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ARTICLES

What *Riley v. California* Means for Military Justice

Lindsay Windsor

What You Don't Know Can Hurt You: Discovering the JAG Corps Online Military Justice Resources

Major Virginia Tinsley

TJAGLCS FEATURES

Lore of the Corps

The Life and Career of Thomas A. Lynch: Army Judge Advocate in the Philippines and Japanese Prisoner of War

Administrative & Civil Law

Does PCS Cover ETS Under the SCRA?

BOOK REVIEWS

America's First Clash with Iran: The Tanker War, 1987-88

Reviewed by *Major T. Aaron Finley*

The Fundamentals of Counterterrorism Law

Reviewed by *Major Christopher M. Hartley*

CLE NEWS

CURRENT MATERIALS OF INTEREST

Department of the Army Pamphlet 27-50-502

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Lore of the Corps

The Life and Career of Thomas A. Lynch: Army Judge Advocate in the Philippines and Japanese Prisoner of War	1
--	---

Articles

What <i>Riley v. California</i> Means for Military Justice <i>Lindsay Windsor</i>	7
---	---

What You Don't Know Can Hurt You: Discovering the JAG Corps Online Military Justice Resources <i>Major Virginia Tinsley</i>	13
---	----

TJAGLCS Features

Administrative & Civil Law

Does PCS Cover ETS Under the SCRA?	29
---	----

Book Reviews

America's First Clash with Iran: The Tanker War, 1987-88 Reviewed by <i>Major T. Aaron Finley</i>	31
---	----

The Fundamentals of Counterterrorism Law Reviewed by <i>Major Christopher M. Hartley</i>	35
--	----

CLE News	39
-----------------------	----

Current Materials of Interest	44
--	----

Individual Paid Subscriptions to <i>The Army Lawyer</i>	Inside Back Cover
--	-------------------

Lore of the Corps

The Life and Career of Thomas A. Lynch: Army Judge Advocate in the Philippines and Japanese Prisoner of War

Fred L. Borch
Regimental Historian & Archivist

Little is known about the officers who served in The Judge Advocate General's Department (JAGD) prior to World War II, if only because there were relatively few lawyers in uniform in the "Old Army."¹ Even less is known about men who served in the JAGD of the Philippine Scouts in the 1920s and 1930s. But one lawyer who served as a judge advocate prior to World War II, and spent the majority of his time as a military attorney in the Philippines, was Thomas A. Lynch. He served in the Philippine Islands as a private, corporal and sergeant in the early 1900s and ultimately retired as a major in JAGD of the Philippine Scouts in 1934. Recalled from retirement in 1940, Lynch was the Staff Judge Advocate, U.S. Forces in the Philippine Islands, when he was taken prisoner by the Japanese in 1942. He survived captivity and retired from the Army a second time in 1946.

Born in Chicago, Illinois on March 2, 1882, Thomas "Tom" Austin Lynch graduated from high school at age 19.² He seems to have worked in Chicago as an office clerk for the Chicago and New Hampshire Railroad before enlisting in the 17th Infantry Regiment on March 28, 1904³. After a short period of service in Cuba, he sailed with his unit to the Philippines where he subsequently served as a private, corporal, sergeant and First Sergeant of Company "F" of that Regular Army unit.

His military records show that he was five foot, six inches tall and weighed 140 lbs. when he enlisted. He had blue eyes and brown hair. He also had a tattoo of a butterfly

(on his left forearm and upper right arm), which he most likely obtained while soldiering in the Philippines. Lynch also picked up some knowledge of Spanish while serving in Cuba and the Philippines, although his records indicate that he spoke it poorly.

Tom Lynch was a talented soldier of proven ability. He not only participated in campaigns against Filipino insurgents on Mindanao in 1904-1905 (his records reflect one year, seven months of "combat" duty)⁴ but his superiors were sufficiently impressed with Lynch that he was offered a commission in the Philippine Scouts.⁵ After slightly more than seven years in the ranks, Lynch took his oath of office as a second lieutenant on February, 16 1912. A year later, he was serving as the "Presidente of Parang and Deputy District Governor" of Cabato, Mindanao.⁶

In 1915, when he was 33 years old, Lynch enrolled in correspondence courses offered by the Hamilton College of Law.⁷ His military records from May of 1919 show that he studied law by correspondence for three years but did not

⁴ *Id.*

⁵ Created by the Army in 1899, the Philippine Scouts were recruited from the indigenous population of the Islands and used to suppress the increasingly vicious insurgency led by Emilio Aquinaldo against the new American colonial regime. In 1901, Congress made the Scouts part of the Regular Army, and assumed responsibility for their pay and entitlements. The Scouts were now a "military necessity" as congressional authorization for the U.S. volunteer army had expired, leaving only U.S. Regular troops and the fifty companies of Scouts (about 5,000 men) to maintain law and order in the Philippines. PAUL A. KRAMER, *THE BLOOD OF GOVERNMENT* 113-14 (2006). By the time 2d Lt. Lynch accepted a commission in the Scouts in 1912, the Scouts were an important military force the Philippines. While soldiers enlisting in the Scouts were exclusively native-born recruits, many Scout officers also were Filipino---in contrast to Lynch. A significant number also were U.S. Military Academy graduates, as West Point had begun admitting Filipinos in 1908; by 1941, 16 of 38 native Scout officers were USMA graduates. See JEROLD E. BROWN, *HISTORICAL DICTIONARY OF THE UNITED STATES ARMY* 366-67 (2001).

⁶ Lynch was stationed on Mindanao because guerilla activity persisted on that island---and the islands of Samar, Cebu and Jolo---until 1913, when then Brigadier General John J. Pershing and troops of the 8th Infantry finally defeated Moro insurgents at the battle of Bud Bagsak on Jolo Island. JERRY KEENAN, *ENCYCLOPEDIA OF THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS* 52 (2001).

⁷ Located in Chicago, Illinois, the Hamilton College of Law advertised that it was "absolutely the ONLY law school of its kind in America" and the "only law school giving a full 3-year University Law course by mail." Lynch probably knew about the Hamilton College of Law because he was from Chicago, but the institution also advertised in magazines that Lynch would have seen in the Philippines. See *COSMOPOLITAN MAGAZINE* (Dec. 1914), 26.

¹ For old soldiers and veterans, the term "Old Army" refers to an army of an earlier period, usually before the last war. Most military historians consider the "Old Army" to be the peacetime Army before World War II, and this Lore of the Corps uses the words in that manner. For more on this phrase, see EDWARD M. COFFMAN, *THE OLD ARMY* (1986). Lawyers in the Old Army were relatively few, but this is understandable given that, from 1922 to 1935, the Army's strength never exceeded 150,000. In the late 1930s, the JAGD had a total of 90 uniformed lawyers, 36 of whom were in Washington, D.C. *JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER* 156 (1975).

² Thomas A. Lynch may have been born on 2 June 1885, and not 2 June 1882. According to one of his granddaughters, he gave the Army an earlier date of birth (DOB) because he was not old enough to enlist. This may be true, but all of Lynch's military records reflect his DOB as 2 June 1882. Additionally, since Lynch enlisted on 28 March 1904, he was already 18 years of age and, as he had reached the age of majority, there would have been no need to falsify his DOB. His actual birthday remains a mystery. Email, Elizabeth Lynch Pitt to author, (Dec. 17, 2014, 9:40PM) (on file with author).

³ War Department Adjutant General's Corps Form No. 66-1, Officer's and Warrant Officer's Qualification Card, Lynch, Thomas A. (9 Sep. 1945), Block (9) War Service.

graduate. These legal studies, were apparently sufficient for Lynch to begin practicing Army law as there was no requirement for a judge advocate to be a law school graduate, or be admitted to the practice of law in any court.⁸

In any event, after serving as Adjutant for Philippine Scouts stationed at Camp Claudio, now Captain (CPT) Lynch was transferred to Fort Santiago in Manila and given his first work as an Army attorney. His Special Efficiency Report for April to September 1919 identifies Lynch as “Assistant to the [Philippine] Department Judge Advocate.” His job? “Assisting in court-martial reviews, etc., looking up law citations and writing of legal opinions.”⁹

While marked as “above average” rather than “superior” when it came to “physical energy and endurance, judgment and common sense, and attention to duty,” this seems to have been a fairly standard grade on an efficiency report for a Philippine Scout officer. After all, in writing “a brief general estimate” of Lynch, Lieutenant Colonel (LTC) Dennis P. Quinlan, his immediate superior, described him as a “fairly well educated officer ... an intelligent, sober, zealous, well-ballasted man” (although precisely what his rater meant by that last term is not clear). Quinlan further described Lynch as “a loyal subordinate, thoroly [sic] conscientious, all-round officer, competent to command [a] regiment in an emergency.”¹⁰ This would appear to have been high praise for the era.

After being promoted to major (MAJ) on July 1, 1920, Lynch continued his work as an Army lawyer. He wore the crossed quill-and-sword insignia on his collar and served as a “Law Member”¹¹ at general courts-martial convened in the Philippines. Lynch also performed duties as a trial counsel at general courts,¹² reviewed court-martial records and

prepared legal opinions. But this was not a full-time position, as his military records show that MAJ Lynch also served as an “Athletic officer,” “Salvage officer,” “Assistant to the Post Quartermaster” and “Regimental Adjutant” between 1920 and 1922.¹³



Major Thomas A. Lynch, Manila, Philippine Islands, 1924.

By 1925, MAJ Lynch was devoting his time exclusively to legal matters as Assistant Department Judge Advocate in Manila. His duties included “preparation of opinions, examinations of G.C.M. records, writing reviews, giving advice on legal questions, and [serving] as trial judge advocate.” His rater, Lieutenant Colonel (LTC) A. R. Stallings, the Philippine Department Judge Advocate, described MAJ Lynch as follows in his November 1925 evaluation of him:

This officer is a careful competent reliable sound lawyer. Has no habits that interfere with his duties. Familiar with the manual [for courts-martial] and an excellent trial J[udge] A[dvocate]. Courteous, and of splendid disposition. Conscientious, capable and fair. Has just been

⁸ In the 19th and early 20th century, it was quite typical for men to become lawyers through self-study and apprenticeship. President Abraham Lincoln, for example, who had but a single year of formal education, was admitted to the Illinois Bar after a period of “reading for the Bar.”

⁹ U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (25 Nov. 1919) (covering period 16 September 1919 to 25 November 1919).

¹⁰ U.S. War Department, Form No. 706, Special Efficiency Report for Regular Officers, Lynch, Thomas A. (3 Sep. 1919) (covering from 4 April 1919 to 1 September 1919).

¹¹ While the law member was the forerunner of today’s military judge, his role and authority were markedly different in the 1920s. The law member was tasked with ruling “in open court” on all “interlocutory questions.” These were defined by the 1921 *Manual for Courts-Martial* as “all questions of any kind arising at any time during the trial” except those relating to challenges, findings and sentence. But the law member’s rulings were only binding on the court when the interlocutory question concerned admissibility of evidence. On all other interlocutory questions, the law member’s decision could be overturned by a majority vote of the members. Interestingly, the law member also participated in all votes taken by the members, including findings and sentencing. *MANUAL FOR COURTS-MARTIAL, UNITED STATES* ¶ 89a(2), (3), (6) (1921).

¹² U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (1 Feb. 1922) (covering period 14 Oct. 1921 to 31 Jan. 1922).

¹³ U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (7 Sep. 1921) (covering period 1 Jul. 1921 to 15 Aug. 1921).

admitted to practice in Philippine Courts. Is very loyal and dependable and an all round experienced lawyer.¹⁴

The following year, LTC Hugh C. Smith, who had replaced Stallings as Department Judge Advocate, also lauded Lynch's abilities as an attorney. He was, wrote Smith, "particularly valuable ... on account of his long service here and his knowledge of Philippine laws and customs and his knowledge of precedents and policies pertaining to questions arising in this office."¹⁵ Although some Anglo-American legal principles had been injected into the Philippine legal system by U.S. authorities after the Spanish-American War, much of Philippine law still was chiefly based on Spanish civil and penal codes, a holdover from the Spanish colonial rule of the archipelago.

In August 1926, MAJ Lynch sailed from Manila to San Francisco, California, and then took leave in New York City. In November, at the end of this authorized absence, he reported for duty at the Office of the Judge Advocate General in Washington, D.C. For the next four years, Lynch served in the Military Affairs Section. Akin to today's Administrative and Civil Law Division at the Office of The Judge Advocate General, military attorneys working in the Military Affairs Section were busy with all manner of non-criminal work involving the Army. According to his military records, he did well in the War Department. "He demonstrated resourcefulness and power of close analysis" and was "a very helpful assistant in the solution of a variety of legal questions."¹⁶

In November 1930, MAJ Lynch returned to the Philippine Islands, and resumed his work as the Assistant Department Judge Advocate. His new boss, Colonel (COL) William Taylor, praised him as "superior" in nine of ten categories, including intelligence, judgment and common sense, and leadership. As Taylor put it, MAJ Lynch was "eminently qualified to serve as a judge advocate anywhere, but especially in the Philippine Islands." This was because he was "thoroughly familiar with all the conditions and laws in force in the Philippines" and was "alive to his surroundings and can be relied upon in any and all situations." But not everyone agreed with Taylor's assessment. Major General John L. Hines, then commanding the Philippine Department, wrote this "indorsement" to MAJ Lynch's report: "An excellent

officer, but this report is entirely too enthusiastic in its praise."¹⁷

Hines had previously served as Army Chief of Staff (from 1924 to 1926)¹⁸ and so his opinion certainly carried some weight--but one wonders if Hines really was able to judge MAJ Lynch's value to the Philippine Department. After all, Lynch's next report card stated the following:

He is especially valuable here because of his familiarity with local laws and conditions. He is a mature man of exceptionally high ideals and he lives in accord with them. He has spent a great portion of his mature life in the Philippines and has acquired an unusual fund of information about the administration and laws of the insular government. He is studious and strong minded.¹⁹

Major Lynch retired from the Regular Army on August 31, 1934, with slightly more than 30 years active duty. This was the minimum period of time required for retirement before World War II and it seems that, having satisfied the number of years needed for a military pension, MAJ Lynch decided it was time to retire from active service. But he liked living in the Philippines and decided to remain there. Having moved out of Army housing, Lynch and his family acquired a home in Manila, and he established a private law practice in downtown Manila.²⁰

Six years later, with war on the horizon after the German attacks on Poland in 1939, the Low Countries and France in 1940, an alarmed Congress authorized the induction of Reservists. It passed America's first peacetime draft the following month. As the Army began expanding, retired officers with special talents and abilities were recalled to

¹⁴ U.S. War Department, Efficiency Report, Lynch, Thomas A. (7 Nov. 1925) (covering 1 July 1925 to 7 November 1925).

¹⁵ U.S. War Department, Efficiency Report, Lynch, Thomas A. (30 Jun. 1926) (covering period 7 November 1925 to 30 June 1926).

¹⁶ U.S. War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (1 Jul. 1928) (covering 1 July 1927 to 30 June 1928).

¹⁷ U.S. War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (13 Oct. 1931) (covering 1 July 1931 to 12 October 1931).

¹⁸ John Leonard Hines was a remarkable man by any measure. Born in West Virginia in May 1868, he was an 1891 graduate of the U.S. Military Academy. Commissioned as an Infantry officer, Hines served in the Santiago de Cuba campaign (1898), Philippine Insurrection (1899-1902), and Punitive Expedition into Mexico (1916). In World War I, Hines served first as a regimental commander, and then as the commanding general of a brigade, division and corps in the American Expeditionary Force. This put him into the history books, as Hines was the only Army officer in World War I to command a regiment, brigade, division and corps in combat. The recipient of the Distinguished Service Cross, Distinguished Service Medal, and Silver Star, Hines served first as Deputy Chief of Staff (1922-1924), and then as Chief of Staff. He retired in 1932 as a major general but was advanced to four star rank in 1940. Hines died five months after celebrating his 100th birthday, and is buried in Arlington National Cemetery. In 2000, the U.S. Postal Service issued a postage stamp honoring him. ARLINGTON NATIONAL CEMETERY WEBSITE, <http://www.arlingtoncemetery.net/jlhines.htm> (last visited Mar. 4, 2015).

¹⁹ War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (9 Jul. 1932) (covering period 13 October 1931 to 30 June 1932).

²⁰ War Department Form 66-1, *supra* note 3.

active duty. Recognizing that a judge advocate of MAJ Lynch's experience would be valuable in the Philippines, he was recalled on November 15, 1940, and promoted to LTC.²¹ He was now 58 years old, well beyond the normal age for soldiering, but a war was coming and his services as a lawyer in uniform were needed.

In early 1941, LTC Lynch assumed duties as Executive Officer to the Philippine Department Judge Advocate. As the threat of a Japanese attack became more likely, his wife Grace, and youngest son, William, were evacuated to the United States.²² But Lynch remained in Manila and was still serving as Executive Officer when the Imperial Japanese Army invaded the archipelago on December 8, 1941. As the American-Filipino defense of the islands got underway, Lynch took on a number of non-legal duties. He was the Chairman of the Enemy Alien Board in Manila and the Liaison Officer to the Civil Government in Bataan Province. In the former position, he oversaw the detention process of Japanese citizens residing in the Philippines. Since there were a large number of Japanese nationals living and working in the islands, this was no small undertaking. In the latter position, LTC Lynch was involved in the handling of refugees fleeing the advancing Japanese Army.

During the retreat of American and Filipino forces from central Luzon into Bataan, LTC Lynch also assumed duties as Transportation Assistant to the Quartermaster. He saw combat and, on 29 December 1941, was wounded in action by bomb fragments (lower left leg and left hand) from Japanese artillery fire. He was later awarded the Purple Heart for these combat injuries.²³

Corregidor, a rocky, two-mile-square island that sits astride the entrance to Manila Bay, was the final defensive position for American and Filipino forces. As units began moving onto the island, Lynch was placed in command of Cabcaban Pier, which was the major off-loading point for materiel going from onto the island. He handled "all unloadings" between December 31, 1941 and January 4, 1942.

Lynch was promoted to colonel on March 28, 1942, and re-assigned as Staff Judge Advocate, U.S. Forces in the Philippine Islands. In this position he provided the full range of legal advice to Lieutenant General Jonathan "Skinny" Wainwright, the senior most Army officer in the

Philippines after General Douglas MacArthur left for Australia in March 1942.²⁴ When Wainwright surrendered all U.S. forces on Corregidor on May 6, 1942, he and Tom Lynch went into Japanese captivity.²⁵

Colonel Lynch's records do not reveal where he was initially confined as a Prisoner of War (POW) but he probably was at a camp for senior officers (generals and colonels) in the old cadre barracks of the Philippine Army at Tarlac, near Manila. In August 1942, he seems to have been transported along with other generals and colonels to Formosa (today's Taiwan). While in a POW camp in Karenko on Formosa, "Judge" Lynch (as he was known to his comrades-in-arms), rescued a fellow officer, COL Abe Garfinkle, who "slipped and almost fell into the forbidden pool."²⁶ According to a book of cartoons about daily life as a POW life drawn by a fellow prisoner of war, COL Malcolm Fortier, and miraculously preserved throughout his captivity, Judge Lynch saved Garfinkle by grabbing his foot, thereby preventing his fall into the liquid. It is not clear what was "forbidden" about the pool but it seems to have been a place to be avoided.

