June 1977

THE ARMY LAWYER

DA PAMPHLET 27-50-54 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D.C.

Withholding of State Income Tax from Active Duty Military Members

David L. Gagermeier, Attorney-Advisor, Legal Office, U.S. Army Finance and Accounting Center

Section 1207 of the Tax Reform Act, Public Law 94–455, amended 5 U.S.C. § 5517 to require the Secretary of the Treasury to enter, upon the request of states, into agreements for the withholding of state income tax from the military pay of military members. The Treasury Department is currently processing requests from 36 states for the withholding of state income tax from military members who are legal residents of the requesting state.

The projected date for implementation of the withholding of state income taxes from the pay of military members whose state of legal residence have entered into withholding agreements with the Treasury Department is 1 July 1977. Withholding formulas have been developed for each state, and these formulas have incorporated the regular state exemptions, deductions, and credits, and also any special military exemptions. These formulas have been developed with the goal to have an amount of state income tax withheld from the military member's pay which is *approximately* the amount of state income tax that the member will be liable for at the end of the taxable year. It should be stressed that the withholding of taxes for military members for their state of legal residence does not negate their legal obligation to file a state tax return with their state of legal residence, nor will the amount withheld necessarily be equal to the amount of taxes owed to their state of legal residence. In fact, during the calendar year 1977, withholding will only be made by the Army from 1 July 1977 to 31 December 1977 for most states and for lesser periods for some states that do not have agreements with the Treasury Department for withholding on 1 July 1977. This will obviously result in an insufficient amount of state taxes withheld in 1977 for most military members.

The state of legal residence listed on the military member's Leave and Earnings Statement as of 1 July 1977 is the state that the Army intends to begin withholding state income tax for on 1 July 1977, provided the state taxes military pay and it has entered into an agreement for withholding with the Treasury Department. A member who desires to change the state of legal residence listed on his LES due to the fact that it is incorrect, or he just desires to change his legal residence, must go to his local Finance and Accounting Office to make this change. The member will then be required to fill out a new Federal Form W–4 (Employee Withholding Exemption Certificate) and a Certificate of Legal Residence. The legal residence listed on the W–4 and Certificate of Legal Residence must be the same. The Finance and Accounting Officer will then input this change in legal residence to USAFAC for appropriate action. The Army intends to accept as correct the state claimed by the member as the member's state of legal residence and also accept any changes to legal residence as being legally proper. Any disputes over the proper state of legal residence for the member will have to be resolved between the member and the concerned states.

Following this article, I have a chart which lists all the states and indicates whether they tax military pay and whether they have applied for a withholding agreement with the Department of Treasury. Some of the states,

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

such as Iowa, have changed their tax laws to tax military pay since Public Law 94-455 was passed, and it is anticipated that other states that do not tax military pay at this time may follow suit in order to obtain more revenue and because they now can require the Armed Forces to withhold taxes from their legal resident in the Armed Forces. The number of states for which withholding will be implemented on 1 July 1977 is difficult to calculate as their applications for withholding are in various stages of processing at the Treasury Department. USAFAC will be prepared to implement withholding on 1 July 1977 for all states with which the Treasury Department has reached an agreement.

Questions posed to legal assistance officers regarding the rate of taxation for a member's legal residence can probably be answered through use of the Allstates Income Tax Guide as this booklet was useful in developing the withholding formulas by USAFAC.

State	*Military Pay Taxed*	*Applied to Treasury Dept for Withholding of State Income Tax*
Alabama	Yes	Yes (Note 2)
Alaska	No	No
Arizona	Yes	Yes (Note 3)
Arkansas	Yes	Yes
California	Yes (Note 1)	Yes
Colorado	Yes	Yes
Connecticut	No	No
Delaware	Yes	Yes (Note 3)
District of Columbia	Yes	Yes
Florida	No	No
Georgia	Yes	Yes (Note 3)
Hawaii	Yes	Yes
Idaho	Yes (Note 1)	No
Illinois	No	No
Indiana	Yes	Yes
Iowa	Yes	Yes
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	Yes
Maine	Yes	Yes (Note 3)
Maryland	Yes	Yes (Note 3)
Massachusetts	Yes	Yes
Michigan	No	No
Minnesota	Yes	Yes (Note 3)
Mississippi	Yes	Yes (Note 3)
Missouri	Yes (Note 1)	Yes (Note 3)
Montana	No	No
Nebraska	Yes	Yes

State	Military Pay Taxed	Applied to Treasury Dept for Withholding of State Income Tax
Nevada	No	No
New Hampshire	No	No
New Jersey	Yes (Note 1)	Yes
New Mexico	Yes	Yes
New York	Yes (Note 1)	Yes (Note 3)
North Carolina	Yes	Yes
North Dakota	Yes	Yes
Ohio	Yes	Yes (Note 3)
Oklahoma	Yes	Yes (Note 3)
Oregon	Yes (Note 1)	Yes
Pennsylvania	Yes (Note 1)	Yes (Note 3)
Rhode Island	Yes	Yes (Note 3)
South Carolina	Yes	Yes
South Dakota	No	No
Tennessee	No	No
Texas	No	No
Utah	Yes	Yes
Vermont	No	No
Virginia	Yes	Yes
Washington	No	No
West Virginia	Yes (Note 1)	Yes
Wisconsin	Yes	Yes
Wyoming	No	No

Note 1: Not taxable if military member not stationed in the state. Military members who are stationed outside these states will not have state tax withheld on their military pay.

Note 2: Applications submitted by the states to the Department of the Treasury for the withholding of state income tax are expected to be approved, with effective date of 1 July 1977.

