begin dissecting past high profile cases, thinking about how the OSJA would address particular situations, and educating the command and staff on its roles and responsibilities. From there, the OSJA can develop the unit and installation plan by consolidating and synthesizing the different authorities and then training with the same intensity as the infantryman does for his battled drills. Although this will not completely eliminate the criticisms or the ad hoc approach currently in practice around the JAG Corps, it will start generating consistency across OSJAs and provide a foundation upon which military justice practitioners can build and share within the Corps.

²⁴⁵ Professional Experiences, *supra* note 148.

²⁴⁶ See U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS para. 1-5d (2 Oct. 2006) [hereinafter AR 15-6] ("Appointing authorities, investigating officers, and boards of officers will ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, a counterintelligence investigation or an investigation being conducted by a criminal investigative [unit].").

²⁴⁷ Risch Interview, *supra* note 53 (Prior to the Fort Hood shooting, the accused Soldier, as a mental health care provider and field grade officer, possibly sought legal guidance on a duty related, non-personal matter. Although this would not form an attorney-client relationship, in an abundance of caution, the SJA screened the DSJA from taking any part in the case.). See also AR 27-26, *supra* note 38, r. 1.7.

²⁴⁸ Risch Interview, *supra* note 53.

²⁴⁹ Cremin Interview, *supra* note 90. This is not a requirement under any rule, but the government can facilitate a smoother process by having a frank discussion with the senior defense counsel and/or regional defense counsel to give the defense a better idea of how to detail counsel. It is up to the SDC and/or RDC to make those detailing decisions, but early communication can avoid delays later in the process.

²⁵⁰ *Id.*

Appendix A

High Profile Case Checklist—Advanced Planning

OSJA MANAGEMENT

- Identify and develop plan to coordinate with higher
 - OCLL—Identify POC and preferred method of communication
 - OTJAG—Identify POC and preferred method of communication
 - Government Appellate Division/TCAP—Contact to schedule training at OSJA and build relationship
 - Higher GCMCA—Determine how much involvement higher SJA wants/needs
 - Identify who is going to make required products and communications
- Litigation team determination
 - Identify strong and weak counsel
 - Identify where OSJA is weak (financial crimes/sex assault/capital) and find support
 - Identify outside assets and means to incorporate into case to augment strengths
 - Identify process to obtain assets (mobilize reservist/TCAP request)
- VWL/casualty notification
 - Assess local VWL program and improve (AR 27-10, Ch. 17)
 - Develop plan to supplement local capacity in VWL program
 - Memorandum of understanding between federal, state, or local services
 - Annual/periodic training for VWLs and for installation support personnel
 - Servicing JAs should also identify and train unit victim advocates and ensure the victim advocates have the VWL contact information (AR 600-20, Chapter 8)
 - Ensure VWL engaged with all available resources and maintains working relationship (office calls, joint training, periodic e-mails)
- Administrative law/ethics considerations
 - Conflicts of interest check
 - Press liaison or POC for PAO training/guidance
 - Administrative investigation team member
 - Develop knowledge base on gifts rules

STAFF COORDINATION

- Explain complexities of high profile cases with commander(s) and chief(s) of staff to get buy in for training, rehearsals, cooperation (CDR, CoS, XO)
 - Schedule LDP for managing high profile cases (for command and for OSJA)
 - Schedule LDP for PAO/media relations (for command and for OSJA)
- Develop situational training exercise scenarios (company level up) (S/G3, staff)
 - Identify staff section roles and capabilities
 - Incorporate staff into process to test subordinate commands
- Emphasize staff integration with BJA and TC—push TC to brigades whenever possible (CDR, CoS, XO, BJA, TC)
 - Schedule office call with comptroller/contracting officer to discuss procedures for contracting for experts, witnesses, services—legal administrator can request training (comptroller)
- Develop fact sheets for the PAO and update as needed (PAO)
 - Acceptable disclosures (what can and what should be disclosed)
 - Basics of military justice
 - Common terms (with explanations)
 - Common questions (with common answers)
- Establish TTPs for press releases (PAO)
 - Who writes/reviews in OSJA
 - Who is release authority in OSJA
 - Identify POC in PAO
- Establish plan, with military judge (MJ)'s approval, for court room accessibility during public hearings (MJ, PAO, clerk of court)
 - Courtroom or overflow room
 - Electronic recording devices

- Audio or visual recording devices
- Internet access
- Live interviews
- Classified information plan for closing courtroom
- Develop court room security plan in advance (PMO, Directorate of Emergency Services, S/G2, S/G3, Comptroller, MJ)
 - Security
 - Identification requirements/badges
 - Storage for prohibited items
 - Metal detectors
 - Media parking
 - Door access
- Consult with unit chaplain regarding available spiritual services available and support plan (Chaplain Cell)
- Consult with unit surgeon regarding mental health support available (Surgeon Cell)
- Discuss with unit transportation/escort plan for accused (PMO, S/G3, S/G4, Comptroller, unit)

COORDINATION WITH OUTSIDE AGENCIES

- Identify and meet with installation POCs
 - Casualty Assistance
 - Casualty Liaison Officer (CID)
 - Family Advocacy Program
 - Behavioral Health (Command Surgeon can facilitate)
 - Provost Marshall Office
 - CID Office
 - Director of Emergency Services (DES)
- Identify and Meet with local law enforcement POCs
 - Local police department(s)
 - Local and state prosecutor(s)
 - Local Assistant United States Attorney(s)
 - Local FBI Office(s)
- Assess medical treatment facility capabilities and develop a plan to conduct R.C.M. 706 boards on site or elsewhere
 - Can local assets comply with R.C.M. 706
 - Where are nearest assets
 - If assets conflicted, who approves alternates
 - Who does OSJA call
 - If no health care providers able to provide assistance on installation, will assistance come to the installation or will unit send Soldier to location
- Request CID brief TCs on capabilities
 - Forensic Science Officer
 - Special agent in charge/CLO duties
 - Computer Crimes Investigative Unit (CCIU) capabilities
 - USACIL (when available) capabilities
- Request TCAP training on high profile cases
 - TCAP will have recent cases useful for developing a plan around
 - TCAP can provide any useful lessons learned
- Miscellaneous
 - If capital, can post support trial
 - Nearest confinement facility if not co-located
 - Use of MJ as Article 32, UCMJ IO
 - Speak with local MJ on process
 - Prepare request memo

Appendix B

High Profile Case Checklist—Top 10 Immediate Responses

- Take accountability of OSJA personnel and report higher
- Send Situation Report through higher OSJA, OTJAG XO, OCLL and OTJAG CLD with 5 Ws in releasable format. Update as needed
 - Contact responding law enforcement agency and deploy STC or COJ to crime scene to assist if safe and practicable
 - Remind CG and all leaders of importance of maintaining impartiality and composure
 - Start running conflicts check in OSJA
 - Notify Trial Defense Service—SDC, RDC or Chief, TDS (if capital) for conflicts check and detailing decision
 - Assess situation and determine best time to hold OSJA meeting to discuss implementation of established office management plan
 - Get VWL engaged and reaching out to outside agencies as appropriate
 - Have identified TC begin preparing the case/charge sheet/other documents
 - Contact PAO to assist with responses to query

Appendix C

High Profile Cases—Deployed

In addition to those tasks identified in Appendices A and B

- Assess what can practically be accomplished in theater
 - Evidence collection/witness interviews
 - Crime scene reconstruction
 - Necessary evaluations (physical or mental)
 - Any preliminary hearings
 - Trial
- For serious crimes—where is theater confinement facility
 - Who can escort to and from
 - What documents are required/who generates
 - Who will provide required screenings/documents
- What is required for air movement—who really approves
- Who is taking lead for orders to transport—MP planner, S3, unit
- Where is nearest mental health care provider (HCP)
 - Does HCP have necessary equipment
 - Can HCP be transported in
 - Does accused need to be transported to facility
- VWLs
 - Reach back capabilities
 - Enough
 - Capable
 - Availability of outside assistance
- Trying case in theater (cost benefit analysis)
 - Who in OSJA is capable of trying case in theater
 - How to preserve the crime scene in light of current situation on ground
 - CID
 - USACIL
 - How to get USACIL on scene
 - Where is service member going if/when redeployed from theater
 - With organic unit
 - With a different unit
 - May depend on host nation law from units installation
 - DC
 - Capital qualified DC
 - Location of counsel
 - IMC
 - Location of IMC counsel
 - Processing IMC request
 - Deploying IMC counsel
 - Civilian counsel
 - Visa requirements
 - Military air capabilities
 - Security clearance
- Where are the CAOs and how to locate and begin coordination
 - Does case involve multi-service victims
 - Which agency is managing CAO duties for other services
 - Who is POC for those other services
- Contact combatant command, service component command, and higher with SITREP

Claiming Privilege Against Self-Incrimination During Cross-Examination

*Lieutenant Colonel Fansu Ku**

Introduction

At a general court-martial before a military judge alone, Specialist (SPC) John Doe pled not guilty to wrongful distribution of a controlled substance. Defense counsel (DC) called SPC Joe Snuffy as an alibi witness. Specialist Snuffy testified that SPC Doe was with him on the date and time in question and that they certainly did not engage in any illegal activity such as wrongful distribution of a controlled substance during the relevant period. During the cross-examination, after answering numerous questions concerning his activities with SPC Doe, the following colloquy took place between SPC Snuffy and the trial counsel (TC):

TC: Now SPC Snuffy, you've sexually assaulted another Soldier, haven't you?

