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AIR COMMAND AND STAFF COLLEGE

AIR UNIVERSITY

**BLOGS V. FREEDOM OF SPEECH:
A COMMANDER'S PRIMER REGARDING FIRST AMENDMENT
RIGHTS AS THEY APPLY TO THE
BLOGOSPHERE**

by

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Abstract

The blogosphere as we know it today is a powerful medium and is growing in readership and creators daily. Just imagine if survivors from the Battle of Gettysburg were able to immediately send their thoughts and first-hand reports to the citizens of a young nation at war. How would public opinion of the war have changed and how would that change have affected the will of the American people? What additional political pressure would these changes have imposed on civilian leadership of the military? The inter-connectedness which the internet provides humans today makes it possible for soldiers in Iraq to do just that -- post their thoughts and reflections regarding an upcoming or recently accomplished mission, to include pictures and video, on a blog in Iraq and within seconds this news from the front can be read by thousands if not millions of people world-wide. This relatively new capability gives great power to the blogger and commander alike. The critical take-away for military leaders to understand is our speech within the military is limited for sound reasons and the blogosphere simply presents one more method for those limits to be tested, and one more tool for commanders to lead their troops.

Preface

In his science fiction novel “Ender’s Game”, Orson Scott Card includes an interesting and thought provoking story line about the use of blogs in Earth’s future. Two of the main characters in the book are Peter and Valentine Wiggin. These child-geniuses agree to post commentary, “on the nets” in an effort to convince adults to end a looming war. They hide their true identities and begin to plant seeds of peace using the adopted names of “Locke” and “Demosthenes”. Two-years later the world is at peace and the “Locke Proposal” ends conflict.¹

Granted, “Ender’s Game” is science fiction and has relatively little to do with any real-world application ... or does it? Humans have developed ways to communicate their thoughts via written symbols and words throughout history from pictograms to alphabets. Blogs may not necessarily present a “revolution” in communications; however, blogs do present a new medium in which to do so. In fact, blogs present the opportunity for anyone with a computer and internet connection to publish his or her thoughts to literally millions of people at no, or very little, cost. So, are the accomplishments of Locke and Demosthenes so unrealistic? I suggest not.

Gone are the days of waiting for the evening news to present events occurring on the battlefield. Gone are the days of relying on professional journalists, or embedded reporters, to paint the day-to-day picture of war. How does this impact free speech? Are these soldier-journalists given ample leeway so as not to unlawfully restrict their First Amendment right or are these riveting accounts, straight from the front, placing our troops in even more danger? How can military commanders take advantage of this technology and what is the appropriate balance between keeping families informed and maintaining operational security? We can now log onto a military blog and read first-hand accounts direct from the 20-year old soldier who is living the war every day. This is power ... power to shape opinion ... power to create history.

Blog Basics and “The Tail”

If you would not be forgotten, as soon as you are dead and rotten, either write things worth reading, or do things worth the writing

Benjamin Franklin

This paper will begin with a discussion of basic terms related to the blogs and an analysis of who reads and creates blogs. Survey results from an Air University survey on blogs will be addressed as well as a short discussion on military specific blogs. The term “weblog” was coined by Jorn Barger in December 1997 to describe his practice of posting comments on his personal website. Weblog was later shortened to “blog” in 1999 by Peter Merholz.² “Blog” is commonly used as either a noun or verb and those who blog or, “bloggers”, operate in the “blogosphere”, that portion of our society which participates and is influenced by blogs. When a topic is hot in the blogs it is referred to as “buzz”, based on the “Yahoo! Buzz Index”, which refers to commonly searched topics among Yahoo! users. The index can be found at “buzz.yahoo.com”.³

Who’s reading and who’s creating blogs? The US population is roughly 295.7 million

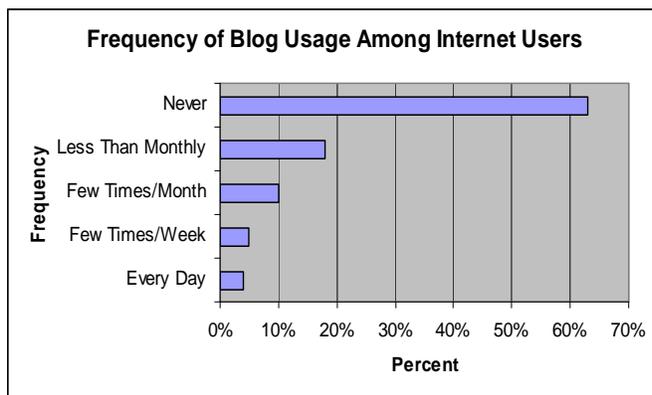
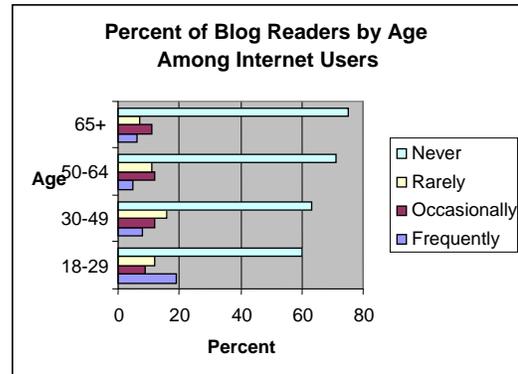


Figure 1, Frequency of Blog Usage Among Internet Users

and approximately 75% of these individuals use the internet at home, school, or work.⁴ Of these internet users, 4% read blogs daily, 5% read blogs a few times per week, 10% read blogs a few times a month, and 18% read them less than monthly.⁵ This represents slightly

more than one-third of internet users that are at least familiar with blogs. See Figure 1 for a review of blog usage.⁶

As for the age of bloggers, almost one in five internet users under the ages of 18-19, which represents 19% of this group, indicate they read blogs frequently. Additionally slightly more than 25% of this age group read blogs at least occasionally.⁷ According to a Gallup Poll conducted in December of 2005, blog readership is significantly higher among adults 29 years of age and younger, than those 30 years of age and older. Similar studies show blog readership has been



increasingly on the rise since March of 2003.⁸ See **Figure 2, Blog Readers Across Ages**

Figures 2 and 3 for information regarding blog readership across various ages and as a comparison against internet users.⁹

Likewise, the number of internet users who create blogs has been steadily rising since June of 2002.¹⁰ See Figure 3 which shows the percentage of internet users who have created

