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Collective Security and the Alliance System

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This article is taken from a lecture given at The Judge Advocate General's School by Dr. Rumpf.

cal and practical dimensions which is thereby coming to the fore with renewed vigor.

Introduction

After some hesitation and discussion among themselves the governments of the member states of the North Atlantic Treaty Organization have, upon insistent bidding from the Warsaw Pact governments, agreed to participate in a Conference on Security and Cooperation in Europe. The prospect of a political conference in which the protagonists of the two great alliance systems, viz. the NATO and the Warsaw Pact Organization, together with representatives of non-committed nations, are going to participate, does not only pose difficult questions for the statesman and the military leader but also interesting problems for the political scientist. These observations are made from the latter point of view.

Discounting the usual commonplaces about peace, security and detente, it is not easy to make out what the prospective participants are really driving at; what their expectations are. These questions of immediate political and military practice shall not be the concern of these remarks, which rather try to appraise some of the more general ideological, political and legal features. As a first observation it is to be noted that the scheme of this Conference constitutes a revival of the idea of collective security. The impact of this idea on the alliance system seems to be a problem of theoretic

I.

There will certainly be no lack of proposals, schemes and plans on how to make Europe safer, and how to consolidate and improve the present state of precarious peace. From the founding of the League of Nations in 1919, the first international institution in which the idea of collective security materialized, until recent days, the historical record shows many and different treaties, charts, plans and drafts designed to promote international security. The United Nations Organization, which was meant to be the improved successor of the League of Nations, is the greatest and most elaborately planned incarnation of the postulate of collective security. Still, since its foundation and in view of the resuscitation of the policy of special alliances in all corners of the globe, new ideas, new devices have been invented and offered for the same end. The differences lie in the territorial extension to be given such an agreement—regional instead of universal—and in the measures proposed. These proposals have, in turn, been conditioned by the evolution of technology, i.e., in particular by the development of the atomic bomb. With special reference to Europe, a variety of such plans and proposals have been on record for the last twenty years. They range from non-aggression pacts, today preferentially termed renunciation of force

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treaties; agreements on disarmament in general, or in respect to particular armaments; agreements on the mutual reduction of troops; nuclear-free zones like the "Rapacki plan;" zones of limited armament; disengagement plans and the like.

At the Geneva Foreign Ministers' Conference of October 1955, the governments of the three Western Powers submitted the Eden Plan, which envisaged measures for European security combined with steps for the reunification of Germany. It was drafted on the assumption that true security could only be expected if—(alongside with commitments of non-aggression)—the removal of the main reason for tension in Central Europe, the continued partition of Germany, was at least initiated. As far as its military component was concerned, the Eden Plan contained the following proposals:

1. renunciation of the use of force;
2. the commitment to deny military or economic aid to any aggressor;
3. limiting the strength of troops and arms in a zone on either side of a line of demarcation between a reunified Germany and the countries of Eastern Europe;
4. reciprocal inspections and controls to ascertain whether the arms limitations are being adhered to and as an advance warning of preparations for attack;
5. a commitment on the part of all parties to the treaty to take suitable measures to deal with the danger of attack.

It is natural that German political groups in former years were especially prolific in the production of plans for European security and German reunification, until recently regarded as inseparable twin issues by the Governments of the Western Alliance. Thus, the German Social Democratic Party in 1959 came out in favor of a "Plan for Germany," in which proposals for a limited-arms-and-control-zone were tied up with steps for the restoration of German unity. This was later

completed by concrete proposals for effective arms control; they provided for reciprocal international controls on the ground—both stationary (in maritime harbors and air bases) and mobile—plus air surveillance, and advanced radar stations at given points on the opposing edges of the “zone of detente,” i.e., a NATO radar station on the Bug in Poland, and an East Bloc radar station on the Rhine. It would be no surprise if such proposals or any variation and combination of them were to be advanced by one or the other side in the course of the forthcoming conference. Their crowning idea, however, would be the proposal of a collective security pact; a treaty of mutual assistance against aggression which has repeatedly been advocated in East and West.

II.

The plans and proposals mentioned were mostly accompanied by assurances that, at least for the time being, the existing alliances should be maintained. Their obligations were held to be compatible with the agreements to be proposed. The most far reaching political imagination even conceived the notion of an overall collective security pact embracing the two European alliance systems. Two questions arise in face of these developments and schemes:

1. Would the proposed agreements be legally in harmony with the existing alliances?
2. Do they fit in the political logic of the alliance system?

The first question could, of course, only be answered accurately by comparing the texts of different treaties. One would have to examine, for instance, whether the rights and obligations of the North Atlantic Treaty would be prejudiced or impaired by an arms limitation pact, by a renunciation of force treaty, or by a general collective security pact. This cannot be done before the clauses of such treaties are drafted in detail. Since most political treaties follow certain patterns, however, a comparison of types embodied in outstanding historical specimens will serve best

to clarify the problem. The typological approach, by aiming at the essence of a treaty, also ascertains its inherent logic.

Historically speaking, the alliance is not only the older type compared with different collective security agreements but it is one of the most ancient political compacts at all, if not the oldest. Textbooks of International Law show an embarrassing variance of definitions because they sometimes lack clear cut criteria and confuse different types of treaties. In our context it is only the military alliance we speak of. This is a treaty between two or more states, persons in international law, who promise each other military assistance under certain circumstances. Up to the 19th century alliances could be defensive as well as offensive in character, according to the purpose pursued by the contracting parties. The present time knows only treaties which, at least in their wording, serve the common defense. The core of such a treaty is the clause on the *casus foederis*, in which the parties pledge themselves to mutual military assistance in the instance that any one of them be attacked by another state. At first sight there may appear no difference between such a treaty termed alliance and a collective security pact of more recent invention, by which states also pledge themselves to mutual military assistance in case one of them became the victim of aggression. In order to give evidence that we are not making a distinction without a difference a few more criteria have to be added. The difference will become clearer with some examples taken from the history of international law.

A good illustration of the classical alliance is to be found in the German-Austrian alliance of October 7, 1879, the counterpart of the Entente cordiale between France and England formed some time later. Article 1 states in the main part: “Should . . . anyone of the two Empires . . . be attacked by Russia,” both powers would assist one another with all their military strength and would conclude a peace only conjointly and by mutual agreement. The classical alliance is the association of two or more states promising each other military as-

sistance in case of attack from a third state, a power outside their association, which sometimes even expressly named. The alliance is extroverted, which is to say, it is pointed outwards, directed against one or any number of other nations specified or unspecified. Politically speaking, it presupposes a friend-foe relationship and a certain measure of international tension, from which it draws its political and psychological strength.

Let us compare the *casus foederis* of a typical alliance with the *casus securitatis* of the first modern collective security pact, viz. the covenant of the League of Nations. In Article 11 it proclaimed "that any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. . . ." According to Art. 16, "should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15," (i.e., in violation of the provisions for the peaceful settlement of international disputes), "it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League." Article 16 of the League Covenant, while only of historic interest, has rightly been called "the pioneering attempt at putting a system of collective security into effect."¹ The striking feature of such a system is to be seen in the completely abstract formulation of the conditions of mutual assistance. The reason for this abstraction and generalization lies in the fact that there is no particular potential aggressor to be faced, let alone to be named, but it is supposed that any one partner of the treaty may turn into an aggressor state. Any one of the contracting states may become assistant policeman or international criminal, as the case may be.

Whereas the League of Nations was designed as the universal organization of international peace, another typical example of a collective security arrangement, the Locarno Pact of 1925, applied the same principle to a restricted region of Western Europe. In this

Pact the contracting parties undertook the following obligations:

1. Germany, Belgium, France, Great Britain and Italy pledged themselves to guarantee the territorial status quo of the borders between Germany and Belgium and between Germany and France, including the stipulations of the Treaty of Versailles covering the demilitarized zone of the Rhineland (Art. 1).
2. Germany, Belgium and France vowed not to attack one another.
3. In the event that anyone of these powers should nonetheless attack any one of the other contracting countries, all other parties to the treaty would offer assistance to the nation under attack, while Great Britain and Italy were to act as guarantor powers.

III.

Behind the difference of the two types of assistance clauses lies a contrast of political philosophy and of outlook on the international scene. Whereas the classical alliance is based on the assumption of a particular and concrete danger to particular states coming from another particular state or states, the collective security system tries to protect from the menace of war and aggression in the abstract without reference to any special potential enemy. Whereas the alliance is extroverted with a spearhead pointing to a known, even if not always revealed threat to the national security of the allies, the collective security pact is introverted, implying the possibility of attack from any one member of the system itself. In the former kind of treaty nations A, B, and C try to protect themselves against nations D, E, and F; in the latter kind of pact nations A, B, C, D, E, and F wish to protect their common security from whatever danger there may arise.

In the words of Professor Morgenthau collective security is the most far reaching attempt on record to overcome the deficiencies of a completely decentralized

system of law enforcement. While traditional international law leaves the enforcement of the rules to the injured states, collective security envisages the enforcement of the rules of international law by all the members of the community of nations, whether or not they have suffered injury in the particular case. As an ideal collective security is without flaw;—However, the two attempts which have been made to put the idea of collective security into practice—Article 16 of the Covenant of the League of Nations and Chapter VII of the Charter of the United Nations—fall short of the ideal.²

At the origin of the idea of collective security was a widespread feeling of discontent with the system of alliance during and after the first World War. Many observers, publicists and statesmen held it partly responsible for the outbreak and extension of the war. According to President Wilson's Fourteen Points, the international peace organization which he advocated should not suffer any "leagues or alliances or special covenants" alongside it. The policy of alliances was condemned, however, not only by pacifists and internationalists, but also by isolationists and nationalists, even if their motives were not identical. While the first school of thought rejected the aspect of power politics, the second one shrunk from the commitments and burdens following from "entangling alliances."

In spite of this, soon after the League of Nations had begun to operate new alliances sprung up. France in particular was of the opinion that its security and pre-eminence needed to be further reinforced through a series of bilateral treaties directed against Germany with Poland, Rumania and Czechoslovakia, while the successor states to the Austro-Hungarian monarchy, Yugoslavia and Czechoslovakia had joined with Rumania to form a "little entente." In 1936 France, in a counter-move to German rearmament, concluded an alliance with Soviet Russia, which served as an excuse for Hitler to denounce the Locarno treaty and to restore military

sovereignty over the demilitarized zone of the Rhineland.

