

Lore of the Corps

From West Point and Armored Cavalry Officer to Harvard Law and The Judge Advocate General: The Life and Career of Wilton B. Persons (1923 - 2015)

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While serving as an Armored Cavalry officer in Austria in the late 1940s, then Lieutenant Wilton B. Persons, Jr., “decided that there must be something more interesting than being in an orderly room of a cavalry troop.”¹ Since he “liked doing” the special courts-martial that were then the sole responsibility of line officers in the Army, and since the Army was advertising that it would send a small group of officers to law school---all expenses paid---Persons applied to Harvard, Yale, and the University of Virginia. He ended up going to Harvard’s law school and, when he graduated in 1953, began what would be a remarkable and rewarding career as an Army lawyer. When Major General Persons retired as The Judge Advocate General in 1979, he had accomplished a great deal in the Corps, and left a lasting legacy for the Army lawyers who followed him.

Born in Tacoma, Washington, on December 2, 1923 (his father was stationed at Fort Lewis), Wilton “Will” Burton Persons, Jr., spent his childhood in Kansas before attending a preparatory school in Montgomery, Alabama. In 1941, when seventeen-year old Persons had enough credits to begin college, he enrolled at Alabama Polytechnic Institute.² He wanted to fly airplanes and applied for aviation cadet training, but his poor eyesight prevented him from flying. In the meantime, Persons also applied several times for an appointment to the U.S. Military Academy, and ultimately gained admission to West Point in July 1943.³



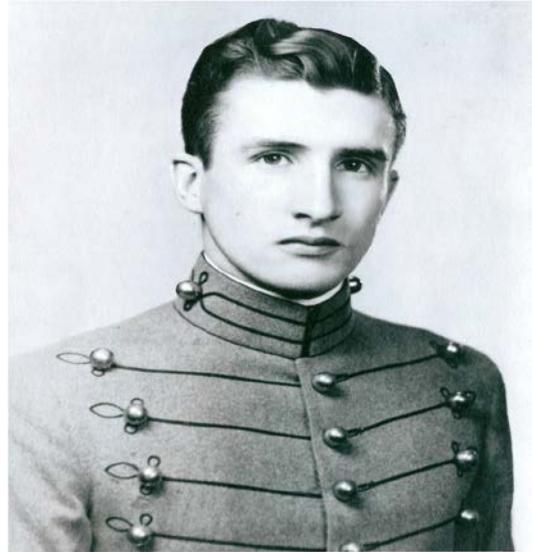
Wilton Persons, Alabama Polytechnic, 1941.

¹ Interview with Major General (ret) Wilton B. Persons (May 8, 2013) [hereinafter May Interview].

² In 1960, Alabama Polytechnic Institute was granted university status by the Alabama state legislature, and renamed Auburn University.

³ Michael E. Smith, *Major General Wilton Burton Persons, Jr. United States Army (Retired) The Judge Advocate General of the Army 1975-1979*, 153 MIL. L. REV. 177, 181 (1996). This excellent biographical sketch of Persons relies primarily on two oral histories done in 1985.

When he graduated in 1946, Second Lieutenant Persons chose Armor as his branch. His first assignment was with the 24th Constabulary Squadron in occupied Austria. He spent eighteen months in Austria and then moved to Germany, where he joined the newly formed 6th Armored Cavalry Regiment in Landshut, Bavaria.



Cadet Wilton Persons, USMA, 1946.

Persons liked the Army--and he still had a service obligation from his time at West Point---but he thought he should look for another line of work because he “was sort of in a dead end job.”⁴ As he remembered it:

After the war, the Army started putting out circulars and announcements [offering] to send officers to different graduate schools---engineering, law, foreign languages. I was in the Armored Cavalry and I decided that there must be something more interesting than being in an orderly room in a cavalry troop. I’d done a lot of courts-martial as a line officer; we did trials on the weekends and in the evenings because that was the only time we had to do them. We were working during the day. I like the law and I enjoyed the court work, so I decided to apply to law school. I also applied to go to Engineering school and Journalism school.

