

JAG Goes to War: The Desert Shield Deployment

COLONEL SCOTT L. SILLIMAN, USAF (RET.)

I. THE HISTORICAL PERSPECTIVE

If it be true that the greatest soldier is also the best student of history, then those who write our operations plans (OPLANS) and who provide for the flow of personnel and equipment to the battlefield through the Time Phased Force Deployment Data (TPFDD) must of necessity look to the lessons of prior wars to guide their decisions. But for the Air Force judge advocate, whose principal prior combat experience was the Vietnam war from 1961 to 1973, there were few specifics that could be carried forward to help prepare for a contingency such as *Operation Desert Shield/Desert Storm*. There was, of course, the acknowledgment that the judge advocate (JAG) had to be in the combat theater in sufficient numbers to serve the needs of commanders and other wing personnel who were prosecuting the war, with the size of each legal office presumably heavily dependent upon overall base population (and the anticipated heavy workload of military justice, legal assistance, and other traditional legal services). There was also the presumption that a commander would want and need a "full up" legal office almost from the very beginning of the deployment and that there would be sufficient airlift to accommodate such a need. Finally, we assumed that, with the appropriate number and type of legal personnel, we could conduct trials within a combat theater in relatively short order. But although we became extremely proficient in writing legal annexes and ensuring that the items in our deployment kits were kept current, we tended to pay little attention to such "abstract" matters as Unit Type Codes (UTCs) and the building of the TPFDD. In fact, prior to the start of the deployment in August of 1990, the number of judge advocates who actually understood the planners' parlance and the mechanics of UTCs was probably less than a dozen. The author was not among them.

II. THE "GAME PLAN" FOR DEPLOYMENT OF JUDGE ADVOCATE PERSONNEL

The Operations Plan that governed the prosecution of *Desert Shield/Desert Storm* was USCINCCENT OPLAN 1002-90, and it tasked particular units within Tactical Air Command and other Major Commanders (MAJCOMs) to deploy to predesignated locations in Southwest Asia. The USCINCCENT OPLAN 1002-90, like any other OPLAN, had an accompanying TPFDD that specified which units would be deployed in support of the plan and an exact schedule for deployment (i.e., which units would go on C+7, which on C+12, etc.). Contrary to what most assume, the United States Air Force does not go to war by airlifting whole organizations intact to the battle front; rather, it goes to war by *UTCs*. A

Colonel Silliman (B.A., University of North Carolina; J.D., University of North Carolina) was the Staff Judge Advocate, Air Combat Command, Langley Air Force Base, Virginia. At the time of Operation Desert Shield/Desert Storm, he was the Staff Judge Advocate of Tactical Air Command. He is a member of the North Carolina Bar.

UTC can be best thought of as a computerized paper bag containing various types of combat or support personnel from a designated base or unit that are needed for a specific function at a combat location. The UTC is inserted into the TPFDD deployment flow when it is needed in support of the OPLAN at that particular time in the battle. For example, the "on the shelf" TPFDD for USCINCCENT OPLAN 1002-90 provided for a small number of combat support element personnel (contained in an XFFB6 UTC) to be deployed to each base in the Southwest Asia Area of Responsibility (AOR) to provide legal, administrative and other combat support to the commander and other base personnel.¹ In most cases, these XFFB6 UTCs were to be "sourced" from the same peacetime wing that provided the principal aircraft package to the AOR installation. In this way, there could be unit integrity and a wing commander would already be familiar with the personnel in the support package. The XFFB6 UTC was a five officer/thirteen personnel in enlisted Combat Support Element package which contained two base level judge advocates (an 8816 and an 8824) and 2 paralegals (88170). It also contained an organization commander, an information management officer as well as an information management executive officer, three contracting specialists, a personnel technician, a reprographics specialist, and six administrative specialists. This UTC was intended to provide combat support staff to service up to 1500 military personnel at a bare bones base. When the TPFDD flow resulted in the base population exceeding that number, there was an XFFB7 UTC that could be inserted that increased the number of combat support staff proportionately (to cover a population up to 3000). As far as the AOR base legal office, the XFFB7 added an additional judge advocate (8824) and paralegal (88170). There were also *JAG unique* UTCs that could be inserted into the TPFDD for specialized legal functions. The XFFB9 UTC, for instance, was comprised solely of an area defense counsel (8824) and area defense administrator (88150), and this UTC would be available to be deployed to any AOR base to provide defense services for military justice actions. For management of the ADCs in the AOR, the Circuit Defense Counsel function was contained in the XFFJ2 UTC (one 8816 and one 88150). There was also an XFFJ1 (a single military judge; 8816) and an XFFJ4 (a single court reporter; 88150) to provide trial support should the need arise for courts-martial in the combat theater. Finally, there was an XFFJ3 UTC that was intended to be a judge advocate "wildcard" package that contained a single judge advocate (8816) and paralegal (88170) and which theoretically could be used to "plus up" any legal function, whether base support or judiciary.² All these UTCs were available to the deliberate planners when they crafted the TPFDD to support US-

1. Although the Objective Wing concept has now been approved, placing the judge advocate function on the wing commander's staff Air Force-wide, at the time of *Operation Desert Shield/Desert Storm* many base staff judge advocate offices were still contained in the combat support group within the wing and the prevailing UTC used in virtually all OPLANs was, therefore, the XFFB6 that contained all combat support group personnel.

2. The heading for the Mission Capabilities Statement from the USAF WMP, Volume III, Part 3, for the XFFJ3 reads, "UTC, XFFJ30; RESP CMD, OT; LEVEL, ELE; UNIT TYPE NAME, CSG AFLSA JAG SPECIFIC MSN AUG" (emphasis added). The Mission Capabilities Statement itself reads, "provides attorney/advisor capability to a BB, LB, SB, COB or MOB to support The Judge Advocate General in fulfilling his specific responsibilities listed in the USAF WMP-I, Annex P and R, and commanders and staff judge advocates in carrying out their responsibilities under federal statutes and regulations. HQ AFLSA and all MAJCOMs may task this UTC as many times as necessary at the same location. UTC may be used for active duty, guard and reserve. AFSC 08824 can be substituted for 08816 and AFSC 881X0 for 88170." When the question arose as to whether the XFFJ3 could be used to "plus up" an existing AOR legal office, the TAC/DPX and XPM Battle Staff program managers took the position that, since the owning organization was the Air Force Legal Services Center (whose principal deployable assets were judiciary personnel), this UTC was in fact an augmentor for the judiciary and could not be used for normal base level augmentation.

CINCCENT OPLAN 1002-90, and certain assumptions guided them in what they did.

First, there was an assumption that most, if not all, of the initial cadre of personnel supporting the combat aircraft at a base would have dedicated and available airlift and would, therefore, be arriving at their installation within the first five days of the deployment. This prompted the planners to insert the combat support element XFFB6 UTC (with its two judge advocates and two paralegals) very early in the TPFDD so that the wing commander would have an adequate support staff to provide services for his 1200-1500 base populace. Secondly, there was an assumption that when combat aircraft from different CONUS or OCONUS wings were to be grouped together at a large AOR base, that each flying package would require its own combat support element staff, with the "unit integrity" principle dictating that the XFFB6 UTC be sourced from the same location as the aircraft. Thirdly, with respect to specific legal functions, it was assumed that *each* AOR base would generate a sufficient amount of military justice actions to merit the deployment of an area defense counsel and area defense administrator, and that these two personnel would be needed quite early in the deployment. Hence, an XFFB9 UTC was inserted into the TPFDD within the first three weeks of the deployment flow to that particular base. Finally, there was also an assumption on the planner's part that we should and would have the capability of conducting trials by court-martial within the first month of the deployment, to support commanders at all echelons of command in maintaining discipline in a combat environment. When dealing with the unique aspects of *Desert Shield/Desert Storm*, however, some of these assumptions proved erroneous.