At the time the United Nations were founded more alliances were already in existence or in the way of preparation. Russia laid the ground for her special relationship with neighboring nations, which later culminated in the Warsaw Pact. In 1967 the Department of State informed the Senate Foreign Relations Committee that the United States entertained alliance relationships with 42 countries, the most important of which were formed by the Rio Pact, the North Atlantic Treaty, the SEATO, and the CENTO Pact.³ To have concluded alliances or "special covenants," to use the language of Woodrow Wilson, notwithstanding the League of Nations system then, and the United Nations Organization now, can be explained only by the conviction of the contracting states that their national security is not being adequately safeguarded by the universal organization for collective security. Although the alliance type of assistance treaty is rather unpopular with political scientists and international lawyers it had a renaissance after both World Wars. In the light of this development the proposal of a Conference on European Security and Cooperation may be viewed as an effort, for whatever reasons it should be made, to make the pendulum swing into the other direction again.

IV.

A comparison between alliances of the classical or nineteenth century type with alliances of today shows, however, that the ideology and phraseology of collective security has not been without influence on their content and their wording. Thus, modern alliance treaties avoid calling any potential enemy by name; they formulate the *casus foederis* as abstractly and innocuously as possible; they take pains to keep in harmony with the system of the United Nations. The North Atlantic Treaty and the Warsaw Pact have been more or less adapted to this new way of thinking in international law. The notorious fact, that NATO was founded and is maintained as a protective alliance against the Soviet Union

as the predominant power of world Communism, is nowhere expressed in the treaty text. At the most, it can be deduced from the implications of the statement of aims and general ideas contained in the Preamble and from the reference to the "principles" contained in Article 10. It can also be gathered from the parliamentary debates and accessory explanations during the treaty-making-procedure. Similarly the Warsaw Pact does not actually cite any hostile power by name in its substantive provisions, against whom the signatory powers claim to have to protect themselves. But in presenting itself in the Preamble as an answer to the accession of the Federal Republic of Germany to NATO, the Warsaw Treaty at least points out a certain political orientation. The Western European Union or Brussels Treaty in its initial version of 1948 was still expressly directed against Germany, a country recently defeated and disarmed, the unfriendly citation of which the draftsmen of the time could afford without risking diplomatic tension. When Italy and the FRG acceded to the WEU all reference to a potential aggressor was omitted. The adaptation of the existing alliances to the United Nations System is further effectuated by certain harmonizing clauses and references. There is, first of all, the reference to Article 57 of the UN Charter, which reserves "the inherent right of individual or collective self-defense." There is, furthermore, the promise to report measures taken to the Security Council and the engagement to suspend them as soon as the Security Council decides on its own action.⁴

V.

After having outlined some essential features of modern alliances as compared to typical collective security treaties it is now appropriate to revert to the question of their legal compatibility. At the time of the creation of the North Atlantic Treaty its conformity with the Charter of the United Nations was a much debated question. It was answered in the negative by communist authors and by politicians of the East Block.

Western international lawyers have long since agreed in a majority that the alliance for the purpose of collective self-defense is compatible with the Charter by virtue of Article 51. Some authors also refer to Article 52 of the UN Charter, thus defining NATO as a regional organization admitted by the Charter. On the other hand, it admits of little doubt, that any alliance within or without the system of the United Nations, is not in harmony with the original and pure idea of collective security. However, be this as it may, the issue to be faced now is rather the reverse problem, to wit: whether and to what extent new and additional collective security arrangements would fit into the existing alliance system.

In Article 5 of the North Atlantic Treaty the parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

The alliance clause of the Western European Union Treaty (Article V) in its version of October 1954 is formulated some what more cogently:

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

The corresponding assistance clause in the Warsaw Pact speaks of "the event of an armed attack in Europe" on one or several of the signatory states "by any state or group of

states," and obliges each signatory to immediate assistance, individually and in agreement with other signatory states, "by all means it may consider necessary, including the use of armed force." Reference is again made to Article 51 of the UN Charters.

The first problem to consider relates to the proposal of a collective security treaty comprising both NATO and the Warsaw Pact. By such an overall pact the existing treaty obligations to render military assistance to a victim of armed aggression would be legally doubled. But would they also be politically reinforced? To illustrate the question let us take an example. Assuming that Western Europe—that is, the Federal Republic of Germany, Belgium, the Netherlands, Luxemborg, Denmark and Norway,—or Italy or Greece and Turkey, became victims of an aggression from the Warsaw Pact; in such a contingency France, Great Britain and the United States by virtue of Article 5 of the Atlantic Treaty are bound to render them assistance by such action as they deem necessary. The same holds good vice versa. Had there before been concluded a collective security pact having all the aforementioned states as members, it could not but give rise to the same obligation. In an analogous manner, the pledges of help made by the East Bloc nations among themselves would be redoubled. They would be obligated to assist one of their partners, if attacked from one or more third nations, both in accordance with the Warsaw Pact and in accordance with the proposed European Security Pact. The new element to be introduced into the political constellation of Europe, however, if a collective security pact on the Locarno or League of Nations model came about, would consist in the crosswise obligation of assistance. East Bloc and Western nations would not only have to help countries of their own camp but likewise those of the opposite camp. In theory, to form a hypothetical illustration, in the event of an aggression by the USSR on the FRG not only the NATO powers but also the rest of the Warsaw Pact would have to rush to the latter's help. On the other hand, were the FRG to attack the

USSR, NATO would have to help the latter. Or, to give more realistic examples, in case of a clash between Greece and Turkey the USSR would be entitled to intervene, just as the United States in the event of a new Russian military intervention in one of the satellite nations. All these cases are purely hypothetical, as everyone knows, if only for the simple reason that East and West will not agree on who is the aggressor in any particular conflict. And only if they did agree could the states, partners to a collective security treaty, feel released from the obligation of assistance versus an aggressive ally.

VI.

The idea of a collective security pact concluded between the existing alliances has little chance of realization and is of no immediate interest in the context of the European Security Conference. Even if the two systems of treaties might be reconciled in law they would not match in practice. An ultimate proof of that could be drawn from the consideration of the aspect of staff work indispensable for the military preparations under collective self-defense as well as under collective security. To have an all-European general staff planning with reciprocal exchanges of military information for any and all conceivable possibilities of aggression in Europe; to imagine the staffs of NATO and the Warsaw Pact cooperating on common plans for two hypothetical situations—an attack from the East and an attack from the West—is an absurd notion. As long as the two camps are facing each other with conflicting political aspirations and ideologies no new system of collective security can be expected to work any better than the old ones, including the United Nations. Casting aside then the idea of a collective security pact coexisting with the alliances in East and West, the question may well be put in terms of a possible *substitution of the alliances* by a collective security arrangement. Such a replacement of special covenants by a universal collective security system was the basic idea of the League of Nations and the United Nations, especially

of Chapter VII of the UN Charter. It has been repeatedly proposed also after the post-war alliance system of today had been established. In particular, moderate socialists and adherents of a policy of neutrality in Western nations cherished such ideas, although they seemed to have dropped them during the last ten or fifteen years. It should be noted, however, that the Soviet Union, too, has been a staunch supporter of the notion of replacement, which is also reflected in Article 11, Section 2 of the Warsaw Treaty of May 14, 1955:

In the event of the organization of a system of collective security in Europe and the conclusion of a general European treaty of collective security to that end, which the contracting parties shall unceasingly seek to bring about, the present treaty shall cease to be effective on the date the general European treaty comes into force.

This clause of the Warsaw Treaty is worth remembering when the prospects of a European security conference are being discussed, although enthusiasm for the idea of replacement of systems seems to have dwindled not only in the West but also in Moscow. There is reason to believe that this idea was advocated by Moscow with the after thought of dissolving the opposite camp while their own would remain virtually intact because of its different structure. Perhaps they are no longer as confident of this as before. But it remains true that, whereas a dissolution of NATO would leave its members, especially the smaller ones, floating under the pressure of centrifugal forces, dissolving the Warsaw Pact would not have the same effect. There are not only the bilateral treaties of assistance and friendship between the Soviet Union and its satellites, but there is, first and foremost, the solidarity of the ruling Communist parties, as expressed in the theory of Socialist Internationalism and the doctrine of "limited sovereignty of socialist nations." Last but not least, there is also the geographic position and military predominance of the Soviet Union.

VII.

In order to stabilize peace in Europe on more pragmatic lines and by means of less ambitions and dubious devices, the method of *renunciation of force treaties* has recently been strongly advocated and applied, in particular by the FRG. One outstanding example is the Moscow Treaty between the FRG and the USSR of August 12, 1970. In Article 2 the contracting parties promise to be guided by the purposes and principles of the United Nations in their mutual relations and in matters of European and international security. Accordingly, they will settle their disputes exclusively by peaceful means and they undertake to refrain from the threat or use of force, pursuant to Article 2 of the UN Charter, in matters affecting European and international security, as well as in their mutual relations. Can this bilateral renunciation of force between the FRG and the Soviet Union be reconciled with the obligations of the respective alliances of the two partners? The answer can be drawn from Article 4 of the Moscow Treaty, according to which "the present Treaty . . . shall not affect any bilateral or multilateral treaties or arrangements previously concluded by them (i.e., the FRG and the USSR)." Applied to their respective alliances this means that the clauses calling for assistance to an ally under attack remain binding in spite of the renunciation of force clause of the later treaty. Otherwise, had no such Article been inserted into the Moscow Treaty, it would at least have been doubtful whether the two partners having renounced force against each other were to be relied upon as allies by their respective blocs in case of an armed conflict. Put in general and abstract terms the problem consists in the conclusion of a Treaty in which members of a military alliance commit themselves not to use force against a state outside the alliance (and possibly its enemy). To keep such a treaty from legally derogating the assistance pact it has to be provided with a harmonizing clause containing an exception in favor of assistance to allies under unprovoked aggression. In order briefly to mention other known proposals de-

signed to enhance European security; arms limitation zones, mutual balanced forces reduction, prohibition of the stationing of atomic-weapons in certain areas, inspection systems; it may be summarily stated that they may in principle be consonant with the alliance obligations, provided the essence of mutual assistance in war and of mutual support in defense preparation is not impaired.

VIII.

It is submitted that the real issue between a policy of alliance and a policy of general collective security does not lie in their legal aspects but in their implications of social and political psychology. While diplomatic draftsmanship may in the end always find harmonizing clauses in order to avoid a contradiction in terms, the inner logic of concepts and the mental basis of the two systems will remain contradictory. Whereas special alliances have in view the concrete security of particular nations who feel threatened by other nations, systems of collective security aim at general and abstract security for all nations of the world or of a particular region, without admitting of any particular danger or political division. In making people believe that the devices of collective security would afford the desired protection and that tension has materially diminished, such systems tend to undermine the moral effectiveness of existing alliances, to cause a gradual "sagging of the beams"⁵ although the basic conflicts of interests and of political aspirations have not been solved. For reasons outlined above it would be the democratic West which had to face such a development more than the communist East. NATO members, in particular, would find it increasingly difficult to comply with Article 3 of the Atlantic treaty, according to which they are expected "separately and jointly, by means of continuous and effective self-help and mutual aid—(to) maintain and develop their individual and collective capacity to resist armed attack." A policy serving only an abstract and general European security would run the risk of prematurely un-

dermining the concrete and actual security afforded by the protecting alliance.

