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The New Federal Rules of Evidence – Part II

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This is the second in a series of three articles on the Federal Rules of Evidence. In the first article, the author described the Rules' background and compared Articles I through IV of the Rules with the Manual rules. In this article, the author compares Articles V through VII with the Manual rules.

ARTICLE V: PRIVILEGES

Five of the privileges listed in the Federal Rules can also be found in the Manual. The first of these common privileges is the privilege for confidential communications between an attorney and his client. Although both the Manual and Rule 503 mention the privilege, they treat the privilege differently in several respects. When defining the privilege's holder, the Manual mentions only natural persons. Rule 503 defines client as including a "corporation, association, or other organization or entity, either public or private. . . ." ¹ The explanation for the difference is obvious: while the Manual applies to exclusively criminal prosecutions, Rule 503 applies to civil actions as well; and it is well-settled that business entities can qualify as clients for purposes of the privilege. When defining counsel, the Manual refers to "military or civilian counsel detailed, assigned, or otherwise engaged to defend or represent a person in a court-martial case or any military investigation or proceeding. . . ." ² The Analysis of the Manual's contents states that the definition includes non-lawyer counsel, representing the accused in a special court or the respondent before a board. ³ Rule 503 protects communications to a non-lawyer counsel only if the

client reasonably believed that the layman was an attorney. ⁴ Finally, since the Advisory Committee feared "sophisticated techniques of eavesdropping and interception . . .," ⁵ Rule 503 permits the holder to prevent a mere eavesdropper from testifying as to the communication. The Manual takes a contrary position; under the Manual, an eavesdropper is not considered bound by the privilege, and he may testify as to the communication.

The second common privilege is the accused spouse's privilege to prevent the witness spouse from testifying against him/her. At common law, there were two separate marital privileges. One privilege was anti-testimonial; the accused spouse could prevent the witness spouse from testifying against the accused spouse. The second privilege was for confidential communications between the spouses. The Manual recognizes both privileges. Rule 505 recognizes only the anti-testimonial privilege. Moreover, there are noteworthy differences between the Manual's and Rule 505's treatment of the anti-testimonial privilege. Under the Manual, even where the accused spouse loses his or her privilege, the witness spouse ordinarily retains a privilege not to testify. ⁶ The Federal Rule permits the witness spouse to claim the accused spouse's privilege on the accused spouse's behalf, but the Rule does not confer an independent privilege upon the witness spouse. The Manual and Rule 505 also differ on the scope of the injured-spouse exception to the privilege. The Manual contains broad language that

the privilege does not exist in favor of the accused spouse when the other spouse

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is the person or one of the persons injured by the offense charged, as in a prosecution for an assault by one spouse upon the other, for bigamy, unlawful cohabitation, or adultery, for abandonment of the wife or children or failure to support them, for mistreatment of a child of the other spouse, or for forgery by one spouse of the other's signature to a writing when the forgery is an injury to the legal rights of the other.⁷

Rule 505's corresponding language is that the privilege is inapplicable where the accused is charged with

a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other.⁸

Rule 505's wording is susceptible to the narrow interpretation that the charged offense must be one directly against the victim's person or property. In contrast, the Manual clearly renders the privilege inapplicable where the accused is charged with an offense against the marital relation such as bigamy, although the accused has not directly injured the victim's person or property. Finally, unlike the Manual, Rule 505 provides that the privilege does not apply "as to matters occurring prior to the marriage . . ." ⁹ Strangely, the Committee has engrafted onto the anti-testimonial privilege an exception ordinarily applied only to the confidential communication privilege. At common law, the confidential marital communication privilege did not apply to disclosures made prior to marriage, but the companion rule was that the same limitation did not apply to the anti-testimonial privilege.¹⁰ Without discussing the exception's historic origin, the Committee's Note justifies the adoption of the exception with the simple statement that "(t)his provision eliminates the possibility of suppressing testimony by marrying the witness."¹¹

The third common privilege is that for confidential communication between penitent and clergyman. The Manual and Federal Rule provisions are almost identical. Both apply the privilege not only to doctrinally required con-

fessions but also to communications the penitent makes as a matter of conscience to the clergyman in the latter's capacity as spiritual advisor.

The fourth common privilege is for the informant's identity. Since this privilege is governed by 4th Amendment considerations which apply to military and civilian courts, it is hardly surprising that the Manual and Federal Rule provisions are substantially similar. There are seeming differences between the provisions, but these differences are insubstantial. The first apparent difference between the provisions is that on its face, Rule 510 is limited to the informant's identity while the Manual purports to protect both the informant's identity and his communications to public officials. However, the Advisory Committee Note indicates that Rule 510 should be construed as privileging communications "to the extent that disclosure would operate also to disclose the informer's identity."¹² The Manual protects communications only "to the extent necessary to prevent disclosure of the informant's identity."¹³

The second apparent difference is that unlike the Manual, the Federal Rule expressly empowers the judge to require disclosure where he is "not satisfied that the information was received from an informer reasonably believed to be reliable or credible."¹⁴ Further analysis shows that like the first difference, this difference is apparent rather than real. It must be remembered that under the Manual if the defense counsel moves for appropriate relief to suppress illegally seized evidence, the trial counsel has the burden of proving the search's legality. Specifically, the trial counsel must establish the informer's reliability, the second prong of the *Aguilar* test.¹⁵ Rule 510 applies only where the judge is not satisfied that the prosecuting attorney has otherwise sustained his burden of proof; the judge is requiring additional proof of the informer's reliability. In the same situation, if the military trial counsel refused to disclose the informer's identity, the military judge would have to find that there was no probable cause and

grant the motion. The ruling is the same result the judge would reach under the Federal Rule.

The last common privilege is that for State secrets. While the provisions are quite similar, Rule 509 is more explicit than the Manual provision. For example, the Manual is silent on the question of the measure of the Government's burden of proof while Rule 509 expressly requires that the Government show a "reasonable likelihood" that the proffered evidence will disclose a State secret.¹⁶ The Manual is similarly silent on the question of the procedures for invoking the privilege. Rule 509 prescribes a detailed procedure, including an *in camera* hearing and the sealing and preservation of the written claim of privilege in the event of an appeal. The Rule contains a unique procedural provision to the effect that if there is a substantial possibility that a privilege claim would be appropriate but the responsible officer has failed to file a claim, the trial judge should cause notice to be given to the officer and stay proceedings to give the officer an opportunity to make the claim. Finally, while the Manual states only that the Government's invocation of the privilege may make it "impossible to proceed with the trial . . .,"¹⁷ Rule 509 details the possible consequences of the Government's invocation of the privilege in a case to which the Government is a party, i.e. striking a witness' testimony, declaring a mistrial, finding against the Government on the issue, or dismissing the charge.

In addition to recognizing the traditional privilege for State secrets, Rule 509 creates a much broader privilege for official information. To invoke this privilege, the Government must show that: (1) the Government has custody or control of the information; (2) the information's disclosure would be contrary to the public interest; and (3) the information consists of intragovernmental opinions or recommendations prepared for use in decisional or policymaking functions, or investigatory files compiled for law enforcement purposes, or information the Government obtained in the exercise of official responsibilities and not

otherwise available to the public under 5 U.S.C. § 552.¹⁸ The Manual does not have a comparable provision. Aside from State secrets, the Manual recognizes as privileged only Inspector General reports.¹⁹

Privileges recognized only by the Federal Rules

In addition to the five common privileges, the Federal Rules list several privileges which have no counter-parts in the Manual.

Rule 504 recognizes a psychotherapist-patient privilege. The Advisory Committee decided against adopting a general physician-patient privilege; the Committee had serious "doubts attendant upon the general physician-patient privilege."²⁰ The Committee was willing to recognize a limited psychotherapist-patient privilege because psychotherapy is the only field of medicine in which confidential communication is absolutely essential to effective treatment.²¹ The Manual draftsmen balked at recognizing even a limited privilege. The Manual states that there is no privilege for any statement a patient makes to a medical officer or civilian physician. Thus, at first glance, there appears to be a vast difference between the two provisions. In fact, the difference, albeit real, is relatively minor. The same Rule which creates the privilege also states exceptions which severely limit the privilege's scope. For example, the Rule provides that the privilege is inapplicable if the statement is made during a court-ordered examination or if the statement relates to the patient's mental or emotional condition in a case in which the patient relies upon the condition as an element of his claim or defense. The privilege would be inapplicable in a criminal case in which the defendant raised the affirmative defense of insanity. Although the Manual does not recognize a psychotherapist-patient privilege, the Court of Military Appeals has fashioned a limited privilege for statements made during a court-ordered psychiatric evaluation.²² The Court has held that in this situation, Article 31 dictates that unless he administered a proper Article 31 warning, the

psychiatrist may testify only as to his opinion of the accused's mental responsibility; the psychiatrist may not testify as to any specific statements the accused made during the evaluation. Ironically, with respect to court-ordered evaluations, military law which does not recognize a psychotherapist-patient privilege seems to afford the accused at least as much protection as the proposed Federal Rules which expressly recognize a privilege.

The Federal Rules also recognize a privilege for required reports. Rule 503 provides that if a statute both requires a report and states that the report is privileged, the person reporting may refuse to disclose and prevent another from disclosing the report. The Manual does not contain a parallel provision. However, a military judge might well apply such a privilege if the statute were an Act of Congress and the Act did not purport to limit the privilege to Federal civilian courts. On the other hand, if the statute were a State enactment, it is highly doubtful that the military judge would or ought to apply the privilege. A military judge has no obligation to apply the evidence law of the State in which he sits.

Finally, Rule 507 grants voters a privilege to refuse to disclose the tenor of their vote at an election by secret ballot. The voter loses his privilege only if "the vote was cast illegally."²³ The Manual does not have a comparable privilege. It has been argued that this privilege is constitutionally based.²⁴ If this argument is correct, then a court-martial would be obliged to apply the privilege.

The Manual and the Federal Rules also address procedural issues related to privilege. The Manual and Rule 511 agree that a party waives his privilege by consenting to a disclosure of the privileged information. With regard to the prohibition against comment on the exercise of a privilege Federal Rule 513 extends the comment prohibition to all privileges. The Manual expressly prohibits comment upon invocation of only the privilege against self-incrimination.²⁵ It is arguable that the Manual imposes the comment prohibi-

tion only where *Griffin v. California*²⁶ compels the imposition of the prohibition; the thrust of the argument would be that if the Manual draftsmen had intended to apply the comment prohibition to non-constitutional privileges, the draftsmen would have done so expressly. This argument is certainly a permissive inference from the Manual's wording. However, the Analysis of the Manual's contents suggests that the draftsmen subscribed to the view expressed in Rule 513. The Analysis states that "(o)f course, a valid assertion of these privileges by the accused or a witness should not be considered as raising an inference that the communication as to which the privilege was asserted would be unfavorable."²⁷ The Manual draftsmen evidently thought that it was so obvious that the comment prohibition applied to non-constitutional privileges that it was unnecessary to explicitly state the rule. If the military judge regards the Manual language as ambiguous, he would be justified in consulting the Analysis; and having done so, he would probably reach the position the Advisory Committee drafted into Rule 513.

ARTICLE VI: WITNESSES

Article VI deals with the competency, credibility, and examination of witnesses.

Competency

The Manual restates the traditional doctrine that a person is competent to testify as a witness only if he has the moral capacity to recognize a duty to tell the truth and the mental capacity to observe, recall, and describe facts and events. Rule 601 eschews any effort to prescribe requirements for competency. The Rule announces that "[e]very person is competent to be a witness except as otherwise provided in these rules."²⁸ The Committee abandoned any effort to specify moral or mental qualifications because such standards "have proved elusive in actual application."²⁹ Under Rule 601, evidence of the witness' defective perception, memory, narration, or truthfulness cuts only to the witness' credi-

bility; the evidence is admissible solely to impeach the witness' credibility.

The Manual and Rule 602 agree that a witness is competent to testify only as to facts which he has personal knowledge of. The Manual simply states that "a witness is qualified to speak only of what he has learned through his senses."³⁰ Rule 602 prescribes a specific procedure for ruling on objections grounded on the witness' lack of personal knowledge. The Rule provides that the judge should permit the witness to testify if "evidence is introduced sufficient to support a finding that he has personal knowledge."³¹ Rule 602 thus treats the issue as a problem of conditional relevance. The testimony lacks logical relevance unless the witness has personal knowledge; and applying the Federal Rules' procedure for determining the admissibility of conditionally relevant evidence, the testimony is admissible if the proponent produces sufficient evidence to support a finding of fact that the witness has personal knowledge.³² The Manual does not mention the problem of conditionally relevant evidence, and the Analysis is silent on the procedure the draftsmen intended to adopt. The common-law procedure was that the judge resolved the factual issue of the witness' knowledge rather than merely passing upon the sufficiency of the evidence to support a finding of knowledge.³³ It is believed that in the absence of an express Manual provision, many, if not most, military judges have followed the common-law rule.

After stating the general rules of competency, the Federal Rules deal with specific types of witnesses.