Note 3: States which have applied to the Department of the Treasury for the withholding of state income tax but have to amend their current state laws to authorize or require withholding from military members. Withholding will begin for these states as soon as these states amend their state laws and the Department of Treasury enters into an agreement with these states.

Military Justice Reporter

The following letter is from The Judge Advocate General

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

5 MAY 1977

DAJA-CL 1977/1927

SUBJECT: Military Justice Reports

ALL STAFF JUDGE ADVOCATES

1. Last November, the armed services were required to terminate their contractual relationship with Lawyers Cooperative Publishing Company for the Court-Martial Reports. This resulted from a finding by the Department of Labor that Lawyers Cooperative had failed to meet required affirmative action plans. Since that time a joint services committee, including representatives from the Court of Military Appeals, has been working on procuring a new publisher. Interim reports printed by the Defense Printing Service have been issued as a stop-gap measure pending a new procurement.

2. On 29 March 1977, a contract was signed with West Publishing Company of St. Paul to provide slip opinions for decisions of the Court of Military Appeals. These will be mailed di-

rectly to JAG activities by West, and will contain for each case a syllabus, headnotes, and permanent pagination. West began printing these opinions on 1 April 1977 and the field should begin receiving them soon if they have not been received already. The slip opinions will begin with volume 3 of the Military Justice Reports, as the West volumes will be entitled. Volumes 1 and 2 will be used to publish the USCMA decisions accumulated since June 1975.

3. The West bound volumes and advance sheets of Military Justice Reports will be procured from the Federal Supply Schedule, just as other law books. Because the bound volumes and advance sheets will be purchased as a "subscription unit," advance sheets will be issued to accompany each set of the bound volumes. This is unlike the procedure used by Lawyers Cooperative, in which the Army procured different numbers of bound volumes and advance sheet subscriptions. The mailing list supplied to West is basically the same as that used by Lawyers Cooperative for distribution of its bound volumes of Court-Martial Reports.

4. Advance sheets will be published approximately every two weeks, about six to eight weeks from the dates of decisions. Included in the advance sheets will be case citators and case digests similar to those currently used for the Federal Reporter system. Bound volumes of approximately 1200 pages will be printed about twice a year. As the services were forced to terminate their contract with Lawyers Cooperative before a bound index for volumes 26 through 50 of the CMR's could be procured, this office, along with the other services, is currently seeking an alternative means of publishing one. Should your activity require fewer or greater numbers of slip opinions, advance sheets, or bound volumes, or if the addresses being used are incorrect, contact the Plans Officer, DAJA-PT.

5. It is my belief that this new reporter system will greatly aid the research of our counsel. While we may experience some difficulty in the transition from an old to a new system, I think in the long run we will have a more complete and more efficent set of research tools.

WILTON B. PERSONS, JR.
Major General, USA
The Judge Advocate General

Current Military Justice Library

A complete library of opinions of the United States Court of Military Appeals and the Courts of Military Review should contain these publications.

COURT-MARTIAL REPORTS (Lawyers Cooperative Publishing Company)

Volumes 1-50 (50 hardbound volumes)

Citators and Index Volumes 1-25 (1 hardbound volume)

Citators and Index Volumes 26-45 (4 clothbound volumes)

Advance Opinions Issues 9-21 (13 paperbound volumes)

The Court-Martial Reports *begin at 1 C.M.R. 1 and the last page is 52 C.M.R. 106.*

INTERIM ADVANCE OPINIONS

7 Unnumbered paperbound volumes

The Interim Advance Opinions *begin at 54 C.M.R. Adv. Sh. 1 and the last page is 54 C.M.R. Adv. Sh. 1242. The last volume contains an index for 54 C.M.R. Adv. Sh. 1 through 54 C.M.R. Adv. Sh. 538. 53 C.M.R. was never published.*

MILITARY JUSTICE REPORTER (West Publishing Company)

3 M.J. No. 1 (1 clothbound volume)

4 Unnumbered slip opinions (paperbound)

The Military Justice Reporter *begins at 3 M.J. 1 and the last page received at TJAGSA as of 26 May 1977 is 3 M.J. 126. 1 M.J. and 2 M.J. have not yet been published.*

Missing copies of the *Court-Martial Reports* and the *Military Justice Reporter* can be obtained through the Army Field Law Library. Missing copies of the *Interim Advance Opinions* are available (as long as the supply lasts) from Criminal Law, OTJAG.

Current Developments in Standards of Conduct

Richard A. Wiley, former General Counsel, Department of the Army

I am delighted to be here today.

My topic today will be "Current Developments in Standards of Conduct." I plan to be selective and not at all inclusive. I plan to concentrate on certain key areas which are receiving current attention or which are areas in which some hopefully new and hopefully creative legal and policy thought is being given.

The area of standards of conduct really breaks down into three principal component parts. First, standards of conduct *per se*, which over the last year and a half has popularly become known as the "gratuities" area. This area involves questions of both regulatory compliance as such and "appearance." Secondly, what I call *true* conflicts of interest. These can be violations of statutory law, violations of regulations, or again, create simply an "appearance" problem. The third topic involves certain current developments in the area of post-government employment actions and limitations. I will discuss certain highlights in each of these three areas.

First, I would like to emphasize that this particular area, standards of conduct, ethics, call it what you will, has traditionally been peculiarly the responsibility of the lawyers in the Department of Defense, both civilian and military, whether in the Office of the Secretary of Defense, the direct defense agencies or the several military departments. This is logical because, by training and experience, lawyers are really best equipped to focus on these particular matters. Businessmen and policy makers, partly because of different training, partly because of different experience, are simply not as oriented as are the lawyers to these issues, not perhaps as sensitive to them.

