



# A Week at the





# WAR COLLEGE

**A MEDIATOR'S MEMORIAL DAY REFLECTION** SIMEON H. BAUM

## An Unexpected FBA Benefit

One of the benefits of membership in the FBA is the opportunity to meet impressive and accomplished people and to form lasting friendships. I never could have imagined that one consequence of these friendships was that I would spend a week at the U.S. Army War College in Carlisle, Pennsylvania, attending its National Security Seminar (NSS) with a number of other civilians and several hundred colonels from the United States and 67 other countries.

At a cocktail party during the previous FBA annual meeting, I heard the FBA's past president, Col. Bob DeSousa, talk with great enthusiasm about entering a new chapter in his life. Bob, who is a JAG colonel with the National Guard and who works as state director for Sen. Pat Toomey of Pennsylvania, had just begun a year's course at the U.S. Army War College. Each year, several hundred colonels who are in the top 5 to 9 percent of their military officer cohort, take a one-year course that is the prerequisite for advancing further in leadership roles in our armed forces. While not surprising that our fearless leader, Bob, had made it into this august group, it was impressive nonetheless. Over drinks, Bob marveled

at this late-in-life opportunity to study Thucydides's *The History of the Peloponnesian War* or to read and discuss Carl von Clausewitz and Sun Tzu.

Perhaps I showed a bit of enthusiasm too—after all, classics and philosophy were involved. The next time I saw Bob in New York, he asked me if I would be interested in attending the War College myself. I was honored and knew from the awe-laden tales told by my father-in-law—who fought with the 82nd Airborne during World War II and who had attended the NSS week a few years ago—that this was an opportunity to be seized. I applied and, along with two other friends of Bob, was invited to attend.

## Awe-Struck Anticipation

In advance of the trip, I tried to learn more about what we would be studying. Now, I have had a fairly diverse experience as a litigator for more than 30 years, and as a mediator in more than 1,000 matters over the last 20 years, including business disputes, IP securities, employment, insurance and reinsurance, real estate, construction, and the like. At times this can produce the illusions of competence or of an understanding of the world. Yet it dawned on me with increasing force that I would be completely out of my depth at the War College. I had never served in the armed forces, and my work involves civil matters, not foreign affairs or domestic security. Responding to my cry for help, Bob sent me an overview of his year, but no reading list. The year's courses covered Strategic Thinking, Strategic Leadership, Theory of War and Strategy, National Security Policy and Strategy, Defense Management, Theater Strategy and Campaigning, a Regional Studies Program, and more.<sup>1</sup> Now I knew I was in trouble. When I followed up for recommendations of what to read to prepare, War College Col. Mike Phillips told me just to read the newspaper daily, with interest.

## Arrayed at Camp Hill

It was with some trepidation that I arrived for a week at the War College on June 1. The Army hosted more than 100 civilian invitees at a local Radisson. We had the chance for an icebreaker the night before class started. One could see that this was a diverse and interesting group. There were a good number of lawyers and folks from the Hill—congressional staffers and strategic advisers—as well as business leaders, government contractors, journalists, religious leaders, policy wonks, and nonprofit representatives. Clearly, a conscious effort had been made to create a dialogue involving diverse perspectives.

The War College program was designed to groom Bob and his colleagues to serve as strategic advisers. They had engaged in a deep study that would aid them in arriving at recommendations that could assist and influence policy makers in Washington, D.C. The study could also help them if, instead, they took command positions, which seemed to be what many of the students would have preferred. But for this year's core mission of training strategic advisers, these colonels would have to be able to communicate effectively with policymakers who did not have the same training and experience and who might be ignorant of military strategy, doctrine, operations, and jargon. So, for the final week of their year, we outsiders were brought in to give the students an opportunity to communicate effectively with outsiders and to gain exposure to the widely divergent views of people outside the military framework of ideology, experience, and commitments.