Rule 605 provides that "the judge may not testify in that trial as a witness. No objection need be made in order to preserve the point."³⁴ The Manual analyzes the problem in different terms. The Manual provides that the judge is challengeable for cause on the ground that he will be a prosecution witness.³⁵ Since this is one of the statutory grounds for challenge, the judge may be excused as soon as it becomes evident that he will be a prosecution witness. The Manual treats the judge's pro-

spective appearance as a defense witness as a fact "indicating that he should not sit as a . . . military judge in the interest of having the trial . . . free from substantial doubt as to legality, fairness, and impartiality . . ." ³⁶ While this is not one of the statutory grounds for challenge, the judge has discretion to grant a challenge on this ground.

Rule 606 is the companion to Rule 605. Rule 606 states that a juror is incompetent to testify in the case in which he is sitting as a juror. The corresponding Manual provision is that as a prospective witness, the juror is challengeable for cause. The Rule further provides that jurors are incompetent to subsequently testify to impeach their verdict; the juror may not testify as to his mental processes or the effect of any evidence on his or another juror's mind. The juror may testify only as to extraneous, prejudicial information that was improperly brought to the jury's attention. The Manual states that "the deliberations of courts and . . . petit juries are privileged . . ." ³⁷ Rule 606's approach to the problem is theoretically sounder. In effect, the Manual creates a privilege without a holder. Rule 606's straightforward, competency approach avoids this anomaly.

Credibility

There are three points in time at which the witness' credibility is in issue: when the proponent attempts to bolster the credibility before the opponent has attacked the credibility; when the opponent attacks the credibility; and when the proponent attempts to rehabilitate the credibility after the opponent has attacked the credibility.

Federal Rule 608 adopts the general, common-law rule that bolstering is forbidden. There is no indication in the Advisory Committee Note that the Committee intended to recognize any exceptions to the prohibition. In this respect, the Manual rules are more liberal. The Manual mentions two cases in which the proponent may bolster his witness' credibility before the opponent has attempted to impeach the witness. First, if the complain-

ing witness in a sex offense prosecution has already testified, the proponent may prove a fresh complaint to bolster the witness' credibility. ³⁸ Second, if the witness has made an in-court identification of the accused or a third party, the proponent may prove the witness' prior, out-of-court identification of the person to bolster the witness' credibility. ³⁹

With respect to the impeachment stage, the Manual and Federal Rules differ on who may impeach and the methods of impeachment.

The Manual follows the orthodox view that the proponent may not impeach his own witness' credibility. The Manual permits the proponent to attack his witness' credibility in only two instances. The first instance is where the "law or the circumstances" make the witness' testimony indispensable to the proponent's case. ⁴⁰ The second instance is where the witness surprises the proponent by giving testimony which positively damages the proponent's case. ⁴¹ In this instance, the Manual permits impeachment and strictly limits the methods of impeachment:

If surprise is the only reason for permitting a party to impeach his own witness, the party may directly attack the credibility of the witness only by proof of prejudice, bias, or other motive to misrepresent with respect to the adverse testimony as to which the party was surprised, or by proof of statements or conduct by the witness inconsistent with that adverse testimony, and may not, for instance, show that the witness has a bad character as to truth or veracity or that the witness has been convicted of crime. ⁴²

Rule 607 repudiates the orthodox view. The Rule pronounces that "(t)he credibility of a witness may be attacked by any party, including the party calling him." ⁴³ The Advisory Committee Note dismisses the orthodox view as based "on false premises." ⁴⁴ The Committee was of the opinion that the orthodox view was unfair because "he (the proponent) rarely has a free choice in selecting them (his witnesses)." ⁴⁵

Assuming that the party may impeach the witness, the next question which arises is

what methods of impeachment may the party use.

A common method of impeachment is to show that the witness has made prior inconsistent statements or committed prior inconsistent acts. The Manual incorporates the rule of the famous *Queen Caroline's Case*⁴⁶ that the proponent must lay a foundation for such impeachment, that is, the proponent must call the witness' attention to the occasion and inquire whether the witness admits that he made the statement. If the proponent does not lay a foundation, he may not introduce extrinsic evidence of the inconsistent statement or act. The Advisory Committee decided to abolish the foundation requirement. Rule 613 states that "(i)n examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown or its contents disclosed to him at that time" ⁴⁷ On the opponent's request, the proponent must disclose or show the statement to the opponent. The Rule guarantees the witness an opportunity to explain or deny the statement, but the Note indicates that the opportunity need not precede the evidence. Another fundamental difference between the Manual and the Federal Rules is that under Rule 801, if evidence of a prior inconsistent statement is admissible for impeachment, it is also admissible as substantive evidence.

Another method of impeachment is to prove that the witness is an untruthful person. The courts commonly accept four types of evidence of the witness' untruthfulness.

The first two types of evidence are reputation and opinion evidence. Under both the Manual and the Federal Rules, these two types of evidence are admissible to prove the witness' truthfulness or mendacity.

The third type of evidence is proof that the witness has been convicted of certain types of crimes. The Manual and Federal Rules admit roughly the same types of convictions. Rule 609 provides that the proponent may prove that the witness has been convicted of an offense (1) punishable by death or imprison-

ment for more than one year or (2) which involved dishonesty or false statement. The Manual uses substantially the same test. However, there are numerous differences between the Manual's and the Rules' treatment of "impeaching" convictions. For example, while Rule 609 establishes an absolute rule that the conviction is inadmissible if it is more than ten years' old,⁴⁸ the Manual does not set forth any specific time limits on the evidence's remoteness. Moreover, under the Manual, evidence of a conviction is inadmissible if the conviction is still undergoing appellate review. Rule 609 provides that if an appeal is pending, the proponent may nevertheless prove the conviction. In the interests of fairness, the Rule permits the opponent to prove the pending appeal.

The fourth type of evidence is proof that the witness committed acts of misconduct which tend to diminish his credibility. The Manual and Rule 608 agree that if the nature of the act is "probative of . . . untruthfulness," ⁴⁹ the proponent may cross-examine the witness about the act. The Manual and Rule 608 also concur that since such acts are collateral, the cross-examiner ordinarily must "take the answer": if, on cross-examination, the witness denies the act, the cross-examiner may not introduce extrinsic evidence of the act. The Manual allows extrinsic evidence in one case; in a sex offense prosecution in which lack of consent is an element, the cross-examiner may introduce extrinsic evidence of "specific acts of illicit sexual intercourse or other lascivious acts" to impeach the complaining witness' credibility as well as to prove consent.⁵⁰ The Federal Rules do not mention any cases in which the cross-examiner would be allowed to introduce extrinsic evidence of the act.

The Manual and the Federal Rules also discuss the rehabilitation of a witness' credibility. The Manual's treatment of the subject is much more extensive than the Federal Rules' treatment. The most basic difference between the treatments is that under Rule 801, if a prior consistent statement is admissible for

rehabilitation, the statement is likewise admissible as substantive evidence.

The Examination of Witnesses

The Manual and Federal Rules regulate the manner in which witnesses may be examined.

The Manual and the Rules differ radically on the scope of cross-examination. The Manual draftsmen opted for the rule of restrictive scope. The Manual states that "cross-examination should, in general, be limited to the issues concerning which the witness has testified on direct examination and the question of his credibility."⁵¹ The Manual cautions judges against unduly limiting cross-examination; the Manual encourages judges to grant the cross-examiner reasonable latitude. The Advisory Committee elected to adopt the rule of wide-open scope. Rule 611 provides that "(a) witness may be cross-examined on any matter relevant to any issue in the case"⁵² The Rule grants the trial judge discretion to narrow the scope when a wide-open cross-examination would prevent the direct examiner from making an orderly presentation of his case.

The Manual and the Federal Rules empower the judge to exclude witnesses from the courtroom while another witness is testifying. Under the Manual, sequestration is the normal practice. The Manual grants judges the power to make exceptions to the general rule of witnesses' exclusion. Rule 615 requires that a party move for exclusion. Unless the party requests or the judge sequesters the witnesses on his own motion, the witnesses will be permitted to remain in the courtroom. Under Rule 615, the judge can exclude any witness except (1) a party who is a natural person, (2) the agent of a party which is not a natural person and whom the party's attorney has designated as its representative, and (3) "a person whose presence is shown by a party to be essential to the presentation of his cause."⁵³

The Manual and the Rules are in accord that the judge may question witnesses. The

Advisory Committee contented itself with a simple assertion of the judge's right to question witnesses. The Manual expressly limits the judge's right. The Manual states that the judge may ask only "questions which would be permissible on cross-examination of the accused by the prosecution."⁵⁴ The Manual adds that when questioning a character witness, the judge must confine himself to "matters which could properly be inquired into by the prosecution."⁵⁵

ARTICLE VII: OPINIONS AND EXPERT TESTIMONY

It is axiomatic that the law recognizes two types of witnesses, laymen and experts. The Manual and Federal Rules place restrictions on the testimony of both types of witnesses.

Laymen Witnesses

Early common law prohibited laymen from expressing opinions in their testimony. This prohibition proved too costly; it resulted in the exclusion of an intolerably large amount of valuable evidence. Consequently, the courts developed the "collective facts" exception to the prohibition: if the witness' impression was relevant and the witness could not convey the impression by merely reciting observed facts, the witness could testify as to the collective fact, his impression. The Manual draftsmen incorporated the exception into paragraph 138.⁵⁶ In a court-martial, a layman witness may express an opinion if (1) his opinion is based on observed facts, (2) his opinion is an inference laymen commonly draw, and (3) the witness' recitation of the underlying, observed facts would not adequately convey the opinion to the court members.⁵⁷ Federal Rule 701 represents a significant liberalization of the collective facts exception. Rule 701 permits a layman to express an opinion if the opinion is

(a) rationally based on the perception of the witness and

(b) helpful to a clear understanding of his testimony or the determination of a fact in issue.⁵⁸

The Advisory Committee felt that any attempt to formulate a more specific standard of admissibility was unnecessary and futile. The Committee decided to rely upon attorneys' natural inclination to use such evidence sparingly: "the detailed account carries more conviction than the broad assertion."⁵⁹

Expert Witnesses

All jurisdictions permit expert witnesses to base their opinions on facts they personally know or on assumed facts in hypothetical questions. A growing minority of jurisdictions permit experts to rely upon third party reports if the report is of a type which practitioners of the expert's specialty customarily rely upon. The Manual added the military to the ranks of the jurisdictions subscribing to this minority view.⁶⁰ Rule 703 would add the Federal court to the same ranks. The Rule permits an expert's opinion to be based on a report "of a type customarily relied upon by experts in the particular field . . ."⁶¹ The minority view appears to be sound. Experts such as physicians base "life-and-death decisions on" such reports.⁶² The position that a witness may not rely upon the same kind of report seems unduly conservative. The opponent's protection lies in his right to cross-examine the expert voicing the opinion.

One of the primary criticisms of the courtroom use of expert, scientific testimony is that the only experts who appear are hired partisans. Of the witnesses he has consulted, the proponent calls only the witnesses who will testify favorably to his position; and understandably, the opponent does likewise. Unfortunately, in most cases, the truth lies in the testimony of the experts who took a more balanced view of the issue—that is, the experts who were not called to testify. Several commentators have suggested that the judge can correct this abuse by exercising his power to call impartial expert witnesses.⁶³ The Manual makes no mention of the judge's power to appoint expert witnesses. Rule 706 prescribes a detailed procedure for the appointment. Under the Rule, "(t)he judge may appoint any

expert witnesses agreed upon by the parties, and may appoint witnesses of his selection."⁶⁴ Either party may call the court-appointed expert, and each party may cross-examine him. In his discretion, the judge may disclose to the jury the fact that the witness is a court-appointed expert. The Rule does not prevent the parties from calling their own expert witnesses.

The Ultimate Fact Prohibition

Some courts prohibit witnesses from testifying as to "ultimate facts." There are some indications that even in the absence of an express Manual provision, the military has applied this prohibition.⁶⁵ Certainly, witnesses should not be permitted to testify as to how they would like the jurors or court members to resolve the dispute in question. However, like the opinion limitation, the ultimate fact prohibition results in the exclusion of much valuable evidence. For that reason, many commentators have scathingly criticized the prohibition.⁶⁶ Responding to these criticisms, the Advisory Committee abolished the prohibition. Rule 704 states that "testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate fact to be decided by the trier of fact."⁶⁷

Footnotes

1. FED.R.EV. 503(a) (1).
2. MCM, 1969, (Rev.), para. 151b(2).
3. DA PAM 27-172 ANALYSIS OF CONTENTS, MANUAL FOR COURTS-MARTIAL, UNITED STATES 1969, REVISED EDITION p. 27-37 (July 1970).
4. FED.R.EV. 503(a) (2).
5. FED.R.EV. 503, Advisory Comm. Note.
6. MCM, 1969, (Rev.), para. 148e. However, even the witness spouse loses his or her privilege if the charged offense is a violation of the Mann Act or the international Mann Act.
7. *Id.*
8. FED.R.EV. 505(c).
9. *Id.*
10. MCCORMICK, EVIDENCE §§ 66 and 81 (2nd ed. 1972).
11. FED.R.EV. 505, Advisory Comm. Note.
12. FED.R.EV. 510, Advisory Comm. Note.
13. MCM, 1969, (Rev.), para. 151b(1).

