



Spring 2004  
Volume 2004, Number 1

## Inside this Issue

- 1** AMC Moves to Fort Belvoir
- Szymanski Named Command Counsel
- 2** Editor's Corner
- 4** Bounce Protection
- Use of ADR
- 5** Bid Protests from In House Entities in A-76
- SAFETY Act of 2002
- 6** Interpreting Statutes
- What is the ITAR?
- Timeliness in Filing Bid Protests at the GAO
- 7** Anti-lobbying Provisions
- Probationary Removals
- 8** Faces in the Firm

# Office of Command Counsel Newsletter



## HQ AMC Moves to Fort Belvoir

[Compiled from news sources]

After being located for more than 30 years in a multi-story office building on Eisenhower Avenue in Alexandria, Virginia, the Army Materiel Command has moved its headquarters several miles south to Fort Belvoir. The new headquarters complex is situated in two, two-story buildings off Gunston Road just south of U.S. Highway One.

Fort Belvoir is a U.S. Army Post located 15 miles southwest of Washington, D.C. More than 19,000 Soldiers, Sailors, Airmen, Marines, and DoD civilians work on Fort Belvoir and in the more than 100 tenant commands located on Post.

*Move Continued on Page 4*

## KATHRYN T. H. SZYMANSKI NAMED COMMAND COUNSEL

By COL David B. Howlett, SJA

Kathryn T. H. Szymanski was selected by the Commanding General to be the new Command Counsel of the U.S. Army Materiel Command. She replaces Mr. Edward J. Korte who retired in early 2003.

Mrs. Szymanski received her B.A. in Political Science from Webster University, attended graduate school at the New School for Social Research in New York City, and was awarded a Juris

*Szymanski Continued on Page 3*

**2004  
AMC CLE  
Program**

See Page 10

# Editor's Corner

Regular readers of the Command Counsel Newsletter will have no doubt noticed many changes since the last time it was published way back in 2003. Much has occurred since that previous issue, some of which, such as the change in the location of HQ AMC, we've reported herein.

That move had a profound effect on the way we produce the Newsletter and, as it so happens, the AMC Command Counsel Website. Up until the move, the Newsletter and the Website were created on an Apple Macintosh clone (try saying that three-times-fast), with special web-publishing software that could only be used on that machine. This software was the state-of-the-art in 1997, when the Newsletter first went *electronic*, and at the time it was only available for Apple Macintosh computers (and its clones).

Until the move, the Newsletter was laboriously put together by then-editor Steve Klatsky and then formatted by Holly Saunders, both of whom performed their wizardry using the "Mac-clone." Once they were done, the files they created were posted to the Command Counsel Website (by me as it so happens), and

the necessary links were added to the Newsletter page of the Website so that the issue could be accessed. This process also involved the use of the "Mac-clone" as well as a conventional "PC".

There's no point in trying to explain in great detail how we used to format and post the Newsletter since, happily, we don't do it that way anymore. Now we use MS Word® to create the Newsletter and now all the formatting for it and for the Webpage can be done on the same "PC" machine. It's not necessarily easier to format the Newsletter this way but there are much fewer steps involved in the process, believe me.

The other big change has been in the personnel who produce the Newsletter. With the retirements of Holly and Steve there are some big shoes to fill, but Linda Mills and I believe we can continue to provide you with a superior product in an attractive format.

To that end, I want to take this opportunity to urge you to continue to send us articles and other items for inclusion in the Newsletter. We can only be as good as the materials we receive from you, so please keep those articles coming. Thank you. - *Josh K.*

## Office of Command Counsel Newsletter

Kathryn T.H. Szymanski  
*Command Counsel*

Joshua A. Kranzberg  
*Editor*

Linda B.R. Mills  
*Associate Editor*

The AMC Office of Command Counsel Newsletter is published quarterly

The current issue of the Newsletter is available online at [http://www.amc.army.mil/amc/command\\_counsel/newsletter.htm](http://www.amc.army.mil/amc/command_counsel/newsletter.htm) as are most back issues. Back issues can also be obtained by contacting the editor.

