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TJAG Addresses Infantry Students

Remarks by Major General George S. Prugh, The Judge Advocate General of the Army, delivered to Advanced Class Students, The Infantry School, Fort Benning, Georgia, on January 6, 1975.

The Judge Advocate General has asked all staff judge advocates to have their commanders consider implementing orientation programs for new company commanders wherein various military environmental factors impacting on discipline can be discussed. An understanding of these concepts by the company commander can assist in his implementation of the preventative programs needed to head off disciplinary problems. General Prugh's speech to the Advanced Infantry Students contains some of his ideas on environmental factors and preventative law programs, and can be used as a basis for discussing such orientation programs for company commanders. Since many commands have some type of orientation programs in operation, their efforts may be directed at having these concepts inserted into existing programs.

I

In my job I do a lot of travelling to service schools, and last year one of the highlights of my trips was a visit to the Infantry Advanced Class here at Fort Benning. I had hoped to return again. Using our Secretary's new motto, "I'm glad you asked."

This will probably be my last opportunity to visit with you, for my four-year term of office expires in mid-year, and after some 34 years of soldiering I'll probably be leaving this exciting and worthwhile work for retirement and whatever it is old soldiers do.

What I'd like to do in the time alloted to me here today is to make a few observations about military law that may be useful to you as you gain greater responsibility in the Army. I'd like to speak briefly about where I think military law is going, and then I welcome your questions.

In your time in the service you've seen the Army undergoing a great many almost revolutionary changes. You've seen it operate in periods officially peaceful and yet very warlike in effect. Most of you have served in Vietnam. During this period you have seen changes in the Army's organization, its weaponry, the appearance of its people, and the attitudes held by servicemen. You've seen the Army emerge from a generation-long draft-operated force to become a new volunteer Army. In short, you know the Army pretty well and you know it's a dynamic and changeable institution.

There have been dramatic changes in the Army, alright, but in the law, both military and civilian, there have been equally dramatic changes during this same period. Many of you were on active duty during the '60s and, during that period the American criminal law fairly exploded. New applications and discoveries were made in the constitutional rights of the accused, the poor, and of others who want to be heard. These explosions have their effects upon the Army as an institution, upon its members, and upon you as troop leaders and officers. The question that guided the law profession was no longer, "What is the law?", but "What should the law be?" This questioning uprooted traditional American law—for American civilians and for American soldiers. Not only is the Army a reflection of the American people. It is clear the Army cannot stand apart from the American people nor can it stand apart from the American peoples' laws.

Military law has had its full share of changes, but it seems to me as I reflect on those now most of the changes are superficial. Changes in procedure, changes in form, but not much change in substance. Our system of military law has been remarkably well preserved for almost the full 200 years of the country's existence. It's basically the same system today that was used in World War I and in World War II but with some refinements which make it seem to be a good deal different than it really is. It is and remains an enlightened and fair system for administering criminal and disciplinary justice to a force committed to our national defense.

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The heart of our military justice system beats in the commander at the company level. That officer's knowledge and capabilities in making the military justice system work are the keystone for its application in the modern Army. A few years ago, a young officer summarized his thoughts as a commander in an article in *Army* magazine. He said, "What it all boils down to is that military command is more difficult today because our society is more heavily stressing freedoms and rights." Authoritarian discipline collides with the current trend toward greater individual freedom. He said, "Leaders unwilling and unable to adjust to this trend will fail."

And yet it must also be true that the leader who cannot achieve *teamwork discipline* is similarly doomed to fail. It is my view that this adjustment to the stress on freedoms and individual rights is fundamentally an American characteristic. It is not new for us but, on the contrary, has been a consideration for American Army officers ever since 1775; it need not be a difficult adjustment for any good troop leader to make; and with adequate knowledge of the system, of the tools of the trade so to speak, the American military leader's role is not an insurmountable one.

One of the very first points to bear in mind is that the law used to punish criminal and disciplinary violations is the same law that vests you with your authority to command. It's the Constitution and the acts of Congress expressed in the Uniform Code of Military Justice and in the decisions of our federal courts which give us the authority to act and which require obedience. We in the military service know how important obedience to lawful orders is, even when we feel that the order is incorrect. Even if we should conclude that a law does not serve our particular needs, there is no question that our compliance with that law must be a fact. In the past year we have seen what tragedy can occur when people place their own causes, no matter how well intentioned, above the law. I mention this not because I believe this is a serious problem that arises with any degree of frequency in the service, because it does not. But I mention it to underscore the fact that our authority as commissioned officers stems from the Constitution and that the requirement for obedience stems from the Uniform Code of Military Justice, Congress's enactment of the rules for the government and regulation of the land and naval forces. As we value this authority and this trust

which Congress has placed in the commissioned officer, so it behooves us to insure the workability, the strength, the effectiveness of the Uniform Code of Military Justice.

In short, your stake in the UCMJ is as great as anyone's could be. If you don't defend it and if you don't see that it works properly, then who will?

II

One of the first bits of legal learning that I would pass along to any officer is that it's important for him to adopt at the outset a healthy attitude of absolute fairness and objectivity in disciplinary and law matters. As much as possible, he should cause himself to stand to one side to look at the whole situation as coolly and unemotionally as he can. He should consider himself a judge - a magistrate - which in truth he really is. And when he mentally dons the judge's robes, he will consider all of the relevant, all of the reliable information that's available, that he can obtain before he makes any decision under the Code.

This brings me to mention to you one of the subjects which I've been concerned with for some time. For want of a better name I've referred to it as the military environmental factors in discipline. Someone else might look at it and say, "Well, it's just what any good leader, any good commander, would be looking for anyway." I made this discovery for myself, at any rate, while I was serving as a member of the Secretary of Defense' Task Force inquiring into the administration of military justice, and attempting to assess the existence of racial discrimination within the system. In the course of this I had the opportunity to look at four Army and two Marine divisions in a period of about six weeks. In examining the statistics and the records that we had from these different commands, it became apparent that there were certain significant environmental factors that impacted directly upon each of these commands, which, as you analyzed, helped to explain some of the disciplinary problems and the approaches to resolving them that the various commanders of these divisions had employed. Let me just start off with a very simple situation. Take for example an infantry battalion that's assigned to an area of very difficult terrain and relatively few recreational facilities, as upcountry in Korea. Let's say that it has operational requirements that prevent a liberal pass policy but nearby there are support units in which soldiers are seen to be able to enjoy a pass policy. It shouldn't surprise anyone, under these circumstances to find a relatively large number of AWOL's in the infantry unit. The theory exemplified here is that all soldiers are affected by their military environment, and bad environmental factors will lead soldiers into disciplinary problems and probably result in military justice proceedings.

Now, you might ask what does this really mean for you. I suggest to you that upon the assumption of command or a senior staff responsibility the real pro who is charged with supervising or administering to the discipline of troops will look at the various environmental factors and make an assessment on his own as a disciplinary estimate of the situation.

III

Let's take just a few more illustrations. Consider the mission of the unit. Now we know that the living conditions of troops are often affected by the unit's mission. If the unit has a tactical mission or a contingency mission, different stresses are placed upon troops than, say, in a training mission. While one of these missions may be more rigorous or physically demanding, the other may be more regular, more orderly, possibly more monotonous or routine. What's really important here, then, is that the unit's leadership recognizes the difference of the set of stresses, if you will, and adjusts accordingly.

A second factor is the physical location of the unit. A unit which is stationed in CONUS, particularly one in a large permanent base, is certainly likely to have a different set of disciplinary stresses than one that's stationed overseas. Within these two large categories there are great differences. It's obvious that a unit that is assigned a remote area should expect different personnel problems than one that has nearby facilities for recreation, for transportation, for family housing, and for off-duty job opportunities.

As a third factor I'd mention the adjacent civilian environment. This impacts directly on the offense incidence of a command. Certainly so in the sense that it may make maintaining good discipline easier or harder for the unit's leadership. A friendly town nearby where servicemen are welcomed and when off duty can melt into the local population is a real asset for a commander. This is especially so if there is plenty of

healthy recreation available at prices the serviceman can meet, where families can obtain housing, and where there are job opportunities. You'll find that in such a place the military justice statistics remain low and even the pernicious effects of racial difficulties are minimized. On the other hand, a community with a high crime rate, with flagrant corruption, ready access to drugs and prostitution, or a police force that hassles servicemen is certainly likely to have disciplinary tensions.

As a fourth factor, I'd take a look at tactical restriction. Our mission includes being prepared to fight in the nation's defense under widely varying missions, and, so of course this means that in some places, say, as in Korea, units will have pass or strength requirements that are quite different from those in other locations, even other overseas areas. Compare the tactical restrictions on units north of Oijom Bu and units in Seoul. Because of differing tactical requirements, units will have a different training emphasis. Some units will have a different attitude toward uniform wear, in part, hinging upon the particular tactical environment in which one is found. Some units may, because of the tactical commitment, even have a more paternalistic attitude about the off-duty conduct of its members. I saw this quite markedly in my recent visit to Korea. A paternalistic attitude concerns the leader about what his troops do off-post and off-duty, while the contrary attitude cares not at all what the troops do then so long as they are fit to perform when on-duty. The attitude of paternalism is strong in most Army and Marine tactical units but it collides head-on with some attitudes of individual freedom found in civilian life.

A fifth factor I would mention is personnel limitations. Certainly the absence or the shortage of leadership personnel, particularly junior leaders serving with small troop units, will have a direct relationship to the effectiveness of preventive law programs, and it will make the demands greater for good leadership upon the part of those who are serving. A shortage of onboard strength adds stresses to the existing manpower that is expected to accomplish more with less, and under these circumstances friction is far easier to generate. There are some other personnel limitations that appear - such as the lower general education levels in certain types of units. A shortage of legal personnel and legal clerks may be a factor, as is a shortage in the housekeeping personnel which requires the diversion of troops from other duties. Incidents of MOS mismatch would certainly seem to be relevant. The more severe these limitations are the more likely that there will be disciplinary stresses and additional military justice actions.

I look at another factor—rotation policies. One environmental factor that seems to be repeated with greater frequency than others having an adverse effect is rapid personnel turbulence. This leads to inadequate supervision, lack of knowledge of troop personnel by their leaders, and uncertainty of personnel policies by those leaders. Personnel turbulence increases the need for retraining and it also increases the need for repeated explanations of the workings of such things as status of forces agreements if you're overseas, or of the UCMJ and the *Manual for Courts-Martial* if you're anywhere.

I would add, in this hasty survey of environmental factors, those which deal with the facilities conditions. Poor billets, inadequate transportation for off-duty periods, deficient recreational facilities, absence of minimum essential privacy in the billets, and the poor safeguarding of personal property, relate directly to the offense rates in a particular command. I might say that these conditions are exacerbated where great variations are readily apparent to the troops. In other words, if they can see adjoining units enjoying much better facilities than what they have the discontent level rises.

Another set of factors that I would look at are the complaint channels. Where complaints can flow relatively freely to the level of the command that can resolve them, then most tensions, including disciplinary tensions, are reduced. To the extent that there are blocks in this flow of complaints, whether it's by NCOs or by other officers, then the risk of the rise in tensions is enhanced.

Now obviously I can't list here all the key factors. In fact, I'm probably not as aware of them as you would be, for you are closer and have a greater opportunity to observe. I hope that you will add to this list yourself. A few additional ones that come to my mind as impacting on discipline, law, and order are leader attitudes about race, about discipline, about off-duty conduct, and about paternalistic authority. I think the attitudes of certain staff officers, such as even your judge advocate or your provost marshal, or your inspector general, or the equal op-

portunity personnel, are important. And there's also an intangible, that for want of a better description you might call the unit reputation. This is the attitude of the men of the unit concerning its conditions, its environment, its effectiveness, its value, its attitudes generally.

IV

I don't suggest for a minute that an analysis of these various environmental factors, these that I have listed and others which you might ascertain, would resolve the disciplinary problems. But if a careful estimate is made of the situation by a commander, taking into account all of these factors, he will be much better prepared to meet and deal with the disciplinary problems that he is likely to face in his particular unit. I suggest to you that this is an area where much more study should be given - not by the military lawyers - but by troop leaders - by men such as yourself who could add to the knowledge in this area and help to forearm those who follow behind us.

