

Notes from the Field

Making Justice Flat: A Challenge to the View That Deploying Commanders Must Relinquish Command and General Court-Martial Convening Authority Over Non-Deploying Forces

Colonel George R. Smawley*

*Unity of command results in unity of effort by coordinated action of all forces toward a common goal. Coordination may be achieved by direction or by cooperation. It is best achieved by vesting a single commander with requisite authority.*¹

—Principles of War, 1954

*It is now possible for more people than ever to collaborate and compete in real time with more other people on more different kinds of work from more different corners of the planet and on a more equal footing than at any previous time in the history of the world—using computers, e-mail, networks, teleconferencing, and dynamic new software. . . . When you start to think of the world as flat, a lot of things make sense in ways they did not before.*²

—Thomas Friedman

I. Introduction

It was a simple question. “Why,” asked the Commanding General of the 25th Infantry Division (25ID) in advance of its 2010 deployment to Iraq, “am I required to relinquish my general court-martial convening authority (GCMCA) over personnel at Schofield Barracks merely because the headquarters deploys? What law mandates I abdicate this aspect of command—oversight of discipline within my assigned formations?” “What prevents me,” he asked, “from retaining unitary justice over a geographically bifurcated command?”

The answer was nothing. There is nothing in the Uniform Code of Military Justice (UCMJ), Article 22, or otherwise at law requiring a commanding officer to transfer authority over courts-martial to another commander simply because he is deploying to a contingency operation, regardless of the duration. It makes no difference whether the commander is geographically separated by a nation (e.g., Bosnia), or one or more continents (e.g., Iraq and Afghanistan); it matters not whether a week, a month, or a year. The decision to transfer GCMCA or to establish an equivalent provisional authority is a *choice*.

The Criminal Law Branch, Office of The Judge Advocate General, U.S. Army, provides deploying staff judge advocates (SJAs) and chiefs of military justice with a superb handbook on how to transfer authority to other convening authorities.³ The guide outlines a “six step

framework for analysis and action”⁴ for deploying units, and specifically considers a scenario where a deploying convening authority retains jurisdiction over rear units, but finds:

Although this course of action may be appropriate for short deployments, or in

Staff Judge Advocate, 25th Infantry Division (25ID), Schofield Barracks, Hawaii, U.S. Division–Center, Iraq, 2010–2011, and Multi-National Division–North and Task Force Lightning, Iraq, 2009; Assistant Executive Officer, Office of The Judge Advocate General, Pentagon, 2007–2009; Deputy Staff Judge Advocate, 10th Mountain Division (Light Infantry) & Fort Drum, Fort Drum, New York, 2004–2007; Deputy Staff Judge Advocate, Combined Joint Task Force–76, Afghanistan, 2006. Member of the bars of Pennsylvania, the U.S. District Court–Northern District of New York, the U.S. Court of Appeals for the Armed Forces, and the U.S. Supreme Court.

Special thanks to the judge advocates and paralegals whose distinctive service, creativity, focus, and commitment to mission enabled the successful implementation of the unitary justice concept during the 25ID’s 2010–2011 deployment in support of *Operation New Dawn*, Iraq, in particular: Captain (CPT) Joanne Gordon, Chief of Military Justice, 25ID and U.S. Division–Center (USD–C), 2010–2012; CPT Hannah Kaufman, Command Judge Advocate, 25ID (Rear-Provisional), Schofield Barracks, 2010–2012; Chief Warrant Officer Three Carolyn Taylor, Legal Administrator, 25ID and USD–C; Master Sergeant Dean Neighbors, Noncommissioned Officer-in-Charge (NCOIC), Military Justice, 25ID & USD–C; Staff Sergeant (SSG) Christopher McCollum, NCOIC, 25ID (Rear-Provisional), Schofield Barracks; SSG Paulette Prince, Senior Court Reporter, 25ID and USD–C; Sergeant Major Cyrus Netter, Command Paralegal NCO, 25ID and USD–C and Lieutenant Colonel Emily Schiffer, Deputy Staff Judge Advocate.