14. FED.R.EV. 510(c) (3).
15. *Aguilar v. Texas*, 378 U.S. 108 (1964).
16. FED.R.EV. 509(b).
17. MCM, 1969, (Rev.), para. 151b(1).
18. FED.R.EV. 509(a) (2).
19. MCM, 1969, (Rev.), para. 151b(3).
Paragraph 143a(2)(d) of the Manual contains a provision which has some superficial similarity to the Federal Rule:
If the head of an executive or military department or independent government agency determines that it would be detrimental to the public interest to disclose the text or informational source of a certain official record kept under the authority of the department or agency, a properly authenticated . . . certificate or statement signed by him, or by his deputy or assistant, setting forth a summary of the record is as admissible in evidence as the record itself . . .
On its face, the provision merely creates an excuse for the non-production of the original to permit the summary's admission. By its terms, the provision does not confer a substantive privilege on the original document and probably does not bar the defense from discovering the document.
20. FED.R.EV. 504, Advisory Comm. Note.
21. *Id.*
22. *United States v. Babbidge*, 18 USCMA 327, 40 CMR 39 (1969).
23. FED.R.EV. 507.
24. Nutting, "Freedom of Silence: Constitutional Protection against Governmental Intrusion in Political Affairs," 47 MICH.L.REV. 181 (1948).
25. MCM, 1969, (Rev.), para. 150b.
26. 380 U.S. 609 (1965).
27. DA PAM 27-2 ANALYSIS OF CONTENTS, MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1969, REVISED EDITION p. 27-38 (July 1970).
28. FED.R.EV. 601.
29. FED.R.EV. 601, Advisory Comm. Note.
30. MCM, 1969, (Rev.), para. 138d.
31. FED.R.EV. 602.
32. FED.R.EV. 104(b).
33. MCCORMICK, EVIDENCE § 70 (2nd ed. 1972).
34. FED.R.EV. 605.
35. MCM, 1969, (Rev.), para. 62f(4).
36. *Id.* at para. 62f(13).
37. *Id.* at para. 151b(1).
38. *Id.* at para. 142c.
39. *Id.* at para. 153a.
40. *Id.* at para. 153b.
41. *Id.*
42. *Id.*
43. FED.R.EV. 607.
44. FED.R.EV. 607, Advisory Comm. Note.
45. *Id.*
46. 2 Brod. & Bing. 284, 129 Eng.Rep. 976 (1820).
47. FED.R.EV. 613(a).
48. FED.R.EV. 609(b).
49. FED.R.EV. 608(b).
50. MCM, 1969, (Rev.), para. 153b(2)(b).
51. *Id.* at para. 149b(1).
52. FED.R.EV. 611(b).
53. FED.R.EV. 615. The accompanying Note explains that "(t)he category contemplates such persons as the agent who handled the transaction being litigated or an expert needed to advise counsel in the management of the litigation."
54. MCM, 1969, (Rev.), para. 149b(3).
55. *Id.*
56. *Id.* at para. 138e.
57. *Id.*
58. FED.R.EV. 701.
59. FED.R.EV. 701, Advisory Comm. Note.
60. MCM, 1969, (Rev.), para. 138e.
61. FED.R.EV. 703.
62. FED.R.EV. 703, Advisory Comm. Note.
63. MCCORMICK, EVIDENCE § 203 (2nd ed. 1972).
64. FED.R.EV. 706(a).
65. THE JUDGE ADVOCATE GENERAL'S SCHOOL, MILITARY CRIMINAL LAW: EVIDENCE § 12-5 (January 1973).
66. MCCORMICK, EVIDENCE § 12 (2nd ed. 1972).
67. FED.R.EV. 704.

Marijuana Detection Dogs As An Instrument of Search: The Real Question *By: Captain T. Barry Kingham, Defense Appellate Division, U. S. Army Legal Services Agency*

In a recent article in *The Army Lawyer* entitled *Admissibility of Evidence Found by Marijuana Detection Dogs*,¹ the authors discussed the use of the marijuana-detecting dog as a supplies of probable cause for a commander-authorized search of a soldier's living area. That question need not even be reached in marijuana dog cases. The threshold consideration is more basic: whether the very use of

the dog constitutes a search. The Lederers fail to address this issue in their article, as do the few military cases in point.² However, it should be the initial consideration in any search case involving marijuana-detecting dogs.

While the word "search" is nowhere defined in the Constitution, courts have indicated

that the term "necessarily implies the prying into or uncovering of that which one has a right to and effectively does conceal from the view or scrutiny of another."³ In this regard, the Court of Military Appeals has noted that a search occurs when an intrusion is made "with a view toward discovering contraband or other evidence to be used in the prosecution of a criminal action."⁴ Obviously, by actually opening lockers, emptying pockets and examining personal belongings, an official engages in a search under the definitions described above. Is the use of a marijuana dog any less an intrusion?

Considerable emphasis has been placed on the use of marijuana dogs as supplying probable cause to search an area to which they "alert."⁵ Indeed, in *United States v. Ponder*,⁶ the Air Force Court of Military Review recognized the necessity for laying a qualitative foundation for the expertise of the marijuana dog before it could be considered as supplying probable cause. Surely, if the dogs are as well qualified as their proponents claim,⁷ they should not only be considered as supplying probable cause; the dog sniff should be considered the search itself.

Use of a properly qualified marijuana-detection dog is no different from mechanical search methods which have been considered as actually constituting the intrusion. In *Katz v. United States*⁸ and *Berger v. New York*,⁹ the Supreme Court recognized that "bugging devices constituted an intrusion into conversations. While the government in those cases did not engage in any personal intrusion, the extension of their ears into areas which otherwise would have been concealed (*i.e.* private conversations), constituted a "search." Likewise, the use of hands to pat down the outer clothing has been held a search; it is an intrusion into an area which is not visible to the suspicious officer.¹⁰ Further, the use of a "magnetometer" at an airport gate is a search; it is an intrusion into an area which cannot be viewed by the person operating the mechanical search device.¹¹ Use of a qualified marijuana-detecting dog is as much a search as using a

properly calibrated magnetometer or an intruding wiretap. The dog is used to intrude into areas which cannot be smelled by the human senses, just as a wiretap or "bugging" device intrudes into areas which cannot be heard by the human ear; just as the magnetometer measures the presence of metal in the air when the human sense could not accomplish such a feat.

In light of the clear parallels between the nature of a qualified marijuana-detection dog and other non-human means of intrusion, the continued emphasis on events occurring *after* the dog has sniffed seems misplaced. Rather, the threshold consideration in dog-sniff cases should be the constitutional propriety of the actual use of the dog as a search instrument. The issue of admissibility of evidence sniffed out by the dog then turns on whether or not there was probable cause to use the dog in the first place, or whether the search authorization requirement need not be met due to one of the recognized exceptions to the requirement for a search warrant.

This issue was presented to the Court of Military Appeals recently in *United States v. Carson*, 22 USCMA —, 46 CMR — (March 30, 1973). There a dog and handler were called to an air terminal for the purpose of sniffing bags which a terminal official thought looked suspicious. The dog sniffed and alerted, and the bags were subsequently opened. The Court decided the case on the theory that the search was not a proper "customs-like" search because the baggage in which the marijuana was found had not yet been presented for passage at the baggage scales. The Court also noted that there was no authorization to search granted by the vice base commander even though he was on the scene and was informed of the dog sniff and the suspicions of the arresting officers. Unfortunately, the Court did not meet the question of when the actual search took place: whether at the moment of sniffing, or when the bags were opened several hours later. However, Judge Quinn noted in his dissenting opinion that the use of the dog under the circumstances was reasonable, and

seemed to imply that a valid search had occurred at that point, analogizing the use of the dog to a pat-down "frisk" for weapons.¹²

In *United States v. Unrue*,¹³ the Court of Military Review indicated that a qualified sniffing and alerting dog would give probable cause to arrest the occupants of a sniffed car. The Court's opinion ignores the important fourth amendment question of whether the sniff itself was a search, and the issue will soon be argued before the Court of Military Appeals,¹⁴ giving the Court another opportunity to decide this interesting issue.

The advice proffered to counsel in the Lederers' article on marijuana dogs is sound.¹⁵ A defense counsel *should* be prepared to attack the reliability of dog and handler, just as he would attack the foundation for evidence offered as the result of any search procedure. But emphasis at a suppression hearing should be placed primarily on whether there is probable cause to use a marijuana dog in the first place, not whether the dog supplies the probable cause. The search procedure is born when the dog handler is authorized to use his animal as an extension of his own senses. The inquiry should be whether or not probable cause exists to make that intrusion, or whether, under the circumstances, an exception prevails which will vitiate the requirement for a warrant.¹⁶ The Courts' failure to meet this basic constitutional question has perpetuated the confusion in an already overly confused area of the law.

FOOTNOTES

1. Lederer and Lederer, Admissibility of Evidence Found by Marijuana Detection Dogs, *THE ARMY LAWYER*, DA Pam 27-50-4 (April 1973), 12.
2. *United States v. Unrue*, No. 427389, — CMR — (ACMR 10 November 1972); *United States v. Ponder*, 45 CMR 428 (AFCMR 1972), *pet. denied*, — USCMA —, 45 CMR 928 (1972).
3. *Poore v. Ohio*, 243 F. Supp. 777, 782 (N.D. Ohio 1963), *aff'd* 366 F. 2d 33 (6th Cir. 1966).
4. *United States v. Lange*, 15 USCMA 486, 489, 35 CMR 458, 461 (1967).
5. Lederer and Lederer, *op. cit.*, *supra*, n. 1; *United States v. Ponder*, *supra*, n. 2.
6. *Supra*, n. 2.
7. *See, e.g.*, *United States v. Unrue*, *supra*, n. 2.
8. 389 US 347 (1967).
9. 388 US 41 (1967).
10. *Terry v. Ohio*, 392 US 1 (1968).
11. *United States v. Epperson*, 454 F. 2d 769 (4th Cir. 1972), *cert. denied* — US — (1972).
12. *United States v. Carson*, 22 USCMA —, 46 CMR — (March 30, 1973), *Ms. Op.* at 7.
13. *Supra*, n. 2.
14. Petition for Grant of Review granted, 26 February 1973.
15. *Supra*, n. 1, DA Pam 27-50-4, 11, 14, 15.
16. The question of whether or not a commander may at random walk marijuana dogs through the barracks is unsettled. The issue has not yet been decided by military appellate courts, because the reported cases have dealt with situations in which dogs were used to sniff a specific soldier's belongings. (*United States v. Carson*, *supra*, n. 12; *United States v. Ponder*, *supra*, n. 2). The closest situation to the random barracks search is found in the *Unrue* case, *supra*, n. 2, in which the dog was used at a police checkpoint to sniff the cars entering an area of Fort Benning. The questionable constitutionality of that procedure is now before the Court of Military Appeals. (*See* test accompanying note 14, *supra*). There are those who argue unconvincingly that in light of the extent of the Army's drug problem or the nature of combat installations, probable cause should be relaxed in barracks or in combat areas where one should not expect privacy or exigencies are compelling. (*See*, Lederer and Lederer, *supra*, n. 1; Gilligan, *Inspections*, *THE ARMY LAWYER*, Vol. 2, No. 11 (November 1972), 11). However, the fourth amendment seems to have survived in the combat zone situation (*see, e.g.*, *United States v. Gibbins*, 21 USCMA 556, 45 CMR 330 (1972)), and the issue surrounding the extent of the drug problem is involved in the *Unrue* case before the Court of Military Appeals. Hopefully, a determination in that case that the use of a marijuana-detection dog constitutes a search will also resolve the barracks "walk-through" situation. The present state of the law provides little guidance to judges, trial and defense counsel, and perplexes the commanders who somehow must make important *ad hoc* determinations in this regard.

Classification, Promotion and Racial Discrimination

By: Captain Jack F. Lane, Jr., Civil Law Division, TJAGSA

In assessing the nature and extent of racial discrimination in the military's criminal justice system, the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces made several findings of racial bias in areas of military personnel administration. Specifically, the Task Force found:

The military personnel assignment and promotion system places heavy emphasis on tests, especially at the entry level. . . . The AFQT has been criticized for being culturally biased, based upon the large number of minority servicemen who score poorly. . . . [T]he ability to perform well in a testing environment, i.e., a pencil and paper test, is necessary for success. This may help to explain the relatively poor performance by minority servicemen, who, as a group, tend to have a poorer educational background. . . . [P]encil and paper tests do not take into consideration post-testing performance. . . .¹

The Task Force recommended that aptitude tests continue to be reevaluated with a view toward finding a better method of predicting eventual job performance, particularly of minority recruits and all Category IV personnel, and that school selections, promotions and other favorable personnel actions not be keyed to any one test or form of test.²

In reaching these conclusions, the Task Force relied, in part, on a recent Supreme Court case, *Griggs v. Duke Power Company*.³ In this case, the defendant power company was requiring new employees to pass two professionally prepared aptitude tests and to have a high school diploma. It also required present employees in the labor department (the only one of five departments in which blacks had been employed before 1965) who lacked a high school diploma to pass the two aptitude tests before they could be transferred to another department. The defendant argued that the requirements were not *intended* to be racially discriminatory, but rather were designed to "improve the overall quality

of the work force."⁴ The Court of Appeals had decided that while the requirements were not related to specific jobs, they did fairly measure the applicant's ability to progress up the promotional ladder.⁵ The Supreme Court, however, interpreted the provisions of section 703(h) of the Civil Rights Act of 1964⁶ to mean that:

. . . good intent or absence of discriminatory intent does not redeem . . . test mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability. . . . What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.⁷

Without discussing the appropriateness of this decision,⁸ the Court's finding that employees transferred out of the labor department before the test and diploma requirements were instituted made progress in their new positions⁹ is important to the Army in the light of recent studies of the Human Resources Research Organization (HumRRO). In its initial report,¹⁰ HumRRO summarized the findings of its studies of enlisted personnel in four occupational specialties — armor crewman (machine ascendant), general vehicle repairman (mechanical, with diagnostic and interpretive skill), unit/organizational supply specialist (clerical) and cook (written specific instructions). The studies showed that, generally, AFQT is related to job performance, although there was a considerable overlap between Category IV men and non-Category IV men. After 30 months of job experience, approximately 90% of the job incumbents performed at the upper levels of the performance distribution. Significantly, the report stated that there was no relationship between race and job performance.

