STAFF JUDGE ADVOCATE
January 1975

THE ARMY LAWYER

DA PAMPHLET 27-50-25 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D.C.

Judge Advocate Support of Army Goals for 1975

Prepared Remarks by Major General George S. Prugh, The Judge Advocate General of the Army, for delivery at the 1974 Reserve Judge Advocate Conference, 4 December 1974.

While little over six months remain until we reach the date marking the bicentennial of the United States Army, the spirit of the occasion already is touching Army planners in the Pentagon. 1975 is the Army's bicentennial year! It is a time for taking stock and a time for thinking ahead. While we are recounting the successes of the past, we will be reaching out for an even better Army of the future. Important victories in battle will be recalled and milestones for the years ahead will be given shape and definition.

The Secretary of the Army and the Chief of Staff have established three major goals for 1975. Moving toward their fulfillment will strongly influence the activities of the entire Army and of the JAG Corps—both active and Reserve. I'd like to share those goals with you this morning, along with a few illustrations of how our particular JAG work is and will be in direct support.

The first Army goal is to *upgrade the quality of our soldiers while maintaining our momentum in recruiting and retention.* 1974 has been a huge success for the volunteer Army. The Army has proven that it can attain its numerical manpower requirements through voluntary enlistments. It truly may be independent of the draft. The challenge now is to improve the quality of our men in uniform by developing and maintaining higher standards. It will be tougher to get into the Army and tougher to stay in the competition.

The Army JAG Corps personnel picture is exceptionally bright and improving with every new group of young lawyers who make the grade to come with us. Of course, the economics of the times have much to do with the increase in numbers of applications for commission in our Corps. Important too, however, are the companion programs for generating new Army lawyers from among the career-dedicated officers of the arms and services. I refer to the Excess Leave Program and the new Fully Funded Program. These are real winners for us, and we will continue to count heavily on both programs for much of our new talent. The Fully Funded Program will deliver 25 new judge advocates each year, drawn from among the finest young career officers in the Army. At the same time, roughly an equal number of fledgling lawyers will join us through the Excess Leave program. This latter group is composed of those determined young fellows who have largely paid their own way through law school in order to qualify for a commission in the Corps. We are doing something new in this program since the last Reserve Conference. We have changed the ground rules so that excess leave officers able to put two or more days together for work in one of our field JA offices, may be paid for it in a full duty status. That means many of our "excess leavers" now can work weekends as well as during summer and other school vacations—all on full pay and allowances.

While these two programs, coupled with direct commissioning of younger lawyers, are more than adequate to cover our recruiting needs, we still have a way to go to reach optimum retention rates. Even here, however, we are doing much better than in the recent past. We are experiencing so many applications for regular Army commissions that certain year groups are oversubscribed. More and more Reserve judge advocates are staying on after completion of their obligated service. We are doing better too in recruiting and retaining minority officers. These are healthy signs indicating that our retention problems of the past may be over.

The second Army goal for 1975 is to *obtain maximum benefit from all resources.* This is an enormous challenge for every one of us. This goal clearly includes conservation of physical resources, economy of funds, and constrained use of personnel. Wasteful procedures must be eliminated and redundant or marginal activities ended. Our government contracting and procurement process must be improved to squeeze

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The Army Lawyer is published monthly by The Judge Advocate General's School. By-lined articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army. Manuscripts on topics of interest to military lawyers are invited to: Editor, The Army Lawyer, The Judge Advocate General's School, Charlottesville, Virginia 22901. Manuscripts will be returned only upon specific request. No compensation can be paid to authors for articles published. Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971.

out costly practices and replace them with soundly efficient improvements.

Army lawyers will have a prominent role in moving the Army toward this goal.

There are two principal areas for focus of judge advocate efforts in support of this second goal. The first requires some institutional introspection to identify the slow, time-worn ways of doing things, and to replace them with imaginative, efficient, modern procedures. Institutional stability is *not* a sufficient reason in itself. It's no answer that we've always done it that way. It's time we lifted our eyes above our desks and acknowledged the arrival of 20th century technology and of modern administrative practices. Now is the time for all of us to put existing technology to work in improving the delivery of legal services.

—Legal research can be expanded and expedited through improvement of such techniques as the Legal Information Through Electronics program operated by the Air Force for all DoD elements. We will strive to include more Army information in the data base and expand Army use of this research tool.

—Preparation of correspondence can be markedly speeded through establishment of typing centers equipped with modern dictation recording equipment and automatic typewriters. Our recent experience with such system in JAGO is a real success. It is rare now to have a typing backlog even though we have cut our secretarial force by over 15 percent in the past 12 months.

—Potential for the use of video tape in the courtroom is especially exciting. The technology is here for such uses as recording interrogations, lineups, searches, crime scenes, and the testimony of distant witnesses. It takes little imagination to add other applications of TV technology to our work. I think the opportunities are manifold for economies in saving time, effort and dollars in crime investigations and in the court-martial process. We are moving ahead—I wish even more aggressively—in this particular area. Imagine how much better than sworn testimony it is to show a court a video tape record of the taking of a confession of an accused. It would all be there for the court to see and to hear. No need to rely on the recollections of the investigators and on their ability to verbalize accurately an event which may have occurred weeks or months ago. The opportunities for use of TV tapes in the government

contract claims procedure are similarly abundant. Picture if you will the video tape showing of a complicated production process for the Armed Services Board of Contract Appeals to view. How much better and more accurate this sort of evidence than the conventional method of proof through testimony of engineers and production specialists.

The technology already is here for us to adapt to our work. Much of the hardware already is out there in the Army's inventory at service schools and audio-visual centers. All we lawyers need do now is overcome the inertia of convention and strike new doctrine, develop new procedures and establish new techniques to capitalize on what the scientists and engineers have laid before us. I am confident that measured in terms of dollar cost this is an economic direction for us to take. In military justice it will mean improved accuracy, better records, and faster processing time, while safeguarding the fundamental rights of the accused. In the commercial law area, it will mean just decisions, reached in a timely manner, without undue expense to either the government or the contractor.

The second way we judge advocates can support the Army goal of obtaining maximum benefit from all resources is to get closer to our principal client—the commander. He, necessarily, will carry the burden of doing more with less. He will have the official responsibility of maintaining peak readiness during this period of shrinking resources. The commander will need the analytical and problem-solving qualities of his lawyer in approaching those tough management decisions he must make in the performance of his mission. All of us judge advocates—Active and Reserve—have a new challenge in supporting this Army goal. We cannot help effectively by sitting back and waiting to be asked for our legal advice. Nor is it enough to so circumscribe our consideration of command problems that only purely legal questions are addressed. What we must do is assure our awareness of all matters of concern to the command, so that we may "weigh in" on appropriate issues. The judge advocate should be sort of a "Vice President for Legal Affairs", so that he is present at the creation of command programs and in at the beginning of the problem solving process. This should be *our* goal in supporting the larger goal of the Army.

The third and final goal of the Army in the bicentennial year is to *shape the Army for the future*. The main objective here is to attain a 16 Active and eight Reserve division force without increasing the total size of the Army. That means, of course, more soldiers in combat units and fewer in combat service support and headquarters units. The Army staff is totally dedicated to this objective. Every staff paper presented in the Pentagon is judged first on whether the proposal is supportive of the 16 and eight division force. One way of illustrating its importance is to underscore that each organizational billet for a judge advocate captain is potentially convertible to a billet for an infantry company commander. Our total JAG strength will be under special review. We will have to justify every judge advocate authorization in both Active and Reserve units and headquarters.

To support the goal of shaping the Army for the future we must assure that the Army's legal needs are not shortchanged. Note that I say *the Army's legal needs*, for we must measure judge advocate manpower requirements in terms of what's good for the Army and not what's good for the JAG Corps. But we lawyers are the best qualified to make these judgments. Only we can make informed estimates of what roles and missions judge advocates will have in 1980. We too are in the best position to plan the Army's need for lawyers in the next war. Our own supportive goal is to assure for the future sufficient judge advocates, in the right places with the right specialties and in the right grades.

Shaping the Army for the future involves much more than manpower considerations. Other important ingredients are doctrine and structure. In these regards there is much for us to do. For instance we will:

—Participate in the formulation of changes in the law of war and the 1949 Geneva Conventions so that interests of the United States are protected and fostered.

—Participate in the reassessment of the Code of Conduct in the light of our Vietnam experience.

—Evaluate the operation of the UCMJ during time of war and recommend changes which will assure its viability in the next war.

—Participate in the implementation of certain recommendations of the Commission on Government Procurement to improve our procurement and contracting procedures.

—Establish the Judge Advocate General's School as the U.S. Armed Forces Center for

Continuing Legal Education, Research and Study (a tri-service school).

These are a few of the goals of the JAG Corps which directly support the Army's goal of shaping the Army for the future.

In a very real sense, as we move into the bicentennial year of the U.S. Army, we enter a golden era for the Corps. On 29 July 1975 we too will be 200 years old! The abilities of our firm's partners and associates—especially the younger officers—have never been better. This is a real blessing, for the demand for legal services in the Army has never been greater. Commanders at all echelons are keenly attuned—as never before—to the legal implications of their command and management activities and turn ever more often to their uniformed lawyer for his counsel, advice and talent for problem solving. Our business now spans virtually every aspect of the Army's business. It ranges from environment to energy, from doctrine to discipline, from contracting to claims, and many, many more. A heavy responsibility follows this burgeoning demand for our talents and services. It is a responsibility which Mr. Hoffmann, the DoD General Counsel, characterizes as "sensitivity." It means we must be ever aware of the needs of our client while at the same time assuring that our counsel is accurate, timely and wise. In our firm—your firm—we have the people, the desire and the professional knowledge to do the job.

Senior Reserve Judge Advocates Confer

The Fourth Annual Judge Advocate General's Reserve Conference was held at Charlottesville, Virginia, from 4-6 December 1974. This Conference annually provides the opportunity for the Senior Reserve Judge Advocates to gather and exchange ideas concerning matters of importance to the Reserves and the Active Army. This year was no exception as over 100 Senior Reserve Judge Advocates attended the three-day program which included presentations on the status and future of the Reserve Components; TOPSTAR the New Officer Personnel System; and a Reserve Forces legislation update. The Chiefs of the Academic Division and Nonresident Instruction of TOPSTAR, and representatives from the Office of The Judge Advocate General contributed their considerable talents to the Conference by providing an analysis of new developments in their respective areas of expertise.

The Judge Advocate General, Major General George S. Prugh, opened the Conference with a challenge to all Reserve Judge Advocate officers to ask the "hard questions" concerning the role of the Judge Advocate General's Corps and the individual Judge Advocate officer. General Prugh's prepared remarks are reproduced elsewhere in this issue of *The Army Lawyer*.

Major General J. Milnor Roberts, Chief of the Army Reserve, was the guest speaker for the Conference banquet held on 4 December at the Boar's Head Inn. General Roberts presented an interesting and informative talk concerning the status of the Reserve Forces and their future as we move towards our bicentennial celebration.

Other distinguished guests included Assistant The Judge Advocate General, Major General Harold E. Parker; Rear Admiral Hugh H. Howell, Jr., Director of the Naval Reserve Law Progress; Brigadier General Robert D. Upp, USAR, the former Assistant Judge Advocate General for Special Assignments (MOB DES); Brigadier General Edmund W. Montgomery, II, Chief Judicial Officer (MOB DES): and Colonel Evan L. Hultman, Brigadier General Designee, The Assistant Judge Advocate General for Special Assignments (MOB DES).

In addition to the presentations, workshops were conducted each afternoon bringing together Judge Advocates by Army areas and duty assignments for discussions concerning common problems and solutions. More specific information concerning the substantive material presented at the conference will be included in successive issues to *The Army Lawyer*. The entire Conference was videotaped and will be available for loan to Judge Advocate units or sections. A bibliography of the tapes available is noted below:

The Judge Advocate General's Keynote address*	MG George S. Prugh The Judge Advocate General	40 minutes
JAGC Personnel Program Plans and Policies	COL Richard J. Bednar, Executive Officer, OTJAG	30 minutes
USAR Personnel Plans of OCAR (TOPSTAR)	COL Theodore N. Ganas Personnel Division, Chief of Army Reserve	50 minutes
FORSCOM Command Briefing	CPT Roy W. Turgeon, Command Information Branch, FORSCOM	50 minutes
The Changing Scene at RCPAC	COL George A. McDonald, Career Management, USARCPAC	30 minutes
Status of Reserve Forces Legislation	LTC John L. Lee Reserve Manpower, Personnel & Training, Office of Deputy Assistant, Secretary of Defense, Reserve Affairs	45 minutes
TJAGSA Resident and Non-resident Instruction	COL Darrell L. Peck Director, Academic Dept. MAJ Charles R. White, Jr., Deputy Director, Nonresident Instruction, TJAGSA	30 minutes
Criminal Law Update	LTC George G. Russell, Jr. Chief, Criminal Law Division, TJAGSA	30 minutes
Current Cases in Legislation	LTC Burnett H. Radosh, Litigation Division, OTJAG	30 minutes
International Law Update	MAJ Warren H. Taylor, International Law Division, TJAGSA	30 minutes
New Developments in the Law of War	Mr. Waldemar Solf, Chief, International Affairs Div, OTJAG	30 minutes
Civil and Administrative Law Update	LTC Dulaney O'Roark, Jr., Chief, Civil & Administrative Law Division, TJAGSA	30 minutes
Claims Administration	COL Germain Boyle, Chief, US Army Claims Service	30 minutes

*Deviates from prepared text produced herein.

Unit commanders are encouraged to request use of above material as desired for presentation during Unit Training Assemblies. The material is on standard ¾" videotape cassettes, audio cassette, and audio reel to reel, and may be used with any video cassette player system connected to a standard TV set or standard audio tape player systems.

Tapes are available for loan, but due to the logistical problems and the heavy demand for existing tapes at TJAGSA, units are requested, if possible, to acquire their own tapes and forward them to the JAG School for reproduction.

Questions or requests concerning the conference material should be forwarded to Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901.

Maintaining an Equilibrium of Power

An address by the Honorable James R. Schlesinger, Secretary of Defense, given at the George Catlett Marshall Memorial Reception and Dinner, Association of the United States Army, Washington, DC, October 16, 1974.

It is a pleasure to be with you tonight and to salute your wisdom in selecting Ellsworth Bunker for the George Catlett Marshall Memorial Award. Ambassador Bunker is truly in the greatest American tradition of dedicated public service so ideally exemplified by General Marshall.

I know that Ambassador Bunker understands, as his words indicated and as General Marshall understood, the peculiar problems faced by a defense establishment in a democratic society. This Association itself exists to support an institution, the U.S. Army—which is at the same time reflective of American life and so indispensable an instrument for the fulfillment of the American role in the world.

As you all know, when American values are in flux, the Army tends to suffer. When our society undergoes illusions of perpetual peace—as it does periodically—the Army tends to dwindle. How, in the circumstances, are we to achieve the necessary stability for this indispensable institution?

