

USALSA Report
U.S. Army Legal Services Agency

Trial Judiciary Note

Trial Judiciary Announces Publication of *Military Judges' Benchbooks* for Trials of Enemy Prisoners of War and Provost Courts

Against the backdrop of ongoing military operations in Iraq and Afghanistan, the U.S. Army Trial Judiciary recently published two *Military Judges' Benchbooks*, which are tailored for trials of enemy prisoners of war and civilians in occupied territories. The most extensive of these *Benchbooks* is *Department of the Army Pamphlet 27-9-1, Military Judges' Benchbook for Trial of Enemy Prisoners of War* (EPW Benchbook).¹ The other is *Department of the Army Pamphlet 27-9-2, Military Judges' Benchbook for Provost Courts* (Provost Court Benchbook).²

Both publications are companions to the original *Military Judges' Benchbook*³ and retain its basic format and many of its provisions. The new publications, however, go well beyond the original *Benchbook* by incorporating procedural requirements that are set forth in the Geneva Conventions relating to POWs⁴ and civilians.⁵ Additionally, the *EPW Benchbook* contains pattern instructions for law of war offenses⁶ and defenses.⁷ By contrast, the *Provost Court Benchbook* contains no instructions for offenses or defenses. Rather, it reserves Chapters 3 and 5 for substantive offenses and defenses that may be applicable in a particular occupied territory.⁸

Should the United States someday seek to prosecute EPWs or civilian internees, the *EPW* and *Provost Court Benchbooks* will, undoubtedly, play a preeminent role in such trials by navigating the military judge and counsel through a maze of unique legal requirements and complexities. Ultimately, they will help to ensure that an accused receives a fair trial and one that preserves his rights under the Geneva Conventions.

¹ U.S. DEP'T OF ARMY, PAM. 27-9-1, LEGAL SERVICES: MILITARY JUDGES' BENCHBOOK FOR TRIAL OF ENEMY PRISONERS OF WAR (4 Oct. 2004) [hereinafter EPW BENCHBOOK].

² U.S. DEP'T OF ARMY, PAM. 27-9-2, LEGAL SERVICES: MILITARY JUDGES' BENCHBOOK FOR PROVOSTS COURTS (4 Oct. 2004).

³ U.S. DEP'T OF ARMY, PAM. 27-9, LEGAL SERVICES: MILITARY JUDGES' BENCHBOOK (1 Apr. 2001).

⁴ Geneva Convention, Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter GC].

⁵ Geneva Convention, Relative to the Treatment of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter GC IV].

⁶ See EPW BENCHBOOK, *supra* note 1, paras. 3A–D. The *EPW Benchbook* also contains all of the original *Benchbook's* instructions for Uniform Code of Military Justice offenses. See *id.* para. 3; see also UCMJ art. 2(9) (2002) (providing specifically that EPWs may be tried for post-capture UCMJ offenses, as well as those arising under law of war).

⁷ See EPW BENCHBOOK, *supra* note 1, para. 5-A. The *EPW Benchbook* also retains all defense instructions that are contained in the original *Benchbook*. See *id.* para. 5.

⁸ See GC IV, *supra* note 5, para. 64.

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

Id.