⁴ Interview with Major General (ret) Wilton B. Persons (June 5, 2012) [hereinafter June Interview].

I went to Frankfurt and took the LSAT in 1949. I was then selected to go to Harvard Law School just before the Korean War started.⁵



Lieutenant Wilton Persons, Austria, 1946



Lieutenant Wilton Persons, U.S. Army Europe & 7th Army, Heidelberg, Germany, 1949.

⁵ May Interview, *supra* note 1.

Persons began his studies in 1950 and graduated from Harvard in 1953. He “worked 18 hours a day for the first year in law school and finished in the top ten percent.”⁶ During his summers, he worked at a civilian law firm in Boston. This was normal for the time; the JAG Corps’ Career Management Office⁷ encouraged officers attending law school at Army expense to “apply for a legal related job” during their summer breaks.⁸

Captain Persons began his judge advocate career in The Judge Advocate General’s Office, or “JAGO” as it was then called. He worked first in the Military Affairs Division and later in the Administrative Law Division. Probably the highlight of this Pentagon tour was his time as the assistant defense counsel in *United States v. Dickenson*. Persons’ work on this high profile case of a Korean war “turncoat” was his first introduction to the new Uniform Code of Military Justice that had replaced the Articles of War under which he had practiced law as a line officer.⁹

After four years in the Pentagon, Persons was selected to attend Command and General Staff College. He was promoted to major (MAJ) shortly before graduating in June 1958 and then travelled to Germany, where he joined the 8th Infantry Division. He worked first as a defense counsel, and then served as a claims attorney and administrative law attorney before becoming the Deputy Staff judge Advocate for the division.



Major Wilton Persons, 8th Infantry Division, German, 1961.

⁶ June Interview, *supra* note 4. See also, Smith, *supra* note 3, at 184.

⁷ Today’s Personnel, Plans and Training Office, Office of The Judge Advocate General.

⁸ May Interview, *supra* note 1.

⁹ For more on Dickenson, and Persons role in the case, see Fred L. Borch, *The Trial of a Korean War “Turncoat”: The Court-Martial of Corporal Edward S. Dickenson*, ARMY LAW. (January 2013). See also *United States v. Dickenson*, 20 C.M.R. 154, 6 U.S.C.M.A. 438 (1955).

When MAJ Persons left in July 1961, he was on his way to Charlottesville and was a very unhappy officer. This was because he had requested that his next assignment be at an Army installation like Fort Huachuca or Fort Bliss, where Persons hoped to do procurement law. But Major General Charles “Ted” Decker, the new Judge Advocate General, informed Persons in a letter that he would instead “take over as chief of the Procurement Law Division at the JAG School.”¹⁰

Persons was distressed. He simply had no interest in a job at The Judge Advocate General’s School (TJAGSA). Perhaps this is understandable since he had not attended either the Basic Course or the Advanced Course and consequently had little or no appreciation of what TJAGSA was all about.¹¹ As Persons remembered, he was so upset that:

I contemplated jumping out the window--it was not economically feasible for me to resign at that point, and I could not very well, at least it never occurred to me, to write back to General Decker and tell him that he got it all wrong. . . So we gritted our teeth and went off to Charlottesville.¹²

When MAJ Persons arrived at TJAGSA, however, he was given a completely different job: School Secretary. He was in this position, similar to today’s TJAGLCS Executive Officer, for a year when he moved to be an instructor in the Military Justice Division. After a year teaching evidence, now Lieutenant Colonel (LTC) Persons (he had been promoted in January 1963) became TJAGSA’s top criminal law instructor as Chief, Military Justice Division.¹³