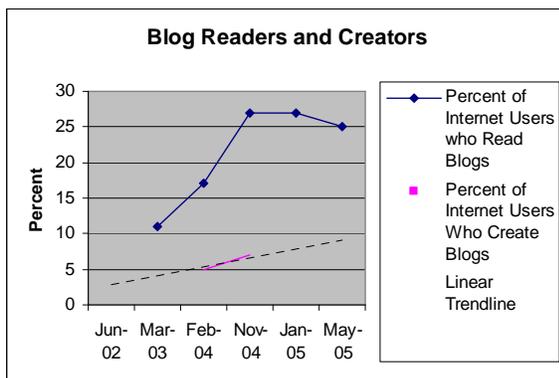


Figure 3, Blog Readers and Creators

blogs over the past 3.5 years compared with those who read blogs.¹¹ As Figure 3 illustrates, the blogosphere is most frequented by the young and, in fact, 92.4 percent of 4.1 million blogs surveyed by the Perseus Development Corporation in 2003 were created by people under 30 years old.¹² This

same study compares the blogosphere to an iceberg where the most popular blogs are visible to many yet the majority of blogs are “hidden”

and relatively unknown to the general public. These “hidden” blogs are created and maintained for specific “nanoaudiences” such as family, friends, or social groups. For example, the typical blog creator is a teenage girl who uses her blog to stay in touch with friends.¹³ These less popular blogs and their respective nanoaudiences contribute to the power of the blogosphere as they can combine to create rather astounding societal effects as will be discussed further in this paper under “The Power of the Blogosphere”. See Table 1 for a look at blog creation by age.¹⁴

Age Range	Blogs Created	Percent
10-12	55,000	1.3%
13-19	2,120,000	51.5%
20-29	1,630,000	39.6%
30-39	241,000	5.8%
40-49	41,700	1.0%
50-59	18,500	0.4%
60-69	13,900	0.3%
Total	4,120,000	100%

Table 1, Blog Creators by Age

The number of actual blogs created to date and currently in use is somewhat in question. One study conducted by the Perseus Development Corporation estimates that 31.6 million blogs had been created as of April 2005, with an anticipated growth in the blogosphere of up to 53.5 million by the end of 2005.¹⁵ Conversely, “BlogPulse.com” indicated that as of 6:30 pm (Central Standard Time) on 23 February 2006, there were 23.1 million identified blogs, 62,330 blogs created within the previous 24 hours, as well as 717,011 blog postings within the previous 24 hours.¹⁶ Perhaps one reason for the discrepancy in reported numbers of blogs is the high abandonment rate among blog creators. According to another study conducted by Perseus, 66 percent of surveyed blogs had not been updated in at least two months.¹⁷ One theory to explain this high rate of blog abandonment is that creating a blog is so easy and in many cases requires no monetary investment that the creator feels no obligation or motivation to maintain their blog.¹⁸

One final point is worth mentioning here and is related to the iceberg theory mentioned above. Mr. David Sifry, founder of “Technorati.com”, an on-line tool used for tracking

popularity of topics across the blogosphere introduced the concept of “the power of the tail”.¹⁹

According to Sifry, “the tail” is the 95-99 percent of blogs that do not receive a lot of traffic, in other words the “hidden” portion of the iceberg referred to earlier. See Figure 4 for a notional depiction of this concept. The power within the tail is the aggregate number of visitors to all blogs on the tail.²⁰ Suppose, for

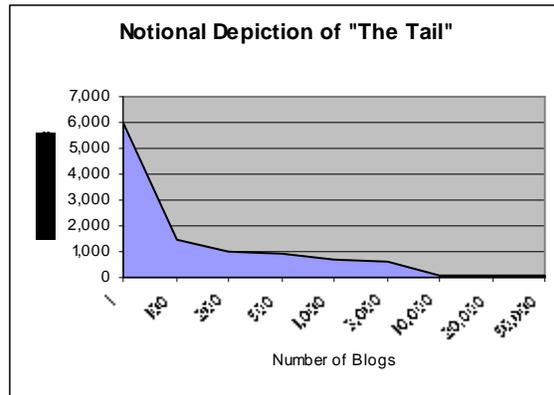


Figure 4, Notional Depiction of "The Tail"

example, that a point of view or an idea is prevalent throughout many of the blogs in the tail, “the audience for that point of view ... will far outstrip even the largest audience for the biggest blogs”.²¹ When considering the literally millions of blogs in the tail the potential power within the tail is difficult to grasp. However, this paper will highlight a few instances where the popular blogs and the tail combined for amazing effects.

Air University Survey

In a survey of Air University students conducted by the author in March of 2006, 232 respondents replied to a variety of blog related questions. This survey made one overall assumption which was that, given the nature of the military’s reliance on the internet, all respondents were internet users. The results of this uniquely military audience are similar in nature to the studies cited above and support the author’s notion that mid to senior-level military leaders are less familiar with blogs than the younger troops they are called to lead. Survey demographics included 202 male and 30 female participants, two participants 30-32 years old, 215 participants 33-44 years old, 14 participants 45-50 years old, and one over 50 years old. One captain, 184 majors, 37 lieutenant colonels, 4 colonels, and 4 civilians participated in the survey.

Of the total respondents, 60 replied that they rely on blogs either, “always”, “frequently”, or “sometimes” for information, while the remaining 172 “never” or “rarely” rely on blogs. These 60 individuals represent 26% of all survey respondents and correlates with the study above citing 37% of internet users indicating they are blog users.²² Additionally, of the 232 respondents, 4 indicated they maintain a blog. This represents 1% of respondents which is slightly lower than the above study which shows 9% of internet users indicating they have created a blog. When these Air University survey results are considered in combination with the number of younger folks involved in the blogosphere discussed earlier, it should serve as an indicator for commanders that at least an awareness of blogs would be beneficial to understanding the current and future culture of our military troops.

My Blog ...

The author’s experience with blogs prior to writing this paper can best be described as non-existent. It was not until my experience at the Air Command and Staff College that I had even heard the term blog or weblog. I consider myself a frequent internet user at work as well as home, however, I had not yet discovered, or been introduced to, the blogosphere. Part of the premise for writing this paper is founded in the ideas expressed above; an assumption that many people in their mid-thirties to mid-forties have little or no experience with blogs and that the military might benefit from a communication tool such as blogs. After contemplating these two assumptions I decided that perhaps mid to senior level military leaders might benefit from a basic primer on blogs and an analysis of their current and potential future application in the military environment.

As part of the research for this paper I created a blog in order to “test the waters” and experience first-hand the blogosphere. The experience was surprisingly quick and simple. In less

than ten minutes, and with minimal information required, I had a free and functioning blog ready for use. It was just that easy and helps to explain why blogs are quickly becoming an integral part of on-line culture. It also reinforces the argument presented above as to why so many blogs are abandoned almost as quickly as they are created; a person feels fewer obligations to stay with the blog given the minimal investment required. See Appendix B for a list of blog hosting services.

