STAFF JUDGE ADVOCATE

May 1975

THE ARMY LAWYER

DA PAMPHLET 27-50-29 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D.C.

JAGC Bicentennial Program

On 14 June 1975 the United States Army celebrates its 200th birthday and begins its activities in conjunction with the National Bicentennial. Forty-five days later the Judge Advocate General's Corps marks its own 200th anniversary, for it was on 29 July 1775 that William Tudor was named to the newly created post of Judge Advocate of the Army. Since that date thousands of judge advocate officers have served their nation and Army, contributing a high degree of scholarship, ethics, wisdom, and practicality in the proud tradition of the Judge Advocate General's Corps.

As part of its bicentennial program, the Corps has several noteworthy projects planned. Among those are a special 200 year history of the Corps in book form, and a commemorative compilation of important military legal writing to appear in the *Military Law Review*. Local observances of our bicentennial are no doubt on the drawingboards at most of our JA field installations. To assist in these activities, The Judge Advocate General's School has prepared special JAGC bicentennial packets available on request to those SJA offices desirous of background historical sketches, information for news releases and other bicentennial promotional materials. As an additional historical highlight to the Corps' bicentennial program, *The Army Lawyer* will feature other short pieces gleaned from the chronicles of our 200 years of service to the nation and the Army. Through these offerings we hope to impart to each JA officer a greater understanding and appreciation for the lore and heritage of the Corps.

We will begin this series in next month's issue of *The Army Lawyer* with a short historical sketch of the Corps by Major General Thomas Henry Green, the Judge Advocate General from 1 December 1945 to 30 November 1949. In the meantime we suggest that bicentennial action officers submit their requests for promotional packets to: The Judge Advocate General's School, US Army, ATTN: Doctrine and Literature Division, Charlottesville, Virginia 22901.

The High Cost of the Great American Windbag*

By: Albert M. Joseph, President, Industrial Writing Institute

"Gobbledygook Has Gotta Go," a Department of Interior pamphlet tells one and all. Dozens of other publications by other agencies urge employees to write clearly and courteously, and almost every office has had at least one directive from the boss pleading for clear, simple letters and reports. Most government agencies try harder than most companies to improve their written communications. But we still get:

"This office has become cognizant of the necessity of eliminating unnecessary vegetation surrounding the periphery of the faculty."

. . .when all the writer wanted to say, and should have said, was:

"Please kill the weeds around the building."

This is not just a government problem. Intelligent adults everywhere write that way. Why? By far the most common reason is that they think they're supposed to, or they think the boss wants it that way—and often he does. Many times, however, people write in heavy language

*Reprinted from the December 1974 issue of *Government Executive*, with permission. Copyright 1974 by Government Publications, Inc.

The Army Lawyer

Table of Contents

The Judge Advocate General
Major General George S. Prugh
The Assistant Judge Advocate General
Major General Harold E. Parker
Commandant, Judge Advocate General's School
Colonel William S. Fulton, Jr.
Editorial Board
Colonel Darrell L. Peck
Colonel John L. Costello
Editor
Captain Paul F. Hill
Administrative Assistant
Mrs. Helena Daidone

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

because they haven't thought out clearly what they're trying to say; the scholarly tone may conceal that they are really not saying much at all. Or, insecure employees may choose overscholarly language in an effort to impress someone. How pathetic that anyone should try to impress with words rather than ideas.

Six Principles of Clear Writing

These are not principles of business communication. They are basic to any kind of writing whether you are composing a letter or report, a newspaper article, or the great American novel. Nor are they new; these principles have been well known to professional writers for centuries. They will help you write clearly, accuartely, and fast. And they will give your writing a warm yet dignified tone.

• *Prefer clear; familiar words.* Vocabulary is a tool, a means to an end, not an end in itself. While a large vocabulary is one of our greatest assets, use it graciously. Don't show off with it. You will certainly need some large words—especially technical or professional terms. But never use a large word when you can say the same thing with a small one. (For example, say "use" instead of utilize "enough" instead of "sufficient.") Because you must think more clearly to express an idea in small words, they produce clearer and more precise writing. And they are the ones which add beauty to the language—if you care about that.

• *Keep most sentences short and simple.* Your writing should average between 15 and 20 words per sentence. (But mix them up; don't make *every* sentence between 15 and 20 words.) Better to express a complex thought in several short sentences than in one long one. Your reports and letters will be easier to write—and to read. Your ideas will be harder hitting. And you will be stuck less often. Don't worry about sounding choppy or childish unless you *overshorten*; there is that danger, however, if you average much below 15 words per sentence.

• *Prefer active voice verbs; avoid passives.* Nothing makes writing more "blah" than the passive voice. Worse, it makes your style inaccurate because if fails to tell by whom. (Write:

"Our engineers have estimated . . ." rather than: *"It has been estimated . . ."* or *"You must install the equipment. . ."* rather than: *"The equipment must be installed. . .")* Passives are easy to recognize: some form of the verb "to be" always precedes the main verb *(has been* estimated, *must be* installed). Once you have recognized it, ask yourself "by whom"? The answer to that question should be the subject, and you are then in the active voice.

• *Get people into your writing.* Don't drag them in artificially, but don't try deliberately to make your writing impersonal. The "third-person" style so prevalent throughout the government is hard to justify, except that "It has always been done that way." Poor justification. Pity the reader who is told: *This office should duly notified upon receipt. . ."* Why not say: *"Will you please notify us when you receive. . ."* Yes, you may even call yourself "I", but don't over do it.

• *Use a conversational style.* Write it the way you would speak it. You write: *"Personnel assigned vehicular space in the adjacent area are advised that utilization will be temporarily suspended Friday morning."* When someone asks what that means you say: *"Please don't park in the lot next door Friday morning."* What would be wrong with writing it that way? But caution: we tend to be careless in conversation. Your writing should be more concise, and grammatically correct. Use a conversational style—well, sort of, anyhow.

• *Gather all the information before you start writing:* Vague statements are usually the result of vague thinkers. Putting it another way, you cannot possibly express an idea in ultimate simplicity until you have thought it out in ultimate simplicity. But that's possible only after you have digested all of the pertinent information. Once you have the "clear-thought" breakthrough, your confidence level will go up and you will therefore feel more at home with clear language.

How to Organize

Start all reports and most letters by telling the gist or conclusion first, then spend the rest of the writing supporting it. This may seem backward, because if you did your work with an open mind you probably arrived at the conclusion last. But your reader wants it first, for two reasons. (1) The conclusion may be all he or she is interested in. (2) Even if the reader intends to read every word you wrote, reading experts tells us people understand better and retain longer if they read an overview first. Examine a good newspaper article. Journalists put the "5 W's" (who, what, when, where, and why) in the opening paragraph. The rest of the article is the "H" (how). This is called the Inverted Pyramid structure. It works equally well in reports and letters, for the same reasons. If you are writing your opinion of a proposed rule, for example, don't give your rationale then tell at the end whether you are for or against it. Rather, give your opinion first, then tell why.

The only time it's appropriate to build up to the conclusion at the end is if it is bad news. If you know it will upset your reader, you can sometimes be more persuasive—or at least soften the blow a bit—by leading up to it gradually. Were you to give the conclusion, then the reasons, your reader might not get to those reasons or might read them with a closed mind. However, never put the conclusion last in a report. It may succeed in a letter, but only because most letters are short.

Government Problems Are Tougher

Government agencies, though they are concerned about writing and generally work hard to improve, face problems tougher than industry's, and therefore progress is slow.

For one thing, there is their size. The larger the organization, the harder it is to write clearly. Why? Because the writer who needs clarification of some directive, so he or she can write about it clearly, often can't find anyone willing or able to provide the necessary explanation, and most reuse the unclear version. Gobbledygook breeds further gobbledygook, therefore, and the larger the organization the truer this axiom seems to be.

The review system. Then too, the larger the office, the more reviewers there are likely to be.

In this respect most government offices are terribly inefficient.

Some writing (but not all) should be reviewed by the writer's superior. But often we find several reviewers between, let's say, a GS-9 writer and a GS-15 boss, each trying to guess how the boss would want this piece written. They may contradict each other. Or sometimes (and many admit it) reviewers change a piece just to have a record on file that they read it and made some contribution. The result is predictable. Writers become confused, then frustrated and disillusioned, and eventually stop trying to write clearly. "Why waste the time trying?" many ask sincerely.

What's remarkable here is that overreviewing almost invariably makes the writing less clear. One would think such careful scrutiny would produce the ultimate of clear and beautiful prose. But for reasons we cannot explain, usually the opposite is true.

Best advice for review: Assign one reviewer for each letter or report. He or she should read mainly to ensure that the content is correct. But reviewers should also check for clarity (use the Six Principles earlier in this article), tone, and organization. Above all, reviewers should understand that they are performing a watchdog function. Like any good watchdog, rejoice if it isn't necessary to bark.

The signoff system stifles initiative. Several things go wrong when a competent employee must write for someone else's signature. First, he or she loses enthusiasm. In that sense, the signoff system is poor employee relations; it represents a vote of no confidence in the writer. Second, the multitude of reviewers and all their disadvantages become a major influence. And third, the style usually becomes cold and impersonal. *("The undersigned hereby acknowledges receipt. . .")* instead of *"I have received. . ."* Probably this is because most writers have trouble using "I" when it stands for someone else.

What's the alternative? In business and industry most employees sign their own letters. This practice is followed in a few federal agencies too.

As one enlightened executive put it: "I can't possibly know all of my subordinates' work as well as they know it. . .If an employee is reliable enough to know what a letter should say, he or she should be reliable enough to sign it. . .We both want it that way."

Government regulations do not require that the boss sign everything leaving the office. There are a few situations requiring higher signature—usually involving amounts of money an employee is authorized to spend. These are restrictions imposed by Congress, and have nothing to do with protocol or whether the person you are writing is of higher or lower rank.

The "sounding official" cop-out. "Clear simple writing is fine for industry," civil servants often tell us, "but as a representative of the Government I must sound official." But what makes writing official? Cold, heavy, menacing tone? So we get: *"Pursuant to the provisions of the Act, taxpayers are expressly forbidden. . ."* Wouldn't that be just as official if it said: *"We're sorry, but the law says you may not. . ."?*

Content, not tone, makes writing official. It is official if you are writing on business you are authorized by your agency to conduct on its behalf. And that is that.

Hiding behind legislation. Timid (or lazy) civil servants often choose to quote directly from a law or regulation rather than tell what it means in simple English. Pity the poor taxpayer who writes your office for clarification of some regulation; and gets back: *"Pursuant to the provisions of the 1964 Act as amended. . ."* followed by a quotation from the Act.

"But," the civil servant may argue, "if the lawyers who wrote the Act wanted it in clear, simple language, why didn't they write it that way?" Why didn't they, indeed? They probably should have. Who ever said that lawyers are better writers than anyone else? One would hope, however, that the specialist dealing regularly with the intracacies of a particular law would be able to discuss it accurately in lay language.

The Legendary Bureaucratic Image

Face to face, a government employee is as likely as his or her industry counterpart to be capable, courteous. But most people's contact with others is through writing, and therefore our impression of others (and theirs of us) is created by writing.

Civil servants, through their writing habits, may inadvertently create the impression they are uncooperative, indifferent, ineffectual paperpushers.

A letter of directive will sound *hostile* if the writer uses cold and heavy language; the reader has no way of knowing that the writer was really trying to cooperate. It will sound *indifferent* if the writer relies on standard rubber-stamp phrases instead of composing original statements; the reader has no way of knowing that the writer gave the matter careful attention. Worst of all, the writing will sound *confused* if the writer tries to use language he or she can't use well; the reader can't tell that the writer really understands.

Might we not argue convincingly, then, that greater cooperation—and therefore greater efficiency—would result if government employees would drop their preconceived style and write things in clear, courteous English?

How to Begin a Letter

The weakest part of most letters, and probably the hardest to write, is the first sentence. Try hard to avoid such standard cliché openings as *"In response to. . ."* or *"With reference to. . ."* or *"In accordance with. . ."* or, perhaps worst of all, *"Pursuant to. . ."* They're overworked, and create the impression that you didn't put much thought into your opening but used rubber-stamp wording instead. Worse, like most clichés, they withhold part of the information in that important briefing at the beginning.

Here is an example of what's wrong. The briefing (past information) and the answer (new information) are in one monstrous sentence:

"In response to your inquiry dated October 8, 1974 relative to authorization of the audit of the personnel records of your company by the Wage and Hour Division, the Fair Labor Standards Act of 1938, as Amended, provides that any business organization engaged in the sale of services or the sale, rental, or lease of products to any agency of the Federal Government may accordingly be subject to examination to ensure compliance with all of the terms and provisions of the above-mentioned Act. It is true, however, . . ."

Just breaking that into two sentences improves it dramatically:

"This is in response to your inquiry dated October 8, 1974 relative to authorization of the audit of the personnel records of your company by the Wage and Hour Division. The Fair Labor Standards Act of 1938, as Amended, provides that any business organization engaged in the sale of services or the sale, rental, or lease of products to any agency of the Federal Government may accordingly be subject to examination to ensure compliance with all of the terms and provisions of the above-mentioned Act. It is true, however. . ."

But the wording is still heavy. Why not say:

"This is in reply to your October 8 letter questioning the Wage and Hour Division's authority to audit the personnel records of your company. The Fair Labor Standards Act of 1938, as Amended, states that any company doing business with any agency of the Federal Government may be examined to ensure compliance with the Act. It is true, however. . ."

Not bad. (Notice, incidentally, how much more information *"questioning"* imparts than the cliché *"relative to."*) But it is still cold, stuffy, unnecessarily legal. And is the briefing necessary in this situation? Sometimes it isn't. Here is that same opening again, this time in clear, courteous, yet accurate English. And it is only half as long:

"Yes, the Wage and Hour Division does have authority to audit your personnel records. The law says we may examine the records of any company doing business with

the Federal Government, to ensure compliance with the Fair Labor Standards Act of 1938, as Amended. You are entirely right, however, ..."

Why Numbered Paragraphs?

Most agencies survive nicely without numbering each paragraph of a letter or report, and the practice is almost never seen outside the government. To those offices which commit this atrocity, we point out respectfully that readers are capable of distinguishing, let us say, the third paragraph from the first or second, without your help.

Numbering paragraphs is worse than silly. It is harmful to the writing for three reasons: (1) It interferes with the writer's ability to structure the letter or report logically, in building-block fashion from idea to idea. (2) It misleads readers by creating the mistaken impression that all paragraphs are of equal importance; that is rarely the case in writing. (3) It suggests to novice writers that regimentation is a substitute for thinking. For goodness sake, stop this outdated habit!

Don't Be Bound by Rules

Many writers lose effectiveness because they stick unflinchingly to formal rules. Some of the things you probably learned as rules, however, are just silly taboos.

For example, you probably learned that you may not repeat words. Of course you may; it is far better than seeking synonyms. And you probably learned that you may not begin sentences with "and" or "but." But you may. The best and most dignified of writers have been doing it for centuries. The alternatives are long, smooth sentences or short, disjointed ones; what can be wrong with short, smooth ones? You may even use sentences that are grammatically incomplete, if you're skillful enough. Occasionally, anyhow.

This is not to suggest that good grammar is no longer important. But grammar need not conflict with clarity. (The taboos in the paragraph above have never been rules, even though you may have learned they were).

Each of us can communicate better if we remind ourselves occasionally that language is just a transportation system for ideas—nothing more. That is the only reason any culture ever created language. It is the only reason we write.

Self-Test For Writers

How good a writer are you? In each example below, select the version you consider best. Some are easy, but some may surprise you. Average for educated adults is six or seven correct. Less than that, your writing probably needs some improvement. Answers follow.

