



THE ARMY LAWYER

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TJAG's "Annual Report"

These remarks by Major General George S. Prugh, The Judge Advocate General of the Army, were delivered at a recent meeting of the Judge Advocates Association. General Prugh's annual report, and those of TJAG's from the other services, will appear in a forthcoming issue of *The Judge Advocate Journal*.

The year following my last "Annual Report" to this group has been both an extremely busy, and a highly successful one for the Office of The Judge Advocate General. Many of the projects I described briefly in our past discussions have "borne fruit" so to speak, and have been implemented on an Army-wide basis.

Legal Center Concept.

In the military justice area during that interval, for example, our Legal Center Pilot Project was tested, evaluated, and implemented Army-wide on an optional basis. The Legal Center Concept, as you recall from last year, authorizes the processing of all legal actions, including administrative discharges, within a specific geographic jurisdiction. Special court-martial jurisdictions are consolidated at the brigade or comparable level. Individual judge advocates at the Center are usually designated to advise brigade level commanders. This concept proved highly successful at the test sites in increasing efficiency and contributing to an improved system of justice. It relieves units of administrative difficulties, and reduces processing times. As the organization and composition of some commands might militate against the requirement of such a Legal Center, the plan was made optional, with direction to all commanders to "carefully evaluate the local situation" with a view toward implementation.

Military Magistrates Program.

Also brought to fruition in the year subsequent to my last report was the Military Magistrates Program. The testing of this concept was being conducted on several CONUS instal-

lations at that time, following successful testing with our Army in Europe. The test results were evaluated early in 1974, and the program was found to be highly successful in reducing pretrial confinement, without a significant adverse impact on unit discipline, while engendering a degree of confidence in the system for those undergoing pretrial confinement. This is significant in view of the importance placed on closer monitoring of pretrial confinement by the DOD Task Force on the Administration of Military Justice in the Armed Forces, which recommended that a system, such as the Army's test program, be implemented by all the services. Therefore, the decision was made to implement the program Army-wide, and Chief of Staff approval was obtained in July. Under the concept, a judge advocate officer is appointed by the convening authority to review the need for continued pretrial confinement and to release those confinees whose confinement is not necessary. The accused's records are reviewed, along with such factors as the seriousness of the offense, number of dependents, and other pertinent information. When continued confinement is not found necessary, the accused is released. The Magistrate's review also insures that no prisoner will be overlooked in the assignment of counsel.

Our evaluation of the test program revealed that it prevents abuses of the use of pretrial confinement and results in a new look by commanders at the use of pretrial confinement, acting as a deterrent to its unnecessary use in many cases. Local regulations will require the updating of each prisoner's status, which causes commanders and their staffs to be more expeditious in the processing of cases, thereby accomplishing another of our goals—reduction in processing times. Not only has the testing of this concept shown to effect favorably the administration of military justice in the "administrative" sense (*i.e.* conformity to regulations on pretrial confinement, reductions in processing times, etc.), but it has also demonstrated

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an impact on an equally important plane—the perception of those soldiers involved in these processes. Prisoners will no longer harbor the perception that they are forgotten until their court-martial. Each individual knows he will be given an impartial interview in which he may bring up any matters relating to his pretrial confinement. Moreover, these prisoners can get fast answers to questions relating to the status of their court-martial.

This program has been implemented at all installations with confinement facilities containing pretrial confinees from other significantly active GCM jurisdictions in the area of confinement facility, and for those with confinement facilities having an average daily pretrial prisoner population of greater than 50 confinees for the six-month period preceding implementation of the program. On those installations with a prisoner population of less than 50, the precise method of implementation is left to the prerogative of the local commander.

Nonjudicial Punishment.

At last year's meeting, I briefly mentioned the Secretary of Defense's Directive to implement the majority of the Task Force's recommendations relating to the imposition of nonjudicial punishment. As of that meeting, a message change to Army Regulation 27-10, *Military Justice* (November 28, 1968) had been sent to the field, providing for an accused's right to present evidence, to call witnesses, and to be accompanied during the proceedings by a personal spokesman. Also, upon request, the proceedings were made open to the public, unless military exigencies or securities preclude public disclosure. If punishment is appealed, the execution, other than reduction and forfeiture or detention of pay, was to be automatically deferred until action is taken on the appeal. Since then, AR 27-10 has been permanently changed to this effect. Accompanying the printed change, as an appendix to the regulation, was a suggested guide for commanders on the Article 15 proceedings. This will insure that all of the participants are advised of their rights and obligations during the proceedings, as well as providing a degree of uniformity of their administration. Concurrent with the published change was the distribution of a revised record of nonjudicial punishment proceedings (DA Form 2627), which replaced the variety of forms used in the past, and reduced the form to a one-page, multi-leaved manifold. This new,

revised form, written in simple, easily-comprehended language, further insures that the soldier understands all of his rights in the proceedings.

Trial and Defense Services.

The Secretary's Directive also required the services to begin to develop plans for a separate defense counsel system. While such consideration had been under study of the Army for some time, and a detailed plan for implementation was submitted, immediate implementation of the plan is precluded by an acute shortage of military lawyers. As an interim measure, general court-martial convening authorities were directed to insure that "counsel in their jurisdictions have adequate office facilities, including private offices, and necessary logistical and administrative support including transportation." Visible, physical separation was prescribed between the offices of defense counsel and those of staff judge advocates and trial counsel. Careful monitoring of this program has shown it to be successful, especially in demonstrating the independence and professionalism of defense counsel, and their freedom, within the confines of the law, to act on behalf of those whom they represent. In addition, an SJA letter of 24 August 1973 established certain programs designed to insure the adequacy of our defense services, in light of the *ABA Standards on Providing Defense Services*. Where possible, SJA's were instructed to insure that newly appointed judge advocates are given certain experience as assistant counsel before handling a case completely on their own. No requisite number of cases was recommended, as the complexities of the cases vary. A fixed pattern of rotation between prosecution and defense was suggested, as it is beneficial for a JA to have experience on both sides of the courtroom.

Furthermore, each major command was instructed to appoint a senior defense counsel who is given general supervisory responsibilities over the other defense counsel, including the rating of those individuals. A visible "chain of command" was emphasized from the local SJA, through the major commands, to the Assistant Judge Advocate General for Civil Law (AJAG/CL). Judge advocates were advised that if the situation warranted it, direct communication with the AJAG/CL on defense matters was proper. All of the above measures have been favorably received in the field, with

no adverse consequences in terms of processing times and the like.

In my speech before the ABA Convention last summer, I mentioned a study being conducted to upgrade the requirements for our defense counsel, in order to comply more adequately with the *Standards on Providing Defense Services* by insuring that some requisite degree of experience was attained prior to solitary appearances as defense counsel. Included in this study was a plan to recognize those with expertise as defense counsel. After careful study, an overall plan was formulated, encompassing both prosecution and defense. The object and details of this plan were sent to all SJA's on 9 May 1974 for optional implementation. Basically, the plan has two distinct categories—those relating to the recognition of "trial lawyers," and those concerning the recognition and utilization of "senior trial lawyers." The plan provides an incentive for the development of a specialty in trial advocacy and provides for the recognition of that development. Where implemented, the plan envisions newly appointed counsel acting first as assistant counsel for a number of cases (this portion of the plan had previously been effected, as mentioned earlier). After successful performance, as determined by the SJA, and upon the endorsement of the local GCM military judge, such counsel may be designated as a "trial lawyer," and the designation is included in the officer's files.

To reward expertise, and to insure proper placement, the designation of "senior trial lawyer" was developed. Upon satisfactory performance as a trial lawyer for 24 months, the trial of 75 courts-martial (at least 25 of which were GCM's or BCD specials, and 10 of which were contested), and upon the recommendation of the SJA and the GCM military judge, an individual may be considered for this designation. After our Personnel, Plans and Training Office has insured that the individual meets the requisite qualifications, a certificate designating him as a "senior trial lawyer" is issued, and the distinction is noted in his files. This recognition is not only well-deserved, but is necessary for two reasons—to identify the most experienced practitioners for proper Army-wide utilization, and to provide recognition for deserving counsel, while engendering *Esprit de corps* for those who would spend an extended period in an independent defense corps, should one be established in the future.

Selection of Court Members.

We have also formulated, and begun testing of a limited program for the random selection of court members, without derogation of the statutory responsibility of the convening authority. This was considered of prime importance by the Task Force, which underscored the "appearance of evil" in the present method of choosing a "jury". While in reality, the convening authority has a low profile in this process, the perception of his involvement has not been dispelled, as witnessed by the many articles decrying this practice written by uninformed critics. The test plan avoids the need for legislative change in the UCMJ, yet accomplishes the desired goal. Under the plan, currently being tested at Fort Riley, Kansas, a master juror list is compiled from post locator files. Individuals on the master list are administered a questionnaire based upon criteria established by the convening authority, to determine whether they possess basic qualifications. A panel is then randomly selected from those found to be so qualified. The convening authority retains veto power over the panel as a whole, and when this power is exercised, another randomly selected panel is chosen. The testing is scheduled to run through December of 1974. Therefore, precise analysis of the test program is not yet available. However, preliminary reports indicate that the program is operating well, with little objection from the personnel involved. An interesting sidelight to this program has been the recorded reaction of enlisted men to the court-martial process. We have found that the enlisted personnel involved in the program as court-members have been very impressed with the fairness of our system, and the respect accorded them and their views by senior officers in the deliberations. Many of these individuals confessed to a certain distrust for the military justice system prior to their experience as court-members.

Court-Martial Processing.

Another gratifying event during the past year has been the decline in processing times for our general and BCD special courts-martial. While our processing times have always compared favorably to those of most civilian jurisdictions, reduction in the time involved has always been a prime concern in the Army. Since our last annual meeting, much effort has been expended to effect a reduction in these processing times, and I am happy to re-

port that we have met with some success. For example, at the time of my last "Annual Report," general court-martial processing times were running 154 days from the charges, to the receipt of the record in the U.S. Army Judiciary. For the last period reported, this time had been reduced to 121 days. For BCD specials, times were running 134 days at the time of my last report, and are now down to 100 days.

Publications.

Several Department of the Army Pamphlets on military law were prepared under the supervision of the Office of The Judge Advocate General in the last year. For example, DA Pamphlet 27-173, *Military Justice—Trial Procedure* (October 1973), revises the earlier trial procedure handbook, to reflect the changes in trial procedure since 1964. DA Pamphlet 27-22, *Military Criminal Law—Evidence* (November 1973), a joint Army and Air Force pamphlet, updates the developments in the law of criminal evidence since the earlier edition of the handbook on evidence in 1962. DA Pamphlet 27-174, *Military Justice—Jurisdiction of Court Martial* (November 1973), is designed as a ready reference for Army lawyers in the area of jurisdiction and updates the previous 1965 version. Finally, a Department of the Army Pamphlet, entitled *What's It All About?—The Special Court-Martial*, was prepared. This pamphlet, published in comic book form, was devised to attract a wider range of personnel and to illustrate the special court-martial process in a manner easily understood by any serviceman. In realization of the need for education in military justice, considerable efforts are continually expended in the area of publications, films and lesson plans, in order that everyone—commanders, NCO's, individual soldiers, and military lawyers alike—is provided the necessary comprehension of military justice that his position requires.

Administrative Law and Personnel Management.

This past year was also an active one in the area of administrative law. Prior to the Supreme Court's decision governing inmates' rights in disciplinary proceedings (*Wolfe v. McDonnell*, decided on 26 Jun 1974), we were actively engaged in reviewing disciplinary and adjustment board procedures at the U.S. Dis-

ciplinary Barracks at Fort Leavenworth. By acting in conjunction with the former Office of The Provost Marshal General, significant progress was made in enhancing the rights of prisoners prior to the time that the Supreme Court decision was announced. As a result, the current procedures at the Disciplinary Barracks are more liberal in many respects than those announced by the Court, and insure fundamental fairness to the inmates appearing before disciplinary boards while, at the same time, preserving the degree of control which discipline requires.

Perhaps the greatest achievement in the administrative law area was the restructuring of the system for processing of complaints under Article 138, UCMJ, which provides that servicemen who believe that they have been wronged by their commanding officers may complain to the commander exercising general court-martial authority. The general court-martial convening authority takes appropriate action based upon the facts as disclosed by an inquiry or investigation. The file is then forwarded to the Secretary of the Army. I have been designated by the Secretary of the Army to act on his behalf on such complaints. Accordingly, procedures governing such complaints are under my jurisdiction. As servicemen have become more aware of the provisions of the Article, the volume of such complaints has increased significantly. For instance, during the Calendar Year 1971, 37 complaints were forwarded for my review. In 1973, 106 such complaints were reviewed, and the volume continues to increase.

After reviewing many complaints, it became apparent that, while the complaints could be resolved by Article 138 action, there were also other channels within the Army which could be utilized by the serviceman to obtain redress of his grievances. Accordingly, an in-depth study of the Article 138 system was conducted, with a view toward improving its efficacy as an extraordinary remedy. As a result of this study, a change to the governing regulation was promulgated, providing a commander with the option of reviewing a case on its merits or referring the serviceman to other channels which exist for the resolution of his complaints. Many of these other channels for redress are specifically designed to redress certain wrongs, and are more appropriate and direct than the rather cumbersome, time-consuming Article

138 procedures. For example, there is an excellent procedure in Army Regulations to review complaints concerning Officer Evaluation Reports; Article 138 is singularly inappropriate as a vehicle to resolve this type of complaint. Whichever course is taken, all cases are eventually reviewed by The Judge Advocate General; however, in those cases involving referral to other channels, my review is generally limited to the propriety of that referral. This change will assist the serviceman in the speedy resolution of his complaints because it utilizes more specific and direct channels, while reserving the Article 138 system for those complaints for which the soldier has no other avenue of obtaining a review within the "system."

In the area of administrative-legislative activities, the Office of The Judge Advocate General furnished the sole legal representative for the Army to the study group which prepared the Defense Officer Personnel Management Act, introduced in Congress as H.R. 12405. This Act took over four months to prepare and, if enacted, would completely restructure and unify the officer personnel management systems of the Army, Navy, Marine Corps and Air Force. Once a uniform, common system of officer personnel administration is achieved through legislation, I foresee an opportunity for officers—particularly lawyers and other professionals—to move relatively freely from one service to the other. More importantly, however, the unification of the armed forces—in the Canadian style—would become a viable option for the future with real promise for materially reducing unnecessary headquarters and thus the defense budget.