III. THE INITIAL DEPLOYMENT CRISIS

On 2 August 1990, Iraq invaded Kuwait and it was only a few days later that the President approved the order that would start the flow of American military personnel to the Persian Gulf. The Tactical Air Command (TAC) Battle Staff started its twenty-four hour a day operation on 2 August and the original concept under USCINCCENT OPLAN 1002-90 was that Lieutenant General Charles A. Horner's Ninth Air Force legal staff at Shaw Air Force Base (AFB), wearing their CENTAF/JA "hat" as the air component of General H. Norman Schwarzkopf's United States Central Command (CENTCOM), would control the flow of judge advocates and paralegals that would be deploying in accordance with the supporting TPFDD. Colonel Dennis Kansala, the CENTAF Staff Judge Advocate (SJA), was also charged with keeping in close coordination with my staff at TAC/JA and Colonel Raymond Ruppert (USA), the CENTCOM Staff Judge Advocate located at MacDill AFB in Tampa, Florida. Ostensibly, the TAC/JA staff at Langley AFB was to have no direct involvement other than assisting in the sourcing of legal assets and providing substantive support as required to the TAC Battle Staff. In the span of but a week, however, the MAJCOM SJAs' role, both at TAC and at other commands, would become immeasurably larger.

The first hint of a problem with the TPFDD sourcing of judge advocates and paralegals came on 7 August when two squadrons of F-15 Eagles from the 1st Tactical Fighter Wing at Langley were directed to deploy to Saudi Arabia. This was the first contingent of combat aircraft to head to the Persian Gulf, and the Wing Commander opted to use a "nonstandard" UTC package of support personnel to complement his aircrews at Dhahran. It was *nonstandard* because he

personally chose those functional specialties to take with him, rather than accepting what would have been the standardized XFFB6 UTC for a combat support element. Therefore, rather than the pre-established two attorney and two paralegal package that would normally have deployed with the 1st Tactical Fighter Wing, only Major Blane Lewis, Langley's Deputy Staff Judge Advocate at the time, was selected to go. It was assumed that he could draw administrative support from 702XXs also being deployed. The rapidity with which Langley's personnel deployed precluded any second-guessing of the Wing Commander's choice of options.

Following the departure of Langley's two squadrons of F-15s, the TPFDD went into full gear and aircraft from various TAC, Strategic Air Command (SAC), Military Airlift Command (MAC) and United States Air Force Europe (USAFE) units were identified and alerted for imminent deployment. That meant that, in most cases, combat support personnel were identified as well to accompany the operational forces. Because each unit tasked under USCINCENT OPLAN 1002-90 had a copy of the plan and the accompanying TPFDD, when a unit was notified that it would deploy, the TPFDD flow became self-executing, as it was designed to be. For example, when the 4th Tactical Fighter Wing's F-15Es at Seymour Johnson AFB in North Carolina were given the green light to head for their initial basing at Thumrait, Oman, the Personnel Readiness Unit (PRU) at that base *expected* two judge advocates and two paralegals, all supposedly preselected, to join the rest of the XFFB6 UTC that was in the TPFDD and board the first available transport aircraft. At the same time, however, at Pope AFB in North Carolina, the PRU there knew that the OPLAN called for an XFFB6 an XFFB7 from Pope to deploy to Thumrait to accompany that base's C-130s that were to be collocated with Langley's F-15s. Thus, at Pope AFB the call went out for three judge advocates and three paralegals (virtually seventy-five percent of the base legal office) to board aircraft to the AOR. Neither Lieutenant Colonel Jarris Sanborn, Seymour Johnson's SJA, nor Lieutenant Colonel Rich Slipsky, Pope's SJA, was aware of the overlapping UTC coverage for Thumrait. That redundancy was apparent only at higher headquarters—CENTAF/JA and TAC/JA—and it was immediately clear that something had to be done to avoid sending too many attorneys and paralegals into the AOR. We quickly determined that if the full "off the shelf" TPFDD were to run its course, a total of 149 judge advocates and 138 paralegals would be deployed, many of whom would be "bunched" at the same bases to create legal offices almost twice the size of their stateside counterparts. With most AOR base populations projected to be between 1500 and 5000, such a result was undesirable.

To further compound the problem, though, as the individual units started receiving their deployment orders and the problem of overlapping UTCs became evident, Lieutenant General Horner and the rest of the CENTAF staff (including Colonel Kansala and most of his legal office) also deployed to Riyadh, Saudi Arabia, to establish what was to be *CENTAF Forward*, the principal air component headquarters in the combat theater. The TAC Battle Staff at Langley AFB was, therefore, given full responsibility to act as rear battle manager in the CONUS (*CENTAF Rear*) and to assume all those tasks previously executed by CENTAF prior to its deployment.

After telephone communications were finally established with Colonel Kansala at CENTAF Forward, the problem of the TPFDD flow was discussed and it was agreed that we would have to "decouple" the judge advocate and paralegal sourcing from the automatic TPFDD flow in order to properly manage the deployment of legal assets into the AOR. After being briefed on the problem, Major General Keith E. Nelson, The Judge Advocate General (TJAG), con-

curred in the plan. He recognized, though, that if worldwide sourcing of judge advocates and paralegals to the AOR was to be accomplished individually from Langley, the TAC SJA had to have the TJAG's full authorization to make commitments of manpower assigned to the Department, whether in the field, the judiciary, or the Air Staff. That authorization was quickly given. The final step was to coordinate the plan with the TAC Battle Staff members who would normally have monitored the XFFB6 sourcing, TAC/DPX and TAC/XPM, and each agreed to allow for JAG assets to be decoupled from the TPFDD. After the TAC Battle Staff Director, Major General Michael E. Ryan, was briefed on what was planned, he also gave his concurrence. Calls were then quickly made to Colonel Mike Ford (the Acting SJA for Ninth Air Force), Colonel Bill Moorman (the Twelfth Air Force SJA), and Colonel Mike Lumbard (Nellis's SJA) to inform them of the approved decision regarding individual sourcing of legal personnel from their respective bases. They agreed to pass the word that no judge advocates or paralegals would deploy unless specifically approved by the TAC SJA. Further calls were made to Brigadier General Roger Jones at SAC, Colonel Bryan Hawley at MAC, Colonel Bill Elliott at USAFE, and all other MAJCOM SJAs who could possibly have units that might deploy into the AOR. All agreed to defer to TAC and to allow Langley to be the central "clearing house" for sourcing of their people. Colonel Bill Dixon, Chief of the Appellate Defense Division in Washington, was also notified and he agreed to alert his circuits and ask them to, in turn, notify each Area Defense Counsel (ADC) to "hold in place" until clearance was received from Langley. Finally, a decision had to be made on the principal strategy for the manual sourcing of legal assets into what were simply bare bones bases, oftentimes little more than a concrete runway and a series of tents. After studying the projected population at each AOR base, and the time line for the buildup to end strength, it did not seem prudent to immediately send in both lawyers and paralegals when half that number might suffice. After several discussions among the TAC/JA staff and a confirming call to Colonel Kansala in Riyadh, the "1+1" formula was adopted. Under this concept, only one judge advocate and one paralegal (one half of the XFFB6 requirement) would be deployed to a bare bones base and it would be their task to establish the legal office, satisfy the immediate needs of command, and, thereafter, communicate directly with Colonel Kansala's staff at Riyadh as to workload requirements and requests for further manpower. In this way, the size of each base's legal office could be increased in *direct* proportion to the SJA's own determination of workload. Further, when more judge advocates or paralegals were needed at a particular location, an attempt would be made to match the lawyers or paralegals with their home station commanders who would also be deploying...to assure "unit integrity" to the greatest extent possible. In this way, the legal personnel and the command element at each base would already be familiar with one another before they joined as a combat team in the AOR. Such a concept seemed far better than following a preordained computer flow that could not be modified to meet real time contingencies.

