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Commentary & Reply

Detainee Operations and the Law of War

To the Editor:

Michael Hoffman's article, "Rescuing the Law of War: A Way Forward in an Era of Global Terrorism" (*Parameters*, Summer 2005), contains so many fundamental flaws in legal scholarship, errors of basic constitutional law, and factual fallacies that it verges on Administration propaganda.¹

Allow me to provide three examples of significant distortions. First, Hoffman argues that "*Rasul v. Bush* . . . establishes that unlawful belligerents have a right to challenge their detention in the federal court system." I was heavily involved in all of the *Rasul* litigation, and that is not what the case was about, nor is it what the Supreme Court decided. *Rasul* held that the prisoners (lawful and unlawful belligerents) at Guantanamo (GTMO) had the right to challenge their detention by way of *habeas corpus* since (a) US *habeas corpus* law applies at GTMO and (b) the petitioners (prisoners) were claiming that they were not unlawful belligerents in the first place. Indeed, Shafiq Rasul, the lead petitioner in the case, was released during the litigation *without charges*, information that should have at least been included in an endnote. That omission is seriously misleading, especially since most of your readers are not lawyers. By creating a penal colony at a place where US law applies, the Supreme Court in *Rasul* simply held, the President could not bar a prisoner from contesting his imprisonment—the very purpose of *habeas corpus*.

Second, Lieutenant Colonel Hoffman states, "There is no treaty that covers . . . situations where privately organized armed forces cross international borders, stalk international sea lanes, or strike at international aviation for their own ideological or political purposes." This is both inaccurate and highly misleading. There are multiple treaties and specific US criminal statutes that govern such conduct, whether by "mercenaries" or others, which a modicum of legal research would have shown, and criminal prosecutions under their provisions have been undertaken by US prosecutors for years.²

1. My qualifications to comment include five years on active duty and 21 years in the active reserves with the US Air Force as a Judge Advocate General officer. I co-chair the Military Law Committee of the National Association of Criminal Defense Lawyers and am a member of that association's Committee on Military Tribunals. I have authored numerous "friend of the Court" briefs in all of the so-called "enemy combatant" cases and the major Guantanamo prisoner litigations, and I was listed as an "expert" in the law of war in an *Amici Curiae* brief at the US Supreme Court in the *Hamdi* case.

2. Applicable treaties include the *Convention on Offenses and Certain Other Acts Committed on Board Aircraft* (1969), the *Convention for the Suppression of Unlawful Seizure of Aircraft* ("The Hague Convention," 1971), the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* ("The Montreal Convention," 1971), and the *International Convention Against the Taking of Hostages* (1979). US statutes include *Destruction of Aircraft or Aircraft Facilities*, 18 U.S. Code § 32; *Violence at*

Third, and particularly problematic in the area of “military law,” is the author’s premise regarding the court’s intervention—e.g., “four years ago, the notion that the judicial branch would assert a role in reviewing battlefield capture and detention would likewise have been impossible to imagine.” Any serious student of US military history or military jurisprudence would know that such a claim simply is not true. Since virtually the founding of our republic, our judiciary has taken an active role, as it is constitutionally required to, in “overseeing” improper executive military actions. Indeed, President George Washington was so concerned about scrupulously protecting the rights of “terrorists” during the Whiskey Rebellion of 1794 that he directed a US District Judge and a US Attorney to “accompany the troops” in quashing the rebellion. Those captured were criminally charged and brought before the judge—judicial “intervention” for sure, and at the express direction of the Commander in Chief.

A decade later, in *Little v. Barreme*, 6 U.S. 170 (1804), the Supreme Court was squarely confronted with the issue of Presidential “wartime” actions. In this case, Congress had passed a statute during a maritime “war” with France, specifically delegating to the President, as Commander in Chief, powers to seize (and forfeit) certain ships and cargoes. The President issued an order, ostensibly consistent with the statute. US Navy Captain Little seized a ship pursuant to the Commander in Chief’s order and was promptly sued by the ship’s owners for damages. Little defended on the ground that he was following an express order from the Commander in Chief, while the ship’s owners argued that the order was illegal, that it exceeded the scope of the congressional statutory authorization. The Court, speaking through Chief Justice Marshall, held that the Commander in Chief’s order was indeed illegal, and noted that such an order could never “legalize” an otherwise illegal act.