Legal Assistance.

The Army Legal Assistance Program, in spite of personnel shortages, continues to function successfully. Increased attention and greater emphasis in this area is contemplated, in order to improve our program world-wide. The Expanded Legal Assistance Program (ELAP), as it is now known has been established in order to provide free legal representation in civilian courts, both civil and criminal, for impecunious service members and their dependents. Currently, the project is in operation at nine Army installations: Fort Devens, Massachusetts; Fort Huachuca, Arizona; Fort George G. Meade and Aberdeen Proving Ground, Maryland; Fitzsimmons General Hos-

pital and Fort Carson, Colorado; Fort Dix and Fort Monmouth, New Jersey; and HQ, US Army Support Command, Hawaii. The availability of legal representation in civilian courts to aid servicemen in their financial and legal difficulties should serve as an effective preventive law device and reduce criminal law activity. Due to the aforementioned shortages, however, ELAP is being re-examined in order to determine what improvements and/or changes to make. One idea that has been proposed is to terminate all criminal representation in the civilian courts. A determination in this regard is expected later in the year.

Several publications in the area of legal assistance have been conceived or revised during the past year. We are now publishing the "Legal Assistance Counselor," which is a monthly newsletter dedicated to serving Army lawyers who provide legal assistance services to our personnel around the world. Army Regulations 608-50, *Legal Assistance* (22 February 1974), was recently revised to consolidate all policy decisions on legal assistance activities. The *Legal Assistance Handbook* (DA Pamphlet 27-12) has also been revised and updated, to insure a current, single volume reference to the law concerning those problems the legal assistance officer most frequently deals with in the day-to-day operation of the legal assistance office. It is a topical digest of the law—common law, statutory and regulatory—having special relevance to the service member and his family.

In short, legal assistance in the Army is alive and well, and we are continually striving for further improvements. Such activities benefit not only the service member, but the Army as well, for the soldier whose personal affairs are in order is a better soldier.

International Law and the Law of War.

Much has transpired in the international law area since our last meeting. The first session of the Diplomatic Conference on the Law of War completed six weeks of work and adjourned on 29 March 1974. The Conference, hosted by the Swiss government, was convened for the purpose of updating international humanitarian law applicable in armed conflict. Specifically, the Conference was convened to consider two draft protocols prepared by the International Committee of the Red Cross and designed to update the Geneva Conventions of 1949.

Controversy surrounding the seating of delegations occupied the first two weeks of the conference. In matters of substance, an article was adopted by Committee I (the committee responsible for addressing implementation and general provisions of proposed articles) of the Conference that declares all armed conflicts "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" to be international armed conflicts to which the Geneva Conventions apply. There was a strong movement to have the conference as a whole adopt this article, but the United States was able to block this action, and, as a result, the Conference adopted a compromise position which "welcomed" but did not "accept" the action by Committee I.

With the assistance of the United Kingdom and several other countries, the United States led action which managed to avoid a potentially dangerous debate in the Ad Hoc Committee on Conventional Weapons concerning weapons which cause unnecessary suffering or have indiscriminate effects. In late September 1974, a conference of government experts is scheduled to convene to consider possible legal restrictions on weapons which cause unnecessary suffering or have indiscriminate effects. At issue in that conference will be weapons such as napalm, high velocity small arms (for example, the M-16 rifle), cluster bombs, fragmentation weapons, mines, and potential weapons such as lasers.

Of primary concern to the United States were the developments at the Conference tending toward the introduction of a "just war" concept into humanitarian law. Implicit in the special recognition granted to armed conflicts involving the right of self-determination is the granting of protection to victims of conflicts on the basis of the cause for which they fight. This approach, if pushed to its logical conclusion, would destroy the fundamental principle of humanitarian law that all victims of conflict are equally entitled to protection. Moreover, it raises the possibility that those fighting for causes not deemed "just," such as suppressing so-called liberation movements, may be considered criminals rather than lawful combatants. The implications of this development to Army personnel who may become prisoners of war in future conflicts make it imperative that the United States exert maximum effort to prevent its adoption.

Although the U.S. is obligated by several treaties and international law to implement the law of war, there has been no uniform DOD policy in respect to training programs, violation investigation and reporting procedures. On May 29, 1974 the Secretary of the Army, noting the need for a uniform statement of policy in this area, transmitted to the Secretary of Defense for consideration a Draft Directive on the implementation of the law of war. The Draft Directive has now been circulated by the General Counsel, Office of the Secretary of Defense, to the Office of the Joint Chiefs of Staff and to the military departments for review and comment. The Draft Directive establishes a DOD Law of War Program which provides uniform procedures for implementing the law of war. The objectives of the proposed DOD Law of War Program are: to insure that the law of war and the obligations of the United States government under that law are observed and enforced by the armed forces of the United States; to insure that a program, designed to prevent violations of the law of war, is implemented by the armed forces of the United States; and to insure that alleged violations of the law of war, whether committed by U.S. personnel or enemy personnel, are promptly reported, thoroughly investigated and, where appropriate, remedied by corrective action. Among the measures emphasized is the requirement for the armed forces to provide education and training in the law of war. The Directive designates the Secretary of the Army as executive agent for the administration of the program with respect to alleged violations of the law of war committed against U.S. forces. The Joint Chiefs of Staff are tasked to insure that rules of engagement issued by unified and specified commands comply with the law of war.

The promulgation of the DOD Directive will insure that DOD and the military departments continue to meet their legal obligations with respect to the law of war. It will also insure that programs within DOD to implement the law of war continue in time of peace, and that procedures for reporting and investigating alleged war crimes are available for immediate use in time of war.

Federal Litigation: Military Justice and Bail.

This has also been a busy year for us in the federal courts. In the period since our last

meeting, we have averaged over 1700 open case files. At the time of the troop withdrawals from Vietnam, many people felt that the number of cases being litigated in the federal courts involving the military services (and the Army in particular) would drop substantially. However, while in terms of numbers there has been a slight decrease, the variety and complexity of cases has proliferated to such an extent that the legal burden has increased. This has been a year when decisions of great significance to the military have been handed down, and where new cases with potentially broad impact have been filed. On 19 June 1974, the Supreme Court upheld the court-martial conviction of former Army Captain Howard B. Levy (*Parker v. Levy* 417 U.S. ___; 42 L.W. 4979), and held that Articles 133 and 134 of the Uniform Code of Military Justice are constitutional. The decision is important for the armed forces in their future litigation because the Court recognized factors differentiating the military from civilian society, and recognized the validity of several older Supreme Court opinions which tend to have a limiting effect on civilian judicial review of military actions.

Federal courts in the recent past have departed from the traditional view that the sole means of collaterally attacking a court-martial conviction was through *habeas corpus* and have broadened the scope of judicial review in this area. We have been urging the traditional limitation on collateral attacks and arguing the necessity for exhaustion of military remedies. The language in *Levy* and several other recent decisions lends support to our position. Three significant cases arose out of off-post possession, sale, or transfer of marijuana or dangerous drugs. In each instance, pending courts-martial were enjoined by U.S. District Courts on the grounds that they lacked jurisdiction because the offenses were not "service-connected" as required by *O'Callahan v. Parker* (395 U.S. 258, 1969). The Third Circuit Court of Appeals (in *Sedivy v. Richardson*, 485 F. 2d. 1115 (1973)), and the Fourth Circuit Court of Appeals (in *Dooley v. Ploger*, 491 F. 2d. 608 (1974)), reversed and remanded because the plaintiffs had failed to exhaust their military remedies. The third case (*Councilman v. Schlesinger, et. al.*) involved a captain at Fort Sill, Oklahoma, who was charged under the UCMJ with possession, sale and transfer of marijuana. The transfer and sale occurred off-post and the buyer was a military police inves-

tigator. He sought an injunction and the U.S. District Court for the Western District of Oklahoma granted it. The Tenth Circuit sustained this action, holding that the offenses were not "service-connected." (*Councilman v. Laird*, 481 F. 2d, 613 (10th Cir. 1973)). The Supreme Court granted certiorari (94 S. Ct. 839 (1973)), to review this holding, but, before oral arguments were held, the Supreme Court requested briefs on the issues of: (1) the jurisdiction of the District Court; (2) the necessity for exhaustion of military remedies, and (3) the propriety of a Federal District Court enjoining a pending court-martial proceeding. In view of the language in the *Levy* decision, we are very hopeful that *Councilman* will be a landmark decision in limiting the scope of review in collateral attacks on courts-martial proceedings.

Before leaving the subject of federal litigation affecting the court-martial system, the petition for writ of *habeas corpus* filed by the former Lieutenant Calley on 11 Feb 74 should be mentioned at least for its notoriety, if not for its consequences and the massive amount of work entailed for Army lawyers. At the time he filed for the writ, Calley also asked for bail pending a determination of his petition, and for a temporary restraining order (TRO) to prevent the Army from moving him to Leavenworth. Judge J. Robert Elliott of the U.S. District Court for the Middle District of Georgia granted the "TRO" and at a hearing on 27 February 1974, released Calley on a \$1000 personal recognizance bond. The government's motion to revoke bail was denied. However, upon appeal, the Fifth Circuit (on 13 June 1974) reversed this decision and ordered Calley returned to military control, which included the right to confine Calley at a place designated by the Army. As its grounds, the Fifth Circuit recognized that "bail" should be granted to a *habeas corpus* petitioner only in very limited circumstances. Specifically the court adopted the test urged by the Army that there must be: (1) a substantial likelihood of success on the merits, and (2) some extraordinary circumstances requiring the granting of bail "... in order to make the award of the writ truly effective." Subsequently the Fifth Circuit denied motions for rehearing and the Supreme Court also denied an application for a stay of the Fifth Circuit order. On the 24th and 25th of June, 1974, oral arguments were held before Judge Elliott on the merits of Calley's petition and

the court currently has the case under submission.

Federal Litigation: USAREUR Activities.

It is apparent that the proponents of federal court intervention are becoming more expert in their attacks of military activities, and that federal courts appear to be more willing to intervene. This is best illustrated by the case of *The Committee for G.I. Rights, et. al. v. Schlesinger, et. al.* (No. 835-73). This was a class action in behalf of all soldiers in Europe, challenging the USAREUR Drug Abuse Prevention Program. During the course of the extensive pleadings and hearings in this suit, Judge Gerhard Gesell of the U.S. District Court for the District of Columbia took the unprecedented action of ordering a review and revision of the USAREUR Circular concerning that program and having it filed with the court before he finally decided the issues. In January of this year he held, among other things, the health and welfare inspections which constitute a principal source of identifying drug abusers to be unconstitutional, except for the limited purpose of getting drug abusers into rehabilitation programs. He prohibited the use of evidence resulting from such inspections for courts-martial or for administrative discharge proceedings other than the award of an honorable discharge without any type of SPN number (or other designator) indicating that the recipient was a drug abuser. On 8 February 1974, the Court of Appeals stayed the execution of Judge Gesell's order, and the government has filed its appellate brief. The Appellee's brief is to be filed on or about 16 August and arguments should occur in late October. It is estimated that more than three man-years of military attorney time were devoted to this massive case prior to Judge Gesell's decision.

Then, on 19 February 1974, another major suit was filed by ACLU attorneys in the U.S. District Court for the District of Columbia concerning U.S. Army Intelligence activities in Germany and Berlin. Styled *Berlin Democratic Club, et. al. v. Schlesinger, et. al.*, this suit purports to be a class action brought on behalf of all U.S. citizens overseas who wish to engage in lawful, constitutionally-protected political, religious, and social activities. The plaintiffs, in a one-inch thick complaint, allege that the Army illegally conducted electronic sur-

veillance of the plaintiffs; intercepted, opened, and photographed their mail; infiltrated their organizations and meetings; and prepared and maintained "blacklists" and intelligence files on them. They claim various constitutional and statutory violations and ask for declaratory and injunctive relief, destruction of offending records, and monetary damages from the Army officials sued in their individual capacity. Since its filing, this case has required the full-time efforts of nine Army attorneys both here and in Germany. The government's 120 page motion to dismiss, or in the alternative, for summary judgment (with four appendices and 35 exhibits), was filed on 7 June. This case is still in the early stages, but the broad scope of the effort and its potential impact is obvious.

Federal Litigation: Personnel Litigation and Environmental Law.

In the area of military-personnel litigation, suits filed by involuntary-activated Reservists and National Guardsmen contesting their activation are the most numerous category.

Also, we are still in court litigating the merits of the suit brought by Dr. Spock and others seeking the right to carry their political campaign onto Fort Dix and to distribute literature without the prior approval of the post commander. If you will remember, they did obtain a preliminary injunction permitting them to do so in the 1972 Presidential campaign (*Spock v. David*, 469 F. 2d. 1047 (3d. Cir. 1972)) and subsequently the District Court ruled in their favor. The Army appealed and the case has been argued before the Third Circuit. We are still awaiting the decision.

Because of the increase in workload, a new branch of our Litigation Division was formed to handle civilian personnel litigation, equal opportunity cases and admiralty cases. The need for this branch was illustrated by the upsurge in the number of suits filed under the Equal Opportunity Act of 1972. Although few cases were pending at the end of FY 73, 20 new cases were filed in FY 1974. The majority of these involved complaints of race and sex discrimination in federal employment. Significantly, several of these suits were brought as class actions involving broad sweeping complaints of discrimination at various installations and activities.

In the area of environmental law, one case is particularly significant. There have been sev-

eral attempts to impose state or local pollution control requirements on federal installations in a manner other than that specified in the clean air act (42 U.S.C., sec. 1857) and the Federal Water Pollution Control Act (33 U.S.C. secs 1251, et. seq.). The recent case of *Kentucky v. Ruckleshaus, et. al.* (No. 73-2099, 6th Cir., 5 June 1974, 6 E.R.C. 1644) in which the commanders of the three Army installations in Kentucky were among the defendants, was the first such case to be decided by a U.S. Court of Appeals. This case upheld the Army's position that federal facilities need not comply with procedural requirements (such as the obtaining of permits) of state and local governments respecting air and water pollution.

Federal Litigation: Procurement Activities and Medical Malpractice.

Turning to litigation arising out of the Army's procurement activities, although the flood of bid protest cases has abated somewhat, chiefly because contractors have had little success in such actions, open files on contract cases continue to average around 260. One type of suit that has become particularly frequent in the past year is action in the Court of Claims by contractors seeking to show that the Renegotiation Board erred in assessing them as having excessive profits.