In June 1943, COL Lynch and his fellow POWs were moved to a new camp near Shirakawa, Formosa. The following year, in October 1944, the POWs were transported by ship to Manchuria. They then travelled by railway to their new camp in Mukden. This was a tough experience for Lynch and his fellow POWs, as they had been living in a tropical climate on Taiwan and were now in "sub-Arctic weather (47 degrees)" [below zero Fahrenheit].²⁷

During his captivity from 1942 to 1945, COL Lynch---like his fellow POWs---was chiefly concerned with survival. There was never enough food to eat, although the men did begin to receive Red Cross food parcels at some point and this no doubt helped. Nonetheless, at the end of their captivity, the POWs were eating anything they could find, including "green" sunflower seeds and tree snails. Some men lost 20 lbs. in the last month of their imprisonment; when COL Lynch was liberated by advancing Soviet troops on August 20, 1945, he weighed 116 lbs.²⁸

²¹ *Id.*

²² Lynch and his wife, Grace, had four sons and one daughter; all were born in the Philippines while he was serving with the Philippine Scouts. By 1941, his two oldest sons, Robert and Douglas, were adults and were working in the United States. His third son, James, was studying to be an engineer in Indiana, and his daughter, Helen, was married to a U.S. Navy officer stationed outside the Philippines. William was the only child still at home with him and his wife. War Department Form 66-1, *supra* note 3.

²³ Headquarters, U.S. Forces in the Philippines, Gen. Orders No. 26 (13 Apr 1942).

²⁴ Jonathan Mayhew Wainwright "was a tough, professional soldier" whose heroic defense of the Philippines "became a symbol of defiance at a time of national calamity." He was awarded the Medal of Honor after his release from captivity in 1946. His nickname, "Skinny," came from his gaunt, gangly physique. JOHN C. FREDRIKSEN, *AMERICAN MILITARY LEADERS VOL. II 842* (1999)

²⁵ Lynch avoided the so-called Bataan Death March, as he was on Corregidor; the Bataan Death March had occurred a month earlier, on 9 April 1942.

²⁶ MALCOLM VAUGHN FORTIER, *THE LIFE OF A P.O.W. UNDER THE JAPANESE 46* (1946).

²⁷ *Id.*, at 110.

²⁸ *Id.*, 124.

Tom Lynch was a lucky man; many Americans had not survived captivity. Additionally, the Japanese High Command had given orders that all POWs in various camps in the Mukden area--including the camp where Lynch was imprisoned--were to be killed. This explains why a small team of Office of Strategic Services (OSS) agents parachuted from a low-flying bomber on August 15, 1945 and moved to the Mukden camp area to prevent the massacre of American and Allied POWs.²⁹

Repatriated to the United States in early September 1945, COL Lynch had a period of "rest and recuperation" before appearing before an "Army retiring board" on January 26, 1946. A medical examination had previously "found [Lynch] to be permanently incapacitated" as a result of severe arteriosclerosis. As the board concluded that this physical infirmity was the direct result of his captivity as a POW, the board directed that Lynch "be relieved from active duty . . . at the expiration of his rest and recuperation leave" and retired as a colonel.³⁰



Colonel (Retired) Thomas A. Lynch, Bethesda, Maryland, 1952.

Shortly thereafter, the War Department awarded Lynch the Legion of Merit in recognition of his six months of difficult service on Bataan and Corregidor. His citation reads:

Colonel Thomas A. Lynch distinguished himself by exceptionally meritorious conduct in the

²⁹ For more on this Office of Strategic Services mission, see HAL LEITH, *POWS OF JAPANESE: RESCUED!* (2004). While the intent of the OSS was to rescue high-ranking officers like Lieutenant General Wainwright, COL Tom Lynch and his fellow POWs also were beneficiaries of this rescue mission.

³⁰ Memorandum for the Secretary of War's Personnel Board, subj: Benefits under Public Law 101-78th Congress, Lynch, Thomas A. (26 Feb. 1946).

performance of outstanding services from December 1941 to May 1942, on Bataan and Corregidor, Philippine Islands. In the several capacities as Executive to the Philippine Department Judge Advocate, President of the Enemy Alien Board, Transportation Assistant to the Quartermaster during the movement into Bataan, Liaison Officer with the Bataan Civil Government and as Judge Advocate for U.S. Forces in the Philippines, he displayed superior political and legal knowledge in his sound advice to his superiors which assisted in solving many pressing problems.³¹

When he retired, 63-year old COL Lynch lived in Bethesda, Maryland. In 1949, his wife, Grace, died. Two years later, in June 1951, he married Marietta Wilmot. They subsequently had a daughter and son--which means that Lynch was a new father when he was in his early 70s.



Colonel (Retired) Thomas A. Lynch with his step-son and youngest son, Bethesda, Maryland, 1956.

Colonel Tom Lynch was an outstanding Army lawyer. He also was a remarkably resilient and tough individual; his survival in the tropics, under fire in battle, and as a POW from 1942 to 1945 proves this to be the case. His medical condition at the end of his POW experience, while serious, did not prevent him from living a full life as a retired judge advocate.

³¹ Lynch, Military Personnel File. Lynch's Legion of Merit was approved by the War Department on 1 July 1946.

COL Lynch died of pneumonia at Walter Reed General Hospital on December 18, 1962. He was 80 years old. Lynch was buried with full military honors at Arlington National Cemetery, and both his wives are buried next to him.³²

³² Department of the Army, Form DD 1300, Report of Casualty, Lynch, Thomas A. (19 Dec. 1962).

What *Riley v. California* Means for Military Justice

Lindsay Windsor*

During the 2013 to 2014 term, the Court of Appeals for the Armed Forces (CAAF) considered a challenge to the warrantless search of a military member's cell phone.¹ In *United States v. Wicks*, the CAAF held that a warrant was required before the government could lawfully search all the text messages on the servicemember's phone, even though a private party had already seen some of them.² Four months later, on June 25, 2014, the Supreme Court issued a seminal opinion in *Riley v. California*,³ which identified for the first time what privacy rights an individual has in his cell phone. The Court considered warrantless searches of a cell phone's content incident to a lawful arrest, and it held, in a unanimous decision, that such searches generally require a warrant.⁴ This article compares the Supreme Court's *Riley* decision with the CAAF's *Wicks* decision and finds that they are complementary. It then evaluates how *Riley* changes Fourth Amendment jurisprudence and what that means for the military.

The Supreme Court's Decision in *Riley v. California*

The Supreme Court decided the appeals of two companion cases—each involving the search of a cell phone incident to a lawful arrest—in one opinion: an appeal from the California Supreme Court in *People v. Riley*,⁵ and an appeal from the First Circuit decision in *United States v. Wurie*.⁶ In each case, police officers seized the petitioner's cell phone upon arrest and searched the contents of the cell phone for evidence of criminal activity. In *Riley*, the criminal evidence that police seized from the cell phone was unrelated to the crime for which Riley was first arrested.⁷ In *Wurie*, the accused was arrested for selling drugs.⁸ A search

of his cell phone call log eventually led police to his home apartment, where officers found more evidence of drug dealing as well as a firearm.⁹ Each trial court denied the petitioner's motion to suppress the evidence obtained as a result of the warrantless cell phone search.

A warrantless search incident to a lawful arrest is a well-established exception to the Fourth Amendment's warrant requirement.¹⁰ In *Chimel v. California*¹¹ the Supreme Court ruled that warrantless searches of the area in the "possession" or "control" of an arrestee are reasonable within the Fourth Amendment for two reasons: they ensure officer safety by securing weapons and other contraband, and they prevent the destruction of evidence.¹² The Court applied this reasoning in *United States v. Robinson* to hold that police may search an arrestee's person incident to a lawful arrest without a warrant.¹³

The Court in *Riley* specifically rejected these rationales as applied to searches of the contents of cell phones incident to a lawful arrest. First, the digital data contained within the phone poses no physical threat to an arresting officer.¹⁴ The Court's rejection of the second *Chimel* rationale—destruction of evidence—in the cell phone context is the most remarkable. There, the Court engaged modern technological considerations in an unprecedented way to evaluate the "reasonableness" which lies at the core of Fourth Amendment jurisprudence.¹⁵ Recognizing a dearth of "precise guidance from the founding era," the Court applied a broad balancing test, weighing "the degree to which [a search] intrudes upon an individual's privacy, and . . . the degree to which it is needed for the promotion of legitimate governmental interests."¹⁶ The Court acknowledged that some evidence of crimes may be destroyed as a result of its decision—perhaps by remote wiping of the device or data encryption—but that the government's interest in law enforcement must be balanced against the individual's privacy interest. For cell phones, this privacy interest is profound due to the immense capacity

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¹ *United States v. Wicks*, 73 M.J. 93 *reconsideration denied*, 73 M.J. 264 (C.A.A.F. 2014).

² *Id.*

³ 134 S. Ct. 2473, 2477, 189 L. Ed. 2d 430 (2014).

⁴ See *id.*

⁵ D059840, 2013 WL 475242 (Cal. Ct. App. Feb. 8, 2013) (unpublished).

⁶ 728 F.3d 1, 16 (1st Cir. 2013).

⁷ *Riley*, 134 S. Ct. at 2481.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2482 (citing *Weeks v. United States*, 232 U.S. 383, 392 (1914)) (noting that this exception has been "well accepted" since 1914).

¹¹ 395 U.S. 752, 760 (1969).

¹² *Id.* at 762–63.

¹³ 414 U.S. 218 (1973).

¹⁴ *Riley*, 134 S. Ct. at 2485.

¹⁵ *Id.* at 2486–87.

¹⁶ *Id.* at 2484 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)).

of a cell phone to store all manner of personal information.¹⁷ Consequently, the Court held that requiring a warrant for a cell phone search in most circumstances is worth the minimal “impact on the ability of law enforcement to combat crime.”¹⁸

In conducting the balancing test, the Court first discounted law enforcement concerns regarding evidence destruction by listing common-sense arguments undermining the government’s assertions that cell phone evidence may be destroyed after the seizure of the cell phone.¹⁹ The instances of remote wiping and data encryption are not prevalent, the Court observed; rather, such events are largely anecdotal.²⁰ Arrestees will have limited opportunities to encrypt or to wipe data remotely from their cell phones in the time between arrest and the cell phone search pursuant to a warrant.²¹ The Court explained that during arrest proceedings, officers are engaged in other pressing matters such as securing the scene, and they will only turn to the contents of the phone later in the process. This delay alone provides enough time for the remote wiping or encryption of data that the government fears; therefore, searching the contents of the phone incident to arrest is not likely to have an impact if the accused is privy to such methods.²² Moreover, police have access to technical solutions which minimize the risk of technical destruction or blocking of cell phone data.²³

The Court next discussed the privacy interest individuals have in their cell phones. It recognized that the digital data stored on a cell phone is categorically different from physical objects and devoted over a thousand words of the opinion to explaining the vast capabilities of modern cell phones and how they differ from physical objects like a wallet or a purse.²⁴ Among the specific differences it listed are:

- 1) The quantity of data a cell phone can hold, which would be the physical equivalent of a large physical storage unit which the Court has held requires a warrant to search.²⁵

- 2) The many different types of data on a cell phone, including photographs, text messages, Internet browsing history, a calendar, phone book, etc.
- 3) The pervasiveness of cell phones in society and of cell phones being carried on the person, especially as compared to personal notes or diaries which historically would rarely be found on a person.
- 4) The qualitative scope of data a cell phone can store, such as historic location information and downloaded apps, compared to the limitations of physical records.²⁶

Cell phones contain “a digital record of nearly every aspect of [people’s] lives—from the mundane to the intimate.”²⁷ The Court concluded that, due to this vast trove of diverse data, “a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house.”²⁸ “Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.”²⁹

The Fourth Amendment in the Military and *United States v. Wicks*

The search and seizure protections of the Fourth Amendment generally apply to military members.³⁰ Some Fourth Amendment protections, such as the requirement that a warrant be supported by oath or affirmation, are not applicable in the military.³¹ Yet military courts have consistently held that the Supreme Court’s jurisprudence about the reasonableness of a search also applies to military searches.³²

The reasonable expectation of privacy for a servicemember, though, is diminished in certain circumstances. Military members are governed by the Supreme Court’s general rule that a standard of

¹⁷ See *id.* at 2489–91.

¹⁸ *Id.* at 2493.

¹⁹ *Riley*, 134 S. Ct. at 2486–88.

²⁰ *Id.* at 2486–87.

²¹ *Id.* at 2487.

²² *Id.*

²³ *Id.* (describing technical solutions such as turning off the cell phone or placing it in a “Faraday bag,” an enclosure “that isolates the phone from radio waves.”).

²⁴ *Id.* at 2484, 2489–91.

²⁵ *United States v. Chadwick*, 433 U.S. 1, 15 (1977) (holding that a 200–pound, locked footlocker could not be searched incident to arrest), *abrogated on other grounds* by *California v. Acevedo*, 500 U.S. 565 (1991).

²⁶ *Riley*, 134 S. Ct. at 2489–91.

²⁷ *Id.* at 2490.

²⁸ *Id.* at 2491 (emphasis in original).

²⁹ *Id.* at 2493.

³⁰ *United States v. Paige*, 7 M.J. 480, 484 (C.M.A. 1979).

³¹ *United States v. McCarthy*, 38 M.J. 398, 401 (C.M.A. 1993).

³² See, e.g., *United States v. Cote*, 72 M.J. 41 (C.A.A.F. 2013); *United States v. Stevenson*, 66 M.J. 15 (C.A.A.F. 2008); *United States v. Springer*, 58 M.J. 164 (C.A.A.F. 2003).

reasonableness, rather than probable cause, governs employers' "work-related, noninvestigatory intrusions as well as investigations of work-related misconduct."³³ For instance, it is presumed that a military member has "no reasonable expectation of privacy in the government computer provided to him for official use," though this presumption is rebuttable.³⁴

In the military, commanders may authorize inspections of otherwise protected areas, such as cars or barracks, "to ensure the security, military fitness, or good order and discipline of the unit."³⁵ The inspection may include "an examination to locate and confiscate unlawful weapons and other contraband."³⁶ "[C]ompulsory random urinalysis" is also a permissible form of inspection.³⁷ Further, military members lack the same reasonable expectation of privacy in the room where they sleep that is afforded to civilians. The CAAF has held that servicemembers have some degree of "reasonable expectation of privacy in a shared barracks room that protects them from unreasonable government intrusions," but this privacy interest is not "coextensive" with the privacy interest in one's home.³⁸ Evidence of criminal activity revealed or seized in an inspection may be introduced at trial when relevant and not otherwise inadmissible.³⁹

Like the Supreme Court in *Riley*, the CAAF in *Wicks* recognized an individual's privacy interest in the contents of his personal cell phone. Technical Sergeant (TSgt) Wicks' ex-girlfriend had pilfered his phone, scrolled through some of the text messages on it, and turned it over to military law enforcement when she learned that he was under investigation for engaging in inappropriate relationships.⁴⁰

The Government seized, searched, and analyzed all the text messages on the phone.⁴¹ It found evidence in the text messages that TSgt Wicks was conducting inappropriate relationships, and sought to admit that evidence at TSgt Wicks' trial.⁴² The Government argued the evidence was admissible under the private search doctrine, since some of the text messages had already been viewed by a private party.⁴³

The CAAF rejected this argument and held that the fruits of the cell phone search were inadmissible.⁴⁴ While the private search doctrine allows the Government to use evidence that a private party has already viewed, that authority is bounded: the Government may not significantly expand the scope of a private search.⁴⁵ In this case, the private search uncovered only a few text messages and the Government searched and analyzed over 45,000 text messages from TSgt Wicks' phone.⁴⁶ In addition to evidence of criminal activity, the Government's search uncovered personal information and deleted text messages.⁴⁷ The CAAF held that the Government thus had exceeded the scope of the private search "in both a qualitative and quantitative manner" in violation of the Fourth Amendment.⁴⁸

In its analysis of the privacy interest an individual has in his cell phone, the CAAF observed that cell phones are "an electronic repository of vast amounts of data" and that "individuals 'store much more personal information on their cell phones than could ever fit in a wallet, address book, briefcase, or any of the other traditional containers.'"⁴⁹ Thus, the expectation of privacy a military member has in his cell phone contents is a reasonable one.⁵⁰ Unlike the Supreme Court in *Riley*, the CAAF did not then consider a balancing test between the Government's law enforcement interest and the particularized privacy interest in a cell phone. Instead, the CAAF turned directly to analysis of the private search doctrine in this case. It did, however, recognize that a military member has a reasonable expectation of privacy in

³³ O'Connor v. Ortega, 480 U.S. 709, 724 (1987) (plurality opinion).

³⁴ United States v. Larson, 66 M.J. 212, 215–16 (C.A.A.F. 2008) (finding that a servicemember did not rebut the presumption where, when the accused used the computer, "a banner appeared that stat[ing] that it was a DOD computer, it [was] for official use, not to be used for illegal activity," and use of the computer required the user to consent to monitoring); see also City of Ontario, Cal. v. Quon, 560 U.S. 746, 761 (2010) (holding that a city's search of the text message transcripts of an employee's city-issued pager was reasonable because it was for "a noninvestigatory, work-related purpose or for the investigation of work-related misconduct," and "justified at its inception because there were reasonable grounds for suspecting that the search was necessary for a noninvestigatory work-related purpose") (internal quotations omitted).

³⁵ MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012) [hereinafter MCM], Military Rule of Evidence (M.R.E.) 313(b).

³⁶ United States v. Bowersox, 72 M.J. 71, 73 (C.A.A.F. 2013) cert. denied, 134 S. Ct. 319 (2013) (internal quotations and citations omitted).

³⁷ United States v. Campbell, 41 M.J. 177, 181 (C.M.A. 1994) (quoting United States v. Daskam, 31 M.J. 77, 79 (C.M.A. 1990)).

³⁸ Bowersox, 72 M.J. at 76.

³⁹ MCM, supra note 35, M.R.E. 313(a); United States v. Stuckey, 10 M.J. 347, 359–61 (C.M.A. 1981).

⁴⁰ United States v. Wicks, 73 M.J. 93, 96–97 (C.A.A.F. 2014).

⁴¹ Id. at 98.

⁴² Id. TSgt Wicks was charged, *inter alia*, with violating general regulations by conducting inappropriate relationships pursuant to Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892 (2012). Wicks, 73 M.J. at 95.

⁴³ Id. at 99–100.

⁴⁴ Id. at 101.

⁴⁵ Id. at 100 (citing United States v. Jacobsen, 466 U.S. 109, 117 (1984)).

⁴⁶ Id. at 101.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 99 (quoting United States v. Wurie, 728 F.3d 1, 9 (1st Cir. 2013)).

⁵⁰ Id. at 98–99.

his personal cell phone and that cell phones are unique for the purposes of Fourth Amendment analysis.

The Fourth Amendment in the Military After *Riley*

Though issued first, the *Wicks* decision is consistent with the Supreme Court's decision in *Riley*. While the CAAF analyzed the privacy doctrine exception to the warrant requirement and the Supreme Court considered the search incident to a lawful arrest exception, both came to the same conclusion: cell phones implicate a unique privacy interest that is protected under the Fourth Amendment.

The major implications of *Riley* are twofold. First, the opinion rejected the application of the Supreme Court's container search jurisprudence to cell phone searches. Instead, the Court affirmed a balancing test and held that test should weigh strongly in favor of an individual's privacy interest when it comes to cell phones. Second, *Riley* introduced an unprecedented perspective on the Fourth Amendment in light of modern technology and set a new standard for courts to apply when considering technological advancements that arise in Fourth Amendment cases.

