



MESSAGE FROM THE PRESIDENT

Dear Fellow JAA Members,

Please enjoy this newsletter and share it with others who are not yet JAA members. The newsletter demonstrates the value of the Judge Advocates Association and its commitment to the advancement of military law. Please also encourage others to join your professional Association.

Our 2011 Awards Dinner will be held at the Army Navy Country Club on the evening of 12 May. This will be a wonderful event, not to be missed, and a great opportunity to see old friends and honor distinguished Judge Advocates. Please make reservations on-line at www.jaa.org.

As always, thank you for your dedication and service.

Marc Warren
Colonel, USA (Ret.)

UPCOMING EVENTS

MAR 31 **2011 Symposium on the Status of the Legal Profession**

March 31st - April 2nd, 2011
Georgetown University Law Center

The symposium is presented by the American Inns of Court and the Georgetown University Law Center with assistance and support from the Honourable Society of the Middle Temple in London.

MAY 12 **2011 JAA/JAF Awards Dinner**

An Annual Awards Dinner honoring the winners of the Chief Justice Marshall Lifetime Achievement Award, the Robinson O. Everett Distinguished Life Service Award, the MG William K. Suter Distinguished Judicial Service Award, and the Outstanding Career Armed Services Attorney Awards for each of the Armed Services.

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NAVY JAG CORPS INITIATIVES AND NATIONAL MOOT COURT COMPETITION

By Captain Mike Jaeger, JAGC, U.S. Navy

a. Navy JAG Corps Initiatives.

The Navy Judge Advocate General's (JAG) Corps' newest initiatives include participation in the Navy's Total Force Domain Virtual Command Pilot Program and the Flex Hour Program. The Virtual Command Pilot Program allows individuals to remain in their current geographic area while performing duties for commands located elsewhere. The Navy Virtual Command Pilot was launched in late 2008 to allow officers and senior enlisted to fill particular career-enhancing billets by teleworking arrangements.

The Flex Hour Program allows personnel to select flexible work hours while maintaining or exceeding current productivity and mission accomplishment. The Navy JAG Corps also participates in the Navy's Career Intermission Pilot Program which is designed for individuals focused on advancing their professional goals and/or personal interests during time away from active duty for a temporary period of up to three years. In addition to these initiatives, the Navy JAG Corps continues its Telecommuting Program, implemented in 2008, which allows personnel to perform officially assigned duties from home or an alternate worksite on a recurring basis.

The JAG Corps continues to assess these and other initiatives designed to strike the appropriate balance between vital personal and professional life goals of individual JAG Corps members, and the needs of the JAG Corps in retaining a highly qualified total force of military and civilian legal professionals.

b. National Moot Court Competition.

The Navy JAG Corps hosted its 2nd annual National Moot Court Competition October 28-30, 2010, on board Naval Air Station Jacksonville, Fla. The competition featured 22 teams representing law schools from across the nation, including Howard University, the Southern University Law Center (Baton Rouge), Texas Southern Thurgood Marshall Law Center, the University of Michigan and the University of Pennsylvania.

The program for this year's competition featured novel and complex constitutional issues presented by search and seizure and electronic satellite technology surveillance, involving distribution of weapons to organized criminal organizations. The participants argued before a distinguished panel of judges, including Chief Judges of the U.S. Court of Appeals for the Armed Forces (CAAF), Andrew S. Effron (presiding), Walter T. Cox III (Retired), and H.F. Gierke (Retired). Other honorable jurists included current CAAF Judge, Scott W. Stucky, as well as the Chief Judge of the Department of the Navy, Captain Daniel O'Toole, JAGC, USN, and the Chief Judge of the Navy-Marine Court of Criminal Appeals (NMCCA), Captain Christian Reismeier, JAGC, USN. The team from the University of Michigan took top honors from among a highly competitive field of artful and impressive advocates. More information about this year's competition and winners can be found at: <http://www.jag.navy.mil/NationalMootCourtCompetition.htm>.

ARMY JAGC UPDATE FOR JAA NEWSLETTER WINTER 2011

The Military Justice system remains the U.S. Army's bedrock. As such, the Army Judge Advocate General's Corps (JAG Corps) continues to develop and refine programs that focus practitioners and leaders of all ranks and branches on military justice. A short update to three of these programs follows.

Military Justice Online (MJO):

Fielded in 2009, MJO is a comprehensive, cradle to grave web-based case management system for military justice practitioners that standardizes military justice document creation and data reporting Army-wide, which in turn enables the retrieval of information (data-mining) that will help The Judge Advocate General (TJAG) identify and analyze trends in military justice.

In that MJO remains a work in progress, the court-martial module is scheduled to be finished this fiscal year (2011). MJO is intended for use by all of those in the military justice technical chain, from the Staff Judge Advocate to the paralegal specialists working in the military justice shop at Brigade.