Contributions to the Newsletter are strongly encouraged. If at all possible, please send them to the editor via e-mail at [Joshua.kranzberg@us.army.mil](mailto:Joshua.kranzberg@us.army.mil). Submissions in Microsoft Word® preferred. Please refer any questions regarding format of a submission to the editor.

Letters to the editor are encouraged. It is requested that letters be no more than 250 words in length. Please note that letters may be edited for clarity and length.

List of  
**Enclosures**

1. Bounce Protection
2. Use of ADR
3. Protests from In-House Entities in A-76 Procurements
4. SAFETY Act
5. The Core in Context
6. International Traffic in Arms Regulation
7. Timeliness at the GAO
8. Anti-Lobbying Provisions
9. Probationary Removals
10. LexisNexis® Corner

Szymanski *Continued from Page 1*

Doctor Degree from the Michigan State University -Detroit College of Law. She is a member of the State Bar of Michigan, the American Bar Association, NDIA and Women in Defense.

Mrs. Szymanski has held various positions within the Department of Defense legal community. She began her Government career at the United States Army Tank-automotive and Armaments Command as a procurement attorney, general law attorney, and procurement fraud advisor. She later served at Army Materiel Command Headquarters in Alexandria, Virginia, overseeing the fraud prevention program and assisting in the implementation of the Agency Protest program. She was the Litigation Counsel for the Chicago, Illinois-based Defense Contract Management Command, North Central Region, of the Defense Logistics Agency and served as Counsel for the Defense Reutilization and Marketing Service in Battle Creek, Michigan. She was appointed to the Senior Executive Service in 1995 as the Chief Counsel of the US Army Communications-Electronics Command and Ft. Monmouth (New Jersey) and was named as the AMC Deputy Command Counsel in November 2002. She was named Acting Command Counsel of the Army Materiel Command in January 2003. Mrs. Szymanski is the recipient of numerous awards including the 2000 Presidential Rank Award for Meritorious Executive.



Kathryn T.H. Szymanski  
(undated photo)

Mrs. Szymanski is a great choice to be the leader of the AMC legal community. She combines energy and vision and is poised to lead us as AMC both transforms and carries out its critical defense missions. Please join me in congratulating her on this appointment, and welcoming her as the new AMC Command Counsel.

The move to Fort Belvoir was planned in the wake of the September 11, 2001 terrorist attacks on the Pentagon and the World Trade Center. Prior to the move, AMC was the only four-star headquarters in the Army not located on a military installation. As noted by Lieutenant General Richard Hack, AMC's Deputy Commander, the primary reasons for the move were increased security, reduction in leased space costs, and enhanced efficiency.

Following a ground breaking in November 2002, about 220 trucks brought in pre-fabricated modular structures, and a skeletal structure of the building was in place by July, 2003. An unusually wet year delayed the construction schedule by 108 days.

By November 2003, the first group of employees moved from headquarters on Eisenhower Avenue to Fort Belvoir. The Office of Command Counsel was among those moved the weekend before Thanksgiving.

Reportedly, this project is the largest modular construction project ever undertaken. The entire project, from groundbreaking to move-in, is estimated to have cost \$48 million.

Employees who helped coordinate the move to Fort Belvoir were recognized at a relocation recognition ceremony on January 9, 2004.

The new home of the Office of Command Counsel is located in the southern end of the first floor of Building 2 in the two-building AMC Headquarters complex. Although Building 2 is actually located on Hall Street, both AMC buildings share the address of 9301 Chapek Road.

Each attorney's office features adjustable lighting, modular office furniture, and ergonomic Aeron desk chairs. Most of these same features are included in the new workstations occupied by the support staff.

