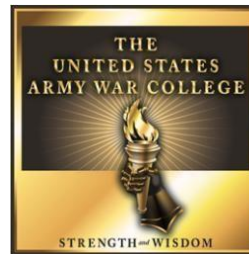


A Return to "Marshall Law": Life After Relief From Command

by

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Class of 2015

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A Return to “Marshall Law”: Life After Relief From Command

What would George Marshall do if he could come back and fix things?

—Thomas Ricks¹

With that question, in the epilogue to his 2012 book, *The Generals: American Military Command from WWII to Today*, Thomas Ricks asserts that during World War II, under General George Marshall's leadership, general officers were held accountable. Ricks then suggests that one of the major problems in today's Army in the post-9/11 wars is the failure of senior leaders--both civilian and military--to hold commanders accountable. Ricks believes the Army needs

A major cultural shift that enables it to embrace accountability, rather than shun it [and] the first step toward improving the capacity of leadership is to reinstate [Marshall's] policy of swift relief, with the option of forgiveness . . . under which relief from command does not terminate an officer's career.²

This paper seeks to answer the primary question of whether a return to a policy similar to the one employed by Marshall during World War II is viable in today's Army. Can an officer who is relieved from command survive such career-threatening action and remain in the military to serve in another capacity? In answering this question, this paper explores the connection between mission command and relief from command. For an officer to survive relief from command, leaders must embrace and adhere to certain principles of mission command, primarily trust and acceptance of risk. By combining mission command and relief from command concepts, this paper explores the grey area when a commander determines relief is in order, but believes the relieved commander can still contribute to the Army in another valuable capacity similar to the Marshall's policy during World War II and other times throughout history. Additionally,

based on the Army's current administrative policies that govern relief from command, an expanded view of the concept of curtailment would have to be implemented.

This paper suggests that the Army's renewed focus on leadership as applied within the mission command philosophy fosters an environment of trust where senior commanders assume risk and underwrite subordinates who do not have to fear an honest mistake will result in career termination.

"Marshall Law" and Mission Command³

To determine if Marshall's policy would work in today's Army, a comparison of his leadership principles to current Army leadership doctrine warrants a brief review. When discussing the greatest leaders in United States history, numerous military historians and scholars place Marshall alongside George Washington.⁴ Scholarly works devoted to Marshall's leadership principles support the assertion that any Marshall philosophy, including his policy of quick relief with continued service is worthy of review by contemporary Army leaders.⁵

Marshall's Leadership Principles

With Marshall's relief policy at the core of this paper, a quick review of the leadership qualities he sought in commanders he fired, and specifically, fired but retained, is instructive. Not surprisingly, many of Marshall's principles appear in current Army leadership doctrine and are imbedded in the leadership tenets for the successful execution of mission command.

Gleaned from Marshall's papers, speeches, and studies of his life's actions in strategic-level leadership positions, scholars attribute numerous leadership traits and characteristics to Marshall, and the officers he selected. In Marshall's own letters from

1920 and 1944, he highlighted the qualities he looked for in promoting officers in the following order: "good common sense," "have studied your profession," "physically strong," "cheerful and optimistic," "display marked energy," "extreme loyalty," and "determined."⁶ The Marshall Foundation's Educational Program lists Marshall's primary leadership principles as: Candor, Commitment, Courage, Integrity, and Selflessness.⁷ Other studies and lists have emerged, including a comparative analysis of Marshall's principles to the Army's 2005 Pentathlete theme that defined 21st Century Army Leaders as multi-skilled warfighter-statesman who live the warrior ethos and possess leader attributes including the "confidence and competence in uncertain situations by being a prudent risk taker, innovative, and adaptive."⁸

Marshall's leadership traits and tenets are applicable to the full spectrum of situations at the tactical, operational and strategic levels within the joint, interagency, intergovernmental, and multinational (JIIM) environments. Importantly, their continued relevance is reflected in current Army leadership doctrine and mission command.

Current Leadership Doctrine

Any discussion of Army leadership doctrine should necessarily include a discussion of trust. "The Army is built upon an ethos of trust" which permeates everything a leader does inside and outside the Army: "trust between Soldiers; between Soldiers and their leaders; among Soldiers, their families, and the Army; and between the Army and the Nation."⁹ Since taking over as the Army Chief of Staff in 2011, General Raymond T. Odierno, made leader development a strategic priority with the primary intent of growing adaptive leaders.¹⁰ Within a comprehensive leader development process, leaders are challenged to earn respect, lead by example, create

a positive climate, maximize resources, inspire others, and build teams to promote excellence.¹¹ Of the eight specified “Leader Expectations,” “Empower subordinates and underwrite risk” is critical to mission command as it supports the premise that leaders can fail and succeed again as they learn from their mistakes. General Odierno specifically acknowledges this latter point--that leaders will make honest mistakes--as a threshold issue in leadership doctrine.¹²

The Army Leadership Requirements Model describes character, presence, and intellect as the three primary leader attributes.¹³ Character is the attribute that best captures the identity and values of the leader.¹⁴ As trust is the foundation of Army leadership, integrity is the sine qua non of a leader’s character. So critical is integrity that once breached, trust is lost and is essentially unrecoverable. When considered in the context of relief from command in today’s Army, there is little to no chance an officer can be retained in the service. Presence focuses on one’s outward demeanor and the impression made on superiors, peers, and subordinates through military bearing, fitness, confidence, and resilience. Intellect describes the skills a contemporary leader must possess, develop, and exhibit to succeed in the complex and uncertain JIIM environment: mental agility, sound judgment, innovation, interpersonal tact, and expertise. Army doctrine contends that possession of these attributes (character, presence, and intellect) and how a leader performs within the three core leadership competencies (leads, develops, and achieves) all contribute to a leader’s overall success within the mission command construct.¹⁵

The leadership principles of General Marshall and current Army doctrine (as endorsed by General Odierno) are quite similar. It is not surprising that current doctrine

has drawn from General Marshall given his place among Army leaders. The relevance of such a comparison is meaningful considering Marshall regularly relieved commanders and allowed them to continue serving while a present-day relieved commander has little to no chance of remaining in today's Army. Yet, under certain circumstances, this should not be the case. The current Army doctrine of mission command, in theory, is the best possible leadership philosophy to support a relief policy similar to the one employed by Marshall.