Milblogs

Military Blogs, or “Milblogs” as they are commonly called, represent a unique genre in the blogosphere. One such milblog, “mudvillegazette.com”, provides a directory, of sorts, linking approximately 170 milblogs from around the world. Most of these types of blogs are authored by military members in the US or overseas, troops’ family members, retired military and other civilians interested in military issues.²³ The 2005 Weblog Awards recognized 15 weblogs written by deployed service members among the top contenders competing for the title of best military blog (See Appendix A for the complete list of top-rated milblogs).²⁴ This new and unprecedented form of battle-front news has numerous advantages and disadvantages which will be explored further in this paper. However, it is worth mentioning at this point that senior military leaders in general view blogs as a healthy form of communication between troops and family members, while at the same time they express concern that blogs potentially pose an operational security risk.²⁵ With this brief introduction to the basics of the blogosphere and milblogs the paper will now turn to a discussion of recent blog-related events.

The Power of the Blogosphere

At least three prominent figures have felt the impact of the blogosphere in very personal ways. Senator Trent Lott resigned as the Republican Senate Leader after a flurry of buzz in the blogosphere due to his allegedly racist comments in December of 2002.²⁶ Also, Senator John Kerry's "Christmas in Cambodia" story during the 2004 Presidential race was vehemently debated in the blogosphere.²⁷ Finally, Mr. Dan Rather stepped down as "CBS Evening News" anchor after he presented controversial documents regarding President Bush's military service. A more detailed review of Mr. Rather and the White House's reaction will help the reader appreciate the potential effects of the blogosphere.

Mr. Rather

On 8 September 2004, Mr. Dan Rather presented documents on CBS' "60 Minutes" which alleged that President Bush had disobeyed direct orders from his then commander, Lt Col Jerry Killian, while serving in the National Guard. Soon thereafter, bloggers with impressive resumes, to include an experienced trial and appellate lawyer who had defended CBS on previous occasions, posted credible commentary supporting claims that the documents were forgeries.²⁸ Claims that the documents were forged were backed up with analysis of the font, spacing, paper size, typical military operating procedures of the era when the documents would have been created, and finally comparisons of known authentic Killian signatures. All evidence supported the forgery claims.²⁹ On 20 Sep, CBS News stated it could no longer, "vouch for the authenticity of the Bush Guard documents, and that the documents should not have been used in Rather's report".³⁰ Forty-five days from his program, Dan Rather stepped down as anchor of the "CBS Evening News".³¹ CBS News and Rather have not officially connected the blogs to his

resignation but the desired effect from the blogosphere was realized just the same; they turned the tide of public opinion in a dramatic fashion.

President Bush

White House strategist, Karl Rove, remarked, “The whole incident in the fall of 2004 showed really the power of the blogosphere ... because in essence you had now, an army of self-appointed experts looking over the shoulder of the mainstream media and bringing to bear enormously sophisticated skills”.³² Reflecting on the events, President Bush offered the following, “I think what’s healthy is that there’s no monopoly on the news ... There’s competition. There’s competition for the attention of ... 290 million people”.³³ A final thought in this regard, Rove lamented, “There is so much ugliness and viciousness and fundamental untruths that the blogosphere transmits ... It also is a vehicle for ugly rumors, for scurrilous personal attacks, an avenue for the creation of urban legends which are deeply corrosive of the political system and of people’s faith in it”³⁴

As the account above illustrates, the blogosphere has proved to be an effective forum for sharing information and, due to the ease of creating blogs, has introduced a new twist on freedom of speech which has introduced both benefits and challenges for military commanders. What can we learn from the past regarding freedom of speech in the military? What are the lawful limits placed on military members and why is the military treated differently than civilian counterparts with regard to speech? A discussion of these issues will follow in this paper.

Free Speech

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Bill of Rights, Amendment I

On March 4, 1789 the United States Constitution had been ratified and adopted but it was not until 1790 that all thirteen original states accepted it as the supreme law of the land.³⁵ Even with this acceptance many people voiced concerns that the Constitution did not spell out many of the individual rights they had come to believe were theirs after declaring independence from England. In fact, before ratifying the Constitution, some states declared the expectation that a “Bill of Rights” be adopted and added to the Constitution. From this setting we now have the Bill of Rights with its ten amendments which were ratified and added to the Constitution in 1791. The first amendment, quoted at the beginning of this section is appropriate when considering blogs and more importantly blogs in the military.³⁶

During the tumultuous years of the Civil War, President Lincoln was faced with many issues to include challenges to restrictions on speech while the country was at war. A brief review of one such case involving a civilian opponent to the war will provide a historical context to current speech limits facing the military today in the blogosphere.

President Lincoln

Perhaps one of the more intriguing cases of free speech in US history took place, prior to blogs, during the Civil War and involved Mr. Clement Vallandigham, an outspoken opponent of the war and then President Abraham Lincoln. On 24 September 1862, Lincoln signed a proclamation which suspended the writ of *habeas corpus* during the war denying prisoners the

right to be released even if proper charges were not brought against them.³⁷ On 1 May 1863, Vallandigham spoke to a large gathering (the “blogs” of the day) in Mount Vernon, Ohio where he described the war as “wicked” and he stated the administration, “could have honorably terminated the war months ago.”³⁸ Vallandigham was tried and imprisoned for the remainder of the war for violating General Order No. 38.³⁹

Angry Democrats soon elevated the matter to Lincoln where they declared Vallandigham’s arrest was unlawful.⁴⁰ While Lincoln was embarrassed by Vallandigham’s arrest, he replied in this manner, “his arrest was made because he was laboring, with some effect, to prevent the raising of troops; to encourage desertions from the army; and to leave the Rebellion without an adequate military force to suppress it”.⁴¹ Lincoln further defends the arrest citing the Constitution’s *habeas corpus* provision which, in effect, authorizes restriction of free speech during wartime in certain instances and according to Lincoln three conditions must be satisfied in this case; 1) the person intends to cause unlawful conduct, 2) the speech interferes with military activities, and 3) the speech does not discourage unlawful conduct.⁴²

Estimates indicate that as many as ten million people read Lincoln’s statements on this issue and proved to be some of the more successful state papers from this administration perhaps shifting public opinion in Lincoln’s favor. Lincoln was able to communicate his message to the masses, albeit not through blogs, but nonetheless the effect was similar to what we see with blogs today; a message was communicated, citizens undoubtedly discussed this message with their families and friends, and opinions were either solidified or shifted. This case speaks to some of the challenges we face today with the Global War on Terror and the opinions expressed by some military and civilian individuals throughout recent history via the blogosphere.

President Lincoln’s challenge explained above continues to surface today. It should be no surprise to anyone who is familiar with the US military that speech for military members is lawfully restricted, however, debate continues as to how much restriction is appropriate or warranted. The blogosphere adds a new dimension to the debate and is currently an issue faced by military commanders. The following section will address speech limits within the military, introduce the concept of the military as a “separate community”, and briefly review three cases where military members exceeded their limits of speech.