All employees have new computers, which feature Intel Pentium 4 processors, 17-inch flat-panel display monitors, and DVD-CD read-write drives. The office area includes a small library for those who still use real books to do research and a high-tech conference room with VTC capacity.

## Bounce protection

MAJ Tom Adams of Fort Monmouth's Legal Services Center directs our attention to a new way for the financially unwary to get in over their heads in a world of easy credit. Tom issues a warning (based on a Consumer Federation of America article) that the "Bounce Protection Plans" currently being offered as a free service by many banks are far more costly than traditional programs designed to protect consumers from bouncing checks. You and your clients will probably agree that the embarrassment of insufficient funds is not worth an APR of more than 200% coupled with assorted fees. (Enclosure 1)

## Use of Alternate Dispute Resolution

The CECOM Legal Office has successfully applied the Alternative Dispute Resolution (ADR) process to both Government contract disputes and EEO complaints. Some of the factors to be considered in determining whether or not ADR is appropriate in a particular situation, as well as a number of the various ADR procedures available for use, are outlined in the attached article by the legal POC's for contract matters: Kim Sawicki (732) 532-1146 or DSN 992-1146, and for EEO: Paula Pennypacker, (732) 532-3336 or DSN 992-3336. (Enclosure 2)

# ACQUISITION LAW

## Will GAO Consider Bid Protests from In-House Entities in A-76 Procurements?

Last summer, the Office of Management and Budget (OMB) issued the latest revision of OMB Circular A-76, the regulation governing cost competitions between public sector performance (i.e., the "in-house entity") and the private sector. Among other changes, the revised circular abolished the previous administrative appeals process and instead established a "contest" procedure governed by FAR 33.103, which is the agency level protest process, for standard cost competitions.

Shortly after the revised A-76 circular was published, the General Accounting Office (GAO) published a Notice in the Federal Register seeking comments on several issues related to whether the in-house entities have standing to file bid protests at the GAO. Specifically, the GAO asked whether the revisions to Circular A-76 "affect the standing of an in-house entity to file a bid protest" at the GAO, and, if so, who would have the "representational capacity" to file such a protest

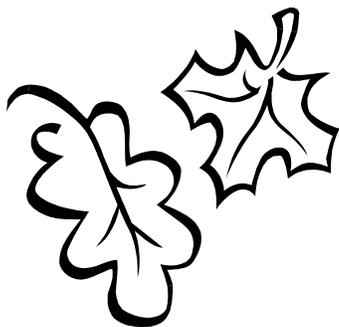
on behalf of an in-house entity. The GAO has consistently held that it lacks authority under the Competition in Contracting Act (CICA) to consider protests by the in-house entities under A-76 studies. In her examination of this issue, AMCOM's Beth Biez looks at the limits of the GAO's authority to hear protests by in-house entities and the possibility that the GAO might actually entertain such protests. (Enclosure 3)

## The Support Anti-Terrorism by Fostering Effective Technologies Act of 2002

If you've never heard of a "QATT," you may want to review Lea Duerinck's Point Paper on The Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act of 2002. Under the Act, the Secretary of the Department of Homeland Security may designate qualified anti-terrorism technology ("QATT"). Once technology is designated as QATT, it becomes part of a litigation management system that, among other things, provides Contractors with an arguable defense of immunity from liability for injury or harm. Lea not only provides a list of some of the criteria used by the Secretary in designating a QATT, but also describes the specific advantages to a defendant seller when a claim is defined as a Federal cause of action because it arises in connection with the deployment of QATT. (Enclosure 4)

## The Core in Context

In interpreting statutes, the federal courts have developed a number of well-recognized canons of statutory construction. One important canon is that words should be considered in the context of the entire statute. Using the core logistics statute, 10 U.S.C. § 2464, Larry Anderson gives us one example of how this canon has been applied. Section 2464 can be viewed as establishing a requirement along with a description of the means to satisfy that requirement. The clear meaning of the terms in the statute is to be understood in light of the overall purposes of the act. (Enclosure 5)



