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The USCMA and the Involuntary Volunteer: *United States v. Catlow*

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The Army's efforts toward the attainment of a quality volunteer force have been somewhat frustrated through a practice utilized by some civil authorities to allow an accused to join the military as an alternative to trial or confinement on criminal or juvenile charges. Such an accused was Thomas W. Catlow.

Catlow was born on 14 November 1951. His teenage years appear to have been plagued by problems, and before he was sixteen he became the product of the proverbial "broken" home. He was shifted between his divorced parents until finally, by court direction, his mother passed custody to his uncle, who became his legal guardian. When this arrangement was found to be unsatisfactory, Catlow was sent back to his father. Following a quarrel, he was shifted back to his mother. His uncle, however, remained his guardian.

Approximately one month prior to his 17th birthday (14 November 1968), Catlow was arrested and charged with loitering, resisting arrest, carrying a concealed weapon, and assault. When he appeared before the judge of the Monmouth County, New Jersey, Juvenile Court, he was informed that since there was "no one who would take him" he had a choice between trial and possibly five years confinement or a three year enlistment in the Army. Reluctantly, Catlow opted for a three year enlistment after being contacted by an Army recruiter. The necessary paperwork was completed and his mother signed the appropriate consent form. His uncle was not consulted on the matter. On his 17th birthday, the Army recruiter obtained his release from civilian confinement and he took his physical examination. On 20 November 1968, six days after his 17th birthday, he entered the Army and, on 28 November 1968, the Juvenile Court charges were dismissed.

In January 1969, his uncle learned of Catlow's new status. However, the possibility of securing

his nephew's release from military service on the basis that his enlistment was effected without the proper consent was not pursued. During this same time frame, Catlow was making known his discontent with Army life, and requesting assistance in order to gain a release from the service. In an effort to be "thrown out", he went AWOL, refused to obey orders, and vocalized the fact that he never really wanted to don Army green. Before the year drew to a close, Catlow was being carried as AWOL again. He returned to military control in October 1971, and in December of that year was arraigned at a general court-martial on a charge of AWOL from 30 December 1969 to 4 October 1971. He was convicted and sentenced to a dishonorable discharge, confinement at hard labor for six months, and total forfeitures.

On appeal, Catlow contended that the court-martial which convicted him lacked jurisdiction as his enlistment was void. Appellate counsel cited a portion of paragraph 2-6, AR 601-210, 1 May 1968, as changed, as establishing a nonwaivable disqualification for enlistment. A footnote to that paragraph explained that the disqualification included:

"2. Persons who, as an alternative to further prosecution, indictment, trial, or incarceration in connection with the charges, or to further proceedings related to adjudication as a youthful offender or juvenile delinquent, are granted a release from the charges at any stage of the court proceedings on the condition that they will apply for or be accepted for enlistment in the Regular Army."

Clearly, Catlow was included within this disqualification.

The Court of Military Review rejected this contention. *U.S. v. Catlow*, 47 C.M.R. 617 (A.C.M.R., 1973). The court held that Catlow's enlistment was voidable at the option of the Army

The Army Lawyer	
	Table of Contents
1	The U.S.C.M.A. and the Involuntary Volunteer: <i>United States v. Catlow</i>
3	OTJAG Outlines Responsibilities for Court-Martial Counsel
5	The Defense of Absolute Privilege in Defamation Suits Against Members of the Armed Forces
9	Judiciary Notes: Self-Inflicted Wounds Litigating Speedy Trial
12	Criminal Law Items
13	Legal Assistance Items
16	Claims Items
17	TJAGSA Solicits Advanced Class Thesis Topics
18	TJAGSA—Schedule of Courses
19	Administrative Law Opinions
21	Personnel Section
26	Current Materials of Interest

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because the disqualification was solely for the benefit of the Army. The court went on to note that Catlow had received a benefit many Army enlistees do not—avoidance of conviction and incarceration. Considering this benefit and the “many beneficial aspects of military service,” the court concluded that it was “obvious that . . . (Catlow) . . . was not prejudiced by his erroneous entry into the Army.” 47 C.M.R. 617 at 619. Additionally, said the court, the dismissal of Catlow's civilian charges on 28 November 1968, validated his enlistment. Catlow's conviction was affirmed.

The Court of Military Appeals disagreed with the Court of Military Review. *U.S. v. Catlow*, 23 U.S.C.M.A. 142, 48 C.M.R. 758 (1974). The USCMA did not see Catlow's disqualification as intended to be invoked only by the Army. Citing a letter by The Judge Advocate General to Chief Justices of various courts, the court reasoned that “forced volunteers”, such as Catlow, are also benefited by disqualification in that they would be spared “a high potential for difficulties in service.” As Catlow's enlistment was not the product of his own volition, since an “inherent vice affected his acquisition of the status of a member of the Army,” the court held his enlistment void at inception.

The court also rejected the Government argument that Catlow's later acceptance of pay and allowances constituted a constructive enlistment on the basis that the Government failed to show that he changed his status after removal of his disqualification. On the contrary, Catlow's “subsequent active and varied protestations against continued service” indicated, in the eyes of the court, that he did not intend to be a soldier once he became qualified. The court reversed the Court of Military Review's decision and ordered the charge dismissed.

This decision is troubling with regard to what the USCMA termed Catlow's “active and varied protestations against continued service.” His civilian charges were dismissed on 28 November 1968, but the AWOL which gave rise to the instant litigation did not commence until 30 December 1969. Presumably, then, Catlow's “protestations,” which included short AWOL's and refusals to obey orders, took place during this 13 month period. The USCMA saw these acts of mis-

conduct as expressions of Catlow's refusal to accomplish a constructive enlistment. The Court of Military Review considered this proposition, that frequent misconduct placed Army authorities on notice that he desired release from his military obligation, but rejected it with these words:

"Resort to self-help through the commission of military offenses is not an appropriate solution for achieving administrative relief." [47 C.M.R. 617 at 620.]

Under the USCMA's rationale, however, such misconduct becomes not merely desirable for individuals situated as Catlow, but, rather, almost

necessary to overcome a constructive enlistment claim by the Government.

U.S. v. Catlow highlights the USCMA's continuing interest in recruiting practices. Proper and lawful recruiting practice would have averted this enlistment, as well as the subsequent litigation. Staff Judge Advocates should take a hard look at their "forced volunteer" cases and explore alternative means of dealing with future Catlows.

In addition, Staff Judge Advocates should insure that recruiting malpractices are reported to appropriate command authorities. "Forced volunteer" cases should be thoroughly documented and a report on each such enlistment forwarded directly to DAJA-MJ.

OTJAG Outlines Responsibilities for Court-Martial Counsel

Certain new responsibilities have been outlined for Senior Defense Counsel under the Corps' one-year old plan devised to meet the ABA Standards on providing defense services. Every major SJA office was to have designated a Senior Defense Counsel, to be given general supervisory responsibilities over other defense counsel in the office. It was to be expected that he would rate his subordinates and, in turn, he would be rated—and the others indorsed—by someone senior to him other than his Chief of Justice, such as the Deputy SJA or SJA. In a letter to Staff Judge Advocates dated 31 May 1974, General Prugh provided further guidance as to the responsibilities of Senior Defense Counsel. The listing below is intended merely as guidance, and is not all-inclusive of those responsibilities.

a. Receiving complaints from subordinate defense counsel in the office, and when he deems the complaints valid, resolving them if it is in his power to do so; if not, then referring the complaints to appropriate military authority (*e.g.*, staff judge advocate, Assistant Judge Advocate General for Civil Law). He should also endeavor to resolve any substantial differences between defense counsel of the office and the staff judge advocate, to include, if appropriate, (1) communicating directly with the staff judge advocate, or (2) communicating directly with the Assistant Judge Advocate General for Civil Law. (Although subordinate counsel are authorized direct communication with the Assistant Judge Advocate General

for Civil Law, they are encouraged, but not required, first to seek advice from their Senior Defense Counsel);

b. Receiving and taking appropriate action on complaints from defense related personnel against defense counsel, *e.g.*, clients, parents, relatives, and civilian attorneys; however, ultimate responsibility for resolution of these complaints remains with the staff judge advocate. (Complaints by commanders or other members of the local command should be referred to the staff judge advocate);

c. Serving as an advisor or consultant, on request, to all subordinate defense counsel of the office in regard to trial tactics, procedures, and potential problems;

d. Monitoring the skill levels of subordinate defense counsel of the office to insure that counsel possess the necessary expertise for the type case involved;

e. Monitoring the separateness and adequacy of subordinate defense counsel's offices and administrative and logistical support, and contacting appropriate personnel if the support, equipment, and facilities provided to counsel are inadequate; and,

f. Supervising the administration of the office of the defense counsel and the activities of the detailed defense counsel, including assignments of cases and the manner of performance of duties.

(This function will include advising the appropriate commander as to the availability of individually requested counsel, rating defense counsel, and presenting defense counsel policy problems to the staff judge advocate and other appropriate staff members.)

Earlier in May, The Judge Advocate General announced the adoption of a Corps-wide plan devised to assure that JAGC counsel possess the necessary degree of skill before engaging alone in criminal trial practice. The plan provides for recognizing those judge advocates having exceptional skills in trial practice, and provides an additional incentive for development of a specialty in trial advocacy. The new procedure is designed for optional use by SJA's and does not modify the present certification process under Article 27(b); nor does it separate the prosecution and defense corps.

Recognition of exceptional trial practice skills is not only well-deserved, but necessary for at least three reasons: first, to eliminate, or at least minimize, the number of cases tried solely by inexperienced counsel; second, to identify the most experienced practitioners for proper Army-wide utilization; and third, to provide recognition of deserving counsel and to engender *esprit de corps* among those who would spend an extended period in an independent defense corps, should one be established in the future.

Details of the plan are set forth below. For the present, the aspects as they apply to use of newly certified counsel as assistant counsel for a number of cases, and the designation of "trial lawyers," (Section III, paras. 1-3) are to be accomplished where feasibility permits. Aspects relating to the identification and designation of "senior trial lawyers" (Section IV, para 4) are intended for immediate implementation.

UTILIZATION/RECOGNITION OF COURT-MARTIAL COUNSEL

I. *Purpose.* The purpose of this plan is to identify and recognize skilled, experienced trial lawyers, and to facilitate their effective placement, thereby insuring that both Government and accused receive the best legal services possible.