This information was refined in HumRRO's later reports issued last year.¹¹ The HumRRO work units used two types of test, as well as supervisor evaluations. The first was the job

sample test, an objective examination lasting several hours which involved the performance of representative job tasks. The second was the job knowledge test, a multiple-choice, pencil and paper test. The latter test is more closely related to the AFQT, a pencil and paper test designed to test verbal ability, arithmetic reasoning, spatial relations and tool functions, *i.e.*, to measure general ability. Specific emphasis was given to the performance of Category IV men—the group found by the Task Force to contain a disproportionate share of black soldiers in the Army.¹²

The results of job sample testing showed a significant presence of Category IV personnel in the upper end of the performance distribution, with some scoring high early in their job experience. Graphically, there was a convergence between personnel in the different categories after five years on the job, and position relative to AFQT scores was actually lost in two specialties (armor crewman and cook). The performance distribution showed men in all AFQT categories in each quarter of the job sample test scores and, further, it showed that the number of months on the job were more highly related to job sample scores than were AFQT scores.

The job knowledge testing showed a similar overlapping of Category IV and non-Category IV personnel, but slightly less complete than was found with job sample testing. There was only slight evidence of convergence between personnel in the different categories after five years on the job, with the single exception of the unit/organizational supply specialist. The job knowledge test scores were more closely related to AFQT scores than were the job sample test scores, but this is not surprising as there are strong verbal components in the job knowledge tests and the AFQT.

One significant aspect of the HumRRO studies is the performance study conducted on a black-white racial basis. The study found that blacks scored proportionately lower on the AFQT than did whites. However, job sample testing (with adjustment in AFQT scores for blacks and months on job for

whites) showed no significant difference in present performance. With respect to job knowledge test scores, there was the same high relationship to AFQT scores initially, but with an increase in months on the job blacks obtained a higher mean score. The resulting conclusion was that job performance of blacks and whites, measured by job sample testing, does not differ despite the lower AFQT scores of blacks.

The stated findings of the HumRRO studies provide some food for thought. The research data suggests a potential loss of a sizable number of good performers if AFQT scores in the lower two-thirds of Category IV (0-20) are used as a grounds to deny entry into the Army: these potential performers are largely black. The studies showed that 33% of the Category IV men performed above the job performance median after 18 months on the job; 25% of the Category I and II men fell below the median. After 30 months on the job, 50% of the Category IV men were above the median, and 85% were above the median when they had over 30 months experience (although there was a tendency for performance to stabilize at 30 months). Also significant is the statement that the AFQT is not related to the types of tasks a man is assigned on the job nor to the frequency of performance.

The HumRRO study¹³ said that rather than excluding low aptitude men, it would appear reasonable for the Army to consider screening out those men who continue to perform in the lower ranges of the distribution after they have acquired some degree of job experience, *i.e.*, at the time they are ready to reenlist for a second term. While job sample testing is the most accurate, it is also the most expensive. Thus, the study recommended job knowledge tests which have been *substantially correlated* to job sample tests. Going beyond the AFQT, the study said that proficiency tests currently in use might be adapted, but that test items at present have often been developed by subject matter experts rather than job holders,

and tend to emphasize theory over job specifics.¹⁴

What does this mean to the Army judge advocate? Quite simply, it means that he may someday soon find himself in court defending the Army in a *Griggs*-type case. An attack on the Army personnel system could strike at two basic procedures—classification and promotion. The HumRRO studies present a fair appraisal of the problems the Army will have in showing that the AFQT is “job related” or more than a method of improving “the overall quality of the work force.” Further, the HumRRO studies place in jeopardy the current MOS proficiency tests as not relating to actual performance on the job. The problem, as raised by the Task Force, is the difficulty most minority servicemen have with pencil and paper tests. While this may be dismissed by some as simply an educational problem and not racial discrimination by the Army, *Griggs* clearly points out that this is not an acceptable argument.

The Court of Appeals’ opinion . . . agreed that . . . “whites register far better on the Company’s alternative requirements” than Negroes. . . . This consequence would appear to be *directly traceable to race*. Basic intelligence must have the means of articulation to manifest itself fairly in a testing process. Because they are Negroes, petitioners have long received inferior education in segregated schools. . . .¹⁵

Additionally, the Army promotion system requires completion of the eighth grade (or a GED equivalent) for promotion to grade E-5 and a high school diploma (or a GED equivalent) for promotion to grades E-6 through E-9.¹⁶ Again, the inferior educational opportunities and the resulting lack of motivation to achieve in an academic setting mitigate against blacks meeting these requirements.¹⁷ The solution to this aspect of the problem is reasonably within the Army’s grasp. Instead of keying promotion to civilian education, the Army should make completion of the various levels of the Noncommissioned Officer Educational System (NCOES) the promotion cri-

teria. As with entrance and proficiency tests, the course-knowledge examinations must have significant correlation to job sample tests in the particular MOS, or actually be job sample examinations. For a truly professional Army, this would be an asset rather than a burden. Proficiency in particular skills means more on the battlefield than does “general ability” or “overall quality of the work force.”

Not all blacks are disadvantaged by the current system. Each of us can point out a black general commanding a division (there are two now) or a black command sergeant major. But what of the many blacks who were denied a military career or a promotion because the Army, with a white majority, established its testing and diploma standards? A black author put the situation in these terms:

Jackie Robinson, Thurgood Marshall, Ralph Bunche, and many others are pointed to by whites as blacks who are “a credit to the race.” A few are always allowed to make it so that the remaining millions will be pacified and will try a little harder to be good citizens, i.e., not giving white folks any trouble.¹⁸

We cannot, in the area of racial discrimination, adopt a “pacification program;” nor can we promise that every black soldier will be a command sergeant major. What we can do is be more realistic in our initial entry testing and our promotion criteria so that the Army does not perpetuate the effects of racial discrimination in the civilian community, and particularly the civilian schools. Equality of opportunity does not mean equality of result. The Army should continue to respect the idea of excellence in performance, the degrees to which human beings are naturally not equal.¹⁹ Let’s make our entrance examinations and proficiency tests as job related as possible and look to performance in Army schools as the criteria for Army promotions; then we will have given equality of opportunity some real meaning.

Footnotes

1. Report of the Task Force on the Administration of Military Justice in the Armed Forces, Vol. I, 46-47 (1972) [hereinafter cited as Report].

2. Report, Vol. I, 114.
3. 401 U.S. 424 (1971), *rev'g* 420 F.2d 1225 (4th Cir. 1970) (Judge Sobeloff dissenting).
4. 401 U.S. at 431.
5. 420 F.2d at 1232.
6. 42 U.S.C. § 2000e-2(h) (1970). The section provides:

. . . nor shall it be an unlawful employment practice . . . to give and to act upon the results of any professionally developed ability test provided . . . [it] is not designed, intended or used to discriminate because of race. . . .
7. 401 U.S. at 432, 436.
8. See Alleyne, *Legal Remedies for Racial Discrimination in Employment: The Evolving Search For Effectiveness*, 2 BLACK L.J. 282 (1972).
9. 401 U.S. at 431-32.
10. HumRRO-TR-71-1, *Effects of Aptitude (AFQT), Job Experience and Literacy on Job Performance: Summary of HumRRO Work Units UTILITY and REALISTIC* (February 1971).
11. HumRRO-TR-72-22, *Performance in Five Army Jobs by Men at Different Aptitude (AFQT) Levels: 3. Comparison of Men with Different Amounts of Job Experience* (August 1972); HumRRO-TR-72-23, *Performance in Five Army Jobs by Men at Different Aptitude (AFQT) Levels: 4. Relationships Between Performance Criteria* (August 1972).
12. Report, Vol. II, 14. Task Force statistics showed that 60% of the blacks administratively discharged in FY 71 were Category IV personnel.
13. HumRRO-TR-72-22, at 105.
14. *Id.*, at 106.
15. 401 U.S. at 430 (emphasis added). The tests used by the Duke Power Company resulted in 58% of the whites passing the tests, as compared with only 6% of the blacks. *Id.*, at n. 6.
16. Army Reg. No. 600-200, paras. 7-15a(10), 7-44b(3), (C.47, 10 February 1972). These criteria are not subject to waiver.
17. See Poussaint, *A Negro Psychiatrist Explains The Negro Psyche*, reprinted in DRRI, *RACIAL POLARIZATION AND SEPARATION* (1972). In *Griggs*, the Court noted that 1960 census statistics showed that in North Carolina 34% of the white males had completed high school while only 12% of the Negro males had done so. 401 U.S. at 430, n. 6.
18. Lester, *The Angry Children of Malcolm X*, in LOOK OUT WHITEY! BLACK POWER'S GON' GET YOUR MAMA (Dial Press 1968).
19. See Greider & Kotz, *False Hopes and Faulty Panaceas*, The Washington Post, Apr. 8, 1973, at A1, col. 2.

The Grant Case: Denial of Political Asylum to a U. S. Serviceman in Germany

From: International Affairs Division, OTJAG

A U. S. enlisted man, while AWOL, was apprehended by German authorities as an illegal resident in the Federal Republic. In an effort to avoid transfer to U. S. military authorities, the soldier requested political asylum from German authorities upon the primary grounds that he was a victim of race discrimination, both in the U. S. Army and as a citizen while living in the United States.

After initial denial of his petition by the German Federal Alien Authority Office, the petitioner sought judicial relief in the appropriate local Administrative Court. This court granted asylum, but its decision was subsequently appealed by Federal officials to the State Administrative Court charged with the appellate review of such cases. The State Administrative Court reversed the decision of

the local court, thereby setting aside the grant of asylum.

The asserted grounds upon which the claim for asylum was based were:

- a. Racial discrimination against black people in the United States and in the Army,
- b. That he was subject to service in the Vietnam conflict, although he believed that U. S. participation in that war was illegal under international law,
- c. That the U. S. military authorities had attempted to frustrate his marriage to his present wife, a German national, because of racial grounds,
- d. That if he was returned to the United States, he would be tried for desertion, which under the circumstances he asserted to be a

political prosecution, and that he believed that the maximum punishment would be imposed.

In acting on the appeal, the State Administrative Court ruled that the discriminatory practices based on race alleged by the soldier, even if true, did not approximate the political or racial persecution envisioned under international asylum law. With respect to the assertion that the soldier had been denied military permission to marry, the court found that such permission had been denied because the prospective wife was ineligible for immigration to the United States having been convicted in Berlin of a security offense.

The German court also discounted the soldier's professed objections to the Vietnam

war. The court noted that the petitioner had accepted induction without protest, had subsequently volunteered for three years, and finally re-enlisted for a period of six years. The appeals court also refused to find any consensus of world opinion on the alleged criminality of the Vietnam conflict which would justify refusal of services by an individual soldier.

Finally, the court stated that the fact that the appellate decision could lead to the soldier's return to U. S. authorities, with resultant court-martial, did not constitute prosecution for political reasons.

Sovereign Immunity of Foreign Countries in U. S. Courts

From: Litigation Division, OTJAG

Set forth below for your information and guidance is a letter from Mr. Harlington Wood, Jr., Assistant Attorney General, Civil Division, Department of Justice, regarding legislation regulating the jurisdictional immunities of foreign states in United States courts. It is to be noted that the Department of Justice is guided by the principles of the legislation in litigation involving defense of the United States in foreign tribunals.

Dear General Prugh:

The Departments of State and Justice have jointly submitted to the 93d Congress a draft bill to regulate the jurisdictional immunities of foreign states in United States courts. The bill, S.566, and its section-by-section analysis are printed in 119 Cong. Rec. 1297-1305 (Jan. 26, 1973).