This leads me to comment on several points comparing the government and the military legal and policy-making world with commercial civilian law and business decision making.

First, there has been a lot of publicity over the last year and a half about foreign payments, bribes, illegal political contributions and the like. I have had the privilege and the highly educational experience in the last six months of representing the Department of Defense on Secretary Richardson's Task Force on Questionable Payments Abroad. The only general conclusion I can draw from the Task Force experience is that I knew that in American private corporate life there was a substantial amount of questionable, improper and, in many cases illegal, payment activity, but I must say that I am now amazed at the extent, breadth and depth of that activity. What particularly surprised and somewhat discouraged me, but I think we *can* do something about it, is that in many cases the lawyers who worked for the corporation involved (these were full-time salaried lawyers) not only knew and looked the other way, but in many cases, actively cooperated in the implementation of the schemes. My office has had correspondence back and forth with the chairmen of the board, presidents, and general counsels of a number of major defense contractors on some relatively minor gratuities problems, hunting lodges, luncheons and the like. The correspondence back from the corporations in many instances has indicated that they feel very squarely that there are two

standards of ethics or behavior with which they must comply: the one which is common in the commercial world, where what the Department of Defense now forbids is represented by the corporations as every-day, common, accepted, expected and necessary practice; and the tough standards which are being applied in the government in general, and I think most strictly, most completely, and more appropriately in the Department of Defense.

Second, I think personally that, as in so many other areas beginning principally with the second World War experience, the Department of Defense and the military services have been, and will have to be the "initiators," as, for example, operations and systems analysis. In the ethical standards effort, both in the military services and in the commercial world, the initiative and the fundamental responsibility to generate acceptance of those standards is inevitably going to have to come from the lawyer—from us. In fact, I can foresee in military legal practice that there will be cases arising where the lawyers are going to be caught—my expression is—"between their two oaths." In civilian life, of course, a practicing lawyer just takes one oath as a member of the bar and officer of the court. In the military and government service there are two oaths, one an oath of office, and of course, the other oath as an officer of the court. On occasion, those two oaths are going to produce conflicting duties. Questions have arisen from time to time in connection with the obligation of JAG officers in the field to report up through channels law of war violations of which they become aware. If they apprise their local commander, and he in effect suppresses the report, what is the JAG officer's duty? Regulations of the different military departments at present I think express this duty slightly differently. We have recently been wrestling with the questions of the duty of JAG's in the field to report intelligence law violations, a new field based on the President's Executive Order issued late last winter. Here the same issue arises. The traditional posture is that the lawyer has a *sole* duty, *i.e.*, to his clients. That has been true in civilian life and has also been true in the military environment. However, what if that client himself, despite the lawyer's advice, insists and persists in doing something which is outright illegal? Does the lawyer then have a duty to report up through separate JAG command channels regardless of his normal duty to his own commander? I think the answer is "Yes." These issues are also going to arise in the standards of conduct and ethics area from time to time.

What I would also like to make clear is that the lawyers should *not* over the long haul, have a first-instance standing and continuing *management* responsibility in the standards of conduct, conflicts of interest and post-employment problem areas. What the lawyer should be doing at all levels, beginning with the Office of the Secretary of Defense and the three military departments at the Pentagon, is carefully creating, developing and articulating the standards, the procedures, interpretations and rules and then having the appropriate administrative and/or personnel offices include clearances of financial interest records and possible gratuity violations for promotion purposes and the like into the regular administrative and or personnel offices include lawyers are left only with the normal lawyer's interpretation and advice function. I will talk later about some of the administrative procedural issues with which we are presently dealing in the Office of the Secretary of Defense. A number of these issues are in a sense new, and they are in many cases too new to have gone down through the system yet. My key point is that much of what should be the new policies will not be developed and not be put firmly into place unless the lawyers take the initiative in structuring what those policies should be. The lawyers should not, however, get embroiled in the day-to-day administration of those policies once they have been developed.

Now as to the first of the substantive topics I indicated earlier, so-called standards of conduct, or for short hand purposes currently

called "gratuities." The background here precedes my tenure in office. I understand that the current interest really started in June or July of 1975 with the first disclosures of the so-called Northrop hunting lodge incidents on the Eastern Shore of Maryland. Quite frankly, the Department's response to these problems through the six months from July 1975 to about January 1976 was rather spotty, erratic, unmanaged and incomplete. Since the first of this year the effort has benefitted from greater continuous attention and an attempt to rationalize what was being done into some sort of coherent structure. I recognize that, off and on in the last twenty years or so in the history of the Department of Defense and the military services, there have been ethics or moral "crusades" from time to time, sort of "fits of ethics" in which useful things hopefully have been done. These efforts have died down, years have passed, and people have in a sense fallen back into the old habits until, in effect, a new crusade was launched. What we hope this time is that we are putting into place a new and permanent policy and procedures so that adherence to a high set of standards of conduct will be a continuing part of the Department's operations and will not be dependent upon pressures from the press or other outside forces or just who happens to be in what office at any particular point in time.