1. (A) It was decided important changes would be made.
   (B) We decided to make important changes.
2. (A) The branch chief liked the idea. And because Harry was worried about schedules, he liked it too.
   (B) The branch chief liked the idea, and because Harry was worried about schedules, he liked it too.
   (C) The branch chief liked the idea. Because Harry was worried about schedules, he liked it too.
3. (A) The job was done very badly.
   (B) It would seem the execution was lacking in quality.
4. (A) The compressor needs oil. In all such units, proper lubrication is vital.
   (B) The compressor needs oil. In all such compressors, proper lubrication is vital.
5. (A) Kendall is the only person he spoke to.
   (B) Kendall is the only person to whom he spoke.
6. (A) There is limited market potential for used aircraft.
   (B) The market for used aircraft is small.
7. (A) The writer devoted two days to observing safety procedures.
   (B) I observed safety procedures for two days.
8. (A) White paint reflects sunlight, and also makes most structures seem larger.
   (B) White paint, which miakes most structures seem larger, also reflects sunlight.
9. (A) The leaves fell too soon.
   (B) Defoliation occurred prematurely.

10. (A) Past history proves the basic principle that we must produce them at top capacity.
(B) History proves that we must produce them at capacity.
(C) History proves the principle that we must produce them at capacity.

Answers To Self-Test For Writers

1. (b). Prefer active voice verbs (we decided) rather than passives (it was decided). Not only is the passive dull, it fails to tell "by whom."

2. (a). Of course you may begin sentences with "and." Furthermore, there are times when you should. The alternatives are one long sentence (two short ones are usually more desirable), or two sentences but without a smooth flow the conjunction (connective) provides. Yes, the same is true for "but."

3. (a). "B" is hedging. Say things directly. It is false diplomacy to hint at things. You soon get a reputation as afraid to express yourself, or as not having valuable ideas.

4. (b). Don't be afraid to repeat good words, in spite of what you may have learned. Above all, don't call things "units." In the same report, "unit" may mean a compressor, or the motor that powers the compressor, or several other things.

5. (a). Yes, you may end sentences with prepositions. To avoid doing so often causes long, unnatural sentences.

6. (b). "A" is windbag style. Such phrases as "limited potential" are vague, abstract, may get you in trouble by not saying what you hoped to say.

7. (b). Never, never call yourself "the writer" or "the undersigned." There is nothing wrong with writing "I" or "me."

8. (a). Neither is very good, but "A" commits fewer sins than "B". Ideally we need two sentences here (". . .sunlight. It also. . ."). But if you insist on one long sentence, place one complete idea *after* another rather than one in the middle of the other. Try not to separate a subject from its verb by another subject and verb. The average business writer cannot cope with the grammer this syntax requires. You end up saying things you didn't intend.

9. (a). Typical of the windbag style, "B" uses large words just to show off. They add nothing.

10. (b). "A" contains four redundancies. "C" gets rid of the three obvious ones *(past* history, *basic* principle, and *top* capacity); but it still contains ". . .proves *the principle* that. . ." when ". . .proves that. . ." says the same thing.

Analysis of Recent MCM/UCMJ Changes

Effective 27 January 1975, the President signed Executive Order 11835 amending certain portions of the *Manual for Courts-Martial, United States, 1969* (Rev. ed.) and the Uniform Code of Military Justice. Section 19 of the Executive Order states that "nothing contained in these amendments shall be construed to invalidate any investigation, trial in which arraignment has been completed, or other action begun prior to January 27, 1975; and any investigation, trial, or other action may be completed in accordance with the applicable laws, Executive orders and regulations in the same manner and with the same effect as if these amendments had not been prescribed."

The verbatim *MCM* changes effected by the Executive Order were set forth in a special insert to 75–1 *Judge Advocate Legal Service: see* 75–1 JALS 28 (DA Pam 27–75–1). In order to assist counsel, those deletions and additions are set forth below for further analysis. After each change is set forth a "reason for change." These explanatory notes are taken from a sectional analysis prepared by the Criminal Law Division of the Office of The Judge Advocate General which accompanied the proposed changes prior to Presidential action. The comments which follow were edited and compiled by Major Francis A. Gilligan, Criminal Law Division, The Judge Advocate General's School.

* * *

1. a. Change paragraph 34*d*, line 7. Delete "there is no provision . . . to military jurisdiction."

Add the following: "The Secretary of a Department may prescribe regulations which permit the payment of transportation expenses and a per diem allowance to civilians requested to testify in connection with the pretrial investigation."

b. *Reason for change.* The proposed authorization will benefit the administration of military justice by increasing the evidence available to a pretrial investigating officer from civilian sources. At present, civilian witnesses in some cases would be willing to testify at a pretrial hearing but are deterred from doing so by the fact that they must bear all travel expenses themselves. In such a case, the only alternative now available which

would allow a personal interrogation requires at least three other persons to travel to the witness.

2. a. Change

(1) Paragraph 53*c*(2)(*a*), line 5. Delete "is entitled to know the identity of the military judge and to. . . ."

(2) Paragraph 53*d*(2)(*c*). Add after the word "assembly" at line 3: "The request must be made in writing. If the accused, after the Article 39(a) session is called to order, indicates his desire to be tried by judge alone, the court should, if necessary, be recessed while the request is executed in writing."

(3) Paragraph 53*d*(2)(*d*). After the word "request" at line 4, add the following: "The request must be made in writing. If the accused, after the court is called to order, indicates his desire to be tried by the military judge alone, the court should, if necessary, be recessed while the request is executed in writing."

b. *Reason for changes.* This proposal is to conform with *United States v. Dean,* 20 U.S.C.M.A. 212, 43 C.M.R. 52 (1970).

3. a. Change:

(1) Paragraph 53*h*, line 6. Delete the sentence beginning this line. Add the following: "But *see* 61*F*(2) and 70*b*. However, after a determination of guilt has been reached, the military judge or president of a special court-martial without a military judge will personally remind the accused of his rights to make a sworn or unsworn statement to the court in mitigation or extenuation of the offenses of which he stands convicted, or to remain silent. *See* 75*c*(2). Further, when necessary, the military judge, or the president of a special court-martial without a military judge, will satisfy himself that the accused is aware of any right to which he is entitled by inquiry of counsel or by explaining that right."

(2) Paragraph 53*H*, line 13. After the word "accused" add a comma.

(3) Paragraph 53*h*, line 17. After the word "accused" add, "except in situations noted above, . . ."

(4) Paragraph 53*h*, line 19. Add an "s" to "right."

(5) Paragraph 53*h*, line 20, after the word "testify," add "or to make an unsworn statement."

b. *Reason for changes.* The changes to paragraph 53*h* of the Manual are to state the requirement that after a finding of guilty, the accused be advised or reminded by the president or military judge of his right to make a sworn or unsworn statement to the court in mitigation or extenuation of the offenses of which he stands convicted, or to remain silent. *See, e.g., United States v. Williams,* 20 U.S.C.M.A. 42, 42 C.M.R. 239 (1970).

4. a. Change paragraph 61*f*(2). Delete line 3; add the following: "the military judge, or the president of a special court-martial without a military judge, will question the accused to ensure his understanding of each of the elements of Article 38(b) and will determine whom he desires to represent him (see appendix 8*a*, page A8-4, and appendix 10*a*, page A10-2)."

b. *Reason for change.* This change is to insure that the defendant understands his rights to counsel. It also requires the judge to ascertain whom the accused desires to represent him in accordance with *United States v. Donohew,* 18 U.S.C.M.A. 149, 39 C.M.R. 149 (1969).

5. a. Change paragraph 70*b*(2). Add the following: "Further, the military judge, president of a special court-martial without a military judge, or summary court-martial must question the accused about what he did or did not do and what he intended (where this is pertinent) to determine whether the acts or omissions of the accused constitute the offense or offenses to which he is pleading guilty. The military judge, president of a special court-martial without a military judge, or summary court-martial must also personally advise the accused that his plea, if accepted, waives his right against self-incrimination, his right to a trial of the facts by a court-martial, and his right to be confronted by the witnesses against him. In order to accept the plea, the military judge, president of a special court-martial without military judge, or summary court-martial must determine on the basis of his inquiries and such additional interrogation as he deems necessary, that there is

a knowing and conscious waiver of the foregoing rights."

b. *Reason for change.* This change is to reflect the requirements of *United States v. Care,* 18 U.S.C.M.A. 535, 40 C.M.R. 247 (1969).

6. a. Change:

(1) Paragraph 76*b*(1), at line 5, delete the last two words "impose. The." Add: "imposed and instructions on the procedures to be followed in voting on the sentence as set forth in 76*b*(2) and 76*b*(3), including the requirement that the voting on proposed sentences begin with the lightest proposal. Such instructions will be given orally. The."

(2) Paragraph 76*b*(1), line 9, add comma after "mitigation."

b. *Reason for changes.* These changes are to comply with *United States v. Pryor,* 19 U.S.C.M.A. 279, 41 C.M.R. 279 (1970); *United States v. Johnson,* 18 U.S.C.M.A. 436, 40 C.M.R. 148 (1969).

7. a. Change:

(1) Paragraph 89*c*(8)(*a*), second paragraph, line 7. After the words "set aside." add: "Additionally, he will be credited with any period actually spent in confinement in connection with the charges which are the subject of the rehearing or other trial between the date the rehearing or other trial is ordered and the date of the rehearing or other trial."

(2) Paragraph 89*c*(8)(*a*), second paragraph, line 10. After the word "served," add "prior to the date the rehearing is ordered."

(3) Paragraph 89*c*(8)(*a*), second paragraph, line 15. Add the following: "If the accused also actually spent one month in confinement in connection with the charges before the rehearing between the date the rehearing was ordered and the date of the rehearing, he would receive one month additional credit and would have a balance of confinement for four months and forfeitures for six months yet to be executed."

(4) Paragraph 89*c*(8)(*a*), second paragraph, line 19. After the word "aside" add: "and any period actually spent in confinement in connection with the charges before the rehearing or other trial between the date the rehearing or other trial was ordered and the date of the rehearing or other trial. . . ."

(5) Paragraph 110*f*, line 6. Delete "new sentence." Add the following: "sentence. Additionally, they shall credit the accused with any period actually spent in confinement in connection with the charges which are the subject of the new trial between the date the new trial is granted and the date of the new trial itself."

(6) Appendix 14b, Form 19, after line 6, add the following: "Additionally, the accused will be credited with actual confinement from _____, 19__, to _____, 19__, being the period spent in confinement between the date the sentence of the former trial in this case was (set aside) (disapproved) and the present sentence in this case was announced."

(7) Appendix 14, Form 45, two commas were added but the substance that was added was as follows. After the end of the sentence on the fifth line, add the following: "Additionally, the accused will be credited with actual confinement from _____, 19__, to _____, 19__, being the period spent in confinement between the date the sentence of the former trial in this case was (set aside) (disapproved) and the present sentence in this case was announced."

b. *Reason for changes.* The preceding changes are to conform with the decisions in *United States v. Blackwell,* 19 U.S.C.M.A. 196, 41 C.M.R. 196 (1970), which required that the accused be credited with any period of confinement served between reversal of a conviction on appeal and a rehearing ordered as a result of appellate review.

8. a. Change:

(1) Paragraph 122*b*(2), second paragraph, at line 3. After the word "defense," add the following: "Where the defense proffers expert testimony concerning the accused's mental responsibility or capacity, the accused may be required to submit to psychiatric evaluation by Government psychiatrists as a condition to the admission of defense psychiatric evidence."

(2) Paragraph 140*a*(2), page 27-16, first full paragraph. Add the following to the paragraph:

"Where the defense presents expert testimony concerning the accused's mental condition, a Government expert, testifying in rebuttal, may testify as to his conclusions concerning the accused's mental responsibility or capacity based on interviews with the accused conducted without advising him of the foregoing rights."

(3) Paragraph 150*b*, page 27–59, at line 1. After the words "to do so," add the following: "An accused may be required to submit to psychiatric evaluation or testing by the Government as a condition precedent to his presenting psychiatric testimony that would raise an issue to his mental responsibility or capacity."

b. *Reason for changes.* The above changes to paragraphs 122*b*(2), 140*a*(2), and 150*b* reflect the holdings by the Court of Military Appeals that an accused who raises the issue of insanity at trial may be required to submit to psychiatric examination by Government doctors. *See, e.g., United States v. Babbidge,* 18 U.S.C.M.A. 327, 40 C.M.R. 39 (1969).

9. a. Change paragraph 152, page 27–63, line 30, after the words "possession or control," add: ", or of an area from which he might gain possession of weapons or destructible evidence;".

b. *Reason for change.* This provision was to comport with *Chimel v. California,* 395 U.S. 752 (1969).

10. a. Change Article 42. Add the following: "b. Each witness before a court-martial shall be examined under oath."

b. *Reason for change.* This provision was added by Executive Order since its initial omission from the present revised edition was an oversight.

Military Correspondence and the JA

The lesson to be learned from these actual events is of importance to all Judge Advocates:

> An installation commander denied an E-7's request for a statement of nonavailability of quarters. The denial informed the member that the accommodations provided for senior enlisted personnel met the general standards of habitability for TDY personnel, and were considered adequate on the basis of military necessity pursuant to paragraph 2–2(g), AR 210–16. Following the denial, a JAGC captain personally wrote on behalf of the member directly to the major commander requesting additional consideration of the E–7's contentions that the offered quarters were inadequate and that no military necessity mandated their occupancy. The major commander returned the member's basic request to the JAGC officer without action, noting that the installation commander's statements must be accepted since it is the installation commander's prerogative to determine military necessity requirements. Thereafter, the JAGC captain sent the identical request for additional consideration directly to the Secretary of the Army. DCSPER, in responding to the correspondence addressed to the Secretary of the Army, reiterated that the installation commander's determination of military necessity was controlling. The DCSPER reply was returned "through channels in the interest of correctly following established procedure for correspondence of this nature."

Military administration problems involving a particular service member are outside the purview of the Legal Assistance Program. As an example of such problems, paragraph 8*b* of Army Regulation 608–50 (22 Feb 1974) specifically notes that government housing problems are inappropriate subjects for Legal Assistance. Normally a Legal Assistance Officer should refer an individual who has a military administration problem to the appropriate staff element. Nevertheless, Army Regulation 608–50 recognizes that official action by the *staff* judge advocate is appropriate in some cases. The action taken, however, must be fully consistent with Army policies governing correspondence and the exercise of command.

Army policies governing correspondence and the exercise of command require correspondence to be routed through those commands, agencies, or offices that are expected to exercise control, take action, or be concerned with the matter discussed. AR 340–15, para. 2–3*a* (C6, 30 May 1972). Further, these Army policies normally require

that correspondence seeking (or containing) a command decision be routed through command channels; technical channels are not appropriate for such correspondence. AR 340–15, paras. 2–3*d*, 2–3*e* (C6, 30 May 1972); AR 600–20, Ch. 2 (28 Apr 1971). Correspondence routed through command channels pursuant to these policies must be signed by the commander personally or "for the commander." AR 340–15, paras. 2–5, 2–6 (C6, 30 May 1972). Thus, it would be improper for any judge advocate officer to write directly to the commander of a higher command, to the Army Chief of Staff, or to the Secretary of the Army regarding a military administration problem such as those mentioned in paragraph 8*b* of Army Regulation 608–50 (22 Feb 1974). It would be equally improper for a judge advocate to prepare such correspondence for an individual service member's signature since legal assistance is not authorized for military administration problems.

The judge advocate in the case related above acted improperly by writing directly to the major commander and the Secretary of the Army. If, after appropriate inquiry, he had determined that the E–7's request for a statement of nonavailability was meritorious, the judge advocate should have advised his staff judge advocate. The staff judge advocate then might have brought the matter to the installation commander's attention in an appropriate way if he had agreed with the judge advocate's determination.

Know Thy Client

By: Lieutenant Colonel Robert B. Smith, Staff Judge Advocate, HQ US Army Infantry Center, Fort Benning, Georgia

General Prugh's recent request of SJA's for their thoughts on future JAGC actions regarding the providing of legal services to the Army brought forth this response from the field.

