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Lore of the Corps
Special Edition

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Introduction

When people read about those who served as Soldier-lawyers, they want answers to at least two questions: Who were they? What did they do? Since 2010, Colonel (retired) Fred L. Borch has been answering these questions with the Lore of the Corps series. With a gift of storytelling and a passion for history, Mr. Borch has been capturing for posterity the contributions and legacies of judge advocates of an earlier era. He has been describing the history of the U.S. Army Judge Advocate General's Corps in ways that are accessible to all.

The articles showcased in this third biennial Lore of the Corps Edition record for posterity those personalities, episodes, and stories that would otherwise be forgotten. The articles in this edition touch nearly every military legal discipline within our corps. For example, in this issue, you will find stories on the remarkable and tempestuous careers of past judge advocate generals, you will hear of family members and spouses serving within the corps, and you will even learn the history of this very publication. Please enjoy this special edition of *The Army Lawyer*.

Cory T. Scarpella
Editor, *The Army Lawyer*

Frederic L. Borch

Before becoming the JAG Corps's first Regimental Historian and Archivist, Mr. Borch served as a judge advocate on active duty from 1980 until 2005. His assignments included trial counsel, trial defense attorney, professor of criminal law, and staff judge advocate. Mr. Borch's last assignment before retiring from active duty was as chief prosecutor of the Department of Defense Office of Military Commissions, which oversaw the prosecution of alleged terrorists detained at Guantanamo Bay, Cuba. In 2006, Mr. Borch took on the duties of the JAGC Regimental Historian and Archivist. Most recently in 2012, Mr. Borch served as a Fulbright Scholar in the Netherlands as a visiting professor at the University of Leiden and as a visiting researcher at the Netherlands Institute of Military History. As the JAG Corps Regimental Historian, Mr. Borch diligently works to chronicle the special history that imbues our corps. In that endeavor, Mr. Borch created and maintains the JAG Corps Regimental History webpage on JAGCNet (https://www.jagcnet.army.mil/history). On this webpage, you can find information on the history of the JAG Corps, the Legal Center & School, and the Hall of Heroes; a historical collection of courts-martial and other military tribunals; historical photographs; and oral histories and interviews, among many other historical treasures.

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Lore of the Corps

Our Regimental Cannons

By Fred L. Borch
Regimental Historian & Archivist

Every visitor to the Legal Center and School (LCS) must walk past two bronze cannons "guarding" the entrance to the building. These naval weapons have been "members" of our Regiment for more than fifty years, and what follows is a brief historical note on the two cannons and how they came to join our Corps in Charlottesville.

The cannons were officially presented to The Judge Advocate General's School (TJAGSA) by Rear Admiral Chester C. Ward,[1] the Judge Advocate General of the Navy, in a ceremony on 21 February 1957. Colonel Nathaniel B. Rieger, then serving as Commandant of TJAGSA, accepted the cannons on behalf of the Corps.

The cannon on the left, as one faces the building, is an English-made weapon. It is a four-pounder with a 3.12 inch bore. It was captured from the Royal Navy during the War of 1812 and taken to Norfolk, Virginia. At the outbreak of the Civil War, the cannon was moved from Norfolk to the U.S. Naval Gun Factory, Washington, D.C., so that it would not fall into Confederate hands.

Rear Admiral Chester C. Ward

The cannon on the right, as one faces the building, is a French bronze gun with a 3.5 inch bore. The name and date, "Frerejean Freres Lyon, 1795," indicate that it was cast by a foundry in Lyon, France, after the Revolution of 1789—which makes sense, given the inscription "Libertie Egalité" stamped near the muzzle of the piece. It is not known how this gun came into the U.S. Navy's possession, but it is stamped "Trophy No. 27."

According to an undated memo in the Regimental Archives, "the cannons are symbolic, first of the traditions of the Armed Forces which strongly influence the role of the military lawyer, and second of the close coordination between the Armed Forces in the operation of The Judge Advocate General's School."[2] It seems reasonable to conclude that this language was the justification for the Navy's gift of the cannons to our Regiment.

[1] Born in Washington, D.C., in 1907, Rear Admiral Chester C. Ward became a naval aviation cadet in 1927, and after receiving his wings the following year, served in a variety of naval aviation assignments until leaving active duty in 1930. He subsequently graduated from The George Washington University Law School in 1935, and then remained on the faculty, first as an instructor and then as an Assistant Professor of Law. Admiral Ward was still teaching law when he returned to active duty in 1941. During World War II, he performed Navy legal duties in a variety of assignments, including Chief, General Law Division. In that position, then Captain Ward was responsible for all admiralty, taxation, international law, legal assistance, and claims matters for the Navy. Admiral Ward remained on active duty after the war ended, and during the Korean War, served as the top legal officer on the staff of the Commander in Chief, Pacific, and Commander in Chief, U.S. Pacific Fleet. Admiral Ward took the oath as the Judge Advocate General of the Navy in August 1956. He retired four years later, at the age of fifty-two. THE JAG JOURNAL, Sept.–Oct. 1956, at 3–4.

[2] THE JUDGE ADVOCATE GENERAL'S SCHOOL, HISTORICAL NOTE ON CANNONS (n.d.).

Only a few hours after the ceremony in 1957, the English cannon was "abducted" by persons unknown. It was discovered three days later on an Albemarle County estate.[3] After returning to Army control at Hancock House on the main grounds of the University of Virginia (UVA), this cannon—and its French counterpart—were firmly anchored on concrete pillars. But not firmly enough: during the Vietnam War in the early 1970s, both cannons were stolen. They were returned a few days later. While the identity of those individuals who took or returned the cannon was never discovered, members of the TJAGSA staff and faculty assumed the culprits were UVA students opposed to U.S. involvement in the war in Southeast Asia.

When TJAGSA moved to its present location on North Grounds in the mid-1970s, the cannons were transported as well—and remain on guard outside the LCS to this day.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

https://www.jagcnet.army.mil/8525736A005BE1BE

[3] THE JUDGE ADVOCATE GENERAL'S SCHOOL, THE JUDGE ADVOCATE GENERAL'S SCHOOL, 1951–1961, at 26 (1961).

The Remarkable—and Tempestuous—Career of a Judge Advocate General: Eugene Mead Caffey (1895–1961)

By Fred L. Borch
Regimental Historian & Archivist

Eugene M. Caffey, who served as The Judge Advocate General (TJAG) from 1954 to 1956, had a remarkable career as an Army lawyer. He apparently is the only judge advocate in history to transfer from his basic branch to the Judge Advocate General's Department (JAGD),[1] and then return to his basic branch before returning to the JAGD once again—to finish out his career as the Army's top lawyer. Caffey also is unique as the only World War II-era judge advocate to have been decorated with both the Distinguished Service Cross and Silver Star—awards for combat heroism that are outranked only by the Medal of Honor. Finally, Caffey is the only judge advocate in modern history to go from colonel to brigadier general to major general (and TJAG) in just six months. Yet despite his outstanding service as a judge advocate and combat commander, Major General Caffey's career was tempestuous because he was unable (or unwilling) to get along with his superiors and was unable (or unwilling) to keep his opinions to himself.

Major General Eugene M. Caffey's official portrait
April 1956

Born in Decatur, Georgia, on 21 December 1895, Eugene Mead Caffey entered the U.S. Military Academy in 1915.[2] His father had retired as an Infantry colonel and young "Gene" Caffey, having spent his "boyhood on various Army posts in the West, the Philippines and China," likewise wanted a life as a Soldier.[3]

After the United States entered World War I, classes at West Point were accelerated, with the result that Caffey graduated on 12 June 1918 and was commissioned a second lieutenant and a first lieutenant (temporary)—on that same day.[4] Two months later, he was promoted to captain, and when the fighting ended in Europe in November 1918, Captain (CPT) Caffey was a company commander in the 213th Engineer Regiment, Camp Lewis, Washington.[5]

Caffey subsequently served with the Panama Canal Department and with the Tacna-Arica Plebiscite Commission in Chile. After completing his tour of duty in Chile, First Lieutenant (1LT) Caffey (who had lost his captain's rank with the end of World War I) travelled to Managua, Nicaragua, in July 1928. There, he served as the assistant to the Secretary, American Electoral Mission in Nicaragua. Caffey also served as a member of a survey team, and assisted in exploring an alternative canal route in Nicaragua. This survey expedition was considered to be of great importance in the late 1920s because, despite the existence of the Panama Canal (completed in 1914), "dreams of a canal through Nicaragua persisted in the United States and elsewhere."[6] When Caffey left South America, his boss lauded him as "an alert, energetic officer of pleasing personality with the ability to adapt himself to a wide range of duties and discharge them in an excellent manner."[7]

After returning to the United States, 1LT Caffey applied for detail with the Judge Advocate General's Department. He was accepted and moved with his family to Charlottesville, Virginia, as he had been admitted to the University of

[1] Before 24 June 1948, the JAG Corps was known as the JAG Department. JUDGE ADVOCATE GENERAL'S CORPS, U.S. ARMY, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 198 (1975).

[2] At least one source (http://www.20thengineers.com/ww2-caffey.html (accessed April 21, 2014)) claims that Caffey entered West Point in 1914, but this is incorrect. His military records correctly reflect that Caffey matriculated in 1915. U.S. Dep't of Def., DD Form 214, Armed Forces of the U.S. Report of Transfer or Discharge, Eugene Mead Caffey, block 32 (1 Nov. 1955).

[3] *Eugene Mead Caffey*, ASSEMBLY 83 (Fall 1961).

[4] U.S. Dep't of Army, DA Form 66, Eugene Mead Caffey, block 12 (1 Nov. 1954) (Appointments).

[5] For details on Caffey's unusual involvement in a homicide prosecution, see Fred L. Borch, *The Shooting of Major Alexander P. Cronkhite: Accident? Suicide? Murder?*, ARMY LAW., Mar. 2014, at 81–83.

[6] Michael J. Brodhead, *"A West, Nasty Job": Army Engineers and the Nicaragua Canal Survey of 1929–1931*, FED. HIST. J., Jan. 2013, at 15, 18.

[7] War Department, Adjutant Gen.'s Office, AGO Form 67, Efficiency Report, First Lieutenant Eugene M. Caffey, block R (9 Mar. 1929) (covering 1 July 1928 to 20 Dec. 1928).

Virginia's law school. First Lieutenant Caffey was a brilliant student, and finished first in his class. He was elected to Phi Beta Kappa, the Raven Society, and the Order of the Coif.[8]

After being admitted to the Virginia bar, Caffey was promoted to captain on 1 July 1933. He then served his first tour as a judge advocate at Fort Bliss, Texas, where he was the "Assistant to the Division Judge Advocate."[9] In June 1934, Caffey was reassigned to Washington, D.C., where he was placed on "detached service" with the Army's Bureau of Insular Affairs. For the next four years, Caffey defended the interests of the War Department in U.S. courts when those interests involved the Philippine government. In one particularly important piece of litigation—lasting two years—Caffey's skills resulted in the defeat of six suits filed in U.S. District Court for the Southern District of New York. Plaintiffs in these suits had sought to force The Chase National Bank of New York City to pay between six and eight million dollars of Philippine government funds, on deposit in the bank, to the plaintiffs.[10] "The loss of such a sum would have shaken the financial position of the [Philippine] government, have seriously threatened the value of its currency, and introduced serious political and administrative problems into the relationship between the United States and the Commonwealth."[11] No wonder that Philippine government officials praised Caffey's skills as an Army attorney—and requested that a Distinguished Service Medal be awarded CPT Caffey in recognition of his fine work.[12]

But not everyone was happy with CPT Caffey's work. A letter written by Major General Allen W. Gullion, then serving as TJAG, and filed in Caffey's official military records in September 1938, indicates why. According to Gullion, Caffey had come to his office sometime between November 1937 and April 1938 and told Gullion that

> [Captain Caffey] wanted to keep [Guillion] from getting in trouble, that the Secretary of War was becoming dissatisfied because [Captain Caffey] wasn't being allowed a free enough hand in Philippine matters. [Guillion] replied somewhat as follows: "I don't know whether you are trying to bluff me, Captain Caffey, but if the Secretary of War is dissatisfied with me he will let me know and I don't think he will employ you as his medium."[13]

As if this were not bad enough, Gullion continued: the Army Chief of Staff had stated "that a Congressman had complained that Captain Caffey and another officer had been trying to induce Congressmen to support legislation to which the War Department was opposed." When confronted with this statement, Caffey "did not deny it, but minimized it and said he would desist from further activities along the lines complained of."[14]

Major General Gullion's unhappiness with Caffey resulted in Gullion *personally* writing Caffey's Efficiency Report. After checking "unsatisfactory" when it came to "cooperation," Gullion wrote that while Caffey was an "officer of strong intellectual ability," his "value to the service is lessened by reluctance to accept the decisions of superior authority when he thinks such decisions involve a diminution of his prestige." Major General Gullion concluded by stating that Caffey's "General Value to the Service" was "doubtful."[15]

Captain Caffey subsequently wrote a twelve-page rebuttal to this adverse Efficiency Report. Caffey went into considerable detail to explain his actions, and counter the adverse information that Major General Gullion had relied upon in writing the Efficiency Report. Perhaps Caffey was right in some respects, but this is hard to know. The Judge Advocate General, however, declined to change his views on Caffey. As Gullion put it, he "had no personal animosity in this case" and what he had written was "only intended to convey a fair estimate of this officer."[16]

So what was Caffey to do? An official history of The Judge Advocate General's Corps published in 1975 states that "by early 1941, it became obvious that war was imminent," and now Major (MAJ) Caffey "traded his JAGD brass for the engineer castle and 'Essayons' buttons." The clear suggestion is that Caffey returned to the Corps of Engineers because he was a "man of action" who wanted to be in the thick of any future fighting.[17] But this is simply untrue; Caffey requested a transfer back to his basic branch because he believed his career as a judge advocate was at an end. Since Major General Gullion was so displeased with MAJ Caffey, and had reflected this unhappiness in writing, Caffey was probably

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[8] ASSEMBLY, *supra* note 3, at 84.

[9] War Dep't, Adjutant Gen.'s Office, AGO Form 67, Efficiency Report, Captain Eugene M. Caffey, blocks E (Duties), H (Performed) (8 June 1934) (covering 27 Aug. 1933 to 6 June 1934).

[10] Berger v. Chase Nat'l Bank, 105 F. 2d 1001 (2d Cir. 1939). The plaintiffs were five liquidators of closed national banks.

[11] Letter, J. M. Elizalde, Resident Comm'r of the Philippines to the United States, to Major General Arthur W. Brown, The Judge Advocate Gen. (8 Apr. 1940).

[12] *Id.*

[13] Letter, Major General Gullion, to The Adjutant Gen., 3d Wrapper Endorsement (12 Aug. 1938).

[14] *Id.*

[15] War Dep't, Adjutant Gen.'s Form 67, Efficiency Report, Captain Eugene M. Caffey (15 Aug. 1938) (covering period 1 Aug. 1937 to 14 November 1937).

[16] Letter, Major General Gullion, to The Adjutant Gen., 7th Wrapper Endorsement para. 2 (7 Dec. 1938).

[17] THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 220.

correct. After all, if TJAG considered Caffey's "General Value to the Service" to be "doubtful," a transfer from the JAGD to the Corps of Engineers was the best course of action. Certainly Caffey must have thought that he stood a better chance to undo the damage to his career if returned to his basic branch.

On 14 February 1941, Caffey became an Engineer again. "Timing is everything," and this saying was certainly true for MAJ Caffey. Assigned to the 20th Engineer Combat Regiment as its executive officer, now Colonel (COL) Caffey deployed to North Africa with *Operation Torch.* After landing in French Morocco, he saw combat in Tunisia in early 1943 and was awarded the Silver Star for gallantry in action and the Purple Heart for wounds received when the jeep in which he was riding ran over a German landmine. In May 1943, COL Caffey took command of the 30,000-man 1st Engineer Special Brigade and participated in the Allied invasions of Sicily and mainland Italy. He was still in command of that unit when it took part in the American, British, and Canadian landings at Normandy in June 1944. Caffey was one of the first Soldiers to wade ashore onto Utah Beach and, in the hours and days that followed, demonstrated his superlative abilities as combat commander. For his extraordinary heroism on D-Day 1944, Caffey was awarded the Distinguished Service Cross with the following citation:

> Colonel Caffey landed with the first wave of the forces assaulting the enemy-held beaches. Finding that the landing had been made on other than the planned beaches, he selected appropriate landing beaches, redistributed the area assigned to shore parties of the 1st Engineer Special Brigade, and set them at work to establish routes inland through the sea wall and minefields to reinsure the rapid landing and passage inshore of the following waves. He frequently went on the beaches under heavy shell fire to force incoming troops to disperse and move promptly off the shore and away from the water sides to places of concealment and greater safety further back. His courage and his presence in the very front of the attack, coupled with his calm disregard of hostile fire, inspired the troops to heights of enthusiasm and self-sacrifice. Under his experienced and unfaltering leadership, the initial error in landing off-course was promptly overcome, confusion was prevented, and the forces necessary to a victorious assault were successfully and expeditiously landed and cleared from the beaches with a minimum of casualties. He thus contributed, in a marked degree, to the seizing of the beachhead in France.[18]

This well-written and descriptive citation demonstrates that Caffey was a remarkable Soldier and, assuming that the film *Saving Private Ryan* accurately depicts the horrific events of 6 June 1944, COL Caffey's "presence in the very front of the attack, coupled with his calm disregard of hostile fire," must have truly inspired the Soldiers who saw him in action. In any event, Caffey remained in Normandy for the rest of the war and, when the fighting ceased in Europe in May 1945, was in command of the Normandy Base Section. Since that Base Section had from 70,000 to 150,000 troops during the last six months of the war, COL Caffey had significant command responsibility.[19]

When COL Caffey returned to the United States in early 1946, he was a respected and highly decorated officer—having also been awarded three Legions of Merit and a Bronze Star Medal. He almost certainly was destined for general officer rank in the Corps of Engineers and his official records show that he was being considered for promotion to brigadier general.[20] Despite this bright future in the Corps of Engineers, COL Caffey decided to request a transfer to the Judge Advocate General's Department. As he explained in his official request:

> The reason underlying this request is that the [JAGD] is becoming increasingly short-handed. By reason of service in and with the [JAGD] for over ten years (September 1930 to March 1941), I am qualified for duty in it and am probably one of the very few older regular officers (not now a member of it) who is so qualified. The logic of the situation is that I should serve where, as I understand it, officers of my qualifications are needed and extremely hard to find.[21]

Interestingly, the Corps of Engineers initially resisted Caffey's request for a transfer. Correspondence in his records shows that the Engineers were considering Caffey for command of the 2d Engineer Special Brigade located at Fort Ord, California, and believed that "the importance of the duties" of the unit made it "imperative that a capable officer be in command."[22] But the Corps of Engineers relented when

[18] Headquarters, European Theater of Operations, Gen. Orders No. 161 (4 May 1945).

[19] Special Rating of General Officers, Colonel Eugene M. Caffey para. 7 (26 May 1945).

[20] Major General Edward F. Witsell, The Adjutant Gen., to Colonel Caffey, subj: General Officers' Eligible List (26 Mar. 1946).

[21] Letter, Colonel Eugene M. Caffey, to The Adjutant Gen., Wash., D.C., subj: Transfer (27 Dec. 1946).

[22] Memorandum from W.H. Biggerstaff, to The Adjutant Gen., subj: Transfer from Engineers to JAG, cmt. no. 10 (12 Mar. 1947).

Caffey again insisted that he wanted to transfer to the JAGD and when Major General Thomas H. Green, who had recently assumed duties as TJAG, wrote that he had "previously recommended approval of Colonel Caffey's transfer and would be pleased to have him as a member of [his] Department."[23]

As a result, Caffey pinned on the crossed-pen-and-sword insignia on 23 May 1947. When one considers that the JAGD was losing hundreds of officers (who were returning to civilian life) as the Army demobilized after World War II and recognizing that the creation of a new and independent Air Force meant that many experienced Army judge advocates would be exchanging Army green uniforms for Air Force blue suits, it seems likely that TJAG Green personally solicited COL Caffey to resume his career as a judge advocate. Additionally, as Caffey's nemesis, Major General Gullion, was no longer on active duty, there was no reason for COL Caffey to think that his skills as an attorney would not be appreciated.

After returning to our Corps, COL Caffey served first as the Executive Officer and Chief, Administrative Division, Office of The Judge Advocate General. In August 1948, he assumed duties as the Staff Judge Advocate, Third Army, Fort McPherson, Georgia. Since Caffey had been born in nearby Decatur, he must have been pleased to return to familiar surroundings.

By May 1953, however, Caffey had had enough of active duty and requested that he be retired the following month, on 30 June 1953. As he wrote in his letter to The Adjutant General, he would "have completed over thirty-five years' service as a commissioned officer in the Regular Army, including service in World War I prior to 12 November 1918."[24] Caffey's request for retirement, however, contains a lengthy explanation for his desire to leave active duty. In light of his earlier conflict with TJAG Gullion in the 1930s, and because Caffey's words provide some insight into his temperament, what he wrote is worth setting forth in its entirety.

> Throughout my service in the Army, the pay, allowances and perquisites of officers have undergone a steady decline: actually, in terms of purchasing power, and relatively, as compared with the emoluments of civilians of education and positions of responsibility. The net result of the decline, in my case, is that after spending my Army income and a good many thousands of dollars besides in order to sustain a moderate existence and educate my children, I approach the end of my useful life without resources sufficient to acquire even a simple house on the wrong side of the tracks in which to pass my remaining years. The prospect is not cheerful. On the other hand, at this time I have an attractive business opportunity of the sort which will not likely be open to me again. Such an opportunity, if I can take advantage of it, gives strong indication that it will clear away the dismal financial future which now confronts me.
>
> Besides the financial side just discussed, the Army seems to have undergone numerous changes which to me are unacceptable and to which I do not and will not subscribe. These changes, so far as I am concerned, have rendered my status as an officer undesirable and have destroyed the attractiveness of the military service as a profession. My own self-respect will cause me faithfully to discharge my duty so long as I continue in the service but having reached the point where I feel but faint pride and slight satisfaction in being an officer of the Army, it seems to me that the interest of the service would be well served were I to pass from active service.

One would think that that language of this kind would not go down well in the Pentagon and that, having revealed that he felt but "faint pride and slight satisfaction in being an officer," COL Caffey would quietly fade away.[25] But that did not happen because COL Caffey withdrew his request to retire from active duty; it was returned to him "without action" on 3 July 1953. Why? Because he must have received word from Washington, D.C., that retirement at this time was not in his best interest. Colonel Caffey did the right thing in deciding to remain on active duty as, on 23 July 1953, the Secretary of the Army announced that he was promoted to brigadier general.[26]

Brigadier General Caffey returned to the Pentagon in August 1953, where he assumed duties as the Assistant Judge

[23] Disposition Form, subj: Transfer cmt. 4 (12 Feb. 1947).

[24] Letter, Colonel Eugene M. Caffey, to The Adjutant Gen., subj: Voluntary Retirement (7 May 1953).

[25] While this cannot be said with certainty, and Caffey does not identify the "numerous changes" that he found "unacceptable," it seems likely that in light of Caffey's speech to the Georgia Legislature in 1956, he was dissatisfied with certain policy changes in the Armed Forces, such as President Truman's 1948 executive order directing desegregation. Since the Army had been racially segregated since 1866, there were more than a few white men and women in uniform who did not like Truman's decision to end institutional racism: Caffey may have been one of them. *See infra* note 31 and accompanying text.

[26] Letter, The Adjutant Gen., to Colonel Eugene M. Caffey, subj: Promotion (23 July 1953).

Advocate General for Civil Law.[27] Amazingly, he was in that position for less than six months as, on 22 January 1954, President Dwight D. Eisenhower nominated him to be TJAG with the rank of major general. When Caffey was confirmed by the Senate on 5 February 1954, he made history, as no judge advocate in the modern era has gone from colonel to major general in just six months. Given that Caffey had expressed such unhappiness with his lot as a Soldier in May 1953, it seems incredible that he now was the Army's top lawyer.

General Matthew Ridgway, Army Chief of Staff congratulating the new TJAG, Major General Caffey
February 1954

Major General Caffey's rise to the top of the Corps was remarkable, and his outstanding record as an attorney and Soldier no doubt explain his rise. But one has to ask what judge advocates who had served in the JAGD during World War II thought of a colleague who had left the Corps prior to the outbreak of war, spent the entire conflict as an Engineer, and then returned in 1947—and was now TJAG. As Major General Caffey's contemporaries passed from the scene long ago, however, there is no way to know.

In late January 1956—after two years as TJAG—Caffey gave a speech on the floor of the Georgia Legislature. Just why he was in Atlanta, and why he was talking to the Georgia House (presumably by invitation), is not entirely clear. But Major General Caffey praised a speech given by U.S. Representative Jack Flynt (D-Ga.), in which Flynt defended racial segregation and "urged support" of those Southerners who wanted "to avoid desegregating public schools in line with the Supreme Court's ruling."[28] Said Caffey to the Georgia lawmakers: "If I were going to make a speech I would hope to make one like that." Some time later, Major General Caffey "told the Georgia Senate the speech contained 'a lot of meat' and added, 'I, for one, admire it.'"[29]

In the uproar that followed, the National Association for the Advancement of Colored People called for Caffey to "be dismissed or disciplined" for his comments. Representative Adam C. Powell (D-N.Y.) "demanded in a telegram to President Eisenhower that Caffey be dismissed."[30] Caffey's response was that Representative Flynt "is a friend of mine. But nothing I said was an endorsement of anyone or anything. I simply paid tribute to Jack Flynt's ability to make a speech."[31]

Was Major General Caffey being disingenuous? According to Major General Wilton B. Persons, who served as TJAG from 1975 to 1979, Secretary of the Army Wilbur M. Brucker thought that Caffey was and, according to Persons, told Caffey that it was time for him to retire. This explains why, despite having been appointed to a four-year term as TJAG, Caffey retired on 31 December 1956. As TJAG Persons remembers, Secretary Brucker "didn't like Caffey personally and after Caffey endorsed the segregationist speech, that was the last straw. [Brucker] called Caffey into his office and told him he was finished and was retiring. Caffey did not resist."[32] This explains why TJAG Caffey's last Officer Efficiency Report contains the following language from General W. Bruce Palmer, the Vice Chief of Staff of the Army: "An able, aggressive, outspoken man, who has amassed a fine record of achievement in his varied career. *His lack of tact sometimes tends to arouse needless controversy*."[33]

[27] As the Assistant Judge Advocate General for Civil Law, Brigadier General Caffey supervised the Military Affairs (today called Administrative and Civil Law), Government Appellate Division, Defense Appellate Divisions, and Army Legal Assistance. U.S. Dep't of Army, DA Form 67-3, Officer Efficiency Report, Brigadier General Eugene M. Caffey (26 Jan. 1954) (covering the period of 5 Aug. 1953 to 26 Jan. 1954).

[28] *Army's Chief Legal Officer May Be Asked to Explain Integration Stand*, STAR-BANNER (Ocala, Fla.), Feb. 1, 1956, at 1. The Supreme Court's 1954 decision in *Brown v. Board of Education* was very unpopular with many white Southerners, and this would explain Representative Jack Flynt's speech.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Telephone Interview with Major General Wilton B. Persons (Apr. 8, 2014) [hereinafter Persons Telephone Interview] (on file with author).

[33] U.S. Dep't of Army, DA Form 67-3, Officer Efficiency Report, Major General Eugene M. Caffey, block 12 (3 July 1956) (emphasis added).

Colonel Ted Decker (left), Judge Walter M. Bastian (center) TJAG Caffey (right), JAG Conference
Charlottesville, Virginia, September 1954

General Caffey and his wife Catherine moved to Las Cruces, New Mexico, where he grew a full beard "like a Civil War general"[34] and practiced law.[35] Unfortunately, this private practice was relatively short-lived, as Caffey died in Las Cruces on 1 May 1961, at the age of 65. One of his partners, Edwin L. Mechem, who would serve four terms as Governor of New Mexico, remembered Caffey as "one of the finest . . . men I have ever met . . . . [A] gentleman and a great patriot." Another of his law partners said, "Eugene Mead Caffey desired a simple and uncomplicated life . . . . [F]ew among his closest friends in New Mexico had any idea until after his death of his spectacular career in the Army."[36]

There is no doubt that Major General Caffey had a truly remarkable career. He was a first-class lawyer in every respect. He was an outstanding combat commander. But Caffey's inability to get along with TJAG Gullion in the 1930s, and with the Secretary of the Army in the 1950s, means that he also had a tempestuous career. Some of this conflict seems to have been caused by Major General Caffey's unwillingness (or inability) to keep his opinions to himself. On at least one occasion (when he submitted his retirement request in 1953), his outspokenness had no adverse impact. His comments on the floor of the Georgia legislature in 1956, however, very much affected his military career.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

https://www.jagcnet.army.mil/8525736A005BE1BE

[34] Persons Telephone Interview, *supra* note 32.

[35] The Caffeys also had "five tall sons and four lovely daughters": Eugene Mead, Catherine Howell, Lochlin Willis, Hester Washburn, Benjamin Franklin, Francis Gordon, Helen Mead, Mary Winn, and Thurlow Washburn. ASSEMBLY, *supra* note 2, at 84. One son, Lochlin Willis Caffey, attended West Point and graduated in 1945. Like his father, Lochlin was commissioned in the Corps of Engineers; he retired as a colonel. ASS'N OF GRADUATES, REGISTER OF GRADUATES (1992), Class of 1945, Lochlin Willis Caffey, No. 14438.

[36] ASSEMBLY, *supra* note 3, at 84.

From Advanced Course to Career Course to Advanced Course (Again) to Graduate Course: A Short History of Advanced Military Legal Education in the Corps

By Fred L. Borch
Regimental Historian & Archivist

On 11 October 1952, nineteen Army lawyers began attending classes at The Judge Advocate General's School (TJAGSA) as part of the first Advanced Course.[1] This was a radical development in military legal education, as it was the first time in history that any service had established a program of instruction that would go beyond the basics of military law. More than sixty years later, as the members of the 62d Graduate Class complete their studies, it is time to take a brief look at the history of the Advanced Course and its evolution from a 32-week long program for 19 career Army judge advocates to today's 41-week long Graduate Course for 118 uniformed lawyers from the Army, Navy, Air Force, Marine Corps, and Coast Guard as well as 4 international military students.

The impetus for the Advanced Course was the recognition that the Corps did not have any education and training for those judge advocates that elected to remain in the Army for a career.[2] The Judge Advocate General's School, which had re-opened in 1950 with the start of the Korean War, had an eight-week Regular Course (now called the Judge Advocate Officer Basic Course) for new Army lawyers. But that course was devoted almost exclusively to courts-martial practice—which made sense given that the bread-and-butter of the Army lawyer in the 1950s was military justice. As for other legal disciplines—contract and procurement law, administrative and civil law, legal assistance, international law and the like—judge advocates generally learned "on-the-job" (OJT).[3]

This *ad hoc* nature of OJT education for career judge advocates, however, could not ensure that when members of the Corps advanced in rank and began to assume duties as staff judge advocates, they were prepared for the various legal issues that might arise at a post, camp, or station. Recognizing this shortcoming in the education of Army lawyers, Colonel (COL) Charles L. "Ted" Decker, TJAGSA's commandant, proposed that an Advanced Course be added to the curriculum. A small number of career-oriented judge advocates would be selected to come to Charlottesville for an academic year of graduate-level legal education, where they would have "the opportunity and incentive to engage in scholarly research" and further their "intellectual development."[4] The proposed course would provide "for a thorough and detailed study . . . [of] all aspects of the specialized field of military law." The end result? A graduate of the Advanced Course would be able to provide significant contributions to the future development of military law while being better prepared to assume more senior leadership positions in the Corps.

The first Advanced Course consisted of nineteen student officers: one colonel, three lieutenant colonels (LTCs), ten majors (MAJs), and five captains (CPTs). When the class graduated on 25 May 1953, its Honor Graduate was MAJ Bruce C. Babbitt.[5] Given its focus on developing staff judge advocates, the second and third Advanced Courses likewise consisted of relatively senior officers. There were eight LTCs out of twenty-three students in the second Course (which graduated on 21 May 1954), and seven LTCs out of twenty-two students in the third Course (which graduated on 27 May 1955).[6]

In 1955, the Advanced Course underwent a transformation when, for the first time, Navy officers were assigned as students. Since the Navy did not yet have a Judge

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[1] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, 1951–61, at 65 [hereinafter ANNUAL REPORT].

[2] In the 1950s, other Army branches also developed an Advanced Course for their officer personnel. In the combat arms, for example, all commissioned officers were required to attend "a branch specific advanced course between their selection for promotion to captain and taking company-level command, normally prior to completing nine years of commissioned service." JEROLD E. BROWN, HISTORICAL DICTIONARY OF THE U.S. ARMY 4 (2001). Successful completion of an Advanced Course was a prerequisite for selection to attend Command and General Staff College at Fort Leavenworth, Kansas. *Id*. Today, the Advanced Course is known as the Captains Career Course. Infantry and Armor officers, for example, attend a twenty-two-week Maneuver Captains Career Course at Fort Benning, Georgia. *Student Information*, U.S. ARMY MANEUVER CENTER OF EXCELLENCE, https://www.benning.army.mil/ mcoe/dot/mc3/ StudentInformation.html#t1 (last visited June 4, 2014).

[3] When The Judge Advocate General's School, U.S. Army (TJAGSA) began to offer instruction in non-military justice subjects, it did so with special stand-alone courses, with the first course (on contract termination) offered in August 1953. ANNUAL REPORT, *supra* note 1, at 71.

[4] *Id*. at 7.

[5] Bruce C. Babbitt was a unique judge advocate and Soldier. He was decorated with the Silver Star for gallantry in action while serving as an infantry officer in the Philippines in 1944 and commanded a rifle battalion while a judge advocate during the Korean War. Then Colonel Babbitt served as the Staff Judge Advocate, Military Assistance Command, Vietnam, from 1969 to 1970. Selected for brigadier general in 1970, Babbitt served as the Assistant Judge Advocate General for Civil Law until he retired from active duty in 1973. Brigadier General Babbitt died in 1999. *Who's Who in U.S. Army JAG Corps History*, THE JUDGE ADVOCATE GENERAL'S CORPS REGIMENTAL HISTORY, https://www.jagcnet.army.mil/8525736A005BE1BE/0/5C2BEB1224678F5D852577AE00521D86?opendocument&noly=1 (last visited June 4, 2014).

[6] ANNUAL REPORT, *supra* note 1.

Advocate General's Corps, the four Navy commanders (LTC equivalents) who attended the Fourth Advanced Course were known as legal specialists, not judge advocates.[7]

That same year, TJAGSA also reached a milestone when the American Bar Association (ABA) reported that the curriculum of the Regular and Advanced Courses made TJAGSA "the outstanding specialist graduate law school in the nation." The ABA concluded that TJAGSA, having "attained an excellence unsurpassed by the programs of any other school," had earned "provisional accreditation." Full approval as a law school was granted on 25 February 1958, with the Advanced Course "fully approved . . . as a graduate program in law."[8] As a result, TJAGSA became the first—and is still the only—ABA-accredited military law school in the United States.

In August 1956, beginning with the Fifth Advanced Course, instruction was increased from 32 to 35 weeks, and the number of hours of instruction was increased from 1405 to 1556. According to the Commandant's *Annual Report*, this "enabled the School to provide more academic time for the student thesis program."[9] By the end of the 1950s, every student was required to write a thesis, and about 300 hours of scheduled time was allotted for preparation and oral presentation of each student's thesis. These three additional weeks also provided more time for "LOGEX" instruction and participation—LOGEX being "a command post exercise" that focused on logistical issues arising under simulated field conditions.[10]

In the late 1950s, the curriculum of the Advanced Course underwent periodic revision—but any changes were "grounded upon the premise that the objective of the [Course] was and continues to be to provide leaders for the military legal profession."[11] In 1959, for example, the Advanced Course added twelve hours of instruction on jurisprudence, eight hours of instruction on military psychiatry, and nine hours of instruction on navigable waters. These additions required a corresponding reduction in the amount of time devoted to civil emergencies and military justice instruction.[12]

A final note about the Advanced Course in the 1950s: foreign military officers joined the Advanced Course for the first time, with LTC Eladio G. Samson, Philippine Army, attending the Sixth Advanced Course and Major Win Phe, Burmese Army, attending the Seventh Advanced Course. By the end of the 1950s, a total of three Burmese and three Filipino officers had attended the Advanced Course.

With the start of a new decade, the Advanced Course "was redesignated, by the Continental Army Command, as the Judge Advocate Officer Career Course."[13] This name change seems to have been more form than substance, as the curriculum remained very similar in content. According to the 1962 *Annual Report of the Commandant*, the thirty-four-week course "thoroughly immersed" the student in legal history, jurisprudence, admiralty, military justice, military administrative law, procurement law, international law, comparative law, claims, civil affairs, legal assistance, military reservations, military training and counterinsurgency. Additionally, each career class student was required to write a thesis on a "significant problem area in military law."[14] Topics included: "Legality of Orders," "Water Rights on Military Reservations," "Powers and Duties of Sentencing and Sentence Reviewing Authorities," and "Dishonorable Failure to Pay Debts."[15]

Students in seminar, 11th Career Course (1962–63)

The Corps made history once again with the Twelfth Career Course, which began on 3 September 1963. This is because, for the first time, there were two female Army judge advocates in attendance: MAJ Ann Wansley and MAJ Mary L. Attaya. Class size was still relatively small (by today's standards), with twenty-six Army lawyers (including Wansley and Attaya), and two Navy legal specialists. The number of foreign lawyers, however, had greatly increased: two judge advocates from Turkey, one from the Philippines, and one from Thailand.[16]

By this time, the Advanced Course was configured in the two semester framework familiar to judge advocates today. In the first semester, the four teaching departments—Military Justice, Military Affairs (today's Administrative and Civil Law), Procurement Law, and International and Comparative

[7] *Id.*

[8] *Id.* at 8.

[9] *Id.*

[10] *Id.* at 10.

[11] *Id.* at 8.

[12] *Id.* at 9.

[13] *Id.*

[14] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, FISCAL YEAR 1962, at 2.

[15] *Id.* at 63–65.

[16] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, FISCAL YEAR 1963, at 12.