As a mediator, much of my own efforts involve bringing together people with divergent views, values, and interests, fostering dialogue and hoping to build mutual understanding and a broadening of perspectives. It was amazing to see this effort mirrored in the U.S. Army. Outsiders might think of the armed forces as tending more toward a monolithic mentality. Let's face it: When one is in the midst of a military operation, then unified action—carrying out the group's purpose efficiently and with singular will—is the need. It is a matter of life and death. There is little time for speculation or questioning in the heat of battle. The colonels who made it to the War College were, by and large, people who had proven themselves good at executing orders. They knew how to manage and direct



Col. Robert J. DeSousa and author, Simeon H. Baum, standing in front of Root Hall by Bob's Class Gift, a torch named "Rigor."

those under their charge, how to read a situation, and how to plan and adjust plans to execute their commander's intent. They had internalized the norms and rules of their organization and were heavily identified with the group to which they belonged. In short, this excellence in achievement could also be a powerful force for "group think."

Now, for the last year, as part of their intensive study, these same high achievers were not only being taught a deeper version of what they already knew—strategic operations and planning—but also were being encouraged to think reflectively and critically and to communicate effectively with policymakers. Effective communication requires understanding of not only one's own subject but of the listener, as well. Similarly, providing good and deep advice on military matters requires understanding the role of the military in the context of the broader society—in our case, a constitutional representative democracy. And, for strategic advisers to render appropriate advice on war, it requires an understanding of the uses and causes of war, assuming our purpose is, to quote the lawyer and former secretary of war under presidents William McKinley and Theodore Roosevelt (under whom he was named secretary of state), Elihu Root—who is featured on the War College's wall—"not to promote war, but to preserve peace."

## Welcome to the War College

With this in mind, bright and early Monday morning, four busloads of civilians were transported from Camp Hill to the 500-acre Carlisle Barracks, home of the U.S. Army War College. When we arrived, we

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were greeted by our escorts—each of us was assigned his or her own colonel—who were arrayed in front of Bliss Hall, dressed in full military regalia. My escort was none other than Col. DeSousa himself, which dramatically enhanced the week's experience. For those of us who know Bob, he is nothing if not organized. Rumor has it that he even made FBA board meetings end on time. Throughout the week, Bob was my Virgil, guiding my every step. Even better than Virgil, who moved Dante from shock to surprise, Bob gave me a head's up on everything, from plans for the next meal or event to the proper attire for each activity. We should know from the history of uniforms that the armed forces pay attention to attire. Bob's level of organization mirrored that of our War College hosts, who provided us with all sorts of materials laying out the plan for the week, including a little white booklet. At the back of the booklet, a code identified the type of attire expected for each event in a day. The FBA could take a lesson from this sartorial advice for our events.

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### **Col. Chuck and Seminar Seven**

The four days of the NSS program were divided into large lectures held in the Bliss Hall Auditorium and smaller seminar sessions held in separate classrooms. Twenty-five seminar groups, each made up of 16 colonels, had studied together for the year. For NSS week, six outsiders were added to each of these groups. I was very fortunate to join Bob's group, Seminar Seven, and not only because of Bob. The group was led by Chuck Allen, a retired colonel who now taught full-time at the War College, concentrating on organizational behavior.

His job for the week was to facilitate our discussion, as we considered foreign affairs, domestic security, the role of the military, and a variety of related issues, all within the context of strategic thinking and policymaking. I spend a fair amount of time teaching alternative dispute resolution (ADR) to lawyers and law students and training mediators, not to mention facilitating discussions during mediations. I therefore have grown very sensitive to both the art of facilitation and the didactic challenges of maintaining an open, thoughtful, critical, and rich discussion that includes all, keeps moving progressively, and generally stays on topic. Chuck was a supreme master of this art. He saw to it that the outsiders were included and brought out the views of all throughout the week. He likened his role to flippers in a pinball machine, but it was much more than that. Chuck had a wonderful way of summarizing what was being said and then laying out a rubric from strategic thinking that would lead the discussion to a deeper level or place it in a helpful context. We will look at some examples of these capping comments in a moment.