* * *

Every officer who has been around the Corps a while has met a number of JA's who are in the Army but not of it. In my philosophy, even a few such men are too many, and their example hurts us all.

Wherever a lawyer practices his profession, it would seem axiomatic that he know his client and his client's business. This is as true in the Army as anywhere else. Yet it seems that a number of Army lawyers do not really know what their clients do. They have little or no idea of the complexities of company administration, or the rigors of living in the field, or of what it's like to hump a mortar baseplate in deep mud. It takes a little time and effort to learn something about the people we serve but it pays large dividends. Commanders are uniformly delighted to show us what they do for as long as we can listen. Show interest in their job, and they'll take more pains to understand yours.

Some of our brethren often fail to understand and observe the customs of the service, and not a few wear crummy, sack-like uniforms, dull shoes, and 'way too much hair. Would we conform generally to the standards and way of life of our clients in private life? I think we would. . .and we should do no less in the service of the United States. How many of us are in decent physical shape? Aside from the unquestioned boon of better health, good conditioning can one day make the difference between performing in a difficult situation, or not. We would, I hope, participate in the life of a civilian town in which we practiced; we should do no less here.

Let's encourage our colleagues and subordinates to learn something of their client's way of life and join in it. Interview witnesses in the field and stay the night; go and learn rapelling with the recon people; fire a tank gun or your M-16, and do so for record. When you go to speak at an officers' call where everybody is in fatigues, wear them yourself; take PT with the units you serve; never miss a change of command or other unit ceremony. Closeness with our clients doesn't make problems vanish. What it does do, though, is foster that trust that makes commanders seek and follow their lawyer's advice, and encourage that midnight telephone call that makes all the difference between a successful prosecution and a case hopelessly botched *ab initio*.

Our only reason for existence is the service of our clients: The Army and its members. We must remember that we are not touched with divine fire because we are lawyers, but are simply officers with a professional specialty amidst other professionals, engaged in a common effort. Not only will 100 percent participation in our client's lifestyle pay tremendous dividends in trust and efficiency, but you'll find its fun. Whether we stay around this Army for three years or 30, being a real part of it will leave us far richer than just flying a desk the requisite number of hours.

The Role of the Fort Knox SJA Office in SCOC

By: Captain E. A. Gates, Circuit Judge, USALSA and
Captain Vincent P. Yustas, Chief, Military Justice, Fort Knox, Kentucky

The Senior Commanders' Orientation Course (SCOC) began in October 1972 under the supervision of the Chief, Leadership Division, Leadership Department, United States Army Armor School, Fort Knox, Kentucky. It is a Department of the Army course and is the only one of its kind in the United States Army. The primary purpose of the two-week (83 hour) course is to provide senior officers an orientation on contemporary leadership problems. It provides a brief study of behavioral science with emphasis on dealing with racial tension, drug abuse and alcoholism and provides an update on military justice and personnel administration procedures affecting maintenance of discipline. Additionally, qualitative management, personnel training, logistical and maintenance management procedures and techniques are stressed during the course. The course is designed to reacquaint lieutenant colonels and colonels, who have recently assumed command or who are programmed to assume command of battalions or brigades anywhere in the Army, with the command process and to provide possible solutions to current command problems. The SCOC course is conducted 10 times each fiscal year and since its inception, according to Armor School records, approximately 900 lieutenant colonels and colonels have attended. On occasion brigadier generals destined to command have also attended.

The "Discipline and Justice" phase of the course currently consists of an eight and one-half hour block of instruction—four and one-half hours of "platform" instruction and four hours of seminar. The first segment is conducted primarily by the Fort Knox Staff Judge Advocate's branch chiefs discussing Claims, Legal Assistance, Military Affairs and Military Justice with the Staff Judge Advocate responding to questions and highlighting certain aspects of the course. The tempo of these lectures is low-key; the participants are encouraged to pose questions at anytime. The theme of the presentations is two-fold: to reacquaint the commander with the function of each branch—how he and his subordinates can obtain the most benefit from the services offered—and to constantly encourage commanders to maintain direct communication with the officers in the Staff Judge Advocate's Office.

The Claims portion is mainly a class in preventive law. The commanders are presented with procedures they can use in their commands to reduce the number of claims presented. For example, a system of reducing the number of barracks larcenies is one of the topics most favorably received by the course members. Finally, they are appraised of the types of claims which are most frequently submitted but cannot be honored. The Legal Assistance portion covers the Soldiers' and Sailors' Civil Relief Act and explains how the Legal Assistance Office functions, using as the instructional vehicle the Legal Assistance Office's most frequent client, the E-6 on the brink of bankruptcy. In both portions the emphasis is placed on communication between the commanders and the JAGC officers so as to provide the maximum benefit to the soldier.

The Military Affairs portion focuses mainly on administrative eliminations, line of duty determinations and reports of survey. The Affairs Officer presents to the commander an idea of what the Staff Judge Advocate Office is looking for in

a file in determining its legal sufficiency. The stress is on substantiating the file, with equal emphasis upon calling the Affairs branch with a question *before* the file is forewarded. Additionally, the Affairs portion reviews the effects in civilian life of the various types of discharges and covers the most common errors occurring in administrative actions forwarded by the commanders.

The Military Justice portion consumes the bulk of the lecture segment. The Military Justice officer is here dealing with commanders who have had virtually no real experience with Military Justice under the 1969 Manual. Deferment of confinement, BCD-special courts-martial, the right to refuse a summary court-martial, trial by military judge alone ("What happened to the Law Officer?")—all these are new concepts to most of these commanders. Accordingly, this portion covers military justice procedure from the question of jurisdiction to the convening authority's action. The stated purpose is to dispel such beliefs as: "The new Military Justice system fails to properly support the commander in his attempt to maintain discipline," and "The lawyers and courts are ruining the disciplinary system in the Army." The recurrent theme is that many of the recurring problems which senior commanders find perplexing and frustrating in the area of administrative and substantive law have relatively simple solutions. To this end topics included in this phase are: The Military Justice Act of 1968, jurisdiction, pretrial restraint and speedy trial, confessions, search and seizure, Article 15 procedure, trial procedure, methods of disposing of charges, what factors to consider in determining the disposition, pretrial agreements, and review action on records of trial. The concept presented to the commanders is that they, as well as the accused, have a lawyer they can turn to for advice when an offense is alleged. "Call your legal advisor early and often" is the keynote; expeditious disposition of the charge through the combined effort of the JAGC officer and the commander is the goal. This Military Justice portion ends with a transitory note leading in to that evening's seminar with the judges and trial attorneys.

The evening seminar is conducted by the trial judiciary at Fort Knox and preambulates the seemingly perplexing court-martial process. Although the course has always had a judge as a participant, the judiciary did not conduct a seminar until the summer of 1973. Prior to that time a judge was a panel member at seminars dealing with equal opportunity and race relations. However, due to the senior officers' intense interest in Army judiciary and the court-martial process, the SCOC course was expanded to include these subjects. A prosecutor and a defense counsel from the office of the Fort Knox Staff Judge Advocate join the two special court-martial circuit judges in conducting each seminar. During the sessions the officers are encouraged to ask "nuts and bolts" questions in any area related to the court-martial process. The officers are generally interested in search and seizure issues, admissibility of contraband and weapons seized during health and welfare inspections, unlawful command influence, admissibility of confessions and other pretrial statements, courtroom rules, processing time, and guidance on correct procedures which will enable their commands to operate an efficient judicial process. Additionally, they always exhibit a keen interest in the trial judiciary and their questions usually encompass most facets of the judicial program. Consistently, inquiries are made as to who prepares judges' OER's, required qualifications for appointment to the trial bench, tenure, and the type of professional and social relationships which should (and hopefully do) exist between the field commander and the local judge. At the conclusion of each session the GCM circuit judge makes closing remarks highlighting the more significant areas of the discussion. At the outset student attendance at this seminar was voluntary. However, because the presentation was so well received by the senior officers, the Armor School Leadership Department recently made the seminar a required part of the course curriculum.

Is this exercise worth the time and effort? We believe it is. The attorneys and judges are usually able to answer the commanders' questions concerning anticipated legal problems. Also these senior officers have an opportunity in an

academic setting to frankly discuss the roles and goals of the commander, counsel and judge. It is our experience that these officers leave Fort Knox with a better understanding of the functions of a prosecutor, defense counsel and circuit judge and we gain a better understanding of the complexity of command. And, most importantly, we hope that the JAGC officers here have been able to instill to the maximum extent possible the concept of a continuing dialogue between the lawyers and the commander. We give commanders an open and sincere invitation to consider their JAGC advisors as virtual members of their personal staffs. We hope that these SCOC participants will move to their new commands throughout the Army with a greater understanding of the mission of the Judge Advocate General's Corps and a fuller appreciation of the ability of the Corps to support our principal clients—the commanders.

After-Action Report: 1975 Advanced Procurement Attorneys' Course

By: Captain Richard C. Bruning, Procurement Law Division, TJAGSA

The 1975 Advanced Procurement Attorneys' Course, held from 6–17 January 1975, was a huge success for the 70-plus attorneys in attendance. Provisions were made for members of the 23d Judge Advocate Officer Advanced Class to attend the two-week course as one of the electives in its curriculum. Six members of the Advanced Class took advantage of the opportunity to hear some of the finest procurement lawyers in the country.

As usual, the students were extremely knowledgeable and represented a wide range of practical experience. Many Army installations were represented as were Navy, Air Force and Coast Guard activities. Several commodity commands of the Army Material Command, the U.S. Postal Service, General Services Administration, Corps of Engineers and the Small Business Administration were also represented.

As in previous years, this year's course was "theme orientated" with the instruction concentrated on the contract performance stage of federal procurement. The School was especially honored to have the Honorable Harold L. Browman, Assistant Secretary of the Army for Installations and Logistics, present the opening address. Mr. Browman challenged the students to know their client and to get involved so as to assist him even more in the future.

The class was introduced to a little-understood organization when Mr. Ronald Kienlen, a former active duty judge advocate officer, completed the first day's activites by presenting a lecture on the operation and functions of the Office of Management and Budget, of which he is now Assistant General Counsel.

Labor law problems in contract performance were not omitted as Mr. William Blackburn, Wage and Hour Division, Department of Labor, and Captain Clifford Brooks of TJAGSA faculty presented material on Labor Standards Enforcement as Impacted by the Service Contract Act Amendments of 1972 and Labor Standards (generally) Affecting Administration of Government Contracts.

Interesting opinions regarding "how to do it" were presented to the tough subject of equitable adjustment in modifications and terminations by government counsel, Captains William Robertson and Robert Worthing, Trial Attorneys, Office of the Chief Trial Attorney, Contract Appeals Division, Department of the Army. Their presentation on The Government View of the Costing of Equitable Adjustments in Modifications of Contracts and Government Problems Involved in Pricing-Out Settlements was countered by Mr. Eldon Crowell of the firm of Jones, Day, Reavis & Pogue, Washington, DC, who presented The Contractor's View in Cost of Equitable Adjustments for Modifications and Terminations.

The knowledge of equitable adjustment proved to be invaluable when Mr. John Lane, Hearing Judge, Armed Services Board of Contract Appeals, presented a discussion on Defective Pricing and Defense Contracts.

Mr. Richard Tarnas, General Counsel, United States Army Tank-Automotive Command, Warren, Michigan, and Mr. Henry B. Keiser, President, Federal Publications, Inc., Washington, DC, spent a full day on the complex subject of Practical Problems in Inspection, Acceptance and Current Developments and Problems with Warranties in Government Contracts.

Since most students were deeply involved with inflation/recession at their agencies and commands, Mr. Porter Walton, Chief, Procurement Policy Division, Office of the Assistant Secretary of the Army for Installations and Logistics, sparked much discussion in his presentation involving DoD Policy, Alternatives and Future Operations Within an Inflating Economy.

Both the government and contractor were well represented when Mr. Aubrey V. Burkett, District Counsel, US Army Engineer District-Fort Worth, Fort Worth, Texas, and Mr. Jack Paul of Paul and Gordon, Los Angeles, California, presented material on Construction Contracting by the Government and Problems Facing the Contractor Regarding Construction Contracting.

In another interesting match-up of experts, Mr. Stanley Dubroff, General Counsel, US Army Electronics Command, Fort Monmouth, New Jersey, and Mr. David V. Anthony of the firm of Pettit, Evers, and Martin, Washington, DC, informed the students of the complexities of Mistake, Impossibility and Defective Specifications from both the government's and contractor's point of view.

The contract appeal system was also considered in depth with presentations by Colonel Joseph Van Cleve, Chief Trial Attorney, Contract Appeals Division, Department of the Army, and Mr. Richard C. Solibakke, Chairman Armed Services Board of Contract Appeals, on Operation of Armed Services Board of Contract Appeals. The subject was further pursued with Mr. Gilbert Cuneo of the firm of Sellers, Conner and Cuneo, Washington, DC, discussing The Route to The Board of Contract Appeals, and Mr. (and LTC, JAGC, USAR) Harry E. Wood, Trial Judge, United States Court of Claims lecturing on Jurisdiction of the Court of Claims.

Most afternoons of the course, students had an opportunity to question the guest speakers in depth during panel sessions. In a number of panels, guest speakers handed out problems to help guide the discussion as well as review the key points of the morning lectures.

One of the advantages of the theme-oriented concept of the Advanced Procurement Attorneys' Course is that a student can return to each year's course and hear new material presented. The 1974 course was primarily concerned with the contract formation stage of procurement. The theme for the 1976 course has not yet been formulated.

The Advanced Procurement Attorney's Course is one of the oldest and most prestigious of the continuing education courses offered at The Judge Advocate General's School. It is expected the 1976 course, tentatively scheduled for 5–16 January 1976, will attract the same quality of speakers and students as did the 1975 and previous courses.

Individuals who are interested in attending the Advanced Procurement Attorneys' Course or any other continuing education course offered at the School are encouraged to contact the Academic Department, The Judge Advocate General's School.

Test Yourself

From: Nonresident Instruction, TJAGSA

Did February's "Test Yourself" quiz convince you that you should have enrolled in TJAGSA's New Developments Course? Here is a chance to test your knowledge again in the second quar-

terly examination administered in the Course. Solutions to the questions appear at the end of the exam.

Administrative and Civil Law.

1. The Posse Comitatus Act prohibits:

A. Use of Army property by civilian law enforcement agencies.

B. Execution of the laws by Army personnel in both their private and official capacity.

C. Use of Army personnel to protect federal property.

D. Use of Army personnel to advise civilian police in deployment of equipment and personnel in a local riot situation in which the President has not ordered federal assistance.

2. The most important teaching point in *U.S. v. Walden is:*

A. Use of military personnel by civilian authorities as undercover police agents in violation of the Posse Comitatus Act will not defeat a criminal prosecution.

B. The Secretary of the Navy should not have voluntarily made the Posse Comitatus Act applicable to the Navy and Marines.

C. Repeated violations by the military of the Posse Comitatus Act will lead to increased judicial interest with the real possibility that an exclusionary rule of evidence will be invoked.

D. The Posse Comitatus Act does not express national policy.

3. Either Servicemen's Group Life Insurance (SGLI) or Veteran's Group Life Insurance (VGLI) is available to each of the below-described individuals except:

A. Mr. John Edwards was released from active duty in 1974 after 3 years of service. He is not presently in the reserves.

B. LTC Smith retired from the Ready Reserves in 1968 after 22 years of service. He is presently 52 years of age.

C. SGT (E-7) Marsten retired in 1972 from active duty after 24 years.

D. CPT Cortello is presently a unit commander in the National Guard in the State of New Hampshire.

4. The *conversion rights* under the Servicemen's Group Life Insurance (SGLI) and the Veteran's Group Life insurance (VGLI) are particularly significant for which one of the following individuals:

A. The individual who is uninsured or inadequately insured at the time of his release from active duty.

B. The individual who has very little disposable income available for the purchase of life insurance.

C. The disabled veteran who may not be able ordinarily to get commercial insurance coverage.

D. The individual with young children who needs maximum insurance protection for his premium dollar.

5. If a federal law enforcement officer is sued as an individual for alleged violation of an aggrieved person's constitutional right to be free from unreasonable search and seizure, the court will:

A. Dismiss because police are always immune from such suits.

B. Join the federal government as a co-defendant.

C. First ascertain whether the officer acted in good faith.

D. Decide whether the officer was engaged in the performance of the sort of discretionary acts for which he should receive official immunity.