Law—were assigned a period of time in which that division taught its material and then administered a four-hour final examination at the end of its instruction. During the second semester, the students spent the first month concentrating on researching and writing their theses. They also attended four seminars twice a week. The following elective-type seminars were offered to the students in the class:

Commander's Problems in Installation Administration
Constitutional Law and the Armed Forces
Research in Foreign and Comparative Law
Problem Areas in International Relations
Legal Control of International Conflict
The Right to Counsel
Model Penal Code and the UCMJ
Wiretapping and Electronic Eavesdropping
The Effect of Sovereignty on Government Contracts
Factors Affecting Competition in Government Procurement
Government Contract Administration[17]

Finally, the students in the class took several field trips during their year at TJAGSA. There was a trip to the Army's Engineer School, then located at Fort Belvoir, Virginia, for the purpose of getting instruction in mine warfare and nuclear weapons.[18] The class also travelled to Washington, D.C., where fifteen of the students were admitted to the U.S. Supreme Court on motion of then COL George S. Prugh, who was serving as the Executive, Office of The Judge Advocate General.[19]

In 1966, the Career Course changed its name—back to the Advanced Course—and the Fifteenth Advanced Course began on 6 September 1966.[20] The goal of the course—still thirty-four weeks long—was the same: to "deepen and broaden a philosophical appreciation of the role of law in its application to all phases of military life and to prepare the officer student to render legal services to higher commanders."[21] The course consisted of twenty-eight students: twenty-five Army judge advocates, one Navy law specialist, and two Marine Corps legal specialists. Two students who would later reach flag rank were in this class: CPT William K. Suter, who would later wear two stars and serve as Acting The Judge Advocate General from 1989 to 1991 before becoming the Clerk of the U.S. Supreme Court, and CPT Dulaney L. O'Roark Jr., who briefly served as TJAGSA's commandant before being promoted to brigadier general in 1985.[22]

Army, Navy, and Marine Corps students, 13th Career Course (1964–65)

In keeping with the times, as the Army began deploying personnel to Southeast Asia, there was a new course offering called "legal aspects of counterinsurgency." The students took a field trip to Fort Bragg, North Carolina, where they attended "Exercise Blue Chip" and saw a demonstration of weapons, tactics, and equipment.[23]

In the late 1960s and early 1970s, as American involvement in the Vietnam war increased and opposition to the war grew in U.S. society, the desire of many Americans to enter the Army—much less the JAG Corps—decreased markedly. This explains, at least in part, why the Advanced Course was relatively small: the Corps was not retaining officers who were interested in staying on active duty and receiving advanced legal education. But a bigger issue, as explained by COL (retired) John Jay Douglass,[24] was that

[17] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, FISCAL YEAR 1964, at 14.

[18] *Id.* at 15.

[19] Executive is today's Executive Officer, Office of The Judge Advocate General. Major General Prugh was The Judge Advocate General from 1971 to 1975. For more on Prugh, see JUDGE ADVOCATE GENERAL'S CORPS, U.S. ARMY, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 256–57 (1975).

[20] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, FISCAL YEAR 1967, at 10 [hereinafter 1967 ANNUAL REPORT].

[21] *Id.* at 9.

[22] For more on Major General (retired) William K. Suter, see *New Clerk for Supreme Court*, N.Y. TIMES, 28 Jan. 1991, at A3. *See also Retiree Spotlight*, MILITARY OFFICER, Aug. 2010, at 28; FRED L. BORCH, JUDGE ADVOCATES IN VIETNAM: ARMY LAWYERS IN SOUTHEAST ASIA 1959–75, at 85, 95–96, 111.

[23] 1967 ANNUAL REPORT, *supra* note 20, at 10–11.

[24] Colonel (Retired) John Jay Douglass, who served in the Corps from 1953 to 1974, finished his military legal career as TJAGSA's commandant. It was Colonel Douglass who oversaw the design and construction of a new TJAGSA building on the University of Virginia's North Grounds. Douglass also originated the General Officer Legal Orientation and Senior Officer Legal Orientation Courses. *See generally* JOHN JAY DOUGLASS, MEMOIRS OF AN ARMY LAWYER (2012); *see also* Fred L. Borch, *Legal Education for Commanders: The History of the General Officer Legal Orientation and Senior Officer Legal Orientation Courses*, ARMY LAW., Dec. 2013, at 1.

there was little incentive for judge advocates to attend the Advanced Course. First, attendance was not a requirement for promotion, much less being selected for a particular assignment and, in any event, those who did not wish to attend in residence could complete the Advanced Course by correspondence.

Second, Charlottesville was not considered to be a good duty assignment—at least for an academic year. There was no commissary or post exchange in the area and, in this era of relatively small pay checks for officers, this was a significant issue. Finally, there was the feeling that going to the Advanced Course to study law and engage in academic discourse was a waste of time for a career Army lawyer—time that could be better spent in the field doing legal work. There was a reasonable basis for this view, since many senior leaders in the Corps had never attended the Advanced Course—Major Generals Kenneth Hodson (TJAG from 1967 to 1971), George Prugh (TJAG from 1971 to 1975), and Wilton B. Persons (TJAG from 1971 to 1975), had not attended the Advanced Course. Prugh and Persons had not even attended a basic course.

Colonel Douglass, who served as TJAGSA Commandant from 1970 to 1974, was determined to enhance the prestige of the Advanced Course—and increase the number of students attending it. To this end, Douglass began soliciting younger judge advocates to come to Charlottesville to attend the course, which worked to some degree, but increased numbers only incrementally. Douglass also added some new features to the course. The students in the Nineteenth Advanced Course, for example, which was now thirty-six weeks in length, holding its first class on 31 August 1970, conducted a three-day field trip to the United Nations in New York City. The thirty-eight students in the class, which included military lawyers from Ethiopia, Iran, and South Vietnam, "received detailed briefings from both United States, United Nations, and foreign diplomats and legal advisors, including talks by Arab and Israeli representatives on the Middle East situation."[25] Since the upheaval resulting from the overwhelming Israeli victory in the Six Day War (June 1967) was still very much in the news, this focus on the Middle East should come as no surprise.

The Nineteenth Class also traveled by military aircraft to Fort Riley and Fort Leavenworth, Kansas. They toured the Correctional Training Facility at Riley and the U.S. Disciplinary Barracks at Fort Leavenworth, and were also given a tour and briefing at the Command and General Staff College in Kansas.[26] Similar field trips occurred for the next several years, as well. Understandably, Advanced Course attendance became more attractive in nature.

By the late 1970s, the Advanced Course consisted of between fifty and sixty students from the Army, Navy, and Marine Corps. According to the *Annual Bulletin 1977-1978*, "all students are attorneys with four to eight years of experience as practitioners" and selection to attend the course was "competitive"—at least for the Army judge advocates, who were selected by a board of officers convened by The Judge Advocate General of the Army."[27]

The 26th Advanced Course, for example, which began in August 1977 and ran forty-one weeks in length, consisted of core courses in the first semester and electives in the second semester. Each student was required to take "at least fourteen electives ranging from Law of the Sea to Legal Assistance."[28] The thesis was no longer required, but a student could write a "research paper" in lieu of six electives, provided that the paper was suitable for publication and on "a legal topic acceptable to the School's writing committee."[29] Another option was to substitute electives offered by TJAGSA with "graduate courses at the University of Virginia Law School."[30] These changes in the Advanced Course curriculum, however, had not altered the goal of the course—preparing "lawyers for duties as staff judge advocates and legal advisors at all levels."[31]

The fifty-seven students who completed the 26th Advanced Class, including officers from Ghana, the Republic of China (Taiwan), and Zaire, were the last to complete an advanced course, as the program was renamed the Graduate Course in 1978. The decision to re-designate the program was made by then Commandant COL Barney L. Brannon, who served in that position from 1976 to 1979. Regardless of the name of the course, however, the fundamentals remained the same.

By the mid-1980s, the option not to attend the Graduate Course by completing it by correspondence was no longer available, and every judge advocate who desired to make the Corps a career was required to attend the Graduate Course. The *Annual Bulletin 1984–1985* describes the course as consisting "of between 75 and 85 students selected from the Army, Navy and Marine Corps."[32] The course, now forty-two weeks long, "was conducted over a two-semester academic year."[33] The first semester was a core curriculum of "criminal law, administrative and civil law, international

[25] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL REPORT, 1970–71, at 23.

[26] *Id.*

[27] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL BULL., 1977–78, at 9. The "Annual Report" was renamed the "Annual Bulletin" in 1977.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 10.

[31] *Id.*

[32] THE JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, ANNUAL BULL. 1984–85, at 13.

[33] *Id.*

law, contract law, military subjects, and communications."[34] Students were required to take electives in the second semester.[35]

A major development in the history of the Advanced/Career/Graduate Course occurred in 1988, when Congress enacted legislation authorizing TJAGSA to award a "Masters of Law" in military law. This degree first went to the 36th Graduate Course, when its members graduated in May 1988. Captain Elyce Santerre, who had the highest overall academic standing in the class, was the first to walk across the stage and consequently was the first judge advocate to be awarded the LL.M.[36]

In the 1990s and the 2000s, the curriculum of the Graduate Course changed—with some courses deleted and others added—depending on changes in the law and the needs of the Army. The course also now operates on the quarter system and, while the bulk of the core curriculum is taught during the first two quarters, electives are now offered in the second quarter. Another major development over the past twenty years has been the presence of Air Force judge advocates in the Graduate Course, with the first Air Force attorney, Captain Bruce T. Smith, attending the 39th Graduate Course in 1990. Since that time, there have been Air Force officers in every Graduate Class.

The latest Graduate Course—the 62d—which began on 12 August 2013, had 114 uniformed judge advocates: seventy-seven active Army, five Army Reserve, two Army National Guard, ten Air Force, fifteen Marine Corps, four Navy, and one Coast Guard. Four international law students, from Egypt, Israel, Korea, and Turkey, rounded out the class of 118. As with the 61st Graduate Course, the size of the class required that it be divided into two parts (Sections A & B). One section receives its core instruction in the morning, with the other section being taught the same material in the afternoon.

While the content of the instruction remains similar to that delivered to earlier Advanced, Career, and Graduate Courses, the method of delivering this instruction is remarkably different, given the prevalence of information technology in the classroom. For example, while the Graduate Classes in the 1990s were taught from paper outlines, today's students have their instructional materials delivered to them electronically via Blackboard.

The 62d Graduate Course also continued the now traditional trip to the U.S. Supreme Court, where those who so desired were admitted to the Court. While a trip to New York City or Kansas is no longer part of the curriculum, the students of the 62d Graduate Course did travel to Gettysburg, Pennsylvania, for a two-day staff ride that focused on leadership issues during the Battle of Gettysburg—an event inaugurated in the 54th Graduate Class in April 2006.

When the 62d Graduate Course graduated on 22 May 2014, its members returned to the field and to other judge advocate assignments, better educated in military law and better prepared to be future leaders. Consequently, while much has changed in the manner in which advanced legal education is taught at The Judge Advocate General's Legal Center and School over the years, the fundamental purpose of that education remains the same.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

[34] *Id.*

[35] *Id.* at 13.

[36] For more on the LL.M., see Fred L. Borch, *Master of Laws in Military Law: The Story Behind the LL.M. Awarded by The Judge Advocate General's School,* ARMY LAW., Aug. 2010, at 1.

"JAG Corps Couples": A Short History of Married Lawyers in the Corps

Fred L. Borch
Regimental Historian & Archivist

For some years now, "Judge Advocate General (JAG) Corps Couples"—Army lawyers married to each other—have been a part of our Corps. Today, this is nothing unusual, since the Corps is twenty-six percent female,[1] and more than a few judge advocates are married to other current or former judge advocates. In the early 1970s, however, with a gender-segregated Army still in existence (the Women's Army Corps was not abolished until 1978) and with fewer than ten women total in the entire Corps in mid-1972,[2] husband-and-wife attorneys who entered the Corps *at the same time* were both a novelty and a rarity.[3]

The first JAG Corps couples were members of the 65th Judge Advocate Officer Basic Course (OBC). This class, which was in session at The Judge Advocate General's School (TJAGSA) from 21 August to 13 October 1972, had "the first two JAG husband-and-wife lawyer teams to serve together."[4] They were Captains (CPTs) Joyce E. and Peter K. Plaut and CPTs Joseph W. and Madge Casper. The Plauts were graduates of the University of Michigan's law school in 1971 and 1972, respectively. The Caspers were 1971 graduates of Case Western Reserve University School of Law. When the two couples graduated the OBC, the Caspers were assigned to the Washington, D.C., area, while the Plauts went to Germany.[5] When CPTs Joyce Platt and Madge Casper pinned the crossed-pen-and-sword insignia on their collars in 1972, the total number of female judge advocates jumped from nine to eleven. Only one of the two women remained in the Corps for a career: Joyce Plaut, later Joyce Peters. She retired as a colonel in 1994.[6]

Captains Joseph W. (left) and Madge Casper (right) were members of the 65th Basic Course.

Captains Peter K. (third row, first from the right) and Joyce E. Plaut (first row) (later Joyce Peters) were members of the 65th Basic Course.

Other JAG Corps Couples followed. Captains Nancy M. and Frank D. Giorno were members of the 71st Basic Course,

[1] E-mail from Colonel Corey Bradley, Chief, Pers. Plans & Training Office, Office of the Judge Advocate Gen., The Pentagon, Wash., D.C., to author (30 May 2014, 04:52 PM).

[2] *Id*. By comparison, the active component Corps had 511 female judge advocates as of June 2014.

[3] While there have been—and will continue to be—judge advocates married to each other, this article focuses on those who entered the Corps at the same time, and were already married to each other.

[4] ALUMNI NEWSLETTER, THE JUDGE ADVOCATE GEN.'S SCHOOL, 1 Oct. 1972, at 4.

[5] Two other judge advocates of note in the 65th Basic Course were Coast Guard Lieutenant Winona G. Dufford and Army Captain Fredric I. Lederer. Dufford was one of the two women lawyers then in the U.S. Coast Guard. A graduate of the University of Connecticut's law school, she was stationed in New Orleans after graduation. Lederer, a 1971 Columbia Law School graduate, later taught criminal law at The Judge Advocate General's School, U.S. Army and was the principal author of the Military Rules of Evidence promulgated in 1980. After leaving active duty to take a teaching position at William and Mary's law school, Lederer remained active in the Army Reserve. He retired as a colonel and was made a Distinguished Member of the Regiment in 1998.

[6] Colonel Joyce E. Peters was the first female judge advocate to serve as a Corps Staff Judge Advocate (I Corps, 1992–1993) and the only judge advocate in history to serve as the Senior Military Advisor to the Secretary of the Army (1993–1994). She was the first female Army lawyer to be decorated with the Distinguished Service Medal, the Army's highest award for service. Lieutenant Commander Danielle Higson, Major Mary Milne & Major Hana Rollins, Oral History of Colonel (Retired) Joyce E. Peters (May 2012).

which was in session from 7 January to 1 March 1974.[7] The Giornos had both graduated from the University of Baltimore School of Law in 1973.[8] Captains Coral C. and James H. Pietsch, both 1974 graduates of Catholic University Law School, were members of the 74th Basic Course. Captain Pietsch would later make history as the first female brigadier general in the Corps and the first Asian-American female Army officer to wear stars. She also is the first half of a JAG Corps couple to reach flag rank, as her judge advocate spouse also transferred to the Army Reserve after completing his tour of active duty. Brigadier General Pietsch was the Chief Judge (Individual Mobilization Augmentee) at the Army Court of Criminal Appeals when she retired from the Army Reserve in July 2006.[9]

History was made again on 22 October 1974, when the 75th Basic Course began and *three* husband-and-wife teams joined their fellow students in the class. They were Captains Myrna A. and Robert W. Stahman, Cherie L. and Robert R. Shelley, and Vicky and Jack J. Schmerling. When the course graduated on 18 December 1974, the Stahmans left Charlottesville for Germany, while the Shelleys went to Fort Ord, California. As for the Schmerlings, they had their initial assignments at Fort Meade, Maryland.[10]

The 75th Basic Course, which began on 22 October 1974 and finished on 18 December 1974, had three married couples in it: Captains Myrna A. and Robert W. Stahman (left), Cherie L. and Robert R. Shelley (center), and Vicky and Jack J. Schmerling (right).

Other married couples who entered the Corps in the 1970s include: Captains Albert R. and Cathy S. Cook, members of the 80th Basic Course (both of whom were 1975 graduates of the University of Florida School of Law),[11] and CPTs Connie S. and Sanford W. Faulkner and Michelle D. and Scott O. Murdoch, who were members of the 85th Basic Course.

Over the years, many more JAG Corps Couples have entered our ranks. One is worth mentioning in closing: First Lieutenant Flora D. Darpino and First Lieutenant Christopher J. O'Brien, who were married to each other when they entered the 112th Basic Course in January 1987. Both graduated from Gettysburg College and completed law school at the University of Rutgers-Camden. Both stayed for a full career, with Lieutenant General Darpino assuming duties as the Army's 39th Judge Advocate General in 2013. While she represents a number of historical firsts, for purposes of this article, Lieutenant General Darpino is important as the first half of a JAG Corps Couple to wear three stars in our Corps.

A final historical note: From the beginning, there was never any intentional recruiting or soliciting of married couples to join the Corps.[12] On the contrary, the entry of husband-and-wife attorney teams resulted from a combination of factors. First, the end of the all-male draft in the 1970s and a recognition that the Army could not meet its future manpower needs without female Soldiers naturally led to an increased emphasis on inviting women to don Army green—and the Corps similarly was increasingly interested in filling its ranks with women. Second, the rise of feminism in American society, and increased opportunities for women in business and the professions, resulted in many more women attorneys (today, in fact, almost fifty percent of law degrees are earned by women).[13] Since some of these female attorneys were married to male attorneys, this inevitably led to both husband and wife signing up for a tour of duty as "JAGs" in the 1970s.

As the Corps moves through the second decade of the 21st century, the existence of JAG Corps Couples might seem like a "dog bites man" story. But it was not always so. While married couples do continue to join the Corps at the same time, a more likely scenario is the one that occurred in the 169th Basic Course. In this class, which began on 2 January 2006 and graduated on 7 April 2006, three single male and three single female judge advocates who met each other in the class were married after graduation. They were: Marcus L. Misinec and Laura O'Donnell, Melissa Dasgupta-Smith and

[7] Captain John D. Altenburg Jr., who would later be promoted to major general and serve as The Assistant Judge Advocate General from 1997 to 2001, was also a member of this class.

[8] THE JUDGE ADVOCATE GENERAL'S SCHOOL, 71ST BASIC CLASS DIRECTORY 15 (1974).

[9] In May 2012, the U.S. Senate confirmed Brigadier General (Retired) Pietsch to serve as Judge, U.S. Court of Appeals for Veterans Claims.

[10] THE JUDGE ADVOCATE GENERAL'S CORPS, JAGC PERSONNEL AND ACTIVITY DIRECTORY, 1 Oct. 1976, at 61–62.

[11] Captain Andrew S. Effron, who would later serve as Chief Judge, U.S. Court of Appeals for the Armed Forces, was a classmate of the Cooks.

[12] E-mail from Major General (Retired) William K. Suter, to author (27 May 2014, 1:40PM) (on file with author). The subject of the e-mail was JAG Corps Couples.

[13] Am. Bar Ass'n, *A Current Glance at Women in the Law*, http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf (last visited June 10, 2014).

Graham Smith, and Patrick and Elisabeth Gilman. No wonder some judge advocates refer to the 169th as the "love class."

Correction. The last paragraph of the May 2014 "Lore of the Corps" about Major General Eugene M. Caffey discusses the last Officer Efficiency Report given him as TJAG, and quotes language from "General W. Bruce Palmer, the Vice Chief of Staff of the Army." This is wrong; the officer writing Caffey's efficiency report in fact was General Williston Birkheimer Palmer. The author mistakenly confused this officer, who graduated from West Point in 1919, with General Bruce Palmer Jr., who graduated from West Point in 1936, and was Vice Chief of Staff at a later time (1968 to 1972). The author regrets this error.

More historical information can be found at

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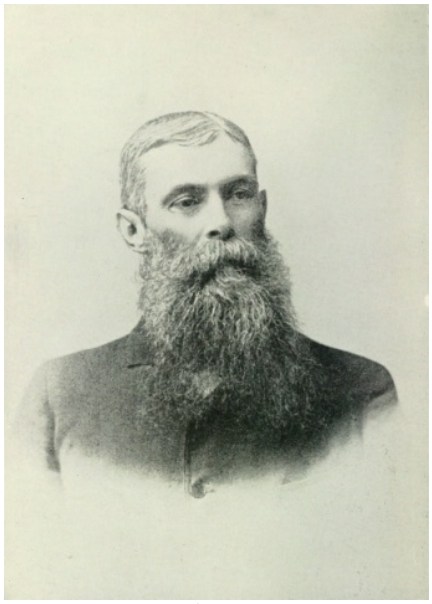
The Trial by Military Commission of Queen Liliuokalani

Fred L. Borch
Regimental Historian & Archivist

On 8 February 1896, Queen Liliuokalani, the last monarch of Hawaii, was escorted into the Throne Room of what had once been her Royal Palace in Honolulu. Two Hawaiian policemen stood behind her as she took a seat on a high-backed chair. Seated in front of the queen, at a long table in the middle of the room, were the eight members of a military commission. This military tribunal had been convened to try Liliuokalani for "misprision of treason," as it was alleged that the queen had concealed knowledge of a treasonous plot to overthrow the Republic of Hawaii—the newest name of the government that had taken power since the overthrow of Liliuokalani in January 1893. What follows is the story of how the last ruler of the Kingdom of Hawaii came to be prosecuted before a military commission—a largely forgotten episode in military legal history.[1]

Queen Liliuokalani (shown here as Crown Princess), ca. 1887

Queen Liliuokalani's predicament had begun some twenty years earlier when her brother, King David Kalakaua, was the reigning monarch in the Kingdom of Hawaii. Businessmen and Christian missionaries, who had come to the islands from the United States and Europe, did not like the absolutist nature of the Hawaiian monarchy, preferring instead a constitutional monarchy where the king (or queen) had significantly less power.[2] Additionally, as the amount of Hawaiian land sown to sugar cane increased dramatically, and sugar mills (including the largest and most modern steam-powered facility in the world) were built, the white businessmen who dominated the sugar growing industry were increasingly unhappy with the Hawaiian system of government. In 1887, after King Kalakaua attempted to further dilute the power of the white businessmen and missionaries in the islands, these "white money men" took action against the king.[3]



Sanford B. Dole, President of the Provisional Government and Republic of Hawaii

Led by Sanford B. Dole,[4] these men created the "Hawaiian League" and forced King Kalakaua to sign a new

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[1] The author thanks Major M. Eric Bahm for suggesting the idea for this "Lore of the Corps" article.

[2] The Hawaiian monarch was virtually absolute in his powers, although the kingdom did have a "House of Nobles" and "Legislative Assembly." These two bodies, however, had little power in the day-to-day running of the islands. In contrast to most monarchies, however, where blood lines determine who is a king or a queen, the Legislative Assembly, consisting mostly of men of Hawaiian native blood, elected the monarch. STEPHEN DANDO-COLLINS, TAKING HAWAII 33 (2012).

[3] *Id.* at 53.

[4] Born in Honolulu in 1844, Sanford Ballard Dole (his parents had come to Hawaii in 1840 from Maine) left the islands to attend law school, but returned in 1867 to establish a successful law practice. In 1886, he was appointed to the Kingdom of Hawaii's Supreme Court as an Associate Justice. After the overthrow of the monarchy in 1893, Dole was elected as president of the Provisional Government. After the Provisional Government declared itself the Republic of Hawaii in 1894, Dole and his allies in the new republic lobbied Congress to annex the islands. After annexation was accomplished in 1898, President William McKinley appointed Dole as the first governor of the new Territory of Hawaii. Dole later served as a U.S. District Court Judge from 1903 to 1916. Sanford B. Dole died in Honolulu in 1926. *Sanford Ballard Dole (1844–1926)*, HAWAIIHISTORY.ORG, http://www.hawaiihistory.org/index.cfm? fuseaction =ig.page&PageID=407 (last visited July 10, 2014); *see also* HELENA G.

constitution that reduced his powers as a sovereign while increasing the authority of the legislature (where men like Dole were serving as members of the Reform Party). This same constitution also disenfranchised many Asians and native Hawaiians by requiring land ownership and literacy. But it expanded the franchise to wealthy non-citizens living in Hawaii, and allowed these same men to stand for election to the legislature. As a result, "only wealthy, educated whites, who made up just three percent of the population of 90,000 people, could stand for election."[5] Since King Kalakaua had been forced to accept the constitution by the threat of violence, it was known as the "Bayonet Constitution."[6]

Kalakaua died in 1891 and his sister, Liliuokalani, succeeded him on the throne. When she proposed revising the existing constitution so that it would restore her powers as a monarch and extend voting rights to native Hawaiians, thirteen white businessmen and sugar planters—some of whom had been members of the Hawaiian League—now acted once more against the monarchy. They formed a "Committee of Safety" and began organizing a coup to overthrow the kingdom. The committee's ultimate goal, driven by the strong economic, political, and family ties of its members to the United States, was American annexation of the Hawaiian Islands.[7]

On 17 January 1893, a militia created by the Committee of Safety assembled near Queen Liliuokalani's Iolani Palace in Honolulu. They were joined by 162 Sailors and Marines from the cruiser USS *Boston*, which was moored in Honolulu Harbor. These American personnel had been ordered by John L. Stevens, the U.S. Minister to Hawaii, "to protect the lives and property of American citizens," including the members of the Committee of Safety.[8] Although no one will ever know what would have happened if the queen had decided to resist the coup, Liliuokalani wanted to avoid violence and consequently surrendered peacefully.

The Committee of Safety now established a "Provisional Government" and elected Sanford Dole as president.[9] In the United States, President Grover Cleveland refused to recognize the Dole government and insisted that Queen Liliuokalani be restored to her throne. Dole and his fellow coup members, however, refused to give up power and instead proclaimed the Republic of Hawaii on 4 July 1894.[10]

Six months later, on 6 January 1895, Hawaiians loyal to Queen Liliuokalani launched a counter-coup. They hoped to oust the Dole government and restore the Kingdom of Hawaii. A royalist force of some one hundred men occupied Punchbowl Hill, and men loyal to the queen also occupied the Diamond Head crater. But the uprising failed and some three hundred royalists were taken into custody by Dole's republican government.[11] Queen Liliuokalani was apprehended as well.

Since the Dole Government had declared martial law, it now decided to crush royalist resistance by using military commissions to prosecute those men loyal to Queen Liliuokalani—and the queen herself—for treason in plotting to overthrow the Republic of Hawaii.

The first royalists were tried on 17 January 1896. The proceedings were held in the Throne Room and, "to save time, the commission tried the accused in batches."[12] Apparently, all were charged with treason and open rebellion. Some pleaded guilty, some did not. When the commission finished its business after 35 days, it had heard evidence against 191 accused. Very few were found not guilty. Some were sentenced to hang.

On 24 January, Queen Liliuokalani, who had been locked up in an "improvised cell directly above the improvised courtroom,"[13] signed a "formal declaration" prepared by the Dole Government. In this document, she abdicated her throne and called upon all her subjects to recognize the Republic of Hawaii as the nation's legitimate government. Liliuokalani initially had strenuously resisted signing the declaration, but did so after receiving representations that, if she signed the instrument, the military trials would come to a halt and those who had already been tried and convicted would be immediately released.[14]

As Queen Liliuokalani soon discovered, her signature had no impact on her case or that of other royalists: the trials continued and death sentences continued to be meted out. Her own trial began at 1000 on 8 February. The judge advocate on the case was Captain William A. Kinney, an attorney who had only recently been commissioned in the Republic of Hawaii's Army. The senior member of the military tribunal was Colonel William A. Whiting, a Harvard Law School graduate who had resigned as one of Hawaii's circuit court

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ALLEN, SANFORD BALLARD DOLE: HAWAII'S ONLY PRESIDENT, 1844–1926 (1998).

[5] *Id.* at 50.

[6] *Id.* at 52.

[7] *Id.* at 122; *see also* WILLIAM ADAM RUSS, THE HAWAIIAN REPUBLIC (1894–1898): AND ITS STRUGGLE TO WIN ANNEXATION (1992).

[8] DANDO-COLLINS, *supra* note 2, at 148.

[9] *A Revolution in Hawaii*, N. Y. TIMES, Jan. 28, 1893, at 1.

[10] *Republic of Hawaii Formally Proclaimed*, N. Y. TIMES, July 28, 1894, at 1.

[11] DANDO-COLLINS, *supra* note 2, at 299.

[12] *Id.* at 305.

[13] *Id.*

[14] *Id.* at 306, 308.

judges to accept a commission as a colonel and an appointment to the military commission.

Queen Liliuokalani had initially been charged with the capital offense of treason. Under pressure from the U.S. and British governments, however, the Dole Government dismissed that charge and instead tried the Hawaiian monarch for misprision of treason, which was not a death penalty offense.[15]

The prosecution decided to prove that Liliuokalani had known about the counter-coup and, in fact, had encouraged it. None of the coup leaders had implicated their queen in any statement, and there was no evidence that Liliuokalani had any part in financing the uprising. But two royal officials did admit that they had spoken with the queen about the coup in early January, and the military commission consequently could conclude that she "had known of some act against the government was in motion."[16] The more damning evidence, however, were the rifles and explosives found buried in the flowerbeds of the queen's personal residence in Honolulu and entries in Liliuokalani's diary, which indicated that she knew about the counter-coup.[17] The queen denied all knowledge of any plot against the Republic of Hawaii, although it was clear that she sympathized with the aims of those who sought to restore her kingdom.

On 27 February 1896, Queen Liliuokalani was found guilty as charged. She was sentenced to be confined *to hard labor* for five years and to pay a $5,000 fine.[18] The following day, President Sanford Dole, acting as Commander in Chief, commuted most of the death sentences that had been adjudged by the military commission. In fact, no hangings were ever carried out, and most of those who had been convicted served only short prison sentences. Dole also cancelled the hard labor portion of the queen's sentence. She subsequently was confined to a small room in Iolani Palace; she was guarded by military personnel at all times. Eight months later, Dole released Liliuokalani from confinement, and she returned to her private residence, where she remained under house arrest. A year later, she was given a full pardon and informed that she was now able to travel freely.

In May 1897, delegates from the Republic of Hawaii traveled to Washington, D.C., to negotiate the annexation of Hawaii to the United States. There was considerable congressional opposition from those with anti-imperialist views, which was buttressed by Liliuokalani, who had journeyed to Washington, D.C., with a petition containing "thousands of signatures from Hawaiians opposed to annexation."[19]

For a time, it looked as if annexation efforts might fail. After the USS *Maine* blew up in Havana on 15 February 1898, however, "patriotic anger and jingoistic fervor" gripped the United States.[20] After the House of Representatives Foreign Relations Committee reported that Hawaii was "an essential base for U.S. operations against the Spanish in the Philippines and Guam,"[21] events moved rapidly. A joint resolution for the annexation of the islands passed the Senate on 15 June and the House on 6 July. President William McKinley signed into law the annexation on 7 July 1898. Hawaii remained a territory until 1959, when it became the 50th state.[22]

In 1993, Congress passed a joint resolution apologizing to the people of Hawaii for the U.S. government's role in the overthrow of Queen Liliuokalani.[23] But no mention was made of the queen's trial by military commission—proving that it remains a forgotten event in military legal history.

As for Queen Liliuokalani? She spent her remaining days in Honolulu. She died in 1917 due to complications from a stroke. She was seventy-nine years old.

More historical information can be found at

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[15] *Id.* at 308.

[16] *Id.*

[17] *Id.* at 309.

[18] *Id.* at 311.

[19] *Id.* at 317.

[20] *Id.*

[21] *Id.*

[22] *The U.S. Occupation*, HAWAII KINGDOM, http://www.hawaiiankingdom.org/us-joint-resolution-1898.shtml (last visited July 21, 2014).

[23] To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510 (1993), *available at* http://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg1510.pdf (last visited July 29, 2014). The resolution identifies the role of U.S. Minister Stevens (who supported the Committee of Safety and extended diplomatic recognition to Dole's Provisional Government) and the unlawful landing of Sailors and Marines from the USS *Boston* as the basis for the apology.

"I Want That Man Shot": A War Crime in Vietnam?

Fred L. Borch
Regimental Historian & Archivist

On 22 September 1968, a wounded and unarmed Vietnamese man who had been captured by a patrol of troopers from the 82d Airborne Division, and was thought to be a Viet Cong (VC) guerrilla, was shot and killed. The shooting occurred after the company commander, Captain (CPT) John Kapranopoulos, made this radio transmission to the Soldiers holding the man: "Damn it, I don't care about prisoners; I want a body count. I want that man shot."[1]

About the same time, Kapranopoulos sent out a second patrol to intercept another suspected VC insurgent. When asked by one Soldier in that patrol what he wanted them to do if the Vietnamese man did not have identification papers proving that he was an innocent civilian, Kapranopoulos replied: "Are you shitting me?" As a result, after capturing this suspected VC and apparently failing to find proof that their prisoner was a civilian, the American Soldiers shot and killed him too.[2]

What follows is the story of CPT Kapranopoulos's general court-martial for the premeditated murder of these two Vietnamese civilians, a two-day affair that occurred shortly after Thanksgiving 1968 at the "Plantation" compound located east of Long Binh, Vietnam.[3]

The accused, twenty-seven year old CPT John Kapranopoulos, was described in a contemporary newspaper as "short" and "bespectacled."[4] He was called "Captain K" by his men, as they apparently found his Greek surname too complicated to pronounce. At the time of the killings, Kapranopoulos was in command of Company A, 2d Battalion, 505th Infantry, 82d Airborne Division, and had a reputation as a "gung ho infantry commander [who was] loved by his men and admired by his superiors."[5] This was his second tour in Vietnam; Kapranopoulos had previously served with the 173d Airborne Brigade in 1966, and been awarded the Purple Heart after being wounded in action.[6]

The facts presented at trial, which began on Friday, 29 November, and finished the following day, were that on 22 September 1968, A Company troopers "spotted four Vietnamese with packs on their backs entering a woodline in the vicinity of Pho Loc."[7] Since the four men had backpacks and since Pho Loc was "in Charlie-infested country"[8] near the city of Hue, CPT Kapranopoulos ordered artillery fire into the woods. Moments later, the four Vietnamese emerged from the woods. They no longer were carrying their packs, and they started running from the artillery.

First Lieutenant (1LT) Ralph Loomis, a platoon leader in the company, was ordered by CPT K to pursue the fleeing Vietnamese with a squad of men. Two escaped. The third man, however, fell back "and tried to cut across behind" Loomis and his Soldiers while the fourth Vietnamese, who was faster, tried to make his getaway by outrunning the Americans chasing him.

Kapranopoulos, who was observing the pursuit from the top of a nearby hill, ordered 1LT Loomis to leave two of his Soldiers behind to capture the straggler while the rest of the squad chased the faster man. In pursuing the faster man, the Americans fired several rounds from their M-16 rifles, wounding the fleeing Vietnamese in the left hand. First Lieutenant Loomis testified at trial that "the injured man dived behind a bush," but as the GIs got closer, "he came out with his hands up."[9]

As Loomis related under oath, he then radioed Kapranopoulos "and told the captain that we had the man captured, that he was wounded and unarmed." As Loomis testified, Kapranopoulos replied as follows: "Damn it. I don't care about prisoners. I want a body count. I want that man shot."[10] Since the troopers in A Company wore buttons on their jungle fatigues emblazoned with the slogan "Wine,

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[1] *Looies Claim CO Ordered Unarmed Men Killed—'I Want That Man Shot,'* OVERSEAS WKLY. (PAC. EDITION), Dec. 21, 1968, at 3. [hereinafter *Looies Claim*].

[2] *Id.*

[3] Telephone Interview with Colonel (Retired) Herbert J. Green (July 10, 2014).

[4] *Looies Claim, supra* note 1.

[5] *Id.*

[6] *Id.* Kapranopoulos had enlisted in the Army and was subsequently commissioned in the Infantry after graduating from Officer Candidate School at Fort Benning, Georgia.

[7] *Id.*

[8] "Charlie" was a moniker attached by U.S. troops to the Viet Cong guerrillas—the "Charlie" originating from the radio alphabet as in "Victor Charlie."

[9] *Looies Claim, supra* note 1.

[10] At this time during the Vietnam war, the Army was pursuing an attrition strategy—the theory being that the enemy could be defeated if sufficient numbers of his personnel were wounded or killed. This led to battlefield success being measured in terms of "body count," i.e. the higher the number of enemy bodies, the more successful a fight with the enemy was considered to have been. For more on the attrition strategy, see JOHN PRADOS, VIETNAM 181–82 (2009).

Women, Body Count,"[11] one might think that CPT Kapranopoulos' order was simply a reflection of the mindset in his unit.

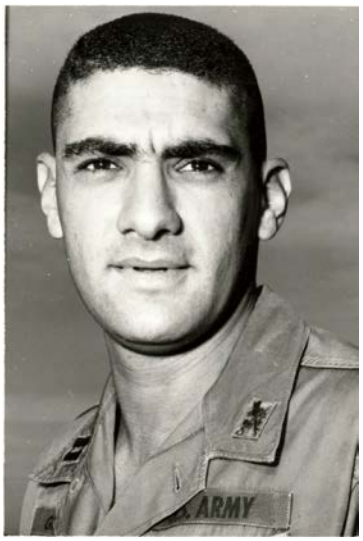
Despite CPT K's order to kill the unarmed prisoner, 1LT Loomis instructed his men not to fire. But Private First Class Joseph Mattaliano, who was serving as the radio-telephone operator or "RTO" and had heard Kapranopoulos' order, began firing his weapon. As Loomis remembered: "The first couple [of rounds] missed. The others hit the man in the neck and rib cage."[12]

As for the second Vietnamese, who had fallen back and attempted to evade 1LT Loomis and his men, he was captured not by the two men that Loomis had left behind but by a squad led by Sergeant Teofilo Colon. Captain Kapranopoulos had sent Colon and his men to intercept this second man who, Kapranopoulos thought, might succeed in evading Loomis' men.[13]

At trial, 1LT Joe E. Harris, an artillery forward observer assigned to Kapranopoulos' company, testified that he had been standing next to CPT K and had heard all the radio transmissions from Kapranopoulos to 1LT Loomis; Harris' in court testimony consequently corroborated what Loomis told the panel. Additionally, 1LT Harris testified that he used a pair of binoculars to watch Colon's squad in action. According to Harris, he saw that Colon's men had captured the suspected VC guerrilla, and that the man was on his knees on the ground with his hands tied behind his back. As Harris watched, "a GI in the squad fired a short execution burst, followed a few seconds later by another. The Vietnamese fell dead."[14]

As Harris put it, he put down the binoculars, turned to CPT Kapranopoulos, and said: "If I were you, I'd untie him." Captain K then "radioed instructions to Colon that the ropes should be removed from the corpse's wrists."[15]

After the trial counsel, Captain Herbert J. Green, presented the testimony of 1LT Loomis and 1LT Harris, the defense counsel, Major Jon N. Kulish, presented his case.