SPC Snuffy: I'll stand on my Article 31 rights in response to that question.

TC: Let me ask you in a different way. When interviewed by Criminal Investigation Division (CID), you were lying when you told CID that you didn't commit the sexual assault, weren't you?

SPC Snuffy: I'll stand on my Article 31 rights and I'm not talking anymore. [Simultaneously with his refusal, DC stood up and said the following:]

DC: Your honor, I object. This line of questioning is completely irrelevant.

TC: Your honor, credibility of the witness is absolutely relevant.

Specialist Snuffy has not been granted any immunity for his testimony at SPC Doe's court-martial and the Army's Criminal Investigation Command is still investigating a recent sexual assault in the barracks where SPC Snuffy is the prime suspect. Specialist Doe is not suspected of any involvement in the sexual assault.

While it is not often that a witness will assert his privilege against self-incrimination when called to testify at a court-martial, much less assert that privilege only during cross-examination, it can happen. Using the above scenario, this article will look at how the various rules work when a

witness asserts his privilege against self-incrimination during cross-examination, the effects of that assertion, and usually the more difficult determination—the appropriate remedy.³

May the Witness Assert the Privilege?

The first question to ask is whether the witness, SPC Snuffy, may assert his privilege against self-incrimination. Military Rule of Evidence (MRE) 301(c) states that:

If a witness states that the answer to a question may tend to incriminate him or her, the witness may not be required to answer unless facts and circumstances are such that no answer the witness might make to the question could have the effect of tending to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if the witness is not subject to criminal penalty as a result of an answer by reason of immunity, running of the statute of limitations, or similar reason.⁴

The military judge, not the witness or panel members, decides whether the witness may properly invoke.⁵ Here,

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³ While the scenario in this article is written with Specialist Snuffy as a defense witness, the same analysis would apply if the witness is a government witness who asserted his privilege during cross-examination by the defense. *See* United States v. Moore, 36 M.J. 329, 334 (C.M.A. 1993) (stating that Military Rule of Evidence (MRE) 301(f) applies whether it is the accused or the prosecution that is deprived of cross-examination on a non-collateral subject); *see also* United States v. Richardson, 15 M.J. 41, 45 (C.M.A. 1983) (quoting United States v. Nixon, 418 U.S. 683, 709 (1974) (“The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.”)).

⁴ MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 301(c) (2012) [hereinafter MCM].

⁵ *Hoffman v. United States*, 341 U.S. 479, 486 (1951) (declaring that a witness' say-so does not justify the silence; it is a question for the court to determine).

answers to whether SPC Snuffy has sexually assaulted another Soldier and whether he has lied to CID could tend to incriminate him. Therefore, SPC Snuffy may properly assert his privilege against self-incrimination, as he has not been granted any immunity for his testimony in court, there is no running of the statute of limitations, and he definitely can be subject to criminal penalty based on his answers.

When Should the Witness Assert the Privilege?

In the above scenario, if it is a court-martial before members and the TC knew before SPC Snuffy took the witness stand that SPC Snuffy would assert his privilege against self-incrimination in response to any question about his involvement in the barracks sexual assault, may the TC question SPC Snuffy about his involvement in the barracks sexual assault before the members? No. Neither the government nor the defense may call or question a witness before members knowing that the witness will assert a claim of privilege.⁶ “[I]t is equally unprofessional for either to call a witness he or she knows will assert a claim of privilege in order to encourage the jury to draw inferences from the fact that the witness claims a privilege.”⁷ If there is a concern that a witness may assert his privilege against self-incrimination upon questioning, the matter should be resolved outside the presence of members regardless of whether counsel believe it is a valid assertion of privilege.⁸ Thus, if the TC knew ahead of time that SPC Snuffy will assert his privilege against self-incrimination when questioned about his involvement in the barracks sexual assault, the TC should raise the issue at an Article 39(a) session rather than before members.

Effect of Asserting Privilege—Drawing Adverse Inference?

Since SPC Snuffy may properly assert his privilege against self-incrimination, may the TC then argue that the fact finder draw an adverse inference from that assertion? No. Pursuant to MRE 301(f)(1), “[t]he fact that a witness has asserted the privilege against self-incrimination in refusing to answer a question cannot be considered as raising any inference unfavorable to either the accused or the government.”⁹

⁶ Moore, 36 M.J. at 332 n.4.

⁷ *Id.* (quoting commentary to Standard 4-7.6(c), in AM. BAR ASS’N, ABA STANDARDS FOR CRIMINAL JUSTICE: THE DEFENSE FUNCTION 4.94 (2d ed. 1979)); AM. BAR ASS’N, ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION 225 (3d. ed. 1993) (maintaining the same standard in this current edition).

⁸ Moore, 36 M.J. at 332 n.4.

⁹ MCM, *supra* note 2, MIL. R. EVID. 301(f)(1).

As an alternative, may the TC argue that the fact finder draw an adverse inference based on “the interests of justice,” citing MRE 512(a)(2)?¹⁰ The answer is also no. When a witness asserts his privilege against self-incrimination while testifying, MRE 301(f), not MRE 512(a)(2), applies.¹¹

Remedy

Since SPC Snuffy appropriately asserted his privilege against self-incrimination and no adverse inference can be drawn from that assertion, what is the TC to do? Military Rule of Evidence 301(f)(2) states that “[i]f a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.”¹² Before asking the military judge to strike the direct testimony of the witness, whether in whole or in part, the TC should consider the following:¹³ (1) whether the attempted impeachment of the witness was in proper form; (2) whether the attempted impeachment of the witness was “collateral”; and (3) whether counsel can eliminate or limit the basis for the witness’s refusal to testify.

Was the Attempted Impeachment of the Witness in Proper Form?

Before asking the military judge to strike SPC Snuffy’s direct testimony, whether in whole or in part, the TC should consider whether the attempted impeachment was in proper form. Trial counsel was correct that the witness’s credibility is relevant and a proper area for impeachment. Evidentiary

¹⁰ *Id.* MIL. R. EVID. 512(a)(2) (“The claim of a privilege by a person other than the accused whether in the present proceeding or upon a prior occasion normally is not a proper subject of comment by the military judge or counsel for any party. An adverse inference may not be drawn there from except when determined by the military judge to be required by the interests of justice.”).

¹¹ See *United States v. Matthews*, 66 M.J. 645, 649, 651 (A. Ct. Crim. App. 2008) (stating that since MRE 301(f) is the specific statute on point, it is controlling, even though MRE 512 provides general guidance regarding constitutional privileges of witnesses), *rev’d on other grounds*, 68 M.J. 29 (2009).

¹² MCM, *supra* note 2, MIL. R. EVID. 301(f)(2). The same analysis would apply in a situation where a witness was unwilling to answer a question, but did not claim a privilege. See *United States v. Longstreath*, 45 M.J. 366, 374 (1996) (reasoning that the fundamental issue is still whether striking all or part of the testimony is necessary to preserve an accused’s right of confrontation).

¹³ This is not an exhaustive list. Other pertinent considerations may be the party’s theory of the case and how the attempted impeachment fits into the party’s theory of the case as a whole. Counsel should always keep in mind that just because something can be done does not necessarily mean that it should be done.

rules, however, continue to apply even when testing the credibility of witnesses.¹⁴

In the above scenario, asking SPC Snuffy whether he has sexually assaulted another Soldier was an improper form of cross-examination. Under MRE 404(a)(3), character evidence of a witness may be admissible as provided in MREs 607–609.¹⁵ Military Rule of Evidence 607 allows the TC to attack SPC Snuffy’s credibility.¹⁶ Military Rule of Evidence 608, however, limits the methods by which a witness’ character, conduct, and bias may be attacked.¹⁷ While the TC may attack the credibility of SPC Snuffy using a specific instance of conduct during cross-examination, under MRE 608(b), those specific instances of conduct must be “probative of truthfulness or untruthfulness” Sexual assault by itself is not probative of truthfulness or untruthfulness. Unless the TC can articulate how the alleged sexual assault is evidence of bias, prejudice, or motive to misrepresent under MRE 608(c), such a cross-examination question would be inappropriate.¹⁸

Asking the witness whether he has lied to CID in the past is, however, a specific instance of conduct “probative of truthfulness or untruthfulness” and is therefore proper as a cross-examination question under MRE 608(b).¹⁹ However, as mentioned above, that is only the first part of a three-part inquiry.