Two Army contract cases are particularly significant: on 19 June 1974 the Court of Claims rendered decisions in *Roscoe-Ajax Construction Co. Inc. v. U.S.*, and *Northland Camps v. U.S.*, which established an important new principle in the handling of disputes arising out of government contracts. After the U.S. Supreme Court decision in *S&E Contractors, Inc. v. U.S.* (406 U.S. 1 (1972)), there was considerable question as to whether the government could appeal an adverse Board of Contract Appeals (ASBCA) decision. In these two cases the contractor appealed portions of an ASBCA decision and sought to prevent the government from contesting portions of the ASBCA decisions that favored it. The Court of Claims held that ASBCA decisions sometimes resolve a number of distinct appeals, and that at other times the issues involved are inextricably bound together. Where the plaintiff's claim and the government's counterclaim are so legally and factually intertwined that they form a unit, they should be decided together.

In the tort area, medical malpractice cases have become a more prominent subject of liti-

gation, with many suits being filed both against the United States as a defendant and against the doctor in his individual capacity. The cases cover the full spectrum of medical malpractice, and their complexity has caused the Army to rely heavily on the expertise of the Armed Forces Institute of Pathology for evaluation of the medical records and their opinion as to whether the standard of care was violated.

While this brief picture gives you some indication of the significant events and major works of the Corps since my last report to you, it merely scratches the surface. I am gratified by the assistance, through the exchange of ideas, substantive suggestions, and general support, that this fine organization affords us, making our task that much easier, and more pleasant.

Recruiting—A "Total Force" Objective

During August 1973 the Office of the Assistant Commandant for Reserve Affairs, TJAGSA, in conjunction with Personnel, Plans and Training Office, of the Office of The Judge Advocate General, began implementation of a program designed to establish a continuous channel of communication between our civilian law schools and The Judge Advocate General's Corps. The program called for establishment of a Reserve Component Judge Advocate officer as the Corps' local liaison officer with every law school throughout the nation. This officer would make himself available to provide the dean, faculty members, and interested law students with necessary information concerning assignment with the Judge Advocate General's Corps both active duty and Reserve Component. Our first request for liaison officers in the August 1973 issue of *The Army Lawyer* produced 12 volunteers who now represent the Corps as liaison to 27 law schools in 11 states. Material was distributed by the Assistant Commandant for Reserve Affairs to each liaison officer providing the information necessary to answer the wide range of inquiries which they could expect to receive from interested individuals. The Judge Advocate General's Corps active duty recruiting officers will request the assistance of the local liaison

officer when visits to represented institutions are scheduled.

This program provides an exceptional opportunity for Reserve Component Judge Advocate General's Corps officers to assist in an important aspect of our Corps activity. Greater reserve participation in the recruiting of new Judge Advocate officers could bring beneficial results to both the Active Army and the reserve components. Many law schools however do not have reserve liaison officers. Detachment commanders are requested to canvass their units to determine if there may be individuals who are interested in acting as a liaison officer for those institutions in their locality which are not presently covered. Alumni of local institutions are especially encouraged to participate as they provide an additional measure of communication and publicity.

Following is a list of Reserve Component law school liaison officers which have presently volunteered their services and the institutions which they represent. Officers who wish to assist in this program or would like to request additional information should forward their name to the Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901.

Reserve Component Law School Liaison Officers

| State | Institution | Liaison Officer | Address | Telephone Number |
|----------|---|---------------------|---|------------------|
| Illinois | University of Chicago School of Law | MAJ Michael I. Spak | De Paul University School of Law | 312-929-3525 |
| | De Paul University College of Law | | 25 East Jackson Blvd Chicago, IL 60606 | |
| | Loyola University College of Law | | | |
| | John Marshall School of Law | | | |
| | Northwestern University College of Law | | | |

| <i>State</i> | <i>Institution</i> | <i>Liaison Officer</i> | <i>Address</i> | <i>Telephone Number</i> |
|---------------|--|---|---|----------------------------------|
| Kansas | University of Kansas Law School | LTC Jack N. Bohm | 950 Home Savings Bldg 1006 Grand Avenue Kansas City, MO 64106 | 816-842-6422 |
| Massachusetts | New England School of Law Boston College Law School Suffolk University Law School Boston University Law School Harvard Law School | CPT Kevin J. O'Dea | 548 Great Elm Way Nagog Woods Alton, MA 01718 | |
| Mississippi | University of Mississippi | LTC Aaron S. Condon | School of Law University of Mississippi University, MS 38677 | 601-232-7421 |
| Missouri | University of Missouri Law School at Columbia | LTC Jack N. Bohm | 950 Home Savings Bldg 1006 Grand Avenue Kansas City, MO 64106 | 816-842-6422 |
| New Jersey | Rutgers University School of Law, New Jersey Seton Hall University School of Law, New Jersey Villanova University School of Law, New Jersey | MAJ Joseph S. Ziccardi | Suite 710, Two Penn Center Plaza 15 and John F. Kennedy Blvd Philadelphia, PA 19102 | 215-568-5057 |
| Ohio | Ohio State University Law School Capitol University Law School | Col Charles E. Brant | The Midland Bldg 250 E. Broad St. Columbus, Ohio 43215 | 614-221-2121 |
| Oregon | University of Oregon Eugene, Oregon | MAJ Gary E. Lockwood | P.O. Box 325 Hood River, OR 97031 | 503-386-1811 |
| Pennsylvania | University of Pennsyl- vania School of Law, Philadelphia Temple University School of Law, Philadelphia Dickinson Law School Carlisle, PA | MAJ Joseph S. Ziccardi | Suite 710, Two Penn Center Plaza 15 and John F. Kennedy Blvd Philadelphia, PA 19102 | 215-568-5057 |
| Texas | St. Mary's University Law School, San Antonio University of Texas at Austin, Law School Texas Tech University | CPT John M. Compere CPT David C. Cummins | 911 Frost Bank Bldg San Antonio, TX 78205 School of Law, Texas Tech University P.O. Box 4030 Lubbock, TX 79409 | 512-225-3031 806-742-6121 |
| Vermont | Vermont Law School | CPT Richard L. Burstein | P.O. Box 28 South Royalton, VT 05068 | 802-763-8320 |

Litigation Notes

From: Litigation Division, OTJAG

EEO Litigation. Equal Employment Opportunity Litigation involving the Army has grown to such an extent as to justify the creation of a separate Civilian Personnel Branch within the Litigation Division, OTJAG. This branch is responsible for developing and coordinating the litigative position in all civil judicial proceedings brought by civilian employees of the Army. Individual and class actions challenging promotion or RIF procedures, allegations of racial or sexual bias or favoritism, and attacks on the hiring policies are among the problem confronted in this litigation.

Captain George Stohner, of the Civilian Personnel Branch, recently briefed the question of the appropriate scope of judicial review of a Federal Agency's processing of an EEO Complaint. The brief was one section of a memorandum of law submitted at the request of the U.S. District Court for the District of Colorado in *Roy A. Archuleta, and all others similarly situated vs. Howard H. Callaway*. As that portion of the memorandum succinctly:

- a. Summarizes the procedures for processing an Equal Opportunity complaint in the Army;
- b. Compares the handling of a Federal employee's complaint vs. one by an employee in the private sector;
- c. Distinguishes the role of an arbitrator under a collective bargaining contract a Federal Agency and the Civil Service Commission roles; and
- d. Argues the necessity to avoid a *de novo* judicial hearing in Federal employee Equal Employment Opportunity litigation, it is reprinted below:

The proper scope of review is limited to review of the administrative records.

It is a basic principal of administrative law that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Co.*, 303 U.S. 41, 50-51 (1938). In this instance, Congress has directed exhaustion of specified administrative remedies, 42 U.S.C. § 2000 e-16(c). Thus, it is well settled that exhaustion of those administrative remedies made available pursuant to the 1972 Act by promulga-

tion of 5 C.F.R. 713.201 *et. seq.* is required prior to the filing of a civil action. e.g., *Bernardi v. Butz*, No. C-73-1110 (U.S.D.C., N.D. Cal.; April 17, 1974), 8 FEP Cases 479; *Spencer v. Schlesinger*, 374 F. Supp. 840 (D.C. 1974); *Hackley v. Johnson*, 360 F. Supp. 1247 (D.C. 1973).

The 1972 Act gave the CSC [Civil Service Commission] expanded powers to enforce the policy of equal employment in the federal government. The statute specifically authorizes the CSC to grant appropriate remedies, including but not necessarily limited to reinstatement and payment of back wages. 42 U.S.C. § 2000 e-16(b). It is also directed to remedy discrimination by issuance of rules and regulations designed to implement its responsibilities, and is authorized to review periodically equal employment progress and reports.

The court is referred to provisions of 5 C.F.R. 713.201 *et. seq.* and to the agency regulation, Department of Army Civilian Personal Regulation 700 ...which outline the straightforward and comprehensive complaint procedures available to federal employees to gain administrative redress of alleged acts of discrimination. A federal employee who believes he has been discriminated against may consult with his activity's Equal Employment Opportunity Officer. In turn the matter is investigated by an Equal Employment Opportunity Counselor. (5 C.F.R. § 713.213). If the matter is not resolved at this level, the employee may file a formal complaint of discrimination. The matter is then referred to USACAPO/ [U.S. Army Civilian Appeals Review Officer] for an impartial investigation. (5 C.F.R. § 713.214-713.216). After decision is reached upon the recommendations and findings of the USACARO investigator, if adjustment of the complaint cannot be made and the complainant remains dissatisfied, he is offered a hearing by a Complaints Examiner designated by the CSC. (5 C.F.R. § 713.217) After conduct of the hearing, the Complaints Examiner makes findings and recommendations that are forwarded to the Director of Equal Employment Opportu-

nity for the Army. (5 C.F.R. § 713.219) His decision constitutes the final agency decision. (5 C.F.R. § 713.221) If the complainant is still dissatisfied, he may file an appeal with the CSC Board of Appeals and Review for their review of the complaint file for further investigation. (5 C.F.R. § 713.231-713.236) In lieu of further appeal to the CSC, a complainant may file a civil action within 30 days of his receipt of notice of final action taken by the agency. Both the agency and the CSC have broad remedial powers to include, among other actions, reinstatement, retroactive promotion, retroactive appointment, and awarding of back pay. (5 C.F.R. § 713.271)

The CSC's expertise and fairness was recognized by the court in *Hackley v. Johnson, supra.*, a seminal case in this area of the law, and thereafter a progressing awareness and acknowledgement of the CSC's and the agencies' expertise has been witnessed. *League of United Latin American Cities, et. al. v. Hampton, et. al.*, No. 72-1961 (D.C. Cir., July 10, 1974), 8 FEP Cases 470; *Bernardi v. Butz, supra.* at 481. The courts have recognized that the broad powers of the CSC to remedy discrimination in federal employment are in sharp contrast to the limited powers of the Equal Employment Opportunity Commission (hereinafter "EEOC") in matters involving alleged discrimination in the private sector. Indeed the only ultimate enforcement authority of the EEOC is to bring suit against a respondent itself or allow the complaining party to do so by issuance of a right to sue letter. For a detailed discussion of the limited powers of the EEOC and comparison with the CSC in federal employment matters, see Sape and Hart, *Title VII Reconsidered; The Equal Employment Opportunity Act of 1972*, 40 Geo. Wash. L. Rev. 824 (1972). Furthermore, as distinct from the absence of any administrative record before the court where a private employee files after EEOC conciliation efforts have failed, here the court is presented with detailed and comprehensive records considered by the agency and the CSC in reaching a determination upon the merits. Thus it is not difficult to understand why the courts permit a *de novo* review of complaints lodged with the EEOC. It should be equally clear why no such review is

permitted in the context of a complaint by a federal employee. To permit such review the comprehensive scheme devised by Congress would be frustrated completely.

In addition, it should be noted that Congress had before it in 1972 amendments to Title VII affecting both the EEOC in the private sector as well as providing a remedy for the federal employee. Had Congress intended both groups to be treated alike one can only view with wonderment why the detailed scheme for federal employee discrimination complaints was considered much less enacted. Thus we believe there is a clear distinction emanating from the Congress in the administration and judicial review of discrimination complaints by private employees *vis a vis* federal employees. The former group can secure complete relief on a meritorious claim only by resort to the judicial process. We have amply demonstrated that such relief is available administratively to the federal employee. Thus it is patent that the body of law confirming *de novo* review of EEOC complaints by private employees is inapposite here.

Based upon the legislative history of the 1972 Act and the substantial differences between procedures available for redress of unlawful discrimination in federal employment and for the same in private employment, the courts have generally held that federal employees are not entitled to a trial *de novo* in actions brought under provisions of the 1972 Act. *Baca v. Butz*, No. 10476 (U.S.D.C. N.M. May 21, 1974) 8 FEP Cases 116; *Salone v. United States* No. CIV-73-591-E (D.C.W.D. Okla., April 30, 1974), 8 FEP Cases 247; *Bernardi v. Butz*, No. C-73-1110 SC, (U.S.D.C., N.D. Cal., April 17, 1974), 8 FEP Cases 479; *Spencer v. Schlesinger*, 374 F. Supp. 840 (D.C. 1974); *Thompson v. U.S. Department of Justice*, 372 F. Supp. 762 (N.D. Cal. 1974), *rev'd* 360 F. Supp. 255 (1973); *Pointer v. Sampson*, 62 F.R.D. 689 (D.D.C. 1974); *Tomlin v. United States Air Force Medical Center*, 369 F. Supp. 353 (S.D. Ohio 1974); *Handy v. Gayler*, 364 F. Supp. 676 (D.C. Md. 1973); *Hackley v. Johnson*, 360 F. Supp. 1247 (D.C. 1973); *Williams v. Mumford*, C.A. No. 1633-72 (U.S.D.C. D.C. August 17, 1973), 6 FEP Cases 483.

Review has been limited by these courts to consideration of the administrative record. This limited scope of review comports with the intent of Congress. The legislative history of the 1972 Act indicates that Congress did not on one hand intend to create this vast administrative framework, to empower the CSC and agencies with broad remedial powers, and to assign primary responsibility to the CSC; and on the other intend that the administrative proceeding record virtually be ignored upon the rationale what somehow resort to the courts is a remedy independent of the administrative proceedings. Congress only chose to afford federal employees access to the courts to gain judicial review of the administrative record, not to gain consideration anew of their complaints.