## What is the ITAR?

The International Traffic in Arms Regulation (ITAR) the regulation that implements the Arms Export Control Act (AECA). The ITAR includes a Munitions List. The Munitions List identifies specific items or classes of items that are subject to export controls under the AECA. In general, the ITAR prohibits the export of items on the Munitions List and the technical data associated with these items. As always in life, there are exceptions to the application of ITAR, but even considering the exceptions, the impact of ITAR is broad. CECOM's Ted Chupein discusses the broad impact of ITAR as well as its exceptions. (Enclosure 6)

## Timeliness In Filing Protests At The Gao

When a government agency receives a GAO protest, the first thing it needs to do is to determine whether the protest is timely. All protests filed at the GAO are subject to timeliness rules. Untimely protests can be summarily dismissed by the GAO. Often, only the agency is a position to know whether a protest is untimely, so knowing the rules on timely filing of protests is important.

Basically there are four scenarios to consider with regard to timely filing of protests. (1) Pre-award protests, which typically involve alleged defects in solicitations. (2) Post-award protests that frequently involve alleged agency failure to comply with stated evaluation criteria. (3) Protests in negotiated procurements where the protester has requested and has received a required debriefing. (4) Protests involving the denial of previous, timely-filed agency-level protests. The rules involving timely filing of protests can be complex, particularly where there are debriefings involved. Janet Baker, of CECOM-Ft. Huachuca, addresses all of these scenarios and helps guide us through the complex thicket of rules that determine when a protest is timely. (Enclosure 7)

# EMPLOYMENT LAW

## Anti-Lobbying Provisions

In a comprehensive discussion of anti-lobbying provisions, CECOM's Lea E. Duerinck notes that the intent of the criminal statute, 18 USC 1913, was to bar the use of official funds to underwrite agency public relations campaigns urging the public to pressure Congress in support of agency views. Lea notes that there has never been a criminal prosecution since enactment of the Anti-Lobbying Act in 1919, and warns against literal application of the terms of the Act.

The attached article provides an historical context for the Act as well as DOJ interpretation and guidance. It explains that DOJ's approach is to first examine whether the alleged violation constitutes egregious grass roots lobbying or a direct communication. If the issue is one of direct communication, it will focus on whether the direct communication was through proper channels. Lea also provides a useful compendium of GAO's opinions on the non-Penal lobbying restrictions, generally known as restrictions on publicity and propaganda, which are contained in various Agency's Appropriations' Riders. A list of "Anti-Lobbying Do's and Don'ts" is also included as a quick reference. (Enclosure 8)

## Probationary Removals

The probationary period, which generally lasts one year for competitive service employees, but may last up to two years as a trial period for excepted service employees, is considered to be the final step in the "examination process" of a new employee. Theoretically, probationary employees may be terminated for any perceived deficiency in performance or conduct, with minimal procedural requirements and without the need to meet the stringent "efficiency of the service" standard that governs the removal of tenured employees. However, as Joel Friedman points out in the attached article, the removal of a probationer should not be undertaken without legal review - there are always some procedural hazards to avoid! (Enclosure 9)



---

## LexisNexis® Corner

Don't miss the opportunity to learn more about the features that can make your legal research efficient and effective. (Enclosure 10)



# FACES IN THE FIRM

## TACOM-Warren

New additions:

**Luis (Mike) Acosta** has recently joined the Intellectual Property Law Division. Mike has extensive experience in the private sector, and most recently worked as a sole practitioner. Mike received his JD from the University of Detroit. He will take over for **Gail Soderling** who will retire 30 September 2004.