II. *Concept.* Staff judge advocates will insure

that newly certified counsel possess an adequate trial skill level prior to trying cases alone. In making this determination, staff judge advocates may consider certification under Article 27(b), successful completion of the basic course at The Judge Advocate General's School, participation in moot courts, and participation as assistant counsel as factors indicating that sufficient expertise has been attained. The purpose is not to reduce the recognition of certification under Article 27(b), but to encourage staff judge advocates to selectively develop counsel for subsequent qualification as a "trial lawyer." After acquisition of the requisite experience level, they will be recognized as qualified to act as principal trial or defense counsel in any court-martial. This group of trial lawyers will form the majority of those engaged in trial practice, devoting their time almost exclusively to this endeavor. After further experience, and in recognition of the quantum and nature of the cases they have tried, a prosecution or defense counsel may be designated as a senior trial lawyer. Senior trial lawyers will be encouraged to maintain their proficiency, thus enabling The Judge Advocate General to have an available pool of senior experienced counsel for such missions as required. Internal office procedures at the Personnel, Plans, and Training Office (PP&TO) will indicate whether a senior trial lawyer is primarily defense or prosecution oriented; however, this fact will not be noted on the individual's certificate (para. III. 4d).

III. *Plan.*

1. Counsel will continue to be certified by The Judge Advocate General pursuant to Article 27(b), Uniform Code of Military Justice.

2. Newly certified officers will normally be limited initially to acting as assistant counsel and not be detailed to try a case alone.

3. When, after acceptable performance in a sufficient number of cases as assistant counsel (to be determined pursuant to the SJA letter of 24 August 1973, subject: Providing Adequate Defense Services—The Defense Counsel [DAJA-MJ 1973/12018]), it appears that the certified officer is well qualified to perform, without restriction, all

prosecution and/or defense duties as a result of special training and trial experience, and upon the indorsement of the military judge of the appropriate general court-martial jurisdiction, he should be considered for the designation of "trial lawyer" by the staff judge advocate of the appropriate general court-martial jurisdiction. This is accomplished by means of a letter to the officer concerned, informing him that he has been designated a "trial lawyer." A copy of this letter is to be forwarded to PP&TO for inclusion in the officer's personnel files. This designation will qualify him for all prosecution and defense counsel duties performed at the trial level and any courts-martial. The designation will be retained for as long as the officer remains active in the practice of criminal law; however, it may be withdrawn by The Judge Advocate General for cause, or for the lack of active practice in the field of criminal law.

4. Special recognition is necessary to identify those individuals with extensive trial experience, not only to reward achievement, but also to insure proper placement. It is contemplated that the bulk of these trial specialists would be utilized in positions of top responsibility. These experienced trial practitioners, upon meeting the criteria set forth below, would be recognized as senior trial lawyers. The qualifications for this designation are as follows:

- a. Satisfactory performance as a trial lawyer for a minimum of 24 months;
- b. The trial of a minimum of 75 courts-martial, at least 25 of which must have been general or BCD special courts-martial, and 10 of which must have been on a contested basis; and,
- c. A recommendation from a staff judge advocate of a general court-martial jurisdiction and a general court-martial military judge serving that jurisdiction.

5. a. Requests for designation as a senior trial lawyer will be initiated by the appropriate staff judge advocate to the Office of The Judge Advocate General, ATTN: Personnel, Plans, and Training Office (DAJA-PT). Upon assuring that the officer concerned possesses the necessary qualifications, PP&TO will prepare a certificate designating the individual as a senior trial lawyer. The certificate will be signed by The Judge Advocate General.

b. PP&TO will identify, in branch records, the skill level of those so designated and, through a review of efficiency reports and other means, indicate whether they are skilled as a prosecution or a defense counsel.

6. Overall supervision of the program will be by the Executive, Office of The Judge Advocate General.

The Defense Of Absolute Privilege In Defamation Suits Against Members of the Armed Forces

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Officers in the Armed Forces, like their counterparts in civil service and private industry, must in the performance of their duties evaluate, rate and comment on supervised personnel. An officer's duties often extend to civilian personnel having no direct employment relationship with him as well as military personnel. For example, an Installation Commander, a Staff Judge Advocate, or a Post Information Officer may be required to investigate and comment on unusual or newsworthy activities occurring on the military reservation, such as demonstrations, accidents, illegal activities or other events the news media believes to be of interest to the general public.

These evaluations or actions may be mandatory, such as submission of officer's efficiency reports,¹ enlisted efficiency reports,² indorsements on certain administrative actions,³ testimony at court-martial proceedings⁴ or required counselling sessions;⁵ or discretionary, such as testimony before administrative boards or hearings,⁶ issuance of oral or written reprimand,⁷ or responding to requests for information from news media or potential employers of evaluated personnel.⁸ The vast majority of these ratings, evaluations, investigations and comments are handled in an efficient and routine manner by the responsible military officer.

Occasionally, however, the responsible officer's acknowledgement is more caustic or acrid than necessary to accomplish the desired goal. When this occurs the evaluator's or investigator's actions begin to infringe on a private right of each individual to be free from defamatory accusations. A conflict develops between the private right of the individual not to be defamed and the public right of an effective government free from judicial interference with mandatory and discretionary functions of its employees. The burden of weighing conflicting interests and reaching a suitable accommodation has historically been the responsibility of the judiciary. In such cases the response of the courts has been recognition that the public interest in effective and efficient government is paramount.⁹ To protect the public interest the courts created the doctrine of absolute privilege. The doctrine is exactly as stated—absolute. In fact, public officials as protected from suit for statements and publications made within the scope of their duty even if the statements were made with a malicious intent.¹⁰

The doctrine of absolute privilege applies to all departments of the executive branch of the government. The list of cases involving members of other departments of the executive branch is exhaustive.¹¹ However, the remainder of this article will deal with landmark cases and cases involving absolute privilege as it applies to members of the Armed Forces.

Privilege and the Military.

English jurisprudence provided early precedent for application of the doctrine of absolute privilege to protect military personnel from libel and slander actions. One of the earliest reported decisions involved an action for libel brought by an Army officer against his superior. The alleged libelous act was a report submitted by the superior officer concerning certain letters written by the Army officer. The Court concluded the conduct was proper, and, in fact, required as part of officer's military duties.¹² A subsequent decision involved an English general called before the court of inquiry conducting an investigation into the

conduct of fellow Army officer. The general made a statement and submitted a written report which had not been requested by the court, but which contained subject matter relevant to the inquiry. The court held both the statements and submission of papers were proper functions of the general's position and the relief was denied to the lower ranking officer.¹³

Relying on the English case law¹⁴ and the prior judicial application of absolute privilege to protect members of the judicial and legislative branches of government,¹⁵ the United States Supreme Court in 1896 applied the doctrine of absolute privilege to protect heads of the executive department from defamation suits.¹⁶ In 1959 the Supreme Court extended the protection to lower ranking officials of the executive branch.¹⁷

Even before the Supreme Court's action in 1959, lower federal courts had extended the immunity to non-cabinet officials.¹⁸ One of the earliest applications of absolute privilege to lower echelon members of the executive branch involved a Navy medical officer. The medical officer had responded to a request for information on a fellow officer. In his response the medical officer indicated the officer was not fit for command because of the mental condition of his wife. The wife brought an action against the medical officer for libel. The court held the response was authorized by law, made in the course of duty and germane to the subject matter at issue, hence absolutely privileged.¹⁹ Although lower federal courts had applied absolute privilege to lower ranking officials, the Supreme Court did not accept that position until 1959 in the landmark decision of *Barr v. Matteo*.²⁰ On the same day the *Barr* decision was rendered a companion case involving the Commander of the Boston Naval Shipyard was decided. The commander, a Navy captain, was sued because of comments he made in an official memo sent to members of Congress, newspapers, and the wire services. Relying on the same principles enumerated in *Barr v. Matteo*, the Court held the captain's memo was absolutely privileged.²¹

The *Barr* and *Howard* cases were landmark

decisions for two reasons. First, they expanded the use of absolute privilege to lower level officials of the executive branch. Secondly, they established a new test to determine if the defamatory statements are within the scope of the officer's authority. The new test expanded the zone of protected actions to include any actions within the outer perimeter of the official's line of duty.²²

Subsequent federal decisions involving military personnel have sought to define what actions fall within the outer perimeters of a military officer's line of duty and to establish the levels of the military command chain which can employ the defense of absolute privilege. These decisions have held contents of certain written communications such as official reprimand letter,²³ an officer's efficiency report,²⁴ an enlisted efficiency report,²⁵ a written evaluation of an Air Force officer submitted to the Civil Service Commission at its request,²⁶ and a letter to a superior officer requesting a civilian be barred for suspected criminal activities to be absolutely privileged and not subject to any civil action for libel.²⁷ Courts have also held remarks by the Inspector General of the Air Force that a contractor and installation commander were conducting illegal activities,²⁸ by an Army installation commander and his Staff Judge Advocate that a taxi cab business was going to be put out of business because of illegal and immoral conduct,²⁹ by an Air Force base commander to a group of reporters that the statements of a professional engineer were irresponsible and untrue,³⁰ by an Air Force colonel that an Air Force major under his command was a traitor and a Benedict Arnold,³¹ by an Army lieutenant colonel that a captain under his command had done a sorry job,³² by an Army major at a going away party characterizing a captain under his command as an incompetent soldier,³³ and by a Navy captain on a television interview program concerning the relief from command of a Navy lieutenant commander,³⁴ were all privileged and could not be used as the basis for a civil suit for slander.

The courts have been unwilling to speculate on the type of statements that would exceed the outer perimeters of one's line of duty. The

cases have inferred that statements made to other military personnel, on a military reservation and having some relationship to the discipline and effective operations of the military are clearly within the soldier's line of duty. Thus it appears the establishment of a nexus between the comments or statements of the military personnel and the operation of the installation and military in general is necessary to invoke the privilege. If the statements or comments cannot be linked to regulatory authority or installation management, control and discipline, the statements may come very close to exceeding the outer perimeter of the officer's line of duty, and lose their privileged status. There is, however, little definitive guidance on what type of conduct goes beyond this boundary.³⁵

In each of the cases mentioned above the privilege was recognized by the court and the military personnel involved were held to have acted within the outer perimeter of their line of duty. Contrary to the widely held belief of many senior military personnel that the federal courts have completely undermined the good order and discipline of the services, the courts in this instance, have created an additional shield to protect senior military personnel against unnecessary litigation from statements made in performance of their respective duties.