Let me start my answer by mentioning two small episodes in the career of our late, admired, and beloved Chief of Staff, General Abe. The first incident occurred last spring at Grafenwoehr, when Abe asked a battalion commander how well his troops got on with the Germans. "We've been down here six weeks, sir, right next to a German unit," was the response—prideful in its grasp of the vital importance of international good will—"and in all that time there has not even been a single fistfight."

"Do you mean to tell me," countered Abe with some mischief in his eye, "that these men lack fighting spirit?"

From so brief an exchange one might rapidly learn that a successful Army is based, not on simple adherence to the norms of correct deportment, but on the pride and self-confidence that readily spill over into combativeness. "Lack of fighting spirit," a concomitant of correct deportment—that would surely have earned for Abe some tongue-clucking from those who dispense the patent medicines of the moral field. Nonetheless, in any successful Army, confidence and combativeness must be fostered and captured. No Army can afford to assume that the meek will inherit the earth.

To delineate the style and character of an Army is quite different from establishing a reason for its existence. That brings me to my second Abrams episode, one which might not elicit tongue-clucking but would certainly cause head-shaking among those academics who develop text book maxims of prudent bureaucratic behavior for leaders of government institutions. When called upon to explain why the Army needed to maintain the then-current 13 divisions, Abe would respond: "Let us turn to an even more fundamental question; why do we need any Army at all?"

How bold!—Are not institutional stability, equity to those who have dedicated their careers and lives to the institution, tradition, or historical inheritance reasons sufficient in themselves? Logically the answer is no. The Army, as an instrument of national policy supported by the public, must be reviewed in each historical timeframe and justified by its continuing contribution to the national purpose. But what is the role of the Army when major conflicts, it is believed will not occur, when the environment is one of detente, and when there are stockpiles of nuclear weapons for deterrence purposes? What, more fundamentally, is the national purpose in the decade ahead and what is the role of the U.S. Armed Forces of which the Army is an integral part?

Let me deal with these questions as succinctly as I can.

Destiny has called the United States to the role of leader and mainstay of the free world, however you may wish to define it. There is no other nation that can carry that burden. If we should fail to carry out our responsibilities, the price will be high. Historically we will be judged not by our excuses, but by our failures and our lost opportunities.

It is the American role to be the mainstay of a system of mutual security—to maintain a worldwide military balance on which the hopes for stability, and therefore detente rests. Without an underlying equilibrium of force there can

be no stability, but only a volatile shifting of political alliances, or political frontiers, and regions of political domination. On an equilibrium of power rests the hoped-for detente, the shaping and maintenance of a true detente, and the ability to prevent the catastrophic disarray of the free world should detente dissolve.

The objective of military balance implies that we measure our capabilities against those of the other superpower, for the United States and the Soviet Union dispose of military capabilities which are in a class by themselves. The American role in maintaining a worldwide military balance is, I fear, better understood in Moscow than it is in this country. It is understood there that failure to maintain a military equilibrium will result in a shift of the correlation of forces, to use the Leninist phrase, adversely against the West with consequent major political adjustments to follow.

To understand the requirements of the military balance so necessary to the security of the Free World demands intellectual discipline and a rejection of the mindless cliches which all too frequently have characterized our domestic debates on military issues in recent years. Despite its advocacy by some, there can be no unilateral disarmament by the United States even in a relative sense. The aggregate of military power represented by the Armed Forces of the United States and its allies must be of both the size and the composition needed to preclude any major level of area of weakness that could prove tempting or destabilizing. In a more general sense, these forces must serve not only as a necessary symbol of power, but also as a physical counterweight to potentially hostile forces organized elsewhere in the world. Such a counterweight is an essential ingredient in deterrence.

It was in the 1950s that some nations in the Western Alliance, even more so than in the United States, made the intriguing and convenient discovery that there was an intangible phenomenon called deterrence, painless in that it would work without the unpleasant necessity of anyone being prepared to fight. Even more miraculously, it turned out that deterrence was low in cost—in contrast to defense. This observation led, in turn, to the enchanting discoveries for some that one could substantially reduce defense capabilities.

At base, this was nothing but a dangerous illusion, and hopefully this is better understood as the period of nuclear predominance for the United States has disappeared. Deterrence and defense are not substitutes for one another; defense capabilities, representing the potential for effective counteraction, are the essential condition of deterrence. This simple truth is especially evident in a crisis, when the forces designed for deterrence only may abruptly be found to be disappointingly lacking in credibility.

Deterrence, in other words, is not something free-floating that exists independently of a credible, implementable threat. It requires the most careful structuring of forces that is fully consistent with an agreed-on alliance strategy. By contrast with the 1950s when the great nuclear superiority of the United States concealed any basic deficiencies in strategy and force structure, it is now evident that deterrence does not simply derive from a pile of nuclear weapons—a pile which, one is persuaded, frightens one's opponents at least as much as the people it is designed to protect.

In the 1950s, as you may recall, there was some misunderstanding of the role to be played by balanced military forces as opposed to simple reliance on nuclear retaliation. The "Fifties," if nothing else, were a period during which even our military institutions became unduly intrigued with the novelty of nuclear explosives.

In those years, the trumpet sounded uncertainly even within the Army itself, as I am sure General Taylor will regretfully agree. I can recall one Army colonel who informed me rather dejectedly that his mission over the next decade would be simply to guard SAC bases. So far had the illusion of pushbutton warfare gone.

More recently, somewhat similar illusions to those of the fifties regarding deterrence have emerged regarding detente. Detente is believed somehow to obviate the need for deterrence and defense. But make no mistake about it: there is no conflict between detente and defense. They are inextricably bound up one with another in the maintenance of an equilibrium of power.

A closed society, like the Soviet Union, has no difficulty in pursuing detente and in simultaneously strengthening its defense efforts. Soviet defense budgets grow by three to five percent per annum in real terms. And next year, the Soviets will start what promises to be the most dramatic deployment of strategic offensive

forces in the entire history of strategic nuclear arms.

Under such circumstances, this nation should be under no illusions regarding the necessity of maintaining a military balance and all the capabilities that go with it. If indeed we are to maintain a military posture second to none, as it is so popular to proclaim, there is no substitute for the hard and unremitting effort to keep up the nation's defenses.

But where does the Army with its conventional strength fit into this scheme of things? Part of the answer lies in the necessity of keeping the nuclear threshold high to maintain deterrence across the entire spectrum of risk. With the world armed as it presently is, none of us should casually entrust the security of the Free World to the easy belief in early access to nuclear weapons. Another part of the answer is that the Army is the visible embodiment of the military strength of one of the world's two most powerful nations. But the Army is more than a visible means of expressing U.S. power. Should the need arise, it is the only and necessary means of contributing to the physical defense and control of land areas critical to the Free World. Only land forces can fully satisfy that purpose.

These needs were recognized in the early 1960s, and we began the strengthening of the general purpose forces. But the effort quickly became both identified with and obscured by our subsequent involvement in the Vietnamese war. The Army found itself the principal target of much of the public disaffection that arose at the end of the 1960s and continued into the early years of this decade.

On the defensive in terms of public support, the Army's manpower has been reduced from a peak of 1.5 million men in fiscal year 1968 to the current level of 785,000. Annual cutbacks in manpower have caused continued personnel turbulence and precluded the stability that is essential for force planning. The threat of further annual cutbacks in the future has heightened that instability.

The stark reality is that the post-Vietnam reductions in the defense budget have left our general purpose forces on the thin side and notably so in the case of the Army. At 785,000 men and women, Army personnel strength is 20 percent below the level prior to Vietnam. It is at the lowest point since the period of Louis Johnson just before the Korean war.

At 13 divisions, the Army is hard pressed to fulfill even the nominal requirements for a one-and-a-half war capability established as the peacetime strategy after Vietnam. For the critical task of NATO reinforcement, the Army remains only marginally adequate to make its contribution in light of the continuing buildup of forces by the Soviet Union in Eastern Europe.

The upshot is that the Army has required more than anything else a period of stability and some tender loving care. It did not need any further buffeting; it had received enough. It did not require any further punishment for alleged past deficiencies. Least of all did it need more splendid analyses justifying even further cutbacks as a means of furthering the national security.

I believe the Army is back on its feet. Now, it faces two obligations: First, through a process of continuous self-examination, it must achieve the adjustments to ensure that the resources provided to the Army are efficiently devoted—not to some past inheritance—but as the Army's contribution to our overall military posture and to the nation's foreign policy objectives.

A major part of the first task has been to revitalize the Army post-Vietnam: to regain stability and end the turbulence, point the Army toward its major European mission, improve its training and readiness. All of this was well under way under General Abrams.

A second part of this task has been to persuade the Congress that we can no longer tolerate reductions to fund necessary pay and price increases at the expense of our equally necessary non-nuclear capability to fight—and hence to deter. We must have both.

For this fiscal year, and hopefully for the future, depending on how hard you work, the difficulty has been resolved by the decision to hold the Army's authorized strength at 785,000 men. In return, the Army is expected to—and will—convert headquarters and marginal support capabilities into additional combat power. The firm intention is to build a strength of 16 divisions. Given stability and the proper incentives, the Army can do the job. The goal—16 divisions and 785,000 men and women—will continue to enjoy my support and already has that of Secretary Callaway and General Weyand. To succeed, however, it must also have Congressional understanding and backing. I believe we have a good hope of achieving that end.

I mentioned a second obligation, but it is easier to describe than it is to meet. As you know, all large organizations must have their system: the rules, codes, and routines by which they run. Such a system tends to place a high value on conformity and to suppress iconoclasm. It is good at taking care of small errors at the price of allowing much larger errors—whether a commission or omission. The system invites the danger of becoming an object of worship: a golden calf or graven image. The ultimate effect of system worship is ossification.

I stress this organizational problem because, in the years ahead, the Army leadership will need to devote an increasing share of its attention to broader issues of strategy while maintaining the necessary and welcome but routine activities such as training and readiness. It is at least as important that the Army adapt to its changing national mission as that it score well by its technical internal criteria of performance. In short, it must be capable of imaginative, innovative, and non-routine responses.

Of special importance is how it deals with the weapons acquisition process: whether it achieves the optimum balance between R&D and procurement; whether it strikes the right balance between pushing the state of the art, aiming for numbers, affordability and maintainability. Quality, as we all know, is not the whole story. When Daniel Boone, who shot fifty bears a year, was replaced by fifty hunters who averaged two each, the bears saw no occasion to celebrate the decline in human marksmanship.

I recognize that these times are not especially hospitable to the military enterprise, whether we are talking about R&D strategy or the role of the standing Army in a nuclear age. One is tempted, in the circumstances, to repeat those lines from the old sentry-box in Gibralter:

God and the soldier
All men adore
In time of trouble
And no more;
For when war is over
And all things righted
God is neglected—
The old soldier slighted.

But all things are not righted. By contrast to this reasonably cheerful 18th Century view, we may recall the more sombre words of Winston Churchill in the waning days of World War I.

"Death stands at attention—obedient, expectant, ready to serve, . . . ready, if called upon, to pulverize . . . civilization." But fortunately, Churchill did not leave it at that. He also reminded us, in 1918, that "a frail, bewildered being" — Man — remains the master. In these circumstances, it is imperative that the soldier (young or old) not be slighted. With your support, we shall avoid either of these two outcomes.

The Legal Center Concept

Taken from a presentation at the 1974 JAG Conference by Lieutenant Colonel Robert S. Poydasheff, Staff Judge Advocate, US Army Engineer Center and Fort Belvoir.

Legal Center Organization.

The Fort Belvoir Staff Judge Advocate office volunteered for the Legal Center concept of operation by letter dated 7 April 1972. CONARC directed establishment of a legal center at Fort Belvoir on 6 June 1972, to be implemented not later than 1 August 1972. The CONARC Direction also directed that resources, including, but not limited to legal clerks, vehicle operators, vehicles, and other equipment needed to support the test be made available to the Legal Center by the installation. This proved to be one our most valuable levers. Though CONARC had directed a test only, it was the intent of Colonel Ward King, the SJA at that time, to retain the Legal Center operation as Fort Belvoir's permanent concept.

Personnel. Prior to establishment of the Legal Center we were authorized personnel as follows: 15 officers, one warrant officer, three enlisted personnel and 11 civilians. This authorization was based on the existence of the Personnel Control Facility (PCF) at Fort Belvoir and did not include legal clerks from other sources. However, at that time we utilized two secretary stenos who were on PCF rolls as special court-martial reporters. We were authorized no vehicles.

Current authorizations for personnel are as follows: 11 officers, one warrant officer, seven enlisted (two provided by the 11th Engineers), and 18 civilians. Our TDA is not yet approved, however, indications are that it will be. Despite the loss of the Personnel Control Facility we managed to hold onto a large share of our officer personnel and were able to increase our enlisted and civilian strength substantially. Additionally, we obtained approval for assignment of two vehicles to provide administrative services and transport in connection with courts-martial, to include the provision for two driver personnel to be carried on TMP rolls and attached to us for duty.

How We Got Personnel. A manpower survey was conducted at Fort Belvoir in November 1972. Prior to that time the personnel over and above our old operating TDA were obtained from legal clerk authorizations from our five local SPCM jurisdictions and additional civilian personnel from the Personnel Control Facility who were attached (military) or detailed (civilian) to our office. We also drew heavily on PCF personnel who had been tried and convicted of long AWOL's, but who possessed clerical or driving skills and/or desired to complete their service. In short, we became a mini-rehabilitation center. Through careful selection, practically all of these personnel became assets to our office.

After the manpower people had surveyed our operation and we had convinced them through Schedule X's and the ever-present leverage of our CONARC letter, that we needed personnel to operate, they recommended the following: 24 officers, one warrant, 10 enlisted personnel, 25 civilian employees, and three other employees. This recognition of requirements was based on the continued presence of the PCF. The survey people recommended the following personnel in the event the PCF was moved: 23 officers, one warrant officer, five enlisted personnel, 21 civilians and three others.

Authorizations for legal clerks in all local SPCM jursidictions have been eliminated with the exception of two in the 11th Engineer Battalion which is a TOE outfit. Personnel assigned to their positions are attached to our office for duty. The 30th Engineer Battalion is also a TOE organization; however, we lost the possibility of receiving a legal clerk from them due to a recent reorganization and TOE change which did not include a legal clerk.

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Traditionally we have had little difficulty in filling authorized civilian positions or in maintaining officer strength levels at or above our authorization. Maintaining authorized enlisted strength levels, however, has presented a continuing problem. There, our problem has either been one of plenty or want, compounded in most instances by the need for OJT legal training because "available" enlisted personnel have generally come to us from nonlegal MOS career fields. Personnel shortages, however, can be overcome. We are doing it now. The key is simply a sound working relationship between the SJA and his AG.

Military Justice.

The implementation of the "Legal Center" concept at Fort Belvoir has had its greatest impact in the area of military justice. The initial guidance given by the Commander, US Army Engineer Center and Fort Belvoir, was basically to relieve commanding officers, at all levels, of all possible administrative burdens while leaving all the decision making with the commander. The end result is a system which provides *total legal service* to commanders.