Thus after a detailed review of the 1972 Act, the court in *Baca v. Butz, supra.*, reasoned:

Congress obviously contemplated a fact-finding procedure within the agency, under rules to be prescribed by the CSC, with review as a matter of right. It does not seem reasonable that Congress would then command the district court to commence anew upon a tabula rasa. Such an abandonment of the traditional administrative process cannot be supposed without a clear directive from Congress. Requiring an automatic *de novo* trial in federal court would effectively negate the operation of agency expertise and would unduly prolong the time required for final resolution of a complaint. [8 FEP Cases at 119].

Similar compelling reasons were found to obtain in *Pointer v. Sampson, supra.*, and *Hackley v. Johnson, supra.*

In addition to conclusions drawn from review of the 1972 Acts legislative history, the court in *Hackley v. Johnson, supra.*, holding the 1972 Act did not require a trial *de novo* as to federal employees' claims, concluded:

Congress wanted prompt and consistent decisions in these discrimination matters. A trial *de novo* does not accomplish this but rather works in the opposite direction for a wholly new record must be made and op-

portunity for reasonable discovery provided. Moreover, it is difficult, as the present cases illustrate, to differentiate between pure discrimination claims and the underlying intricacies of civil service regulations governing job qualification selection for promotion, training, and the like. The Commission's growing expertise and these latter areas, emphasizes that an automatic trial *de novo* will not serve the laudable purpose of the Act. [360 F. Supp. at 1252].

More recently, the court in *Bernardi v. Butz, supra.*, rejection the notion of a trial *de novo* observed that:

Such a requirement would inevitably result in much duplication of administrative efforts. Further, that duplication would cover intricate areas of regulations governing job qualifications, promotion and training—areas in which the administrative agencies have attained and are expanding their expertise. [8 FEP Cases at 481].

The reasoning of the courts in this line of cases has been held to apply equally in both individual and class actions. e.g. *Baca v. Butz, supra.*, *Bernardi v. Butz, supra.*, *Spencer v. Schlesinger, supra.* See also, *Penn v. Laird*, No. 72-3684 (5th Cir., July 26, 1974), 8 FEP Cases 453, *rov'g en banc*, 490 F. 2d 700 (5th Cir. 1973); *League of United Latin American Citizens, et al. v. Hampton, et al., supra.* The District Court for the District of Columbia explicitly framed the issue of class action certification in the context of the trial *de novo* question in *Pointer v. Sampson, supra.* There the court stated:

[I]t is clear that if a charge of discrimination by a federal employee is to be considered only on the traditional basis of a review of his administrative record, *Polcover v. Secretary of the Treasury*, 155 U.S. App. D.C. 338, 477 F. 2d 1223 (1973), those employees without an administrative record would lack the essential prerequisite for review in court. [62 F.R.D. at 691]

Drawing from the legislative history of the 1972 Act the court concluded:

[I]t is apparent to the Court that Congress did not intend U.S. District Courts to allow federal employees to bypass the administrative procedures set up pursuant to the 1972 Amendments through the process of trials *de novo* in class action discrimination suits. [id. at 692]

In this particular case, both of plaintiff's individual complaints of discrimination have been considered by an EEO counselor at Pueblo Army Depot, and forwarded to USACARO for a thorough investigation. . . .

Plaintiff requested and received a hearing before a CSC Hearing Examiner concerning his complaint of discrimination regarding the "detail" of Mr. [X] to a higher grade position, and received a favorable decision upon his claim from the Director of Equal Employment Opportunity for the Army. Concerning his second individual complaint regarding alleged "harassment and retaliation", plaintiff has received and is presently receiving the same thorough review of the applicable record by the Director of EEO. In this complaint, plaintiff waived a hearing, but this fact in light of the comprehensive record compiled by the USACARO investigator does not justify a trial *de novo*. *Bernardi v. Butz, supra.*, 8 FEP Cases at 481; *Thompson v. U.S. Department of Justice, supra.*, at 764. Moreover, having waived a hearing of the administrative process, plaintiff can hardly be heard now to assert any entitlement to a *de novo* hearing before this court. See *McGee v. United States*, 402 U.S. 479 (1971).

Even the most cursory examination of the administrative record before the court in the instant case reveals a detailed and comprehensive inquiry into all the claims asserted by the plaintiff of the administrative proceedings. As for any new claims plaintiff seeks to advance now, they must be regarded as having been waived by the plaintiff's failure to raise them administratively. *McGee v. United States*, 402 U.S. 479 (1971). See *Spencer v. Schlesinger, supra.*; *Williams v. Mumford, supra.* But even if the plaintiff is not precluded from raising new matters here, at the very least, such would compel a remand to the agency for consideration, investigation and relief if necessary and appropriate. See *Douglas v. Hampton*, 338 F. Supp. 18 (D.D.C. 1972).

We are not unmindful of this court's concern with Judge Finesilver's opinion of April 24, 1974 in *Carreathers v. Alexander Comm'r I.R.S.*, No. C-5082, (D. Colo., April 24, 1974). With all due respect to that opinion, we believe the court there overlooked the important and significant distinctions Congress delineated in treating complaints of discrimination brought by private employees and those brought by federal employees. We have already set forth many of those distinctions. However, in view of this court's concern with *Carreathers*, we believe additional discussion is warranted.

The *Carreathers* opinion is founded entirely upon Judge Finesilver's view of the recent Supreme Court opinion in *Alexander v. Gardner-Denver*, _____ U.S. _____, 94 S. Ct. 1011, 42 U.S.L.W. 4214 (Feb 19, 1974). The *Alexander* case involved the question of whether resort to arbitration arising out of a collective bargaining agreement foreclosed judicial review of a civil rights claim in an employment context. The Court held it did not. Significantly, the opinion is solely in the context of the private employee's rights and whether the arbitration process is an adequate forum in which to vindicate civil rights violations.

In *Alexander* the court discussed what is one of the most important limitations of the arbitration process, i.e.:

[T]he arbitrator's task is to effectuate the intent of the parties. His source of authority is the collective-bargaining agreement, and he must interpret and apply that agreement in accordance with the "industrial common law of the shop" and the various needs and desires of the parties. The arbitrator, however has no general authority to invoke public laws that conflict with the bargain between the parties:

"[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words

manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S., at 597.

If an arbitral decision is based "solely on the arbitrator's view of the agreements of enacted legislation," rather than on an interpretation of the collective-bargaining agreement, the arbitrator has "exceeded the scope of his submission," and the award will not be enforced. *Ibid.*

Thus the arbitrator has authority to resolve only questions of contractual rights... [id. at p. 1021-1022.]

In addition, the arbitrator's authority and the nature of the remedies he may award are similarly limited by the contract under which he is operating and the "intent of the parties." Thus, if the collective-bargaining agreement does not permit a back pay award, none may be given even if the aggrieved party may be entitled to such relief. In that context, the federal judiciary must remain available to vindicate completely the injuries inflicted by unlawful discrimination.

Likewise, the procedure and authority of the EEOC are limited, not by contract but by Congress. As the Supreme Court so congenitally pointed out:

Even in its amended form, however, Title VII does not provide the Commission with direct powers of enforcement. The Commission cannot adjudicate claims or impose administrative sanctions. Rather, final responsibility for enforcement of Title VII is vested with federal courts. The Act authorizes courts to issue injunctive relief and to order such affirmative action as may be appropriate to remedy the effects of unlawful employment practices. 42 U.S.C. § 2000 e-5(f) and (g)." [id. at 1018].

Thus the EEOC in some respects has even less authority than the arbitrator, for as already noted, the EEOC or the claimant must look to the federal judiciary for the range of relief available to remedy the past effects of discrimination and make the claimant whole.

All of the foregoing however is in stark contrast to the Congressionally created machinery operable when a federal employee asserts a claim of unlawful discrimination. We have already discussed the procedures involved in the investigation and review of such complaints and will not repeat that here. In sum however, the authority of the agency and the CSC virtually parallels that of a court. Indeed, there is ample authority reposed in the agency and the CSC to take whatever measures necessary upon a finding of unlawful discrimination to remove the effects thereof as well as restoring the complainant to his rightful position.

Even after all of this, there remains the availability of the judiciary to a dissatisfied federal employee. But when such an employee does resort to the courts, is he entitled to the same *de novo* process the private employee may expect? We think not for to do so ignores the comprehensive procedures and remedies set up by the federal agencies and the CSC *at the instance of Congress*. Indeed, had Congress intended to afford the federal employee a *de novo* review of his claims in the judicial forum the time and expense involved in creating and operating the administrative machinery defies logical explanation.

Returning to Judge Finesilver's opinion in *Carreathers*, we note the court disposed of the distinction between the private employee and the federal employee as being of "little moment." We must respectfully disagree for it was Congress which established the distinction. And the Supreme Court in *Alexander* did nothing to eradicate that distinction.

We believe it clear *Alexander v. Gardner-Denver, Co.* is restricted to its facts and the status of its litigants and may not be extended to control in the present case. Significantly, in other fact situations, the Supreme Court has held that the federal courts must not usurp or repeat administrative functions where federal employees are protected by administrative safeguards. See *Sampson v. Murray*, _____ U.S. _____, 94 S. Ct. 937, 42 U.S.L.W. 4221 (February 19, 1974). Defendants submit that a *de novo* hearing is not warranted by either interpretation or construction of 42 U.S.C. § 2000 e-16(c)-(d) and that to allow a *de*

de novo hearing in this case would be to render nugatory the administrative scheme envisioned by Congress.

As Chief Judge Northrup observed in *Handy v. Gayler*, 364 F. Supp. 676 (D. Md. 1973), by enacting those provisions of the Equal Employment Opportunity Act of 1972 applicable to federal employees, the Congress

“...intended to provide federal employees

with substantial and expedient remedies for complaints of racial discrimination. This would be frustrated by a trial *de novo* which would require a new record and reasonable discovery. In essence, a new and independent cause of action would be created for the federal employee as was done for the private employee. But to do this would nullify the system established by Congress and render the statute meaningless.” [id at 677].

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Allegations of Impropriety of Military Judges and Counsel

In recent correspondence between the Office of The Judge Advocate General and the Lawyers Military Defense Committee (LMDC), the propriety of certain actions taken by military judges and counsel in specific cases was drawn into question. Departing from the traditional avenues of raising error in the conduct of courts-martial (*i.e.*, the appellate courts), the LMDC asked The Judge Advocate General to exercise his supervisory authority over the administration of military justice to correct the alleged misconduct, which varied from what the LMDC considered to be lawful and ethical.

The Judge Advocate General expressed the opinion that the exercise of his collateral supervisory authority would be proper in cases where the allegations of impropriety could not be raised on appeal, because of the inability to perceive the misconduct from the record of trial or counsel's briefs and related documents. Similarly, action may be proper where allegations indicated that widespread practices existed in several courts-martial which clearly contravene procedures set down in the Uniform Code of Military Justice, the *Manual for Courts-Martial, United States, 1969 (Revised edition)*, or the Uniform Rules for Practice Before Army Courts-Martial (DA Pamphlet 27-9, Appendix H). In addition to supervisory action

requiring compliance with the established procedural aspects of courts-martial, action may be initiated in appropriate cases, under the provisions of Chapter 4, Army Regulation 27-10, 26 November 1968, as changed, to suspend counsel or military judges where evidence of corruption, personal misconduct, or professional incompetence is present.

Absent circumstances described above, allegations concerning the impropriety of either military judges or counsel should be raised, argued, and decided within the appellate avenues provided under the Uniform Code of Military Justice. In this manner, the use of the machinery provided by Congress can serve to insure that the rights of the accused are fully protected, without the sacrifice of judicial independence.

2. Command Note: Pass Privileges.

The following is a recent expression of Department of the Army policy. Recent battalion-level visits by the Office of the Inspector General have revealed a general lack of understanding of the intent of the Army's policy on pass privileges and the degree of control commanders can exert.

Indications are that there is an uncertainty on the part of some company commanders as to the proper procedures to employ in the withdrawal of pass privileges, limits of their authority, difference between restriction and

limiting individual soldier command to the confines of the post, methods to use to ensure the presence of soldiers who have been denied pass privileges, and methods to assure effective recall of personnel on pass when changes in readiness conditions occur.

A Chief of Staff message to Major Army Commanders (30 May 1973) expresses the Army's pass policy. The major aspects of that message are:

"The pass is a privilege and not a right for our soldiers. It is important to deal with this issue so as to separate the many good men from a few poor ones—in other words to encourage effective soldiering.

"Most soldiers will earn the privilege of being on pass during off-duty hours, and this privilege should be freely accorded to them. However, some soldiers will not earn that privilege and should not be granted pass privileges.

"Some soldiers will be denied the privilege as a result of their conduct; others may not be permitted to be on pass in order to meet operational requirements, or for temporary administrative control.

"I believe that commanders have sufficient discretionary authority to ensure the presence and availability of these soldiers to make our pass policy effective. It is important that only those controls which are absolutely necessary be established and all soldiers are informed in the clearest terms of our policies concerning passes and controls, and the facts of life which dictate the policies."

Commanders authorized to grant pass privileges may revoke or withhold these privileges to ensure effective control of personnel for operational necessity or to establish and maintain a high degree of morale and military effectiveness. Withholding of pass privileges is not a disciplinary action imposed as punishment. There is no prescribed procedure for the revocation or withholding of regular or special pass privileges. The only requirement is that those persons for whom pass privileges are revoked or withheld are notified,

either orally or in writing, prior to the effective date of such action. If a member departs the confines of the military installation, or specified area, after his pass privilege has been withdrawn, he has absented himself without authority. Such incidents are in violation of Article 86, UCMJ, and may be disposed of in accordance with paragraph 32, *Manual for Courts-Martial, U.S., 1969*.

A commander's control over pass privileges, which in practice may limit an individual's movement to the confines of a specified area or to the confines of the installation, is not a form of blanket restriction. Accordingly, individuals who have been denied pass privileges should be informed as to the specific limitations of their movement during a specified period. This can be accomplished orally, in writing, and/or set forth in unit SOP's.

By contrast, the limits of restriction are governed by its nature and reasons for its imposition. The limits may range from restriction to certain specified buildings and areas, as in the case of restriction imposed for punitive disciplinary reasons, to restriction to the company, battalion, or installation areas. In all cases where restriction is imposed, for whatever authorized reasons, the limits and duration of the restriction should be clearly set forth.

