

# THE FIRST ANNUAL HUGH J. CLAUSEN LEADERSHIP LECTURE: TRANSFORMATIONAL LEADERSHIP TEACHING THE JAG ELEPHANT TO DANCE\*

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## I. Transformational Leadership

There are always new “in” ideas on leadership that define the mood and circumstances of the times. In the 1990s, Tom Peters’s book, *Tkrivering On Chaos*, best depicts the environment for today’s leaders of public and private organizations. Correspondingly, a new leadership personality has been discovered; the “Type C” leader who is successful in resolving chaos. The overall label that best captures this defining issue of the 1990s is “Transformational Leadership.”

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\*\*Judge Advocate General’s Corps, United States Army. Brigadier General O’Roark served two tours of duty at The Judge Advocate General’s School. He was the Chief of the School’s Administrative and Civil Law Division from 1973 to 1976, and returned as the Commandant from June 1985 until his promotion to the rank of Brigadier General in September 1985. His distinguished military career included tours of duty in Vietnam; the 8th Infantry Division (Mechanized), United States Army Europe; III Corps and Fort Hood; Executive, Office of The Judge Advocate General; Commander, United States Army Legal Services Agency and Chief Judge, United States Army Court of Military Review; and The Judge Advocate, United States Army Europe and Seventh Army. General O’Roark retired from active duty in June 1989 and currently works with the Kentucky Bar Association and local bar groups providing continuing legal education programs on professional responsibility and risk management. He also writes a continuing column on professional responsibility in the *Bench and Bar*, the Kentucky Bar Association’s quarterly magazine. His observations on the judge advocate’s role in developing the command climate of the future are the direct product of correspondence from and discussions with the recently retired President of the Center for Creative Leadership, Lieutenant General (Ret.) Walter F. Ulmer Jr. The author expresses his sincere thanks to General Ulmer for generously sharing his insightful analysis and, as always, profound thinking. The author extends a special thanks to Dr. Ann Mane O’Roark, a psychologist specializing in leadership, who, as she often has done in the past, provided him with ideas, resources, and encouragement.

Transformational leadership is a fresh concept for talking and thinking about the dramatic changes—political, social, and technical—occurring throughout the world and how leaders must have the vision to make crucial changes to their organizations. Few people in leadership positions need to be told that we live in a watershed period of history. What is rare is for this to be so evident to us all. It is intuitively obvious that our society in general, and the military in particular, is undergoing a sea change.

Transformational leadership holds that a leader first must recognize the magnitude of this change. Then that leader must create a vision of the future for the organization and a strategy for achieving that vision which allows the organization to survive chaos and continue to serve its purpose. What is vision? Vision is a graphic and compelling description of the organization in the future. It is *graphic* in the sense that members of an organization can literally conceptualize what the future organization **will** look like and *compelling* because it incorporates the values and inspiration for the future organization that motivates people to want to be part of that vision and help to achieve it. The transformational leader's role is to develop that vision and teach its worth to the organization.

## 11. So What's the Problem? Just Do It!

Unfortunately, as they say, the devil is in the details. The truth is that it is extremely difficult for either individuals or organizations to change.

On an individual basis, while we often know change is on the horizon, it is hard to believe that tomorrow will be much different from today. So we do not do much today. The classic example is the buggy whip companies of the early part of this century whose leaders thought that the automobile would never replace the horse. This lack of vision led to the rapid disappearance of those companies which failed to transform their operations to a new reality. Another inhibitor is that not every person in a leadership position is a good visionary. In our military history the court-martial of General Billy Mitchell, whose vision for air power was not recognized by his leaders, is a symbol of the frustrated visionary's fate. Individuals with talent for creativity, adaptability, and innovative application are more rare than many think. They are an organizational treasure.

Regrettably, it is harder to get a large organization to change than an individual. James A. Belasco's book, *Teaching the Elephant To Dance—The Manager's Guide To Empowering Change*, captures organizational inertia best with this analogy:

In India, where an elephant is a beast of burden, a baby elephant is tethered to a stake with a short rope attached to a metal band on one of the baby's hind legs. The young elephant quickly learns that it has a range of the short rope and no more. After the elephant is grown, at the end of a day's work a metal band is once again put on a hind leg, but the elephant is not tethered with a rope to a stake because no rope and stake can hold a grown elephant. Fascinatingly, the elephant free to go any where it wants will range no farther than a short rope's length because that is as far as it thinks it can go with a metal band on a hind leg.

Much the same thing happens in organizations. "We have always done it that way," the "not invented here" syndrome, tunnel vision, and resistance to change by those comfortable with the current situation are just a few of the symptoms of a moribund organization. John Maynard Keynes said it best when he commented that "[t]he difficulty lies not in the new ideas, but in escaping from the old."