6. The March 1974 Amendment to the Federal Tort Claims Act allows:

A. Claims to be filed against the government for assaults committed by federal employ-

ees acting within the scope of their employment.

B. Suits to be filed against individual federal employees for certain intentional type torts.

C. The federal government to now pay punitive damages for torts of its employees.

D. A plaintiff to receive injunctive relief protection against certain intentional type torts.

7. An Army installation commander has discretion to expel from the open portions of the installation civilians who are engaged in the exercise of their First Amendment right to speech and assembly when:

A. The commander personally believes that the content of the speech presents a clear danger to loyalty, discipline and morale.

B. The commander determines that the activity impedes his overall military mission.

C. The commander determines that the activity *is* unreasonable in time, manner or place.

D. The commander determines that the activity may encourage soldiers to begin a demonstration sympathetic to the civilians ideas.

8. A soldier has standing to challenge a punitive regulation as void for vagueness or overbreadth when he can show that enforcement of the regulation would have the effect of "chilling" the exercise of freedom of speech *and*

A. Although he himself was on notice at the time of the commission of the offense, his conduct was proscribed by the regulation, the regulation may be unconstitutionally applied in another factual setting.

B. He could not at the time of commission of the offense reasonably determine whether his conduct, which occurred on the "closed" portion of the installation was proscribed by the regulation.

C. A reasonable man is not able to determine whether similar conduct of civilians on the "open" portion of the post would be proscribed by the regulation.

D. His conduct did not have a direct and palpable impact on loyalty, discipline and morale even though he was on notice, at the time of the commission of the offense, that his conduct ws proscribed by the regulation.

9. The debtor/creditor relationship was significantly affected by Supreme Court decisions in the 1969–1972 era in that:

A. The creditor is required to post bond prior to taking action against a debtor.

B. The creditor may not utilize state officials or process to repossess property unless the debtor has been afforded a hearing on the issue.

C. No creditor may act to repossess any property without leave of court.

D. The debtor is now obligated to produce the property or security bond upon proper filing by the creditor.

10. What is the effect of *Mitchell v. Grant* on the due process standards of *Fuentes?*

A. The court has found the cases clearly distinguishable on their facts, and therefore, there is no effect.

B. The *Fuentes* standards have been overruled.

C. The court was unable to draw a true comparison between the cases due to the fact that Louisiana utilizes a Civil Code.

D. While the *Fuentes* standards are still viable under *Mitchell*, there is strong argument that they may have lost much or all of their effect.

11. During the Yom Kippur War of October 1973, the United States shipped U.S. military equipment stored in Germany from the port of Bremerhaven to Israel. The equipment was in Germany for use under the North Atlantic Treaty in the protection of NATO states. Israel is not a member of NATO. Upon public revelation of these shipments a diplomatic protest was

made by Germany to the United States and further shipments from Bremerhaven were halted. Had the draft definition of aggression been adopted during this time, which of the following statements best describes the effect it would have had on the U.S. shipments.

A. Such acts are clearly outside the scope of the draft definition and would not be considered an act of aggression.

B. Such acts are within the scope of the draft definition and accordingly require the U.N. Security Council to determine them to be acts of aggression, if the issue is submitted to the Security Council.

C. Such acts are within the scope of the draft definition but since the definition is intended only to serve as guidance to the Security Council, the Council does not have to determine them to be acts of aggression in violation of the United Nations Charter.

D. Such acts are not clearly inside or outside the draft definition and the impact of the definition upon them is not clearly known.

12. Which of the following statements best describes the draft definition's position about justifications for aggression?

A. Political considerations may serve as a justification for aggression.

B. Economic considerations may serve as a justification for aggression.

C. Both of the above.

D. None of the above.

Examination Solutions

1. Choice D is correct.

2. Choice C is correct.

3. Choice C is correct.

4. Choice C is correct.

5. Choice D is correct.

6. Choice A is correct.

7. Choice C is correct.

8. Choice B is correct.

9. Choice B is correct.

10. Choice D is correct.

11. Choice D is correct. The resupplying of Israeli armed forces from the port of Bremerhaven does not clearly fall within any of the listed acts of aggression set forth in Article 3 of the draft definition, however, Article 3e provides that "the use of armed forces of one state, which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement. . .shall qualify as an act of aggression. . . ." While the example in question involved the use of military equipment, rather than armed forces from the territory of another state in contravention of the agreement providing for their presence in the receiving state [the North Atlantic Treaty], the effect caused by the shipments is basically the same as it would have been had it involved shipments of armed troops, and it is not inconceivable that such military equipment shipments could be labeled acts of aggression. This is particularly true as Article 4 of the draft definition provides that the acts enumerated in Article 3 are not exhaustive.

12. Choice D is correct. Article 5 of the draft definition specifically provides that "no considerations of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Service Of Post-Trial Review Upon Defense Counsel. The United States Court of Military Appeals has ordered in the case of *United States v. Goode*, CM 429946, 4 April 1975, that on or after 15 May 1975, a copy of the post-trial review must be served on counsel for the accused in order to provide him an opportunity to correct or challenge any matter he deems erroneous, inadequate, or misleading, or upon which he otherwise wishes to comment. Proof of such service, together with any such correction, challenge, or comment by counsel will be made a part of the record of trial. The failure of counsel for the accused to take advantage of this opportunity within five days of said service upon him will normally be deemed a waiver of any error in the review. It should be noted that compliance with this requirement will not be sufficient

cause to extend the 90-day period in cases subject to the rule established in *Dunlap v. Convening Authority*, 23 USCMA 135, 48 CMR 751 (1974).

2. Military Magistrate Program. With the adoption of the Military Magistrate Program on a world-wide basis (Chapter 16, AR 27-10), the opportunity for service s a military magistrate has been greatly expanded. Military magistrates occupy a particularly sensitive position in the military justice system, and individuals appointed to positions as military magistrates should familiarize themselves with the instructions for military magistrates contained in DA Letter 27-74-3, dated 31 July 1974, as well as local regulations and guidance. In order to make the program a success, it is necessary that military magistrates maintain their status as neutral magistrates. Thus, each magistrate must guard against becoming, or being perceived as, a "commander's" man, or as a personal counsel for the accused. The rendering of legal assistance, for example, causes the military magistrate to put aside his cloak of neutrality, and must be avoided. Prisoners indicating a desire for legal assistance will be referred through appropriate channels to the local legal assistance office.

3. Court Reporting Equipment Problems. Cases in which a verbatim record cannot be prepared due to equipment malfunction or departure of court reporters continue to plague the military justice system. In *United States v. Webb*, CM 430177, 28 February 1975, the Court of Military Appeals found the reconstructed record of trial to lack the necessary completeness required by Article 54. To preclude occurrences such as this, Staff Judge Advocates should require court reporters to use tape recorders as "back-up" equipment. This is an especially important consideration for closed microphone court reporters using recorders of dubious reliability. New court reporting equipment should be distributed to the field by the end of the year, but the use of "back-up" systems in all cases can help prevent cases such as *Webb*.

4. Scheduling DAC Expert Witnesses. A continuing problem faced by trial counsel is the scheduling of the appearance of witnesses at courts-martial. Sometimes this involves civilian chemists from CID laboratories appearing at the trials of drug-related offenses. In the scheduling of cases in which such an expert must testify, trial counsel, as well as military judges, should bear in mind that certain civilian employees are *not* paid wages during travel time outside of their regularly scheduled workweek. Thus, an expert witness travelling on a weekend to testify at a court-martial is not compensated for such travel time. As a result, it is suggested that consideration be given to scheduling the appearance of a government-employed expert witness for the middle of the week, in order not to impinge on the witness' own time.

Judiciary Notes

From: U.S. Army Judiciary

1. Administrative Notes.

a. *Court-Martial Orders.* The second and any subsequent even numbered pages of a court-martial order should be printed head-to-foot to facilitate reading of the order when it is made part of the record. Moreover, it should be dark enough to be readable. To preclude the need for a corrected copy, it must be authenticated (signed and sealed) in accordance with the provisions of paragraph 12–4*c*, AR 27–10, and paragraph 1–24*c*, AR 310–10.

When it is necessary to rescind a court-martial order, the reason for the rescission should be stated therein (for example: "having been issued prior to completion of appellate review"; "having been erroneously published as a general court-martial order instead of a special court-martial order"; "having been inadvertently published prior to evaluation of the accused by the general court-martial convening authority as required by AR 190–36". Further, the revoking order should include the accused's name, service number, and organization.

b. *Records of Trial.* Many records of trial are arriving in the Judiciary in damaged condition due to inadequate packaging. Lengthy records should not be prepared as one large volume, held together by "acco" fasteners, but rather as several smaller volumes each of about 200-250 pages, including exhibits and allied papers. Records of this size are easier to handle during the review process. Further, they should be shipped in a container which can withstand rough handling in the postal service. Manila envelopes should be used only as a last resort and then only after the record has been reinforced with tape or protected with sturdy cardboard.

c. *Signatures on Records of Trial.* Many records of trial continue to be received in which the signature of the officer certifying the record as legally sufficient is illegible. Judge advocates are reminded to clearly stamp, print or type their names below their signatures on the front cover of records of trial they review. Not infrequently, it is important to determine which judge advocate reviewed the record of trial and found the same to be "legally sufficient." It should further be noted that the stamp, indicating review, is itself often illegible and/or fails to identify the GCM authority to which a record of an inferior court was submitted for supervisory review. Such information should be apparent from the cover of the record of trial.

2. Recurring Errors and Irregularities.

March 1975 corrections by ACOMR of Initial Promulgating Court-Martial Orders.

a. Failing to show in the FINDINGS paragraph that the accused was found Not Guilty, rather than Guilty, of a Charge.

b. Failing to show certain specifications as amended after arraignment—four cases.

c. Failing to show in the name paragraph the correct ASN—two cases.

d. Failing to show verbatim the accused's pleas prior to their change.

e. Failing to show that the sentence was adjudged by a Military Judge.

f. Failing to set forth certain Charges and Specifications upon which the accused had been arraigned, but withdrawn prior to pleas—two cases.

g. Failing to show in the PLEAS paragraph that certain Charges and Specifications had been withdrawn after arraignment but prior to pleas—two cases.

h. Failing to show that the sentence included "total forfeitures of all pay and allowances."

i. Failing to show correctly in the authority paragraph the court-martial convening orders and the amendments thereto.

j. Failing to include in the name paragraph the accused's ASN.

k. Failing to show the correct number of previous convictions considered by the court-martial.

3. Distribution of *The Advocate*. The Defense Appellate Division currently distributes *The Advocate* to Army JAG officers in the following manner: One copy to each SJA office and one copy to each defense counsel office as listed in the Roster of Defense Counsel maintained by PP&TO. Local reproduction is encouraged. Defense counsel offices not receiving *The Advocate* should notify the Defense Appellate Division. In addition, Army JAG Reserve and National Guard attorneys are elioible for gratuitious distribution. If individuals wish to receive *The Advocate*, please contact Defense Appellate Division.

Requests for Appellate Defense Counsel: Its Uses and Abuses

A Note From the Defense Appellate Division

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

The attorney-client relationship between an accused and his trial defense counsel continues after the conclusion of the trial. There are numerous post-trial duties required of trial de-

fense counsel. *See generally* paragraph 48k, *Manual for Courts-Martial, United States, 1969 (Revised edition); The Army Lawyer*, DA Pamphlet 27-50-22, October 1974 at page 23; *The Advocate*, Volume 6 No. 1, July 1974 at page 10. Upon conviction and sentencing, one post-trial duty is advising the accused of his appellate rights. Paragraph 48*k*(3), *Manual.*

Among an accused's appellate rights in all cases referred to the Court of Military Review under the provisions of Articles 66(c) and 69, Uniform Code of Military Justice is the right to request the designation of appellate defense counsel. Article 70, Uniform Code of Military Justice. The decision of whether to request counsel on appeal should be an informed choice by an accused based upon the advice of trial defense counsel.

It should be noted that in actions on cases disposed of by the Army Court of Military Review during Fiscal Year 1974, 82 percent of the findings and sentence were affirmed. The cases submitted to the court by appellate defense counsel represent a majority of the 18 percent of the cases in which the court took some ameliorative action.

However, it should also be considered that a request for appellate counsel will result in an increase in appellate processing time. This increase of time results from review, research and preparation of pleadings by appellate defense counsel and by government appellate counsel, arguments before the court and the court's consideration and decision in the case. This factor should be carefully considered in deciding on a request for appellate counsel. Of course, in all cases, the accused *must* be fully informed of his *absolute right* to request appellate defense counsel.

If an accused desires representation by counsel on appeal after consultation with trial defense counsel, a "Request for Appellate Defense Counsel" form should be executed. The most common form for requesting appellate defense counsel has a space for the listing of "errors or other matters urged as grounds for relief." Counsel should be aware that this form is included in the record of trial and is available to appellate defense counsel, government appellate counsel and members of the court. Thus, counsel should be very careful not to include on this form any matters which should be kept confidential. Counsel should also inform the accused of this fact. Meritorious assignments of error and prejudicial occurrances at trial should be noted on the form and its use for this purpose is strongly encouraged. However, any confidential matters which counsel desires to bring to the attention of appellate defense counsel should be forwarded separately. This should not, in any way, limit defense counsel's submission of a brief pursuant to Article 38(c), Uniform Code of Military Justice, but counsel should always give thought to addressing their comments directly to the Defense Appellate Division rather than making them a matter of public record.

Recusal: The Need for the Exercise of Sound Discretion

A Note from the Defense Appellate Division

By: Captain John M. Nolan, Defense Appellate Division, USALSA

A troublesome and complex issue currently active in military appellate courts is the recusal of a trial judge upon challenge. Initially, it is a matter to be resolved by the military judge upon challenge. However, his decision is reviewable for abuse of discretion.

As noted in the recent decision of *United States v. Cockrell*, 49 CMR 567 (ACMR 1974), the Uniform Code of Military Justice does not address this issue, and the *Manual* provides but slight guidance.

However, standards have slowly evolved. It was discussed in a Military Judge Memorandum Number 78, dated 2 January 1973, revised version, dated 18 July 1973. The subject of the memorandum was "Recusal of Military Judge." In that publication, the Chief of the Trial Judiciary established and directed implementa-

tion of the proper procedures which military judges should follow when faced with the issue of recusal.

The Chief Trial Judge stated:

> Recent developments in military and federal criminal law have raised serious doubts about the continued participation of a military judge in those cases in which he has gained some prior knowledge of a case or has previously acted in a fact finding capacity in the same case. These situations arise generally in those cases in which a legally appropriate request for trial by military judge alone is requested or has been granted.