Good judgment applied to determining the duration and specified areas for pass control will create a recognizable difference locally between the degree of freedom accorded an individual not on pass and the degree of restraint imposed on an individual undergoing a form of restriction.

AR 630-5, which governs the pass policy, authorizes local commanders to use pass forms to ensure that operational requirements are met. When commanders exercise this authority, the use of sign-out/in procedures may be necessary to achieve the degree of accountability required. To enforce the presence of personnel not granted pass privileges, a commander may adopt various types of personnel surveillance. In this regard, commanders have wide latitude in determining the appropriateness of these measures with respect to personnel control.

**MONTHLY AVERAGE COURT-MARTIAL
RATES PER 1000 AVERAGE STRENGTH
APRIL-JUNE 1974**

| | General Cm | | Special CM | Summary |
|------------------------------------|------------|---------|------------|---------|
| | BCD | NON-BCD | CM | CM |
| ARMY-WIDE | .21 | .16 | 1.29 | .51 |
| CONUS Army commands | .20 | .16 | 1.45 | .55 |
| OVERSEAS Army commands | .23 | .14 | .98 | .43 |
| U.S. Army Pacific commands | .13 | .10 | .94 | .26 |
| USAREUR and Seventh Army commands | .28 | .17 | 1.01 | .49 |
| U.S. Army Alaska | .11 | .07 | 1.41 | .63 |
| U.S. Army Forces Southern Commands | .21 | | 1.12 | .29 |

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

**NON-JUDICIAL PUNISHMENT
MONTHLY AVERAGE AND QUARTERLY
RATES PER 1000 AVERAGE STRENGTH
APRIL-JUNE 1974**

| | Monthly Average Rates | Quarterly Rates |
|------------------------------------|-----------------------|-----------------|
| | ARMY-WIDE | 18.11 |
| CONUS Army commands | 18.69 | 56.07 |
| OVERSEAS Army commands | 17.01 | 51.03 |
| U.S. Army Pacific commands | 16.74 | 50.21 |
| USAREUR and Seventh Army commands | 18.25 | 54.76 |
| U.S. Army Alaska | 12.56 | 37.67 |
| U.S. Army Forces Southern Commands | 12.39 | 37.17 |

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

Judiciary Notes

From: U.S. Army Judiciary

1. Recurring Errors and Irregularities

a. *Changes to Records of Trial.* Pen and ink changes (other than corrections in grammar or spelling) are occasionally being made in court-martial records of trial without any identifying information as to who made the correction and when it was made. This raises the specter of possible tampering with the authenticated record of trial. See *United States v. Harris*, 21 USCMA 123, 44 CMR 177 (1971). To avoid this, all Judge Advocate personnel are enjoined to comply with the letter from The Judge Advocate General, subject: Authentication of Records of Trial, dated 9 February 1973 (DAJA-MJ 1972/13429).

b. *May 1974 Corrections by ACOMR of Initial Promulgating Orders.*

(1) Failing to show verbatim the specification upon which the accused had been arraigned — 2 cases.

(2) Failing to show in the name line the correct service number — 2 cases.

(3) Failing to show in the PLEAS paragraph that the not guilty plea was changed to guilty with exceptions and substitutions.

(4) Failing to show that a certain charge was formally amended during trial — from Article 121 to Article 80.

(5) Failing to show verbatim the accused's pleas to the Charges and specifications.

(6) Failing to show the correct number of previous considered by the court-martial — 3 cases.

(7) Failing to show in the authority paragraph the amendment to a court-martial convening order.

(8) Failing to show the correct date that the sentence was adjudged.

(9) Failing to show that the sentence was adjudged by a Military Judge — 3 cases.

(10) Failing to show in the FINDINGS paragraph that a certain charge and its specification had been withdrawn, after arraignment, because it failed to allege an offense; that a motion for a finding of not guilty was granted to a Charge and its specification — 2 cases.

c. *June 1974 Corrections by ACOMR of Initial Promulgating Orders:* see last month's issue of *The Army Lawyer*.

d. *July 1974 corrections by ACOMR of Initial Promulgating Orders.*

a. Failing to show that the sentence was adjudged by a military judge — two cases.

b. Failing to show the correct number of previous convictions — two cases.

c. Failing to show the accused's name correctly — two cases.

d. Failing to show in the authority paragraph the correct court-martial convening order — one case.

e. Failing to show in the FINDINGS paragraph the verbatim findings to include the renumbering of certain charges and specifications — one case.

f. Failing to show in the PLEAS paragraph that the plea of "guilty" had been changed to "not guilty" — one case.

g. Failing to correctly show the charge and specifications upon which the accused was arraigned — six cases.

2. Administrative Note.

Article 15 Punishments. DA Form 2627 St 4, 1 Nov 73 has recently been published as a manifold set with interleaved carbons which will reduce the number of forms required by each command. In the past the administration of an Article 15 punishment required four copies of the form but with the new version only one manifold form is required. This factor must be taken into account when placing future orders.

3. Note From Defense Appellate Division.

Waiver. In recent months the doctrine of waiver has been heavily relied upon by the Army Court of Military Review in rejecting assignments of error raised on appeal. Fully ef-

fective service to military accused therefore requires that trial defense counsel make timely and appropriate motions and objections at trial. A proper objection means either of two things: one, the government will be required to proceed properly and assume its full burden if the objection is sustained at trial; or two, a viable chance for appellate relief exists if the objection is denied at trial.

Examples of issues recently held waived by trial defense counsel are finality of previous convictions (*United States v. West*, SPCM 9853 (ACMR 1 August 1974)), a contested pre-trial search and seizure motion followed by a guilty plea (*United States v. Habermann*, CM 430759 (ACMR 30 July 1974)), and vagueness in a specification alleging an Article 92 violation (*United States v. Edell*, SPCM 9407 (ACMR 30 July 1974)). In *Edell* the Court concluded, "Thus, in the absence of objection below, even an inartfully couched specification survives if by any fair construction the facts making out the offense sought to be charged are implied in its language."

The recent increased reliance on waiver by the Army Court of Military Review reaffirms the fact that the efforts of trial defense counsel represent the greatest single opportunity for relief in the eventuality of an appeal. See also *United States v. Pinkney*, 22 USCMA 595, 48 CMR 219 (1974) (improper trial counsel argument waived); *United States v. Buchholtz*, 47 USCMA 177 (ACMR petition denied _____ CMR _____ (17 July 1973) (multiplicity of charges waived).

JAG School Notes

1. **TJAGSA Summer Courses.** While most other law schools slowed down their academic pace for the summer months, The Judge Advocate General's School got into high gear presenting six different continuing legal education courses for the military and DA civilian community. Over 350 personnel were in attendance for the various offerings, which included: the 13th Military Judge's Course, our 16th SOLO Course, the 11th Law of War and Civil Military Operations Course, our 59th Procurement At-

torneys Course, the 16th Military Justice Course, and the 14th Civil Law Course. Coming up this fall: Second Reserve SOLO, 17th SOLO and 60th Procurement Attorneys courses. A complete listing of TJAGSA continuing legal education courses appears elsewhere in this issue of *The Army Lawyer*.

2. **Conference Time Draws Near.** Mr. Martin R. Hoffmann, General Counsel for the Department of Defense, will honor us by being the

speaker at the banquet of this years' worldwide JAG Conference on Monday, October 7. The banquet will follow a day of lectures and workshops revolving around personnel problems chaired by Brigadier General Emory M. Sneed. Lieutenant Colonel Hugh R. Overholt will present the main portion of the day's briefings. Tuesday's theme is "Responsibilities Old and New" and is chaired by Brigadier General Lawrence H. Williams. Topics include reports on the Training Discharge Program, the Expeditious Discharge Program, and a talk by Brigadier General Alexander M. Weyand, Assistant Commander, USAREC, on "Administrative Eliminations and the Volunteer Army." Judiciary and OTJAG Division reports will also be presented. A picnic at Charlottesville's McIntyre Park will round off the day on a carefree note.

"Streamlining Support" will be the thrust of Wednesday's presentations, chaired by Brigadier General Wilton B. Persons, Jr. Discussions on lawyers' assistants, electronic legal research, videotape in the courtroom, and automatic data processing headlines the day's event. A Gatsby-inspired speakeasy party at the Ramada Inn follows in the evening. On Thursday, Brigadier General Bruce T. Coggins chairs the final day's proceedings dedicated to "Improving Organization and Training." SJA office organizations, continuing legal education, and "Steadfast" accent the lectures. The Conference will wind up with a talk by Major General Harold I. Haywood, Assistant Deputy Chief of Staff for Personnel. Monday and Wednesday afternoon's programs will consist of a variety of workshops to fit the interests of individual conferees. As an additional daily highlight, tours of the new JAG School building will be available after the afternoon programs.

3. Reserve Affairs Goes Automated. The trend toward automation in military personnel records management has caught up to the Judge Advocate General's Corps Reserve Component officer. The Office of the Assistant Commandant for Reserve Affairs is presently in the final stages of the implementation of an automatic data processing system. This infor-

mation storage and retrieval system will permit a wide range of capabilities which are designed to improve our ability to serve the individual reserve component officer. Reserve Affairs' future reliance upon the ADP system does not signal a loss of the personal touch which exists between the Office of the Assistant Commandant for Reserve Affairs and our individual reservists. This system is designed to augment not replace the personal attention which is necessary to assist reservists in their unique personal career objectives. It will signal a reduction in the hours spent on projects, such as Reserve Directory, which the computer can accomplish more quickly, thereby allowing the staff to concentrate on activities relating to career management and reserve training. Career guidance activities will be greatly improved by the new system. The information retrieval process will permit the gathering of statistics concerning the legal specialties of various attorneys, prepare an up-to-date one page printout on each officer describing his current status regarding assignment and promotion qualifications, identify individuals who are reaching certain important stages in their career pattern and other information which can be of material significance to a reserve officer's career. The ADP system will have the capability to printout the reserve directory, establish rosters of reserve units, prepare labels for printouts and mailings and other miscellaneous administrative activities which now require a considerable portion of the time of our secretarial staff. The product we obtain from the system, however, is only as good as the information programmed into the system. Recently Reservists should have received through the mail a computer input form and instructions from the Office of the Assistant Commandant for Reserve Affairs. This form provides the basic information required for the system. If you have not already done so, please take time to accurately complete the form and forward it to our office. If any Reservist have not received this form and instructions, drop us a note and they will be sent out immediately. The sooner we receive these input forms the sooner we can work any bugs out of the system and become fully operational. Please help us to help you.

4. **Attention Authors.** TJAGSA wants to establish a permanent library display of the published works of present (and past) members of the Corps. If you have written an article or book on the law, and have a reprint (as authors

usually receive), typescript or published copy, why not send it to the Commandant or Librarian for display? And, if you write in the future, please keep our exhibit in mind—it needs to grow.

Reserve Points For Pilot Legal Assistance Program: An Update

The Special Legal Assistance Officer program announced in the January 1973 issue of *The Army Lawyer* has attracted response from Reserve Component JAG Corps officers throughout the country. Printed below is a listing by state and city of the reserve officers currently designated on orders as Special Legal Assistance Officers. Future additions and deletions from the roster will be publicized by *The Army Lawyer*. No separate distribution of the roster will be made.

Staff Judge Advocates and Legal Assistance Officers are encouraged to detach and save this roster for use by their legal assistance offices. The attorneys listed are authorized to represent members of the active Army and their dependents in accordance with paragraph 5b(2), AR 608-50. Officers so designated receive no

military pay and will not be able to accept any fee for their services; however, they are entitled to receive points creditable towards their reserve time.

Special Legal Assistance Officers are encouraged to contact the Staff Judge Advocate of the closest military installation in their geographical area and make known their availability for legal assistance work. Any questions, problems or suggestions concerning this program should be directed to the Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901. Interested officers are encouraged to participate in this program. Requests to be designated as a Special Legal Assistance Officer should be forwarded to the address noted above.

Roster Of Reserve Judge Advocates Designated As Special Legal Assistance Officers Pursuant to Paragraph 5b(2), AR 608-50

| <i>State and City</i> | <i>Name</i> | <i>Business Address</i> | <i>Telephone Number</i> |
|---------------------------------|---|---|-------------------------|
| <i>Arizona</i> Sierra Vista | Shull, Charles J., MAJ, USAR RCPAC Control Gp (MOB DES) (SO #115, 18 Dec 73) | 11 North Canyon Drive Sierra Vista, AZ 85635 | (602) 458-8070 |
| <i>California</i> Sacramento | Verzyl, Edwin, LTC, ARNG HQ 79th Support Center, CA NG (SO #56, 18 Jun 73) | 2667 El Paseo Lane Sacramento, CA 95821 | (916) 483-3202 |
| San Francisco | Najarian, Melvin K., MAJ, USAR | 451 Jackson Street San Francisco, CA 94110 | (415) 788-6330 |
| <i>Illinois</i> Moline | Fackel, Joseph F., CPT, USAR RCPAC Control Gp. (SO #56, 18 Jun 73) | 1st National Bank Bldg. Moline, Illinois 61265 | (309) 762-0736 |
| <i>Maryland</i> Denton | Kent, Roland C., MAJ, USAR RCPAC Control Gp (MOB DES) (SO #56, 18 Jun 73) | 118 Market Street Denton, MD 21629 | (301) 479-2570 |
| <i>Massachusetts</i> Boston | Rogers, Herbert, COL, USAR RCPAC Control Gp (Reinf) (SO #56, 18 Jun 73) | 148 State Street Boston, MA 02109 | (617) 742-0080 |

| <i>State and City</i> | <i>Name</i> | <i>Business Address</i> | <i>Telephone Number</i> |
|-------------------------------------|---|---|-------------------------|
| <i>Mississippi</i> Jackson | Montgomery, Edmund W. II, BG USAR, RCPAC Contr Gp (MOB DES) (SO #56, 18 Jun 73) | P.O. Box 724 Jackson, MS 39205 | (601) 948-6321 |
| <i>New Mexico</i> Albuquerque | Boyd, David F., Jr., COL, USAR 210th JAG Detachment (SO #205, 23 Oct 73) | Suite 504 400 Gold Avenue S.W. Albuquerque, NM 87101 | (505) 842-8287 |
| <i>Ohio</i> Dayton | Hunt, Carroll E., LTC, USAR 146th JAG Detachment | Suite 1520, Hulman Bldg 120 West 2d Street Dayton, Ohio 45402 | (513) 223-0808 |
| <i>Pennsylvania</i> Philadelphia | Cohen, Gene D., CPT, USAR 153d JAG Detachment (SO #115, 18 Dec 73) | 3604 Weightman Street Philadelphia, PA 19129 | |
| | Jaffee, Jerome, LTC, USAR | 1201 Chestnut Street 7th Floor Philadelphia, PA 19107 | (215) 563-1288 |
| <i>Texas</i> Amarillo | Hill, Edward H., LTC, USAR RCPAC Control Gp (Reinf) | 1500 Amarillo National Bank Bldg Amarillo, TX 79116 | (806) 376-5613 |
| <i>Tennessee</i> Union City | Warner, John L., Jr., CPT, USAR RCPAC Control Gp (Standby) (SO #56, 18 Jun 73) | P.O. Box 6 Union City, TN 38261 | (901) 885-2424 |
| <i>Vermont</i> South Royalton | Burstein, Richard I., CPT, USAR HQ 167th Support Gp, Concord, NH (SO #115, 18 Dec 73) | Box 131 E. RFD #2 South Royalton, VT 05068 | (802) 295-3040 |
| <i>Virginia</i> Norfolk | Cloud, John M., MAJ, USAR 300th Support Group (SO #56, 18 Jun 73) | 108 The Mall Janaf Shopping Center Norfolk, VA 23502 | (804) 853-2316 |
| | Furr, Carter, B.S., MAJ, USAR 300th Support Group (SO #56, 18 Jun 73) | 801 Bank of Virginia Norfolk, VA 23510 | (804) 622-3239 |
| <i>Washington</i> Redmond | Diesen, Charles F., CPT, USAR 226th JAG Detachment (SO #56, 18 Jun 73) | 7969 Gilman Street Redmond, WA 98052 | (206) 885-1227 |
| <i>Wisconsin</i> Milwaukee | Burroughs, Charles C., CPT, USAR RCPAC Control Group (SO #56, 18 Jun 73) | 1902 Marine Plaza Milwaukee, WI 53202 | (414) 272-8550 |