After you have made an analysis of the environmental factors that impact on the discipline of your command, the next step is to determine what you should do with it. I would start by isolating what are found to be the critical troublespots, the kinds of factors that suggest serious disciplinary problems could easily start or be fostered by those particularly important environmental factors that you have determined. For example, these might be identifying certain geographical problem areas, particular places, which are sources of serious difficulty for your command. Or you might want to pin down the impact of the particular pass policy, or you might note some stress points that are due to your training requirements. And, along side of these, you would then want to know some facts which are not readily obtainable through your own resources. Here you are going to have to turn to certain staff officers to give you a factual basis. A good place to start, of course, is the local provost marshal. Now he can tell you about the nature and the volume of serious incidents in the command during the recent past. He can give you advise and information of a general nature. He can also give you information about off-post offenses. This is a frequently missed area by many commanders who are not aware of the fact that since the Supreme Court enunciated the decision in the *O'Callahan* case the courts-martial have lost jurisdiction over nonservice connected offenses in CONUS. That fact that the offense is nonservice connected does not mean that it's any less of a disciplinary problem to you or the Army. the place to find out information about this is through your local provost marshal, who should have access to reports from the local law enforcement people. The provost marshal can also tell you about the volume of reported barracks thefts and of recoveries. This is particularly important today in the Army. Barracks larcenies have a distinctly adverse effect upon command, and the incidence of these in the Army today remains very high. Larceny and robbery make up about one quarter of all serious military crimes. I would suggest that with the relatively high rate of pay for servicemen today and the potentially adverse economic situation, we are likely to see a greater incidence of on-post robbery, thefts and theft claims in the future. I keep track of these Armywide, and I can say that there is little evidence of success in suppressing these offenses in recent years. But certainly we must do this if the volunteer force is expected to succeed. Who wants to be subjected to the ripoff on his post and in his barracks and quarters?

Another staff officer that I would visit in my initial orientation concerning the discipline in the command is the local Judge Advocate Claims Officer. Again, this is one who is frequently missed by commanders. He can give to a commander some real facts indicating the number and the value of recent theft claims and other claims, like accidents, which may have an important bearing on the personnel of your command. He also can give you figures concerning neighboring commands against which you can make comparisons.

Another staff officer that's worth talking to is the Judge Advocate Legal Assistance Officer. He can give information about the kinds of legal assistance problems that are characteristic in the command. Of course he cannot divulge confidential information concerning particular cases, but he can tell you, for example, about any unusually large number of domestic relation cases or debt problems which may be characteristic. He can probably tell you about unscrupulous local civilian vendors who make a business of preying on servicemembers and their dependents.

The Local Community Services Officer, Safety Officer, Army Emergency Relief Office, and the Red Cross people are also good sources of general information about people problems in

your command. Unfortunately these, too, are frequently ignored.

A careful study of the record of nonjudicial punishment which your unit keeps or the units within your command keep will give considerable information. You'd want to look at the reasons for the nonjudicial punishment, the number of repeaters, and the kinds of punishment which are used. They will tell you quite a bit about a unit.

I would suggest spending some time in informal talks with your servicing staff judge advocate, whether he is at a general or a special court-martial level. For example, you can learn from him how long it takes in the command to process different kinds of cases, how long it takes for a soldier to obtain defense counsel advice, and where and how he gets it, what kind of law service is available on call to the unit commander who needs legal advice in preparing charges and the procedures for him to use, what alternatives to court-martial are the most useful in the command, and whatever special policies the command has in the discipline law and order area.

At an early opportunity, I'd suggest that you would want to have a first hand look at the local confinement facility and familiarize yourself with the procedures for putting a person into it and getting him out. It's surprising how few commanders actually go inside the confinement facility to see what it's like, to smell it, and to feel it. I'd also suggest a visit to the local correctional custody facility, if there is one. If there is not one available, I'd want to know why there isn't and I'd want to take a look at whether one should be started.

I know that no one in this audience would overlook a discussion with the Command Sergeant Major and with your own senior NCO's in an informal way designed to getting them to open up with you.

Frequently, chaplains and medics are a good source of general information impacting on a unit's discipline. And, of course, the inspector general and the equal opportunity officers have valuable information about potential trouble-spots in the command.

V

After you have found all the disciplinary facts that you can lay your hands on, then your next step is to draft a preventive program. And, I would pronounce that *prevent* like the *prevent* defense in football. What you're trying to do is to head off disciplinary disasters before they occur. In setting up such a *prevent* defense, the first thing you would want to do, of course, is to check your own policies to see that they are not a source of difficulties. Secondly, you would want to determine what action, if any, you can take about the external environmental factors that we've just discussed, considering, for example, off-limits sanctions or warnings or the use of patrols or observers. And thirdly, you would want to look to the internal matters - like the presence within the barracks of noncommissioned officers around the clock or the adequacy of the protection of private property in the barracks, or the availability of marking devices and storage facilities for high-value items, or the proper street and facilities lighting which helps to reduce the incidence of crime, the frequency and content of health and welfare inspections, the frequency of checks on the noncommissioned officers to insure they know the men, their whereabouts, their strengths and their weaknesses. You would want to scrutinize the weapon security and the controls over them. You would want a check on the condition, the use, and the availability of recreational facilities, and program for their use, and you would want a review of the leave policy and the leave records. You would want to be sure that the contents of unit safes are constantly known, and that the inventory of valuables isn't in the same place as the valuables.

I know that none of these things are new to you. You've commanded units - many of you have commanded in combat, and so what I'm reviewing for you may seem to be old hat. I go over it because it seems so easy to forget and to push these matters aside in the press of other work. There is never enough time for all the preparations we know we can take before we're required to act. But the more familiar we are with the sequences of things to do in order to be prepared, and the more often we go over them, in actuality the fewer the disciplinary problems that will catch us unprepared.

Well, so far we've covered the idea of a philosophy behind the use of the UCMJ. We talked a bit about environmental law factors, and we've considered the preparation of a *prevent* defense.

VI

Now, let's address, for a minute, what attitudes can do for us when disciplinary cases do

arise. I've already mentioned one of these attitudes - a key attitude, and that is to keep cool and objective - not to let your personal emotions influence your judgment in a disciplinary matter. When emotion comes into the picture, usually justice goes out the window. But the next step that I think is important and that I urge you to make is an early appraisal of whether a particular offender you're dealing with is worth retaining in the service, or should be released from the service as soon as possible. This is a fundamental question, which if resolved early will help you in knowing the direction in which you should aim your actions. I suggest that you should resolve the doubtful case by coming down on a side of trying to retain the person and making a soldier out of him. I stress the usefullness of this decision because it helps you to find the right course of action for the disposition of the matter. If you're convinced that correction can only be achieved by substantial confinement time, then it's probably true that the offender will never become a good soldier. I endorse the thought that usually when we send a poor soldier into confinement we get a bad soldier out. Only a few can rehabilitate after extensive confinement. If, however, you determine that only some brief confinement will do the job in correcting a particular offender, then, of course, you are also determining that this is a matter whach ought to go before a court-martial. Your flexibility in determining the adequate alternatives is much reduced when you're going the route of courts-martial. If you should determine that confinement is not necessarily the best way to correct the offender, then, of course, you have expanded the scope of measures which are available to you, to include a substantial list of administrative actions, short of nonjudicial punishment, and then nonjudicial punishment itself, which is a fairly quick and responsive method of dealing with disciplinary matters.

A third, and by no means less important, method of disposition, is the administrative separation of the offender, once you have determined that he just is not a fit soldier or a suitable one. There are a variety of administrative measures that are available for the early separation of a soldier who simply cannot make the grade, and it certainly is a policy of the Army to rid itself of such people rather than to hold them on duty using up space, time, money, effort and demands upon leadership merely in order to keep them around for punishment purposes. This is hardly a useful rationale for a volunteer Army.

VII

Summarizing very briefly what I've covered so far, I would make these points. First, that we have a very useful military justice system that can be responsive to the needs of a commander, but it does place upon a commander considerable responsibility for knowing how it works and being able to apply with precision the various provisions in the whole spectrum of alternatives that are open to him. This is a difficult thing to do unless the commander is going to put considerable time and effort into comprehending and practicing his responsibilities under the Code.

The second point is that there is a great deal to be learned about the disciplinary situation of a command by looking at the environmental factors and that these vary with each command.

A third thing that I've referred to is that there are many facilities available to a commander — many sources of information which can give him a pretty good forewarning to the kinds of disciplinary problems he will face and upon which he can base a meaningful strategy that is preventive in nature, designed to reduce the significance of the disciplinary cases that do arise.

The fourth point is that it's crucial to any officer operating under the Uniform Code of Military Justice to have proper attitudes about the way in which he is going to apply his power, and if he has framed these attitudes adequately, it will greatly ease his particular burdens under the Code, and will probably achieve for him better results in the long run, especially with respect to the disposition route which he chooses for particular disciplinary problems.

As you see, we are becoming much more sophisticated with our use of military law. This is not so much the result of the workings of military lawyers as it is the increased sophistication of our people, with regard to what they see as the legal rights of American citizens, to include servicemen.

VIII

Well, where does this leave us concerning the UCMJ in the future? You know that there have been several proposals introduced into Congress which would radically change the Uniform Code of Military Justice, pushing it generally in the direction of further civilianization - making it, in other words, closer to what we visualize the law is in the civilian courts. This is a worrisome thing to me because it seems to me that

the civilian law record is not a criteria for us. Neither is it particularly successful. On the other hand, the record of the UCMJ in time of war or combat or emergency has not been a particularly reassuring one, either. I think that there are many problems in the operation of the Code in a major combat situation, and moving farther into the direction of civilianization is merely going to aggravate the performance of the Code in time of combat. So I am presently looking at the Code with a view to combat conditions, while we still have available some of the men who have seen it tried in wartime or emergency conditions - Korea, Vietnam, the Dominican Republic, and so forth. Pending this time of war study I would like to try to hold off on substantial changes to the Code. This is not to say that there aren't some minor refinements which we can consider, or minor improvements that would make it operate a little bit more efficiently.

One of the areas that we are presently spending a lot of time on is to develop something that will speed up our processes and make them more accurate, more modern. The use of television-tape is one such device. Actually, in my visit last year to Fort Benning, when I saw the way television-tape was being used in your training in the Career Course, it struck me that this would have considerable implication and benefit to the military justice system. And so The Judge Advocate General's School is presently at work to develop our doctrine with respect to that. The potential is great for savings of time, manpower, for accuracy, for the preservation of records and testimony which would otherwise be lost.

I do visualize a gradual reduction in the volume of courts-martial cases and a growing capability by the Army to divert the legal resources, the judge advocate officers with whom I deal, to more effort in the direction of preventive law and the performance of legal services for the good soldier who is not in trouble with the law. I think one of the best developments of recent months has been the use of a judge advocate assigned, dedicated, if you will, to providing legal advice to commanders. This is now being done in most tactical units so that a judge advocate is available at least at brigade or special court-martial level to provide advice directly to the commanders concerned.

One of the studies that is under way at the moment concerns itself with the random selection of members. This is quite a dramatic change from anything that the Army has had in this respect for some 200 years. But it's a little too early to say very much about the results of our test, which has been underway at Fort Riley, Kansas for about a year. Actually, most cases are tried by judge alone. In about half of all of the courts-martial, the accused pleads guilty. So it's a little difficult to date to point to the real value or to the problems that are developing in connection with the random selection method. But it is a matter in which I'm sure you will have an interest and which you will want to keep your eye on.

Well, in this time I've had only a brief opportunity to mention a few highlights about military law. I hope it is sufficient to plant a seed of curiosity in your minds so that you will follow up to be sure that you understand pretty clearly what your responsibilities are in this very important area.

I appreciate this opportunity to talk over these matters with you. I hope that you'll find the comments of some value, and that they will trigger some further questions on your part. I welcome those questions. Thank you.

The Initial Interview with a Criminal Client*

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The initial interview in a criminal case is probably the most important discussion that counsel will have with the client. It largely shapes the client's judgment of the lawyer; at the least, it gravely influences all future dealings of the two. The lawyer's primary objective in the initial interview, therefore, is the establishment of an attorney-client relationship grounded on mutual confidence, trust, and respect.

To gain a client's confidence, it is necessary for counsel to convey his sincere interest in helping the client, as well as to project the image of a competent, knowledgeable lawyer. The client must be given an adequate opportunity to explain his problems, and counsel must be able to give reasonable answers and assurances to any questions needing immediate attention.

Preparing for the Interview

Proper preparation for an interview is necessary to achieve the objective of inspiring confidence and trust in the client. In the course of locating a client in custody or of checking out the status of a "wanted" client, counsel will ordinarily have spoken to the desk officer in the arrest precinct or in the client's home precinct, as well as to the investigating officer. In these conversations, he should be sure to learn the specific charge against the client and any other charges being considered.

If counsel has the statute books at hand or can get them quickly, he should take the time before the initial interview to look up the elements of the offense, and particularly the penalty, including any applicable recidivist sentencing and parole provisions. It is important that counsel be acquainted with the elements and penalties, both to avoid floundering when taking the defendant's story and to answer the question—usually the client's first inquiry of counsel—as to the kind of a sentence the client is facing.