*Was the Attempted Impeachment of the Witness
“Collateral?”*

In addition to being in a proper form under the MRE, questions to impeach a witness cannot be on a matter that is “collateral.” Military Rule of Evidence 301(f)(2) allows a party to ask the military judge to “strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are *purely collateral*.”²⁰ “Collateral” is defined as “evidence of minimal importance” and “[a] matter is collateral when sheltering it would create

little danger of prejudice to the accused.”²¹ Credibility of the witness is generally not deemed collateral.²² As with most general propositions, there are exceptions.

Courts have drawn a distinction between cross-examinations aimed at attacking a witness’s general credibility versus those aimed at the specific facts of the charged offense. Noting the “ample civilian and military precedent,” the Court of Military Appeals (CMA) in *United States v. Richardson* concluded that there are limitations on striking a witness’s direct testimony when the cross-examination concerns a witness’s prior misconduct that has no connection to the charged offense.²³ In *Richardson*, upon the TC’s motion, the military judge struck a witness’s entire direct testimony when the witness asserted his privilege against self-incrimination after the TC attempted to cross-examine him about drug activities unrelated to the charged offenses.²⁴ The CMA found that the military judge erred because the TC’s questions about the witness’s involvement in unrelated drug dealings, asked to attack his general credibility, were “purely collateral.”²⁵

Unlike questions designed to probe a witness’s general credibility, courts view questions that go to the facts of the case at hand differently. In *United States v. Shatteen*, the military judge struck a defense witness’s direct testimony after he asserted his privilege against self-incrimination during cross-examination.²⁶ The accused was charged with, among other offenses, wrongful use of marijuana.²⁷ The witness testified during direct examination that on the night in question, all personnel involved were smoking a Black and Mild cigar, as opposed to a marijuana cigarette.²⁸ When TC questioned him about his familiarity with a “blunt” that is a cigar versus a “blunt” that is a hollowed-out cigar

¹⁴ See, e.g., MCM, *supra* note 2, MIL. R. EVID. 404(a)(3) and 607–609.

¹⁵ *Id.* MIL. R. EVID. 404(a)(3).

¹⁶ *Id.* MIL. R. EVID. 607 (“The credibility of a witness may be attacked by any party, including the party calling the witness.”).

¹⁷ *Id.* MIL. R. EVID. 608(a) (providing opinion and reputation evidence of truthfulness or untruthfulness); *id.* MIL. R. EVID. 608(b) (providing specific instances of conduct probative of truthfulness or untruthfulness).

¹⁸ *Id.* MIL. R. EVID. 608(c) (“Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”).

¹⁹ Although a proper question under MRE 608(b), the trial counsel is stuck with the answer; no extrinsic evidence is allowed. *Id.*

²⁰ *Id.* MIL. R. EVID. 301(f)(2) (emphasis added).

²¹ *Id.* MIL. R. EVID. 301(f)(2) analysis, at A22-6; see also *United States v. Richardson*, 15 M.J. 41, 47 (C.M.A. 1983) (distinguishing collateral matters from “invocation of the right in connection with questions dealing with ‘the details of [the witness] direct testimony’”) (citing *United States v. Colon-Atienza*, 47 C.M.R. 336, 337 (C.M.A. 1974)).

²² See *United States v. Rivas*, 3 M.J. 282 (C.M.A. 1977) (stating that cross-examination may touch areas of self-incrimination if it is related to the direct examination or to the witness’s credibility); *United States v. Matthews*, 66 M.J. 645, 649 (A. Ct. Crim. App. 2008) (stating credibility issues are key concerns of the truth seeking process).

²³ *Richardson*, 15 M.J. at 47 (citing, *inter alia*, *Dunbar v. Harris*, 612 F.2d 690 (2d Cir. 1979); *United States v. LaRiche*, 549 F.2d 1088 (6th Cir. 1977); *United States v. Phaneuf*, 10 M.J. 831 (A.C.M.R. 1981); *United States v. Terrell*, 4 M.J. 720 (A.F.C.M.R. 1977)).

²⁴ *Id.* at 43–44.

²⁵ *Id.* at 47.

²⁶ *United States v. Shatteen*, No. ACM S29721, 2001 WL 1163635, at *2 (A.F. Ct. Crim. App. Sept. 14, 2001), *aff’d*, 58 M.J. 22 (2002).

²⁷ *Id.* at *1.

²⁸ *Id.* at *2.

containing marijuana and about his personal use of marijuana on numerous occasions that presumably would have led to that familiarity, the defense objected and requested that the witness be advised of his right against self-incrimination.²⁹ Upon being warned, the witness asserted his privilege against self-incrimination and refused to give further testimony, resulting in his entire testimony being struck.³⁰ The Air Force Court of Criminal Appeals affirmed the military judge's decision, noting that while the judge resorted to the most extreme remedy available, defense failed to put forth any evidence that the matters to which the witness refused to testify were purely collateral.³¹

Thus, in determining what is collateral and what, if any, testimony to strike, the military judge has discretion and is encouraged not to resort to the most extreme remedy.³² In *United States v. Moore*, the CMA held that the military judge should not have struck *all* of the witness's testimony when she asserted her privilege against self-incrimination.³³ The CMA emphasized that MRE 301(f)(2) only empowers a military judge to strike testimony as appropriate; it is not a requirement.³⁴ "In other words, the rule anticipates that a military judge to whom such a motion to strike is made will approach a ruling with some sensitivity to determining what if any remedy is necessary to achieve fairness and justice through the adversary system."³⁵ The CMA noted that the purpose of TC's intended cross-examination was unclear, and that if it was only to undermine the witness's credibility in a general way as a lawbreaker, it would be collateral.³⁶ In any event, the CMA concluded that the military judge should have been more precise in his exclusion of the witness's direct examination.³⁷

In SPC Snuffy's scenario, TC's attempt to impeach SPC Snuffy regarding the sexual assault was improper under the MRE. The military judge should therefore not strike the direct testimony as a result of his first invocation. As to SPC Snuffy's second invocation, did the TC properly cross-examine SPC Snuffy by questioning him about lying to CID? As with *Richardson*, such attempt to impeach SPC Snuffy's credibility by asking him whether he lied to CID about a wholly separate event from the ones at issue in trial may be deemed collateral.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at *3.

³² *United States v. Longstreath*, 45 M.J. 366, 374 (1996).

³³ *United States v. Moore*, 36 M.J. 329, 335–36 (C.M.A. 1993).

³⁴ *Id.* at 334.

³⁵ *Id.*

³⁶ *Id.* at 335.

³⁷ *Id.* at 335–36.

Specialist Snuffy fully answered the TC's questions about the details of his direct examination. Given that SPC Snuffy's statement to CID about the sexual assault is wholly unrelated to the charges at trial—wrongful distribution of a controlled substance—or his direct testimony, it may be evidence of minimal importance in connection with the facts at hand. As the CMA noted, if every refusal to answer a question on cross-examination on grounds of self-incrimination results in striking the witness's direct testimony, a cross-examiner may be encouraged to harass the witness into asserting privilege in order to have the witness's direct testimony struck.³⁸

Now assume that in the above scenario, instead of asking SPC Snuffy about his involvement in the barracks sexual assault, TC had attempted to impeach SPC Snuffy about his involvement in the wrongful drug distribution as a drug supplier to several Soldiers in the unit, to include SPC Doe. In this instance, should SPC Snuffy assert his privilege against self-incrimination, TC would have been well within the limits of MRE 301(f)(2) and case law to ask the military judge to strike SPC Snuffy's entire direct testimony. Specialist Snuffy's role as the drug supplier in the charged offense is not collateral as it goes directly to the facts of the case at hand, and it also supplies a motive for him to provide SPC Doe with an alibi. In the alternative, TC, at a minimum, can ask the military judge to strike portions of SPC Snuffy's testimony that relates to the alibi defense.

Could Counsel Eliminate or Limit the Basis for the Witness's Refusal to Testify?