The upshot is that the organization does not realize its strength and flexibility and remains tethered far short of its potential. The challenge for leaders in today's environment is to overcome this self-limiting, elephant mindset that exists in all organizations, including our military institutions. The transformational leader must provide the vision that will teach the organization how strong it really is and how to range and even dance at a distance far beyond anything believed possible in the past.

### III. Some Thoughts on Teaching the JAG Elephant to Dance by Practicing Transformational Leadership

The following observations are in no way intended to be prescriptive. Instead, they are my best effort to demonstrate how a vision for the future of the Judge Advocate General's Corps (JAGC) might be developed. These ideas do not concern specifics (such as what a division staff judge advocate's table of organization and equipment should be in the next century). Every day many smart people are working hard on that vision of the future of the JAGC. The three ideas I offer are more philosophical in nature, but may be worth exploring **as** the JAGC expands its vision of the future for legal services in the Army. Should some of my examples be out of step, do not let that divert attention from the importance of transformational leadership that is the point of this essay.

#### *A. What Role Should Military Lawyers Have in Shaping the Command Climate of the Future?*

We have a unique confluence of societal and international events

that are placing extraordinary demands on our military institutions. Military leaders are expected simultaneously to downsize and yet respond to multiple diverse missions. Technological change adds enormous stress as machines give us new combat options, increase demands for precision, and alter command relationships by simultaneously passing information in a multitude of directions. *All* of this requires the military to “smarten up, not dumb down.” The military needs to recruit Peter Drucker’s knowledge worker who also can meet the physical demands of a combat soldier. In short, the “grunt is dead” and we must recruit the highest quality force in our nation’s history.

It is in this context that the military must come to grips with the worldwide trend in democratized countries to make the work environment more humane. In the years to come the American military will undergo intense scrutiny from a number of sources to include budget cutters, isolationists, special interest groups, and antihierarchy advocates. Everything about the military will be examined. Unfortunately, those who examine the military will do it somewhat naively because that time we all knew was coming—when the public we serve would be profoundly ignorant of military science, skills, and values—is here. They simply do not know how hard it is to do. Moreover, we must never forget that an antimilitary sentiment exists in this country that is alive and malignant.

While young Americans are still capable of patriotism and commitment to national service, they have increasing expectations of fair treatment and good leadership. If they find this lacking, they will “vote with their feet” and quickly take us back to the hollow army of the mid-1970s. The totality of this situation will put commanders on edge and on the defensive as they are expected to carry out complex operations flawlessly with what may seem diminished command control and inferior forces.

What is the answer to this exceedingly difficult situation? *Who* in the military will mediate the stresses that this combination of factors presents? One answer is the judge advocates of the services. Military lawyers are uniquely qualified to take on the role of mediators and rationalizers within the system. In this role judge advocates will seek to link the commander’s traditional requirements for discipline, loyalty, and obedience with the legitimate expectations of fair treatment by modern soldiers. Military lawyers, by developing confidence in the fairness of military justice, personnel policies, and in the overall fairness of military institutions, can strike the balance in a new era of authority relationships.

What vision should the JAGC have to innovate change in military law and in service to our clients to accommodate the need for a disciplined force that meets soldiers’ expectations of fair and humane treatment? In this context the questions that occur to me are as follows:

During peacetime in garrison why is it not feasible to:

- (1) Give military judges sentencing authority similar to their civilian counterparts—for example, suspended sentences, shock probation, community service?
- (2) Develop a form of random jury selection that does not compromise seniority?
- (3) Require a unanimous jury vote for conviction by court-martial instead of a two-thirds vote (what a civilian is entitled to in almost all states)?

Is the table of maximum punishments too severe? A criminal class does not exist in the military—most crimes involve very young, inexperienced people. Is it not time to review the military punishment scale for fairness and equity with civilian standards?

What is the vision for the role of women in the military? Surely this role will expand—will personnel policies be in place to assure women fair treatment when it does?

*What should our vision be for the role of the military lawyer in shaping the command climate of the next century?*

### *B. What Doctrine is Necessary for the Legal Education and Professional Development of the Judge Advocates of the Next Century?*

The civilian bar has made a stunning discovery. The legal profession is the only profession in which you can get a license to practice without knowing how. Any staff judge advocate could have told the civilian bar that.

The current high interest in lawyer competence stems from the American **Bar** Association's (ABA) study entitled, *Legal Education and Professional Development—An Educational Continuum* (known as the MacCrate Report). It is a massive study looking at a legal education spectrum of law school, new lawyer transition programs, and continuing legal education. The MacCrate Report found serious deficiencies in teaching lawyer skills and values in all lawyer professional development programs with law schools receiving particularly low marks.