If counsel gets the chance without significantly delaying the initial interview, he should also try to learn from the investigating officer the sort of factual case the police have against the defendant. However, with a defendant in custody, it is more important to get to him quickly than to tarry to speak to the police about the case.

tion, American College of Trial Lawyers, and National Defender Project of the National Legal Aid and Defender Association.

Putting the Client at Ease

Psychology is important in striking up an attorney-client relationship. Remember that the criminal client is a person in trouble, and that the last thing he needs is more trouble from counsel. For most people, making a new aquaintance is difficult in itself. It places demands upon their personality by requiring an effort to create a good impression and by exposing them to the fear of being judged inadequate or "put down."

Counsel should therefore make the beginning of his initial interview with the client as undemanding as possible. Questions should be kept very simple until the client's abilities to think and express himself have been evaluated, and then should be kept well within the limits of those abilities. Any indication that the client is making a bad impression or is failing to provide what counsel wants should be avoided. To the contrary, counsel should convey the image that the client is doing well and giving helpful information.

The client enters upon this meeting with certain preconceptions about lawyers generally that may be far from favorable. Counsel should attempt to eliminate or, at least, alleviate these impressions by conveying the idea that his only interest is to serve and help the client. He should say that he is there to represent the client and to do everything necessary to protect the client's rights, and in order to make sure that nothing is overlooked that could help the client, counsel needs certain information. If the relevance of counsel's questioning to the client's needs and interests is not perfectly obvious—obvious, that is, to a layman, not a lawyer—counsel should explain why he is asking the questions. He should avoid giving the client any grounds for suspicion or confusion about the lawyer's role or loyalties or motives, which may arise if the lawyer begins to ask for information without saying why he wants it.

Counsel should ascertain and respond specifically to anything in the immediate situation that is bothering the client or making the client afraid, and should promise specific help if he can deliver it. The client should be made to feel comfortable and secure in the presence of counsel. When explaining something to the client, it is usually better to say "okay" than "do you understand that?"

Whatever the client tells counsel should be received with interest, an attempt to under-

stand, and patience, as under stress the client may be rambling and inarticulate. He should not be shut off without explanation—or at all, unless time is pressing. When he must be turned from one subject to another, counsel should explain the need to change the subject in a way that does not make the client feel like a fool.

Convincing the Client

It is not easy for a lawyer to convince a client to trust him when the client has never seen the lawyer before, and particularly when the lawyer is "the law," along with the police and the judge; he has no reason to believe that the lawyer is on his side. His distrust will likely be greater if he is indigent and the lawyer is court-appointed, since, in his experience, things one gets for nothing are ordinarily worth nothing, and the only sure way to obtain loyalty is to buy it.

In order to overcome these attitudes, it is seldom sufficient to promise the client that counsel is going to do something for him; counsel must actually do something for the client. Consequently, it is important in building the attorney-client relationship that, when possible, counsel take early effective action that visibly benefits the client, such as stopping police mistreatment, getting the client released from jail, or standing up firmly for the client in front of an impatient or overbearing magistrate at preliminary arraignment. At the preliminary interview, though, there is often little of immediate practical consequence that counsel can do for the client to win his confidence.

Counsel can, and should, state clearly and forcefully, "I am *your* lawyer; my job is to represent *you*, to go to bat for *you;* and I intend to do everything that can possibly be done to help *you* from now on in this case." However, abstract protestations of this sort cannot be developed or repeated too much without their beginning to sound hollow; and a useful way to emphasize counsel's fidelity to the client, without seeming to sell himself to the client in the manner of a used car salesman, is to find some obviously relevant, operational reason for describing counsel's role.

Explaining the Attorney-Client Privilege

Often, the best occasion comes in connection with an explanation of the attorney-client privilege—an explanation that is independently desirable, in any event, in order to assure the client that he can tell counsel his story in complete confidence. Counsel may say something like this:

"Now, I am going to ask you to tell me some things about yourself, and also about this charge they have against you. Before I do, I want you to know that everything you tell me is strictly private, just between you and me. Nothing you tell me goes to the police, or to the District Attorney, or to the judge, or to anybody else. Nobody can make me tell them what you said to me, and I won't.

"You've probably heard about this thing they call the attorney-client privilege. The law says that when a person is consulting with his lawyer, what he tells his lawyer is confidential and secret between the two of them. This is because the law recognizes that the lawyer's obligation is to his client and to nobody else; that he is supposed to be one hundred per cent on his client's side; and that he is only supposed to help his client, and never do anything—or disclose any information—that might hurt the client in any way.

The District Attorney is the one who is supposed to represent the government in prosecuting cases, and the judge's job is to judge the cases. But the law wants to make sure that even if everybody is lined up against a defendant, there is one person who is not obliged to look out for the government, but to be completely for the defendant. That is his lawyer.

"As your lawyer, I am completely for you, and I couldn't be completely for you if I were required to tell anybody else the things that you say to me in private. So you can trust me and tell me anything you want without worrying that I will ever pass it along to anyone else, because I won't. I can't be subpoenaed or questioned or made to talk because I am 100 per cent on your side, and my job is to work for you and only for you; and everything we talk about stays just between us. Okay?"

The Importance of Truth

After explaining the attorney-client privilege, counsel should emphasize how important it is for the client to tell counsel the truth, the whole truth, and the exact truth, and that the client should not hold anything back or be embarrassed or afraid to tell counsel everything, even if the client will look bad. If the client has done whatever he is being charged with, or any part of it, counsel must know; the

failure to tell counsel every detail will badly hurt the presentation of the defense. Counsel's job is not to judge the client, but to represent him whether he is guilty or innocent; and that is exactly what counsel intends to do. But to do it well, counsel has to know the truth.

It may be helpful to state that counsel is eventually going to hear the prosecution's version anyway, and that he cannot be prepared to handle this presentation if he hears the facts for the first time in court, in front of judge and jury. The client should be told that "the question is what a judge or a jury is going to believe, so I want you to tell me the worst possible things that the prosecution's witnesses might say, or that the prosecution may be able to prove, as well as your own recollection of everything that actually happened." He may be told that "I have seen defendants get crucified in court, even where they were innocent, because they didn't tell their lawyer all of the damaging circumstances—all of the evidence that might point to guilt—that the prosecution might come up with."

Through all this, counsel must remember to scrupulously avoid showing any sign of reprobation or moral condemnation of the client's conduct, or the client will take the clue and begin to hide the worst.

Note-Taking

At the outset, it is usually good to talk to the client, at least for a little while, without taking notes. This establishes a human rapport and does not communicate machinelike dispassion. Before too long, note-taking should begin. It may be begun, and a good impression of competence and interest conveyed, by counsel's summarizing orally while writing it down, what the client has thus far said that is important. At the same time, clarifying questions can be asked.

Long periods of writing in silence should be avoided, except as a tactic to unnerve the client when counsel believes that the client is lying to him. If an extended note has to be made, counsel should say aloud what he is writing as he writes.

Once the serious business of getting the client's story begins, it is advisable to put down in detail what the client says. These notes will serve to refresh the lawyer's and the client's memories later. They may even be admissible at trial in the client's behalf, if the prosecution seeks to create the impression that the client's trial testimony is a recent fabrication. In addition, notes will shield counsel from unwarranted attacks, such as inadequate representation and suppression of facts favorable to the defense, should the defendant ultimately be convicted. It is generally wise to read the notes to the client and, at the end of the interview, to have him sign and date them.

The Problem Client

Foreign language clients whose English is weak obviously pose a problem. In urban areas, an interpreter can usually be found. If there is none in the courthouse complex other than persons allied in interest with the prosecution, nongovernmental social work agencies should be tried. A relatively disinterested interpreter is usually to be preferred to one from the client's family, who may intrude his own personality into the interview and before whom the client may be ashamed to tell the truth. As a last resort, a family member may have to do.

English-speaking clients with low verbal ability, deficient intelligence, or mental illness have to be handled on an individual basis as counsel's good sense dictates. If counsel if having trouble understanding or making himself understood by the client, a relative or a friend who has had long-time dealings with the client may aid communication, although that procedure raises the same dangers as getting an interpreter from the family.

Counsel who is dealing with an impaired client should try at the outset to determine as well as he can the areas and dimensions of the impairment. Careful observation may lay the foundation for a later decision to have the client mentally examined and may provide facts to support an application to a court, if that proves advisable, for court-ordered and state-paid examination. In addition, the degree of the client's disability may prove significant in later attacks on a confession to police, on purported consent to police search and seizure, and on other purported waivers of rights by the client in the early stages of the criminal process.

Getting the Story

Obtaining information from the client is a fine art and a vital one. At the outset, it is good to let the client tell the story in his own way and with few interruptions, for thus:

- The client is most at ease;

- The lawyer learns what the client thinks is important;
- The lawyer receives unsolicited details on which, if he suspects untruth, he can cross-examine the client later; and
- The client reveals his intelligence, his verbal ability, and how his mind works.

The journalistic "who, what, why, when, where, and how" approach is suggested as a means of filling in details. A biographical sketch of the defendant and a full chronology of his involvement in this case, including police investigative activity and any judicial proceedings that may have been held, are necessary. These facts can be elicited by following the Interview Checklist found in the Appendix to this article.

After the client has told his story, specific questions on his version of the affair should be asked to determine whether all the legal elements of the charge against him have been made out. There is no sense in asking questions that may be above the client's level of comprehension. Apart fom this, unless the client is obviously lying and unless discovery of the truth appears immediately necessary for effective defense investigation, the client should probably not be cross-examined much during the initial interview. After some independent investigative efforts by counsel, and after the attorney-client relationship has had a little more time to solidify, there will be time for cross-questioning the client.

Custodial Complaints

In addition to physical abuse a client in custody may complain about lack of medical treatment, exercise, food, and numerous other things. Most of these problems can be corrected administratively by informing the authorities in charge about them. Counsel should see the commanding officer on duty if the client is in a police station, or the ranking jail official if he is in a jail.

Settling the Roles

To avoid later misunderstandings, it is imperative to settle, during the initial interview, the respective roles that counsel and the client will play in the defense. The client should be advised of his major rights—to be released on bail before trial, if bail can be made; to have a trial at which he contests guilt and insists that the prosecution prove its case; to hace a jury trial (when applicable); to testify in his own defense; and to be present and to have counsel present at every judicial proceeding in his case. He should be told that counsel undertakes to present every defense that the law permits to protect the client's rights and none of the rights just mentioned will be waived without the client's express consent.

The client will also be advised of all developments in the case, and when decisions of any consequence have to be made, the possible choices will be described and discussed with him and, unless time does not permit, no decisions will be made until he has had full opportunity to consider the possibilities and to give counsel his best thinking about them. Nonetheless, since counsel is representing the client as an attorney, counsel is ultimately going to have to be responsible for those decisions. Counsel must control the strategy of the defense and have the final say about what points will be raised, what witnesses will be called, what discussions will be had with the prosecutor and the judge, and all the when's and where's of the investigation and the trial.

The client must be made to comprehend that counsel is not a "mouthpiece" whose only job is to appear in court and say what the client wants. Rather, counsel's job is to plan, design, and carry out the best defensive strategy possible in the client's interests. That kind of planning requires decisions based upon thorough technical knowledge of the law, as well as experience in working with the law, the court system, prosecutors, judges, and juries in a wide range of situations. Counsel is simply not giving the client the proper kind of representation unless decisions in the conduct of the defense are made on the basis of counsel's best professional judgment, taking into account everything that counsel knows about the legal system.

Therefore, counsel should tell the client that he wants the client to inform him about anything that the client wants or needs, or thinks should be done, during their relationship; that he wants the client to give him any ideas and thoughts the client has about the conduct of the case; that he always works with his clients in thinking the case through, but that *he*, the attorney, has to make the final decisions.

Advice to Client

At the conclusion of the initial interview, whether or not the client is in custody and

whether or not he has previously been given such warnings, counsel should advise him:

- To say nothing at all to the police or prosecuting lawyers, to tell them nothing under any circumstances, and to reply to all questions by saying that his lawyer has told him not to answer questions unless the lawyer is present;
- Under no circumstances to discuss any offer or deal with the police or prosecuting lawyers in counsel's absence;
- To discuss the case with no one, and particularly not to talk to cellmates, codefendants, or reporters about it, but to tell anyone who wants to discuss the case or who has information about it to contact counsel;
- If the client is at liberty, to refuse to go anywhere with the police or prosecuting attorneys unless they have an arrest warrant, and to refer them to counsel;
- If the client is in custody, to refuse in counsel's absence to participate in any lineup or to appear before any person for possible identification; to refuse in counsel's absence to accompany the police or prosecuting lawyers to any place outside the jail, except to court; to object to any inspection of his body, physical examination, or test of any sort in counsel's absence; to request permission to telephone counsel in the event that the police begin any lineup or identification procedure or try to take any test; and, if put in a lineup or identification situation over his objection, to observe and remember all the circumstances;
- To refuse consent to anyone who may ask his permission to search his home or automobile or any place or thing belonging to him, unless that person has a search warrant;
- Not to make faces, cover up his face, or dodge if newspaper photographers attempt to photograph him; and
- To telephone counsel as soon as possible if anything at all comes up relating to the case—if anyone whom he does not know tries to talk to him about it, if codefendants tell him that they have made some sort of a deal, if the police tell him that codefendants have squealed on him, or if the client gets any new information about the case. The client should be given counsel's telephone number for that purpose.

