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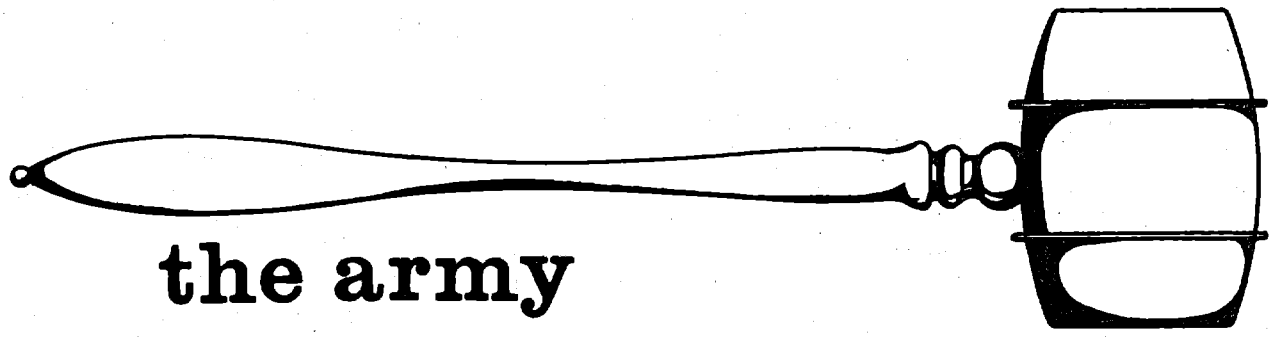

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"I Did *What*?" The Defense of Involuntary Intoxication

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"I was just sitting at my table, watching what was going on at the bar. The next thing I know, Gibson leans over and drops something in Jackson's beer. Now, Jackson doesn't see this and he takes a swig of the beer. A few minutes later, Jackson just freaks out! He starts throwing glasses, ashtrays . . . he picks up a barstool and smashes it on Fay's head . . . again and again and again. Next thing I know, Fay's dead."

Assume that the above was the testimony of a witness presented at the trial of Private First Class Jackson for the murder of Specialist Four Fay. Further assume that the defense was able to present evidence that the "something" dropped in the accused's beer was a half-inch by quarter-inch postage stamp-like piece of paper with a picture of a unicorn on it. Finally, a member of the local drug suppression team testifies that such a description fits the locally rampant variety of lysergic acid diethylamide (LSD) which was being sold by and to servicemembers.

The military judge immediately recognizes that this testimony raises the defense of involuntary intoxication. Having been fairly and reasonably raised by the evidence, the defense must be fully

explained by the judge to the courtmembers. Dutifully, the military judge searches the Military Judges' Benchbook[1] for the instruction; none is located. Military case law is sought; it is sparse.[2] The Manual for Courts-Martial[3] is scanned; no mention is found of the defense.

What, then, is this defense of involuntary intoxication? It is the purpose of this article to survey the various aspects of the defense and to suggest an analytical framework for situations in which the defense may arise.

The Gist of the Defense

Involuntary intoxication is, in short, a complete defense to any charged misconduct.[4] As with the recently ambushed insanity defense,[5] the defense of involuntary intoxication reflects the societal view that one should not be held criminally responsible for actions over which one had no rational control.[6] Indeed, the involuntarily intoxicated defendant is usually a far more sympathetic figure than the deranged one; the accused is the normally law-abiding, mentally balanced citizen who, through no fault of his or her own, has been

[1]Dep't of Army, Pamphlet No. 27-9, Military Judges' Benchbook (May 1982) [hereinafter cited as Military Judges' Benchbook].

[2]*See* United States v. Ward, 14 M.J. 950 (A.C.M.R. 1982); United States v. Schumacher, 11 M.J. 612 (A.C.M.R. 1981); United States v. Martin, 7 M.J. 613 (N.C.M.R. 1979); United States v. Craig, 3 C.M.R. 304 (A.B.R. 1952).

[3]Manual for Courts-Martial, United States, 1969 (Rev. ed.) [hereinafter cited as MCM].

[4]Commonwealth v. McAllister, 313 N.E.2d 113 (Mass.), *cert denied*, 419 U.S. 1115 (1974); Saldiveri v. State, 217 Md. 412, 143 A.2d 70 (1958); People v. Penman, 271 Ill. 82, 110 N.E. 894 (1915); State v. Rippy, 104 N.C. 752, 10 S.E. 259 (1889); State v. Gilchrist, 15 Wash. App. 892, 552 P.2d 690 (1976).

[5]*See, e.g.*, N.Y. Times, 23 June 1982, at B6, col. 1. The insanity defense has recently been abolished by legislation in two states. *See* 1982 Idaho Sess. Laws ch. 368; 1979 Montana Laws ch. 713. Additionally, several states have adopted a "guilty but mentally ill" verdict. *See* 1982 Alaska Sess. Laws ch. 143, 1982 Ga. Laws 1493; 1981 Ill. Legis. Serv. 82-553 (West); Ind. Code Ann. §§ 35-5-2-3, 35-5-2-6 (Burns Supp. 1980); 1982 Ky. Rev. Stat. & R. Serv. ch. 113 (Baldwin); Mich. Comp. Laws Ann. § 768.36 (1982); N.M. Stat. Ann. §§ 31-9-3, 31-9-4 (1982). For older criticisms of the insanity defense, *see* N. Morris, Madness and the Criminal Law (1983); Burt, *Of Mad Dogs and Scientists: the Perils of the "Criminal-Insane"*, 123 U. Pa. L. Rev. 258, 279-80 (1974); Goldstein & Katz, *Abolish the "Insanity Defense"—Why Not?*, 72 Yale L.J. 853, 866-71 (1963); Wales, *An Analysis of the Proposal to "Abolish" the Insanity Defense in S.1: Squeezing a Lemon*, 124 U. Pa. L. Rev. 687, 690 (1976). *Contra* Robitscher & Haynes, *In Defense of the Insanity Defense*, 31 Emory L.J. 9 (1982). *See also* Bonnie, *The Moral Basis of the Insanity Defense*, 69 A.B.A.J. 194 (1983); Smith, *Limiting the Insanity Defense: A Rational Approach to Irrational Crimes*, 47 Mo. L. Rev. 605 (1982).

[6]*See* discussion in State v. Rice, 379 A.2d 140, 145 (Me. 1977).

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rendered "temporarily insane"[7] through the fraud, contrivance, duress, or mistake of another.[8] Although infrequently invoked and rarely successful, the defense is a potentially effective one and deserves to be well understood.

There are three elements to the defense of involuntary intoxication. First, the accused must have ingested the intoxicant involuntarily.[9] Second, a sufficiently disabling level of intoxication must have been attained.[10] Finally, the offense in question must have been committed while the accused was under the influence of the involuntarily taken substance.[11]

What is Involuntary?

The defense of involuntary intoxication envisions the lack of a knowing, volitional act on the part of the accused in consuming the intoxicant. This absence of independent judgment may result from the deceit, contrivance, or duress of another, or by an innocent adherence by the accused to the instructions of a physician.[12] The conduct of the accused must have been legally faultless; proven voluntary complicity by the accused in the acts of others will diffuse the defense.[13] A survey of the more common areas in which involuntariness may arise is instructive.

The Drugged Drink

In *Commonwealth v. McAllister*,[14] as in our opening scenario, the accused contended that his beverage, coffee, had been doctored without his knowledge. After drinking it, the accused claimed to have heard buzzing sounds, seen flashing lights and shadows, and felt an aching in his head; expert testimony established these factors to have been consistent with an ingestion of LSD.[15] While in this frenzied state, the accused robbed and fatally shot his victim. The trial court informed the jury that if they found that the accused lacked mental capacity for any reason other than voluntary intoxication, then the accused had established a complete defense.[16] The accused was nonetheless convicted of murder. On appeal, the Supreme Judicial Court of Massachusetts approved of the judge's instruction, noting that the evidence had fairly raised the defense of involuntary intoxication. The defense, however, was deemed to have been rebutted by the testimony of government witnesses.[17]

In *State v. Alie*,[18] the accused testified that he lost consciousness upon drinking what his victim had represented to be whiskey; he remembered nothing of the ensuing murder.[19] The trial court failed to instruct the jury concerning involuntary intoxication; the appellate court found this to be error:

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[7]The term "temporary insanity" is frequently used synonymously with involuntary intoxication. *See, e.g.*, City of Minneapolis v. Altimus, 238 N.W.2d 851, 857 (Minn. 1976) ("temporarily insane"); State v. Alie, 82 W.Va. 601, 604, 96 S.E. 1011, 1014 (1918) ("temporarily insane"); People v. Penman, 271 Ill. 82, 86, 110 N.E. 894, 900 (1915) ("brief or temporary madness or insanity").

[8]United States v. Craig, 3 C.M.R. 304, 311 (A.B.R. 1952) (quoting Johnson v. Commonwealth, 135 Va. 524, 528, 115 S.E. 673, 677 (1923)).

[9]*See* text accompanying notes 12-85 *infra*.

[10]*See* text accompanying notes 86-96 *infra*.

[11]*See* text accompanying notes 97-100 *infra*.

[12]In Johnson v. Commonwealth, 135 Va. 524, 528, 115 S.E. 673, 677 (1923), an oft-cited case concerning the law of involuntary intoxication, the court explained that

> [t]he only safe test of involuntary drunkenness, and the one almost if not quite universally found in the authorities, is the absence of independent judgment and volition on the part of the accused in taking the intoxicant—as, for example, when he has been made drunk by fraudulent contrivance of others, by casualty, or by error of his physician.

See also R. Perkins, Criminal Law 783-84 (1957).

[13]*See* Perkins v. United States, 228 F. 408 (4th Cir. 1915); Hanks v. State, 542 S.W.2d 412 (Tex. Crim. App. 1976); State v. Hall, 214 N.W.2d 205 (Iowa 1974); text accompanying 62-64 *infra*.

[14]313 N.E.2d 113 (Mass.), *cert. denied*, 419 U.S. 1115 (1974).

[15]313 N.E.2d at 115.

[16]*Id.* at 119.

[17]*Id.* at 115. The government experts opined that the accused's actions contemporaneous with the crime were not the result of a toxic reaction, but appeared to be "purposeful" in nature. *Id.*

[18]82 W. Va. 601, 96 S.E. 1011 (1918).

[19]*Id.* at 602, 96 S.E. at 1012.

> If the jury lent credence to the defendant's testimony and believed that he was entirely deprived of his mental facilities at the time of the homicide by the administration of a drug to him by the deceased before that time, then he was at the time insane . . . . He is entitled to an instruction presenting his defense, even though it is supported only by his own testimony.[20]

In the two cases above, the accused had professed ignorance that the drink had been tampered with prior to his drinking it. If, however, the accused had known that the beverage had been drugged in some fashion and then drank it anyway, another result would obtain. In *Hanks v. State*,[21] the accused was aware that his drink had been "spiked" by his companion.[22] Throwing caution to the wind, he drank the beer and murdered his companion during the resulting intoxication. The appellate court refused to find this intoxication involuntary: "To constitute involuntary intoxication, there must be an absence of an exercise of independent judgment and volition on the part of the accused in taking the intoxicant."[23] Given an admitted volitional choice by the accused, the trial judge was relieved from instructing the factfinder concerning the defense.[24]

Maligning the Physician

The adverse reaction negligent physician line of cases also provide a key to the defense. In *Saldiveri v. State*,[25] the accused was administered a medication in a hospital in order to calm his alcohol-jangled nerves. The accused claimed that his offenses, various sexual abuses of a young girl also confined to the hospital, were committed while under the influence of the medication.[26] The court found that such intoxication, if established,[27] would have been involuntary. "[I]nvoluntary intoxication caused by the unskilled administration of a drug by a physician ordinarily constitutes a valid defense."[28] A patient is entitled to rely upon the purported skills of his doctor and may assume that an intoxicating dosage would have not been prescribed.[29]

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[20] *Id.* at 604, 96 S.E. at 1014. Certain courts have held, however, that the defense is not fairly raised by the evidence and an instruction need not be given the jury when the *sole* evidence of involuntary intoxication is found in the testimony of the accused that he blacked out or that someone must have drugged him. *See* State v. Barr, 340 Mo. 738, 102 S.W.2d 629 (1933); People v. White, 131 Ill. App. 2d 652, 264 N.E.2d 228 (1970). It is submitted, however, that a requirement of corroboration of the accused's claim of involuntary intoxication is one which ought to concern the court members in determining the weight to give the accused's testimony rather than the court in its decision as to whether to instruct concerning the defense. In United States v. Pruitt, 17 C.M.A. 438, 38 C.M.R. 236 (1968), an accused charged with bigamy claimed, against "substantial evidence to discredit his assertion," that he genuinely believed that his first marriage had been terminated. The Court of Military Appeals found that such testimony "raised a question of fact for the court-martial's consideration" and held that the trial judge's instruction concerning the mistake-of-fact defense had been proper. *Id.* at 439, 38 C.M.R. at 237. Similarly, while the bald assertions of an accused that he must have been drugged may weigh contrary to other evidence in the case, an issue of fact is raised for the court members' determination and an instruction ought to be given.

[21] 542 S.W.2d 413 (Tex. Crim. App. 1976).

[22] The conversation between the accused and his companion was recounted at trial as follows:

Companion: "You go ahead and drink it, it's good."
Accused: "You did something to it."
Companion: "Drink it, it's still good."
Id. at 416.

[23] *Id.*

[24] *Id.* Unlike the trial court in *Alie*, *see* text accompanying notes 20 *supra*, the court in *Hanks* had before it an undisputed set of facts and was able to resolve that, *as a matter of law*, the accused had not met the threshold definition of voluntariness such that the defense had not been fairly raised by the evidence. *Cf.* United States v. Rodriguez, 8 M.J. 648 (A.F.C.M.R. 1979) (conceded negligence by accused; not error to refuse instruction on defense of accident); United States v. Rowe, 8 M.J. 542 (A.F.C.M.R. 1979) (conceded possession of drugs by accused for purpose of return to unlawful owner; not error to refuse instruction on planted drugs); United States v. Anderson, 46 C.M.R. 1073 (A.F.C.M.R. 1973) (conceded knowledge by accused that substance possessed was contraband; mistake of fact not raised by the evidence).

[25] 217 Md. 412, 143 A.2d 70 (1958).

[26] *Id.* at 414, 143 A.2d at 72.

[27] *See* text accompanying note 89 *infra*.

[28] 217 Md. at 419, 143 A.2d at 77.

[29] *Id.* Given the myriad potent drugs currently prescribed in military hospitals and health clinics, *any* dosage of some medications may prove intoxicating. A classic example is methysergide, a drug whose common name is sansert. Sansert is not infrequently prescribed as a prophylactic treatment for migraine headaches. Methysergide, however, is a congener, or substance of the same genus, as LSD and is illicitly sold as a substitute for

As noted above, the accused must have been faultless in taking the intoxicant. In *Perkins v. United States*,[30] the accused committed murder after taking a second dosage of a duly prescribed medication.[31] The linchpin to the success or failure of the defense for the *Perkins* court was the reaction of the accused, if any, to the first dosage. "Intoxication or delerium, from a drug used with knowledge that it is likely to produce intoxication or delerium obviously stands on the same footing as intoxication from alcohol."[32] As with the dog's first bite, the patient is permitted one adverse reaction; the second will be deemed to have been foreseeable and, therefore, voluntary and culpable.

