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Army Regulation 600-15, Indebtedness of Military Personnel: Time for An Update

Major James S. Tripp*

I. Introduction

Private Snuffy is twenty years old. He has completed almost half of his four year enlistment. He is a good Soldier: he shows up on time, does his job well, and gets along with others. During the past two years he purchased an expensive stereo, a video game system, a fancy digital camera, a state-of-the-art computer, and a pile of DVDs and video games—all on credit. He bought a used sports car three months ago, financed at a high interest rate. He also has several credit cards, all of which he maxed out. He makes minimum monthly payments on all of these debts.

Last month, *Snuffy's* commander began to receive phone calls from several of *Snuffy's* creditors. Each of these creditors complained that *Snuffy* was behind on his payments, and each disclosed detailed information about *Snuffy's* financial history and requested help with collections. The commander ordered *Snuffy* to start making payments immediately or face action under the Uniform Code of Military Justice (UCMJ). *Snuffy* saw a legal assistance attorney for help. After a brief meeting, the legal assistance attorney called the commander and explained that the commander had no authority to interfere in *Snuffy's* private financial matters, especially considering that *Snuffy* was a good Soldier and his financial affairs were not affecting his job performance or the unit's mission. The commander then called the trial counsel for guidance, who affirmed the Army's position that Soldiers need to pay their debts promptly. The trial counsel, however, then cautioned that the Army had no legal authority to require *Snuffy* to actually pay a private debt, nor could the Army divert any part of his pay to satisfy a commercial debt, even for a creditor who had obtained a judgment from a civil court. The trial counsel did say a creditor with a civil judgment could seek an involuntary allotment against *Snuffy*, but he was not sure how that program worked. The trial counsel also commented on various federal and state consumer protection laws, which appeared to limit what the commander could do, and then referred the commander to *Army Regulation 600-15, Indebtedness of Military Personnel*,¹ for more information.

Unsure of what to do next—but determined to do the right thing—the commander reviewed *AR 600-15*, expecting to find clear guidance and quick answers. Instead, she found the regulation confusing, disorganized, and often contradictory. She found no information on involuntary allotments in the regulation.

Army Regulation 600-15—a small and relatively unknown regulation—is the U.S. Army's primary source for information on policies and procedures governing Soldier indebtedness and creditor claims. The regulation sets forth Army policy on indebtedness and creditor claims; it suggests various tools and punishments for Soldiers who fail to resolve unpaid debts; it refers to and describes federal laws and regulations that govern indebtedness and that apply to Soldiers; and it provides instructions on how creditors may receive assistance with debt collections against Soldiers.

Unfortunately for Soldiers, commanders, and creditors, *AR 600-15* is poorly written and out-of-date. It was published in 1986, during a time when Soldier pay was immune from state court judgments for commercial debts. Substantial changes in federal law have occurred that have greatly altered the relationship between Soldiers and creditors. These changes are not reflected anywhere in *AR 600-15*, yet it is the regulation to which commanders and Soldiers must turn for policy information and guidance when dealing with indebtedness.

This article reviews the history of garnishment of federal pay, including the effect of the 1993 Hatch Act Reform Amendment,² which for the first time made federal pay subject to garnishment for commercial judgments. Further, this article reviews the historical development of *AR 600-15*. It then analyzes the structure of the current version of *AR 600-15* in light of its own internal inconsistencies and obsolete information. The article addresses the responses of the Coast Guard, Navy, Marine Corps, and Air Force to the Hatch Act, which is followed by analysis and argument regarding how the Army

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¹ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL (14 Mar. 1986) [hereinafter *AR 600-15*].

² 5 U.S.C.S. § 5520a (LEXIS 2005).

should update *AR 600-15*. This article concludes with the recommendation that *AR 600-15* should: (1) have a new proponent agency (the Office of the Judge Advocate General); (2) be updated to incorporate changes in federal law and Department of Defense (DOD) regulations; and, (3) be revised to mirror the current Air Force Instruction on indebtedness.

II. Background

Early in United States history, a generally accepted principle of sovereign immunity was that a federal employee's pay could not be subject to garnishment for state court judgments. This principle has its roots in the Constitution. Article I, Section 9, clause 7 specifies that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law,"³ which suggests that "Congress [has] primary authority over whether Treasury moneys are put to any particular use, including satisfying judgments."⁴

A. Judicial Interpretation of Sovereign Immunity and Federal Pay

An early case to apply this principle was *Buchanan v. Alexander*,⁵ which involved some Sailors who owed money to an innkeeper. When the Sailors' ship returned from a cruise, the innkeeper attempted to serve a writ of attachment on the ship's purser, who controlled the sailors' wages.⁶ The issue was elevated to the Secretary of the Navy, who ordered the purser to disregard the writ and pay the Sailors.⁷ The innkeeper sued the purser in a Virginia court. The court ruled against the purser for disregarding the attachments on the Sailors' wages.⁸ The purser appealed to the U.S. Supreme Court, who overturned the Virginia trial court, holding:

The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen.⁹

This aspect of sovereign immunity remained constant well into the twentieth century.¹⁰ Courts "consistently cited two policy reasons to uphold the immunity of federal pay from garnishment. First, garnishment unreasonably would interrupt the process of public administration. Second, it would apply public funds to purposes for which they had not been appropriated."¹¹

B. Changing Demographic Realities Compel Policy Modifications

Cultural changes in the 1960s created national pressure to rethink these policy reasons. The number of divorces¹² and children born to single parents¹³ began to increase, with the consequent increase in court-ordered child support.¹⁴ Congress

³ U.S. CONST. art. I, § 9, cl. 7.

⁴ Vickie C. Jackson, *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, 35 GEO. WASH. INT'L L. REV. 521, 535 (2003).

⁵ *Buchanan v. Alexander*, 45 U.S. 20 (1846).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., *Applegate v. Applegate*, 39 F. Supp. 887 (E.D. Va. 1941) (holding that Congress had as yet never waived federal immunity to permit attachment or garnishment proceedings against the United States Treasury or its disbursing officers).

¹¹ Captain Gerald E. Wuetcher, *The Garnishment Equalization Act: Leveling the Playing Field or Upsetting a Delicate Balance?*, ARMY LAW., Nov. 1992, at 4 (citations omitted).

¹² U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2003, at 71 (tbl. no. 83) (2003), available at <http://www.census.gov/prod/2004/pubs/03statab/vitstat.pdf>.

¹³ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2003, SUPPLEMENT, 2003 MINI HISTORICAL STATISTICS 23 (tbl. HS-14—Births to Teenagers and to Unmarried Women: 1940 to 2002), available at <http://www.census.gov/statab/hist/HS-14.pdf>.

took note of the variety of ways obligors avoided paying child support, including “the statutory barrier to collecting from military personnel and federal employees,”¹⁵ and passed legislation in 1974 waiving immunity of federal pay for child support and alimony.¹⁶ Servicemembers were specifically included in that particular type of immunity waiver,¹⁷ but, like the rest of the federal workforce, their pay was still immune from garnishment for regular creditor judgments.

C. The Hatch Act

Once the sovereign immunity shield was pierced for child support, no compelling arguments remained to protect federal employee pay from other types of judgments. Congress passed the Hatch Act in 1993,¹⁸ which amended the law governing the withholding of government employee pay.¹⁹ Federal pay would now be treated much like private citizen pay: both subject to state court judgments for commercial debts.²⁰

D. The Promulgation of *Department of Defense Directive 1344.9 and Instruction 1344.12*

When it was proposed, the Hatch Act presented an interesting dilemma for the military. Servicemembers are a special category of federal employees.

Unlike other forms of federal employment . . . military service interferes with an individual's representation of his or her interests. The ability of service members to appear in courts and to defend against civil claims always is subordinate to, and often is restricted by, their military duties. Moreover, the Armed Forces frequently subject service members to involuntary moves and extended world-wide deployments at short notice. Consequently, military personnel are very susceptible to default judgments.²¹

The DOD was able to persuade Congress to “distinguish military personnel from all other federal employees, including DOD civilian employees,”²² in the actual language of the law.²³ Instead of garnishment, an “involuntary allotment” of a servicemember’s pay would be used to satisfy a proper judgment from a state court.²⁴ The Hatch Act directed the DOD (as

¹⁴ Wuetcher, *supra* note 11, at 5.

¹⁵ *See id.* n.23

¹⁶ *Id.* n.22 (citing Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337).

¹⁷ *Id.* n.25 (citing Pub. L. No. 93-647, § 459, 88 Stat. 2357 (1974) (codified as amended at 42 U.S.C. § 659(a) (LEXIS 2005)).

¹⁸ 5 U.S.C.S. § 5520a (LEXIS 2005). Subsection (k), the portion of the law affecting servicemembers, states:

(k)(1) No later than 180 days after the date of the enactment of this Act, the Secretaries of the Executive departments concerned shall promulgate regulations to carry out the purposes of this section with regard to members of the uniformed services.

(2) Such regulations shall include provisions for -

(A) the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.); and

(B) consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty.

(3) The Secretaries of the Executive departments concerned shall promulgate regulations under this subsection that are, as far as practicable, uniform for all of the uniformed services. The Secretary of Defense shall consult with the Secretary of Transportation with regard to the promulgation of such regulations that might affect members of the Coast Guard when the Coast Guard is operating as a service in the Navy.

Id.

¹⁹ *Id.* § 5520.

²⁰ *See* TJAGSA Practice Note, *Garnishment of Military Pay—What's Going On?*, ARMY LAW., Sept. 1993, at 36.

²¹ Wuetcher, *supra* note 11, at 7.

²² *Id.* at 6.

²³ *See* 5 U.S.C. § 5520a(k).

²⁴ The term “involuntary allotment” appears to be unique to the military. Although the author could not find a definition for this term, its use in various laws and regulations, such as 5 U.S.C. § 5520a and 32 C.F.R. Parts 112 and 113 (2004), suggests that it was coined to distinguish it from the more familiar

well as some other federal agencies) to promulgate regulations to carry out the law, taking into consideration protections afforded by the Servicemember's Civil Relief Act (SCRA) (formerly titled the Soldiers' and Sailors' Civil Relief Act),²⁵ as well as the absence of a servicemember "from an appearance in a judicial proceeding resulting from the exigencies of military duty."²⁶ In 1994, the DOD promulgated *Directive 1344.9*²⁷ and *Instruction 1344.12*,²⁸ both of which were designed to implement the Hatch Act.²⁹

Department of Defense Directive 1344.9 directed the service secretaries to establish procedures to comply with the Hatch Act. The Coast Guard, Navy, Marine Corps, and Air Force have each updated their service specific "indebtedness" regulations.³⁰ The Army has not,³¹ possibly because *AR 600-15* currently has no responsible proponent.

III. Army Regulation 600-15, Indebtedness of Military Personnel

A. The History of Army Regulation 600-15

The first version of *AR 600-15* was promulgated on 11 February 1970. Prior to that date, official Army guidance on Soldier indebtedness came from two sources: paragraph thirty-six of *AR 600-20, Army Command Policy and Procedures*,³² and paragraphs eight, nine, and ten of *AR 210-7, Personal Commercial Affairs*.³³ Those four paragraphs captured several themes that have remained fairly consistent through all updates and changes over the past thirty plus years: (1) the Army expects Soldiers to pay their just debts promptly;³⁴ (2) Soldiers have rights that protect them against unscrupulous creditors;³⁵ and (3) the Army has no actual authority to make Soldiers pay creditors.³⁶ Nevertheless, the decision to have guidance on

concept of "garnishment." Garnishment (also known as wage attachment or income withholding) follows a civil court judgment and is an order by the court directing an employer to withhold money from the defendant's pay and remit payment to the plaintiff. In the case of servicemembers, garnishments are only allowed for child support and alimony and constitute a waiver of sovereign immunity by the federal government for that narrow category of judgments. See 42 U.S.C. § 659. The Hatch Act granted an additional qualified waiver of sovereign immunity for commercial debts, and tied that qualified waiver to protections afforded to servicemembers under the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 501-594 (LEXIS 2005) (recently updated and renamed the Servicemembers Civil Relief Act (SCRA), Pub. L. No. 108-189, 117 Stat. 2835 (2003)). 5 U.S.C. § 5520a(k). A garnishment order is neither necessary nor sufficient to start an involuntary allotment against a servicemember. U.S. DEP'T OF DEFENSE, INSTR. 1344.12, INDEBTEDNESS PROCESSING PROCEDURES FOR MILITARY PERSONNEL para. 6.2.1.3 (18 Nov. 1994) [hereinafter DOD INSTR. 1344.12]. Rather, a plaintiff is required only to secure a civil court judgment, ensuring that all required protections under the SCRA have been met, and then submit a copy of the judgment along with an Involuntary Allotment Application (U.S. Dep't of Defense, DD Form 2653, Involuntary Allotment Application (Aug. 2004) [hereinafter DD Form 2653]) to the Defense Finance and Accounting Service (DFAS). *Id.* para. 6.2.1.4. Detailed instructions regarding the involuntary allotment procedure are available at the DFAS website, <http://www.dod.mil/dfas/money/garnish/mcdafact.htm> (last visited Mar. 17, 2005).

²⁵ See *id.* § 5520a(k)(2)(A).

²⁶ See *id.* § 5520a(k)(2)(B).

²⁷ U.S. DEP'T OF DEFENSE, DIR. 1344.9, INDEBTEDNESS OF MILITARY PERSONNEL (27 Oct. 1994) [hereinafter DOD DIR. 1344.9].

²⁸ DOD INSTR. 1344.12, *supra* note 24.

²⁹ The Secretary of Defense also implemented the Hatch Act in 1995 via parts 112 and 113 of Title 32, Code of Federal Regulations. The language in 32 C.F.R. part 112 is virtually identical to that found in DOD Directive 1344.9; the same is true for 32 C.F.R. part 113 and *DOD Instr.* 1344.12. See TJAGSA Practice Note, *Involuntary Allotment—Draft Department of Defense (DOD) Directive 1344.9*, ARMY LAW., Nov. 1994, at 49.

³⁰ See U.S. COAST GUARD, COMMANDANT INSTR. M1000.6A ch. 8.L. (8 Jan. 1988) (updated by C26, 3 Feb. 1997) [hereinafter CGCI M1000.6A]; U.S. DEP'T OF NAVY, NAVAL MILITARY PERSONNEL MAN. 7000-020 (22 Aug. 2002) [hereinafter MILPERSMAN 7000-020]; U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug. 1999) [hereinafter MCO P5800.16A]; U.S. DEP'T OF AIR FORCE, INSTR. 36-2906, PERSONAL FINANCIAL RESPONSIBILITY (1 Jan. 1998) [hereinafter AFI 36-2906].

³¹ *AR 600-15*, *supra* note 1.

³² U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY AND PROCEDURES (1 Feb. 1970) [hereinafter 1970 AR 600-20]. See Appendix A for the complete text of paragraph 36.

³³ U.S. DEP'T OF ARMY, REG. 210-7, PERSONAL COMMERCIAL AFFAIRS (10 June 1966) [hereinafter AR 210-7]. See Appendix B for the complete text of paragraphs 8, 9, and 10.

³⁴ *Id.* para. 8(a) ("A member of the Armed Forces is expected to pay his just financial obligations in a proper and timely manner."). *Id.* The current version of *AR 600-15* states: "Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly." *AR 600-15*, *supra* note 1, para. 1-5(a).

³⁵ See *AR 210-7*, *supra* note 33, para. 10. See also *AR 600-15*, *supra* note 1, para. 1-5(e).

³⁶ See *AR 210-7*, *supra* note 33, para. 8(b).

[T]he Department of the Army has no legal authority to require a military member to pay a private debt, or to divert any part of his pay for the satisfaction thereof even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.

indebtedness come from two separate sources created a division between Soldier protections and command responsibility that exists to this day.

B. *Army Regulation 210-7* (1967)

The 1967 version of *AR 210-7* represented the Army's acknowledgement that as Soldiers participated in the growth of borrowing opportunities and consumer credit, the chain of command would increasingly be viewed as a tool for debt collectors.³⁷ Few, if any, civilian employers have the kind of control commanders possess over Soldiers. Soldiers are also uniquely susceptible to scams and unreasonable credit arrangements, mostly due to the lack of family or other close responsible parental figures that could monitor both the Soldier and the creditor.

To give teeth to this policy position, the Army required creditors to comply with certain "Standards of Fairness,"—embodied in ten paragraphs—which covered such topics as finance charges, assignment of debts, late fees, and prepayment penalties.³⁸ Creditors were also required to disclose to the borrower up front and in writing the terms of any contract, concisely stating the finance rate, value of any trade-in, repayment schedule, etc.³⁹ Finally, both the creditor and the borrower were required to sign a "Certificate of Compliance," signifying that the Standards of Fairness had been applied to the transaction, full disclosure of the terms of the transaction had been made to the borrower, and that the borrower had been given a copy of the disclosure.⁴⁰ A creditor who failed to accomplish any of these requirements *would not be eligible for collection assistance by the Army*.⁴¹

The language in *AR 210-7* is more than mere admonishment. The requirements listed give the impression that the Army was serious about forcing creditors to act responsibly when dealing with Soldiers. Nevertheless, as with most things in the Army, actual implementation of policy was left to commanders, who usually consult commander-specific regulations first. For Soldier indebtedness, that meant consulting paragraph thirty-six of *AR 600-20, Army Command Policy and Procedure*, which, unfortunately, gave little attention to Soldier protections.

C. Paragraph 36 of *Army Regulation 600-20* (1967)

Paragraph thirty-six of the 1967 version of *AR 600-20* does not even mention the Standards of Fairness, the creditor disclosure requirements, or the procedures for processing debt complaints discussed previously.⁴² Under paragraph thirty-six, the commander had three main issues to consider when dealing with Soldier indebtedness.

First, did the Soldier's actions with regard to the indebtedness rise to the level where disciplinary or adverse administrative action should be undertaken?⁴³

Id.

The current version of *AR 600-15* states: "The Army . . . has no legal authority to force soldiers to pay their debts. Also, the Army cannot divert any part of a soldier's pay even though payment of the debt was decreed by a civil court. Only civil authorities can enforce payment of private debts." *AR 600-15, supra* note 1, para. 1-5(a).

³⁷ *AR 210-7, supra* note 33, para. 10.

³⁸ *Id.* app. I. See also Appendix C of this article for the text of the 1967 *AR 210-7*'s Standards of Fairness.

³⁹ *Id.* Note that these required disclosures predate the Truth in Lending Act, 15 U.S.C.S. 1601-1667 (LEXIS 2005), the first version of which became law in 1968.

⁴⁰ *Id.*

⁴¹ *Id.* para. 10(b)(2). *Army Regulation 210-7* also made allowance for creditors who failed to comply with all the requirements but who acted in good faith and had objectively reasonable terms in their contracts. Such creditors simply needed to execute the required disclosures and certificate of compliance after the fact. See *id.* Of course, that procedure meant seeking the signature of the Soldier on a new Certificate of Compliance. By that time, a Soldier may not have felt like cooperating and may even have realized that by signing the new Certificate of Compliance, the creditor would then have a green light to obtain collection assistance from the Army.

⁴² In fact, the only reference in the 1967 version of *AR 600-20* to the requirements of the 1966 version of *AR 210-7* for Army assistance in collections appears in paragraph 36(a), which states: "See *AR 210-7*." 1970 *AR 600-20, supra* note 32, para. 36(a).

⁴³ Note how the text of paragraph 36 begins:

Commanding officers will not tolerate actions of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the private indebtedness and financial obligations of their personnel. Normally, it is not difficult to distinguish between an honest denial of an obligation and a dishonest or irresponsible evasion thereof. . . . If, after consideration of all factors, a commanding officer believes that a member of his command has dishonorably failed to pay his just debts, disciplinary action may be initiated

Second, had the creditor made reasonable efforts to collect directly from the Soldier? If not, the commander was directed to inform the creditor that any Army action would be deferred until the creditor could show that direct efforts had reasonably been made and had been unsuccessful.⁴⁴

Third, if reasonable efforts to collect directly from the Soldier had been unsuccessful, the commander literally became the arbitrator who judged whether any bona fide dispute existed between the creditor and the Soldier.⁴⁵

D. The First Version of AR 600-15

When the first version of AR 600-15 was promulgated in 1970, it virtually mirrored the indebtedness language contained in the old AR 210-7 and AR 600-20. It differed in two main respects: (1) the new regulation contained an absolute prohibition on releasing any information to creditors regarding disciplinary or adverse administrative action taken against a Soldier as a result of a complaint of indebtedness;⁴⁶ and (2) the commander's role in processing indebtedness complaints was greatly expanded.⁴⁷ Again, however, the language imposing disclosure requirements on creditors and requiring adherence to the Standards of Fairness was disconnected from the directions given to commanders. Full disclosure and Standards of Fairness requirements are in chapter two of the 1970 AR 600-15, whereas the commander's Procedures for Processing Private Debt Complaints are in chapter three. Chapter three only indirectly refers to the prerequisites creditors must have complied with in order to receive Army assistance with collection⁴⁸—the only other limit on the commander's involvement was when the commander determined in his or her sole discretion that there was a bona fide dispute between the parties. In that situation, the commander again was supposed to refer the matter to the civil courts.⁴⁹

Another interesting aspect of the first version of AR 600-15 was its reference to other recently enacted federal and state laws governing creditors. With the increase in borrowing opportunities came an increase in creditor abuses of consumers. Congress took note of this increase and began passing protective legislation.⁵⁰ The federal laws referenced in the original AR

(arts. 15, 133, 134, UCMJ; para. 213b, MCM, 1951). Whether or not disciplinary action is taken, unpaid personal indebtedness of long standing which the individual is not attempting to resolve may be handled administratively.

Id. para. 36. This language appropriately reflects an aspect of command that exists independent of any obligations owed to creditors,—the protection of the Army's public image—but its placement is curious. In contrast to the 1966 version of AR 210-7, which is all about Standards of Fairness and disclosure and the Army's position that there will be no cooperation unless creditors comply, paragraph 36 begins with telling the commander when to consider a court-martial! *Id.* Another interesting aspect of paragraph 36 is that it did not prohibit a commander from telling a creditor whether any adverse action was taken against a Soldier because of the complaint. *See id.*

⁴⁴ There is no direct mention anywhere in paragraph 36 that creditors are required to have complied with the Standards of Fairness and to have made affirmative disclosures prior to receiving any assistance from the Army. The only question is whether the creditor had tried sufficiently to work directly with the Soldier. The commander is the sole judge of this issue and paragraph 36 provides no standards or guidance.

⁴⁵ If there was no dispute, and the Soldier agreed to pay the debt, the commander was directed to "insure that reply is made promptly to the complainant indicating the member's intentions regarding payment." 1970 AR 600-20, *supra* note 32, para. 36(d)(2) (1970). If the Soldier disputed the debt, then the commander could, in his or her discretion, "require either or both parties to submit any necessary documents or other pertinent evidence." *Id.* If the commander determined the dispute was bona fide, the commander was to inform the creditor that Army policy dictated that disputed debts were to be resolved in civil court. *Id.* If, on the other hand, the commander determined that there was no real dispute, then the commander "will take appropriate followup action with a view to assisting the member in complying with previous arrangements." *Id.* Again, such language obviously gave enormous discretion to commanders and was subject to abuse.