The notion of "dissolving the blocs" with its promise of peace, national independence, trade exchanges and cultural cooperation, fascinating as it is, will remain wishful thinking as long as the underlying principal political conflicts persist.

IX.

There is a political antithesis between an alliance policy embodied in a system of collective self-defense and the postulates of collective security. Historically the two ideas and movements are related to each other like ebb and flow, action and reaction. The discrediting of the alliances after World War I gave rise to the building of collective security systems; the failure of the latter being followed by a revival of special pacts for mutual assistance. The same tidal movement took place after World War II. The alliances of our time are, however, as I have tried to show, in some respect different in appearance from those of the past. Among the distinguishing features are to be mentioned: (1). the organizational set-up they have in common with other international organizations; and (2). the ideological motivation. The last point deserves some concluding observations.

In the preamble to the North Atlantic Treaty the parties declare that "they are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law." According to Article 10 of the Treaty "any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area" may be invited to accede. Recent experience has shown that the bond of a common political philosophy does not always and necessarily function as an element of cohesion, but may also give occasion to internal dissent. A valuable and strategically important ally may find himself ostracized by some other allies because they believe he no longer lives up to

the common constitutional standard. The issue is usually put in the query whether a community of states who have joined together to defend democracy, liberty and the rule of law may legitimately put up with a partner who seems to violate these same ideals in his own political system. Idealists incline to regard as cynical the view that practical military and strategic considerations outweigh any criticism of the constitutional system of such a partner as long as he remains faithful to the common cause. I submit that the true justification for a large measure of inter-allied tolerance is to be found in a broader and deeper approach to the problem. In such a view constitutional homogeneity of all partners is less important than their solidarity in the face of a common menace to their basic social values. An alliance is basically more a community of interests than a community of ideals.

The New Federal Rules of Evidence – Part IV

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This is the last of a series of four articles on the Federal Rules of Evidence. In this article, the author assesses the effect the Rules' adoption would have on military evidence law.

PART II: AN ASSESSMENT OF THE FEDERAL RULES' EFFECT ON MILITARY EVIDENCE LAW

If the Federal Rules are adopted, Paragraph 137 of the Manual will be the vehicle for their incorporation into military practice. As previously stated, Paragraph 137 states that "(s)o far as not otherwise prescribed in this manual, the rules of evidence generally recognized in the trial of criminal cases in the United States district courts . . . will be applied by courts-martial."¹ The extent to which military evidence law incorporates the Federal Rules will depend upon the interpretation of the term "rules." Unfortunately, like the word "jurisdiction," the term "rule" is a legal chameleon.² Propositions which some analysts characterize as generalized eviden-

X. Standards of Evidence

The quest for security is largely tantamount to the longing for peace. But there is no absolute security between nations, only relative safety for each nation's life, liberty and property, and in our age of interdependence this can only be had in cooperation and mutual assistance between nations whose interests and aspirations are essentially in harmony.

Footnotes

1. Hans Morgenthau, *Politics Among Nations*, 1. ed. 1949, p. 232.
2. *loc. cit.*
3. Quoted from David Fromkin, *Entangling Alliances*, *Foreign Affairs*, vol. 48, No. 4, July 1970, p. 689.
4. NATO Treaty, Articles II; Warsaw Pact, Article 4, II; WEU, Articles 5 and 6.
5. Flora Lewis in *New York Times*, 21 VII. 72.

tiary principles might strike other commentators as particular rules of evidence. The Court of Military Appeals might interpret the term "rule" as including such general propositions as the statement that confidential communications between husband and wife are privileged. If the Court does so, then it could be plausibly argued that as long as the Manual addresses a topic such as the husband-wife privilege, the Manual pre-empts the area and precludes the Federal Rules' incorporation. However, it is unlikely that the Court will adopt this construction. In *United States v. Massey*,³ the Government charged the accused with carnal knowledge with his daughter. The trial counsel called the accused's wife as a witness against him. The accused objected, and the Government responded that the charged offense fell within the injured spouse exception to the marital anti-testimonial privilege. The Court held that the governing Manual provision was ambiguous. To resolve the issue, the Court consulted Federal civilian and State

precedents. Strictly speaking, *Massey* involved an issue on which there was an ambiguous Manual provision rather than no provision. However, the Court unhesitatingly resorted to civilian precedents to fill a gap in military evidence law. The Court obviously did not feel that the Manual's inclusion of a general statement of the privilege prevented the Court from incorporating a more particularized proposition from civilian law. Thus, even where the Manual contains a general discussion of an evidentiary topic, the Court would probably be willing to incorporate narrower propositions of law from the Federal Rules.

The Court will incorporate such propositions unless the Manual has "otherwise prescribed . . ." ⁴ Negatively, a Federal Rule should not be incorporated if (1) the Rule conflicts with an express Manual provision or (2) the Rule is exclusionary in nature, and there is a clear inference that the Manual draftsmen carefully balanced the competing interests in the field and intended that their list of restrictions would be exhaustive. Affirmatively, a Rule should be incorporated if (1) the Manual is absolutely silent on the issue or (2) the Manual provision is ambiguous, and the rule's incorporation would help to resolve the ambiguity. Using these generalizations about the incorporation of the Federal Rules, we can now attempt to assess the Rules' impact on military evidence law.

Articles Which Will Have Little or No Effect on Military Evidence Law

Articles I (General Provisions), II (Judicial Notice), and VI (Witnesses) will probably have little or no effect on military law.

There are many significant differences between Article I and the Manual, but the Rules' differing provisions cannot be incorporated because they conflict with Manual provisions. The Federal Rule generally relaxing evidentiary rules' application to the judge's rulings is in direct conflict with the Manual provision, relaxing the application on only two rulings, applications for continuance and determinations of witnesses' availability. The Analysis

makes it clear that the Manual draftsmen considered and rejected the general relaxation the Advisory Committee adopted. Similarly, the Federal Rules' limitation on the rule of completeness could not be applied to the military. The Manual quite clearly applies the rule to oral evidence of former testimony, and it would fly in the face of the Manual provision not to apply the completeness rule to such evidence. Finally, although the question is not without doubt, the Court of Military Appeals would probably hold that Rule 104's procedure for admitting conditionally relevant evidence cannot be incorporated. It might be argued that Paragraph 53's language is ambiguous; but it is difficult to believe that the draftsmen's choice of the terms, "finally" and "all," was unintentional. There certainly is no suggestion in the Manual or Analysis that the draftsmen intended that the judge would use a special procedure when ruling on the admissibility of conditionally relevant evidence. Rule 104 would probably be held to conflict with Paragraph 53.

Article II will have a minimal effect on military evidence law. The Manual uses different terminology than the Rules' "adjudicative facts" and "self-authenticating evidence"; but in most cases, the military judge should reach the same result under the Manual as a Federal civilian judge would reach under Article II. Upon analysis, most of the seemingly great differences between the Manual' and Federal Rules' treatment of judicial notice vanish.

Article VI probably will not effect any major changes in military law. There are many differing provisions; but as was the case with Article I, Article VI's differing provisions conflict with Manual provisions. The military cannot incorporate Rule 601's liberal competency standard. The Manual specifies the types of specific mental and moral competency qualifications which the Committee decided not to prescribe. There is an inescapable conflict between the Rule 601 and the Manual provisions.

Neither could the military adopt the Federal Rules' apparently absolute prohibition on

bolstering. To adopt the prohibition would be to ignore the Manual's plain language allowing bolstering evidence of fresh complaint and pre-trial identification. Likewise, the military could not adopt the Federal Rule permitting the party to impeach his own witness; the Rule directly conflicts with the Manual provision that except in limited circumstances, the party may not attack his own witness' credibility. The military cannot incorporate Rule 613's abolition of the foundation requirement because in no uncertain terms, the Manual imposes a foundation requirement. The differing Federal Rule provisions on impeaching convictions would also conflict with express Manual provisions; Rule 609 clearly permits proof of a conviction undergoing appeal while the Manual just as clearly excludes evidence of convictions still undergoing appellate review. Finally, while Federal Rule 801 provides that a prior consistent statement may be admitted as substantive evidence, a conflicting Manual provision states that such statements are admissible solely for rehabilitation.

Unavoidable conflicts would also arise if the military attempted to adopt the Federal Rules' provisions regulating the manner of witnesses' examination. The Manual and Federal Rules take diametrically opposed views on the proper scope of cross-examination; the Manual draftsmen opted for restrictive scope while the Advisory Committee adopted the wide-open scope.

Articles Which Would Significantly Affect Military Evidence Law

Articles III (Presumptions), IV (Relevancy), V (Privileges), VII (Opinions and Expert Testimony), VIII (Hearsay), IX (Authentication and Identification), and X (Contents of Writings, Recordings, and Photographs) could significantly affect military evidence law.

Article III might drastically affect the military presumption doctrine. At the outset, it must be stated that Article III will not affect military evidence law in the same fashion as the other Articles. The other Articles would work their effect through Paragraph 137 of

the Manual. Article III would effect change in spite of Paragraph 137. Article III's more important provisions clearly conflict with the Manual. For instance, the Federal Rules deny presumptions the mandatory-inference effect the Manual seems to grant them. However, if Article III embodies a correct interpretation of the new constitutional limitation on presumptions' creation and effect, the Constitution will force the military to adopt many of the provisions of Article III. If *Gainey*⁵ and *Winship*⁶ do prohibit permitting mandatory inferences operating against the accused in a criminal case, the military must adopt Rule 303's provision to that effect. If *Turner*⁷ requires that a foundational fact have sufficient probative value to prove the presumed fact's existence beyond a reasonable doubt, the military will be compelled to adopt Rule 303's provision to that effect. Of course, the Constitution would not force the military to adopt Rule 301's provision that a presumption shifts the burden of proof as well as the burden of going forward. There is not the slightest suggestion that the Morgan view is a constitutional mandate, and Rule 301 is in direct conflict with the contra Manual provision.

Article IV would have a limited, but noteworthy, impact on military law. Most of the Federal Rules' provisions on uncharged misconduct, habit, routine practice, and character evidence either conflict with or are counterparts of Manual provisions. However, the Manual is absolutely silent on the admissibility of evidence of withdrawn guilty pleas, offers to plead guilty, and statements made in connection with such pleas and offers. Rule 410 would probably be incorporated into military practice. As previously stated, in the absence of an express Manual provision, the military courts have excluded evidence of the accused's admissions during the providency inquiry and in stipulations of fact entered into in connection with withdrawn pleas.⁸ However, the military courts have not yet addressed the issue of the admissibility of the accused's statements in connection with plea negotiation. Rule 410's incorporation would answer this unsettled

question. By excluding such statements, the Rule would remove accused's fear that damaging statements which they or their counsel made while seeking a pretrial agreement would subsequently be admitted against them.