There is a division of authority concerning the question of the involuntariness of an intoxication caused by the administration of a "medication" by one other than a physician. In *State v. Rippy*,[33] the accused, then in an excited state due to heavy drinking, was dispensed an accidental overdose of morphine by his brother. The avowed and apparently credible intention of the brother was to calm the accused: the brother had used morphine to relieve his own rheumatism pain for several years.[34] After being given the morphine, the accused shot and killed his father. The appellate court found that "[i]f the homicide was committed while . . . in a frenzy produced by an overdose of morphine, administered to him *as medicine* under the circumstances detailed by the brother, it would be a complete defense."[35]

Intoxication caused by the self-administration of a "medication" has, on the other hand, been consistently held not to be involuntary. In *Johnson v. Commonwealth*,[36] the accused, during Prohibition, prescribed himself corn whiskey in order to relieve his toothache pain. While intoxicated, he assaulted his victim; such intoxication was found to be voluntary. Although the decision was obviously affected by the moral tones and illegality of drinking during the period,[37] the court acknowledged that the same result would likely have obtained in an earlier, "wetter" era.[38] Both pre-[39] and post-Prohibition[40] cases have supported this observation.

In sum, while an asserted "medicinal" administration of an intoxicant by another may raise the defense of involuntary intoxication, the self-indulgence in a nonprescription substance stands no higher in the law than a beer at happy hour.[41]

Duress

Involuntariness might result from duress. While there has been no dispute that drinking at the

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LSD. Goodman & Gilman's The Pharmacological Basis of Therapeutics 638 (6th Ed. 1979). Indeed, 16 millograms (mg) of sansert are said to be equal to 100 mg of LSD. Persyko, *Psychiatric Adverse Reactions to Methysergide*, 154 J. Nervous & Mental Disease 299, 300 (1972). Adverse reactions to the drug, which occur in up to forty percent of patients treated, include "unworldly feelings (described variously as 'disassociation,' 'hallucinatory experiences', etc.)," Facts and Comparisons 253a (1982), and "frank psychotic episodes." Goodman & Gilman, *supra*, at 639. Finally, in one study, nine of 57 patients surveyed (15.8%) suffered "severe psychic reactions (psychosis, nightmares and hallucinations)" to the drug. Persyko, *supra*, at 299 (citing Hale & Reed, *Prophylaxis of Frequent Vascular Headache With Methysergide*, 243 Am. J. Med. Sci. 92 (1962)). If this study accurately reflects the experiences of all sansert users, a patient being treated for migraine headaches runs an almost one-in-six chance of becoming involuntarily intoxicated.

[30]228 F. 408 (4th Cir. 1915).

[31]*Id.* at 415.

[32]*Id.*

[33]104 N.C. 752, 10 S.E. 259 (1889).

[34]*Id.* at 754, 10 S.E. at 261. Morphine was, of course, legal at the time.

[35]*Id.*

[36]135 Va. 524, 115 S.E. 673 (1923).

[37]The *Johnson* court explained:

> Drunkenness has always been recognized as a vice and the reason most usually assigned for the rule that it does not excuse crime is that no man may be allowed to expose the public to the danger of harm or violence caused by his own misconduct in rendering himself dangerous.

Id. at 528, 115 S.E. at 677. *See also* Bennett v. State, 257 S.W. 372 (Ark. 1923); Cribb v. State, 45 S.E. 396 (Ga. 1903).

[38]*Id.*

[39]People v. Piercy, 16 Cal. App. 13, 116 P. 322 (1911).

[40]Walden v. State, 178 Tenn. 71, 156 S.W.2d 385 (1941).

[41]*See* note 37 *supra* ("No man may be allowed to expose the public to the danger of harm or violence caused by *his own* misconduct in *rendering himself* dangerous." 135 Va. at 528, 115 S.E. at 677 (emphasis added)). *But see* People v. Baker, 42 Cal. 2d 550, 268 P.2d 705 (1954), in which the accused knowingly took intoxicating pills to ward off an attack of epilepsy. The court found reluctantly that such facts required that the defense of involuntary intoxication be submitted to the jury.

solicitation,[42] suggestion or invitation,[43] or urging[44] of others or drinking alcohol supplied by another,[45] even the accused's victim,[46] does not constitute involuntariness, a coerced intoxication might raise the defense. In *Burrows v. State*,[47] the accused, a passenger in a car then traveling through the desert, was offered some beer by the driver. After the accused had offered mild, then strenuous, protests to drinking the beer, the driver presented the accused with the unenviable option of drinking the beer or being ejected from the car.[48] The accused thereupon drank three or four bottles of beer as instructed by the driver and killed the driver during the resultant intoxication.[49] Although the murder conviction was reversed for other reasons, the court indicated that intoxication "induced by acts amounting in effect to duress" would fulfill the legal standard for involuntary intoxication and excuse the accused from criminal responsibility for his actions.[50]

When attempting to determine whether involuntary intoxication through duress may be present in a particular case the military practitioner should look to the definition of duress used in the military. The Manual for Court-Martial explains that

> [t]his degree of coercion or duress is a reasonably grounded fear on the part of the actor that he would immediately be killed or would immediately suffer seriously [sic] bodily injury if he did not commit the act. The fear compelling the act must be of immediate death or serious bodily injury and not of an injury in the future or of an injury to reputation or property. The threat must continue throughout the perpetration of the act. If the accused has a reasonable opportunity to avoid committing the act without subjecting himself to the threatened danger, his act is not excusable.[51]

Case law has expanded the situations in which duress may be found. It has been held that the threat of harm to a family member or fiancee of the accused might be sufficient to raise an issue of duress.[52]

The incidence of intoxication due to duress is likely to be rare; *Burrows* is the only reported case which suggests that the facts might have warranted the defense. If there is evidence that the accused was administered an intoxicant under threat of death or serious bodily harm, the defense of involuntary intoxication has been raised and must be submitted to the factfinder.

Mistaken Identity

In those cases in which the accused was completely and innocently misled as to the identity of the substance ingested, the resulting intoxication will probably be labeled involuntary. Thus, where a pill thought to be an aspirin or a tranquilizer turned out to be an hallucinogen,[53] or where an assumed "breath perfumer" was in fact cocaine,[54] the courts have found involuntary intoxication to have been raised by the evidence.

The scant case law concerning this aspect of the defense does not specify whether the accused's mistaken belief as to the identity of the substance ingested may be merely honest or need be both honest and reasonable. The language and facts of the cases, however, strongly hint at the former standard. In *People v. Carlo*,[55] although the cir-

[42]Commonwealth v. Dudash, 304 Pa. 124, 53 A. 756 (1902).

[43]Borland v. State, 158 Ark. 37, 249 S.W. 591 (1923).

[44]Seiwald v. People, 66 Colo. 332, 182 P. 20 (1919).

[45]McCook v. State, 91 Ga. 740, 17 S.E. 1019 (1893).

[46]State v. Christie, 243 Iowa 1119, 53 N.W.2d 887 (1952); Chambers v. State, 16 Okla. Crim. 238, 182 P. 714 (1919); State v. Sopher, 70 Iowa 494, 30 N.W. 917 (1886).

[47]38 Ariz. 99, 297 P. 1029 (1931).

[48]*Id.* at 104, 297 P. at 1034.

[49]The court noted that the accused was particularly susceptible to the influence of the alcohol because of his unfamiliarity with it and his having not eaten very much prior to drinking it. *Id.*

[50]*Id.* at 116, 297 P. at 1046.

[51]Manual for Courts-Martial para. 216*f*.

[52]United States v. Pinkston, 18 C.M.A. 261, 263, 39 C.M.R. 261, 263 (1969).

[53]People v. Carlo, 46 App. Div. 2d 764, 361 N.Y.S.2d 168 (1st Dep't 1974) (per curiam).

[54]People v. Penman, 271 Ill. 82, 110 N.E. 894 (1915).

[55]46 App. Div. 2d 764, 361 N.Y.S.2d 168 (1st Dep't 1974) (per curiam).

cumstances under which the accused procured the hallucinogen, thought to be a tranquilizer, are unreported, the court found that the accused would have been entitled to the defense if he "thought that the pill . . . was in the nature of an aspirin or tranquilizer,"[56] The court was silent as to the reasonableness of the belief. In *People v. Penman*,[57] the accused acquired the cocaine pill, believed to be a breath perfumer, from an otherwise unidentified old man in a dance room of a house of prostitution.[58] The reasonableness of taking such a person's word concerning the identity of the substance is, at best, minimal. Nonetheless, the court would have afforded Penman the defense if he had taken the pill "supposing it to be some innocent thing."[59]

It is suggested, however, that the addition of a requirement that the accused's belief have been reasonable would not impose a particularly insurmountable obstacle on the defense. In a case such as where the accused is given an innocent-looking item by an acquaintance for an innocent purpose, such as a capsule for a headache, reasonableness of ingestion will easily be found. In cases such as *Penman*, however, a reckless consumption of a pill proffered by a stranger in a house of ill repute would, and perhaps ought to, be viewed in a different light. Additionally, inasmuch as the defense of involuntary intoxication has been noted to be a disfavored one[60] which may be prone to abuse,[61] the appendage of this further safeguard should tend to mollify the critics of the defense, as well as insure that the defense will be successfully pursued only in those cases in which it is truly warranted by the *innocent* behavior of the accused.

Clearly not innocent is the accused who has been put on notice that the substance was not entirely harmless. In *State v. Hall*,[62] the accused was furnished with a pill and was told that it would make him feel "groovy" and be "a little sunshine".[63] After taking the pill, an hallucinogen, the accused killed his traveling companion. The intoxication was ruled voluntary. The accused had neither been coerced nor tricked into taking the pill and, based upon the descriptions given him concerning its potential effects, he well knew that the tablet was some form of mind-altering drug.[64] Having ingested the substance with this prior knowledge, the accused was deemed to have assumed the risk of the tragic consequence which ensued.

A different species of culpable ingestion was at issue in the recent military case of *United States v. Ward*.[65] In *Ward*, the accused, a mail clerk, testified that he had assisted another servicemember in starting his car. As a reward, the accused was given a marijuana cigarette. After smoking the cigarette for about ten minutes, the accused realized that "it wasn't a regular joint, that it was something else." He was informed by the donor that the cigarette had been laced with phencyclidine (PCP).[66] Upon returning to duty, the accused blacked out and, during the blackout, ransacked the mailroom. At trial, the accused pled guilty to and was convicted of unlawfully opening the mail.[67]

On appeal, the Army Court of Military Review assumed that the facts related above were true and further assumed that the condition produced in the accused satisfied the legal definition of insanity.[68] Notwithstanding these factors, the defense

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[56]*Id.* at 766, 361 N.Y.S.2d at 170.

[57]271 Ill. 82, 110 N.E. 894 (1915).

[58]*Id.* at 86, 110 N.E. at 898.

[59]*Id.* at 88, 110 N.E. at 900.

[60]State v. *Mriglot*, 15 Wash. App. 446, 447, 550 P.2d 17, 18 (1976).

[61]Burrows v. State, 38 Ariz. 99, 105, 297 P.2d 1029, 1035 (1931).

[62]214 N.W.2d 205 (Iowa 1974).

[63]*Id.* at 206.

[64]The court stated that the "[d]efendant did not take the pill by mistake—thinking, for example, it was candy . . . he knew it was a mind-affecting drug." It was no defense that the drug had a different or unanticipated effect. *Id.* at 208. *Accord* Commonwealth v. Campbell, 445 Pa. 488, 284 A.2d 798 (1971); Bennett v. State, 161 Ark. 496, 257 S.W. 372 (1923).

[65]14 M.J. 950 (A.C.M.R. 1982).

[66]*Id.* at 951.

[67]The accused was convicted under Article 134 of the Uniform Code of Military Justice, 10 U.S.C. § 934 (1976).

[68]*See* text accompanying notes 94-95 *infra*.

of involuntary intoxication was deemed not to have been raised by the evidence.[69] The court reviewed the applicable authorities in the field[70] and concluded that, given the illegal and often unpredictable nature[71] of the known substance consumed and the common knowledge that marijuana is frequently mixed with PCP, the accused's intoxication could hardly be called nonculpable.[72] Accordingly, the conviction was affirmed.

"I Know My Limit"

Personal misjudgments as to the potency of a particular intoxicant or as to one's capacity to "hold one's liquor" will not excuse the inevitable intoxication. In *Tackett v. Commonwealth*,[73] the accused imbibed Jamaican ginger, expecting to find it "a little intoxicating" but not so potent as to cause him to black out and commit murder.[74] His conviction was nonetheless upheld. The accused freely consumed the beverage and was not misled or mistaken as to its identity. "Clearly, when one drinks of his own free will, the mere fact that he misjudges his own capacity, or the intoxicating effects of a particular beverage, will not render his intoxication involuntary."[75]

Pills and Booze Don't Mix (Or Do They?)

At first blush, both logic and common sense might seem to dictate that one who knowingly and intentionally consumes alcohol before or after having taken a drug, whether legal or illegal, ought to be criminally responsible for acts committed while under the influence of this combined assault upon the human system. Indeed, such an actor would appear to be at least as reckless as the drinker of the knowingly spiked beer,[76] the toothache sufferer,[77] or the ingestor of the "little sunshine."[78] Logic, however, does not always carry the day.

In *People v. Murray*,[79] the accused, a prison inmate, consumed both alcohol and a narcotic commonly known as "goof balls," following which he escaped from prison.[80] Notwithstanding this apparently culpable intoxication on the part of the accused, the court held that

> the defendant's testimony, if believed, would establish that he was not a habitual user of either alcohol or narcotics and that he had not previously taken both alcohol and "goofballs" in tandem so as to be familiar with the possible effect. Thus involuntary intoxication—which may be treated the same as insanity.[81]

The *Murray* court allowed the dog his first bite; now aware of the adverse effects of the combination of alcohol and illegal drugs, Murray might be convicted if the unfortunate situation recurred. Such were the facts in *People v. Mahle*,[82] like *Murray*, a California case. In *Mahle*, the accused sought to invoke *Murray* by claiming ignorance of the potentially intoxicating effects of librium and

[69]As the accused had been convicted pursuant to his plea of guilty, 14 M.J. at 951, the appellate court was asked to determine whether military judge had correctly accepted the plea as provident and whether any defense to the charge had been fairly raised during the providency inquiry. *Id.* at 952. *See* Military Judges' Benchbook para. 2-13 n.2.

[70]The court compared State v. Hall, 214 N.W.2d 205 (Iowa 1974), *see* text accompanying notes 62-64 *supra*, with People v. Carlo, 46 App. Div. 2d 764, 361 N.Y.S.2d 168 (1st Dep't 1974) (per curiam), *see* text accompanying notes 55-59 *supra*. 14 M.J. at 953-54.