Contact with Family

Counsel will ordinarily want to be in touch with the client's family very early in his investigation of a case. Obviously, the family will often be worrying about the client if he has been arrested and retained in custody, and the client will probably be troubled by the family's concern. It is therefore a good idea, if it is at all possible, for counsel to telephone or visit, or at least get a message, to the client's family, shortly following the initial interview with a client in custody:

- Reassuring them that the client is all right;
- Informing them when and how counsel will next contact them or how they should contact him; and
- Informing them when, where, and how they can visit the client.

At the close of the initial interview, counsel should offer to get in touch with the client's family and should ask whom to call. The client is undergoing a frightening experience, and any help that counsel can give him on a human level is crucial and appreciated.

Subsequent Interviews

Normally the client must be interviewed on more than one occasion. In counsel's preparation for trial, facts will be disclosed that were untouched in earlier interviews, and these must be reviewed and analyzed with the client. Increasingly, the client should be cross-examined in a fashion that will help preserve the lawyer-client relationship and yet get to the truth at the same time.

Appendix

What follows is the substance of a "model" or "ideal" interview, covering most of what the lawyer will have to learn from his client in order to defend him adequately throughout the several stages of an ordinary criminal case. These Interview Sheets should be completed following the initial interview. Circumstances often will not permit coverage in the initial interview of everything that is included here. When that happens, inquiry concerning less immediate background matters, such as educational military service, employment, family, and medical histories and the details of the police investigation may be deferred until subsequent interviews.

Interview Checklist

Attorney's file no.: _____
Criminal case no.: _____
Client's name: _____
Charges: _____
Date and hour of interview: _____
Place of interview: _____
Name of Interviewer: _____

Name (make the client spell even common names):
All aliases:

Address (if apartment or room, include number):
Phone (or phone at which he can be reached and name of person there):

Date of birth:
Place of birth:

Place of residence at time of arrest:
Prior places of residence (from latest to earliest):

Residence	From (date)	To (date)

Education:

	Name of school and location	Highest grade completed	Date last attended
Elementary:			
High School:			
Trade School:			
Other:			

Armed forces:
- Branch of service:
- Date of beginning of active duty:
- Date of discharge:
- Type of discharge:
- Rank at time of discharge:
- Any honors or medals:
- Combat service:
- Time overseas (place and dates):
- Any court martial charges:
  - Charge:
  - Finding:
  - Date of finding:
  - Sentence:

Present employment (separate notation of all employers, if more than one):
- Name of employer:
- Address:
- Type of business:
- Client's immediate supervisor:
- Client's job designation:
- Client's type of work:
- Pay (starting): (present):
- Employed since (date):
- Indicate season if seasonal:

If presently unemployed, check [ ]
Since (date):
Receiving unemployment compensation? [ ] Amount:
Other means of support:

Prior employment (all employers, from latest to earliest):
Name of employer:
Address:
Type of business:
Client's immediate supervisor:
Client's job designation:
Client's type of work:
Pay (starting): (at termination):
Employed from (date): to (date):
Indicate season if seasonal:
Reason for leaving:

Social security number:
Marital status:
( ) Single
( ) Divorced
( ) Married:
ceremonial ( ) common-law ( )

Wife:
Name:
Address:
Phone:
Employed:
Type of work:
Employer's name:
Employer's address:

Children:
Name: Age:
Name: Age:

Client's father and mother:
Name: Type of work:
Living [ ] Deceased [ ]
If living:
Address:
Phone:

Client's brother(s) and sister(s):
Name
Type of work:
Living [ ] Deceased [ ]
If living:
Address:
Phone:

By whom was client raised? Indicate if parents were separated during childhood. If client raised by a person other than a parent, get data for that person as if parent.

Does client use narcotics:
Type(s):
Since (date):
Present frequency of use:

Has client received treatment for a narcotics problem or participated in any form of detoxification program? Describe:

Does client use alcohol:
Volume of use:
If heavy drinker, since (date):

Has client received treatment for an alcohol problem or participated in any form of detoxification program? Describe:

Physical and mental condition:
Present physical disabilities:
Present physical illnesses:
Presently under medical care:
Doctor's name:
Address:
Phone:
Serious physical injuries (and all head injuries):
Type:
Cause:
Date:
If hospitalized, name, address, and city of hospital, and dates of hospitalization:

Has client even been in a mental hospital or institution (name and address of hospital):

Has client even been treated by a psychiatrist (name, address, and telephone number of psychiatrist):

Has client ever undergone psychiatric or psychological evaluation (circumstances; names and addresses of evaluators):

Prior criminal record (all arrests in all jurisdictions) from latest to earliest, including pending charges, and juvenile arrests:
Date of arrest:
Jurisdiction (city and state):
Charge(s):
Disposition, if not by court:
Plea (guilty or not guilty; if guilty, of what charges):
Trial by judge or jury:
Name of judge:
Court disposition (guilty or not guilty; if guilty, of what charges):
Sentence:
Date sentence handed down:
Name of attorney:
Address of attorney:
Time served:
Institution: Prison number:
Dates on probation or parole: from: to:
Name of probation or parole officer:

Rearrest for probation or parole violation:
Date of rearrest:
Violation charged:
Disposition:

Was client on probation or parole at the time of this arrest:
Probation or parole:
On which of the above prior charges (indicate by number):

Was client under any pending charges at the time wanted for arrest on other charges in any jurisdiction at the time of this arrest:
Jurisdiction:
Charge(s):

How client knows he is wanted:
Name of law enforcement agency involved, if known:
Name of officers involved, if known:

Present custodial status:
Jail (name and address):
Prison (name and address):

Prison number:

Bail:
Where posted:
When posted:
Amount:
Form (cash, property, professional surety):
If bonding company, name:
Who paid for the bill:

The client should be asked to tell in chronological order everything he knows about the present charge. Before terminating the interview, counsel should know at least the following:

Client's version of the events on which the charge is based; or, if the client denies involvement, where client was and what he was doing at the time of the events on which the charge is based:

Witnesses (indicate if immediate contact is advised for any reason):

Witnesses to the events on which the charge is based (including the complainant and persons who may be prosecution witnesses):

Alibi witnesses:
Character witnesses:
In each case, get name (spelling and all aliases and nicknames):

Address:

Phone number:

Other information helpful in locating the witness (where does he work, where does he hang out, is he a member of a union, is he on relief and where does he collect his check, etc., as appropriate):

Arrest:
Who was with client when he was arrested? Were they arrested?
Get information as for witnesses:

Was client drunk when arrested or had he taken alcohol recently:
Was he under the influence of narcotics or had he taken narcotics recently:
Was client ill when arrested:
Was client struck or roughly handled in arrest or thereafter (describe injuries):

Date and time of arrest:
Exact location of arrest:

Names of arresting officers:

Did they have a warrant:
What did they say the charge was:

What questions did they ask the client:

What did the client tell them:

Did police at time of arrest or any other time take property from the client's person, home, place of work, automobile, place where the client was, home or place of any other person:
Kind of property:

Did police have a search warrant:
Describe circumstances under which property was taken:

For all persons present, get information as for witnesses:

After arrest:
Every location to which client was taken by police:

Exact times of confinement in each place:

Number of officers present in each place (get names, ranks, and descriptions of each officer significantly involved in investigation):

Interrogation:
Where did it take place:
When and how long:
Interrogating officers:

Other persons present:
Was a lie detector test given:
What specific questions did the officers ask (this is often a good means of learning something about the prosecution's case):

Did the police confront the client with any evidence against him:

Did the police tell the client that any person had incriminated him, or that any codefendant had confessed:

Did any codefendant confess or incriminate the defendant in his presence:

Did client tell the police anything:
What, in detail:

Did client make a written statement:
Was his oral statement taken down:
Did he sign anything:
Were there any recording devices around:
Other circumstances at the time of the client's statement—in detail:

Was the client previously warned:
That he had a right to remain silent:
That anything he said could be used against him:
That he had a right to a lawyer before making a statement:
That if he could not afford a lawyer, one would be appointed for him before making any statement:
What did client say to these warnings:

Was the client given any physical examination:
Was a blood sample taken:
Was hair taken or combed:
Was a narcotics or alcohol test administered:
Was a body inspection of any sort made:
Was the client examined by a doctor or psychiatrist:
Where:
When:
Describe the examination, test, or inspection:

All persons present:

Did anyone say anything about what the examination, test, or inspection showed:

Was client asked for permission to make the examination, test, or inspection:
Was he told that he had a right to refuse or to have an attorney present:
Was the client exhibited in a lineup or brought, under any circumstance, before any person for identification:
Where:
When:
Describe the situation:

All persons present (including police, identifying witnesses, other persons in lineup, codefendants):

What did the police say to the identifying witness:

What did the identifying witness say:

Was the client asked to say anything:
Was the client asked for permission to put him in the lineup or to exhibit him for identification:
Was he told that he had a right to refuse or to have an attorney present:
Was he asked to do anything (move, walk around, speak):
Was he told that he had a right not to do these things:
What did he say or do:

Was the client asked to reenact anything (same subquestions as for lineup):
Was the client asked to give his permission to the search of any place or thing:
Where:
When:
By whom was the request made:
All persons present:

For what place or thing was permission to search requested:
What was the search supposed to locate:
What was said to the client by the person requesting permission:

What did the client say:

Was the client told that he had a right to refuse permission:
Was anything said about a search warrant? If so, what, specifically:

Has client appeared in court in prior judicial proceedings:
When:
What court:
Nature of proceedings:

Who was present (names or descriptions of judge, prosecutor, police):

Were charges read or shown to the client:
What were they:

Was the defendant asked to plead:
What did he plead:
Who testified:
What was the testimony:

Did the client testify:
What did he say:

Was he represented by a lawyer (name or description of lawyer and circumstances of representation; did the attorney give client his card, and does client still have it):
What else happened:

Was client given a slip of paper or a form of any sort?

If so, where is it: (Counsel will want to get this form from the client or his family as soon as he can, since it will usually state the charges and next court appearance date more accurately than the client can remember them, and will contain the court's case number).

Are there any codefendants:
Name(s):

If in custody, where:

If at liberty, get information as for witnesses:
Where appropriate, counsel should obtain:

Information relating to bail:
Client's signed release giving counsel the right to inspect all hospital, prison, and juvenile court records relating to the client (releases for each on separate sheets):
A signed retainer and fee agreement:

Travel of Witnesses

The following notice was sent to all Staff Judge Advocates from Brigadier General Lawrence H. Williams, Assistant Judge Advocate General for Military Law, on 12 February 1975.

* * *

The critical shortage of funds has affected all Army operations. Courts-martial are no exception. In particular the money available for the travel of judges and the travel of witnesses has been sharply curtailed. This means that there must be renewed emphasis on reducing, to the extent compatible with the needs of discipline, both the number of cases tried and the number of offenses charged.

In addition you should remind your chief trial counsel of his duty to oppose vigorously the subpoena and travel of witnesses who are not manifestly necessary and material to a fair disposition of the case. The request for "live" witnesses on extenuation and mitigation should particularly be opposed unless the trial counsel is satisfied that the accused can bear his burden of proving that personal appearance (as opposed to, say, a stipulation) is somehow vital to his case. In this connection, attention is invited to *United States* v. *Manos*, 17 USCMA 10, 37 CMR 274 (1967) wherein the United States Court of Military Appeals seemed to indicate that "live" testimony on extenuation and mitigation was not normally necessary if there was adequate "substitute" testimony.

In no manner should this letter be construed as implying that trial counsel should oppose travel of witnesses solely because there is a shortage of money. Justice, of course, cannot be measured in purely monetary terms. However, because of the shortage of money it is necessary that travel funds be expended only for those witnesses who are clearly necessary and material to a full and fair hearing. In the past, trial counsel, perhaps in an abundance of caution, often resolved all doubts in favor of the accused and did not always oppose requests for witnesses even if it was unlikely that necessity and materiality could be established.

Please give this matter your full personal attention so that insofar as is possible public monies are expended in a way that is consistent both with the rights of the accused and the rights of the public.