Container Jurisprudence

Both the Supreme Court and the CAAF rejected a comparison of cell phones to the typical containers (e.g., boxes, cigarette packs, wallets) that have been the subjects of past Fourth Amendment jurisprudence. The Court has approved searches of the inside of a container incident to a lawful arrest on the justification that such containers may contain weapons or evidence.⁵¹ In *United States v. Robinson*, the Court held that the search of the contents of a cigarette pack found on the arrestee's person was a reasonable warrantless search.⁵² The Court has also recently upheld searches incident to arrest of passenger compartments in vehicles "when it is reasonable to believe evidence relevant to the crime of the arrest might be found in the vehicle."⁵³ Therefore, in both *Riley* and *Wicks*, the government argued this jurisprudence should be applied to permit the search of the contents of a cell phone, which might also contain relevant evidence.⁵⁴

The prosecution sought the application of the container comparison because the Fifth and Eleventh Circuit Courts have applied this analysis to cell phones.⁵⁵ Each of those

courts held that a more thorough search of a closed container is permissible without significantly exceeding the scope of an initial private search.⁵⁶ The lower court in *Wicks* was persuaded by this argument; it found that the private search of some of the text messages amounted to a search of a closed container, and the government's search was nothing more than a more thorough search thereof.⁵⁷ By analogizing the cell phone to a closed container like a box or compact disk, the lower court upheld the government's more thorough cell phone search.⁵⁸

Both the Supreme Court and the CAAF declined to adopt this view. The CAAF rejected "container metaphors" in *Wicks*: "Because of the vast amount of data that can be stored and accessed, as well as the myriad ways they can be sorted, filed, and protected, it is not good enough to simply analogize a cell phone to a container."⁵⁹ For this reason, as well as the private quality of the content a cell phone may access, the information contained in a cell phone "is far more expansive than mere CDs or cardboard boxes."⁶⁰

The Supreme Court rejected the comparison of a cell phone to a container as an "analogy [that] crumbles entirely" in consideration of the fact that the data accessible from a cell phone may actually be stored on remote servers.⁶¹ The cell phone thus "contains" papers and effects beyond the physical proximity of an arrestee.⁶² The Court likened the access of this remotely-stored data from a seized cell phone to "finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house."⁶³

Following *Riley* and *Wicks*, military courts cannot analogize cell phones to containers in justifying cell phone searches. In this way, the Supreme Court's decision implicitly affirms the CAAF's holding in *Wicks* and guts all future arguments the government might make using a container analysis under the private search doctrine or when dealing with a search incident to arrest.

The Fourth Amendment in the Twenty-First Century

The Supreme Court in *Riley* went a step beyond any of its previous Fourth Amendment jurisprudence, and further than the CAAF in *Wicks*, by (1) explaining a modern view of the Fourth Amendment in the context of contemporary

⁵¹ See *United States v. Robinson*, 414 U.S. 218, 234 (1973).

⁵² *Id.*

⁵³ *Arizona v. Gant*, 556 U.S. 343, 335 (2009). *But see United States v. Chadwick*, 433 U.S. 1, 15 (1977) (holding that a 200-pound, locked footlocker could not be searched incident to arrest).

⁵⁴ See *United States v. Robinson*, 414 U.S. 218 (1973).

⁵⁵ *United States v. Runyan*, 275 F.3d 449 (5th Cir. 2011); *United States v. Simpson*, 904 F.2d 607 (11th Cir. 1990).

⁵⁶ *Runyan*, 275 F.3d 449; *Simpson*, 904 F.2d 607.

⁵⁷ *United States v. Wicks*, Misc. Dkt. No. 2013-08, 2013 WL 3336737, at *5-7 (A.F. Ct. Crim. App. June 24, 2013) (unpublished) (citing *Runyan*, 275 F.3d at 464).

⁵⁸ *Id.*

⁵⁹ *United States v. Wicks*, 73 M.J. 93, 102 (C.A.A.F. 2014).

⁶⁰ *Id.*

⁶¹ *Riley v. California*, 134 S. Ct. 2473, 2491, 189 L. Ed. 2d 430 (2014).

⁶² *Cf. United States v. Robinson*, 414 U.S. 218, 256 (1973).

⁶³ *Riley*, 134 S. Ct. at 2491.

technology, (2) engaging with modern technology, and (3) setting a new standard for courts faced with technically fact-dependent legal issues.

The watershed moment of the Supreme Court's *Riley* decision was the Court's conclusion that the spirit of the Fourth Amendment trumped its literal language in the context of technology not contemplated by the Founders. It acknowledged for the first time that the Founders of the Constitution did not give "precise guidance" on the application of the Fourth Amendment to cell phone searches.⁶⁴ In doing so, the Court departed from its reliance on original intent in its recent Fourth Amendment jurisprudence, acknowledging those limitations in the digital age. As recently as 2012, the Court quoted a common law case from 1765 in holding that the "physical intrusion" of attaching a GPS tracking device to petitioner's car "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted."⁶⁵ And in *Florida v. Jardines*, the Court quoted Blackstone's 1769 Commentaries to hold that the curtilage is within the protected area of the home where the government cannot use a drug-sniffing dog.⁶⁶ Now, in *Riley*, instead of relying on original definitions and understandings, the Court conjured the broader historical purpose of the amendment. Invoking the principle of freedom from British officers' general searches—the origin of the Constitution's warrant requirement—the Court wrote: "The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought."⁶⁷

Second, the Court demonstrated knowledge and understanding of technological applications of cell phones and technical solutions for law enforcement problems. It mentioned "geofencing,"⁶⁸ "Faraday bags,"⁶⁹ "cloud computing,"⁷⁰ and "e-mail[ing] warrant requests to judges' iPads."⁷¹ This use of jargon is in stark contrast to the Supreme Court Justices' recent displays of unfamiliarity with the basic technologies of e-mail, text messaging, TV technology, and Facebook.⁷² For a Court consistently criticized as Luddite, this opinion was a turning point. To

⁶⁴ *Id.* at 2484.

⁶⁵ *United States v. Jones*, 132 S. Ct. 945, 949 (2012) (quoting *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765)).

⁶⁶ 133 S. Ct. 1409 (2013) (quoting 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 223, 225 (1769)).

⁶⁷ *Riley*, 134 S. Ct. at 2495.

⁶⁸ *Id.* at 2486.

⁶⁹ *Id.* at 2487.

⁷⁰ *Id.* at 2491.

⁷¹ *Id.* at 2493.

⁷² *See, e.g.*, Adam Raymond, 8 Times the Supreme Court Was Bewildered by Technology, N.Y. MAG. (Apr. 23, 2014).

master the listed concepts in *Riley*, at least to the degree of using technical terms accurately in an opinion, demonstrates engagement in modern society in a new and meaningful way.

Third, by mastering the technology and engaging it in analysis of the Fourth Amendment, the Court set a fresh benchmark for both military and civilian courts. The Court clearly expects judges to understand the technical capabilities of cell phones, computers, and digital media at issue in any particular case, as well as the Fourth Amendment repercussions of those capabilities. Legal issues implicated by, for example, location data automatically gathered by an iPhone, wireless connectivity, use of Facebook, or aggregation of metadata must be analyzed in a technically accurate way. Comparisons of modern technology to physical objects considered by courts many decades ago are obsolete and must be rejected as technically and legally inaccurate.

For the military, the applicable Fourth Amendment analysis must also meet the contemporary capabilities of a modern military force. Cell phones provide an easy and transportable personal center of operations, containing all of a Soldier's most personal documents, contacts, and communications, wherever the Soldier goes. *Riley* suggests that the servicemember's strong privacy interest in the contents of a personal cell phone may be greater than the military's law enforcement interest in searching the contents of that cell phone, absent a warrant. In a search incident to a lawful arrest, the police have relatively broad authorities to intrude on protected areas for purposes of seizing weapons and preserving evidence, but even those interests are not sufficient to balance the personal privacy interest at stake with cell phones; likewise, the military has broad authorities to protect and discipline its members, but those interests are not sufficient to search the contents of a cell phone without a judicial determination of probable cause.

The more difficult case concerns the blend between personal and professional. The military provides devices with internet capability to servicemembers for mission purposes, such as government-issued Blackberrys, along with guidelines and agreements concerning how those ought to be used. Often, the guidelines provide no bright-line rule and permit some modicum of personal use provided that it does not interfere with work.⁷³ Many individuals stretch the rules in practice and conduct much personal business on government devices. On such devices, the servicemember likely has no reasonable expectation of privacy.⁷⁴ Even if a

⁷³ *See, e.g.*, United States Office of Government Ethics, *Use of Government Equipment or Property* (noting that it is permitted for an employee to use her government telephone to call to arrange a car repair), <http://www.oge.gov/Topics/Use-of-Government-Position-and-Resources/Use-of-Government-Equipment-or-Property/>.

⁷⁴ *See United States v. Larson*, 66 M.J. 212, 215–16 (C.A.A.F. 2008). (finding that a servicemember did not rebut the presumption where, when the accused used the computer, "a banner appeared that stat[ing] that it was a DOD computer, it [was] for official use, not to be used for illegal activity," and use of the computer required the user to consent to monitoring); *see*

servicemember carefully compartmentalizes his personal and professional use of the cell phone—perhaps, for instance, by using his personal email only in the cell phone browser’s “incognito” mode—the courts are likely to reject any sort of container analysis and find there remains no reasonable expectation of privacy in any personal use of the government device.

In the reverse scenario, Soldiers often use their personal cell phones to communicate with other units for military purposes. Such use implicates serious security concerns, but personal privacy interests are at stake too. If the personal cell phone becomes the default work cell phone, an individual’s expectation of privacy in it may be reduced: the government’s interest in protecting sensitive information could permit a search of otherwise private communications on the personal cell phone. It is therefore in the interests of both national security and personal privacy for servicemembers to distinguish clearly their personal and professional use of government and personal electronic devices.

also City of Ontario, Cal. v. Quon, 560 U.S. 746, 761 (2010) (holding that a city’s search of the text message transcripts of an employee’s city-issued pager was reasonable because it was for “a noninvestigatory, work-related purpose or for the investigation of work-related misconduct,” and “justified at its inception because there were reasonable grounds for suspecting that the search was necessary for a noninvestigatory work-related purpose”) (internal quotations omitted).

What You Don't Know Can Hurt You: Discovering the JAG Corps Online Military Justice Resources

Major Virginia H. Tinsley*

*"Military justice is our statutory mission and at the core of a disciplined fighting force. We must do it right and we must do it well."*¹

I. Introduction

To assist judge advocates who practice military justice in carrying out their mission in a right and well manner, it is imperative that the Judge Advocate General's Corps (JAGC) offer advocates both on-the-job training through courtroom experience² and the most up-to-date research tools. To accomplish the latter, the Corps has created online military justice resources. These resources are laid forth in this article with a nod to a few additional online sources which provide invaluable information to practitioners. In executing their daily duties, military justice practitioners are expected to perform a myriad of duties that extend beyond courtroom preparation. They often find themselves executing the administrative role of advising commanders in addition to staying current on case law and excelling in courtroom advocacy.³ These demands greatly reduce the time a practitioner can spend focusing solely on discovering resources that will assist her in various tasks.

The obligation for ensuring the JAGC provides counsel with the appropriate resources ultimately lies with The Judge Advocate General (TJAG) whose responsibility "for the overall supervision and administration of military justice within the Army,"⁴ also includes the "technical supervision of training in military justice."⁵ Thus, TJAG's JAGC

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¹ Major General Scott C. Black, *Changes in Military Justice*, TJAG SENDS, Apr. 2008.

² See generally Major Derrick W. Grace, *Sharpening the Quill and Sword: Maximizing Experience in Military Justice*, ARMY LAW., Dec. 2010, at 24.

³ JAGCNET, <https://www.jagcnet.army.mil/Sites/jaro.nsf/homeContent.xsp?open&documentId=F7CF74D9F92616FE85257B2D004EF3F6>. (last visited Jan. 28, 2015). The site provides a job description of a first-term captain.

⁴ U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE para. 1-4(a) (3 Oct. 2011) [hereinafter AR 27-10].

⁵ *Id.* para. 18-2(a). The Judge Advocate General's (TJAG) technical supervision includes the requirement to:

[p]rovide IT-related combat and materiel development plans and data . . . to Army organizations" as well as "[o]versee legal technology support provided by the Army [Chief Information Officer] (CIO), Army Cyber Command/Second U.S. Army, and [Network Enterprise Technology Command] (NETCOM) for rapid, responsive, and continuous provision of military justice . . . support to

Strategic Plan of 2010, called for the Corps to "[u]se Information Technology and Knowledge Management to enhance the efficiency and effectiveness of our business practices."⁶ In fulfilling that mandate, The Assistant Judge Advocate General (TAJAG), in his role as the Chief Information Officer (CIO), approved the 2011 Knowledge Management Strategic Plan (KM STRATPLAN) which provided the framework for "an integrated approach to identifying, retrieving, evaluating, and sharing an enterprise's tacit and explicit knowledge assets to meet mission objectives and simplify the complexity of work."⁷ Currently, the online mechanisms for sharing the JAGC's military justice knowledge, spread across five search platforms,⁸ occur in the subordinate organizations of three separate general officer entities: Office of The Judge Advocate General (OTJAG) Criminal Law Division located in the Pentagon, The Judge Advocate General's Legal Center and School (TJAGLCS) Criminal Law Department located in Charlottesville, Virginia, and U.S. Army Legal Services Agency (USALSA) located at Fort Belvoir, Virginia. This article discusses the capabilities of these platforms by addressing the military justice mission and the resources produced by each entity, orienting the reader to where the platform resides on the internet, and commenting on the site's navigability and user experience. This article will also point out some additional resources that are valuable to judge advocates in the field. The article concludes with ways in which both new counsel and experienced supervisors can capitalize on the online resources in order to improve their practice. The first entity to be discussed is the OTJAG.

II. Office of The Judge Advocate General Criminal Law Division's Online Resources

The responsibility of supervising the OTJAG Criminal

the Warfighter, commander, and staff across the full spectrum of military engagement.

U.S. DEP'T OF ARMY, REG. 25-1, ARMY INFORMATION TECHNOLOGY para. 2-15 (23 June 2013) [hereinafter AR 25-1].

⁶ Lieutenant General Dana K. Chipman, *One Team: The Judge Advocate General's Corps Vision, Mission, and Priorities*, TJAG SENDS, Mar. 2010 [hereinafter STRATPLAN 2010].

⁷ OFFICE OF THE JUDGE ADVOCATE GEN., KNOWLEDGE MANAGEMENT STRATEGIC PLAN 1 (Oct. 2011) [hereinafter KM STRATPLAN].

⁸ The five platforms are: The Judge Advocate General's Corps Network (JAGCNet), JAG University (JAGU), milSuite, Library of Congress (LoC), and an Article 31(b)log.

Law Division (CLD) has been delegated to The Assistant Judge Advocate General for Military Law and Operations (AJAG/MLO).⁹ Located in the Pentagon, the CLD is just down the hall from TJAG and AJAG/MLO. The CLD Chief, supported by a Deputy, assists AJAG/MLO in responding to data calls and congressional inquiries and oversees the five separate divisions: (1) Policy, (2) Operations, (3) Plans and Training, (4) Programs, and (5) Criminal Law/Knowledge Management (CL/KM).¹⁰ According to The Report of the Judge Advocate General of the Army, “OTJAG, Criminal Law Division (CLD) has two primary missions. First, the CLD advises TJAG on military justice policy, legislation, opinions, and related criminal law actions.”¹¹ In carrying out its second mission, the CLD “provides comprehensive policy guidance and resources to military justice practitioners in the field.”¹² Further the CLD “facilitates the active integration and synchronization of training by coordinating quarterly training and budget meetings with the Corps’ key training arms: Trial and Defense Counsel Assistance Programs (TCAP and DCAP) and The Judge Advocate General’s Legal Center and School (TJAGLCS).”¹³ The CLD also “manages software initiatives for JAGC-wide application and facilitates active information flow to and from the field using web-based media.”¹⁴

The CLD’s web-based media currently includes the Military Justice Online (MJO) application.¹⁵ Links to these resources can be found on the Judge Advocate General’s Corps Network (JAGCNet).¹⁶

Created, maintained, and updated by the Information Technology Division (ITD) in conjunction with the CLD’s

Operations section, MJO¹⁷ is the JAGC’s premier tool for creating, storing, and tracking military justice related documents. Although most counsel are familiar with MJO because of its required use,¹⁸ many are unaware of the valuable progress that MJO has made.

Because of ITD’s efforts, MJO’s capabilities and functionality have improved since its early days. The system now has the ability to create customizable reports with just a few clicks¹⁹ of the mouse and to link to Human Resources Command’s (HRC) database.²⁰ This ability to link allows counsel to simply type in a Soldier’s social security number and have the additional personnel information populated to the document.

A. Site Navigation

To maintain security over the sensitive information stored in the site, MJO access is restricted to users who create actions for the unit and administrators at the higher levels. Counsel should contact their local legal administrator in order to be added to the site. After access has been granted, counsel can navigate to MJO by logging into JAGCNet, clicking “Applications” and choosing “MJ Online (AC)” for active component.²¹ Counsel will then be redirected to the MJO database. Upon log-in, users should see their unit. From this page, users can click on “Create a new action” to start an investigation, draft a reprimand, create an Article 15, begin the paperwork for either an enlisted or an officer administrative separation, or initiate a court-martial action. In addition to document creation, MJO also has checklists²² to assist counsel as they create documents.

B. User Experience and Tips

⁹ U.S. DEP’T OF ARMY REG. 27-1, MILITARY JUSTICE para. 2-4(a)(1) (30 Sept. 1996) (RAR 13 Sept. 2011) [hereinafter AR 27-1].

¹⁰ E-mail from Captain John H. Mark, Criminal Law/Knowledge Mgmt. Attorney, Office of the Judge Advocate Gen. Criminal Law Div., to author (Feb. 18, 2014, 15:06 EST) (on file with author).

¹¹ LIEUTENANT GENERAL FLORA D. DARPINO, REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY OCTOBER 1, 2012, TO SEPTEMBER 30, 2013, ANNUAL REPORT (n.d.).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ E-mail from Captain John H. Mark, Criminal Law/Knowledge Mgmt. Attorney, Office of the Judge Advocate Gen. Criminal Law Div., to author (Jan. 10, 2015, 07:41 EST) (on file with author). Until Aug. 1, 2014, the Community of Practice (JAGConnect–Criminal Law), also belonged to CLD. However, on that day, responsibility was transferred to TJAGLCS Criminal Law Academic Dept. *Id.*

¹⁶ JAGCNET, <https://www.jagcnet2.army.mil> (last visited Jan. 28, 2015). The network “is the primary knowledge management tool for the JAGC.” Policy Memorandum, Office of the Judge Advocate Gen. Information Technology Div., U.S. Army, subject: Access to The U.S. Army Judge Advocate General’s Corps Network (JAGCNet) (18 Dec. 2009) [hereinafter JAGCNet Access Memo].

¹⁷ See *infra* Appendix for a screenshot of MJO.

¹⁸ Memorandum from Major General Clyde J. Tate, II, to All Staff Judge Advocates, subject: Use of Military Justice On-line as an Enterprise Application (17 July 2013) [hereinafter MJO Memo].

¹⁹ The customizable status report for both Special Courts-Martial (SPCM) and General Courts-Martial (GCM) currently offers twenty-four criteria. A screenshot of the choices available to customize a Special Courts-Martial status report is located in the Appendix. The same choices are available for customizing a GCM status report.

²⁰ E-mail from Chief Warrant Officer Three James A. Carroll, Senior Project Officer, Information Technology Div., U.S. Army Legal Services Agency, to author (Mar. 13, 2014, 14:39 EST) [hereinafter Carroll e-mail] (on file with author).

