



## 1972 JAG CONFERENCE

The 1972 World-wide Judge Advocate General's Conference was held at Charlottesville from 1-5 October. Over 150 judge advocates were in attendance. This year warrant officers and senior legal clerks were also represented at the conference. Following General Prugh's opening remarks, which will be printed in part in next month's *Army Lawyer*, the conference began with the yearly personnel report from LTC Mundt and Major Suter of PP&TO. A portion of Major Suter's remarks and all of LTC Mundt's presentation appear in this issue of *The Army Lawyer*. The conference then heard from Mr. Richard Baxter, Professor of Law, Harvard University, who reported on the Geneva Conference of Government Experts. Excerpts from his presentation concerning the current developments in the laws of war will be published in a later issue of *The Army Lawyer*.

The afternoon session of the opening day heard reports on operations in USAREUR and USARPAC and then broke up into meetings of special interest groups. The CONUS judge advocates discussed problems peculiar to their jurisdictions, while the Procurement Attorneys exchanged current developments in this area. The U.S. Army Judiciary also met and discussed problems of sentencing. Overseas judge advocates met to exchange ideas on their problems and the warrant officers and legal clerks met to discuss enlisted personnel difficulties.

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The annual banquet was held that night with entertainment by the Army Chorus. The featured speaker was retired Supreme Court Justice Tom Clark.

The next morning was devoted to military justice developments. General Williams made a short presentation and introduced LTC Overholt who gave his yearly criminal law update. Colonel James B. Vaught, Commanding Officer, 1st Corps Support Command, and Major Doyle L. Herndon explained their experience with the correctional custody program and stockade operations. Trial delay was the topic of General Wilton B. Persons, Colonel James E. Simon, and Colonel James E. Macklin, who explained what steps can be taken to reduce this continuing problem. The morning was capped by an address by the General Counsel, Department of Defense, The Honorable J. Fred Buzhardt.

In the afternoon Major General Hodson made his report from the U. S. Army Judiciary. Errors in records of trial resulting from the preparation of the papers rather than substantive errors of law continue to be a major problem. Brigadier General Edmund W. Montgomery II spoke for a short time on reserve participation in the judiciary.

Major Robert Rex Brookshire and Major Philip Suarez then presented a discussion on the Random Selection of Court Members. Major Brookshire's paper on this topic will appear in the fall edition of the *Military Law Review*. In general, the random selection plan involves three phases. First, a suitable number of names of prospective court members (e.g., 400) are drawn at random from the post or unit locator file. Each person thus selected is then mailed a questionnaire which will question him with respect to the objective criteria set by the convening authority for court members. Examples of possible criteria are (1) that the person speak and read English, (2) that he be a

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United States citizen, (3) that he be 21 years of age, (4) that he have served on active duty for one year, (5) that he have served in the convening authority's command for three months, (6) that he will not PCS within three months, (7) that he not have been convicted by court-martial or received three Article 15's, (8) that his presence not be required for a pending ATT or AGI, and (9) that he not occupy one of several specified key positions in the unit. When the list has been reduced by the responses to the questionnaires, it then is composed of those who the convening authority believes to be "best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament."

In phase 2 each of these fully qualified men is assigned a number which corresponds to a number on a poker chip (red for enlisted personnel and white for officers). When a court-martial panel is required, the desired number of poker chips is blindly drawn. If the accused has not requested enlisted members, all the red chips would be returned. If the accused has requested enlisted members, sufficient red chips would be drawn to constitute at least one third of the court.

In the final phase, the randomly selected list is presented to the convening authority who personally approves and details them to the court.

At this point the conferees broke into workshop sessions to discuss search and seizure; the SJA and Defense Counsel, including the concept of an independent defense corps; the Corrections program and a drug abuse workshop.

The next morning was devoted to civil law, with an overview by General Babbitt and Colonel Carne. LTC David A. Fontanella summarized recent developments in civil law. CPT Jack Lane and CPT Jonathan Gordon discussed the training and use of legal clerks and paraprofessionals. Colonel Fulton, Director of the Academic Department, TJAGSA outlined changes in the advanced class curriculum. Captain Graham discussed the Defense Race Relations Institute. Later in the afternoon four more workshops were held to discuss on-the-job training of reservists; civilian personnel and employee unions; race relations; and Environmental Law. A Hawaiian R&R party was held that night.

The last day heard from Attorney General Robert B. Morgan, whose address is reproduced in this issue. The Honorable John A. Busterud, Deputy Assistant Secretary of Defense for Environmental Quality discussed the environment. Mr. Busterud is a recent Presidential appointee to the Council on Environmental Quality. Mr. Busterud stressed to the judge advocates present that the major impact that they were going to face in the future was the result of the National Environmental Policy Act of 1970. NEPA requires that a report be filed for every major federal action which significantly effects the quality of human environment. Mr. Busterud then went on to discuss the Council on Environmental Quality's role in defining a major federal action. He pointed out that the Council's interpretation of what such actions went significantly beyond the language of the statute and that the Council requires that an impact statement be prepared in any case where the action is "controversial" regardless of whether it has any impact on the environment. In addition, Mr. Busterud stressed that it is important when preparing these impact statements for the preparer to be frank in his assessment of the environmental consequences. Not only must the report show what the actual consequences of the action are but the report must consider any possible alternatives to

the proposed action from changing the action, to taking actions outside the scope of the proponents' powers, to taking no action at all. Finally, Mr. Busterud stressed the role of the courts in the National Environmental Policy Act interpretation process. He noted that the courts are becoming increasingly more aggressive in their interpretations of the statute and are reading the statute in a very, very liberal fashion. Thus, the scope of NEPA may be said to be expanding through the courts' actions. Mr. Busterud then went on and reviewed other environmental statutes such as the Clean Air Act of 1970 as amended, the Federal Water Quality Improvement Act of 1970 and the Rivers and Harbors Act of 1899. In effect, with respect to all of these areas, Mr. Busterud pointed out to the judge advocates present that their role in environmental law was an increasing one and that the area was one of dynamic change.

Assistant Judge Advocate General, Special Assignments, Brigadier General Robert D. Upp, gave a brief report on ways to increase USAR utilization by active duty judge advocate offices.

Closing remarks were then presented by the Assistant Judge Advocate General, Major General Harold E. Parker and the Judge Advocate General, Major General George S. Prugh.

## ATTORNEY GENERAL - JUDGE ADVOCATE RELATIONS

*Presented to the 1972 JAG Conference by Robert Morgan,  
Attorney General of North Carolina and Chairman,  
Special Committee on Legal Services to the Armed  
Forces of the National Association of Attorneys General*

I have been asked to address you on the very general topic of the relationship between the office of Attorney General and military legal officers.

In many states there is not much of a relationship. I have taken it upon myself to attempt to improve this situation. At present, I am Chairman of a special committee of the National Association of Attorneys General, which has the name: "Special Committee on Legal Services to Military Forces."

The Special Committee is a recent creation of the National Association of Attorneys General. In the process of preparing a lengthy report studying the office of Attorney General in all jurisdictions

of the U. S., it became clear that further study and action with respect to military forces was needed by attorneys general. Thus, at its Winter meeting in 1971, the Association adopted a resolution calling for the creation of a special advisory committee on legal services to military forces and requesting representatives from the armed forces to serve on the committee. The special committee was directed by the resolution to formulate recommendations for:

improving liason at both the state and national level; developing model legislation to clarify legal problems where this appeared indicated; preparing man-

uals and related materials concerning the legal status of members of the National Guard; collecting, analyzing and disseminating information on existing laws and administrative practice; and strengthening relationships between legal advisers, military forces, and law enforcement officers, especially during emergency situations.

At present, the committee is composed of the Attorneys General of Indiana, Mississippi, California, as well as North Carolina; the Adjutants General of North Carolina, New Jersey, Wisconsin, and Maryland; and the Judge Advocate Generals of the armed forces; Maj. Gen. James S. Cheney of the Air Force, Rear Admiral Merlin H. Staring, of the Navy; and Maj. Gen. George S. Prugh of the Army. In addition, there are advisors from National Guard offices in Washington and from several attorney general offices.

At its meeting in February of this year, the special committee focused upon seven subjects for study and subsequent recommendations:

1. Civil legal services to military bases
2. Improving liason between attorney generals, state bar associations and military forces
3. Interjurisdictional problems with the national guard and federal forces
4. Legal services to the National Guard
5. The law and procedures of declaring martial law in state emergencies
5. The liabilities and benefits of National Guardsmen
7. Legal Claims against the Guard and the Federal armed forces

To begin work in these very large areas, the special committee has hired a research attorney who has been added to the staff of the National Association. He is Robert F. Magill, Jr.

As I have indicated, one of the top priorities of the Special Committee is to improve liason between military forces and Attorneys General. The Special Committee believes that there could and should be:

- greater knowledge of state legal resources and procedures by military legal officers

- greater sensitivity of Attorneys General to needs and problems of the armed forces in their jurisdictions
- increased cooperation between Attorneys General and military legal officers

To start work towards its goal of greater coordination between the military and attorneys general, a meeting was held at the Pentagon this summer, attended by staff members of the National Association and by officers appointed by the Judge Advocates General of the armed forces. At this meeting, it was suggested that proposals and comments on liason be solicited by means of a questionnaire to various military bases. The military legal officers, however, believed that a more beneficial approach would be to have someone address a conference of judicial officers. That someone is me and the conference is today.

So, instead of writing each one of you and asking you to fill out some forms and answer some questions, I urge you to communicate with me or Mr. Magill, by phone or by letter, to comment upon my ideas or to raise questions or proposals which I do not mention. Do not hesitate to contact him during the next year if you have an idea or a problem which you believe the Special Committee should consider in order to achieve better coordination and communication between military legal officers and Attorneys General.

Let me make a few comments on why an Attorney General would be interested in providing assistance to military officers. Most Attorneys General are charged with the duty of enforcing the laws of the state as to all persons, not just citizens, within his state. In addition, an Attorney General has the responsibility of providing information about and interpretations of the legal policy of the State.

There is more than duty, however, which would make an Attorney General desire to give assistance to the military. There is also an element of enlightened self-interest: many of the people of military bases are citizens of the state and will spend time, money, and votes in the state in future years.

What resources, then, can an Attorney General bring to the legal problems of military personnel? First of all, the power and prestige of his office.

The Attorney General usually has ready access to the Governor, state regulatory agencies, legislative committees, and the press. A stubborn legal battle involving the military and some civilian organization may evaporate rapidly should the Attorney General lend his voice. An example of this is a recent dispute at a National Guard helicopter base with the Federal Office of Emergency Planning developed over the proposed building of a gigantic antenna right next to the base, which would have diminished its utility for landings and take-offs. The Attorney General's office of the state assisted the Guard in its successful presentation of the case at the Federal agency's headquarters in Washington.

A more common area where the prestige of the Attorney General's office is useful is that of consumer protection. Several Attorney Generals send persons from their consumer protection offices to visit bases and take complaints on a regular basis. A retail establishment in the habit of using questionable practices when dealing with soldiers or sailors might more likely be persuaded to cease and desist by a letter from the office of Attorney General than by a letter from an officer on the base who could not close the business down. Their limitations are known and local attorneys cannot afford to take the usual small case. Used auto dealers near one base were demanding and getting their military buyers to pay for extremely high auto insurance rates, the dealers also being agents for the insurance companies. The Attorney General's office of that state applied pressure through the insurance commission of the state upon the dealers and the rates were lowered.

A resource of many, but not all, Attorneys General is that they are empowered to prosecute on behalf of the state as part of their role of enforcing the laws of the state. At one base, there were some restaurants which discriminated against Black sailors, contrary to the statutes of the state and Supreme Court cases. The Attorney General of the state, enforcing the laws of the state, acted swiftly; by court order, he closed the restaurants until such time as they would comply with the statutes.

Another function of the Attorney General is to publicize and interpret the state's laws. He does

this through bulletins describing some facet of the state's legal machinery and through opinions in response to questions as to a particular law's interpretation. In some jurisdictions, the Attorney General may provide a pamphlet directed to the servicemen and their families in his state as to a particular topic of concern to them, such as auto insurance. On some occasions, the Attorney General's office will prepare a formal opinion in response to a question from the armed services in his state. He may be prevented by his regulations from answering such a question fielded to another state official who is entitled to a formal opinion from the Attorney General's office.

The Attorney General can also initiate and support new legislation. If he is made aware of a problem affecting servicemen he can recommend legislation. For example, there is a statute in some states allowing the wives of prisoners of war to have the power of attorney in fact to convey real property. In those states that do not have such legislation, if the Attorney General is made aware of the desire for it, he may recommend that such a statute be enacted. And if the title companies and real estate lawyers of the state do not accept such legislation as valid, the Attorney General might be persuaded to bring an action in the state courts to test the validity of the statute.

