

USAWC STRATEGY RESEARCH PROJECT

TRANSFORMING THE RESERVE COMPONENT JAG CORPS FOR THE 21ST CENTURY

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The views expressed in this academic research paper are those of the author and do not necessarily reflect the official policy or position of the U.S. Government, the Department of Defense, or any of its agencies.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

REPORT DOCUMENTATION PAGE

Form Approved OMB No.
0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.

1. REPORT DATE (DD-MM-YYYY) 07-04-2003	2. REPORT TYPE	3. DATES COVERED (FROM - TO) xx-xx-2002 to xx-xx-2003
---	----------------	--

4. TITLE AND SUBTITLE Transforming the Reserve Component JAG Corps for the 21st Century Unclassified	5a. CONTRACT NUMBER
	5b. GRANT NUMBER
	5c. PROGRAM ELEMENT NUMBER

6. AUTHOR(S) Khalil, Gary A. ; Author	5d. PROJECT NUMBER
	5e. TASK NUMBER
	5f. WORK UNIT NUMBER

7. PERFORMING ORGANIZATION NAME AND ADDRESS U.S. Army War College Carlisle Barracks Carlisle, PA17013-5050	8. PERFORMING ORGANIZATION REPORT NUMBER
---	--

9. SPONSORING/MONITORING AGENCY NAME AND ADDRESS ,	10. SPONSOR/MONITOR'S ACRONYM(S)
	11. SPONSOR/MONITOR'S REPORT NUMBER(S)

12. DISTRIBUTION/AVAILABILITY STATEMENT APUBLIC RELEASE
--

13. SUPPLEMENTARY NOTES

14. ABSTRACT See attached file.

15. SUBJECT TERMS

16. SECURITY CLASSIFICATION OF:	17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 100	19. NAME OF RESPONSIBLE PERSON Rife, Dave RifeD@awc.carlisle.army.mil
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a. REPORT Unclassified	b. ABSTRACT Unclassified	c. THIS PAGE Unclassified	19b. TELEPHONE NUMBER International Area Code Area Code Telephone Number - DSN -
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ABSTRACT

AUTHOR: LTC Gary A. Khalil
TITLE: Transforming the Reserve Component Jag Corps for the 21st Century
FORMAT: Strategy Research Project
DATE: 07 April 2003 PAGES: 102 CLASSIFICATION: Unclassified

Given the increased operations tempo, mobilizations, and deployments for Reserve Component (RC) judge advocates, the current training and educational models for such officers are insufficient to ensure seamless legal support to commanders at all levels. Additionally, given the trifurcated management of judge advocates among the three components' (Active, Army Reserve, and Army National Guard) judge advocate force structure, the administrative means do not exist to train judge advocate officers to provide The Army and its field commanders with consistent legal support at every level of command. Further, the education, training, and professional development model currently utilized within the Judge Advocate General's Corps (JAGC) RC do not adequately meet a transformed Army's needs for timely and accurate legal support. These shortcomings will prevent The Judge Advocate General's Corps from emulating The Army in its transformation from three separate components to The Army as required by the guidance and direction of The Army Chief of Staff.

This paper proceeds from the assumption that since 1991 and Operation DESERT STORM, and particularly since 1999, the frequency of mobilizations and deployments of RC judge advocates has significantly risen in at least direct proportion to the mobilizations and deployments of all branches of RC soldiers during that same period. In light of that increased reliance by The Army and the Nation on its RC judge advocates to provide legal support to all aspects of Army operations, the existing training model for those RC judge advocates preparing them for deployment are plainly inadequate in their current iterations. This includes in particular the RC judge advocate Basic and Advanced courses, as well as CAS3 and C&GSC. Further, the AC JAGC has delegated doctrinal and officer management for the JAGC RC to its respective Reserve and National Guard component offices. While this clearly was satisfactory under the Cold War model of limited reliance upon the RC, given the increased reliance by The Army and the JAGC in particular on its RC arms, such delegation is plainly no longer justified.

Transforming the RC JAGC will require a total integration of doctrine, training, and management among the Corps' three component parts. This will require in turn a significant upgrading in training and standards for the two branches of the RC JAGC. How that may be accomplished, and a discussion of the various requirements for RC judge advocate preparation, will comprise the final portion of this paper.

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PREFACE

Acknowledgement for completing this paper must be given to several key individuals, each of whom selflessly offered whatever support I sought, and volunteered significantly more than I ever hoped for. First among these must be my cat Lyle, who provided significant moral support during the process of writing this Project. Additionally LTC Stuart Risch, Deputy Chief of the Center for Law and Military Operations (CLAMO), The Judge Advocate General's School (TJAGSA), Charlottesville, Virginia, along with MAJ Cody Weston (USMC) and MAJ Mike Kramer, also of CLAMO, provided important data regarding deployment of judge advocates, their components, and the various mission they performed. COL Pat O'Hare of TJAGSA's Combat Development Department, provided important information regarding the JAGC's efforts regarding transformation, along with critical information regarding the Objective Force. Finally, acknowledgement must be given to COL Mark Cremin, Deputy Chief of the Personnel, Plans, & Training Office, Office of The Judge Advocate General, Headquarters, Department of the Army, for his selfless support to ensure that the author received unlimited support from the myriad sources available in the Office of The Judge Advocate General.

TRANSFORMING THE RESERVE COMPONENT JAG CORPS FOR THE 21ST CENTURY

“That government is a murderer of its citizens which sends them to the field uninformed and untaught.”

—General Harry “Light Horse” Lee¹

Alexander Hamilton stated that “War, like most things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.”² It is that question, of how best to acquire and master the science and art of military operations, the ways and means America will conduct those operations in the coming century, and, specifically, how the Reserve Component³ (hereinafter RC) Judge Advocate General's Corps⁴ (hereinafter JAGC) will contribute to such operations, that is the focus of this paper. The environment in which that question is raised includes the overall struggle to transform the entire defense community, The Army in general, and the JAGC and its reserve component (including the United States Army Reserve and the Army National Guard) in particular. The effort is in part intended to transform The Army and its RC from a “legacy force” designed for the Cold War, rarely mobilized⁵ much less deployed, to an “objective force” capable of being called upon often by the nation, fit to fight and win the Nation's wars and serve in the military missions into the 21st Century.

The issue of acquiring and mastering the science of war and conflict, applied to Army judge advocates, involves a baseline inquiry of how The Army currently prepares its officers, including judge advocates. This is true specifically regarding RC JAGC officers, and the means by which they are prepared for performance in the field in support of the full spectrum of Army missions. This will involve a comparison of the system of training, education, and preparation of AC officers, and specifically AC judge advocates, as it compares with the education and training received by typical RC judge advocates. From this initial inquiry arise myriad related issues: how can the JAGC better structure itself to ensure that mobilization and deployment of RC judge advocates is as seamless as possible, to guarantee rapid integration with their active duty JAGC counterparts, or to support their commanders in the field? If there is substantial difference in how The Army prepares its RC judge advocates, then transformation as it applies to RC judge advocates, at the outset, must mean at a minimum that it be made substantially similar to the education, training, and preparation received by AC judge advocates. Only in this way will commanders be able to expect that the legal advice they receive in the field in support of Army missions is of a uniformly high standard.

The current state of RC judge advocate and JAGC soldier training differs in many particulars from that of their active component (hereinafter AC) counterparts. Where these

differences lie represents the heart of the need for transformation of the RC JAGC, and in many ways the heart of this paper. Additional issues arising from this comparison of components include:

- What steps can the JAGC take now to ensure that its officers of any component (AC or RC, including both the USAR and the ARNG) are best prepared to serve in deployed Army missions supporting commanders and soldiers?
- What measures must the JAGC take specifically regarding RC judge advocates to ensure a uniform standard of performance regardless of a judge advocate's component?
- How can the JAGC combine available information on training doctrine, mobilization, and preparation for deployment into a systematic training methodology to prepare its RC JAGC officers for the full spectrum of military operations⁶ in the 21st Century?
- What can RC judge advocates do to better prepare themselves for mobilization, and subsequent deployment, for Army missions?

The answers to these questions must be considered in the context of the overall transformation effort within The Army and the mission environment in which judge advocates of any component will be expected to perform in the future.

Starting with a detailed consideration of the Defense community's, and then specifically The Army's current effort to transform from a heavy, mechanized Cold War force to a force relevant to meet the threats and challenges of the 21st Century, this paper will consider why this concept has been developed in light of the successes of the Cold War and DESERT SHIELD / DESERT STORM. From that starting point, it will proceed to an explanation of the fundamental theory, doctrine, and tenets for both Joint and Army transformation, and how these apply to the JAGC.

From the review of the two reserve components and their recent experiences with mobilization and deployments, this paper will turn to develop an understanding of the current doctrine and training structure for AC judge advocates. How that doctrine and training structure applies to RC judge advocates, and an analysis of whether that doctrine and training structure should be revised will flow from that understanding. While this paper is not intended to focus on issues of substantive law and the technical information a RC judge advocate should know of such law prior to mobilization and deployment, it is inevitable that such substantive legal information is entwined with the preparation of such officers for their missions in support of military operations and commanders in the field. Particularly in complex yet deployment-related

subject areas as Federal and Defense procurement law and fiscal law, which might operate to place constraints upon a commander in the field, such information will be included to provide background knowledge and to illustrate the preparation needed by RC judge advocates prior to their mobilization and deployment.

Based upon that review of training doctrine for judge advocates of all components, the paper will then move to a review of the role of the RC in light of the basic legal and regulatory foundations of and for the Army National Guard (ARNG) and United States Army Reserve (USAR). In this context, it will consider the effects of the Nation's statutory and regulatory legal structure on Army and JAGC personnel and planning policies during a period of transformation; these laws and regulations serve to provide a foundation for the training and preparation for mobilization and deployment of RC judge advocates as well all other RC soldiers. Following that consideration of legal foundations and authorizations for the RC in general and the RC JAGC in particular, this paper will move to consider trends in employment of the RC JAGC to support Army missions worldwide. Flowing from that review, an analysis of such trends, and the causes of and recent experiences from increases in mobilizations and deployments of RC judge advocates, will follow. The increase in the volume of deployment missions Army-wide, and the resulting increase in the demands for judge advocate services, exceeds the capacity and capability of the AC JAGC to support on a continuing basis, and is clearly driving the increased reliance on RC judge advocates. Whether these judge advocates are adequately prepared by the JAGC to serve in such missions will be considered in this review and analysis as well.

As RC JAGC mobilizations and deployments in support of Army missions increase, and as The Army accelerates its transformation, it would be an understatement to say that the concept of transformation looms large in the minds of planners Army-wide. It is submitted that JAGC planners both in the AC and RC must understand and embrace these concepts, and seek to aggressively apply them to their branch and components to ensure that the JAGC remains relevant to The Army of the 21st Century. It should go without saying (though recent experience suggests that this should be said, loudly and often) that arrival at a mobilization site is too late a time to receive education and training regarding a basic legal knowledge of military operations, and the many federal laws that constrain commanders in executing duties and missions. As noted in the quote at the beginning of this paper, to so mobilize and send RC judge advocates to the field is to send them ill-prepared; to do so is to set those officers up for failure, or worse, disaster.⁷

With the above caveat in mind, however, it is important to note that it is not so much what we are teaching and training RC judge advocates in terms of substantive law, but rather *how* we

are teaching and training them that matters in the long run. Individual laws, regulations, and doctrine can and will change; but the methodology of preparing individuals for their service to the nation should be the product of considered reflection and planning, rather than a knee-jerk reliance on past practices. With that in mind, a consideration will be undertaken in the final portion of this paper of where the JAGC can (and should) go from where it stands today. In this regard, while it is understood that resources in today's competitive defense environment are scarce, it will be submitted that the current structure of RC JAGC training and education is being conducted today on a shoestring budget. If the JAGC expects a ready and capable RC, it is submitted that a consideration of how best to make future investments to achieve that goal must be undertaken now.

THE DOCTRINE OF TRANSFORMATION

"Transformation is the military buzz-word for a change from heavy, slow-moving forces to lighter, more agile units, employing the latest information technology to wage computerized warfare. It is also known as RMA (revolution in military affairs)."⁸ The entire process of transformation is to move the Nation's military from a "legacy force," that is, a force structure that served the nation through the end of the Cold War, and move toward an "objective force," a force structure that Defense planners believe the Nation will require for 2015 and beyond. In this way, the Defense community is seeking to anticipate the Nation's defense and security needs for the future, rather than reacting to change after the fact, as the United States has been forced to do at many points in the Nation's history.

It would be fair to ask why this effort is taking place, when the United States currently fields the most technically advanced military forces in the world, where the performance gap between the U.S. military and those of its closest peers and competitors is widening at an alarming rate, and where there does not appear to be any genuine conventional military threat facing the nation anywhere on the horizon. The performance of American military power in Operations DESERT SHIELD / DESERT STORM appeared to illustrate that at a time when European, ex-Soviet, and Chinese militaries are struggling to modernize, the United States fields a military force second to none. That conventional military advantage, however, belies threats to the Nation that our military, and in particular our Army, are ill prepared to face.

Change is coming, it is coming faster than nearly everyone expects, and nothing can be done to stop it. The only sensible response is to enthusiastically embrace change and use it to our advantage to improve overall organizational effectiveness better and faster than the competition.⁹

The difficulties in facing an irregular threat in Somalia in 1993, The Army's seeming inability to provide a significant rapid Army response to the unraveling of Serbia's control over Kosovo in 1999, and the controversy surrounding the methods The Army employed in facing the sudden requirement to confront the Taliban-led regime in Afghanistan and the terrorist organizations it supported following the terror attacks against the United States on 11 September 2001, all indicated that the Cold War military that so excelled in Southwest Asia in 1991 was ill-suited to respond to threats of the 1990s and beyond. Indeed, it may have been overwhelming success by U.S. forces in the deserts of Saudi Arabia, Kuwait, and Iraq that convinced our nation's adversaries that if they hoped to oppose America's policies and goals, it had to be by some means other than conventional military force.

In that light, The Army sought to initiate a process whereby it considered the challenges our military and our nation would face in the coming years, and to reflect now, while there was an opportunity to do so, how best to prepare for the challenges of the future.

Our Nation is at peace. Our economy is prosperous. We have strategic perspective and technological potential. This window of historic opportunity will grow narrower with each passing day. We can transform today in a time of peace and prosperity. Or we can try to change tomorrow on the eve of the next war, when the window has closed, our perspective has narrowed, and our potential is limited by the press of time and the constraints of resources.¹⁰

As retired Vice Admiral Arthur K. Cebrowski, Director of the Department of Defense's Office of Force Transformation noted, "Transformation is foremost a continuing process. It does not have an end point."¹¹ It is the process of considering in a meta-cognitive manner what we will need to think about in the future to ensure that The Army can respond quickly and effectively to the threats to our nation, its security, and its interests and goals for the foreseeable future.

In 2015, the Objective Force is the Nation's offensively oriented, JIM (joint, interagency, multinational), interdependent, combined arms precision maneuver force that employs revolutionary multi-dimensional operational concepts enabled by technology. The Objective Force brings a campaign quality to the Joint fight, ensuring long term dominance over evolving, sophisticated threats with asymmetric capabilities on a non-contiguous battlefield against an adaptive adversary.¹²

At the Joint level, this effort has already resulted in shifting responsibilities. Previously, the Joint Requirements Oversight Council (JROC), staffed by the respective Service Vice Chiefs of Staff, chaired by the Vice Chairman of the Joint Chiefs of Staff, focused primarily on procurement

decisions for the joint force. Now, “(t)he role of the JROC has evolved from a strictly materiel focus to a strategic integration role in the co-evolution of joint doctrine, organization, training, materiel, leadership and education, personnel, and facilities.”¹³

What follows is a review of the Joint and Army doctrines regarding transformation. This review is critical for leaders of the JAGC active and reserve components, so that they may best understand the mission they face, the environment in which they face this task, and so they may fully buy into the concepts underlying transformation. From that point, they will best be able to understand the resources they have available to satisfy the requirement for timely and accurate legal support to commanders and units in the transformed missions environment at the tactical, operational, and strategic levels of military operations.

JOINT TRANSFORMATION DOCTRINE

Former President William J. Clinton, in publishing his administration’s final National Security Strategy in December 2000, identified the need to transform the nation’s military from the force designed to address Cold War needs to one capable of meeting “the challenges of the future and [to] ensure that the nation can secure its vital, important, humanitarian, and other interests.”¹⁴ In his annual report to Congress, Secretary of Defense Donald H. Rumsfeld has identified six goals for the military under the transformation current effort. These include:

1. Protect the U.S. homeland and defeat weapons of mass destruction and their means of delivery
2. Project and sustain power in distant anti-access and area-denial environments;
3. Deny enemy sanctuary by developing capabilities for persistent surveillance, tracking, and rapid engagement;
4. Leverage information technologies and innovative network-centric concepts to link joint forces;
5. Protect information systems from attack; and,
6. Maintain unhindered access to space and protect U.S. space capabilities from enemy attack.¹⁵

The timing of implementation of these changes is critical; while the Nation enjoys relative peace, putting a new type of military force into place will allow the Nation’s military to effect and adapt to the changing operational conditions and requirements.

This is a historic opportunity. Most armies change when wartime defeat forces them to do so. Today, we seek to change in a time of peace, prosperity, perspective, and potential. But we have a narrow window, and these conditions will not last for very long. While they do, The Army, is embarking on its most significant effort to transform since World War I . . . The Army has moved out. We will repay America's investment in us with quality people, war-fighting readiness, and in time, with a land force transformed to meet the threats all across the spectrum of operations . . . We cannot afford to miss this opportunity.¹⁶

"Time delay is one of the very important problems here. We want the U.S. soldier to have the benefit of having the enemy dead as soon as possible so time to decide becomes very, very important. The more vertical a communications structure has to be, the more time delays there are."¹⁷

Current Defense doctrine recognizes that transformation of the entire American defense community cannot and will not occur overnight; indeed, as noted below, it is an on-going process, one of continuing re-assessment, changing as the requirements for military action change. To that end, current Defense doctrine calls for a three-phased approach to transformation. The first phase involves maintenance and upgrade of existing technologies, doctrine, and force structures. The United States, as already noted, currently enjoys a military superiority and global reach unprecedented in history; that superiority is based on current technologies and doctrine. Recapitalization of the existing military base, or "legacy force" (discussed in Army contexts below) is required to maintain current advantages, while allowing time for investigating and researching new approaches to applying the military force of the Nation.

As you change on the fitness landscape other people respond. This calls for a three-part strategy. First is to advance what it is you are currently doing and becoming much more efficient at it, modernizing those capabilities and recapitalizing as appropriate to ensure your competitive advantage. This is indeed what the Department of Defense is doing. This does not compete at all with transformation.¹⁸

From the continued development of legacy capabilities, the Defense Department is seeking to identify the direction it desires to move, concepts it believes will be applicable to that movement, and application of technologies and doctrine that will represent an improvement in the Department's and the services' ways and means of applying the military component of national power to further the goals and interests of the United States.

Part Two is since you don't have a real insight into the entire fitness landscape, you jump to another peak that is higher than your current position. This pushes out the boundaries of [Defense] capabilities. . . . One of the great examples is the Navy going to unmanned underwater vehicles to do shallow water [anti-submarine warfare] and mine clearing. Something that is in the Navy's core competency but was very hard to do with prudent risk.¹⁹

The final phase of defense transformation involves genuine change in the manner and means of conducting the organizational missions. This involves breaking existing paradigms to freshly consider the application of national fiscal, manpower, and space resources toward the overall mission of defending the Nation and furthering its interests abroad.

Part Three is time to time you have to jump and explore those things that are well away from your core competency. Is new competitive space, creating a new reality. This is a key element of transformation. But the first inclination is to say we don't do this often or very well. The fact is we do it quite often and we do it very, very well.

It shows up in such things as knowing where we are and what time it is and we will compete on that basis. We create a system to do that, we adjust our doctrine and organizational constructs to take advantage of this superior position and it is called GPS. It changed the department, it changed the character of how you measure military operations and it changed the world. The decision to send and communicate from space is another example. The decision to relocate the complexity of the system, which we did with the Tomahawk missile, is another.²⁰

Admiral Cebrowski's three phases of transformation above illustrate ways and means to transform the manner in which the defense of the Nation is conducted. They illustrate and guide all branches of the military, and each of the branches of The Army, in the manner in which to reconsider the ways and means it operates, and to seek significant change to improve the contribution each makes to the joint defense of the Nation. Based on this overall Defense doctrine of joint transformation, the Army doctrine to guide it through this process follows below.

ARMY TRANSFORMATION DOCTRINE

Transformation of The Army is first and foremost about transforming the way we think – leveraging dominant knowledge, facilitating decision superiority, giving war-fighters an actionable understanding of the battlespace. Simply, that's battle command. We are transforming The Army into this knowledge-based, network-centric force – putting into place the architecture of one Army network, nested in and augmenting the power of this device called the Global Information Grid that's being developed.²¹

In shaping The Army's effort to transform itself to ensure that it is capable of meeting the challenges this nation will face in the new century, Army Chief of Staff Eric K. Shinseki has identified seven core tenets The Army transformation effort must adhere to. These include responsiveness, agility, deployability, versatility, lethality, survivability, and sustainability.²² At the same time, The Army has identified two basic principles that must control the process of its transformation into a more responsive, more lethal force. The principles are:

1. During transformation, The Army must maintain sufficient capability to overmatch near-term threats while sustaining the current technological superiority of our legacy forces through timely recapitalization; and
2. The Army must not sacrifice dominance for responsiveness. While it is easy to increase responsiveness by developing marginal capabilities, The Army is committed to 'no fair fights,' and will resolutely ensure the development and commitment of Army forces to decisively defeat any and all opponents.²³

Transformation of The Army involves three key phasing concepts: the "Legacy Force," the "Interim Force," and the "Objective Force."²⁴ The Legacy Force is that force structure and doctrine that we have inherited, and mostly relates to the Cold War Force structure of a combination of heavy (armored and mechanized infantry) divisions and light (light infantry, airborne, and air assault) divisions. That force structure, built to an unprecedented level of excellence by the end of the Cold War, was wholly inapposite to the contingencies operations of the 1990s and into the new century in Somalia, Kosovo, and Afghanistan.

Despite the need to transition The Army from the Cold War structure to meet the challenges of the new century, as driven home by those three missions, the Legacy Force remains a critical part of The Army's fighting capability, as it "guarantees our near-term war-fighting readiness to support the National Military Strategy."²⁵ It is that legacy force structure with which The Army must fight any major conflicts for at least the next ten to fifteen years. As will be shown later, while the concept of maintaining the Legacy capability is important in terms of The Army's combat arms branches, for the purposes of the JAGC, and the RC JAGC in particular, a need to maintain legacy capabilities does not exist.

The Interim Force meets an immediate requirement to provide the geographic combatant commanders with increased war-fighting capabilities.²⁶ This Interim Force is designed to address The Army's recent demonstrated inability to rapidly deploy a lethal and yet survivable force in support of Joint missions furthering national policies.²⁷ The current concept of force structure for the Interim Force is that

“[t]he Army will convert six to eight combat brigade teams to interim brigade combat teams (IBCT). The IBCT is a rapidly deployable, combat brigade task force that will be centered on an interim armored vehicle (IAV). This force will be trained and ready to deploy and is not an experimental force. It will provide the [joint combatant commanders] with an increased war-fighting capability that they do not now possess.”²⁸

“The Interim force will meet an operational shortfall that currently exists between the capabilities of our early arriving light forces and our later arriving heavy forces.”²⁹ The IBCT concept is relevant to this paper, since the judge advocates supporting those IBCTs and their commanders must be in a position to deploy as rapidly as the brigades they support, and to be immediately effective in providing the commanders of such units with timely and accurate legal support. As will be shown, AC JAGC doctrine is moving rapidly toward meeting that goal; it is the position of this paper that the RC JAGC, its doctrine, and its force structure, are lagging far behind in this transformation effort.