I think that we have probably now seen all or most of the incidents from prior to 1976 which are liable to surface. We had a flurry of publicity last winter and spring about those incidents. All of them have not been disposed of; most have. I would suspect that from this point forward, we will have fewer incidents arising than in the past because there has been a very useful *in terrorem* effect of the operations which have taken place over the last year. Another very important point is that, notwithstanding the views of Senator Proxmire and some others who have expressed an active interest in this field, the Department of Defense has not launched, and has no intention of launching, a general inquiry crusade. In other words, we do not intend to go out directly, or indirectly, and ask everyone in sight: "Have you ever committed any violation of our regulations dealing with standards of conduct?" We just do not think that is a good management technique. We are acting and reacting to disclosures which are brought to our attention. We have been criticized that we are being too passive about this kind of activity, but I assure you that a very conscious management judgment has been made to handle this area the way it is being handled. The primary sources of our information have been disclosures in the press and disclosures from congressional committees. Back last winter, on several occasions we approached, on our own initiative, the forty-three largest defense contractors in the country and asked them what they knew from their point of view about their improper activities involving Department of Defense personnel. That inquiry produced some useful information, including some very meticulously-worded avoidances of the question, and we are still engaged in continuing dialog with a number of these companies. Another valuable source of information has been routine audits of defense contractors by the Defense Contract Audit Agency (DCAA), and last spring we had special audits done of the Washington representative offices of ten of the major defense contractors. Those special audits produced some fascinating information. I might say in this connection that DCAA was initially not exactly wildly enthusiastic about adding to their routine audit activities on a continuing basis the types of inquiries which we would like to have added, but I think we are going to work that problem out successfully. It is important to have a *regular* source of *internally* generated data as to possible violations.

As far as processing any allegations of violations of standards of conduct rules is concerned, in the late winter and the early spring The Judge Advocates General of the several services and we, in cooperation, worked out a series of guidelines both for procedure and for substance in processing the gratuities or standards of conduct violations which had then come to light and which have come to light since. Basically

as to procedure, some of these violations involve Office of the Secretary of Defense personnel, and my own office has been dealing with these directly. The others, as they surface, have been referred directly to the military departments. Essentially, what we did was to develop a fairly straightforward questionnaire directed to the individual about whom an allegation had been made, and each of the departments has handled these in a different way. Some have used the questionnaire as such, some have sat down and talked to the people individually using the questionnaire as a reference, and others have made up their own modified questionnaire. In our discussions, we concluded that some sort of a legal rights warning was appropriate at the outset of these inquiries because the facts involved could lead to something which could constitute a violation of law and might require quite formal disciplinary proceedings.

On the whole we have had excellent cooperation from the about 150 or so individuals, civilian and military, who to date have one way or another been alleged to have violated the standards of conduct. Usually the response is perfectly frank and straightforward, and the initial inquiry and the one response disposes of the matter. To date the maximum, in effect, "punitive" action taken has been so-called letters of admonition which were designed so that they would be delivered and filed but they would not appear in the individual's official personnel file. There are still a number of cases in several of the military departments which may well lead to something more than a letter of admonition, but to my knowledge, at the present time, nothing more than a letter of admonition has been issued. Our goal in this procedure, of course, has been to deal with the problems as expeditiously as possible to protect the rights of the individual involved and to use the handling of these cases, quite frankly, to deliver a deterrent message to the rest of our community.

We also attempted in these guidelines to deal with a number of special issues which obviously require special treatment. What about aides to general officers? What is their duty? To do whatever the general asks them to do, or do they have a duty to counsel a general and perhaps say he should not be doing something? If the general says "I'll do it anyway," then, what does the aide do? Exercise his own independent judgment? What about legislative and liaison escort officers, who as we know, are called upon to do some very unusual things from time to time? Where does the line get drawn for them?

On one issue we irritated Senator Proxmire quite substantially when all of this broke last spring. NASA was, in effect, on his carpet at the same time we were. When NASA processed its original Northrop hunting lodge cases, it asked each of its senior personnel, including those about whom allegations had been made, whether they knew of any violations of the standards of conduct regulations by any *other* NASA personnel, even those about whom no allegations had been made—what we call the "tattling" concept. The Department of Defense made a very conscious and deliberate policy decision right then *not* to ask anyone about any possible violations by anyone else unless we received some independent information as to a possible violation. Just recently we have had to deal specifically with this problem. Senator Proxmire wrote us a letter about a month ago, which I had fully expected for about three months, in effect saying: "How can you reconcile your 'anti-tattling position' with the existence of the toleration clause in the West Point Honor Code?" I must say that preparing the answer to that letter was one of the more difficult jobs we have had in recent times.

Substantively, it is clear now that there were various exceptions built into the directives dealing with standards of conduct on which a number of those about whom allegations had been made and many others as to whom no allegations have surfaced had relied for a substantial period of time. There was an exception recognizing that entertainment activities constituting customary exchanges of social amenities between personal friends

were acceptable. That exception was removed from the directive in November 1975 and, in effect, it no longer can be relied on. However, there are other exceptions in the basic directive and regulations which can still be relied on and as to which we have attempted over the last eight or nine months to clarify policies. There are just two of these. One is attendance at contractor and trade association-type functions. The policy previously was, and is now, that attendance at these functions both by military and civilian personnel, officers of the government, when in the interest of the government, can take place assuming a basic valid purpose for the association and its activity and assuming that the seating at these occasions is random. In other words, contractors cannot tell the trade association: "We would like to put Contractor *X* together with General *Y* at a given table so that we can hope to sell him a given weapons system." That is out. The seating has to be completely random. Hospitality suites maintained by particular companies in connection with these meetings are out. We recently had occasion to rule on the question of attendance of wives at otherwise "acceptable" association meetings. This involves attendance at the expense, in effect, of the association. In that connection, the answer was that attendance of wives at the expense of the trade association was fine if the industry members bring their wives as a general rule so that, in effect, our people would look quite out of place. You would partly defeat the purpose of the occasion if our wives, to the extent they wish, were not able to accept the invitation under these circumstances. Another area that is still acceptable practice involves public ceremonies of individual contractors, such as dedications of buildings and launching of ships. Again, the same criteria apply. The attendance in effect normally would be in the interest of the government. It is important, however, that the invitations to these occasions be to the government and to the office, rather than to the individuals. Normally, they come in the name of the individual. The decision on who should attend and how many people should attend should really be made as an institutional decision by the government office involved.