During and since the Civil War, there have been more than a dozen additional relevant instances of judicial involvement in cases of “wartime” captives.³ One wonders, then, if this is a case of poor scholarship, or if the article just devolves to a promotion of the Administration’s policies. What caught my eye in

International Airports, 18 U.S.C. § 37; *Use of Army and Air Force as Posse Comitatus*, 18 U.S.C. § 1385; *Piracy Under Law of Nations*, 18 U.S.C. § 1651; *Citizens as Pirates*, 18 U.S.C. § 1652; *Aliens as Pirates*, 18 U.S.C. § 1653; *Terrorism Definitions*, 18 U.S.C. § 2331; *Acts of Terrorism Transcending National Boundaries*, 18 U.S.C. § 2332b; *Providing Material Support to Terrorists*, 18 U.S.C. § 2339A; and *Aircraft Piracy*, 49 U.S.C. § 46502.

These are just some of the legal weapons in the US arsenal. Also compare *United States v. Yunis*, 924 F.2d 1086 (DC Cir. 1991), regarding a Lebanese citizen hijacking Jordanian aircraft in Middle East, and *United States v. Yousef*, 927 F.Supp. 673 (S.D. NY 1996), jurisdiction based on the *Montreal Convention*.

3. A sampling includes: *Ex parte Merryman*, 17 Fed.Cas. 144 (C.C.D. Md. 1861) (civilian “prisoner of state”); *Ex parte Vallandigham*, 68 US 243 (1863) (civilian); *Ex Parte Milligan*, 71 US 2 (1866) (civilian); *Ex Parte Quirin*, 317 US 1 (1942) (German “enemy combatants”); *Application of Yamashita*, 327 US 1 (1946) (“enemy combatant”); *Johnson v. Eisentrager*, 339 US 763 (1950) (POWs); *In re Territo*, 156 F.2d 142 (9th Cir. 1946) (American citizen held as a US POW); *Colepaugh v. Looney*, 235 F.2d 429 (10th Cir. 1956) (“enemy belligerent”); *Ex parte Benedict*, 3 Fed.Cas. 159 (#1,292) (N.D. NY 1862) (civilian “prisoner of state”); *Ex parte Field*, 9 Fed.Cas. 1 (# 4,761) (D. Vt. 1862) (civilian “prisoner of state”); *In re McDonald*, 16 Fed.Cas. 18 (# 8,751) (E.D. Mo. 1861) (civilian “prisoner of state”); *Ex parte Weitz*, 256 Fed. 58 (D. Mass 1919) (civilian, habeas granted); *In re Bartolo*, 50 F.Supp 929 (S.D. NY 1943) (civilian); and *Jones v. Seward*, 40 Barb. 563 (NY Sup. Ct. 1863) (suit for false military imprisonment of civilian).

this regard were two phrases: “the executive branch has taken a *gradualist approach* in adopting appropriate rules” (emphasis added), and “the executive branch is best equipped to devise rules for this emerging though not entirely unprecedented problem.”

The claim that the Administration has “taken a gradualist approach” is one of the most disputed issues in all of the GTMO “enemy combatant” litigation. In my opinion, the consensus of the experts in this area, including two US Supreme Court decisions (*Hamdi* and *Rasul*), is that the US government’s approach has been both unprecedented and extremist.

Last, from a US military perspective, there is a serious omission in the article. In the author’s discussion of “paradigms,” there either should be three paradigms rather than two, or his litigation vs. law enforcement construct has a major unelaborated subcomponent. The “missing” component—one of special interest to a military audience—is the use of the UCMJ. For almost 100 years, Congress has given General Courts-Martial the jurisdiction to try persons suspected of violating the laws of war. So, to the extent that any “rescuing” is necessary, the failure to discuss this as a legitimate and available option is inexcusable. The very litigation that Colonel Hoffman bemoans could in large measure have been avoided by simply applying the UCMJ’s provisions to the GTMO prisoners’ cases. That was the holding in the recent case of *Hamdan v. Rumsfeld*, a *habeas corpus* action of a GTMO prisoner actually charged with offenses.