Unlike the Interim Force, “the Objective Force is not driven by a single platform [in the case of the IBCT, the IAV], but rather the focus is on achieving capabilities that will operate as a ‘system of systems.’”³⁰ “The Objective Force is a system of integrated capabilities – space, air, ground, direct, and indirect, internetted with Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance (C4ISR).”³¹ The Objective force is being developed with the understanding that the emerging operational environment is one significantly different from that in which The Army operated during the Cold War.

At one end of the [operational] spectrum, creative and adaptive opponents will employ strategies to destroy U.S. resolve by attacking our homeland, killing innocent civilians, and conducting prolonged operations. Some will immerse themselves in our culture, exploit our vulnerabilities, and seek to create maximum fear in the hearts of our citizens and coalition partners. . . . Respecting the superior power of U.S. military forces, they will employ anti-access strategies comprising several integrated lines of action (from diplomacy to information operations to direct and indirect military actions) aimed at preventing or limiting U.S. impact on regional crises. . . .

Once U.S. force is committed, however, respect for our significant capabilities causes the enemy to forego massed formations in favor of smaller dispersed forces with lethal capabilities targeted against strategically significant symbols to generate confusion and encourage tentativeness in our use of force. To reduce its exposure and complicate U.S. targeting, the adversary will disperse and operate from areas of physical and moral sanctuary often located in complex, urban terrain, shielded by civilians and culturally significant structures.

Humanitarian concerns will limit key attack options and impose an increased burden on Joint Force Commanders.³²

It is in this operational environment that judge advocates of the 21st Century must support units, commanders, and soldiers. “The goal is a force that will be more responsive, deployable, agile, versatile, lethal, survivable, and sustainable (than) the current force.”³³ Similarly, the judge advocate must be more responsive to requirements for support, more deployable to provide that support on the spot in a timely manner, and more versatile in terms of the types of support required by commanders.³⁴

A major goal for the Objective Force is that it operate effectively at all three doctrinal levels of warfare: tactical, operational, and strategic. Unlike past efforts, however, the Objective force will seek to “provide common situational understanding . . . compressing the strategic, operational, and tactical echelons.”³⁵ At the tactical level, application of modern information technologies will greatly enhance the reach and visualization of a tactical unit’s battlespace. This is especially so in the staff environment where judge advocates will operate. “The expanded battlespace and reach of tactical units provided by the capability to see and understand the enemy in a holistic sense, enables tactical echelons to employ strategic and operational assets with decisive effects.”³⁶

At the tactical level, Objective Force Units will *see first, understand first, act first, and finish decisively as the means to tactical success*. Operations will be characterized by developing situations out of contact; maneuvering to positions of advantage; engaging enemy force beyond the range of their weapons; destroying them with precision fires; and, as required, by tactical assault at times and places of our choosing. Commanders will accomplish this by maneuvering dispersed formations of Future Combat Systems units linked by web-centric C4ISR capabilities for common situational dominance. With these capabilities, the Objective Force will master the transition at all levels of operations.³⁷

The ability to leverage modern information technologies will greatly enhance the ability of all members of a unit, including judge advocates supporting those units, to increase the ability of commanders to visualize the battlespace and apply military force more effectively and efficiently. This will greatly enhance the ability of commanders to overcome the problems of time delay mentioned earlier in the quote by Retired Vice Admiral Cebrowski.³⁸

A major problem with the current tactical doctrine is that it is not truly ‘joint.’ Currently, the first joint headquarters for any military operation is encountered only at the operational (combatant commander) level; below that, all structures are based on service component. “In

DESERT SHIELD/DESERT STORM, for example, the Joint Force Air Component Commander had as his immediate staff the same people, organized in the same way, as the staff of the largest air component command, the 9th Air Force.”³⁹ This hampers both vertical and horizontal communications between components. Changing the existing paradigm to provide for genuinely joint force headquarters is a major initiative of Secretary of Defense Rumsfeld, who has placed a target date of 2005 for the respective services to establish joint doctrine and headquarters at the tactical level.⁴⁰ “First, Secretary Rumsfeld is trying to change the concept of ‘joint operations.’ He wants to change it from coordination among institutionally separate organizations to the integration of members of the different services within joint organizations.”⁴¹

For judge advocates advising senior commanders (division and corps) at the tactical level, developing the ability to operate effectively in a joint environment will enable them to provide their tactical commanders of any component with timely and accurate legal advice and support. That advice will include ways and means to employ one set of rules of engagement, to make targeting decisions employing all component capabilities, and seamlessly adhere to the laws of armed conflict. Developing this capability will require not only close coordination of legal doctrine between components, but also a transformation of education and training in the functions and capabilities of joint operations and staff doctrine. In this way will judge advocates transform their capabilities to operate effectively in a joint environment at the tactical level.

At the operational level, transformation will enhance the ability of the theater commander to visualize the battlespace, effectively react to developing situations, and employ force from elements contributed by all service components in a synergistic manner, at the time and place of his choosing.

“At the operational warfighting level, Objective Force units as part of joint teams will conduct operational maneuver from strategic distances, creating diverse, manifold dilemmas for adversaries by arriving at multiple points of entry.”⁴²

As such, the effort to transform the military will also include changing the way the services operate in the field together, so that air, sea, and ground components will be able to interact effectively at lower echelons of the command structure. This will require re-thinking the ways in which command, control, and communications is designed and operated, thus making the transformation effort at the joint level one that goes significantly beyond systems and service doctrine.

Finally, strategic transformation involves developing capabilities to leverage “strategic responsiveness, forward presence, and force projection capability, [to] assist shaping the

environment, [to deter] would-be aggressors, and [provide] options to the National Command Authorities in regions of U.S. national interests.⁴³ It is the process of applying and leveraging all the elements of national power (diplomatic, informational, military, and economic),⁴⁴ as well as all the myriad tools available in terms of military power, in a synergistic manner never before attempted. This synergistic application of the elements of national power will achieve overwhelming dominance of the operations environment, thereby efficiently achieving the Nation's objectives.

A basic understanding of the tenets of Army transformation is required to best assimilate the discussions of the relative positions of AC and RC judge advocates in terms of training and doctrine. Judge advocate planners of all components must understand these tenets not only in how they apply to the Objective Force, but to the future JAGC as well. In order to advance that required basic knowledge, this paper will review below the meaning of each of The Army's transformation tenets in turn, and then discuss how these tenets relate to transformation of the JAGC and, more specifically, its reserve component.

Responsive

Responsiveness has the quality of time, distance, and sustained momentum. Our threat of the use of force, if it deters miscalculation by adversaries, provides a quality of responsiveness all its own. We will provide strategic responsiveness through forward-deployed forces, forward positioned capabilities, engagement, and when called, through force projection from CONUS or any other location where needed capabilities reside. Wherever soldiers serve, we are part of the nation's solution to its tremendous world leadership responsibilities.⁴⁵

Clearly, responsiveness refers to a force designed, trained, and equipped to deploy and operate globally over sustained periods on short notice. While the basis for the current effort to design a responsive force is centered on a change in major end item platforms with which The Army will fight its future wars, this force must be based first and foremost on trained and ready soldiers – trained to a high technical standard of performance and prepared mentally and physically to respond to a wide range of challenges throughout the spectrum of military operations. It is a preparedness that permits a rapid, appropriate, and proportional response to each situation, applying the appropriate means in an efficient manner, ensuring that the mission and intent of the commander is met quickly and successfully. Considering the full spectrum of operations The Army performs today, from humanitarian relief, stabilization and security operations, and low intensity uses of force, through war, this responsiveness requires a sensitivity to the requirements of the various mission types, the ongoing requirement for force

protection in each of these varied environments, and the necessity for tailored operations orders and rules of engagement to ensure that the mission and commander's intent are satisfied with appropriate displays of force and readiness.

Agile

We will attain the mental and physical agility operationally to move forces from stability and support operations to war-fighting and back again just as we have demonstrated the tactical war-fighting agility to task organize on the move and transition from the defense to the offense and back again. We will develop leaders at all levels and in all components who can prosecute war decisively and who can negotiate and leverage effectively in those missions requiring engagement skills.⁴⁶

Agility represents that characteristic of flexibility, a capacity to perform a wide range of tasks across an operational spectrum, and to do so rapidly, understanding the nuances of each type of operation, and applying the skills, training, and experience appropriate to each mission. It is "the ability to move quickly and easily. . . thinking, planning, communicating, and acting faster than the enemy can effectively react."⁴⁷ It represents an adaptability to changing and unfamiliar circumstances, remaining able to perform critical missions.

The future joint force must be able to act or react faster than, and within the decision cycles of, adversaries in relation to an unfolding situation. Agility permits [Joint Force Commanders] to exploit fleeting opportunities, protect incipient friendly vulnerabilities, and adapt rapidly to changes in the operational environment.⁴⁸

Deployable

We will develop the capability to put combat force anywhere in the world in 96 hours after liftoff – in brigade combat teams for both stability and support operations and for war-fighting. We will build that capability into a momentum that generates a war-fighting division on the ground in 120 hours and five divisions in 30 days.⁴⁹

Deployability represents that aspect of responsiveness that will technically permit The Army to field a fully capable brigade-sized force anywhere in the world within four days.⁵⁰ While the AC Army works to transform itself into such a force, its RC assets struggle to maintain outmoded models of mobilization and deployment, even during times when they are called upon in ever-greater numbers to perform traditional AC missions. The question of deployability is one which will require a mindset that is not traditional for the RC soldiers and units – one that will

require them to envision their mobilization and deployment both throughout CONUS and overseas with ever-increasing frequency.

Versatile

We will design into our organizational structures, forces which will, with minimal adjustment and in minimum time, generate formations which can dominate at any point on the spectrum of operations. We will also equip and train those organizations for effectiveness in any of the missions that The Army has been asked to perform. These commitments will keep our components capable, affordable, and indispensable to the Nation.⁵¹

Versatility will require soldiers and units to achieve a flexibility in their mission performance that will allow them to interact with AC and RC units and soldiers, to adapt quickly to changing mission environments, and to interact in terms of doctrine and performance with ease with their AC and RC counterparts. For the RC, this will require an openness to changing joint and combined doctrine, allowing RC units and soldiers to quickly fill the places of AC soldiers and units, seamlessly and rapidly.

The future joint force must be able to perform diverse missions in diverse environments. Versatility permits [Joint Force Commanders] to keep open as many options as possible and strive for effective solutions as opposed to optimal ones.⁵²

The training that will allow RC soldiers and units to achieve this level of proficiency must, per force, be modeled on that used to train AC soldiers and units, and with a frequency that will allow them to achieve and maintain a professional level of proficiency.

Lethal

The elements of lethal combat power remain fires, maneuver, leadership, and protection. When we deploy, every element in the war-fighting formation will be capable of generating combat power and contributing decisively to the fight. We will retain today's light force deployability while providing it the lethality and mobility for decisive outcomes that our heavy forces currently enjoy. . . . We intend to get to trouble spots faster than our adversaries can complicate the crisis, encourage de-escalation through our formidable presence, and if deterrence fails, prosecute war with an intensity that wins at least cost to us and our allies and sends clear messages to all who threaten America. . . .⁵³

Of course, lethality refers to the ability of military forces to direct their capabilities toward overwhelming and defeating an enemy. It is more than simply the ability to field the most modern and deadly equipment, however. Lethality relates also to the capability to command and control these platforms and the soldiers who operate them in an efficient, coordinated manner, so they are each focused on achieving a common goal in a manner consistent with the commander's intent. To this end, not only will the BOS (battlefield operating systems) of fires and maneuver be enhanced by transformation, but so also will the command and control (specifically staff) capabilities to efficiently coordinate those capabilities in a deployed combat environment.

Survivable

We will derive the technology that provides maximum protection to our forces at the individual soldier level whether that soldier is dismounted or mounted. Ground and air platforms will leverage the best combination of low observable, ballistic protection, long-range acquisition and targeting, early attack, and higher first round hit and kill technologies at smaller calibers that are available. We are prepared to venture into harm's way to dominate the expanded battle-space, and we will do what is necessary to protect the force.⁵⁴

Survivability is the ability to weather the military force of the enemy, to retain freedom of action and maneuver in the face of that force, and to continue to operate so as to successfully complete missions in the manner envisioned by the commander. It is not just technology that enhances the ability of the soldier to sustain fire, it is also the training and doctrine that ensure that the soldier is prepared to operate in adverse conditions, against a prepared enemy in a hostile environment. The knowledge each soldier will require to understand that environment, and thereby reduce surprise and stress, are major components of the transformation effort, both in the Interim and Objective Forces. To that end, application of advanced information technologies that provide soldiers with all the data they require to fully understand and master their combat environments is a major focus of the transformation effort.

Sustainable

We will aggressively reduce our logistics footprint and replenishment demand. This will require us to control the numbers of vehicles we deploy, leverage reach back capabilities, invest in a systems approach to the weapons and equipment we design, and revolutionize the manner in which we transport and sustain our people and materiel. We are prepared to move to an all-wheel formation as soon as technology permits.⁵⁵

Sustainability is the capacity of a force to continue operations, deferring its culmination point beyond which offensive operations are no longer possible, continuing to apply force against an enemy, and thereby accelerating the enemy's culmination point and hastening the termination of combat. "It involves providing joint forces the right personnel, equipment, supplies, and support – in the right place, at the right time, and in the right quantities across the range of military operations."⁵⁶ At the tactical level, sustainability is affected by planning, providing for the efficient application of resources in a manner designed to continue operations for as long a period as possible. At the strategic level, sustainability is enhanced through the design of systems, doctrine, and training, applying available technologies in a manner that achieves the maximum benefit of design, technology, planning, and doctrine.

A major focus of The Army's transformation effort is to achieve maximum efficiency of its deployed forces, reducing the amount of logistics required to maintain a force in the field, thereby ensuring that offensive operations can be maintained for as long a period of time as possible. In this way, the Intermediate Force will consist of systems that are less complex technically, smaller in terms of both the size of the major systems and the equipment and personnel required to maintain those systems in the field. This will not only enhance the deployability of the systems and the soldiers who operate them in combat, it will also reduce the size of the logistics force required to maintain them to ensure they are available in the fight.

Applying the tenets of Army Transformation to the JAGC

While it may seem overly basic to have provided the above detailed information regarding the tenets of Army Transformation doctrine, it is critical that JAGC planners possess a firm grounding in these concepts. This is to ensure that in developing a "JAGC Objective force," of all components, the force they design is one that is nested in, compatible with, and answers the needs of the Objective Force Army. As detailed as the above may seem, it represents but a mere tip of an iceberg of information and current thought within the Department of Defense community, and The Army in particular, regarding transformation, opinions on its development, and its management. To that end, an application of the above Army Transformation tenets, as they apply to the JAGC, is vital to ensure that, at a minimum, JAGC planners agree on (or at least begin to discuss) the manner in which these tenets apply to them, their branch, and their mission within the overall mission of The Army.⁵⁷

Obviously, the interpretations of the tenets of Army transformation as applied to the JAGC is not meant to be authoritative, exclusive, or exhaustive. Indeed, leaders within the JAGC, both present and future, are strongly encouraged to consider these tenets, the ways in which they

may be applied to designing and developing an Objective Force JAGC, and the training and doctrine to make those proposed applications of these tenets possible. By encouraging public discussion of this issue in appropriate military press and journals the JAGC can solicit the considered thoughts of those most relevant to this issue, the judge advocates who will have to serve in and apply the doctrine of an Objective Force JAGC.

Regarding first the capability to be responsive within the meaning of the Objective Force, tomorrow's judge advocates of whatever component will be required to be able to deploy globally on short notice to perform legal support to missions across the operations spectrum. In part this is going to demand modernization of equipment and doctrine (especially in the RC, as noted *infra*), and in part it will require significant changes in the judge advocate training model (again, especially as it applies to the RC JAGC).

In order for a JAGC Interim Force or Objective Force to be responsive, a judge advocate must be trained and prepared to leverage all the information technologies available using the doctrinal equipment and skills mandated for AC judge advocates (see, discussion on Rucksack Deployable Law-Office Library, or RDL, below). They must be able to do so in semi-permissive or denied environments, often with little access to electrical power or hard-line communications capabilities. They must be prepared to operate under these conditions on very short notice, so as to be operational and capable of providing timely and accurate legal advice to commanders and staff officers within 96 hours of first notification. Responsive is more than just getting there fast, it is being able to meet and anticipate the needs of commanders and soldiers under stressful conditions, across a broad spectrum of operational requirements. More than just equipment, it will require an attitude that anticipates issues, and prepares to resolve them.

In addition to being responsive, judge advocates of all components must be agile; that is, trained and ready to participate as knowledgeable staff officers in combat units, meaningfully serving in Army operations across the full spectrum of military missions. Judge advocate agility will require more than simply getting to the area of operations quickly. It will call for a military legal education and training system that prepares even the most junior judge advocates (the ones most likely to be advising commanders of rapidly deployed Stryker brigades) to be capable of recognizing the subtle the legal implications of each of the Army's myriad missions.

Flowing logically from operational agility, deployability of the Interim Force or Objective Force judge advocate supporting a rapidly deployable combat unit will depend not only upon the training the JAGC provides to its officers, but also in the doctrine and equipment the JAGC fields. This will, in turn, affect the logistical footprint that JAGC planners develop and prescribe in doctrine regarding the manner in which judge advocate operations in the field are conducted.

Deployability, or the lack thereof, remains a major issue facing the RC JAGC in its struggle to transform, as will be seen later in this paper.

Deployability will also require judge advocates supporting combat units to be trained in vehicle operation and maintenance; of course, this training will likely not be institutional training, but rather unit training. However, it is important enough that each judge advocate and 27D paralegal soldier should be required, not excused, from such unit training. This aspect of deployability also is directly related to survivability, below.

Versatility is a capacity different from mere deployability. It will require judge advocates of all grades to perform staff duties beyond providing legal support. An Interim Force or Objective Force judge advocate will need to be versed in military staff officer skills that will allow a commander to apply the judge advocate's special staff education, training, and skills in new ways, expanding beyond both JAGC and Army staff doctrine to leverage the staff team in new expansive ways. Versatility represents a skills and mental flexibility that allows judge advocates to perform as full members of a deployed staff team.

As to lethality, it would be ludicrous to suggest that the judge advocate will be required to operate weapons systems with the proficiency of the trained soldier in a combat arms unit, that somehow Objective Force judge advocates will become killing machines. They will, however, play an important role in the lethality of the units and commanders they will be supporting in tomorrow's battlefields. It is the ability to understand and operate in the modern battle staff at battalion, brigade, and higher levels command, providing accurate advice and counsel to the commander and his staff officers, allowing the unit's soldiers to perform their missions with the highest possible efficiency, targeting those objectives most relevant to the unit's prosecution of its mission.

The [JAGC] of the future, even more than the Corps of today, will be a non-lethal element of military power. Its Judge Advocates are instruments of both engagement and disengagement, and should become the experts in conflict termination and conflict resolution. With regards to engagement, Judge Advocates are involved in Expanded International Military Education and Training (citation omitted), and have the potential for increased participation in programs as diverse as the Marshall Center in Garmisch, Germany and the International Institute for Humanitarian Law in San Remo, Italy. As instruments of disengagement, Judge Advocates have been significant members of training teams that have prepared United Nations, multinational, or other national headquarters to successfully accept responsibility from the United States for ongoing missions.⁵⁸

Commanders on tomorrow's media-intensive battlefields will be under stress and scrutiny unlike any experienced by their predecessors at any time in the nation's history. A competent, qualified judge advocate can assist a commander maneuver through this potentially hostile environment to ensure that risks to the mission are minimal, and that the unit's soldiers target those obstacles and threats relevant within the meaning of Rules of Engagement and the laws of armed conflict. As such, the judge advocate becomes a means for commanders to enhance and leverage the lethality of their units and become more mission-capable.

In order for judge advocates to ensure they are survivable, that they are able to operate and stay alive to perform their missions on the modern battlefield, they will require training in basic soldier and combat skills. Currently, the JA OBC offers little such training even to its AC junior judge advocates; RC judge advocates receive little if any such training, and once at their units are often excused from such training in order to perform their legal support missions. Vehicle operation and maintenance, basic soldier medical and Combat Lifesaver skills, and Basic Combat skills are also mostly absent from judge advocate institutional and unit level training. And yet, in emergency situations, such as in Southwest Asia in 1990-91, the JAGC called upon literally hundreds of judge advocates and 27D paralegal soldiers from all components to mobilize and deploy to support combat operations in hostile and severe environments. Twelve years later, nearly one hundred judge advocates are deployed around the globe, and still this training is absent from any structured preparation of judge advocates of either the AC or RC. It is likely mostly luck that has prevented serious judge advocate casualties or deaths over the past fifteen years.

Finally, in order to be sustainable in deployed environments while supporting combat units and commanders, the Interim or Objective Force judge advocate must require as little logistical support, and as little legal-specific equipment, as possible. Where The Army is struggling to reduce the weight of deploying units in order to strive to meet its 96-hour deployment goal, the judge advocate must not present combat unit commanders with problems, but rather with solutions. As it is, the judge advocate in either AC or RC units relies on the supported unit for logistics and supplies. The RDL (described in depth below) is a major step in that direction, freeing the judge advocate from the weight of hauling law libraries and regulations with them overseas. Similarly, in designing its doctrine for the future, the JAGC must maintain a clear focus on the requirement to reduce its footprint within the deploying unit so as to reduce the support requirements for judge advocate operations.

In sum, the judge advocate in the Interim or Objective Forces must be as capable of adhering to the tenets of transformation to the same extent as all other members of Army

operations. For this to occur, it would be prudent to ensure that JAGC leaders are fluent in the above seven Army transformation tenets. In this way, they may best focus all future JAGC efforts so as to ensure their efforts are nested within the overall Army transformation goals developed for the interim and Objective Forces. By ensuring that JAGC planners, educators, and trainers are versed in these basic transformation tenets, JAGC leaders will be able to confidently prepare judge advocates to be sent out with units on deployments.

CURRENT JAGC DOCTRINE AND TRAINING

FM 27-100

In many ways, the JAGC conducted its self-assessment, and began its transformation process well ahead of the rest of The Army. The process and the thought that went into that transformation effort is reflected in Army Field Manual (FM) 27-100, Legal; Support to Operations (1 March 2000). In this manual, the JAGC articulates its mission in support of military operations, and identifies the role of the judge advocate in supporting forward operations; that mission is “to provide professional legal services at all echelons of command throughout the range of military operations.”⁵⁹ “The United States Army is doctrine-based, and FM-27-100 contains the doctrine for legal support to operations;”⁶⁰ in FM 27-100, the JAGC realized its need to align its internal practices with The Army’s methodology in terms of doctrine and mission, so as to allow judge advocates to gain a focus of the ways and means judge advocate operations are nested within overall Army operations. How that nesting is done, even in an Objective Force Army, is reflected in FM 27-100. Indeed, in many ways, FM 27-100 defines the Objective Force JAGC.

Prior to publication of FM 27-100, the JAGC, both AC and RC, lacked concise cohesive doctrine on how it proposed to provide legal support to commanders and units during Army operations. “Changes in the strategic situation since the end of the Cold War, and the development of the Force XXI Army, require[d] a new model of legal support to operation.”⁶¹ It was recognized that “providing effective service to commanders, staffs, personnel, and family members in the new [operational] environment will challenge judge advocates in four ways:

First, judge advocates must maintain connectivity with operational and tactical networks and legal information sources in a fluid and technologically advanced environment . . .

Second, judge advocates must provide technical supervision (supervision of legal operations by a Staff Judge Advocate) and technical support (direct legal

expertise from JAGC organizations) to deployed judge advocates in every contingency

Third, judge advocates must be mobile. They must move, not only with the supported unit, but also independently to investigate claims and potential war [and other] crimes, to be at the commander's side at key meetings, and to perform other legal missions. . . .

