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American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands**

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Beyond DL Wills:¹ Preparing Wills for Domiciliaries of Louisiana, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands

Major Jonathan E. Cheney*

I. Introduction

Service regulations authorize military legal assistance attorneys to provide wills and will services to authorized clients.² Attorneys must act competently in advising clients and producing wills.³ Each military service provides its legal assistance attorneys Drafting Libraries (DL) Wills software to aid in drafting wills.⁴ The DL Wills program provides state-specific will templates for most jurisdictions within the United States, assisting an attorney in competently drafting wills for clients hailing from states other than the one in which the attorney is licensed. The DL Wills software is not designed, however, to produce wills for domiciliaries of Louisiana or the various U.S. territories.⁵

This primer provides guidance to military legal assistance attorneys who are advising clients domiciled or with property interests in Louisiana, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, or the U.S. Virgin Islands. Additionally, this primer provides suggestions for preparing simple wills using the DL Wills program for domiciliaries of these U.S. jurisdictions.

This paper surveys the jurisdictions in alphabetical order, introducing each with a short history relevant to its entry into the United States and the formation of its legal system. These introductions also identify each jurisdiction's type of legal system⁶ and any atypical difficulties in researching the applicable law facing the practitioner with access to LexisNexis or Westlaw, but who does not read Spanish.⁷ Discussion follows concerning laws unique to the jurisdiction and relevant to advising will clients.⁸

The introductory section for each jurisdiction closes with a survey of the law, if any, concerning three testamentary instruments a legal assistance attorney may find appropriate for a client. For the jurisdictions that have either the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UTMA), this section explains whether the law allows

¹ DL Wills refers to the wills drafting software of DL Drafting Libraries, produced by Attorneys' Computer Network, Inc. Version 8.0 was used for this primer.

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² See U.S. DEP'T OF AIR FORCE, INSTR. 51-504, LEGAL ASSISTANCE, NOTARY, AND PREVENTIVE LAW PROGRAMS para. 1.4.1 (27 Oct 2003) [hereinafter AFI 51-504]; U.S. DEP'T OF COAST GUARD, COMMANDANT INSTR. 5801.4D, LEGAL ASSISTANCE PROGRAM para. 7(a) (20 Dec. 2002) [hereinafter COMDTINST 5801.4D]; U.S. DEP'T OF NAVY, JUDGE ADVOCATE GENERAL'S INSTR. 5801.2, NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM para. 7-2(a) (11 Apr. 1997) [hereinafter JAGINST 5801.2]; U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-6(b) (21 Feb. 1996) [hereinafter AR 27-3]; see also U.S. DEP'T OF DEFENSE, DIR. 1350.4, LEGAL ASSISTANCE MATTERS para. 4.1.2 (28 Apr. 2001) (C1, 13 June 2001) [hereinafter DOD DIR. 1350.4].

³ See, e.g., U.S. DEP'T OF ARMY, REG. 27-26, RULES FOR PROFESSIONAL CONDUCT FOR LAWYERS app. B, R. 1.1 (1 May 1992).

⁴ See, e.g., COMDTINST 5801.4D, *supra* note 2, para. 17(a).

⁵ When DL Wills queries the user as to which state's laws are to govern the will, the user may select from among any of the fifty states, Washington D.C., Guam, Puerto Rico, and the Virgin Islands. If the user selects Louisiana, Guam, Puerto Rico, or the Virgin Islands, the next screen prominently displays the following warning, "NOTE: The programs were not designed for the laws of [the jurisdiction selected]." When the user presses the enter key from this warning screen, the software enables the user to prepare a generic will that states the testator is from the jurisdiction selected.

⁶ The different legal systems represented are common law (two jurisdictions), mixed common law and civil law (two), and mixed common law and traditional law (two).

⁷ The ability to read Spanish is relevant to research in Puerto Rican law. See *infra* text accompanying notes 233-236.

⁸ Two examples illustrate types of legal provisions not present here. First, legal assistance attorneys can assume that anti-alienation laws no longer have restrictions based upon the racial designation of the beneficiary to whom a testator may transfer his real property, regardless of the state in which the land is located or the residence of the testator. See *Buchanan v. Warley*, 245 U.S. 60, 70-71, 82 (1917) (holding as unconstitutional a Louisville ordinance forbidding a colored person to purchase residential property in a block inhabited primarily by white persons or a white person to purchase residential property in a block inhabited primarily by colored persons). Thus, this primer does not address race-based anti-alienation laws except for the two jurisdictions in which they remain viable.

Second, because good drafting makes clear the intent of a testator who leaves potential heirs out of the will, precluding inadvertent omissions of potential heirs, this primer does not address pretermitted heir statutes. For similar reasons, this primer does not address provisions concerning ademption and advancement.

for testamentary transfers under the UGMA or UTMA and at what age property under the UGMA or UTMA must be turned over to the minor.⁹ This section also identifies those jurisdictions that allow a testator to transfer property under a tangible personal property memorandum or similar device and any peculiarities of the law concerning these instruments.¹⁰ Although analysis of trust law is beyond the scope of this primer, this section provides citations to the statutory trust provisions of the four jurisdictions that have them.¹¹

For each jurisdiction, this paper addresses rights to property by surviving family members, intestate succession, testamentary capacity and testamentary formalities, guardianship or tutorship, and, finally, guidance for preparing a will using DL Wills. Section A of each jurisdiction surveys the law concerning rights in surviving family members to a decedent's property so the attorney can advise the client about what property comprises the estate, to whom some of the estate must go by law, and what remaining portion of the estate is freely disposable. This section identifies those jurisdictions with a community property regime. Section A and section B of each jurisdiction, which provides intestate succession information, should assist in advising a client about the need for a will. Section C of each jurisdiction describes the testamentary capacity and testamentary formalities required for a valid will; how to make the will self-proving, if possible; and what types of foreign wills the jurisdiction accepts. Though this section references the validity of holographic wills, the requirements for such wills is beyond the scope of this primer. Section D of each jurisdiction provides information about executors and administration and section E of each jurisdiction discusses the law regarding the nomination of guardians or tutors. Both these sections discuss any code provisions that would allow the testator to alleviate some of the burdens typical to these positions, such as providing security, inventory, and accountings. Corporate fiduciaries are not addressed. Finally, for each jurisdiction, section F provides guidance on preparing simple wills for a military legal assistance client domiciled in the jurisdiction using DL Wills software, with reference to the sample will language in the appendices. This guidance addresses jurisdiction-specific wills, military testamentary instruments,¹² and foreign wills.

This article uses gender neutral terms and masculine pronouns in gender neutral situations to highlight those few instances in which the law distinguishes among persons based on gender.

To fully address all available will preparation options, this primer examines federal law concerning the validity and preparation of military testamentary instruments. Before surveying each jurisdiction, a look at the military testamentary instrument statute is in order.

II. Military Testamentary Instruments

Within the National Defense Authorization Act for 2001, Congress created a new type of will—the military testamentary instrument.¹³ Codified at 10 U.S.C. § 1044d, this statute enables the military attorney to provide testamentary instruments that every U.S. jurisdiction must recognize as valid.¹⁴ Furthermore, the statute provides the means to make a

⁹ See generally Major Paul M. Peterson, *The Uniform Transfers to Minors Act: A Practitioner's Guide*, ARMY LAW., May 1995, at 3. Even if the jurisdiction of domicile does not have a UGMA or UTMA, a testator may be able to transfer property under another jurisdiction's UGMA or UTMA. See *id.* at 11.

¹⁰ See generally Major Rick Rousseau, *Preparation of Tangible Personal Property Memorandums: Using Drafting Libraries (DL) Wills Software*, ARMY LAW., July 2000, at 26.

¹¹ For general service policy concerning testamentary trusts, see AFI 51-504, *supra* note 2, para. 1.4.1.1; COMDTINST 5801.4D, *supra* note 2, para. 7(a); JAGINST 5801.2, *supra* note 2, para. 7-2(a)(2), (5); AR 27-3, *supra* note 2, para. 3-6(b).

¹² A military testamentary instrument is a document conforming to the testamentary formalities of 10 U.S.C. § 1044d (2000), which gives such a document the same legal effect of a validly executed will or testament in any U.S. jurisdiction. See Part II below. Regardless of the jurisdiction selected, the DL Wills program allows the practitioner to select whether a military testamentary instrument is prepared. When this option is not selected, DL Wills instead prepares a will with the formalities required by the jurisdiction previously selected.

¹³ Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 § 551, Pub. L. No. 106-398, 114 Stat. 1654, 1654A-123 to -125 (2000) (codified as amended at 10 U.S.C. § 1044d). Congress identified four purposes of this provision: to require all U.S. jurisdictions "to recognize a will prepared for a person eligible to receive legal assistance under section 1044," to ensure such wills "are admissible for state probate proceedings," to "simplify will preparation for eligible personnel," and to provide "greater certainty and security in accomplishing their testamentary intent." H.R. REP. NO. 106-616, at 368 (2000).

¹⁴ See 10 U.S.C. § 1044d(a) (2000) (exempting a military testamentary instrument "from any [U.S. jurisdiction's] requirement of form, formality, or recording before probate" and giving such an instrument the same legal effect of a validly executed will or testament of that jurisdiction). Section 1044d does not affect how a U.S. jurisdiction's law applies to the provisions within the will. See *id.* For example, Puerto Rico must recognize as valid a Puerto Rican testator's military testamentary instrument properly executed in Texas, but will apply Puerto Rico's law of forced heirship to the administration of the testator's estate notwithstanding any provisions to the contrary within the military testamentary instrument.

military testamentary instrument self-proving.¹⁵ While § 1044d has not eliminated the military's practice of preparing state-specific wills, it has provided military attorneys a valuable option in preparing wills for their legal assistance clients.¹⁶

A military testamentary instrument is a document that the testator signs in the presence of the presiding military legal assistance attorney and two disinterested witnesses and that conveys testamentary intent and testamentary dispositions.¹⁷ Department of Defense policy additionally requires a preamble or equivalent statement and a self-proving affidavit (substantially the same "in form and content" as those provided in the instruction providing the policy) to accompany any military testamentary instrument.¹⁸ A properly executed self-proving affidavit under the Department of Defense policy meets the § 1044d requirements to make the military testamentary instrument self-proving. The DL Wills program provides a conforming preamble and self-proving affidavit upon request, regardless of the jurisdiction selected. Thus, a military testamentary instrument prepared using DL Wills is a significant option now available to the legal assistance attorney for any clients domiciled in any of the jurisdictions addressed in the sections to follow.

III. American Samoa

Comprised of seven islands in the South Pacific, American Samoa became a territory of the United States in 1900.¹⁹ Congress has classified American Samoa as an outlying possession of the United States.²⁰ Consequently, a person born in American Samoa acquires status as a noncitizen U.S. national.²¹ Although civil and judicial authority lies with the Secretary of the Interior,²² American Samoa is mostly self-governing.²³ Its constitution establishes an executive branch headed by an

¹⁵ See *id.* § 1044d(d). A will is self-proving if its form and content allow a court to admit the will to probate without the attesting witnesses testifying in court. This is usually accomplished by means of a self-proving affidavit. See BLACK'S LAW DICTIONARY 63, 1630 (8th ed. 2004); see also 10 U.S.C. § 1044d(d)(1) (providing the legal effects of a self-proving military testamentary instrument). A military testamentary instrument is self-proving

if it includes (or has attached to it), in a form and content required under [prescribed regulations], each of the following: (A) A certificate, executed by the testator, that includes the testator's acknowledgment of the testamentary instrument. (B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed. (C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

10 U.S.C. § 1044d(d)(2).

¹⁶ See 10 U.S.C. § 1044d(b)(1). Compare AFI 51-504, *supra* note 2, para. 1.4.1.2 (requiring all Air Force wills to be military testamentary instruments), with COMDTINST 5801.4D, *supra* note 2, para. 7(b)(1)(f) (not requiring all Coast Guard wills to be military testamentary instruments). The corresponding Army regulation and Navy instruction predate § 1044d.

Some practitioners may have concern about whether § 1044d would withstand constitutional scrutiny as a legitimate exercise of preemption of a state's authority in the probate process. An additional issue especially relevant to the topic of this primer is whether § 1044d would be constitutional with regard to U.S. territories, even if it were not constitutional with regard to the states. See, e.g., 48 U.S.C. § 1421b(u) (extending some, but not all, of the U.S. Constitution to Guam). This primer assumes the constitutionality of § 1044d, while recognizing that the issue is not definitively resolved.

¹⁷ See 10 U.S.C. § 1044d(b), (c). Alternatively, if the testator is unable to sign the document, he may direct another to sign on his behalf and in his presence. See *id.* § 1044d(c)(1).

¹⁸ DOD DIR. 1350.4, *supra* note 2, para. 4.2; see *id.*, encls. 1 & 2 (pmb. and affidavit). The preamble and affidavit are reproduced at Appendix A.

¹⁹ See Joint Resolution of Feb. 20, 1929, ch. 281, 45 Stat. 1253, 1253 (codified as amended at 48 U.S.C. § 1661(a) (2000)) (accepting, ratifying, and confirming treaties with Samoan chiefs as of 10 April 1900 and 16 July 1904); U.S. CIA, *American Samoa*, in WORLD FACTBOOK (2004), available at <http://www.cia.gov/cia/publications/factbook/index.html>. In 1900, the Senate ratified the 1899 treaty with Great Britain and Germany recognizing U.S. possession of the islands. See Convention to Adjust Amicably the Questions in Respect to the Samoan Group of Islands, Dec., 2, 1899, U.S.-U.K.-Germany, 31 Stat. 1878, 1878-79. Congress annexed Swains Island to American Samoa in 1925. See Joint Resolution of Mar. 4, 1925, ch. 563, 43 Stat. 1357, 1357 (codified as amended at 48 U.S.C. § 1662).

²⁰ See 8 U.S.C.S. § 1101(a)(29) (LEXIS 2005). American Samoa (including Swains Island) is the only outlying possession of the United States. See *id.*; 7 CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 92.04[1][c] (2004).

²¹ See 8 U.S.C. § 1408(1). The person may also acquire citizenship status if one of his parents was a citizen at his birth. See GORDON ET AL., *supra* note 20, § 92.04[7]. A noncitizen national owes allegiance to the United States and enjoys its protection, but has fewer political rights than a citizen does. See 8 U.S.C. § 1101(a)(22); GORDON ET AL., *supra* note 20, § 92.04[1][a].

²² See 48 U.S.C. § 1661(c) (granting such power to whomever the President appoints); GORDON ET AL., *supra* note 20, § 92.04[7]. Amendment of the American Samoa Constitution, however, requires an act of Congress. See 48 U.S.C. § 1662a.

²³ See Daniel E. Hall, *Curfews, Culture, and Custom in American Samoa: An Analytical Map for Applying the U.S. Constitution to U.S. Territories*, 2 ASIAN-PAC. L. & POL'Y J. 69, 88-89 (2001).

elected governor, a bicameral legislature, and a judiciary.²⁴ American Samoa is a common law jurisdiction that retains some elements of customary law.²⁵

Legal research may be more difficult regarding the law of American Samoa because neither LexisNexis nor Westlaw currently provide American Samoa legal authorities. The American Samoa Bar Association, however, provides legal resources on its web site, including American Samoan cases, statutes, and court rules.²⁶

Concepts of land ownership unique to American Samoa require the estate planning attorney to inquire into the nature of a testator's interest in any real property located in American Samoa. Land in American Samoa is of three types—communal land, freehold land, and individual land.²⁷ Communal land, which comprises the majority of the land,²⁸ may not be devised or passed intestate.²⁹ Freehold land may be owned by anyone,³⁰ and thus is devisable to anyone.

Individual land can pass only to natives or certain nonnatives.³¹ A native is “a full-blooded Samoan person of Tutuila, Manu’a, Aunu’u, or Swains Island.”³² A nonnative can own individual land only if “he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than [five] years and has officially declared his intention of making American Samoa his home for life.”³³ Notwithstanding, a native can place individual land in trust, by will or deed, for the benefit of a child in a mixed marriage or for the issue of such a marriage.³⁴

American Samoa does not have an UGMA or UTMA.³⁵ The American Samoa Code does not recognize tangible personal property memorandums.³⁶ American Samoa lacks a trust code or similar statutory authority concerning trusts.³⁷

²⁴ See AM. SAMOA CONST. arts. II (legislature), III (judiciary), IV (executive branch). The legislature is called the Fono. Hall, *supra* note 23, at 73. The highest local court is called the High Court. The Secretary of the Interior appoints the Chief Justice and Associate Justices. See AM. SAMOA CONST. art. III, § 3.

²⁵ See AM. SAMOA CODE ANN. §§ 1.0201, .0202 (Supp. 1986). Customary law is subject to positive law and common law. “The customs of the Samoan people not in conflict with the laws of American Samoa or the laws of the United States concerning American Samoa shall be preserved.” *Id.* § 1.0202. Indeed, the American Samoan legislature has a policy to protect Samoan customs. See AM. SAMOA CONST. art. I, § 3.

²⁶ American Samoa Bar Association, Legal Resources, www.asbar.org (last visited Mar. 15, 2005).

²⁷ See *Moon v. Falemalama*, 4 Am. Samoa 836, 839-40 (1975). Communal land is also known as native land. See AM. SAMOA CODE ANN. § 37.0201(d) (www.asbar.org through 2004 Pub. L. No. 28-17). The *Moon* court referred to individual land as “other land,” but the American Samoa High Court usually uses a term similar to “individual land.” See, e.g., *Tuiteleleapaga v. King*, 8 Am. Samoa 2d. 49, 50-51 (1988) (referring to “individual property”).

²⁸ See Hall, *supra* note 23, at 72. Over ninety percent of all land in American Samoa is communal land. *Id.*

²⁹ See AM. SAMOA CODE ANN. §§ 40.0106, .0206 (Supp. 1986). Communal land is land held by families and can only be held by full-blooded Samoans. See *Moon*, 4 Am. Samoa at 839. Title is held in trust by the *matai*, who can alienate it only with the approval of the Governor. See AM. SAMOA CODE ANN. § 37.0204(a) (Supp. 1987). The *matai* is the head of the familial group owning the land. See Hall, *supra* note 23, at 71. Non-Samoans may have some interest in communal land. The Governor may approve leases on communal land of up to fifty-five years “for any purpose, except for the working of minerals and cutting of timber.” AM. SAMOA CODE ANN. § 37.0221(a).

³⁰ See *Reid v. Tavete*, 1 Am. Samoa 2d 85, 89 n.1 (1983). Freehold land is land in court grants before 1900 that has not reverted to individual land. See AM. SAMOA CODE ANN. § 37.0201(b). Only by election of an owner may freehold land revert to the status of individual land. See *id.*

³¹ See AM. SAMOA CODE ANN. § 37.0204(b). The Governor may also approve conveyance of land “to an authorized, recognized religious society, of sufficient land for erection thereon of a church, or dwelling house for the pastor, or both; provided, that the reconveyance and retransfer of such land shall be to native Samoans only and in the discretion and upon the approval of the Governor.” *Id.* § 37.0204(d).

The restrictions of section 37.0204 apply as well to Swains Island, a later addition to American Samoa that is not under the *matai* system. See *id.* § 37.0204(e). Notwithstanding, descendants of the 1949 Swains Island record titleholder are deemed eligible to receive title to real property on Swains Island. See *id.*

³² *Id.* § 37.0201(c).

³³ *Id.* § 37.0204(b). “Samoan” is a racial designation and so encompasses Western Samoans. See *Moon*, 4 Am. Samoa at 839. This racially-based system of discrimination has survived a “strictest judicial scrutiny” challenge under the U.S. Constitution. *Craddick v. Territorial Registrar of Am. Sam.*, 1 Am. Samoa 2d 10, 12 (1980).

³⁴ See AM. SAMOA CODE ANN. § 37.0205; *Craddick Dev. Inc. v. Craddick*, 28 Am. Samoa 2d. 117, 122 (1995).

³⁵ See AM. SAMOA CODE ANN. index (www.asbar.org through 2004 Pub. L. No. 28-17).

³⁶ See *id.* tit. 40.

³⁷ See *id.* index. Nonetheless, American Samoa law recognizes trusts. See, e.g., *id.* § 37.0205 (allowing native landowner to place individual land in trust to benefit nonnative progeny); *Beaver v. Craven*, 19 Am. Samoa 2d 14, 18-32 (1991) (interpreting and analyzing the terms of a trust instrument).

A. Rights to Property by Surviving Family Members

The surviving spouse has dower rights to one-third the value of all real and personal property of the decedent.³⁸ These rights are subject to the prohibitions against alienation of real property discussed above.³⁹

B. Intestate Succession

Intestate succession varies depending on whether property is real or personal. For real property, priority of succession is to descendants, to siblings and their descendants, to father, to mother, and finally to surviving spouse.⁴⁰ For personal property, priority of succession is to descendants, to surviving spouse, and finally to next of kin.⁴¹ Distribution to representatives is per stirpes.⁴²

C. Testamentary Capacity and Testamentary Formalities

A person of full age—eighteen years⁴³—and sound mind has testamentary capacity.⁴⁴ A will must be in writing and signed by the testator.⁴⁵ Two competent persons must witness the testator signing the will and attest to his signature by signing the will themselves.⁴⁶

The American Samoa Code does not recognize self-proving affidavits for wills.⁴⁷ Nevertheless, an affidavit that accompanies the will may facilitate probate if the affidavit contains witness testimony concerning the required testamentary formalities.⁴⁸

American Samoa lacks a statutory provision recognizing a foreign will.⁴⁹

D. Executors and Administration

An executor must be twenty-one years old, a resident of American Samoa, and mentally competent.⁵⁰ The Code makes no provisions for a court to waive the requirements of an individual executor to post a bond, to file initial and annual inventories, or to file annual and final accountings.⁵¹

³⁸ See AM. SAMOA CODE ANN. § 40.0103 (Supp. 1986).

³⁹ See *id.*; *supra* notes 27-34 and accompanying text.

⁴⁰ See AM. SAMOA CODE ANN. § 40.0202. Succession of real property is subject to the prohibitions against alienation of real property discussed *supra* notes 27-34 and accompanying text. See AM. SAMOA CODE ANN. § 40.0206.

⁴¹ See AM. SAMOA CODE ANN. § 40.0201. The statute does not elaborate on how to apply the term, “next of kin.” See *In re Estate of Ah Mai*, 14 Am. Samoa 2d 32, 33-34 (1990) (noting a lack of legislative and judicial guidance for interpreting “next of kin” under section 40.0201). Presumably, then, the court would apply the next of kin provision in accordance with English common law. See AM. SAMOA CODE ANN. § 1.0201; *Utu v. Am. Sam. Gov’t*, 20 Am. Samoa 2d 53, 57 (1992) (using the common law rule to determine next of kin in applying the wrongful death statute). The common law rule is that the degree of kinship is the greater of the number of generations from the deceased to the first common ancestor and the number of generations from the relative in question to the ancestor. See *Wetter v. Habersham*, 60 Ga. 193, 199-200 (1878).

⁴² See AM. SAMOA CODE ANN. § 40.0204.

⁴³ See *id.* § 40.0401.

⁴⁴ See *id.* § 40.0101.

⁴⁵ See *id.* § 40.0102. Alternatively, the testator may direct someone to sign on his behalf and in his presence. See *id.* The statute allows for a verbal will if the estate is valued at no more than \$300. See *id.*

⁴⁶ See *id.* If the testator directs someone else to sign for him, then the two witnesses similarly attest to the proxy’s signature. See *id.*

⁴⁷ See AM. SAMOA TRIAL CT. R. PROB. PROC. 11, available at www.asbar.org (last visited Mar. 15, 2005).

⁴⁸ Trial Court Rule of Probate Procedure 11 provides in part: “In the event that neither attesting witness is available, an affidavit may be substituted. If both attesting witnesses are dead or unlocatable, the Court may accept whatever extrinsic evidence as to the validity of the will as the Court deems appropriate.” *Id.* Additionally, providing such an affidavit may serve as self-proving if the will is probated in a different jurisdiction or if American Samoa later adopts a self-proving affidavit provision.

⁴⁹ See AM. SAMOA CODE ANN. tit. 40 (www.asbar.org through 2004 Pub. L. No. 28-17).

⁵⁰ See *id.* § 40.0306 (Supp. 1986).

E. Guardianship

American Samoa authorizes guardianships over a person, an estate, or both.⁵² Jurisdiction for a guardianship requires either the ward to be domiciled or the property to be located in American Samoa.⁵³ A guardian must be twenty-one years old, a resident of American Samoa, and mentally competent.⁵⁴ The Code makes no provisions for the court to waive the requirements of an individual guardian to post a bond or to file annual inventories and accountings.⁵⁵

F. Preparing a Will

Options for preparing a will for an American Samoan include drafting an American Samoa will, drafting a military testamentary instrument, and drafting a will for the jurisdiction of execution. Because the Code does not provide for self-proving wills or foreign wills, a military testamentary instrument is recommended.

To draft an American Samoa will using the DL Wills program, select “Guam” for the state and continue normal will drafting procedures for DL Wills. Once the word processing document is created, replace “Guam” with “American Samoa” throughout the document. To facilitate transfer of any real property in American Samoa, add a statement to the first paragraph of the will concerning Samoan ancestry and, if Samoan, include a place of birth and island of domicile, if applicable, such as “I am a full-blooded Samoan of Manu’a, born in American Samoa” or “I am not of Samoan descent.”

If there is a possibility that the testator will own individual land in American Samoa at his death, consider adding a savings clause, and if the testator is a native Samoan, consider adding a savings clause with trust provision. For any real property in American Samoa the testator presently owns, identify the type of real property owned, *e.g.*, “The real property I presently own in American Samoa [optional: place description here] is individual land and not communal land.” Also, provide sufficient information, if known, to identify the ancestry and birth of any person who may receive individual land in American Samoa under the will.⁵⁶ To the first paragraph of the affidavit, append a comma and the following language: “and that each witness was competent to witness the signing and execution of the attached or foregoing instrument.”

See Appendix B for a sample will with savings clause and affidavit and Appendix C for a sample savings clause and a sample savings clause with trust provision for a full-blooded Samoan testator.

To draft a Military Testamentary Instrument, proceed as above except (1) accept the DL Wills offer to prepare a military testamentary instrument preamble and affidavit and (2) do not amend the language in the affidavit. To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except, once the document is produced, (1) replace in the first paragraph the name of the state with “American Samoa,” deleting “the State of” or “the Commonwealth of,” and (2) provide language as outlined above concerning Samoan ancestry and real property in American Samoa, as applicable.

IV. Guam

In 1898, Spain ceded the Pacific island of Guam to the United States as a result of the Spanish American War.⁵⁷ Since then, the United States has maintained possession of Guam except for a three-year Japanese occupation during World War II.⁵⁸ Persons born in Guam are U.S. citizens.⁵⁹ Guam’s Organic Act established an executive branch headed by an elected governor, a unicameral legislature, and a judiciary.⁶⁰ Guam lacks its own constitution. Given an opportunity to adopt a

⁵¹ See *id.* §§ 40.0310 (bond), .0321 (inventories and annual accounting), .0331 (final accounting) (Supp. 1983).

⁵² See *id.* § 40.0401 (1981).

⁵³ See *id.* § 40.0402 (Supp. 1983).

⁵⁴ See *id.* § 40.0403.

⁵⁵ See *id.* §§ 40.0404 (bond), .0406 (inventory and annual accounting).

⁵⁶ For an example, see the introductory paragraph in the sample will at Appendix B.

⁵⁷ See Treaty of Peace, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754, 1755; 48 U.S.C. § 1421 (2000); GORDON ET AL., *supra* note 20, § 92.04[6].

⁵⁸ See U.S. CIA, *Guam*, in WORLD FACTBOOK (2004), available at <http://www.cia.gov/cia/publications/factbook/index.html>.

⁵⁹ See 8 U.S.C.S. §§ 1101(a)(38), 1401(a) (LEXIS 2005).

⁶⁰ See 48 U.S.C. §§ 1422 (executive branch), 1423 (legislature), 1424 (judiciary). The highest court of the judicial branch is the Supreme Court of Guam. See 48 U.S.C. § 1424; GUAM CODE ANN. tit. 7, § 3102 (Supp. 1994).

constitution, in 1978 the Guamanians rejected the draft constitution their constitutional convention submitted for approval.⁶¹ Guam is a common law jurisdiction⁶² that has adopted much of its probate code from California.⁶³

Guam's version of a UGMA or UTMA is the Guam UGMA.⁶⁴ "A testator may bequeath securities, money, life or endowment policies, and annuity contracts" under the Guam UGMA.⁶⁵ Custodial property held under the Guam UGMA must be turned over to the minor when he reaches the age of eighteen.⁶⁶

Guam does not have a provision recognizing personal property memorandums.⁶⁷ In addition to other statutory authority for the administration of trusts,⁶⁸ Guam has the Guam Uniform Testamentary Additions to Trusts Act⁶⁹ to facilitate pour-over wills.⁷⁰

A. Rights to Property by Surviving Family Members

The Guam Code recognizes rights in the decedent's family members to community property, homestead property, a family allowance, and exempt property. Like California, Guam is a community property jurisdiction.⁷¹ Upon the death of a married person under Guam's community property scheme, the surviving spouse retains a one-half undivided interest in community property.⁷² A one-half interest in quasi-community property also passes to the surviving spouse.⁷³

A homestead in Guam that has been recorded as such passes free of the decedent's unsecured debts to a surviving spouse or, absent a surviving spouse, to any minor children.⁷⁴ If a homestead has not been recorded, the court, upon petition, will set aside a probate homestead from community property, quasi-community property, or other property the decedent and surviving spouse owned in common.⁷⁵ Such a probate homestead will pass to the surviving spouse and any minor children.⁷⁶

⁶¹ See Act of Oct. 21, 1976, Pub. L. No. 94-584, 90 Stat. 2899 (amended 1980) (authorizing Guam and U.S. Virgin Islands to enact constitutions); OFF. OF THE ATT'Y GEN., ORGANIC ACT OF GUAM AND RELATED FEDERAL LAWS AFFECTING THE GOVERNMENTAL STRUCTURE OF GUAM 84 note (2001), available at <http://www.guamattorneygeneral.com/pdf/oa2000.pdf#search=ORGANIC%20ACT%20OF%20GUAM%20AND%20RELATED%20FEDERAL%20LAWS> (noting Guamanian disapproval of constitution).

⁶² See GUAM CODE ANN. tit. 1, § 100 (LEXIS 2004) (listing laws applicable in Guam).

⁶³ See, e.g., *id.* tit. 15, § 815 cmt. (1993).

⁶⁴ *Id.* tit. 19, ch. 12.

⁶⁵ *Id.* tit. 15, § 727.

⁶⁶ See *id.* tit. 19, § 12104(d).

⁶⁷ See *id.* tit. 15, div. 1 (1993) (Wills).

⁶⁸ *Id.* ch. 33 (Administration of Trusts).

⁶⁹ *Id.* ch. 7, subch. A.

⁷⁰ See *id.* § 701 cmt. A pour-over will is "[a] will giving money or property to an existing trust." BLACK'S LAW DICTIONARY, *supra* note 15, at 1630.

⁷¹ See GUAM CODE ANN. tit. 19, ch. 6 (Community Property). In general, community property is property acquired by either spouse during the marriage while the spouses live together unless the property is acquired by gift, devise, bequest, or descent. See *id.* § 6101 (defining separate and community property).

⁷² See *id.* tit. 15, § 1001.

⁷³ See *id.* Quasi-community property is "property acquired in a non-community property jurisdiction which would be community property had it been acquired in Guam." *Id.* § 1101 cmt. For a non-domiciliary of Guam who dies leaving real property in Guam that is not community property of the decedent and surviving spouse, Guam grants the same election to the surviving spouse as would the decedent's domicile. See *id.* §§ 1103-05.

⁷⁴ See *id.* §§ 2401, 2405(a), (c); *id.* tit. 21, § 43204. This provision applies to the decedent's separate property only if the decedent himself either designated or joined in the designation of the homestead property. See *id.* tit. 15, § 2401. The homestead can consist of dwelling, outbuildings, and the land thereunder. See *id.* tit. 21, § 43101. The homestead exemption is limited in value. Its limit for a head of family or a person older than sixty-five years is \$40,000 "over and above all liens and encumbrances" and \$25,000 above encumbrances for all other persons. *Id.* § 43123. If the value of the property exceeds the limit of the homestead exemption, then as needed the probate court will order a division of the property or, if such division cannot be done without "material injury" to the property, the court will order a sale and equitable distribution of the proceeds. *Id.* tit. 15, § 2407(c).

⁷⁵ See *id.* tit. 15, § 2409(a)-(b).

⁷⁶ See *id.* § 2409(a); see also *id.* tit. 7, § 23111 (Supp. 1994) (stating that a debtor's homestead is exempt from execution); *id.* tit. 15, § 2409 cmt ("[Probate homestead] exists for precisely the same purposes as the declared homestead."). If both the spouse and minor children survive the decedent, then one-half of the probate homestead passes to the spouse and one-half passes to the minor children. See *id.* § 2411. Otherwise, the entire probate homestead passes to the spouse or the minor children as applicable. See *id.* If no such property exists to comprise a probate homestead, the court can set aside a probate homestead from the decedent's separate property, but can do so for no longer than the lifetime of the spouse or the minority of any minor children. See *id.* § 2409.

A surviving spouse, any minor children, and any adult children dependent on the decedent and unable to earn a living are entitled to a family allowance from the estate during its administration, but limited in duration to one year if the estate is insolvent.⁷⁷ Additionally, the surviving spouse or, absent a surviving spouse, any minor children are entitled to possession of exempt property until the inventory is filed.⁷⁸ Following the filing of the inventory, the court has discretion to award any or all of the exempt property to the surviving spouse or, absent a surviving spouse, to the minor children.⁷⁹

B. Intestate Succession

Intestate succession varies depending on whether property is characterized as separate, community, or quasi-community.⁸⁰ Community property and quasi-community property pass to the surviving spouse.⁸¹

If the decedent leaves a surviving spouse and either only one child or descendants through only one child, then one-half of the separate property passes to the spouse and one-half passes to the child or to the descendants per stirpes.⁸² If the decedent leaves a surviving spouse and more than one child or descendants through more than one child, then one-third of the separate property passes to the spouse and two-thirds pass to the children or to the descendants—equally if in the same degree of kindred, but per stirpes if otherwise.⁸³

If the decedent leaves a surviving spouse with no descendants, then one-half of the separate property passes to the spouse and one-half passes in priority of succession to parents, to parent's descendants per stirpes, and finally to surviving spouse.⁸⁴ If the decedent has descendants but no surviving spouse, the property passes to the descendants, equally if in the same degree of kindred, but per stirpes if otherwise.⁸⁵ If the decedent leaves neither surviving spouse nor descendants, then the property passes in priority of succession to parents, to siblings and their descendants per stirpes, and finally to next of kin.⁸⁶

Intestacy favors whole-blood relatives over half-blood relatives only for property of the decedent received by gift, devise, or descent from a decedent's ancestor not in blood relation to the half-blooded relative.⁸⁷ Guam determines intestate succession concerning illegitimate children and adopted children based on the existence of a recognized parent-child relationship.⁸⁸

C. Testamentary Capacity and Testamentary Formalities

A will must be in writing and subscribed by the testator.⁸⁹ The testator must be of sound mind⁹⁰ and at least eighteen years of age.⁹¹ The testator must either subscribe his will or acknowledge subscription of the will before two witnesses.⁹²

⁷⁷ *See id.* tit. 15, § 2415. If a person otherwise eligible for the family allowance “has a reasonable maintenance derived from other sources,” then the family allowance is set aside only for those eligible and not having such maintenance. *See id.* § 2419.

⁷⁸ *See id.* § 2401. The Code exempts many types of property from execution, many of which the Code expressly limits in value. Examples include necessary furniture; professional libraries of certain professionals limited to \$250 in value; and one cow with suckling, two sows with sucklings, fifteen hens, three roosters, and food for such animals for one month. *See id.* tit. 7, § 23111.

⁷⁹ *See id.* tit. 15, § 2401. The court may also set aside a declared homestead temporarily for the use of other family members in the absence of a surviving spouse. *See* GUAM CODE ANN. tit. 21, § 43204.

⁸⁰ *See id.* tit. 15, §§ 901-1107. For a decedent with property from a predeceased spouse, succession may also depend upon the characterization of the property when it was received from the spouse. *See id.* §§ 917-19.

⁸¹ *See id.* §§ 1001, 1101.

⁸² *See id.* § 903(a).

⁸³ *See id.* § 903(b)-(c).

⁸⁴ *See id.* §§ 907-09.

⁸⁵ *See id.* § 905.