Mission Command

The main feature distinguishing mission command from command and control is that within decentralized mission command, a commander orders a subordinate what to do, but not how to do it--broad mission orders that allow (and trust) the subordinate to take initiative on how to complete the mission. In contrast, detailed orders in a centralized command philosophy tell a subordinate what to do and how to do it thereby removing a subordinate's flexibility and stifling initiative, and perhaps suggesting the commander does not fully trust the subordinate to figure out how to accomplish the task on his own.

As a command philosophy, the concept of mission command has been implemented by the United States (U.S.) military leaders for decades, particularly in combat. In the fog of war, decentralized command enables adaptive leaders to make quick decisions to counter emerging threats. While not called "mission command," the broad concepts of mission command appeared in United States Army field manuals in the early 1900s.¹⁶ In an excellent *Military Review* article, Clinton Ancker chronicles the evolution of mission command and Army's century-long doctrinal emphasis on certain

elements of mission command, primarily commander's intent and subordinate's initiative.¹⁷

Several scholarly works document the emergence and evolution of the U.S. military perspective of mission command through the 20th century and in our modern history.¹⁸ In the mid-1970s, the new Training and Doctrine Command was less focused on mission command in doctrine. The 1976 version of Field Manual (FM) 100-5, *Operations*, mentions decentralization, mission-type orders, and initiative in only one paragraph.¹⁹ The 1982, 1986, 1993 editions of FM 100-5 continued to emphasize decentralization, especially as a battle became more complex, and the concomitant importance of individual initiative operating within such a system.²⁰

Commander's intent, as a clearly defined concept, was first introduced in the 2001 edition of FM 100-5. While mentioned in earlier manuals, commander's intent was not separately identified as a concept. In 2001, two years before mission command was introduced as a separate and distinct command doctrine, the manual tied the following concepts together: commander's intent, decentralization, mission orders, delegation, freedom for subordinates to act, aggressive action, and "initiative exercised by well trained, determined, disciplined soldiers."²¹ "It also requires leaders who trust their subordinates and are willing to take and underwrite risks."²²

That these concepts appear in the 2001 version of FM 100-5 is prescient considering the conflicts that would emerge over the next decade and require this exact type of command philosophy. During both conflicts, when faced with decisions of high consequence and complexity, junior leaders thrived under mission command.²³ In 2003, FM 6-0, *Mission Command: Command and Control of Army Forces*, established mission

command as the Army's preferred concept of command and control.²⁴ Between 2010 and 2012, culminating with Army Doctrine Publication 6-0 (*Mission Command*) in May 2012, mission command was solidified as concept with specific principles, a philosophy of command, and as a warfighting function. Commanders' implementation of the mission command philosophy is no longer optional--it is our doctrine.²⁵

As a warfighting function, the mission command philosophy supports a relief policy similar to Marshall's. For such a policy to be practicable, a certain environment must exist within the Army. The *2013 Center for Army Leadership Annual Survey of Army Leadership (CASAL): Main Findings Report* is an informative study that provides specific insight on commanders' views on the topic of command leadership within mission command.

Army doctrine defines mission command as "the exercise of authority and direction by the commander using mission orders to enable disciplined initiative within the commander's intent to empower agile and adaptive leaders in the conduct of unified land operations."²⁶ To be effective, commanders and subordinates must have mutual trust, a shared understanding, and a common purpose. As leaders operate in a volatile, uncertain, complex, and ambiguous environment, mission command enables commanders to push responsibility and decision making to the point of action.²⁷ Through clear orders and intent, commanders tell subordinates what to do, but not how to do it. In turn, innovative and adaptive subordinates work within their commander's intent and exercise initiative, assume responsibility, exploit opportunities, and respond to uncertain and emerging threats and challenges. At its essence, mission command is about establishing trust and assuming risk. Mission command's six principles are:

- (1) Build cohesive teams through mutual trust;
- (2) Create shared understanding;
- (3) Provide a clear commander's intent;
- (4) Exercise disciplined initiative;
- (5) Use mission orders; and
- (6) Accept prudent risk.²⁸

With a potential relief from command, the first and last of these six principles, building trust and accepting risk, identify effective leader behaviors and indicators. With trust as the foundation of the Army profession, it is not surprisingly mission command's first principle is building cohesive teams through mutual trust. Leaders know trust is gained through actions over time and trust is earned by following Army Values and the Army's Leadership Principles. It takes time to earn and build trust, but trust can be lost immediately based a single act. Importantly, "Trust is gained or lost through everyday actions more than grand or occasional gestures."²⁹

In doctrine, "Accepting prudent risk" is tied to the senior commander, yet, this principle is equally important to the subordinate when tied to "building mutual trust." Prudent risk is "a deliberate exposure to potential injury or loss when the commander judges the outcome in terms of mission accomplishment as worth the cost."³⁰ This appears to be a bold statement, particularly if a soldier is injured or lost due to the risk, yet when considered in the context of a volatile and uncertain environment, "Making reasonable estimates and intentionally accepting prudent risk are fundamental to mission command."³¹ Pursuing opportunities rather than avoiding defeat means there will be risks. How the commander evaluates those risks is the art of command. Mission

command is not about taking the safest route to avoid defeat, nor is it about taking an unreasonably dangerous route to pursue an opportunity. In doctrine, gambling, defined as risky action in hope of a desired result, is the antithesis of prudent risk taking. A commander that makes an irrational, ill-planned decision without considering the second or third order effects is gambling. Conversely, a commander that gives due consideration to the risks and takes measures to mitigate them is prudent.