Another of Chuck's contributions was his handling of acronyms. Whenever one of his colonels used a military acronym, Chuck would repeat it, signaling that translation was required. This showed recognition and respect for the outsiders in the group and was excellent training for strategic advisers who would be speaking with civilian policymakers. Too often, use of acronyms signals insider knowledge. It suggests that the user has a special knowledge that the listener lacks, setting up a hierarchy of the cognoscenti and the others. Chuck keenly kept his colonels communicating in a way that would imply equality of all participants by the unpacking of any acronym. In addition, acronyms can lock the user into his or her own box of specialized knowledge. While they might be useful shorthand when complex concepts are being interwoven and juggled, they also create the false sense of a closed set. This solidifies and freezes thought, detaching the thought structure from the broader personal, social, and environmental reality from which it derives and to which it relates. Chuck's insistence on natural language thus promoted openness both in the thinking and awareness of the speaker and the intergroup dialogue. It was deeply impressive to see this cultivated in our military leaders.

The military and civilian members of Seminar Seven were an impressive bunch. One of the rules of the week was that we were free to share with outsiders the issues and thoughts that were raised during our discussions, but without attribution to speakers. There is

no harm, however, in describing the range of branches from which these colonels came. The 82nd Airborne, a cybersecurity unit, psychological operations, Special Forces, Marines, Air Force, artillery, reconstruction, human resources, the National Guard JAG (we know who that is), and others were among them.

Also in my group were three foreign officers—from Israel, Afghanistan, and Cambodia. The War College admits about 70 foreign officers each year into this yearlong program. This year's foreign students came from 67 different countries. A good number of its foreign graduates move on to significant roles of military leadership in their home countries. For instance, the current Egyptian leader, Gen. Abdelattah Said al-Sisi, attended the War College, as did Sedki Sobhi, who succeeded him as minister of defense and commander-in-chief of the Egyptian Armed Forces. Whatever the future divergence in national policies, there is real value to the United States in having friendly leaders around the world who have developed deep and lasting relationships with their War College classmates and have benefited from this education and learned some of our values and principles.

### The Bird's-Eye View from Bliss Hall

Each day's main lecture followed a different theme. Day One set out the theme of Strategic Planning, featuring four-star general and TV personality Barry McCaffrey, who provided an overview of U.S. power and national security. Day Two, styled "looking out," featured a panel of War College experts who delivered briefings on Russia,



Simeon Baum standing by monument for nurses and enlisted men who lost their lives in the World War.

China, and Afghanistan and Pakistan. During the afternoon of Day Two, we were given the option of attending programs on Africa—U.S. opportunities and threats; China and the economy; drug trafficking in Latin America; and critical thinking. Day Three, "looking in," featured Rachel Maddow, who drew on her recent book, *Drift*, to present thoughts on the disassociation of the U.S. military action from the U.S. people. That afternoon we had the extraordinary treat of touring Gettysburg with professors from the War College—strategists, military historians, and developers of military doctrine—as our guides. Day Four, "looking forward," presented Peter W. Singer, an expert from the Brookings Institute, who spoke on cybersecurity.

Given the length of this program, for our purposes we will look at a few highlights.

First, the definitions of strategic planning provided clarity on approaches we all use during times of complex decision-making. One approach was to see strategy as a balancing of ends, ways (ways of making use of resources), and means (resources). This balancing act takes place in a set of circumstances that—having discussed the problems with acronyms, here is a great one—can be characterized as VUCA: volatile, uncertain, complex, and ambiguous. Factoring in risk and relating it to policy in a context of shifting circumstances and shifting goals is all part of the challenge of strategic decision-making. This sounds not unlike many of the contexts and ways choices are framed in complex commercial mediations or negotiations.

### U.S. Power and National Security

The next Bliss Hall speaker was retired four-star Gen. Barry McCaffrey, who served as drug czar under President Bill Clinton. Gen. McCaffrey, who sounds a lot like Jimmy Stewart, presented a sweeping talk on U.S. power and national security. His observations ranged from noting the need to budget for a minimum of 15 years to build next-generation technologies and defining strategy as conceptual architecture with the resources to make it happen. He identified a set of global security challenges, including Chinese naval and air power, North Korea's threat to Japan and South Korea; Iran's threat to the Persian Gulf states; Russian border expansion; civil war and failed states; cyberthreats to the U.S. infrastructure and institutions; proliferation of nuclear, biological, and chemical weapons; international terrorism; drug trade in Afghanistan; international crime and drug cartels; and humanitarian crises and refugees. Within minutes, I was ready to retreat to the nearest well-stocked shelter—preferably one with an ample supply of Talisker.