Article V's effect on military law is more problematic than the effect of any other Article. It is conceivable that Article V would have virtually no effect. It is true that it is highly unlikely that the Court of Military Appeals would hold that by merely addressing such broad topics as relevance and presumptions, the Manual pre-empts those topics and precludes the incorporation of narrower propositions of law from the Federal Rules. However, the pre-emption argument's application to Article V involves special considerations. Like no other subject in the field of evidence, privilege represents a delicate balance of competing interests: the societal interest in protecting confidential relationships and information, on the one hand, and, on the other hand, the desirability of making all relevant, material evidence available to the triers of fact. If the Court of Military Appeals is going to invoke the pre-emption doctrine to prevent the incorporation of any Article of the Federal Rules, the Court would invoke the doctrine with respect to privilege. The Court might conclude that since the Manual listed only certain privileges, the Manual draftsmen had concluded that the balance of competing considerations favored the admissions of all the types of evidence they decided against privileging. If the Court inferred that the Manual's list of privileges was intended to be exhaustive, the Court could simply refuse to incorporate any privileges which the Manual draftsmen chose not to recognize.

It is also possible that Article V could have a limited impact. Although refusing to make a wholesale adoption of the new Federal Rules' privileges, the Court might selectively incorporate provisions. For example, the Court might adopt (1) the political vote privilege on the ground that the privilege is constitutionally based and (2) Rule 509's detailed procedures on the ground that although the Manual dis-

cusses the substantive State secret privilege, the Manual is silent on the procedures for invoking the privilege. If the Court adopted this cautious approach, most of the new Federal Rules' privileges would not be incorporated; but Article V would have a noticeable effect on military evidence law.

Finally, the Court might permit Article V to have a dramatic effect. If the Court refused to infer that the Manual draftsmen intended their listing of privileges to be exhaustive, the Court could incorporate such privilege as that for official information. The incorporation of the official information privilege would substantially expand the types of privileged, governmental information.

It must be emphasized that Article V's effect will depend upon the Court's willingness to conclude that the Manual listing of privileges is intended to be exhaustive. It is difficult to predict whether the Court will draw this conclusion. The Analysis is of no help; the draftsmen did not affirmatively indicate whether they regarded the listing as exhaustive. It is perhaps significant to note that at the end of Paragraph 151, the draftsmen specifically listed certain privileges which they did not feel should be recognized. If the draftsmen had intended the Court to draw the inference of the listing's exhaustiveness, it certainly would have been unnecessary to expressly prohibit the recognition of the privileges mentioned in Paragraph 151c. The Court may treat Paragraph 151c as evidence that the draftsmen did not want the Court to infer that the military should not recognize any privileges in addition to those the Manual lists. If the Court does so, the Court would probably adopt the new Federal Rules' privileges, including the official information privilege.

Even if it has no other effect on military law, Article VII would at least end the dispute as to whether the ultimate fact prohibition applies in the military. Some military judges have apparently applied the prohibition in the absence of an express Manual provision. If the Federal Rules are adopted, Rule 704

would become a military rule; and it would banish the ultimate fact prohibition from courts-martial.

It can safely be said that Article VIII would have the most far-reaching impact on military evidence law. It must be concluded that the military could not adopt Rule 801's provision that prior consistent and inconsistent statements are admissible as substantive evidence; Rule 801 conflicts with express Manual provisions. It probably must also be conceded that the Court would permit the Rules' incorporation to modify the military versions of the exceptions common to both the Manual and the Rules. The Court would not read express requirements out of the Manual; and since the Manual's statement of each exception's requirements represents the draftsmen's judgment that declarations satisfying those requirements are trustworthy evidence, it would be improper to incorporate Federal Rules which would have the effect of imposing additional restrictions on the admissibility of declarations satisfying the Manual requirements.

Nevertheless, in spite of these concessions, Article VIII would have an important effect. The Manual's list of hearsay exceptions is not exhaustive; the Manual expressly refers to the listed exceptions as merely "the principal exceptions to the hearsay rule applicable in court-martial trials . . ." ⁹ If the Rules are adopted, military counsel could invoke all the Federal Rules' exceptions which presently cannot be found in the Manual. Moreover, Rules 803's and 804's catch-all provisions would become applicable to the military; and military judges would be permitted to admit hearsay declarations which do not fall within any listed exception if the judges are satisfied that there is a comparable circumstantial guarantee of trustworthiness. Most assuredly, Article VIII would drastically liberalize the military hearsay doctrine.

Like Article IV, Article IX would probably have a limited effect on military law. In the first place, Article IX's incorporation would

authorize military counsel to use the ancient document doctrine as a means of authenticating documents. Its incorporation should remove the hesitancy of any military judges who were reluctant to recognize the doctrine as a common-law rule under Paragraph 137. In the second place, although this question is more doubtful, the Court might permit military counsel to use Rule 902's self-authentication provisions for types of evidence which the Manual's judicial notice provisions do not mention.

Article X would also have a noticeable effect. The Manual does not mention the collateral issue exception, and Rule 1004's adoption would integrate the exception into the military best evidence doctrine. Rule 1006's incorporation would settle the question whether the opponent's admission of the document's contents is an adequate excuse for nonproduction. Finally, the Court might incorporate Rule 1005's preference for written copies of original, official records.

CONCLUSION

The Advisory Committee which drafted the Federal Rules hoped that the Rules would promote the "growth and development of the law of evidence." ¹⁰ Before closing, we should make some observations about the direction in which the Committee has attempted to point the law of evidence.

On the whole, the Rules' standards of admissibility are lower than the Manual's standards. The Manual admits more types of bolstering and rehabilitating evidence than the Federal Rules; but in most other areas, the Federal Rules are more liberal than the Manual provisions. Witnesses who would be incompetent to testify in a court-martial would be permitted to testify under the Rules. Declarations which a military judge would now characterize as rank, incompetent hearsay would be readily admitted under the Rules. Testimony on an ultimate fact which some military judges would exclude would be accepted under the Rules. The Rules lower the relevance

requirements and expand the exceptions to the hearsay rule.

Yet, paradoxically, this same Committee constructed a complex, extensive scheme of privileges. The Committee evidently believed that while laymen jurors can evaluate probative dangers, they might not be sufficiently sensitive to the need to protect confidential relationships and information.

Lastly, it should be noted that wherever possible, the Committee avoided including constitutional limitations in the Rules. As the Note accompanying Rule 501 emphasizes,

No attempt is made in these rules to incorporate the constitutional provisions which relate to the admission and exclusion of evidence, whether denominated as privileges or not. The grand design of these provisions does not readily lend itself to codification. The final reference must be made to the provisions themselves and the decisions construing them. Nor is formulating a rule an appropriate means of settling unresolved constitutional questions.¹¹

This approach contrasts sharply with that of the Manual. The Manual draftsmen attempted to define some of the more important 4th, 5th, and 6th Amendment limitations on the admission of evidence.¹² The advantage of the Manual approach is that the military counsel has a single, convenient sourcebook, stating the common-law, statutory, and constitutional limitations on the admission of evidence. The disadvantage of the Manual approach is that if the Manual incorporates a broad reading of a particular Supreme Court decision and the Supreme Court subsequently retreats from its decision, the broad reading is frozen into the Manual¹³ and the rule binds the military until the President changes the rule by Executive Order. Of course, the Committee's flexible approach inures to the benefit of Federal prosecuting attorneys.

The Federal Rules' adoption would effect many important changes in military evidence

law. The military hearsay doctrine would be dramatically liberalized. However, there is growing Congressional opposition to the immediate adoption of the Rules, and on 30 March, Public Law 93-12, which provides that the Federal Rules will not take effect until Congress expressly adopts them, was signed into law. Yet, even if the Federal civilian judiciary does not adopt the Rules, the very proposal of the Rules gives us an opportunity to compare our existing Manual rules with the thoughts of the eminent, civilian evidence experts who drafted the Rules. Hopefully, this comparison will prompt us to re-evaluate our Manual provisions and revise them where appropriate. Such a re-evaluation would be a moving force in the growth and development of military evidence law.

Footnotes

1. MCM, 1969 (Rev.), para. 137.
2. See Note, *Understanding the Model of Rules: Toward a Reconciliation of Dworkin and Positivism*, 81 YALE L.J. 912 (1972).
3. 15 U.S.C.M.A. 274, 35 C.M.R. 246 (1965).
4. MCM, 1969, (Rev.), para. 137.
5. *United States v. Gainey*, 380 U.S. 63 (1965).
6. *In re Winship*, 397 U.S. 358 (1970).
7. *United States v. Turner*, 396 U.S. 398 (1970).
8. *United States v. Barben*, 14 U.S.C.M.A. 198, 33 C.M.R. 410 (1963); *United States v. Daniels*, 11 U.S.C.M.A. 52, 28 C.M.R. 276 (1959).
9. MCM, 1969, (Rev.), para. 139c.
10. FED.R.EV. 102.
11. FED.R.EV. 501, Advisory Comm. Note.
12. MCM, 1969, (Rev.), paras. 150b, 152, and 153a.
13. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court used broad language to the effect that an unwarned confession was inadmissible for any purpose. The draftsmen of the 1969 Manual incorporated a broad reading of *Miranda* into Paragraph 153b(2)(c). In *Harris v. New York*, 401 U.S. 222 (1971), the Supreme Court held that the broad language in *Miranda* was dictum and that an unwarned confession was admissible for impeachment. In *United States v. Jordan*, 20 U.S.C.M.A. 614, 44 C.M.R. 44 (1971), the Court of Military Appeals held that *Harris* notwithstanding, Paragraph 153b(2)(c) still binds the military.

