



THE ARMY LAWYER

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THE JUDGE ADVOCATE GENERAL'S CONFERENCE

The 1971 Judge Advocate General's Conference was held at Charlottesville, Virginia, from Sunday, 3 October to Thursday, 7 October. This and the next issue of *The Army Lawyer* will present highlights of the Conference.

Following registration and the traditional Ice Breaker on Sunday, the Conference began work on Monday morning with welcomes from Colonel Douglass, Commandant of the School, and General Prugh. Colonel Chase, Staff Judge Advocate, First United States Army, and moderator of the day, presented his report and then introduced Colonel Sneed, Lieutenant Colonel Mundt, and Major Brown for the Personnel, Plans and Training Office presentation. A summary of this presentation appears in the Personnel Section, *infra*. Lieutenant Colonel Wagner, Director, Reserve Affairs Department at the School discussed the role of the active Army in training reserve judge advocates. This topic is of particular interest with the enlarged summer on-the-job training program for reservists as discussed in the October issue of *The Army Lawyer*. General Persons then reported on the United States Army, Europe. General Hodson closed out the morning with a report on the Army Judiciary today.

The Monday afternoon session began with a talk by Mr. Dolf Droge, National Security Council Staff, The White House, on Vietnam

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and the Vietnamese. Mr. Droge traced our involvement in Vietnam, and discussed the lessons to be learned from the experience. He emphasized that the primary lesson to be learned from Vietnam is that an understanding of the people and their culture is essential to any solution to their problems.

The Conference Reception and Banquet was held on Monday evening, with a keynote address by The Honorable Robert F. Froehlke, Secretary of the Army. Excerpts from his remarks appear *infra*.

The Tuesday session began with the Third U. S. Army report from Colonel Kelso, who was also moderator of the day. Following were reports on Civil Law Developments by Lieutenant Colonel Fontanella, Chief, Civil Law Division at the School; Litigation-Status and Trends from Colonel Carne, Chief, Litigation Division, OTJAG, and an address by General Babbitt, Assistant Judge Advocate General for Civil Law. Next was a report on the operation and control of non-appropriated funds by Lieutenant Colonel Weinstein, Director of Investigations, U. S. Army Criminal Investigations Command, Lieutenant Colonel Absher, formerly assigned to Non-Appropriated Funds Branch, Personal Services Division, Office of DCSPER, DA, and Major Rogers, Procurement Law Division, at the School. The morning was closed out by a discussion of the legal assistance pilot program by Captain Vernon, Legal Assistance Officer, Fort Monmouth, and Colonel Zalonis, Chief, Legal Assistance, OTJAG. They traced both the lessons learned in the implementation of the program and the program's future.

The afternoon session was devoted exclusively to a symposium on Drug Use and Abuse in the Army. Moderated by Lieutenant Colo-

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The Judge Advocate General

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nel Fontanella, the speaker was Brigadier General Robert Gard, Director of Discipline and Drug Policy, Department of the Army. Other panelists were Colonel Haughney, United States European Command; Lieutenant Colonel Movsesian, United States Army Vietnam, and Colonel Lennon, XVIII Airborne Corps.

The Wednesday session began with Colonel Taylor's report on the Fifth U. S. Army. Colonel Taylor also acted as moderator for the day. He was followed by Brigadier General Lawrence Williams, Assistant Judge Advocate General for Military Law. A discussion of the recent developments in Criminal Law was given by Lieutenant Colonel Overholt, Chief, Criminal Law Division at the School. Selected topics in the administration of military justice were then presented. Colonel Hugh Clausen, Chief, Military Justice Division, OTJAG, discussed delays in processing of special courts-martial. Colonel Reid Kennedy talked on the military judge and the "Cause Celebre." Finally, Colonel Arthur Slade, Staff Judge Advocate, U. S. Continental Army Command, discussed the legal problems of Personnel Control Facilities. Colonel Henry Tufts, Commanding Officer, The U. S. Army Criminal Investigation Command, presented an outline of his operations. The morning closed with a talk on racial problems in the Army by Mr. Nathaniel Jones, General Counsel, National Association for the Advancement of Colored People.

The afternoon session began with a panel on the Commanders View of Military Justice, Lieutenant Colonel Overholt of the School moderating. Panelists were Colonel Edward Gibson, Commanding Officer, Headquarters Command, United States Army Engineer Center and Fort Belvoir; Major Cornelius T. Creeden, Correctional Officer, Post Stockade, Fort Bragg; and Captain Barry McCaffrey, United States Army Armor School, Fort Knox, Kentucky. Following this panel the Conference broke into special interest meetings of Judicial Officers, Procurement Attorneys, CONUS Staff Judge Advocates, Overseas Staff Judge Advocates, and one

group discussing Personnel topics. Wednesday was capped by an Oktoberfest party that evening.

Thursday, the last day of the Conference, was moderated by Colonel Thomas Reese, who presented a report on Sixth U. S. Army. Major General Harold E. Parker, The Assistant Judge Advocate General then addressed the Conference. Following was a presentation by the members of the 20th Advanced Class concerning the Crisis in Credibility: The Problem and a Proposed Approach. A summary of this presentation appears *infra*. Mr. H. Lee Turner, Chairman, Legal Assistants Committee, American Bar

Association, then discussed para-legal personnel. A summary of this presentation also appears *infra*. Finally, The Judge Advocate General closed the Conference with his address.

The Conference dealt with some old problems, such as the administration of criminal justice and personnel. But the emphasis was on the current difficulties of drug abuse and racial discrimination, and our "Crisis in Credibility." Some solutions were offered, and a new para-legal approach was discussed. Some of these ideas are now being implemented.

SECRETARY OF THE ARMY ADDRESSES CONFERENCE

Robert F. Froehlke, Secretary of the Army, gave the keynote speech at the Banquet during the 1971 Judge Advocate General's Conference. The following are excerpts from his remarks.

"I hope my presence here tonight again convinces you that what you are doing is important and of equal importance, I hope that it announces loudly and clearly to the Army generally that you gentlemen are important to the Army's mission. . . .

"I am very proud and very happy to be the Secretary of the Army for two reasons. One. I think the Army's mission is vital to world peace and I am happy to play a part for world peace, and Two, I like the people with whom I'm serving in the Army and if I can work on something of importance with good people, I am happy and I am satisfied. Now, what are my objectives in the Army? . . . Obviously, the number one overriding objective is national security. I have set four interim objectives. If we can go and meet them, we are going to be much more successful in insuring the national security of this country. Interim objective number one. Pride. I hope whenever my tenure as Secretary of the Army ends people will be able to say the man wearing the uniform is wearing the uniform a little more proudly. I am very disturbed as I

go around this country and particularly, talking to our young soldiers, and find that perhaps the main reason they don't like short hair is that this identifies them as soldiers when they are in town on pass. All of our people are not wearing that uniform with pride. None of us will equal our true potential unless we are proud of the uniform we wear. We must convince the young man wearing the uniform of his country that what he's doing is important. I want to do this because until we make all of our soldiers, all of our officers, proud of wearing the uniform we aren't going to fulfill our true potential.

"My second interim objective is to develop a more positive attitude in the Army. We have had many problems and we have many problems in the Army, but it is high time we in the Army recognize we have good people, recognize that we can solve these problems as soon as we candidly identify them, put them on the table and discuss them. . . .

"Three. I want to see more excitement in the Army. There are three things that we can do to make this excitement. One. We are going to have some successes. I happen to think that the Army has just about bottomed-out for a lot of reasons. The main one is the fact that the American public is inherently fair and the American public has been taken

on a ride the last two or three years and has gone along on the ride but I believe I see sure signs that the American public is gradually saying, Gee, all these problems aren't the fault of the Army. When that day arrives, the American public is going to say, we're for the underdog and I think the Army has just about reached that underdog role. I also think the makeup of the Army is such that as soon as we identify our problems we'll go to work on them. As an example, I'm very proud of the job that Bob Goddard is doing with drugs. We could sit back in the Army and say we have no problem in the Army with drugs other than the problem of society and we would be dead right. Problems of drugs, problems of crime, problems of race that we have in the Army are problems of society. But in all three areas we are not sitting back and saying it is the problem of society.

We are saying we have a unique opportunity in the Army because we are a little more structured, because we are a closer knit group of people, we can lead society in solving the problems of drugs, race and crime. And this is going to help us a great deal in making success. The second reason why we are going to have more excitement in the Army is because we are going to start having some fun. I happen to think as a manager you should have fun doing what you're doing and I encourage all young people I see in the Army, if you don't have fun most of the time, for heaven's sake, get out of the Army because your job should be fun. You should be excited, you should be satisfied, you should be enjoying yourself. . . .

Lastly, we are going to have excitement in the Army because we are going to encourage people to innovate. Now, that's a good word. And everyone says, wonderful, innovate. But I want you here in the leadership of the JAGC to know that as leaders you have an obligation not to just tell your people to innovate but you have a very difficult assignment of encouraging them to innovate. One of the most encouraging things you can do to your people is to say, innovate and I will

overlook a mistake. If you say innovate, and cut off the neck of the individual who makes a mistake, he's going to have his blinders on, he is going to trudge down the road without looking right or left. I encourage, I entreat, I order, if I can, with your young troops let them have their head and let them make that mistake and don't cut off that head when they made a mistake because when you do you will ruin one career and you will encourage all the rest of your people not to innovate.

"Finally, my fourth objective is to regain the credibility of the Army. Now this obviously is the most important, and it is the easiest to come by. Because credibility is what you appear to be. Integrity is what you are and far and away the majority of people that I've encountered in the Army have integrity. This begins with General Westmoreland and goes right on down through the ranks. I'm an old salesman and I've got a good product and I can sell the credibility of the Army when I am selling people of integrity. Don't overlook the importance of this credibility. In a democracy the Army can exist just so long without it and today we are not credible. Don't stay on that post where you are living and enjoy yourself with your friends in uniform. Every officer in the Army has an obligation to get off that post, to associate with civilians and deliver the message about what kind of a mission we have and by our actions to let our civilian associates know what kind of people we are. Those are the four objectives that I hold out for however long my tenure lasts.

"I hope another technique we can use in the next months, years, decades, is to encourage people to be more candid. I have observed that there is a tendency to not put things on the table and call a spade a spade. . . . I encourage all of you to be completely candid as long as you combine that with warmth. A warmth that says to the individual to whom you are being candid, I like you and I trust you. If we can exhibit that warmth and then tell it how it is, we are going a long way to achieving our objective.

"Now let me make a few comments about the military law. There is an unfocused, but strongly felt dissatisfaction with the legal system in the military. This is a fact. Now what causes this? I've found that it's in three areas. First, there is a feeling, particularly among the junior officers, that our legal military system takes too much time. Now it's relatively unimportant whether it does or it doesn't. It is vital that our junior field officers think it does. And it is important that we do two things. One. Speed up justice as fast as we can and two, explain to these field commanders why justice sometimes doesn't move as fast as the company commander would like to have it and this fellow who has been AWOL for twenty-four hours—why he is not in Leavenworth for twenty-four years. And I'm sympathetic to that company commander. Someone hasn't explained it to him and that's your job. Secondly, there is a feeling, again primarily among those all important junior officers, that our system is non-responsive to the needs of discipline in the military. Again, the man who goes AWOL—throw the book at him because that's going to keep all people from going AWOL. Now that isn't, as lawyers know, the way to look at it, but you have an obligation to explain it. . . .