Results. This centralization has several beneficial results:

1. It secures maximum utilization of scarce legal and clerical personnel. For example, if a unit has one legal clerk assigned to it, chances are that itsvolume does not require full utilization of that clerk, and he ends up performing other duties. Attaching all available legal clerks to the Office of the Staff Judge Advocate should result in a post-wide reduction in the number of legal clerks needed, or, better clerical support for your counsel, thus relieving them of clerical burdens and making them available for matters requiring the attention of an attorney.

2. It develops expertise among clerical personnel. Instead of a legal clerk having to concern himself with all administrative aspects of courts-martial—some of which occur only rarely

in any given unit—centralization of the legal administrative requirements of all units allows for a given clerk to work and develop experience in a specialized area, for example pretrial matters (preparing charge sheets, convening orders, referral to trial) or post-trial matters (actions, promulgating orders, record of trial processing). Instead of being exposed to 25 courts-martial in a year, he is exposed to 150 to 200, and the wide variety of problems that can occur.

3. It causes the review of proceedings by a judge advocate from their commencement rather than from the time of referral. In a traditional system, the company commander will draft charges, and will all too frequently fail to seek advice because it is a "routine" matter. At Fort Belvoir, all charges are drafted by the Legal Center. Questions of sufficiency of evidence, legality of searches and seizures, admissibility of confessions, etc. can be dealt with at that time. Bad cases can be weeded out at the start, thus saving effort and often saving "face" for a company commander who is less likely to have to "back down" after charging a man.

4. It provides legal representation of accused persons at an earlier stage of proceedings. Instead of an accused not receiving a defense counsel until his case is referred to trial (unless of course he take the initiative and seeks out counsel), an extra copy of the charge sheet is provided to the Senior Defense Counsel at the time of typing who then assigns counsel before the charges are even preferred. This allows the accused to have an advocate during the critical early stage of proceedings. In addition, counsel can begin early preparation of his case and is thus sometimes ready to go to trial by the time the government is ready. This causes less need for defense delays which benefits both parties.

Achieving Results. How is this goal of *total legal service* accomplished?

Currently, our Justice Division is divided into three sections: 1) the Trial Counsel Section, 2) the Courts-Martial Administration Section, and 3) the Article 15 Section. A Defense Counsel Section works separately from the Justice Division under the leadership of a Chief Defense Counsel.

In a typical special court-martial case, the unit commander visits or calls the Chief of Military Justice to initiate charges. If a review of the facts and evidence indicate that the case is viable, the Legal Center: drafts the charges; types the charge sheets; prepares the commander's forwarding letter and "check-the-block"—type form indorsements for the special court-martial convening authority and any intermediate commanders. The unit commander comes to the Legal Center to swear to the charges and they are then forwarded. Once charges are returned by the special court-martial convening authority with direction for trial, the Legal Center: cuts the convening order (one of several officers at the Legal Center, appointed as an Assistant Adjutant for all special court-martial convening authorities, completes the referral section of the charge sheet for the commander); tries the case; completes the record of trial; types the action directed by the convening authority; cuts the promulgating order and completes review of the case (The Assistant Adjutant completes the DA Form 494 for the convening authority); and distributes the record of trial and promulgating orders. The units are relied on to get the accused to the Legal Center for trial in proper uniform, and to provide necessary guards and drivers. The Legal Center arranges for transportation of prisoners and coordinates between units to share transportation to and from the stockade. The Legal Center is also the contact point for the stockade, and the Administrative Division of the Legal Center handles all shipments of 201 files, requests for psychiatric evaluation, confinement orders, temporary and permanent releases from confinement, and all other matters in connection with transfer of prisoners to the Disciplinary Barracks or the US Army Retraining brigade.

The Military Justice Division prepares and reviews all Article 15's, conducts all Article 32 investigations, maintains statistical data as desired by commanders, and briefs commanders as to their military justice posture as desired.

Administrative Eliminations.

Under the Legal Center concept, administrative eliminations are handled almost entirely by lawyers. This includes the performance of administrative details by persons under the supervision of an attorney. The Legal Center concept of centralization insures that administrative discharges meet standards of due process and are legally correct. Unit commanders are relieved of the frustration of seeing what they deemed to be an iron-clad case "bounced back" on a legal technicality.

Administrative Discharge Workload. During the first six months of 1974, the Fort Belvoir Boards Section processed: 23 Chapter 10's, 45 Chapter 13's and nine others for fraudulent enlistment, civil convictions and qualitative management.

Elimination Board Work Flow. In each step of the administrative discharge work flow, the Legal Center maintains its guiding hand over the proceedings. In a case where a unit commander wants to eliminate one of his soldiers for unfitness, the commander notifies the Legal Center. If the case is questionable, the commander discusses the case with an attorney. If it is weak, the case is usually dropped at this stage. If it is decided that the case will be processed, the commander gathers relevant evidence in accordance with the Recorder's directions. At the same time the Legal Center's Boards Section requests the soldier's 201 file. When the material is assembled, the Board Section arranges for the soldier to confer with counsel. The soldier, after being advised, will decide whether to waive or request a board of officers. The Board Section types a packet of correspondence which is forwarded to the unit commander who signs it and sends it through the chain of command for appropriate indorsements which are already prepared and only require a block being checked and signature. Thereafter the packet is returned to the Legal Center's Boards Section where either: a Board of Officers is convened if the soldier has so requested, *or* the case is prepared for final action. Assuming the soldier requests a board of officers, the Board Section notifies the members of the board when and where it will convene. Usually the Legal Center courtroom is the site of the action. Our Boards Section secretary acts as the reporter and transcribes an almost verbatim record.

After the hearing, the recommendation of the board of officers is reduced to an indorsement. The entire record including the original packet is hand carried by the SJA to the commander for action. Where the case involves an unsuitable discharge, a special court-martial convening authority may take action. Waiver of transfer rehabilitation and counselling must be done by an 0–6 or higher. We have only one special court-martial commander with that qualification. Therefore, waivers must be approved by the general court-martial convening authority. Thereafter, the case is returned to the Legal Center Boards Section for disposition in accordance with regulations. On most installations, the action is initiated by a company legal clerk who is usually inexperienced with such matters. The packet is forwarded through channels to the AG Personnel Actions Section which convenes a board. Often a non-JAG lieutenant is appointed Recorder for presentation of the case before a board of officers while the soldier is represented by JAG or civilian counsel. Under a Legal Center concept, a JAG Attorney controls the proceedings from the time the unit commander expresses his desire to eliminate the soldier until final forwarding to the Post AG who discharges the soldier. This reduces legal errors while providing prompt service to the unit commanders and the entire chain of command.

Other Legal Services.

In addition to what has been noted, we of course provide legal assistance and claims service, all at the Center. At Fort Belvoir, people know of these services and use them.

The Trainee Discharge Program

Taken from a presentation at the 1974 World-Wide JAG Conference by Major Carl E. Bacon, Personnel Staff Officer, DCSPER, TRADOC.

The Trainee Discharge Program has been in effect for the past 13 months in our training establishment. The program is officially entitled "The Trainee Discharge Program" but I am sure many of you will recognize it by one of its aliases, such as the: "179-Day Early Out," "635–1," "TDP," "180-Day Discharge," "Speedy Admin Discharge" (SAD) and "Early Release Program" (ERP). I intend to present some background information on why the program was adopted by the Army, the nature of the program (to include how it operates) and conclude with some statistics that you might find interesting.

During the draft era then Secretary of the Army Froehlke required that 70 percent of all accessions to the Army be high school graduates. It became clear that the end of the draft would make it difficult to maintain the 70 percent figure. In July of 1973, Secretary of the

Army Calloway directed that the Army continue to recruit as many high school graduates as possible and to over-recruit qualified nonhigh school graduates. This decision was made with the understanding that past experience had shown that three of 10 nonhigh school graduates who entered Army ranks went on to become good soldiers. It was quite clear that with the emphasis on nonhigh school graduate recruiting, the Army needed a system whereby the few (two of 10) who could not make it would be identified and discharged in training before they joined a field unit and added to the burden of that unit.

The Army looked for a simple, streamlined system based on chain of command involvement at the lowest level which would prove itself during the training period, or during the first six months of service. On 1 September 1973, the Trainee Discharge Program was adopted. This program, TDP, is based on:

a. Early identification and streamlined administrative process.

b. Close evaluation of the trainee in terms of aptitude, attitude, motivation and self-discipline.

c. Face to face counseling and chain of command assistance to the slow learner.

d. Decision prior to the soldier being awarded an MOS, and, where indicated, honorable discharge prior to his becoming eligible for veteran's benefits.

The January 1974 Congressional constraints on Army recruitment which placed a ceiling of 45 percent on nonhigh school graduates entering the Army reinforced the need for this form of quality screening. To explain the mechanics of operation of the TDP, I will refer to a hypothetical Private Smith who enters the Army and is sent to a training center for basic combat training.

The first figure of authority Private Smith meets is the Army drill sergeant. This skilled and highly trained NCO is the key figure in evaluating Smith's potential for Amy service. He sees Smith continuously throughout his training. If a problem surfaces, the drill sergeant counsels Smith and gives him assistance as required. If initial counseling does not work, Smith will be counseled by another NCO or by an officer of the trainee company. This second counseling, an important requirement of the TDP system, is called the "two man rule." We look on this step as being essential to objective evaluation and to ensure that Smith is, in fact, performing below the line and not simply involved in a personality conflict with his platoon drill sergeant.

If Smith does not respond and his performance continues to be below standard, he may be given special remedial training sessions away from his trainee platoon. If improvement still does not occur, he will be counseled by his trainee company commander. If the company commander feels that rehabilitation is unlikely to succeed, he initiates the discharge procedure. This takes the simple form of a letter to Private Smith notifying him of the proposed discharge, setting forth the reasons for this decision. In the letter, Smith is invited to challenge or accept the company commander's decision and is offered officer counsel to explain or clarify the proposed action. Counsel is usually not a lawyer but must be an in grade of First Lieutenant or higher. If Smith accepts the company commander's decision, the case is submitted to the special court-martial convening authority, normally the brigade commander, for final approval and issuance of the discharge.

If Smith is typical of the average trainee discharged under TDP, problem identification and initial counseling will take place during the second week of basic training and the discharge will be issued in the fourth week. Seventy percent of the TDP discharges thus far have occurred during basic training with the remainder spread throughout advanced individual training.

If Smith elects to challenge the discharge, he is accorded assistance in making his appeal to the general court-martial convening authority, normally the installation commander, and decision is made at that level. If the installation commander upholds the action, Smith is issued an honorable discharge and leaves the service within three days. If the discharge is not approved, Smith will be returned to training and evaluation continues.

Experience shows that two and one-half percent of all TDP discharges have been appealed to the general court-martial convening authority. One percent of the appeals made has been upheld in favor of the trainee. Under this simple system, when discharge is ordered under TDP, there is no question mark as to its validity. All

training center cadre agree to the effectiveness and fairness of the system.

During the first 12 months of its operation, approximately 20,000 (RA & REP) trainees have been discharged under TDP. During this same period, 173,724 male trainees entered on regular Army service. To date 16,458 have been found unacceptable and discharged. This equates to a discharge rate of 9.5 percent. The discharge rate for women is 5.9 percent: 1,036 discharged against 17,542 who entered on active duty. This makes a total RA discharge rate of 9.1 percent. The loss rate for reserve and national guard troops on active duty for training is running slightly higher, between about 10 and 11 percent. And as the TDP loss rate has climbed to its present 9.5 percent level, there has been a corresponding decrease in other forms of discharge. The rate for adverse and desertion discharges has dropped to new lows in recent Army history.

By age group, the loss rate per 1,000 accessions is 109 for 17 year olds; 90 for those between the ages of 18 and 21. As noted, the TRADOC rate of discharge for RA males stands at 95 out of every 1,000 trainees. The record shows a higher rate of discharge for Category IV personnel as compared to other categories of mental tests: 115 as compared to 80 per 1,000 accessions. This comparison illustrates two important elements of the TDP procedure. First, as expected, the lower mental category produces one and one-half times as many who fail to measure up—perhaps more importantly, the rate established that under the TDP, almost nine out of 10 Category IV personnel make the grade and meet Army performance standards.

Looking at educational background, it is not surprising to find that the nonhigh school graduate is two and one-half times more prone to discharge than is the high school graduate—130 versus 55 losses per 1,000 accessions. However, almost nine out of 10 nonhigh school graduates, under the TDP, measure up to the demands of Army service, an even better record than during the Vietnam draft era. As can be seen, the 17 year old is more vulnerable for discharge than the older trainee, but not to a significant degree. A most satisfying and encouraging element of these statistics is that there is no significant difference between losses by racial category: the loss rate per 1,000 accessions being 94 for blacks, and 96 for whites.

Over 6,000 TDP discharges have been analyzed as to emergent causes. Results have been classified into four major categories with numerous subcategories of cause. These break down roughly as follows:

Anti-Social Traits	15%
Personality/Behavioral Problems	79%
Extra Military Problems	21%
Medical/Mental Emotional Problems	35%

The percentages total more than 100 percent since many of the discharged personnel possessed more than one of the major indicators. Personality and behavioral problems are the primanry causes for discharge, understandable since positive motivation and attitude are essential to successful completion of training.

We in TRADOC are sold on the effectiveness of the Trainee Discharge Program, primarily as a quality screening device. We indorse its effectiveness from the standpoint of permitting enlistment of a higher number of nonhigh school graduates without fear and trepidation. As long as we are permitted to screen out the one or two nonperformers out of 10 who enlist, it is clear that the field units will continue to receive the type of quality essential to mission accomplishment. Feedback from field surveys, including USAREUR are unanimous in support of this view. This positive response underscores to us the need to continue the program as now constituted.

HQDA Letter Outlines Support For Military Legal Counsel

A recently-issued DA letter from the Office of the Adjutant General and a first indorsement thereto by the FORSCOM Chief of Staff, should provide the basis for continued upgraded support of JA activities. HQDA Letter 27-74-4, DAAG-PAP-A (M) (7 Oct 74) DAJA-CL, dated 31 October 1974 (expires 31 October 1975) reads as follows:

1. Reference HQDA letter 27-73-2, DAAG-PAP-A(M) (11 June 73) DAJA-ZA, dated 15 June 1973, subject, Support for Military Legal

Counsel. Though many commands have made substantial progress in implementing the goals to provide adequate support for military legal counsel, to include private offices for defense and trial counsel visibly separate from each other, continued efforts are required, especially in the critical budget area.

2. Discipline and morale in the Army are dependent on a strong, fair military justice system. However, the best system will fail unless it is recognized as such by those subject to it. Therefore, all commanders must make every effort to bring legal services as close as possible to the "military public," and make these services as effective and professional as possible. These efforts should include the improvement of those branch SJA offices currently serving brigades and other subordinate units, and making adequate transportation available to counsel so that maximum benefits and economies are had from the operational capability of the limited number of available counsel. In addition, these efforts must also include making functional and confidential those places where counsel confer with soldiers and their dependents on personal legal matters, as well as with soldiers having difficulties with military law.