The issue is not whether we treat acts of “terrorism” as criminal acts or acts of war, but what do we do with the “terrorist” once he has been captured? The government’s schizophrenic response, characterized by the *criminal* prosecutions of the 1993 World Trade Center bombers, the 1998 American Embassy bombers, John Walker Lindh, Zacarias Moussaoui, Richard Reid (the shoe bomber), and the “Lackawana Six,” versus creating an unprecedented “enemy combatant” status and a questionable “military commission” process, is the core reason that the litigation lamented by Colonel Hoffman is ongoing. The criminal trial modality—criminally prosecuting terrorists for terrorist crimes—has worked effectively and efficiently. To the extent that perhaps lay jurors would not understand the laws of war, Congress has provided for prosecution under the UCMJ, a proven alternative.

“The second principle” postulated by Colonel Hoffman (p. 31), regarding the extent of executive branch discretion, is simply not accurate. The executive branch’s “discretion” is limited by law—constitutional law, treaty law, statutory law, international law (including “customary international law”), and the law of armed conflict. The unbridled “executive discretion” argument was advanced by the government and *rejected* by the Supreme Court in both the *Rasul* and *Hamdi* decisions.

Whether one is labeled an “unlawful belligerent” or an “unlawful combatant,” the results are the same. The American “customary law of war” is subject to both treaty law and our own US domestic law, and while such persons may not be entitled to Prisoner of War status, international law still governs and protects them. Furthermore, there is an overwhelming recognition that such persons, if

suspected of committing “war crimes,” will be tried consistent with the rights guaranteed under the UCMJ.

Donald G. Rehkopf, Jr.
Lt. Col., USAFR
Attorney at Law
Rochester, New York

The Author Replies:

Along with his colleagues, the author of the letter preceding has achieved remarkable success in pushing back the law of war. Guantanamo detainees are the world’s only belligerents—and the very first belligerents in the history of the world—automatically privileged to file writs of *habeas corpus* and secure assistance of counsel for that purpose. Arguments in his letter underscore the urgency in restoring a law-of-war paradigm.

Lieutenant Colonel Rehkopf gets to the heart of the matter in identifying Guantanamo as a penal colony. It’s not. It’s a military detention center for belligerents captured waging private warfare against the United States. In granting them a broad right of *habeas corpus*, the judicial branch upends centuries of pragmatic experience with the rules of war.

Colonel Rehkopf’s letter cites treaties and statutes drafted for law enforcement efforts against terrorism and its criminal prosecution—but of little value as legal guidance for warfighting. I agree with him on one point: the United States is bound by domestic and international law in determining rules for the protection of captured belligerents. My point is that we’re now starting to apply the wrong law, and this invites problems.

Our efforts in Afghanistan and Iraq plainly follow a military model, and the rules of war apply, not those of law enforcement, criminal procedure, or due process. From 1775 on, US forces have followed the rules of war in protecting and controlling captured members of opposing forces. Why shouldn’t they continue to do so? In those few (earlier) cases involving judicial review of military practice and captured belligerents, the courts ultimately deferred to the executive branch. They didn’t assert a de facto law-of-war oversight role then, but they’re developing an appetite for one now. Early results are disquieting. In contrast to these bold moves, the executive branch has moved with care, clearly recognizing there are circumstances where it has to draw legal distinctions between unlawful belligerency waged by a private foreign army, and alleged criminal conduct by sympathizers and members captured or arrested in the United States.¹

The precedents cited in my article were carefully chosen. They represent sources offering a realistic handle on the law of war, and insight on why the judicial branch has played a minimal role in its development. State practice and oper-

1. For any reader who may be curious, the author is a private citizen, has no ties to the Bush Administration, did not consult with anyone affiliated with the Administration while preparing the article, and at this writing doesn’t know what view regarding his article prevails in the Administration.

ational application of public international law will help us identify and implement useful and reasonable rules for suppression of unlawful belligerency.