General Albert Clark, Superintendent of the Air Force Academy, was instrumental in having legislation passed in the State of Colorado which requires the reporting of convictions to the Colorado Department of Motor Vehicles by every military authority having jurisdictions over offenses substantially the same as those set forth in the motor vehicle code which occur on federal military installations in Colorado. General Clark states that this legislation has been beneficial to the military and that the civilian authorities support the military commanders by imposing drivers' license sanctions against military personnel against offenses occurring on military installations. General Clark also urges the passage of such legislation in other states.

I have given you examples of how the Attorney General has been or could be of assistance to the servicemen in his state. But the Attorney General cannot be expected to discover the problems on his

own. And it is at this step that I would like to point out the necessity of initiative by military legal officers. You must be the ones to discover the legal problems of your clients. You must bring these problems which cannot solve themselves to the office of the Attorney General. For example, in the case I just mentioned to you where an Attorney General closed down restaurants discriminating against Black servicemen, the Attorney General was not aware of the problem until the legal officers of the naval base complained to him of the discrimination. Once they had complained, action was swift.

What is necessary, then, for the cooperation of the Attorney General is that there be some input into his office of the legal problems of servicemen. And the best place to get this input is from the offices of the staff judge advocates. It would help if the Attorney General knew beforehand who the military legal officers were in his state. A letter or phone call of complaint from Captain Smith will be of greater significance if the Captain Smith has previously announced himself to the Attorney General's office.

Let me point out here that assistance is not to be one way. The Attorney General can be useful to the military. But the military can assist the Attorney General as well. Because of the large number of complaints that will reach him, the military legal officer will be a central point of information about consumer complaints in the base area—like a local Better Business Bureau. If the consumer complaints are properly catalogued and filed, the military legal offices can act as a resource to the Attorney General's consumer protection division, providing not only a stimulus to action but also a source of evidence should the Attorney General's office decide to act against a retail establishment in the area.

Another area where the military bases would be of assistance to the Attorney General is drugs. The information compiled on drug abuse in the bases would most likely be useful to the Attorney General in discovering and rooting out the sources of illegal drugs in his state. In North Carolina, there is an Interagency Drug Squad, designed to find and prosecute the pushers of contraband drugs. Military personnel constitute an active part

of this Squad, participating with state forces in making both investigations and raids.

So far I have attempted to show by example how Attorneys General and Staff Judge Advocates can assist each other. I would like to discuss the methods whereby such cooperation can be obtained, for I see a real need in establishing a solid framework for continued cooperation.

The central problem, as I see it, is knowing whom to contact. A military legal officer must have some person to call in the Attorney General's office, and the Attorney General's office needs to know who has what responsibility in the bases in the state. Quite often informal arrangements develop: Capt. Jones is acquainted with Assistant Attorney General Brown. But when Capt. Jones is given another post of duty outside the state, or when Brown goes into private practice, their successors do not know whom to call, and time is wasted in establishing a new informal arrangement, if it is established at all. To remedy this, I propose the following, as a minimum: that each military legal officer be given, when he begins his duty within a state, a list of the various sections within the office of Attorney General in the state, with the names and phone numbers of the persons responsible for each section. Thus, when a consumer protection problem arises which he cannot handle alone, the military legal officer can take out his list and call the appropriately designated person in the Attorney General's office. Similarly, there should be a list on file in the offices of the Attorney General of the military legal officers in the state, together with a designation of the field of responsibility of each of them. Each of these lists should be kept current. A further step which might prove useful is to have each Attorney General appoint a person on his staff who is to act as general liaison with the SJA's in the state, and each SJA appoint someone on his staff with similar responsibility.

I also propose to you that exchanges of personnel for short periods of time would be valuable. In North Carolina, I have arranged for such an exchange to take place. One of the JAG officers at Ft. Bragg, Capt. Warren Pate, recently spent two weeks at our offices in Raleigh acquainting himself with our consumer protection division. In his visit, Capt. Pate met with all of my staff work-

ing on consumer protection, reviewed histories of cases we were working on and accompanied a staff member on a trip to investigate and obtain an injunction against a local flim-flam operation. In addition, we put him to work on some of our pending consumer protection cases. Since Capt. Pate's visit with us was very recent, I do not have a substantial amount of feedback from him as to how useful the visit was. He has, however, indicated that he thinks the visit was worthwhile in discovering who was in my office and how we work at consumer protection. And he has requested that his name be added to the mailing list for material put out by our consumer protection division. It was the consensus of all involved in this exchange that a similar invitation be extended to all military bases in North Carolina.

A reciprocal visit by two of my staff members to Ft. Bragg has been arranged, at the invitation of Col. Sneed. We hope that this planned tour will give us a clearer picture of the problems in the consumer protection area encountered by the military in our state.

Another method of establishing communication, which I believe is untried but which I propose today for your consideration, is to assign reserve legal officers occasionally for their active duty requirements to the Attorney General. Reserve of-

icers are often requested when not on active duty, to perform legal services for their armed service. I believe that their capability for such additional work would be enhanced if they were familiar with the resources and personnel of the office of the Attorney General in the state. In addition, such tours of duty would naturally broaden the conduits of communication between the state's legal offices and those of the military.

I have attempted to give you some idea of the utility of the office of Attorney General to military legal officers. I have also suggested that there are areas where the military can assist the Attorney General. There are, of course, other fields of law where cooperation would be of benefit. But substantial achievement must wait until some initiative is taken to open up paths of communication. So I urge you to consider the proposals I have made here today—get written lists of who's who in your respective Attorneys General offices; make sure that your names and those of your associates are on file with the Attorney General; contact your Attorney General and bring to his attention problems that you face that you think he can resolve or help and explore with him the possibility of cooperative ventures or exchanges in areas where you believe there is a common interest. And contact my office or Mr. Magill if you have any additional ideas.

## THE PERSONNEL PICTURE

*Presented to the 1972 JAG Conference*

*By LTC James A. Mundt, Chief, PP&TO, OTJAG*

It is a pleasure for me to attend the conference again this year and have the opportunity to make a few remarks concerning the personnel picture of our Corps.

### **Personnel Status.**

Our personnel status as of 31 August 1972, is as follows:

**COLONELS:** A total of 106 colonels are on board. During the past year we lost 21 full colonels through mandatory and voluntary retirements. Next year we will lose nine (9) full colonels through mandatory retirement alone. Add to this the figure for voluntary retirements, and it is not difficult to

arrive at the conclusion that the Corps is rapidly losing its experienced WWII officers.

**LIEUTENANT COLONELS:** The number of lieutenant colonels is at the lowest point in recent history. As of 31 August there were 95 JAG lieutenant colonels. Fortunately, however, a portion of this loss is due to the promotion of 21 lieutenant colonels to the grade of colonel.

**MAJORS:** There is a total of 150 majors. This is down 35 from last year. Sixteen are resignations, the rest reflected in promotions. Between 21 May 1971 and 12 September 1972, no JAGC captain was promoted to major. Fred Morrison finally

broke the ice on that date and hopefully others will soon follow. On the last promotion list to major, 5 January 1970, we had 197 selectees. Only 50 are still on duty. Fifteen (15) have been promoted. Another statistic—In FY 70 we had 325 majors and captains (promotable). Currently we have only 150 majors and 35 promotable captains, for a total of 185, a loss of approximately 42% of our majors and captains (promotable) in the last two years.

**CAPTAINS:** On 31 August 1972 there were 1264 JAG captains. This represents a decrease of 24 captains over the past year, while the Corps has shrunk by 82 from 1703 on 31 July 1971 to 1621.

Another interesting figure is our manning capability. This gives you a feel for the critical experience problems we are living with today.

First, the field grades: We have a total of 751 field grade requirements, down 10 from last year, with 351 field grade officers to fill them, down 75 from a year ago. Thus, we have a shortage of 400 field grade officers, or 53%.

Filling authorized colonels' positions does not present a serious problem. There are 106 colonels for 134 positions, 28 lieutenant colonels theoretically fill these vacancies. In the grade of lieutenant colonel, we have a very critical problem. Many of the authorized lieutenant colonel slots are not filled by lieutenant colonels. There are only 67 LTC's and 142 majors filling the 209 LTC positions. Put another way, only one-third of the lieutenant colonel's positions can then be filled with lieutenant colonels.

There are 408 majors authorized with 150 on board as of 31 August 1972. After filling the LTC positions only 8 are available for majors positions. However, 28 field grades are in school. Thus, there are not enough field grades to fill all the 06 and 05 positions. Finally, the backbone of the Corps the captains. We are over in captains, but this fact does not tell the true story. Many of our captains, of necessity, are doing an outstanding job in field grade positions.

#### **Officer Procurement.**

With the recent cutback in military forces, allowing ROTC officers the choice of 4-6 months active duty as opposed to a 4-year commitment to the

JAG Corps, the zero or near zero draft picture and the lack of motivation for young lawyers to join the Army, the task of procuring high caliber new officers for The Judge Advocate General's Corps will be more difficult from this point forward. An example: the last IOBC at Benning had 55 lawyers in the ADT program. In order to offset this disadvantage, a 3-year tour has been recommended. For those now on active duty the concept provides in general that each officer on active duty, upon the effective date of the 3-year tour policy, would have his active duty commitment reduced by 7 and one-half days for each month of his remaining service obligation. The reduction is voluntary and no one's commitment will be reduced contrary to his wishes. For example, an officer with two years on duty would have two years remaining, thus would have his tour reduced by 180 days, or six months. Exempt from this program are officers who have extended for a particular assignment, e.g., accompanied overseas tours, schools, etc. While there is some reduction for excess leave officers, they do not fit within the same criteria. The tour of excess leave officers will be reduced on a phased basis from 4½ years to 4 years for the normal commitment. What does this do to our recruiting picture? We will lose 390 officers this year. However, our end strength will also be reduced by 150 from our FY 72 end strength of 1660. This means that in FY 73 we will be required to add 240 Judge Advocate officers. If our FY 74 end strength remains 1510 we must add 392 officers during that year. As you can see, this will be no mean accomplishment. An additional complication is presented by the fact that the Corps is authorized to procure only 200 officers during FY 73, for a net shortfall of 40 officers. We were successful last year in raising our recruiting authorization from 100 to 200. Hopefully, we will be able to increase the authorizations, as was done last year.

The basis for our success is the authorized JAG positions in the field. Thus it is extremely essential that you keep your justification up. The time will soon be upon us where we may not be able to man JAG shops at their authorizations. At that point, without an authorization the position will be unmanned. We appreciate all you have done during the past year in this regard and I can only say,

please, for the benefit of the Corps, keep up your good work. Before we leave the area of assignment as you all know, other than for Staff Judge Advocates and other key positions, e.g., legal advisor to USEUCOM, we do not nominate officers for assignment. Before an officer is reassigned, however, you will be notified and if there is a compelling reason, the reassignment will be delayed or revoked. With the reduction in strength, increase in the pilot legal assistance program, etc., reassignments may be necessary. We will do our best to keep you up to your authorized strength in number.

#### **Schools.**

Attendance at the Advanced Class is essential for full professional development. The Advanced Course is also a prerequisite for higher level military schooling such as Command and General Staff College and the Armed Forces Staff College, as well as advanced civil schooling. I am pleased to report that our young officers appreciate its value and this year's class, is comprised of 35 Army volunteers. The growth of the advanced class from last year's strength of 19 is a tribute to our senior Judge Advocate in the field. Please continue to sell its advantages to our young officers and ask them to let PP&TO know if they are interested in attending the 22d Advanced Course next year. We already have 22 volunteers for the 22d Class. Have them get their applications in early, as 35 is about all the school can handle.

A few words about C&GSC. While the size of the student body was cut by one-fourth this year, JAG was able to maintain its input of 9 students, plus one at the Armed Forces Staff College. The competition for these slots is very stiff. There isn't enough room for all our good people. Those officers who are not selected for C&GSC, and in many cases this is due to the needs of the service, should consider the correspondence course. This brings us to the next alternative, which is constructive credit. In the past, a number of JAG's have been able to obtain constructive credit for C&GSC through service in Vietnam. This opportunity is almost gone with the Vietnam drawdown. Recently, however, Colonel Jack Crouchet was successful in getting constructive credit for C&GSC as a military judge in Vietnam. Others of you may wish to apply for similar credit. Don't sit back and wait for lightning to strike! Indications from

DCSPER are that the authority for constructive credit may soon be terminated.