Striking a witness's entire direct testimony is a drastic remedy. Before asking the military judge to grant such remedy, counsel should be prepared to justify their request, consider other alternatives, and distinguish the facts of their case as necessary. For example, the CMA has noted that striking a defense witness's direct testimony would be an especially harsh remedy when the government could grant immunity and eliminate the basis for the witness's refusal to answer.³⁹ Counsel should also consider if the point they are attempting to get across can be or has been presented through another witness's testimony. If it is cumulative to what has already been presented, or if there is an alternative

³⁸ *United States v. Richardson*, 15 M.J. 41, 47 (C.M.A. 1983).

³⁹ *Id.* at n.4. The Government also holds the immunity key to another door when a Government witness invokes. *United States v. Dill*, 24 M.J. 386, 389 (C.M.A. 1987) (quoting *United States v. Valente*, 17 M.J. 1087, 1088–89 (A.F.C.M.R. 1984) (“[A] prosecution witness is not ‘unavailable’ under [MIL. R. EVID.] 804(a)(1) even though he asserts his privilege against self-incrimination if he can be made available through the granting of testimonial immunity . . . The prosecution has an option; it can either do without the evidence or it can introduce appropriate hearsay statements of an absent witness; however, if the absence can be cured by testimonial immunity, such immunity must be granted. The confrontation clause of the U.S. Constitution requires nothing less.”)).

method to get the same facts to the fact finder, a military judge is less likely to grant the drastic remedy of striking a witness's entire direct testimony.

Moreover, courts have held that the privilege against self-incrimination is determined one question at a time.⁴⁰ Military Rule of Evidence 301(f)(2) also allows the military judge to strike a witness's direct testimony in part.⁴¹ Therefore, counsel should consider starting with questions the answers to which will not incriminate the witness. If the witness later asserts his privilege against self-incrimination, counsel can then ask for the less drastic remedy of striking a witness's testimony in part. Counsel should not automatically ask the military judge to grant the most drastic remedy just because the witness did not testify the way counsel wanted the witness to testify. For instance, in the scenario presented above, SPC Snuffy fully answered TC's questions concerning his activities with SPC Doe during the relevant period. Given that military judges are encouraged not to resort to the most extreme remedy, counsel should carefully examine what non-incriminating testimony can be properly elicited from the witness first.

Conclusion

While it can happen, it should be rare that counsel cannot anticipate that a witness will assert his privilege against self-incrimination. Therefore, the next time a witness tells you that he is asserting his privilege against self-incrimination and that he is not talking anymore, go through the steps set out above. First, has the witness appropriately asserted the privilege against self-

incrimination? Knowing that you cannot ask for an adverse inference to be drawn based on the assertion, consider other alternatives. Have you asked the right question? Is there another way of asking the question? What is the subject matter that you want to get into with the witness? Does it relate to the details of what the witness has testified to on direct? Does it relate to prior misconduct that has no relation to the charged offenses or what the witness has testified to? Have you considered granting the witness testimonial privilege if you are the government? Is the information you want already before the factfinder or can it be elicited from another witness? If you have thought through the above questions ahead of time, you will be well-prepared to argue your desired course of action before the military judge.

⁴⁰ See, e.g., *United States v. Mares*, 402 F.3d 511, 514 (5th Cir. 2005) (stating that the trial court is responsible for determining what the boundaries of the privilege are in relation to the testimony sought by the defendant); *Johnson v. United States*, 746 A.2d 349, 355 (D.C. 2000) (stating that a witness' privilege against self-incrimination can only be asserted against those specific questions to which his answers would incriminate him).

⁴¹ MCM, *supra* note 2, MIL. R. EVID. 301(f)(2).

The Good Soldiers¹

Reviewed by Major Thomas L. Clark*

*[I]f we all said, 'This is our focus, this is our priority, and we're going to win it, we're going to do everything that we have to do to win it,' then we'd win it. This nation can do anything that it wants to do. The question is, does America have the will?*²

I. Introduction

In *The Good Soldiers*, David Finkel³ follows a battalion of 800 Soldiers through their fifteen-month deployment at Rustamiyah, one of the most violent forward operating bases in Iraq.⁴ Nicknamed “The Rangers,” the 2-16th (2d Battalion, 16th Infantry Regiment of the 4th Infantry Brigade Combat Team, 1st Infantry Division) deployed in early 2007 as part of the surge to quell sectarian violence in and around Baghdad.⁵ Finkel spent eight months embedded with the 2-16th, observing the war through their eyes, hoping to “document their corner of the war, without agenda.”⁶

II. Background

On 10 January 2007, President Bush declared that previous “efforts to secure Baghdad” had failed because “[t]here were not enough Iraqi and American troops to secure neighborhoods that had been cleared of terrorists and insurgents. And there were too many restrictions on the troops we did have.”⁷ As an effort to fill this void, he announced the commitment of an addition of twenty thousand more troops.⁸ These Soldiers would deploy, primarily in and around Baghdad, to address the increased

sectarian violence.⁹ Their mission was “well-defined,” as announced to the nation: “to help Iraqis clear and secure neighborhoods, to help them protect the local population, and to help ensure that the Iraqi forces left behind are capable of providing the security that Baghdad needs.”¹⁰ This new strategy was designed to put the burden back on the Iraqis: we were finally shifting responsibility over to them. Much of the strategy on the ground would follow the guidance of the newly published Army field manual on counterinsurgency, “[w]in the people, win the war.”¹¹

III. Analysis

In the beginning, the 2-16th Soldiers are portrayed as overly optimistic and arguably naïve, from the battalion commander, Lieutenant Colonel (LTC) Kauzlarich,¹² on down.¹³ The average age in the battalion was nineteen: for most of them, this was their first deployment and their first time away from the United States.¹⁴ After only a few days on the ground, LTC Kauzlarich ordered “a day long walk through the sixteen-square mile area of operations.”¹⁵ “They were finding stockpiles of weapons before the weapon could be used against them. They were getting shot at but not hit. Training and standards. . . . that was the difference.”¹⁶ Two months into the deployment passed before 2-16th experienced their first casualty, but this still did not seem to affect their confidence right away. It was bound to happen. Soon enough, however, the casualties mounted up and confidence began to deteriorate. This was not the case for the political rhetoric back in Washington.

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¹ DAVID FINKEL, *THE GOOD SOLDIERS* (2009).

² *Id.* at 5.

³ David Finkel is the National Enterprise Editor of the *Washington Post*. He was awarded the 2006 Pulitzer Prize for Explanatory Reporting for his series of stories about U.S.-funded democracy efforts in Yemen. *Id.* inside front cover. In May 2010, Mr. Finkel received the 2010 J. Anthony Lukas Book Prize for *The Good Soldiers*. Interview by Andrea Pitzer with David Finkel [hereinafter Pitzer Interview], available at <http://niemanstoryboard.us/2010/05/03/david-finkel-on-the-good-soldiers-the-obligation-is-to-the-story>.

⁴ *Id.* after app. (A Note on Sources and Methods).

⁵ *Id.* at 10.

⁶ *Id.* after app. (A Note on Sources and Methods).

⁷ President George W. Bush, President's Address to the Nation (Jan. 10, 2007), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/01/20070110-7.html>. [hereinafter, President Bush's Address].

⁸ *Id.*

⁹ *Id.*

¹⁰ FINKEL, *supra* note 1, at 10 (quoting President Bush's Address, *supra* note 7).

¹¹ *Id.* at 29. Field Manual 3-24, *Counterinsurgency*, was released just prior to the surge after receiving its first update in twenty years. U.S. DEPT' OF ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY (15 Dec. 2006).

¹² FINKEL, *supra* note 1, at 8. Lieutenant Colonel (LTC) Kauzlarich investigated the Pat Tillman friendly fire death in Afghanistan and made statements to the media that generated negative national attention.

¹³ *Id.* at 19.

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 18.

¹⁶ *Id.* at 19.

To emphasize this disconnect, Finkel introduces each paragraph with a quote from President Bush, most showing stark inconsistency between the Soldiers' experience on the ground and Washington's interpretation of progress.¹⁷ For example, President Bush announced "We're kicking ass," on the same day the 2-16th lost two more members.¹⁸ Finkel does not challenge the statement as false. "To President Bush, that was his version of the war that day."¹⁹ To the Soldier on the ground, it was an entirely different war. In this context, President Bush should be regarded as an equally important character to the story as the Soldiers. It was his war. This conflict also reflects the different roles of the infantry Soldier and policy maker. To the Soldier, war is intimate, horrific and personal, and the measure of success is survival. Neither was necessarily right or wrong, just different perspectives based on their piece of the fight.