The MacCrate Report identified ten key lawyer skills including investigation, communication, counseling, negotiation, and resolving ethical problems. It further identified a number of professional values—competent representation, professional self-development, promotion of justice, fairness and morality, and improvement of the profession. Based on this evaluation, the ABA recommended that all state **bars** perform a review of the legal education programs for lawyers in their jurisdictions to determine whether these programs adequately develop the MacCrate Report skills and values considered essential to lawyer competence.

Led by Virginia, several states have responded to this recommendation by conducting a Legal Education Conclave. The conclave process recognizes shared responsibility among legal educators, the judiciary, and the practicing bar for legal education. It is intended to lead to a common vision for the future of the legal profession and the education programs required throughout a lawyer's career to achieve it. Kentucky's Conclave is typical of how state bar reviews are being conducted. It considers the spectrum of legal education including law school, transition programs, and continuing legal education. The Kentucky Conclave's three-part mission is to:

- (1) Evaluate the ABA's MacCrate Report recommendations on lawyer skills and values for application to Kentucky legal education;
- (2) Analyze resources available to pursue change; and
- (3) Analyze legal education doctrine in Kentucky to determine what subjects and programs will best prepare Kentucky lawyers to meet the requirements of the public and the profession in the twenty-first century.

If the civilian bar is concerned about lawyer professional development and perceives a need to review the entire process, perhaps the **military** bar should do the same. Thanks to the instruction provided to the Basic and Graduate Courses at The Judge Advocate General's School, United States Army (TJAGSA), judge advocates are well ahead of the civilian bar in developing Army lawyers, at least early in their careers (and assuming the JAGC is teaching the "right" things). Applying the ABA's MacCrate Report recommendations on lawyer skills and values to military legal education would allow the JAGC to determine whether it is.

While considering MacCrate Report issues, judge advocates also should address the question of whether the JAGC should have mandatory continuing legal education requirements. Most states require mandatory annual continuing legal education for members of their bar. The military bar must have the same need. In the Army JAGC, the Graduate Course is the last mandatory program for lawyer skills and values professional development. Ohio is looking at a career time-line approach for continuing legal education. What should the focus of continuing legal education be in the first five years of a lawyer's career, the next ten, and so on? This approach could work well for Army lawyers. Currently, while judge advocates receive voluntary continuing legal education throughout a career, state licensing requirements dictate the amount that a judge advocate must obtain each year. This unstructured, "ticket-punch" approach to judge advocate professional development is behind the times.

While TJAGSA's leadership constantly reviews the School's programs and modifies them as needed, the last comprehensive review of the JAGC's legal education and professional development doctrine oc-

curred ten years ago. *Why not hold an Army JAGC Legal Education Conclave to develop the vision of what the professional judge advocate of the twenty-first century should be and what it will take to get there?*

### C. *The Judge Advocate in Cyberspace*

The pace of acceleration of the use of computers in the delivery of legal service is breathtaking. The transformational leader must recognize that how law is practiced is profoundly changing. Many lawyers see the use of computers simply as a matter of efficiency and law office economics. They must understand that much more than that is happening. Fundamental practice skills bearing directly on legal method are undergoing a change that is central to how law will be practiced in the future.

The first rule of professional responsibility is competence. Competence requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation. These qualifications center on research, writing, negotiation, litigation skills, and organization and management of legal work. This is how law is practiced and it is all changing as a result of technology. Lawyers who do not keep up with technological change will one day literally be incompetent to practice.

The JAGC has worked hard to automate Army legal service and in many respects is ahead of the civilian bar. What follows are some selected recent developments in automating legal method that are "pressing the envelope" of how law is practiced. My hope is that these ideas will add incrementally to the creative thinking already being done to envision the electronic staff judge advocate office.

#### 1. *Computer Assisted Legal Research*

a. *Law library On-line Services*—On-line law library services have been available for years. What is new is that this service industry is undergoing its own transformation. It is in a period of merger, buyouts, and new service startups. Similar to cable television companies, service is more extensive and more options are offered at less cost. For example, LEXIS now offers a service of Military Law Library Materials. They call this service LEXIS MVP, The Most Valuable Part of LEXIS for Small Firms. Civilian lawyers practicing outside military installations can now have a military law library on par with the post legal office and one that always will be more up to date. *Perhaps it is time for the JAGC to study whether this is the future for the Army Law Library Service? Do we make or buy? Whatever is done, there is a better way than the laborious, expensive, and slow system that the current paper law library service dictates.*

b. *CDROM Law Office Library* — From an economic and pro-

fessional standpoint, it seems clear that the future law library will be a CD ROM system. Such a system makes more extensive holdings feasible and reduces space and utility costs. Many civilian lawyers use a hybrid of CD ROM for basic research and on-line service to make sure that they have the most recent authority. *This state-of-the-art research is a technique ideal for a military law office.*