¹ U.S. DEP’T OF ARMY, FIELD MANUAL 100-5 OPERATIONS 26 (27 Sept. 1954), available at <http://cgsc.contentdm.oclc.org/utis/getfile/collection/p/contentdm.4013coll9/id/79/filename/80.pdf> (last visited Mar. 4, 2013).

² THOMAS L. FRIEDMAN, THE WORLD IS FLAT, A BRIEF HISTORY OF THE 21ST CENTURY 8 (2005).

³ OFFICE OF THE JUDGE ADVOCATE GENERAL, DEPLOYING JUSTICE: A HANDBOOK FOR THE CHIEF OF MILITARY JUSTICE (2008).

⁴ *Id.* at 3.

* Judge Advocate General’s Corps, U.S. Army. Presently assigned to the Office of The Judge Advocate General, Washington, D.C. M.S.S., 2013, The U.S. Army War College, Carlisle Barracks, Pennsylvania; The U.S. Army Command & General Staff College, Fort Leavenworth, Kansas, 2004; LL.M., 2001, The Judge Advocate General’s School, U.S. Army, Charlottesville, Virginia; J.D., 1991, The Beasley School of Law, Temple University; B.A., 1988, Dickinson College. Previous assignments include:

situations where the convening authority returns to home station regularly to meet with key staff and review documents, this option is usually not appropriate in the current environment where units are typically deploying for 12–15 months.⁵

This otherwise invaluable guide, therefore, does little for those legal offices with commanders contemplating retention of their command and UCMJ authority over non-deploying personnel for extended periods of time. There has never been a model—until now.

As the final combat division to serve in the final year of the American experience in Iraq, the 25ID, under the command of Major General (MG) Bernard S. Champoux,⁶ retained GCMCA of three special court-martial convening authorities (SPCMCAs) and some 8,000 Soldiers at Schofield Barracks, Hawaii, during the division's thirteen-month tour as the headquarters for U.S. Division–Center (USD–C), *Operation New Dawn*, 2010–2011.

This note details the 2010–2011 experience of the 25ID, and suggests that commanders and their SJAs should not automatically reject the idea of retaining UCMJ authority over non-deployed personnel during contingency operations. It advocates a fresh look at how GCMCA *can* be retained over the challenges of space and time during extended operational deployments.

II. Background

The long-standing bias for deploying Army headquarters is that non-deploying units and personnel are, with rare exception, assigned to a new or different GCMCA for the duration of the operation. There are several reasons for this, primarily associated with proximity and practicality: proximity of the convening authority to subordinate units and the practicality inherent in the local administration of military justice. A third issue concerns the willingness of deployed commanders and staff to underwrite and respond to legal issues far from the immediacy of contingency operations. Staff judge advocates and the Judge Advocate General's Corps have traditionally reinforced these concerns and developed a mature process for the transition of non-deploying personnel to home station GCMCAs.

But in late 2010, the 25ID Commander openly questioned the necessity for this, and the idea of transferring GCMCA over 25ID Soldiers to another commander within U.S. Army Pacific (USARPAC). Given that the Commander, USARPAC, did not himself exercise military

justice in a way that would allow jurisdiction over 25ID personnel to be kept within the chain of command, MG Champoux decided to retain his GCMCA during the 2010–2011 deployment to central Iraq inclusive of all the prerogatives and associated authority for the maintenance of good order and discipline over non-deploying personnel.

This included the equitable administration of military justice, responsible and accountable military discipline including adverse administrative actions, separations, approval of pertinent investigations, and the continuity of each before, during, and immediately following his headquarters' deployment to Baghdad. It was also an integrated part of a larger effort to remain fully engaged with the Schofield Barracks community, the 25ID units stationed there, their families, and the local Hawaiian civilian community.

Major General Champoux was committed to the application of his command philosophy, values, and priorities toward ALL Soldiers in his assigned formation, whether in Hawaii or 8,200 miles away in Iraq. He felt accountable for them regardless of where his headquarters was located. The Army had selected him to command the 25ID and its subordinate brigades, and he intended to do it, so long as justice could be achieved and high standards met.