You have an obligation to sell our system. If you prefer you can use the word, explain. I like to use the word sell. Sell it to the company grade officers. I know you are over-worked. You are spending too much time in the court. I recognize this but devote some time to working with the field commanders. Secondly, speed up the paper work to the extent you can. Three, to the extent you can, spend some time in the field. You'd be amazed the impression you make if you just appear for one hour on the rifle range just talking to some of the men and talking to some of the officers, and talking to the range officer. You identify yourself with the man in the field. Now, granted work is piling up back in the office but you have a selling job to do, so sell, speed up the paper work and get out in the field occasionally and identify with this pla-

toon leader, company commander, battalion commander, brigade commander. It will pay off in the long run.

"Now, we have another duty and that is to sell the Army. And this is, of course, a much more important duty. I could list all sorts of problems we have—I'm going to list four or five and just throw out to you suggestions as to what I do when I meet with our civilian friends in an attempt to explain to them why all the problems of the world are not caused by the Army and how the Army is trying to solve it's own problems. Problem number one. Vietnam. There is no question that the number one problem that America faced in the 60's was Vietnam. It didn't divide America—it fragmented America. And because the Army was the one entity most involved in Vietnam, of course, it fragmented the Army. Now, I am disturbed about Vietnam most because people say the Army caused Vietnam. Don't ever let anybody make that statement. I am proud of how the Army conducted itself in Vietnam. We didn't say to go into Vietnam, civilian leadership said go to Vietnam. We didn't say how we should conduct the war in Vietnam, civilian leadership directed the parameters. We fulfilled our duty, we observed the parameters set down by civilian leadership and the most encouraging part of Vietnam is that we are extricating ourselves from Vietnam in an honorable fashion and when the Army is extricated, over fifty percent of our problem will dissolve into the night.

"The draft is creating a problem, because we are doing two inconsistent things and please, explain these two actions because the papers have been and will be accusing me specifically, and you because you are part of the team, of one hand not knowing what the other hand is doing. We are going to be drafting people while we are letting other people out of the Army and sometimes forcing other people out of the Army. And the hue and cry will be, there they go again. They don't know what they are doing. We need the draft for three reasons. One. We are not getting suffi-

cient enlistments of combat arms personnel. Two. We need the draft for the brainpower. At this stage, and I again say the trend is encouraging, but at this stage we are not getting sufficient mentally competent people through the enlistments for the very skilled professions that we need in the Army. Three, we need the draft for the subtle pressure that the draft gives us towards enlistment. But at the same time, we are going to be letting people out of the Army. We aren't going to be letting the combat arms out, we aren't going to be letting these people in the skilled technological fields out, we are going to be letting noncommissioned officers and officers out of the Army because we have cut down our Army from roughly a million and a half to around nine hundred thousand. When we cut down after Korea, you'll recall, we let the reserve units come out including generals, field grade, company grade and noncommissioned officers and when the unit left we still had a very symmetrical organization. We did not call our reserves to active duty at the time of Vietnam. And we cut down the size of the Army. We let the draftees out, the privates, we brought fewer in. We cut it off from the bottom and we overloaded with noncommissioned and commissioned officers. Now, I don't mean to sound cruel; I don't mean to sound cold; I mean however, to sound as the head of the Army at this time we are going to look at our noncommissioned officers and we are going to keep the good ones and we are going to attempt, if we have to, to let others go—the less capable. I think there is no other choice and I think it makes a lot of sense and when we get through, we're going to have a better Army. We are going to tighten standards. Frankly, the past two or three months that I've been the Secretary of the Army, I have seen signs in the recruiting that our standards haven't been sufficiently high. We are not going to just meet our recruiting standards and lower our man standards. We are going to have better types in the Army and I think we should be prepared for that.

“Finally, we have had a serious problem in the Army and this is something that really

bugs me. I can't tell you how many well meaning fathers, wives, uncles, etc., have called me and said, Bob, I have this wonderful son, husband, cousin, who is a graduate—sometimes has a PhD—who was drafted and you know what that foolish Army is doing? Putting him in the infantry as a buck private. And my reply has been we have a problem in the Army. General Westmoreland refers to it as educational inversion. We made a serious mistake, a number of years ago, when in our draft we allowed the educational deferment. I don't think that was fair. I don't think it was wise. And what happens, a young man stays in education—and eventually he gets a degree. Sometimes he gets his PhD, but eventually, he comes out and then he's drafted. Almost without exception anybody who was drafted went into the combat arms and this created real problems. First of all the fathers saying my boy with a B.A. or a Master's or PhD. serving as a rifleman. But worse than that. This rifleman was being led by a non-commissioned officer who did not have the educational background that he had, and sometimes there is nothing worse than an immature, very intelligent individual. He doesn't know how to work with that noncom and it has led to many problems. But I suggest to you that many of these bachelors, masters, PhDs have got a post doctorate in human relations if they had a positive attitude while they were serving.

“Now these are some of the problems we are going to solve. We are well on the way to solving. In conclusion, I have a little vignette I'd like to relay because I think it's important that we do be positive. It's a story about Cardinal Maury who was a French prelate back in the 18th century and he was elected to the French Academy of Science, and he did a strange thing when he was elected. He accepted the honor but he did not accept any of the perquisites that went with the office. And his friends said, Cardinal, you are being inconsistent. You accept the honor of the office, you don't accept any of the dignities that go with the office. And in explaining, he said, when I consider myself I am nothing and

therefore, I can't accept these perquisites of the office but when I compare myself I am superb, and therefore I will accept the office. I suggest to you that when people talk about America, first and foremost, we should and we are considering America and America has innumerable problems, race, poverty, education, health, transportation, housing, we could go on and on. All of them serious problems which we are considering and when you consider America we are nothing but that is not

enough. We must also compare America and you determine the criteria that you want to use to determine greatness and you choose any other country in this world with whom you want to compare America. You choose the criteria—you choose the country—and when you compare America, she is superb, and that's a message we too often fail to deliver. We are considering our problems but as we do, compare America and when you do, she is superb."

ADVANCED CLASS STUDIES CRISIS IN CREDIBILITY

Comments from the field made to the Chief of Staff, General W. C. Westmoreland, the Matheson Report and the McCaffery report, recently focused attention on a seemingly prevalent belief on the part of many commanders, especially junior leaders and senior non-commissioned officers, that the military justice machinery had completely collapsed. Further, many of them view this "collapse" as a major contributor to the collapse of discipline in the Army. To come to grips with this problem, The Judge Advocate General's School used an adaptation of the Advanced Class Think Tank Program. The 20th Advanced Class was divided into five groups, at the very beginning of the academic year, each of which was to study a facet of the problem and reach conclusions.

One group studied junior enlisted men (E-1 through E-5); group two looked at senior non-commissioned officers; group three approached the problem from the view point of the company grade officer; group four looked at special court-martial convening authorities; and group five studied the Staff Judge Advocate's part in the credibility gap. The Matheson and McCaffery and Army War College reports served as source materials for the studies. The studies were conducted in a "Think Tank" atmosphere, with the groups meeting in closed session to provide maximum exchange of ideas.

The guideline for the study was not only to decide what needed to be done, but to "do it."

Following almost a month of intensive work, the Advanced Class, recognizing that communication was at the heart of the problem, isolated the difficulties inherent to their focus of study, decided what should be done and proposed methods for implementation of their solution.

The group studying junior enlisted men concluded that the soldier lacks appreciation of and confidence in the criminal law system.

To solve this problem it was determined that emphasis should be placed, not on imparting legal facts, but on achieving an understanding of the fairness of the system.

The priority solution for achieving this goal is a new lesson plan. The lesson plan is designed to be taught by a team of two individuals, the unit's company commander and a JAG officer whose principal function is that of defense counsel. The company commander is employed so that his primary role as the front line administrator of justice and fairness will be made clear to the enlisted men and to the company commander as well. A defense counsel is utilized so that enlisted men will actually see an attorney specifically interested in their welfare. The format was designed to reduce the problem of credibility by increasing communications between the enlisted men and the two officers, who are most directly involved with their legal problems. (It has the added advantage of exposing counsel to groups of enlisted men in their environment.)

In addition to the lesson plan, the Advanced Class group developed a series of leaflets to highlight some of the areas of military law with which the enlisted man is likely to come into contact, and to call his attention to other areas with which he may not be familiar. The leaflets are in a short, readable format, recognizing the educational level of the target group. Topics are:

"Here Comes the Judge," an explanation of the role played by the military judge in a court-martial.

"Nobody Knows the Trouble I'm In." An invitation to the soldier to use the Legal Assistance Officer, with a sample list of Legal Assistance services available.

"Summary Court-Martial." An explanation of the purpose and composition of a summary court, and of the accused's rights at a summary court-martial.

"Help! I've Been Robbed!" Informs the soldier that the Army may reimburse him for lost or damaged property, and suggests the procedure for initiating a claim.

"Do You Know About the Article 138 Complaint?" An explanation of the purpose of Article 138 and of the procedure for initiating a complaint.

"So You're Getting an Article 15." An explanation of the Article 15 procedure and of the soldier's rights thereunder.

"Three Ways Out of the Army." A discussion of the types of discharges with which a soldier may be separated, and of the importance of obtaining an honorable discharge.

The senior noncommissioned officer and company grade commanding officer groups determined that the lack of faith in the military justice system resulted, in part, from a lack of readily accessible understandable information concerning military law. Accordingly, the students prepared a "Legal Guide for Commanders" for use by officers and non-commissioned officers at the Company level. The Guide, 225 pages long, is in desk book

form with a detailed table of contents and index permitting quick identification of the sections in the handbook related to the problem at hand. The book covers all areas of military justice with which the commander deals, and administrative actions, restrictions on private activities, disposition of personal property, legal assistance, civil rights, and complaints under Article 138, UCMJ.

In addition to the Legal Guide, the group developed a series of eight lesson plans for use in classes with company grade officers and noncommissioned officers. The lessons are based upon chapters in the Legal Guide, which serves as the text for the lessons.

The lessons were written for presentation by a judge advocate officer. Each lesson has several cases or problems for group discussion. Free and open discussion is essential to the success of the lessons. However, the lessons include discussion questions and an outline of teaching points for the instructor to develop with his students.

The Advanced Class group studying special court-martial convening authorities, again recognizing that a lack of readily available knowledge concerning the military law system is a major impediment to an understanding and appreciation of the function of the system, prepared a Desk Book for Special Court-Martial Convening Authorities. This Desk Book contains materials on all military justice aspects, including post-trial actions. Used in conjunction with the Senior Officer's Legal Orientation Book, the special court-martial convening authority now has a fund of information on military law at his fingertips. This will assist the officer to fulfill his function in the system with greater efficiency and a better understanding of the part he plays in the entire system.