Footnotes

1. Army Reg. No. 623-105 (1 January 1973).
2. Army Reg. No. 600-200, chap 8 (Change No. 37, 21 June 1972).
3. Army Reg. No. 635-200, chaps. 13-15 (Change No. 42, 14 December 1973).
4. Uniform Code of Military Justice, art. 47; 10 U.S.C. §847 (1970).
5. Army Reg. No. 635-200, para. 13-7 (Change No. 42, 14 December 1973).
6. Army Reg. No. 15-6 (12 August 1966).
7. Manual for Courts-Martial, United States, 1969 (Rev. Ed.), para. 128(c).
8. Army Reg. No. 340-17 (25 June 1973).
9. In *Gregoire v. Biddle*, 177 F.2d 579 (2d Cir. 1949), Judge Learned Hand summarized the philosophical basis for recognition of absolute privilege. His language has been quoted often on this subject. Judge Hand stated:

It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the fact of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. (*Gregoire v. Biddle*, 177 F.2d 579)

10. *Garrison v. Louisiana*, 379 U.S. 64 (1964).
11. *Burk's Estate v. Ross*, 438 F.2d 230 (6th Cir. 1971); *Sauber v. Bliedman*, 283 F.2d 941 (7th Cir. 1970); *Morton v. Macy*, 417 F.2d 1161 (D.C. Cir. 1969); *Ruderer v. Meyer*, 413 F.2d 175 (8th Cir. 1969); *Urbina v. Gilfilen*, 411 F.2d 546 (9th Cir. 1969); *Heine v. Raus*, 399 F.2d 785 (4th Cir. 1968); *West v. Garrett*, 392 F.2d 543 (5th Cir. 1968); *Becker v. Philco*, 372 F.2d 771 (4th Cir.), *cert. denied* 389 U.S. 969 (1967); *LeBurkien v. Notti*, 365 F.2d 143 (7th Cir. 1966); *Chavez v. Kelly*, 364 F.2d 113 (10th Cir. 1966); *Chafin v. Pratt*, 358 F.2d 349 (5th Cir.), *cert. denied* 385 U.S. 878 (1966); *Kelly v. Dunne*, 344 F.2d 129 (1st Cir. 1965); *Keiser v. Hartman*, 339 F.2d 597 (3rd Cir. 1964), *cert. denied* 381 U.S. 934 (1965); *Preble v. Johnson*, 275 F.2d 275 (10th Cir. 1960); *Basinger v. Hext*, (M.D.N.C. 1971) Civil No. C-77-S-71 (M.D.N.C., filed 1971); *Frost v. Stern*, 298 F. Supp. 778 (D.S.C. 1969); *Molever v. Lindsey*, 289 F. Supp. 832 (E.D. Mich. 1968); *Camero v. Kostos*, 253 F. Supp. 331 (D.N.J. 1966); *Gaines v. Wren*, 185 F. Supp. 774 (N.D.G. 1960).
12. *Dawkins v. Paulet*, L.R. 5 Q.B. 94 (1869). The Court also addressed the issue of malice in making the communications Justice Mellor stated:

I apprehend that the motives under which a man acts in doing a duty which it is incumbent upon him to do cannot make the doing of that duty actionable, however malicious they may be.
13. *Dawkins v. Rokeby*, L.R. 8 Q.B. 255, *aff'd* L.R. 7 H.L. 744 (1866).
14. *Dawkins v. Paulet*, L.R. 5 Q.B. 94 (1869); *Dawkins v. Rokeby*, L.R. 8 Q.B. 255, *aff'd* L.R. 7 H.L. 744 (1866).
15. *Randall v. Brigham*, 74 U.S. (7 Wall) 523 (1868); *Bradley v. Fisher*, 80 U.S. (13 Wall) 335 (1871); *Kilbourne v. Thompson*, 103 U.S. 168 (1881); *Tenney v. Brandlove*, 341 U.S. 367 (1951).
16. *Spalding v. Vilas*, 161 U.S. 483 (1896).
17. *Howard v. Lyons*, 360 U.S. 593 (1959); *Barr v. Matteo*, 360 U.S. 564 (1959).
18. *Standard Nut Margarine Co. v. Mellon*, 72 F.2d 557 (D.C. Cir.) *cert. denied* 293 U.S. 605 (1934); *United States ex rel Parravicino v. Brunswick*, 69 F.2d 383 (D.C. Cir. 1934); *Farr v. Valentine*, Am & Eng. Ann. Cas. 1913 C 821 (D.C. Cir. 1912); *DeArnaud v. Ainsworth*, 4 L.R.A. (N.S.) 163 (D.C. Cir. 1904).
19. *Miles v. McGrath*, 4 F. Supp. 603 (D. Med. 1933). (The alleged libelous communication was a letter from an officer to his superior indicating that a certain lady was a drug addict.)
20. *Barr v. Matteo*, 360 U.S. 564 (1959).
21. *Howard v. Lyons*, 360 U.S. 593 (1959).
22. *Barr v. Matteo*, 360 U.S. 564 (1959).
23. *Inman v. Hirst*, 213 F. Supp. 524 (D. Neb. 1962). (The letters of reprimand contained allegations that the plaintiff had abused his sick leave and had made some vulgar statements.)
24. *Reed v. Todaro and Schuver*, Civil No. 979 (E.D.N.C. filed June 26, 1972). (In this case the plaintiff received an OER of zero and his intelligence, ability, integrity and honesty were attacked orally by his superior officers.)
25. *Pagano v. Martin*, 275 F. Supp. 498, *aff'd* 397 F.2d 620 (4th Cir. 1968), *cert. denied*, 393 U.S. 1022, (An adverse enlisted efficiency report characterized Pagano in the following manner:

"quite often failed to demonstrate the qualities of leadership expected of a first class petty officer." "too often diverted his efforts to get his own way." "his attitude was in general bad for morale. He is not recommended for reenlistment in the future." "his professional performance, attitude and capabilities were extremely marginal and in general E-4 level.)
26. *Gordon V. Adcock*, 441 F. 2d 261 (9th Cir. 1971). (In this case the officer characterized his former subordinate as "slow and lethargic, shows little initiative; does just enough to get by." He added, "I wouldn't employ this individual in any job under any circumstances.")
27. *Brown v. Coen*, 209 F. Supp. 56 (D. Alaska 1962). (The alleged libel was a letter to the base commander that the plaintiff should be barred from post because of

- suspected criminal activities which might involve military personnel.)
28. *Brownfield v. Landon*, 307 F. 2d 389 (D.C. Cir. 1962). (The statements made concerned the involvement of a high ranking military officer [Brigadier General] in certain business and personal transactions involving the government contractor.)
29. *Sulger v. Pochyla*, 397 F.2d 173 (9th Cir. 1968). (The plaintiff was accused of using his business [taxi cabs] for illicit and immoral purposes, *i.e.*, soliciting for prostitutes.)
30. *Denman v. White*, 316 F 2d 524 (1st Cir. 1963). (A high ranking officer referred to the criticism of a professional engineer of a particular incident as "irresponsible and distortions of the fact.")
31. *Wanamaker v. Riley*, Civil No. 32863 (E.D. Mich. 1970) *affirmed* Case No. 21, 032 (6th Cir. 1970); *cert. denied* 404 U.S. 986, (1971). (In this case the plaintiff was characterized as a modern Benedict Arnold and a traitor to his country.)
32. *Reed v. Todaro and Schuver*, Civil No. 979 (E.D.N.C. filed June 26, 1972).
33. *Ibid.*
34. *Berndtson v. Lewis*, 465 F.2d 706 (4th Cir. 1972). (The alleged slander involved the following statement:
- I know that all responsible Seniors who were required to review this record concurred in the relief of LT Cmdr Arnheiter at the time.
35. *See Kelly v. Duane*, 341 F2d 129 (1st Cir. 1965) and the *Reed* and *Wanamaker* cases, footnotes 31 and 32.

Judiciary Notes

From: U.S. Army Judiciary

1. Recurring Errors and Irregularities.

a. In reviewing applications for relief under the provisions of Article 69, it has been noted that many of the rubber stamp impressions on records of trial and promulgating court-martial orders are out-dated. The designation of the command exercising supervisory review should conform to that of the officer then exercising general court-martial jurisdiction. For example, if the general court-martial authority is "United States Army Training Center, Infantry and Fort Polk," the designation on the rubber stamp should not read merely "Fort Polk," especially when that designation has not been used for many years.

b. *June 1974 Corrections by ACOMR of Initial Promulgating Orders:*

(1) Failing to show a certain specification of a Charge upon which the accused had been arraigned.

(2) Failing to show in the PLEAS paragraph that a certain specification of a Charge had been

withdrawn after arraignment on motion of the government.

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

(4) Failing to show a certain specification as amended formally during the trial.

(5) Failing to show that a certain specification of a Charge had been dismissed by the Military Judge before arraignment.

(6) Failing to show in the FINDINGS paragraph the verbatim findings, with exceptions and substitutions, as to a certain specification of a Charge.

(7) Failing to show the correct number of previous court-martial convictions considered by the court-martial—two cases.

(8) Failing to show in the authority paragraph the correct Court-Martial Convening Order.

(9) Failing to show in the name line the accused's service number.

Note from Government Appellate Division.

Self-Inflicted Wounds

By: Lieutenant Colonel Donald W. Hansen

The volume of cases being tried and the premium placed on speedy disposition of cases dic-

tated by *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971), *United States v. Marshall*, 22

USCMA 431, 47 CMR 409 (1973) and *Dunlap v. United States*, Misc. Docket No. 74-16 (21 June 1974) necessitates that each case be finally completed the first time it is acted upon by a staff judge advocate. Furthermore, the end result of the process must be such that it justifies the time, personnel, and effort that have been invested in the case. While these statements should be accepted as axiomatic, there are two errors being consistently made which violate both of the foregoing propositions. They are the failure of the post-trial review to reflect the recommendations of the forwarding commanders, and the failure of the record of previous convictions (DA Form 20B) or the extract of previous convictions (DD Form 493) to reflect that supervisory review of the conviction has been completed.