An issue, however, was a USARPAC execution order (EXORD) which expressly required the transition of non-deploying 25ID personnel to the GCMCA of the adjacent 8th Theater Support Command (8th TSC), based at Fort Shafter, Hawaii. The 8th TSC previously assumed GCMCA during the Division's 2008–2009 deployment in support of *Operation Iraqi Freedom*.

Eight weeks before the deployment, after lengthy discussions between the USARPAC and 25ID SJAs, the USARPAC Commanding General, Lieutenant General Benjamin R. Mixon,⁷ agreed to MG Champoux's request for jurisdiction over non-deploying 25ID personnel. He gave the 25ID ninety days to make it work. If not, the rear provisional GCMCA would revert to the Commander, 8th TSC, on or about 1 March 2011.

III. Making the World Flat

The concept of “unitary justice” while deployed was informed by Thomas Friedman's observations in his bestselling book, *The World Is Flat: A Brief History of the 21st Century*. Citing an interview with the chief executive officer of Indian technology giant Infosys Technologies, Nandan Nilekani, Friedman highlights the immeasurable way information technology has altered and liberated the manner in which intellectual work is conducted.

⁵ *Id.* at 4.

⁶ Promoted to Lieutenant General, 1 January 2013.

⁷ Lieutenant General (LTG) Benjamin R. Mixon; succeeded by LTG Francis J. Wiercinski in March 2011.

[C]omputers became cheaper and dispersed all over the world, and there was an explosion of software—email, search engines like Google, and proprietary software that can chop up any piece of work and send one part to Boston, one part to Bangalore, and part to Beijing, making it easy for anyone to do remote development. When all of these things suddenly came together around 2000, added Nilekani, they “created a platform where intellectual work, intellectual capital could be delivered from anywhere. It could be disaggregated, delivered, distributed, produced, and put back together again—and gave a whole new degree of freedom to the way we do work, especially work of an intellectual nature”⁸

What the 25ID set out to do was no different from what hundreds of corporate enterprises and multinational organizations have done for the past decade or longer—flatten collaboration, administrative, and decision-making functions of the organization by leveraging communications between and among critical stakeholders. Why was it that American business, medical, and accounting firms successfully conduct core professional services across the continental United States and from New York to Bangalore, and an Army headquarters could not do the same from Hawaii to Iraq? What are the material limitations? What makes us different? Where are the crucial similarities?

The answer is that the differences are surprisingly modest. While there is little point debating the inherent power of physical presence and proximity within an office or command, as a practical matter the vast majority of legal work conducted by judge advocates and military paralegals can be supervised and migrated across space and time without regard to the actual location of the players. The key enabler is technology, combined with sound business practices and properly empowered people who know how to use it.

Unified processes, systemic communication, and a common operating picture were central to the leadership of a bifurcated SJA office in the administration of a GCMCA. In the same way a tactical command post requires ready communication with a division operations center (DOC), the SJA office in Baghdad had to have unequivocal access to the Hawaii office.

The elements were rather basic. For example, in the early 1990s the 6th Infantry Division GCMCA was located at Fort Wainwright (Fairbanks), Alaska, while half the command was 364 miles south at Fort Richardson (Anchorage); with a judiciary located at Fort Lewis, Washington. The SJA and chief of military justice were co-located with the convening authority and supervised military justice with two separate panels some six hours apart. This, in an age without access to the Internet, e-mail, digital scanners, web portals, Adobe readers, Microsoft, or plain paper facsimile machines. Legal services were supervised and administered via rotary dial phones, the U.S. Postal Service, and a C12 aircraft that routinely moved staff actions and records of trial over the Alaska Range to and from the convening authority.⁹

And it worked.

It also worked for shorter durations of two to five months for the 10th Mountain Division (Afghanistan), and 1st Infantry Division (Bosnia), among others.¹⁰

So why, in 2010–2011, with nearly every commercially available information technology system and the reliable network access afforded by the mature Iraq theater of operations, could we not do the essentially the same thing over even greater distances for the duration of a twelve-month deployment?

