STAFF JUDGE ADVOCATE SJA File Copy

MARCH 1974

THE ARMY LAWYER

D A PAMPHLET 27-50-15 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D. C.

Permits for Federal Facilities: Procedural and Substantive Requirements Under the Clean Air Act and Federal Water Quality Act

By: Captain Frederick Huff, Regulatory Law Office, OTJAG

One of the major problems arising from the new environmental legislation is the degree to which the provisions apply to federal facilities. In particular, the question of the applicability of state and local administrative schema, especially of operating permits, has presented some thorny issues of constitutional dimension to the courts.

The passage of the Clean Air Act of 1970 (42 USC §1857 *et seq.*) brought with it a renewed interest in a statutory schema which provided for regulations both at the federal level and at the state and local level.[1] The reason for the latter is clearly to allow those with direct knowledge and interest to regulate their own air quality within the national ambient levels.[2] The Clean Air Act provides then essentially for state regulation.[3] When incorporated into an implementation plan which has been accepted by the Environmental Protection Agency (EPA) the state regulations become enforceable as a matter of federal as well as state law.

As a part of their implementation plan some states have chosen to rely on the issuance of operating permits.[4] The issuance of such permits is conditioned on a compliance schedule to bring the source within emission limits set by the state.[5] The permit compliance schedule system is essentially a variance granting process which allows continued operation of nonconforming equipment. That such a program is enforceable against a private person there is little doubt; the question, however, is whether such permit schemes are applicable to federal facilities located within the state.[6]

Section 1857f, which deals with compliance by federal facilities states as follows:

> Each department, agency and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements.

The key words clearly are "requirements" and "to the same extent that any person is subject to such requirements."

Without any further reference to the potential constitutional question of whether the quoted wording is sufficient to make the U. S. Government the same as any other person as a matter of law, it suffices to say that the problem is inherent in §1857f and remains to date, in its largest sense, essentially unresolved. There is, however, a narrower issue which evolves from the same language which has been resolved, at least temporarily in three federal district court cases.

The question of whether a distinction may be logically drawn between substantive and procedural requirements, may at first blush, seem meaningless. When considered in light of §1857f and Executive Orders 11507, 11514,[7] the distinction takes on some meaning. In es-

TABLE OF CONTENTS

1 Requirements Under the Clean Air Act and Federal Water Quality Act

4 Absence Without Leave—The Nature of The Offense

9 The Role of the Paraprofessional in Providing Legal Services

12 Minority Personnel in the Office of the SJA

14 SJA Spotlight: Four-Party Joint Military Team, Republic of Vietnam

16 Race Relations and Equal Opportunity in the Military

19 JAG School Notes

20 Law Day 1974

22 TJAGSA CLE Courses

23 Legal Assistance Items

25 Medical Care Recovery Program

25 Judiciary Notes

31 Litigation Update: "Oh Say! Can You Sue?" (or be Sued?)

32 Summary of Installation Profiles

33 Personnel Section

34 Current Materials Of Interest

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sence, it has been the Army position that §1857f and EO 11507 mandate compliance with federal, state and local substantive standards but do not require compliance by federal facilities with state operating permit schemes on the theory that such "requirements" are procedural only.

A search of the legislative history of the act reveals nothing of particular importance on how the drafters viewed the meaning of the word "requirements." Credible argument can be made that the only meaning of "requirements" consistent with constitutional principles is that given here.[8]

Mention was made earlier of three cases based on §1857f interpreting the point. The cases are *People v. Statsny*,[9] a California case involving the question of whether the Long Beach Naval Air Station could be required to obtain an operating permit on its sandblasting operation. No allegation was made that *Statsny* was violating standards, only the failure to obtain a permit. The case was dismissed on a motion by the U.S. for failure to state a cause of action on which relief could be granted, relying on the distinction between substantive and procedural requirements under §1857f.

Alabama v. Seeber[10] raised the question of whether Redstone Arsenal and its operating contractor could be compelled to obtain operating permits. Under the Alabama law at the time, all sources were to be operated under permit and if the state authorities were not satisfied with abatement progress, the permit was revoked and the operator prosecuted for operating without a permit, not for violation of a substantive standard. In fact, no mechanism had been established to enforce the substantive standards. The case was dismissed on a motion for failure to state a cause of action, again relying on the substantive-procedural distinction.

Commonwealth v. Ruckelhaus[11] is the third major case involving the permit question. It arose in Kentucky where the state implementation plan relied on a permit scheme. As in

the *Seeber* case, federal facilities including TVA and AEC refused to apply for state permits. Again, there was no allegation of violation of substantive standards, but rather a test of the meaning of "requirements" under §1857f. The case was also dismissed and an opinion filed which relied on the distinction between substantive and procedural requirements.[12]

There is a particularly difficult issue which arises in the case of the government-owned, contractor-operated (GOCO) facilities peculiar to the Army Materiel Command. The question, simply put, is whether the contractor, who may also operate several other plants of his own within the state, can be compelled to obtain operating permits for a government-owned facility. In large measure, it seems that the outcome will depend on whether the permit runs to the facility or the operator, to what extent the contractor can rely on his status as an agent of the U.S., and in the final analysis what the contract says.[13] Query: What will be the result when there is a fee for the permit, the contractor pays and then seeks reimbursement under the contract? [14]

To date the position of the Army has been that the GOCO operating contractor will not apply for pollution control permits to operate federally-owned facilities and that the same procedural-substantive distinction exists in the GOCO situation, on the theory that the permit runs to the facility and not the operator.[15]

Section 1323 of the Federal Water Pollution Control Act of 1972, 33 USC §1251 *et seq.* (FWPCA) contains language copied from the Clean Air Act. Section 1323, entitled "Federal Facilities Pollution Control," states in part:

> Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with Federal, State, interstate, and local requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements, including the payment of reasonable service charges.

Note that present in the Water Quality Act is the language "including reasonable service charges." The exact meaning of this additional language is unclear though it is apparently directed at payment for monitoring services, etc., and not permit fees.[16]

Section 1342 of the FWPCA sets forth the National Pollutant Discharge Elimination System (NPDES) which is currently administered by EPA. NPDES provides for the issuance of permits for all discharge points including sewage treatment works whose discharge is greater than 50,000 gallons a year. The permit program replaces the Refuse Act Permit Program administered by the Corps of Engineers. Applications for Refuse Act Permits will be effective for issuance of NPDES permits. A large number of Refuse Act Applications were filed before the program was terminated as a result of *Kalur v. Resor.*[17] All discharges covered by the Refuse Act Permit Program are covered by NPDES. Domestic sewage, not covered in the Refuse Act Program, is also included under NPDES.

Federal facilities must have NPDES permits. The permits for federal facilities will be issued by EPA which intends to retain the administration of the program as it applies to federal facilities. Other dischargers will eventually be regulated under state permit programs inplemented pursuant to §1342.[18]

The NPDES permit program should obviate most of the potential litigation under §1323 on the question of requirements since the NPDES standards established in the EPA-issued permit will reflect the state water quality standards. To date, there has been no litigation under §1323 analogous to that under §1857f of the Clean Air Act. It seems, however, that should the occasion arise, the same rationale which has been successfully employed under the Clean Air Act should apply with

equal validity to cases arising under §1323 of the Federal Water Pollution Control Act.

The question of the meaning of the word "requirements" under the Clean Air Act has, at least for the present, been resolved to some degree. A two-pronged definition of requirements, procedural-substantive has been developed in the cases and the conclusion has been drawn that the federal facilities are required to comply with "substantive requirements" or standards but not with state "procedural requirements" including the securing of operating permits.

Under the Federal Water Quality Act, Federal facilities are required to obtain NPDES permits issued by EPA pursuant to 33 USC §1341; may be required to pay reasonable fees for actual services pursuant to §1323; but again need not obtain state operating permits.

Finally, it is worth noting that AR 200-2 deals in some depth with the question of supplying information to state and local regulatory agencies which may be required of federal facilities pursuant to state implementation plants. It has been our experience that the open exchange of data, plans for abatement, start up of new equipment, etc., has a most beneficial effect on minimizing the potential for litigation. Under both the Clean Air Act and the Federal Water Quality Act, the primary responsibility for meeting the deadlines set in these statutes is with the states. It is incumbent upon us to assist the states in meeting their obligations.

Footnotes

1. The exact language of §1857f is "federal, state, interstate and local . . ."
2. Ambient meaning free air, air in general as opposed to point source, from the stack.
3. 42 USC §1857 (a)(3), 1857 (d)(1).
4. At present 45 states issue operating permits.
5. Compliance schedules detail plans and deadlines for bringing nonconforming sources within standards.
6. Interestingly, to date it has not been argued that federal facilities over which the U. S. has exclusive jurisdiction are not within the states and therefore not subject to such provisions.
7. Federal Facilities Pollution Abatement, see esp. §§ 2(d) and 4a(1), Executive Order 11507.
8. The line of cases dealing with state regulation of federal activities is long indeed, and generally recognizes the immunity of the federal Government from state procedural requirements, i.e., licensing.
9. 4ERC 1447 (CD California, 1972).
10. ND Alabama No. 72-939, June 5, 1973.
11. 5ERC 1728, (WD Kentucky 1973).
12. No opinions were filed in Statsny or Seeber.
13. There is an operating contractor at Redstone Arsenal who was joined as defendant in the Seeber case.
14. The question has arisen at the Detroit Arsenal. Michigan seeks to levy effluent charges on industrial waste discharged by the Arsenal. The operating contractor had paid the fee and now seeks reimbursement from the Government.
15. For a discussion of permits on federal enclaves, see Leslie Miller v. Arkansas, 352 U.S. 187 (1956).
16. FWPCA provides for state implementation plans, etc., following the same general pattern as set out in the discussion of the Clean Air Act above.
17. 3ERC 1458, (D.C. District of Columbia 1971).
18. The NPDES implementation plans are adopted following a procedure similar to that outlined above in discussion of the Clean Air Act.

Absence Without Leave – The Nature Of The Offense

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Of all the varied punitive articles within the UCMJ, Article 86, AWOL, seems to be the mainstay of the military lawyer's practice. Curiously enough this appears to have also been true in other eras [1] and nations [2] as well. Indeed, AWOL as an offense dates back at least to the Articles of War of Richard II promulgated in 1385.[3] Despite this long hallowed tradition, counsel frequently consider AWOL prosecutions uninteresting and professionally unrewarding. While this may be easily understandable (AWOL does lack the "glamor" and challenge presented by other equally traditional offenses such as pillage, looting, and

rapine) it may unfortunately result in counsel taking the offense for granted. The numerous appellate decisions defining the offense of AWOL—(Article 86(3))—in simplistic but highly misleading terms, compounded the problem. Consequently, an analysis of the offense with particular attention to the Court of Military Appeals' latest pronouncement in this area in *United States v. Lynch*[4] appears merited.

Absent without leave has been said to be committed on the day of the inception of the absence.[5] All time subsequent to the initial absence is said to constitute only aggravation, important only for considerations of maximum sentence.[6] Numerous authorities, thus have recited the statement that "AWOL is not a continuing offense." This has led to the occasional use of the term "instantaneous" to describe the nature of the offense. If AWOL is viewed in this fashion—as complete upon the soldier's unauthorized departure from his unit —certain *logical* consequences would seem to follow. First, consider this hypothetical. If the accused is charged with AWOL from his unit from on or about 1 January 1974 until on or about 30 June 1974, it is logical to presume that the offense charged is AWOL on or about 1 January 1974. Thus if AWOL is "instantaneous" and the prosecution, due to failure of proof, can prove only the termination date, the accused should be acquitted since the termination date, although part of the aggravating period, is a *different* offense than the inception date. Second, if AWOL is complete upon the actual inception, the statute of limitations should run from the actual (as against the date the prosecution may choose to prove) inception date. Third, for former jeopardy purposes acquittal at trial of an inception date should not bar retrial for a new inception date subsequent to the first date—although within that date's period of aggravation.

Unfortunately the *Manual for Courts-Martial* and the appellate courts have indicated that only the second conclusion dealing with the statute of limitations[8] is correct. In other words, the "instantaneous" model for AWOL is not consistent fact situations. We must, therefore, continue the search for a description of the nature of the AWOL offense. The rules of pleading for Article 86(3) are well known and need not be discussed at length. It suffices to point out that *some* inception date must be pleaded. Matters of proof are somewhat more complicated. If the government is unable to prove the pleaded inception date, but can prove either the pleaded termination date or *any* other date within the *single* pleaded period of the specification,[9] the accused may be convicted (by exceptions and substitutions) of an AWOL with a new inception date. This is true not only where the usual failure of proof occurs but also for the extremely rare case in which the accused establishes a defense of mental irresponsibility to the initial part of the charged AWOL period.[10] While the prosecution may prove any date within the pleaded time period, it may not create a second offense from the same period. In other words, if the evidence shows that the accused returned to military control during the charged period and again absented himself, the court may not find him guilty of the second absence either alone or in conjunction with the first.[11]

These rules further undermine the "instantaneous" model of AWOL. Since an accused may be convicted of any inception date within the charged period—despite its even extreme length and despite defense objections claiming fatal variance from the pleaded inception date—AWOL cannot be considered as an "instantaneous" offense. Rather it appears more correct to describe the offense as a course of conduct. While the offense is complete upon the absence for purposes of proof, it is incorrect to say that the rest of the time period is important only for aggravation. At the same time AWOL is not what has been called a "renewed"[12] offense because every day of the alleged period cannot be a separate chargeable offense for statute of limitations and former jeopardy purposes.