As long ago as *United States v. Boatner*, 20 USCMA 376, 43 CMR 216 (1971) and *United States v. Rivera*, 20 USCMA 6, 42 CMR 198 (1970), the importance of having favorable recommendations of the chain of command brought to the attention of the convening authority was made known to those charged with the preparation of the post-trial review. However, the number of cases in which the recommendations of unit and battalion commanders, Article 32 investigating officer, and military judge have not been included in the post-trial review seems to have increased. An excellent summarization of the nature of such cases may be found in *United States v. Acosta*, 46 CMR 582 (ACMR 1972). Subsequent volumes of the Court-Martial Reports reflect an equal number of such errors.

The effect of such recommendations on the convening authority may vary from case to case; however, the law dictates that they be brought to his attention. When the appellate authority determines that there is some small kernel of a favorable recommendation, not noted in the review, it will test for prejudice. If prejudice is found, the appellate authority will either reassess the sentence, often to eliminate the punitive discharge (see, e.g., *United States v. Greene*, 44 CMR 420 (ACMR 1971)), or order a new post-trial review and action (see, e.g., *United States v. Parker*, 22 USCMA 358, 47 CMR 10 (1973)). Thus, the absence of the recommendations risks losing the punitive discharge or will call upon a staff judge

advocate to go through the duplicating exercise of a new post-trial review.

The requirement to provide the convening authority with such favorable recommendations having been established as early as 1970, failures should not be resulting in any reversals at this late date. The question of what constitutes a favorable recommendation, e.g., does a recommendation for a regular special court-martial carry with it a recommendation for retention, is undoubtedly a matter of grave import in the ivy halls of the JAG School and the appellate agencies; however, the question is of little importance at the level where "the rubber meets the road." The simple method of handling this problem is to include the recommendations of the chain of command, the Article 32 investigating officer, and the military judge, as appropriate, in all cases. In short, this self-inflicted wound can be eliminated by making the recommendations an item of "boiler plate" to be included in all post-trial reviews.

The failure to show that previous convictions have become final is more of a legal issue; if not settled at the trial level, it becomes an issue on appellate review. However, the issue can be avoided before the case goes to trial. At the pre-trial level, it is a lack of attention by the staff judge advocate and the trial counsel which results in the consideration of a document which does not reflect that supervisory review has been completed. The requirement for the DA Form 20B to reflect supervisory review is found in Army Regulation 27-10, paragraphs 2-25 and 2-31, and Army regulation 640-2, at pages 3-70 through 3-72. The upshot of these provisions is that DA Form 20B will show the dates that the sentence was adjudged, approved, and supervisory review was completed. An illustration of the correct method of reflecting supervisory review on the DA Form 20B can be found on page 3-72, Army Regulation 640-2.

In its most recent decision the Army Court of Military Review held that the absence of a notation that supervisory review has been completed results in a "negative presumption of regularity" for "if pertinent regulations require an entry to be made when final review is taken, it may be presumed that the absence of that entry signifies that final review has not been accomplished" (*United*

States v. Perkins, CM 430895 (ACMR 26 June 1974).

As in the case of a deficient review, the appellate courts can either reassess the sentence or return the case for a sentence rehearing. While in the latter case the command can secure a document reflecting proper supervisory review, nevertheless the case occupies the attention of the staff judge advocate, his trial and defense counsel, and a position on an already overcrowded trial docket, all of which unnecessarily strain the assets of the office.

The solution to the problem is obvious. When reviewing the draft pretrial advice, the staff judge advocate should insure that there is "evidence of admissible previous convictions" which includes, among other things, that supervisory review has been completed and the correct notations are included on the DA Form 20B or the DD Form 493. Similarly, the trial counsel should be examining the document during his pretrial preparation to insure that it has been properly completed.

If the conviction involves a case tried in that command, it is a simple matter to insure that review has been completed, and that the personnel officer makes the correct notations as required by

the regulations. Where the conviction involves some other command, often one from Vietnam or at some great distance away, a copy of the court-martial promulgating order with the stamp reflecting supervisory review may be used. If the court-martial promulgating order does not contain the notation that supervisory review has been completed it may still be used as long as sufficient time has elapsed so that the presumption of regularity provides prima facie evidence that the conviction has been finally reviewed (*United States v. Wilson*, 7 USCMA 656, 23 CMR 120 (1957)). If none of the above alternatives are available, and the referral to a punitive discharge court-martial is indicated primarily because of the record of previous convictions, the case should be re-examined with a view to some other disposition.

The above errors constitute a significant volume of the case load in the Government Appellate Division, and they represent a large number of our losses. They also represent a significant volume of "repeat" cases for the busy staff judge advocate. More importantly they represent administrative errors that could be avoided by minimal care and attention to cases and regulations that have been on the books for some time.

Note From Government Appellate Division.

Litigating Speedy Trial

By: Lieutenant Colonel Ronald M. Holdaway

The cases of *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971) and *United States v. Marshall*, 22 USCMA 431, 47 CMR 409 (1973), have effected a revolution in the law concerning speedy trial. *Burton*, of course, established a "90-day" rule for pretrial processing. Of even more significance was the *Marshall* case that completely re-defined the rules concerning the concept of prosecutorial "diligence" in the processing of a case that extended beyond 90 days. Such things as heavy case loads and personnel shortages, factors that were (and are) considered in determining diligence in non-*Burton* cases, were excluded. Notwithstanding this radical change, there are, for delays extending beyond 90 days, still too many cases where speedy trial is litigated in the same manner as before. So-called

chronologies are introduced which really do little more than show the appellate court the status of the case at various stages. Very few of these documents ever show why it took a certain number of days to move the case from one level of command to another; why it took a certain number of days to conduct an Article 32 investigation; why it took the time it did to prepare a pretrial advice; or why a judge was not available until a certain date or what efforts were made to obtain another one if the judge who usually sat was unavailable. In *United States v. Reitz*, 22 USCMA 584, 48 CMR 178 (1974) Chief Judge Duncan noted that:

If there are extraordinary circumstances or unusual difficulties in prosecuting a particular case, the Government should make them a

matter of record in replying to a defense motion for dismissal of the charges. Similarly, if there is in fact a defense agreement to delay of the prosecution it should also be noted on the record. . . . Appellate argument, however well-intended, cannot be substituted for the facts.

This admonition admirably sums up the burden that a trial counsel faces if he is to sustain the "extra-heavy" burden of *Burton-Marshall*. Counsel who has such a case must carefully analyze his facts and proceed on the basis that if he does not have documented defense delays or truly extraordinary circumstances he will surely lose his case at the threshold if not on appeal. If there were delays caused by extra-ordinary or unusual circumstances, counsel must be prepared to show not only the putatively unusual circumstances themselves, but why they caused the delay, how much of the delay was attributable to these circumstances, and what steps were taken to overcome the difficulty. These *facts* must be placed in the record! In short, counsel must ask himself: Why is this case different than most others that were tried within 90 days? Why was this case not so tried? The answer to these questions will, hope-

fully, be the facts of record sustaining the *Burton* burden. Similarly, if part of the delay was at the request, or with the concurrence, of the defense these facts must be documented. For example, suppose that the judge who normally tries cases in a particular jurisdiction will not be available for two or three weeks. Very often the defense will prefer to wait because of a desire for that particular judge. If such is the case, the trial counsel must document the defense's desire for that particular judge. This may be done either by a defense continuance or a Memorandum for Record executed by trial counsel wherein he "documents" the verbal request of the defense that were expressed to him by counsel. It is important in all instances where it appears that the defense wants both a delay and the advantages of the *Burton* rule that they be forced to make an election and that the election be made a matter of record. The *Burton* rule is a safeguard for the accused's rights; it should not be subverted into a shield against prosecution if in fact the defense was not ready to proceed or acceded to the delay. Again, it is worth repeating to all trial counsel—*Document* the lack of defense readiness and/or the defense agreement to delay.

Criminal Law Items

By: Criminal Law Division, OTJAG

1. WAC Personnel On Courts And Boards. SJA's are reminded of the requirement set forth in paragraph 14(a) of Army Regulation 600-3, 18 March 1970, which mandates the inclusion of Women's Army Corps personnel, if available, as members of general and special courts-martial when the accused is a WAC. Paragraph 14(b) of that regulation provides for the presence of at least one WAC officer, if available, on all boards dealing with matters pertaining primarily to WAC personnel unless the board is composed entirely of medical officers.

2. Pretrial Confinement. It is anticipated that requests for judicial relief from the imposition of pretrial confinement, involving both military and civilian courts, will increase in the future. As such, staff judge advocates are advised to monitor closely pretrial confinement within their respective jurisdictions.

Commanders should be cautioned that not only should prospective pretrial confinement be examined to determine whether it meets the legal standards of Article 13, Uniform Code of Military Justice, and paragraph 20c, *Manual for Courts-Martial, United States, 1969 (Revised edition)*, but also whether, given the individual facts of the case, pretrial confinement is actually necessary. The fact that a member is charged with a "serious" offense does not mandate that he be placed in pretrial confinement. If the decision is made that pretrial confinement is appropriate, the case should be reexamined continually for any subsequent intervening factors which would warrant reconsideration.

The Military Magistrate Test Program has proven very successful as a means of monitoring pretrial confinement. The magistrate acts as an independent party to monitor and regu-

late pretrial confinement throughout a command or installation. It is anticipated that the establishment of a military magistrate will soon be mandatory at certain installations with active stockades. At those installations where it is not mandatory, it is recommended that commanders weigh carefully the benefits to be gained by the establishment of this monitoring device with a view toward its implementation, or the implementation of an alternative means of monitoring pretrial confinement.

3. Promulgating Orders. Recently, it has been noted that certain commands are improperly delaying the dispatch of a copy of the promulgating order to the United States Army Retraining Brigade, when an accused has been transferred to that installation for the service of his sentence to confinement, until completion of the Article 65(c) supervisory review.

There is no requirement that the copy which is forwarded to the Retraining Brigade be declared legally sufficient prior to transmittal. If the copy of the order is received before the accused is restored to duty from the Retraining Brigade, certain favorable administrative actions may be accomplished by that facility. However, the favorable actions are precluded if the order has not been received.

In cases where the accused is transferred to the Retraining Brigade, a copy of the promulgating order should be dispatched to that organization immediately after publication.