⁴⁶ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL para. 3-1(b) (31 Feb. 1970).

⁴⁷ *Id.* para. 3-1(c).

⁴⁸ "Complaints of civil indebtedness or financial obligations which meet the requirements of this regulation . . . will be forwarded to the immediate commanding officer of such member for action." *Id.* para. 3-1(a).

⁴⁹ *Id.* para. 3-1(c)(4).

⁵⁰ One of the original federal consumer protection statutes, the Consumer Credit Protection Act, 15 U.S.C.S. §§ 1601-1693 (LEXIS 2005), begins as follows:

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

Id. § 1601(a).

600-15 include the Consumer Credit Protection Act,⁵¹ the Truth in Lending Act,⁵² and the Federal Reserve Board's Regulation Z,⁵³ all of which imposed mandatory disclosure requirements on creditors. The regulation is silent as to which state laws may apply.

After referring to all of these laws (and the Standards of Fairness), the regulation then directs the following:

In all loan and credit transactions subject to this regulation, communications charging military members with indebtedness which do not meet the above requirements will be returned to the claimant informing him that the [e]nclosed copy of Appendix A and/or B must be completed before the request can be acted upon.⁵⁴

The “above requirements” referred to in *AR 600-15* are the Standards of Fairness and the various federal and state laws and regulations. Appendix A of the regulation simply lists the Standards of Fairness—there is nothing in Appendix A to “be completed.” Appendix B is a Certificate of Compliance, which gives the creditor an opportunity after the fact to state that they complied with all applicable consumer protection laws. Unlike the Certificate of Compliance in the old *AR 210-7*, the certificate of compliance in *AR 600-15* does not require the signature of the borrower. The regulation also does not instruct the commander on how to determine whether a creditor actually complied with these laws.

Army Regulation 600-15 was updated as federal and state consumer protection laws were modified to address weaknesses and gaps. The first update to *AR 600-15* occurred in 1973. Language referring to state laws was expanded to reflect the many states that recently enacted laws prohibiting creditors from contacting a debtor's employer.⁵⁵

The second update to *AR 600-15* occurred in 1974. Creditors were now required to furnish documentary evidence showing compliance with the various federal and state laws and regulations. Commanders were to refer Soldiers whom they suspected were not provided the required disclosures to a legal assistance attorney. Also, explicit language was added indicating that “many personal financial cases which come to a commander's attention do not reflect adversely on the character, integrity, morals or professionalism of the individual and should not be placed in his official records.”⁵⁶

The third update to *AR 600-15* occurred in 1975. A sample form letter for the commander to send to creditors was added to the regulation.⁵⁷ This form letter was the “check-the-block” type—the commander simply filled in the name and address of the creditor and then checked the applicable block. Interestingly, of all the options included in this form letter, an option stating that the creditor had not complied with one of the consumer protection laws or the Standards of Fairness was not included.

E. The 1979 Revision of *Army Regulation 600-15*

In 1979, the Army published a revised *AR 600-15*.⁵⁸ This new version incorporated references to the Fair Debt Collection Practices Act (FDCPA), which was enacted in 1977.⁵⁹ As implemented by *AR 600-15*, the FDCPA prohibited debt collectors from contacting commanders without either the prior consent of the debtor or a court order.⁶⁰ The regulation

⁵¹ 15 U.S.C. §§ 1601-1693. Originally enacted in 1968, the Consumer Credit Protection Act is actually an umbrella statute which has evolved and expanded over the years. It started in 1968 with the Truth in Lending Act, *id.* §§ 1601-1667 (governing credit transactions and advertising), and expanded as Congress saw fit to pass more consumer protection laws, such as the Fair Credit Billing Act, *id.* § 1666 (establishing minimum standards for billing practices in credit transactions), and the Fair Credit Reporting Act, *id.* §§ 1681-1682 (governing the reporting of credit transactions).

⁵² 15 U.S.C. §§ 1601-1667.

⁵³ 12 C.F.R. pt. 226 (2000).

⁵⁴ *AR 600-15*, *supra* note 46, para. 2-3(a).

⁵⁵ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of *AR 600-15*, subject: Interim Change to DA Circular 640-13 and *AR 600-15* (12 June 1973).

⁵⁶ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of Initial Distribution Copies of *AR 600-15*, subject: Interim Change to *AR 600-15* (C1, 6 Feb. 1974).

⁵⁷ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of Initial Distribution of *AR 600-15*, subject: Interim Change to *AR 600-15*, Indebtedness of Military Personnel (C2, 3 Apr. 1975).

⁵⁸ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL (28 Sept. 1979) [hereinafter 1979 *AR 600-15*].

⁵⁹ 15 U.S.C.S. § 1692 (LEXIS 2005).

⁶⁰ 1979 *AR 600-15*, *supra* note 58, para. 1-6.

also expanded the description and requirements of the many federal and state laws and regulations pertaining to debt collection practices then in effect.⁶¹ Most of the prior interim changes were incorporated, and a sample letter was included for commanders to send to creditors who had failed to comply with any of the required laws or who had failed to provide the necessary documentation to show compliance.⁶² The regulation itself increased from sixteen to twenty-five pages.

Unfortunately, the same division between the commander's and the creditor's responsibilities continued. The commander's responsibilities were listed in chapter two, and the creditor's responsibilities were listed in chapter four.

F. The Current *Army Regulation 600-15*

The current *AR 600-15* has one major difference from the 1979 version—the amount of documentary evidence the creditor is required to provide before receiving collection assistance from the Army was increased.⁶³

1. *The Structure of the Current Army Regulation 600-15*

Like its predecessors, the current *AR 600-15* continues to represent a clash of competing absolutes. For example, in the current *AR 600-15*, “Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly,”⁶⁴ but “[t]he Army . . . has no legal authority to force soldiers to pay their debts.”⁶⁵ When one adds strong institutional values, such as “the Army’s public image,”⁶⁶ to this apparent dichotomy, the result is a regulation that is confusing at best, and subject to manipulation at worst.

The current *AR 600-15*’s structure loosely reflects its two main goals: (1) the implementation of a procedure for a creditor to follow whereby he or she may receive Army assistance in collecting a debt from an uncooperative Soldier, and (2) protection of a Soldier’s right to privacy. The regulation is a mix of law, Army policy, exhortations, and procedure. Many of these areas overlap and several appear contradictory. For example, paragraph 1-5(a) of *AR 600-15* states: “The Army cannot divert any part of a [S]oldier’s pay even though payment of the debt was decreed by a civil court.”⁶⁷ Paragraph 1-4b states that the Commanding General, United States Army Community and Family Support Center (USACFSC)⁶⁸ will “process debt claims received at USACFSC regarding [S]oldiers.”⁶⁹ Even more directly, paragraph 1-5(c) states: “Creditors who follow chapter four *will* have their debt complaints processed.”⁷⁰ “Processed” is defined nowhere in the regulation, but the context certainly seems to imply that the Army will assist the creditor to receive payment.

2. *Processing Creditor Claims in Accordance with AR 600-15*

The following is a description of what is supposed to happen when creditors follow the guidance in *AR 600-15*.

⁶¹ *Id.* ch. 4.

⁶² *Id.* app. E.

⁶³ Compare *AR 600-15*, *supra* note 1, para. 4-3, with 1979 *AR 600-15*, *supra* note 58, para. 4-3(a)(4). Another interesting addition to the current *AR 600-15* is paragraph 1-10, Allotments of Pay for Debts. Paragraph 1-10 prohibits creditors from: (1) requesting that a soldier set up a bank account for the purpose of paying a debt, (2) requesting a soldier to pay by allotment, or (3) sending sample copies of an allotment form to the soldier or guiding the soldier on how to make out such an allotment. *AR 600-15*, *supra* note 1, para. 1-10. The regulation, however, does not provide any recourse for a Soldier who unwittingly creates an allotment at the request of a creditor.

⁶⁴ *AR 600-15*, *supra* note 1, para. 1-5(a).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ The U.S. Army Community and Family Support Center was established by the Department of the Army in 1984. The USACFSC provides oversight for Army Morale, Welfare, and Recreation operations. See U.S. Army MWR, About MWR, <http://www.armymwr.com/portal/about/> (last visited Nov. 21, 2005).

⁶⁹ *AR 600-15*, *supra* note 1, para. 1-4(b).

⁷⁰ *Id.* para. 1-5(c) (emphasis added).

Creditors are advised first to contact delinquent Soldiers directly.⁷¹ A reasonable time should be allowed for Soldiers to respond to each such contact.⁷²

If a Soldier does not respond, the creditor should then make available to the commander a series of documents, including either written permission from the Soldier for the creditor to contact the Army about the debt⁷³ or a court order;⁷⁴ a copy of the contract forming the basis of the debt, signed by the Soldier;⁷⁵ written evidence showing the creditor's efforts to get the money directly from the Soldier;⁷⁶ and evidence showing the creditor has complied with the DOD's Standards of Fairness and other applicable federal and state regulations.⁷⁷

Even when the required items are provided by the creditor, the commander is not supposed to take the complaint at face value. The regulation directs commanders to review each case "to ensure that the terms of [AR 600-15] have been met."⁷⁸ The commander is to return creditor requests for help in processing debt complaints without action⁷⁹ if the commander finds, for example, that the claim is obviously false or misleading,⁸⁰ if any penalty for prepayment has been charged,⁸¹ or if there has been a late charge in excess of the lesser of five percent of the late payment or five dollars.⁸²

Once all the required information has been provided and the commander has determined that the creditor complied with the terms of AR 600-15, the creditor may then contact the Soldier's commander directly.⁸³ It is also at this point—and only at this point—that the commander is supposed to counsel the Soldier.⁸⁴ If the debt is not disputed, but the command is unable or unwilling to persuade the Soldier to pay, the creditor may appeal to USACFSC.⁸⁵ The regulation is silent at this point on what happens next.⁸⁶ Presumably, USACFSC would coordinate with the Defense Finance and Accounting Service (DFAS) to deduct the money from the Soldier's pay and give it to the creditor, as USACFSC is the same organization responsible for recouping money from Soldiers through DFAS for checks returned for insufficient funds from Army commissaries, clubs, etc.⁸⁷

The language of AR 600-15 puts creditors with a civil court judgment in the best position. Such creditors do not need consent from the Soldier to contact the command⁸⁸—the court order is presumed valid on its face⁸⁹—and there is little to fear from the SCRA,⁹⁰ as judgments secured in violation of the SCRA are voidable, not void.⁹¹

⁷¹ *Id.* para. 4-3a(5).

⁷² *Id.*

⁷³ *Id.* para. 4-3(a)(4). What if permission from the Soldier comes as part of the boilerplate of a contract – can the Soldier revoke permission? If he or she does, is there then a breach of contract? As few, if any, commanders or creditors ever bother to check such things, the question at this point may only be academic.

⁷⁴ *Id.*

⁷⁵ *Id.* para. 4-3(a)(2).

⁷⁶ *Id.* para. 4-3(a)(5).

⁷⁷ *Id.* para. 4-3(a)(1).

⁷⁸ *Id.* para. 2-1(a).

⁷⁹ *Id.* para. 4-4.

⁸⁰ *Id.* para. 4-4(c).

⁸¹ *Id.* para. 4-4(g).

⁸² *Id.* para. 4-4(i). Does anyone in the Army today know about this provision? The language in paragraph 4-4(i) would appear to apply to most consumer loans and credit card debt, but it conflicts with the Standards of Fairness, listed in Appendix B of AR 600-15, which state: "No late charge shall be made in excess of five percent of the late payment, or \$5 whichever is the lesser amount, or as provided by law or applicable regulatory agency determination." *Id.* app. B, para. B-5 (emphasis added). Which provision controls? Rather than viewing it as conflicting with the Standards of Fairness, could it not also be viewed as increased protection afforded to Soldiers by the Army? Put differently, Army policy could be that any late charge in excess of the lesser of five percent of the late payment or \$5 could be justification for the commander to take no action on the case.

⁸³ *Id.* para. 4-3(e).

⁸⁴ *Id.* para. 2-1c(8). Of course, commanders have various tools to encourage soldiers to resolve unpaid debts, including reprimand, administrative separation, and court martial. *Id.* para. 3-1.

⁸⁵ *Id.* para. 4-3e.

⁸⁶ *But see id.* para. 1.5c ("Creditors who follow chapter 4 will have their debt complaints processed."). *Id.* (emphasis added).

⁸⁷ Telephone Interview with Isaac Templeton, Jr., Chief of Transition Support, Family Program Directorate, USACFSC (Oct. 8, 2004).

⁸⁸ AR 600-15, *supra* note 1, para. 4-3a(4).

Finally, if a Soldier disputes a debt, the commander is supposed to return the matter to the creditor without action.⁹² Nowhere in *AR 600-15* does it require that the dispute be bona fide, but because commanders are charged with reviewing debt complaints, it is reasonable to assume that such a review would include at least a preliminary assessment of whether a Soldier's dispute has merit.

3. *The Reality of AR 600-15*

As any attorney who has worked in a military legal assistance office knows, commanders and noncommissioned officers routinely involve themselves in the private financial matters of their Soldiers, regardless of the circumstances surrounding the alleged debt. Either Soldier protections in *AR 600-15* are ignored or certain provisions are taken out of context to justify the commander's involvement.

Creditors often fare no better in the actual implementation of *AR 600-15*. First, exactly who promulgates *AR 600-15* is unclear. The regulation states that the proponent is the Army's Office of the Deputy Chief of Staff for Personnel,⁹³ but comments and suggested improvements,⁹⁴ as well as requests for collection assistance, are to be forwarded to USACFSC.⁹⁵

While USACFSC exists and performs important missions for the Army, management of *AR 600-15* is not one of them. No one at USACFSC can recall a creditor *ever* submitting a request for debt collection assistance, whether in compliance with *AR 600-15* or not.⁹⁶ There is even doubt about where a letter sent to the address listed in paragraph 4-3e of *AR 600-15* would ultimately arrive.⁹⁷

Of course, as with any complex regulation, *AR 600-15* is also subject to manipulation, as parties are able to take phrases out of context to justify a particular course of action. Creditors can rely on paragraphs that require prompt payment⁹⁸ or threaten court-martial.⁹⁹ Soldiers can rely on paragraphs that state both that the Army neither judges disputed debts¹⁰⁰ nor has any authority to make Soldiers pay debts,¹⁰¹ and also that creditors who try to make the Army a debt collector may be refused

⁸⁹ *Id.* para. 2-1c(6).

⁹⁰ Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003). The SCRA was formerly known as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.S. §§ 501-594 (LEXIS 2005).

⁹¹ *Smith v. Davis*, 364 S.E.2d 156 (N.C. Ct. App. 1988); *see also* TJAGSA Practice Note, *Procedural Steps in the SSCRA That a Plaintiff Must Take to Secure a Default Judgment Against a Military Member*, ARMY LAW., Dec. 1993, at 38. In plain terms, this means that unless a Soldier goes back to court, reopens the case, and succeeds in persuading the court that the original judgment should be voided, the judgment remains valid.

⁹² *AR 600-15*, *supra* note 1, para. 2-1c(1).

⁹³ *Id.* at i.

⁹⁴ *Id.*

⁹⁵ *Id.* para. 4-3e.

⁹⁶ Telephone Interview with Christel Schaefer, Senior Banking Officer, USACFSC (Oct. 19, 2004).

⁹⁷ If a creditor has complied with *AR 600-15*'s requirements, but is unable to obtain collection assistance from the commander, paragraph 4-3(e) instructs creditors to seek help from the Commander, USACFSC, ATTN: DACF-IS-PA, ALEX VA 22331-0522. The author sent a test letter via registered mail, return receipt requested, on 28 October 2004, to verify whether the address or procedure is still valid. Based on the zip code of the delivery address, the letter was delivered to the mail room at the Hoffman Building in Alexandria, Virginia, which was where USACFSC was located until 1998. Someone in the Hoffman Building mail room must have recognized the acronym USACFSC, and placed a mailing label with the current address on the letter. Once forwarded to USACFSC's current location, the local mail room staff consulted a routing sheet, which broke down the various organizational elements within USACFSC according to the ZIP-4 extension. For the author's test letter, the ZIP+4 extension was 0522, as indicated in the regulation. On the local routing sheet, 0522 corresponded to the Armed Forces Sports Office, and the author's test letter was forwarded there. Someone in the Sports Office opened the letter, saw that it concerned *AR 600-15*, and forwarded it to Sally Entlich, a Senior Program Analyst with USACFSC, whose responsibilities include providing guidance on Army regulations. The author and Ms. Entlich began to correspond via email in early December 2004. After researching the matter, Ms. Entlich learned that back in 1986, when the current version of *AR 600-15* was published, elements of the Adjutant General's office were still part of USACFSC, including "Installation Support, Personal Affairs," whose office symbol was "IS-PA" (see the address listed above). Telephone Interview with Sally Entlich, Senior Program Analyst, Strategic Planning and Policy Section, USACFSC (Dec. 9, 2004).

⁹⁸ *AR 600-15*, *supra* note 1, para. 1-5a.

⁹⁹ *Id.* para. 1-5g.

¹⁰⁰ *Id.* para. 1-5f.

¹⁰¹ *Id.* para. 1-5a.

assistance.¹⁰² Commanders can go either way. They can use passages to justify either heavy involvement in a Soldier's private financial affairs¹⁰³ or refusal of assistance to a creditor.¹⁰⁴

G. Effect of the 1993 Hatch Act Reform Amendment

Interestingly enough, it is the Hatch Act that achieves the original goals of *AR 600-15*. Creditors now have a much more stream-lined procedure for recovering money from delinquent Soldiers.¹⁰⁵ Similarly, Soldiers now have real protections under the SCRA.¹⁰⁶

Under the Hatch Act, creditors who are unable to recover money directly from Soldiers now have an incentive to go to court. With a court order, the Hatch Act allows Soldier pay to be subject to an involuntary allotment for commercial debts. The procedures are straightforward,¹⁰⁷ are available to anyone on the Internet,¹⁰⁸ and appear to be working quite well.¹⁰⁹

As for Soldiers, the Hatch Act specifically requires that the regulations promulgated by the services address the plight of Soldiers unable to attend hearings due to "exigencies of military duty."¹¹⁰ *Department of Defense Instruction 1344.12* requires creditors to strictly observe the protections offered by the SCRA—failure to do so results in denial by DFAS of the application for an involuntary allotment.¹¹¹ This protection appears to be working quite effectively.¹¹² Of course, without recourse to DFAS, judgment creditors are usually left without a realistic remedy, as the typical Soldier's main asset is his or her monthly income from DFAS.

With the enactment of the Hatch Act and the promulgation of *Department of Defense Directive 1344.9* and *Instruction 1344.12*, *AR 600-15* has been ready for an overhaul for many years. Before discussing the substance of that overhaul, a review of the actual requirements of *Directive 1344.9* and *Instruction 1344.12* and a comparison of how the sister services have responded to the Hatch Act are appropriate.

IV. *Department of Defense Directive 1344.9* and *Instruction 1344.12*

Like most DOD Directives and Instructions, *DOD Directive 1344.9* sets forth policies and prescribes responsibilities for various department heads. *Department of Defense Instruction 1344.12* implements the actual workings of the policies.

The policies set forth in *DOD Directive 1344.9* address the following: indebtedness,¹¹³ debt complaints,¹¹⁴ and involuntary allotments.¹¹⁵ In general, servicemembers are expected to pay their just financial obligations in a proper and

¹⁰² *Id.* para. 1-5e(2).

¹⁰³ *Id.* para. 1.5c(8)(g).

¹⁰⁴ *Id.* para. 1.5f.

¹⁰⁵ See DOD INSTR. 1344.12, *supra* note 24 (outlining the specific procedures for initiating an involuntary allotment against a soldier's pay).

¹⁰⁶ See TJAGSA Practice Note, *Defenses to Involuntary Allotments for Creditor Judgments—Implementing the Hatch Act Reform Amendments*, ARMY LAW., Jan. 1995, at 68; see also Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003) (formerly known as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 501-594 (LEXIS 2005)).

¹⁰⁷ A creditor seeking an involuntary allotment against a Soldier's pay must meet two requirements: (1) the creditor must obtain a final judgment against the Soldier from a civil court, which meets the procedural requirements of the SCRA, and (2) the creditor must send a copy of the judgment to DFAS along with a completed Involuntary Allotment Application, DD Form 2653, *supra* note 24. See Defense Finance and Accounting Service, *Involuntary Allotment from Military Personnel for Commercial Debt*, <http://www.defenselink.mil/dfas/money/garnish/mcdafact.htm> (last visited Oct. 27, 2005).

¹⁰⁸ See *id.* (providing creditors with the Involuntary Allotment Application (DD Form 2653) and a non-lawyer version of the procedures for initiating an involuntary allotment).

¹⁰⁹ Telephone Interview with Rodney L. Winn, Director, Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center (Oct. 8, 2004) [hereinafter Telephone Interview with Mr. Winn]. According to Mr. Winn, in 2003 DFAS received over 6,800 applications from creditors for involuntary allotments against servicemembers. *Id.*

¹¹⁰ 5 U.S.C.S. § 5520a(k)(2)(B) (LEXIS 2005).

¹¹¹ See TJAGSA Practice Note, *Involuntary Allotment Defenses*, ARMY LAW., May 1995, at 71.

¹¹² Telephone Interview with Mr. Winn, *supra* note 109. According to Mr. Winn, of the over 6,800 applications for involuntary allotment submitted in 2003 by judgment creditors, almost half were rejected, the principal reason being failure to comply with the requirements of the SCRA. *Id.*

¹¹³ The portion of the DOD's policy on indebtedness relevant to this article is set forth in sections 4.1. and 4.2. of *DOD Instruction 1344.9*:

4.1. Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice . . . or a

timely manner. Failure to do so may result in disciplinary action; however, the service has no legal authority to require servicemembers to pay a private debt or to divert any part of their pay for satisfaction of a private debt. Instead, in accordance with the Hatch Act, an involuntary allotment system is established.

Department of Defense Instruction 1344.12 implements *Directive 1344.9's* policies with specific guidance. Mandatory disclosure by creditors is still a prerequisite to receiving assistance with debt complaints from the services.¹¹⁶ The instruction explains the entire involuntary allotment process. Also, the services are instructed that “[d]ebt complaints that meet the requirements of [*DOD Instruction 1344.12*] shall be processed by DOD Components.”¹¹⁷ This time, unlike in *AR 600-15*, “processed” is defined¹¹⁸—the servicemember is counseled about the debt by the commander, and the creditor is informed

claim pursuant to Article 139 of [the UCMJ], . . . [T]he DOD Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt.

. . . .

4.2. Whenever possible, indebtedness disputes should be resolved through amicable means. Claimants may contact military members by having correspondence forwarded through the military locator services for an appropriate fee.

DOD DIR. 1344.9, *supra* note 27, §§ 4.1, 4.2.

¹¹⁴ The part of DOD’s policy on debt complaints relevant to this article is set forth in section 4.3. of DOD Instruction 1344.9:

4.3. The following general policies apply to processing of DEBT COMPLAINTS (not involuntary allotments):

4.3.1. Debt complaints meeting the requirements of this Directive, and procedures established [under DOD Instruction 1344.12] shall receive prompt processing assistance from commanders.