When combined, building trust and accepting prudent risk best illustrate the effective, or ineffective, implementation of mission command. Trust and risk are tightly coupled factors. As trust increases, the willingness to accept risk increases. In practice, the level of a commander's trust in a subordinate dictates how much risk a commander is willing to take. Tied to other elements of mission command, a commander that trusts a subordinate will provide broad mission orders with a shared understanding that the subordinate will exercise disciplined initiative. The commander, ultimately responsible for the subordinate's actions, accepts risk by giving the subordinate freedom of action and underwriting the subordinate's mistakes. In exercising disciplined initiative, the subordinate is expected to make prudent decisions based on reasonable estimates.³²

The 2014 CASAL study provides evidence of mission command's effectiveness in units. Almost 22,000 respondents were asked if their leader effectively implemented the four primary leader attributes that best characterize mission command.³³ The percentages listed below represent those personnel that responded that they were satisfied or very satisfied that their leader effectively implemented the specified trait:

- Members have freedom/latitude in the conduct of duties (73%)
- Members allowed to learn from honest mistakes (71%)

- Members empowered to make decisions pertaining to their duties (70%)
- Members have moderate to very high trust with others in the unit (83%)³⁴

Focusing on trust as the essential element of mission command, the study identified two characteristics as having the strongest relationship to high levels of trust:

- Empowerment to make decisions pertaining to their duties
- Allow and encourage learning from honest mistakes³⁵

Turning to relief from command, these two indicators, along with the four above, are critical to the analysis of how much risk will a commander take with a subordinate and how many mistakes (and what types) will the commander underwrite before relieving a subordinate commander, and if relieved, is that officer a candidate for future service.

Relief from Command: A Brief History

The concept of relief from command, and specifically, the concept of continuing in the service after relief from command, has examples dating back to the Continental Army in the Revolutionary War. After allegations of misbehavior before the enemy at the Battle of Monmouth in July 1778, General Charles Lee was court-martialed and relieved of command for one year.³⁶ During the Civil War, President Lincoln relieved a number of commanders, including General George McClellan twice, for poor performance, yet allowed those commanders to serve in the Army of the Potomac following their reliefs.³⁷ In 1867, George Armstrong Custer was relieved of his command of the Seventh U.S. Cavalry, court-martialed and suspended for one year only to return to command the Seventh Cavalry again until his last stand at the Battle of Little Big Horn in June 1876.³⁸

As a captain during World War I, Marshall observed General John J. “Black Jack” Pershing, the First American Expeditionary Force Commander, relieve many generals,

including eleven in one day, and his own division commander for ineffectiveness.³⁹

Utilizing a swift relief policy, Pershing relieved six division and two corps commanders during the war--all were allowed to continue in other assignments after their relief.⁴⁰

Learning from Pershing's policy, and after being sworn in as Army Chief of Staff in October 1939, Marshall forced the retirements and discharges of an estimated 600 active duty and reserve officers. While not reliefs from command, they were precursors of Marshall's low tolerance for those he considered excess, mediocre or incompetent.⁴¹ During World War II, when he relieved a commander, Marshall believed in second chances. In most cases, he followed relief with reassignment back to the U.S. but "at least five Army generals of World War II . . . removed from combat command and later given another division to lead in combat."⁴² While "brutal" for the individual officers, the relief policy achieved military effectiveness and was used by his subordinates then and in later wars.⁴³

In Korea, Eighth Army Commander General Matthew Ridgway relieved numerous commanders; however, the new Army Chief of Staff, General J. Lawton Collins, was less supportive of the quick reliefs and more concerned about the public's perception. Still, Ridgway continued with the reliefs usually followed by reassignments to training posts.⁴⁴ By Vietnam, "The swift relief of failing officers was unwelcome in the U.S. Army of the 1960s."⁴⁵ Despite that sentiment, General William DePuy, the First Infantry Division Commander, relieved 56 officers and sergeants major in one year, including seven battalion commanders. The Army Chief of Staff, General Harold K. Johnson, told DePuy to slow down on the reliefs and afford officers second chances. DePuy told Johnson it was his duty to remove incompetent commanders who were

getting people killed. Johnson disagreed with DePuy's relief philosophy, yet, ironically because of the Army's rejection of relief as a managerial tool, Johnson did not relieve DePuy.⁴⁶ Pershing relieved eleven generals in one day during World War I. DePuy relieved seven battalion commanders in one year in Vietnam. By comparison, Army leadership relieved a total of 129 battalion and brigade commanders during the twelve year period from 2003 through 2014.

Relief for Cause during the post 9/11 period

When *The Generals* was published in 2012, Ricks had the Navy's relief data, but not the Army's: "In relieving leaders, the Army can learn from the Navy, which has maintained the practice of relief even as the Army has lost it, with more than 120 commanding officers relieved from 2000 through 2011."⁴⁷ In context, his comment was aimed at the Army leadership and a perception that commanders were not held accountable for their actions. The Army's data reveals otherwise.

The Human Resources Command official relief for cause data shows that from 2003 through 2014, 98 battalion and 31 brigade commanders were relieved for cause.⁴⁸ Overall, Army relief numbers (129) are remarkably similar to Navy numbers (120) during a relatively comparative twelve year period (2003-14 v. 2000-11). Considering Ricks' comment that the Army has lost its practice of relief (in comparison to the Navy), the data suggests division commanders held their subordinate battalion and brigade commanders accountable for their actions. Yet, does the relief of a combined 129 Army battalion and brigade commanders signal a problem with commanders in general? A more in-depth review of the data suggests there is not.

Of the 129 Army commanders, 25 (24 battalion and one brigade commander) were relieved from their commands in combat. At first glance, the overall numbers during the post 9/11 period seems to support the notion that the Army has a problem with senior leader misconduct. In February 2015, a bold print Army Times headline read: "129 Army battalion, brigade commanders fired since 2003."⁴⁹ With a quick calculation, the reader estimates an average of 11 commanders per year were relieved during the twelve year period. Yet, a more detailed review of the data demonstrates that less than 2% of the total population of battalion or brigade commanders were relieved in a given calendar year since 2003.

The Command Select List (CSL), a product of an in-depth centralized Department of the Army board process designed to select the best-qualified officers for the privilege of command, helps put the relief for cause data into perspective. The fact that relatively so few battalion and brigade commanders are relieved suggests the validity of the rigorous selection process. Over the 11 year period from 2003 through 2013, the lieutenant colonel (battalion commander) selection rate has remained between 5.5% and 6% of the entire eligible population for a given year. For perspective, in 2003, 6,243 eligible Lieutenant Colonels competed for 379 positions (6.1% selection) growing to 7,421 competing for 408 positions (5.5% selection) in 2013. For colonels (brigade commanders), the selection rate was as high as 7% between 2003 and 2005, but remained around 5% since 2005. Here, 2,201 Colonels competed for 152 positions in 2003 (6.9% selection) and 2,933 competed for 161 positions in 2013 (5.5%). While the selection rate for battalion and brigade command has hovered between 5% and 6% during the post-9/11 period, overall, the CSL represents 1% of the total Active Army

Component Officer End Strength confirming that only the best of the best are selected for coveted command billets. In 2013, there were 569 command billets (408 battalion and 161 brigade) in a year when the Army officer end strength was 98,967.⁵⁰ Those officers selected for command in 2013 represented 0.6% of the officer corps.