3. 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. Close cooperation between commanders and staff judge advocates with respect to reasonable allocation of administrative and financial support is necessary to insure that each military counsel is equipped to provide fair, competent, professional, and functional legal services to the individual soldier, irrespective of grade, race, sex, or ethnic origin.

4. Within available resources, general court-martial convening authorities are requested to insure that:

a. Defense and trail counsel in their respective jurisdictions have private office facilities, necessary administrative and logistical support, and adequate transportation.

b. Offices of military counsel are furnished in a manner to create an atmosphere of professional distinction, and equipped with modern secretarial devices to facilitate preparation of legal documents and memoranda.

c. Offices of military counsel be situated to provide ready access to adequate and reasonably complete law libraries.

d. Offices of defense counsel are visibly separate from those of staff judge advocates and trial counsel.

5. In the event sufficient funding is not available to accomplish these goals, situations requiring immediate correction will be processed under AR 415-35, Minor Construction. Longer range requirements will be developed under regular MCA programming procedures.

6. The Judge Advocate General will monitor progress toward achieving the above goals and will provide advice and assistance as necessary.

BY ORDER OF THE SECRETARY OF THE ARMY:

/s/
VERNE L. BOWERS
Major General, USA
The Adjutant General

* * *

FORSCOM's first indorsement, dated 29 November 1974, reads:

1. Commanders exercising general court-martial jurisdiction are requested to furnish necessary support to staff judge advocates to attain the stated goals.

2. Adequate legal facilities, including appropriate law libraries and office equipment promote an atmosphere of professionalism essential to the administration of military law. Legal services furnished in an adequate environment can be expected to be more productive than when accomplished under unfavorable conditions and in mediocre facilities.

3. Commanders should determine necessary requirements to achieve the suggested goals and will establish priorities for funding such projects. The appreciable funding increase most installations received for facilities work in FY 1975 should provide some assistance in accomplishing projects of this nature. However, if local funds are not available to comply with paragraph 5 of the basic letter, the additional funding needs will be provided this headquarters, ATTN: AFJA. Also these additional requirements need to be addressed in the FY 1976

Command Operating Budget to insure full consideration is given to the improvement of legal facilities.

4. These matters will be included as items of interest during staff visits and inspections by representatives of this headquarters. Accordingly, areas mentioned in basic communication will be inspected to determine whether they conform to desired standards and whether adequate logistic and administrative support is being provided. Conditions beyond command control tending to prevent or hinder full compliance should be brought to the attention of this headquarters, ATTN: AFJA.

FOR THE COMMANDER:

/s/
JEFFREY G. SMITH
Major General, GS
Chief of Staff

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Requests for Individual Counsel. Accused service personnel on occasion submit requests for individual military defense counsel without requesting counsel by name. (Article 38b, UCMJ; Paragraph 48b, *Manual for Courts-Martial, United States, 1969 (Revised edition)*). It is the opinion of the Criminal Law Division that generalized requests or requests for any counsel from a particular group, class, or characterization, without further personal identification, are not proper requests for "individual" counsel within the meaning of Article 38b and paragraph 48*b*. Upon receipt of such a general request, the Chief, Criminal Law Division, suggests that the SJA return the request to the accused with the further request that the accused identify the requested individual military defense counsel by name or in such a fashion that the requested individual can be identified. Detailed defense counsel should assist the accused in obtaining the names of counsel who might satisfy the wishes of the accused, and in submitting a request for such counsel by name.

2. Additional Function of Military Magistrates. Article 72, UCMJ, and *Morrissey v. Brewer*, 408 US 471 (1972), require a hearing to be held before suspended sentences involving a discharge or confinement, or which were imposed by general court-martial may be vacated. Appendix 16 of the Manual for Courts-Martial states that convening authorities may appoint responsible officers to hold preliminary hearings regarding the vacation of suspended sentences. In prescribing additional functions of military magistrates, paragraph 16–5 of AR 27–10 provides that they may ". . . perform other appropriate judicial duties as assigned." Conducting preliminary hearings with respect to the vacation of suspended sentences is deemed an "appropriate judicial duty" which may be assigned to military magistrates.

3. Conditional Probation in the Army. The placing of conditions on a convicted member during the period of suspension of a court-martial sentence has been sanctioned by the United States Court of Military Appeals in its decision in the case of *United States v. Lallande*, 22 USCMA 170, 46 CMR 170 (1973). There is no specific provision within the Uniform Code of Military Justice or the *Manual for Courts-Martial, United States, 1969 (Rev.)*, which provides for probation powers. However, the court determined that Article 71 gives the convening authority probationary powers, and that this broad grant of power allows the convening authority to impose, at a minimum, the same conditions as a judge in a federal civilian criminal court. *Id.* at 172–73, 46 CMR at 172–73.

In *Lallande*, the accused submitted a pretrail agreement providing for suspension, which set forth the following conditions and were included in the convening authority's action:

> [T]hat the probationer:
>
> . . .
>
> 3. Conducts himself in all aspects as a reputable and law-abiding citizen;
>
> 4. does not associate with any known users of, or traffickers in, dangerous drugs or narcotics, or marijuana; and
>
> 5. submits his person, vehicle, place of berthing, locker and/or other assigned personal storage areas aboard a Naval vessel or command, to search and seizure at any time of the day or night, with or without search warrant or appropriate command authorization, whenever requested to do so

by his Commanding Officer or authorized representative.

Id. at 173, 46 CMR at 173. As to condition 3, the court determined that it might have been better if the convening authority had been more specific, but the condition was not so overbroad as to be unconscionable. Moreover, the court found that condition 4 was reasonable and appropriate since the probationer had been convicted of wrongful possession of prohibited substances. Implicit in the decision is the court's preference for detailed conditions, specifically tailored for the individual probationer and his offense.

The greatest difficulty for the court was posed by condition 5. However, its use was affirmed on three grounds: first, the majority determined that the potential for misuse of a power (i.e., the power of a commander to search and seize without warrant or probable cause) does not require divestment of the power, but careful scrutiny of the propriety of its exercise; second, the rate of recidivism in drug cases makes it reasonable to anticipate a relapse, and the occasion for inspection is left to the probationer's commanding officer, who is responsible for the accused's well-being and progress; and, third, the court found the condition not to be unreasonable, in light of the overall goals of probation, since the accused and his counsel proposed and consented to it. *Id.* at 174, 46 CMR at 174. (It should be noted that Judge Duncan specifically dissented from the majority opinion with regard to the last condition, in addition to voicing general reservations as to the convening authority's power to impose conditions upon suspension.)

It may be argued that the *Lallande* decision would have been decided differently if the conditions had originated with the government, rather than being proposed by the accused and his counsel. In this regard, the court stated:

> The conditions in this case were proffered by the accused in his offer to plead guilty, with an accompanying memorandum acknowledging his understanding of their meaning and effect. They are the exclusive product of his own, voluntary effort, not a response to a demand by the Government that they be accepted "or else." . . . The accused's consent to the conditions, therefore, is factual, not fictional.

Id. at 173, 46 CMR at 173. However, adding support to the argument that the source of the conditions is not controlling, the court continued:

> Arguably, the accused ought not to be allowed to retain the advantages of the pretrial offer but cast off its restraints. We pass decision on this point, however, to reach the merits of his contention that the conditions in issue "contradict public policy."

Id. Although the court did not address the issue of probationary conditions being placed on an accused without the vehicle of a pretrial agreement, it must be assumed that these conditions would withstand challenge so long as they are definite and do not place an unreasonable burden on the probationer. It should be noted that the only restriction placed on a grant of probation by the *Manual* is that the "period of suspension should not be unreasonably long." Paragraph 88e(1), *Manual for Courts-Martial, United States, 1969 (Rev.).* However, the convening authority is also restricted in that he may not impose or approve a sentence that is cruel or unusual, illegal or forbidden by the Code. Concomitantly, conditions of probation must not abuse these standards.

Closely related to the question of conditional suspension of certain portions of a sentence is the power of the convening authority to include conditions within the pretrial agreement which, if breached between the date of sentencing and the date of the convening authority's action, would allow the convening authority to consider the pretrial agreement as null and void. In *United States v. Cox*, 45 CMR 572 (ACM 1972), the United States Army Court of Military Review held that there was no "unspoken condition" in a pretrial agreement that an accused will serve in a proper manner between the time of sentencing and the convening authority's action. The court stated that, in order for a convening authority to nullify a pretrial agreement, the accused must have specifically pledged in the pretrial agreement that he would not engage in misconduct between the dates of the agreement and convening authority action. See, for example, *United States v. Mogardo*, 41 CMR 490 (ACM 1969). However, the court in Cox hastened to add that they questioned the validity of incorporating such a clause into every pretrial agreement. The *Cox* case was subsequently certified to the United States Court of Military Appeals, where the decision of the Court of Military Review was upheld: *United States v. Cox*, 22 USCMA 69, 46 CMR 69 (1972). Further

expansion of this concept was attempted in *United States v. Correa*, 47 CMR 672 (ACM 1973), where the accused entered into a pretrial agreement which provided, *inter alia*, that if the accused engaged "in any misconduct . . . between the time of sentencing and *the execution of said sentence by the convening authority pursuant to Article 71, UCMJ*," the convening authority could regard the pretrial agreement as null and void: *Id* at 673. The United States Army Court of Military Review declared that portion of the agreement to be a legal nullity, "since an unsuspended sentence, once approved, cannot be increased by the convening authority and acted to preclude its use. It is noted that in *Correa* the court upheld another condition of the agreement in which the accused promised "to abide by the law and conduct myself as a law abiding, well disciplined soldier." *Id* at 673. As such, the *Correa* decision does not preclude conditional suspensions which may be adopted by both parties as part of pretrial agreements. However, these conditions may not be phrased so as to nullify the pretrial agreement if violated between sentencing and the execution of the sentence, since this period may include appellate review. After the convening authority takes his action, misconduct by the accused can only result in vacation proceedings if his sentence was suspended.

Although the courts have acknowledged the convening authority's power to grant conditional probation, there has been only limited delineation of what these conditions may entail. In *United States v. Figueroa*, 47 CMR 212 (NCM 1973), the United States Court of Military Review upheld the convening authority's action suspending the sentence and imposing upon the accused the requirement that he meet with a designated "probation officer" weekly during the period of suspension. Citing *Lalland*, the court found this to be an "eminently fair and reasonable condition." 47 CMR at 213.

Besides the terms upheld in *Lallande* and *Figueroa*, the Court of Military Appeals has determined that the incidental probationary power of the convening authority would parallel the federal civilian criminal court standard of "such terms and conditions as the court deems best" contained in 18 U.S.C. 3651. Although it is the convening authority's province to determine the terms and conditions of probation, he may consider offers that arise from the accused, recommendations of the military judge, or suggestions from his staff judge advocate. Some of the resources available to the convening authority would include drug rehabilitation programs, half-way houses, volunteer groups or individuals, and other similar facilities frequently used by civilian judges. Such resources would enable the convening authority to "tailor" the specific conditions to an individual accused.

The following is a list of standard conditions of probation used by the United States District Court which have been tailored for the military community:

(1) You shall refrain from violation of any law. You shall immediately contact your Commanding Officer (and probation officer) if arrested or questioned by a law-enforcement officer.

(2) You shall associate only with law-abiding persons and maintain reasonable hours.

(3) You shall support your legal dependents, to the best of your ability.

(4) You shall not travel beyond 25 miles of your assigned unit without permission of your commanding officer.

(5) You shall report to your commanding officer (and probation officer) as directed.

(6) You shall make restitution or reparation to _____ for actual damages or loss caused by the offense for which you have been convicted.

The above-listed conditions are offered as examples of standard conditions which may be made applicable to any or all probationers and are not meant to preclude other specific conditions being made applicable to indicidual probationers. With respect to suggested condition (6), convening authorities should consider whether a failure to make restitution or reparation resulted from an actual inability or was volitional. See *United States v. Rodgers*, _____ CMR _____, SPCM 9943, 24 September 1974.

Placing conditions on probation in the military, except for "misconduct," is of relatively recent origin. Perhaps in most cases such conditions would be an unnecessary complication; but sometimes a particular condition would be deemed essential, if probation were to be used at all. Probation enables an early release from confinement and return to productive duty within the military society. Conditional proba-

tion allows better manpower utilization and offers excellent rehabilitation opportunities for convicted service members.

MONTHLY AVERAGE COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH JULY–SEPTEMBER 1974

	General CM	*Special CM*		*Summary CM*
	BCD	*NON*	*BCD*	
ARMY-WIDE	.20	.13	1.19	.48
CONUS Army commands	.20	.16	1.35	.54
OVERSEAS Army commands	.20	.09	.89	.36
U.S. Army Pacific commands	.06	.04	.88	.14
USAREUR and Seventh Army commands	.27	.10	.90	.43
U.S. Army Alaska	.07	.29	1.04	.25
U.S. U.S. Army Forces Southern Commands	-	-	1.55	1.01

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

NON-JUDICIAL PUNISHMENT MONTHLY AVERAGE AND QUARTERLY RATES PER 1000 AVERAGE STRENGTH JULY—SEPTEMBER 1974

	Monthly Average Rates	*Quarterly Rates*
ARMY-WIDE	17.88	52.63
CONUS Army commands	18.86	56.58
OVERSEAS Army commands	15.06	45.17
U.S. Army Pacific commands	15.70	47.12
USAREUR and Seventh Army commands	15.80	47.40
U.S. Army Alaska	11.08	33.25
U.S. Army Forces Southern commands	15.55	46.65

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

Judiciary Notes

From: U.S. Army Judiciary

1. Administrative Notes:

a. *Rules 33 and 34 of the Uniform Rules of Procedure before Army Courts-Martial, Appendix H, DA Pam 27–9, Military Judges' Guide.*

The Chief Trial Judge of the Army Judiciary recently dispatched to all trial judges certain proposed amendments to Rules 33 and 34 of the Uniform Rules of Procedure before Army Courts-Martial, Appendix H, DA Pam 27–9, Military Judges' Guide (Trial Judge Memorandum #96, dated 15 November 1974). In October 1974 all trial judges were encouraged to insist on the use of forms signed by the proponent counsel and served upon the opposing counsel and the trial judge. Samples of forms were furnished to trial judges for issuance to counsel practicing in their jurisdiction. Trial judges were further encouraged to consider sanctions against those counsel who flagrantly disregarded the established rules.

The proposed amendments to Rules 33 and 34 were suggested for local implementation by individual judges as local rules of court pending a formal amendment of those rules to be applicable Army wide.