*c. Public Domain Law Libraries — The manner in which the law is reported is in a state of flux. The technology exists to place all state and federal laws, regulations, and case decisions in an indexed data base. All that needs to be done is to agree on a uniform citation system. The core principles of this country call for easy public access to legal authority. Automation provides the process to open the legal system more than ever before in our history. The implication of public domain law libraries for military legal service is enormous. Consider the affect that inexpensive, on-line access to all state law, regulations, and case decisions will have on the Legal Assistance Program alone.*

*2. Electronic Filing and Document Retrieval — A key issue for law practice is whether to convert paper files to electronic files. It sounds like office efficiency again, but it is much more. Law practice experts cite the “80-20 Rule” in support of such a conversion. This rule holds that eighty percent of work done in most law firms is not new. If this is true, then there is a legal research gold mine in law office paper files that are pertinent to new matters if only they can be located. Automation’s answer is “work product retrieval.” Work product retrieval uses computer global search techniques to determine whether documents on point for a new matter exist in office electronic files. With the high turnover of personnel in military law offices, automated work product retrieval is an even more valuable research tool for judge advocates than it is for lawyers in more stable civilian law offices with long-term institutional memory. How do we get there?*

### *3. Automating the Litigation Process*

*a. Machine Readable Transcripts (MRT) — Legal documents prepared in MRT are becoming more common. A typical example is a pretrial deposition. Instead of providing only a paper transcription of testimony, the reporter also provides the deposition on a computer “floppy” disk. The lawyer is then able to put the deposition into a computer with a program by which it is automatically indexed and immediately retrievable in a data base. In addition to the obvious uses this technique has for analysis of the testimony, the deposition can easily be copied in whole or part as well as transmitted quickly and inexpensively by electronic mail. The improved legal method and cost savings that MRT offers for transcription of courts-martial records of trial, posttrial*



*review, appellate review, and records maintenance are immense. How do judge advocates capitalize on this technology?*

*b. Real Time Courtroom Testimony Transcription — If you have noticed what appear to be television monitors on the judge's bench and counsels' table at the O.J. Simpson trial, that is exactly what they are. The court reporter's transcription of testimony as it is recorded verbatim is instantly shown on screens before the judge and opposing counsel. It is automatically indexed and immediately retrievable in a data base by using key phrases — such as "bloody glove." At the end of each day, the lawyers receive floppy disks containing the day's testimony that they may use for research and analysis in preparation for the next day's proceedings. We need to import this courtroom technology to the court-martial system.*

*c. Computerized Exhibits — The "Forrest Gump Effect" — While people marveled at the movie industry's ability to realistically place Forrest Gump in historical settings, the truth is that this technology is commonplace. As a result, more and more programs are available to lawyers to demonstrate to juries how the facts of a case unfolded. One example is a program used by plaintiffs' counsel in medical malpractice cases called Animated Dissection of Anatomy for Medicine (or A.D.A.M.). Although expensive, the program can recreate an entire operation to show the jury how the medical misadventure occurred. Judge advocates need to develop these computerized litigation skills just as their civilian counterparts are currently doing.*

*d. Use of Computer Notepads for Big-Screen Depiction of Crime Scenes, Accident Sites, Charts, and Diagrams — Gone is the day when lawyers have to rely on rudimentary and awkward cardboard and pen techniques to enable witnesses to show the jury a crime scene or how an accident developed. Using computer notepads and big-screen technology, witnesses can mark a computer notepad from the witness stand which then will instantly be clearly displayed on a large screen, and in easy view of the jury and public. If this technique works for civilian trials, it obviously will work well in the court-martial system.*

*What is our vision of the future for maintaining judge advocate competence through skillful use of automation? How should this technology be applied to the court-martial system, litigation skills, legal research, work product retrieval, and function and size of military law offices? What will the electronic staff judge advocate office of the next century look like?*

#### IV. Conclusion

In preparing the lecture on which this essay is based, it struck me how fitting it was to focus on transformational leadership and vision in the dedication of the Hugh J. Clausen Leadership Chair. **This** is true because General Clausen was so good at it on so many levels. **His** work in developing the Senior Officer Legal Orientation Program, establishing the Friends of The Judge Advocate General's School—which has contributed so much to military legal education—and directing a major expansion of The Judge Advocate General's School are only a few examples of how his vision has been realized to the continuing benefit of military lawyers and the Army.

My final thought is, rather than using this newly created academic chair to solely sponsor an annual lecture on leadership, why not an annual Hugh J. Clausen Leadership Conclave? Make it inclusive by inviting line officers as well as judge advocates. Call on the array of talent available to the JAGC from our reserve and retired ranks. Schedule it for two days so that there will be time for thoughtful analysis and hard recommendations. What would be the purpose of such a conclave? To teach the JAG elephant to dance and to build for the future of military legal service in the worthy cause of our national defense.