From 2003 through 2013, on average, there were approximately 393 battalion and 156 brigade command positions during a given year. Using the relief from command data for the same period, 110 commanders were relieved (85 battalion and 25 brigade) for an average of 10 commanders relieved per year (8 battalion and 2 brigade). Overall, the yearly average for the first eleven years of the post-9/11 conflicts breaks down to 10 of 549 battalion and brigade commanders (1.8%) relieved in a given year (8 of 393 battalion commanders (2%) and 2 of 156 brigade commanders (1%)).

The final factor in the analysis is the reason for the relief. While the Human Resources Command data is broad due to privacy concerns, it can be divided into two general categories: relief for misconduct and relief a loss in confidence (incompetence or hostile command climate). These areas are discussed in more detail below; but of the original 129 officers relieved from 2003-2014, far more were relieved for misconduct (93) than for loss of confidence (36). While readers may disagree, the relief of approximately 2% of the Army's vetted command slate of officers in a given year appears to suggest: (1) there is not a general problem among battalion and brigade commanders, and (2) division commanders hold accountable those officers they lose confidence in or commit misconduct. The next section reviews the causes for relieving a commander in more depth.

Relief for Cause Reasons

The relief for cause rule contemplates a commander losing confidence in a subordinate due to misconduct, poor judgment, incompetence, or other similar reasons. This section distinguishes misconduct from all other reasons to support the argument that relief for any reason other than misconduct may be suitable for continued service.

Relief for Misconduct

If a subordinate commander commits an illegal, immoral, or unethical act, few would dispute the commander has forfeited the right to command troops. When such an act is committed the foundation of trust is lost. In reviewing conduct warranting relief of a commander for cause, the distinction between illegal, immoral, and unethical behavior appears unimportant since any such behavior is incompatible with military service. However as with all acts, even these three categories cover a spectrum of conduct the senior commander must consider when deciding the fate of the offending officer, particularly, how that officer is separated from the military, either administratively or punitively. Importantly, a brief review of these three categories is instructive when comparing the concept of honest mistakes.

Illegal conduct is specifically prohibited under the Uniform Code of Military Justice (UCMJ) and other state, federal, and international legal codes with jurisdiction over the military service member. Focusing on the UCMJ, there are numerous punitive articles that cover the concepts of lying, fraud, dishonesty, and deceit such as False Official Statement (signing a document with the intent to deceive), Perjury (knowingly giving false testimony under oath), Forgery (falsely altering a document with the intent to defraud), and Fraud (knowingly making a false claim against the government). These

offenses are specific intent crimes meaning the offender specifically intends to deceive military authorities or gain something under false pretenses--the person knows exactly what they are doing. Compared to an "honest mistake" (discussed below), such intentional acts of deceit and deception are easily distinguishable.

Immoral acts are acts that do not conform to accepted standards of morality. The litany of synonyms for "immoral" are its best descriptors: wrongful, wicked, evil, dishonorable, corrupt, disreputable, and depraved among others. In the UCMJ, offenses described as "indecent" mean "conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."⁵¹ While immoral acts are not confined to sexual impurities, having "dishonorable" as a synonym puts such behavior in its proper military context.

Unethical behavior has received much attention in the military. With volumes of literature and studies, and to enhance leader training on ethics, the military created the Center for Professional Ethic. An unethical person is one who lacks moral principles, but in context here, an unethical person is one who is unwilling to act in accord with the standards of our profession. Standards of conduct in the Army are also subject to the Joint Ethics Regulation (JER) [Department of Defense (DoD) Directive 5500.7-R] which requires all DoD personnel to comply with the highest ethical standards and makes violations of the JER punitive under the UCMJ.⁵² Violations of the JER could be prosecuted as violations of UCMJ, Article 92, Dereliction of Duty. Like illegal and immoral acts, if a commander engages in unethical conduct, that commander should no longer be trusted to lead troops. These are not the only acts that can lead to relief.

Relief for Reasons Other than Misconduct

A commander may lose confidence in a subordinate based on poor judgment, incompetence, and “other similar reasons.” While a commander relieved for misconduct may stand little chance of continued service, these other reasons open the possibility. Distinguishing these other reasons from misconduct is critical to a commander’s analysis of potential continued service after relief. There are nuanced but important legal distinctions that take poor judgment, incompetence, and the concept of honest mistakes out of the criminal realm. The primary factors to be discussed are “intent” (not to be confused with commander’s intent) and “degree of care.”

Two UCMJ offenses mentioned above, False Official Statement and Dereliction of Duty, and one additional one, Damaging or Destroying Military Property (UCMJ, Article 109), provide instructive analogies for conduct that runs the spectrum from honest mistakes to deliberate acts. When viewing the actions and intent of a person in the context of these three offenses (signing a document, performing a duty, and caring for military equipment), it is easier to distinguish non-criminal conduct (poor judgment, incompetence, and honest mistakes) from illegal, immoral and unethical conduct.

For intent, one must consider whether an act was intentional (deliberate and with full knowledge) or unintentionally (mistake or ignorance). For example: a company commander uses unit morale funds to take two subordinates to an expensive dinner. When questioned, the commander says he thought he could use the funds for any act that would build unit morale. If the commander knew he could not use the money for such purposes, then the taking the money and response would both be intentional acts of misconduct. Yet, if the commander truly thought he could use the money for such

purposes, then both acts would be honest mistakes. This example highlights the difficulty for the senior commander and mutual trust becomes the focal point--does the commander believe the company commander is telling the truth. If so, perhaps the subordinate commander survives this honest mistake.

When determining a subordinate's competence to complete a mission, the "degree of care" analysis can help distinguish between incompetence and misconduct. This analysis starts with the assumption that a subordinate failed to accomplish a mission--the senior commander must decide if they failed to accomplish the mission purposely (intentionally blew it off), failed to accomplish it due to lack of effort or indifference, due to incompetence, or due to an honest mistake. Degree of care signifies the amount of due care that a reasonably prudent person would take under the same or similar circumstances.⁵³ There are a number of words that describe the degree of care spectrum: deliberate, wanton, reckless, and negligent.