CPT Herbert J. Green

Specialist Five John Thielemann, a medic who had been with 1LT Loomis' men when they captured the wounded and unarmed Vietnamese man, testified that he had slipped while jumping a gully and dropped his weapon. Private First Class Mattaliano then testified that after Thielemann had dropped his rifle, the Vietnamese in their custody "made a suspicious move toward [the weapon], so he opened fire to protect his buddy." In any event, Mattaliano said, there had been no radio transmission from CPT K; there had been no orders to kill any prisoner.[16]

As for the Vietnamese captured by Colon's squad? Sergeant Colon testified that this man had been killed during the chase and that there had never been any order from CPT Kapranopoulos that prisoners were not to be taken in combat. Several other men who had participated in the capture of the two suspected VC insurgents also testified that "they didn't hear any orders to kill [prisoners]."[17]

Lieutenant Colonel Robert Hurley, CPT K's battalion commander, testified that Kapranopoulos was "the best company leader I've seen in my 19 ½ years of military service."[18] Hurley also undercut 1LT Loomis' credibility with the panel hearing the case when he testified that Loomis once told him "he wasn't sure he could kill anyone or have anyone killed." This statement, said Hurley, "was a real shock to me." It likely was somewhat surprising to the panel members as well, given their professions and current location. Hurley's good character evidence was buttressed by the testimony of Brigadier General Alexander R. "Bud" Bolling, the commander of the 82d Airborne Division's 3d Brigade.

[11] Telephone Interview with Colonel Green, *supra* note 3.

[12] *Looies Claim*, *supra* note 1.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

Bolling, who testified before Hurley took the stand, told the panel that Kapranopoulos "was one of the most outstanding company commanders I've ever had in my command."[19]

Not surprisingly, Major Kulish called CPT K to the stand to testify on his own behalf. After swearing to tell the whole truth and nothing but the truth, Kapranopoulos "told the court that he never said a word to Loomis or Colon about killing the prisoners." As for 1LT Loomis, CPT Kapranopoulos said that he "was a lousy platoon leader" and had fabricated the story of a radio transmission. Since a number of Soldiers, in addition to LTC Hurley, testified that "Loomis had a mighty funny attitude toward combat because he didn't like to kill people," this probably undercut 1LT Loomis' credibility with the panel.[20] There was, however, no attack on 1LT Harris' veracity, and his testimony about the substance of CPT K's radio transmissions was unrebutted.

After Colonel Jack Crouchet, the law officer assigned to the court-martial, instructed the panel, the court closed for deliberation. The eight officer members spent just thirty minutes before returning with their verdict: not guilty of the charge and its two specifications of premeditated murder. Kapranopoulos, who would have been sentenced to life imprisonment if he had been convicted as charged, walked out of the small, air-conditioned courtroom as a free man.[21]

Had CPT K been found guilty, the government intended to try PFC Mattaliano for his part in the shooting. After the acquittal, however, the case against Mattaliano was dropped.

What explains the result in *United States v. Kapranopoulos*? Did a war crime occur? Was the evidence sufficient for a finder of fact to conclude—beyond a reasonable doubt—that the accused was guilty of ordering the unlawful killing of two prisoners? If so, why would the panel of officers acquit him?

The evidence—testimony from two lieutenants who had no motivation to lie or concoct a story incriminating CPT Kapranopoulos—was overwhelming. But from the outset, the senior Army lawyer involved in the case knew a successful prosecution would be problematic. The Tet Offensive of January 1968—in which vicious, coordinated VC and North Vietnamese attacks had been defeated but with heavy U.S. and Army of Vietnam (ARVN) losses—was still fresh in everyone's mind, and attitudes toward the enemy had hardened.[22] Additionally, at this time, all courts-martial were heard by panels (there was no option for trial by military judge until 1969) and, for trials held in Vietnam, this meant panels consisting, at least in part, of combat commanders—men who had seen hard fighting and consequently not only would be sympathetic to CPT K's predicament but would be loathe to find him guilty of war-related misconduct.

Major General Kenneth J. Hodson and Major Barney L. Brannen, Jr.

This explains, at least in part, why Major (MAJ) Barney L. Brannen Jr., the Staff Judge Advocate at II Field Force, told the convening authority, Lieutenant General Walter T. "Dutch" Kerwin that, although he (Brannen) believed Kapranopoulos would be found not guilty, "we had no choice but to try him anyway."[23] In Brannen's view, there was no question that CPT Kapranopoulos had ordered the killings and was guilty; this alone was sufficient reason to try him by general court-martial. But an additional reason for prosecuting him was that Captain K's "we don't take prisoners in combat" order was now common knowledge, and failing to prosecute him would send the message that such an attitude was acceptable in the II Field Force. General Kerwin saw it the same way, and so the case went to trial.[24]

Later, after the acquittal of CPT Kapranopoulos, the president of the court-martial told MAJ Brannen that "we [the panel] thought CPT K was guilty, but we just couldn't find him guilty." Just why this officer told Brannen that the panel

[19] *Id.*

[20] *Id.*

[21] *Id.* Jack Crouchet, the judge advocate who served as law officer in the trial (the law officer was the forerunner of today's military judge), later included the *Kapranopoulos* court-martial in a book he authored about his experiences in Vietnam. According to Crouchet, "there was great rejoicing" in CPT K's unit when news of his acquittal reached the Soldiers. JACK CROUCHET, VIETNAM STORIES 134 (1997). Since Crouchet changed the names of the participants in his book, his re-telling of the event is somewhat different from the version reported in *Overseas Weekly*.

[22] On 30 January 1968, the beginning of the lunar New Year (or Tet), VC and their North Vietnamese allies launched a series of coordinated attacks designed to destroy the ARVN and encourage the civilian population to rise up against the South Vietnamese government. The VC and North Vietnamese struck five major cities, thirty-six provincial capitals, sixty-four district capitals, and fifty villages. They also attacked Ton Son Nhut Air Base outside Saigon and successfully penetrated the U.S. Embassy grounds in Saigon. Although the enemy forces were decisively defeated (more than 50,000 VC and North Vietnamese were killed or wounded), U.S. and ARVN losses were heavy (20,000 killed or wounded in action). For more on Tet, see ERIC M. HAMMEL, FIRE IN THE STREETS (1991).

[23] E-mail from Colonel (Retired) Barney L. Brannen Jr., to author (July 23, 2014, 5:53 PM) (on file with author).

[24] *Id.*

had engaged in an act of jury nullification is an open question, but the man apparently felt comfortable in sharing this information.[25]

Time magazine later pointed to the result in *Kapranopoulos* as proof that "military courts sometimes follow the unofficial 'mere gook' rule, which devalues Vietnamese lives."[26] According to *Time*, "atrocities" like the killings in the CPT K court-martial occurred because "the tension of being feared and hated in a remote, racially different Asian country . . . pushed many Americans toward a tribalistic logic—all 'gooks' are enemies and therefore killable."[27]

What became of some of the players in this event? Walter T. "Dutch" Kerwin Jr. reached four star rank and was the Army Vice Chief of Staff before retiring in 1978. He died in 2008. Alexander R. "Bud" Bolling finished his distinguished career as a major general. He retired in 1973 and died in 2011. The II Field Force Staff Judge Advocate, MAJ Barney Brannen, retired as a colonel in 1979; he finished his career in our Corps as the Commandant of The Judge Advocate General's School. The trial counsel, Captain Herbert "Herb" Green, is perhaps best remembered for his many years as a trial judge. He retired as a colonel in 1994 and now works as an administrative law judge for the Social Security Administration. As for then CPT Kapranopoulos? A quick Internet search shows that he apparently retired as a lieutenant colonel and today lives in Arizona.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

https://www.jagcnet.army.mil/8525736A005BE1BE

[25] *Id.*

[26] *Legal Orders*, TIME, Apr. 12, 1971, at 18.

[27] *Id.* "Gook" was a pejorative moniker for all Vietnamese (and Asians) used by GIs during the war in Southeast Asia. The derogatory term originated during the Spanish-American War, when U.S. troops in the Philippines began using it to refer to Filipinos. PAUL DICKSON, WAR SLANG 29 (2007).

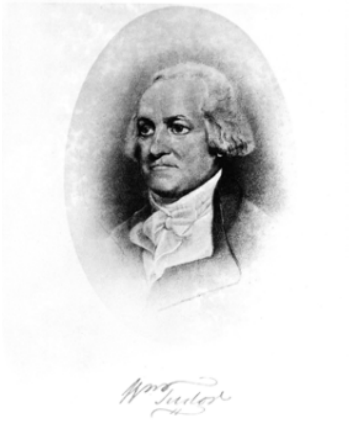
"It's a Family Affair"[1]: A History of Fathers, Daughters and Sons, Brothers, and Grandfathers and Grandsons in the Corps

Fred L. Borch
Regimental Historian & Archivist

The recent promotion to colonel of Nicholas F. "Nick" Lancaster by his father, Colonel (COL) (Retired) Steve Lancaster, both Army lawyers, raises the question of just how many fathers and daughters and sons, as well as brothers and sisters, and even grandfathers and grandsons, have served as lawyers in our Corps. What follows is a quick look at our version of "It's a Family Affair."

Earliest Family Relationships

Truly the most remarkable family connection in our history is that of the first Army lawyer, William Tudor, and his direct descendant, Thomas S. M. Tudor.



William Tudor was The Judge Advocate General (TJAG) from 1775 to 1777; his great-great-great grandson, Tom Tudor, served as an Army lawyer from 1975 to 1978.

Colonel William Tudor was the first Judge Advocate General and served under General George Washington from 1775 to 1777.[2] Two hundred years later, in 1975, his great-great-great grandson, Captain (CPT) Thomas "Tom" Tudor, joined our Corps. Captain Tudor served one tour of duty with 3d Armored Division in Germany and left active duty in 1978. Tudor subsequently joined the U.S. Air Force Judge Advocate General's Corps. He served as an Air Force lawyer from 1980 to 2002.[3]

Another early family connection in our history is Columbia Law School professor Francis Lieber, author of the famous General Orders No. 100 ("Lieber Code") and his son, Guido Norman Lieber, who served first as the Acting Judge Advocate General (1884 to 1895) and then as the Judge Advocate General (1895 to 1901). Although the Liebers technically do not qualify for this *Lore of the Corps* since Francis Lieber was a civilian law school professor who never wore an American uniform, they are worth mentioning because of their significance in the history of Army law.[4]

Fathers and Daughters

Major General George S. Prugh was already retired (he left active duty in 1975) when his daughter, Virginia "Patt" Prugh, entered the Corps. She retired as a LTC in 2006.

The earliest father and daughter pair is Major General (MG) George S. Prugh and his daughter, Lieutenant Colonel (LTC) (Retired) Virginia "Patt" Prugh. General Prugh's distinguished career culminated with his service as TJAG

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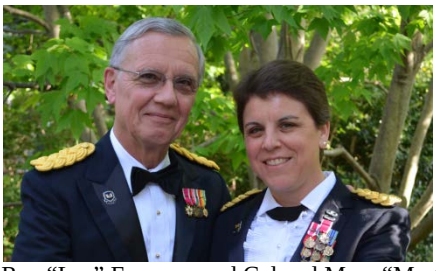
[1] With a tip of the hat to SLY AND THE FAMILY STONE, *Family Affair, on* FAMILY AFFAIR, (Epic Records 1971), *available at* http://www.azlyrics.com/lyrics/slythefamilystone/familyaffair.html (last visited Aug. 27, 2014). *Family Affair* was the number one single on the Billboard Top 100 in late 1971. The author thanks the members of the Retired Association of Judge Advocates (RAJA) for their help in gathering information for this Lore of the Corps, with a special thanks to RAJA members Major General (Retired) William K. Suter and COL (Retired) Barry P. Steinberg.

[2] For more on the first Judge Advocate General, see JUDGE ADVOCATE GENERAL'S CORPS, U.S. ARMY, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 7–10 (1975).

[3] The lineage for this remarkable Tudor connection is as follows: William Tudor (1750–1819); Frederic Tudor (1783–1864); Frederic Tudor (1845–1902); Rosamund Tudor (1878–1949); Tasha Tudor (1915–2010); and Thomas Tudor (1945–present). E-mail, Thomas Tudor, to author, subj: Great-great-great grandson (8 Sept. 2014, 9:58 AM) (on file with author).

[4] For more on Dr. Francis Lieber and his son, see THE ARMY LAWYER, *supra* note 2, at 61–62, 84–86 (1975). While Francis Lieber never served in the U.S. Army, he did see combat as a soldier in the Prussian Army during the Napoleonic wars. He was badly wounded during the Waterloo campaign, and was left for dead on the battlefield. *See* http://www.loc.gov/rr/frd/Military_Law/Lieber_Collection/pdf/francisbio-more.pdf (last visited Sept. 25, 2014).

from 1971 to 1975.[5] His daughter served in the Corps from 1982 to 2006. After retiring from active duty, she joined the U.S. State Department, where she serves today.



Colonel LeRoy "Lee" Foreman and Colonel Mary "Meg" Foreman

Colonel (Retired) LeRoy F. "Lee" Foreman and COL Mary M. "Meg" Foreman are the first father-daughter pair to reach the rank of COL as judge advocates. Lee Foreman served on active duty from 1963 to 1992, including overseas assignments in Germany, Vietnam, and Korea. His daughter graduated from the U.S. Military Academy (USMA) in 1988, and entered the Corps through the Funded Legal Education Program (FLEP). Colonel Meg Foreman is now assigned to the Department of Defense General Counsel's Office.

Finally, Brigadier General (Retired) M. Scott Magers, who entered the Corps in 1968 and retired from active duty in 1995, and his daughter, Eleanor Magers (later Eleanor Vuono), served on active duty at the same time at the Pentagon. Then-CPT Magers has the unique distinction of being the only judge advocate to begin her career in the Army General Counsel's Honors Program[6] and then switch to active duty after completing the Judge Advocate Basic Course. Eleanor left active duty from Fort Carson, Colorado, in 2000.

Other father and daughter combinations include Michael B. "Brett" Buckley, who served as a CPT in the Corps in the early 1980s and his daughter, CPT Michele B. Buckley, now on active duty at Fort Bragg, North Carolina. Similarly, Keith W. Sickendick, who served as a CPT at the Defense Appellate Division in the late 1980s, has a daughter, CPT Katherine E. Sickendick. She also is now on active duty at Fort Bragg, North Carolina.

Fathers and Sons

There are at least nineteen father-and-son pairs. In alphabetical order, known pairs include: John and John E. "Jeb" Baker; Steven E. and John T. Castlen; Dean Dort Sr. and Dean Dort Jr.; Charles P. and Douglas A. Dribben; Gregory and Cameron Edlefsen; Thomas and John T. Jones; Ward and Ward D. King; Steven F. and Nicholas F. Lancaster; Thomas and Dustin J. Lujan; John and Kevin Ley; James Edgar Jr. and James Ennis Macklin; Talbot Nicholas and Talbot Nicholas Jr.; William S. and William J. Ostan; Joseph and Edward Piasta; Robert S. Poydasheff and Robert S. Poydasheff Jr.; Paul and Paul Robblee; James "Jim" and Frank Rosenblatt; and Gary and Gary Thorne.

Colonel John Baker (shown here as Coast Artillery Corps captain) is one of only a handful of judge advocate colonels to have a son (Colonel "Jeb" Baker) reach the rank of colonel in the Corps.

John Baker, a 1942 USMA graduate, entered the Corps after graduating from Yale's law school in 1951. His career as an Army lawyer took him to a variety of assignments and locations, including service as Staff Judge Advocate, U.S. Army South, U.S. Canal Zone, from 1966 to 1969. When COL Baker retired in 1970, he returned to the Canal Zone to serve as a U.S. Magistrate judge until 1982.[7] His son, John E. "Jeb" Baker, also received his commission through the USMA (Class of 1972) and started his career as a judge advocate in 1979 with the 193d Infantry Brigade in the U.S. Canal Zone (his father was still serving as a U.S. Magistrate judge). The younger Baker retired as a COL in 2002.[8]

Steve Castlen entered the Corps in the 1980s. He retired as a COL and his last assignment was with the Army Trial Judiciary. His son, CPT John T. Castlen, is currently serving in Germany.

Colonel Dean Dort Sr. and his son, Dean Dort Jr., both served in the Corps. While the elder Dort stayed for a career and retired as a COL, the junior Dort resigned his commission when he was a major (MAJ).

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[5] For more on Major General George S. Prugh, see THE ARMY LAWYER, *supra* note 2, at 256–57.

[6] The Army General Counsel's Honors Program provides young attorneys with a unique opportunity to help advise the Department of the Army's senior civilian and military leadership on a wide variety of legal and policy issues. These attorneys generally apply for the program in their third year of law school. If selected, they are invited to work alongside highly experienced career civilian and military attorneys in one of our four main practice groups. OFFICE OF THE ARMY GENERAL COUNSEL, http://ogc.hqda.pentagon.mil/Carrers/honors_program.aspx (last visited Oct.9, 2014).

[7] ASS'N OF GRADUATES, REGISTER OF GRADUATES AND FORMER CADETS 3-77 (2004).

[8] *Id*. at 3-398.

Charles P. Dribben retired as a COL; his last assignment was with the U.S. Army Judiciary. His son, Douglas A. "Doug" Dribben, entered the Corps in 1990 through the FLEP; the younger Dribben had graduated from the USMA in 1983. Major Doug Dribben retired in 2003.[9]

Lieutenant Colonel Gregory Lee Edlefsen served in the Corps from 1971 until he retired in 1993. His last assignment was Staff Judge Advocate, 7th Signal Command, Fort Ritchie, Maryland. His son, MAJ Cameron R. "Cam" Edlefsen, is on active duty and currently serves as a trial attorney, Contract & Fiscal Law Division, U.S. Army Legal Services Agency. The younger Edelfsen graduated from the USMA in 2000 and entered the Corps in 2007 through the Funded Legal Education Program.

Colonel Charles Grimm and his son, Paul Grimm, both served in the Corps. The senior Grimm served his entire career as an active duty Army lawyer. The younger Grimm served some active duty and retired as Reserve LTC. He is now a U.S. District Court judge in Maryland.

Colonel John Thomas Jones graduated from the USMA in 1946 and entered our Corps after completing law school at Columbia University. He was a judge on the Army Court of Military Review before retiring in 1982.[10] His son, John Thomas Jones Jr., served in the Corps in the 1980s and 90s and retired as a LTC; the younger Jones' area of expertise was contract law, and he headed the Contract Law Division at The Judge Advocate General's School, U.S. Army (TJAGSA) prior to his retirement.

Colonel Ward King and his son, Ward D. King, both served in the Corps. The younger King graduated from the USMA in 1971 and, after service as a Field Artillery officer, completed law school at the University of Texas and entered the Corps in 1977. Lieutenant Colonel King retired in 1996.[11]

John P. Ley Jr. entered the Corps in 1977. He served in a variety of locations, including overseas duty in Germany, Italy, and Korea. When COL Ley retired in 2008, he was serving as the Acting Commander, The Judge Advocate General's Legal Center and School (TJAGLCS). His son, MAJ Kevin M. Ley, serves in the Corps today.

Colonel (Retired) Thomas R. Lujan served more than twenty-five years before retiring in 1998. His son, CPT Dustin Lujan, was commissioned as an Infantry officer and later entered the Corps through the FLEP. He is now stationed at Fort Hood, Texas.

James Edgar Macklin Jr., a USMA graduate who entered the Corps in 1955 after graduating from Columbia Law School, retired as a COL. His son, James E. Macklin, was commissioned after graduating from the USMA in 1980 and entered the Corps through the FLEP. He retired as a LTC.[12]

Colonel Talbot Nicholas and his son, Talbot Nicholas Jr., both served in the Corps. The younger Nicholas left active duty as a CPT.

The senior William Ostan served at Fort Dix, New Jersey from 1976 to 1979; his son, CPT "Bill" Ostan, entered the Corps in 2007 and is on active duty today.

Colonel Joseph Piasta and his son, Edward Piasta, both served in the Corps.

Colonel (Retired) Robert S. "Bob" Poydasheff served in a variety of assignments in the Corps from 1961 to 1979. When he retired from active duty, Poydasheff was the Staff Judge Advocate at Fort Benning, Georgia. His son, Robert S. Poydasheff Jr., served in the Corps from 1986 to 1991, when he left active duty.

Colonel Paul A. Robblee and his son, Colonel Paul Robblee, both served full careers as Army lawyers and retired as colonels. The senior Robblee received his law degree from the Minnesota College of Law in 1935 and, after serving as an Infantry officer in World War II, entered our Corps in 1947. He retired in the 1960s.[13] The junior Robblee first served as an Infantry officer in Vietnam (with the 101st Airborne Division) before going to law school at Washington and Lee University. He entered the Corps in 1972 and then served in a variety of assignments including Deputy Staff Judge Advocate, 82d Airborne Division and Staff Judge Advocate, U.S. Army Japan and Third U.S. Army. The younger Robblee retired in 1992. The Robblees were the first father-son pair in our Corps's history to both attain the rank of COL.

Then-Captain Paul A. Robblee Jr. (left) and Colonel Paul A. Robblee Sr. (right), ca. 1970.

[9] ASS'N OF GRADUATES, *supra* note 5, at 3-562.

[10] *Id*. at 3-126.

[11] *Id*. at 3-385.

[12] ASS'N OF GRADUATES, REGISTER OF GRADUATES AND FORMER CADETS 403, 786 (1992).

[13] Department of the Army, Army Register (1961).

Colonel James "Jim" (but also called "Rosey" by those who knew him well) Rosenblatt retired after a distinguished career and was the Dean, Mississippi College of Law, for many years. His son, MAJ Franklin Rosenblatt, entered the Corps through the FLEP and is on active duty in Hawaii today.

Colonel Gary Thorne served as a judge advocate in the 1950s; his son, also named Gary, served as a captain in our Corps in the 1970s. The younger Thorne "is one of the most recognizable voices in sports broadcasting, having covered Major League Baseball, the National Hockey League, the Olympics, NCAA basketball, football and hockey" during a more than a thirty-five-year broadcasting career.[14]

A final father-son pair, albeit like the Liebers, not exactly in the category of father-son judge advocates, is William S. Fulton Jr. and Sherwin Fulton. Colonel Fulton served as a judge advocate for many years (after seeing combat as an Infantryman in World War II and Korea), and finished his service to our Corps as an Army civilian employee and Clerk of the Army Court of Criminal Review (the forerunner of today's Army Court of Criminal Appeals). His son, Sherwin, was a paralegal in our Corps and retired in 1995 as a sergeant first class.

Brothers

There have been at least ten sets of brothers in the Corps: the Camerons, Comedecas, Cooleys, Goetzkes, Hudsons, Lederers, Mackeys, Russells, Warners, and Woodruffs.

Dennis S. Cameron served in the 1970s and his brother, Michael K. Cameron, was on active duty in the Corps in the 1980s and 1990s.

The Comedeca brothers, Peter J. (senior) and Michael P. (junior), were on active duty at the same time in the late 1980s. Pete Comodeca graduated from the USMA in 1977 and entered the Corps through the FLEP after completing law school at Harvard. He resigned his commission in 1990. His brother, Mike, likewise graduated from the USMA (class of 1979) and entered the Corps through the FLEP. Lieutenant Colonel Mike Comodeca retired in 2000.[15]

Robert and Howard Cooley were brothers who served in the Corps in the 1970s and 1980s. Robert "Bob" Cooley left active duty after several tours of duty and began a career as a state court judge in Virginia. His younger brother, Howard, remained in the Corps for a career and retired as a COL. The Cooleys are apparently the only African-American brothers to have served as judge advocates in our Corps.

Karl M. and Kenneth H. Goetzke Jr., both served in the Corps at the same time. Karl retired as a COL; Ken left active duty as a MAJ.

William A. "Bill" Hudson Jr. and Walter M. "Walt" Hudson, both served in the Corps at the same time. Bill Hudson entered the Corps in 1984 and retired as a COL. His younger brother, Walt, is on active duty in the Corps today.

Colonel (U.S. Army Reserve Retired) Fredric I. "Fred" Lederer and his younger brother, COL (Retired) Calvin M. "Cal" Lederer likewise were on active duty at the same time in the 1970s. The older Lederer finished his active duty at TJAGSA (teaching in the Criminal Law Division) before beginning an academic career as a law school professor at the College of William and Mary. His younger brother, Cal Lederer, served a full career as an Army lawyer and retired from active duty in 2002. He then assumed duties as the Deputy Chief Counsel for the U.S. Coast Guard. When the Coast Guard became a part of the Department of Homeland Security in 2003, the Secretary of that department designated Cal Lederer as Deputy Judge Advocate General for the U.S. Coast Guard.[16]

Patrick J. and Richard J. Mackey were identical twins who entered the Corps in 1974 and served full careers; both retired as COLs. They are likely the only identical twins to have served in our Regiment.

George and Richard "Rich" Russell both served in the Corps at the same time; both retired as COLs. George was the older sibling and is deceased.

Colonel (Retired) Karl K. "Kasey" and LTC (Retired) Andrew M. "Mac" Warner entered the Corps in the 1980s. Both were USMA graduates who pinned the crossed sword and quill insignia on their collars after completing the FLEP. Kasey Warner retired in 2001; Mac Warner retired in 2000.[17]

Finally, William A. "Woody" Woodruff and his younger brother, Joseph A. Woodruff, both served on active duty in the Corps. The older Woodruff joined the Corps in 1974 and retired as a COL. He is now on the law faculty at Campbell University's law school in Raleigh, North Carolina. The younger Woodruff entered the Corps after graduating from the University of Alabama's law school. He left active duty as a MAJ and now practices law in Tennessee. A final note: Cedric Woodruff, their father, served as a warrant officer in

[14] Baseball Assistance Team, MLB.ORG, http://www.mlbcommunity.org/programs/baseball_assistance_team.jsp?content=new_board_2014 (last visited Aug. 27, 2014).

[15] ASS'N OF GRADUATES, *supra* note 5, at 3-471, 3-501.

[16] Calvin Lederer, *U.S. Coast Guard, Dep't of Homeland Security*, http://www.uscg.mil/flag/biography/CalvinLederer.pdf (last visited Aug. 27, 2014).

[17] ASS'N OF GRADUATES, *supra* note 5, at 3-434, 3-472.

the Corps from 1962 to 1972 and retired as a Chief Warrant Officer Three.

Grandfathers and Grandsons

To date, there have been two situations where a grandfather and his grandson were Army lawyers. Major General Ernest M. "Mike" Brannon served as TJAG from 1950 to 1954.[18] Almost thirty years later, his grandson, Patrick D. "Pat" O'Hare, entered the Corps on active duty. The younger O'Hare retired as a COL in 2005 and now serves as the Deputy Director of the Legal Center at TJAGLCS.

Colonel Edward W. Haughney was a judge advocate from 1949 until his retirement in 1972. He subsequently joined the faculty at the Dickenson School of Law and taught for more than thirty years. His grandson, LTC Chris Jenks, recently retired from the Corps after twenty years on active duty.

Just as this Lore of the Corps gave a "tip of the hat" to the Liebers, who do not quite fit the mold, it is only appropriate and fair to mention a father and daughter-in-law: Brigadier General (Retired) Richard "Dick" Bednar and his daughter-in-law, MAJ Yolanda A. Schillinger.

Brigadier General Bednar entered the Corps in 1954 and retired from active duty in 1983; Major Schillinger recently completed the 62d Graduate Course and remains on active duty. The only thing missing from this "family affair" story is mothers, sons, daughters, and sisters. With the ever increasing number of female judge advocates in the Corps, however, the day will soon come when sons and daughters join their mothers in wearing JAG brass on their collars, along with sisters.

A final note: pieces of this family affair are almost certain to be missing. Your Regimental Historian and Archivist invites readers to send him information that should be included in this part of our history.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

https://www.jagcnet.army.mil/8525736A005BE1BE

[18] For more on Major General Brannon, see THE ARMY LAWYER, *supra* note 2, at 200–02.

A Lore of the Corps

Lawyering in the Empire of the Shah—"The Rest of the Story"[1]

Fred L. Borch
Regimental Historian & Archivist

In April 2012, *The Army Lawyer* published a *Lore of the Corps* about judge advocates who had served in Iran in the 1960s and 1970s. That article ended by stating that the assignment of Army lawyers "to Iran apparently ended in the mid-1970s."[2] This was incorrect. The truth is that military attorneys continued to be stationed in Tehran until 1979; the last judge advocate in-country departed on July 15, 1979, only months before a group of Iranian students seized the U.S. Embassy and took fifty-two Americans hostage for 444 days. What follows is the "rest of the story" about lawyering in the Empire of the Shah. It focuses on three of the last Army attorneys in Tehran: Captains (CPTs) Kenneth J. "Ken" Densmore, Theodore F.M. "Ted" Cathey, and Thomas G. "Tom" Fierke.[3]

From the mid-1970s until late January 1979, when the Shah fled Iran and large-scale evacuations of U.S. personnel began, there were roughly 45,000 Americans living in Iran. Most were military and civilian technicians and their dependents.[4] Of these, about 1,500 were Department of Defense personnel assigned to the U.S. Embassy, the U.S. Military Mission with the Iranian Army, or the U.S. Military Assistance Advisory Group to Iran (MAAG).[5] Most of these U.S. military and civilian personnel were involved in training Imperial Iranian forces on the aircraft, warships and other military hardware sold to Iran by the United States under the Foreign Military Sales program.[6] This was a lucrative arrangement for the United States in the 1970s, since Iran "paid cash for its arms purchases and covered the expenses" of American technical advisors "indispensable for weapons operations and maintenance."[7]

There were a variety of legal issues arising out of these foreign military sales contracts and the "down country" technical assistance field teams associated with them.[8] This explains why judge advocates serving in Tehran during this period were heavily involved in contract matters—in addition to the various administrative and civil law, claims, and legal assistance issues that naturally arose in a military and civilian community of 5,000.[9] Since courts-martial could not be convened in Iran, there was little in the way of a criminal law practice.[10]

This was certainly the case with CPT Densmore, who was stationed in Iran from April 1976 to July 1978. Densmore was intimately familiar with Armed Services Procurement regulations and Army implementing regulations, as he had prior experience in procurement law at the Army Missile

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[1] With a "tip of the hat" to conservative talk show host Paul Harvey, whose "The Rest of the Story" was a Monday-through-Friday radio program that aired from 1976 until Harvey's death in 2009. *Paul Harvey, Talk-Radio Pioneer, Dead at 90*, http://www.nytimes.com/2009/03/01/nyregion/01 harvey.html?_r=0 (last visited Oct. 27, 2014). Each broadcast ended with the phrase, "And now you know the rest of the story." PAUL HARVEY, http://www.paulharvey.com/ (last visited Oct. 27, 2014).

[2] Fred L. Borch, *Lawyering in the Empire of the Shah*, ARMY LAW., Apr. 2012, at 3.

[3] In addition to Densmore, Cathey, and Fierke, the following judge advocates served in Tehran between 1975 and 1979: Majors (MAJ) Holman J. "Jim" Barnes Jr. and Warren Taylor (who replaced Barnes), and Captain's Stanley T. "Stan" Cichowski, John E. Dorsey, Charles L. Duke, Stephen Moore, and Mark H. Rutter. Rutter was the last judge advocate to arrive in country. OFFICE OF THE JUDGE ADVOCATE GENERAL, PERSONNEL DIRECTORY (1975); Telephone Interview with Theodore F. M. Cathey (Oct. 27, 2014) (on file with author).

[4] http://www.country-data.com/cgi-bin/query/r-6526.html (last visited Oct. 28, 2014).

[5] *Id.* In addition to these 1,500 personnel, there were another roughly 3,500 family members, for a total official community of about 5,000 individuals. In 1978, the U.S. military mission in Iran was the largest in the world.

[6] The Foreign Military Sales (FMS) program is a form of security assistance authorized by the Arms Export Control Act (AECA) and a fundamental tool of U.S. foreign policy. Defense Security Cooperation Agency, Foreign Military Sales, http://www.dsca.mil/programs/foreign-military-sales-fms (last visited Oct. 30, 2014) [hereinafter FMS]; Arms Export Control Act, 22 U.S.C. ch. 39 (2012). Under the Act, the United States may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the United States and promote world peace. FMS, *supra*. Under FMS the U.S. Government and a foreign government enter into a government-to-government sales agreement. The State Department determines which country will have an FMS program while the Defense Department executes the program. *Id.*

[7] FMS, *supra* note 6. Iran could pay cash because of moneys it earned from the export of oil. The Shah's government bought F-4 "Phantom" fighter bombers, C-130 "Hercules" cargo airplanes, M-60 "Patton" main battle tanks, AH-1 "Cobra" helicopters, radar equipment, mortars, and machine guns.

[8] The term "down country" referred to geographic location of these technical teams; they were located south of Tehran or "down" on a map of Iran.

[9] Although judge advocates in Iran supported the mission of the U.S. Military Assistance Advisory Group to Iran (MAAG), they were not a part of it. Rather, they were assigned to the U.S. Support Activity-Iran (USSA-I), a part of U.S. Army, Europe.

[10] As explained in *Lawyering in the Empire of the Shah*, the United States was prevented by its agreements with Iran from holding any judicial proceedings on Iranian soil. Judge advocates in Tehran did, however, advise commanders on the imposition of non-judicial punishment under Article 15, Uniform Code of Military Justice. Most of these Article 15s were for blackmarketing, i.e., the improper sale (or transfer) to Iranians of goods purchased through the Army and Air Force Exchange Service. *See* Borch, *supra* note 2, at 1.

Command, Redstone, Alabama.[11] This no doubt explains why, shortly after arriving in Tehran, Densmore was informed by Colonel (COL) Milton Sullivan, Commander, U.S. Support Activity-Iran (USSA-I), that he was the new Contracting Officer (KO) for the command. Since the mission of the USSA-I was to support the MAAG and its down country teams, this meant that CPT Densmore would not only do a legal review of contract solicitations and awards but, as the KO, would also be administering (and interpreting) the many contracts already in place. Since USSA-I also ran the club system, the Morale, Welfare and Recreation program, the commissary, and the hospital, Densmore also was involved with contracts for these operations. His KO warrant was for $100,000 and, while this does not seem like much money today, it was adequate to do most of the work of the USAA-I. As Densmore remembers, most of the contracts he awarded "were for minor construction projects in and around the military facilities in Tehran," such as plumbing, electrical, and carpentry work.[12] Densmore took a special interest in the hospital, which was located on the U.S. Embassy compound, especially after his youngest son was born there in 1978. As for his two years in Tehran, Densmore remembers that "my KO duties quickly overwhelmed me and I was not of much further utility in the JAG office."[13] At least, that is, for non-contract issues.

Army Colonel Keith Barlow presents Captain Ken Densmore with the Meritorious Service Medal, Tehran, Iran, 1977

In July 1978, as CPT Densmore was leaving after slightly more than two years in Iran,[14] CPT Ted Cathey was just arriving—to replace Major Warren H. Taylor and assume duties as the Staff Judge Advocate (SJA) for the MAAG. As Cathey remembers, he and his youngest son arrived on a Pan American flight at the Mehrebad airport near Tehran. But it was "not a good sign because tires were burning on the runway" and Iranians in the streets were shouting "Death to the Shah" and "Yonky [sic] go Home."[15] Prior to volunteering for duty in Tehran, Cathey had been an instructor in contract law at The Judge Advocate General's School, U.S. Army. Just as CPT Densmore had discovered, CPT Cathey also quickly learned that the many issues arising from the sale of American military equipment to the Shah's armed forces meant that procurement law was an important component of the delivery of legal services to the MAAG.

While Cathey was the senior military lawyer in Iran, he had a Deputy SJA, CPT Charles L. Duke, and two more judge advocates on his staff: CPTs Tom Fierke and Mark H. Rutter. Rounding out his legal office were two legal clerks, Sergeant First Class Bobby Saucier and Specialist Six Paul Burch. There also were two Iranian advisors, two local national drivers, and a translator who ensured accurate transcription of Farsi and English language documents, especially private residential leases.

But "legal business as usual" was short-lived. The Shah's government had imposed martial law (which included a curfew) on 7 September 1978 and by November 1978, with insurgent activity putting Americans and their families in danger, the MAAG began preparing evacuation plans for family members.[16] After military personnel in Iran began receiving hostile fire pay in early December 1978, it was only a matter of time before evacuations would begin.[17]

Captain Cathey and his office prepared a legal annex to the MAAG's evacuation plan, and did periodic briefings to family members on the legal aspects of evacuation. These briefings occurred in the auditorium on the "Gulf District" compound upon which USSA-I was located. Cathey remembers that the briefings advised family members that they were being evacuated to a "safe haven" for thirty to sixty days, with return to Tehran to occur as soon as the situation had stabilized. But they were advised to have up-to-date wills and powers of attorney, and to make a complete inventory of their household goods. At the time, the Army paid no more than $15,000 for any claim for missing or damaged household goods, which meant that Americans in Iran were advised to

[11] E-mail from Kenneth J. Densmore, to author (Oct. 30, 2014, 4:46 PM) (on file with author).

[12] *Id.*

[13] E-mail from Kenneth J. Densmore, to author (Sept. 25, 2012, 8:47 PM) (on file with author).

[14] After departing from Iran, Densmore left active duty and transferred to the Army Reserve. He subsequently served with the 350th Civil Affairs Brigade, and deployed with it to Bosnia-Herzegovinia in 1996 as part of Operation Joint Endeavor/Constant Guard. In 1998, now COL Densmore assumed command of the 2d Legal Services Organization, New Orleans, Louisiana. Coincidentally, CPT Fierke, discussed infra, had previously commanded this same unit. Densmore relinquished command in 2001 and retired from the Army Reserve in 2002. Today, Densmore serves as Counsel, Naval Education and Training Command, Pensacola, Florida (the Navy's close equivalent to Army Training and Doctrine Command). He has 44 years of civilian and military service.

[15] Interview with Cathey, *supra* note 3.