Fourth, judge advocates must provide professional legal services to personnel and families, most importantly during deployments and split-based operations.⁶²

In this environment, the developing concept of "operational law" attracts greater attention that it may have in the past. "Operational Law (OPLAW) is that body of domestic, foreign, and international law that directly affects the conduct of operations."⁶³

The doctrine developed by the JAGC to meet the needs of the Force XXI Army is the Brigade Operations Law Team (BOLT). This structure includes the brigade judge advocate (usually the brigade trial counsel while the unit is in garrison),⁶⁴ as well as the legal specialists (MOS 27D) assigned to support the brigade.⁶⁵ The BOLT and the brigade judge advocate provide the supported brigade with direct support (DS) legal services. The BOLT, in turn, is supported by the division or corps OSJA providing direct support (DS) and general support (GS) legal services to the commanders and soldiers within the division or corps.

Judge advocates serving as Chiefs of BOLTs must understand the brigade command and control facilities. They are adept at obtaining information from the flow of messages into and out of these facilities, at inserting important information into that flow, at helping the brigade staff determine what ingredient the decision process needs, and in supplying the needed ingredient.⁶⁶

This allows the brigade judge advocate to provide the brigade commander with rapid and responsive legal support, while not requiring that officer (usually a judge advocate in the grade of captain) to have mastered the advanced legal subject matter often encountered in a brigade's deployed operations.⁶⁷

Clearly, the development of the BOLT concept, integrating the traditional support a brigade receives from its assigned trial counsel with the requirement for responsive legal support during Army missions across the entire spectrum of military operations, is a significant development in the JAGC's mission. This will allow the JAGC to meet its requirement to "provide professional legal support at all echelons of command throughout the range of military

operations⁶⁸ for the Legacy, Interim, and Objective Forces. As the BOLT is usually situated within the brigade Tactical Operations Center (TOC), or Tactical Command Post (TAC CP), the brigade judge advocate must have access to the commander (through the brigade executive officer or deputy commander) and must “have the training, mobility, secure communications and equipment to provide the right answers at the right place at the right time.”⁶⁹

The training challenge in today and tomorrow's military is immense. Judge advocates must balance the ever-present mission in garrison with the need to deploy and provide our commanders and soldiers with the full range of legal support in operations. Like their non-legal counterparts, legal personnel must be aware of and train with emerging technologies – global positioning devices (GPS), night vision devices, vehicles, communications means, and automation software and hardware. All legal personnel should be well-read on emerging joint and Army doctrine and train on individual soldier skills at every opportunity (e.g., SJA section leader development programs, unit exercises, deployment to the Army's Combat Training Centers).⁷⁰

Such training is critical if the JAGC, and its RC in particular, is to successfully integrate with its AC counterpart in time of crisis, and to develop the capabilities required to provide legal support in the Objective Force. Such training does not occur by accident, or as a result of a headquarters company training schedule. It is the product of deliberate planning, flowing from the development of a mission essential task list (METL) by the SJA in coordination with his Deputy SJA.

The SJA and DSJA must use the [Army training doctrine] to develop and assess METLs of [legal service organizations/mobilization support organizations] and/or the judge advocate sections of other RC units within their subordinate wartrace chain of command. This process **should** be part of the training association relationships between SJA sections and RC units, such as the training relationships created and fostered pursuant to FORSCOM Regulation 27-1, Judge Advocate Training Association Program (15 Jun 1998).⁷¹

In the AC JAGC, in MTOE units, the personalities are identified while the unit is in garrison, and habitual relationships are formed in that environment that enhance the ability of the judge advocate to integrate with the commanders and staff officers, and thus more effectively provide timely and accurate legal support. In the RC, however, and especially in the ARNG, where The Army's reserve combat units are often spread among several states (and thus controlled by several different STARCs), these relationships are hindered.⁷² Additionally, because of the dual nature of ARNG units, and the tension between state and federal missions,

training in current doctrine is often at best in name only, and at worst is not even addressed.⁷³ As a result, integration of the doctrine reflected in FM 27-100 has often not been achieved by RC JAGC officers. As a result, the training development described in the quote above rarely, if ever occurs in an RC unit prior to receipt of a warning order notifying the RC JAGC office of a mobilization for deployment.⁷⁴

JAGC DOCTRINE NESTED WITHIN ARMY TRAINING DOCTRINE

Judge advocates must be trained and prepared to operate independently across the spectrum of core legal disciplines and the spectrum of conflict, standing by the commander's side. To succeed in today's operational environment, judge advocates must be master general practitioners; effective in their roles as lawyer, ethical advisor, and counselor; increasingly knowledgeable as soldiers and lawyers; constantly aware of the operational situation; and proactively working to promote the mission, serve Army personnel and their families, and enhance the legitimacy of Army operations.⁷⁵

Army training doctrine is based on three pillars: institutional (schools) training, unit (operational) training, and individual (self-development) training.⁷⁶ Each is part of a unified training system designed to "enhance the ability of units to perform their missions. Unit readiness is the objective of all Army training."⁷⁷ Institutional training "provides institutional centers of excellence in military knowledge and progressive resident and non-resident training and education to enhance individual potential, initiative, and competence in task performance and war-fighting skills."⁷⁸ "Training in schools is individual or collective training in the training base which uses approved programs of instruction and includes education/training which is structured, developed, and supported by a Service school, Service training center, or any educational institution under DOD sanction."⁷⁹

Individual, or self-development training, "provides a means for Army personnel to posture themselves for promotion, better job, or self-motivated improvement in personnel performance."⁸⁰ As The Army transitions to greater use of information technologies, these two categories will likely merge, as more and more soldiers, and for purposes of this paper RC judge advocates, avail themselves of the advantages of modern technologies to access training and courses to further their careers.

For purposes of this paper, institutional training is the most critical of the three training pillars. Institutional training for judge advocates occurs at and through the Judge Advocate General's School (TJAGSA), located in Charlottesville, Virginia. TJAGSA is not only where all judge advocates receive their training in preparation for their assignments and careers, it is also

the location where doctrine on the conduct of judge advocate activities is developed. The Academic and Training Development Departments plan, develop, and execute the programs of instruction (POIs) for all AC and RC judge advocate training. The content of AC and RC POIs, and the considered progression of a judge advocate's career, regardless of component, is at the heart of this paper's thesis. RC JA career management and training must transform from its Cold War stasis to something more resembling the current status of AC JA training, doctrine, and development.

Institutional training from TJAGSA can come in the form of the officer basic and advanced courses, as well as periodic legal conferences on a variety of subjects conducted at TJAGSA. These periodic conferences are recognized as Continuing Legal Education (CLE) by the American Bar Association, and are authorized by each state to be counted toward the licensing requirements the respective states maintain for annual attorney CLE requirements.⁸¹ Attendance at such CLE is not, however, a mandatory requirement for JAGC career progression in either the AC or RC.

While institutional training is central to preparing judge advocates to support Army missions, doctrinal development of unit training for judge advocates would allow these officers to continue their development, in ways and with means relevant to the units they support, in between the opportunities for institutional training. Further, it would be doctrinally driven unit training that would enhance several of the tenets of Army transformation, outlined above. Specifically, common task training, training in vehicle operations and maintenance, in establishing operations in a deployed or field environment, to include set-up of deployed or field headquarters offices, would greatly enhance the judge advocate's ability to perform to Army standards during deployments. Additionally, it would go a long way to establishing an officer's credibility with his or her peers while conducting operations in the field.⁸²

In sum, a combination of institutional and unit training, driven by doctrine, utilizing mission-essential task lists (METLs) derived from centralized doctrinal materials, and performed to standard, would go a long way to ensuring that the JAGC does not send its officers into the field "untrained and untaught." Integrating the AC and RC components of the JAGC in this training will require significant effort if officers from these components are to perform in the field together in a seamless and efficient manner. This represents a significant responsibility of JAGC leaders at the senior and the intermediate levels, especially in the RC, where currently little of this training is centrally managed or supervised.

JUDGE ADVOCATE GENERAL PUB. 1-1, JAGC PERSONNEL AND ACTIVITY DIRECTORY AND PERSONNEL POLICIES 2002-03

In addition to FM 27-100, much of the education doctrine and standards for the JAGC is derived from Judge Advocate General Publication 1-1, the JAGC Personnel And Activity Directory And Personnel Policies 2002-03 (JAG Pub. 1-1), developed and published by the Office of the Judge Advocate General, Headquarters, Department of the Army. The training and career progression of a JAGC officer is the product of a training and officer career management structure developed by the JAGC, specifically the Personnel, Plans, & Training Office within the Office of the Judge Advocate General. Each phase of that training and development is based on the perceived need to provide “officers with a solid foundation of individual tasks and standards” commensurate with their grade, duties, and responsibilities “with which they can become fully effective members of units.”⁸³ What follows is a review of the educational and training structure centrally developed for judge advocate officers in both the AC and RC, as articulated in JAG Pub. 1-1, with differences between the two components noted where applicable.

Officer Basic Schooling

When an officer is accessed into The Army, training “consists of the Officer Basic Course (OBC) conducted by the officer’s basic branch school and other required functional training.”⁸⁴ In the case of AC JA officers, that training is the Judge Advocate Officer Basic Course, a resident course that “provides new JAs with the basic orientation and training necessary to perform their duties.”⁸⁵ This is a two-phased course. Because the majority of JA officers are commissioned directly out of law school, often with little or no military experience, Phase I consists of four weeks focusing on basic military training and concepts, and is conducted at Fort Lee, Virginia. Upon completion of that basic military training, the JA lieutenant attends Phase II, a ten-week program conducted at the Judge Advocate General’s School (TJAGSA) in Charlottesville, Virginia, adjacent to the University of Virginia School of Law.

Unlike their AC counterparts, the RC JA officer receives his basic military and military law training through the Judge Advocate Officer Basic Correspondence Course, which “provides basic branch orientation for Reserve Component officers who are commissioned in the JAGC without concurrent orders to active duty. It is comparable to the Judge Advocate Officer Basic Course.”⁸⁶ It is comprised of a correspondence phase and a two-week resident phase, that together form an introduction to military legal concepts and doctrine.

Officer Career Schooling

Once an officer is identified for service beyond the basic period of obligation, the next level of training for Competitive category officers is the Captains' Career Course, designed "to produce technically and tactically competent officers who are professionally qualified for their next assignment (especially command) and prepared for future deployment."⁸⁷ The corollary instruction for JA officers is the Judge Advocate Officer Graduate Course (hereinafter the Graduate Course), a resident course designed to provide "career JAs and selected Department of the Army civilian attorneys with education and training in all areas of military law, leadership and management, and communications."⁸⁸ This training is viewed as essential for the development of AC JA officers:

It is an essential element in career development and the keystone in the JAGC's professional development plan; accordingly, the Graduate Course will be completed in residence by all selected career force officers.⁸⁹

This 42-week program of instruction prepares officers for middle and senior grade legal positions, and "those students meeting the academic requirements established by The Judge Advocate General's School for award of a graduate law degree receive a degree of Master of Laws (LL.M.) in military law."⁹⁰ Because of the advanced nature of the POI, and because the JA officer already possesses a Juris Doctor degree from an American Bar Association-accredited law school, unlike their Army Competitive Category counterparts, judge advocate officers are not considered for this schooling until they:

- (1) Are in RA [Regular Army, usually occurring upon promotion to major] or VI [Voluntary indefinite] status;
- (2) are a major or have completed not less than five years of commissioned service since promotion to captain as of 1 September of the academic year the course begins;
- (3) have served at least three years as a JA in a field assignment, after completing the [Judge Advocate] Basic Course, as of 1 September of the academic year the course begins; and,
- (4) have completed their current overseas tour or 24 months of a CONUS assignment as of 1 September of the academic year the course begins.⁹¹

The career-course equivalent of the Graduate Course's training for RC judge advocates comes through the Reserve Component Judge Advocate Officer Advanced Course (hereinafter RC JAOAC), which "provides a working knowledge of the duties and responsibilities of field grade judge advocates."⁹²

This course is an essential element in the RC company grade judge advocate's career progression and promotion eligibility. This course is divided into two phases. Phase I consists of 117 hours of nonresident courses which must be completed before enrolling in Phase II, a two-week resident course at TJAGSA in January.⁹³

While functionally the AC Graduate Course and the RC JAOAC are comparable, they are quantitatively and qualitatively different, and are used for career management at different stages in an officer's career. Unlike the AC Graduate Course, which as noted immediately above is usually reserved for judge advocate majors, under Army Regulation 135-155, in order to be considered for promotion to major, a RC JAGC captain must complete the RC JAOAC.⁹⁴ Unlike the stringent requirements outlined above for assignment to the Graduate Course, however, the only prerequisite for enrollment in the RC JAOAC is that the candidate must have completed the Judge Advocate Officer Basic Course. In theory, a RC judge advocate could complete the RC JAOAC shortly after completing the RC basic course.

Command and General Staff Officer Course

"The purpose of this course is to prepare officers to perform duties as field grade commanders and principal staff officers at major commands."⁹⁵ The Command and General Staff Officers Course (C&GSOC) is the intermediate officer educational experience, focusing primarily on tactical and operational concepts. "Credit for a staff college is a prerequisite for consideration to attend senior service schools and is essential for promotion to higher grades."⁹⁶ For promotion from the grade of Major to Lieutenant Colonel, then, an AC judge advocate must complete this intermediate staff school, or attend another service's staff college in residence. This screening tool serves to ensure that officers must have a common educational experience before being selected for promotion and increased responsibility.

The RC judge advocate is also required to enroll in the C&GSOC, but for promotion purposes, a RC judge advocate is only required to have completed fifty percent of the course in order to be eligible for promotion.⁹⁷ Indeed, under the applicable promotion regulation, an AC officer considered but not selected for resident attendance at C&GSOC, who elects to be released from active duty, would for three years following his release from active duty be considered educationally qualified for promotion to Lieutenant Colonel in the RC without having completed *any* portion of C&GSOC by correspondence.

THE RESERVE COMPONENTS

By 2015 the seamless integration of our Reserve Components (RC) into The Army is profound. Our nation possesses an Army as a part of the JIM [Joint, Interagency, and Multi-national] force, capable of precision maneuver, that can enter a theater at the time and place of our choosing, maneuver at will to gain positional advantage, and, if necessary, close with and destroy an adversary. It is an Army, nested within the national strategic and military guidance, designed, tailorable to provide ground power as a critical combat multiplier to the Joint Forces Commander (JFC).⁹⁸

The above review of the Joint and Army doctrine of Transformation is important so that one may properly consider the current state of RC judge advocate education, training, and preparation for deployment, and whether it is preparing RC judge advocates to meaningfully participate and support Interim or Objective Force missions. If the goal of “seamless integration” is to be achieved, the leaders of the RC JAGC must understand the direction The Army seeks to go, and how it seeks to get there. Only in that way will the leaders of the JAGC and its RC understand the requirements they will be expected to meet, what contributions judge advocates will be expected to provide in this new operational environment, and how they may properly plan for how they will meet that challenge.

The Objective Force will require higher levels of integration between the active and reserve components to the point of truly being The Army, not three separate components. This has to be accomplished in order to achieve strategic responsiveness and dominance across the spectrum of military operations, and simultaneously provide for homeland security. The distribution of Objective Force capabilities between the active and reserve components must accommodate requirements for immediate strategic responsiveness as well as maintenance of a strategic reserve for extended campaigns and multiple global engagements. . . . Additionally, the reserve must include capabilities that mirror those of the active force for expansibility, but which are afforded additional response times prior to commitment.⁹⁹

As noted above, the role of the RC JAGC is caught up in the larger question of the roles, resources, and structuring of the RC itself. This question includes the structuring of America’s military, the balance between active and reserve forces (and in the RC, between the ARNG and The USAR), the dedication of resources, and especially the distribution of combat, combat support, and combat service support capabilities, soldiers, and units among the AC and RC. The answers to these issues affect The Army at large and the JAGC in particular. As missions, lines, and resources between the AC and RC of the force in general and JAGC in particular become increasingly blurred, new thought must be given to how The Army structures, trains, equips, and deploys these components to meet its missions. As such, discussion must be

made regarding the backgrounds, authorities, and limitations of the various components of The Army and the JAGC.

The RC of the United States Army, and more specifically the ARNG, remain captive to the existing Regular Army force structure, caused in no small part by the statutory and doctrinal obligation of the ARNG to serve as the combat reserve for The Army.¹⁰⁰ Questions relating to transformation currently facing the active Army affect the RC, and specifically the ARNG, as well. This is as it must be if the RC are to serve as the effective combat reserve, and especially in the case of the USAR the bulk of the Combat Service Support (CSS), of The Army if The Army is to assemble effectively on the modern battlefield.

With the ARNG and the USAR now often performing missions alongside and even in place of the AC,¹⁰¹ manning, force structure, and policy questions become more imperative, all the more so when The Army faces questions of its future and what missions it must be prepared to perform.¹⁰² On the issue of burden sharing among the respective components, the National Guard in particular is often viewed by its regular counterpart with some distrust, suspicion of political motivations and influence, and jealousy over the political weight the ARNG carries with Congress. That political influence with Congress is often seen by AC officers and leaders as disproportionate with the ARNG's missions, readiness, and capabilities.

These issues are not easily addressed, yet the issues seemingly invite experts from all corners: this is perhaps a by-product of the resources expended by the States' and federal governments for the ARNG. Additionally, the participation in the debate over resources by those who have vested personal, professional, and political constituency interests in the expenditure of those resources is likely unavoidable: many who propose future structuring of the RC in fact often seek to re-direct resources in a manner that benefits theories, projects, or purposes that suit themselves or their political allies. But that being said, it does not address the basic question of what the future roles, requirements, and resources of the RC should be. That question cannot be addressed without encountering strong emotional and political responses. Regardless of the difficulty in answering this question, however, it remains to be answered. Further, it must be answered in a timely manner to ensure seamless transformation of the Total Army, and not just the combat arms of the active component. Should The Army fail to fully coordinate transformation across both combat, combat support, and combat service support branches, and across both the AC and RC (both the ARNG and The USAR), the nation could find itself at the end of an expensive transformation process with an Army incapable of fighting a sustained conflict in the manner and under the conditions it desires.

THE ARMY NATIONAL GUARD

Today, nearly 2,000 Soldiers from the Guard and the Reserve are on point for the Nation around the globe, serving in places like Bosnia, Kosovo, Saudi Arabia, and Kuwait. There are also hundreds of individual augmentees with civil affairs, psyops, military intelligence, transportation, postal, and medical support skills deployed overseas serving alongside their active-duty counterparts. In 2000, The Army set a precedent by placing a National Guard unit in command of active-duty units in Bosnia for the first time since World War II. In February 2000, the headquarters of the 49th Armored Division, Texas Army National Guard, assumed the Task Force Eagle mission [in Bosnia] from the 10th Mountain Division. The 49th Division did a superb job and set a standard for other National Guard units to follow. . . . In October 2001, the 29th Infantry Division, Virginia Army National Guard, will assume the Task Force Eagle mission.¹⁰³

In recent years, The Army has come to rely on the RC, and in particular the units of the ARNG, to perform its global missions. In Bosnia-Herzegovina, the 49th Armored Division of the Texas ARNG deployed in 2000 to command NATO Stabilization Force (SFOR) VII. The 29th Infantry Division (Light) of the Virginia-Maryland ARNG deployed in 2001 to command SFOR X (comprised for the first time with a majority of ARNG and USAR soldiers in its maneuver and support elements). The 28th Infantry Division (Mechanized) of the Pennsylvania ARNG deployed in September 2002 to command of SFOR XII, now comprised almost entirely of ARNG and USAR soldiers. The 28th Division will, in turn, be replaced in Bosnia in April 2003 by the 35th Infantry Division (Mechanized) of the Kansas-Missouri ARNG for SFOR XIII. With these deployments of ARNG division headquarters and maneuver units, along with USAR support soldiers and units, The Army has for the present passed this important mission in Bosnia from its AC to the RC. Additionally, upon completing its mission in command of SFOR XII, the 28th Division's headquarters will deploy directly to Kosovo in April 2003, taking command of Task Force Falcon in that troubled region of Europe.¹⁰⁴ Whether this represents a shift of the Kosovo mission from the AC to the RC remains to be seen.

In addition to the deployments mentioned above, the ARNG has traditionally performed a wide variety of domestic security operations, often leading The Army's efforts in this regard.¹⁰⁵ It is clear, following the terror attacks against the United States on September 11, 2001, that the ARNG and Reserve will be called upon in ever-increasing numbers to perform security missions throughout the United States and its facilities overseas, to provide for the greater need for security.¹⁰⁶ Because of this greater reliance by The Army upon the ARNG, it is fitting to pause and consider the legal basis and authority for the ARNG, where it first within the statutory scheme fulfilling Congress's role of providing for the Army and Navy, and the states' militias.

The legal basis and authorities supporting the ARNG are as old as the Nation itself, and the foundations are indeed a good deal older. Because of the historical role and use of militias in providing security for the colonies, the Founding Fathers appear never to have seriously considered replacing them with a standing federal Army. As a result, the United States Constitution does not authorize states' militias; rather, it assumes they will exist, and authorizes Congress to regulate them,¹⁰⁷ and provides the President with command authority over them in time of Federal Service.¹⁰⁸ As such, the Constitution assumes that the National Guard, as the current configuration of those militias,¹⁰⁹ exists and would continue to do so as the United States matured. In that vein, the Constitution limits state power of, and, concurrently, the power over the militias,¹¹⁰ absent Congress authority, and establishes that in time of national emergency, command authority over the militias is vested in the President.¹¹¹

Based on the above Constitutional authority, while keeping in mind the original role of the militias, the Federal statutory scheme established by Congress to regulate the Armed Forces and the National Guard is designed to create a viable combat reserve force for the Nation. The federal authority *vis a vis* the ARNG is based on a power-sharing relationship over the ARNG between the Federal Government and the states. The President is empowered to establish uniform regulation of the ARNG, and he determines its force make-up in consultation with the states' governors.¹¹² The Congressional intent is a reserve component capable of performing its statutorily mandated mission of homeland defense.¹¹³ To that end, Congress has mandated the ARNG be maintained in essentially similar force structure as the active component of the land forces,¹¹⁴ and that unit and branch designation is to be determined by the President in consultation with the States' governors.¹¹⁵

These are not trivial issues, especially in light of the terror attacks against the United States on 11 September 2001. If the statutory mission of the ARNG is to be able, in conjunction with the AC Army, to defend the homeland,¹¹⁶ the question is begged: how can The Army, and thus the RC, and especially the ARNG, best defend the homeland? Nowhere in the Constitution or the United States Code does it require such a defense to be restricted to the geographic boundaries of the homeland itself. At the same time, political considerations (such as employer support for RC-related absences of their employees, and the financial and social impacts on voter-soldiers of such duty-related absences)¹¹⁷ serve as brakes upon any inclination to rapidly deploy a reserve component of the land forces in service of Executive adventurism.

Based on the above dual-control model where power and authority over the ARNG is shared between the Federal government and the respective states, during peacetime ARNG

judge advocates are controlled and managed by their respective State Area Readiness Commands, or STARCs. The actions of the respective states are, in turn, coordinated by the National Guard Bureau.¹¹⁸ As such, for peacetime force management issues such as recruiting, schooling, training, and assignment, the respective state SJAs are responsible. It is only

when these units are called into federal status and while in CONUS FORSCOM [U.S. Army Forces Command] subordinate units will normally command and control them; the FORSCOM and FORSCOM subordinate command SJAs [staff judge advocates] will normally exercise technical supervision of these federalized judge advocates. When Army National Guard units are assigned, attached, or OPCON [under operational control] to other commands, the SJA of the gaining command will exercise technical supervision over all the assigned, attached, or OPCON judge advocates.¹¹⁹

The National Guard Bureau,¹²⁰ not the JAGC, “formulates and administers programs to ensure development and maintenance of Army National Guard units,” to include the judge advocates supporting those units.¹²¹

Each of the several states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, has a State Judge Advocate who serves as the senior judge advocate within the respective jurisdiction.¹²² As a result of this structure, there is little if any centralized coordination of training of ARNG judge advocates by the JAGC; it is only through the institutional training program, discussed *infra*, that **any** centralized management of the ARNG JAGC force structure can occur.