We have a limited corpus of US judicial opinion relevant to any facet of warfighting; it applies to entirely different circumstances and offers no useful insight on how to meet this challenge. For example, the Civil War detention cases—which remain important today for other reasons—involved civilians. Soldiers and sailors in Confederate service were given de facto prisoner of war status upon capture, even while still considered to be citizens by the US government. They had no right of *habeas corpus*, suspended or otherwise. This should be the case even more so with unlawful belligerents in a private foreign army that's waging international warfare, who have little to no claim of protection under the Constitution of the United States, and who possess legal status and protection considerably more ambiguous even than that accorded members of a domestic insurgency under the modern rules of war.

Colonel Rehkopf focuses principally on issues relevant to judicial review when someone complains the state has deprived them of liberty without legal justification—which has almost without exception meant judicial review in cases involving someone, anyone, other than captured members of an opposing force. The courts are dismantling that distinction, and we can barely imagine where this is going. “Barracks lawyering” may assume an entirely new and improbable dimension, with every captured belligerent proclaiming mistaken identity and playing the system for judicial review. If the courts decide they've hit their stride with oversight of belligerent detention, where do we go next? Is judicial review and second-guessing of command decisions on strategy, tactics, and weaponry also in the offing?

Where Colonel Rehkopf refers to criminal law and procedure, I note that such applies only if a detainee faces criminal prosecution. The United States can hold a belligerent, captured on the battlefield, for that reason alone and without a requirement to prosecute or offer the judicial branch any oversight role. The rules of war already provide for their protection and release (I point out the importance of those rules in my article), and the newfound judicial role is unique to the United States, gratuitous, and entirely experimental. Where the United States now leads in inventing new “rights” for opposing forces, few if any will ever follow, and our own forces will never benefit from anything remotely like them.

Colonel Rehkopf suggests that my article “verges on Administration propaganda,” contains “significant distortions,” and reflects “poor scholarship.” These assertions reflect a reality of ground rules in the present debate. Advocates of a “due process, criminal procedure” model have achieved almost total terrain dominance in a battle of ideas. Those favoring a law-of-war approach have been maneuvered to a point where its often assumed they have to accept a defensive posture, that their views are somehow antithetical to domestic and international law (not so), have no legal basis (they do, see my article), and are misleading or merely propaganda (a charge best refuted by retaking the initiative and assertively building up appropriate law-of-war based mechanisms). Proponents for the law of war are finding their voice and taking practical steps, but need to work quickly.

The focus should shift back to the executive and legislative branches, and Congress may take an active role in framing rules on the status and treatment of the Guantanamo detainees. Perhaps these will provide guidance on other unlawful belligerents as well. This could be a chance to disentangle the law of war from peacetime constitutional practice. It could provide a way forward that ensures effective and humane application of the customary rules of war, while avoiding long years of painful lessons that will, in the end, demonstrate the futility of any other approach.

Michael H. Hoffman

On “The Origins of al Qaeda’s Ideology”

To the Editor:

Christopher Henzel’s article “The Origins of al Qaeda’s Ideology: Implications for US Strategy” (*Parameters*, Spring 2005) is thought-provoking, and his historical discussion appears mostly correct. There are two issues to be commented on, however. The first issue, though a minor aspect of Mr. Henzel’s overall essay, is still important to discuss because scholarship on Islam is rife with inaccuracy both from within and outside the religion. Because Westerners at all levels need to become correctly familiar with this religion due to its prominence on the international stage, it is important writers on Islam be as precise as possible when presenting even the minutest of points about the religion. Mr. Henzel’s references both to Egypt being Sunni Islam’s “center of gravity” and Al-Azhar University being the center of Sunni orthodoxy, subjects which are very much tied together, is the first issue to be addressed. The second is Mr. Henzel’s argument that the United States needs to focus less on a near-term democratic revolution throughout the Middle East and more on cooperating with that region’s current regimes in the Global War on Terrorism (GWOT).