Appendix

TABLE OF CORRESPONDING PROVISIONS

FEDERAL RULES MANUAL PARAGRAPHS

201 (a)	147a
201 (b)	147a
201 (c)	147a
201 (d)	
201 (e)	
201 (f)	
201 (g)	147a
301	138a
302	
303 (a)	
303 (b)	
303 (c)	138a
401	137
402	137
403	137
404 (a) (1)	138f (2)
404 (a) (2)	138f (3)
404 (b)	138g
405	138f (1)
406	138h
410	
503 (a) (1)	151b (2)
503 (a) (2)	151b (2)
503 (a) (3)	151b (2)
503 (a) (4)	151b (2)
503 (b)	151b (2)
504	152c (2)
505	148e
506	151b (2)
507	
508	
509 (a) (1)	151b (1)
509 (a) (2)	151b (3)
509 (b)	151b (1)
509 (c)	
509 (d)	
509 (e)	151b (1)
510 (a)	151b (1) and 152
510 (b)	151b (1)
510 (c)	151b (1)
511	
512	
513	150b
601	148a, b, and c
602	138d
603	114f
604	114e and 141
605	62f (4)
606 (a)	62f (4) and (13)

FEDERAL RULES MANUAL PARAGRAPHS

606 (b)	151b (1)
607	153b (1)
608 (a)	138f (1) and 153b (2)
608 (b)	153b (2) (b)
609 (a)	153b (2) (b)
609 (b)	153b (2)
609 (c)	
609 (d)	153b (2) (b)
609 (e)	153b (2) (b)
610	
611 (a)	137, 149a, and 150a
611 (b)	149b (1)
611 (c)	149c (1)
612	146a
613	153b (2) (c)
614	149b (3)
615	53f and 149a
701	138e
702	138e
703	138e
704	
705	138e
706	
801 (a)	139a
801 (b)	139a
801 (c)	139a
801 (d) (1)	153a and 153b (2) (c)
801 (d) (2)	140a (4) and 140b
802	
803 (1)	142b
803 (2)	142d
803 (3)	
803 (4)	146a
803 (5)	144c and 144d
803 (6)	143a (2) (h)
803 (7)	144b
803 (8)	
803 (9)	
803 (10)	143a (2) (g)
803 (11)	144c
803 (12)	144c
803 (13)	
803 (14)	
803 (15)	
803 (16)	
803 (17)	144f
803 (18)	138e
803 (19)	
803 (20)	
803 (21)	138f (1)
803 (22)	
803 (23)	
803 (24)	
804 (a)	
804 (b) (1)	145a and 145b

<i>FEDERAL RULES</i>	<i>MANUAL PARAGRAPHS</i>	<i>FEDERAL RULES</i>	<i>MANUAL PARAGRAPHS</i>
804(b) (2)		902 (4)	143b(2) (e)
804(b) (3)	142a	902 (5)	
804(b) (4)		902 (6)	
804(b) (5)		902 (7)	
804(b) (6)		902 (8)	144b(3)
805		902 (9)	
806			
901 (a)	143b(1)	1001 (1)	143d
901 (b) (1)	143b(1)	1001 (2)	143d
901 (b) (2)	143b(1)	1001 (3)	143a(1)
901 (b) (3)	143b(1)	1001 (4)	143a(1)
901 (b) (4)		1002	143a(1)
901 (b) (5)		1003	143a(1)
901 (b) (6)		1004(1)	143a(2) (a)
901 (b) (7)	143b(2) (f)	1004(2)	143a(2) (a)
901 (b) (8)		1004(3)	143a(2) (a)
901 (b) (9)		1004(4)	
902 (1)	143b(2) (c) and 143b(2) (d)	1005	143a(2) (c)
902 (2)	143b(2) (c) and 143b(2) (d)	1006	143a(2) (b)
902 (3)	143b(2) (e)	1007	

SJA Spotlight – Okinawa

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About two years ago on TV's Laugh In, Goldie Hahn was asked what she thought about the U.S. plans to give Okinawa back to Japan. In her own inimitable, wide-eyed style, she responded: "They can't do that, she belongs to John Lennon." In the past year there are many, Okinawans, Japanese, and Americans alike, who silently (and not so silently) wish that Goldie's position had prevailed.

This rugged island of less than six hundred square miles and approximately one million inhabitants is rich in history, but there is enough history since Reversion on 15 May 1972, including activities immediately preceding it, to more than suffice for this article. The judge advocate has played a major role in this history. Rather than discussing the work of the various divisions within the office, I plan to discuss the significant problems and developments, since in most cases they cut across normal judge advocate functional areas.

To fully appreciate the impact of Reversion, it must be recalled that for 60 years before

and during World War II, the Okinawans felt themselves to be "country cousins" of the mainland Japanese. They looked northward with apprehension and distrust. On Easter Sunday 1945 they were invaded by allied forces in what became the bloodiest battle of the Pacific, with thousands of civilian deaths. There followed nearly 27 years of American administration, and then suddenly Okinawa was another prefecture of Japan, and the ubiquitous American was a guest. It required an adjustment for which no one was fully prepared.

Coincident with Reversion, what had been known as U.S. Army Ryukyu Islands (USARYIS) was reorganized into U.S. Army Base Command, Okinawa (USARBCO), a subordinate command to U.S. Army Japan. (Before Reversion, the command channel was directly to USARPAC). Thus it was natural that in Reversion planning we looked to USARJ, not only as our future higher headquarters but because they had lived with the

Japanese for two decades under the Status of Forces Agreement (SOFA) and its similar predecessor Administrative Agreement. Our counterparts in USARJ, as was true with other staff sections, were most helpful in our planning. However, we were all to learn soon after Reversion that *hondo nami*, "do it like we do on the main island", was not quite adequate or complete planning guidance. Okinawa has not yet become just another prefecture of Japan, particularly vis a vis the American military community. The reasons are many: the history described above and the American visibility (10% of the people on Okinawa belong to the American military community) are certainly two of the primary ones. In addition, the political climate on Okinawa probably leans further to the left than on the mainland, though recent events seem to be narrowing that gap.

One of the first problems encountered by the judge advocate was the currency fluctuation, compounded by rampant inflation on Okinawa. Both preceded Reversion and continue today. Legal Assistance was flooded with clients who rented houses and apartments off-post. "My lease is written in dollars—my landlord insists the amount be converted at 308 (or even 360) to the dollar and I can only buy 305 yen for the dollar. That's not fair." They didn't realize how lucky they were until the rate dropped to 263 per dollar. (Suddenly Americans are mowing their own lawns—the yard man or "papa-san" is a vanishing breed.) Claims had the sticky problem of converting a yen repair bill into a dollar claim, when the rate from day to day was unpredictable. A claim based on a repair estimate would be too small, though paid in full, when the yen goes down while the claim is being processed. ("But how can we give him \$90.00 when he only claimed \$85.00?") And how do you advise the Engineer on his local contracts. Going over the budget is serious enough, but if a carefully estimated construction project suddenly exceeds the limit for installation commander approval, everyone is concerned about the repercussions.

Public utilities problems occupied a great deal of time in the work load of the International Law/Military Affairs Division of our office during the first year after Reversion. Both the local power company and the Prefectural and Municipal Water enterprises sought to increase costs to US Forces on Okinawa for their electricity and water consumption. Assuming a position as legal representative of all four services, our personnel sought effective legal means to prevent this increase as proposed and reduce its impact to what was considered to be a more justifiable level.

The water rate issue became a local political football and received a great deal of publicity in the local news media as well as in mainland Japan and consequently placed a great deal of pressure on both the U.S. and Japanese Governments. This pressure resulted in the establishment of a subcommittee (ad hoc) by the SOFA Joint Committee to propose a solution to the problem. The Staff Judge Advocate office provided the legal advisor to that committee which eventually proposed a satisfactory settlement to the problem and opened the way to negotiating water service contracts for all of the installations on Okinawa, which would be fair to both parties and acceptable under the Japanese Water Service Law.

The electric utility problem has as of this date not been settled although an interim understanding has been negotiated with the local power company. The overall rate question, which the U.S. Forces have argued as being unfair and discriminatory has been appealed to the Ministry of International Trade and Industry by U.S. Forces in Japan. Again our office provided the legal advisor in both the initial intervention against the increased rate and at the appeal level.

In the labor area, union activities have plagued the military on Okinawa for years. They built up to a crescendo with a thirty-five day strike (a record!) just before Reversion involving nearly all local national employees of the U.S. military. With Reversion, the Master Labor Contract applied, which means these people are actually working for the Govern-

ment of Japan, which has agreed to furnish us our requirements. Although no strikes in the last year have approached the magnitude of the pre-Reversion blast, labor problems continue. Union leadership and perfectural officials have been reluctant to accept the idea that there is nothing to negotiate with the military—they still want to settle their gripes by direct confrontations with the Americans. Union leadership has recently shown an interest in pursuing their cause in the courts. If this trend continues, judge advocate involvement will undoubtedly increase. An interesting sidelight to the labor difficulties is that just as the command was emphasizing personal appearance and grooming, all of the Exchange concessionaire barbers went on strike.

Reversion in effect put us out of the foreign claims business as far as adjudication and payment is concerned but at the same time it opened up a whole new vista. Claims which formerly would be referred to our Foreign Claims Commission are now filed with the Japanese Defense Facilities Administration Bureau (DFAB), which forwards it upward through its channels. At the same time, our investigation now goes to Fifth Air Force, which has single-service claims responsibility for Japan. However, it's not really that simple. A great deal of coordination and exchange of information takes place between the JA and the DFAB, before any paperwork leaves the island. Informal joint investigations are becoming quite frequent. And when a serious incident takes place, the judge advocate is presented with some novel questions: Do we give them a copy of our complete investigation or just a summary? Can they talk to our witnesses, and carry away our real evidence for examination? What about entry into secured areas, or signing statements in Japanese? It should be added that while this description makes our Japanese counterparts sound extremely ubiquitous, our relationship with them has been excellent. Since SOFA provides that Japan pays 25% of in-scope claims, they are

as interested as we in avoiding inflated or fraudulent claims.

Naturally the area of greatest involvement by the judge advocate brought about by Reversion is foreign criminal jurisdiction. In anticipation, the Japanese Criminal Law and Liaison Division was created within the SJA office, authorized five personnel but unfortunately never fully staffed because of recruiting problems. They have been, and will continue to be, extremely busy, and their work has spilled over into the rest of the office.

Our relationship with the Chief Prosecutor and his staff has been excellent. If there is one flaw in it, it is what we perceive as his exercise of less control than we would like over some of his assistants, and the police. Trials in Japanese courts are extremely slow, and our efforts to have them expedited have not met with unqualified success. It is difficult to answer a Congressional concerning a soldier who was due to return to "the World" six months ago, and have to state that a trial date has not yet been set. It is difficult also at times to deal with the police who are reluctant to accept the SOFA provisions concerning apprehension and custody. And it is frustrating to realize that, although Japanese law concerning compulsory self-incrimination is practically identical to ours, in practice it doesn't work out that way. If an individual is guilty, he is expected to confess, it's the right thing to do. It makes some of us a bit squeamish to advise a soldier in trouble, as we feel we must, that although he has the right to remain silent, full cooperation and an appropriate demonstration of remorse will pay him dividends as far as duration of detention and ultimate sentence.