Nominally, “TJAG authorizes state appointments to the JAGC, and ensures that judge advocates in the Army National Guard are subject to the same training, educational standards, and supervision as other members of the JAGC.”¹²³ In practice, however, such supervision is limited to publishing the correspondence courses discussed below for the Judge Advocate Officer Basic and Advanced Courses. True supervision rests with the several states, and, to a much more limited extent, the National Guard Bureau.

THE UNITED STATES ARMY RESERVE

The role of the USAR is “to provide trained units and qualified persons available for active duty in time of war, national emergency, or when national security requires.”¹²⁴

The U.S. Army Reserve is the active component's primary federal reserve force. It consists of highly trained combat support and combat service support Soldiers and units that can move on short notice. The U.S. Army Reserve gives The Army the resources it needs to deploy overseas and sustain combat troops

during wartime, contingencies, or other operations. It is The Army's main source of transportation, medical, logistic, and other combat service support units. It is The Army's only source of trained individual soldiers to augment headquarters staffs and fill vacancies in units.¹²⁵

Unlike the National Guard, whose units are commanded by the governors of the several states unless and until called to Federal service, "almost all USAR TPUs [troop program units] are commanded by [a] USARC [U.S. USAR Command] which is subordinate to U.S. Army Forces Command (FORSCOM). . . ."¹²⁶

In the USAR JAGC, legal operations and "legal support consists of support embedded in U.S. USAR units, such as in the judge advocate sections of Garrison Support Units (GSUs) designed to provide legal services to power projection platforms, and in **Judge Advocate General Service Organizations (JAGSOs)**."¹²⁷

JAGSOs are legal units that provide legal services to troops not otherwise provided organic legal support. Additionally, JAGSOs provide CONUS sustaining base support for mobilization, mobilization sustainment, and demobilization operations. . . . JAGSOs consist of modular teams that provide legal service in all core legal disciplines.¹²⁸

These teams are not wholly self-sustaining, rather they usually "depend on the unit to which they are assigned for all logistical and administrative support."¹²⁹ As such, they are traditionally designed to mobilize and deploy in order to augment or support the capabilities of AC units at Division, Corps, and Theater levels.¹³⁰

LEGAL CONSIDERATIONS REGARDING THE RESERVE COMPONENTS AND TRANSFORMATION

A significant issue involving the development and transformation of the RC, and in particular the ARNG, revolves around the legal status of RC soldiers.

Members of the State National Guard (NG) simultaneously serve in a Federal status as members of the Army National Guard of the United States (ARNGUS). Phrased differently, a NG soldier has a dual status: non-federal, as a member of the NG of a state, territory, Puerto Rico, or the District of Columbia; and federal, as a member of the ARNGUS in Title 10 [of the United States Code] status.

Because the states and territories control their militias, or National Guards, through their respective Adjutants General, commanded by their respective governors,¹³¹ the coordination of these forces is problematic.

One example of this has been the adaptation of the RC to homeland defense issues following the terror attacks of September 11, 2001. Coordination, command, and control of RC units proved more difficult than expected, especially given the lack of standing joint headquarters tailored to meet such a threat and capable of addressing the myriad details inherent in applying RC units to domestic defense operations.¹³² Clearly, conducting such operations requires significant preparation for command and control structures; planning ahead remains a key to avoiding misunderstandings and to ensure seamless integration of such ARNG forces into a total force operation.

Another issue is the inherent tension between the AC and the RC in the competition for scarce resources. At a time when the AC of The Army seeks not only to modernize but indeed to significantly change the manner in which it conducts military operations, the transition to new platforms will require larger budget outlays for force modernization; whether The Army will also provide the budget and resources for simultaneous transition of the RC to these new platforms, and in particular the combat arms units within the ARNG, remains to be seen. Federal laws that require the RC, and specifically the ARNG, to share in force modernization programs create great friction between the AC and the RC in battles for funding.

A third issue involves the dual-control of the ARNG. That this dual control (by the states and by the federal government through the NGB) results in a perceived double standard of management and quality control is illustrated by the case of military judges serving in the JAGC of the ARNG. While The Judge Advocate General (TJAG) has already approved the appointment of all ARNG military judges,¹³³ upon mobilization that officer is required to again go through an suitability evaluation and determination, despite having once run the gauntlet to achieve certification:

Upon mobilization and federalization of an Army National Guard military judge, the Chief Trial Judge will review the Army National Guard military judge's training, background, experience, and qualities (demonstrated mature judgment and high moral character) to determine the officer's suitability to serve as a member of the Army Trial Judiciary.¹³⁴

Even if such a review upon mobilization were only a *pro forma* check to screen for recent information, as it exists this rule creates a perception of dual quality standards. If it is perceived in the AC JAGC that only upon federalization does the JAGC, and specifically TJAG, closely scrutinize ARNG military judge candidates, this is enough to raise questions regarding the lack of, and need for, centralized management and development of RC, and specifically ARNG, judge advocates.

Restrictions and constraints specifically affecting the availability of ARNG forces as outlined above do not generally apply to use of USAR forces; as a consequence, a large portion of The Army's RC combat service support round-out capabilities, especially at the Corps and echelons above Corps level, reside within the USAR.¹³⁵ This allows The Army to deploy and support large combat forces without the Constitutional and procedural constraints inherently imposed on use of ARNG forces. Limitations to use of the USAR are structural, however, stemming from the placement of all RC combat arms forces in the ARNG – while the USAR forces can sustain AC combat units, they cannot replace them.

Several of the above issues involve the ARNG alone. Even USAR forces, however, cannot be mobilized without any legal constraints. The Reserve Components are themselves subdivided into identifiable portions, each with different legal issues involved in their use. It is important that strategic force planners, including those within the JAGC, understand these differences so as to best plan for and structure a system that allows for their effective use.

Within the RC structure, the Ready Reserve consists of military members of the ARNG and USAR organized in units or as individuals and subject to recall to active duty to augment the Active Army in time of war or national emergency.¹³⁶ The Ready Reserve consists of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard. In turn, the Selected Reserve is made up of Ready Reserve units and individuals designated by the Army and submitted by the Chairman, Joint Chiefs of Staff, to the Secretary of Defense for approval as so essential to initial wartime missions that they have priority over all other Reserves.¹³⁷ All Selected Reserves are in an active status.¹³⁸ Individual Mobilization Augmentees (IMAs) are trained USAR individuals pre-assigned to an Active Army, Selective Service System, or Federal Emergency Management Agency (FEMA) billet that requires fill on or shortly after mobilization. Individual Mobilization Augmentees (IMA) participate in training activities on a part-time basis (12 days annually) with an Active Army unit in preparation for mobilization recall.

The Individual Ready Reserve (IRR) is assigned to the USAR only, and consists of Ready Reservists not in the Selected Reserve.¹³⁹ IRR soldiers are assigned for management purposes to two groups. The Annual training (AT) Control Group is made up of IRR soldiers with a training obligation, but not normally assigned to USAR units; these soldiers take part in AT when directed by ARPERCEN; the Reinforcement Control Group is made up of IRR soldiers not assigned to another control group.¹⁴⁰ “Both obligated and non-obligated officers are eligible for assignment to a USAR unit or an IMA position.”¹⁴¹

Laws restrict the authority to mobilize and employ the RC. The Presidential Reserve Call-up (PRC) authorizes a mobilization of two hundred thousand RC forces service members, of all

services combined, but of the Selected Reserve only, for up to 270 days.¹⁴² If the President relies on this mobilization authority, no extension of the mobilization is authorized. This authority is appropriate for short-term contingency missions (such as in Bosnia or Kosovo) where there is an identifiable end-date for the mission.

Additional authorities exist for mobilization of RC forces, for situations of uncertain length and requiring both greater temporal flexibility and deeper force structures to face more serious threats to the nation. A Partial Mobilization requires either the President or Congress to declare or initiate a national emergency, and authorizes the mobilization of as many as one million service members from the Ready Reserve (the Selected Reserve plus the Individual Ready Reserve and Inactive National Guard) from all services combined, for a period of up to two years.¹⁴³ This was the authority relied upon by President George H.W. Bush for the RC mobilizations to support Operations DESERT SHIELD / DESERT STORM in 1990-91. A Full Mobilization based on a declaration of a national emergency allows for a mobilization of the entire approved peacetime reserve component force structure for a period of the duration of the emergency plus six months.¹⁴⁴ A Total Mobilization is also based on a declaration of a national emergency by Congress, allows for a mobilization of a force beyond the entire approved peacetime reserve component force structure, again for a period of the duration of the emergency plus six months.¹⁴⁵ As a result of these authorities, and the limitations placed on them by Congress, RC force planners must understand exactly the nature of the mission for which they are preparing; Congressional reporting requirements are placed on each of the mobilization authorities above.

As noted above, another legal challenge confronting RC force planners is budgeting. Because budgeting for ARNG is routed through NGB and the respective states, The Army has less control over force modernization of ARNG units. With the USAR, those legal constraints do not exist but again, those forces are primarily combat support and combat service support units. For the RC JAGC, materiel modernization that is part of transformation is a critical issue regarding information technologies and training for its soldiers. It is especially important in information technology modernization. ARNG JAGC materiel modernization is particularly problematic, however, because the NGB and STARC leaderships do not often see information technology upgrades that are part of transformation as priority items. Because of the state responsibility for (and control of) budget and equipment during peacetime, the JAGC leadership can often do little to affect such resourcing decisions. Within the USAR, such technology upgrades are less a legal concern than the victims of the normal struggle for budget dollars.

Another issue involved in budgeting is control of training and equipment budgets for ARNG units. Control of these budgets remains at the STARC level; regardless of the above legal and budgetary constraints, judge advocates in the RC have struggled to modernize their information technology equipment and software in an effort to keep pace with their AC counterparts.¹⁴⁶ RC judge advocates often train on information technology equipment significantly older than their AC counterparts. The doctrinal Rucksack Deployable Law Office and Library (RDL) capability discussed at length in FM 27-100,¹⁴⁷ while a reality for most AC judge advocates, is far removed from the conditions many, if not most, RC judge advocates train in. This directly impacts training and education issues for RC judge advocates, where many modern JAGC resources are either internet-based or available only on compact discs, designed to be used in conjunction with modern computer equipment and communications capabilities.

As can be seen in the above discussion, there are significant issues that complicate use of the RC, both the USAR and the ARNG, that are not involved in deployment of AC soldiers and units for Army missions. Centralization of JAGC planning and budgeting might be one way to ensure that development of all components of the JAGC is planned and executed in a consistent, Army-wide manner. Whether this lack of centralization has affected Army deployments of RC soldiers and units can be seen in the next section.

WHERE WE HAVE BEEN

RECENT TRENDS IN RC JUDGE ADVOCATE MOBILIZATIONS AND DEPLOYMENTS

“Between 1990 and 1996, The Army ‘deployed 25 times – an increase in missions by a factor of 16.”¹⁴⁸ In addition to the deployments referred to in the above quote, there were additional mobilizations and deployments overseas of RC soldiers, including judge advocates, in order to backfill and support AC soldiers, such as regionally-focused LSOs supporting and backfilling United States Army, Europe (USAREUR) units deployed to the Balkan theater of operations. A review of recent mobilizations and deployments, including USAR mobilizations, follows, in turn followed by specific information on the experiences encountered by RC judge advocates in preparing for and performing these missions.

Within the JAGC, data on the recent deployment of judge advocates of all components has been compiled by the Center for Law and Military Operations within TJAGSA. While the main focus of such data has been the deployment of Army judge advocates, some information has been provided by other services as well, particularly the Marine Corps and Air Force. Systematic collection and tracking of this data commenced during the Christmas holiday period

in 1998; it has continued since that time, providing the Office of the Judge Advocate General with timely information on the numbers and components of deployed judge advocate officers worldwide. These deployment numbers do not include those USAR judge advocates assigned, mobilized, and deployed with USAR TPUs such as LSOs whose mission is to support AC Army units and to backfill deployed AC judge advocates both in CONUS and overseas, such as in USAREUR. Similarly, they do not reflect those judge advocates deployed with special operations or special mission units, due to the issues of security and classification.¹⁴⁹

At Christmas 1998, the majority of the thirty deployed Army judge advocate officers were AC, with but two USAR judge advocates deployed in support of Operation JOINT FORGE in Bosnia, and one RC judge advocate located at the support base in Tazar, Hungary.¹⁵⁰ Approximately ten additional Army judge advocates were deployed in support of Task Force FALCON in Kosovo beginning in the summer of 1999, none of whom were from the RC.¹⁵¹ Over the next two and one-half years, these numbers did not substantially change.¹⁵²

Immediately prior to the terror attacks against the United States on 11 September 2001, the above picture had changed but little. In particular, several of the deployed missions had stabilized, and the JAGC sought to ease the deployment burden on AG judge advocates by providing for deployment of RC judge advocates on either a unit or voluntary individual replacement basis. The judge advocates deployed to high priority missions with higher operations tempo (optempo) such as the Task Force FALCON were in the main AC judge advocates. Other missions, including the SFOR mission in Bosnia were staffed in part by RC judge advocates, mostly on voluntary temporary tours of active duty (TTAD).¹⁵³ That mission was scheduled in late 1999 to be assumed by a majority of RC judge advocates when the 29th Infantry Division (Light) of the Virginia and Maryland Army National Guards in October 2001.¹⁵⁴

By April 2002, the number of deployed judge advocates leaped to a total of sixty-one, and now because of the increased Army presence around the globe due to the missions flowing from the attacks of 11 September 2001, eighteen of these deployed judge advocates were from the RC JAGC.¹⁵⁵ The percentage of RC judge advocates deployed on Army missions overseas is likely to jump further in the Spring of 2003, when, as noted, command of the Kosovo mission will be assumed by the 28th Infantry Division (Mechanized) of the Pennsylvania Army National Guard; replacing them in Bosnia will be the 35th Infantry Division (Mechanized) of the Kansas and Missouri Army National Guards. With increased deployments of all components in support of Operation NOBLE EAGLE homeland defense missions (which, again, are not tracked by the CLAMO database), RC judge advocates are also both supporting mobilizations (such as through USAR LSOs and mobilization support units) and conducting actual deployed missions.

Further, with the recent force build-up in Southwest Asia in preparation for possible operations to disarm the current Iraqi regime, the reliance of the JAGC on RC judge advocates to perform these missions is only likely to further increase from the current levels and percentages for the foreseeable future.

ANALYSIS OF RECENT RC JUDGE ADVOCATE MOBILIZATIONS AND DEPLOYMENTS

Given the increase in RC judge advocate optempo discussed above, and the resulting likelihood of increased reliance by the JAGC on its RC, a review of recent experiences by RC judge advocate leaders to seek lessons learned as a result of recent RC judge advocate mobilizations would be prudent. To ensure a complete picture of lessons arising from such recent deployments, this paper will consider the experiences of judge advocates from each of the two RC elements, the USAR and the ARNG. It will thereby seek to derive lessons from RC unit mobilizations and deployments to perform Army missions overseas and also from those units designed to support the AC by providing traditional legal support to deployments and back-filling AC units while soldiers from those units deploy on Army missions. In this way, not only may human faces be placed upon the statistics above, but also the lessons learned from those deployments can be applied for the benefit of future judge advocates in both the AC and RC of the JAGC.

ARNG Mobilization and Deployment Experiences

Certainly, the above data support the contention that with increasing reliance upon its RC the JAGC must begin to transform its training and mobilization models for its RC judge advocates to prepare them more fully for mobilization and deployment missions. In this regard, the experiences of ARNG and USAR judge advocates add meaning to the statistics in the preceding section.

LTC Bruce A. Pagel, a judge advocate with the Virginia ARNG, served as the Staff Judge Advocate for the Headquarters, 29th Infantry Division (Light) during its deployment to command the NATO Multi-national Division (North) sector in Bosnia for NATO Stabilization Force (SFOR) X, from October 2001 to April 2002. A career National Guard judge advocate officer, LTC Pagel is a graduate of the RC JAOBC, RC JAOAC, and the Command and General Staff College. His experiences as a senior judge advocate in recruiting, identifying, mobilizing, training, and deploying a team of judge advocates to perform its mission in Operation JOINT FORGE in Bosnia is illustrative of the need for a total transformation of the RC judge advocate education, training, and mobilization model.

Regarding training, LTC Pagel discovered a prolonged training cycle to prepare for the mission made it difficult to form the force early and lock it into the mission. In turn, this resulted in great inefficiency, as officers volunteered early for the mission, only to be later removed from the Division's manning document (DMD), and thereby from the mission, for a variety of reasons. As a result, officers who participated in early phases of the training for the mission in several cases did not deploy with the Division, while officers who eventually deployed had missed out on early and fundamentally important training. Because they had missed that early training, more advanced training often had to wait while the initial training was repeated for the new additions to the judge advocate DMD. The cause was both the long training cycle and the unit leadership's unwillingness to hold officers' feet to the fire once they had identified themselves as volunteering for the mission. LTC Pagel believes that this resulting waste of training resources (including time) and opportunities could easily have been avoided by several means.

First, commitment to the mission upon volunteering would require judge advocates to carefully think about the commitment and sacrifices they would be making before identifying themselves for the mission. This would have spared the Division and the Office of the Staff Judge Advocate from wasting deployment-specific training resources on officers who did not deploy with the unit.¹⁵⁶ Of course, in individual cases there would always be a limited number of soldiers and officers who for one reason or another would not deploy with the unit; however, allowing individuals to simply change their minds and renege on their commitment cause the command to experience significant manning difficulties.

As a corollary to this requirement, the unit leadership's early commitment to rely on volunteers to staff a deploying RC SJA office is an issue that in LTC Pagel's opinion must be resolved. Of course, there remained a stay-behind mission for officers in the Division headquarters (to include mobilizing other Virginia Guardsmen for missions supporting both Operations NOBLE EAGLE for homeland defense and security, and ENDURING FREEDOM, in support of the global war on terrorism following the terror attacks of 11 September 2001). In practice, however, it turned out that the "majority of the OSJA, 29th infantry Division (Light) did not deploy with SFOR X, and there was no good program to recruit RC [judge advocates] to fill deployment SJA slots."¹⁵⁷ Under the mobilization and staffing model proposed by LTC Pagel, rather than relying on volunteers to identify themselves as available for the mission, if an individual were assigned to a staff position such as Staff Judge Advocate, and that position were identified for deployment, that individual would be required to deploy with the Division headquarters. The officer in a deploying position who chose for whatever reason to not deploy would be required to surrender his position on the Division staff (and perhaps even be required

to either resign, retire, or request removal to the Individual Ready Reserve). This requirement of the officers assigned to positions within the Division, and the OSJA, to serve on the deployment would have significantly alleviated the manning difficulties experienced by the unit.

A second means to avoid the manning difficulties experienced by LTC Pagel would, in his opinion, to have shortened the pre-deployment training period from eighteen months to perhaps six, and to extend the period of the mobilization orders.¹⁵⁸ In this way the majority of the training could have occurred immediately prior to the deployment, with much of the more intensive training of both line units and staff coming post-mobilization. Using this method, the judge advocate officers receiving the training would already be on orders (eliminating the training of officers who volunteered early but for whatever reason did not eventually deploy with the unit), and the training would have an immediacy that was lacking over much of the prolonged training cycle.¹⁵⁹ In practice, the decision to extend the pre-deployment preparation was one driven by limited resources. Rather than mobilize the unit for an extended period for pre-mission training, the decision was made to use scheduled drill training weekends. This caused the training cycle to be prolonged over a year and a half, but “saved” resources that would have been spent on a longer period of actual mobilization. In reality, as LTC Pagel notes, this did not in the end save resources wasted on officers who eventually did not deploy.

A related issue involving mobilization and deployment of RC soldiers that was not addressed in any of the doctrine, one for which LTC Pagel found himself unprepared, was what he termed the “Battle of the STARCs.” While the Division has fully signed up for the deployment mission when assigned it by Headquarters, Department of the Army, in practice, LTC Pagel found that the respective state commands were less enthusiastic. As a result, requests for support, particularly in the assignment of judge advocates and paralegal soldiers often were never answered.¹⁶⁰ This exacerbated the staffing of the mission on a volunteer basis, requiring the Staff Judge Advocate to act as a staff officer to the commander, the trainer to his own staff, and the recruiter in order to build the team of judge advocates and paralegal soldiers he would deploy with.¹⁶¹ Eventually, the office was only rounded out to near its authorized manning when OSJA, XVIII Airborne Corps, provided one AC judge advocate and two AC paralegal soldiers for the deployment.

Another aspect of the training experienced by the SFOR X judge advocates was the lack of preparation for missions involving counter-terrorism and apprehension of Persons indicted for War Crimes (PIFWCs) by the International Criminal Tribunal for the Former Yugoslavia (ICTY). This turned out to be a high-stress aspect of the SFOR mission for the judge advocates, but was never addressed in their preparation training for the deployment. This was so despite the

fact that procedures for judge advocate involvement were in place awaiting their arrival in theater, and several judge advocates on the deployment had the requisite security clearances to be briefed on the procedures.

This inefficiency and disconnect between the training and the actual deployment caused LTC Pagel to note that it was “probably not true that [his team saw] everything in training” that they were to experience during the deployment rotation, despite the fact that judge advocates had served in two Implementation Force (IFOR) and nine previous SFOR rotations since late December 1995.¹⁶² As a result, he came to believe that his staff, as a whole, needed better training in a variety of areas.¹⁶³ Because he arrived in theater and discovered that he felt unprepared by the training program for the realities of the mission, LTC Pagel came to realize that the deployment represented a 24-hour per day, seven day per week challenge for him and his team. In order to overcome his lack of active duty experience and what he discovered to be the insufficient preparation for the deployment in the training program, LTC Pagel found himself required to exert more energy on various issues than in hindsight he should have. This was despite the fact that he volunteered early in the training cycle (February 2000), and had participated with distinction in the staff exercises in various capacities.¹⁶⁴

Regarding the substantive legal issues he faced during the deployment rotation, LTC Pagel quickly realized that “deployment is not like being a garrison Staff Judge Advocate,”¹⁶⁵ and that in the words of his Commanding General, Major General H Steven Blum, Bosnia represented “intellectual warfare; this is graduate-level stuff.”¹⁶⁶ In particular, LTC Pagel came to realize that while they served and drilled in Virginia, the OSJA was not an integrated part of the Division staff, contrary to the JAGC doctrine outlined above. LTC Pagel discovered that ARNG “commanders’ routine experience with their OSJA is limited to wills and [administrative separation] drug boards, that does not prepare them to effectively use OSJA as a force multiplier in [such] operations.”¹⁶⁷ “The [ARNG], at least the 29th [ID(L)], just doesn’t organize itself like an [active duty] division; [Division judge advocates] had no experience in claims, legal assistance, fiscal law, criminal law.”¹⁶⁸ LTC Pagel discovered this lack of mission integration of the OSJA was so even though the Division Chief of Staff for the SFOR X deployment was an AC Colonel who had Infantry command experience up to the battalion level.¹⁶⁹ Even as late as the Division’s Mission Rehearsal Exercise at Fort Polk, Louisiana in June 2001, the OSJA was not integrated into the staff and had to “struggle to get even a small part-time desk in the ‘White House’ [Division Headquarters].”¹⁷⁰

Fortunately for LTC Pagel and his judge advocates, the Division Staff quickly realized upon its deployment to Bosnia that “NATO Peacekeeping is legally intensive, made more complicated by deployment and cross-component issues.”¹⁷¹ As a team, they were eventually able to overcome their collective learning curve and that of the staff, and to integrate themselves into the Division Staff. With placement of the Chief of Operations Law into the Division’s Plans and Operations workspaces, the location of the OSJA in the Division Headquarters on the floor immediately above the Command Group, and the Staff Judge Advocate’s daily participation in the staff briefs, Crisis Action Team meetings, and intelligence updates with the Commanding General, the Division staff and its leaders came to understand that early reliance on their legal team usually saved overall effort rather than simply adding to the layers of staff work.¹⁷² The 29th Division OSJA looks back on its experiences in SFOR X as a major success, and is now working with the Division Staff in ways not previously experienced.