For those officers who, for one reason or another, have not obtained credit for C&GSC, they may wish to consider the Civil Schools route for a masters degree. Civil Schooling cannot be equated to C&GSC. For this would be comparing "apples to oranges." All officers have a military educational level—basic, advanced, C&GSC, SSC. All lawyers have a civil educational level of a professional degree and an advanced degree enhances their civilian educational level, which may tend to offset, to some extent, a lower military educational level. The best combination, of course, is a high level in each.

#### **Promotions.**

The promotion picture for the Corps overall is favorable, except for Majors. The current major list, which has finally begun to move, is not scheduled to be exhausted prior to October of 1973. Even then I would doubt that the new zone of consideration for promotion to major would be very extensive.

Concerning time in grade, let's start with the majors. As you know, during the past year the question was—Do we RIF an officer to promote another? The decision was to keep promotions to a minimum. Even in a RIF situation it is not expected that we would lose many. Our total loss through RIF last year was one officer. We lost two more through failure for selection for regular army promotion the second time. The time in grade for promotion will increase to approximately 6.7 years for colonels, 7.1 years for lieutenant colonels, and 7.4 years for majors by the end of FY 74.

#### **Efficiency Reports.**

This brings us to our next subject—efficiency reports. Nearly all our senior judge advocates know how to write an efficiency report. While there is a new report planned for implementation on 1 January 1973, as you will see, the new report is not substantially different from the present report.

The new personnel efficiency rating for officer personnel does have several changes. These are:

Rated officers will be given a copy of their completed reports at the time they are rendered.

This policy received the strong support of the officer corps, and those major commands and DA staff elements which participated in the field test. This will inform the officer immediately how he has been rated and eliminate the need for him to visit the Adjutant General's Office to review individual reports. It will also aid in early detection and resolution of administrative errors in the report.

A visible scoring system will be used. The revised officer evaluation report form contains numeric scoring ranges for reporting performance of duty and potential, thus providing an openly visible score. This contrasts with our current system in which no scores appear on the face of the form, but selected elements of the report are quantified by personnel management activities in order to facilitate comparisons between officers.

Each officer will be furnished, on a personal, confidential basis, his annual individual mean score. This proposal answers an overwhelming demand from the officer corps to "know where they stand."

The average score by grade for the officer corps will be computed and published periodically. This information will provide rating officials an objective "yardstick" or "benchmark" from which to begin their evaluation of the subordinate officers. Under the current system, rating officials must guess at what the average officer receives, thus, many build into their ratings a factor for assumed inflation. This, of course, has amplified our actual inflation problem, which restricts our ability to discern the *truly* outstanding officer from the many *average* officers who are rated "outstanding."

One matter bears mentioning—that is the frequency of reports. It is highly desirable to rate an officer as frequently as possible. Most important, however, is get the ER's in on time. The C/S, DCSPER, and everyone is concerned about this. Do unto others as you would have them do unto you! When rating an officer if he is good say so. If not say so—consider would you want to work for him? If he is promoted someone will have to.

#### **Warrant Officers.**

Warrant officer end strength has now been dropped to 55. This is due to 8 WO authorizations being lost. Thus, fills for other posts will come

from these stations. Also when the WO moves out these installations will go to the bottom of the list for fill—if we can even get the strength back up.

#### **Excess Leave Officers.**

There are currently 132 officers participating in the excess leave program. They range in grade from second lieutenant to major. This year we were able to increase the percentage of active duty officers entering the program to approximately 80%. There were 93 active duty applicants for the 36 active duty positions and 82 applicants for the 13 DMG positions. We ask you to continue to motivate young line officers to become judge advocates through the excess leave program. Our experience indicates that those officers who enter the excess leave program from active duty have a much greater career potential than the DMG officer. Thus, we are emphasizing excess leave for active duty officers. We also appreciate your past efforts in attracting and recruiting our young OBV officers for permanent positions. Recently, however, this effort has declined. In July General Prugh asked each of you to nominate OBV JAGC officers for RA commissions—we have received only two nominations. If each of you can sell the Corps to one good officer our future would be much brighter.

#### **Efficiency Reports:**

We ask your help in connection with the excess leave program. Many of our excess leave officers are still not receiving efficiency reports for on-the-job training periods, or if they do receive them they are late. I ask your assistance to insure that timely ratings are given for their periods of OJT service. In rating these officers, remember not to compare them with your lawyers. They should be compared with other excess leave officers of like grade and experience. Many of these officers have also reported problems with their pay and allowances while on active duty. We have submitted a change to the excess leave regulation which will permit the excess leave officer to retain his personnel and finance records in his possession while not on OJT. Do what you can to assist them with their pay problems particularly, as money is an extremely precious commodity to these individuals. In this connection they may now enter OJT for 5 rather than 7 days, if there is productive work for them to perform.

We have distributed the new issue of "Your JAGC Career," to SJA's. It sets forth the policies of The Judge Advocate General in many areas administered by PP&TO. If you have any questions in this regard, we will be happy to answer them, as you will note 2 changes are distributed with the packet—more will be added. Next year it will be published in larger numbers. This copy is for *your* office. Please let your office staff know it exists.

#### Assignments.

*Short Tours:* The only short tour area remaining which has required levy in the past six months is Korea. Vietnam and Thailand with one exception, are filled with volunteers. Korea is becoming more desirable. Two-year accompanied tours are now a reality for those officers assigned in the Seoul area. Thus, very few of our officers will enter on an unaccompanied short tour during this year.

*Europe:* Due to the increase in authorizations within Europe, judge advocate officers initially entering active duty, or those who have been on station for one year, may volunteer for a European assignment. The tour length is three years.

*CONUS:* Personnel assigned within CONUS will not be moved solely because they have completed three years on station. Moves will occur at the officer's request or to fulfill the needs of the service.

**NEW PROJECTS:** In October of last year the Corps entered into an extensive minority recruiting program. With 50% of the inmates of Leavenworth being black and over one-third of the stockade population black, 15 black officers in a Corps of over 1600 officers, just is not sufficient. Captain Ken Gray joined PP&TO on a full time basis in

January. His achievements have been laudable. By the end of December of this year it is expected that we will have between 25 and 30 black judge advocates on active duty. Additionally, the number of black judge advocates in the excess leave program has grown from three to eight.

Ken has also been responsible for supervising a most successful summer intern program, another first for the Corps. As you know, under this program approximately 100 first and second year law students serve as legal interns in various JAG offices throughout the world. Of this number, six served in Germany. The reports from the field and from the summer interns indicate that this was an extremely successful venture. Many of them have asked to return next summer. The number that will be allowed to do so has not been determined. In a few instances, of course, the interns were not given the stimulating work they were capable of performing. Those areas which did not prove successful will not be filled next year. The large majority, however, were appropriately used in paralegal functions to assist counsel, and other worthwhile activities. These young ambassadors having been given a taste of an active practice are expected to aid recruiters in the field, thus helping meet our manpower needs of the future. We expect to continue the program next year. If you want some of this valuable help, please let us know. This is an extremely good program for the JA office and the post. They are charged against positions created in the Judiciary and paid from Headquarters DA funds. In this connection you may wish to send letters of commendation to the Dean of the Law School if your summer intern did a good job. Also, send in your evaluations of the interns and the program.

## INSPECTIONS

*By: Major Francis A. Gilligan, Criminal Law Division, TJAGSA*

Part of the Fourth Amendment provides that "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Upon examining this language, it appears that no question of reasonableness is raised unless the challenged situation involves either a search or seizure as those

terms are defined. The Fourth Amendment does not protect a person against "lawful inspections."<sup>1</sup> The perplexing question facing the commander and the military lawyer today is whether he may "inspect" his unit for the purpose of seizing drugs and weapons with a view toward confiscation or criminal prosecution. This question may be ana-

lyzed in terms of the inherent right of the commander to inspect his unit, the difference between a search and an inspection, or the serviceman's justifiable expectation of privacy.

One of the first pronouncements in this area was the *Gebhart*<sup>3</sup> case in which then Chief Judge Quinn stated that the "generalized and particularized types of searches are not to be confused with inspections of military personnel entering or leaving certain areas, or those, for example conducted by a commander in furtherance of the security of his command. These are wholly administrative or preventive in nature and are within the commander's inherent powers."<sup>3</sup> This language was again quoted with approval in *United States v. Lange*.<sup>4</sup> In *Lange*, the accused's squadron commander, accompanied by the base commander and squadron administrative officer, was conducting an inspection of the barracks. During the inspection, the base commander suggested that the squadron commander conduct periodic shakedown inspections as he would be surprised at what he might find. Upon hearing this, the squadron commander immediately told his administrative officer that these inspections should be conducted about once a month. The administrative officer understood the order as a directive to conduct regular inspections for the purpose of insuring the "health, welfare, morale of the individual, and also to see that his belongings are clean, properly kept and maintained, uniforms are right, and if there's any property in his possession that does not belong there." This inspection would entail checking billets and lockers and going through the unit's members' personal belongings. About seventeen days after the base commander's visit, it was reported to the administrative officer that a watch and money had been stolen. The squadron administrative officer, being aware of other such reports over the last two months, remembered the order given him by the squadron commander to conduct monthly inspections. Thus, he undertook to immediately conduct such an inspection. Since he believed the property reported stolen earlier that day would be found in close proximity to the victim's room, he included in the first group of men to be inspected those sharing quarters with the victim and those living in the adjoining billets. The accused was the victim's roommate. In the course of checking the accused's

room, three wallets which the accused was later convicted of stealing were found among his possessions.

The Board of Review held that the record failed to establish the legality of the seizure of the wallets and the question before the Court of Military Appeals certified by The Judge Advocate General of the Air Force was whether this ruling was correct. The Court of Military Appeals approvingly cited the following Board of Review language setting forth the inherent power of the commander and the language distinguishing a search from an inspection: "[W]e find that a search is made with a view toward discovering contraband or other evidence to be used in the prosecution of a criminal action. In other words, it is made in anticipation of prosecution. On the other hand, an inspection is an official examination to determine the fitness or readiness of the person, organization, or equipment, and, though criminal proceedings may result from matters uncovered thereby, it is not made with a view to any criminal action. It may be a routine matter or special, dictated by events, or any number of other things, including merely the passage of time. There is no requirement for 'probable cause,' as that term is used in the law, but it may result from a desire of the commander to know the status of his organization or any part of it, including its arms, equipment, billets, etc."<sup>5</sup> The Court agreed with the Board of Review that "all the evidence points to . . . a search"<sup>6</sup> since the "inspection" was motivated by specific misconduct and the purpose was to seize recently stolen property. The Court refused to answer the "question whether the administrative officer was permitted to order a search by virtue of his commander's authority."<sup>7</sup> The Court did not answer this question since there was no evidence that the administrative officer was the senior officer present in the organization.

In noting that they were not concerned with "an inspection that had been already scheduled at the time the administrative officer received the report of the larceny,"<sup>8</sup> the Court foretold the next issue that they would face. This issue arose in *United States v. Grace*.<sup>9</sup> *Grace* does not at first blush appear to follow the definitional approach set forth in *Lange*. The commanding officer in that case had ordered an inspection of the "Squadron area and

its three barracks 'to check living conditions' and to determine whether unauthorized weapons were present."<sup>10</sup> A concession by the accused's appellate counsel that there was a lawful inspection at the inception was implicitly accepted by the Court citing *Gebhart*.<sup>11</sup> Prior to inspecting the accused's locker, one of the sergeants conducting the inspection was informed that the accused had marijuana in his locker. When the sergeant was ready to inspect Grace's locker, the accused questioned the sergeant's authority. This conversation was reported to the accused's commanding officer who did not think he had the authority to continue the inspection. Upon checking with the local staff judge advocate, he instructed the sergeant to continue inspection.

In holding the marijuana seized from the accused's locker admissible, the Court rejected the argument that the inspection was a sham to circumvent the Fourth Amendment. It also dismissed the appellate defense counsel's argument that *Lange* was controlling, stating "An inspection valid at inception is not transformed into an illegal proceeding simply because one of the persons subject to the inspection becomes the subject of a criminal investigation."<sup>12</sup> The Court seemed unconcerned with whether the inspection for unauthorized weapons was for the purpose of prosecution or whether the commander was seeking weapons for only confiscation. This factor becomes important when one considers that the Court would not have accepted a concession which would have varied the results in the case.<sup>13</sup> Since the Court did not indicate what motivated the inspection, it is arguable that an inspection for weapons for the purposes of criminal prosecution would be within the commander's inherent power. However, a reading of the Court of Military Review case indicates that the Court was probably still following the definitional approach of *Lange*.<sup>14</sup> The Court of Military Review decision in *Grace* indicates that the inspection was not conducted in anticipation of criminal prosecution.<sup>15</sup> Thus, it appears that the Court was again following a definitional approach.