Regarding the debate among Sunni Muslims in Egypt, which he refers to as “Sunni Islam’s center of gravity,” Mr. Henzel states, “On one side, Cairo’s Al-Azhar has been the center of Sunni orthodoxy for a thousand years. On the other side, al Qaeda’s ideology has its origins in late-19th-century efforts in Egypt to reform and modernize faith and society.” That statement is arguable, especially the notion of Al-Azhar being *the* center of Sunni orthodoxy. Despite the presence of Al-Azhar and its being the birthplace of thinkers who helped form al Qaeda’s theological and ideological positions, the idea that Egypt is the “center of gravity” for Sunni Islam is incorrect if that term is taken by the reader to mean that Egypt is the source of Sunni doctrine, spiritual guidance, and overall inspiration after the Koran, Hadith, and secondary commentary from the “rightly guided.” It is correct to say that Al-Azhar University is the largest and, in the eyes of many scholars, is and has been the most prestigious Islamic center of learning. However, when juridical rulings are issued from Al-Azhar, though such are taken seriously by many Sunnis, certainly not all Sunni *ulama*, even in the

Arab world (and not labeled as “reformist” as presented in the article), agree. Al-Azhar of late is seen by many to be in crisis. The intellectual battles within the university as well as its credibility-damaging political balancing are commented on in other forums. The existence of other prominent Sunni institutions makes Mr. Henzel’s assertion about Al-Azhar problematic as well.

Regarding the second issue, Mr. Henzel states, “Only the existing Muslim regimes, in coordination with American investigators and spies, can defeat the cells of al Qaeda.” This is a problematic assertion. Defeat of al Qaeda also requires efforts toward religious education of the masses away from traditionalist notions of Islam that uphold forms of Islamic law not in concert with increasingly accepted global norms. This will require efforts that transcend pure US government/regime cooperation. An important way to ensure the defeat of al Qaeda is through applying pressure for change in the existing regimes’ behaviors concurrent with supportive interaction with them. The idea that only existing Muslim regimes in coordination with the US investigators can defeat the enemy leaves out the role of nongovernment organizations, inter-faith dialogue, international law reform, modification of international systemic structures, and persistent finding and freezing or seizing of terrorist financial sources, along with other approaches to defeat the enemy.

Mr. Henzel would be correct in asserting that physical destruction of existing operational cells and the gaining of insight into current al Qaeda operating paradigms and structures require close coordination between existing regimes and the United States; however, he appears to imply that the strategic effort must be set aside or diminished to focus on the operational and tactical. This strategy of active separation of the levels of war in the GWOT can only lead to setbacks. The informational, economic, diplomatic, spiritual, and kinetic destruction efforts must be executed at all levels concurrently by governmental and nongovernmental means against terrorist cells, their immediate direct support networks, and those charities and other organizations that provide funds while also doing good works. Thus Mr. Henzel’s idea that “Washington should set aside, for now, its ambitions for democratic revolution, at least until the Salafist revolution is contained,” is one that will slow the process of defeating not only al Qaeda, but an interpretation of Islam that though at many levels is resisted by the Salafist “reformers” still at other levels provides them a basis for their actions.

Overall, Mr. Henzel’s article is beneficial in getting a reader to think about strategy to defeat the enemy. It is good that he wrote the article. However, writers should strive for precise correctness in discussing even seemingly small points regarding Islam. That is why multiple facets of what some might think a minor point, such as Egypt’s place in Sunni Islam, should be presented. Tactical defeat of al Qaeda cells does not mean new cells will not form. This is because the conditions that draw so many to the enemy must be alleviated and have not yet been. Such alleviation must begin now rather than later. Certainly encouragement of Islam’s moderation has to be done with great care so as not to enflame the masses, but it should not be set aside. Secretary of State Condoleezza Rice’s recent diplomatic snubbing of Egypt, when she canceled a visit because of that government’s retrac-

tion of democratic procedure, was the right thing to do; it brought about positive results. Better public diplomacy through multiple mediums and intense efforts to present US intent combined with carefully modulated carrot-stick methods, further combined with steady yet varying types of support for the efforts of governments, religious organizations, and others acting against the extremists, will, in the long run, despite enemy efforts to the contrary, bring about positive results.