Judge Advocate General's Corps Reserve Components Technical Training (On-Site) Program

The Reserve Component Technical Training (On-Site) Program was developed to accomplish the Army Readiness Region mission responsibility assigned to The Judge Advocate General's School of providing technical training to U.S. Army Reserve Component units pursuant to the reorganization of the Army.

The training is principally directed to all unit and non-unit Judge Advocate General's Corps Reserve Component officers throughout the country and is designed to bring all Reserve Component Judge Advocate General's Corps officers up to date in the area of law of their unit mission assignment. In addition, all active

duty JAGC officers assigned to posts, camps and stations located near the scheduled training site are encouraged to attend the sessions.

The schedule which follows sets forth in alphabetical order the city, date and time and the subject matter of the on-site technical training programs to be presented throughout the United States and Puerto Rico during the academic year 1974-75. Also provided is a list of the local action officers and the training site locations for each visit.

Reserve component officers who do not receive notification of the on-site program through their unit of assignment are encouraged to contact the action officer to confirm the date, time and location of the scheduled training, as unavoidable changes may occur.

Detachment commanders who have not already done so are requested to amend their

unit training schedule to conform to the published schedule. For those units performing OJT at various posts it may also be necessary to advise the SJA involved that your unit may not be available for OJT during one of the days on the training schedule because of the "on site" training.

Reserve Component JAG Corps Officers assigned to troop program units other than Judge Advocate General Service Organizations should advise their commander of the "on site" training and request equivalent training for unit assemblies during the month of the technical training.

Problems or suggestions should be addressed to the attention of the Office of Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901 or telephone 804-293-7469.

Reserve Component Technical Training (On-Site) Schedule FY 1974-1975

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|-----------------|--|--------------------|---|-------------------------------|
| Albuquerque, NM | 11-12 Nov, 1900-2300 hrs | International Law | COL David F. Boyd, Jr. 505-842-8287 | Bldg 327, Kirtland AFB |
| | 3-4 Feb, 1900-2300 | Procurement Law | | |
| Atlanta, GA | 19 Oct, 0800-1500 hrs | Criminal Law | MAJ James E. Baker 404-526-6455 | Chamblee Armory |
| | 14 Dec, 0800-1500 | Civil Law-Claims | | |
| | 11 Jan, 0800-1500 | Civil Law-Leg Asst | | |
| | 8 Mar, 0800-1500 | Procurement Law | | |
| | 19 Apr, 0800-1500 | International Law | | |
| Austin, TX | 15-16 Jan, 1900-2300 hrs | International Law | MAJ Charles W. Richards 512-451-8261 | USAR Center |
| | 7-8 Apr, 1900-2300 | Criminal Law | | |
| | 5-6 May, 1900-2300 | Procurement | | |
| | | | | |
| Baltimore, MD | Combination meetings — See Washington, D.C. | | | |
| Baton Rouge, LA | 23-24 Oct, 1900-2300 hrs | Criminal Law | MAJ Carl Guidry 504-344-9220 | Saurage USAR Center |
| | 5-6 Mar, 1900-2300 | Procurement Law | | |
| | | | | |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|---------------------------|--|--|--|---|
| Birmingham, AL | 26-27 Feb, 1900-2300 hrs 5-6 May, 1900-2300 | Procurement Law Criminal Law | COL Lee Lloyd 205-328-5120 | 142 W. Valley Ave |
| Boise, ID | 30 Sep-1 Oct, 1900-2300 19-20 Mar, 1900-2300 hrs 23-24 Apr, 1900-2300 | Procurement Law Civil Law-Claims Civil Law-Leg Asst | MAJ Robert M. Southcombe 208-344-7811 | USAR Center |
| Boston, MA | 4-5 Dec, 1900-2300 hrs 22-23 Jan, 1900-2300 31 Mar-1 Apr, 1900-2300 14-15 May, 1900-2300 | Civil Law-Claims Civil Law-Leg Asst Criminal Law International Law | MAJ Peter F. MacDonald 617-727-2257 617-542-2262 | Boston USAR Center |
| Chattanooga, TN | 7-8 Oct, 1900-23 hrs 1 Mar, 0800-1500 16-17 Apr, 1900-2300 | Criminal Law Procurement Law International Law | LTC William Sherrill 615-265-2444 | Alexander Guerry USARTC |
| Chicago, IL | 7 Dec, 0800-1500 hrs 8-9 Jan, 1900-2300 5-6 Feb, 1900-2300 15 Mar, 0800-1500 17 May, 0800-1500 | Civil Law-Claims Civil Law-Leg Asst Criminal Law International Law Procurement Law | 1LT William F. Helfrick 312-353-3981 | Muskala USAR Center 2025 E. 71st Street Chicago, IL 60615 |
| Cincinnati/ Dayton, OH | 7-8 Oct, 1900-2300 hrs 6-7 Jan, 1900-2300 2-3 Apr, 1900-2300 | Criminal Law Civil Law-Leg Asst Civil Law-Claims | LTC Jacquelson Jennewein 513-421-4420 | Outcalt USAR Tng Center |
| Cleveland, OH | 2-3 Dec, 1900-2300 hrs 8-9 Jan, 1900-2300 5-6 Feb, 1900-2300 31 Mar-1 Apr, 1900-2300 | Procurement Law Criminal Law International Law Civil Law-Claims | MAJ Robert E. Glaser 216-696-1144 | Mote USAR Center |
| Columbia, SC | 12 Oct, 0800-1500 hrs 9-10 Dec, 1900-2300 25 Jan, 0800-1500 8 Feb, 0800-1500 14-15 Apr, 1900-2300 | Criminal Law Civil Law-Claims Procurement Law Civil Law-Leg Asst International Law | LTC H. Hugh Rogers 803-359-2599 | Forest Drive Armory |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|------------------------|---|---|---|--|
| Columbus, OH | 4-5 Dec, 1900-2300 | Procurement Law | LTC Charles R. Gambs, Jr. 614-422-4736 | Army Reserve Center |
| Dallas/Ft Worth, TX | 9 Nov, 0800-1500 hrs 8 Feb, 0800-1500 17-18 Mar, 1900-2300 | Procurement Law Criminal Law Civil Law-Leg Asst | MAJ Virgil Lowrie 817-387-3831 | Muchert Reserve Center |
| Dayton, OH | Combination meetings — See Cincinnati | | | |
| Denver, CO | 29 Sep, 0800-1500 hrs 2-3 Dec, 1900-2300 22-23 Jan, 1900-2300 21-22 Apr, 1900-2300 | Procurement Law Civil Law-Claims Criminal Law Civil Law-Leg Asst | LTC Bernard Thorn 303-573-7600 | T-332 Fitzsimons General Hospital |
| Des Moines, IA | 14 Dec, 0800-1500 hrs 17-18 Mar, 1900-2300 | Criminal Law Civil Law-Claims | LTC Walter McManus 515-282-8171 | Bldg 59, Ft Des Moines |
| Detroit, MI | 8 Feb, 0800-1500 hrs 19-20 May, 1900-2300 | International Law Procurement Law | LTC Cay A. Newhouse, Jr. 313-573-1717 | Raymond Zussinson USARC |
| Fairmont, WV | 4-5 Nov, 1900-2300 hrs 3-4 Feb, 1900-2300 | Procurement Law Criminal Law | MAJ William E. Johnson 304-293-5306 | Colburn USARC |
| Fort Worth, TX | Combination Meeting — See Dallas, TX | | | |
| Greensboro, NC | 18-19 Oct, 1900-2300 hrs 20-21 Jan, 1900-2300 | Civil Law-Claims Procurement Law | MAJ Dan Fouts 919-275-5314 | USAR Tng Center |
| Harrisburg, PA | 9-10 Oct, 1900-2300 hrs | Criminal Law | LTC Harvey S. Leedom 717-728-6310 | Bldg 442, New Cumberland Army Depot |
| Hartford, CT | 2-3 Apr, 1900-2300 hrs | Criminal Law | LTC Mark Wise Levy 203-522-2201 | Berry-Rosenblat Train- ing Center |
| Hattiesburg, MS | 7-8 May, 1900-2300 hrs | Criminal Law | LTC Dorrance Aultman 601-583-2671 | National Guard Armory |
| Honolulu, HI | 17-18 Mar, 1900-2300 hrs 12-13 May, 1900-2300 | International Law Civil Law-Leg Asst | LTC Donald C. Machado | Bruyeres Quadrangle |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|------------------|---|--|--------------------------------------|--|
| Houston, TX | 21-22 Oct, 1900-2300 hrs 11-12 Dec, 1900-2300 19-20 Mar, 1900-2300 10 May, 0800-1500 | Criminal Law Civil Law-Claims Civil Law-Leg Asst Procurement Law | MAJ Donald M. Bishop 713-224-9811 | Annex Building |
| Indianapolis, IN | 5 Oct, 0800-1500 hrs 3-4 Feb, 1900-2300 | Civil Law-Claims International Law | COL T.D. Wilson 317-923-4573 | Boros Hall |
| Jackson, MS | 26 Oct, 0800-1500 hrs 14 Dec, 0800-1500 3-4 Mar, 0800-1500 | Criminal Law Civil Law-Claims Procurement Law | MAJ Edward L. Cates 601-948-2333 | USAR Tng Center |
| Kansas City, MO | 30 Sep-1 Oct, 1900-2300 6-7 Jan, 1900-2300 3-4 Mar, 1900-2300 | Civil Law-Claims Civil Law-Leg Asst Procurement Law | MAJ Tom Graves 816-221-2800 | Long USAR Center |
| Knoxville, TN | 5-6 Feb, 1900-2300 | Civil Law-Leg Asst | MAJ Harvey L. Sproul 615-986-8054 | USAR Center |
| Lexington, KY | 6-7 Jan, 1900-2300 hrs 7-8 Apr, 1900-2300 | Criminal Law Procurement Law | LTC Edward Fossett 502-564-3630 | USAR Center |
| Little Rock, AR | 23-24 Oct, 1900-2300 hrs | Criminal Law | LTC William Mitchell 501-624-5404 | Seymour Terry Armory |
| Los Angeles, CA | 13-14 Nov, 1900-2300 hrs 25 Jan, 0800-1500 5-6 Feb, 1900-2300 26 Apr, 0800-1500 | International Law Criminal Law Procurement Law Civil Law-Leg Asst | CPT John J. Wittorff 213-485-3640 | Bldg 1002 (25th & Western), Ft. MacArthur |
| Louisville, KY | 9-10 Apr, 1900-2300 hrs | Procurement Law | COL James F. Kemp 502-456-1966 | COL E.E. Major USARC |
| Madison, WI | 2-3 Oct, 1900-2300 hrs 11 Jan, 0800-1500 8 Feb, 0800-1500 8 Mar, 0800-1500 17 May, 0800-1500 | Civil Law-Claims Civil Law-Leg Asst Criminal Law Procurement Law International Law | MAJ Richard Kabaker 608-262-2441 | Madison AFR Armory |
| Memphis, TN | 21-22 Oct, 1900-2300 hrs 13-14 Jan, 1900-2300 24-25 Feb, 1900-2300 | Criminal Law International Law Procurement Law | MAJ Robert G. Drewry 901-526-0542 | Marine Hospital |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|-------------------|--|--|--|--|
| Miami, FL | 18-19 Dec, 1900-2300 hrs 8 Mar, 0800-1500 | Criminal Law International Law | LTC Alden N. Drucker 305-656-1753 | 5601 San Amaro Drive Coral Gables, FL |
| Milwaukee, WI | 20-21 Jan, 1900-2300 5-6 Mar, 1900-2300 14-15 May, 1900-2300 | Civil Law-Leg Asst Procurement Law International Law | LTC James W. Moll 414-762-7000 | 536 West Silver Spring Dr. |
| Minneapolis, MN | 11 Jan, 0800-1500 hrs. 26 Apr, 0800-1500 24 May, 0800-1500 | Criminal Law Civil Law-Leg Asst Procurement Law | MAJ Robert M. Frazee 612-338-0661 | Bldg 501, Ft. Snelling |
| New Orleans, LA | 23 Nov, 0800-1500 hrs 22 Mar, 0800-1500 12 Apr, 0800-1500 | Civil Law-Claims Civil Law-Leg Asst Criminal Law | CPT Donald Mintz 504-685-1200 | USAR Center, 5010 Leroy Johnson Drive |
| New York City | 9 Nov, 0800-1500 hrs 7 Dec, 0800-1500 25 Jan, 0800-1500 5 Apr, 0800-1500 17 May, 0800-1500 | Procurement Law Civil Law-Claims Civil Law-Leg Asst Criminal Law International Law | COL Morton Levinson 212-947-0941 | Patterson USAR Center |
| Norfolk, VA | 16-17 Nov, 1900-2300 hrs 22-23 Jan, 1900-2300 5 Apr, 0800-1500 | Procurement Law Criminal Law Civil Law-Claims | CPT Robert L. Bohannon 804-622-6357 | 2086 USAR Training Warehouse |
| Oklahoma City, OK | 6-7 Nov, 1900-2300 hrs 5-6 Feb, 1900-2300 31 Mar-1 Apr, 1900-2300 | Procurement Law Criminal Law International Law | MAJ Stewart Hunter 405-236-2727 | Krowse USAR Center |
| Omaha, NB | 4-5 Dec, 1900-2300 hrs 20-21 Jan, 1900-2300 23-24 Apr, 1900-2300 21-22 May, 1900-2300 | Civil Law-Claims Criminal Law Civil Law-Leg Asst Procurement Law | LTC John Churchman 712-322-4965 | USAR Center |
| Orlando, FL | 16-17 Dec, 1900-2300 hrs 3-4 Feb, 1900-2300 5-6 Mar, 1900-2300 | Criminal Law Civil Law-Leg Asst International Law | LTC Theodore H. VanDeventer 305-656-1753 | Taft USAR Center |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|--------------------|---|--|--|---------------------------------|
| Philadelphia, PA | 12 Oct, 0800-1500 hrs 7 Dec, 0800-1500 20-21 Jan, 1900-2300 12-13 May, 1900-2300 | Criminal Law Procurement Law Civil Law-Leg Asst International Law | CPT Joseph S. Berarducci 215-568-7666 | Philadelphia Memorial AFRC |
| Phoenix, AZ | 16-17 Dec, 1900-2300 hrs 2-3 Apr, 1900-2300 | Criminal Law International Law | MAJ Paul Crowder 602-947-7705 | Will Barnes USARC |
| Pittsburgh, PA | 6-7 Nov, 1900-2300 hrs 22-23 Jan, 1900-2300 | Procurement Law Civil Law-Leg Asst | CPT James A. Lynn 412-434-3709 | Gen Malcom Hay Armory |
| Portland, OR | 12-13 Feb, 1900-2300 hrs 22 Mar, 0800-1500 | Criminal Law International Law | CPT Jeffrey T. Noles 503-224-1900 | Vancouver Barracks |
| Richmond, VA | 19 Oct, 0800-1500 hrs 25 Jan, 0800-1500 12-13 May, 1900-2300 | Procurement Law Criminal Law International Law | LTC Robert L. Masden 804-770-2346 | Monteith USAR Center |
| Rochester, NY | 2-3 Dec, 1900-2300 hrs | Civil Law-Claims | MAJ James Harvey 315-394-6612 | James Wadsworth USAR Center |
| Sacramento, CA | 10-11 Feb, 1900-2300 hrs | Criminal Law | COL Willard A. Shank 916-445-2326 | 555 Capitol Mall (2nd floor) |
| St. Louis, MO | 6-7 Jan, 1900-2300 hrs 10-11 Mar, 1900-2300 21-22 Apr, 1900-2300 | Criminal Law International Law Civil Law-Leg Asst | CPT Robert L. Norris 314-268-6971 | Training Center #1 |
| St. Petersburg, FL | Combination meeting — See Tampa, FL | | | |
| Salt Lake City, UT | 16-17 Dec, 1900-2300 hrs 8-9 Jan, 1900-2300 | Civil Law-Claims Criminal Law | MAJ Gail G. Weggeland 801-524-5796 | Bldg 100, Ft Douglas, UT |
| San Antonio, TX | 18 Jan, 0800-1500 hrs 9-10 Apr, 1900-2300 7-8 May, 1900-2300 | International Law Criminal Law Procurement Law | MAJ Richard G. Weil 512-735-9261 | 2010 Harry Wurzbach USARC |
| San Diego, CA | 18-19 Jan, 1900-2300 hrs | Civil Law-Claims | LTC David Gill 714-238-1355 | Miramar Naval Air Station |