Under the implementing agreements to SOFA, waiver of Japanese jurisdiction is automatic if notice of intent to indict is not given to us within twenty days after notice of the offense, or ten days in case of minor offenses. This time period can be extended upon request. To date the waiver rate is between 75 and 80%, but this is misleading. The vast

majority of waivers involve minor offenses, such as on-post traffic violations. Very few serious offenses have been waived. We have discovered, as we anticipated, that the Japanese are particularly interested in drug cases (a significant problem on Okinawa). The Japanese "professional negligence" law, built on the assumption that anyone driving on Japanese roadways is a professional driver and will be held to such standards, is also the source of many foreign jurisdiction cases.

There are two types of Japanese criminal courts of original jurisdiction, the summary court and the district court. The former handles minor cases, primarily traffic, without a formal hearing, usually resulting in a fine. Since confinement cannot normally be adjudged, no trial observer is required. In the first year, 198 cases have been disposed of by summary proceedings, and another 22 are pending. Drunk driving and professional negligence make up the bulk of them, and fines average in the neighborhood of \$150.00.

The serious offenses are tried in the district courts. In our first year, 27 cases have been completed. The breakdown shows that seven received suspended sentences to confinement of which five were drug cases; nine are now serving confinement in prison on the mainland and all were drug cases; four are pending appeal of which three were drug related, and seven pending decision to appeal of which four involved drugs. There are 40 cases pending trial in district court, or already in process of trial. Of these, 27 are for drug charges.

The phrase "in process of trial" requires a word of explanation. The Japanese district courts rarely complete a case in one hearing. The average case requires about five or six hearings, often spread out over several months, and at present we have a case pending the tenth hearing. Considering the time lag between offense and formal indictment (not to be confused with notice of intent to indict), delays in scheduling hearings, number of hearings, and possible appeals, it is not unusual for more than a year to elapse between

offense and final verdict. No hearing date has yet been set (as of this writing in early June) on the initial appeal regarding an offense which occurred within a week after Reversion.

The judge advocate becomes involved in many different ways in foreign criminal jurisdiction. He is frequently sought for advice by the soldier facing trial, either during his detention by police (which means a visit to jail—done in all cases), or through an office visit. Contracts for local attorneys are executed in our office. Close coordination is required on waivers and indictments, in view of the "double jeopardy" provisions of SOFA. The bulk of the involvement, however, is in acting as trial observers. Considering the statistics cited above, and the number of hearings per case (each of which requires the attendance of an observer, who must be a lawyer and a U.S. citizen), the magnitude of this task is apparent. It has far outrun the capability of the Law and Liaison Division, and nearly every lawyer in the office gets his chance to visit a local court. Of course, when the case is completed, a lengthy trial observer's report is required.

Obviously foreign criminal jurisdiction requires a tremendous effort by this office. However, it also offers a marvelous challenge and many opportunities. The chance to meet and become acquainted with many fine Japanese officials, and the exposure to a different culture and judicial system, is more than worth the effort.

By focusing on the problems I have not intended to convey a feeling of frustration, but rather one of challenge, opportunity and stimulation. Nor do I intend to give the impression that all of our work is unique to this command. We continue to try courts-martial, at an average monthly rate of six to eight generals and 15-20 specials. At this writing, three first degree murder cases are pending trial by general court-martial. We still process, adjudicate and pay Chapter 11 claims, with some very interesting situations created by the high incidence of theft and politically-motivated van-

dalism. Military Affairs keeps more than busy with the usual oversea proliferation of non-appropriated fund activities, and the extremely active community of commercial solicitors, two of whom were recently "evicted" after a complicated investigative effort by this office. Legal Assistance has a never-ending stream of clients.

If the reader gets the impression that this is an extremely busy office, he is quite correct.

An assignment here offers the young judge advocate a breadth of experience, an exposure to unique problems, and an early (career-wise) assumption of responsibilities probably found nowhere else in the Corps. Fringe benefits include relatively easy access to exotic ports of call such as Taipei, Hong Kong, Bangkok, Tokyo and Manila. In short, it is an assignment to be sought.

Task Force – Implementation of Recommendations on Office Facilities

The following is a letter (Subject: Support for Military Legal Counsel) which is in the distribution process to all major commands. All staff judge advocates should take appropriate action to insure compliance by their commands. Questions concerning this letter and its implementation should be addressed to the Executive, OTJAG.

"1. Discipline and morale in the Army are dependent on a strong, fair military justice system. Also, the appearance of fairness to personnel of every grade, race, and ethnic group is almost as important as the actual functioning of the system.

2. The Task Force on the Administration of Military Justice in the Armed Forces, in a report to the Secretary of Defense, recommended that all military legal counsel be provided adequate facilities and services, including proper office equipment, adequate law libraries, private offices for defense and trial counsel, and necessary logistical and administrative support. The report emphasized that the

offices of defense counsel should be separated from the remainder of the legal staff. This separation would demonstrate and support the fact that the defense counsel is free, within the limits of the law, to act on behalf of those he is authorized to represent.

3. General court-martial convening authorities will insure that:

a. Defense and trial counsel in their jurisdictions have adequate office facilities, including private offices, and necessary logistical and administrative support, including transportation.

b. Offices of defense counsel are visibly separated from those of staff judge advocates and trial counsel.

4. The Judge Advocate General will monitor compliance with the above requirements.

BY ORDER OF THE SECRETARY OF THE ARMY:"

Writing Requirement For Judge Advocate Advanced Career Course

Resident students at The Judge Advocate General's School in Charlottesville have been required for a number of years to submit an acceptable graduate level thesis prior to graduation from the Advanced Career Course. The resident papers average 50-75 pages in length

and also involve an extensive oral examination.

Effective 1 September 1973, all students in the Judge Advocate Advanced Career Course (Resident, USAR, Correspondence, or Resi-

dent/Nonresident) must submit a satisfactory paper prior to completion of the Advanced Career Course.

This new requirement will be a 65-credit hour requirement and will be taken after all legal subject phases are completed. The final paper must be no less than 3,000 words (normally 15 pages) and must be appropriately documented. Papers must be completed within four months of topic approval. This research and writing program will be offered only by correspondence as JA Subcourse 150.

The Deputy Director for Nonresident Instruction, Academic Department, will administer this program. His telephone number is (703) 293-6286. Student faculty advisors for these papers will be named for each student from the resident and mobilization designee members of the faculty.

This research and writing program is a major step forward in paralleling all versions of the Judge Advocate Advanced Career Course. We look forward to working with you, as we now do with our resident students, in your written contribution to military law.

New Approach to Military Law Instruction for ROTC

By: Major James A. Endicott, Jr., Deputy Director for Nonresident Instruction, TJAGSA

Does the military really need criminal punishments to handle absence offenses? Is not absence just as serious for a major industrial concern as it is for the military? Should a commander simply be able to "fire" an employee who is late to work or who simply takes off from his job? . . . In the military the commander plays a definite role in the administration of the judicial system. Should the commander be removed completely from the judicial system leaving it entirely to the lawyers as it is done in a civilian community. Or is the military right in having the commander in the judicial process.

These questions are samples of the discussion problems in a new ROTC Manual 145-85, *Fundamentals of Military Law*. This new Manual and the corresponding Instructor's material in CONARC Pamphlet 145-14 present military law for the ROTC cadet in an entirely new manner in light of the significant changes which have occurred in military law in the past five to seven years.

This new course is commander-oriented with emphasis on the "why," not the "how" of military law. The predecessor manual to ROTCM 145-85 began immediately with a textual discourse on the technical aspects of military justice. The new Manual begins with a chapter on the history of military law and is followed

by a chapter on the philosophy of military law and justice. An overview chapter on the court-martial system follows with primary emphasis on the future commander's role in the system. The actual trial phase which now belongs to the lawyer almost exclusively has been reduced to one short page. Rules of evidence, trial procedures, motions, and the details of the appellate process are likewise for the lawyer and have been eliminated. A moot court is no longer included as a recommended practical exercise.

There is a brief discussion of those criminal offenses which are unique to the military such as absence offenses, offenses involving military authority and offenses involving the funds and property of the United States. Material on "civilian" criminal offenses has been deleted.

A major new portion of the Manual emphasizes the alternatives to court-martial. Primary emphasis is placed on non-punitive measures that the commander can take without resorting to a criminal trial. Included is a discussion of the various discharge and elimination proceedings that are available to be initiated by a commander.

A new chapter has been added on international law as it pertains to both peacetime and wartime military operations. Primary em-

phasis is on the commander's awareness of the criminal and civil liabilities created by various treaties that relate to our forces stationed around the world.

The last two chapters are also new and discuss military and personal property and personal affairs law. These chapters provide insight for the future commander on the types of legal problems that his soldiers may encounter.

To assist ROTC instructors in presenting this new instruction, The Judge Advocate General's School has encouraged reserve component lawyers to volunteer their services to

serve as instructors for ROTC instruction. The Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, U. S. Army, Charlottesville, Virginia 22901, (703) 293-7469, can provide assistance to Professors of Military Science and reserve component lawyers in arranging for such instructional support.

This new ROTC Manual is designed to present a philosophical and objective assessment of military law from the future commander's point of view. This School thinks that this new approach is right for the job at hand. If not, please let us hear *your* comments.

Report From USALSA

RECURRING ERRORS AND IRREGULARITIES

1. *Court-Martial Convening Orders in Records of Trial.* In each of several cases recently received for appellate review, the staff judge advocate's office has failed to place *all* court-martial convening orders on which the case has been referred, in the record of trial. However, in each such instance, the office had checked Item 3a, DD Form 494, Court-Martial Data Sheet, in the "yes" column stating that they had inserted the orders. Copies of *all* convening orders referring a given case to trial are absolutely necessary for complete appellate review to insure that trial and defense counsel, among others, have not served in an inconsistent capacity in the same case prior to trial.

2. *Supplementary Court-Martial Orders.*

a. When the United States Court of Military Appeals or the Army Court of Military Review has set aside findings of guilty *and* dismissed or ordered the dismissal of charges, the supplementary court-martial order should expressly state that the charge or charges, as appropriate, were dismissed.

b. In the recent case of *United States v. Smith*, decided 2 May 1973, the United States

Court of Military Appeals, referring to a certificate of attempted service, stated the following: "That date marked the commencement of the thirty day period within which he could permissibly petition this Court for review. . . ." Accordingly, as provided by Chapter 15, AR 27-10, a certificate of attempted service should be executed (dated and signed) as soon as the necessary information is available. The supplementary court-martial order should not, however, be issued until the expiration of thirty days from the date of the certificate of attempted service.

3. *May 1973 Corrections by ACOMR of Initial Promulgating Orders.*

a. Showing, incorrectly, that the sentence was adjudged by a military judge.