⁸⁶ *See id.* §§ 911-913; *see also id.* §§ 807-17 (determining next of kin). The next of kin are those relatives of nearest degree to the decedent. Guam uses the civil law method of counting degrees of kindred. Each generation counts as one degree. *See id.* § 807. To count the number of degrees between two collateral relatives, add the number of generations from the first relative to the first common ancestor and the number of generations from the common ancestor to the second relative. *See id.* § 811.

⁸⁷ *See id.* § 813.

⁸⁸ *See id.* §§ 815-17. For example, an adopted child does not inherit from or through the natural parent “when the relationship between them has been severed by adoption.” *Id.* § 817.

⁸⁹ *See id.* § 201 (1993). The code also provides for holographic wills. *See id.* § 207.

The testator “must declare to the attesting witnesses that it is his will.”⁹³ The witnesses must sign “at the end of the will, at the testator’s request and in the testator’s presence.”⁹⁴ The witnesses should provide their place of residence.⁹⁵

A self-proving affidavit requires a witness to affirm the facts to which he would be required to testify in a probate proceeding.⁹⁶ A foreign will is valid in Guam if it was executed according to the laws of Guam or of the jurisdiction where it was executed or if it is otherwise valid in the jurisdiction where the testator is domiciled at execution or in the jurisdiction where the testator is domiciled at death.⁹⁷

D. Executors and Administration

An executor must be an adult, a resident of Guam, physically present in Guam, a non-felon, and competent “to execute the duties of the trust.”⁹⁸ An executor may receive letters testamentary without “providing security for the faithful performance of his trust” if the will expresses such intent.⁹⁹ A court may waive the requirement to file an inventory and appraisal if “it appears that none of the heirs, devisees, legatees, or creditors will be prejudiced by such waiver.”¹⁰⁰ The executor must file an accounting within thirty days after the deadline to present a claim against the estate, a final accounting, and any other accounting the court may require.¹⁰¹

E. Guardianship

A parent can appoint a testamentary guardian over the person of his child, the estate of his child, or both.¹⁰² Nevertheless, a child over the age of fourteen who resides in Guam may nominate his own guardian, subject to the court’s approval.¹⁰³ When appointing a guardian, the testator can modify the guardian’s powers and duties from the statutory default rules.¹⁰⁴ Unless the court rules otherwise, a testamentary guardianship requires no bond.¹⁰⁵ In addition to an initial inventory and appraisal, the guardian must file accountings one year after appointment and as often as the court requires thereafter.¹⁰⁶

⁹⁰ See *id.* §§ 101(a), 103.

⁹¹ See *id.* §§ 101(a), 103; *id.* tit. 19, §§ 1101-03 (Supp. 1994).

⁹² See *id.* tit. 15, § 201(a)-(b). Alternatively, the testator may direct someone to subscribe the will on his behalf and in his presence. See *id.* § 201(a). The statute gives no qualifications for the witnesses. See *id.* ch. 2.

⁹³ *Id.* § 201(c).

⁹⁴ See *id.* § 201(d).

⁹⁵ See *id.* Nevertheless, “a failure to do so will not affect the validity of the will.” *Id.*

⁹⁶ See *id.* § 1519(b)(2) (uncontested proceeding). Such an affidavit may be inadmissible in a contested proceeding. See *id.* § 1605.

⁹⁷ See *id.* § 113(a). The foreign jurisdiction must be within the United States. See *id.*

⁹⁸ *Id.* § 1701(c). The court may allow a felon to serve as executor if “satisfied that such person is competent to execute the duties of the trust.” *Id.* § 1701(c)(4). The court can find a person “incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.” *Id.* § 1701(c)(5). Banking and trust institutions operating in Guam may also qualify as executor. See *id.* § 1701(a).

⁹⁹ *Id.* § 2011(c).

¹⁰⁰ *Id.* § 2603.

¹⁰¹ See *id.* §§ 2703-05.

¹⁰² See *id.* §§ 3503-05; *id.* tit. 19, §§ 9106-9107. Similarly, the testator can appoint a guardian of a spouse who is incompetent or insane. See *id.* tit. 15, § 3505; *id.* tit. 19, § 9107.

¹⁰³ See *id.* tit. 15, § 3507.

¹⁰⁴ See *id.* § 4005.

¹⁰⁵ See *id.* § 4006.

¹⁰⁶ See *id.* §§ 4301 (inventory and appraisal), 4304 (account).

F. Preparing a Will

Options for preparing a will for a Guamanian include drafting a Guam will, drafting a military testamentary instrument, and drafting a will for the jurisdiction of execution. Because the Guam Code provides for self-proving wills, a Guam will is slightly preferable to a military testamentary instrument or a foreign will for a simple Guam will.

To draft a Guam will using the DL Wills program, select “Guam” for the state and continue normal will drafting procedures for DL Wills. Once the document is created, amend the affidavit as follows: Following the language in the first paragraph of the affidavit, “signed and executed said instrument as his [or her] last will and testament in the presence and hearing of the witnesses,” insert “and that he [or she] stated that said instrument is his [or her] last will and testament” and a comma. See Appendix D for a sample first paragraph of the affidavit.

To draft a Military Testamentary Instrument using the DL Wills program, select “Guam” for the state and continue normal will drafting procedures for DL Wills, accepting the DL Wills offer to prepare a military testamentary instrument preamble and affidavit. To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except, once the Word document is produced, in the first paragraph replace the name of the state with “Guam,” deleting “the State of” or “the Commonwealth of.”

V. Louisiana

Louisiana’s unique legal system is a product of its history. Though Spain discovered Louisiana in the sixteenth century, France was the first European nation to claim the territory in 1682.¹⁰⁷ In 1762, France ceded Louisiana to Spain, who ceded Louisiana back to France in 1800.¹⁰⁸ When the United States purchased Louisiana in 1803, it intended to change the legal system to a common law system, but for the most part Louisianans successfully resisted the change.¹⁰⁹ As a result, Louisiana produced its first Civil Code in 1808, with revised civil codes in 1825 and 1870.¹¹⁰ Modeled on the Napoleonic Code, the Louisiana Civil Code of 1870 has roots to prior civil codes from Louisiana, France, Spain, and Justinian Rome.¹¹¹ While portions of the 1870 civil code remain in force, the legislature has been revising much of the code piecemeal since 1976.¹¹²

Louisiana’s legal system is a mixture of common law and civil law.¹¹³ Like typical civil law jurisdictions, Louisiana gives binding effect only to legislation and custom.¹¹⁴ Jurisprudence joins doctrine, conventional usage, and equity as persuasive sources.¹¹⁵ Thus, though not authoritative in themselves, prior court opinions provide persuasive guidance for interpreting legislation and custom.¹¹⁶

The Louisiana legislature enacted the Louisiana UTMA in 1987.¹¹⁷ Under the Louisiana UTMA, a testator may establish a UTMA by will.¹¹⁸ The custodian must turn over the custodial property to the minor upon the earlier of the minor reaching the age of eighteen years or receiving judicial emancipation.¹¹⁹

¹⁰⁷ See A.N. Yiannopoulos, *An Introduction to the Louisiana Civil Code*, in 1 LOUISIANA CIVIL CODE, at XV (West 1999).

¹⁰⁸ See *id.* at XVI-XVII.

¹⁰⁹ See *id.* at XVII-XIX.

¹¹⁰ See *id.* at XIX-XXIII.

¹¹¹ See *id.* at XXV.

¹¹² See *id.* at XXVIII-XXX.

¹¹³ See Christopher Osakwe, *Introduction—Louisiana Civil Law: The Cinderella of American Law*, 60 TUL. L. REV. 1105, 1105-06 (1986) (describing Louisiana as “the only mixed jurisdiction among the fifty states”).

¹¹⁴ See LA. CIV. CODE ANN. art. 1 (1999) (“The sources of law are legislation and custom.”); Yiannopoulos, *supra* note 107, at XXXIII. Legislation has priority over custom. See LA. CIV. CODE ANN. art. 3 (“Custom may not abrogate legislation.”).

¹¹⁵ See Yiannopoulos, *supra* note 107, at XXXIII; see also LA. CIV. CODE ANN. art. 4 (“When no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages.”).

¹¹⁶ See Yiannopoulos, *supra* note 107, at XXXIV.

¹¹⁷ See LA. REV. STAT. ANN. §§ 9:751-:773 (2000).

¹¹⁸ See *id.* §§ 9:755(A).

¹¹⁹ See *id.* §§ 9:770.

The Louisiana legislature has also provided the Louisiana Trust Code.¹²⁰ Conversely, Louisiana does not have a provision recognizing personal property memorandums.¹²¹

A. Rights to Property by Surviving Family Members

Louisiana provides rights to the decedent's property for surviving family members through community property, marital portion, and forced heirship. Louisiana is a community property state.¹²² Under Louisiana's community property system, the surviving spouse owns an "undivided one-half interest in the community property."¹²³

"[T]he surviving spouse is entitled to claim the marital portion" if the decedent "die[d] rich in comparison with the surviving spouse."¹²⁴ The marital portion is a one-fourth share of the estate if no children survive the decedent, a one-fourth share in usufruct for life if three or fewer children survive, or a child's share in usufruct for life if more than three children survive.¹²⁵

Louisiana requires forced heirship to the decedent's children under twenty-four years of age, to children physically or mentally unable to care for themselves, to the representatives of any deceased child if such child would have been under twenty-four if still alive, and to any deceased child's representatives who are physically or mentally unable to care for themselves.¹²⁶ The forced portion is one-quarter of the estate if the decedent has one forced heir and one-half if he has more than one forced heir, except that an heir's forced portion cannot exceed his intestate portion.¹²⁷ The testator may disinherit a forced heir only for just cause, as defined by the legislature.¹²⁸ The testator may be able to limit an heir's enjoyment of the forced portion by placing it in trust or by giving the surviving spouse a usufruct in the forced portion.¹²⁹

¹²⁰ See *id.* §§ 9:1721-:2252 (1991 & Supp. 2005) (Louisiana Trust Code).

¹²¹ See LA. CIV. CODE ANN. arts. 1570-1626 (2000 & Supp. 2005) (Dispositions Mortis Causa); LA. REV. STAT. ANN. arts. 2401-2450 (Donations Mortis Causa).

¹²² See, e.g., LA. CIV. CODE ANN. art. 2335 (Supp. 2005). In general, community property is property acquired "through the effort, skill, or industry of either spouse" during the marriage and property acquired with community property. *Id.* art. 2338 (defining community property); *cf. id.* art. 2341 (defining separate property).

¹²³ LA. CIV. CODE ANN. art. 2336 (1985); see LA. CODE CIV. PROC. ANN. art. 3061 (2003).

¹²⁴ LA. CIV. CODE ANN. art. 2432. "While there is not a definitive test to determine when a spouse is entitled to the marital portion, the marital portion will usually be awarded when the comparison of assets show a ratio of one to five or more in favor of the deceased spouse." Succession of Adams, 02-0005 (La. App. 3 Cir. 05/08/02), 816 So. 2d 988, 990; see also LA. CIV. CODE ANN. art. 2432 cmt. (c).

¹²⁵ See LA. CIV. CODE ANN. art. 2434 (Supp. 2005). The marital portion has a limit of one million dollars. See *id.* A usufruct is an ownership or servitude in property limited in duration. See *id.* art. 535 (1980); N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 LA. L. REV. 1265, 1294 (1994) (defining "usufruct"); see also *infra* note 266 (providing Puerto Rico's Civil Code definition of usufruct). A usufruct for life would be equivalent to a life estate under common law. See Kinsella, *supra*, at 1294.

¹²⁶ See LA. CIV. CODE ANN. art. 1493 (2000); see also LA. CONST. art. XII, § 5 (requiring legislative forced heirship provisions). The inability to care for one's self must be of a permanent nature. See LA. CIV. CODE ANN. art. 1493(A).

¹²⁷ See LA. CIV. CODE ANN. art. 1495; LAURA J. CARMAN, *LOUISIANA SUCCESSIONS* § 2:52 (2d ed. 2004). An heir's forced portion is called the legitime. See LA. CIV. CODE ANN. art. 1494. The remaining portion is called the disposable portion. See *id.* art. 1495.

¹²⁸ See LA. CIV. CODE ANN. arts. 1494, 1620 (Supp. 2005). Disinherison is Louisiana's civil law term corresponding to disinheritance. See Kinsella, *supra* note 125, at 1274 (defining "disinherison").

A parent has just cause to disinherit a child if: (1) The child has raised his hand to strike a parent, or has actually struck a parent; but a mere threat is not sufficient. (2) The child has been guilty, towards a parent, of cruel treatment, crime, or grievous injury. (3) The child has attempted to take the life of a parent. (4) The child, without any reasonable basis, has accused a parent of committing a crime for which the law provides that the punishment could be life imprisonment or death. (5) The child has used any act of violence or coercion to hinder a parent from making a testament. (6) The child, being a minor, has married without the consent of the parent. (7) The child has been convicted of a crime for which the law provides that the punishment could be life imprisonment or death. (8) The child, after attaining the age of majority and knowing how to contact the parent, has failed to communicate with the parent without just cause for a period of two years, unless the child was on active duty in any of the military forces of the United States at the time.

LA. CIV. CODE ANN. art. 1621(A). "A grandparent may disinherit his grandchild for any of the causes, other than the sixth, expressed in the preceding Article, whenever the offending act has been committed against a parent or a grandparent. He may also disinherit the grandchild for the seventh cause expressed in the preceding Article." *Id.* art. 1622. To disinherit someone requires testamentary formality and clear identification in the instrument of the person disinherited. See *id.* arts. 1618, 1619. The testator must also express in the instrument "the reason, facts, or circumstances" constituting the just cause relied upon for disinherison. *Id.* art. 1624. The facts expressed in the instrument carry a rebuttable presumption that they are true. See *id.*

¹²⁹ See LA. CIV. CODE ANN. art. 1496 (2000); see also LA. REV. STAT. ANN. §§ 9:1841-1847 (1991 & Supp. 2005) (Trust Code provisions concerning placing the legitime in trust).

B. Intestate Succession

In Louisiana, intestate succession favors a decedent's descendants. If the decedent leaves descendants, property passes intestate to his descendants.¹³⁰ The decedent's one-half interest in any community property, however, passes to the descendants with the surviving spouse retaining a usufruct that terminates upon remarriage or death.¹³¹

If the decedent does not leave descendants, community property passes to the surviving spouse.¹³² For separate property generally, when the decedent does not leave descendants, priority of succession is to siblings and their descendants, to parents, to spouse unless judicially separated, to ascendants, and finally to collateral heirs.¹³³ Separate property passing to siblings is subject to a "joint and successive" usufruct in the parents.¹³⁴ As an exception to the above, if a decedent without descendants has real property that is separate property he received as a gift from a surviving ascendant, then such property passes to that ascendant, however it may be encumbered.¹³⁵

C. Testamentary Capacity and Testamentary Formalities

In Louisiana, a person has testamentary capacity at age sixteen.¹³⁶ A testator "must also be able to comprehend generally the nature and consequences of the disposition that he is making."¹³⁷

Testamentary formalities require the testator to declare to two witnesses and a notary that his testament is his testament and then to sign each page of the dated testament.¹³⁸ Each witness must be at least sixteen years of age, sane, not blind, and able to sign his name.¹³⁹ The notary and the witnesses must sign a declaration "[i]n the presence of the testator and each other" acknowledging that they witnessed the testator's declaration and signature.¹⁴⁰ To be valid, a testament executed

¹³⁰ See LA. CIV. CODE ANN. art. 888. Succession to heirs is stirpital, though the Civil Code uses the term "representation" rather than "per stirpes." See *id.* arts. 881-88.

¹³¹ See *id.* art. 890.

¹³² See *id.* art. 889.

¹³³ See *id.* arts. 891-896 (2000 & Supp. 2005). If siblings are born of different parents and siblings are in both of decedent's paternal and maternal lines, then separate property is divided equally into paternal and maternal lines and distributed. See *id.* art. 893 (2000). Separate property passes to ascendants only to the nearest degree, being split equally into paternal and maternal lines when such ascendants are in both lines. See *id.* art. 895. Separate property passes to collaterals only to the nearest degree per stirpes. See *id.* art. 896. Louisiana determines degrees of kindred using the civil law method. See *id.* arts. 899-901 (defining nearest in degree), see also *supra* note 83 (describing civil law method of determining degrees of collaterals).

¹³⁴ *Id.* art. 891 (Supp. 2005).

¹³⁵ See *id.* arts. 897-898 (2000). The code uses the civil law term "immovables" rather than "real property"; "movables" is the term that corresponds to personal property. See Kinsella, *supra* note 125, at 1277 (defining immovables); see also LA. CIV. CODE ANN. arts. 462-470 (1980 & Supp. 2005) (Immovables).

¹³⁶ See LA. CIV. CODE ANN. art. 1476 (2000).

¹³⁷ *Id.* art. 1477.

¹³⁸ See *id.* art. 1577 (Supp. 2005) (providing formalities for a notarial testament). Within the notarial form of testament, the code provides other formalities for testators who are blind, deaf, unable to read, or unable to sign the testament. See *id.* arts. 1578-80.1 (2000).

Louisiana recognizes two types of testaments: olographic and notarial. See *id.* art. 1574. Before 1999, Louisiana recognized five different types of testaments to include the two remaining types. See Max Nathan, Jr., *Commentary: Introduction to the New Louisiana Law of Successions*, in 5 LOUISIANA STATUTES ANNOTATED: CIVIL CODE 212-14 (West 2000). Notarial testaments were then known as statutory testaments. See *id.* at 213-14. A sixth type, the maritime and military testament, no longer exists. See *id.* at 213.

In civil law jurisdictions, a notary often serves in a capacity beyond that of the notary public familiar to common law practitioners. See, e.g., LA. CODE CIV. PROC. ANN. art. 3131 (2003) (directing the court to appoint a notary to take the inventory of the decedent's estate); *infra* notes 237-247 and accompanying text (introducing Puerto Rico's notarial practice). Nevertheless, Louisiana expressly recognizes acts of military notaries and of notaries public from other U.S. jurisdictions. See LA. REV. STAT. ANN. §§ 35:5-:7 (1985 & Supp. 2005).

¹³⁹ See LA. CIV. CODE ANN. art. 1581.

¹⁴⁰ *Id.* art. 1577(2) (Supp. 2005). The acknowledgment should substantially say the following:

In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _____, _____.

Id.

outside Louisiana must comply with the law of either Louisiana, the jurisdiction where executed, or the jurisdiction where the testator is domiciled at execution.¹⁴¹ A notarial testament is self-proving.¹⁴²

D. Executors and Administration

An executor must be a non-felon, eighteen years of age or older, and a resident of Louisiana or willing to appoint a resident agent.¹⁴³ Additionally, a person must not be mentally incompetent or “proved to be unfit for appointment because of bad moral character.”¹⁴⁴ An executor named by the testator need not provide security unless required by the testament or compelled by a surviving spouse, forced heir, or creditor.¹⁴⁵ An executor may file a detailed descriptive list of estate property in lieu of a public inventory of the estate property.¹⁴⁶ An executor must file an annual accounting, a final accounting, and any other accounting the court may require.¹⁴⁷

A testator may provide in the testament for independent administration of his estate.¹⁴⁸ Independent administration allows an executor to administer the estate with minimal court participation and oversight.¹⁴⁹

E. Tutorship

In Louisiana, tutorship corresponds to guardianship in common law jurisdictions.¹⁵⁰ A judge must appoint the tutor that the testator nominates unless doing so would not be in the best interest of the child.¹⁵¹ The judge will require the tutor to provide security and either an inventory and appraisal or a descriptive list of the minor’s property.¹⁵² The Code also requires the tutor to provide an annual accounting and a final accounting.¹⁵³

F. Preparing a Testament

The Fort Polk Legal Assistance Office will draft a Louisiana testament for military legal assistance attorneys preparing a testament for a Louisiana domiciliary.¹⁵⁴ Other options for preparing a testament include drafting a Louisiana testament,

¹⁴¹ See LA. REV. STAT. ANN. § 9:2401 (1991); see also LA. CODE CIV. PROC. ANN. art. 2888 (requiring the same production of evidence to probate a foreign testament as required in the jurisdiction under which the form of execution is recognized).

¹⁴² See LA. CODE CIV. PROC. ANN. art. 2891 (“A notarial testament . . . do[es] not need to be proved. Upon production of the testament, the court shall order it filed and executed and this order shall have the effect of probate.”). Thus, a self-proving affidavit is unnecessary for a notarial testament.

¹⁴³ See *id.* art. 3097(A)(1), (3), (4).

¹⁴⁴ *Id.* art. 3097(A)(2), (6).

¹⁴⁵ See *id.* arts. 3153-3155. The phrase “executor named by the testator” distinguishes this type of “succession representative” from a dative testamentary executor—a succession representative named in a testate proceeding who is not named as executor in the testament. See *id.* art. 3083 (providing for appointment of dative testamentary executor).

¹⁴⁶ See *id.* art. 3136.

¹⁴⁷ See *id.* arts. 3331, 3332, 3391. The code uses the term “account” instead of “accounting” except in the newer provisions for independent administration. See *id.* art. 3396.17. The heirs may waive the requirement of a final account. See *id.* art. 3391.

¹⁴⁸ See *id.* art. 3396.2. Conversely, the testator may foreclose the possibility of the legatees compelling an independent administration by prohibiting an independent administration in the testament. See *id.* art. 3396.13.

¹⁴⁹ See *id.* art. 3396.15. Annual accountings are required only if an appropriate interested person demands them. See *id.* art. 3396.17.

¹⁵⁰ See Kinsella, *supra* note 125, at 1293 (defining tutorship); see also LA. CODE CIV. PROC. arts. 4261-4262 (1998) (setting forth general duties of tutor).

¹⁵¹ See LA. CODE CIV. PROC. art. 4062. A tutorship so formed is a tutorship by will. See LA. CIV. CODE ANN. art. 257 (1993); see also *id.* art. 258 (providing the right of appointment when the parents are divorced or judicially separated). Louisiana defines its other three types of tutorship—natural tutorship, legal tutorship, and dative tutorship—based upon the nature of any pre-existing relationship between minor and tutor. See *id.* arts. 247, 250, 263, 270 (listing tutorship types and providing nature of each). Of course, a minor’s surviving natural parent, unless otherwise disqualified, would take priority as a natural tutor over a tutor named in the decedent parent’s testament. See *id.* arts. 250, 257.

¹⁵² See LA. CODE CIV. PROC. arts. 4062 (bond), 4101(A); see also *id.* art. 4131 (determining amount of bond and allowing judge to reduce bond).

¹⁵³ See LA. CODE CIV. PROC. arts. 4391-4392.

¹⁵⁴ See Major Fenton, *Help With Preparing Wills for Louisiana Domiciliaries*, in *TJAGSA Practice Note: Wills and Professional Responsibility Notes*, ARMY LAW., July 1999, at 30, 31; Telephone Interview with Louis L. Sherman, Jr., Chief of Legal Assistance, in Fort Polk, Louisiana (Feb. 1, 2005) [hereinafter Sherman Interview].

drafting a military testamentary instrument, and drafting a will for the jurisdiction of execution. A Fort Polk Louisiana testament is preferable because the form, being familiar to Louisiana lawyers and judges, invites less scrutiny and is more readily recognized as valid. Otherwise, if the will may be probated in a jurisdiction other than Louisiana, a military testamentary instrument as outlined below is preferable to a Louisiana testament because it uses a recognized self-proving affidavit.

To obtain a Louisiana testament from Fort Polk, the military legal assistance attorney must complete Fort Polk's Louisiana Last Will and Testament Questionnaire for the Louisiana client and send it to the Fort Polk Legal Assistance Office.¹⁵⁵ While the legal assistance attorney should receive the drafted testament via e-mail within three duty days, turnaround time is often as early as the next day.¹⁵⁶ Only in compelling circumstances should the non-Louisiana attorney forego this valuable service of the Fort Polk Legal Assistance Office. A copy of the Last Will and Testament Questionnaire from Fort Polk is at Appendix D. A sample testament prepared by the Fort Polk Legal Assistance Office is at Appendix E.

If the legal assistance attorney does not obtain a Louisiana testament from Fort Polk, a similar Louisiana testament can be drafted using DL Wills. To draft a Louisiana testament using the DL Wills program, select "Louisiana" for the state and continue normal will drafting procedures for DL Wills, disposing of property as if the entire estate were freely disposable. Once the document is created, amend the document as follows: Ensure the testator's marital status, name of spouse, if any, and names of children are included in the first paragraph of the testament. In the paragraph immediately preceding the testator's signature line, the time entry "at _____" may be omitted. In the paragraph immediately following the testator's signature line, insert the words "at the end and on each separate page" after the word "signed." Delete the heading, "AFFIDAVIT." Delete all lines between the lines "WITH THE UNITED STATES ARMED FORCES AT _____" and the notary's signature line. Move the lines "WITH THE UNITED STATES ARMED FORCES AT _____" to immediately follow the testator's signature line. The result should be substantially similar to that of the Fort Polk testament at Appendix F.

For a testator with children or who would like the contingency of having children in the future, amend the gift portion of the testament as follows: Before the language giving property, insert a paragraph or subparagraph that gives the forced portion to any children that are forced heirs at the testator's death. If desired, give the forced portion subject to a testamentary usufruct for the spouse. If a specific bequest is to be made to someone other than the spouse, make any testamentary usufruct subject to the specific bequest.¹⁵⁷ Provide instruction as to the limits of the usufruct—ordinarily, if the testator desires to leave a usufruct to the spouse, then the usufruct will have few restraints.¹⁵⁸ Provide the following statement: "If I have no forced heirs at the time of my death, then all of my property shall be treated as freely disposable property."¹⁵⁹ In the remaining gift portion of the testament, replace the phrase "rest, residue and remainder" with the phrase "freely disposable property," ensuring that "property" is not used redundantly in the sentence. Similarly, any fractional portion of the estate should generally be expressed in terms of a fractional portion of the freely disposable property of the estate.

If an independent administration is desired, add the following statement: "I expressly provide that my Executor may serve as an Independent Executor, with all of the rights, powers and authority of an Independent Executor as provided by Louisiana law."¹⁶⁰ If the testator wants to disinherit an heir, then provide the legal basis to do so.¹⁶¹

To draft a Military Testamentary Instrument, proceed as above except (1) accept the DL Wills offer to prepare a military testamentary instrument preamble and affidavit, (2) do not amend the affidavit, (3) copy the lines "WITH THE UNITED STATES ARMED FORCES AT _____" and paste them immediately following the testator's signature line, and (4) copy the notary's signature block and paste it immediately preceding the self-proving affidavit.

¹⁵⁵ The questionnaire is available electronically to those with access to JAGCNet at www.jagcnet.army.mil on the LAAWS XXI Legal Assistance Database under the category Estate Planning,Wills/SGLI. Completed questionnaires should be sent to either or both of the following e-mail addresses: shermanl@polk-emh2.army.mil and lenzp@polk-emh2.army.mil. See Sherman Interview, *supra* note 154. Legal assistance attorneys can also send any questions about this service to these e-mail addresses.

¹⁵⁶ See Fenton, *supra* note 154, at 31; Sherman Interview, *supra* note 154.

¹⁵⁷ For an example, see Louis L. Sherman, Jr., Sample Testament: Louisiana para. seventh (second subparagraph) (Jan. 11, 2005) (unpublished testament, reproduced at Appendix F).

¹⁵⁸ For an example with few restraints and much authority, see *id.* para. seventh (fourth subparagraph).

¹⁵⁹ *Id.* para. seventh (fifth subparagraph).

¹⁶⁰ *Id.* para. third.

¹⁶¹ See *supra* note 128 and accompanying text.

To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except, once the document is produced, (1) replace in the first paragraph the name of the state with “Louisiana,” replacing “Commonwealth” with “State,” if applicable; and (2) amend the will as outlined above concerning marital status, spouse, children, forced heirship, usufruct, and independent administration, as applicable.

VI. Northern Mariana Islands

The Northern Mariana Islands were among several German islands in the Pacific Ocean north of Guam that were mandated to Japan following World War I.¹⁶² In 1947, following World War II, the United Nations placed these islands under the United States as a trust territory—the Trust Territory of the Pacific Islands.¹⁶³ In 1986, the Northern Mariana Islands, as one group of islands in the trust territory, became a commonwealth under the sovereignty of the United States, thus leaving its relationship as part of the trust territory.¹⁶⁴ Since 1986, Northern Mariana Islanders have been citizens of the United States.¹⁶⁵ The commonwealth constitution establishes an executive branch headed by an elected governor, a bicameral legislature, and a judiciary.¹⁶⁶ The commonwealth is a common law jurisdiction that retains some elements of customary law.¹⁶⁷

Research into Northern Mariana Islands law can be difficult because LexisNexis and Westlaw do not carry the Northern Mariana Islands Constitution and Commonwealth Code.

The Northern Mariana Islands Constitution restricts alienation of land, allowing only persons of at least one-quarter Northern Marianas descent to acquire “permanent and long-term interests in real property within the Commonwealth.”¹⁶⁸ An exception allows a spouse to inherit real property if the decedent leaves no issue “eligible to own land in the Northern Mariana Islands.”¹⁶⁹ A “person not of Northern Marianas descent” can receive by devise or descent “the maximum allowable legal interest in . . . real property” with any remaining interest passing to the next closest heirs or devisees eligible to own land in the Northern Mariana Islands.¹⁷⁰

¹⁶² See Trusteeship Agreement for the Former Japanese Mandated Islands, pmbL., Apr. 2-July 18, 1947, U.S.-U.N., 61 Stat. 3301, 3301; U.S. CIA, *Northern Mariana Islands*, in WORLD FACTBOOK (2004), available at <http://www.cia.gov/cia/publications/factbook/index.html>.

¹⁶³ See Trusteeship Agreement for the Former Japanese Mandated Islands, *supra* note 162, arts. 1-2. Although as trustee the United States held considerable governmental power over the trust territory, the United States was not the sovereign. See *Northern Mariana Islands v. Atalig*, 723 F.2d 682, 684 (9th Cir. 1984).

¹⁶⁴ See Proclamation No. 5564, 51 Fed. Reg. 40,399 (Nov. 7, 1986). The other islands in the trust territory—Palau, the Marshall Islands, and the Federated States of Micronesia—chose instead to become independent nations having free association with the United States. See *id.*; Proclamation No. 6726, 59 Fed. Reg. 49,777 (Sept. 27, 1994).

¹⁶⁵ See Proclamation No. 5564, 51 Fed. Reg. 40,399 (Nov. 7, 1986); GORDON ET AL., *supra* note 20, § 92.04[9].

¹⁶⁶ See N. MAR. I. CONST. arts. II (legislature), III (executive branch), IV (judiciary).

¹⁶⁷ See 7 N. MAR. I. CODE § 3401 (2004). For civil matters,

the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary.

Id. Nevertheless, when positive law and customary law are inapplicable, a court may look to a majority view from the United States, rather than to common law. See *Ada v. Sablan*, 1 N. Mar. I. 415, 425-29 (1990) (holding that a marital property regime exists in the commonwealth because as to property of a marriage, the common law, which is largely inapplicable in the several states, has principles contrary to the commonwealth constitution).

¹⁶⁸ N. MAR. I. CONST. art. XII, § 1; see *id.* § 4. “The term permanent and long-term interests in real property . . . includes freehold interests and leasehold interests of more than fifty-five years including renewal rights, except an interest acquired above the first floor of a condominium building.” *Id.* § 3. A person is of Northern Marianas descent if “a citizen or national of the United States and . . . at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof” or if adopted before the age of eighteen by a person of Northern Marianas descent. *Id.* § 4. For determining descent, the constitution considers a person “to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if . . . born or domiciled in the Northern Mariana Islands by 1950 and . . . a citizen of the Trust Territory of the Pacific Islands before [November 3, 1986].” *Id.*; see Proclamation No. 5564, 51 Fed. Reg. 40,399 (Nov. 7, 1986) (establishing end date of trusteeship). A corporation is eligible to own land only if “it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors one-hundred percent of whom are persons of Northern Marianas descent and has voting shares . . . one-hundred percent of which are actually owned by persons of Northern Marianas descent.” N. MAR. I. CONST. art. XII, § 5. Article XII’s alienation restrictions “are not subject to equal protection analysis” under the U.S. Constitution. *Wabol v. Villacrusis*, 958 F.2d 1450, 1463 (9th Cir. 1990).

¹⁶⁹ N. MAR. I. CONST. art. XII, § 2.

¹⁷⁰ 8 N. MAR. I. CODE § 2411.

Land can be of different types depending on whether it is held under Chamorro custom or Carolinian custom. Under the Chamorro custom, intestate succession differs for land if it is ancestors' land.¹⁷¹ The Commonwealth Code defines ancestors' land as "land acquired . . . from one or more of [the owner's] Chamorro ancestors of Northern Marianas descent."¹⁷²

For Carolinian land ownership, property is held either in one's individual capacity or as family land.¹⁷³ The Commonwealth Code recognizes family land as land acquired "from one or more Carolinian ancestors, and held by the person as customary trustee for the use of the family members."¹⁷⁴ Family land is held by a customary trustee for the equal enjoyment of all descendants of the original land owner.¹⁷⁵ Any alienation of the land, erection of a permanent structure on the land, or occupation of a permanent structure requires the consent of the family, which is determined by majority vote of the customary trustee and his siblings.¹⁷⁶ Thus, family land loses its nature as such only with family consent.¹⁷⁷ A court will presume land held by a Carolinian to be family land unless the original owner showed clear intent to hold it otherwise.¹⁷⁸

Marital homestead property is a special type of homestead land that may confront an estate planning attorney. In general, homestead land is public land conveyed to individuals who had been homesteading on the land and meet certain statutory requirements.¹⁷⁹ Marital homestead property is homestead land conferred under the Marital Homestead Family Act¹⁸⁰ when marriage occurs before the required homestead term expires.¹⁸¹ Significant for the estate planning attorney is that homestead marital property is held in joint tenancy with right of survivorship.¹⁸²

The Commonwealth Code does not have an UGMA or UTMA.¹⁸³ It also lacks a trust code or similar statutory authority concerning trusts.¹⁸⁴

The Commonwealth Code recognizes personal property memorandums as a means to convey tangible personal property not specifically bequeathed in a will.¹⁸⁵ For a court to give effect to such a memorandum, the memorandum must be expressly referenced in the will, in the handwriting of the testator or signed by the testator, and "describe the items and the devisees with reasonable certainty."¹⁸⁶ The memorandum need not be in existence at the time of will execution.¹⁸⁷

¹⁷¹ See *id.* §§ 2902-2903; *In re Estate of Deleon Guerrero*, 1 N. Mar. I. 301, 306 (1990) (applying pre-code intestacy law under Chamorro custom).

¹⁷² 8 N. MAR. I. CODE § 2107(a). This section states the acquisition can be "in any manner," but then restricts the manner of acquisition by saying "whether by inheritance, gift, will, or family agreement." *Id.*

¹⁷³ See *In re Estate of Rangamar*, 4 N. Mar. I. 72, 76-77 (1993). Carolinians of the Northern Mariana Islands are also called Refaluwasch. See *In re Estate of Amires*, 1997 MP 8, 5 N. Mar. I. 70, 71 n.1.

¹⁷⁴ 8 N. MAR. I. CODE § 2107(l). The acquisition can be "by law or decision of the family or by inheritance." *Id.* The commonwealth considers as family land any land passing to the heirs of a Carolinian or of a person following the Carolinian custom. See *id.*

¹⁷⁵ See *id.* §§ 2904(b), 2910. Historically, Carolinian family land was matrilineal in that it was held collectively by the females in the family, with title in the oldest female for administrative purposes. See *In re Estate of Rangamar*, 4 N. Mar. I. at 76-77 (describing Carolinian land custom in the Northern Mariana Islands).

¹⁷⁶ See 8 N. MAR. I. CODE §§ 2904(c), 2907, 2909. This relationship applies "[u]nless the family consents or agrees otherwise." *Id.* § 2909. For deceased siblings with descendants, the descendants may vote by representation. See *id.*

¹⁷⁷ See *id.* § 2904. But see *Tarope v. Igisaiar*, 3 N. Mar. I. Commw. Rptr. 112, 117 (N. Mar. I. Commw. Trial Ct. 1987) (holding that family land can lose its nature as such if the family acts inconsistently with family land ownership).

¹⁷⁸ See *In re Estate of Lairopi*, 2002 MP 10, ¶ 12, 2002 N. Mar. I. LEXIS 9, 4.

¹⁷⁹ See 2 N. MAR. I. CODE §§ 4301-14 (general provisions for homestead land).

¹⁸⁰ *Id.* §§ 4341-47.