To conclude on standards of conduct, I might note that for the last four months our office has been engaged in a complete restatement, consolidation, revision, and hopefully clarification and updating of DoD Directive 5500.7, from which all of the other standards of conduct directives derive. In its present form, which is now being circulated for informal comment to the representatives of the various military departments and Department of Defense agencies who have been working on the redraft, it will be probably less than a third the length of the persent directive and, hopefully, sharper, clearer and more complete.[1]

As to my second major topic, conflicts of interest as such, I would like to talk briefly about three principal areas with which we have been concerned recently. As you know, this area is basically statutory, and it basically derives from a series of criminal provisions appearing in title 18. The three subjects I would like to talk about are Sections 205 and 209 and then, in somewhat more detail, Section 208. A number of these sections have just not had much happen under them for years. In fact, I understand that, under several of them, when matters have been referred to the Department of Justice for possible action, the Department of Justice has displayed a rather uninterested attitude. It has traditionally not had much enthusiasm for doing anything about these problems. They are staffed and organized somewhat differently over there now, which I will comment upon shortly, and I believe that this is now an area of greater interest to them.

First, let's look at Section 205. Our office first got into this last spring in connection with the original allegations involving former Secretary of the Army Callaway. Section 205 is the provision, of course, which basically forbids any officer of the government to in any way represent anyone in any claim proceedings, or to shorthand it, in any attempt to get something out of any *other* government

agency. This is a statute which basically has not been focused upon much. Just last week the full report from the Subcommittee of the House Interior Committee which looked into the whole Callaway episode was published, and we are in the process of reading it with care in our office. I think we are going to be able to derive from that episode a series of what I would call re-stated "house rules" on points which probably were settled a long time ago and, if they were not, should have been. They will be resolved now. For example, let me extract two things here from the Callaway exercise. First, it is fairly clear that Secretary Callaway wrote various letters to do with his private business activities on Secretary of the Army letterhead. I am told that back in 1953 or 1954 then Secretary of the Air Force Talbott was fired out of hand for doing exactly the same thing. I thought this was fairly elementary and self-evident to anyone with common sense, but apparently this is going to take a current restatement. Our present standards of conduct directive states quite flatly that it is a violation of that directive for anyone to use any government assets for private purposes. I think it would be fair to say that most of us on occasion will make personal (hopefully only local) telephone calls over government telephone instruments and may have our secretary type a few personal letters. There obviously is a *de minimus* concept in this area that no one is going to worry about, but it is fairly clear that, deriving somewhat from the Callaway case, this is going to take some restatement for emphasis purposes. Incidentally, I should note that the Callaway case was called to the attention of the Department of Justice first by our office back last March when it first broke. Justice is still investigating that matter,[2] and we now have two other matters in which we are now engaged in discussion with Justice also involving Section 205. This Section is very important because it applies to all officers of the government, civilian and military alike, and basically the only way to stay out of potential trouble with it is not ever even to make the first telephone call or inquiry to any other government office or agency with regard to any matter on behalf of anyone outside the government which may involve that agency. This really becomes a black and white rule.

Now, let me turn to Section 209. That is the section which in shorthand form, basically forbids any supplement of the salary of an officer of the government. This is an area which, when I first came across it last spring, puzzled me immensely because I was shown two or three opinions of the Department of Justice which quite frankly just did not make sense. Late in the spring we discovered that the Energy Research and Development Administration had put a question before the Department of Justice involving Section 209 as applicable to a General Electric Company plan. Out of that question in the middle of the summer came a new opinion from the Office of the Legal Counsel at Justice which now does make sense, and it rescinded all previous opinions. Basically, what the law adds up to here is that an officer of the government can receive income from private sources while he is receiving his government salary *if* that income (not investment income, but income for services) is for services rendered *prior* to the government employment and the amount is fixed or liquidated determined upon the value of those prior services rendered prior to the service with the government.

The interesting problem is that a number of corporations have varying policies as to payment of "departure" amounts to departing employees under different circumstances. They may go into another line of business. They may go into a university teaching position. A number of them will come with the government. The Justice Department had originally ruled on the G.E. plan and said that it was alright so that, if someone came with the Department of Defense from G.E. drawing these extra payments of, say $20,000 a year for the following three years, he was not violating Section 209. However, when that same G.E. plan was looked into more closely this spring, it was discovered, as we had suspected, be-

cause we had a G.E. problem at the same time and raised this issue coincidentally with ERDA, that the G.E. plan had deliberately been designed only for those people who were, in fact, leaving for government service. That, of course, poses a problem. If the employer has a general plan in which he makes extra payments for the value of past services for someone who goes to other places, and the government as well, fine. However, if the real purpose of the plan, notwithstanding the "surface wording" which any competent corporate counsel can write to avoid the statute, is only to compensate those who go with the government, then we have a statutory violation. Our office now has two of these matters over to the hands of the Justice Department. Section 209, of course, *does* permit a continuance of fringe benefits while the officer is with the government. The Section recognizes participation in group life and group Blue Cross-Blue Shield and the like plans, and continuation of participation in retirement plans, although normally not the continuance of the accrual of years of service while with the government, but just the preservation of the rights which had accrued prior to the government service—rather a "leave of absence" concept. This again is an area which, my impression is, has simply not had much attention prior to the last six months but is a problem which can arise at almost any level.