In addition to the Chief Trial Judge's directive, in the case of *United States v. Creagh*, CM 427781 (ACMR 13 December 1972), the majority opinion offered guidance to military judges who become involved in the situation involving a potential question or recusal. It was noted that the military judge should take great care to avoid being placed in the position of having to erase all that he has heard from his mind and attempt to commence anew. *Creagh* dealt with a providency problem, but the basic issue is present in all cases involving a challenge. A military judge must exercise sound discretion. The Army Court of Military Review relied heavily upon the direction provided by Military Judge memorandum Number 78 and upon the *Creagh* case in the decision of *United States v. Caldwell*, 46 CMR 1301 (ACMR 1973). In *Caldwell* the defense challenged the judge because he had previously acted in the capacity of the magistrate who issued the search warrant in the case. The judge refused to recuse himself. The court stated: "While impartiality is the desideratum in judicial conduct, human nature still impedes the attainment of that legal millennium. Accordingly, upon challenge, the trial judge should have recused himself..." 46 CMR at 1306. *See also United States v. Watson*, 47 CMR 990 (ACMR 1973). It has held that the military judge in *Caldwell* had, through his prior actions and proceedings, committed himself and made determinations which could not help but be against the interest of the individual accused. It was incumbent upon the judge to recognize his human limitations and recuse himself; the failure to do so was error.

Substantial authority exists which would suggest that this area of military criminal law is so important that an untoward "appearance of evil" may invoke the doctrine of *general prejudice*. Paragraph 1.7 of the American Bar Association Standards Relating to The Function of The Trial Judge is entitled "Circumstances requiring recusation" and provides:

> The trial judge should recuse himself whenever he has any doubt as to his ability to preside impartially in a criminal case or *whenever he believes his impartiality can reasonably be questioned.* (Emphasis added).

See also, Note "Disqualification of Judges for Bias in Federal Courts," 79 *Harv. L. Rev.* 1435 (1966).

The same guidelines are expressed in Canon 3c(1) of the Code of Judicial Conduct of the American Bar Association, entitled "Disqualification" which states:

> (1) *A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned* including but not limited to instances where:
>
> (a) he has personal bias or prejudice concerning a party, or *personal knowledge of disputed evidentiary facts concerning the proceedings.* (Emphasis added).

These particular policy guidelines were held to embody the intent of the *Manual* (paragraph 52(f) (13)) by the Army Court of Military Review in *United States v. Cockrell, supra.*

This strong desire to avoid the appearance of evil envisioned by both the American Bar Association and the drafters of the *Manual* is obviously grounded in the concept that an impartial trier of fact is the cornerstone of both the American justice system and the military justice system. *United States v. Devin*, 5 USCMA 44, 17 CMR 44 (1954); *Offutt v. United States*, 348 U.S. 11 (1954). The principle is equally applicable to judges as it is to jurors. Paragraph 62(f), *Manual for Courts-Martial, United States,*

1969 (Revised edition); Code of Judicial Conduct of the American Bar Association; *United States v. Villa,* 19 USCMA 564, 42 CMR 166 (1970); *United States v. Renton,* 8 USCMA 697, 25 CMR 201 (1958). Furthermore, military courts have never hesitated to void proceedings which have been tainted by the participation of a biased judge. *United States v. Posey,* 21 USCMA 188, 44 CMR 243 (1972); *United States v. Jones,* 44 CMR 818 (ACMR 1969). In his concurring opinion in *United States v. Posey, supra,* Judge Duncan set out the controlling maximum in this area when he stated:

> Respect for and confidence in the system of military justice can only be maintained by the avoidance of partiality or the appearance of partiality of a military judge . . .*Id.*, 44 CMR 246.

That guiding tenet has been stated repeatedly by the Court of Military Appeals. In *United States v. Jackson,* 3 USCMA 646, 14 CMR 64 (1954), the court admonished that the presiding judicial official must maintain an "impartial and scrupulously fair attitutde throughout the trial." In the later case of *United States v. Turner,* 9 USCMA 124, 25 CMR 386 (1958), the Court of Military Appeals referred to the high standard set for military trials stating "(i)n the frontier phase of this Court's development, we made it crystal clear that the trial of cases by courts-martial must remain scrupulously free of even the slightest suspicion of improper conduct."

The most recent pronouncement from the United States Court of Military Appeals is the decision of *United States v. Hodges,* 22 USCMA 506, 47 CMR 923 (1973). In that case, the trial defense counsel challenged the military judge for cause because the trial judge was aware that the accused was attempting to contact the convening authority to "offer a pretrial agreement". The judge denied knowledge of the circumstances surrounding the negotiations, and claimed he could be impartial. The court opined that the military judge would have been better advised to recuse himself; however, the majority simply concluded that "We cannot reasonably hold that every unsuccessful overture to plea bargain made by an accused is to be viewed as an admission of guilt." There was insufficient evidence to warrant reversal simply upon "the appearance of impurity which troubled the Court of Military Review". 47 CMR at 925.

In so holding, the majority cited the following passage from the case of *United States v. Walker,* 473 F.2d 136, 138 (D.C. Cir. 1972), that "the disciplined judicial mind should not be subject to any unnecessary strain; even the most austere intellect has a subconscious". *Id.*

Attention must also be drawn to the *United States v. Jarvis,* 22 USCMA 260, 46 CMR 260 (1973), in which the military judge at an earlier trial was presented with a theory of the case which implicated the second man as the "principal malefactor" in the incidents. Although *United States v. Jarvis* also dealt with the additional problem of conflict of interest, the court reversed on the *cumulative* effect of the denial of the challenge and the conflict of interest. The court stated in language pertinent here:

> While our decision is not meant to asperse the integrity of counsel or the military judge, we nonetheless consider that Jarvis has a right to be tried in a different arrangement. *Id.*

The question of the military judge's integrity or motive is not the issue; the best intentions will not suffice for a failure to exercise sound discretion.

It is recognized that the area of recusal involves difficult decisions for both trial judges and appellate courts. Such decisions involve a careful "self-analysis," the difficulty of which cannot be minimized. The thrust of the case law is clear however that a military judge should recuse himself if he has any doubt as to his ability to render justice to either side. *United States v. Cockrell, supra.* Obviously the "appearance of fairness" doctrine is definitely a criterion to be considered by judges in their decision to recuse themselves. The mere existence of prior knowledge of some of the underlying facts must not necessarily always result in recusal. *United States v. Hodges, supra.* "A mere showing of prior judicial exposure to the present parties or questions" is not the test. *United States v. Crider,* 21 USCMA 199, 44 CMR 247, 253 (1972).

See United States v. Broy, 15 USCMA 382, 35 CMR 354 (1965); *United States v. Oliver*, 14 USCMA 192, 33 CMR 404 (1963).

It must be stressed that the area of how to prepare for appeal has yet to be developed in the case law. A motion for a judge to recuse himself should be made seriously, and the grounds developed fully *on the record*. If denied by the judge the alternatives usually offered are to proceed to trial with members or to continue with the same military judge alone.

It is best to put on the record the reasons, if any, that it is in the client's best interest to have the case heard by judge alone; if tactical considerations concerning the defense(s) which will be employed are the reason for this choice, state it in support of your motion. Tactically it may be well advised to have the individual client himself explain why he desires to be tried by military judge alone (assuming he is capable of coherently presenting these matters). The judge at that time however may withdraw the alternative of trial by judge alone and simply order that the trial be handled with court members. In order to preserve the error for appellate review, counsel should place his objection (and its underlying grounds) on the record and if necessary file an Article 38c brief to the convening authority following trial detailing both the objection and examples, if any, of events during the trial which support the objection. It is by no means clear that these actions will preserve successfully the error to the satisfaction of the appellate courts. It is clear however that a bare objection without further and continuing action will have the practical effect of precluding successful appellate litigation.

As noted in *United States v. Cockrell, supra*, a military judge is presumed to have a trained and disciplined judicial intellect which enables him to separate those matters from his ultimate decision which are not proper. *United States v. Montgomery*, 20 USCMA 35, 42 CMR 227 (1970). Therefore, his decision whether to withdraw in a given case is tested for an abuse of discretion. *United States v. Walker, supra.* Clearly inherent within this appellate rule is that the military judge exercises an informed discretion. A military judge must carefully review all the matters presented to him, including those factors advertently or inadvertently disclosed to him.

It is submitted that his decision whether to recuse himself must represent an exercise of sound discretion. The military judge must carefully weigh all factors and either continue to sit or recuse himself. Analysis of factors presented him as well as full cognizance of the doctrine "of the appearance of evil" is required. The choice is difficult but necessary; challenges for cause to a military judge are infrequent and must be presumed to have been made seriously. The fairness of the given trial and the integrity of the judicial system are involved. Neither can be ignored or minimized.

JAG School Notes

1. Bicentennial Packets. As noted in the lead article of this issue, TJAGSA has compiled a helpful array of bicentennial promotional material dealing with the history of the Judge Advocate General's Corps. These packets contain various historical sketches of the Corps and its insignia, along with biographies of noteworthy JAGC officers and selected photographs to supplement local bicentennial activities. Action officers should contact: The Judge Advocate General's School, US Army, ATTN: Doctrine and Literature Division, Charlottesville, Virginia 22901.

2. JAG School Visitors. The Fourth Annual Kenneth J. Hodson Lecture closed out the month of March, featuring the remarks of Professor B. J. George, Director of Wayne State University's Center for Administration of Justice. April saw four more successful CLE courses at TJAGSA. On hand as guest speakers for the 2d Environmental Law Course were: Professor Dennis W. Barnes, Associate Provost for Research, University of Virginia; Lieutenant Colonel Charles Sell of the EPA's Office of Federal Activities; Mr. Tom Speicher from USAMC's Office of the General Counsel; Cap-

tain R. Norville Kittel of OTJAG's Regulatory Law Division; Mr. William N. Hedeman, Jr., Assistant General Counsel for Regulatory Functions, US Army Corps of Engineers; and Lieutenant Commander Jack Bolander, Chairman of Environmental Management at USALMC. Twenty 71D's and one 71E attended our 3d NCOES Course, addressed by: Lieutenant Colonel Wayne Hansen of USALSA's Government Appellate Division; Major Paul Ray of PP&TO, OTJAG; and Master Sergeant Patrick Worrall, MILPERCEN. Last month also included the 61st and 62d Procurement Attorneys Courses where Lieutenant Steven J. Dulaney, USCG, and Captain Robert Eastburn, JAGC, respectively, garnered the awards as distinguished graduates. And, in addition to welcoming a 27-member strong 77th Basic Class, the School also received visits from Lieutenant General James G. Kalergis, Commanding General of the First US Army and Rear Admiral Horace B. Robertson, Judge Advocate General of the Department of the Navy, who addressed members of the 23d Advanced Class.

3. Mug Collection. We issue a somewhat belated note of thanks to Major Mitchell D. Franks, Major William J. Norton II, and all the JAG officers of the 1st Infantry Division Forward for their gift of a beer mug for TJAGSA's growing collection of distinctive military tankards, flagons and steins. We continue to invite additional contributions from the Corps.

International Law Notes

1. Board of Directors Meeting of International Law Society. On 27 May to 1 June 1975, the Board of Directors of the International Society for Military Law and Law of War will hold executive sessions in the Charlottesville, Virginia and Washington, D.C. area.

The Society, which was constituted at the University of Strasbourg in 1955, has the following purposes: studies in comparative military and disciplinary law, the harmonization of municipal systems with international agreements in the field of the development of a law of war heedful of the rights of the individual.

The Society at present has some 1000 members and is composed of university professors, magistrates, both civil and military, barristers and officers belonging to 38 countries, viz., Argentina, Australia, Austria, Belgium, Bengla Desh, Brazil, the Cameroons, Canada, Chili, Columbia, the Republic of Zaire, Denmark, Ecuador, France, Greece, Ireland, Israel, Italy, Japan, Libya, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Peru, Puerto Rico, Portugal, Spain, Sweden, Switzerland, Tunesia, Turkey, the Union of South Africa, the United Kingdom, the United States, Venezuela, the West German Federal Republic.

In several of these countries, members have created national associations and have set up research seminars.

The Society has held five international congresses so far: Brussels (Belgium) 1959; Florence (Italy) 1961; Strasbourg (France) 1964; Madrid (Spain) 1967; Dublin (Ireland) 1970; and The Hague (Netherlands) 1973.

Three standing committees have been set up by the Society:

— A committee for the protection of human life in wartime;
— A committee on criminology;
— A working group for the study of the history of military and disciplinary law.

The management of the society is in the hands of a Board of Directors elected by the members at the general meeting. The Board is bound to meet at least once a year. A Bureau, appointed from among the members of the Board, meets whenever matters relating to the administration of the Society require examination.

Major General George S. Prugh, the Judge Advocate General of the Army, is a vice-president of the Society and a member of the Board of Directors. The Chairman of the Board and President of the Society is Monsieur Rene Paucot, Advocate General of the French Court

of Cassation. Monsieur John Gilissen, Past President, Chairman of the Board of Directors and Advocate General of the Belgian Military Court, will also attend. Also included in the group of visitors are representatives from Australia, Belgium, France, Germany, Ireland, Italy, Netherlands, Spain, Turkey, United Kingdom, and Zaire.

The Board of Directors will hold its meetings in Charlottesville, Virginia, at the new facilities of The Judge Advocate General's School. Following these sessions, the Board will spend several days in the Washington area where they will receive various briefings, including visits at the Pentagon, the United States Court of Military Appeals, and the United States Supreme Court.

2. Publication of the International Society for Military Law and Law of War. The Sixth International Congress held at The Hague by the International Society for Military Law and the Law of War from the 22nd until the 25th of May 1973 was partly devoted to the study of the cease-fire.

The first volume of Tome VI (473 pages) of the digests of the Society contains a portion from the questionary which was the basis for the studies, the national reports, the general report as well as the interventions of the participants to the Congress.

Considering that some terms used in the drawing up of the different studies, *e.g.* truce, armistice, suspension of arms, capitulation, reddition, or cease-fire, do not always cover the same meanings, the organizers of the Congress have proposed:

- — the identification of the different ways to cease or to suspend hostilities;
- — the research of the terms to establish a cease-fire;
- — the determination of the major conditions laid down in a cease-fire agreement;
- — the study of the problems put by the enforcement of a similar agreement.

The analysis of the reports and interventions reveals the accuracy and the utility of these studies.

Subscription to this work can be obtained by forwarding a purchase request to the deputy Secretary General of the International Society for Military Law and Law of War, Palais de Justice, B–1000 Bruxelles and by paying the necessary amount to following account: CCP 310–0305875–23 of the International Society for Military Law and Law of War-Brussels. Price for Society members is $19.00 (95FF/750 frs belges); for Nonmembers, the price is $25.00 (125FF/1000 Frs belges). Requests should be addressed to:

Monsieur le Secretaire general adjoint
Societe internationale de droit penal militaire
et de droit de la guerre
Auditorat general pres la Cour Militaire
Palais de Justice
B–1000 — Bruxelles, Belgique

Reserve Affairs Items

From: Reserve Affairs, TSAGSA

Superior Unit Awards. On 15 February 1975 the Secretary of the Army Superior Unit Award citations were awarded to the 214th JAG Detachment and all of its subordinate units, the 117th, the 128th and 134th JAG Detachments located in Minneapolis, Minnesota. These detachments are commanded by Colonel Edward D. Clapp, Lieutenant Colonel Robert L. Bartholic, Lieutentant Colonel Terry Klas and Major Charles Jensch, respectively. The certificates were awarded during the 88th ARCOM Commanding General's Conference at Fort Snelling, Minnesota, and were presented by Brigadier General Lawrence Williams, The Assistant Judge Advocate General for Military Law, on behalf of the 88th ARCOM Commander, Major General Merle B. Evans. Lieutenant General John. J. Hennessey, Commander, Fifth United States Army, and Brigadier General Evan Hultman, the Assistant Judge Advocate General for Special Projects (MOB DES) were also in attendance. Presentation of these awards

marks the first time that all four of these units received citations in the same year. The outstanding performance of the officers and enlisted members of these detachments reflect great credit upon their units and the Judge Advocate General's Corps as well as insuring the achievement of that necessary and important goal of mobilization readiness. Congratulations are in order for the officers and enlisted members of these fine units for a job well done.