Finally, the group looking at the Staff Judge Advocate prepared a report entitled "The Judge Advocate: A Bridge of Understanding." This report focuses on the judge advocate and his status as to the deterioration in credibility in the military justice system. The

report outlines the judge advocate's responsibilities, spotlights his various clients, states his relationship with The Judge Advocate General, and outlines the operations of a Judge Advocate office.

All of these materials were completed in time for the Judge Advocate General's Conference. During the Conference, each group presented its findings and conclusions and a full set of all materials were distributed to each conferee.

Following the Conference The Judge Advocate General sent copies of the materials to the Chief of Staff and directed field tests of all of the materials outlined above.

The materials for enlisted men will be tested at Fort Rucker and Fort Campbell. Portions of the lessons for senior noncommissioned and company level commanders will be tested at the Infantry Training Center at Fort Lewis and the Armor Center at Fort Knox. The Special Court-Martial Convening Authority Desk Book will be field tested at Fort Carson and Fort Polk. These field tests do not preclude local use of the material at other installations.

Comments on the materials are solicited from all conferees and should be forwarded to The Judge Advocate General's School, ATTN: Director of Academics, Charlottesville, Virginia 22901, by 15 November 1971.

TRAINING PARA-LEGAL PERSONNEL

Mr. H. Lee Turner, Chairman, Legal Assistants Committee, American Bar Association, addressed the Judge Advocate General's Conference concerning para-legal personnel. The following are excerpts from his remarks.

"The civilian bar is in a tremendous crisis today. I am going to talk about the problems confronting the civilian bar and what appear to be promising new answers responding to the challenges with which we are confronted. I think that some of the answers that we develop can have a relationship to what you do. It's a crisis of cost and confidence. Our critics charge us with operating the most expensive legal system the world has ever known. We are the most lawyer ridden society the world has ever known. And yet our critics also point out as many as 65% of the people have been absolutely excommunicated from the resources of the law because of the cost factor.

"Time is the only commodity available to the lawyer, yet the demands on time constantly increase. Stop to consider the acceleration of information and knowledge. Ask how you keep abreast with all of this. It used to be that every civilian lawyer tried to be a generalist. But if you try to be a generalist and keep abreast there are simply not enough hours in the day. Today we are defending 10

lawyers on lawyer malpractice cases because they have been selling their services based on ossified knowledge. Something has to give somewhere. What's the answer? I think the answer is to do what business did. They took a look at the scientific method that had been developed a couple of hundred years ago and adapted it to business and called its systems management. It's a big word. Really all it means is organization and delegation. How do you do it? First of all let me talk about my office, and this will give you some ideas. Two years ago we were four lawyers, twenty-eight non-lawyers. We have eleven lawyers today and about seventy non-lawyers. We cover the whole state and do an enormous volume of work. In our firm we feel that any lawyer worth his salt should be able to work six non-lawyers effectively. At the same time, we're able to hold the line on cost. I submit that law today remains a 20th century anarchism in the respect that it is probably the only remaining piece-work 18th century type industry in 20th century America. They talk about this age of mass production, electronic communication, the post-industrial society, and here we are still doing it on a piecework basis with very little carryover from generation to generation.

"Now, what do you do? First of all you recognize the problem and then you collect your facts. Then you analyze your facts and set up a hypothesis, test your hypothesis, prove or disprove it, and you've got yourself a procedure. You're in to systems management. You organize and then you delegate. Responsibilities are clearly defined. Then you require accountability for the action taken. The procedures you develop must be in writing. In doing this, all we're doing is rediscovering what was discovered thousands of years ago—put it in writing, and you end the difficulties of verbal transmission.

"I submit that if we had an honest secret poll here, we'd find that most of you would readily agree that at least 50% of your time is squandered, as far as your skills are concerned, doing things that with standard operating practices and procedures could be done by far lesser trained people. I'm sure that the same thing applies to the military. All this has to be built in to the cost, and if the cost mounts high enough, society is going to turn to other answers. That's one of the big crises in civilian law today.

"Now, a check list. When check lists proliferate you have to clarify areas of responsibility by a written chart, always avoiding overlapping areas. You've got to periodically audit and refine them. And when refined they lead to uniform high quality effort. We find that we do far better when we reduce anything to writing than when a good lawyer tries to do it verbally. Why? Telephone rings or you think about something else and you might miss a vital point. If you've got a written check list, people of far lesser skills will go through that check list and they'll never miss an item. A lawyer will miss time and time again.

"The principle is you delegate routine tasks to the lowest level of skill possible consistent with the uniform high quality work product. No lawyer in our office ever does work that a highly skilled non-lawyer can do. It's a waste of the lawyer's time and it costs too much, and the costs have to be passed back to the

clients. We define a non-legal assistant as a lay person who, under the direction and supervision of the lawyer, performs tasks other than giving legal advice, and appearing as legal counsel, which traditionally had been performed by lawyers.

"The second step is to identify functions performable by non-legal personnel. The obstacle to conversion is the problem of semantics. Everyone has a secretary. How many have a legal assistant? We must forget traditional terms, such as secretary, bookkeeper, receptionists, labels like this, and define what they do in accordance with functions performed. Everyone uses a secretary as a non-legal assistant from time to time. What we try to do is to divide them into the mechanical and the intellectual. On the mechanical side, traditionally they perform ministerial services such as witnessing wills, other documents, notarizing papers. As a combination of mechanical-intellectual or the medium ground everyone's secretary from time to time will make, register, and monitor appointments for individual lawyers of the firm. On occasion she will prepare routine pleadings of relatively simple and fixed form. Proceeding to the increasingly intellectual functions, most secretaries, from time to time, perform a task quite often performed by lawyers. When your secretary prepares pleadings dictated by a lawyer, she's a mechanic. When she drafts pleadings and other factual schedules for the lawyer's review and approval, she is performing those functions ordinarily performed by a lawyer and is operating on an intellectual level. Consider what these people can do by function rather than label.

"With this in mind, let's talk about the way we practice law in Great Bend, Kansas. First of all, when a case comes in, no lawyer is allowed to look at it until one girl, who operates the calendar and docket, docket it, sets up the tickler for deadlines and so forth. As for answers, we get a slip immediately back on a new file. It goes on the desk and tells you when the answer date is. If you haven't got your answer out five days before the answer is due, the procedure calls for her to

some back once. Four days before the answer's due she comes back once in the morning and once in the afternoon. Three days before the answer's due, the procedure calls for her to come back at 8 o'clock in the morning and sit down in your office and stay there. You never miss answer dates that way.

"On the defense of a case. When a file comes in, you press the button in our office and it starts to move. I dictate the answer; I go through the file; I indicate the areas I want covered by interrogatory questions under the federal rules of civil procedure which we also have in the state. Just a general outline of what I want to cover. I also, in the outline, indicate which witnesses I think are important and which should be deposed—their deposition or testimony taken as quickly as possible. All of that then goes into a record transcription unit. We have a record transcription unit with MTSTs.

"They put what they can in final form. If they can't put it in final form, they kick it up to a specialist. We have five trial specialists. The case load is divided five ways. The first thing the trial specialist does is read through the case. From the time the case comes in to the time the case is closed, she is up on every aspect of the case. In writing, she can tell you what the status of the case is, what needs to be done, and what hasn't been done.

"She puts together a set of interrogatories. With answers to interrogatories, the trial specialist will take these, send a copy to the client, with written instructions as to what they are all about, and how he is to answer them to the best of his ability. Then she proceeds to take another copy and go through the file. She develops her own answers to the interrogatories from the file information. If necessary she'll schedule the client in for review and interview. Before I talk to the client, the client has gone completely through the files so I don't have to waste my time while he sits there and reads through it. She'll try to intergrate the clients answers with her answers, so that when I review these interrogatories that I'm going to have to sign as having

been answered, I don't have to worry about inconsistencies.

"As to scheduling. Most lawyers try to handle their own scheduling. Again a waste of time. We have one woman in our office of great men, whose sole duty it is to use the lawyers time most profitably. She has a chart. Whenever you're supposed to go a particular place, you get notice that you're supposed to be there. She tries to put together an itinerary that will make maximum use of the lawyers time. When you get close to trial, the problem of discovery depositions arises. The heart and soul of successful trial work, at least civilian trial work, is the discovery deposition. They list a witness. You find out what that witness is going to say. You can find out far better than you can at trial. Our specialists outline and index discovery depositions.

"As to new clients, the first thing that's done before I talk to them or any lawyer talks to them, is that the girls screen to find out what insurance company it is they want to sue. To prevent a conflict of interest. If you determine that it's a case that you can represent the come on back then and talk to the lawyer. The first thing I want to know — what's liability? Then when I assure him that we're going to take his case, outline how we're going to handle it, the fee arrangement and so forth, I take him by the hand and I turn him over to a legal assistant who will spend the next three or four hours completely debriefing him, getting all of the information no lawyer ever has the time to get. Three or four hours with an attractive woman who has unlimited time to talk to him about his problems, and our clients are satisfied clients.

"We found that a great under utilized resource in the United States is the college-trained woman. We look to the women forty years of age, the kids are in school or graduated and so forth, their husbands are successful, and we put these people to work and find that they absolutely transform the practice of law. Check lists and procedures—they'll begin to develop their own check lists and pro-

cedures. They'll make suggestions that you never thought of.

"One thing the lawyer must have is complete control of the standards and policy. You have to periodically audit. He who does not condemn, approves. We try every three months to audit what happens in these written procedures. Whenever a mistake occurs, arrange the system to prevent its repetition. No mistakes should be made twice. Everything we do in our office is by written memo. This is a source material for making changes. Get three memos on the same point, then you raise hell and you change it so it doesn't happen again.

"Moving to JAG, I think the Army has a tremendous resource, I read the speech of the new Secretary of the Army. He points out that the Ph.D. who is drafted in as an enlisted man, is a source of problems when you've got a guy like that serving under people who are not nearly as intelligent and educated as he is. What a resource for JAG. Believe me, on a short time basis, a year or 18 months, at least in my office, we could get all kinds of benefits from people like this. Why? I don't have to waste time and train my people. Once you develop a specialty and train a girl in that specialty her first order of business is to develop a backup specialist so that if she leaves, someone else moves immediately into the slot, and the first order of business for the new person in the slot is to train their backup. You build redundancy into the system, and that way it carries on year in and year out.

"Now moving on, let's talk about what the organized bar has done. The ABA has been accused of being ultra conservative, but the

ABA has recognized that this is one of the best ways out of the problems of our times. In 1968 the Bar Association declared that the legal profession recognizes there are many tasks in serving a clients needs which could be performed by a trained non-lawyer assistant working under the direction and supervision of a lawyer; that the profession encouraged the training and employment of such assistants; and they created the committee which I chair. An authorized practice committee, because many lawyers say "I don't like this type of competition, it's the unauthorized practice of law." The Ethics Committee laid this to rest in Opinion 316, which states as follows: "A lawyer may employ lay secretaries, lay investigators, lay researchers, accountants, non-lawyer draftsmen and non-lawyer researchers. In fact, he may employ non-lawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court, or appear in formal proceedings as part of the judicial process so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client.