IV. The 25th Infantry Division General Court-Martial Convening Authority, 2010-2012 . . . The Sun Never Set . . .

The planning assumptions for the establishment and support of a large, geographically bifurcated GCMCA included the following facts:

- (1) Schofield Barracks, Hawaii—three SPCMCA with approx. 8,000 Soldiers;
- (2) U.S. Division-Center, Iraq—nine SPCMCA (peak) with approx. 23,000 Soldiers;
- (3) 8,200 miles of separation;
- (4) Thirteen hour time difference;
- (5) Three Tandbergs; seven digital scanners; one Army Knowledge Online (AKO) team site with unlimited storage;
- (6) Minimal military augmentation;

⁹ The author served as a trial counsel with the 6th Infantry Division while assigned there from 1992–1995, and witnessed firsthand the operation of military justice in Alaska during that time.

¹⁰ Interviews with Colonel (COL) Charles Pede, former SJA of the 10th Mountain Division, and COL Mark Cremin, former SJA of the 1st Infantry Division. (on file with author).

⁸ FRIEDMAN, *supra* note 2, at 6–7.

- (7) No mid-grade officers; eleven captains with an average 2.3 years of active duty experience; and
- (8) Twelve-month deployment to Camp Liberty, Iraq.

With that, the SJA concept of the operation was based on five principle lines of effort: staff, standards, systems, technology, and resources.

A. Staff

As the SJA, I considered the commanding general the center of gravity, and therefore deployed the deputy staff judge advocate, command paralegal noncommissioned officer (NCO), legal administrator, chief of justice, and chief paralegal NCO to Iraq where most of the post-trial and associated work, collaboration, and coordination would occur—Camp Liberty, Victory Base Complex, outside Baghdad. Assisting were the division trial counsel, fiscal attorney, administrative law attorney, two operational law/rule of law attorneys, and a client services attorney. They were supported by eight paralegals. The Schofield office was run by a gifted second-term captain, Captain (CPT) Hannah Kaufman, and her team of nine judge advocates and paralegals.

While it is common for a deploying headquarters to leave the deputy staff judge advocate behind to lead the office in the rear, the challenges of the Army's final year in Iraq required the full complement of SJA leadership forward to deal with the issues associated with the reposturing of 50,000+ Soldiers and tens of thousands of civilians out of the country, closing dozens of installations, transitioning facilities and relationships to the Embassy, all while conducting engagement and force protection operations. Had things changed, or the initial model not worked, it would have been easy to transition key leaders between the two offices.

As with most deployments, the decision of who deployed and who remained was driven by a number of considerations, including prior deployments, temperament, demonstrated ability, and cognitive and emotional intelligence. Personalities mattered; peer-to-peer leadership among captains over distances within Iraq and to Hawaii was one of the great achievements for an office without any majors (albeit authorized two).

Under a concept of "one office, two locations," it was also important that the deployed branch chiefs continued in their role for both offices: the chiefs of justice, administrative law, and fiscal law continued to supervise, rate, reach-back, and were accountable for their respective disciplines/portfolios in both Iraq and Schofield Barracks. Uniformly maintaining office leadership integrity reinforced a common operational picture, ensured appropriate

management and supervision of actions, simplified communication, and fortified important relationships between the two offices and associated division staff sections. This was done for a number of reasons, not the least of which was the thin green line of the SJA formation.

B. Standards

The one non-negotiable characteristic for the unitary justice concept—its fundamental precondition—was that basic standards of professional competence, responsiveness, timeliness, and accuracy would not be compromised. Major General Champoux was fully prepared to abandon the effort if the SJA leadership deemed it untenable. This applied across the spectrum of legal services including fiscal law, ethics, administrative law and investigations, and basic command counsel. But nowhere did it matter more than in military justice, and at no time were the basic tenets of "legally correct and letter perfect" ever compromised. Post-trial processing, in particular, was the subject of great attention.

C. Systems

Great effort was put into the development of systems and processes reinforcing the vision of how the unitary justice concept should work, particularly regarding the flow of information between Iraq (and within it) and Hawaii. Standards and business practices for pre- and post-trial processing were published and widely disseminated, as were the relationships among the brigades and the division. Standard operating procedures for uploading actions, including minor details like enumerated pages to ensure nothing was missed, were adopted to ensure quality control over the transmitted actions.