More recently the Court of Military Review in *United States v. Brashears*<sup>16</sup> stated as follows:

We recognize the broad discretionary authority of a Military Commander to conduct inspections to assist him to maintain orderly,

clean, and safe barracks; to insure the preparedness of individual soldiers; and to enforce regulations prohibiting items of inherently dangerous nature, such as switchblade knives, hand guns, hand grenades, explosives, and, presumably, contrabands such as marijuana or narcotics.

Two other cases seem to agree with the language in *Brashears*. In *United States v. Leck*<sup>17</sup> and *United States v. Marsalek*,<sup>18</sup> the commanding general ordered a "shakedown" inspection which took place on the 16th of December 1970. Several events lead to the decision to conduct such an inspection. First, four days prior to the inspection, a soldier was killed on post by a private unregistered weapon; second, the command had in the past found unregistered weapons and illegal drugs in the possession of soldiers on post; and third, the command wanted to prevent any illegal drugs or weapons from leaving the base before the holiday period.<sup>19</sup> Although no specific or identifiable items were sought in connection with a specific crime, illegal weapons and drugs were the subject of the inspection. Agents of the CID had been alerted in advance of the inspection to standby in case any contraband was found. It was specifically stated that the "shakedown was not an ordinary inspection of military equipment."<sup>20</sup> Pursuant to the order of the commanding general, the accused's living quarters were inspected and a small bag containing a vegetable-like substance which chemical analysis later determined to be marijuana was found. When the person conducting the inspection entered the accused's living area, "he pated down clothing hanging in the closet, looking for items in the pockets of the clothing. He also pulled back the covers on the beds. He then looked through the lockers in the room. At no time did he check the gear of any of the soldiers involved to see if it was clean or in working order."<sup>21</sup> On the basis of this seizure, the accused was charged with the unlawful possession of marijuana in violation of Article 134, Uniform Code of Military Justice.

Following the definitional approach, these cases seem erroneous. To support these cases, a different rationale must be adopted. *Katz*<sup>22</sup> and *Biswell*<sup>23</sup> may be helpful in this regard.

Traditionally the Supreme Court has spoken in

terms of intrusion into "Constitutionally protected areas." This approach focused on the Fourth Amendment's protection of person's "houses, papers, and effects," against unreasonable searches and seizures. However, *Katz*<sup>24</sup> changed this approach and offered an alternative view. In *Katz*, the accused was convicted of transmitting betting information by use of a telephone. At trial, the Government was permitted to introduce over the accused's objection evidence of the accused's end of telephone conversation overheard by FBI agents who had attached a listening device to the outside of a public telephone booth. In concluding that non-trespassory eavesdropping into a public telephone booth constituted a search, the Court declined to accept the formulation of the issue in the case in terms of "constitutionally protected areas." It stated "the correct solution of Fourth Amendment problems is not necessarily promoted" by the use of such a term.<sup>25</sup> Nor can the Fourth Amendment be translated into a general constitutional right of privacy.<sup>26</sup> The Court stated that the "Fourth Amendment protects people not places."<sup>27</sup> The premise that the Fourth Amendment depends on property law concepts has been rejected.<sup>28</sup> Once the aforementioned is acknowledged it can be seen that the Government's electronic listening and recording of the accused's conversation "violated the privacy upon which he justifiably relied."<sup>29</sup> What is considered to be a justifiable expectation of privacy was not further elaborated upon by the majority; however, Mr. Justice Harlan in a concurring opinion suggested a "twofold requirement, first that a person has exhibited an actual (subjective) expectation of privacy, and, second, that the expectation be one that society has prepared to recognize as 'reasonable.'"<sup>30</sup> He also notes that in asking what protection the Fourth Amendment provides an individual that is whether an expectation of privacy is reasonable, it is generally necessary to answer this question in reference to a place.<sup>31</sup> Thus, it seems that many of the earlier property based decisions would not be disturbed by *Katz*.

In *Biswell*,<sup>32</sup> the Court again dealt with the concept of expectation of privacy. The accused in *Biswell* was convicted for dealing in firearms, that is, two sawed-off shotguns, without having paid the required special occupational tax. These sawed-off shotguns were found as a result of an inspection

under the 1968 Gun Control Act<sup>33</sup> which authorizes official entry during business hours into "the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining . . . any firearms or ammunition kept or stored by such . . . dealer . . . at such premises."<sup>34</sup> The accused was federally licensed to deal in sporting weapons. He was visited one afternoon by a Federal Treasury Agent who identified himself and requested entry into the accused's locked storeroom. The respondent asked the agent whether he had a search warrant. Upon being told he did not, the accused said that he would not permit such an inspection. The Treasury agent then reached into his pocket and pulled out a copy of the Gun Control Act and read it to the accused. The accused replied, "Well, that's what it says, so I guess it's O.K."

In upholding the seizure of the two sawed-off shotguns, the Court noted that the search was not accompanied by any unauthorized force<sup>35</sup> and the respondent was on notice as to the agent's identity and the "legal basis for their action."<sup>36</sup>

The Court indicated that although it appeared that there was no voluntary consent in this case citing *Bumper*,<sup>37</sup> it stated that where there is a regulatory inspection on a business premises which is carefully "limited in time, place, and scope, the legality of the search depends not on consent but on the authority of a valid statute."<sup>38</sup> Citing *Colonade*,<sup>39</sup> the Court held in that case that a forceful entry into a locked storeroom without the owner's consent and in the absence of a warrant violated the owner's right under the Fourth Amendment. However, they did recognize that Congress had ample power "to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand."<sup>40</sup> Although the federal interest in controlling firearms was not as deeply rooted as the Government control of liquor, the Court noted that the control of firearms is "undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders."<sup>41</sup>

The Court distinguished *See v. Seattle*<sup>42</sup> by stating that the inspection system in that case was to discover and correct violations of building ordinances that were "relatively difficult to conceal or

to correct in a short period of time."<sup>43</sup> However, to require a warrant in the firearms area could easily frustrate the inspection that is authorized.<sup>44</sup> In justifying the result in the case, the Court noted that the inspections authorized in the Gun Control Act posed "only limited threats to the dealer's justifiable expectations of privacy."<sup>45</sup> In addition, the "possibilities of abuse and the threat to privacy" were not of "impressive dimensions."<sup>46</sup>

Should the definitional approach of *Gebhart*, *Lange*, and *Grace* be followed? Such an approach depends on the subjective motivation of the officer ordering the inspection. The language in *Lange* indicates that if the commander is looking for evidence of a crime, even though he is not motivated by specific misconduct, he must satisfy the requirements of the Fourth Amendment. It is questionable whether this should be the test. Anytime an inspection is conducted by the commanding officer, he is either consciously or subconsciously motivated by the thought that the members of his unit may possess drugs or illegal weapons. With this fact in mind that the commanding officer is coached by the trial counsel to the effect that if he indicates that he is consciously motivated by the thought of weapons and drugs in the unit, the military judge will grant a defense motion to suppress. Thus the commander strains to convince himself that his inspection was not the result of such conscious motivation. If he testifies that he was not looking for contraband, he ignores reality.

In addition, there are some circumstances in which the commander should have the inherent right to make an inspection to ensure the "security of the command," but literally following the definitional approach, such an inspection would be deemed to be an illegal search. For example, assume that Lieutenant Colonel Bradley is the commander of a firebase in Vietnam. The perimeter of the firebase has been penetrated the previous two evenings by "sappers." Assuming Lieutenant Colonel Bradley can show that a number of persons in his unit may be using drugs including the persons manning the perimeter at the point of penetration, Lieutenant Colonel Bradley should be able to conduct an inspection of his unit specifically looking for drugs. However, again, *Lange* indicates that such an "inspection" would be unlawful if there was no probable cause for such an intrusion. If a

balancing test were applied using the rationale of *Katz* and *Biswell*, such action might be held lawful. Some of the factors that might be considered in applying such a test are as follows: The nature of the unit; location of unit; previous incidents involving contraband; time and frequency of the inspections; type of quarters inspected; subjective and objective expectation of freedom from inspections by members of the unit; evidence of specific crime sought; and thoroughness of inspection. The application of these factors would justify the result in *Leck* and *Marsalek* and the dictum in *Brashears*.

## Footnotes

1. *United States v. Gebhart*, 10 USCMA 606, 28 CMR 172 (1958); *United States v. Biswell*, 406 U.S. 311 (1972); *Colonnade Catering Corporation v. United States*, 397 U.S. 72 (1970).
2. *United States v. Gebhart*, 10 USCMA 606, 28 CMR 172 (1958).
3. *Id.* at 610 n.2, 28 CMR at 176 n.2.
4. 15 USCMA 486, 35 CMR 458 (1965).
5. *Id.* at 489, 35 CMR at 461 (n.2 from *Gebhart* omitted).
6. *Id.* at 490, 35 CMR at 462.
7. *Id.*
8. *Id.*
9. 19 USCMA 409, 42 CMR 11 (1970).
10. *Id.* at 410, 42 CMR at 12.
11. *Id.*
12. *Id.* at 411, 42 CMR at 13.
13. *See United States v. Greene*, 21 USCMA 543, 45 CMR 313 (1972); *Lohr v. United States*, 21 USCMA 150, 44 CMR 204 (1972); *United States v. Bearchild*, 17 USCMA 598, 38 CMR 396, 398 (1968); *United States v. Hart* 17 USCMA 524, 38 CMR 322, 323 (1968); *United States v. Wille* 9 USCMA 623, 26 CMR 403, 407 (1958).
14. *United States v. Grace*, 41 CMR 879 (ACMR 1969).
15. *Id.* "The inspection was to cover not only living conditions but, in view of past incidents, was primarily directed toward the discovery and removal of contraband weapons located within the squadron area. Recovery of any such weapons found in the Barracks area was motivated by safety considerations and not with a view toward prosecution."
16. 45 CMR — (ACMR 1972), *rev'd on other grounds*, 21 USCMA 552, 45 CMR 326 (1972).
17. Relief under Article 69, UCMJ, denied 30 Apr 1971.
18. Relief under Article 69, UCMJ, denied 24 Jun 1971.
19. *United States v. Leck* (Appellate Exhibit 3).
20. *Id.* (Appellate Exhibit 3).
21. *Id.*, Petitioners Brief, Page 2.
22. *Katz v. United States*, 389 U.S. 347 (1967).
23. *United States v. Biswell*, 406 U.S. 311 (1972).
24. *Katz v. United States*, 389 U.S. 347 (1967).
25. *Id.* at 350.
26. *Griswold v. Connecticut*, 381 U.S. 479, 509 (1961)

- (dissent of J. Black). "The average man would very likely not have his feelings soothed anymore by having his property seized openly than by having it seized privately and by stealth. . . . And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home."
27. *Katz v. United States*, 389 U.S. 347, 351 (1967). "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* at 351-52.
28. *Warden v. Hayden*, 387 U.S. 294, 304 (1967). "[T]he premise that property interests control the right of the Government to search and seize has been discredited." *Silverman v. United States*, 365 U.S. 505, 511 (1961). In *Silverman*, the Court held that the Fourth Amendment governs not only the seizure of tangible items but also extends to the recording of oral statements overheard without any "technical trespass under . . . local property law."
29. *Katz v. United States*, 389 U.S. 347, 353 (1967).
30. *Id.* at 361.
31. *Id.*
32. *United States v. Biswell*, 406 U.S. 311 (1972).
33. *Id.* at n.2.
34. 18 U.S.C. § 923(g).
35. *United States v. Biswell*, 406 U.S. 311, 313-15 (1972).
36. *Id.* at 315.
37. *Bumper v. North Carolina*, 391 U.S. 543 (1968).
38. *United States v. Biswell*, 406 U.S. 311, 315 (1972).
39. *Colonnade Catering Corporation v. United States*, 397 U.S. 72 (1970).
40. *United States v. Biswell* 406 U.S. 311, 314 (1972).
41. *Id.* at 315.
42. 387 U.S. 541 (1967).
43. *United States v. Biswell*, 406 U.S. 311, 316 (1972).
44. *Id.*
45. *Id.*
46. *Id.* at 317.

## TAADS AND SUCH

*Presented to the 1972 JAG Conference by Major William K. Suter, PP&TO, OTJAG*

First, a look at TAADS—The Army Authorization Document System. Basically, all manpower requirements and authorizations for our officer and enlisted personnel are derived from TOE, MTOE, TDA and MIDA documents. These documents, when approved by the Assistant Chief of Staff for Force Development, ACSFOR, are placed in the TAADS data bank. ACSFOR determines the Army's size by developing a balanced force based on Secretary of Defense guidance. They prepare troop lists and formulate a "force accounting system." ACSFOR is interested only in the number of spaces in the Army and is not concerned with the personnel to occupy those spaces—in other words, "spaces not faces." ACSFOR works with some 7,700 Army units and with 4,900 authorization documents—some units share a common document—for example, TOE Armor Battalions in Germany. The Deputy Chief of Staff for Personnel (DCSPER), on the other hand, is concerned with the faces to fill the spaces. Based upon the number of spaces reflected in the TAADS data bank, and other variable factors, such as budget limitations, DCSPER determines the total and strength of the Army. This end strength, in turn, determines our officer and enlisted requisition and procurement authority. This is very important to remember!