¹⁸¹ See *id.* § 4341(g). The Act requires a certificate of title or deed of conveyance for land to qualify as marital homestead property. See *id.*

¹⁸² See *id.* §§ 4343-44; *Estate of Faisao v. Tenorio*, 4 N. Mar. I. 260, 267 (1995) (holding that marital homestead property passes non-probate even if the surviving spouse is not named on the title). The grantee may file to have it titled as joint tenancy with right of survivorship. See 2 N. MAR. I. CODE § 4346.

¹⁸³ See N. MAR. I. CODE index.

¹⁸⁴ See *id.*; see also *Aldan-Pierce v. Mafnas*, 2 N. Mar. I. 122, 148-59 (1991) (analyzing a resulting trust case using restatements and case law from various states).

¹⁸⁵ See 8 N. MAR. I. CODE § 2313. This section explicitly excludes bequeathing in this manner "money, evidences of indebtedness, documents of title, and securities, and property used in trade or business." *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See *id.*

A. Rights to Property by Surviving Family Members

The Commonwealth Code recognizes rights in the decedent's family members to marital property, exempt property, a homestead allowance, and a family allowance. The commonwealth is a community property jurisdiction.¹⁸⁸ Under the commonwealth's community property system, the surviving spouse retains his one-half undivided interest in marital property, subject to the constitutional alienation restrictions.¹⁸⁹

A surviving spouse has rights to exempt property of the decedent's estate consisting of "the primary family home and lot, household furniture, one automobile, furnishings, appliances, and personal effects."¹⁹⁰ Such a spouse also has the right to a homestead allowance from the estate of \$5000.¹⁹¹ If the decedent does not leave a surviving spouse, then exempt property passes jointly to the decedent's children and the homestead allowance passes to the decedent's minor and dependent children.¹⁹²

In addition to exempt property and a homestead allowance, the decedent's surviving spouse and minor and dependent children are entitled to a family allowance from the decedent's estate during administration of the estate, but limited to two years in duration if the estate is insolvent.¹⁹³ The amount of the family allowance is to be "reasonable" for purposes of maintenance and is set at \$500 per month unless the probate court orders otherwise.¹⁹⁴

Rights to exempt property, homestead allowance, and family allowance have priority over any claim on the estate and "override any provision in the will of the decedent to the contrary unless . . . the will expressly provides an adequate substitute for the loss of these rights."¹⁹⁵ Unless a will provides adequate substitution for these rights, they are in addition to any benefit conferred by will or intestate succession.¹⁹⁶

B. Intestate Succession

Intestate succession varies depending on whether the decedent was Chamorro, Carolinian, or neither. Under Chamorro custom, a life estate in ancestors' land passes to the surviving spouse with priority of succession for the remainder to descendants and then to siblings and their descendants.¹⁹⁷ If the decedent does not have a surviving spouse, then priority of succession for ancestors' land is to descendants and then to siblings and their descendants.¹⁹⁸ For all other property under Chamorro custom, one-half passes to the surviving spouse and one-half passes to the descendants, but if the decedent does not have a surviving spouse, then all such property passes in priority of succession to descendants, to parents, and then to siblings and their descendants.¹⁹⁹

¹⁸⁸ See Commonwealth Marital Property Act of 1990, 8 N. MAR. I. CODE §§ 1811-1834 (establishing community property regime in terms of "marital property" and "individual property"); *In re Estate of Aldan*, 1997 MP 3, ¶ 16, 5 N. Mar. I. 50, 52. The commonwealth's community property regime is based on the Uniform Marital Property Act. See *Reyes v. Reyes*, 2004 MP 1, ¶ 27, 2004 N. Mar. I. LEXIS 2, 18; 8 N. MAR. I. CODE § 1811 cmt. The Commonwealth Marital Property Act of 1990 took effect in 1991. 8 N. MAR. I. CODE § 1811 cmt. Marital property rights existed in the commonwealth prior to the Marital Property Act. *Ada v. Sablan*, 1 N. Mar. I. 415, 429 (1990) (deciding a dispute in a Chamorro custom case).

¹⁸⁹ See 8 N. MAR. I. CODE § 1820(c). In general, marital property is property acquired by either spouse during the marriage except for property received by gift, devise, or descent to one spouse alone or for property traceable to one spouse's individual property. See *id.* § 1820.

¹⁹⁰ *Id.* § 2601. This applies only to a decedent domiciled in the Northern Mariana Islands. See *id.*

¹⁹¹ See *id.* § 2602. This applies only to a decedent domiciled in the Northern Mariana Islands. See *id.*

¹⁹² See *id.* §§ 2601-02.

¹⁹³ *Id.* § 2603. The children entitled to share in the allowance are the "minor children whom the decedent was obligated to support and children who were in fact being supported by him." *Id.*

¹⁹⁴ *Id.* § 2603; see *id.* § 2604. The family allowance can be paid in a lump sum. See *id.* § 2604. The death of a person terminates his right to any unpaid family allowance. See *id.* § 2603.

¹⁹⁵ *Id.* § 2601; see *id.* §§ 2602-03.

¹⁹⁶ See *id.* §§ 2601-03.

¹⁹⁷ See *id.* § 2902(a), (c). Succession to heirs is stirpital, though the Commonwealth Code uses the term "representation" rather than "per stirpes." See *id.* § 2915.

¹⁹⁸ See *id.* § 2902(b), (d).

¹⁹⁹ See *id.* § 2903. As written, the Commonwealth Code would permit one-half of property other than ancestors' land to escheat to the commonwealth if the decedent had a surviving spouse but no descendants. See *id.* §§ 2903, 2914 (escheat provision).

Under Carolinian custom, intestate succession depends upon whether property is family land, other real property, or personal property, but the statutory intestate succession scheme is subject to change upon family agreement.²⁰⁰ For family land when the decedent was the customary trustee, “[u]nless the family consents or agrees otherwise,” another family member will become the customary trustee and the land will retain its nature as family land.²⁰¹ For other land, “[u]nless the family consents or agrees otherwise,” if the decedent dies with a surviving spouse and no descendants, then the land passes to the surviving spouse, otherwise the land becomes family land and a customary trustee will be determined according to the Commonwealth Code.²⁰²

Personal property passes under Carolinian custom by a regime subject to change upon family agreement.²⁰³ Personal property passes to a wife who survives the decedent.²⁰⁴ When the decedent predeceases her husband, a life estate in the personal property passes to the husband with priority of succession to the remainder to her descendants and then to her siblings and their descendants.²⁰⁵ For a decedent without surviving spouse or descendants, priority of succession of personal property is to parents and then to siblings and their descendants.²⁰⁶

For decedents not of Northern Marianas Chamorro or Carolinian descent, the first \$50,000 of the estate and one-half of the residue passes to the surviving spouse; priority of succession for the other one-half of the residue is to descendants and then to parents, but if no descendants or parents survive decedent, then all property passes to the surviving spouse.²⁰⁷ If the decedent does not have a surviving spouse, then priority of succession is to descendants, to parents, and finally to siblings and their descendants.²⁰⁸

In the Northern Mariana Islands, intestate succession treats half-blood relations as whole blood relations.²⁰⁹ Intestate succession treats illegitimate children and adopted children as legitimate, natural children.²¹⁰ The exception to this rule is that in the Carolinian custom, the family can agree to treat an adopted child as not belonging to the family for purposes of

²⁰⁰ These rules are malleable; all sections in the Commonwealth Code concerning Carolinian probate custom contain the phrase: “[u]nless the family consents or agrees otherwise.” *See id.* §§ 2904-11.

²⁰¹ *Id.* § 2904 (a). Priority of succession to customary trustee is to oldest surviving sister, to oldest surviving brother, to oldest surviving daughter of decedent and his siblings, to oldest surviving son of decedent and his siblings, to decedent’s oldest surviving granddaughter, and finally to decedent’s oldest surviving grandson. *See id.* If none of these survive, the court will select a customary trustee according to Carolinian custom if the family does not agree on a choice. *See id.* § 2904(a)(6).

²⁰² *Id.* § 2905. Because the Commonwealth Code in section 2905 refers in terms to a father predeceasing a mother or vice versa, rather than in terms of a surviving spouse, a strict reading of the Commonwealth Code would fail to apply this section when a decedent leaves a surviving spouse and never had children, thus leaving the land to escheat to the Commonwealth. *See id.* §§ 2905, 2914 (escheat provision). If the land becomes family land under section 2905, a surviving spouse retains a life estate as customary trustee. *Id.* § 2905(a). Priority of succession for the remainder interest as customary trustee, or as customary trustee if no spouse survives, is to oldest daughter, to oldest son, to oldest granddaughter, to oldest grandson, to any descendant, to oldest sister, to oldest brother, to oldest daughter of siblings, and finally to oldest son of siblings. *Id.* § 2905(a)-(c).

²⁰³ *See id.* § 2906. Section 2906 begins, “Unless the family consents or agrees otherwise.” *Id.* Because the Commonwealth Code in section 2906 refers in terms to a father predeceasing a mother or vice versa, rather than in terms of a surviving spouse, a strict reading of the Commonwealth Code would fail to apply this section when a decedent leaves a surviving spouse and never had children, thus leaving personal property to escheat to the Commonwealth. *See id.* §§ 2906, 2914 (escheat provision). Additionally, because section 2906 does not address a decedent without a surviving spouse but with surviving descendants, a strict reading of the Commonwealth Code would have the personal property of such a decedent escheat to the Commonwealth. *See id.*

²⁰⁴ *See id.* § 2906(a). *But see supra* note 203 (questioning applicability of section 2906 if spouses never had children).

²⁰⁵ *See* 8 N. MAR. I. CODE § 2906(b). *But see supra* note 203 (questioning applicability of section 2906 if spouses never had children). In distributing the remainder to the children, “preference [is to be] given to daughters and sons for those items normally passed to them under custom.” *See* 8 N. MAR. I. CODE § 2906(b)(1).

²⁰⁶ *See id.* § 2906(c).

²⁰⁷ *See id.* § 2912(a)-(c).

²⁰⁸ *See id.* § 2912(d)-(e).

²⁰⁹ *See id.* § 2916.

²¹⁰ *See id.* § 2918. The courts will recognize the Carolinian custom of mwei-mwei as a valid adoption. *See In re Estate of Rofag*, 2 N. Mar. I. 18, 31-32 (1991) (affirming heredity through mwei-mwei). Mwei-mwei occurs when a single adult or a married couple choose to raise a child as if it were the natural child of the adopting party with the consent of the natural parent or parents. The child is usually taken in as a baby and is usually a relative of the adopting party. *In re Estate of Amires*, 1997 MP 8, ¶¶ 19-21, 5 N. Mar. I. 70, 73 (affirming lower court’s finding that mwei-mwei had not occurred). The courts will also recognize as a valid legal adoption the Chamorro custom of poksai when the pineksai (the child under poksai) is raised as the natural and legitimate child of the adopting party. *See In re Macaranas*, 2003 MP 11, ¶¶ 13, 16, 17, 2003 N. Mar. I. LEXIS 10, 8-11 (summarizing supreme court law concerning poksai).

family land rights and intestate succession.²¹¹ Adopted children inherit through their natural relations.²¹² A father inherits through his child only if he “has openly treated the child as his and has not refused to support the child.”²¹³

C. Testamentary Capacity and Testamentary Formalities

Testamentary capacity requires the testator to be at least eighteen years old and of sound mind.²¹⁴

A will must be in writing and signed by the testator.²¹⁵ The testator must either sign the will or acknowledge his signature before two witnesses.²¹⁶ The witnesses must sign the will having witnessed either the signing of the will or the testator’s acknowledgment of the signing.²¹⁷ The only standard for witnesses is that they be competent.²¹⁸ The Commonwealth Code does not provide for a self-proving affidavit for wills.²¹⁹

For a will executed outside the commonwealth to be valid, it must comply with the law of either the Northern Mariana Islands, the jurisdiction where executed, or the jurisdiction where the testator is domiciled.²²⁰

D. Executors and Administration

The Commonwealth Code does not address qualifications of an executor.²²¹ An executor must file an inventory and a final accounting.²²² The court will set a bond if it “deems this necessary.”²²³

E. Guardianship

The Commonwealth Code provides little guidance for guardianship proceedings.²²⁴ While the Commonwealth Code recognizes some right in the testator to name a guardian for children and other dependents in defining a guardian, the rules for probate procedure do not discuss what weight such a nomination should carry.²²⁵ The guardianship court must determine the need for a guardian to post bond or other security.²²⁶

²¹¹ See 8 N. MAR. I. CODE § 2908.

²¹² See *id.* § 2918(a)(2).

²¹³ *Id.* § 2918(b)(2).

²¹⁴ See *id.* § 2301.

²¹⁵ See *id.* § 2303(b). In addition to wills under this section, the Commonwealth Code recognizes wills under customary law, partidas, holographic wills, and oral wills. See *id.* §§ 2302 (customary will and partida), 2304 (holographic will), 2305 (oral will). A partida is an oral division of property a father makes among his children, often made in a family meeting. See *In re Estate of Barcinas*, 4 N. Mar. I. 149, 152 n.4 (1994).

²¹⁶ See 8 N. MAR. I. CODE § 2303(b). Alternatively, the testator may direct someone to sign the will in his name, by his direction, and in his presence. See *id.*

²¹⁷ See *id.*

²¹⁸ See *id.* § 2306(a). Presumably, competency requires a person to be of age. A person reaches majority at eighteen years of age. See *id.* § 1106.

²¹⁹ See *id.* div. 2, ch. 3 (Wills).

²²⁰ See *id.* § 2307.

²²¹ See *id.* div. 2 (Probate Law and Procedure).

²²² See N. MAR. I.R. PROB. PROC. 9, 12.

²²³ N. MAR. I.R. PROB. PROC. 8.

²²⁴ See 8 N. MAR. I. CODE ANN. § 2107(n) (defining “Guardian” under the general definitions section of the Commonwealth Code division for probate law and procedure); N. MAR. I. CODE index (providing no Commonwealth Code listing for “Guardian” or “Guardianship”).

²²⁵ See 8 N. MAR. I. CODE ANN. § 2107(n) (defining “Guardian” as “a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem”); N. MAR. I.R. PROB. PROC. 26d (“the court will be guided by . . . best interest of the child and if the child is of sufficient age to form an intelligent preference, the court may consider that preference”).

²²⁶ See N. MAR. I. R. PROB. PROC. 26d.

F. Preparing a Will

Options for preparing a will for a domiciliary of the Northern Mariana Islands include drafting a Northern Mariana Islands will, drafting a military testamentary instrument, and drafting a will for the jurisdiction of execution. Because the Commonwealth Code does not provide for self-proving wills, a military testamentary instrument is recommended.

To draft a Northern Mariana Islands will using the DL Wills program, select “Guam” for the state and continue normal will drafting procedures for DL Wills. Once the document is created, replace “Guam” with “the Northern Mariana Islands” throughout. Add a statement to the first paragraph of the will concerning ancestry, such as “I am of Chamorro descent,” “I am of Carolinian descent,” or “I am not of Chamorro or Carolinian descent.” Provide sufficient information, if known, to identify the ancestry of any persons who may receive Northern Mariana Islands real property under the will. For any real property in the Northern Mariana Islands the testator presently owns, identify the type of real property owned, *e.g.*, “The real property I presently own in the Northern Mariana Islands [optional: place description here] is individual land and not family land.” If any real property in the Northern Mariana Islands may pass under the will to a person who is not of Northern Mariana Islands descent, add a savings clause. See Appendix G for a sample savings clause.

To draft a Military Testamentary Instrument, proceed as above except (1) accept the DL Wills offer to prepare a military testamentary instrument preamble and affidavit and (2) do not amend the language in the affidavit. To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except once the document is produced, (1) in the first paragraph replace the name of the state with “the Northern Mariana Islands,” and if applicable, replacing “the State of” with “the Commonwealth of,” and (2) provide language as outlined above concerning Northern Mariana Islands ancestry and real property as applicable.

VII. Puerto Rico

Like Guam, Puerto Rico became a territory of the United States in 1898 as a result of the Spanish American War.²²⁷ Persons born in Puerto Rico are U.S. citizens.²²⁸ The Puerto Rican constitution establishes an executive branch headed by an elected governor, a bicameral legislature, and a judiciary.²²⁹ Like Louisiana, Puerto Rico has a civil law tradition.²³⁰

Puerto Rico is similar to Louisiana in that its legal system combines elements of its civil law tradition with the common law system.²³¹ Legal assistance practitioners, however, should not assume the two jurisdictions have combined the civil law and common law similarly. One important distinction is that unlike Louisiana, Puerto Rico recognizes precedential value in case law.²³²

Research of Puerto Rican law can be difficult for non-Spanish speakers. The predominant language of Puerto Rico is Spanish; only about a quarter of the population speaks English fluently.²³³ While Spanish and English are the two official languages of Puerto Rico,²³⁴ Puerto Rican court proceedings are conducted in Spanish.²³⁵ The systematic translation of court proceedings into English ended in 1972 and updated text of legislation in English generally lags a couple years.²³⁶

²²⁷ See Treaty of Peace, *supra* note 57, at 1755; GORDON ET AL., *supra* note 20, § 92.04[4]. Puerto Rico came into the United States known as Porto Rico. See Treaty of Peace, *supra* note 57, at 1755. Congress officially recognized its name as Puerto Rico in 1932. See 48 U.S.C. § 731a (2000); Joint Resolution of May 17, 1932, ch. 190, 47 Stat. 158, 158-59. The territory of Puerto Rico includes not only the island of Puerto Rico, but also all of the islands adjacent to the island of Puerto Rico that belong to the United States. See P.R. CONST. art. I, § 3; 48 U.S.C. § 731.

²²⁸ See 8 U.S.C. §§ 1101(a)(38), 1401(a) (LEXIS 2005).

²²⁹ P.R. CONST. arts. III (legislature), IV (executive branch), V (judiciary). The high court is the Supreme Court. See *id.* art. V, § 1.

²³⁰ See P.R. LAWS ANN. tit. 31, § 1 (1993).

²³¹ See, *e.g.*, José Trías Monge, *Legal Methodology in Some Mixed Jurisdictions*, 78 TUL. L. REV. 333, 333-34 (2003).

²³² See *Ocasio v. Díaz*, 88 P.R. 658, 736 (1963) (Negrón Fernández, C.J., concurring) (stating that the precedential value of *stare decisis* necessarily depends upon the soundness of the prior legal opinions consulted); Monge, *supra* note 231, at 338-40.

²³³ See José J. Alvarez-González, *Law, Language and Statehood: The Role of English in the Great State of Puerto Rico*, 17 LAW & INEQ. 359, 367 (1999). Over ninety-eight percent of the population speaks Spanish. See *id.*

²³⁴ See P.R. LAWS ANN. tit. 1, § 59 (1999). If a discrepancy exists between the Spanish text and the English text of a Puerto Rican statute, then the Spanish text controls unless the statute’s origin was in English. See *id.* tit. 31, § 13 (1993). For example, if the legislature passed a statute in Spanish that was an adaptation of a Florida statute, then the English text would have preference. See *id.* § 13(a). Citations within this primer are to the English version unless noted parenthetically.

²³⁵ Alvarez-González, *supra* note 233, at 368. Federal court proceedings in Puerto Rico are conducted in English. See *id.* at 373.

²³⁶ See *id.* at 378.

Furthermore, LexisNexis does not carry the Puerto Rican cases that have been translated into English. Westlaw carries Puerto Rico Supreme Court cases since December 1986 that have been translated into English. Not all cases, however, have been translated into English. Both Westlaw and LexisNexis carry all Puerto Rican cases in Spanish.

One area of the law relevant to will preparation that sets Puerto Rico apart from other U.S. jurisdictions is its notarial practice. Puerto Rico only allows attorneys to become notaries.²³⁷ Yet the notary's duties lie with the public trust rather than with the parties involved.²³⁸

A notary's main responsibilities concern affidavits, acts, and deeds.²³⁹ The notary maintains records of all affidavits in a Registry of Affidavits.²⁴⁰ Unlike affidavits, acts and deeds are considered public documents.²⁴¹ As such, acts and deeds are admissible as evidence in Puerto Rican courts.²⁴² The notary maintains all acts and deeds in a protocol, a collection of documents kept by the notary, but belonging to the commonwealth.²⁴³ A will entered into a protocol, being by nature a deed, has the status in Puerto Rico of a probated will in common law jurisdictions upon the death of the will's testator.²⁴⁴

Notaries must send monthly indices of their notarial activities to the Office of the Director of Notarial Inspection of Puerto Rico.²⁴⁵ Within twenty-four hours of executing a will, the notary must send an act certifying the execution to the Director of Notarial Inspection, who maintains the certification in a registry of wills.²⁴⁶ Additionally, notaries are entrusted with some functions concurrent with a court, to include conducting testate and intestate proceedings and issuing letters testamentary.²⁴⁷

The Civil Code has a chapter concerning trusts,²⁴⁸ but Puerto Rico does not have an UGMA or UTMA.²⁴⁹ The Civil Code allows for a tangible personal property memorandum to have effect only if the memorandum fulfills the requirements as a holographic will.²⁵⁰ Nonetheless, this provision is more expansive than typical tangible personal property memorandum provisions in that it allows the memorandum to convey any bequest or legacy.²⁵¹

²³⁷ See P.R. LAWS ANN. tit. 4, § 2011 (2002).

²³⁸ See *id.* § 2002; Pedro A. Malavet, *The Non-Adversarial, Extra-Judicial Search for Legality and Truth: Foreign Notarial Transactions as an Inexpensive and Reliable Model for a Market-Driven System of Informed Contracting and Fact-Determination*, 16 WIS. INT'L L.J. 1, 32-35 (1997); see also P.R.R. EVID. 25(C)(4) (denying attorney-client privilege for issues concerning acts and deeds the attorney has prepared as a notary).

²³⁹ See Malavet, *supra* note 238, at 7-8. Under the civil law system, affidavits are "simple documents in which [the notary] only certifies the identity of the party or parties signing it [or another document]"; acts are "public documents certifying facts that the notary has personally witnessed or otherwise ascertained"; deeds are "public documents in which the notary [formats, authenticates, and memorializes] an agreement reached by the parties." *Id.* at 8. Acts are also called certificates in the Puerto Rico Civil Code. See P.R. LAWS ANN. tit. 4, § 2048; Malavet, *supra* note 238, at 15 n.75.

²⁴⁰ See P.R. LAWS ANN. tit. 4, § 2094.

²⁴¹ See *id.* §§ 2031, 2071; Malavet, *supra* note 238, at 8-9, 12. Even so, the protocol is considered secret and must generally remain at the notary's office. See P.R. LAWS ANN. tit. 4, §§ 2071, 2077.

²⁴² See P.R.R. EVID. 65(H) (exception to hearsay rule for public records), 79(B) (self-authentication of public records), 79(E) (self-authentication of certified copies); Malavet, *supra* note 238, at 20.

²⁴³ See P.R. LAWS ANN. tit. 4, §§ 2071, 2072; Malavet, *supra* note 238, at 10 n.34. The notary may charge up to a certain amount for his notarial services and collects and remits a stamp tax on deeds, acts, affidavits, and certified copies of each. See P.R. LAWS ANN. tit. 4, §§ 851, 896, 2021, 2131, 2132.

²⁴⁴ See P.R. LAWS ANN. tit. 31, § 2517 (1993) (recognizing an executor's implied acceptance of office upon receiving the notice of testator's death and executor's appointment in the will); *id.* tit. 32, § 2571 (2004) (entitling an executor under a will to letters testamentary upon formally accepting office); *Andino Flores v. Andino Flores*, 83 P.R. 134, 136-37 (1961) (approving an executor's exercise of office without prior court recognition); McConnell Valdés, *Puerto Rico Law Digest*, in MARTINDALE-HUBBELL LAW DIG. PR-1, PR-25 (2003) ("Concept of probate does not exist [in Puerto Rico].").

²⁴⁵ See P.R. LAWS ANN. tit. 4, § 2023 (2002).

²⁴⁶ See *id.* §§ 2123, 2124 (2002). A notary has a similar seventy-two hour requirement for powers of attorney. See *id.* § 922. A court will require a petitioner for a declaration of heirship to file a certification from the Office of Notarial Inspection showing that office has no record of the decedent having executed a will. See *id.* §§ 2124, 2125.

²⁴⁷ See *id.* §§ 2155, 2156 (Supp. 2003). Notarial action in these matters assumes a presumption of correctness, but does not become *res judicata*. See *id.* § 2162.

²⁴⁸ See *id.* tit. 31, §§ 2541-81 (1993). Section 2542 recognizes testamentary trusts.

²⁴⁹ See *id.* INDEX (1974 & Supp. 2003).

²⁵⁰ See *id.* tit. 31, § 2126 (1993); see also *infra* note 283 (providing requirements for a holographic will). In effect, such a memorandum is a codicil anticipated in the will.

²⁵¹ See *id.* tit. 31, § 2126.

A. Rights to Property by Surviving Family Members

Puerto Rico provides rights to the decedent's property for surviving family members in conjugal property, homestead, and forced heirship. Puerto Rico is a community property jurisdiction.²⁵² Under the commonwealth's community property system, the surviving spouse has a right to an undivided one-half interest in the property of the conjugal partnership.²⁵³

A head of a family is entitled to own a homestead valued at no more than \$15,000.²⁵⁴ In general, homestead property is exempt from execution or encumbrance.²⁵⁵ Following the death of the head of the family, homestead rights exist in the spouse as long as he continues occupancy, or, if there is no surviving spouse, in the remaining dependent family members until the youngest reaches majority.²⁵⁶

Puerto Rico sets aside a portion of a decedent's estate, called the legal portion, to the decedent's forced heirs.²⁵⁷ The forced heirs are the decedent's descendants, ascendants in the absence of descendants, and the surviving spouse.²⁵⁸

The legal portion set aside for descendants as forced heirs is two-thirds of the estate, subject to a usufruct in the spouse.²⁵⁹ Of this two-thirds, one-half (*i.e.*, one-third of the estate) must pass according to intestate succession; the testator may dispose of the other one-half (*i.e.*, one-third of the estate) to any of his descendants.²⁶⁰ The second one-third "is called an advantage or extra portion."²⁶¹

In the absence of descendants, the legal portion set aside for ascendants is one-half, subject to a usufruct in the spouse.²⁶² The legal portion passes to the ascendants of the nearest degree, divided equally between paternal and maternal lines if applicable.²⁶³ Furthermore, in the absence of descendants of the decedent, any ascendant succeeds to specific property the ascendant gave to the decedent or to the proceeds of the property if it has been alienated.²⁶⁴ Such an ascendant succeeds to the property "to the exclusion of all other persons."²⁶⁵

As a forced heir, a surviving spouse is entitled to a portion of the estate in usufruct.²⁶⁶ If the decedent leaves descendants, the spouse is entitled to a fractional share of the estate in usufruct corresponding to the fractional share of a descendant forced heir not favored in the extra portion or one-third if only one such forced heir survives the decedent.²⁶⁷ The

²⁵² See *id.* §§ 3621-3701 (1991 and Supp. 2003) ("Conjugal Partnership"). In general, property of the conjugal partnership, *i.e.*, community property, is property acquired by either spouse during the marriage except for property received by gift, legacy, or descent to one spouse alone and property traceable to one spouse's separate property. Compare *id.* § 3641 (1991) (defining conjugal property), with *id.* § 3631 (defining separate property).

²⁵³ See *id.* § 3697 (1991).

²⁵⁴ See *id.* § 1851 (LEXIS through 2003 legislation) (Spanish). The homestead is real property used as a residence. See *id.* Head of family status requires some family member to be dependent upon the person claiming the status. *Masa v. Registrar of Caguas*, 30 P.R. 88, 91 (1922).

²⁵⁵ See P.R. LAWS ANN. tit. 31, § 1852 (1993). Notable exceptions include liens for the purchase price of the property or for improvements on the homestead property. See *id.*; see also *id.* § 1851 (listing other exceptions).

²⁵⁶ See *id.* tit. 31, § 1853 (1993). The age of majority is twenty-one. See *id.* § 971. Family members who could qualify as dependents under this section include ascendants or descendants to the fourth degree and foster parents or children. See *id.* § 1853.

²⁵⁷ See *id.* § 2361.

²⁵⁸ See *id.* § 2362. Section 2362, last amended in 1947, is written in terms of legitimate relations. In 1952, the Puerto Rican constitution eliminated legal discrimination based upon birth and subsequent legislation afforded equality of rights between legitimate and illegitimate children, entitling "all children to the full rights of inheritance." *Vega ex rel. Morales v. Bowen*, 664 F. Supp. 659, 662 (D.P.R. 1987); see P.R. CONST. art. II, § 1; P.R. LAWS ANN. tit. 31, § 441 (1993); *Ocasio v. Díaz*, 88 P.R. 658, 731-32 (1963).

²⁵⁹ See P.R. LAWS ANN. tit. 31, §§ 2363, 2411-2416 (1993 & Supp. 2003).

²⁶⁰ See *id.* §§ 2363, 2391 (1993); *Díaz Lamoutte v. Luciano Maldonado*, 85 P.R. 804, 819 (1962) (stating that the testator could have given the second one-third to his grandchildren even if his son—the grandchildren's father—survived the testator).

²⁶¹ P.R. LAWS ANN. tit. 31, § 2391.

²⁶² See *id.* §§ 2364, 2411-16 (1993 & Supp. 2003).

²⁶³ See *id.* § 2365 (1993).

²⁶⁴ See *id.* § 2366. If the property has "been alienated, [then the ascendant] shall succeed to all the actions which the [decedent] may have with regard to [the property], and to the value should [the property] have been sold, or to [other] property by which [the property was] substituted if [it were] bartered or exchanged." *Id.*

²⁶⁵ *Id.*

²⁶⁶ "Usufruct is the right to enjoy a thing owned by another person and to receive all the products, utilities and advantages produced thereby, under the obligation of preserving its form and substance, unless the deed constituting such usufruct or the law otherwise decree." *Id.* § 1501. See generally *id.* §§ 1501-80 (usufruct).

²⁶⁷ See *id.* § 2411 (Supp. 2003).

usufruct is taken from the advantages portion of the legal portion unless the decedent leaves children of multiple marriages, in which case the usufruct is taken from the free third of the estate.²⁶⁸ If the decedent leaves ascendants and no descendants, then the spouse is entitled to one-third of the estate in usufruct, taken from the free half of the estate.²⁶⁹ If the decedent leaves neither descendants nor ascendants, the spouse is entitled to one-half of the estate in usufruct.²⁷⁰

A forced heir could lose his inheritance if found unworthy to succeed to a portion of the estate or if the testator disinherits him. Puerto Rico has an expansive list of persons not qualified to succeed to property by devise or descent because of their conduct-based unworthiness. Some acts that would disqualify a person as being unworthy include attempting to kill the decedent or certain of his family members, attempting to treacherously influence the decedent's making of will, or abandoning or attempting to sexually exploit one's child.²⁷¹ The testator may also disinherit a forced heir, but only for just cause as defined in the Civil Code.²⁷² Reconciliation between the testator and the heir negates the effect of disinheritance.²⁷³

A testator may devise a minor heir's legal portion in trust to the minor. Nevertheless, such a trust is null if "constituted to the detriment or impairment of the rights of heirs at law."²⁷⁴

B. Intestate Succession

Subject to forced heirship requirements, priority of succession is to descendants, to ascendants, to siblings and their children, to surviving spouse, and finally to collaterals in the closest degree not exceeding the sixth degree.²⁷⁵

²⁶⁸ See *id.* §§ 2412, 2416 (1993). The free third is the one-third remaining after the legal portion is allotted and is otherwise at the free disposal of the decedent. See *id.*

²⁶⁹ See *id.* § 2413. The free half is the half remaining after the legal portion is allotted and is otherwise at the free disposal of the decedent. See *id.*

²⁷⁰ See *id.* § 2414.

²⁷¹ See *id.* § 2261 (Supp. 2003).

The following are disqualified to succeed by reason of unworthiness: (1) Parents who have abandoned their children or prostituted their daughters or made attempts against their chastity. (2) He who has been sentenced in a trial for having made attempts against the life of the testator, his spouse, descendants or ascendants. (3) He who has accused the testator of a crime for which the law imposes an exemplary punishment, when the accusation is declared libelous. (4) The heir of age who, knowing of the violent death of the testator, has not denounced it to the courts within one month, unless the latter had already acted *ex officio*. (5) A person sentenced at a trial for adultery with the wife of the testator. (6) He who, by threats, fraud, or violence, forces the testator to make a will or to change it. (7) He who, by the same means, prevents another from making a will or from revoking one already made, or who forges, conceals, or changes a subsequent one.

Id.

²⁷² See *id.* §§ 2455-58 (1993 & Supp. 2003). A person may only disinherit an heir in a will, wherein he must mention the legal cause of the disinheritance. See *id.* § 2452 (1993). The other heirs must prove the grounds for disinheritance if the disinherited heir denies them. See *id.* § 2453. In addition to certain causes for unworthiness enumerated in section 2261 (reproduced *supra* note 271), the testator can disinherit a descendant for the following causes:

(1) To have refused without lawful reason, support to the father or ancestor that disinherits him. (2) To have abused him by acts or grievously by words. (3) To have delivered over a daughter or granddaughter to prostitution. (4) When the child has accused his/her father or mother of a crime, except for high treason. (5) When the child has refused to post bond to free his/her father or mother who have been imprisoned, when able to do so. (6) When the son or daughter has married without the consent of his/her father, mother or guardian, [when consent is required due to the age of the child]. (7) When the child or descendant has been negligent in caring for the testator who is ill.

Id. § 2456 (Supp. 2003). In addition to certain section 2261 causes for unworthiness, the testator can disinherit an ascendant for the following causes:

(1) To have lost the paternal power. (2) To have refused support to his children or descendants without legal reason. (3) For the father or mother or ancestor to have accused the child or descendant of a capital crime except the crime of high treason. (4) For the father, mother or ancestor to have been careless in taking under his care the child or issue who finds himself sick. (5) To have refused to furnish bail for the release of the child or issue from jail when it could be done. (6) For one of the parents to have attempted the life of the other in which case the child or issue shall have the right to disinherit the one of the two spouses who has committed the attempt.

Id. § 2457 (1993). In addition to certain of the section 2261 causes for unworthiness, the testator can disinherit a spouse for the following causes: "(1) Those that afford ground for divorce. (2) Those that afford ground for the loss of the paternal power. (3) To have refused support to the children or to the other spouse. (4) To have made an attempt upon the life of the testator if there has been no reconciliation." *Id.* § 2458. For a cause under (1) to be a ground for disinheritance, the spouses cannot "live under the same roof." *Id.*

²⁷³ See *id.* § 2459.

²⁷⁴ *Id.* § 2553; see *id.* § 2367.

Illegitimate children and adopted children inherit as if they were legitimate, natural children of the decedent.²⁷⁶ A parent inherits through an illegitimate child only if he has acknowledged the child as his.²⁷⁷ When siblings or their children succeed to property, whole-bloods succeed to twice the amount as half-bloods.²⁷⁸ In all other situations, whole-bloods and half-bloods are treated equally.²⁷⁹

C. Testamentary Capacity and Testamentary Formalities

A person has testamentary capacity if at least fourteen years old and of sound mind.²⁸⁰

The Civil Code recognizes six types of wills—holographic, open, closed, military, maritime, and foreign.²⁸¹ Because preparing any of the first five types of wills is generally incompatible with standard military legal assistance practice outside of Puerto Rico,²⁸² military practitioners outside Puerto Rico should prepare wills for Puerto Rican domiciliaries either as military testamentary instruments or as foreign wills.²⁸³ Puerto Rico recognizes wills by its citizens executed abroad if done in conformity to the formality of “the laws of the country in which they are sojourning.”²⁸⁴ Puerto Rican courts apply the rule

²⁷⁵ See *id.* §§ 2641-79. Succession to descendants is per stirpes. See *id.* §§ 2623, 2643-45. Property passing to ascendants passes to the ascendants of the nearest degree, divided equally between paternal and maternal lines if division is necessary. See *id.* § 2653. Succession to nephews and nieces is by representation if any of the decedent’s siblings survive, but per capita if otherwise. See *id.* § 2624. Succession to collaterals of the nearest degree (other than siblings and their children) is per capita. See *id.* § 2678. Degrees for collaterals are calculated under the civil law method by counting generations from the decedent to the common ancestor and then from the common ancestor to the collateral. See *id.* § 2604.

The English translation of some of these sections is deficient by inadvertently excluding females. *Hermanos* is sometimes translated as “brothers” rather than “brothers or sisters” or “siblings,” *sobrinos* as “nephews” rather than “nephews or nieces,” and *tios* as “uncles” rather than “uncles or aunts.” See, e.g., *id.* §§ 2624 (translating *hermanos* as “brothers or sisters,” but *tios* as “uncles”), 2677 (translating *hermanos* as “brothers” in one place and “sisters” in another) (1993) (English) (LEXIS through 2003 legislation) (Spanish). Practitioners should understand these provisions as not favoring anyone based on gender.