"Believe me it works. In our case, tremendous volume is handled through the use of these people. They'll hand me that brief case the day before trial and I know the witnesses that I want will be there at the appropriate time. Everything will be in order. There won't be any gap. The case will be prepared for trial. I've been through it, reviewed it, and I may have to spend maybe half a day reviewing all the material in the file if its a big case.

"Gentlemen, give the legal assistants a chance. They'll transform the practice of military law. Thank you."

ARMY LAWYER SPOTLIGHTS: THE JA IN EUROPE

By Major Paul Dommer

A view of the Army's law business as it is seen in Europe begins with a brief description of USAREUR's organization. The major elements are still the two Corps: the Vth at Frankfurt, with the 8th Infantry and 3d

Armored Divisions; and the VIIth Corps at Stuttgart, with the 3d Infantry and 1st Armored Divisions plus the 1st Infantry Division (Forward).

The old area commands and the COMZ have been absorbed into the Theater Army Support Command (TASCOM) which has 95 special courts-martial jurisdictions. The 32d Air Defense Command is scattered over the German countryside. In addition, a headquarters and some troops (plus 4 JAGC officers) are still at SETAF in Italy, the Berlin Command has 5 JAGC's and we are still present in the BENELUX. Our legal force in France is now one JAGC Captain at the US Embassy in Paris. The Office of the Judge Advocate, HQ USAREUR and Seventh Army is in Heidelberg. Its divisions include, in addition to an Executive Office, Criminal Law, International Affairs, Administrative Law, Procurement Law, Legal Assistance and Foreign Litigation Divisions.

In all, there are roughly 180,000 US Army troops and about 150,000 Army dependents and other civilians accompanying the force. The vast majority are located in four states or lands in the Federal Republic of Germany — Hesse, Baden-Wuerttemberg, Rheinland-Pfalz and Bavaria. The requirement is still ours, however, to be able to work in any European law — from the Scandanavian to Middle Eastern shores.

Total strengths have been reduced from previous years as well as the number of installations. The Army units in USAREUR are distributed in about 870 installations and facilities—raising the difficult issue of effective command control. Mail service within USAREUR is slow and the telephone system at times little better.

Significant changes in many areas of legal practice in Europe have taken place over the past several years but none more significant than the implementation of the Military Justice Act of 1968. The 179 Judge Advocates plus 10 full time judiciary officers make the matter of military justice a going thing. When the Act hit, deficiencies in effective implementation became glaring. There were too many special court-martial jurisdictions, too few trained legal clerks in the field units, imbalanced geographical distribution of military

judges and military counsel, staggering requirements for travel time to and from our installations, inadequate numbers of personnel capable of assembling a record of trial and the existence of large troop complexes composed of soldiers from many different major commands without a presently available common commander or supporting legal counsel.

With such unpromising horizons, it was obvious that bold novel steps were in order to get maximum use of the resources available to USAREUR. These steps are the subject of this first installment on practicing law in Europe today.

LAW CENTERS

Because of the extra burdens placed upon judge advocate personnel by the Military Justice Act of 1968, it was apparent that the old procedures of each unit being responsible for the trial of its courts-martial would be exceedingly expensive in terms of both time and resources. The wide dispersion of individual units of GCM jurisdictions would force extensive travel by counsel or fragmenting of SJA offices to provide on-the-spot legal services, primarily trial of cases, to their outlying units. The solution was the law center concept.

The US Army Legal Services Agency, Europe, a TDA unit, was organized in July 1970. It comprised three law centers: one in Kaiserslautern (5 JAGCs), one in Mannheim (5 JAGCs) and one in Nuernberg (10 JAGCs). Each Center has a courtroom, library and individual offices for counsel. There are at least two trial counsel and two defense counsel at each Center. A battery of legal clerks and typists and court reporters support this operation. At Mannheim and Nuernberg are two US confinement facilities in addition to a significant US Force presence. These Centers can accept any court-martial case for trial on a cooperative basis with GCM and SPCM convening authorities. Simply stated, the Law Center concept places a team of lawyers in strategic locations of high troop concentration. All special courts arising within

a roughly described area may be tried by the Center without regard to the GCM jurisdiction involved. The GCM authority does not lose responsibility. The Centers, at his request or the request of his subordinate convening authority, furnish only a service—the trial of the case and preparation of the record of trial after the command concerned has referred the charges for trial. At present, the Law Centers are trying approximately 45 per cent of all special courts-martial in Germany. The officers in charge at present (Major slots) are two Majors and one promotable Captain. All JAGC officers at the Centers are on blanket travel orders to permit ease of travel.

The initial function of the Law Centers has been expanded to include additional legal services of providing counsel for Article 32 investigations, a limited legal assistance program and a qualified counsel in such situations as police line-ups and interrogations.

The noteworthy benefits of the Law Centers have been more efficient utilization of counsel and a savings of time in the court-martial process.

STOCKADE VISITATION

A worthwhile dividend of locating two of the three Law Centers near US confinement facilities has been to enable USAREUR to put into operation a Stockade Visitation Program. It was found that many soldiers once placed in pre-trial confinement, had difficulty making contact with a lawyer. These individuals tended to be the most restless and troublesome of those in confinement.

Hence, the Stockade Visitation Program and its purpose—to provide advice on rights of counsel to pre-trial prisoners on a daily basis. Under the program used in USAREUR, a pre-trial prisoner is interviewed within twenty-four hours of his arrival at a stockade (72 hours on weekends). At the interview, the counsel covers the following points:

a. He advises the prisoner that he is a defense attorney assigned to the Law Center and that the purpose of the interview is to

help the prisoner secure a defense counsel as soon as possible.

b. He explains briefly the procedures used by the Army to get an accused to trial including the time increment involved.

c. Counsel advises that, because of pre-trial procedures the prisoner may be in pre-trial confinement for several weeks.

d. Counsel advises of the names of all known available JAGC defense attorneys in that area and of the prisoner's right to counsel at special and general courts-martial.

e. The prisoner is encouraged to submit a request to see a Law Center defense attorney at any time he needs assistance.

f. Counsel determines if the prisoner has a prior record of misconduct and, if so, the prisoner is counselled concerning a request for discharge for the good of the service.

MAGISTRATE'S PROGRAM

In 1971, a USAREUR approved program was established to require a JAGC Magistrate to monitor all pre-trial confinements. Without touching the merits of the alleged offense, the JAGC Magistrate reviews the nature of the alleged offense, its gravity and other pre-trial confinement criteria and determines whether continued pre-trial confinement is necessary. In appropriate instances, the magistrate may release and direct the soldier's return to his unit.

LEGAL CLERK'S COURSE

Support for the lawyers in the form of well-trained legal clerks is indispensable. Arrangements have been made for the US Army School, Europe in Oberammergau to fund and instruct 60 enlisted students in a legal clerks course each quarter year. Results have been praiseworthy and every energy is being made to extend the course to two weeks.

A mobile training team from the School recently travelled to the 3d Infantry Division

in Wurzburg to present still another course in this quarter.

A Court Reporter's course is within the School, capability to fund and teach. Plans are underway to get additionally trained personnel through formalization of such a course.

These are, briefly described, some of the innovations in USAREUR legal practice over

the past several years and the training mission necessary to support our lawyers' time and energies.

A final word concerning these and other innovations which have yet to be told about an Army lawyer's assignment in Europe today—USAREUR is more than ever a blue chip, high yield investment of three years in his Army career!

REPORT FROM THE U. S. ARMY JUDICIARY

Statistics

AUGUST WORKLOADS

	On Hand	Received	Disposed of	Pend- ing
Review—Art 66				
GCM	814	152	187	779
SPCM	381	107	104	384
	<u>1195</u>	<u>259</u>	<u>291</u>	<u>1163</u>
Examination—				
Art 69	25	40	47	18
	<u>25</u>	<u>40</u>	<u>47</u>	<u>18</u>
Total	1220	299	338	1181

Results of Cases Disposed of by:

Court of Military Review

Findings and sentence affirmed	232
Findings affirmed, sentence modified	41
Findings partially disapproved, sentence affirmed	3
Findings and sentence affirmed in part, disapproved in part	5
Findings and sentence disapproved, rehearing ordered	1
Findings and sentence disapproved, charges dismissed	3
Returned to field for new SJA Review—C/A action	5
Order for psychiatric examination	1
	<u>291</u>

Examination and New Trials Division

Legally sufficient or noted	43
Referred to Court of Military Review	4
	<u>47</u>
TOTAL	338

Recurring Errors and Irregularities

a. Problems exist regarding authentication of records of trial and certificates of correc-

tion by someone other than the military judge. Paragraph 82f and Appendix 9b, MCM, 1969 (Rev.) provide that one other than the military judge may authenticate the record of trial only in the case of the *death, disability, or absence* of the military judge. "Non-availability" and "permanent change of station," although indicating probable absences, are not sufficient grounds. One of the three *specified* grounds must be set forth in the authentication.

b. Often, defense and government counsel introduce documentary evidence with leave for substitution of copies at the end of trial. These substituted copies are sometimes completely or partially illegible. In one case the illegible document was a DA Form 20. By the time a readable copy was obtained it contained entries which obviously had been made some time after trial. Thus the new copy of the document was not the one which had been viewed by the military judge at the time of trial. Staff judge advocates must insure that legible copies are substituted for the originals at the end of the trial.

c. When referring or re-referring a case to trial more attention must be paid to the previous involvement of counsel in the pretrial activity. When a seemingly inconsistent capacity appears on the face of the proceedings, appropriate, timely and effective disclaimers must be given at trial.

d. The allegation of prejudicial error stemming from what appears to be inordinate de-

lay in the *post-trial* processing of cases is being made with increasing frequency. Normally the focus of the attack is on the period of time between the trial and the action by the convening authority. The best way to avoid the allegation of this type of error is, of course, to complete the action on the case as rapidly as possible. It is recognized that a heavy case load, shortage of experienced personnel, or some other factor will sometimes delay final action beyond what is considered normal. When this happens, these delays should be explained in the "Remarks" section of the chronology sheet. If this is done, then it will greatly aid defense appellate counsel in considering whether to raise the issue and government appellate counsel in meeting the issue, if raised.

e. Staff Judge Advocates should be extremely careful in appointing one lawyer to represent more than one accused in cases tried in common or joint trials due to the likelihood of conflicts of interest between the accused. Military judges also should be aware that apparent conflicts, such as when half of the accused in one joint or common trial plead guilty and the other half plead not guilty, will be raised at the appellate level. The defense appellate division normally appoints separate counsel for each accused when there is a possible conflict, regardless of whether this was done at the trial level. Therefore, in such cases it would be helpful and time saving, in all cases involving multiple accused, if an additional copy of the record of trial for each additional accused was forwarded for use by appellate defense counsel.

f. A convening authority may not retain an accused in a grade above Private E-1 unless the convening authority suspends the confinement adjudged. See Article 58a, UCMJ. In a situation wherein the convening authority suspends the punitive discharge, but does not suspend the confinement, yet attempts to retain the accused in a grade above Private E-1, the Court of Military Review has no choice but to disapprove the confinement in

order to give effect to the retention in grade, for the Court cannot suspend a sentence. Careful compliance with the forms provided in the Manual for use in case of this type would preclude the necessity for such corrective action and attendant delay in the review.

g. Records of trial which have allied papers or exhibits that contain the protective marking FOR OFFICIAL USE ONLY have been received by the Judiciary. It is recognized that many factors may require that such documents be safeguarded prior to the trial in which they become evidence or otherwise a part of the record. However, in most cases, these factors no longer prevail upon completion of the trial. Necessary action should be taken, at the time the record is reviewed, to determine in accordance with the provisions of AR 340-16 whether the markings may be cancelled.