[16] *Id.*

[17] Colonel Thomas G. Fierke, Recollections (of the Last JAG in Tehran 1978–1979), at 52 (1999) (unpublished thesis, U.S. Army War College Strategy Research Project) (on file with author). All military personnel received hostile fire pay in December 1978 and January and February 1979. The evacuations of Defense Department and State Department family members and other U.S. civilians ultimately occurred in December 1978, and January and February 1979.

consult their insurance companies to see if they could obtain additional coverage.[18]

Some Americans, recognizing that they might depart Iran and never return, began mailing personal items (photographs, papers) and high value items (jewelry, antiques, collectibles) to the United States through the Army Post Office system. Some of these mailings were successful; others were not. Cathey's wife had left Iran in December; she never returned because of the increasing instability. The following month, CPT Cathey and his three children boarded a C-141 and flew from Tehran to Athens, Greece, to Rhein Main, Germany. They then flew on a civilian charter to McGuire Air Force Base, New Jersey, and, after landing there, CPT Cathey took his children to Charlottesville for a rendezvous with his wife. Cathey then returned to Tehran.[19]

Near the end of his tour of duty in Tehran, CPT Cathey was heavily involved in arranging for "termination for the convenience" or "T4C" of the U.S. Government contracts with the Iranian government. The Pentagon's "czar" for military assistance, Erich von Morbod,[20] flew to Iran and sat down with CPT Cathey to T4C a whole host of contracts for equipment that had been sold to the Iranians.[21] Much of the hardware—artillery, tanks, ships—had been paid for and these terminated contracts were later the subject of much litigation involving the United States and the new Iranian government that emerged after the Shah fled Iran in January 1979.[22] In addition to these contracts, CPT Cathey also was involved in the termination of rental leases—as the American tenants had been evacuated and would not be returning. When CPT Cathey left Tehran in February 1979, it was "pandemonium" and Cathey thought he would be the last judge advocate out of Iran; after all, CPTs Mark Rutter and Tom Fierke had already departed.[23]

But he was not: CPT Fierke, who had been the Chief of Administrative Law and Claims, had volunteered to return to Iran on temporary duty. Fierke had previously been in Iran from June 1978 until 19 February 1979, when he and CPT Rutter boarded a Pan Am Boeing 747 and flew to Frankfurt. Now, on 18 March 1979, he returned to Tehran because the MAAG and USSA-I commanders needed an experienced claims judge advocate to help wind down the American military presence in Iran.[24]

Initially, Fierke was one of roughly fifteen American military and State Department personnel during this twilight of the U.S. presence in the Shah's empire. In the following days and weeks however, the numbers of Americans in Iran did increase until there were more than fifty.[25]

An Iranian national (left) with then Captain Tom Fierke (right), in front of the U.S. Embassy gate, Tehran, 1979.

After arriving in Tehran—carrying a "black" diplomatic passport and immediately hearing the sound of gunfire and revolutionary fervor—Fierke lived on the fifteenth floor of the Royal Tehran Hilton. This was considered to be the safest location for the American military personnel still in-country because its height offered the best protection from sniper fire.[26]

Within days of his arrival in Tehran, Fierke was the "Staff Judge Advocate, USSA-I." But he also had the title of "Chief Legal Counsel, MAAG/U.S. Embassy." His mission was to "insure proper conclusion of all lease and procurement contracts" with the Iranians. This included the settlement of private leases between Americans and their Iranian landlords. As the Defense Department saw it, these leases could not be terminated until household goods were removed from the premises and any damages to the premises could be assessed. Consequently, CPT Fierke became the USSA-I "operations" and "transportation" officer who, with a small staff, arranged for the packing and pick-up of household goods and their

[18] The statutory aggregate maximum for the loss of household goods was $15,000. No private insurance company, however, would pay claims for household goods lost in the Iranian Revolution of 1979. The event was considered to be a "war" or "civil disturbance" excluded from policy coverage.

[19] Cathey e-mail, *supra* note 3.

[20] From 1978 to 1981, von Marbod was the Deputy Director, Defense Security Assistance Administration. In this position, he was the senior U.S. Defense Department representative to Iran, and was a key player in the Shah's purchase of American weaponry. JOSEPH J. TRENTO, PRELUDE TO TERROR: EDWIN P. WILSON AND THE LEGACY OF AMERICA'S PRIVATE INTELLIGENCE NETWORK 262 (2005).

[21] Cathey e-mail, *supra* note 3.

[22] *Id.*

[23] For their work in support of the December 1978 evacuations, CPTs Cathey, Duke, Fierke, and Rutter were awarded the Humanitarian Service Medal.

[24] Fierke, *supra* note 17, at 61.

[25] Letter from Captain Thomas G. Fierke, U.S. Defense Representatives IRAN, to Colonel Wayne E. Alley, Judge Advocate, Headquarters, U.S. Army–Europe & 7th Army, APO N.Y. 09403 and Colonel James A Mounts, Chief, USA Claims Service, Fort Meade, Md. 20755 (June 11, 1979) (The subject of the letter was Iran Judge Advocate update).

[26] Letter from Captain Thomas G. Fierke, U.S. Dep't of Army, Office of the Staff Judge Advocate, Fort Devens, Mass., to Headquarters, U.S. Dep't of the Army, ATTN: DAJA-PT (LTC Barry P. Steinberg), subj: Iranian Adventure: FIERKE, Thomas G., CPT JAGC, at 4 (3 Apr.1980).

movement to U.S. custody. In June 1979, for example, Fierke was arranging for the pick-up of six sets of household goods a day, six days a week. In the ever present turmoil on the streets of Tehran, this was a difficult mission to accomplish: there were no street maps of Tehran, which made it difficult to locate the apartments and houses that had been rented by American personnel. Additionally, the Revolutionary Guards, landlords, and movers were tempted to steal the household goods of the now departed U.S. personnel if they had the opportunity. Fierke also had much difficulty in negotiating for the lease terminations with the Iranian landlords, as many were not inclined to be reasonable in their dealings with the U.S. Government.[27]

In addition to these landlord-tenant and household goods issues, Fierke had to "close-out" a variety of contracts between the Iranians and the American government. He had an unlimited warrant as a Termination Contracting Officer (TCO) for the Department of Defense, Department of State, and several agencies conducting classified intelligence work. As a result, it was CPT Fierke who terminated the multi-multi-million dollar contract that the Imperial Armed Forces had with the Bell helicopter subsidiary in Iran.[28]

Fierke also had a smaller dollar warrant as a TCO for lower dollar value contracts involving Iranian nationals. A major problem with terminating these contracts for the convenience of the government was that many local nationals were unable to gain access to him and other U.S. Embassy personnel in the "Gulf District" (where the procurement office was located) in order to demand payment.[29]

Captain Fierke worked long days; his typical workday was 6:00 A.M. to 7:00 P.M., seven days a week.[30] Additionally, as the only American government attorney in post-Revolutionary Iran, Fierke advised not only Defense Department personnel, but also the U.S. ambassador to Iran and his staff.

Fierke also faced considerable personal danger. He was arrested four times. On one occasion, he was stopped while driving a pick-up truck, pulled from the vehicle at gunpoint, and then handcuffed and blindfolded. Three hours later, he was released. Apparently his offense had been driving the truck without license plates.[31] Fierke also heard gunfire on a routine basis while in Tehran, and some of the bullets came very close to him.

Tom Fierke left Tehran on 15 July 1979; he flew "first class" on a Swiss Air airliner to Frankfurt, Germany. As Air Force Major General Philip C. Gast,[32] the Chief, MAAG-Iran, put it, CPT Fierke had "braved the hostility in Iran after the Revolution with calm and resolution" and was a "man of unflagging devotion to duty."[33]

With CPT Fierke's departure, the judge advocate presence in Iran ceased. Timing is everything; Fierke made it out. The fifty-plus Americans in the U.S. Embassy were not so lucky: After being taken captive by Iranian students in November, they did not see freedom for another 444 days.[34]

Regimental History Announcement: World War II-era Boards of Review Holdings and Opinions are now available on-line. From 1942 to 1946, Boards of Review (the forerunner of today's Army Court of Criminal Appeals) operated in the European Theater of Operations. They also operated in the Mediterranean Theater of Operations (MTO) and the North African Theater of Operations (NATO) from 1943 to 1945. The decisions of these Boards have been digitized and added to the LCS Library's Military Legal Resources Web site at the Library of Congress (http://www.loc.gov/rr/frd/Military_Law/ military-legal-resources-home.html). Board of Review decisions from the India-Burma Theater (originally China-Burma-India Theater), the South West Pacific Area Theater, the Pacific Ocean Areas Theater, and the Pacific Theater are scheduled to be digitized and added to the Military Legal Resources site in the future.

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[27] Fierke, *supra* note 17, at 77.

[28] E-mail from Thomas G. Fierke, to author (Nov. 9, 2014, 7:29 PM) (on file with author).

[29] *Id.*

[30] Fierke, *supra* note 17, at 81.

[31] *Id.* at 5.

[32] Philip C. Gast retired as a lieutenant general in 1987. He had a long and distinguished career as an airman, including a Silver Star for downing a North Vietnamese MiG fighter during the war in Southeast Asia.

[33] U.S. Dep't of Army, DA Form 67-7, Officer Evaluation Report, FIERKE, Thomas G., pt. VII.b (Indorser) (15 Jan. 1980). After earning an engineering degree and a regular Army commission through Reserve Officer Training Corps at Iowa State University in 1971, Fierke received a J.D. from the University of Minnesota in 1974 and an LL.M. (tax) from Boston University in 1978. Initially, CPT Fierke served as a trial counsel and administrative law officer in the Office of the Staff Judge Advocate, Fort Devens, Massachusetts. At the same time, he was the Group Judge Advocate, 10th Special Forces Group (Airborne). Fierke was one of the first judge advocates to complete the resident Special Forces (SF) Officers Course, earning the SF "long tab" in 1978. In 1980, he left active duty and transferred to the Army Reserve. In 1991, Fierke deployed to Saudi Arabia with the Third U. S. Army; he subsequently served with U.S. Army Forces, U.S. Central Command during the first Gulf War. When COL Fierke retired in 2002, he had more than thirty years of active and Reserve service and had been the SJA, 377th Theater Support Command, New Orleans, for four years. He recently retired as the General Counsel, Lockheed Martin Manned Space Systems, where he was involved with America's space program for twenty-eight years.

[34] For more on the takeover of the U.S. Embassy in Tehran, see MARK BOWDEN, GUESTS OF THE AYATOLLAH (2006).

Lore of the Corps

The Army Lawyer: A History

Fred L. Borch
Regimental Historian & Archivist

When The Judge Advocate General's School (TJAGSA) opened in Charlottesville in 1951, and the first Advanced Class (today's Graduate Class) arrived later that year, it was only natural that the faculty would look for ways to enhance legal research and writing. As a result, the *Military Law Review* began publishing in 1958 and, for more than fifty-five years now, that legal periodical has contained in-depth, comprehensive, analytical articles akin to those published in other law school journals in the United States.

The Army Lawyer, which began publishing in August 1971, originated for very different reasons and, with this 500th issue, it is now appropriate to examine its history and its impact on our Corps. This *Lore of the Corps* looks first at the origins of *The Army Lawyer*. It then looks at the evolution of the monthly periodical from the 1970s to the present, and identifies some of the men and women who have edited, formatted, and produced it through the years. Finally, this article offers some thoughts on the future of *The Army Lawyer*.

The first issue of *The Army Lawyer* announced why it was being created as "a monthly publication" of TJAGSA:

> Its purpose is to provide practical, how-to-do-it information to Army lawyers. Thus, *The Army Lawyer* will fill the gap between the *Judge Advocate Legal Service*[1] and the *Military Law Review*, and at the same time consolidate other publications in a single, convenient source. *The Army Lawyer* replaces, in part, the Procurement Legal Service, the *Legal Assistance Bulletin*, the *PP&TO Newsletter*, the *Claims Administrative Newsletters*, and the non-case materials of JALS, except those of interest to reservists and those which must have immediate distribution to the field.[2]

In short, *The Army Lawyer* was going to be practical and informative, and it was going to consolidate the many existing newsletters produced throughout the Corps so that judge advocates would need look only at one source for the latest best legal practices. In fact, this first issue announced that future issues would contain "comments on recent developments in the law and provide a forum for short articles from the field." It would also "carry items of current general interest to Army lawyers."[3]

But there was more to *The Army Lawyer*'s origins than what appeared in the printed text of Volume 1, Number 1. As Colonel (Retired) John Jay Douglass remembers, there were a number of other important reasons to create a monthly legal periodical—the chief one being that no one in the Corps really knew what TJAGSA had to offer in the way of education and training. This was particularly true for the many hundreds of Reservists in the Corps who, as Douglass puts it, "really had no contact with the active duty guys."[4]

Colonel John Jay Douglass, who served as Commandant, The Judge Advocate General's School, from 1970 to 1974, played a major role in the creation of The Army Lawyer.

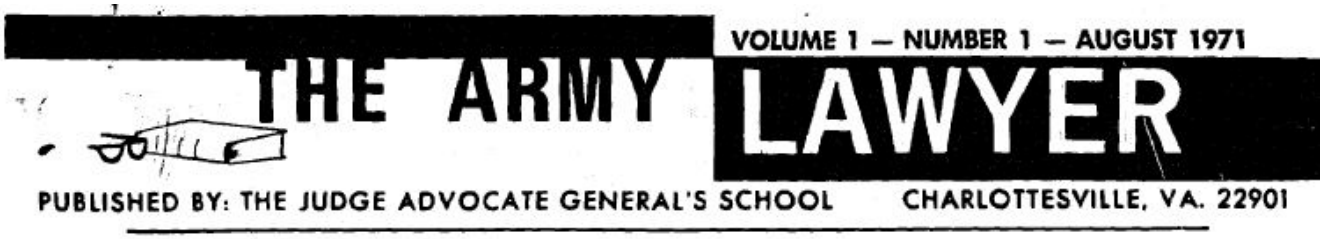
Why would Douglass be concerned with the Reserve legal community? The answer was simple. The year before he assumed duties as Commandant in 1970, The Judge Advocate General's Office (or "JAGO" as it was called in everyday conversation) "had transferred all the JAG Reservist responsibilities to the School." This meant that it was now COL Douglass' responsibility to keep in

[1] Published between March 1959 and November 1975, the *Judge Advocate Legal Service* (JALS) was initially published on a *weekly* basis to provide field Judge Advocates with the latest appellate decisions from the Court of Military Appeals (the forerunner of the Court of Appeals of the Armed Forces) and the Comptroller General. In the 1960s, JALS expanded its content to contain other information of interest to Army lawyers, including information on claims, procurement, international law, and military affairs. After the creation of *The Army Lawyer*, however, JALS limited its content to military criminal law. It ceased publication in 1975.

[2] ARMY. LAW., Aug. 1971, at 1.

[3] *Id.*

[4] Telephone interview, author with Colonel (Retired) John J. Douglass (8 Dec. 2014) (on file with author).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contact with Reserve judge advocates and he saw that publishing a monthly journal that was distributed to them by mail would be a way to accomplish this goal. In the 1970s, virtually all widespread communication in the Army was by written letter or other printed publication—delivered by the U.S. post office—so this concept makes sense.

While Douglass says that this desire to have contact with the Reserve judge advocate community was a major impetus behind the creation of *The Army Lawyer*, he also identifies a second important reason: active component judge advocates really did not understand what TJAGSA did, or what it offered in the way of legal education and training, and this ignorance meant the School was both underutilized and underappreciated.

This state of affairs existed because while every lawyer who entered the Corps was required to attend the Judge Advocate Officer Basic Course, there was no requirement to attend the Advanced Course—or any other instruction being offered in the way of shorter courses. Additionally, since more than a few successful senior officers—including Major Generals George S. Prugh and Harold E. Parker, then serving as The Judge Advocate General and The Assistant Judge Advocate General, respectively—had never attended either the Basic or Advanced Courses, Douglass discovered that there was considerable resistance to coming to TJAGSA for a year of graduate legal education from senior captains and majors who intended to make the Corps a career. As they reasoned, why should a young officer uproot his family for a year at TJAGSA if that was not necessary to reach flag rank? But, thought Douglass, a monthly publication would showcase the short course offerings at TJAGSA and, as uniformed attorneys came to Charlottesville for a week (for example) of procurement law instruction, might encourage these Army lawyers to attend the Advanced Course when offered the opportunity.

Colonel Douglass' goal—which he said repeatedly to all within earshot—was to make TJAGSA "The Home of the Army Lawyer." Every judge advocate, in his view, must believe that he must come to Charlottesville to be successful in the Corps. Consequently, when it came time to select a name for the new monthly publication, it was logical for it to be christened *The Army Lawyer*.

When the first issue was published in August 1971, it contained reports on the new "Pilot Legal Assistance Program" in New Jersey (where Judge Advocates, with the approval of the New Jersey State Bar Association, provided in-court representation in civil matters for soldiers in the grades of E-4 and below) and from the Army Trial Judiciary (court-martial statistics, and recurring errors and irregularities). There was an article from the Army Claims Service titled "Suggestions for a Successful Recovery Program" and from the Litigation Division on various pending cases and decisions of interest. The School's Procurement Law Division (today's Contract and Fiscal Law Division) discussed recent decisions from the Court of Claims and Board of Contract Appeals. On a truly practical level, the Legal Assistance Division at the Office of The Judge Advocate General (OTJAG) offered tips on "telephone etiquette" that should be observed by those answering calls coming to a legal assistance office in the field. Helpful advice included refraining from telling the caller that the judge advocate with whom he wished to speak was "out playing golf" or had "left early." Finally, there was a brief article written by a civilian attorney at Third U.S. Army, Fort McPherson, Georgia. It focused on the legal issues arising in a court-martial of a Marine Corps Reservist who willfully disobeyed the order of his superior commissioned officer to get a haircut and who rejected Article 15 punishment in favor of trial by court-martial.

This inaugural issue of *The Army Lawyer* finished with sections called "Personnel Actions," "Books of Interest to Lawyers," and "Military Affairs Opinions." The first, provided by the Personnel, Plans and Training Office, OTJAG, was almost certainly the first section read by those who received the new publication because it contained the names of those officers and warrant officers who were retiring from active duty or being promoted. It also contained a list of all upcoming assignments of colonels, lieutenant colonels, majors, captains, lieutenants, and warrant officers. As for the second section, this listed books of professional interest to lawyers, such as Anthony Lewis' *Gideon's Trumpet* (about the celebrated *Gideon v. Wainwright* decision) and Catherine Bowen's *Yankee from Olympus* (about Supreme Court Justice Oliver W. Holmes). Finally, the last section contained opinions from OTJAG's Military Affairs Division (today's Administrative Law Division). With a view toward practicality, these opinions were printed in *The Army Lawyer* in a 3-inch-by-5-inch format, so that a reader could "clip" and paste them on 3 x 5 cards and so build a card reference library. The opinions covered civilian pursuits by retired officers, the privileges

enjoyed by children of remarried and divorced Army widows, whether "bowling score sheets" could be accepted as gifts by a military bowling lane located on a military reservation, and whether military personnel could carry concealed weapons while off-duty.

By the time it was in its second year of publication, *The Army Lawyer* had expanded to include new features in addition to articles, reports, and practical legal information. The Personnel Section began listing the names of all judge advocates receiving military awards, information on volunteering for overseas assignments, policies on attending civil schools at Government expense, and job openings for "DA Civilian Attorney Positions."[5] There was a new section called "JAG School Notes" which provided information on staff and faculty at TJAGSA and even solicited readers to contribute to a newly formed "beer mug collection to be displayed in the [TJAGSA] Open Mess."[6] Finally, a section called "Bar Notes" announced upcoming American Bar Association, Federal Bar Association, and Judge Advocate Association news items.[7]

Starting in November 1971, *The Army Lawyer* began publishing the schedule of courses offered at TJAGSA, along with "scopenotes" for these offerings—thereby fulfilling COL Douglass' goal of letting Judge Advocates in the field know what was available in the way of legal education. Courses listed included the 62d Basic Course, 20th Advanced Course, 2d Staff Judge Advocate Course, 1st Legal Assistance Course, and 5th Law of Federal Employment Course.[8] *The Army Lawyer* continued to list available courses in the 1980s, 1990s, and 2000s; today readers interested in Continuing Legal Education (CLE) offerings are directed to the "Legal Center and School" website for a schedule of courses.

In the early 1980s, the content of *The Army Lawyer* began evolving toward what might be called a "mini-law review" in that information on personnel (promotions, reassignments, school selection, and awards) and other similar non-legal news items were no longer carried. The last PP&TO section, for example, appeared in February 1982. Apparently this occurred because the Army Publications and Printing Command changed its policy on what could be published in a Department of the Army Pamphlet (DA Pam) and informed TJAGSA that non-legal items were no longer permissible. Since *The Army Lawyer* had become a DA Pam in March 1973, it had to follow this new guidance—which meant the end of information on promotions, awards, reassignments, and similar items.[9] This prohibition, however, does not seemed to have prevented the occasional insert of information from PP&TO; the January 1994 *The Army Lawyer* contained an announcement on the importance of official photographs for promotions and information on filing "commendatory matters" in the Official Military Personnel File.[10]

From the 1990s to the present, *The Army Lawyer*'s content has been relatively stable, with a number of notable exceptions. First, beginning in the 1990s, the editors began devoting entire issues to one topic. As a result, there were special issues devoted to contract and fiscal law[11] and criminal law,[12] usually on an annual basis. *The Army Lawyer* also began publishing "TJAGSA Practice Notes" in which faculty members from all the teaching departments provided short articles on current developments in the law. In November 1997, for example, "practice notes" included information on the application of the Major Fraud Act to government contracts and the Taxpayer Relief Act of 1997.[13] The following month contained "practice notes" on the Child Support Recovery Act and the Uniformed Services Employment and Reemployment Rights Act.[14]

Second, starting with the October 2004 issue, the editors began publishing book reviews. Written mostly by Graduate Course students as part of their writing curriculum, these now appear in virtually every issue.

Third, at the suggestion of then Captain Ronald P. "Ron" Alcala, who was editing *The Army Lawyer* in 2010, a monthly history feature called the "Lore of the Corps" began appearing as the lead article. Two to four pages in length, and covering a variety of topics (courts-martial, personalities, war crimes, and general history), these have been a regular monthly feature for nearly five years. Alcala's other adopted suggestion was a newly designed blue-and-gold colored cover for *The Army Lawyer*, featuring the Regimental crest. The new cover first appeared in December 2010.

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[5] ARMY LAW., Sept. 1972, at 30.

[6] *Id*. at 27.

[7] ARMY LAW., OCT. 1972, at 26.

[8] ARMY LAW., Nov. 1971, at 24–25.

[9] As a result, this information was not officially available, although individual members of the Corps routinely prepared unofficial assignment lists through the years. Additionally, *The Regimental Reporter*, the newsletter of the TJAGSA Alumni Association, usually published lists of assignments when these became known. Not until the Corps created an electronic newsletter called the *Quill and Sword* did assignment lists once again become officially available.

[10] *Personnel, Plans and Training Office Notes*, ARMY LAW., Jan. 1994, at 44.

[11] *E.g.*, *Contract Law Developments of 1996—The Year in Review*, Army Law., Jan. 1997; *Contract and Fiscal Law Developments of 2006—The Year in Review*, Army Law., Jan. 2007.

[12] *E.g.*, *50th Anniversary of the UCMJ Series*, ARMY LAW., July 2000; *Military Justice Symposium I*, ARMY LAW., May 2004, *Military Justice Symposium II*, ARMY LAW., July 2004.

[13] *TJAGSA Practice Notes*, Army Law., Nov. 1997, at 31–44.

[14] *TJAGSA Practice Notes*, Army Law., Dec. 1997, at 26–34.

From its inception in 1972 until the present, a number of judge advocates have served as editors of *The Army Lawyer*. The first to serve were Captains (CPT) Stephen L. Buescher (editor) and Donald N. Zillman (articles editor). They were followed by the following *primary* editors:[15] CPT Paul F. Hill (October 1973 through November 1975); CPT Charles P. Goforth Jr. (December 1975 through August 1978), Major (MAJ) Percival D. Park (September 1978); CPT Frank G. Brunson Jr. (October 1978 through September 1980); CPT Connie S. Faulkner (October 1980 through May 1982); CPT Stephen J. Kaczynski (June 1982 through August 1983); CPT Debra L. Boudreau (September 1983 through July 1985); CPT David R. Getz (August 1985 through March 1988); MAJ Thomas J. Feeney (April 1988 through June 1988); CPT Matthew E. Winter (July 1988 through August 1990); CPT Daniel P. Shaver (September 1990 through May 1993); CPT John B. Jones Jr. (June 1993 through August 1995); CPT John B. Wells (September 1995 through August 1996); CPT Albert R. Veldhuyzen (September 1996 through June 1998); CPT Scott B. Murray (July 1998); CPT Mary J. Bradley (August 1998 through September 1998); CPT Kenneth D. Chason (October 1998 through June 1999); CPT Mary J. Bradley (July 1999 through August 1999); CPT Drew A. Swank (September 1999 through July 2000); CPT Todd S. Milliard (August 2000 through November 2000); CPT Gary P. Corn (December 2000 through July 2001); CPT Todd S. Milliard (August 2001 through October 2001); CPT Erik L. Christiansen (November 2001 through August 2002); CPT Joshua B. Stanton (October 2002 through August 2003); CPT Heather B. Fagan (September 2003 through May 2004); CPT Anita J. Fitch (June 2004 through February 2007); CPT Alison M. Tulud (March 2007 through August 2009); CPT Ronald T. P. Alcala (September 2009 through November 2010); CPT Madeline Yanford (later Gorini) (December 2010 through May 2011); CPT Joseph D. Wilkinson II (June 2011 through May 2012); CPT Takashi Kagawa (June 2012 through June 2013); CPT Marcia Reyes Steward (July 2013 through August 2014); and CPT Michelle E. Borgnino (September 2014 to present).

Of all these editors, two deserve additional mention: MAJ Matthew E. "Matt" Winter and CPT John B. Jones Jr. This is because both received "Army Editor of the Year" honors for their work on *The Army Lawyer*. In a Pentagon ceremony on 15 November 1990, Secretary of the Army Michael P. W. Stone presented Winter with his award. The citation for the award noted that MAJ Winter made *The Army Lawyer* "easier to read, understand and use." Secretary Stone also noted that Winter's initiatives while editor had "broadened the scope of legal subjects covered[,] . . . encouraged submission of articles[,] . . . eliminated printing errors, and substantially cut the production cycle" of the monthly periodical.[16]

Four years later, on 10 November 1994, Secretary of the Army Togo D. West Jr., himself a former member of the Corps, presented Captain John B. Jones Jr. with the award. According to the citation for Jones' award, he had prepared "approximately 3750 pages of manuscript for twelve issues" and "moved up the production cycle thirty days to ensure that *The Army Lawyer* was published and distributed by its cover date."[17]

While these editors had overall responsibility for producing the monthly periodical, they could not have accomplished their work without the support of administrative assistants. Initially, Mrs. Helena Daidone and Miss Dorothy "Dottie" Gross, both long-time civilian employees at TJAGSA, provided administrative support to *The Army Lawyer* editors. Miss Gross left the position for another job in TJAGSA after a short period, but Mrs. Daidone continued to support *The Army Lawyer*'s editors through the August 1979 issue.

A new Administrative Assistant, Ms. Eva F. Skinner, came on board in November 1979. She had been an employee in TJAGSA's Academic Department (today's Office of the Dean) since August 1973 but transferred to the Developments, Doctrine and Literature Department (or "DDL" as it was known colloquially) to become an "Editorial Assistant." Since DDL oversaw the production of both *The Army Lawyer* and *The Military Law Review*, Skinner began supporting the editors of both publications. When she retired in January 1995, Ms. Skinner had "trained fifteen different editors and coordinated the production of . . . 200 issues of *The Army Lawyer*."[18]

Charles J. "Chuck" Strong replaced Skinner as "Editorial Assistant" in November 1995. His recent retirement as "Technical Editor"[19] in January 2015 means that *The Army Lawyer* will be without administrative support for the near future.

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[15] This Lore of the Corps lists only *primary* editors as, on occasion, the masthead of *The Army Lawyer* lists "assistant editors." For example, CPT Jennifer Crawford is listed as an assistant editor for the November 2004 through May 2005 issues; CPT Colette E. Kitchel is listed as an assistant editor for the July 2005 through March 2007 issues. The March 2007 issue shows CPT Alison M. Tulud as the editor, with now MAJ Anita J. Fitch and CPT Colette E. Kitchel as assistant editors. Similarly, the August 2009 *The Army Lawyer* shows MAJ Tulud as editor with MAJ Ann B. Ching and CPT Ronald T. P. Alcala as assistant editors.

[16] *Major Winter Selected Army Editor of the Year*, THE REGIMENTAL REPORTER, Spring 1991, at 4.

[17] *Captain Jones Selected Army Editor of the Year*, THE REGIMENTAL REPORTER, Spring 1995, at 8.

[18] *Eva Skinner Retires After Lifetime of Service*, THE REGIMENTAL REPORTER, Spring 1995, at 10.

[19] The position was upgraded and renamed "Technical Editor" in January 2000, chiefly because the job had expanded to require the incumbent to use new electronic software in formatting both *The Army Lawyer* and the *Military Law Review* for publication. Additionally, the Technical Editor now was required to ensure that all legal citations followed the uniform system contained in Harvard Law School's *The Bluebook: A Uniform System of Citation*.

When one compares today's *The Army Lawyer* to the inaugural issue, it is clear that the content of the periodical has changed considerably. Certainly the original intent to have a practical, how-to-do-it periodical that would also trumpet TJAGSA's educational offerings in Charlottesville has given way to a more scholarly journal.

One sometimes hears the complaint that *The Army Lawyer* is just a smaller version of *The Military Law Review*. When one considers, however, that the former contains a much greater variety of articles than the latter, and that many of the authors writing for *The Army Lawyer* are seeking to provide helpful guidance to the practitioner in the field, this is not a criticism that should be taken too seriously.

As for the future? There seems little doubt that *The Army Lawyer* will continue to be published on a monthly basis, although the number of print copies will certainly decrease over time as the Army—and the Corps—moves increasingly to electronic-only publishing. In fact, the on-line version of *The Army Lawyer* (posted on www.jagcnet.army.mil) already appears weeks before the print version is available. But, as long as *The Army Lawyer* is offered by the Government Printing Office as an "individual paid subscription"—currently priced at $50 per year—it would seem likely that a print version will remain in existence.

The Army Lawyer, like its sister, the *Military Law Review*, is part of the Army JAG Corps's "brand." When readers see it, they have no doubt that it is connected to lawyering in the Army and to legal education at the only American Bar Association accredited military law school in the world.

Adam E. Patterson: First African American Judge Advocate in History

Fred L. Borch
Regimental Historian & Archivist

The first African-American lawyer to join our Corps—then known as the Judge Advocate General's Department—was Adam E. Patterson. He had practiced law in Oklahoma and Illinois for more than fifteen years before being appointed as a Major, Division Judge Advocate, 92d Division, American Expeditionary Force, by General John J. Pershing on October 5, 1918. What follows is the story of a remarkable lawyer and judge advocate.

Born in Walthall, Mississippi, on December 23, 1876, Adam E. Patterson went to high school in Kansas City, Kansas, and Pueblo, Colorado. After graduating in 1897, he attended the University of Kansas, and earned his LL.B.[1] in 1900.[2]

After being admitted to the bar, 24-year old Patterson began practicing law in Cairo, Illinois. Five years later, he moved to Muskogee, Oklahoma. Active in Democratic Party politics, he was "conspicuous" in supporting Woodrow Wilson in the 1912 elections.[3] As a reward, once he was elected, President Wilson nominated Patterson to be Register of the U.S. Treasury on July 24, 1913. Two days later, however, after two prominent senators from Mississippi and South Carolina and their followers "served notice" on Wilson that the nomination of an African-American "could not be confirmed," Wilson withdrew Patterson's nomination.[4] Secretary of State Williams Jennings Bryan subsequently offered Patterson the position of "Minister to Liberia," but Patterson apparently declined this appointment and returned to Illinois in 1914.[5]

Adam E. Patterson as a student at the University of Kansas, circa 1900.

In Chicago, Patterson continued his involvement in politics. He was elected president of the National Colored Democratic League and, in 1916, "managed the national campaign for [the] Democratic Party among colored voters."[6] He also had an active civil and criminal law practice and took on a number of high profile cases. On one occasion, Patterson worked alongside the famous lawyer Clarence Darrow[7] in defending Oscar S. De Priest, a black Republican and Chicago alderman, who was being prosecuted for graft; De Priest was acquitted.[8]

In 1917, after America's entry into World War I, Patterson joined the Officers Training Camp at Fort Des Moines, Iowa. He spent ten months as a captain of Infantry and was an

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[1] A bachelor of laws was the basic degree awarded to an individual upon the completion of law school until the late 1960s. THE FREE DICTIONARY, http://www.legal-dictionary.thefree dictionary.com/LL.B. (last visited Feb. 18, 2015).

[2] Questionnaire for the Judge Advocates Record of the War, Adam E. Patterson, National Archives and Records Administration, Record Group (RG) 153, Records of the Office of The Judge Advocate General, Entry 45, Box 4. [hereinafter NARA]

[3] THE CRISIS, Sept. 1913, at 227.

[4] *First Negro for Register: Opposition in Senate to President's Nomination of Patterson*, N.Y. TIMES, July 27, 1913, at 4.

[5] NARA, *supra* note 2.

[6] *Id.*

[7] *See* IRVING STONE, CLARENCE DARROW FOR THE DEFENSE: A BIOGRAPHY (1941). Clarence Darrow (1857-1938) is perhaps the most famous trial lawyer in U.S. history and was known for taking unpopular cases. He gained national prominence when defending John T. Scopes at the so-called "Scopes Monkey Trial" in Tennessee in 1925. *Id.*

[8] UNITED STATES HOUSE OF REPRESENTATIVES, HISTORY, ART & ARCHIVES, *De Priest, Oscar Stanton*, http://history.house.gov/People/Detail/12155? ret=True#biography (last visited Jan. 26, 2015). Oscar Stanton De Priest (1871-1951) was the first African-American to be elected to Congress from outside the southern states. He served as a Republican in the House of Representatives from 1929 to 1935; he was the only African-American in Congress during these years. *Id.*

instructor in the 4th Officers Training Camp, Camp Dodge, Iowa. Then, on October 5, 1918, Patterson was promoted to major and appointed Division Judge Advocate for the 92d Division.

This all African-American division, which had been created by General John J. Pershing as part of the American Expeditionary Force in 1917, had four infantry battalions, three field artillery battalions, and three machine gun battalions. It also had an engineer regiment, an engineer train, a signal corps, and a trench mortar battery.[9] While most officers in the division were African-American, black officers could not outrank white officers—meaning black officers generally were unable to attain a rank higher than lieutenant. This meant that Patterson was truly unique; he was one of only a handful of African-American majors in the Army and the first African-American lawyer to wear the crossed quill-and-sword insignia on his collar.

At the time of his appointment as Division Judge Advocate, the 92d Division was already in existence. Consequently, Patterson sailed to France, joined the unit, and then remained in France at least until February 1919.[10] Assisting him with his legal duties were Captain Austin T. Walden, the Assistant Judge Advocate and two enlisted men.[11] As for what he did as the senior lawyer in the division, Patterson wrote in 1925 that he "personally handled all offenses committed by the soldiers from A.W.O.L. to murder."[12] Additionally, he would have provided legal advice to commanders and their staffs, and almost certainly was available if Soldiers in the 92d needed legal assistance.

After returning to Chicago from France in 1919, Patterson "became a major figure in the city's Democratic Party." He also established "The Committee of One Hundred," composed mostly of African-American war veterans, working for "civic racial uplift" in Chicago.[13]

Patterson was also very active in refuting an organized campaign by General Robert L. Bullard and other senior white Army officers to discredit the contributions of African-Americans in World War I, especially those of the 92d Division.[14] As General Pershing had lauded the exploits of the division in France, Patterson and other black Americans who had served in the 92d took Bullard's criticisms "as a personal affront."[15]

In the 1920s and 1930s, Patterson served as assistant corporation counsel for the City of Chicago, a prestigious and high-paying position. In this job, Patterson defended the city in civil suits for money damages. He continued to use his military rank during this time, and is routinely identified in books and newspaper stories as "Major Adam Patterson."[16]

Patterson probably remained in Chicago for the remainder of his life but your Regimental Historian has been unable to find an obituary for him that would confirm this assumption; though one must exist given his prominence in the community. In any event, it is unquestionable that Adam E. Patterson was inordinately proud of his service as a Judge Advocate and that he deserves to be remembered.

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[9] STEVEN D. SMITH AND JAMES A. ZEIDLER, A HISTORIC CONTEXT FOR THE AFRICAN-AMERICAN MILITARY EXPERIENCE 156 (1998).

[10] NARA, *supra* note 2.

[11] Walden was the second African-American lawyer to join the Army as a judge advocate. He was commissioned as a captain on November 15, 1918 and ordered to duty as the Assistant Judge Advocate, 92d Division. Born at Fort Valley, Georgia, in 1885, Walden received his law degree from the University of Michigan in 1911 and practiced law in Macon, Georgia, prior to joining the Army in 1917. Walden returned to Georgia after World War I and became a prominent member of the African-American community in the Atlanta area. He also was active in politics, and when appointed to a judgeship on the Atlanta Municipal Court in 1964, he became the first black judge in Georgia since Reconstruction. Walden died in 1965. NARA, *supra* note 2; A. T. Walden (1885-1965), New Georgia Encyclopedia, http://www.georgiaencyclopedia.org/articles/history-archaeology/t-walden-1885-1965 (last visited Jan. 27, 2015).

[12] *92d Division Officer Nails Bullard's Lie*, CHICAGO DEFENDER, Jun. 13, 1925, at 3.

[13] CHAD LOUIS WILLIAMS, TORCHBEARERS OF DEMOCRACY: AFRICAN AMERICAN SOLDIERS IN THE WORLD WAR I ERA 322 (2010).

[14] General Bullard, commander of the 2d American Army, insisted that African-American soldiers were "hopelessly inferior" and had been cowards in battle. Historians today view condemnations by Bullard and others to have been "attempts to cover their own failures in combat and pitiful efforts to promote their own belief in black inferiority." SMITH AND ZEIDLER, *supra* note 6, at 179.

[15] WILLIAMS, *supra* note 13. Pershing told the members of the 92d that the "Division stands second to none in the record you have made since your arrival in France . . . . I commend the 92d Division for its achievements not only in the field, but on the record its men have made in their individual conduct." SMITH AND ZEIDLER, *supra* note 9, at 178-79.

[16] WALLACE B. WEST, PASSIONATELY HUMAN, NO LESS DIVINE 178 (2005); *Lays Cornerstone of $50,000 Church*, CHICAGO DEFENDER, July 31, 1937, at 4.

The Life and Career of Thomas A. Lynch: Army Judge Advocate in the Philippines and Japanese Prisoner of War

Fred L. Borch
Regimental Historian & Archivist

Little is known about the officers who served in The Judge Advocate General's Department (JAGD) prior to World War II, if only because there were relatively few lawyers in uniform in the "Old Army."[1] Even less is known about men who served in the JAGD of the Philippine Scouts in the 1920s and 1930s. But one lawyer who served as a judge advocate prior to World War II, and spent the majority of his time as a military attorney in the Philippines, was Thomas A. Lynch. He served in the Philippine Islands as a private, corporal, and sergeant in the early 1900s and ultimately retired as a major in JAGD of the Philippine Scouts in 1934. Recalled from retirement in 1940, Lynch was the Staff Judge Advocate, U.S. Forces in the Philippine Islands, when he was taken prisoner by the Japanese in 1942. He survived captivity and retired from the Army a second time in 1946.

Born in Chicago, Illinois, on March 2, 1882, Thomas "Tom" Austin Lynch graduated from high school at age 19.[2] He seems to have worked in Chicago as an office clerk for the Chicago and New Hampshire Railroad before enlisting in the 17th Infantry Regiment on March 28, 1904.[3] After a short period of service in Cuba, he sailed with his unit to the Philippines where he subsequently served as a private, corporal, sergeant, and First Sergeant of Company "F" of that Regular Army unit.