D. Technology

The basic tools, previously noted, were: three dedicated Tandbergs (one each for the SJA, chief of justice, and the Schofield command judge advocate); six high-end digital scanners (two in Hawaii, two for the SJA office, and two for military justice); the 25ID SJA AKO team site; and the obvious enablers of e-mail, NIPR/SIPR phones, and a common division web portal for hanging documents and references. The approximate cost for the hardware was less than \$30,000. A talented young NCO, Staff Sergeant (SSG) Christopher McCollum, developed a highly effective AKO team site used by the two offices, with unlimited storage, where actions could be organized, digitized and uploaded in Schofield, and downloaded and printed in Iraq, and vice versa. This effectively facilitated "cloud computing" for the

office and enabled it to move huge amounts of data from one location to another, file sharing, etc.¹¹

E. Resources

At the onset in the fall of 2010, the commanding general committed to doing whatever was required to enable the legal support mission, including unfettered movement of SJA staff between the two locations, temporary duty in support of training and litigation, and sustained resourcing for courts, counsel, experts, and assistance from the Trial Counsel Assistance Program (TCAP) including the travel of highly qualified experts to Hawaii to advise and assist with certain criminal cases. In particular, the SJA office had the unfettered fiscal support of the command to ensure the responsible and effective administration of criminal litigation.

V. Mission Readiness Exercise (MRX)

In September 2010, the SJA office incorporated the migration of GCMCA actions into the division's MRX. Actions flowed from the brigades to the division SJA military justice office, where they were reviewed for completeness and accuracy. A junior paralegal then digitized and transmitted the entire packet to the SJA AKO team site. At the MRX location on the opposite end of Schofield Barracks, another paralegal downloaded the entire packet, reassembled it, and provided it to the military justice NCOIC who supervised the appropriate GCMCA correspondence or action.

The final packet was reviewed by the chief of justice before forwarding to the command paralegal NCO and deputy staff judge advocate, with final review and consideration by the SJA. The commanding general then took action during a real-world SJA update, and the entire process would happen again only in reverse: GCMCA actions were digitized by a military justice paralegal, uploaded to AKO, downloaded at the other end, and distributed as appropriate. The system was applied to administrative separations, reprimands, referrals, post-trial

¹¹ *Cloud Computing*, INVESTOPEDIA, <http://www.investopedia.com/terms/c/cloud-computing.asp#ixzz1r7mK42LK> (last visited May 22, 2013) (A model for delivering information technology services in which resources are retrieved from the internet through web-based tools and applications, rather than a direct connection to a server. Data and software packages are stored in servers. However, cloud computing structure allows access to information as long as an electronic device has access to the web. *This type of system allows employees to work remotely. . . . Cloud computing is so named because the information being accessed is found in the "clouds", and does not require a user to be in a specific place to gain access to it.*) (emphasis added).

actions, investigations, and a variety of affiliated general officer actions.

It worked. Major General Champoux's only significant comment—and perhaps his greatest compliment, was that the actions looked no different from the ones compiled conventionally. If the transfer and migration of documents could move via the AKO team site across Schofield Barracks, what difference would a couple of oceans make? Technically, the leveraging of digitized data from one location to the other made the actual distances almost irrelevant.

VI. United States Division—Center, Iraq

Upon deployment, a generally tight battle rhythm of weekly Tandberg and video teleconferences (VTCs) meetings, updates, and consultations among all SJA sections was established, particularly involving military justice, to facilitate routine communication with the SJA rear office and the Schofield-based special victim prosecutor (SVP), brigade judge advocates, trial counsels, and senior paralegal NCOs.

