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Holding the King Accountable

A New Era of Judicial Review?

Major Thomas M. Strassburg, Instructor,
Administrative and Civil Law Division, TJAGSA

The gradually eroding doctrine that "the King can do no wrong" has now been nearly eliminated from our law. In Public Law No. 94-574[1] Congress amended the Administrative Procedure Act by waiving the sovereign immunity of the United States in many actions in which it had not previously been waived. This article will briefly discuss the effect of this new statute on federal court review of military activities.

Before its amendment in 1976 the Administrative Procedure Act provided in part: "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action ... is entitled to judicial review thereof."[2] In Public Law No. 94-574 Congress simply added to that provision by prohibiting dismissal or denial of relief in actions in federal courts on the ground that they are against the United States. This waiver of sovereign immunity applies to actions seeking relief other than money damages which state a claim that a federal agency, officer, or employee acted in an official capacity or under color of legal authority.[3] Congress further amended the Administrative Procedure Act[4] by providing that unless a special statutory review proceeding is applicable, "the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer."[5] In section 2 of the new law Congress amended the grant of "federal question" jurisdiction to the United States district courts[6] by eliminating the $10,000 "amount in controversy" requirement in actions "brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity."[7] Finally, Congress liberalized joinder of nonfederal defendants in such actions.[8]

The legislative history makes it clear that the purpose of Public Law No. 94-574 is to remove certain "technical barriers to the consideration on the merits of citizens' complaints against the federal government, its agencies or employees."[9] What are the implications of this law for the military lawyer advising a commander or assisting a United States attorney in defending a suit against the Army? Should he plan for a substantial increase in his litigation workload? Perhaps the effect of the Act is not as great as one might expect.

An examination of the impact of the new law can begin with a look at the so-called doctrine of nonreviewability of military activities. That doctrine, to the extent that it survives today, is best exemplified by the case of *Mindes v. Seaman*[10] and is fully defined by Colonel Darrell Peck in a recent law review article.[11] The doctrine as defined by Colonel Peck depends upon a balancing of interests and recognizes that there are some challenges to military activities which courts should refuse to review.[12] While courts-martial and certain wartime activities are not subject to review under the Administrative Procedure Act,[13] some military activities are subject to review under that law. The Army engages in many activities which are common to other departments of the government, such as adverse actions against civilian employees and the preparation of statements required by the National Environmental Policy Act. In short,

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the question of which challenges to actions of the military are reviewable does not depend upon the concept of sovereign immunity and hence should not be directly affected by Public Law No. 94–574. While it is true that the intent of Congress was to remove certain technical obstacles to the judicial review of complaints against the government, the legislative history points out that numerous grounds to dismiss an action or otherwise deny relief remain:

> These grounds include, but are not limited to, the following: (1) extraordinary relief should not be granted because of the hardship to the defendant or the public ("balancing the equities") or because the plaintiff has an adequate remedy at law; (2) action committed to agency discretion; (3) expressed or implied preclusion of judicial review; (4) standing; (5) ripeness; (6) failure to exhaust administrative remedies; and (7) an exclusive alternative remedy.[14]

If a given military action is reviewable, Public Law No. 94–574 may have a significant impact. Section 2 removes the "amount in controversy" requirements in certain federal question cases and is not tied to review under the Administrative Procedure Act. As a result, courts will no longer have to search for a grant of jurisdiction in suits against the United States, the Army, and commanders and other personnel acting in an offical capacity. Conversely, courts will not be able to conveniently find a lack of jurisdiction in cases they do not want to review. A number of military cases may be affected by this change in the law. Court-martial convictions and command determinations allegedly in violation of constitutional rights are examples of the types of cases in which it may be easier for courts to reach the merits of the litigation. While there are relatively few court-martial convictions in which the plaintiffs seeking review must reply upon the district court's federal question jurisdiction, the reverse seems to be true with regard to cases which involve constitutional challenges to command authority. The jurisdictional question of whether constitutional

rights are capable of valuation,[15] and if so, whether their value is in excess of $10,000 in a given case,[16] need no longer be raised, because the amount in controversy requirement has been eliminated in suits against the United States and its officials.

A few additional matters are worth noting. The legislative history points out that the sovereign immunity of the United States is not affected in proceedings in state courts.[17] In addition, the statute does not waive sovereign immunity in suits for money damages. As noted in the legislative history, "limitations on the recovery of money damages contained in the Federal Tort Claim Act, the Tucker Act, or similar statutes are unaffected."[18] The extent to which money damages will continue to be sought in suits against individuals arising out of the performance of official duties remains to be seen. Perhaps the increased availability of nonmonetary relief which should result from Public Law No. 94-574 will discourage claims which raise questions of immunity from suit.

It seems generally conceded that the impact of the new statute on judicial review of agency will be beneficial. The bill was supported by the American Bar Association, the Administrative Conference of the United States and the Department of Justice.[19] It is the hope of Congress that it will "force the court to articulate the true rationale for a decision. . . ."[20] For the military lawyer the new law provides an opportunity to urge that courts adopt "a principled approach for determining the reviewability of challenges to military administrative activities."[21]

Notes

1. 90 Stat. 2721 (1976).

2. 5 U.S.C. § 702 (1970).

3. 90 Stat. 2721 (1976).

4. 5 U.S.C. § 703 (1970).

5. 90 Stat. 2721 (1976).

6. 28 U.S.C. § 1331(a) (1970).

7. Act of Oct. 21, 1976, Pub. L. No. 94-574, § 2, 90 Stat. 2721 (1976).

8. *Id.*, § 3.

9. H.R. Rep. No. 94-1656, 94th Cong., 2d Sess. 3 (1976).

10. 453 F.2d 197 (5th Cir. 1971).

11. Peck, *The Justices and the Generals: The Supreme Court and Judicial Review of Military Activities*, 70 MIL. L. REV. 1 (1975).

12. *Id.* at 78-80.

13. *See* 5 U.S.C. § 701 (1970).

14. H.R. Rep. No. 94-1656, 94th Cong., 2d Sess. 12 (1976).

15. *See, e.g.* Yahr v. Resor, 339 F. Supp. 964 (E.D.N.C. 1972).

16. *See, e.g.*, Spock v. David, 502 F.2d 953 (3d Cir. 1974), *rev'd on other grounds sub nom.*, Greer v. Spock, 424 U.S. 828 (1976).

17. H.R. Rep. No. 94-1656, 94th Cong., 2d Sess. 11 (1976).

18. *Id.*

19. *Id.* at 2.

20. *Id.* at 11.

21. Peck, *The Justices and the Generals: The Supreme Court and Judicial Review of Military Activities*, 70 MIL. L. REV. 1, 79 (1975).

Legal Assistance Items

Major F. John Wagner, Jr. and Captain Steven F. Lancaster,
Administrative and Civil Law Divisions, TJAGSA

1. ITEMS OF INTEREST.

Commercial Practices and Controls. The Board of Governors of the Federal Reserve System has adopted various amendments to their Regulations *B*, *Z*, *AA*, among them amendments redesignating the "Office of Saver and Consumer Affairs" as the "Division of Consumer Affairs." [Ref: Ch 10, DA PAM 27-12]

Commercial Affairs—Commercial Practices and Controls—Truth in Lending—Fair Credit Billing Act. On 13 December 1976, the Board of Governors of the Federal Reserve System issued a supplement to its Regulation

Z (Truth in Lending) specifying the procedures and criteria under which states may be granted exemptions under the Fair Credit Billing Act.

The Fair Credit Billing Act, which is part of the Truth in Lending Act, permits the Board to grant exemptions to states that the Board determines have substantially similar laws, or ones that provide greater protection to consumers, and that make adequate provision for enforcement.

The supplement also contains procedures whereby a state may apply to the Board for a determination whether its law is inconsistent with the Fair Credit Billing Act.

Applications may be made only by states. Applications will be published for comment prior to final determination by the Board. [Ref: Ch 10, DA PAM 27-12]

Commercial Affairs—Commercial Practices and Controls—Truth in Lending—Fair Credit Billing Act. On 28 December 1976, the Board of Governors of the Federal Reserve System issued for public comment a proposed amendment to its Truth in Lending regulation to clarify provisions that permit discount for cash customers.

The proposal would carry out provisions of Public Law 94-222 that permits discounts for cash purchases, as opposed to surcharges for credit card use. The proposal also specifies that cash discounts are not to be considered charges for credit under the usury or credit card disclosure laws of any state.

At the same time, the Board announced adoption of a technical amendment correcting an error in the Fair Credit Billing section of the Regulation. [Ref: Ch 10, DA PAM 27-12].

Family Law—Domestic Relations—Alimony, Child Support, Custody and Property Settlements; Support of Dependents. In a recent domestic relations case, the New York Family Court of Suffolk County held that, where a mother who was seeking to continue receiving child support payments under the New York Uniform Support of Dependents Law (URESA) while still refusing to allow her ex-husband to exercise his decreed visitation privileges, the support money being paid by the ex-husband could be held in escrow until the child's mother allowed her ex-husband to exercise his visitation rights. The petitioning mother contended that the Uniform Support of Dependents Law was purely a statutory creation, and as such was so specialized in nature as to be limited to support and nothing else. In response to this contention, the court states that if that were the case, a mother could circumvent a valid divorce decree which provided for visitation and support by merely relocating to an adjoining county or state and still expect the court to enforce the support provisions of the decree. According to the court, a strict imterpretation of the Uniform Support of Dependents Law would encourage that kind of conduct; a phenomenon which the court found to be totally repugnant to any concern for fair play. In supporting its position, the court cited a recent line of New York cases which had held that in any Uniform Support of Dependents proceeding where there is no danger to the welfare of the child or mother upon visitation, a denial of such visitation may justify suspension of support payments (*Abraham v. Abraham*, 44 A.D.2d 675, 353 N.Y.S.2d 794; *In the Matter of Wheeler v. Wheeler*, 74 M.2d 1021, 346 N.Y.S.2d 1013). The court ordered respondent to pay $20 per week to the Suffolk County Probation Department, and that all monies were to be held in escrow until actual visitation takes place. *Goodwin v. Fayerman* (N.Y. Fam. Ct. Suffolk County, 1977) 3 FAM. L. REP. (BNA) 2173. But see *Pifer v. Pifer* (N.C. App. 1976); 3 FAM L. REP. (BNA) 2075. [Ref: Chs 20 & 26, DA PAM 27-12]

Taxation—Federal Income Tax—Tax Reform Act of 1976. For reviewing income tax returns for 1976 the following changes based on the Tax Reform Act of 1976 (Pub. L. No. 94-455, October 4, 1976) are noted.

a. Standard Deduction. The standard deduction of 16% of the adjusted gross income was made permanent. For tax year 1976 the maximum standard deduction for a single individ-

ual is $2,400 and the minimum $1,700. For a married couple filing jointly the maximum is $2,800 and the minimum $2,100, and for married taxpayer filing separate returns the maximum is $1,400 and the minimum $1,050.