²¹ A link to the MJ Online Reserve Component (RC) site can be found on the same page directly below the active component link.

²² A screenshot of the MJO checklist can be found in the Appendix. After opening a Courts-Martial action in MJO, counsel can find the checklists by clicking on the “Attachments” folder. To mark the box after a task is completed, counsel will need to click the “Edit” button in the top right-hand corner of the screen and then click “Save.”

To operate the MJO system with knowledge and efficiency, users must invest time in learning the features of the system. The programmers of MJO can complete an Article 15 in fifteen minutes merely because they know how to use the system.²³ To aid in the learning process, the creators of MJO posted nineteen detailed MJO user training videos in the MJO in the Manuals/Training/Policies tab.²⁴ If users encounter issues while using MJO, they should provide suggestions for improvement under the “Feedback” tab.²⁵

III. U.S. Army Legal Services Agency’s Online Resources

In addition to the general military justice resources provided through OTJAG Criminal Law, the JAGC also provides resources specifically geared towards assisting both trial and defense counsel with trial preparation through organizations located at the second one-star entity: United States Legal Services Agency (USALSA). Trial counsel have access to TCAP online presence, and defense can access resources through DCAP online presence. Additionally, both trial and defense counsel can benefit from the online resources offered by the Trial Judiciary.

A. Trial Counsel Assistance Program (TCAP)

Because it is a subsection of the Government Appellate Division (GAD), the “[o]perational control and supervision of TCAP is exercised by the Chief, GAD, for the AJAG/MLO. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief and training and litigation officers, as necessary.”²⁶ Part of TCAP’s regulatory mission is to “provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by trial counsel. The TCAP provides publications and references for chiefs of military justice and trial counsel and conducts periodic advocacy training.”²⁷

One way TCAP carries out its mission is by posting documents and motions in the OTJAG Criminal Law DocLib and maintaining a TCAP milBook²⁸ page. The

²³ Carroll e-mail, *supra* note 20.

²⁴ MJO, <https://www.jagcnet2.army.mil/Portals/jagc.nsf/homeDisplay.xsp?tag=MJO+User+Training> (last visited Feb. 28, 2015).

²⁵ To report a problem with the application, suggest an improvement, or provide encouragement, click on the “Feedback” button at the top right hand side of the page. The progress of the question can then be tracked by clicking on the “Tech Support Forum.”

²⁶ AR 27-10, *supra* note 4, para. 21-3.

²⁷ *Id.* para. 21-2.

²⁸ milSuite “is a collection of online tools and applications originally produced within the [Program Executive Office for Command, Control and Communications-Tactical (PEO C3T)] MilTech Solutions office for the

TCAP’s milBook page functions in the same manner as JAGConnect–Criminal Law where counsel can discuss issues and share ideas in real time. However, it differs in that membership is limited to trial counsel and individuals who are assisting trial counsel. The forum can be accessed from JAGConnect–Criminal Law.²⁹ Access is granted by TCAP. To maintain equal assistance to trial and defense counsel alike, Trial Defense Service (TDS) also has online resources.

B. U.S. Army Trial Defense Service (USATDS)

By regulation, TJAG is required to “administer an independent, Army-wide Trial Defense Service to provide representation for soldiers tried by courts-martial. The Chief, USATDS, assists TJAG in managing the TDS mission.”³⁰ In furtherance of this mission, “the Chief, USATDS, in coordination with DCAP, develops programs and policies designed to enhance the professional qualifications of defense counsel and USATDS paralegal personnel.”³¹ Thus, DCAP has developed an online presence to provide defense-counsel specific resources by creating a discussion forum in milBook³² and maintaining a TDS Document Library in JAGCNet.³³ Defense counsel can request access to both pages through USATDS. In addition to the counsel-specific resources, USALSA also houses the Trial Judiciary website, in which both trial and defense counsel alike will find useful information to assist in courtroom preparation.

C. Trial Judiciary

The Army Trial Judiciary does not limit itself to presiding at trial. It also “ensure[s] the quality of the Army judiciary and the fairness of the military justice system”³⁴ by

purpose of bringing online collaborative methods and secure communities to the entire Department of Defense.” milBook is a subpart of the website. MILSUITE, [https://login.milsuite.mil/?goto=https%3A%2F%2Fwww.milsuite.mil%3A443%2Fbook%](https://login.milsuite.mil/?goto=https%3A%2F%2Fwww.milsuite.mil%3A443%2Fbook%2F)

²⁹ MILBOOK, <https://www.milsuite.mil/book/groups/jagconnect-army-criminal-law> (last visited Feb. 24, 2015).

³⁰ AR 27-1, *supra* note 9, para. 2-1(d)(11). Additionally, “oversight of this responsibility has been delegated to The Assistant Judge Advocate General for Civil Law and Litigation (AJAG/CLL) who, “[t]hrough the Chief, Trial Defense Service, exercise operational control and supervision of U.S. Army Trial Defense.” *Id.* para. 2-3(c).

³¹ AR 27-10, *supra* note 4, para. 6-6.

³² MILSUITE, <https://www.milsuite.mil/book/groups/jagconnect-army-criminal-law> (last visited Jan. 31, 2015).

³³ JAGCNET, <https://www.jagcnet2.army.mil/Portals/jagc.nsf?opendatabase&login#> (last visited Jan. 31, 2015).

³⁴ JAGCNET, <https://www.jagcnet2.army.mil/USATJ> (last visited Feb. 28, 2015).

“[a]dministering an advocacy-training program for trial and defense counsel called ‘Bridging the Gap.’ This program includes an initial, gateway session for new counsel and post-trial critiques after each trial to improve the advocacy of counsel.”³⁵ The Trial Judiciary does this by not only talking to counsel face-to-face but also posting useful documents on its JAGCNet page.³⁶

1. Site Navigation

Counsel can navigate to the Trial Judiciary site by logging into JAGCNet. From the main JAGCNet page, counsel will click on “USALSA” and then click on “Trial Judiciary” under the second “Divisions” column.³⁷ Counsel will be redirected to the Army Trial Judiciary page. From the main page, counsel can click to view the e-docket,³⁸ download an electronic version of the benchbook, browse the resources that judges have determined are important, and review the “Bridging the Gap” materials.

2. User Experience and Tips

The site is easy to navigate and contains useful trial preparation materials. The Gateway materials, word documents created by Chief Judge Colonel Michael J. Hargis, are divided into several categories: The Basics, Prior Inconsistent Statement and Refreshing Recollection, Demonstrative Evidence, Voir Dire, and Sentencing. Though it is important for counsel to delve into these issues, valuable online resources can still be found by the entity who first trained them in the ways of Criminal Law: TJAGLCS.

IV. The Judge Advocate General’s Legal Center and School’s Online Resources

According to Army Regulation, “[t]he Commander and Commandant of TJAGLCS is responsible for military justice courses in the curriculum of TJAGLCS. The Commander and Commandant (Commandant), TJAGLCS—one person—is also responsible for developing military justice training materials for the Army service school system.”³⁹

³⁵ *Id.*

³⁶ *Id.*

³⁷ A screenshot of the Trial Judiciary site is located in the Appendix.

³⁸ The e-docket was created in response to the need for docket centralization and access by judges who travel across jurisdictions to set courts-martial dates and to de-conflict schedules. The e-docket can be searched by judge, installation, or a group of installations. Judge Hargis encourages counsel to check this schedule as they are filling out their request for trial dates. Interview with Colonel Michael J. Hargis, C.J., U.S. Army, in Charlottesville, Va. (Mar. 6, 2014).

³⁹ AR 27-10, *supra* note 4, para. 18-2(d).

The Commandant carries out this task through the two separate entities of (1) the Legal Center and (2) the School. The Legal Center, through its Training Development Directorate (TDD),⁴⁰ provides online tools by developing JAGU and partnering with the Naval Justice School. The School provides online military justice resources through the Criminal Law Department and TJAGLCS Library.⁴¹

A. JAG University (JAGU)

Part of TDD’s vision is to “Leverage Technology, Transition JAGC Training and Education into the Information Age [through] Learning Management System Architecture and Centralized Courseware System[s].”⁴² As the “Online Learning Home of the Judge Advocate General’s Corps,”⁴³ JAG University fulfills this vision. Launched in 2007 as a result of a growing need to bring correspondence courses into the age of technology,⁴⁴ JAGU is the site where counsel can hone their military justice skills by watching TJAGLCS lectures, viewing interactive demonstrations conducted in an in-court environment, and testing their knowledge through online training modules. Counsel can navigate to JAGU by either accessing its primary URL⁴⁵ or through the link on JAGCNet.⁴⁶ Upon

⁴⁰ According to its mission statement,

TDD is the Army proponent for JAG Corps training development. TDD analyzes training needs, designs training strategies, leverages training and education technologies, and develops training products and materials for resident, non-resident, and distributed learning programs. TDD manages the online Judge Advocate’s General’s University and . . . provides technical assistance and products for legal training programs for the JAG Corps worldwide.

JAGCNET, <https://www.jagcnet2.army.mil/TDD> (last visited Jan. 28, 2015).

⁴¹ Prior to 2003, the JAG Corps housed its documents behind the firewall in JAGCNet. However, due to deployed counsel and other personnel who could not get access to the documents, a need arose for documents to be placed in front of the firewall. The Judge Advocate General’s Legal Center and School (TJAGLCS) library, in conjunction with the Center for Legal and Military Operations (CLAMO) began submitting documents for posting in The Library of Congress (LoC) website. Interview with Daniel C. Lavering, The Judge Advocate Gen.’s Legal Ctr. & Sch. Law Librarian, U.S. Army, in Charlottesville, Va. (Feb. 27, 2014). The historical documents and links to congressional history are useful for drafting motions and studying specific statutory questions. A screenshot of the page is located in the Appendix.

⁴² JAGCNET, https://www.jagcnet2.army.mil/8525755_A004BF591/0/C62_BB0479E544A6885257551006B207F?opendocument&noly=1 (last visited Feb. 22, 2014).

⁴³ JAGU, <https://jagu.army.mil/> (last visited Feb. 12, 2015).

⁴⁴ Interview with Jeffrey P. Sexton, Deputy/Online Program Adm’r., Distributed Learning Dep’t, Training Dev. Dir., The Judge Advocate Gen.’s Legal Ctr. & Sch., U.S. Army, in Charlottesville, Va. (Nov. 19, 2013) [hereinafter Sexton Interview].

⁴⁵ JAGU, <https://jagu.army.mil/> (last visited Feb. 12, 2015). Accessing the website from the primary Uniform Resource Locator (URL) is preferable because the servers for each site are located in different geographical areas.

logging into JAGU, counsel will see a scrolling banner in the middle of the page with various resources and tabs located at the top of the page.⁴⁷ Counsel can find military justice resources under two headings: LPDP and Streaming Media.

1. TJAG's Leader Professional Development Program

The TJAG's Leader Professional Development Program (LPDP), is "designed to assist Staff Judge Advocates (SJAs) in the conduct of their Leader Development Program."⁴⁸ Under the "Military Justice" tab, the site has three training videos: Pretrial Practice, Professional Responsibility in Military Justice, and Post-Trial processing. Each session is taught by TJAGLCS Criminal Law faculty. Though only three videos exist under this heading, the faculty has many more under Streaming Media.

2. Streaming Media

Streaming Media is a valuable video library resource. From online military justice TJAGLCS lectures to demonstrations of how to conduct effective cross-examination, the site contains over fifty videos that beginners and experienced litigators can watch in order to improve their military justice skills both in and out of the courtroom.

Counsel can navigate to Streaming Media by first accessing the JAGU home page. Counsel should then hover over "JAGU Resources" and click on "Streaming Media." A webpage entitled "JAGU Video Library" will open. Expanding the folders requires counsel to click on the plus sign versus the name of the folder. Thus after navigating to the left side of the screen, counsel will need to expand the JAGU Video Library folder by clicking on the plus sign expand "Criminal Law Presentations." Counsel will see then see six folders to browse.⁴⁹

The search function on Streaming Media is a convenient tool to locate videos that may address a specific topic area or issue. At the search function box at the top right of the Streaming Media page, counsel can type in a key word, such as "evidence," and locate all videos containing the key word

Thus, if JAGCNet's servers are down, the link to JAGU on JAGCNet will not work and counsel will think that the JAGU site is down. However, accessing JAGU through its primary URL ensures that a downed server on a non-primary site does not affect the ability to access the primary site. Sexton Interview, *supra* note 44.

⁴⁶ JAGCNet, <https://www.jagcnet.army.mil/> (last visited Feb. 12, 2015).

⁴⁷ A screenshot of JAGU is located in the Appendix.

⁴⁸ JAGU, <https://jagu.army.mil/webapps/portal/frameset.jsp> (last visited Feb. 12, 2015).

⁴⁹ The six folders are Crimes and Defenses, Demonstrations, Hodson Lectures, Procedure, Professional Responsibility, and Trial and Evidence.

in the video's title or description. In addition to the search function, counsel can search for videos by browsing each individual folder.⁵⁰ Once counsel has either learned a concept for the first time or refreshed her memory, she can test their newly gained knowledge by taking online training modules created by the Naval Justice School.

B. Naval Justice School Online Legal Education (NJS Online)

Instructors at the Naval Justice School (NJS) in Newport, Rhode Island, in partnership with the TJAGLCS Distributed Learning Department, have created additional online training and classes that are available to Army Judge Advocates.⁵¹ These courses, located on the NJS Online Legal Education Website (NJS Online)⁵² are "built with the student and their schedule in mind,"⁵³ and are offered in two primary formats: LAWgos⁵⁴ and multi-week sessions. LAWgos, designed to be the "building blocks of legal education,"⁵⁵ allow counsel to train in a self-paced manner. Conversely, the multi-week courses offer counsel direct interaction with both fellow counsel who are taking the course and the NJS instructors teaching the course "via email, announcements, questions, and required discussion boards."⁵⁶

1. Site Navigation

To navigate to NJS Online, counsel should first log into JAGU and click on "NJS Online."⁵⁷ On the main NJS page, counsel will see the following five tabs: Courses, LAWgo, Quick References, External Links, and Help. In the middle

⁵⁰ E-mail from Jeffrey P. Sexton, Deputy/Online Program Adm'r, Distributed Learning Dep't, Training Dev. Dir., The Judge Advocate Gen's Legal Ctr. & Sch., U.S. Army, to editor (Dec. 11, 2014, 16:40 EST) (on file with editor). Mr. Sexton further explains that the search capacity may be greater with future Streaming Media updates, "It will not only search presentation titles and descriptions, but any text on some of the presentation slides as well." *Id.*

⁵¹ NJS, https://jagu.army.mil/webapps/portal/frameset.jsp?tab_tab_group_id=_20_1 (last visited Feb. 12, 2015).

⁵² *Id.*

⁵³ E-mail from Lieutenant Commander Sean M. Sullivan, Program Manager, Online Legal Educ., Naval Justice Sch., Judge Advocate Gen.'s Corps, U.S. Navy, to author (Mar. 11, 2014, 09:35 EST) [hereinafter Sullivan e-mail] (on file with author).

⁵⁴ LAWgos "consist[] of a mix of reference materials, audio and visual presentations, and short assessments to reinforce understanding. They are designed to provide a variety of timely legal education in a digestible format that fits into the learner's schedule." NJS, https://jagu.army.mil/webapps/portal/frameset.jsp?tab_tab_group_id=_20_1 (last visited Feb. 12, 2015).

⁵⁵ *Id.*

⁵⁶ Sullivan e-mail, *supra* note 53.

⁵⁷ A screenshot of NJS Online is located in the Appendix.

of the page, counsel will find links to Current Course Offerings, Upcoming Courses, and the Fiscal Year 2014 Course Schedule. On the right-hand side of the page, counsel can also see a listing of the new LAWgos. Nineteen military justice LAWgos are currently offered and counsel can search for them by hovering over the word “LAWgo” on the main page and choose Military Justice. Counsel can then browse through the Military Justice specific LAWgos, read the course description, and choose a class in which to enroll.

2. User Experience and Tips

The NJS faculty have done a great job providing counsel with training modules that are easy-to-use and intuitive. The module starts with an initial assessment so that counsel can see where their weaknesses lie. After completing the module, counsel should have a firm grasp of the subject matter presented. Counsel should note that, when searching for LAWgos versus the military justice multi-week self-enroll courses, LAWgos are listed in a separate category than Military Justice LAWgos. In addition to completing the training modules in NJS, counsel can also improve their military justice skills by taking advantage of the online resources offered by the TJAGLCS Criminal Law Department.

C. TJAGLCS Criminal Law Department

The TJAGLCS Criminal Law Department (ADC) is responsible for keeping the field updated on recent military justice development, as well as teaching military justice to both Basic and Graduate Course students,⁵⁸ and short courses. These responsibilities are echoed in its department description.⁵⁹ The Criminal Law Department accomplishes its missions through the efforts of a Department Chair (O-5), a Vice Chair (O-5), eight field grade Associate Professors, a civilian Department Coordinator,⁶⁰ and three field grade Adjunct Professors.⁶¹ Leveraging online resources to assist their regulatory mission, ADC maintains the Criminal Law Department website on JAGCNet, the JAGConnect–Criminal Law site and populates the Criminal Law Document Library.

⁵⁸ AR 27-10, *supra* note 4, para. 18-5.

⁵⁹ JAGCNET, <https://www.jagcnet.army.mil/sites/tjaglcs.nsf/homeContent.xsp?open&documentId=B571C747E3ECC6F985257AAD0067597A> (last visited Feb. 12, 2015).

⁶⁰ JAGCNET, <https://www.jagcnet2.army.mil/852577C10047F4D7/0/2F2558A6CDBC3BD2852578B9006ED5D3?opendocument> (last visited Jan. 31, 2015).

⁶¹ JAGCNET, <https://www.jagcnet.army.mil/852577C10047F4D7/0/4731125148A3D066852577AE00623205?opendocument&noly=1>, (last visited Feb. 12, 2015).

1. Criminal Law Department Website in JAGCNet

The Department webpage in JAGCNet⁶² is maintained by the civilian Department Coordinator in coordination with professors who populate the site’s substantive information. The page is available to the public.

To locate the ADC’s page, users should navigate to JAGCNet select “The Judge Advocate General’s Legal Center and School,” click on “School” and, under the “Departments” click on “Criminal Law.”⁶³ The page offers links to information about the professors, descriptions of the School’s military justice courses, and publications from various entities including ADC, OTJAG Criminal Law, and Army Trial Judiciary. Under “Resources,” ADC offers links to the Deskbook, videos, charts and guides, checklists and worksheets, advocacy articles, sexual assault materials, training opportunities, and a link to the MJO (academic) site. Additionally, under “Useful Links” users can navigate to JAGConnect–Criminal Law, MJO, Army Court of Criminal Appeals (ACCA), OTJAG Criminal Law Division, and Court of Appeals for the Armed Forces (CAAF). By clicking on “More,” users will be redirected to a site containing thirteen links, including each of the sister services court’s websites.⁶⁴

The site is most useful for counsel seeking to increase their military justice capabilities by attending a short course at the School. The combined knowledge of the course description and when the course is offered will empower counsel to ask their SJA for the appropriate training.

2. JAGConnect–Criminal Law

JAGConnect–Criminal Law is a military-justice-specific discussion forum housed on milSuite and designed to capture and distribute criminal law knowledge across the entire Department of Defense (DoD).⁶⁵ [M]ilSuite was “chosen as the Corps’ collaboration and knowledge-sharing package” after taking into account “the JAG-wide survey, the results from the World-Wide CLE working groups, the current social-media trends, and the DoD’s focus on common collaboration tools.”⁶⁶ JAGConnect–Criminal Law allows practitioners to share and receive knowledge about lessons learned from the field, current topics, and best

⁶² JAGCNET, <https://www.jagcnet.army.mil/852577C10047F4D7> (last visited Feb. 12, 2015).

