

Leadership Training in the Judge Advocate General's Corps

Major Pamela M. Stahl
1st Armored Division

The most essential dynamic of combat power is competent and confident . . . leadership. Leaders inspire soldiers with the will to win. They provide purpose, direction, and motivation Thus, no peacetime duty is more important for leaders than studying their profession, understanding the human dimension of leadership, becoming tactically and technically proficient The regular study and teaching of military doctrine, theory, history, and biographies of military leaders are invaluable.¹

Introduction

Effective leadership is a subject much in debate in the past year, with political events spurring a renewed interest in the role of leadership.² Army judge advocates (JAs) should take this opportunity to reflect upon their own leadership role and explore what the Army expects of them as officers and leaders. Although few JAs will “command” soldiers, as that term is defined by Army doctrine,³ they are Army officers who likely will supervise and lead junior officers, enlisted soldiers, and Department of the Army civilian employees. This article assists the JA in exploring Army leadership by first discussing the Army’s formal leader development system and providing suggestions on how JAs can use this system to develop their own leadership abilities and those of their subordinates. It then outlines the Army leadership model, describing the Army ethos and how it applies to JAs.

Leaders From the Beginning

The Army is an institution, not an occupation. Members take an oath of service to their nation and the Army, rather than simply accept a job . . . the Army has moral and ethical obligations to those who serve and their families; they, correspondingly, have responsibilities to the Army.⁴

When JAs begin their careers in the Judge Advocate General’s Corps (JAGC), they, like all army officers, swear “to support and defend the Constitution of the United States against all enemies, foreign and domestic” and to “well and faithfully discharge the duties of [a commissioned officer in the United States Army].”⁵ As lawyers, JAs understand the legal consequences of becoming a commissioned officer. For example, they cannot oppress or maltreat persons subject to their orders;⁶ act in a manner that is unbecoming their status as officers;⁷ or use contemptuous words towards certain officials.⁸ Of course, effective leadership goes well beyond simply following a criminal code. Judge advocates must also understand what it means to be an officer in the United States Army; what they represent and what they stand for.

At The Judge Advocate General’s School’s, U.S. Army (TJAGSA) Fourth Annual Hugh J. Clausen Leadership Lecture,⁹ General (retired) Frederick M. Franks, Jr. (former Commanding General, US Army Training and Doctrine Command and Commander, VII Corps during OPERATIONS DESERT SHIELD/STORM) stated that as an officer and lawyer in today’s Army:

In your future duties you will continue to encounter situations where there is no clear precedent to guide you, situations where you

1. U.S. DEP’T OF ARMY, FIELD MANUAL 100-5, OPERATIONS, 2-11 (14 June 1993).

2. See generally Jack Elliot, Jr., *Republican Presidential hopefuls speak out on Clinton allegations*, ASSOCIATED PRESS, (visited Jan. 6, 2000) <http://reagan.com/hottopics.main/hotmike/document-3.2_1988.3.html>.

3. See generally U.S. DEP’T OF ARMY, REG. 600-20, COMMAND POLICY, para. 1-5 (3 Mar. 1988).

4. See U.S. DEP’T OF ARMY, FIELD MANUAL 22-100, ARMY LEADERSHIP, para. 3-4 (June 1999) [hereinafter FM 22-100].

5. 5 U.S.C.A. § 3331 (West 1999).

6. See UCMJ art. 93 (West 1998).

7. See *id.* art. 133.

8. See *id.* art. 88.

9. General Frederick M. Franks, Jr., *The Fourth Annual Hugh J. Clausen Leadership Lecture: Soldiering Today and Tomorrow*, in U.S. DEP’T OF THE ARMY, PAM. 27-100-158, MILITARY LAW REVIEW, at 130 (Dec. 1998).

will call on your education and your considerable ability to think, situations where you have to use your own wits and your knowledge of the law to help your commanders sort their way through conditions or scenarios hard to predict much in advance. But you have something else. You know who you are and what you stand for. You are lawyers, but you are also American soldiers and stand for something.¹⁰

What is this “something” that JAs stand for? During Vietnam, then Major Franks was severely wounded in combat in Cambodia. During his two-year recovery at Valley Forge General Hospital in Pennsylvania, he concluded that many military leaders had abandoned their soldiers.¹¹ While in the hospital with other badly wounded soldiers, General Franks observed that there were no leaders who visited the soldiers to tell them that their country was grateful. Franks said that “[he] was a graduate of West Point and truly believed in duty, honor, and country [and] [s]o did these soldiers.” He wondered if they were all fools for believing in those things.¹²

Of course, General Franks’ subsequent Army career is a testament to the fact that it is not foolish to believe in one’s country. General Franks says that his experience created in him a resolve to do whatever he could to see that leaders never again fracture the trust of their soldiers.¹³ Judge advocates can learn from General Franks’ experiences, which resulted in a great leader who was effective because he had that certain “something”; he did what was right for his soldiers and for his country.