Following the talk, we bunkered down in our seminar rooms. We engaged in a heady reflection on the meaning of strategy as opposed to operations and tactics. These distinctions can apply to negotiations as well. Strategic thinking was seen as requiring the application of both critical and creative thinking. It requires the development and assessment of systems, ethical considerations, and considerations of timing and environmental factors.

### Fear, Honor and Interest—Thucydides Meets "Getting To Yes"

As discussion related to world events, our facilitator, Col. Chuck, set out a rubric that gave structure to our thinking for the next few days. He summarized Thucydides's classic explanation of the *casus belli*, the three chief, underlying reasons for war: reasonable fear, honor, and interest. This has real application to conflict in the Middle East. When Israelis respond to missiles launched into their territo-



Documentary evidence that this tale is true.

ry, it is with a sense of existential threat. This is root fear, as well as interest. When residents of Gaza feel trapped by restrictions on movement and inhibitions blocking growth, this is impeded interest and more. For many Muslims to find others in their land is an affront to honor. Long gone are the golden days of the caliphates. Now there is diminished glory. Looking out from ruins and rubble, with limited sense of potential, indeed with hopelessness and despair, the affront to self-worth is a threat to honor.

It is a core principle of the *Getting to Yes*<sup>2</sup> joint, mutual gains, problem-solving approach to negotiation that one should seek options that maximize satisfaction of the interests of all parties. This fits quite well with the Clausewitz model. Another *Getting to Yes* insight is to be soft on the parties and hard on the issues. Being respectful, empathetic, and sensitive to others shows regard for their honor. Avoiding harsh, threatening modes of communication fits squarely with an approach designed not to provoke fear in the other. These days, *Getting to Yes* is basic, required, or recommended reading in most courses and trainings on negotiation and mediation. Interestingly, core strategies and principles for resolving conflict, and making deals, fit hand in glove with principles and strategy concerning the causes of war.

### The Study of War as Study of Peace

I was struck by how the study of war was also the study of peace. In studying how to reverse the causes of war, we study how to create the conditions for peace. From this perspective, a mediator's enterprise—conflict resolution—is in fact continuous with the study of war and the struggle for its termination or prevention.

In another seminar session, Col. Chuck capped another discussion by introducing us to Clausewitz's trinity, presented as government (the rational), people (seen as irrational—the passions), and the military (seen as the genius for getting things done—a genius for execution in both senses of the word). It was Clausewitz who defined war as a continuation of "policy by other means." Again, by showing us the relation of war and policy, Chuck taught the impor-

tance of the ability of his students to communicate with policymakers.

There is a general military concept of commander's intent. Soldiers must follow their superior's orders, but, at times, circumstances and environment create a need to vary from adherence to strictly expressed orders in order to fulfill the commander's true purpose and objective for that operation. The commander of a particular operation, in turn, might be seeking to achieve overall objectives in a given war that might require adjustment to the operation itself. And so it goes up the chain. The war, itself, is carried out to achieve certain policies.

The more one reflects on war and its causes, and its relation to policy, the more apparent it becomes that, from a theoretical standpoint, one might seek to develop policy that obviates the need for war. Indeed, a study of war and utopianism go hand in hand. Thinking in a concerted way about war, it is hard not to find oneself wondering

what the ideal conditions are for preventing the need for the arising of war. Is it the elimination of fear, the satisfaction of interest, and the granting of honor to all? This seems like a potentially productive blueprint for developing solutions to conflict and the building blocks of conditions for a better world.

### A Taste of Presidential Briefings on Russia, China, and Afghanistan/Pakistan — Nostalgic Ambitions, Great Game, and Win/Win P'eng Pong

The second day's briefings on Russia, China, and Afghanistan and Pakistan by three world experts in these areas were outstanding. It felt as if we were flies on the wall in a D.C. or Pentagon think tank.

Jim MacDougall, the chairman of the War College's department of national security and strategy, introduced the program. He made a point of saying that we should use a map with no center to avoid bias in the ways we think of the world and the relationships among nations and regions. The first speaker, Dr. R. Craig Nation, director of Russian and European studies at the War College, made every sentence count. He offered a tentative solution to Winston Churchill's description of Russia as a "riddle wrapped in a mystery inside an enigma"<sup>3</sup>—Russian interests. He gave a sensitive and balanced description of Russia as a historically authoritarian country torn between nostalgia for its actual or imagined past glory and its desired return to power. He reflected on Russia's posture reaching into both Asia and Europe, with reference to its longtime complex of wishing to be part of, and even internalize, European culture, while taking pride in and expressing indigenous Russian culture.