⁶³ A Criminal Law Department screenshot is located in the Appendix.

⁶⁴ JAGCNET, <https://www.jagcnet.army.mil/sites/tjaglcs.nsf/homeContent.xsp?open&documentId=66FD84C42F9EADC985257AAD006EC709>, (last visited Feb. 24, 2015).

⁶⁵ milSuite Purpose, *supra* note 28.

⁶⁶ MILSUITE, <https://www.milsuite.mil/book/docs/DOC-25187> (last visited Jan. 28, 2015).

practices with Judge Advocates from each branch of service.⁶⁷

a. Site Navigation

Counsel have two ways to navigate to milSuite. The first way is to type milSuite's primary uniform resource locator (URL)⁶⁸ into their browser; the second is to navigate to JAGCNet's URL and click on the milBook icon at the top of the page.⁶⁹ Once there, counsel will need to create a milSuite account by logging in with a common access card (CAC).⁷⁰ After creating a milSuite account, counsel need to locate the JAGConnect–Criminal Law page within the milSuite platform. This can be accomplished by clicking on the icon “Join a Group” and typing the words “JAGConnect–Criminal Law” into the search box located in the top right hand corner. Counsel should choose JAGConnect–Criminal Law from the search results. The browser will open up the JAGConnect–Criminal Law page and counsel should click on the button “Request to Join the Group.”⁷¹

Counsel will receive an e-mail, containing a direct link to JAGConnect–Criminal Law, confirming that they have been added to the site. After clicking on this link, counsel should be directed to the JAGConnect–Criminal Law “Overview” page.⁷² On this page, counsel can catch a glimpse of the military justice topics currently being encountered in the field by reviewing the questions and answers posted under “Recent Content.” Counsel can also either post or respond to a question by choosing the appropriate function under “Post to this Site.” Counsel can also conduct a preliminary search of the site by typing a term in the “Search Our Content” box located on the middle-right side of the page.

From the “Overview” page, counsel can navigate the content of the entire site by clicking on one of the five tabs (Content, People, Projects, Reports, or Calendar) located to the right of the “Overview” tab. Clicking on the “Content” tab will redirect counsel to a page where all of the blogs,

documents, and discussions can be searched through various filters such text, tags, latest activity, title, or date. Counsel can query the system to search the discussions, documents, and blog posts to see if the topic about which they are searching has already been discussed.⁷³

b. User Experience and Tips

Each time they wish access JAGConnect–Criminal Law, users will need to go through the cumbersome site navigation process listed above at each log-in. To remedy this problem, users can create a link that will give them quick access at next log-in. This can be accomplished by copying the JAGConnect–Criminal Law URL and saving it under the “Quick BookMarks” in the toolbar⁷⁴.

Counsel should also be cognizant that the two search boxes on the page actually search two different areas of milSuite. The search box in the top right hand corner searches the entire milSuite platform. The search box under “Search Our Content” searches the JAGConnect–Criminal Law page.

Additionally, the document storage rule for the site is not intuitive. For instance, if counsel reference a document in their JAGConnect–Criminal Law discussion, they may be inclined to upload the document to milSuite. Despite the fact that milSuite has a mechanism for uploading documents, it is not the preferred site for document storage. Another forum, the Criminal Law Document Library, is the official document repository.⁷⁵ Thus, counsel are expected to discuss issues in JAGConnect–Criminal Law and upload documents in the Criminal Law Document Library.

3. Criminal Law Document Library

The Criminal Law Document Library (DocLib), created through the collaboration of the CL/KM attorney and the JAGC's Information Technology Division (ITD),⁷⁶ “provides a single space in the secure JAGCNet cloud for the academic and policy documents of the JAG Corps’

⁶⁷ MILSUITE, <https://www.milsuite.mil/book/groups/jagconnect-army-criminal-law> (last visited Jan. 28, 2015).

⁶⁸ MILSUITE, <https://login.milsuite.mil> (last visited Jan. 28, 2015).

⁶⁹ JAGCNET, <https://www.jagcnet.army.mil/> (last visited Jan. 28, 2015). The milBook icon is circled on the JAGCNet screenshot in the Appendix.

⁷⁰ A screenshot of the milSuite log-in page is located in the Appendix.

⁷¹ JAGConnect–Criminal Law is a private community with access restricted to the military legal community.

⁷² Currently, ten sections are displayed: Categories, JAG Corps on milBook, OTJAG Crim Law Monthly Newsletter, DocLibs on JAGCNet, Featured Content, Upcoming Events, Recent Content, Search Our Content, Post to this Site, Create a Military Justice Action, Resources and Links. A screenshot of the JAGConnect–Criminal Law overview page screenshot is located in the Appendix.

⁷³ MILSUITE, <https://www.milsuite.mil/book/groups/jagconnect-army-criminal-law> (last visited Feb. 12, 2015).

⁷⁴ A screenshot of the “Quick BookMarks” function on JAGConnect–Criminal Law is located in the Appendix .

⁷⁵ JAGCNET, <https://www.jagcnet2.army.mil/Sites/crimlaw.nsf/homeLibrary.xsp> (last visited Jan. 28, 2015) [hereinafter JAGCNet].

⁷⁶ The Information Technology Division's (ITD) mission is to “[p]rovide secure, useful, user-friendly, and cost effective information technology and knowledge management enterprise solutions for the JAGC and its clients at all levels of command across the full spectrum of legal operations and JAGC disciplines enabling the JAGC to effectively deliver legal services.” JAGCNET, <https://www.jagcnet2.army.mil/8525741200560C10/0/B4B2D16FE965C6BD85257957004A01E8?opendocument> (last visited Jan. 28, 2015).

proponent offices, as well as valuable resources contributed by legal professionals in the field. Community members can store content [in the DocLib] and link to it in their [JAGConnect–Criminal Law] postings.⁷⁷ Thus, the DocLib also functions as the document repository for the discussions occurring on JAGConnect–Criminal Law. The DocLib was developed in response to a 2011 Knowledge Management Division (KMD) survey in which over “900 military and civilian members of the JAGC from the active and reserve components provided hundreds of helpful comments”⁷⁸ which identified that a document library was needed.

a. Site Navigation

The DocLib, currently maintained by the Criminal Law Department of TJAGLCS has both a public and a private page. While the public page houses documents that can be seen by the general public prior to log-in, the private page houses documents that reside behind JAGNet’s firewall which can be accessed only after log-in.⁷⁹ To view the public page, counsel should navigate to JAGCNet,⁸⁰ click on “Public Doc Libraries,” and choose “Criminal Law” under the Legal Disciplines heading. To gain access to the private page, users must first create a JAGCNet account.⁸¹ Once counsel have created an account and logged into JAGCNet, they can navigate to the DocLib by clicking on “Legal Disciplines,” choosing and then clicking on “Criminal Law Doc Library” under the “Military Justice” heading.

The DocLib currently contains military justice documents sorted into fourteen categories.⁸² Content on the site can be sorted by category, by the date the document was added to the site, or by the source who uploaded documents to the site.⁸³ This source designation is important because it

⁷⁷ See JAGCNet Access Memo *supra* note 16.

⁷⁸ U.S. Army Judge Advocate General’s Corps Knowledge Management Survey, 5 October–4 November 2011: Results of Survey (n.d.), <https://www.milsuite.mil/book/docs/DOC-25477>. The survey also identified the following as the top four needs of practitioners: improvement in JAGCNet navigation, creation of an enterprise search engine, the formation communities of practice that avoid reinvention of the wheel, and effective training of the currently existing databases and applications. *Id.*

⁷⁹ JAGCNET, <https://www.jagcnet.army.mil/Sites/jagc.nsf/home.xsp> (last visited Jan. 28 2015).

⁸⁰ *Id.*

⁸¹ See JAGCNet Access Memo, *supra* note 15. This memo details instructions on how to create a JAGCNet account. Only Army Judge Advocates General are entitled to a JAGCNet account. All others must go through the process of sponsorship. *Id.*

⁸² A screenshot of the OTJAG Criminal Law Document Library (DocLib) is located in the Appendix .

⁸³ To sort the documents by source, counsel should click on the arrow next to “All Sources” and choose one of the seven sources: Defense Appellate Defense, TCAP, Field Contribution, Special Attorney U.S. Attorney, OTJAG-CrimLaw, LCS-CrimLaw, or Government Appellate Division.

assures the user that the document being retrieved was uploaded into the library by a reputable source. A user in the field can only choose “Field Contribution” while the proponent of the document can choose the correct identifier.

In addition to retrieving documents, counsel also have the ability to upload documents. This can be accomplished by choosing the “Upload New Document” button in the top left-hand corner. Since uploading a document can be a tricky task, users should read the uploading instructions.⁸⁴

b. User Experience and Tips

One positive aspect of the Crim Law DocLib is that if used correctly, it could supplement and possibly replace the individual share drives found at each installation. Since it can hold a large amount of data, this site is a great place to store Standard Operating Procedures, Investigation Officer Guides and other large documents that are difficult to transport from assignment to assignment. Users are encouraged to assist in its improvement by populating the DocLib with documents and giving constructive feedback for improvements to OTJAG Criminal Law.

However, using the DocLib as document storage for discussions that occur in milBook does present a few difficulties. The process tends to be time-consuming because counsel must have both sites open at the same time and know the differing tagging procedures for each site.⁸⁵

Furthermore, while milSuite is accessible to all of DoD, portions of the DocLib are accessible only to JAGCNet account holders.⁸⁶ One of the reasons that milSuite was chosen was so that Army JAG information could be shared DoD-wide.⁸⁷ If the documents are behind a firewall and inaccessible unless counsel have JAGCNet capabilities, then the DocLib hinders the information-sharing purpose from being fulfilled.

V. Library of Congress

Though not created or maintained by the JAG Corps, the Library of Congress (LoC) provides another avenue of access to military justice materials. Documents related to

⁸⁴ JAGCNET, <https://www.jagcnet2.army.mil/Sites/administrativelaw.nsf/document.xsp?&documentId=E08A4E8B9B73C2CE85257B3400443E0F&action=openDocument> (last visited Feb. 12, 2015).

⁸⁵ In the DocLib, tags encompassing each new group of terms should be separated with a comma. Conversely, in JAGConnect–Criminal Law, spaces are used to separate tags.

⁸⁶ See JAGCNet Access Memo, *supra* note 16.

⁸⁷ See milSuite Purpose, *supra* note 28.

the Corps began being posted on LoC in 2003.⁸⁸ As the webpage states:

[t]he U.S. Army Judge Advocate General's Legal Center & School Library in Charlottesville, VA, holds extensive collections of primary source materials and publications in the field of military law. Selections from these collections are now being made accessible in full text PDF versions via the Library of Congress Federal Research Division (FRD) Web site. As more materials are converted to digital formats, they will be added to this page.⁸⁹

The site does not require a log in. It merely requires internet access.⁹⁰ The documents are grouped by functional area and are clearly labeled. All of the Military Law Review and The Army Lawyer articles can be found on this site. The Manual for Courts-martial is front and center. The historical documents and links to Congressional history are useful for drafting motions.

VI. United States Court of Appeals for the Armed Forces

Additionally, the following resource was not created by JAG leadership but nevertheless provides counsel with quick case law updates when counsel are pressed for time. The United States Court of Appeals for the Armed Forces (CAAF), the military's highest appellate court, also maintains a website.⁹¹ Within the website, a digest of opinions can be found. As noted by the disclaimer within the website, this resource:

constitutes no part of the opinions of the United States Court of Appeals for the Armed Forces and it does not represent the official position of the Court. The digest has been prepared by a member of the Court's staff for the convenience of the public. The digest summarizes key issues from the various opinions of the Court.⁹²

VII. Conclusion

From the new advocate to the experienced litigator, the resources discussed above provide military justice practitioners with tools that allow them to access quickly access pertinent online information. Now that counsel are aware of these tools, becoming familiar with the scope of assistance that these sites offer will allow counsel to capitalize on the knowledge of other attorneys instead of reinventing the wheel. Counsel who previously dreaded the idea of finding information on a new topic will quickly discover that there is little that has not already been discussed.

For example, advocates who are using MJO to draft a charge sheet can take advantage of the Military Judge's website to ensure that the most recent version of the benchbook is being used. As the case progresses and more questions arise about how to conduct effective direct and cross examination, counsel can ask a question on JAGConnect-Criminal Law, or watch a video presentation on JAGU to see a live demonstration.

Furthermore, supervisors and leaders who maximize the use of current platforms can greatly simplify their daily life. For the judge advocate who is placed in a Chief of Military Justice position but has not practiced in a while, the LAWGos are a great refresher on the basics. Use of the tools described in this paper can reduce the time that it takes to be caught back up with current case law, National Defense Authorization (NDAA) updates, etc. LAWgos can also be used to train subordinates in the monthly Leadership and Professional Development sessions. As the JAGC as a whole maximizes the use of existing online tools and search platforms, we will be that much closer to providing uniform advice to commanders built from the common knowledge provided among these sites. That way, as leaders reinforce TJAG's policy by first using the tools themselves and then requiring their subordinates to use them, they will discover the personal benefit of life made easier and the team benefit of improving their subordinate's practice of law.

⁸⁸ Interview with Daniel Lavinger, TJAGLCS Law Librarian, in Charlottesville, Va. (Feb. 27, 2014).

⁸⁹ LoC, http://www.loc.gov/rr/frd/Military_Law/military-legal-resources-home.html (last visited Feb. 24, 2015).

⁹⁰ A screenshot of the page is located in the Appendix.

⁹¹ CAAF, <http://www.armfor.uscourts.gov/newcaaf/home.htm> (last visited Feb. 12, 2015).

⁹² CAAF, http://www.armfor.uscourts.gov/newcaaf/opinions_digest.htm (last visited Feb. 12, 2015).

Appendix

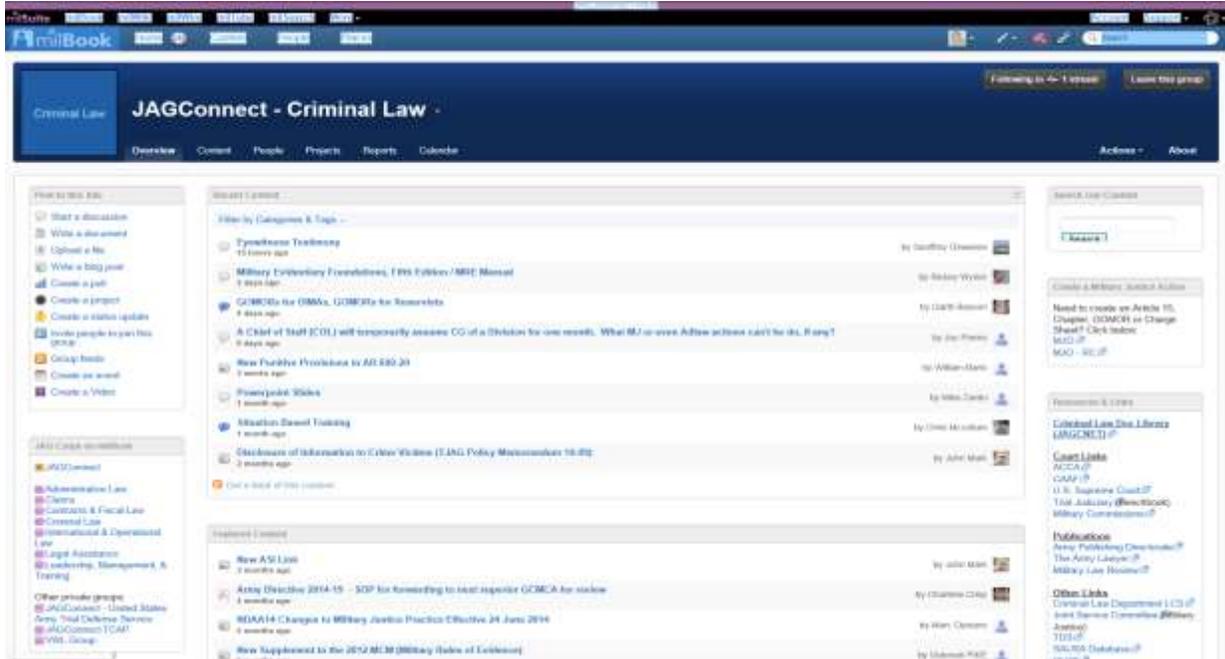
milBook Icon on JAGCNet Screenshot



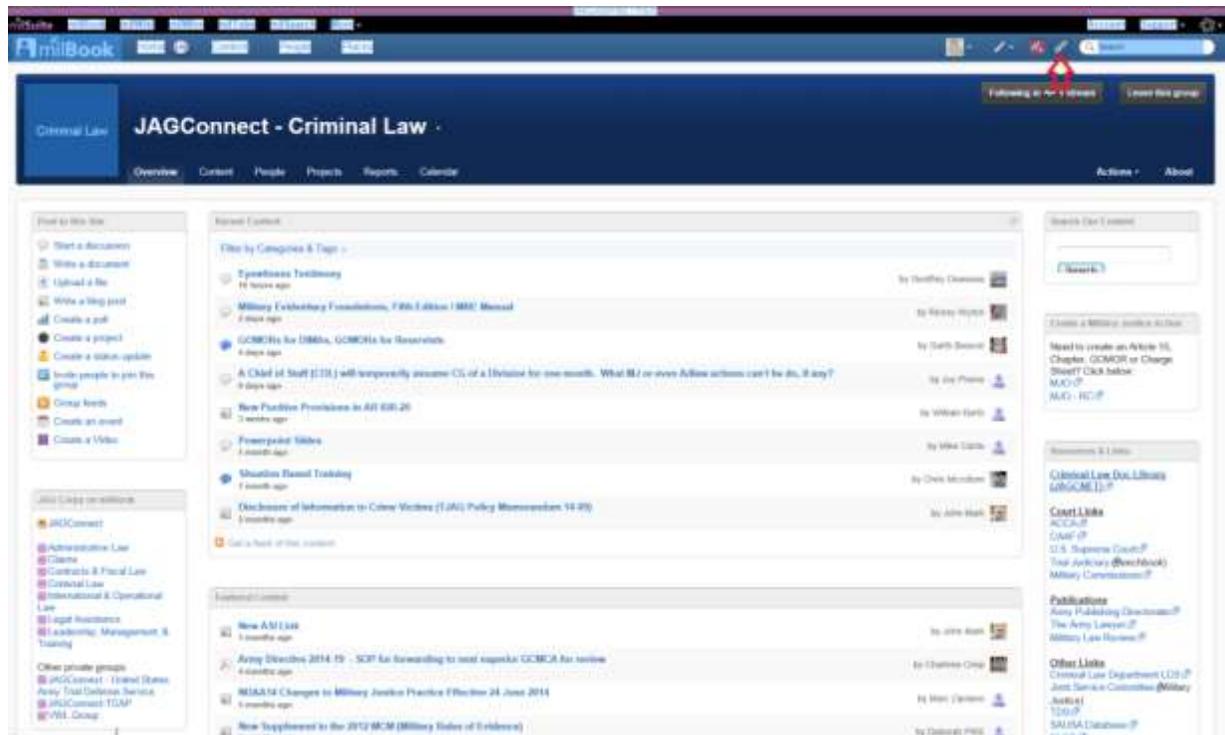
milSuite Sign-in-Page Screenshot



JAGConnect–Criminal Law Overview Page Screenshot



JAGConnect–Criminal Law “Quick Bookmarks” Screenshot



OTJAG Crim Law Document Library Screenshot

Criminal Law

MAJ Eugene Tammey
Chief, Administrative and Civil Law
CDLM, HQ, 2d Infantry Division

Home | JAGCNet Home | Help | Contact | What's New | Last Visited | JAMS | EADSI

Community of Practice | Document Library | TDM (Restricted Access) | Ref Reports (Restricted Access) | Other Document Libraries | Related Sites | Applications | Rules for Posting | Show Public Links

Upload New Document

Criminal Law Library

WELCOME

All Documents (22 documents + 71 attachments) (1 | Page: 1 | 2 | 3 | 4 | 5 | 10)

Title	Date	Source
DA Certificate Confidential Protective Order (CPO) 2014	10/17/2014	PALE Contribution
Practicing Military Justice Deskbook	10/01/2014	CSB - CivilLaw
Requesting Adult Only Orders for Reserve Component Court-Martial Witnesses	10/08/2014	PALE Contribution
TC Issues	09/18/2014	OTJAG - CivilLaw
TC Exceptional Eligibility	09/18/2014	OTJAG - CivilLaw
Transfer of Cooperation	09/18/2014	OTJAG - CivilLaw
NWL Trng 2014	09/18/2014	OTJAG - CivilLaw
NWL Training 2014	09/18/2014	OTJAG - CivilLaw
Expedit Transfer	09/18/2014	OTJAG - CivilLaw
Correction Victim Assistance	09/18/2014	OTJAG - CivilLaw
IVC Program	09/18/2014	OTJAG - CivilLaw
San Offenses	09/18/2014	OTJAG - CivilLaw
CEO Interview Methods	09/18/2014	OTJAG - CivilLaw
YAWF	09/18/2014	OTJAG - CivilLaw
Expectations	09/18/2014	OTJAG - CivilLaw
MU Overview	09/18/2014	OTJAG - CivilLaw
Stuttering Behavior	09/18/2014	OTJAG - CivilLaw
ACFD Brief	09/18/2014	OTJAG - CivilLaw
Military Victim Witness Liaison Training	09/18/2014	OTJAG - CivilLaw
Sec Def Name 14 AUG 13 - AK for all Sen Rescind A1 13	09/15/2014	PALE Contribution

WELCOME TO THE CRIMINAL LAW DOCUMENT LIBRARY

This library provides a single space in the secure JAGCNet cloud for the academic and policy documents of the MAG Corps' program offices, as well as valuable resources contributed by legal professionals in the field.