Finally, I would like to discuss Section 208. Incidentally, "special government employees," who can be consultants or part-time employees, do fall into these sections, as well as full-time officers or employees of the government. Section 208, in effect, says that it is a crime for any officer of the government to participate in, make a recommendation with regard to or make a decision or finding in any matter in which he has a "financial interest." If you read this section too quickly, you can be deceived. What it says is that there must be *personal* and *substantial* participation by the officer in the matter in which he has a financial interest. There must be about a dozen or fifteen court decisions annotated under this section. None of them are helpful on any of the issues that make a difference. In short, there really is no useful law. What is "personal" participation? What is "substantial" participation? Those are both requirements on the *participation* end.

Contrary to considerable assumption, there is no requirement for substantiality on the financial interest end. In other words, *any* financial interest falls into the section. There is no *de minimis* rule for financial interest in the Department of Defense in this context. I have discovered that the Department of Transportation, for example, has published a *de minimis* rule for a financial interest which is less than the lesser of $5,000 in value in a security of 1% of the outstanding class of securities involved. I should note that Section 208(b) permits any executive department to make exemption findings from this statute on either of two theories: (1) to publish a general rule in the Federal Register, which is what the Department of Transportation and some other agencies have done (DoD has never published such a general exemption), or (2) for the individual's superior in an individual case to make a finding based on a particular set of facts that an interest is *de minimis*. I understand that in the past such individual case *de minimis* findings have been made from time to time in DoD. I doubt that we are going to see any from this point forward because the trend is away from this type of finding. We are now dealing so much with appearance-type problems that, as a managerial matter, even were management to believe that given stock holdings were sufficiently small so as not to create a statutory problem, and therefore, be willing to give an exemption, I think from this point forward exemptions would most likely not be granted because the appearance problem would still remain.

I would now like to speak about some aspects of the arrangements we have worked out recently with the Department of Justice in connection with referring matters to them. There are a series of so-called "delimitation" agreements which go back some years. They deal

with different types of topics, and to be perfectly frank about it, I find them rather confusing and somewhat incomplete. Basically these agreements deal with two basic matters: (1) the allocation of investigation responsibilities between the Department of Justice and, in our case, our department and the military departments for different types of law violation investigations, and (2) some rules as to when our department is obligated to refer to the Department of Justice, for their formal consideration from that point forward, prospective violation of the various title 18 sections. Quite frankly, the only helpful memorandum in this area was written by Attorney General Mitchell about four or five years ago. That memorandum was rescinded by Justice early this spring, and a new memorandum was substituted which is not as clear. Also in the spring, as you probably know, a new Public Integrity Section was created in the Justice Department which is not in the Criminal Division; rather it reports directly to the Attorney General. In the beginning that Section seems to have been looking for work. As I indicated earlier, no great interest had been shown at Justice in question of violations of Sections such as 205 and 209. However, they are quite interested now, and we have had a series of discussions with them in which we have worked out the following procedure. When we think we have got something which may violate one of these sections, we are going to make, notwithstanding what some of the wording in the delimitation agreements might indicate, a preliminary investigation of our own with our own resources. This, to protect the individual and for management purposes, will take us to the point of being reasonably satisfied that there may be a violation of law. Then what we are going to do, and we have done in the half a dozen cases in the last couple of months, is to sit down informally with the Public Integrity Section to tell them what our inevstigation indicates, show them some papers without leaving copies and let them think. Then, if they wish to see the papers formally, we send our investigative report and supporting materials. Then Public Integrity thinks again. If they are not interested in the topic, they tell us informally, and that ends it. If they are further interested in the topic, we will then make a formal official referral. By getting to the formal official referral point, Justice is really then, in effect, predetermining that they are probably going to want to investigate this with their own resources. If they do, that means investigation by the FBI. Whether or not Justice ultimately decides to prosecute would be an entirely separate decision. So far this arrangement has worked out quite well.

Our aim in the whole conflict of interest area is, in effect, to catch these problems at the outset. This has not yet taken place. We are still dealing in my office right now with stockholdings which pose possible conflicts on the part, in some cases of presidential appointees, let alone other senior people in the Office of the Secretary of Defense, which have been sitting there for a year or two and should have been caught a lot earlier. What we are trying to concentrate on is to develop procedures, first for use in the Office of the Secretary of Defense and some of these are already filtering down into the military departments, to catch these problems at the beginning, rather than later. When I say the beginning, I mean not the first month or two after the person is on board, but to catch them at the beginning of the employment consideration process before an offer is made or there is an acceptance or everyone has gone to the trouble of putting the individual on the payroll. In this connection what we are doing is the following. As for presidential appointees, and this includes the military appointments such as the Chairman of the Joint Chiefs or the Chiefs of Staff of the several services which themselves require Senate confirmation, we are working jointly with the staff of the Senate Armed Services Committee and the White House Personnel Office to make certain that the information filed in all those three places is the same, which it hasn't always been. This makes sense, and any problems are

eliminated right at the outset. At Secretary Rumsfeld's request about six months age, we instituted, as part of the three and four star general officer appointment promotion and reassignment processes, a requirement, which is now in the hands of military departments rather than being done by our office, that the papers which come forward include a certification that the officer's latest Financial Interest Statement on Form 1555 has been reviewed and is free of problems and that any records pertaining to standards of conduct or gratuities violations have been reviewed and that there are no problems. I might note that some interesting items have come to light through that process to date. Secretary Rumsfeld also wanted to extend this procedure right down to one and two star promotions and reassignments. Some administrative problems of possible promotion board "leaks," which are understandable, showed up at that point. However, something has just occurred within the last week which has caused me to take a whole new look to see whether those administrative problems are really insuperable. My guess is that this process will be brought down through all general and flag officer appointments and reassignments in due course.

