search issue require application of the subjective test.

The use of different standards is reasonable, considering the neutral and detached role required of an official who authorizes a search, as opposed to the risks and responsibilities of a policeman on his beat who must make a quick decision to apprehend without the leisure to explore every remote source of subjective uncertainly which might be suggested by hindsight or cross-examination.

VI. Conclusion

As stated above, the Court of Military Appeals seems to recognize a difference in the standard for measuring probable cause in the litigation of search and apprehension issues. However, it has never expressly adopted a purely objective test for probable cause to apprehend.

In the absence of express recognition of the rule allowing probable cause to apprehend to be established by facts which provide a present but unarticulated basis for the apprehension, counsel should take care to litigate this issue fully when relying on such alternate theories. However, even in the absence of controlling military precedent, Army trial counsel should be able to persuade trial judges to look with favor upon a purely objective standard both because of its favorable policy considerations and in light of the increased flexibility it offers a trial judge.[26] In addition, a complete factual record will be a valuable asset on appeal for demonstrating the existence of probable cause to apprehend.

Trial counsel should be alert to employ the rule which invokes the existence of a present but unarticulated basis for probable cause to apprehend to establish the validity of an apprehension even though such a theory was not considered by the apprehending agent. By doing so, the quality of both trial and appellate litigation in the military justice system will be improved.

[26] The validity of an apprehension is generally raised in the context of an attempt to suppress evidence seized during a search conducted pursuant to apprehension. Because of this, the requirement of Rule 311(d)(4), Military Rules of Evidence, that the essential factual basis of the judge's ruling be stated on the record, is eased by providing alternate theories. Because the judge need not divulge his legal reasoning, his factual findings could cover several theories of probable cause to apprehend. Thus, even if the trial judge is right for the wrong reasons, his ruling may be upheld on appeal.

Legal Assistance Items

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Consumer Affairs—Truth in Lending Act

Ford Motor Credit Company (FMCC) provided forms and approved the credit of purchasers of vehicles prior to the dealers executing the sales contracts. FMCC was designated as an assignee of the contract. Plaintiffs argued that the failure to identify FMCC as a creditor violated the Act. The Supreme Court held that FMCC was a "creditor" within the definition of the Truth in Lending Act and Regulation Z. The dealers were considered arrangers of credit while FMCC was considered the extender of credit. Although FMCC was not identified as a creditor, notice that it was an assignee was sufficient to meet the requirements of the Truth in Lending Act and Regulation Z. The Court stated that to add more would not meaningfully benefit the consumer. *Ford Motor Credit Co. v. Cenance*, ____ Sup. Ct. ____, 49 U.S.L.W. 3892, 68 L.Ed. 2d 744 (1981).

Validity of Foreign Divorce—Louisiana

The Attorney General of Louisiana, in Opinion Number 80-1687, dated 24 June 1981, has determined that Louisiana will not recognize a divorce obtained under foreign law by a Louisiana resident serving on military orders in a foreign country. The Attorney General predicates his opinion on the principle that the judicial power to grant divorce is based on domicile and the holding of Louisiana courts that a member of the military service is presumed to retain his Louisiana domicile until he abandons it and establishes it elsewhere. The Attorney General also opined that the State of Louisiana will recognize a marriage validly and properly contracted under foreign law by service personnel serving in a foreign country.

Rental Agreement was not subject to Truth in Lending Act. Clark v. The Rent-It Corporation, CCH ¶ 97,126A (S.D. Ia. 1981).

The Truth in Lending Act is applicable to "credit sales," which are defined as sales in which the seller is a creditor. This includes a lease if the lessee contracts to pay for the use of the property a sum substantially equivalent to the aggregate value of the property leased, and will become or has the option to become the owner of the property. (15 U.S.C. 1602(g)).

The plaintiff's lease agreement for a television set provided that he could become the owner of the set after payment of $17 a week for 78 weeks. Plaintiff alleges this is a disguised credit sale, so the Truth in Lending Act disclosures should have been provided. The Court held that this is not a credit sale because the agreement obligated the lessee to rent the set for one week only. Termination could be made at any time after that. One week's rent is substantially less than the value of the television set.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Larceny of Services

Article 121, Uniform Code of Military Justice, lists the objects which can be the subject of larceny as "any money, personal property, or article of value of any kind." In *United States v. Abeyta*, ___ M.J. ___, SPCM 15438 (ACMR 2 September 1981), the Army Court of Military Review found that taxi cab services cannot be the subject of a larceny as defined by Article 121, Code. Similarly, case law holds that phone services, use and occupancy of government quarters, and use of a rental car cannot be the subject of larceny. *United States v. Case*, 37 CMR 606 (ABR 1966), *pet. denied*, 37 CMR 470 (CMA 1967); *United States v. Jones*, 23 CMR 818 (AFBR 1956); *United States v. McCracken*, 19 CMR 876 (AFBR 1955). The Court in *Abeyta* declined to follow *United States v. Brazil*, 5 M.J. 509 (ACMR 1979).

The theft of phone services, cab services, or other services can be prosecuted under the Uniform Code of Military Justice in a number of ways. First, as recognized by the Court in *Abeyta*, theft of services may be alleged as an offense sounding in fraud under Article 134, Code. *See also United States v. Herndon*, 15 USCMA 510, 36 CMR 8 (1965). Second, the theft of services can be charged as a crime and offense not capital in violation of Article 134, Code, and 18 U.S.C. § 641, if the services taken are property of the United States. Third, it may be possible to charge the theft of services as a violation of a state statute assimilated through 18 U.S.C. § 13. *See United States v. Wright*, 5 M.J. 106 (CMA 1978), and *United States v. Herndon, supra*, if the issue of preemption is raised.

2. Estelle v. Smith and United States v. Mathews

In *United States v. Mathews*, 6 M.J. 357 (CMA 1979), the Court of Military Appeals, per Judge Fletcher, held that "[s]elf-incrimination