The *Manual for Courts-Martial* states clearly that the statute of limitations runs from the inception date of the absence because AWOL is not a "continuing" offense and is "committed, respectively, on the date the person absents himself." [13] This language raises the possibility that the defense can affirmatively prove an earlier inception date to raise the defense of statute of limitations. If PVT Doe is charged on 28 December 1973 with AWOL from 1 January 1972 until 15 December 1973, the statute of limitations would bar prosecution for an AWOL beginning prior to 28 December 1971. It would appear perfectly proper for the defense to prove that the AWOL actually began on 1 December 1971—it could then argue that prosecution for the entire period was barred by the statute of limitations. It is important to note that despite the Manual's language, this result is consistent with a conception of AWOL as a course of conduct. The inception date is vital, for it defines the offense in its most basic sense. However, the offense includes the remainder of the period for proper definition, otherwise every individual day would constitute an offense and the prosecution could select any date within the period. If that date were not barred by the statute, a successful prosecution would result despite the date of the actual inception.

For purposes of former jeopardy, AWOL is also treated as a course of conduct. In *United States v. Hayes*,[14] the accused was charged with desertion from 1 May 1952 until 11 June 1953. At trial the defense showed that the accused had earlier been convicted [15] of AWOL from 1 May 1953 until 11 June 1953. Hayes was then convicted of desertion from 1 May 1952 until 30 April 1953. On appeal, the Navy Board of Review held that it had been error for the trial court to simply exempt the period covered by the AWOL offense. The Board stated that "within the *same period of unauthorized absence* any lesser period of unauthorized absence is the *same offense* but of lesser gravity." [16] The court argued that this result followed necessarily from the fact that AWOL is not a continuing offense. The recent Court of Military Appeals decision, *United States v. Lynch*,[17] appears to follow *Hayes*. In *Lynch*, the accused was initially charged with AWOL from Special Processing Company, Special Troops, Fort Leonard Wood, from on or about 7 November 1969, until on or about 7 January 1971. At trial at Fort Sill, the defense showed that the accused had been apprehended by civilian authorities on 7 November 1969, and ultimately returned to military authority. The military judge acquitted the accused.[18] Within the week, Lynch was charged with AWOL from Special Processing Detachment, Fort Sill, from on or about 27 November 1969, until on or about 7 January 1971. At the second trial, the military judge denied the defense's motion to dismiss the charge and specification on grounds of former jeopardy because the "offense of unauthorized absence is not a 'continuing one'." [19] On appeal the Government claimed that former jeopardy did not apply because Lynch had been prosecuted for a different offense each time. Two theories were urged—firstly, that different units were involved each time, and secondly, that AWOL is not a continuing offense and that, therefore the acquittal was irrelevant to the second set of charges which, dealing with a new inception date, dealt with a new offense.

The Court of Review reversed the conviction, stating that the apparent variance between units was inconsequential because at the time of the second trial, Lynch, while attached to Fort Sill, remained assigned to Fort Leonard Wood and his alleged absence could have been prosecuted for AWOL from either unit.[20] Turning to the claim that different offenses were involved because different inception dates were charged, the court stated that the first trial apparently involved an AWOL running from 7 November until return of Lynch to military authorities on 24 November 1969, and that the holding of *United States v. Reeder* [21] preventing the carving out of a second AWOL from a single period was applicable. Using *Reeder* as precedent and finding that the doctrine of AWOL as a completed offense on the date of inception had the effect of

benefiting the accused via the statute of limitations, the court held that acquittal of an AWOL period barred prosecution at "a subsequent trial for a lesser period of unauthorized absence contained within the dates of the period of which he was acquitted." [22]

Upon certification by The Judge Advocate General, the Court of Military Appeals affirmed the decision of the Court of Review.[23] Its opinion was somewhat more expansive, however. It indicated that "the Government's insistence that the court's decision is 'inconsistent' with our iterated pronouncement that 'absence without leave is not a continuing offense,' . . . impels a separate statement." [24] A continuous offense, said the court, had been defined as "a continuous unlawful act or series of acts set on foot (*sic*) by a single impulse and operated by an unintermittent force, however long a time it may occupy." [25] AWOL is not a continuing offense in the sense that the offense was complete upon unauthorized departure from the unit. However, the length of the offense is essential, according to Judge Quinn's opinion, not only for determining the maximum legal punishment but also in that the single charged time period may not be fragmented into two or more periods for jeopardy purposes. Because one "cannot be prosecuted and punished for an act which is 'part and parcel' of an offense for which he was previously convicted and punished," [26] the first acquittal barred retrial for any time period contained within the first set of charges.[27]

Unfortunately, the Army Court of Military Review decision in *United States v. Espinosa* [28] shows that *Lynch* has not settled this area of law. *Espinosa* concerned an accused charged with AWOL from 15 May 1971 until 26 February 1973. At trial the defense proved that the accused had terminated the absence on 31 July 1971 and had then again absented himself. Apparently to save the longer period, the trial judge found *Espinosa* guilty by exceptions and substitutions of the second period beginning on 31 July, and acquitted him of the 15 May 1971 to 31 July period. On appeal the Court of Review set aside the findings of guilty, holding that the judge could have convicted Espinosa only of the first period and that the second period constituted an "uncharged offense" which could be the subject of a retrial. Retrial of the first period was barred by the acquittal. As written, the Court of Review's opinion is difficult to understand. Despite its statement that the trial judge "was not obliged to make any findings as to the uncharged offense commencing on 31 July," it would appear that current procedure would indeed require the trial judge to acquit an accused of the second period. While *Lynch* discussed the two absences within one specification problem,[29] it did so within the context of an outright acquittal for the entire period. Thus, while *Lynch* may not be dispositive of the issue generally, until a new form of procedure is devised that does not result in an acquittal of the second absence during the first trial, it would appear that *Lynch* would bar retrial for the second absence.

Lynch and *Espinosa* are illustrative of the weaknesses of the simplistic "instantaneous" definitions of AWOL. AWOL is an "instantaneous" offense for some purposes and a "continuous" [30] one for others. Obviously, what is involved is a question of semantics. It would be best if, rather than analyzing AWOL issues by means of a single multi-purpose model of the offense's nature, counsel focused directly on the result the decided cases have reached on the pleading, proof, statute of limitations and former jeopardy problems presented by AWOL cases. One improvement in the conceptual framework can be suggested, however. If AWOL is viewed as an offense which included duration as a basic part of the offense, all of the cases appear consistent. The inception date will indicate the beginning of the period—the critical date for statute of limitations purposes and the first date for which the accused may be convicted. The duration will allow the government within the single charged period to prove (as if by election) any "inception date," because while

each day is not a new offense,[31] the government may prove the accused was in an AWOL status beginning on any date within the charged period. However, having done so, the accused at a second trial will have a plea of former jeopardy as to any period included in the period originally charged regardless of the final outcome at the first trial. Thus to the extent that any catchphrase can be used to describe AWOL, it might be well to describe AWOL as a "course of conduct." [32] Using a course of conduct as a model, counsel will be better able to predict the legal consequences of any given set of AWOL facts while escaping the erroneous conclusions that follow from use of misleading labels.

Footnotes

1. *See e.g.* A. AVINS, THE LAW OF AWOL 33-38 (1957), [hereinafter cited as AVINS], indicating that slightly under one half of all Army prosecutions in World War I involved AWOL and that more than half of all Army offenses during World War II were unauthorized absences. Avins reports that 70% of all Naval courts-martial during the Second World War involved unauthorized absences other than desertion.
2. *See e.g.*, AVINS at 33.
3. W. WINTHROP, MILITARY LAW AND PRECEDENTS 905 (2d ed. 1896).
4. 22 U.S.C.M.A. 457, 47 C.M.R. 498 (1973) digested in 73-12 JALS 2 (DA Pam 27-73-12).
5. *See e.g.*, L. TILLOTSON, THE ARTICLES OF WAR ANNOTATED 205 para. 27 (Revised ed. 1949) discussing Article of War 61; United States v. Emerson, 1 U.S.C.M.A. 43, 1 C.M.R. 43, 46 (1951); United States v. Lovell, 7 U.S.C.M.A. 445, 22 C.M.R. 235 (1956); United States v. Krutsinger, 15 U.S.C.M.A. 235, 35 C.M.R. 207 (1965); United States v. Frye, 36 C.M.R. 556, 558 (ABR 1965) Judge Wilkinson dissenting; United States v. Reeder, 22 U.S.C.M.A. 11, 46 C.M.R. 11, 13 (1972). *See also* AVINS 69-70.
6. *See e.g.*, United States v. Emerson, 1 U.S.C.M.A. 43, 1 C.M.R. 43 (1951); United States v. Frye, 36 C.M.R. 556, 558 (ABR 1965) Judge Wilkinson dissenting; United States v. Harris, 21 U.S.C.M.A. 590, 45 C.M.R. 364 (1972).
7. *See* footnote 5. *See also* MCM 1969 (REV) para. 215(d).
8. *See* MCM 1969 (REV) para. 215(d); United States v. Buskin, 7 U.S.C.M.A. 661, 23 C.M.R. 125 (1957).
9. *See e.g.*, United States v. McNabb, 34 C.M.R. 619 (ABR 1964); United States v. Harris, 21 U.S.C.M.A. 590, 45 C.M.R. 364 (1972; *cf.* United States v. Madro, 7 C.M.R. 690 (AFBR 1952).
10. United States v. McNabb, 34 C.M.R. 619 (ABR 1964).
11. *See e.g.* United States v. Reeder, 22 U.S.C.M.A. 11, 46 C.M.R. 11 (1972) hereinafter cited as Reeder; United States v. Hayward, 43 C.M.R. 777 (ACMR 1971); United States v. Espinosa, SPCM 9038 (ACMR 30 Nov 1973).
12. A term used by Avins in his AWOL text to indicate an offense where a new offense is committed every "day, hour, minute, or second" the accused remains AWOL. AVINS 69; see also page 277.
13. MCM 1969 (REV) para 215(d).
14. 14 C.M.R. 445 (NBR 1953).
15. Apparently the charges had used 1 May 1953 by error and the proper year was 1952. The convening authority, upon notice of the mistake, disapproved the sentence and dismissed the charges so that Hayes could be retried on the correct dates. The court found that the dismissal notwithstanding, the first trial had to be considered a "conviction."
16. 14 C.M.R. at 449 (Court's italics).
17. 47 C.M.R. 143 (ACMR), *affirmed*, 22 U.S.C.M.A. 457, 47 C.M.R. 498 (1973).
18. 47 C.M.R. at 144.
19. 47 C.M.R. at 499.
20. 47 C.M.R. at 145.
21. *See* note 11 *supra*.
22. 47 C.M.R. at 147.
23. 22 U.S.C.M.A. 457, 47 C.M.R. 298 (1973) digested at 73-12 JALS 2 (DA Pam 27-73-12).
24. *Id.* at 500.
25. *Id.* at 501, citing Armour Packing Co. v. United States, 153 F. 56 (8th Cir. 1907) *aff'd* 209 U.S. 56 (1908).
26. 47 C.M.R. at 501 citing United States v. Maynazarian, 12 U.S.C.M.A. 484, 485, 31 C.M.R. 70, 71 (1961).
27. Judge Quinn continues to say that the court cannot conceive how an accused, already AWOL from a unit can absent himself a second time. "By reason of the hierarchical nature of a military command, an individual's absence from his assigned unit will also constitute him an absentee from superior organizations in the same command or his armed force." 47 C.M.R. 501. Judge Quinn adds that prosecution by one unit in the chain will bar prosecution for the same absence by another unit in the chain and, similarly, while either the unit an accused is assigned to or attached to can be the unit the accused is prosecuted for leaving, he cannot be prosecuted twice for the same basic offense.

28. SPCM 9038 (ACMR 30 November 1973) digested at 74-2 JALS 12 (DA Pam 27-74-2).
29. The Court of Military Appeals in Lynch points out that while the Government urged that two separate offenses took place in the time period charged at the first trial, the judge at the first trial acquitted Lynch of the entire period and did not, pursuant to Harris, convict him of a lesser period. From the facts as set forth in the Court of Review and Court of Military Appeals opinions, it seems possible that, lacking the trial counsel's concession at the first trial, Lynch could have been convicted of a short AWOL.
30. *See* United States v. Skipper, 1 C.M.R. 58 (CGBR 1951) describing AWOL as an offense of "continuing duration" to prevent the period from being endlessly divided up into separate offenses.
31. *Id. See also* Avins 69-70, 277-79.
32. It appears that it was in this sense that Colonel Winthrop described AWOL as a continuing offense. W. WINTHROP, MILITARY LAW AND PRECEDENTS 255 (2d ed. 1896).