Administrative Actions

a. In order to expedite completion of appellate review, the Army Court of Military Review (ACOMR) has begun issuing a "Court-Martial Order Correcting Certificate" to correct the plethora of incorrect initial court-martial promulgating orders. This certificate is signed by the Clerk of Court and copies thereof are attached to copies of the ACOMR's decision, including those marked "For Convening Authority," "For GCM Authority," "For Accused's Field 201 File," and "For Accused." One copy of the "Correcting Certificate" is sent to the U. S. Army Personnel Services Support Center, ATTN: AGPE-F Fort Benjamin Harrison, Indiana 46249. Further distribution by Staff Judge Advocates is not required. Supplementary court-martial orders issued pursuant to the provisions of paragraphs 12-5e and 12-6, AR 27-10, should, in appropriate cases, indicate that the initial promulgating court-martial order was corrected by "Court-Martial Order Correcting Certificate, U. S. Army Court of Military Review, dated _____."

b. During the month of September 1971, the Army Court of Military Review issued

Court-Martial Order Correcting Certificates for the following type errors:

1) Failure of SPCMO Number 2, Headquarters U. S. Army School Training Center and Fort Gordon, dated 1 September 1971, to show the convening authority's signature block at the end of the "ACTION" and before his command line.

2) Failure of GCMO Number 198, Head-

quarters U. S. Army Training Center, Infantry and Fort Dix, dated 5 August 1971, to reflect that Specification 1 of the Charge was amended during trial.

3) Failure of GCMO Number 2, Headquarters U. S. Army Support Command, Thailand, dated (incorrectly) 27 July 1971, to bear the date of the convening authority's action.

MEDICAL CARE RECOVERY FROM WORKMEN'S COMPENSATION

By The Litigation Division, OTJAG

Recently the General Accounting Office has shown increased interest in encouraging the armed services to make more effective efforts to accomplish medical care recoveries under state workmen's compensation statutes. This is the first of several articles explaining the procedural aspect of workmen's compensation statutes. The purpose of these articles is to examine possible ways of recovering medical expenses without reliance on the Federal Medical Care Recovery Act.

Persons as to whom recovery would be sought after being furnished treatment at Army hospitals include, but are not limited to, those suffering injuries arising out of and occurring in the course of employment as follows:

1. Active duty personnel injured on second or civilian jobs distinct from their military duty.
2. Dependents of active military personnel.
3. Retired military personnel.
4. Civilian workmen injured on military posts who receive emergency medical treatment.

Regardless of the procedure authorized by state law in presenting claims, petitions, liens, etc., it is imperative that reimbursement be claimed only insofar as expenses are recoverable under the workmen's compensation law of that state. Otherwise, in certain states, the claim may be allowed out of the employee's

compensation rather than against the employer or his insurance carrier. This would, contrary to the purpose of federal acts authorizing such care, amount to a charge against the individual obtaining the care.

In the early part of this century, the common law defenses of contributory negligence, assumption of risk, and the fellow servant doctrine virtually eliminated tort actions as an effective method of reimbursement for on-the-job injuries. At first the burden of caring for the injured person or his family fell upon the public. Later compensation statutes were enacted at the state and federal level creating systems of liability without fault, and abolishing or modifying the common law defenses in injuries arising out of and occurring in the course of the employment. Typically such statutes substitute a relatively assured recovery of certain limited benefits in place of the prospectively larger but uncertain recovery at common law. They are generally administered by a Board or Panel under such names as, "Workmen's Compensation Board," or "Industrial Accident Commission," and are comprised of doctors, lawyers or laymen or a combination thereof, with Referees or Hearing Examiners as appropriate. Many statutes allow election as to coverage of workmen's compensation laws by either the employer or the employee, but normally, affirmative action must be taken to avoid coming under workmen's compensation laws. In certain instances, whole employment areas, such as

agriculture or domestic workers, may be excluded for policy reasons. Additionally, in most states certain casual work is excluded. The reason for such exceptions are rather obvious, when one considers that otherwise everyone's babysitter, yard worker, or snow shoveler, would be entitled to benefits, which, while seldom generous, are often substantial. Nevertheless, the vast majority of employee injuries not occurring navigable waters, federal employment, etc., are included under state compensation acts.

Depending on the particular jurisdiction involved, an industrial injury may encompass not only specific traumatic incidents of direct physical injury but also a wide variety of conditions including heart attacks, contact dermatitis, emphysema and other lung conditions, mental and emotional problems, continuing traumas (wherein repetitive micro-trauma eventually result in injury and disability), industrial disease (encompassing latent and deleterious substances which cause injury), plus a virtually unlimited variety of other causes. Injury may include almost anything which happens to the employee at the main place of employment with some work connection being desirable to insure compensability. Injuries away from work which have such work connection are also compensable. As a general rule injuries due to deliberate misconduct, intentional self-infliction, or intoxication are excluded.

Most states now provide medical and hospital benefits, including artificial members and aids, that are unlimited as to time and amount, or if limited, can be extended indefinitely by administrative authority. (See *Larson, The Law of Workmen's Compensation*, Appendix B. Tab 13). Under the usual statute, the employer is required to furnish the necessary medical services, and it is only if he fails to do so, within a reasonable time after receiving notice, that the employee is entitled to incur reimbursable expenses on his own behalf. (*Larson, supra*, Vol. 2, para. 61.)

Ordinarily, the employer (commonly his insurance carrier) is required to furnish med-

ical treatment in the first instance. Under some statutes the employee may choose his own physician, with the authorization of administrative authority. Under other statutes the employer designates the physician. Still other statutes provide that the employee is allowed to select the physician from a panel authorized by the Board or by his employer.

Whether or not included as a specific provision in the various statutes, it is generally held that in the event that the employer, being on notice, fails to provide adequate treatment, the employee may obtain such treatment on his own, with the employer being liable to reimburse the expense. As to what constitutes being on notice, it is usually sufficient that the employer receive notice from some reliable source, such as by report from the injured employee or his fellow employees, the witnessing or knowledge of such incident by persons in authority including leadmen, foremen, superintendents, etc. or by report from nurses, physicians and hospitals. Once on notice, the employer has a positive duty to provide treatment and his failure to do so will render him liable.

In addition, if the employee is entitled to a choice of physicians but is not given an appropriate panel to select from, or, if the employee seeks a form of treatment different than that being rendered and obtains improved results, the employer may also be liable for self-procured treatment. Treatment obtained on an emergency basis, when there is no opportunity for notice or, when rendered to one who is insensible or incompetent to give notice, may still be reimbursable.

In a few states the employee has the right to select his own treating physician without interference from his employer. Generally, medical treatment includes not only the doctors' services and hospital expenses, but also, nursing, medical and drugs, orthopedic devices and crutches, ambulance service, special beds and equipment necessitated by the injury, diagnostic tests and X-rays and sometimes necessary transportation expense associated therewith.

Assuming that the necessary prerequisites are met, many states have specifically recognized that their workmen's compensation tribunal has jurisdiction to order the employer to pay a third party who has provided medical services *directly*. A variety of procedures are followed in the presenting of such claims by the third party. Veterans Administration liens are regularly being allowed in

California and other states and certain Recovery Judge Advocates have effected recoveries for treatment provided in Army hospitals.

The subject of the next article will be a discussion of the relationship between workmen's compensation laws and the Federal Medical Care Recovery Act.

LEGAL ASSISTANCE ITEMS

By Legal Assistance Division, OTJAG

Preventive Law Program

The Preventive Law Program was designed to decrease the volume of personal legal problems confronting military personnel and their dependents. Effective implementation at post level will significantly reduce the man hours exhausted by the Legal Assistance Officer on remedial counseling.

In conjunction with this program, the Legal Assistance Officer should encourage the use of the Annual Legal Checkup Form (DD Form 1543) by the serviceman seeking advice on management of his financial affairs or estate planning. The form provides an orderly and comprehensive arrangement of an

individual's significant personal affairs and is a ready reference for the serviceman on the status of his estate. Furthermore, it will provide the Legal Assistance Officer or civilian attorney with pertinent information on the personal affairs of his client when that client seeks advice on any of the broad areas covered by the form.

Veterans Benefits Timetable:

The Veterans Administration has recently released the following timetable setting forth the quasi-prescriptive notification, application and eligibility time limits controlling the benefits.

After Separation the Veteran Has

Notification or Application Directed To

10 days	To advise Selective Service of your address in person or by mail.	Any local board.
30 days	To register with Selective Service (if not already registered).	Any local board.
90 days	To apply for re-employment	Former employer.
120 days (or 1 year if totally disabled)	To convert your Servicemen's Group Life Insurance without examination.	Any approved insurance company.
1 year (from date of notice of disability rating)	To obtain GI life insurance based on service-connected disability.	VA Office.
1 year	To file for dental care	VA Office.
1 year	To receive unemployment compensation. Check your state.	State Employment Service.
8 years	To use all of your GI education and training entitlement.	VA Office.
No time limit	To obtain a GI loan to buy, build or improve a home or to buy a farm.	VA Office.
No time limit	To file compensation claim for injury or disease.	VA Office.
No time limit	To obtain VA hospital care.	VA Office.
No time limit	To get assistance in finding employment or job, or a job training program.	Local office of State Employment Service.

PROCUREMENT LEGAL SERVICE

By The Procurement Legal Division, TJAGSA

Socio-Economic Policies. Section 8(a) subcontracts awarded by the Small Business Administration held constitutional. *Kleen-Rite Janitorial Services, Inc. v. Laird, DC Mass., 9/21/71.*

Under authority of Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) the Small Business Administration acts as the prime contractor for certain Government contracts. The Administration then subcontracts for the actual performance of the contract to firms owned by socially or economically disadvantaged persons. This category is further defined to include, but not restricted to, Black Americans, American Indians, Spanish Americans, Oriental Americans, Eskimos and Aleuts. Dismissing a suit for injunctive relief against the Small Business Administration's plan to award a janitorial service contract to such a firm, the court first noted that there was no constitutional requirement to offer such a contract for competitive bidding. Finding no merit to the contention that such procurements violate the Fifth Amendment, the court determined that the class of persons eligible is not defined racially, but by social or economic disadvantage. The court stated, "Social and economic classifications are common in welfare and other legislation, and have, so far as this court knows, not been regarded as unconstitutional on that ground. If the Government is constitutionally free to select the handicapped for financial grants it is surely free to select them for service contracts."