Requisitions are based on authorized spaces reflected in the TAADS data bank. Spaces get there from unit authorization documents.

DCSPER recognizes that with changing missions and requirements throughout the Army, authorizations reflected in the TAADS data bank may not reflect personnel needs of commands. DCSPER, therefore, requires quarterly reports from major commands showing their officer needs by branch for the next several quarters. This report of requirements may or may not coincide with authorizations in TAADS documents. This report is of great importance to us for two reasons: (1) It forms the basis of the projected requisition authority (PRA) prepared at DA and used by PP&TO. The PRA shows the number of officers which a headquarters may requisition during a given quarter. (2) Our procurement authority for new officers is based on this report. If a command DCSPER or G-1 under-reports JAG requirements, SJA offices in the field become under-strength, and our over-all strength is reduced. Be sure to keep liaison with your personnel staff officers to make certain that all needed JAG officers are reported so that they will be reflected in the PRA.

Last year at the conference, a new system was

discussed, SACS—the Structure and Composition System—which is a computer program used to project the force structure of the Army in the future. In essence, SACS is a system used to systematically reduce the strength of the Army without regard to MOS or branch. For awhile, SACS hung over the JAG Corps like a “Sword of Damocles”—ready to cut our officer strength like a “grim reaper.” Somehow, the JAG Corps got out of the path and we are safe for the time being.

I would like to mention one new development in this area. It is called “vertical TAADS.” ACSFOR is streamlining the TAADS system to reduce the lag time between submission of document changes and final approval. In 1970 it took 383 days to get a TDA or TOE change approved. Presently, according to ACSFOR, it is taking 180 days. Under vertical TAADS it will take only 90 days.

At the present time, the TAADS data bank reflects a total of approximately 1414 JAG officer authorizations. The present personnel strength is approximately 1600 officers. Thus, in the eyes of DCSPER, the Corps is over-strength, even though we are experiencing a critical shortage in the grades of MAJ and LTC. It is, therefore, imperative that you continually monitor and document valid manpower requirements if the strength of the Corps is to be kept at a level that will permit the fulfilling of our mission.

That brings us back to TAADS. If you have new requirements—officer or enlisted—for instance, if you are using non JAGs or enlisted lawyers to do a JAG's work, you must justify your needs and move toward an MTOE or MIDA change. How do you do it? You start with reading AR 310-49, the TAADS bible. Then get with the experts in your local force development shop and seek their assistance. You can get MTOE or MTDA changes by trade-off within command resources, a favorable manpower survey, or, if the command is between manpower surveys, by manpower survey report forms completed as though a survey had been conducted. This might sound like a lot of work, but it is not—and it is worth the effort.

PP&TO has the TAADS JAG officer authorizations for each installation and unit. You might

want to review it to see if the TAADS data bank reflects what you think it should.

A word about assignments of legal clerks and court reporters. (The enlisted personnel picture will be presented next month). They are assigned only against validated requisitions. If you need a legal clerk and have a vacancy for one, you must insure that your AG puts in a requisition. Bear in mind, however, that there is an overall shortage of these valuable clerks and everyone must share the shortage. I recently received a request for assistance from an SJA office that is worth mentioning. The caller stated that he had vacancies in his office for one legal clerk and one court reporter and neither was filled. He was desperate. A run-down of the installation-wide TAADS authorizations revealed that the SJA office in question was authorized no court reporter but was authorized six legal clerks. In addition, three more legal clerks were authorized in units on post. Yet no requisitions for replacements were on hand at DA. It was the local AG's job to get the requisitions in, but it would have been a good idea for someone in the JA's office to check on this. Through our coordination agreement with EPD we were able to get three legal clerks for this office.

In line with this, don't overlook the 71D authorizations in subordinate units at your installation. A legal clerk is now authorized at battalion level under the new H-series TOE. Make sure requisitions get in for these slots. If you are woefully short of legal clerks, you can probably work out a loan agreement with the battalion commander. COL Ward King at Fort Belvoir has been successful in this regard. He had a clerk problem. His deputy obtained copies of all TOEs and TDAs of units at Fort Belvoir authorized legal clerks, got with the AG and had requisitions submitted. He then visited the Special Categories Branch in the Pentagon and OTJAG and made arrangements for getting the clerks.

Thus, an understanding of TAADS and its source documents, and their constant monitoring to insure they reflect our manpower needs is essential to insure that the strength of the Corps remains at a level high enough to enable us to perform our work.

**SJA SPOTLIGHT — US ARMY EUROPE**

*By William G. Werdehoff, CPT. JAGC, OJA, HQ USAREUR & 7TH ARMY*

The USAREUR Judge Advocate has the most enviable task of heading the Army's European law office from his headquarters located in historic and romantic Heidelberg, Germany. His primary responsibility of providing legal advice to the USAREUR Commander-in-Chief is complicated by the fact that our system must operate in a civilian legal environment which is inherently different from our own. Meshed together by treaty, the two systems seek to achieve the legitimate goals of justice recognized by both the United States and the foreign governments involved. In addition to his advisory capacity, the USAREUR JA exercises technical supervision over approximately 209 Judge Advocates who staff the legal offices of Europe's 10 active General Court-Martial jurisdictions.

Unlike CONUS organizations, USAREUR's subordinate commands have their units widely spread across the entire Federal Republic of Germany. The trip from a command headquarters to a member battalion may be a matter of several hours drive even using the famous German autobahn system. Accordingly, an SJA often faces serious time and distance problems in providing efficient and effective legal service for personnel who were widely removed from his headquarters. Processing times for courts-martial skyrocketed in August 1969 because of the sheer logistical problems of pretrial investigation and forwarding charges, allied papers and records of trial from place to place by mail. Other problems beset the command such as high racial tension, overcrowded stockades and troops disgruntled with being away from home over long periods of time and living in substandard barracks and family quarters. These factors contributed to a rising drug problem and more friction between the German populace and American soldiers.

While providing and supervising the necessary legal services for commanders in Europe, the Judge Advocate was also constrained to take affirmative action within legal spheres to attempt to solve these problems. In the past few years the office of the USAREUR Judge Advocate had to become a hotbed of revolutionary and progressive change. Since the biggest problems centered around

military justice, its administration, and the way the system is perceived by soldiers and others, most of the improvements developed have been in the military justice field.

One of the first problems identified was the strong feeling among USAREUR soldiers that Article 15s were not being administered fairly and impartially. Whether that was fact or mere product of perception is difficult to ascertain. In order to try to correct the fact, if it existed, and to change the perception which was obviously existent, USAREUR initiated the requirement that all Article 15s be posted on unit bulletin boards so that all could see and compare the punishments given by the unit commander. Subsequently, in 1971, this requirement was adopted Army-wide in an effort to combat discrimination and insure fair and equal treatment of all soldiers.

Also begun in 1969 was a pilot program to explore the possibilities of providing enlisted personnel to act as lawyers' assistants in investigating court-martial cases and doing the administrative work which is so costly in terms of a trial lawyer's time. The program, having proved successful, is at this time fully operational. A two-week course is now offered for training individuals to be lawyers' assistants at the Combat Support Training Center at Oberammergau, Germany, where since August 1970 USAREUR has conducted a legal clerks school to train enlisted men from our own ranks to provide our required administrative support. Twenty-eight lawyers' assistants, 17 of whom have graduated from the lawyers' assistants course, are now on duty in USAREUR. Recent surveys conducted on these personnel indicate that they are extremely valuable and can save as much as 50% of lawyer's trial preparation time. The SJAs for whom they work have high praise for them and the program in general.

It also became obvious in 1969, with the passage of the new military justice act, that something had to be done to improve the cumbersome and inefficient situation caused by our widely scattered units. In order to centralize and localize court-

martial trials, law centers were created at Kaiserslautern, Mannheim and Nuernberg. These centers tried all special courts-martial within their areas of responsibility and brought lawyers closer to troops and commanders. With the success of the law centers, which provided area legal services on a small scale, came the birth of the area jurisdiction concept for all of USAREUR. In spite of grumblings from commanders who were concerned about separating military justice from command lines, CINCUSAREUR decided to institute the concept effective 1 July this year. The Federal Republic of Germany was divided into geographical areas with one commanding general in each area having general court-martial jurisdiction over all morning report units stationed in that area and a central Staff Judge Advocate office in each area (with branches—often newly established—as required) became the legal center for the area. The necessary consolidation within areas greatly reduced the number of commanders exercising special courts-martial jurisdiction and physical distance no longer imposed a tremendous barrier to efficient legal support. Incidentally, even though only one general is exercising court-martial jurisdiction including Article 15s, and justice related activities such as 212s and Chapter 10s, over another general's troops, none of the fears initially expressed have come to fruition. This may indicate that it makes very little difference who does the justice work in a command as long as it is accomplished fairly, efficiently and promptly.

Having realized that problems of overcrowding and extreme discontent existed in USAREUR Stockades, the Judge Advocate in 1970 began a series of sweeping changes and innovations to bring those problems under control. First in 1970, USAREUR started a new policy with respect to personnel placed in pretrial confinement by requiring that a lawyer be appointed for an individual within seven days after he entered pretrial confinement, rather than after charges were referred to trial. This innovation helped considerably to relieve tension among pretrial prisoners in USAREUR stockades by providing a system more responsive to the soldiers' needs during a time of extreme hardship and crisis. This policy was further refined this July with the new requirement that military defense counsel be appointed for and talk with an

accused individual prior to his being placed in pretrial confinement. This is another step towards building respect and faith in a system of which the accused may otherwise feel he is a victim and has the additional advantage of getting defense counsel into a case in the earliest stages when he can often be the most help to his client.

Another policy was begun in 1970 with the institution of the Stockade Visitation Program. Under that system, military attorneys visited each of the USAREUR stockades on an almost daily basis to interview new prisoners. Their task was to make sure that newly confined personnel were aware of their rights, to provide limited legal assistance and to aid in requesting defense counsel of their choice. Of course, the appointment of defense counsel prior to incarcerating an individual has subsumed the necessity for stockade visitation.

In July 1971 the Military Magistrate Program began its evolution in USAREUR with the goal of insuring that no accused suffered unnecessary pretrial confinement. Presently there are two full-time military magistrates, both JAGC field grade officers, who are required to interview an accused and review his records within 7 days of his incarceration (and every two weeks thereafter) to ascertain if continued pretrial confinement is warranted. They have plenary power by direct authority of CINCUSAREUR to order the release of any prisoner who should not be in pretrial confinement. The USAREUR confinement population has now dropped to less than 50% of its strength of one year ago. The magistrate's program is not solely responsible, but its impact is significant and illustrates another measure which has been effective in dealing with the problems of USAREUR stockades.

Turning to the problem of administrative delays in processing courts-martial, in September 1971 USAREUR adopted a "45 Day Rule" for summary and special courts-martial. This rule requires that charges referred to a summary or special court-martial must normally be brought to trial within 45 days from the day charges were preferred or when restraint was imposed, whichever is earlier. Failure to comply results in dismissal of the charges by the general court-martial convening authority. If charges are not dismissed upon the accused's ap-

plication, he may appeal that decision to CINCUSAREUR even though he may have already been tried by the time a final decision is made. Certain delays are excluded from computing the 45 day period. The rule has alerted commanders and judge advocates to the necessity of rapidly processing court-martial charges and precluded unnecessary restraint prior to charges. It has also been a contributing factor in eliminating case backlogs by forcing a more efficient handling of cases and of course has reduced processing time considerably.

For the lawyers who practice within USAREUR, a program of continuing legal education has been operational over the past three years. Captains' Conferences and SJA Conferences have been held in such places as Berlin, Bertchesgaden, Munich and Gramisch to provide periodic intellectual stimuli and an opportunity for the exchange of ideas among lawyers from widely scattered JAG offices.

The programs and innovations described above which have emanated from the USAREUR Judge Advocate have contributed to an overall enhancement of efficiency, and fairness within our military

justice system in Europe. However, the challenge is still great and more ideas are being explored with respect to improving further the credibility of our system and the perceptions of accused persons for their JAG lawyers. In the planning stage are defense counsel seminars, professional identification cards for defense counsel (at the printers at the time of writing), and extensive changes in Article 15 procedures.