Legal Assistance Items

By: Administrative and Civil Law Division, TJAGSA

1. Handbook Revision. Subsequent to the publication of the revised edition of the *Legal Assistance Handbook*, DA Pam 27-12, periodic chapter supplements will be prepared by TJAGSA's Administrative and Civil Law Division in order to keep the Handbook current. Some of the items and cases noted below will be included in the forthcoming supplements, but are included here because of their immediate importance and interest to legal assistance officers.

MONTHLY AVERAGE COURT/MARTIAL RATES PER 1000 AVERAGE STRENGTH JANUARY-MARCH 1974

	General Cm		Special CM	Summary
	BCD	NON-BCD	CM	CM
ARMY-WIDE	.22	.14	1.33	.51
CONUS Army commands	.22	.14	1.43	.65
OVERSEAS Army Commands	.21	.15	1.13	.50
U.S. Army Pacific commands	.18	.02	1.24	.48
USAREUR and Seventh Army commands	.24	.20	1.19	.51
U.S. Army Alaska	.17	.07	.49	.52
U.S. Army Forces Southern Command	.08	—	.73	1.09

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 JANUARY-MARCH 1974

	Monthly Average Rates	Quarterly Rates
ARMY-WIDE	18.83	56.49
CONUS Army commands	18.62	55.86
OVERSEAS Army commands	19.22	57.66
U.S. Army Pacific commands	17.94	53.83
USAREUR and Seventh Army commands	20.71	62.13
U.S. Army Alaska	15.84	47.52
U.S. Army Forces Southern Command	17.11	51.34

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.

2. Legislation Regarding Dependency and Indemnity Compensation 38 U.S.C.A. §401, et seq. Congress is clearly aware of the problems inherent in establishing fixed-amount compensation schedules in an inflationary economy. Many of the statutory programs defining the entitlements of survivors of military personnel or former personnel have been revised during the past several years. Legislation has been recently passed to provide for cost-of-living increases in Dependency

and Indemnity Compensation paid to surviving widows and children of deceased military personnel. The increases are approximately 17 percent.

The former range of monthly DIC payments to widows, for example was \$184-\$469. The exact monthly amount is based upon the pay grade of the service member at the time of his death or retirement or release from active duty (38 U.S.C.A. §411). The cost-of-living increases as enacted move the range upwards to \$215-\$549 per month for each eligible widow.

Of all governmental benefits to survivors of deceased military personnel, DIC payments may be the most important means of long-range financial security. These payments are made to eligible widows until their death or remarriage and in most instances to children until age 18, or if in school, until age 23. The effect of the cost-of-living increases will be of great significance to the nearly 319,000 widows and the many children presently receiving DIC payments.

3. State Bonuses for Vietnam Veterans. Fifteen states and the Territory of Guam have now authorized the payment of state bonuses to qualifying Vietnam veterans. The state bonuses are cash payments made to eligible service personnel upon application to the appropriate state agency or department. The exact amount, application procedures, and eligibility requirements vary from state to state. Some states have recently enacted cutoff dates for applications for the bonus. If a service member's home state does authorize the payment of such a bonus and he feels that he may be eligible, he should make prompt application. Such bonuses are exempt from both state and federal income taxation. Some states further authorize payments to the survivors of a deceased service member.

The states which presently have such bonuses as of May, 1974 are as follows: Connecticut, Delaware, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, North Dakota, Ohio, Pennsylvania, South Dakota, Vermont, Washington and West Virginia.

Summaries of the state's provisions and the address for applications can be found in DOD Information Guidance Series Publication (DIGS) 8A-10 (Revised), dated May, 1974.

4. Continuing Scrutiny of State Durational Residency Requirements. During the past several years "durational" or "prior" residency requirements have been under ever-increasing constitutional attack. Such requirements are generally imposed by states in order to limit the enjoyment of state benefits and/or use of state facilities and institutions to persons who are bona fide residents and who have lived within the jurisdiction for a specified period of time. In light of closely analogous Supreme Court cases regarding the right of a bona fide, but recent, resident to apply for welfare, *Shapiro v. Thompson*, 394 U.S. 618 (1969); to vote in state elections, *Dunn v. Blumstein*, 405 U.S. 330 (1972), *Bullock v. Carter*, 405 U.S. 134 (1972); or to be eligible for resident tuition rates at state universities and colleges, *Vlandis v. Kline*, 409 U.S. 1036 (1973), it is not surprising that there have been many recent challenges to similar requirements imposed by states as a prerequisite to the filing of a petition for divorce. Frequently the courts have concluded that such requirements unconstitutionally infringe upon one's right to travel among the states and unconstitutionally discriminate between long-time residents and recent residents. Some courts have followed another line of reasoning and have held that such prior residency requirements unconstitutionally deny recent residents access to the courts in violation of the due process clause of the Fourteenth Amendment *Boddie v. Connecticut*, 401 U.S. 371 (1971)

The courts have upheld the residence requirements of six months in New Mexico and Florida, but have struck down the two-year requirements in Rhode Island, Wisconsin, and Massachusetts. The constitutionality of one-year prior residency requirements, which are by far the most common, is still in question. Such requirements have been upheld in Iowa, New Hampshire, Vermont, and Ohio, but have been struck down in Hawaii and South Dakota.

In light of the considerable litigation in this area, it is advisable to check the present status of such residency requirements before advising a client. This is especially true with regard to inquiries regarding contemplated divorce actions.

5. Cases of Interest

McDonald v. McLucas, 371 F. Supp. 831 (S.D.N.Y. 1974) Procedures employed by the secretaries of the services and used to determine whether to make official reports of death or presumptive findings of death of persons missing in action held unconstitutional.

Barrows v. Barrows, 489 F.2d 661 (3rd Cir. 1974) An award of separate maintenance and support under New Jersey law ceases to have effect and is not entitled to full faith and credit and res judicata upon the subsequent entry of a decree of absolute divorce which is binding upon the defendant spouse.

Swoap v. Superior Court of Sacramento County, 516 P.2d 840, 111 Cal.Rptr. 136 (1973) State may constitutionally require that adult children contribute to needy parents' support.

Grissom v. Dade County, 293 So.2d 59 (1974) Extending *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Florida Supreme Court held that an indigent who seeks to adopt a child is denied equal protection and due process by a state statute requiring the payment of notice publication costs.

Hayes v. Board of Regents of Kentucky State University, _____ F.2d _____ (6th Cir. 1974) A student's registration to vote within a state need not be accepted as "conclusive proof" of the student's residence for tuition purposes.

Samuel v. University of Pittsburgh, _____ F. Supp. _____ (W.D.Pa. 1974) A rule of state-affiliated universities that, for purposes of in-state tuition privileges, the domicile of a married female student, but not that of a married male student, is presumed to be that of the spouse violates the equal protection clause of the Fourteenth Amendment. The court did not find that sex was an inherently suspect classification, but it did apply the "rigorous rational basis test," of *Reed v. Reed*, 404 U.S. 71 (1971). See also *Frontiero v. Richardson*, 411 U.S. 677 (1973). Four justices expressly found sex to be a suspect class thus invoking the "compelling state interest" test.

Waller v. Waller, _____ F.2d _____ (6th Cir. 1974) Pursuant to a divorce decree the husband was to pay all marital debts existing at

the time of the divorce. The court here held that said obligation constitutes "alimony . . . or [monies] for maintenance or support of wife or child" within the meaning of 11 USC §35(a)(7)(1970), and thus was not dischargeable by the husband's subsequent voluntary bankruptcy.

Walker v. United States, 493 F.2d 700 (4th Cir. 1974) Beneficiary of National Service Life Insurance policy may be changed by evidence of "clear and convincing" intent and overt acts by decedent such as statements of such intent to neighbors and an insurance agent, designation of second wife as beneficiary of unpaid pay and allowances, and execution of power of attorney to second wife. But see, *Collins v. Collins*, 378 F.2d 1020 (4th Cir. 1967).

Rosentiel v. Rosentiel, 368 F. Supp. 51 (S.D.N.Y. 1973) Brief but good discussion of the issues of migratory *ex parte* divorces and divisible divorce theory.

6. Articles and Publications of Interest

Adams, "Citado a Comparacer: Language Barriers and Due Process—Is Mailed Notice in English Constitutionally Sufficient?," 61 CAL. L. REV. 1395 (December 1973).

Young Lawyer's Section, Chicago Bar Association, "How To File a Lawsuit in the Special Pro Se Branch of the Small Claims Court." May be obtained from the Chicago Bar Association, 29 South LaSalle Street, Chicago, Illinois 60603.

Tierney, "Separate But Equal—An Analysis of State Civil Rights Law Enforcement and Its Interaction with Federal Law," 49 NOTRE DAME LAW 122 (October 1973).

National Association of Attorneys General, Committee on the Office of Attorney General, *State Programs for Consumer Protection*, 1973. Pp. 87. \$3.00 This publication describes the development and functions of the state consumer protection agencies, the number and types of complaints they handle, how consumer complaints are handled, education and information programs, state consumer fraud laws and specific state consumer legislation. Available from the National Association of Attorneys General, Committee on the Office of At-

torneys General, 1516 Glenwood Avenue, Raleigh, North Carolina 27608.

Miller, "Kentucky's New Dissolution of Marriage Law," 61 KY.L.J. 980 (1972-1973).

American Bar Association Special Committee on Legal Assistants. *The Training and Use of Legal Assistants: A Status Report*, 1974. Free. Available from the ABA Special Committee on Legal Assistants, American Bar Association, 1155 E. 60th Street, Chicago, Illinois 60637.

"The Right of Women to Use Their Maiden

Name," 38 ALB.L.R. 105 (1973).

Freed, Foster, "Economic Effects of Divorce," 7 FAMILY L.Q. 275 (Fall 1973).

"A Shopper's Guide to Lawyers." By Herbert S. Denenberg, Commissioner, Pennsylvania Insurance Department, Harrisburg, Pennsylvania 17120. In cases which require referrals to civilian attorneys this book may be useful in assisting such persons in selecting and using civilian counsel. Limited numbers of copies may be obtained directly from the Pennsylvania Insurance Department.

Claims Items

From: U.S. Army Claims Service

1. Recognition of Claims Work. At The Judge Advocate General's Conference held in September 1973, this Service presented a program by Dean Dunlap of the University of Virginia's School of Business Administration. Dean Dunlap presented his program as a part of the Claims Workshop. He utilized a developmental problem solving technique for problems involved with the adjudication of household goods claims. The workshop was well attended by judge advocates with prior Staff Judge Advocate experience. They contributed their wealth of experience and practical "know how" to aid Dean Dunlap in reaching several solutions by the use of this developmental problem solving technique.