| <i>City</i> | <i>Date & Times</i> | <i>Subject</i> | <i>Action Officer Phone</i> | <i>Training Site Location</i> |
|---------------------------------|--|--|--|---|
| San Francisco, CA | 16 Nov, 0800-1500 hrs 21 Dec, 0800-1500 11 Jan, 0800-1500 8 Feb, 0800-1500 17 May, 0800-1500 | International Law Civil Law-Claims Criminal Law Procurement Law Civil Law-Leg Asst | CPT Lionel M. Allan 408-286-9800 | Harmon Hall, Presidio of San Francisco |
| San Juan, PR | 16-17 Dec, 1900-2300 hrs 20-21 Jan, 1900-2300 | Civil Law-Claims Criminal Law | COL Antonio J. Amadeo 725-8225 | National Guard Puerta Sierra |
| Seattle, WA | 2-3 Oct, 1900-2300 hrs 15 Feb, 0800-1500 19-20 Mar, 1900-2300 14-15 May, 1900-2300 | Procurement Law Criminal Law International Law Civil Law-Leg Asst | MAJ John P. Cook 206-624-7990 | Harvey Hall, Ft Lawton |
| Spartanburg, SC | 9-10 Oct, 1900-2300 hrs 22-23 Jan, 1900-2300 | Criminal Law Procurement Law | LTC Milton A. Smith 803-582-8121 | S.C. USAR Tng Center |
| Tampa/St. Petersburg | 20-21 Nov, 1900-2300 hrs 21 Dec, 0800-1500 | Civil Law-Claims Criminal Law | MAJ James L. Livingston 813-385-5156 | USAR Center |
| Topeka, KS | 12-13 Mar, 1900-2300 hrs 12-13 May, 1900-2300 | International Law Procurement Law | CPT Roger K. Weatherby 913-234-8247 | Menninger USARC |
| Tucson, AZ | 18-19 Dec, 1900-2300 hrs 5 Apr, 0800-1500 | Criminal Law International Law | MAJ Manuel Garcia 602-792-1401 | Tucson USAR Center |
| Tulsa, OK | 4-5 Nov, 1900-2300 hrs 3-4 Feb, 1900-2300 | Procurement Law Criminal Law | LTC Arthur Breeland 918-582-5201 | USAR Center |
| Washington DC/ Baltimore, Md | 19 Oct, 0800-1500 hrs 25 Jan, 0800-1500 12 Apr, 0800-1500 10 May, 0800-1500 | International Law Civil Law-Leg Asst Procurement Law Criminal Law | MAJ Russell M. King, Jr. 804-525-9400 | Ft. G.G. Meade Building T-816 |
| Wichita, KS | 8-9 Jan, 1900-2300 hrs 22 Mar, 0800-1500 14-15 May, 1900-2300 | Civil Law-Leg Asst Civil Law-Claims Procurement Law | LTC Robert L. Chestnut 316-689-7171 | USAR Training Center |

**TJAGSA—Schedule of Resident Continuing Legal
Education Courses Through 30 August 1975**

| <i>Number</i> | <i>Title</i> | <i>Dates</i> | <i>Length</i> |
|---------------|---|------------------|---------------|
| 5F-F16 | 2d Legal Assistance | 30 Sept-3 Oct 74 | 3½ days |
| CONF | The Judge Advocate General's Conference | 6 Oct-10 Oct 74 | 5 days |
| 5F-F7 | 2d Reserve Senior Officer Legal Orientation | 15 Oct-18 Oct 74 | 3½ days |
| 5F-F8 | 17th Senior Officer Legal Orientation | 4 Nov-7 Nov 74 | 3½ days |
| 5F-F11 | 60th Procurement Attorneys | 11 Nov-22 Nov 74 | 2 wks |
| CONF | U.S. Army Reserve Judge Advocate Conference | 4 Dec-6 Dec 74 | 3 days |
| 5F-F10 | 11th Law of Federal Employment | 9 Dec-12 Dec 74 | 3½ days |
| 5F-F12 | 5th Procurement Attorney, Advanced | 6 Jan-17 Jan 75 | 2 wks |
| 5F-F17 | 1st Military Administrative Law and the Federal Courts | 13 Jan-16 Jan 75 | 3½ days |
| 5F-F8 | 18th Senior Officer Legal Orientation | 27 Jan-30 Jan 75 | 3½ days |
| 7A-713A | 5th Law Office Management | 3 Feb-7 Feb 75 | 1 wk |
| 5F-F15 | 2d Management for Military Lawyers | 10 Feb-14 Feb 75 | 1 wk |
| 5F-F8 | * 19th Senior Officer Legal Orientation | 24 Feb-27 Feb 75 | 4 days |
| CONF | National Guard Judge Advocate Conference | 2 Mar-5 Mar 75 | 4 days |
| 5F-F11 | 61st Procurement Attorneys | 24 Mar-4 Apr 75 | 2 wks |
| 5F-F13 | 2d Environmental Law | 7 Apr-10 Apr 75 | 3½ days |
| 5F-F8 | 20th Senior Officer Legal Orientation | 14 Apr-17 Apr 75 | 3½ days |
| (None) | 3d NCO Advanced | 28 Apr-9 May 75 | 2 wks |
| 5F-F6 | 5th Staff Judge Advocate Orientation | 5 May-9 May 75 | 1 wk |
| 5-27-C8 | 22d JA New Developments Course (Reserve Component) | 12 May-23 May 75 | 2 wks |
| 5F-F1 | 17th Military Justice | 16 Jun-27 Jun 75 | 2 wks |
| 5F-F1 | Administration Phase | 16 Jun-20 Jun 75 | 1 wk |
| 5F-F1 | Trial Advocacy Phase | 23 Jun-27 Jun 75 | 1 wk |
| 5F-F8 | 21st Senior Officer Legal Orientation | 30 Jun-3 Jul 75 | 3½ days |
| 5F-F9 | 14th Military Judge | 14 Jul-1 Aug 75 | 3 wks |
| 5F-F3 | 19th International Law | 21 Jul-1 Aug 75 | 2 wks |
| 5F-F11 | 62d Procurement Attorneys | 28 Jul-8 Aug 75 | 2 wks |

* Army War College Only

Personnel Section

From: PP&TO

1. Retirements. On behalf of the Corps, we offer our best wishes to the future to the following officers who retired after many years of faithful service to our country.

COL Edwin F. Ammerman
COL Lawrence Hansen
COL John A. Lighthall

COL William T. Rogers
LTC Wayne G. Williams
COL Kenneth Youngblood

2. Promotions. Congratulations to the following officers who were promoted.

To LTC, AUS

Richard R. Boller
Richard Dahlinger
Howard M. Hougen
Jeremy R. Johnson

Earle F. Lasseter
John F. Lymburner
James C. Su Brown
Norman S. Wilson

3. Orders Requested As Indicated.

| <i>Name</i> | <i>From</i> | <i>To</i> |
|------------------------------|----------------------------------|--------------------------------|
| COLONELS | | |
| LAKES, Cecil T. | US Army Materiel Command | OTJAG |
| LIEUTENANT COLONELS | | |
| MOONEYHAM, John | ARADCOM | FORSCOM, Ft McPherson |
| MAJORS | | |
| BRANDENBURG, Andrew | Claims Svc, Ft Meade | Army Intel, Ft Meade |
| HUG, Jack P. Falls Church | USA Leg Svc Agy, | Germany |
| JACUNSKI, George | Korea | Legislative Lsn, OSA |
| CAPTAINS | | |
| ALMAND, James W. | USAG, Ft Hamilton | USAG, Ft Meade |
| BAXENDALE, John | USA Leg Svc Agy, Falls Church | 9th Inf Div, Ft Lewis |
| BEHUNIAK, Thomas | Europe | Stu Det, Ft Ben Harrison |
| BILLINGSLEA, John | Europe | USAG, Presidio of SF |
| CHERRY, Hugh E. | Europe | Ft Huachuca |
| CLARK, Charles | Europe | Ft Ord |
| COYLE, David T. | USAG, Ft Carson | USA Leg Svc Agy, Ft Carson |
| CURRY, Pete | Claims Svc, Ft Meade | Walter Reed |
| DESLER, Peter M. | OTJAG | Letterman Hospital, Pres of SF |
| DICHTER, Stephen | USAG, Ft Meade | STRATCOM, Ft Huachuca |
| EARL, James D. | Ft Bragg | Def Lang Inst, Mont-Pres |
| FISCHER, William | Ft Eustis | JFK Ctr, Ft Bragg |
| GLIDDEN, Jonathan | Ft Gordon | USA Leg Svc Agy, Falls Church |
| HOLGATE, Willard | Europe | USAG, Presidio of SF |
| KAUKL, Douglas | USAG, Ft Greely | 9th Inf Div, Ft Lewis |
| LAWRENCE, Robert | USA Leg Svc Agy, Falls Church | OTJAG |
| McGINTY, John P. | Korea | HQ, MDW |
| MORLOCK, Frank | OTJAG | Iran |
| POTTER, Marcus | Ft Riley | 3d Retg District, Georgia |
| PRENTICE, Robert | Europe | USAG, Ft Devens |
| ROD, Wayne G. | Ft Leonard Wood | Ft Huachuca |
| ROSS, Ronald F. | Europe | White Sands |
| RUDASILL, Michael | Ft McClellan | Ft Jackson |
| SCHRAG, Barbara | USAG, Ft Meade | MTMC, Brooklyn, NY |
| SHERMAN, Louis | Ft Bragg | Ft Polk |
| SMITH, Douglas | Ft Leavenworth | 193d Inf Bde, Ft Amador |
| ST. CLAIR, Richard | OTJAG | USA Leg Svc Agy, Falls Church |
| YEKSAVICH, Michael | TJAGSA, Charlottesville | Germany |
| FIRST LIEUTENANTS | | |
| VOLZER, Harvey | Stu Det, Ft Ben Harrison | Germany |

4. **Awards.** Congratulations to the following who received awards as indicated:

MERITORIOUS SERVICE MEDAL

MAJ Richard S. Arkow (23 Oct 71-5 May 74)
 MAJ Andrew Brandenburg (Aug 71-Jul 74)
 CPT Robert E. Deaton (Nov 71-Jul 74)
 COL David W. Haplin (16 Jul 70-11 Jan 74)
 COL Richard A. Hawley (Sep 71-Jul 74)
 CPT Dan R. Kiely (26 Mar 71-29 Jan 74)
 COL Arnold I. Melnick (15 Mar 72-7 Jun 74)
 CPT Charles S. Mitchell (31 Aug 71-30 Jun 74)
 COL James E. Noble (23 Oct 71-5 May 74)
 COL Patrick T. Sheedy (10 Nov 66-17 Dec 73)
 CPT Lawrence I. Wagner (1 Nov 71-31 Aug 74)
 CPT John T. Willis (22 Oct 71-15 Aug 74)

MERITORIOUS SERVICE MEDAL (1st OLC)

LTC H.M. Hougen (11 Jul 73-9 Aug 74)
 LTC Keith A. Wagner (25 Jun 71-30 Aug 74)

ARMY COMMENDATION MEDAL

CPT Peter J. Curry (1 Apr 73-19 Aug 74)
 LTC Frank W. Elliott (1 Sep 73-1 Jul 74)
 CPT Glenn S. Hara (8 Jun 73-5 Jul 74)
 LTC Constantine D. Lambros (10 Jun 68-2 Aug 74)

CPT Howard E. Mentzer (5 Jan 71-28 Jun 74)
 CPT John F. Schmutz (15 Dec 72-26 Aug 74)

ARMY COMMENDATION MEDAL (1st OLC)

CPT Wayne L. Friesner (13 Oct 72-30 Nov 73)

5. **Awards Correction.** Due to a typesetting error, last month's issue of *The Army Lawyer* incorrectly listed the following officers as recipients of Army Commendation Medals—they actually received Meritorious Service Medals.