Improved JAG Field Offices and Courtrooms

By: Colonel Richard J. Bednar, Executive, OTJAG

A continuing responsibility of all staff judge advocates is to look for ways of upgrading courtrooms and office facilities whenever necessary to improve professional efficiency. Real economy is attained through having efficient facilities. Judge advocates, civilian attorneys, legal clerks and court reporters are the principal assets of the Corps. To give them equipment

and appropriate surroundings that expand their accuracy, efficiency and work volume is a worthwhile goal. Modern equipment stretches their legs and arms. Dignified courtrooms, regularly used, are beneficial in providing the atmosphere for this important and serious business. Accordingly, the outlay of funds, especially in times of economy, is a good investment for the Army. It is recognized that requests for improvements often must be deferred in times of economy for more urgent command priorities. Nevertheless, some commands have been able to set and bring their physical facilities to operational standards. Replies to a recent TJAG letter to all staff judge advocates evidence that substantial improvements in judge advocate physical facilities have been made recently at eight CONUS installations. Considering the general limitations of funds available for such projects, this news is particularly encouraging. Some of the projects mentioned below occurred during the past fiscal year; some are on-going.

At Fort Lee, Virginia, where LTC Richard P. Scheff is the JAG in charge, the SJA offices have been moved into a substantially better and more attractive building. Additionally, that office has arranged for new office equipment (MTST and Mag Card typewriters, a new office copier) as well as new furniture for the Legal Assistance Office.

At White Sands Missile Range, where Colonel Anthony A. Movsesian is SJA, significant improvements have been made to the courtroom. Over $3,000 was spent in acoustical materials and for new furniture for the military judge and other court personnel, including counsel.

At Fort Bliss, Texas, where Colonel Hubert Miller is Staff Judge Advocate, over $33,000 was expended to renovate the SJA offices. Nearly $15,000 was expended to upgrade the speaker system for the courtroom, the intercom system for the offices, and the shelving and furniture for the library.

At Fort Ord, California, where Colonel Viviano Gomez is the Staff Judge Advocate, the sum of $71,000 has been authorized for renovation of the office complex, to include judges' chamber, legal assistance and the office of each JA and civilian attorney. Additionally, new equipment and furniture have been approved to improve office efficiency.

LTC James A. Mundt, Staff Judge Advocate at Fort Carson, Colorado, reports that separate offices for defense counsel have been established at a cost of approximately $1,700. Moreover, nearly $15,000 has been expended recently for electric typewriters, dictating equipment, portable recorders, transcribers, and an office copier. Further, improved office furnishings costing approximately $2,500 have been added recently.

At III Corps, Fort Hood, Texas, where Colonel Hugh Clausen is Staff Judge Advocate, the defense counsel have been moved into a new office area so that each counsel now has a separate office, which adjoins a waiting room. Additionally, all offices have been refurbished by installing carpeting and drapes. Further, modern office equipment and new furniture have been acquired to improve the efficiency and environment.

At Fort Riley, Kansas, Colonel Charles P. Dribben, SJA, states that over $14,000 has been approved for renovation of the two courtrooms. Further, new furniture, drapes and paint have been authorized or acquired as part of the renovation program.

At the 82d Airborne Division, where LTC Earle F. Lasseter is Staff Judge Advocate, significant improvements have been attained. These include new courtroom, modern offices for trial counsel, defense counsel and legal assistance, plus new office equipment and office furniture. The result is greatly improved individual efficiency, office morale and dedication.

This fine progress is a direct result of the energetic efforts of those named SJA's and their staffs. In some cases, spade work was begun by their predecessors, who also deserve credit for ultimate achievements. These examples of what can be accomplished by initiative, imagination and aggressive persistence stand as a challenge to all SJA's to strive for improvement of their professional environment.

New Labor Law Office in OTJAG

On 1 January 1975 the Civilian Personnel Law Office and the Industrial Relations Team, Procurement Law Division were consolidated into a new Labor and Civilian Personnel Law Office, OTJAG (DAJA-LCP). The Civilian Personnel Law Office provided legal services for adminis-

tration of government employees, including federal labor-management relations, and represented DA before the United States Civil Service Commission and the United States Department of Labor. The Industrial Relations Team furnished legal advice concerning labor law as it arose in cases involving government contracts. Both offices were, then, essentially concerned with substantive labor law.

The OTJAG "labor law" office will perform the functions of the two former activities and provide increased flexibility in operations by shifting legal resources to problem areas when required. The common discipline of labor law and the parallel application of labor standards for both government employees and contractor employees will permit expanded legal services to the Secretariat and the DA staff. The four incumbent attorneys all have extensive professional experience in both public sector and private sector labor law.

The DA Labor Counselor Program will be expanded to provide legal services to contracting officers on labor problems. Technical information in support of the program will be forwarded to labor counselors through their Staff Judge Advocates and General Counsel. The establishment of this new legal office recognizes the growing influence of labor unions on all DA activities and provides a focal point for legal services, legislative research, and management representation before other federal agencies responsible for administering labor and employment laws and regulations.

Personnel Law Litigation: A Supplement

The following case citations are included as a supplement to an earlier listing of federal decisions in the area of personnel law litigation which appeared at page 11 of the September 1974 issue of *The Army Lawyer*. We are indebted to Colonel Charles M. Munnecke (USA, Retired) for furnishing this updated list of annotations from the Court of Claims to complement our previous presentation. Colonel Munnecke, a former Chief of Army Legal Assistance, handled Court of Claims cases in the Department of Justice for 12 years. After two years of retirement, he is at it again (on the other side) with the law firm of King and Biddle in Washington, D.C. He volunteered this Court of Claims supplement in view of the importance of that court's decisions across the broad spectrum of personnel law litigation. References are to the U.S. Court of Claims Reports unless otherwise noted.

* * *

I. General Scope of Review of Military Determinations

Armstrong	205-	(Dec 74)		
Augenblick	180-131	(1967)*	377 F2d 586	390 U.S. 1038
Brown	184-501	(1968)	396 F2d 989	
Haggerty	196-66	(1971)	449 F2d 352	
Juhl	181-210	(1968)	383 F2d 1009	Rev'd 393 U.S. 348
McDonald	205-	(Dec 74)		

II. Jurisdiction

C. Soveriegn Immunity

Clark	198-393	(1972)	461 F2d 781	cert denied 409 U.S. 1028

E. Federal Question

Artis	205-	(Dec 74)		
Begalke	148-397	(1960)		cert denied 364 U.S. 865
Haggerty	196-66	(1971)	449 F2d 352	
Hooper	164-151	(1964)	326 F2d 982	cert denied 377 U.S. 977

*See also 206- (Jan 1975)

G. Declaratory Judgment, 26 U.S.C. 2201, et. seq.

King	182-631	(1968)	390 F2d 894	395 U.S. 1 (largely mooted now)
Ray	197-1	(1971)	453 F2d 754	

III. Review of Medical Determinations

Cooper	178-277	(1967)	Ulcer	
Harris	177-538	(1967)	Rectal Incontinence	
Hutter	170-517	(1965)	Hypertension	
Merson	185-48	(1968)	Neurological 401 F2d 184	
Smith	168-545	1964)	Cardiovascular renal disease	
Wason	179-623	(1967)	Degenerative joint disease	

VI. Failure to Follow Regulations

Beckham	183-628	(1968)	392 F2d 619	Manual of Navy Med Dept.
Biddle	187-87	(1968)		AR 135-173
Cole	171-178	(1965)		Reinlistment Reg.
Conn	180-120	(1967)	376 F2d 878	Art. 15
Middleton	170-36	(1965)		Naval Dir. relating to C.M. actions
Reale	188-586	(1969)	413 F2d 556	AFR 36-40, 36-35
Sofranoff	165-470	(1964)		Para 107.75, Marine Corps Manual
Carter	206-	(Jan 75)		AFR 36-2

VII. Proper Training/Ability to Perform Duties

Beckham	183-628	(1968)	392 F2d 619	389 U.S. 1011
Harris	177-538	(1967)		
Lawler	169-644	(1965)		
Morrow	156-493	(1962)		
Snell	168-219	(1964)		

X. Review Limited to Admin Record

Brown	184-501	(1968)	396 F2d 989 De Novo trial ordered	
Hertzog	167-377	(1964)		
Merson	185-48	(1968)	401 F2d 184 De Novo trial	

XII. Construction of Regulations

Borys	201-597	(1973)		AR 600-31
Clark	198-593	(1972)	461 F2d 781	AFM 35-3, cert denied 409 U.S. 1028
Cowan	161-739	(1963)	316 F2d 740	Bupers Instr. 8
Gliden	185-515	(1968)		AFR 35-60
Keef	185-454	(1968)		AFR 35-66, 11-1
Lischak	202-598	(1973)		AFM 30-7
Muldonian	193-99	(1971)	432 F2d 443	AFR 45-5 para 15

Reale	188-586	(1969)	413 F2d 556	AFR 36-40
Reese	180-932	(1967)		AR 600-10
Rieth	199-200	(1972)	462 F2d 530	AFM 354 para 17
Tasker	178-56	(1967)		AR 36-104

XII. General Due Process Considerations

Augenblick	180-131	(1967)**	377 F2d 586	390 U.S. 1038
Clackum	148-404	(1960)		
Cole	171-178	(1965)		
Conn	180-120	(1967)	376 F2d 878	
Glidden	185-515	(1968)		
Haggerty	196-66	(1971)	449 F2d 352	

XVII. Exhaustion of Remedies

A. Failure to take Admin Appeal Precludes Relief

Artis	205-	(Dec 74)		
Dingley	157-468	(1962)		Cor. Bd. is permissive
Haggerty	196-66	(1971)	449 F.2d 352	Art. 15

C. ABCMR, ADRB (10 U.S.C. 1552, 1553; AR's 15-185, 15-180

Dingley	157-468	(1962)	
Haber	200-749	(1973)	(Remand to Cor. Bd. with instructions)

**See also 206- (Jan 75), Art. 134

Legal Assistance Items

From: Administrative and Civil Law Division, TJAGSA

1. Items of Interest.

Publication of Legal Assistance Handbook. DA Pamphlet 27-12, *Legal Assistance Handbook* (December 1974) has been printed and is presently being distributed. As explained in the July issue of *The Army Lawyer* periodic supplements will be prepared and distributed in order to keep the Handbook current. The organization of the book is slightly different than the previous edition. Selected chapters [Ch. 38 (Retired Personnel); Ch. 40 (The Soldiers' and Sailors' Civil Relief Act); Chs. 41-43 (Federal and State Taxation); Ch. 44 (Veterans Benefits); and Ch. 45 (Voting)] provide for the insertion of designated separate publications. The current edition of the *All States Income Tax Guide*, for example, is to be inserted at Chapter 43, "State and Local Income Tax." It is hoped that the long-awaited publication will contribute significantly to the rendition of military legal assistance and that the supplements will keep the publication current and useful in the future.

Family Law - Divorce - "Equitable Distribution of Property." Many states are now forcing an "equitable distribution of property" rather than basing such distribution upon marital misconduct. Modifying the common law marital property system, the divorce courts in these jurisdictions distribute the marital property so as to meet the economic needs of the parties. This development is certainly consistent with the theory and intent of no-fault statutes. "[A] sense of symmetry, if not logic, dictates that if the fault issue is removed from the divorce grounds it likewise should be eliminated from judicial consideration in awarding alimony and distributing property." [Footnote omitted], Foster, Freed, "Divorce Reform: Brakes on Breakdown," 13 *J. Family L.* 443, 476 (1973—1974). In some instances, such "equitable distribution" is mandated by the express language of the statute. See, e.g., Cal. Civ. Code § 4509 (West 1970) ("[E]vidence of specific acts of misconduct is improper and inadmissible, except where it is determined by the court to be necessary to establish the existence of irreconcilable differences" or where child custody is in issue and such evidence is relevant to that issue.)

In other no-fault jurisdictions, especially where the no-fault grounds are incompatibility or separation for a period of time, marital misconduct may still be considered in determining awards of property, maintenance, or alimony. Such states provide that evidence of marital fault either is "relevant" or is "a discretionary factor" which the court is permitted to consider in awarding property or maintenance or alimony. See, Note, "The Economics of Divorce: Alimony and Property Awards," 43 *U. Cin. L. Rev.* 133 (1974). See generally, Holman, "A Law In The Spirit of Conciliation and Understanding: Washington's Marriage Dissolution Act," 9 *Gonzaga L. Rev.* 39 (1973); Note, "Irreconcilable Differences: California Courts Respond to No-Fault Dissolutions," 7 *Loyola U.L. Rev.* (L.A.) 453 (1974) (Interesting discussion regarding the relevance of "collusion" in a no-fault jurisdiction, proof requirements for "irreconcilable differences," and the issue of constitutional due process as it relates to the (impermissibly?) "vague" terms "irreconcilable differences" and "marital breakdown"). See also M. Wheeler, *No-Fault Divorce,* 1974 and a review thereof, Veitch, 60 *A.B.A.J.* (Oct. 1974).