The Role of the Paraprofessional in Providing Legal Services

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Within the last five years the number of paraprofessionals employed by practicing lawyers has increased significantly.[1] Civilian lawyers, in particular, are using legal paraprofessional personnel as a means of increasing income, motivating employees and rendering faster service.[2] Military lawyers, likewise, are using legal paraprofessionals to increase efficiency and economy in rendering legal services. The acceptance of paraprofessionals among practicing lawyers is due in large part to the recognition that lawyers spend too much time performing routine matters which can be performed equally well by nonlawyers.

Legal paraprofessionals are nonlawyers who have been specially trained in basic legal concepts. They work under the supervision of lawyers and perform many of the tasks that lawyers traditionally have performed.[3]

The role of legal paraprofessionals within the legal system is unique. They are not legal clerks and they are not legal secretaries. Nor are they law office managers or law librarians. They are simply nonlawyers doing work that traditionally lawyers have done.[4]

The use of laymen by lawyers to perform legal tasks has been approved by the American Bar Association's Standing Committee on Professional Ethics. In 1967 the Committee issued an Opinion stating that:

> A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners, nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client. In other words, we do not limit the kind of assistants the lawyer can acquire in any way to persons who are admitted to the Bar, so long as the nonlawyers do not do things that lawyers may not do or the things that lawyers only may do.[5]

This statement often is cited as the authorization permitting lawyers to employ paraprofessionals.[6] Ethical Consideration 3-6 of the American Bar Association's *Code of Professional Responsibility* also is cited as approving the practice of using paraprofessional personnel to perform tasks associated with the practice of law. Ethical Consideration 3-6 provides that:

> A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.[7]

In response to the American Bar Association's authorizing the use of lay assistants, military lawyers, like their civilian counter-

parts, began to employ paraprofessionals to perform legal tasks. The use of paraprofessionals in the military has grown as the need for legal services has increased.

In recent years the demand for legal services within the military community has increased significantly due to the passage of the Military Justice Act of 1968, the expansion of Article 15 procedures, the implementation of the Legal Assistance Pilot Programs and the expansion of traditional legal assistance services. To meet the growing demand for the services of lawyers, a number of staff judge advocates have allowed paraprofessionals to do work previously performed by lawyers. Permitting paraprofessionals to perform in this manner has enabled lawyers to devote more time to preparing legal memoranda, counseling clients and trying courts-martial.

Staff judge advocates are using enlisted and civilian paraprofessionals in civil law sections to assist both claims officers and legal assistance officers. As civil law legal assistants, these individuals process claims and interview claimants and persons seeking legal assistance. They have been trained to identify legal problems and perform basic legal research under the supervision of legal assistance attorneys. They also draft routine documents and correspondence at the direction of the legal assistance officer.

In military justice sections, staff judge advocates are using enlisted paraprofessionals to assist trial and defense counsels. As military justice legal assistants, these individuals assist in the preparation of cases for trial. They interview witnesses, gather evidence, perform legal research, and prepare trial briefs. They also conduct legal investigations and prepare court-martial documents.[8]

To meet the increasing need for trained paraprofessional personnel to be used in military legal offices, The Judge Advocate General's School has developed paraprofessional training programs in both civil and criminal law. The paraprofessional courses are taught by lawyers serving on the faculty of The Judge Advocate General's School.

The Civil Law Paraprofessional Course[9] consists of 40 hours of instruction in four major areas: legal assistance office management and administration, preliminary interviewing of legal assistance clients, military legal research, and substantive law such as wills, powers of attorney, family law and Soldiers' and Sailors' Civil Relief Act. In addition students receive instruction on the civilian court system, on legal ethics and professional responsibility, and on the role of the paraprofessional within a civil law office.

The Criminal Law Paraprofessional Course consists of 40 hours of instruction in six areas of military justice: Article 15, court-martial administration, military legal research, evidence, interview and examination of witnesses, and preparation of cases for trial. In addition students also receive instruction on court-martial trials, on legal ethics and professional responsibility, and on the role of the paraprofessional in the criminal justice system.

Within the past two years over 100 Army, Navy, Coast Guard, and Marine enlisted personnel and over 30 Department of the Army civilian employees have attended the Civil Law and Criminal Law Paraprofessional Courses offered at The Judge Advocate General's School.

USAREUR also has developed a paraprofessional course to train enlisted personnel to serve as legal investigative assistants for trial and defense counsel. Under the USAREUR program selected enlisted personnel receive 80 hours of instruction and training in legal investigation, court-martial procedures, interviewing witnesses, military legal research and preparation of cases for trial.

In addition to the courses discussed above, a number of colleges and universities offer courses and degree programs to train legal secretaries, legal assistants and legal administrators.[10] The University of Minnesota, for

example, offers a one-year program for legal secretaries, "a two-year associate of arts degree program for legal assistants and a four-year baccalaureate degree program for legal administration." [11]

A number of private institutes also offer specialty courses for paraprofessionals in selected legal subjects.[12] Law schools have been encouraged too to begin developing programs of instruction for training legal paraprofessionals.[13]

As noted above, the efficient use of trained paraprofessionals in a staff judge advocate's office can reduce substantially the amount of time lawyers spend on routine legal matters. Use of paraprofessionals also should result in the faster processing of claims, the improved rendering of legal assistance, the reducing of backlogged dockets, and the more efficient trial of court-martial cases.

The use of trained paraprofessionals, whether they be civilian employees or enlisted personnel, can improve significantly the administration of civil law and criminal law within staff judge advocate offices. Most importantly, the use of paraprofessionals can result in a significant increase in the amount of legal services that a staff judge advocate can provide to his command.

Footnotes

1. *See* Bigelow, *Help for Lawyers: The Nonlawyer Assistant*, 77 CASE AND COMMENT 40 (July-August 1972).
2. *Id.* at 40-41.
3. Fry, *A Short Review of the Paralegal Movement*, 7 CLEARINGHOUSE REVIEW 463 (1973) [hereinafter cited as *Paralegal Movement*].
4. *Id.*
5. American Bar Association Standing Committee on Professional Ethics Opinion 316 (1967). *See* Statsky, *Paraprofessionals: Expanding the Legal Service Delivery Team*, 24 J. LEGAL ED. 397, 405-06 (1972).
6. *See, e.g., Paralegal Movement, supra* note 3.
7. American Bar Association, *Code of Professional Responsibility and Cannons of Judicial Ethics*, EC 3-6, p. 15 (1969).
8. Some staff judge advocates are using nonlawyer officers from other branches to assist chiefs of military justice in the administration of military justice. These individuals are being referred to as legal officers and are used successfully as unit liaisons to chiefs of military justice at headquarters and division staff judge advocate offices. They also are serving as legal advisors to company commanders, as administrators for processing military justice matters at brigade level, and as trial counsels at special courts-martial. They are trained by chiefs of military justice through a program of on the job training, and they do the types of things that lawyers traditionally have done.
9. *See* Lane, *Expanding the Military Legal Delivery System The Legal Paraprofessional*, THE ARMY LAWYER Vol. 2, No. 4 (April 1972), p. 1.
10. About 25 community colleges around the country offer paralegal training. . . .

    . . . .

    A few colleges and law schools conduct paralegal training programs. Columbia Law School in the summer of 1969 presented a six-week pilot training program to 23 paralegals slated for OEO Legal Services. Antioch Law School has entered 10 paralegals in their first year Law School class, where they receive the same training as law students, to be followed by six months of specialty training. The University of West Los Angeles Law School runs a two-year paralegal training program. George Washington University in Washington, D. C. presents an adult education (non-credit) one-year paralegal training program with substantial assistance from its Law School. The University of Southern California offers a brief, intensive, training program for legal secretaries in trust and estate work.

    Paralegal Movement, supra note 3, at 464.
11. Larson, *Legal Paraprofessionals: Cultivation of a New Field*, 59 A.B.A.J. 631 (1973).
12. *Paralegal Movement, supra* note 3, at 463-64.
13. *Individual Training for the Public's Profession*, A Report by the Association of American Law Schools Committee to Study the Curriculum, Tentative Draft 2 (September 1970).

Minority Personnel in the Office of the SJA

By: Captain David E. Graham, Instructor, International and Comparative Law Division, TJAGSA

The study that follows is the second of several proposed case studies for the Handbook on Race Relations. The Judge Advocate General has tasked TJAGSA to draft this handbook and preview various portions in *The Army Lawyer*. Additional installments in this series will be forthcoming in the near future.

You are invited to submit comments or suggestions on the format and the discussion within. They should be addressed to The Judge Advocate General's School, Civil Law Division, ATT: Captain Ronald Griffin, JAGC, Charlottesville, Virginia 22901.

* * *

Fact Situation.

Colonel Taylor, the SJA at Fort Robie, has just been notified that Captain Rich Evans, a minority JA, will be assigned to his office within the next month. Colonel Taylor is in the process of determining Captain Evans' assignment. A lack of minority counsel has long been a complaint of minority soldiers at Fort Robie, and Captain Evans' assignment as defense counsel would appear to be an ideal way to ease the situation. However, two JA's from the claims section are leaving in two months, and Captain Evans would normally be assigned there. "Would it be right for me to change normal office assignment policy in this situation," he wonders. "That's not exactly 'equal treatment.' Still, I can't help but think he would be the most effective there. It's a position so much more visible to the troops."

Colonel Taylor is also aware that minority personnel have voiced concern over the inability of white JA's to aid them in many of their legal assistance problems. The white JA's in the office have told him that minority soldier "just won't open up." The Colonel surmises that one minority attorney will not help this problem to any great extent. "How can I handle that situation," he wonders.

SJA Actions

Colonel Taylor's decisions with regard to assignment of incoming minority JA's and proper utilization of minority personnel within his office are difficult ones. No definitive guidelines can be set forth. These decisions must be based on the circumstances of each situation, the experience of the SJA, and the well-being of the attorneys involved. What follows are simply suggestions and considerations which might prove beneficial to the SJA in making these determinations.

Upon being notified that a minority JA is being assigned to his office, the SJA may find himself in a quandry as to what type of work to assign this incoming officer. This decision may be approached in several different ways. The SJA might adopt the view that minority JAs "should be treated like everyone else, that there will be no favors or special treatment in this shop." Certainly no one can question the basic validity of this philosophy. The entire DOD race relations program is based on the concept of equal treatment and consideration for all military personnel. However, perhaps this particular approach overlooks some of the significant realities associated with the SJA's decisional process. Consideration might be given to the fact that there may be duties within the office of the Staff Judge Advocate for which minority JA's are particularly well-qualified. It is most probable that minority attorneys will prove to be extremely effective in communicating with and counseling minority clients. Thus, a minority JA serving in the role of a defense counsel or a legal assistance officer may prove to be beneficial to both minority personnel with legal problems and the office of the SJA as a whole. The very

presence of a highly visible and efficient minority JA should do much toward increasing the credibility of the military judicial process within the minds of minority soldiers. Accordingly, the SJA should consider the utilization of minority attorneys in legal assignments in which they are likely to have the most contact with minority personnel. Although it might be argued, as noted above, that this policy of duty assignment fails to follow the desired practice of "equal treatment", such an approach does serve as a realistic attempt to utilize JA's in areas of the law where they are uniquely qualified to accomplish the most good.

Regardless of the basis upon which the SJA makes his decision concerning assignments of minority JA's, it is strongly suggested that he eliminate any feeling on the part of the incoming attorney that he is being used as "window dressing." Certainly, the assignment of minority JA's to highly visible legal positions may result in such feelings on the part of these attorneys, and there should be sensitivity to this reaction. Thus, as in all cases of assignment of duties within the SJA office, the individual preferences and desires of the minority JA should also be given great weight.

Every SJA is aware of the fact that legal assistance is one area of the law which lends itself to establishing the credibility of the military judicial system and those who administer it. However, as has been mentioned elsewhere in these studies, the white JA may have difficulty in communicating with minority clients. This appears to be especially true in terms of the initial interview with minority soldiers. There may be several reasons for this. A language barrier may exist or there may be a failure on the part of either the white legal officer to understand the nature and causes of problems which may be unique to minority soldiers or the minority soldier to be able to express himself or to know what the legal officer is supposed to do for him. Moreover, the minority client may feel embarrassment at having to explain his situation to a member of the white majority or he may feel the "system" has once again forced him into dependency on a representative of the "white" judicial process for his well-being. For all these reasons, a minority JA may prove to be of significant value to a legal assistance program.

There may often be times when minority JAs are unavailable for work with minority legal assistance clients. In such a situation, some SJA's have utilized minority law students from nearby law schools and minority enlisted personnel and paraprofessionals within their own offices. These individuals have proven to be valuable, especially in the initial interview stage. It is recommended that SJA's consider utilizing minority personnel in this capacity.