²⁷⁶ See P.R. CONST. art. II, § 1; P.R. LAWS ANN. tit. 31, §§ 441 (illegitimate children), 538 (adopted children) (1993 & Supp. 2003); *Vega ex rel. Morales v. Bowen*, 664 F. Supp. 659, 662 (D.P.R. 1987); *Ocasio v. Díaz*, 88 P.R.658, 731-32 (1963).

²⁷⁷ See P.R. LAWS ANN. tit. 31, §§ 2652-53 (1993).

²⁷⁸ See *id.* § 2674.

²⁷⁹ See *id.* § 2678.

²⁸⁰ See *id.* §§ 2111-12. A testator must be at least eighteen to make a holographic will. See *id.* § 2161.

²⁸¹ See *id.* §§ 2141-42. The Code of Civil Procedure also recognizes nuncupative wills. See *id.* tit. 32, §§ 2241- 48 (2004) (Recording of Oral Wills and Codicils).

²⁸² Many of the requirements for these wills differ significantly from those of other U.S. jurisdictions. For example, if the notary and two of the attesting witnesses are not acquainted with the testator and two non-attesting witnesses cannot be found who are acquainted with the testator, the notary, and two of the attesting witnesses, then the notary or witnesses must describe in an act the testator, the circumstances, and the documents relied upon to establish identity. See *id.* tit. 31, §§ 2150, 2151 (1993).

Moreover, many of the requirements for specific types of will are beyond the ability of the typical military practice. A closed will requires the testator to place the will in a sealed envelope; a notary and five witnesses to witness the execution; the notary to wrap the envelope with a memorandum he has drafted describing the marks of the seal and the formalities of the execution signed by the notary, the testator, and the witnesses; and the notary to keep a certified copy of the memorandum in his protocol. See *id.* §§ 2202, 2205. For an open will, the will is read aloud and the notary informs the testator and three witnesses of their right to read the will themselves. See *id.* §§ 2181, 2182. Unlike the closed will, the executed open will must enter the notary’s protocol. Compare *id.* tit. 4, § 2071 (2002) (“[t]he protocol is the orderly collection of original deeds and acts executed during a calendar year by the notary”), with *id.* tit. 31, § 2206 (1993) (“[t]he testator may keep the closed will in his possession”).

A military will requires a judge advocate to file a certified copy of the executed will in an office designated to keep copies of military wills and powers of attorney, and upon the activation or mobilization of the testator, to send certified copies of the will and the orders of activation or mobilization to the Director of the Office of Notarial Inspection of Puerto Rico (the Director). See *id.* tit. 25, §§ 2904, 2905 (1999). Additionally, before authenticating a Puerto Rican military will, a Judge Advocate must present his credentials to the Director. See *id.* § 2903.

²⁸³ Because of an inability to provide a Puerto Rico-specific will, some legal assistance offices routinely assist Puerto Rican clients in preparing holographic wills. See Telephone Interview with Captain Javier E. Calderón, Acting Chief of Legal Assistance, in Fort Buchanan, Puerto Rico (Feb. 4, 2005) [hereinafter CPT Calderón Interview] (describing legal assistance practice at Fort Buchanan); Sherman Interview, *supra* note 154 (describing legal assistance practice at Fort Polk). Holographic wills are not uncommon in Puerto Rico. Captain Calderón Interview, *supra*. To be valid, a holographic will must be entirely in the testator’s hand, signed, and dated with year, month, and day. See P.R. LAWS ANN. tit. 31, § 2161 (Supp 2003). The testator must note under his signature any corrections such as cross outs or insertions. See *id.* The testator for a holographic will must be at least eighteen years of age. See *id.*

²⁸⁴ P.R. LAWS ANN. tit. 31, § 2221 (1993); see *id.* § 11. The court will then apply Puerto Rican law to the will as to substantive matters within the jurisdiction of Puerto Rico. See *id.* § 11 (stating that “[t]he forms and solemnities of contracts, wills and other public instruments are governed by the laws of the country in which they are executed,” but the law of said jurisdiction will not invalidate Puerto Rican “prohibitory laws relating to persons, their acts or property, and those which relate to public order and to good morals”); see, e.g., § 2222 (declaring mutual wills for Puerto Ricans invalid even if such a will would be valid in the jurisdiction of will execution).

for foreign wills to wills executed within the United States.²⁸⁵ Such a will becomes valid as a Puerto Rican public document upon protocolization in Puerto Rico.²⁸⁶

A military practitioner practicing within the United States can prepare a will for Puerto Rican domiciliaries according to the testamentary formalities of the jurisdiction in which the will is to be executed. If the attorney is preparing the will for execution outside the United States, the will should meet the requirements for a military testamentary instrument. The practitioner should advise the testator of the necessity to protocolize the will and may want to refer the testator to a legal assistance office in Puerto Rico when he next returns to the island.

D. Executors and Administration

An executor must be at least twenty-one years of age and mentally competent.²⁸⁷ The Civil Code does not require an executor to provide security.²⁸⁸ An executor provides an accounting to the heirs and, if necessary, to the court.²⁸⁹ The executor must file an inventory, quarterly statements of account, and a final account.²⁹⁰ The duration of administration of an estate may not exceed one year unless extended by a court or by the heirs and legatees.²⁹¹ The Code of Civil Procedure declares, however, that “[a]ll directions of the testator as to the administration of his property shall be followed,” apparently authorizing the testator to relieve the executor of any of these requirements.²⁹² A person named as executor “who does not accept the office, or renounces it without sufficient cause,” loses any benefit of the will beyond his rights, if any, to the legal portion.²⁹³

E. Tutorship

In Puerto Rico, tutorship corresponds to guardianship in other U.S. jurisdictions.²⁹⁴ A testator may appoint a tutor for a minor child in his will.²⁹⁵ To qualify, a tutor must be a resident of Puerto Rico.²⁹⁶ The Civil Code requires the tutor to provide a bond, but the testator can relieve the tutor of this requirement in his will.²⁹⁷ The tutor must provide annual accounts and a final account of the tutorship.²⁹⁸

²⁸⁵ See *Quiñones Arroyo v. Escalera Irizarry*, 99 P.R. 933, 937 (holding a will purporting to convey property in Puerto Rico void because the will did not comply with Texas law); *Armstrong v. Armstrong del Valle*, 85 P.R. 387, 388, 391-92 (1962) (upholding a New York will conveying property in Puerto Rico).

²⁸⁶ See P.R. LAWS ANN. tit. 4, § 2056 (2002). To protocolize a document is to have it entered into a notary’s protocol. Protocolization need not occur before the death of the testator, but a notary would naturally be less hesitant to protocolize a foreign will the testator presents rather than one the heirs present.

²⁸⁷ See *id.* tit. 31, §§ 971, 2512, 3402 (1993 & Supp. 2003).

²⁸⁸ See *id.* §§ 2511-30 (1993).

²⁸⁹ See *id.* § 2526. The executor provides an accounting to the court if “appointed, not in order to deliver the property to determined heirs, but to invest or distribute the same in the manner ordered by the testator.” *Id.*

²⁹⁰ See *id.* tit. 32, §§ 2401-03 (inventory), 2511 (quarterly statements), 2512 (final account) (2004).

²⁹¹ See *id.* tit. 31, §§ 2523-25 (1993).

²⁹² *Id.* tit. 32, § 2442 (2004); see *id.* tit. 31 § 2520 (1993).

²⁹³ *Id.* tit. 31, § 2519 (1993).

²⁹⁴ See *id.* § 783 (setting forth general duties of tutor).

²⁹⁵ *Id.* § 681. The age of majority is twenty-one. See *id.* § 971. When the child turns eighteen, the parents or the court may emancipate the child. See *id.* § 911 (parents), 912 (court), 951, 953 (orphans).

²⁹⁶ See *id.* § 741(11) (listing grounds for disqualification). Among others disqualified include felons, “[b]ankrupts and insolvents not rehabilitated,” and “[p]ersons of bad conduct who have no visible means of support.” *Id.* § 741(2), (5), (6).

²⁹⁷ See *id.* §§ 761, 764, 767.

²⁹⁸ See *id.* §§ 801, 803. The requirement to provide an account does not lie with a tutor to whom the will has granted “an allowance from the proceeds [of the tutorship] for maintenance.” *Id.* § 801.

F. Preparing a Will

Options for preparing a will for a Puerto Rican include drafting a military testamentary instrument and drafting a will for the jurisdiction of execution. Because a Puerto Rican notary or court would more readily recognize the self-proving nature of a military testamentary instrument, such an instrument is preferable to a foreign will.

To draft a military testamentary instrument using the DL Wills program, select “Puerto Rico” for the state and continue normal will drafting procedures for DL Wills as if the entire estate were disposable, accepting the DL Wills offer to prepare a military testamentary instrument preamble and affidavit. In the first paragraph, include the marital status of the testator and insert the name and relationship to the testator of each potential forced heir—all living ascendants and descendants and the spouse, if married. For a testator with forced heirs, amend the gift portion of the will by using language similar to that provided in Appendix H. If the testator wants to disinherit an heir, then provide the legal basis for disinheritance.²⁹⁹ Consider releasing the executor from statutory obligations that could burden him by default, such as the requirement to provide bond or security or to provide quarterly, annual, or other accountings.

To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except once the document is produced, (1) replace in the first paragraph the name of the state with “Puerto Rico,” deleting “the State of” with “the Commonwealth of” as applicable; and (2) amend the will as outlined above by adding information concerning marital status, identity of forced heirs, gifts considering forced heirship, and executors, as applicable.

VIII. U.S. Virgin Islands³⁰⁰

Formerly known as the Danish West Indies, the Virgin Islands became a territory of the United States in 1916.³⁰¹ Denmark ceded these islands lying just east of Puerto Rico for \$25 million and the United States not objecting to Denmark extending sovereignty over all of Greenland.³⁰² Persons born in the Virgin Islands are U.S. citizens.³⁰³ The Virgin Islands does not have its own constitution.³⁰⁴ Its organic act establishes an executive branch headed by an elected governor, a unicameral legislature, and a judiciary.³⁰⁵

The Virgin Islands is a common law jurisdiction relying on U.S. common law.³⁰⁶ The Virgin Islands Code took effect in 1957.³⁰⁷ The Code chapters covering wills and intestate succession derive from the New York Decedent Estate Law existing in 1957.³⁰⁸ Virgin Islands courts, therefore, often look for guidance to state case law from the United States and to New York case law, in particular, to interpret portions of the probate code similar to that of New York.³⁰⁹

²⁹⁹ See *supra* note 272 and accompanying text.

³⁰⁰ Hereinafter “Virgin Islands.” This term excludes the British Virgin Islands.

³⁰¹ See Convention for Cession of the Danish West Indies, Aug. 4, 1916, U.S.-Den., 39 Stat. 1706, 1706; GORDON ET AL., *supra* note 20, § 92.04[5]. The Virgin Islands consists of “the Islands of Saint Thomas, Saint John and Saint Croix together with the adjacent islands and rocks.” Convention for Cession of the Danish West Indies, *supra*, at 1706; see 48 U.S.C. § 1541(a) (2000).

³⁰² See Convention for Cession of the Danish West Indies, 39 Stat. at 1711, 1715; U.S. CIA, *Virgin Islands*, in WORLD FACTBOOK (2004), available at <http://www.cia.gov/cia/publications/factbook/index.html>.

³⁰³ See 8 U.S.C.S. §§ 1101(a)(38), 1401(a), 1406 (LEXIS 2005).

³⁰⁴ See *Gov’t of the Virgin Islands v. Rivera*, 333 F.3d 143, 145 (3d Cir. 2003), *cert. denied*, 540 U.S. 1161 (2004). Congress has authorized the Virgin Islands to enact its own constitution. See Act of Oct. 21, 1976, *supra* note 61, at 2899-900.

³⁰⁵ See 48 U.S.C. §§ 1571(a) (legislature), 1591 (executive branch), 1611 (judiciary) (2000). For most local matters, the U.S. District Court of the Virgin Islands shares concurrent original jurisdiction with the Territorial Court of the Virgin Islands. See *id.* § 1612; V.I. CODE ANN. tit. 4, §§ 32, 75, 76 (1997); *Rivera*, 333 F.3d at 145-46 (describing the Virgin Islands court system). Appeals from the Territorial Court will be heard in the Appellate Division of the U.S. District Court until the Virgin Islands legislature establishes an appellate court. See 48 U.S.C. § 1613a(a); V.I. CODE ANN. tit. 4, § 33; *Rivera*, 333 F.3d at 146.

³⁰⁶ See V.I. CODE ANN. tit. 1, § 4 (1995). “[I]n the absence of local laws to the contrary,” the rules of decision in Virgin Islands courts are “[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States.” *Id.*

³⁰⁷ See *id.* § 3. The Legislature repealed all former laws concerning matters addressed in the Code. See *id.* § 5.

³⁰⁸ See *id.* tit. 15, § 1 preceding rev. note (1996).

³⁰⁹ See *In re Estate of Buckley*, 536 F.2d 580, 582 (3d Cir. 1976) (assuming the Virgin Islands legislature adopted then-existing New York case law interpreting certain statutes by adopting the New York statutes verbatim); *Estate of Georg v. Congregacion Religiosa Hermanas Mercedarias de la Caridad Incorporada*, 7 V.I. 298, 303-304 (D.V.I. 1969) (analyzing New York law interpreting a statute similar to the case at bar and regarding it as “highly persuasive”); *Masonry Prods., Inc. v. Tees*, 6 V.I. 108, 111-13 (D.V.I. 1968) (determining the nature of tenancy by the entirety according to the majority rule in the United States); *In re Estate of Walters*, 38 V.I. 14, 21-23 (V.I. Terr. Ct. 1997) (analyzing New York case law concerning undue influence in the making of a will because “the Virgin Island probate code is modeled closely after New York’s Estate, Powers, and Trusts Law”).

Real property owned by more than one person can be held as tenants in common, joint tenants, or tenants by the entirety.³¹⁰ A transfer of real property to both spouses in a marriage creates a tenancy by the entirety, unless the deed or will provide otherwise.³¹¹ A transfer of real property to multiple persons in other cases creates a tenancy in common unless the deed or will expressly states “that the grantees or devisees shall take the land as joint tenants.”³¹²

A tenancy by the entirety is held by the marriage as a single entity and is not subject to the claims upon only one of the spouses.³¹³ Upon termination of the marriage by divorce, the property vests in the former spouses as tenants in common.³¹⁴ Upon termination of the marriage by death, the property vests in the survivor free of the debts of the decedent.³¹⁵

The Virgin Islands established the Virgin Islands UTMA in 2001.³¹⁶ Under the Virgin Islands UTMA, a testator may establish a UTMA relationship by will.³¹⁷ The custodian must turn the custodial property over to the minor once the minor reaches the age of eighteen.³¹⁸

The Code has a chapter concerning trusts applicable to testamentary trusts that is based on the Uniform Trusts Act of 1937.³¹⁹ The Virgin Islands does not have a provision recognizing personal property memorandums.³²⁰

A. Rights to Property by Surviving Family Members

The surviving spouse has election rights to take under intestacy up to one-half of the estate.³²¹ Some testators can limit the enjoyment of such an election by providing in trust the spouse’s share with the spouse owning the income for life.³²² Neither a person who had abandoned his decedent spouse nor a “husband who ha[d] neglected or refused to provide for his [decedent] wife” has the right of spousal election.³²³

A surviving widow has the right for one year to remain in the decedent’s dwelling rent-free and to receive “reasonable sustenance out of the estate.”³²⁴ Additionally, a surviving widow has a right to property exempt from execution, to be used for the maintenance of herself and any minor children of the decedent.³²⁵ If there is no surviving widow, any minor children

³¹⁰ See V.I. CODE ANN. tit. 28, § 7.

³¹¹ See *id.* § 7(c); *Modeste v. Benjamin*, 18 V.I. 619, 622 (D.V.I. 1981); *Masonry Prods., Inc. v. Tees*, 6 V.I. at 110-11. Tenancy by the entirety was unknown in the Virgin Islands before the enactment of the Code and section 7 in 1957. See *Masonry Prods., Inc.*, 6 V.I. at 113. Section 7 addresses real property only. V.I. CODE ANN. tit. 28, § 7. Thus, neither the possibility that spouses can hold personal property as tenants by the entirety nor the presumption that personal property transferred to spouses is held as tenants by the entirety necessarily follows.

³¹² V.I. CODE ANN. tit. 28, § 7(b).

³¹³ See *Masonry Prods., Inc.*, 6 V.I. at 114. This is the majority rule. See *id.*

³¹⁴ See V.I. CODE ANN. tit. 28, § 7(d); *Modeste v. Benjamin*, 18 V.I. at 622.

³¹⁵ See *Masonry Prods., Inc.*, 6 V.I. at 112-13. This is the majority rule. See *id.*

³¹⁶ See V.I. CODE ANN. tit. 15, §§ 1251a-1251x (Supp. 2004). The Virgin Island formerly had the Virgin Islands UGMA. See *id.* §§ 1241-1250 (1996) (repealed 2001).

³¹⁷ See *id.* § 1251f(a).

³¹⁸ See *id.* §§ 1251u.

³¹⁹ See *id.* § 1091 preceding rev. note (1996) (preceding chapter 57, Trusts and Trustees).

³²⁰ See *id.* ch. 1 (Wills).

³²¹ See *id.* § 10(a)(1).

³²² See *id.* § 10(a)(2)-(7). Using the spousal election, if the testator devises or bequeaths some or all of the spousal election amount in trust with the income payable to the surviving spouse, the spouse is entitled to a maximum of \$2500 outright. See *id.* Thus, the amount that the testator can keep from the spouse by making it the principal of the trust is the excess of the spousal election amount over \$2500. See *id.* This allows a testator to minimize the value of the spousal election to little more than \$2500 regardless of the size of the estate by funding the spousal trust with property designed to produce little income. Partly for this reason, New York abandoned a similar spousal election provision in 1992. See Margaret V. Turano, *Practice Commentaries*, in 17B N.Y. EST. POWERS & TRUSTS LAW 193, 193-94 (McKinney 1999) (commenting on section 5-1.1-A).

³²³ V.I. CODE ANN. tit. 15, § 10(d)-(e).

³²⁴ *Id.* § 356.

³²⁵ See *id.* § 352.

have the right to the exempt property.³²⁶ Exempt property includes a homestead or its proceeds;³²⁷ necessary clothing; necessary tools of a trade or occupation; and household goods, utensils, and furniture not exceeding \$3000 in value.³²⁸

B. Intestate Succession

The intestate share of a surviving spouse depends on the relationship of the decedent to the other heirs. Notwithstanding any share of a surviving spouse, priority of succession is to descendants, parents, siblings and their descendants, and if there is no surviving spouse, then to next of kin.³²⁹ The share of the surviving spouse is the following: if any descendant survives, one-third of the estate; otherwise, if any parent survives, \$5000 plus one-half of the residue of the estate; otherwise, if any siblings or any sibling's child survives, \$10,000 plus one-half of the residue of the estate; otherwise, the whole estate.³³⁰

Intestate succession in the Virgin Islands treats half-blood relations as whole blood relations.³³¹ The Virgin Islands Code treats illegitimate children as legitimate in intestacy except that the maternal relatives of a decedent who was illegitimate have priority in succession over paternal relatives.³³² The Code treats adopted children as natural children in intestacy except that they cannot succeed to property by right of representation of an adoptive parent.³³³

Neither a person who had abandoned his decedent spouse nor "a husband who ha[d] neglected or refused to provide for his [decedent] wife" can inherit through intestacy.³³⁴ A parent who had abandoned or "who ha[d] neglected or refused to provide for" an infant child cannot inherit from the child by intestacy "unless the parental relationship and duties [had] resumed and continue[d] until the death of the child."³³⁵

C. Testamentary Capacity and Testamentary Formalities

For the testator to have testamentary capacity, he must be at least eighteen years old and of sound mind.³³⁶ A testator having a surviving spouse, descendant, or parent may devise or bequeath no more than one-half his estate to a charity.³³⁷

A testator must subscribe his will or acknowledge subscription of the will before two witnesses and declare to them that it is "his last will and testament."³³⁸ The witnesses must subscribe the will at the testator's request.³³⁹ Each witness must provide his place of residence next to his name.³⁴⁰ A self-proving affidavit requires a witness to affirm those facts to which

³²⁶ *See id.*

³²⁷ *See id.* tit. 5, § 478(a) (1997). A "homestead must be the actual abode of and owned by such family or some members thereof." *Id.* The homestead cannot exceed \$30,000 in value, nor can it exceed five acres or, if located in a town divided into lots or blocks, one-fourth an acre. *See id.*

³²⁸ *See id.* § 479(a). Necessary clothing excludes jewelry. *See id.* § 479(a)(1). Tools of a trade or occupation refer to "[t]he tools, implements, apparatus or library necessary to enable any artisan, mechanic or professional person to carry on the trade, occupation or profession by which such person habitually earns his living." *Id.* § 479(a)(2).

³²⁹ *See id.* tit. 15, § 84(1)-(6) (1996). Any distribution to representatives is stirpital. *See id.* § 84(1), (4)-(6), (9). Determination of next of kin among collaterals is by the civil law method, which counts generations from the decedent to the first ancestor common with the collateral relative and then from the common ancestor to the relative. *See id.* tit. 1, § 41 & note (1995) (defining "kin" and "kindred" based on Delaware statute); *In re Cavender's Estate*, 130 A. 746, 747 (Del. Ch. 1925) (describing civil law method). Nevertheless, "collateral kindred claiming though a nearer common ancestor shall be preferred to those claiming though a more remote common ancestor." V.I. CODE ANN. tit. 1, § 41.

³³⁰ *See* V.I. CODE ANN. tit. 15, § 84(1)-(4).

³³¹ *See id.* § 84(11).

³³² *See id.* § 84(7), (13).

³³³ *See id.* tit. 16, § 146(a).

³³⁴ *Id.* tit. 15, § 87(3), (4).

³³⁵ *Id.* § 87(5).

³³⁶ *See id.* §§ 2, 7.

³³⁷ *See id.* § 9. Only a surviving spouse, descendant, or parent has standing to challenge a will in violation of section nine. *See id.*

³³⁸ *See id.* § 13. As an exception, the Code recognizes nuncupative and holographic wills for mariners at sea and Soldiers and Sailors "while in actual military or naval service," but the effectiveness of such wills for a service member expires one year following discharge from military service if the service member then has testamentary capacity. *Id.* § 8.

³³⁹ *See id.* § 13(4).

³⁴⁰ *See id.* § 14. Failure to do so, however, does not invalidate the will. *See id.*

he would be required to testify in a probate proceeding.³⁴¹ To be valid, a will executed outside the Islands must comply with the law of either the Virgin Islands, the jurisdiction where executed, or the jurisdiction where the testator is domiciled.³⁴²

D. Executors and Administration

An executor must be of sound mind, above the age of eighteen, domiciled in the Virgin Islands, and neither a misdemeanant of a crime of moral turpitude nor a felon.³⁴³ The court, however, may appoint a non-domiciliary who appoints a Virgin Islands agent or attorney to receive service of any papers for the administration.³⁴⁴ The executor must provide a bond unless the will “expressly declares that no bond shall be required of [the testator’s] executor.”³⁴⁵ The executor must conduct an appraisal and file an inventory, quarterly accounts, and a final account.³⁴⁶

E. Guardianship

A testator can appoint a guardian for his minor child and the child’s estate subject to the rights of a competent surviving parent.³⁴⁷ The guardian must file bond equal to the value of the ward’s estate and estimated annual income.³⁴⁸ The guardian must also conduct an appraisal and file an inventory, annual accounts, and a final account.³⁴⁹

F. Preparing a Will

Options for preparing a will for a Virgin Islander include drafting a Virgin Islands will, drafting a military testamentary instrument, and drafting a will for the jurisdiction of execution. Because the Code provides for self-proving wills, a Virgin Islands will is slightly preferable to a military testamentary instrument and a foreign will for a simple will.

To draft a Virgin Islands will using the DL Wills program, select “Virgin Islands” for the state and continue normal will drafting procedures for DL Wills. Once the document is created, in the first paragraph, insert “U.S.” before “Virgin Islands.” Amend the affidavit as follows: Following the language in the first paragraph of the affidavit, “signed and executed said instrument as his [or her] last will and testament in the presence and hearing of the witnesses,” insert “and that he [or she] stated that said instrument is his [or her] last will and testament” and a comma. See Appendix D for a sample first paragraph of the affidavit.

To draft a Military Testamentary Instrument using the DL Wills program, select “Virgin Islands” for the state and continue normal will drafting procedures for DL Wills, accepting the DL Wills offer to prepare a military testamentary instrument preamble and affidavit. In the first paragraph, insert “U.S.” before “Virgin Islands.” To prepare a specific will for a state in the United States, prepare a will as if the testator were a resident of that state except, once the document is produced, in the first paragraph replace the name of the state with “the U.S. Virgin Islands,” deleting “the State of” or “the Commonwealth of.”

³⁴¹ See *id.* § 22; V.I. TERR. CT. R. 194(a) (recognizing the admissibility of such an affidavit).

³⁴² See V.I. CODE ANN. tit. 15, §§ 15, 16. Such a will must be written and subscribed by the testator. See *id.*

³⁴³ See *id.* § 235(a); *id.* tit. 16, § 261 (declaring the age of majority to be eighteen); *In re Estate of Vose*, 276 F.2d 424, 427 (3d Cir. 1960) (holding that section 235’s residency requirement refers to domicile).

³⁴⁴ See V.I. CODE ANN. tit. 15, § 235(b), (c).

³⁴⁵ *Id.* § 239(a); see V.I. TERR. CT. R. 194(b) (“Bond will be waived only when a testator has so directed.”).

³⁴⁶ See V.I. CODE ANN. tit. 15, §§ 312 (inventory), 314 (appraisal), 561 (quarterly accounts), 564 (final account).

³⁴⁷ See *id.* § 826. If both parents have died, then a father who had not lost custody of his child by a divorce decree has priority over the mother in appointing a testamentary guardian. See *id.* § 826. The Code does not grant a testator authority to appoint a guardian for incompetent dependents. See *id.* §§ 841-44 (Insane Persons, Idiots, Etc.).

³⁴⁸ See *id.* § 881(b)(1).

³⁴⁹ See *id.* §§ 564 (requiring final account of executors), 825 (inventory), 882 (requiring of guardians appraisal and accounts “in like manner as” of executors) (1996); V.I. TERR. CT. R. 208 (requiring annual accounting of guardians). But see V.I. CODE ANN. tit. 15, § 561 (requiring quarterly accounts of executors).

IX. Conclusion

Military legal assistance attorneys can go beyond the limits of DL Wills to provide competent will preparation services for domiciliaries of Louisiana and the U.S. territories. With the advent of the military testamentary instrument, military attorneys can be confident the wills they draft are legally valid throughout the United States, including its territories.

The two civil law jurisdictions surveyed provide striking contrasts in how military practitioners are able to serve will clients. Because of Fort Polk's initiative to prepare Louisiana wills for other legal assistance offices, Louisiana wills should be the least worrisome of wills for the non-Louisiana attorney. Even in compelling circumstances, an attorney can provide a legally-sufficient testament using DL Wills software and some careful drafting concerning Louisiana's forced heirship provisions. Puerto Rico poses a different situation. To produce a valid Puerto Rico will is beyond the reach of most legal assistance offices outside of Puerto Rico. Within their capabilities, however, is a military testamentary instrument produced using DL Wills and careful drafting concerning Puerto Rico's forced heirship provisions.

Of the other jurisdiction surveyed, the two territories that rely most exclusively on U.S. common law principles, Guam and the Virgin Islands, pose little difficulty in preparing valid wills using DL Wills software. Both require only one adjustment—the same additional clause in the self-proving affidavit. The two jurisdictions that have mixed common law and traditional law principles, American Samoa and the Northern Mariana Islands, present little more difficulty. The attorney must consider land ownership principles as they relate to the local race classifications of the testator and possible devisees under the will. Otherwise, minor adjustments to a DL Wills-drafted instrument produce a valid will for either jurisdiction.

Appendix A

Military Testamentary Instrument Preamble and Self-Proving Affidavit³⁵⁰

This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of title 10, U.S. Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this document from any requirement of form, formality, or recording that is provided for testamentary instruments under the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator revokes it.

AFFIDAVIT

WITH THE ARMED FORCES
AT _____

We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the testator/testatrix military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her], and that [he][she] executed it as [his][her] free and voluntary act for the purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

Testator/Testatrix

Print Name

Witness Signature

Print Name

Witness Signature

Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date _____.

(Signed)

(Official Capacity of Person Administering the Oath)

³⁵⁰ DOD DIR. 1350.4, *supra* note 2, encls. 1 & 2. For discussion, see *supra* Part II.

Appendix B

Sample Will: American Samoa³⁵¹

LAST WILL AND TESTAMENT OF JOE Q. SNUFFY

I, **JOE Q. SNUFFY**, a resident of *American Samoa*, make, publish and declare this to be my Last Will and Testament, revoking all wills and codicils at any time heretofore made by me. I am in the military service of the United States, currently stationed at FORT SWAMPY. My father JOSEPH P. SNUFFY, deceased, was one-half Samoan, born in Hawai'i. My mother JOSEPHINE O. SNUFFY of Tutuila is full-blooded Samoan, born in American Samoa on Tutuila. They are the natural parents of my brother JOHN SNUFFY, my sister JANET SISTRE, and me, all born in American Samoa on Tutuila. My wife JANE SNUFFY is three-quarters Samoan, born in American Samoa on Manu'a. She is the mother of my two children, JACK SNUFFY, born in American Samoa on Tutuila, and JILL SNUFFY, born in Germany while I was stationed there in the military service of the United States.

FIRST: I direct that the expenses of my last illness and funeral, the expenses of the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this will, and any interest or penalties thereon, shall be paid out of my residuary estate, without apportionment and with no right of reimbursement from any recipient of any such property.

SECOND: I give all real estate owned by me at the time of my death, and all rights that I have under any related insurance policies, to my wife JANE SNUFFY, if she survives me.

THIRD: I give all tangible personal property owned by me at the time of my death, including without limitation personal effects, clothing, jewelry, furniture, furnishings, household goods, automobiles and other vehicles, together with all insurance policies relating thereto, to my wife JANE SNUFFY, if she survives me, or if she does not survive me, to those of my children (JACK SNUFFY and JILL SNUFFY and any other children which I hereafter may have) who survive me, in substantially equal shares, to be divided among them as they shall agree, or if they cannot agree, or if any of them shall be under the age of twenty-one (21) years, as my Executor shall determine.

FOURTH: I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my "residuary estate"), as follows:

- (a) If my wife JANE SNUFFY survives me, to my wife outright.
- (b) If my wife does not survive me, then to those of my children who survive me and to the issue who survive me of those of my children who shall not survive me, per stirpes.
- (c) If my wife does not survive me and there shall be no issue of mine then living, my residuary estate shall be paid and distributed to my siblings who shall survive me and the then living issue of any siblings who predecease me per stirpes.
- (d) If none of the beneficiaries described above shall survive me, then I give my residuary estate to those who would take from me as if I were then to die without a will, unmarried and the absolute owner of my residuary estate, and a resident of *American Samoa*.

³⁵¹ For discussion, see *supra* Part III.F.

FIFTH: If any property of my estate vests in absolute ownership in a minor or incompetent, my Executor, at any time and without court authorization, may: distribute the whole or any part of such property to the beneficiary; or use the whole or any part for the health, education, maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee or other legal representative of the beneficiary, or to a custodian for the beneficiary under any gifts to minors or transfers to minors act, or to the person or persons with whom the beneficiary resides. Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my Executor from any liability with respect thereto, even though my Executor may be such person. If such beneficiary is a minor, my Executor may defer the distribution of the whole or any part of such property until the beneficiary attains the age of twenty-one (21) years, and may hold the same as a separate fund for the beneficiary with all of the powers described in Article SEVENTH hereof. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary.

SIXTH: I appoint my wife JANE SNUFFY to be my Executor. If my wife does not survive me, or shall fail to qualify for any reason as my Executor, or having qualified shall die, resign or cease to act for any reason as my Executor, I appoint my sister JULIE SISTRE as my Executor. I direct that no Executor shall be required to file or furnish any bond, surety or other security in any jurisdiction.

SEVENTH: I grant to my Executor all powers conferred upon executors wherever my Executor may act. I also grant to my Executor power to retain, sell at public or private sale, exchange, grant options on, invest and reinvest, and otherwise deal with any kind of property, real or personal, for cash or on credit; to borrow money and encumber or pledge any property to secure loans; to exercise all powers of an absolute owner of property; to compromise and release claims with or without consideration; and to employ attorneys, accountants and other persons for services or advice. The term "Executor" wherever used herein shall mean the executors, executor, executrix or administrator in office from time to time.

EIGHTH: I direct that for purposes of this will a beneficiary shall be deemed to predecease me unless such beneficiary survives me by more than thirty days. The terms "child" and "children" as used in this will include not only the child and children (whether now or hereafter born) of the person designated, but also the legally adopted child and children of such person. The term "issue" includes not only the children and other issue (whether now or hereafter born) of the person designated, but also the legally adopted children and issue of such person.

NINTH: If my wife shall not survive me or is adjudged to be incapacitated, I appoint my sister JULIE SISTRE to be the Guardian of the person and property of any children of mine who have not attained the age of majority. No Guardian of the person shall be required to file or furnish any bond, surety or other security in any jurisdiction.

TENTH: I have served in the Armed Forces of the United States. I therefore request that my Executor make appropriate inquiries to ascertain whether there are any benefits to which I, my dependents or my heirs may be entitled by virtue of any military affiliation. I specifically request that my Executor consult with a retired affairs officer at the nearest military installation, the Department of Veterans Affairs, and the Social Security Administration.

IN WITNESS WHEREOF, I, JOE Q. SNUFFY, sign my name and publish and declare this instrument as my last will and testament this ____ day of _____, 2005.

JOE Q. SNUFFY

The foregoing instrument was signed, published and declared by JOE Q. SNUFFY, the above-named Testator, to be his last will and testament in our presence, all being present at the same time, and we, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses on the date above written.

having an address at

having an address at

AFFIDAVIT

WITH THE UNITED STATES ARMED FORCES
AT FORT SWAMPY

We, the Testator and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator, JOE Q. SNUFFY, signed and executed said instrument as his last will and testament in the presence and hearing of the witnesses, and that he had signed willingly, and that he executed it as his free and voluntary act and deed for the purposes therein expressed, and that each of the witnesses at the request of the Testator, in the presence and hearing of the Testator and each other, signed the will as witness, and that to the best of his or her knowledge the Testator was at the time at least eighteen years of age or emancipated, of sound mind and under no constraint, duress, fraud or undue influence, and that each witness was competent to witness the signing and execution of the attached or foregoing instrument.

JOE Q. SNUFFY
Testator

print:
Witness

print:
Witness

Subscribed, sworn to and acknowledged before me by the said JOE Q. SNUFFY, Testator, and subscribed and sworn to before me by the above-named witnesses, this ____ day of _____, 2005.

I, the undersigned officer, do hereby certify that I am, on the date of this certificate, a person with the power described in Title 10 U.S.C. 1044a of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, and that by statute no seal is required on this certificate, under authority granted to me by Title 10 U.S.C. 1044a.

Name of Officer and Position: _____
Grade and Branch of Service:
Command or Organization:

Language that is italicized and underlined in the will and affidavit above is additional to that produced by DL Wills in a Guam will. See Appendix C for a sample savings clause that could be appropriate in the Fourth paragraph in the will above as subparagraph (e).

Appendix C

Sample Savings Clauses, American Samoa³⁵²

If any gift of property to a beneficiary under this will is invalid under applicable law, then I direct that for purposes of determining the recipient of that property alone the beneficiary shall be deemed to predecease me and if said beneficiary is within a class of beneficiaries under this will, then I direct my Executor to distribute my estate in a manner so as to effect the distribution as detailed above as close as is prudently possible.

Savings clause: for use when testator may own individual land in American Samoa. This would be appropriate for use in the Fourth paragraph of the sample will in Appendix B.