The library is open to our entire community of practice on military JAGCNet - Criminal Law. Community members can view content here and link it to their Outlook profiles.

All users may contribute content, tag documents, and comment upon any material posted to the site. Review our Rules for Posting Content to ensure Document Library and overall your experience for professional responsibility, information security guidance, and protection of Personally Identifiable Information (PII).

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MJO screenshot

MJ Online 5.4

Justice Applications | Manuals/Training/Policy | Management | Resources

My Units

Search Units by Long Name, Short Name, Office Symbol or Address.

10th Mountain Division (Light Infantry) (R)(P)
HQ, Fort Drum, Fort Drum, New York, UNITED STATES - 13602-5000...

10th Regional Support Group
HQ, 10th RSG, 7th Station, APO AF, JAPAN - 96376...

1st Cavalry Division
HQ, 1CO, FORT HOOD, Texas, UNITED STATES - 76844...

1st Sustainment Command (Theater)
HQ, 1st TSC, Fort Bragg, North Carolina, UNITED STATES - 28310...

21st Theater Sustainment Command
HQ, 21st TSC, APO AE, GERMANY - 96004...

28th Infantry Division
28th ID, Hawaii, UNITED STATES...

2nd Infantry Division
HQ, 2ID, Camp Red Cloud, APO AF, KOREA, REPUBLIC OF - 94058-5041...

7th Infantry Division
HQ, 7th IN DIV, Joint Base Lewis-McChesle, Washington, UNITED STATES - 98433...

82nd Airborne Division
HQ, 82nd ABN DIV, Fort Bragg, NC, UNITED STATES - 28310...

8th Theater Sustainment Command
HQ, 8th TSC, Fort Shafter, Hawaii, UNITED STATES - 96058...

My Bookmarks
You have not bookmarked any Actions.

MJO Portal

MJO's top five priorities

1. Respond to feedback from the field in a timely manner
2. Clean up templates and make them user friendly
3. Integrate reports with MJO - make reports easy and useful
4. Help the field with bandwidth problems where possible
5. Continue to refine and integrate training

Status Reports

GCHCA and SPCHCA Status Reports now allow the selection of specific data points. Please check them out and let us know.

DID YOU KNOW?

- MJO needs your help! We are seeing a lot of incomplete or incorrect scans for upload to HRC. Please ensure you upload a complete packet and that you upload all docs in the same session.
- You can start a discussion on JAGCNet - Criminal Law (login required) [here](#)
- When JAGCNet is down you can still access MJO - just login at www.jagonet4.army.mil/mjo

Release Calendar

Calendar View | Grid View | CSV View

February 2014

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

MJO Checklist Screenshot

Your MJR is due and has not been submitted for: Headquarters, 34TH INFANTRY DIVISION (MECHANIZED) (A)

Archie, Richard M

Attachments Edit Back

Pretrial Referral of Charges Trial Post-Trial Tip Tab Audit Trail

Check List

1. PRELIMINARY ACTIONS:

2. PREFERRED AND RECOMMENDATIONS:

Prefer charges. Have accused present to be provided a copy of charge sheet (then complete Block 12, DD Form 458).

Meet with SCMCA for signature on forwarding endorsement. Complete Block 13, DD Form 458.

Meet with SPCMCA for signature on endorsement / Art 32 appointment memo (as appropriate).

MANDATORY DISCLOSURE REQUIREMENTS

Evidence favorable to the defense

3. ARTICLE 32:

Attachments

S.N	Attachment Name	Type	Size	Date	Source Screen	Delete
1	AJR - initial exerpt.pdf	PDF	34.73 KB	12/03/2013	Personnel	<input type="checkbox"/>
2	Archie 2d Statement 2013.pdf	PDF	37.83 KB	12/03/2013	Personnel	<input type="checkbox"/>
3	Archie Statement 2013.pdf	PDF	49.47 KB	12/03/2013	Personnel	<input type="checkbox"/>
4	Frederickson Statement 2013.pdf	PDF	40.45 KB	12/03/2013	Personnel	<input type="checkbox"/>
5	Jacobs Statement 2013.pdf	PDF	70.77 KB	12/03/2013	Personnel	<input type="checkbox"/>

MJO SPCM Customizable Status Report Screenshot

Reports

Reports

SPCMCA Reports

Cognos Reports

Dashboard

Sr. Leader Misconduct

Actions by Offense

Busiest Jurisdictions

COCOM Snapshot

Military Justice - Manager

Military Justice - Usage

Offense Frequency

General Reports

Custom Report

Actions Home

Motions

Custom Status Reports (SPCMCA)

To generate your Custom Report, choose from the options below and click 'Run Report' to download to excel. To save your custom report settings for reuse, enter the custom report name and click 'Save Report'.

Custom Report Name Save Report

Download File Name .xls Run Report

Action Types

Courts-Martial Admin Separations Nonjudicial Punishment Reprimands Investigations

Action Status

Open Closed

Date Created

From: To: last 30 days

Common Report Data [show/hide](#)

Status Basic Pay NCO

Name Unit Paralegal

Rank Battalion Trial Counsel

Component Unit Cmdr Action Number

Sex SCMCA Cmdr Report Remarks

Race SPCMCA Cmdr Action Type

PEBD GCMCA Cmdr Date Created

Years of Service Assigned to Date Action Closed

[Check / Uncheck](#)

Courts Martial Report Data [show/hide](#)

Admin Separations Report Data [show/hide](#)

Nonjudicial Punishment Report Data [show/hide](#)

Reprimands Report Data [show/hide](#)

Investigations Report Data [show/hide](#)

NJS Screenshot

TJAGLCS Criminal Law Department Screenshot

Library of Congress Screenshot

The Library of Congress <> Researchers

Military Legal Resources Federal Research Division
Library of Congress

Home >> **Military Legal Resources** Find in Military Legal Resources



Military Legal Resources [Site Map >>>](#)

2012 Manual for Courts-Martial United States >>>
 2012 Supplement, see [Military Rules of Evidence >>>](#)
 2014 Amendments, see [E.O. 13669 >>>](#)

The U.S. Army Judge Advocate General's Legal Center & School Library in Charlottesville, VA, holds extensive collections of primary source materials and publications in the field of military law. Selections from these collections are now being made accessible in full text PDF versions via the Library of Congress Federal Research Division (FRD) Web site. As more materials are converted to digital formats, they will be added to this page.

If you would like us to notify you whenever new documents are added, send us your e-mail address

- ▶ [Commandant's Annual Reports and Annual Bulletins — 2014-2015 *New!*](#)
- ▶ [The Army Lawyer \(1971-2014\)](#)
- ▶ [LCS Administrative & Civil Law Department *Updated!*](#)
- ▶ [LCS Contract & Fiscal Law Department](#)
- ▶ [Center for Law and Military Operations \(CLAMO\)](#)
- ▶ [Geneva Conventions Materials *Updated!*](#)
- ▶ [Army JAG Corps Historical Publications...](#)
- ▶ [Manuals for Courts-Martial](#)
- ▶ [U.S. Army TJAGLCS: Selected Theses](#)
- ▶ [Ethics and Fiscal Documents](#)
- ▶ [Military Law Historical Monographs, Studies, Texts and Treatises](#)
- ▶ [Military Law Review \(1958-2014\)](#)
- ▶ [LCS Criminal Law Department](#)
- ▶ [LCS International & Operational Law Department](#)
- ▶ [U.S. Court of Appeals for the Armed Forces](#)
- ▶ [War Crimes Trials Materials](#)
- ▶ [Military Commissions Act of 2006](#)
- ▶ [UCMJ Legislative History](#)
- ▶ [U.S. Army Field Manuals, Training Circulars...](#)
- ▶ [Army Regulations](#)
- ▶ [War Dept/Dept of the Army Pamphlets *Updated!*](#)
- ▶ [Legislative Histories](#)

▶ [U.S. Army TJAGLCS Library Historical Collections](#)

	The Reno Court of Inquiry (Conduct at the Battle of Little Big Horn River)
	The Lieber Collection Trial of Captain Henry Wirz
	Martial Law in Hawaii: Papers of MG Thomas H. Green... Nazi Saboteurs Trial, Washington, D.C., 1942 Enactments and Approved Papers... (1945-1948) Nuremberg Trials

Does PCS Cover ETS Under the SCRA?

Administrative & Civil Law

Legal Assistance judge advocates may encounter a scenario in which landlords refuse to allow a Soldier to terminate a lease due to an expiration of term of service (ETS). Although such a case may seem unthinkable at first, a careful reading of § 535 of the Servicemembers Civil Relief Act (SCRA)¹ will find terms such as ETS and retirement noticeably absent from the text of the statute. Recent case developments provide attorneys with new ammunition to fight early termination fees levied against Soldiers trying to break a lease when leaving the service.

On 8 March 2012, the U.S. District Court for the District of Nebraska entered a consent order finding Empirian Property Management, Inc. in violation of § 535(a)(1) of the Servicemembers Civil Relief Act (SCRA).² Under Section 535(a)(1), servicemembers may terminate residential leases upon receipt of “military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.”³ At issue in *Empirian* was interpretation of the term “permanent change of station” (PCS) orders.⁴ The Defendant, Empirian Property Management, argued that orders permanently releasing servicemembers from military service (e.g., expiration of term of service (ETS), discharge, or retirement orders) were not within the meaning of “permanent change of station” orders found in § 535(a)(1).⁵ The Department of Justice, and ultimately the court, disagreed.⁶

The SCRA defines military orders as “official military orders, or any notification, certification, or verification from the servicemember’s commanding officer, with respect to the servicemember’s current or

future military duty status.”⁷ Further, the Army defines PCS as “the assignment, detail, or transfer of a Soldier to a different permanent duty station (PDS) under a competent travel authorization that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct return to the old PDS.”⁸ Finally, the Joint Travel Regulation (JTR) connects these two terms by placing travel benefits associated with a servicemember’s “discharge, resignation, or separation from the Service under honorable conditions” under the auspices of PCS travel.⁹

The court in *Empirian* reviewed the definitions of military orders and PCS and the general intent of § 535(a)(1) to find the Defendant had wrongfully withheld security deposits from servicemembers who had properly terminated their leases under the SCRA.¹⁰ The court relied upon the language found in the JTR when it enjoined the Defendant from refusing to terminate leases when given a proper notice of termination accompanied by “a copy of the servicemember’s military orders for PCS, including PCS orders discharging, releasing, or separating that servicemember from military service under honorable conditions.”¹¹ Therefore, the court clearly recognized that orders discharging servicemembers for the military service are encompassed by the term “PCS orders” found in § 535(a)(1) of the SCRA.

Interestingly, many state statutes now explicitly allow servicemembers to prematurely break a lease due to an ETS, without incurring an early termination fee from the landlord.¹² These laws are instructive for two reasons. First, legal assistance attorneys should consider looking to state law, in addition to the

¹ 50 U.S.C. § 535 (2012).

² See Consent Order, *United States v. Empirian Property Management, Inc.*, No. 8:12CV87 (D. Neb. Mar. 8, 2012).

³ 50 U.S.C. § 535(a)(1) (2012).

⁴ See *Empirian Property Management*, *supra* note 2, at 2.

⁵ *Id.*

⁶ *Id.* See generally, Patrick Clary, *Let ‘em go, Landlord – SCRA, Residential Leases, and PCS*, (Nov. 12), http://www.americanbar.org/content/dam/aba/events/legal_assistance_military_personnel/ls_lamp_cle_nov12_top_5_landlord_skra_residential_leases_pcs.authcheckdam.pdf.

⁷ § 535(i)(1).

⁸ U.S. DEP’T OF ARMY, REG 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT, § II (26 Feb. 2009) (RAR 11 Oct. 2011)..

⁹ U.S. DEP’T OF DEF., JOINT TRAVEL REGULATIONS, app. A1 (1 Mar. 15).

¹⁰ See *Empirian Property Management*, *supra* note 2, at 10.

¹¹ *Id.*

¹² For example, Virginia provides that any member of the armed forces of the United States . . . (iii) is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard[.] VA. CODE ANN. § 55-248.21:1 (2007).

SCRA¹³, when facing issues related to an ETS, or to an involuntary separation.¹⁴ By doing so, legal assistance attorneys may discover that the state legislature has already resolved any ambiguity in favor of their client, without needing to tread into vagueness of the SCRA for this issue. Second, Congress should consider amending § 535(a)(1) to align with the court in *Empirian* and more closely resemble the state statutes that have already affirmatively addressed this issue.

The Justice Department issued a press release following its settlement with Empirian Property Management.¹⁵ In this release, the Assistant U.S. Attorney for the District of Nebraska, Deborah R. Gilg, stated, “This settlement sends a strong message that the rights of our service personnel will be protected. No service man or woman engaged in protecting all of us from harm should suffer financial damage from landlords who seek to thwart the protection our laws afford our service personnel.”¹⁶ Legal assistance attorneys can employ the *Empirian* case with relevant state statutes to build a foundation upon which to make strong arguments for Soldiers facing early termination fees due to an ETS, retirement, or early discharge.

—MAJ T. Scott Randall and MAJ Jonathan E. Fields

¹³ FLA. STAT. § 83.682 (2014). Termination of rental agreement by a service member. This statute from Florida is just one example of a state’s own version of the Servicemembers Civil Relief Act. Legal Assistance Attorneys should not forget these state laws when advocating for their clients, and should add any such applicable state law to their internal office’s standing operating procedure (SOP).

¹⁴ N.C. GEN. STAT. §§ 42-45 (2012). (a) Any member of the Armed Forces of the United States who . . . (ii) is prematurely or involuntarily discharged or released from active duty with the Armed Forces of the United States, may terminate the member’s rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord’s receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member’s commanding officer.

¹⁵ See DEP’T OF JUSTICE, <http://www.justice.gov/opa/pr/justice-department-settles-landlord-tenant-case-under-servicemembers-civil-relief-act> (last visited 21 Jan. 15).

¹⁶ *Id.*

America's First Clash with Iran: The Tanker War, 1987–88¹

Reviewed by Major T. Aaron Finley*

It was not a grand act of folly. Rather as one suspects of many, if not most disasters, it was the cumulative result of numerous smaller errors, not all of which were committed on the Vincennes.²

Introduction

One sunny July day, a commercial aircraft took off for what was scheduled to be a quick flight for its nearly 300 passengers and crew.³ Some of them were traveling for family vacations; others for business.⁴ As the aircraft passed over a region which had seen its fair share of armed conflict in the months leading up to that July day, it was struck by a surface to air missile.⁵ All passengers aboard were killed almost immediately upon the explosion and resulting crash.⁶ If asked to identify this disaster, a large part of the U.S. general public and military may remember the recent downing of Malaysian Airlines Flight 17.⁷ However, in the book *America's First Clash With Iran: The Tanker War, 1987–1988 (Tanker War)*, Lee Zatarain skillfully details this very scenario, as well as the events leading up to it, in which a U.S. Navy warship shot down an Iranian commercial airliner in 1988 after mistakenly identifying it as a hostile Iranian F-14.

With his meticulous research, incisive arguments and a style that engenders suspense at every turn, Zatarain takes the reader on an engaging journey through America's little-known conflict with Iran as well as answers decades-old questions about Iran's use of Silkworms⁸ and the downing of Iran Air Flight 655. This review addresses several aspects of

Tanker War which make it a worthwhile read for military and civilian alike. Zatarain's thoughtful organization captures the reader, and his dogged research and analysis uncover the truth of an often overlooked segment of military history.

What about this Tanker War?

Zatarain makes clear in the introduction to *Tanker War* that his purpose is to inform the reader of a little-remembered naval conflict that took place between the United States and the Republic of Iran between 1987 and 1988.⁹ Already engaged in fierce ground battles with Iraq since 1980 over disputed control of the Shatt al-Arab waterway, Iran began attacking Kuwaiti-owned oil tankers in the Persian Gulf.¹⁰ In an effort to keep the Persian Gulf sea lanes open and reduce the Soviet Union's influence in the region, the United States agreed to provide U.S. Navy escorts and to reflag Kuwaiti oil tankers under U.S. sovereignty.¹¹ The precarious nature of the Persian Gulf at the time tested U.S. resolve before the reflagging operation, named Operation Earnest Will (OEW), ever began. Two months before the first OEW escort was provided, an Iraqi warplane mistakenly targeted the USS *Stark*, a Navy frigate, with two anti-ship missiles.¹² Despite the loss of thirty-seven Navy crew members and severe damage to the ship, the United States followed through with its commitment in the region and began OEW in July of 1987.¹³ Over the next twelve months, Iran and the United States engaged in a back and forth conflict resembling a naval version of cat and mouse. Iran's sporadic and often indirect attacks against U.S.-flagged tankers and Kuwaiti assets would spark measured, armed responses from U.S. Navy assets.¹⁴ The

¹ LEE ALLEN ZATARAIN, *AMERICA'S FIRST CLASH WITH IRAN: THE TANKER WAR, 1987–88* (2008).

* Judge Advocate, U.S. Air Force. Student, 63d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

² *Id.* at 377.

³ *Id.* at 301.

⁴ *Id.*

⁵ *Id.* at 309.