4.3.2. Assistance in indebtedness matters shall not be extended to those creditors:

4.3.2.1. Who have not made a bona fide effort to collect the debt directly from the military member.

4.3.2.2. Whose claims are patently false and misleading; or

4.3.2.3. Whose claims are obviously exorbitant.

4.3.3. Some States have enacted laws that prohibit creditors from contacting a debtor’s employer about indebtedness or communicating facts on indebtedness to an employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment or obtaining written permission of the debtor.

4.3.3.1. At DOD installations in States having such laws, the processing of debt complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

4.3.3.2. The rule in subparagraph 4.3.3.1. shall govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

4.3.4. Under [the Fair Debt Collection Practices Act], contact by a debt collector with third parties, such as commanding officers, for aiding debt collection is prohibited without a court order, or the debtor’s prior consent given directly to the debt collector. Creditors are generally exempt from [the Fair Debt Collection Practices Act], but only when they collect on their own behalf.

Id. § 4.3.

¹¹⁵ The part of DOD’s policy on involuntary allotments relevant to this article is set forth in section 4.4. of *DOD Instruction 1344.9*:

4.4. The following general policies apply to processing of INVOLUNTARY ALLOTMENTS under [the Hatch Act].

4.4.1. In those cases in which the indebtedness of a military member has been reduced to a judgment, an application for an involuntary allotment from the pay of the member may be made under procedures prescribed [in DOD Instruction 1344.12]. Such procedures shall provide the exclusive remedy available under [the Hatch Act].

4.4.2. An involuntary allotment from a member’s pay shall not be stated in any indebtedness case in which:

4.4.2.1. Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

4.4.2.2. There has not been compliance with the procedural requirements of the Soldiers’ and Sailors’ Civil Relief Act of 1940.

Id.

¹¹⁶ DOD INSTR. 1344.12, *supra* note 24, sec. 6.1.2.

¹¹⁷ *Id.* sec. 6.1.5.

¹¹⁸ Paragraph 6.1.5. states:

6.1.5. Debt complaints that meet the requirements of this Instruction shall be processed by DOD components. “Processed” means that Heads of the DOD Components, or designees, shall:

that the servicemember has been counseled.¹¹⁹ “Processed” does not mean that the services ultimately have a way to divert money from a servicemember’s pay. In the end, if a servicemember refuses to pay a just debt, the only way to attach his or her pay is to have a creditor obtain a proper civil court judgment against the servicemember and apply for an involuntary allotment.

V. How the Other Services Have Responded to the Hatch Act

All of the other services—the Coast Guard, Navy, Marine Corps, and Air Force—begin their respective regulations on indebtedness with the same two general principles: (1) servicemembers are expected to pay their just financial obligations in a timely manner, and (2) the services have no authority to require a servicemember to pay a private debt or to divert any part of their pay for its satisfaction.

A. The Coast Guard: *COMDTINST M1000.6, Chapter 8.L., Indebtedness*

The Coast Guard instruction is internally inconsistent and lacks information required by *DOD Directive 1344.6*. For example, the instruction does not mention any of the various federal and state consumer protection laws. Compliance with these laws is supposed to be a prerequisite to receiving any command assistance. All claimants are treated the same in the instruction, regardless of which state they are from or where the debtor is located, thus ignoring any consumer protections afforded under state law. There is also no distinction between creditors and debt collectors, which is curious considering that the Fair Debt Collection Practices Act prohibits debt collectors from contacting employers about a debt unless the debtor consents or the debt has been reduced to a court judgment.

There is also the same division between language early in the instruction restricting what the commander can do regarding matters of indebtedness,¹²⁰ and later guidance instructing what the commander should do when a complaint of indebtedness arrives. The latter section, “Action upon Receipt of Complaint of Indebtedness,”¹²¹ begins with the following phrase:

Commanding officers receiving an initial complaint of indebtedness shall inquire into the complaint and take prompt action to resolve the controversy. Such action should support Coast Guard regulations

6.1.5.1. Review all available facts surrounding the transaction forming the basis of the complaint, including the member’s legal rights and obligations, and any defenses or counterclaims the member may have.

6.1.5.2. Advise the member concerned that:

6.1.5.2.1. “Just financial obligations” . . . are expected to be paid in a “proper and timely manner” . . . and what the member should do to comply with that policy;

6.1.5.2.2. Financial and legal counseling services are available . . . ; and

6.1.5.2.3. That a failure to pay a just debt may result in the creditor obtaining a “judgment” . . . from a “court” . . . that could form the basis for collection of pay from the member pursuant to an involuntary allotment.

6.1.5.3. If a member acknowledges a debt as a result of creditor contact with a DOD Component, advise the member that assistance and counseling may be available from the on-base military banking office, the credit union serving the military field of membership, or other available military community service organizations.

6.1.5.4. Direct the appropriate commander to advise the claimant that:

6.1.5.4.1. Those aspects of DOD policy prescribed in [DOD Directive 1344.9 section 4] are pertinent to the particular claim in question; and

6.1.5.4.2. The member concerned has been advised of his or her obligations on the claim.

6.1.5.5. The commander’s response to the claimant shall not undertake to arbitrate any disputed debt, or admit or deny the validity of the claim. Under no circumstances shall the response indicate whether any action has been taken, or will be taken, against the member as a result of the complaint.

Id.

¹¹⁹ Commanders are to reveal to creditors only that counseling took place—not whether any action has or will be taken against a servicemember. *Id.* para. 6.1.5.5.

¹²⁰ “While a commanding officer is not authorized to adjudicate disputed cases . . .” CGCI M1000.6A ch. 8.L.1.c. (8 Jan. 1988).

¹²¹ *Id.* para. 8.L.3.

regarding the maintenance of discipline. Command action must also support the law which provides for the garnishment of a member's pay as described in Article 8.L.1.a. All actions should be accomplished within 30 days of receipt of a complaint.¹²²

Could a Coast Guard commander misread the intent of this paragraph? What if the complaint received is from a debt collector who has neither a court order nor permission from the debtor to contact the commander? The sending of such a complaint violates the Fair Debt Collection Practices Act and should result in no collection assistance by the command. Or what if the particular Coast Guard unit is located in a state that prohibits creditors from contacting employers about a debt, such as Florida?¹²³ The Coast Guard instruction does not address or even refer to these issues. Instead, the first sentence of the section following the one quoted above states: "The commanding officer should urge the individual to make payments on debts by U.S. postal money order, check, or by any other method of proving an actual record of payment."¹²⁴ It is reasonable to assume that in many situations the directive "take prompt action to resolve the controversy" will transform "urge the individual to make payments" into "order the individual to make payments."¹²⁵

The Coast Guard instruction requires commanders to make a difficult choice: (1) quickly consult the section of the Instruction which appears on point, but which is incomplete and, if read out of context, provides erroneous guidance, or (2) take the time to read and try to understand the entire instruction, which is a task lawyers struggle with. The Coast Guard instruction serves as a poor model for an updated *AR 600-15*.

B. The Navy: *MILPERSMAN 7000-020, Indebtedness and Financial Responsibility of Members*

The Navy takes a simpler approach to the matter of servicemember indebtedness:

The enforcement of private obligations is a matter for civil authorities. A commanding officer is without authority to adjudicate claims or to arbitrate controversies concerning debts or private obligations of naval members, or to act as an agent or collector. . . . The extent to which commanding officers may cooperate with creditors is limited to administrative referral of correspondence to the member.¹²⁶

The regulation then lists various consumer protection laws and regulations that a creditor must be comply with before he can receive assistance with debt collection. The laws and regulations cited come almost verbatim from *DOD Instr. 1344.12*, section 6. Next follows a series of common sense financial "tips" for the commander to discuss with servicemembers. These include adages such as "thrift is not only a virtue, but for most people, a necessity,"¹²⁷ "be wary of the 'high pressure' salesperson,"¹²⁸ and "prior to acceptance of any credit plan, members should evaluate their financial capabilities and set up a budget."¹²⁹

¹²² *Id.* para. 8.L.3.a.

¹²³ *See, e.g.*, FLA. STAT. ch. 559.72 (2004).

¹²⁴ CGCI M1000.6A, *supra* note 30, ch. 8.L.3.b.

¹²⁵ The Coast Guard Instruction also offers commanders a sample letter to use when responding to claimants. The language of the letter is worth repeating. After listing the address and salutation, the letter states:

This is in response to your letter of <Date>, concerning the alleged failure of <Name of Member>, to pay the debt owed to you.

The Coast Guard expects its members to honor all just debts and comply fully with the orders of any court of competent jurisdiction not under appeal. Upon receipt of your letter, we referred the matter to <Name of member> and advised <him/her> to communicate with you concerning this indebtedness.

If you and <Name of member> are unable to resolve this issue in a mutually agreeable manner, you must comply with the procedures of the Soldiers' and Sailors' Civil Relief Act and the provisions of Title 32, Code of Federal Regulations, Parts 112 and 113, to obtain a final judgment and court order in a court of competent jurisdiction.

Id. ch. 8.L.3.c. The language of this sample letter could easily lead a creditor to conclude that the Coast Guard merely handed the complaint over to the member.

¹²⁶ MILPERSMAN 7000-020, *supra* note 30, para. 2.

¹²⁷ *Id.* para. 4.a.

¹²⁸ *Id.* para. 4.e.

¹²⁹ *Id.* para. 4.c.

The regulation then adopts an interesting strategy for how the commander is to respond to complaints received. The commander is supposed to divide complainants into various categories, depending on whether the creditor has complied with various consumer protection laws and regulations, and whether the creditor already has a court order. The regulation provides a matrix for the commander to follow, along with several sample letters. For example, if a particular complainant failed to comply with the Fair Debt Collection Practices Act, the commander fills out and sends letter L-1; if the complainant failed to provide evidence of compliance with the Standards of Fairness, the commander fills out and sends letter L-2.¹³⁰ Each of the sample letters has boilerplate language to address the particular situation.

Initially, this approach seems straightforward and simple to follow. Unfortunately, commanders are left to determine which of all the various consumer protection laws and regulations apply to a particular situation. None of the referenced or applicable laws are provided in the regulation, and it is the rare commander who would take the time to research the issue. The Navy regulation does not facilitate a commander's compliance with *DOD Directive 1344.9* and *Instruction 1344.12* and, therefore, is not a good model for the Army.

C. The Marine Corps: *Marine Corps Order P5800.16A, Chapter 16, Indebtedness*

The Marine Corps order is straight forward and comes almost verbatim from *DOD Directive 1344.9* and *Instruction 1344.12*. Most of the applicable consumer protection laws are listed at the beginning, along with a description of how the laws must be complied with before a complainant can receive assistance.¹³¹ Unlike the Coast Guard instruction and the Navy regulation, the Marine Corps order urges commanders to contact their local staff judge advocate (SJA) for assistance.¹³² Next follows the section "Processing Complaints of Indebtedness,"¹³³ which begins with a list of disclosure requirements and a description of various types of creditors.¹³⁴ It is only after all these matters are covered that the commander receives instruction on how to actually respond to indebtedness complaints. The commander's response basically consists of a counseling session with the Marine. Marine Corps policy regarding indebtedness is to be explained to the Marine, as is the possibility of an involuntary allotment.¹³⁵ The only information communicated to the complainant is that the Marine has been counseled concerning his obligations.¹³⁶ The commander is not to reveal information on potential disciplinary or adverse administrative action to the claimant.¹³⁷

The Marine Corps order then briefly provides explanatory information on how the involuntary allotment process works,¹³⁸ and concludes with some helpful, common sense counseling tips on how to counsel Marines about financial matters¹³⁹ and, of course, a reminder to commanders that punitive, nonpunitive, and administrative actions are available for more serious situations.¹⁴⁰ There is a series of figures at the end of the Marine Corps order that contain the Standards of Fairness,¹⁴¹ a Certificate of Compliance,¹⁴² and several sample letters for commanders to use.¹⁴³

Generally, this is a helpful regulation. There are, nevertheless, two weaknesses. First, figure 16-3 (Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Member of the Command) of *MCO P5800.16A*, gives a

¹³⁰ *Id.* para. 6.

¹³¹ MCO P5800.16A, *supra* note 30, para. 16002.

¹³² *Id.* para. 16002.7. Interestingly enough, the Navy's MILPERSMAN 7000-020 only refers to attorneys in the context of referring debtors to legal assistance attorneys. MILPERSMAN 7000-020, *supra* note 30, para. 4(j). The Coast Guard's Instruction never refers to judge advocates once! CGCI M1000.6, *supra* note 30, chap. 8.L.

¹³³ MCO P5800.16A, *supra* note 30, para. 16003.

¹³⁴ *Id.*

¹³⁵ *Id.* para. 16003.5(b).

¹³⁶ *Id.* para. 16003.5(d).

¹³⁷ *Id.*

¹³⁸ *Id.* para. 16004.

¹³⁹ *Id.* para. 16005.2.

¹⁴⁰ *Id.* para. 16005.3.

¹⁴¹ *Id.* Figure 16-1.

¹⁴² *Id.* fig. 16-2.

¹⁴³ *Id.* figs. 16-3 through 16-6.

claimant an incorrect impression that a garnishment order is required in order to recover a debt from the pay of a Marine.¹⁴⁴ As discussed earlier in this article, a state garnishment order is neither necessary nor sufficient to initiate an involuntary allotment. Rather, a state court judgment in compliance with the SCRA is required.¹⁴⁵

The other weakness with the Marine Corps order is the same as that which plagues the Coast Guard's and Navy's respective regulations: the commander is required to spend too much time gathering information in order to make a proper decision on a case.

D. The Air Force: *Air Force Instruction 36-2906, Personal Financial Responsibility*

The Air Force instruction represents the best model for an update to *AR 600-15*. The instruction presents the clearest guidance on how commanders, members, creditors, and others are to respond to issues of member indebtedness. The Instruction is divided into two main sections: instructions to the various individuals invariably involved when a complaint of indebtedness is made¹⁴⁶ and a "fact sheet" containing basic information on the involuntary allotment process.¹⁴⁷

The instruction is well organized with responsibilities grouped according to the individual involved, such as major commands, installation commanders, unit commanders, SJAs, servicemembers, and even DFAS. Very little law or doctrine is set forth or even referenced; rather, each person in the "chain" receives a succinct series of instructions of what he needs to do concerning matters of indebtedness. For example, at the senior level, major commands are instructed to monitor and guide subordinate units and to include a block of instruction on personal financial management in course curricula.¹⁴⁸ Installation commanders are instructed to "[d]evelop and coordinate responses to high-level, executive, and congressional inquiries."¹⁴⁹

Unit commanders—the major players in debt collection practices—have the greatest number of responsibilities. They are to review and respond to complaints of indebtedness,¹⁵⁰ but their response is limited to a recitation of Air Force policy on indebtedness.¹⁵¹ They advise servicemembers of Air Force policy on indebtedness and that failure to pay a just debt may result in a court judgment and subsequent involuntary allotment.¹⁵² Commanders are also advised to continue their traditional role of considering adverse administrative or disciplinary action against servicemembers who continually demonstrate financial irresponsibility.¹⁵³ No information regarding adverse disciplinary or administrative action, however, may be provided to complainants.¹⁵⁴

¹⁴⁴ Figure 16-3, Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Member of the Command, states in part:

Section 5520a of Title 5, United States Code, provides that a servicemember's pay is subject to legal process initiated to enforce satisfaction of a legal debt. Such action, however, requires final judgment of a court of competent jurisdiction *directing the Marine Corps to withhold an amount from the pay of _____ and make payment to _____.*

Id. fig. 16-3 (emphasis added). The italicized portion of the quote above is garnishment language. *Department of Defense Instruction 1344.12*, to which each of the service regulations are subordinate, states: "A garnishment summons or order is insufficient to satisfy the final judgment requirement . . . and is not required to apply for an involuntary allotment under this Instruction." DOD INSTR. 1344.12, *supra* note 24, para. 6.2.1.3.

¹⁴⁵ DOD INSTR. 1344.12, *supra* note 24, para. 6.2.1.4.

¹⁴⁶ AFI 36-2906, *supra* note 30, paras. 1-9.

¹⁴⁷ *Id.* attachment 3.

¹⁴⁸ *Id.* para. 1.

¹⁴⁹ *Id.* para. 2.

¹⁵⁰ *Id.* para. 3.1.1.

¹⁵¹ The Air Force's policy on private indebtedness is as follows:

"Military members are expected to pay their just financial obligations in a proper and timely manner. . . . However, Air Force components have no legal authority to arbitrate or resolve personal disputes over debts, or . . . to require a member to pay or to divert any part of a member's pay to satisfy a private debt."

Id. attachment 3, para. A3.2.

¹⁵² *Id.* para. 3.4.1.

¹⁵³ *Id.* para. 3.1.6.

¹⁵⁴ *Id.* para. 3.1.4.

In the Air Force instruction, SJAs are the listed resource for both commanders and servicemembers for information on how to apply the various laws and regulations.¹⁵⁵ This is appropriate. Some of the more relevant laws, such as the Fair Debt Collection Practices Act, are mentioned as examples of laws to consider,¹⁵⁶ but the instruction is not a resource on the law in this area. The instruction simply presumes that lawyers know what laws and regulations are applicable to a given situation.

The “Fact Sheet” in attachment 3 of AFI 36-2906 provides an accurate, concise summary of the “general procedures involved in resolving allegations of indebtedness and initiating involuntary allotments against military pay for civil debts.”¹⁵⁷ It is devoid of military acronyms. All of the necessary points of contact, addresses, phone numbers, laws, forms, and procedures are spelled out in less than two pages. Commanders are even authorized to send a copy of attachment 3 to claimants in appropriate cases.

The Air Force has obviously recognized that private indebtedness is a complicated subject matter for anyone who does not regularly work in this area. As such, they have created a regulation that is a practical resource for commanders. It provides basic information and assigns responsibilities, but appropriately refers all of the legal issues to the SJA. This is the model the Army should follow to update *AR 600-15*.

VI. A Proposal to Revise *AR 600-15*

After considering *AR 600-15* in light of the history of garnishment of federal pay, the development of *AR 600-15*, changes in federal law, including the enactment of the Hatch Act, the requirements of *DOD Directive 1344.9* and *Instruction 1344.12*, and the response of the sister services, the following revisions to *AR 600-15* are necessary to bring the regulation up to date and to make *AR 600-15* an effective tool for commanders.

A. A New Proponent

Regardless of what is written in the current *AR 600-15*, there is no active proponent for the regulation. Although the Office of the Deputy Chief of Staff for Personnel (G-1) is listed as the proponent,¹⁵⁸ no one in G-1 knows anything about the regulation today.¹⁵⁹ As explained earlier, no one at USACFSC knows anything about *AR 600-15* either. This leaves commanders, Soldiers, and creditors with no one to serve as the final authority on the regulation. Also, there is no one to whom suggested improvements or changes to *AR 600-15* may be addressed.¹⁶⁰ Given the problems with the current *AR 600-15* discussed above and all of the changes in the law, a proper, accessible proponent is imperative.

The Office of the Deputy Chief of Staff for Personnel is not the proper proponent because G-1 addresses standard personnel issues such as managing morale programs, establishing policy matters, and tracking human resources, while *AR 600-15* almost exclusively involves legal matters. The number of laws and regulations that overlap in the area of private indebtedness continues to increase. Anytime an issue of private indebtedness arises, it is necessary to analyze the complex relationship between the privacy rights of Soldiers, the administrative requirements of creditors, the unique role of the commander, and the array of possible administrative and disciplinary actions in place to protect the Army’s image and to ensure good order and discipline. The host of different federal and state laws and regulations need to be understood and

¹⁵⁵ *Id.* sec. 5.

¹⁵⁶ *Id.* para. 5.2.

¹⁵⁷ *Id.* para. A3.1.

¹⁵⁸ *AR 600-15*, *supra* note 1, at i.

¹⁵⁹ Ms. Entlich, the USACFSC employee referred to in *supra* note 97, also stated that she did some investigating on her own after our conversations. She consulted personnel at the Deputy Chief of Staff’s office in the Pentagon and was told that the section entitled “Compensation and Entitlements,” a part of G-1, now was the proponent for *AR 600-15*. E-mail from Ms. Sally Entlich, Senior Program Analyst, Strategic Planning & Policy, USACFSC, to MAJ James S. Tripp, Student, 53d Graduate Course, The Judge Advocate General’s Legal Center and School, U.S. Army (27 Jan. 2005) (on file with author). Ms. Entlich referred the author to Patricia Battle, G-1 Publications Control, Management Support, who confirmed that Compensation and Entitlements was indeed the listed proponent for *AR 600-15*. Telephone Interview with Patricia Battle, G-1 Management Support, Publications Control, The Pentagon (Jan. 28, 2005). The author then contacted Gail Roman-Rodriguez at the Compensation and Entitlements office in the Pentagon. Ms. Roman-Rodriguez said her office managed remission and cancellation of indebtedness to the U.S. Government, and that they have never dealt with the issue of private soldier indebtedness. She had no knowledge of *AR 600-15*. Telephone Interview with Ms. Gail Roman-Rodriguez, Compensation and Entitlements, G-1, The Pentagon (Jan 28, 2005).

¹⁶⁰ Comments and suggested improvements are supposed to be sent to the same address to which the author sent the test letter, referred to in footnote 97 above.

applied correctly. Questions in this area are appropriately addressed to lawyers, not personnel specialists, human resource managers, or accountants. As such, a logical choice for the proponent of *AR 600-15* is the Office of the Judge Advocate General. The regulation should be switched to become part of the *AR 27* legal series—for example, *AR 27-15, Indebtedness of Military Personnel*.

B. The Content and Format of an Updated *AR 600-15*

Air Force Instruction 36-2906 is a great example of what the Army's revised *AR 600-15* should resemble. Brief, concise, readable—*AFI 36-2906* represents a real resource for commanders.

The regulation should begin with a general statement of Army policy on indebtedness: Soldiers are expected to pay their just financial obligations in a proper and timely manner, but the Army has no legal authority to arbitrate or resolve personal disputes over debts, to require a Soldier to pay debts, or to divert any part of a Soldier's pay to satisfy a private debt. This policy statement should be followed by a section describing the responsibilities of the various commands and other parties involved. The regulation should also contain a fact sheet, along with some reference and sample materials, on indebtedness and the involuntary allotment process that is written in language understandable to civilians (a proposed sample is provided in Appendix D of this article). That is all—perhaps ten to fifteen pages in length.

The various commands and other parties covered in the responsibilities section should include the Office of the Judge Advocate General (OTJAG), the Legal Assistance Policy Division within OTJAG, installation commanders, unit commanders, SJAs, Soldiers, and DFAS.

The OTJAG would have overall responsibility and supervision of the interpretation of *AR 600-15*. Of course, as with any branch of the Executive Department, this is to ensure responsibility and accountability for the regulation. There must also be an ultimate authority on the regulation within the agency. Although the current *AR 600-15* lists the Deputy Chief of Staff for Personnel as that authority,¹⁶¹ the reality is that language in the regulation shifts all decision-making authority to the Commanding General (CG), USACFSC.¹⁶² As discussed earlier, USACFSC has literally no dealings with *AR 600-15*, so it is difficult to imagine how a technical question on interpretation of the regulation would be answered by the CG, USACFSC. Most likely, the CG would turn to his judge advocate for guidance. Questions regarding Soldier private indebtedness will almost always be legal questions; therefore, a logical choice for ultimate authority on interpretation of *AR 600-15* would be The Judge Advocate General of the Army.