The first real test of the decoupled program came but four hours later when we received word that the Shaw AFB PRU was requiring two attorneys and two paralegals to be deployed to fill out an XFFB6 to accompany Shaw's F-16s to Al Dhafra in the United Arab Emirates. Looking at the projected rate of buildup at Al Dhafra and using our newly agreed-upon strategy, the decision was made to send a "1+1" (one Judge Advocate and one paralegal) package, rather than simply sourcing the full UTC. After calls to the Shaw legal office and Colonel Ford at Ninth Air Force, Major Rob Russell (Shaw's Deputy SJA) and Technical Sergeant Brenda McManus were selected to deploy. Their names and other

identifying information were submitted in writing to the DPX and XPM program managers on the TAC Battle Staff, as previously agreed to. All seemed to be going well until the Shaw PRU called "foul" and claimed that the TPFDD had to be followed, that a full complement of two attorneys and two paralegals had to deploy as prescribed in the XFFB6 UTC. After a full hour of intensive phone calls between Langley and Shaw, the 363rd Combat Support Group Commander ultimately agreed to accept the deviation from the XFFB6 TPFDD sourcing.³ That "battle" being won, an unexpected problem immediately arose. Since we had only sourced the Shaw XFFB6 at fifty percent strength, the DPX and XPM battle staff members here at Langley wanted to close out that UTC in the computer and started procedures to cancel the remaining "1+1" that remained "unsourced" in the TPFDD (since they believed we had determined it unnecessary). We wanted just the opposite...no action. Our goal was to preserve the potential for sourcing against that unfilled "1+1" into Al Dhafra, and to be able to do it at a later time, as determined by Major Russell from Al Dhafra and Colonel Kansala from Riyadh. After discussing the problem at length, TAC/DPX and XPM agreed to allow us to enter a "9999" code into the computerized TPFDD that had the effect of putting the unsourced "1+1" in limbo. From our vantage point, it gave us the exact option we wanted and also avoided any potential adverse manpower implications; from their view, it merely required them to delay resolution of the TPFDD until a future time. To both sides, it was a satisfactory decision and one that would prove invaluable to TAC/JA in the later months of the conflict.

IV. HANDLING THE BUILDUP

Throughout the Fall of 1990, the strength of the United States Air Force in the Persian Gulf continued to build as political threats, United Nations resolutions, and the economic blockade of the Iraqi ports failed to force Saddam Hussein out of Kuwait. At places with names like King Fahd, Khamis Mushait, Abu Dhabi and Shaikh Isa, there was a continuous buildup of planes, people, and equipment, all coming under the operational control of a single "Air Boss," Lieutenant General Horner at CENTAF Forward in Riyadh. With greater numbers of fighters, bombers, tankers, and reconnaissance aircraft being dedicated to *Operation Desert Shield*, ramp space became more and more crowded and new bases like Al Kharj in Saudi Arabia were literally constructed in the middle of the desert. By the beginning of the air campaign in January of 1991, we were operating from twenty-one bases in the Persian Gulf, as well as airfields in Egypt, Turkey, Spain and other countries on both sides of the Atlantic.

As the population increased at these bases, so also did the size of the legal offices. Each day, both at TAC headquarters and at CENTAF, the personnel community provided the respective commanders and Battle Staff directors with strength figures for each installation, as well as projections for end strength based upon the TPFDD flow. Using this data, a joint decision was made by TAC/JA and CENTAF Forward/JA two or three times each week as to which base legal offices needed to be "plussed up" to accommodate increased populations. If there was an XFFB6 or XFFB7 UTC in the TPFDD close to the date when we

3. There were repeated instances of "arm wrestling" between MAJCOM SJAs and base PRUs over the sourcing of the XFFB6 UTC. In one case, where attorneys at March AFB were told to board an aircraft to the AOR, it took a flash message from Brigadier General Jones, the SAC SJA, to keep them from having to join an already adequately manned base legal office.

wanted to deploy an additional attorney and/or paralegal, then we would use that UTC as the authorization for the additional sourcing. If not, we would look back to the "unsourced" 1+1 from the original XFFB6 that had been put into limbo with the "9999" coding and use that to deploy the new people. In either case, we would provide full names, social security numbers, and other identifying data to the DPX and XPM program managers working our JAG account in the TPFDD. The actual selection of who to deploy in these instances was always left to the respective MAJCOM SJA, who worked with his NAF/SJA and respective base SJA to make the choice. Using this procedure, the *Operation Desert Shield/Desert Storm* law firm ultimately totalled forty-nine judge advocates and forty-six paralegals at thirty different locations, including the contingency hospitals in the United Kingdom and three ADCs and one Area Defense Administrator in the AOR.⁴

V. "ONE LAW FIRM" - CAN EVERYONE HAVE A PART IN THE WAR?

The Air Force Judge Advocate General's Department has always touted itself as being one law firm, comprised of our active duty, reserve and Air National Guard judge advocates, paralegals, and civilians. In *Operation Desert Shield/Desert Storm*, the issue of how each part of the Department would participate arose early in the deployment. The active duty attorneys and paralegals

⁴ On 11 March 1991, the JAG manning in direct support of *Operation Desert Shield/Desert Storm* was as follows:

LOCATION	JUDGE ADVOCATES	PARALEGALS	ADC/ADA	SOURCING MAJCOM
ABU DHABI, UAE	1	1		SAC
AL AIN, UAE	1	1		MAC
AL DHAFRA, UAE	2	2	1/0	TAC/USAFE
AL KHARJ, SA	2	2		TAC/USAFE
AL MINHAD, UAE	2	1		TAC
BATEEN, UAE	1	1		MAC
CAIRO WEST, EGYPT	1	1		SAC
DHAHRAN, SA	2	2	1/0	TAC
DIEGO GARCIA	1	1		SAC
DOHA, QATAR	1	1		USAFE
INCIRLIK, TURKEY	2	1		USAFE
JEDDAH, SA	2	2		SAC
KHAMIS MUSHAIT, SA	1	2		TAC
KING FAHD, SA	4	4		TAC/AFSOC/RES
KING KHALID IAP, SA	1	1		SAC
KING KHALID MC, SA	1	1		TAC
MASIRAH, OMAN	1	1		MAC
MORON, SPAIN	1	1		USAFE
RIYADH, SA (CENTAF)	6	5		TAC
RIYADH, SA (BASE)	1	2	1/1	TAC/SAC
RIYADH, SA (USMTM)	1	1		-
SEEB, OMAN	1	1		SAC
SHAIKH ISA, BAHRAIN	1	1		TAC
SHARJAH, UAE	1	1		MAC
TABUK, SA	1	1		TAC
TAIF, SA	2	2		TAC/USAFE
THUMRAIT, OMAN	1	1		MAC
UK CONT. HOSPITALS	4	4		AFLC/ATC/AFSC/ PACAF/USAF

were, of course, fully deployable, and if they were selected, they went with their operational units to the Persian Gulf. The larger question involved how our Air National Guard (ANG), Category A and Category B reservists would be used.