The next speaker, Larry Goodson, cast his thoughts on Afghanistan and Pakistan in light of the 19th-century concept of the Great Game, originally attributed to Arthur Conolly and early on used to describe the play of British/Russian power politics in Afghanistan. He and others say that the Great Game continues, whether the players are now the U.S., Russia, and China, or others, and whether its field of play may be extended to Central Eurasia. When superpowers act, small powers may suffer.



Colonels and their guests deep in thought in Seminar 7.

David Lai, a research professor of Asian Security Affairs at the Strategic Studies Institute, next spoke on the continuing rise of China. He observed that by 2024, the positions of the U.S. and China as global economic leader will be inverted. The next 10 years is a time of flux. Times of flux are times of potential violence, as those losing power seek to hold on or as those gaining power seek the benefits and protections that should accompany it. Given this critical juncture, he recommends that the U.S. negotiate directly with China as superpower rather than simply play the irritating, indirect game of making strategic alliances with its smaller neighbors.

The notions of the Great Game and Dr. Lai's comments about the need for great powers to recognize one another for some reason reminded me of some lines from Kuo Hsiang's third-century commentary on the Chuang Tzu:

A big thing necessarily comes about in a big situation, and a big situation necessarily comes about with a big thing. It is because of principle that it is naturally so. We need not worry that this will fail. Why be anxious about it?

The flight of the fabulous (*p'eng*) bird may take half a year and will not stop until it gets to the Celestial Lake. The flight of a small bird takes only half of the morning and stops at getting from tree to tree. So far as capacities are concerned, there is a difference. But in adapting to their nature, they are the same.<sup>4</sup>

A message from this nearly 2,000-year-old text, in conjunction with Dr. Lai's advice and Great Game observations, might be that we need to be appropriate for the activity, field, and player involved in a particular action. There is a difference between actions among large players and incrementalism of smaller actions involving smaller players.

One drawback of the Great Game theory is that its strategic framework is fundamentally competitive. I was left wondering whether a collaborative model, along *Getting to Yes* lines, where

powers seek to meet the interests of all, might still be helpful even among giant players. William Ury wrote a sequel to *Getting to Yes* entitled *Getting Past No*.<sup>5</sup> The sequel addresses the "game" from competitive to joint, mutual gains, and collaborative problem solving, what does one do when one's counter party continues to adhere to the old, competitive model. We naturally tend to think that all of us are living in the same time, e.g., 2015, at the time of this writing. Yet, based on behaviors, expressions, and outlooks, it can appear that the views of some parties are more characteristic of different times in history. In the context of these War College talks, one might wonder whether certain nations are living old Great Game theory, while others might be inclined to shift to a Fisher/Ury type model. Can we effectively apply Ury's *Getting Past No* recommendations:

not to react, to recognize and assess the other party's perspective, to reframe

the dialogue in a constructive manner, to help the counter party find a face-saving way to meet its own interests in a manner not adverse to one's own, and to use power to educate ("walk softly but carry a big stick")?

### Tips on Critical Thinking for Policymakers, Lawyers, and Negotiators

That afternoon, we were given a set of options for breakout lectures. I chose Steve Gerras's overview of his course on Critical Thinking. Dr. Gerras, professor of behavioral sciences at the Department of Command, Leadership, and Management at the War College, put critical thinking in the context of various key leadership attributes, which he said include extraversion (energy and assertiveness), conscientiousness, cognitive ability, team building, and judgment. He defined judgment as a cognitive process that leads to a decision. The focus of Dr. Gerras's remarks was on critical thinking and the factors that might affect sound judgment. It was fascinating to see, again, a correspondence between thoughts for those studying war and for those who work in the ADR field. Over the last several years, gatherings of larger ADR bar sections offering multiple CLE programs or trainings include components on many of the elements that Dr. Gerras identified as affecting critical thinking. For instance, we frequently discuss how vestigial psychological mechanisms, which protect our ego and set up defenses, hurt our ability to make sound judgments or create effective deals. Gerras, too, pointed out that people are hard-wired to win. We tend to operate with confirmation bias, protecting our self-esteem. Several of the last ADR trainings I attended (not to mention my own commercial mediation training course) address how the amygdala, which is found in the brains not only of humans but also of primates, mammals, and even lizards, can kick in as a defensive reflex when we find ourselves in conflict situations. This generates the flight/fight response. It can be very helpful in the wild, conserving energy and supplying heuristic shortcuts. We quickly categorize, but at times this can lead to mistaken judgment. Dr. Gerras laid out a list of psychologically determined cognitive bar-