[71]*Id.* (citing U.S. Dep't of Health & Human Serv., DHHS Pub. No. (ADM) 80-706, Let's Talk About Drug Abuse (1980); National Inst. on Drug Abuse, Research Monograph 31, Marijuana Research Findings: 1980 15-17, 26-29 (1980); *Guns, Grass—And Money*, Newsweek, 25 Oct. 1982, at 36-41).

[72]14 M.J. at 954 (citing R. Linder, S. Lerner, & R. Burns. PCP: The Devil's Dust 8-11 (1981)). *Cf.* People v. Brumfield, 390 N.E.2d 589 (Ill. Ct. App. 1979) (marijuana consumed, before drinking alcohol, laced with PCP; defense held to have been raised by the evidence).

[73]205 Ky. 490, 266 S.W. 26 (1924).

[74]*Id.* at 491, 266 S.W. at 27.

[75]*Id. See also* United States v. Schumacher, 11 M.J. 612, 616 (A.C.M.R. 1981).

[76]*See* text accompanying notes 21-24 *supra*.

[77]*See* text accompanying notes 36-38 *supra*.

[78]*See* text accompanying notes 62-64 *supra*.

[79]247 Cal. App. 2d 730, 56 Cal. Rptr. 21 (1967).

[80]*Id.* at 732, 56 Cal. Rptr. at 23.

[81]*Id.* at 732, 56 Cal. Rptr. at 23 (citing People v. Wells, 33 Cal. 2d 330, 202 P.2d 53 (1949); People v. Hower, 151 Cal. 638, 91 P. 507 (1907); People v. Fellows, 122 Cal. 233, 54 P. 830 (1898); People v. Lim Dum Dong, 26 Cal. App. 2d 135, 78 P.2d 1026 (1938)).

[82]273 Cal. App. 2d 309, 78 Cal. Rptr. 360 (1969).

martinis.[83] In upholding the accused's homicide conviction and distinguishing *Murray*, the court stressed that the evidence had indicated that the accused had previously experienced the effects of this combination, such that not only should the intoxication have come as no surprise, but that the deliberate conduct of the accused in drinking excessively after his ingestion of librium appeared to invite those past experiences to recur in even greater intensity.[84]

Such cases, however, are notable only as exceptions, not the rule. In *State v. Bunn*,[85] the accused shot two people while under the influence of a combination of valium and alcohol.[86] His conviction was affirmed. Inasmuch as he knew what he was drinking and no one forced him to drink it, the intoxication was entirely voluntary and criminal liability for his actions clearly attached.[87]

"But I Couldn't Help It"

Our society and the medical profession have come to regard alcoholism as a disease. The majority opinion remains, however, that even the chronic alcoholic retains a degree of free will in deciding to take the first drink.[88] Thus, any resulting intoxication is usually deemed voluntary and the accused will be held criminally liable for offenses commensurate with his adjudged intent.[89] Such remains the case even if the accused is shown to be physically or physiologically susceptible to intoxication by a moderate and normally nonintoxicating amount of alcohol.[90] Notwithstanding Model Penal Code endorsement as a defense,[91] this concept of "pathological intoxication" has been accepted only in dicta.[92]

Involuntariness—A Capsulization

In one of the rare cases in which a military appellate court has dealt with the defense of involuntary intoxication, the court noted that

> the general rule that involuntary intoxication excuses an accused from criminal responsibility applies where one involuntarily becomes drunk by being compelled to drink [duress], through another's fraud [misrepresentation of the nature or identity of the substance] or strategem [the drugged drink], or by taking [medication] prescribed by a physician.[93]

In these instances, the military judge should recognize that the accused has cleared the first hurdle toward becoming entitled to an instruction to the courtmembers concerning the defense. The next question for judicial scrutiny is the level of intoxication or, simply put, "how drunk is drunk?"

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[83] *Id.* at 315, 78 Cal. Rptr. at 366.

[84] *Id.* at 316, 78 Cal. Rptr. at 367.

[85] 283 N.C. 444, 196 S.E.2d 777 (1973).

[86] *Id.* at 451, 196 S.E.2d at 784-85.

[87] *Id.* at 452, 196 S.E.2d at 786.

[88] *See* Annot., 73 A.L.R. 3d 195, 222-28 (1976). The military view of alcoholism is summarized in the Military Judges' Benchbook: "Alcoholism is recognized by the medical profession as a disease involving a compulsion towards intoxication. As a matter of law, however, intoxication from drinking as a result of the compulsion of alcoholism is regarded as voluntary intoxication." *Id.* at para. 5-12. In United States v. Schumacher, 11 M.J. 612 (A.C.M.R. 1981), the accused, a lieutenant colonel, had been tried and convicted of, *inter alia*, conduct unbecoming an officer by being drunk in a public place. On appeal, he alleged that the trial court had committed error by refusing to instruct the court members concerning the defense of involuntary intoxication. It was alleged that the evidence that the accused, an alcoholic, had been moved to drink by "so-called 'unconscious factors' which overcame his diminished ability to resist" had raised the defense. *Id.* at 615. The Army Court of Military Review found that the election of the trial court to treat the intoxication as voluntary was not in error: "His history of alcohol addiction, detoxification, and treatment indicates that the consequences of taking the first drink, and succeeding ones, were well known to him." *Id.* at 616. *See also* Poikoleinen, *Alcoholism: A Social Construct*, 12 J. Drug Issues 361 (1982).

[89] *See* cases cited in Annot., 73 A.L.R. 3d at 222-23.

[90] *See id.* at 239-42.

[91] The Model Penal Code § 2.08(4), (5)(c) (Proposed Draft 1962) has recommended that pathological intoxication, defined as "intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he or she is susceptible," be considered an affirmative defense to any charged misconduct.

[92] *See, e.g.*, State v. Johnson, 40 Conn. 136 (1873); People v. Castillo, 70 Cal. 2d 264, 74 Cal. Rptr. 385, 449 P.2d 449 (1969), in which pathological intoxication was paid lip-service as a defense, following which the cases were decided upon other grounds.

[93] United States v. Craig, 3 C.M.R. 304, 311 (A.B.R. 1952).

What Constitutes Intoxication?

The Standard

The authorities concur that, in order for an accused to successfully assert the defense of involuntary intoxication, the level of impairment caused by the intoxicant must rise to the legal standard of insanity.[94] Thus, under the definition of insanity currently recognized in the military:

> The accused is not mentally responsible and, therefore, not criminally responsible if, at the time of the offense, as a result of [involuntary intoxication] he/she lacked substantial capacity either to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law.[95]

In seeking to raise the defense, therefore, it is incumbent upon the accused not only to establish a recognized form of involuntariness, but also, most logically through available eyewitness and expert testimony, to demonstrate that he or she was affected in some way by the intoxicant. Such testimony would oblige the military judge to instruct concerning the defense. To *successfully* assert the defense, the accused must cause the factfinder to doubt his or her sanity following ingestion of the intoxicant.[96] It frequently occurs that, even in those cases in which an ingestion is conceded by the court to have been involuntary, the defense falters in the eyes of the factfinder either because eyewitness testimony from government witnesses demonstrated that the accused was acting inconsistent with one strongly intoxicated or testimony from government experts that whatever intoxication was suffered did not reach a level of insanity.[97]

The Burden of Proof

The division of authority amongst jurisdictions concerning the burden of proof on the insanity defense also exists with respect to the defense of involuntary intoxication. The view held by a majority of jurisdictions places the burden of proving beyond a reasonable doubt the accused's mental responsibility at the time of the offense upon the government in cases involving the issue of insanity; the same demand is likewise made of the government in cases involving involuntary intoxication.[98] Because of the increasing unpopularity of the insanity defense and the pre-existing distrust of involuntary intoxication, a growing number of jurisdictions are re-evaluating this position. Statutorily[99] and by judicial decree,[100] some states have shifted the burden of proving mental responsibility onto the accused. In those jurisdictions, the accused must similarly prove involuntary intoxication. The Model Penal Code has espoused the position that involuntary intoxication should be an affirmative defense.[101] The Court of Military Appeals, however, has recently affirmed the military practice of requiring the government to establish the mental responsibility of the accused; a reasonable doubt as to the issue in the mind of the factfinder mandates an acquittal.[102] Consequently, ab-

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[94]*See e.g.*, Perkins v. United States, 228 F. 408 (4th Cir. 1915); United States v. Martin, 7 M.J. 613 (N.C.M.R. 1979); Commonwealth v. McAllister, 313 N.E.2d 113 (Mass.), *cert. denied*, 419 U.S. 1115 (1974). *See also* R. Perkins, Criminal Law 782-83 (1957).

[95]Military Judges' Benchbook, para. 6-4.

[96]*See* text accompanying notes 98-104 *infra*.

[97]Such was the case in Saldiveri v. State, 217 Md. 412, 143 A.2d 70 (1958), *see* text accompanying notes 25-29 *supra*. In *Saldiveri*, the accused convinced the court to adopt the position that a patient should be able to rely upon the skill of his doctor and not be held criminally culpable for actions committed while under the influence of the medication. The testimony of government witnesses, however, established that the medication *did not* have an intoxicating effect upon the accused. His conviction for sexual abuses of a young girl was therefore affirmed.

[98]*See, e.g.*, State v. Rice, 379 A.2d 140 (Me. 1977); Commonwealth v. McAllister, 313 N.E.2d 113 (Mass.), *cert. denied*, 419 U.S. 1115 (1974); People v. Penman, 271 Ill. 82, 110 N.E. 894 (1915); Torres v. State, 585 S.W.2d 746 (Tex. Crim. App. 1979). For a listing of those states which place the burden of proof of mental responsibility on the government, *see* cases cited in 21 Am. Jur. 2d *Criminal Law* §§ 51-52 (1965). *See also* congressional proposals in note 103 *infra*.

[99]Ill. Rev. Stat. ch. 38, § 6-3(b) (Smith-Hurd 1972); Kan. Stat. Ann. § 21-3208(1) (1974); Wis. Stat. Ann. § 939.42 (1958), *interpreted in* Staples v. State, 74 Wis. 2d 13, 245 N.W.2d 679 (1976).

[100]City of Minneapolis v. Altimus, 238 N.W.2d 851 (Minn. 1976).

[101]Model Penal Code § 2.08(4) (Proposed Draft 1962).

[102]United States v. Cortes-Crespo, 13 M.J. 420, 422 (C.M.A. 1982).

See also Manual for Courts-Martial para. 122*b*(4).

sent congressional action modifying the insanity defense or reallocating the burden of proof,[103] involuntary intoxication, once raised by the evidence,[104] must be disproven by the government in any trial by court-martial.

Was the Crime Committed While Under the Influence of the Intoxicant?

The coincidence that there had been an involuntary ingestion of a substance following which the accused engaged in criminal activity does not end the inquiry. The factfinder must yet determine whether the offense in question was committed while the accused was under the influence of the intoxicant. The determination is not always an easy one.

The facts and result of *Hand v. State*[105] highlight the occasional dilemma. In *Hand*, the accused had

[103]In *Cortes-Crespo*, the court indicated that any action tending to alter the insanity defense in the military must originate in Congress, 13 M.J. at 421, and invited such legislation to be made "specifically applicable to the military justice system." *Id.* at 421-22 n.2. Several bills had been introduced in the 97th Congress which tended to modify in various respects the insanity defense in the federal court system. *See, e.g.*, H.R. 112, 97th Cong., 1st Sess. (1981) (established time limit for determination of competence to stand trial); H.R. 4898, 97th Cong., 2d Sess. (1982) ("guilty but insane" verdict established): H.R. 5395, 97th Cong., 2d Sess. (1982) (established "guilty but insane" verdict); H.R. 5057, 97th Cong., 2d Sess. (1982) (maintains current definition of insanity; establishes new incompetency and commitment procedures); H.R. 6497, 97th Cong., 2d Sess. (1982) (insanity a defense only to specific intent crimes); H.R. 6653, 97th Cong., 2d Sess. (1982) (insanity defense abolished; "guilty but mentally ill" verdict established); H.R. 6661, 97th Cong., 2d Sess. (1982) (abolishes insanity defense in prosecutions for presidential assassination); H.R. 6673, 97th Cong., 2d Sess. (1982) (abolishes insanity defense but allows evidence of mental state concerning elements of the offense); H.R. 6702, 6709, 6716, 6726, 6742, 97th Cong., 2d Sess. (1982) (establishes "guilty but insane" verdict); H.R. 6718, 97th Cong., 2d Sess. (1982) (insanity a defense only to specific intent crimes); H.R. 6737, 97th Cong., 2d Sess. (1982) (limits insanity defense to failure to understand nature or consequences of offense); H.R. 6783, 97th Cong., 2d Sess. (1982) (places burden of proof of insanity on accused by a preponderance of the evidence); H.R. 7117, 97th Cong., 2d Sess. (1982) (insanity a defense only to specific intent crimes; expressly inapplicable to courts-martial); H.R. 7124, 97th Cong., 2d Sess. (1982) ("guilty but insane" plea and verdict established; defense only to specific intent crimes); H.R. 7259, 97th Cong., 2d Sess. (1982) (burden of proof on accused by a preponderance of the evidence); S. 818, 97th Cong., 1st Sess. (1981) (insanity a defense only to specific intent crimes; expressly inapplicable to courts-martial); S. 1106, 97th Cong., 1st Sess. (1981) ("guilty but insane" plea and verdict established); S. 1558, 97th Cong., 1st Sess. (1981) (insanity a defense to specific intent crimes); S. 2669, 97th Cong., 2d Sess. (1982) (insanity a defense only to specific intent crimes; expressly inapplicable to courts-martial); S. 2672, 97th Cong., 2d Sess. (1982) (insanity a defense only to specific intent crimes; burden of proof on accused by a preponderance of the evidence; expressly inapplicable to courts-martial), S. 2745, 97th Cong., 2d Sess. (1982) (insanity defense abolished except as to expert testimony concerning issue of state of mind which is an element of the offense; expressly inapplicable to courts-martial); S. 2780, 97th Cong., 2d Sess. (1982) (maintains insanity defense; places burden of proof on accused by preponderance of the evidence; excludes expert opinion evidence on the ultimate legal issues); S. 2902, 97th Cong., 2d Sess. (1982) (insanity an affirmative defense; burden of proof on accused by clear and convincing evidence; expressly inapplicable to courts-martial); S. 2903, 97th Cong., 2d Sess. (1982) (insanity a defense to specific intent crimes only; expressly inapplicable to courts-martial); S. 2922, 97th Cong., 2d Sess. (1982) (insanity an affirmative defense; burden of proof on accused by clear and convincing evidence). *See also* President's Message to Congress Transmitting the Criminal Justice Reform Act of 1982 (13 Sept. 1982) (proposes that insanity be a defense only to specific intent crimes; expressly inapplicable to courts-martial). Detailed analysis of the merits and drawbacks of the various proposals is provided in Arenella, *Reflections on Current Proposals to Abolish or Reform the Insanity Defense*, 8 Am. J. L. & Med. 271 (1982); *Hearings on S. 818, 1106, 1558, 2669, 2672, 2678, 2745, and 2780 Before the Comm. on the Judiciary*, 97th Cong., 2d Sess. (1982). While these bills were not acted upon in the 97th Congress, the first bills dealing with the insanity defense have been introduced in the 98th Congress. *See* H.R. 682, 98th Cong., 1st Sess. (1983) (creating "guilty but insane" verdict); S. 56, 98th Cong., 1st Sess. (1983) (insanity an affirmative defense to be proven by clear and convincing evidence).