With regard to the ANG judge advocates and paralegals, because they trained to deploy with the rest of their unit, the presumption was that those assigned to flying wings and groups *would* deploy, *as long as* it would not create an overabundance of legal personnel at AOR bases where a legal office was already established and adequately manned. In fact, one of the very first attorneys to deploy into the combat theater was an ANG judge advocate, Colonel Bernard A. Paul, of the Missouri ANG state headquarters staff, who went in with one of that state's flying units to Jeddah, Saudi Arabia. Several Missouri ANG attorneys, operating on a monthly rotational basis, continued deploying in and out of Jeddah until TAC/JA and CENTAF/JA jointly determined that the legal office at that base was sufficiently manned with enough active duty personnel so that ANG augmentation was no longer required. The decision to discontinue ANG judge advocate support to Jeddah was concurred in by Colonel Jack Slayton, the Air National Guard Assistant to the TAC SJA, and Brigadier General Allen C. Pate, the Air National Guard Assistant to The Judge Advocate General.

The Category A reserve judge advocates and paralegals are also assigned directly to operational units and train to deploy with them. As with the ANG legal personnel, then, the presumption was that they would deploy with their units, *if* they were needed at the AOR base of deployment. In December of 1990, it became evident to both TAC/JA and CENTAF/JA that we would have to "plus up" one of the Saudi Arabian base legal offices with an additional judge advocate and paralegal. Because the TPFDD showed a Category A reserve flying unit scheduled to deploy to that very base, it seemed prudent to use the reserve judge advocate and paralegal assigned to that unit to augment the AOR base legal office, thus maintaining unit integrity and also assuring that an officer and enlisted representative of the Category A program would have the opportunity to participate in the conflict. TAC/JA called the unit commander and told him that his staff judge advocate and paralegal would be needed at his AOR location and to ensure that they both deployed with the unit. The next day, however, it was discovered that the unit staff judge advocate would not be able to deploy because of scheduling conflicts with his civilian job. In an attempt to resolve the problem, the AFRES SJA, Colonel Bill Henry, suggested that we could "mix and match" a Category A judge advocate from another unit to go with the deploying unit into the AOR. After conversations with CENTAF/JA; the Deputy TJAG, Major General David C. Morehouse; and the TJAG, Major General Nelson, it was decided that using a Category A staff judge advocate from another unit would not be acceptable as it would violate the unit integrity principle. The unit then deployed without its legal staff to its AOR basing location. The early cessation of hostilities precluded any further opportunities to use Category A judge advocates or paralegals in the Persian Gulf.

The traditional role of the Category B reservist assigned to our 9005th Air Reserve Squadron (ARS) at Denver, Colorado, (but attached to our active duty offices for training) is to be prepared to augment the active duty offices or to take the place of the active duty judge advocates and paralegals when they (the active duty force) deploy in any contingency. Training opportunities for the Category B personnel, therefore, generally center around working in and managing a CONUS active duty office. It follows, and was accepted as TJAG policy, that members of the 9005th ARS would not be deployable to an AOR; rather, they would be responsible for "backfilling" the stateside legal offices. That is exactly how they were used in the early stages of the deployment. Colonel John

Lester, TAC's Senior IMA at the time, happened to be serving a week of active duty training at TAC headquarters during the first part of August of 1990. His timing could not have been better. As we commenced the deployment of active duty legal personnel to the AOR, Colonel Lester, in conjunction with Colonel Ron Rakowsky, the Staff Judge Advocate for the Air Reserve Personnel Center at Denver, arranged for a one-for-one replacement of Category B personnel to fill the vacancies in our CONUS base and numbered air force legal offices. This very successful program of a one-for-one backfill continued throughout the conflict and was managed by selected senior IMAs under Colonel Lester's tutelage. A Category B reservist, Major Roger L. Young, even served for almost two months as the Staff Judge Advocate at Myrtle Beach AFB in South Carolina after Major Doug Acklin, the regular active duty SJA, deployed with the base's operational forces to King Fahd International Airport in Saudi Arabia. Also, when Colonel Kansala and his staff deployed to Riyadh, his office at Shaw AFB was reconstituted with a heavy percentage of Category B reservists. In late December of 1990, as the buildup of forces was reaching its peak prior to the 16 January 1991 commencement of the air campaign, and coincidental with the inability to source a Category A legal team with their deploying unit, Major General Nelson revised his policy guidance regarding the use of 9005th ARS personnel. He decided that, on a selective basis, Category B reservists could deploy to the AOR to augment the active duty legal offices there. Shortly thereafter, Captain William Shearer and Staff Sergeant Freddie Gravely deployed to King Fahd International Airport to join Major Doug Acklin's law office at that location, making it the largest base legal office in the AOR. Captain Shearer was in practice near RAF Bentwaters in the United Kingdom and was attached to that base for training (one of the very few members of the 9005th ARS attached to an OCONUS base for training), while Staff Sergeant Gravely was attached to the base legal office at Travis AFB in California. Both remained in the AOR until the redeployment of forces in the late spring and early summer of 1991. For his efforts, Captain Shearer was later recognized as Outstanding IMA for 1990. Again, because of the early cessation of hostilities, he and Staff Sergeant Gravely were the only two Category B legal personnel who were sent to the Persian Gulf.

VI. LESSONS FOR THE FUTURE

One of the principal problems identified in the *Operation Desert Shield/Desert Storm* deployment was our inability to manage, with precision, the flow of our legal assets into the AOR. Although many of our functional specialties were and still are contained in JAG-unique UTCs, the base level judge advocate and paralegal were part of the larger congregation of assets contained in the XFFB6 UTC, under control of the Combat Support Group Commander. Even now, with the advent of the Objective Wing concept that places the judge advocate function Air Force-wide on the Wing Commander's staff, the new 9AAGB UTC (independent wing support UTC) still contains a combination of two judge advocates (one 8816 and one 8824) and two paralegals (88170) among its numbers. Our experience in the Persian Gulf conflict proved that placing two attorneys and two paralegals into an AOR *with the initial cadre* of wing personnel was usually not warranted. Recognizing that, on 27 May 1992, Major General Morehouse issued a TJAG policy letter entitled "Policy on Deployment of Judge Advocate Personnel" that authorized TAC/JA to tailor the JAG complement in the 9AAGB UTC down to a one judge advocate and a one paralegal,

with other MAJCOMs doing likewise as they establish their independent and dependent UTCs. To ensure adequate projection of wartime requirements, however, the letter also stipulates that an XFFJ3 "wildcard" UTC also be incorporated into the TPFDD for each 9AAGB, although perhaps at a much later time in the TPFDD flow. With regard to the XFFJ3 UTC, which was not accepted by the TAC Battle Staff as a legitimate "plus up" for a base level legal office, HQ USAF/JAI is currently working to clarify the MISCAP language to avoid what happened in *Operation Desert Shield/Desert Storm*. Even with these two much needed changes, judge advocates involved in the deliberate planning process must carefully consider the exact number of judge advocates needed under any OPLAN and where they should be in the TPFDD flow.