b. General Tax Credit. For tax year 1976 there is a tax credit equal to the larger of $35.00 times the number of exemptions claimed (not including exemptions for blindness or age) or 2% of the taxable income up to $180.00.

c. Child Care Credit. Prior to tax year 1976, child care expenses were treated as itemized deductions. For tax year 1976, 20% of employment-related expense for a qualifying individual can be claimed as a nonrefundable tax credit. This can be taken even if the standard deduction is used by the taxpayer. The maximum credit for one qualifying individual is $400 (20% of $2,000 employment related expenses) and for two or more qualifying individuals it is $800 (20% of $4,000 employment related expenses). A qualifying individual includes a dependent under 15 for whom the taxpayer is entitled an exemption, a dependent who is physically or mentally incapable, and a spouse who is physically or mentally incapable of self-care. Under the new law child care payments to relatives qualify as employment related expenses, provided the relative is not a dependent of the taxpayer and the relative's wages are subject to FICA tax. To claim the credit a married couple must file a joint return. If married, a spouse who is a full time student is considered gainfully employed for purpose of the child care credit.

d. Alimony Payments. Alimony, separate maintenance, or similar periodic payments may be deducted as part of itemized deductions for taxable year 1976. For tax years beginning after 1976 alimony will be deductable from gross income in arriving at adjusted gross income. This will permit the use of the standard deduction when deducting for alimony payments.

e. Moving Expense Adjustment. For members of the military on active duty who move under military orders in connection with a permanent change of station the 50 mile distance and 39 week full time employment test do not apply. Military personnel are also exempt from reporting reimbursements in kind or cash reimbursements or allowances to the extent of moving expenses actually paid or incurred incident to a permanent change of station. If a spouse and dependent move to or from separate locations (dependents to a selected site and sponsor to an unaccompanied tour) the moves can be treated as a single move to the sponsors new principal place of work for purposes of this adjustment.

f. Points. As a general rule prepayment of interest after 1975 is to be deducted ratably over the term of the loan. An exception to this rule is a mortgage incurred in connection with the purpose of improvement of, and secured by, the taxpayer's principal residence. In that case points are deductable currently as interest expense, if points are generally charged in the geographical area of the purchase and to the extent of the number of points generally charged in the area.

g. Capital Assets. For tax year 1976 the holding period required to entitle one to the long term capital gains tax treatment on a gain remains 6 months. For tax year 1977 this period will be extended to 9 months and for tax year 1978 to 1 year. [Ref: Ch 40, DA PAM 27–12]

2. PENDING LEGISLATION

Commercial Practices and Controls—Civilian Indebtedness. H.R. 29, 95th Cong., 1st Sess. (1977). A bill to amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors. Referred to the Committee on Banking, Finance and Urban Affairs. [Ref: Ch 10, DA PAM 27–12]

Commercial Practices and Controls—Truth in Lending. H.R. 247, 95th Cong., 1st Sess. (1977). A bill to amend the Truth-in-Lending Act to require lenders to post current interest rates charged for various categories of loans to consumers. Referred to the committee on Banking, Finance and Urban Affairs. [Ref: Ch 10, DA PAM 27–12]

Commercial Practices and Controls—Truth in Lending. H.R. 248, 95th Cong., 1st Sess. (1977). A bill to amend the Truth-in-Lending Act to prohibit discrimination on account of age in credit card transactions. Referred to the Committee on Banking, Finance and Urban Affairs. [Ref: Ch 10, DA PAM 27-12]

Domestic Relations—Alimony, Child Support, Custody and Property Settlements. H.B. 1982 has been introduced in the Texas House of Representatives. The Bill provides for garnishment of wages for certain court-ordered child support and alimony *pendente lite.*

3. ARTICLES AND PUBLICATION OF INTEREST.

Commercial Affairs—Civilian Indebtedness—Bankruptcy.

Sommer, *Efficient Consumer Bankruptcy Practice,* THE PRAC. LAW., Oct. 15, 1976, at 15. [Ref: Ch 9, DA PAM 27-12]

Decedents' Estates and Survivors' Benefits—Estate Planning.

Palmquist, *The Estate Tax Deductibility of Unenforced Claims Against a Decedent's Estate,* 11 GONZ. L. REV. 707 (1976). [Ref: Ch 13, DA PAM 27-12]

Real Property—Closing (or Settlement).

Fisher, *The Amended Real Estate Settlement Procedures Act (RESPA), Parts I & II,* THE PRAC. LAW., Oct. 15, 1976, at 45, Dec. 1, 1976, at 27. [Ref: Ch 34, DA PAM 27-12]

Daniel Meador Nominated as Assistant Attorney General

Lieutenant Colonel Daniel J. Meador, JAGC, USAR, a mobilization designee to The Judge Advocate General's School and a professor at the University of Virginia School of Law, has been nominated as an assistant attorney general in the Department of Justice.

As a specialist in the areas of judicial reform and the federal judiciary, Professor Meador will head the newly created Office for Improvements in the Administration of Justice when he is confirmed by the Senate. This office will seek to improve the organization and procedure of the federal judicial system. Assistant Attorney General Designate Meador's office will concentrate on the federal courts, both civil and criminal, although the office will also deal with internal Justice Department procedure and the federal justice system as a whole.

An Alabama native, Professor Meador attended Auburn University, graduated from the University of Alabama Law School in 1951, and was a graduate of legal scholar at Harvard from 1953 until 1954. He joined the University of Virginia School of Law faculty in 1957 after serving as a law clerk for former United States Supreme Court Justice Hugo Black. During 1966–1970, Professor Meador served as dean at the Alabama Law School.

Lieutenant Colonel Meador served as chairman of the Task Force on Courts for the National Advisory Commission on Criminal Justice from 1972–1973 and as a member of the Advisory Council on Appellate Justice from 1971–1975.

Professional Responsibility

In a recent decision by the U.S. Court of Military Appeals, error was assigned because an Assistant Defense Councel admitted during the course of the trial that he had disclosed a very damaging confidence of the accused to the Assistant Trial Counsel prior to trial. De-

spite this admission, the accused elected to continue the counsel in his representation. After considering the Assistant Trial Counsel's denial of having heard the admission, and no indication in the record of trial that the alleged admission was exploited by the prosecution, the court found no prejudice to the accused because of the Assistant Defense Counsel's actions. However, the lack of prejudice finding was specifically not considered as any indication of approval of the actions of the counsel.

If the Assistant Defense Counsel were still a member of the JAG Corps, active or reserve, The Judge Advocate General would undoubtedly have referred this breach of DR 4-101 of the Code of Professional Responsibility to a board of officers for findings and recommendations with a view to suspension or decertification of the counsel under the provisions of Chapter 4, AR 27-10. The apparent violation should have been brought to the attention of The Judge Advocate General much sooner.

Video Tapes and the Law
An Update

Captain Gary F. Thorne, Government Appellate Division, USALSA

Not so long ago there was great discussion among military legal officers as to the future impact the use of videotapes would have on the court-martial process.[1] The discussion of videotape involved its use as a means of conducting an entire trial or to more readily implement the presentation of both testimonial and demonstrative evidence. That discussion has somewhat abated in light of cases which went through the military criminal process and raised questions at the appellate level which resulted in differing conclusions by the Courts of Military Review and resulted in two cases pending decision by the Court of Military Appeals.[2] This article is an attempt to update the reader on the status of videotape issues in the military and to examine present civilian studies on the impact of videotape in legal proceedings.

In *United States v. Killscrow*[3] and *United States v. Huff*[4] courts-martial were videotaped and those tapes were forwarded to the Army Court of Military Review as *the* verbatim record. The government argued such action complied with the Manual requirements for a verbatim record (Paragraphs 82*b*, 82*f* and 83*a*) while the defense contended verbatim means a written transcript. The court in both cases never reached the issue of whether a videotape can be construed as a verbatim record, ruling the tapes were not properly authenticated, that a procedure was necessary to authorize a person "to be sworn and to have performed the preparation and control of the tapes during and after trial," and that a procedure was necessary to insure compliance with Article 54(c) of the Uniform Code of Military Justice.[5]

The Coast Guard presented to its Court of Military Review a similar situation when a videotape was presented at the appellate level as the record of trial.[6] The Coast Guard Court of Military Review, however, ruled that a videotape does not comply with the requirements of the Code (Article 66) or the Manual as to the "record" which is to be forwarded for review subsequent to a court-martial. The court also ruled that no provision in the Manual can be used to justify use of a videotape rather than a written tanscript on appeal as the record of trial. The court found that the Code and the Manual, together with congressional hearings, could only be read as meaning that a record is one which can be "read and studied."[7] Their ultimate conclusion was that "transcript" must be in writing. This and a companion case are pending decision before the Court of Military Appeals on the issue of whether a videotape constitutes a record for purposes of review.[8]

The problems raised by both the Army and Coast Guard Courts of Review are but exam-

ples of the difficulties encountered when the written transcript is wholly supplanted by a videotaped record at the appellate level. The problems clearly are not insurmountable, but at this point have not been sufficiently examined in a systems context to weigh total benefits and problems. It is interesting to note that Judge Young of the Coast Guard Court of Military Review in his dissent in the *Simpson* case[9] prointed to the court's abrogation of its responsibilities in refusing to accept the videotaped record insofar as the Court of Military Review, under Article 66 of the Code, is burdened with the responsibility of reviewing credibility. Judge Young reasoned that when compared with a written transcript, the videotape clearly provides the most conclusive means of redetermining credibility and the court should not reject a tool of such value. Judge Young also indicated that a court "cannot reject a videotape transcript simply because lawyers find it more convenient to work with another type of transcript."[10]

Depending on the outcome of the cases before the Court of Military Appeals, Judge Young's comments indicate a need to consider just how videotapes may be implemented at the appellate level and whether or not the changes necessary to employ them on review are outweighed by the advantages gained at the trial level. Judge Young's comments are in line with those of a pioneer in the use of videotapes in courts—Judge James McCrystal, Erie County Court of Common Pleas, Sandusky, Ohio. Judge McCrystal, at a recent videotape conference, again voiced his concern that appellate courts not hinder use of the videotape at the trial level simply because it raises new procedural problems for them on appeal. The point is well taken in light of Judge McCrystal's personal experience as to the positive impact videotape can have at the trial level in expediting proceedings.[11]

One of the most important uses of videotape at trial may well be its availability as a means of presenting depositions. In the case of *United States v. Moore*[12] such a videotape was presented to the jury for its consideration, but was ultimately excluded by the judge as being "inaudible." The jury was instructed to disregard that deposition and the record of trial did not contain a written transcript of that ultimately excluded deposition, but the videotape was attached to the record of trial for consideration at the appellate level.

On appeal, the appellant challenged the completeness of the record contending that it was necessary for the deposition to have been transcribed into the written record. The Court of Military Review held that there was no such requirement in that the videotaped deposition constituted nothing more than an exhibit which was not admitted into evidence and was attached to the record for review if necessary. The court cited paragraphs 84*d* and 82*b*(5) of the Manual as providing that "exhibits offered into evidence but not admitted will be appended to the record of trial" and compliance with those provisions had been rendered.[13] The court then reviewed the videotape to determine whether the judge's instruction to disregard the exhibit was adequate to preclude any possible prejudice and ruled that it was. The court also determined that appellate counsel had viewed the exhibit and had in no way been hampered in preparation of the case.