The necessity for change of these rules arises from recent decisions of the Army Court of Military Review (*United States v. King and Wright*, CM 430427, 17 Oct 1974; *United States v. Hammer*, SPCM 9682, 31 Oct 1974). These decisions apparently do not view Rule 34 with judicial approbation, but they do question the applicability of Rule 34 insofar as it tends to deny to the accused a right afforded to him by the Constitution, the Code, or the Manual for Courts-Martial. In view of these two decisions the language of both Rules 33 and 34 tends to be ambiguous. To clarify these rules, the Chief Trial Judge recommended to trial judges the following changes as to Rules 33 and 34, the changes to be implemented by local rules of court pending revision of Appendix H, DA Pam 27–9.

"Rule 33. ~~Immediately upon referral of~~ charges for trial, the trial counsel will serve or cause the charge(s) to be served on the accused, and will furnish a copy of the charge(s) and specifications(s), and a copy of the convening order to the defense counsel and the trial judge to be detailed to the court-martial. By appropriate notification, trial or defense counsel will inform the trial judge of the estimated duration of the trial, whether it will be by judge alone, and whether it appears the case will be contested. ~~Counsel will also advise the judge as~~

Suspense —
(msg Idtd by DA Pam 27-9) See msg DAJA-CL 231457Z APR 75

See Mag DAJA-CL, 23145 7 Z APR 75 (Filed w/DA Pam 27-9)

~~to final disposition of the scheduled case by~~ action other than court-martial (i.e., administrative separation or non-judicial punishment) as soon as such other disposition action occurs. Counsel for both sides shall prepare for trial as expeditiously as possible. They will arrange with the trial judge for a firm trial date, which will be within 20 days of service of the charges on the accused in a general court-martial case, and within 10 days in a special court-martial case . . . ." [The remainder of Rule 33 would be as currently issued.]

"Rule 34. ~~Counsel shall be prepared to~~ dispose of all motions at one or more preliminary hearings during an Article 39a session. See Article 39a, UCMJ, paragraph 53*d*, MCM. Any motions or other matters counsel desire the trial judge to determine at an Article 39a session must be made in writing and show service of such motions or matters on opposing counsel with a copy to the trial court, utilizing appropriate forms stating the nature of the action or remedy desired. Moving counsel will indicate whether the hearing will involve submission on brief only, oral arguments, or the presentation of evidence and arguments. The written notification herein prescribed will be filed as early as possible prior to the scheduled hearing, but in no event less than three (3) days prior to the scheduled Article 39a hearing. Motions or matters submitted to the trial judge for consideration without compliance with this rule will not be considered until compliance with the rule has been observed. In his discretion and upon a showing of good cause, the trial judge may waive compliance with the rule in any particular case."

b. *Processing Applications for Relief from Court-Martial Convictions.* Attention is invited to the provisions of Chapter 13, AR 27–10, and the instructions on the reverse side of DA Form 3499 concerning the processing of applications for relief from court-martial convictions. To expedite the disposition of such applications, they should, whenever possible, be submitted through the office of the staff judge advocate of the general court-martial authority who exercised supervisory review over the case. That staff judge advocate should then forward the application, together with the original record of trial and its allied papers, with appropriate comments and pertinent documents concerning the allegations set forth in the application. The documents should be sent to HQDA (JAAJ–ED), Nassif Building, Falls Church, VA 22041, by certified or registered mail. In this connection, applicants should be informed that HQDA (JAAJ–ED) should be kept advised of any change in their address.

c. *Supervisory Review of Special and Summary Court-Martial Records.* In the review of special and summary court-martial records of trial, when passing upon applications for relief submitted under the provisions of Article 69, UCMJ, it has been noted that many of the rubber stamp impressions on the court-martial orders are deficient: For example: The date that supervisory review was completed is omitted; the designation of the command (the GCM supervisory authority) which the review was accomplished is incorrect or omitted; the language of the stamp does not conform to the provisions of subparagraph 94a)2), MCM 1969 (Rev. ed), in that it does not state that the "findings and sentence, as approved by the convening authority, are correct in law and fact." Strict compliance with subparagraph 2–24b(4), AR 27–10, and the Manual provisions is urged.

d. *Final Court-Martial Orders:*

Several final court-martial orders have been received which do not include the date forfeitures initially applied. When this information is omitted a corrected copy of final court-martial orders is required (see para 126h (5), MCM 1969 (Rev. ed)). Some final court-martial orders have been received which were published less than thirty days after the date of attempted service (see para 15–5a(2) AR 27–20).

It is not necessary to order the sentence into execution in the final court-martial order when a prior order in the same case has properly ordered the sentence into execution.

2. *Recurring Errors and Irregularities.*

a. Failing to show the accused's name and SSN correctly—two cases.

b. Failing to reflect the charges and specifications correctly—six cases.

c. Failing to reflect the pleas correctly—seven cases.

d. Failing to show the findings correctly—three cases.

e. Failing to show that the sentence was adjudged by a military judge—one case.

f. Failing to show correct number of previous convictions—one case.

g. Failing to show correct date sentence adjudged—one case.

h. Failing to show the date of the ACTION—one case.

3. Note from Defense Appellate Division

Defense Counsel Argument on Sentence — Still an Advocate

By: Captain David A. Shaw, Defense Appellate Division, USALSA

Argument on sentence to the judge or jury has been described as "a golden opportunity for a lawyer really to be an advocate, and to salvage at this juncture something which may be irretrievably lost if the opportunity for advocacy is not seized upon." *Handbook on Criminal Procedure in the United States District Court* § 17.5 (West 1967). Yet, trial defense counsel occasionally pursue sentencing arguments with less than dedicated enthusiasm.

The judge or jury and the accused benefit from an informed, persuasive argument on sentency by counsel. The sentencing court will benefit from counsel's unique insights into the accused's rehabilitative potential, special needs, personal history, and desires. The accused benefits from the knowledge that the sentencint body will have all pertinent information presented in his best interests, and structured to highlight his individual needs and desires. The additional benefit derived from forceful argument on sentence is that the staff judge advocate, the convening authority, and appellate authorities have a solid foundation upon which to base some favorable clemency actions if necessary or warranted.

The American Bar Association project on Standards for Criminal Justice stated in the Standards Relating to Sentencing Alternatives and Procedures § 5.3(e): "The defense attorney should recognize that the sentencing stage is the time at which for many defendants the most important service of the entire proceeding can be performed." This subsection states the opinion of the Advisory Committee that there are many cases where the most important service of the entire proceeding is performed at sentencing (*Standards Relating to Sentencing Alternatives and Procedures,* Approved Draft, 1968, page 245).

Argument on sentence is not a time to reargue the merits of guilt or innocence. Arguments should focus upon the defendant as a person: his good record, lack of violence, pressures of the moment that led him to commit the crimes, his need in the community or at home, his rehabilitative potential, and future contribution to the service. The argument should be cogent, but spoken with emphasis and feeling.

Recent appellate cases reveal that some trial defense counsel are again beginning to argue for the punitive discharge of a client. This should never be done, unless the client, on the record, reiterates his desires for a punitive discharge, discloses a full and complete understanding of the consequences, and has directed his counsel to so argue (*See United States v. Freeland,* 19 USCMA 455, 42 CMR 57 (1970); *United States v. Weatherford,* 19 USCMA 424, 42 CMR 26 (1970); *United States v. Blunk,* 17 USCMA 158, 37 CMR 42 (1967); and *United States v. Carter,* 43 CMR 798 (ACMR 1971).

Trial defense counsel should not abandon the client after findings, but vigorously pursue all avenues to obtain the most appropriate sentence possible under the circumstances.

4. Note from Government Appellate Division.

Competency—A Less Assumed Presumption

By: Captain Gary F. Thorne, Government Appellate division, USALSA

One of the most distressing and pressing problems for lawyers today is the attack from various authoritative sources challenging the competency of individual counsel in terms of litigation ability. Since becoming Chief Justice, Warren Burger has continued to press for a new recognition within the profession, particularly by those in the criminal law field, that it is time

for a renewed emphasis on understanding professional ethics, rejuvenating continuing legal education programs and recognizing the need for specialization. The Chief Justice bases his contentions on a belief "that from one-third to one-half of the lawyers to appear in the serious (criminal) cases are not really qualified to render fully adequate representation."[1] The present general attack on the competency of counsel, such as expressed by Chief Justice Burger, has gained congressional interest as evidenced by Senator John Tunney's statement at the recent ABA convention that "occasional instances of brilliant, able and distinguished work would likely be remembered as a rare breeze of fresh air" by trial and appellate judges.[2] Such recognition within the profession adds to the mistrust of the profession so long ingrained in the public's mind. It has led to a call by many within the profession for immediate action to open the bar up for the public to view.[3] Among the changes urged are full media coverage of trials, open disciplinary hearings, and public scrutiny of the procedures employed to select judges.[4]

What is being said is that the secretive trappings lawyers foist over their undertakings—often to make the simple seem more complicated and thus the lawyer more profound—should be stripped away so the public might view just who the lawyer or judge is and what he is doing. In conjunction with these public measures, it is obvious that scrutiny from within the profession itself will be heightened, and will deal in good measure with a desire to reaffirm the profession's ethics and the lawyers' ability to carry out the responsibility he has assumed. The military lawyer, bound by the same code of ethics as his civilian counterpart,[5] will not escape the scrutiny, particulary in the criminal justice field.

Scrutiny of the type indicated above has been fairly common in the military where the appellate courts have long labored to insure that no injustice is done to an accused because of the inexperience or inadequacy of his counsel—both military and civilian. The recent case of *United States* v. *Gaillard*,[6] is illustrative of the increasing interest of appellate authorities in the subject and their expectations as to the manner in which defense counsel are performing their duties. In the first instance, the court makes clear that the paraprofessionals now employed in many judge advocate offices[7] are there to "improve the representation of a client, but we can not permit any defense counsel to use the system for his benefit rather than that of his client."[8] In the *Gaillard* case, the trial defense counsel was reprimanded by the Court of Military Review for using a paraprofessional to interview a client, and then solely relying on those notes for his trial preparation after having only perfunctory discussions with the defendant himself. The statement that paraprofessionals "interview witnesses, gather evidence, perform legal research and prepare trial briefs"[9] is *only* true when it is recognized that this is not a task to be done in lieu of the attorney, but supplements the attorney's efforts in these areas. The *Gaillard* case specifically stated that the requirement of adequate representation cannot be satisfied if the *attorney* has not investigated the facts, consulted with the accused and prepared the case by researching the law. Relying on a paraprofessional's notes or investigations without a personal effort to acquaint oneself with those matters is not adequate assistance of counsel.

Gaillard also set forth what is expected of a trial defense counsel at the trial itself. Effective assistance of counsel encompasses "both the competency of counsel and the utilization of such competency by the counsel on behalf of the accused."[10] The court noted that the brightest of counsel is of little solace to a defendant when he fails to apply his brilliance. Equally compelling, a counsel applying himself to his fullest is of equally little solace if unable to cope with the legal issues presented. In this regard, it becomes clear that continuing legal education is of vital importance in keeping trial defense counsel honed on recent decisions both in and outside the military judicial system. Despite the fact there are numerous programs such as short courses at TJAGSA and Northwestern University available to some members of the trial defense bar, it may be necessary at this time for a more comprehensive program of continuing legal education to be initiated at the Office of The Judge Advocate General.

As to the utilization of abilities by counsel, that remains, as always, a matter of personal integrity. Nevertheless, in light of the Court of Military Review's actions in assessing competency of counsel it seems more compelling than ever that counsel realize their actions are indeed subject to review and detailed examination. This does not mean that a court will question the tactics of counsel,[11] but it does mean that when those choices result from inadequate preparation the court will find that effective assistance of counsel has been denied.

These increasing demands for competency naturally add to the growing importance of specialization in the military.[12] The on-the-job-training which so many military lawyers receive in the courtroom itself may well be a matter upon which an allegation of incompetency of counsel can rest. Chief Justice Burger has stated that "valuable as this may be as a learning experience, there is a real risk that it may be at the expense of the helpless clients they represent . . ."[13] If this attitude prevails, the military may find itself with problems in assigning young graduates of law schools with little or no trial experience to defend felony cases on their own.

Should this problem materialize, one possible solution is the implementation of the award of Judge Advocate Specialty Designations.[14] One designation applies to trial lawyers with a minimum of 24 months of primarily trial work covering at least 75 courts-martial with 25 or more of these being general or BCD specials.[15] Such certification is evidence of the type of experience Justice Burger seems to desire for defense counsel in serious cases. However, an across-the-board rule requiring that at least defense counsel in serious cases have such experience seems to neglect the obviously qualified younger counsel, and may be difficult to achieve in small offices without violation of the rules announced in *United States v. Burton.*[16]

The Army must also continually guard against occasionally assigning the best defense counsel within a command from defense to prosecution once they have proved themselves. Such action invites a panapoly of potential due process allegations against a service practice. Many jurisdictions avoid this difficulty by rotating counsel from one side to the other for fixed periods.

The willingness of the Court of Military Review to hear competency allegations is exemplified in *United States v. Zuis.*[17] There a civilian counsel was involved and the Court of Military Review accepted affidavits offered on appeal alleging numerous areas of incompetency with a resultant coerced plea. The court sent the case back for a limited rehearing, primarily because the independent counsel refused to respond to the defendant's affidavits alleging wrongdoing on the part of counsel. In *Gaillard,* it was a military trial defense counsel who did not respond to the government appellate efforts to obtain his affidavit to meet the defendant's claims alleging ill preparation. A reading of the record and the appellant's affidavits raised the issue of adequacy of representation for the court, and the caustic remark that trial defense counsel's failure to respond to the government appellate request for an affidavit showed trial defense counsel's "inaction extended to the Government as well as to the appellant."

Such language calls for a recognition by defense counsel of an obligation to the profession and the public as well as to their client. Vigorous advocacy has, and will continue to be, a necessary element of adequate representation at trial. However, having extended oneself at trial in such a manner, the defense counsel owes it to his profession and the public to defend his manner of defense when later challenged at an appellate level. To think that a failure to respond to allegations of defendants, such as were made in the affidavits in *Zuis* and *Gaillard*, benefits the appellant is a total abrogation of the defense counsel's responsibility to the profession and if ultimately accepted by the court as true raises considerable doubt as to the attorney's fitness to practice before military courts. The Court of Military Review, as indicated by the decisions in *Zuis* and *Gaillard,* is prepared to read a defense counsel's lack of response to mean a defendant's affidavit has some merit; the case is then returned for the limited purpose of assessing the adequacy of representation.

The technique of using affidavits to attack the trial defense counsel is questionable. Nevertheless, the impetus to scrutinize an advocate's competency will not cease regardless of what avenue is judicially recognized as an appropriate vehicle in which to do so.

The ultimate burden rests on each counsel to act in a manner which evidences competency in both preparation and presentation at trial. What is at stake is his own reputation as an attorney. Failing to conscientiously apply oneself at the trial level is an invitation for challenge at the appellate level. Even if one has extended himself at trial, a failure to stand up for his action when challenged at the appellate level is likely to undo what good efforts have been accomplished. The potential for these problems should move defense counsel to keep adequate records of all actions taken for each defendant. In doing so, defense counsel will have to recognize that their dual burdens to represent a defendant and serve a legal profession are not inconsistent and that both must be vigorously abided by in each and every case.