Only the individual SJA can best determine upon what basis to make the assignment of duties within his office. The above observations and suggestions are set forth only for his consideration. The office of the SJA must function as a cohesive unit. Proper and effective utilization of minority attorneys and other minority personnel is an integral part of this functional process.

Checklist.

1. Consider assignment of minority JA's to duties which will put them in contact with the greatest number of troops, minority and white.

2. Consider those assignments in which minority JA's can most effectively deal with minority soldiers; i.e., defense counsel and legal assistance.

3. Be sensitive to the fact that assignments based on the above considerations may result in minority attorneys feeling as if they are being "used." It is important that the minority JA feel as if his assigned role offers him the opportunity to best serve the interests of the judicial process.

4. Consider the professional and career interests of the minority JA to the fullest extent possible.

5. Consider the use of minority law students and other minority personnel and paraprofessionals in the legal assistance office, especially in connection with initial interviews of minority clients.

6. Consider the value of a broad experience base; attempt to develop the "whole" lawyer.

SJA Spotlight: U.S. Delegation, Four-Party Joint Military Team, Republic of Vietnam

By: Captain Jerome W. Scanlon, Jr., JAGC

One of the most unique, and one of the smallest, joint U.S. military commands, remains in the Republic of Vietnam today: The U.S. Delegation, Four-Party Joint Military Team.

The Four-Party Joint Military Team (FPJMT) is the successor organization to the Four-Party Joint Military Commission. The latter was established by the Agreement on Ending the War and Restoring Peace in Vietnam, signed in Paris on 27 January 1973, with the mission of ensuring joint action by the parties in implementing the Paris Agreement and Protocols. It remained in operation for 60 days and was disbanded on 31 March 1973. The Fourt-Party Joint Military Team was established under the terms of Article 10(a) of the Protocol Concerning Captured Military Personnel, Foreign Civilians, and Vietnamese, to ensure that the parties acted jointly in implementing Article 8(b) of the Paris Agreement, to resolve the status of missing military personnel and foreign civilian personnel of the parties, and to recover the remains of the dead. The parties participant are the same parties that formed the Joint Military Commission: The United States, the Republic of Vietnam (RVN), the Democratic Republic of Vietnam (DRVN), and what has come to be called the Provisional Revolutionary Government of the Republic of South Vietnam (PRG/RSVN). The first FPJMT meeting was held 4 April 1973.

The FPJMT derives its mission from Article 8(b) of the Paris Agreement. This mission is to obtain information on military and civilian personnel of the parties to the Vietnam conflict missing in action (MIA); to determine the location and take care of the graves of those who died in captivity (DIC) or were killed in action to facilitate the exhumation and repatriation of their remains; and to take other such measures as may be required to determine the status of those still considered missing or unaccounted for. The latter phrase is construed by the U.S. delegation as authority to conduct search operations, such as crash and grave site investigations. In this regard, the U.S. delegation has attempted to negotiate entry rights for U.S. search teams to enter the various areas of control in North and South Vietnam to conduct these operations. The actual search teams are from the Joint Casualty Resolution Center (JCRC) based at Nakhon Phanom Royal Thai Air Force Base, Thailand.

The U.S. delegation, FPJMT consists of 15 officers and men, representing the U.S. Army, U.S. Air Force, U.S. Navy and U.S. Marine Corps. The chief of the delegation is a U.S. Army colonel, who acts as the chief negotiator. The deputy chief is a U.S. Air Force lieutenant colonel.

There are four operating divisions: administrative, operations, liaison and negotiations. The functions of the first three divisions are self-explanatory. The negotiations division, however, is the primary operating element of the delegation. Its mission is to formulate overall negotiating tactics and working strategy for implementation of Article 8(b) of the Paris Cease-Fire Agreement. Within the US diplomatic mission in Vietnam, this division is also responsible for analysis and re-

porting of plenary and special FPJMT meetings. The mission of the negotiations division also includes developing and managing the team's historical program. The experience gained by members of the team is truly unique, in that this is the first time since Korea, that we, as members of the military, have had such prolonged contact with representatives of a communist government. We feel that it is extremely important that this experience be fully documented and preserved for the benefit of those who will follow. The U.S. Army JAG officer is assigned to this division, and provides legal support to the entire U.S. delegation. The specific role of the Legal Officer will be discussed below.

The reporting channel for the U.S. delegation is through the Defense Attache, Saigon, the U.S. Support Activity Group at Nakhon Phanom Royal Thai Air Force Base, Thialand, to Commander-in-Chief, Pacific. The delegation is under the direction of the U.S. Ambassador to Vietnam.

There are three groups of personnel that the U.S. delegation is concerned with. The U.S. desires the return of the remains of those personnel identified on the Paris lists as having died in captivity, and to gain as much information as is available on the circumstances of their deaths. There are a total of 70 persons on these lists: 47 on the PRG/RSVN lists and 23 on the DRVN lists. There is also a 24th person, unidentified except that he is U.S. military, that was discovered during the FPJMT visits to the graves of U.S. DIC personnel in the DRVN in May 1973. This total of 70 includes U.S. civilians and third country nationals. The U.S. also wishes to determine the status of those personnel missing in action, and recover their remains if possible. Lastly, the U.S. desires to gain information about personnel who are believed dead, but whose bodies have not been recovered or accounted for by the U.S., and to recover their remains.

At present, the United States has over 2,000 individuals listed as missing in action or killed in action, bodies not recovered, and has information on over 1,000 crash sites in all areas of Indochina. Crash and grave site investigations by the JCRC have been successfully conducted in RVN controlled territory and territorial waters. The DRVN and PRG/RSVN have refused to grant permission for such operations in their respective areas of control. The prospects for permission in the near future appear bleak at this time.

In order to gain the information necessary to resolve the status of those missing in action and recover the remains of those who died, the U.S. delegation has consistently taken the initiative. Our first and most direct efforts are through the formal negotiations, at the Tuesday and Thursday plenary sessions of the FPJMT. One of our more potentially productive sources has been informal bilateral negotiation, during the breaks at the formal sessions or in private meetings with other delegations on a face-to-face basis. We have exchanged a great amount of correspondence in the form of memoranda concerning liaison flights, crash site investigations, requests for information on specific individuals, and requests to begin repatriation of our DIC personnel. We have provided the other delegations with specific information and complete listings of all known missing and dead persons in Indochina in an effort to stimulate the other parties to respond. This information has been provided directly to the other delegations with several following queries. To date, no return information has been forthcoming. We have also provided weekly C-130 liaison flights to Hanoi for the DRVN delegation to confer with their government. These operated on a weekly basis from 7 April until 8 June, 1973. On the latter date, an on-board fire, caused by an unidentified device in one of the bags of the DRVN delegation, injured seven persons. The flights were suspended from that time to 3 August, until the DRVN gave written assurances they would not carry dangerous materials on the aircraft. Despite our best efforts, the DRVN and PRG/RSVN have not been forthcoming

with any substantive information since the beginning of the FPJMT.

Many impasses have developed throughout the history of FPJMT negotiations. Some of these have concerned the color of the FPJMT flag, the privileges and immunities possessed by each delegation, and FPJMT ID cards. The U.S. delegation has, in the main, a short term objective: to determine the status of our people and to recover their remains. On the other hand, the DRVN and PRG/RSVN have both short-range and long-range objectives. They have pressed for many things that are beyond the purview and interpretation of Article 8(b) of the Paris Agreement. For example, they have consistently expressed the desire to build monuments and cemeteries in RVN territory, and to allow for the visits of relatives to the graves. The RVN objects to this based on their past experiences, wherein such means were used for political purposes and to rebuild the infrastructure within RVN territory. The U.S. has supported the RVN position in these negotiations. The DRVN and PRG/RSVN know that the longer they can prolong negotiations the more impatient the U.S. and RVN will become, with the hope that we will concede to their demands. If they could convince us to allow them to realize their short-term objectives, they would improve their visibility in the RVN areas and establish some form of legitimacy for their presence and form of government. They are very content to wait and they are well aware of our inherent lack of patience. They are also aware of the pressures exerted by stateside organizations and other internal problems of our government. They wait and take advantage of these pressures and opportunities.

As far as the role of the Legal Officer in the U.S. delegation to the FPJMT is concerned, he is part of the negotiations division. His responsibilities include participation in the development of negotiating strategies, documentation of our negotiation efforts, research and assembly of background materiel used in negotiations, and assisting the chief of the U.S. delegation in planning and conducting negotiations. He is also called upon to provide necessary legal interpretation of the many complex issues that arise during the course of our efforts to implement Article 8 (b) of the Paris Agreement.

It is our constant hope and earnest desire that we can accomplish our mission and thereby terminate U.S. participation in the FPJMT. We realize that U.S. hopes for information about MIA personnel, and recovery of the remains of the personnel who died in captivity, are tied as a direct result of communist tactics, to the larger question of the political and military future of the Republic of Vietnam. The work presents many challenges: to continually review the tactics used by the communist delegations, to formulate new and imaginative strategy for the U.S. delegation, and to ensure that various governmental agencies concerned are kept fully informed.

This assignment presents many and varied opportunities for a JAG officer. It is true that there is none of the drama associated with a long and difficult criminal trial. There are none of the rewards attendant to providing total legal services to our organizational or individual clients. The team represents an attempt, on the part of the United States, to bring an end to a chapter in American military history through achievement of purely humanitarian goals. What we learn and experience here may well help lay the foundation for future closing chapters, should the need arise.

Race Relations and Equal Opportunity In the Military

These remarks were made by General Creighton W. Abrams, U.S. Army Chief of Staff, at the Department of the Army Race Relations/Equal Opportunity Conference, January 16, 1974.

A fellow wrote a long article in the *Fortune* Magazine in the middle of the thirties. It was one of their in-depth reviews of a particular subject. This one was about why we have an Army. Of course, we didn't have much then —and I won't go into all that—but at the end there was a concluding sentence which, in effect, said about an Army: if you think you might need one, maybe you should have one. Well, you know, that's not too positive a thing to sink your teeth in. But the reason you have an Army is because there might be a war, and if you are going to be in it you just have to have a good Army that will go ahead and win it. And in all the things we do today, we kind of start from that point. If you are going to have a good one, equipment is important; we should have good weapons—hopefully we would have the best; and we need other things, too.

But the most important thing we have in the Army is people. It is the spirit, the faith, the attitudes of people that make a winning Army. And the farther we get away from the experiences of a war, the more we forget and the dimmer our memory grows of the really harsh circumstances that men must face up to and must persevere in. So, it's important to the Army, and most of all to the Nation, that there be a spirit, and an attitude, and an understanding, within the Army—within all its units and among all its people—a confidence in each other, a faith in each other, a recognition of their dependence on each other.

When it was decided in Vietnam that we, the Army, should make an effort to raise the standards of training of the territorial forces, we organized teams to do the job. We set a policy in the beginning that the only men who could be in those teams were those who had served in rifle companies for four months in combat. Now, we didn't insist on these men just because they knew about fighting. It's more than that. There's something that happens to men in rifle companies. It has to do with how they look at people.

You see, Americans as a whole had trouble with the whole idea of the Vietnamese. Their color was a little different, their eyes were a little different, they were kind of small—those kinds of differencies tend to bother Americans. So we sent the rifle company fellows who had been in combat for four months, because in that four months' time their whole set of human values changes. They're no longer interested in what school another fellow went to, no longer interested in what color he is, no longer interested in what city he comes from, or how he speaks the King's English. Those things were no longer important. Their values were about other things: who carried his load when the night was dark—and when the day was long—and when the danger was there all the time. Those were the things that mattered, and that they looked for and saw in others. And that's why we chose those men to work with the Vietnamese—because they had a set of human values that made working with them possible. They had had the experience so they could see people for what they were really worth. And I think, by and large, they were a very successful group.

Now, we need that attitude and those values all the time—but it's a difficult thing to achieve today when we don't have the real pressures, the real dangers, the real threats that will bring us together and see each other for what we are really worth as human beings. So our Government has a policy of Equal Opportunity. It is a matter of law. The Department of Defense has some very clear policies; the Army, like the other Services, does, too. The policies are clear and they are really unmistakable. But we always try to judge our progress by the charts. We are proud of the policies, and we are proud of the charts, and we are proud of the progress, if somebody can show them on the charts. But I think we all know—inside—that Equal Opportunity is not a matter of policies and charts. It's really a matter of human attitudes toward other humans; it's a matter of attitudes which still need to be changed so we can move ahead. You can't do that by regulation. You can't do it by directive. Somehow there has got to be a conviction among almost

everyone that it has to change, and that we have to look at each other as humans and equal, and that the opportunities for each one of us are all there.