Clear and Present Danger

Some protections found in The Bill of Rights are specifically inapplicable to military members as noted in the text of the document itself. For example, the Fifth Amendment specifically excludes military personnel as follows, “Any person accused of a capital or infamous crime, except a person on active duty with the military forces during time of war or public danger, must be indicted by a grand jury” prior to being tried in federal court.⁴³ Other protections found in the Bill of Rights are not specifically excluded for military personnel in the text, rather “interpreted differently” in the context of the military, such as, the Fourth Amendment’s search and seizure protection for which the Court of Appeals for the Armed Forces has historically instituted a separate society rationale for the military.

Military Limits to Free Speech

The First Amendment right of freedom of speech falls within the latter category above, that of a “different interpretation”, within the military. The military limits speech of its members at three specific levels, 1) punitive articles of the Uniformed Code of Military Justice (UCMJ), 2) regulations and instructions from the Department of Defense and separate services, and 3) lawful general orders of commanders.⁴⁴

First, within the UCMJ, two articles are commonly cited by courts in free speech

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

Figure 5, UCMJ Article 88

conduct that discredits the armed services (see Figure 6).⁴⁵ One such case involved Major

General Harold N. Campbell who reportedly referred to President Clinton, while giving a speech in 1993 in the Netherlands, as a “dope smoking”, “skirt chasing”, and “draft dodging” Commander in Chief.⁴⁶ The Air Force

determined Campbell had violated Article 88

and was administered a written reprimand under Article 15.⁴⁷ Clearly in this case Campbell’s remarks fall within Article 88’s “contemptuous words” clause and therefore violate the article’s intent. However, if Campbell were a civilian at the time of his speech Article 88 would not have applied and his free speech would have been protected.

decisions; Article 88, which prohibits contemptuous words against specific government authorities (see Figure 5), and Article 134, which prohibits disorders to the prejudice of good order and discipline, and

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

Figure 6, UCMJ Article 134

Second, regarding regulations and instructions, Air Force Instruction (AFI) 33-129 and AFI 36-2909 refer to free speech in the areas of internet use and unprofessional relationships. Also, AFI 51-902 addresses restrictions of Airmen in political activities.⁴⁸ These AFIs place lawful limits on the type of speech permitted while in the military and serve as a reminder to all military that while the Bill of Rights grants free speech to all, free speech within the military is certainly limited. Additionally, AFI 51-903 states that, “commanders must preserve the service

member's right of expression, to the maximum extent possible, consistent with good order, discipline, and national security" and grants commanders authority to ensure their mission is performed while maintaining good order and discipline.⁴⁹ The purpose of these regulations is two-fold, to "avert clear and present dangers to military order and discipline" and to "maintain a politically disinterested military that remains safely under the control of civilian superiors".⁵⁰

Capt Glines contested Air Force regulations after circulating a petition amongst the populace of Guam AFB complaining about Air Force grooming standards with the intent of sending the petitions to members of Congress and the Secretary of Defense. Glines did not seek prior approval from the base commander in direct violation of Air Force regulations. Glines was reassigned and the case was brought to court on the basis of free speech violation. In *Brown v. Glines*, 1980, the court determined that this speech was indeed not protected and the regulations in question "protect a substantial government interest unrelated to the suppression of free speech".⁵¹ The court further noted the regulations "prevent commanders from interfering with the circulation of any materials other than those posing a clear danger to military loyalty, discipline, or morale". And finally, the court stated that prior approval was required and lawful because, "if the commander did not have the opportunity to review the material, then he could not avert possible disruption among his troops".⁵² This is precisely the basis for newly established policies with regard to blog entries as they relate to service in a combat zone. These policies will be discussed further in this paper.

Third, military commander's have the authority to limit speech within their command through the issuance of lawful general orders. As demonstrated in *Ethredge v. Hail*, 1995, the Commander of Robins Air Force Base issued a lawful administrative order banning, "bumper stickers or other similar paraphernalia ... that embarrass or disparage the Commander in

Chief”.⁵³ Ethredge was a civilian employee of the base who had affixed a bumper sticker to his vehicle stating, “HELL WITH CLINTON AND RUSSIAN AID”.⁵⁴ While the 11th Circuit Court determined the order was lawful, one could argue with the specific wording and raise potential vagueness claims. For example, the order prohibits specific items that “embarrass or disparage” the President. The problem becomes, who determines what “embarrasses” the President? Must the President be consulted in all such cases? As a suggestion to commanders, orders of this nature must be easily interpreted by third parties so as to facilitate enforcement of expected standards. Perhaps borrowing the phrase “contemptuous words” from Article 88 itself would have made the Robins AFB order easier to interpret and enforce.⁵⁵

Arguments for Current Limits on Speech

Two common arguments raised in support of the current limitations on military member’s free speech focus on, 1) good order and discipline and, 2) maintenance of proper relationships between military and civilian leaders.⁵⁶ First, military forces serve a unique role in our society and must be prepared to immediately defend national interests. Given that mission, military members are entrusted with powerful weapons and technologies, “capable of destroying not only towns and countries, but human civilization as we know it”.⁵⁷ This distinction was acknowledged by the Supreme Court in *Solorio v. United States*, 1987, where the court described military induction, “not merely as a job but a change in status”.⁵⁸ Senator Nunn explains that military service, either voluntary or involuntary, requires a high level of training and unit readiness because, “a soldier that is behind a comfortable desk today might be in a hostile and physically challenging field environment on very short notice”.⁵⁹ Dissenting speech could quickly undermine unit morale and cohesion and weaken command authority during very critical times when the unit must perform its mission. Thus the current limits on speech maintain needed

good order and discipline. General (ret) Colin Powell emphasized this point as follows (See Figure 7).⁶⁰

We create cohesive teams of warriors who will bond so tightly that they are prepared to go into battle and give their lives if necessary for the accomplishment of the mission and for the cohesion of the group and for their individual buddies. We cannot allow anything to happen which would disrupt that feeling of cohesion within the force.

Second, the military is ultimately under civilian control and civilian leaders can

Figure 7, General (ret) Powell's Comments

be threatened by dissenting speech. Given the power described above, vested in the military, the potential threats posed to civilian leaders by the military, “range from the seizure of power by a military coup to the refusal to obey orders”.⁶¹ The military’s role is to enforce policy as given by civilian leadership. Statements made by military authorities which violate the intent of Articles 88 and 134 of the UCMJ could be interpreted by the public as “official military statements” and could weaken the national, and international, integrity of civilian leadership.