Although OTJAG would be the proponent of the regulation and would be responsible for overall supervision and administration, the Legal Assistance Policy Division (LAPD) within OTJAG would actually be the office to promulgate policies and procedures. This is a logical proposal as the LAPD normally tracks consumer laws on indebtedness. Since the LAPD is the subject-matter experts, they could monitor and guide installation legal offices to ensure the offices have up-to-date information on federal, state, and local laws concerning indebtedness. The LAPD could also coordinate with the Administrative Law Division of OTJAG to prepare and distribute instructional materials to commanders on personal financial management and the involuntary allotment process.

Installation commanders would be charged with monitoring and guiding subordinate units. This responsibility would really only consist of making sure implementation of *AR 600-15* is a command responsibility. Also, in coordination with their local SJA, installation commanders would be responsible for responding to congressional and other high-level inquiries.

Unit commanders would have the most responsibilities as this is the most efficient way to carry out the intent of *DOD Directive 1344.9*. The commander's listed responsibilities would be devoid of the various federal and state laws and regulations. Rather, commanders would be charged with reviewing and assessing commercial indebtedness complaints, in consultation with their local SJA. Commanders would then be directed to counsel Soldiers on Army policies regarding indebtedness, regardless of the circumstances. This counseling would not include an order to pay. It would be a discussion of the Army's policy that Soldiers pay their just debts timely, and that failure to do so could result in an involuntary allotment by the creditor. The commander would also inform the Soldier that repeated demonstrations of financial irresponsibility could result in adverse administrative or disciplinary action. If the Soldier has questions, he would be referred to an installation financial counselor or a legal assistance attorney.

¹⁶¹ *AR 600-15*, *supra* note 1, para. 1-4(a).

¹⁶² *Id.* para. 1-4(b)(4).

As for the complainant, the commander would respond to the creditor in writing using a sample letter contained in the regulation as a guide. The sample letter would acknowledge receipt of the complaint and would indicate that the Soldier has been counseled on the Army's policy concerning indebtedness. The complainant would be informed, however, that Army policy dictates that assistance to creditors is limited to the administrative referral of the material to the Soldier, as the Army has no legal authority to arbitrate or resolve personal disputes over debts, nor to require a Soldier to pay, or to divert any part of a Soldier's pay to satisfy, a private debt. The commander would refer to and include with the letter a "Fact Sheet" from AR 600-15. This "Fact Sheet" would contain a concise description of Army policy on personal indebtedness and the involuntary allotment process.¹⁶³ Limited information would be provided on the involuntary allotment procedure, as the forms used by DFAS to set up an involuntary allotment are self explanatory and contain a great deal of information.

Staff judge advocates would be charged with advising commanders on how to apply Army policy to individual cases of indebtedness, and of the involuntary allotment procedures. Of course, the SJA has always been and will continue to be an advisor to the command on the appropriate administrative or disciplinary action in cases of continued financial irresponsibility, fraud, deceit, or criminal conduct. The SJA would also be charged with providing legal assistance to Soldiers on issues of financial responsibility under federal and state laws and regulations and to those who choose to contest applications for involuntary allotments for civil debts.

The section on Soldiers' responsibilities would mainly consist of directions to comply with the Army's policy on indebtedness, but it would also include exhortative language encouraging behaviors such as thrift and budgeting.

A section about DFAS would not direct DFAS to do anything; rather, it would provide a brief description of DFAS's role in matters of indebtedness and provide contact information.

VII. Conclusion

Now, having read the proposed *AR 600-15*, when the commander receives a call from *Snuffy's* creditors she calmly responds that Army policy requires that she not arbitrate or judge complaints of indebtedness. She takes the name and address of the creditor and then sends the creditors a tailored copy of *AR 600-15's* sample letter, along with the Fact Sheet, which explains Army policy in more detail and provides information on the involuntary allotment procedure. She also counsels *Snuffy* about the possibility of an involuntary allotment and the potential for adverse administrative or disciplinary action if his financial problems interfere with the unit's mission or damage the Army's public image. She then refers him to the local installation financial counselor and the legal assistance office.

The current *AR 600-15* is obsolete and without a real proponent. Most commanders are unaware of its existence. Those that have heard of *AR 600-15* usually ignore its mandates or take language out of context to justify a decision in a given situation. Some commanders are aggressive in matters of indebtedness and give orders intruding into a Soldier's private life—even when the Soldier's work performance is flawless and, absent the call from the creditor, no one in the army would know there was a dispute. On the other hand, other commanders are reluctant to take any measures against a Soldier—relying on "the army has no authority" language—even when the Soldier is engaging in flagrant financial misbehavior, bringing discredit on the Army, or harming relations between a local creditor and the military community at large.

The DOD published *Directive 1344.9* and *Instruction 1344.12* over ten years ago. These publications were in response to the Hatch Act and implemented many changes in the way the Army is to process complaints of Soldier indebtedness. The Army has yet to update *AR 600-15* to comply with these changes. *Army Regulation 600-15* should be revised to comply with current law, and it should be greatly simplified so that it becomes an effective resource for commanders and Soldiers. Its new proponent should be the Office of the Judge Advocate General, as it is a regulation that deals mainly with the application of various federal and state laws and regulations.

¹⁶³ A sample "Fact Sheet" is provided in Appendix D of this article.

Appendix A

Paragraph 36, AR 600-20, Army Command Policy and Procedures (1 February 1970)

36. Private indebtedness and financial obligations.

a. *See AR 210-7.*

b. Commanding officers will not tolerate actions of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the private indebtedness and financial obligations of their personnel. Normally, it is not difficult to distinguish between an honest denial of an obligation and a dishonest or irresponsible evasion thereof. A claim based upon a judgment, order, or decree of a court which appears valid on its face, should ordinarily be accepted by the commanding officer as prima facie evidence of the financial obligation established thereby. Such a judgment, however, may be rebutted by other evidence, such as a conflicting decree of another civil court. If, after consideration of all factors, a commanding officer believes that a member of his command has dishonorably failed to pay his just debts, disciplinary action may be initiated (arts. 15, 133, 134, UCMJ; para. 213b, MCM, 1951). Whether or not disciplinary action is taken, unpaid personal indebtedness of long standing which the individual is not attempting to resolve may be handled administratively under the provisions of AR 600-200, AR 635-105, or AR 635-212.

c. Complaints of civil indebtedness or financial obligations which are not subject to the provisions of AR 210-7 and which are received at any echelon of the Department of the Army superior to the immediate command of the member concerned will be forwarded through proper channels to the immediate commanding officer of such member for action as outlined in *d* below. Each communication will be acknowledged by the command receiving the complaint and the writer informed of the referral of his letter.

d. Upon receipt of a communication from any echelon of the Department of the Army superior to the immediate command of the member concerned, or directly from the complainant, concerning a member's failure to satisfy his private indebtedness or financial obligations, the appropriate procedure set forth below will be followed:

(1) If upon receipt of the communication it appears that the complainant has not made reasonable efforts to collect directly from a member, inform the complainant that action by the military authorities will be deferred until such time as it appears that the complainant has made such efforts. In questionable cases involving civil court judgments, commanders are encouraged to utilize the services of a Staff Judge Advocate prior to furnishing a reply to the complainant.

(2) If upon receipt of the communication there appears to be evidence showing a reasonable effort to collect directly from the member, the organizational commander will discuss the matter with the member concerned. If the obligation is admitted by the member, the commanding officer will insure that reply is made promptly to the complainant indicating the member's intentions regarding payment. If the obligation or the amount is disputed or denied by the member, the commanding officer, in his discretion, may require either or both parties to submit any necessary documents or other pertinent evidence. When the commanding officer believes that the matter justifiably is controversial, he will make reply directly to the complainant advising that it is the established policy of the Department of the Army that a disputed debt is a matter to be settled by the civil courts. When complaints of a member's repeated failure to satisfy private indebtedness or financial obligations are received, the commanding officer will take appropriate followup action with a view to assisting the member in complying with previous arrangements. The complainant will be requested to address any further correspondence deemed necessary direct to the member concerned or to his commanding officer.

(3) Complaints received after a service member has been reassigned will be forwarded to his current organization if the latest assignment is available. Complaints received after a service member has departed on orders for overseas duty or on orders to return to CONUS, and whose current organization is not known, will be forwarded to the commanding officer of the appropriate overseas replacement station or returnee reassignment station. All complaints in the above categories will be acknowledged and the complainant will be advised-

(a) Of the service member's leave address when applicable.

(b) That service member will be in a transient status for 30 to 90 days (or the approximate number of days normally required in each individual case) prior to reaching his new duty station.

(c) That further correspondence concerning the indebtedness should be addressed to the commanding officer of the unit of the service member, if known. If the unit of the service member is not known, the complainant will be advised of the due date and the address to which correspondence should be sent in format consistent with the following examples:

Commanding Officer of
PVT Robert E. Roe, SN 00000000
U.S. Army Overseas Replacement Station
Fort Lewis, Washington
(DUE DATE: 1 Jan 196-)

or

Commanding Officer of
PVT Robert E. Roe, SN 00000000
U.S. Army Returnee-Reassignment Station
Fort Hamilton, New York
(DUE DATE: 1 Jan 196-)

e. The provisions of *b* through *d* above, and paragraph 37 do not normally apply in the case of retired personnel not on active duty. Routine complaints of civil indebtedness or financial obligations of retired personnel not on active duty, is outside the responsibility of the Army and that the command regrets that it cannot be of assistance in the matter. Requests for exception to policy may be forwarded to The Adjutant General, ATTN: AGPF-IC, Department of the Army, Washington, D.C. 20310, when in the opinion of the reviewing officer the complaint justifies consideration by the active military.¹⁶⁴

¹⁶⁴ 1970 AR 600-20, *supra* note 32, para. 36.

Appendix B

Paragraphs 8, 9 and 10 of AR 210-7, Personal Commercial Affairs (1 July 1966)

8. Indebtedness of military personnel.
 - a. A member of the Armed Forces is expected to pay his just financial obligations in a proper and timely manner. A “just financial obligation” means one acknowledged by the military member in which there is no reasonable dispute as to the facts or the law, or one reduced to judgment which conforms to the Soldiers’ and Sailors’ Civil Relief Act (50 U.S. C., Appendix 501, et seq.), if applicable. “In a proper and timely manner” means a manner which the installation commander concerned determines does not under the circumstances, reflect discredit on the military service.
 - b. The Department of the Army does not condone an attitude of irresponsibility or evasiveness by its personnel toward their just private indebtedness or financial obligations. However, the Department of the Army has no legal authority to require a military member to pay a private debt, or to divert any part of his pay for the satisfaction thereof even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.
 - c. Creditors desiring to contact a military member concerning his indebtedness will be advised that the member’s current address may be obtained by writing to The Adjutant General, ATTN: AGPF, Department of the Army, Washington, D.C. 20310, for officers and warrant officers and to the Commanding Officer, US Army Personnel Services Support Center, Fort Benjamin Harrison, Ind., 46249, for enlisted personnel, and inclosing \$1.50 as a fee for the service. See AR 37-30.
9. Standards of fairness and full disclosure by lenders and sellers.
 - a. Appendix I describes the principal standards (Part I) which are considered to characterize fair and just dealing with servicemen and itemizes the information (Part II) which the servicemen needs to know in order to be fully informed on the terms of the contract. Adherence to these standards and disclosure of this information in advance places both parties squarely on notice of their respective obligations, discourages improvident loans, and reduces cases of default.
 - b. Those who sell or loan to military personnel are expected to subscribe to the standards of fairness and to make full disclosure before the loan or credit agreement or contract is executed. Because banks and credit unions operating on military installations own a special responsibility to deal fairly with those assigned to or employed on the installation, they must conform to the requirements of appendix I before executing the loan or credit agreement or contract.
 - c. The itemized information required in Part II of appendix I may be presented to the serviceman in the form most convenient to the seller or lender, as long as all of the information is disclosed and a copy is provided to the borrower.
10. Processing debt complaints.
 - a. With the growth of borrowing opportunities and consumer credit, the Department of the Army has been called upon with increasing frequency to provide assistance in the processing of debt complaints growing out of such transactions. While many of these requests involve loan and credit transactions which are fair and reasonable, other involve transactions in which the full cost of credit has not been stated simply and clearly in advance. Further, some of these transactions levy exorbitant charges and other unreasonable obligations against the military debtor. Under such circumstances the Department of the Army will not use its facilities and personnel in processing such debt complaints through military channels. For the purpose of this regulation, lenders also include all financial institutions (such as centralized charge systems) which, although not a party to the original transaction, seek assistance in the collection of debts.

b. In all loan and credit transactions subject to this regulation, communications charging military members with indebtedness will be referred through channels to the debtor only under the conditions set forth in (1) and (2) below.

(1) Lenders and creditors completing appendix I before executing the loan or credit contract must submit a copy of Part II (Full Disclosure) to the commanding officer of the military member concerned or, if unknown, to the Headquarters, Department of the Army, for forwarding to the military member concerned.

(2) Those not executing appendix I before consummating the loan or credit contract (or who are unable to produce a copy thereof signed by both parties) must submit an executed copy of Part II (Full Disclosure) and Part III (Certificate of Compliance). Requests for assistance which fail to meet these requirements and which are not modified after the sender has been so notified will not be acted upon.

c. Those claims in which there is questionable compliance with these requirements, or in which the cost of the loan or credit including all finance charges, although stated, appear excessive or exorbitant, will be referred to the officer who has been designated by the installation commander as responsible for such consideration and disposition as may be appropriate. Before deciding on a course of action, the designated officer will give the creditor an opportunity to demonstrate that the finance charges conform to the law of the State governing the contract and the extent to which the finance charges and rates conform to the prevailing rates and charges for similar consumer credit transactions.

d. Additionally, the fact that a particular claim is exempt from the requirements of Full Disclosure and Standards of Fairness under *e* below (e.g., an open-end or revolving charge account), does not foreclose the right by the debtor to question service charges and other finance charges and to negotiate a fair and reasonable settlement.

e. The following types of debt complaints are not subject to the processing requirements of *d* above: claims by accommodation endorsers, comakers, or lenders against the party primarily liable on obligations not intended to benefit the accommodating party through payment of interest or otherwise; contracts for the purchase, sale or rental of real estate; claims in which the total unpaid amount does not exceed \$50; claims for support of dependents; claims based on a revolving or open-end credit account if the account shows the periodic rate and its annual rate equivalent and the balance to which it is applied to compute the charge; or purchase money liens on real property (this does not include other liens on real property and related obligations such as those which represent obligations for improvement or repair). See also paragraph 36, AR 600-20.¹⁶⁵

¹⁶⁵ AR 210-7, *supra* note 33, paras. 8, 9, 10.

Appendix C

Appendix I of AR 210-7, Personal Commercial Affairs (10 June 1966)

Standards of Fairness

1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed by the serviceman. In the event a contract is signed with a U.S. company in a foreign country the lowest interest rate of the State or States in which the company is chartered or does business shall apply.
2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed in which event the fee provided in the contract shall not exceed 10% of the obligation found due. No attorney fees shall be authorized if he is a salaried employee of the holder.
3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised him of this fact.
4. The debtor shall have the right to remove any security for the obligation beyond State or national boundaries if he or his family moves beyond such boundaries under military orders and notifies the creditor in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.
5. No late charge shall be made in excess of 5% of the late payment, or \$5., whichever is the lesser amount. Only one late charge may be made for any tardy installment.
6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment that portion of the finance charges which have inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied, in which case its operation shall be explained in the contract.
7. No charge shall be made for an insurance premium or for finance charges for such premium unless satisfactory evidence of a policy, or insurance certificate where state insurance laws or regulations permit such certificates to be issued in lieu of a policy, reflecting such coverage has been delivered to the debtor within 30 days after the specified date of delivery of the item purchase or the signing of a cash loan agreement.
8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.
9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will meet the following conditions: (a) the defaulting purchaser will be given advance written notice of the intention to repossess; (b) following repossession, the defaulting purchaser will be served a complete statement of his obligations and adequate advance notice of the sale; (c) he will be permitted to redeem the item by payment of the amount due before the sale, or in lieu thereof submit a bid at the sale; (d) there will be a solicitation for a minimum of three sealed bids unless sold at auction; (e) the party holding the security, and all agents thereof, are ineligible to bid; (f) the defaulting purchaser will be charged only those charges which are reasonably necessary for storage, reconditioning and resale and (g) he shall be provided a written detailed statement of his obligations, if any following the resale and promptly refunded any credit balance due him, if any.

10. The contract may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in pre-production costs, or require preparation for delivery, such additional costs will be listed in the order form or contract. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion, and the purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract.¹⁶⁶

¹⁶⁶ AR 210-7, *supra* note 33, app. I.

Appendix D

Proposed Fact Sheet for Revised AR 600-15

Personal Indebtedness and Involuntary Allotments for Civil Debts

1. Involuntary Allotments. This fact sheet addresses the general procedures involved in resolving allegations of indebtedness and initiating involuntary allotments against military pay for civil debts.
2. Army Policy. Soldiers are expected to pay their just financial obligations in a proper and timely manner. When necessary, commanders will counsel Soldiers about their financial responsibilities. Nevertheless, the Army has no legal authority to arbitrate or resolve personal disputes over debts or to require a Soldier to pay or to divert any part of a Soldier's pay to satisfy a private debt.
3. Disputes Over Indebtedness. Whenever possible, disputes over indebtedness should be resolved through amicable means by the parties involved. Claimants desiring to contact a Soldier about a debt may, in most cases, obtain the Soldier's address by contacting:

Commander
U.S. Army Enlisted Records & Evaluation Center
ATTN: Locator
8899 East 56th Street
Fort Benjamin Harrison, IN 46249-5301

The Army will charge a reasonable fee for the research service. In situations in which the Army is unable to release information about the Soldier (i.e., Soldiers assigned at overseas installations or at classified locations), the Army will forward correspondence from the claimant to the Soldier at no additional cost.

4. Involuntary Allotments for Civil Debts. Creditors whose bona fide efforts to collect a debt have failed may seek relief by applying for an involuntary allotment of pay pursuant to the Hatch Act Reform Amendments of 1993 (Public Law No. 103-94), as implemented by DOD Directive 1344.9, DOD Instruction 1344.12, and Army Regulation 600-15.

4.1. A creditor may initiate this process against any Soldier of the regular Army, Army National Guard, or Army Reserve. Involuntary allotments will not be taken from retired or disability pay. The application is initiated by preparing and submitting DD Form 2653, Involuntary Allotment Application, along with a certified copy of a judgment issued by a civil court and any other certifications required by DOD Instruction 1344.12, to the Defense Finance and Accounting Service (DFAS). Information and forms are available from DFAS by calling (800) 859-1845 or via the internet at www.dod.mil/dfas, or by writing:

Defense Finance and Accounting Service
Cleveland Center, Code PGL
P.O. Box 998002
Cleveland, OH 44199-8002

4.2. The creditor's application must certify certain state and federal procedural requirements have been satisfied prior to obtaining the judgment, including satisfaction of the procedural requirements of the Servicemember's Civil Relief Act.

4.3. Upon proper receipt of a complete application package, DFAS will forward a copy of the application to the Soldier and the Soldier's commander along with a DD Form 2654, Involuntary Allotment Notice and Processing. The Soldier will have 90 days from the date DFAS mails the package in which to respond to the application. The Soldier's time to respond to the action may be extended by the Soldier's commander for good cause. If the Soldier and commander fail to respond to the notice from DFAS within the allotted time, and application is otherwise valid, DFAS may automatically process the involuntary allotment on the 15th calendar day after the date a response was due.

4.4. If the Soldier consents to the allotment, the commander will return the package to DFAS. The allotment will commence within 30 days. If the Soldier contests the application, the Soldier may seek legal assistance and will submit supporting evidence refuting the validity of the application within 15 days to his or her commander, who will then forward the response to DFAS.

4.5. DFAS officials will make the final decision on any issues or defenses raised by the Soldier except for the issue of whether "military exigencies" adversely impacted the Soldier. A "military exigency" is defined in DOD Directive 1344.9 to be a military assignment or mission-essential duty that, because of its urgency, importance, duration, location or isolation, necessitates the Soldier to be absent from an appearance at a judicial proceeding, or prevents the Soldier from being able to respond to notice of an involuntary allotment action. Exigency of military duty is normally presumed during periods of war, national emergency, or when the Soldier is deployed. The Soldier's unit commander will decide whether the defense of military exigencies is valid and the commander's decision on this issue is binding on DFAS. Commanders return the application to DFAS indicating their decision on the DD Form 2654. If the commander finds that the military exigencies defense is valid, DFAS will return the application to the creditor without further action.

4.6. If the involuntary allotment application is denied based upon the commander's determination that military exigencies adversely impacted the Soldier's ability to respond to the legal action, DFAS will give the creditor the name and address of the appellate authority listed on the DD Form 2654 by the commander. In the Army, the appellate authority is the immediate Army superior commander to the commander who made the initial decision. The creditor may appeal the denial to the appellate authority, who will make the final decision within 30 days of receiving the appeal and who will respond directly to the creditor. The appellate authority's decision may not be appealed. If the appeal is granted, the creditor must submit a written request to DFAS, along with a copy of the appellate authority's decision, to start the allotment.

4.7. Involuntary allotments will be taken only from pay that is "subject to involuntary allotment," as defined by DOD Instruction 1344.12. Pay subject to allotment includes basic pay and certain other payments, but not allowances, reimbursements for expenses, or separation pay. The maximum amount of pay that may be taken is the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum amount authorized by the applicable state's law. Other debts (e.g., income tax withholding, government debts, military fines and forfeitures, family support obligations) take priority over allotments for civil debts.

The Burden of Proof in Nonjudicial Punishment: Why Beyond a Reasonable Doubt Makes Sense

Captain Shane Reeves*

Roadmap

The *Manual for Courts-Martial* (MCM) fails to specify the required burden of proof for a commanding officer to determine guilt when administering nonjudicial punishment. As a result of the MCM's silence, the military services have been able to apply different burdens of proof when administering nonjudicial punishment. The lack of a uniform burden of proof throughout the military creates a perception of arbitrary justice, is contrary to the intent of the Uniform Code of Military Justice (UCMJ), and presents difficult issues for joint operation commanders.

The adoption of a uniform burden of proof would eliminate these problems. A comparison of possible burdens of proof demonstrates that beyond a reasonable doubt offers the greatest individual protections to accused servicemembers while maintaining the efficiency required by the nonjudicial punishment system. Therefore, the services should universally implement beyond a reasonable doubt as the burden of proof when administering nonjudicial punishment.