⁶ *Id.*

⁷ Marc Fisher, *After a Malaysian Plane is Shot Down in Ukraine, Grief and Outrage Ripple Worldwide*, WASH. POST (Aug. 21, 2014, 12:20 AM), http://www.washingtonpost.com/world/after-a-malaysian-plane-is-shot-down-in-ukraine-grief-and-outrageripple-worldwide/2014/07/24/b9bf99a2-11e9-11e4-98ee-daea85133bc9_story.html.

⁸ Iran had obtained Silkworm missiles from the People's Republic of China as early as September of 1986. The Silkworm is an anti-ship missile with a range of fifty miles and a warhead containing three times the power of an Exocet warhead. ZATARAIN, *supra* note 1, at 34. The USS *Stark*, a Navy frigate, was nearly sunk by Exocet anti-ship missiles in the Persian Gulf on May 17, 1987. *Id.* at Chapter 1 (discussing the USS *Stark* disaster).

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ *Id.* at 36.

¹² *Id.* at 51.

¹³ *Id.* at 16, 21, and 65.

¹⁴ See, e.g., *id.* at 71 (discussing the Bridgeton supertanker under escort by U.S. Navy warships hitting an Iranian mine); *id.* at 91 (discussing the U.S.-owned Texaco Caribbean supertanker hitting an Iranian mine just outside the Strait of Hormuz); *id.* at 123 (discussing the U.S. Navy sinking the Iran Ajr mine laying ship); *id.* at 152 (discussing the Iranian Revolutionary Guard hitting the Sea Isle City tanker located in Kuwait's Shuaiba oil loading terminal with a Silkworm anti-ship missile); *id.* at 155 (discussing the U.S. Navy destroying the Iranian Rashadat oil platform in response to Sea Isle City tanker attack).

conflict would reach its apex on July 3, 1988 when the USS *Vincennes*, an Aegis cruiser, mistakenly shot down Iran Air Flight 655, killing the 290 people aboard.¹⁵

In telling the story of this little-remembered conflict Zatarain uses a creative nonfiction approach in order to grab and hold the reader's attention. He employs such literary techniques as foreshadowing,¹⁶ characterization,¹⁷ flashback,¹⁸ and imagery¹⁹ which turn an otherwise vapid exposition of military history into a work of literature more appealing to the general public. Although the organization of the book follows mostly a chronological approach, Zatarain deviates as needed to hook the reader and build suspense.²⁰

Zatarain also uses supplementary materials such as maps and pictures to aid the reader in visualizing the battlefield and key figures in the conflict.²¹ Overall, the maps are useful in referencing locations of key events from the conflict. However, the map located after Chapter 2 is in an awkward position considering most of the locations it depicts are not discussed until later in the book. It is recommended that readers bookmark the page for easier reference while finishing the remainder of the book.

Silkworm Denial

In addition to providing a compelling, detailed account of America's little-remembered naval conflict with Iran, Zatarain excellently supports his theories regarding a few of the conflict's most debated topics. One of these topics involved whether Iran fired Silkworm missiles at U.S. Navy

warships during Operation Praying Mantis²² on April 18, 1987.²³ Despite significant evidence from U.S. Navy assets in the Gulf that Iran used Silkworms, Pentagon and Central Command officials denied the missile launches occurred.²⁴ Akin to President Obama's predicament over his August 2012 statement to reporters about a "red line"²⁵ on Syria's use of chemical weapons, the Reagan administration found itself in a similar situation over statements it made about a U.S. response if Iran used Silkworm missiles against U.S. Navy warships.²⁶

Zatarain explains his theory that the "U.S. had gotten itself into a box on the Iranian use of Silkworm missiles"²⁷ and chose to deny the event in order to prevent an escalation in hostilities that the United States was not politically ready to pursue.²⁸ Zatarain, a career attorney,²⁹ provides excellent support for the theory with critical analysis of firsthand accounts from commanders and Department of Defense (DoD) Gulf Media Pools³⁰ that were in the Persian Gulf at the time of the attacks. He also utilizes official statements later given by high-ranking military officials. His skills as an attorney aids him in building the case against the U.S.

¹⁵ *Id.* at 309.

¹⁶ One example of this includes Zatarain using a July 1987 quote of Middle East Task Force Commander, Rear Admiral Harold Bersen to a reporter that "it has gone precisely the way I thought it would-smoothly, without any confrontation on the part of Iran." The *Bridgeton* supertanker hit an Iranian mine less than twenty-four hours after the statement was made. *Id.* at 68.

¹⁷ *See, e.g., id.* at 101 (introducing an Army Warrant Officer helicopter pilot from the mountains of northern Georgia who would pilot a few of the key Special Operations missions).

¹⁸ *See, e.g., id.* at 377 (discussing that the fate of the USS *Stark* must have weighed heavily on the mind of Captain Rogers as he made the decision to fire on the incoming aircraft).

¹⁹ *See, e.g., id.* at 309 (describing in vivid detail what the passengers and crew of Iran Air Flight 655 must have experienced after the missiles impacted the aircraft).

²⁰ For example, Zatarain uses Chapter 1 to gain the reader's interest with excellent imagery in describing the USS *Stark* attack even though it occurred before many of the events described in Chapter 2. *Id.* chs. 1 and 2.

²¹ *See, e.g. id.* at 26 (containing map of Persian Gulf with the Iranian Exclusion Zone and Iraqi war zone); *id.* at 38 (containing map of Persian Gulf with many of the mine fields and locations of key incidents in the book).

²² The U.S.-conducted Operation Praying Mantis as a retaliatory strike against Iran for the USS *Samuel Roberts* mining incident. The strike included orders for U.S. Navy warships to destroy three Iranian oil platforms and one Iranian Navy ship. *Id.* at 207.

²³ *Id.* at 274.

²⁴ *Id.* at 277.

²⁵ Glenn Kessler, *President Obama and the 'Red Line' on Syria's Chemical Weapons*, WASH. POST (Aug. 21, 2014, 12:40 AM), <http://www.washingtonpost.com/blogs/fact-checker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/>.

²⁶ On several occasions the U.S. administration stated it would retaliate with strikes to missile launch sites in Iranian territory if Iran used Silkworms against U.S. ships. ZATARAIN, *supra* note 1, at 259 and 285-86.

²⁷ *Id.* at 285.

²⁸ *Id.* at 274-75.

²⁹ Lee Zatarain has spent his entire career as a practicing attorney, largely based out of the Washington D.C. area. Although his publisher, Casemate, has no knowledge of Mr. Zatarain having military service or an affiliation with the military, they state that he has been a "close student of naval affairs." E-mail from Tara Lichterman, Publicity Dir., Casemate Publ., to author (Aug. 21, 2014, 07:50 EST) (on file with author).

³⁰ For example, Zatarain used a DoD Gulf Media Pool Report from the USS Jack Williams to reveal how Navy crew members had not only electronically detected incoming Silkworm missiles in the Persian Gulf on April 18, 1988, but had also visually identified them. *Id.* at 269-70 nn. 4-6. The media pool system, used by the DoD in the late 1980s, involved allowing preselected groups of journalists to accompany DoD military forces during military operations. Major Douglas W. Moore, *Twenty-First Century Embedded Journalists: Lawful Targets?*, ARMY LAW., Jul. 2009, at 1, 7. Disliked by most journalists because of its strict review procedures and prohibition of media pool reporters from publishing their own independent reports, the media pool system eventually gave way to "open and independent journalism" through the use of embedded combat journalism. *Id.* at 1, 7-8.

party line that there is no “positive proof” Iran used Silkworms.³¹

Zatarain’s argument begins by highlighting the U.S. motive to ensure Iran had not crossed the “Silkworm threshold.”³² He explains in detail the immense political pressure and negative public feelings against escalating the conflict.³³ This information is key to the reader understanding the “why” behind Zatarain’s theory. He then methodically lays out compelling evidence of Iran’s Silkworm use, such as multiple U.S. Navy ships identifying the missiles with Electronic Warfare Support Measures,³⁴ a Navy EA-6B aircraft visually identifying a Silkworm,³⁵ and Iran’s likely motivation to use the Silkworm during a desperate attempt to strike back at the United States.³⁶ Zatarain finally contrasts the evidence against official statements made by senior military leaders and the Pentagon’s Praying Mantis After-Action Report.³⁷ He is able to attack the weaknesses and holes in their explanations by scrutinizing them against the timeline of events as well as the reports that came from the U.S. Navy ships involved.³⁸ Overall, Zatarain provides a persuasive case that the United States withheld judgment regarding Iran’s use of Silkworms during Operation Praying Mantis in order to avoid an escalation in hostilities.

Explaining a Disaster

Zatarain also provides an in-depth, critical analysis of what was arguably the conflict’s most investigated topic: the factors causing the USS *Vincennes* to mistakenly shoot down Iran Air Flight 655. This is no easy task considering the complexity of the battlefield environment and decision-making process faced by the USS *Vincennes* at the time of the engagement. Dedicating four chapters to the topic,³⁹ Zatarain again uses his abilities as an attorney to dissect all sides of the issue and to skillfully address each factor.

One of the much-debated, key inconsistencies Zatarain addresses is why the combat information center (CIC) crew onboard the *Vincennes* misinterpreted the altitude of Flight 655.⁴⁰ Zatarain successfully debunks the theory proposed by the official government report,⁴¹ as well as one put forth in later years by Captain William Rogers,⁴² the commander of the USS *Vincennes* at the time of the incident. Zatarain does so by exposing the logical flaws and weaknesses in each of the two theories.⁴³ Zatarain then posits his own theory that the CIC crew members experienced a type of “scenario fulfillment” following the disaster by observing the incorrect altitude handwritten on a large display screen in the CIC.⁴⁴ He provides excellent support for his theory using firsthand testimony gathered from the crew after the incident as well as electronic console data from the ship.⁴⁵

In addition to explaining the differing theories regarding the altitude of Flight 655, Zatarain highlights many of the other factors that led to the disaster. He does so by using his ability to discern and explain key information taken from vast amounts of data. He considers electronic warfare data,⁴⁶ including audio and video data⁴⁷ from U.S. Navy warships operating in the Persian Gulf. He also identifies and solves key inconsistencies in the electronic data, numerous statements of the Navy personnel involved, and DoD investigative findings. Finally, Zatarain provides data and analysis supporting additional circumstances that may have contributed to the battlefield environment in which

³¹ ZATARAIN, *supra* note 1, at 276.

³² *Id.* at 274–75.

³³ *Id.*

³⁴ *See id.* at 264 and 269. *See also id.* at 46 (describing the Navy Electronic Warfare Support Measures (ESM) system called SLQ-32 that passively receives radar signals from incoming missiles and compares them to an internal library of electronic signatures in order to identify the incoming threat).

³⁵ *Id.* at 269.

³⁶ *Id.* at 285.

³⁷ *Id.* at 277.

³⁸ *Id.* at 276–89.

³⁹ *Id.* chs. 19–22.

⁴⁰ This factor is important because the commander of the USS *Vincennes* at the time of the incident had based his decision to fire the missiles, in part, on the report that the incoming aircraft was descending. *Id.* at 316.

⁴¹ *Id.* at 328 and 354. Rear Admiral William Fogarty headed the official investigation into the Flight 655 disaster. His team’s report is referred to as the “Fogarty Report.” *Id.* at 315.

⁴² Zatarain references a 1992 unpublished, Naval Postgraduate School Thesis written by Air Force Captain Kristen Ann Dotterway. In the thesis, Captain Dotterway analyzes Captain Rogers’s theory that the altitude misinterpretation derived from a mix-up in aircraft track numbers. *Id.* at 351–54

⁴³ Zatarain debunks the official government report theory by referencing statements made by a medical team of psychiatrists and psychologists sent to the USS *Vincennes* by the Chief of Naval Operations after the Flight 655 disaster. The team found the chances of five CIC crew members all having the same incorrect memory of seeing decreasing altitude as highly unlikely. *Id.* at 354. *See also id.* at 328 (referencing Captain Rogers’s later statements that the Fogarty team doctors never interviewed members of the USS *Vincennes* crew before making the combat stress determination); *see also id.* at 355 (debunking Captain Rogers’s dual track theory by pointing to contradictory recorded console data from the USS *Vincennes*).

⁴⁴ *Id.* at 359–62.

⁴⁵ *Id.*

⁴⁶ *See, e.g., id.* at 302–03 (referencing Flight 655 data tracked by both USS *Vincennes* and USS *Sides*).

⁴⁷ *See, e.g., id.* at 365 (referencing video footage of the bridge crew aboard the USS *Vincennes*); *see id.* at 364 (referencing audio recordings from the USS *Samuel Roberts* bridge crew in order to contrast with the discipline levels shown by the USS *Vincennes* bridge crew).

such an accident could occur.⁴⁸ By adequately addressing these factors, Zatarain provides solid support for his theory that a combination of many smaller mistakes, not all of which occurred on the *Vincennes*, led to the disaster.⁴⁹

Final Impressions

Lee Zatarain's *Tanker War* is a valuable addition to its genre for two reasons. First, it is written in a style that should make it interesting to a wide range of readers, to include military and civilian. Second, and most importantly, military professionals reading the book would benefit from its discussions on topics and scenarios valuable to professional insight and reflection. Its discussions of incidents involving rules of engagement and targeting,⁵⁰ political influence on the battlefield,⁵¹ the importance of proper training and discipline,⁵² the danger of underestimating enemy tactics and capabilities,⁵³ and heroism under stress⁵⁴ are just some of the many opportunities a reader of *Tanker War* has to reflect on one's own personal views and understanding of important military principles.

A reader desiring a more comprehensive historical view of the entire Iran and Iraq conflict may consider reading *The Tanker War, 1980–88: Law and Policy* by George K. Walker.⁵⁵ Another potential read for those wanting to know more about the USS *Vincennes* and Flight 655 is *Storm Center: The U.S.S. Vincennes and Iran Air Flight 655: A Personal Account of Tragedy and*

Terrorism.⁵⁶ The book is co-written by the USS *Vincennes* commander at the time of the disaster, U.S. Navy Captain (Retired) Will Rogers.

Conclusion

Lee Zatarain leaves no stone unturned in his analysis of this little-remembered naval conflict between the United States and Iran. From his riveting prose and suspense-building hooks to his powerful blow-by-blow take downs of the conflict's biggest questions, Zatarain delivers a sure winner. Military and civilian readers with any interest in naval or recent military history should most definitely add *Tanker War* to their reading queues.

⁴⁸ See, e.g., *id.* at 366 and 371 (discussing how commander of USS *Vincennes* had organized his combat information crew (CIC) in such a way that communication broke down during the Flight 655 disaster); see *id.* at 325–26 (discussing how Iranian air traffic control centers and Iranian commercial flights would regularly not monitor their civilian distress frequencies nor take them seriously when receiving alerts from U.S. warships).

⁴⁹ *Id.* at 377.

⁵⁰ See, e.g., *id.* at chs. 19–21 (discussing factors and procedures followed leading up to the USS *Vincennes* engagement of Flight 655).

⁵¹ See, e.g., *id.* at 286 (discussing U.S. denial of Iran's Silkworm missile use to prevent conflict escalation).

⁵² See, e.g., *id.* at 203 (discussing how an increase in damage control training after the USS *Stark* disaster aided the USS *Samuel Roberts* crew in saving their ship after hitting a mine).

⁵³ See, e.g., *id.* at 73 (discussing the *Bridgeton* supertanker mine attack and how the U.S. Navy initially had no minesweeping technology in the Persian Gulf).

⁵⁴ See, e.g., *id.* ch. 1 (discussing the heroic efforts of USS *Stark* crew after sustaining significant damage from two air to surface missile strikes).

⁵⁵ GEORGE K. WALKER, *THE TANKER WAR, 1980–1988: LAW AND POLICY* (2000).

⁵⁶ WILL ROGERS ET AL., *STORM CENTER: THE USS VINCENNES AND IRAN AIR FLIGHT 655: A PERSONAL ACCOUNT OF TRAGEDY AND TERRORISM* (1992).

The Fundamentals of Counterterrorism Law¹

Reviewed by Major Christopher M. Hartley*

Introduction

National Security Law can be a difficult topic to grasp, particularly for a law student or entry-level practitioner. The various subsets, such as Counterterrorism Law (CT law), the Law of Armed Conflict, and Cyber-terrorism Law, are equally difficult topics to master. Two primary reasons contribute to this murkiness. First, National Security Law, unlike other familiar core competency topics such as Criminal or Property law, does not involve an extensive and well-developed case law history, nor do our nation's courts often address the issue. Instead, National Security Law is largely based on statute and executive order on the domestic side and on treaty and customary international law for international issues, sprinkled with the few judgments of international tribunals as well as our own federal courts' recent guidance for detainees from the battlefield. The second reason National Security Law is difficult to grasp relates to the first: because so much of National Security Law relates to a particular country's or foreign tribunal's interpretation of international law, much of the resulting law that has been developed in our country is actually driven by policy. Indeed, for National Security practitioners, there is also a significant third rail that bridges law and policy, sometimes referred to as "legal policy."² Since so much of National Security Law resides in the policy and legal policy domains, textbooks and articles purporting to provide the "fundamentals" of National Security Law often jump right into policy discussions and debates without first clearly laying out the statutory, treaty, or international common law underpinnings of the law. These discussions are important, no doubt, as they constitute the very dialogue that shapes National Security Law, but they also often dominate the discussions in National Security Law classes and references at the expense of addressing the fundamentals.

So when a book comes along titled, *The Fundamentals of Counterterrorism Law*, the first question to answer is how the book fares in actually laying out the fundamentals. Does it give a summary of the legal underpinnings of CT Law? If so, does it also successfully weave in the policy debates and perspectives? Would it serve as a good text or hornbook for a student of CT Law? Similarly, would it serve as a good reference for an attorney interested in learning what Counterterrorism Law practice might look like? Would it

answer the mail in providing a beginner the fundamentals he or she needs?

In short, *The Fundamentals of Counterterrorism Law* does a good job when pressed with the questions above. To be fair, the book is a successor to *The Law of Counterterrorism*, of the same editor and publisher, and some of the gaps in the current edition are indeed filled by its predecessor. Twenty-six national security law academics, practitioners, experts and consultants contribute to eighteen chapters, so this review will not summarize or even evaluate every chapter. However, the book's articles can be grouped into several topical themes, and this review attempts to identify which of these groupings were particularly useful and how others may have missed the mark?

The book begins with an illustrative discussion by Lieutenant Colonels (LTCs) Shane R. Reeves³ and Robert E. Barnsby⁴ about the transitive nature of warfare and the necessity for Law of Armed Conflict (LOAC) to stay apace with this evolution.⁵ The book then provides eighteen chapters covering the gamut of CT Law topics, including LOAC, contractors on the battlefield, separation of powers as it pertains to funding detainee operations, and ethics for national security lawyers. Most of the chapters read fairly well and do not lose the reader with intricate legal terms or lofty academic discussions. Some chapters do better than others at actually delivering the fundamentals of CT law.

The FBI and Law Enforcement Chapters

Robert M. Blitzer⁶ provides a strong start to the substantive portion of the book with a succinct summary of laws affecting and empowering Federal Bureau of Investigations (FBI) operations and the transition of these ground rules after 9/11.⁷ The second of three chapters focusing on FBI and law enforcement matters is a short,

¹ THE FUNDAMENTALS OF COUNTERTERRORISM LAW (Lynne Zusman, ABA Section of Administrative and Regulatory Practice, 2014).

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² See e.g. Philip Zelikow, *Legal Policy for a Twilight War*, History News Network (May 31, 2007), <http://hnn.us/article/39494>.

