

Lore of the Corps

Contracting in China:

The Judge Advocate Experience, 1944–1947

Fred L. Borch

Regimental Historian & Archivist

While procurement law has been an important component of judge advocate practice for many years, few men and women today know that Army lawyers were involved in the negotiation and supervision of contracts in China during World War II and the immediate post-war period. What these contract law attorneys did and how they did it is a story worth telling.

While American troops had been stationed in China prior to World War II, the Japanese attack on Pearl Harbor caused the United States to greatly strengthen its relationship with the Chinese, if for no other reason than to keep China in the war against Japan. Recognizing that strengthening General Chiang Kai-shek's army could inflict considerable damage on their common enemy, the War Department created the China-Burma-India (CBI) Theater in 1942. As one of its lines of effort against Japan, the United States supplied the Chinese Army with weapons, ammunitions, food and other supplies by using the Burma Road, until the Japanese disrupted its use in 1942, and by airlifts flown over "the Hump," the air route over the 14,000 foot Himalayas Mountains located between India and southern China. While a total of 650,000 tons of supplies would eventually be airlifted to China, the limitations on what could be flown and how much could be flown meant that essential supplies still had to be purchased in local markets. Fuel was the single most important item for purchase. Army officers negotiated contracts for gasoline for aircraft and alcohol for use in motor vehicles. But contracts also were signed for fresh fruits and vegetables and other supplies that could not be brought into China via the Burma Road or over "the Hump."¹

The first judge advocates apparently arrived in China in mid-1944 and were headquartered at U.S. Forces, China Theater, under the command of Lieutenant General (LTG) Albert C. Wedemeyer in Chungking.² From that time until mid-1947, some twenty judge advocates served at U.S. Forces, China Theater, and its successor commands, U.S. Army Forces China, Nanking Headquarters Command, and

Army Advisory Group, China. At any one time, the maximum number of Army lawyers in the country was twelve, and all judge advocates apparently had departed China by June 1947.³

While most were involved in supervising courts-martial, investigating war crimes, processing claims, and providing legal assistance, a small number of Army lawyers supervised the preparation of procurement contracts and reviewed existing contracts for legal sufficiency.

The most difficult issue for judge advocates involved in the negotiation of contracts (and leases for real estate, in which Army lawyers also participated) was the requirement that "Chinese National Currency will be the medium of exchange in all fiscal matters."⁴ At first, this requirement was not a problem, as the Chinese yuan held its value but, by early 1945, the currency was rapidly losing its value. As Colonel (COL) Edward H. "Ham" Young⁵ explained in his report on legal operations in China, this exchange rate fluctuation presented serious difficulties:

Since most procurement contracts called for large advance payments to enable the local contractors to purchase raw materials, and since most leases provided for large advance payments, the fluctuation of the currency necessitated frequent modifications of contracts. . . . By agreement between the governments of the

¹ CENTER OF MILITARY HISTORY, U.S. ARMY CAMPAIGNS IN WORLD WAR II: CHINA OFFENSIVE 4 (1992).

² Albert Coady Wedemeyer, appointed by President Franklin D. Roosevelt as the Commanding General of the U.S. Forces in the China Theater and the Chief of Staff to Chiang Kai-shek, arrived in China on 31 October 1944. Wedemeyer had served in China from 1930 to 1934, and consequently had the perspective and experience necessary for success. See ALBERT C. WEDEMEYER, WEDEMEYER REPORTS! (1958) (providing more information on Wedemeyer's life as a Soldier).

³ EDWARD H. YOUNG, REPORT OF THE JUDGE ADVOCATE, UNITED STATES FORCES, CHINA THEATER, UNITED STATES ARMY FORCES CHINA, NANKING HEADQUARTERS COMMAND, AND ARMY ADVISORY GROUP CHINA, 1 JANUARY 1945 TO 10 JUNE 1947, at ii (1948).

⁴ HEADQUARTERS, U.S. FORCES CHINA THEATER, CIR. NO. 37, PURCHASING AND PROCUREMENT POLICIES—CHINA THEATER para. K (17 Feb. 1946).

⁵ Edward Hamilton "Ham" Young was one of the most well-known and admired judge advocates of his generation. A graduate of the U.S. Military Academy, Young was serving as an infantry officer when the Army sent him to law school so that he could return to West Point to teach. Young liked law and, after being detailed to the Judge Advocate General's Department, obtained his law degree from New York University's law school. During World War II, Colonel Young served as the first Commandant of The Judge Advocate General's School and is widely credited with creating the educational curriculum that transformed civilian lawyers into judge advocates. See Colonel Edward H. Young, *The Judge Advocate General's School (1944)*, DETROIT B.Q., Jan. 1944, reprinted in ARMY LAW., Sept. 1975, at 29.