Notwithstanding Finkel's stated lack of agenda, his novel engages the ultimate question of the Iraq war: is it worth it? He left the question conspicuously unanswered. "To politicians, generals and commentators, the war was about things more strategic, more political, more policy-driven. To the Soldiers of the 2-16th, war would always be about specific acts of bravery and tragedy."²⁰

Despite his immersion in operations for eight months, Finkel is noticeably absent from the story.²¹ Instead of a first person narrative, he writes in third person making the Soldiers stand out as the main characters.²² The story is not about his experiences; it rightly belongs to the Soldiers. During an interview, Finkel casually shrugged this point off as merely his writing style.²³ Regardless of the explanation, his method provides a unique and chilling perspective on the Iraq War. He takes us much closer to what these Soldiers went through each moment.

¹⁷ *Id.* at 117. Compare "I'm optimistic. We'll succeed unless we lose our nerve. —George W. Bush, July 19, 2007," with "It scared the shit out of everyone. And this . . . has scared everyone, too. Me, everytime I go out on patrol, I feel sick. It's like, I'm gonna get hit, I'm gonna get hit, I'm gonna get hit. . . ."

¹⁸ *Id.* at 162–63.

¹⁹ David Finkel, Speaking at the Perth Writer's Festival (Feb. 27, 2010), available at http://fora.tv/2010/02/27/David_Finkel_The_Good_Soldiers. Finkel explains in another interview "those were directly relevant statements by a main character in the story—it was his war." Pitzer Interview, *supra* note 3.

²⁰ Michiko Kakutani, *Ground War: The Iraq Surge Grunts Knew*, N.Y. TIMES, Oct. 5, 2009, available at <http://www.nytimes.com/2009/10/06/books/06kakutani.html> (reviewing *The Good Soldiers*).

²¹ Dough Stanton, *Their Corner of the War*, N.Y. TIMES, Oct. 8, 2009, available at <http://www.nytimes.com/2009/10/11/books/review/Stanton-t.html> (reviewing *The Good Soldiers*).

²² Pitzer Interview, *supra* note 3.

²³ *Id.*

Finkel describes the physical injuries and casualties suffered by Soldiers and Iraqis in almost gruesome detail:

Now they watched helplessly as the driver, nineteen-year-old James Harrelson, burned to death in front of their eyes. Now they were in the tall, green grass on the side of the berm, tending to the snapped bones and hemorrhaging wounds of the four Soldiers they had been able to get to.²⁴

At the same time, he successfully strikes a balance to avoid what he labeled in a recent interview as "war porn."²⁵ In similar regard, he skillfully captures the anguish of surviving comrades and how each casualty steadily shifted their naïve optimism to a realization that "the bullet had already been fired, it was only a matter of time."²⁶ It became apparent that their training wouldn't make a difference to the insurgent at the other end of the wire attached to their bomb. Everything became a matter of chance, almost like a lottery, but with worse odds.

The Good Soldiers gives a voice to those who have served in the most hostile territory in Iraq. Many returned suffering physical and mental injuries that will last a lifetime. During an interview, Finkel commented that a typical e-mail he receives from Soldiers states, "I was over there, I came home. Everyone wanted to know what it was like. I can't talk about it, and I don't talk about it. Now I give people your book and say, 'Read the book, and you'll understand what it was like and why I can't talk about it.'"²⁷

Finkel focuses almost entirely on the horrors and tragedy of war, leaving the reader emotionally drained in the end. Aside from a short interlude into a Soldier of the Month board preparation, little is depicted about the Soldiers' interaction in their down time. Their corner of the war cannot be fully understood without a glimpse into their lives between the bombs and after patrols.

IV. Relevance

The Good Soldiers is pertinent to all judge advocates (JAs). As an advisor, the JA must understand and appreciate the perspective of those who seek our insight. It serves as a reminder that traditional roles of our organizations are not fixed and leaders must adjust for these changes. The 2-16th was an infantry battalion, whose "purpose is to close with

²⁴ FINKEL, *supra* note 1, at 124.

²⁵ Pitzer Interview, *supra* note 3.

²⁶ FINKEL, *supra* note 1, at 101.

²⁷ Pitzer Interview, *supra* note 3.

and destroy the enemy.”²⁸ The surge was an entirely different mission, with a newly written playbook, untested strategy and different rules. Assigned JAs must often provide advice to leaders when the lines are not entirely clear.

This story also reminds us that sometimes, despite the regulations, leaders will do what they think is right. For example, when the daughter of the commander’s interpreter, Izzy, was injured from an explosion, Major (MAJ) Brent Cummings, the 2-16th’s executive officer acting in his commander’s absence, ignored her non-eligible status and allowed treatment on the base by military physicians.²⁹ It was clearly against regulations, but MAJ Cummings just wanted to help Izzy “who had come to represent all the reasons [LTC] Kauzlarich continued to find faith in the goodness of Iraqis.”³⁰ Attorneys can advise, maybe find a workable solution, but in the end it is the commander’s decision.

Military leaders at all levels must be aware that they are not immune to the same forces that compel mental help for their Soldiers. In fact, they may be more susceptible because of their responsibility. Lieutenant Colonel Kauzlarich

refused Combat Stress³¹ after witnessing his Soldiers remains “scattered along the road.”³² “He made it clear that he needed no help whatsoever. I don’t need that bullshit.”³³ Combat Stress ultimately saw him at his office. As the battalion commander, he likely (and maybe correctly) believed it would not be appropriate to be seen by his troops at Combat Stress.

V. Conclusion

Finkel began his effort with no agenda, but ended with a powerful story that connects on many levels. *The Good Soldiers* is an exceptional book that effectively and accurately captures the truth of war from the Soldiers’ perspective. All could benefit from a deeper understanding of what Soldiers are asked to do, the horror they experience and the scars that are often left behind.

²⁸ FINKEL, *supra* note 1, at 29.

²⁹ *See id.* at 168–73.

³⁰ *Id.* at 168.

³¹ Combat Stress Control Team. *See Combat Stress Control*, ARMY MEDICINE, <http://www.armymedicine.army.mil/about/tl/factscombatstresscontrol.html> (last visited Nov. 27, 2012).

³² *Id.* at 207.

³³ *Id.*

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

b. Active duty servicemembers and civilian employees must obtain reservations through their directorates training office. Reservists or ARNG must obtain reservations through their unit training offices.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department at (800) 552-3978, extension 3307.

d. The ATRRS Individual Student Record is available on-line. To verify a confirmed reservation, log into your individual AKO account and follow these instructions:

Go to Self Service, My Education. Scroll to ATRRS Self-Development Center and click on "Update" your ATRRS Profile (not the AARTS Transcript Services).

Go to ATRRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

If you do not see a particular entry for a course that you are registered for or have completed, see your local ATRRS Quota Manager or Training Coordinator for an update or correction.

e. The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGLCS CLE Course Schedule (September 2012–September 2013) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

ATRRS. No.	Course Title	Dates
GENERAL		
	61st Judge Advocate Officer Graduate Course	13 Aug 12 – 23 May 13
	62d Judge Advocate Officer Graduate Course	12 Aug 13 – 22 May 14
5-27-C20	189th JAOBC/BOLC-B (Ph 2)	1 Feb – 18 Mar 13
	190th JAOBC/BOLC-B (Ph 2)	22 Feb – 1 May 13
5F-F1	225th Senior Officer Legal Orientation Course	4 – 8 Feb 13
5F-F1	226th Senior Officer Legal Orientation Course	18 – 22 Mar 13
5F-F1	227th Senior Officer Legal Orientation Course	17 – 21 Jun 13
5F-F1	227th Senior Officer Legal Orientation Course	26 – 30 Aug 13
5F-F3	19th RC General Officer Legal Orientation Course	27 May – 1 Jun 13
5F-F40	Brigade Leader Course (Pilot)	22 – 25 Jan 13
5F-F1	CSM Legal Orientation Course	29 – 31 Jan 13

5F-F5	2013 Congressional Staff Legal Orientation (COLO)	21 – 22 Feb 13
5F-F52	43d Staff Judge Advocate Course	3 – 7 Jun 13
5F-F52-S	16th Team Leadership Course	3 – 7 Jun 13
5F-F55	2013 JAOAC	7 – 18 Jan 13
5F-57E	16th Paralegal Triennial Training	15 – 26 Jul 13
5F-F70	44th Methods of Instruction	27 May – 1 Jun 13
5F-F70	45th Methods of Instruction	4 – 6 Sep 13
JARC-181	JA Recruiting Course	17 – 19 Jul 13