S.566 would create a comprehensive statutory regime for determining sovereign immunity issues, and would give guidance to the courts, grounded in the restrictive theory of immunity, on the standards to be employed. These are consistent with the standards applied in other developed legal systems. In brief, foreign states would not be immune from the jurisdiction of United States courts when the for-

eign state has waived its immunity; when the action is based on a commercial activity, or concerns property present in the United States in connection with a commercial activity; when the action relates to immovables or to rights in property acquired by succession or gift; or when an action is brought against a foreign state for personal injury, death, or damage to property occasioned by the tortious act in the United States of officers or employees of a foreign state.

The proposed codification of the restrictive theory of immunity will have an impact on the Government's litigation abroad. In representing the United States and its agencies and instrumentalities in foreign tribunals, this Department will henceforth be guided by the principles set forth in S.566 in determining whether to raise immunity as a defense to the action. I would be grateful to you if those of your subordinate offices which deal with foreign litigation would be notified of the foregoing.

Harlington Wood, Jr.

Staff Judge Advocates desiring additional information regarding this subject should contact HQDA (DAJA-LT) Washington, D. C. 20310.

Military Justice Items

From: Military Justice Division, OTJAG

Preparation of transcripts of proceedings:

1. If charges are referred to a court-martial for trial, and proceedings take place but are permanently terminated either before arraignment or findings for any reason, the following action should be taken to complete the disposition of the case:

a. A record of proceedings held should be transcribed and authenticated.

b. A copy of the transcript should be furnished to the accused.

c. If a general court-martial, a review limited to the question of jurisdiction should be prepared by the staff judge advocate.

d. An initial special or general court-martial order should be promulgated in accordance with Appendix 15, *Manual for Courts-Martial, United States, 1969 (Revised edition)*, reflecting the proceedings, the disposition of the charges, the usual recitals up to the point where the pleas are shown, and the fact that the accused "appeared" rather than "was arraigned and tried" in the initial recital, if the proceedings were terminated prior to arraignment. Following the recitation of the charges and specifications, a statement should be included in the order reflecting the reason for the termination of the proceedings at an intermediate stage. A sample statement is as follows:

The accused having (appeared) (been arraigned), the proceedings were terminated by (a declaration of a mistrial) (other _____) by the military judge. Due to the subsequent administrative discharge of the accused from the service under the provisions of Chapter 39, Army Regulation 635-200, the charges and specifications are dismissed. All rights, privileges, and property of which the accused may have been deprived by virtue of these proceedings are hereby restored.

e. The transcript of proceedings with the allied papers specified in Appendix 9e of the

Manual should be transmitted in general court-martial cases to JAAJ-CC, Nassif Building, Falls Church, Virginia 22041.

2. If an accused is administratively separated or discharged from the Army subsequent to the findings and sentence of a court-martial but prior to the convening authority's action, jurisdiction will continue until the appellate process is complete. This means that a transcript of proceedings should be prepared; that, in the case of general courts-martial, a review should be prepared by the staff judge advocate; and that the transcript and allied papers should be forwarded to the US Army Judiciary in general court-martial cases. Other records should be reviewed for jurisdiction and filed as in the case of a completed summary or special court-martial. A sample action of a general court-martial case in which an accused is discharged pursuant to Chapter 10, Army Regulation 635-200, after the sentence and findings but before the convening authority's action, is as follows:

In the foregoing case of _____, the findings of guilty are approved. Only so much of the sentence as provides for confinement at hard labor for (insert the actual time served) is approved and ordered executed. The accused having requested discharge for the good of the service pursuant to the provisions of Chapter 10, Army Regulation 635-200, which was approved, was discharged from the service on _____ with (a) (an) _____ discharge. The record of trial is forwarded for action under Article 69.

Court-Martial Authority Under the Reorganization

As a result of the reorganization of major CONUS commands during calendar year 1973, numerous Secretarial grants of general court-martial convening authority will be required. The affected convening authorities are those requiring Secretarial grants pursuant to Article 22(a)(6) of the Uniform Code of Mil-

tary Justice. This will include those commands that are experiencing a redesignation, reorganization, or initial organization as a command requiring general court-martial jurisdiction. Staff Judge Advocates of the above described commands are requested to ensure that the necessary grants are requested in ad-

vance of their need. Requests should be directed to HQDA (DAJA-MJ), Washington, D.C. 20310. It is essential that the request contain the accurate and complete designation of the new command and the date the grant is to be effective.

Military Justice Instruction for Enlisted Personnel

The Judge Advocate General has approved a new Military Justice lesson plan for use in the field. The lesson plan is directed to enlisted soldiers and is deemed a course of special significance within the meaning of para. 3c, Army Regulation 350-212. Materials are at the printer and will be distributed within the near future.

The program is designed to give enlisted personnel a down-to-earth picture of the Army criminal law system as it most directly affects their daily lives—at the company level. The instruction is based on the concept that if a soldier is presented a practical view of criminal law at the company level, with a feeling for the role of the company commander and the defense counsel, he will have a better appreciation of and confidence in the military criminal law system. The emphasis in this instruction is not placed on imparting legal facts; the lesson plan does not nor is it intended to replace any other military justice course. It is aimed

solely at achieving an understanding of the fairness of the system.

The method of instruction employs a company commander and a judge advocate as the principal participants. By using the company commander, it is hoped that his primary role as the frontline administrator of justice and fairness will be made clear to enlisted soldiers and to company commanders as well. It is intended that the judge advocate officer be one whose primary duties are those of a defense counsel, so that enlisted personnel will actually see that an attorney is specifically interested in their welfare.

It is the intent of the new program to reduce the problem of credibility by increasing communication between the enlisted soldiers and the two officers most directly involved with their legal problems—the company commander and the defense lawyer.

Report From The U.S. Army Judiciary

Recurring Errors and Irregularities

a. *Use of Part-time Military Judges.* The attention of military judges and Staff Judge Advocates is invited once more to the provisions of paragraph 9-8b, AR 27-10, pertaining to the use of "part-time" special court-martial judges. Such judges may be detailed only after a determination has been made by both the supervising general court-martial judge and the Chief Circuit Judge (or initially by the latter if there is no intervening supervisory GCM judge) that no special court-martial

judge assigned to the Army Judiciary is available. Disregard of these regulatory provisions results in the improper use of part-time judges and less than full-time use of Judiciary judges. Part-time judges should not be used except in those urgent situations where substantial prejudice will result if cases are delayed until a "full-time" military judge is available.

b. *"Lost Time" Military Judges.* Recent routine military judge reports have indicated that many military judges lose approximately 20% of their time (or approximately one day

per week in a busy jurisdiction) because of case withdrawals or postponements. While many of these delays cannot be avoided (i.e. where there are new offenses, illness, recent request for an attorney, etc.), a great deal of this delay results from the granting of a request for a "Chapter 10" or "Chapter 13" discharge immediately prior to the scheduled trial. Several jurisdictions have attempted to meet this lost time problem in a variety of ways. One approach apparently meeting with success in reducing lost time is to establish a deadline prior to the scheduled trial rate (i.e. five days) beyond which a request for discharge will not delay the trial or cause withdrawal of charges. This policy does not preclude or discourage the submission of such a request, nor does it indicate any predetermination as to the nature of the command decision. However, it does put an accused and his counsel on notice that if the accused wishes to try to avoid trial by applying for an administrative discharge, he must submit a timely request. Requests filed within the five day period would be considered, but affirmative action approving such a discharge would not be taken until after the completion of the scheduled trial. Appropriate action to reduce lost judge time will result in the more efficient use of legal manpower and better administration of justice.

c. *DD Form 494*. Despite the fact that DD Form 494 (Court-Martial Data Sheet), dated 1 June 1970, states that it "replaces DD 494, 1 June 63, which is obsolete," the 1963 version still is being used by some Staff Judge Advocates. A Trial Counsel and Staff Judge Advocate cannot properly check current records of trial with the 1963 version and, consequently, errors become more probable. Also, it is most difficult for appellate judges to accomplish their portion of the checklist when the obsolete form is used.

d. *March 1973 Corrections by ACOMR of Initial Promulgating Orders*.

(1) Failure to show the accused's correct service number where it first appeared on the order.

(2) Failure to cite in the authority paragraph an amending Court-Martial Convening Order.

(3) Failure to show amended specifications—three cases.

(4) Failure to show a Charge and its specification on which the accused had been arraigned—two cases.

(5) Failure to show that the sentence was adjudged by a military judge—two cases.

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

e. *Supplementary Court-Martial Promulgating Orders*.

(1) In a number of instances it has been noted that the supplementary order issued as a result of vacating proceedings pursuant to Article 72, UCMJ, has ordered the sentence into execution even though accused's 30-day appeal period had not expired. According to Article 71 (c), a sentence that extends to punitive discharge or confinement for one year or more may not be executed until affirmed by the Court of Military Review and, in cases reviewed by it, by the Court of Military Appeals.

(2) In those cases where the Army Court of Military Review has issued a Court-Martial Order Correcting Certificate, the supplementary court-martial order should show that the initial promulgating order had been corrected by a Correcting Certificate of a certain date.

(3) If an initial promulgating order shows that the sentence was ordered into execution, the supplementary order should not, after reflecting the modifications, once again order the sentence executed.

Claims Items

From: U.S. Army Claims Service, OTJAG

1. ROTC cadets.

ROTC cadets during periods of active duty for training at summer camp are now considered proper party claimants under Chapter 11, AR 27-20. This position has recently been adopted by all Services. Pending publication of Change 4, AR 27-20, the provision in paragraph 11-3e to the contrary should, therefore, be disregarded.

2. Requests to U.S. Army Claims Service for return of claim files.

All requests for return of claim files from U.S. Army Claims Service, OTJAG, should be addressed to:

U.S. Army Claims Service
Office of The Judge Advocate General
ATTN: Mail and Records Branch
Fort Meade, Maryland 20755

or phone Autovon 923-4857. Priority requests involving Congressional interest or other urgent need for the file should be indicated.

3. Safeguarding property.

The U.S. Army Claims Service continues to receive a large number of claims for personal property that disappeared while the owner was AWOL, hospitalized, confined, or otherwise absent from his unit.

Paragraph 10-6, DA Pamphlet 27-19, states in part that when a soldier is absent from his unit under other than normal circumstances the unit commander has a duty to insure that personal property of the soldier is protected from theft, damage or loss. Failure of unit commander to promptly inventory and safeguard property of soldiers absent under such circumstances exposes the Government to large claims of questionable validity which are difficult to adjudicate.

Legal Assistance Items

From: Legal Assistance Office, OTJAG

Readjustment Pay. Recently, due to a reduction in the size of the Army, a number of officers have been involuntarily released from the service. Upon their release they were paid a readjustment pay. Certain of these officers were allowed to remain on active duty as enlisted men, and then subsequently to retire. Upon retirement, and receipt of retirement benefits, they were required to pay back to the government a portion of the readjustment pay. Federal tax treatment of this problem is not clear at this time. Legal Assistance Officers should consider the possibility of using IRC section 1341, the Claim of Right Rule in resolving the tax problem. The Claim of Right Rule simply stated provides that when income is received under a claim of right and appears unrestricted as to its use, it is income in the year received, even though it may have to be

repaid in a later year because the right to its use proves not to have been unrestricted. Section 1341 provides that the said repayment may be treated as a deduction.

The Director of the Individual Income Tax Division, North Carolina Department of Revenue, in response to an inquiry setting forth the above facts, has ruled that for North Carolina tax purposes, the readjustment pay would be fully reportable in the year received, and any portion required to be paid back to the government would be deductible in the year repayment is made. The ruling is important in that the North Carolina tax statutes does not specifically provide for a method to recoup taxes paid on the money repaid.

Taxes: West Virginia. In response to a recent inquiry, the Director of the West Virginia

Income Tax Division, indicated that his department would refund for the years 1969 through 1971 the taxes paid by resident servicemen of the state who did not maintain a place of abode within the state, did not spend over thirty days in the state, and who maintained a permanent place or abode outside the state. For purposes of the refund the occupation of government quarters as well as non-government housing would qualify as "maintaining a permanent place of abode" outside the state. Persons claiming a refund for the tax year 1969 should file their claims prior to 15 April 1973.

Survivor Benefit Plan. The Office of the Assistant Secretary of Defense, Manpower and

Reserve Affairs, recently determined that persons on the Emergency Officers Retired List are eligible to participate in the Survivor Benefit Plan established by Public Law 92-425. That office ruled that although this category of retirees is unique, the language of both statutes under which they were awarded retirement pay and of the new Survivor Benefit Plan are sufficiently broad to include such officers in the plan. The Emergency Officers Retired List consists of officers, other than Regular Army officers, who incurred physical disability in line of duty while in the service of the United States during World War I, and who are entitled to pay from the Veterans Administration.

JAG School Notes

1. Board of Visitors. The board of visitors for the School held its biennial meeting in Charlottesville from 11 to 13 April. Members of the Board include: Colonel Eberhard P. Deutsch, USAR Retired; Colonel John H. Finger, USAR Retired; Professor Myres S. McDougal, Yale Law School; Professor John W. Reed, University of Michigan Law School; Colonel Birney M. Van Benschoten, USAR Retired; Commissioner Richard E. Wiley, FCC; Colonel Benjamin O. Schleider, Jr., JAGC, USAR, Recorder for the Board. The Board was briefed on the reorganization of the School and all aspects of its current operation. The members also had an opportunity to talk individually with members of the staff and faculty and with students. The essential function of the Board is to then make recommendations for improvement in the School and to report to The Judge Advocate General.