Significantly, the JAGC has realized that in the face of increasing reliance on RC (and specifically ARNG) judge advocates and units to perform overseas deployed missions such as in Bosnia and Kosovo, it lacks resources to assist in the training of these officers to perform their missions. In this regard, TJAGSA and specifically CLAMO have responded by recruiting LTC Pagel to accompany training teams to ARNG units to help in the training of ARNG judge advocates as they prepare for these deployment missions.¹⁷³ LTC Pagel has caveated his presentations with the admonition that his information has a short shelf-life, and that these mission environments are fluid, with information changing rapidly. However, his contribution to this training effort will significantly reduce the learning curves for those officers preparing to serve in these important and volatile regions.

USAR Mobilization and Deployment Experiences

As with the ARNG, the USAR generally and the USAR JAGC in particular have increasingly mobilized and deployed to perform Army missions. USAR judge advocates, as noted, are trained and educated using the same model as judge advocates within the ARNG; however, they are often organized differently, with specialized legal support organizations designed to meet specific combat service support needs within The Army. As such, the experiences of USAR judge advocates add a different perspective to the statistics in the preceding section.

COL Robert (Bob) Erickson is a senior judge advocate within the USAR; unlike LTC Pagel, COL Erickson had significant AC judge advocate experience preceding his RC career. Most recently he was assigned as Commanding Officer of the 10th Legal Services Organization,

headquartered at Andrews Air Force Base in Maryland, outside of Washington, D.C. With active and reserve military service in an unbroken period spanning from 1979 to the present, COL Erickson has experienced all facets of judge advocate training and education at every level. His military education includes the Judge Advocate Basic Course, the RC JAOAC, and the Command and General Staff College, and he was selected for the United States Army War College Distance Education program. He is currently serving as a Special Assistant to the Commanding General for the 99th Reserve Support Command.¹⁷⁴

COL Erickson has been mobilized and deployed to serve in a variety of missions, including service in Operation DESERT STORM, conducting 24-hour operations supporting the command center established in response to the terror attacks against the Pentagon on 11 September 2001, and participating in a training mission to Peru sponsored by the Naval War College to conduct training in developing democracies (COL Erickson conducted legal training in anti-fraud operations). In his civilian career, COL Erickson is currently an Assistant United States Attorney in the Criminal Fraud Section of the Office of the United States Attorney for the Eastern District of Virginia in Alexandria, Virginia. He has also served in the Civil Torts Division of the United States Department of Justice in Washington, D.C., the Civil Law Section in the Office of the United States Attorney for the Eastern District of Virginia, and as a staff attorney in the United States Marshals Service.

COL Erickson entered active duty in 1979, and was first assigned to the 32d Army Air Defense Command [32d AADCOM] in Darmstadt, Germany. His first duty position was as a trial counsel (military prosecutor) within that command. Based upon his performance and experience, he was soon elevated to become the Chief of Military Justice (chief prosecutor) for the 32d AADCOM, supervising all criminal and disciplinary actions for a general court-martial jurisdiction in the Army in Europe. Following his service within 32d AADCOM, COL Erickson was named the Senior Defense Counsel for V Corps, headquartered in Frankfurt, Germany, and served as both detailed defense counsel and individually-requested military counsel in numerous courts-martial. Following his service in Germany, COL Erickson was reassigned to the United States Army Legal Services Agency, where he served in the Government Appellate Division as an appellate prosecutor.

COL Erickson remained in the military following his release from active duty. He elected to serve in the USAR, and his first RC assignment was in the 10th LSO, the same unit he would eventually command, where he served as a member of a trial defense team representing soldiers facing disciplinary or adverse administrative actions. He then was reassigned to the Office of the Staff Judge Advocate for the 310th Theater Army Command [TACOM], where he

served in a variety of positions of increasing responsibility, leading to his being named as the first Command Judge Advocate for the 55th Materiel Management Center, a subordinate command within the 310th TACOM. It was during his service with the 55th MMC that COL Erickson was mobilized and deployed in support of Operation DESERT STORM. In that mission, he served as the Chief of Military Justice for the 22d Support Command [SUPCOM] in Dhahran, Saudi Arabia. COL Erickson was pleased to find on this deployment senior AC judge advocates (including COL Bill Hagan, the Staff Judge Advocate for the 22d SUPCOM under LTG William Pagonis) who appreciated and sought to integrate RC judge advocates into the command's mission. This was not something COL Erickson had always encountered in his interactions with AC judge advocates.

Following his service with the 55th MMC, COL Erickson was selected to serve as the Deputy Staff Judge Advocate for the 310th TACOM; upon his promotion to Colonel, he was named Commanding Officer for the 10th LSO. Based on his experience while he served in the 310th TACOM, COL Erickson utilized and further developed a program whereby his unit supported AC judge advocate offices, especially those in Germany, in their day-to-day missions. In one such mission, COL Erickson and another unit judge advocate prepared a criminal arson case for trial, including conducting the investigation, preparing the charges, organizing the Article 32b, UCMJ,¹⁷⁵ investigation, and actually initiating that investigation before turning it back over to the AC judge advocates upon the completion of his Annual Training period. He sought these experiences for unit officers because he believed there was more meaningful work available to RC judge advocates in AC JAGC offices, and because these experiences were simply more fun for those who participated, and thus made for more positive training events.¹⁷⁶

Upon taking command of the 10th LSO, COL Erickson found he was dissatisfied with the training and education program for the unit's officers. While he was pleased to discover that his officers each had significant legal experience and skills, based on his own deployment experience he believed more could be done to prepare them for mobilization and deployment to support Army missions. While he believed that his officers were as experienced as AC judge advocates (especially with their significant civilian legal experience to draw from¹⁷⁷), the training available to them to help them perform their unit missions was inadequate. In general, he was dissatisfied with much of the unit training available from The Army and the JAGC, finding much of it "canned and not relevant" to the duties and tasks deployed judge advocates were likely to face.¹⁷⁸ Because of this perceived shortfall between the unit's training program and what he felt were the requirements for success on deployments, he worked hard to develop his own training

model to ensure that, if called upon, the unit's officers could not only perform but excel in the field.

COL Erickson's training model included a three-pronged approach, to ensure that, at a minimum, the unit's officers could immediately perform duties in a deployed environment.

These three skills focused on in this training model were:

- writing wills and performing legal assistance support for soldiers;
- conducting administrative disciplinary boards and preparing punishment proceedings under Article 15, UCMJ; and,
- possessing basic military skills, including safety awareness, mine recognition, weapons qualifications, staff skills (including preparing Rules of Engagement for operations orders), map reading, gas mask familiarization, and even assembling tents in a field environment.

The training modules under this program were prepared and taught by officers within the unit with whatever resources the unit could assemble. For example, a former Special Forces warrant officer (who had been recruited to the unit following his release from active duty to attend law school) conducted the mine recognition training. While Army resources were often used for such training, it was not part of JAGC training prepared by TJAGSA - rather, it was training in skills COL Erickson believed based on his experiences was critical to survival and success in deployed missions. Once this training model was put into practice, COL Erickson discovered that it was tremendously popular with the unit's officers, even those who had served in the AC JAGC, many of whom had likely never had significant military skills training of this sort.

Another move COL Erickson believed was important was to assign judge advocates to serve with the units they supported, rather than supporting such units from a centralized location such as the 10th LSO's headquarters at Andrews Air Force base. This move was based on his positive experiences as the first Command Judge Advocate with the 55th MMC. COL Erickson believed this was important because of a variety of reasons. First, the experience available at the units for such judge advocates was more meaningful both for military law experience and for military experience - that such officers would, by serving in the unit environment, gain significant experience in military skills simply by observing unit activities. Second, COL Erickson believed strongly that this was consistent with established JAGC and criminal law policy that the vast majority of problems are best handled locally, and the lowest level possible consistent with the nature of the misconduct involved.

In terms of his views on RC judge advocate training and education, while he believes he was personally well prepared for his mobilizations and deployments, he recognizes this is in part

due to his AC experience. Except for particularized fields (e.g., operations law, international law), COL Erickson found that the unit's officers were in general prepared for their missions; in large part, this was due to the depth of experience each brought to the unit from their respective civilian employment experiences.¹⁷⁹ For COL Erickson, the greatest deficiency he found in terms of preparing RC judge advocates for Army missions is not training but the structure and alignment within the LSO unit system. If LSO were structured into smaller teams, each focused on particular missions (e.g., deployment contracting, legal assistance support, military justice) this would allow the LSOs to develop expertise in important mission areas. Cross-training, or rotations among teams, would ensure that sufficient depth were maintained so the unit could be prepared in the event of emergency situations.

It is the civilian experiences that RC judge advocates bring to their military duties that makes them value added assets to Army missions, according to COL Erickson. In this regard, especially since the average age and experience of RC judge advocates is generally greater than their AC counterparts, that minimizes any "readiness gaps" between the AC and RC JAGC components. He states "perhaps the RC JAGC needs to meet a standard, and perhaps there are deficiencies that the RC JAGC can address, but in many ways we're ahead of the AC because of significant civilian legal experience that AC judge advocates often lack."¹⁸⁰ This was particularly true when his unit conducted 24-hour operations in support of the emergency command center responding to the 11 September terror attacks against the Pentagon. For these types of mass casualty disaster events, COL Erickson believes the RC judge advocate is perhaps even better situated to provide meaningful support than is his AC counterpart.

In terms of resident institutional training, COL Erickson strongly supports RC judge advocate education conducted at TJAGSA, stating "it is important to have the time for an officer to get together in an educational environment with peers."¹⁸¹ The current system of utilizing books with multiple-choice questions for non-resident education seems to him more structured for ease of grading by course managers than for providing a meaningful educational experience to the officer. His concerns is that generally, the time required for RC JAGC educational requirements is disproportionate to what benefit the officers gets out of the experience. At the same time, COL Erickson is cognizant of the burdens military educational requirements place on officers who already have significant civilian careers, personal responsibilities, and RC military duties. He believes current training requirements often drive good officers to leave the service. As a result, in order to justify the increasing educational burdens, the JAGC must develop education and training that is significantly more interesting and sophisticated, consistent with continuing legal education in the civilian sector.

One significant issue COL Erickson discovered commanding the 10th LSO, in arranging resident training at TJAGSA for the unit's officers, was that, for whatever reason, RC judge advocates were not treated the same as AC judge advocates in enrolling for courses. Sources at TJAGSA informed him that the Army's centralized training enrollment system, the Army Training Requirement Resource System [ATRRS], would not allow RC officers to enroll in resident courses at TJAGSA prior to thirty days before the course, while AC judge advocates could enroll well before the event. Sources at the RC Personnel Command in St. Louis informed him that the problem was at TJAGSA. He was never able to identify the cause for this disparity. With civilian employment requirements, the thirty-day window placed RC judge advocates at a significant scheduling disadvantage.¹⁸²

In sum, COL Erickson strongly believes that the strength of the RC JAGC is in the depth of legal experience its officers bring to the military from civilian life. While the RC judge advocate perhaps trails the AC counterpart in certain technical areas of practice (operational law being foremost among these), he strongly feels they make up for that gap by the enormous legal and other experience they bring from civilian life. He often found himself frustrated by the training available from The Army generally (and from the JAGC and TJAGSA in particular), which he found canned and often irrelevant, that frustration reaching the point that he developed a training program for his unit that he believed more properly prepared his unit's officers for their missions. Finally, he believed the most productive training and interoperability training came from actual interaction between AC and RC judge advocates where the USAR judge advocates would support AC JAGC offices in their missions. In this way, he believes, each would best come to appreciate the strengths of the other, rather than focusing on gaps in education, training, and experience.

FUTURE JAGC DOCTRINE

Pursuing the mission in the 21st Century will challenge judge advocates in three ways. First, judge advocates must become increasingly refined as soldiers and lawyers. . . . Second, judge advocates must become more involved in the military decision-making process in critical planning cells, and at lower levels of command. . . . Third, judge advocates must be capable of expanding the level of support to meet the mission demands of a force projection army.¹⁸³

The focus of this paper is to consider productive and realistic means to enhance the readiness of RC judge advocates for mobilization and deployment. There is an underlying question in that focus: "readiness for what?" What qualifications and capabilities will The Army

expect RC judge advocates to perform in the 21st Century? In light of the experiences outlined above, coming from recent mobilization and deployment experiences in both the ARNG and the USAR, it is submitted that now more than ever The Army must train RC judge advocates to perform the entire spectrum of legal support to military operations outlined in FM 27-100. The days when RC judge advocates would routinely expect to perform only administrative separation boards of soldiers accused of misconduct, and to prepare wills for other soldiers mobilizing and deploying, are over.

The debate in The Army over the proper role of the judge advocate in the support of military operations is illustrated by two recent experiences:

Most recently, in the war in Afghanistan, press reports attributed to senior Air Force officials, including a named Air Force Lieutenant General, complained that the Staff Judge Advocate of the United States Central Command (USCENTCOM) had 'repeatedly refused to permit (air) strikes,' including one believed to have targeted Taliban Leader Mullah Mohamed Omar [citation omitted]. The reported rationale of the Staff Judge Advocate was that the convoy of civilian vehicles believed to be carrying Omar might actually be carrying only non-combatant civilians (thus not a lawful target) and might even be a deliberate attempt to trick the United States into attacking a civilian convoy. For the Staff Judge Advocate to have raised these issues and counseled caution in bombing the convoy was, of course, perfectly proper. For others to have disagreed with the Staff Judge Advocate [if he in fact gave such advice], and perhaps to assert different conclusions based on available intelligence, is also proper. However, to assert that the Staff Judge Advocate exercised the authority to "disapprove" the strikes demonstrates a flawed understanding of the rules of engagement, and a shocking misconception of the roles of the commander and the Staff Judge Advocate.¹⁸⁴

Compare that experience with the one outlined below, which received national attention at the time it was published:

Even big artillery pieces are fired in a careful way. At one point [describing a field training situational exercise conducted at the Combat Maneuver Training Center in Hohenfels, Germany, preparing for mission in Bosnia], the exercise has U.S. troops shelled by a mortar hidden in the "oldest castle in the Balkans," an important cultural monument. The brigade's fire support officer asks Capt. Edward Hayes, the staff lawyer, whether they can hit back. [Hayes] clears the use of five shells. But after most land on target, [Hayes] says next time he would only recommend two – "the minimum force necessary."¹⁸⁵

Clearly, either example represents more than the traditional experience of RC judge advocates. In the first example, the author posits the judge advocate as a staff officer, and a special staff

officer at that,¹⁸⁶ one who would not be authorized and should not as a matter of principle be allowed to make command decisions relating to executing military operations. This debate, however, is not resolved,¹⁸⁷ though Army doctrine is clear that this is the responsibility of the commander alone.¹⁸⁸ The comments of the judge advocate in the second scenario presuppose an authority most judge advocates would not believe they have or should have in Army operations. The discussion above on the proper role of the judge advocate in military staff operations is important so that the JAGC can best understand what exactly it is seeking to prepare its officers, to include its RC officers, to perform. In any event, the JAGC must speak clearly on the role of the judge advocate in the battle staff, so JAGC planners, in turn, may best design a system to prepare those officers, through education and training, for those missions.

The doctrinal step of placing the judge advocate in the thick of the battle staff, as presented in FM 27-100, represents a major leap forward in ensuring the relevance of the judge advocate to Army operations. In keeping with that first example provided above, it is reasonable to expect that The Army will seek for the judge advocate, of whatever component, to be capable of serving as a qualified staff officer providing timely staff support to the commander in a technical but ever-increasing scope of missions. In order to do this, as represented in the doctrine contained in FM 27-100, the judge advocate must possess staff skills appropriate for officers of their grade regardless of branch.

Whereas before company grade judge advocates could be content to quietly absorb information while performing tasks in their specialized realm, today a junior judge advocate captain is likely to be required to support a deployed brigade in its missions, often far from technical support from more senior judge advocates. Company grade judge advocates should understand basic Army staff doctrine, their role in supporting that doctrine, and their place in Army operations. Given the educational and training model outlined above, however, it would be hard to argue that the RC JAGC is currently preparing its officers for this type of duty.

For field grade officers, it is reasonable for the commander of today to expect that the judge advocate to understand the fundamentals of the operations of a staff at the brigade, division, and corps echelons. Such officers should be expected to understand the basics of the operations order, the various inputs expected of judge advocate for such orders (preparation of rules of engagement for the mission, as well as appropriate legal annexes), and the conduct of planning and targeting sessions of the staff. Further, commanders should reasonably expect their field grade judge advocates to have a common level of technical knowledge, regardless of component. In this regard, LTC Pagel's comments above regarding the implications of fiscal law on SFOR operations is illustrative of a shortfall in RC JAGC training. Given that experience,

whether the JAGC can currently satisfy such expectations using RC officers is questionable using the training model it currently employs.

Centralized control of judge advocate operations, personnel management, and training would also go a long way toward standardizing the procurement of information technology capabilities for RC judge advocates. Where Army doctrine expects judge advocates to be able to mobilize in order to support commanders conduct deployed missions, it is not unreasonable to expect that at least these officers will be able to bring with them the equipment and capabilities Army doctrine specifies for them.

FUTURE JUDGE ADVOCATE TRAINING: WHERE DO WE GO?

In 2015 people remain the centerpiece of The Army. Training Soldiers and growing leaders continues to be one of The Army's most essential missions. Expectations of Soldiers, recruited from the same population base as in 2002, are greater because the current operational environment demands are greater and more complex than in our past.¹⁸⁹

Consistent with the concept of centralized information, decentralized operations so important to Army transformation,¹⁹⁰ it is past time for JAGC doctrine and training policy, for all components, to be centralized within the Office of the Judge Advocate General and The Judge Advocate General's School of The Army. While this is easily accomplished with regards to the USAR, this would require coordination with, and perhaps even subordination of, the Office of the Chief Counsel at NGB to the Office of The Judge Advocate General. Only in this way could The Army reasonably expect that it could mobilize and deploy a judge advocate from any state, from any component, and reasonably expect that officer to perform to a given standard. Execution of that standard would be the responsibility of each state's SJA; the minimum requirement would be established by The Judge Advocate General, and conformity to that standard would be supervised by the Chief Counsel of the NGB.

While the RC JAGC struggles to maintain competitiveness with its AC partners, The Army in turn is already looking to change the manner in which it trains its officers. Where it currently is based on the Basic Course, Captain's Career Course, and Command and Staff College model outlined above, The Army has unveiled a plan to totally revamp that model and replace it with a three phased Basic Officer Leader Course, or BOLC.¹⁹¹

The BOLC concept's three phases begin with Phase I, pre-commissioning training, and upon the officer's entry onto active duty would flow into BOLC Phase II, where the officer

receives initial entry training.¹⁹² The third phase, BOLC III, would be where the officer receives branch-specific training.¹⁹³ This three-phased approach would replace the current branch Officer Basic Courses. The concept is based on the belief that by receiving a common educational experience upon entry into service as a commissioned officer, officers would better understand the Army as a whole, rather than being focused solely and exclusively on their branch-related duties. BOLC III would provide new officers with training and education specific to their branches.

Following BOLC and their initial duty assignments, captains would receive training through Captains' Professional Military Education (PME) that will replace the captains' Career Courses currently in place. This training will be divided into two types, one for officers likely to serve in staff positions, the other for those officers likely to serve in command positions.¹⁹⁴ For officers likely to serve in staff positions, PME would consist of the Combined Arms Staff Course (CASC); for those officers likely to command at the company/battery/troop level, this education would come via the Combined Arms Battle Command Course (CABCC). "Captains' PME end state is to develop adaptive thinkers and leaders able to sense changes in the environment, adjust their plan, make innovative decisions, and execute."¹⁹⁵

Beyond the BOLC initial education and training, and the Captains' PME advanced training, there are plans to revamp the education for intermediate (junior field grade) officers as well. Currently, only fifty percent of Army majors (and fewer than that for AC judge advocates) receive resident instruction at The Army's Command & General Staff College (C&GSC). The Army is seeking to remodel that educational experience so that one hundred percent of majors will receive that level of instruction (Intermediate Level Education, or ILE) through a thirteen-week resident education comparable to Term I of the current C&GSC.¹⁹⁶ This core course will qualify graduates for Military Education Level 4 (MEL4) and Joint Professional Military Education Level I status.¹⁹⁷

For those officers in the Operations Functional Area, an additional 28-week module, similar to Terms II and III of C&GSC, is being developed.¹⁹⁸ For officers in the three other Functional (career management) Areas in the Competitive Categories (Operational Support, Information Operations, and Institutional Support), their respective functional areas will "conduct individual qualification courses ranging from two to 178 weeks in length."¹⁹⁹ Presumably, all judge advocates would receive this training through the ILE and a Functional Area individual qualification course, and would not otherwise qualify for the 28-week operations module.

Whether The Army would consider the Graduate Course as satisfying the individual Functional Area qualification course remains to be seen.

Given the new “objective” training model described above, before the issue of updating judge advocate training may be taken up, it is important to consider what exactly we are seeking to train the judge advocate for. Put another way, the JAGC, and its RC in particular, must understand its place on the modern battlefield. The two scenarios of the judge advocate’s role quoted in the previous section illustrate only part of the dilemma. It is not just the authorities (or limitation thereto) that are at issue: rather, the role and even the location of the judge advocate in the battle-staff may be at stake.

Some, viewing the judge advocate as a technical expert at best, would have little difficulty in removing the judge advocate from the TAC or TOC, and through information technology be available to the commander on a “pull” or requirements-driven basis. If this is the position The Army seeks to take, however, there is really no reason the same argument could not be made for the entire battle-staff, including the operations officer, who could provide staff support to the commander through technical means. The judge advocate has the same requirement as primary staff officers to be able to visualize the mission environment in which they will have to perform. Absent a presence on the battlefield, especially in military operations shorts of full war, the judge advocate’s ability to provide timely and accurate legal advice and support to the commander and staff will be impaired. Given that, the conclusion is inescapable that if the commander and staff seek quality legal support to operations, the place of the judge advocate in those operations is with the staff, not in some reach-back capacity via technical means, and that judge advocate must available to the commander to the same extent as any other staff officer.

Once the issue of what exactly the JAGC seeks to train its officers for, the question next arises what subject areas should a mobilized and deployed judge advocate be conversant in to be truly trained and prepared for the operational environment of the 21st Century. The basic JAGC staples of UCMJ, legal assistance, and claims will no longer suffice to provide the operational support required of today’s commanders. Today, the judge advocate must be fluent in funding restrictions on military operations, in public affairs doctrine and the political realities of a battlefield intensively covered by broadcast media, and in the operational art of the primary staff officer. “The use of law as a weapon of war,” in an environment where the “American military is particularly vulnerable (to) unrealistic norms’ propounded by advocates of a ‘new international law (which) may become one of the most potent weapons ever deployed against the United States.’²⁰⁰ Further, the primary formation in The Army’s order of battle may become the brigade rather than the division. As such, the junior judge advocate will be required to

perform in a manner significantly different even from that experienced by counterparts in Operation DESERT STORM. At least as regards the RC judge advocate, it is the position of this paper that the junior judge advocate is not currently trained to perform that mission to standard in that modern battlefield environment.

Given the current backward state of RC JAGC officer training described previously, and The Army's movement toward the new officer training model outlined above, it cannot be reasonably argued that the educational experience of the RC judge advocate is in any way, qualitatively or quantitatively, similar to that received by his or her AC judge advocate partner. This educational gap between the AC and RC components of the JAGC is becoming evident at a time when, as noted in the experiences of RC judge advocate leaders above, the RC JAGC is struggling to prepare its officers effectively for mobilized and deployed service. As an example, it is surprising that the Judge Advocate Office Graduate Course is considered "an essential element in career development and the keystone in the JAGC's professional development plan,"²⁰¹ and yet the prerequisites and the POI for the RC JAOAC vary so significantly from that "keystone" educational experience. Indeed, "[AC judge advocate] officers who have completed the Judge Advocate Officer Advanced Correspondence Course (sic), obtained an advanced law degree, or completed an advanced course at another service school will still [be required to] attend the resident Graduate Course."²⁰² As such, even the JAGC can hardly credibly claim that the RC JAOAC is the qualitative equivalent of the education and training received by AC judge advocates.