To support this contention, the article is divided into five sections. Section I briefly introduces the nonjudicial punishment system and discusses the problem of services using different burdens of proof. Section II defines burden of proof and describes the possible burdens of proof available to military commanders. This discussion analyzes when a burden of proof is typically implemented and what situations require a finding of guilt beyond a reasonable doubt. Section III describes the severity, scope, and long-term consequences of the possible punishments available to commanding officers in Article 15 proceedings and explains why beyond a reasonable doubt is the most equitable burden of proof in nonjudicial punishment proceedings. Section IV compares civilian administrative hearings and Article 15 proceedings. This comparison illustrates that nonjudicial punishment lacks many of the procedural protections found in civilian administrative adjudications. Adopting beyond a reasonable doubt as the universal standard when adjudicating nonjudicial punishment is necessary in order to counterbalance the loss of these procedural protections. Section V concludes that all military commanders should apply the burden of proof of beyond a reasonable doubt when adjudicating nonjudicial punishment.

I. Introduction

Article 15 of the UCMJ enables U.S. military commanders to address minor offenses¹ that do not warrant a trial by court-martial, but present discipline or authority problems within their units.² Article 15 proceedings are unlike courts-martial and are a nonjudicial form of punishment.³ Commander's discretion, though not absolute, is extremely broad.⁴ Commanders determine when to pursue nonjudicial punishment and also what punishment to impose if he finds the individual guilty of the alleged infraction.⁵ Before making a determination of guilt, the commanding officer must be

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¹ What constitutes a "minor offense" is a much debated topic. The UCMJ does not define "minor offense" and simply states that "[A]ny commanding officer may . . . impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial." UCMJ art. 15(b) (2005). The MCM states:

Whether an offense is minor depends on several factors: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record and experience; and the maximum sentence imposable for the offense if tried by general court-martial. Ordinarily, a minor offense is an offense which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than 1 year if tried by general court-martial. The decision whether an offense is "minor" is a matter of discretion for the commander imposing nonjudicial punishment.

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. V, ¶ 1e (2005) [hereinafter MCM]. The Supreme Court has stated that "those infractions falling below the threshold of criminal activity in the civilian world" may be dealt with by nonjudicial punishment in the military. *Parker v. Levy*, 417 U.S. 733, 750 (1974). For a discussion concerning the parameters and definition of "minor offense" see FREDRIC I. LEDERER, *MILITARY LAW: CASES AND MATERIALS* § 8-22.00 (1999).

² UCMJ art. 15(b).

³ Nonjudicial punishment is known by different names among the separate branches of the military. The Navy and Marine Corps refer to nonjudicial punishment as "Captain's Mast" or "Office Hours." The Army refers to nonjudicial punishment as an "Article 15" and the Air Force calls it "NJP." The Coast Guard refers to nonjudicial punishment as "NJP," "Captain's Mast," or "Article 15" punishment.

⁴ The primary limit on a commanding officer's discretion is the right of the accused military personnel to refuse nonjudicial punishment and demand trial by court-martial. UCMJ art. 15(a). The one exception to this rule is for personnel "attached to or embarked in a vessel." *Id.* In addition, personnel given punishment they feel is unjust may appeal to the commanding officer's next superior in the chain of command. MCM, *supra* note 1, pt. V, ¶ 7a.

⁵ MCM, *supra* note 1, pt. V, ¶ 1d(2).

convinced by the facts and circumstances surrounding the infractions that nonjudicial punishment is appropriate.⁶ The *MCM*, however, fails to specify the required burden of proof for determining guilt in nonjudicial punishment proceedings. As a result, the services currently use different burdens of proof for ascertaining guilt in nonjudicial punishment proceedings.⁷

The use of different burdens of proof throughout the military is contrary to the intent of the drafters of the UCMJ and specifically Article 15. Prior to the creation of the UCMJ, the military services dealt with misconduct individually. Criticism of these separate military justice systems caused the Secretary of Defense in 1948 to “appoint[] a special committee to draft a Uniform Code of Military Justice, uniform in substance and uniform in interpretation and construction, to be equally applicable to all of the armed forces.”⁸ Article 15 of the UCMJ “combine[d] the present practices of mast punishment in the Navy and Coast Guard and the disciplinary punishment imposed by commanding officers in the Army and Air Force.”⁹ The intent behind the enactment of Article 15 was to eliminate the differences in the separate forms of nonjudicial punishment. The continued use of different burdens of proof among the individual branches of the military violates the drafters’ intent for conformity in all service branches.¹⁰

The lack of a uniform burden of proof also raises credibility questions about the equity of the nonjudicial punishment system. Commanders are entrusted with the power to act as both prosecutor and judge in nonjudicial matters.¹¹ Commanders must determine if a servicemember’s actions should result in nonjudicial punishment. A commander’s determination will differ based on the burden of proof adopted by the commander’s specific service. Because of the different burdens of proof, outcomes and punishments may vary for the same misconduct by virtue of the offender’s branch of service.

The problems that arise by the separate services adopting different burdens of proof are most clearly demonstrated in joint operations. Joint operations place nonjudicial punishment authority over military personnel from different services under a single commander.¹² The joint operation commander has authority to impose nonjudicial punishment on any servicemember, but must apply the parent service’s procedures.¹³ Thus, if the joint operation commander administers nonjudicial punishment to military personnel from different services who commit the same act of misconduct, he determines guilt or innocence based upon different burdens of proof.¹⁴ This disparity creates a likelihood of servicemembers under the same command who commit the same misconduct receiving different punishments. The possible variance in outcomes creates credibility issues for the joint operations commander, promulgates a perception of partiality, and raises legitimate concerns for military personnel serving in a joint operation.

Based upon the intent behind the drafting of Article 15 and the credibility problems created by the separate services’ use of different burdens of proof, there is a need for a uniform burden of proof throughout the military. Only a uniform burden of proof would eliminate the perception of arbitrary justice and create certainty in the nonjudicial punishment system. With the

⁶ *Id.*

⁷ Commanders in the U.S. Army must find guilt beyond a reasonable doubt. U.S. DEP’T OF ARMY, REG. 27-10, LEGAL SERVICES: MILITARY JUSTICE para. 3-16(d)(4) (27 Apr. 2005) [hereinafter AR 27-10]. Navy, Marine, and Coast Guard commanders must find guilt by no less than a preponderance of the evidence. U.S. DEP’T OF NAVY, NAVY JAG MANUAL para. 0110(b) (1990) [hereinafter NAVY JAG MANUAL]; U.S. COAST GUARD, COMMANDANT INSTR. M5810.1, MILITARY JUSTICE MANUAL para. 1.D.1.f (17 Aug. 2000) [hereinafter MJM]. In the Air Force, no specific standard of proof applies to NJP proceedings; however, because beyond a reasonable doubt is used in courts-martial, which an accused may elect, commanders are urged to consider this standard before initiating NJP proceedings. U.S. DEP’T OF AIR FORCE, INSTR. 51-202, NONJUDICIAL PUNISHMENT para. 3.4 (3 Nov. 2003)[hereinafter AFI 51-202].

⁸ ESTES KEFAUVER, ESTABLISHING A UNIFORM CODE OF MILITARY JUSTICE, S. REP. NO. 81-486, at 4 (1949), *reprinted in* INDEX AND LEGISLATIVE HISTORY OF THE UNIFORM CODE OF MILITARY JUSTICE, 1950, at 4 (1985).

⁹ *Id.* at 5.

¹⁰ For a discussion concerning whether the unique discipline scenarios faced by the separate military branches justifies different burdens of proof in nonjudicial punishment, *see infra* text accompanying notes 91-96.

¹¹ *Coppella v. United States*, 624 F.2d 976 (Ct. Cl. 1980) (supporting the use of commander’s discretion to determine when a particular offense was punishable by Article 15).

¹² A joint operation, or joint force, is “composed of significant elements, assigned or attached, of two or more Military Departments operating under a single commander authorized to exercise operational control over the force to accomplish an assigned mission.” AFI 51-202, *supra* note 7, para. 2.4.

¹³ In the Army, a “commander is not prohibited from imposing nonjudicial punishment on a military member of his command solely because the member is a member of another armed service.” AR 27-10, *supra* note 7, para. 3-8c. But punishment may only be imposed on the servicemember, “under the circumstances, and according to the procedures, prescribed by the member’s parent service.” *Id.* The Air Force recognizes the possible need for joint operation commanders to use nonjudicial punishment, but requires the commander to follow the procedures detailed in their instruction. AFI 51-202, *supra* note 7, para. 2.4.2.

¹⁴ *Id.* The commander conducting the nonjudicial punishment must use the parent service’s procedures and presumably the parent service’s burden of proof. *See generally id.*

need for a uniform burden of proof evident, what burden of proof should be adopted as the standard for all military commanding officers when administering nonjudicial punishment?

To answer this question, burden of proof must be defined, and more specifically, the burdens of proof available to commanding officers in Article 15 proceedings must be described. The appropriate burden of proof to apply in Article 15 proceedings depends on the servicemember's threatened individual interest. As the individual interest in the outcome of the proceeding increases, the need for a greater burden of proof to protect those interests also increases.¹⁵ The proper burden of proof to apply in Article 15 proceedings is further dependent on the procedural safeguards implemented in Article 15 proceedings.¹⁶ A comparison between civilian administrative hearings and Article 15 proceedings¹⁷ demonstrates that a demanding burden of proof is needed to compensate for the loss of traditional administrative procedural protections.¹⁸ The combination of the servicemember's threatened personal interests and the limited procedural protections offered in Article 15 proceedings indicate that of the available burdens of proof, the most equitable burden is a finding of guilt beyond a reasonable doubt.

II. Possible Burdens of Proof

A burden of proof "represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."¹⁹ The burden of proof influences the relative frequency of erroneous outcomes; thus the application of a particular burden of proof to a case is an indicator of the level of protection society places on a particular individual interest.²⁰ The greater the individual's threatened interests, the greater the confidence the deciding authority needs to have in his decision—the greater the burden of proof.²¹

There are three burdens of proof generally recognized as available to a deciding authority when determining guilt: preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt. An analysis of these three burdens of proof illustrates that the implementation of the proper standard is dependent on the magnitude of possible deprivations of individual liberties and the interest society has in protecting against these deprivations.²² If an individual has minimal interest in the outcome of the proceeding, the authority making the decision should use a less demanding burden of proof. Conversely, if the individual's interest in the outcome is high, a more demanding burden of proof is required.

¹⁵ See *infra* text accompanying notes 21-22.

¹⁶ Another method to protect against erroneous outcomes is by increasing the procedural safeguards in administrative hearings. See *infra* text accompanying notes 68-77.

¹⁷ For a comparison between civilian administrative hearings and Article 15 proceedings see *infra* Section IV.

¹⁸ There has been some debate whether nonjudicial punishment is an "administrative" action in the same context as civilian administrative adjudications. The Supreme Court has stated that "[a]rticle 15 punishment, conducted personally by the accused's commanding officer, is an administrative method of dealing with the most minor offenses." *Middendorf v. Henry*, 425 U.S. 25, 31-2 (1976). The Court went on to state that there are four methods of dealing with offenses committed by members of the military: general, special, and summary courts-martial, and "disciplinary punishment administered by the commanding officer pursuant to Article 15, UCMJ, 10 U.S.C. section 815." *Id.* at 31. General and special courts-martial resemble civilian judicial proceedings, summary courts-martial fall between the courtroom-type procedure of general and special courts-martial and the informality of nonjudicial punishment. Thus, nonjudicial punishment was considered informal adjudication similar to civilian administrative adjudications. See *id.*; see also *Parker v. Levy*, 417 U.S. 733, 750-51 (1974).

In short, the UCMJ regulates a far broader range of the conduct of military personnel than a typical state criminal code regulates of the conduct of civilians; but at the same time the enforcement of the UCMJ in the area of minor offenses is often by sanctions that are more akin to administrative or civil sanctions than to civilian criminal sanctions.

¹⁹ *In re Winship*, 397 U.S. 358, 370 (1970). The burden chosen will "communicate to the finder of fact different notions concerning the degree of confidence he is expected to have in the correctness of his factual conclusions." *Id.*

²⁰ *Id.* Burdens of proof are usually associated with the form of the proceeding, for example beyond a reasonable doubt with criminal proceedings and a preponderance of the evidence with a civil proceeding. It is important to note that the form of the proceeding is irrelevant; it is the individual interest threatened that determines when the proper burden of proof is implemented. The individual interest at risk in a proceeding is recognizable by the possible punishments available to the deciding authority and the procedural safeguards that are emplaced in the proceeding.

²¹ *Ortiz v. Principi*, 274 F.3d 1361 (Fed. Cir. 2001).

²² In situations involving individual rights "[the] standard of proof [at a minimum] reflects the value society places on individual liberty." *Tippett v. Maryland*, 436 F.2d 1153, 1166 (4th Cir. 1971).

Preponderance of the Evidence

The “burden of proving something by a preponderance of the evidence requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.”²³ Preponderance of the evidence is the least demanding burden of proof and is typically used in civil cases involving monetary disputes between private parties.²⁴ A lower burden of proof is required when the accused’s interest is money, which may be important to the individual, but does not involve an individual liberty interest and has minimal societal implications. Thus, when no substantial individual rights are at risk, the societal implications of these proceedings are minimal.²⁵ Once a more recognizably important individual interest or right is threatened, however, the plaintiff’s burden of proof is increased.²⁶

Clear and Convincing Evidence

Clear and convincing evidence is considered the intermediate standard of proof and is typically used in situations in which the accused’s interests are greater than the loss of money. An example would be a civil case involving allegations of fraud in which an individual may not only lose money, but also sustain damage to his reputation.²⁷ Clear and convincing evidence requires the government to “prove [its] case to a higher probability than is required by the preponderance-of-the-evidence standard,”²⁸ which means that “the thing to be proved is highly probable or reasonably certain”²⁹ to the extent that guilt is clear, convincing, and unequivocal.³⁰

Beyond a Reasonable Doubt

When confinement or imprisonment is possible as the result of a criminal trial, the accused is protected “against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”³¹ The state cannot impose its most severe form of punishment, notably confinement, if reasonable doubt remains as to the guilt of the accused.³² The accused maintains the presumption of innocence until his guilt is established beyond a reasonable doubt; if this burden is not met, he must be declared not guilty.³³ Due to the U.S. judicial system’s emphasis on the protection of individual rights, this most demanding burden of proof is required when an accused could possibly be deprived of personal liberty.

An Article 15 proceeding threatens an accused servicemember’s specific individual interests. The appropriate burden of proof to apply should be dependent upon the servicemember’s threatened interests. The forms of punishment that may be imposed and the long-term consequences that attach upon a finding of guilt determine a servicemember’s individual interests in an Article 15 proceeding. Thus, a description of the forms of punishment and a discussion of the long-term consequences is required to determine the appropriate burden of proof in an Article 15 proceeding.

²³ *Principi*, 274 F.3d at 1361 (quoting *Winship*, 397 U.S. at 371-72). When a decision is based upon a preponderance of the evidence, both parties “share the risk of error in roughly equal fashion,” with the complaining party carrying the burden of persuasion. *Addington v. Texas*, 441 U.S. 418, 423 (1979). If the evidence is inconclusive, the complaining party loses.

²⁴ See *Addington*, 441 U.S. at 423.

²⁵ *Principi*, 274 F.3d at 1361 (quoting *Winship*, 397 U.S. at 371-72).

²⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-90 (1983).

²⁷ *Addington*, 441 U.S. at 424. Clear and convincing evidence is used when an individual is accused of “quasi-criminal wrongdoing.” *Id.*

²⁸ *California ex rel. Cooper v. Mitchell Bros. Santa Ana Theater*, 454 U.S. 90, 93 n.6 (1981).

²⁹ BLACK’S LAW DICTIONARY 577 (7th ed. 1999).

³⁰ *Addington*, 441 U.S. at 424.

³¹ *In re Winship*, 397 U.S. 358, 364 (1970).

³² *United States v. Pine*, 609 F.2d 106, 107 (1979).

³³ *Id.* at 108.

III. Forms of Punishment

There are five forms of punishment available to commanding officers when an accused is found guilty in nonjudicial punishment.³⁴ The punishments available to a commander include the following: forfeiture of pay, restriction on movement, extra duty, reduction of grade, reprimand, and admonition.³⁵ The punishments range from causing a servicemember inconvenience to directly threatening highly protected individual rights. A brief description of the forms of punishment illustrates the wide range of options a commander has when implementing nonjudicial punishment.

Forfeiture of Pay

A commander may influence the property interest of charged personnel by forcing a forfeiture of a portion of basic pay for up to two months.³⁶ When this punishment is imposed, the servicemember loses all entitlement to the forfeited amount of basic pay.³⁷ Forfeiture of pay must be expressed in dollar amounts for the affected time period, and if the forfeiture lasts longer than one month, the commander must notate the monetary amount and number of months the servicemember's pay is forfeited.³⁸

Restriction on Movement

Commanders may limit freedom of movement in one of four ways: restriction, arrest in quarters, correctional custody, and confinement on bread and water or diminished rations.³⁹ Both restriction and arrest in quarters involve moral restraint⁴⁰ and are a less severe deprivation than correctional custody, confinement on bread and water, or diminished rations, which all involve physical restraint.⁴¹

Restriction and arrest in quarters are a less severe manner of depriving the charged individual of liberty.⁴² Restriction allows the commander to require the charged individual to report to a designated place at a specified time.⁴³ The severity of restriction depends on the length of the punishment and the geographical limits of restriction that are specified when imposed.⁴⁴ Arrest in quarters, which applies only to officers, requires the charged personnel to remain within their quarters during the period of punishment unless the deciding authority extends the boundaries.⁴⁵ "Quarters" is broadly defined, thus giving the commander latitude to restrict the officer to more than a traditional living area.⁴⁶

Correctional custody and confinement on bread and water include physical restraint and clearly deprive the charged individual of freedom of movement or physical needs. An individual under correctional custody is physically restrained during duty or nonduty hours and may be under a number of incidental punishments including extra duty, fatigue duty, or

³⁴ There are two limits on the commanding officer's ability to impose punishment: (1) The rank or grade of the servicemember, and (2) Express limits found in Article 15(b). UCMJ art. 15(b) (2005). A commanding officer may also find a servicemember guilty, but decide to adjudge no punishment or suspend all punishment. AR 27-10, *supra* note 7, para. 3-25.

³⁵ MCM, *supra* note 1, pt. V, ¶ 5.

³⁶ *Id.* ¶ 5b.

³⁷ *Id.* ¶ 5c(8). Basic pay is "fixed by statute for the grade and length of service of the person concerned and does not include special pay for a special qualification, incentive pay for the performance of hazardous duties, proficiency pay, subsistence and quarters allowances, and similar types of compensation." *Id.*

³⁸ *Id.*

³⁹ *Id.* ¶ 5c(2)(3)(4)(5).

⁴⁰ *Id.* ¶ 5c(2)(3).

⁴¹ *Id.* ¶ 5c(4)(5). Confinement on bread and water or diminished rations has been eliminated as a possible punishment imposable by court-martial, but has been retained in Article 15 proceedings. *Id.* R.C.M. 1003(d)(9) (amended 1995).

⁴² *Id.* ¶ 5c(2).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* ¶ 5c(3).

⁴⁶ *Id.* Quarters is construed broadly to include a military residence, "whether a tent, stateroom, or other quarters assigned or a private residence when government quarters have not been provided." *Id.*

hard labor.⁴⁷ Confinement on bread and water or diminished rations restricts the charged individual to an area where he may only communicate with authorized personnel.⁴⁸ The commander specifies the ration given to the charged individual, but he does not have the discretion to restrict the ration to solely bread and water.⁴⁹ The punishment of confinement on bread and water cannot be implemented unless specifically imposed.⁵⁰ Confinement on bread and water is further restricted to those individuals that, in a medical officer's opinion, will not suffer serious injury due to the punishment.⁵¹

Extra Duty

A charged individual punished with extra duty is simply performing duties in addition to those normally assigned.⁵² Extra duty may include any military duty with some limitations on the commander's discretion. Assigned duties may not include the following: duties associated with a known safety or health hazard, duties amounting to cruel or unusual punishment, duties unsanctioned by customs of the concerned service, or duties that "demean the grade or position of the punished personnel."⁵³

Reduction in Grade

Reduction in grade is recognized as one of the most severe forms of nonjudicial punishment.⁵⁴ The *MCM* does not express why reduction in grade is considered one of the most severe forms of nonjudicial punishment. It is possible the combination of short-term consequences, such as deprivation of pay and prestige, and long-term consequences, such as reduced future promotion possibilities, is a reason why extra caution is required of the commander prior to imposing this punishment. Though all nonjudicial punishment requires discretion, extra care is required prior to imposing reduction in grade.⁵⁵ Due to possible abuse, commanding officers may only reduce the grade of those who he has the authority to promote.

Reprimand and Admonition

Reprimand and admonition are two ways for a commanding officer to censure a servicemember's conduct.⁵⁶ When used as nonjudicial punishment, reprimands and admonitions are punitive and are considered more severe than administrative reprimands or counseling.⁵⁷ Reprimands or admonitions are required to be in writing if given to a commissioned officer or warrant officer; otherwise "they may be administered either orally or in writing."⁵⁸

⁴⁷ *Id.* ¶ 5c(4).

⁴⁸ *Id.* ¶ 5c(5).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* ¶ 5c(6).

⁵³ *Id.*

⁵⁴ *Id.* ¶ 5c(7).

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 5c(1). A reprimand is more severe than an admonition. *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* "Written admonitions and reprimands imposed as a punitive measure under UCMJ, Art. 15, will be in memorandum format, per AR 25-50, and will be listed as an attachment" to the DA Form 2627. AR 27-10 *supra* note 7, para. 3-19(d). If the Article 15 is filed in the servicemember's Official Military Personnel Record, the written admonition or reprimand accompanies the Article 15 as an attachment. *See id.* Similar to the negative impact that a permanently filed Article 15 has on a servicemember's career, a permanently filed admonition or reprimand could potentially have a comparable negative impact on a servicemember's career. *See infra* notes 61-62.

The long-term consequences of nonjudicial punishment cannot be ignored when assigning the appropriate burden of proof for determining guilt in Article 15 proceedings. The specific forms of punishment available to a commanding officer are merely the short-term consequences of nonjudicial punishment. The effects of nonjudicial punishment on a servicemember are felt long after the specific punishment imposed is complete. Nonjudicial punishment dramatically affects the servicemember's long-term career possibilities, his social standing within the military hierarchy, and his competitiveness for promotion. The specific punishments that may be imposed by an Article 15 combined with the long-term stigma attached to nonjudicial punishment require a commander to have absolute confidence that his decision is justly imposed.

The specific punishments available to a commanding officer range from minor intrusions to short durations of correctional custody or restricted movement. If a servicemember returned to his previous social and career status upon completion of a specific punishment, the use of beyond a reasonable doubt as the applicable burden of proof would seem extreme in most situations. Because, however, a servicemember continues to carry the stigma of being the recipient of nonjudicial punishment, a more restrictive burden of proof appears warranted.⁵⁹ Simply receiving nonjudicial punishment can harm the servicemember's career by affecting future promotion possibilities, the likelihood of retention, and his social standing within the military hierarchy.⁶⁰

After a servicemember received punishment, the record of the proceeding will be filed in either their local units' records or permanently in their official military record. A permanent filing of nonjudicial punishment in a servicemember's military record effectively eliminates opportunities for advancement and retention.⁶¹ A servicemember may petition the review board to remove the permanent filing from their record.⁶² A review board, however, is slow, burdensome, and does not remove the stigma associated with receiving nonjudicial punishment.⁶³ Furthermore, a favorable outcome—removal—is not guaranteed. Many findings of guilt are not permanently recorded and are instead filed in the servicemember's local personal file.⁶⁴ Though the severity of the long-term consequences associated with nonjudicial punishment may be reduced by a local filing, the stigma of receiving nonjudicial punishment still attaches to the servicemember regardless of the filing determination. Upon receipt of nonjudicial punishment, whether permanently or locally filed, the servicemember is adversely impacted without an adequate remedy to address the long-term consequences.