Beyond these rather unique groups, we are going to carry a clearer and earlier procedure to pick up the others that should be picked up— Schedule C's, consultants, experts, and eventually, and this involves a lot of steps to gt there from here, anyone who, by the virtue of the position once he gets in it, will be subject to the annual Financial Interest Statement filing requirement on Form 1555. What we have discovered is that, as part of hiring in-process in some cases copies of DoD Directive 5500.7 are handed out; in some cases, they are not. In any case, they are handed out, but there is no requirement that the new employee come back later and sign something acknowledging that he has read and understands the Directive. If after someone is on board he will be required to file a 1555, he should fill one out as part of the initial employment consideration process, have it reviewed and checked out at that point by Personnel, with the assistance of whatever legal advice is necessary. The appointment should not be processed further until all possible questions are eliminated.

As to the annual filings on Forms 1555, with which all of you are familiar, we are in the process of revising the forms. One defect, for example, is that the form is filed annually and does not require a report of "in and out" transactions which have occurred during the year. It just speaks as of the filing date which is the close of the year, formerly June 30th, which will be revised to September 30, the new government fiscal year end. Insider trading reports which have to be filed by officers of publicly-held companies with the SEC, for example, require transactions, sales and purchases to be reported upon when they occur. Our forms do not. We depend upon the individual involved remembering to file an amendment or supplement to his form, and most people do not think about it. So, in these forms we are going to require reports of transactions which have occurred during the course of the year as well.

In this area a change was made last June, which was slightly controversial, for the forms which were filed as of June 30. For the first time we required those forms to be first given to the individual's immediate supervisor for review. We have had a suggestion of Privacy Act issues, and I understand that the Civil Service Commission may be unhappy with what we have done. We have not heard from them officially. We will wait until we do. The problem was these 1555's were previously being filed directly with what the regulations call the Ethics Counselor, which in many cases is, in effect, a legal office. The presumption was that the legal office would be equipped in the first instance to know enough about the exact duties of the employee to be able to judge what might or might not pose a conflict. That seemed rather unrealistic. On the other hand, the employee's immediate supervisor should know very well what contract and what companies the employee is having contact

with and can immediately flag for the legal office what issues should be attended to. The privacy issue seemed not to be of much significance, because we never did and still do not require any disclosure of the *extent* of the financial interest. As I stated earlier, Section 208, on the financial interest end, does not have a *de minimis* concept, and we do not plan to create one. Therefore, whether the individual has one share of Boeing Aircraft or 10,000 shares is irrelevant. The only issue is that he has an interest in Boeing and then you look at the problem from that point forward.

Several other policies we have changed in the last few months. Incidentally, when I said before that there is no standing exemption from Section 208 in the Department of Defense, there is none published in the Federal Register. I have discovered, as reflected in the Directive, that there has been one "in-house exemption" and that is for what is called an investment in a diversified and widely-held investment company. This was designed to take care of mutual fund investments, and I have no trouble with the rule. However, several months age (what we have been doing, incidentally, is reviewing, I think with greater care than previously, all of these 1555's filed in the Office of the Secretary of Defense as of June 30th and discovered all sorts of interesting things) we discovered that a presidential appointee had a very substantial investment in what turned out to be a *non*-diversified but widely-held investment company. The name of the fund on the Form 1555 just did not seem to us to be a "normal" mutual fund; so we looked it up in Standard and Poors' and Moody's and found exactly what we suspected—that this company had a more than 50 percent, or controlling interest, in three companies, two at the second tier and one at the third tier, that degree of indirection, which was defense contractors on the Defense Statistical List. It just so happened that this particular appointee had business crossing his desk which related to the industry in which those companies were involved. The company must be not only widely-held, *but* also diversified; what diversified means is that the mutual fund or investment company's interest cannot constitute anything which would give them the ability to control, directly or indirectly, the investments at any level down.

We are also working on trust relationships. I have heard all sorts of popular assumptions about the creation of blind trusts, none of which have made much sense, and we are nearing the end of an analysis and plan to publish a set of guidelines as to trust relationships—what sort of relationship as settlor, as trustee, as current income beneficiary, as contingent beneficiary, first, second or third removed, trusts for the benefit of wives, children, people in the same household, people not in the same household which the individual has a legal or perhaps a practical obligation to support financially, will create a possible conflict problem. We are going to try to publish guidance on all of these issues because the issues there are a lot more subtle than have been generally assumed.

One point I would like to stress is that, to date, when a financial interest which would raise a Section 208 type problem has been focused on, the automatic assumption has been that completing a disqualification form on the individual acting in any way with regard to that company as a matter of record will solve the problem. Or, perhaps in the case of an individual investment, that the sale of that security would, in effect, solve the problem. However, what we have run into is a number of cases where the breadth and the diversity of the investments of the individual concerned was such that disqualification would not really solve the problem. The officer could not sell as a practical matter for tax and other reasons and said so flatly. Disqualification would not solve the problem either, because if the officer filed all of the necessary disqualifications, there would be no job left for him to perform. We have had some questions recently on a fairly senior level in the Office of the Secretary of Defense where this has been the case. The only solution is separation. Those problems

should not be caught a year or two years after the officer or employee is brought on board. Those are the problems that have to be caught when the officer first starts talking the possibility of employment in the Department of Defense. If, as I indicated before, we lawyers do the creative thinking and the personnel and administrative do the types of structuring of policies and procedures to catch all these problems as part of the initial hiring discussion and personnel review process, then we would not run into any of these problems later on.