This decision does not indicate whether the court would have excluded the videotape proper had the deposition in fact been admitted. Because this tape has been excluded there was no ultimate consideration as to whether a taped deposition may be presented in a criminal trial. Nevertheless, the decision at least opens the door for consideration of those matters and did not involve an outright rejection of the use of videotape.[14]

Such questions will ultimately be raised on subsequent appeals and will bring into play more than just legal issues. The ultimate question as regards the use of videotape at the trial level, particularly in criminal cases, is whether an unfair advantage or disadvantage results from the use of videotaped testimony or demonstrative evidence rather than continuing present practices. These questions are being examined at the present time in one study undertaken by communication researchers at Michigan State University. At a

recent symposium conducted by these researchers,[15] an update was presented on their studies and interim findings.[16]

It should be noted initially that the study at Michigan State was undertaken by social scientists to determine what, if any, impact use of videotape will have on the legal environment. Both their methods of analysis and their conclusions usually are not framed in legal terms. Rather, they have examined and attempted to define the human reactions resulting from the employment of videotape in the legal process. Because use of videotape in the civilian sector has almost exclusively been in the civil field, the configuration of the methodology employed by the researchers has been directed towards the civil case and the civil jury. However, the results of their studies seem translatable to consideration of the impact of videotape in the criminal area. The following is a sampling of some particular problem areas examined by the researchers and some of their interim conclusions.

One area examined was the effect of videotape on the juror's perceptions of the credibility and veracity of a witness. Those persons playing the part of jurors were provided with live, videotaped, audio-taped and written transcripts of testimony. The initial conclusions are that the accuracy of judging veracity is not substantially affected by videotaped testimony. The use of just audio-tapes, however, resulted in a significant drop in the ability to judge veracity. Videotape and the written transcript showed nearly identical results.

Regardless of the medium employed, the ability of the acting jurors to judge credibility was below fifty percent. While there was no significant difference between the use of videotape and the live presentations, the persons judging veracity felt they received more information from the videotaped testimony and felt more secure in their judgment as to veracity even though the ultimate conclusions were of no greater degree of accuracy. In fact, the researchers believe that when a jury wishes to review testimony during its deliberations, the degree of accuracy is increased if a written transcript is delivered to them for examination rather than a videotape.

These initial conclusions raise questions the researchers intend to explore. One is why the acting jurors believed that they could more accurately judge veracity from viewing the videotape rather than witnessing live testimony.

Another question is why the written transcript seems to result in juries more accurately deciding veracity issues. It may well be more important for a jury to consider only what was said rather than how it was said. This raises a panoply of questions about the value of a live trial.

The recent splash of popular books on the subject of body language would indicate that if one understands body language it is possible to read far more into a person's words than simply what is said. However, the research undertaken in the videotape area indicates that people may have erroneously stereotyped body movements and the conclusions they draw from such movements may be wrong. For example, the twitching or nervous movements of a witness either testifying in person or via videotape may simply be part of the physical and mental makeup of the witness, but the probable conclusion to be drawn by a jury looking for clues in body language is that the nervousness indicates lack of truthfulness. The likelihood of such erroneous conclusions is heightened when one considers that a juror studies unknown witnesses, unaware of mannerisms in that person's daily life.

The importance of this particular research to the legal field may be to indicate that use of videotaped testimony does not increase or decrease the ability of the juror to determine the veracity of the witness. This would negate arguments that videotaped testimony unfairly prejudices by unduly affecting the juror's ability to weigh credibility. The fact that jurors perceive videotape as improving their ability to judge veracity, however, informs the attorney that juries are drawing conclusions from the very fact testimony is videotaped!

A second area of study is the use of videotape to edit out inadmissible evidence, objections or discussions surrounding objections. The researchers believe that once evidence is presented to a jury they retain that matter regardless of instructions to disregard. However, it does appear that instructions to disregard are in fact utilized by jurors. Studies show that civil jury awards do not differ in any significant degree where inadmissible evidence has been presented and instructed upon or where that inadmissible evidence was never before the jury. The researchers have undertaken a second phase of this particular aspect of thier review to determine just how juries deal with inadmissible evidence during deliberations. These answers will provide an insight as to whether use of videotapes to edit out inadmissible evidence will have a significant impact on the manner in which a jury would have determined guilt or innocence or an award.

It should be remembered that inadmissible evidence is just that. Because it is inadmissible the jury should never hear it and the use of videotape to remove objections and discussions of objections from the record should not be considered as an adverse impact or unfair advantage at the trial level for either side. The simple fact is if evidence is inadmissible then it should not go to the jury, particularly if it can be shown the jury does consider the inadmissible evidence in one form or other during their deliberations.

Another issue examined was what effect the use of videotape has on a jury simply because it is videotape.[17] The researchers predicted that the use of videotape would enhance the status of a witness in that jurors might conclude a reason the witness could not appear personally was because of some important business, thus automatically enhancing stature based on sheer speculation. Also, because of the television media, there was a prediction that one who appears on a videotape would be thought of in terms of the persons viewed on television, also enhancing the status of the witness.

The interim study results, which involved the use of actual panelled jurors from Michigan who believed they were sitting in an actual civil trial, indicate that where defense witnesses were on tape and plaintiffs' witness were live, videotape was advantageous to the defense in that awards were lower. Researchers have not yet concluded why this result exists. They will seek an answer in further examinations of how the individual juror's perception of a witness is translated into a final decision by a collective jury.

Part of the Michigan State study involved an examination of the effect on jurors of different camera shots and angles, and use of the videotape to edit out objectionable material. An overall conclusion is that a jury, as might be expected, feels more detached from a videotaped witness than from one appearing live. However, the study thus far indicates that the awards in civil cases are not affected by these technical consideration in the use of videotape.

The jury perceives a witness as more competent in a closeup rather than a long shot. The jurors' interest increases during a closeup shot as opposed to either a medium or a long distance view. This is particularly true when the witness is attractive. The study indicates that the witness who would be basically unattractive to a jury is best shot from a middle distance.

Using the videotape as a means to edit out objectionable material has not been shown to have a substantial impact on the jurors' perceptions of the proceedings.[18] The studies indicate a jury finds that in the circumstances of a live trial, the raising of objections and rulings thereon constitute a distraction and that the least distractive means of presenting evidence is through a videotape in which all such objections, arguments and rulings have been edited out.[19] This process also avoids jury speculation about information that is in fact objected to and ruled inadmissible at trial.

These are but examples of the aspects of videotape and the law which the Michigan State researchers and others are examining. For the lawyer, it is important to realize these

examinations are underway, for videotape appears to be here to stay.

There is a wider range of questions which the studies only touch upon, but which constitute a vital factor in any decision as to how videotape should be implemented in the legal profession. One such question is how the extensive use of videotape would alter society's view of the judicial system. Would there be a concern on the part of the public that 1984 was upon us and that the judicial system was a leading institute directing society in that regard? One might also wonder whether use of videotape constitutes a means for one human being to avoid confronting another and having to react and render decisions in a face to face situation when those decisions can be rendered in the vacuum created when videotape is used.

One survey of jurors found they felt much more at ease viewing the tape rather than live testimony; and so did the attorneys and witnesses feel more at ease.[20] Yet, a number of those jurors were troubled by the impersonal quality of a videotaped presentation. One juror, debating the merits or lack thereof of the tape process, concluded that while some felt the influence of personalities was properly lessened by using videotape, " 'personalities are why they are the people they are.' . . . Or as another juror put it, 'It's just very hard to explain. . . . [T]he human factor is needed. . . . [I]t's just [as] if all of a sudden we are all becoming numbers. . .' " [21]

The Michigan State study and others may find that in fact video testimony does not alter the decisions and awards rendered by jurors. Nevertheless, "if litigants generally believed that they could not receive a fair trial with PRVTT [prerecorded videotaped trials], or if the general public came to disrespect the courts because of a belief that justice could not be done with widespread use of PRVTT, then, even if the belief were false, the administrative and technical advantages of the innovation would have been gained at too high a cost.[22] We must insure that the jury system does not become so impersonal that verdicts and awards are adjudged in nice, quiet, calm environs, enjoyable to all participants because no one has to face another and call him or her guilty or liable. Those statements, like gossip, are easier made to one's back or television image. Is justice lessened as a result? Perhaps not. For the military lawyer, such issues may have to be dealt with in the real setting of videotape usage in courts-martial.

Notes

1. Piotrowski, *Television Comes to Court*, ARMY LAW., Nov. 1974, at 1.

2. United States v. Simpson, 51 C.M.R. 769 (C.G.C.M.R. 1976), *pet. granted*, No. 31,011 (C.M.A. Mar. 25, 1976); United States v. Barton, CGCM 9943 (C.G.C.M.R. Mar. 1, 1976) *pet. granted*, No. 32,010 (C.M.A. Mar. 25. 1976).

3. SPCM 10902 (A.C.M.R. 29 Aug. 1975).

4. CM 432668 (A.C.M.R. 29 Aug. 1975).

5. *See* United States v. Killscrow, SPCM 10902 (A.C.M.R. 29 Aug. 1975); United States v. Huff, CM 432668 (A.C.M.R. 29 Aug. 1975).

6. United States v. Simpson, 51 C.M.R. 769 (C.G.C.M.R. 1976), *pet. granted*, No. 31,011 (C.M.A. Mar. 25, 1976).

7. *Id.* at 771.

8. United States v. Simpson, 51 C.M.R. 769 (C.G.C.M.R. 1976), *pet. granted*, No. 31,011 (C.M.A. Mar. 25, 1976); United States v. Barton, CGCM 9943 (C.G.C.M.R. Mar. 1, 1976), *pet. granted*, No. 32,010 (C.M.A. Mar. 25, 1976).

9. United States v. Simpson, 51 C.M.R. 769, 774 (C.G.C.M.R. 1976) (Young, J., dissenting), *pet. granted*, No. 31,011 (C.M.A. Mar. 25, 1976).

10. *Id.* at 774, 775.

11. The Chief Judge of the Ohio Supreme Court called upon Judge McCrystal in September to assist a county outside Judge McCrystal's normal jurisdiction to alleviate a severe civil case backlog (appropriation cases) through the use of prerecorded videotaped trials. The comparative results of that effort as of 31 December 1976, as released by the Ohio court, are summarized on the chart following these notes.

12. United States v. Moore, CM 432624 (A.C.M.R. 29 Mar. 1976).

13. *Id.*

14. *See* United States v. King, 20 Cr. L. 1063 (9th Cir. Dec. 16, 1976) (videotaped criminal deposition ruled proper).

15. The symposium, entitled Conference on the Use of Videotape in the Legal Environment, sponsored by Dr. Gerald R. Miller and Research Associates, Department

of Communication, Michigan State University and the National Science Foundation, was held 17-20 January 1977 in New Orleans, Louisiana. References to discussions at that conference are from the author's notes of those meetings.