If any gift of property to a beneficiary under this will is invalid under applicable law, then I direct that said gift be given to <IDENTIFY TRUSTEE HERE> in trust for the benefit of said beneficiary for the life of the beneficiary or until said property and property of a similar nature is no longer in the trust, at which time the proceeds of said trust shall be distributed to the beneficiary or beneficiaries in the manner as other property would be distributed to the beneficiary or beneficiaries under this will. If such a gift of property to a beneficiary in trust is valid under applicable law, then I direct that any remaining interest in the beneficiary's portion of the property pass under the terms of this will as if the beneficiary had predeceased me. Nevertheless, if such a gift of property to a beneficiary in trust is invalid under applicable law, then I direct that for purposes of determining the recipient of that property alone the beneficiary shall be deemed to predecease me and if said beneficiary is within a class of beneficiaries under this will, then I direct my Executor to distribute my estate in a manner so as to effect the distribution as detailed above as close as is prudently possible.

Savings clause with trust provision: for use when testator is a native Samoan, may own individual land in American Samoa, and beneficiaries may include descendants that are not native Samoans. Trust provisions should be provided elsewhere in the will.

³⁵² For discussion, see *supra* Part III.F.

Appendix D

Sample Self-Proving Affidavit, First Paragraph: Guam, Virgin Islands³⁵³

We, the Testator and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator, JOE Q. SNUFFY, signed and executed said instrument as his last will and testament in the presence and hearing of the witnesses, *and that he stated that said instrument is his last will and testament*, and that he had signed willingly, and that he executed it as his free and voluntary act and deed for the purposes therein expressed, and that each of the witnesses at the request of the Testator, in the presence and hearing of the Testator and each other, signed the will as witness, and that to the best of his or her knowledge the Testator was at the time at least eighteen years of age or emancipated, of sound mind and under no constraint, duress, fraud or undue influence.

Language that is italicized and underlined is additional to that produced by DL Wills in a Guam will or a Virgin Islands will.

³⁵³ For discussion, see *supra* Parts IV.F, VIII.F.

Appendix E

Fort Polk's Last Will and Testament Questionnaire³⁵⁴

Last Will and Testament Questionnaire

Office of the Staff Judge Advocate

Privacy Act Statement

AUTHORITY: 5 U.S.C. 301; 10 USC 3012

PRINCIPAL PURPOSE: To indicate a Legal Assistance Division client's desires in the disposition of his or her estate.

ROUTINE USES: Information provided in the questionnaire is used to aid the Legal Assistance Division, Office of the Staff Judge Advocate, in the preparation of wills. Upon completion of processing a will, this questionnaire is destroyed.

EFFECT OF NON-DISCLOSURE: Failure to provide the requested information will preclude the Legal Assistance Division from preparation of legal documents desired by the client.

SECTION I - CLIENT'S INFORMATION

FULL NAME: FIRST MIDDLE LAST (MAIDEN) SSN:

Permanent Residence: (City, County/Parish, State) LA residents must also complete Section IV of this form.

Current Mailing Address: City State Zip Code

Status: AD/Family member Rank: Marital Status: Married Single RET/Family member Rank: Divorced Widow/er

UNIT: Spouse's name: First Middle Last

Full names of children: Age Child Stepchild Disabled (LA only)

SECTION II - PERSONAL REPRESENTATIVES

Whom do you wish to appoint as the Executor/Executrix of your estate and what is their relationship to you? The person to carry out the terms and provisions of your Will Relationship City/State of Residence Primary: Alternate:

Whom do you wish to appoint as Guardian(s) of your minor children, if you should die with or after your spouse? Primary: Alternate:

³⁵⁴ Courtesy Fort Polk Legal Assistance Office (reformatted for this appendix). For discussion, see supra Part V.F.

Last Will and Testament Questionnaire
Office of the Staff Judge Advocate

*****SECTION III - PROPERTY DISPOSITION*****

When you die, to whom do you wish to leave your possessions and what is their relationship to you?

A. _____

If you die with or after the person in Line A above, to whom do you wish to leave your possessions?

B. _____

If you die with or after all of the persons in Line A or B above, to whom do you wish to leave your possessions?

C. _____

Do you have any specific bequests you would like to make? _____

*****SECTION IV - LOUISIANA RESIDENTS ONLY*****

Louisiana residents are required to provide additional information concerning their marital status. If you have ever been married, you must provide the requested information below. If you have never been married, check the "Never Married" box and complete sections I, II, and III.

Marital Status: Married Never Married Married, now divorced/widow(er)

Date/Place of Marriage

Name of Spouse
(include Maiden Name)

How terminated/Date

First Marriage: _____

Second Marriage: _____

Third Marriage: _____

Subsequent Marriages: _____

Appendix F

Sample Testament: Louisiana³⁵⁵

LAST WILL AND TESTAMENT OF JOE Q. SNUFFY

I, **JOE Q. SNUFFY**, a legal resident of the City of Leesville, Parish of Vernon, and State of Louisiana, being of sound and disposing mind and memory, and, not under restraint and realizing the uncertainties of life, do hereby make my LAST WILL AND TESTAMENT, expressly revoking all prior wills and codicils that I have made heretofore.

FIRST: I have been married twice, first to JANET ABLE on June 6, 1990 at Leesville, Louisiana, which marriage was dissolved by divorce on June 7, 1991, second to JANE BAKER on June 8, 1993 at Hometown, Georgia, with whom I am presently living.

SECOND: Of the above marriage(s) the following children were born, namely JACK SNUFFY presently eight years old, and JILL SNUFFY presently six years old. I have no other children nor have I adopted anyone to date.

THIRD: I appoint my spouse, JANE B. SNUFFY, Executor, of this, my LAST WILL AND TESTAMENT, with full seizin and without bond. In the event she is unable to perform her duties as Executor, if she predeceases me, or fails to qualify, or after qualifying, dies, resigns, or ceases to act as Executor for any reason, I nominate my sister, JULIE SISTRE, as Substitute Executor of this, my LAST WILL AND TESTAMENT, with full seizin and without bond. In the event my Executor or Substitute Executor is a nonresident of the State of Louisiana, or is an absentee at the time of my death, I hereby consent to the appointment of an agent by the probate court for the sole purpose of receiving service of process for the named Executor or Substitute Executor in matters pertaining to the probate hereof. I expressly provide that my Executor may serve as an Independent Executor, with all of the rights, powers and authority of an Independent Executor as provided by Louisiana law.

FOURTH: While acting as Executor, any person appointed by me or designated in the manner provided above, shall have, with respect to everything subject to the Executor's administration, whether under the laws of the State of Louisiana, or elsewhere, all the power, and authority given by me in this Will to the full extent permitted by the laws applicable to it, except where contrary to some provisions of this Will, no Executor shall ever be required either in the State of Louisiana or elsewhere to furnish bond or other security for the faithful performance of the Executor's duties. I do hereby expressly delegate to my Executor, under the provisions of Louisiana Civil Code Article 1302, the authority to assign and allocate the specific assets necessary to satisfy the legitime of my forced heirs.

FIFTH: I direct the attention of my Executor to such burial allowances and related benefits to which my family and my estate may be entitled by reason of my active service in the Armed Forces of the United States.

SIXTH: I direct my Executor to pay all just debts, including taxes and penalties and interest thereon, all expenses of my last illness, funeral and interment and all expenses of the probate of my Will and the administration of my succession, but nothing herein shall be deemed to require the prepayment or acceleration of maturity of any debts owed by me at the time of my death, nor shall my Executor be required hereby to discharge any encumbrance which may affect the property specifically bequeathed herein, unless there is a special fund to pay off those encumbrances.

³⁵⁵ Louis L. Sherman, Jr. (Jan. 11, 2005) (unpublished testament).

SEVENTH: I confirm the one-half interest of my spouse in our community property.

I give and bequeath the forced portion of my property of whatever nature and wheresoever situated to my forced heirs JACK SNUFFY and JILL SNUFFY if they are forced heirs at my death, subject to a testamentary usufruct for life in favor of my spouse JANE B. SNUFFY. In addition to the above testamentary usufruct, without bond, I give and bequeath the disposable portion of my said property to my spouse subject to the following specific bequest. It is my intention to give and bequeath as much as legally allowable to my spouse subject to this specific bequest.

I specifically bequeath my 1960 Ford Mustang to my brother JOHN SNUFFY of Alexandria, Louisiana.

If I have forced heirs at the time of my death, then I grant my spouse a usufruct over all of my separate and community property which is received by my forced heirs. This usufruct is for the remainder of my spouse's life, even though my spouse may remarry. This usufruct shall be treated as a legal usufruct, not as an impingement upon the legitime of my forced heirs. My spouse shall enjoy this usufruct in any way my spouse shall desire, and shall never require the consent or concurrence of any other person or persons for the enjoyment thereof. To the extent that this usufruct applies to nonconsumables, I expressly grant to my spouse the right to sell, donate, or otherwise dispose of or encumber such nonconsumables as my spouse may see fit, in accordance with Louisiana Civil Code Article 568. No bond or other security shall ever be required for the enjoyment of this usufruct, nor should my spouse ever be required to make any investments other than as my spouse may choose, nor shall an inventory ever be required.

If I have no forced heirs at the time of my death, then all of my property shall be treated as freely disposable property.

I give, devise and bequeath all of the disposable portion of my property of whatever nature and wheresoever situated to my spouse JANE B. SNUFFY.

If my spouse does not survive me, then I give, devise and bequeath all of my disposable property, in equal shares, to my children, or their descendants, by representation. In the event that I do not have surviving descendants, then I give, devise and bequeath my distributable estate, in equal shares, to my siblings JULIE SISTRE and JOHN SNUFFY, or to their descendants, by representation.

EIGHTH: If devolution of my property depends on priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, my property shall be disposed of as if I had survived them.

NINTH: If any beneficiary to any share of my estate which is not subject to the provisions of any trust which may be created by this will is at the time of distribution of his or her share, a minor under the laws of his or her domicile, I direct that the minor's share be converted into qualifying property and delivered to the minor's Guardian as Custodian for the minor under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as may then be in effect in either the state in which the beneficiary or the Custodian resides, or any other state of competent jurisdiction.

a. The Uniform Gifts to Minors Act or The Uniform Transfers to Minors Act, as may then be in effect in the state concerned, is hereby incorporated by reference. The property affected by the Act shall be managed, held, and distributed in accordance with the provisions of the Act.

b. The financial custodian will serve without bond or surety and without intervention of any court, except as required by law.

c. The receipt by the Custodian, for the minor, of any principal or income transferred pursuant to this paragraph shall be a full acquittance and discharge of my Personal Representative or Trustee, as applicable, from liability with respect to such transfer and from further accountability for the principal or income so transferred.

TENTH: In the event my spouse does not survive me, I direct that my sister, JULIE SISTRE, be appointed the legal Tutors of the persons and estate of my minor children who survive me. If they are unable to act as the legal Tutors, I hereby desire that my parents-in-law, WALTER and ANNA BAKER, be appointed the legal Tutor of my minor children.

ELEVENTH: I hereby dispense all of my forced heirs from collating any gift or donation received from me, whether during my lifetime or by reason of my death, and direct that any gift or donation received from me was intended as an advantage or extra portion to the recipient heir.

TWELFTH: Pursuant to the provisions of Article 1705 of the Louisiana Civil Code, I direct that this, my LAST WILL AND TESTAMENT, shall not be revoked by the subsequent births, legitimation, or adoption of any child of mine.

THIRTEENTH: If any bequest or paragraph of this my LAST WILL AND TESTAMENT should be invalid for any reason, it shall be disregarded and the remainder of my will shall remain in force.

IN WITNESS WHEREOF, I have signed this, my LAST WILL AND TESTAMENT, in the presence of the witnesses hereinafter named and undersigned, this _____ day of _____, A.D. _____.

JOE Q. SNUFFY, TESTATOR

WITH THE UNITED STATES ARMED FORCES

AT _____

The Testator has signed this Will at the end and on each other separate page, and has declared or signified in our presence that it is his LAST WILL AND TESTAMENT, and in the presence of the Testator and each other, we have hereunto subscribed our names this _____ day of _____, _____.

WITNESSES:

PRINTED NAME _____

JOE Q. SNUFFY, TESTATOR

PRINTED NAME _____

NOTARY PUBLIC

NAME/RANK _____

TITLE _____

Appendix G

Sample Savings Clause, Northern Mariana Islands³⁵⁶

If any gift of real property to a beneficiary under this will is invalid under applicable law because the beneficiary is not of Northern Mariana Islands descent as defined in the Northern Mariana Islands Commonwealth Code, then I give the beneficiary the maximum allowable legal interest in the beneficiary's portion of the property with any remaining interest passing under the terms of the will as if the beneficiary and all other persons not eligible to own land in the Northern Mariana Islands had predeceased me.

Savings clause: for use when testator may own land in the Northern Mariana Islands.

³⁵⁶ For discussion, see *supra* Part VI.F.

Appendix H

Sample Gift Clauses: Puerto Rico³⁵⁷

Three gift schemes with Puerto Rican forced heirship follow: Married with Descendants, Unmarried Without Descendants, and Unmarried with Descendants.

Gift with Forced Heirship: Testator Married with Descendants.

(a) If I have descendants who survive me, then I give, devise, and bequeath the following portion of my property and estate of whatever nature and wheresoever situated as follows:

(1) One-half of the forced portion *<two-thirds>* of my property I give in equal shares to those of my children who survive me and to the issue who survive me of those of my children who shall not survive me, per stirpes.

(2) The other one-half of the forced portion *<two-thirds>* of my property I give as an extra portion to my descendants and in the manner described as follows: *<Here distribute the extra portion to any or all descendants as testator desires. Distribution can be as in subparagraph (a)(1) above, but this should still be a distinct subparagraph.>*

(3) If my spouse shall survive me, then a fractional portion of the extra portion *<or “free portion” if the surviving descendants are issue of different marriages>* equal to the smallest fractional share of a child not receiving an extra portion shall be subject to a usufruct in my spouse. *<Optional: Add, “The part of the extra portion that shall be subject to this spousal usufruct is <describe beneficiary and property here>”>*.

(b) If I do not have any descendants survive me, but I have ancestors that survive me, then I give, devise, and bequeath the following portion of my property and estate of whatever nature and wheresoever situated as follows:

(1) I give the forced portion *<one-half>* of my property to my parents in equal shares, or to one parent if the other shall not survive me, but if neither parent survives me, then to my surviving ancestors of nearest degree equally except that should all such ancestors not be ancestors of one of my parents, then I direct the forced portion be divided equally between my mother’s surviving ancestors and my father’s surviving ancestors. *<Tailor this subparagraph based on surviving ancestors—the fewer surviving, the simpler this can be.>*

(2) I direct that two-thirds of the free portion of my estate be subject to a usufruct in my spouse if my spouse shall survive me.

(3) *<If applicable, add:>* Notwithstanding subparagraph (b)(1), I give, devise, and bequeath the following specific property that I had received by gift, devise, or descent, or the proceeds of such property, or the property exchanged for such property, to my ancestor(s) that previously owned such property. I direct any gifts under this subparagraph be taken as far as possible from the forced portion of my estate. *<Identify all such property and appropriate ancestor(s) here.>*

(c) If I have neither descendants nor ancestors survive me, then I direct that one-half of my estate be subject to a usufruct in my spouse if my spouse shall survive me.

(d) I give, devise, and bequeath the following specific property. Unless required to comply with the law or unless otherwise indicated, such gifts are not subject to any usufruct in my spouse. *<List specific*

³⁵⁷ For discussion, see *supra* Part VII.F.

bequests. *If the recipient may be a forced heir, add "If feasible, this gift should come from the forced/free portion of my estate."*>

(e) I give, devise, and bequeath the rest, residue, and remainder . . .

Gift with Forced Heirship: Testator Unmarried and Without Descendants.

(a) If I have ancestors that survive me, then I give, devise, and bequeath the following portion of my property and estate of whatever nature and wheresoever situated as follows:

(1) I give the forced portion <one-half> of my property to my parents in equal shares, or to one parent if the other shall not survive me, but if neither parent survives me, then to my surviving ancestors of nearest degree equally except that should all such ancestors not be ancestors of one of my parents, then I direct the forced portion be divided equally between my mother's surviving ancestors and my father's surviving ancestors. *<Tailor this subparagraph based on surviving ancestors—the fewer surviving, the simpler this can be.>*

(2) *<If applicable, add:>* Notwithstanding subparagraph (b)(1), I give, devise, and bequeath the following specific property that I had received by gift, devise, or descent, or the proceeds of such property, or the property exchanged for such property, to my ancestor(s) that previously owned such property. I direct any gifts under this subparagraph be taken as far as possible from the forced portion of my estate. *<Identify all such property and appropriate ancestor(s) here.>*

(b) I give, devise, and bequeath the following specific property. *<List specific bequests. If the recipient may be a forced heir, add "If feasible, this gift should come from the forced/free portion of my estate.">*

(c) I give, devise, and bequeath the rest, residue, and remainder . . .

Gift with Forced Heirship: Testator Unmarried and Has Descendants.

(a) If I have descendants who survive me, then I give, devise, and bequeath the following portion of my property and estate of whatever nature and wheresoever situated as follows:

(1) One-half of the forced portion <two-thirds> of my property I give in equal shares to those of my children who survive me and to the issue who survive me of those of my children who shall not survive me, per stirpes.

(2) The other one-half of the forced portion <two-thirds> of my property I give as an extra portion to my descendants and in the manner described as follows: *<Here distribute the extra portion to any or all descendants as testator desires. Distribution can be as in subparagraph (a)(1) above, but this should still be a distinct subparagraph.>*

(b) If I do not have any descendants survive me, but I have ancestors that survive me, then I give, devise, and bequeath the following portion of my property and estate of whatever nature and wheresoever situated as follows:

(1) I give the forced portion <one-half> of my property to my parents in equal shares, or to one parent if the other shall not survive me, but if neither parent survives me, then to my surviving ancestors of nearest degree equally except that should all such ancestors not be ancestors of one of my parents, then I direct the forced portion be divided equally between my mother's surviving ancestors and my father's surviving ancestors. *<Tailor this subparagraph based on surviving ancestors—the fewer surviving, the simpler this can be.>*

(2) *<If applicable, add:>* Notwithstanding subparagraph (b)(1), I give, devise, and bequeath the following specific property that I had received by gift, devise, or descent, or the proceeds of such property, or the property exchanged for such property, to my ancestor(s) that previously owned such property. I direct any gifts under this subparagraph be taken as far as possible from the forced portion of my estate. *<Identify all such property and appropriate ancestor(s) here.>*

(c) I give, devise, and bequeath the following specific property. *<List specific bequests. If the recipient may be a forced heir, add "If feasible, this gift should come from the forced/free portion of my estate.">*

(d) I give, devise, and bequeath the rest, residue, and remainder . . .

Immigration and Naturalization Issues in the Deployed Environment

Major Marc Defreyn & First Lieutenant Darrell Baughn¹

Naturalization is an important issue for many U.S. Army Soldiers, especially for those Soldiers deployed overseas, and, more specifically, those Soldiers deployed in the combat zone in support of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). The privilege of U.S. citizenship brings not only significant benefits to the Soldier, such as the opportunity to reenlist beyond eight years of service² and the ability to obtain a security clearance,³ but also provides collateral opportunities and benefits to the Soldier's dependents and other family members.⁴ Although historically the process of immigrating to the United States and eventually becoming a citizen has been known to be slow and cumbersome, even for Soldiers, recent changes to United States law and policy have created extraordinary opportunities for Soldiers to naturalize more quickly and inexpensively than ever before. For example, for the first time in U.S. military history, non-U.S. citizen servicemembers may utilize expedited procedures and are entitled to preferential considerations in order to become U.S. citizens on foreign soil if they are serving in support of the Global War on Terror.⁵ This article addresses naturalization issues of recent relevance to servicemembers, with emphasis on procedures and advice for Legal Assistance office personnel in the deployed environment.

On 4 October 2004, forty-eight Soldiers, Airmen, and Marines participated in a naturalization ceremony in Baghdad, Iraq, as the first servicemembers ever to be sworn in on Iraqi soil as U.S. citizens.⁶ Just three days prior, on 1 October 2004, a similar naturalization ceremony was held in Afghanistan, marking the first ever naturalization ceremony for U.S. servicemembers on foreign soil. Legislation passed on 24 November 2003 now allows a military applicant for U.S. citizenship to take the exam, the interview, and the oath at certain overseas locations.⁷ The law authorizes and encourages commanders to provide military leave and transportation to qualifying servicemembers for naturalization purposes.⁸ The legislation also reduced from three years to one the years of military service required for non-citizens servicemembers to be eligible for citizenship,⁹ and waived all citizenship application fees for servicemembers.¹⁰ Additionally, in perhaps the most significant action with regard to military naturalization to date, President George W. Bush signed an executive order granting an exception to the service requirement for any active duty servicemember serving during the Global War on Terrorism.¹¹

The sheer size of the federal bureaucracy responsible for immigration and naturalization issues is impressive and can prove daunting for Soldiers unfamiliar with navigating the naturalization waters. The U.S. Citizenship and Immigration and Service (USCIS), formerly known as the Immigration and Naturalization Service, now falls within the Department of

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² U.S. DEP'T OF ARMY, REG. 601-280, ARMY RETENTION PROGRAM para. 3-8b (31 Mar. 1999) [hereinafter AR 601-280]. If the Soldier's citizenship application is pending at the eight-year-mark, the active Army component may extend the enlistment for a period not to exceed twelve months. *Id.* para 4-9k. The U.S. Army Reserve specifically prohibits any such extensions for noncitizens. *Id.* para 7-4a(2). Additionally, a military personnel (MILPO) message dated 12 May 2005 rescinded the prohibition on non-citizens reenlisting past eight years of service. It is unclear, however, whether the change will be permanent.

³ U.S. DEP'T OF ARMY, REG. 380-67, PERSONNEL SECURITY PROGRAM para. 3-400(c)(2) (9 Sept.1988) [hereinafter AR 380-67]. A security clearance is a necessity for many jobs in the U.S. Army.

⁴ U.S. Citizenship and Immigration Services, *About Us*, at <http://uscis.gov/graphics/services/visas.htm> (last visited Oct. 17, 2005) (describing the U.S. Citizenship and Immigration Application Process for dependents).

⁵ National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 1701, 117 Stat. 1392, 1403 (2003) (codified at 8 U.S.C.S. § 1440 (LEXIS 2005)).

⁶ During the week of 27 July 2005, 144 servicemembers were interviewed, tested, and sworn in as United States Citizens in Baghdad.

⁷ National Defense Authorization Act for Fiscal Year 2004 § 1701 (codified at 8 U.S.C.S. § 1443a); *see also* E-mail from Don Moody, Supervisory Adjudications Officer N-400 Team, to 1LT Darrell Baughn, (18 Feb. 2005) (on file with authors) [hereinafter Moody E-mail] (listing Baghdad, Iraq; Frankfurt, Germany; Seoul, Korea; Tokyo, Japan; and certain locations in Afghanistan).

⁸ In late 2004, approximately 7,000 non-citizen service member applications were pending with the federal government; approximately 2,000 of those applications belong to servicemembers serving in OIF and OEF. *See* SPC Leah R. Burton, *Soldiers Take Oath of Citizenship in Iraq*, DEFENDAMERICA NEWS, Oct. 13, 2004, <http://www.defendamerica.mil/articles/oct2004/a101304a.html>

⁹ *See* 8 U.S.C.S. § 1439(a) (LEXIS 2005).

¹⁰ *See id.* § 1401.

¹¹ Exec. Order No. 13,269, 67 C.F.R. § 45287 (2002). The order made active duty non-citizen Soldiers immediately eligible to apply for citizenship.

Homeland Security and employs over 14,000 individuals in over 250 offices.¹² Like any large government agency, the USCIS manages a tremendous workload. In FY 2004 alone, the USCIS received over 662,188 naturalization applications, approved approximately 536,174 applications, denied at least 103,203 applications, and had over 653,190 applications pending.¹³ Fortunately for personnel of all military services, the Department of Defense and USCIS have partnered to streamline the application process for Soldiers.¹⁴ In the Army, overall responsibility with regard to the Soldier naturalization process lies with the unit personnel section.¹⁵ Instead of creating centralized help desks as the other three military services chose to do, the Army designated personnel services offices in the battalion (BN) or Brigade Combat Team (BCT), Personnel Services Battalion (PSB), Personnel Service Center (PSC), Military Personnel Division (MPD), or Military Personnel Office (MILPO) to assist Soldiers in the citizenship application process and to coordinate directly with the Army Human Resources Command. These personnel offices provide assistance at virtually every stage of the process, to include issuing initial eligibility worksheets and citizenship application documents, scheduling fingerprint appointments, reviewing completed documents, verifying Soldier service data, coordinating background checks with the Army Central Clearance Facility, and mailing the citizenship application packet to USCIS. In addition, although individual Soldiers are not authorized to contact USCIS directly, the Army has authorized these designated personnel representatives to contact USCIS on behalf of Soldiers.¹⁶

It is imperative to reiterate that the designated unit personnel services offices have primary responsibility for assisting the Soldier in the citizenship application process. As a client service, however, many legal assistance offices will review, upon request, the servicemember's application.¹⁷ Although each servicemember is ultimately responsible for ensuring that his naturalization application packet is complete and accurate, legal assistance personnel can play a vital role in verifying that application packets are complete and accurate upon first submission.¹⁸ To this end, when workload and resources permit, Client Services offices may want to conduct regular "citizen workshops" to assist large numbers of applicants at one time. This has proved to be extremely successful in Iraq. During these workshops, the attorney or paralegal should review each participant's application forms in detail to ensure that the Soldier has completed everything correctly. By conducting a pre-submission review with the Soldier and by noting common mistakes, the Client Services office emphasizes to the Soldier the importance of taking individual responsibility for his application and seeing the process through to completion. Client Services offices must emphasize that although judge advocate personnel provide advice and assistance, the onus remains with the Soldier to complete the packet properly. Diligence is important because a mistake in filling out the required application documents normally results in the USCIS sending a query letter to the Soldier's home address indicated on the application, which is often a stateside address. If USCIS fails to receive a response, the mistake could cause the application to be shelved and to be potentially abandoned by the USCIS.¹⁹

To begin the application process, the Soldier needs the following documentation:

1. Form N-400 Application, completed and signed.²⁰
2. Two standard passport photos.
3. Form N-426, certified by the appropriate military personnel.²¹

¹² U.S. Citizenship and Immigration Services, About Us, <http://uscis.gov/graphics/aboutus/index.htm> (last visited Oct. 17, 2005) (describing the U.S. Citizenship and Immigration Service).

¹³ U.S. Citizenship and Immigration Services, N-400 Naturalization Benefits, <http://uscis.gov/graphics/shared/aboutus/statistics/msrsep04/NATZ.HTM> (last visited Oct. 3, 2005) (providing the U.S. Citizenship and Immigration Statistics).

¹⁴ U.S. ARMY HUMAN RESOURCES COMMAND, THE SOLDIER'S GUIDE TO CITIZENSHIP APPLICATION (2000), available at <http://www.riley.army.mil/view/document.asp?ID=701-2003-04-15-57289-91> (providing the framework for citizenship packets and customer assistance).

¹⁵ U.S. DEP'T OF ARMY, PAM. 600-8-101, PERSONNEL PROCESSING (IN-,OUT-, SOLDIER READINESS, MOBILIZATION, AND DEPLOYMENT PROCESSING) para. 2-5b(4) (28 May 2003) [hereinafter DA PAM. 600-8-101].

¹⁶ E-mail from Leslie Lord, USAHRC Action Officer, to 1LT Darrell Baughn (24 Feb. 2005) [hereinafter Lord e-mail] (on file with authors).

¹⁷ U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-5(f) (21 Feb.1996) [hereinafter AR 27-3]. All service member applications are processed through the USCIS Nebraska field office, where a staff of thirteen processes the entire caseload. See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, NATURALIZATION INFORMATION FOR MILITARY PERSONNEL (2004), <http://uscis.gov/graphics/services/natz/MilitaryBrochurev7.pdf> (providing the basics of the naturalization process); Moody E-mail, *supra* note 7. While this is mainly a PSB function, client services at LSA Anaconda has undertaken this responsibility in order to ensure servicemembers who are serving their country overseas can obtain their citizenship more easily.

¹⁸ Legal Assistance Offices typically receive a large number of requests for assistance with citizenship applications. See SPC Leah Burton, *Legal Assistance Helps Soldiers Become Naturalized Citizens*, ANACONDA TIMES (Iraq), Jan. 16, 2005, at 2.

¹⁹ U.S. Citizenship and Immigration Services, How Do I Report a Change of Address to the UCIS?, <http://uscis.gov/graphics/howdoi/address.htm> (last visited Oct. 17, 2005) (providing answers to problems with changes of address).

²⁰ See U.S. Dep't of Justice, Form N-400, Application for Naturalization (July 2002), available at <http://uscis.gov/graphics/formsfee/forms/files/N-400.pdf> (the form can also be obtained by calling call 1-800-870-3676).

4. Form G-325B, Biographical Information.²²
5. Two Sets of fingerprints on FD-258, signed by the appropriate personnel, sealed in an envelope, and signed along the seal.
6. A letter indicating all the enclosures and including more information.²³

In order to complete the forms correctly without delay, the Soldier should obtain, at a minimum, his Alien Registration Number, which is on his permanent resident card,²⁴ and know a five-year history of previous employment and residence data.²⁵ Each male Soldier must have a selective service number and the date of his registration with the selective service.²⁶ Lastly, the Soldier should obtain evidence of military service, such as the Form 4-1 or 4-2 enlistment contract, DD 214, mobilization orders, or a recent leave and earnings statement. The typical client services workshop will take approximately three hours, including fingerprinting, photographing, and verification of the Soldier's service record.

Completing the N-400 Application for Naturalization

The instructions for completing the Application for Naturalization N-400 may be accessed on the internet.²⁷ The USCIS requires exact compliance with the application process. Uniformity and completeness is essential for an expedited application process. All applicants must either write legibly on the application or type the form online. If the USCIS cannot read the application, it may treat it as incomplete, causing the application to be abandoned if not corrected.²⁸ The applicant must answer each question—no question may be left blank.²⁹ The Soldier must enter his USCIS Alien Number on the top right of each page of this form in the block provided. In question 1A, the "Family Name" is the Soldier's last name and the "Given Name" is the Soldier's first name. If the Soldier does not have a middle name, then "n/a" or "none" should be indicated. The Soldier should enter his name *exactly* as it appears on his permanent resident card for 1B. In 1C, the Soldier should only enter other names as listed on his birth certificate or a maiden name and not a nickname. Assuming that the Soldier does not desire a change of name, then "no" should be indicated in question 1D; otherwise, the applicant must complete the process CONUS. If the Soldier wants to take advantage of the expedited application process and fee waiver offered to the military, the Soldier must mark question 2C as indicating the applicant is in the military.³⁰ This military box, when checked, notifies USCIS not to charge an application fee to expedite the review process. If the applicant does not answer this question correctly, USCIS transfers the Soldier's file to Vermont with no expedited review process and will include a request for the filing fee.

In question 3C, the date should be entered in standard month/day/year format. The date should *not* be entered in military format. The date format must be consistent throughout the application. In question 3H, "no" will typically be marked because the Soldier will not want to waive the U.S. history and government requirements. In question 3I, no Soldier should have any of the disabilities so listed. The response to question 4 should list as "home address" the Soldier's correct APO AE address for Iraq or the foreign duty station, unless the Soldier is redeploying within thirty days. The Soldier should also enter a valid U.S. mailing address. The USCIS will send mail to this address in three to six months, so the Soldier needs to enter a reliable person in the space marked "in care of" who will check the mail and forward it to him/her.³¹ Question 4C requires a valid, professional e-mail address.

²¹ See U.S. Dep't of Homeland Security, Form N-426, Request for Certification of Military or Naval Service (May 2004), *available at* <http://uscis.gov/graphics/formsfee/forms/files/N-426.pdf>.

²² See U.S. Dep't of Justice, Form G-325B, Biographic Information (Oct. 1982), *available at* <http://uscis.gov/graphics/formsfee/forms/files/g-325b.pdf>.

²³ A sample transmittal letter is provided at Appendix A.

²⁴ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, A GUIDE TO NATURALIZATION 7 (2004), *available at* <http://uscis.gov/graphics/services/natz/English.pdf> [hereinafter A GUIDE TO NATURALIZATION] (providing guidance to the entire naturalization process). A Soldier's Alien Registration Number may also be found in the "My Personnel" file of the Soldier's Army Knowledge Online account.

²⁵ E-mail from SGT Raffel, Client Services Paralegal at LSA Anaconda, to ILT Darrell Baugh, Chief of Client Services at LSA Ananconda (10 Feb. 2005) (on file with authors).

²⁶ Servicemembers can register for the selective service or verify their registration at the Selective Service System, www.sss.gov (last visited 17 Oct. 2005).

²⁷ See U.S. Dep't of Justice, Form N-400 Instructions, Application for Naturalization (July 2002), *available at* <http://uscis.gov/graphics/formsfee/forms/files/n-400ins.pdf>.

²⁸ U.S. Citizenship and Immigration Services, USCIS Service Centers: National Information, <http://uscis.gov/graphics/fieldoffices/scnational/index.htm#H> (last visited Oct. 17, 2005) (providing providing general tips on assembling applications for mailing). While the Soldier can go on-line and type the forms, these forms cannot be saved without the proper software.

²⁹ *Id.*

³⁰ Moody E-mail, *supra* note 7.

³¹ A GUIDE TO NATURALIZATION, *supra* note 25, at 11.

Any additional page should be styled “Addendum to [Name of the Form and Number]” and should then indicate the Soldier’s full name and USCIS Alien number and include “Question ___; page ___.” This page should follow the question to which it refers and should be stapled in order. If a question calls for a separate sheet, the Soldier *must* include a separate sheet. For question 7A, if the Soldier is in Iraq, ensure the deployment is listed but the Soldier need not include it as a trip or count the days. The total number of days listed in the table needs to be totaled along with all the number of trips and so entered. A deployment from Fort Bragg that refuels in Germany and stops in Kuwait for a day and then goes to Iraq is one trip, but if the stop in Kuwait is over twenty-four hours, the Soldier should indicate that on the chart.

If the Soldier enters “yes” to any question in Part 10A, a separate sheet of paper *must* be attached to provide an explanation for the affirmative answer. While question 10A(6) asks about any title of nobility, the United States does not recognize titles of nobility. Question 10B(10) does not include Iraq when it asks if the Soldier has ever advocated the overthrow of any government. In question 10D, as will all parts of the application, each subquestion about moral character must be answered truthfully. Failure to list a conviction, even a petty conviction, may result in denial of the application because the Soldier lacks moral character.³² In question 10F, the Soldier should answer “yes” to subquestion number 29 because he has served in the U.S. Armed Forces. If the Soldier is a male, he must enter his selective service number in subquestion number 33 and the date he registered. If unknown, the Soldier can locate his selective service number and date at www.sss.gov.³³ If the answer to any question in H is “no,” the USCIS will probably deny this Soldier’s application.

Completing the N-426 Request for Certification of Military or Naval Service

The Soldier should fill out the page with the USCIS Alien number blank on the left and the date of the request on the right in triplicate but not the other pages. The Soldier should provide the name used during active duty service. The service number is the social security number. All Soldiers in Iraq are in active service for the purposes of this form. The Soldier should fill out the same information three times. Once complete, a representative from the PSB or any other authorized military official will verify the Soldier’s service record. This individual will fill out the next page in triplicate, and certify it by looking at the Soldier’s Form 4-1 or 4-2 Enlistment contract, any DD 214s, any mobilization orders, or even an LES which verifies the date the Soldier entered service.³⁴ The authorized military official should fill in all the blanks, especially the dates of service in question one, and if the Soldier served honorably in question five, and if the military discharged him due to alienage in question 11. Once verified, these three forms should be signed and stamped or sealed.

Completing the G-325B Biographic Information Form

The “Family Name” is the Soldier’s last name. “All other names” means official names and not nicknames. The address information and employment information should match the information provided on the Application for Naturalization form.

Fingerprint Cards

The Soldier should fill in the name, sign the card, list his residence, indicate the country of citizenship, fill in the sex, race, height, weight, eye color, hair, date of birth, place of birth, social security number, date the card, and fill in the employer and address. The person conducting the fingerprinting must also sign the card. The military is exempt from the fingerprint fee and the requirement that applicants be fingerprinted by USCIS. Thus, any certified individual may fingerprint the Soldier. At the Soldier’s Legal Center at LSA Anaconda in Iraq, the client services paralegals received fingerprint training and certification and obtained several fingerprint kits.³⁵ On the form, for the “reason fingerprinted,” the appropriate response is “N-400” and for the “miscellaneous number” the Soldier should use the alien number. The Soldier should complete two fingerprint cards and enclose them in a separate envelope. The person conducting the fingerprinting must sign across the seal of the envelope, tape over the signature, and enclose this envelope within the larger envelope containing the rest of the application.

³² *Id.* at 8.

³³ *See supra* note 27 and accompanying text.