[104]In Torres v. State, 585 S.W.2d 746 (Tex. Crim. App. 1979), *discussed in* Case Note, *Criminal Law—Defenses—Involuntary Intoxication is a Defense in Texas*, 12 St. Mary's L.J. 232 (1980), the court explained that, although the defense need be disproven beyond a reasonable doubt by the government, it must at least be "affirmatively raised" by the defense. 585 S.W.2d at 749. Although stating that "[i]nsanity at the time of the offense . . . is an affirmative defense," the Military Judges' Benchbook places the burden of proving mental responsibility on the government. *Id.* at para. 6-4I. Thus, this "affirmative defense" language may be equated with the "affirmatively raised" language of *Torres*, *i.e.* the government need not concern itself with sanity until it has been raised as an issue; the presumption of sanity will suffice in most cases. The Manual for Court-Martial dictates that the mental responsibility of the accused may be placed in issue by evidence "introduced either by the prosecution or by the defense or on behalf of the court." *Id.* at para. 122*a*. It is therefore incumbent upon all parties to the trial to be alert to *any* evidence, regardless of its source, which might tend to raise the defense of involuntary intoxication.

[105]190 Miss. 314, 200 So. 258 (1941).

been drinking heavily for three days and was administered medication by his brother, a doctor, to ameliorate his condition.[106] The accused thereafter abstained from alcohol for two days. He remembered nothing from the onset of his drinking binge to the conclusion of the second day of abstention during an earlier part of which the accused killed his son.[107] At trial, the accused was convicted of murder.

The appellate court upheld the jury verdict. The court laid the blame for the accused's acts on the pervasive influence of the alcohol:

> the drugs or medicine were administered because of the condition produced by the voluntary intoxication; that this condition still prevailed at the time the same were prescribed and furnished; and the giving of these barbituric preparations were deemed necessary because of the condition produced by such intoxication.[108]

Factually, given that the accused's amnestic condition had indisputably been caused by the drinking and continued throughout the entire period in question, the accused must have still been under the influence of the alcohol, the voluntary intoxication, at the time of the murder. While the lawfully administered medication might have intensified the effect of the alcohol, the medication did not, of itself, create the accused's condition. Under these facts, the accused was found to have been properly denied the successful use of the defense of involuntary intoxication.

Involuntary Intoxication: An Analytical Framework

Given the survey discussed above, how should the court and counsel analyze a case in which involuntary intoxication looms as a potential issue?

Involuntariness. The threshold issue is involuntariness; if the ingestion is found to have been voluntary, then even a comatose level of intoxication will not excuse the accused of at least a general intent crime. The parties to the trial should thus first focus upon the nature of the involuntariness in issue.

1. If the involuntariness is alleged to have resulted from a drugged drink and if some degree of intoxication has been established,[109] the court should instruct the court members concerning the issue even if the only evidence on the issue originates in the testimony of the accused.[110] If there has been established an undisputed or conceded knowledge on the part of the accused that something had been placed in his drink, then the resulting intoxication may be deemed voluntary as a matter of law and no instruction need be given.[111] In those cases in which prior knowledge is contested, a factual determination exists for resolution by the factfinder.[112]

2. If the basis for involuntariness is asserted to have been the consumption of a "medication," the parties to the trial should first look to the identity of the administrator or prescriber of the drug. If such person is a physician or one purporting to act as one, then the resulting intoxication may be considered involuntary and an instruction ought to be given *unless* it has been undisputed or conceded that the accused had knowingly suffered a severe reaction to the medication on a prior occasion. In these cases, the second dosage may be deemed voluntary.[113] If, however, a factual dispute exists as to the occurrence or severity of a prior reaction, then an issue exists for the factfinder.

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[106] *Id.* at 315, 200 So. at 259.

[107] *Id.* The first recorded reaction of the accused to the news that he had killed his son was, "My God, why did I do it, and how did I do it?". *Id.* Alcohol-induced amnesia, standing alone, is no defense to crime. United States v. Olvera, 4 C.M.A. 134, 15 C.M.R. 134 (1954); United States v. Soule, 27 C.M.R. 706 (A.B.R. 1959). *See also* Military Judges' Benchbook para. 5-13.

[108] 190 Miss. at 316, 200 So. at 260.

[109] *See* text accompanying notes 126-28 *infra*.

[110] *See* text accompanying note 20 & note 20 *supra*.

[111] *See* text accompanying notes 21-24 *supra*.

[112] In the event of such a factual dispute, the court members should be instructed that if they find that the accused had known that some sort of intoxicant had been placed in his or her drink prior to the accused drinking it, then they must find that the intoxication of the accused was voluntary. If, however, they find that the accused did not possess such prior knowledge, then they may find an involuntary taking by the accused and proceed to considered the degree of the accused's intoxication.

[113] *See* text accompanying notes 30-32 *supra*.

In those cases in which the medication is self-administered, attention should be paid to the nature of the "medication." If the medication is a "home remedy" with a known or suspected intoxicating effect, such as alcohol, the intoxication is voluntary and no instruction need be given.[114] If, however, the medication has been duly prescribed and taken in reasonable relation to the recommended dosage *and* there is no evidence of an established adverse reaction to a prior dosage of the medication,[115] then an issue of involuntariness had been raised. A dispute as to a prior adverse reaction creates an issue for determination by the finder of fact.

3. If the accused claims that he or she had been forced into taking the intoxicant, the degree of coercion used is the key. Mere social or peer pressure or strenuous insistence by another will not raise an issue of involuntariness.[116] If, however, evidence has been adduced which tended to establish a threat of immediate death or serious bodily injury to the accused or a member of the accused's family if the substance were not ingested, then an issue of duress has been raised and the aspects of it should be detailed for the factfinder.[117]

4. In those cases in which the accused asserts that he or she had been mistaken or misled as to the identity of the intoxicant, the primary inquiry ought to be into the accused's belief at the time when the substance was consumed. If the accused had professed an *honest* belief that the substance was lawful[118] and harmless, then the defense has been raised. On the other hand, undisputed or conceded notice to the accused of the suspect nature of the intoxicant vitiates the honesty as a matter of law and relieves the court of its duty to instruct concerning the defense.[119] A dispute as to such notice, however, requires that the factual issue be submitted to the factfinder.[120]

It has been suggested that the accused's mistaken belief ought to be both honest and reasonable before the defense may be successfully asserted.[121] Reasonableness is virtually always an issue within the bailiwick of the finder of fact. In those cases in which an honest belief in the innocence of the intoxicant is at least in issue, the court should further require that the factfinder determine whether the accused's belief was reasonable in light of the circumstances under which the accused procured the intoxicant. These circumstances should be marshaled in the instruction.[122]

5. Finally, allegations that the accused misjudged the potency of or his or her capacity for a particular intoxicant[123] or, as an alcoholic, the accused could not physically or physiologically refrain from alcohol[124] do not raise the defense under the current state of the law. Additionally, where the accused has knowingly and willingly mixed drugs and alcohol, it should be deemed to have been done at the accused's own risk; misconduct committed under the influence of this combina-

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[114]*See* text accompanying notes 36-41 supra.

[115]*See* text accompanying notes 30-32 *supra*.

[116]*See* text accompanying notes 42-46 *supra*.

[117]*See* text accompanying notes 47-52 *supra*. Taking a cue from the *Burrows* court, *see* text accompanying note 50 *supra*, the court ought to require that the court members find the same degree of duress in the accused's taking of the intoxicant as for the defense of duress to be triggered. *See* Military Judges' Benchbook para. 5-5.

[118]At the core of any defense sounding in mistake of fact is the requirement that the accused's factual belief, if true, would have constituted a lawful activity. *See* United States v. Anderson, 46 C.M.R. 1073 (A.F.C.M.R. 1973) (accused charged with possession of LSD thought to be mescaline—no defense).

[119]*See* text accompanying notes 62-64 *supra*.

The court members would thus be instructed that if they found that the accused had been put on notice of the intoxicating effect of the substance and had ingested it anyway, then they must find a voluntary taking by the accused. If, on the other hand, they find an honest mistake by the accused concerning the identity of the substance and no such prior notice, then they may proceed to consider the reasonableness of that belief. *See* text accompanying note 122 and note 122 *infra*.

[120]*See* text accompanying notes 60-61 *supra*.

[121]A good pattern instruction from which an instruction concerning involuntariness through mistake may be drawn is found at Military Judges' Benchbook para. 5-11(II) (Ignorance or Mistake When Only General Intent Is in Issue): "To be reasonable the (ignorance) (belief) must have been based on information, or lack of it, which would indicate to a reasonable person that [the substance was a breath perfumer (*Penman*) or a tranquilizer (Carlo)]. (Additionally, the (ignorance) (mistake) cannot be based upon a negligent failure to discover the true facts)."

[122]*See* text accompanying notes 73-75 *supra*.

[123]*See* text accompanying notes 88-92 *supra*.

tion will not be excused by the defense of involuntary intoxication.[125]

Intoxication. The mere ingestion of an intoxicant under conditions colorably involuntary is insufficient to raise a duty on the part of the court to instruct. It must further have been established that the substance had affected the accused in some way. Consequently, if the threshold issue of involuntariness has been joined, the parties should seek to determine whether any evidence of intoxication had been produced. *Any* evidence, even if through lay testimony[126] or the testimony of the accused,[127] will require the court to deliver an instruction on involuntary intoxication. In framing such an instruction, the standard instruction concerning mental responsibility should be used with minor modifications.[128]

Under the Influence. If involuntariness is in issue and some degree of intoxication has been established, the factfinder must be instructed that, before a reasonable doubt may be entertained as to the accused's mental responsibility at the time of the offense,[129] it must be found that the offense in question was committed while under the influence of the involuntarily taken intoxicant. The military judge should summarize the available evidence on the issue and, if expert testimony has been produced, deliver the standard instruction on that subject.[130]

Conclusion

The defense of involuntary intoxication has historically been little understood because of its infrequency of appearance and rarity of success. Additionally, the standard research tools of the military practitioner are devoid of any explanation of the defense. The preceding discussion was intended to exhibit those situations in which the defense has arisen in the hope of fostering a better understanding of it and encouraging a uniform approach to it in military jurisprudence. A firm grasp of the defense by the students of the law increases the likelihood that it will be properly weighed by those laypersons who frequently serve a vital role in the military justice system.

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[125] *See* text accompanying notes 85-87 *supra*.

[126] It should be remembered that lay testimony is competent to raise the insanity defense. So, too, should it be sufficient to raise the defense of involuntary intoxication. *See* United States v. Fountain, 2 M.J. 1202 (N.C.M.R. 1976); United States v. Thomas, 48 C.M.R. 865 (A.C.M.R. 1974).

[127] *See* text accompanying note 20 & note 20 *supra*.

[128] Military Judges' Benchbook para. 6-4(I). The "two basic questions" posed for the court members in the instruction may be rephrased as follows:

(1) Was the accused suffering from involuntary intoxication at the time of the offense; and

(2) Did the involuntary intoxication cause the accused to lack substantial capacity either to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law.

The court would thereafter describe the requirements of the particular type of involuntariness asserted and then give the standard instruction concerning the definition of insanity, the presumption of sanity, and the burden of proof. *See id.*

[129] *See* text accompanying notes 102-04 *supra*.

[130] Military Judges' Benchbook para. 7-9.

Information Systems Planning
A Design for the Future

Information Systems Planning Team, USALSA

This past January, work quietly began to address a problem which has long beset The Judge Advocate General's Corps. After attending a course of instruction presented by IBM's Information Systems Management Institute in New York City, a team of officers started preliminary analysis and fact-gathering as the first phase of an Information Systems Planning Study directed by The Judge Advocate General.

It has become increasingly evident to staff judge advocates, division chiefs, and other senior executives throughout the Corps that we are approximately 12-15 years behind the rest of the Army and the legal profession generally in our employment of automation technology. As a consequence, the Corps has often been too slow in identifying incipient problem areas while they could still be easily managed, and even when a problem area

was at last identified we have collectively been too slow in reacting with timely and accurate legal advice and assistance to commanders and service members. Certainly, in most instances "the job got done," but little pretense could be made that we were doing it as efficiently and effectively as possible throughout the Corps. A strategic plan was and is needed to identify, manage, and apply timely and reliable information to use personnel and legal resources effectively. Current information systems have not been integrated and do not allow for efficient utilization of key assets, such as personnel and legal information. Such a strategic plan will permit The Judge Advocate General's Corps to continue providing professional services to the Army in a time of increasing automation in both the Army and the legal profession as a whole.

When Major General Clausen announced the Information Systems Planning Study at a kickoff meeting on 23 February 1983, the project was characterized as being one of the most significant activities undertaken by the Corps in years and one which will influence branch direction for decades. An Information Systems Plan (ISP) is a basic automation analysis document which considers organizational needs and requirements from a macro perspective. The proven methodology used in developing the plan focuses on what an organization does, how it uses its resources to produce a product or service, not its organizational structure. The end result is an "information architecture" which portrays information flow within the organization—in our case, The Judge Advocate General's Corps—in such a way that specific subsystems or automation applications can be identified and independently targeted for procurement and implementation.

The ISP study and the plan itself encompass the interrelationships within and between OTJAG, USALSA, TJAGSA, USARCS, and both MACOM and GCM-level SJA activities. Follow-on efforts will incorporate similar input from USAREUR and other non-CONUS areas so that the information system ultimately created provides for worldwide internetting and data sharing throughout the entire Corps.

Lieutenant Colonel Rex Brookshire, leader of the ISP Study Team, emphasized at the February meeting that the plan to be developed would not itself produce hardware nor even specification designs for the various subsystems which may be needed by the Corps. "Those are produced during the subsequent implementation stage and are the result of activities by OTJAG's Automation Management Office and the Computer Systems Command," he said. "But one of the key resource and planning documents used at that time will be the basic Information Systems Plan now under development. The ISP is just the first critical step in an on-going process which will acquire even more significance to the Corps as we collectively mature in our use of automation."

Other members of the study team are Lieutenant Colonel Phil Chiminello, Major Larry Galehouse, Major Paul Wiese, Captain Rick Laverdure, Captain Chris Maher, and Captain Kevin Carter. The seven specific objectives of the study are to:

1. Provide an information systems plan that supports the short- and long-term information needs of The Judge Advocate General's Corps and is integral with the overall strategic plans and policies of the Corps.

2. Provide a formal, objective method for Corps managers to establish information systems priorities without regard to provincial interests, thereby providing direction for the expenditure of data processing resources.