16. *See also* Miller, *Televised Trials—How do Juries React?*, 58 JURICATURE 242 (1974).

17. *See also* Bermant, Chappell, Crockett, Jacoubovitch, McGuire, *Juror Responses to Prerecorded Videotape Trial Presentations in California and Ohio*, 26 HASTINGS L.J. 975 (1975) [hereinafter cited as *Juror Responses*]; Bermant, Jacoubovitch, *Fish Out of Water: A Brief Overview of Social and Psychological Concerns About Videotaped Trials*, 26 HASTINGS L.J. 999 (1975) [hereinafter cited as *Fish Out of Water*].

18. *See Fish Out of Water, supra* notes 17, at 1008.

19. *See Juror Responses, supra* note 17, at 987.

20. *Id.* at 986–987, 991.

21. *Id.* at 986–987.

22. *Fish Out of Water, supra* note 17, at 1004.

Comparative Results of the Use of Prerecorded Videotaped Trials in Appropriation Cases in Ohio

Appropriation Cases Terminated		Appropriation Cases Terminated by Jury Trial		Appropriation Cases Pending	
1972	70	1972	29	12/31/72	153
1973	67	1973	21	12/31/73	185
1974	59	1974	22	12/31/74	221
1975	79	1975	25	12/31/75	160
1976	108	1976	72*	12/31/76	62**

*Fifty-three terminated by PRVTT (prerecorded videotaped trials).
**Seven of these cases are edited and awaiting trial.

REMARKS:
Over 100 cases were assigned to the PRVTT docket.
One non-resident judge edited the 53 PRVTTs and presided over 27.
Four resident trial judges presided over the remaining 26 PRVTTs.
Trial time for the 53 PRVTTs was less than 50 days.
One Judge presided over 27 PRVTTs in 17 days using two Court rooms.

The Right to Counsel at a Summary Court-Martial

Major Leonard R. Piotrowski, JAGC, Senior Instructor, Criminal Law Division, TJAGSA

This is the second of four articles on the right to counsel. The first article, The Determination of Availability of Requested Individual Military Counsel, The Army Lawyer, December 1976, at 6, was partially based upon material from The Advocate, Volume 8 Number 3, May-June 1976, at 7–16, written by Captain Steve McAuliffe, and such material should be consulted for a different analysis.

From 1972 to 1976 the military was in a state of flux or at least a state of uncertainty pertaining to the right to detailed counsel at a summary court-martial. In *Argersinger v. Hamlin*,[1] the Supreme Court ruled that the right to counsel under the Sixth Amendment is not contingent upon classification of the particular crime as a misdemeanor or felony, but that the right to counsel is contingent upon the possibility of loss of liberty, *i.e.* confinement.[2] The Supreme Court held that no imprisonment could be imposed unless an accused is represented by counsel or knowingly waives his right to such representation.[3]

Following the lead of the Supreme Court, more or less, the United States Court of Military Appeals, via three separate opinions, concluded that an accused on trial in a minor military tribunal (*i.e.*, summary court) has no right to counsel when the contemplated sentence included restriction, but not confine-

ment.[4] Judge Quinn authored that opinion. Judge Darden, in a very perceptive opinion, substantiated by history, reasoned that the right to counsel established by *Argersinger* had no applicability to the military because of its distinct and separate military association.[5]

As a result of *United States v. Alderman*, Army policy and military law were changed to provide that a soldier could not be sentenced to confinement by a summary court-martial unless he was represented by a lawyer or made a knowing and intelligent waiver of his right to such representation.[6]

Finally, in *Middendorf v. Henry*,[7] by a five-three vote, on 24 March 1976, the Supreme Court determined that an accused has no right to detailed counsel at a summary court-martial. The Court positioned its opinion on the nature of the proceedings (*i.e.*, nonadversary), the nature of the offenses (relatively minor), and the nature of the punishments (thirty days maximum confinement, minimum forfeitures and reduction).[8] The Court also placed weight on the fact that it was a brief, informal hearing that was totally within the option of the accused.

These factors the Court concluded, combined with the distinctive nature of military life and discipline, and the expressed congressional intent lead to a conclusion that a summary court is not a criminal prosecution and no right to counsel exists thereat.[9] The Court further stated that military necessity, discipline, efficiency, and morale demand the utilization of this expeditious disciplinary procedure for relatively minor offenses. Obviously, since *Middendorf* judicial history no longer requires the appointment of counsel for summary court-martial.

However, the peculiar nature of the military provides an accused with individual requested military counsel or civilian counsel, and it appears these two options still exist for the military soldier pending trial by summary court-martial. Paragraphs 79*a* through *d* of the Manual[10] set out the procedure that will be followed by the summary court-martial officer in advising the accused of his rights and of his right to object to trial by summary court-martial in accordance with Article 20.[11] Notably, paragraph 79 makes no provision for the accused to consult with or to be represented by counsel. Paragraph 79, however, does provide that regulations of the secretary of the department concerned may prescribe procedures for summary court-martial.[12]

The Secretary of the Army, pursuant to this authority, provides in paragraph 2–5*b* AR 27–10,[13] as follows: "PAM 27–2 will serve as a guide for summary court-martial procedure."[14] An examination of DA PAM 27–7, dated 9 February 1973, in effect creates for the accused two rights that do not exist in other legal texts pertaining to summary court-martial. Initially, paragraph 1–2 provides: "the accused may be represented during summary court-martial proceedings by a civilian lawyer provided by him, or by military counsel if one has been made available for that purpose by competent authority.[15] Later on page 3–4 in the paragraph entitled "Representation by Counsel," the pamphlet reiterates the right to a civilian lawyer and to a judge advocate or other lawyer made available. It then elaborates further on the right to legal counsel and states:

> You may consult a civilian lawyer at no cost to the government or a military lawyer, if available, not only to represent you in court, but also to help you in deciding if you want to be represented in court. Additionally, you may consult a lawyer to help in deciding whether you want to object to trial by summary court-martial.[16]

It is interesting to note that neither the Code nor the Manual requires these rights to counsel be given at a summary court-martial, but they are created via a policy determination by the Secretary of the Army. It is also interesting to note as pointed out in the dissenting opinion in the *Middendorf* case that:

> . . . the court approves the denial of counsel to the summary court-martial defendant at all stages and for all purposes, including at least as regards sailors and marines, the very decision whether to reject trial by summary court-martial. . . .[17]

The Court goes on to point out that internal Army guidelines (DA PAM 27-7) contain a requirement that the accused be permitted to consult with counsel in making his decision whether or not to accept summary court-martial. However, Navy guidelines contain no such provisions.[18]

We have created a right to individual military counsel for summary courts-martial in the Army, but we have provided no means of enforcement of that right, no guidelines for its application and in practical effect, perhaps no right at all.

Commands do not make detailed determination of availability. It is local policy, ad hoc or general, *i.e.*, the wishes of the SJA, that determine availability.[19] This is a totally distinct procedure from that required for availability of counsel in other courts-martial. A cavalier attitude to the availability determination and the necessity for counsel at summary courts has been justified in the past based upon the procedural handling of such cases and the minor nature of the proceedings.[20] The attitude cannot continue in light of the expanded power of military courts under the All Writs Act[21] and the expansion of the C.M.A.'s supervisory power over all courts-martial.[22]

The summary court-martial must be included within the authority referred to by the Court of Military Appeals in the case of *McPhail v. United States.*[23] The Court held that it had the authority to entertain obvious errors of law in *all court-martial* proceedings. This was a collateral attack on a special court-martial whose sentence was below the jurisdictional limits for the Court of Military Appeals—actually a writ for coram nobis. The Court noted that it possessed supervisory responsibility to require compliance from all courts and persons purporting to act under the UCMJ's authority.[24]

Article 70[25] of the U.C.M.J. specifically provides in subparagraph (c) that appellate defense counsel shall represent the accused before the Court of Military Review or the Court of Military Appeals when requested to do so by the accused, when the United States is represented by counsel or when a case has been sent to the Court of Military Appeals by The Judge Advocate General. Academically, a right to file an extraordinary writ may linger in the accused although he has no right to counsel at trial, but more importantly, the definition of availability of counsel for summary courts may be removed from administrative control and redefined by the C.M.A.

The potential for litigation is immense, the potential result unfavorable, the right in its present form of dubious value, and the solution simple. If AR 27-10 and DA PAMPHLET 27-7 are amended to comply with the requirements of Congress and the *Manual for Courts-Martial*, the right to a lawyer, individual or detailed, need not exist at a summary court. Finally, the practical solution may be to not utilize summary courts-martial at all, but to remand them to the posture of dinosaurs.

Notes

1. 407 U.S. 25 (1972).

2. *Id.*

3. *Id.*

4. United States v. Alderman, 22 C.M.A. 298, 46 C.M.R. 298 (1973).

5. *Id.* at 306, 46 C.M.R. at 306 (Darden, C.J. dissenting).

6. Army Reg. No. 27-10, Legal Services-Military Justice, para. 2-35 (C16, 4 Nov. 1975). "Confinement cannot be adjudged or approved in any courts-martial if the accused is not represented by lawyer counsel, unless the accused makes a knowing and intelligent waiver of such representation. A knowing and intelligent waiver of representation by lawyer counsel can be made only after consultation with lawyer counsel, or after the accused affirmatively declines such consultation." This paragraph was superseded on 18 Apr. 1976 by DA message.

7. Middendorf v. Henry, 47 L. Ed. 556 (1970).

8. *Id.*

9. *Id.*

10. MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1969 (Rev. ed.), para. 79 [hereinafter cited as MCM, 1969].

11. UNIFORM CODE OF MILITARY JUSTICE art. 20, 10 U.S.C. § 820.

12. MCM, 1969, para. 79.

13. Army Reg. No. 27-10, Legal Services-Military Justice, para. 2-5 (27 May 1969).

14. *Id.*, referring to U.S. DEP'T OF ARMY PAMPHLET NO. 27-7, MILITARY JUSTICE HANDBOOK, GUIDE FOR SUMMARY COURT-MARTIAL TRIAL PROCEDURE (1973) [hereinafter cited as DA PAM 27-7].

15. DA PAM 27-7, *supra* note 14, at 1-2.

16. *Id.* at 3-4.

17. Middendorf v. Henry, 47 L. Ed. 556, 583 n.7 (1970).

18. *Id.* at 583 n.23.

19. The author could find no official guidance on availability determinations but from personal experience knows of blanket unavailability policies based on case load in other courts-martial; case by case determinations made by subordinates, chief of military justice or deputy, and blanket policies of position unavailability.

20. Summary courts are revised in the local command and generally not subject to review at Dep't of Army level. *See* articles 65, 66. 67. U.C.M.J.

21. 28 U.S.C. § 1651 (1970).

22. *See* Phillippy v. McLucas, 50 C.M.R. 916 (1975) and Bouler v. Wood, 23 C.M.A. 589, 50 C.M.R. 854 (1975).