Another lesson learned from our experience in the Persian Gulf pertains to the choice of *whom* to deploy. In some instances, those at CONUS base legal offices who were predesignated for mobility positions were ill-equipped to be the only attorney or paralegal at a bare bones base, but they were the ones selected, if for no other reason than by "drawing the short straw." In one case, a judge advocate with less than one year's experience in the Department was deployed with the initial XFFB6 UTC and was simply not experienced enough to operate in the combat environment. He was replaced after three months by a more experienced officer from the same CONUS legal office. This is not to say, however, that the staff judge advocate or the deputy should themselves be the ones to deploy. Since most CONUS legal offices actually experienced an *increase* in workload after their operational forces deployed to the AOR, a base staff judge advocate must be prepared to keep the regular base office running at peak efficiency at the same time part of the office is lost to the combat theater. In a word, office personnel must be divided to provide the best possible coverage at both the deployed location *and* the home station. The decision will be crucial to satisfying the legal requirements of both.

A final issue involves the reserve components. As mentioned before, the Judge Advocate General modified his policy on use of Category B reservists in December of 1990 to allow deployment of members of the 9005th ARS to the AOR. Since the training program for the IMA must be geared towards a wartime tasking, the policy on that tasking needs to be reviewed as to whether we will revert to the pre-December 1990 concept or continue to allow for possible deployment in a future contingency. If it be the former, then our training directives for Category B reservists throughout the Air Force probably need little revision; but if it be the latter, then a complete review is in order. It makes little sense, however, to try to train an IMA to cover a backfilling role *as well as* a possible deployment role. It seems more prudent to consider selecting a small cadre of Category B judge advocates and paralegals, whose civilian occupations allow them, during periods of national emergency, the freedom to be away from their jobs for long periods of time and to train them together as a deployment unit within the 9005th ARS. They would then be available (and fully trained) to deploy when the MAJCOM SJA sourcing manager needed to fill an XFFJ3 UTC in any AOR.

In the end, the key lesson to be applied in any future deployment of JAG assets is the need for *flexibility*. We must have *flexibility* in the way we source our personnel, *flexibility* in the selection of those we send to the combat theater with our operational forces, and *flexibility* in how we use the different parts of our Departmental law firm. With this *flexibility*, we can truly fulfill our wartime taskings and, in so doing, make our own valued contribution to our country and the defense of freedom in the world.

Guard and Reserve Issues in Deployment

MAJOR RONNIE DAWSON JAMES, USAF

I. INTRODUCTION

The cost of active duty forces and the competing demands for government resources have increasingly forced transfer of capabilities and responsibilities to reserve components. The basic aerospace doctrine of the United States Air Force¹ dictates that the Air Force should organize to make full, effective, and coordinated use of its total force. Reserve and National Guard forces comprise a major portion of aerospace power.² The extent we rely on Air Reserve components was illustrated during Operation Desert Storm where more than 100 different Air National Guard and Air Force Reserve units and approximately 600 individual mobilization augmentees deployed in support of active duty forces.³ Since reserve components will continue to play a significant role in future deployments judge advocates must be prepared to address issues raised by their participation. This article will provide a starting point for handling those issues.

II. CATEGORIES OF RESERVE FORCES

The Air Reserve Components (ARC) of the United States Armed Forces include the Air National Guard of the United States (ANG) and the Air Force Reserve (USAFR).⁴ USAFR members are categorized by type of assignment, reserve status, military obligation, and laws or directives which govern their administration. Reserve categories include Ready, Standby, and Retired Reserve.⁵

The Ready Reserve is composed of units and individual reservists liable for active duty as provided in 10 U.S.C. §§ 672 and 673.⁶ The Ready Reserve consists of two major subdivisions—the Selected Reserve and the Individual Ready Reserve (IRR). Those units and individual reservists belonging to the Selected Reserve are required to participate in inactive duty training periods and annual training. The Selected Reserve also includes reservists on initial active duty for training or awaiting initial active duty for training.⁷ The IRR primarily consists of ready reservists not assigned to a unit or Individual Mobilization Augmentee (IMA) position.⁸

Major James (B.S., Case Western Reserve University; J.D., University of Miami; LL.M., George Washington University) is the Chief, International Law Division, Office of the Staff Judge Advocate Headquarters Ninth Air Force, United States Central Command Air Forces, Shaw Air Force Base, South Carolina. He is a member of the State Bar of Florida.

1. Air Force Manual (AFM) 1-1, Vol. I & II.

2. *Id.* at para. 4-2a.

3. AFM 1-1, Vol. II, Essay W, n5.

4. 10 U.S.C.A. § 261 (1983).

5. 10 U.S.C.A. § 267 (1983); Air Force Regulation (AFR) 35-41, Vol. I, para. 2-4.

6. 10 U.S.C.A. § 268 (1983).

7. AFR 35-41, Vol. I para. 2-6.

8. *Id.* at para. 2-7.

The Standby Reserve is composed of units and individual reservists, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in 10 U.S.C. §§ 672 and 674.⁹ Reservists in the Standby Reserve may be in an active or an inactive status.¹⁰ While in an inactive status, a reservist is not eligible for pay or promotion.¹¹

The Retired Reserve consists of reservists who are or have been retired under 10 U.S.C. §§ 3911, 6323, or 8911 or under 14 U.S.C. § 291. It also includes those who are transferred to it upon their request, retain their status as reservists, and are otherwise qualified.¹²

III. MOBILIZATION

A. Authority to Order ARC Forces to Extended Active Duty (EAD)¹³

The request to seek mobilization from the National Command Authority (NCA) is usually initiated by the supported command (unified or specified commander-in-chief) through the Chairman of the Joint Chiefs of Staff. Mobilization approval from the NCA normally flows to the Secretary of Defense, to the Secretary of the Air Force, to the Chief of Staff, USAF, who issues the mobilization order. If less than full mobilization is considered, each MAJCOM or activity will be required to identify the resources needed to support the contingency operation. The proposed force list will be refined as part of the staffing process. The following items are included in the execution message:

1. Authority to mobilize (legislative authority¹⁴ or the Executive Order, as appropriate).¹⁵

9. 10 U.S.C.A. § 273 (1983).

10. AFR 35-41, Vol. I para. 2-8.

11. 10 U.S.C.A. § 273(c) (1983).

12. 10 U.S.C.A. § 274 (1983).