If the RC judge advocate career officer is willing to invest the time and effort, on a non-resident basis, to pursue military education to ensure he or she is competitive in the field with the AC judge advocate, instead of on the resident basis of the AC judge advocate, all the while pursuing his or her civilian professional development and career, it is not too much to ask that the experience and education should be comparable. Models exist within The Army to illustrate how a transformation of the current training model may be reasonably achieved. If funding is the issue preventing creation of this level of quality training and military education, the JAGC must be willing to expend the resources to provide its RC officers with the training they need to perform The Army's mobilization and deployment missions.

Among the first steps that must be taken to ensure that student quality in RC judge advocate training is equivalent to that required for the resident graduate Course is to mandate that the prerequisites for enrollment are at least similar. In the case of the RC JAOAC, completion of the Combined Arms & Services Staff School (CAS3), a temporal *de facto* prerequisite for the AC judge advocate prior to attending the Graduate Course, could and

should be a similar requirement for the RC judge advocate prior to enrollment in the RC JAOAC. This should be so if only to ensure that the field grade judge advocate officer has a basic understanding of military doctrine, terminology, and concepts so as to be able to communicate effectively with his or her counterparts in other branches of The Army.

Further development of the RC JAOAC must be made. In the case of both the RC Command & General Staff College, managed regionally by the various USAR Training Divisions under the auspices of the Command & General Staff College at Fort Leavenworth, and the U.S. Army War College's Distance Education Program, managed and administered by the War College's Department of Distance Education, (USAWCDDE), students are required to enroll in these course in various phases, and both courses are conducted over the period of two years, each with two one-year non-resident correspondence (or seminar training, in the case of the RC C&GSOC) phases and two two-week resident sessions. Such a model could easily be adapted to the RC JAOAC. Obviously, this would represent an increased commitment on the part of the RC judge advocate officer, but there are ways to entice these officers to pursue this increased educational requirement.

An immediate objection to lengthening the current RC training and education model for RC judge advocates, to include the additional information and materials relevant to mobilization and deployment, would be that their units cannot afford to send them to this training both in terms of resources (funding) and loss of these officers while they are attending the training and yet continue to hold their billets within the unit. One answer could be based on the current AC model for both the Judge Advocate officer Basic Course and the Graduate Course previously described: create RC billets at TJAGSA to assign these officers against. This would free up their billets at their units, allowing these units to recruit or promote and assign officers against these positions, and would simultaneously free these officers from unit responsibilities while they pursue their military education. A long-term, centralized career management structure would allow these officers to attend their schooling with some expectation of the positions they would fill upon their completion of the relevant course.

Alternatively, although potentially more onerous for the individual officers concerned, certain additional resident training at TJAGSA could be made mandatory in order to qualify a judge advocate officer for promotion to the next higher grade. This alternative would clearly represent a "stick" approach, as opposed to the carrot of creating assignments for RC judge advocate officers at TJAGSA. Either of these approaches would require significant coordination with, and, as discussed above, perhaps subordination of the Offices of the Chief Counsels at both NGB and the Office of the Chief of the Army Reserve (OCAR), to the Office of the Judge

Advocate General at Headquarters, Department of the Army. This would be so if only for the officer management issues that such an officer career management transformation would entail.

Additionally, a POI can and should be developed by TJAGSA for the RC JAOAC that results in the granting of a graduate degree to those RC judge advocate students who complete the POI, to place them on an equivalent footing with their AC counterparts who complete the Graduate Course. It is conceivable that the RC JAOAC could be developed, under the auspices and with the cooperation of the American Bar Association, to meet the minimum requirements of the Master of Laws (LL.M.) degree. Receiving such a degree would provide a tangible benefit to the RC judge advocate for undertaking the additional work required by an expanded RC JAOAC, a benefit that would be recognized as such within the broader legal community. Relevant to this proposed change in the RC JAOAC, the AWC awards a graduate degree, the Master of Arts degree in Military Science, to students who successfully complete the Distance POI.²⁰³

Of course, the content of the RC JAOAC would need to be significantly revamped before such an upgrade could occur; but that is one of the central points of this paper, that RC judge advocate training must be significantly upgraded. The expansion of the non-resident course curriculum could include all of the core courses contained in the Graduate Course, along with the offering of electives commensurate with those offered in the Graduate Course. An expansion of the RC JAOAC program from one where Phase I is conducted through books with multiple choice questions, to one with subjective essays graded by regular TJAGSA faculty, conducted over two years, as is done in the USAWC Distance Education Program, with a requirement for similar two two-week resident sessions, could certainly fulfill the minimum requirements for awarding the LL.M. degree. This would follow the model used in the Distance Education Program at the USAWC for the Master of Arts degree, and would also represent a quantum leap forward toward ensuring that the RC judge advocate is as nearly well-prepared as possible as is the AC judge advocate.

Gone are the days when judge advocates would require boxes of books in order to perform their missions; luckily technology provides meaningful answers for that problem. In the RC, however, judge advocates and the offices and units they serve in often have great difficulty in acquiring the training and resources necessary to upgrade operations to the minimum information technology standards that JAGC doctrine takes for granted. AC judge advocates in rapid-deployment units have ready access to the information technology to operate in the modern Army mission environment. RC judge advocates, however, as seen above in the experiences of both LTC Pagel and COL Erickson, not only don't have access to such

equipment, they lack the training on such equipment (unless their civilian employers provide some of that) to perform Army missions if they are called upon to mobilize and deploy.²⁰⁴

The above discussion on advanced military legal education in general, and aligning AC and RC advanced military law education in particular, is offered as a partial proposal to ensure that when the RC judge advocate is mobilized and deployed to serve besides AC judge advocates, and perhaps even leading them in support of Army missions overseas,²⁰⁵ the AC judge advocate can feel confident in the training and educational experience of that RC judge advocate. As shown above, the likelihood of such a situation is clearly more likely today than it was even only five years ago; in this regard, the JAGC must transform its RC training to ensure its ability to seamlessly support The Army in its missions.

CONCLUSIONS AND RECOMMENDATIONS

In a transformed Army culture, every Soldier is trained and equipped to be a decision-maker. Leaders provide a command climate that supports initiative, innovation, and risk-taking. Unit manning increases cohesion and readiness as personnel stay in units for longer periods of time. The Army offers opportunities for a continuum of service where Soldiers may transition among the AC, RC, civilian life, and back. The Army has transformed to a culture of centralized information and decentralized operations within the context of the JIM environment.²⁰⁶

As noted at the outset of this paper, at a minimum, “transformation” of the RC JAGC must mean a component-wide upgrade of the education, training, and preparation of RC judge advocate officers to a standard substantially similar to that provided for AC judge advocates. In only this way can a commander in the field reasonably expect a single high standard of the legal advice and support for Army missions in the field. In order to achieve the model outlined in the above quote from the Army Chief of Staff, the RC JAGC must take decisive action to improve the training and educational model for its officers prior to their mobilization and deployment on Army missions. This decisive action is required so that the AC judge advocate will be able to expect the same level of performance from any judge advocate he or she serves with, regardless of component, based on a common and shared training and educational experience.

In reviewing the questions posed at the beginning of this paper,²⁰⁷ as regards AC judge advocates, it is submitted that the JAGC is well on its way, through education, training, and doctrine (represented by FM 27-100), to taking those steps to ensure that its officers of all components are prepared to serve in deployed missions supporting commanders and soldiers. However, it is clear that the JAGC must take significant action specifically regarding RC judge

advocates to ensure a uniform standard of performance in support of commanders and soldiers, regardless of a judge advocate's component. The means are available for the JAGC to combine available information on training doctrine, mobilization, and preparation for deployment, into a systematic training methodology to prepare RC JAGC officers for the full spectrum of military operations in the 21st Century. What is required is a dedication of resources and the will to ensure that such resources are committed to ensuring that RC judge advocates, now being called upon more than ever in recent memory, are prepared as best as possible to serve their country.

Further, as noted at the opening of this paper, it is the ethical responsibility of the JAGC to ensure that those judge advocates it sends to the field to perform JAGC and Army missions is not "uninformed and untaught."²⁰⁸ Given the increased reliance of the JAGC on RC judge advocates to perform what had traditionally been AC missions, and the likelihood that such reliance will only increase for the foreseeable future, the transformation of the JAGC from AC and RC divisions, to "The JAGC" of the future, will require a dedication of resources, planning, and effort unlike any prior transformation effort. In particular, updating and improving the military educational system for RC judge advocate officers, if the JAGC seeks to ensure that these officers received substantially the same preparation for deployment as their AC counterparts, will require The Army and the JAGC to invest significant resources.

First and foremost among the recommendations would be to provide for assignment of RC judge advocates to TJAGSA while completing their Judge Advocate Officer Basic and Advanced Courses. This would allow RC units to recruit officers, and then, working with TJAGSA, to assign them against slots held by and paid for by TJAGSA. Such training would be a combination of correspondence and resident institutional education and training. This change is required to allow for the training of RC judge advocates without requiring them to perform their civilian careers, RC military duties, and military education simultaneously while their AC counterparts are able to focus solely on their military training. The officers would by this change be freed of the current structure's requirement to balance these three career statuses. Upon completing their training, they could confidently return to their units prepared and ready to perform Army missions of significantly increased responsibility.

A corollary to this transformation would be the simultaneous upgrade and improvement in the education system for RC judge advocates. Quantitatively, both the RC JAOBC and RC JAOAC would be significantly lengthened to ensure that the RC judge advocate receives substantially the same education as that received by their AC counterparts. Further, a qualitative change in the judge advocate officer education system must be undertaken, so as to

ensure that the commander in the field can expect the same competent quality legal support for Army operations regardless of the component of the judge advocate providing that advice and support. In this regard, especially as it applies to the RC JAOAC, a shift is required from an objective testing system of primarily multiple choice questions (whereby the judge advocate can simply look up the answers in the body of the testing books), to a subjective questioning system such as that utilized by the USAWCDDE, relying primarily on written papers on a wide variety of subjects, over a significantly extended period of time from that currently expected. The officers in question are practicing attorneys; it is not a stretch for the JAGC to expect a higher standard of education and thus testing for that education than that utilized by the remainder of TRADOC for line Army officers.

More than simply being able to get to the area of operations, in order to be versatile within the meaning of the tenets of Army transformation, a judge advocate in the Interim or Objective Force Army will be required to serve as a staff officer performing many staff and support functions not traditionally associated with judge advocate duties. This will require education and training in Army staff officer principles, at a stage in their career much earlier than that currently required even for AC judge advocates. JAGC doctrine does not yet require that staff officer training before junior judge advocates are assigned to advise brigade commanders. If a junior judge advocate (lieutenant or captain) of any component is likely to be deployed during his or her first tour of duty to support brigade operations, providing staff officer training only after the officer's being accepted for Indefinite status is illogical and inappropriate.²⁰⁹

In terms of content of such education, a significant improvement of such materials and course requirements could be achieved by including electives such as are part of the second semester of the Judge Advocate Graduate Course; further material could be gleaned from the many CLE courses provided by TJAGSA. As noted in the review of recent RC judge advocate mobilization experiences above, it is common for many RC judge advocates to feel they have not been well-prepared for the requirements of mobilization and deployments for Army missions. The days of RC judge advocates focusing primarily on administrative separation boards and preparing wills and powers of attorney over the entire course of their careers are over for the majority of the RC JAGC. As such, an education system that provides the substantive training required by today's deployed judge advocates of all components is long overdue.

A "carrot" for this increased burden, in part, would be relieving these officers of the expectation that while they pursue their education of their other RC military duties, in that they would be assigned, for the duration of their education, to billets at TJAGSA. In this way, the JAGC could, as does the AWC, take the following steps:

- hold those officers enrolled in such training to a tight schedule for completion of assignments;
- ensure that those assignments are significantly more sophisticated than mere multiple choice questions at the end of a course booklet;
- require those officers enrolled in the course to adhere to a high standard of proficiency in completing such assignments; and,
- require those officers enrolled in the course to adhere to a tight schedule of completing the materials and coursework involved.

This is not asking the impossible; the students enrolled in the training would already be graduates of American Bar Association approved law schools who had each successfully studied for and passed their respective states' licensing examinations.

Another "carrot," as noted above, would be to provide for awarding the Master of Laws (LL.M.) degree to those RC judge advocates who complete the RC JAOAC. An intangible benefit of taking the time and effort required to complete such training, in the form of an advanced law degree, would be awarded to the RC judge advocate successfully completing this "keystone" educational milestone. It would be a benefit which he or she could hold out to his or her civilian peers in the legal profession, one which would be recognized by both military and civilian attorneys as a significant accomplishment in one's legal career. In this regard, this does not require that new ground be plowed by the JAGC. Development of such a course of instruction could be achieved by working with the AWC and the American Bar Association, to determine the best means to achieve such recognition for TJAGSA and the best curriculum to provide to the RC judge advocate.²¹⁰

A final note on this point is that it might be perceived that RC judge advocates received substantially similar training if the courses were named the same. Changing the RC JAOAC to the RC Judge Advocate **Graduate** Course, so as to align it in name and fact with the AC Judge Advocate Officer Graduate Course, would go a long way, in addition to the changes noted above, to addressing any perception that RC judge advocates do not receive substantially similar training. Anything less is to burden the RC judge advocate intermediate education experience with a label that screams "second best."

Regarding C&GSC, the loophole in the promotion scheme identified above whereby an AC officer considered, but not selected, for resident attendance at C&GSOC could elect to be released from active duty and would for three years following his release from active duty be considered educationally qualified for promotion to Lieutenant Colonel in the RC. This loophole currently allows for that promotion without the officer in question having completed *any* portion of C&GSOC by correspondence. In limiting the exception, it should be restricted to those

officers considered and selected for resident attendance at C&GSOC, but who for whatever reason elect to be released from active duty prior to attendance. In this manner, the RC JAGC could better control the quality of those officers considered for promotion to Lieutenant Colonel, and thereby control assignment of such officers to serve in positions of significant responsibility.

Another, more costly, and potentially more contentious change, would be to remove responsibility for providing information technology equipment from the respective STARCs in the ARNG, and Reserve Commands in the USAR, and withholding that budgetary authority at the Department of the Army, and specifically the Office of The Judge Advocate General (Legal Technology). Only in this way could the JAGC ensure that resources for training and equipping RC judge advocates to doctrinally-required standards are not otherwise diverted to missions that the respective STARCs and USAR Reserve Commands believe are more pressing. Clearly, this could lead to hard feelings at the respective States and Reserve Command levels, especially in those situations where the immediacy of mobilization and deployment is somewhat removed. However, it is only through this step that the JAGC can ensure that its officers and personnel of whatever component are trained and equipped to a substantially uniform standard.

While waiting for the JAGC to take the above steps, RC judge advocates must aggressively use the tools available to them, to include active participation in the available resident CLE and correspondence (both JAGC specific and Army-wide) courses. In this way, RC judge advocates can better prepare themselves for mobilization, and subsequent deployment, for service as versatile and agile staff officers in Army missions. More than the traditional judge advocate preparation will be required for future Army missions. As such, it would behoove the prudent RC judge advocate to avail him or herself of as many of the opportunities for self-improvement and preparation as possible, before being called upon to mobilize and deploy.

Obviously, these recommended changes to upgrade the RC JAGC will not be cheap, for either the JAGC or the RC judge advocate, in terms of time, resources, and effort. The effort to transform The Army from a Legacy Force to an Objective Force, however, represents one of the most expensive efforts The Army has ever undertaken. This is at a time when the competition among the services is severe for scarce resources, and while the Nation seeks to conduct a Global War on Terrorism and simultaneously prepares for operations in Southwest Asia and contingencies on the Korean Peninsula. It is submitted, however, that in comparison to all other transformation efforts being made by The Army, the costs associated with transforming the RC JAGC would be miniscule, and the benefits to commanders in terms of enhancing unit capabilities would be enormous.

The Nation and The Army cannot afford to seek cost-savings in the manner it educates, trains, and prepares its officers, and specifically as regards this paper its RC judge advocate officers. Indeed, the resources spent on transforming the education and training model for these officers will be seen as extremely cost-effective the first time a field commander relies on his or her RC judge advocate to provide legal advice and support in a crisis situation. When that judge advocate is able to confidently perform that critical staff function based on the education, training, and pre-deployment preparation he or she received. In this context, the Nation, The Army, and the JAGC cannot reasonably afford to do anything less than take such measures as described herein to transform the RC JAGC. To do otherwise would be seen, in retrospect, as having truly been penny-wise and pound-foolish.

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ENDNOTES

¹ U.S. DEP'T OF THE ARMY, FIELD MANUAL 100-1, THE ARMY (14 June 1994) [hereinafter FM 100-1], p. 25 (quoting General Harry "Light Horse" Lee).

² The Federalist No.25 at 166 (Alexander Hamilton) (Clinton Rossiter, ed., 1961).

³ 10 USC Chapter 1003 identifies the Army National Guard of the United States (ARNG) and United States Army Reserve (USAR) as the Reserve Components (RC) of the Army. "The RC include the Army National Guard of the United States (ARNGUS), the United States USAR (USAR), the United States Naval Reserve (USNR), the United States Marine Corps Reserve (USMCR), the Air National Guard of the United States (ANGUS), the United States Air Force Reserve (USAFR), and the United States Coast Guard Reserve (USCGR)." U.S. DEP'T OF THE ARMY, Center for Law and Military Operations (CLAMO) The Judge Advocate General's School (TJAGSA), Domestic Operational Law (DOPLAW) Handbook for Judge Advocates (15 April 2001) [hereinafter DOPLAW Handbook], available at www.jagcnet.army.mil/clamo/publications, Chapter 10, at p. 181. This paper will focus solely on the Army National Guard (ARNG) and the USAR (USAR). The two components of the RC, the ARNG and USAR, along with the Active Army and civilian workforce, comprise "the Total Army."

⁴ 10 U.S.C. § 3072 establishes The Judge Advocate General's Corps. 10 U.S.C. §3037 outlines the duties of The Judge Advocate General of The Army, as well as other General Officers within The Judge Advocate General's Corps.

⁵ JOINT CHIEFS OF STAFF, JOINT PUB. 4-05, JOINT DOCTRINE FOR MOBILIZATION PLANNING (22 June 1995) [hereinafter JOINT PUB. 4-05], p. vii:

Mobilization is the process of preparing for war or other national emergencies by assembling and organizing personnel and materiel for the active military forces, activating the reserve components, including federalizing the National Guard, extending terms of service, surging and expanding the industrial base, and bringing the US Armed Forces to a state of readiness for war or other national emergency.

The four tenets of mobilization are Objective, Unity of Effort, Flexibility, and Timeliness, which, taken together, describe the attributes of successful mobilization. *Ibid*, p. viii.

⁶ U.S. DEP'T OF THE ARMY, FIELD MANUAL 3-0, OPERATIONS (14 June 2001) [hereinafter FM 3-0], Chapter 1, "The Army and the Role of Land Power," para. 1-8, p. 1-4: "Full spectrum operations are the range of operations Army forces conduct in war and military operations other than war."

⁷ "The paradigm of mobilization will change from 'Alert-Train-Deploy' to 'Train-Alert-Deploy.' Mobilization as understood in 2002 has ceased to exist. The RC compliments the operational capabilities of the active force for expandability. Most units are able to move directly from home station to Ports of Embarkation (POEs), eliminating the cold war mobilization processes and reducing employment timeliness. Statutory and policy requirements are refined to facilitate the immediacy in alerting and deploying individuals and units for operations." U.S. DEP'T. OF THE ARMY, "Reserve Components: Characteristics and Capabilities," Final Draft, The Objective

Force (8 December 2002), "The Objective Force in 2015," available at Army Knowledge Online, www.objectiveforce.army.mil/pages.pdf (18 December 2002) [hereinafter Objective Force White Paper].

⁸ Iain Carson, "Transformed?," *The Economist* (July 20, 2002), reprinted in "A Survey of the Defence Industry (July 20, 2002), p. 3, The Economist Newspaper Group, Inc. New York.

"RAND defines an RMA as 'a paradigm shift in the nature and conduct of military operations which either renders obsolete or irrelevant one or more core competencies in a dominant player, or creates one or more new core competencies in some dimension of warfare, or both.'"

Ibid, p. 7; *cf.*, Arthur K. Cebrowski, "What is Transformation?," Office of Force Transformation, Department of Defense (25 November 2002) [hereinafter "What is Transformation?"]:

"Transformation is foremost a continuing process. It does not have an end point. Transformation is meant to create or anticipate the future. Transformation is meant to deal with the co-evolution of concepts, processes, organizations, and technology. Change in any one of these areas necessitates change in all"

⁹ Kip P. Nygren, "Emerging Technologies and Exponential Change: Implications for Army Transformation," *Parameters*, 31 (Summer 2002), p. 93.

¹⁰ U.S. ARMY WAR COLLEGE, Department Of Command, Leadership, And Management, *How The Army Runs: A Senior Leader Reference Handbook (2001-2002)* (2002), U.S. Government Printing Office, Pittsburgh, PA [hereinafter *How the Army Runs*], p. 1-2 (quoting GEN Eric K. Shinseki).

¹¹ *What is Transformation?*, p. 1.

¹² *Objective Force White Paper*, p. 1.

¹³ JOINT CHIEFS OF STAFF, Directorate For Operational Plans And Joint Force Development, "An Evolving Joint Perspective: US Joint Warfare and Crisis Resolution in the 21st Century" (28 January 2003) [hereinafter *An Evolving Joint Perspective*], p. 1.

¹⁴ Lieutenant Colonel David R. Hogg, "Rapid Decisive Operations: The Search for the Holy Grail of Joint Warfighting," *Transformation Concepts for National Security in the 21st Century* (William Murray, Editor), Strategic Studies Institute, U.S. Army War College, Carlisle, PA (2002).

¹⁵ "Rumsfeld to Lawmakers: Transformation Can't Wait," Newsbreaks, *National Guard*, The National Guard Association of the United States, Volume 56 (September 2002), Number 8, p. 25. Following Secretary Rumsfeld's identifying his initial objectives for the transformation effort, The Office of Force Transformation within the Office of the Secretary of Defense identified five "top goals" for the transformation effort. These include:

1. Make force transformation a pivotal element of national defense strategy and DoD corporate strategy effectively supporting the four strategic pillars of national military strategy.
2. Change the force and its culture from the bottom up through the use of experimentation, transformational articles (operational prototyping), and the creation and sharing of new knowledge and experiences.
3. Implement Network Centric Warfare (NCW) as the theory of war for the information age and the organizing principle for national military planning and joint concepts, capabilities, and systems.
4. Get the decision rules and metrics right and cause them to be applied enterprise-wide.
5. Discover, create, or cause to be created new military capabilities to broaden the capabilities base and mitigate risk.

OFFICE OF THE SECRETARY OF DEFENSE, Office Of Force Transformation, available at www.of.t.osd.mil, (13 March 2003).

¹⁶ U.S. DEP'T OF THE ARMY, "Army Transformation Briefing" (17 October 2000), available at Army Knowledge Online, www.army.mil (18 Dec 02), (quoting remarks by Army Chief of Staff GEN Eric K. Shinseki, 10 February 2000).

¹⁷ Vice Admiral (Retired) Arthur K. Cebrowski, Speech at The Center for Naval Analyses (20 November 2002), reprinted in Transformation Trends, 2 December 2002, published by the Outreach Director, Office of Force Transformation, Department of Defense [hereinafter Cebrowski 20 Nov 02 speech], p. 2.

¹⁸ *Ibid*, p. 3.