His military records show that he was five foot, six inches tall and weighed 140 lbs. when he enlisted. He had blue eyes and brown hair. He also had a tattoo of a butterfly (on his left forearm and upper right arm), which he most likely obtained while soldiering in the Philippines. Lynch also picked up some knowledge of Spanish while serving in Cuba and the Philippines, although his records indicate that he spoke it poorly.

Tom Lynch was a talented Soldier of proven ability. He not only participated in campaigns against Filipino insurgents on Mindanao in 1904-1905 (his records reflect one year, seven months of "combat" duty)[4] but his superiors were sufficiently impressed with Lynch that he was offered a commission in the Philippine Scouts.[5] After slightly more than seven years in the ranks, Lynch took his oath of office as a second lieutenant on February 16, 1912. A year later, he was serving as the "Presidente of Parang and Deputy District Governor" of Cabato, Mindanao.[6]

In 1915, when he was 33 years old, Lynch enrolled in correspondence courses offered by the Hamilton College of Law.[7] His military records from May of 1919 show that he studied law by correspondence for three years but did not graduate. These legal studies were apparently sufficient for Lynch to begin practicing Army law as there was no

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[1] For old soldiers and veterans, the term "Old Army" refers to an army of an earlier period, usually before the last war. Most military historians consider the "Old Army" to be the peacetime Army before World War II, and this Lore of the Corps uses the words in that manner. For more on this phrase, *see* EDWARD M. COFFMAN, THE OLD ARMY (1986). Lawyers in the Old Army were relatively few, but this is understandable given that, from 1922 to 1935, the Army's strength never exceeded 150,000. In the late 1930s, the JAGD had a total of 90 uniformed lawyers, 36 of whom were in Washington, D.C. JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 156 (1975).

[2] Thomas A. Lynch may have been born on 2 June 1885, and not 2 June 1882. According to one of his granddaughters, he gave the Army an earlier date of birth (DOB) because he was not old enough to enlist. This may be true, but all of Lynch's military records reflect his DOB as 2 June 1882. Additionally, since Lynch enlisted on 28 March 1904, he was already 18 years of age and, as he had reached the age of majority, there would have been no need to falsify his DOB. His actual birthday remains a mystery. Email, Elizabeth Lynch Pitt to author (Dec. 17, 2014, 21:40 EST) (on file with author).

[3] War Department Adjutant General's Corps Form No. 66-1, Officer's and Warrant Officer's Qualification Card, Lynch, Thomas A. (9 Sep. 1945), Block (9) War Service.

[4] *Id.*

[5] Created by the Army in 1899, the Philippine Scouts were recruited from the indigenous population of the Islands and used to suppress the increasingly vicious insurgency led by Emilio Aquinaldo against the new American colonial regime. In 1901, Congress made the Scouts part of the Regular Army, and assumed responsibility for their pay and entitlements. The Scouts were now a "military necessity" as congressional authorization for the U.S. volunteer army had expired, leaving only U.S. Regular troops and the fifty companies of Scouts (about 5,000 men) to maintain law and order in the Philippines. PAUL A. KRAMER, THE BLOOD OF GOVERNMENT 113-14 (2006). By the time 2d Lt. Lynch accepted a commission in the Scouts in 1912, the Scouts were an important military force in the Philippines. While soldiers enlisting in the Scouts were exclusively native-born recruits, many Scout officers also were Filipino—in contrast to Lynch. A significant number also were U.S. Military Academy graduates, as West Point had begun admitting Filipinos in 1908; by 1941, 16 of 38 native Scout officers were USMA graduates. *See* JEROLD E. BROWN, HISTORICAL DICTIONARY OF THE UNITED STATES ARMY 366-67 (2001).

[6] Lynch was stationed on Mindanao because guerilla activity persisted on that island—and the islands of Samar, Cebu and Jolo—until 1913, when then Brigadier General John J. Pershing and troops of the 8th Infantry finally defeated Moro insurgents at the battle of Bud Bagsak on Jolo Island. JERRY KEENAN, ENCYCLOPEDIA OF THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS 52 (2001).

[7] Located in Chicago, Illinois, the Hamilton College of Law advertised that it was "absolutely the ONLY law school of its kind in America" and the "only law school giving a full 3-year University Law course by mail." Lynch probably knew about the Hamilton College of Law because he was from Chicago, but the institution also advertised in magazines that Lynch would have seen in the Philippines. *See* COSMOPOLITAN MAGAZINE, Dec. 1914, at 26.

requirement for a judge advocate to be a law school graduate or admitted to the practice of law in any court.[8]

In any event, after serving as Adjutant for Philippine Scouts stationed at Camp Claudio, now Captain (CPT) Lynch was transferred to Fort Santiago in Manila and given his first work as an Army attorney. His Special Efficiency Report for April to September 1919 identifies Lynch as "Assistant to the [Philippine] Department Judge Advocate." His job? "Assisting in court-martial reviews, etc., looking up law citations and writing of legal opinions."[9]

While marked as "above average" rather than "superior" when it came to "physical energy and endurance, judgment and common sense, and attention to duty," this seems to have been a fairly standard grade on an efficiency report for a Philippine Scout officer. After all, in writing "a brief general estimate" of Lynch, Lieutenant Colonel (LTC) Dennis P. Quinlan, his immediate superior, described him as a "fairly well educated officer[,] . . . an intelligent, sober, zealous, well-ballasted man" (although precisely what his rater meant by that last term is not clear). Quinlan further described Lynch as "a loyal subordinate, thoroly [sic] conscientious, all-round officer, competent to command [a] regiment in an emergency."[10] This would appear to have been high praise for the era.

After being promoted to major (MAJ) on July 1, 1920, Lynch continued his work as an Army lawyer. He wore the crossed quill-and-sword insignia on his collar and served as a "Law Member"[11] at general courts-martial convened in the Philippines. Lynch also performed duties as a trial counsel at general courts,[12] reviewed court-martial records and prepared legal opinions. But this was not a full-time position, as his military records show that MAJ Lynch also served as an "Athletic officer," "Salvage officer," "Assistant to the Post Quartermaster," and "Regimental Adjutant" between 1920 and 1922.[13]

Major Thomas A. Lynch, Manila, Philippine Islands, 1924.

By 1925, MAJ Lynch was devoting his time exclusively to legal matters as Assistant Department Judge Advocate in Manila. His duties included "preparation of opinions, examinations of G.C.M. records, writing reviews, giving advice on legal questions, and [serving] as trial judge advocate." His rater, Lieutenant Colonel (LTC) A. R. Stallings, the Philippine Department Judge Advocate, described MAJ Lynch as follows in his November 1925 evaluation of him:

> This officer is a careful competent reliable sound lawyer. Has no habits that interfere with his

[8] In the 19th and early 20th century, it was quite typical for men to become lawyers through self-study and apprenticeship. President Abraham Lincoln, for example, who had but a single year of formal education, was admitted to the Illinois Bar after a period of "reading for the Bar."

[9] U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (25 Nov. 1919) (covering period 16 September 1919 to 25 November 1919).

[10] U.S. War Department, Form No. 706, Special Efficiency Report for Regular Officers, Lynch, Thomas A. (3 Sept. 1919) (covering from 4 April 1919 to 1 September 1919).

[11] While the law member was the forerunner of today's military judge, his role and authority were markedly different in the 1920s. The law member was tasked with ruling "in open court" on all "interlocutory questions." These were defined by the 1921 *Manual for Courts-Martial* as "all questions of any kind arising at any time during the trial" except those relating to challenges, findings, and sentence. But the law member's rulings were only binding on the court when the interlocutory question concerned admissibility of evidence. On all other interlocutory questions, the law member's decision could be overturned by a majority vote of the members. Interestingly, the law member also participated in all votes taken by the members, including findings and sentencing. MANUAL FOR COURTS-MARTIAL, UNITED STATES ¶ 89a(2), (3), (6) (1921).

[12] U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (1 Feb. 1922) (covering period 14 October 1921 to 31 January 1922).

[13] U.S. War Department, Form No. 711, Efficiency Report, Lynch, Thomas A. (7 Sep. 1921) (covering period 1 July 1921 to 15 August 1921).

> duties. Familiar with the manual [for courts-martial] and an excellent trial J[udge] A[dvocate]. Courteous, and of splendid disposition. Conscientious, capable and fair. Has just been admitted to practice in Philippine Courts. Is very loyal and dependable and an all round experienced lawyer.[14]

The following year, LTC Hugh C. Smith, who had replaced Stallings as Department Judge Advocate, also lauded Lynch's abilities as an attorney. He was, wrote Smith, "particularly valuable … on account of his long service here and his knowledge of Philippine laws and customs and his knowledge of precedents and policies pertaining to questions arising in this office."[15] Although some Anglo-American legal principles had been injected into the Philippine legal system by U.S. authorities after the Spanish-American War, much of Philippine law still was chiefly based on Spanish civil and penal codes, a holdover from the Spanish colonial rule of the archipelago.

In August 1926, MAJ Lynch sailed from Manila to San Francisco, California, and then took leave in New York City. In November, at the end of this authorized absence, he reported for duty at the Office of the Judge Advocate General in Washington, D.C. For the next four years, Lynch served in the Military Affairs Section. Akin to today's Administrative and Civil Law Division at the Office of The Judge Advocate General, military attorneys working in the Military Affairs Section were busy with all manner of non-criminal work involving the Army. According to his military records, he did well in the War Department. "He demonstrated resourcefulness and power of close analysis" and was "a very helpful assistant in the solution of a variety of legal questions."[16]

In November 1930, MAJ Lynch returned to the Philippine Islands, and resumed his work as the Assistant Department Judge Advocate. His new boss, Colonel (COL) William Taylor, praised him as "superior" in nine of ten categories, including intelligence, judgment and common sense, and leadership. As Taylor put it, MAJ Lynch was "eminently qualified to serve as a judge advocate anywhere, but especially in the Philippine Islands." This was because he was "thoroughly familiar with all the conditions and laws in force in the Philippines" and was "alive to his surroundings and can be relied upon in any and all situations." But not everyone agreed with Taylor's assessment. Major General John L. Hines, then commanding the Philippine Department, wrote this "indorsement" to MAJ Lynch's report: "An excellent officer, but this report is entirely too enthusiastic in its praise."[17]

Hines had previously served as Army Chief of Staff (from 1924 to 1926)[18] and so his opinion certainly carried some weight—but one wonders if Hines really was able to judge MAJ Lynch's value to the Philippine Department. After all, Lynch's next report card stated the following:

> He is especially valuable here because of his familiarity with local laws and conditions. He is a mature man of exceptionally high ideals and he lives in accord with them. He has spent a great portion of his mature life in the Philippines and has acquired an unusual fund of information about the administration and laws of the insular government. He is studious and strong minded.[19]

Major Lynch retired from the Regular Army on August 31, 1934, with slightly more than 30 years active duty. This was the minimum period of time required for retirement before World War II and it seems that, having satisfied the number of years needed for a military pension, MAJ Lynch decided it was time to retire from active service. But he liked living in the Philippines and decided to remain there. Having moved out of Army housing, Lynch and his family acquired a home in Manila, and he established a private law practice in downtown Manila.[20]

Six years later, with war on the horizon after the German attacks on Poland in 1939, the Low Countries and France in 1940, an alarmed Congress authorized the induction of Reservists. It passed America's first peacetime draft the following month. As the Army began expanding, retired officers with special talents and abilities were recalled to active duty. Recognizing that a judge advocate of MAJ

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[14] U.S. War Department, Efficiency Report, Lynch, Thomas A. (7 Nov. 1925) (covering 1 July 1925 to 7 November 1925).

[15] U.S. War Department, Efficiency Report, Lynch, Thomas A. (30 Jun. 1926) (covering period 7 November 1925 to 30 June 1926).

[16] U.S. War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (1 Jul. 1928) (covering 1 July 1927 to 30 June 1928).

[17] U.S. War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (13 Oct. 1931) (covering 1 July 1931 to 12 October 1931).

[18] John Leonard Hines was a remarkable man by any measure. Born in West Virginia in May 1868, he was an 1891 graduate of the U.S. Military Academy. Commissioned as an Infantry officer, Hines served in the Santiago de Cuba campaign (1898), Philippine Insurrection (1899-1902), and Punitive Expedition into Mexico (1916). In World War I, Hines served first as a regimental commander, and then as the commanding general of a brigade, division, and corps in the American Expeditionary Force. This put him into the history books, as Hines was the only Army officer in World War I to command a regiment, brigade, division, and corps in combat. The recipient of the Distinguished Service Cross, Distinguished Service Medal, and Silver Star, Hines served first as Deputy Chief of Staff (1922-1924), and then as Chief of Staff. He retired in 1932 as a major general but was advanced to four star rank in 1940. Hines died five months after celebrating his 100th birthday, and is buried in Arlington National Cemetery. In 2000, the U.S. Postal Service issued a postage stamp honoring him. ARLINGTON NATIONAL CEMETERY WEBSITE, http://www.arlingtoncemetery.net /jlhines.htm (last visited Mar. 4, 2015).

[19] War Department, Adjutant General's Office Form No. 67, Efficiency Report, Lynch, Thomas A. (9 Jul. 1932) (covering period 13 October 1931 to 30 June 1932).

[20] War Department Form 66-1, *supra* note 3.

Lynch's experience would be valuable in the Philippines, he was recalled on November 15, 1940, and promoted to LTC.[21] He was now 58 years old, well beyond the normal age for soldiering, but a war was coming and his services as a lawyer in uniform were needed.

In early 1941, LTC Lynch assumed duties as Executive Officer to the Philippine Department Judge Advocate. As the threat of a Japanese attack became more likely, his wife Grace and youngest son, William, were evacuated to the United States.[22] But Lynch remained in Manila and was still serving as Executive Officer when the Imperial Japanese Army invaded the archipelago on December 8, 1941. As the American-Filipino defense of the islands got underway, Lynch took on a number of non-legal duties. He was the Chairman of the Enemy Alien Board in Manila and the Liaison Officer to the Civil Government in Bataan Province. In the former position, he oversaw the detention process of Japanese citizens residing in the Philippines. Since there were a large number of Japanese nationals living and working in the islands, this was no small undertaking. In the latter position, LTC Lynch was involved in the handling of refugees fleeing the advancing Japanese Army.

During the retreat of American and Filipino forces from central Luzon into Bataan, LTC Lynch also assumed duties as Transportation Assistant to the Quartermaster. He saw combat and, on 29 December 1941, was wounded in action by bomb fragments (lower left leg and left hand) from Japanese artillery fire. He was later awarded the Purple Heart for these combat injuries.[23]

Corregidor, a rocky, two-mile-square island that sits astride the entrance to Manila Bay, was the final defensive position for American and Filipino forces. As units began moving onto the island, Lynch was placed in command of Cabcaban Pier, which was the major off-loading point for materiel going to and from the island. He handled "all unloadings" between December 31, 1941 and January 4, 1942.

Lynch was promoted to colonel on March 28, 1942, and re-assigned as Staff Judge Advocate, U.S. Forces in the Philippine Islands. In this position he provided the full range of legal advice to Lieutenant General Jonathan "Skinny" Wainwright, the senior most Army officer in the Philippines after General Douglas MacArthur left for Australia in March 1942.[24] When Wainwright surrendered all U.S. forces on Corregidor on May 6, 1942, he and Tom Lynch went into Japanese captivity.[25]

Colonel Lynch's records do not reveal where he was initially confined as a Prisoner of War (POW) but he probably was at a camp for senior officers (generals and colonels) in the old cadre barracks of the Philippine Army at Tarlac, near Manila. In August 1942, he seems to have been transported along with other generals and colonels to Formosa (today's Taiwan). While in a POW camp in Karenko on Formosa, "Judge" Lynch (as he was known to his comrades-in-arms), rescued a fellow officer, COL Abe Garfinkle, who "slipped and almost fell into the forbidden pool."[26] According to a book of cartoons about daily life as a POW life drawn by a fellow prisoner of war, COL Malcolm Fortier, and miraculously preserved throughout his captivity, Judge Lynch saved Garfinkle by grabbing his foot, thereby preventing his fall into the liquid. It is not clear what was "forbidden" about the pool but it seems to have been a place to be avoided.

In June 1943, COL Lynch and his fellow POWs were moved to a new camp near Shirakawa, Formosa. The following year, in October 1944, the POWs were transported by ship to Manchuria. They then travelled by railway to their new camp in Mukden. This was a tough experience for Lynch and his fellow POWs, as they had been living in a tropical climate on Taiwan and were now in "sub-Arctic weather (47 degrees) [below zero Fahrenheit]."[27]

During his captivity from 1942 to 1945, COL Lynch—like his fellow POWs—was chiefly concerned with survival. There was never enough food to eat, although the men did begin to receive Red Cross food parcels at some point, and this no doubt helped. Nonetheless, at the end of their captivity, the POWs were eating anything they could find, including "green" sunflower seeds and tree snails. Some men lost 20 lbs. in the last month of their imprisonment; when COL Lynch was liberated by advancing Soviet troops on August 20, 1945, he weighed 116 lbs.[28]

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[21] *Id.*

[22] Lynch and his wife, Grace, had four sons and one daughter; all were born in the Philippines while he was serving with the Philippine Scouts. By 1941, his two oldest sons, Robert and Douglas, were adults and were working in the United States. His third son, James, was studying to be an engineer in Indiana, and his daughter, Helen, was married to a U.S. Navy officer stationed outside the Philippines. William was the only child still at home with him and his wife. War Department Form 66-1, *supra* note 3.

[23] Headquarters, U.S. Forces in the Philippines, Gen. Orders No. 26 (13 Apr. 1942).

[24] Jonathan Mayhew Wainwright "was a tough, professional soldier" whose heroic defense of the Philippines "became a symbol of defiance at a time of national calamity." He was awarded the Medal of Honor after his release from captivity in 1946. His nickname, "Skinny," came from his gaunt, gangly physique. JOHN C. FREDRIKSEN, AMERICAN MILITARY LEADERS VOL. II 842 (1999).

[25] Lynch avoided the so-called Bataan Death March, as he was on Corregidor; the Bataan Death March had occurred a month earlier, on 9 April 1942.

[26] MALCOLM VAUGHN FORTIER, THE LIFE OF A P.O.W. UNDER THE JAPANESE 46 (1946).

[27] *Id*. at 110.

[28] *Id*. at 124.

Tom Lynch was a lucky man; many Americans had not survived captivity. Additionally, the Japanese High Command had given orders that all POWs in various camps in the Mukden area—including the camp where Lynch was imprisoned—were to be killed. This explains why a small team of Office of Strategic Services (OSS) agents parachuted from a low-flying bomber on August 15, 1945 and moved to the Mukden camp area to prevent the massacre of American and Allied POWs.[29]

Repatriated to the United States in early September 1945, COL Lynch had a period of "rest and recuperation" before appearing before an "Army retiring board" on January 26, 1946. A medical examination had previously "found [Lynch] to be permanently incapacitated" as a result of severe arteriosclerosis. As the board concluded that this physical infirmity was the direct result of his captivity as a POW, the board directed that Lynch "be relieved from active duty . . . at the expiration of his rest and recuperation leave" and retired as a colonel.[30]

Colonel (Retired) Thomas A. Lynch, Bethesda, Maryland, 1952.

Shortly thereafter, the War Department awarded Lynch the Legion of Merit in recognition of his six months of difficult service on Bataan and Corregidor. His citation reads:

> Colonel Thomas A. Lynch distinguished himself by exceptionally meritorious conduct in the performance of outstanding services from December 1941 to May 1942, on Bataan and Corregidor, Philippine Islands. In the several capacities as Executive to the Philippine Department Judge Advocate, President of the Enemy Alien Board, Transportation Assistant to the Quartermaster during the movement into Bataan, Liaison Officer with the Bataan Civil Government and as Judge Advocate for U.S. Forces in the Philippines, he displayed superior political and legal knowledge in his sound advice to his superiors which assisted in solving many pressing problems.[31]

When he retired, sixty-three-year-old COL Lynch lived in Bethesda, Maryland. In 1949, his wife Grace died. Two years later, in June 1951, he married Marietta Wilmot. They subsequently had a daughter and son—which means that Lynch was a new father when he was in his early 70s.

Colonel (Retired) Thomas A. Lynch with his step-son and youngest son, Bethesda, Maryland, 1956.

Colonel Tom Lynch was an outstanding Army lawyer. He also was a remarkably resilient and tough individual; his survival in the tropics, under fire in battle, and as a POW from 1942 to 1945 proves this to be the case. His medical condition at the end of his POW experience, while serious, did not prevent him from living a full life as a retired judge advocate.

COL Lynch died of pneumonia at Walter Reed General Hospital on December 18, 1962. He was 80 years old. Lynch

[29] For more on this Office of Strategic Services mission, *see* HAL LEITH, POWS OF JAPANESE: RESCUED! (2004). While the intent of the OSS was to rescue high-ranking officers like Lieutenant General Wainwright, COL Tom Lynch and his fellow POWs also were beneficiaries of this rescue mission.

[30] Memorandum for the Secretary of War's Personnel Board, subj: Benefits under Public Law 101-78th Congress, Lynch, Thomas A. (26 Feb. 1946).

[31] Lynch, Military Personnel File. Lynch's Legion of Merit was approved by the War Department on 1 July 1946.

was buried with full military honors at Arlington National Cemetery, and both his wives are buried next to him.[32]

[32] Department of the Army, Form DD 1300, Report of Casualty, Lynch, Thomas A. (19 Dec. 1962).

Camaraderie after the Corps: A History of the Retired Army Judge Advocate Association

By Fred L. Borch
Regimental Historian and Archivist

For every lawyer who decides to make a career of The Judge Advocate General's Corps (JAGC), retirement—from the Regular component, Army Reserve, or National Guard—is inevitable. Retirement does not mean, however, that friendships and associations with other Army lawyers are at an end. On the contrary, the desire of judge advocates to continue to foster camaraderie in retirement resulted in the establishment of the Retired Army Judge Advocate Association (or "RAJA" as it is colloquially known) in 1976. What follows is a short history of RAJA, including the impetus for its creation and some details on its activities over the last 40 years.

In early 1976, the Korean embassy in Washington, D.C., contacted Colonel (COL) (retired) Waldemar "Wally" A. Solf,[1] who was then working as a civilian attorney in the International Affairs Division[2] at the Office of The Judge Advocate General. As part of a number of events commemorating the 25th anniversary of the start of the Korean War, the government in Seoul was interested in inviting a select group of judge advocates who had served in Korea during the conflict to make a return visit.[3]

As a result, a small number of judge advocates who had served in Korea in the 1950s received telephone calls from the Korean embassy. Each was asked whether he would be interested in making a trip with his spouse as part of the Korean Service Veterans Revisit Program, and was informed that it would be an all-expense paid six-day trip. This phone call was followed up by a written invitation signed by the president of the Seoul (South Korea) Bar Association.

Brigadier General Clio E. Straight

In July 1976, a small group of retired Army lawyers and their wives met in Los Angeles and flew to Seoul. Some knew each other from prior tours of duty together while others knew each other only from "JAG Conferences."[4] Major General Lawrence "Larry" J. Fuller had served as the SJA at Eighth U.S. Army after the Korean War; his wife Mary accompanied him.[5] Brigadier General Clio "Red" E. Straight (and wife Betty) and Brigadier General Bruce C. Babbitt (and wife Betty) also were in attendance. Straight, who had served as a judge advocate in both World War II and Korea, had retired from the Corps in June 1961.[6] Babbitt, who had served as an Infantry officer in World War II, had been a judge advocate during the Korea War. While serving in the 2d Infantry

[1] Waldemar A. Solf (1913-1987) was an expert in the Law of Armed Conflict (LOAC). A 1937 graduate of the University of Chicago's law school, he served as an Artillery officer in France and Germany in World War II before transferring to the Judge Advocate General's Department in 1946. Solf subsequently had a distinguished career as a judge advocate, including service as a military judge in Korea and as the Staff Judge Advocate, Eighth U.S. Army. After retiring in 1968, Wally Solf served as the Chief, International Affairs Division from 1971 to 1977 and then as Special Assistant to The Judge Advocate General (TJAG) from 1977 to 1979. It was Solf who, in 1974, suggested that a Defense Department-level Law of War program be created. Major General George S. Prugh, then serving as TJAG, concurred with this suggestion, and the result was that the Army became the executive agent for all law of war matters in the Defense Department—and Army lawyers were tasked with ensuring that all U.S. military operations complied with LOAC. Solf's 1974 suggestion was the starting point for the emergence of today's Operational Law framework familiar to all judge advocates. From 1975 to 1977, Solf was a Delegate to the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law in Armed Conflict in Geneva and was heavily involved in the drafting of what became the 1977 Protocols Additional. While the United States did not ratify the Protocols, their impact on the development of LOAC has been immense.

[2] Today's International and Operational Law Division.

[3] JOHN JAY DOUGLASS, A SHORT HISTORY OF RAJA, 1976 TO 2004 (unpublished monograph), at 1-2.

[4] Today this event is known as the World Wide Continuing Legal Education conference.

[5] Born in 1914, Lawrence J. Fuller served in World War II and Korea. His last assignment in the Corps was as The Assistant Judge Advocate General (today's Deputy Judge Advocate General). Fuller retired as a major general in 1971 and died in 1998.

[6] Born in 1904, Clio Edwin Straight graduated from the University of Iowa's law school in 1930 and served in the Corps in World War II. In 1945, he was sent to Europe where he assumed duties as the Deputy Theater Judge Advocate for War Crimes, U.S. Forces European Theater. In this position, he had overall responsibility for the prosecution of German Army personnel for war crimes. When he retired from the Army in June 1961, he was a brigadier general and the Assistant Judge Advocate General for Civil Law. He subsequently joined Champion International Corporation, where he worked as a lawyer until 1972, when he joined the law firm of Frost & Jacobs in Cincinnati, Ohio. Straight retired from the practice of law in 1977. He died in 1991 and is buried in Arlington National Cemetery. U.S. DEP'T OF ARMY, U.S. ARMY REGISTER VOLUME III, RETIRED LISTS 51 (1968).

Division in the early months of the conflict, then Major (MAJ) Babbitt made history when he became the first (and only) judge advocate to command a rifle battalion; his unit was deployed in defensive positions along the division's main supply route.[7]

Brigadier General Bruce C. Babbitt

The other attendees were no less distinguished. Colonel (retired) Burton "Burt" F. (and Dee) Ellis,[8] COL (retired) Howard (and Blanche) Levie,[9] COL (retired) Leonard "Lenny" (and Ruth) Petkoff,[10] COL (retired) John Jay (and Margaret "Papoose") Douglass,[11] and COL (retired) Thomas "Tom" F. (and Marie) Meagher.

At a breakfast toward the end of this visit to Korea, the Babbitts, Petkoffs, and Douglasses all agreed that this reunion in Korea had been "a great event" and that a group should be formed that "could bring the JAGs together for some kind of annual reunion."[12] According to COL Douglass, the name of this organization—Retired Army Judge Advocate Association—was born high over the Pacific on the return flight from Seoul to the United States.[13]

Bruce Babbitt, who was now in private practice in Florida, incorporated RAJA in Florida, with retired judge advocate COLs Dave Chase and Tom Oldham[14] as incorporators. John Jay Douglass was the president and Bruce Babbitt was the Secretary-Treasurer.

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[7] Bruce C. Babbitt (1920-1999) was a remarkable judge advocate by any measure. He was decorated with the Silver Star in World War II and, after completing his law degree in 1947, joined the Corps. In 1952, Babbitt graduated first in his class at the inaugural Advanced Course (today's Graduate Course). He was the SJA, 3d Infantry Division in the 1950s (when the division was stationed in Germany) and later served as SJA, Military Assistance Command, Vietnam. Babbitt was the Assistant Judge Advocate General for Civil Law when he retired in 1973. For more on Babbitt, *see* JAGCNET, https://www.jagcnet.army.mil/852736A005BF 2E1 /0/10421739EA80CE98525749F00561BD7/$file/Bruce%20Babbitt%20bio. pdf (last visited Apr. 6, 2015).

[8] Born in Idaho in 1903, Burton "Burt" French Ellis graduated from the University of Idaho's law school and entered the Corps late in World War II; then Major Ellis graduated from TJAGSA's eight-week 21st Officer Course in March 1945. George P. Forbes, Jr., *The Judge Advocate General's School*, JUDGE ADVOCATE J., Summer 1945, at 60. Ellis is best known as the prosecutor of SS Lieutenant Colonel Jochen Peiper and other SS personnel for war crimes committed during the Battle of the Bulge. This trial, known today as the "Malmedy Massacre," was one of the most famous trials to come out of World War II. Ellis retired from the regular Army in November 1958. He lived the next 41 years in Merced, California, where he died in 2000 at the age of 97. Ellis left a $6 million bequest to the University of Idaho's law school; at the time, this was the largest individual gift to the school in its history. Ellis is buried in Arlington National Cemetery. DOUGLASS, *supra* note 3, at 15. For more on the Malmedy Massacre prosecution and Ellis' role in it, see DANNY S. PARKER, HITLER'S WARRIOR: THE LIFE AND WARS OF SS COLONEL JOCHEN PEIPER 159-71 (2014).

[9] Born in 1907, Howard S. Levie graduated from Cornell University's law school in 1930. After service in the Coast Artillery in World War II (mostly in the Pacific), he transferred to the JAG Department in 1946. Levie had a successful career until retiring in 1963 and beginning a second career as a law school professor at St. Louis University. An expert in war crimes and prisoner of war matters, Levie is most famous for having authored the words of the armistice agreement that stopped the fighting in Korea in 1953—the agreement that is in effect today. Levie celebrated his 100th birthday in December 2007, and is the only Army judge advocate to reach the century mark. He died in 2009, at the age of 101. For more on Levie, *see* Fred L. Borch, *The Cease-Fire on the Korean Peninsula: The Story of the Judge Advocate Who Drafted the Armistice Agreement that Ended the Korean War*, ARMY LAW., Aug. 2013, 1-3.

[10] Born in 1916, Leonard Petkoff graduated from New York University's law school in 1940 and served in World War II, Korea, and Vietnam before retiring from the Corps in 1972. He was the SJA, U.S. Forces, Korea, in the 1950s. After leaving active duty, Petkoff was the Chief Trial Attorney for the Washington Metropolitan Area Transit Authority. He died in Melbourne, Florida, in 2008, aged 91 years. He is buried in Arlington National Cemetery. FIND A GRAVE, http://www.findagrave.com/cgi-bin /fg.cgi?page=gr&G Rid=28920156 (last visited Apr. 7, 2015).

[11] Born in 1922, John Jay Douglass had a long and distinguished career as an Army officer and judge advocate. He served as an Infantry officer from 1944 to 1946. Then, after graduating from the University of Michigan's law school in 1952, he returned to active duty as a judge advocate. Douglass subsequently served in Japan and Korea (1953-1954) and Vietnam (1968-1969). His final assignment was as Commandant, The Judge Advocate General's School, in 1970. Colonel Douglass retired from active duty in 1974. JOHN JAY DOUGLASS, MEMOIRS OF AN ARMY LAWYER (n.d.)

[12] DOUGLASS, *supra* note 3, at 3.

[13] *Id.*

[14] Then Lieutenant Colonel Thomas Oldham served as COL John Jay Douglass' deputy when Douglass was the staff judge advocate, U.S. Army, Vietnam, from 1968 to 1969. Interview with John Jay Douglass (Apr. 7, 2015) (on file with author).

Colonel (retired) John Jay Douglass was the first President of RAJA.

By early 1977, plans were underway for the first RAJA gathering at The Judge Advocate General's School in Charlottesville, Va. With the help of COL Barney L. Brannen Jr., then serving as Commandant, about 70 retired judge advocates and spouses attended the "first annual RAJA conference" in the summer of 1977.[15]

In what has been called a "democratic" decision, the members of RAJA decided that they would invite only one active duty Army lawyer—TJAG—to address their first gathering, but he would be limited to 25 seconds for any remarks he might wish to make at the RAJA banquet held on Saturday evening. Major General Wilton Persons, then serving as TJAG, apparently used only 20 seconds of his allotted time.[16]

Since this inaugural event, the sitting TJAG has always been invited to RAJA's annual gathering. He or she continues to be restricted to 25 seconds for any banquet speech. But there is no restriction on how long TJAG may address RAJA at the annual business meeting, and TJAG's remarks generally have followed a "State of the Corps" format. Over the years, the TJAGSA (now TJAGLCS) Commandant also has been invited to attend RAJA, and usually makes brief remarks about the "State of the School (or LCS)." But the members of RAJA still pride themselves on having the shortest possible annual "business meetings," with the goal of accomplishing all business in less than ten minutes.[17]

After the 1977 event in Charlottesville, the retired Army lawyers next gathered in San Antonio, Tex. (1978), and San Francisco, Cal. (1979). By the time RAJA met in Williamsburg, Va., in 1980, the organization had grown to over 200 members and had determined that future meetings would "repeat the geographic pattern of East Coast, Mid-America, and West Coast in subsequent years."[18] As a result, RAJA met in the following locations after Williamsburg: Colorado Springs, Colo. (1981); Monterey, Cal. (1982); Atlanta, Ga. (1983); Louisville, Ky. (1984); Las Vegas, Nev. (1985); Savannah, Ga. (1986); Austin, Tex. (1987); San Diego, Cal. (1988); Newport, R.I. (1989); Pensacola, Fla. (1990); Honolulu, Haw. (1991); Charlottesville, Va. (1992); San Antonio, Tex. (1993); Reno, Nev. (1994); and Charleston, S.C. (1995). At the Charleston gathering, RAJA members elected COL (retired) Jim Mundt as president and COL (retired) Don Pierce as Secretary; Douglass and Babbitt (who had both served 20 years) stepped down from their inaugural leadership positions.[19]

In 1996, RAJA met in Colorado Springs and in Palm Springs in 1997. It met in the following locations in succeeding years: Cocoa Beach, Fla. (1998); Kansas City, Mo. (1999); Sacramento, Cal. (2000); Williamsburg, Va. (2001); San Antonio, Tex. (2002); Las Vegas, Nev. (2003); Portsmouth, N.H. (2004); and Columbus, Ga. (2005). At this meeting, COL (ret) Tim Naccarato replaced Jim Mundt as RAJA president; Mundt had served ten years in the position.

The following year, RAJA was in Rapid City, S.D., and then held meetings in the following locations: Scottsdale, Ariz. (2007); Atlanta, Ga. (2008); New Orleans (2009); Indianapolis, Ind. (2010); Charlottesville, Va. (2011); Fort Worth, Tex. (2012); Honolulu, Haw. (2013); and Baltimore, Md. (2014). RAJA is scheduled for Colorado Springs, Colo. in 2015.[20]

Over the years, RAJA has implemented a number of changes affecting its membership. Initially, Babbitt and Douglass wanted to restrict membership to Regular Army retirees. In 1999, however, recognizing the increased contributions of Reserve judge advocates to the Army and the Corps, RAJA members unanimously passed a motion opening RAJA membership to retired Army Reservist and National Guard judge advocates. The first retired reserve judge advocate to attend a RAJA event was COL (retired) Ernest "Ernie" Auerbach; he was at the 2000 event in Sacramento, Cal. In 2007, RAJA opened membership to the Corps' legal administrator community, too. As with the earlier decision to open RAJA to Army Reserve and National Guard judge advocate retirees, extending membership to retired judge advocate warrant officers made sense given their contributions to the Corps over the years.

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[15] DOUGLASS, *supra*, note 3, at 3.

[16] *Id.*

[17] *Id.* at 10.

[18] *Id.* at 4.

[19] *Id.* at 10.

[20] *Id.* at 23.

Colonel (Retired) Ernest Auerbach was the first retired Reserve JA to attend RAJA; this photograph was taken of him in Vietnam in 1966.

Today, RAJA has more than 300 members. Any commissioned or warrant officer who has retired from the regular component of the Army, the Army Reserve, or the National Guard is eligible for membership. Associate members are widows and widowers of regular members; today there are about 35 members in this "associate member" category.[21]

A final note: In addition to RAJA, there are other organizations for retired members of our Corps. Similar in purpose to RAJA, the Judge Advocate General's Corps Retired Noncommissioned Officer Association (JAGCRNCOA) began informally in 1999 but did not have its first formal meeting (to draft a constitution and by-laws) until 2003. From the initial 36 "founding members" of JAGCRNCOA, the organization has grown to more than 85 retired regular and reserve non-commissioned officers who served as legal clerks, legal specialists, or paralegals in the Corps. It has an annual reunion in various locations throughout the United States.[22] Finally, Army officers who served in Vietnam as judge advocates or who soldiered in any capacity in Vietnam but later served in the Corps are eligible to attend the biannual "JAGs in Vietnam" get-together. The impetus for this reunion of Vietnam veterans came from Chuck Spradling of Anniston, Ala., who served as a judge advocate in Vietnam from 1971-1972. He is assisted in planning the event—which always takes place in northern Virginia—by Major General (retired) William K. Suter and COL (retired) Barry Steinberg. About 75 officers and their spouses attended the last reunion in 2013; the next get together will be in September 2015, in Washington, D.C.[23]

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

[21] RETIRED ARMY JUDGE ADVOCATES ASSOCIATION, www.rajaassn.com (last visited Apr. 8, 2015).

[22] Email from Master Sergeant (retired) Rick Cox, to author (Apr. 7, 2015, 15:01 EST) (on file with author).

[23] Email from Major General (retired) William K. Suter, to author (Apr. 7, 2015, 15:52 EST) (on file with author).

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

Fred L. Borch
Regimental Historian & Archivist

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

Born in Tacoma, Washington, on December 2, 1923 (his father was stationed at Fort Lewis), Wilton "Will" Burton Persons Jr. spent his childhood in Kansas before attending a preparatory school in Montgomery, Alabama. In 1941, when seventeen-year-old Persons had enough credits to begin college, he enrolled at Alabama Polytechnic Institute.[2] He wanted to fly airplanes and applied for aviation cadet training, but his poor eyesight prevented him from flying. In the meantime, Persons also applied several times for an appointment to the U.S. Military Academy, and ultimately gained admission to West Point in July 1943.[3]

Wilton Persons, Alabama Polytechnic, 1941.

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

Cadet Wilton Persons, USMA,1946.

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

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

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

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

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

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

decided to apply to law school. I also applied to go to Engineering school and Journalism school.

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

Lieutenant Wilton Persons, Austria, 1946

Persons began his studies in 1950 and graduated from Harvard in 1953. He "worked 18 hours a day for the first year in law school and finished in the top ten percent."[6] During his summers, he worked at a civilian law firm in Boston. This was normal for the time; the JAG Corps's Career Management Office[7] encouraged officers attending law school at Army expense to "apply for a legal related job" during their summer breaks.[8]

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

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

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

[5] May Interview, *supra* note 1.