**Sharon Kurzatkowski**, Legal Technician. Sharon worked at TACOM from 1979-1989 in the Procurement & Production Directorate, Word Processing Branch and then left to work as a legal secretary and legal assistant in law firms until 2000. In January 2001 she returned to TACOM and worked as a Secretary /Administrative Assistant in the Product Manager's Office, Construction Equipment and Material Handling Equipment, Force Projection, PEO CS&CSS. Sharon has an Associate Degree in Applied Science, Legal Assistant Certificate, from Macomb Community College. She is also currently attending Central Michigan University in pursuit of a Bachelor of Science Degree, majoring in

Organization Administration. She is married to Casimer ("Cas") and has one daughter, Kimberly, who is 11 years old. They live in Fraser, MI. Sharon enjoys reading, bowling, and volunteering in her daughter's elementary school library two afternoons a month.

On March 16, 2004, **Captain Matthew Krause** joined the TACOM Legal Office as the new Command Judge Advocate. Captain Kraus attended college at Eastern Michigan University and then went on to study law at Wake Forest University in North Carolina. Captain Krause served in the North Carolina Army National Guard for six years before coming to TACOM. Most recently, he was mobilized in support of Operation Enduring Freedom for service in Heidelberg, Germany where he served as the V Corps Chief of Legal Assistance at the Patton Law Center on Patton Barracks. CPT Krause is married to Katrina and they are expecting their first child in late April.

Recent Promotions:

**Darin Morency** was promoted from GS11 to GS12. He has been with TACOM-

Warren Business Law Office since January 2003.

**Christine Kachan** was promoted from GS13 to GS14. She has been with the TACOM-Warren Business Law office since 1998.

Retirement/Hiring

On March 1, 2004, **Major Bradley Jan** retired from active military service after more than 20 years. Major Jan was formerly the TACOM Command Judge Advocate. He applied and was subsequently selected for an Attorney-Advisor (General) position in the TACOM Legal Office, General Law Division.

## TACOM-Rock Island

Paralegal, **Diana ("Dee") Bain**, who had been with the office for about a year (and had previously worked at Picatinny) retired at the end of January. Dee is shuttling back and forth between Quarters 3, her home on RIA, and her prospective home in Alabama as she and her husband, COL Dale Bain (Deputy Director, Northwest Region, Installation Management Agency) prepare for their move after his retirement later this spring.

## Watervliet Arsenal

**Larry Schaefer** joined Watervliet Arsenal on March 8, 2004 as its Contract and Fiscal Law Attorney. Mr. Schaefer comes from the law firm of Hinman Straub, P.C., where he focused on health care and labor litigation. Prior to private practice, Mr. Schaefer was an active duty U.S. Air Force Judge Advocate, where he performed tours at Dover AFB and the Pentagon. Larry is also a Major in the Air National Guard and is the Staff Judge Advocate for the 105th Airlift Wing, Stewart ANGB. In April he will be deploying to the Coalition Provisional Authority, Baghdad, Iraq for 90 days.

## Picatinny Arsenal

### New Hire

**LTC Nancy Higgins**, currently serving as the Chief Counsel at the Defense Acquisition University has been selected for an attorney position in the General Law Division of the ARDEC Legal Office. Nancy will be retiring from the Army JAGC and plans to start work here at Picatinny in May. We look forward to her joining the team.

### Promotion

**Claudette Rebish** was selected to be the

Administrative Officer for the ARDEC Legal Office. Prior to her selection, Claudette served as an administrative assistant and secretary to the Business Law Team.

### Departures

**Cindy Bedell**, Secretary and **Melinda Carlson**, Patent Legal Technician, departed the legal office in January. Both employees left to take promotions in other offices within ARDEC. We wish them both good luck.

## CECOM

### Awards

**CPT Michael Stephens**, Administrative Law Attorney, Staff Judge Advocate Division, was selected as one of CECOM's Ten Outstanding Personnel for FY 2003. He was selected as a result of his efforts in designing and implementing a completely new and easier process for training filers and reviewing, filing, and tracking OGE Form 450s. This Lean Thinking initiative has greatly simplified the process for CECOM's filers, and his outstanding briefings and program demonstrations to AMC and DA senior leaders may result in the exporting of the program to DA for eventual use throughout the Army.