Footnotes

1. Burger, *The Special Skills of Advocacy*, THE ARMY LAWYER, Feb. 1974 at 17.
2. Tunney, *The Bar's Responsibility to the Public*, JUDICATURE (Oct. 1974) 108, 112.
3. D'Alemberte, *The Case for an Open Judicial System*, JUDICATURE (Aug-Sept 1974) 61.
4. *Id.*
5. *See* AR 27-10, Para. 2-32.
6. No. SPCM 9748, __CMR__ (ACMR 29 October 1974).
7. *See* Horbaly, *The Role of the Paraprofessional in Providing Legal Services*, THE ARMY LAWYER, Mar. 1974 at 9.
8. *Supra* note 5.
9. *Supra* note 7 at p. 10.
10. *Supra* note 6.
11. *Id.*
12.
13. *Supra* note 1.
14. DAJA-PT, P2620412, Aug. 1974, Subject: Instructions for Award of Judge Advocate Specialty Designations. *See also* THE ARMY LAWYER, Sept 1974 at 4.
15. *Id.*
16. 21 USCMA 112, 44 CMR 166 (1971).
17. CM 429814, __CMR__ (ACMR 23 Aug. 1974.

International Law Notes

From: International Law Division, OTJAG

1. DOD Directive on the Implementation of the Law of War. The United States is obligated by several treaties and international agreements as well as by customary international law to implement the law of war. The Department of Defense has recognized these legal obligations and it has been DOD policy to implement the law of war through service training programs and investigative and reporting procedures. However, there has been no uniform comprehensive statement of DOD policy with respect to the law of war.

On 29 May 1974, the Secretary of the Army, noting the need for a uniform statement of policy in this area, transmitted to the Secretary of Defense for consideration a draft directive on the implementation of the law of war. This directive was approved by the Secretary of Defense on 4 November 1974 (DOD Directive 5100.77).

The directive establishes a DOD law of war program which provides uniform procedures for implementing the law of war. Among the measures emphasized are education and training in the law of war and the establishment of a system for reporting, investigating, and taking corrective action with respect to alleged violations of the law of war committed by or against U.S. personnel. The directive designates the Secretary of the Army as Executive Agent for the administration of the program with respect to alleged violations of the law of war committed against U.S. forces. The Joint Chiefs of Staff are tasked to insure that rules of engagement issued by unified and specified commands comply with the law of war.

The promulgation of the DOD directive insures that DOD and the military departments will continue to meet their legal obligations with respect to the law of war. It also insures that programs within DOD to implement the law of war will continue in time of peace and that procedures for reporting and investigating alleged war crimes will be available for immediate use in time of war.

2. Proposed Change to AR 27-10. Pursuant to a request by The Judge Advocate General, the International Affairs Division conducted a review of the policy involving the filing of charges under the Uniform Code of Military Justice as the basis for pretrial confinement of U.S. Army personnel who are facing foreign criminal proceedings.

The result of this review indicates that the custody provisions of the various Status of Forces Agreements and similar international agreements intended to establish the status of U.S. forces abroad are sufficient legal authority for the confinement of U.S. Army military personnel subject to foreign criminal jurisdiction in U.S. military confinement facilities pending disposition of charges brought against such personnel by the foreign government concerned.

Paragraph 6, AR 190-2, however, provides that only individuals charged with an offense under the Uniform Code of Military Justice may be confined in a U.S. Army confinement facility. In coordination with a comprehensive revision of all AR's relating to the United States Army Correctional System, this office is recommending that those provisions pertinent to the confinement of individuals subject to foreign criminal jurisdiction be changed to permit confinement of such individuals pending final disposition of their offense by foreign authorities. It is contemplated that this policy and the procedures necessary to implement it will be promulgated as Chapter 17 in a forthcoming change to AR 27-10.

"LITE" Becomes "FLITE"

LITE, the military's Denver-based computerized legal research facility, has recently had its name changed to FLITE, an acronym for Federal Legal Information Through Electronics. DoD Directive 5160.64 brought about this change of status, transforming what began in the early 1960's as an Air Force "project" into an activity of the Department of Defense. Under its new "charter" FLITE will be operated and administered by the Department of the Air Force with the assistance of the other DoD components. Assistance to be provided by the other military departments includes the financial costs of special projects as well as the assignment of officer and enlisted personnel to the FLITE staff, as appropriate.

The Department of the Air Force retains the responsibility for providing search services to members of the Department of Defense as well as adding new data bases for DoD users. FLITE is currently in the process of adding the 40 most recent volumes of the *Federal Reporter* (2d Series) and *Federal Supplement* to its data bank of decisional materials which already includes portions of the *U.S. Reports, Court of Claims Reports, Decisions of the Board of Contract Appeals, Decisions of the Comptroller General* and the *Court-Martial Reports.*

FLITE staff attorneys are available to frame and submit computer searches for Department of Defense personnel Monday through Friday from 0730 to 1600 hours, Central Standard Time at the following telephone numbers. Commercial: (303)825-1161, ext. 6433; FTS: (303)825-6433; or AUTOVON: 555-6433.

Legal Assistance Items

From: Legal Assistance Office, OTJAG

JA Service Constitutes Practice of Law Under Georgia Comity Statute. Information has been received that the Georgia Court of Appeals has recently upheld a trial judge's decision permitting admission to the State Bar of Georgia under that state's comity statutes which is of great interest to Judge Advocates. In the case (*State Bar of Georgia v. Haas*, No. 49458, decided October 1974. Rehearing denied, 13 November 1974), the court ruled that (1) service as a Judge Advocate in our Armed Forces constitutes the active practice of law; and, (2) a licensed attorney, who has been authorized to practice law by and on behalf of the US government and who has continued to be a member in good standing of the bar of the state of his admission, is lawfully practicing law under that state's auspices wherever he may be assigned by the government (thus complying with the requirements of the Georgia comity statute). Copies of this decision are being distributed with "The Legal Assistance Counselor". Additional information can be obtained by contacting OTJAG (ATTN: DAJA-LA).

Editor's Note: Relevant extracts of the *Haas* decision follow.

"It is common knowledge that during the last two decades the military services have vastly upgraded their corps of lawyers. In the process they have provided all service men with competent legal advice and representation and have turned the system of criminal justice in the armed services, which at one time was subject to much criticism, into modern, fair and formal legal proceedings of the highest order. Sec 10 USC 801 et seq. Nor is the scope of their practice limited to criminal justice. It extends to all facets of the practice of law. Numerous legal publications conclude that "military bar members" are just as actively practicing law as any other lawyer in the civilian community. We agree with that premise as apparently does the State Bar as indicated by its admission that the appellee was practicing law during his service as a judge advocate. See Lanning v. State Board of Bar Examiners, 72 N. M. 332, 383 P2d 578; Hodson, The Judge Advocate Lawyer, 34 Bar Examiner 56 (1965), and Howell, Does Judge Advocate Service Qualify For Admission On Motion? 53 ABJA 915. (1967). In holding that judge advocate service constitutes the active practice of law, we find ourselves in full accord with some 36 other jurisdictions. See Munnecke, Problems in Bar Admission On Motion, 32 FBJ 170, 174. It is worthy to note that the State Bar admitted during oral argument that it had not objected to the admission on the basis of comity of other judge advocates who were assigned to a military post in their State of admission for the five-year prescribed period. They

object to appellee solely on the basis that he had not been assigned for five of the past eight years within the jurisdiction of his admission. At most that is a distinction without a reason as the practice of law as a military judge advocate must be the same wherever performed."

In noting that the Georgia statute does not authorize such a technical distinction, the court continued:

"The United States of America is a union of fifty States. The whole is greater than any of its parts. Therefore, when a person is authorized to practice law for the United States Government that person wherever he may be assigned owes allegiance to this country and its laws and is indeed practicing law "in a State of the United States or the District of Columbia." Therefore, when competent authority within the Air Force designated the appellee as a judge advocate it very plainly authorized him to lawfully practice law within the jurisdiction of the military. His initial designation as a judge advocate was contingent on his being a member of either the District of Columbia Bar or a State Bar in good standing. Thereafter his continued practice as a military lawyer was contingent on his remaining a member of his original Bar in good standing. Thus wherever he performed the practice of law as a judge advocate pursuant to military orders at home or abroad, he was in a very practical sense representing the Bar of his admission and practicing under their auspices. This meets the requirements of the statute."

JAG School Notes

1. Lesson Plan Available. The XVIIIth Airborne Corps has an excellent 2-hour military justice lesson plan for its NCO Academy. The lesson plan covers Articles 15 and 31, the five kinds of legal searches and seizures, and board actions under AR's 600–200, 635–200 and 635–206. If your office would like a copy, call or write the Chief, Criminal Law Division, TJAGSA. We'll reproduce and send copies so long as our paper supply lasts.

2. WHOA! (Temporarily). Early in December, the planned move to TJAGSA's new home encountered another delay: interior finishing was still incomplete and some additional design or construction defects needed to be remedied—preferably before moving in rather than afterwards. The University and the contractor haven't settled on a new acceptance date. TJAGSA's best guess is a February move. By the time you are reading this, we whould be moved, moving, or about to move.

3. Board of Visitors. The Honorable Robert M. Duncan, Judge of the U.S. District Court for the Southern District of Ohio (and former judge of the USCMA) has accepted appointment to the TJAGSA Board of Visitors. The Board, chaired by Mr. Eberhard Deutsch, Civilian Aide to the Secretary of the Army for Louisiana, met at the School on 9 December 1974 for a review and evaluation of the School's programs and activities. Other members in attendance were John H. Finger (a retired Reserve JA) of San Francisco, Professor John W. Reed of the University of Michigan School of Law, and former JAGC officer Richard E. Wiley, Chairman of the Federal Communications Commission.

4. Bookstore. By 31 December 1974 the School will have ceased to operate its Bookstore. Pursuant to Congressional and DOD action, the Army and Air Force Exchange Service will operate all service school bookstores. These will operate under PX patronage rules and within any limitations as to types of service and merchandise available through PX's. Souvenir items with the Corps and School insignia will, however, continue to be available. As soon as the new facility is in operation, we will tell you what can be ordered by mail and how to order.

5. Gifts to the School. As readers know, TJAGSA has several collections designed not merely to beautify the School, but to foster esprit d'[JAG] Corps among the students and alumni. The collection of foreign military lawyers' insignia is growing slowly. Several authors have responded to our appeal for copies of their writings for the new library's permanent "JAGC Authors" display. The unit and service school mug collection was recently augmented by the members of LTC Pedar C. Wold's office (OSJA, Hq 25th Inf Div) and CPT Nicholas P. Reston's office (Cmd JA, Hq 4th Missile Cmd). Most recently, the School received a striking aerial photograph of "The Most Isolated Legal Office in the Corps" from CPT Jay P. Manning (Cmd JA, Kwajalein Missile Range). The 74th and 75th Basic Classes were most helpful, too,

contributing respectively, funds to improve landscaping at the new building and for the purchase of a lobby directory to list BOQ occupants in the new building. To all who are moved to such generosity, we suggest that any contributions (other than library books) be made to the nonprofit, tax-exempt Association of Alumni of The Judge Advocate General's School. Conditional gifts to the Government pose legal questions which are described in COL Joseph Tenhet's excellent handout to the last JAG Conference.

6. Coming Events. The School will be represented at the annual meeting of the Association of American Law Schools in San Francisco in December. In February, it will have a representative in Chicago at the midyear meeting of the Association of Continuing Legal Education Administrators. March brings the annual conference of National Guard (Army and Air) Judge Advocates to the School. Courses in the first quarter of CY 1975 include the 5th Advanced Procurement Attorneys Course (6–17 January) with a stellar cast of guest speakers, the 1st Military Administrative Law Course (13–16 January), our 18th Senior Officer Legal Orientation (27–30 January), the 5th Law Office Managers Course (3–7 February), our second course in Management for Military Lawyers (10–14 February), and the 61st Procurement Attorneys Course (24 March–4 April). Due to oversubscription, we are planning to follow the latter course immediately with a 62d Procurement Attorneys Course.

7. "Lessons in the Law" Audio Cassette Program. Response to our pilot audio tape casette on management for military lawyers (see page 10 of the June issue) has been most encouraging. We have since completed two new offerings featuring the remarks of Major Francis A. Gilligan, Instructor in our Criminal Law Division. The first, "Recent Developments in Searches Incident to a Lawful Arrest," explores the new standards under *Robinson* and *Gustafson* concerning when such searches may be made, notes the current definitional problems with "custodial" arrests and reviews the various tests for the geographical limits to these searches under the *Chimel* progeny. The tape runs 10 minutes. The second cassette, also of interest to the military justice practitioner, is titled "The Plain View Doctrine on the Law of Searches." This presentation highlights the cases of *Collidge v. New Hampshire,* 403 U.S. 443 (1971) and *United States v. Gray,* 484 F.2d (6th Cir. 1973). This tape runs 26 minutes. Both 352 tapes may be requested for loan from the Office of Nonresident Instruction, The Judge Advocate General's School, US Army, Charlottesville, Virginia 22901. Further programs will be produced, in the areas of Administrative and Civil Law, Procurement Law and International Law.

71D Correspondence Course Available from TJAGSA

By: Captain Donald A. Deline, 23d Advanced Class, TJAGSA

Since the beginning of the 71D MOS producing school at Fort Benjamin Harrison there has been a tremendous upgrading of legal education for enlisted personnel in the Army. The courses at Fort Benjamin Harrison cover the full span of knowledge required of a legal clerk at both the battalion and the SJA office. In addition, a number of other useful courses such as typing are being taught during the 8½ weeks of instruction. In order to keep clerks in the field abreast of the material offered at that school, the Office of Nonresident Instruction of The Judge Advocate General's School is now offering an updated version of its basic 71D correspondence course. The new course contains two types of subcourses. One covers the clerical education essential to the 71D and has been left essentially unchanged. The following are examples of these subcourses:

—JA 62 Command Publications and Routine Orders

—JA 65 Records Management

—JA 66 Military Boards and Investigations

—JA 69 Safeguarding Defense Information

—JA 75 Effective Written Communication.

Extensive revision in the subcourses that concern primarily military justice skills have been prepared. Subjects such as preparation of charge sheets, Article 15 preparation and assembling summarized records of trial have been revised to reflect current procedure. These new subcourses also contain some practical exercises

to allow the student the opportunity of putting his knowledge to work while still enrolled in the course. The subcourse that has been changed the most is JA 31 which formerly concerned "Inferior Courts." It has been divided into two subcourses—JA 31 and JA 32. These two new subcourses now total 88 credit hours and contain the following subjects among others:

—Introduction to Military Justice

—Nonjudicial Punishment

—Pretrial investigations

—Preparation of Charge Sheets

—Convening Orders

—Summarized Records of Trial, and

—Convening Authorities Actions.