Judge advocates have a responsibility to take the initiative in developing themselves and their subordinates into good leaders. Judge advocates must all have that “something” that General Franks speaks of. The Army attempts to instill that “something” in Army leaders through the Army’s leader development system.

Training Leaders through the Army’s Leader Development System

The Army’s leader development system consists of institutional training and education, duty assignments, and self-development.¹⁴ Judge advocates have an excellent training and education program at TJAGSA. This is just one part, however, of the leader development system. The leadership skills of JAs are also developed and refined in the other two components of the system: duty assignments and self-development.

Duty Assignments

Duty assignments provide JA supervisors the opportunity to train subordinates in Army leadership, while at the same time refining their own leadership skills. Supervisors can accomplish this training through a formal leadership development program and informally through on-the-job training.

First, a formal leadership development program should begin by providing subordinates with the leader’s mission focus. These programs should be in writing and contain goals, objectives, and training programs that include study, practice and feedback. Ideally, the program should also have a mechanism for assessment, review and improvement.

Formal leadership instruction, in particular, is a vital component of any leadership development program. The supervisor’s direct involvement in leadership training is critical and the supervisor should act as the primary teacher, coach and counselor.¹⁵ Because of their depth and breadth of experience, along with the credibility that those experiences bring, senior JAs, preferably staff judge advocates or deputy staff judge advocates, must provide leadership instruction. Ideally, leadership instruction should be incorporated into an officer professional development (OPD) program. Leadership specific training should be provided at least once each quarter.

10. *Id.* at 133.

11. TOM CLANCY & GENERAL FREDERICK FRANKS, JR. (RET.), INTO THE STORM 78 (1997).

12. *Id.*

13. *Id.* at 79. Indeed, on 22 February 1991, just two days before OPERATION DESERT STORM began, General Franks visited a field hospital where soldiers from the 1st Cavalry Division who were wounded in combat two days prior were recovering from their injuries. See *id.* at 238.

14. U.S. DEP’T OF ARMY, PAM. 350-58, LEADER DEVELOPMENT FOR AMERICA’S ARMY 3-4 (13 Oct. 1994) [hereinafter DA PAM. 350-58].

15. *Id.* at 27.

Second, in addition to a formal leadership program, all JA supervisors can enhance subordinate leader development by: (1) assigning progressively more complex and demanding duties; (2) assessing performance against standards, and providing information on strengths, weaknesses, and developmental needs; (3) counseling and coaching; and (4) helping prepare and execute self-development plans, which are discussed below.¹⁶

Like all Army leaders, JAs have a fundamental responsibility to counsel their subordinates.¹⁷ Leaders may feel uncomfortable performing this counseling because they are unfamiliar with the counseling requirements. Consequently, all JAs could benefit from a good leadership counseling training program.¹⁸ Leaders should incorporate such a program into their OPD schedules.

Leadership development training may seem like an enormous task to those who are already stretched thin. The benefits, however, of instilling in JAs important leadership skills are immeasurable. Such skills will result in effective leaders who are better prepared to carry out the Army mission.

Self-Development

Judge advocates are also responsible for their own leadership development, regardless of their length of service. The most effective method to accomplish this goal is through a written self-development plan for leadership development that is structured to meet each JA's specific goals and needs. Plans may include self-study, reading programs, and civilian education.¹⁹

To be effective, supervisors must establish and maintain a climate and training environment that promotes self-development. For example, formal leadership instruction may include time for JAs to discuss literature that they have read on legal issues or Army history. Supervisors can also establish a reading list for their subordinates, and maintain an informal library containing recommended books.

Self-development plans should contain a list of ways to improve leader knowledge and skills. It is not important whether the JA accomplishes every action in the plan. What is important is that JAs consider the various ways in which they can improve their own leadership skills and strive to take action to improve those skills whenever possible.