13. AFR 28-5, para. 2-4.

14. The statutory authorities for mobilization of the ARC under Title 10, United States Code, are (reprinted from AFR 28-5, para. 2-2,) *USAF Mobilization Planning*:

1. By the Congress:

a. § 123, Suspension of certain provisions of law relating to reserve commissioned officers.

b. § 263, Basic policy for order into federal service.

c. § 672(a), Reserve Components. Units and individuals assigned to the Ready, Standby, and Retired Reserve are mobilized to meet the requirements of this section. Units are ordered to active duty (AD) at their assigned strength.

2. By the President:

a. § 331, Federal aid for state governments.

b. § 333, Interferences with state and federal law.

c. § 671b, Members. Service extension when Congress is not in session.

d. § 673, Ready Reserve. Partial mobilization.

e. § 673a, Ready Reserve. Members not assigned to, or participating satisfactorily in, units.

f. § 673b, Selected Reserve--200,000 Presidential Call-Up. Order to active duty other than during war or national emergency.

g. § 673c, Authority of the President to suspend certain laws relation to promotion, retirement, and separation.

3. By the Secretary of the Air Force (SAF):

a. § 511, Reserve Components. Terms.

b. § 671a, Members. Service extensions during war.

c. § 672(b). ARC units or members not assigned to units. Order to active duty (without member consent) for 15 days (with governor consent for Air National Guard (ANG) forces).

d. § 672(d), Volunteer ARC members. Ordered to active duty with member consent (ANG forces also require governor consent).

2. Units and categories of personnel to be mobilized according to approved force lists.
3. Instructions to gaining major commands to issue orders for mobilization.
4. Type and duration of mobilization.
5. Reporting instructions for effective date and location of affected units and individuals.
6. Special instructions concerning delays, exemptions, Stop-Loss action, and amending orders of members already on active duty under 10 U.S.C. § 672d.

B. Full or Partial Mobilization Authority¹⁶

For partial mobilization, units, IMAs, and IRR members are mobilized as required. For full mobilization, units, IMAs, IRR members, Standby Reserve, and Retired Reserve are mobilized as required. Full or partial mobilization may be effected through several authorities.

The first of these is when Congress proclaims a national emergency or declares war. Any unit and any member not assigned to a unit organized to serve as a unit of the ARC may be ordered to active duty (other than for training). This activation may last for the duration of the war or emergency and for six months thereafter, without the consent of the persons affected. A member on an inactive status list or in a retired status, however, may not be ordered to active duty unless it is determined that there are not enough qualified reserves in an active status or in the inactive National Guard in the required category who are available.¹⁷

Mobilization also may occur when the President has proclaimed a national emergency. Any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve may be ordered to active duty (other than for training) for not more than 24 consecutive months, without the consent of the persons concerned. Not more than one million members of the Ready Reserve may be on active duty (other than for training), without their consent, under this authority, at any one time.¹⁸

A third source of mobilization is when the President determines that it is necessary to augment the active forces for any operational mission under what is sometimes referred to as the “200,000 Presidential call-up.” He may authorize the Secretary of Defense to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve to active duty (other than for training) for not more than 90 days. Units and members ordered to active duty under this authority, however, may not perform any functions associated with military support for domestic emergencies under chapter 15 (Insurrection) or section 8500 (Air National Guard in Federal Service) of title 10. Nor may they provide assistance

e. § 688, Retired members. Recall of retired members with 20 or more years of active duty.

4. Additional statutory authorities relating to members of the ANG and USAFR are:

a. § 261, Reserve Components named.

b. § 267, Ready Reserve, Standby Reserve, Retired Reserve. Placement and status of members.

c. § 268, Ready Reserve. Describes the organization thereof to include the authorized strength.

d. § 269, Ready Reserve. Placement in; transfer from.

e. § 674, Standby Reserve.

f. § 675, Retired Reserve.

15. *See, e.g.*, Exec. Order No. 12,743, 18 Jan. 1991, 56 F.R. 15, Ordering the Ready Reserve of the Armed Forces to Active Duty, to respond to the continuing threat posed by Iraq’s invasion of Kuwait.

16. AFR 28-5, para. 2-5.

17. 10 U.S.C.A. § 672(a) (1983).

18. 10 U.S.C.A. § 673 (1983).

to either the Federal Government or a State during a serious or manmade disaster, accident, or catastrophe. Not more than 200,000 members of the Selected Reserve may be on active duty under this authority at any one time. If the President determines that an extension is in the interest of national security, the President may authorize the Secretary of Defense to extend the ninety-day active duty period for a period of not more than ninety additional days.¹⁹ This 200,000 Presidential Call-Up authority is scenario driven and affords flexibility for building up prior to a declaration of war or national emergency.²⁰

Finally at any time, an authority designated by the Secretary of the Air Force may order a member of the ARC to active duty or retain him or her on active duty with the consent of the member. However, a member of the ANG may not be ordered to active duty under this authority without the consent of the Governor or other appropriate authority of the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned.²¹ It should be noted that the consent of a Governor described above may not be withheld (in whole or in part) with regard to active duty outside of the United States, its territories, and its possessions, because of any objections to the location, purpose type, or schedule of such activity.²²

C. Change in Statutory Authority

If the active duty authority changes from 10 U.S.C. § 672(d) (voluntary) or 10 U.S.C. § 673(b) (200,000 Presidential Call-Up) to 10 U.S.C. § 673 or 10 U.S.C. § 672(a), the active duty orders will be rescinded and new orders issued to reflect the new mobilization authority and period of service. If the member has been mobilized and the tour changes from 10 U.S.C. § 673 to 10 U.S.C. § 672(a), the mobilization orders will be amended to ensure no break in service.²³

D. Reporting Requirements²⁴

A mobilized member is required to report at the time specified in the activation order or by verbal order of the gaining commander. ARC unit members and IMAs of the Selected Reserve must report to their home station within twenty-four hours of notification of activation under the 200,000 Presidential Call-Up authority or under other mobilization statutes. All other reservists and retirees must be able to start travel no later than 2400 hours of the fifth day after notification to mobilize.²⁵ If a member fails to report, attempts must be started immediately to locate the member. Additional copies of orders must be delivered in person by the member's unit commander or designated representative or by certified mail (return receipt requested). A notarized affidavit of personal delivery must be completed when orders are personally delivered. All reasonable efforts to contact the member will be documented for possible legal action. If the member fails to reply to correspondence or to report after reasonable efforts have been made to contact him or her, the member is re-

19. 10 U.S.C.A. § 673b (1983).

20. AFR 28-5, para. 2-6. This authority was exercised prior to Desert Shield/Desert Storm through Exec. Orders No. 12,727, 22 Aug. 1990, 55 F.R. 35,027, and No. 12,733, 13 Nov. 1990, 55 F.R. 47,837.

21. 10 U.S.C.A. § 672(d) (1983).

22. 10 U.S.C.A. § 672(f) (1983).

23. AFR 28-5, para. 10-37.

24. AFR 28-5, para. 10-3.

25. *Id.* at para. 2-8.

ported as absent without leave (AWOL) by the gaining unit in accordance with AFR 35-73, *Desertion & Unauthorized Absence*.²⁶

E. Delays, Exemption, and Early Release from Active Duty²⁷

Except as discussed below, delays in reporting for active duty are not approved. Commanders have discretionary authority to approve emergency leave on an individual basis for up to seven days, subject to AFM 177-373, Volume 3, *Air Reserve Forces Pay & Allowance System*. A member may be considered for exemption if seven days is not enough time. Exempted members are not ordered to active duty.