¹⁹ *Ibid*, p. 4.

²⁰ *Ibid*.

²¹ Army Chief of Staff Eric K. Shinseki, Speech at the Dwight D. Eisenhower Luncheon, 2002 Association of the United States Army Annual Convention, Washington, D.C. (22 October 2002).

²² Colonel Edward J. Filliberti, Chapter 1, "Introduction," Section II: "Army Transformation," How the Army Runs, p. 1-4.

²³ *Ibid*, p. 1-3.

²⁴ *Ibid*

²⁵ *Ibid*. "The current Army forces must be prepared to fight and win the Nation's wars and be able to supplement the capabilities of the Objective Force until 2032. . . . It is this Legacy Force that guarantees our near-term war-fighting readiness in support of the National Military Strategy." *Ibid*, p. 1-4.

²⁶ *Ibid*, pp.1-3, 1-4.

²⁷ *Ibid*, p. 1-4; “The former Secretary of the Army (SA), Louis Caldera, cited the experiences of task Force Hawk in the Kosovo Operation as an example of ‘. . . why The Army must transition to a lighter, more agile force.’ Secretary Caldera stated that, ‘ I use [that example] to talk to senior leaders about whether The Army was willing and able to get into the fight.” *Ibid*, p. 1-2.

²⁸ *Ibid*, p. 1-4, 1-5.

²⁹ U.S. DEPT OF THE ARMY, “The Army Vision: A Status Report” (2001) (hereinafter The Army Vision: A Status Report), pp. 11-12.

³⁰ *Ibid*, p. 1-4. As Army Chief of Staff Erik K. Shinseki noted in his keynote address to the 2002 Association of the United States Army convention in Washington, D.C. on 22 October 2002,

People often ask, “What will the Objective Force look like?” And the honest answer, the only one I can give, is “I don’t know.” Doesn’t mean I don’t care. But, I don’t know. We’re looking for breakthrough technologies. But what I do know is that transformation will involve change of our doctrine, our training, our leader development, our organizations, materiel, people and facilities – we have to do it all to achieve the Objective Force.

General Erik K. Shinseki, Speech at the Dwight D. Eisenhower Luncheon, Association of the United States Army 2002 Annual Convention (22 October 2002).

³¹ The Army Vision: A Status Report, p. 12.

³² U.S. DEPT OF THE ARMY, United States Army White Paper: Concepts for the Objective Force (DATE) [hereinafter Concepts for the Objective Force], p. 2.

³³ How the Army Runs, p. 1-3.

³⁴ U.S. DEPT OF THE ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATION (1 March 2000) [hereinafter FM 27-100], p. 2-19:

“Legal organizations must be as capable as the units they support. The OSJA [Office of the Staff Judge Advocate] element in a corps, division, or brigade Command Post must have the workspace, communications and automation capabilities, and transportation assets to function in coordination with the staff.”

It should be added that the members of the OSJA element must be able to operate and maintain these capabilities, as they are unlikely to receive significant support for these assets in a deployed field environment. The skills required for operating and maintaining the assets comes only with training.

³⁵ Concepts for the Objective Force, p. 4.

³⁶ *Ibid*

³⁷ *Ibid*, p. 6 (emphasis in original).

³⁸ See, TRADOC PAM. 525-3-90/O&O, THE UNITED STATES ARMY, OBJECTIVE FORCE: OPERATIONAL AND ORGANIZATIONAL PLAN FOR MANEUVER UNIT OF ACTION (22 July 2002), for a more in-depth discussion of the concepts and desired capabilities of the Objective Force.

³⁹ Thomas C. Hone, "The paradox of Change: Defense Transformation as a Destructive Process," speech presented before a conference on "Transforming Defense," National Defense University, Washington, D.C. (20-21 November 2002) [hereinafter Defense Transformation as a Destructive Process], p. 8.

⁴⁰ *Ibid* p. 7.

⁴¹ *Ibid*, p. 8.

⁴² Concepts for the Objective Force, p. 6.

⁴³ *Ibid*, p. 5.

⁴⁴ FM 3-0, Chapter 1: "The Environment of Operations," p. 1-4.

⁴⁵ U.S. DEP'T OF THE ARMY, "The Army Vision: Soldiers on Point for the Nation; Persuasive in Peace, Invincible in War" (October 1999), [hereinafter The Army Vision], at p. 4.

⁴⁶ The Army Vision, p. 5.

⁴⁷ An Evolving Joint Perspective, Enclosure 2, para. 12, p. 57.

⁴⁸ *Ibid*, p. 58. "Adaptability is described as [the ability to] (r)espond mentally and physically to identify, induce, and exploit new patterns in both the larger security environment and in the specific operational area more rapidly and effectively than adversaries." *Ibid*.

⁴⁹ The Army Vision, p. 5.

⁵⁰ *Contra*, "RAND: Stryker Brigade Not Likely to Meet 96-Hour Deployment Metric," Inside The Pentagon: Inside the Army, Vol. 15, No. 2, January 13, 2003, available at www.insidedefense.com, pp. 9-10.

The Army is questioning the findings of a recent RAND report that concludes that a Stryker brigade is not likely to be rapidly or globally deployed in the 96-hour metric set forth by Army leadership. The report, published in late December, found that "a force with over 1,000 vehicles cannot be deployed by air from [the Continental United States to the far reaches of the globe in four days. With some mobility enhancements, it will be possible to achieve deployment timelines on the order of one to two weeks." Historically, the military has relied on forward-basing its forces and pre-positioning assets overseas to respond to short-warning crises. One of the Army's transformation goals established by

service leadership is to be able to deploy its future forces from CONUS within four days.

Ibid, p. 9.

⁵¹ The Army Vision, p. 5.

⁵² An Evolving Joint Perspective, Enclosure 2, para. 12, p. 57.

⁵³ The Army Vision, p. 6.

⁵⁴ *Ibid*.

⁵⁵ The Army Vision, p. 6. "Sustainability is described as – Provide, support, maintain, and prolong those levels of ready forces, materiel, and consumables necessary to maintain the required intensity and duration of operational activity to achieve military objectives." An Evolving Joint Perspective, Enclosure 2, para. 11, p. 57.

⁵⁶ *Ibid*, Enclosure 2, para. 11, p. 56.

⁵⁷ For purposes of this discussion and future force planning and doctrine, the Interim and/or Objective Force JAGC would not include the entire JAGC, but rather would include those judge advocates and 27D paralegal soldiers supporting the combat forces of the Objective Force Army. As such, the Office of The Judge Advocate general, the field operating agencies of the JAGC, the United States Army Legal Services Agency (but excluding those US. Army Trial Defense Service supporting Interim/Objective Force units), or The Judge Advocate General's School, would not be within the definition of the Objective Force JAGC. However, since judge advocates routinely serve with such agencies and offices, then rotate to positions supporting combat units, the training and preparation of all judge advocates would be affected by the tenets of Army Transformation, including both the AC and RC JAGC. See, *generally*, FM 27-100, Chapter 2-1, for a complete discussion of such offices and agencies within the JAGC.

⁵⁸ Marc L. Warren, Teaching the JAG Elephant to Dance . . . Again, Strategy Research Project (Carlisle Barracks: U.S. Army War College, 9 April 2002) [hereinafter Warren SRP], at p. 18.

[Judge advocates] will have a central role in stability and support operations, in building or rehabilitating systems of governance, and in promoting security cooperation. A Judge Advocate is now serving a year [-long tour of duty] in Colombia with the mission to assist in the creation of a Colombian JAG Corps, including building a JAG School. [Judge advocates] will continue to be heavily involved in international criminal tribunals, such as those established by the United Nations for the former Yugoslavia, and will likely become involved in military commissions convened for the trial of terrorists implicated in the attacks [against the United States] on 11 September [2001]. The JAG Corps of tomorrow may also find itself engaged (with great reluctance) in the new International Criminal Court established under the Rome Convention.

Ibid (citations omitted). Indeed, one of COL Warren's predictions has already come to pass, with the appointment of a senior Army judge advocate as a Special Assistant to the Judge

Advocate General for Military Commissions. OFFICE OF THE JUDGE ADVOCATE GENERAL PUB. 1-1, JAGC Personnel And Activity Directory And Personnel Policies 2002-03 (1 November 2002), Washington, D.C.; Office of the Judge Advocate General [hereinafter JAGC Pub. 1-1], p. 5.

⁵⁹ FM 27-100, at p. 1-1. “Legal support to operations encompasses all legal services provided by judge advocates and other legal personnel in support of units, commanders, and soldiers throughout an area of operations and across the spectrum of operations.” *Ibid*

⁶⁰ *Ibid*, at viii.

⁶¹ *Ibid*, at ix.

⁶² *Ibid*, at pp. 1-9, 1-10.

⁶³ FM 27-100, at p. 2-16.

⁶⁴ FM 27-100, at p. 5-21.

⁶⁵ FM 27-100, at p. 5-21: “The Brigade is the smallest unit in the Army that must integrate all of the seven battlefield operating systems – intelligence, maneuver, fire support, mobility / survivability, air defense, combat service support, [and] battle command – into a potent whole.” Given that complexity, the brigade judge advocate must be trained to integrate with the staff, understanding the basic nature of the responsibilities of each staff officer, so as to better understand the unit’s mission and the judge advocate’s place within that mission.

⁶⁶ FM 27-100, at p. 5-22.

⁶⁷ FM 27-100, at p. 5-21: Although it is trained and equipped to identify issues across all three functional areas and the six disciplines of legal support to operations, the challenge for the BOLT is always to achieve requisite synergy to resolve complex legal questions within particular disciplines. Often, this synergy can be achieved only by communicating with the division SJA section and other judge advocates in technical channels.”

⁶⁸ FM 27-100 at p. 1-1; Note 59, *supra*.

⁶⁹ FM 27-100, at p. 5-22. “In serving within these other [battlefield operating] systems [within the brigade command post], the BOLT must be prepared both to identify and resolve the full range of legal issues – across the legal functional areas and core legal disciplines – by inserting sound analysis and recommendations into the brigade’s [military decision-making process].” *Ibid*

⁷⁰ FM 27-100, at p. 5-25.

⁷¹ FM 27-100, at p. 5-25.

⁷² As an example, within the 29th Infantry Division (Light) the TOE billets for the OSJA are spread between the states of Maryland and Virginia; while the Division Staff Judge Advocate is allotted to Virginia, the Deputy Staff Judge Advocate, the second most senior judge advocate

within the unit, and responsible the organization, administration, and functioning of the OSJA (FM 27-100, at p. 2-11), is assigned to Maryland. That officer does not drill with the Division headquarters in Virginia, but rather serves in the Maryland STARC performing staff duties for The Adjutant General (TAG) of Maryland. This effectively prevents the Division from receiving any benefit from that officer's services. Lieutenant Colonel Bruce A. Pagel, interview by author, conducted in Charlottesville, Virginia, 6 January 2003 [hereinafter Pagel Interview].

⁷³ Pagel Interview; in practice, ARNG judge advocates often have no experience in their careers beyond the STARC-assigned missions of conducting administrative elimination boards under the provisions of Army Regulation 135-178 for drug-related misconduct, or providing legal assistance-related support at annual mobilization drills for ARNG units within the state. See, U.S. ARMY EUROPE, Operations, Plans, & Training Analysis Branch, "SFOR X After Action Report, October 2001 – April 2002: Making a Difference, Moving Forward; The Right People, The Right Strategy," Heidelberg, Germany (June 2002) [hereinafter SFOR X AAR], Chapter 3, Staff Lessons Learned, p. 3-10: "[poor planning during training] is exacerbated by the fact that there is little in the ARNG SJA experience that preps them for active duty deployment." As a result, even senior judge advocates are now finding themselves unprepared by their ARNG military education, training, and experience for mobilization and deployment. Despite that training and experience gap, they are being asked to serve in positions of significant responsibility in support of Army missions around the world, and yet with relatively quick preparation are thrust into positions where they are expected to perform on par with their AC JAGC counterparts.

⁷⁴ Pagel Interview, *supra*, Note 72. While AC OSJAs are willing and eager to provide support for RC JAGC offices identified for mobilization and deployment, such a relationship rarely exists prior to notification of mobilization. As a result, precious time is lost, and both the AC and RC judge advocates associated with such a deployment are often left to react to circumstances rather than plan for, train for, and anticipate the requirements for such a mobilization and deployment.

⁷⁵ *Ibid.*

⁷⁶ How the Army Runs, at 15-1; U.S. DEP'T OF THE ARMY, FIELD MANUAL 7-1, TRAINING THE FORCE (22 October 2002) [hereinafter FM 7-0], para. 1-20:

The three core domains that shape the critical learning experiences throughout a soldier's and leader's career are the operational, institutional, and self-development domains. Together, these domains interact using feedback and assessment from various sources and methods to maximize warfighting readiness. Each domain has specific, measurable actions that must occur to develop our leaders. The operational domain includes home station training, combat training center rotations, joint training exercises, and operational deployments that satisfy national objectives. Each of these actions provides foundational experiences for soldiers, leaders, and unit development. The institutional domain focuses on educating and training soldiers and leaders on the key knowledge, skills, and attributes required to operate in any environment. It includes individual, unit and joint schools, and advanced education. The self-development domain, both structured and informal, focuses on taking those actions necessary to reduce or eliminate the gap between operational and institutional experiences.

FM 7-0, para. 1-20.

⁷⁷ How the Army Runs, at 15-1.

⁷⁸ *Ibid*

⁷⁹ *Ibid*, at 15-13.

⁸⁰ *Ibid*, at 15-1.

⁸¹ See, generally, JAGC Pub. 1-1, Appendix, para. 6-12 p. 32:

TJAG policy is that all attorneys participate in CLE. Supervisors should ensure that officers attend courses at TJAGSA whenever feasible. Many states now require CLE. Each [judge advocate] is responsible for fulfilling the requirements of his or her state bar.

Ibid, para. 6-13:

- a. Attendance at resident CLE courses at TJAGSA is restricted to those students who have a confirmed reservation.

⁸² FM 27-100 recognizes the importance of such training, noting that “the training of an SJA section itself must integrate [all common legal functions] and all other aspects of legal support to operations.” *Ibid*, Chapter 4, p. 4-30. Additionally, this manual incorporates the Army Principles of Training contained in U.S. DEP’T OF THE ARMY, FIELD MANUAL 25-100, TRAINING THE FORCE (15 November 1988) [hereinafter FM 25-100]. These principles include: Train as a Combined Arms and Services Team, Train As You Fight, Use Appropriate Doctrine, Use Performance-Oriented Training, Train to Challenge, Train to Sustain Proficiency, Train to Use Multi-Echelon Techniques, Train to Maintain, and Make the Commanders the Primary Trainers (recognizing that SJAs are the primary trainers of their sections). FM 27-100, pp. 4-30 to 4-32.

⁸³ How the Army Runs, at 15-13.

⁸⁴ *Ibid*, at 15-20.

⁸⁵ JAG Pub. 1-1, Appendix, p. 26.

⁸⁶ *Ibid*

⁸⁷ How the Army Runs, at 15-20.

⁸⁸ JAGC Pub. 1-1, Appendix at 27.

⁸⁹ *Ibid*

⁹⁰ *Ibid*

⁹¹ *Ibid*, Appendix at 28

⁹² *Ibid*, Appendix at 29.

⁹³ *Ibid*

⁹⁴ U.S. DEP'T OF THE ARMY, REGULATION 135-155, ARMY NATIONAL GUARD AND U.S. USAR: PROMOTION OF COMMISSIONED OFFICERS AND WARRANT OFFICERS OTHER THAN GENERAL OFFICERS (24 October 2001) [hereinafter Army Reg. 135-155], Table 2-2, p. 9.

⁹⁵ JAGC Pub. 1-1, Appendix, p. 29.

⁹⁶ *Ibid*

⁹⁷ , Army Reg. 135-155, Table 2-2, at p. 9. An officer released from active duty within three years of being considered for promotion will be considered educationally qualified for promotion for purposes of the regulation. *Ibid*, para. 2-8b(2)(c). As a result, an officer considered for but not selected for resident attendance at C&GSOC, and who has not completed any portion of the correspondence course, would still be considered educationally qualified for promotion to Lieutenant Colonel in the RC.

⁹⁸ The Objective Force White Paper, Concept Summary, at i.

⁹⁹ Concepts for the Objective Force, *supra*, Note 32, p. 18.

¹⁰⁰ 32 U.S.C. §102: "In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line of defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force as so needed."

¹⁰¹ Steven Lee Meyers, "Reservists' New Role Transforms Military," The New York Times, January 24, 2000; *accord*, Chris Maddaloni, "Army Announces More Guard Combat Units Going to Bosnia," National Guard, Volume 53, Number 11, The National Guard Association of the United States (November 1999), p. 19. According to the Principal Deputy Assistant Secretary of Defense for Reserve Affairs, the number of peacekeeping missions the ARNG performs will likely be increased in the future, as U.S. missions worldwide (Kuwait, Kosovo, Bosnia, and possible participation in a peacekeeping force in the Golan Heights between Syria and Israel) increase. Charles L. Cragin, "Milestones on the Road to Integration," The Officer (January-February 2000), p. 32. See, *also*, Chris Maddaloni, "A Bigger Piece of Peacekeeping: Army National Guard Combat units Prepare for Command Roles in Bosnia, Larger Presence in Other Peacekeeping Missions Worldwide," National Guard, Volume 54, Number 1, The National Guard Association of the United States (January 2000), pp. 19-20.

¹⁰² See, *generally*, Mackubin Thomas Owens, "Reshaping Tilted Against The Army?," The Washington Times, November 24, 2002, p. B3.

¹⁰³ "The Army Vision: A Status Report," at p. 8. In addition to those missions mentioned by GEN Shinseki, as noted in the following Note, and elsewhere, the RC is assuming missions from the AC Army in order to meet The Army's myriad mission requirements at the beginning of the 21st Century. Besides Bosnia and now Kosovo, the ARNG has assumed for all purposes the Multi-National Observer Force mission in the Sinai Peninsula, monitoring the peace between Egypt and Israel. Rob Rogers, "Sinai Watch: Oregon Guard Infantry Unit Takes Turn Keeping Peace on Egypt-Israeli Border," National Guard, Volume 56, Number 11, The National Guard Association of the United States (December 2002 / January 2003), p. 22.

¹⁰⁴ Ivana Avramovic and Rick Scarvetta, "Keystone Guardsmen Ready for Kosovo Duty," European and Pacific Stars & Stripes, Monday, January 27, 2003, available at www.estripes.com/article.asp?section=104&article=12072&archive=true.

As if the Pennsylvania National Guard troops were not already doing enough, the Army has tapped them for duty in Kosovo, now that the 1st Cavalry Division has been removed from the scheduled rotations so it is available for a possible war against Iraq. . . . The deployments to Europe and Bosnia already make the Keystone national Guard the most deployed guard in the States with 3,800 soldiers away from home. . . . This will be the first time a National Guard unit has had the command and a significant presence in Serbia's disputed region.

Ibid, at p. 2. See, also, The ZGram, January 21, 2003, pp. 1, 7, available at www.zgram.net.

¹⁰⁵ See, National Guard Bureau (NGB-ARO-OM), "Information Paper, subject: Domestic Support Operations," (12 February 1998), at p. 1, re-printed in DOPLAW Handbook, at Appendix 8-5, pp. 479-80.

In domestic support operations, the Army recognizes that national Guard forces, acting under the command of their respective governor's (sic) in a state (non-federal) status, have the primary responsibility for providing military assistance to state, territorial, and local governments. States routinely provide mutual support through the use of various interstate compacts.

Ibid, at p. 1, p. 479.

¹⁰⁶ Gerry J. Gilmore, "Guard, Reserve Destined for Bigger Homeland Defense Roles," Defense Press Service, February 4, 2003, p. 1, available at www.afis_sender@dtic.mil

The President's nominee to become DoD's chief liaison to the Department of Homeland security told U.S. lawmakers during a recent confirmation hearing that he sees the Guard and Reserve assuming more homeland defense duties. Paul McHale, former Pennsylvania congressman and marine, met Jan. 30 with Senate Armed Services Committee members to discuss his nomination to become assistant secretary of defense for homeland defense. In answering a question from Oklahoma Sen. James Inhofe, McHale said the Guard and Reserve would become more deeply engaged in homeland defense in the months to come. In fact, he said, DoD is conducting a review of future reserve component roles and missions.

Ibid, at p. 1.

¹⁰⁷ U.S. CONST., art. I, §8.

¹⁰⁸ U.S. CONST., art. II, §2, cl. 1: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States”

¹⁰⁹ How the Army Runs, at 7-1: “With the National Defense Act of 1916 (NDA-1916), the term ‘National Guard’ became the official name” of the states’ militias.

¹¹⁰ U.S. CONST., art. I, §10, cl. 3.

¹¹¹ U.S. CONST., art. II, §2, cl. 1.

¹¹² 32 U.S.C. §104(c)-(f).

¹¹³ 32 U.S.C. §102.

¹¹⁴ 32 U.S.C. §104(b).

¹¹⁵ See, 32 U.S.C. §104(c), (d).

¹¹⁶ Given the current debates regarding homeland defense, the meaning of that term, and the inherent overlap between homeland defense and homeland security following the creation of the Department of Homeland Security by President Bush and Congress in 2002, it is important to review briefly the concept of homeland defense and its relation to the National Guard under the U.S. Constitution and United States Code. The U.S. Constitution is coy regarding the mission of the militia, but it does imply that the statutory homeland defense mission is the proper role for such a force. For example, Article 1, §10, Clause 3 provides that no state may “engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.” Note 110, *supra*. Reading that as authorization for the states to conduct actual military defense of the homeland against foreign invasion, it is probable that this is the primary mission the Founding Fathers envisioned for the states’ militias. While some might seek to rely on a strict interpretation of the Founding Fathers’ terminology to support a claim that the ARNG should be restricted to homeland *security* missions, following the terror attacks against the United States on 11 September 2001, and in light of today’s global military, diplomatic, and economic environment, it seems clearer that the Founding Fathers’ intention was to authorize a state force that could be relied upon in time of national emergency to augment the federal military in fighting the Nation’s battles as a component of defense of the homeland.

¹¹⁷ See, generally, Steven Lee Myers, “Duty Calls the Guard, but some bosses resist,” The New York Times, February 6, 2000; *accord*, John G. Roos, “Reforging The Army: Personnel and Material Issues Figure Prominently in Service’s Plans for Fielding a Coherent, Integrated Force,” Armed Forces Journal International, January 2000 (hereinafter Roos), p. 38, at 43 (Quoting LTG David Ohle, Army Deputy Chief of Staff for Personnel).

¹¹⁸ FM 27-100, p. 2-6.

¹¹⁹ *Ibid.*

¹²⁰ UNITED STATES ARMY COMMAND & GENERAL STAFF COLLEGE, "Academic Year 00 Student Issue Phase I M CD-ROM, M- 400, Resource Planning And Force Management," Lesson 7, "Reserve Components," Appendix 1 to Advance Sheet, Lesson 7 Extract (undated) [hereinafter C&GSC Extract], p. 7-5:

At the federal level, the National Guard Bureau (NGB) is a joint bureau of the Departments of the Army and Air Force. It provides a peacetime channel of communications among the Departments of the Army, Air Force, and National Guard as established by 10 USC 3040. It is both a staff and an operating agency.

¹²¹ *Ibid.* Cf., DOPLAW Handbook, at p. 189:

The [National Guard] channel of communications at the federal level is the NGB, a statutory, joint bureau within DOD [10 U.S.C. §3015(a) (1998)]. Serving as the legal channel of communication among the Army, the Air Force, and the [National Guard] in the 54 states and territories, the NGB is the coordination, administrative, policy, and logistical center for the ARNG and the [Air National Guard, or ANG]. . . .The Chief, NGB, has executive agent responsibility for planning and coordinating the execution of [National Guard] military support operations. . . .