Arguments for Increased Tolerance of Speech

While there are arguments that support current limits to free speech in the military, there are also at least two arguments for increased tolerance of speech which, if adopted, would relax current limits. These two arguments are as follows, 1) intellectual development, and 2) free flow of information to the public and military authorities.⁶²

First, the greatest attributes of the US military are its members and more specifically the great intellect and self-awareness that the military culture promotes in its members. There are a number of professional military courses which focus on the development of communication and intellect with the intent of fostering leadership. Free speech reminds us of our, “uniqueness and self-worth”.⁶³ A free and open exchange of ideas is encouraged throughout a military career for both officer and enlisted alike. In fact, the Air Command and Staff College mission statement reads as follows, “To our students ... Inspire critically thinking Airmen to lead Air & Space

forces in Joint/Combined operations”.⁶⁴ The question becomes, how can a culture purport to “inspire critical thinking” among it’s personnel while at the same time limit and restrict the very tool which humans have to express their thinking and point of view – their speech?

Second, permitting a free flow of thoughts and ideas through more relaxed limits to speech could in fact lead to more informed decisions among military and civilian leaders. Through more relaxed speech limits, information which would have been stifled in a restrictive environment could provide decision-makers with the appropriate detail needed to make more informed and reasonable policies. Detlev F. Vagts, Bemis Professor of International Law, Emeritus, at Harvard Law School, argues, “preventing unofficial opinions from competing in the military marketplace of ideas [grants] a dangerous monopoly to official dogma that may shelter a stagnation and inefficiency we can ill afford in these swift and perilous times”.⁶⁵

Good order and discipline is paramount to any military organization but the intellectual development of military members, to include challenging the status quo, is essential for continued growth and improvement of our military forces in these budget-restrained and globally challenging times. Military commanders must strike a balance between the two for the good of their individual troops and the mission which they are charged to carry out.

Separate Community

In a military context, courts have generally deferred to the expertise and experience of government officials primarily for the following two reasons; 1) the Constitution declares that responsibility for administration of the military is a function of the Legislative and Executive branches and 2) the commonly accepted concept of the military as a “separate community”.⁶⁶ Evidence of this concept is noted in *Orloff v. Wiloughby*, 1953, where the court stated, “But judges are not given the task of running the Army ... The military constitutes a specialized

community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters”.⁶⁷

A review of court decisions shows the separate community concept to be a common theme as also illustrated in *United States v. Priest*, 1972 (See Figure 8).⁶⁸ However, while judicial deference to the military as a separate society is common, some disagree stating the Supreme Court’s

In the armed forces some restrictions exist for reasons that have no counterpart in the civilian community. Disrespectful and contemptuous speech, even advocacy of violent change is tolerable in the civilian community, for it does not directly affect the capacity of the Government to discharge its responsibilities ... In military life, however, other considerations must be weighed. The armed forces depend on a command structure that at times must commit men to combat, not only hazarding their lives but ultimately involving the security of the Nation itself. Speech that is protected in the civil population may nonetheless undermine the effectiveness of response to command. If it does, it is constitutionally unprotected.

Figure 8, United States v. Priest (1972)

treatment of free speech in the military context as, “the area of most extreme judicial abdication”.⁶⁹ Justice Rehnquist in *Goldman v. Weinberger*, 1986, mentioned two characteristics common in judicial treatment of first amendment claims within the military. “First, there is an insensitivity ... a lack of attention to and concern with the burden on the litigant’s first amendment rights. Second, there is a strong deference to the special needs of the military’s separate society and an unwillingness to review the military’s judgment ...”⁷⁰

It is incumbent upon the reader to determine to his or her own satisfaction whether or not the military ought to be treated as a separate community. However, it is the author’s opinion that indeed, the military is a separate community with a mission unlike any other organization. When the US President calls upon the military to bring deadly force to bear against a foe, there must be in place an environment of good order and discipline and commanders must have authority to maintain that environment. Thus, the speech limitations currently placed on military members serve the greater good of national interest over individual rights and are therefore warranted.

The following three cases will help to illustrate free speech challenges faced by commanders.

Three Cases

In 2004, Capt Oscar Estrada posed the following question in an article he published in the 6 June edition of the Washington Post, “Are we winning [Iraq’s] hearts and minds?”⁷¹ The implied conclusion of his article was, “No”. Literally, within days of publication Estrada was accused of, “aiding the enemy” and was transferred to a new unit. The Supreme Court ruled in a similar case in 1974, *Parker v. Levy*, 417 U.S. 733 by stating that, “While service members are not excluded from the protection of the First Amendment, a different application is required because of the fundamental need for obedience and discipline”.⁷² With this authority given to military commanders, Estrada’s commander, Col Dana J. H. Pittard said, “I think he violated a professional code” and therefore took action resulting in Estrada’s transfer.⁷³

Similarly, Sergeant Samuel Provance, who was assigned to Abu Ghraib prison during the recent prisoner abuse scandal, spoke to the media, against advice from others, about conversations he overheard in the prison. Provance’ commanders determined that he was a threat to the mission and decided to suspend his security clearance and reassign him elsewhere.⁷⁴ Finally, Lt Col Melvin B. Voorhees wrote about his experience in Korea in his book titled, “Korean Tales”. Voorhees submitted the text for review prior to publishing but refused to omit identified passages as noted by the reviewer. He was later court-martialed and the U.S. Military Court of Appeals let the convictions stand. They declared, “A few dissident writers ... could undermine the leadership of the armed forces, and if every member of the service was, during a time of conflict, or preparation ... permitted to ridicule, divide, deprecate, and destroy the character of those chosen to lead the armed forces, and the cause for which this country was fighting, then the war effort would most assuredly fail”.⁷⁵

Commentary

This, the author believes, is the essence of the issue at hand concerning blogs and the military. The “few dissident writers” alluded to in the case of Voorhees could easily turn into hundreds or thousands given the blogosphere. As cited earlier, more than sixty-two thousand blogs were created in one 24-hour period. Of course, it is nearly impossible that all of these blogs were created by military authors delving into questionable topic areas such as described above. However, it is neither unreasonable to suppose that some blogs created daily are done so under assumed names by military individuals who have become disgruntled with their current situation and are determined to undermine the mission and leaders at every possible moment.

Perhaps these are modern day interpretations of what Justice Oliver Wendell Holmes referred to as a “clear and present danger” when he asserted in *Schenck v United States*, in 1919, “The question in every case is whether the words are used in such circumstances and are of such a nature as to cause a clear and present danger ... When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight”.⁷⁶ Justice Holmes’ “clear and present danger test” is essentially the same criteria referenced earlier by President Lincoln’s three conditions which he used to justify restriction of speech. This clear and present danger test is commonly referenced today by courts concerning military members and their First Amendment right to free speech.

Given this discussion of free speech within the military, the paper will now focus on blogs within a military context. What is acceptable content for the milblogger? What issues do milbloggers present and how are senior leaders addressing concerns while granting adequate freedom for military personnel to speak to the world via their blogs?