Legal Assistance Items

By: Captain Mack Borgen, Administrative and Civil Law Division, TJAGSA

1. Items of Interest.

a. *Cross-referencing of Legal Assistance Items.* Beginning with this issue of *The Army Lawyer* each Legal Assistance Item will be cross-referenced to the appropriate corresponding chapter or part of Department of Army Pamphlet 27-12, *Legal Assistance Handbook*, December 1974. The format will be as follows—Ref: Ch. (or Part) ___, DA Pam 27-12. It is hoped that this cross-referencing will facilitate the Legal Assistance Officer's subsequent notations in his own copy of the *Legal Assistance Handbook*.

It is also recommended for consideration that the Table of Contents of the *Legal Assistance Handbook* be used as the basis for an office and/or personal file for articles, publications and cases. Maintenance of the file could be the responsibility of a lawyer's assistant under the supervision of the Legal Assistance Officer. As useful materials are obtained by the Legal Assistance Office, they could be filed by subject for general office use. Consider also the incorporation of this filing system with the extra-office retrieval system discussed in the article entitled "Recommendations For the Management and Administration of Military Legal Assistance Offices" in the April issue of *The Army Lawyer*.

b. *Emergency Assistance - Loans for Lost/Stolen Government Checks.* The Retired Officers Association (1625 Eye Street, N.W., Washington, D.C. 20006; (202) 331-1111) has a program whereby interest-free short term loans (due within 90 days or upon receipt of replacement check; limited extensions available) will be made to TROA members or widows on TROA rolls. Such loans will be made when any of the following government checks are lost or stolen in the mails: retired military pay, VA compensation, RSFPP or SBP annuity checks, DIC checks, or VA Widow's Pension checks. For a more detailed discussion of the program and for a copy of a loan application form, see "Loans for Lost Checks," *The Retired Officer*, March 1975, at 36. [Ref: Part Eight, DA Pam 27-12].

c. *Family Law — Child Custody — Interstate Child Custody Litigation.* There are approximately four million minor children of divorced parents in the United States, and it is estimated that this number increases by nearly 300,000 children each year. In a great percentage of these cases custody is awarded to the mother, but the inter spousal conflict and "irreconcilable differences" which may have served as the basis for many of these divorces are often transformed into post-divorce "irreconcilable disputes over visitation — and often custody — irrespective of who is granted custodianship." Ms. Hudak's article, "Seize, Run, and Sue: The Ignominy of Interstate Child Custody Litigation in American Courts", 39 *Mo.L.Rev.* 521 (Fall, 1974) very succinctly and convincingly states the dimensions of the problem and analyzes the court's frustrating attempts to interjurisdictionally litigate and determine the "best interests of the child." Warring parents have found an unfortunate ally in the jurisdictional confusion among the states and in the limited state power of extra-territorial enforcement of court orders.

The judicial development of the law in custody cases emphasizes the desirability of, if not need for, flexible rules which permit the subsequent judicial alteration of custody decrees if and when needed to serve the supposed "best interests of the child" As noted by one writer, "[s]ome decisions of the United States Supreme Court suggest that the interest in maintaining

flexibility ...outweighs the strong constitutional and federal policy of full faith and credit ...'Because the child's welfare is the controlling guide in custody determination, a custody decree is of an essentially transitory nature.'" Comment, "The Uniform Child Custody Jurisdiction Act and the Continuing Importance of-*Ferreira v. Ferreira*" [9 Cal. 3d 824 (1973)], 62 *Cal.L.Rev.* 365 n.26 (Mar. 1974) (quoting *Kovas v. Brewer*, 356 U.S. 604, 612 (1958) (Frankfurter, J., dissenting) (*dec'd on other grds*). Many psychologists and other commentators strongly criticize the "transitory nature" of custody decrees and focus upon the child's need for continuity and stability. *See, e.g.* J. Goldstein, A. Freud, A. Solnit, *Beyond the Best Interests of the Child* (1973) ("The absence of finality coupled with the concomitant increase in opportunities for appeal are in conflict with the child's need for continuity." Extending this argument even to rights of visitation, the authors argue that "[o]nce it is determined who will be the custodial parent, it is that parent, not the court, who must decide under what conditions he or she wishes to raise the child. Thus, the noncustodial parent should have no legally enforceable right to visit the child." Pp. 37-38).

In the two articles noted above, an attempt is made to outline methods of avoiding costly and lengthly interstate custody litigation (*e.g.* restriction of out-of-state visitation rights in the original decree or by modification based upon prior conduct of the noncustodial parent) and the proposed "solutions" such as the "Texas rule" ("[T]he modification of a custody decree is governed by the law of venue [and] ...must be brought in the county where the custodian and child reside." Hudak, *supra* at 541-542), the Uniform Child Custody Jurisdiction Act, which has been enacted by only five states (California, Colorado, Hawaii, North Dakota, Wyoming), or a federal statute designed to eliminate the "competition between [the] courts" which arises when the "litigation crosses state lines."

Because of the high percentage of family law cases encountered by the Legal Assistance Officer and because of the unprecedented high divorce rates and great spousal (and child?) mobility within the military community, it may be necessary to be familiar with these legal problems attendant to the determination and security of child custody decrees.

In a related development, on 10 March 1975 Representative Joshua Eilberg (D-Pa.) introduced a bill—HR 4504—to amend the Soldiers' and Sailors' Civil Relief Act so that "[n]o decree, judgment, or order, entered against any person in the military service during the period of such service or thirty days thereafter, resulting in the termination of said person's parental rights with respect to any child, shall be vacated, set aside, or reversed after a final judgment or decree has been entered in an adoption proceeding with respect to that child, provided such military person was given reasonable notice." The bill was referred to the Committee on Veterans' Affairs. [Ref: Chs. 20,40, DA Pam 27-12].

d. *Voting — 1975 Army Voting Assistance Program.* On 5 March 1975 DA Circular 608-50 was promulgated. Information is provided therein concerning those five states (Kentucky, Mississippi, New Jersey, Virginia, Wisconsin) which have scheduled elections in 1975. It is also noted that the *Voting Assistance Guide* (DA Pam 360-503, 1 Oct. 1973) is the principal and permanent reference for use in counseling military personnel on voting matters. Changes to the *Voting Assistance Guide* will be issued as necessary. Further information can be obtained from the Department of the Army Voting Assistance Officer by calling AUTOVON 22-30713/30714 or COMMERCIAL 202-693-0713/0714. [Ref: Ch. 45, DA Pam 27-12].

2. Recently Enacted Legislation.

Real Property — Sex Discrimination. The Housing and Community Development Act of 1974, P.L. 93-383, provides, *inter alia*, that it shall be unlawful to discriminate against women in the selling, renting, or financing of housing or the providing of brokerage services. The Act also provides that the combined income of both husband and wife shall be considered "for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof." The term "federally related mortgage loan" is defined very broadly and includes any loan which

"is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government." [Ref: Ch. 34, DA Pam 27–12].

3. Articles and Publications of Interest.

a. *Civil Rights and Open Housing.* "A Bibliography of Research on Equal Opportunity in Housing," (HUD–337–2–A). This pamphlet may be purchased for 85¢ from the Superintendant of Document, U.S. Government Printing Office, Washington, D.C. 20402. [Ref: Ch. 5, DA Pam 27–12].

b. *Consumer Practices and Controls — Consumer Protection.* Comment, "Due Process: Consumer-Soldier Versus Creditor in the Prejudgment Arena," 66 *Mil.L.Rev. 143 (Fall 1974).* Ref: Ch. 10, DA Pam 27–12].

c. *Estate Planning — Life Insurance.* Freeman, "Life Insurance and Estate Taxes," 16 *A.F.L.Rev.* 1 (Winter 1974). [Ref: Ch. 13, DA Pam 27–12].

d. *Federal Income Taxation — Overseas Personnel.* Buck, Lawyer, "Problems Related to Federal Income Taxation of United States Servicemen Stationed Overseas," 16 *A.F.L.Rev.* 20 (Winter 1974). [Ref: Ch. 41, DA Pam 27–12.]

e. *Prisoners of War and Missing in Action.* Stewart, "The Plight of the POW/MIA and Attendant Legal Problems," 8 *Creighton L. Rev.* 295 (1974–1975). Although the article was apparently written in 1973 and the analysis is limited in many respects, the article does outline many of the serious legal problems common to POW/MI families *(e.g.,* powers of attorney, conveyancing and conservatorships, divorce and marriage problems, presumptive findings of fact, pay and allowances of men in a missing status, etc.) and some of the state and congressional legislation designed to facilitate the resolution of the legal problems. *See also* Comment, "Legal Problems of the American MIA/POW Family and A Proposed Statutory Solution," 12 *J. Family L.* 81 (1972–1973). [Ref: Ch. 46, DA Pam 27–12.]

f. *Survivor's Benefits.* DA Pam 608–4, *For Your Guidance — A Guide for the Survivors of Deceased Army Members,* February 1975. [Ref: Ch. 16, DA Pam 27–12.]

g. *The Survivor Benefit Plan and the Retired Serviceman's Family Protection Plan — Taxation.* "SBP/RSFPP Annuities — Liability for State Income and Inheritance/Estate Taxes," *The Retired Officer,* March 1975 at 45. This one-page chart summarizes income, inheritance, and estate tax liability for each state with regard to both the SBP and the RSFPP annuities. [Ref: Ch. 15, DA Pam 27–12.]

h. *Veterans' Benefits — State Bonuses for Vietnam Veterans.* DOD Information Guidance Series (DIGS) No. 8A–10, "Service Benefits — State Bonuses for Vietnam Veterans," March 1975. [Ref: Ch. 44, DA Pam 27–12.] *See also,* "Legal Assistance Items," *The Army Lawyer,* September 1974.

Procurement Law Notes

By: Edwin R. Fischer, Chief, Tax & Property Law Team, Procurement Law Division, OTJAG

Federal, State and Local Tax Problems Arising Under Army Contracts. Two problem areas typically occur in the resolution of federal, state and local tax problems arising under fixed price Army contracts. One area relates to the reimbursability of the tax by Army to contractor in the event that the tax in question is imposed on the contractor. In this instance, the provisions of the contract must be carefully analyzed to determine whether the tax, pursuant to the contract provisions, is deemed to be included in the contract price, or subject to contract price increase. If the contract contains no tax clause, authority does not exist to modify the contract price regardless of the nature of the tax imposed upon the contractor, and regardless of the fact that the tax (or rate increase thereof) became effective after the date of the contract.

Typically, a fixed price contract would include one of the standard "Federal, State, and Local Taxes" clauses set forth in ASPR 7-103.10. Under the ASPR 7-103.10(a) tax clause — used in certain advertised and negotiated contracts — contract price adjustment is authorized for certain federal taxes under specified conditions, but is not authorized for any change in state or local taxes occurring after the contract date. Under the ASPR 7-103.10(b) tax clause, contract price adjustment is authorized for changes in certain federal, state and local taxes occurring after contract date. Federal Supply Schedules occasionally provide that the contract price excludes state and local taxes; and that if such taxes are applicable, they will be billed to the federal agency placing orders under such schedules. In any event, the tax provisions of the contract control the reimbursability of a given tax by the Army to the contractor. Questionable cases may, of course, be referred to DAJA-PL for advice pursuant to the provisions of ASPR and APP 11-000.

In the area of cost reimbursement type contracts questions concerning the reimbursability to contractor of federal, state and local taxes are relatively infrequent for the reason that such taxes are generally considered allowable costs of the contractor except for the exceptions spelled out in ASPR 15-205.41.

The second principal problem area in the field of federal, state and local taxes as they relate to Army contracts is the applicability of the tax. It is possible that a federal excise tax, for example, may be inapplicable to certain vehicles manufactured for the Army on the ground that the vehicle is not a highway vehicle under Treasury regulations or Revenue Rulings. Or, it may be that a certain state or local tax as applied to an Army contractor subjects such contractor to unusual tax burdens not applicable to similarly circumstanced contractors of the state or local tax authorities or private parties generally. In this case, the tax imposition may be contested — with the approval of DAJA-PL — on the ground that the tax unconstitutionally discriminates against the United States and those with whom it deals. Such instances, and similar instances of doubtful validity of the state or local tax involved, should be brought to the attention of DAJA-PL, pursuant to ASPR and APP 11-000, for appropriate action.

Delays in the Criminal Process: Review of a Recent Article

Reviewed by Colonel John L. Costello, Jr., Judge,
US Army Court of Military Review

Delays in the criminal process and increasing uncertainty about outcomes adequate to achieve deterrence are the products of voluntary behavior on the part of judges, prosecutors and defense counsel.

The conduct of participants in the process is motivated more by a personal view of the system and personalized goals than by abstractions concerning the requirements of a case or the society.

The relationships among system participants are substantially the same as those in other large public organizations, and the degree of resistance to change is identical.

Behavior modification must come about through increases in external management and positive inducements to modify. Negative sanctions will be met by further cooperation among the participants and concerted action to avoid the sanction without changing basic behavior.

These propositions are drawn from an important new study: Levin, "Delay in Five Criminal Courts," 4 *J. Leg. Studies* 83 (1975). The January 1975, issue may be obtained from *The Journal of Legal Studies*, The University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637, for $4.50.

Professor Levin's work is broadly-based, thorough, and concerns the conduct of activities directly comparable to many parts of the military criminal justice system. He has messages for the manager concerned about the independence of publicly-funded defense counsel; the

SJA who is trying to isolate and treat the causes of trial delays; and those interested in the relationships among caseloads, sentences, and dispositions short of trial.

The military manager is not much concerned about the impact of fee considerations on the conduct of defense counsel, but he is about judicial reaction to cases presented for trial. Similarly, the existence of an intermediate appellate court in the Army with provision for the automatic review of cases moots one of Professor Levin's principal recommendations; but, do we know that we have maximized the advantages of those resources? Just one more example: We have measured our processing times with averages. is that the best way to state the central tendency of our data, or is Professor Levin right in his use of the median? Big city courts have a bad image for slowness; some of his processing times are surprising. In these and other respects, this study has the potential to excite a number of excellent questions and to point the way toward a panoply of practical solutions.

CLE News

1. CLE Calendar.

MAY

New Jersey State Bar Association, annual meeting.

South Carolina Bar Association, annual meeting.

1–3: ALI-ABA program "Bankruptcy for the General Practitioner and the Business Lawyer," Fairmont Hotel, San Francisco, CA.

1–3: 15th International Conference on Legal Medicine, sponsored by the American College of legal Medicine, Caesar's Palace, Las Vegas, NV.

2–4: ABA Special Committee on Environmental Law, Airlie House Conference on Environment, Warrenton, VA.

4–7: National College of District Attorneys Program, Environmental Law, Houston, TX.

4–9: Institute for Court Management, Technology of Court Management Workshops, Records, Systems and Procedures in Courts, New York Area.

5–9: American Society for Industrial Security, Comprehensive Asset Security Course, Hotel Pontchartrain, Detroit, MI.

5–9: World Congress on Crime Prevention, Louisville, KY.

5–16: Drug Enforcement Administration, Law Enforcement Training School, Concord, NH.

6–8: Case Western Reserve Law School Center for Criminal Justice, Seminar on Crime Prevention, Cleveland, OH.

7–9: Ohio State Bar Association, annual meeting, Columbus, OH.

7–11: American Association of Attorney/Certified Public Accountants, Inc., midyear meeting, Dallas, TX.

8–10: ABA Special Committee on Prepaid Legal Services, 5th National Conference on Prepaid Legal Services, Monteleone Hotel, New Orleans, LA.

9–10: Federal Bar Association, Mid-America Conference, two concurrent seminars—"Federal Rules of Evidence" and "Labor Law and Labor Relations Update," Stouffer's Indianapolis Inn, Indianapolis, IN.

10: Discovery Seminar (Freedom of Information Act, Litigation in Tax Court, District Court and Court of Claims) sponsored by San Francisco Chapter and Court and Tax Procedure Committee, FBA, San Francisco, CA.