23. McPhail v. United States, 24 C.M.A. 304, 52 C.M.R. 15 (1976).

24. *Id.* at 310, 52 C.M.R. at 21.

25. UNIFORM CODE OF MILITARY JUSTICE art. 70, 10 U.S.C. § 870.

Criminal Law Section

Criminal Law Division, OTJAG

1. A Convening Authority Junior in Rank to the Accuser. The following case in which The Judge Advocate General granted relief under Article 69, U.C.M.J., is of importance to judge advocates in the field. It illustrates a recurring error.

The accused's company commander determined that a field grade Article 15 was appropriate for the offense. The battalion and brigade commanders concurred. However, the special court-martial convening authority, a brigadier general, determined that the matter should be referred to a special court-martial. The brigadier general signed a charge sheet and forwarded it to the general court-martial convening authority who forwarded it to another subordinate special court-martial convening authority, a major, for appropriate action. The major referred the charge for trial by special court-martial. As the convening authority was not superior in rank or command to the accuser, TJAG found that the court was convened in violation of Article 23(b), U.C.M.J., and set aside the finding and sentence. *Bloom,* SPCM 1976/3761. *See United States v. La Grange,* 1 C.M.A. 342, 3 C.M.R. 76 (1952); *United States v. Kostes,* 38 C.M.R. 512 (ABR 1967).

2. Change to Army Regulation 600-50. In *United States v. Courtney,* 24 C.M.A. 280, 51 C.M.R. 796 (1976), the United States Court of Military Appeals determined that equal protection of the law was violated by applying the higher maximum punishment under an Article 134 charge when the same conduct was chargeable under Article 92, which carried a lesser punishment, and there was no policy to guide the accuser as to which article the specification should be laid under.

At the request of the Criminal Law Division, the Office of the Deputy Chief of Staff for Personnel (DAPE-HRL) has published a message change to AR 600-50, which because of its importance is set out below in its entirety.

"R 150048Z JAN 77

UNCLAS

SUBJ: Interim Change to AR 600—50

A. AR 600-50, Standards of Conduct for DA Personnel, April 1972, with Changes 2 and 3.

1. Para 4-2*a*(7) is superseded to read: '(7)(*a*) Except as authorized by regulation or other competent authority, military personnel will not use, possess, sell, transfer, or introduce into any military unit, base, station, post, ship, or aircraft any dangerous drug. The term 'dangerous drug' means a non-narcotic drug which is habit forming or has a potential for abuse because of its stimulant, depressant, or

hallucinogenic effect as defined by the Attorney General of the United States as defined in 21 U.S.C. Section 801, et seq., and includes but is not limited to: amphetamines, barbiturates, lysergic acid diethylamide (LSD), mescalin, 4-methyl-2 demethoxyamphetamine (STP), psilocybin, psilocyn, phencyclidine (PCP) and diemethyl-triptamine (DMT).

(*b*) As a matter of policy, a military person who violates (*a*) above shall be charged only under Article 92, Uniform Code of Military Justice, and not under any other provision of the Uniform Code of Military Justice.

(*c*) As a matter of policy, the use, possession, sale, transfer, or introduction into a military unit, base, station, post, ship, or aircraft of marihuana or any narcotic drug by military personnel is chargeable only as a violation of Article 134, Uniform Code of Military Justice. The term 'marihuana' used in this paragraph is defined in 21 U.S.C. Section 802(15) (1970). The term 'narcotic drug' as used in this section is defined in 21 U.S.C. Section 802(16) (1970) and includes but is not limited to: heroin, cocaine, codeine, methadone, morphine, and opium.'

2. The above change is effective immediately."

Judiciary Notes

U.S. Army Judiciary

Administrative Note

1. Staff Judge Advocate offices in the field are reminded that when vacation proceedings have been instituted pursuant to Article 72, Uniform Code of Military Justice, in a general or special (BCD) court-martial, an original and two copies of the proceedings, together with the vacating order, should be forwarded to the Army Judiciary for inclusion in the court-martial record file.

QUARTERLY COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER—DECEMBER 1976

	General CM	*Special CM*		*Summary CM*
		BCD	*NON-BCD*	
ARMY-WIDE	.39	.28	1.48	.56
CONUS Army Commands	.24	.37	1.57	.68
OVERSEAS Army Commands	.67	.10	1.30	.33
USAREUR and Seventh Army commands	.86	.10	1.22	.37
Eighth US Army	.14	.14	1.48	.03
US Army Japan	—	.24	—	.24
Units in Hawaii	.06	.06	1.00	.22
Units in Thailand	—	—	—	—
Units in Alaska	.22	.22	2.80	.43
Units in Panama/ Canal Zone	.55	—	2.62	1.10

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

NON-JUDICIAL PUNISHMENT QUARTERLY COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER-DECEMBER 1976

	Quarterly Rates
ARMY-WIDE	50.58
CONUS Army Commands	55.76
OVERSEAS Army Commands	40.97
USAREUR and Seventh Army Commands	40.64
Eighth US Army	46.90
US Army Japan	11.46
Units in Hawaii	51.01
Units in Thailand	—
Units in Alaska	27.77
Units in Panama/Canal Zone	38.24

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

17
International Affairs Section

International Affairs Division, OTJAG

Decision by the Court of Military Appeals in the *Butler* Case. Seaman *B*, U.S. Navy, was placed in a Navy confinement facility in the Philippines under court-martial charges alleging murder of a Philippine citizen. Charges arising from the same incident were also preferred by the Philippine Government. Seaman *B* petitioned the Court of Military Appeals for release under a writ of Habeas Corpus. After the Philippine trial commenced, the charges drawn under the Uniform Code of Military Justice were dropped. Seaman *B* continued to be held in U.S. confinement pursuant to the custody provisions of the Philippine Base Agreement. At the invitation of the Court of Military Appeals dated 26 March 1976, TJAG directed that an Amicus Curiae brief be filed on behalf of the Department of the Army with respect to the subject case.

The issues specified in the Court of Military Appeal's invitation were:

a. May the United States detain the petitioner by confinement in a stockade at its Naval Base in the Philippines pursuant to the Military Bases Agreement between the United States and the Republic of the Philippines?

b. If so, what procedural remedies are available to the petitioner (and others similarly situated) to seek release from such confinement pending call of his case for trial by the Philippine Government?

c. Is the decision to confine the petitioner to the stockade at the Naval Base in the Philippines pursuant to the Military Bases Agreement reviewable by the Court? [C.M.A.].

In response to these issues the Army submitted an Amicus brief indicating in substance that:

a. The custody provisions of Status of Forces Treaties and executive agreements entered into by the U.S. pursuant to specific treaty provisions provide authority for restraints including confinement, if necessary, of armed service personnel pending disposition of foreign criminal charges.

b. The U.S. Army has provided in Chapter 17, AR 27-10, adequate procedural remedies for persons confined in U.S. facilities awaiting disposition of foreign criminal charges. Such procedures require review of foreign charges by the local Staff Judge Advocate and provide for independent review of the necessity for confinement by a military magistrate.

c. The Army also set forth the position that decisions to restrain service members solely pursuant to self-executing custody provisions of status of forces agreements are not reviewable by the Court of Military Appeals and therefore the petition should be dismissed.

On 21 January 1977, the Court of Military Appeals dismissed the petition stating:

Because the petitioner no longer is being held for trial by court-martial and because the petitioner is being confined exclusively pursuant to the provisions of a military bases agreement between the Republic of the Philippines and the United States it is, by the Court, this 21st day of January 1977,

ORDERED:

That the Petition for Writ of Habeas Corpus or Other Extraordinary Relief be, and the same is, hereby dismissed.

It is significant to note that, by implication, the Court recognizes the right of the services to confine service personnel subject to the exercise of foreign criminal jurisdiction in a U.S. confinement facility pursuant to the custody provisions of a status of forces agreement or similar international agreement (see Chapter 17, AR 27-10). Further, the Court impliedly acknowledges by its dismissal of petitioner's plea for relief (as opposed to denying such plea) its lack of jurisdiction when confinement is based exclusively on such custody provisions.

International Society for Military Law and the Law of War

The International Society for Military Law and the Law of War recently announced that the second volume of its proceedings from its VIth International Congress at the Hague has been printed and may now be ordered. This second volume concerns "the enforcement of certain penalties applicable to military personnel", and contains the presentations and reports made on the subject at the Congress. These presentations were made by military jurists from many of the forty-five different countries which are now represented in the Society, and the book provides an interesting and valuable collection of material on comparative military penal law. The book is available at a reduced price of $19.00 to members. Membership may be obtained by applying to the Permanent Correspondent of the Society at Charlottesville, Virginia:

Major James Burger
Permanent Correspondent
International Society for Military Law
and the Law of War
Post Office Box 1903
Charlottesville, Virginia 22903

Membership dues are $3.00 per year, and members may subscribe to the Society's Review, which is published two times a year for $8.50 per year. The dues, subscription fees for the Review, and payments for the Proceedings of the Congresses may be sent by checks made out to the Society and mailed to the Permanent Correspondent.

Participation in Law Day Observances

Each year "Law Day" is observed throughout the country as a means of providing an opportunity to rededicate ourselves to the ideals of equality and justice under the law and to reaffirm our respect for the legal system. Increased participation in Law Day observances is encouraged with respect to non-attorney personnel in local legal sections and offices. To facilitate such non-attorney participation, Law Day co-chairpersons should be appointed to represent the enlisted legal sections and the legal secretaries and to serve along with the attorney Law Day chairperson in coordinating local office activities in celebration of Law Day. Law Day activities should incorporate all legal personnel in the various Law Day events and allow all those who make the law function on a daily basis the opportunity to observe and participate in its annual observance.

Reserve Affairs Section

Reserve Affairs, TJAGSA

Headquarters IX Corps Participates in Training Exercise. Headquarters (HQ) IX Corps recently participated in exercise Tropic Lightning 1-77 conducted at Schofield Barracks, Hawaii. A unit unique in the Army today, HQ IX Corps is composed of active duty and reserve augmentation elements. The bulk of the SJA section, headed by Colonel Shuichi Miyasaki, is reservists who normally meet at Fort De Russy, Waikiki. The other JAG reservists accompanying Colonel Miyasaki as players in the exercise were Major Wesley F. Fong, deputy SJA/Chief Military Justice, Major Earle A. Partington, Chief, Administrative Law, and Captain Frank Yap, Chief of Claims. Captain Glenn S. Hara, the active Army SJA representative from Camp Zama, Japan, served as Chief, International Law. Lieutenant Colonel George W. Y. Yim had his hands full as the controller who responded for various subordinate, lateral, and superior HQ's during the exercise. Administrative support

was supervised by SGM John Tolentino and provided by SP5 William Campbell and SP5 Ronald Sakata.