Captain Vincent Littrell, USAF
SHAPE
Mons, Belgium

The Author Replies:

In my view, it's entirely accurate to use the term "center of gravity" to describe Egypt in relation to the other components of the Sunni Arab world. In addition to the religious prominence of Al-Azhar, Egypt has long been an important regional factor culturally, politically, and demographically. Even today, a generation after the failure of Nasserism, Egyptian music, literature, and cinema are important forces in every Arab country. The Arab League is headquartered (again) in Cairo, and the Secretary General of the League remains, by tradition, an Egyptian. With 77 million people, Egypt is by far the most populous Arab state. It is at the center of the Sunni Arab world, and not just geographically.

This matters because Salafism was born in Egypt, al Qaeda's chief ideologist is Egyptian, and his fondest hope is the overthrow of the current Egyptian regime. Without the contributions to revolutionary Salafism of Egyptian ideologues and fighters, I suspect many of Bin Laden's present-day admirers would have dismissed al Qaeda's ideology as a strange product of Sunnism's periphery. (Muhammed 'Abduh, who coined the term *salafiah*, and was Egypt's Grand Mufti at the turn of the last century, regarded Wahabism as heterodox, as did most Sunni scholars.)

I'm sorry I was unable to persuade Captain Littrell that there is a strategically significant distinction between what he calls "traditionalist notions of Islam" and revolutionary Salafism. I remain convinced that the divide is there. One recent example: At the July 2005 Islamic conference in Amman, an impressively wide range of traditional Muslim clerics (and even a few moderate Salafists) from across the Muslim world were able to agree on a communiqué denouncing *takfir*, the doctrine under which the revolutionary Salafists designate their Muslim enemies as apostates; it is a cornerstone of the revolutionaries' ideology.

I of course agree with Captain Littrell that the United States should carefully employ all the appropriate instruments of national power to implement whatever strategy it chooses to pursue. However, I think a number of the steps proposed in his comment would be counterproductive in the situation the United States faces now. As for what the US strategy should be, I'll let my article speak for itself.

Christopher Henzel

“The Trouble with History” and the Schlieffen Plan

To the Editor:

Editor’s note: The correspondent, Dr. Terence Zuber, is author of “The Schlieffen Plan Reconsidered,” in War in History (July 1999), and Inventing the Schlieffen Plan (Oxford 2003), which were alluded to in the article he comments upon.

In his article “The Trouble with History” in the Summer 2005 issue of *Parameters*, Dr. Antulio J. Echevarria II said that I contend that the “Schlieffen plan” was merely a “ruse to dupe the German Parliament into increasing the budget for the Kaiser’s Army.” I have never made such an assertion, or anything like it, and I have no idea how, if Dr. Echevarria has read any of my numerous works on the “Schlieffen plan,” he could have arrived at such a conclusion.

The real point of my work is to show that Schlieffen recognized that he was not going to have the mass army he desired and that, in compensation, he developed a counterattack doctrine based on surprise, interior lines, and mobility, in particular railroad mobility. The members of the German military establishment created the myth of the infallible “Schlieffen plan” after the war to explain their individual and collective failure to defeat France in August and September 1914.

Dr. Echevarria then complains that I have no evidence to support what he believes to be my thesis. This is not surprising. I never contend that Schlieffen was trying to dupe the German parliament. Therefore, I do not try to prove this point.