Free Speech – The Military - The Blogosphere

What constitutes free speech in a military context has entered a new dimension given recent operations in Iraq and the introduction of the blogosphere. Anyone, with an opinion, a desire to share it and access to a computer can now publish their thoughts to the world with little effort on their part. For example, Army reservist Jason Hartley was ordered to shut down his blog, “Just Another Soldier” soon after he posted comments such as this, “Being a soldier is to live in a world of sh**. From the povies who cook my food and do my laundry to the Apache pilots and the Green Berets who do all the Hollywood stuff, our lives are in a constant state of suck”.⁷⁷ This posting and similar others prompted Pentagon officials to order the shut down. Hartley complied with the order for a short time but resumed soon thereafter and as a result was administratively reduced in grade from sergeant to specialist for defying a direct order. Hartley did not appeal his case.⁷⁸ The story does not end there, in October of 2005, Hartley’s blog transformed into a book and is now available for purchase – a sort of “rags to riches” ending.

In a similar scenario Major Michael Cohen, a doctor formerly based at the 67th Combat Support Hospital in Mosul, described his wartime experience to the world via his blog, “67cshdocs”. One account in particular details his perspective of the effects of a suicide bombing incident where 22 people were killed. The account described, “washing out wounds, removing shrapnel, and casting fractures”.⁷⁹ He also cited specific statistics related to this incident, “91 total patients arrived ... 18 were dead on arrival ... 4 died of wounds shortly after arrival”. This account caused concern within his chain of command and his boss indicated there were some who believed the blog content violated Army regulations. The Army asked Cohen to shut down his blog and the satellite network he had personally constructed which was supporting 42 other military families and related blogs. However, the Army decided against this course of

action because in Cohen's own words, "they didn't want a hornet's nest".⁸⁰ Rather than shut down the site and network, Cohen agreed to stop blogging. As with Hartley, Cohen decided not to challenge the order, he was too close to returning home and instead complied.

Warnings to Milbloggers

In light of situations such as those described above, the military has recently issued formal warnings and instructions specifically to military bloggers. See Figures 11 and 12 at Appendix B for an example of one such product issued by the Pentagon OPSEC Working Group.⁸¹ In August of 2005, Army Chief of Staff General Peter Schoomaker sent a memo to all Army personnel declaring, "We must do a better job at operational security".⁸² He went on to state, "Some soldiers continue to post sensitive information ... on the internet ... such as photos depicting weapon system vulnerabilities and tactics, techniques and procedures ... Such OPSEC violations needlessly place lives at risk and degrade the effectiveness of our operations".⁸³

Additionally, Schoomaker's deputy, General Richard Cody stated that, "Iraqi insurgents and foreign Jihadists are using pictures of roadside bomb strikes, firefights, injured or dead U.S. soldiers or enemy and destroyed or damaged vehicles and other equipment as propaganda and terrorist training tools".⁸⁴ Cody provided as an example, "annotated photos of an Abrams tank penetrated by (a rocket propelled grenade) are easily found on the internet". An Army spokesman, Lt Col Paul Pierett clarified the comments in the following manner, "By showing the effect on a vehicle that way, you are revealing its vulnerabilities".⁸⁵

In an interview with USA Today, Captain Alison Salerno, a spokesperson for U.S. Central Command states that, "being able to access the internet enhances mission effectiveness [and] quality of life ... though it must be used responsibly by servicemembers".⁸⁶ Salerno further stated that what should not be posted by troops, "would basically center around ...

information that could give our adversaries insight into current and future operations, and anything that could put coalition forces at risk”.⁸⁷ In reaction to past OPSEC violations in the blogosphere, and in an attempt to reduce further violations a policy was implemented in the spring of 2005 requiring, “military bloggers inside Iraq to register with their units”.⁸⁸ The policy, “directs commanders to conduct quarterly reviews to make sure bloggers aren’t giving out casualty information or violating operational security or privacy rules”.⁸⁹

Contractor Case

There is recent concern with a blog created by a former contract employee for the DoD. The blog details on-going security team operations in Iraq to include how they are trained. There are also pictures and descriptions of improvised explosive devices (IEDs) along with instructions of how to assemble such devices. Finally, the site contains pictures showing the impact of IEDs on vehicles and armor. Obviously, there is a desire among the military community to shut this site down as it poses a very probable threat to force protection of coalition troops and the potential harm that could be done if this information slips into enemy hands. The problem in this case is the blogger is a “former” DoD contract employee and is currently not affiliated with the US government in any manner.⁹⁰ What recourse is available to limit this type of speech? There may be some value added in considering the following four historical references.

First, the previously mentioned “Lincoln conditions” which were essentially three questions he used to limit free speech of a non-government civilian during wartime; specifically, 1) does the person intend to cause unlawful conduct, 2) does the speech interfere with military activities, and 3) does the speech discourage unlawful conduct? In Lincoln’s case, this was his “test” to determine the validity of Mr. Clement Vallandigham’s arrest.

Second, in *Pickering v. Board of Education*, the Supreme Court adopted a “two-part balancing test”, commonly called the “Pickering test” in determining if a government employee’s speech was protected. As per the Pickering test, “the speech must address a matter of public concern. If it does, then a court must determine whether the employee’s interest as a citizen ‘in commenting on matters of public concern’ is outweighed by the government’s interest as employer”.⁹¹

Third, while the “clear and present danger” test as articulated by Justice Holmes may seem to fit, and is still widely used in military cases, it has been replaced in the civilian sector by the “imminent lawless action” test as presented *per curiam* in *Brandenburg v. Ohio*, 1969. In this case the court determined that speech is protected unless, “it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”.⁹² As of this writing, the imminent lawless action test continues to be applied in civilian free speech decisions.⁹³

Fourth, the “forum analysis” as used by the Supreme Court in *Flower v. US*, 1972, takes into consideration the location of the speech and what government interest applies to this location. Specifically, in *Flower v. US*, the court held, “that a base commander could not prohibit the distribution of leaflets by a previously ‘barred’ civilian on a street within the base that was open to the public”.⁹⁴ The blogosphere is so wide-spread it would be difficult determine exactly “where” the speech occurs. Furthermore, a particular blog’s host server could likely be located outside US jurisdiction complicating the matter even more.

Commentary

Given the relative “youth” of the blogosphere, there may not be precedent at this time to review which fits nicely within the constraints of the “contractor case” described above.

However, the preceding four references might assist in formulating a decision as to whether or not this blog content is considered protected speech. It is the author's opinion that this type of blog content will continue to plague military operations as the blogosphere continues its projected growth. Furthermore, given the current US involvement in the Global War on Terror, and in anticipation of future armed conflicts, it would behoove military commanders, as well as civilian legislative and judicial powers, to determine appropriate limits of speech on US citizens (military and civilian alike) within the blogosphere while balancing the safety and security of US troops and national security interests. Such analysis merits a comprehensive review and is therefore a recommendation for further research. The paper will now address two official blogs hosted by military leaders within their respective organizations.