Military Justice Report (formerly known as the JAG2):

This report will be integrated into MJO and enable military justice practitioners to easily produce reports of indiscipline and perform related trend analysis, from the local level all the way up to Headquarters, Department of the Army. This report will also provide quick and accurate answers to the numerous calls for military justice related data that originate

from many sources, such as the U.S. Congress, the Office of the Secretary of Defense, and Headquarters, Department of the Army.

Skill Identifiers (SI).

Skill Identifiers identify Soldiers who possess skills, training, and/or qualifications in addition to their Military Occupation Specialty (MOS). In 2008, in order to emphasize the importance of Military Justice to our Army and JAG Corps, and to motivate Judge Advocates to seek and become expert in Military Justice positions, TJAG established four SIs for Military Justice: Basic Military Justice Practitioner (SI: 3I), Senior Military Justice Practitioner (SI: 3M), Expert Military Justice Practitioner (SI: 3P), and Master Military Justice Practitioner (SI: 3T). So, a Judge Advocate who is also an Expert Military Justice Practitioner would be identified with the MOS 27A and SI 3P.

The SI program continues to incentivize new and career Judge Advocates to gain expertise in Military Justice, with added benefits to our assignment process -- it is now much easier to identify future Chiefs of Justice or Senior Defense Counsel, and Judge Advocates with special skills and training can be more easily found when the need arises in high profile or unique cases or specialized assignments calling for particular expertise. The SI program also allows TJAG to know, with a few strokes on the keyboard, who is prosecuting and defending courts-martial world-wide, and who is seeking and receiving specialized training in Military Justice. This enhanced visibility provides TJAG with a sharper tool with which to resource and manage the Regiment's training programs and assignment process.

More Military Justice initiatives are on the horizon, from standardized courtrooms, to best practices, to revisions to the Manual for Courts-Martial (MCM) and the Uniform Code of Military Justice (UCMJ). So, stay tuned to this station.

WHY MILITARY JUSTICE MATTERS

By Colonel Kenneth M. Theurer and Mr. James W. Russell, III

A few weeks ago, we had the opportunity to respond to questions from the Government Accounting Office regarding our military justice system. One question was “why don’t you just refer your cases to civilian jurisdictions?” It is a valid question, but unfortunately it shows that for many people, the importance of the Uniform Code of Military Justice (UCMJ) as a tool for commanders to maintain good order and discipline is not readily apparent.

The importance of good order and discipline certainly was not lost on General George Washington. In 1775, General Washington took command of an army composed of “a mixed multitude of people ... under very little discipline, order or government.” As General Washington understood, an undisciplined military unit is undistinguishable from an armed mob. From the start, General Washington set about inculcating a discipline and used courts-martial to achieve this result. He famously remarked, “Discipline is the soul of an army. It makes small numbers formidable; procures success to the weak and esteem to all.”

While circumstance, the nature of combat, and the country have changed since General Washington’s time, discipline is still critical to mission accomplishment, and the Air Force is not exempt. While the Articles of War are now historic, the law provides commanders with a modern tool—the UCMJ—to enforce discipline. The UCMJ is a valuable aid for commanders if used properly. To be an effective disciplinary tool, punishment administered

under the UCMJ needs to be fair and timely. The inability to administer punishment that is both swift and just deprives commanders of a means vital to maintaining an effective, well-disciplined force.

Discipline

The need for discipline in the armed forces has no parallel in the civilian world. The differences between the military and civilian communities result from the fact that ‘it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise....An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier.’

The military takes thousands of young men and women from throughout society, trains and then arms them with the most lethal weapons man has developed. These same young Soldiers, Sailors, Airmen, And Marines are then asked to apply lethal force in a prescribed manner—but, at the same time, they are directed to refrain from using force in other circumstances. At all times, they must use the utmost care to prevent collateral damage and maintain public trust. Mission accomplishment and retaining public confidence requires well-disciplined units and self-disciplined individuals.

It is no accident that the preamble to the Manual for Courts-Martial stresses the importance of military justice:

The purpose of military law is to promote justice, to assist in maintaining good order and

WHY MILITARY JUSTICE MATTERS (CONTINUED)

discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

Combat forces are required to overcome both any natural reluctance to use lethal force and to place themselves in harm's way. Discipline is the impetus that ensures our forces engage the enemy. For commanders of ground forces in the Army and Marine Corps, the need for well-disciplined forces is evident. Without a considerable amount of discipline, a soldier or marine unit is unlikely to willingly place themselves at risk and to engage the enemy.