Two of the solutions received a large consensus of agreement from the participants. The first solution stressed the need for the Staff Judge Advocate to make every possible effort to place those personnel in claims work who have an aptitude and interest in the work. The second solution was emphasized by many of the participants. It was felt that each Staff Judge Advocate should reevaluate his thinking toward claims work in his office. If he did not have empathy for the work and did not mark such work with proper recognition, then it would be difficult or impossible for others working under him to generate the proper work atmosphere for claims adjudication. The Staff Judge Advocate who downgrades claims work may find himself with a self-fulfilling

prophecy concerning the future quality of the claims work in his office. Those judge advocates, however, who seize upon opportunities to give the claims personnel in their office appropriate recognition may find their legal personnel with a greater desire to work in the claims field. In addition, this recognition will give the administrative claims personnel an opportunity to find a renewed sense of duty and accomplishment.

A developmental problem solving technique for claims problems may seem just a little too esoteric but the pragmatic solutions which resulted certainly are far from theoretical. These solutions can be implemented by every Staff Judge Advocate.

2. Claims of Nongovernment Employees and DOD School Teachers. All professional personnel of the overseas dependents' schools established by DOD become employees of the military department assigned by DOD as the geographic manager. The Army has been named as manager of all schools in the European area, the Navy in the Atlantic area, and the Air Force in the Pacific area.

Thus, the above respective services are responsible for settling personnel claims submitted by employees assigned to base and installation schools in the above corresponding geographic areas, regardless of the particular branch of service operating a particular base or installation.

TJAGSA Solicits Advanced Class Thesis Topics

A hallmark of The Judge Advocate General's School's Officer Advanced Course has been its student research program, wherein each student submits a graduate-level law thesis for evaluation and acceptance by the faculty. With TJAGSA's 23d Advanced Course schedule for a late August opening, solicitation has been underway for suggested thesis topics from the field.

While the thesis program enhances the students' own skills in legal research and analysis, it is also designed to answer the needs of the Corps and the military bar regarding critical problem areas of the law. Because these areas can best be identified with the assistance of those attorneys in the field who deal with them daily, TJAGSA has solicited suggestions for thesis topics.

The fields of law involved in such research and analysis include: military criminal law, procurement law, military and civilian personnel law, claims, environmental law, the law of war and other aspects of international law, legal assistance to servicemen, military law education or training for lawyers and other service members, and management areas such as office organization and delivery of legal services in the armed forces. Suggested thesis topics should be sent to: Commandant, The Judge Advocate General's School, U.S. Army, ATTN: Director, Academic Department, Charlottesville, Virginia 22901. The School's Doctrine and Literature Division can make limited distribution to those needing our *Catalog of Advanced (Career) Class Theses* and annual supplements. Listed below are the thesis titles for the 22d Advanced Class which graduated this past spring. Loan copies of theses for temporary use may be solicited from: Interlibrary Loan, Law Library, University of Virginia, Charlottesville, Virginia 22903. Loan copies are *not* available from TJAGSA, although our library does possess a record copy of each thesis for use at the School only.

Probation and Parole in The Military Services
Major Stephen A. Bamberger, USMC

A New Look At the Code Of Conduct
Major Holman J. Barnes, Jr.

The Exclusionary Rule: Analysis and Comparison of Alternatives
Captain Owen D. Basham

Sex Discrimination in the Military
Major Harry C. Beans

The UCMJ in Future Hostilities: Towards a More Workable System
Captain Charles E. Bonney

By Scaean Gates, A Janus Passage: The Military Gate Search
Major Terry H. Breen, USMC

"You May Cross-Examine." . . . But to What Extent?
Captain Robert L. Brittigan

The Equal Protection Clause and Administrative Proceedings in the Army
Captain Sidney B. Brody

Dealing with Civilian Crime on Military Installations
Captain Michael A. Burke

An Independent Defense Counsel Corps: Is It Workable?
Major Thomas P. Burns

Prejudicial Joinders: The Crazy-Quilt World of Severances
Major Dennis M. Corrigan

The Attitude of Emergent States Toward the Existing System of International Law
Major Getahun Damte, Imperial Ethiopian Army

The Current Status of the Federal Enclave
Major David J. Deka

The Commander's Authority to Restrict Personal Possession and Display of Obscene Materials
Captain Frank E. Devine

Effect of *Katz v. United States* on the Law of Search and Seizure
Major Alfred J. Dirksa

- The Burdens of Proof to be Applied When Dealing with the Fourth and Fifth Amendments
Captain Dean R. Dort, II
- Military Legal Malpractice: A New Dilemma for the Judge Advocate
Captain Ronald S. Frankel
- The Article 32: A Dead Letter?
Major William O. Gentry
- Due Process: Consumer-Soldier Versus Creditor in the Prejudgment Arena
Captain James C. Gleason
- Records of Trial in Military Courts
Captain Jonathan C. Gordon
- A Study of the Group Level Services Concept with Emphasis on its Possible Application of the U.S. Army
Captain Kenneth E. Gray
- Article 138: Fact or Fiction?
Captain William P. Greene, Jr.
- Polygraph Evidence: Judicial Acceptance or Rejection?
Captain Richard L. Heintz
- An Analysis of the Federal Magistrates System As Implemented by the Military
Captain Michael B. Kennett
- Canadian Procurement: Some Observations
Captain John T. Kuelbs
- The Military Sentence Procedure: Time for a Change
Captain M. Scott Magers
- The Verbal Acts Doctrine
Major Jeffery M. Maurer, USMC
- What Price Character?
Captain Robert J. Mulderig
- The Logan Act: Purpose, Necessity, Recommended Revitalization
Major James A. Murphy
- Death Taxes: You Do Have a Choice
Lieutenant Richard C. Newman, USN
- A Review of Negotiated Pleas
Captain Richard E. Ouellette, USMC
- Recusal in the Military
Major Brendan T. Quann
- Flower v. United States* and Its Effect Upon the Post Commander
Captain M. Garland Rigney
- Prosecutorial Discovery for the Military
Captain Richard A. Russell
- The Law of Entrapment in the Federal and Military Courts
Captain Robert G. Walker
- The Employment of Legal Paraprofessionals in the Administration of Military Justice
Captain Steven M. Werner
- Marital Status Discrimination in the Army
Captain William B. Woodward, Jr.
- An Army Installation Plan for Dealing with the Juvenile Problem
Captain Michael E. Yeksavich
- Due Process in Military Probation Revocation: Has *Morrissey* Joined the Service?
Major Rufus C. Young, Jr., USMC

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

<i>Number</i>	<i>Title</i>	<i>Dates</i>	<i>Length</i>
5F-F5	14th Civil Law I	5 Aug-16 Aug 74	2 wks
5F-F5	Law of Military Installations	5 Aug-9 Aug 74	1 wk
5F-F5	Claims	12 Aug-16 Aug 74	1 wk
512-71D20/40	4th Military Lawyer's Assistant (Civil)**	23 Sep-27 Sep 74	1 wk
512-71D20/40	3d Military Lawyer's Assistant (Criminal)***	23 Sep-27 Sep 74	1 wk
5F-F16	2d Legal Assistance	30 Sep-3 Oct 74	3½ days
CONF	The Judge Advocate General's Conference	6 Oct-10 Oct 74	5 days
5F-F7	2d Reserve Senior Officer Legal Orientation	15 Oct-18 Oct 74	3½ days

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

* Army War College only

** Formerly listed as "4th Civil Law Paraprofessional"

*** Formerly listed as "3d Criminal Law Paraprofessional"

Administrative Law Opinions*

(Boards and Investigations - Elimination Boards; Separation From The Service - Grounds) **Scope Of Board Review In Shirking And Other Elimination Cases Clarified.** An inquiry was made regarding the legitimate scope of inquiry of a board of officers convened to consider whether an enlisted member should be discharged for shirking. It was opined that "shirking," as used in paragraph 13-5a(4), AR 635-200, 15 Jul 1966, as changed, refers to

avoidance of military duties only. Failure to report for mandatory urinalysis testing was considered avoidance of a designated military duty and, as such, could properly be considered some evidence tending to establish a pattern of shirking. Failure to fulfill a civil obligation such as support of dependents, on the other hand, could not be so used.

Concerning the provision under paragraph 13-22e, AR 635-200, *supra*, that the board president insure that there is sufficient testimony to evaluate fairly an individual's "usefulness," it was noted that this inquiry cannot override administrative due process require-

* The headnotes for these opinions conform to the list of topic headings found at Appendix 8-A to DA Pamphlet No. 27-21, Military Administrative Law Handbook (1973).

ments. Those requirements mandate that a respondent be specifically advised of the basis of possible board action, and that he be given full opportunity to rebut any adverse evidence. Consequently, the practices of using a broad statement of the basis for elimination in order to encompass a variety of unspecified grounds and of basing a recommendation for discharge upon different grounds than those upon which the respondent received are not generally acceptable adequate notice. Supplementing the scope of notification by the statements of witnesses and other evidence attached is currently considered effective, however, in spite of some judicial expression of concern at the practice.

The opinion endorsed the practice of a board abstaining from inquiry into the military career intentions of a respondent unless raised initially by the member. Such an inquiry will not be considered prejudicial, however, in the absence of a clear showing in the record or by the respondent to that effect. At the same time, a member's desire and ability to complete his current enlistment in an honorable and satisfactory manner is a proper matter for consideration in relation of his "usefulness," having a direct relevancy to the question of whether retention may be appropriate. (DAJA-AL 1974/3846, 29 Apr 1974.)

(Claims - Against The Government) **Army Not Liable For Care Of Serviceman At State Mental Hospital.** An opinion was sought whether the State of Texas could properly seek reimbursement from Army Medical Department funds for the costs of hospitalizing an SP4. The individual apparently became *non compos* while stationed at Fort Hood, and subsequently killed his brother near the installation. He was thereafter committed to a Texas mental facility, found insane and committed indefinitely awaiting trial. The SP4 stayed a member of the service until 1 February 1973, when he was placed on the Temporary Disability Retired List. Texas sought reimbursement of costs incurred from the time of initial commitment until the individual was placed on the TDRL.