Training Leaders Through Instruction in the Army Leadership Model

Good leadership training should stress the Army leadership model. As Army officers, JAs must understand and abide by this leadership framework, which articulates the Army ethos. According to this model, three words clearly and concisely state the characteristics of Army leaders: Be, Know, Do.²⁰

“Be” describes a person’s character; the values and attributes that are generally demonstrated through behavior.²¹ “Know” describes a person’s level of knowledge and competency.²² Of course, to be a good leader, character and knowledge are not enough. “Do” describes how JAs apply what they know, and act as leaders to influence their subordinates, accomplish the mission, and improve their organization.²³

What a Leader Must “Be”

When George Bush, a Navy combat flier in World War II, was running for President, he was asked what he thought about as he drifted in hostile seas after being shot down. He answered, “Oh, you know—the usual things, duty, honor, country.” As a political answer, it was a groaner. Nonetheless, it was probably very close to the essence of George Bush.²⁴

In his own matter-of-fact way, former President Bush was simply describing what the military had instilled in him as a young Navy flier over fifty years ago; that is, the values and attributes of a member of the United States military. These values and attributes make up a person’s character.

16. *Id.* at 6-7.

17. U.S. DEP’T OF ARMY, FIELD MANUAL 22-101, LEADERSHIP COUNSELING 7 (3 June 1985).

18. *See id.*

19. DA PAM. 350-58, *supra* note 14, at 7.

20. FM 22-100, *supra* note 4, para. 1-21.

21. *Id.* para. 1-22.

22. *Id.* para. 1-25.

23. *Id.* para. 1-6.

24. TOM BROKAW, THE GREATEST GENERATION 274-75 (1998).

Army Values. The seven Army values that guide all effective Army leaders are loyalty, duty, respect, selfless service, honor, integrity, and personal courage.²⁵ As leaders, JAs must understand these values, but more importantly, they must believe in them and teach their subordinates to accept them.

First, as Army officers, JAs have an obligation to be *loyal* to their country and their Army, including both superiors and subordinates.²⁶ Judge advocates must also perform their *duty* to the best of their ability and treat all people with *respect*.²⁷ This concept of respect for others is the basis for the Army's Consideration of Others program.²⁸

Selfless service. Judge advocates should not make decisions and take actions that will help their careers at the expense of others.²⁹ Judge advocates must also place the needs of the Army and the nation before their own interests. This does not mean, however, that JAs are expected to neglect their families and themselves to "get ahead."³⁰ General Franks eloquently explained this concept as follows:

In the military, it often happens that a professional soldier will deny his family, give up time with them—holidays, vacations, evenings, weekends—normally for the often-unexpected call of duty. The military is a demanding and sometimes cruel profession that exacts a toll on families, all in the name of duty and service. Too often, the present gets mortgaged for the future. You tell yourself, "Well, I'll have time for that later in life, after I retire. For the time being, I have to work hard, and maybe the family has to pay the price." Most of the time, duty leaves you little choice.

Now I came to realize that the present is the only time you have. . . . You are successful only by taking care of the present. . . . I began to realize I was not powerless in this tension between the demands of duty and family considerations. . . . And within my circle of responsibility I could help others cope better by establishing policies that help.³¹

The JA leader also serves with *honor* and *integrity*. Judge advocates must live by all Army values and do what is right, both legally and morally.³² Judge advocates must also have the personal *courage* to face adversity, both physical and moral.³³

Army Attributes. The other part of what a leader must "Be" includes certain attributes. Attributes are a person's fundamental qualities and characteristics; some they are born with and others are learned and can be changed. The Army expects its leaders to have certain mental, physical, and emotional attributes.³⁴

First, Army leaders must have the mental attributes of will, self-discipline, initiative, judgment, self-confidence, intelligence, and cultural awareness.³⁵ Second, Army leaders must have the physical attributes of health and physical fitness, and military and professional bearing.³⁶ These are the most visible competencies that JAs maintain. Judge advocates must lead by example. Therefore, the junior JA who may be exposed to the military for the first time must be taught how to wear the uniform and common Army courtesies. Subordinates must also learn the importance of maintaining physical fitness and meeting height and weight standards.³⁷

Finally, the Army teaches that leaders must have the emotional attributes of self-control, balance, and stability.³⁸ If a

25. FM 22-100, *supra* note 4, para. 2-6.

26. *Id.* para. 2-10.

27. *Id.* para. 2-14.

28. *Id.* para. 2-21.

29. *Id.*

30. *Id.* para. 2-22

31. CLANCY, *supra* note 11, at 80.

32. FM 22-100, *supra* note 4, paras. 2-26, 2-31.

33. *Id.* para. 2-34.

34. *Id.* paras. 2-40, 2-41.