Official Blogs

Chaplain Service Institute:

In the spring of 2002 the USAF Office of the Chief of Chaplain Service (HQ USAF/HC) launched a blog as an extension of its website. The intended purpose of the blog was to enable communication among approximately 2,500 active duty USAF chaplain (USAF/HC) personnel as well as appropriate personnel within the Guard, Reserve, and Civil Air Patrol. The blog was only accessible via a secure website with a by-name, restricted log-in. . Discussion threads were initiated by HQ USAF/HC staff and capability was added for any USAF/HC users to begin discussions. Unlike most traditional blogs, comments were not anonymous given the author's username appeared on the blog attached to the applicable discussion thread initiation or comments. Finally, a disclaimer was placed on the blog stating the forum was not to be used as a "soapbox" to espouse complaints and grievances rather as a venue to exchange "best practice" information regarding USAF/HC needs and discussions would be monitored by system administrators as well as the Chief of Chaplains office.⁹⁵

In the summer of 2003 a handful of registered users (approximately ten) began to use the forum as a means of expressing dissatisfaction with their supervisors and co-workers. Initially the comments were relatively discreet (although the identity of the authors was readily available via their username) however, the comments evolved into direct personal attacks of character. Interestingly enough, other users "reprimanded" the authors on-line in an effort to quell the apparent abuse of the blog and disregard for its purpose. HQ USAF/HC weighed in with a strong warning to cease and desist or face possible expulsion from the site. During this time, blog comments decreased from several hundred posts per quarter to less than 50 per quarter. The

blog abuse continued. Fearing potential freedom of speech complaints, HQ USAF/HC decided to pull the entire blog in the fall of 2003 rather than restrict certain users.⁹⁶

No formal administrative action was taken against anyone in this particular case. However, the chaplain's blog experience does indicate what can potentially happen in an on-line blog forum and should put commanders, currently using or considering a blog, on alert. Incidentally, the chaplain's blog relaunched in the spring of 2004 with more strict registration criteria and formalized restrictions on discussion protocol. There have been approximately 1,200 blog comments posted over the past 12 months with no violations of protocol.⁹⁷

Four-Star Blogger

The Commander of US Strategic Command (USSTRATCOM), Marine Corps General James Cartwright, has caught the vision of the blogosphere and has adapted it to suit his command's needs. Since taking command in July 2004, Cartwright noted that one of the problems of the multiple organizations he led was that they "were built extremely well to make sure that they didn't talk to anybody".⁹⁸ Cartwright's challenge was to overcome a cultural bias against sharing and build a collaborative tool which would establish a connection.⁹⁹ Enter the

We have this culture, this vertical culture, this Napoleon command and control structure. It doesn't do well with the information age we live in. We have undertaken a lot of effort out there to get people to understand how to communicate – chat rooms, blogs, things like that. It's more about culture than it is about technology, but what you can do is empower an incredibly larger crowd than in this vertical structure ... and getting that crowd empowered.

blogosphere. Cartwright's internal STRATCOM blog, known as "SKIWeb" (pronounced sky-web) and available only with a Secure Internet Protocol Router Network (SIPRNet) account, provides a common location within the command

Figure 9, General Cartwright Comments

where anyone can pose a question and people will respond with answers.¹⁰⁰ Cartwright explained his blog philosophy in this manner (see Figure 9 above).¹⁰¹

The idea of a 4-star general soliciting direct responses from all ranks across his command via a tool such as a blog is quite foreign to many military members. In fact, such an idea seems to radically contradict the traditional chain of command concept which is so ingrained into military culture. For example, one can only suppose how General George S. Patton would have reacted to suggestions from “Private Snuffy” regarding the General’s apparent failure during the Lorraine Campaign, in which Patton faced an entrenched, static enemy rather than the more traditional swift moving battles for which he was known.¹⁰² Based on Patton’s documented “slapping behavior” he would likely not have received “Snuffy’s” critique warmly and openly. Rather, he would likely have expected and demanded that “Snuffy” adhere to the traditional military culture which dictates that suggestions, grievances and complaints be routed through the appropriate chain of command before being aired in front of the commanding General Officer.

Initially, Cartwright found that those who posted responses to his questions on the blog had to, “clear it with the boss first before they could blog back”.¹⁰³ This was not the reaction, nor the response, Cartwright wanted from SKIWeb. Cartwright states, “I got what I would call ‘tethered goats’”, insinuating that people who answered his blog postings were really, “blogging for the boss” rather than providing the right answer.¹⁰⁴ To further emphasize his intent, Cartwright made the following statement at his Commander’s Call in March of 2005 to USSTRATCOM leadership (See Figure 10).¹⁰⁵

The metric is what the person has to contribute, not the person’s rank, age, or level of experience. If they have the answer, I want the answer. When I post a question on my blog, I expect the person with the answer to post back. I do not expect the person with the answer to run it through you, your OIC, the branch chief, the exec, the Division Chief and then get the garbled answer back before he or she posts it to me. The Napoleonic Code and Netcentric Collaboration cannot exist in the same space and time. It’s YOUR job to make sure I get my answers and then if they get it wrong or they could have got it righter [sic], then you guide them toward a better way ... but do not get in their way.

Figure 10, General Cartwright's Comments

In a recent interview with Major James Miller, USSTRATCOM, Project Manager, Command and Control Modernization, he indicated that SKIWeb is creating a “culture change” within USSTRATCOM manifested by a “flattening of the traditional organizational structure”.¹⁰⁶ In fact, Miller indicates there are approximately 6,000 registered users of SKIWeb and 58% of those are internal to the USSTRATCOM building. The remaining 42% are external users, not necessarily assigned to USSTRATCOM, but who contribute to this cultural change.¹⁰⁷ Recall from the two quotes above, Cartwright referred to a Napoleon-like command structure, and how that system, in his opinion, does not work in the information age where news, ideas, and events travel extremely fast. Cartwright’s intentions and employment of his blog are reminiscent of Col (ret) John Boyd’s OODA Loop concept where the idea is to “get inside the enemy’s decision cycle” and act/react faster than the enemy is able to accommodate.¹⁰⁸ Additionally, Cartwright seeks what he calls “the right answers”, unfiltered and uncensored, straight from the experts in the field. This is a paradigm shift for the military culture and is facilitated in large part by the blogosphere.

The preceding example, from the Chaplain Service Institute, demonstrates that the Air Force is not protected from what Rove described earlier as the “ugliness and viciousness” in the blogosphere. Perhaps commanders and the Air Force as a whole would do well to follow in General Cartwright’s footsteps, and take the advice of Stephen Baker, technology commentator for “BusinessWeek Online” when he says, “there is a way to ensure that the growing blogosphere embodies our highest ideals and not our worst fears ... Jump right in!”¹⁰⁹ As we add more sensible “voices” to the blogosphere less power and credibility will be given to those ne’er-do-wells (military and civilian alike) propagating unintentional, or intentional, untruths.