This was particularly important in advance of trial. The 25ID GCMCA conducted twenty-two courts-martial during the period of the deployment, including the rare case of a Soldier killing an American contractor in Iraq. In all there were fifteen trials in Hawaii and seven in Iraq; the majority were contested. Some may consider twenty-two cases low for a GCMCA with multiple brigades, and it is a fair observation that had the 25ID conducted twice as many courts-martial the administrative demands could have become unsustainable. What we found was that the reality of the modular Army—the constant brigade-level transitions in and out of the command, some for as few as 100 days—had a governing effect on cases mature enough for trial, with available witnesses, lab results, experts, etc. In two cases, the 25ID transferred New York National Guardsmen accused on armed robbery to the division's headquarters and headquarters battalion (HHBN) to prevent loss of jurisdiction, and tried them in theater accordingly. But otherwise, units with near-term redeployments often took their cases with them, as was the case elsewhere.

The Tandbergs, particularly the one maintained by military justice, allowed the chief of justice to routinely collaborate with Schofield's trial counsel, assist with trial strategy, and conduct impromptu and lengthy discussions with Schofield's SVP, as well as defense counsel, law enforcement officials, and others. It was a critical enabling tool and an enormously valuable investment by the Office of The Judge Advocate General, which funded them.

However, despite the coordination afforded by communications technology, some travel was required. In February 2011, in advance of the trial of a Schofield Soldier

accused of reckless homicide, the chief of justice and legal administrator were redeployed to Hawaii from Iraq on temporary duty to assist counsel and manage the forty-plus (mostly off-island) witnesses and associated logistics. While there they also conducted several hours of training, coordinated with budget/contracting officials, and attempted to bring value to their temporary duty at Schofield office. In a separate matter tried in July 2011, the command funded the travel of two Highly Qualified Experts from TCAP (Washington, D.C.) to Hawaii to assist with a difficult date rape case. These costs of travel, a consideration for any litigation, may therefore be more pronounced when key leaders are not immediately available to observe, consult, or assist junior officers.

VII. The Challenges

Despite the success of the 25ID's experience with unitary justice, it would be a mistake to suggest the enduring, geographically bifurcated GCMCA was easy. There was a point in the first month when the SJA office was moving some two dozen actions back and forth each week—as many as two thousand pages' worth—when some voiced concerns that the process was unsustainable. But over time, as systems matured and staff developed a comfort zone with the process and their own abilities, an important leveling occurred by mid-January 2011 where the consensus view was that the concept was entirely doable: a living, breathing, adaptable process in need of occasional adjustment but absolutely doable.

First among the challenges was the obvious lack of presence and diminished visibility by the leadership over officers and paralegals at Schofield Barracks. Quality time on video teleconferences, telephones, and e-mail is important, but it can never be an absolute substitute for immediate access or the important moments in-between during daily interaction, walking the halls, ad hoc conversations, and impromptu meetings. But over time those subsidiary interactions mattered less and less; communication became routine and was planned and purposeful.

Second, the 25ID assumed risk with post-trial processing. This required an almost unnatural vigilance by the chief of justice, CPT Hannah Kaufman and the SJA leadership, particularly the command paralegal NCO, Sergeant Major Cyrus Netter, who was hard on paralegals and court reporters with regard to the movement, timeliness, and accuracy of records. There were multiple panels in Hawaii and Iraq, the military judges (Hawaii has no resident judge) stretched from Kuwait, Fort Lewis, Fort Carson, and Korea, as did trial defense counsel. The process of errata and authentication alone consumed hundreds of man hours coordinating, tracking, and mailing records (some as long as 3,000 pages) across the planet, all supervised by the extraordinary efforts of the senior court reporter, SSG

Paulette Prince, and her exceptional team who seamlessly cross-leveled cases from one office to the other. In one memorable instance in early October 2011, after mail services ceased in Iraq due to the closure of facilities, an NCO was flown roundtrip from Baghdad to Kuwait with a record of trial, for the sole purpose of coordinating with Army Central Command (ARCENT) SJA personnel, who put it in the mail. The promise of Military Justice Online and digital records of trial will dramatically simplify this, making the post-trial process from locations without resident judges far more efficient.¹²

Third, there was a constant struggle against the tyranny of time zones. Depending on the time of year, Hawaii is twelve to thirteen hours behind Iraq. The standard meeting would start at 2000 in Iraq, or 0700 at Schofield Barracks. But more often than not crucial discussions happened much later, or earlier, and required staff at both locations to abandon any notion of a normal duty day. Weekend hours for the Schofield team were the norm, as it was for those deployed. The chief of justice and her NCOIC worked tirelessly, and were available during the day for the brigades and associated work in Iraq, and at night for the three brigades and associated work in Hawaii. The command judge advocate for the Schofield office, who worked similar hours, became that rare judge advocate captain authorized a Blackberry to accommodate 24/7 communications.