I think the Army can point to some good things that have been accomplished—and I think that's true—but we shouldn't take any comfort in that. On the whole, we do not have the kind of universal acceptance of the philosophy of Equal Opportunity. For example, today in our country, not very many are going to stand up and say publicly that they don't want integration, or they won't have integration. They really can't do that. Yet that doesn't mean that they've all come on board. It just means that the opposition is a little more subtle, that the ways of resisting are a little more sophisticated. And we who serve in the Army, we who serve our Government, have to do more than meet the requirements on the chart or see that the regulation is not violated. We have to be positive, and insure that our policy is equal—and it means that we must actively pursue whatever is not.

For a long time America was a beacon in the sky for everybody in the world; it was a dream—and that's what it was. Now as a practical matter, if you go back to the Constitutional Convention of 1787 they had a lot of disagreement on what were people. The lyrics were there. They all talked about the people. "We, the people." "By the people." "Of the people." But some of them thought that people were those who owned property; and some of them thought that people were those who were Protestant—anyway they left the generalized term "people." We've matured since then, but we still have to make sure we think of people as people and that we focus our attention on people regardless of race, religion or whatever—even regardless of sex.

We've got a problem in the Army now with women. By policy and by regulation and by all of the rest of the bureaucratic machinery, the Army is in great shape on accepting women. But we still have men who really don't think that women should be in the Army. It's something that we must change. Women, too, have their place in the Army, and they should be a part of the Army, and should have jobs commensurate with their ability. We have to overcome the hangups.

I think it's true that anything goes well in the Army goes well because the chain of command backs it. In most places I visit, it's a pretty well accepted fact that we'll fight to see that there's no rent-gouging in off-post housing. The chain of command backs the project. The policy is that our people—the people who serve in the military—must have access to any housing they can afford, and so on. The chain of command must be equally aggressive in pursuing that policy.

Yes, we can have help, we can have counselors, we can have experts—I think they are required. But they cannot make it work; they can only help to make it work. If the chain of command doesn't make it work, it won't work.

We all like to think that we have two lives, our official military life and our private life. I think maybe some people think that. But I know that any leader in the military who believes that is wrong. He only has one life and that's his military life. He can't have a dual personality; on the post an advocate for Equal Opportunity and when off the post—in so-called private life—a member of a club or society that is not in keeping with Equal Opportunity. Is there anyone left who thinks his soldiers don't know all that—and realize what a damned fraud he is? If you're a leader you can't do it. If you can't live with that, you're just in the wrong outfit. You should seek employment elsewhere.

Finally, I want to tell you an old-fashioned story—because I am talking about the attitudes of people and that's what the story is about. There are two seas in Palestine. The River Jordan flows into one of these seas and it's a great one: the water is fresh and bubbling; grass and trees and flowers and shrubs bloom around the shores; fish live in it and jump in it; people have built their homes around it; children splash and play in it. The

Bible says our Lord was there one day and fed 5,000 people.

The River Jordan flows on from there to the second sea. This is a different one. There is a desert there around it; there is not a sign of grass or trees or human life; travelers go a round-about way to avoid it; birds don't fly there; there are no fish in the water.

Well, what makes the seas different? The River Jordan supplies the good water to both. The soil is not different. But the first sea, for every drop of water it gets from the River Jordan, it gives a drop away, out the other end. The other sea takes the good water of the River Jordan—and that's where it ends. It doesn't give any; the water goes nowhere.

The first sea is the Sea of Galilee and the second one is the Dead Sea. I think men are like that. You really live by giving, and in this whole program which our country and ourselves struggle with—Equal Opportunity, a new philosophy, correction of the wrong, getting on the track, looking at people for what they are—it requires each and every one of us to give. And I really think that for all of us, whether you are in the Army or wherever you are, the way to live is to give.

JAG School Notes

1. *Military Law Review* Delayed By Paper Shortage. Those of you still searching the office for that misplaced Volume 62 of the *Military Law Review* can take some comfort in learning that it has not yet graced your in-box. Although noted in last December's JALS index, the Fall 1973 MLR remains stalled at the printer, victim of a temporary paper shortage affecting it and Volume 63 (Winter 1974). As of this time, no distribution date for either volume can be accurately forecasted. Printing stock for JALS and *The Army Lawyer* has not been affected by the shortage, and distribution of these publications should continue at their previous frequencies.

2. Basic Class Hears *Avrech* and *Levy*. The new 59-member strong 72d Basic Class began its studies last month. The group includes four new female additions to the Corps, as well as four visiting allied officers: two from Iran, plus officers from Thailand and the United Kingdom. During part of the two-week "overlap" in basic classes, members of the 71st Class had the additional opportunity to hear the oral arguments on *Avrech* and *Levy* before the Supreme Court as part of their Court of Military Appeals trip. On 1 March that class heard a graduation address by Brigadier General Bruce T. Coggins, Assistant Judge Advocate General for Civil Law, and prepared to leave Charlottesville for their upcoming field assignments.

3. Criminal Law Curriculum Revised. The Criminal Law curriculum for the Basic Class has been revised to place greater emphasis on trial advocacy. Most of the lectures on common-law evidence have been removed from the core curriculum and are now offered in an elective. This elective is a nine-hour block of instruction, covering general relevance, the identification of physical evidence, the validation of scientific evidence, presumptions and inferences, best evidence and hearsay. In addition, more practical exercises in trial techniques have been incorporated into the core curriculum. There are new practical exercises on voir dire, opening statement, confessions, physical evidence, stipulations and judicial notice. Finally, the Criminal Law Division is developing a set of videotape demonstrations on trial techniques to be interspersed throughout the curriculum. There will be a series of approximately 20 videotape demonstrations in the mechanics of such techniques as laying the foundation for a document, past recollection recorded and other evidentiary problems. By greater use of videotape demonstrations and practical exercises, the School hopes to make the Basic Class graduate a more polished trial practitioner.

4. **New Course in Scientific Evidence for Advanced Classes.** An elective course in Scientific Evidence is being offered during the second semester for Advanced Course students. The course will cover firearms and toolmark identification, questioned documents, forsenic pathology, toxicology, serology, fingerprints, trace element identification and comparison—plus instrumental analysis involving neutron activation analysis, atomic absorption and voiceprints. Legal aspects, such as admissibility and qualifications of experts, as well as technical aspects pertaining to the underlying scientific principle, methodology, and limitations of the various techniques, will be treated.

5. **Advanced Class at United Nations.** The 22d Advanced Class had a busy February. They spent the week of the 18th in New York as part of the traditional United Nations trip. A number of guest lecturers also addressed members of the class during last month. Major General George S. Prugh, The Judge Advocate General, spoke on the Protocols to the Geneva Conventions; Captain Jerome Scanlon highlighted his activities in accounting for the missing and recovering the dead in Vietnam; William J. Kenealy of the Federal Mediation and Conciliation Service explained labor negotiations in the federal sector; Fort Lewis' Colonel Rupert Hall addressed the class as part of the SJA Seminar Series; Mr. Browder Holland from the Army Installation Management School gave a talk on financial management; Dr. Robert Wood of UVA's School of Government and Foreign Affairs discussed war and public order in the international system; and Major William G. Eckhardt from OTJAG spoke on helping a commander control his installation.

6. **Gifts to the School.** Three new additions to the School's growing collection of world JAG insignias arrived during the past month. Brigadier General Van Lierop of the Royal Netherlands Army; Brigadier M. J. Ewing, Directorate of Legal Services for the Australian Army; and Colonel Joseph N. Blamo, AFL (SJA) of the Liberian Army all made donations of insignia from their military legal corps.

7. **National Guard JAG Conference.** March 3-6 marks the date that the JAG School hosts the Annual National Guard Judge Advocate Conference. Nearly 125 senior National Guard JAG officers are expected to be in attendance. Highlights from the Conference will be noted in next month's issue of *The Army Lawyer*.

Law Day 1974

Introduction.

In 1961 the 87th Congress by joint resolution set aside the first day of May of each year as a special day of celebration by the American people in appreciation of their liberties and in the reaffirmation of their loyalty to the United States of America. 1 May is intended to be a time for American to rededicate themselves to the ideals of equality and justice under law in their relations with each other as well as with other nations and to further cultivate that respect for the law that is so vital to the democratic way of life.

Law Day celebrations are designed to enable Americans to understand the place of the law in our lives, to learn how the law and our legal system operate and to examine how the law can better serve our people and nation. While Law Day is not a day for lawyers, it is a time for the legal profession to take charge in reminding all citizens of their rights and the role of the law in protecting them in the enjoyment of those rights. Without the citizens' support the system of law would be unable to function, a result which would lead to the loss of enjoyment of those rights.

The importance of Law Day celebrations in our society is clearly pointed out by the words of our Presidents, who have been encouraged by the Joint Resolution of the 87th Congress to proclaim 1 May as a special day of observance. In stressing the importance of the law,

John F. Kennedy stated in his 1961 proclamation that "law is the strongest link between man and freedom." Again in 1962 President Kennedy emphasized the role of law in our society by stating that the rule of law is a vital bulwark in "man's struggle to sustain individual freedom, human dignity and justice for all." In proclaiming Law Day 1964, Lyndon B. Johnson stated that "respect for law is the condition upon which our social order depends." Law Day 1967 was proclaimed by President Johnson with the challenge that "all who cherish freedom should also cherish law." The recent words of President Nixon's 1973 proclamation continue to echo the importance of the law—"We honor the law because it preserves civilized society. We revere the law because it protects the individual."

Law Day 1973 Observance.

Each year the Judge Advocate General's Corps goes to great lengths to ensure that its jealous mistress is not only understood but appreciated. For its role in the 1972 and 1973 Law Day observances throughout the world, the Corps was awarded Certificates of Merit by the American Bar Association. U.S. Army Judge Advocates filed 71 after-action reports representing celebrations in 9 foreign countries, 21 states and the District of Columbia. News of Army Law Day activities appeared in 48 newspapers. 21 radio stations transmitted Law Day messages sponsored by Army Judge Advocates, while 14 television stations transmitted coverage of Army sponsored Law Day activities. 50 command letters and proclamations were signed. 26 installations sponsored Law Day ceremonies in their local schools to include mock trials, Law Day quizzes, essay contests, films, civil rights discussions, poster contents and the demonstration of law enforcement equipment. In addition, 22 installations coordinated Law Day observances with their religious activities.

Law Day 1974 Observance.

The JAG Corps can be truly proud of its participation in Law Day 1973 celebrations. This year installations throughout the world are again challenged to strive for even better celebrations reaching more and more people. For its 1974 theme the American Bar Association has selected:

YOUNG AMERICA!
LEAD THE WAY
Help
Preserve good laws,
Change bad laws,
Make better laws.

In support of that theme programs should convey to youth a deeper knowledge, understanding, and appreciation of the law and the legal process; should examine and explore where the law has failed to provide equality of individual rights; should show potential for change within the legal system; and should encourage youth to support the legal process and participate in the democratic process. Programs dramatizing the social and cultural values of our legal system should be directed to youth at all levels of education as well as within the military system to ensure youth's understanding of our system of law. After all, the world of tomorrow will be governed by the youth of today.

In furtherance of JAGC participation in Law Day celebrations, all installations are again required to submit after-action reports on local celebrations to — TJAGSA, ATTN: DDL, Charlottesville, Virginia 22901—no later than 10 May 1974. After-action reports should be subdivided into categories of: (1) command letters and proclamations; (2) displays; (3) newspaper articles; (4) radio and TV coverage; (5) religious activities; (6) school programs; (7) naturalization ceremonies; (8) Law Day gatherings; (9) seminars and panel discussions; and (10) miscellaneous. Photographs, press releases and other exhibits in conjunction with observances are encouraged but should not delay the narrative reports.

TJAGSA Announces Upcoming Continuing Legal Education Courses

1. Law of Federal Employment Course (11-14 March).

Several years ago, when civilian personnel law and labor-management relations law became a major part of the Army lawyer's practice, TJAGSA instituted the Labor Law Course, later redesignated as the Law of Federal Employment Course. The purpose of this course was to provide the military lawyer with a fundamental working knowledge in this important area of developing law. Now that the military lawyer is becoming even more heavily involved in these areas, the time has come for more advanced studies. For this reason, the Tenth Law of Federal Employment Course will concentrate on employee adverse actions, unfair labor practices, collective bargaining, grievance arbitrations, and Equal Employment Opportunity complaints. To be held on 11-14 March 1974, the course will feature discussion of adverse action case studies presented by a CONUS installation Civilian Personnel Officer and a discussion of adverse action litigation by Mr. Anthony Mondello, General Counsel for the Civil Service Commission.

2. Environmental Law Course (6-9 May).

In recent years the Army has been faced with an expanding legal practice in the environmental law area. In response to this growth the Civil Law Division on 6-9 May 1974 will conduct its first course devoted entirely to consideration of environmental law problems facing the military today. Special attention will be given to environmental law impact statements, the effects of substantive laws relating to air, water, noise and solid waste pollution on the operations of a military installation, and the relationship of DOD and the Environmental Protection Agency. This Environmental Law Course is a revision of the Litigation and Environmental Law Course originally scheduled for 29 April—3 May 1974.