While at TJAGSA, LTC Persons developed some firm opinions about the institution’s place in the Corps—some of which were at odds with the views of the Corps’ leadership. General Decker, for example, was attempting to get authority for TJAGSA to award an LL.M. Persons, however, was not really convinced that this was necessary. In his view, the school’s role “was to turn out people who could immediately function in the Army” and this meant that TJAGSA was a “service school first and a graduate school second.”¹⁴

He also formed some definite opinions about administration in the schoolhouse. Persons disliked faculty meetings because they were a waste of time. As for student evaluations, only those from the Advanced Course (today’s Graduate Course) were valuable. Faculty evaluations from basic course students were of little consequence. As Persons put it: “[T]o take seriously what they thought should be in the curriculum and who should teach it seemed to me to be pretty silly.” When asked by Colonel John F. T. Murray, then serving as TJAGSA Commandant, what should be done with evaluations from the Basic Class, LTC Persons replied: “Throw them in the waste basket. Don’t even read them.”¹⁵

While Persons believed that his time at TJAGSA was professionally rewarding, he “was becoming bored with teaching” by the end of this tour of duty. But obviously his record was good, as he was selected to attend the Army War College with only 18 months in grade as a lieutenant colonel.¹⁶

After graduating from the course at Carlisle Barracks, LTC Persons returned to Washington, D.C., for an assignment as Chief, General Law Branch. He subsequently served as Assistant Chief and then Chief, Military Affairs Division. During this tour in the Pentagon, LTC Persons was the legal advisor to the Army’s Civil Disturbance Liaison Committee. Racial unrest in the late 1960s had resulted in the Army’s involvement “in the civil disturbance business in a big way,”¹⁷ and Persons was heavily involved in advising on the drafting of model proclamations, operations plans, and rules of engagement. Additionally, when the White House decided that soldiers should be deployed to the location of a riot or other civil disturbance, a judge advocate went with these soldiers. On more than a few occasions, these Army lawyers “reached back” to LTC Persons for advice and counsel.¹⁸

In July 1969, now Colonel Persons (he had been promoted in November 1967) assumed duties as the Staff Judge Advocate (SJA), U.S. Army, Vietnam (USARV). The Military Justice Act of 1968, which had created the new position of military judge and, as a practical matter, also took line officers out of special courts-martial, had just become effective. Implementing these two major changes to courts-martial practice was a significant challenge, as commanders were not at all happy with the new reality that a military judge was now in charge of proceedings at special courts, much less that judge advocates were now serving as trial counsel and defense counsel at these courts. Colonel Persons, however, was successful in convincing commanders in Vietnam that lawyers were not “taking over

¹⁰ Smith, *supra* note 3, at 189.

¹¹ Persons did not attend any course at TJAGSA until the summer of 1969, when he was a full colonel and student in the ‘SJA course’ prior to deploying to Vietnam. *Id.* at 195, fn 133.

¹² *Id.*

¹³ *Id.*, 190-191. Department of the Army (DA) Form 2-1, Wilton B. Persons, para. 12, Appointments.

¹⁴ Smith, *supra* note 3, at 191. For more on the efforts to obtain authority for TJAGSA to award an LL.M, see Fred L. Borch, *Masters of Laws in Military Law: The Story Behind the LL.M. Awarded by The Judge Advocate General’s School*, ARMY LAW. (August 2010), 1.

¹⁵ *Id.* at 190.

¹⁶ *Id.* at 191.

¹⁷ *Id.* at 192.

¹⁸ *Id.* at 193.

the system” and that commanders “still made the key decisions” in the system.¹⁹ During this same tour of duty, COL Persons also wrestled with the high profile court-martial of Army Special Forces personnel charged with the murder of suspected Vietnamese double agent. This case generated intense media interest and took most of Persons time during the first three months of his year in Saigon.²⁰



Colonel Wilton Persons, Staff Judge Advocate, U.S. Army Vietnam, 1969.