The first broad category of exemptions are those found in AFR 28-5, table 10-1, *USAF Mobilization Planning*. These include high school students, who must be granted a delay or exemption until they cease to satisfactorily pursue such course, graduate, or attain age 20, whichever occurs first.

Members in any reserve or retired status may be granted a delay or exemption in exceptional cases where involuntary active duty will result in prolonged or temporary extreme personal hardship or where the member's withdrawal from the community would create a prolonged or temporary extreme community hardship. In the case of a personal hardship, documentary evidence from at least two disinterested parties must show that the reservist's dependents would suffer an extreme hardship greater than other members can be expected to experience if called to active duty. Approval of a delay or exemption is conditional based on the documented severity of the claimed hardship. In the case of a community hardship, documentary evidence from at least two community officials must show that the member's withdrawal from a particular community in a national emergency would have a substantial adverse effect on the health, safety, or welfare of that community. Exemption is mandatory unless otherwise directed by HQ USAF. Members who ask for exemption due to a permanent personal or community hardship must submit their resignation or a request for discharge.²⁸

Members qualified for transfer to the Standby Reserve may be granted a delay or exemption if the request is made before the alert or order to extended active duty and authority for mobilization of the Standby Reserve is not in effect. Members enrolled in graduate study or training in medicine, dentistry, veterinary, podiatry, optometry, osteopathy, or doctors of medicine or intern or residency training, may be granted delays or exemptions. This exemption also applies to members preparing for the ministry in a recognized theological or divinity school.

If the President or Congress has not authorized extension of enlistment's or periods of obligated service, or when it is required under HQ USAF established procedures and approved by the Secretary of the Air Force, the following members may be granted a delay or exemption:

1. Airmen with less than 90 days before expiration of term of service (ETS).
2. Airmen with 180 days or less obligated service remaining as of the mobilization date.
3. Officers within 90 days of discharge or retirement due to maximum service, age, or cause.
4. Officers twice passed over for promotion.

26. *Id.* at para. 10-3.

27. *Id.* at para. 13-8.

28. See *Blocher v. Fonville*, 756 F. Supp. 306 (S.D. Tex. 1991), for an unsuccessful attempt by an Army doctor to get an "extreme hardship for the community" deferment from active duty in the Persian Gulf.

Table 10-1 recognizes additional grounds for exemption, including pregnancy. Pregnant members may be granted a delay or exemption until four weeks after delivery date. (Exemption or discharge is authorized based on the advice of the attending physician with the concurrence of the member.) Members who are Medal of Honor recipients or sole surviving sons may be granted delays or exemptions. Finally, single member parents may also be granted delays or exemptions in accordance with AFR 35-59.

It should be noted that officers who have twice failed to be selected for Reserve Officer's Personnel Act (ROPA) promotion to the next higher Reserve grade are exempt unless the commander who exercises special court-martial jurisdiction over the member orders the member to active duty because of military needs.

In addition, personnel who are in basic, technical, or flying training or waiting to enter basic training are exempt. Exemptions also apply to personnel who are temporarily unable to perform duty because of an injury or illness, who are patients in a hospital, or who have a validated temporary personal hardship that cannot be accommodated within emergency leave policy (*i.e.*, exceeds seven days). Finally, an exemption applies to members due to be reassigned from the Selected Reserve or discharged in the period of active duty and who do not or cannot extend their date of separation to serve the full period of active duty.

When Stop-Loss is not in effect, early release authority for individuals remains with HQ USAF/DP based on the Total Force needs of the Air Force. Early releases for hardship or cause will be handled according to Air Force policy. No member will be involuntarily released except for cause. Members released early will revert to inactive duty status within the control of their respective states or their parent unit.

F. Stop-Loss Implementation²⁹

Under the provisions of 10 U.S.C. § 673c, the President may suspend any provision of law relating to promotions, retirements, and separations during any period when members of any Reserve component are on active duty under involuntary call-up or mobilization authorities—often referred to as “Stop-Loss.” The Air Force routinely seeks Stop-Loss authority when members of the ARC are, or will be, placed on active duty involuntarily.

IV. UCMJ JURISDICTION OVER GUARD AND RESERVE FORCES

A. Command³⁰

Command jurisdiction of all nonmobilized units of the ANG of the applicable States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands is vested in the Governor, through the Adjutant General or other appropriate authorities. Command jurisdiction as to the District of Columbia is vested in the President. Similar command jurisdiction for USAFR units is vested in the Commander, Air Force Reserves (AFRES), who in turn is responsible to the Chief of Staff, Air Force (CSAF). When units or individuals are ordered to extended active duty, jurisdiction rules vary according to the authority by which the member is mobilized. Under a 200,000 Presidential Call-Up pursuant to 10 U.S.C. § 673b, administrative jurisdic-

29. AFR 28-5, para. 10-31.

30. AFR 45-1, para. 6a.

tion remains unchanged. Operational control transfers to the commander of the gaining command. Under other mobilization authorities, command jurisdiction transfers to the commander of the gaining command.

B. Attachment of Jurisdiction

Members of the ARC are subject to the Uniform Code of Military Justice (UCMJ) when they are lawfully called or ordered into federal service on active duty from the date when they are required by the terms of the call or order to obey it.³¹ Such members remain subject to UCMJ jurisdiction after leaving active duty for offenses committed prior to such termination of active duty if the member retains military status in a reserve component without having been discharged from all obligations of military service.³² Members may be held on active duty over objection if action is taken with a view to trial prior to the end of the active duty period. Taking action with a view to trial attaches jurisdiction over the member and such jurisdiction continues throughout the trial and appellate process and for purposes of punishment. If jurisdiction attaches before the effective terminal date of self-executing orders, the member may be held for trial by court-martial beyond the effective date. Actions by which court-martial jurisdiction attaches include apprehension, imposition of restraint (restriction, arrest, or confinement), and preferral of charges.³³

C. Recall to Active Duty

Members of the ARC who are not on active duty and who are made the subject of proceedings under Article 15 or Article 30 of the UCMJ with respect to an offense under the UCMJ may be involuntarily ordered to active duty for investigation under Article 32 of the UCMJ, trial by court-martial, or nonjudicial punishment under Article 15 of the UCMJ. The offense must have been committed while the member was on active duty or on inactive duty training in federal service.³⁴ Procedures for recalling members to active duty are set out in AFR 111-2, *Court-Martial Jurisdiction over Reserve Members*. The recalled member may not be sentenced to confinement or required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive duty training or other active duty training unless the order to active duty was approved by the Secretary of the Air Force.³⁵

V. THE SOLDIERS' & SAILORS' CIVIL RELIEF ACT

A major concern of reservists is the Soldiers' and Sailors' Civil Relief Act (SSCRA).³⁶ The purpose of the SSCRA is to help ameliorate some of the adverse consequences caused by a transition from civilian to military life. Its provisions allow for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of military members.³⁷ The SSCRA was recently amended to address some of the inequities manifested during Operation Desert Shield/Storm,

31. 10 U.S.C.A. § 802 (1983); Uniform Code of Military Justice (UCMJ), art. 2 (1988).