2. Groundbreaking. The official groundbreaking for the new School building was held on 12 April at the University of Virginia Conference Center due to inclement weather. Colonel Douglass made opening remarks and introduced the Distinguished Guests who included the Board of Visitors, General Prugh and General Hodson, University of Virginia President Shannon, Mr. William Dickson of the ABA,

Mr. Normand Poirier of the FBA, Colonel Charles J. Keever, Acting Director, JA Division, USMC, RADM Ricardo A. Ratti, General Counsel, USCG, Mayor Fife of Charlottesville, Mr. Gordon Wheeler of the Albemarle County Board of Supervisors, and former Commandant, Kenneth Crawford. General Prugh and President Shannon each gave a short address, noting the excellent relationship between the University and the School.

The new building should be ready for occupancy by Fall of 1974. It will house offices, living quarters, VIP suites, four classrooms, twelve conference rooms, two moot court rooms, an auditorium and a 50,000 volume library with individual study carrels.

3. ABA President. American Bar Association President Robert W. Meserve visited the School on 16 April, touring both the present facilities and the construction site of the new building. Mr. Meserve was briefed on the School's activities and attended several classes.

4. New Phone Numbers. The phone numbers of the various divisions of the School, some of which are new as a result of the reorganization, were inadvertently omitted from the SJA Spotlight on the School appearing in last

month's Army Lawyer. They are printed here for your information:

Commandant	293-3936
Academic Dept.	293-7475; 293-9298
Deputy Director for Nonresident Instruction	293-6286; 293-4046
Criminal Law Division	293-2546; 293-4730
Civil Law Division	293-4095; 295-4230
Procurement Law Division	293-3938
International Law Division	295-4330
Assistant Commandant for Reserve Affairs	293-7469
JAGC RC Career Management	293-2028
Training Office	293-7808
Developments, Doctrine and Literature Dept.	296-4668
Doctrine & Literature Div.	293-7376
Military Operations & Management Division	293-4668
School Secretary	293-4732
Legal Assistance & Claims	293-4731
Adjutant	293-4047
Logistics	293-2402
Visitors Bureau and Services	293-7245

5. **Training Films.** The School is involved in technical assistance for three new training

films which are being prepared for distribution throughout the Army. The Criminal Law Division is concerned with an Article 15 Film and one on the Uniform Code of Military Justice to replace those presently in use and quickly becoming obsolete. International and Comparative Law Division is working on a new film on the Geneva Conventions. It may be some months before these are seen in the field as the lag time appears to be considerable from the point at which the School is involved with the script until final distribution.

6. **DRRI and SMA Assistance.** The School is giving assistance to the Defense Race Relations Institute and to the Sergeants Major Academy in the preparation of materials for military justice training at these two institutions. The Board which supervises the Defense Race Relations Institute at Patrick Air Force Base has directed that that institution include within its training of Race Relations instructors material on military justice. The Chief of Criminal Law Division and the Commandant have both spoken there and materials have been presented for consideration by that School. The Commandant gave a three hour presentation at the Sergeants Major Academy to the first class in attendance there. It seems particularly important that these two groups have as much education on the operation of the military justice system as possible as they will certainly be directly involved in counseling and advising soldiers.

7. **Congressman Robinson.** Representative J. Kenneth Robinson of the 7th District of Virginia spoke at the AUSA luncheon held in Charlottesville on 25 April. He was the overnight guest of the School, with his wife, and was briefed on current School and JAG activities during his visit.

Administrative Law Opinions*

(Retired Members—Civilian Pursuits) Retired Member May Act As Advisor To Army Education Center. TAG requested an opinion regarding the proposed employment of a re-

tired RA officer as advisor to an Army Education Center. Contracts under the General Educational Development Program are negotiated pursuant to AR 621-5 and create the relation-

ship of "independent contractor" rather than "employee." Accordingly, the officer would not be subject to 5 USC § 5532 requiring a reduction in retired pay. The "Harbord Amendment," 37 USC 801(c) prohibiting the selling of any tangible property to any agency of the Department of Defense within three years of retirement, does not restrict the sale of personal and professional services; thus, it would not affect the officer's retired pay in this case. Finally, the proposed employment would not violate 18 USC § 281 as that statute only prohibits the representation of others in the sale of services and goods, and does not apply to self-employed officers. (DAJA-AL 1973/3502, 16 Mar. 1973).

(Disability—Reserve Member) Enlisted Reserve Member May Be Retired For Disability If Disease Was Incurred And He Was Disabled While On Active Duty For 30 Days Or More. An enlisted reservist underwent initial ADT and AIT from 30 Sept. 1970 through 23 Jan. 1971. At the time of his release from active duty an Army physician noted glucosuria and suggested that a medical board consider the individual. Currently the member is undergoing re-evaluation at an Army hospital and it is apparent he is suffering from diabetes mellitus. He is on active duty pursuant to a letter order for the purpose of appearing before a medical board. The CG, USAPDA requested an opinion on the propriety of ordering a reservist to active duty solely for the purpose of medical evaluation and disability processing and whether the individual is eligible for processing under the physical disability retirement and separation provisions of 10 USC 1201 *et seq.*

It was stated that the initial question was whether the individual was entitled to basic pay. In general, it is improper to furnish pay and allowances to a member who is put in a basic pay status (i.e. ordered to active duty) solely for the purposes of disability processing

*The headnotes for these opinions conform to The Judge Advocate General's School Text, "Effective Research Aids For The Preparation Of Military Affairs Opinions," February 1971.

without assignment of actual military duties. However, if it could be found that the member contracted the disease while on active duty for a period of more than thirty days and that he was disabled therefrom during the same period, then he would be entitled to basic pay under 37 USC 204(g)(1), and eligible for processing under chapter 61 of Title 10, U. S. Code.

The next question was whether the member would then be entitled to physical disability retirement. The statute (10 USC § 1201-03) has been interpreted by the Comptroller General (33 Comp. Gen. 339 (1954)) to require only that the member be entitled to basic pay. A member who is entitled to basic pay under 37 USC 204(g)(1) is considered as having, for purposes of chapter 61 processing, a continuous entitlement to basic pay until separation. Thus, he would be entitled to processing under chapter 61 and to disability retirement if all conditions were met. (DAJA-AL 1973/3546, 13 Mar. 1973).

(Commissioned Officers—General) Installation Commander May Accept Honorary Position On Board Of Directors Of Chamber Of Commerce. A Staff Judge Advocate asked whether his installation commander might hold an honorary position on the board of directors of a local Chamber of Commerce. It was opined that the Chamber of Commerce is a service organization and not a "trade" or "professional" association within the meaning of subparagraph 3d, AR 1-210. Accordingly, there would be no legal objection to the acceptance of the position. It was suggested, however, that the commander's name not be used on any organization letterheads or non-local directories, it being impossible to ascertain the use to which the name, title or position might be made under the circumstances, and, that if unforeseen events gave rise to a potential conflict of interest, the commander should disassociate with the organization until the matter could be resolved. (DAJA-AL 1973/3579, 9 Mar. 1973).

(UCMJ—Article 138) Complaint Failed To Allege A Personal Wrong. A post commander

issued a directive concerning barracks wall decorations and disruptive symbols. It stated, in part: "nothing will be displayed on the walls of government buildings that portray an anti-religious, anti-military, anti-patriotic, or pro-drug air." An enlisted member, after complaining of the directive to the commander, filed a complaint under Article 138, alleging that the directive was vague and infringed on individual rights. However, 10 USC 938 and AR 27-14 require an action which results in a detriment to the member. The purpose is to redress a wrong personal to the individual. The member in this case did not complain of the application of the directive, but merely of its existence. There was no evidence that the directive was or ever will be applied to the member. Accordingly, the complaint was not cognizable under Article 138. (DAJA-AL 1973/3622, 8 Mar. 1973).

(Commissioned Officers — General) JAG May Place Name On Firm Letterhead. A JAGC Captain requested an opinion whether his

name, with an appropriate indication of his current status as an active member of the armed forces, could be put on the letterhead of his father's law firm. He would receive no remuneration and would not actively practice with the firm.

The relevant directive is DoD Dir. 5500.7, 8 Aug. 1967, as changed, and the applicable regulation is AR 600-50, 6 Mar. 1973. These prohibit active military members from using their military titles or positions in connection with any "commercial enterprise." However, the mere use of his name, without military title or position, and a statement that he is serving on active military service was found not to be objectionable. Attention was focused on the Code of Professional Responsibility (EC 2-12, EC 2-13, DR 2-102(A)(4) and DR 2-102(B)), which could be interpreted as proscribing the proposed course of action and an opinion from the state bar association was recommended. (DAJA-AL 1973/3608, 13 Mar. 1973).

PERSONNEL SECTION

From: PP&TO, OTJAG

1. RETIREMENTS. On behalf of the Corps, we offer our best wishes to the future to the following personnel who retired.
Colonel Dean R. Dort, 31 March 1973

Colonel James F. Senechal, 31 March 1973
CW4 Frank L. Hopson, 31 March 1973

2. ORDERS REQUESTED AS INDICATED:

NAME	FROM	TO
COLONELS		
DAVIS, Gerakl W.	Europe	HQ, USARPAC
NEWMAN, Vernon H. H.	Ft. Hood, Texas	Fifth USA Ft. S. Houston, Tex.
TASKER, Clayton B.	OTSG, Wash. D.C.	Army Council Rev. Bd. Wash., D. C.
LIEUTENANT COLONELS		
ADAMKEWICZ, Edward	Fifth US Army, Ft. S. Houston, Tx.	USA Leg. Svc. Agcy., Falls Church Va.
ALLEY, Wayne E.	USA Leg. Svc. Agcy.	ICAF, Ft. McNair, Wash., D. C.
DEFORD, Maurice	USA Leg. Svc. Agcy.	OCLL, Wash., D. C.
DRIBBEN, Charles	OCLL, Wash., D.C.	USA Gar, Ft. Riley, Ka.
GREEN, James L.	CGSC, Ft. Leavenworth, Ks.	Korea
LOANE, Jabez W., IV	Claims Svc., Korea	Claims Svc., Ft. G. G. Meade, Md.
MCNEALY, Richard	OTJAG	USA War College, Carlisle Bks., Pa.
MINTON, David L.	Korea	USA Leg. Svc. Agcy, Falls Church, Va.
NICHOLAS, Talbot	SAFEGUARD, Arlington, Va.	ASBCA, Wash., D. C.
RUSSELL, George G.	CGSC, Ft. Leavenworth, Ks.	S-F, TJAGSA, Charlottesville, Va.
SPENCER, Bryan S.	Ft. Carson, Colo.	JUSMAG, Thailand
WOLD, Pedar C.	CGSC, Ft. Leavenworth, Ks.	USAAVNC, Ft. Rucker, Ala.

NAME	FROM	TO
	MAJORS	
BURNS, Thomas P.	USA Leg. Svc. Agcy.	TJAGSA
BUCK, Richard S.	TJAGSA	Korea
BOLLER, Richard R.	2d Inf. Div., Korea	S-F, TJAGSA
CUMMING, Richard	Ft. MacArthur, Ca.	Europe
DANCHECK, Leonard	TJAGSA	Korea
DEKA, David J.	Stu. Det. 5th USA	TJAGSA
DIRSKA, Alfred J.	USA Intell. Cmd., Ft. Holabird	TJAGSA
FANCHER, Harry L.	OTJAG	USA Sp. Spt. Actv., CZ
KNAPP, Thomas A.	TJAGSA	USA Med. Health Svc., Ft. S. Houston, Texas
KUCERA, James	Europe	Korea
MALINOSKI, Joseph	Ft. McClellan, Ala.	OTJAG
MCHUGH, Richard K.	USARPAC	USA Sch. Tng. Cen., Ft. McClellan, Ala.
O'ROARK, Dulaney L.	CGSC, Ft. Leavenworth	S-F, TJAGSA
PIOTROWSKI, Leonard	Europe	Legal Svc. Agcy., w/sta Kaiserlautern, Germany
PRICE, James F.	Ft. Carson, Colo.	OTJAG
QUANN, Brendan T.	Stu. Det. HQ 5th USA	TJAGSA
ROHN, Gordon F.	Korea	USA Gar, Ft. MacArthur, Ca.
WICKER, Raymond K.	Kagnew Station	OTJAG
WHITTEN, William	Avn. Sys. Cmd., St. Louis, Mo.	USA Leg. Svc. Agcy., Falls Church, Va.
YELTON, James M. J.	Ft. Benning, Ga.	USA Leg. Svc. Agcy., w/sta. Ft. Bragg, N. C.