OTJAG opined that the United States was

not liable for the Texas claim. Under the state statute in issue, it was noted that the United States Army was doubtfully "some . . . person . . . legally liable for [the patient's] support, maintenance, and treatment . . ." Secondly, the opinion questioned the existence of any federal law authorizing the expenditure of appropriated funds for such a purpose. Under the doctrine of *McCulloch v. Maryland*, 17 US 316 (1819) it was also noted that the power of a state government to extract funds from the federal government by means of a statute enacted without some form of Congressional consent was at best dubious. (DAJA-AL 1974/3462, 11 Feb 1974.)

(UCMJ - Article 138) **Complainants Not Wronged—But Threatened Punishment For Failure To Provide Additional Evidence Was Improper.** Article 138 complaints were filed by two EM brothers against three of their superiors: a CW3, lieutenant colonel and colonel. The complaints involved: adverse EER's rendered by the CW3; relief from duties of both complainants (requested by the CW3, concurred in by the lieutenant colonel and approved by the colonel); verbal harrasment by the colonel because of the complainants' failure to comply with his request for additional information after receipt of their initial request for redress; and a threat of Article 15 or court-martial made by the colonel if the complainants pursued their actions for the sole purpose of harrasing the command or failed to produce information requested by him.

TJAG determined that the CW3 respondent was not a commissioned officer or a commander within the meaning of Article 138. It was further noted that EER's were excluded from the scope of such complaints, and that the relief from duties of both complainants was justified. The opinion found none of the colonel's comments to amount to an actionable wrong under the article. It was, however, observed that there was no basis in law or regulation to impose disciplinary punishment in the event that a complainant fails to provide additional evidence in support of an Article 138 complaint. The opinion noted that the evidence which a

member submits in support of his complaint is entirely within his discretion. Mention was also made of the fact that the colonel herein had undertaken some of the investigatory responsibility specifically reserved to the GCM convening authority UP paragraph 27-14, 15 Feb 72, superseded by AR 27-14, 10 Dec 73, effective 1 Feb 74. While these actions were noted as otherwise justifiable under paragraph 3 of the regulation, they were not so regarded in such a situation where the colonel was also a respondent in the action and had full knowledge of the facts involved in the complaint. However, it was determined that under the circumstances of this case the complainants were not wronged by any of the named respondents. (DAJA-AL 1974/3431, 25 Feb 1974.)

(Commissioned Officers - General; Enlisted Personnel - General) **Opinion Expands Regulation Regarding Reprimands.** It was opined that paragraph 2-4, AR 600-37, 16 Oct 1972, authorizes any military commander in a member's chain of command or staff supervision to impose a written administrative reprimand, admonition or censure upon a member. The opinion further stated that any former commander or supervisor may take such action for transgressions which occurred while the individual was in his chain of command or supervision. In all such instances, the written documents are to be filed in the member's Military Personnel Records Jacket—however, it was

observed that such documents could be filed in personnel files other than the MPRJ. Along these lines, it was opined that UP paragraph 2-4a, AR 600-37, *supra*, any general officer, whether or not in a member's chain of command or supervision, may, by personal indorsement or other written designation, cause such documents to be placed in a member's official Military Personnel Files and career branch files (subject to HQDA review). The opinion noted that such correspondence should generally be returned to give a member opportunity for rebuttal when the indorsement: contains new adverse information; contains a new or substantially harsher reprimand; or directs filing in a manner of which the member was not previously notified. The Secretaries of the Army and Defense, along with the Commander-in-Chief, were considered as having inherent authority to take such actions apart from any regulatory provisions. (DAJA-AL 1974/3511, 11 Feb 1974). *Note:* Msg 131310 Jun 1974, Subject: Change to AR 600-37; Unfavorable Information, added officers exercising GCM authority over a member as individuals who could impose and direct OMPF filing of administrative reprimands. The message also made MPRJ reprimand filing discretionary and provided for mandatory review by a general officer in the chain of command of all letters *in the nature of* an administrative reprimand, censure, or admonition to determine if the document should be forwarded for OMPF filing.

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 Don W. Adair
COL James A. Hagan
COL Reid W. Kennedy
COL Ward D. King

COL Darrell O. McNeil
COL Robert K. Weaver
COL Peter S. Wondolowski
LTC Arthur H. Taylor

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

TO COL, AUS
John L. Costello, Jr

TO MAJ, AUS
John B. Adams

TO COL, AUS

Thomas H. Davis
James F. Thornton

TO LTC, AUS

Charles G. Hoff, Jr
Peter J. Kenny
William P. McKay
Dulaney L. O'Roark
William K. Suter

TO MAJ, AUS

Norman C. Cooper
Thomas M. Crean
Roger G. Darley
Charles H. Giuntini
Arthur G. Haessig
George G. Jacunski
Morris J. Lent
David McNeill, Jr
Peter K. Plaut
Lawrence J. Sandell
Jerome W. Scanlon
Warren W. Taylor

3. Orders Requested As Indicated:

<i>NAME</i>	<i>FROM</i>	<i>TO</i>
LIEUTENANT COLONELS		
DUDZIK, Joseph	OTJAG	Ofc Gen Counsel, Wash., DC
MORROW, Cecil R.	USA Stu Det FBH	OTJAG
SCOTT, Walter J.	Europe	USA Mil Ast, Ft Bragg, N.C.
WAGNER, Keith A.	TJAGSA	Okinawa
MAJORS		
BOZEMAN, John R.	Ft. Bragg, N.C.	USA Stu Det Ft. B. Harrison, In.
CARMICHAEL, Harry	USA Leg Svc Agy	USA Stu Det Ft. B. Harrison, In.
CARROLL, Bart J.	OTJAG	USA Stu Det Ft. B. Harrison, In.
CUTHBERT, Thomas	Europe	USATC Ft. Leonard Wood, Mo.
LAGRUA, Brooks	Armor Ctr, Ft Knox, Ky.	S-Faculty USMA
MORRISON, Fred	Ft. Lewis, Wa.	S-Faculty USMA
ROSE, Lewis J.	Ft. Carson, Co.	Vietnam
CAPTAINS		
ADAMS, Gilbert	Fort Meade, Md.	USA Leg Svc Agy, Falls Church, Va.
BARNA, Allen A.	Ft. Eustis, Va.	Ft. Devens, Ma.
BEESON, John R.	USARCPAC, St. Louis, Mo.	Ft. Knox, Ky.
BLACKBURN, David	Presidio of SF, Ca.	Air Def Ctr, Ft Bliss, Tx.
BOWMAN, Thomas	Ft. McArthur, Ca.	Korea
CHERRY, Mack H.	Korea	USA Leg Svc Agy, Falls Church, Va.
COOPER, Thomas	Walter Reed	Claims Service, Ft Meade, Md.
CRARY, Peter B.	Korea	Safeguard, ND
DAVIS, Jerry A.	Walter Reed	OTJAG
DEATON, Robert	Europe	Trans Ctr, Ft. Eustis, Va.
DEDRICK, James	Ft. Bragg, N.C.	Ft. Hood, Tx.
DICKINSON, James	Ft. Lewis, Wa.	OTJAG

CAPTAINS

DICKSON, Charles	Ft. Leonard Wood, Mo.	Rocky Mt Arsenal, Co.
DULL, Robert J	Ft. Ord, Ca.	Ft. Huachuca, Az.
GALE, Ronald E	Thailand	Ft. Monmouth, N.J.
GRAHAM, Frank P	Def Language Inst, EC	Germany
GRAY, Thomas W.	Europe	USA Leg Svc Agcy, Falls Church, V.
GREGG, Robert E	USA Stu Det Ft. B. Harrison, In.	OTJAG
HAMPTON, Thurman	Korea	Hawaii
HILTS, Earl T	Korea	Ft. Devens, Ma.
HIMES, Albert L	Army Material Cmd	OTJAG
HOLMES, David B	Ft. Bliss, Tx.	Ft. G. G Meade, Md
HUFF, Richard L	Ft. Sam Houston, Tx.	Phy Dis Agcy, Wash DC
JOHNSON, Jay S	Walter Reed	Armed Forces Ins of Pathology
KITTEL, Robert	Seneca Army Depot, N.Y.	OTJAG
KLENJNA, Dennis	Ft. Dix, N.J.	USA Leg Svc Agcy, Falls Church, Va.
LAMB, Lafayette	MAAG, Taiwan	Signal Sup Group, Taiwan
LEWIS, Hollis C	Ft. Hood, Tx.	Korea
MACKEY, Richard	Europe	9th Inf & Ft. Lewis, Wa.
MARSHALL, Frank	Def Lang Inst, WC	Germany
McDANIEL, Terry	Ft. Carson, Co.	Aberdeen PG, Md.
McGUIRE, Richard	Europe	Ft Leavenworth, Ks.
NEWTON, Edward	Europe	OTJAG
NIXON, Richard	USA Weapons Cmd	9th Inf & Ft. Lewis, Wa.
PODBIELSKI, Thaddeus	Ft. Gordon, Ga.	Presidio of Monterey, Ca.
RESEN, William	Ft. Huachuca, Az.	Air Def Center, Ft Bliss, Tx.
RICHEY, Steven	Ft. Lee, Va.	Ft. Bragg, N.C.
SCHMUTZ, John F	OTJAG	USA Leg Svc Agcy, Falls Church, Va.
SHEA, Ronald J	Ft. Leonard Wood, Mo.	Ft. Leavenworth, Ks.
SIMMONS, Harvey	Ft. Dix, N.J.	Seneca Army Depot, N.Y.
SISSON, George	Def Language Inst, WC	Germany
STEARNS, James	Ft. Benning, Ga.	Ft. McPherson, Ga
TOOMEY, Allan A	Panama	USA Leg Svc Agcy, Falls Church, Va.
VAUGHAN, David	Ft. G.G. Meade, Md.	Ofc Gen Counsel, Wash DC
WEBB, Thomas L	Ft. Jackson, S.C.	Ft. Rucker, Al.
WILLETT, Stephen	Korea	Ft. Carson, Co.

WARRANT OFFICERS

BALLANO, Nicholas	Ft. Gordon, Ga	Ft. Polk, La.
KOCEJA, Daniel	Ft. Bragg, N.C.	Ft. Rucker, Al.