riers, including over-confidence, group think, confirmation bias, and loss aversion, as well as a number of logical and rhetorical fallacies with which we, as lawyers, are more familiar—e.g.: *ad hominem*, false dichotomy, unqualified authority, false cause, appeal to fear, appeal to masses, slippery slope, weak analogy, and red herring.

All in all, it was a good afternoon for retooling the old thinking cap. When these breakout sessions were done, we returned to our small seminar groups and traded notes.

### **Rachel Maddow Meets the Colonels, Who Get the Drift**

The following day proved that the War College experience was intended to generate fresh thinking. Rachel Maddow, the liberal MSNBC talk show host, was our featured plenary speaker. She presented the message of her book *Drift* in a thoughtful and compelling manner. She began by showing her respect for the military—letting us know that her father was a captain before he worked as a lawyer—and acknowledging that she knew nothing of the combat challenges through which the 400 colonels in the room had lived. All of us were impressed by her humility, as well as by her intelligence and mastery of critical information. Her thesis was that over the last 30 years or more, America has moved from the intent of the 1973 War Powers Resolution—which was intended to shore up the need for congressional consent to declarations of war and U.S. use of force abroad. Maddow tracked the way that, from President Ronald Reagan's time forward, the executive branch has launched and reinforced undeclared wars around the globe. This, coupled with the professionalizing of the armed forces and our dependence on volunteers rather than a draft, has generated a disconnect between the American people and its military elite and the wars they fight. This disconnect is further augmented by the increased use of private military contractors. She notes that the death of four civilians employed, e.g.,

by Blackwater does not get the same press and public identification and grief as would the death of U.S. soldiers, especially if they had been drafted. Maddow traces back to Jefferson and the constitutional founders the view that congressional inefficiency in declaring war and raising an army is just what the doctor ordered. While he valued a well-trained and well-armed militia, Thomas Jefferson in 1789 dramatically reduced the standing army—and saw standing armies as an instrument dangerous to the rights of the nation. There was a discomfort with the wars of kings, the easy launching of ships and men to fight foreign wars. It should be hard to decide to go to war; that, says Maddow, is how our forefathers saw it and what is best for the country. While a professional army might be more effective than a group of newly minted backwoodsmen and farmers—or today's bankers, salespeople, factory workers, and cashiers—the less representative military is the more likely expression of the national will.

Maddow's critique of this form of alienation stirred a great deal of comment, both during the plenary Q&A and back in our seminar rooms. But her remarks were received with universal respect and thoughtful consideration.

### **Walking Gettysburg With a Military Historian and Tactician—Lessons in Trust, Initiative, Commander's Intent, Illusion, and Lady Luck**

Following group reflection on Maddow's talk and our regular lunch in the officer's mess hall came what might for many have been the highlight of NSS Seminar week: a tour of led by military historians. Seminar Seven was assigned to Paul Jussel, a War College professor who specializes in, and keeps current, U.S. Army military doctrine. Doctrine is the set of principles, rules, or instructions for the handling of different challenges in the field.