A deliberate act is done purposefully, intentionally, willfully, and knowingly. Wanton and reckless are harder to define. Wanton behavior is considered worse than reckless in the law, yet their definitions are similar as each has to do with a disregard of the probable consequences of one's actions or omissions.⁵⁴ To illustrate: two officers are rushing back to their units on a post with a 15 mph speed limit. One drives 45 mph in area with relatively few people (reckless) and one drives 45 mph through a school zone (wanton). Negligence is the absence of due care that a reasonably prudent person would use in similar circumstances. These definitions may guide a commander in determining if an act was an honest mistake or whether a risk was prudent.

Finally, the legal defense of mistake allows a person to claim they were ignorant of a certain fact or under the mistaken belief of an event and be exonerated for their action, in other words, they made an honest mistake. For example, if the speeding officers claim they were unaware of the speed limit, the commander must consider the probability or improbability of the assertions to determine if they made honest mistakes. For example, it is improbable that an officer at the installation for a number of months is unaware of the limit, compared to someone's first few days on post.

Perhaps the best description that connects trust, prudent risks, and honest mistakes comes from Army Doctrine Publication 6-0's discussion of command authority. Acknowledging commanders are responsible for their decisions and their subordinate's actions, accomplishments, and failures, and that people make mistakes and errors may occur, the doctrine describes what success looks like despite these mistakes.⁵⁵

Successful commanders allow subordinates to learn through their mistakes and . . . gain the experience required to operate on their own. However, commanders do not continually underwrite subordinates' mistakes resulting from a critical lack of judgment. Nor do they tolerate repeated errors of omission when subordinates fail to exercise initiative.⁵⁶

The doctrine highlights the significance of such actions: "the art of command lies in discriminating between mistakes to underwrite as teaching points from those that are unacceptable in a military leader."⁵⁷

Relief for Cause Process

Considering its implications, the Army's relief for cause policy is straightforward:

When a higher ranking commander loses confidence in a subordinate commander's ability to command due to misconduct, poor judgment, the subordinate's ability to complete assigned duties, or for other similar reasons, the higher ranking commander has the authority to relieve the subordinate commander.⁵⁸

In two short paragraphs, Army Regulation (AR) 600-20, Command Policy, goes on to describe the procedural due process rights afforded to the officer facing potential relief. Relief for cause is an administrative process which does not, and cannot, by itself result in the discharge of an officer from the Army. While this paper suggests otherwise in certain circumstances, the administrative act of relief for cause is almost always followed by a separate administrative act of elimination, or in cases of serious misconduct, the officer is dismissed (punitively discharged) pursuant to a court-martial.

In theory, a senior commander must only state that they have lost confidence in the subordinate's ability to command based on misconduct, poor judgment, poor performance, or other reasons to relieve that subordinate commander. In practice, a number of due process requirements⁵⁹ ensure the process is administered in a fair and impartial manner. In addition to AR 600-20, numerous regulations govern the process, such as AR 15-6 for investigations, AR 623-3 for Officer Evaluation Reports (OER), and AR 600-8-24 for Officer Eliminations.⁶⁰ The key steps involved in the relief for cause process include: temporary suspension, a 15-6 investigation, notice of intent to relieve, a rebuttal, and the actual relief for cause. Other processes that may occur contemporaneously or in sequence include: Article 15 or court-martial for misconduct, a reprimand, relief for cause OER and referred report, and show cause (officer elimination) proceedings.⁶¹ While a loss of confidence is all it takes for a commander to relieve a subordinate from command, regulations ensure the subordinate is afforded procedural due process rights before the relief is final. The last section discusses the feasibility and potential implementation of a return to Marshall's policy.

A Return to Marshall Law--the Policy in Practice

The prime consideration that emerges from the examination of mission command and relief from command is the concept of honest mistakes. Having described honest mistakes (as distinguished from misconduct), a commander must consider: Was the subordinate's act or omission an honest mistake?; Why did the honest mistake occur?; does the officer deserve a second chance?; How many honest mistakes can occur before a commander is relieved?; and finally, If relieved, can the officer contribute in another area?

If a unit fully embraces the mission command philosophy, trust will be high. Commanders give subordinates freedom of action through mission orders, assume prudent risks, and underwrite subordinates' mistakes. Subordinates exercise disciplined initiative knowing their commander will support them if they make honest mistakes. If mistakes are made, the commander can ascertain whether it was an honest mistake based on the facts presented. The commander's experience, judgment, and leadership skills will inform the determination of whether the subordinate made an honest mistake or committed an act of misconduct, and to what degree. To further the analysis, here, we will assume an honest mistake was made so the next question is why?

When exploring why an honest mistake occurred, a commander must consider a number of factors such as their own role and the subordinate's experience and workload. Foremost, a commander must view their own role in the mistake. With the commander ultimately responsible for the subordinate's acts, this is a difficult, but critical assessment. Was the commander's intent clear? Mission command calls for broad orders, but were they too vague? How did the other subordinates receive and

execute the same or similar missions? In short, did the commander create an environment (provide sufficient resources and personnel) for the subordinate to succeed. Equally important is the commander's consideration of the subordinate's experience and workload. As described in a recent monograph on officer ethics, and well-documented in AR 350-1, commanders have myriad requirements that can overwhelm even the most organized officer.⁶² If the subordinate took a risk, was it a prudent risk where the subordinate considered the second and third order effects and took steps to mitigate the risk? Did the subordinate exercise disciplined initiative? The commander must account for all of the facts and circumstances in which the honest mistake occurred. After assessing the circumstances of the honest mistake, the commander determine if the subordinate deserves a second chance.

When a subordinate makes an honest mistake, it is the commander's stated responsibility to support the subordinate (underwrite the mistake) and counsel, coach, teach, and mentor the subordinate to prevent future occurrences of the same mistake. Mission command allows and accounts for this process and commanders are obliged to comply. Depending on the magnitude of the honest mistake and its impact on good order and discipline and unit morale, the commander must determine if the subordinate's mistake is easily correctable. While the subordinate may not make the exact same mistake twice, the commander must be confident that, based on the counseling and coaching, the subordinate will learn from the mistake. The situation becomes more precarious if the subordinate makes repeated mistakes. As noted above, commanders are not obligated to continually underwrite subordinates' mistakes when they lack judgment and they are not expected to tolerate repeated errors of omission

when subordinates fail to exercise initiative. At some point, the senior commander will lose trust and confidence in the subordinate's ability to successfully execute missions. At this stage, relief is warranted and the decision is whether the relieved commander should be separated or allowed to serve in another capacity?