³⁴ E-mail from N-400 Military Team, to 1LT Darrell Baughn, Chief of Client Services LSA Anaconda (Feb. 17, 2005) (on file with author).

³⁵ The U.S. Citizenship and Immigration Services provides fingerprint instructions for applications. *See* U.S. Citizenship and Immigration Services, Fingerprint instructions for all Immigrant Benefit Applications Naturalization Benefits Applicants, <http://uscis.gov/graphics/formsfee/finger/ALLAPPS1.htm> (last visited Oct. 17, 2005).

Photographs

The USCIS now accepts passport photographs; therefore, Soldiers can disregard all former rules regarding size of the person in the photograph.³⁶ While the USCIS may accept photographs printed on regular photographic paper by a color printer, the application will look more professional using a traditional passport photograph.

After the Soldier completes the application, and a legal assistance attorney or paralegal checks the packet, the Soldier or the servicing personnel office mails the packet to the Lincoln, Nebraska Service center. The Soldier should expect to wait up to six months before the USCIS contacts him. The USCIS does try to reduce the processing time for servicemembers to be no more than four months. The USCIS processes the applications of non-citizen servicemembers serving on active duty after 11 September 2001 on an “expedited” basis.³⁷

Once the application has been received and accepted, USCIS will assign a Lincoln, Nebraska tracking number (LIN) to the file and will then begin a thorough background investigation.³⁸ As the application is being processed, the Soldier should retrieve study material online and prepare to take the exam and interview.³⁹ At this point, the Soldier typically waits for another letter from USCIS informing him of the time for an interview. If the Soldier misses the interview and does not notify USCIS, the case will be closed by USCIS after one year.⁴⁰ After the interview, the Soldier is then set for a time to take the exam. Finally, after a successful interview and exam, the USCIS will contact the Soldier to schedule a date to be sworn in before a federal judge.

If a Soldier is overseas, he may qualify for an expedited application process. The Soldier may ask for permission to attend a special overseas ceremony and may qualify for leave for this event. The Soldier may coordinate with USCIS to be interviewed and tested by USCIS and sworn by a USCIS official in a 2-3 day period overseas.⁴¹ The designated personnel services office should contact USCIS by e-mail and request naturalization interviews at the next available opportunity for military personnel deployed in or assigned to CENTCOM.⁴²

After reviewing this note, judge advocates will be better able to assist Soldiers interested in going through the naturalization process and obtaining U.S. citizenship. Assistance by judge advocate personnel will increase the confidence of non-citizen Soldiers that their application packets are complete and accurate. Becoming a United States citizen is an extreme privilege for any person, but holds special significance to the brave non-citizen Soldiers who have volunteered to serve the nation during the Global War On Terrorism. Judge advocate personnel who participate in this effort perform a much-needed and professionally rewarding service to their fellow Soldiers.

³⁶ U.S. Citizenship and Immigration Services, USCIS is Making Photos Easier (July 2004), http://uscis.gov/graphics/publicaffairs/newsreels/04_08_02Photo_flyer.pdf.

³⁷ Memorandum, Immigration and Naturalization Service, The Department of Justice, to Directors, subject: Processing Expedited Naturalization Applications (23 Aug. 2000).

³⁸ E-mail from James S. Windle, CAO, USCIS, Dept. of Homeland Security, to 1LT Darrell Baughn, Chief of Client Services LSA Anaconda (7 Feb. 2005) (on file with author).

³⁹ U.S. Citizenship and Immigration Services, Eligibility and Testing, <http://uscis.gov/graphics/services/natz/require.htm> (last visited Oct. 17, 2005) (providing material to study for the exam).

⁴⁰ A GUIDE TO NATURALIZATION, *supra* note 25, at 10.

⁴¹ Lord e-mail, *supra* note 16.

⁴² *Id.*

Appendix

Many Soldiers who are deploying or redeploying encounter communication difficulties with USCIS. In order to reduce these problems, Soldiers may want to include the following transmittal letter with their application. This letter accompanies the USCIS application and has proven helpful in expediting Soldier's applications by adding information that might be useful to the USCIS:

USCIS NEBRASKA SERVICE CENTER
PO BOX 87426
LINCOLN NE 68501-7426

_____200_

RE: Application for Naturalization; Name _____
Alien# _____

1. This facilitated military application contains the following documentation and/or information:

___ Form N-400, completed and signed

___ Pictures

___ All fees waived after October 1, 2004.

___ Form N-426 which has been certified by the appropriate military personnel office as required by USCIS policy.
(It has been verified by the appropriate PSB)

___ Form G-325B, Biographical Information.

___ Fingerprints on Form FD-258 (\$50.00 waived if the service member is overseas)

2. Contact Information and Request for Interview:

a. I am currently deployed to Iraq in support of Operation Iraqi Freedom (OIF) and expected to return to the United States on or about _____.

b. Request interview at the following USCIS office: _____.

_____ I am currently stationed overseas and request consideration about finalizing the interview/oath at this overseas location: _____.

c. Request interview date after _____.

d. My current APO address is: _____

e. My stateside address is: _____

f. United States phone: _____

g. E-mail address: _____

3. Any correspondence regarding the status of this application please e-mail me at the above address.

Signature: _____

From Problem-Solver to Policeman: The Ombudsman's Role in Army Compliance Agreements

Major Gregory R. Bockin¹ & Captain Scott N. Flesch²

*A country man between two lawyers is like a fish between two cats.*³

Introduction

You are sitting in your office one day, and your boss, Major Delegation, comes in and explains that another attorney in the office just developed a case of the mumps and will be out for a month. Major Delegation gives you the procurement fraud case previously assigned to your ailing colleague. Major Delegation has read the file and suggests that if the contractor can provide appropriate assurances of responsibility,⁴ the suspension and debarment official (SDO)⁵ may consider a compliance agreement.⁶ He asks you to prepare a compliance agreement, including the requirement for an ombudsman,⁷ for the SDO to evaluate.

Puzzled, you ask, "What's an ombudsman?" Major Delegation explains that "[u]sually, an ombudsman is a[n] [objective] third party who intervenes to address concerns that individuals or dependent groups have with larger and more powerful organizations or bureaucracies."⁸ Finally, Major Delegation explains that an ombudsman is the intermediary between the Army and the contractor.⁹ As he leaves your office, you wonder what the role of the ombudsman is in Army compliance agreements and how he can assist you in this case.

There is a dearth of information regarding the use of Ombudsmen in Army Compliance Agreements. The current guidance in the Federal Acquisition Regulation [FAR] regarding the use or implementation of an ombudsman is limited to the use of an independent agency ombudsman to review contractor complaints related to awards of task and delivery order contracts.¹⁰ This note provides an overview of the ombudsman's function in Army procurement fraud compliance agreements. First, this note discusses the suspension and debarment process. Second, this note explains the use of compliance agreements within the Army. Third, the note analyzes the Army's use of the ombudsmen and the many roles that they play in the enforcement of compliance agreements. Last, this note addresses factors to consider when approving an ombudsman and assists the practitioner in utilizing an ombudsman in the compliance process.

¹ Trial Attorney, Contract Appeals Division, U.S. Army Legal Services Agency.

² Trial Attorney, Contract Appeals Division, U.S. Army Legal Services Agency.

³ USHistory.org, The Quotable Franklin, <http://www.ushistory.org/franklin/quotable/quote35.htm> (last visited Oct. 11, 2005) (providing quotes attributed to Benjamin Franklin).

⁴ The Federal Acquisition Regulation (FAR) provides that contractors are not considered responsible unless the contractor: (1) has adequate financial resources to perform; (2) is able to comply with required or proposed delivery dates and performance schedules; (3) has a satisfactory performance record; (4) has a satisfactory record of integrity and business ethics; (5) has the necessary organization, experience, controls, skills or ability to obtain such; (6) has the necessary production, construction, and technical support; and (7) is qualified and eligible to receive an award under law and regulation. See GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 9.104-1 (July 2005) [hereinafter FAR].

⁵ The current U.S. Army SDO is Mr. Robert N. Kittel. The Army also has SDOs in Europe and Korea. The Europe SDO is the Deputy Staff Judge Advocate for U.S. Army Europe and 7th Army. The SDO for Korea is the Staff Judge Advocate for U.S. Eighth Army. Mr. Kittel also serves as Special Assistant to the Judge Advocate General for Regulatory Law & Intellectual Property and Chief of the Regulatory Law & Intellectual Property Division, US Army Legal Services Agency. Additional information on Mr. Kittel can be found on the Army Fraud Fighters Website, <https://www.jagcnet.army.mil/armyfraud> (last visited Oct. 18, 2005) [hereinafter Army Fraud Fighter's Website]. Launched in March 2005, the Army's Fraud Fighter's Website contains Compliance Agreements between the Army and contractors that may be of interest to practitioners.

⁶ See Major Jennifer S. Zucker & Captain Joseph Fratarcangeli, *Administrative Compliance Agreements: An Effective Tool in the Suspension and Debarment Process*, ARMY LAW., Feb. 2005, at 19.

⁷ "om-buds-man *n.* 1. A government official, esp. in Scandinavian countries, who investigates citizens' complaints against the government or its functionaries. 2. One that investigates complaints, as from consumers, reports findings, and assists in achieving fair settlements." AMER. HERITAGE DICTIONARY (2d College ed. 1982).

⁸ Richard C. Rueben, *Public Justice: Toward a State Action Theory of Alternative Dispute Resolution*, 85 CAL. L. REV. 577, 580 n.3 (1997).

⁹ See Mary P. Rowe, *The Corporate Ombudsman: An Overview and Analysis*, 3 NEGOTIATION J. 127 (1987).

¹⁰ FAR, *supra* note 4, 16.505(b)(5).

Suspension and Debarment in a Nutshell

Subpart 9.4 of the FAR governs the suspension, debarment, and ineligibility of government contractors.¹¹ Suspension and debarment actions are proven means of ensuring that the government “solicit[s] offers from, award[s] contracts to, and consent[s] to subcontracts with responsible contractors only.”¹² Suspension and debarment actions are not meant as punishment, but rather are “imposed only in the public interest for the Government’s protection.”¹³ Therefore, agencies are only allowed to “impose debarment or suspension to protect the Government’s interest and only for the causes” set forth in the subpart 9.4 of the FAR.¹⁴

The SDO has the responsibility to determine whether debarment is in the government’s interest.¹⁵ Specifically, the FAR provides that the “existence of a cause for debarment, however, does not necessarily require that the contractor be debarred” and suggests that the SDO consider “the seriousness of the contractor’s acts or omissions and any remedial measures or mitigating factors” before making a decision.¹⁶

The FAR lists the following factors that the SDO should consider when making these determinations:

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment;
- (2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
- (3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
- (4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

¹¹ *Id.* at 9.4.

¹² *Id.* at 9.402(a).

¹³ *Id.* at 9.402(b); *see also* Frequency Elecs. v. United States Dep’t of the Air Force, 1998 U.S. App. LEXIS 14888 (4th Cir. 1998).

It is important to remember that Suspensions and Debarments are not to punish contractors for misconduct or contract failures. Other measures, such as criminal or civil prosecution, accomplish that purpose. Rather, Suspensions and Debarments serve to protect the integrity of the Government procurement process, our taxpayer dollar, and, importantly, ensure that our Soldiers receive safe, reliable goods and services.

Army Fraud Fighter’s Website, *supra* note 5.

¹⁴

[Suspension and Debarment] Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

FAR, *supra* note 4, 9.402.

¹⁵ Interview with Mrs. Christine S. McCommas, Chief of the Procurement Fraud Branch, U.S. Army Contract Appeals Division, in Arlington, VA (Nov. 2, 2005) [hereinafter McCommas Interview]. Mrs. McCommas has responsibility for the Army’s Procurement Fraud Program as well as Army Administrative Compliance Agreements. *Army Regulation 27-40*, para. 8-2(c), established the Procurement Fraud Division, U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement. U.S. DEP’T OF ARMY, REG. 27-40, LITIGATION para. 8-2(c) (19 Oct. 1994) Effective July 2003, the Procurement Fraud Division was redesignated as the Procurement Fraud Branch of the U.S. Army Contract Appeals Division, U.S. Army Legal Services Agency. A change to the regulation is currently being staffed.

¹⁶ FAR, *supra* note 4, 9.406-1(a).

- (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
- (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
- (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
- (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.¹⁷

The contractor can also use these factors to convince the SDO that the contractor is responsible. Additionally, the contractor must ensure the government that it conducts business "with the highest degree of integrity and honesty."¹⁸ After reviewing these factors, the SDO may terminate or avoid a suspension or debarment action if a compliance agreement is executed.¹⁹

Administrative Compliance Agreements

Administrative compliance agreements address concerns about "contractor responsibility and enhance the overall corporate ethical conduct of Government contractors."²⁰ These agreements routinely document the existence of the mitigating factors found in FAR 9.406-1,²¹ any other representations made to the SDO, and the contractor's agreement to take corrective and prophylactic measures for a stated period of time in order to satisfy the SDO of the contractor's responsibility.²² Typically, compliance agreements last three years.²³

The precise terms of a compliance agreement are based upon the facts and circumstances of each case.²⁴ Administrative compliance agreements, however, generally include the implementation of an ethics and compliance program, additional internal controls and remedial measures, and requirements for the contractor to periodically submit reports to the agency. Administrative compliance agreements also subject the contractor to monitoring by the agency.²⁵ In each of these areas, an ombudsman can play a critical role.

¹⁷ *Id.*

¹⁸ U.S. DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 203.7000 (1 July 2002) [hereinafter DFARS].

¹⁹ The U.S. Army's SDO recently explained his philosophy regarding when it is appropriate to use administrative compliance agreements, stating:

During the past year, both I and the Chief Trial Attorney have encouraged the expanded use of administrative "Compliance Agreements" in those circumstances where their use provides appropriate assurances of responsibility coupled with continuing oversight to police the process. We refer to our Agreements with contractors as "Compliance Agreements" rather than "settlement agreements," because emphasis is placed on contractor change in behavior ("compliance") and more accurately describes the probationary period initiated for the contractor. During the past year, I believe the Army has been creative in crafting agreements for large as well as small firms. In the end, a process that cultivates responsible and ethical contractors better achieves the ultimate goal of improving the overall integrity and efficiency of the procurement process.

U.S. DEP'T OF ARMY, ARMY PROCUREMENT FRAUD ADVISORS UPDATE (Christine McCommas ed. 2004), available at [https://www.jagcnet.army.mil/JAGNETInternet/Homepages/AC/ArmyFraud.nsf/\(JAGCNetDocID\)/86DABEE8FC6CC4DA8525703F005519E9/\\$FILE/PFB%20Update%2056-Public.pdf](https://www.jagcnet.army.mil/JAGNETInternet/Homepages/AC/ArmyFraud.nsf/(JAGCNetDocID)/86DABEE8FC6CC4DA8525703F005519E9/$FILE/PFB%20Update%2056-Public.pdf).

²⁰ Army Fraud Fighters Website, *supra* note 5, Compliance Agreements, [http://www.jagcnet.army.mil/JAGCNetInternet/Homepages/AC/ArmyFraud.nsf/\(JAGCNetDocID\)/AGREEMENTS?OpenDocument](http://www.jagcnet.army.mil/JAGCNetInternet/Homepages/AC/ArmyFraud.nsf/(JAGCNetDocID)/AGREEMENTS?OpenDocument) (last visited Oct. 18, 2005).

²¹ FAR, *supra* note 4, 9.406-1(a) (instructing the debarring official to consider several factors before arriving at any debarment decision).

²² AMERICAN BAR ASSOCIATION, COMMITTEE ON DEBARMENT AND SUSPENSIONS 5 (3d ed. 2002).

²³ *Id.* Although a compliance agreement typically lasts three years, the Army may adjust the duration and requirements of the agreement, including the use of an ombudsman, if warranted by the action of the affected contractor.

²⁴ Zucker & Fratarcangeli, *supra* note 6.

²⁵ *Id.* Compliance agreements are patterned, in part, after the factors cited in DFARS 203.70.

The Army's Use of Ombudsmen in Compliance Agreements

In the corporate sense, the term “ombudsman” commonly describes “a neutral or impartial manager within a corporation, who may provide confidential and informal assistance to managers and employees in resolving work-related concerns, who may serve as a counselor, go-between, mediator, fact-finder or upward-feedback mechanism, and whose office is located outside the ordinary line management structures.”²⁶ As used by government agencies, ombudsmen have numerous and diverse uses, including assisting small businesses with regulatory and administrative concerns.²⁷ The federal government is not alone in this endeavor.²⁸ State and international governments also assist small businesses and individuals by employing ombudsmen in varying capacities.²⁹ The Army, however, primarily uses ombudsmen as the “the Army’s eyes and ears.”³⁰

They Wear How Many Hats?

Typically, Army compliance agreements define an ombudsman as “an independent attorney, certified public accountant, or other expert knowledgeable in the area of Federal Government contracting policies and procedures who will audit [the Company’s] compliance with the terms of this Agreement throughout the life of the Agreement.”³¹ Normally, a contractor facing suspension or debarment nominates an individual who is not an employee to serve as an ombudsman at the contractor’s expense.³² The nominee is then vetted by the Army for potential conflicts and qualifications and may be rejected at the Army’s discretion.³³

Serving as the “Army’s eyes and ears,”³⁴ the ombudsman wears many hats.³⁵ In addition to being “an independent”³⁶ check upon the contractor’s compliance, the ombudsman serves as the “honest broker, sheriff, and facilitator”³⁷ to the

²⁶ Rowe, *supra* note 9, at 127.

²⁷ The U.S. Small Business Administration, Office of the National Ombudsman was established to assist small businesses with unfair and excessive federal regulatory enforcement, such as repetitive audits or investigations, excessive fines, penalties, retaliation or other unfair regulatory enforcement action by a federal agency. The Office of the “National Ombudsman receives complaints and comments from small business concerns and acts as a “trouble shooter” between them and federal agencies. Small business comments are forwarded to Federal agencies for a high level review and federal agencies are requested to consider the fairness of their action.” See United States Small Business Administration, National Ombudsmen Fair Enforcement of Federal Regulations, <http://www.sba.gov/ombudsman> (last visited Oct. 11, 2005). The Environmental Protection Agency also offers small businesses an ombudsman to provide documents, guidance, and explanations of environmental regulations. See U.S. Environmental Protection Agency, Small Business Ombudsman, <http://www.epa.gov/sbo> (last visited Oct. 11, 2005). The U.S. Agency for International Development (USAID) also provides an ombudsman to assist small businesses in USAID acquisition and assistance programs. See U.S. Agency for International Development (USAID), Acquisition and Assistance Ombudsman, <http://www.usaid.gov/business/ombudsman.html> (last visited Oct. 11, 2005). In 1996, the Securities and Exchange Commission appointed a Special Ombudsman for Small Business to serve and represent the concerns of smaller companies. See U.S. Securities and Exchange Commission, Q&A: Small Business and the SEC, <http://www.sec.gov/info/smallbus/qasbsec.htm> (last visited Oct. 11, 2005).

²⁸ See FAR, *supra* note 4, 16.505(b)(5).

²⁹ Various state governments employ ombudsmen to assist small business with regulatory issues, including environmental regulations. See, e.g., Pennsylvania Department of Environmental Protection, Office of the Small Business Ombudsman, <http://www.dep.state.pa.us/dep/deputate/pollprev/Ombudsman/ombudsma.htm> (last visited Oct. 11, 2005). The State of Oregon also established an ombudsman office to assist small businesses with worker compensation issues. See Oregon, Small Business Ombudsman, <http://egov.oregon.gov/DCBS/SBO/message.shtml> (last visited Oct. 11, 2005). Internationally, governments use ombudsmen for a variety of purposes including investigating complaints from citizens who claim to have suffered injustice by certain government departments and public agencies. See, e.g., Ombudsman of British Columbia, Office of the Ombudsman, http://www.ombudsman.bc.ca/about_ombudsman/about_ombudsman.htm (last visited Oct. 25, 2005); Parliamentary and Health Service: Ombudsman, <http://www.ombudsman.org.uk/> (last visited Oct. 25, 2005); Ombudsman Manitoba, <http://www.ombudsman.mb.ca/> (last visited Oct. 25, 2005); Ombudsman South Australia, <http://www.ombudsman.sa.gov.au/> (last visited Oct. 25, 2005). Ombudsmen are also used to resolve disputes between consumers and businesses. See, e.g., Financial Ombudsman Service, <http://www.financial-ombudsman.org.uk/> (last visited Oct. 11, 2005) (Great Britain).

³⁰ Interview with Colonel (Retired) (U.S. Army) Karl M. Ellcessor, III, former Chief Trial Attorney, U.S. Army Contract Appeals Division, in Arlington, VA (Mar. 1, 2005) [hereinafter Ellcessor Interview]. Chief Trial Attorneys oversee the Procurement Fraud Branch of the U.S. Army’s Contract Appeals Division.

³¹ See, e.g., Administrative Compliance Agreement, U.S. Army and Cartwright International Van Lines, Inc., et al. Agreement (Sept. 1, 2004), at 3, available at [https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC.ArmyFraud.nsf/JAGCNetDocID/86DABEE8FC6CC4DA8525703F00519E9\\$FILE/Cartwright%20Compliance%20Agreement.pdf](https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC.ArmyFraud.nsf/JAGCNetDocID/86DABEE8FC6CC4DA8525703F00519E9$FILE/Cartwright%20Compliance%20Agreement.pdf) [hereinafter Cartwright Agreement]. See also Administrative Compliance Agreement, U.S. Army and The Pasha Group, et al. (Apr. 16, 2004), at 7-9, available at [https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/ARMYFRAUDNSG/\(JAGCNetID\)/92D403AE65BE737285256FB200637C2C/\\$FILE/Pasha%20Compliance%20Agreement.pdf](https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/ARMYFRAUDNSG/(JAGCNetID)/92D403AE65BE737285256FB200637C2C/$FILE/Pasha%20Compliance%20Agreement.pdf) [hereinafter Pasha Agreement].

³² Pasha Agreement, *supra* note 31, at 7.

³³ *Id.* In fact, pursuant the terms of most Compliance Agreements, the Army may terminate the relationship of the ombudsman under the Agreement at any time for cause.

³⁴ Ellcessor Interview, *supra* note 30.

compliance agreement. In fact, an ombudsman may not be successful in the sometimes “shuttle diplomacy” required under an agreement if he cannot also serve as “a coach, cheerleader, consultant, and facilitator.”³⁸ An ombudsman is critical to the successful enforcement of a compliance agreement³⁹, and “serves an Inspector General function as both an investigator and barometer.”⁴⁰

The need for these varied roles is often the result of diverging interests at the beginning of any compliance agreement. The underlying circumstances necessitating a compliance agreement are almost always viewed differently by the Army and the contractor. Although all contractors that enter compliance agreements must expressly accept responsibility for their wrong doing,⁴¹ in reality, some do so reluctantly.⁴² The looming threat of suspension or debarment on a contractor can have devastating consequences. In contrast, the Army’s primary interest is to protect the integrity of the procurement process; contract with responsible government contractors; and receive quality goods and services on time.⁴³ As a result, an ombudsman needs to balance the government’s interests with the underlying circumstances and the contractor’s mindset. By simply monitoring the scripted requirements and deadlines underlying most Army compliance agreements,⁴⁴ it is somewhat more difficult to effect change on the corporate ethos or mindset.⁴⁵ Being an ombudsman is “more an art than a science.”⁴⁶ An ombudsman must earn the respect and trust of the contractor’s management and employees, while reprimanding and reporting any violations.⁴⁷ Further, an ombudsman must know when to ask the Army to advise a contractor that corrective action may be warranted.⁴⁸ This situation makes for a complicated and sometimes hostile environment for an ombudsman to operate.

Ombudsmen, however, must be careful not to cross some contractual and perceived constraints. For instance, the mandate to be “independent” under most agreements precludes an ombudsman from acting as an advocate and creating the appearance of advocating on behalf of the contractor or management. In fact, this pitfall can cause the Army to question an ombudsman’s independence and objectivity.

Ombudsmen must also ensure that they do not become agents of a contractor. To this end, “ombudsmen must avoid situations that: (1) assume a direct role or managerial duty for the company; (2) make [ombudsmen] advocates; (3) go beyond a consultant type role.”⁴⁹ This can be even more difficult for ombudsman working with smaller companies where

³⁵ McCommas Interview, *supra* note 15.

³⁶ Ellcessor Interview, *supra* note 30.

³⁷ Telephone Interview with Brigadier General (Retired) (U.S. Army) Michael Kelleher, Ombudsman to the Administrative Compliance Agreement, U.S. Army and Gosselin Worldwide Moving, in Atlanta, Georgia (Mar. 17, 2005) [hereinafter Kelleher Interview].

³⁸ *Id.*

³⁹ McCommas Interview, *supra* note 15.

⁴⁰ Ellcessor Interview, *supra* note 30. Colonel Ellcessor also suggested that an ombudsman, investigate and assess the corporate and ethical climate of contractors, secure the trust of the Army, corporate management, and contractor employees.

⁴¹ *Id.*

⁴² Based on the authors’ experience, contractors, unlike the government, must consider the collateral consequences of entering into compliance agreements. A contractor’s reluctance to expressly admit wrongdoing is a result of fear that such admissions may be used in civil and criminal proceedings in federal or international courts.

⁴³ Ellcessor Interview, *supra* note 30.

⁴⁴ Zucker & Fratarcangeli, *supra* note 6, at 20-21.

⁴⁵ Kelleher Interview, *supra* note 37.

⁴⁶ *Id.*

⁴⁷ Interview with Colonel (Retired) (U.S. Army) Fred K. Green, Ombudsman for the Cartwright Agreement, in Kansas City, Missouri (Mar. 10, 2005) [hereinafter Green Interview]. Mr. Green is a retired U.S. Army Judge Advocate and licensed attorney in the State of Kansas. Mr. Green serves as the ombudsman for the Cartwright Agreement. Following thirty-one years of federal service, Mr. Green recently retired as the Director of International Summer Programs, University of Missouri-Kansas City, School of Law.

⁴⁸ Telephone Interview with Mr. James Balassone, Ombudsman for the Pasha Agreement, in Santa Clara, California (Apr. 20, 2005) [hereinafter Balassone Interview]. Mr. Balassone currently serves as an Executive in Residence at the Santa Clara University, Markkula Center for Applied Ethics, in Santa Clara, CA. The Markkula Center is focused on contributing to the development of government, business, and bio-medical ethics. The Markkula Center for Applied Ethics also consults with member organizations on the role and training of Ethics Officers, the development of values-based Codes of Conduct, and ‘campaign’ training and implementation of their ethics initiatives. Further information regarding the Markkula Center is available at <http://www.scu.edu/ethics/> (last visited Oct. 11, 2005).

⁴⁹ Green Interview, *supra* note 47.

close relationships are more easily created.⁵⁰ Additionally, most compliance agreements prohibit privileged communications between the ombudsman and the contractor.⁵¹ The bottom line is that the “employment” relationship between an ombudsman and contractor must not create or appear to be an employer-employee arrangement, but that of a professional services type of agreement.⁵²

Recipe for an Ombudsman

Generally, it is an ombudsman's duty to assist contractor management to implement the terms and conditions of a compliance agreement.⁵³ The ombudsman must also be able to field all of the contractor's questions regarding the terms and conditions of the agreement, investigate complaints concerning compliance, audit the contractor, and report to the Army and contractor management concerning the contractor's compliance with this agreement.⁵⁴ As a result, the required qualifications for an ombudsman are dictated by the underlying facts in each case. For example, an attorney with a background in antitrust is appropriate if the misconduct involves antitrust issues. Whereas, a person with an engineering background may be appropriate if the misconduct involved defective manufacturing. The “employment” of an attorney, however, is not essential and could “be an impediment” where business experience is more valuable than “legal know-how.”⁵⁵ The ombudsman should have a “sufficient range and depth of executive experience” and be able to “to understand the complexity and moving parts of an organization.”⁵⁶ Even a generalist with broad business skills may serve as an appropriate ombudsman under the right circumstances. Any potential ombudsman must be a detail oriented, responsive, communicative and approachable individual,⁵⁷ with impeccable character that is able to “operate at a high level where there is no place for an ego.”⁵⁸

An ombudsman must also have the wherewithal to ask for help before the contractor unnecessarily expends additional funds. Most Army compliance agreements give ombudsmen the authority to consult with an attorney or expert, or pursue training, at the contractor's expense, in performing any of his or her responsibilities under the agreement.⁵⁹ Ombudsmen, however, must avoid creating additional work or expense that is unnecessary and not relevant to the role of the ombudsman.⁶⁰ Although the financial arrangement between the ombudsman and the contractor is reduced to writing before beginning work, an ombudsman could virtually go unchecked and bill the contractor for excessive work under the auspices of “government requirements.”⁶¹ As a result, ombudsmen need to be financially frugal and monitor their costs. Such financial frugality protects the integrity of the Army's compliance agreement process and allows contractors to trust the use of ombudsmen.

Summary

To an outsider, the scheme under which the Army utilizes ombudsmen seems complex. An ombudsman must serve as the parties' honest broker and yet be willing to discipline contractors that violate agreements. An ombudsman must remain independent, yet serve as the Army's eyes and ears. An ombudsman must simultaneously win the trust of the contractor and its employees and report misconduct and non-compliance to the Army and law enforcement officials. An ombudsman does a majority of the Army's “leg work” in the enforcement and implementation of a compliance agreement, yet is compensated by the contractor that committed the original misconduct. The Army's use of ombudsmen not only serves an oversight purpose

⁵⁰ *Id.*

⁵¹ Cartwright Agreement, *supra* note 31, at 8.

⁵² Kelleher Interview, *supra* note 37.

⁵³ Cartwright Agreement, *supra* note 31, at 9.

⁵⁴ *Id.*

⁵⁵ Kelleher Interview, *supra* note 37.

⁵⁶ *Id.*

⁵⁷ Green Interview, *supra* note 44.

⁵⁸ Kelleher Interview, *supra* note 35.

⁵⁹ Cartwright Agreement, *supra* note 31, at 8.

⁶⁰ Green Interview, *supra* note 47.

⁶¹ *Id.*

but saves taxpayers thousands of dollars by putting the financial cost of compliance where it belongs—on the offending contractor. Using the principles in this article, government officials can successfully utilize an ombudsman in the compliance process and cultivate a better government contractor. The use of an ombudsman as problem solver and policeman is an investment in a government contractor's future that will pay dividends that extend beyond the limitations of a compliance agreement and will ensure that the government procures only with responsible contractors.

Book Reviews

SPY HANDLER:¹ INSIDE THE WORLD OF A KGB “HEAVY HITTER”²

MAJOR JOHN C. JOHNSON³

In *Spy Handler*, former KGB official Victor Cherkashin, writing with Gregory Feifer, shares nearly forty years of experience as a Soviet foreign intelligence officer.⁴ Cherkashin handled renowned spies Aldrich Ames and Robert Hanssen and participated in many other Cold War intrigues in the course of a career that took him from Moscow to Australia, Lebanon, India, and Washington, D.C.⁵ By Cherkashin’s own admission, the nature of his work prohibits him from being entirely forthcoming.⁶ Nevertheless, *Spy Handler* has much to offer students of the history of the Cold War, of modern Russia, and of the business of espionage alike, without cumbersome details or technicalities that might discourage the casual reader. Cherkashin’s memoirs⁷ are a credible, readable, and valuable account of the activities and perspectives of intelligence agents on both sides of the Iron Curtain.

At the outset, Cherkashin indicates his primary motivation to write *Spy Handler* was to respond to certain misrepresentations and inaccurate reports regarding his activities.⁸ In particular, Cherkashin was irked by claims that he was involved in “betraying” Aldrich Ames’ identity when, on the contrary, he felt he “handled” Ames “with all the care and devotion [he] could muster.”⁹ As an effort to set the record straight, *Spy Handler* is largely successful. First, Cherkashin enjoys a distinct advantage—he is in the best position to relate what he did and did not do with respect to Ames and the other agents and operations he handled.¹⁰ Second, Cherkashin enhances his credibility by generally keeping his account straightforward and dispassionate rather than indulging in gratuitous attacks on others’ character.¹¹ Third, Cherkashin convincingly portrays himself as a loyal and conscientious KGB officer, for whom betraying a high-value agent like Ames would be quite unlikely and out of character.

Yet the primary value of *Spy Handler* for most American readers will not lie in resolving squabbles among past and present Russian intelligence officials, but in Cherkashin’s accounts of Cold War espionage and the lessons to be drawn from them. Beginning during the Korean War and ending after the failed coup attempt of August 1991, Cherkashin’s KGB career

¹ VICTOR CHERKASHIN WITH GREGORY FEIFER, *SPY HANDLER: MEMOIR OF A KGB OFFICER: THE TRUE STORY OF THE MAN WHO RECRUITED ROBERT HANSEN AND ALDRICH AMES* (2005).

² *Id.* at 137.

³ U.S. Air Force. Written while assigned as a student, 54th Judge Advocate Officer Graduate Course, The Judge Advocate General’s Legal Center and School, U.S. Army, Charlottesville, Virginia.

⁴ See CHERKASHIN WITH FEIFER, *supra* note 1, at 41-42, 254, 282. Cherkashin joined the Soviet Ministry of State Security (MGB), precursor to the Committee for State Security (KGB), in 1952. *Id.* at 41-42, 45. He resigned from the KGB shortly after the attempted coup against Mikhail Gorbachev in August 1991, having attained the rank of colonel. *Id.* at 117, 282. Cherkashin was well-known and respected in the American intelligence community. See *id.* at 137; Andrew Meier, *Spooky Seduction; A KGB Legend Describes How He Convinced Americans to Spy for the Soviet Union*, NEWS & OBSERVER (Raleigh, N.C.), May 8, 2005, at G4, available at http://www.lexis.com/research/retrieve/frames?_m=233c391335a4cee516cfef775be84a5&csvc=fo&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAV&_md5=52944bd74e8802876ccf3b98ad3233da (book review).

⁵ CHERKASHIN WITH FEIFER, *supra* note 1, at 11-31, 47-52, 69-73, 77-99, 101-06, 182-207, 228-48.

⁶ *Id.* at ix. Cherkashin explains “intelligence work doesn’t lend itself to memoir writing. . . . Its essence is secrecy. For those like me who have spent their careers in espionage, publicizing its details goes against instinct and tradition.” *Id.*

⁷ Cherkashin writes his story “almost entirely from memory,” as one might expect in an autobiography. *Id.* at xi. The authors do cite a few books, articles, and other documents from time to time. See *id.* at 315-18. The scarcity of additional sources, however, does not seriously affect Cherkashin’s credibility. Interestingly, there are uncited quotations attributed to several American and Russian intelligence officials throughout the book. See *id.* at 56-57, 80-81, 83, 86, 94, 109-10, 129, 137, 146, 158-59, 182, 193, 230-31, 233. Presumably these come from interviews Feifer conducted in the course of preparing the book, but this could have been better documented. See *id.* at xiv (Feifer thanking “those who agreed to be interviewed”).

⁸ See *id.* at xii, 6-10.

⁹ *Id.* at 8. In Russia, Cherkashin successfully sued the author and publisher of a 1999 book alleging that Cherkashin betrayed Ames’s identity to former KGB officer Oleg Kalugin. *Id.* at 303-04. Kalugin, once a rising star in the KGB, fell out of favor with the agency and was accused of spying for the CIA. *Id.* at 129-34, 287-88. In 2002 Kalugin was tried in Russia *in absentia*, convicted of treason, and sentenced to fifteen years in prison. *Id.* at 288.

¹⁰ See *id.* at xii, 305.

¹¹ See Dan Danbom, “Spy” *Freely Dishes on KGB*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Jan. 21, 2005, at 24D, http://www.lexis.com/research/retrieve/frames?_m=233c391335a4cee516cfef775be84a5&csvc=fo&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAV&_md5=52944bd74e8802876ccf3b98ad3233da (book review). This is not to say Cherkashin does not criticize the behavior of several former supervisors, colleagues, adversaries, agencies, and politicians. See, e.g., CHERKASHIN WITH FEIFER, *supra* note 1, at 167-68 (criticizing CIA handling of Soviet defector), 207-08 (criticizing KGB superior for taking undue credit), 273-75 (criticizing Gorbachev’s reforms).

spanned nearly the duration of the Cold War.¹² Although “[i]ntelligence consists chiefly of workaday routine” and the book offers few “James Bond-style exploits,”¹³ Cherkashin and Feifer keep the reader engaged. The authors maintain a brisk pace and a readable style while including numerous dramatic incidents that illustrate the relationships between the Soviet intelligence services, their Western (primarily American) adversaries, and the agents employed by both sides. Cherkashin touches on many diverse incidents and operations that are impossible to summarize here. They include safe house infiltrations,¹⁴ the Cuban missile crisis,¹⁵ theft of military aircraft designs,¹⁶ escapes across the Russo-Finnish border,¹⁷ defections,¹⁸ redefection,¹⁹ executions,²⁰ and many other episodes, both well-known and obscure. Although the authors sacrifice some depth in their account for the sake of breadth, readability, and perhaps discretion,²¹ *Spy Handler* for the most part captures the highlights in a coherent and engaging narrative.