After his year in Vietnam, COL Persons reported for duty as the SJA, U.S. Army Pacific. During his ten months in Hawaii, he thought seriously about retiring from active duty. Persons had twenty-five years of active service and realized that if he retired, he was still young enough for a second career in a law firm. But retirement became a non-issue when Persons was selected for brigadier general and was sent to Heidelberg as the Judge Advocate, U.S. Army Europe and Seventh Army.

After arriving in Germany, Persons made history as the first judge advocate to be frocked to a higher rank. General (GEN) Michael S. Davison, the USAREUR commander, believed that Persons would be more successful in his dealings with the German authorities if he were wearing stars, and received permission from the Pentagon to frock him. As a result, Persons pinned a single star on his collar in September 1971. His official promotion to brigadier general occurred six months later, in February 1972.²¹

¹⁹ *Id.* at 197.

²⁰ For more on the Green Beret murder case, see JEFF STEIN, *A MURDER IN WARTIME* (1992).

²¹ Smith, *supra* note 3, at 205, fn 207; DA Form 2 & 2-1, *supra* note 13.

Brigadier General Persons’ tour of duty in USAREUR was a tough one. There were many complicated legal issues that arose during his four-year tenure. These included: improving race relations between black and white soldiers (by establishing equal opportunity staff officers in each unit); creating a Military Magistrate Program (giving a judge advocate magistrate the responsibility to review every case of pre-trial confinement); and replacing command-line court-martial jurisdiction with so-called area jurisdiction (which made better sense given that some units were widely dispersed in Germany).²²

But the most serious challenge involved the command’s aggressive crackdown on illegal drug use among soldiers, especially in the barracks. A drug abuse prevention plan was published in USAREUR *Circular 600-85*, and it included provisions “permitting the dissemination of drug information to nonmilitary government agencies” and prohibiting “the display on barracks walls of posters and other items” condoning illegal drug use. When a group of soldiers assigned to USAREUR filed a class action suit in Washington, D.C., challenging this drug abuse prevention plan, both GEN Davison and BG Persons were surprised when U.S. District Court Judge Gerhard A. Gesell certified the class as “representing all soldiers in the European Command with ranks of E-1 through E-5.” They were shocked, however, when Gesell held that “the existing USAREUR drug plan [was] so interlaced with constitutional difficulties that *Circular 600-85* must be withdrawn and cancelled, along with all earlier related orders and instructions.”²³ It should come as no surprise that the European edition of the *Stars and Stripes* newspaper trumpeted that Judge Gesell had stopped the “Drug War in Its Tracks.”²⁴

Fortunately for GEN Davison and BG Persons, Judge Gesell stayed his order pending the Army’s appeal of his ruling. But Gesell required USAREUR to keep very detailed records of any and all soldiers disciplined for drug offenses while the appeal was pending, and this requirement, “along with other litigation support efforts, required an enormous amount of effort and many overtime hours.”²⁵ Ultimately, the Court of Appeals for the D.C. Circuit, in an unanimous decision, reversed Judge Gesell. But this did not occur until September 1975, some 28 months after the plaintiffs had filed their complaint.²⁶

In 1975, BG Persons was selected to succeed Major General George S. Prugh as the next Judge Advocate General. For the next four years, until he retired from active

²² Smith, *supra* note 3, at 210-217.

²³ *Committee for G.I. Rights v. Calloway*, 370 F. Supp. 934 (D.D.C. 1974).

²⁴ Smith, *supra* note 3, at 209.

²⁵ *Id.*

²⁶ *Committee for G.I. Rights v. Calloway*, 518 F. 2d 446 (D.C. Cir. 1975).

duty in 1979, Major General Persons was the top uniformed lawyer in the Army. He wrestled with a number of legal issues, including the so-called “West Point Cheating Scandal” and attempts to unionize the armed forces. The former involved collusion on a take-home electrical engineering exam. Of a reported 117 cadets suspected of having cheated on the test, 50 were later discharged. The event resulted in a reexamination of the Cadet Honor Code and reforms to the Military Academy’s adjudication process. The latter involved efforts by two federal employee unions to give soldiers safeguards “against oppressive and unlawful actions by their commanders.”²⁷ Ultimately, this attempt to unionize the Army was resolved when Congress enacted legislation prohibiting uniformed personnel from joining organized labor.