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

[7] Today's Personnel, Plans and Training Office, Office of The Judge Advocate General.

[8] May Interview, *supra* note 1.

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

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

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

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

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

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

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

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

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

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

[10] Smith, *supra* note 3, at 189.

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

[12] *Id*.

[13] *Id*. at 190-91. Department of the Army (DA) Form 2-1, Wilton B. Persons, para. 12, Appointments.

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

[15] *Id*. at 190.

[16] *Id*. at 191.

[17] *Id*. at 192.

Soldiers. On more than a few occasions, these Army lawyers "reached back" to LTC Persons for advice and counsel.[18]

In July 1969, now Colonel Persons (he had been promoted in November 1967) assumed duties as the Staff Judge Advocate (SJA), U.S. Army, Vietnam (USARV). The Military Justice Act of 1968, which had created the new position of military judge and, as a practical matter, also took line officers out of special courts-martial, had just become effective. Implementing these two major changes to courts-martial practice was a significant challenge, as commanders were not at all happy with the new reality that a military judge was now in charge of proceedings at special courts, much less that judge advocates were now serving as trial counsel and defense counsel at these courts. Colonel Persons, however, was successful in convincing commanders in Vietnam that lawyers were not "taking over the system" and that commanders "still made the key decisions" in the system.[19] During this same tour of duty, COL Persons also wrestled with the high profile court-martial of Army Special Forces personnel charged with the murder of a suspected Vietnamese double agent. This case generated intense media interest and took most of Persons' time during the first three months of his year in Saigon.[20]

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

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

After arriving in Germany, Persons made history as the first judge advocate to be frocked to a higher rank. General (GEN) Michael S. Davison, the USAREUR commander, believed that Persons would be more successful in his dealings with the German authorities if he were wearing stars, and received permission from the Pentagon to frock him. As a result, Persons pinned a single star on his collar in September 1971. His official promotion to brigadier general occurred six months later, in February 1972.[21]

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

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

[18] *Id*. at 193.

[19] *Id*. at 197.

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

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

[22] Smith, *supra* note 3, at 210-17.

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

trumpeted that Judge Gesell had stopped the "Drug War in Its Tracks."[24]

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

In 1975, BG Persons was selected to succeed Major General George S. Prugh as the next Judge Advocate General. For the next four years, until he retired from active duty in 1979, Major General Persons was the top uniformed lawyer in the Army. He wrestled with a number of legal issues, including the so-called "West Point Cheating Scandal" and attempts to unionize the armed forces. The former involved collusion on a take-home electrical engineering exam. Of a reported 117 cadets suspected of having cheated on the test, 50 were later discharged. The event resulted in a reexamination of the Cadet Honor Code and reforms to the Military Academy's adjudication process. The latter involved efforts by two federal employee unions to give Soldiers safeguards "against oppressive and unlawful actions by their commanders."[27] Ultimately, this attempt to unionize the Army was resolved when Congress enacted legislation prohibiting uniformed personnel from joining organized labor.

Major General Person's most important action as TJAG—and certainly his longest lasting contribution—was his decision to create a separate and independent Trial Defense Service (TDS). Persons had long been concerned that the existing system—whereby SJAs supervised both trial and defense counsel and rated their performance—led inexorably to a perception of unfairness. Others in the Corps had voiced similar concerns over the years. The end result was that, in March 1977, TJAG Persons directed then COL Wayne E. Alley "to assign and take the actions necessary to establish a separate [trial] defense organization."[28] Ultimately, the details of the framework for the new defense organization fell to COL Robert B. Clark. Clark interviewed commanders in preparing the proposed trial defense service and Major General Persons was pleased with the end product.

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

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

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

Will Persons was proud that he never again worked for money but instead was able to do volunteer work in a variety of organizations. These included: the Skidaway Island

[24] Smith, *supra* note 3, at 209.

[25] *Id*.

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

[27] Smith, *supra* note 3, at 230.

[28] *Id*. at 237. For more on Wayne E. Alley, see George R. Smawley, *In Pursuit of Justice, A Life of Law and Public Service: United States District Court Judge and Brigadier General (Retired) Wayne E. Alley (U.S. Army 1952-1954, 1959-1981),* 208 MIL. L. REV. 213-306 (2011).

[29] *Id*. at 238.

[30] *Id*.

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

Division, Southside Fire Department (where he served as assistant chief and ultimately as board president); Skidaway Island Yacht Club (where he served as commodore); Savannah Symphony (where he served as president); and U.S. Fish and Wildlife Service (where he served as a volunteer guide and wildlife interpreter).[32]

Major General Persons once said in an interview: "My father never thought I would amount to much. . . ."[33] In an oral history, Persons mused in retrospect that this might have been his father's way of motivating his son—by telling young Will Persons that he was not "strong enough or smart enough."[34] Regardless of why the senior Persons had this opinion, history proves that he could not have been more wrong about his son. When Persons died at the age of 91 on April 3, 2015, he had lived a rich life filled with personal and professional accomplishments.[35]

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

[32] *Id.*

[33] May Interview, *supra* note 1.

[34] Smith, *supra* note 3, at 181-82.

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

Hangings and Death by Musketry in the Pacific: Death Penalty Courts-Martial in Australia, Hawaii, and India (1942-1947)

Fred L. Borch
Regimental Historian & Archivist

In April 2001, the *Honolulu Advertiser* published an article titled, "Mysterious Schofield Plot Filled with Untold Stories."[1] Those who took the time to read the piece learned that the six-acre Schofield Barracks Post Cemetery in Hawaii has a special plot containing the remains of seven Soldiers who were tried, convicted, and executed either by hanging or by firing squad. What follows is the story of five of those seven courts-martial, which occurred either in Australia, Hawaii, or India. They are examined in chronological order.[2]

United States v. Private Edward J. Leonski
Australia 1942

Twenty-four year old Leonski "paid with his life for three brutal murders which chilled the blood."[3] The victims, all Australian females residing in Melbourne, were killed by the accused on three different days in May 1942. The accused, a private (PVT) assigned to the 52d Signal Battalion, Camp Pell, Melbourne, Australia, was apprehended and confessed to the murders. He was charged with premeditated murder of all three victims in that Leonski "willfully, deliberately, feloniously, [and] unlawfully" strangled each woman "with his hands."[4] Tried by general court-martial in July, he was found guilty of the triple homicide and sentenced to death.

Given that Leonski had confessed to the killings when questioned by an Australian police detective, the panel members did not have trouble finding him guilty. But the accused was a heavy drinker, and evidence was presented at trial that he had consumed prodigious amounts of alcohol prior to each murder. Prior to the last homicide on 18 May, for example, PVT Leonski drank "25-30 glasses of beer, followed by five one-ounce whiskeys."[5] The defense suggested that the accused's drinking was evidence of "mental derangement," but the panel rejected this theory, as did Lieutenant Colonel John A. Stagg in his Staff Judge Advocate's Review of the case.[6] Leonski in fact "had acquired a reputation for his drinking ability," and the members necessarily concluded that he was able to form the requisite intent to support their findings.[7]

On October 26, 1942, the Board of Review, Branch Office of The Judge Advocate General, then sitting in Melbourne, Australia, concluded in a thirty-page opinion that the record was "legally sufficient to support the findings of guilty . . . and the sentence."[8] Events moved quickly after the board's work was completed. General Douglas MacArthur, as Commander-in-Chief, Southwest Pacific Area, ordered the death sentence to be carried out on November 4, 1942, and Leonski went to the gallows five days later. Leonski initially was interred in Ipswich, Australia, but his remains were subsequently transported to

[1] Will Hoover, *Mysterious Schofield Plot Filled with Untold Stories*, HONOLULU ADVERTISER, Apr. 22, 2001.

[2] The author thanks Colonel William D. Smoot, Staff Judge Advocate, 25th Infantry Division, for alerting him to the existence of this piece of military legal history. He also thanks Chief Warrant Officer Four Jennifer D. Young, Senior Legal Administrator, Fort Shafter, Hawaii, for photographing the gravestones of the executed Soldiers buried in the Schofield Barracks Post Cemetery.

[3] *Leonski in Life and Death: Full Story*, THE SUN NEWS (Melbourne, Australia), no date. This article was published shortly after Leoniski's execution on 4 November 1942.

[4] Gen. Court-Martial Order No. 1, Gen. Headquarters, Southwest Pacific Area (4 Nov. 1942).

[5] United States v. Private Edward J. Leonski, CM 267174, 16 (Board of Review, Oct. 26, 1942) (record is located at the National Archives and Records Administration, National Archives at St. Louis, Record Group 153).

[6] Review of the Staff Judge Advocate, Branch Office of The Judge Advocate General 30 (29 Sept. 1942) (United States v. Edward J. Leonski, CM 267174, 16 (Board of Review, Oct. 26, 1942)).

[7] *Id.*

[8] *Leonski*, CM 267174 at 30.

the Schofield Barracks Post Cemetery, probably shortly after World War II ended.

United States v. Herman Perry
India 1944–45

On March 15, 1945, Private Herman Perry, 849th Engineer Aviation Battalion, was hanged in New Delhi, India. He had been convicted of murder, desertion, and willful disobedience of a lawful command of a superior officer.[9]

On March 4, 1944, the accused failed to report for duty and, when told that he consequently was under arrest and "was going to the guard house," killed a lieutenant who was attempting to apprehend him.[10] Private Perry then fled into the surrounding jungle. When apprehended by a "raiding party" sent to search for him on July 20, 1944—more than four months later—he was discovered to be married to a local Indian woman and was operating a small farm with her. At first the accused denied that he was Herman Perry, but "later admitted his identity."[11]

At trial, the accused admitted that he had disobeyed orders and deserted. But he claimed that he had been justified in shooting the lieutenant because the officer had "jumped at" him. The panel members, however, saw it otherwise. After the Acting Staff Judge Advocate, Major Charles Richardson Jr., wrote that "this is a case of cold-blooded, deliberate, and brutal murder of a brave young officer of the United States Army," and that the death penalty was "the only fitting punishment for this offender," there was little doubt that the Commanding General, U.S. Army Forces, China, Burma, and India Theater, would order the execution to be carried out.[12]

United States v. Jesse D. Boston
Hawaii 1945

Thirty-five-year-old Private First Class (PFC) Boston killed a woman by striking her in the head with a "cement weight." He was executed by firing squad on August 1, 1945—the only Soldier to be "executed by musketry" in Hawaii in World War II.[13]

Why a firing squad? This was the actual punishment adjudged by the panel deciding Boston's case. Under the Articles of War then in effect, the members had the option of selecting hanging as a punishment, but did not.[14] Presumably, the convening authority could have altered the means of execution, but he did not. Boston was shot by musketry shortly before the hanging of Cornelius Thomas, discussed below, which meant Boston was part of the only double execution to occur in Hawaiian history.

Boston's trial by general court-martial was held in Hawaii from April 20–24, 1945. Evidence showed that the accused was stationed on the island of Maui at the time of the crime, and on February 15, he entered the home of Shizue Saito, a civilian, with the intent to "take her money if she had any." Private Boston walked up behind Saito and he hit her in the head with a "rock or brick or something of the sort." He likely hoped that the victim would be rendered unconscious, but when she began yelling for help, his plan went awry. When Boston left the victim's home, she was alive. Unfortunately for the accused, her skull had been fractured and she died before midnight that same night. After being advised of his rights, Boston admitted to having killed Mrs. Saito while attempting to rob her.[15]

After being convicted of premeditated murder and sentenced to be dishonorably discharged, to forfeit all pay and allowances, and to be shot by musketry, the Board of Review, U.S. Army Forces Pacific Ocean Areas, affirmed both the findings and sentence. The Commanding General, U.S. Army Forces Pacific Ocean Areas, then ordered the execution to be carried out.

[9] United States v. Private Herman Perry, CM 307871 (Board of Review, 4 Sept. 1944) (record is located at National Archives and Records Administration, National Archives at St. Louis, Record Group 153).

[10] Review of the Staff Judge Advocate 2 (21 Sept. 1944) (United States v. Perry, CM 307871 (Board of Review, 4 Sept. 1944) (Allied Papers)).

[11] *Id.* at 3.

[12] *Id.*

[13] Gen. Court-Martial Orders No. 19, Headquarters, U.S. Army Forces Pacific Ocean Areas (19 June 1945); United States v. Jesse D. Boston, CM 307533 (Board of Review, 24 Apr. 1945).

[14] Under the Manual for Courts-Martial then in effect, the panel members were required to "prescribe" the method of execution, "whether by hanging or shooting." While the Manual stated that shooting usually was prescribed for military offenses, this was not required. MANUAL FOR COURTS-MARTIAL, UNITED STATES ¶ 103c (1928).

[15] *Boston*, CM 307533 at 8 (Allied Papers).

United States v. Cornelius Thomas
Hawaii 1945

Twenty-two-year-old Thomas killed a man by shooting him with a .45 caliber pistol. He was hanged on August 1, 1945, shortly after Jesse D. Boston was shot by firing squad.[16]

On June 11, 1944, PVT Thomas, a member of the 3297th Quartermaster Service Company, then located on the island of Maui, absented himself without leave from his camp. He walked to the home of Francis T. Silva, where Silva, his wife, and nine-month-old child were sleeping. The accused cut a rear screen door and went into the Silva's bedroom. Although PVT Thomas did not know the Silvas, his intent was to awaken Mrs. Silva and "compel her to come outside for the purpose of having sexual relations with him." But when Thomas touched her leg to awaken her, she screamed. Perhaps the accused panicked, but he had a .45 caliber pistol with him that he raised and fired. The bullet hit the third finger of Mrs. Silva's right hand and then passed into the chest of her husband, killing him. According to the evidence presented at trial, PVT Thomas left the Silva home and, "after wandering about for some two hours and breaking into several other houses with a view to committing rape, returned to his camp."[17]

The members had no difficulty in finding Thomas guilty as charged. He had given a "voluntary written statement" in which he admitted entering the Silva home "with the intent to commit rape." Private Thomas also admitted to "firing a shot at the deceased." The defense objected to the admissibility of this statement on the grounds that it was involuntary, but the objection was overruled, and the defense counsel offered no additional evidence at trial.[18]

Major General Myron C. Cramer, then serving as The Judge Advocate General, recommended to President Franklin D. Roosevelt that the "sentence of death be confirmed and ordered executed." As Cramer put it, PVT Thomas was "a confirmed criminal and a menace to society."[19] On March 20, 1945, Roosevelt agreed and ordered the execution to be carried out. The record of trial is not clear why it took nearly four months for the War Department to publish General Court-Martial Orders ordering the hanging of PVT Thomas to occur, but they were published on July 11, 1945.[20] Slightly more than two weeks later, Thomas met the hangman's noose.

United States v. Private Garlon Mickles
Hawaii 1946-1947

Mickles was the last Soldier hanged in Hawaii: the "trap was strung" on April 22, 1947, at 7:01 a.m., and Mickles was "pronounced dead" twenty minutes later.[21]

On April 3, 1946, nineteen-year old Private Garlon Mickles was assigned to the 2280th Quartermaster Truck Company, then located on Guam, Marianas Islands. According to the evidence presented at his general court-martial, Mickles entered the barracks room of a sleeping female civilian at about 10:30 p.m. on April 3, 1946. He was carrying "a coral rock about the size of a grapefruit," which he used to strike the woman in the head. When she did not "make any sound . . . he proceeded to have intercourse with her for about fifteen minutes." Just before leaving her room, Mickles noticed that his victim was wearing an expensive wristwatch on her right arm. He took it from her arm, put it in his pocket, and left.[22]

When the victim awoke, she knew she had been raped but was unable to provide any information about her assailant. Consequently, the crime remained unsolved

[16] United States v. Thomas, CM 267174 (Board of Review, 9 Aug. 1944) (record is located at National Archives and Records Administration, National Archives at St. Louis, Record Group 153).

[17] *Boston*, CM 307533.

[18] Review of the Staff Judge Advocate, Headquarters, Central Pacific Base Command 2 (14 Sept. 1944) (United States v. Thomas, CM 267174 (Board of Review, 9 Aug. 1944).

[19] Memorandum from Myron C. Cramer, The Judge Advocate General to Major General Edwin M. Watson, subject: Private Cornelius Thomas, 3297th Quartermaster Service Company (25 Jan. 1945).

[20] Gen. Court-Martial Order No. 333, War Department (11 July 1945).

[21] War Department, Message from Commanding General Army Forces Pacific to War Department 4 (22 Apr. 1947) (United States v. Mickles, CM 31502 (Board of Review, 11 June 1946) (Allied Papers)).

[22] Review of the Staff Judge Advocate, Headquarters, Twentieth Air Force 1 (28 June 1946) (United States v. Mickles, CM 31502 (Board of Review, 11 June 1946)).

until early May, when Mickles attempted to sell the wristwatch to some local civilians. The accused was apprehended, and the rape victim identified the watch as hers. Private Mickles subsequently gave a statement in which he "admitted all the essential elements of proof required" for rape and larceny.[23]

The question of Mickles's sanity was hotly contested at trial, but after an Army psychiatrist testified that the accused was sane at the time he committed the offenses, the panel did not have much trouble finding him guilty. At the time, rape was a capital offense under the Articles of War, and the panel certainly had little sympathy for the accused. The twenty-seven-year-old victim testified that she woke up "to find herself in great pain about the face and head, and unable to open her eyes."[24] She was fortunate not to have been killed when struck in the head with the coral rock. Additionally, although he was only nineteen years old, the accused had two prior convictions by courts-martial. The accused was African-American, and the victim was white. While race may have been a factor at trial given that black Soldiers were segregated from white Soldiers and faced discrimination on a daily basis, the extent to which race played a role will never be known.

On June 11, 1946, Private Mickles was found guilty of rape and larceny and sentenced to be dishonorably discharged, to forfeit all pay and allowances, and to be hanged by the neck until dead. After the convening authority took action, the case went to The Judge Advocate General, Major General Thomas Green, for his recommendation, and then via the Undersecretary of War to President Harry S. Truman for a final decision on the death sentence. The National Association for the Advancement of Colored People, and other interested parties, lobbied the Army and the White House for clemency for Mickles, but their efforts were to no avail. Truman ordered the hanging to proceed. While Mickles had been tried in Guam, he would be executed in Hawaii on April 22, 1947. He was the last Soldier hanged in Hawaii.

A final note on Mickles: The War Department Adjutant General's Office Form 52-1, Report of Death, states that his "cause of death" was "due to Judiciary strangulation."[25] Your Regimental historian has not previously seen this legal term in use.

A final note about the burials of these executed men: The graves are "hidden behind a hedge [and] separated from the main cemetery."[26] This is because it was considered wrong to bury them alongside men and women who served honorably and faithfully. Additionally, as the executed men had dishonored the Army and the Nation, they were buried "with their heads toward their individual tombstones, thus facing away from the post cemetery flag." This is significant as, of roughly 1800 people buried in the Schofield Barracks Post Cemetery, only these men are so interred; every other buried person faces toward the flag.[27]

There were, of course, other Soldiers tried by courts-martial and sentenced to death in Asia and the Pacific during World War II; their stories must wait until another day. But at least the history of five men executed and interred at the Schofield Barracks Post Cemetery is now better known to readers of *The Army Lawyer*.

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[23] *Id.* at 2.

[24] Statement of Captain (Dr.) Leonard W. Charvet, 204th General Hospital, Guam, Marianas Islands 1 (14 May 1946) (United States v. Mickles, CM 31502 (Board of Review, 11 June 1946) (Allied Papers)).

[25] War Department Adjutant General's Office Form 52-1, Report of Death, Garlon Mickles (United States v. Mickles, CM 31502 (Board of Review, 11 June 1946) (Allied Papers)).

[26] Post Cemetery, Schofield Barracks, n.d. (visitor's brochure) (on file with Regimental Historian).

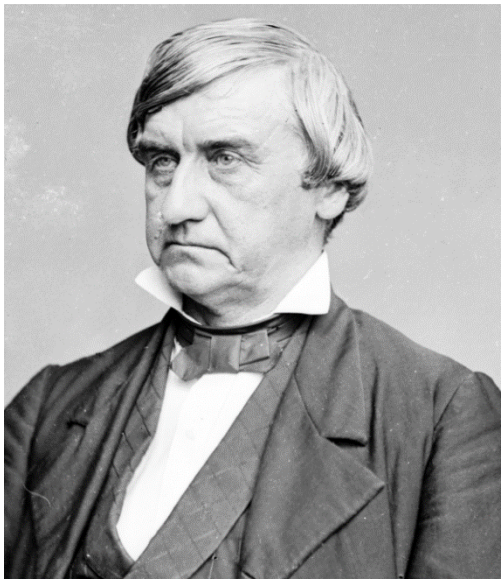
[27] Hoover, *supra* note 1.

Epaulettes and Shoulder Knots for Judge Advocates: A History of Branch Insignia for Army Lawyers in the 19th Century

Fred L. Borch
Regimental Historian & Archivist

While Army officers today wear their branch insignia on the lapels of their service uniforms, in the 19th century they wore this insignia (along with their insignia of rank) on their "epaulettes" and "shoulder knots." What follows is a brief history of epaulettes and shoulder knots for judge advocates in the 19th century.

On July 29, 1775, the Continental Congress selected William Tudor as "Judge Advocate of the Army"; slightly more than a year later, the Congress changed Tudor's title to "Judge Advocate General." But neither Tudor nor any military lawyer who followed him in the late 18th century or early years of the 19th century wore any insignia identifying him as a judge advocate, much less as the Judge Advocate General. In fact, Army Regulations published in 1825 provided that "chaplains, judge advocates, commissaries of purchases and storekeepers have no uniform."[1] This meant, of course, they wore civilian clothes.



Brigadier General Joseph Holt, TJAG from 1862 to 1875, never wore a uniform despite his status as the top lawyer in the Army.

Not until 1851 did judge advocates have a device that set them apart from other staff officers: a white pompon that they wore on their caps. But the wear of an Army uniform, much less the white pompon, does not seem to have been particularly important: witness the civilian attire of Judge Advocate General Joseph Holt. Then Brigadier General Holt, who served from 1862 to 1875, never wore a uniform while on active duty.

Sometime between 1861 and 1865, judge advocates who did wear Union uniforms were authorized epaulettes that distinguished them by the use of the old English letters "JA."[2] The photograph below illustrates epaulettes for a judge advocate captain. These were a graduation gift to the Corps from the members of the 62d Graduate Course in 2014, and are now on display at The Judge Advocate General's Legal Center and School.

Epaulettes worn by Bureau of Military Justice captain (Civil War period to 1872).

In 1872, the shoulder knot replaced the epaulette on the full dress uniform, and those prescribed for judge advocates had the letters "JA" in Old English characters embroidered on them.[3]

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[1] JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 140 (1975).

[2] Other branches also adopted this style of letters to designate their officers. For example, officers in the Inspector General's Department wore shoulder insignia with the letters "ID" and those in the Adjutant General's Department wore the letters "AD." WILLIAM K. EMERSON, ENCYCLOPEDIA OF UNITED STATES ARMY INSIGNIA AND UNIFORMS 167 (1996).

[3] War Department, Adjutant General's Office, Gen. Orders No. 92 (26 October 1872.

Shoulder knot on left worn by Bureau of Military Justice colonel or JAGD colonel (1872-1890); shoulder knot on right worn by JAGD colonel from 1890 to 1903.

In 1890, the Judge Advocate General's Department (JAGD), which had been established six years earlier, adopted a new insignia for Army lawyers. General Orders No. 53 described it as "a sword and pen crossed and wreathed[,] . . . embroidered in silver on the cloth of the pad (except for a Colonel … who will wear the device made of solid silver on the knot midway between the upper fastening and the pad)."[4]

Shoulder knots with the sword-and-quill insignia (worn 1890-1903) were no longer permitted after that date, because the Army revised its uniform regulations and changed the style of shoulder knots to the pattern worn on dress uniforms today. As a result, judge advocates now wore the crossed sword and pen insignia on the collars of their service coats—a practice that continues to this day.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

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[4] EMERSON, *supra* note 2, at 250; Headquarters, U.S. Dep't of Army, Gen. Order No. 53 (23 May 1890).

Lore of the Corps

Marine was First Navy Judge Advocate General[1]

Fred L. Borch
Regimental Historian and Archivist

As strange as it may seem, the first *uniformed* Judge Advocate General of the Navy was a Marine colonel.

Marine Colonel William Butler Remey was the first Judge Advocate General of the Navy. He served from 1880 to 1892. Photo credit: U.S. Marine Corps

When Congress authorized a Judge Advocate General (JAG) for the Army in July 1862, it provided that this position would have the rank and pay of a colonel.[2] But Congress created no such counterpart for the Navy and it was not until the month prior to the end of hostilities in the Civil War, in March 1865, that Congress finally got around to creating the office of "Solicitor and Naval Judge Advocate General" for the Navy. Even then, however, the job was filled by a civilian lawyer who earned a yearly salary of $3,500. Ultimately, this position disappeared in 1870, when Congress abolished it.[3]

In July 1878, Secretary of the Navy Richard W. Thompson "administratively created" the position of "acting Judge Advocate."[4] As Jay M. Siegel explains in his authoritative *Origins of the United States Navy Judge Advocate General's Corps*, Thompson's idea was to appoint a uniformed lawyer as acting Judge Advocate and task that individual with providing legal advice on "all matters submitted to the Secretary of the Navy involving questions of law or regulations." This acting Judge Advocate was also responsible for reviewing records of summary and general courts-martial, and making recommendations on their disposition to the Secretary of the Navy.[5]

To fill this new position of acting Judge Advocate, Secretary Thompson selected thirty-six-year-old William Butler Remey, a captain in the U.S. Marine Corps. This was a logical choice, in that Marine Corps officers in the Navy of the 1870s "handled the lion's share of court-martial prosecutorial duties" and consequently were far more experienced than their naval counterparts in court-martial procedure.[6]

Born in 1842, Remey was commissioned as a second lieutenant in 1861 at the age of 19. He almost certainly tried enlisted Sailors and Marines at courts-martial during the Civil War and, after hostilities ended, prosecuted courts-martial at California's Mare Island Naval Shipyard and at the Washington Navy Yard. Lieutenant Remey so impressed his superiors, he was appointed acting Judge Advocate of the Marine Corps in 1870 and, after a tour of duty embarked upon the USS *Colorado*, was made Judge Advocate of the Marine Corps in 1875.[7]

After assuming duties as the Navy's acting Judge Advocate in 1878, Captain Remey focused exclusively on disciplinary questions. He reviewed the records of courts of inquiry and courts-martial for evidentiary, jurisdictional, and procedural errors. (Other legal issues—involving contracts, claims, personnel, real estate, and admiralty—were handled by the U.S. Attorney General).[8]

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[1] A slightly different version of this article was published by the author in *The Judge Advocate* (the Journal of the Judge Advocate Association) in February 2012.

[2] Act of 17 July 1862, 12 Stat. 597, 598; JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 49-50 (1975).

[3] JAY M. SIEGEL, ORIGINS OF THE NAVY JUDGE ADVOCATE GENERAL'S CORPS 119-20, 151 (1997).

[4] *Id*. at 173.

[5] *Id*. at 174.

[6] *Id*. at n 5-4.

[7] *Id*. at 175-76 n.5-6.

[8] *Id*. at 177.

Remey worked hard in his new duty assignment and apparently made valuable political and social connections in the Washington, D.C., establishment. According to his nephew, "Uncle Will . . . was very popular socially. . . . He drove a snappy one horse high trap in the late afternoons and was quite a figure about town."[9] This social prominence no doubt helped when Remey lobbied for his temporary position to be made permanent, on the theory that naval law was now so complex that it required a *uniformed* officer—familiar with sea service customs and culture—to oversee naval discipline. Congress agreed with Remey (and the Secretary of the Navy) and, on June 8, 1880, enacted legislation authorizing the president "to appoint, for the term of four years . . . from the officers of the Navy or the Marine Corps, a judge-advocate-general of the Navy, with the rank, pay and allowances of a captain in the Navy or colonel in the Marine Corps, as the case may be."[10]

The next day, on June 9, President Rutherford B. Hayes appointed Remey to be the first uniformed Judge Advocate General of the Navy and, after the Senate confirmed this appointment, now Colonel Remey (he exchanged his captain's bars for a colonel's eagle) began what would be a twelve year assignment.[11]

Between 1880 and 1892, when Colonel Remey retired from active duty, he received and examined all records involving courts-martial, courts of inquiry, and "boards for the examination of officers for retirement and promotion in the naval service." He also investigated complaints by his fellow officers of alleged violations of naval regulations; these complaints were typically accompanied by a request from the complainer that the Secretary of the Navy convene a general court-martial to try the offender. Colonel Remey also reviewed pay and promotion questions, retirement and other personnel matters. He examined claims from civilians who wanted to be paid for work or travel they had done for the Navy, or who wanted to be reimbursed for damage to their property caused by the Navy. For example, a Navy lieutenant commander filed a claim asking to be reimbursed for his clothing and bedding, both of which had been destroyed to prevent the spread of yellow fever: Remey recommended that the Navy pay the claim.[12]

Remey offered legal advice on a breach of contract question and also provided legal analysis on a patent infringement claim. It seems that he was willing—and able—to answer even those inquiries that more properly should go to the U.S. Attorney General. When the commanding officer of the naval station located at Beaufort, South Carolina, asked the Secretary of the Navy if state civil authorities had the legal authority to board a naval vessel and arrest and take from the ship a sailor wanted for a crime, Remey drafted the telegram that replied: "In the case cited in your letter . . . they have. See Statutes South Carolina."[13]

But not all of Remey's legal issues were of great importance: the Secretary tasked Remey with determining whether a midshipman third rate was entitled to his choice of bunks on the starboard side of starboard steerage quarters because of his seniority.[14]

In early 1891, Remey fell ill. His doctors determined it was the result of too much hard work. They prescribed rest, so Remey left Washington and spent the summer in the mountains of Maryland. He returned to work in the fall but, in early 1892, began showing signs of mental illness. He subsequently had a complete physical and mental breakdown. Not surprisingly, when his third four-year term as Navy Judge Advocate General ended in June 1892, Remey voluntarily retired from active duty. Sadly, he died of pneumonia less than three years later, in January 1895, in a sanatorium in Sommerville, Massachusetts.[15]

Colonel Remey's place in naval legal history remains unique: the first uniformed lawyer to serve as Navy Judge Advocate General and also—at least to date—the only Marine to serve as the top uniformed lawyer in the Navy.[16]

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

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[9] *Id*. at 178 n.5-13; CHARLES M. REMEY, REMINISCENCES OF COLONEL WILLIAM BUTLER REMEY, UNITED STATES MARINE CORPS, 1842-1894, AND LIEUTENANT EDWARD WALLACE REMEY, UNITED STATES NAVY, 14-28 (1955).

[10] *Id*. at 178-79.

[11] *Id*. at 180.

[12] *Id*. at 195.

[13] *Id*. at 195-96.

[14] *Id*. at 195.

[15] *Id*. at 211-13.

[16] Under Title 10, United States Code 5148, a Marine may serve as the top uniformed lawyer in the Navy. 10 U.S.C. § 5148 (2012).

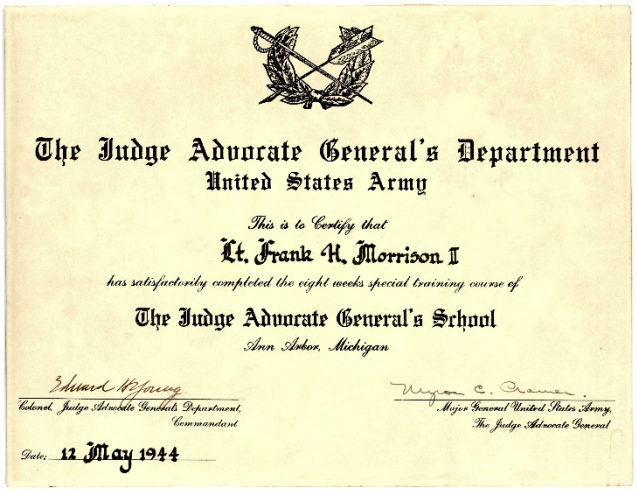
From Camp Judge Advocate to War Crimes Prosecutor: The Career of Captain Frank H. Morrison II, Judge Advocate General's Department[1]

By Fred L. Borch
Regimental Historian & Archivist

Even attorneys who served but briefly as Army lawyers in World War II had remarkable experiences, as illustrated by the two-year judge advocate career of Frank H. Morrison II. After "satisfactorily" completing "the eight week special training course" at The Judge Advocate General's School (TJAGSA) in May 1944,[2] First Lieutenant (1LT) Morrison served as the lone "Camp Judge Advocate" at Camp Van Dorn in Mississippi until he was transferred to the Legal Section of General Douglas MacArthur's General Headquarters, Southwest Pacific Area, in February 1945. [3] For the next eighteen months, until he was discharged from active duty and returned to civilian life, now Captain (CPT) Morrison investigated war crimes in the Philippines and Japan. He also assisted in the prosecution of more than 300 Japanese war criminals, and was part of the "prosecution staff which sent Generals Yamashita and Homma to the gallows."[4] This is the story of his time as an Army lawyer in World War II.

Born on June 18, 1912 in Nashville, Tennessee, Frank Hamilton Morrison II graduated from Boys' High School in Atlanta, Georgia, in 1931, and earned his law degree from Emory University in 1937. He was certainly popular with his classmates, as he was voted "wittiest" boy in his high school class and elected president of the law school while at Emory. Morrison also was a good athlete and was passionate about tennis.[5]

After passing the Georgia bar, Morrison joined the law firm of Howard, Camp and Tiller in Atlanta, where he practiced law until being inducted into the Army in October 1942. Morrison subsequently attended the 16th Officer Class at TJAGSA and, after receiving a diploma signed by Colonel Edward H. "Ham" Young, TJAGSA Commandant and Major General Myron C. Cramer, The Judge Advocate General, reported for duty at Camp Van Dorn, Mississippi, in May 1944.



The Judge Advocate General's Department
United States Army

This is to Certify that

Lt. Frank H. Morrison II

has satisfactorily completed the eight weeks special training course of

The Judge Advocate General's School
Ann Arbor, Michigan

Colonel, Judge Advocate General's Department, Commandant

Major General United States Army, The Judge Advocate General

Date: 12 May 1944

For the next eight months, 1LT Morrison served as the "Camp Judge Advocate." He was the lone Army lawyer and consequently was responsible for the delivery of all legal services at Camp Van Dorn. This small installation, commanded by a colonel and located near Centreville, Mississippi, had begun training troops in November 1942. When Morrison arrived, the 63d Infantry "Blood and Fire" Division was still in training; it left Camp Dorn for New York in November 1944.[6] Prior to the departure of that division, however, 1LT Morrison was incredibly busy.

First Lieutenant Frank Morrison with a client at the Camp Van Dorn Judge Advocate Office, 1944.

[1] The author thanks Ms. Margaret "Nan" Morrison for her help in preparing this Lore of the Corps about her father.

[2] Diploma of Lt. Frank H. Morrison, II (May 12, 1944).

[3] *Frank H. Morrison II, Atlanta Attorney, Dies*, ATLANTA CONSTITUTION, Jan. 5, 1959, at 7.

[4] *Id*.

[5] Email from Margaret Morrison to author (June 24, 2015, 15:46 EST) (on file with author).

[6] For more on the 63d Infantry at Camp Van Dorn, *see* 63D INFANTRY DIVISION, www.63rdinfdiv.com.

Some of his work involved advising on military justice matters and reviewing courts-martial for legal sufficiency. Camp Van Dorn's commander was a special court-martial convening authority, and he convened about fifty courts-martial a year.[7] But it seems that the majority of 1LT Morrison's time was devoted to legal assistance matters.

According to an article published in the Camp Van Dorn newspaper in September 1944, the "Office of the Camp Judge Advocate" was heavily involved in providing legal counsel to Soldiers stationed at the installation. The office had "over 250 divorce cases. . . pending in almost every state in the union."[8] But Morrison also assisted "in the naturalization of approximately 15 to 25 aliens a month." He had this large number of naturalization cases because of wartime changes made by Congress to the laws governing citizenship. In 1942, desiring to ease the naturalization process for non-U.S. citizens serving in the U.S. Armed Forces, Congress eliminated age, race, and residence requirements for American citizenship.[9] As if this were not sufficient incentive for non-citizen men and women in uniform to fill out naturalization paperwork, the Congress went even further in 1944, removing any requirement to prove that one had lawfully entered the United States.[10]

With this as background, 1LT Morrison's unusual, if not amusing, experiences with naturalization make sense. In one case, a Chinese national serving in the Army at Camp Van Dorn was filling out a form so that his petition for naturalization could be submitted to the local U.S. District Court. The Chinese Soldier, however, spoke poor English and had only been in the U.S. for a short time. First Lieutenant Morrison needed an interpreter but the only person he could find was a Russian "who had a very meager knowledge of the Chinese language."[11] As a newspaper article explained:

> When asked how he entered the United States, the Russian informed Lt. Morrison that the Chinaman stated he swam in. Lt. Morrison, feeling that certainly the Russian had misunderstood, repeated the question several times and gesticulated with his arms and used all manner of sign language to elucidate the proper answer from the Chinese and the answer always came back that he swam in.
>
> After approximately one hour of cross examination on this one particular question . . . it was learned that this [Chinese] alien had been a cook on an oil tanker which had been torpedoed off the Atlantic coast and that he actually swam into this country. So the answer as it appears in his petition for naturalization to the question asked is "I swam into the United States."
>
> Needless to say, this petition was acted on favorably and the man is now a fully naturalized American citizen.[12]

First Lieutenant Morrison (far right) at the Camp Van Dorn Officers Club, 1944.

In February 1945, with training operations at Camp Van Dorn winding down, Morrison was reassigned to the Pacific Theater. He "was one of the first members of Gen. MacArthur's staff to investigate Japanese atrocities at Cabanatuan Prison and during the Bataan Death March."[13]

Now CPT Morrison started his work in Manila as part of a five-man team; this eventually grew to be a staff of 150. As Morrison explained to a newspaper reporter in May 1946, the "hardest part of the job in connection with the war crimes activities was to find those responsible for the atrocities,

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[7] HISTORICAL AND PICTORIAL REVIEW OF CAMP VAN DORN 2 (1944).

[8] *Van Dorn's Mr. Anthony*, THE VAN-GUARD (Vol. 1, No. 46), Sept. 9, 1944, at 2. From 1935 until 1953, millions of radio listeners tuned in to a popular show hosted by John J. Anthony. The show's format was for listeners to call in to the show to ask about family problems, and each show began with the preamble, "Mr. Anthony, I've got a problem. . . ." The phrase was a popular American saying during World War II, and the headline about 1LT Morrison's legal assistance work being akin to Mr. Anthony's show would have struck a responsive chord with readers. *See* Bob Thomas, *Radio's Mr. Anthony Has New Problem*, MIAMI NEWS, July 13, 1966, at 8.