So as you can see, being the USAREUR Judge Advocate (or a member of his staff) encompasses more than beer and schnitzel, or castle hunting from the decks of a Rhein River Boat, or skiing in the Austrian, Swiss, and French Alps, or hiking in the Black Forest, or touring the famous cities of Paris, London, Rome, Vienna, Madrid and Berlin, or watching the Grand Prix at Monte Carlo and even more than the ordinary task of legal advisor and supervisor. It is a challenging position serving progressive commanders and one in which only the limits of the imagination limit the improvements and changes necessary to build greater respect for and credence in a justice system under fire. Auf Wiedersehen!

## CHAPTER 10 DISCHARGES

*From: Administrative Law Division, OTJAG*

In the December 1971 issue of *The Army Lawyer*, comment was made on the need for "preventive maintenance" in the application of the provisions of Chapter 10, Army Regulation 635-200, 15 July 1966. At that time, concern had been expressed that a service member would request and receive an administrative discharge, wait a suitable length of time, and then seek recharacterization of his or her discharge before the Army Discharge Review Board or the Army Board for the Correction of Military Records. It was urged that care be exercised to insure that the use of the provisions of Chapter 10 did not infringe on the rights of the accused or the Government.

A recent study conducted by the Office of the Deputy Chief of Staff for Personnel reveals an upward trend in the rate of use of Chapter 10 discharges. This increase in discharges pursuant to Chapter 10, coupled with the impending end of

the draft, and total reliance on an all volunteer Army, has caused serious concern to the Deputy Chief of Staff for Personnel and to The Judge Advocate General.

As a result of this concern, on 29 August 1972, the Department of the Army transmitted a message to subordinate commands clarifying the use of Chapter 10 discharges. Pursuant to this message, controls are now considered essential to ensure that a soldier is not discharged until every reasonable and proper effort has been expended in his behalf. One way to carry out this new policy is for commanders to insure that the individual who requests a discharge for the good of the service has been adequately counseled and his potential for rehabilitation considered. In this regard, the total man concept should govern. An isolated incident of relatively minor misbehavior should not be utilized solely as the determinant for approval of a Chap-

ter 10 discharge. Rather, the individual's total record should be reviewed taking into account his potential to become a good soldier under different leadership, the scope and variety of tasks he has performed in the past, his trend in conduct and efficiency, his military and civilian education, and his length of service and maturity. This, in turn, will ensure that soldiers having potential for acceptable service are not lost unnecessarily to the Army. Accordingly, commanders were directed to continue to be selective in their approval of requests for discharge under Chapter 10.

It is conceivable that, if the upward trend continues, additional restrictive measures on the authority to approve requests for discharge for the good of the service may be required. Such measures could include revision of the regulation to restrict its application to specific offenses, or to require that minimum periods of confinement be authorized

in addition to the punitive discharge requirement. Also, complete suspension or restriction of the authority to approve requests for such discharges may be imposed, or the imposition of a requirement that the court to which charges are referred be empowered to adjudge a punitive discharge.

Accordingly, Army lawyers must be especially cautious in recommending use of Chapter 10. It provides a valuable tool for eliminating individuals where the offense charged is sufficiently serious to warrant elimination from the service and the individual lacks motivation for continued service and/or rehabilitative potential. It should not be utilized for a truly minor offense, nor should it be used merely because of a heavy workload or to clear courts-martial dockets. It should only be utilized when both the interests of the accused and the interests of the Army are served.

## REPORT FROM THE U. S. ARMY JUDICIARY

### ADMINISTRATIVE NOTES

a. *Rules of Court.* The Uniform Rules for Practice and Procedure Before Army Courts-Martial have been disseminated informally to Staff Judge Advocates of each General Court-Martial jurisdiction. While the Rules will not have official sanction until promulgation of the next change to AR 27-10, that change, which will incorporate the Rules en toto by reference and which will incorporate a portion thereof specifically, was announced in TJAG TWX dated 22 September and in TJAG letter dated 25 September; in both, MG Prugh asked for earliest possible compliance with the policy of the Rules by all counsel, judges, and commands involved in processing and trial of court-martial cases.

Most of the rules of court have their exegesis in the American Bar Association's Project on Standards for Criminal Justice as modified by the statutory limitations imposed by the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1969 (Revised). The Rules for the first time set forth specific requirements for the handling of witnesses and documentary evidence, conduct of counsel, and processing time. In general, they are designed to speed up the trial

of courts-martial while maintaining a judicious forum in which to hear those courts-martial. If the Rules are fully understood by the commands processing courts-martial, by counsel, and by judges, and are followed by all concerned and firmly enforced in the courtroom, positive results leading to efficient, yet fair, justice will be realized.

b. *Time Lag on Appeal.* The overall average time from restraint or preferring of charges to the opinion of the United States Court of Military Appeals in a general court-martial case has risen from about 575 days in FY 1971 to about 605 days in FY 1972—an increase of 30 days. The cause of this increase is not the number of cases received, for the Army Judiciary received 600 fewer cases in 1972 than in the previous year. Rather, it would appear that the basic cause of this increased delay is the higher percentage of accused who are requesting appellate representation: In 1971, 43% asked for appellate counsel; in 1972, 63% requested counsel. Thus, despite the fact that 600 fewer cases were received in 1972, this 20% increase in requests for counsel effectively increased the workload of the appellate divisions by 600 cases over the prior year. As it takes appellate counsel about 150 days to file

briefs in a given case, the additional workload resulted in an increase in appellate delay.

### RECURRING ERRORS AND IRREGULARITIES

a. *September 1972 Corrections by ACOMR of Initial Promulgating Orders.*

(1) Failure to show the date that the sentence was adjudged.

(2) Showing, incorrectly, in the PLEAS paragraph that a motion for a finding of not guilty as to a charge and its specification was granted [should have been shown under the FINDINGS paragraph].

(3) Failure to show the correct number of previous court-martial convictions considered.

(4) Failure to show in the SENTENCE paragraph that partial forfeitures had been adjudged.

(5) Failure to show under "PLEAS" that the pleas to some of the Charges and their specifica-

tions had been changed by order of the military judge—three cases.

(6) Failure to show under "FINDINGS" that the portion of a specification to which the accused had pleaded not guilty had been withdrawn by order of the convening authority.

b. *Supplementary Court-Martial Promulgating Orders.*

(1) In a number of instances it has been noted that final type orders have been issued immediately upon receipt of a decision of the Army Court of Military Review which disapproved a punitive discharge. Such orders should not be promulgated until the accused has executed a "Request for Final Action" or, if no request, a full 30 days after the date of service of the decision, provided, of course, the accused has not petitioned the Court of Military Appeals for a grant of review.

(2) If the confinement portion of the affirmed sentence has run, the final order should state the following: "That portion of the sentence pertaining to confinement has been served."

## INTERDEPARTMENTAL COMMITTEE ON MEDICAL MALPRACTICE

*BY: Major Leonard E. Rice, Jr., Chief, Tort Branch, Litigation Division, OTJAG*

Previous issues of this publication have contained references to the Interdepartmental Committee on Medical Malpractice and its supporting role to the Secretary of Health, Education and Welfare Commission on Medical Malpractice. This article summarizes topics discussed either during committee meetings or in material distributed by the committee.

Interest in medical malpractice was generated by the increase in malpractice lawsuits and a consequential rise in malpractice insurance rates during the 1960's. The increase in medical malpractice lawsuits is attributable to trends in the law and a breakdown in the personal character of the physician-patient relationship as a result of increasing medical specialization. In a letter to the U. S. Senate's Subcommittee on Executive Reorganization, which, in 1969, examined the Federal role in health and care problems, a representative

of AMA outlined the following as one of several possible causes behind the rapid rise in medical malpractice suits:

"... the growing complexity of life and the increased volume of medical care rendered has tended to breakdown the physician-patient rapport which once was much in evidence. In former days the family doctor was more likely to be a family friend. Most patients wouldn't think of suing a family friend. Today the doctor is too busy to have many family friends and medical practice has unavoidably become more impersonal. Instead of a family physician, the patient may have a string of specialists whom he calls on when needed. These are more apt to seem like impersonal businessmen to the patient than like a family friend."

Some of the more legally oriented topics discussed by the Committee follow.

### *Medical Grievance Procedures*

A representative of the Office of The Surgeon General, U. S. Army, provided information, essentially as set forth below, to both the Commission and the Committee.

(1) Within the AMEDD (Army Medical Department) Class II command, the Inspector General system—an extension of the Army Inspector General system—is the principal grievance—resolution mechanism. This provides for detailed Inspectors General who have an obligation to receive and hear complaints and grievances, who have certain defined investigative authority and have direct access to operating officials, staff officials and command officials within the hospital or medical center organization. It is their function to receive and evaluate grievance complaints and, when appropriate, to assure redress of grievances and correction of deficiencies, within established hospital and Army command policies.

(2) Where detailed Inspectors General are not assigned to a hospital, Hospital Inspectors have been designated by commanders to perform the IG function. The authority and prerogatives of such individuals are similar to but not necessarily the same as those of Inspectors General. They are, however, effective agents for grievance-resolution.

(3) The most significant role of the IG in resolving grievances and complaints is to establish communication. The majority of grievances and complaints regarding quality of patient care result from failure of medical personnel and patients to communicate with and to understand each other.

(4) The "Open Door" concept is another effective grievance-resolution mechanism. Under this concept, officials within the hospital hierarchy are available to hear and act on complaints and grievances. This idea is not widespread within hospitals at present. It has merit, but must also be applied reasonably. If it is not, it can become disruptive and defeat its purpose.

### *Defensive Medicine*

With regard to civilian medical care, increased medical costs were attributable to higher malpractice insurance premiums and "defensive medicine" practices. Defensive medicine has two as-

pects: 1. Positive aspect—medically unjustified care provided by a physician for the purpose of reducing the possibility of a malpractice suits; 2. Negative aspect—physician refusal to undertake activities which have a high risk of resulting in malpractice litigation.

### *Medical Records*

Defense of medical malpractice suits is difficult where incomplete records fail to establish a defense or explain treatment which is thought to have existed at the time of the alleged malpractice. The lack of well documented records increase the exposure of the doctor and the U. S. to malpractice claims.

### *Theories of Liability*

Theories of medical malpractice most frequently asserted are:

Battery—a touching without consent.

False Imprisonment—wrongful detention.

Lack of Informed Consent—a lack of informed consent may result from either incomplete information as to the risks involved in a medical procedure or a failure to divulge alternative measures of treatment. If, however, disclosure of such information would vitiate treatment, sound medical judgment must prevail.

Misrepresentation—failure to inform the patient of the results of an examination.

Libel—publication of an untrue statement which is damaging to a patient's reputation.

Negligence—liability arises from conduct by the defendant which fails to meet a reasonable degree of care and skill and which injures the plaintiff.

False Arrest—commitment of a patient without either his consent or legal order.

Negligent Organization—allegation that the organization of the hospital prevented receiving care which meets the appropriate standard.

Product Liability—based on defective products placed in the flow of commerce.

### *Conspiracy of Silence*

Plaintiff's counsel may be faced with a reluctance of physicians to testify against fellow practitioners. This reluctance is also known as the "conspiracy

of silence." The doctrine of *res ipsa loquitur* provides some relief from the conspiracy of silence by allowing a plaintiff to establish a prima facie case without expert testimony if he shows: (1) Injury which ordinarily would not occur in absence of negligence; (2) The instrumentality causing the injury was at all times under the exclusive control of the defendant; and, (3) The plaintiff was not contributorily negligent.

*Legal Representation*

In all cases, the determination of whether legal representation will be provided by the United States is made by the Department of Justice.

While this topic was not discussed in great detail by the Committee, Tort Branch experience regarding representation of doctors is as follows:

Where the alleged negligent act was performed in scope of employment and the U. S. is named a defendant or co-defendant, and the doctor is uninsured, the United States will defend and, in the event of an adverse decision, pay judgment.

Where only an uninsured doctor is a defendant, the U. S. will defend the suit but will not pay an adverse judgment.

Where only an insured doctor is a defendant, his insurer, having a vital interest in the case by virtue of its insurance contract requiring that it pay a judgment against the doctor, is expected to defend the suit. Where the possibility of judgment

exceeding insurance coverage exists, Department of Justice will maintain a more active role than where such possibility is remote. In any event, Department of Justice is involved to some degree in the defense of every medical malpractice suit stemming from activities within scope of employment. If judgment is entered against a doctor alone and he is without medical malpractice insurance or his insurance coverage is insufficient and the malpractice was committed within the scope of his employment, Army policy is to support private legislative relief to cover the resulting indebtedness. If such support is not effective, however, responsibility for payment of the judgment will remain a personal one. It is the opinion of many military attorneys that physicians in the Armed Services should not be advised to carry malpractice insurance. However, the best practice is to advise the physician of the overall situation and let him make his own determination regarding malpractice insurance coverage. It might be added that physicians practicing medicine outside the responsibilities of their official duties are well advised to have medical malpractice insurance.