While a subordinate may be deemed unfit to command troops, a commander must assess whether that officer still has value to Army based on their skill, talent, years of training, experience and expertise in other non-command functions as well as previously demonstrated excellence, leadership skills, and the potential for rehabilitation and future success. The considerations and expectations will be different for each level of command from company to brigade. Relieved battalion and brigade commanders, likely retirement eligible or close to it, may not desire to remain in the service, other than sufficient time to retire. Relieved company commanders, with a desire to stay in the Army could benefit most from such a policy. However, the current process, as described above, a relief for cause OER in an officer's Army Military Human Resources Record will generate officer elimination proceedings. For an officer to remain on active duty after being relieved, the Army would have to consider and implement a policy similar to that of curtailment.

As described in AR 614-30, curtailment is an administrative process where a person's overseas assignment is cut short "to enhance stability and reduce costs of overseas assignments" and soldiers are expected to serve the full length of their tours.⁶³ Curtailments are reserved for unavoidable exigencies such as compassionate reasons (family health reasons) and other exceptional cases (potential defection, extreme personal hardship, threat to life, and sexual assault cases).⁶⁴ When such an exigency

exists, the regulation provides detailed rules for how such a case is processed. Each case is reviewed on a case-by-case basis requiring a fully justified request initiated by the first Colonel in the Soldier's chain of command and approved by a general officer and forwarded back to Headquarters, Department of the Army.⁶⁵ Such a process could be replicated for relief for cause cases.

This process adds a valuable option for commanders to consider when deciding the fate of an officer deemed unfit to command troops, but well-qualified to serve in other functional areas. The officer would be designated a curtailed officer, rather than a relieved officer. The curtailed officer is the functional equivalent of the relieved officer, but the curtailed officer has a second chance in the service whereas the relieved officer has little to no chance of remaining. For such a system to work, where the relieved officer (now a curtailed officer) truly has a second chance in the service, numerous regulatory changes would have to be implemented, primarily within the OER system. Currently, a relief for cause OER, or a referred report, would automatically generate a show cause board. The policy change would not generate a referred OER for a curtailed officer. Still, the OER would speak for itself as far as the officer's potential, but it would not have the negative connotation associated with a relief for cause OER.

Conclusion

As Ricks details in *The Generals*, Marshall employed a philosophy of quick relief from command of World War II corps and division commanders who could not perform in combat. In Korea and Vietnam, Marshall's policy was employed by some, but the policy fell out of favor with the Army's senior leadership. While Ricks wrote about the generals, this paper focuses on the accountability of lieutenant colonels and colonels

leading battalions and brigades during the post-9/11 wars. Data suggests that with 129 commanders relieved for cause 2003 to 2014, tactical, key leaders were indeed held accountable for their actions.

Marshall's leadership principles are incorporated and espoused in contemporary Army leadership literature. This paper seized on Rick's suggestion of returning to Marshall's policy of quick relief with a chance for redemption and concludes that the implementation of such a policy fits squarely within the principles of mission command. Thus, the convergence of Marshall's principles, mission command, and relief for cause (if warranted), will aid leaders at the operational and strategic levels to make informed decisions on an officer's career. Mission command moves the Army from a zero-defects culture toward a command philosophy that allows for honest mistakes. Given the rigorous selection process, leaders must consider whether an officer not suited for command can continue in another capacity. With considerable time, effort, and resources dedicated to training and selecting leaders, an environment that encourages initiative, innovation and risk tasking must consequently evolve to allow those risk takers who make honest mistakes the opportunity for future success. Importantly however, this author believes that honest mistakes must be distinguished from illegal, immoral and unethical acts by leaders. While those leaders must absolutely receive full due process for their actions, if it is determined that illegal, immoral, or unethical acts were committed, then those officers cannot remain part of the military profession.

Endnotes

¹ Thomas E. Ricks, *The Generals: American Military Command from World War II to Today* (New York: Penguin Books, 2012), 447.

² Ibid., 451.

³ “Marshall Law” is the author’s term for General George Marshall’s leadership principles, not a reference to “martial law” or two of our nation’s greatest jurists (Chief Justice John Marshall or Justice Thurgood Marshall).

⁴ In 1984, historian Don Higginbotham concluded that “[n]o officers have ever equaled Washington and Marshall in effectively bridging the gap between the civilian and the military. [They] united the best of both the professional and political . . . characteristics of the American military tradition. Don Higginbotham, “George Washington and George Marshall: Some Reflections on the American Military Tradition,” public speech, USAFA Harmon Memorial, Colorado Springs, <http://gwpapers.virginia.edu/history/articles/george-washington-and-george-marshall/> (accessed March 22, 2015); In 1989, historian Mark C. Stoler wrote: “Statesman as well as soldier, his character and accomplishments were so exceptional that he is placed in the company of only George Washington when historical parallels and superlatives are used.” Mark A. Stoler, *George C. Marshall: Soldier-Statesman of the American Century* (New York: Twayne Publishers, 1989), ix; In 2005, Ambassador David M. Abshire compared George Marshall to George Washington and Robert E. Lee as our nation’s greatest “character-based” leaders and noted that “Marshall was not a leader of blind ambition who sought power and self-aggrandizement but, to the contrary, he was an unparalleled servant-leader. Such leadership was based on the qualities [of] integrity, honor, duty, and sacrifice.” David M. Abshire, *The Character of George Marshall: With Reflections on George Washington and Robert E. Lee*, Essay, 2005, 1. Available at: http://marshallfoundation.org/programs/wp-content/uploads/sites/23/2014/03/Character_of_George_Marshall.pdf (accessed March 22, 2015).