35. *Id.* para. 2-42.

36. *Id.* para. 2-67.

37. *Id.* para. 2-73.

leader wants his subordinates to be calm and rational under pressure, the leader must also display those emotions.³⁹

What a Leader Must “Know”

The best JA leaders always strive to improve, to be better Army officers as well as better lawyers. Judge advocates must focus on learning more about their profession, thereby building competence in their subordinates and themselves. According to the Army leadership model, the JA must have interpersonal, conceptual, and technical skills.⁴⁰

The JA must continually work with clients, including commanders, individual soldiers and family members, with personal legal problems. Therefore, the JA must have the proper *interpersonal skills* to interact with clients who may be superiors, peers, subordinates, or their families. The JA must also learn how to interact with their own subordinates, to include coaching, teaching, counseling, and motivating.⁴¹ In addition, JAs must have proper *conceptual skills*; they must be competent at handling ideas. For most JAs, this is not difficult because of their law school training. This skill involves sound judgment, however, as well as the ability to think creatively and reason analytically, critically, and morally.⁴² Finally, JAs must have the *technical skills* expected of an Army lawyer; they must be competent in job-related tasks.

What a Leader Must “Do”

Finally, according to the Army leadership model, leaders must work to influence people, operate to accomplish the mission, and act to improve their organizations.⁴³

A leader development program is designed to teach appropriate skills, values, and attributes. Real leadership begins, however, only when the leader acts.

Leaders *influence people* toward a goal. Good leaders do this through communication, decision-making, and motivation.⁴⁴ In providing advice and counsel, JAs are also expected to use sound judgment and logical reasoning in their decision-making process.

Leadership action also includes *operating skills*. For the JA, this means getting the job done on time and to standard. It also includes taking care of their people and efficiently managing their resources.⁴⁵

In addition, leaders always strive to *improve* themselves and their organizations. To improve, JAs must set priorities and balance competing demands. Judge advocates also must invest adequate time and effort to develop subordinates as leaders.⁴⁶ This includes establishing a formal leader development program, performing counseling, and helping subordinates institute a self-development plan.

Conclusion

General Franks described one of his JAs as “a friend, legal counselor, combat veteran from Vietnam, and a soldier with a total appreciation of the problem. He was also an American with a sense of what was right.”⁴⁷ It is difficult to imagine any higher praise of a JA by his commanding officer. Certainly, this is the JA that all should strive to be and the JA that [WE] should train our subordinates to be. In doing so, it is vital that JAs completely appreciate the legal aspects of a given situation, and that they have that “sense of what is right.” Both can be taught through effective leadership training. Judge advocates are all responsible for leader training, both in duty assignments and through self-development. An integral part of leadership training is instruction on the Army leadership model and inculcation of the values and attributes that are vital to effective Army leadership.

38. *Id.* para. 2-74.

39. *Id.* para. 2-79.

40. *Id.* para. 2-107.

41. *Id.*

42. *Id.*

43. *Id.* para. 2-111.

44. *Id.* para. 2-113.

45. *Id.* paras. 2-114, 2-115.

46. *Id.* para. 2-117.

47. DA PAM. 27-100-158, *supra* note 9, at 132. General Franks states that in negotiating with Iraq in March 1991, one of the biggest problems was how to get United States’ troops out while attempting to deal with the growing population of refugees fleeing the brutality of the Iraqi government. He turned to his staff judge advocate for advice on the situation. *Id.*

Congress passed the CDA in 1978.¹ The CDA changed the payment mechanism for both judgments and board awards in contract cases.² Before the CDA, court judgments against the United States were paid from the Judgment Fund with no requirement that it be reimbursed.³ Claims adjudicated before the boards of contract appeals were not paid out of the Judgment Fund; instead, federal agencies paid these claims out of their own funds.⁴ Consequently, the procuring agency had some incentive “to avoid settlements and prolong litigation in order to have the final judgment against the agency occur in court, thus avoiding payment out of agency funds.”⁵

Absent a specific statutory requirement, an agency is not required to reimburse the Judgment Fund.⁶ Section 612(c) of the CDA provides such a statutory requirement. It requires the agency to reimburse the Judgment Fund for the payment of claims made pursuant to a court judgment or monetary award.⁷ Under the CDA, a court judgment or monetary award by the boards of contract appeals is viewed as giving rise to a new liability.⁸ Hence, repaying the Judgment Fund must be made out of funds current at the time of the judgment, or by obtaining additional appropriations for such purposes.⁹