Family Law - Divorce. In a brief and excellent article in *Business Week* (February 10, 1975) the following major trends and developments in the law of divorce were noted and discussed: (1) nearly all states now have some form of no-fault divorce ("irreconcilable differences" or "marital breakdown", "incompatibility", or separation for a period of time); (2) relatedly, the number of migratory divorces has decreased significantly; (3) nearly 95 percent of divorce proceedings are uncontested; (4) the award of alimony, where allowed, is increasingly a function of economic need and is payable to either spouse; and (5) there has been less reliance upon the "maternal preference" presumption in child custody cases. Even the recession and rising level of unemployment are causing problems in that they make it "harder to arrange a financial settlement. . . and harder to enforce alimony and child support agreements." Some of the related consequences of inflation are being tempered by the inclusion of "escalator clauses" in separation agreements.

Criminal Representative Under ELAP Restricted. Pursuant to a letter of Major General George S. Prugh, dated 30 December 1974, criminal representation through the Expanded Legal Assistance Program has been limited (see article on "Proposed Changes to AR 608-50 and the Expanded Legal Assistance Program" in the February 1975 issue of *The Army Lawyer*). Essentially a priority is to be given to civil cases, although "assuming compliance with existing eligibility standards and the agreement of the local bar and judiciary," misdemeanor cases may be handled under the ELAP "if the appropriate Staff Judge Advocate determines that his resources are sufficient." Felony representation will be permitted only upon the "specific permission of the Staff Judge Advocate" and only after notification to The Judge Advocate General (ATTN:DAJA-LA).

Unclaimed Savings Bonds. According to a recent House report over 700,000 unclaimed United States savings bonds with an estimated face value of $50 million are presently being held by the Treasury and Federal Reserve banks. Many of the bonds have been held longer than 30 years and institutional records indicate that a high percentage of them are owned by World War II, Korean and Vietnam veterans, or their successors or co-owners. In addition to the government's "safekeeping program", serious consideration is being given to initiating a program to attempt to locate and notify bondowners. Legal assistance officers should ensure that their clients are not among the "forgetting" owners and should ensure that, if appropriate, the client's bonds are identified and listed among his assets. See generally, Committee on Government Operations, Unclaimed Savings Bonds Belonging to Veterans and Others, H.R. Rep. No. 1625, 93d Cong., 2d Sess. (1974). Letters of inquiry should be mailed to Bureau of the Public Debt, "Safekeeping," Washington, D.C. 20226. The following information should be submitted: the full name of the service member or former service member and any other name which may have been on the bond as a co-owner, the individual's former military serial number or, if appropriate, his social security number, and the appropriate current address.

Washington State Bonus Deadline. The deadline for applying for Washington's $250 bonus is 28 March 1975. Vietnam veterans, service members, or their survivors may be eligible. Applications may be obtained from Vietnam Veterans Bonus Division, Post Office Box 586, Olympia, Washington 98504.

Michigan State Bonus - Applications Available. Application forms for eligible Vietnam veterans are now available upon request from

Vietnam-Era Veterans Bonus Section, Post Office Box 1500, Lansing, Michigan 48904.

2. Recently Enacted Legislation.

Family Law - Support - Garnishment. The Federal Family Support Act, P.L. 93-647 (January 6, 1975) provides for the garnishment or attachment of "... moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States" in actions "brought for the enforcement, against [an] individual of his legal obligations to provide child support or make alimony payments." The statute, effective 1 January 1975, is clearly applicable to the pay and allowances of both active duty and reserve members and the retired, retirement, or retainer pay of retired members. The implementation of the act within the Department of the Army is presently being planned and guidance regarding the many collateral issues such as service of process, conflicts of law, processing procedures, and so forth will be forthcoming.

Section 1034(h) - Sale of Residence - "Induction period" Requirement Eliminated. Section 1034 of the Internal Revenue Code, 26 U.S.C. § 1034, provides for the nonrecognition of capital gains with regard to the sale or exchange of one's principal place of residence if strict time requirements are met in the purchase or construction of a new principal place of residence. Ordinarily the "new residence" must be purchased "within a period beginning 1 year before the date of [the] sale [of the old residence] and ending 1 year after" the sale. Section 1034(h) allowed members of the armed forces up to four years before investing the profits from the sale of the old residence, but, causing great confusion and concern, that four-year postponement rule seemingly applied only during an "induction period." P.L. 93-597, *inter alia*, clarifies Section 1034(h) and expressly removes the "induction period" requirement.

Federal Taxation - Survivor Benefit Plan. Pursuant to P.L. 93-406, The Employee Retirement Income Security Act of 1974 [Pension Reform Act], dated 2 September 1974, survivor benfit plan withholdings from a retiree's pay are exempt from federal income tax. Upon the death of the retired member the value of the SBP annuity is not included in the estate for federal estate tax purposes. As before, however, subsequent SBP payments are includable in the beneficiary's(ies') gross income for tax purposes.

3. Cases of Interest.

In keeping with the newly expanded scope of the *Judge Advocate Legal Service* announced in last month's issue of *The Army Lawyer*, future case digests of legal assistance-related subjects will be digested within the Administrative and Civil Law section of JALS. Those opinions worthy of expanded subjective commentary, however, will continue to be highlighted within this column.

4. Articles of Interest.

"Committee [Standing Committee for Legal Assistance for Servicemen] Goes to Bat for Military Legal Aid," 20 *AM. Bar News* 1 (Jan. 1975).

Comment, "The Determination of Domicile," 65 MIL. L. REV. 133 (Summer 1974).

"Survey of Paralegals in OEO Legal Services Projects: A Preliminary Report," 8 *Clearinghouse Rev.* 614 (Jan. 1975).

Loughry, LTC A.S., "Survivor Benefit Plan - Some Winners and Some Losers," 58 *Marine Corps Gazette*, August 1974, at 33.

Captains' Advisory Council Notes

The CAC has recently held elections and the following officers are announced:

Chairman	Captain Anthony J. Sinao (Defense Appellate Division)
Co-Chairman	Captain Alvin L. Thomas (Litigation Division)
Secretary	Captain William C. Kirk (Government Appellate Division)

Any questions concerning the activities of the CAC may be addressed to any of these officers or to members of the council whose names have appeared in earlier issues of *The Army Lawyer*.

At this time the CAC is in the process of distributing a questionnaire to a sample group of JAGC captains concerning their working conditions, attitudes toward the Corps, and fu-

ture plans. The Council hopes to use the results of this poll to highlight problem areas as captains see them.

Also under consideration at this time is liaison with the ABA and Judge Advocates' Association in order to provide input into areas of concern of active duty JAG's. The area of continuing legal education remains of prime interest to the CAC and area conferences are planned. These conferences are handled at the local level with the CAC available for any help that may be needed in organization.

JAG School Notes

1. New Legal Assistance Handbook. As noted in "Legal Assistance Items," the new *Legal Assistance Handbook*, DA Pam 27-12 (December 1974), has been printed and is in pinpoint distribution. You should have received your copies by now. The book is a near-complete rewrite of the old pamphlet. You will also notice that to complete the volume, several other publications are required. These publications and the chapters they constitute are listed below. Some of the publications (e.g., the *All States Income Tax Guide* and *Voting Information*) have already been distributed by OTJAG; others you will have to requisition or otherwise acquire from appropriate agencies.

Chapter	Publication
38	DA Pam 600-5, *Handbook on Retirement Services*
40	DA Pam 27-166, *Soldiers' & Sailors' Civil Relief Act*
42	IRS Pub. 448, *Federal Estate & Gift Tax*
43	*All States Income Tax Guide*
44	VA 15-1 Fact Sheet, *Federal Benefits for Veterans and Dependents*
45	DA Pam 360-503, *Voting Information*

The JAG School does *not* stock these pubs; they are available from AG Pubs, IRS or VA, but not TJAGSA. The address for AG Publications is 2800 Eastern Boulevard, Baltimore, Maryland 21220.

2. "Lessons in the Law" Audio Cassette Program. Add another entry to the growing list of offerings in our Lessons in the Law Audio Cassette series. The latest presentation is entitled "Control of Information" (JA-A-12), featuring a 42-minute discussion on release of records to the public by Captain Thomas M. Strassburg of TJAGSA's Administrative and Civil Law Division. The lecture contains a historical overview of legislation in this area, as well as the substantive and procedural aspects of the Freedom of Information Act as amended by Public Law 93-502. The tape may be requested for loan from the Office of Nonresident Instruction, The Judge Advocate General's School, US Army, Charlottesville, Virginia 22901. Speaking of the Freedom of Information Act—be on the lookout for a series of several articles from OTJAG on the new legislation. These will be breaking in the next few issues of *The Army Lawyer*.

3. Mug Collection. Special thanks to MAJ Frank Wright, a student of the 1st Military Administrative Law Course, for his gift of an Air Force Academy mug.

Reserve Affairs Items

Promotions. Fifteen Judge Advocate General's Corps officers of the United States Army Reserve and the Army National Guard were nominated for promotion and their names submitted to the Senate for confirmation on January 21, 1975. Congratulations to these fine officers on this career achievement and the dedicated effort which has earned them this promotion.

Elliott, Frank W., Jr., [redacted] LTC to COL

Mitchell, William R., [redacted] LTC to COL

Morrison, Robert W., [redacted] LTC to COL

Patcher, Milton H., [redacted] LTC to COL

Winner, Francis L., [redacted] LTC to COL
Army National Guard

Britt, Dudley H., Jr., [redacted] MAJ to LTC

Coleman, William F., [redacted] MAJ to LTC

Dolan, James G., [redacted] MAJ to LTC
Glaser, Robert E., [redacted] MAJ to LTC
Jamar, Roy B., [redacted] MAJ to LTC
Little, James M., [redacted] MAJ to LTC
Loush, Mark A., [redacted] MAJ to LTC
Oxner, George D., [redacted] MAJ to LTC
Plechner, Richard F., [redacted] MAJ to LTC
Sbarboro, Gerald L., [redacted] MAJ to LTC
[redacted] Army National Guard

Judiciary Notes

From: U.S. Army Judiciary

1. Administrative Notes.

a. *DA Pam 27-9, Military Judge's Guide.* The Army Judiciary has been notified by AG Publications that DA Pam 27-9, Military Judge's Guide, will probably reach a "stock out" position in the next few weeks pending re-publication. DA Pan 27-9 is presently undergoing extensive revision which will require substantially a new publication. Because of the current austere Army operating budget, replenishment republication followed shortly by republication caused by revision is not economically feasible nor reasonable. Accordingly, new supplies of DA Pam 27-9 probably will not be available from AG channels for a number of months.

While there should be an adequate supply of DA Pam 27-9, *Military Judge's Guide*, in the various Judge Advocate offices and in the hands of trial judges, each officer is encouraged to protect and maintain copies that are personally available or are available in Judge Advocate offices. Requests from units or other nonlegal agencies for copies of DA Pam 27-9 should be considered and response made thereto in light of the current exigency.

b. *Retention of Special and Summary Court-martial Records of Trial.* In processing and acting upon applications for relief submitted under the provision of Article 69, UCMJ, the usual procedure is to obtain the orginal record of trial from the appropriate repository. In several instances, however, JAAJ-ED was informed, for example, that the original special record of trial (sentence adjudged in October 1973) could not be located and "no explanation exists for its apparent disappearance;" that the original summary court-martial record (sentence adjudged 17 January 1973) could not be found in the SJA Office or its branches. Attention is invited to the provisions of AR 340-18-4 pertaining to the retention and retirement of court-martial files. SJA's are urged to take necessary action to assure that original records of trial of summary and special courts-martial (non-BCD) are, until retired to the National Personnel Records Center, properly filed, stored, and adequately secured.

2. Recurring Errors and Irregularities.

January 1975 corrections by ACOMR of Initial Promulgating Orders:

a. Failing to show the accused's name and SSN correctly — one case.

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

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

d. Failing to reflect the findings correctly — two cases.

e. Failing to state that the sentence was adjudged by a military judge — two cases.

f. Failing to state the correct number of previous convictions — four cases.

g. Other miscellaneous errors — one case.

Completion of appellate review could be accomplished much sooner (1) if the accused could be advised of his appellate rights and would make his election in writing as to appellate counsel before he is transferred from site of trial; and (2) if the initial promulgating court-martial orders could correctly reflect the charges and specifications, the pleas and the findings of guilty. Many records of trial are being received with no indication that the accused has been advised of his appellate rights.