⁵ Rose Page Wilson, *General Marshall Remembered* (Englewood Cliffs, NJ: Prentice-Hall, 1968); Leonard Mosely, *Marshall: A Hero for Our Times* (New York: Hearst Books, 1982); Stewart Husted, *George C. Marshall: The Rubrics of Leadership* (Carlisle, Pennsylvania: U.S. Army War College Foundation, 2006); Gerald Pops, *Ethical Leadership in Turbulent Times: Modeling the Public Career of George C. Marshall* (Lanham, Maryland: Lexington Books, 2009); H. Paul Jeffers, *Marshall: Lessons in Leadership* (New York: Palgrave Macmillan, 2010); Stephen Taaffe, *Marshall and His Generals: U.S. Army Commanders in World War II* (Lawrence, Kansas: University Press of Kansas, 2011); Debi and Irwin Unger, *George Marshall: A Biography* (New York: HarperCollins, 2014).

⁶ Ricks, *The Generals*, 24-25, 471. Ricks cites the original sources in note 25, page 471.

⁷ *George C. Marshall Foundation Educational Programs*, <http://marshallfoundation.org/programs/leadership-series/marshalls-leadership-principles-2/> (accessed March 22, 2015).

⁸ For detailed examples and analysis of leadership from Marshall’s life, see Husted, *Rubrics of Leadership*; and LTC Jeffrey S. Tipton, *George C. Marshall: The Essential Strategic Leader*, Strategy Research Project (Carlisle Barracks, PA: U.S. Army War College, March 30, 2007), 4.

⁹ U.S. Department of the Army, *The Army*, Army Doctrine Publication 1 (Washington, DC: U.S. Department of the Army, November 7, 2012), 2-1 – 2-2; *America’s Army: Our Profession* (U.S. Army Training and Doctrine Command: Center for the Army Profession and Ethic, September 2014), 7.

¹⁰ In the January 2012 Marching Orders, the fourth bullet under CSA Priorities stated: “Adapt leader development to meet our future security challenges in an increasingly uncertain and complex strategic environment.” U.S. Department of the Army, *America’s Force of Decisive Action*, Marching Orders 38th Chief of Staff (January 2012), 2; By October 2013, leader development was the #1 strategic priority: growing “adaptive Army leaders for a complex world. *CSA Strategic Priorities*, October, 2013, slide 4, available at: <http://usarmy.vo.llnwd.net/e2/c/downloads/316390.pdf> (accessed March 22, 2015); and The Chief of Staff’s guidance on how to grow these adaptive leaders includes: fostering “individual toughness, battlefield skill and fighting spirit”; educating the force to understand the joint, interagency, intergovernmental, multinational (JIIM) environment; evolving the Army education system; retaining tactical competence and technical proficiency while cultivating strategic leadership; actively managing talent through assignments and educations; and instituting new evaluation and assessment tools that enable leaders to identify that talent..

¹¹ U.S. Department of the Army, *Army Leadership*, Army Doctrine Publication (ADP) 6-22 (Washington, DC: U.S. Department of the Army, August 1, 2012), foreword.

¹² The eight specified “Leader Expectations” are: (1) Have a vision and lead change; (2) Be your formation’s moral and ethical compass; (3) Learn, think, and adapt; (4) Balance risk and opportunity to retain the initiative; (5) Build agile, effective, high performing teams; (6) Empower subordinates and underwrite risk; (7) Develop bold, adaptive, broadened leaders; and (8) Communicate – up, down, and laterally; tell the whole story. General Odierno’s “Leader Expectations” are included in both *Marching Orders*, 3, and U.S. Department of the Army, *Army Leadership*, ADP 6-22, foreword.; and U.S. Department of the Army, *Army Leadership*, ADP 6-22, Foreword.

¹³ *Ibid.*, iii.

¹⁴ U.S. Department of the Army, *Army Leadership*, 3-1. Other aspects of character are defined by living the Army Values (Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage) and living the Warrior Ethos (I will always place the mission first, I will never accept defeat, I will never quit, and I will never leave a fallen comrade). *Ibid.*, 3-2 and 3-4.

¹⁵ *Ibid.*, Figure 1-1, 1-5. The three core leadership competencies of leads, develops, and achieves provide leaders with more refined guidance on implementing leadership functions. Each competency has equally important “sub-competencies.” Leads has five competencies (leads others, builds trust, extends influence beyond the chain of command, leads by example, and communicates); Develops has four competencies (creates positive environment/fosters esprit de corps, prepares self, develops others, and stewards of the profession); and Achieves has one (gets results). *Ibid.*

¹⁶ See War Department: Office of the Chief Staff, Field Service Regulations, United States Army, 1905 (Washington D.C.: War Department, February 1, 1905), Orders, Article II, paragraphs 39-42, 29-30. Available at: <https://archive.org/details/usarmyregs00unitrich>; and War Department: Office of the Chief Staff, Field Service Regulation, United States Army, 1914, (Washington DC: War Department, March 19, 1914), Combat, Article V, paragraph 149, 78. Available at <https://archive.org/stream/armyfieldservice00unit#page/78/mode/2up/search/nonreceipt> (accessed March 22, 2015).

¹⁷ Clinton J. Ancker, "The Evolution of Mission Command in U.S. Army Doctrine, 1905 to the Present," *Military Review* (March-April 2013).

¹⁸ For access to a number of scholarly articles on mission command, visit the *The Maneuver Center's Maneuver Self Study Program Home Page*, <http://www.benning.army.mil/mssp/Mission%20Command/> (accessed March 26, 2015).

¹⁹ *Ibid.*, 46.

²⁰ *Ibid.*, 47-48.

²¹ *Ibid.*, 49.

²² *Ibid.*; Field Manual (FM) 100-5, Operations, 2001.

²³ Robert Gates, "Secretary of Defense Speech: United States Military Academy," February 25, 2011, <http://www.defense.gov/speeches/speech.aspx?speechid=1539> (accessed March 22, 2015).

²⁴ U.S. Department of the Army, *Mission Command: Command and Control of Army Forces*, Field Manual 6-0 (Washington, D.C.: U.S. Department of the Army, August 11, 2003), xiii.

²⁵ Through the end of 2013, 91% of active duty field grade leaders were familiar with mission command and 59% of all leaders were somewhat familiar with the doctrine. U.S. Army Combined Arms Center, *2013 Center for Army Leadership Annual Survey of Army Leadership (CASAL): Main Findings* (Fort Leavenworth, Kansas, U.S. Combined Arms Center, April 30, 2014), 37.