The most practical manner to protect the servicemember from the harsh consequences of an Article 15 while maintaining a fair result is to require commanding officers to make a determination of guilt beyond a reasonable doubt in nonjudicial punishment proceedings.

⁵⁹ See *United States v. Pine*, 609 F.2d 106, 107 (1979) (citing *In re Winship*, 397 U.S. 358, 364 (1970)) (recognizing that beyond a reasonable doubt is the proper standard in criminal cases because a criminal conviction may result in the loss of personal liberty and will result in the stigmatization of the accused).

⁶⁰ See *United States v. Kelley*, 3 M.J. 535 (A.C.M.R. 1977). Captain Kelley received an Article 15 as an enlisted man. *Id.* at 535. He attempted to wrongfully remove the record of the Article 15 from his Official Military Personnel Records Jacket because he feared the impact it might have on his retention. *Id.* at 536. The damage to a punished individual's career is arguably dependent on his rank as well as the punishment imposed. Regardless of the scope of the damage caused, it seems clear that nonjudicial punishment carries with it a stigma that often damages the career of the charged individual. See generally *LEDERER supra* note 1, § 8-29.20 (stating "it is abundantly clear that nonjudicial punishment can have a prejudicial effect on the subsequent military career of the accused.").

⁶¹ See AR 27-10, *supra* note 7, para. 3-6(a). When making a filing determination, the Army requires its commanders to balance the future career of the servicemember against the interests of the Army. *Id.* "A commander's decision whether to file a record of nonjudicial punishment on the performance section of a Soldier's Official Military Personnel File is as important as the decision relating to the imposition of nonjudicial punishment itself." *Id.* See also *MJM, supra* note 7, para. 1.A.6.b(10) (explaining that when implementing punishment during NJP a commander must take into consideration the potential adverse administrative consequences); AFI 51-202, *supra* note 7, para. 6.4.1 (discussing that a commander has the discretion to determine whether the NJP record is permanently filed presumably based upon his opinion concerning the service member's future value to the Air Force).

⁶² The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard. 10 U.S.C.S. § 1552(a) (LEXIS 2005).

⁶³ For example, a Soldier may apply for relief to the Army Board for Correction of Military Records (ABCMR). U.S. DEP'T OF ARMY, REG. 15-185, ARMY BOARD FOR CORRECTION OF MILITARY RECORDS para. 2-3(b) (29 Feb. 2000) [hereinafter AR 15-185]. Before applying for relief from the ABCMR the Soldier must first exhaust all other administrative remedies. *Id.* para. 2-5. The Soldier has the burden of persuading the board that an injustice or material error exists, *id.* para. 2-9, and he must pay for his own attorney if he wants representation. *Id.* para. 2-7. In most situations the ABCMR decision is only a recommendation and the Secretary of the Army is the final decision authority. *Id.* paras. 2-13 to -14.

⁶⁴ The Army maintains a non-permanently filed record of nonjudicial punishment for two years at the unit level. AR 27-10, *supra* note 7, para. 3-37(b)(1). In the Air Force, a commander determines whether the NJP is permanently filed. AFI 51-202, *supra* note 7, para. 6.4.1.

Comparing civilian administrative proceedings and Article 15 proceedings further justifies beyond a reasonable doubt as the proper burden of proof when a commander imposes nonjudicial punishment. A comparison between these proceedings illustrates that a servicemember facing nonjudicial punishment has fewer procedural safeguards protecting their interests than a civilian facing a comparable administrative punishment. To balance the loss of these traditional safeguards without affecting the military necessity of Article 15 efficiency requires commanding officers find servicemembers guilty beyond a reasonable doubt.

IV. Lack of Procedural Safeguards

The *MCM* specifies the general procedural aspects for Article 15 proceedings.⁶⁵ Similar to a civilian administrative hearing, the procedures required during nonjudicial punishment proceedings are intended to afford the accused due process protections.⁶⁶ Clearly, both civilian administrative hearings and nonjudicial punishment proceedings are concerned with protecting the accused individual's rights. A comparison between the minimum procedures required for a civilian administrative hearing and the minimum procedures required for a nonjudicial punishment hearing, however, indicate that greater protection is afforded an accused in a civilian hearing.

Civilian Administrative Hearing Procedures

Civilian administrative hearings vary and do not rely upon a single uniform set of procedures. In a civilian administrative hearing, due process protection is applicable only if a state actor is involved⁶⁷ and only if a potential deprivation of liberty or property may result.⁶⁸ If both of these criteria are present, the proper procedures for the hearing are determined by balancing individual interests against governmental interests.⁶⁹ Civilian procedures require flexibility since the individual's interest may vary from a small monetary loss⁷⁰ to confinement. The government's interest is much easier to define and is typically the administrative and fiscal costs of implementing further procedural protections. Balancing these interests achieves the proper level of procedures in a civilian administrative hearing. Thus, if the property or liberty interest of the individual is great, more procedural safeguards are required to protect against the risk of erroneous deprivation.⁷¹ If the burden on the government of adding procedural protections outweighs the individual's possible loss of liberty, then the cost of the additional procedures outweighs the benefit gained by their implementation.⁷²

Despite this flexible approach, civilian administrative hearings generally require specific procedures. These procedures include the following: impartial and competent tribunal, notice, opportunity to present proof, cross-examination of witnesses, a decision based on the record, and reviewability of decisions.⁷³ These procedures are still not concretely defined in all civilian administrative hearings and are dependent on the individual interest threatened. Thus, as the individual interest increases, and the consequences of an erroneous deprivation become more severe, the formality of the procedural safeguards increases.

⁶⁵ *MCM*, *supra* note 1, pt. V, ¶ 4.

⁶⁶ *Id.* Appendix 24, at A24-1, pt. IV, ¶ 1.

⁶⁷ *See* *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 829 (1982) (stating that the offending party must be a state actor).

⁶⁸ *See* *Goldberg v. Kelly*, 397 U.S. 254 (1970) (arguing that the government cannot take away an entitlement without due process); *Board of Regents v. Roth*, 408 U.S. 564 (1972) (arguing that the government cannot change a person's legal status without due process).

⁶⁹ *See* *Matthews v. Eldridge*, 424 U.S. 319 (1976) (stating that three factors must be weighed to determine the procedures necessary in a hearing: private interest, government interest, and risk of erroneous deprivation).

⁷⁰ A speeding ticket is one example of a small monetary loss.

⁷¹ *Matthews*, 424 U.S. at 335.

⁷² *Id.*

⁷³ *See* Roger Cramton, *A Comment on Trial-Type hearings in Nuclear Power Plant Siting*, 58 VA. L. REV. 585, 588 (1972). This list of procedural protections is debatable and different opinions exist as to what procedures are required in all administrative hearings. *See* Henry Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267 (1975) (listing possible procedural elements to include: unbiased tribunal, notice of proposed action and the grounds asserted for it, opportunity to challenge, right to call witnesses, right to know adverse evidence, right to have decision based only on evidence presented, right to be represented, record, statement of reasons for final action, hearing open to public, opportunity for review within the agency).

Article 15 Hearing Procedures

In contrast to civilian administrative hearings, which provide different procedures based on the individual interest threatened, Article 15 proceedings approach all offenses with the same level of procedural safeguards. Article 15 proceedings are considered an administrative method for military commanders to deal with minor offenses in an informal and efficient manner.⁷⁴ Consequently, Article 15 proceedings have few required procedures.⁷⁵ Prior to actually pursuing nonjudicial punishment, a preliminary inquiry is performed to determine if nonjudicial punishment is appropriate.⁷⁶ Once nonjudicial punishment is deemed necessary, the same procedures are applied regardless of the individual interest threatened.

Once a commander decides to use nonjudicial punishment, he must provide notice to the accused servicemember.⁷⁷ Notice to the servicemember must include the following:

- (1) a statement that the nonjudicial punishment authority is considering the imposition of nonjudicial punishment;
- (2) a statement describing the alleged offenses—including the article of the code—which the member is alleged to have committed;
- (3) a brief summary of the information upon which the allegations are based or a statement that the member may, upon request, examine available statements and evidence;
- (4) a statement of the rights that will be accorded to the servicemember
- (5) unless the right to demand trial is not applicable . . . a statement that the member may demand trial by court-martial in lieu of nonjudicial punishment, a statement of the maximum punishment which the nonjudicial punishment authority may impose by nonjudicial punishment; a statement that, if trial by court-martial is demanded, charges could be referred for trial by summary, special, or general court-martial; that the member may not be tried by summary court-martial over the member's objection; and that at a special or general court-martial the member has the right to be represented by counsel.⁷⁸

Once the accused servicemember receives notice, he must elect either a trial by court martial or nonjudicial punishment. If the servicemember elects to waive his right to trial by court-martial, the servicemember will have a number of rights at the nonjudicial punishment hearing. The accused servicemember may personally appear before the commander, unless there are extraordinary circumstances.⁷⁹ The servicemember may have a spokesperson, but the spokesperson is not an advocate and may not question witnesses unless the commanding officer allows questioning as a matter of discretion.⁸⁰ The commanding officer is to inform the servicemember, either orally or in writing, of the information gathered concerning the allegations.⁸¹ The servicemember is allowed to review evidence that the commanding officer has examined and intends to use in determining guilt and in electing the punishment that should be imposed.⁸² The servicemember may present a defense or

⁷⁴ *Middendorf v. Henry*, 425 U.S. 25, 32 (1976). Though nonjudicial punishment is defined as an administrative process, there are a number of procedural similarities between an Article 15 proceeding and a court-martial. The common procedural similarities include: formal accusation of criminal misconduct, mandatory consultation with a defense attorney, ability to examine evidence, opportunity to present witnesses, opportunity to question adverse witnesses, and the ability to offer mitigating or extenuating evidence. See *infra* text accompanying notes 77-88. The resemblance between nonjudicial punishment proceedings and a court-martial likely creates a perception by the accused servicemember that he is involved in a criminal action. Due to the perceived criminal nature of nonjudicial punishment proceedings, an accused servicemember has a justifiable expectation that the burden of proof in an Article 15 proceeding would mirror the burden of proof used in a court-martial.

⁷⁵ *Middendorf*, 425 U.S. at 32 (stating “[i]ts [nonjudicial punishment] purpose ‘is to exercise justice promptly for relatively minor offenses under a simple form of procedure.’”) (quoting MANUAL FOR COURTS-MARTIAL, UNITED STATES, ¶ 79a (1969) [hereinafter 1969 MCM]).

⁷⁶ MCM, *supra* note 1, pt. V, ¶ 4a; see LEDERER, *supra* note 1, § 8-25.20 (discussing with more detail how the preliminary screening works).

⁷⁷ MCM, *supra* note 1, pt. V, ¶ 4a.

⁷⁸ *Id.* ¶ 4a.

⁷⁹ *Id.* ¶ 4c(1). If there is a reason why the nonjudicial punishment authority cannot be present than the accused is “entitled to appear before a person designated by the nonjudicial punishment authority who shall prepare a written summary of any proceedings before that person and forward it and any written matter submitted by the servicemember to the nonjudicial punishment authority.” *Id.* In addition, “subject to the approval of the nonjudicial punishment authority, the servicemember may request not to appear personally.” *Id.* ¶ 4c(2). If the request is granted, the accused “may submit written matters for consideration by the nonjudicial punishment authority before such authority’s decision.” *Id.*

⁸⁰ *Id.* ¶ 4c(1)(B). This does not apply if the punishment to be “imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand.” *Id.* Since this is not a criminal proceeding, the 6th Amendment right to counsel does not apply. See generally *Middendorf v. Henry*, 425 U.S. 25, 25 (1976).

⁸¹ MCM, *supra* note 1, pt. V, ¶ 4c(1)(C).

⁸² *Id.* ¶ 4c(1)(D).

explain mitigating circumstances either orally or in writing.⁸³ The servicemember may present witnesses, including adverse witnesses, but with limitations.⁸⁴ Finally, the servicemember may open the proceedings to the public with limitations.⁸⁵

After considering all relevant matters, the commanding officer will make his decision. If the commanding officer decides that the accused servicemember did not commit the alleged offense, the proceedings are terminated.⁸⁶ If the commanding officer decides that the servicemember committed the alleged offenses, the commanding officer will “(i) so inform the servicemember; (ii) inform the servicemember of the punishment imposed; and (iii) inform the servicemember of the right to appeal.”⁸⁷

Comparison

Article 15 proceedings, and specifically the hearing, contain many of the procedures required in a civilian administrative hearing, but lack the ability to add crucial procedural safeguards.⁸⁸ Civilian administrative hearings use a malleable balancing test to protect against erroneous deprivation of liberty when the accused has a significant interest. In nonjudicial punishment proceedings, however, the procedure is concretely defined regardless of possible punishment. Civilian administrative hearings add more formality or more protective procedures to the proceeding as the individual interest at stake increases. In comparison, Article 15 procedures do not change because of the possible punishments⁸⁹ — the same procedures are used regardless of the individual interest threatened. Failure to consider the extent of the possible punishments creates a situation in which accused servicemembers with substantially different interests are dealt with under the same procedures.⁹⁰

Though greater procedural protection seems reasonable when greater individual interests are threatened, more procedures or added formality also make the hearing less efficient and more time consuming. Military necessity requires nonjudicial punishment to remain efficient when dealing with discipline problems. Additional procedures may cause the system to become inefficient and essentially create the same time commitment problems found in a court-martial.

It is possible to reconcile the competing interests of adequately protecting individual interests with procedural efficiency by requiring commanding officers to find guilt beyond a reasonable doubt in nonjudicial punishment proceedings. Most of the procedural protections that are omitted in nonjudicial punishment proceedings are intended to decrease the possibility of erroneous deprivation of liberty and to increase the confidence in the decision. A determination of guilt beyond a reasonable doubt, without additional procedures, would minimize the possibility of the erroneous deprivation of individual rights. Thus, the accused servicemember would gain a heightened form of protection from deprivation, and the government would retain the efficient system it requires. Accepting beyond a reasonable doubt as the burden of proof in nonjudicial punishment is a non-intrusive manner of balancing the military necessity for an efficient system with the goal of protecting the servicemember’s individual rights.

⁸³ *Id.* ¶ 4c(1)(E).

⁸⁴ *Id.* ¶ 4c(1)(F). The witness statements must be relevant and reasonably available. *Id.* For a detailed description of what is reasonably available see *id.*

⁸⁵ *Id.* ¶ 4c(1)(G). For a discussion of the limitations on having the nonjudicial hearing open to the public see *id.*

⁸⁶ *Id.* ¶ 4c(4)(A).

⁸⁷ *Id.* ¶ 4c(4)(B).

⁸⁸ This article does not dispute the constitutionality of different approaches to dealing with administrative problems between civilian and military law. Procedural differences between civilian administrative hearings and Article 15 proceedings are valid due to the inherent differences that are judicially recognized between civilian and military law. The Supreme Court is traditionally deferential to the military concerning discipline and recognizes that “the military is, by necessity, a specialized society separate from civilian society. . . . [and] also recognize[] that the military has, again by necessity, developed laws and traditions of its own during its long history.” *Parker v. Levy*, 417 U.S. 733, 743 (1974). “Members of the military community enjoy many of the same rights and bear many of the same burdens as do members of the civilian community, within the military community there is simply not the same autonomy as there is in the larger civilian community.” *Id.* at 751. A comparison between civilian administrative hearings and Article 15 proceedings remains valuable to demonstrate that some of the added protections found in civilian hearings are possible by using the “beyond a reasonable doubt” burden of proof without the inefficiency of added procedures.

⁸⁹ For punishments ranging from the inconvenience of extra-duty to the severe deprivation of liberty through confinement see *supra* Section III.

⁹⁰ There are a number of other possible procedural shortcomings to nonjudicial punishment. For example, it is arguable that a commander residing over the nonjudicial punishment proceeding or the residing authority in appeals can act as an impartial tribunal in every situation.

V. Conclusion

It is arguable that requiring a finding of guilt beyond a reasonable doubt as the burden of proof in all nonjudicial punishment scenarios is impractical since the separate services have varying degrees of interest in different burdens of proof. For example, naval operations on a ship present unique disciplinary matters that are not faced in any other aspect of the military. Does this justify a less demanding burden of proof for those commanders imposing nonjudicial punishment on a ship? When attempting to create the UCMJ a similar question was raised concerning the need for different forms of punishment between the services.⁹¹ Historically, the diversity in practice between the Army and the Navy was attributed to the following two factors:

- (1) men on shipboard are necessarily in a different situation with reference to freedom of motion and availability of replacement than men in camp, and
- (2) the punishment is imposed at mast by the captain, and a summary court consists of an inferior officer, while in the Army such an incongruity in rank between a commanding officer and a summary court would be virtually unknown.⁹²

These factors justified allowing the separate services to impose different punishments in Article 15 proceedings, but once again presented an appearance of arbitrariness in the administration of nonjudicial punishment.⁹³ To reduce this appearance, a uniform set of punishments was created and the Secretaries of the individual services were given the power to “determine which ones of these different and various punishments that are set forth are necessary for their own disciplinary problems.”⁹⁴ Creating a single list of punishments and then allowing each service to further restrict use of these punishments was the solution to the recognized problem that no set of punishments would fit all the services perfectly.⁹⁵ But the intent behind making a single list of punishments and allowing the individual services to limit their own powers in comparison to each service having a separate list of punishments was to maintain a sense of uniformity. By having the powers and punishments “emanate from one source, such action w[ould] [e]nsure uniformity of punishment for the same type of offense and a uniform exercise of powers throughout the armed services.”⁹⁶

This very small exception to the general rule of uniformity adopted by the drafters of the UCMJ does not apply to the burden of proof. This exception was created solely to address the recognized need for different forms of possible punishments due to the special environments each service faced. The exception, however, was meant to remain very narrow to maintain a sense of uniformity concerning nonjudicial punishment. Though the disciplinary problems may be different due to service specific mission requirements, a commanding officer’s ability to determine guilt beyond a reasonable doubt is not affected. The threat to a servicemember’s individual interests combined with the lack of procedural safeguards in Article 15 proceedings remains the same regardless of the accused servicemember’s branch and environment in which they serve.

The use of different burdens of proof by the separate military branches raises serious concerns about Article 15 proceedings. These concerns are most evident in joint operations where servicemembers under the same command who commit the same misconduct may receive different dispositions. A fair yet efficient solution is for a uniform requirement that all commanding officers find guilt beyond a reasonable doubt. Regardless of the form of the proceeding, whether criminal, civil, or administrative, the greater the individual’s interest, the greater the confidence the deciding authority needs to have in his decision. Neither preponderance of the evidence nor clear and convincing evidence, adequately protects an

⁹¹ See *Bill to Unify, Consolidate, Revise, and Codify the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard, and to Enact and Establish a Uniform Code of Military Justice: Hearings on H.R. 2498 Before a Subcommittee of the Committee on Armed Services*, 81st Cong. 1st Sess. (1949), reprinted in *INDEX AND LEGISLATIVE HISTORY OF THE UNIFORM CODE OF MILITARY JUSTICE*, 1950, at 931-32 (1985).

⁹² *Bill to Unify, Consolidate, Revise, and Codify the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard, and to Enact and Establish a Uniform Code of Military Justice: Hearings on H.R. 2498 Before a Subcommittee of the Committee on Armed Services*, 81st Cong. 1st Sess. (1949) (statement of Professor Edmund M. Morgan Jr. Harvard University Law School), reprinted in *INDEX AND LEGISLATIVE HISTORY OF THE UNIFORM CODE OF MILITARY JUSTICE*, 1950, at 601 (1985).

⁹³ *Id.*

⁹⁴ *Id.* at 932.

⁹⁵ *Id.*

⁹⁶ *Bill to Unify, Consolidate, Revise, and Codify the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard, and to Enact and Establish a Uniform Code of Military Justice: Hearings on S. 857 and H.R. 4080 Before a Subcommittee of the Committee on Armed Services*, 81st Cong. 1st Sess. (1949) (statement of John J. Finn, Judge Advocate, Department of the District of Columbia, the American Legion), reprinted in *INDEX AND LEGISLATIVE HISTORY OF THE UNIFORM CODE OF MILITARY JUSTICE*, 1950, at 197 (1985).

accused servicemember's individual interests. Both of these standards also fall short when attempting to find an effective and efficient counter balance to the lack of procedural protections offered to an accused servicemember. Beyond a reasonable doubt is the only standard that adequately protects an accused servicemember's inherent individual rights and maintains the speed and efficiency required for nonjudicial punishment.

TJAGLCS Practice Note

Consumer Law Note

Flood Damaged and Salvaged Automobiles Threaten Consumer Woes: Hurricanes Katrina and Rita & the \$40 Million State Farm Insurance Settlement

Major Jeremy A. Ball*

A. Introduction

On the heels of Hurricanes Katrina and Rita flooding the market with water damaged and salvaged cars, State Farm Mutual Automobile Insurance Company (State Farm) is quietly attempting to settle tens of thousands of potential lawsuits related to its failure to properly title cars previously declared a total loss.¹ In September and October 2005, over 30,000 car owners in the United States received letters from their state attorney general informing them that State Farm, the largest automobile insurer in the United States,² had failed to obtain an appropriate title to their vehicle after declaring it a total loss.³ Under applicable law in nearly all fifty states, State Farm should have applied for a salvage title before reselling a totaled vehicle.⁴

State laws vary, but a salvage title is normally required for a damaged vehicle when the cost of repair exceeds the vehicle's fair market value, or when an insurer or government agency has declared the vehicle a total loss.⁵ Some states also use salvage titles to identify stolen vehicles that were recovered after the insurer compensated the owner for the loss of the vehicle.⁶ Once a vehicle has been issued a salvage title, state laws typically prohibit the vehicle from being registered and licensed for operation on the road.⁷ The legal consequences of changing a car's title from a "clean" or "clear" title to a salvage title are immense, including the possibilities that the vehicle cannot be insured or registered and that a lender may accelerate any outstanding loan balance.⁸ These legal consequences are in addition to an estimated fifty percent decline in

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¹ ConsumerAffairs.com, *State Farm's Wrecked Car Owners Feeling Slighted* (Oct. 26, 2005), available at http://www.consumeraffairs.com/news04/2005/state_farm_totaled.html [hereinafter *State Farm's Wrecked Car Owners*].

² State Farm Mutual Automobile Insurance Company insures approximately one-in-five drivers in the United States. Michael D. Sorkin, *State Farm Violated Agreement on Selling Totaled Cars*, ST. LOUIS POST-DISPATCH, Oct. 20, 2005. Of those vehicles insured by State Farm, approximately six million are wrecked each year, with 700,000 of those declared a total loss. *Id.*

³ *In the matter of State Farm Mutual Automobile Insurance Company, Assurance of Voluntary Compliance (AVC)* (Jan. 10, 2005), available at http://www.michigan.gov/ag/0,1607,7-164-17334_17362-128145--,00.html [hereinafter *State Farm AVC*]; see *State Farm's Wrecked Car Owners*, *supra* note 1.