NCO ACADEMY COURSES

512-27D30	2d Advanced Leaders Course (Ph 2)	7 Jan – 12 Feb 13
512-27D30	3d Advanced Leaders Course (Ph 2)	7 Jan – 12 Feb 13
512-27D30	4th Advanced Leaders Course (Ph 2)	11 Mar – 16 Apr 13
512-27D30	5th Advanced Leaders Course (Ph 2)	10 – 16 Jun 13
512-27D30	6th Advanced Leaders Course (Ph 2)	12 Aug – 17 Sep 13
512-27D40	2d Senior Leaders Course (Ph 2)	11 Mar – 16 Apr 13
512-27D40	3d Senior Leaders Course (Ph 2)	10 – 16 Jun 13
512-27D40	4th Senior Leaders Course (Ph 2)	12 Aug – 17 Sep 13

WARRANT OFFICER COURSES

7A-270A0	20th JA Warrant Officer Basic Course	20 May – 28 Jun 13
7A-270A1	24th Legal Administrator Course	24 – 28 Jun 13
7A-270A2	14th JA Warrant Officer Advanced Course	25 – 29 Mar 13

ENLISTED COURSES

512-27D/20/30	24th Law for Paralegal NCO Course	18 – 22 May 13
512-27D/DCSP	22d Senior Paralegal Course	10 – 14 Jun 13
512-27DC5	40th Court Reporter Course	4 Feb – 22 Mar 13
512-27DC5	41st Court Reporter Course	29 Apr – 21 Jun 13
512-27DC5	42d Court Reporter Course	5 Aug – 20 Sep 13
512-27DC6	13th Senior Court Reporter Course	8 – 12 Jul 13
512-27DC7	18th Redictation Course	7 – 11 Jan 13
	19th Redictation Course	8 – 12 Apr 13

ADMINISTRATIVE AND CIVIL LAW

5F-F22	66th Law of Federal Employment Course	29 Jul – 2 Aug 13
5F-F24	37th Administrative Law for Military Installations & Operations	11 – 15 Feb 13
5F-F28	2012 Income Tax Law Course	3 – 7 Dec 12
NA	Tax Year 2012 PACOM Income Tax CLE	7 – 11 Jan 13
5F-F28H	Hawaii Tax Course Off Site	14 – 18 Jan 13
5F-F29	31st Federal Litigation Course	26 – 30 Aug 13
5F-F202	11th Ethics Counselors Course	8 – 12 Apr 13

CONTRACT AND FISCAL LAW

5F-F10	166th Contract Attorneys Course	15 – 26 Jul 13
5F-F12	84th Fiscal Law Course	11 – 15 Mar 13
5F-F14	31st Comptrollers Accreditation Fiscal Law Course	18 – 22 Mar 13

CRIMINAL LAW

5F-F33	56th Military Judge Course	15 Apr – 3 May 13
5F-F34	44th Intermediate Trial Advocacy Course	4 – 15 Feb 13
5-F-301	16th Advanced Trial Communications Course	29 – 31 May 13

INTERNATIONAL AND OPERATIONAL LAW

5F-F41	9th Intelligence Law Course	12 – 16 Aug 13
5F-F47	59th Operational Law of Armed Conflict Course	25 Feb – 1 Mar 13
5F-F47	60th Operational Law of Armed Conflict Course	29 Jul – 9 Aug 13
5F-F48	6th Rule of Law Course	8 – 12 Jul 13

3. Naval Justice School and FY 2012–2013 Course Schedule

For information on the following courses, please contact Jerry Gallant, Registrar, Naval Justice School, 360 Elliot Street, Newport, RI 02841 at (401) 841-3807, extension 131.

Naval Justice School Newport, RI		
CDP	Course Title	Dates
03RF	Legalman Accession Course (10) Legalman Accession Course (20)	4 Mar – 17 May 13 10 Jun – 23 Aug 13
03TP	Basic Trial Advocacy (10)	4 – 8 Feb 13
049N	Reserve Legalman Course (10) (Phase I)	Cancelled
056L	Reserve Legalman Course (10) (Phase II)	Cancelled
07HN	Legalman Paralegal Core (030) Legalman Paralegal Core (10) Legalman Paralegal Core (20) Legalman Paralegal Core (30)	31 Aug – 20 Dec 12 21 Jan – 17 May 13 20 May – 9 Aug 13 29 Aug – 18 Dec 13
08LM	Reserve Legalman Phases Combined (10)	TBD
08XO	Legal Ethics for Paralegals Course (20) Legal Ethics for Paralegals Course (30)	28 Jan – 1 Feb 13 26 – 30 Aug 13
09XU	Professional Development (10)	Cancelled
09XY	Afghanistan Pre-Deployment (10) Afghanistan Pre-Deployment (20)	TBD TBD
09XZ	Information Operations Law Training (10)	TBD
09YA	Sexual Assault Disposition Authority Class for JA-Mobile Training Teams (10)	TBD
09YB	Sexual Assault Disposition Authority Class for Convening Authorities - Mobile Training (10)	TBD
09YF	Sexual Assault Disposition Authority Class for JA-Distance Learning (10)	TBD
09YO	Litigating Complex Cases (10)	20 – 24 May 13
09Y9	Working with Experts (10)	Cancelled
10E1	Ethics for Trial and Defense (20)	6 – 13 May 13

10E2	Post Trial Review (20)	15 – 30 Apr 13
10E3	Operational Law (10) Operational Law (20)	3 – 21 Dec 12 10 – 28 Jun 13
10E4	Law of Armed Conflict (20)	29 Apr – 13 May 13
846L	Senior Legalman Leadership Course (10)	22 – 26 Jul 13
932V	Coast Guard Legal Technician Course (10)	TBD
0257	Lawyer Course (10) Lawyer Course (20) Lawyer Course (30)	9 Oct – 14 Dec 12 22 Jan – 29 Mar 13 29 Jul – 4 Oct 13
0258	Senior Officer (030) Senior Officer (040) Senior Officer (050) Senior Officer (060) Senior Officer (070) Senior Officer (080) Senior Officer (090) Senior Officer (110) Senior Officer (120) Senior Officer (130) Senior Officer (140)	17 – 19 Dec 12 (Newport) 22 – 24 Jan 13 (Newport) 11 – 13 Feb 13 (Newport) 11 – 13 Mar 13 (Newport) 15 – 17 Apr 13 (Newport) 13 – 15 May 13 (Newport) 17 – 19 Jun 13 (Newport) 1 – 3 Jul 13 (Newport) 29 – 31 Jul 13 (Newport) 26 – 28 Aug 13 (Newport) 23 – 25 Sep 13 Newport)
627S	Senior Enlisted Leadership Course (Fleet) (40) Senior Enlisted Leadership Course (Fleet) (50) Senior Enlisted Leadership Course (Fleet) (60) Senior Enlisted Leadership Course (Fleet) (70) Senior Enlisted Leadership Course (Fleet) (80) Senior Enlisted Leadership Course (Fleet) (90) Senior Enlisted Leadership Course (Fleet) (100)	9 – 11 Jan 13 (Norfolk) 20 – 22 Feb 13 ((San Diego) 25 – 27 Mar 13 (San Diego) 29 – 31 May 13 (Norfolk) 29 – 31 May 13 (San Diego) 31 Jul – 2 Aug 13 (Norfolk) 16 – 18 Sep 13 (Pendleton)
748A	Law of Naval Operations (010) Law of Naval Operations (020)	15 – 19 Apr 13 (San Diego) 16 – 20 Sep 13 (Norfolk)
748B	Naval Legal Service Command Senior Officer Leadership (10)	29 Jul – 2 Aug 13
786R	Advanced SJA/Ethics (10)	22 – 26 Apr 13
846M	Reserve Legalman Course (10) (Phase III)	Cancelled
850T	Staff Judge Advocate Course (10) Staff Judge Advocate Course (20)	25 Feb – 8 Mar 13 8 – 19 Jul 13
850V	Law of Military Operations (10)	6 – 17 May 13
900B	Reserve Legal Assistance (10)	15 – 19 Apr 13