²⁶ U.S. Department of the Army, *Mission Command*, Army Doctrine Publication (ADP) 6-0 (Washington, D.C.: U.S. Department of the Army, March 12, 2014), 1.

²⁷ U.S. Army War College, *Strategic Leadership Primer*, 3rd Edition (Carlisle, PA: U.S. Army War College, 2010), 11.

²⁸ *Ibid.*, 2.

²⁹ *Ibid.*, 3.

³⁰ *Ibid.*, 5.

³¹ *Ibid.*

³² For the doctrine on command authority, see U.S. Department of the Army, *Mission Command*, paragraphs 25 and 26, 6.

³³ There were 21,956 respondents ranging from sergeant to colonel. U.S. Army Combined Arms Center, *2013 CASAL Main Findings*, v.

³⁴ *Ibid.*, 37-39.

³⁵ Ibid., 54.

³⁶ For background on General Lee's relief for cause and court-martial, see Samuel White Patterson, *Knight Errant of Liberty: The Triumph and Tragedy of General Charles Lee* (New York: Lantern Press, 1958), 200-233. General Washington also relieved Generals Philip Schuyler and Horatio Gates. Ricks, *The Generals*, 22.

³⁷ For background on General McClellan's two reliefs, see Joseph T. Glatthaar, *Partners in Command: The Relationship Between Leaders in the Civil War* (New York: The Free Press, 1994), 52, 71. In addition to McClellan, President Lincoln relieved Generals Irvin McDowell, John Pope, Don Carlos Buell, Ambrose Burnside, Joseph Hooker, and George Meade. Ricks, *The Generals*, 22.

³⁸ Lawrence A. Frost, *The Court-Martial of General George Armstrong Custer* (Norman, OK: University of Oklahoma Press, 1968). The book covers Custer's court-martial for abandoning his troops and command on the Kansas plains.

³⁹ Ricks, *The Generals*, 21.

⁴⁰ Ibid., 22.

⁴¹ Ibid., 31-32.

⁴² The five generals were: Orlando Ward, Terry Allen, Leroy Watson, Albert Brown, and Frederick Irving; Ibid., 37.

⁴³ Ibid., 39.

⁴⁴ Ibid., 187.

⁴⁵ Ibid., 242.

⁴⁶ Ibid., 242-47.

⁴⁷ Ibid., 452.

⁴⁸ U.S. Army Human Resources Command, *Relief Tracker*, November 14, 2014, 1-7 (on file with author).

⁴⁹ Michelle Tan, "129 Army Battalion, Brigade Commanders Fired Since 2003," *Army Times*, February 2, 2015.

⁵⁰ U.S. Department of Defense, *2013 Demographics: Profile of the Military Community* (Washington DC: U.S. Department of Defense, 2013), 11.

⁵¹ U.S. Department of the Army, *Military Judge's Benchbook*, Department of the Army Pamphlet 27-9 (Washington DC: U.S. Department of the Army, September 10, 2014), 549.

⁵² U.S. Department of Defense, Joint Ethics Regulation, DoD 5500.7-R (Washington DC: U.S. Department of Defense, August 30, 1993, with change 7, November 17, 2011), 7.

⁵³ The reasonably prudent person is someone that exercises average care, is reasonably cautious, and uses good sensible judgment. Combined from the definitions of reasonable person and prudent. The Law Dictionary.org.

⁵⁴ U.S. Department of the Army, *Military Judge's Benchbook*, 921.

⁵⁵ U.S. Department of the Army, *Mission Command*, 6.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ U.S. Department of the Army, *Army Command Policy*, Army Regulation 600-20 (Washington DC: U.S Department of the Army, November 6, 2014), 17.

⁵⁹ In general, the due process rights include procedural and substantive due process rights which require the government to follow the procedures and timelines specified in the governing regulations and afford the officer facing relief or elimination certain rights such as notice, the right to an attorney, and the opportunity to respond.

⁶⁰ U.S. Department of the Army, *Procedures for Investigating Officers and Boards of Officers*, Army Regulation 15-6 (Washington, DC: U.S. Department of the Army, October 2, 2006); and U.S. Department of the Army, *Evaluation Reporting System*, Army Regulation 623-3 (Washington, DC: U.S. Department of the Army, March 31, 2014); and U.S. Department of the Army, *Officer Transfers and Discharges*, Army Regulation 600-8-24 (Washington, DC: U.S. Department of the Army, April 12, 2006).

⁶¹ The description of the relief for cause process is a broad overview based on the author's extensive experience with officer elimination proceedings. The following hypothetical case, with both misconduct and incompetence, further illustrates the key steps in the relief process. A battalion commander (LTC A), frustrated with a company commander's (CPT B) incompetence, loses control during an argument and pushes CPT B. Once notified, the Commanding General (CG) temporarily suspends both commanders in writing and appoints an AR 15-6 investigating officer (IO) to determine the facts and circumstances surrounding the fight. Here, the IO substantiates that LTC A pushed CPT B and that CPT B has displayed incompetence. The CG approves the results and serves notice of intent to relieve on each commander and their right to submit a rebuttal. After reviewing the rebuttals, CG relieves each commander for cause, LTC A for misconduct and CPT B for incompetence. The CG personally informs both commanders orally and in writing of their relief completing the relief for cause process and officially terminating their respective commands. Additional related, but separate processes occur contemporaneously, each with their own set of substantive and procedural rights. For example, an Article 15 or general officer memorandum of reprimand could be issued. Each officer will receive relief for cause OERs and be afforded all of the procedural rights generated by the referred report. If any document is filed in the officers' Army Military Human Resources Record (AMHRR), the officer would have to show for retention and go through the officer elimination process which is governed by a separate regulation.

⁶² Leonard Wong and Stephen J. Gerras, "Lying to Ourselves: Dishonesty in the Army Profession," *Strategic Studies Institute and United States Army War College Press*, February 17, 2015; and U.S. Department of the Army, *Army Training and Leader Development*, Army Regulation 350-1 (Washington, DC: U.S. Department of the Army, August 19, 2014).

⁶³ U.S. Department of the Army, *Overseas Service*, Army Regulation 614-30 (Washington, DC: U.S. Department of the Army, January 27, 2015), 25.

⁶⁴ *Ibid.*, 26.

⁶⁵ *Ibid.*, 25.

