

Drawing Straight With Crooked Lines:

A Conversation With Thomas Ayres, Deputy Judge Advocate General of the Army



BY RYAN CALEF



Three years ago, I interviewed Lt. Gen. Flora Darpino, the judge advocate general of the Army, for *The Federal Lawyer*. Darpino expressed a focus on avoiding brain drain during combat drawdowns in Iraq and Afghanistan. She also explained her focus on addressing a growing concern regarding the handling of sexual assault in the military. With changes in mission over the last three years, how has the focus of the senior leadership of a 10,000-person law firm changed to adapt? To answer this question, I followed up by interviewing Maj. Gen. Thomas E. Ayres, the deputy judge advocate general of the Army. We spoke about how the Army is adapting to a changing battlefield, how his rich personal history shaped his career, and what advice he has for lawyers in practice moving forward.

What's Past Is Prologue

Despite the drawdowns Darpino was concerned with three years ago, today the Army finds itself more engaged around the world. The battlefield itself has changed, with an ever-increasing focus on cyber operations. Ayres likens the current circumstances to before World War I when the world was in the middle of an industrial revolution: from muscle power to machine power. This created a push for dominance in that era's industrial arms race. As World War I progressed, there was a massive change in warfare as the industrial revolution led to the advent of modern war technology. Society witnessed an evolution from the Wright brothers to the first attack aircraft and from trench warfare to the birth of tank warfare.

Ayres observed that cyber security is changing the information revolution. Cyber activities are used to control the rise of state and non-state actors engaging in cyber operations. In a large-scale conflict, these areas will experience massive growth, along with robotics, drones, and an increase in electronic and counter-electronic warfare. How do judge advocates apply the law of war and the rules of force to a cyberspace war? While there are a few individuals working on this at the national level, the potential for growth is huge. How do you make our armed forces ready for a large-scale conflict in the information age? Encourage expertise and specialization of attorneys in this new and exciting area.

Another area Darpino discussed was how to handle sexual assault

in the military. This remains a problem for the services. As the armed forces, as a whole, adapts to societal changes and works to wade through these issues, how do they protect service members? One such innovation is the special victims' counsel. The Army is developing an entirely different field of law where victims of sexual violence will be assigned to and represented by military counsel recognized by the courts as legal counsel, thereby ensuring attorney-client privilege. This is a relatively novel approach and provides for increased support for victims and their rights during a criminal and civil process.

Camaraderie and Crooked Lines

Ayres was introduced to military life by his father, who served and retired from the Army. While initially more interested in outdoor and agriculture work, a football recruiter influenced Ayres to attend the U.S. Military Academy in West Point, N.Y. While he only spent one year on the football team, his career in the military was set. Ayres credits the values learned at West Point as having a good influence on his life. "One thing you learn at West Point is [that] leadership is not about tyrannical leadership but, rather, leading by example," said Ayres, quoting from the 1820 disciplinary code still in use today. "West Point teaches more than traditional leadership in the profession of arms, but [also] how to motivate, influence, and guide young soldiers to perform their very best."

Ayres said he never intended to become an attorney or to attend law school, but that a chance encounter changed the course of his life. While serving as a captain in Italy, he was asked to sit on a court-martial panel for an assault case. He became fascinated by the back and forth of the attorneys. He was intrigued by the objections by counsel and the ruling by the judge. The panel led to a chance encounter with his former West Point law professor, Lt. Col. Thomas Brown, who was the deputy judge advocate on post. Brown told the young captain that the job of the prosecutor was an important duty and obligation. He said the service needed smart soldiers to participate in the Funded Legal Education Program. Ayres signed up.

After attending law school at the University of Pennsylvania, Ayres joined the JAG Corps as a prosecutor. While he hoped to remain a prosecutor, his legal mentors encouraged him to take on a new assignment and broaden his practice because, he explained, "At some point you need to become more broadly skilled, supervise, and take on a leadership role." This led to a role in environmental litigation, representing the Army around the country. This role cemented his choice to remain in the Army. During a case involving the burning of chemical munitions, the Army hired outside counsel. Ayres worked as a junior major with a senior partner at a large outside firm. During the preparatory phase, depositions, and a five-week trial, he observed a very adversarial process in civilian practice. For him, the Army "was a client he loved, a practice he enjoyed, and [it had] a great sense of camaraderie between attorneys." Ultimately, he observed, "God writes straight with crooked lines. You need to be open enough to listen to senior leadership. One thing good about service is people want to see you succeed. You are part of a team and continuing to be open to listen to others who are vested in your success. A camaraderie unlike anything in the civilian sector."

Protect the Process

As Ayres moved through the ranks, he embraced his leadership role. He mentored soldiers by providing guidance in problem-solving and how to handle complex matters. He was very satisfied watching younger lawyers grow and develop. As Ayres grew as a leader, the role of attorneys in the military changed as well. In the early '90s, attorneys had a limited, secondary role in operations. After the Gulf War, with missions in Somalia, Bosnia, and Kosovo, attorneys became an integral part of the process, establishing their credibility to leadership. Commands became interested in having attorneys involved in planning, realizing that attorneys had become a force multiplier. This is equally valid guidance in building strong client relations in civilian practice.

Ayres' role in the 18th Airborne Corps after Sept. 11, 2001, gave him the opportunity to observe the evolution of the practice of law during high-intensity operations. By March 2002, he and his command were in Afghanistan. The role of a senior attorney in combat is similar to that of a general counsel in a large corporation: "Protect the command and commander," Ayres said. "When in an operational unit, you are trying to determine a commander's intent and meet his intent, getting to yes, without ever compromising your moral integrity. Attorneys are uniquely positioned on the staff to say no and hold the command accountable. Your responsibility [is] to do both." This contrasted with his role as chief judge on the Army Court of Criminal Appeals, where his obligation was to "protect the process."

"As a judge, you are uniquely positioned to protect the process," Ayres said. "Justice demands a protection of the process and must point out where that is not followed. A judge is a demanding role that required digging to understand what the law and process requires."

Contribute and Stay Challenged

While his father served only 20 years before retiring and embarking on another career, Ayres felt compelled to continue his service after he completed his 20 years in May 2004. He felt an obligation to continue to serve since the country was still at war. Ayres never focused on advancement or career progression; he took jobs he enjoyed doing. He encourages everyone to take roles where you think you can contribute and be challenged. He was rewarded for his efforts, selected for one of the few general officer opportunities for lawyers in the military. He described his selection as a lightning strike, the same language used by Darpino during her interview three years before.

Looking toward retiring in the summer, Ayres reflected on the next phase of his career and life. His primary focus is to keep his family at the forefront. Commenting on his son, "It is not in spite of the hardship of public service. Kids see your commitment to public service and a dedication to public good. They learn and adopt these values." Ayres sees an opportunity to continue to take on challenges and solve complex legal issues for an organization he believes in. He sees himself helping companies learn from compliance, correct it, and move forward. This is good advice for any attorney looking for an opportunity to make a difference. ☺

Capt. Ryan Calef focuses on cyber security auditing in the financial industry and serves as a judge advocate in the Army.