11–14: University of Georgia Institute of Government Police Science Division, Crime Scene Technicians Seminar on Police and Juveniles, Athens, GA.

13–15: Case Western Reserve Law School Center for Criminal Justice Seminar on Investigation of the Sex Offender, Cleveland, OH.

14–17: Pennsylvania Bar Association, annual meeting, William Penn Hotel, Pittsburgh, PA.

16–18: American University Center for Administration of Justice, Institute for Crisis Intervention, Washington, DC.

18–23: ABA Appellate Judges' conference, seminar, Boston, MA.

19: ALI-ABA program "Social Security

Rights and Remedies," Mayflower Hotel, Washington, DC.

19–23: Drug Enforcement Association, Forensic Chemists Seminar, DEA Special Testing & Research Lab, McLean, VA.

20–23: American Law Institute, annual meeting, Mayflower Hotel, Washington, DC.

21–23: Kansas Bar Association, annual meeting, Holiday Inn Plaza, Wichita, KA.

22–23: PLI Program, "Practical Will Drafting," Sheraton Inn Downtown, Birmingham, AL.

22–23: Federal Bar Association Conference on Openness in Government, Mayflower Hotel, Washington, DC.

22–24: State Bar of Nevada, annual meeting, Tonopah, NV.

23: Virginia Bar Program, New Federal Rules of Evidence, John Marshall Hotel, Richmond, VA.

25–30: University of Georgia Institute of Government and Police Science, Crime Scene Technicians Seminar on Narcotics and Dangerous Drugs, Athens, GA.

27–31: Death Investigation Seminar, Corning Community College, Corning, NY.

28–29: ABA Section of Public Contract Law, National Insstitute on "Boards of Contract Appeals Practice," Mayflower Hotel, Washington, DC.

28–30: Case Western Reserve Law School Center for Criminal Justice, Search and Seizure Institute, Cleveland, OH.

29–30: Federal Bar Association and American Arbitration Association Annual Practice Institute on Collective Bargaining in the Federal Service, Mayflower Hotel, Washington, DC.

30–31: ALI-ABA program, "Practice under the new Federal Rules of Evidence," cosponsored by the Massachusetts Continuing Legal Education, Inc., Boston, MA.

JUNE

Delaware State Bar Association, annual meeting, Wilmington Country Club, Wilmington, DE.

Idaho State Bar, annual meeting, Vancouver, B.C., Canada.

Montana Bar Association, annual meeting, Bozeman, MT.

The District of Columbia Bar, annual meeting, Washington, DC.

2: Connecticut Bar Association, midyear meeting, Hartford, CT.

2–4: Mississippi State Bar, annual meeting, Biloxi, MS.

4–6: State Bar of Georgia, annual meeting, Savannah, GA.

4–7: Arkansas Bar Association, annual meeting, Arlington Hotel, Hot Spring, AR.

8–10: American Society of Law & Medicine, National Conference on the Medicolegal Implications of Emergency Medical Care, Statler Hilton Hotel, Washington, DC.

11–13: Tennessee Bar Association, annual meeting, Four Seasons Motel, Gatlinburg, TN.

12–14: State Bar of South Dakota, annual meeting, Aberdeen, SD.

12–15: Massachusetts Bar Association, annual meeting, Wentworth-By-The-Sea, Portsmouth, NH.

15–18: 22d National Institute on Crime and Delinquency, Minneapolis, MN.

15–20: U.S. Civil Service Commission CLE Program, Administrative Law Judges and the Regulatory Process, Williamsburg, VA.

15–27: National College of District Attorneys Course, Executive Prosecutor Course, Houston, TX.

June 15–July 4: National Institute for Trial Advocacy, First National Session, 1975, Boulder, CO.

June 15–July 11: National College of the State Judiciary, Regular Four Week Session (session I), Judicial College Building, University of

16–20: Institute on the Physical Significance of Bloodstain Evidence, Elmira College, Elmira, NY.

17–19: State Bar of Wisconsin, annual meeting, Lakelawn Lodge, Delavan, WI.

18–20: Minnesota State Bar Association, annual meeting, St. Paul Hilton, St. Paul, MN.

18–20: State Bar Association of North Dakota, annual meeting, Jamestown, ND.

18–21: The Florida Bar, annual meeting, Boca Raton Hotel & Country Club, Boca Raton, FL.

18–21: Utah State Bar, annual meeting, Hilton Hotel, Salt Lake City, UT.

19–21: Iowa State Bar Association, annual meeting, Des Moines, IA.

19–21: Maine State Bar Association, annual meeting, Samoset Treadway Resort, Rockport, ME.

20–21: Virginia State Bar, annual meeting, Marriott Twin Bridge, Arlington, VA.

23–25: PLI Workshop, Preparation of Federal Estate Tax Returns, Brown Palace, Denver, CO.

25–28: Alaska Bar Association, annual meeting, Vancouver, B.C., Canada.

27–28: New Hampshire Bar Association, annual meeting, Mt. Washington Hotel, Bretton Woods, NH.

June 29–July 11: National College of the State Judiciary, Regular Two Week Session (session I), Judicial College Building, University of Nevada, Reno, NV.

June 20–July 1: PLI Program, "Practical Will Drafting," Benson Hotel, Reno, NV.

June 20–July 3: State Bar of Texas, annual meeting, Dallas, TX.

JULY

6–25: National College of District Attorneys Course, Career Prosecutor Course, Houston, TX.

8–10: U.S. Civil Service Commission CLE Program, Management Seminar for Chief Administrative Law Judges, Washington, DC.

7–12: Northwestern University Short Course for Defense Lawyers, Northwestern University School of Law, Chicago, IL.

10–11: PLI Workshop, Preparation of US Fiduciary Income Tax Return, Delmonico Hotel, New York, NY.

13–19: Association of Trial Lawyers of America Presentation, The National College of Advocacy, University of Southern California, Los Angeles, CA.

July 13–Aug 1: National Institute for Trial Advocacy, Second National Session, 1975, Boulder, CO.

16–17: U.S. Civil Service Commission CLE Program, Freedom of Information/Privacy Acts Seminar, Washington, DC.

July 20–Aug 1: National College of the State Judiciary, Graduate Session in New Trends in the Law, the Trial and Public Understanding, Judicial College Building, University of Nevada, Reno, NV.

July 20–Aug 15: National College of the State Judiciary, Regular Four Week Session (session II), Judicial College Building, University of Nevada, Reno, NV.

23–35: PLI Workshop, Preparation of Federal Estate Tax Returns, Delmonico Hotel, New York, NY.

29–31: U.S. Civil Service Commission CLE Program, Seminar for Attorney Managers, Washington, DC.

31: Virginia Bar Association, midyear meeting, Greenbrier Hotel, White Sulphur Springs, WV.

July 31–Aug 1: PLI Workshop, Preparation of U.S. Partnership Income Tax Return, Sir Francis Drake Hotel, San Francisco, CA.

New Pro Pay Bill in Congress

A new bill providing for professional pay for military lawyers has been introduced by Senator Birch Bayh (D-Ind) and referred to the Committee on Armed Forces. Senator Bayh stated that: "Enactment of this legislation is essential to bring to a halt the alarming exodus of experienced lawyers from our Armed Forces and to increase the retention of career military lawyers."

This proposed legislation allows payment to active duty military lawyers of an additional $100 per month in grades 0–1 through 0–3, $200 per month in grades 0–4 and 0–5. Additionally, the bill would provide for the payment of an incentive bonus to judge advocate personnel to remain in the military three years beyond their initial period of obligated service. This incentive payment would amount to two months of basic pay for each year of service beyond the attorney's completion of his initial active duty obligation, up to a maximum of six years.

The full text of the bill is set forth below:

S. 1362

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That chapter 5 of title 37, United States Code, is amended—

(1) by inserting immediately after section 302b the following new section:

"S. 302c. Special pay: judge advocates and law specialists

"(a) In addition to any other basic pay, special pay, incentive pay, or allowances to which he is entitled, a judge advocate of the Army, Navy, Air Force, or Marine Corps, or law specialist of the Coast Guard, as defined in section 801 of title 10, other than one on active duty under a call or order which specifies a period of less than one year, is entitled to special pay at the following rates while he is performing judge advocate duties:

"(1) $100 a month for each month of active duty, if he is in pay grade 0–1, 0–2, or 0–3.

"(2) $200 a month for each month of active duty, if he is in pay grade 0–4 or 0–5.

"(3) $250 a month for each month of active duty, if he is in a pay grade above 0–5.

"(b) The amounts set forth in subsection (a) of this section may not be included in computing the amount of an increase in pay authorized by any other provision of this title or in computing retired pay or severance pay.

(2) by inserting immediately after section 313 the following new section:

"§ 314. Special pay: judge advocates and law specialists who execute active duty agreements

"(a) Under regulations prescribed by the Secretary of Defense and approved by the President, a judge advocate of the Army, Navy Air Force, or Marine Corps, or a law specialist of the Coast Guard, who—

"(1) is entitled to special pay under section 302c of this title:

"(2) has completed his initial active duty service commitment as a judge advocate or law specialist; and

"(3) executes a written agreement to remain on active duty for a period of at least three, but not more than six, additional years;

may be paid not more than two months' basic pay at the rate applicable to him when he executes that agreement for each additional year that he agrees to remain on active duty. Pay under this section may, at the election of the officer be paid to him in a lump sum at the beginning of the additional period or be prorated.

"(b) An officer who does not serve on active duty for the entire period for which he was paid under this section shall refund that percentage of the payment that the unserved part of the period is of the total period for which the payment was made,"; and

(3) by amending the analysis of such chapter 5 by inserting immediately after

"302b. Special pay: dentists."

the following:

"302c. Special pay: judge advocates and law specialists.";

and by inserting immediately after

"313. Special pay: medical officers who execute active duty agreements."

the following:

"314. Special pay: judge advocates and law specialists who execute duty agreements.".

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

Number	*Title*	*Dates*	*Length*
5F–F8	* 19th Senior Officer Legal Orientation Crs	28 Apr–1 May 75	4 days
5F–F6	5th Staff Judge Advocate Orientation Crs	5 May–9 May 75* *	1 wk
	Reserve Component Training JAGSO Teams	2 Jun–13 Jun 75	2 wks
5F–F30	1st Military Justice I Course	16 Jun–27 Jun 75	2 wks
5F–F1	1st Trial Attorneys' Course	23 Jun–27 Jun 75	1 wk

Number	*Title*	*Dates*	*Length*
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
5F-F1	2d Management For Military Lawyers* * *	4 Aug-8 Aug 75	1 wk

* Army War College only
* * Reflects date change since previous listing
* * * Reflects course addition since previous listing

JAG Personnel Items

From: PP&TO, OTJAG

1. Orders Requested as indicated:

NAME	*FROM*	*TO*
	COLONELS	
BEDNAR, Richard	OTJAG	Contract Appeals Division
DAVIS, Gerald W	Hawaii	HQ FORSCOM, Ft McPherson, GA
FINKELSTEIN, Zane	USA Element, OJCS	KOREA
GLASGOW, Richard	Europe	Hq 1st USA, Ft G. Meade, Md
GODDARD, Ross M	Electronic Cmd, Ft Monmouth, NJ	USA JUSMAG, Thailand
GOMEZ, Viviano	USATC, Fort Ord, CA	USA Health Svc, Ft S.H. Texas
HAMMACK, Ralph	USALSA w/Sta Ft Bragg, NC	USALSA w/Sta Korea
KENYON, Nathaniel	US Army War College, Pa.	U.S. European Command
KINNEY, John C	USA Readiness Cmd, MacDill AFB, FL	HQ Sixth USA, Pres of S.F. CA
LENNON, Daniel	USA Element, So. Comd. CZ	HQ TRADOC, Ft Monroe, Va
McNAMEE, Alfred	S-F, CGSC, Ft Leavenworth, Kans.	USA Elem. AFSOUTH, Europe
McNEALY, Richard	HQ USA Japan	S-F, USA War College, Pa
MILLER, Harold	USA War College, Pa.	Europe
SCHIESSER, Charles	USALSA w/Sta Hawaii	USALSA w/Sta Nurnberg, Germany
SLADE, Arthur R	HQ TRADOC, Ft Monroe, Va	USA Readiness Cmd, MacDill AFB, Fl.
SNYDER, Richard	USALSA, w/Sta Nurnberg, Germany	USALSA w/Sta Hawaii
SPENCER, Bryan	HQ MACTHAI/JUSMAG, Thailand	S-F TJAGSA, Charlottesville, Va
THORNTON, James	101st Abn, Ft Cambell, Ky	HQ USA Elm. USSO, CZ
ZEIGLER, William	HQ EUSA, Korea	USA Spt Command, Hawaii
	LIEUTENANT COLONELS	
ADAMKEWICZ, Edward	USALSA, Falls Church, Va	OTJAG
BRIGHT, Fred Jr.	USALSA w/Sta Korea	USALSA w/Sta Ft Campbell, Ky
COMEAU, Robert	Europe	OTJAG
CROWLEY, Leonard	USA AF Exchange, w/Sta Europe	USA Spt Command, Hawaii
GARN, George J	USALSA w/Sta Ft Lewis, WA	USALSA w/Sta Frankfurt, Germany
HAMEL, Robert D	USA Claims Svc, Korea	USCGSC, Ft Leavenworth, Kansas
LASSETTER, Earl	82d Abn Div, Ft Bragg, N.C	HQ MAAG China
MULLINS, Jack A	1st Spt Bde, Europe	USA Base Command, Okinawa
MUSIL, Louis F	8th USA Area Cmd, Korea	USA Armor Center, Ft Knox, Ky

STEVENSON, Bruce	Taiwan	USALSA w/Sta Ft Dix, N.J
STRIBLEY, Orrin	HQ TRADOC, Ft Monroe, Va	USA Claims Svc, Ft Meade, Md
TRACY, Curtis L	HQ USA Spt Command, Hawaii	Electronics Cmd, Ft Monmouth, NJ
WAGNER, Keith A	HQ USA Base Comd, Okinawa	HQ USA Japan
WASINGER, Edwin	USACGSC, Ft Leavenworth, Kansas	HQ TRADOC, Ft Monroe, Va
WILSON, Norman	USACAC, & Fort Leavenworth, Kansas	USALSA w/Sta Manheim, Germany

MAJORS

CHUCALA, Steven	USACIDC, Washington, DC	Korea
COOPER, Norman	USALSA w/Sta Frankfurt, Germ	S-F TJAGSA, Charlottesville, Va
DARLEY, Roger G	USA Stu Det, Ft B, Harrison, Ind	USALSA w/Sta Frankfurt, Germany
DELVIN, Terrence	S&F TJAGSA, Charlottesville, Va	USA-AF Exchange Svc w/Sta Germany
DUNN, John P	2d Inf Div, Korea	HQ USATC Inf, Ft Ord, Ca
FORYS, Conrad W	HQ USA Base Cmd, Okinawa	Europe
GILLEY, Dewey C	HQ QMC, Ft Lee, Va	Korea
GREEN, Fred K	USA Elm OSD, Wash DC	S-F TJAGSA, Charlottesville, Va
GREEN, Herbert	USALSA w/Sta Mannheim, Germ	USALSA w/Sta Ft Lewis, Wa.
HAESSIG, Arthur	USALSA w/Sta Ft Carson, Co	USALSA w/Sta Korea
HANDCOX, Robert	4th Inf, Ft Carson, Co	HQ WRAMC, Washington, DC
HUNT, Dennis R	USALSA, w/Sta Frankfurt, Germ	Stu Det, USAC&GCS, Ft Leavenworth
ISKRA, Wayne R	USALSA w/Sta Nurnberg, Germ	Stu Det, USAC&GSC, Ft Leavenworth
KAPLAN, Harvey	USA Claims Svc, Europe	USAG, Ft Hamilton, NY
LASNER, Edwin J	USALSA w/Sta Ft Dix, N.J	USALSA w/Sta Ft Meade, Md.
McGOWAN, James	S-F TJAGSA, Charlottesville, Va	USA JUSMAG, Thailand
MOSS, Frederick	OCLL, Wash DC	Korea
NAUGHTON, John	Dir of Mil Support, Wash DC	USALSA w/Sta Wurtzburg, Germ.
NORENE, Luther	USALSA, Europe	USA Armor Center, Ft Knox, Ky
PAULEY, Earl A	S-F, USMA, New York	USA Cmb Arms Center, Ft Leavenworth, Ky
PLATT, Edgar C	Aberdeen Proving Gd. Maryland	USA Claims Service, Korea
RICH, Royce G	USA Claims Svc, Ft Meade, Md	USA Claims Svc, Europe
ROSE, Lewis J	4 Power Del, Vietnam	Stu Det, USAG&GCS, Ft Lvn, Kan.
STOCKSTILL, Charles	Korea	TJAGSA, Adv. Class, Charlottesville
WATSON, Kermith G	USA MP Sch, Ft Gordon, Ga	Korea