United States and China, the rate of exchange between the Chinese Yuan and the U.S. dollar was fixed However, contracts were entered into with individuals to whom this fixed rate did not apply and who made the open market and black market rates of exchange the basis for the determination of the costs of their services rendered or materials furnished.⁶

As COL Young observed, if American negotiators and their judge advocate supervisors tried to deal with the local suppliers on the basis of the fixed yuan-dollar exchange rate, U.S. units would be unable to obtain essential materials. No wonder Young reported that this meant that procurement in the China Theater was done in accordance with “local conditions.”⁷

In addition to currency fluctuation, inflation presented challenges for Americans stationed in China. When “sky-rocketing prices in local commercial establishments” made it difficult for U.S. troops to obtain necessary goods and services, Army Special Services opened snack bars, barber shops, and gift shops. Chinese concessionaires operated these establishments, but judge advocates were “called upon to develop procedure and to draft contracts to meet each particular situation.”⁸

Inflation and currency fluctuation also affected the hiring of local Chinese personnel. Employment contracts for cooks, clerks, guards, drivers and other similar laborers contained provisions requiring pay adjustments when changes in the monthly cost-of-living index occurred. The Shanghai Municipal Government, for example, issued a monthly index that covered various items such as rent, clothing, and food. This index had been created using prices that existed in 1939, prior to the Japanese occupation of Shanghai. By 1944, however, variations in the monthly cost-of-living index occurred so frequently that judge advocates “worked closely with all Purchasing and Contracting Officers” in drafting payments clauses. These clauses modified existing contracts in such a way to adjust pay when changes in the index occurred without having to amend each employment contract each month.

Contracts for real estate presented equally thorny issues for judge advocates. One unusual situation involved the use of facilities owned by the Methodist Missionary Society in Chungking. When LTG Wedemeyer opened his new China Theater Headquarters in that city in October 1944, the society offered the use of its privately owned middle school compound for the military headquarters. General

Wedemeyer accepted this offer because the society did not want any rent for its use. Prior to taking occupancy of the facilities, however, the United States requested that the Chinese Government make “large scale repairs” and build additional structures on the property, which the Chinese did.⁹

The Methodist Missionary Society then asked the Chinese Government to execute a written instrument guaranteeing that the school compound would be returned to the society at the end of the war, when American forces presumably would leave China. When the Chinese Government refused to give any such written assurances, the society looked to LTG Wedemeyer and the Americans for support. Colonel Young and his judge advocates advised that, regardless of whether the Chinese ultimately returned the property to the Methodist Missionary Society, the use of the property by the United States would create a quasi-contractual relationship between the Army and the society and potentially expose the United States to a claim for the fair market value of the rental property. Based on this legal advice, COL Young and his lawyers “conducted a series of conferences with all parties involved” and, as a result of these negotiations, the Chinese Government agreed that the premises would be returned to the Methodist Missionary Society. In return, the society “executed a general release in favor of United States forces exempting the United States from all future claims ‘which may have attended its occupancy.’”¹⁰

As for real estate leases generally, judge advocates working in Shanghai and other locations in China quickly learned that “transfers of property to and between the Japanese during the regime of the Puppet Government . . . threatened to involve the U.S. military authorities in lengthy litigation.”¹¹ This was because more than one Chinese national would claim to be the rightful owner of the same leased premises, and demand that the moneys due under the lease be paid to him. Fortunately, a close working relationship with Chinese authorities “overcame most of these difficulties.”¹² One solution was for the Chinese to take over the property in question and then permit the U.S. Army to use it until the true owner was found or determined. While this ensured that U.S. personnel had use of the premises—an important point—this only postponed the ownership issue and ultimately, the Americans paid a claim for the full value of the leased property to the rightful owner.

⁶ YOUNG, *supra* note 3, at 19.

⁷ *Id.*

⁸ *Id.* at 20.

⁹ *Id.* at 18.

¹⁰ *Id.* at 19.

¹¹ *Id.* at 20.

¹² *Id.*

When COL Young, who served as the senior judge advocate in China from 1 January 1945 to 10 June 1947, returned home to the United States, he lauded the “ability, versatility and loyalty” of the “relatively small group of

judge advocates” and others who had served alongside him in China. As this short history of contracting in China shows, Young certainly included his contract law attorneys in this group.¹³

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>

¹³ *Id.* at iii.