After publication of the new materials, this revised portion of the course will be sent to anyone who regularly enrolls in the correspondence course. In addition, the two new subcourses, JA 31 and JA32 will be available to other enlisted personnel to aid them in OJT training. OJT personnel will be glad to know that JA 31 and JA32 will be very helpful in preparing for the MOS test. The recent revisions in the Basic Legal Clerks Correspondence Course were designed to align the course with the subjects presently being taught at Fort Benjamin Harrison and with current procedures in the 71D area. The new courses have been examined and approved by the instructors at the 71D school and, in addition, they have undergone limited field testing. Anyone who desires this entire correspondence course or only the two subcourses should request the needed materials from the Office of Nonresident Instruction, The Judge Advocate General's School, US Army, Charlottesville, Virginia 22901.

TJAGSA—Schedule of Resident Continuing Legal Education Courses Through 30 August 1975

Number	*Title*	*Dates*	*Length*
5F-F12	5th Procurement Attorney, Advanced	6 Jan–17 Jan 75	2 wks
5F-F17	1st Military Administrative Law	13 Jan–16 Jan 75	3½ days
5F-F8	18th Senior Officer Legal Orientation	27 Jan–30 Jan 75	3½ days
7A-713A	5th Law Office Management	3 Feb–7 Feb 75	1 wk
5F-F15	2d Management for Military Lawyers	10 Feb–14 Feb 75	1 wk
CONF	National Guard Judge Advocate Conference	2 Mar–5 Mar 75	4 days
5F-F11	61st Procurement Attorneys	24 Mar–4 Apr 75	2 wks
5F-F11	62d Procurement Attorneys	7 Apr–18 Apr 75	2 wks
5F-F13	2d Environmental Law	7 Apr–10 Apr 75	3½ days
5F-F8	20th Senior Officer Legal Orientation	14 Apr–17 Apr 75	3½ days
5F-F8	*19th Senior Officer Legal Orientation Crs	28 Apr–1 May 75	4 days
(None)	3d NCO Advanced Course	28 Apr–9 May 75	2 wks
5F-F6	5th Staff Judge Advocate Orientation Crs	5 May–9 May 75	1 wk
5-27-C28	22d JA New Developments Crs (Reserve Component)	12 May–23 May 75	2 wks
	Reserve Component Training JAGSO Teams	2 Jun–13 Jun 75	2 wks
5F-F30	1st Military Justice I Course	16 Jun–27 Jun 75	2 wks
5F-F1	1st Trial Attorneys' Course	23 Jun–27 Jun 75	1 wk
5F-F8	21st Senior Officer Legal Orientation Crs	30 Jun–3 Jul 75	3½ days
	USAR School (Civil)	7 Jul–18 Jul 75	2 wks
5F-F9	14th Military Judge Course	14 Jul–1 Aug 75	3 wks
5F-F3	19th International Law Course	21 Jul–1 Aug 75	2 wks
5F-F11	63d Procurement Attorneys' Course	28 Jul–8 Aug 75	2 wks

* Army War College only

Reservists—A Rare Opportunity To Complete Phase IV of The Judge Advocate Officer's Advanced Course In Two Weeks

Currently Reserves may complete Phase IV (Administrative and Civil Law) of the Judge Advocate Officer Advanced Course in one of three ways:

a. Correspondence Course: JA 121 through and including JA 129.

b. Resident/Nonresident Courses: Civil Law I (5F–F5) (2 weeks) and Civil Law II (5F–Fw) (2 weeks).

c. USAR School.

During the period 7–18 July 1975 the 2093d USAR School will present Phase IV at TJAGSA. The first week of instruction will be the equivalent of Civil Law I and correspondence courses JA 124, 125, 126, 127, and 128. The second week of instruction will be the equivalent of Civil Law II and correspondence courses JA 120, 121, 122, 123, and 129.

Reserve officers in addition to those enrolled in the USAR School program may attend this course (or a single week if appropriate based on previously completed requirements). Early application is recommended as there are a limited number of spaces.

Military Legal Research in Progress

The following is a list of thesis topics selected by members of the 23d Judge Advocate Officers Advanced Class. The final theses are due on 7 April 1975 and will be available on request from the field in late May when evaluation is complete.

Student	*Approved Paper Subject*
Adams, John B. MAJ	Should There Be a Prosecutorial Appeal in the Military?
Aileo, William A. CPT	The Constitutional Tort, Discretionary Functions and the Military.
Altieri, Richard T. CPT	Civil Actions Arising Upon Military Installations.
Anderson, Gary L. CPT	Foreign Trials of U.S. Forces Personnel: The Rights to be Protected and Standards of Fairness.
Arkow, Richard S. MAJ	The Role of the Military Judge in Adversary Criminal Proceedings.
Atkins, Hugh S. MAJ, USMCR	Reliability of Eyewitness Identification: A Need for Instruction?
Burger, James A. CPT	Subversive Activities—An Area Within or Outside the Scope of International Law.
Cathey, Theodore F.M. CPT	Interest Claims Under Government Contracts.
Cope, Dennis F. CPT	*United States v. Ruiz:* A New View of Self-Incrimination in the Military.
Crean, Thomas M. MAJ	Changing the Role of the Convening Authority.
Cruden, John C. CPT	War Powers Act: Impact on Foreign Affairs.
Davenport, David E. Jr. CPT	The Role of Psychiatry in Military Law.
DeBerry, Thomas P. CPT	The Need for Legislation to Protect Federal Employees From Money Damage Suits Resulting From Scope of Employment Acts.
Deline, Donald A. CPT	The Career Management and Education of Paralegal Personnel.
DePue, John F. CPT	The Application of Norms of International Law to Armed Conflicts of an Internal Nature.
Flanigan, Richard C. CPT	The "Domestic Matters" Limitation on the Application of International Law.
Gray, Kenneth D. CPT	*Furman v. Georgia:* Its Impact on the Death Penalty in the Military.
Horst, Carl H. LCDR, USN	The Right to Petition in the Military.
Makey, Patrick J. CPT	Exploring the Myths of the Judicial System: Study of the Actual Effects of Selected Functional Considerations Within the Judicial System Upon the Ultimate Disposition of

Student	*Approved Paper Subject*
	Special Court-Martial Cases Within Specified Jursidictions.
Maron, Andrew W. CPT	Pretrial Diversion and the Juvenile Delinquent.
McMahon, John P. MAJ, USMC	Right to Representation of Counsel, Art. 38(b), UCMJ.
Meacham, Christopher L. CPT	Disposition of Minor Disciplinary Offenses in the Military: An Evaluation of Existing Procedures and Proposals for Change.
Meeks, Clarence I. III MAJ, USMC	The Posse Comitatus Act: A Commander's Pitfall.
Nakayama, MASAO CPT (Inf) (Japan)	Article IX, Constitution of Japan: Renunciation of War.
Richardson, John W. CPT	The *Argersinger v. Hamlin* and the *U.S. v. Alderman* Decisions, Their Meaning and Effect.
Richardson, Quentin W. CPT	Extraordinary Relief—Revisited.
Robblee, Paul A. Jr. CPT	Legitimacy of Modern Weaponry in the Law of War.
Sepulveda, Eloy CPT	Bail in the Military.
Smith, Edgar A. P. Jr. CPT	The Standard Government Suspension of Work Clause.
Swick, Richard CPT	Judicial Review of the OER System.
Switzer, James E. Jr. CPT, USMC	Appearance Regulations: Right of the Military to Regulate the Appearance Standards of Service Personnel.
Thomas, Evan E. CPT	The Right to Counsel as an Element of Administrative Due Process for the Inmate.
Tiedemann, John J. MAJ	The Standards of Unavailability for the Admission of Depositions and Former Testimony.
Vogel, Richard L. CPT, USMC	Duress: An Affirmative Defense to Criminal Prosecution.
Wilkerson, James Neill CPT	Administrative Due Process Requirements in Revocation of On-Post Privileges, *e.g.*, Driving, Housing, PX, Theater.
Yudesis, Benjamin M. CPT	Does Administrative Due Process Require a Right to Counsel (Legally Qualified or Not) in Administrative Elimination.
Zimmerman, Charles A. CPT	Diversion from the Criminal Process: Proposed Military Model.

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.

COL Fred J. Moore	31 Oct 1974
CW3 Arthur A. Laborada	30 Nov 1974
CW2 Hollis Whitaker	31 Oct 1974

2. Promotions. Congratulations to the following officers who were promoted.

TO COL, AUS

Conboy, Joseph B.
Miller, Harold L

3. Orders Requested as Indicated.

NAME	*FROM*	*TO*
	Majors	
BOSILJEVAC, Mary L	Beaumont Gen Hosp. Texas	USA Health Svc Cmd, Ft S. Houston Texas
MYERS, Walter K	Stu Det, AFSC, Norfolk, Va	OTJAG, Wash DC
WEINBERG, Paul	Europe	USA Leg Svc Agcy, w/sta Europe

NAME	*FROM*	*TO*
	Captains	
AGOVINO, Frank	USA Leg Svc Agcy	OTJAG, Wash DC
ALLAN, Edward G	JFK Ctr for Mil Asst. Ft. Bragg, NC	82d Abn Div, Ft Bragg, NC
APEL, John P	White Sands Missile Range, NMex	USAG, Ft Stewart, Ga
BILLINGSLEY, C. Coleman	QM Center, Ft Lee, Va	S&F, TJAGSA
BOOHAR, Charles	Japan	USAG, Ft Stewart, Ga
BORNHORST, David	XVIII Abn Corps, Ft Bragg, NC	USATC, Ft Jackson, SC
BOYAKI, Walter	Air Def Cen, Ft Bliss, Tx	USA Trans Cen, Ft Eustis, Va
BRUMMETT, William	Korea	White Sands Msl Range, NMex
CURTIS, David	101st Abn Div, Ft Campbell, Ky	USA Fld Arty, Ft Sill, Okla
DESONIER, Donald	USA Gar, Ft Lewis, Wa	Korea
DOOLITTLE, Garry	3d Recrtg Region, Ga	4th Inf Div, Ft Carson, Colo
GILVERT, Jerry	USATC, Ft Ord, Ca	USA MidWest Region Rctg Cmd. Ft Sheridan, Ill
HAGGARD, Albert	USA Health Acad, Ft. S. Houston	Korea
HANKINSON, Tommy	Msl Cmd, Redstone Ars, Ala	Europe
HERBERT, Clarke	Europe	USATC, Ft Ord, Ca.
HOPKINS, Gary	OTJAG	USA Leg Svc Agcy, Falls Church Va.
HUFF, Frederick	USA Leg Svc Agcy	OTJAG
KELLY, James J	Europe	USA Rtng Bde, Ft Riley, Ks
KESLER, Dickson	Europe	USA Clms Svc, Ft Meade, Md
KODAK, Robert	USATC, Ft Ord, Ca	USA Engr Cen, Ft Belvoir, Va
LYFORD, Robert	9th Inf Div, Ft Lewis, Wa	Ft Greely, Alaska
MCCOY, Regis	Trans Ctr, Ft Eustis, Va	OTJAG
MEIXELL, John	Korea	Europe
MILNE, John	USATC, Ft Jackson, SC	Korea
MOBERLY, Kirk	USA Engr Center, Ft Belvoir, Va	OTJAG
MORTON, Richard	Korea	Europe
NAGLE, James	USAG, Presidio of SF CA	Korea
OLENSLAGER, Delbert	2d Armd Div, Ft Hood, Tex	9th Inf Div, Ft Lewis, Wa
PARWULSKI, James	AMC, Alexandria, Va	Def Lang Inst, Monterey, Ca
PEARSON, Robert	USATC Engr, Ft L. Wood, Mo	Disciplinary Bks, Ft Leavenworth, Kansas
POWELL, Robert	USA Leg Svc Agcy	193d Inf Bde, Ft Amador, CZ
RETSON, Nicholas	Korea	USA Leg Svc Agcy, Falls Church,
ROGERS, Richard	USA Leg Svc Agcy	OTJAG
SCOTT, Dwvid	Korea	Europe
SMITH, Carl	Korea	USA Leg Svv Agency, Falls Church, Va

NAME	*FROM*	*TO*
VAGLICA, Phillip	4th Inf Div, Ft Carson, Co	Korea Procurement Agency
VREELAND, John	Europe	USAG, Ft Sam Houston, Texas
WATTS, Theodore	Europe	USA Leg Svc Agcy, Falls Church, Va.
WICKSTEAD, Michael	USAG, Ft Devens, Ma	Korea
WZOREK, Lawrence	Korea	USA Leg Svc Agcy, Falls Church, Va.

4. In Memoriam: CW4 John L. McIntyre. On 16 November 1974, CW4 John L. McIntyre died at Clarksville, Tennessee, of a heart attack. At the time of his death, Mr. McIntyre was serving with the Office of the Staff Judge Advocate, 101st Airborne Division, Ft. Campbell, Kentucky.

Mr. McIntyre was appointed a warrant officer from enlisted status on 9 March 1962. His illustrious career included several tours of duty with the 101st Airborne Division at Ft Campbell and the Republic of Vietnam. His other assignments were at Ft Leavenworth, Kansas, Ft McPherson, Georgia and in Europe. He is survived by his wife, Lou and five children. "Mr. Mac" will be sorely missed by his comrades in the Corps.

5. Service School Selections: The following JAGC officers have been selected for Senior Service Schools:

Col Darrell L. Peck — Army War College

LTC David A. Fontanella — Army War College

LTC Robert S. Poydasheff — Army War College

LTC Hugh R. Overhold — Industrial College of the Armed Forces

6. OTJAG Opens Professional Support Activity. On Friday, 22 November 1974 in the Offices of The Judge Advocate General, Major General George S. Prugh, The Judge Advocate General, officiated at a ribbon cutting ceremony opening a Professional Support Activity (a word processing center). The activity's Supervisor, Ted Placzkouski, assisted General Prugh in the festivities.

The center, whose motto is "We offer PLEAS" (Professional Legal Electronic Automated Services), is staffed by Miss Margie Rich, Miss Sharon Frederick, Mrs. Myrna Drennan, Miss Karen Fowler, Ms. Celina Dixon, and Ms. Janet L. Miller.

Located in Room 2B464 of the Pentagon, this activity supports most of the judge advocates and civilian attorneys assigned to the Office of The Judge Advocate General. The equipment used consists of magnetic tape selectric typewriters and dictaphone equipment. The carpeting, sound reducing partitioning and newly painted walls make this office the warmest and most attractive word processing center in the Pentagon.

7. Senior Trial Lawyers. Three more JAGC officers have been designated as Senior Trial Lawyers:

Captain Stephen L. Bola
Captain Gerald T. Leeling
Captain Kenneth A. Phillips

8. Civil Service Clarifies Bar Membership Requirement for Civilian DOD Attorneys. The following response was provided by the Office of the General Counsel, United States Civil Service Commission, to a recent DOD inquiry.