Both of these courses are part of TJAGSA's Continuing Legal Education Program in Administrative Law designed to enhance the quality of legal services provided by judge advocate officers. Quotas for these courses will be distributed to the major commands for allocation to installations and Reserve area commands. Inquiries concerning quotas should be addressed to your major command training office. Inquiries concerning the scope of the courses may be addressed to the Civil Law Division, TJAGSA, U. S. Army, Charlottesville, Virginia 22901, AUTOVON: 236-0311 (Fort Bragg); FTS: 296-1308. Course information letters will be sent to students holding quotas approximately two weeks in advance of each course.

3. Military Justice Course (13-24 May).

The 16th Military Justice Course is scheduled for the period 13-24 May 1974. This year's course will emphasize practice-oriented instruction and will consist of two phases either of which may be attended separately. Phase 1 (13-17 May) will be designed for the Chief of Justice of a command or installation and will tentatively include, in addition to updates on the major legal changes that have occurred in the past year, classes on the establishment and use of correctional custody facilities; solving speedy trial problems on the local level; prediction of discipline problems within the command; personnel and fiscal management, and correction of deficiencies within pretrial and posttrial reviews. It is expected that representatives of both Defense and Government Appellate will speak. Phase 2 (20-24 May) will emphasize matters of particular interest to trial lawyers. Classes tentatively scheduled (many to be presented by guest speakers) will include approximately seven hours on scientific evidence (fingerprints, voiceprints, and neutron activation analysis; firearms identification and gun powder residue; questioned documents examination; forensic chemistry); examination and use of psychiatrists; proper use of voir dire; creation and use of "jury" instructions; electronic surveillance; use of the polygraph and hypnosis; attacking eyewitness identification

and closing summations—the last to be presented by a guest civilian prosecutor and a guest civilian defense counsel.

Any additional inquiries concerning this course should be addressed to the Criminal Law Division, TJAGSA, U. S. Army, Charlottesville, Virginia 22901, AUTOVON: 236-0311 (Fort Bragg); FTS: 296-1308

Legal Assistance Items

From: Legal Assistance Office, OTJAG

1. Social Security Benefits. Section 202(g)(1) of the Social Security Act grants a "Mother's benefit" to widows under 62 who are caring for children under 18 years of age which is equal to 75% of the deceased husband's primary insurance amount. Recently a three-judge Federal District Court awarded a "Father's benefit" to a widower who had a newborn infant to raise. The court said the law discriminated against the husband and his wife who had made payments to Social Security while working and also the infant child. See *Wiesenfeld v. Secretary of HEW*, No. 208-73, U.S.D.C. N.J., Dec. 11, 1973). Fathers who were previously widowed may possibly be able to collect back "Mothers'-Fathers'" benefits.

2. South Dakota residency requirements for divorce unconstitutional. A three-judge Federal district court has declared the South Dakota one-year state and three-month county residence requirements for divorce unconstitutional. The court held that the residency requirement was merely an administrative convenience and not justification for abrogating constitutional rights. It noted that a driver's license or voter registration are examples of a number of factors that are as indicative of domicile as length of residence and stated that trial courts are capable of inquiring into such factors without needing an "objective standard" to prevent jurisdictional fraud. (*McCay v. South Dakota*, No. CIV 73-3017, D.S.D., Nov. 19, 1973)

3. Avoiding Tax Withholding. Students who work during the summer or part-time can be exempt from income tax withholding if they have no tax liability in 1973 and anticipate none in 1974. If the student is single and will earn less than $2050 for 1974 he should notify his employer and file a Form W-4E—in which case no tax will be withheld.

4. Tax Tip. Upon the sale of an old residence and the acquiring of a more costly residence, capital gain on the old home may be postponed. In this situation the taxpayer should consider whether it would be more advantageous to use the sale-related expenses as an offset against the amount realized on the sale or to use them as a moving expense. He may elect one or the other but not both of these tax advantages. (Sec. 217(b)(a); 1.-27-2(b)(7) I.R.C.)

5. Average Return. The IRS recently disclosed figures as to what is an average return when considering itemized deductions. The following was released by the Internal Revenue Service:

Adjusted Gross Income	Contributions	Interest	Taxes	Medical*
9,000- 10,000	275	666	671	318
10,000- 15,000	313	783	858	325
15,000- 20,000	415	966	1,177	325
20,000- 25,000	557	1,181	1,548	357
25,000- 30,000	694	1,436	1,944	432
30,000- 50,000	1,007	1,900	2,615	490
50,000-100,000	2,186	3,376	4,518	681
100,000 or more	13,533	11,832	13,068	1146

Any amount above these figures may "red-flag" the return. However, if there are valid itemized deductions, be sure to take them, but at the same time be sure that they can be proven, as well as all other items in the return.

*This figure also includes medical insurance premiums.

Note: A return may still be audited even if the deductions taken compare favorably with these figures.

6. W-4 Employee's Withholding Exemption Certificate. The W-4 form has several purposes. It reports the number of exemptions a taxpayer has and allows him to request the finance office to withhold extra income tax, an effect that is accomplished by reducing the number of exemptions claimed. This may be done to prevent the problem of not having sufficient withholding to cover the amount of Federal income tax due, a situation that arises when a taxpayer has taxable income during the year that is not subject to withholding.

Should a taxpayer have significant itemized deductions (above the % standard deduction of 15% of Adjusted Gross Income, not to exceed $2000) he may reflect his fact by reducing the amount of tax withheld. One additional exemption may be claimed for each $750 or portion thereof in excess of the above noted % standard deduction.

One other thing that the W-4 does is to reflect a service member's legal residence. This address determines which state will receive a copy of the tax statement (W-2) at the end of the year. It is important for the service member to identify correctly his legal residence to preclude incurring a possible tax liability in states other than that of the legal residence.

The above should be kept in mind when advising members concerning income tax problems.

7. Tax Exclusion For Combat Zone Accrued Leave. Due to numerous inquiries regarding the taxability of combat zone accrued leave, the following item of continued liability is reprinted from the June 1973 issue of *The Army Lawyer*.

The Armed Forces Income Tax Council has recently received a letter ruling from the Internal Revenue Service clarifying Revenue Ruling 71-343, 1971-2 C.B. 92, on the taxability of combat zone accrued leave.

Revenue Ruling 71-343 generally provided that payments attributable to leave earned by a serviceman in a combat zone are part of compensation for active service excludable from gross income to the extent allowed by section 112 of the Code. This ruling left many issues unanswered, and accordingly, the Armed Forces Individual Income Tax Council submitted a request for clarification to IRS. In reply the Service has set forth specific guidelines to be used in implementing the original ruling. These guidelines will be incorporated in a published Revenue Ruling which is scheduled for printing and distribution on or about 23 April 1973. The content of the letter ruling dated 16 April 1973 is basically as follows:

> . . . although the use of leave by a member of the Armed Forces decreases his obligation to be present and perform services at his duty station, this does not ordinarily result in the realization of gross income to him; that is, a taxable amount in addition to his base pay or other forms of taxable compensation. The latter are affected neither by the accrual nor the use of such leave. On the other hand, the payment for accrued unused leave to a member of the Armed Forces at the time of his discharge is monetary compensation in addition to other forms of compensation . . .
>
> . . . since rights to leave accrue by reason of active service, if payments for unused accrued leave made at the time of discharge from the service are designated . . . as being attributable to unused leave accrued during a period of active service for a month or months during any part of each of which a member in the Armed Forces of the United States served in a combat zone, first, in the case of a member below the grade of commissioned officer, such *payments* are excludable from his gross income, and second, in the case of a commissioned officer, such *payments* are excludable from his gross income to the extent that the limited exclusion provided by section 112(b) of the Code has not been previously exhausted by exclusions from income under the same section relating to the same period of service. Of course, under section 112(b) of the Code, to the extent the *payment* for unused leave of an officer is at-

tributable to leave accrued for any month during any part of which he was in a missing status during the Vietnam conflict as a result of such conflict, the exclusion is not limited. (emphasis added)

Some specific examples furnished as clarification are as follows:

a. Enlisted member *uses* combat zone leave in a month in which he does not serve in a combat zone—No exclusion.

b. Enlisted member *uses* combat zone leave in a month in which he serves in combat zone —Exclusion.

c. Enlisted member gets advance leave and then earns leave to cover it in a combat zone—see examples a and b above with respect to the exclusion or non-exclusion.

d. Enlisted member is advanced in rate between date of earning leave and being reimbursed. The exclusion is not limited to rate of pay at the date earned.

e. Enlisted member is *paid cash* for his unused combat leave at the date of separation—Exclusion.

f. Commissioned officer *uses* combat zone leave in a month in which he does not serve in a combat zone—No exclusion.

g. Commissioned officer *uses* combat zone leave in a month in which he serves in a combat zone—exclusion of $500 per month applies to the total compensation for month in which leave is utilized. Since all commissioned officers presently receive in excess of $500 per month, no additional exclusion woud attach.

h. Commissioned officer is *paid* lump sum for combat zone leave at date of his separation —exclusion for the month of separation is limited to any balance of the $500 per month exclusion not previously used. Since all commissioned officers presently receive in excess of $500 per month, generally no additional exclusion would attach.

Personnel who received cash settlements for combat accrued leave in 1970 and thereafter may file amended tax returns to claim the exclusion if they have not already done so. With respect to those servicemen who have already filed an amended return and received payment for combat zone accrued leave, it should be pointed out that section 7805(b) of the Code and the regulations thereunder specifically provide that rulings are retroactively applied. Accordingly, (a) if a refund has already been based on Revenue Ruling 71-343, (b) in light of the new Revenue Ruling such refund should not have been made, and (c) the Statute of Limitations has not expired with respect to the year for which the refund has been made, then the serviceman should amend his return including as income those amounts which were previously erroneously excluded as combat zone compensation.

As this ruling obviously affects many service personnel still on active duty, it is requested that all local legal assistance officers make this information available to their command.

Collection Pursuant to AR 27-40
(Medical Care Recovery Program)
CY 1973

ALL ARMY AREAS:

Number of Claims Asserted	4,403	
Total dollar amount of Claims Asserted		$4,610,520.20
Number of Claims Collected	3,610	
Total dollar amount of Claims Collected		$2,726,378.29

Judiciary Notes

From: U. S. Army Judiciary

1. Administrative Note.

JAG-2 Reports. Staff Judge Advocates of each command having general court-martial jurisdiction are reminded that the JAG-2 (R8) report for the period 1 Jan—31 Mar 74 should be forwarded, airmail, to HQDA

(JAAJ-CC), Nassif Building, Falls Church, Virginia 22041, not later than 10 April 1974. In this connection, attention is invited to the instructions set forth on page 17 of the March 1973 edition of *The Army Lawyer*. For your information, a revised Chapter 10, AR 27-10, is at the printers. It will indicate, among other matters, that the report is based upon (1) records of trial by summary and special courts-martial received in the office of the preparing agency during the quarter and upon which review under Article 65(c), UCMJ, has been completed or which have been forwarded to HQDA (JAAJ-CC); (2) general court-martial trials during the quarter and received in the preparing agency for review.

2. Note From Defense Appellate Division.

*Thoughts on the Statute of Limitations**. The "time of war" tolling clause in the statute of limitations, which has particular relevance to certain offenses (e.g. AWOL, desertion, fraud against the government) has again gained significance in the military justice system with the cessation of hostilities in Vietnam.

In its 1968 decision in *United States v. Anderson*, 17 USCMA 588, 38 CMR 386, the Court of Military Appeals held that an unauthorized absence commencing 3 November 1964 was "in time of war" within the meaning of Article 43 and the accused could properly be tried for the offense even though charged after the statute of limitations had run. The principal opinion, by Chief Judge Quinn, relied primarily on the Congressional action in passing the Tonkin Gulf Resolution in deciding that the Vietnam conflict was a war under the Code. The other two judges, while concurring in the result, did so on the basis principally of the Court's prior holding as to the status of the Korean War, *United States v. Bancroft*, 3 USCMA 3, 11 CMR 3 (1953); *United States v. Ayers*, 4 USCMA 220, 15 CMR 220 (1954); *United States v. Shell*, 7 USCMA 646, 23 CMR 110 (1957). Subsequently in 1969 and 1971, though the scope of the war was being narrowed (*United States v. Averette*, 19 USCMA 363, 41 CMR 363 (1970)), the Court of Military Review again invoked the *Bancroft* and *Anderson* doctrines and held that the Vietnam involvement was a war within the meaning of the Code (*United States v. Taylor*, 40 CMR 761 (ABR 1969); *United States v. Moss*, 44 CMR 299 (ACMR 1971)). But, just as, for purposes of military law, an undeclared war may legally constitute a war within the meaning of the Code, so the cessation of that war is to be determined by the factual circumstances occurring at the time. Insofar as the Vietnam War was declared to be a *de facto* war for purposes of military law it must necessarily follow that it has a *de facto* terminal date. Certainly, as of this time, the statute of limitations is no longer suspended.