COMMENT: 15 U.S.C. 637(a) states that the SBA is empowered (1) "to enter into contracts with the United States . . . to furnish articles, equipment, supplies, or materials to the Government," (2) "to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others . . .". Although the language omits any reference to service or construction contracts, the Comp. Gen. ruled

in 1969 that this section must be read with section 2 (a) of the Act which states that it is the policy of the Congress that "a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises . . .". On this basis the SBA was found to have the authority to utilize 8(a) procedures for any type of contract. Comp. Gen. Dec. B-132740 (2 Oct. 1969).

The SBA has stated that the program is no longer restricted to minority group members but is now open to such people as Appalachian whites.

Federal Credit Unions Exempt From Communications Excise Tax.

A recent Revenue ruling as to the applicability of the communications tax imposed by section 4251 of the Internal Revenue Code to charges for telephone service provided Federal credit unions by the Army on Army installations, holds that the tax is not applicable as follows:

"The telephone service furnished the Federal Credit Unions is the 'Class B' service that is provided by the Army on its installations for unofficial business. As indicated by the regulations, this service is furnished by the Army where it is determined that telephone service is not available from local, private, or public sources, or cannot otherwise be obtained by the purchaser.

"Federal credit unions are granted exemption from the Federal taxes by section 23 of the Federal Credit Union Act (73 Stat. 637; 12 U.S.C. 1768). The exemption so provided applies to those Federal excise taxes the legal incidence of which would fall upon the Federal credit unions.

"The communications taxes imposed by section 4251 of the Code are imposed upon

the person making the payment for communications services and facilities. Thus, since the legal incidence of these taxes would fall upon a Federal credit union paying for communications services and facilities, payments for such services and facilities made by a Federal credit union to the person furnishing the services and facilities are exempt from the taxes imposed by section 4251 of the Code.

"Under the provisions of section 4293 of the Code, the exemption for the United States prescribed by the authorization of the Secretary of the Treasury dated June 20, 1947 (Internal Revenue Cumulative Bulletin 1947-2, at page 205) continues to apply with respect to the tax imposed on amounts paid for communication services enumerated in section 4251 of the Code.

"Revenue Ruling 68-276, Internal Revenue Cumulative Bulletin 1968-1, at page 493, holds that the telephone company furnishing the services and facilities to a United States agency may, for purposes of its records, treat all use of such services and facilities as though it is official and exempt from the tax imposed by section 4251 of the Code. However, the accountable or appropriate administrative officer of the agency is responsible for collecting the tax from individuals using the services and facilities for their personal or private business.

"As evidenced by the above-referred-to Federal Credit Union Act, it was Congressional intent that Federal credit unions be exempt from the taxes imposed by section 4251, where the legal incidence of such taxes fall on them. An effect of Revenue Ruling 68-276 is to impose the legal incidence of the tax on the person using the services and facilities under the circumstances stated therein.

"Accordingly, in any case where communications services or facilities are furnished

Federal credit unions by the U. S. Army and payment for such services or facilities is made by the credit unions to the U. S. Army, the exemption provided by the Federal Credit Union Act applies and amounts paid for the services or facilities are not subject to the taxes imposed by section 4251 of the Code."

The credit unions may file a claim for refund of overpaid excise taxes on IRS Form 843 directly to the District Director in the District where the Department of the Army paid the tax.

Such a claim must set forth the facts on which it is based including a statement that no refund, in whole or in part, has been made to the claimant and that the claimant has not consented to the allowance of a credit or refund to the Department of the Army. The Department of the Army should assist in establishing the amount and dates of taxes collected and must provide a statement from a responsible officer of the dates when taxes collected were paid over to the District Director, IRS. The above statements and evidence, in addition to the ruling dated 6 May 1971 from the IRS, must be submitted with the claim.

Alternatively, the Department of the Army may claim a refund for overpaid excise taxes on IRS Form 843 provided it submits a sworn statement or other evidence that the tax has been repaid to the person from whom it was collected or written consent of such person to the refund allowance. The claim must contain the same evidence set forth in paragraph "a" above, including a copy of the 6 May 1971 IRS opinion.

The claim is limited to the tax paid within the period immediately preceding the filing of the claim, equal to 3 years plus any extension of time for filing a return, if any, given by the Internal Revenue Service to the Department of the Army.

EDITORIAL — THE MEDINA VERDICT*

It is impossible for anyone present neither at Mylai nor the courtroom in Fort McPher-

son to say for certain that perfect justice has been meted out in the trial of Captain Ernest

Medina. But it can be said that, on the basis of the extensive coverage of the trial, it is difficult to see how the jury could have reached any verdict other than acquittal on all charges.

It is proper, too, to view that verdict as one more item of persuasive proof that the United States system of justice—military justice included—is in a sound state of health. The wave of revulsion that followed disclosure of the Mylai outrage would have made it possible to select a handful of scapegoats to be thrown to the wolves. Of the Army could have given in to the natural instinct of every group; it could have closed ranks and protected its own against attacks of the outsiders.

The evidence is now clear that the Army did neither. It chose, instead, to handle the

prosecutions as all criminal prosecutions should be handled, as individual cases, carefully considering each charge of separate wrongdoing on its own merits. Military judges and juries have refused, despite the very considerable pressures that have been applied, to be stamped out of the path of proper judicial procedure.

What took place at Mylai is something that every American should remember with shame. How the country reacted to that horror—the recognition of guilt, the acceptance of responsibility, the painstaking legal pursuit of the truth—is something every American should also remember, and with pride.

* Reprinted with permission of "The Evening Star," Washington, D. C. 24 September 1971.

FBA SUPPORTS PILOT LEGAL ASSISTANCE PROGRAM

"Resolved, by the Federal Bar Association, that we endorse and support the efforts of the Department of Defense to establish pilot programs designed to provide complete legal services to those military personnel and their dependents who cannot afford legal fees without undue hardship to themselves and their families."

By the resolution set out above, the Federal Bar Association recorded its support for a program designed to enhance the morale and welfare of our individual soldiers, sailors, marines, airmen, and coast guardsmen. Rather

than fund a legal assistance program for operation by the Office of Economic Opportunity, the Department of Defense initiated pilot programs to determine whether it can better provide these same legal assistance services through the expansion of existing military legal assistance programs. The Secretary requested the support of all bar associations. On 13 August 1970, the American Bar Association, through its Board of Governors, endorsed the Secretary of Defense's proposal. The Federal Bar Association, by this resolution, added its support.

POST-TRIAL REVIEW

From Military Justice Division, OTJAG

Several recent United States Army Court of Military Review decisions have found error because the record did not indicate that the accused had been given an opportunity to rebut or explain adverse matter from outside the record in the post-trial advice. One such case was *United States v. Self*, — CMR — (ACMR, 24 September 1971). In reassessing the sentence, the Court did not approve a

punitive discharge. The Court followed the holding in *United States v. Griffin*, 8 USCMA 206, 24 CMR 16 (1967). To prevent a like result in the future, it is recommended that staff judge advocates request the defense counsel to note on the post-trial advice that he has read it and either attaches matters in explanation or rebuttal or has none to present. The following format may be used:

.....
(Date)

I have read the above post-trial review in this case.

() I do not desire to submit anything in explanation or rebuttal.

() I do desire to submit matters for consideration as follows (list documents to be attached to review) :

.....
Defense Counsel

ERRORS IN CMR INDEX

Two errors appear in the new CMR Index covering Volumes 36-40. Beginning at the top of the right hand column on page 163 and running to page 170, the caption should be "Confessions or admissions" rather than "Conduct unbecoming an officer." Beginning at the top of the right hand column on page

186 and running to page 190 the caption should be "Disobedience of orders or regulations" rather than "Dismissal from service."

Other errors which appear in the index should be reported to the Director, Administrative Office, Headquarters, U. S. Army Judiciary, OTJAG, Washington, D. C. 20315.

ERRORS IN LAW OF AWOL BOOK

1. On page 57 of The Law of AWOL, a Judge Advocate General's School text, paragraph A should read: "An individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Para. 10-1, AR 600-200. Hence, if your client has had AWOL or other charges preferred for which a bad conduct discharge or a dishonorable discharge could result under paragraph 127c, sections A or B, MCM, 1969 (Rev), he may submit a request in writing for a discharge for the good of the service. Referral to a non-BCD special court does not alter this conclusion. (JAGA 1969/3538, dated 25 March 1969 and digested in 69-12 JALS 25 (DA Pam 27-69-12). Therefore, an accused who is charged with an AWOL offense over thirty days could submit a request for discharge for the good of the service notwithstanding the later referral of the case to a non-BCD special court. It is the *preferal of charges* for which a punitive discharge could result which is determinative.

2. Subparagraphs B(1) and (2) are deleted.

3. Paragraph C is renumbered as paragraph B and should read: "If your client has had a charge preferred against him but it does not warrant discharge from the service under the criteria of paragraph 127c, section A, MCM, 1969 (Rev), a request for discharge may still be submitted, since:

"1. Paragraph 127c, Section B, MCM, 1969 (Rev), provides that an accused found guilty of an offense or offenses for none of which a dishonorable discharge is authorized, proof of three or more previous convictions adjudged during the year next preceding the commission of any offense of which the accused stands convicted will authorize dishonorable discharge and total forfeitures and confinement at hard labor for one year if the authorized confinement is less than one year.

"2. Section B also authorizes: if an accused is found guilty of an offense or offenses for none of which a dishonorable discharge or bad conduct discharge is authorized, proof of two or more previous convictions adjudged by a court during the three years next pre-

ceding the commission of any offense of which the accused stands convicted will authorize a bad conduct discharge, total forfeitures, and confinement at hard labor for three months if the authorized confinement is less than three months.

accused is found guilty of two or more offenses for none of which a dishonorable discharge or bad conduct discharge is authorized, the fact that the authorized confinement without substitution for these offenses is six months or more will, in addition, authorize a bad conduct discharge and total forfeitures."