*Statute of Limitations*

As a general rule in tort law, statutes of limitations begin running at the time of injury. In medical malpractice litigation, however, the statute of limitations begins running at the time the injury is discovered or, with reasonable diligence, could be discovered.

**LEGAL ASSISTANCE ITEMS**

*From: Legal Assistance Office, OTJAG*

**Decedents Estate—Virginia adopts Self Proving Clause.** Virginia recently enacted a statute providing for proof of wills by notarial acknowledgement (Code Section 64.1-87.1, Acts of Assembly Chapter 116). This section is of major importance in execution of wills of Virginia domiciliaries after July 1, 1972 and accordingly has been set out in full:

Section 64.1-87.1. A will may at the time of its execution or at any subsequent date be made self-proved; by the acknowledgement thereof by the testator and the affidavits of the attesting witnesses,

each made before an officer authorized to administer oaths under the laws of the State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

STATE OF VIRGINIA  
COUNTY/CITY OF .....

Before me, the undersigned authority, on this day personally appeared .....,  
....., and  
....., known to me to be a testator and the witnesses, respectively, whose

names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ..... the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

.....  
Testator  
.....  
Witness  
.....  
Witness  
.....  
Witness

Subscribed, sworn and acknowledged before me by ....., the testator subscribed and sworn before me by ....., and ....., witnesses, this ..... day of ..... A.D. ....

(SEAL) SIGNED .....  
(OFFICIAL CAPACITY OF OFFICER)

The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken ore tenus before such court)

**STATE INCOME TAX—RHODE ISLAND** The Division of Taxation, State of Rhode Island, takes a strict view of its statute defining taxable residents with respect to military personnel. A copy of that office's memorandum on servicemen-domiciliaries is reproduced below:

**MEMORANDUM CLARIFYING RULING RE SERVICEMEN DATED JANUARY 3, 1972 PURSUANT TO CHAPTER 8, PUBLIC LAWS OF 1971, RHODE ISLAND PERSONAL INCOME TAX**

References: Section 44-30-5(a)(1) attached as Exhibit A, and Ruling re Servicemen dated January 3, 1972 attached as Exhibit B.

Under the statute, as applied to the serviceman, a resident is one whose domicile is Rhode Island at the time of entry into service. Domicile, of course, is a word of art and there are numerous court decisions defining it. In general, domicile means the permanent home. By the ruling of January 3, 1972, a person entering service from Rhode Island and retaining that address on his service records, continues to regard Rhode Island as his home, even though he merely retains an address of parents or other person as his mail address.

However, if a Rhode Island serviceman seeks to be exempted from the Rhode Island income tax, he must fulfill all three requirements of the law, namely, (1) he must maintain no permanent place of abode in Rhode Island, (2) he must maintain a permanent place of abode outside the state and (3) he must not have spent 30 days in the aggregate in the state.

Under general principles of tax law, the courts uniformly have held that exemptions are strictly construed and a taxpayer must prove by a preponderance of the facts that he is entitled to an exemption.

The major contentions advanced in claiming non-resident status by servicemen relate to subparagraph (2) of the law; claim is made that the serviceman "maintains a permanent place of abode" outside the state. Here the following paragraph in the ruling is pertinent.

"It is the position of the Tax Division that absence from the state on duty in the armed forces is of a transitory and temporary nature, irrespective of the period of service."

This is not to say that there may not be rare instances of assignment to a permanent duty station where the serviceman from Rhode Island can make a satisfactory showing that he is *maintaining* a

*permanent* place of abode off post. He must, of course, fulfill the other two requirements set forth, namely, not maintaining a permanent place of abode in Rhode Island and not spending 30 days a year in the aggregate in Rhode Island. Normally, a serviceman is assigned to a duty station for a definite period or only on a temporary tour. The statement in service orders that a serviceman is assigned to a "permanent station" does not necessarily establish the "permanent place of abode" as used in the tax law. Where the assignment to a "permanent" station is for a definite period, the portion of the ruling quoted makes it clear that this is not permanent for tax purposes. In this situation, the apparent intent of the law requires that a Rhode Island domiciliary be held to be a resident since he has not qualified for the exemption.

The above discussion rests on the language of the law as amplified by the ruling. Any contrary interpretation of residence of a serviceman would now have to come from the legislature.

**FEDERAL INCOME TAX** The Internal Revenue Service has recently called to our attention a common error on the individual income tax returns of servicemen. Many members are taking as a deduction the amount by which their actual housing expenses exceed their basic allowance for quarters. Although the quarters allowance is tax free income there is no complimentary deduction for those living expenses in excess of that allowance. Such a deduction is clearly not allowable and servicemen should be advised accordingly.

### MILITARY JUSTICE ITEMS

*From: Military Justice Division, OTJAG*

Because of the increasing number of cases involving "bomb threat" and "bomb threat hoax", it is suggested that the following sample specification be used in charging an individual for such offenses:

**CHARGE:** Violation of the Uniform Code of Military Justice, Article 134

Specification: In that (name of the accused) did at (location) on or about (time) through the use

of the (telephone) (mail) (telegraph) (other instrument of commerce), [wrongfully communicate a threat] [maliciously convey false information knowing same to be false], concerning an (attempt being made or to be made) (alleged attempt being made or to be made), [to (kill) (injure) (intimidate) (name of person)] [unlawfully to (damage) (destroy) a (building) (vehicle) (other real or personal property, to wit: (designate the building, vehicle, or property)] by means of an explosive.

### CLAIMS ITEMS

*From: U. S. Army Claims Service, OTJAG.*

**1. Processing of a Claim for a Member of Another U. S. Armed Force.**

Paragraph 11-3b of AR 27-20 provides as follows:

"A member of another U. S. Armed Force may, where an installation of his service is not immediately available, present a claim to the Army for loss of or damage to personal property incident to his service. Any such claim will be investigated and processed short of adjudication under the provisions of this chapter. The com-

pleted file will contain all required supporting documents, including evidence in support of the amount claimed and evidence pertaining to recovery from a carrier, insurer, or other third party. Such claims will be forwarded direct to the nearest installation of the service concerned for settlement."

This Service has been informed that in some instances members of another Armed Force have not been aided as required by the cited paragraph or the investigation and processing has not been

adequately developed prior to forwarding the claim for settlement. It is important that all claims officers in the field give careful attention to providing all of the services required under this provision in order that we may continue to receive full cooperation from the other Services for Army claimants.

## 2. RECOVERY—Impasse Claims

a. Paragraph 11-40b, AR 27-20, provides in part that where an impasse has been reached in an attempt to make an appropriate recovery, the file, including all recovery correspondence, will be forwarded to this Service. The file must be forwarded with a brief cover letter with the word "IMPASSE" typed in bold letters on the top of such letter. As a further administrative aid to this Service to insure that a file dealing with an impasse is properly processed by this Service, it is requested that in addition to typing the word "IMPASSE" on the top of the cover letter, that the word "IMPASSE" be printed in large letters on the front of the folder. This will insure that upon removal from the mailing wrapper the file will be clearly identifiable as an "IMPASSE".

b. In addition, review of certain completed

claims files has disclosed that on occasion negotiable third party checks and offers of settlement have been included in the file without a cover letter reflecting that the file is an impasse type case. Such checks or offers of settlement should never be forwarded with a claim file unless an impasse does exist. If an impasse exists and the file is marked as requested on the front, this Service can insure that the Recovery Division is receiving all the files upon which further action needs to be taken in order to safeguard the Government's fiscal interests.

## 3. Reporting Recoveries on DA Form 3.

Many DA Forms 3 are being forwarded to this Service which do not reflect all amounts recovered from third parties prior to and subsequent to payment to the claimant by the Government. As a result, field claims offices are not receiving credit for such amounts not reported. Unreported collections do not enter the computer system and, therefore, are not included in the fiscal year report of total amounts collected. Claims officers are urged to insure that all amounts recovered are reported on the DA Form 3 so that credit may be received for the efforts expended in making the collections.

## JAG SCHOOL NOTES

1. **USAR Conference.** The close of the Worldwide JAG Conference did not mean relaxation for the School until next year. In early December the School will host the annual USAR Conference. Over 125 senior reservists from around the nation will converge on Charlottesville for a three day meeting highlighted by addresses by Major General George S. Prugh, TJAG, and Major General J. Milnor Roberts, Chief of Army Reserves. Preparations are also underway for hosting the Second Annual Conference of Army and Air Force National Guard Staff Judge Advocates in early March.

2. **Placement Service.** Several years ago the School set up a system to connect our retirees with available civilian positions. As the School becomes aware of civilian opportunities for those about to retire, it passes them on directly. We shall continue to act as a clearinghouse. It is comforting to learn that there is a good market for JAGC experience. A recent classified ad in *The Wall Street*

*Journal* stated in part: "Opening for an experienced individual. Our ideal candidate will have 2-3 years government procurement experience. JAG experience is helpful, but not required." As more attorneys with judge advocate experience return to the civilian bar, the incidence of such ads is sure to increase.

3. **ABA Standards.** Since the message to the field advising that the ABA Standards on Fair Trial and Free Press, the Function of the Trial Judge and the Prosecution and Defense Function are to be applied to us, the School has had several requests for these publications. Unfortunately, they are not available from the School. Individuals desiring these publications are advised to write to:

Circulation Department  
American Bar Association  
1155 East 60th Street  
Chicago, Illinois 60637

The cost per copy is \$2.00 per volume or \$1.00 in lots of 10 or more.

The School has been using these materials for some time in its instructional program with the basic class and military judge and military justice courses.

**4. New Basic Class.** The 66th Basic Class began at the School on 24 October. This class, which numbers 61 judge advocates, will graduate on 15 December.

**5. Publications.** The School has written and the Department of the Army has published a number of new pamphlets in the past year. The Legal Guide for Commanders (DA Pam 27-19), the Special Court-Martial Convening Authorities Handbook (DA Pam 27-18) and The Legal Clerks Handbook (DA Pam 27-16) are for use outside the judge advocate office. The School would like to know the extent of use, availability and reception of these publications.

## PROCUREMENT LEGAL SERVICE

*By: Procurement Law Division, TJAGSA*

**BRAND NAME OR EQUAL SPECIFICATIONS: Failure to list desired salient characteristics. Ms. Comp. Gen. B-175955, 25 July 1972.**

On a formally advertised brand name or equal procurement for lead detectors, the procuring activity listed seven features of the brand name product as salient characteristics. The low bidder offered its lead detector as an equal to the brand name product. Upon evaluation by the procuring activity, the low bidder's product was determined not to be an "or equal" item and the bid was rejected as being nonresponsive. This determination was based on the failure of the low bidder's lead detector to possess certain desired characteristics of the brand name product. None of the missing features had been listed with the salient characteristics in the invitation for bids.

Ruling on the low bidder's protest, the GAO found that the procuring agency failed to comply with the pertinent part of section 1-1.307-4(b) of the Federal Procurement Regulations which stated that "Brand name or equal purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced product which are essential to the needs of the Government." Based upon this finding the Comptroller General held that the IFB was defective and that no award should have been made thereunder. However as an award had already been made to another bidder and performance was completed, the GAO held that failure to list the salient characteristics did not necessarily require cancellation of the contract. Given these circumstances, the GAO held it

was not in the best interests of the Government to cancel the contract.

**COMMENT:** Although this procurement did not involve a military department, ASPR § 1-1206.21 (b) contains similar language to that involved in this decision. In addition to clearly demonstrating the reluctance of the GAO to order the cancellation of a contract, this decision illustrates one of the difficulties caused by brand name or equal specifications. The success of the price competition in a formally advertised procurement is dependent on the bidders on substantially the same product or service. Thus the necessity in formal advertising for clear, complete and definite specifications. The requirement in a brand name or equal procurement to list the salient characteristics is intended to place the bidders on an equal basis in preparing their bids. A procuring activity's failure to list the desired or salient characteristics of the brand name product forces the bidders to guess which characteristics are essential. The situation would eliminate any semblance of equality in the bidding process. Any invitation which fails to list all the salient characteristics or lists characteristics that are not essential is defective. Ms Comp. Gen. B-173290, 19 October 1971. If presented with such an invitation prior to award, the GAO would order that the solicitation be cancelled. 43 Comp. Gen. 76., 766 (1964). Related to this problem is the confusion created by paragraph (a) of the Brand

Name or Equal clause. ASPR § 1-1206.3(b). This clause provides that "Bids offering 'equal' products will be considered for award if such products . . . are determined by the Government to be equal in all material respects to the brand name products referenced in the Invitation for Bids." This language has been interpreted by some bidders to mean that equality may include a comparison of features other than those listed as salient in the IFB. The GAO considers *material aspects* to mean only those characteristics listed in the specification as "salient characteristics." Ms. Comp. Gen. B-175253, 25 April 1972. Consequently the Comptroller General has recommended that the Brand Name or Equal clause be revised to eliminate the misleading language. Ms. Comp. Gen. B-175292 (1), (2) and (3), 19 June 1972.