Though no court has yet spoken on this issue, there are various theories for selecting the termination date. The date of the repeal of the Gulf of Tonkin Resolution in January 1971 is an obvious date, others are the date of the withdrawal of combat troops in September, 1971, or the date of the signing of the Paris Peace Agreement in January, 1973. There are good arguments for each of these. It remains to be seen which the United States Court of Military Appeals will ultimately adopt. In any circumstance, the time has come to litigate the issue and we can expect to see it raised in the coming months.

3. Recurring Errors and Irregularities.

a. *Withdrawal of Convening Authority's Action.* On a number of occasions, after a record of trial has arrived in the Judiciary for review, a supplemental review, new action, and an initial promulgating order will be received. The Army Court of Military Review has held, in such instances, that the convening authority was without authority to change his action and that it is a legal nullity, requiring revocation of the second court-martial order. *See* subparagraph 89*b*, MCM, 1969 (Rev.), and *United States v. Shulthise*, 14 USCMA 31, 33 CMR 243 (1963). Once the

* Article 43, Uniform Code of Military Justice, 10 U.S.C. § 843.

convening authority's action has been published in a court-martial promulgating order and the accused has been officially notified thereof, the Action should not be withdrawn without prior authorization from TJAG, Army Court of Military Review, or the United States Court of Military Appeals.

b. Court-Martial Data Sheet. Several records of trial have been received recently in which either the trial counsel or the SJA had not completed his portion of the Data Sheet. Attorneys should realize that a careful checking of the data sheet will help to eliminate many errors at the trial level.

c. *Faulty SJA Reviews.* The Court of Military Review is receiving numerous cases where it is apparent that page 1 of the SJA Review was prepared by one person and the rest of the review by another. It is also apparent that the reviewer did not check the page 1 information for accuracy and consistency with the remainder of the review.

For example, a record of trial now before the Court contains these discrepancies: Page 1 of the review, dated 18 January 1974, reflects that the accused was born on 28 August 1952; page 2 says he is 22 years old. Page 1 of the review shows 12 years of education; pages 2 and 3 state that he has 8 years of education. In addition, page 1 of the review characterizes his service as "unsatisfactory" although the DA Form 20 shows that his ratings during approximately two years of creditable service were "excellent" until the commencement of the offenses (AWOLs) for which he was tried.

d. *Punitive Regulations.* Convictions by courts-martial for offenses under Article 92, UCMJ, alleging violations of local general regulations continue to be challenged on the basis that such regulations are non-punitive. It has been more than 15 years since *United States v. Hogsett,* 8 USCMA 681, 25 CMR 185 (1958), but, despite continuing litigation of this issue (*Scott,* 22 USCMA 25, 46 CMR 25 (1972); *Wheeler,* 22 USCMA 149, 46 CMR 149 (1973); *Atkins,* 46 CMR 572 (1972); *Bala,* 46 CMR 1121 (1973); *Jackson,* 46 CMR 1128 (1973)), many, if not most, of the regulations reviewed by the Court do not contain words indicating the intent of the command that a violation of the provisions of the regulation subject the offender to punishment under the provisions of Article 92, UCMJ. Command judge advocates should review their punitive regulations to insure adequacy of notice to personnel of the regulation's punitive nature. The Court of Military Appeals stated in *Scott,* 46 CMR at 29:

> ". . . if a general order is to provide a course of conduct for servicemen and a criminal sanction for a failure to abide by it, we see no reason why the drafter of the order cannot clearly state therein to whom the provisions are applicable and whether or not further implementation is required as a condition to its effectiveness as a criminal law."

See AR 600-50, paragraphs 1-1 and 4-1, for acceptable notice provisions as to purpose, scope, application.

e. *January 1974 Corrections by ACOMR of Initial Promulgating Orders:*

(1) Misspelling, in the name paragraph, the accused's surname—three cases.

(2) Showing, incorrectly, that certain specifications were alleged under Article 123 rather than Article 123a.

(3) Failing to show the accused's service number or the correct one in the name paragraph—four cases.

(4) Failing to show the correct number of previous convictions considered—five cases.

(5) Failing to show in the name paragraph that the accused was in the "U.S. Army."

(6) Failing to show that certain specifications were formally amended during the trial —three cases.

(7) Failing to show in the PLEAS paragraph that the pleas to a certain charge and its specification were changed from guilty to not guilty by the military judge.

(8) Failing to show that the sentence was adjudged by a Military Judge.

(9) Failing to show in the authority paragraph an amending Court-Martial Convening Order.

(10) Failing to show in the PLEAS paragraph that the plea to a certain specification has been changed from not guilty to guilty with exceptions.

(11) Showing, incorrectly, that a violation of Article 85 was alleged as the Charge rather than as Charge I.

(12) Showing the incorrect date that the sentence was adjudged—two cases.

(13) Failing to set forth a certain specification on which the accused was arraigned.

4. Suggestions To A Witness.

The following standard guides for the prospective witness are excerpted from an article entitled "Instructions for Witnesses," by Payne H. Ratner, Jr. It was originally published in the April 1956 issue of *The Practical Lawyer* (Vol. 2, No. 4), at page 44.

* * *

You, as a witness in a lawsuit, have a very important job to do. Important not only to the party for whom you appear, and to yourself, but most important to the American system of justice. For in order for a jury to make a correct and wise decision, it must have all of the evidence put before it in a truthful manner.

You already know that you take an oath in court to tell nothing but the truth. But there are two ways to tell the truth. One is in a halting, stumbling, hesitant manner, which makes the jury doubt that you are telling all of the facts in a truthful way. The other is in a confident, straightforward manner, which makes the jury have more faith in what you are saying. You help yourself, the party you are testifying for, and the judge and jury by giving your testimony in this last way.

To assist you in this, we have prepared a list of time-proven hints and aids which, if followed, will make your testimony much more effective.

1. If you are a witness in a case involving an accident, and you saw the accident happen, try to visit the scene again before the trial. Stand on all the corners so you will be familiar with the place. Close your eyes and try to picture the scene, the objects there, and the distances.

2. Before you testify, visit the court, and listen to other witnesses testify in your case, or in a different case. This will make you familar with a court, and help you to understand some of the things you will come up against when you give your testimony.

3. Wear clean clothes in court. Dress conservatively.

4. Don't chew gum while testifying or taking the oath.

5. Stand upright when taking the oath. Pay attention and say "I do" clearly.

6. Don't memorize what you are going to say.

7. Be serious at all times. Avoid laughing and talking about the case in the halls, restrooms, or any place in the courthouse.

8. Talk to the members of the jury. Look at them most of the time and speak to them frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily.

9. Listen carefully to the questions asked of you. No matter how nice the other attorney may seem on cross-examination, he may be trying to hurt you as a witness. Understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not give a snap answer without thinking. You can't be rushed into answering, although, of course, it would look bad to take so much time on each question that the jury would think you were making up an answer.

10. Explain your answer if necessary. This is better than a simple "yes" or "no." Give

an answer in your own words. If a question can't be truthfully answered with a "yes" or "no," you have a right to explain the answer.

11. Answer directly and simply *only* the question asked you, and then stop. Do not volunteer information not actually asked for.

12. If your answer was wrong, correct it immediately.

13. If your answer was not clear, clarify it immediately.

14. The court and jury only want *facts:* not hearsay, nor your conclusions, nor opinions. You usually can't testify about what someone else told you.

15. Don't say, "That's all of the conversation," or "nothing else happened;" say, "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question you will remember something important.

16. *Be polite* always, even to the other attorney.

17. Don't be a smart aleck or a cocky witness! This will lose you the respect of the judge and jury.

18. You are sworn to tell the *truth.* Tell it. Every material truth should be readily admitted, even if not to the advantage of the party for whom you testify. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory.

19. Don't try to think back to what was said in a statement you made or a deposition. When a question is asked, visualize what you actually saw and answer from that. The jury thinks a witness is lying if his story seems too "pat" or memorized, or if he answers several questions in the same language.

20. Do not exaggerate.

21. Stop *instantly* when the judge interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.

22. Give positive, definite answers when at all possible. Avoid saying "I think," "I believe," "in my opinion." If you do know, say so, don't make up an answer. You can be positive about the important things which you naturally would remember. If asked about little details which a person naturally would not remember, it is best to just say that you don't remember. But don't let the cross-examiner get you in the trap of answering question after question with "I don't know."

23. Don't act nervous. Avoid mannerisms which will make the jury think you are scared, or not telling the truth or all that you know.

24. Above all—this is *most* important—do *not* lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (a) tiredness (b) crossness (c) nervousness (d) anger (e) careless answers (f) willingness to say anything or answer any question in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that some attorneys on cross-examination will try to wear you out so you will lose your temper and say things that are not correct, or that will hurt you or your testimony. Do not let this happen.

25. If you do not want to answer a question, do *not* ask the judge whether you must answer it. If it is an improper question, your attorney will take it up with the judge for you. Don't ask the judge for advice.

26. Don't *look* at your attorney or at the judge for help in answering a question. You are on your own. If the question is improper, your attorney will object. If the judge then says to answer it, do so.

27. Do not "hedge" or argue with the other attorney.

28. Do not nod your head for a "yes" or "no" answer. Speak out clearly. The court reporter must hear the answer.

29. If the question is about distances or time and your answer is only an *estimate,* be sure that you say it is only an estimate. Be

sure to think about speeds, distances, and intervals of time before testifying, and discuss the matter with your attorney so that your memory is reasonable.

30. When you leave the witness stand after testifying, wear a confident expression, not a downcast one.

31. There are several questions which are known as "trick questions." That is, if you answer them the way the other attorney hopes you will, he can make your answer sound bad to the jury. Here are two of them:

(a) "Have you talked to anybody about this case?" If you say "no," the jury knows that isn't right because good lawyers always talk to the witnesses before they testify. If you say "yes," the lawyer may try to infer that you were told what to say. The best thing to do is to say very frankly that you *have* talked to whomever you have—lawyer, party to suit, police, etc.—and that you were just asked what the facts were. All we want you to do is just to tell the truth.

(b) "Are you getting paid to testify in this case?" The lawyer asking this hopes your answer will be "yes," thereby inferring that you are being paid to say what your side wants you to say. Your answer should be something like "No, I am not getting paid to testify; I am only getting compensation for my time off from work, and the expense (if any) it is costing me to be here."

32. Except in a few situations, an insurance company cannot be joined as a defendant, and if anything is said which will let the jury know that an insurance company is actually defending the case, the judge will declare a mistrial. The jury will be discharged and the case started all over. Therefore, be careful not to mention insurance.

33. Go back, *now*, and reread these suggestions so you will have them firmly in your mind. We hope they won't confuse you. We hope they will help. These aren't to memorize. Ask us about anything you don't understand. You will find there is really nothing at all to be scared about or nervous about in testifying. If you relax and remember you are just talking to some neighbors on the jury you will get along fine.

MONTHLY AVERAGE COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER—DECEMBER 1973

	General CM	*Special CM*		*Summary CM*
		BCD	*NON-BCD*	
ARMY-WIDE	.17	.15	1.47	.51
CONUS Army commands	.18	.13	1.65	.52
OVERSEAS Army commands	.16	.17	1.15	.49
U.S. Army Pacific commands	.15	.12	1.32	.36
USAREUR and Seventh Army commands	.16	.21	1.17	.53
U. S. Army Alaska	.10	.07	.88	.78
U. S. Army Forces Southern Command	.21	—	.89	.51

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 OCTOBER—DECEMBER 1973

	Monthly Average Rates	*Quarterly Rates*
ARMY-WIDE	17.27	51.80
CONUS Army commands	16.56	49.67
OVERSEAS Army commands	18.55	55.65
U. S. Army Pacific commands	21.53	64.60
USAREUR and Seventh Army commands	18.94	56.83
U. S. Army Alaska	11.86	35.57
U. S. Army Forces Southern Command	14.98	44.95

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.

Litigation Update: "Oh Say! Can You Sue?" (or be Sued?)

By: Colonel William H. Neinast, Chief, Litigation Division, OTJAG

Soldiers have a new game. It's called "Sue 'Em." Some even substitute more descriptive words for the "Em."

It almost seems that an officer who is not involved in litigation as a part of his official duties just is not getting out there and mixing it up with the troops. In other words, his profile is too low; he lacks exposure. Don't say it cannot or will not happen to you. A plaintiff may be sitting in front of your desk right now. Plaintiffs these days come in all sizes, shapes, and ages and from some very strange sources.