Fourth, technology has its limits. In mid-October 2011, as U.S. forces were re-posturing out of Iraq consistent with the 2008 Security Agreement, broadband connectivity ceased at Camp Liberty. A month later the division headquarters jumped to Contingency Operating Base (COB) Adder in the south (Tallil Air Base, located near Nasiriyah) where the staff was limited to two enhanced tactical joint network nodes (JNNs), affording connectivity roughly equivalent to dial-up (for those who remember). Put another way, connectivity speed and capacity was reduced by over 80%. This had a profound impact on the SJA office's ability to move actions to and from the AKO team site. It was not impossible, but certainly much slower. To compensate, coordination was made with the ARCENT SJA for support on an as-needed basis—as with the 6th Infantry Division twenty years prior—where actions were hand-carried aboard rotating U.S. aircraft. This was done on a couple of

¹² See Memorandum from The Deputy Judge Advocate General, U.S. Army, to All Staff Judge Advocates, subject: Exclusive Use of Military Justice Online (MJO) (Phase One) as Enterprise Application (8 June 2009); Memorandum from The Deputy Judge Advocate General, U.S. Army, to All Staff Judge Advocates, subject: Use of Military Justice On-Line as an Enterprise Application (17 Jul 2012). The Army's military justice regulation, recently updated in October 2011, provides for the preparation and transmittal of electronic records of trial, but does not replace the original record of trial. U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE paras. 5-41h, 5-48 (3 Oct. 2011); see also Captain Virginia Tinsley, Criminal Law Div., Office of The Judge Advocate Gen., *DEC 12 OTJAG Criminal Law Monthly Newsletter*, MILSUITE (Feb. 4, 2013, 10:20 AM), <https://www.milsuite.mil/book/message/103976#103976>.

occasions, and would have been necessary for Iraq cases regardless but was exacerbated by the requirements for timely post-trial processing of Hawaii-based litigation.

Fifth, it is important to recognize that there are other issues and responsibilities associated with GCMCA besides military justice. First and foremost are the many Army Regulation 15-6 investigations. During the thirteen-month deployment, MG Champoux retained jurisdiction over investigations dealing in senior leader misconduct, suicides, high-value financial liability investigations, the loss of sensitive items, and an investigation alleging detainee abuse and war crimes by an officer recently returned from duty in Iraq. All required close supervision, tracking, and coordination between the chief of administrative law and the Schofield office.

Lastly, there was the constant leadership challenge of managing people from great distances, facilitating cooperation between them, and monitoring the peer-to-peer leadership that is invariably an issue. Without the ballast of either of the two mid-career field grade officers the division OSJA was authorized, the two offices were susceptible to a mild sort of tribalism: the Schofield tribe verses the Iraq tribe; one surrounded by beaches, the other by desert. The relationship was no different than between any headquarters and a field or branch office, and required the same kind of leadership attention able to enfranchise people in a common mission, with a shared purpose.

VIII. Did It Work?

Over the duration of the nearly thirteen-month deployment, from 1 December 2010 thru 18 December 2011, the 25ID was as busy as any similarly situated deployed command in what proved to be the concluding chapter of the Army's nine-year experience in Iraq. During the year the military justice office "jumped" a total of five times—in 2010 from Schofield Barracks to West Camp Liberty; from West Camp Liberty to East Liberty; from the East Liberty legal center to the division headquarters building (commensurate with the loss of broadband); from there to COB Adder; and from COB Adder back to Schofield Barracks. The junior officers and paralegals, without exception, were creative, adaptable, innovative, and exceptionally hard-working despite the physical and logistical challenges of providing legal services, which afforded the commanding general with a unity of command over good order and discipline that was seamless, consistent, effective, and responsive.