Cherkashin gives special emphasis to his interactions with two agents in particular, Aldrich Ames of the Central Intelligence Agency (CIA) and Robert Hanssen of the Federal Bureau of Investigation (FBI). In 1985, while Cherkashin was assigned to the Soviet embassy’s KGB detachment in Washington, Ames approached the KGB through an embassy official “to offer [the KGB] information on CIA operations against the USSR in return for \$50,000.”²² At the time Ames was the “CIA’s chief of Soviet counterintelligence.”²³ By the time he was caught in 1994, Ames had been paid \$2.7 million, betrayed over twenty American agents (ten of whom the Soviets executed), compromised multiple intricate and extremely expensive American operations inside the Soviet Union, and “all but shut down CIA operations in Moscow”—at least for a time.²⁴ Also in 1985, FBI counterintelligence agent Robert Hanssen volunteered to work for the KGB by sending a letter specifically to Cherkashin.²⁵ Described by a fellow agent as “diabolically brilliant,”²⁶ Hanssen continued spying for the Soviet Union and later for Russia for over fifteen years until his arrest in 2001.²⁷ During that time Hanssen provided Moscow with “thousands of documents” and information “worth tens of billions of dollars.”²⁸

Ames and Hanssen were crown jewels, not only of Cherkashin’s career²⁹ but of the entire Soviet counterintelligence effort in the mid-1980s.³⁰ In addition, their names are perhaps the most recognizable for an American audience³¹ among the dozens of intelligence officers and agents Cherkashin refers to in the book. The authors clearly recognize this and have

¹² CHERKASHIN WITH FEIFER, *supra* note 1, at 41-42, 45, 282.

¹³ *Id.* at x.

¹⁴ *Id.* at 87-90.

¹⁵ *Id.* at 62-63.

¹⁶ *Id.* at 96-98, 149-51.

¹⁷ *Id.* at 176-77, 179-82.

¹⁸ *Id.* at 152-58, 192-93.

¹⁹ *Id.* at 166-73.

²⁰ *Id.* at 66, 113, 149, 190-93.

²¹ *Id.* at xi (“[I]n such accounts it’s not possible to reveal everything.”)

²² *Id.* at 16; *see id.* at 11-29.

²³ *Id.* at 26.

²⁴ *Id.* at 4; *see id.* at 1-2, 193, 210. For an in-depth account of the Ames case, see PETE EARLY, *CONFESSIONS OF A SPY: THE REAL STORY OF ALDRICH AMES* (1997).

²⁵ CHERKASHIN WITH FEIFER, *supra* note 1, at 211-13.

²⁶ *Id.* at 230.

²⁷ *Id.* at 245.

²⁸ *Id.* For more information on Hanssen’s life and espionage, see DAVID A. VISE, *THE BUREAU AND THE MOLE* (2002).

²⁹ Cherkashin makes clear that although he was directly involved in “recruiting” both Ames and Hanssen and handling their early operations, he of course did not manage their entire careers. *See* CHERKASHIN WITH FEIFER, *supra* note 1, at 16-33, 187-93, 207, 211-14, 228-45, 248, 257. Cherkashin ceased handling Ames when Ames transferred from Washington to Rome in July 1986, and Cherkashin’s career handling foreign spies effectively ended upon his return to Moscow from Washington shortly thereafter. *Id.* at 257; *see id.* at 261-65.

³⁰ *See id.* at 257 (“The major coup I helped pull off put us squarely on top of the Cold War intelligence battle.”)

³¹ Cherkashin avers he wrote *Spy Handler* “for a general Western audience, which has shown more interest in the real facts—the good and the bad of intelligence history—than Russians have.” *Id.* at xi.

structured the narrative to bring Ames into the story from the start.³² Rather than beginning the narrative chronologically with Cherkashin's childhood in Ukraine,³³ the authors devote the prologue and first chapter to facets of the Ames case and its aftermath.³⁴ This is a wise choice, despite some minor disruption in the narrative flow.³⁵ This structure engages the reader by bringing one of the most interesting and dramatic episodes to the foreground and by underscoring Cherkashin's personal significance to Cold War espionage. This structure also bolsters Cherkashin's credibility by explaining his avowed purpose in writing the book—to rebut certain false reports that he betrayed Ames's identity.³⁶ In all, the prologue and two chapters are devoted to the Ames case and another chapter to Hanssen.³⁷

In addition to providing a wealth of factual information about Ames, Hanssen, and many others, Cherkashin also offers some analysis and develops certain themes. Some of his conclusions are more convincing than others. One lesson Cherkashin draws from his experiences is that “ideology very rarely, if ever, motivates treason.”³⁸ He explains,

Spies tend to focus on their personal problems, not political ones. Most don't want to betray their countries and refuse to see themselves as traitors. They simply want to solve an immediate problem or satisfy a kindled ambition, and spying offers itself as a possibility. Money is a key motivation. Another is proving self-worth³⁹

Ames, for example, was motivated partly by money and partly by resentment of his CIA superiors.⁴⁰ Despite offering his services to the KGB, Ames was “against communism” and “felt patriotic about the United States.”⁴¹ Hanssen also took money from the Soviets,⁴² but he was primarily motivated by “control.”⁴³ Like Ames, he was personally against communism, but he wanted to prove his skill by becoming a “great wizard” of espionage, “to offer and glean information from intelligence agencies on both sides of the Cold War front line.”⁴⁴ Similarly, spies recruited by American agencies were motivated by career frustration, bitterness, revenge, money, and other personal reasons.⁴⁵ Cherkashin's assessment of human nature rings true and finds much support in his book.

Less convincing is a second conclusion Cherkashin draws: that governments should be lenient with spies they uncover and catch.⁴⁶ He declares himself “deeply convinced the spies Ames betrayed should have been fired and deprived of their pensions, but no more.”⁴⁷ At first blush, this seems to be a surprising view for a senior KGB officer and loyal Soviet official.⁴⁸ Execution was a common fate for spies caught by the Soviets.⁴⁹ Perhaps Cherkashin's leniency derives from his

³² *See id.* at 1.

³³ *See id.* at 35.

³⁴ *Id.* at 1-33.

³⁵ Cherkashin resumes Ames's story much later in the book, relying on the reader's recollection of the first chapters. *Id.* at 182-210.

³⁶ *See id.* at 6-10.

³⁷ *Id.* at 1-33, 179-210, 227-54.

³⁸ *Id.* at 63.

³⁹ *Id.* at 115.

⁴⁰ *Id.* at 28. At his trial, Ames told the judge “[t]he espionage business, as carried out by the CIA . . . is a self-serving sham, carried out by careerist bureaucrats.” EARLY, *supra* note 24, at 333.

⁴¹ CHERKASHIN WITH FEIEFER, *supra* note 1, at 28.

⁴² At Hanssen's trial, prosecutors alleged the Soviets paid Hanssen \$600,000 in cash and diamonds and put \$800,000 more in an escrow account for him in Russia. *Big Ego, Big Money Cited as Alleged Spy's Motivation*, CNN.COM, May 10, 2002, <http://archives.cnn.com/2001/US/02/21/spy.profile/index.html>.

⁴³ CHERKASHIN WITH FEIEFER, *supra* note 1, at 250. Hanssen achieved his aim, becoming “the most prolific and damaging spy in U.S. history,” according to one biographer. *What Made the American Turncoat Tick*, CNN.COM, May 10, 2002, <http://archives.cnn.com/2002/LAW/05/10/spy.hanssen/>.

⁴⁴ CHERKASHIN WITH FEIEFER, *supra* note 1, at 238.

⁴⁵ *See, e.g., id.* at 63-64, 114, 151, 156-57, 175, 216.

⁴⁶ *See id.* at 210.

⁴⁷ *Id.* Cherkashin writes, “As far as I was concerned, officers who turned traitor should be fired and deprived of their pensions. That's enough.” *Id.* at 31.

⁴⁸ *See id.* at xii (“I continue to care deeply for the KGB's reputation. . . . The many years I spent working against the CIA were my contribution to the maintenance of my country as a great power.”).

⁴⁹ *Id.* at 116.

role as a spy handler, one who recruits spies and convinces them to expose others.⁵⁰ No doubt it might be easier on the conscience of the handler if the recruited spy and those he exposed were not facing execution or lengthy imprisonment.⁵¹

In any event, Cherkashin's rationale appears to have two primary bases. First, he suggests that spies, once exposed, are essentially harmless.⁵² Second, he contends severe punishment for espionage is counterproductive:

As long as punishment for espionage remains as dire as certain imprisonment (it was usually death in the Soviet Union), spies will have greater motives to broaden their activities than to come clean or stop their espionage before it becomes too serious. To pressure Aldrich Ames into betraying most CIA agents in the Soviet Union, I would remind him of the risks he was taking under U.S. law. . . . Thus prepped, as it were, he chose to protect himself by wading irrevocably deeper into the waters instead of retreating.⁵³

Cherkashin is correct to a degree. Obviously, espionage occurs despite the threat of severe sanctions. Moreover, once an agent begins to spy for an adversary, he has a strong incentive to expose moles within that adversary in order to conceal his own activities.⁵⁴ But Cherkashin fails to address the obvious counterargument. What of all the agents who might have been tempted to betray their agencies and countries but were dissuaded by the threat of severe punishment? What message would it send to effectively do away with criminal sanctions for espionage? It is hard to believe espionage would not increase if the only counterbalance to the enormous potential financial rewards and professional or personal satisfaction of spying was the risk of losing one's job. Cherkashin's position is unconvincing and seems remarkably naïve.

A third conclusion Cherkashin draws from his experiences is also surprising to hear from a senior KGB counterintelligence officer. He confides, "Intelligence work is less politically important than it may seem."⁵⁵ "Some of the best-known espionage cases were more about spy versus spy than real issues of national security. . . . It was thieves stealing from thieves, which raises the question of whether all the years of work and hundreds of millions of dollars were worth it."⁵⁶ By the late Cold War era, espionage had become "expensive and superfluous."⁵⁷

It may be true that, as Cherkashin suggests, the Cold War was ultimately resolved by the structural strengths and weaknesses of the competitors rather than by any specific conflict or espionage operation.⁵⁸ Yet Cherkashin's own narrative undermines his conclusion to some extent. Cold War espionage produced dramatic results from time to time. For example, a Russian scientist named Adolf Tolkachev provided the CIA with "reams of information about Soviet avionics, radar, missile and other weapons systems for fighter aircraft [that] enabled Washington to save billions of dollars and many years of research—and achieve superior technology."⁵⁹ Other agents betrayed Soviet "military planning, nuclear strategy and chemical and biological weapons research"⁶⁰ and "secret arms caches in Western Europe."⁶¹ It is difficult to believe that such matters were "superfluous."⁶²

⁵⁰ See *id.* at 31 (noting that Cherkashin "was as responsible as anyone else" for the execution of the agents Ames betrayed).

⁵¹ See *id.* at 66, 113, 149, 177, 193, 245. Many of the agents Ames betrayed were Cherkashin's friends and colleagues. *Id.* at 31. Cherkashin admits, "I was only doing my job, but the moral dilemma weighed heavily." *Id.* Cherkashin seems to have genuinely liked Ames as well. See *id.* at 5-6 (Cherkashin pitying Ames and planning to bring Ames's son to live in Russia); EARLY, *supra* note 24, at 350 (Cherkashin calling Ames a "humanitarian" and "a very fine fellow"). Cherkashin did not feel as close to Hanssen, who he never met and knew "almost nothing" about until Hanssen's arrest in 2001. CHERKASHIN WITH FEIEFER, *supra* note 1, at 248. Both Ames and Hanssen were convicted and sentenced to confinement for life without parole. *Id.* at 245; EARLY, *supra* note 24, at 333.

⁵² See CHERKASHIN WITH FEIEFER, *supra* note 1, at 210.

⁵³ *Id.* at 116.

⁵⁴ See *id.*

⁵⁵ *Id.* at 310.

⁵⁶ *Id.* at 108-09. By the mid-1980s, Cherkashin states, CIA and KGB activities were "little more than intelligence games. Their connection to real issues of national security, such as stealing military/technological secrets—let alone to the larger national interest as a whole—was often peripheral. Mostly they tried to ferret out moles and recruit enemy intelligence officers." *Id.* at 310.

⁵⁷ *Id.* at 312.

⁵⁸ See *id.* at 282-83.

⁵⁹ *Id.* at 150.

⁶⁰ *Id.* at 111.

⁶¹ *Id.* at 168.

⁶² *Id.* at 312.

Cherkashin concludes his account with his opinions about the proper role of the intelligence services in the post-Cold War world.⁶³ He strongly criticizes Boris Yeltsin and the leaders of post-Soviet Russia for attempting to dismantle the KGB.⁶⁴ He writes, “It was absurd to think we’d entered a new era of brotherhood and cooperation with the United States” when CIA operations in Russia were proceeding “full steam.”⁶⁵ He also decries the political manipulation of the intelligence services in the United States and Russia, citing the United States’ occupation of Iraq in 2003 as a prime example.⁶⁶ Cherkashin, however, recommends greater cooperation between the intelligence services in areas of common interest.⁶⁷ In his view, these areas include “[e]conomic development,” “combating organized criminal activities such as drugs and human smuggling,” and “[f]ighting terrorism.”⁶⁸ These final comments, while interesting, are of less value than Cherkashin’s description of his KGB career because they are merely his opinions on matters of general knowledge.

Ultimately, it is the factual information rather than the opinions and analysis that makes *Spy Handler* worth reading. Cherkashin and Feifer provide a fascinating view of Cold War espionage from within the KGB. As Cherkashin points out, the business of espionage is alive and well, and the legacy of the Cold War is quite relevant to relations between the United States and Russia.⁶⁹ *Spy Handler* is recommended reading for anyone interested in the history of the Cold War, relations between the United States and Russia, or the business of espionage.

⁶³ *Id.* at 307-13.

⁶⁴ *Id.* at 307-09.

⁶⁵ *Id.* at 309.

⁶⁶ *Id.* at 310-12.

⁶⁷ *Id.* at 312-13.

⁶⁸ *Id.* at 312.

⁶⁹ *See id.* at 254, 308-10.

LINCOLN'S WAR: THE UNTOLD STORY OF AMERICA'S GREATEST PRESIDENT AS COMMANDER IN CHIEF¹

REVIEWED BY CAPTAIN TAMAR TAVORY²

*The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states*³

*The Congress shall have the power to . . . declare war.*⁴

I. Introduction

When waging war, the President wields a powerful influence. In the Korean War, President Harry S. Truman dismissed General Douglas MacArthur for threatening to defy his authority,⁵ and in the Vietnam War, President Richard Nixon's "Madman Theory" made his personality a strategic linchpin.⁶ To some extent, the limits of this power are repeatedly challenged: in 1967, several draftees filed a petition against President Lyndon B. Johnson regarding his authority to *coerce* participation in an offensive attack that Congress did not approve;⁷ in 1990, fifty-four members of Congress filed suit seeking to prevent President George W. Bush from deploying forces without prior Congressional approval.⁸

In *Lincoln's War*, Geoffry Perret, author of previous presidential biographies and military history books,⁹ argues that President Abraham Lincoln unalterably expanded the President's role as Commander in Chief, and in doing so, directly contributed to the Union's victory. Possibly, the book's title, *Lincoln's War*, is intentionally subtly ambiguous: in the possessive sense, the title hints at the figurative war Lincoln waged on Congress, the military command, and political parties; in the descriptive sense, the title attributes much of the literal war's outcome to Lincoln.

Lincoln's War primarily presents the Civil War from Lincoln's point of view. It chiefly describes events chronologically, but also occasionally topically.¹⁰ Though *Lincoln's War* is not a novel, Perret personalizes Lincoln by interjecting descriptions of Lincoln's personal feelings and by citing anecdotal stories.¹¹

While Lincoln's role as Commander in Chief indeed warrants study,¹² as the topic is significant and remains relevant today, critics have noted numerous factual errors in *Lincoln's War*.¹³ This review argues, however, that *Lincoln's War* is more seriously flawed. In Perret's enthusiasm for emphasizing Lincoln's role as Commander in Chief, he offers an exaggerated view of Lincoln's war powers and the effect of Lincoln's military decisions on the outcome of the Civil War. The book also fails to convince the reader that Lincoln's primary role in the Civil War was not that of a politician.

¹ GEOFFRY PERRET, *LINCOLN'S WAR: THE UNTOLD STORY OF AMERICA'S GREATEST PRESIDENT AS COMMANDER IN CHIEF* (2004).

² Israel Defense Forces. Written while assigned as a student, 53d Judge Advocate Graduate Course, The Judge Advocate General's Legal Center and School, United States Army, Charlottesville, Virginia.

³ U.S. CONST. art. II, § 2.

⁴ *Id.* § 8.

⁵ JOHN COSTELLO, *THE PACIFIC WAR: 1941-1945*, at 604 (1982).

⁶ STANELY KARNOW, *VIETNAM: A HISTORY* 597 (1983).

⁷ See *Mora v. McNamara*, 389 U.S. 934 (1967) (failing to rule on the legality of the war).

⁸ *Dellumes v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990) (ruling that the matter was not ripe for judgment); see also DENNIS R. HUNT, DONALD N. ZILLMAN, MICHAEL F. NOONE JR. & POUL A. CAPFARI, *CONSTITUTIONAL LAW FOR THE CITIZEN SOLDIER* 160 (2d ed. 1993) (providing background information on this judgment).

⁹ See, e.g., GEOFFRY PERRET, *OLD SOLDIERS NEVER DIE: DOUGLAS MACARTHUR* (1996); GEOFFRY PERRET, *ULYSSES S. GRANT: SOLDIER AND PRESIDENT* (1998); GEOFFRY PERRET, *JACK: A LIFE LIKE NO OTHER* (2002).

¹⁰ See PERRET, *supra* note 1, at 144-55 (describing Lincoln's fascination with weapons).

¹¹ See *id.* at 334 (describing Lincoln accepting visitors with ink on his fingers and a hole in his sock); *id.* at 281 (Lincoln writing an angry letter to a disappointing general and filing it away); *id.* at 167 (Lincoln crying miserably over the death of Willy, his eleven years old son).

¹² See, e.g., David Herbert Donald, *Lincoln and Davis as Commanders in Chief*, in *THE LINCOLN ENIGMA: THE CHANGING FACES OF AN AMERICAN ICON* 72-85 (Gabor Borrit ed., 2002).

¹³ James M. McPherson, *Top Gun*, *NATION*, June 14, 2004, at 36, 36-38.

II. Legal Aspects

“Are all the laws, but one, to go unexecuted . . . lest one be violated?”¹⁴

In shaping the role of Commander in Chief, Lincoln relied on vague constitutional phrasing and altered the accepted separation of powers between the President and Congress. Legal issues, therefore, are inseparable from Perret’s theme. As *Lincoln’s War* is a general history text, Perret is warranted in omitting detailed legal analysis. He does so to such an extent, however, that readers are likely to develop an exaggerated sense of Lincoln’s war powers and an erroneous perception of Lincoln’s views on the rule of law. For the sake of brevity, this review discusses below only some of the more striking examples of such omissions.

A. Blockade Declaration

In 1861, Lincoln declared a naval blockade of Confederate ports, primarily aimed at hampering the Confederacy’s cotton exports and arms imports.¹⁵ Although Congress subsequently ratified the blockade, it did not *a-priori* approve it. Under international law, a blockade amounts to a war declaration.¹⁶ The Constitution, however, grants Congress, not the President, the authority to declare war.¹⁷ In the milestone *Prize Cases*, Lincoln’s blockade declaration was legally challenged.¹⁸

Perret’s description of the Court’s ruling focuses on the legal question of blockading Confederate ports without recognizing the Confederacy as a belligerent state.¹⁹ Perret’s description, however, omits an important point: while the Court ruled that the President is authorized to take means in order to repel an invasion or insurrection, it explicitly upheld the authority of Congress alone to initiate or declare war.²⁰ This limitation on the President’s war powers is not conveyed to Perret’s readers.

B. Expansion of the Regular Army and Disbursement of Funds

In the course of the war, Lincoln expanded the regular army, established a volunteer’s army, and disbursed funds to support them.²¹ The Constitution authorizes Congress, not the President, “to raise and support armies,”²² and further states “No money shall be drawn from the treasury, but in consequence of appropriations made by law.”²³

Perret’s discussion of Lincoln’s actions gives the impression that Lincoln considered himself to have legal power to take emergency actions contrary to legal mandates.²⁴ It does not explain Lincoln’s actual view that in the given emergency state he was effectively powerless to simultaneously uphold all laws. It does not mention precedent and the actions of former Presidents Washington and Jefferson. And it does not explain Lincoln’s belief, and Congress’s subsequent ratification thereof, that his actions were for the public good and *a-priori* on behalf of Congress.²⁵

¹⁴ Message to Congress in Special Session (July 4, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 430 (Roy P. Basler ed., 1953-55).

¹⁵ See PERRET, *supra* note 1, at 380.

¹⁶ See *The Brig Amy Warwick (The Prize Cases)*, 67 U.S. 635 (1863).

¹⁷ See U.S. CONST. art. II, § 2 & § 8.

¹⁸ *The Prize Cases*, 67 U.S. 635.

¹⁹ See PERRET, *supra* note 1, at 381-82.

²⁰ *The Prize Cases*, 67 U.S. at 668-69. The Court’s majority opinion, by a five to four vote, distinguished the power to *initiate* a war from the power to *respond* to one. It stated that the blockade did not amount to recognition of the Confederacy as a belligerent state, since a *de facto* state of war already existed. See also DANIEL FARBER, *LINCOLN’S CONSTITUTION* 139-40 (2003) (explaining the Court’s ruling).

²¹ See PERRET, *supra* note 1, at 31-33, 41-47.

²² See U.S. CONST. art. I, § 8.

²³ See *id.* § 9; see also *id.* art. II §§ 2, 8 (stating that Art. II, generally vesting the president’s authority as Commander in Chief, does not override the explicit phrasing of Art. I).

²⁴ See PERRET, *supra* note 1, at 47.

²⁵ See FARBER, *supra* note 20, at 192-95 (describing these three points, based also on Lincoln’s Message to Congress in a special session (July 4, 1861), *supra* note 14, at 429-30).

C. Suspension of Habeas Corpus

In the early stages of the war, Lincoln suspended a writ of habeas corpus, the Constitutionally-protected right of a detainee to argue the detention's legality in court.²⁶ He did so in response to mob attacks on Union Soldiers and supporters throughout Maryland, including in the city of Baltimore.²⁷ The Constitution does not specify whether Congress or the President has the authority to suspend the writ of habeas corpus.²⁸

Perret mentions this episode as another example of Lincoln's expansion of presidential authority and correctly notes the severe implications for civil rights (*e.g.*, life, liberty and freedom of speech).²⁹ The *Ex parte Milligan* ruling,³⁰ however, held that the habeas suspension applied to detention, but not to punishment; furthermore, it limited this power to military operation theatres, but not to locations where the courts are functioning. As Perret does not mention this ruling, the Court's distinctions and the resulting limitations on war powers are lost on Perret's readers.³¹

Perret mentions Lincoln's disobedience of a direct order from Chief Justice Roger B. Taney finding the habeas suspension unconstitutional,³² giving the impression that Lincoln believed he could second-guess judicial orders. Here, too, the author omits the points previously raised in this review. Perret also omits discussion of the validity of the Court's jurisdiction following the authorized suspension of the habeas writ.³³

III. Political-Military Aspects

"My policy is to have no policy"³⁴

In accordance with his main theme, Perret emphasizes Lincoln's greatness in his role of military leader³⁵—issuing orders. He does not convince the reader that Lincoln's greatness did not lie primarily in his role of politician, maneuvering and compromising in the face of opposition.³⁶

Other authors³⁷ emphasize Lincoln's crucial role as a pragmatic politician: his maneuvering between the Union's different political parties, his postponing emancipation until the right political moment, his implementing of policy on slave-holding in border states, his decisionmaking on amnesty and reconstruction in Louisiana and Missouri, and his skilled negotiating with Cabinet officers. It is especially important to note the political climate that surrounded the 1862 elections—the Democrats planned a call for immediate cessation of hostilities if they had won. Lincoln's major political victory in these elections, even carrying the border states, largely ensured the war's continuation.³⁸

²⁶ A habeas corpus petition is a "writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal." BLACK'S LAW DICTIONARY 716 (7th ed. 1990). See also U.S. CONST. art. I, § 9.

²⁷ See FARBER, *supra* note 20, at 16-17 (describing the historical background of the suspension of habeas corpus).

²⁸ As Congress subsequently ratified the writ suspension, the question is restricted to Lincoln's initial actions. See *id.* at 158.

²⁹ See PERRET, *supra* note 1, at 300-305.

³⁰ *Ex parte Milligan*, 71 U.S. 2 (1866) (ruling, after the end of the war, that the habeas suspension was unconstitutional); see FARBER, *supra* note 20, at 164-67 (describing the case in detail).

³¹ Recently, in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), the Court awarded Hamdi, an American citizen detained as an Afghani "enemy combatant" for two years without trial, a due-process ruling. Although both the President and Congress agreed on habeas suspension, the Court decided that the detainee was entitled to an opportunity to rebuff the Government's factual assertions concerning him. It rejected the Government's position limiting the Court's role in wartime circumstances.

³² See PERRET, *supra* note 1, at 301 (failing to refer to the primary source of Chief Justice Taney's ruling: *Ex parte Merryman*, 17 F. Cas. 144, 148 (C.C.D. Md. 1861) (No. 9,487)).

³³ See FARBER, *supra* note 20, at 176-95 (discussing Lincoln's views on the rule of law and specifically addressing his response to Judge Taney's ruling).

³⁴ Encyclopedia Americana: The American Presidency, Abraham Lincoln, <http://ap.grolier.com/article?assetid=0247400-00templatename=/article/article.html> (last visited Oct. 23, 2005); see also KEITH D. DICKSON, THE CIVIL WAR FOR DUMMIES: A REFERENCE FOR THE REST OF US! 312 (2001).

³⁵ See PERRET, *supra* note 1, at 334-35, 340-42, 358, and flap cover.

³⁷ See David Herbert Donald, *Abraham Lincoln and the American Pragmatic Tradition*, in LINCOLN RECONSIDERED: ESSAYS ON THE CIVIL WAR ERA 121-32 (David Herbert Donald ed., 3rd ed. 2001); see also McPherson, *supra* note 13, at 38 (arguing Perret did not link the military strategy with national strategy and that "Lincoln had an intuitive grasp of the integral relationship between these two forms of strategy.").

³⁸ See DICKSON, *supra* note 34, at 265.

Lincoln's War focuses on the military effects of Lincoln as Commander in Chief in determining overall strategy, raising armies, raising funds, and determining command. Perret largely exaggerates these effects and ignores their political considerations.

A. Determining Overall Strategy

As Perret describes, at the war's outset, General in Chief Winfield Scott and General Irvin McDowell proposed conflicting strategies to win the war.³⁹ General Scott's strategy consisted of a western offensive operation along the Mississippi River to physically split the Confederacy, coupled with an eastern defensive action and a naval blockade.⁴⁰ This plan was strategically sound: the Union could both economically strangle the Confederacy in an "anaconda-like" grip and obtain a base for subsequent offensive operations.⁴¹ General McDowell's strategy consisted mainly of a thrust to Richmond, the Confederate capital. His strategy ignored the Confederacy's advantages in defending Richmond and did not include a strategic alternative in the event the Confederacy relocated its capital.⁴²

Lincoln chose General McDowell's seemingly more speedy and aggressive plan over General Scott's more passive "Anaconda Plan." Although Perret claims that Lincoln's "Forward to Richmond!"⁴³ strategy finally succeeded,⁴⁴ he does nothing to convince the reader that this was a militarily sound plan that a Commander in Chief should have chosen. Rather, the benefits of this plan were political. The press and the public derided General Scott's "Anaconda Plan"⁴⁵ and were enthusiastic about General McDowell's plan,⁴⁶ possibly due to the romanticized view of war's nature, which was colored by images of Tennyson and Napoleon's Grand Armée⁴⁷. While Lincoln's decision lay strictly within his role as Commander in Chief—overriding subordinates—his decision more clearly illustrated his role as a politician whose ear is attuned to public opinion.

B. Choice of Generals

Perret stresses Lincoln's role as Commander in Chief in dismissing and appointing generals throughout the war. In many cases, Lincoln's command choices were influenced by public opinion or contained political considerations, such as the dismissal of General McDowell,⁴⁸ the removal of General Samuel Curtis,⁴⁹ and the appointments of General Franz Sigel, General Carl Schurz,⁵⁰ and General Benjamin Butler.⁵¹ The appointment of Ulysses S. Grant as the head of the Army of the Potomac only followed Lincoln's conviction that Grant would not challenge him as a presidential nominee.⁵²

C. Raising Armies

Clearly, the Union's overwhelming manpower advantage was crucial to its victory.⁵³ Perret stresses Lincoln's role as Commander in Chief in translating the numerical superiority of the Union's population into a numerical superiority in the

³⁹ See PERRET, *supra* note 1, at 55-60.

⁴⁰ See DICKSON, *supra* note 34, at 71.

⁴¹ See *id.*; see also PERRET, *supra* note 1, at 57-60.

⁴² See PERRET, *supra* note 1, at 59.

⁴³ *Id.* at 60.

⁴⁴ *Id.* at 410.

⁴⁵ See *id.* at 57-60 (containing the mocking newspaper cartoon of the "anaconda plan").

⁴⁶ *Id.* at 57-60.

⁴⁷ BRUCE CATTON, *THE CIVIL WAR* 33 (2001).

⁴⁸ PERRET, *supra* note 1, at 71 (explaining that McDowell was dismissed due to political considerations).

⁴⁹ *Id.* at 266 (explaining Curtis was dismissed because he did not get along with a governor).

⁵⁰ *Id.* at 266-67 (explaining the effect on the German immigrant population of appointing German-born (inept) commanders Sigler and Schurz).

⁵¹ *Id.* at 386 (describing the political implications of appointing Butler, a Democrat).

⁵² *Id.* at 390-91.

⁵³ See DICKSON, *supra* note 34, at 328.

Union's armies: raising militia and regular army Soldiers, declaring a draft, and using the Emancipation Proclamation to enlist and arm African-Americans.⁵⁴

In reality, the Union's manpower superiority does not seem to follow quite as dramatically from Lincoln's actions as Perret argues. On many occasions, Congress called for more men than Lincoln requested.⁵⁵ As noted earlier in this review, Lincoln argued that in enlarging the regular army he had merely acted on behalf of public opinion and Congress. Also, the overwhelming majority of Union Soldiers were volunteers and not draftees.⁵⁶ Finally, the aura of racism dictated the assignment of African-American regiments largely to quiet areas.⁵⁷

D. Raising Funds

Perret stresses Lincoln's role in the issuing of greenbacks: "No major war is won without money. Lincoln created his own."⁵⁸ This is another example of Perret overrating Lincoln's actions—issuing greenbacks was the action of Congress. Also, Perret does not mention actual sums. Greenbacks accounted for only four hundred fifty million dollars, whereas loans, bonds, and taxation accounted for over two billion dollars, the majority of the sum raised to finance the war.⁵⁹

IV. General Criticism

Lincoln's War is also flawed in problematic referencing, omission of relevant background, and insufficient analysis of critical battles.

A. Problematic Referencing

Perret supports nearly all of *Lincoln's War's* facts through references. Unfortunately, in many cases when referring to legal issues, he does not refer to primary legal sources,⁶⁰ which is possibly the root of some of the problems noted in Section II of this review. Also, previous critics have argued that Perret refers to questionable secondary sources.⁶¹

B. Omission of Background

As outlined in this review, many of Lincoln's decisions were political in nature. Clearly, to understand these decisions, the reader must first understand the political context in which the decisions were made. Perret merely mentions that Lincoln headed the newly-formed Republican Party.⁶² Perret neither explains the party's origins,⁶³ nor mentions Lincoln's Whig roots and their significance to his views on legal issues.⁶⁴

C. Insufficient Analysis of Critical Battles

Lincoln's War omits significant Civil War battle details, fails to clearly group battles into campaigns, and hampers the visualization of each battle by including only a single map to accompany a variety of tactical and strategic battles. It is difficult to understand any aspect of the war, Lincoln's role included, without understanding its campaigns and battles. For the sake of brevity, only some striking examples are listed below.

⁵⁴ See PERRET, *supra* note 1, at 31-33, 41-47.

⁵⁵ See *id.*

⁵⁶ See DICKSON, *supra* note 34, at 317.

⁵⁷ See *id.* at 328.

⁵⁸ See PERRET, *supra* note 1, at 202.

⁵⁹ See DICKSON, *supra* note 35, at 312-13.

⁶⁰ See, e.g., *id.* at 301 (Chief Justice Taney's decision), 380-82 (the Prize Cases); 303-05 (the "Valladingham case").

⁶¹ See McPherson, *supra* note 13, at 36-39.

⁶² See PERRET, *supra* note 1, at 15.

⁶³ See DICKSON, *supra* note 34, at 22-23.

⁶⁴ See FARBER, *supra* note 20, at 119 (explaining that the Whig party was formed largely in opposition to President Jackson's aggressive use of presidential power, which they viewed as a threat to democracy).

Perret omits the masterful stealth maneuvers of General Stonewall Jackson's Valley Campaign and does not even mention General William T. Sherman's March to the Sea.⁶⁵ It is difficult to understand Lincoln's frustration with his generals' ineptitude, such as General Ambrose E. Burnside at Fredericksburg,⁶⁶ without comparing these generals to their more gifted contemporaries, such as General Jackson. It is also difficult to understand the Confederacy morale without knowledge of General Sherman's scorched-earth policy, which caused large-scale civilian devastation unseen since the seventeenth century.⁶⁷

In a larger sense, it is difficult to understand from *Lincoln's War* the reasons for the Union's victory. Diversion, stealth, reconnaissance, and morale are generally considered important military tactics.⁶⁸ Nearly eight decades after the Civil War, however, Japanese General Isoroku Yamamoto predicted the inevitability of Japanese defeat in World War II due to overwhelming U.S. industrial superiority.⁶⁹ Possibly, Perret's opinion is that the Civil War's outcome was inevitable for the same reason. *Lincoln's War*, however, does not provide insight into his opinion.

V. Conclusions

Lincoln's War exaggerates Lincoln's admittedly important role as Commander in Chief and downplays his role as a politician. The book's structure and style obscure the key points Perret attempts to make. A military lawyer looking for the legal lessons of Lincoln's Civil War actions⁷⁰ has better alternatives than *Lincoln's War*. Following a dramatic introduction, the book is essentially a lengthy and detailed transcript of Lincoln's Civil War activities, written without sufficient structure, clear statements of main points, or a cogent summary.

⁶⁵ See DICKSON, *supra* note 34, at 123-32, 265-68.

⁶⁶ See PERRET, *supra* note 1, at 235.

⁶⁷ See PAUL K. DAVIS, 100 DECISIVE BATTLES: FROM ANCIENT TIMES TO THE PRESENT 133 (2001).

⁶⁸ See SUN-TZU, THE ART OF WAR, 192, 202, 231, 173 (Sawyer trans., 2002).

⁶⁹ See COSTELLO, *supra* note 5, at 81.

⁷⁰ Farber's *Lincoln's Constitution* provides a thorough and interesting review of the constitutional aspects of Lincoln's actions and discusses related modern constitutional issues. See FARBER, *supra* note 20.

Announcements

The Office of The Judge Advocate General is seeking a U.S. Army Reserve (USAR) Judge Advocate in the rank of captain or major to attend the Graduate Course at TJAGLCS in-residence in 2006.

The Graduate Course is the School's "flagship" course. Accredited by the American Bar Association, the Graduate Course prepares experienced attorneys for supervisory duties and other positions of increased responsibility within their respective services. Students who successfully complete the course are awarded a Master of Laws degree in Military Law. Selection for attendance at the Graduate Course is competitive and successful applicants for this position will normally have served as a judge advocate for a minimum of five years.