CAPTAINS

ARKISON, Peter H.	Ft. Hood, Texas	Ft. Lewis, Washington
BAWDEN, Ralph E.	Ft. Dix, N. J.	Ft. Sheridan, Illinois
BARR, Steven J.	Ft. Gordon, Ga.	Ft. Carson, Colo.
BASHAM, Owen D.	Armor Cen., Ft. Knox, Ky.	TJAGSA
BENSHOFF, Terrence	Ft. Leonard Wood, Mo.	Korea
BONNEY, Charles E.	Europe	TJAGSA
BRITTIGAN, Robert E.	Ft. Gordon, Ga.	TJAGSA
BRODY, Sidney B.	Ft. Leavenworth, Ks.	TJAGSA
BURKE, Michael A.	Ft. Sheridan, Illinois	TJAGSA
CARR, Frank	First USA Ft. G. Meade, Md.	TJAGSA
CIRELLI, Joseph F.	Ft. Eustis, Va.	CID, Ft. Meade, Md.
DAVIS, Jerry A.	Ft. Hood, Texas	Ft. Amador, CZ
DEWEY, Thomas F.	Korea	Korea
DORT, Dean R., II	USA Leg. Svc. Agcy., Falls Church	Germany
DOSTER, Harold C.	Ft. Monmouth, N. J.	TJAGSA
EAK, Gerald J.	Ft. Lee, Va.	Ft. Lee, Va.
ELMER, Michael C.	OTJAG	Ft. Monmouth, N. J.
FRANKEL, Ronald S.	Ft. Belvoir, Va.	USATC Inf., Ft. Ord, Ca.
FRYER, John W.	Ft. Leonard Wood, Mo.	TJAGSA
GANSTINE, Robert	Ft. Leonard Wood, Mo.	Korea
GARRETT, Stacy E.	USATC, Ft. Ord, Va.	Korea
GARRETSON, Peter	Claims Svc., Europe	TJAGSA
GENTRY, William O.	USA Leg. Svc. Agcy., Falls Church	Ft. Riley, Ka.
GIANNELLI, Paul C.	Inst. of Pathology, WRAMC	TJAGSA
GLEASON, James C.	Stu. Det., HQ 1st Army	TJAGSA
GRAY, Kenneth E.	Ft. Dix, N. J.	TJAGSA
GORDON, Jonathan	Ft. Ben. Harrison, Indiana	TJAGSA
HAESSIG, Arthur G.	TJAGSA	Leg. Svc. Agcy., w/sta Fort Carson, Colo.

NAME	FROM	TO
	<i>CAPTAINS—Continued</i>	
HAMILTON, John R.	Ft. Knox, Ky.	Third US Army, Ft. McPherson, Ga.
HAMILTON, Bate R.	Ft. Jackson, S. C.	Ft. Ord, Ca.
HARGRAVE, Robert	Korea	Ft. Knox, Ky.
HEIM, Thomas G.	Ft. Bragg, N. C.	Ft. Monmouth, N. J.
INGRAM, Allen R.	Ft. Carson, Colo.	Korea
JACKSON, Robert H.	QM Cen. & Ft. Lee, Va.	Korea
JOYCE, Paul M.	IGMR, Pennsylvania	USA Gar, Ft. Devens, Ma.
KEEFE, Thaddeus J.	Ft. Leonard Wood, Mo.	Ft. Detrick, Md.
KING, Winston E.	Korea	Ft. Campbell, Ky.
KYLE, Robert P.	USA Leg. Svc. Agcy., Falls Church	Ft. Devens, Ma.
LANCE, Charles E.	Ft. Campbell, Ky.	Korea
LAZARUS, Carlos	QM Cen. & Ft. Lee, Va.	Canal Zone
LEHMAN, William J.	TJAGSA	USA Gar, Ft. Lewis, Wash.
LOFGREN, Douglas	USA Gar, Ft. Meade, Md.	Korea
MAGERS, Malcolm S.	USA Leg. Svc. Agcy., Falls Church	TJAGSA
MCGOWAN, William	Korea	USA Phy. Dis. Agcy., Wash. D. C.
McKENNA, Robert B.	Korea	OTJAG
MEISNER, Ovo	Alaska	USA Gar, Ft. Devens, Ma.
MEMORY, John M.	Ft. Bragg, N. C.	TJAGSA
MILLER, Ralph I.	HQ MDW, Wash., D. C.	USARPAC
MILLER, Joe D.	Europe	Ft. Jackson, S. C.
MULDERIG, Robert	Ft. McPherson, Ga.	TJAGSA
MUELLER, Patrick	Ft. Leonard Wood, Mo.	Europe
MULFORD, Ralph K.	Europe	9th Inf., Ft. Lewis, Wash.
NOMURA, Lewis H.	Europe	USARSUPTHAI
NORTON, William J.	TJAGS	USA Leg. Svc. Agcy., w/sta Goepingen, Germany
OSBORNE, Zebulon	APG, Aberdeen, Md.	Korea
PEEPLS, Clayburn	Ft. Bliss, Texas	Redstone, Alabama
PHILLIPS, John S.	Ft. Carson, Colo.	Fitzsimons Gen. Hosp., Colo.
PYLE, Frank J., Jr.	TJAGSA	Stu. Det., MDW, Wash., D. C. w/sta DLIEC
RAICHE, Herbert L.	Ft. Gordon, Ga.	Ft. Lee, Va.
REESE, Benjamin W.	Fort G. G. Meade, Md.	Korea
RIGNEY, Marvin G.	Ft. Bragg, N. C.	TJAGSA
ROBERTSON, William	Army Log. Ctr., Ft. Lee, Va.	USA Leg. Svc. Agcy., Falls Church
RUSSELL, Richard	Europe	TJAGSA
SIMMON, Randall C.	USA Leg. Svc. Agcy., Falls Church	Korea
SKYLAR, David A.	Fifth US Army	ARADCOM, Ft. Baker, Ca.
STADING, Ronald J.	Ft. Bliss, Texas	Korea
STEPHENS, Frederick	Ft. Huachuca, Ariz.	Europe
STEPP, Terry A.	Ft. Hood, Texas	USA Leg. Svc. Agcy., Falls Church
SPIRN, Stuart D.	Okinawa	Ft. Eustis, Va.
TAYLOR, Warren H.	Nat. Law Center, Wash., D. C.	TJAGSA
TERZIAN, Robert P.	Ft. Dix, N. J.	Korea
WALKER, Robert G.	USA Phys. Dis. Agcy., WRAMC	TJAGSA
WASHKO, Robert J.	Letterman Gen. Hosp. S. F. Ca.	IGMR, Indiantown, Pa.
WERNER, Steven	Ft. Carson, Colo.	TJAGSA
WHITE, Timothy M.	HQ, USA Hawaii	OTJAG
WOODWARD, William	S-F, USMA	TJAGSA
YEKSAVICH, Michael	White Sands, N. Mex.	TJAGSA
ZEIGLER, Paul L.	Ft. Bragg, N. C.	TJAGSA

NAME	FROM	TO
WARRANT OFFICERS		
CAMIRE, Walter	HQ, MDW	USA Gar, Ft. G. Meade, Md.
FINN, Melvin H.	Stu. Det., Ft. S. Houston, Tx.	Germany
HERTLI, Peter	Europe	Stu. Det. 5th A. Ft. S. Houston
HIGHTOWER, Anderson	Ft. Campbell, Ky.	Ft. Ricker, Ala.
STANLEY, George W.	Ft. Hood, Texas	Ft. Bragg, N. C.
STIMLER, Walter J.	Ft. G. Meade, Md.	Europe
WHITAKER, Hollis	Europe	Ft. Bragg, N. C.

3. Congratulations to the following who received awards as indicated:

Cpt John Belk	Army Commendation Medal Jan. 71-Jan 73
Cpt. Craig J. Casey	Army Commendation Medal Jun 72-Mar 73
Cpt. James S. Gibson	Army Commendation Medal (1st OLC) Apr 71-Dec 72
Cpt. Frank W. Jablonski	Army Commendation Medal Jun 72-Mar 73
Cpt. James W. Lane	Army Commendation Medal (1st OLC) May 72-Apr 73
Cpt. John Massey	Army Commendation Medal Aug 71-Apr 73
Cpt. Costa M. Pleicones	Army Commendation Medal Apr 69-Feb 73
Cpt. Arthur J. Swindle	Army Commendation Medal Apr 71-Jan 73
Cpt. Richard S. Ugelow	Army Commendation Medal (1st OLC) Jun 71-Apr 73
Cpt. Paul K. Wustrack, Jr.	Army Commendation Medal Sep 71-Apr 73
Cpt. Edward A. Zimmerman	Army Commendation Medal (1st OLC) Aug 71-Apr 73
CW4 Frank L. Hopson	Legion of Merit Jan 69-Mar 73

4. ATTENTION ILLINOIS ATTORNEYS:

A new Illinois Supreme Court rule requires all attorneys licensed to practice law in the state to register with the new Disciplinary Commission. A fee is normally required. Persons licensed in Illinois who neither reside, practice, nor are employed in Illinois need not pay a fee, but they still must register. Attorneys while serving in the military do not have to pay the fee. Anyone who failed to receive a notice and a registration card should request them from the Administrator for the Disciplinary Commission, P.O. Box 3444, Springfield, Illinois 62708. The registration deadline had been set at 1 April 1973 but the Commission will not firmly follow this rule. However, you should register immediately.

5. IMPORTANT NOTICE: In order to update the JAGC Personnel and Activities Directory for 1973, each office that is listed in the directory should send PP&TO (DAJA-PT) by 1 June its up to date telephone numbers

both commercial and autovon. Also send your current office symbol for inclusion in the directory. If you don't send us the information, it does not get printed.

6. Help Wanted—Positions Available.

USALSA. There will be positions available in the Appellate Divisions, U.S. Army Legal Services Agency in September and October. Those officers who will have at least 18 months service at that time and are interested contact Captain Crean, PP&TO.

Iran. There will be a requirement for a Judge Advocate in Iran in September 1974. However, the officer must be languaged trained in Persian. Those officers interested in attending the Defense Language Institute for Persian language training with subsequent assignment to Iran, contact Captain Crean PP&TO immediately.

Korea and Europe. There are openings for accompanied tours in Korea (2 years) and Europe (3 years). Contact Captain Crean.

TJAGSA. Also available are positions on the Staff and Faculty of The Judge Advocate General's School. An officer assigned to the faculty must agree to remain for at least two academic years. Staff positions include the editor, The Army Lawyer and JALS.

7. Courses. Northwestern will hold its annual short course for defense attorneys from 16 July to 21 July and the annual short course for Prosecuting Attorneys from 30 July to 4 August. Staff Judge Advocates interested in sending their officers to this course should nominate no more than one officer for each course to PP&TO by 15 June. A determination of the officers to attend will then be made based on the funds available for civilian schooling in FY 74. Notifications will be sent directly to the officer that he will attend and to register with Northwestern. OTJAG will fund the \$200.00 registration fee and the local commands must bear the cost of TDY and per diem. If a staff judge advocate wants to send more officers to the course, he may do so out of local funds.

One position is available for a career judge advocate to attend the Career Prosecutors Course at the National College of District Attorneys, Houston, Texas from 22 July to 17 August. Staff Judge Advocates interested in sending an officer to this course should contact Captain Crean by 15 June. OTJAG will fund the tuition and the local command the TDY and per diem.

8. Those officers selected for graduate civil schooling should furnish their mailing address to the JAG School so they are assured of receiving copies of JALS, The Army Lawyer and other material of interest to all judge advocates.

9. DA CIVILIAN ATTORNEY POSITIONS.
Title & Grade
Trial Attorney
GS-905-14 (Announcement Nr. 73-46)

Organization or Agency

OASD (C) ODASD (Security Policy).
Industrial Security Clearance Review Div.
Eastern Field Office
New York, New York

Applications should be sent by air mail to the Personnel Division, Office of the Secretary of Defense, Room 3B 347, The Pentagon, Washington, D. C. 20301, Attn: P-CH.

Title & Grade

Supervisory Attorney Advisor
GS-13

Eastern Area MTMTS,
Brooklyn, New York

Inquiries should be directed to the Office of the Staff Judge Advocate, Headquarters, Eastern Area, MTMTS, Brooklyn, New York 11250.

10. 1973 JAG Conference. Planning is now underway to hold the annual JAG Conference during the period 16-20 September 1973 at Charlottesville, Virginia. Attendance will be limited to those conferees approved by The Judge Advocate General based upon nominations submitted by major commands. Judge advocates occupying a position whose incumbent attended the conference last year will, in most cases, be invited this year. Budgetary and space limitations require that the number of conferees be controlled in this way; a limited number of junior officers, warrant officers and enlisted personnel will be invited again this year. In addition to those approved to attend using DA funds, it appears that a small number of judge advocates can be allowed to attend if approved by The Judge Advocate General, provided local funds are used. More information concerning the conference will appear in future editions of *The Army Lawyer*.

11. Husband-Wife Teams. JAG now has three husband and wife JAGC teams and five JAG and other branch officer teams. It is JAGO policy to assign these officers to the same locality but to separate offices. While

this limits some assignments there are lots of good ones left.

PP&TO will continue the policy whenever possible and expects no difficulty. PP&TO, however, does not control other branch assignments, but works with those branches to accomplish the aim of keeping families together. All JAGC related teams are now assigned to the same locale.

Is your spouse interested in signing up?