3. Improve relationships between the information systems proponents and users by providing for systems that are user oriented and are responsive to user requirements and priorities.

4. Provide a basis for the subsequent development of systems that have a long life, thereby protecting the systems investment, because these systems will be based upon the Corps' legal service processes that generally will be unaffected by organizational changes.

5. Provide that the data and information processing resources are managed for the most efficient and effective support of the Corps' legal service goals.

6. Increase executive/managerial confidence that high-return, major information systems will be produced.

7. Identify data as a collective corps resource that should be planned, managed, shared, and controlled in order to be used effectively by everyone.

The ISP Study is not simply a brain-storming session during which the study team develops and presents its ideas for automating the Corps. "The actual participants are the thirty key executives selected by The Judge Advocate General, to include field SJA's," LTC Brookshire explained. "The Team is a collector, synthesizer, and analyzer of their respective inputs. Information considered includes the areas of responsibility mentioned by the participants, their managerial problems and difficulties, their critical success factors, and their use and evaluation of any existing computerized support (if any). All of this is examined in light of each executive's actual involvement in the various types of activities and decisions which are made within the Corps."

The final report is scheduled to be completed and the Information Systems Plan published and distributed in mid- to late April. SJA offices and activities which have not received a copy by 1 May, Law Day, should contact the Automation Management Office, USALSA.

Obtaining Military Publications of Interest to the Judge Advocate

Developments, Doctrine, and Literature Department, TJAGSA

The Judge Advocate General's School regularly receives requests from the field for various military legal publications. Most of these requests cannot be fulfilled by TJAGSA and should have been routed elsewhere. It is the purpose of this item to clarify the proper channels available for obtaining military legal publications.

Department of the Army Publications

Department of the Army (DA) publications, including regulations, pamphlets, training manuals and circulars, field manuals, and subject schedules, are ultimately obtained from one of the two U.S. Army Adjutant General Publication Centers (USAAGPC). One USAAGPC is located in St. Louis, Missouri and is responsible for the initial distribution and resupply of all technical and supply publications. Of greater interest to the judge advocate, however, is the center located in Baltimore, Maryland. The Baltimore center administers the initial distribution and resupply of all DA administrative, doctrinal, training, and organizational publications, Department of Defense (DOD) regulations and manuals, DOD doctrinal, training, and organizational publications, and miscellaneous publications such as joint travel regulations and procurement directives.

To obtain DA publications, the unit must first have a publications account with the appropriate USAAGPC or be supported by a unit which has one. In order to open the account, the unit prepares a DA Form 12, Request for Establishment of a Publications Account, detailing the personnel strength of the unit and submits the form through the local publications control officer to the appropriate publications center. Upon receipt of the form, the center assigns the requestor an account number. Thereafter, the new account holder may request distribution of DA publications by preparing and forwarding that form of the DA Form 12 series which pertains to the particular publication sought.

Commanders of units from MACOM to separate company level, commanders or heads of special staff sections from DA to division level (including staff judge advocate offices), commandants of service colleges and schools, and commanders of personnel administrative centers consolidated at battalion level are authorized publications accounts.

Army National Guard units which are company-sized or larger and heads of special staff sections from division level to state adjutant general may establish accounts. Requests from such units must be routed through the state adjutant general for review and approval.

Commanders of Army Reserve units which are battalion-sized or larger and heads of special staff

sections from division to DA level may establish publication accounts. Commanders of USAR battalions will open a single account for the battalion headquarters and subordinate units.

Units ordering publications are cautioned that only publications relevant to the unit's mission should be ordered and only in needed quantities. Annually, account holders receive a computer printout from their publication center which reflects the data currently maintained on the unit's DA Form 12 at the center. Results of this annual verification are subject to inspection during DA Inspector General and other inspections.

Reference: Chapter 3, AR 310-2 (12 July 1976) (C.3 15 May 1980).

TJAGSA Instructional Materials

Each year TJAGSA publishes deskbooks and materials to support resident instruction. Much of this material is found to be useful to judge advocates in the field who are not able to attend courses in their practice areas. This need is satisfied in many cases by local reproduction of returning students' materials or by requests to the MACOM SJAs who receive "camera ready" copies for the purpose of reproduction. Because further distribution of these materials is not within the School's mission, TJAGSA does not have the resources to provide these publications.

In order to provide another avenue of accessibility some of this material is being made available through the Defense Technical Information Center (DTIC). DTIC is a component of the Department of Defense (DOD) scientific and technical information program. DTIC assists the management and conduct of defense research and development efforts by providing access to and transfer of scientific and technical information among DOD agencies and contractors, and other government agencies and their contractors. The vast majority of the over one million technical reports contained in DTIC's data bases concern those specialized areas normally associated with the conduct of the defense establishment, such as aeronautics, space, and missile technology. In addition to these documents, however, TJAGSA has included several of its deskbooks in the DTIC data base. The deskbooks are unclassified and available to any registered DTIC user.

How does an organization become a DTIC user? Many judge advocates in the field may already be associated with a DTIC user and not know it. Most Army technical, school, or MACOM libraries are presently DTIC users and are authorized to request DTIC information. If they are school libraries, they may be free users. Other government agency users pay three dollars per hard copy and ninety-five cents per fiche copy.

An office not associated with a current DTIC user may itself become a user. The necessary information and forms to become registered as a user may be requested from: Defense Technical Information Center, Cameron Station, Alexandria, VA 22314.

Once registered, an office or other organization may open a deposit account with the National Technical Information Center to facilitate ordering materials. Information concerning this procedure will be provided when a request for user status is submitted.

Biweekly and cumulative yearly indices are provided users. TJAGSA publications may be identified for ordering purposes through these. These indices are classified, however, and are available only to those DTIC users whose organizations have a facility clearance. Consequently, recently included titles and the identification numbers necessary to order them will be published in *The Army Lawyer*.

The following publications are in DTIC. The nine character identifiers beginning with the letters AD are numbers assigned by DTIC and must be used when ordering the publications:

AD NUMBER	TITLE
AD B071083	Criminal Law, Procedure, Pretrial Process/ JAGS-ADC-83-1
AD B071084	Criminal Law, Procedure, Trial/JAGS-ADC-83-2
AD B071085	Criminal Law, Procedure, Posttrial/JAGS-ADC-83-3
AD B071086	Criminal Law, Crimes & Defenses/JAGS-ADC-83-4

AD NUMBER	TITLE
AD B071087	Criminal Law, Evidence/ JAGS-ADC-83-5
AD B071088	Criminal Law, Constitutional Evidence/JAGS-ADC-83-6
AD B064933	Contract Law, Contract Law Deskbook/JAGS-ADK-82-1
AD B064947	Contract Law, Fiscal Law Deskbook/JAGS-ADK-82-2

The Military Law Review and *The Army Lawyer*

The *Military Law Review* and *The Army Lawyer* are distributed by the contract printer using mailing labels supplied by the Legal Editor, Developments, Doctrine and Literature Department, TJAGSA. The distribution schedule is as follows:

Active Duty

All judge advocate offices receive the publications in sufficient number to provide one copy to each attorney and one office copy. Staff judge advocate offices are responsible for further distribution to those branch and Trial Defense Service offices and military judges whom the SJA office otherwise supports. It should be noted that legal clerks and court reporters are not authorized distribution of these publications. Changes in office requirements should be reported to the Legal Editor, TJAGSA.

Reserve Officers

Reserve units containing judge advocates each receive an office copy. Army reserve judge advocates each receive an individually addressed copy. Additions to or deletions from these lists requires the concurrence of the Reserve Affairs Department, TJAGSA.

National Guard Officers

Army National Guard units and the various state adjutants general receive office copies. Individual Army National Guard judge advocates receive individually addressed copies. Additions to or deletions from these lists requires the concurrence of the Reserve Affairs Department, TJAGSA.

Reference: Annex DDL-1, App. C, TJAGSA Reg. 10-2 (1 Jan. 1982).

Conclusion

It is only by understanding the proper sources of and procedures in obtaining desired military legal publications that frustration with the Army pubilcations system can be avoided. This note is intended only as a general guide; those wishing to order publications or establish accounts at either a USAAPC or DTIC should be sure to consult the authority listed or contact the organization responsible for the particular service. If everyone follows the rules, the game will be played a bit smoother.

Judiciary Notes

US Army Legal Services Agency

1. Digest—Article 69, UCMJ Application

A recent application under the provisions of Article 69, UCMJ, *Plaia*, SPCM 1983/5301, involved the admissibility of the accused's pretrial statement where he had been denied his right to counsel. 1LT C was told by military police that they wanted to question the accused regarding ammunition which civilian police had found in the accused's residence off post. The accused, who was then on guard duty, was brought to 1LT C at about 1200 hours. 1LT C informed the accused of his conversation with military police and read him his rights. The accused requested an attorney. No attorney was provided to the accused and he remained in the area of 1LT C for the next four to five hours. During that time, 1LT C asked the accused, "off the record," why he kept the "stuff." The accused then talked to people and watched TV until military police came for him and took him to a military police investigator (MPI) who was not made aware of the accused's earlier request for counsel. The MPI advised the accused of his rights. The accused signed a DA Form 3881 (Rights Warning Procedure/Waiver Certificate) on which he waived his right to see a lawyer. He then made

incriminating statements regarding the ammunition which had been found.

If the initial contact between 1LT C and the accused was a custodial interrogation, the accused's request for counsel continued to exist when interrogation continued by the MPI four or five hours later. *See* Edwards v. Arizona, 451 U.S. 477 (1981); Miranda v. Arizona, 384 U.S. 436 (1966); United States v. Tempia, 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967). If a custodial interrogation was started by 1LT C and authorities did not provide the accused with an opportunity to consult with counsel, they may not lawfully initiate further communications with him. *See* United States v. Alba, ____M.J.____ (A.C.M.R. 11 Jan. 1983).

It was determined that custodial interrogation existed at the time that 1LT C met with and spoke to the accused. 1LT C was aware that military-type ammunition had been found at the accused's residence and that, as a result of that find, military police had been summoned. He also knew that his role regarding the accused was to keep the accused under his control until military police came for him. In addition, he treated the accused as a suspect by reading him his rights and informing him of the reason he was there. *See generally* United States v. Schneider, 14 M.J. 189, 195 (C.M.A. 1982). Admission of the statement into evidence was error. *See* Mil. R. Evid. 305(d)(i).

If this error of constitutional dimension had been harmless beyond a reasonable doubt, reversal of the court's decision would not be necessary. *See* Chapman v. California, 386 U.S. 18, (1967); United States v. Alba, *supra*. Here, however, the erroneously admitted evidence provided the element of wrongful withholding and thereby contributed to the conviction. *See* Bumper v. North Carolina, 391 U.S. 543 (1968). Moreover, there was no independent overwhelming evidence to support the wrongful appropriation conviction. *See* Brown v. United States, 411 U.S. 223, (1973).

The Judge Advocate General granted relief in this case by setting aside the findings of guilty and the sentence.

2. Reserve Participation in Appellate Practice

The appellate workload at US Army Legal Services Agency continues to go up. At the present time there is a backlog of around 700 cases.

USALSA is considering use of reserve officers to assist in reducing the backlog. Although all the details of the program have not been worked out, a general outline has been developed:

a. The reserve officer would have to assume professional responsibility for the case. This means the basic responsibility is that of the reserve officer. Check sheets will be developed which would permit the individual to do an initial screening, resolve those issues he or she feels comfortable with, and identify those needing more detailed work by the active duty counsel. Most cases could go through the system based solely upon the individual's review but with supervisory examination just as is done when a MOBDES performs annual active duty.

b. USALSA would try to select those cases which do not have long records, and do not appear overly complicated.

c. USALSA would need a 30-day turn around time.

d. Points would be awarded on some as yet undefined basis, taking into account the time spent, length of record, and complexity of issues.

In general, USALSA is looking for those individuals, either in the IRR or units, with recent appellate experience before the ACMR and who have local access to a library with military materials.

Individuals interested in a "cases for points" program as outlined above should write to the Commander, US Army Legal Services Agency, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041.

Criminal Law News

Criminal Law Division, OTJAG

Service of Addenda to Post-trial Reviews on Defense Counsel

In a recent case, the Army Court of Military Review held that the failure to serve an addendum to the post-trial review, which contained a post-trial chronology and discussed a post-trial delay issue, on the trial defense counsel was error requiring a new action by the convening authority. Relying on United States v. Narine, 14 M.J. 5 (C.M.A. 1982), the court held that, although *Narine* had been decided before the convening authority took action in this care, *Narine* did not prescribe a new rule, but rather applies the rule announced in United States v. Goode, 1 M.J. 3 (C.M.A. 1975). In so holding, the court stated that the addendum need not be served on the trial defense counsel in every case, but only where it contains "new matter" of the type contemplated by *Narine*.

Staff judge advocates should insure that addenda to post-trial reviews are closely scrutinized and that any "new matter" raised therein is served on trial defense counsel in order to avoid potential problems upon appeal.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

(Prohibited Activities And Standards Of Conduct—General) **Post Newspaper Advertising Morale Support Activities May Be Mailed Using Official Postage.** DAJA-AL 1982/2098 (25 June 1982).

The Military Postal Service Agency inquired whether the Fort Riley "Good Times Gazette" could be mailed using official postage. The Judge Advocate General replied that official postage could be used because the monthly newspaper constitutes an information package describing certain Morale Support Activities. Paragraph 1-5d, AR 340-3, authorizes use of official mail to support the installation Morale, Welfare, and Recreation (MWR) mission so long as such mail is not used for revenue-producing activities or solely to describe individual MWR activities conducted with nonappropriated funds. Use of official mail for a "consolidated MWR information package" is specifically approved. Further, paragraph 1-5e, AR 340-3, allows official mail to be used for MWR activities supported by appropriated and nonappropriated funds. Official mail would therefore be authorized for the publication in question in view of paragraph 1-3, AR 28-1, which permits appropriated fund Morale Support Activities to receive supplemental support from nonappropriated funds. However, advertisements for bingo in the newspaper would be improper inasmuch as 18 U.S.C. § 1302 (1976) prohibits mailing publications which advertise games of chance. Additionally, the newspaper may not advertise prices for commercial activities.

(Retired Members—Recall To Active Duty) **The "Uniformed Services Former Spouses Protection Act" Does Not Affect The Recall Authority or Obligation Of Retirees.** DAJA-AL 1982/2811 (5 October 1982).

Title 10, U.S.C. § 688(a) (Supp. V 1981), enacted in 1980, authorizes the Secretary of the Army to order a retired member of the Regular Army to active duty "at any time." The Uniformed Services Former Spouses Protection Act, contained in Title X of the Department of Defense Authorization Act, 1983 (Public Law No. 97-252, 8 September 1982, effective 1 February 1983), permits state courts, under certain circumstances, to consider disposable military retired pay as property in divorce settlements. The latter statute does not interfere with the Secretary's recall authority under section 688(a) because that statute does not condition the authority to recall retirees on their actual receipt of retirement pay. Further, neither the Act nor the Conference Committee's report manifests any intent of Congress to change the

status of retired members of the Regular Army or to limit the Secretary's authority to recall these individuals to active duty under Section 688(a).