This is in response to your letter of October 11, 1974, regarding bar membership of civilian attorneys employed in the Department of Defense. It is your understanding that a civilian attorney in the Federal civil service must be a member in good standing of a bar in at least one state. However, in recent years some states have changed their rules concerning the practice of law to require payment of mandatory dues or other assessments, while making provision for attorneys who wish to maintain an inactive status without obligation to pay dues or assessments. You seek our opinion as to whether a civilian attorney who is in an "inactive" status in the bar of the State of his admission is still qual-

ified under Civil Service Regulations to hold an attorney position.

As pointed out in Civil Service Commission Bulletin No. 930-16, of December 11, 1972, the definition of the General Attorney Series, GS-905, specifically states that the work requires admission to the bar. Federal Personnel Manual Chapter 213, Appendix A, "Identifying Attorney Positions", further states:

> "Admission to the bar means that a person is licensed and authorized to practice as an attorney under the laws of a State or the District of Columbia or the Commonwealth of Puerto Rico."

The requirement for admission to the bar in the definition of the occupation is more than a qualification requirement for appointment to an attorney position: it is a meaningful, continuing requirement for a license for performance of the work. Accordingly, an attorney's membership in the bar must be such as would permit him to practice law. Therefore, an attorney's membership in a unified bar (also called an integrated bar) must also be such as to permit him to practice law in that jurisdiction, whether or not it involves maintaining an "active" status.

As of this writing, several jurisdictions have adopted the integrated, or unified bar concept under which all attorneys, admitted to the bar in the jurisdiction must belong to a dues-paying, quasi-governmental body in order to practice law there. (However, some bars are integrated with respect only to the disciplining of members of the bar.) These bar organizations have been created by acts of the State legislature, rules adopted by the highest court in the State, or both. Since most jurisdictions having an integrated bar require their attorneys to pay annual dues to maintain active membership status, in order to practice law in the jurisdiction, the provision in the FPM necessitates government attorneys who are members of a unified bar with such a rule to pay applicable annual dues to retain their positions in the Federal service. In fact, the Federal Bar Association has requested the Civil Service Commission to inform Federal agencies that there is a continuing requirement for active bar membership.

Thus, the membership rules of individual bars must be reviewed to determine what is required of attorneys to continue to practice law in that jurisdiction.

9. Secretary Callaway Visits Riley Judge Advocates. During a visit to Fort Riley, Kansas on 13 September 1974 Army Secretary Callaway spoke with several Judge Advocate officers assigned to the 1st Infantry Division and Fort Riley. Captains Al Walczak, Scott Brown, Peter Garretson, Keith Hamack, Rich McCurdy, Bill Ramsey, and Major Rex Brookshire participated in the discussion.

Secretary Callaway opened the informal conference by asking for observations of those present regarding the military justice system and its administration, and for their opinions regarding the military service as a career for attorneys. As might be anticipated, the comments were decidedly mixed. During the meeting, which lasted approximately one hour, propay for attorneys was mentioned as was the possibility of establishing a separate promotion list for JAGC officers. Both were viewed as desirable objectives to assist in the career retention of Army attorneys. It was admitted that pay disparity was only one consideration bearing on an individual's decision whether to remain in the service; however, it was characterized as a very important factor.

Other subjects which were discussed included the possible establishment of a trial branch within The Judge Advocate General's Corps which would enable attorneys who enjoy trial work to specialize in that field; the creation of a universal military magistrate system which would be fully responsible for the issuance of search warrants as well as pretrial confinement, thereby minimizing instances of unlawful search and incarceration; and expanding the capability of the military services—particularly at Fort Riley—to represent service members in both civil and criminal cases in the local civilian courts. Several of the attorneys voiced a degree of frustration when confronted with situations in which service members had apparently legitimate and litigable grievances against their landlords, merchants, or individuals, but could not pursue the issues in the local courts due to the indigency of the soldier. A final topic which was mentioned, focusing on what the service could do itself to enhance career attractiveness, concerned the establishment of an optional "sabbatical" program. The suggestion recognized a fact of life which often confronts military attorneys: the press of daily duties often precludes giving attention to a research project or study which an individual would personally like

to undertake for his own professional enrichment. Job satisfaction, it was mentioned, would be greatly enhanced if the officer-attorney knew that every three or four years throughout his career—probably between assignments—he could devote several months to a special study or research project of his own choosing.

10. New ABA Military Law Committee. The following note from Colonel John Jay Douglass (JAGC, Retired) who chairs the American Bar Association's newly-created Military Law Committee, appeared in the fall issue of *Docket Call*, the quarterly publication of the ABA Section of General Practice.

* * *

There was a myth among civil practitioners that military lawyers were really not lawyers. There was a similar myth among commanders that military lawyers were really not military. Such beliefs only prove that military lawyers were probably doing their jobs properly. But whatever may have been the conception a few years ago, these members of the bar have come on better times and the importance of their function in the legal profession and in the Armed Forces is now quite clearly recognized.

What may still not be fully understood, however, is the extensive interest in military law and military lawyers throughout the American Bar. A recapitulation of the military-law-oriented groups within the American Bar Association indicates concern with this legal area across a broad spectrum of the ABA Sections including Criminal Justice, International Law, Administrative Law, Public Contract Law and Family Law as well as such other groups as the Young Lawyers Section, three Standing Committees, the Judicial Administration Division, National Conference of Special Court Judges, and the Bar Activities Section. It was only this year that a military law committee has been added to the Section of General Practice.

Because so many ABA members have shown increasing concern with the subject of military law, it was logical that a Military Law Committee be organized within the General Practice Section. What made the creation of this committee even more appropriate is the fact that active duty military lawyers are in fact general practitioners.

The Section's Military Law Committee proposes to assist in cross-dissemination of materials using the expertise of military attorneys to keep the civilian bar cognizant of military law development and by encouraging membership in the Section of military lawyers in order to extend their awareness of the problems of the general practitioner.

Immediately, the military law literature will be surveyed for material suitable for publication to the civilian bar. A subcommittee is organized to prepare an educational program for presentation at Montreal in 1975.

The committee has shown interest in state acceptance of the service of a lawyer in the military forces to be counted as service in the practice of the profession. The committee has been asked to co-sponsor two trial tactics seminars for Navy and Marine lawyers. Liaison has been made with other ABA groups, and initial contacts have been made with the Judge Advocate General and General Counsels of the Armed Services.

With all these activities, the committee's future promises to be busy and exciting as it strives to serve both those in and out of uniform.

11. Judge Advocates Association Forms Three New Committees.

At the meeting of the Board of Directors of the Association on 26 October 1974, the formation of three new committees was approved. These committees are: Committee on Continuing Legal Education, Committee on Malpractice Insurance for the Active Duty Judge Advocates and Committee on Bar Specialization, Recertification and Designation.

Committee on Continuing Legal Education

With the increased emphasis on professional competence occurring at the state and national level, more local, state and national bar associations are sponsoring many worthwhile continuing legal education prublications, seminars and institutes. Many active duty judge advocates are stationed within jurisdictions other than those in which they are admitted to practice. Even though The Judge Advocates General have established systems of military continuing legal education, there exists a need for active duty judge advocates to be current in the civilian practice. Therefore, it is desirable that a committee be formed to coordinate the CLE programs of the state and national bar associations with the individual military attorney.

The objectives and goals of the new committee will be, in cooperation with The Judge Advocates General of the Armed Forces, to:

(1) Set up within each state, in cooperation with the JAA State Chairman, a central point of contact to disseminate CLE program information to active duty military lawyers within that state or other interested persons.

(2) Explore the possibility of a group or reduced rate for active duty military for CLE publications, institutes, or other programs.

(3) Serve as an informal contact to promote more cooperation between active duty judge advocates and state and local bar association groups.

(4) Disseminate CLE information of interest to service publications and encourage writing by military attorneys for state and local bar journals.

(5) Explore the feasibility of presenting with state CLE programs a seminar or institute on military or federal law.

Committee on Malpractice Insurance for the Active Duty Judge Advocate

With the change of the Pilot Legal Assistance Program into the Expanded Legal Assistance Program more active duty judge advocates are practicing in state courts throughout the United States. Concurrently the U.S. Department of Justice is expressing concern over the increasing number of suits filed against federal officers in their individual capacities for acts performed both on and off duty. Therefore, it is desired that a committee be formed to update previous studies made as to the desirability of professional malpractice insurance for the military practitioner.

The objectives and goals of the new committee will be, in cooperation with The Judge Advocates General of the Armed Forces, to:

(1) Review the current state of the law as it relates to malpractice liability of military officers on active duty for acts performed as an attorney.

(2) Update the previous studies for alternate forms of protection to the military attorney and client.

(3) Survey the existing insurance schemes currently utilized by the civilian bar.

(4) Contrast insurance plans with possible legislative amendments.

(5) Complete an informal report or reports with recommendations for presentation to the JAA membership at the annual meeting in Montreal, August 1975.

Committee on Bar Specialization, Recertification and Designation

With two state specialization programs in operation (California and New Mexico) and other states moving toward recertification (Minnesota), a major change is taking place in the practice and educational requirements necessary for the continuing practice of law. There is a danger in this trend for the active duty or the reserve judge advocate to be placed at a disadvantage in several respects, *e.g.*, his participation in resident instruction at service schools during his active duty career or during his annual active duty for training may not be counted toward the state bar recertification requirements; likewise, the participation in nonresident instruction courses may be ignored as CLE; the professional specialties developed during a service career of 20–30 years in taxation, criminal law, patents, litigation, workmen's compensation may not constitute "sufficient experience" to qualify for the state requirements.

There is sufficient need to form a committee within the JAA to monitor the State Bar Associations and Supreme Court rule changes to insure that the active duty and reserve judge advocates are considered when rule changes are contemplated.

The objectives and goals of the new committee will be, in cooperation with The Judge Advocates General of the Armed Forces, to:

(1) Maintain liaison with the appropriate committee of the state bar or bar association to monitor any contemplated rule changes in the area of specialization, recertification and designation.

(2) Keep The Judge Advocates General and the editors of the service publications informed of any contemplated rule changes.

(3) Represent the JAA before the appropriate committee of the various state bar associations or the state government body and insure that any contemplated rule changes take into consideration the situation of the active duty or reserve judge advocate.

(4) Maintain a list of JAA members by state and keep them informed of pending rule changes.

(5) Promote the "professionality" of the judge advocate before the state bar groups.

12. C&GSC Nonresident/Resident Course. The Judge Advocate General's Corps has been allocated two quotas for Active Army officers to attend the resident phases of the C&GSC Nonresident/Resident Course during calendar year 1975. One quota is for Part I to be conducted during the period 1–20 June 1975. The other quota is for Part II during the period 22 June–18 July 1975. Any officer who desires to attend the resident phase during calendar year 1975 must submit their request for attendance by 14 March 1975. If there are more officers requesting attendance than quotas available to the JAG Corps, additional quotas may be sought. Request for additional information concerning quotas should be directed to Major Kile, DAJA-PT, Room 2E443, Pentagon, Washington, DC 20310 (Autovon 225-1353).

13. JAG Appointed to ABA and DC Bar Positions. Captain Gerald A. Schroeder, Headquarters U.S. Army Physical Disability Agency, Walter Reed Army Medical Center, Washington, D.C. 20012, telephone: (202) 576-5214, has recently been appointed to two professional positions within the D.C. Bar and the American Bar Association. Captain Schroeder is serving as Vice Chairman of the Military Law Committee of the District of Columbia Bar Association, and within the Administrative Law Section of the American Bar Association as Vice Chairman of the Military Law Committee. Any military attorney desiring to have more information or desiring to participate in an active role within either of these two professional areas should contact Captain Schroeder.

14. Ethics Questions. *Barrister*, the magazine of the American Bar Association's Young Lawyers Section, has recently begun a column concerned with legal ethics. The regular feature is in question and answer format, designed to meet one of the stated goals of the Section's Ethics Committee—namely, to assist the young lawyer in handling the peculiar ethical problems that confront him. It is hoped that this column will provide the basis for future consultation concerning many ethical questions of the young attorney. Additionally, the Section is interested in highlighting—in *Barrister* or law reviews, under Committee auspices—any worthy article or note on ethical considerations confronting the young lawyer. Personnel interested in submitting inquiries or articles should contact: Kenneth L. Foran, Assistant Professor of Law, The T.C. Williams School of Law, The University of Richmond, Richmond, Virginia 23173. Professor Foran is co-chairman of the Young Lawyers' Ethics Committee.

Current Materials of Interest

Articles.

Note, "A Sixth Amendment Right to Counsel Under Article 15 of the Uniform Code of Military Justice" 72 MICH.L.REV. 1431 (June 1974). A 31-page note which discusses the extent to which military necessity qualifies the application of the Bill of Rights and the Sixth Amendment to military personnel and the substantive determinants of that right ("criminal prosecution" and "imprisonment") in the context of nonjudicial punishment, concluding that the right to counsel demands that the aid of a trained attorney be given to Article 15 respondents.

Hartnagel, "Absent Without Leave: A Study of the Military Offender," 2 J. POL. & MIL. SOCIOLOGY 205 (Fall 1974). A psychological study conducted while the author was at the Department of Psychiatry, Walter Reed Army Institute of Research.

Haddox, Gross and Pollack, "Mental Competency to Stand Trial While Under the Influence of Drugs, 7 LOYOLA OF L.A. L. REV. 425 (September 1974).

Taylor and Blitz, "A Case for Officer Graduate Education," 2 J. POL. & MIL. SOCIOLOGY 251. Followed by a critical comment by Margiotta on "How Much is Enough?", and a reply by the authors.

Dean, "The Illegitimacy of Plea Bargaining," *Fed. Probation*, Vol. XXXVIII, No. 3 (September 1974). The U.S. Probation Officer for New York City discusses the legal status of negotiated pleas as reflected in recent Supreme

Court decisions, agreeing with the National Advisory Commission on Criminal Justice Standards and Goals that they should be abolished.

Tague, "An Indigent's Right to the Attorney of His Choice," 27 STAN. L. REV. 73 (November 1974).

Creedon, "Lifetime Gifts of Life Insurance," 20 PRAC. LAW. 27 (October 1974).

Karcher, "A Lawyer Answers His Client's Queries On Will Drafting and Estate Planning," *Case & Comment*, Vol. 79, No. 6 (November–December 1974) p. 10.

Haemmel, "Paralegals/Legal Assistants—Five Years of Development and Growth, *Case & Comment*, Vol. 79, No. 6 (November–December 1974) p. 32.

New ABA Pub.

The ABA Consortium on Legal Services and the Public—whose seven-committee constituency includes the Standing Committee on Legal Assistance for Servicemen—has come out with a new bimonthly newsletter called *alternatives*. The publication is provided free of charge. Anyone wishing to be placed on the mailing list, or wanting to contribute news and feature stories, should contact: Linda L. Castle, Editor, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

By Order of the Secretary of the Army:

FRED C. WEYAND
General, United States Army
Chief of Staff

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