



# Military Law News

U.S. Air Force • U.S. Navy • U.S. Coast Guard • U.S. Marines • U.S. Army

Spring 2019

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## Message from the Chair

*Peter Jankell, Esq.*

I remember attending a briefing when I was a Lieutenant Commander. As I walked into the briefing room, I realized that this was going to be an important briefing. In addition to the standard Navy breakfast of coffee, donuts, and a Power Point presentation, there were also preprinted, color, glossy, magazine style handouts. Someone had spent a lot of money on this briefing.

The briefing was about something called "Sea Power 21" and very early into the presentation it devolved into what we mid-level officers used to call "Admiral Speak". My eyes glassed over and it became difficult to stay awake as the presentation droned on about things occurring way above my pay-grade that would have little to no effect on my daily duties.

It was not until many years later, after I had served on several flag staffs, that I understood the enormity of Sea Power 21. It was a complete overhaul of how the Navy operates and a revolutionary change to the culture of Navy decision-making and how the Navy conducts preparedness and missions. It was, as we say in the Navy, a major sea-change.

The Military Law Section of the Virginia State Bar is in the midst of what I would describe as a major sea-change of our culture. This change started subtly under my predecessors and, hopefully, will continue under future section leadership. What I have tried to accomplish in my time as section chair is to bring this change to the surface where it can be recognized, implemented, and improved.

Some of you have heard me speak on this change in the past. You may have heard me say that we need to be the "military law section" rather than "the section of former military lawyers". To accomplish that requires a broadening in the focus of the section and expanding our membership beyond former JAGs. We need to change who we serve as a section from servicemembers to lawyers whose practice may be impacted by the military service of one of the parties.

Please do not misunderstand me. Serving the legal needs of servicemembers and veterans is a noble and valuable pursuit. There are many fine aid organizations that do just that, often with the assistance of pro bono lawyers. It just should not be the role of this section. This section is a section of the Virginia State Bar. An organization made up of and for attorneys. According to the VSB, a section is "a separate group devoted to improving the practice of law in a particular substantive area or specialty practice".

In accordance with these principles, the description of the section has changed on our website. It now reads, "Virginia is home to the largest concentration of servicemembers from all branches of the service. These active duty, reserve and retired servicemembers and their families have a multi-billion-dollar impact on the Virginia economy. At some point every attorney in Virginia is likely to confront an issue related to the military, regardless of area of practice. The Military Law Section serves attorneys who

practice in areas likely to be impacted by laws unique to the military and its members." We need to expand what we do as a section to meet this new description.

In the past, we have been very good at covering subjects like, the Uniformed Services Former Spouses' Protection Act (USFSPA), the Servicemembers Civil Relief Act (SCRA), and the Uniformed Services Employment and Reemployment Rights Act (USERRA). In the last few years, the section has presented "Showcase" CLEs at the annual meeting of the VSB regarding the effect of bankruptcy on security clearances and the unique issues confronting guardians *ad litem* in military child custody and visitation cases. These "Showcase" CLEs were a tremendous step in the right direction in expanding our focus and visibility beyond the former JAG community.

We can go so much farther. I was a claims officer back in the day when the Navy had uniformed claims attorneys. We used to say that we were guided by nine federal statutes. These statutes included the Federal Tort Claims Act, the Military Claims Act, the Foreign Claims Act, the Personnel Claims Act, the Federal Medical Care Recovery Act, and the Affirmative Claims Act. There is always discussion about the possibly changing landscape of the *Feres* doctrine and *Feres v. United States*, 340 U.S. 135 (1950).

The mobility of servicemembers makes knowledge of multijurisdictional legislation like the Federal Parental Kidnapping Prevention Act (PKPA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Uniform Interstate Family Support Act (UIFSA) imperative for family law practitioners representing military families. Real estate practitioners have to deal with Veterans Administration guaranteed mortgages. General practice attorneys may be confronted with disability claims in the military and the VA, and have to know the difference between the two. Criminal law attorneys need to know the consequences of a conviction on a servicemember's career and ability to hold a security clearance. A conviction of a domestic violence offense can prohibit a servicemember from carrying a firearm.

Attorneys whose practice might involve contracting with the military certainly need to know the Federal Acquisition Regulation (FAR), the Buy American Act, and the Antideficiency Act. There are also laws like the Law of the Sea, the Law of War, the various Geneva Conventions, and *posse comitatus* that most practitioners will not encounter but might find interesting.

This change in direction is important for the section. I cannot claim credit for it, as it began before my joining the Board of Governors. My hope, however, is that we understand and embrace this change. I, personally, have always been resistant to change. It took me a long time to grasp the significance of Sea Power 21. Having gone through that process, I now know that organizational redefinition can be beneficial.

*Peter J. Jankell, Chair*

## ANNUAL MILITARY LAW SYMPOSIUM 2019: SERVING THOSE WHO SERVE

Section Members can pre-register at a discounted rate of \$125.

- Gain a greater understanding of International Humanitarian Law and explore how ordinary people placed in leadership positions during wartime balance personal and institutional perspectives on morality, law and leadership
- Receive an overview of the recently passed Veterans Appeals Improvement and Modernization Act and the current process for making a claim in the right to appeal under Veterans Administration regulations
- Review the significant updates to the Uniform Code of Military Justice that went into effect on 1 January 2019, including voir dire and panel selection, plea agreements, and sentencing
- Understand the practical challenges of implementing the Servicemembers Civil Relief Act standards and provisions in courts and receive some recommendations on best practices when assisting a client on an SCRA issue.

**REGISTER NOW**

**Live on Site: Friday, May 17**  
**On Marine Corps Base Quantico**  
**Registration: 8:00 a.m.**  
**Program: 8:30 a.m. – 4:00 p.m.**  
**MCLE Credit: 6.0 (Ethics 1.0)**  
**Live-Interactive Credit: 6.0**