961J	Defending Sexual Assault Cases (10)	12 – 16 Aug 13
2622	Senior Officer (Fleet) (20) Senior Officer (Fleet) (30) Senior Officer (Fleet) (40) Senior Officer (Fleet) (50) Senior Officer (Fleet) (60) Senior Officer (Fleet) (70) Senior Officer (Fleet) (80) Senior Officer (Fleet) (90) Senior Officer (Fleet) (110) Senior Officer (Fleet) (120)	14 – 17 Jan 13 (Cancelled) 25 – 28 Feb 13 (Cancelled) 8 – 11 Apr 13 (Cancelled) 20 – 23 May 13 (Cancelled) 24 – 27 Jun 13 (Cancelled) 8 -12 Jul 13 (Camp Lejeune, NC) 15 – 19 Jul 13 (Quantico, VA) 22 – 26 Jul 13 (Parris Island) 19 – 22 Aug 13 (Cancelled) 9 – 13 Sep 13 (Cancelled)
4040	Paralegal Research & Writing (10) Paralegal Research & Writing (20) Paralegal Research & Writing (30)	26 Nov – 13 Dec 12 11 – 22 Feb 13 16 – 27 Sep 13
4048	Legal Assistance Course (10)	15 – 19 Apr 13
7878	Legal Assistance Paralegal Course (10)	15 – 19 Apr 13
S-5F-1217	Prosecuting Alcohol Facilitated Sexual Assaults (10)	12 – 16 Aug 13
S-5F-1218	TC/DC Orientation (10) TC/DC Orientation (20)	29 Apr – 3 May 13 9 – 13 Sep 13
NA	Legal Service Court Reporter (010) Legal Service Court Reporter (020)	10 Jan – 12 Apr 13 11 Jul – 10 Oct 13
NA	Legal Services Military Justice (10)	13 – 24 May 13
NA	Legal Services Post Trial Review (10)	22 Apr – 3 May 13
NA	Legal Services Admin Law (10)	3 – 14 Jun 13
NA	Legal Services Admin Board Recorder (10)	TBD
NA	Legal Specialist Course (10) Legal Specialist Course (20) Legal Specialist Course (30)	4 Oct 12 – 18 Dec 12 10 Jan – 12 Apr 13 7 May – 18 Jul 13
NA	Senior Trial Counsel/Senior Defense Counsel Leadership (10)	Cancelled

**Naval Justice School Detachment
Norfolk, VA**

0376	Legal Officer Course (20) Legal Officer Course (30) Legal Officer Course (40) Legal Officer Course (50) Legal Officer Course (60) Legal Officer Course (70) Legal Officer Course (80) Legal Officer Course (90)	26 Nov – 14 Dec 12 28 Jan – 15 Feb 13 11 – 29 Mar 13 8 – 26 Apr 13 6 – 24 May 13 10 – 28 Jun 13 8 – 26 Jul 13 12 – 30 Aug 13
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0379	Legal Clerk Course (30) Legal Clerk Course (40) Legal Clerk Course (50) Legal Clerk Course (60) Legal Clerk Course (70) Legal Clerk Course (80)	28 Jan – 8 Feb 13 11 – 22 Mar 13 8 – 19 Apr 13 10 – 21 Jun 13 8 – 26 Jul 13 12 – 23 Aug 13
0360	Senior Officer Course (30) Senior Officer Course (40) Senior Officer Course (50) Senior Officer Course (60)	14 – 16 Jan 13 29 Apr – 1 May 13 3 – 5 Jun 13 9 – 11 Sep 13

Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (20) Legal Officer Course (30) Legal Officer Course (40) Legal Officer Course (50) Legal Officer Course (60) Legal Officer Course (70) Legal Officer Course (80)	26 Nov – 14 Dec 12 28 Jan – 15 Feb 13 25 Feb – 15 Mar 13 6 – 24 May 13 10 – 28 Jun 13 22 Jul – 9 Aug 13 19 Aug – 6 Sep 13
947J	Legal Clerk Course (20) Legal Clerk Course (30) Legal Clerk Course (40) Legal Clerk Course (50) Legal Clerk Course (60) Legal Clerk Course (70) Legal Clerk Course (80) Legal Clerk Course (90)	3 – 14 Dec 12 7 Jan – 18 Jan 13 4 – 15 Feb 13 4 – 15 Mar 13 13 – 24 May 13 17 – 28 Jun 13 29 Jul – 9 Aug 13 26 Aug – 6 Sep 13
3759	Senior Officer Course (020) Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060)	7 – Jan 13 (San Diego) 8 – 10 Apr 13 (San Diego) 29 Apr – 1 May 13 (San Diego) 3 – 5 Jun 13 (San Diego) 16 – 18 Sep 13 (Miramar)

4. Air Force Judge Advocate General School Fiscal Year 2013 Course Schedule

For information about attending the following courses, please contact Jim Whitaker, Air Force Judge Advocate General School, 150 Chennault Circle, Maxwell AFB, AL 36112-5712, commercial telephone (334) 953-2802, DSN 493-2802, fax (334) 953-4445.

Air Force Judge Advocate General School, Maxwell AFB, AL	
Course Title	Dates
Judge Advocate Staff Officer Course, Class 13-A	9 Oct – 13 Dec 12
Trial & Defense Advocacy Course, Class 13-A	7 – 18 Jan 13
Gateway, Class 13-A	7 – 18 Jan 13

Wills Preparation for Paralegals Course, Class 13-B	8 – 10 Jan 13
Paralegal Apprentice Course, Class 13-02	15 Jan – 8 Mar 13
Homeland Defense/Homeland Security Course, Class 13-A	22 – 25 Jan 13
CONUS Trial Advocacy Course, Class 13-A	28 Jan – 1 Feb 13 (Maxwell AFB, AL)
Joint Military Judge’s Annual Training, Class 13-A	39 Jan – 1 Feb 13
Legal & Administrative Investigations Course, Class 13-A	4 – 6 Feb 13
Judge Advocate Staff Officer Course, Class 13-B	11 Feb – 12 Apr 13
Paralegal Craftsman Course, Class 13-02	11 Feb – 29 Mar 13
Wills Preparation for Paralegals Course, Class 13-C	12 – 14 Mar 13
Paralegal Apprentice Course, Class 13-03	19 Mar – 8 May 13
Environmental Law Update Course-DL, Class 13-A	26 – 28 Mar 13
Defense Orientation Course, Class 13-B	1 – 5 Apr 13
Advanced Labor & Employment Law Course, Class 13-A (off-site)	2 – 4 Apr 13 (Washington, D.C.)
Air Force Reserve & Air National Guard Annual Survey of the Law, Class 13-A (off-site TBD)	12 -13 Apr 13
Military Justice Administration Course, Class 13-B	15 – 19 Apr 13
European Trial Advocacy Course, Class 13-A (off-site)	22 – 26 Apr 13 (Ramstein AB, Germany)
Cyber Law Course, Class 13-A	23 – 24 Apr 13
Negotiation & Appropriate Dispute Resolution, Class 13-a	29 Apr – 3 May 13
Advanced Trial Advocacy, Class 13-A	6 – 10 May 13
Operations Law Course, Class 13-A	6 – 17 May 13
CONUS Trial Advocacy Course, Class 13-B (off-site)	13 – 17 May 13 (Lackland AFB, TX)
Reserve Forces Paralegal Course, Class 13-A	20 – 29 May 13
Paralegal Apprentice Course, Class 13-04	20 May – 11 Jul 13
CONUS Trial Advocacy Course, Class 13-C (off-site)	3 – 7 Jun 13 (Nellis AFB, NV)
Staff Judge Advocate Course, Class 13-A	10 – 21 Jun 13
Law Office Management Course, Class 13-A	10 – 21 Jun 13
Paralegal Craftsman Course, Class 13-03	10 Jun – 26 Jul 13

Wills Preparation for Paralegals Course, Class 13-D	24 – 26 Jun 13
Judge Advocate Staff Officer Course, Class 13-C	8 Jul – 6 Sep 13
Paralegal Apprentice Course, Class 13-05	23 Jul – 12 Sep 13
Gateway, Class 13-B	29 Jul – 9 Aug 13
Environmental Law Course, Class 13-A	12 – 16 Aug 13
Paralegal Craftsman Course, Class 13-04	12 Aug – 27 Sep 13
Paralegal Contracts Law Course, Class 13-A	19 – 23 Aug 13
Accident Investigation Course, Class 13-A	27 – 30 Aug 13

5. Civilian-Sponsored CLE Courses

For additional information on civilian courses in your area, please contact one of the institutions listed below:

- AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225
- ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200
- AGACL: Association of Government Attorneys in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552
- ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600
- ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990
- CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973

CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747

CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662

ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900

FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

FB: Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5600

GICLE: The Institute of Continuing Legal Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.
966 Hungerford Drive, Suite 24
Rockville, MD 20850
(301) 251-9250

GWU: Government Contracts Program
The George Washington University Law School
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1555 King Street, Suite 200
Alexandria, VA 22314
(703) 684-0510
(800) 727-1227