Major General Wilton Person, The Judge Advocate General of the Army, 1975.

Major General Person’s most important action as TJAG—and certainly his longest lasting contribution—was his decision to create a separate and independent Trial Defense Service (TDS). Persons had long been concerned that the existing system—whereby SJAs supervised both trial and defense counsel and rated their performance—led inexorably to a perception of unfairness. Others in the Corps had voiced similar concerns over the years. The end result was that, in March 1977, TJAG Persons directed then COL Wayne E. Alley “to assign and take the actions necessary to establish a separate [trial] defense organization.”²⁸

²⁷ Smith, *supra* note 3, at 230.

²⁸ *Id.* at 237. For more on Wayne E. Alley, see George R. Smawley, *In Pursuit of Justice, A Life of Law and Public Service: United States District*

Ultimately, the details of the framework for the new defense organization fell to COL Robert B. Clark. Clark interviewed commanders in preparing the proposed trial defense service and Major General Persons was pleased with the end product.

The Army Chief of Staff, General Bernard W. Rogers, however, was not convinced that a separate TDS was a good idea. On the contrary, Rogers apparently believed “that defense counsel were already out of control and that under a separate system they would become even more out of control.”²⁹ The solution was to suggest to General Rogers that, rather than creating a “full-fledged” Trial Defense Service, the Army conduct “a test program first.” General Rogers approved the test program and, in November 1980, after a two year Army-wide test, “TDS was given permanent organizational status.”³⁰ Major General Persons had retired the year before, but the creation of TDS remains a lasting legacy of his tenure as TJAG.

In retirement, Persons settled in Savannah, Georgia, and “enjoyed a long, wonderful retirement” with his wife Christine. He danced, drank Maker’s Mark bourbon, and amassed an “impressive hat and necktie” collection.³¹

Will Persons was proud that he never again worked for money but instead was able to do volunteer work in a variety of organizations. These included: the Skidaway Island Division, Southside Fire Department (where he served as assistant chief and ultimately as board president); Skidaway Island Yacht Club (where he served as commodore); Savannah Symphony (where he served as president); and U.S. Fish and Wildlife Service (where he served as a volunteer guide and wildlife interpreter).³²

Major General Persons once said in an interview: “My father never thought I would amount to much. . .”³³ In an oral history, Persons mused in retrospect that this might have been his father’s way of motivating his son—by telling young Will Persons that he was not “strong enough or smart enough.”³⁴ Regardless of why the senior Persons had this opinion, history proves that he could not have been more wrong about his son. When Persons died at the age of 91 on

Court Judge and Brigadier General (Retired) Wayne E. Alley (U.S. Army 1952-1954, 1959-1981), 208 MIL. L. REV. 213-306 (Summer 2011).

²⁹ *Id.* at 238.

³⁰ *Id.*

³¹ *Wilton Persons (1923-2015)*, SAVANNAH (GA.) MORNING NEWS, Apr. 7, 2015.

³² *Id.*

³³ May Interview, *supra* note 1.

³⁴ Smith, *supra* note 3, at 181-182.

April 3, 2015, he had lived a rich life filled with personal and professional accomplishments.³⁵



Major General (ret) Persons and Major General (ret) William K. Suter, at the Retired Association of Judge Advocates gathering at TJAGLCS, June 2011.

³⁵ Major General Persons is survived by his wife of 69 years, Christine (nee Smith); his children Charlotte Persons, Alice Persons, and Wilton B. Persons III; grandsons David and Stephen Blomeyer, and many nieces and nephews.