**Theodore Chupein**, Chief of the Competition Management Division, was selected as the recipient of the CECOM Leadership Award (Supervisory Category).

On 3 March 2004, **Denise Marrama** received a DoD Counter-Narcoterrorism Technology Program Office (CNTPO) 2004 Outstanding Support Award in recognition of her outstanding contract services in support of the CNTPO mission.

CECOM was selected as one of the recipients of the 2002 Army Chief of Staff Award for Excellence in Legal Assistance. CECOM has received this award for fourteen consecutive years.

### New Employees

**CPT Daniel Pantzer** joined the Staff Judge Advocate Division on 30 June 2003. He previously served with the 1st Armored Division in Germany. CPT Pantzer is serving as the Magistrate Court Trial Counsel.

**Katharine Singer** joined the Intellectual Property Law Division on 8 September 2003 as a Paralegal Specialist. She previously worked in the Office of the Judge Advocate General in Stuttgart, Germany.

**Gloria Carter-Perkins**, a Patent Applications Clerk, joined Business Law Division



C, Fort Belvoir, Virginia, on 8 September 2003.

**Karin Wiechmann** joined Business Law Division B as a General Attorney, on 6 October 2003. Karin previously was employed at the TACOM-Warren Legal Office.

**Roger Phillips** joined the Intellectual Property Law Division as a Patent Attorney on 3 November 2003.

**Marci Caraballo** joined Business Law Division A on 11 January 2004 as a Legal Assistant. Marci previously worked at the Fort Monmouth Garrison.

Retirements

**Joyce Bradley**, a Legal Assistant in the Intellectual Property Law Division, will be retiring on 3 April 2004 after 32 years of Government service. She plans to be very active in community service after her retirement.

**Elizabeth (Libby) Bruley**, a Paralegal Specialist in Business Law Division C, Fort Belvoir, Virginia, will be retiring on 3

April 2004 after 34 years of Government service.

Deployment

**Sheila Lowell**, a Paralegal Specialist in Business Law Division B, has voluntarily deployed and taken a position in Baghdad. The assignment is for a period of 120 days with a possibility of an extension to 179 days.

**AMCOM**

Returnees

Welcome back to . . .

**COL Katheryn Sommerkamp** who was deployed to Bagdad in October 2003.

Former SJA **Roger Cornelius**, who has been assigned as a civilian attorney to the Acquisition Law Division Branch B.

**Bryan Toland**, who will return in early April 2004 from deployment to Ft. Campbell, Kentucky.

New Arrivals

**Brenda Boyett** assigned as Budget Analysis to the Plans and Operation Division, comes from the Safety Office.

Departures

**Tom Aug** transferred to White Sand Missile Range New Mexico in August 2003.

**Elizabeth Carter** transferred to TMDE on 5 October 2003.

**Jack Glandon** retired on 3 January 2004. **CPT Douglas**

**Becker** retired from the military on 27 Feb 2004, and will be working as a civilian attorney at Ft. Meade, Maryland. **Arthur Tischer** retired on 3 March 2004.

Promotion

Congratulations on the promotion of **Mr. Fred W. Allen** to AMCOM Chief Counsel SES, 19 October 2003.

**Aviation Applied Technology Directorate**

Welcome to **Gary Parker**, attorney advisor, previously of the US Army Cadet Command.

Speedy recovery to **Wayne Van Kauwenbergh**, Chief Counsel, who recently had elective intestinal bypass surgery and is doing well.

**The 2004 AMC Continuing Legal Education Program Will be held on June 7 – 11, 2004, in New Orleans, LA.**  
For more information contact Maria Marigny, (703) 806-8271 or DSN 656-8271, Or go to <[www.amc.army.mil/amc/command\\_counsel/CLE/CLEinfo.html](http://www.amc.army.mil/amc/command_counsel/CLE/CLEinfo.html)>