LSU: Louisiana State University
Center on Continuing Professional Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

MLI: Medi-Legal Institute
15301 Ventura Boulevard, Suite 300
Sherman Oaks, CA 91403
(800) 443-0100

MC Law: Mississippi College School of Law
151 East Griffith Street
Jackson, MS 39201
(601) 925-7107, fax (601) 925-7115

NAC National Advocacy Center
1620 Pendleton Street
Columbia, SC 29201
(803) 705-5000

NDAA: National District Attorneys Association
44 Canal Center Plaza, Suite 110
Alexandria, VA 22314
(703) 549-9222

NDAED: National District Attorneys Education Division
1600 Hampton Street
Columbia, SC 29208
(803) 705-5095

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108
(612) 644-0323 (in MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers' Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
104 South Street
P.O. Box 1027
Harrisburg, PA 17108-1027
(717) 233-5774
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of Law
Office of Continuing Legal Education
727 East 26th Street
Austin, TX 78705-9968

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905

6. Information Regarding the Judge Advocate Officer Advanced Course (JAOAC)

a. The JAOAC is mandatory for an RC company grade JA's career progression and promotion eligibility. It is a blended course divided into two phases. Phase I is an online nonresident course administered by the Distributed Learning Division (DLD) of the Training Developments Directorate (TDD), at TJAGLCS. Phase II is a two-week resident course at TJAGLCS each January.

b. Phase I (nonresident online): Phase I is limited to USAR and Army NG JAs who have successfully completed the Judge Advocate Officer's Basic Course (JAIBC) and the Judge Advocate Tactical Staff Officer Course (JATSOC) prior to enrollment in Phase I. Prior to enrollment in Phase I, students must have obtained at least the rank of CPT and must have completed two years of service since completion of JAIBC, unless, at the time of their accession into the JAGC they were transferred into the JAGC from prior commissioned service. Other cases are reviewed on a case-by-case basis. Phase I is a prerequisite for Phase II. For further information regarding enrolling in Phase I, please contact the Judge Advocate General's University Helpdesk accessible at <https://jag.learn.army.mil>.

c. Phase II (resident): Phase II is offered each January at TJAGLCS. Students must have submitted all Phase I subcourses for grading, to include all writing exercises, by 1 November in order to be eligible to attend the two-week resident Phase II in January of the following year.

d. Regarding the January 2013 Phase II resident JAOAC, students who fail to submit all Phase I non-resident subcourses by 2400 hours, 1 November 2012 will not be allowed to attend the resident course.

e. If you have additional questions regarding JAOAC, contact LTC Baucum Fulk, commercial telephone (434) 971-3357, or e-mail baucum.fulk@us.army.mil.

7. Mandatory Continuing Legal Education

Judge Advocates must remain in good standing with the state attorney licensing authority (i.e., bar or court) in at least one state in order to remain certified to perform the duties of an Army Judge Advocate. This individual responsibility may include requirements the licensing state has regarding continuing legal education (CLE).

To assist attorneys in understanding and meeting individual state requirements regarding CLE, the Continuing Legal Education Regulators Association (formerly the Organization of Regulatory Administrators) provides an exceptional website at www.clereg.org (formerly www.cleusa.org) that links to all state rules, regulations and requirements for Mandatory Continuing Legal Education.

The Judge Advocate General's Legal Center and School (TJAGLCS) seeks approval of all courses taught in Charlottesville, VA, from states that require prior approval as a condition of granting CLE. For states that require attendance to be reported directly by providers/sponsors, TJAGLCS will report student attendance at those courses. For states that require attorneys to self-report, TJAGLCS provides the appropriate documentation of course attendance directly to students. Attendance at courses taught by TJAGLCS faculty at locations other than Charlottesville, VA, must be self-reported by attendees to the extent and manner provided by their individual state CLE program offices.

Regardless of how course attendance is documented, it is the personal responsibility of Judge Advocates to ensure that their attendance at TJAGLCS courses is accounted for and credited to them and that state CLE attendance and reporting requirements are being met. While TJAGLCS endeavors to assist Judge Advocates in meeting their CLE requirements, the ultimate responsibility remains with individual attorneys. This policy is consistent with state licensing authorities and CLE administrators who hold individual attorneys licensed in their jurisdiction responsible for meeting licensing requirements, including attendance at and reporting of any CLE obligation.

Please contact the TJAGLCS CLE Administrator at (434) 971-3309 if you have questions or require additional information.

Current Materials of Interest

1. Training Year (TY) 2013 RC On-Site Legal Training Conferences

The TY13 RC on-site program is pending policy and budget review at HQDA. To facilitate successful execution, if the program is approved, class registration is available. However, potential students should closely follow information outlets (official e-mail, ATRRS, websites, unit) about these courses as the start dates approach.

Date	Region, LSO & Focus	Location	Supported Units	POCs
8 – 10 Feb 13	Mid-Atlantic Region 154th LOD Focus: Military Justice and Separations	Norfolk, VA	NA	MAJ Darrell Baughn Darrell.baugh@usar.army.mil SFC Daniela Davis daniela.davis@usar.army.mil
8 – 10 Mar 13	Southeast Region 12th LOD Focus: Administrative and Civil Law	Atlanta, GA	NA	LTC Phil Lenski plenski@saclc.net SSG Kayla Thomas shakaylor.thomas2@usar.army.mil
19 – 21 Apr 13	Southwestern Region 22d LOD Focus: Military Justice and Separations	Camp Robinson North Little Rock, AR	NA	CPT DeShun Eubanks d.eubanks@usar.army.mil SFC Tina Richardson Tina.richardson@usar.army.mil
3 – 5 May 13	National Capital Region 151st LOD Focus: Fiscal and Contract Law	Camp Dawson, WV	NA	LTC Tom Carter gcarter@nmic.navy.mil SGT Jessica Steinberger jessica.f.keller@usar.army.mil
31 May – 2 Jun 13	Northeast Region 4th LOD Focus: Client Services	Philadelphia, PA	NA	LTC Leonard Jones ltcleonardjones@gmail.com SSG James Griffin james.griffin15@usar.army.mil
19 – 21 Jul 13	Heartland Region 91st LOD Focus: Client Services	Cincinnati, OH	NA	1LT Ligy Pullappally Ligy.j.pullappally@us.army.mil SFC Jarrod Murison jorrod.t.murison@usar.army.mil
23 – 25 Aug 13	North Western Region 75th LOD Focus: International and Operational Law	Joint Base Lewis-McChord, WA	NA	LTC John Nibbelin jnibblein@smcgov.org SFC Christian Sepulveda christian.sepulveda1@usar.army.mil

2. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DoD) access in some cases. Whether you have Army access or DoD-wide access, all users will be able to download TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OTJAG staff:

(a) Active U.S. Army JAG Corps personnel;

(b) Reserve and National Guard U.S. Army JAG Corps personnel;

(c) Civilian employees (U.S. Army) JAG Corps personnel;

(d) FLEP students;

(e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DoD personnel assigned to a branch of the JAG Corps; and, other personnel within the DoD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to: LAAWSXXI@jagc-smtp.army.mil.

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 6 or higher recommended) go to the following site:
<http://jagcnet.army.mil>.

(2) Follow the link that reads “Enter JAGCNet.”

(3) If you already have a JAGCNet account, and know your user name and password, select “Enter” from the next menu, then enter your “User Name” and “Password” in the appropriate fields.

(4) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smtp.army.mil.

(5) If you do not have a JAGCNet account, select “Register” from the JAGCNet Intranet menu.

(6) Follow the link “Request a New Account” at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(7) Once granted access to JAGCNet, follow step (c), above.

3. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

The Judge Advocate General’s School, U.S. Army (TJAGSA), Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGSA, all of which are compatible with Microsoft Windows Vista™ Enterprise and Microsoft Office 2007 Professional.

The faculty and staff of TJAGSA are available through the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact Legal Technology Management Office at (434) 971-3257. Phone numbers and e-mail addresses for TJAGSA personnel are available on TJAGSA Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

For students who wish to access their office e-mail while attending TJAGSA classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGSA. If your office does not have web accessible e-mail, forward your office e-mail to your AKO account. It is mandatory that you have an AKO account. You can sign up for an account at the Army Portal, <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

Personnel desiring to call TJAGSA can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the LTMO at (434) 971-3264 or DSN 521-3264.

4. The Army Law Library Service

Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mr. Daniel C. Lavering, The Judge Advocate General's Legal Center and School, U.S. Army, ATTN: ALCS-ADD-LB, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3306, commercial: (434) 971-3306, or e-mail at Daniel.C.Lavering@us.army.mil.

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