CPT Gary W. Lunter
 CPT Jeffery L. Mason
 CPT Stanley A. Millan
 CPT John W. Richardson
 CPT Stephen K. Todd
 CPT Timothy M. White
 CPT Merle F. Wilberding

Award For a Heidelberg Lady. This summer, at Headquarters, US Army in Heidelberg, nine American officers and soldiers and two civilian employees received special meritorious awards with a parade and a one-gun salute. General William R. Kraft, deputy commander-in-chief of the US Army in Europe and Seventh Army,

personally handed the medal to the awardees and attached them to the soldiers' uniforms. One of the two civilian recipients was Mrs. Erika Schwarz, a German employee of the Judge Advocate Division in Headquarters USAREUR. She is the 56th person who has received the Outstanding Civilian Service Award, the highest award which may also be given by the Commander in Chief of the US Forces in Europe to Germans for special merits.

Mrs. Schwarz, who studied philology (English) and music in Berlin and has been employed with the US Forces since 1949, received the medal for her special merits as Chief, Civil Process Section of the HQ USAREUR, Judge Advocate Division, for her initiative as intermediary between American military agencies and German civilian agencies, for her ability in protocol matters and preparations for the German-American law dinners, as well as for the new ways which she found to fulfill the tasks delegated to the section of which she was in charge. Mrs. Schwarz, who is a descendant of an old Heidelberg family (one of her ancestors was a famous professor of theology and a church advisor at the University of Heidelberg) is the 50th German citizen who has received this high award.

Stenotype Court Reporter Training at Civilian Institutions. Final selection has been made by MILPERCEN of the initial input of five students for attendance at CONUS civilian stenotype court reporting schools in the newly instituted DA fully funded stenotype court reporter training program under provisions of Chapter V, AR 621-1, 6 May 1974 (See Item 10, Personnel Section, *The Army Lawyer*, August and November 1973). The following named enlisted personnel were selected to commence study during the 1974 Fall semester at the indicated National Shorthand Reporters Association approved school:

SP6 JOYCE E OAKES, SSAN
 463-86-0011, PMOS 71E20
 Office of the Staff Judge Advocate,
 25th Infantry Division
 APO San Francisco 96225
 School: Cannon's International Business College of Honolulu, Honolulu, HI 96813

SP6 CHRISTOPHER J RIVES, SSAN 449-76-1839,
PMOS 71E20

Office of the Staff Judge Advocate,
Fort Devens, MA 01433

School: Stenotype Institute of Jacksonville, Jacksonville, Beach, FL 32250

SP5 RONALD J IWANSKI, SSAN 507-56-0680,
PMOS 71E20

Office of the Staff Judge Advocate, US
Army Support Command, Thailand

APO San Francisco 96232

School: To be selected upon return
from USARPAC

SP5 JAMES C MILLER, SSAN 438-90-8702,
PMOS 71E20

Office of the Staff Judge Advocate,
82nd Airborne Division

Fort Bragg, NC 28307

School: Stenotype Institute of Jacksonville, Jacksonville Beach, FL 32250

SP5 ROBERT C ROGERS, SSAN 266-96-2348

Office of the Staff Judge Advocate
Headquarters 32nd Army Air Defense
Command

APO New York 09227

School: To be selected upon return
from USAREUR

OTJAG is planning the continuance of this training program for FY76 under guidelines already set forth in OTJAG letter, DAJA-PT, Subject: Enlisted Training Program in Stenotype Court Reporting, 28 December 1973, with a prospective enlargement of the student input from the "pilot" number of the above-named five students now scheduled to enter training during FY75. Attendance at this course will continue to be limited to enlisted personnel with a primary or secondary MOS of 71D (Legal Clerk) or 71E (Court Reporter). An uninterrupted one-year time frame has been established for this course of instruction. Personnel selected for attendance will incur a service obligation of three months for each month of schooling, with a minimum of 36 months on active duty as a stenotype court reporter.

Only highly motivated military personnel who have demonstrated a strong desire and a keen interest in becoming a stenotype court reporter will be considered for attendance at this course. Applicants *must* meet all the eligibility criteria set forth in paragraph 5-2, Chapter V, AR 621-1. Applicants who failed to meet these basic requirements for FY75 training are urged to take prompt remedial action in order to be considered for training in FY76. Applicants will be individually screened by a senior JAGC officer as to their eligibility, motivation, and potential as a stenotype court reporter in accordance with instructions to be issued in an OTJAG letter of implementation at a later date.

Applicants are reminded that the attainment of the requisite stenotype court reporting skill (175-200 words per minute) will require a *maximum* expenditure of their time and effort during the 12-month training period in a rigorous course of study and practice.

Upon completion of the course, students will be encouraged to continue their court reporter training, at their own expense, during off-duty hours at either a stenotype court reporting school or by self-education, consistent with their military assignment. If possible, every effort should be made to qualify for the certificate of Certified Short-hand Reporter which is granted by 10 states.

Further details concerning FY76 stenotype court reporter training will be formally announced in a future DA message and/or OTJAG letter of implementation. Inquiries to PP&TO, OTJAG, should be withheld pending this further announcement.

In accordance with AR 616-200, dated 29 July 1974, effective 15 September 1974, stenotype court reporter positions within the JAGC TOE/TDAs must be validated by the Army Enlisted Education Requirements Board (AEERB) to be considered eligible for DA fully funded training under Chapter 5, AR 621-1, during FY76. Staff Judge Advocates and Judge Advocates will receive further details concerning validation of this position by OTJAG letter in the near future.

Current Materials of Interest

A two-part series on "The American Soldier and the Law of War" by Captain Roger G. Darley,

JAGC, appears in *Field Artillery Journal*: Part I at Vol. , No. (- 1974) p. ; Part II at Vol.

42, No. 2 (Mar-Apr 1974) p. 14.

Note on *Levy v. Parker* in "Front & Center" section (p. 4) of September 1974 issue of *Army* (Vol 24, No. 9) Captain Gary F. Thorne, JAGC (Gov't Appellate Division).

Phillips, "Drug Testing Procedures in Crime Laboratories," 8 VALPARAISO L. REV. 655 (Spring 1974). Part of a five-article group on drug abuse and defending drug cases—with a slant toward Indiana law.

Morgan, "Achieving National Goals Through Federal Contracts: Giving Form to an Unconstrained Administrative Process," 1974 WISC. L. REV. 301 (1974). Explores the procedural and substantive limits upon the government's ability to further nonprocurement objectives through the contract process.

The Summer 1974 issue of *Tips* contains some interesting reading on the new morning report system, SIDPERS, domicile, JUMPS and other subjects.

Comment, "Plea Bargaining Mishaps - The Possibility of Collaterally Attacking the Resultant Plea of Guilty," 65 J. CRIM L & CRIMINOLOGY 170 (June 1974).

Podell, "Understanding Race Relations As An Aspect of the Management of Military Personnel," NAVAL WAR COLLEGE REVIEW, Vol. XXVI, No. 6 (May-June 1974) 67.

Note, "The Freedom of Information Act: A

Seven-Year Assessment," 74 COLUM. L. REV. 895 (June 1974).

"Changing Fashions in Procurement" p. 8 of *Army* by John K. Daniels. (An Air Force Consultant calls for major advances in the effectiveness of defense system developments.)

Paust and Blaustein, "The Arab Oil Weapon—A Threat to International Peace," 68 AM. J. INT'L. L. 410 (July 1974). Captain Jordan Paust, JAGC, USAR, also expresses "Some Thoughts on 'Preliminary Thoughts' on Terrorism" at page 502 of this issue.

Cressy and Desfosses, "Developing An Alternative Approach to Race Relations Education: Identifying Military Middle Management Resistance," NAVAL WAR COLLEGE REVIEW, Vol. XXVII, No. 1 (July-August 1974) 58.

Comment, "State Durational Residence Requirements for Divorce: How Long is Too Long?" 31 WASH & LEE L. REV. 359 (Summer 1974).

Ledbetter, "The Community Property Laws—Revisited," 20 PRAC LAW 39 (April 1974).

Kennedy, "The New Rules of Bankruptcy Procedure," 20 PRAC LAW 11 (April 1974).

Note, Reviewability of Administrative Action: The Elusive Search for a Pragmatic Standard, 1974 DUKE L.J. 382 (April 1974).

Finlay & McKnight, "Law of the Sea" Its Impact on the International Energy Crisis," 6 LAW & POLICY IN INT'L BUS. 639 (Summer 1974).

Realities of the Military Justice System

By: Captain Wayne T. Crowder, USMC, Assistant to Combat Developments Officer, Developments, Doctrine and Literature Department, TJAGSA

Every day the typical Judge Advocate makes assumptions about the way the military justice system works. He talks to people based on these assumptions, and acts and reacts according to his set of expectations about how all the various elements fit together into a single system. But how good are these assumptions and expectations? Rather than being content to base our decisions on a sort of "gut-Gestalt", it seems reasonable to task ourselves to become better informed about the realities of the system. Or are our experience-based beliefs accu-

rate enough?

The following little quiz is designed to let you see for yourself. It was given to the 16th Military Justice Course at TJAGSA, and now it is offered to you. It is our hope that you will take the time to fill it out and return it to JAGS/D, TJAGSA, Charlottesville, Va. 22901. We will tabulate your anonymous (*and unresearched!*) answers, and print the results, as well as the correct answers, in an upcoming issue of *The Army Lawyer*.

* * *

The following questions are designed to "test" your expectations/assumptions about the military justice system.

A. What sort of person do you expect to find tried by a general C.M.?

- _____ 1. Age:
- a. 17-19
 - b. 20-24
 - c. 25-29
 - d. Older
- _____ 2. Education:
- a. Not H.S. graduate
 - b. H.S. graduate (or GED)
 - c. Some college
 - d. College graduate
- _____ 3. Mental Group:
(AFQT Score)
- a. I (93-100)
 - b. II (65-92)
 - c. III (31-64)
 - d. IV (10-30)
 - e. V (Below 10)

B. Offence Charged?

- _____ 4. Most frequently:
- a. Article 86
 - b. Article 121
 - c. Article 122
 - d. Article 128
- _____ 5. Second most frequently:
- a. Article 86
 - b. Article 121
 - c. Article 122
 - d. Article 128

C. The USCMA has held that a time-lag over 90 days from arrest, restraint, or date of affidavit to trial and that a similar delay from sentence to CA action would be presumptively a denial of speedy trial.

- _____ 6. In the last five years, what percent of cases would the first (Burton) have affected?
- a. Less than 2.5%
 - b. 2.6-5%
 - c. 5.1-10%
 - d. Over 10%
- _____ 7. What percent of cases during the last five years would have been affected by the second (Dunlap)?
- a. Less than 2.5%
 - b. 2.6-5.0%
 - c. 5.1-10%
 - d. Over 10%

D. Irrespective of the offence charged at a GCM:

- _____ 8. What is the conviction rate in contested cases?
- a. Less than 50%
 - b. 51-70%
 - c. 71-85%
 - d. Over 85%

_____ 9. Assuming the accused to have been found guilty, what are the chances of receiving a punitive discharge?

- a. Less than 50%
- b. 51-70%
- c. 71-85%
- d. Over 85%

_____ 10. Assuming a DD was adjudged, what are the chances of it actually being executed?

- a. Less than 50%
- b. 51-70%
- c. 71-85%
- d. Over 85%

_____ 11. Which of the following pleas would you expect to result in the longest median confinement adjudged at trial?

- a. Negotiated guilty pleas
- b. Non-negotiated guilty pleas
- c. Not guilty pleas
(All of the sample
group having been
found guilty)

E. What percent of the cases received and disposed of by the Court of Military Review are

_____ 12. Affirmed both as to findings and sentence?

- a. Less than 25%
- b. 26-50%
- c. 51-75%
- d. Over 75%

_____ 13. Findings affirmed, sentence modified?

- a. Less than 25%
- b. 26-50%
- c. 51-75%
- d. Over 75%

Note: Other actions by the Court affect only 4-6% of the cases.

F. Regarding the system as a whole:

_____ 14. Within 1,000, how many GCM's were conducted last fiscal year?

- a. 2,000
- b. 3,000
- c. 4,000
- d. 5,000

_____ 15. How many Special C.M.'s were conducted last fiscal year?

- a. Fewer than 10,000
- b. 10,000-15,000
- c. 15,001-20,000
- d. Over 20,000

16. How many Summary C.M.'s were conducted last fiscal year?

- a. Fewer than 10,000
- b. 10,001-15,000
- c. 15,001-20,000
- d. Over 20,000

By Order of the Secretary of the Army:

FRED C. WEYAND
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

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