12. Assignment of JAGC Officers and Authorization Documents. DA message 302027Z Mar 73 provides that "Commands/agencies responsible for requisitioning officers will no longer be required to submit requisitions for Chaplain, Judge Advocate General, or Army Medical Department. In the future, officer replacements from these branches will be assigned by DA as vacancies are projected to occur."

In view of the above-mentioned assignment policy and projected officer shortages, assignments of JAGC officers will henceforth be made against authorized spaces in DA approved TOE, MTOE, TDA, MTDA and JTD documents. Those judge advocate officers with excess officer strengths must anticipate being reduced to authorized levels. In some instances, personnel resources will necessitate manning at less than authorized strengths. If additional resources are required, action must be taken at the local level to obtain additional authorized spaces. General guidance concerning manpower documentation is found in THE ARMY LAWYER, Mar 73, page 13 (DA Pam 27-50-3). Particular attention should be given to the authorization of warrant officer spaces. There are only 54 JAGC warrants authorized worldwide.

13. Legal Clerks and Court Reporters:

The Army Authorization Document System contains 1162 spaces for enlisted legal clerks (MOS 71D) and 94 spaces for enlisted court reporters (MOS 71E). The Military Personnel Center reports that there are 743 legal clerks and 103 court reporters on active duty. This

presents an enviable status in comparison to last year's legal support personnel strengths. Notwithstanding this posture, the Military Personnel Center has been faced recently with the dilemma of having legal clerks available for assignment without personnel requisitions for these clerks. If a judge advocate office or unit is severely understrength in legal clerks, there is a possibility that the command has not submitted requisitions. It is incumbent that SJAs coordinate with their AG to insure that requisitions are submitted. The needs of subordinate units should also be taken into consideration when ascertaining that necessary requisitions are being forwarded.

14. NONCOMMISSIONED OFFICERS' ADVANCE COURSE FOR SENIOR LEGAL CLERKS. The first group of Senior Non-Commissioned officers in the MOS of 71D have been selected by DA and are attending the Non-Commissioned Officers Advance Course from 29 March 1973 to 15 June 1973. The first eight weeks training will be in the 71L MOS track at Fort Benjamin Harrison, Indiana, and the remaining two weeks will be in the 71D MOS at The Judge Advocate General's School in Charlottesville, Virginia. Those selected and attending are:

SFC Nelson Torres-Rivera
581-60-9657
US Army Aviation Center
Ft. Rucker, Alabama
SP7 Gunther M. Nothnagel
425-76-4509
HHC USAAGS
Ft. Benjamin Harrison, In.
SFC Lennart H. Carlson
473-30-8260
HQ Co, Walter Reed Med Ctr
Washington, D.C.
SFC Leonard L. Naffziger
514-36-5930
Co B, HQ Comd, dty/w SJA
Ft. Leonard Wood, MO
SP7 William G. Crouch
404-50-2574
USATCI
Ft. Jackson, SC

SFC Thomas G. Davis
429-72-5029
HQ 6 Rgn ARADCOM
Ft. Baker, CA
SFC Harry J. Eskew
220-36-2789
US Army Health Services Command
Ft. Sam Houston, TX
SFC Clair D. Hinkle
177-32-8848
HQ Co HQ Comd
Ft. Belvoir, VA
SFC Keen Johnson
404-54-4328
USA Armor Center
Ft. Knox, KY
SFC Leo F. May
189-14-8101
US Army/Navy AC Element (Naval Justice
Sch Newport, RI)
Washington, DC
SP7 Ronald A. Newcomer
173-32-3620
USATC Inf
Ft. Dix, NJ
SP7 George E. Thorne Jr.
070-32-8966
USATC Inf
Ft. Dix, NJ

15. LEGAL CLERK TRAINING. A prior issue of *THE ARMY LAWYER* (pp. 23-25, Vol. 3 — No. 2 — Feb. 73), contained information regarding the assignment to SJA offices during FY 73 of 220 enlisted personnel who are *not* graduates of the legal clerks' MOS-producing course at the AG School. A tentative list of organizations scheduled to receive these assets was also published.

Difficulties have arisen in obtaining qualified personnel from AIT to serve in SJA offices on an OJT basis and the tentative list of units of assignment is rescinded. We are, however, still receiving additional personnel for assignment in SJA offices who do not possess MOS 71D. Most possess MOS 71B, but others from overstrength MOS are available. A representative from PP&TO will notify gaining

SJA offices of the names of these personnel as they are received from MILPERCEN.

16. FIELD LAW LIBRARY NOTES. 1. The following guidance has been received from the Legal Assistance Office, OTJAG, regarding tax materials:

a. A tax service is not necessary for proper legal assistance in the field. The rare case requiring such legal research material may be handled by the legal assistance officer contacting the Chief of Army Legal Assistance in the Pentagon for help, or, referring the taxpayer to the service provided this year and presumably scheduled for the future by the Internal Revenue Service in helping tax payers with their returns.

b. In the event the Staff Judge Advocate requests such a service he should specify the precise title and description of the publication desired. It is noted that the Federal Supply Schedule, Group 76, Part Two, Law Books and Tax and other Regulatory Reporting Periodicals contains specific items of this nature.

c. The tax material distributed annually by this office would appear to be adequate for the majority of income tax problems upon which legal assistance officers are called to give advice. Where additional materials are requested, it is recommended that approval, if granted, should not exceed the following:

(1) One copy of Federal Income Tax Regulations:

(a) Federal Supply Schedule Index Number 862 (Commerce Clearing House — \$8.00)

(b) Index Number 1646 — Prentice Hall — \$9.00

Either one of the above two may be purchased.

(2) Index Number 1648 — Internal Revenue Code — Prentice Hall — \$4.00

d. The Federal Supply Schedule lists Index Number 856, Commerce Clearing House's Federal Tax Return Manual — \$23.00. If this

item is specifically requested, then if deemed necessary, it may be purchased.

e. Requests for this material should be coordinated with this office.

2. Bonding requirements for non-JAGC accountable officers have been removed by P.L. 310, 86 Stat. 201 (6 Jun 72). The statute requires reporting of losses. Reporting criteria are being generated by the Comptroller of the Army and will be published as a change to AR 600-13.

17. Retired Members. All retired JAGC officers are requested to send their current ad-

resses to: Information Officer, The Judge Advocate General's School, Charlottesville, Va. 22901.

The following is the calendar of courses which will be offered by The Judge Advocate General's School for the remainder of FY 73 and FY 74. It is not too early to begin planning for attendance at these courses, especially with regard to budgeting. The calendar for FY 74 has been expanded to provide the maximum number of offerings possible. Also listed are the dates for the various conferences scheduled for FY 74.

TJAGSA Courses

NUMBER	TITLE	DATES	LENGTH
5F-F13	3d Litigation	14 May-18 May 73	1 wk
5F-F5	13th Civil Law I	4 Jun-15 Jun 73	2 wks
5F-F5	Law of Military Installation Phase	4 Jun-8 Jun 73	1 wk
5F-F5	Claims Phase	11 Jun-15 Jun 73	1 wk
	**2d Judge Advocate Operations Overseas	4 Jun-8 Jun 73	1 wk
5F-F9	12th Military Judge	9 Jul-27 Jul 73	3 wks
5F-F3	17th International Law	9 Jul-20 Jul 73	2 wks
5F-F2	11th Civil Law II	23 Jul-3 Aug 73	2 wks
5F-F2	Personnel & Administrative Law Phase	23 Jul-27 Jul 73	1 wk
5F-F2	Legal Assistance Phase	30 Jul-3 Aug 73	1 wk
5F-F1	15th Military Justice	13 Aug-24 Aug 73	2 wks
5F-F1	Administration of Military Justice Phase	13 Aug-17 Aug 73	1 wk
5F-F1	Trial Advocacy Phase	20 Aug-24 Aug 73	1 wk

**For Active Army Under Orders to Foreign Areas

(Phase I, 69th Judge Advocate Officer Basic Course, 12 July-9 August 1973)

5F-F11	56th Procurement Attorney	6 Aug-17 Aug 73	2 wks
5F-F1	15th Military Justice	13 Aug-24 Aug 73	2 wks
5F-F1	Administration Phase	13 Aug-17 Aug 73	1 wk
5F-F1	Trial Advocacy Phase	20 Aug-24 Aug 73	1 wk
5-27-C20	69th Judge Advocate Officer Basic Course	14 Aug-10 Oct 73	8 wks
5-27-C22	22nd Judge Advocate Officer Advanced Course	27 Aug-31 May 74	40 wks
5F-F8	12th Senior Officer Legal Orientation	5 Sep-7 Sep 73	3 days

NUMBER	TITLE	DATES	LENGTH
	(FBA Annual Meeting, 10-15 September 1973)		
	The Judge Advocate General's Conference	16 Sep-20 Sep 73	1 wk
5F-F10	9th Law of Federal Employment	1 Oct-5 Oct 73	1 wk
5F-F8	13th Senior Officer Legal Orientation	17 Oct-19 Oct 73	3 days
	(AUSA Annual Meeting, 15-17 October 1973)		
5-27-C20	70th Judge Advocate Officer Basic Course	23 Oct-19 Dec 73	8 wks
5F-F13	4th Litigation and Environmental Law	29 Oct-2 Nov 73	1 wk
5-27-C8	21st JA Res. Component Field Grade Officer Refresher	5 Nov-16 Nov 73	2 wks
	(Phase I, 71st Judge Advocate Officer Basic Course, 15 Nov.-14 Dec. 1973)		
	U.S. Army Reserve Judge Advocate Conference		
	Service School Legal Instructors Conference	15 Nov-17 Nov 73	3 days
5F-F11	57th Procurement Attorney (AALS, 26-29 December 1973)	27 Nov-28 Nov 73	2 days
5F-F8	1st Reserve Senior Officer Legal Orientation	3 Dec-14 Dec 73 5 Dec-7 Dec 73	2 wks 3 days
5F-F12	4th Procurement Attorney, Advanced	7 Jan-18 Jan 74	2 wks
5-27-C20	71st Judge Advocate Officer Basic Course	7 Jan-1 Mar 74	8 wks
512-71D20/40	3d Civil Law Paraprofessional	14 Jan-18 Jan 74	1 wk
512-71D20/40	2d Criminal Law Paraprofessional	14 Jan-18 Jan 74	1 wk
	(Phase I, 72d Judge Advocate Officer Basic Course, 17 Jan-14 Feb 1974)		
	(ABA Mid-Year Meeting, 1-5 February 1974)		
5F-F2	12th Civil Law II	4 Feb-15 Feb 74	2 wks
5F-F2	Personnel and Administrative Law Phase	4 Feb-8 Feb 74	1 wk
5F-F2	Legal Assistance Phase	11 Feb-15 Feb 74	1 wk
5-27-C20	72d Judge Advocate Officer Basic Course	19 Feb-12 Apr 74	8 wks
7A-713A	4th Law Office Management National Guard Judge Advocate Conference	4 Mar-8 Mar 74 4 Mar-6 Mar 74	1 wk 3 days
5F-F10	10th Law of Federal Employment	11 Mar-15 Mar 74	1 wk

NUMBER	TITLE	DATES	LENGTH
(Phase I, 73d Judge Advocate Officer Basic Course, 14 Mar-11 Apr 1974)			
5F-F3	18th International Law	11 Mar-22 Mar 74	2 wks
5F-F8	14th Senior Officer Legal Orientation	25 Mar-27 Mar 74	3 days
	2d NCO Advanced Course	1 Apr-12 Apr 74	2 wks
5F-F11	58th Procurement Attorney	8 Apr-19 Apr 74	2 wks
5-27-C20	73d Judge Advocate Officer Basic Course	16 Apr-12 Jun 74	8 wks
5F-F13	5th Litigation and Environmental Law	29 Apr-3 May 74	1 wk
5F-F6	4th Staff Judge Advocate Orientation	6 May-10 May 74	1 wk
5F-F1	16th Military Justice Administration Phase	13 May-24 May 74	2 wks
5F-F1	Trial Advocacy Phase	13 May-17 May 74	1 wk
5F-F1		20 May-24 May 74	1 wk
5F-F9	13th Military Judge	3 Jun-21 Jun 74	3 wks
5F-F14	3d Judge Advocate Overseas Operations	10 Jun-14 Jun 74	1 wk
	USAR JAGSO Legal Assistance (IA, IB) Teams	17 Jun-28 Jun 74	2 wks
	USAR JAGSO Claims (FA, FB) Teams	8 Jul-19 Jul 74	2 wks
5F-F8	15th Senior Officer Legal Orientation	22 Jul-24 Jul 74	3 days
5F-F5	11th The Law of War & Civil-Military Operations	22 Jul-2 Aug 74	2 wks
5F-F11	59th Procurement Attorney	29 Jul-9 Aug 74	2 wks
5F-F5	14th Civil Law I	5 Aug-16 Aug 74	2 wks
5F-F5	Law of Military Installations	5 Aug-9 Aug 74	1 wk
5F-F5	Claims (ABA Annual, 12-16 August 1974)	12 Aug-16 Aug 74	1 wk
5-27-C22	23d Judge Advocate Officer Advanced Class	26 Aug-	

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
 General, United States Army
 Chief of Staff

Official:

VERNE L. BOWERS
 Major General, United States Army
 The Adjutant General