History is replete with examples of undisciplined forces fleeing contact with the enemy. Studies have also shown the reluctance of soldiers to actually engage the enemy once in contact. A recent visit to Gettysburg National Military Park brought home the challenges both Union and Confederate officers faced in leading units in battle directly in the face of withering cannon and small arms fire. The Union Army alone suffered more than 23,000 casualties—including 3,155 killed in the three-day battle. Likewise, the D-day invasion at Normandy during World War II required well-disciplined units to overcome their collective fear and storm the beaches.

If not for disciplined members, our Air Force would never have developed into the modern, effective fighting force it is today. Aviation, even in peacetime, is inherently dangerous. Throughout World War II, the Army Air Corps aircrews assigned to the European and

Mediterranean Theater of Operations suffered almost 30,000 killed. These pilots and aircrews overcame incredible self-risk in order to engage the enemy. Aerial combat remained perilous during the Vietnam Conflict, and continued to involve a considerable amount of self-risk in order to inflict damage on the enemy.

The necessity of discipline as a means of overcoming self-risk may be less of a factor today than it was even 30 or 40 years ago. Beginning with the first Persian Gulf War in 1990, our Air Force has gained such a tremendous advantage in training and equipment that our aircrews have been able to engage the enemy with relatively low self-risk (if not with impunity). While combat aviation always involves risk, stand-off weapons and air superiority have greatly increased the odds that an American aviator will survive an encounter with the enemy. Today, with the advent of UAVs, our aircrews can now reach out, destroy the enemy, and still be home for dinner. In many ways, for the UAV operator, war might resemble a video game—one in which the UAV operator suffers no personal risk and the enemy is a faceless target.

While the necessity to overcome self-risk once formed the basis for military discipline, the dwindling self-risk experienced by most airmen today actually makes it more important to have a well-disciplined force. As important as discipline is to compel armed forces to engage and destroy the enemy, it is equally important in order to control the use of lethal force. Once again, history provides many examples of war crimes and atrocities perpetrated by armed forces against defenseless civilians. The Nanking Massacre, wherein soldiers of the Imperial Japanese Army tortured, raped, and killed thousands of innocent civilians, illustrates the devastation caused by the lack of discipline on a large scale. Mistreatment

WHY MILITARY JUSTICE MATTERS (CONTINUED)

of prisoners by US forces at Abu Ghraib reminds us that consequences of a breakdown in discipline on even a small scale can have serious consequences.

Discipline also requires conscientious adherence to checklists, rules of engagement, and regulations. For the Air Force, the lethality of our weapons and the potential for collateral damage demand well-disciplined units and individuals. Failure to maintain discipline can have potentially devastating consequences. In 2002, an F-16 pilot disregarded rules of engagement by dropping a GBU-12, 500 lb laser guided bomb on a target and accidentally killing four Canadian soldiers and injuring eight others. In 2007, aircrew and weapons transport crews at Minot AFB, North Dakota failed to conduct proper inspections resulting in a B-52 taking off and flying to Barksdale AFB loaded with AGM-129 nuclear cruise missiles. While this particular incident did not result in death or injury, the lack of discipline exhibited by these individuals seriously compromised the public trust in the Air Force.

Commanders are charged with maintaining good order and discipline. While leadership and training are key to creating a disciplined force, breaches of discipline require consequences. The law vests commanders with the UCMJ as their primary tool for administering legal consequences for breaches of discipline.

Accountability and Timeliness

While discipline and punishment are not synonymous, punishment is a necessary component to ensure accountability. The ability to demand accountability and to administer

consequences is key to creating good order and discipline within Air Force units. In the simplest sense, punishment is necessary to correct or modify the “undesirable behavior” of a person.

From an organizational perspective, however, punishment is important because it conveys “important information about standards of behavior, outcomes of misconduct, and workplace justice.” In this context, punishment serves a number of important purposes, including “reinforcing behavioral standards, making an example of the violator, and maintaining the perception that the organization is a just place where people get what they deserve.” Given the potential consequences of “undesirable behavior” within a military unit, commanders need the ability to effectively administer punishment.

To be an effective tool for maintaining good order and discipline, punishment needs to be fair and timely. Common sense tells us that punishment needs to be fair to be effective. Why? If people react purely in their own self-interest, punishment—no matter how severe—would seem to be effective. However, studies have shown that when people perceive a punishment to be unfair, the imposition of that punishment often backfires. When people believe that sanctions are unfair, there is a measured decrease in their willingness to cooperate. Timeliness is likewise important both because it is a component of fairness, and because the effects of punishment become discounted over time. One is less deterred by the possibility of being punished at some time in the distant future than the probability of being called immediately to account. Likewise, delayed justice is unfair to the victims and the innocent.