It was amazing to hear a blow-by-blow description of the Gettysburg battles through Dr. Jussel's eyes. We traveled the field tracing



the action as it progressed in significant ways from hour to hour and day to day. One of the most memorable tales was the story of Little Round Top, a hill that was pivotal to victory at Gettysburg. It had a patch of open ground that could have given an advantage to the army that held it. The Union commander, Maj. Gen. George Gordon Meade, sent his chief of engineers, Brig. Gen. Gouverneur K. Warren, to assess Union coverage of Little Round Top. Warren, to his shock and dismay, discovered that the hill had been abandoned as the result of larger troop movement as Maj. Gen. Daniel Sickles had pulled his men to engage the Confederate troops and was not able timely to replace Maj. Gen. John Geary's men, who were ordered elsewhere. Seeing the hill abandoned, Brig. Gen. Warren called upon Col. Strong Vincent to cover the area. Interestingly, Col. Vincent had orders from his immediate superior to stay put elsewhere. But he permitted those orders to be countermanded by Brig. Gen. Warren on the theory that Brig. Gen. Warren, as Maj. Gen. Meade's number two, had a better understanding of the overall "commander's intent," which justified this reversal. Shifting orders, delivered by Brig. Gen. Warren's courier to Col. Vincent in a shifting terrain, and the decision of Col. Vincent to adjust, saved the day for the Union.

There is more on initiative in this story. Among the regiments in Col. Vincent's brigade was the 20th Maine, under the command of Lt. Col. Joshua L. Chamberlain. Lt. Col. Chamberlain had been a rhetoric and modern languages professor at Bowdoin College, Nathaniel Hawthorne's alma mater. When he requested leave from the college's administration to join the war, he was denied. So, instead, Chamberlain took a sabbatical and joined the Union army!

By the time of the Gettysburg battle, Lt. Col. Chamberlain's brigade, which began with 1,621 men, had shrunk to 266 soldiers. This group was supplemented by the 120 soldiers remaining from the 2nd Maine. They were ready to mutiny, on the grounds that they should fight only under their own brigade's flag. But since Lt. Col. Chamberlain came from their hometown (and had orders to shoot any mutineers), they complied.

Deploying his regiment to the top of Little Round Top, Col. Strong Vincent ordered Lt. Col. Chamberlain to use his 386 men to hold the eastern, extreme left position of the Union's line, "and to stand against all hazards." This translates to stand or die.

Lt. Col. Chamberlain had his soldiers fan out to the east and eventually form a northerly right angle at the extreme eastern flank. He ordered Company B, led by Capt. Walter G. Morrill, to move ahead to the left-front flank as skirmishers, giving Capt. Morrill full discretion to do as he saw fit as the occasion arose. This grant of discretion and trust was critical to the later Union success in this battle.

Joining Capt. Morrill's Company B was a 14-man squad of crack-erjack sharpshooters, armed with .52-caliber breech-loading rifles from Maj. Homer Stoughton's 2nd U.S. Sharpshooters.

This array of soldiers from different regiments or brigades, wearing uniforms with different colors or markers, produced a favorable, unintended consequence. When the critical time came in battle with the Confederates, Lt. Col. Chamberlain's group appeared to be at least a couple of regiments, rather than just one brigade. Like various animals that expand or create the illusion of strength—the pufferfish, cane toad, cobra, praying mantis, Io moth, and frilled lizard—this appearance of greater strength had a decisive impact on the Confederates.

Maj. Gen. John B. Hood, leading the Confederates at Gettysburg, directed Col. William C. Oates to take two Alabama regiments and

capture Round Top. Under heavy fire as the Confederates advanced uphill, threatening to outflank the 20th Maine to the east, Lt. Col. Chamberlain's troops held firm. The bravery of young Andrew J. Tozier, the color sergeant, who held firm under withering fire, later earned him the Medal of Honor. When it appeared that Lt. Col. Chamberlain's men had run out of ammunition, he ordered them to fix bayonets. This led to an immediate charge, perhaps prompted by Lt. Holman Melcher of Company F, on the reloading Confederates downhill. As the Confederates continued to advance, Capt. Morrill's B Company, with its cadre of sharpshooters, who had outflanked them on the east, rose up from behind a rock and commenced fire. Fearing that they were being assaulted by at least two additional Union regiments from the rear, the Confederates retreated. Many—including Lt. Col. Chamberlain, who wrote a glowing tale of this battle and later went into politics, serving as governor of Maine—consider it one of the, if not the single most, decisive battles of Gettysburg (and the Civil War).

It is amazing to see the roles of trust, illusion, bravery, initiative, flexibility, judgment, and fortune as they play out in life-and-death battles that so profoundly affected the fate of those involved, and of this nation.