Dr. Echevarria then says that I claim to have “special insight” into German planning due to the three years I spent as the VII (US) Corps liaison officer to the German 12th Panzer Division, and that I use this insight in lieu of proof to support my ideas concerning Schlieffen’s planning. In fact, in the acknowledgment preceding *Inventing the Schlieffen Plan* I merely thank the 12th (GE) Panzer Division Chief of Staff and the G-3 for teaching me a great deal about operations, tactics, and leadership. I also thank four American officers as well as the soldiers in the two companies I commanded in the 3d (US) Infantry Division. At no point in any of my work on Schlieffen’s planning do I mention my experience in either the German or American armies.

My work on Schlieffen’s planning is based on extensive research in the German military archives at Freiburg, Dresden, Stuttgart, Munich, and Karlsruhe. In the process I discovered, or was the first to recognize the significance of, a large number of German General Staff rides, intelligence estimates, other planning documents, and *Reichsarchiv* documents, including Wilhelm Dieckmann’s *Der Schlieffenplan*. Five pages of such documents are listed in the bibliography of *Inventing the Schlieffen Plan*. Dr. Echevarria evidently does not find the contents of these documents or my interpretation of them to be convincing. He does not state his reasoning. It would be valuable if Dr. Echevarria would support his position by providing his own experience with these documents. He could include his own archival research into German war planning and his

facility in reading old German *Sütterlin* script, which is used in most of Schlieffen's documents.

Finally, Dr. Echevarria descends to egregious insult. He states (note 29) that "Zuber's book was, incidentally, published by Oxford University Press; even respected publishing houses make mistakes." Such a comment is not worthy of a serious historian, nor does it have a place in discussing the work of another Army officer in a professional US Army publication. In any case, it would seem likely that it was not Oxford, nor the authors of the many favorable reviews that *Inventing the Schlieffen Plan* has received, who have made the mistake, but rather Dr. Echevarria.

Dr. Terence Zuber
New Martinsville, West Virginia

The Author Replies:

To argue, as Dr. Zuber does, that the 1905/06 *Denkschrift* was merely a reflection of Schlieffen's belief that Germany's conscription policies must change, and then to pretend that this concept paper would not have had implications for the Kaiserheer's budget, and for the Reichstag's many debates concerning the same, is simply untenable. The 1905/06 *Denkschrift* would not have been taken seriously as a case for increasing the size of the Kaiserheer unless it was presented as a war plan, or at least the basic concept for one. If it was not the real war plan, as Zuber maintains, but only masqueraded as one, then it was a ruse, a ploy, though one Schlieffen perhaps thought justified.

I am sympathetic to Dr. Zuber's other main argument that the "Schlieffen myth" was to a large extent a deliberate invention of the postwar years, though that argument is not entirely new. And I particularly appreciate his deconstruction of Gerhard Ritter's reconstruction of the Schlieffen plan; it was long overdue. However, Dr. Zuber simply goes too far in claiming that there never was a Schlieffen plan.

Concerning the "special insight" allusion, this observation has little to do with Dr. Zuber's time in the 12th Panzer and everything to do with a tendency for rather tendentiously filling in history's gaps. His arguments have been challenged by many able historians in conference settings and in articles, as the running debate on the issue of the Schlieffen plan reveals. Some of those challenges have to do with the degree of significance Dr. Zuber ascribes to the general staff's war games and to the incomplete Dieckmann manuscript. A valid response requires further concrete evidence to support his claims, thereby possibly making an indelible contribution to history, not merely oversimplifying his opponents' arguments and countering them by splitting hairs regarding his own remarks.

Regarding the German standard script, I should thank Dr. Zuber for reminding me of the pleasurable experience I had learning the script at Moravian College in Bethlehem, Pennsylvania. I found the skill quite valuable for my dissertation research some years ago. But, I do not consider it a special skill, as most historians of the Wilhelminian period probably possess it.

As for the alleged insult, my intent was merely to show that even the publications of the most prestigious presses should not be above rigorous critical analysis. Prestige is, after all, something we as professionals consent to afford to someone or something; that consent should not necessarily be automatic.