The participation of personnel representing almost a dozen other active duty and reserve units from various locations in Far East, Hawaii and CONUS added realism to problem play based on a simulated East Asia battle scenario. The inclusion of a fictional Corps Support Command (COSCOM), in addition to three divisions, as part of the exercise proved to be a valuable learning experience as it added to the complexity of the allocation of legal resources in the Corps area. In particular, experience in planning for and utilization of JAG Service Organizations teams was greatly increased over prior exercises due to the inclusion of a COSCOM. Besides participating in the development of a staff estimate to support an offensive action, the section also responded to staff and controller input of legal problems covering a broad array of issues.

By the end of the exercise, the members of SJA, HQ IX Corps, agreed with the other staff members of HQ IX Corps that the exercise purposes of sharpening skills, raising levels of unit efficiency and operations coordination had been achieved.

JAG School Notes

1. Colonel Murray Appointed Dean at St. Louis University Law School. Professor of Law and Colonel (Ret.) John F. T. Murray has been appointed Dean at the St. Louis University Law School. Colonel Murray served as Commandant of The Judge Advocate General's School from 1961 through 1964.

2. Recent UJAGSA Visitors. Major General and Mrs. Lawrence H. Williams visited TJAGSA on 16–17 December. General Williams was the guest speaker at the graduation of the 82d Basic Class. Mr. and Mrs. William D. Clark, Deputy Assistant Secretary of the Army (RA) visited the School on 10–12 January.

3. 82d Basic Class Graduates. Major General Williams presented diplomas to TJAGSA's 82d Basic Class at their graduation ceremony on 17 December 1976. Captain Richard B. Liss (the Distinguished Graduate) won the American Bar Association Award for Professional Merit for the highest overall class standing. Captain Landon P. Snell III (Commandant's List) was awarded the United States Court of Military Appeals Judge Paul W. Brosman Award for the highest standing in criminal law. Captain Jonathan P. Tomes (Commandant's List) received the Judge Advocates Association Award for Achievement for the highest standing in administrative and civil law. Captain Stephen R. Kruft (Honor Graduate) earned the Foundation of the Federal Bar Association Award for Distinguished Accomplishment for the highest standing in procurement law. Captain James R. Garner acquired The Judge Advocate General's School Award for Distinguished Accomplishment for the highest standing in international law.

The other Honor Graduates were Captains Blair, Boren, Clary and Strecker. Eleven other Captains made the Commandant's List.

4. 1st Claims Course Success. TJAGSA's 1st Claims Course, 17–20 January 1977, provided installation level claims officers with knowledge of recent developments in military claims. Colonel Germain P. Boyle, Chief, U.S. Army Claims Service, addressed the course on the role of the U.S. Army Claim Service in administering the Army claims system and assisting claims officers. Mr. Jabez W. Loane, Chief, Foreign Claims Branch, U.S. Army Claims Service, discussed the problems faced by the claims officer in processing claims arising overseas. Major James C. Gleason, Chief, Tort Branch, Litigation Division, OTJAG, explained the relationship between the Tort Branch and installation claims officers. Mr. Joseph H. Rouse, Chief, General Claims Division, U.S. Army Claims Service, participated in the Federal Tort Claims Act seminar.

The School plans to offer the 2d Claims Course in 1978.

5. Captain Lederer Nominated for Fulbright Lectureship. Captain Frederic I. Lederer, Associate Professor of Law, The Judge Advocate General's School, US Army, and Lecturer-in-Law of the University of Virginia, has been nominated for a Fulbright-Hays Lectureship in Germany by the Council for International Exchange of Scholars. If Captain Lederer is ultimately successful in the remaining competition, he will spend one year in Germany on the law faculty of a German university. Captain Lederer has been a member of the JAG School faculty for the past three years and a University Lecturer since 1975. He received his J.D. from Columbia Law School, and his LL.M from the University of Virginia. He is currently working on his S.J.D. at the University of Virginia. Captain Lederer is apparently the first Army officer on active duty ever to be nominated for a Fulbright Lectureship.

6. Post Information Collection. TJAGSA would like to solicit informational material about posts and other installations worldwide. The information will be used to assist students and faculty members being reassigned. Please forward informational packets or books to Transportation Officer, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901.

CLE News

1. Mandatory CLE Credit for 1976 JAG Conference. Minnesota, Wisconsin and Iowa have certified portions of the 1976 Judge Advocate General's Worldwide Conference for mandatory continuing legal education credit as follows:

Address by Mr. Rex Lee	October 12, 1976	1 hour
Environmental Impact Statement	October 13, 1976	.5 hours
Antideficiency Act Violations	October 14, 1976	.5 hours
Address by the Honorable Richard H. Wiley	October 14, 1976	1 hour
Each afternoon seminar		1 hour

Requests for mandatory continuing legal education credit should be addressed to the appropriate agency in each state.

2. ABA Code of Professional Responsibility Available. TJAGSA currently furnishes the ABA Code of Professional Responsibility and Code of Judicial Conduct to each member of the Basic Course, Advanced Course, Criminal Trial Advocacy Course, Defense Trial Advocacy Course, and Military Judge Course. Additional copies of the American Bar Association Code of Professional Responsibility and Code of Judicial Conduct are available from the American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637, at a cost of $.50 each.

3. 1977 Conference on Military Law for Legal Educators. The Conference to take place at The Judge Advocate General's School Wednesday, June 1st, through Friday, June 3d, is intended to allow law professors teaching military law or subjects with topics common to military practice to meet to exchange views and teaching methods.

Further information can be obtained from Captain Frederic Lederer, Criminal Law Division, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901, 804–293 4730.

4. Mandatory Continuing Legal Education—Status Report (1 Aug 76). Four states, Minnesota, Iowa, Wisconsin, and Washington, have adopted rules concerning mandatory continuing legal education. The first three of these states' rules prescribe 15 hours per year and each make provisions for non-resident courses. Seven states have rules which are waiting court or bar study or final action. Those states are California, Kansas, Maryland, New Mexico, North Dakota, Utah, and Virginia. Rules are either under study or waiting committee action in Alabama, Arkansas, Arizona, Colorado, Georgia, Illinois, Louisiana, Michigan, Missouri, New Hampshire, North Carolina, Ohio, Oregon, South Carolina and

Texas. The remaining states and the District of Columbia have taken no action concerning mandatory continuing legal education, except for the state of Idaho, which rejected CLE at the Mid-Year Meeting of the Idaho Bar Association.

5. TJAGSA Courses.

April 4–8: 15th Federal Labor Relations Course (5F–F22).

April 4–8: 3d Law of War Instructor Course (5F–F42).

April 11–15: 32d Senior Officer Legal Orientation Course (5F–F1).

April 11–22: 70th Procurement Attorneys' Course (5F–F10).

April 18–20: 1st Government Information Practices (5F–F28).

April 18–21: 2d Defense Trial Advocacy Course (5F–F34).

May 2–4: 1st Negotiations Course (5F–F14).

May 2–6: 7th Staff Judge Advocate Orientation Course (Selection by The Judge Advocate General) (5F–F52).

May 9–13: 4th Management for Military Lawyers Course (5F–F51).

May 9–20: 2d Military Justice I Course (5F–F30).

May 16–20: 3d Criminal Trial Advocacy Course (5F–F32).

May 16–27: 1st International Law II Course (5F–F41).

May 31–June 3: 6th Environmental Law Course (5F–F27).

June 6–10: Military Law Instructors Seminar.*

June 6–10: 4th Law of War Instructors Course (5F–F42).

June 13–17: 33d Senior Officer Legal Orientation Course (5F–F1).

June 20–July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5–27–C23).

July 11–22: 12th Civil Law Course (5F–F21).

July 11–29: 16th Military Judge Course (5F–F33).

July 25–August 5: 71st Procurement Attorneys' Course (5F–F10).

August 1–5: 34th Senior Officer Legal Orientation Course (5F–F1).

August 1–12: NCO Advanced Phase II (71D50).

August 8–12: 7th Law Office Management Course (7A–713A).

August 8–October 7: 84th Judge Advocate Officer Basic Course (5–27–C20).

August 22–May 1978: 26th Judge Advocate Officer Advanced Course (5–27–C22).

August 29–September 2: 16th Federal Labor Relations Course (5F–F22).

September 12–16: 35th Senior Officer Legal Orientation Course (5F–F1).

September 19–30: 72d Procurement Attorneys' Course (5F–F10).

*Tentative

6. TJAGSA Course Prerequisites and Substantive Content. This list of courses is in numerical order by course number.

PROCUREMENT ATTORNEYS' COURSE (5F–F10)

Length: 2 weeks.

Purpose: To provide basic instruction in the legal aspects of government procurement at the installation level. Completion of this course also fulfills one-half of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Advanced Course and covers one-half of the material presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase VI.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian

attorney employed by the United States Government with 6 months' or less procurement experience.

Security clearance required: None.

Substantive Content: Basic legal concepts regarding the authority of the government and its personnel to enter into contracts; contract formation (formal advertising and negotiation), including appropriations, basic contract types, service contracts, and socio-economic policies; contract performance, including modifications; disputes, including remedies and appeals.

NEGOTIATIONS COURSE (5F–F14)

Length: 2½ days.

Purpose: The Negotiations Course is designed to develop advanced understanding of the negotiated competitive procurement method. The course focuses on the attorney's rule in negotiating competitive procurement including; (1) when and how to use this method (2) development of source selection criteria (3) source selection evaluation process (4) competitive range (5) oral and written discussions and (6) techniques.

Prerequisites: Active duty or reserve component military attorney, civilian attorney or appropriate person employed by the United States Government, with at least one year, but not more than five years, of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F–F10) or equivalent.

Security clearance required: None.

Substantive Content: The course will focus on solicitation and award by negotiation including selection of the procurement method, use of the negotiation process in the development of source selection, discussion and techniques.

FEDERAL LABOR RELATIONS COURSE (5F–F22)

Length: 4½ days.

Purpose: To provide a basic knowledge of personnel law pertaining to civilian employees, and labor-management relations.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the United States Government. A reserve officer must have completed the Judge Advocate Officer Advanced Course. Although appropriate for a reservist, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Advance Course.

Security clearance required: None.

Substantive Content: *Law of Federal Employment:* Hiring, promotion and discharge of employees under the FPM and CPR; role of the Civil Service Commission; procedures for grievances, appeals and adverse actions; personal rights of employees; and equal employment opportunity complaints.

Federal Labor-Management Relations: Rights and duties of management and labor under Executive Order 11491, as amended, and DoD Directive 1426.1; representation activities; negotiation of labor contracts; unfair labor practice complaints; administration of labor contracts and procedures for arbitration of grievances.

Government Contractors: An overview of the responsibility of military officials when government contractors experience labor disputes.

ENVIRONMENTAL LAW COURSE (5F–F27)

Length: 3½ days.

Purpose: To provide instruction in the basic principles of environmental law as they affect federal installations and activities.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the United States Government. A reserve officer must have completed the Judge Advocate Officer Basic Course.

Security clearance required: None.

Substantive Content: Basic principles of environmental law as it applies to military installations, including the National Environmental Policy Act and its requirement for preparation of environmental impact statements, the Clean Air Act, and the Federal Water Pollution Control Act. The course also includes a brief discussion of other environmental laws and the roles of the Environmental Protection Agency and the Army Corps of Engineers in environmental regulation.