[9] U.S. Citizenship and Immigration Services, Military Naturalization During WWII, http://www.uscis.gov/history-and-genealogy/our-story/agencyhistory /military-naturalization-during-wwii (last visited June 22, 2015)

[10] *Id.*

[11] *Van Dorn's Mr. Anthony*, *supra* note 5.

[12] *Id.*

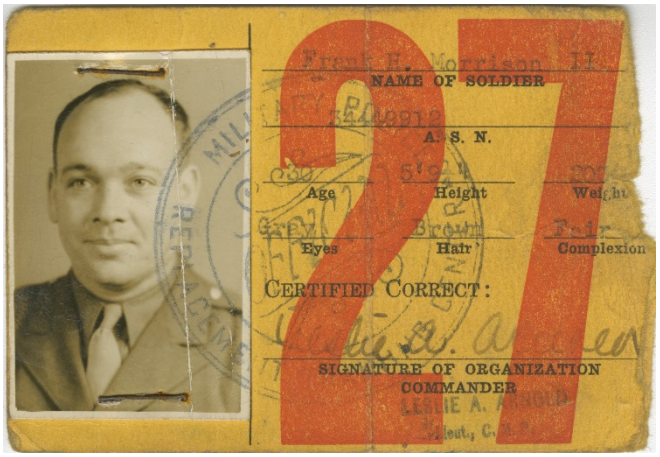
[13] *Frank H. Morrison II*, *supra* note 2, at 7.

tortures, and other crimes and then apprehend them."[14] The American soon discovered, however, that Japanese soldiers suspected of war crimes would commit suicide rather than allow themselves to be apprehended by the Americans. After Japanese Emperor Hirohito was directed to order accused Japanese military personnel to report for hearings, however, these suicides ceased. As Morrison explained, "the Japanese believed hari-kari was honorable, but if they were ordered to report by the Emperor, they would obey rather than face disgrace and the wrath of their dead ancestors for refusing to comply with an order from their ruler."[15]

After months of investigative work in the Philippines—interviewing witnesses and visiting crime scenes—CPT Morrison served on the military commission prosecution teams that tried General Tomoyuki Yamashita and General Masaharu Homma. Yamashita's moniker was the "Tiger of Malaya." These men were tried in Manila in late 1945 by a commission consisting of five general officers. Convicted of failing to provide effective control over his troops, who were committing horrific war crimes in the Philippines in late 1944, Yamashita was sentenced to be hanged. The sentence was carried out in 1946.[16] Homma, who was the commander in the Philippines at the time of the infamous Bataan Death March, was likewise convicted by a military commission; he was found guilty of allowing members of his command to commit "brutal atrocities and other high crimes."[17] Homma was executed by firing squad in April 1946.

Captain Morrison at his desk in Yokohama, Japan.

Some time after the Yamashita and Homma trials in Manila, CPT Morrison was reassigned to General Douglas MacArthur's General Headquarters in Tokyo, Japan. According to an article in *The Emory Alumnus*, Morrison had been "selected by the chief of General MacArthur's legal section to assist in the prosecution of more than 300 accused war criminals in Yokohama."[18] As a result of his exemplary work as a war crimes prosecutor from May 1945 to March 1946, CPT Morrison was later awarded the Bronze Star Medal for meritorious achievement by the Commander in Chief, U.S. Forces, Pacific.[19]



Captain Morrison's identification card used during war crimes investigations.

After being released from active duty in mid-1946, Frank Morrison returned to Atlanta, where he rejoined his old law

[14] *Obedience to Will of Emperor Halted Wave of Jap Suicides*, ATLANTA CONSTITUTION, May 20, 1946.

[15] *Id.*

[16] ALLAN A. RYAN, YAMASHITA'S GHOST-WAR CRIMES, MACARTHUR'S JUSTICE, AND COMMAND ACCOUNTABILITY (University Press of Kansas, 2012).

[17] GARY D. SOLIS, THE LAW OF ARMED CONFLICT 384 (2010)(quoting Theater Staff Judge Advocate's Review of the Record of Trial by Military Commission of General Masaharu Homma, 5 March 1946, at 1).

[18] *Emory Soldier-Lawyers Prosecute Jap Thugs*, THE EMORY ALUMNUS, Mar. 1946, at 13; *Capt. Morrison Aids Prosecutor in Jap Trial*, ATLANTA JOURNAL, Jan. 7, 1946, at 5.

[19] *Georgians Get Army Awards for Service*, ATLANTA JOURNAL, August 18, 1946.

firm.[20] He tried his hand at politics, and ran unsuccessfully for the Fulton County seat in the Georgia State Legislature in 1948.[21]

Shortly after Christmas in 1958, Morrison suddenly took ill. He died a week later, of cirrhosis of the liver, on January 3, 1959.[22] He was only 46 years old. It was an untimely end for a man who had a remarkable career as an Army lawyer in World War II and who likely would have had an equally distinguished career as a civilian attorney in Atlanta.

More historical information can be found at

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[20] Although released from active duty in 1946, Morrison was not discharged from his Army Reserve obligation until 1950. Email from Margaret Morrison, *supra* note 3.

[21] *Frank H. Morrison II, supra* note 2.

[22] *Id*.

The Army Court of Military Review: The First Year (1969-1970)

By Fred L. Borch
Regimental Historian and Archivist

On October 24, 1968, President Lyndon B. Johnson signed the Military Justice Act of 1968. This legislation, which became effective on August 1, 1969, made revolutionary changes to military criminal law.

At the trial level, judge advocates began serving as trial and defense counsel at special courts-martial; previously these duties were performed by non-lawyer line officers. Additionally, a military judge presided over the proceedings. Also, for the first time in history, it was possible for an accused to elect to be tried by military judge alone. Prior to August 1, 1969, every court-martial was heard by a panel.

At the appellate level, the Military Justice Act likewise resulted in significant changes to the military criminal legal system. In the Army, the Army Boards of Review were renamed the Army Courts of Military Review (ACMR) and the members of the new appellate court were redesignated as military judges. The newly-constituted courts were different from their predecessors in that there was now *one court* with a number of panels rather than a number of separate boards.[1] This change was designed to "foster more consistence and a higher quality of legal decision"; apparently the separate and distinct Boards of Review were not always uniform in their decision-making.[2]

What follows is a brief history of the first year of the ACMR, and the judge advocates who served on it as appellate judges.

On August 1, 1969, Major General Kenneth J. Hodson, then serving as The Judge Advocate General, appointed a total of twelve jurists to the new ACMR. Colonel (COL) George F. Westerman was appointed as the Chief Judge. The other judges on the court were: COLs Joseph L. Bailey, Joseph L. Chalk, Rodney J. Collins, John S. Folawn, Jacob Hagopian, Winchester Kelso Jr., William W. Kramer, Arthur D. Porcella, Granville I. Rouillard, and Edward L. Stevens. Rounding out the court was the lone lieutenant colonel: Abraham Nemrow.[3]

Depending on the composition of the three-judge panels, one or more of these colonels might be designated as a "Senior Judge," and cases decided by the new ACMR in August and September 1969 reflect the following served in this capacity: COLs Edward L. Stevens, Joseph L. Chalk, and Arthur D. Porcella.[4]

Members of the United States Army Court of Military Review are shown on August 1, 1970, the first anniversary of the establishment of the court. Pictured left to right are: First row (seated): Senior Judge Marvin G. Krieger; Chief Judge George F. Westerman; Senior Judge Joseph L. Chalk. Second row (standing): Judge Zane E. Finklestein; Judge John S. Folawn; Senior Judge Winchester Kelso Jr.; Judge Abraham Nemrow; Senior Judge Arthur Arthur D. Procella; Judge Joseph L. Bailey; Judge Rodney J. Collins; Judge I. Granville Rouillard; Judge George O. Taylor Jr.

One of the first cases to be heard by the new ACMR was *United States v. Motes*.[5] In this case, decided on August 11, 1969, the court ruled that an accused could not plead guilty to, and be convicted of, eight specifications of wrongful sale of military property where those specifications had been "lined through" on the charge sheet.[6] While this was hardly an earth-shattering decision, it was the first ACMR case to be published in the Court-Martial Reports. It also was the first time that the judge advocates serving on this appellate court signed a published opinion as "Appellate Military Judges." Prior to August 1, 1969, military lawyers serving on the Army

[1] When enacted by Congress on May 5, 1950, Article 66, Uniform Code of Military Justice, required The Judge Advocate General (TJAG) to "constitute in his office one or more boards of review." Under the new Military Justice Act, however, Article 66 was amended so that TJAG "shall establish a Court of Military Review which shall be composed of one or more panels, and each panel shall be composed of not less than three appellate judges."

[2] JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 247 (1975).

[3] OFFICE OF THE JUDGE ADVOCATE GEN., JUDGE ADVOCATE GEN.'S CORPS (JAGC) PERSONNEL AND ACTIVITY DIRECTORY, at 4 (1969) [hereinafter JAG PUB. 1-1].

[4] *Id.*

[5] United States v. Motes, 40 C.M.R. 876 (A.C.M.R. 1969).

[6] *Id.* at 879.

Board of Review signed their opinions as "Judge Advocates."[7]

Between August 1, 1969 and July 31, 1970, the ACMR judges decided some 200 appellate cases, many of which resulted in published opinions. Noteworthy cases included *United States v. Averette*, in which the court ruled that a court-martial had jurisdiction over a civilian employee of a government contractor working in Saigon, Vietnam. The accused, who was the supervisor of an Army motor pool housing vehicles, had been convicted of conspiracy to steal 36,000 motor vehicle batteries.[8] Averette argued that the court-martial lacked jurisdiction over him as a civilian because the on-going armed conflict in Vietnam did not meet the "in time of war" requirement for the exercise of court-martial jurisdiction over civilians as set out in Article 2, Uniform Code of Military Justice. While the ACMR ruled against Averette in this early decision, he ultimately prevailed when the Court of Military Appeals heard his appeal the next year.[9]

Within the first twelve months of the ACMR's existence, COLs Hagopian, Kramer, and Stevens left the court. They were replaced by COLs William T. Rogers and Marvin G. Krieger, and LTC Zane E. Finklestein.[10]

More than 45 years later, the ACMR continues to perform a key role in the court-martial appellate process, albeit under its new name, the Army Court of Criminal Appeals.[11] Scores of senior judge advocates have served on this first-line appellate court during this period and will continue to serve.

World War II JAG School Scrapbooks now on Library of Congress Website

In 1942, the Judge Advocate General's School opened on the campus of the University of Michigan in Ann Arbor, Michigan. Initially, the School was under the leadership of Colonel Edward H. "Ham" Young, who determined the curriculum and put together the initial staff and faculty. When Young departed for a new assignment in late 1944, he was succeeded by Colonel Reginald C. Miller, who served as Commandant until the School closed in 1946. During its operation at the University of Michigan, the School transformed hundreds of civilian lawyers into Army judge advocates. These military lawyers ultimately served as uniformed attorneys in a variety of world-wide locations, including Australia, China, England, France, Germany, India, Japan, and Morocco. These scrapbooks contain photographs, newspaper articles, graduation programs, and other documents related to the operation of the School from 1943 to 1946.

See the scrapbooks here:
http://www.loc.gov/rr/frd/Military_Law/Scrapbooks.html

More historical information can be found at

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[7] *See, e.g.*, United States v. Coonrod, 40 C.M.R. 873 (A.B.R. 1969). The *Coonrod* case was decided on July 31, 1969—the last day the Army Boards of Review existed in the military criminal legal system.

[8] United States v. Averette, 40 C.M.R. 891 (A.C.M.R. 1969).

[9] United States v. Averette, 41 C.M.R. 363 (C.M.A. 1970).

[10] JAG PUB 1-1 (1970), at 4.

[11] This name change, which was made by legislation effective in October 1994, did not otherwise alter the nature of the institution. *See* UCMJ art. 66 (2012).

Samuel W. Koster v. The United States: A Forgotten Legal Episode from the Massacre at My Lai

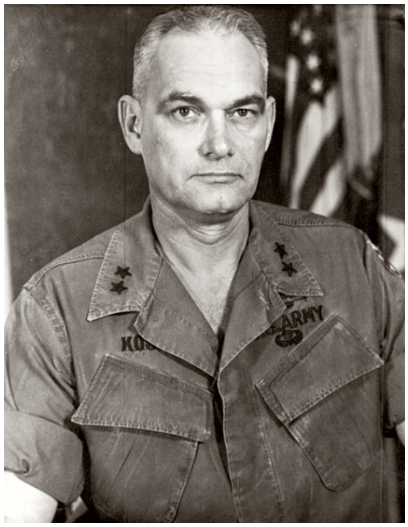
Fred L. Borch
Regimental Historian & Archivist

In March 1970, Lieutenant General William R. Peers completed his official investigation into the murders committed by Lieutenant William F. "Rusty" Calley and his platoon at the South Vietnamese sub-hamlet of My Lai 4 in March 1968.[1] On the basis of Peers' scathing report about what has become known as the "My Lai Massacre," Major General Samuel W. Koster, who was in command of the 23d Infantry "Americal" Division at the time, and to which Calley and his men had been assigned, was charged with failure to obey lawful regulations and dereliction of duty in covering up the massacre.[2] While Koster was never prosecuted at a court-martial,[3] Secretary of the Army Stanley R. Resor took administrative action against him: Stanley vacated Koster's temporary promotion as a major general, reducing him to his permanent rank of brigadier general, and he revoked the Distinguished Service Medal (DSM) that Koster had been awarded as Americal Division commander.[4] He also directed the filing of a Letter of Censure in Koster's official military personnel records.[5]

But Koster fought back in the courts, and what follows is the story of that struggle—*Samuel W. Koster v. The United States*—an episode in military legal history that today is mostly forgotten.[6]

Born in December 1919, Samuel William Koster graduated from the United States Military Academy in 1942 and was commissioned in the Infantry.[7] He subsequently had a stellar career, which included substantial wartime experience. Koster served as a company and battalion commander in World War II (earning a Silver Star, two Bronze Stars, and the Purple Heart) and was the commanding officer of the Eighth Army's guerilla warfare unit during the Korean War.[8] He also had significant peacetime experience as an instructor at West Point, and in various assignments at Fort Benning, Georgia, in the Pacific, and at the Pentagon.[9]

By late 1968, Koster held the permanent rank of brigadier general and the temporary rank of major general.[10] While wearing two stars, Koster commanded the 23d Infantry Division in Vietnam. This was "a difficult assignment because of the conglomerate make-up of the Division and its very large area of operations."[11] After returning from Vietnam, while still holding the temporary two-star rank, Koster served as the Superintendent of the United States Military Academy, a high honor and an assignment that indicated that Koster had not yet reached the end of this career as an Army general officer.[12]



Major General Samuel W. Koster circa 1968

[1] WILLIAM R. PEERS, THE MY LAI INQUIRY 213 (1979).

[2] Koster v. United States, 685 F.2d 407, 409 (Cl. Ct. 1982).

[3] *Id*. Charges against Koster were dismissed on January 28, 1971. *Id*.

[4] *Id*. at 409-10.

[5] RICHARD HAMMER, THE COURT-MARTIAL OF LT. CALLEY 35, 43 (1971).

[6] *Koster*, 685 F.2d at 408.

[7] David Stout, *Gen. S.W. Koster, 86, Who Was Demoted After My Lai, Dies*, N.Y. TIMES, Feb. 11, 2006.

[8] *Koster*, 685 F.2d at 408-09.

[9] Stout, *supra* note 7.

[10] Prior to the enactment of the Defense Personnel Management Act in 1980, commissioned officers in the Regular Army (RA) had both permanent and temporary ranks. Title 10, United States Code, Section 3442, provided that a regular commissioned officer might hold, in addition to his "regular" or permanent grade, a temporary grade in the Army of the United States (AUS). 10 U.S.C. § 3442 (1956) (repealed 1980). Consequently, an officer might hold an RA appointment as a captain and an AUS appointment as a lieutenant colonel. The appointments in the RA and AUS were independent of each other and selections for promotion to higher grades in each status were also independent of each other. *Id*. As a practical matter, almost every RA officer in the Army during Koster's era had a more senior temporary rank.

[11] *Koster*, 685 F.2d at 408. The 23d Division was created in Vietnam in September 1967 by combining three separate brigades that were already "in country." Consequently, it was a unique unit in that it was the only combat division formed outside the United States. The division was deactivated after its withdrawal from Vietnam in November 1971.

[12] Stout, *supra* note 7.

On March 16, 1968, Lieutenant William F. "Rusty" Calley and his platoon, members of Major General Koster's command, murdered at least 300 Vietnamese civilians near the village of My Lai.[13] Shortly after this massacre of non-combatant civilians, Koster "came to know of at least four irregularities that should have spurred him to call for a fuller investigation and for a report of the results to be made to higher authority"[14] as required by regulations promulgated by the Military Assistance Command, Vietnam (MACV).[15] First, Koster learned that there were "unusual" body count figures for the day, in that 128 enemy soldiers were reported killed yet only two friendly soldiers killed and eleven wounded. Second, he learned that "an unusually large number" of Vietnamese civilians had been killed by artillery fire. Third, Koster "received personally a watered-down version of the report by a U.S. helicopter pilot who tried to stop the killing at My Lai."[16] Finally, a month later, Major General Koster learned about a Viet Cong leaflet claiming that U.S. troops had massacred "some 500 civilians" near the hamlet of My Lai.[17]

Lieutenant Calley at trial, Fort Benning, Georgia

While the subsequent investigation into the My Lai Massacre done by Lieutenant General William R. Peers revealed that Koster did make some inquiries, Peers ultimately concluded that Major General Koster had not done enough. As Peers put it, Koster was one of thirty persons who had knowledge of the war crimes committed at My Lai "but had not made official reports, had suppressed relevant information, had failed to order investigations, or had not followed up on the investigations that were made."[18]

As a result of these failures, while serving as division commander, charges were preferred against Koster in March 1970.[19] The charges, which had been drafted by Colonel Hubert Miller,[20] then a judge advocate assigned to the Office of the Judge Advocate General, alleged that Koster had failed to obey orders and regulations and had been derelict in the performance of his duty, a violation of Article 92, Uniform Code of Military Justice (UCMJ).[21]

An investigation conducted pursuant to Article 32, UCMJ, "acknowledged" that Koster "may have been remiss" in not ordering a proper investigation into the alleged war crimes, but recommended dismissal of the court-martial charges against him.[22] The result was that charges were dismissed by Lieutenant General Jonathan O. Seaman in January 1971.[23]

In May 1971, on the recommendation of General William C. Westmoreland, then serving as Army Chief of Staff, Secretary of the Army Resor took the following administrative actions against Major General Koster. First, he vacated Koster's appointment as a temporary major general, so that Koster reverted to his permanent rank of brigadier general.[24] Second, he directed that a Letter of Censure, which criticized Koster's failure to report known civilian casualties to higher headquarters and his failure to insure that a proper investigation was conducted into killings at My Lai, be placed in Koster's military personnel file.[25] Finally, Secretary Resor directed the withdrawal of the

[13] HARRY G. SUMMERS, JR., HISTORICAL ATLAS OF THE VIETNAM WAR 140 (1995). In addition to the killings at My Lai, Calley and his men "raped and sodomized" women and children, set houses on fire, and bayonetted the inhabitants of the village as they attempted to escape. *Id.*

[14] *Koster*, 685 F.2d at 409.

[15] MILITARY ASSISTANCE COMMAND, VIETNAM (MACV) DIR. 20-4, INSPECTIONS AND INVESTIGATIONS, WAR CRIMES (18 May 1968) *reprinted in* GEORGE F. PRUGH, LAW AT WAR (1975), Appendix F (requiring the reporting of all war crimes committed by or against U.S. forces). For more on the evolution of the policy requiring the reporting of war crimes, see FRED L. BORCH, JUDGE ADVOCATES IN VIETNAM 34-36 (2004).

[16] *Koster*, 685 F.2d at 409. The helicopter pilot was Warrant Office Hugh C. Thompson who, while piloting a Hiller OH-23 Raven observation helicopter, witnessed the killings at My Lai. Thompson landed his OH-23 and then directed Bell UH-1 Iroquois utility helicopter gunships under his command to land and evacuate some of the civilians facing death at My Lai. WILLIAM R. PEERS, THE MY LAI INQUIRY 66-76 (1979).

[17] *Koster*, 685 F.2d at 409.

[18] PEERS, *supra* note 1, at 212.

[19] *Koster*, 685 F.2d at 409.

[20] PEERS, *supra* note 1, at 214. For more on Hubert Miller, see Fred L. Borch, *A Remarkable Judge Advocate by Any Measure: Colonel Hubert Miller (1918-2000)*, ARMY LAW., Mar. 2011, at 2.

[21] PEERS, *supra* note 1, at 212.

[22] *Id.* at 223.

[23] *Koster*, 685 F.2d at 409. Lieutenant General Jonathan O. Seaman was the Commander, First Army. He was the General Court-Martial Convening Authority for twelve of the fourteen individuals against whom charges were preferred as a result of their involvement in the My Lai Massacre. *Id.* at 221. Born in 1911, Seaman was a graduate of the U.S. Military Academy (Class of 1934). *Lt. Gen. Jonathan Seaman, 74, Dies; Commanded Army Troops in Vietnam*, WASH. POST, Feb. 26, 1986, at B6. He had a distinguished career as a combat Soldier, including command of the 1st Infantry Division in Vietnam. *Id.* After 37 years of active duty, Seaman retired as a lieutenant general. *Id.* He died in South Carolina in 1986. *Id.*

[24] *Koster*, 685 F.2d at 409-10.

[25] *Id.*

Distinguished Service Medal awarded to Koster for his service as Americal Division commander.[26]

Instead of leaving the Army after his loss of a star, Koster became deputy commander of the Army's Test and Evaluation Command at Aberdeen Proving Ground, Maryland.[27] He hoped to be promoted to the permanent grade of major general, but adverse information in his Officer Efficiency Reports apparently prevented any such promotion. Additionally, when Koster retired from active duty in 1973, Secretary of the Army Callaway, who had succeeded Secretary Resor, refused to find that Koster had performed satisfactorily in the grade of major general.[28] Under the law as it then existed, Koster could have received retired pay as a major general if Callaway had determined that he had served satisfactorily as a two star for six months.[29] When Calloway declined to make this determination, Koster's retired pay was computed based on his permanent rank as a one-star.[30]

For the next ten years, Brigadier General Koster fought to clear his name. He insisted that the Army's censure of him was "unfair and unjust" and based on "faulty conclusions."[31] He admitted that he had been "under the impression that only about 20 civilians had been 'inadvertently killed' by artillery, helicopter guns and 'some small-arms fire'" at My Lai but insisted that this was an insufficient basis to impose administrative "punishments" upon him.[32]

In January 1974, Koster filed a petition with the Army Board for Correction of Military Records (ABCMR).[33] He alleged that he was improperly retired as a brigadier general and that his records should be corrected to reflect retirement as a two-star.[34] Koster also requested removal of the Letter of Censure from his military personnel records and the restoration of his Distinguished Service Medal.[35] Three years later, in January 1977, Brigadier General Koster also filed a petition in the U.S. Court of Claims.[36] Since his petition with ABCMR was still pending, Koster apparently filed his petition with the Court of Claims so as to avoid the running of the statute of limitations in his case. This also explains why Koster concurrently petitioned the Court to suspend proceedings until the ABCMR had acted in his case.[37]

For reasons that are not clear from the legal records in the proceedings, it took Brigadier General Koster more than five years to submit a 415-page brief with seventy-five exhibits to the ABCMR.[38] This explains why it was not until March 1980 that the ABCMR was able to act upon Koster's January 1974 petition. In an "extensive memorandum," the Board ruled against Brigadier General Koster, concluding that the administrative sanctions imposed by the Secretary of the Army—the Letter of Censure, termination of his temporary appointment as a major general, and withdrawal of his DSM—were "justified on the record of evidence and were not arbitrary or capricious."[39]

With the ABCMR decision now final, it was time for the Court of Claims to examine Koster's petition. The Civil Division of the Department of Justice (DOJ), representing the government, filed a motion for summary judgment on July 7, 1981.[40] While DOJ attorneys filed the 100-page brief with the court, it was authored by then MAJ Michael J. Nardotti Jr., a relatively young judge advocate assigned to the Litigation Division, Office of the Judge Advocate General.[41]

Nardotti presented a number of reasons in support of the motion for summary judgment. First, he argued that plaintiff Koster's failure to submit a brief to the ABCMR for more than five years after filing his original petition meant that Koster's claim had "excessive and inexcusable delay." The government was prejudiced by this delay and the court, argued Nardotti, should dismiss Koster's petition as barred by the doctrine of laches.[42]

Alternatively, argued MAJ Nardotti, as the Court of Claims had jurisdiction over only money claims against the government, it had no jurisdiction to review the Secretary of the Army's decision to vacate Koster's temporary appointment to major general or to review Koster's claim for retirement at two-star rank. It also had no jurisdiction over the Letter of Censure or the revocation of Koster's DSM.[43]

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[26] *Id.* at 411. *See also* Defendant's Motion for Summary Judgment at 32, Koster v. United States 685 F.2d 407 (Cl. Ct. 1982) (No. 65-77) (historian files, TJAGLCS).

[27] Stout, *supra* note 7; *see also Koster*, 685 F.2d at 412.

[28] *Koster*, 685 F.2d at 410.

[29] *Id.*

[30] Stout, *supra* note 7.

[31] *Id.*

[32] *Id.*

[33] *Koster*, 685 F.2d at 410.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 408.

[37] *Id.* at 411.

[38] *Id.*

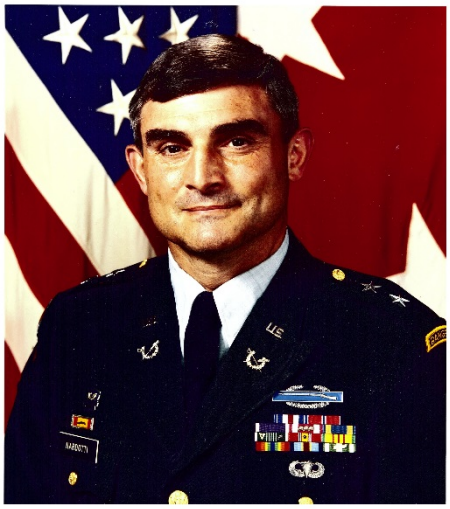
[39] *Id.* at 413.

[40] Defendant's Motion for Summary Judgment at 32, Koster v. United States, 685 F.2d 407 (Cl. Ct. 1982) (No. 65-77) (historians files, TJAGLCS).

[41] Nardotti is identified as "of counsel" on the brief. *Id.*

[42] Defendant's Motion for Summary Judgment at 57, Koster v. United States, 685 F.2d 407 (Cl. Ct. 1982) (No. 65-77) (historians files, TJAGLCS).

[43] *Id.* at 60-62.



Major General Michael J. Nardotti Jr., The Judge Advocate General, U.S. Army, 1993-1997

The Court of Claims agreed that it lacked the power to resolve the issue of the letter and the decoration, but it found that the vacation of his temporary appointment to two-star rank and his reduced retirement pay as a brigadier general did "colorably involve money" and consequently gave the court jurisdiction over these issues.[44]

But the court agreed with MAJ Nardotti's argument that the only issue was whether the ABCMR's decision in Koster's case was "arbitrary, capricious, unsupported by substantial evidence, in bad faith or contrary to law or regulation."[45] After carefully examining the administrative record created by the ABCMR and considering the written and oral arguments presented by both sides, the Court of Claims ruled against Koster.[46] On July 28, 1982, it held that it "was not able to conclude that the decision of the ABCMR should be overturned."[47] The court granted the government's motion for summary judgment and it denied Koster's cross-motion for summary judgment.[48]

It is worth noting that the Court of Claims was "sensitive" to Brigadier General Koster's claim he was made "to suffer for the political and public pressures that were brought to bear on the Army as a result of the My Lai incident."[49] The court, however, quoted from a memorandum written by Army Secretary Resor to the Secretary of Defense in March 1973. In the court's view, that memorandum best explained why the adverse administrative actions taken against Koster had been both lawful and fair:

> There is no single area of administration of the Army in which strict concepts of command responsibility need more to be enforced than with respect of vigorous investigation of alleged misconduct. . . . General Koster may not have deliberately allowed an inadequate investigation to occur, but he did let it happen, and he had ample resources to prevent it from happening . . . .
>
> . . . .
>
> Doubtless there will be some, including military officers, who feel that General Koster is being treated harshly, or that he is being made a scapegoat. . . . [But] the job of maintaining necessary standards of responsibility of senior officials is too important to the Army and to the nation to be significantly influenced by the criticism of those who are inadequately informed . . . .[50]

What became of two of the participants in this event in legal history? Brigadier General Koster died in January 2006 at his home in Annapolis, Maryland. He was 86 years old. Major Nardotti continued his career as an Army lawyer and, after serving as The Judge Advocate General from 1993 to 1997, retired as a major general. He continues to practice law at Squire Patton Boggs in Washington, D.C.[51]

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

[44] *Koster*, 685 F.2d at 413.

[45] *Id.* at 411.

[46] *Id.* at 409.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 414.

[50] *Id.* at 419.

[51] For an excellent treatment of Major General Nardotti's place in military legal history, see George R. Smawley, *The Soldier-Lawyer: A Summary and Analysis of An Oral History of Major General Michael J. Nardotti, Jr., United States Army (Retired) (1969-1997)*, 168 MIL. L. REV. 1-39 (2001).

Three Unique Medals to an Army Lawyer: The Chinese Decorations Awarded to Colonel Edward H. "Ham" Young

By Fred L. Borch
Regimental Historian & Archivist

While it is not unusual for a judge advocate in today's Army to be awarded a foreign *badge* for proficiency in parachuting, marksmanship, or physical prowess, the award of foreign decorations and medals is another matter, if for no other reason than these are rarely presented to judge advocates. Additionally, because of the constitutional prohibition on any "Person holding any Office" from accepting "any present . . . or Title, of any kind whatever, from any King, Prince, or foreign state," the Army has traditionally been reticent about permitting servicemembers to accept and wear foreign medals—especially during peacetime.[1]

With this as background, the award of not one or two, but three foreign military decorations to Colonel Edward H. "Ham" Young is a story worth telling. Young was awarded all three decorations by the Chinese government, in recognition of his outstanding service as the senior Army lawyer in China, from 1944 to 1947.

Born in Milwaukee, Wisconsin, in June 1897, Edward Hamilton "Ham" Young entered the U.S. Military Academy in June 1917.[2] Since the Army needed officers badly as it expanded during World War I, Young and his classmates graduated in November 1918, just 18 months after arriving as cadets. Commissioned in the Infantry, Second Lieutenant Young was immediately sent to Europe, where he visited the Belgian, French, and Italian battle fronts and also observed the American Army in occupation duties in Germany.[3] After returning from Europe, Young served in a variety of company, battalion, and regimental assignments in the Philippines and the United States in the 1920s and early 1930s.[4]

Colonel Edward H. "Ham" Young, circa 1947

In 1933, Young was sent to New York University School of Law, where he took a course in law, then went to West

[1] U.S. CONST. art. 1, § 9, cl. 8. After the Persian Gulf War, for example, a small number of high ranking Soldiers, including Generals Colin L. Powell and H. Norman Schwarzkopf, were awarded the Knight Commander, Order of the British Empire (KBE) by the U.K. government. *List of Honorary British Knights and Dames*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_honorary_British_knights_and_dames#Military (last visited Dec. 14, 2015). Ordinarily, recipients of the KBE are entitled to be addressed as "Sir" (as in "Sir Colin" or "Sir Norman"), but because of the constitutional prohibition in Article 1, Section 9, Generals Powell and Schwarzkopf were not permitted to accept this honorific. U.S. CONST. art. 1, § 9.

Despite the constitutional obstacles to accepting a title accompanying a foreign decoration like the KBE, the Congress began enacting legislation in World War I that gave blanket authority to "any and all members of the military forces of the United States . . . to accept . . . decorations" awarded to them by Allied governments. U.S. DEP'T OF ARMY REG. 600-45, AWARD AND SUPPLY OF DECORATIONS FOR INDIVIDUALS (9 Mar. 1922). Similar legislation was enacted during World War II, Korea, and Vietnam so that judge advocates serving in those conflicts were permitted to accept (and wear) Belgian, British, Dutch, French, Italian, Korean, and Vietnamese decorations and medals. *See* Act of Aug. 1, 1947, Pub. L. No. 80-314 (authorizing the acceptance of decorations, orders, medals, and emblems by officers and enlisted men of the armed forces of the United States tendered them by governments of cobelligerent nations, neutral nations, or other American Republics); Act of May 8, 1954, Pub. L. No. 83-354 (authorizing certain members of the Armed Forces to accept and wear decorations of certain foreign nations); Act of Oct. 19, 1965, Pub. L. No. 89-257 (authorizing certain members of the Armed Forces to accept and wear decorations of certain foreign nations (codified as 5 U.S.C. § 7342 (2015))).

Today, Army Regulation 600-8-2, *Military Awards*, paragraph 9-3, provides that a foreign decoration which has been awarded in recognition of "active field service in connection with combat operations," or which has been awarded "for outstanding or unusually meritorious performance," may be accepted and worn upon receiving the approval of Commander, U.S. Army Human Resources Command (HRC), Awards and Decorations Branch, Fort Knox, Kentucky. U.S. DEP'T OF ARMY REG. 600-8-2, MILITARY AWARDS para. 9-3 (25 June 2015). To ease the approval process, however, paragraph 9-27 provides that any foreign decoration listed in Appendix E of the regulation is pre-approved by Human Resources Command (HRC) for acceptance, provided it is approved by a commander who is a brigadier general or a commander who is a colonel with general court-martial convening authority. *Id.* para. 9-27, Appendix E. A decoration not listed in Appendix E cannot be accepted or worn without HRC approval. *Id.* para. 9-27.

[2] Fred L. Borch, *From West Point to Michigan to China: The Remarkable Career of Edward Hamilton Young (1897-1987)*, ARMY LAW., Dec. 2012, at 1.

[3] *Id.*

[4] M.S. Young, *Edward H. Young 1919*, ASSEMBLY, Sept. 1990, at 154. For more on Young, *see* Borch, *supra* note 2.

Point to be an instructor in the academy's law department.[5] Three years later, he joined the Judge Advocate General's Department, and in 1938, finally completed his law studies and passed the New York Bar Exam.[6]

When the United States entered World War II, Young was in Washington, D.C., where he was the deputy chief of the Military Affairs Division. Then, in February 1942, Major General Myron C. Cramer, The Judge Advocate General, selected Colonel Young to be the first commandant of The Judge Advocate General's School, United States Army (TJAGSA), then located at the National University Law School.[7]

Shortly thereafter, when TJAGSA moved to the campus of the University of Michigan in Ann Arbor, Young went with it.[8] Working with a small group of Army lawyers, Young successfully planned, organized, and administered a comprehensive course of instruction. During his tenure as commandant, TJAGSA trained more than 1700 officers and officer candidates to be judge advocates.[9] As this constituted two-thirds of the active duty strength of the entire Judge Advocate General's Department,[10] it was a remarkable achievement by any measure.

In December 1944, Colonel Young was transferred to the China, Burma, India Theater where he assumed duties in China as the Theater Judge Advocate, U.S. Forces in China.[11] He was also the legal advisor to the U.S. Embassy and the Far East United Nations War Crimes Commission.[12] After the Japanese surrender in August 1945, Colonel Young remained in China as the Staff Judge Advocate, Nanking Headquarters Command and Advisory Group.[13]

When he left China in June 1947, Colonel Young's tenure had been unique in the history of the Corps, as no other judge advocate had served as Theater Judge Advocate before him—and no one followed Young in the assignment.[14] He was decorated by his boss with the Legion of Merit for his extraordinary service.[15] But the Nationalist Chinese government of General Chiang Kai-shek also saw Young's service as worthy of recognition, and decorated him with three medals: the Special Collar of the Order of the Brilliant Star, the Special Breast Order of the Cloud and Banner, and the Special Breast Order of Pao Ting. He is the only judge advocate in history to be awarded all three Chinese military decorations.[16]

Order of the Brilliant Star Award to Colonel Young

Founded in February 1941 as an award for outstanding merit, the Order of the Brilliant Star was created in nine classes or grades. Colonel Young received the Third Class or "Special Collar" class of the decoration with its purple neck ribbon. Very few awards of the Order of the Brilliant Star have been awarded; by 1968, the Nationalist Chinese government (relocated to the island of Taiwan in 1949) had only made 875 awards of the decoration.[17]

Order of the Cloud and Banner Awarded to Colonel Young

[5] Borch, *supra* note 2, at 1.

[6] *Id*. at 2.

[7] JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975, at 188 (1975). Founded in 1869, the National University Law School merged with the George Washington University School of Law in 1954. *History*, THE GEORGE WASHINGTON UNIVERSITY, http://www.law.gwu.edu /School/Pages/History.aspx (last visited Dec. 1, 2015).

[8] JUDGE ADVOCATE GENERAL'S CORPS., *supra* note 7, at 188.

[9] *Id*. at 187.

[10] *Id.* at 169.

[11] Borch, *supra* note 2, at 2.

[12] *Id*.

[13] For more on Young's service in China, *see* Fred L. Borch, *Contracting in China: The Judge Advocate Experience, 1944–1947*, ARMY LAW., Aug. 2012, at 1.

[14] Borch, *supra* note 2, at 2.

[15] Young, *supra* note 4, at 154.

[16] *Id*.

[17] ROBERT WERLICH, ORDERS AND DECORATIONS OF ALL NATIONS 86 (1990).

The Order of the Cloud and Banner was created in 1935 as an award for exceptional acts of bravery by members of the Chinese armed forces. By World War II, however, its award to foreigners also was permitted. Like the Order of the Brilliant Star, the Order of the Cloud and Banner also came in nine classes or grades. Colonel Young received the Fourth Class award with its wide blue stripe edged in narrow red/orange and bordered in white.[18]

Order of Precious Tripod Awarded to COL Young

Finally, Colonel Young was awarded the Special Breast Order of Tao Ping or "Precious Tripod." Created by Chiang Kai-shek in 1929, for either valor or outstanding service by a member of the Chinese armed forces or foreigners, the medal features a green and white tripod in its center. Colonel Young received the Fourth Class of the award, as evidenced by the white enamel band surrounding the tripod, and the blue and white ribbon.[19]

The obverse of each Chinese medal is depicted in this "Lore of the Corps," along with Colonel Young's original ribbon bar from his dress uniform. Note that the three Chinese decorations follow all Young's American medal ribbons (Distinguished Service Medal, Legion of Merit, American Defense Service Medal, Army of Occupation of Germany Medal, World War I Victory Medal, American Campaign Medal, Asiatic-Pacific Campaign Medal, and World War II Victory Medal).[20]

Ribbon Bar Worn by COL Young

"Ham" Young retired from active duty in 1954 and died in Florida in 1987.[21] He is interred in Arlington National Cemetery.[22] As for his Chinese decorations, they were donated to the Judge Advocate General's Corps by Colonel Young's descendants, and are part of the historical collection at the the Judge Advocate General's Legal Center and School, United States Army.