(Dependents—Medical Care) **Spouse's Eligibility For Military Medical Care Is Not Terminated By Separate Maintenance Agreement.** DAJA-AL 1982/2432 (25 August 1982).

Eligibility for medical care in Army medical facilities and under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) program is controlled by 10 U.S.C. §§ 1071-1088 (1976). The definition of "dependent" contained in Section 1072 includes the "wife" of a "member or former member of a uniformed service." This statutory definition is implemented in paragraph 1-2*c*(1)(a), AR 40-3, and Section B.2, Chapter III, Enclosure 2, DOD Instruction 6010.8. Under these provisions, the authorization for a wife to receive medical care is not terminated by a separate maintenance agreement, since she remains the member's lawful wife until the marriage is judicially terminated.

(Military Installations—Law Enforcement) **Installation Commanders Can Restrict Access To Public Highways Traversing Military Installations.** DAJA-AL 1982/2479 (24 August 1982).

Because installation commanders have the authority and responsibility to maintain order, security, and discipline on military installations, access to an installation via public roads that traverse the installation may be controlled and restricted in circumstances such as a national emergency or increased terrorist threats. The authority of a commander to maintain law and order and to generally restrict the access of civilians to a military base has been recognized in Greer v. Spock, 424 U.S. 828 (1976); Relford v. Commandant, 401 U.S. 355 (1971); and Cafeteria & Restaurant Workers v. McElroy, 367 U.S. 886 (1961). The Attorney General has also discussed the historically recognized authority of a commander to maintain law and order on installations in a memorandum concerning the use of military personnel to patrol posts housing Cuban refugees. Additionally, general authority to regulate and control access to military posts is provided for in paragraph 2-23, AR 210-10, which is derived from the President's authority as Commander-in-Chief and from statutes enacted by Congress. The exercise of the installation commander's power is not dependent upon a proprietorial interest or the possession of legislative jurisdiction over the road in question. Where public highways have been created as the result of easements granted by the Army, military control of the highway is generally authorized by a provision in the agreement making the easement subject to rules and regulations of the local commander. In any event, where access to public highways crossing military installations is restricted, state and local authorities should be notified as a matter of policy to eliminate federal-state confrontations, to minimize monetary claims on the theory that the highway has been taken by the United States for its use, and to insure state and local cooperation with the military authorities.

(Standards Of Conduct) **A Voluntary, Nominal Gift Presented By One Army Unit To Another Army Unit Does Not Violate The Gift Prohibition Of Paragraph 2-3, AR 600-50.** DAJA-AL 1982/2822 (23 September 1982).

The Armed Services Medical Regulating Office (ASMRO), located in the Pentagon, has been supported by the Office of The Surgeon General of the Army for the past 32 years. Upon its relocation to Scott Air Force Base and change in administrative and logistical support to the United States Air Force, the ASMRO wished to present the Office of The Surgeon General with a plaque (valued at less than $25.00) as a nominal token of appreciation. No government funds would be used for the purchase of the plaque. TJAG stated that since the proposed gift was not a gift by DA personnel to an official superior the express provisions of paragraph 2-3, AR 600-50, were inapplicable. However, the policy implications of that paragraph and of paragraph 5-7*f*, AR 600-20, indicate that only legitimate voluntary contributions of a nominal value may be used to fund such a gift. Since this appeared to be the situation in the instant case, TJAG concluded that there was no legal objection to the proposed gift.

The Army Labor Counselor Program

Administrative & Civil Law Division, TJAGSA
Labor & Civilian Personnel Office, OTJAG

The following list of designated labor counselors within Department of the Army has been compiled by TJAGSA and OTJAG. It is being provided to facilitate the exchange of information on federal labor relations' issues. Each installation/command should insure that a labor counselor has been appointed. Changes in these personnel should be promptly reported to:

Department of the Army
Office of the Judge Advocate General
ATTN: DAJA-LC
Washington, D.C. 20310

Army Labor Counselors

Aberdeen PG, MD*	
Academy Health Sciences*	
Ft Richardson, AK*	—CPT Toni B. London—Primary (P) CPT Edward W. France—Alternate (A)
Allied Forces, Southern Europe*	
Arlington Hall, VA*	
ARRCOM, Rock Island, IL	—Mr. Dennis Bates (P) Ms. Carrie Schaffner (A)
Armed Forces Staff College*	
AAFES*	
Ft Baker, CA*	
Ballistic Missle Command, Huntsville, AL	—Mr. Ernest A. Moran (P) CPT Billy J. Stokes (A)
Ballistic Missle Command, Kwajalein*	
Bayonne, NJ, MTMC*	
Beaumont AMC, El Paso, TX*	
Ft Belvoir, VA	—CPT John J. Short (P) CPT Douglas Haney (A)
Ft Benjamin Harrison, IN	—Mr. Ronald J. Medaris CPT Edwin R. Babbitt (A)
Ft Benning, GA	—Mr. Bernard Pfieffer
Ft Bliss, TX	—CPT Wilbur L. Tomlinson (P) CPT George A. Sirmans (A)
Ft Bragg, NC	—CPT Phillip W. Barton
Ft Buchanan, PR*	
Ft Campbell, KY	—Mr. Michael Lewis (P) CPT Adele Odegaard (A)
Carlisle Bks, PA	—MAJ Joseph J. Switzer
Ft Carson, CO*	
Claims Service, Ft Meade, MD*	
Combat Development Experimentation Command,* Ft Ord, CA	
Ft Leavenworth, KS*	
CGSC*	
Communications Command, Ft Monmouth, NJ*	
Comptroller of Army*	
Computer Systems, Ft Belvoir, VA*	
Corpus Christi Depot, TX*	
CID Command*	
DARCOM*	—Mr. Harvey S. Leedom
Ft Davis, Panama*	
HQ DA	—Mr. Samuel Horn
Ft Detrick, MD*	
Ft Devens, MA*	
USADB, Ft Leavenworth, KS	
Ft Dix, NJ	—CPT James H. Gilliam (P) CPT Stephen E. Mattesky (A)
Ft Drum, NY	—MAJ William S. Key
Dugway Proving Ground, UT	
8th Army, Korea	—LTC Michael L. Feighny
Electronics Materiel Readiness Activity, Vint Hill, Farm	—MAJ Edgar A. Smith
Engineer Division, Pacific Ocean	
ERADCOM, Adelphi, MD	—Mr. Joseph M. Davis (P) Ms. Cassandra T. Johnson (A)
Ft Eustis, VA	—CPT Richard A. Pelletier (P)
Ft Sill, OK*	
5th Army, Ft Sam Houston, TX*	
1st Army, Ft Meade, MD*	
Fitzsimmons AMC, Denver, CO*	
FORSCOM HQ*	
DA General Counsel*	
Ft Gillem, GA*	
Ft Gordon, GA	—Mr. James D. Bauer (P) Mr. Sidney B. Brody (A)
Ft Greeley, AK*	
Ft Hamilton, NY	—CPT Alexandria St. John
Ft Shafter, HI	—CPT Jeffrey A. Griswold
HSC, Ft Sam Houston, TX*	

Ft Hood, TX	—Ms. Sharon Hill
Ft Huachuca, AZ*	
Hunter AAF, GA*	
IGMR, PA*	
Ft Benning, GA*	
DA IG*	
AFIP*	
INSCOM*	
Italy*	
Ft Jackson, SC	—MAJ James K. Wolski (P) CPT Thomas P. Swaim (A)
Japan*	
TJAGSA	—MAJ Phillip F. Koren (P) MAJ William C. Jones (A)
Ft Knox, KY	—CPT Victor L. Horton (P) MAJ Jay D. McQueen (A)
Ft Leavenworth, KS	—CPT Mary C. Hutton (P) CPT O. Robert Hilmo (A)
Ft Lee, VA	—Mr. Cliff P. Greenwood (P) MAJ Robert J. Short (A)
USALSA*	
Ft Leonard Wood, MO	—CPT Stephen J. Spinello
Letterman AMC*	
Ft Lewis, WA	—Mr. Richard McCurdy
Ft MacArthur, CA*	
Madigan AMC*	
Ft McClellan, AL	—Mr. Paul W. Hughes (P) CPT Randy M. Clapp (A)
Ft McCoy, WI	—MAJ Benjamin M. Yudesis
Ft McNair	—CPT Paul N. Bley (P) CPT Wendy A. Kelly (A)
Ft McPherson, GA*	
Ft Meade, MD	—Mr. Robert P. Lowell (P) Ms. Janet E. Sloan (A)
Night Vision Laboratory, Ft. Belvoir, VA	—Mr. Alfred E. Moreau
USMA*	
MTMC, Wash D.C.*	
Redstone Arsenal, AL*	
Ft Monmouth, NJ	—CPT Thomas M. Tamurany CPT Timothy F. Tierney
Ft Monroe, VA	—MAJ Gerald R. Coppenrath CPT Mark A. Exley (A)
NGB	—Mr. Joe Reyna
NATO/SHAPE*	
MTMC Oakland, CA*	
Okinawa*	
Ft Ord, CA*	
Panama*	
Pine Bluff Arsenal, AR	—CPT Stephen P. Anderson
Ft Polk, LA*	
Presidio, SF*	
Ft Riley, KS	—CPT Kenneth B. Darin
Ft Ritchie, MD	—CPT John D. Fritz
Ft Rucker, AL	—Mr. David M. Smith
Ft Sam Houston, TX	—CPT Stuart H. Simms
Schofield Bks, HI*	
Ft Sheridan, IL*	
Sierra Army Depot, CA*	
Signal Warfare Laboratory, Vint Hill Farms, VA	—Mr. Dominic A. Femino
Ft Sill, OK	—Mr. Patrick F. Barry
Ft Stewart, GA	—CPT Bruce Bartholomeu (P) CPT Stephen Cirillo (A)
RCPAC St Louis	—MAJ John Higley
Tank—Automotive Command MI*	
Test & Evaluation Command*	
TRADOC HQ	—LTC Richard Runke (P) Mr. Stanley Grant (A)
Tripler AMC, HI*	
Sinop, Turkey*	
Ft Wainwright AK*	
Walter Reed AMC	—Ms. Mary F. Slattery
White Sands Missle Range, NM*	
Yuma Proving Grounds, AZ*	

*Units failed to respond to inquiries

**Units failed to respond to inquiries. Individual listed as Primary Counselor is SSA/OIC of the respective office.

United States Army, Europe

Command	*Servicing JA Office*	*Counselor* a. Primary b. Alternate
HQ USAREUR and Seventh Army (Heidelberg)	OJA, USAEUR & Seventh Army, APO 09403	a. GM-14 Robert E. Dunn (2121-) 8121 b. CPT Jackie B. Patrick (2121-) 6989
V Corps (Frankfurt)	OSJA, V Corps APO 09079	a. MAJ Patrick K. Hargus (2311-) 6405 b. CPT C. Michael Wysocki (2311-) 6496

Command	*Servicing JA Office*	*Counselor* a. Primary b. Alternate
VII Corps (Stuttgart)	OSJA, VII Corps APO 09107	a. MAJ Edelbert F. Phillips (2723-) 787
	North Stuttgart Br Ofc, OSJA, VII Corps APO 09154	b. CPT Denise P. Contento (2721-) 6020
	Heilbronn Br Ofc, OSJA, VII Corps, APO 09176	b. CPT Charles V.S. Platt (2761-) 490
	Augsburg Br Ofc, OSJA, VII Corps, APO 09178	b. CPT John F. Zink (2581-) 6501
	Munich Br Ofc, OSJA, VII Corps, APO 09184	b. CPT Frederick A. Johnson (2521-) 8313
21st Support Command (Kaiserslautern)	OSJA, 21st SUPCOM APO 09325 (for Director, OCP, 21st SUPCOM)	a. LTC Richard H. Black (2221-) 8491 b. CPT Kate T. Clark (2221-) 7681
	OSJA, 21st SUPCOM, APO 09325 (for Area CPO, Kaiserslautern)	a. LTC Richard H. Black (2221-) 8491 b. CPT Kate T. Clark (2221-) 7681
	Legal Services Center, Heidelberg, APO 09102 (for Heidelberg Community CPO)	a. GS-12 Frank Romano, III (2121-) 7243 b. CPT Michael D. Warren (2121-) 6233
	Legal Services Center, Karlsruhe, APO 09360 (for Area CPO, Karlsruhe)	a. GS-12 Michael P. Rogus (2141-) 6352 b. CPT Linda M. Terner (2141-) 6351
	OSJA, 21st SUPCOM, APO 09166 (for Area CPO, Mannheim	a. GS-12 John T. Nolan (2131-) 6792 b. CPT Cary D. Jobe (2131-) 8272
	Legal Services Center, Pirmasens APO 09189 (for Pirmasens) Community CPO)	a. MAJ Alexander M. Mather, Jr. (2211-) 7223 b. CPT Virginia P. Prugh (2211-) 7223
	OSJA, 21st SUPCOM, APO 09325 (for Zweibrucken Community CPO)	a. LTC Richard H. Black (2221-) 8491 b. CPT Kate T. Clark (2221-) 7681 (Kaiserslautern)
	GJA, 54th Area Support Group, APO 09172 (for Area CPO, Rheinberg)	a. MAJ Brian K. Smith Rheinberg Civ (02843-60366) b. None

Command	*Servicing JA Office*	*Counselor* a. Primary b. Alternate
7th Medical Command (Heidelberg)	OCJA, 7th Med Cmd, APO 09102	a. CPT Thomas L. Bryant (2122-) 600/842 b. None
US Army, Berlin	OSJA, USAB, APO 09742	a. MAJ Everett M. Urech (238-) 6452/6017 b. CPT Temple W. Cabell (238-) 6452/6017
1st Armored Division (Ansbach)	OSJA, 1st AD, APO 09326	a. CPT John P. Woodley, Jr. (2671-) 8368 b. CPT Robert C. Feller (2761-) 8337
1st Infantry Division (FWD) (Goeppingen)	OSJA, 1st ID (FWD), APO 09137	a. CPT Alan R. Butterworth (2731-) 403 b. CPT Pamela J. Meyers (2731-) 793
2d Armored Division (FWD) (Garlstedt)	OSJA, 2d AD (FWD), APO 09355	a. LTC Dennis F. Coupe (2443-) 6717 b. CPT Rex H. Cray (2443-) 6248
3d Armored Division (Drake Casern, Frankfurt)	OSJA, 3d AD, APO 09039	a. MAJ Robert F. Gonzales (2314-) 8215 b. CPT Mary T. Dipaola (2314-) 7126
3d Infantry Division (Wuerzburg)	OSJA, 3d ID, APO 09036	a. CPT Ann L. Wright (2321-) 7197 b. CPT William B. Kimball (2321-) 6131
8th Infantry Division	OSJA, 8th ID, APO 09111 (for Area COP, Bad Kreutznach)	a. CPT Debra L. Boudreau (2252-) 7217 b. CPT William D. Turkula (2252-) 7217
	Mainz Br Ofc, OSJA, 8th ID, APO 09185 (for Area CPO, Mainz)	a. CPT David E. Norris 2351-) 7580 b. CPT Gregory V. Hand (2351-) 7477
	Baumholder Br Ofc, OSJA, 8th ID, APO 09034 (for Area CPO, Baumholder)	a. MAJ James M. Lazarek (2231-) 6428 b. CPT Christopher F. Wilson (2231-) 6507
	Wiesbaden Br Ofc, OSJA, 8th ID, APO 09633 (for Area CPO, Wiesbaden)	a. CPT Warren P. Fligg (2355-) 5054 b. CPT Daniel G. Gianquinto (2355-) 5745