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

c. Showing, incorrectly, that the military judge granted a motion to dismiss on grounds of lack of evidence.

d. Failure to show amended specifications—three cases.

e. Failure to reflect correct findings of guilty and the dismissal of certain Charges and Specifications.

Claims Items

From: U.S. Army Claims Service, OTJAG

Claims for Sonic Boom Damage. Paragraph 2-8y (2), AR 27-20, provides that if a claim for sonic boom damage within the United States is received by an Army Claims Office, it will normally be forwarded to Headquarters, United States Air Force (AF-JALM), Washington, D. C. 20024, unless the aircraft and its pilot have been identified and the claim is cognizable under Chapter 7, AR 27-20. The Air Force has requested that such claims not be forwarded to Headquarters, United States Air Force, but to the Air Force installation nearest the damaged site. Therefore, an Army Claims Office receiving a claim for sonic damage should contact the Air Force installation nearest the damaged site and forward the claim to that office for adjudication, unless the aircraft and its pilot have been identified and the claim is cognizable under Chapter 7, AR 27-20.

When AR 27-20 is revised, paragraph 2-8y (2) will be changed to read:

"As the Army does not operate supersonic aircraft, it normally is not responsible for the settlement of sonic boom claims except in countries where it has single service responsibility. Within the United States, the Army acts as receiving state representative for claims under Chapter 7. If a claim for sonic boom damage within the United States is received by an Army Claims Office or other Army office, *that office will contact the claims office at the Air Force installation nearest the damaged site and forward the claim to that office for adjudication*, unless the aircraft and its pilot have been identified and the claim is cognizable under Chapter 7. A register of sonic boom flights is maintained in accordance with AFR 35-34 and inquiries may be directed to Headquarters, United States Air Force (AF/JACC), Washington, D. C. 20314, for specific flight information." (Changed material is italicized).

Legal Assistance Items

From: Legal Assistance Office, OTJAG

FEDERAL INCOME TAXES: Nonrecognition of Gain on Sale of Residence. Section 1034 of the Internal Revenue Code provides that if property used by the taxpayer as his principle residence is sold, and if within a period beginning one year before such sale and ending one year (18 months if a new residence is constructed by the taxpayer) after such sale, new property is purchased and used by the taxpayer as his principle residence, gain on the sale of the old residence shall be recognized only to the extent that the adjusted sales price of the old residence exceeds the taxpayer's costs of purchasing the new residence. The adjusted sales price is the amount realized on the sale reduced by certain expenses for work performed on the old residence to assist in its sale. Section 1034(h) suspends the period after the date of sale of the old residence dur-

ing any time the taxpayer served on extended active duty with the armed forces, except that no period so suspended shall extend beyond four years. This suspension is contingent upon there being an induction period as defined in section 112(c) (5) of the Code.

As the draft expires on 30 June 1973 (Act of September 28, 1971, Title I, section 103, 85 Stat. 355) the suspension period of section 1034(h) will terminate. All servicemen who are deferring recognition of gain under section 1034 anticipating that they will purchase a new qualifying residence within the four year period allowed by section 1034(h) will now have only one year (18 months if constructing a new residence) within which to acquire and use a new principle residence if gain is to be deferred.

The Armed Forces Individual Income Tax Council has proposed legislation which would delete from section 1034(h) the requirement that there be an induction for such section to be operative. However, the status of this legislation is quite uncertain and should not be relied upon by the military taxpayer. In determining what course of action the taxpayer

should follow the facts of each case must be carefully analyzed. Certainly the two prime considerations will be the additional tax liability generated by recognition of the heretofore nonrecognized gain and secondly, the feasibility of purchasing a qualifying principle residence within the shortened time span.

Military Justice Items

From: Military Justice Division, OTJAG

1. Extra Help For Court-Martial Backlogs. It has recently come to the attention of JAGO that a post had a large number of untranscribed and unacted-upon general courts-martial and BCD-special courts-martial, in addition to a large number of such cases awaiting trial. By the time this came to the attention of JAGO, the situation was far advanced. The situation could have been improved considerably by earlier notification to JAGO so as to redirect personnel resources, and to assist in other ways. If you have a situation in your office which may require outside help, notify the appropriate division in JAGO as soon as possible.

2. Code of Professional Responsibility. Paragraph 2-32, Army Regulation 27-10, 26 November 1968, as changed by Change 10, 15 April 1973, makes the Code of Professional Responsibility and Code of Judicial Conduct

applicable to judges and lawyers involved in court-martial proceedings in the Army. In June, copies of these Codes were mailed to all staff judge advocates for distribution to attorneys within their offices. Accordingly, judge advocates should familiarize themselves with these Codes, if they have not already done so, and comply with the high ethical standards for the legal profession contained in them.

3. GTA 27-1-1, Army Rules for Imposing Nonjudicial Punishment for Minor Offenses (Art. 15, UCMJ), and GTA 19-6-2, Procedure for Informing Suspect/Accused Persons of Their Rights, are handy, billfold-sized cards that should be in the possession of all troop leaders. Proper use of these cards will assist in the orderly administration of military justice. Both cards may be obtained through local training aid service offices.

Bar Notes

ABA Annual Meeting. Washington, D. C., has been chosen as the site of the 96th American Bar Association Annual Meeting to be held next month. Section meetings will range from 1 August 1973 to 9 August 1973. Those planning to attend this year's meetings are reminded of the many meetings and social events of particular interest to military lawyers.

The Military Service Lawyers Committee of the Young Lawyers Section will host a Military Lawyers Breakfast on Saturday, 4 August 1973, in the Chancery Room of the Em-

bassy Row Hotel. Senator Strom Thurmond is scheduled to speak. That evening a dinner dance will be held at Fort Myer hosted by The Judge Advocates General of the Armed Services as well as those committees taking an interest in the serviceman.

On 5 August 1973 the Military Judge Committee, Judicial Administration Division will meet at the Shoreham Hotel to discuss "Can Military Justice Meet the ABA Standards for Criminal Justice."

The Federal Bar Association Breakfast will be held the morning of 6 August at the Shoreham. Later that morning the Judge Advocates Association will hold its business meeting in the Sheraton Carlton Hotel. That night the Judge Advocates Association Annual Dinner will be held at the Officers' Club, Washington Navy Yard. Elliot L. Richardson, Attorney General, is the scheduled speaker.

On 7 August 1973, the ABA Committees on Military Justice; Legal Assistance to Servicemen; Lawyers in the Armed Forces; and the Military Law Committee, Administrative Law Section, will present a program in the Sheraton Park Hotel. The committees will attend a luncheon in the Sheraton Park, with John Warner, Secretary of the Navy as the speaker. Finally, that afternoon the committees and the D. C. Bar Association will attend a Reception and Admissions Ceremony at the U.S. Court of Military Appeals.

Further information may be had by contacting Professional Liaison and Development Officer, TJAGSA, A/C 804 296-4668.

THE AMERICAN SOCIETY OF INTERNATIONAL LAW. The American Society of International Law is a learned society of substantial significance to military personnel, particularly members of the Judge Advocate General's Corps. Military lawyers are at times called upon to make judgments of far-reaching international effect. Consequently, the Society regards the membership and other involvement of men in uniform to be of major importance in the accomplishment of its purposes. These purposes are "to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice".

For more than a half century concerned with problems of international order and the legal framework for international relations, the Society serves as a meeting place, forum and collegial research center for scholars, officials, practicing lawyers, students and others. The Society is hospitable to all viewpoints in

its meetings and its publications. Those publications include the *American Journal of International Law*, *International Legal Materials*, a monthly *Newsletter*, books, and occasional papers, many of which are the product of study panels. A Society membership exceeding 5000 is drawn from some 100 countries.

Articles and documents in the Society's publications regularly convey information of interest to military personnel. Such information ranges from scholarly articles in the *American Journal of International Law* on subjects such as terrorism and reprisals to documentation reproduced in *International Legal Materials* on the SALT agreements. Books published under the auspices of the Society have included the three-volume series, *The Vietnam War and International Law*; *The International Law of Civil War*; *Nuclear Proliferation: Prospects for Control*; and *Law and Civil War in the Modern World*.

The Society maintains a library at its headquarters. The library, which is open to all interested readers, contains standard materials for study and research in international law. The library also contains selected briefs in cases involving international law, offprints of recent articles and copies of unpublished materials, and a large collection of legal periodicals from other countries.

Among the Society's other activities of particular interest to men in uniform are study panels of experts who meet from time to time on the subjects of The Constitution and the Conduct of American Foreign Policy, Humanitarian Problems and International Law, Protection of Diplomats, The Role of International Law in Civil Wars, and the Role of International Law in Decision-Making in War-Peace Crises. Under the auspices of the last-named panel, Professor Richard R. Baxter of the Harvard Law School is conducting a study of the teaching of international law in U.S. service academies and war colleges.

The Society also sponsors public regional meetings, primarily in the continental United States, on subjects of particular interest to

military personnel. For example, two of these, both held in Washington, were on the subjects of the Laws of War and the United States Incursion into Cambodia. Papers of the Cambodia meeting have been published in the *American Journal of International Law* and the material from the Laws of War meeting will be published soon in book form.

The Society's Annual Meeting, which is held in Washington during the month of April, each year features panel and round-table sessions of special interest to men in uniform. The 1973 meeting, for example, included sessions on the future of the SALT negotiations,

terrorism, the impact of the multiple balance of power on international law and institutions, human rights in armed conflicts, and the achievement of a "final settlement" of World War II in Europe. During the 1973 Annual Meeting a joint luncheon with the American Bar Association presented two evaluations of the "Justness of the Vietnam Peace".

For further information and a membership application form, please write Membership Secretary, The American Society of International Law, 2223 Massachusetts Ave., N.W., Washington, D.C. 20008.