To illustrate the foregoing, consider some of the matters being kicked around in the Litigation Division, Office of The Judge Advocate General:

The Judge of a Federal District Court has just dismissed the action of a soldier who was suing a general and two captains. In the words of the judge,

"The complaint arises out of plaintiff's alleged mistreatment at the Personnel Control Facility where he was detained after being apprehended for desertion. He arrived at the facility on April 25, 1973, and was released on April 29, 1973. During this interval he claims that:

1. He was denied psychiatric treatment;

2. Because of homosexual attacks he was forced to remain outside the barracks where he suffered 'severe sunburn;'

3. Certain drugs were dispensed to him by someone without a prescription or other approval by a physician; and

4. Captain [X] prolonged plaintiff's confinement by 'approximately one hour'."

A month earlier, this judge dismissed a suit by the same soldier against his JAGC defense counsel for malpractice. The essence of this unfounded complaint was that the Army lawyer had promised the petitioner that he would have the petitioner out of confinement in a week, advised him not to get a civilian lawyer, and did not tell him about habeas corpus. That soldier, a reservist, in yet another suit is complaining about the actions of all the officials who had anything to do with his involuntary activation.

In a completely different vein, various Army officials, the State of New Mexico, and "Does 1 through 100 inclusive" are being sued for denying a widow her inherited gold mine. Gold also gleamed in another complaint recently filed by an inmate of a California penal institution. This is a suit for "150 million cash dollar or gold equal." Notwithstanding the beautiful and clear hand printing, the basis for the claim by this holder of an undesirable discharge is not apparent. The only understandable portion is the biographical material submitted with the complaint. In his biographical sketch, the plaintiff states emphatically that his mother took his father's name when they married and that his wife assumed his name upon their marriage.

Then there is the "Perennial Plaintiff." He has been permanently enjoined from all litigation in two Federal districts. The judges of those districts became somewhat perturbed when the U. S. Attorneys called to their attention that this former civilian employee of the Army had initiated 47 actions in their courts.

In other cases just the styles attract attention. Can you believe, for instance, that Melvin was suing Laird? Seems Mr. Melvin did not want to be ordered to active duty by Mr. Laird. How about Westmoreland suing Laird? In that one, a Ms. Westmoreland claims that she is the victim of sex and race discrimination in Mr. Laird's outfit. Laird is also getting it from Schlesinger, only in *Schlesinger* v. *Laird* the plaintiff is a lieutenant seeking to avoid active duty. Finally, Nixon is suing the

United States. Here, however, a Captain Nixon is unhappy over his RIF notice.

Finally, some plaintiffs even wax poetic. It was not surprising, therefore, to find this concluding paragraph in a petition:

> "That the Petitioner, seeks solace in Justice, pleads sanctuary in Equity, and prays for human understanding from this Honorable Tribunal, in filing his belated claim, and ask [sic] in silent supplication that substance be not crucified in [sic] the idle cross of form."

So all is not deadly serious when the Army is hailed into civil court. Among the corpuses seeking habeas, RIF'ed officers trying to avoid becoming civilians, enlisted personnel trying to become civilians, and members of the Russian Railway Service desiring recognition, there is some comic relief along the way. The "allegators" of the Litigation Division can usually find something to brighten each day.

Summary of Installation Profiles

The Judge Advocate General's School, Developments, Doctrine and Literature Department, has been providing Corps General Officers assistance in preparing for inspection trips to GCM jurisdictions. That assistance includes a statistical profile of the courts and Article 15 activity at the visited jurisdiction since 1 January 1970. Included in each profile is a summary of all available numbers and the "Q" Index which was explained in the lead article in last month's issue of *The Army Lawyer*. Each jurisdiction profile is supplemented by a total Army profile for the same period.

SJA's with whom these profiles have been discussed were uniformly interested in how they "stacked up" with everybody else. Our position is that the present state of the art does not permit a one-to-one comparison of jurisdictions because there is so much more hidden in, than reflected by, the numbers now available. This is particularly true in the cases where one jurisdiction is responsible for a PCF, the special problems of which were well presented by Colonel Warren L. Taylor in "Manpower Utilization Survey Reports," at page 13 of the March 1973 issue of *The Army Lawyer*.

If such special problems are recognized, there remains a solid basis for some comparison. We know that the numbers of all courts and Article 15's are related to troopstrength in a statistically significant manner. This is true for the entire period since 5 May 1951, on an annual basis for a "horizontal" cut done for CY 1972 and for the short term presented in the profile when done on a quarterly basis. The correlation coefficients are summarized below. (For a discussion of these coefficients, see the article on "Facts, Trends and 'Watchpoints'—Army Non-Judicial Punishment" by Daniel and Costello, page 13 of the December 1973 issue of *The Army Lawyer*.)

	FY 52-73	CY 72	15 Quarters
SCM	.35	.68	.89
SPCM	.88	.72	.96
GCM	.54	.70	.86
Art 15's	.81	.79	.96

On this basis, and saying nothing about special local circumstances, we report the following results as of 30 September 1973:

	% of Total Army Strength	% of Total Army Response Reported			
		Art 15's	SCM	SPCM	GCM
Polk	1.8	1.4	2.5	1.1	.5
Bliss	2.2	1.0	4.8	3.3	1.7
Huachuca	.9	.6	.8	.2	0.0
Benning	2.3	2.2	0.0	7.6	7.6
Carson	2.8	3.4	.2	3.2	3.7
8th Inf	1.9	3.1	1.9	1.7	1.2
3d Armd	2.8	4.0	3.0	1.4	2.2

We are doing more jurisdictions as the occasion arises and will report them from time to time. Any SJA who would like a profile is invited to send us his quarterly end strengths since 1 January 1970.

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 George O. Taylor	31 January 1974	COL John Jay Douglass	31 January 1974

2. Orders Requested As Indicated:

NAME	*FROM*	*TO*
	COLONELS	
MELNICK, Arnold I.	USA Leg Svc Agy	USAREUR
	MAJORS	
DAVIES, David C.	Prmy Heptr Cen Ft Wolters	OTJAG
STONE, Frank R.	AFSC Norfolk, VA	USARPAC (Hawaii)
AMES, Orrin K.	USAREUR	Hq USATCI Ft Ord, CA
	CAPTAINS	
ASPELUND, Carl L.	APG, Aberdeen, MD	Hq USATCI Ft Polk, LA
BEEVERS, Wiley J.	Hq, 8th USA	Okinawa
DEAM, William A.	Hq, USAMC	USA Leg Svc Agy Falls Church
KIRBY, Robert B.	USATC Ft Ord, CA	OTJAG
KNIGHT, Sammy S.	2d Armored Div Ft Hood, TX	USA Leg Svc Agy Falls Church
MAC PHERSON, John R.	Hq USARYIS	OTJAG
MC LAURIN, John P.	USAG, Yuma PG, AZ	USAREUR
ORR, Eston W.	USAREUR	Hq FORSCOM Ft McPherson, GA
PYLE, Frank J.	DLIEC	USAREUR
SOVIE, Donald E.	USAREUR	USA Leg Svc Agy Falls Church
TEELE, Arthur E.	TJAGSA	Korea
VALENTINE, James I., Jr.	USAREUR	Thailand

3. Awards: Congratulations to the following officers who received awards as indicated:

COL John Jay Douglass	Distinguished Service Medal Aug 69-Jan 74
LTC Patrick A. Tocher	Meritorious Service Medal 10 Aug 71-31 Jul 73 (First Oak Leaf Cluster)
CPT Robert P. Bedell	Meritorious Service Medal 20 Aug 71-21 Jun 73
CPT Douglas Deitchler	Meritorious Service Medal 1 May 72-4 Oct 73
CPT Richard M. Evans	Meritorious Service Medal 11 Jan 72-9 Aug 73
CPT Ronald S. Frankel	Army Commendation Medal 26 Jun 69-9 Aug 73
CPT J. Houston Gordon	Meritorious Service Medal 10 Sep 71-4 Oct 73
CPT Clifford W. Perrin, Jr.	Army Commendation Medal 15 Nov 72-2 Apr 74
CPT Vincent A. Scamell	Army Commendation Medal 24 May 72-10 Jan 74

4. PP&TO Update. The Personnel, Plans, and Training Office, Office of the Judge Advocate General consists of:

Field Grade Assignments—Plans
LTC Hugh R. Overholt, Chief
LTC Robert B. Smith, Asst Chief
Maj William K. Suter
Recruitment—Advertising—Summer Intern
Maj Bart J. Carroll, Jr.
CPT Kenneth D. Gray
Mrs. Isabel Benton
Mrs. Barbara Rose (Summer Intern)
Captain's Assignments—Excess Leave
CPT Thomas M. Crean
Mrs. Lea Green
Miss Grace Lanning
Civilian Attorneys and Personnel Actions
Miss Beth Beckley

Inquiries are normally handled by the military personnel assistants and/or secretaries. For example questions regarding reassignment orders should be referred to Miss Lanning. Inquiries on excess leave applications, etc. to Mrs. Lea Green; Mrs. Benton on direct appointments and transfers and Mrs. Rose administers the summer intern program. All personnel may be reached on Autovon 225-1353 or Area Code 202-0X5-1353.

All Reserve Affairs matters should be referred to The Reserve Affairs Department, The Judge Advocate General's School, Charlottesville, Virginia 22901. Phone 804-293-2028; 7808. LTC Keith Wagner is Assistant Commandant for Reserve Affairs; LTC James N. McCune, Chief, Reserve Training; Captain Eldon D. Roberts, Career Management Div.

5. Appointment of Personnel as Warrant Officers, Legal Administrative Technicians, MOS 713A. Applications for appointment as a warrant officer may be submitted UP AR 135-100 when DA announces that the MOS 713A field is open. Announcements are normally made in DA messages. Applications that reach DA prior to the announced cut-off date are submitted to a board of officers. The board considers all applications and makes selection of a sufficient number (approximately 10-15) of those found "best qualified" to provide a source for subsequent appointment. Those not selected as "best qualified" will have their applications returned.

When vacancies occur and quotas are received, appointments will be made from the "best qualified" list. Thereafter, the field will again be opened for applications and the procedure outlined above will be repeated. Those applicants who had their files returned may again submit applications in accordance with AR 135-100.

Attention is invited to DA Message 041525Z JAN 74 announcing that applications are being accepted for appointment as a warrant officer, USAR, MOS 713A, Legal Administrative Technician. Interested persons should apply UP AR 135-100.

Congratulations are extended to Specialist Seven Arthur E. Gunderman, Specialist Seven Michael F. Walsh, Specialist Six Frank E. Maloney and Specialist Six Charles H. Allred on their selection for appointment as Warrant Officers, W1, MOS 713A. The actual appointments will be consummated shortly and assignment to initial duty as a warrant officer will be announced.

The end Fiscal Year 75 MOS 713A authorization has been increased to 59. This is seven more authorizations than were previously projected for Legal Administrative Technicians. The total Army-wide warrant officer end FY 75 strength is now projected to be 13,464 of which 5,526 will be rated aviators.

Current Materials Of Interest

Articles.

Rogge, "An Overview of Administrative Due Process—Part I," 19 VILL. L. REV. 1 (November 1973). First of a two-part series.

"Armed Forces Absentee Voting," *Commander's Digest,* Vol. 15, No. 4 (January 24, 1974). A complete issue dedicated to voting information, for the military, with a state-by-

state breakdown of upcoming primary elections in 1974.

Moyer, "Corps of Engineers Dredge and Fill Jurisdiction: Buttressing a Citadel Under Siege," 26 U.FLA.L.R. 19 (Fall 1973).

Note, "The Freedom of Information Act: Shredding the Paper Curtain," 47 ST. JOHN'S L.R. 694 (May 1973).

Comment, "The Status of Voiceprints as Admissible Evidence," 24 SYRACUSE L.R. 1261 (1973).

Note, "Admissibility of Computer Print-Outs As Business Records," 9 WAKE FOREST L.R. 428 (June 1973).

Note, "The Constitutionality of Airport Searches," 72 MICH. L.R. 128 (November 1973).

Note, "Gottschalk v. Benson—The Supreme Court Takes A Hard Line on Software," 47 ST. JOHN'S L.R. 635 (May 1973).

Symposia, International Law and North American Environmental Problems, 1 SYR. J. INT'L L. & COM. 191-362 (Fall 1973).

Neinast, "Amnesty For Whom: Draft Evaders or Military Deserters?" *Army*, Vol. 24, No. 2 (February 1974) p. 35.

Note, on *Avrech v. Secretary of the Navy*, 477 F.2d 1237 (D.C. Cir., 1973), 18 ST. LOUIS U.L.J. 150 (Fall 1973).

Note, on *Fronterio v. Richardson*, 411 U.S. 677 (1973), 7 CREIGHTON L.R. 69 (Fall 1973).

Courses.

The following ALI-ABA Courses are scheduled for this spring. To register or obtain further information write to Paul A. Wolkin, Director, or Donald M. Maclay, Assistant Director for Courses of Study, ALI-ABA Joint Committee, 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

April 18	International Trademark Registration and Licensing	New York, N.Y.
April 18-20	The Use and Misuse of Tax Shelters —II	New Orleans, La.
April 19-20	Real Estate: Trends and Challenges in the Year of the Energy Crisis	New York, N.Y.

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS

General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS

Major General, United States Army
The Adjutant General

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