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

MERITORIOUS SERVICE MEDAL

LTC Robert B. Smith (1st OLC)

ARMY COMMENDATION MEDAL

CPT Raymond T. Bennett (2d OLC)

MERITIOUS SERVICE MEDAL

LTC William K. Suter (2d OLC)
 MAJ Franklin D. Arness
 MAJ Bartlett J. Carroll (1st OLC)
 MAJ Thomas M. Crean
 MAJ Ronald P. Cundick
 MAJ William G. Eckhardt (1st OLC)
 MAJ Jack F. Lane Jr.
 MAJ Kenneth A. Raby (1st OLC)
 MAJ Paul J. Rice
 CPT Joseph R. Beatty
 CPT Eugene H. Bernstein
 CPT Howard M. Bushman
 CPT Michael R. Ford
 CPT Kenneth D. Gray
 CPT Edward J. Imwinkelried
 CPT James D. Kemper
 CPT Ronald A. Kienlen

ARMY COMMENDATION MEDAL

CPT Gary W. Lunter
 CPT Jeffery L. Mason
 CPT Stanley A. Millan
 CPT John W. Richardson
 CPT Stephen K. Todd
 CPT Timothy M. White
 CPT Merle F. Wilberding
 CPT George W. Clarke
 CPT Dennis D. Daly (1st OLC)
 CPT Ronald C. Griffin
 CPT John H. Shows
 CPT Robert A. Wicker
 CPT Thomas W. Wilson

JOINT SERVICE COMMENDATION MEDAL

MAJ David B. Briggs

5. JAGC Job Vacancies. There will be vacancies for JAG Captains in the following locations on the dates indicated; active duty obligations at each location are also indicated:

a. Europe - three year tours beginning after 1 January 1975.

b. Korea - one year tour (two years accompanied), beginning immediately.

c. US Army Recruiting Command - minimum one year tour, following locations:

(1) Headquarters, USAREC, Ft. Sheridan, Illinois beginning immediately.

(2) Northeastern Region, Ft. Meade, Maryland, beginning 1 December 1974.

(3) Southeastern Region, College Park, Georgia, beginning 1 January 1975.

(4) Midwestern Region, Ft. Sheridan, Illinois, beginning 1 November 1974.

(5) Western Region, Presidio of San Francisco, California, beginning 1 Dec 1974.

d. US Army Legal Services Agency, Falls Church, Virginia (Appellate Divisions) minimum one year tour, beginning immediately.

e. US Army Legal Services Agency, Falls Church, Virginia (Contract Appeals Division), minimum three year tour, beginning 1 January 1975.

f. The Judge Advocate General's School,

Charlottesville, Virginia, minimum two year tour, beginning immediately.

g. US Army Claims Service, Fort Meade, Maryland, minimum one year tour, beginning 1 January 1975.

h. United States Military Academy, West Point, New York, minimum two year tour (two years field experience required), beginning immediately.

i. Kwajalein Missile Range, Kwajalein Island, APO San Francisco 96555, two year tour (12 months unaccompanied), beginning 1 May 1975.

Interested individuals should contact CPT Kennett at PP&TO.

6. Selection of Military Judges. To be a military judge, a JAGC officer must have a broad background of criminal law and military justice experience. He must have impeccable moral character, an even temperament, good judgment, common sense, sound reasoning ability, patience, integrity, courage, a non-abrasive personality and a high degree of maturity. He must be able to express himself, orally and in writing, in a clear, concise manner. It is also important for him to have an understanding of, and experience in, the principles and problems of leadership and exhibit a neat military appearance.

General Courts-Martial military judges are selected from qualified applicants in the following categories:

a. Highly qualified officers with prior experience as a general court-martial military judge.

b. Highly qualified officers with at least three years service as a special court-martial military judge and at least eight years of JAGC service.

c. When the exigencies of the service require other exceptionally qualified officers with extensive experience in the field of military justice and criminal law.

Special Courts-Martial military judges are selected from qualified applicants in the following categories:

a. Highly qualified officers with prior experience as a special court-martial military judge.

b. Highly qualified officers who have completed their obligated tour of service and are in a Regular Army or voluntary-indefinite status who have extensive experience in the field of military justice and criminal law.

General court-martial, special court-martial and part-time special court-martial military judges are selected by the Chief Judge, US Army Court of Military Review, upon nomination of the Chief Trial Judge, and as finally approved by The Judge Advocate General. Certification is made by The Judge Advocate General.

It is the policy of The Judge Advocate General to certify only qualified officers to fill authorized vacancies in the US Army Legal Services Agency for general and special court-martial judges.

Officers selected to perform duties as a military judge must have completed the Military Judge Course unless exigencies of the service prevent such attendance.

Officers interested in applying for the full-time military judge program should make their desires known to the Chief Trial Judge, US Army Legal Services Agency or the Chief, Personnel, Plans, and Training Office, Office of The Judge Advocate General. Application

packets and information will be forwarded to interested officers.

7. Senior Trial Lawyers. In compliance with DAJA-MJ letter, 1974/11313, Subject: Utilization and Recognition of Prosecution and Defense Counsel, PP&TO is pleased to announce the certification of the following Captains as Senior Trial Lawyers:

John F. Bender
Joseph H. Burns
Ray E. Chandler
Dee D. Drell
Robert G. Franks
Daniel R. Grills
Timothy J. Hauler
Paul E. Kitchens
James L. Linebarger
Michael L. Mason
Michael R. McGown
James D. McManus, Jr.
Robert H. Taylor
Thomas W. Taylor
James R. Watson

8. SJA Appointment Certificates. Certificates of appointment as Staff Judge Advocate or Command Judge Advocate are now being sent to officers designated to assume such duties this summer. Copies will be placed in both branch and official personnel records. Certificates will not be given retroactively.

9. Official Military Personnel File (OMPF). All personnel are again reminded of the importance of insuring that their OMPF is current. The OMPF, formerly known as the "TAG 201 file," maintained at MILPERCEN, should be personally reviewed when possible. Each officer must insure that a good current photograph is in his file. Also, make sure that evaluation reports are rendered when required. These are the files reviewed by promotion selection boards. Branch files are not!

10. Help Wanted. Civilian Attorney Advisor, GS 11, 12 or 13. \$14,671-\$26,878. Principal duty as assistant to Senior Procurement Attorney in small legal office of major R&D Laboratory in Washington, D.C. Experience in other legal areas desirable, but not mandatory. Send Standard Form 171 to Commander, U.S.

Army Harry Diamond Laboratories, Attention: Chief Counsel 070, Connecticut Avenue and Van Ness Street, Washington, D.C., 20438, Telephone (202) 282-2366.

11. JAGC Family Emergencies. The Judge Advocate General has requested that, in the event of a death or serious illness in the JAGC family, a telephonic notice of that fact be provided. These calls pertaining to civilian JAG personnel, and of active, retired and reserve corps members (and their dependents) should be directed to the OTJAG Executive (202) 695-4384.

12. Legal Clerks' Course Update. Certain changes and cancellations in the Legal Clerk Course at The Adjutant General School, Fort Benjamin Harrison, Indiana, have taken place since the listing appeared at page 27 of the May issue of *The Army Lawyer*.

The FY-75 schedule listing should be updated to reflect the cancellation of the following numbered classes: Class No. 5 (Oct 74-Jan 75), Class No. 6 (Nov 74-Feb 75), Class No. 8 (Jan-Apr 75) and Class No. 11 (May-Jul 75). The total FY-75 enrollment figure should be adjusted from 498 to 318.

Current Materials of Interest

Sandell, "The Grand Jury and the Article 32: A Comparison," 1 N. KY. L.F. 25 (Spring 1973). Captain Sandell, JAGC, notes that procedural safeguards and advantages offered military accused at the Article 32 investigation far surpass those offered his civilian counterpart at a grand jury proceeding.

Glosser and Rosenberg, "Military Correction Boards: Administrative Process and Review by the United States Court of Claims," 23 AMER. U.L. REV. 391 (Winter 1973). Explores the complexities of prosecuting military pay cases before correction boards, detailing certain deficiencies in the process and suggesting legal reforms in the substantive and procedural review by the Court of Claims.

Note, "The Validity of United States Magistrates' Criminal Jurisdiction" 60 VA. L. REV. 697 (April 1974).

Note, "Vagueness Doctrine in the Federal Courts: A Focus on the Military, Prison, and Campus Contexts," 26 STAN. L. REV. 855 (April 1974). Examines the due process standard of preciseness required of the military and other institutions.

Amsterdam, "Pretrial Confinement in the Military—Rights and Realities," 1 NEW ENGLAND J. ON PRISON L. 34 (Spring 1974). Argues that an enlightened public, a more sensitive military bar and legislative reform are necessary to ameliorate present conditions in military pretrial confinement.

TJAGSA's Former Visiting Professor, LTC Frank W. Elliot and Assistant Commandant for Reserve Affairs, LTC James N. McCune, authored an item on "Reservists Rights: The UCMJ Today" appearing at page 22 in the May 1974 issue of *Army Reserve Magazine* (Vol. XX, No. 5).

Note, "Developments in Evidence of Other Crimes," 7 U. OF MICH. J.L. REFORM 535 (Spring 1974).

Wiener, "The Greed of Benedict Arnold: Siren Call to Treason," *Army*, May 1974, 43. Colonel Frederick Bernays Wiener (JAGC, Retired) recites some of the evidence that America's greatest scoundrel was guided in his actions by a "constant and consistent love of money."

Courses. The following seminars are being offered by the National College of District Attorneys for the fall. To register or obtain further information write to that organization % College of Law, University of Houston, Houston, Texas 77004, or telephone (713) 749-1571.

September 8-11	Pretrial Strategy Atlanta, Georgia
September 22-25	Consumer Fraud and Protection Scottsdale, Arizona
October 8-12	Trial Tactics San Francisco, California

October 20-23 Welfare Fraud
 Washington, DC
November 10-14 Organized Crime
 Chicago, Illinois
November 20-23 Civil Law
 Houston, Texas

The Bureau of National Affairs, Inc., will

sponsor a one-day "Environment and Safety Briefing Session" on November 1, in Washington, DC. For more information contact: Frederick B. Tagg, Communications Manager, The Bureau of National Affairs, Inc., 1231 25th Street, NW, Washington, DC 20037, or telephone (202) 223-3500 (Ext. 412).

By Order of the Secretary of the Army:

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

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