The numbers reveal much. The 25ID conducted twenty-two courts-martial and took post-trial action in twenty-eight cases during the *Operation New Dawn* deployment. The average processing time for general courts was 165 days and for a special court it was eighty-three; within the Army mean and standard, particularly for jurisdictions without a resident

military judge. As late at 16 December 2011, a day before the command group's redeployment and following the redeployment of all but one member of the Iraq SJA office, MG Champoux referred Hawaii-based cases, initiated Article 15s, and made reprimand filing determinations that were transmitted back to Schofield Barracks for action via the JNN connection with the support of the Hawaii office, proving the capability of today's technology to flatten and multiply the capacity for legal support.

Throughout the year the commanding general conducted seventeen Article 15, UCMJ, hearings for senior leaders, including several at Schofield Barracks via VTC, including the relief of a commander. A total of 152 general officer reprimands were prepared and issued, including an associated number of filing determinations. Most of these were Hawaii-based driving under the influence and related misconduct. There were over eighty-four chapter eliminations including fourteen as the result of a board recommendation; ten involving officers.

For administrative law, the division completed 101 general officer-level investigations, fifty-four ethics reviews, and ninety-three unrelated actions resulting in a written legal opinion. Fiscal and contracting law produced forty-nine written opinions and some 172 Financial Liability Investigation of Property Loss reviews, among other actions. Also worthy of mention were the client services conducted by the division including 820 powers of attorney, 350 notaries, 72 passport applications processed through the embassy, and over 300 scheduled client appointments.

IX. Summary

In his closing chapter of *The World Is Flat*, Thomas Friedman considers the national economic and security implications, good and bad, of the flattening of the world through technology, and the associated revolutions in collaborative information sharing. He concludes that "[o]n such a flat earth, the most important attribute you can have is creative imagination—the ability to be the first on your block to figure ways to create products, communities, opportunities . . . and that has always been America's strength."¹³

The promise and power of collaboration between and among Army legal offices via information technology has simply never been greater. E-mail, smart phones and tablets, teleconferencing, digitized relays of data, cloud computing, file sharing, and mature online legal resources have all inextricably altered the way legal professionals conduct their work domestically, and over thousands of miles. Friedman

¹³ FRIEDMAN, *supra* note 2, at 469.

refers to these advanced technologies as “the steroids” because of their ability to

Amplify[] and [turbocharge] . . . the other flatteners. They are taking all forms of collaboration . . . and making it possible to do each and every one of them in a way that is “digital, mobile, virtual, and personal,” as former Hewitt Packard CEO Carly Fiorina put it in her speeches, thereby enhancing each one and making the world flatter by the day. . . .¹⁴

. . . .

. . . These steroids . . . will enable more individuals to collaborate with one another in more ways and from more places than ever before.¹⁵

The experience of the 25ID in 2011 offers an important example of how this collaboration can support the administration of military justice and related legal support during a deployment. It is not something that can or should be done everywhere, particularly in cases where communications networks are immature. But for developed contingency environments where a commander and SJA are

willing to underwrite the risks and challenges, unitary justice offers a worthy model for the retention of jurisdiction and administration of a consistent approach to command responsibility across a formation, no matter where it sits.

¹⁴ *Id.* at 161.

¹⁵ *Id.* at 171. Friedman, writing of technology—“steroid”-driven collaboration in a business context with clear analogies to the way the Army operates, continues,

They will enhance outsourcing, because they will make it so much easier for a single department of any company to collaborate with another company. They will enhance supply-chaining, because headquarters will be able to be connected in real time with every individual employee stocking the shelves, every individual package, and every Chinese factory manufacturing the stuff inside them. They will enhance insourcing—having a company like UPS come deep inside a retailer and manage its whole supply chain, using drivers who can interact with its warehouses, and with every customer, carrying his own PDA. And most obviously, they will enhance informing—the ability to manage your own knowledge supply chain.

Id.