³ LTC Shane Reeves is a judge advocate in the U.S. Army currently assigned as Academy Professor, Department of Law, United States Military Academy, West Point, New York.

⁴ LTC Robert Barnsby is a judge advocate in the U.S. Army, currently assigned as Chief, Administrative & Civil Law, Headquarters, U.S. Army Contracting Command, Redstone Arsenal, Alabama.

⁵ FUNDAMENTALS *supra* note 1, 1-6.

⁶ Robert M. Blitzer was employed from 2006 to 2012 as a vice president and Homeland Security Fellow at ICF International, a professional services company, in Fairfax, Virginia. Prior to joining ICF, Mr. Blitzer served from 2003 to 2006 as the Deputy Assistant Secretary in Charge of the Office of Public Health Emergency Preparedness, at the U.S. Department of Health and Human Services (HHS).

⁷ FUNDAMENTALS *supra* note 1, 7-21.

stump-speech style piece written by Thomas V. Fuentes⁸ that focuses on the FBI's jurisdiction over the murder of U.S. citizens outside the United States, and specifically discusses the killing of four U.S. personnel in Benghazi.⁹ This chapter is useful from a background and processes standpoint, as opposed to 'fundamentals' of CT law. However, the chapter's short length limits its breadth and causes it come across more as a defensive response in the midst of the Benghazi investigation. While a curious student may find this chapter devoid of CT law fundamentals, it does give a valuable snapshot of CT processes in a recent CT case.¹⁰ Finally, Raymond W. Kelly¹¹ rounds out the third law enforcement-related chapter by citing several recent domestic and international terrorism events as examples. A bit more developed than Mr. Fuentes' previous chapter, Mr. Kelly's chapter provides a very helpful backdrop for our current CT challenges and enduring threats.¹² He posits three important points to remember as we develop the legal apparatus to deal with CT: "First, the terrorist threat to the U.S. homeland remains severe, complex, and unrelenting. Second, medium-sized cities such as Boston are now in play for terrorism events. Third, the crude and simplistic attacks Al-Qaeda has been encouraging its followers to carry out are now being realized."¹³ In total, the law enforcement chapters provide good fundamentals, followed by two background and practical application to provide contextual challenges for our law enforcement assets.

The Drone Chapters

Chapter Twelve, "A Game of Drones—Unmanned Aerial Vehicles (UAVs) and Unsettled Legal Questions" by Colonel Martiza S. Ryan¹⁴ is the first of several chapters wrestling with the legal questions about the use of UAVs.¹⁵ The chapter is aptly first in the series as it provides an organized layout of the basic challenges of remote

⁸ Thomas V. Fuentes is president of Fuentes International, L.L.C., a consulting firm based in Washington, D.C. Mr. Fuentes served as assistant director of the Federal Bureau of Investigation's Office of International Operations from 2004 until his retirement in November 2008.

⁹ FUNDAMENTALS *supra* note 1, 23-25.

¹⁰ The author juxtaposed the investigative challenges in the recent Benghazi embassy incident with the investigations that followed the '98 bombings of the U.S. Embassies in Tanzania and Kenya.

¹¹ Raymond W. Kelly is a 43-year veteran of the NYPD, serving in 25 different commands before being named police commissioner in 2002. He served three years in the Marine Corps including a combat tour in Vietnam.

¹² FUNDAMENTALS *supra* note 1, 27-32.

¹³ *Id.* at 29.

¹⁴ COL Martiza S. Ryan is a judge advocate in the U.S. Army, currently assigned as Professor and Head, Department of Law, United State Military Academy, West Point, New York.

¹⁵ FUNDAMENTALS *supra* note 1, 185-211.

targeting—"whether the proper legal framework is that of the law of armed conflict, international law, domestic law, or perhaps some combination of some or all of them?"¹⁶ She follows with a thorough yet easy to follow discussion of some of the thornier sub-issues UAVs bring into play, such as the proper classification of the conflict,¹⁷ the challenges of the "unprivileged belligerent" status,¹⁸ the question of imminent attack vs. anticipatory self defense,¹⁹ and the questions of targeting American citizens abroad.²⁰ Not to be outdone, Colonel Dawn M. K. Zoldi's²¹ "On the Front Lines of the Homefront: The Intersection of Domestic Counterterrorism Operations and Drone Legislation" is also outstanding and provides an exceptionally educational overview of the fundamental laws relating to UAV usage.²² By providing a useful compendium of federal and state UAV legislation, Colonel Zoldi uses a hypothetical scenario closely tied to the facts of the Boston Marathon attack to help walk a student or entry-level CT attorney through how these federal and state laws would apply to the facts.²³ Colonel Zoldi concludes with her policy recommendations that would allow the continued use of UAVs as an effective CT tool while at the same time protecting our citizens' privacy concerns.²⁴

The Terrorist Financing Chapter

Jeff Breinholt's²⁵ "Demystifying Terrorist Financing" is unique in that it deals specifically with the legal tools for and practical effects of limiting or cutting off terrorist funding sources.²⁶ However, it is an excellent, concise overview of the laws, intelligence, and functional impact of exercising such power. In layman's terms, Mr. Breinholt walks the reader through the laws and lists that make it "a crime for anyone to knowingly engage in a financial transaction with people the United States officially designates as

¹⁶ *Id.* at 187.

¹⁷ *Id.* at 192-194.

¹⁸ *Id.*

¹⁹ *Id.* at 194-197.

²⁰ *Id.* at 200.

²¹ COL Dawn M.K. Zoldi is a judge advocate currently assigned as Chief, Operations Law, Headquarter, Air Combat Command (ACC), Joint Base Langley-Eustis, Virginia.

²² *Id.* at 281-342.

²³ *Id.*

²⁴ *Id.* at 305-306.

²⁵ Jeff Breinholt serves as an attorney-advisor in the Department of Justice's Office of Law and Policy, National Security Division. He previously served as the deputy chief of the Counterterrorism Section as a white-collar fraud prosecutor with the Tax Division.

²⁶ FUNDAMENTALS *supra* note 1, 267-280.

obnoxious.”²⁷ He discusses the efficacy of such lists and explains to the reader the dual effect these lists have as both a “prosecutor’s tool” and a “signaling tool.”²⁸ While a relatively short piece, Mr. Breinholt’s terror-financing chapter is, per page, one of the most informative and easy to follow chapters in this book.

The Military Commissions Chapters

While light on fundamentals of CT law, the two chapters discussing Military Commissions provide an important point to counterpoint argument about the efficacy of the Commissions.²⁹ More precisely, the focus is not on the how to prosecute or defend a case in front of the current Military Commissions framework, but whether the Commissions should be used. Relying heavily on a policy argument, Peter R. Masciola,³⁰ Christopher L. Kannady,³¹ and Michael D. Paradis³² contend that the current Military Commissions structure as a prototype national security court is a “bad idea” that has been “overcome by divisive politics”³³ and should be replaced by a national security bar administered by the Administrative Office of the United States Courts.³⁴ The authors use several examples of specialized courts and bars to propose that federal courts are indeed able to handle the complexities of CT litigation, much more so than the nascent, Uniform Code of Military Justice (UCMJ)-based Military Commissions.³⁵

Brigadier General (BG) Mark S. Martins³⁶ and Captain (Capt) (retired) Edward S. White³⁷ counter this criticism by citing the long history of Military Commissions in the

²⁷ *Id.* at 270.

²⁸ *Id.* at 276

²⁹ *Id.* at 49-81.

³⁰ Peter Masciola is the founding partner of MillerMasciola, a Washington, D.C. law firm in civil litigation. Mr. Masciola is a brigadier general and a judge advocate in the Air National Guard Reserve Component.

³¹ Christopher L. Kannady is Of Counsel to the Federal Practice Group in Washington, D.C. He continues to serve as counsel for Noor Muhammad, a Guantanamo Bay detainee. He is a major in the Air National Guard.

³² Michel Paradis is presently an attorney in the U.S. Department of Defense, Office of the Chief Defense Counsel, where he has argued cases on behalf of Guantanamo detainees in the military commissions and the federal courts of appeal.

³³ FUNDAMENTALS *supra* note 1, 49.

³⁴ *Id.* at 63.

³⁵ *Id.* at 49-81.

³⁶ Mark S. Martins is a brigadier general in the United States Army. He is currently assigned as the Chief Prosecutor of Military Commissions.

³⁷ Edward S. White retired as a captain in the United States Navy, most recently serving as Deputy Chief Prosecutor (Motions & Appeals) in the Office of the Chief Prosecutor of Military Commissions.

United States, illustrating the procedural safeguards and transparency of the Military Commissions Act of 2009, and downplaying the logistical costs cited in the previous chapter.³⁸ In short, the authors rebut the previous chapter’s criticism by providing details on how the current Commissions would not be politically divisive—where the previous article seemed to suggest that the Commissions may be irreparably damaged by the mere history of this division—and are fundamentally more fair process apt to handle the challenges of prosecuting these types of cases.³⁹

The two Military Commissions chapters are emblematic of the book’s minor shortcomings for two reasons. First, both chapters provide thorough insight about the issues that make the Military Commissions controversial. A moderately informed citizen, student, or entry-level attorney might simply think, “I heard those Commissions have problems,” or “I understand their use is controversial.” The two chapters do a good job laying out some of the more real, non-hyperbole issues at play. But what is lacking is a brief summary of the recent case law combined with a more basic layout of the Rules of Military Commissions that help constitute the current state of practice before the Commissions. While some of the rules and applicable case precedent are referred to, no concise reference for a student or entry-level practitioner is provided. Case in point: the *Boumediene v. Bush*⁴⁰ case, a seminal decision establishing a habeas right for detainees, is not even mentioned. From this angle, the Military Commissions discussions lack the concise, pedagogical quality of Colonel Zoldi’s or Mr. Breinholt’s chapters. To be fair, the predecessor book “The Law of Counterterrorism” includes chapters by Dick Jackson and Major General Altenberg that better summarize Military Commission particulars and provide an illustrative chart about how they compare with other forums. As a singular resource, however, the two Military Commissions chapters of this book provide the reader with valuable insight but fail to stay true to the book’s “Fundamentals” title.

Conclusion

The *Fundamentals of Counterterrorism Law* is a good read for anyone wanting to generally familiarize himself with CT law basics and also a good resource for those desiring to learn more about a specific aspect of CT Law. While some of the chapters may appear more akin to the newspaper op-ed of the day, these sections are nonetheless valuable illustrations of the challenges and debates framing the development of CT law and are buttressed by the other immensely useful instructive chapters that provide the basic CT law framework and in some cases provide practical applications. While this book certainly stands as a viable

³⁸ FUNDAMENTALS *supra* note 1, 73-81.

³⁹ *Id.*

⁴⁰ *Boumediene v. Bush*, 553 U.S. 723 (2008).

reference on its own merits, newcomers to the field should consider reading its predecessor as well.

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 TJAGLCS CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

b. Active duty servicemembers and civilian employees must obtain reservations through their directorates' training office. U.S. Army Reserve (USAR) and Army National Guard (ARNG) Soldiers must obtain reservations through their unit training offices.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department, at (800) 552-3978, extension 3172.

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

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

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

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

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

2. Continuing Legal Education (CLE)

The armed services' legal schools provide courses that grant continuing legal education credit in most states. Please check the following web addresses for the most recent course offerings and dates:

a. The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS).

Go to: <https://www.jagcnet.army.mil>. Click on the "Legal Center and School" button in the menu across the top. In the ribbon menu that expands, click "course listing" under the "JAG School" column.

b. The Naval Justice School (NJS).

Go to: http://www.jag.navy.mil/njs_curriculum.htm. Click on the link under the "COURSE SCHEDULE" located in the main column.

c. The Air Force Judge Advocate General's School (AFJAGS).

Go to: <http://www.afjag.af.mil/library/index.asp>. Click on the AFJAGS Annual Bulletin link in the middle of the column. That booklet contains the course schedule.

3. Civilian-Sponsored CLE Institutions

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

- AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225
- ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200
- AGACL: Association of Government Attorneys in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552
- ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600
- ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990
- CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973
- CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747
- CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662
- ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900
- FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Phase I (nonresident online): Phase I is limited to USAR and ARNG JAs who have successfully completed the Judge Advocate Officer's Basic Course (JAOBC) and the Judge Advocate Tactical Staff Officer Course (JATSOC). Prior to enrollment in Phase I, students must have obtained at least the rank of CPT and must have completed two years of service since completion of JAOBC, unless, at the time of their accession into the JAGC, they were transferred into the JAGC from prior commissioned service. Other cases are reviewed on a case-by-case basis. Phase I is a prerequisite for Phase II. For further information regarding enrollment in Phase I, please go to JAG University at <https://jagu.army.mil>. At the home page, find JAOAC registration information at the "Enrollment" tab.

c. Phase II (resident): Phase II is offered each December at TJAGLCS. Students must have completed and passed all non-writing Phase I modules by 2359 1 October in order to be eligible to attend Phase II in the same fiscal year as the 1 October deadline. Students must have submitted all Phase I writing exercises for grading by 2359 1 October in order to be eligible to attend Phase II in the same fiscal year as the 1 October deadline.

d. Phase II includes a mandatory Army Physical Fitness Test (APFT) and height and weight screening. Failure to pass the APFT or height and weight may result in the student's disenrollment.

e. If you have additional questions regarding JAOAC, contact LTC Andrew McKee at (434) 971-3357 or andrew.m.mckee2.mil@mail.mil.

5. Mandatory Continuing Legal Education

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

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

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

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

e. Please contact the TJAGLCS CLE Administrator at (434) 971-3307 if you have questions or require additional information.

Current Materials of Interest

1. The USALSA Information Technology Division and JAGCNet

a. The USALSA Information Technology Division operates a knowledge management, and information service, called JAGCNet. Its primary mission is dedicated to servicing the Army legal community, but alternately provides Department of Defense (DoD) access in some cases. Whether you have Army access or DoD-wide access, all users will be able to download TJAGLCS publications available through JAGCNet.

b. You may access the “Public” side of JAGCNet by using the following link: <http://www.jagcnet.army.mil>. Do not attempt to log in. The TJAGSA publications can be found using the following process once you have reached the site:

(1) Click on the “Legal Center and School” link across the top of the page. The page will drop down.

(2) If you want to view the “Army Lawyer” or “Military Law Review,” click on those links as desired.

(3) If you want to view other publications, click on the “Publications” link below the “School” title and click on it. This will bring you to a long list of publications.

(4) There is also a link to the “Law Library” that will provide access to additional resources.

c. If you have access to the “Private” side of JAGCNet, you can get to the TJAGLCS publications by using the following link: <http://www.jagcnet2.army.mil>. Be advised that to access the “Private” side of JAGCNet, you MUST have a JAGCNet Account.

(1) Once logged into JAGCNet, find the “TJAGLCS” link across the top of the page and click on it. The page will drop down.

(2) Find the “Publications” link under the “School” title and click on it.

(3) There are several other resource links there as well. You can find links the “Army Lawyer,” the “Military Law Review,” and the “Law Library.”

d. Access to the “Private” side of JAGCNet is restricted to registered users who have been approved by the Information Technology Division, and fall into one or more of the categories listed below.

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

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

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

(4) FLEP students;

(5) 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.

e. Requests for exceptions to the access policy should be e-mailed to: itdservicedesk@jagc-smtp.army.mil.

f. If you do not have a JAGCNet account, and meet the criteria in subparagraph d. (1) through (5) above, you can request one.

(1) Use the following link: <https://www.jagcnet.army.mil/Register>.

(2) Fill out the form as completely as possible. Omitting information or submitting an incomplete document will delay approval of your request.

(3) Once you have finished, click “Submit.” The JAGCNet Service Desk Team will process your request within 2 business days.

g. Contact information for JAGCNet is 703-693-0000 (DSN: 223) or at itdservicedesk@jagc-smtp.army.mil

2. The Judge Advocate General's Legal Center and School (TJAGLCS)

a. Contact information for TJAGLCS faculty and staff is available through the JAGCNet webpage at <https://www.jagcnet2.army.mil>. Under the “TJAGLCS” tab are areas dedicated to the School and the Center which include department and faculty contact information.

b. TJAGLCS resident short courses utilize JAG University in a “blended” learning model, where face-to-face resident instruction (‘on-ground’) is combined with JAGU courses and resources (‘on-line’), allowing TJAGLCS short course students to utilize and download materials and resources from personal wireless devices during class and after the course. Personnel attending TJAGLCS courses are encouraged to bring a personal wireless device (e.g. laptop or tablet) to connect to our free commercial network to access JAGU course information and materials in real-time. Students must have their AKO username and password to access JAGU unless the wireless device has a Common Access Card (CAC) reader. Additional details on short course operations and JAGU course access are provided in separate correspondence from a Course Manager.

c.. Personnel desiring to call TJAGLCS can dial via DSN 521-3300 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 TJAGLCS Information Technology Division at (434) 971-3264 or DSN 521-3264.

3. Distributed Learning and JAG University (JAGU)

a. *JAGU*: The JAGC’s primary Distributed Learning vehicle is JAG University (JAGU), which hosts the Blackboard online learning management system used by a majority of higher education institutions. Find JAGU at <https://jagu.army.mil>.

b. *Professional Military Education*: JAGU hosts professional military education (PME) courses that serve as prerequisites for mandatory resident courses. Featured PME courses include the Judge Advocate Officer Advanced Course (JAOAC) Phase 1, the Pre-Advanced Leaders Course and Pre-Senior Leaders Course, the Judge Advocate Tactical Staff Officer’s Course (JATSOC) and the Legal Administrator Pre-Appointment Course.

c. *Blended Courses*: TJAGLCS is an industry innovator in the ‘blended’ learning model, where face-to-face resident instruction (‘on-ground’) is combined with JAGU courses and resources (‘on-line’), allowing TJAGLCS short course students to utilize and download materials and resources from personal wireless devices during class and after the course. Personnel attending TJAGLCS courses are encouraged to bring a personal wireless device (e.g. laptop, iPad, tablet) to connect to our free commercial network to access JAGU course information and materials in real-time. Students must have their AKO user name and password to access JAGU unless the wireless device has a Common Access Card (CAC) reader. Additional details on short-course operations and JAGU course access are provided in separate correspondence from a Course Manager.

d. *On-demand self-enrollment courses and training materials*: Self enrollment courses can be found under the ‘Enrollment’ tab at the top of the JAGU home page by selecting course catalog. Popular topics include the Comptrollers Fiscal Law Course, Criminal Law Skills Course, Estate Planning, Law of the Sea, and more. Other training materials include 19 Standard Training Packages for judge advocates training Soldiers, the Commander’s Legal Handbook, and specialty sites such as the SHARP (Sexual Harassment/Assault Response and Prevention) site and the Paralegal Proficiency Training and Resources site.

e. *Streaming media*: Recorded lectures from faculty and visiting guests can be found under the JAGU Resources tab at the top of the JAGU home page. Video topics include Investigations Nuts and Bolts, Advanced Contracting, Professional Responsibility, Chair Lectures and more.

f. *Naval Justice School Online (NJS Online)*: JAGU is also the home of the Naval Justice School Online Legal Education Program. Find it by going to the JAGU home page and selecting the 'NJS Online' tab. NJS Online features 'LAWgos,' which are "shot in the arm" self-paced chunks of targeted learning in various topics. NJS Online also features multi-week courses taught over a number of weeks with facilitated instruction. Most courses are open enrollment for servicemembers across the DOD.

g. *Contact information*: For more information about Distributed Learning/JAGU, contact the JAGU help desk at <https://jagu.army.mil> (go to the help desk tab on the home page), or call (434) 971-3157.

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