Command	*Servicing JA Office*	*Counselor*
32d Army Air Defense Command (Darmstadt)	OSJA, 32d AADCOM, APO 09175	a. MAJ Julia A. Belt (2371-) 7142 b. CPT Jeanne M. Lieberman (2371-) 6527
US Army Southern European Task Force Vicenza)	OSJA, USASETAF, APO 09168	a. LTC Howard C. Eggers** (Vicenza Mil 7308/7717) b. GS-12 Frank Di Tore (Vicenza Mil 7818)
5th Signal Command (Worms)	OJA, 5th Signal Command, APO 09056	a. MAJ Robert D. Ganstine (2421-) 7782 b. (To be designated)*
Seventh Army Training Command (Grafenwoehr)	OSJA, Armored Division, 09326	a. CPT John P. Woodley, Jr. (2671-) 8368 (Ansbach) b. CPT Robert C. Feller (2671-) 8337 (Ansbach)
NATO/SHAPE Support Group (US) (SHAPE, Belgium)	OJA, NSSG (US), APO 09088	a. GS-13 Thomas R. Dorrington (SHAPE Mil 4868) b. MAJ Ronald M. Riggs (SHAPE Mil 4910)
AFCENT Support Activity (US) (Schinnen, Netherlands)	OJA, AFCENT SUPACT (US), APO 09011	a. GS-12 Elek Fenyes (Schinnen Mil 235) b. None
US Army Claims Service, Europe (Mannheim)	OSJA, 21st SUPCOM, APO 09166	a. GS-12 John T. Nolan (2131-) 6792 b. CPT Cary T. Jobe (2131-) 8272
Real Estate Agency US Army Installation Support Activity, Europe (Frankfurt)	Legal Section, Real Estate Agency, USAISAE, APO 09710	a. GS-13 William Birney (2311-) 6628 b. C-10 Peter Rauschke (2311-) 8219
Legal Services Agency, Europe (w/dy sta AMEMB, Paris)	Legal Section, USDAO AMEMB, Paris, APO 09777	a. CPT Kevin L. Call (AMEMB Paris, X 2818/2757) b. None
US Army Contracting Agency, Europe (Frankfurt)	OSJA, V Corps, APO 09079	a. MAJ Patrick K. Hargus (2311-) 6405 b. CPT C. Michael Wysocki (2311-) 6496
2d Region, USACIDCOM (Mannheim-Seckenheim)	RJA, 2d Reg, USACIDCOM, APO 09102	a. CPT James Marshall, Jr. (2131-) 7320 b. None

Command	*Servicing JA Office*	*Counselor*
66th Military Intelligence Group (McGraw Barracks, Munich)	CJA, 66th MI Group, APO 09108	a. CPT Richard G. Totten** (2521-) 6227 b. None
US Army Field Station, Augsburg, USAINSCOM	JA, USA Field Station, Augsburg, USAINSCOM, APO 09458	a. CPT Stephen D. Aarons** (2581-) 8314/6267 b. None
DARCOM-Europe (Hammond Barracks, Manneheim)	Staff Judge Advocate, DARCOM-Europe, APO 09333	a. LTC Richard T. Altieri (2131-) 7207 b. None

Legal Assistance Items

Major Joseph C. Fowler, Major John F. Joyce, Major William C. Jones, Major Harlan M. Heffelfinger, and Captain Timothy J. Grendell
Administrative and Civil Law Division, TJAGSA

State Bar Liaison

Liaison with federal, state, and local bar associations is encouraged. Information disseminated by these organizations, as well as seminars and continuing legal education classes conducted by them, prove beneficial to legal assistance attorneys and their clients. The following is a list of contacts points for liaison with state bar associations concerning activities which impact on the military community and the legal assistance client.

Alabama
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101
No Military Committee

Alaska
Alaska Bar Association
P.O. Box 279
Anchorage, AK 99510
No Military Committee

Arizona
State Bar of Arizona
Suite 858
234 N. Central
Phoenix, AZ 85004
No Military Committee

Arkansas
Arkansas Bar Association
C.E. Ransick, Executive Director
400 West Markham
Little Rock, Arkansas 72201
No Military Committee

California
State Bar of California
Legal Services Section
Standing Committee on Military Legal Assistance
William Dunbar, Chairman
2150 Valdez Street, #885
Oakland, CA 94612

Colorado
Colorado Bar Association
250 W. 14th Ave. #800
Denver, CO 80206
No Military Committee

Connecticut
Connecticut Bar Association
Veterans' and Military Affairs Committee
Hon. Richard C. Noren, Chairman
155 Church Street
Putnam, CT 06260

Delaware
Delaware Bar Association
25 Public Building
11th and King Street
Wilmington, DE 19801
No Military Committee

District of Columbia
The Bar Association of the
District of Columbia
Military Law Committee
Neil B. Kabatchnick,
Chairman
Suite 1100
1333 New Hampshire Ave.,
N.W.
Washington, D.C. 20036

Florida
The Florida Bar
Military Law-Aid to
Servicemen Committee
John S. Thornton, Jr.,
Chairman
30 N. 6th St.
St. Petersburg, Florida 33701

Georgia
State Bar of Georgia
Military Law Section
George J. Polatty, Sr.,
Chairman
P.O. Box 396
Roswell, Georgia 30075

Hawaii
Hawaii State Bar Association
Donald C. Machado,
Chairman
Legal Assistance for Military
Personnel Committee
P.O. Box 26
Honolulu, HI 96810

Idaho
Idaho State Bar
P.O. Box 895
Boise, ID 83701
No Military Committee

Illinois
Illinois State Bar Association
Illinois Bar Center
Springfield, IL 62701
No Military Committee

Chicago
Chicago Bar Association
Military Law and Affairs
Committee
Gerald Rubin, Chairman
Suite 111, Westmoreland
Bldg.
Skokie, IL 60077

Indiana
Indiana State Bar Association
6th Flr., 230 E. Ohio
Indianapolis, IN 46204
No Military Committee

Iowa
Iowa State Bar Association
Military Affairs Committee
Norman G. Bastemeyer,
Chairman
121 Albany Avenue, NE
Orange City, Iowa 51041

Kansas
Kansas Bar Association
Military Law Section
N. Trip Shawver, Chairman
632 N. Broadway
Wichita, Kansas 67214

Kentucky
Kentucky Bar Association
West Main at Kentucky River
Frankfort, KY 40601
No Military Committee

Louisiana
Louisiana State Bar
Ste. 210, 225 Baronne St.
New Orleans, LA 70112
No Military Committee

Maine
Maine State Bar Association
P.O. Box 788
Augusta, ME 04330
No Military Committee

Maryland
Maryland State Bar
Association
Committee on Legal
Assistance for Military
Personnel
Wallace Dann, Chairman
Suite 517, Chesapeake Bldg.
305 W. Chesapeake Ave.
Towson, MD 21204

Massachusetts
Massachusetts Bar
Association
One Center Plaza
Boston, MA 02108
No Military Committee

Michigan
State Bar of Michigan
Committee on Military Law
Norman J. Rice, Chairman
20247 Kelly Rd.
Detroit, Michigan 48225

Minnesota
Minnesota State Bar
Association
100 Minnesota Federal Bldg.
Minneapolis, MN 55402
No Military Committee

Mississippi
Mississippi State Bar
P.O. Box 2168
Jackson, MS 39205
No Military Committee

Missouri
The Missouri Bar
Military Law Committee
James A. Daugherty,
Chairman
100 N. Tucker, Rm. 630
St. Louis, Missouri 63101

Montana
State Bar of Montana
P.O. Box 4669
Helena, MT 59604
No Military Committee

Nebraska
Nebraska State Bar
Association
1019 Sharp Bldg.
Lincoln, NB 68508
No Military Committee

Nevada
State Bar of Nevada
300 E. First Street
Reno, NV 89501
No Military Committee

New Hampshire
New Hampshire Bar
Association
18 Centre Street
Concord, NH 03101
No Military Committee

New Jersey
New Jersey State Bar
Association
Military Law Committee
Sanford Rader, Chairman
313 State St.
Perth Amboy, NJ 08861

New Mexico
State Bar of New Mexico
P.O. Box 25883
Albuquerque, NM 87125
No Military Committee

New York
New York State Bar
Association
Special Committee on
Military and Veterans
Affairs
William K. Hoyt., Jr.,
Chairman
155 Leonard St.
New York, NY 10013

North Carolina
North Carolina State Bar
Special Committee on
Military Personnel
c/o Mark E. Sullivan, Project
Officer
Huggard, Sullivan, Hensley &
Pearson, P.A.
124 St. Mary's St.
Raleigh, NC 27605
North Carolina Bar
Association
1025 Wade Avenue
Raleigh, NC 27605
No Military Committee

North Dakota
State Bar Association of
North Dakota
P.O. Box 2136
Bismarck, ND 58501
No Military Committee

Ohio
Ohio State Bar Association
33 W. 11th Ave.
Columbus, OH 43201
Requests for assistance by
the military are handled
through the lawyer referral
service at state bar
headquarters.

Oklahoma
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
No Military Committee

Oregon
Oregon State Bar
1776 S.W. Madison St.
Portland, OR 97205
No Military Committee

Pennsylvania
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
No Military Committee

Rhode Island
Rhode Island Bar Association
Expanding regular lawyer referral service and request to be on LAMP mailing list.
Lawyer Referral Service
1804 Industrial Bank Building
Providence, RI 02903

South Carolina
South Carolina Bar
P.O. Box 11039
Columbia, SC 29211
No Military Committee

South Dakota
State Bar of South Dakota
222 E. Capitol
Pierre, SD 57501
No Military Committee

Tennessee
Tennessee Bar Association
3622 West End Ave.
Nashville, TN 37205
No Military Committee

Texas
State Bar of Texas
Military Law Section
Jack L. Slayton, Chairman
P.O. Box 5218
Austin, Texas 78763

Utah
Utah State Bar
425 E. First South
Salt Lake City, UT 84111
No Military Committee

Vermont
Vermont Bar Association
P.O. Box 100
Montpelier, VT 05602
No Military Committee

Virginia
Virginia Bar Association
Committee on Liaison with the Armed Forces
James W. Woodward, Chairman
P.O. Box 1337
Alexandria, Virginia 22313

Washington
Washington State Bar Association
Legal Services to the Armed Forces Committee
Stephen K. Causseaux, Jr., Chairman
Rm. 510, 915½ Pacific Ave.
Tacoma, WA 98402

West Virginia
West Virginia Bar Association
Military Affairs Committee
Abraham Pinsky, Chairman
P.O. Box 349
Wellsburg, WV 26070

Wisconsin
State Bar of Wisconsin
402 W. Wilson
Madison, WI 53703
No Military Committee

Wyoming
Wyoming State Bar
P.O. Box 109
Cheyenne, WY 82001
No Military Committee

Litigation News

Recent Message

081704Z Mar 83
DAJA-LTM
FOR SJA/JA/Legal Counsel
SUBJECT: New Rules Governing Service of Process on Federal Officials Sued in Their Individual Capacities

1. Rule 4 of the Federal Rules of Civil Procedure was amended by Pub. Law 97-462. The new rule, effective 26 Feb 83, provides that an individual defendant may be served by first-class mail. Such service is to include a form for acknowledging the service. If it is acknowledged by the defendant, service is deemed complete. If acknowledgement is not returned within 20 days of the mailing of the summons and complaint, the defendant must be personally served in the manner provided under the current Rule 4. However, if personal service is required and perfected, the court may order the defendant to pay the cost of such service.

2. The full effect of the rule is unknown. Department of Justice advises that the new rule does not provide a new and independent means of obtaining personal jurisdiction and venue over federal officials sued in their individual capacities for acts arising in the performance of official duties. Accordingly, you should alert commanders and supervisors in your jurisdiction to bring the receipt of any summons and complaint, however served, to your immediate attention. Litigation Division, OTJAG, AVN 225-1700 is available for further advice.

3. Request widest dissemination of this message.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan

1. Automation. Webster's dictionary defines it as "the automatic operation or control of a process, equipment, or a system, or the totality of mechanical and electronic techniques and equipment used to achieve such operation or control."

The Judge Advocate General has made a commitment to place the JAG Corps in the computer age. As we become more involved with computers and start using automation, legal support personnel will need to acquire the additional skills. Just as in the civilian community where both attorneys and support personnel need the necessary education to perform new tasks, so, too, will JAG Corps personnel need additional training.

The primary areas of concern relate to what must be learned in order to use automation and what can be expected of legal automation. Simple programs are being developed so that one need not be a technical expert in computers in order to operate one. Someday, computers will be like telephones: easily used with no need for technical expertise. Some Army judge advocates and paralegals are using automated legal research tools. Preliminary comments are extremely favorable, with few complaints regarding the difficulty of learning the methodology. New programs are being tested to make automated legal research easier.

Computer programs have been developed to address most areas of the law, with the greatest concentration in the criminal law environment. It is likely that many of these programs can be adapted to criminal justice matters.

It is not difficult to foresee what the future may hold: When a soldier arrives at a post, personnel data concerning the service member will be electronically captured by the local MILPO and AG. If the soldier commits a crime, the MPs will use much of the initial data, such as name and social security number, and add their data to it. When justice action is taken, much of the data needed will be already available. As the case progresses,

only that data which is new need be added. Cases, attorney time, docketing, control of witnesses, pretrial confinement, and other important matters will be more easily and accurately controlled. It is envisioned that court reporters will be sending records of trial electronically, followed by an authenticated original to the appropriate location.

Naturally, there is much to be done. Today's JAG Corps, however, is on the leading edge of a new age. We must take advantage of these new developments. It should be remembered that acquisition of this equipment takes time and money; it will not happen overnight. Although full automation may not be implemented at your current duty station, the new training must begin now, so that, at your new assignment, you may build upon the work of others and be prepared to operate the equipment when it arrives.

2. Continuing Education. The Third Annual Chief Legal Clerks and Court Reporters Refresher Training Course is scheduled for 13-15 July 1983 at The Judge Advocate General's School, Charlottesville, Virginia. Letters of instruction and invitations have been sent to all chief clerks and selected court reporters. This course is designed for senior NCOs that occupy chief clerk positions.

The objective of this course is to update new policies and procedures, exchange new ideas, and other ongoing projects that will affect the Corps.