3. Note from Defense Appellate Division.

Withdrawn Charges: A Trap For the Unwary

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

The government at trial will frequently present to the trier of fact charges or specifications which have been, or should have been, withdrawn by the convening authority before trial. This substantially prejudicial exposure to charges or specifications arises when prior to arraignment, the trial counsel states the general nature of the charges, or the reading of the charges is waived and the charges are presented for the record, or the charges are read from the charge sheet. This tactic should be opposed by trial defense counsel as prejudicial to the substantial rights of the client.

Occasionally an accused will be arraigned on two or more charges or specifications and plead not guilty to at least one of the charges or specifications. The government's case will then be presented on all but one or more of the charges or specifications, with no evidence presented on the latter. While the military judge will normally grant the motion for a finding of not guilty by the defense on the latter charges, error has occurred. The trier of fact will have viewed all the charges or specifications, the court-martial promulgating order will reflect that the accused was tried on all charges or specifications, and the possibility exists that the sentencing body will be prejudicially influenced by the superfluous charges.

Trial counsel's duty in this area is clear. Paragraph 44*f*(5), *Manual for Courts-Martial; United States, 1969 (Revised edition)* states that if during the preparation stages of a case trial counsel discovers material which in his opinion makes it inadvisable to bring the case to trial, he must inform the convening authority at once. The convening authority should then withdraw the unsupported charges or specifications prior to trial. The Court of Military Appeals in *United States v. Phare*, 21 USCMA 244, 45 CMR 18 (1972) held that prejudicial error resulted from trial counsel's presentation of unprovable charges to the court. Relying on *United States v. Bird*, 30 CMR 752 (CGBR 1961) the court stated that as a matter of fundamental fairness if a charge cannot be substantiated by competent, legal evidence, it should not be brought to the notice of the court which is trying him on other charges. The court reasoned that an accused is entitled to be protected against the risk of having a mere accusation influence a determination of guilt on other charges. Therefore when a prosecutor is aware before trial that he is not going to be able to prove one or more of the specifications but he nevertheless arraigns the accused on all, it is just as unfair to the accused as though he had given the court copies of a withdrawn charge.

When the convening authority withdraws charges or specifications prior to trial, or before the time the members of the court are aware they have been referred to trial, paragraph 56*d* of the *Manual* requires that the trial counsel insure that the withdrawn specification is not brought to the attention of the court members. In *United States v. Jernigan*, 13 CMR 396 (ABR 1953), trial counsel, in announcing the general nature of the charges, mentioned three separate allegations. Later, upon completion of challenges, the trial counsel announced the withdrawal of one of the specifications. The Board of Review noted that from the time the court convened until the announced withdrawal of the specification there was no possible recess or intervention of time during which the convening authority could have transmitted the withdrawal to the trial counsel. The board concluded that the trial counsel knew at the original convening of the court that the specification had been withdrawn and held that this was error. (See also *United States v. Carroll*, 37 CMR 870 (AFBR 1967).

In certain cases an accused and the convening authority have a pretrial agreement in which the accused agrees to plead guilty to certain charges and specifications and the convening authority agrees to disapprove any sentence in excess of a certain quantum and further agrees to withdraw all other charges and specifications. When the convening authority fails to formally withdraw the charges, the trial counsel will proceed through arraignment on all charges and specifications. When a provident plea of guilty is accepted by the military judge, then the trial counsel will withdraw the remaining charges or the defense counsel will move and the military judge will sustain a motion for a finding of not guilty.

The Court of Military Review has indicated in such cases that dismissal of part of the charges and specifications is one of the benefits an accused receives in entering into the pretrial agreement. *(United States v. Shaw*, 47 CMR 988 (ACMR 1973); *United States v. Sanders*, CM 430396 (ACMR March 1974)). The court reasoned that the incentive to the accused is that he avoids the possibility that his sentence will be aggravated by the presence of additional charges and specifications. The value of such a provision to the accused is great and can be the motivating factor for the accused entering into the pretrial agreement. The court in *Sanders* recognized this value and stated that a "bargained for dismissal of a charge or specification... should be given equal weight with sentence reduction." The court in *Shaw* found error in that the accused via the pretrial agreement had bargained for dismissal of one charge *before trial* yet received in return for his plea of guilty, withdrawal of that charge *after arraignment.* Citing *United States v. Coley*, 26 CMR 580 (ABR 1958) the court concluded "[I]t is axiomatic that the spirit as well as the letter of any pretrial agreement between appellant and the convening authority should be scrupulously observed."

Trial defense counsel should be aware of the method and prejudice in this area arising at trial, and insure their clients' interests are properly protected. One possible corrective measure (although one may question the effectiveness) would be to ask for a limiting instruction regarding the evidence which informed the members of the dismissed charges or specifications. However, this avenue of relief could be attacked as ineffectual. As the Court of Military Appeals stated in *United States v. Grant*, 10 USCMA 585, 28 CMR 151, when quoting from *People v. Deal*, 357 Ill. 634, 192 NE 649 (1934):

> "... Human nature does not change merely because it is found in the jury box. The human mind is not a slate, from which can be wiped out, at the will and instructions of another, ideas and thoughts written thereon."

The most effective remedy to cure this type of error would be for trial defense counsel to move for a mistrial. This motion would be based on trial counsel's misconduct under paragraph 44*f*(5) and/or paragraph 56*d*, *Manual, supra*, and *Phare;* noncompliance with the pretrial agreement under *Shaw, Coley*, and *Sanders;* and under a general miscarriage of justice theory under *Phare* and *Bird.* It should also be argued that the client is entitled to a court-martial promulgating order showing arraignment and trial on only the relevant charges or specifications, citing paragraph 90 and appendix 15*a*, *Manual*, paragraph 12–4*b*(3) (f), Army regulations 27–10, and *United States v. Young*, 26 CMR 702 (ABR 1958).

Trial defense counsel should thus be cognizant of the possibility of prejudice arising in these cases and seek to protect the interests of the client.

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Motions Concerning Electronic Surveillance (DAJA-CL 1975/1653). Reference is made to DAJA-LT MSG 271653Z Dec 74. The referenced message contains guidance in handling motions concerning electronic surveillance. In order to assist counsel and the trial judge in limiting access to classified material only to those essential parties involved in the litigation of such motions, a sample motion for protective order and order follows:

(Appropriate style of case)

MOTION FOR PROTECTIVE ORDER

Pursuant to paragraph 66(b), *Manual for Courts-Martial, United States, 1969 (Revised edition)* and Article 39(a), Uniform Code of Military Justice, the government respectfully moves this Court for a protective order to prevent further disclosure or dissemination of the documents entitled Defense Exhibit _____, which bear a Government security classification of "_____."

In support of this motion, the government attaches hereto and incorporates herein by reference the affidavit of *(appropriate official dealing with security matters of intelligence).*

In further support hereof, the government submits a memorandum of points and authorities and a proposed order.

_____

Trial Counsel

(Appropriate style of case)

ORDER

UPON CONSIDERATION of the government's motion for a protective order to prevent further disclosure or dissemination of the documents entitled Defense Exhibit _____, and it appearing to the court that the Government has determined that release of these documents to unauthorized persons could reasonably be expected to cause damage to the national security, and therefore has classified these documents "_____" pursuant to (appropriate regulations, etc.), it is by the Court this _____ day of _____, _____,

ORDERED that these documents be maintained under appropriate security cover under protection of the Court; and, it is

FURTHER ORDERED that any further writtten references to these documents by the parties shall be submitted in sealed envelopes, and any such documents shall be maintained by the Court under appropriate security cover, for consideration of this Court and any appropriate appellate court; and, it is

FURTHER ORDERED that any oral references to these documents by the parties shall be in a closed hearing, *in camera*; and, it is

FURTHER ORDERED that other than as provided in (appropriate regulations, etc.), there shall be no disclosure or dissemination of these documents except as provided in this order.

_____

Military Judge

2. Handling of Nonnarcotic Controlled Substances. Reference DA Message from DAPE-HRE-PO, 111600Z Feb 1975, Subject: Change in Evidence Handling Procedures. The referenced message announced changes in handling requirements for nonnarcotic controlled substances. In December 1974, TJAG approved the use of the results of standardized field tests of nonnarcotic substances in lieu of forensic laboratory reports in cases where the appropriate commander determines that only nonjudicial or administrative action will be taken. Paragraph 3 of the referenced message implements that approval.

Claims Items

From: U.S. Army Claims Service

1. Theft of Motorcycles. Before a claim resulting from the theft of a motorcycle can be paid, it is necessary to determine whether the loss was caused wholly or partly by the negligent or wrongful act of the claimant, his agent or employee. Failure to exercise reasonable care to protect and secure the motorcycle can be considered negligence. "Securing" means fastening or attaching the motorcycle to some permanent immovable fixture such as a pole, post, tree, etc., if such is reasonably available. Where installation commanders or unit commanders provide parking areas designated for motorcycles, a pole or post should be made available at the parking site to permit the service member to properly secure the motorcycle. If no immovable fixture is reasonably available in a parking area specifically marked for motorcycles, then the service member cannot be barred from recovery due to failure to properly secure his motorcycle since no fixture is reasonably available. However, the U.S. Army Claims Service encourages all staff judge advocates and their claims officers to review the parking facilities within their installation and if no immovable fixtures are provided for motorcycle parking areas, it is suggested that appropriate action be taken to provide such fixtures.

2. Effect of NATO-SOFA and Similar Agreements on the Settlement of Maritime Claims. The scope of this article is limited to administrative settlement of nongovernmental maritime tort claims against the United States generated by the U.S. Armed Forces in territories covered by NATO-SOFA or similar agreements employing the so-called NATO-SOFA claims formula.

At the outset, it may be observed that the statutory authorizations for the administrative settlement of maritime claims against the United States (Army, 10 U.S.C. 4802; Navy, 10 U.S.C. 7622; Air Force, 10 U.S.C. 9802) are not covered in the Department of Defense Assignment of Single Service Responsibility (Department of Defense Directive 5515.8). Unless, therefore, a maritime tort claim is covered by a SOFA, it is for settlement by the Department owning the vessel, or other property, or employing the person who generated the claim.

A preliminary question which must be answered in determining whether a maritime tort claim falls under a SOFA is whether the vessel, property or person was a part of a "force or civilian component" (para. 5, Article VIII, NATO-SOFA). Whether a vessel is part of a force so as to be cognizable under NATO-SOFA is usually determined by mutual agreement of the sending and receiving states. This problem was considered by a U.S. District Court in *Shafter v. United States*, 273 F. Supp. 152 (S.D. N.Y. 1967) which involved a U.S. Navy vessel engaged in regular voyages from Norfolk, Virginia, to Bremerhaven, Germany, carrying food supplies for use by NATO military and civilian personnel. A German Defense Costs Office concluded that personal injury claims arising from the operation were cognizable under NATO-SOFA. The court in *Shafter* agreed that the subject matter had been withdrawn from its jurisdiction by the provisions of NATO-SOFA and granted the government's motion for summary judgment. The court rejected an argument that a vessel had to have a special marking on her hull and specific documents assigning it to a NATO command before a claim generated by her operation in NATO territory could be cognizable under NATO-SOFA.

Another question which sometimes arises is whether the claimant is a "third party" under paragraph 5, Article VIII, NATO-SOFA. This question was considered by the court in *Newington v. United States*, 354 F. Supp. 1097 (E.D. Va. 1973). A British employee sued his U.S. Army employer for injuries he received aboard an Army ship transitting Netherlands waters (suit was filed after his earlier administrative claim had been denied by Netherlands under the NATO-SOFA). The court, in denying summary judgement for the United States, held that the NATO-SOFA remedy was not exclusive because the plaintiff was not a "third party" in the Netherlands. Absent a reciprocal interpretation of "third parties" between the United States and the Netherlands, the phrase included only local citizens of the Netherlands, in whom the Netherlands had a much greater interest.

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

Number	*Title*	*Dates*	*Length*
5F-11	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
(None)	3d NCO Advanced Course	14 Apr–25 Apr 75	2 wks
5F-F8	* 19th Senior Officer Legal Orientation Crs	28 Apr–1 May 75	4 days
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-F6	5th Staff Judge Advocate Orientation Crs	16 Jun–20 Jun 75**	1 wk
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

** Reflects date change since previous listing in *The Army Lawyer*.

Personnel Section

From: PP & TO

1. Retirements. On behalf of the Corps, we offer our best wishes to the future to Colonel Charles H. Taylor who retired 31 January 1975 after many years of faithful service to our country.

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

TO LTC, AUS
Haight, Barrett S

TO MAJ
Terry, Guyton O., Jr.

TO CW2
Bailey, Dennis G.