"3. Section B also authorizes: that if an

TJAGSA SCHEDULE OF COURSES

NUMBER	TITLE	DATES	LENGTH
5-18-C22	20th Advanced Course	7 Sep 71-2 June 72	39 wks
5F-8101	62d Basic Course	26 Oct-17 Dec 71	8 wks
5F-F10	5th Law of Federal Employment Course (formerly Labor Law)	18-22 Oct 71	1 wk
5F-F14	1st Legal Assistance Course	1-5 Nov 71	1 wk
	Senior Officers Legal Orientation	15-17 Nov 71	3 days
5F-F12	2d Legal Logistics Officers Advanced Course	24 Jan-4 Feb 72	2 wks
5F-F9	11th Military Judge Course	6-24 Mar 72	3 wks
5F-F10	6th Law of Federal Employment Course (formerly Labor Law)	13-17 Mar 72	1 wk
5F-F11	4th Legal Logistics Officers Course	3-14 Apr 72	2 wks
5F-F13	2d Litigation Course	6-14 Apr 72	1 wk & 2 days
5F-F15	*2d Staff Judge Advocate Orientation Course	24-28 Apr 72	1 wk
5F-F1	14th Military Justice Course	8-19 May 72	2 wks
5-18-C9	20th Judge Advocate Reserve Field Grade Refresher Course	15-26 May 72	2 wks
5F-F5	3rd Military Affairs I: Claims and Litigation, Civil Emergencies, Military Reservations, Legal Assistance	5-16 Jun 72	2 wks
5F-F3	16th International Law Course	24 Jul-4 Aug 72	2 wks
5F-F2	1st Military Affairs II: Military/Civilian Personnel Law, Administrative Law	7-18 Aug 72	2 wks
5F-F4	10th Civil Affairs Law Course	14-25 Aug 72	2 wks
5F-F11	5th Legal Logistics Officers Course	21 Aug-1 Sep 72	2 wks

* BY INVITATION ONLY

SCOPENOTES FOR CONTINUING LEGAL EDUCATION COURSES AT THE JAG SCHOOL

CIVIL AFFAIRS LAW COURSE (5F-F4)—A two week course concerned with the legal aspects of civil affairs with particular reference to international law as it may pertain to civil affairs in foreign countries.

INTERNATIONAL LAW COURSE (5F-F3)—A two week course concerned with the interpretation and application of international law with coverage divided between the study of those fundamental principles of international law that govern peaceful relations between nations and those concerning wartime relations.

JUDGE ADVOCATE RESERVE FIELD GRADE REFRESHER COURSE (5-18-C9)—A two week course providing refresher training for reserve field

grade judge advocates in all areas of law pertinent to military legal practice with emphasis on current trends and developments.

LAW OF FEDERAL EMPLOYMENT COURSE (5F-F10)—A one week course designed to acquaint military and civilian lawyers within the Department of Defense with the federal civilian personnel system, legal aspects of federal contractor labor relations and the rapidly developing area of labor management relations within the federal government.

LEGAL ASSISTANCE COURSE (5F-F14)—A one week course providing specialized instruction in litigation, legal administration, taxation, Soldiers' and Sailors' Civil Relief Act, family law, immigration and naturalization, personal finance, real estate practice, civil rights, survivor's benefits, veterans benefits, survey of conscientious objector law, and wills.

LEGAL LOGISTICS OFFICERS COURSE (5F-F11)—A two week course providing basic instruction and training in the legal aspects of government procurement, including general principles of government contract law and the policies and procedures relating to contract formation, performance, disputes and remedies arising at the post, camp and station level.

LEGAL LOGISTICS OFFICERS ADVANCED COURSE (5F-F12)—A two week advanced course in procurement law providing specialized instruction in incentive contracting, funding, competitive negotiation, socio-economic policies, Government assistance, state and local taxation, modifications, weapons system acquisition, truth in negotiations, terminations, labor relations problems, contract claims and litigation.

LITIGATION COURSE (5F-F13)—A one week course devoted to a review of the Federal Rules of Civil Procedure, Judge Advocate coordination with the Department of Justice, and the procedural law relating to practice before administrative agencies including preparation of litigation reports and techniques of evaluating liability and amount of damages.

MILITARY AFFAIRS I: CLAIMS AND LITIGATION, CIVIL EMERGENCIES, MILITARY RESERVATIONS, LEGAL ASSISTANCE (5F-F5)—A two week course providing advanced training in military affairs law with special emphasis on claims and litigation, civil emergencies, military reservations and legal assistance.

MILITARY AFFAIRS II: MILITARY AND CIVILIAN PERSONNEL LAW, ADMINISTRATIVE LAW (5F-F2)—A two week course providing advanced training in military affairs law with special emphasis on legal research, military and civilian personnel law, and selected problems of military administrative law.

MILITARY JUDGE COURSE (F5-F9)—A three week course providing military lawyers with advanced schooling to qualify them to perform duties as full time military judges at courts-martial, with emphasis on special courts-martial. Subjects covered include substantive military criminal law, defenses

to crimes and instructions to the court, rules and principles of evidence, trial procedure, and panels and seminars dealing with current military legal problems.

MILITARY JUSTICE COURSE (5F-F1)—A two week course providing specialized instruction in military criminal law including the study of the law of evidence, substantive crimes, defenses and instructions, procedure, the jurisdiction and courts-martial, punishments and appellate review of court-martial records.

SENIOR OFFICER'S LEGAL ORIENTATION—A three day course for commanding officers in the grade of Lieutenant Colonel and above designed to acquaint these senior commanders with legal problems they are likely to encounter in the areas of both criminal and civil law. Civil law instruction will include installation management, labor-management relations, military personnel law, nonappropriated funds, investigations, legal assistance and claims and litigation. Criminal law instruction will include options available to commanders, search and seizure, confessions and convening authorities' duties before and after trial. The course will be presented using seminar techniques, and outlines and textual material suitable for future student reference will be utilized. Staff Judge Advocates are urged to make this course availability and utility known to commanders they serve and advise. Quotas, or additional information may be obtained from Academic Department, The Judge Advocate General's School, Charlottesville, Virginia 22901. Telephone (703) 293-2329. AUTOVON 934-3550 (Fort Bragg. Ask operator for JAG School.)

STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F-F15)—A one week course of instruction in new developments in the areas of criminal law, civil law, procurement, and international and comparative law. Attendance at this particular course is limited to judge advocates who are scheduled to serve as Staff Judge Advocates in general court-martial jurisdiction and whose recent practice has been limited to a specialized military legal area.

PERSONNEL REPORT

The following are excerpts from LTC Mundt's presentation to the 1971 JAG Conference.

Personnel status as of 31 July 1971. "As of 31 July 1971 we have a total of 196 colonels on board. During the year we lost 15 colonels through mandatory and voluntary retirements. Next year we will lose 6 through mandatory retirement.

"In the next 5 years the Corps will lose 48 colonels through mandatory retirement. Add to this figure the voluntary retirements for each year and it is not difficult to arrive at the conclusion that a large part of our World War II input of experienced judge advocates will have retired by 1976.

"As to lieutenant colonels, in 1969 we had 181 on board. Last year it's a new low of 125.

Promotions simply haven't kept pace with retirements.

"With majors, the total of 185 is down 13 from last year. Another statistic, in FY 70 we had 325 majors and captains (promotable). At the end of FY 71 we had only 216 or a loss of over one-third.

"With regard to captains, we have 1287 on board.

"As Vietnam winds down and the strength of the Army goes down, JAG personnel strength will also decrease. Personnel spaces will become more difficult to retain.

Manning Capability. "The emphasis here is how we stand in capability to staff mission oriented requirements world-wide.

"On authorizations and actual strength as of 31 July 1971, in the field grades we have a total of 761 field grade requirements with 416 field grade officers to fill them. This leaves us with a shortage of 345 in the field grades.

"Colonels—Filling authorized colonels positions does not present a serious problem at this time.

"Next, lieutenant colonels, we have a problem in this grade. I know many authorized lieutenant colonel slots we're not filling. Our authorizations for lieutenant colonels total 235. We have 125 on board. Because of the shortage of colonels, some lieutenant colonels fill colonels positions, and the student, patient and transient further erodes our fill capability.

"Let's turn now to the majors. Our authorizations number 395. On board strength is 185. The snowball effect hits us in this grade. When colonels and lieutenant colonels positions are filled we have only 51 majors for the 396 major slots. Sixteen of those 41 are currently in school.

"Finally, the backbone of the Corps—our captains. We're 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. We've never

had better young attorneys in terms of quality and motivation.

Professional Procurement.

"It is becoming apparent that the recent cutbacks in military forces, coupled with changes in the selective service system, changes in the ROTC program, and the increasing general anti-military feelings in the civilian community, will make the task of procuring high caliber new officers for the Judge Advocate General's Corps more difficult from this point forward.

"Perhaps the most dramatic evidence can be found by comparing applications for appointment. In FY 70, over 1298 applications for appointment were received and considered for approximately 360 openings. In FY 71 about 670 applications were received for 222 openings. For FY 72 we had 314 applicants for 100 openings. Our selection rate stays up because our openings have decreased. In this connection, this year we are losing about 250 captains and we can recruit only 100. Thus, for each 2½ officers we lose we will get 1 replacement. However, we are fighting for more JAG slots and revitalizing our recruiting program to keep applications up. We can not be successful unless you keep your authorization up—the Corps strength is based upon world-wide authorizations.

"A bright spot is that as Vietnam winds down and the Army is reduced in strength, a relative reduction in our strength and input quotas may help in maintaining a good professional procurement picture.

"One method that comes to mind to reduce your future shortage is to convert your office from the Quill we wear on our collar to word processing centers. If we can increase the professional portion of the attorneys time and reduce the number of hours spent writing copy out in hand, or typing it, we can increase output.

Schools. "Attendance at the JAGC Advanced Course is essential for the full professional development of a career judge advocate.

The course provides in-depth training and exposure in each major functional area of military law, and affords an officer the opportunity to exchange ideas and experiences with his colleagues in an atmosphere free from operational requirements. It should and must be a pleasant as well as professionally developing year. Upon successful completion of the course, each officer is considered fully qualified to perform legal duties at all levels of command. The Advanced Course is also a prerequisite for higher level military schooling, such as Command and General Staff College and Armed Forces Staff College, as well as advanced civil schooling.

"The JAGC follows Department of the Army policy that all qualified officers will attend their branch advanced course between the fourth and fifth year of service. Judge advocate officers should seek advanced course attendance at the earliest possible time in their careers. You should encourage them to do so. A declination of attendance could adversely affect both an officer's professional development and his future career opportunities.

"A few words now on C&GSC. With the reduction of the size of C&GSC, JAGC will probably lose some spaces. Hopefully none but probably one. Thus, we will have 8 at C&GSC and 1 at AFSC for a total of 9. The competition for these 9 slots is very stiff. I know many would like to know how our judge advocates do in primarily line schools. Last year at C&GSC, one-third were on the Commandant's list and 2 were in the top 5% of the graduates. My report to you is without reservation—they are finishing in the top of their classes. Our Corps is making a fine record of which you can be proud.

"Turning now to the subject of constructive credit for C&GSC. This affords JAG a tremendous boon, but is rapidly drying up with the Vietnam drawdown. It is still something our good people should consider if not selected for C&GSC. The basic criteria under OPD regulation, as applied to JAGC officers, are as follows: The officer must have served in Viet-

nam during a time of combat in grade of colonel, lieutenant colonel or major as the SJA of a division, field force, regional assistance command, logistical command, or position of comparable scope for a period of six months. We have tested "position of comparable scope." The deputy SJA, USARV, SJA Engineer Company, and Staff JA, Saigon Support Command have qualified for constructive credit, as has the Procurement Agency Chief. Brigade SJA's and Chief of Military Justice, USARV, have been turned down. We continuously screen records of all field grade officers who have served in Vietnam to determine eligibles. But if you are qualified, contact us. Don't sit back and wait for lightning to strike. The C&GSC Constructive Credit Board has given expeditious consideration to JAGC files. As you can readily see, the combination of constructive credit, plus increased quotas over past years, is giving the Corps many more officers with credit for C&GSC, but many fine officers still need it.