Dr. Antulio J. Echevarria II

Demography, Recruiting, and Vigorous Veterans

To the Editor:

Dr. George H. Quester's excellent article, "Demographic Trends and Military Recruitment: Surprising Possibilities" (*Parameters*, Spring 2005) covers many contemporary trends, and entertains many scenarios, in its effort to plot the shape of future recruitment based on today's patterns. His research is particularly valuable for an organization that has traditionally had real concerns about finding young men and women to replace experienced, but aging, warfighters. I was somewhat surprised then to find that he did not address one particularly significant trend that might also affect military recruitment, namely the ability to extend what he calls soldiers' "stamina of youth" with increasingly sophisticated biotechnologies. As the baby-boomer population has aged, interest and research in age-management have only increased, and Dr. Quester's point that retirement ages are increasing everywhere but in the military is important for this reason: people are retiring later, in part because they can perform longer.

As a culture, we tend to equate "productivity" with the extension of desk-top work (or even just the ability to drive one's car to Bingo Night) into our 80s, but this should not distract us from the reasonable expectation that hormone optimization, anti-oxidant strategies, stem cell research, somatic gene therapies, and nutrigenomics will extend peak physical performance into our 50s and 60s in the very near future. Already we see this trend developing among elite athletes, many of whom are now benefiting from years of optimized nutrition and other interventions. It is not uncommon to find 40-year-old football players, triathletes, and swimmers who are able to physically compete, and mentally outperform, many younger athletes. Rather than viewing aging athletes as having no "useful role," many teams are beginning to appreciate the benefits of keeping veterans on the field. Not only does it reduce the pressure to have to replace older generations (a pressure that could lead to drops in standards), but it means the newest recruits have excellent leaders and mentors alongside them at the moments when it matters most—no small advantage when teaching 20-year-olds how to behave like professionals.

One does not need to be a rogue scientist to anticipate that increased understanding of diet, genes, and other biological systems is going to help men and women be able to keep up (if not exceed) younger persons who do not avail themselves of similar age-management biotechnologies. Warfighter age-management may mean that we no longer have to choose, in Dr. Quester's terms, between

“physical vigor . . . and maturity, experience, and technological expertise.” Further, this trend toward delaying age-related performance declines can only be expected to continue, especially in a nation whose general optimism leads its people—as the British are fond of saying about Americans—to believe that death is optional.

We must also consider the strategic consequences of having a “veteran force.” The capacity to keep large numbers of experienced warfighters operational is historically unprecedented, and while its effects are unpredictable, I would wager they can only benefit a high-tech, net-centric military, seeking to push decisionmaking further down the operational chain. Recent military operations also suggest that other qualities that come with experience—maturity, composure, and cultural awareness, to name just a few—will be more important for a future US military, not less. The ability to keep veteran warfighters in their mental and physical peak for decades could give the US military the real ability to do more, with less, for longer, resulting in a force-multiplying effect that may be hard to neutralize or counter.

This would require, as Dr. Quester acknowledges, a radically new system of military promotion, organization, and even hierarchy—a system that would have to reconsider the up-or-out promotion tradition and entertain other scenarios, in which well-paid, elite, 50-year-old warfighters might reasonably be expected to lead squad- or platoon-sized units in urban operations or stability and support operations. Further, military age-management would also require a long-term strategy, something for which the military is not famous. Such is the nature of age-management that we would have to begin to apply biotechnologies to extend warfighters’ physical and mental performance years, and probably decades, before we have historically begun to think of them as “aging.” While we will be able to prevent aging, there is less chance of being able to reverse it once it begins. This means thinking ahead. However, in an era where the military must compete with other professionally attractive industries, it is worth considering the appeal of an organization that promises to use its significant resources to keep its personnel on the young side of old. Indeed, with appropriate investment in age-management, the adage “old soldiers never die” may have to be updated: “Old soldiers may die, but they don’t age....”

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The Author Replies:

Dr. Russell’s comments are a very provocative example of what is called for by the inexorable pressures of demographic trends, a willingness to think “outside the box” about military manning. And they are another illustration of the spin-offs by which the same research that allows us to enhance the duration and quality of life can reinforce our ability to deploy armed forces.

George Quester