3. Planning for FY 84 Continuing Legal Education. To assist in budget preparation and planning for enlisted personnel training in FY 84, the following tentative listing of projected courses is provided:

a. Courses to be held at The Judge Advocate General's School, Charlottesville, Virginia:

(1) Military Lawyer's Assistant Course, 16-20 April 1984.

(2) Claims Training Seminar, 11-15 June 1984.

(3) Law Office Management Course, 9-13 July 1984.

(4) Senior Legal Clerks Refresher Training Course for 71D-40-50 and 71E-40-50, 11-13 July 1984.

b. Courses to be held elsewhere include:

(1) Senior NCOs and Warrant Officer Training Course, three days, location to be announced.

(2) Refresher Training Course for 71D-10-30 and 71E-10-30, three days, March 1984, Fort Ord, California.

(3) Air Force Legal Service Advanced Course (for selected personnel), two weeks, January 1984, Maxwell Air Force Base, Alabama.

(4) Air Force Claims Course (for selected personnel), two weeks, January 1984, Maxwell Air Force Base, Alabama.

Attendance at the Basic Legal Clerk, Court Reporting, and Advanced NCO Courses, as well as the U.S. Army Sergeants Major Academy requires selection and funding by MILPERCEN. Other resident and correspondence courses are listed in the Army school catalog.

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO ATTENTION OF

DAJA-SM

3 March 1983

SUBJECT: Legal Clerk and Court Reporter Skill Qualification Test Preparation

STAFF AND COMMAND JUDGE ADVOCATES

1. Between 1 July 1983 and 30 September 1983, Army Legal Clerks and Court Reporters will take the Skill Qualification Test (SQT). This year the entire test will be written. The "hands on" and job site portions of previous tests have been eliminated. The test is demanding and will be very difficult for those who are not well prepared.

2. The SQT program provides soldiers and commanders with the necessary tools to prepare for the test. The Legal Clerk Soldier Manuals, FM 12-71D1/2/3/4 and 12-71E1/2/3/4 of 1981 are the study material that will be used in preparation for the test. These are essential to adequately prepare for the test. If your personnel do not have these materials I urge you to take immediate steps to obtain these publications.

3. We have a responsibility to our Legal Clerks and Court Reporters and to the Army to properly prepare them for the SQT. Preparation for last year's test was excellent, but there is always room for improvement. You should take immediate steps to develop and host appropriate training sessions and to monitor closely all preparations for the test.

4. I encourage all Staff and Command Judge Advocates to work toward obtaining maximum success on this fourth cycle of skill qualification testing and to better the fine record established over the past years.

Hugh J. Clausen

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General

Attention Holders of DA Pam 27-7, Military Justice Handbook — Guide for Summary Court-Martial Trial Procedure

Holders of DA Pamphlet 27-7, Military Justice Handbook — Guide for Summary Court-Martial Trial Procedure (May 1982) should note a printing error on page 18. In section III(c), paragraph 21, line 1, the pamphlet currently reads: "I will *not* advise you more particularly . . ." (emphasis added). It should read: "I will *now* advise you more particularly . . ." (emphasis added).

Erratum

In the article *Recent Developments Relating to the Posse Comitatus Act*, which appeared in the January 1983 issue of *The Army Lawyer*, the subheading at page 3 of the issue entitled "The Amendments" was in error. This title was inadvertently added to the article after submission by the author for publication. In fact, the author's view is that section 905 of the Department of Defense Authorization Act of 1982 (codified at 10 U.S.C. §§ 371-78) did not amend the Posse Comitatus Act. We regret the error.

CLE News

1. 96th Contract Attorneys Course

The 96th Contract Attorneys Course scheduled for 16-27 May 1983 has been canceled.

2. 16th Fiscal Law Course

The 16th Fiscal Law Course, 5F-F12, has been changed from a 3½ days course to a 4½ day course. The course will now commence on Monday, 9 May 1983.

3. Mandatory Continuing Legal Education Jurisdictions and Reporting Dates

Jurisdiction	*Reporting Month*
Alabama	31 December annually
Colorado	31 January annually
Idaho	1 March every third anniversary of admission
Iowa	1 March annually
Minnesota	1 March every third anniversary of admission
Montana	1 April annually
Nevada	15 January annually
North Dakota	1 February every third year
South Carolina	10 January annually
Washington	31 January annually
Wisconsin	1 March annually
Wyoming	1 March annually

For addresses and detailed information, see the January 1983 issue of The Army Lawyer.

4. Resident Course Quotas

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

5. TJAGSA CLE Course Schedule

May 2-6: 5th Administrative Law of Military Installations (Phase I) (5F-F24).

May 9-13: 5th Administrative Law for Military Installations (Phase II) (5F-F24).

May 9-13: 16th Fiscal Law (5F-F12).

May 16-June 3: 26th Military Judge (5F-F33).

June 6-10: 71st Senior Officer Legal Orientation (5F-F1).

June 13-17: Claims Training Seminar (U.S. Army Claims Service).

June 20-July 1: JAGSO Team Training.

June 20-July 1: BOAC: Phase II.

July 11-15: 5th Military Lawyer's Assistant (512-71D/20/30).

July 13-15: Chief Legal Clerk Workshop.

July 18-22: 9th Criminal Trial Advocacy (5F-F32).

July 18-29: 96th Contract Attorneys (5F-F10).

July 25-September 30: 101st Basic Course (5-27-C20).

August 1-5: 12th Law Office Management (7A-713A).

August 1, 1983-May 8, 1984: 32nd Graduate Course (5-27-C22).

August 22-24: 7th Criminal Law New Developments (5F-F35).

September 12-16: 72nd Senior Officer Legal Orientation (5F-F1).

October 11-14: 1983 Worldwide JAG Conference.

October 17-December 16: 102nd Basic Course (5-27-C20).

6. Civilian Sponsored CLE Courses

July

5-9: ALIABA, Basic Law of Pensions & Deferred Compensation, Boston, MA.

8: WSBA, Young Lawyers, Spokane, WA.

8-22: NCDA, Career Prosecutor Course, Houston, TX.

10-8/5: NJC, General Jurisdiction—General, Reno, NV.

10-22: NJC, The Judge and The Trial—Graduate, Reno, NV.

10-15: NJC, Sentencing—Corrections: Process and Purpose—Graduate, Reno, NV.

10-15: ALIABA, Labor & Employment Law, Stanford, CA.

15-17: NCCD, Final Arguments, Burlington, VT.

15: NCLE, Corporate Counsel, Omaha, NE.

15: WSBA, Young Lawyers, Yakima, WA.

17-22: NJC, Judicial Writing in Trial Courts—Specialty, Reno, NV.

18-21: Touro College, Fundamentals of Government Contracting, Fundaments Course, Seminar Division Office, Fifth Floor South, 1120 20th Street, N.W., Washington, DC 20036.

22: WSBA, Young Lawyers, Seattle, WA.

24-8/5: NJC, New Trends—Graduate, Reno, NV.

24-29: NJC, Evidence—Graduate, Reno, NV.

31-8/5: NJC, Criminal Law—Graduate, Reno, NV.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ABICLE: Alabama Bar Institute for Continuing Legal Education, Box CL, University, AL 35486

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

ALEHU: Advanced Legal Education, Hamline University School of Law, 1536 Hewitt Avenue, St. Paul, MN 55104

ALIABA: American Law Institute—American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ASLM: American Society of Law and Medicine, 520 Commonwealth Avenue, Boston, MA 02215

ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007. Phone: (202) 965-3500.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

HLS: Program of Instruction for Lawyers, Harvard Law School, Cambridge, MA 02138

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MIC: Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.

MICLE: Institute of Continuing Legal Education, University of Michigan Hutchins Hall, Ann Arbor, MI 48109

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCD: National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NCSC: National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507. Phone: (702) 784-6747.

NKUCCL: Chase Center for the Study of Public Law, Salmon P. Chase College of Law, Northern Kentucky University, Highland Heights, KY 41076. Phone: (606) 527-5444

NLADA: National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452-0620.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NPLTC: National Public Law Training Center, 2000 P. Street, N.W., Suite 600, Washington, D.C. 20036

NWU: Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULS: New York University School of Law, 40 Washington Sq. S., New York, NY 10012

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TUCLE: Tulane Law School, Joseph Merrick Jones Hall, Tulane University, New Orleans, LA 70118

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

WSBA: Washington State Bar Association, 505 Madison Street, Seattle, WA 98104

This directory should be retained. Addresses of civilian organizations which sponsor CLE courses are published quarterly.

Current Material of Interest

1. Bar Admission in Illinois for the Out-of-State Attorney—A Recent Case

In a recent case of interest to attorneys in the active military or federal service, the U.S. Court of Appeals for the Seventh Circuit upheld against constitutional challenge a requirement that an attorney have practiced law in the state of his or her bar admission for a specified period prior to seeking admission on motion in Illinois.

In *Lowrie v. Goldenbush*, No. 81-2250 (7th Cir. 24 Jan. 1983), the attorney had been admitted to practice in Michigan in 1969 and did practice law there for two years. He thereafter served as an attorney for the Department of Justice in Missouri and Illinois from 1975 to 1981, whereupon he sought admission on motion to the Illinois bar. The governing Illinois rule permitted such admission only for "a person who has been admitted . . . in any other state . . . and who has actively and continuously practiced in such other jurisdiction for a period of at least 5 years." Accordingly, as the attorney had not practiced in his state of admission, Michigan, for the requisite period, he was denied admission on motion to the Illinois bar. Suit in federal court proved unavailing. The district court dismissed the complaint, 521 F. Supp. 534 (N.D. Ill. 1981), and the Seventh Circuit affirmed the dismissal.

The appellant, joined by the Federal Bar Association in an *amicus curiae* brief, had argued that the Illinois rule contravened the equal protection and privileges and immunities clauses of the Fourteenth Amendment. The Seventh Circuit initially conceded that: "Although the states have a constitutionally permissible and substantial interest in regulating bar admissions, . . . the standards of qualification promulgated 'must have a rational connection with the applicant's fitness or capacity to practice law.' " Nonetheless, the panel found that the state's concern for the applicant's character and fitness met this rational basis test and justified the challenged rule. A petition for rehearing has been filed.

The FBA reports that sixteen states have a similar rule. Federal attorneys who are contemplating retirement or separation from active federal service and relocation in a state other than that of admission, or those who merely seek admission to the bar of the state in which they are located should determine whether the state in question has such a rule and whether exceptions to the rule are available. Prior inquiry can prevent the unhappy situation of an attorney, removed from the state of admission, being unable to practice law in the state of current or anticipated residence.

2. Regulations & Pamphlets

Number	*Title*	*Change*	*Date*
AR 135-100	Appointment of Commissioned and Warrant Officers of the Army	15	1 Mar 83
AR 135-133	Ready Reserve Screening, Qualification Records System, and Change of Address Reports	7	1 Mar 83
AR 135-155	Promotion of Commissioned Officers and Warrant Officers Other Than General Officers	11	1 Mar 83
AR 135-175	Separation of Officers	8	1 Mar 83
AR 600-9	The Army Weight Control Program		15 Feb 83
AR 600-85	Alcohol and Drug Abuse Prevention and Control Program	I02	11 Feb 83
AR 608-1	Army Community Service Program	I02	10 Feb 83
AR 635-40	Physical Evaluation for Retention, Retirement, or Separation	2	15 Feb 83
AR 635-100	Promotion of Officers on Active Duty	I01	1 Feb 83
AR 635-200	Enlisted Separations	I02	14 Feb 83
DA Pam 360-503	Voting Assistance Guide		1982
DA Pam 550-77	Chile: A Country Study		May 1982
DA Pam 550-80	Nicaragua: A Country Study		Sep 1981

3. Articles

Bonnie, *The Moral Basis of the Insanity Defense*, 69 A.B.A.J. 194 (1983).

Causey, *Some Practical Suggestions for the Appellate Lawyer*, 29 Fed. B. News & J. 462 (1982).

Everett, *Persuasive Appellate Advocacy*, 29 Fed. B. News & J. 469 (1982).

Gates, *Don't Call Out the Marines: An Assessment of the Posse Comitatus Act*, 13 Tex. Tech. L. Rev. 1467 (1982).

Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C.L. Rev. 503 (1982).

Goodpaster, *An Essay on Ending the Exclusionary Rule*, 33 Hastings L.J. 1065 (1982).

Hanscom, *Admissibility of Illegally Seized Evidence: Could This Be the Path Out of the Labyrinth of the Exclusionary Rule?*, 9 Pepperdine L. Rev. 799 (1982).

Hyde, *Beyond Collective Bargaining: The Politicization of Labor Relations Under Government Contract*, 1982 Wis. L. Rev. 1.

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Lever, *The New Court of Appeals for the Federal Circuit (Part II—Conclusion)*, 64 J. Patent Off. Soc'y 243 (1982).

Marton, *Copyright in the 1980's*, 30 Fed. B. News & J. 39 (1983).

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Reed, *Trial by Propensity: Admission of Other Criminal Acts Evidenced in Federal Criminal Trials*, 50 U. Cin. L. Rev. 713 (1981).

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Schlag, *Assaults on the Exclusionary Rule: Good Faith Limitations, Damage Remedies, and Congressional Power*, 73 J. Crim. L. & Criminology 875 (1982).

Schnitzer, *Evolving Contractors' Remedies—The GAO*, 29 Fed. B. News & J. 466 (1982).

Schwartz, *Some Recent Administrative Law Trends: Delegation and Judicial Review*, 1982 Wis. L. Rev. 208.

Smith, *Federal Habeas Corpus—A Need for Reform*, 73 J. Crim. L. & Criminology 1036 (1982).

Spencer, *Motion in Limine: Pretrial Tool to Exclude Prejudicial Evidence*, 56 Conn. B.J. 325 (1982).

Squires & Mucklestone, *Simple "Simple" Will*, 57 Wash. L. Rev. 461 (1982).

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Note, *Constitutionality of Discharging Homosexual Military Personnel*, 12 Colum. Hum. Rts. L. Rev. 191 (1980-81).

Note, *EIS Supplements for Improperly Completed Projects: A Logical Extension of Judicial Review Under NEPA*, 81 Mich. L. Rev. 221 (1982).

Note, *Prosecutorial Vindictiveness in the Criminal Appellate Process: Due Process Protection After* United States v. Goodwin, 81 Mich. L. Rev. 194 (1982).

Note, *Legislation: Oklahoma's Statutory Definition of Death*, 35 Okla. L. Rev. 615 (1982).

Note, *When the Walls Come Tumbling Down—Theories of Recovery for Defective Housing*, 56 St. John's L. Rev. 670 (1982).

Note, *What You Do Not Say Can and Will Be Used Against You: Prearrest Silence Used to Impeach a Defendant's Testimony*, 16 Val. U.L. Rev. 537 (1982).

Note, *Federal Rule of Evidence 803(3) and the Criminal Defendant: The Limits of the* Hilmon *Doctrine*, 35 Vand. L. Rev. 659 (1982).

Note, *Use of Hypnosis to Refresh Memory: Invaluable Tool or Dangerous Device?*, 60 Wash. U.L.Q. 1059 (1982).

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