The Graduate Course covers a full resident academic year, from 14 August 2006 to 24 May 2007. Each class consists of students selected from the Army, Navy, Air Force, and Marine Corps, as well as international military students and Department of the Army civilian attorneys. All students are attorneys who generally have five to eight years of experience. The Graduate Course consists of four academic quarters of instruction. Electives are offered in the second, third, and fourth quarters. Students may select from approximately fifty electives offered by the School's five academic departments. Students may specialize in Contract and Fiscal Law, International and Operational Law, Criminal Law, or Administrative and Civil Law. To qualify for a specialty, a student must either write a thesis in the area of specialization or earn at least ten elective credit hours and write an extensive paper in the area of specialization.

SUSPENSE for applications is 15 FEBRUARY 2006.

Applicants' packets must include:

- Military Biography
- ORB or DA Form 2-1
- Copy of applicant's current DA Form 705 (APFT Scorecard), applicant's height and weight at the time of APFT must be entered in the appropriate blocks. Include copy of DA Form 5500-R (Male) or 5501-R (Female) (Body Fat Composition Worksheet) if applicant's recorded height and weight statistics exceed AR 600-9 screening table standards. Include copy of DA Form 3349 (Physical Profile) if applicant had a permanent or temporary profile at the most recent APFT.
- DA Form 7349 (Initial Medical Review)
- One recommendation from next higher JA supervisor and two additional recommendations
- Memorandum explaining reasons for applying to attend in residence

Applicants should ensure that their official photo is viewable in their official on-line records and that all OERs have been profiled and inserted into their PERMS.

Send completed packets to:

The Judge Advocate General
ATTN: DAJA-PT, MAJ Howie Reitz
1777 North Kent Street, 10th Floor
Rosslyn, VA 22209-2194

National Guard officers interested in applying should refer to the National Guard announcement in the National Guard Forum. POC is MAJ Chris Rofrano at chris.rofrano@ngb.ang.af.mil.

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, U.S. Army (TJAGSA), 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 service members and civilian employees must obtain reservations through their directorates training office. Reservists or ARNG must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPERCOM), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department at 1 (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 Globe Icon (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. TJAGSA CLE Course Schedule (June 2005 - September 2007) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

ATRRS No.	Course Title	Dates
GENERAL		
5-27-C22	54th Graduate Course	15 Aug 05 – thru 25 May 06
5-27-C22	55th Graduate Course	14 Aug 06 – thru 24 May 07
5-27-C22	56th Graduate Course	13 Aug 07 – thru 23 May 08
5-27-C20	168th Basic Course	13 Sep – 7 Oct 05 (Phase I – Ft. Lee) 7 Oct – 15 Dec 05 (Phase II – TJAGSA)
5-27-C20	169th Basic Course	3 Jan – 27 Jan 06 (Phase I – Ft. Lee) 27 Jan – 7 Apr 06 (Phase II – TJAGSA)
5-27-C20	170th Basic Course	30 May – 23 Jun 06 (Phase I – Ft. Lee) 23 Jun – 31 Aug 06 (Phase II – TJAGSA)
5-27-C20	171st Basic Course	12 Sep – 6 Oct 06 (Phase I – Ft. Lee) 6 Oct – 14 Dec 06 (Phase II – TJAGSA)
5-27-C20	172d Basic Course	2 Jan – 2 Feb 07 (Phase I – Ft. Lee) 2 Feb – 6 Apr 07 (Phase II – TJAGSA)
5-27-C20	173d Basic Course	29 May – 22 Jun 07 (Phase I – Ft. Lee) 22 Jun – 30 Aug 07 (Phase II – TJAGSA)
5-27-C20	174th Basic Course	11 Sep – 5 Oct 07 (Phase I – Ft. Lee) 5 Oct – 14 Dec 07 (Phase II – TJAGSA)

5F-F70	37th Methods of Instruction Course	30 May – 2 Jun 06
5F-F70	38th Methods of Instruction Course	29 May – 1 Jun 07
5F-F1	189th Senior Officers Legal Orientation Course	14 – 18 Nov 05
5F-F1	190th Senior Officers Legal Orientation Course	30 Jan – 3 Feb 06
5F-F1	191st Senior Officers Legal Orientation Course	27 – 31 Mar 06
5F-F1	192d Senior Officers Legal Orientation Course	12 – 16 Jun 06
5F-F1	193d Senior Officers Legal Orientation Course	11 – 15 Sep 06
5F-F1	194th Senior Officers Legal Orientation Course	13 – 17 Nov 06
5F-F1	195th Senior Officers Legal Orientation Course	5 – 9 Feb 07
5F-F1	196th Senior Officers Legal Orientation Course	26 – 30 Mar 07
5F-F1	197th Senior Officers Legal Orientation Course	11 – 15 Jun 07
5F-F1	198th Senior Officers Legal Orientation Course	10 – 14 Sep 07
5F-F3	12th RC General Officers Legal Orientation Course	25 – 27 Jan 06
5F-F3	13th RC General Officers Legal Orientation Course	24 – 26 Jan 07
5F-F52	36th Staff Judge Advocate Course	5 – 9 Jun 06
5F-F52	37th Staff Judge Advocate Course	4 – 8 Jun 07
5F-F52-S	9th Staff Judge Advocate Team Leadership Course	5 – 7 Jun 06
5F-F52-S	10th Staff Judge Advocate Team Leadership Course	4 – 6 Jun 07
5F-F55	2006 JAOAC (Phase II)	8 – 20 Jan 06
5F-F55	2007 JAOAC (Phase II)	7 – 19 Jan 07
5F-JAG	2005 JAG Annual CLE Workshop	3 – 7 Oct 05
5F-JAG	2006 JAG Annual CLE Workshop	10 – 13 Oct 06
JARC-181	2006 JA Professional Recruiting Seminar	11 – 14 Jul 06
JARC-181	2007 JA Professional Recruiting Seminar	17 – 20 Jul 07
ADMINISTRATIVE AND CIVIL LAW		
5F-F21	4th Advanced Law of Federal Employment Course	19 – 21 Oct 05
5F-F21	5th Advanced Law of Federal Employment Course	25 – 27 Oct 06
5F-F22	59th Law of Federal Employment Course	17 – 21 Oct 05
5F-F22	60th Law of Federal Employment Course	23 – 27 Oct 06
5F-F23	57th Legal Assistance Course	31 Oct – 4 Nov 05
5F-F23	58th Legal Assistance Course	15 – 19 May 06
5F-F23	59th Legal Assistance Course	30 Oct – 3 Nov 06
5F-F23	60th Legal Assistance Course	14 – 18 May 07
5F-F24	30th Admin Law for Military Installations Course	13 – 17 Mar 06
5F-F24	31st Admin Law for Military Installations Course	26 Feb – 2 Mar 07
5F-F28	Tax Year 2005 Basic Income Tax CLE	12 – 16 Dec 05
5F-F28	Tax Year 2006 Basic Income Tax CLE	11 – 15 Dec 06
5F-F280	1st Advanced Income Tax CLE	14 – 16 Dec 05
5F-F29	24th Federal Litigation Course	31 Jul – 4 Aug 06
5F-F29	25th Federal Litigation Course	30 Jul – 3 Aug 07

5F-F202	4th Ethics Counselors Course	17 – 21 Apr 06
5F-F202	5th Ethics Counselors Course	16 – 20 Apr 07
5F-F23E	2005 USAREUR Legal Assistance CLE	17 – 21 Oct 05
5F-F23E	2006 USAREUR Legal Assistance CLE	23 – 27 Oct 06
5F-F24E	2006 USAREUR Administrative Law CLE	11 – 14 Sep 06
5F-F24E	2007 USAREUR Administrative Law CLE	10 – 13 Sep 07
5F-F26E	2005 USAREUR Claims Course	28 Nov – 2 Dec 05
5F-F26E	2006 USAREUR Claims Course	27 Nov – 1 Dec 06
5F-F28E	Tax Year 2005 USAREUR Basic Income Tax CLE	5 – 9 Dec 05
5F-F28E	Tax Year 2006 USAREUR Basic Income Tax CLE	4 – 8 Dec 06
5F-F28H	Tax Year 2005 Hawaii Basic Income Tax CLE	9 – 13 Jan 06
5F-F28OE	1st USAREUR Advanced Income Tax CLE	7 – 9 Dec 05
5F-F28P	Tax Year 2005 PACOM Basic Income Tax CLE	3 – 6 Jan 06
5F-F28P	Tax Year 2006 PACOM Basic Income Tax CLE	8 – 12 Jan 07
CONTRACT AND FISCAL LAW		
5F-F10	156th Contract Attorneys Course	17 – 28 Jul 06
5F-F10	157th Contract Attorneys Course	23 Jul – 3 Aug 07
5F-F11	2005 Government Contract Law Symposium	6 – 9 Dec 05
5F-F11	2006 Government Contract Law Symposium	5 – 8 Dec 06
5F-F12	73d Fiscal Law Course	24 – 28 Oct 05
5F-F12	74th Fiscal Law Course	1 – 5 May 06
5F-F12	75th Fiscal Law Course	30 Oct – 3 Nov 06
5F-F12	76th Fiscal Law Course	30 Apr – 4 May 07
5F-F13	2d Operational Contracting Course	10 – 14 Apr 06
5F-F13	3d Operational Contracting Course	12 – 16 Mar 07
5F-F14	18th Comptrollers Accreditation Course (Ft. Bragg)	21 – 24 Feb 06
5F-F101	7th Procurement Fraud Course	31 May – 2 Jun 06
5F-F102	6th Contract Litigation Course	16 – 20 Apr 07
5F-F103	7th Advanced Contract Law	12 – 14 Apr 06
5F-F15E	2006 USAREUR Contract & Fiscal Law CLE	28 – 31 Mar 06
5F-F15E	2007 USAREUR Contract & Fiscal Law CLE	27 – 30 Mar 07
N/A	2006 Maxwell AFB Fiscal Law Course	6 – 9 Feb 06
N/A	2007 Maxwell AFB Fiscal Law Course	5 – 8 Feb 07

CRIMINAL LAW		
5F-F31	12th Military Justice Managers Course	21 – 25 Aug 06
5F-F31	13th Military Justice Managers Course	20 – 24 Aug 07

5F-F33	49th Military Judge Course	24 Apr – 12 May 06
5F-F33	50th Military Judge Course	23 Apr – 11 May 07
5F-F34	25th Criminal Law Advocacy Course	13 – 24 Mar 06
5F-F34	26th Criminal Law Advocacy Course	11 – 22 Sep 06
5F-F34	27th Criminal Law Advocacy Course	12 – 23 Mar 07
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07
5F-F35	29th Criminal Law New Developments Course	29 Nov – 2 Dec 05
5F-F35	30th Criminal Law New Developments Course	14 – 17 Nov 06
5F-301	9th Advanced Advocacy Training	16 – 19 May 06
5F-301	10th Advanced Advocacy Training	15 – 18 May 07
INTERNATIONAL AND OPERATIONAL LAW		
5F-F42	85th Law of War Course	30 Jan – 3 Feb 06
5F-F42	86th Law of War Course	10 Jul – 14 Jul 06
5F-F42	87th Law of War Course	29 Jan – 2 Feb 07
5F-F42	88th Law of War Course	16 – 20 Jul 07
5F-F44	1st Legal Aspects of Information Operations Course	26 – 30 Jun 06
5F-F44	2d Legal Aspects of Information Operations Course	25 – 29 Jun 07
5F-F45	5th Domestic Operational Law Course	24 – 28 Oct 05
5F-F45	6th Domestic Operational Law Course	30 Oct – 3 Nov 06
5F-F47	45th Operational Law Course	27 Feb – 10 Mar 06
5F-F47	46th Operational Law Course	31 Jul – 11 Aug 06
5F-F47	47th Operational Law Course	26 Feb – 9 Mar 07
5F-F47	48th Operational Law Course	30 Jul – 10 Aug 07
LEGAL ADMINISTRATORS COURSES		
7A-270A1	17th Legal Administrators Course	19 – 23 Jun 06
7A-270A1	18th Legal Administrators Course	18 – 22 Jun 07
7A-270A2	7th JA Warrant Officer Advanced Course	10 Jul – 4 Aug 06
7A-270A2	8th JA Warrant Officer Advanced Course	9 Jul – 3 Aug 07
7A-270A0	13th JA Warrant Officer Basic Course	30 May – 23 Jun 06
7A-270A0	14th JA Warrant Officer Basic Course	29 May – 22 Jun 07
PARALEGAL AND COURT REPORTING COURSES		
512-27DC4	10th Speech Recognition Training	17 – 28 Oct 05
512-27DC4	11th Speech Recognition Training	23 Oct – 3 Nov 06
512-27DC5	19th Court Reporter Course	30 Jan – 31 Mar 06
512-27DC5	20th Court Reporter Course	24 Apr – 23 Jun 06
512-27DC5	21st Court Reporter Course	31 Jul – 29 Sep 06
512-27DC5	22d Court Reporter Course	29 Jan – 30 Mar 07
512-27DC5	23d Court Reporter Course	23 Apr – 22 Jun 07
512-27DC5	24th Court Reporter Course	30 Jul – 28 Sep 07
512-27DC6	6th Court Reporting Symposium	31 Oct – 4 Nov 05
512-27DC6	7th Court Reporting Symposium	30 Oct – 3 Nov 06

512-27D/20/30	17th Law for Paralegal NCOs Course	27 – 31 Mar 06
512-27D/20/30	18th Law for Paralegal NCOs Course	26 Mar – 6 Apr 07
512-27DCSP	2d Combined Sr. Paralegal NCO Course	12 – 16 Jun 06
512-27DCSP	3d Combined Sr. Paralegal NCO Course	11 – 15 Jun 07

3. Navy Justice Schooland FY 2006 Course Schedule

Please contact Monique, E. L. Cover, Other Services Quota Manager/Analyst, SRA International, Inc., Naval Personnel Development Command, Code N72, NOB, 9549 Bainbridge Ave., N-19, Room 121, at (757) 444-2996, extension 3610 or DSN 564-2996, extension 3610, for information about the courses.

Naval Justice School Newport, RI		
CDP	Course Title	Dates
0257	Lawyer Course (010)	17 Oct – 16 Dec 05
0257	Lawyer Course (020)	17 Jan – 17 Mar 06
0257	Lawyer Course (030)	5 Jun – 4 Aug 06
0257	Lawyer Course (040)	7 Aug – 6 Oct 06
NA	Brigade Oriented Legal Team (010)	11 – 14 Oct 05 (NJS)
NA	Brigade Oriented Legal Team (020)	9 – 13 Jan 06 (NJS)
NA	Brigade Oriented Legal Team (010)	20 – 24 Mar 06 (USMC)
NA	Brigade Oriented Legal Team (030)	7 – 11 Aug 06 (NJS)
961F	Coast Guard Judge Advocate Course (010)	11 – 14 Oct 05
0259	Legal Officer Course (010)	6 -24 Feb 06
0259	Legal Officer Course (202)	12 – 30 Jun 06
900B	Reserve Lawyer Course (010)	1 – 5 May 06
900B	Reserve Lawyer Course (020)	11 – 15 Sep 06
914L	Law of Naval Operations (010)	8 – 12 May 06
914L	Law of Naval Operations (020)	18 – 22 Sep 06
850T	SJA/E-Law Course (010)	30 May – 9 Jun 06
850T	SJA/E-Law Course (020)	24 Jul – 4 Aug 06
786R	Advanced SJA/Ethics (010)	27 – 31 Mar 06 (San Diego)
786R	Advanced SJA/Ethics (020)	24 – 28 Apr 06 (Norfolk)
850V	Law of Military Operations (010)	12 – 23 Jun 06
961D	Military Law Update Workshop (Officer) (010)	20 – 21 May 06 (East)
961D	Military Law Update Workshop (Officer) (020)	17 – 18 Jun 06 (West)
961M	Effective Courtroom Communications	5 – 9 Dec 05 (Norfolk)
961M	Effective Courtroom Communications	27 – 31 Mar 06 (San Diego)
961J	Defending Complex Cases (010)	17 – 21 Jul 06
525N	Prosecuting Complex Cases (010)	10 – 14 Jul 06
4048	Estate Planning (010)	14 – 18 Aug 06

7487	Family Law/Consumer Law (010)	22 – 26 May 06
7485	Litigation National Security (010)	6 – 8 Mar 06 (Washington, DC)
748K	National Institute of Trial Advocacy (010)	24 – 28 Oct 06 (Camp Lejeune)
748K	National Institute of Trial Advocacy (020)	30 Jan – 3 Feb 06 (San Diego)
748K	National Institute of Trial Advocacy (030)	22 – 26 May 06 (Hawaii)
748B	Naval Legal Service Command Senior Officer Leadership (010)	21 – 25 Aug 06
2205	Defense Trial Enhancement (010)	9 – 13 Jan 06
3938	Computer Crimes (010)	3 – 7 Apr 06
0258	Senior Officer (NewPort) (010)	31 Oct – 4 Nov 05
0258	Senior Officer (NewPort) (020)	23 – 27 Jan 06
0258	Senior Officer (NewPort) (030)	13 – 17 Mar 06
0258	Senior Officer (NewPort) (040)	8 – 12 May 06
0258	Senior Officer (NewPort) (050)	10 – 14 Jun 06
0258	Senior Officer (NewPort) (060)	14 – 18 Aug 06
0258	Senior Officer (NewPort) (070)	25 – 29 Sep 06
2622	Senior Officer (Fleet) (010)	11 – 14 Oct 05 (Pensacola)
2622	Senior Officer (Fleet) (020)	24 – 28 Oct 05 (Pensacola)
2622	Senior Officer (Fleet) (030)	12 – 16 Dec 05 (Pensacola)
2622	Senior Officer (Fleet) (040)	13 – 17 Feb 06 (Pensacola)
2622	Senior Officer (Fleet) (050)	27 – 31 Mar 06 (Camp Lejeune)
2622	Senior Officer (Fleet) (060)	3 – 7 Apr 06 (Quantico)
2622	Senior Officer (Fleet) (070)	17 – 21 Apr 06 (Pensacola)
2622	Senior Officer (Fleet) (080)	8 – 12 May 06 (Pensacola)
2622	Senior Officer (Fleet) (090)	10 – 14 Jul 06 (Pensacola)
2622	Senior Officer (Fleet) (100)	28 Aug – 1 Sep 06 (Pensacola)
7878	Legal Assistance Paralegal Course (010)	22 – 26 May 06
3090	Legalman Course (010)	17 Jan – 17 Mar 06
932V	Coast Guard Legal Technician Course (010)	11 – 22 Sep 06
846L	Senior Legalman Leadership Course (010)	24 – 28 Jul 06
049N	Reserve Legalman Course (Phase I) (010)	10 – 21 Apr 06
056L	Reserve Legalman Course (Phase II) (010)	24 Apr – 5 May 06
846M	Reserve Legalman Course (Phase III) (010)	8 – 19 May 06
5764	LN/Legal Specialist Mid-Career Course (010)	17 – 28 Oct 05
5764	LN/Legal Specialist Mid-Career Course (020)	24 Apr – 5 May 06
961G	Military Law Update Workshop (Enlisted) (010)	TBD
961G	Military Law Update Workshop (Enlisted) (020)	TBD
4040	Paralegal Research & Writing (010)	20 – 31 Mar 06 (Newport)
4040	Paralegal Research & Writing (020)	24 Apr – 5 May 06 (Norfolk)
4040	Paralegal Research & Writing (030)	17 – 28 Jul 06 (San Diego)
4046	SJA Legalman (020)	30 May – 9 Jun 06 (Newport)

627S	Senior Enlisted Leadership Course (010)	1 – 3 Nov 05 (Yokosuka)
627S	Senior Enlisted Leadership Course (020)	8 – 10 Nov 05 (Okinawa)
627S	Senior Enlisted Leadership Course (030)	15 – 17 Nov 05 (San Diego)
627S	Senior Enlisted Leadership Course (040)	30 Nov – 2 Dec 05 (Norfolk)
627S	Senior Enlisted Leadership Course (050)	10 – 12 Jan 06 (Pendleton)
627S	Senior Enlisted Leadership Course (060)	11 – 13 Jan 06 (Jacksonville)
627S	Senior Enlisted Leadership Course (070)	21 – 23 Feb 06 (San Diego)
627S	Senior Enlisted Leadership Course (080)	22 – 24 Feb 06 (Norfolk)
627S	Senior Enlisted Leadership Course (090)	21 – 23 Mar 06 (Hawaii)
627S	Senior Enlisted Leadership Course (100)	4 – 6 Apr 06 (Bremerton)
627S	Senior Enlisted Leadership Course (110)	12 – 14 Apr 06 (Naples)
627S	Senior Enlisted Leadership Course (120)	2 – 4 May 06 (San Diego)
627S	Senior Enlisted Leadership Course (130)	22 – 24 May 06 (Norfolk)
627S	Senior Enlisted Leadership Course (140)	19 -21 Jul 06 (Millington)
627S	Senior Enlisted Leadership Course (150)	1 – 3 Aug 06 (San Diego)
627S	Senior Enlisted Leadership Course (160)	16 – 18 Aug 06 (Norfolk)
627S	Senior Enlisted Leadership Course (170)	12 – 14 Sep 06 (Pendleton)
Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (010)	17 Oct – 4 Nov 05
0376	Legal Officer Course (020)	30 Jan – 17 Feb 06
0376	Legal Officer Course (030)	6 – 24 Mar 06
0376	Legal Officer Course (040)	24 Apr – 12 May 06
0376	Legal Officer Course (050)	5 – 23 Jun 06
0376	Legal Officer Course (060)	24 Jul – 11 Aug 06
0376	Legal Officer Course (070)	11 – 29 Sep 06
0379	Legal Clerk Course (010)	17 – 28 Oct 05
0379	Legal Clerk Course (020)	5 – 16 Dec 05
0379	Legal Clerk Course (030)	23 Jan – 3 Feb 06
0379	Legal Clerk Course (040)	6 -17 Mar 06
0379	Legal Clerk Course (050)	3 – 14 Apr 06
0379	Legal Clerk Course (060)	5 – 16 Jun 06
0379	Legal Clerk Course (070)	31 Jul – 11 Aug 06
0379	Legal Clerk Course (080)	11 – 22 Sep 06
3760	Senior Officer Course (010)	14 – 18 Nov 05
3760	Senior Officer Course (020)	12 – 16 Dec 05
3760	Senior Officer Course (030)	9 – 13 Jan 06 (Jacksonville)
3760	Senior Officer Course (040)	27 Feb – 3 Mar 06
3760	Senior Officer Course (050)	15 -19 May 06
3760	Senior Officer Course (060)	26 – 30 Jun 06
3760	Senior Officer Course (070)	17 – 21 Jul 06 (Millington)
3760	Senior Officer Course (080)	28 Aug – 1 Sep 06
4046	Military Justice Course for SKA/Convening Authority/Shipboard Legalman (030)	10 – 21 Jul 06
Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (010)	3 – 21 Oct 05
947H	Legal Officer Course (020)	28 Nov – 16 Dec 05
947H	Legal Officer Course (030)	17 Jan – 3 Feb 06
947H	Legal Officer Course (040)	27 Feb – 17 Mar 06

947H	Legal Officer Course (050)	8 – 26 May 06
947H	Legal Officer Course (060)	12 – 30 Jun 06
947H	Legal Officer Course (070)	14 Aug – 1 Sep 06
947J	Legal Clerk Course (010)	3 – 14 Oct 05
947J	Legal Clerk Course (020)	28 Nov – 9 Dec 05
947J	Legal Clerk Course (030)	6 – 17 Feb 06
947J	Legal Clerk Course (040)	27 Feb – 10 Mar 06
947J	Legal Clerk Course (050)	17 – 28 Apr 06
947J	Legal Clerk Course (060)	8 – 19 May 06
947J	Legal Clerk Course (070)	12 – 23 Jun 06
947J	Legal Clerk Course (080)	14 – 25 Aug 06
3759	Senior Officer Course (010)	31 Oct – 4 Nov 05 (Yokosuka)
3759	Senior Officer Course (020)	7 – 10 Nov 05 (Okinawa)
3759	Senior Officer Course (030)	9 – 13 Jan 06 (Pendleton)
3759	Senior Officer Course (040)	13 – 17 Feb 06 (San Diego)
3759	Senior Officer Course (050)	3 – 7 Apr 06 (Bremerton)
3759	Senior Officer Course (060)	24 – 28 Apr 06 (San Diego)
3759	Senior Officer Course (070)	5 – 9 Jun 06 (San Diego)
3759	Senior Officer Course (080)	24 – 28 Jul 06 (San Diego)
3759	Senior Officer Course (090)	11 – 15 Sep 06 (Pendleton)
2205	CA Legal Assistance Course (010)	6 – 10 Feb 06 (San Diego)
4046	Military Justice Course for SJA/Convening Authority/Shipboard Legalmen (010)	17 – 27 Jan 06

4. Air Force Judge Advocate General School Fiscal Year 2006 Course Schedule

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) for information about attending the listed courses.

Air Force Judge Advocate General School Maxwell AFB, AL	
Course Title	Dates
Federal Employee Labor Law Course, Class 06-A	3 – 7 Oct 05
Paralegal Apprentice Course, Class 06-A	3 Oct – 16 Nov 05
Paralegal Craftsman Course, Class 06-A	11 Oct – 18 Nov
Judge Advocate Staff Officer Course, Class 06-A	11 Oct – 15 Dec 05
Advanced Environmental Law Course, Class 06-A (Off-Site Washington, DC)	24 – 25 Oct 05
Deployed Fiscal Law & Contingency Contracting Course, Class 06-A	28 Nov – 2 Dec 05
Senior Reserve Forces Paralegal Course, Class 06-A	5 – 9 Dec 05
Paralegal Apprentice Course, Class 06-B	9 Jan – 22 Feb 06

Trial & Defense Advocacy Course, Class 06-A	9 – 20 Jan 06
Total Air Force Operations Law Course, Class 06-A	20 – 22 Jan 06
Homeland Defense Workshop, Class 06-A	23 – 27 Jan 06
Environmental Law Course, Class 06-A	23 – 27 Jan 06
Claims & Tort Litigation Course, Class 06-A	30 Jan – 3 Feb 06
Reserve Forces Judge Advocate Course, Class 06-A	6 – 10 Feb 06
Legal Aspects of Sexual Assault Workshop, Class 06-A	8 – 10 Feb 06
Fiscal Law Course (DL) , Class 06-A	13 – 17 Feb 06
Judge Advocate Staff Officer Course, Class 06-A	13 Feb – 14 Apr 06
Paralegal Craftsman Course, Class 06-B	22 Feb – 31 Mar 06
Paralegal Apprentice Course, Class 06-C	3 Mar – 14 Apr 06
Accident Investigation Board Legal Advisors' Course, Class 06-A	19 – 21 Apr 06
Advanced Trial Advocacy Course, Class 06-A	24 – 28 Apr 06
Military Judges' Seminar, Class 06-A	25 – 28 Apr 06
Paralegal Apprentice Course, Class 06-D	24 Apr – 6 Jun 06
Military Justice Administration Course, Class 06-A	1 – 5 May 06
Reserve Forces Judge Advocate Course, Class 06-B	8 – 12 May 06
Advanced Labor & employment Law Course, Class 06-A	8 – 10 May 06
Operations Law Course, Class 06-A	15 – 25 May 06
Negotiation & Appropriate Dispute Resolution Course, Class 06-A	22 – 26 May 06
Air National Guard Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Air Force Reserve Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Staff Judge Advocate Course, Class 06-A	12 – 23 Jun 06
Law Office Management Course, Class 06-A	12 – 23 Jun 06
Paralegal Apprentice Course, Class 06-E	19 Jun – 1 Aug 06
Environmental Law Update Course, Class 06-A	28 – 30 Jun 06
Computer Legal Issues Course, Class 06-A	10 – 14 Jul 06
Reserve Forces Paralegal Course, Class 06-A	17 – 28 Jul 06

Judge Advocate Staff Officer Course, Class 06-C	17 Jul – 15 Sep 06
Paralegal Craftsman Course, Class 06-C	1 Aug – 26 Sep 06
Paralegal Apprentice Course, Class 06-F	14 Aug – 8 Sep 06
Trial & Defense Advocacy Course, Class 06-B	18 – 29 Sep 06

5. Civilian-Sponsored CLE Courses

For addresses and detailed information, see the September 2005 issue of *The Army Lawyer*.

6. Phase I (Correspondence Phase), RC-JAOAC Deadline

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is **NLT 2400, 1 November 2006**, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in the year 2007 (“2006 JAOAC”). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2007 JAOAC will be held in January 2007, and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or “re-do” any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2006). If the student receives notice of the need to re-do any examination or exercise after 1 October 2006, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2006 will not be cleared to attend the 2007 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any additional questions, contact Jeffrey Sexton, commercial telephone (434) 971-3357, or e-mail Jeffrey.Sexton@hqda.army.mil

7. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

<u>Jurisdiction</u>	<u>Reporting Month</u>
Alabama**	31 December annually
Arizona	15 September annually
Arkansas	30 June annually
California*	1 February annually
Colorado	Anytime within three-year period
Delaware	Period ends 31 December; confirmation required by 1 February if compliance required; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc.

Florida**	Assigned month every three years
Georgia	31 January annually
Idaho	31 December, every third year, depending on year of admission
Indiana	31 December annually
Iowa	1 March annually
Kansas	Thirty days after program, hours must be completed in compliance period 1 July to June 30
Kentucky	10 August; completion required by 30 June
Louisiana**	31 January annually; credits must be earned by 31 December
Maine**	31 July annually
Minnesota	30 August annually
Mississippi**	15 August annually; 1 August to 31 July reporting period
Missouri	31 July annually; reporting year from 1 July to 30 June
Montana	1 April annually
Nevada	1 March annually
New Hampshire**	1 August annually; 1 July to 30 June reporting year
New Mexico	30 April annually; 1 January to 31 December reporting year
New York*	Every two years within thirty days after the attorney's birthday
North Carolina**	28 February annually
North Dakota	31 July annually for year ending 30 June
Ohio*	31 January biennially
Oklahoma**	15 February annually
Oregon	Period end 31 December; due 31 January
Pennsylvania**	Group 1: 30 April Group 2: 31 August Group 3: 31 December

Rhode Island	30 June annually
South Carolina**	1 January annually
Tennessee*	1 March annually
Texas	Minimum credits must be completed and reported by last day of birth month each year
Utah	31 January annually
Vermont	2 July annually
Virginia	31 October completion deadline; 15 December reporting deadline
Washington	31 January triennially
West Virginia	31 July biennially; reporting period ends 30 June
Wisconsin*	1 February biennially; period ends 31 December
Wyoming	30 January annually

Current Materials of Interest

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2004-2005).

5-6 Nov 05	Topeka, KS Washburn School of Law	Civil Law, Legal Assistance, Operational Law, Criminal Law	MAJ Fran Brunner (785) 274-1027 Fran.brunner@ks.ngb.army.mil
19-20 Nov 05	New York, NY 77th RRC	ADA/ADI	MAJ John Dupon (718) 352-5654 john.dupon@us.army.mil
13-15 Jan 06	New Orleans, LA 2d LSO	ADI/ADC	MAJ Nick Lorusso (504) 282-6439 (504) 593-6529 nlorusso@cox.net
28-29 Jan 06	Seattle, WA 70th RRC	ADA/ADK	LTC Lloyd Oaks (253) 301-2392 lloyd.d.oaks@us.army.mil
11-12 Feb 06	Orlando, FL 174th LSO/12th LSO	ADA/ADC	MSG Timothy Stewart (305) 779-4022 tim.stewart@usar.army.mil
25-26 Feb 06	Draper, UT 115th En Grp UTARNG/ 87th LSO	ADA/ADC	CPT Daniel K. Dygert (115th En Grp) (435) 787-9700 (435) 787-2455 (fax) daniel.k.dygert@us.army.mil SFC Matthew Neumann (87th LSO) (801) 656-3600 (801) 656-3603 (fax) matthew.neumann@us.army.mil
4-5 Mar 06	Fort Belvoir, VA 10th LSO	ADC/ADA	CPT Eric Gallun (202) 514-7566 frederic.gallun@usdog.gov
11-12 Mar 06	San Francisco, CA 75th LSO	ADK/ADA	LTC Burke Large (213) 452-3954 burke.s.large@us.army.mil
18-19 Mar 06	Cincinnati, OH 9th LSO	ADA/ADK	MAJ Charles Ellis (973) 865-6800 charles.ellis@us.army.mil
18-19 Mar 06	Fort McCoy, WI WIARNG	ADI/ADK	CW3 Ty Letto (608) 261-2292 (608) 242-3082 (fax) tyrone.letto@doa.state.wi.us
22-23 Apr 06	Indianapolis, IN INARNG	ADI/ADK	COL George Thompson (DSN) 369-2491 george.thompson@in.ngb.army.mil
22-23 Apr 06	Boston, MA 94th RRC	ADI/ADK	MAJ Angela Horne (978) 784-3940 angela.horne@usar.army.mil
29-30 Apr 06	Oakbrook, IL 91st LSO	ADA/ADI	COL John Matthews (847) 402-2627 john.matthews@usar.army.mil
6-7 May 06	Mobile, AL 81st RRC	ADK/ADI	MAJ Timothy Harner (205) 795-1575 timothy.harner@usar.army.mil

			CW2 Jonee' Spence (205) 795-1980 jonee.spence@us.army.mil
19-21 May 06	Kansas City, MO 8th LSO/89th RRC	ADC/ADK	COL Meg McDevitt SFC Larry Barker (402) 554-4400, ext. 227 mmcdevitt@bqlaw.com larry.r.barker@us.army.mil

2. The Judge Advocate General's School, U.S. Army (TJAGSA) Materials Available through the Defense Technical Information Center (DTIC)

Each year, TJAGSA publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material through the installation library. Most libraries are DTIC users and would be happy to identify and order requested material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273, DSN 427-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography (CAB) Service. The CAB is a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at no cost or in hard copy at an annual cost of \$25 per profile. Contact DTIC at www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7, \$12, \$42, and \$122. The DTIC also supplies reports in

electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at <http://www.dtic.mil> to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last twenty-five years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-8267, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

- AD A301096 Government Contract Law Deskbook, vol. 1, JA-501-1-95.
- AD A301095 Government Contract Law Deskbook, vol. 2, JA-501-2-95.
- AD A265777 Fiscal Law Course Deskbook, JA-506-93.

Legal Assistance

- AD A384333 Soldiers' and Sailors' Civil Relief Act Guide, JA-260 (2000).
- AD A333321 Real Property Guide—Legal Assistance, JA-261 (1997).
- AD A326002 Wills Guide, JA-262 (1997).

AD A346757 Family Law Guide, JA 263 (1998).

AD A384376 Consumer Law Deskbook, JA 265 (2004).

AD A372624 Legal Assistance Worldwide Directory, JA-267 (1999).

AD A360700 Tax Information Series, JA 269 (2002).

AD A350513 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (1998).

AD A350514 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).

AD A329216 Legal Assistance Office Administration Guide, JA 271 (1997).

AD A276984 Legal Assistance Deployment Guide, JA-272 (1994).

AD A360704 Uniformed Services Former Spouses' Protection Act, JA 274 (2002).

AD A326316 Model Income Tax Assistance Guide, JA 275 (2001).

AD A282033 Preventive Law, JA-276 (1994).

Administrative and Civil Law

AD A351829 Defensive Federal Litigation, JA-200 (2000).

AD A327379 Military Personnel Law, JA 215 (1997).

AD A255346 Reports of Survey and Line of Duty Determinations, JA-231 (2004).

AD A347157 Environmental Law Deskbook, JA-234 (2002).

AD A377491 Government Information Practices, JA-235 (2000).

AD A377563 Federal Tort Claims Act, JA 241 (2000).

AD A332865 AR 15-6 Investigations, JA-281 (1997).

Labor Law

AD A360707 The Law of Federal Employment, JA-210 (2000).

AD A360707 The Law of Federal Labor-Management Relations, JA-211 (1999).

Criminal Law

AD A302672 Unauthorized Absences Programmed Text, JA-301 (2003).

AD A302674 Crimes and Defenses Deskbook, JA-337 (1994).

AD A274413 United States Attorney Prosecutions, JA-338 (1994).

International and Operational Law

AD A377522 Operational Law Handbook, JA-422 (2005).

* Indicates new publication or revised edition.

3. 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.

4. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information of TJAGSA Publications Available Through the LAAWS XXI JAGCNet, see the September 2005 issue of *The Army Lawyer*.

5. TJAGLCS Legal Technology Management Office (LTMO)

The TJAGLCS, U.S. Army, Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows XP Professional and Microsoft Office 2003 Professional.

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS 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 LTMO at (434) 971-3257. Phone numbers and e-mail addresses for TJAGLCS personnel are available on TJAGLCS 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 TJAGLCS classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGLCS. 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 TJAGLCS 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.

6. 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 Mrs. Dottie Evans, The Judge Advocate General's School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at Dottie.Evans@hqda.army.mil.