CAPTAINS

ALTIERI, Richard	TJAGSA, Adv Cl, Charlottesville, Va	4th Inf, Ft Carson, Colo.
ANDERSON, Larry	USA Spt Cmd, Hawaii	TJAGSA, 24th Adv Cl, Charlottesville
ARONSON, Stephen	USAG, Ft Meade, Md	CID 1st Regn, Ft Meade, Md.
ARQUILLA, Alfred	32d Army Air Def Cmd, Europe	USALSA, w/Sta Frankfurt, Germ.
BEHUNIAK, Thomas	Stu Det Ft Benj, Harrison, Ind	S-F, TJAGSA, Charlottesville
BROWNING, Joseph	HQ FORSCOM, Ft McPherson, Ga	HQ USATC Inf, Ft Polk, La.
CRUDEN, John C	TJAGSA, Adv Cl, Charlottesville, Va	Europe

CULP, King K	HQ, USA Avn Sys, St Louis, Mo	S-F TJAGSA, Charlottesville
CURRY, Peter J	AFIP, Walter Reed Army Medical Cen.	USA Claims Svc, Ft Meade, Md
DAVIS, Louis R	Europe	TJAGSA, Adv Class, Charlottesville
DELINE, Donald	TJAGSA, Adv Cl, Charlottesville, Va	OCLL, Wash DC
DICKERSON, H. Ashby	HQ, USASETAF, Europe	TJAGSA, Adv Class, Charlottesville
DIOGARDI, John	USATC, Ft Ord, CA	Korea
EISENBERG, Stephen	USATC, Ft Dix, N.J	USAG, Ft Hamilton, NY
FEIGHNY, Michael	Korea	HQ USAG, Ft S. Houston, Texas
FLANNERY, Frank	AFIP, WRAMC, Wash DC	USA Claims Svc, Ft Meade, Md.
FULBRUGE, Charles	Europe	TJAGSA, Adv Cl, Charlottesville
GAMBOA, Anthony	USAG, Ft Meade, Md	TJAGSA, Adv Cl, Charlottesville
GILLETT, Michael	USASETAF, Europe	TJAGSA, Adv Cl, Charlottesville
GILLIS, Henry L	32d Army Air Def, Europe	USA Inf Ctr, Ft Benning, Ga
GOO, Lester M	Korea	Taiwan
GRAVELLE, Adrian	32d Army Air Def, Europe	TJAGS, Adv Cl, Charlottesville
GRAY, Kenneth D	TJAGSA, Adv Cl, Charlottesville	S-F TJAGSA
HAMELIN, Norman	HQ USAREUR (Bonn)	TJAGSA, Adv Cl, Charlottesville
HAMPTON, Thurman	Korea	SVIII Abn Corps, Ft Bragg, NC
HANKINSON, Tommy	VII Corps, Europe	USA Inf Sch, Ft Benning, Ga
HELMCAMP, Dewey	82d Abn Div, Ft Bragg, NC	USALSA w/Sta Nurnberg, Germ.
HIGHTOWER, James	2d Armored Div, Ft Hood, Tx	USA Inf Sch, Ft Benning, Ga
HODGDON, Thomas	3d Armored Div, Europe	USALSA w/Sta Ft Polk, La
JEFFRESS, Walton	32d Army Air Def Cmd, Europe	Stu Det, Ft Ben Harrison w/Sta Geo. Washington University
JUECHTER, Alfred	4th Inf Div, Ft Carson, Co	Kwajalein Msl Range, Kwajalein
KULIK, Joseph P	USALSA, Falls Church, Va	Ofc Def Sup Service, Wash DC
LANCASTER, Steven	25th Inf Div, Hawaii	TJAGSA, Adv Cl, Charlottesville
LANCE, Charles	USALSA w/Sta Korea	TJAGSA, Adv Cl, Charlottesville
LONG, John W	USA Security Agcy, Thailand	TJAGSA, Adv Cl, Charlottesville
LONG, Robert A	USA Logistic Mgmt Cen, Ft Lee, Va	TJAGSA, Adv Cl, Charlottesville
MANNING, Jay P	Kwajalein Missle Range	TJAGSA, Adv Cl, Charlottesville
MARON, Andrew W	TJAGSA, Adv Cl, Charlottesville	9th Inf Div, Ft Lewis, Washington
MATHER, Alexandria	25th Inf Div, Hawaii	TJAGSA, Adv Cl, Charlottesville
MATHESON, Ralph	S-F, TJAGSA, Charlottesville	Europe
McMAKIN, Sue A	USATC, Ft Eustis, Va	HQ TRADOC, Ft Monroe, Va
MOISER, Jerome	172D Inf Bde, Alaska	TJAGSA, Adv Cl, Charlottesville
MULLIN, Philip	Korea	USA Air Def Ctr, Ft Bliss, Tx
OTTMER, Peter P	8th Log Cmd, Europe	Stu Det, Ft B Harrison, w/Sta Geo Washington Univ
PODBIELSKI, Thaddeua	Def Lang Inst, Monterey, Ca	Europe
PORTER, William	Europe	USALSA w/Sta Schweinfurt, Germ.
RAICHE, Herbert	USA Logistic Cen, Ft Lee, Va	USALSA, Falls Church, Va
RERES, Matt Jr	HQ, FORSCOM, Ft McPherson, Ga	TJAGSA, Adv Cl, Charlottesville
REYNOLDS, Arthur	USA Berlin	TJAGSA, Adv Cl, Charlottesville
REYNOLDS, George	USAG, Yongsan, Korea	TJAGSA, Adv Cl, Charlottesville
ROBBLEE, Paul A	TJAGSA, Adv Cl, Charlottesville	S-F USMA, New York
ROVAK, Stephen	AFIP, WRAMC, Washington, DC	OTJAG

SOVIE, Donald E	Stu Det, Ft Benj. Harrison Ind	USALSA, Falls Church, Va
STROM, Larry J	Stu Det, Ft Benj. Harrison	TJAGSA, Adv Cl, Charlottesville
TAYLOR, Daniel	S-F USMA, West Point, NY	Europe w/Sta Amer. Embassy, Paris
THOMAS, Dominick	III Corps, Ft Hood, Tx	S-F USMA, New York
VALLECILLO, Carlos	VII Corps, Europe	TJAGSA, Adv Cl, Charlottesville
VON MAUR, Reed L	USALSA w/Sta Frankfurt, Germ	OTJAG
YUDESIS, Benjamin	TJAGSA, Adv Cl, Charlottesville	4 Power Del, Vietnam
ZIEGLER, Edward	VII Corps, Europe	TJAGSA, Adv Cl, Charlottesville
ZIMMERMAN, Charles	TJAGSA, Adv Cl, Charlottesville, Va	USAG, Ft Riley, Kansas

WARRANT OFFICERS

YOUNG, Seburn V	XVIII Abn Corps, Ft Bragg, NC	Europe

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

TO COL, AUS

BRANNEN, Barney
SPENCER, Byran S
McNAMEE, Alfred A

TO LTC, AUS

HAMEL, Robert D
GARN, George J. Jr.
MURRAY, Charles R

TO LTC, AUS

MURRAY, Robert E
MYERS, Walter K
YELTON, James M. Jr.

TO MAJ, AUS

RICHARDSON, Quentin
WERNER, Steven M

3. JAGC Job Vacancies.

a. Editor, *Military Law Review*, TJAGSA. Minimum tour is two years. Law review/editorial experience is preferred. Interested officers should contact PP&TO.

b. 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.

c. There are also a limited number of accompanied and unaccompanied tours available for Korea. Contact PP&TO for further details.

4. Promotion To Major AUS. Concern has been expressed by several JAGC captains that their age alone may preclude promotion to major, AUS. This concern was apparently generated by recent articles in *Army Times* regarding allegations directed against the major, AUS board held in FY 74. PP&TO has examined the files of all JAGC captains selected for promotion by the board in question and also the files of all JAGC captains, first time considered for promotion, who failed for selection by that board. Of the 24 captains selected for promotion, two were age 39, one was 34, four were 33, nine were 32, seven were 31 and one was 29. Of the six captains, first time considered, who were passed over, one was 37, three were 32 and two were 31. The foregoing statistics reflect that, with respect to JAGC officers, age was not a determinative factor.

5. Labor Counselor Program In New CPR. The latest change to CPR 700 (C 21), Chapter 711.A dealing with Labor-Management Relations in the DoD, dated 18 March 1975, discusses the role of the Labor Counselor in the General Policies and Responsibilities section. It points out that a qualified attorney, designated by the activity, is available to provide advice and assistance to the civilian personnel officer on matters such as union contracts involving attorneys, third-party proceedings, grievance resolution, arbitration representation, legal advice to negotiation committees, contract interpretation, management training (including instructor assistance), and review of labor relations policies and procedures. A copy of this CPR will be sent directly to all SJA's and legal offices.

6. JAG Spring Dinner Dance.

On Friday, 20 June 1975, the Annual Judge Advocate General's Corps Spring Dinner Dance

will be held in the Capitol Ballroom, Bolling Air Force Base.

The entire JAG family, including retired and reserve JAG officers and their ladies, are invited to join in an evening of cocktails, dinner, and dancing. Additionally, we have planned some entertainment provided by our OTJAG players. The cocktail hour (cash bar) will begin at 1900 hours and dinner will be at 2000.

Attire for the evening is: Army blue or Army white uniform with black bow tie or blue or white mess uniform, or evening dress uniform, or tuxedo.

The cost of the evening will be $10 per person. Checks should be made payable to the JAGO Dinner Dance Committee. Reservations may be made by completing the attached form. Captain Andrew J. Moran, DAJA-LCP, Autovon 8-225-9481, is in charge of reservations.

Your prompt reply will insure a place at the Spring Dinner Dance.

(Clip or Photocopy)

The Annual Judge Advocate General's Corps
Spring Dinner Dance
Captain Andrew J. Moran, OTJAG-DA (DAJA-LCP)
Washington, DC 20310

Inclosed is check for $____ in payment for _____ reservations for the Spring Dinner Dance on Friday, 20 June 1975, beginning at 1900 hours.

Name _____

Address _____

_____

Current Materials of Interest

Articles

Hodson, "Use of the ABA Standards in the Military" 12 AM. CRIM. L. REV. 447 (Winter 1975). Major General Kenneth J. Hodson (JAGC, Ret) authored this 13-page piece as part of a symposium on the ABA Standards Relating to the Administration of Criminal Justice.

Gilligan, "The Aftermath of *Robinson-Gustafson" Search and Seizure Law Report*, March 1975 (Volume 2, Number 3). Major Francis A. Gilligan, JAGC, reviews the impact of these two recent Supreme Court decisions.

Smith, "The Role of the Military Trial Judge: An Overview," 34 FED. B. J. 64 (Winter 1975). J. Clay Smith (JAGC, USAR) compares the role and function of the military judge with that of any other federal tribunal empowered to impose sanctions for criminal conduct.

The Winter 1974 issue of THE AIR FORCE LAW REVIEW contains several articles and comments of note: (1) "Capital Punishment Under the UCMJ After *Furman*," (2) Part I (1775–1920) of a two-part offering on "A History of the Structure of Military Justice in the United States," (3) "Problems Related to Federal Income Taxation of US Servicemen Stationed Overseas," (4) "Life Insurance and Estate Taxes," and (5) Current Initiatives in the Laws of Armed Conflict" and others.

Link, "The Polygraph—Accepted in Civilian Courts—Why Not in Courts-Martial?" *Military Police Law Enforcement Journal*, Volume II Number 1 (Spring Quarter 1975), p. 50. CW3 Frederick C. Link, MPC, recommends a re-evaluation of the merits of polygraph evidence by the military legal system.

The April issue of *Army* (Vol 25, No 4) contains an item on Article 138 complaints within its "Cerebrations" section. Captain Gary F. Thorne, JAGC, authored this two-page note en-

titled, "Arbitration: Consistent With Military Justice?"

Borman, "The Chilled Right to Appeal from a Plea Bargain Conviction: A Due Process Cure," 69 NW. U. L. REV. 663 (November-December 1974). This piece fashions a proposal for extending due process protections to provide the successful appellant whose "offense bargain" plea conviction has been vacated with an opportunity to plead again according to the terms of the original bargain; also tests the utility of this proposal by considering its application as an alternative to previous conflicting lower court decisions which have dealt with this type of remand situation.

Hardy and Cargill, "Resolving Government Contract Disputes: Why Not Arbitrate?" 34 FED. B.J. 1 (Winter 1975).

Baxter, "Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law" 16 HARV. INT'L L.J. 1 (Winter 1975).

Endacott, "Systemization and the Legal Assistant In the Law Office," 54 NEB. L. REV. 46 (1975).

O'Connor, " 'That's the Man' " A Sobering Study of Eyewitness Identification and the Polygraph," 49 ST. JOHN'S L. REV. 1 (Fall 1974).

The March/April 1975 issue of *Trial* magazine, (Volume 11, Number 2), contains several articles on bar ethics and prepaid legal services. Murphy, "Buy New—Receive Later A Vision of the Future" at p. 12; Morrison, "Bar Ethichs: Barrier to the Consumer" at p. 14; Sorensen, "Bar Ethics: Guardian to the Profession" at p. 15; and Frank, "Lawyers Beware: Federal Government Ahead" at p. 21.

Volume 27 Number 3 of STANFORD LAW REVIEW (February 1975) contains several items of note from its compilation of faculty essays: Amsterdam, "Speedy Criminal Trial: Rights and Remedies" 27 STAN. L. REV. at 525; Babcock, "Voir Dire: Preserving 'Its Wonderful Power' " 27 STAN. L. REV. at 545; Ehrlich, "The Legal Process in Foreign Affairs: Military Intervention—A Testing Case," 27 STAN. L. REV. at 637; Kaplan, "A Primer on Heroin," 27 STAN. L. REV. at 801; and Rabin, "Preclusion of Judicial Review in the Processing of Claims for Veterans' Benefits: A Preliminary Analysis," 27 STAN. L. REV. at 905.

Errata.

A regretable typesetter's error in Captain Mack Borgen's lead article of last month, "The Management and Administration of Military Legal Assistance Offices" merits immediate attention. The second sentence of the introductory note to item I.B. on page of that article should read: "In many instances the role of the LAO closely comports with their private practice and expertise, and they are *most* willing to satisfy their Reserve obligations by serving in some capacity within the legal assistance program.[10]"

The insertion of "not" in this sentence instead of "most" which appeared in our submitted manuscript was indeed a mistake.

Our publication apologizes to Captain Borgen and all our JAGC Reservists for this printer's miscue. We take this time to remind our readership that both JALS and *The Army Lawyer* are distributed without the aid of a final proofing by JAGC editors and that occasional deviations from our original will occur. We will continue to alert our readers to those errors going to the substance of matters presented in either publication.

By Order of the Secretary of the Army:

Official:

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

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