WHY MILITARY JUSTICE MATTERS (CONTINUED)

The UCMJ provides a framework that allows for the imposition of punishment that is both fair and timely. Numerous scholars have favorably described the UCMJ in terms of fairness and due process as compared to the civilian criminal justice system. The late Senator Ted Kennedy called the UCMJ the gold standard of military justice. The UCMJ contains numerous provisions, including nonjudicial punishment and summary courts-martial, that envision imposition of punishment very shortly after the offense. The rules themselves suggest that even more serious proceedings under special and general courts-martial should be relatively expeditious. The rules require only three days between referral of charges to a special court-martial and commencement of trial; five days in the case of a general court-martial.

In today's Air Force, the average general court-martial takes more than 70 days from referral to trial and this is only after a lengthy investigation and pre-referral process. It is not unusual for far more than a year to elapse from the date Air Force officials discover an offense to resolution of the criminal allegation in a trial by courts-martial. Even minor offenses handled through nonjudicial punishment suffer inordinate delays. Today, on average, nonjudicial punishment is offered more than 40 days after the date an offense is discovered. The Air Force is failing to leverage the tools available under the UCMJ to impose punishment that is both fair and timely. This failure reduces the effectiveness of the UCMJ as a means to ensure good order and discipline.

A recent news article described the frustration of commanders in one of our sister services with the military justice system. As an alternative to a system they described as slow and resource-intensive, these commanders advocate using administrative procedures to “fire” military offenders and then rely on the civilian criminal justice system to administer whatever criminal consequences the civilians thought appropriate.

While understandable, this is unacceptable. A commander's threat to “fire” a military member needing discipline—the reluctant deployer, the guard who abuses detainees, the pilot whose recklessness results in civilian casualties—rings hollow. In fact, it arguably destroys good order and discipline; does a no-cost, relatively pain-free ticket out of the Air Force have any deterrent value or serve to encourage the ‘right stuff’? The UCMJ provides the mechanism to assure just consequences and a disciplined force—and as judge advocates, our mission is to ensure the UCMJ works for our commanders.

As judge advocates, we are responsible for providing advice on disciplinary issues and administering justice under the UCMJ. Military justice is our core competency. When we fail to provide a process that is fair, timely, and accurate, we fail in a central mission. Our system must be responsive to commanders, fair to the accused, transparent to the public, and administered by competent, confident military justice professionals JAG Corps-wide. That is why military justice is not an additional duty—it is “a brick and mortar skill-set” and for base legal offices it needs to be “Job One.”

THE AIR FORCE LEGAL ASSISTANCE WEBSITE—TRIED, TESTED, AND A PROVEN SUCCESS

Providing the highest quality legal assistance to Airmen and their families is a priority in the Air Force Judge Advocate General's Corps. In today's demanding environment, Airmen must be assisted rapidly and in a format designed for 21st Century requirements and lifestyles. They must receive comprehensive legal advice and we must have in place a mechanism for feedback on the legal assistance program to ensure we meet the highest standards of professionalism. That road to accomplishing that goal was paved in February 2010, when the Air Force launched the Air Force Legal Assistance website: <https://aflegalassistance.law.af.mil>.

To accomplish the goal the website features links to:

Legal topics. From disaster assistance, to estate planning, to consumer/financial affairs, this link provides short papers on common legal-assistance topics.

Legal worksheets. The core efficiency provided by the website is the ability for clients to fill out worksheets for wills, living wills and a wide variety of powers of attorney on the website. Clients no longer need to run the risk that they will visit a legal office and be unprepared to finalize a will because they left important documents at home or they forgot to discuss an issue with their dependents. The information entered is secured and a

unique ticket number is issued to the client once the worksheet(s) are completed. Clients obtain the final legal document by visiting the legal office, where the unique ticket number allows legal officer personnel to pull the worksheet from the website and finalize the legal document.

Online survey: Following a visit to the legal office, clients are encouraged to provide feedback concerning the professionalism and helpfulness of our legal professionals.

Legal office locator. This is a link to the Armed Forces Legal Assistance website where clients can locate the nearest legal office where services are available and contact information.

Convenient as it is, the website is not a replacement for legal consultation with your local legal office's legal assistance professionals. Information on the website is for educational and informational purposes only.

The website has already made a tremendous impact on the Air Force legal assistance program. By year's end, the website had been visited over 116,000 times and use of the website expanded very rapidly in the last eight months. In December alone, Air Force legal offices processed 5316 worksheet tickets. In addition, clients submitted 1504 surveys in December. Compared to May, that's a 370% increase in usage, and a 1470% increase in feedback.

As a bonus, the feedback has been overwhelmingly positive.



JUDGE ADVOCATES
ASSOCIATION



2011

JAA/JAF AWARDS DINNER

May 12th, 2011 6:45-9:00pm - Army Navy Country Club

FOR DETAILS AND TO SIGN UP, VISIT JAA.ORG