⁴ When an insurance company declares a vehicle a total loss it must usually acquire a salvage, or other similarly named, title. See, e.g., ALA. CODE § 32-8-87 (2005) (defining a total loss to include circumstances when an insurance company compensates an insured for damage to a vehicle that is greater than seventy-five percent of the vehicle's pre-damage fair retail value; requiring an insurance company which pays compensation for a total loss to obtain the title and provide it to the state for replacement with a salvage certificate); LA. REV. STAT. § 32:702(11) (2005) (defining a "total loss" as a "motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by the most current National Automobile Dealers Association Handbook"); LA. REV. STAT. § 32:707I(1)(a) (requiring both insurance companies and vehicle owners to obtain a salvage title for any vehicle declared a total loss); MISS. CODE ANN. § 63-21-33 (2005) (requiring an insurance company which obtains title after paying a total loss claim to obtain a salvage title).

⁵ See CARFAX Vehicle History Reports, Glossary of Terms, <http://www.carfax.com/Definitions/Glossary.cfm> (last visited Dec. 7, 2005).

⁶ See *id.* (listing the following states that have such a law: Arizona, Florida, Georgia, Illinois, Minnesota, New Jersey, New Mexico, New York, Oklahoma, and Oregon)

⁷ See, e.g., ALA. CODE § 32-8-87 (stating that "[n]o motor vehicle for which a salvage or junk certificate has been issued by this state or any other state shall be driven or operated on the highways or public places of this state"); LA. REV. STAT. § 32:707I(b) (prohibiting operation of a salvage vehicle on "any public street, roadway, or highway until it is registered with the office of motor vehicles, and a reconstructed vehicle title is issued"); TEX. TRANSP. CODE § 501.098 (2005) (prohibiting an owner of a vehicle with a salvage or nonrepairable vehicle title from operating the vehicle on a public highway).

⁸ See Dani K. Liblang, *State Farm Salvage Title Settlement: Your Rights and Remedies* (Nov. 30, 2005), AUTOPEDIA, THE AUTOMOTIVE ENCYCLOPEDIA, available at http://autopedia.com/html/LemonLaw/Michigan_Lemon_Law_Consumer_Alert_State_Farm_Salvage_Title_Settlement.html.

the vehicle's value, along with the known safety risks of continuing to operate, or even repair, a flood damaged or salvaged vehicle.⁹

Given the large number of vehicles seriously damaged by Hurricane Katrina—estimates range as high as 571,000¹⁰—along with the real example of State Farm's widespread violation of state titling statutes, there is an urgent need for military legal assistance attorneys to understand the laws governing flood damaged and salvaged vehicles.¹¹ This article addresses these pressing issues, first exploring the law relevant to flood damaged and salvaged vehicles, followed by an explanation of the terms of the State Farm settlement, and concluding with a discussion of how legal assistance attorneys can educate servicemembers and their families to avoid purchasing a car damaged by the ravages of Hurricanes Katrina or Rita.

B. The Law

With the exception of South Dakota, all states have automobile titling statutes that require vehicles to be "branded,"¹² often with a salvage title, whenever damage exceeds a specified percentage of the vehicle's retail value.¹³ For example, Alabama law states that the total loss of a vehicle occurs whenever an insurance company compensates a vehicle owner for damage that is equal to or greater than seventy-five percent of the vehicle's retail value prior to the damage.¹⁴ Similarly, Louisiana defines a vehicle as a "total loss" whenever it has "sustained damages equivalent to seventy-five percent or more of the market value as determined by the most current National Automobile Dealers Association Handbook."¹⁵ Under both Alabama and Louisiana law, insurance companies and individual owners are required to obtain a salvage title for a "total loss" vehicle.¹⁶ Of the four states hardest hit by Hurricanes Katrina and Rita, including Louisiana, Mississippi, Alabama, and Texas, each requires the title of a "total loss" damaged vehicle to be branded following a damage settlement with an insurance company.¹⁷

In some circumstances, state titling statutes may require a "total loss" vehicle to receive a brand other than salvage. For example, Michigan law requires a damaged vehicle for which the estimated cost of repair exceeds ninety-one percent of the vehicles pre-damage retail value to be branded as "scrap" rather than "salvage."¹⁸ The primary difference between a "scrap" and a "salvage" vehicle is that the latter may be rebuilt, re-titled, and registered to operate on the state's highways.¹⁹ Texas has a similar statute that requires an insurance company to obtain a "nonrepairable" title rather than a "salvage" title²⁰ when the vehicle is "damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal."²¹ Although Texas does not allow a "nonrepairable" vehicle to be rebuilt, salvage vehicles may be rebuilt as long as the title bears the words "REBUILT SALVAGE" in red capital letters that "occupy at least 15 percent of the face of the certificate of title."²²

⁹ See Liblang, *supra* note 8; Chris Solomon, *Steer Clear of 'Flood Cars'*, MSN MONEY, <http://moneycentral.msn.com/content/Savinganddebt/Saveonacar/P129008.asp> (last visited Dec. 5, 2005); COORDINATING COMMITTEE FOR AUTOMOTIVE REPAIR (CCAR), SAFETY CONCERNS REGARDING HANDLING, DISPOSAL AND REPAIR OF FLOODED VEHICLES FOLLOWING HURRICANE KATRINA (ed. 1.2, 2005), available at <http://www.ccar-greenlink.org>.

¹⁰ See Solomon, *supra* note 9 (reporting that the National Automobile Dealers Association estimated that 571,000 cars and trucks may have been destroyed by Hurricane Katrina).

¹¹ Some consumer law advocates estimate that more than ten million vehicles on the road have either been salvaged or involved in a serious wreck. JONATHAN SHELDON & CAROLYN CARTER, NAT'L CONSUMER L. CENTER, AUTOMOBILE FRAUD: ODOMETER TAMPERING, LEMON LAUNDERING, AND CONCEALMENT OF SALVAGE OR OTHER ADVERSE HISTORY § 2.1.1 (2003 & Supp. 2005) [hereinafter NCLC AUTO FRAUD].

¹² "Branding" is the common term used in state titling statutes to indicate that the title has a special labeling of the vehicle's condition. Examples of typical brands include "salvage," "junk," "scrap," "flood," "water damage," "salt water," nonrepairable," and "rebuilt." See NCLC AUTO FRAUD, *supra* note 11, § 2.4.5.4.2 (listing thirty different title brands along with common abbreviations used on the certificate of title).

¹³ See *supra* note 4; State Farm AVC, *supra* note 3, para. 3.

¹⁴ ALA. CODE § 32-8-87(d) (2005). Cf. TEX. TRANSP. CODE § 501.091(15) (2005) (defining a "salvage motor vehicle" as a vehicle that "has damage . . . to the extent that the cost of repairs . . . exceeds the actual cash value of the motor vehicle immediately before the damage").

¹⁵ LA. REV. STAT. § 32:702(11) (2005).

¹⁶ ALA. CODE § 32-8-87(b); LA. REV. STAT. § 32:707(1)(a).

¹⁷ See *supra* note 4; TEX. TRANSP. CODE § 501.092(b).

¹⁸ MICH. COMP. LAWS § 257.217c (2005).

¹⁹ *Id.* § 257.217c(12), (13) (requiring a repaired salvage vehicle to be branded "rebuilt salvage" in the legend of the title).

²⁰ TEX. TRANSP. CODE § 501.092(b).

²¹ *Id.* § 501.091(9).

²² *Id.* § 501.100(c).

In the case of Hurricane Katrina, the Louisiana Office of Motor Vehicles has provided specific guidance for titling of damaged vehicles.²³ Following a damage settlement between an automobile insurance company and the insured, the insurance company must apply for a new title with one of the following brands: ST SK for Salvage/Katrina, WA SK for Water Damaged/Katrina, or ST WA SK for Salvage/Water Damaged Katrina.²⁴ If an insurance company allows the owner to retain title after entering into a damage settlement, the insurance company must file a report with the Office of Motor Vehicles that flags the title of the vehicle as “salvage retention” until the owner applies for an appropriately branded title.²⁵

A subsequent vehicle owner’s remedy for previous noncompliance with a state titling statute varies widely from state to state.²⁶ Most states will allow a claim for violation of the state’s consumer protection statute, which typically prohibits unfair or deceptive acts or practices.²⁷ In these claims, failure to acquire a branded title in accordance with the titling statute is characterized as a *per se* deceptive act or practice. In addition, noncompliance, especially by an insurance company, may support a claim of common law fraud.²⁸ A minority of states may even provide a specific damage remedy, rescission of the contract, or criminal penalties.²⁹

C. The State Farm Settlement

In January 2005, State Farm entered into an agreement (Assurance of Voluntary Compliance (VPC)) with the attorney’s general of forty-nine states³⁰ and the District of Columbia.³¹ Over a year earlier, in November 2003, State Farm had approached the Iowa Attorney General’s Office with the revelation that State Farm could not confirm whether it had obtained branded titles for tens of thousands of vehicles that it had declared a “total loss” after 1 June 1997.³² As part of the negotiations leading to the VPC, State Farm requested the assistance of the state attorneys general and the state departments of motor vehicles, or equivalent agency, to identify and locate the current owners of these questionably titled vehicles.³³

Under the terms of the VPC, each of the participating states agreed to release State Farm from liability for failing to comply with its titling statutes for vehicles acquired by State Farm between 1 January 1997, and 10 January 2005.³⁴ In return, State Farm agreed to make reasonable efforts to identify all vehicles not properly titled, to inform the vehicle’s current owner of the discrepancy, and to offer the vehicle’s owner financial compensation.³⁵ State Farm further agreed to provide a total of \$40 million to compensate current car owners who elect to release their legal claims against State Farm.³⁶ Finally, State Farm agreed to compensate the attorney’s general for their costs and attorney’s fees in the amount of one million dollars.³⁷

Although Iowa Attorney General Tom Miller, along with many of the other state attorney’s general, applauded State Farm for voluntarily disclosing and offering to remedy its failure to properly title over 30,000 vehicles,³⁸ others point out that

²³ Louisiana Office of Motor Vehicles, Hurricane Katrina Duplicate Title & Registration Process, <http://www.dps.state.la.us/omv/katrinavr.html> (last visited on Dec. 5, 2005).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See NCLC AUTO FRAUD, *supra* note 11, § 6.2.1.9.

²⁷ See *id.*

²⁸ See *id.*; see also *O’Brien v. B.L.C. Ins. Co.*, 768 S.W.2d 64 (Mo. 1989) (upholding a jury award of punitive and statutory damages based on fraud against an insurance company that failed to obtain a salvage title for a flood damaged vehicle).

²⁹ See NCLC AUTOFRAUD, *supra* note 11, § 6.2.1.9; see also Liblang, *supra* note 8 (listing potential causes of action against an automobile dealer or private seller arising out of State Farm’s failure to obtain branded titles for total loss vehicles).

³⁰ Indiana is the only state that did not enter into the agreement. State Farm AVC, *supra* note 3.

³¹ See *States Reach Agreement with State Farm Insurance that Will Result in \$40 Million to Consumers* (Jan. 10, 2005), available at http://www.state.ia.us/government/ag/latest_news/releases/jan_2005/State_Farm.html [hereinafter *States Reach Agreement with State Farm*].

³² See Sorkin, *supra* note 2.

³³ See State Farm AVC, *supra* note 3, para. 7.

³⁴ See *id.* para. 36; see also *States Reach Agreement with State Farm*, *supra* note 31.

³⁵ See State Farm AVC, *supra* note 3, paras. 25-33.

³⁶ See *id.* para. 27.

³⁷ See *id.* para. 44.

³⁸ See *States Reach Agreement with State Farm*, *supra* note 31.

State Farm has a history of failing to obtain salvage titles for totaled vehicles.³⁹ Following a two-year investigation of State Farm's compliance with Indiana titling laws, which culminated in a lawsuit, a judge ordered State Farm to buy back each consumer's misbranded automobile at the purchase price plus finance charges, taxes, insurance premiums, and repair costs.⁴⁰ For consumers who wished to keep their car, the minimum settlement amount was \$2,500.⁴¹

Unlike the Indiana residents who were essentially returned to the position they had been in prior to purchasing a "total loss" vehicle, State Farm is offering car owners in the rest of the United States only a fraction of their monetary loss. Based on estimates in the State Farm AVC, car owners are being offered approximately twenty-five to thirty-five percent of their car's retail value, with the amount varying based on the total value of the car.⁴² In addition, not all purchasers of the misbranded vehicles are included in the settlement. To be eligible for compensation, the car owner must satisfy four criteria: (1) be the current registered owner of the vehicle, (2) not be the person who was the registered owner at the time of the total loss, (3) be unaware at the time of purchase that the vehicle had been declared a total loss, and (4) complete a claim form that includes a release from all other claims against State Farm.⁴³ For owners of vehicles no longer registered, whether because they are inoperable or because they have been dismantled for parts, no compensation is available.⁴⁴ To make matters worse, the letters notifying consumers of the offered settlement are being signed by the state attorneys general, giving the offer the tacit endorsement of the states' primary consumer protection advocates.⁴⁵

Legal assistance attorneys advising a client who has received a State Farm settlement letter should be aware of the following terms of the AVC. First, the amount of compensation contained in the AVC distribution plan is only an estimate.⁴⁶ The agreement provides that the actual amount of compensation will be "increased or decreased proportionately based on the number of Current Vehicle Owners who elect to receive the compensation set forth" in the distribution plan.⁴⁷ If State Farm accepts Compensation Claim Forms from all 30,000 plus owners, the average compensation will only be \$1,333.33. As the number of participants decreases; the amount of compensation increases. Because the \$40 million fund does not depend on the actual number of current vehicle owners who elect to participate, individual compensation could theoretically exceed actual loss.

The details of the car owner's release are also significant. According to the terms of the Compensation Claim Form, the car owner's release of claims "is not binding until payment is made and the check has been negotiated."⁴⁸ The timing of when the release becomes binding is important because the mailing of State Farm settlement letters by the state attorneys general included a deadline of 18 November 2005, for return of the claim form.⁴⁹ Thus, car owners who returned their claim form without understanding the significance of the release of claims or without appreciating the paltry amount of estimated compensation will not be bound by the agreement until they cash the compensation check.

Because the amount of compensation under the AVC could theoretically exceed actual damages, car owners who returned their claim form prior to the deadline are now in a position to choose between accepting the compensation check or seeking greater damages in a lawsuit. For car owners who failed to submit the claim form prior to the deadline, State Farm is under no obligation to include them in the pool of current vehicle owners who will share the \$40 million.⁵⁰

The large financial impact of a car owner losing clean title to a vehicle makes it necessary for legal assistance attorneys to consider the following actions with regard to the State Farm settlement. First, elicit the assistance of the command in

³⁹ Sorkin, *supra* note 2.

⁴⁰ *See id.*; Liblang, *supra* note 8.

⁴¹ *See* Liblang, *supra* note 8.

⁴² *See* State Farm AVC, *supra* note 3.

⁴³ *Id.* Exhibits A and B.

⁴⁴ *Id.* para. 27. One of the ironies of this agreement is that vehicle owner's who stopped registering their totaled vehicle because it was beyond the limits of safe operation or economical repair are ineligible for compensation. In other words, those who were harmed the most will receive the least, unless they seek a remedy outside the terms of the State Farm AVC.

⁴⁵ *Id.* Exhibit A.

⁴⁶ *Id.* para. 27.

⁴⁷ *Id.*

⁴⁸ *Id.* Exhibit A.

⁴⁹ *See State Farm's Wrecked Car Owners*, *supra* note 1.

⁵⁰ *See* State Farm AVC, *supra* note 3, para. 33.

identifying all servicemembers or dependents who may have received a State Farm settlement letter, either in the past or possibly in the future—neither the attorneys general nor State Farm have indicated whether additional letters will be sent. Second, provide detailed information and personal legal advice to those who have received a settlement letter. Legal advice should include the option of rejecting the State Farm compensation offer and seeking a judicial remedy.⁵¹ And third, if a legal assistance client chooses to pursue a judicial remedy, the legal assistance attorney should provide an appropriate referral to an attorney with expertise in the area of automobile fraud.⁵²

D. Avoiding Flood Damaged or Salvage Vehicles from Hurricanes Katrina and Rita

Avoiding a flood damaged or salvaged vehicle is often easier said than done. The National Consumer Law Center estimates that over ten million automobiles on the nation's roads have been sold with "an undisclosed salvage or serious wreck history."⁵³ Such a troubling statistic can only suggest that unscrupulous individuals make widespread efforts to return severely damaged automobiles to the retail car market. Nonetheless, there are some simple steps that consumers may take to avoid purchasing a flood damaged or salvaged vehicle resulting from Hurricanes Katrina and Rita.⁵⁴

Step one is to search the National Insurance Crime Bureau's (NCIB) database, located at www.nicb.org, for a car's vehicle identification number (VIN).⁵⁵ In a cooperative effort between insurance companies,⁵⁶ salvage yards, and state and local authorities, the NCIB created a database of VINs (over 165,000 as of 4 November 2005) for vehicles damaged in Hurricanes Katrina and Rita.⁵⁷ Because the database does not include any information about the scope of damage to the vehicle, the NCIB recommends that any vehicle identified in the database be inspected by a competent mechanic before purchase or sale.⁵⁸

Step two is for prospective purchasers to conduct a thorough examination of the vehicle. Iowa Attorney General Tom Miller recommends that consumers look for the following signs of flood damage:

1. Check inside the trunk, including around the spare tire, for evidence of moisture, silt, or corrosion.
2. Check the engine for signs of moisture damage, such as rust or silt or grass.
3. Give the vehicle a smell test—inside and out—if it smells musty, it could have been flood-damaged.
4. Examine the underside of the vehicle for signs of excess moisture.
5. Check inside dome lights, glove boxes, and other places where water might have been trapped for signs of moisture, mold, rust, or silt.
6. Check the interior for signs of mismatched items such as carpeting or seat covers.
7. Test all electrical components, including lights, signals, switches, and audio systems.⁵⁹

⁵¹ See, e.g., *Pittsburgh Consumer Sues State Farm Insurance for Selling Salvage Cars Without Disclosure*, PRNEWswire (Nov. 17, 2005), available at <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/11-17-2005/0004218694&EDATE=> (describing a lawsuit filed in Pennsylvania by Robert Beaves who was offered \$2,700 by State Farm as compensation for his 2001 pre-certified Honda Civic LX).

⁵² Legal assistance attorneys who are unable to identify a local attorney with expertise in automobile fraud should consider contacting the National Association of Consumer Advocates (NACA), <http://www.naca.org>, for an appropriate referral. There are also numerous attorneys specializing in automobile fraud or Lemon Law litigation that advertise on the World Wide Web.

⁵³ See NCLC AUTO FRAUD, *supra* note 11, § 2.1.1.

⁵⁴ See Tom Miller, *Don't Buy Flood-Damaged Vehicles* (Nov. 4, 2005), available at http://www.state.ia.us/government/ag/latest_news/releases/nov_2005/flood_damaged_cars.htm.

⁵⁵ Prospective car buyers may also conduct a free search at www.carfax.com/flood and www.autocheck.com/storm.

⁵⁶ Insurance companies providing information to the NCIB include Allstate, Copart, Direct General, Farmers Insurance, GEICO, Insurance Auto Auctions, Imperial Fire & Casualty, Infinity Insurance Company, Liberty Mutual, MetLife, Nationwide, Progressive, Safe Auto, Safeway Insurance of Louisiana, Sentry, St. Paul Travelers, State Farm, The Hartford, The Republic Group, TM Claims Service, U.S. Agencies, USAA, and Universal Underwriters. See National Crime Insurance Bureau Homepage, <http://www.nicb.org> (last visited on Dec. 5, 2005).

⁵⁷ See Miller, *supra* note 54.

⁵⁸ See National Crime Insurance Bureau Homepage, <http://www.nicb.org> (last visited on Dec. 5, 2005).

⁵⁹ See Miller, *supra* note 54.

Step three is to conduct a thorough title search. Although services such as Carfax and Autocheck may be useful, buyers must be cautioned not to rely on either service as a comprehensive record of an automobile's title history.⁶⁰ When the information on a Carfax or Autocheck report appears incomplete or questionable, a buyer should seek additional information from the state departments of motor vehicles in which the car has been titled. Once a buyer has assembled a complete title history, he or she should examine the documents for specific indicators of prior damage. First, the buyer should look for any indication of a title brand, whether salvage, water damage, or any other indication of a nonstandard condition.⁶¹ Second, the buyer should look for evidence that the car has been owned or transferred by an insurance company, a body shop, a junk yard, or a rebuilder.⁶² When either indicator is present, the average consumer should avoid purchasing the vehicle.

Even after completing these three steps, potential car buyers should hesitate before signing on the dotted line. Auto experts point out a number of ways in which the current owners of flood damaged vehicles may attempt to defraud buyers.⁶³ For owners who do not have insurance, there may be a temptation to clean, repair, and sell a flood damaged car without acquiring a branded title, and possibly without disclosing the prior damage to a potential buyer.⁶⁴ A second way in which a potential buyer may be defrauded is by the seller's noncompliance with state titling laws.⁶⁵ Whether accomplished with the assistance of nefarious insurance companies, rebuilders, or auto auctions, one only needs to refer to the State Farm settlement to understand how easy it may be for a total loss vehicle to be sold without the required branded title.⁶⁶

When buying a car, consumers should not rely on the myriad of state consumer protection laws, titling statutes, and private information services like Carfax and Autocheck. If there is one thing that the State Farm settlement makes clear, it is that the rule in buying an automobile is still *caveat emptor*. Legal assistance attorneys must, therefore, educate the military community on the need to conduct a thorough investigation of any used car that they may consider buying, including a detailed title search, a thorough personal inspection, and a paid inspection by an expert mechanic.

⁶⁰ See NCLC AUTO FRAUD, *supra* note 11, § 2.3.

⁶¹ *Id.* § 2.4.5.4.1.

⁶² *Id.*

⁶³ See Solomon, *supra* note 9.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

Book Review

A QUESTION OF LOYALTY: GEN. BILLY MITCHELL AND THE COURT-MARTIAL THAT GRIPPED THE NATION¹

REVIEWED BY CAPTAIN JENNIFER L. CRAWFORD²

*Lightning rods must galvanize public opinion and prod politicians to force the bureaucracy to change.
Mitchell was a needed spark.*³

General William “Billy” Mitchell may have ignited a fire to become “the godfather of modern naval aviation,”⁴ but author Douglas Waller fails to kindle that flame in *A Question of Loyalty: Gen. Billy Mitchell and the Court-Martial that Grippled the Nation*. Rather than fan the flames, Waller snuffs the fire out in his attempt to bring twenty-first century readers to Mitchell’s 1925 court-martial. Waller’s recitation of an otherwise “gripping” tale leaves nothing but a few embers.