GOVERNMENT INFORMATION PRACTICES COURSE (5F–F28)

Length: 2½ days.

Purpose: To provide basic knowledge of the requirements of the Freedom of Information Act and the Privacy Act.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the United States Government. A reserve officer must have completed the Judge Advocate Officer Basic Course.

Security clearance required: None.

Substantive Content: The disclosure requirements of the Freedom of Information Act; the exemptions from disclosure and their interpretation by the federal courts; the restrictions on the collection, maintenance, and dissemination of personal information imposed by the Privacy Act; the relationship between the two Acts and their implementation by the Army.

MILITARY JUSTICE I COURSE (5F–F30)

Length: 2 weeks.

Purpose: To provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law and trial advocacy. This course is specifically designed to fulfill approximately one-half of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Advanced Course. It also covers approximately one-half of the materials presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase II.

Prerequisites: Active duty or reserve component military attorney, 02–04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Advanced Course by correspondence.

Security clearance required: None.

Substantive Content: The source and nature of court-martial jurisdiction, habeas corpus, and the service connection requirement, common law evidence, constitutional evidence, and military due process, military crimes, topical aspects of current military law.

CRIMINAL TRIAL ADVOCACY COURSE (5F–F32)

Length: 4½ days.

Purpose: To improve and polish the experienced trial attorney's advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27*b*(2), U.C.M.J., with at least six months experience as a trial attorney.

Substantive Content: Intensive instruction in trial practice to include problems confronting trial and defense counsel from pretrial investigation through appellate review.

DEFENSE TRIAL ADVOCACY COURSE (5F–F34)

Length: 4½ days.

Purpose: To improve and polish the experienced trial attorney's defense advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27*b*(2), U.C.M.J., with 6–12 months' experience as a trial attorney and with present or prospective immediate assignment as a defense counsel at the trial level.

Security clearance required: None.

Substantive Content: Conference, panel discussions, seminars, and videotape exercises cover military criminal law substantive and procedural topics. Evidence, professional responsibility, the role and duties of a defense counsel, extraordinary writs, and trial advocacy are included to provide polish to defense advocates.

INTERNATIONAL LAW II COURSE (5F–F41)

Length: 2 weeks.

Purpose: To provide familiarization with the law of war including customary and conventional (Hague and Geneva Conventions) laws, and the national and international legal rules affecting military operations during times of peace, of armed conflict and of occupation. This course fulfills approximately one-third of the requirements of Phase II of the nonresident/resident Judge Advocate Office Advanced Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase II.

Prerequisites: Active duty or reserve component military attorney, 02–04, or appropriate civilian attorney employed by the United States Government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Advanced Course by correspondence.

Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of United States Military Forces in military operations in all levels of hostilities; the Hague and Geneva Conventions and their application in military operations and missions, to include problems on handling of war crimes, control of civilians and Article 5 tribunals for the classification of prisoners of war; the international rules of jurisdiction, jurisdictional arrangements, status of forces agreements, foreign claims operations, procurement in military operations, and the Posse Comitatus Act.

LAW OF WAR INSTRUCTOR COURSE (5F–F42)

Length: 4½ days.

Purpose: To prepare officers to present Law of War instruction by providing basic knowledge of the law of war and working knowledge of the method of instruction skills necessary for the presentation of effective instruction.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the Department of Defense, and officers with command experience who are assigned the responsibility of presenting formal instruction in the Geneva Conventions of 1949 and Hague Convention No. IV of 1907. The attorney and the officer with command experience must attend the course as a teaching team.

Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of United States forces in military operations in all levels of hostilities; the Hague and Geneva Conventions and their application in military operations and missions, to include problems on reporting and investigation of war crimes, treatment and control of civilians, and the treatment and classification of prisoners of war. Special emphasis is placed on the preparation of lesson plans, methods of instruction, and appropriate use of training materials available for law of war instruction. Participation in team teaching exercises is required.

MANAGEMENT FOR MILITARY LAWYERS COURSE (5F–F51)

Length: 4½ days.

Purpose: To provide military lawyers with basic concepts of military law office management and supervision.

Prerequisites: Active duty military attorney.

Security clearance required: None.

Substantive Content: Army management principles and policies, management theory

and practice, formal and informal organizations, motivational management styles, communication, and civilian law office management techniques. A review of JAGC personnel management.

STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F-F52)

Length: 4½ days.

Purpose: To inform newly assigned staff judge advocates of current trends and developments in all areas of military law.

Prerequisites: Active duty field grade Army judge advocate whose actual or anticipated assignment is as a staff judge advocate or deputy staff judge advocate or a command with general court-martial jurisdiction. Selection for attendance is by The Judge Advocate General.

Security clearance required: None.

Substantive Content: Major problem areas and new developments in military justice, administrative and civil law, procurement, and international law.

7. Civilian Sponsored CLE Courses

APRIL

3–6: NCDA, Institute on Prosecution of Crime Against Person, Denver, CO. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

5–7: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

5–7: Federal Publications, Medical Malpractice, New Orleans, LA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

6–8: National Security Industrial Association—Federal Publications, Practical Negotiation of Government Contracts, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

6–8: Loyola Univ. School of Law-Federal Publications, Competing for Contracts, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

6–9: National Clearinghouse for Criminal Justice Planning and Architecture—LEAA, Progress in Criminal Justice—By Whose Standards? [emerging criminal justice standards; programs and facilities for law enforcement, courts, corrections, and juvenile justice; application of new standards in pilot projects], Fairmont Hotel, New Orleans, LA. Contact: Symposium Coordinator, Conferences and Institutes, 116 Illini Hall, Champaign, IL 61820.

11–15: George Washington Univ., Cost Reimbursement Contracting, George Washington Univ., Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone: 202–676–6815. Cost: $450.

12–14: Federal Publications, Practical Labor Law, New Orleans, LA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

13–15: Federal Publications, Government Architect—Engineer Contracting, San Diego, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

15–17: National College of Criminal Defense Lawyers and Public Defenders, Advanced Evidence, Buffalo, NY. Contact: Registrar, NCCDLPD, Bates College of Law, Univ. of Houston, 4800 Calhoun Blvd., Houston, TX 77004.

17–20: NCDA, Pretrial Problems, Phoenix, AZ. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

17–22: National College of the State Judiciary, Criminal Evidence—Specialty, Univ, of Nevada, Reno, NV. Contact: National College of the State Judiciary, Univ. of Nevada, Reno. NV 89557. Ohone: 702–784–6747.

17–22: National College of the State Judiciary, Court Management—Specialty, Univ. of Nevada, Reno, NV. Contact: National College of the State Judiciary, Univ. of Nevada, Reno, NV 89557. Phone: 702–784–6747.

18–22: Federal Publications, The Skills of Contract Administration, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $550.

19–1 May: ABA Standing Committee on Environmental Law, National Conference of the Environment, Sheraton Conference, Reston, VA.

20–21: LEI, Preparation of Litigation Reports Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

21–23: ABA National Institute, Federal Rules of Evidence and RESPA, Contemporary Hotel, Orlando, FL.

25–27: Federal Publications, Renegotiation of Government Contracts, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington DC 20006. Phone: 202–337–7000. Cost: $475.

29–30: FBA, Federal Trial Practice, Hyatt Regency Washington, Washington, DC. Contact: FBA, 1815 H St. NW, Washington, DC 20006. Phone: 202–638–0252.

MAY

2–4: Federal Publications, Government Contract Costs, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost $425.

3–5: Federal Publications, Practical Labor Law, Chicago, IL. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

6–7: ALI–ABA, Construction Contracting in the Middle East: Problems and Solutions, San Francisco, CA. Contact: Director, Courses of Study, ALI–ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: 215–387–3000.

9–11: Federal Publications, Changes in Government Contracts, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

10–12: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $250.

12–13: Federal Publications, Terminations of Governments Contracts, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $350.

13–14: ICLE, 28th Annual Advocacy Institute [lectures and trial demonstrations—the 1977 theme is "persuasion: The Key to Success in Trial!"], Univ. of Michigan, Ann Arnor, MI. Contact: ICLE, Hutchins Hall, Ann Arbor, MI 48109. Phone: 313–764–0533. Cost: $90.

16–18: George Washington Univ.-Federal Publications, Equal Employment Claims & Litigation, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

16–18: Federal Publications Procurement for Lawyers, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

17–20: American Law Institute, Annual Meeting, The Mayflower, Washington, DC.

17–20: Federal Publications, Fundamentals of Government Contracts, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $500.

19–20: FBA, Equal Employment Conference, Hyatt Regency Washington, Washington, DC. Contact: FBA, 1815 H St. NW, Washington, DC 20006. Phone: 202–638 0252.

23–25: George Washington Univ., Patents and Technical Data [procurement aspects of patents and technical data in government contracting], George Washington Univ., Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone: 202–676–6815. Cost: $400.

23–25: Federal Publications, Medical Malpractice, Berkeley, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

24–26: LEI, Institute for New Government Attorneys, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

25–17: Federal Publications, Government Contract Costs, Seattle, WA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

JAGC Personnel Section

PP&TO, OTJAG

1. Reforger 76 After Action Report. The after action report concerning participation by JAGC personnel assigned to the 101st Airborne Division (Air Assault) in Reforger 76 is on file in the Personnel, Plans, and Training Office, OTJAG. The report will be invaluable to SJA personnel participating in similar exercises in the future. A copy of the report will be furnished to interested staff judge advocates upon request.

2. West Point Assignments. There will be assignments available at the United States Military Academy this summer. Interested ca-

reer officers who have completed their overseas tour or two years in the continental United States may apply.

3. PCS Moves. A permanent change of station (PCS) move to a continental United States location, other than for separation, carries an automatic one year service obligation at the new duty station (para. 3–75*a*(2)(d), AR 635–100).

PCS to an overseas location incurs an obligation to complete the current prescribed tour for the area of assignment as specified in AR 614–30, unless the officer is released voluntarily from active duty or separated under policies prescribed in paragraph 3–75*a*(2)(a) of AR 635–100. Officers serving on an unaccompanied overseas tour must serve twelve months before retiring. On an accompanied overseas tour, five-sixth of the prescribed tour length must be completed before retirement (Chapter 4, AR 635–100). However, these service obligations do not apply to non-Regular Army officers who apply for voluntary retirement in conjunction with release from active duty under the provisions of Chapter 3 of AR 635–100.

If an officer does not desire to accept a PCS-incurred service obligation, he may within thirty days after receiving alert or assignment instructions, exercise their option to resign, retire or request release from active duty, providing he has no other service obligations (para. 3–75*b* or 4–18*e*, AR 635–100).

4. Short Courses. Northwestern University School of Law will again conduct short courses for defense lawyers and for prosecuting attorneys. The defense lawyers course will be held from 27 June through 1 July 1977. The prosecutors course will be held from 1–5 August 1977. Funds are available for the courses; however, the TDY must be funded by the commands. Names must be submitted to this office for the defense course by 27 May, and for the prosecutors course by 1 July 1977.