32. MANUAL FOR COURTS-MARTIAL, United States, MIL. R. EVID. 204(d)(1984)[hereinafter MCM].

33. MCM, *supra* note 32, MIL.R. EVID. 202 (c).

34. 10 U.S.C.A. § 802d; UCMJ, art. 2(d).

35. *Id.*

36. 50 U.S.C. app. §§ 501-48, §§ 560-93 (1990 and Supp. 1993)

37. 50 U.S.C. app. § 510 (1990).

and more changes may be anticipated in the future. This discussion will cover some of the current provisions of the SSCRA of particular concern to mobilized members of the ARC.

The SSCRA applies to all individuals called to active duty in the military service, including members of the ARC, from the date on which the individual enters active service to the date of the individual's release from active service or death while in active service to the extent the SSCRA remains in force.³⁸ Members of reserve components who are ordered to report for military service are entitled to relief and benefits accorded persons in the military service under articles I, II, and III of the SSCRA (sections 510 to 517, 520 to 527, and 530 to 536 of 50 U.S.C. Appendix) during the period beginning on the date of receipt of such order and ending on the date upon which such members report for military service or the date on which the order is revoked, whichever is earlier.³⁹

The SSCRA officers numerous protections. These protections cover:

1. **Default Judgments.** Any default judgment rendered against a person in military service during the period of such service or within thirty days thereafter, where it can be shown that the person was prejudiced because of his or her military service in presenting a defense thereto, may be reopened by the court within ninety days after the end of such service. It must appear that the defendant has a meritorious or legal defense to the action or some part thereof.⁴⁰

2. **Stay of Proceedings.** At any stage of a proceeding involving a person in military service, during the period of such service or within sixty days thereafter, a court may, at its discretion, stay the proceedings for up to three months after the end of such service, unless the court determines that the person's ability to pursue or defend the action is not materially affected by reason of his or her military service.⁴¹

3. **Stay or Vacation of Execution.** In any action or proceeding commenced against a person in the military, before or during the period of such service, or within sixty days thereafter, a court may stay the execution of any judgments or orders entered against such person or vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, for up to three months after the end of such service, unless the court determines that the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by his or her military service.⁴²

4. **Statute of Limitations.** Statutes of limitations, except those prescribed under the internal revenue laws of the United States, are tolled during the period of military service.⁴³

5. **Maximum Rate of Interest.** A court may limit the maximum rate of interest on obligations or liabilities bearing an interest rate of more than six percent per year incurred by a person in military service before that person's entry into such service to six percent per year during any such period of military service, unless the court determines that the ability of such person to pay interest at a higher rate is not materially affected by reason of such service, in which case the court may make an equitable adjustment to the interest rate.⁴⁴

38. 50 U.S.C. app. § 511 (1990 and Supp. 1993).

39. 50 U.S.C. app. § 516 (1990).

40. 50 U.S.C. app. § 520 (1990).

41. 50 U.S.C. app. §§ 521 & 524 (1990).

42. 50 U.S.C. app. §§ 523 & 524 (1990).

43. 50 U.S.C. app. §§ 525 & 527 (1990).

44. 50 U.S.C. app. § 526 (1990).

6. Eviction. If the agreed rent does not exceed \$1200 per month, a person in military service cannot be evicted or distressed from premises occupied chiefly for dwelling purposes by the spouse, children, or other dependents of such person, during the period of military service, without a court order. If an action for eviction or distress is initiated, the court may, in its discretion, stay the proceedings for not longer than three months or make such other order as may be just, unless the court determines that the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service.⁴⁵

7. Installment Contracts for Purchase of Property. If, after making a deposit or installment payment for the purchase of real or personal property, a person enters military service, the seller of such property cannot rescind or terminate the contract or resume possession of the property for nonpayment of any installment due or for any other breach of the terms of the contract occurring prior to or during the period of such military service, except by court order. The court may take equitable actions or stay the proceedings unless the court determines that the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service.⁴⁶

8. Mortgages. No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, will be valid if made during the period of military service or within three months thereafter, without an agreement or court order. The court may stay any enforcement proceedings or make other equitable disposition of the case unless the court determines that the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of military service. The real or personal property must have been owned by the person entering military service at the time he or she enters such service and still be owned during such service. The obligations must have originated prior to such service.⁴⁷

9. Termination of Leases by Lessees. A lease executed by a person who later enters military service for premises occupied by the person or his or her dependents may be terminated in writing at any time following the date of the beginning of such military service.⁴⁸

10. Insurance. A military member's private life insurance policies are protected against lapse, termination, and forfeiture for nonpayment of premiums or any other indebtedness for the period of military service plus two years.⁴⁹

VI. VETERAN'S REEMPLOYMENT RIGHTS ACT⁵⁰

Another area of great concern to members of the ARC is reemployment rights. One of the purposes of the Veteran's Reemployment Rights Act (VRRRA) is to provide reemployment rights protection to members of the ARC called to active duty voluntarily or involuntarily. Reemployment rights apply to members who, after entering employment on the basis of which such members claim restoration or reemployment, enter active duty (other than for the purpose of determining physical fitness or for training) in response to an order or call.

45. 50 U.S.C. app. § 530 (1990 and Supp. 1993).

46. 50 U.S.C. app. § 531 (1990 and Supp. 1993).

47. 50 U.S.C. app. § 532 (1990 and Supp. 1993).

48. 50 U.S.C. app. § 534 (1990 and Supp. 1993).

49. 50 U.S.C. app. §§ 540-48 (1990 and Supp. 1993).

50. 38 U.S.C. §§ 4301-307 (Supp. 1993).

The period of active duty may not exceed four years plus any additional period in which the member is unable to obtain orders relieving them from active duty. If the member enters active duty or is voluntarily or involuntarily extended during a period when the President is authorized to order Units of the Ready Reserve or members of a reserve component to active duty, the limitation on the length of active duty service is extended. This extension applies to the period of active duty and may not exceed the maximum period the President is authorized to order, provided such active duty is at the request and for the convenience of the Federal Government. In addition, for reemployment rights to apply, the member must be discharged or released from active duty under honorable conditions and the member must apply for reemployment with the preservice employer within ninety days after separation from active duty.

For members called to active duty under the 200,000 Presidential Call-Up, the limitation on the period of active duty service is ninety days plus another ninety days if extended and the time of application after release from active duty is within thirty-one days.

The National Committee for Employer Support of the Guard and Reserve, an activity of the Department of Defense, conducts an ombudsman program to advise Guard members, Reservists, and their employers about their rights and obligations under the VRRRA. Inquiries to the committee ombudsman may be made through a toll-free telephone number, (800) 336-4560. The ombudsman is available during normal business hours (Eastern Time), Monday through Friday. (Virginia, Guam and the Commonwealth of Marianas, call collect (202) 696-5305.)

VII. CONCLUSION

Air National Guard and Air Force Reserve units and individuals, as part of the Total Forces, are the initial and primary source of augmentation forces in any emergency that requires rapid and substantial expansion of U.S. Air Force combat capability.⁵¹ It is critical that their transition from civilian to military life be as smooth as possible so that they can focus on the contingency and not problems at home. This article serves as a starting point for addressing some issues created during mobilization. Cited authorities always should be consulted to ensure the currency of the information.

51. AFR 45-1, para. 1.