The Chief Counsel, NGB, provides legal advice and assistance to the Chief, NGB, the Directors of the Army and Air National Guards, and to the full-time [active Guard and Reserve, or AGR] JAs.

¹²² FM 27-100, at p. 2-6. Cf., DOPLAW Handbook, at p. 190:

The majority of the fifty-four National Guards have a single, full-time AGR JA, and all have a part-time (sic) state Staff Judge Advocate (SJA). Both the full-time JA and the part-time SJA may be either ANG or ARNG. Their primary mission is to advise their respective TAG. . . .

Approximately fifty percent of the ARNG JAs are assigned to SJA sections in combat support and combat service support units (CS/CSS). The remaining ARNG JAs are usually assigned to the STARC or territory headquarters. . . .

The State SJA is the POC for purposes of coordinating training and preparation for natural disasters, civil disturbance, civilian assistance, and counter-drug missions within the respective state/territorial jurisdiction. The SJA of the ARNG combat or CS/CSS unit is the POC for legal training for the federal training/mobilization mission.

¹²³ FM 27-100, at p. 2-6.

¹²⁴ 10 U.S. Code §10101.

¹²⁵ U.S. DEP'T OF THE ARMY, FIELD MANUAL 1, THE ARMY (14 June 2001) [hereinafter FM 1], Chapter 3: The Army in Military Operations, p. 25.

¹²⁶ How the Army Runs, at 7-12; "Except for designated special operations force (SOF) units that are commanded by the SOCOM [U.S. Special Operations Command] and OCONUS units commanded by U.S. Army Europe (USAREUR) and U.S. Army Pacific (USARPAC)." *Ibid*

¹²⁷ FM 27-100, at p. 2-7 (emphasis in original). *Cf.*, DOPLAW Handbook, at p. 191:

The USAR has a unique modular force structure of Table of Organization and Equipment (TOE) legal units, which field six different types of Judge Advocate General Service Organizations (JAGSOs).

¹²⁸ FM 27-100, p. 2-7. The types of JAGSOs are:

- (1) Legal Support Organizations (LSOs), commanded by a judge advocate and providing technical supervision of as many as four Legal Services teams, and also ;
- (2) Mobilization Support Organizations (MSOs), which perform mobilization support duties;
- (3) Legal Services Teams (LSTs), which is the basic JAGSO and is capable of providing legal support to all operations;
- (4) Regional Trial Defense Teams (RTDTs) provide operational control, training , and technical supervision for as many as four Trail defense teams; and
- (5) Senior Military Judge Teams, which perform duties as and supervise military judge teams.

Ibid, pp. 2-7 thru 2-9.

¹²⁹ *Ibid*, p. 2-9. "Personnel services, finance, communications, transportation, maintenance, automation equipment, and supply are all areas of support needed by the JAGSOs to enable them to deliver the operational law services for which they are deigned." *Ibid*. As such, they are most effective when nested with habitual relationships to service and support units to ensure seamless operations.

¹³⁰ For example, the Legal service Organizations (LSOs) provide "operational control and technical supervision over the subordinate legal teams actually providing legal support services. . . . Seven of the eighteen LSOs have missions to deploy outside the continental United States to provide legal support services in up to two operational or geographically discrete areas. These LSOs are usually affiliated with particular AC units, with which they have a habitual relationship." DOPLAW Handbook, at p. 191.

¹³¹ *Ibid*, at pp. 182-83:

In their state capacity, National Guard units comprise fifty-four separate armies and air forces under the command and control of The Adjutants General (TAGs) and the Governors of their respective states or territories. The Governor is the Commander in Chief for his particular ARNG and ANG units. In this status, they are subject to the military code of the respective state to which they belong.

¹³² W. Spencer Johnson, "New Challenges for the Unified Command Plan," Joint Forces Quarterly, Institute for National Strategic Studies, National Defense University, Washington, D.C., Summer 2002, Number 31, at p. 67:

With an ill-defined yet demonstrated asymmetric threat to the United States, the nature of the organizational structure for territorial defense will require study and innovation. Again, regional standing joint task forces with designated army commanders responsible may be the organizing concept. The Reserve components (sic) will play a large part and may require reworking to create units optimized for homeland defense roles and missions. Impediments in interpreting Title 10 and 32 [of the United States Code] authorities for mobilizing and utilizing the National Guard must be ironed out. The use of Guardsmen for airport security since September 2001 is an instructive case.

¹³³ JAGC Pub. 1-1, Appendix, p. 35:

a. For a NG JA to be certified as a military judge by TJAG, the following criteria must be met: (1) have demonstrated mature judgment and high moral character; (2) be serving in the Army national Guard as a Major(p) or higher; (3) be serving as or nominated to serve as a state military judge; (4) have a minimum of one year criminal law experience as (a) a full-time civilian trial or appellate judge, U.S. Magistrate Judge or administrative law judge, or (b) a criminal trial practitioner, with recent extensive experience in federal, state, or military courts, or (c) full-time criminal law instructor in a military or civilian school; and (5) are (sic) able to graduate and attain at least a grade of C (77 points) in the Military Judge Course, TJAGSA.

b. NG applications for certification as a military judge must be endorsed by the senior judge advocate or State Staff Judge Advocate, as applicable, and sent through to the Chief Trial Judge, United States Army Trial Judiciary. Applications must contain additional information necessary to demonstrate substantive criminal law experience, maturity of judgment, and high moral character.

¹³⁴ FM 27-100, at p. 2-7.

¹³⁵ C&GSC Extract, p. 7-7, para. 3-9a:

"The Office of the Chief, Army Reserve (OCAR) provides direction for USAR planning to provide trained units and individuals to support Army mobilization plans. Figure 3-5 shows the organization of the OCAR. The Chief, Army Reserve (CAR) is appointed by the President, with the advice and consent of the Senate, and holds the rank of major general in the Army Reserve. The CAR also functions as the FORSCOM Deputy Commanding General for Reserve Affairs and commands the U.S. Army Reserve Command (USARC)."

ibid, para. 3-9b:

USARC commands all USAR troop program units (TPU) in CONUS and Puerto Rico. The Commanding General, FORSCOM, commands the USARC

and is responsible for organizing, equipping, stationing, training, and maintaining combat readiness of assigned units.

¹³⁶ C&GSC Extract, p.7-2.

¹³⁷ *Ibid*, p. 7-3; 10 USC §10143.

¹³⁸ C&GSC Extract, p. 7-4.

¹³⁹ *Ibid*.

¹⁴⁰ *Ibid*.

¹⁴¹ *Ibid*.

¹⁴² 10 U.S.C. § 12304.

¹⁴³ 10 U.S.C. § 12302.

¹⁴⁴ 10 U.S.C. § 12301(?).

¹⁴⁵ 10 U.S.C. § 12301(?).

¹⁴⁶ Major David Parker (Virginia Army National Guard, currently serving as Deputy Staff Judge Advocate, 29th Infantry Division (Light)), interview by author, conducted at Headquarters, 29th Infantry Division (Light), Fort Belvoir, Virginia, 5 January 2003, (hereinafter Parker Interview).

¹⁴⁷ FM 27-100, Chapter 4, pp. 4-26 through 4-28. "The RDL is a set of computer hardware, software, and networking products, which are updated periodically, and currently provide the judge advocate or legal specialist the following capabilities in a man-portable bundle:

- Word processing, database, spreadsheet, form-filler, and other necessary software that is compatible with command software
- Legal document protection
- Convenience copying
- Cellular voice communication
- Wire line and non-wire facsimile (with satellite communication capability)
- Wire line and non-wire e-mail and digital communication (with satellite capability)
- Photography and digital telecommunication of photographs
- Legal research with import-to-document capability."

Ibid, p. 4-26. In its current configuration, the RDL consists of the following equipment:

- A laptop computer (with sufficient processor and memory capabilities to interact with [the Army battle Command System], to conduct efficient research from electronic databases, and to store a large volume of required legal references and products with removable hard drive for secure storage of classified information)
- CD ROM reader (preferably internal)
- Scanner-printer (battery back-up)
- PCMCIA fax modem (cellular phone and satellite telephone up-linkable)
- Digital camera
- Digital audio card and microphone
- Hard-shell case
- Full range of software
- Full range of legal references on compact disks and/or hard drive.

Ibid, pp. 4-26, 4-27. Most RC judge advocate leaders would not believe that Army doctrine expects them to possess such equipment on their property books, and for them to be trained to use such equipment, given their great difficulty in obtaining even out-of-date information technology. For example, the OSJA, 29th Infantry Division (Light), Virginia ARNG, only obtained much of its office's desk-top computer equipment when the Office of the Judge Advocate General, located in Arlington, Virginia sought to dispose of out-dated equipment from its property book. As such, even when it acquired this equipment, it was already out-of-date by JAGC standards. Parker Interview, Note 146, *supra*.

¹⁴⁸ FM 27-100, at p. 1-6, quoting Department of the Army, *The Army Vision 2010*, at p. 5.

¹⁴⁹ *Ibid*, Chapter 4.6.1, Legal Support and Special Operations, pp. 4-37, 4-38:

Special Operations missions are legally and politically sensitive, particularly in the absence of international armed conflict. The commander must consider not only traditional law of war issues, but also the requirements of domestic United States law (such as fiscal, security assistance, and intelligence oversight laws or Department of Defense Directives relating to PYSOP) and broader international law requirements (such as those in mutual defense treaties and host nation support).

Judge advocates assigned to special operations forces may deploy with their units deep in enemy territory where access to other legal resources is nonexistent

¹⁵⁰ Memorandum, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Members Of The Judge Advocate General's

Corps Deployed At The Holidays, 1998 (21 April 1999). The Center for Law and Military Operations (CLAMO) provides The Judge Advocate General with these periodic deployed personnel updates, which in addition to deployed judge advocates also provide information on deployed 27-D Paralegal soldiers, a significant number of whom are also from the RC.

¹⁵¹ Memorandum, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Judge Advocate Operations Update (Deployed Judge Advocates) (16 July 1999).

¹⁵² See, *generally*, Memoranda, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Judge Advocate Operations Update (Deployed Judge Advocates) (21 October 1999) (adding a deployed USAR judge advocate, LTC Bob Sundberg, in support of operations in East Timor); (20 December 1999); (20 March 2000); (22 June 2000); (6 November 2000); and (15 May 2001).

¹⁵³ Memorandum, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Judge Advocate Operations Update (Deployed Judge Advocates) (1 September 2001).

¹⁵⁴ Memorandum, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Judge Advocate Operations Update (Deployed Judge Advocates), (1 October 2001). With the 29th Infantry Division (Light) assuming command of Task Force EAGLE and the SFOR Multi-National Division (MND) North mission, the number of deployed RC judge advocates increased from the two deployed during Christmas 1998 to a total of eight deployed RC judge advocates. This was out of a total of thirty one deployed judge advocates, of all components, worldwide.

¹⁵⁵ Memorandum, Center for Law and Military Operations, The Judge Advocate General's School, to The Judge Advocate General, subject: Judge Advocate Operations Update (Deployed Judge Advocates) (16 April 2002). As noted, with the assumption of commanding the Kosovo mission by the headquarters of the 28th Division, Pennsylvania ARNG, and the Bosnia mission being assumed by the 35th Division's headquarters, these numbers will likely rise further.

¹⁵⁶ Pagel Interview, *supra*, Note 72; Lieutenant Colonel Bruce A. Pagel, Briefing Notes (April 2002) [hereinafter Pagel Notes], paragraph 3. *Accord*, SFOR X AAR, *supra*, Note 73, Chapter 3, Staff Lessons Learned, p. 3-10:

The OSJA spent more time on administrative [tasks] and recruiting than substantive training, and those [judge advocates] who eventually deployed missed key training events and team building opportunities.

¹⁵⁷ Lieutenant Colonel Bruce A. Pagel, Powerpoint presentation prepared for the Center of Law and Military Operations (CLAMO), The Judge Advocate General's School, United States Army (TJAGSA), Charlottesville, Virginia (April 2002) [hereinafter Pagel Powerpoint], slide 1.

¹⁵⁸ *Ibid.*

¹⁵⁹ In this regard, LTC Pagel notes “Keeping the head in the game [during this extended mission preparation cycle] is difficult with the extended training program.” Pagel Notes, paragraph 1. He added: “As a [RC judge advocate], be prepared for a steep learning curve.” Pagel Notes, paragraph 32; Pagel Interview, *supra*, Note 72. It is the position of this paper that RC judge advocates experience that steep learning curve because the RC training and education model as it is currently configured inadequately prepares them for mobilization and deployment.

¹⁶⁰ LTC Pagel stated “the ‘Battle of the STARCs is the never-ending embarrassment to the ARNG; at the state level, the ARNG remains small-minded and too parochial.” Pagel Notes, paragraph 17.

¹⁶¹ Pagel Powerpoint, slide 1.

¹⁶² Pagel Notes, paragraph 13.

¹⁶³ Pagel Notes, paragraph 2.

¹⁶⁴ During the Division’s Staff Training Exercise #3 (STAFFEX 3) in June 2000 LTC Pagel filled in for another officer as Chief of Operations Law due to the incumbent’s sudden illness, and was identified by the training team from the Battle Command Training Program at Fort Leavenworth as a “Hero of the Exercise”. Pagel Interview, *supra*, Note 72.

¹⁶⁵ Pagel Notes, paragraph 101.

¹⁶⁶ Pagel Notes, paragraph 95. MG Blum, former Commanding General of the 29th Infantry Division (Light), is currently Chief of Staff at the North American Aerospace Defense (NORAD) Command / United States Northern Command (USNORTHCOM). President George W. Bush has nominated MG Blum to be promoted Lieutenant General and to serve as Chief of the National Guard. See, Tom Bowman, “Bush Nominates Marylander To Top National Guard Post: Blum, 56, Would Oversee Policy, Future Direction of 470,000 Standby Troops,” The Baltimore Sun (January 7, 2003), p. 1.

¹⁶⁷ Pagel Powerpoint, Slide 2.

¹⁶⁸ Pagel Notes, paragraph 23.

¹⁶⁹ Pagel Interview. Colonel Randall Bruch, assigned as the Division’s AC Training Officer, 1st United States Army, was seconded to the Division to serve as its Chief of Staff for the SFOR X deployment. *Ibid*. The United States Code provides for such a detail of AC officers to serve as Chiefs of Staff for ARNG Divisions. “To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard ,” 32 U.S.C. § 104 (e).

¹⁷⁰ Pagel Powerpoint, Slide 2.

¹⁷¹ *Ibid*; Pagel Notes, Paragraph 20: “SJA issues in SFOR can be like a fiscal law exam; judge advocates must know the ‘school solutions’ on [issues such as] mil air / coins / gifts / etc.”

¹⁷² Pagel Interview *supra*, Note 72.

¹⁷³ *Ibid.*

¹⁷⁴ Colonel Robert Erickson, telephone interview conducted by the author, 3 April 2003 [hereinafter Erickson Interview].

¹⁷⁵ 10 U.S.C. §832(b).

¹⁷⁶ Erickson Interview. Surprisingly, a decision was made at a higher command, over COL Erickson's objections, to discontinue these training events with AC JAGC offices. While this was primarily a resourcing issue with the USAR, the AC JAGC did not become involved in advocating for or maintaining the habitual relationships that had been established with the AC JAGC offices.

¹⁷⁷ *Ibid.* In this regard, COL Erickson noted that among his unit's officers were attorneys from the United States Department of State and the United States Agency for international Development (USAID), and that as such, COL Erickson believed his unit was as well positioned as any AC JAGC office to conduct international law missions.

¹⁷⁸ *Ibid.*

¹⁷⁹ It must be recognized that being situated just outside of Washington, D.C., the 10th LSO had a particularly rich pool of potential former AC judge advocates and others to draw from in its recruiting.

¹⁸⁰ Erickson Interview.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ FM 27-100, at 1-8, 1-9.

¹⁸⁴ Warren SRP, *supra*, Note 58, p. 5.

¹⁸⁵ Thomas E. Ricks, "Battle Plans: In the Wake of the Cold War, an Intellectual Leads the Army in New Missions," The Wall Street Journal, vol. CCXXVI, No. 64, p.1, at p. 6.

¹⁸⁶ U.S. DEP'T OF THE ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATIONS AND OPERATIONS (31 May 1997) [hereinafter FM 101-5], at p. 2-3: "Special staff officers help the commander and other members of the staff in their professional or technical functional areas."

¹⁸⁷ *Cf.*, Richard K. Betts, "Comprised Command," Foreign Affairs, July/August 2001 (review of Wesley Clark, Waging Modern War: Bosnia, Kosovo, and the Future of Combat), p. 126:

One of the most striking features of the Kosovo campaign, in fact, was the remarkably direct role lawyers played in managing combat operations – to a degree unprecedented in previous wars. . . . The role played by lawyers in this

war should also be sobering – indeed alarming – for devotees of power politics who denigrate the impact of law on international conflict. . . . NATO's lawyers . . . became, in fact, its tactical commanders.

Ibid, pp. 129-30

¹⁸⁸ See, generally, U.S. DEP'T OF THE ARMY, REGULATION 600-20, COMMAND POLICY (29 April 1988); FM 101-5, *supra*, Note 177.

¹⁸⁹ The Objective Force White Paper, at 8.

¹⁹⁰ The Objective Force White Paper, at 8; Note 195, *infra*.

¹⁹¹ Staff Sergeant Marcia Triggs, "Army to Transform Officer Education System," Army Link News (February 4, 2003), available at www.dtic.mil/armylink/news/Feb2003/a20030204ile.html [hereinafter Army Link Officer Education], p. 2:

Many of the changes were recommended by the Army Training and Leader Development Panel officer study. This study identified two formative periods in an officer's career during which institutional training and education plays a critical role. The first is initial entry, when the institution prepares officers to lead small units, officials said. The other formative period is associated with the officer's selection for promotion to major, when educational institutions prepare them for field grade responsibilities, officials added.

¹⁹² *Ibid*

¹⁹³ *Ibid*

¹⁹⁴ *Ibid*.

These courses will provide assignment-oriented training, just in time for the duty position, officials said. Both courses capitalize on advanced distributed learning and new high-impact resident training methods such as multi-echelon, combined arms "gauntlet" exercises conducted at Fort Knox, Ky. CASC and CABCC will put commanders back in the driver's seat for junior officer professional development, officials said, while returning approximately 1,500 captains to the field. They said plans are for CASC and CABCC to be fully implemented by 2nd quarter, FY 06.

Ibid

¹⁹⁵ U.S DEP'T OF THE ARMY, "Army 2003 Force Modernization Plan" (February 2003) [hereinafter Army 03 Force Mod Plan], available at www.army.mil/features/MODPlan/2003/default.html (14 March 2003), Annex C: Training and Leader Development, pp. C-5, C-6.

¹⁹⁶ Army Link Officer Education, at p. 2:

For majors, the current Command and General Staff Officer's Course selection policy makes education a discriminator, officials said. "Under this policy, only 50 percent of mid-career officers attend resident instruction, while the other 50 percent complete the education through non-resident courses," said Lt. Col. Jim McCreight, chief of the ILE Team at the Command and General Staff College, Fort Leavenworth, Kansas. "Under the ILE concept, 100 percent of the majors will get resident instruction."

¹⁹⁷ Army 03 Force Mod Plan, p. C-7

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Brigadier General Charles J. Dunlap, "Law and Military interventions: Preserving Humanitarian Values in 21st Century Conflicts," "Humanitarian Challenges in Military Intervention Conference," Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, held at Washington, D.C. (29 November 2001). General Dunlap defines "lawfare" as "a method of warfare where law is used as a means of realizing a military objective" (citing to John Carlson and Neville Yeomans, "Whither Goeth the Law – Humanity or Barbarity," The Way Out – Radical Alternatives in Australia, (M. Smith & D. Crossley, ed.s 1975), available at www.laceweb.org.au/whi.htm.) "Lawfare," in General Dunlap's view, is a use of law as a way to manipulate the informational aspect of national power, and "potentially provides disproportionate power and influence to our adversaries and to small groups seeking to manipulate the diplomatic landscape." *Cf.*, Trevor Royle, "Finally, Bush Realises He Must Win Friends To Topple Saddam ... But It's Not Going To Be Easy: THE MARCH TO WAR: After months of go-it-alone talk, America is courting allies," The Sunday Herald (08 September 2002), available at www.sundayherald.com/print27512 (23 March 2003):

'The moral and practical dimensions of American military strategy are under constant review,' argues Richard Connaughton, author of *Military Intervention and Peacekeeping: The Reality*. 'There is a worrying attitude problem among a number of Washington decision-makers who regard international law and the law of war as instruments used to obstruct America in doing what she wants to do, a challenge to her sovereignty. The new terminology is called lawfare.'

²⁰¹ JAG Pub. 1-1, Appendix, p. 27, para. 6-5a.

²⁰² *Ibid.*, p. 28, para. 6-6g.

²⁰³ U.S. ARMY WAR COLLEGE, Department of Distance Education, Distance Education Catalogue for the Class of 2004 (2002) (11 February 2003), available at www.dde.carlisle.army.mil/catalogues/cat04.pdf, at p. 15

²⁰⁴ In this regard, COL Erickson (Note 174, *supra*) believes strongly that centralized JAGC management of information technologies would go a long way toward alleviating the difficulties RC judge advocates face in acquiring modern computers and equipment. Upon his assumption of command of the 10th LSO, the unit had broken computers and out-of-date equipment that would not operate with software issued by the JAGC. During his tenure in command, he struggled to update that equipment, and feels that centralized JAGC management of this

equipment would avoid struggles with higher commands over allocation of resources. With his unit, equipment modernization was not an issue until the higher command was required to support Army mobilizations. When the Deputy Commanding General contacted COL Erickson and asked if his unit had sufficient computers and related equipment, the response was "we'll find out." It was only at this point, where mission failure was a possibility, that the command supported acquisition of up-to-date computer equipment for the 10th LSO.

²⁰⁵ As an example of where RC judge advocates have supervised and rated AC judge advocates, LTC Pagel, an officer in the Virginia ARNG, as Staff Judge Advocate SFOR X, supervised the activities of eight judge advocates and seven enlisted support soldiers. These soldiers were from the active Army, the USAR, and the Army National Guard. Pagel Interview, *supra*, Note 72.

²⁰⁶ The Objective Force White Paper, at 8.

²⁰⁷ Those questions posed in the Introduction are:

- What steps can the JAGC take now to ensure that its officers of either component are best prepared to serve in deployed missions supporting commanders and soldiers?
- What measures must the JAGC take specifically regarding RC judge advocates to ensure a uniform standard of performance regardless of a judge advocate's component?
- How can the JAGC combine available information on training doctrine, mobilization, and preparation for deployment into a systematic training methodology to prepare its RC JAGC officers for the full spectrum of military operations²⁰⁷ in the 21st Century?
- What can RC judge advocates do to better prepare themselves for mobilization, and subsequent deployment, for Army missions?

Supra, pp. 1-2.

²⁰⁸ *Supra*, Note 1, quoting General Harry "Light Horse" Lee.

²⁰⁹ Currently, the only requirement as to when a judge advocate, even one in the AC, is to attend CAS3 for staff officer training, is "before they may attend the Graduate Course," JAG Pub. 1-1, Appendix, para. 6-4d, p. 27, which occurs with "not less than five years commissioned service since promotion to captain." *Ibid*, para. 6-5c(2). Thus, it is not only possible but indeed likely that an AC judge advocate will serve one quarter of a twenty year career before receiving any substantive training in staff operations and procedures. As to the RC judge advocate, many are exempted from CAS3, since it is not a prerequisite for promotion to major. See, Army Reg. 135-155, Table 2-2, p. 9, Note 94, *supra*.

²¹⁰ In this regard, it is interesting to note that COL Erickson (Note 174, *supra*) does not believe that civilian attorneys would be much interested in or motivated by the awarding of a degree for completion of an RC Judge Advocate Graduate Course. He believes that RC judge advocates, as civilian attorneys with either government or civilian practices, do not necessarily care about advanced law degrees in general, whether from civilian universities or from TJAGSA

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