PROMOTIONS:

"JAG officers fare well in competing with others for promotion to colonel and lieutenant colonel.

"With regard to majors, this is an ancient list, as it was published in January 1970. Only 220 promotions are projected this year, but there is a considerable forecasted increase to 1960 next year. For this year it's a question of do we RIF an officer to promote another one? The decision was to keep the tap open, but only let it dribble. If a RIF is necessitated, of course, JAG can't lose too many as we don't have them, but even a few will hurt. As you can see by the chart, the time in grade for promotion will increase to approximately five and one-half years for each grade by the end of FY 72.

EXCESS LEAVE:

"A few words about the Excess Leave Program. There are currently 128 officers participating in the Excess Leave Program. They

range in grade from second lieutenant to major. They are spending their summers in judge advocate offices, and many are spending their long vacation periods there during the school year. We ask your help in motivating these future judge advocates toward a career in the Corps. Quite frankly, the Corps will rely on this source for a large portion of our career force in the future. If half of you could see the Corps to one good regular Army officer, the future of our Corps would look very bright.

"Efficiency reports are a problem I ask your help on in connection with the Excess Leave Program. Many of these officers are still not receiving efficiency reports for on-the-job training periods, or if they do receive them, they are completed late. I ask your assistance in insuring that timely ratings are given for their periods of service on OJT. In rating the officer, remember do not compare him with your lawyers. He 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. Do what you can to assist them.

"Finally, during the past year, policies which were firmly set in the mind of many prior incumbents of my job were reduced to writing and being used in a policy file. Some are of sufficient general interest to bring to your attention.

CERTIFICATION OF NON-JAG LAWYERS. "In a letter from General Hodson to all GCM SJA's on 30 March 1970, he pointed out that the need for non-JAGC lawyers had diminished with our increase in strength. In keeping with this guidance, non-JAGC lawyers are no longer certified unless a good case can be made by the Staff Judge Advocate. Small shops and RVN have been the primary sources justifying exception. Quite frankly we aren't certifying them today because to do so works against our fight to keep JAG spaces up.

PCS MOVES FOR CAPTAINS WITHIN CONUS. "Because of so much personnel turbulence associated with JAG Short-Tour assignments, we formerly had a policy that captains would not be moved from one CONUS station to another. As the Vietnam requirement decreases, we will allow it if career motivating.

SHORT TOURS. "Also as Vietnam winds down and troop withdrawals are made from Vietnam and Korea, some relief is in sight for the total number required in all grades. Experience tells us legal workload, however, is not down in proportion. The Corps will have a little over 100 in the Short-Tour areas next year. LTC's will be going back for second short tours. In fact, those who returned in 1966 will be in-country in 1972. Majors will be faced with this proposition in 1973 or 1974. Colonels are safe.

"The situation with new captains is to assign the officer to a Short-Tour area as soon after he completes 1 year of service in the Corps as is possible. He will be in the hot zone during 12-24 months of service and then out as a matter of policy. Not as a matter of guarantee. The letter notifying the officer of a short tour will come through you, as SJA.

"The letter specifies country (usually Vietnam) and the reporting date by month. Should an officer request to go a little earlier or later than the specified reporting date, he is expected to communicate his request by mail with appropriate supporting documentation. We have adjusted reporting dates in meritorious cases.

"This policy has proven beneficial in two respects: (1) We're moving experienced RVN returnees into the CONUS with nearly 2 years remaining to serve on active duty. (2) A number of the RVN returnees are extending their service commitments in order to ITT to Europe. The objective is, so long as we have substantial numbers in short-tour areas, a tour in RVN prior to a tour in Europe. Letters have gone out to most of the LTC's and majors (promotables) selected. The value

of Vietnam service can't be underplayed. For example, Command and General Staff schooling is open to only Vietnam veterans without branch waiver. This last selection list to LTC,

as far as we are able to determine, did not include any below-the-zone people who did not have Vietnam service."

PERSONNEL SECTION

From: PP & TO, OTJAG

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

COL ROUILLARD, Irving G. 30 September 1971

2. **PROMOTION.** Congratulations to the following officer who was promoted on the date indicated.

COL BROWN, Henry L. 13 September 1971

3. **ORDERS REQUESTED AS INDICATED.**

<i>NAME</i>	<i>FROM</i>	<i>TO</i>	<i>APPROX. DATE</i>
COLONELS			
HANSEN, Lawrence P.	MACV	USAG Ft Leavenworth	Sep 71
SENECHAL, James F.	Hq, MDW	MACV	Nov 71
MAJORS			
CARROLL, Bartlett	TJAGSA	OTJAG	Dec 71
DE GIULIO, Anthony	USA Jud	USARV	Oct 71
ISKRA, Wayne R.	VN	USA Jud w/dy Long Binh	Oct 71
HEMMER, William J.	TJAGSA, S-F	Stu Det TJAGSA	Sep 71
SIMON, Ernest A.	VN	Hq III Corps Ft Hood	Jan 72
CAPTAINS			
BARILE, Leo R.	VN	USAG Ft Meade	Feb 72
BEGLE, Howell E.	HQ USARYIS	USA Jud	May 72
BOBO, Columbus W.	VN	USAG Pres of SF	Feb 72
BRODY, Sidney B.	USATCI Ft Polk	USAG Ft Leavenworth	Dec 71
BUESS, Thomas E.	USA Fld Aty Cen Ft Sill	OTJAG	Jan 72
CHAREAU, Kenet E.	Jt Supt Comd Ft Ritchie	Hq Ft Huachuca	Dec 71
CREECH, John G.	Europe	USATC Ft Gordon	Jan 72
CUNNINGHAM, William	Europe	USARV	Jan 72
DAVENPORT, Peter M.	Europe	USA Jud	Dec 71
DEWALL, David R.	VN	USAG Ft Sam Houston	Mar 72
DOYLE, Brooks S.	USAIC Ft Benning	USARV	Nov 71
DUNST, George A.	Korea	USAG Ft Sheridan	Nov 71

CAPTAINS—Continued

NAME	FROM	TO	APPROX. DATE
ELLIOTT, Joel T.	VN	USATCI Ft Ord	Mar 72
EVANS, Richard M.	VN	USA Jud	Jan 72
FEDYNSKY, George	USAIC Ft Benning	Korea	Jan 72
FITZGERALD, John D.	VN	Miss Comd Red Stone, AL	Feb 72
FORRESTER, Robert	VN	USA Elect Spt Ft Monmouth	Jan 72
FRIERDICH, Michael	OTJAG	USA Avn Sys Com St Louis	Dec 71
CALE, Ronald E.	Europe	USA JUSMAG THAI	Feb 72
GLIAUDYS, George J.	Hq 6th USA	VN	Dec 71
GOLDEN, John C.	USA JUSMAG THAI	USARV	Feb 72
HARVEY, Sanford W.	Hq, MDW	Europe	Jan 72
HENRICHSON, Presto	Safeguard Sys Comd Kwajalein	USA Jud	Jan 72
HEBERT, Clarke E.	DLI Pre of Mont	Europe	Apr 72
HOLDERNESS, Robert	Europe	USA Jud	Feb 72
HOPSON, William S.	VN	S-F TJAGSA	Jan 72
HUTKA, Stanley C.	VN	USAG Ft Carson	Jan 72
JABLONSKI, Robert	OTJAG	Korea	Nov 71
JELINCH, Frank	VN	Valley Forge Hospital	Jan 72
KLIMISCH, William	VN	USAG Ft Carson	Feb 72
LEWKOWSKI, Edward	USARSUPTHAI	USAG Ft Sheridan	Mar 72
MANNING, Jay P.	USA Msb Comd Redstone Ars	SAFSCOM Kwajalein	Dec 71
McCLINTOCK, Kenneth	Hq 3rd USA	Hq USAG Ft Riley	Dec 71
McGLOTHLIN, Larry	1st Cav Div Ft Hood	USAG Ft G. G. Meade	Jan 72
McMAHON, Thomas G.	USA Eng Cen Ft Belvoir	OTJAG	Sep 71
MEMORY, John M.	USA Qm Cen Ft Lee	82AG Adm Co Ft Bragg	Nov 71
MINGLEDORF, Walter	DLI Pres of Mont	Europe	Apr 72
MORRISON, Frank	USAG Ft Bragg	USATC Ft Eustis	Oct 71
MYER, Edward H.	USA MP Sch Ft Gordon	USASTC Ft Gordon	Dec 71
NEEB, David W.	VN	USATCI Ft Lewis	Mar 72
OCONNELL, Dennis E.	Korea	USATC Ft L'Wood	Nov 71
PARK, Percival D.	VN	HQ USAE MACV	Oct 71
PHILLIPS, Edelbert	VN	Med Cen Brook AMC	Jan 72
RICHARDS, Edwin J.	Hq 3rd USA	HQ WA MTMTS, Oakland	Nov 71
SMITH, James P.	USAG Ft Riley	Hq XVIII Abn Cps Ft. Bragg	Jan 72
SOURS, John D.	VN	OTJAG	Dec 71

CAPTAINS—Continued

NAME	FROM	TO	APPROX. DATE
STAITI, Peter F.	Korea	USAG Ft Devens	Jan 72
SULLIVAN, William	USA Corr Tng FA Ft Riley	Hq USARYIS	Jan 72
TOLAND, John R.	VN	USA Jud	Feb 72
TRUMAN, John R.	USAG Ft McPherson	USA Avn Sys Comd St Louis	Nov 71
UNDERWOOD, Jack R.	USA Inf Cen Ft Benning	Europe	Dec 71
WARREN, Robert B.	ADC Ft Bliss	USAG Ft Carson	Nov 71
WILSON, Jimmy	VN	MisslCmd Hq Redstone	Sep 71

WARRANT OFFICERS

RAMSEY, Alzie	S-F TJAGSA	USA Adj Sch Ft Benjamin Harrison	Nov 71
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CURRENT MATERIALS OF INTEREST

Prisoner's Rights and The Correctional Scheme: The Legal Controversy and Problems of Implementation—A Symposium 16 Villanova Law Review. (1971) (Single copy—\$2.50 Villanova Law Review, School of Law, Villanova University, Villanova, Pennsylvania 19085)

Stafford, Military Justice in a Volunteer Army, Juris Doctor, Vol 2, No. 1, October 1971. (Single copy \$1.25, Circulation Director, Juris Doctor, 555 Madison Avenue, New York, N. Y. 10022.)

J. Sack, Lieutenant Calley His Own Story (1971) (The Viking Press, 625 Madison Ave., New York)

Johnson and Fievez, Belgian Law, Judge Advocate Division, Headquarters NATO/SHAPE Support Group (US), APO New York 09088.

AR 340-13 Addressing Mail and Correspondence to Army Staff Agencies, eff. 1 Oct. 1971. Reg. announces a new format for addressing correspondence and mail from Army field commands to Headquarters, DA staff agencies.