5. Assignments.

COLONELS

NAME	*FROM*	*TO*	*APPROX DATE*
Robert B. Clarke	OTJAG	USALSA	Jan 77
Joseph Conboy	USA CAC Ft Leavenworth	HQ USAREUR	Jul 77
Frank Dorsey	USALSA w/dy 6th USA Pres of SF	USA Claims Svc Ft Meade, MD	Apr 77
William R. Laray	USALSA	OTJAG	Jan 77
Richard McNealy	USAWC	OTJAG	Jun 77
Arnold Melnick	USAREUR	OTJAG	Jul 77

LIEUTENANT COLONELS

Thomas R. Cuthbert	Command & General Staff College Stu Det	OTJAG	Jul 77
Raymond C. McRorie	XVIII ABN Corps Ft Bragg, NC	25th Inf Div	Jan 77
Thomas E. Murdock	OTJAG	USALSA	Jan 77
Thomas Rankin	USATC Ft Jackson, SC	Walter Reed AMC	Jun 77
Carroll J. Tichenor	Command & General Staff College Stu Det	OTJAG	Jul 77
Pedar C. Wold	25th Inf Div	Fitzsimons Army Medical Ctr	Mar 77

MAJORS

William Heaston	USMA	172d Inf Bde	
Walter E. Herkenhoff	US Army Japan	Atlantic Cmd	Jul 77
		Norfolk, VA	Jul 77
Malcolm Magers	TJAGSA	Korea	
Robert H. McNeill, II	OTJAG	USATC Ft Jackson	Jun 77
Gordon F. Rohn	Atlantic Cmd	21st Support Bde	Jul 77
	Norfolk, VA	Mannheim	Jun 77
Lewis L. Thompson	25th Adv Cls	21st Support Cmd	
Anthony L. Wagner	25th Adv Cls	OTJAG	Jul 77
			Jul 77

CAPTAINS

John S. Armstrong	25th Adv Cls	82d ARN Div	
		Ft Bragg, NC	Jul 77
Alfred F. Arquilla	25th Adv Clan	USALSA	
		Ft Riley, Kansas	Jun 77
Richard J. Ashby	USALSA	USA ENGINEER	
	Kaiser	Center & Ft Leonardwood	Jun 77
Michael J. Brawley	25th Adv Cls	USMA	
Richard A. Canatela	USAG Ft Sheridan, IL	USALSA	Jun 77
Grifton E. Carden	25th Adv Cls	Korea	May 77
Roy D. Carlton	2nd Inf Div	USALSA	Jul 77
Victor S. Carter, Jr.	25th Adv Cls	25th Inf Div	Apr 77
William L. Cheatham	25th Adv Cls	3d Armd Div	Aug 77
		Frankfurt	Jun 77
Andrew J. Chwalibog	25th Adv Cls	9th Inf Div Ft Lewis	
Joseph F. Ciralli, Jr.	25th Adv Cls	USAG Ft Meade	Jul 77
Ferdinand D. Clervi	25th Adv Cls	USALSA w/dy	Jun 77
		Mannheim	Jun 77
Joe A. Cole	25th Adv Cls	Korea	
Dayton M. Cramer	25th Adv Cls	OTJAG	Jul 77
Patrick F. Crow	25th Adv Cls	Korea	Jul 77
John J. Dieguardi	Korea	7th Inf Div	Jul 77
		Ft Ord	Jun 77
David R. Dowell	25th Adv Cls	Korea	
Brooks S. Doyle	FORSCOM	Space & Bld Mgt	Jun 77
		Wash DC	Apr 77
Douglas P. Franklin	25th Adv Cls	USALSA	
Peter W. Garretson	25th Adv Cls	1st Armd Div	Jul 77
		Nurnberg	Jul 77
Pitzhugh L. Godwin, Jr.	25th Adv Cls	S&F TJAGSA	
James F. Gravelle	25th Adv Cls	OTJAG	May 77
William R. Hagan	25th Adv Cls	SETAF	Jun 77
Michael G. Hayden	3d Armd Div	USA Logistics	Jul 77
		Management Ctr	Apr 77
Lance K. Hiltbrand	25th Adv Cls	Ft Lee, VA	
Larry B. Horton	USA Combined Arms Ctr	FORSCOM	
	Ft Leavenworth, KS	Defense Language	Jul 77
John R. Howell	25th Adv Cls	Institute Pres of	May 77
Arthur L. Hunt	25th Adv Cls	Monterey	
Craig C. Jacobsen	25th Adv Cls	III Corps, Ft Hood	
Robert B. Kirby	25th Adv Cls	101st ABN Div	Jun 77
Thomas M. Kullman	25th Adv Cls	TRADOC	Jun 77
Jerome L. Lemberger	25th Adv Cls	S&F TJAGSA	Jul 77
Michael Marchand	25th Adv Cls	OTJAG	May 77
David O. Markert	USAC Ft Sam Houston, TX	V Corps Weisbaden	Jul 77
	25th Adv Cls	FORSCOM	Jul 77
		3d Inf Div	Apr 77
		Schweinfert	Jul 77

Dale V. Matthews	USALSA	OTJAG	Feb 77
James D. Mogridge	25th Adv Cls	USAAC Ft Knox	Jul 77
Vahan Moushegian, Jr.	25th Adv Cls	OTJAG	Jul 77
Joseph A. Neursuter	USA Sig Ctr Ft Gordon	RMDC Kwajalein	Mar 77
Percival D. Park	25th Adv Cls	S&F TJAGSA	May 77
Joyce E. Plaut	25th Adv Cls	S&F TJAGSA	May 77
Joseph R. Rivest	25th Adv Cls.	USALSA w/dy Ft Benning, GA	Jun 77
John Roselle, Jr.	5th Int Div Ft Polk	USAG Ft McCoy SI	Mar 77
Daniel L. Rothlinburger	25th Adv Cls	USA Claims Svc Europe	Jul 77
David A. Schlueter	25th Adv. Cls	S&F TJAGSA	May 77
Paul M. Seibold	25th Adv Cls	USATC Ft Leonard Wood, MO	Jun 77
Peter M. Smith	25th Adv Cls	3d Armd Div Frankfurt	Jul 77
James O. Smyser	25th Adv Cls	8th Inf Div Mainz	Jul 77
Terry A. Stepp	25th Adv Cls	USAREUR	Jul 77
Barry M. Tapp	8th US Army	MDW	May 77
Vaughan E. Taylor	25th Adv Cls	S&F TJAGSA	May 77
Alexander M. Walczak	25th Adv Cls	21st Repl Bn	Jul 77
Michael J. Wentink	25th Adv Cls	OTJAG	Jun 77
Riggs W. Wilks	25th Adv Cls	S&F TJAGSA	May 77

6. Promotions.

AUS PROMOTIONS

LIEUTENANT COLONEL	
Thomas R. Cuthbert	1 Feb 77
David C. Davies	1 Dec 75
Herbert M. Flemming	1 May 76
MAJOR	
Owen D. Rasham	1 Feb 77
John C. Carr, Jr.	1 Feb 77
Kenneth D. Gray	1 Jan 77
Mark H. Rutter	27 Dec 76
Frank J. Wagner	1 Feb 77
CAPTAIN	
Prentiss E. Feagles	29 Nov 76
Dennis K. Ferm	14 Jan 77
Michael K. King	29 Nov 76
John K. Myers	6 Dec 76
David R. Tyrrell	10 Dec 76
Robert J. VanHooser	20 Dec 76

RA PROMOTIONS

LIEUTENANT COLONEL	
Keith A. Wagner	1 Feb 77
MAJOR	
Andrew Brandenburg	25 Jan 77
Ronald P. Cundick	25 Jan 77
Harvey W. Kaplan	25 Jan 77
CAPTAIN	
Alfred H. Jucchter	2 Jan 77
Donald L. Ketels, Jr.	2 Jan 77
Garey L. Laube	10 Jan 77
Daniel G. McCarthy	2 Jan 77
Timothy Naccarato	5 Jan 77

Current Materials of Interest

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Green, *Grants of Immunity and Military Law, 1971–1976*, 73 MIL. L. REV. 1 (1976). Major Herbert Green is a Military Judge in the Second Judicial Circuit, Fort Gordon, Georgia.

Gibb, *The Applicability of the Laws of Land Warfare to U.S. Army Aviation*, 73 MIL. L. REV. 25 (1976). Captain Steven P. Gibb is a Judge Advocate with the 2d Infantry Division.

Borgen, *The Proper Role of the Military Legal Assistant Officer in the Rendition of*

Estate Planning Services, 73 MIL. L. REV. 65 (1976).

Wilkerson, *Administrative Due Process Requirements in the Revocation of On-Post Privileges*, 73 MIL. L. REV. 107 (1976). Major J. Neill Wilkerson is a Military Judge in the Third Judicial Circuit, Fort Hood, Texas.

Kunzig, *Perspective—Government Contracts—Legal and Administrative Remedies*, 74 MIL. L. REV. 1 (1976).

Price, *Copyright in Government Publications: Historical Background, Judicial Interpretation, and Legislative Clarification*, 74 MIL. L. REV. 19 (1976). Captain Brian R. Price is the editor of the MILITARY LAW REVIEW.

Lederer, *The Law of Confessions—The Voluntariness Doctrine*, 74 MIL. L. REV. 67 (1976). Captain Frederic I. Lederer is an instructor in the Criminal Law Division, TJAGSA.

Hansen, *Discharge for the Good of the Service: An Historical, Administrative and Judicial Potpourri*, 74 MIL. L. REV. 99 (1976). Lieutenant Colonel Donald W. Hansen is the Staff Judge Advocate at the U.S. Army Training Center & Fort Dix, New Jersey.

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Editorial Comment, *Foreign Policy and Fidelity to Law: The Anatomy of a Treaty Violation*, 70 AM. J. INT'L L. 802 (1976).

Brown & Brown, *What Counsels the Counselor? The Code of Professional Responsibility's Ethical Considerations—A Preventive Law Analysis*, 10 VAL. U.L. REV. 453 (1976).

Law Scope: Ethics, *Conflict of Interest: The Debate Heats Up*, A.B.A.J., Jan, 1977, at 16. This article discusses the proposal to put a tough new conflict-of-interest rule based on D.R. 5–105 (D) into the District of Columbia Bar Code of Professional Responsibility.

The Final Action of the Legal Ethics Committee on Inquiry 19, B. REP., Jan. 1977, at 1, col. 2. The BAR REPORT is the official publication of the District of Columbia Bar. Inquiry 19 concludes that "when an attorney is disqualified from a matter because of substantial responsibility in that matter while a government employee, the partners and associates of that lawyer should also be disqualified."

Book Review

Benton, *Developments in the Law—Legal Citation*, 86 YALE L.J. 197 (1976). (Review of the Twelfth Education of A UNIFORM SYSTEM OF CITATION.)

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:
PAUL T. SMITH
Major General, United States Army
The Adjutant General

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