Although reimbursement is mandatory, the CDA is silent as to the time period in which repayment must occur.¹⁰ Thus, the agency has some discretion in the matter, as the General Accounting Office has recognized.¹¹

It is clear that Congress wanted the ultimate accountability to fall on the procuring agency, but we do not think the statute requires the agency to disrupt ongoing pro-

grams or activities in order to find the money. If this were not the case, Congress could have just as easily have directed the agencies to pay the judgments and awards directly. Clearly, an agency does not violate the statute if it does not make the reimbursement in the same fiscal year that the award is paid. Similarly, an agency may not be in a position to reimburse in the following fiscal year without disrupting other activities, since the agency's budget for that fiscal year is set well in advance. In our opinion, the earliest time an agency can be said to be in violation of 41 U.S.C. § 612(c) is the beginning of the second fiscal year following the fiscal year in which the award is paid.

Hence, an agency may violate the Act if reimbursement does not occur by “the beginning of the second fiscal year following the fiscal year in which the award is paid.”¹²

At the same time the Judgment Fund issues a check to pay the judgment or monetary award, the Department of the Treasury, Financial Management Service (FMS), simultaneously bills the procuring agency. *Department of Defense Regulation 7000.14-R* suggests that the agency follow the procedures listed below to reimburse the Judgment Fund:¹³

(1) Determine “what appropriation originally funded the portion of the contract that led to the claim and subsequent judgment.”

1. *Id.*
2. S. REP. NO. 95-1118, at 33 (1978).
3. *Id.*
4. GENERAL ACCOUNTING OFFICE, *supra* note 23, at 12-76.
5. S. REP. NO. 95-1118, at 33.
6. Financial Management Service Home Page (visited November 28, 1999) <<http://www.fms.treas.gov/judgmentfund/history.html>>. See Reimbursements to Permanent Judgment Appropriation under the Contract Disputes Act, B-217990.25-O.M., General Accounting Office (October 30, 1987).
7. 41 U.S.C.A. § 612(c) (West 1999). Although monetary awards adjudicated at the board of contract appeals are usually paid directly by the agency, the Judgment Fund may be used to pay those awards in certain circumstances; for example, when the agency has insufficient funds to pay the award.
8. *Id.* See Bureau of Land Management—Reimbursement of Contract Disputes Act Payments, 63 Comp. Gen. 308, 312 (Apr. 24, 1984).
9. 41 U.S.C.A. § 612(c). See U.S. DEP’T OF DEFENSE REG. 7000.14-R, Vol.3, BUDGET EXECUTION—AVAILABILITY AND USE OF BUDGETARY RESOURCES, para. 080304 (Dec. 1996) [hereinafter DOD REG. 7000.14-R].
10. 41 U.S.C.A. § 612.
11. Reimbursements to Permanent Judgment Appropriation under the Contract Disputes Act, B-217990.25-O.M., General Accounting Office (October 30, 1987). See DOD REG. 7000.14-R, para. 080304(F).
12. *Id.*
13. *Id.*

(2) Find funds (if possible) that were “currently available for new obligation at the time of the judgment. Expired appropriations that were current at the time of the judgment also may be used.”

(3) Reprogram funds “from existing allocated funds within the appropriation. If sufficient funds do not exist within the appropriation, then supplemental funds must be sought.”

(4) “Upon identification of funds to be charged and completion of any reprogramming actions, forward the package to the Defense Finance and Accounting Office having accounting responsibility for the designated fund accounts to process the payment.”

(5) If the Judgment Fund reimbursement exceeds \$1,000,000, have the cognizant Assistant Secretary of the Military Depart-

ment (Financial Management and Comptroller) or Defense Agency Comptroller approve the reimbursement.¹⁴

If reimbursement does not occur, then the FMS will send follow-up inquiries. The tools normally available to the Department of the Treasury to collect a debt from a private party are not available when the debtor is another federal agency.¹⁵ The Department of the Treasury cannot sue another federal agency that fails to reimburse the Judgment Fund, charge interest, or offset the claim against present or future appropriations.¹⁶ If the agency still fails to pay, then FMS could report the agency to Congress.

Reimbursement requirements are not onerous. With a basic understanding of the CDA and *DOD Regulation 7000.14-R*, Army attorneys and the contracting officers they advise can avoid common pitfalls that could embarrass their command. Major Key.

14. *Id.*

15. Antitrust, Fraud, Tax, and Interagency Claims Excluded, 4 C.F.R. § 101.3(c) (1999).

16. *Id.*