In 1925, the U.S. military court-martialed then-Colonel Billy Mitchell⁵ for insubordination⁶ resulting from public comments made by the war hero.⁷ Throughout his career, Mitchell, an Army officer, publicly advocated for an independent air force separate and apart from the Departments of the Army and Navy.⁸ Appointed a general officer at the age of thirty-nine,⁹ Mitchell’s prescient predictions about the future of air power¹⁰ argued, generally, that the future of the U.S. military might lay dormant in the untapped and under-utilized resources of air power.¹¹ Mitchell voiced frustration that military decisionmakers failed to act on his ideas and failed to understand the importance of air assets.¹² After years of outspoken rhetoric through speeches,¹³ publications, and deeds,¹⁴ on 5 September 1925, Mitchell stacked the final straw on the

¹ DOUGLAS WALLER, *A QUESTION OF LOYALTY: GEN. BILLY MITCHELL AND THE COURT-MARTIAL THAT GRIPPED THE NATION* (2004).

² U.S. Army. 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.

³ WALLER, *supra* note 1, at 364.

⁴ *Id.* at 155.

⁵ *See id.* at 2 (“Brigadier general had been [Mitchell’s] temporary rank during World War I, when officers were promoted rapidly as the army expanded for combat. After the war most reverted to their permanent peacetime ranks.”). Although Mitchell returned to the rank of colonel, many Soldiers continued to call him “General.” *Id.* Upon his ultimate retirement from military service, Mitchell retained the “use [of] ‘General’ as his title . . . because that was the rank he had achieved during the war.” *Id.* at 331. As recently as 2003, Mitchell’s heirs continued to fight for the restoration of their famous ancestor’s rank to that of brigadier general. *Id.* at 361 (referencing a U.S. House of Representatives bill introduced by Mitchell’s grandnephew “to promote Mitchell posthumously”).

⁶ *Id.* at 61; *see also* United States v. Martinez, 42 M.J. 327, 330 (1995) (“Article 134, UCMJ, and its statutory predecessor Article of War 96, proscribe all disorders and neglects by a member of the services which prejudice the good order and discipline in the armed forces and all conduct of a nature to bring discredit upon the armed forces.” (citing Parker v. Levy, 417 U.S. 733, 753-54 (1974); Dynes v. Hoover 61 U.S. 65 (1857))). Article 96, of the 1806 Articles of War, stated: “All officers, . . . of the United States, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts martial, in the like manner with the officers and soldiers of the other troops in the service of the United States.” Major Jan E. Aldykiewicz, *Authority to Court-Martial Non-U.S. Military Personnel for Serious Violations of International Humanitarian Law Committed During Internal Armed Conflicts*, 167 MIL. L. REV. 74, 90 (2001) (citing 1806 Articles of War, 2 Stat. 359, art. 96 (1806)).

⁷ WALLER, *supra* note 1, at 20-21 (providing the substance of Mitchell’s statement which formed the basis of the subsequent court-martial charges); *see also id.* at 46 (giving the date of the court-martial), 136 (detailing Mitchell as a war hero), 324 (reciting the comment of the president of the court-martial panel that Mitchell received a lesser sentence because of his military record during World War I).

⁸ WALLER, *supra* note 1, at 2, 6; *see also* John Lehman, *The Visionary Mitchell, Maverick of Air Power*, CHI. SUN-TIMES, Nov. 21, 2004, at 16 (characterizing Mitchell as “a visionary who understood the future importance of air power long before it became a reality”).

⁹ WALLER, *supra* note 1, at 136; *see also supra* note 5 (describing Mitchell’s war-time promotion). Mitchell retained the rank of brigadier general after the war when the military assigned him as “assistant director of the air service,” which allowed for retention of the rank of brigadier general as long as the individual remained in that assignment. *See* WALLER, *supra* note 1, at 2.

¹⁰ *See id.* at 5-6. In 1923, Mitchell predicted the Japanese bombing of Pearl Harbor that was not to happen until 1941. *Id.* at 56-57. An additional prediction described the destruction to be caused by “[a] single explosion’ well placed by aircraft into the heart of New York City.” *Id.* at 6. Further, Mitchell foresaw the use of air power to drop munitions on foreign targets, a revolutionary concept in the 1920s. *Id.* at 5. Waller notes that such anticipated cruise missiles and unmanned aerial vehicles (UAVs) were used against Iraq and Afghanistan, respectively. *Id.* Waller further credits Mitchell as having “planted the intellectual seeds for what is now America’s global airpower.” *Id.* at 8.

¹¹ *Id.* at 2, 5-6.

¹² *Id.*

¹³ *See id.* at 7 (providing a description of Mitchell’s congressional testimony charging that “America’s air service . . . was woefully unprepared for a future war”).

proverbial camel's back of the U.S. War Department.¹⁵ Two days earlier, the *USS Shenandoah* crashed, killing fourteen members of the crew.¹⁶ Believing the flight to have been a useless publicity stunt,¹⁷ Mitchell issued a statement to the press accusing the Navy and War Departments of "incompetency, criminal negligence and almost treasonable administration of the national defense."¹⁸ In the end, after a month-long trial with the testimony of ninety-nine witnesses¹⁹ filling over 3,700 pages,²⁰ Mitchell's peers declared him guilty of violating eight specifications of Article 96 of the Articles of War.²¹ Although the panel gave Mitchell a relatively light sentence,²² public disgrace and financial necessity caused the former general to resign his commission less than two months after his conviction.²³

At the time Waller authored *A Question of Loyalty*, no less than nine Mitchell biographies existed.²⁴ Why write a tenth? Waller claims that "parts of [Mitchell's] life still remained a mystery for those who had written about him before. Questions about the man, and his court-martial, remained unanswered."²⁵ While Waller provides over three-hundred pages that deem to address the unanswered questions, he neglects to identify the missing pieces that are relevant to an understanding of Mitchell as a man or as a military accused. At times, Waller even fails to follow through on his own historical narrative.²⁶ He references how Mitchell, during one flight, was forced to land his aircraft in East Potomac Park near Washington, D.C.²⁷ Waller does not explain what caused this experienced pilot to land on this "makeshift" field or the consequences of the landing.²⁸ In another episode, Mitchell encounters his estranged children at a horse show.²⁹ Waller describes how difficult the alienation was for one of the children but never describes the sure to be explosive, or at least icy, interaction between Mitchell and the children on this occasion.³⁰ Which begs the question, why include this information at all?

A veteran author³¹ and journalist,³² Waller handicaps *A Question of Loyalty* with too many facts and details. Rather than dissect volumes of research to provide a riveting tale of an unusual court-martial under unusual circumstances, Waller

¹⁴ See *id.* at 5, 7 (describing Mitchell's writing for the *Saturday Evening Post*), 7 (noting the 1925 publication of Mitchell's treatise on air power, *Winged Defense*), 139 (citing *Our Air Force* as Mitchell's "first book on aeronautics").

¹⁵ *Id.* at 17-19.

¹⁶ *Id.* at 10. The United States modeled the *Shenandoah*, a dirigible, on the German Zeppelin design. *Id.* at 11. The government paid \$2.7 million for the airship, a "fortune" by economic standards of the day. *Id.* For a concise, yet thorough, recitation of the *Shenandoah* incident and the subsequent court-martial of Mitchell, see JOSEPH DIMONA, GREAT COURT-MARTIAL CASES 93-115 (1972).

¹⁷ See, e.g., WALLER, *supra* note 1, at 200 (presenting testimony from the *Shenandoah* pilot's widow that the pilot thought the fatal flight "was made solely for political purposes"), *id.* at 289 (demonstrating that Mitchell's attorney elicited testimony from a witness that lists facts the *Shenandoah* would fly over, when formulating its route).

¹⁸ *Id.* at 20. Mitchell issued to the press a typed, single-spaced, nine-page statement, totaling over six thousand words. *Id.* The statement also condemned the Navy's poor preparation and oversight of the flights of several naval seaplanes from California to Hawaii. See *id.* at 17-18.

¹⁹ *Id.* at 316.

²⁰ *Id.* at 356, 426.

²¹ *Id.* at 89-91, 324. The panel deliberated for approximately three hours. See *id.* at 322-23.

²² *Id.* at 324 (stating that the panel sentenced him "to be suspended from rank, command and duty with the forfeiture of all pay and allowances for five years"). Waller describes Mitchell's sentence as one of "peonage" because Mitchell "would be allowed to remain in the army, but he would have no rank, command nobody, do no job, and be paid nothing." *Id.*

²³ *Id.* at 331.

²⁴ *Id.* at 425; see also *id.* at 420-24 (listing a selected biography of sources utilized by Waller).

²⁵ *Id.* at 425. When asked in a publisher's promotional interview, why he wrote the book, Waller again fails to answer definitively. See Douglas C. Waller Official Website, *A Question of Loyalty: An Interview with Douglas Waller on His Latest Book*, <http://www.douglascwaller.com/aqol/interview.html#1> (last visited Nov. 21, 2005). Instead he simplistically declares, "Billy Mitchell was a fascinating person. For the journalists of his day, Mitchell was good copy. I would have loved to cover him as a reporter. Digging into his life and writing about him as a biographer today was fun." *Id.*

²⁶ See *infra* notes 27-29 and accompanying text.

²⁷ WALLER, *supra* note 1, at 139.

²⁸ *Id.* Waller also alludes to Mitchell having "scariest moments with crashes" but does not provide any of the details of these crashes. *Id.*

²⁹ *Id.* at 214.

³⁰ *Id.*

³¹ See Douglas C. Waller Official Website, *Biography*, <http://www.douglascwaller.com/bio.html> (last visited Nov. 21, 2005) (listing several of Waller's previous books).

³² See *id.* (noting that Waller has written for both *Time* and *Newsweek* magazines and for newspapers in Greensboro and Charlotte, North Carolina).

includes all of the details under the rubric of providing everything and letting the reader sort it out.³³ The book is filled with verbatim court-martial examination to no benefit of the reader.³⁴ By using such extraneous verbiage, Waller erroneously relies on the trial and defense counsels to do his work for him. Thus, the written word is only as good as the attorneys' oral examinations. Waller's lazy, misplaced, "everything *and* the kitchen sink" tactic may have sprouted from a hinted-at loyalty to the Mitchell family.³⁵ Mitchell's descendents cooperated with Waller in his research by, literally, welcoming him into their homes and giving him virtually unrestricted access to Mitchell's personal writings and letters.³⁶ Such unprecedented access to "the legend of Billy Mitchell" may, unconsciously, have steered Waller to include the minutiae of Mitchell's life.

Thus, it is not the author's research or sources that make *A Question of Loyalty* worth skipping,³⁷ but rather his prose,³⁸ structure, and style.³⁹ The book never reaches its envisioned potential as either a biography or a "gripping" tale of a military court-martial. *A Question of Loyalty* begins by alternating chapters between Mitchell's life and the court-martial.⁴⁰ Less than halfway through the book, Waller abruptly stops this style to focus solely on the court-martial.⁴¹ Waller provides no warning to the reader and his parallel storytelling strands never seem to intersect. Waller's attempt at a seamless transition between earlier parts of Mitchell's life and career and the court-martial of 1925 fails miserably. Such broken structure on the page ensures broken structure in the reader's mind, making the story difficult to follow and difficult to read. For example, one chapter, "Triumph," focuses on the sinking of the *Ostfriesland* battleship by aerial bombing in 1921.⁴² Yet, as soon as Waller describes the success of the bombs in driving the *Ostfriesland* to a watery grave, he unexplicably jumps to describing the "domestic turmoil" in 1920 of Mitchell's first marriage.⁴³ Similarly, the chapter "Preparing for Battle," ends with the fact that "[w]omen had been an important part of Billy Mitchell's life. They could make or break his career."⁴⁴ Illogically, the next chapter begins with Mitchell's return from Europe at the end of World War I.⁴⁵ The structure simply does not flow smoothly.

For the modern judge advocate, *A Question of Loyalty* harbors several flints among the embers. Readers may be entertained by comparing the "carnival atmosphere"⁴⁶ surrounding Mitchell's trial against a modern court-martial. What modern military trial judge would allow the rustling of a newspaper's comics during a trial?⁴⁷ The cracking of peanuts?⁴⁸ Smoking in the courtroom?⁴⁹ Imagine a military judge's reaction to an accused turning from the defense bar to reporters

³³ See WALLER, *supra* note 1, at 419-24 (listing a "Selected Biography" of over 150 sources). Waller unceremoniously concludes one chapter by describing a night out at the opera for Mitchell and his wife to include such details as: the hosts of the pre-opera party; the location of the opera performance; the title of the opera; the location of the Mitchells' seats; the sponsor of the seats; and the time the Mitchells arrived. *Id.* at 212.

³⁴ See, e.g., *id.* at 52 (trial counsel's voir dire of the panel), 90-91 (pleas of the accused), 109 (testimony of A.H. Yeager, newspaper reporter), 178 (testimony of Carl Spaatz, pilot), 236 (testimony of Hiram W. Sheridan, air service flight instructor), 280-81 (testimony of Charles Rosendahl, *USS Shenandoah* navigator), 301-02 (testimony of Mason Patrick, chief of the army air service).

³⁵ See *id.* at 425-26. Waller acknowledges receipt from various family members of "Mitchell stories passed down from generation to generation." *Id.* at 425.

³⁶ See *id.*

³⁷ See *id.* at 365-418 (providing extensive "Source Notes" for Waller's text).

³⁸ See *id.* at 216. The reader owes no gratitude to Waller for inclusion of sentences such as: "There was *no* rule in the manual for courts-martial that a *nonlawyer* could *not* act as a prosecutor and interrogate a witness." *Id.* (emphasis added).

³⁹ See, e.g., *id.* at 255. For example, during the trial, the panel president grants a Thanksgiving recess. *Id.* Rather than resume his story-telling with the next day of the trial, Waller feels compelled to waste three pages covering the celebrations of the various trial participants. *Id.* The book loses what little momentum Waller established. Additionally, Waller favors passive prose that burdens down his text. For example, in "The Verdict," Waller's first sentence fails to capture the reader and draw interest: "For the last day of the trial the courtroom was crowded with almost as many army and navy officers as it was with civilian spectators." *Id.* at 316; see also *id.* at 167, 207.

⁴⁰ See, e.g., *id.* at chs. 1-14.

⁴¹ See *id.* at 168.

⁴² *Id.* at 136-55. Upon defeat in World War I, the Germans surrendered the *Ostfriesland* to the Allies. *Id.* at 143. In turn, the Department of the Navy allowed Mitchell to use the battleship for operational exercises. See *id.*

⁴³ *Id.* at 159.

⁴⁴ *Id.* at 135.

⁴⁵ *Id.* at 136.

⁴⁶ *Id.* at 195.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 323.

seated in the courtroom and “in a low hoarse voice utter[ing] insults about [the witness].”⁵⁰ Would a military judge or the parties tolerate the panel members rearranging their seats so that they all could be in a press photo about the trial?⁵¹

Of interest to legal historians will be the procedural and substantive differences that abound between Mitchell’s trial and modern courts-martial. In 1925, courts-martial proceeded without a military judge.⁵² Instead, the president of the court-martial panel presided over the proceedings with the guidance of a law officer.⁵³ The law officer, like today’s military judge, ruled on objections, addressed the admissibility of evidence, and controlled witnesses.⁵⁴ Granted wide discretion, the law officer often worked as an instrument of the panel instead of an instrument of the system. For example, in *United States v. Mitchell*, the law officer joined the panel members for deliberation and sat next to the panel president for announcement of the findings and sentence.⁵⁵

For all of the differences in the court-martial system, some of Waller’s anecdotes confirm that some aspects of the process are want to change over time. Waller describes the frequent mishaps made by Mitchell’s civilian defense counsel that alienate the military panel.⁵⁶ In another situation, the defense witnesses “had agreed among themselves that whenever [the defense attorney] asked a loaded question they would blurt out the answer before [the trial counsel] could stop them.”⁵⁷ Further, at one point both the trial counsel and assistant trial counsel rise from counsel table to object and present argument whereupon the defense counsel counters with “I object to this tandem objection.”⁵⁸ Comically, Waller recites how, when faced with his own witness giving “surprise” testimony, the experienced trial counsel objected to the testimony as “incompetent . . . irrelevant and immaterial!”⁵⁹ Additionally, the modern reader may appreciate that the assistant trial counsel, in at least one instance, asked of a defense witness a question to which he did not know the answer.⁶⁰

“What place should [Mitchell] have in history?” questions Waller.⁶¹ The better query asks whether Mitchell’s notoriety as a court-martial accused overshadowed his renown as “the godfather of modern naval aviation.”⁶² Disappointingly, *A Question of Loyalty* fails to answer either question. Ultimately, the quest for the answer in Waller’s storytelling takes too long and is too strenuous a journey. The search for scraps of literary or legal redemption is not worth the minimal reward. General Billy Mitchell’s court-martial may have “gripped the nation,” but his life story fails to hold interest on the page.

⁵⁰ *Id.* at 296. Mitchell also spent one day of the court-martial “munch[ing] on candy from a paper bag.” *Id.* at 219.

⁵¹ *Id.* at 323.

⁵² *See id.* at 86 (listing the required court-martial personnel in 1925).

⁵³ *See id.* (describing the role of the “law member” to rule on legal questions” before the panel); *see also* Major Jeffery D. Lippert, *Automatic Appeals Under UCMJ Article 66, Time for a Change*, 182 MIL. L. REV. 1, 11-12 (2004) (characterizing the “law officer” as “the ‘legal arbiter’ for a court-martial”).

⁵⁴ *Compare* Lippert, *supra* note 53, at 11-12 (listing the duties of the law officer as “rul[ing] on questions of law and instruct[ing] the court members prior to their deliberation” and “rul[ing] on motions to dismiss, or . . . declar[ing] mistrials when necessary” (internal citations omitted)), *with* MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 801 (2005) (providing the duties and responsibilities of the military judge).

⁵⁵ WALLER, *supra* note 1, at 322, 323. *But see* U.S. DEP’T OF ARMY, PAM. 27-9, LEGAL SERVICES: MILITARY JUDGES’ BENCHBOOK para. 1-1a(2)(d) (15 Sept. 2002) (“The judge should avoid comment, conduct, or appearance that may unfairly influence court members or affect their judgment on the outcome of the case.”).

⁵⁶ WALLER, *supra* note 1, at 172 (questioning the civilian defense attorney’s knowledge of “basic aviation terminology”), 294 (retelling how a government witness shouts back at the defense counsel because the defense counsel interrupted the witness), 297 (depicting how the civilian defense counsel confused the Distinguished Service Cross, awarded for heroism in battle, with the Distinguished Service Medal), 312-13 (describing how the civilian defense counsel and a government witness almost came to physical blows during the trial). Waller also describes a scene familiar to modern military counsel in which the civilian defense counsel and military defense counsel act in such a way that “[t]he left hand didn’t know what the right hand was doing . . . – a situation that was not uncommon for military tribunals.” *Id.* at 189.

⁵⁷ *Id.* at 173.

⁵⁸ *Id.* at 235.

⁵⁹ *Id.* at 189.

⁶⁰ *Id.* at 224. All hope is not lost for the modern judge advocate who may make a similar error. The assistant trial counsel in the Mitchell case, Major Allen Guillon, went on to become The Judge Advocate General for the Army. *Id.* at 356.

⁶¹ *Id.* at 363.

⁶² *Id.* at 155.

Announcement

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. Point of contact is MAJ Chris Rofrano at chris.rofrano@ngb.af.mil.

CLE News

1. Resident Course Quotas

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

b. Active duty 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	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	5th Advanced Law of Federal Employment Course	25 – 27 Oct 06
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-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	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	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	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 (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)
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) (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 (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 (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 (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 (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 (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
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
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
Legal Aspects of Information Operations Law Course, Class 06-A	12 – 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. Attendance at January 2006 RC-JAOAC (Phase II Resident)

The 2006 Judge Advocate Officer Advanced Course (JAOAC) Phase II (Resident Phase) is scheduled for 8-20 January 2006. To be eligible to attend the 2006 JAOAC, the deadline for submission of all JAOAC Phase I (Correspondence Phase)

materials was 1 November 2005. Students who have not completed all Phase I correspondence courses, to include submission of all JA 151 (Fundamentals of Military Writing), are NOT cleared to attend the 2006 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase. Students who were required to retake any subcourse examination or “re-do” any writing exercises are NOT cleared to attend 2006 JAOAC unless they have received a passing grade and have been approved for attendance by the course manager.

Registration and weigh-in for the 2006 JAOAC is from 1100-1600, Sunday, 8 January 2006, followed by a mandatory orientation briefing at 1600. Classes end at 1200, 20 January 2006. We cannot issue certificates of completion for students who depart early or miss class sessions. Students should bring Class A (graduation) and Class B (classroom instruction) uniforms, as well as the PT uniform (for weigh-in).

Questions regarding the January 2006 RC-JAOAC should be directed to LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail jeffrey.sexton@hqda.army.mil.

7. Phase I (Correspondence Phase), Deadline for RC-JAOAC 2007

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. 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 LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail jeffrey.sexton@hqda.army.mil

8. 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	ADA/ADI	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
21-22 Jan 06	Decatur, GA 213th LSO	No support requested	COL Bernard Pfeiffer (706) 545-1130 Bernard.pfeiffer@us.army.mil
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	Miami, 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	No support requested	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
7-8 Apr 06	Oakbrook, IL 91st LSO	ADA/ADI	MAJ Douglas Lee (312) 338-2244 (office) (630) 728-8504 (cell) (630) 375-1285 (home) Douglas.lee1@us.army.mil
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

6-7 May 06	Columbia, SC 12th LSO	ADI/ADK	MAJ Lake Summers (803)413-2094 lake.summers@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
20-21 May 06	Nashville, TN 139th LSO	ADC & ADI	COL Gerald Wuetcher (502) 564-3940, ext. 259

2. The Judge Advocate General's School, U.S. Army (TJAGLCS) 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).	(2000).
AD A326002	Wills Guide, JA-262 (1997).	AD A332865 AR 15-6 Investigations, JA-281 (1997).
AD A346757	Family Law Guide, JA 263 (1998).	Labor Law
AD A384376	Consumer Law Deskbook, JA 265 (2004).	AD A360707 The Law of Federal Employment, JA-210 (2000).
AD A372624	Legal Assistance Worldwide Directory, JA-267 (1999).	AD A360707 The Law of Federal Labor-Management Relations, JA-211 (1999).
AD A360700	Tax Information Series, JA 269 (2002).	Criminal Law
AD A350513	The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (1998).	AD A302672 Unauthorized Absences Programmed Text, JA-301 (2003).
AD A350514	The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).	AD A302674 Crimes and Defenses Deskbook, JA-337 (1994).
AD A329216	Legal Assistance Office Administration Guide, JA 271 (1997).	AD A274413 United States Attorney Prosecutions, JA-338 (1994).
AD A276984	Legal Assistance Deployment Guide, JA-272 (1994).	International and Operational Law
AD A360704	Uniformed Services Former Spouses' Protection Act, JA 274 (2002).	AD A377522 Operational Law Handbook, JA-422 (2005).
AD A326316	Model Income Tax Assistance Guide, JA 275 (2001).	
AD A282033	Preventive Law, JA-276 (1994).	

* 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

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

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.

By Order of the Secretary of the Army:

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