World War II Judge Advocate General's School Scrapbooks on the Library of Congress Website

In 1942, the Judge Advocate General's School opened on the campus of the University of Michigan in Ann Arbor, Michigan. Initially, the School was under the leadership of Colonel Edward H. "Ham" Young, who determined the curriculum and put together the initial staff and faculty. When Young departed for a new assignment in late 1944, he was succeeded by Colonel Reginald C. Miller, who served as Commandant until the school closed in 1946. During its operation at the University of Michigan, the school transformed hundreds of civilian lawyers into Army judge advocates. These military lawyers ultimately served as uniformed attorneys in a variety of world-wide locations, including Australia, China, England, France, Germany, India, Japan, and Morocco. These scrapbooks contain photographs, newspaper articles, graduation programs, and other documents related to the operation of the school from 1943 to 1946.

See the scrapbooks here:
http://www.loc.gov/rr/frd/Military_Law/Scrapbooks.html

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

[18] *Id*. at 88.

[19] *Id*. at 87.

[20] JOHN E. STRANDBERG & ROGER JAMES BENDER, THE CALL OF DUTY: MILITARY AWARDS AND DECORATIONS OF THE UNITED STATES OF AMERICA (2004).

[21] Borch, *supra* note 2, at 3.

[22] *Id*.

From Infantry Officer to Judge Advocate General to Provost Marshal General and More: The Remarkable Career of Allen W. Gullion

By Fred L. Borch
Regimental Historian & Archivist[*]

Allen W. Gullion was an extraordinary Soldier by any measure. He saw combat in the Philippines, served on the border with Mexico, and joined the Judge Advocate General's Department shortly before the United States entered World War I. After a number of significant assignments as a lawyer, he became The Judge Advocate General (TJAG) in 1937. When he retired from his position as TJAG on December 1, 1941, Major General Gullion assumed full-time duties as the Army's Provost Marshal General—a position that had not existed since World War I. He subsequently supervised the handling of all Axis prisoners of war, both in the United States and overseas. He also was the chief architect of the Army's framework for the post-World War II occupation of Austria, Germany, Japan, and Korea. In early 1944, Major General Gullion accepted an invitation from General Dwight D. Eisenhower to join his staff as the Chief, Displaced Persons Branch. In this unique job, Major General Gullion oversaw Allied efforts involving the repatriation of millions of refugees and other civilians displaced by the chaos of World War II. With basic plans for this project completed, Gullion retired in December 1944. He died eighteen months later, in June 1946. What follows is the story of his remarkable career—unique in the history of the U.S. Army and The Judge Advocate General's Corps.

Born in New Castle, Kentucky, on December 14, 1880, Allen Wyant Gullion graduated with a Bachelor of Arts from Centre College, Danville, Kentucky, in 1901. As a student, he excelled in the subjects of Greek, Latin, and oratory (he won the school's prize in oratory),[1] but decided to pursue a career as an Army officer. Consequently, he obtained an appointment to the U.S. Military Academy at West Point, and after graduating in 1905, he was commissioned as a second lieutenant (2LT) in the Infantry branch.[2]

After service with the 2nd U.S. Infantry Regiment at Fort Logan, Colorado, 2LT Gullion sailed to the Philippines in 1906.[3] He served two years in the Philippine Islands, where he saw combat in military operations against Filipino insurgents.[4]

Major General Allen W. Gullion, The Judge Advocate General, U.S. Army, 1937

After returning to the United States in 1908, Gullion was assigned to Fort Thomas, Kentucky.[5] In 1911, he was promoted to first lieutenant and transferred to the 20th U.S. Infantry Regiment.[6] Gullion was then detailed as a Professor of Military Science and Tactics at the University of Kentucky, and during his two-year assignment, he attended law school earning a Bachelor of Law degree in 1914.[7]

When National Guard units were sent to the Mexican border in 1916, Gullion accepted a commission as a colonel in the 2nd Kentucky Infantry.[8] He served on the border until

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[*] The author thanks General Thomas S. Moorman Jr., U.S. Air Force, Retired, for his help in preparing this *Lore of the Corps*. General Moorman is the grandson of Major General Gullion. General Moorman served as Vice Chief of Staff of the Air Force from 1994 to 1997.

[1] DOUGLAS WALLER, A QUESTION OF LOYALTY 222 (2004).

[2] U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 155 (1975).

[3] WALLER, *supra* note 1, at 222.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] J.T. White & Co., *Allen Wyant Gullion*, WHITE'S BIOGRAPHY 254 (1949).

[8] *Id.*

May 1917, then gave up this rank and position in order to accept an appointment as a Regular Army major (MAJ) in the Judge Advocate General's Department.[9]

As the United States began mobilizing for World War I, MAJ Gullion was ordered to Washington for duty as Assistant Executive Officer and Chief of the Mobilization Division in the Provost Marshal General's Office. Major General Enoch H. Crowder, who had been the Army's Judge Advocate General since 1911, took a leave of absence from this position to become the Provost Marshal General and oversee the implementation of the first wartime draft since the Civil War.[10] Gullion assisted Crowder in administering the new Selective Service Act, and as a result of his superlative performance of duty, Gullion—who had been previously promoted to Lieutenant Colonel—was awarded the Distinguished Service Medal.[11] His citation read, in part:

> As chief of publicity and information under the provost marshal general, he successfully conducted the campaign to popularize selective service. Later, as acting executive officer to the provost marshal general, he solved many intricate problems with firmness, promptness, and common sense. Finally, as the first chief of mobilization, division of the provost marshal general's office, he supervised all matters relating to the making and filling of calls and the accomplishment of individual inductions. To each of his varied and important duties he brought a high order of ability and remarkable powers of application. His services were of great value in raising our National Army.[12]

In March 1918, Lieutenant Colonel (LTC) Gullion deployed to France, where he served as a member of the General Staff, American Expeditionary Force and as Judge Advocate, Advance Session and III Corps.[13] After the end of hostilities, Gullion remained in Europe, and marched with III Corps into Germany as part of the Allied occupation.[14]

Allen Gullion returned to the United States in early 1919 and was assigned to Governors Island, New York.[15] For the next five years, he was the legal advisor to Lieutenant General Robert L. Bullard, a distinguished Soldier who had successfully commanded a brigade before taking charge of the First Division, III Corps, and Second Army in World War I.[16] Since Gullion had been Bullard's lawyer while Bullard commanded III Corps from September 1918 to October 1918, it is likely that the two Soldiers had forged a strong professional relationship during wartime that continued in peacetime in New York.[17]

In June 1924, LTC Gullion was transferred to the Office of the Judge Advocate General in Washington, D.C.[18] The next year, he earned accolades for his performance in the court-martial of World War I aviation hero Colonel (COL) William "Billy" Mitchell.[19] In September 1925, after two aeronautical accidents involving the loss of a Navy dirigible and three Army Air Corps aircraft, Mitchell claimed in a press conference that these air disasters were "the direct result of the incompetency, criminal negligence, and almost treasonable administration of our national defense by the Navy and War Departments."[20]

The White House and leaders in the Navy and War Departments were outraged by Mitchell's intemperate words, and he was ordered to stand trial by general court-martial. At a high-profile trial that was on the front page of virtually every American newspaper for weeks, Mitchell was found guilty of insubordination, conduct to the prejudice of good order and military discipline, and bringing discredit on the War Department.[21] But, while the court-martial left Billy Mitchell's reputation in tatters, Gullion emerged as "one of the most skilled and aggressive prosecutors" in the Army.[22] His withering cross examination of Mitchell's testimony had been featured in newspaper stories throughout the country, and Gullion's closing argument on findings and sentencing likewise brought him to the attention of both the public and the Army's leadership.[23] He certainly seemed destined for higher rank and positions of greater responsibility.

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[9] *Id*.

[10] *Id*.

[11] For a biography of Crowder, see DAVID A. LOCKMILLER, ENOCH H. CROWDER: SOLDIER, LAWYER AND STATESMAN (1955). *See also* Fred L. Borch, *The Greatest Judge Advocate in History? The Extraordinary Life of Major General Enoch H. Crowder (1859–1932)*, ARMY LAW., May 2012, at 1–3.

[12] War Dep't, Gen. Order No. 9 (1923).

[13] WALLER, *supra* note 1, at 222.

[14] U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, *supra* note 2, at 155.

[15] *Id.*

[16] For more on Robert Lee Bullard, see ALLAN R. MILLETT, THE GENERAL: ROBERT L. BULLARD AND OFFICERSHIP IN THE UNITED STATES ARMY (1975).

[17] III Corps took part in the Meuse-Argonne offensive in September and October 1918, the largest U.S. operation in World War I. LAURENCE STALLINGS, THE DOUGHBOYS: THE STORY OF THE AEF, 1917-1918 293-95 (1963).

[18] J.T. White & Co., *supra* note 4, at 254.

[19] *Id.*

[20] WALLER, *supra* note 1, at 222.

[21] *Id*.

[22] *Id*. at 221-22.

[23] For more on the legal aspects of the Mitchell court-martial, see Fred L. Borch, *The Trial by Court-Martial of Colonel William "Billy" Mitchell*, Army Law., Jan. 2012, at 1.

But Gullion was also recognized by his contemporaries as an eccentric.[24] Although "he played polo and enjoyed watching boxing matches, he smoked heavily (always with a cigarette holder) and thought exercise could be bad for his health."[25] When reading the newspaper in bed, he wore "white gloves so the print wouldn't soil his hands."[26] On car trips from Washington back to Kentucky, he would stop at each railroad crossing and order his son out to inspect the track both ways and then signal him to pass over it.[27]

Like many officers of the period, Gullion was intensely apolitical.[28] He never voted in an election, believing that officers must stay out of politics.[29] Finally, officers who acted in an ungentlemanly or unprincipled manner deeply offended him.[30] Certainly, COL Billy Mitchell fell into this category.

Major General Gullion (left) and Colonel Myron C. Cramer (right), December 1941. Colonel Cramer replaced Major General Gullion as The Judge Advocate General, U.S. Army.

In 1929, LTC Gullion was selected to represent the United States as the senior War Department representative at an international conference in Geneva, Switzerland.[31] This gathering of forty-seven nations came together to formulate a code for prisoners of war and revise the Geneva Convention of 1906.[32] The result of this conference were two new international treaties on July 27, 1929: The Geneva Convention Relative to the Treatment of Prisoners of War (GPW) and the Geneva Convention for the Amelioration of the Wounded and Sick of Armies in the Field.[33] According to a War Department press release, Gullion was "chiefly responsible for the creation of" the 1929 GPW, and in May 1944, benefited personally from his work.[34] This was because the American Prisoner of War Bureau, created in compliance with U.S. obligations under the GPW, informed him that his youngest son, an Army Air Forces officer, had been captured by the Germans in France and was a prisoner of war (POW).[35]

In 1930, the War Department sent LTC Gullion to the Army War College, located at Fort Myer, Virginia.[36] After graduating in 1931, the War Department sent him to advanced schooling at the Naval War College, from which he graduated in 1932.[37] Gullion then sailed for Hawaii, where he assumed duties as the top military lawyer in the Hawaiian Department.[38]

In late 1934, in an unusual turn of events, LTC Gullion took off his uniform to become the civilian administrator of the National Recovery Administration (NRA) for the Territory of Hawaii.[39] Congress created the NRA in 1933 as a way to stem, at least in part, the deflation of the Great Depression in October 1929.[40] The goal of the NRA, which adopted a blue eagle as its symbol and "We Do Our Part" as its slogan, was to bring industry and labor together to create codes of "fair practice" and set prices that would raise consumer purchasing power and increase employment.[41]

Hugh S. Johnson, who had been a member of the Judge Advocate General's Department in World War I, was the first

[24] WALLER, *supra* note 1, at 222.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] J.T. White & Co., *supra* note 4, at 254.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] Press Release, War Department, Bureau of Public Relations, Maj. Gen. Allen W. Gullion Retires, 1 (Jan. 1, 1945) (on file with author). Gullion's son, Allen Wyant Gullion Jr., graduated from the U.S. Military Academy in 1943. Commissioned in the Air Corps, he was a pilot assigned to the 416th Bombardment Group when he was shot down and taken prisoner. After being released from captivity in 1945, he remained on active duty and served in a variety of Air Force assignments until retiring as a lieutenant colonel in 1966. He died in Cadiz, Spain, in 1985. THE U.S. MILITARY ACAD., WEST POINT, THE REGISTER OF GRADUATES & FORMER CADETS 352 (1992).

[36] J.T. White & Co., *supra* note 4, at 254.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] For more on the National Rifle Association, see JOHN K. OHL, HUGH S. JOHNSON AND THE NEW DEAL (1985).

Director of the NRA.[42] Johnson selected administrators like Gullion, whom he knew from his years as a judge advocate, to implement NRA goals.[43] These included: a minimum wage of between twenty and forty-five cents per hour and a maximum work week of thirty-five to forty-five hours.[44] For the next year, Gullion and his staff drafted and implemented rules and regulations that governed almost every aspect of the economy in the islands.[45] Within months, he was so popular in the community that the local newspapers reported that Gullion was considered to be a possible future governor of the Territory.[46] But Gullion was abruptly out of a job in 1935, after the U.S. Supreme Court declared the NRA unconstitutional in *Schechter Poultry Corp. v. United States.*[47] He then returned to Washington, D.C., to become the Chief, Military Affairs Division, in the Office of the Judge Advocate General.[48]

Colonel Gullion became Assistant Judge Advocate General in 1936, and the following year, after the retirement of Major General Arthur W. Brown in November 1937, Gullion was promoted to Major General and became TJAG.[49]

The following year, Major General Gullion was the delegate of the United States at an international conference of judicial experts in Luxembourg.[50] At the conference, Gullion spoke "on the subject of protection of civil populations from bombardment from the air."[51] Given the role of airpower in World War II and the destruction wrought by aerial bombardment, his remarks must have been prescient. After Luxembourg, Major General Gullion continued to participate in high-profile events. In 1941, he represented the War Department and the American and Federal Bar Associations at the first convention of the Inter-American Bar Associations in Havana, Cuba.[52]

In September 1939, after the outbreak of war in Europe and as the U.S. Army began preparing for war, Gullion and his staff were heavily involved in drafting legislation to transform the Army into a wartime body.[53] However, as TJAG, Gullion was apparently most proud that during his tenure, the general court-martial rate was reduced "to its lowest rate in the peacetime history of the Army."[54]

Major General and Provost Marshal General Gullion, Provost Marshal General School, Arlington, Virginia, March 1942

On July 3, 1941, five months before his four-year term as TJAG ended, Major General Gullion was appointed as the Provost Marshal General (PMG).[55] Shortly after Gullion assumed his new position, he took on responsibility for manning and training the new Military Police Corps, soon universally known as "MPs," which was created by the Secretary of War in September 1941.[56] Under Major General Gullion's guidance, the Military Police Corps of World War II "emerged as a trained specialist equipped to handle the difficult task of law enforcement."[57]

As PMG, Gullion did much more than oversee law enforcement operations in the Army; he was in charge of handling all Axis prisoners of war and was responsible for developing the framework for occupying liberated and conquered Axis territories.[58] This was a significant

[42] *Id.*

[43] J.T. White & Co., *supra* note 4, at 254.

[44] *Id.*

[45] *Id.*

[46] *Gullion for Governor?*, HONOLULU STAR BULLETIN, Sept. 24, 1938.

[47] A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

[48] J.T. White & Co., *supra* note 4, at 254.

[49] *Id.*

[50] War Department, Bureau of Public Relations, *supra* note 35.

[51] *Id.*

[52] *Id.*

[53] U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, *supra* note 2, at 156.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

responsibility.[59] By the end of World War II, approximately 425,000 Axis POWs were living and working in 700 camps in the United States, and the Office of the PMG was responsible for every detail of POW welfare, from food, pay, and housing to medical care, mail, and recreation.[60]

As for military occupation, Gullion and his staff formulated the policies for military governance adopted by President Franklin D. Roosevelt, including an important 1943 revision to Field Manual (FM) 27-5, *Military Government*.[61] The FM ultimately was seen as the bible for all those involved in civil affairs and military occupation duties because "it provided guidance on how to train, to plan, and eventually implement military government."[62] Major General Gullion also established a Military Government School at the University of Virginia.[63] In "a tough 16-week course," Army "civil affairs officers" were "thoroughly grounded in Army organization, international law, and public administration"[64] so that the United States could effectively and efficiently govern in Germany, Italy, and Japan. Later, on Gullion's recommendation, the Army also created a Civil Affairs Division (as part of the War Department General Staff), to utilize the military personnel (some of whom were judge advocates) being educated at the University of Virginia.[65]

In May 1944, Gullion was offered the chance to join General Dwight D. Eisenhower in France as the Chief, Displaced Persons (DPs) Branch.[66] Major General Gullion accepted the position, and "he was relieved [of his duties as PMG] at his own request in order to accept the appointment."[67] In his new assignment, Gullion consulted and coordinated with other Allied governments (most of which were "in exile" in London) regarding repatriating nationals who had been displaced by the war.[68] Since at least 15 million Europeans had been displaced, (war refugees, political prisoners, forced laborers, deportees, civilian internees, concentration camp inmates, ex-POWs, and stateless persons) returning them to their homes, or otherwise finding a country that would accept them, was a huge task.[69] Within months, however, Major General Gullion and his staff were able "to develop the framework of the organization" [70] for the rehabilitation and return of these DPs. Although this must have given Gullion great satisfaction, he certainly must have been frustrated since in November 1944 poor health required him to be "invalided at home."[71] He retired "because of disability incident to the service" on December 31, 1944.[72]

Eighteen months later, on June 19, 1946, Major General Gullion died of a heart attack at his son's home. At the time of his death, he and his son were listening to a radio broadcast of the heavyweight boxing championship bout between Joe Louis and Billy Conn.[73] Guillion was 65 years old.

Allen W. Gullion served nearly forty years as a Soldier. With more than ten years as an Infantry officer, nearly twenty-five years as an Army lawyer, and World War II service as Provost Marshal General and a member of Eisenhower's staff in France, he was a truly remarkable Soldier by any measure.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

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[59] *Our Growing Prison Camps: How U.S. Treats War Captives*, NATIONAL WEEKLY, May 28, 1943, at 22. For more on German and Italian Prisoners of War (POWs) in the United States during World War II, see ARNOLD KRAMMER, NAZI PRISONERS OF WAR IN AMERICA (1979).

[60] *Id.*

[61] WALTER M. HUDSON, ARMY DIPLOMACY 72 (2015).

[62] *Id.*

[63] *Id.* at 135-55.

[64] *When the Yanks Take Over*, LOOK, July 13, 1943.

[65] HUDSON, *supra* note 62, at 135-55.

[66] War Department, Bureau of Public Relations, *supra* note 17.

[67] *Id.*

[68] For more on displaced persons, see MARK WYMAN, DPS: EUROPE'S DISPLACED PERSONS, 1945-1951 (1998).

[69] *Id.*

[70] U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, *supra* note 2, at 156.

[71] *Gen. Gullion Retires*, ARMY NAVY J., Jan. 1945.

[72] *Id.*

[73] *Maj. Gen. Allen Gullion Dies While Hearing Fight*, THE NEWS DEMOCRAT (Carrolton, Kentucky), June 20, 1946; *Louis Stops Conn in Eighth Round and Retains Title*, N.Y. TIMES, June 20, 1946, at 1. Before the Louis-Conn fight, Louis was asked whether Conn might "outpoint" him because of Conn's hand and foot speed. In a reply that still is remembered today, Louis quipped: "He can run, but he can't hide." The Louis-Conn bout, held at Yankee Stadium, was seen by more than 45,000 fans. The bout also was televised by the NBC network and was the first televised world Heavyweight championship fight ever. It was watched by 146,000 people, which set a record for the most viewed world Heavyweight bout in history. *Id.* Thousands more—like Gullion—listened to the fight on their radios.

An Army Lawyer Tried and Convicted by Court-Martial: *United States v. Joseph I. McMullen*

By Fred L. Borch
Regimental Historian & Archivist

While there have been a handful of courts-martial in which an Army lawyer was the accused, including one involving a former Judge Advocate General,[1] the high-profile trial of Colonel Joseph I. McMullen in February 1936 has long been forgotten. But the case is worth remembering for two reasons: First, McMullen was well-known as one of the prosecutors in the court-martial of Colonel William "Billy" Mitchell in the 1920s, and so the story of his trial was carried in the newspaper of the day.[2] Second, the misconduct for which McMullen was convicted was a classic violation of professional ethics: engaging in the private practice of law and accepting money and other gratuities from civilian corporations that were doing business with the government. What follows is the story of Joseph I. McMullen's place in military legal history.

Joseph Irving McMullen began his military career in April 1896, when he enlisted in the 6th Cavalry at the age of twenty-two.[3] Five year later, he obtained a commission as a Second Lieutenant (2LT).[4] McMullen then remained on active duty until 1906, when he "was retired on account of physical disability in line of duty."[5]

Ten years later, 2LT McMullen was recalled to active duty, and after America's entry into World War I, he was quickly promoted to first lieutenant, captain, then major.[6] In August 1921, now Lieutenant Colonel McMullen transferred to the Judge Advocate General's Department; he apparently had been admitted to the bar in Idaho and California sometime prior to World War I and so was well-qualified to serve as an Army lawyer.[7] Additionally, McMullen seems to have been an expert in patent law, which would explain why he was the Chief of the Patents Section, Judge Advocate General's Office, from 1921 until 1935.[8]

In this important legal assignment, McMullen had much contact with businessmen and corporations doing business with the Army. By all accounts, he was a superb attorney "who discharged his duties in an excellent manner and did nothing . . . to impair . . . the rights of the War Department in patent matters."[9] But, perhaps believing that his good work entitled him to more than his military pay and allowances, McMullen engaged in "gravely unethical conduct."[10]

Judge Advocate Colonel Joseph I. McMullen (center) stands with his son, Bruce McMullen (left), and defense counsel, William Leahy (right), after his conviction by general court-martial for dishonorable conduct on February 20, 1936.

A 1935 investigation conducted by the Army Inspector General (IG) revealed that in 1932, newly-promoted Colonel (COL) McMullen had received $3,000 from the Cuban-

[1] In 1884, Brigadier General David D. Swaim, who had been serving as Judge Advocate General since 1881, was tried for "improprieties" arising out of "his conduct of a business transaction," including fraud and conduct unbecoming an officer. U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 79-82 (1975). After an unprecedented fifty-two days of trial time, Swaim was found guilty and sentenced to be suspended from rank, duty, and pay for three years. *Id.* Unhappy with this result, however, President Chester A. Arthur returned the case to the court for "revision," which was permitted under the Articles of War at that time. *Id.* As a result, the members "adjusted" Swaim's sentence to suspension from rank for twelve years and to forfeiture of one half of his monthly pay for every month for twelve years. *Id.*

[2] *Colonel McMullen on Trial before Court Martial, Charged with Accepting Railroad Tickets as Reward for Advice*, LEWISTON DAILY SUN, Feb. 15, 1936, at 12; DOUGLAS WALLER, A QUESTION OF LOYALTY 51 (2004). For more on the legal aspects of the Mitchell court-martial, see Fred L. Borch, *The Trial by Court-Martial of Colonel William "Billy" Mitchell*, ARMY LAW., Jan. 2012, at 1.

[3] McMullen v. United States, 100 Ct. Cl. 323, 324 (1943).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 325. *See also* WALLER, supra note 2, at 51.

[8] JUDGE ADVOCATE GENERAL'S DEPARTMENT, BOARD OF REVIEW CM 204639, UNITED STATES V. MCMULLEN 26 (1936) [hereinafter OPINION, BOARD OF REVIEW].

[9] Memorandum from Major General J. F. Preston, Inspector Gen., for Sec'y of War, subject: Investigation of Colonel Joseph I. McMullen, JAGD, Judge Advocate General's Office, at 1 (13 April 1935).

[10] *Id.*

American Manganese Corporation. At the time, Congress was considering legislation that would impose a one-cent tax on manganese imports from Cuba, and such a tax would have a substantial and adverse impact on the company's profits given that manganese ore coming from Cuba was free of duty at the time.[11]

The Cuban-American Manganese Corporation approached McMullen and asked him to help the company stop this import tax, and in May 1932, Congress in fact rejected the proposed one-cent tax. This was a victory for the company, and because McMullen had "led the company to believe that he had favorably influenced high government officials" to prevent the tax from being imposed, the Cuban-American Manganese Corporation wanted to reward McMullen for his good work.[12] According to the IG, McMullen had in fact "accomplished no such . . . results" for the company, but he collected $3,000 from the Cuban-American Manganese Corporation because the company's officers believed that he had successfully lobbied for them.[13] At that time, $3,000 was nearly twice the income of the average American family, and considering that the United States was in the middle of the Great Depression, this was a sizeable gratuity.[14]

This same IG investigation also disclosed that in January 1934, while acting as a legal advisor to the Assistant Secretary of War, COL McMullen had accepted two round-trip railroad tickets from Joseph Silverman Jr.[15] Silverman was a second-hand clothing dealer in New York City who operated "under a number of different firm names" and who sought to buy "surplus [clothing] goods" from the War Department.[16] In any event, Silverman had "continuing business dealings with the War Department," and at the time McMullen took the tickets from Silverman, he had been giving legal advice on the latter's clothing contracts with the War Department.[17]

As a result of his ethical lapses, McMullen was tried by general court-martial at Walter Reed General Hospital in January and February 1936. He was charged with violating the 96th Article of War, which was the equivalent of today's Article 134 of Uniform Code of Military Justice.[18] As it was concerned that much of McMullen's criminal behavior was outside the statute of limitations, the War Department decided only to court-martial McMullen for having "wrongfully and dishonorably" accepted the two round-trip railroad tickets from Mr. Silverman given "with the intent to have [McMullen's] decision and action on [Silverman's] contract . . . influenced thereby."[19]

Colonel McMullen pleaded not guilty but was convicted. He was sentenced "to be reduced in rank to the foot of the list of officers of his grade," to be reprimanded, and to forfeit $150 per month for twenty-four months.[20]

When McMullen's record of trial was reviewed by the Board of Review, the forerunner of today's Army Court of Criminal Appeals, he got lucky: The three-judge appellate body determined there was "reasonable doubt" in McMullen's case.[21] According to the Board members, there was "a doubt as to whether the [train] tickets were a gift" from Mr. Silverman. Consequently, the Board recommended to The Judge Advocate General that he advise the convening authority that the evidence was "legally insufficient" and that the findings of guilty and the sentence be set aside.[22]

Based on this recommendation, Major General Arthur W. Brown, then serving as The Judge Advocate General, advised the convening authority to take no action in McMullen's case, and so his court-martial—as a practical matter—had no legal effect.[23] But this was not the end of the story because McMullen had been indicted in U.S. District Court for the District of Columbia for his unethical dealings with the Cuban-American Manganese Company in 1932. This was because the three-year statute of limitations applicable to courts-martial did not apply to Title 18 offenses prosecuted in Federal civilian court, and so McMullen could be indicted for taking $3,000 from the Cuban-American Manganese Corporation.[24]

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[11] McMullen v. United States, 96 F.2d 574 (D.C. Cir. 1938).

[12] Memorandum from Major General J. F. Preston, *supra* note 10, at 5.

[13] *Id.*

[14] The average U.S. family income between 1934 and 1936 was $1,574. *100 Years of U.S. Consumer Spending*, U.S. BUREAU OF LAB. STAT. 35 (2006), http://www.bls.gov/opub/uscs/1934-36.pdf.

[15] Memorandum from Major General J. F. Preston, *supra* note 9.

[16] GEORGE P. PERROS, RECORDS OF THE MILITARY AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES RELATING TO AN INVESTIGATION OF THE WAR DEPARTMENT (1934-1936) 4 (1955).

[17] Memorandum from Major General J. F. Preston, *supra* note 9, at 5.

[18] OPINION, BOARD OF REVIEW, *supra* note 8, at 1.

[19] *Id.* at 2.

[20] *Id.* at 4. In the Army of the 1930s, a loss of seniority by date-of-rank was a lawful punishment at a court-martial, and for McMullen, this meant he would be the junior ranking colonel in the Regular Army. MANUAL FOR COURTS-MARTIAL, U.S. ARMY ch. XXIII, para. 103h. (1928) ("Loss of rank is accomplished by a sentence directing that the accused . . . be reduced in rank to the foot of the list of officers of his grade."). As for the $3,600 forfeiture of pay, this was significant: In the 1930s, an Army colonel with twenty-four years of service earned $408.00 a month; a colonel with thirty years of service earned $500 a month. Military Pay Chart 1922-1942, NAVY CYBER SPACE, https://www.navycs.com/charts/1922-officer-pay-chart.html (last visited Feb. 18, 2016).

[21] OPINION, BOARD OF REVIEW, *supra* note 8, at 26.

[22] *Id.*

[23] McMullen v. United States, 100 Ct. Cl. 323, 332 (1943).

[24] ARTICLES OF WAR, 41 stat. 787 art. 39 (1920); letter from George H. Dern, Secretary of War, to John J. McSwain, Chairman, Military Affairs Division, April 16, 1935 (on file with author).

On April 26, 1936, a civilian jury convicted him of receiving (in violation of a Federal statute[25]) "compensation for services rendered by him while still an officer of the United States in behalf of one of his clients in relation to a proceeding in which the United States was interested," i.e. lobbying against the proposed tax on manganese imported into the United States by the Cuban-American Manganese Company.[26] McMullen was sentenced to six months in jail and fined $1,000.[27]

McMullen appealed his conviction. He argued that it should be set aside because the trial court denied his motion for a bill of particulars in the case.[28] According to McMullen, the indictment was legally insufficient to support his conviction because it did not clearly state whether McMullen had received "a thing of value" or "money." As a result, he had been deprived of a fair trial because in denying his motion for a bill of particulars, the jury had been "in doubt" as to what McMullen had actually received from the Cuban-American Manganese Corporation.[29]

On March 21, 1938, the U.S. Court of Appeals for the District of Columbia agreed. It reversed McMullen's conviction and "remanded for a new trial."[30] Lest any lawyer reading its opinion be mistaken, the court wrote that "forms and procedure still have their place and purpose in the administration of the law; without them we would have chaos."[31] The court continued: "Much impatience is being shown with the technicalities of the law . . . [but] the requirement that an indictment . . . must state the crime with which a defendant is charged, and the particular act constituting the crime is more than a mere technicality; it is a fundamental, a basic principle of justice . . . ."[32]

So what happened next? Despite the fact that the Court of Appeals had set aside McMullen's conviction in the U.S. District Court, the Army "[a]s a result of the conviction" and relying on "an opinion from the Attorney General of the United States," notified McMullen that he "was dropped from the rolls of the Army and . . . that he ceased to be an officer of the Army as of May 8, 1938."[33] The Attorney General's rationale was that, having been convicted of a crime involving the acceptance of a gratuity, McMullen "became immediately incapable of holding any office of honor, trust, or profit under the Government of the United States,"[34] and so must be separated from the Army.

Shortly thereafter, the Department of Justice (DOJ) decided that it had had enough of the "McMullen affair";[35] on June 30, 1939, DOJ declined to take any further criminal action against him.[36]

But while the Army and the Justice Department may have believed they were finished with COL Joseph I. McMullen, he was not finished with them. On September 11, 1940, McMullen filed a complaint in the U.S. Court of Claims. In his suit for money, he maintained that because his Federal conviction had been reversed (and the case *nolle prosequi* by DOJ), he "never was legally separated from the service" and consequently was entitled to recover as much as $25,000 in back pay.[37]

What happened to McMullen's suit in the U.S. Court of Claims? On December 6, 1943, that court ruled that the War Department had acted lawfully in permanently separating McMullen from the Regular Army after his 1935 conviction in U.S. District Court.[38] In their opinion, the three judges deciding McMullen's claim acknowledged that his conviction at trial had been reversed.[39] They conceded that it might seem unfair that he was being penalized after this conviction was overturned. But, said the court, the Army had correctly dismissed McMullen because of the immediate "harm to the public service" resulting from his conviction, and his subsequent "vindication" was insufficient reason to award him any back pay.[40]

The Court of Claims expressly rejected McMullen's argument that once the Court of Appeals had set aside his conviction in U.S. District Court, he should be treated as if he had never been convicted of any crime, and "be paid the salary and allowances" of an Army colonel.[41] The Court of Claims dismissed McMullen's petition; he recovered nothing.[42]

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[25] 18 U.S.C. § 203 (2015).

[26] McMullen v. United States, 96 F.2d 574, 575 (D.C. Cir. 1938).

[27] *Id.*

[28] *Id.* at 576.

[29] *Id.* at 575.

[30] *Id.* at 579.

[31] *Id.*

[32] *Id.*

[33] Memorandum from Colonel James E. Morrisette, Chief, Military Justice Division, Office of The Judge Advocate General, to General Malin Craig, no subject (Nov. 8 1942) (on file with author).

[34] Status of Army Officer Removed Because of Conviction, 39 Op. Att'y Gen. 437, 438 (1941).

[35] McMullen v. United States, 96 F.2d 574, 575 (D.C. Cir. 1938).

[36] Memorandum: Re: Colonel Joseph I. McMullen v. United States; Court of Claims No. 45242. Suit filed September 11, 1940; amount involved around $25,000 counting interest, undated, at 1 (on file with author).

[37] *Id.*

[38] McMullen v. United States, 100 Ct. Cl. 323, 343 (1943).

[39] *Id.* at 323, 324.

[40] *Id.* at 343.

[41] *Id.* at 338.

[42] *Id.* at 343.

So ended the "McMullen affair"—a largely forgotten but fascinating piece of our military legal history.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
https://www.jagcnet.army.mil/8525736A005BE1BE

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The United States Court of Military Appeals: The First Year (1951-1952)

By Fred L. Borch
Regimental Historian & Archivist

The United States Court of Military Appeals (COMA) was the three-judge forerunner of today's five-judge United States Court of Appeals for the Armed Forces (CAAF). This is the story of COMA's origins and its first year in operation.

As a result of a multitude of complaints about military justice during World War I, including controversial trials like the Houston Riots courts-martial,[1] Congress began modifying the Articles of War to give an accused more procedural and evidentiary rights at trial.

The first three COMA judges, 1951. Left to right are George W. Latimer, Robert E. Quinn, and Paul W. Brosman

In February 1919, Brigadier General Samuel T. Ansell, who had served as Acting Judge Advocate General during World War I, proposed that Congress create a "military appeals court of three judges, appointed by the President with lifetime tenure during good behavior."[2] The court would review every general court-martial in which the accused had been found guilty and sentenced to death, a dishonorable discharge or dismissal, or imprisonment for more than six months. This idea was too radical for its time, however, and it could not overcome opposition from the military and the War Department.[3]

Some twenty years later, millions of Americans in uniform during World War II experienced firsthand—or else observed—that the military criminal legal system could be both arbitrary and capricious. Additionally, "The public became aware of many miscarriages of justice both through the press and from relatives in the armed forces."[4]

Their concerns soon reached Congress, which decided that "drastic modifications and improvements were necessary" in the military criminal legal system.[5] The result was the end of the Articles of War, Rules for the Government of the Navy, and disciplinary laws of the Coast Guard—and the creation of a new Uniform Code of Military Justice (UCMJ) on May 5, 1950.[6]

This new UCMJ created a civilian court consisting of three judges appointed from civilian life by the President—by and with the advice and consent of the Senate—for terms of fifteen years. But, the law also provided that the terms of the original three appointees should be terms of fifteen, ten, and five years, respectively. Finally, the law also provided that not more than two of the judges would be appointed from the same political party.[7]

On May 22, 1951, President Harry S. Truman nominated Robert E. Quinn of Rhode Island, George W. Latimer of Utah, and Paul W. Brosman of Illinois.[8] Quinn was appointed Chief Judge and received the fifteen-year term of office.[9] Latimer was appointed an Associate Judge with a ten-year term; Brosman was appointed an Associate Judge with a five-year term. The Senate confirmed all three on June 19, 1951, and the following day, the first three COMA judges were administered the oath of office by Judge Matthew F. McGuire of the U.S. District Court for the District of Columbia.[10]

The court started operating on July 25, 1951. In its first open session, the COMA admitted forty-seven attorneys as

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[1] For more on the Houston Riots and their impact on military justice, see Fred L. Borch, *"The Largest Murder Trial in the History of the United States": The Houston Riots Courts-Martial of 1917*, ARMY LAW., Feb. 2011, at 1. *See also*, GARNA L. CHRISTIAN, BLACK SOLDIERS IN JIM CROW TEXAS 1899–1917 (1995).

[2] JUDGE ADVOCATE GENERAL'S CORPS, U.S. ARMY, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 134-35 (1975).

[3] *Id*. at 136.

[4] Pamphlet from the United States Court of Military Appeals 2 (1965) (on file with author) [hereinafter Court of Military Appeals].

[5] *Id*.

[6] 10 U.S.C. §§ 801-940 (1950).

[7] Court of Military Appeals, *supra* note 4, at 2.

[8] *Id*. at 3.

[9] *Id*.

[10] *Id*.

the first members to its bar. Not surprisingly, among those admitted that first day were The Judge Advocate Generals of the Army, Navy, and the Air Force, and the Assistant General Counsel of the Department of the Treasury (the Coast Guard was part of the Treasury at this time).

As for its location? The COMA moved into a structure located at 5th and E Streets, Northwest, Washington, D.C., on October 31, 1952. This building had formerly been the home of the U.S. Court of Appeals for the District of Columbia and had been built and occupied in 1910. Today, the CAAF still occupies this historic structure on Judiciary Square.[11]

What happened to the first three COMA judges? Latimer's term expired on May 1, 1961, and he returned to private practice.[12] Latimer later garnered considerable publicity as the lead defense counsel for Lieutenant William "Rusty" Calley.[13] Brosman died suddenly of a heart attack in his chambers at the COMA on December 21, 1955. As for Chief Judge Quinn, he completed his full fifteen-year term and continued to be active on the court until 1971.[14]

Congress expanded the three-judge COMA to five judges in 1989, and in 1994, re-designated the institution as the Court of Appeals for the Armed Forces. But while the highest military appellate court may be different today, its prestige today rests on the foundation laid by COMA in its first year of operation.

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[11] *Id.* at 6.

[12] *Id.* at 2.

[13] For more on Latimer's role in the Calley court-martial, see RICHARD HAMMER, THE COURT MARTIAL OF LT. CALLEY (1971).

[14] Court of Military Appeals, *supra* note 4, at 2; *Judges*, UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, http://www.armfor.uscourts.gov/newcaaf/judges.htm (last visited Feb. 29, 2016).

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