3. Orders Requested as Indicated.

NAME	*FROM*	*TO*
	LIEUTENANT COLONELS	
BALDREE, Charles	Korea	Europe
GREEN, James L	Korea	OTJAG, Wash DC
MINTON, David L	USALSA	USA Engr Cen, Ft Belvoir, Va
STEFFEN, William	Acad of Health Sciences	USA Admin Cen, Ft. B.H. Indiana
	MAJORS	
PRICE, James F	OTJAG, Wash DC	George Washington University
	CAPTAINS	
BONE, John R.	Europe	Homestead AFB, Florida
BUDZ, Chester H	Europe	4th Inf Div, Ft Carson, Colo
COLLINS, Gary	1st Cav Div, Ft Hood, Tx	Def Lang Inst, Monterey, Ca.
CUNNINGHAM, William	Europe	USA Garrison, Ft Stewart, Ga
DONAT, Walter J	Korea	4th Inf Div, Ft Carson, Colo
DENNY, Michael	USA Armor Sch, Ft Knox, Ky	Def Lang Inst, Monterey, Ca
EASTBURN, Robert	Europe	USA Leg Svc Agcy, Falls Church, Va
FIERKE, Thomas	USA Garrison, Ft Devens, Ma	10th Spec Forces GP, Ft Devens
GONZALES, Robert	Korea	82d ABN Div, Ft Bragg, NC
GUINN, Robert L	Europe	USA Materiel Command, Alexandria, Va
HEDICKE, Robert	Fitzsimons Gen Hosp, Denver	Beaumon Gen Hosp, El Paso, Tx
HUFF, Richard L	USA Phys Dis Agcy, Wash DC	OTJAG, Wash DC
LAND, Harlow H.	Europe	HQ USATC, Inf, Ft Ord, California
MURPHREE, Billie	82d ABN Div, Ft Bragg, NC	USAG, Ft Wainwright, Ala
NEWETT, Frank R	USATC, Ft Dix, NJ	USA Leg Svc Agcy, Falls Church, Va
PANGBURN, Kenneth	Europe	USA Sch Tng Cen, Ft Gordon, Ga
SCOTT, Paul M	USA Base Cmd, Okinawa	OTJAG, Wash DC
VALENTINE, James	USA Support Thailand	6th Reg. USACIDC, SF Ca

CAPTAINS

WALKER, Cornel	USA Armor Cen, Ft Knox, Ky	HQ III Corps & Ft Hood, Tx
WILEY, Dennis M	USATC, Ft Polk, La	USA Avn Sys Cmd, St Louis, Mo
WILLIAMS, William	Stu Det, Ft B. Harrison	USAG, Ft Sam Houston, Tx
WOODSMALL, Douglas	HQ USACIDC, Wash DC	USATC, Inf, Ft Ord, Ca

WARRANT OFFICERS

COLEMAN, Sidney	USA Engr Cen, Ft Belvoir, Va	25th Inf Div, Hawaii
FINN, Melvin H	Europe	USATC, Inf, Ft Dix, N.J.
GAFFNEY, David	Europe	Stu Det, Ft B. Harrison, w/sta Wm. Carey College Miss.
HALL, Jackie E	25th Inf Div, Hawaii	USA Engr Cen, Ft Belvoir, Va
HARTWELL, Richard	USA Sch Tng Cen, Ft Gordon, Ga	101st Abn Div, Ft Campbell, Ky.
KNIGHT, Lawrence	HQ FORSCOM, Ft McPherson, GA	Europe
LATHERS, Frank	USA Leg Svc Agcy, Falls Church	Europe
MANNIX, Rrichard	Europe	XVIII Abn Corps, Ft Bragg, NC
RECA, James J	USATC, Ft Dix, N.J.	FORSCOM, Ft McPherson, Ga

4. Reduced Obligation for Former ROTC Scholarship/Excess Leave Officers. A recent policy change has reduced the active duty obligation for former ROTC scholarship/excess leave officers from five and one-half to four and one-half years (four years for those officers who signed an initial five year obligation) following graduation from law school and admission to the bar. Additionally, all former excess leave officers are entitled to a reduction in their active duty obligation, following graduation and admission to practice, of two months for each eighteen months remaining on their obligation after 1 April 1973 (Appendix 2u, "Your JAGC Career"). Any officer affected by the foregoing may contact PP&TO for computation of his earliest release date for resignation purposes.

5. JAGC Job Vacancies.

a. There will be instructor vacancies for JAGC Majors and Captains at the United States Military Academy, West Point, New York, during the Summer of 1975. Two years field experience is required and the minimum tour at the Academy is two years.

b. The following additional instructor positions will be available after 1 April 1975 for interested JAGC Captains:

(1) United States Army Armor School, Fort Knox, Kentucky;

(2) United States Army Quartermaster School, Fort Lee, Virginia;

(3) United States Army Infantry School, Fort Benning, Georgia.

c. There are still vacancies for JAGC Captains in Europe and more openings will occur this summer. The minimum tour is three years. Interested officers should contact PP&TO.

6. US Army War College Nonresident Course. All officers interested in participating in the US Army War College Nonresident Course should submit their applications in accordance with AR 351-11, 7 January 1974. Applications are to be sent to HQDA (DAJA-PT) Room 2E443, The Pentagon, Washington, D.C. 20310, so as to arrive by 1 April 1975.

7. DAC Commendation at Fort Ord. On 13 December 1974, Mr. James De Nardo, GS-12,

Criminal Law Branch, Office of the Staff Judge Advocate, USATC & Fort Ord, Ca., 93941, was presented a Commendation Certificate for an Incentive Award he submitted while in the Karlsruhe Branch, Staff Judge Advocate Office, U.S. Army Theater Support Command, Europe.

8. Retirement - DA Civilian Attorney. Mr. Joe L. Stenhouse, GS–12 General Attorney in the Office of the SJA, 9th Infantry Division and Fort Lewis, retired with over 30 years service on 1 October 1974. Mr. Stenhouse began his service as a 1LT, Infantry, with the 3d Infantry Division during WWII. He was detailed to the JAGC in 1949, and served with the 2d Infantry Division in Korea. In 1953 he transferred to the JAGC. He was a graduating member of the 1st Advanced (Career) Class at TJAGSA. In 1959 he completed 20 years service and retired to private practice in Nashville, TN. Mr. Stenhouse accepted the General Attorney position at Fort Lewis in January 1964. In October 1972 he was cited by TJAG for special recognition for his outstanding contributions to the service. Mr. Stenhouse now resides with his wife, Louise, at 1506 Lafayette St., Steilacoom, WA 98388.

9. Notice to Iowa Attorneys. Members of the Iowa Bar are reminded that March 11, 1975, is the deadline for submitting feedback regarding consideration of the Proposed Court Rule of the Supreme Court of Iowa for Continuing Legal Education of Members of the Bar. Copies of the proposed rule were mailed to members of the Iowa Bar in January; the rules have also been printed in the advance sheets of the *Northwestern Reporter*. Viewpoints of bar members should be expressed in writing, addressed to the Court Administrator, Statehouse, Des Moines, Iowa 50319. The rules will be considered by the Supreme Court of Iowa on March 12, 1975.

Current Materials of Interest

Articles.

Curvey, "Preparation For Handwriting Testimony In Military Courts," *Military Police Law Enforcement Journal*, Volume I Number 5 (Winter Quarter 1975) p. 35. In a seven-page article, CW4 Clifford E. Curvey, MPC, Chief of the Question Documents Division, US Army Criminal Investigation Laboratory, US Army Criminal Investigation Command, Fort Gordon, GA, identifies some of the legal and practical problems for both the documents examiner and attorney in presenting handwriting evidence in a court-martial. Mr. Curvey has a similar article on this subject, "Obtaining Results From Handwriting" which appears in *The Detective*, The Journal of Army Criminal Investigation, Volume V Number 8 (Winter 1974–75) p. 5.

Tunney and Frank, "Federal Roles in Lawyer Reform," 27 STAN. L. REV. 333 (January 1975). Senator John V. Tunney and Jane Lakes Frank, Chief Counsel and Staff Director of the Subcommittee on Representation of Citizen Interests of the Senate Committee on the Judiciary, address the scope of federal legislation to regulate lawyers, the problems resulting from the longstanding federal policy of nonintervention, and the options for a more significant federal presence in the future.

The December 1974 issue of *Juris Doctor* magazine includes an article in defense of military justice, "Military Law is to Law as ...," written by Captain Joseph A. Rehyansky, JAGC, of the 32d Army Air Defense Command, Kaiserslauten, Germany. He also serves as editor of the *International Journal of Military Mensa*.

Bruning, "The United Nations' Staff Committee: Future or Failure?" *The Military Law and Law of War Review*, Volume XIII Number 1 (1974). Captain Richard C. Bruning, JAGC, examines the historical development of this little used committee, the reasons for and effects of its failure, and present alternatives and approaches to bring its military influence to bear on international peace keeping.

Connor, "Arson Investigation," *Military Police Law Enforcement Journal*, Volume I Number 5 (Winter Quarter 1975) p. 50. A two-page discussion of the more unique aspects of this type of criminal investigation, namely: the importance of motive, aspects of interviewing witnesses and locating evidence.

The Fall 1974 issue of THE AIR FORCE LAW REVIEW contains some potentially useful articles and comments. Among some of them: "Pretrial Mental Examinstions Under Military Law:

A Re-examination," "Interest Liability of the United States on Contract Claims: Equity vs Sovereign Immunity," and "Government Contract Interpretations: Answers to Questions You've Always Wanted to Ask."

Gaudineer, "Ethics: The Zealous Advocate," 24 DRAKE L. REV. 79 (Fall 1974).

An up-to-date listing of state income taxes appears in *Commanders Digest*, Volume 17 Number 5 (January 30, 1975).

Wiley, "Community Property in a Common Law State," 21 PRAC. LAW. 81 (January 1975).

Mindes, "Lawyer Specialty Certification: The Monopoly Game," 61 A.B.A.J. 42 (January 1975). A law professor questions whether *de jure* certification will turn into *de facto* licensure.

Harrington, "One-Stop Legal Aid," *Soldiers*, Volume 30 Number 2 (February 1975). A staff writer for *Soldiers* gives a two-page highlight of Fort Belvoir's legal center concept, which was noted in the January issue of *The Army Lawyer*.

Kalo, "Deterring Misuse of Confidential Government Information: A Proposed Citizens' Action," 72 MICH. L. REV. 1577 (August 1974).

Paust, "Weapons Regulation, Military Necessity and Legal Standards: Are Contemporary Department of Defense 'Practices' Inconsistent With Legal Norms?" 4 J. INT'L L. & POLICY 229 (Fall 1974). A short followup comment on the appropriateness of the M–16 Rifle under international law by Captain Jordan J. Paust (JAGC, USAR).

Manning, "A Socio-Ethical Foundation for Meeting the Obligations of the Legal Profession," 5 CUMBERLAND-SAMFORD L. REV. 237 (Fall 1974). Lieutenant Colonel R. Kenneth Manning, Jr. (JAGC, USAR) proposes a new law school teaching methodology for courses in professional responsibility, analyzing the meaning of "profession" and suggesting a theoretical ethical foundation from which proposed answers to practical problems might be given.

Seminars.

The following seminars are being offered by the National College of District Attorneys for the winter and spring. To register or obtain further information, write to that organization: % College of Law, University of Houston, Houston, Texas 77004, or telephone (713) 749-1571.

March 11–15	Organized Crime, San Diego, California
March 23–26	Major Fraud/White Collar Crime Tampa, Florida
April 8–12	Trial Tactics, Indianapolis, Indiana
May 4–7	Environmental Law, Houston, Texas

Conference.

An FBA-sponsored conference on the New Federal Rules of Evidence will be held Friday, March 7 and Saturday morning, March 8, 1975, at The Mayflower Hotel, Washington, DC. The program will discuss general provisions and aspects of the new rules, to include: relevancy and its limits, witnesses, opinions and expert testimony, hearsay, and a discussion of the DC Law and its application to the new rules. Registration: $60 for FBA members, $70 for nonmembers. For more information contact: Conference Secretary, Federal Bar Association, 1815 H Street, NW, Washington, DC 20006.

Institute.

On April 18 and 19, 1975, the Section of Insurance, Negligence and Compensation Law is sponsoring the first ABA National Institute devoted to the legal and practical aspects of legal medicine. Entitled "Medical-Legal Aspects of Litigation," the institute will be held in New Orleans and will include discussions on: medical malpractice; hospital liability; trial tactics; the securing and utilization of medical experts; the development of medical evidence; discovery techniques; and the substantive law which presents the most problems to practioners. Registration: $125 for ABA members; $150 for non-ABA members. For more information contact: ABA National Institute, American Bar Association, 1155 East Sixtieth 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