When a procuring activity drafts a specification based on a brand name product, there is sometimes a tendency to list every characteristic of the brand name product as salient. This practice could lead to a successful protest to the GAO that the specification is unduly restrictive. 32 Comp. Gen.

354 (1953). In addition, the manufacturer of the brand name product may realize that no one else can be a responsive bidder. This realization would eliminate any incentive for the maker of the brand name product to offer his best price to the Government. If an agency can justify the purchase of a specific product, the chances of obtaining a fair and reasonable price are better on a negotiated sole source contract than with a formally advertised procurement in which only one bidder can be responsive.

If the successful bidder in the brand name or equal procurement offers an "equal" product, he can be held responsible to deliver an end item that contains the characteristics listed as salient in the solicitation. If, after delivery, the procuring activity determines that the "equal" product does not have one of the characteristics of the brand name product, the Government has no recourse against the contractor unless the characteristic was included in the salient features listed in the solicitation. *Union Sewing Machine Co.*, ASBCA No. 1318, 1954.

## PERSONNEL SECTION

From: PP&TO, OTJAG

- 1. RETIREMENTS.** On behalf of the Corps, we offer our best wishes to the future to the following officer who retired after many years of faithful service to our country.

LTC HUIE, Douglas T.

30 September 1972

- 2. PROMOTIONS.** Congratulations to the following officers who were promoted to the grade of *COLONEL, LIEUTENANT COLONEL* and *MAJOR* on the date indicated:

COL Harrell, George W.  
 COL Moore, Fred H.  
 COL Cook, Peter H.  
 COL Donahue, Joseph E.  
 COL Kenyon, Nathaniel  
 LTC Raby, Kenneth A.  
 LTC Thornock, John R.  
 LTC Whitmore, Richard A.  
 MAJ Morrison, Fred K.

11 September 1972  
 11 September 1972  
 12 September 1972  
 12 September 1972  
 12 September 1972  
 11 September 1972  
 11 September 1972  
 11 September 1972  
 12 September 1972

- 3. Orders requested as indicated:**

### COLONELS

NAME	FROM	TO	APPROX DATE
ADAIR, Don W.	USA Jud	USA Jud w/sta Ft Sam Houston	Oct 72

## LIEUTENANT COLONELS

NAME	FROM	TO	APPROX DATE
BYERS, Robert D.	USA Jud	Fifth USA Ft Sam Houston	Oct 72
WEBB, John F., Jr.	USA Claims Svc	Hq, MDW	Sep 72

## CAPTAINS

BAILEY Edward G.	USARV	Hq WA MTMTS Oakland, CA	Feb 73
BEEVERS, Wiley J.	82d Abn Ft Bragg	Korea	Feb 73
BORCHERS, Richard	Hq Fifth USA Ft Sam Houston	Korea	Jan 73
DYAS, Richard W.	Hq First USA Ft Meade	Thailand	Dec 72
FRYER, John W.	Fifth USA Ft Sam Houston	USATC Ft L'Wood, MI	Dec 72
GLUCK, Stuart A.	USAG Ft Bragg	Korea	Feb 73
HENDRY, Alexander	USAG Ft McPherson	Hq USARHAW	Dec 72
HUNT, Arthur L.	USARV	USA COORD Elm Ft Sheridan	Feb 73
JONES, John H., Jr.	Engr Ctr Ft Belvoir	USA Engr Sch Ft Belvoir	Oct 72
KALE, Richard B., Jr.	USAREUR	USATC Ft Jackson	Feb 73
KANE, Christopher	USAREUR	USA Engr Ctr Ft Belvoir	Feb 73
KIMBALL, Robert B.	USAG Ft Meade	Korea	Feb 73
LABOWITZ, Daniel I.	Sch Inf Ctr Ft Benning	S-F USMA	Oct 72
LANE, Thomas C.	USATCI Ft Ord	USAREUR	Dec 72
MARKLAND, Richard	Flt Tng Ctr Ft Stewart	VFGHospital	Feb 73
MOBERLEY, Kirk B.	Inf Tng Ctr Ft Jackson	Korea	Mar 73
ROZZELL, Steirly R.	Fifth USA	Korea	Feb 73
RYAN, Kevin M.	S-F USMA	USATCI Ft Lewis	Feb 73
SAUNTRY, John P., Jr.	USARYIS	Hq, MDW	Jan 73
SHAPIRO, Michael F.	Korea	USAG Ft MacArthur	Jan 73
SHELDAHL, Baron C.	USAREUR	USA Jud, Falls Church	Feb 73
SHEPHERD Robert L.	Tng Ctr Ft Eustis	Deseret TC Salt Lake City	Nov 72
SHORE, Elbert R.	1st Cav Div Ft Hood	USAG Aberdeen PG	Jan 73
SIMON, Samuel A.	Log Comd Ft Lee	OTJAG	Nov 72
STOHNER, George A.	Sixth USA	Korea	Feb 73
SUTERA, Vincent P.	Engr Ctr Ft L'Wood	USAG Ft Leavenworth	Dec 72
SUTTON, Roger L.	USAIC Ft Benning	USAG Ft B. Harrison	Nov 72
TODD, Stephen K.	USATCI Ft Jackson	OTJAG	Nov 72
TRACY, Thomas G.	Korea	4th Inf Div Ft Carson	Mar 73
VARO, Gregory O.	USAAC Ft Knox	Korea	Jan 73
WAGNER, Anthony L.	Engr Ctr Ft Belvoir	USAREUR	Jan 73
WALLACE, John K., II	USAAC Ft Knox	Korea	Mar 73
WALTON Abbott B.	USA Inf Sch Ft Benning	USAIC Ft Benning	Oct 72
WASSERSTROM, Richard	USARYIS	Hq, MDW	Jan 73

## WARRANT OFFICERS

HALL, Jackie E.	Hq USARHAW	25th Inf Div Hawaii	Nov 72
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4. Congratulations to the following officers who received awards as indicated:

COL Crouchet, Jack H.	Meritorious Service Medal	July 69-July 72
COL Howard, Kenneth A.	Meritorious Service Medal	Jul 70-Jun 72
COL Hammack, Ralph B.	Legion of Merit (1 OLC)	Aug 69-Jul 72
COL Wondolowski, Peter S.	Meritorious Service Medal	Jun 70-Jun 72
LTC Alley, Wayne E.	Meritorious Service Medal	Jul 70-Jun 72
MAJ Adams, Allen D.	Meritorious Service Medal (1 OLC)	Mar 70-Jun 72
CPT Ahern, Terrance	Meritorious Service Medal	Dec 70-Sep 72
CPT Devine, Frank E.	Army Commendation Medal (1 OLC)	Aug 71-Aug 72
CPT Ehrhard, Lawrence R.	Army Commendation Medal	Jan 70-Jun 72
CPT Gallenstein, Robert I.	Bronze Star Medal (2 OLC)	Feb 72-Sep 72
CPT MC Grath, Barry G.	Army Commendation Medal (1 OLC)	Dec 70-Aug 72
COL Lennon, Daniel A.	Legion of Merit (2d OLC)	Jan 70-Jun 72
COL Sneed, Emory M.	Legion of Merit (1st OLC)	Jul 70-May 72
CPT Croyle, Robert G.	Army Commendation Medal	Sep 69-Jul 72
CPT Gentry, William E.	Army Commendation Medal	Jan 71-Oct 72
CPT Grimes, Samuel G.	Army Commendation Medal	Nov 70-Sep 72
CPT Henderson, Joe B.	Army Commendation Medal	Jan 71-Jul 72
CPT Ruth, Patrick	Army Commendation Medal	May 71-Jul 72
CPT Sullivan, Patrick R.	Army Commendation Medal	Jul 69-Sep 72
CPT Watts, Theodore H.	Army Commendation Medal	Oct 71-Oct 72

5. **EXCESS LEAVE.** AT 601-114 is being changed to permit Excess Leave officers to enter OJT for a minimum period of five full consecutive days as opposed to seven days. This change is to permit OJT on holiday periods not now permitted under the seven day rule. It is anticipated that a change will be published on or about 1 November. While it may be desirable to remove any minimum time limitation, such action could be construed as violating the present restrictions on the use of appropriated funds to provide basic legal education to military personnel.

6. **Transferability of Academic Credits Achieved at USACGSC:** The Commission on Accreditation of Service Experiences of the American Council on Education has reported its evaluation of the resident academic program at USACGSC during academic year 1970-71. The Commission has recommended the granting of 15-35 hours of graduate-level credits in the areas of Public Administration, Management, Comparative Government, International Relations, OR/SA, and Advanced Logistics Management. It also recommends a total of 30 semester hours at the Baccalaureate level in the areas of History, Political Science, International Relations, and Management. This amount of graduate and undergraduate accreditation is only avail-

able for officers graduating from CGSC in 1971 and subsequent years. Graduate accreditation for officers graduating prior to 1971 is not possible, but some limited undergraduate accreditation is possible on a case by case basis. Those recommendations of credit are maximum figures. The amount actually accepted for transfer depends upon the applicant's future academic goals and the regulations of the admitting institution on transfer of credit. If you are pursuing or plan to pursue a degree and are a CGSC graduate, your school may obtain a copy of the report by writing to:

The Commission of Accreditation of Service Experiences  
American Council on Education  
1 Dupont Circle  
Washington, D. C. 20036

Additionally, the school may request an official copy of the transcript by writing to:

Commandant  
US Army Command and General Staff College  
Ft Leavenworth, KS 66027

7. Common Table of Allowances (CTA) No. 50-913, "Office Type Furniture and Equipment", dated 15 August 1972, contains the authorization

for obtaining executive and unitized wood furniture (chairs, tables and desks), davenport, drapes and rugs for court rooms, legal assistance offices deliberations rooms and military judges offices. All judge advocates are encouraged to make every effort to obtain suitable furniture and equipment.

**8. RA Appointments:** Applicants for RA commission should expect a substantial period of delay after their initial notification from PP&TO of their tentative acceptance for an RA appointment. This is necessary as the RA Appointments Section must not only complete the administrative work but the application must be sent to the senate for confirmation. An example of the inherent delay is that applications received after the close of this session cannot possibly be processed until some time in

January or February, 1973. If you have any question on your RA application please contact PP&TO.

**9. DA CIVILIAN ATTORNEY POSITION**

*Title & Grade*

General-Attorney (Procurement)

GS 0905-12

*Organization or Agency*

HQ US Army Procurement Center

Office of the Staff Judge Advocate

(Frankfurt, Germany)

APO New York 09757

All interested personnel please submit Std Form 171 to Chief, Personnel Plans and Training Office, Office of the Judge Advocate General, Washington, D.C., 20310.

**CURRENT MATERIALS OF INTEREST**

**AR's**

AR 340-19, 18 Sep. 1972, effective 1 November 1972, "Release of Information Pertaining to Disciplinary Actions." This revision expands policy guidelines applicable to release of information to the public concerning persons accused of offenses.

**Courses**

PLI, Fifth Annual Criminal Advocacy Institute, 17-18 Nov. in New York; 8-9 Dec. in Detroit and 19-20 Jan. in Las Vegas. Cost \$100. Write to Practising Law Institute, 1133 Avenue of the Americas, New York, New York 10036.

PLI, Defending a Narcotics Case, 10-11 Nov. in Atlanta; 8-9 Dec. in San Francisco; 13-14 Jan. in New York. Cost \$100. Write to Practising Law

Institute, 1133 Avenue of the Americas, New York, New York 10036.

PLI, Law Office Management, 13-14 Oct. New York; 3-4 Nov., Miami Beach; 30 Nov.-1 Dec., Las Vegas. Cost \$100. Write to Practising Law Institute, 1133 Avenue of the Americas, New York, New York 10036.

**Articles**

Bond "Proposed Revisions to the Law of War Applicable to Internal Conflict, 12 Santa Clara Lawyer 223 (1972).

**Army Lawyer Distribution**

Beginning with this issue The Army Lawyer will be sent to all Reserve judge advocates on a regular basis.