Recommendations and Conclusion

As a concluding piece to this research the author provides a number of recommendations directed toward current and future commanders. First, blogging is a reality and, if you've not taken the opportunity to learn more, you would do well to experience the blogosphere. Bloggers tend to be young, intellectually savvy, and uninhibited from expressing their points of view. While this is a great asset for a young troop, it can lead to trouble for the troop and the commander. The advice given above to "jump right in" is the best way to understand the power of blogs. Additionally, further research should be conducted regarding the proper balance of free speech in the blogosphere and security of US troops.

Second, while serving as a deployed commander, it is imperative you understand the appropriate guidelines and policies with respect to blogs. For example, you should know who is actively blogging and you should review the content of their blog for the good of your troop, unit, and mission. You should be familiar with what acceptable content in a blog is and what the appropriate limits to place on blogging are. Understand that in many cases blogging is the troop's chosen method of connecting with familiar people and escaping the horror of war or simply the mundane of long deployments. If conducted properly, blogging is healthy and is also a huge boost to morale. However, it is always incumbent on the commander to ensure the troops are aware of and following proper procedures.

Third and similar to the previous recommendation, maintenance of good order and discipline within your unit rests squarely on your shoulders. As discussed above, the US military culture encourages critical thinking which implies open communication. As commander, it is incumbent upon you to preserve the right to free speech for your troops while at the same time guard against dissenting speech which could undermine your mission. Perhaps the historical

examples provided above specifically the “Lincoln Test”, “Pickering Test”, “Clear and Present Danger Test”, and the “Forum Analysis” will aid in your determinations of appropriate limits to speech. Additionally, the base legal office (JA) is an invaluable resource to any commander faced with this dilemma and you should develop a good working relationship with the JA staff.

Fourth, when issuing formal orders, or even more informal guidance, take care to ensure what your words say, and what you intend to say, are the same. As described previously, vagueness in wording can definitely send a confusing message to the troops and can be used as a legitimate defense should one of your orders be contested. Again, the JA office is available to provide guidance to commanders and will assist in crafting a statement which reads as you intend.

Fifth, official military blogs are not unprecedented and in the cases cited in this research can prove beneficial to an organization. However, some things to consider when implementing a blog are clear guidance as to the purpose for the blog and what is not acceptable, such as clearly prohibiting personal attacks, and understand that the culture of the unit may resist. In spite of these potential issues to overcome, you could experience a fresh wave of energy and ideas as your troops openly communicate in a professional manner.

As with most intelligence and resources known to mankind, they can be used for productive or destructive purposes. The blogosphere is no different. Anyone with a computer and an internet connection can produce a blog and freely express their thoughts to whoever will read. This relatively new capability gives great power to the blogger and commander alike. The critical take-away for military leaders to understand is our speech within the military is limited for sound reasons and the blogosphere simply presents one more method for those limits to be tested, and one more tool for commanders to lead their troops.

Appendix A

Blog Hosting Services (for blog creation):

<http://spaces.msn.com>
<http://www.typepad.com>
<http://www.blogger.com>
<http://www.livejournal.com>
<http://www.myspace.com>

2005 Weblog Awards – Top Contenders for Best Milblog:

<http://www.blackfive.net>
<http://www.cabarfeidh.com/blogger>
<http://thunder6typepad.com>
<http://www.soldierperspective.us>
<http://tmmkkt22.blogspot.com>
<http://www.intel-dump.com>
<http://strengthandhonor.typepad.com/captaink>
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<http://beldar.org>
<http://www.instupundit.com>
<http://justoneminute.com>
<http://powerlineblog.com>
<http://www.hughhewitt.com>
<http://volkapundit.com>
<http://www.balloon-juice.com>
<http://www.captainsquartersblog.com>
<http://www.rogerlsimon.com>
<http://www.freerepublic.com>
<http://buckheadjohn.blogspot.com>
<http://blog.justanothersoldier.com>
<http://www.67cshdocs.com>

Appendix B

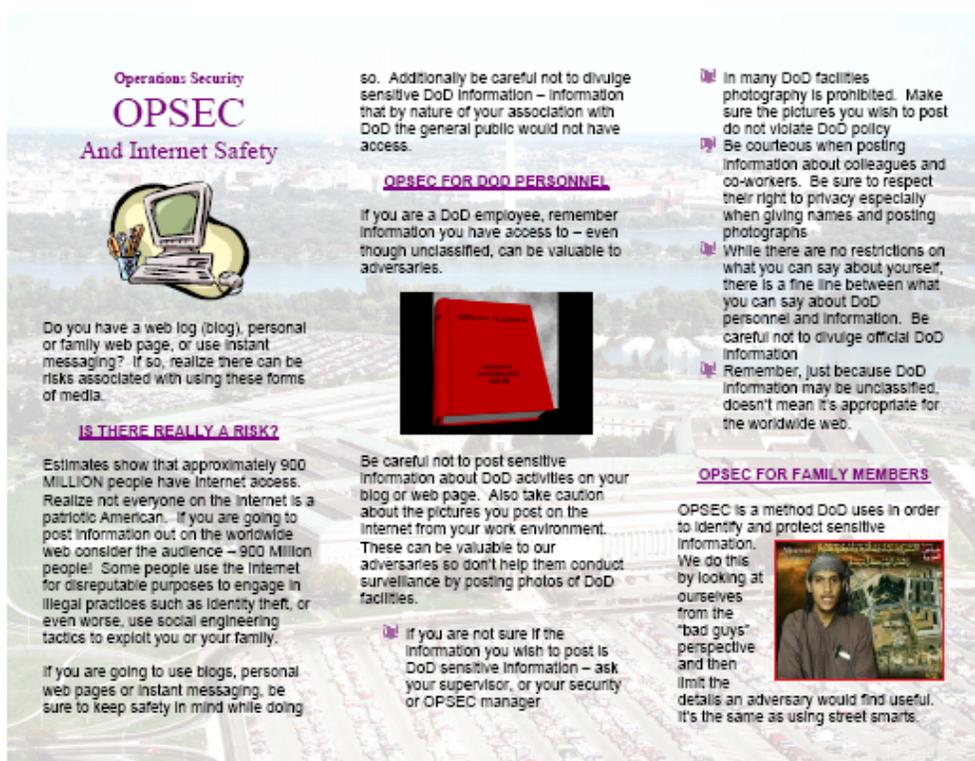


Figure 11, Pentagon Internet OPSEC Brochure (Front)



Figure 12, Pentagon Internet OPSEC Brochure (Back)

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