## Cybersecurity — Picture This

The following day was our wrap-up. After reflecting on the Gettysburg experience in our seminar, we attended the final plenary session. Dr. Peter W. Singer of the Brookings Institute presented on cybersecurity. He offered a host of staggering statistics on the extent of our dependence on the Internet, and on the multiplicity of cyberthreats and daily cyberattacks. One unintended lesson from this talk was his use of images. He had a running PowerPoint presentation of cyber- or computer-related images. He said that studies show that people remember more when images are available for association with the information presented. This could be a good tip for FBA presentations.

## A Salute to Bob DeSousa and the FBA

As the NSS week came to a close, I believe all involved realized that we had been through an extraordinary experience. Perhaps there would begin lasting relationships with folks we otherwise never would have met. It certainly provided an entirely new context for the thinking of this mediator. And I owe it all to the FBA cocktail party where our then-President DeSousa marveled about the luxury and fascination of reading Thucydides and Sun Tzu. ☺



*Simeon H. Baum, litigator and president of Resolve Mediation Services Inc. (www.mediators.com), is a member of the FBA Board of Directors and former chair of the FBA's ADR section and former president of the SDNY Chapter. He has successfully mediated more than 1,000 disputes. He has been active since 1992 as a neutral in dispute resolution, assuming the roles of mediator, neutral evaluator, and arbitrator in a variety of cases, including the highly publicized mediation of the Studio Daniel Libeskind–Silverstein Properties dispute over architectural fees relating to the redevelopment of the World Trade Center site, and Donald Trump's \$1 billion suit over the West Side Hudson River development in New York. For two decades, he has played*

a leadership role in the bar relating to ADR, including service as founding chair of the Dispute Resolution Section of the New York State Bar Association, chairing the ADR Committee of the New York County Lawyers Association, and serving on ADR Advisory Groups to the New York Court system. He was selected for the 2005–2015 Best Lawyers and New York Super Lawyers listings for ADR, and as the Best Lawyers' Lawyer of the Year for ADR in New York for 2011 and 2014. He teaches on the ADR faculty at Benjamin N. Cardozo School of Law and is a frequent speaker and trainer on ADR. © Simeon H. Baum. All rights reserved.

## Endnotes

<sup>1</sup>Here is a more comprehensive list and description of the year's course load:

Strategic Leadership (SL) — Develops an appreciation for the uniqueness of strategic leadership. Builds on strategic thinking and examines environmental scanning, managing change, culture and the profession, strategic and ethical decision-making.

Theory of War and Strategy (TWS) — Emphasizes the theoretical approach to war and strategy. Provides key concepts for analyzing conflict and cooperation among nations as well as the causes and use of war.

National Security Policy and Strategy (NSPS) — Examines the U.S. governmental process for integrating, balancing, and synchronizing the instruments of national power in promoting and protecting national interest.

Defense Management (DM) — Addresses how strategic guidance is employed within Department of Defense systems and processes to develop trained and ready combat forces.

Theater Strategy and Campaigning (TSC) — Critically examines the application of joint doctrine in planning and conducting unified and multinational operations. Evaluates service roles, capabilities, and cultures in providing ready forces to the Unified Commanders.

Regional Studies Program (RSP)—Students choose to study U.S. national security issues in relation to one of seven regions (Africa, Middle East, Asia-Pacific, Americas, Europe, Russia-Eurasia, and South Asia).

In addition to the above-required courses, the students also took on a special strategy research project, one or more special programs, and a series of complementary programs.

<sup>2</sup>*Getting to Yes: Negotiating Agreement Without Giving In*, Roger Fisher and William Ury (1981). (Second Edition, with Bruce Patton, 1991).

<sup>3</sup>Winston Churchill, "The Russian Enigma" speech, Oct. 1, 1939, (transcript), Churchill Society, [www.churchill-society-london.org.uk/RusnEnig.html](http://www.churchill-society-london.org.uk/RusnEnig.html) (accessed June 8, 2015).

<sup>4</sup>Tr. Wing-tsit Chan (1963), *A Sourcebook in Chinese Philosophy*, Princeton University Press, 326.

<sup>5</sup>Ury, William, *Getting Past No: Negotiating with Difficult People*, (New York: Bantam Books (1991)).

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