Personnel Section

From: PP&TO

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

LTC Robert N. Katayama 31 May 1973
COL Shelton R. Nelson 31 May 1973

2. **Congratulations to the following officers** who were promoted on the dates indicated:

COL William K. Laray 7 May 1973

LTC John L. Fugh	17 May 1973
MAJ Richard G. Mann	18 May 1973
MAJ John T. Burch, Jr.	18 May 1973
MAJ Harvey W. Kaplan	17 May 1973
MAJ Ronald P. Cundick	17 May 1973
MAJ Andrew Brandenburg	17 May 1973
MAJ William J. Norton	15 May 1973
MAJ John P. Dunn	15 May 1973
MAJ Edward L. Colby	15 May 1973
MAJ Terrence E. Devlin	8 May 1973
MAJ John J. Tiedemann	8 May 1973
MAJ Stephen V. Sickel	8 May 1973

3. ORDERS REQUESTED AS INDICATED

NAME	FROM	TO
COLONELS		
MARTIN, Harold V.	USA Legal Svc w/dy Korea	USA Leg Svc Falls Chr
MURPHY, Eugene J.	STRATCOM Ft. Huachuca	USA Avn Sys Com St. Louis
LIEUTENANT COLONELS		
DEFRANCESCO, Jose	Hq USARSO	STRATCOM Ft. Huachuca
GARNER, Milton P.	Trans Ctr Ft. Eustis	USA Air Def Ctr Ft. Bliss
HANSEN, Donald W.	Stu Det Ft. Sam Houston	USA Leg Svc Falls Chr
MAY, Ralph J., Jr.	Stu Det Ft. Sam Houston	OTJAG
MUNDT, James A.	OTJAG	4th Inf Div Ft. Carson
MAJORS		
BEANS, Harry C.	USA Engr Ctr Ft. Belvoir	TJAGSA 22d Adv Class
GAJESKI, Edwin A.	1st Rgn Arad Ft. Stewart	USAREUR
HOPPER, James A.	Stu Co Ft. Myer	USA Leg Svc Falls Chr
HOUGEN, Howard M.	Qm Ctr Ft. Lee	OTJAG
NORTON, William J.	TJAGSA	USA Leg Svc Falls Chr
		DYSTAUSAREUR

CAPTAINS—Continued

NAME	FROM	TO
BADO, John T.	USA Taiwan	HQ USA Forcs Taiwan
BORGEN, Mack W.	Tng Ctr Inf Ft. Dix	S-F TJAGSA
BUSHMAN, Howard M.	OTJAG	Hq MDW
CASPER, Joseph W.	AMC	OTJAG
CHASET, Alan J.	RCTG Cmd Hampton	Hq TRADOC Ft. Monroe
CONVERY, Vincent	Hq USARSO	USA Leg Svc Falls Chr
DAVIDSON, Selmer	USAREUR	9th Inf Div Ft. Lewis
DORSEY, John E.	Tng Ctr Inf Ft. Polk	USA Elm MAAG Irn
FORD, Michael R.	Hq MTMTS	OTJAG
GIANNELLI, Paul C.	WRAMC	S-F TJAGSA
IRBY, Richard M.	Korea	OTJAG
KIRBY, Douglas R.	2d Armored Div Ft. Hood	USA Phy Dis Agy w/sta Letterman Hospital Korea
LANCE, Charles	Ft. Campbell	22d Adv Class TJAGSA
LAUBE, Garey L.	Elect Cmd Ft. Monmouth	Hq USCONARD Ft. Monroe
MILLER, Michael P.	Valley Forge General Hospital	USAC Fort Stewart
NICHOLSON, John H.	Hunter Army Airfield	OTJAG
SCHULINGKAMP, David	HHC Cps Ft. Hood	USATC Ft. Jackson
SMITH, John C., Jr.	USATC Ft. Ord	S-F TJAGSA
TAYLOR, Warren H.	Stu Co Ft. Myer	USAADC Ft. Bliss
WRIGHT, Philip D.	HQARMDCAVGT Ft. Bliss	

WARRANT OFFICERS

BETTERIDGE, Kendall J.	AGCO Adm Ft. Hood	Korea
YOUNG, Seburn V.	Hq 6th USA	Stu Det Ft. Meade
WINGER, Arnold L.	Tng Ctr Inf Ft. Dix	USAREUR

4. Congratulations to the following who have received awards as indicated:

COL Edwin F. Ammerman	Meritorious Service Medal, Jul 71-Feb 73
COL Harvey S. Boyd	Legion of Merit, Sep 69-Jun 73
LTC Donald L. Pierce	Meritorious Service Medal, Sep 70-Feb 73
MAJ Joseph C. Malinosky	Army Commendation Medal, Jul 70-Jun 73
MAJ James Kucera	Meritorious Service Medal, Aug 70-Jun 73
CPT Ronald A. Cimino	Army Commendation Medal, Aug 71-Jun 73
CPT Michael C. Elmer	Army Commendation Medal, Dec 70-Jun 73
CPT Walter S. Felton, Jr.	Army Commendation Medal, Aug 72-May 73
CPT Michael E. Guarisco	Army Commendation Medal, Feb 71-Jul 73
CPT John E. Hatcher, Jr.	Army Commendation Medal, Jun 71-May 73
CPT Peter J. Kellogg	Army Commendation Medal, Nov 69-May 73
CPT William A. Kolibash	Army Commendation Medal, Jun 72-Jun 73
CPT Patrick A. Mueller	Army Commendation Medal, Jun 71-May 72
CPT Borden E. B. Parker	Army Commendation Medal, Feb 71-Aug 73
CPT Thomas W. Phillips	Army Commendation Medal, Nov 69-Jun 73
CPT Richard S. Ryan	Army Commendation Medal, Apr 69-Feb 73
CPT John D. Sours	Army Commendation Medal, Jan 72-Jun 73
CPT Peter F. Staiti	Army Commendation Medal, Dec 71-May 73
CPT James K. Stewart	Army Commendation Medal, Oct 71-Jun 73
CPT John R. Toland	Army Commendation Medal, Jan 72-Jun 73
CPT Merle F. Wilberding	Army Commendation Medal, Oct 69-Aug 73

5. Information on MOS Evaluation Scores. Individual soldiers desiring information regarding their MOS evaluation scores should consult their local test control officer (TCO) for assistance. Individual telephone inquiries made directly to the Enlisted Evaluation Center, Fort Benjamin Harrison, Indiana, often result in delays in obtaining an answer when the individual does not have sufficient information, such as the TCO roster number and the date that the documents were submitted. Many questions can be answered locally, since the Enlisted Evaluation Center provides test results to the TCO as they are processed. The TCO is also notified of any discrepancies in the Enlisted Efficiency Report or MOS tests which have been returned for correction.

6. FY 1974 Class Schedule for the Legal Clerk Course at Fort Benjamin Harrison:

The FY 1974 class schedule published in the February issue of The Army Lawyer has been revised. There has been no change down through class number 7; however, for ease in reference the entire FY 74 class schedule is provided:

CLASS #	REPORT DATE	CLOSE DATE
1	6 Jul 73	29 Aug 73
2	27 Jul 73	20 Sep 73
3	24 Aug 73	19 Oct 73
4	21 Sep 73	16 Nov 73
5	26 Oct 73	20 Dec 73
6	9 Nov 73	18 Jan 74
7	4 Jan 74	28 Feb 74
8	25 Jan 74	21 Mar 74
9	15 Feb 74	10 Apr 74
501	8 Mar 74	1 May 74
10	29 Mar 74	22 May 74
11	19 Apr 74	13 Jun 74
502	10 May 74	5 Jul 74
12	31 May 74	25 Jul 74
503	14 Jun 74	8 Aug 74
504	28 Jun 74	22 Aug 74

7. Congratulations to the following Distinguished Graduates of the Legal Clerk's Course:

CLASS #	GRADUATION DATE	NAME and UNIT OF ASSIGNMENT
LC 10-73	26 Jan 73	PFC GERALD S. HARRISON 24th TC Bn (WDBO/A) Ft Eustis, VA 23604
LC 11-73	1 Mar 73	PFC JAMES B. WATKINS HHC, USAG Walter Reed Medical Center Washington, D.C. 20012
LC 12-73	9 Mar 73	PFC JAY A. LEWIS 32 AD HHB CMD (AVAA) APO NY 09227
LC 13-73	23 Mar 73	PFC ROBERT A. SCHLOMANN US Army Garrison Ft Carson, CO 80913
LC 14-73	6 Apr 73	PFC GEORGE H. JOHNSTON 1st Infantry Division Ft Riley, KS 66442
LC 15-73	20 Apr 73	PFC GEORGE G. ECK USA Armor Center (WOOX/A) Ft Knox, KY 40121
LC 16-73	4 May 73	PFC TIMOTHY R. FUGINA 15th AG Co Ft Hood, TX 76544

<i>CLASS #</i>	<i>GRADUATION DATE</i>	<i>NAME and UNIT OF ASSIGNMENT</i>
LC 17-73	18 May 73	PFC JONATHAN N. ORFANOS Office of the Secretary of the Army Washington, D.C. 20310

8. Congratulations to: SSG Robert L. Schatz, Legal Clerk, Military Justice Div., Office of the SJA, HQ, 9th Inf Div & Ft Lewis, who was awarded the NCO of the Quarter Trophy by MG William B. Fulton, Jr., CG of the 9th Inf Div & Ft Lewis on 25 May 73.

9. Congratulations to: Colonel John Jay Douglass and Captain Donald N. Zillman who received their Masters of Law degrees and to Lieutenant Colonel David A. Fontanella, who received his Masters in Educational Psychology, all from the University of Virginia.

10. 1973 JAG Conference. Selected staff judge advocates have been requested to nomi-

nate individuals to attend the 1973 JAG Conference to be held during the period 16-20 September 1973 at Charlottesville, Virginia. Certain judge advocates have been individually invited to attend. Budgetary and space limitations require that the number of conferees be controlled in this way. Attendance at the Conference must be upon approval of The Judge Advocate General even though local funds are available for travel and per diem. Individuals selected to attend the Conference will be notified by the Office of The Judge Advocate General.

Current Materials of Interest

Articles

Note, "Command Responsibility For War Crimes," 82 Yale L.J. 1274 (1973). This article discusses the problem of war crimes committed by subordinates and command responsibility for such crimes.

"Crime at the Bargaining," Trial (May-June 1973). This is a good symposium on the plea bargaining process.

Levy, "Military Aircraft Accidents—Representing the Injured Serviceman," 8 Wake Forest L. Rev. 507 (1972). A discussion of the right of military personnel to recover for injuries resulting from military aircraft accidents.

Book

Moyer, ed., Justice and the Military, Public Law Education Institute, 1346 Conn. Ave., Washington, D.C. 20036.

Courses

The following is a schedule of PLI courses for this summer and fall. Locations of the courses, dates and price are indicated. For

more information write to: Practicing Law Institute, 1133 Avenue of the Americas, New York, N.Y. 10036 (212) 765-5700.

Eleventh Annual Defending Criminal Cases Forum: New York, July 20-21; Las Vegas, Aug. 23-24; Detroit, Sep. 7-8; \$100.

Prosecutors' Workshop: New York, July 16-19; Las Vegas, Aug. 20-23; \$175.

Public Defenders Workshop: New York, July 16-19; Las Vegas, Aug. 20-23; \$175.

Criminal Defense Techniques Advanced Workshop: Lake Tahoe, Aug. 16-18; \$225.

Lawyer's Secretary Workshop — Office Management and Legal Support: New York, July 12-14; San Francisco, Aug. 1-3; \$75.

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