Briefly on topic three, post employment issues, I will not say anything about all of the standard statutory post-government service selling restrictions and the like. You are all familiar with those. What I would like to talk about, however, just briefly are some policies that we have developed quite recently which we have written down for our own office but which have not gone beyond us yet. They will. For example, how you should handle the problems of officers and employees departing government employment for civilian employment. There have been several rather celebrated cases recently, one involving the Under Secretary of the Air Force, which caused a certain amount of controversy up on the Hill. We have developed a series of "house rules" as follows. First, it is a good idea, as soon as an officer of the government, military or civilian, has decided that he wants to go do other things, for him to notify his superior and say: "Look, I am thinking of leaving. I want to go out and see what is out there in the civilian job market." Then the superior is aware that the employee is looking and does not hear about it from all sorts of odd third-hand sources. Secondly, as soon as an individual undertakes any kind of serious discussions with a particular company about a job, salary, and the like, he ought to let his superior know that he has reached that stage too. Third, as soon as the individual has made a deal, and that does not necessarily mean a formal agreement or letter of offer or letter of acceptance, but made a deal, then he should report back to his superior and to his subordinates, just as if it were a formal disqualification because of a stock interest. Depending on the nature of the employee's job, it may be that he cannot have a substantially delayed departure period. Otherwise, the appearance of conflict may be such that that risk is not worth assuming from the point of view of the department. This is an issue that we have wrestled with several times recently. After an employee makes a firm deal to go with a company which may create a genuine "appearance" problem with regard to his continuing government duties, can you have him keep performing his present duties for next three or four months, or really should he leave with just time enough to clean out his desk? These are very delicate issues. This area, again, has not had enough specific attention prior to this point in time.

Let me conclude by saying once again that the initiative to make progress in this area really lies with all of us and that it will take strict, continuous and conscientious effort and attention. I might say, in case what I have already said gives any suggestion that the Department of Defense has been asleep at the switch, I think that is not the case. I have tried fairly carefully to find out what other government departments and agencies have or have not been doing in this area in not only the historic past but in, say, the last year and a half, the period of primary attention. As some of you may know, the GAO has published a series of individual studies over the last year on about ten or twelve other executive departments or independent agencies. If you read those, and I get all sorts of calls from the General Counsels at other government departments and agencies saying "I have got the following problem. How would you fellows handle it?", I can tell you without hesitation that we are light years ahead right now of anyone else in the federal government. I am confident that we will stay ahead and that we will improve in many ways what we are already doing. To go back to one of my opening points, I look upon what we are doing in this area as, again, setting the pace as the federal government has done in so many other areas. As I in-

dicated before, I think part of our job is to set an example, to set a standard which will not only increase and hold the confidence of the general electorate in the validity of the federal government but set standards which hopefully private corporate enterprise will want to emulate and follow. Thank you very much.

Notes

1. The restated DoD Directive 5500.7 was, in fact, published in the Federal Register for public comment in December 1976 and signed, and made effective, by the Secretary of Defense in January 1977.
2. The Department of Justice subsequently determined that there was insufficient ground to proceed criminally in the Callaway matter.

Professional Responsibility

Criminal Law Division, OTJAG

The OTJAG Professional Ethics Committee recently considered a case involving the question whether an assistant trial counsel's conduct of the post-trial interview of an accused in the area confinement facility constituted a violation of Disciplinary Rule (DR) 7-104 (A) (1) which states:

> During the course of his representation of a client a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Subsequent to the accused's conviction by general court-martial, CPT *H*, who was detailed as assistant trial counsel, conducted the post-trial interview of the accused. At the outset of the interview the accused was advised of his rights under Article 31, UCMJ. He was also advised that his defense counsel would be obtained if he so desired. The accused indicated his willingness to answer questions without his counsel being present and CPT *H* proceeded with the interview. CPT *H* gave his interview notes to the Chief Legal Clerk and did not participate further in the review of the accused's court-martial. It was established that the procedure was used at the behest of the Chief of Military Justice, based in part upon CPT *H*'s fluency in Spanish, the accused's primary language.

The OTJAG Ethics Committee concluded that CPT *H* improperly communicated with the accused without the prior consent of the accused's counsel. CPT *H*'s duties as assistant trial counsel involved him in the continuing representation of the government in that case. Therefore, his interview of the accused without first obtaining the consent of the accused's counsel constituted the type communication specifically prohibited by DR 7-104(A)(1). The fact that the accused was given a chance to request his counsel's presence was not germane; the rule requires that prior consent be obtained from the party's counsel rather than the party.

Based on its finding of the violation of DR 7-104(A)(1), the OTJAG Professional Ethics Committee recommended that CPT *H*'s immediate supervisor be directed to counsel him concerning his conduct in this case. TJAG approved the finding of the Ethics Committee and forwarded a copy of the opinion to CPT *H*'s superior for disposition deemed appropriate.

The OTJAG Professional Ethics Committee also recently considered the question whether a trial counsel's advice to an accused to cooperate with the government during questioning by investigators constituted a violation of Disciplinary Rule (DR) 7-104(A)(2) which provides:

> During the course of his representation of a client a lawyer shall not: (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of

being in conflict with the interests of his client.

The accused was apprehended as a suspect in drug offenses and taken to a military police station for questioning. He stated that he might answer questions about persons dealing in drugs if provided a lawyer. It was after duty hours and the investigators arranged to have CPT *O*, whose regular assignment was trial counsel, come to the station. CPT *O* introduced himself to the accused as a trial counsel and properly explained his function as a prosecutor. During the ensuing interrogation, with most of the questioning done by CPT *O*, the accused answered questions. Acting on CPT *O*'s advice and explanation of possible benefits to be derived from cooperating with the government, the accused also disclosed the name of a suspected drug user.

At the accused's later trial for possession of drugs, evolving from his apprehension, CPT *O* was the trial counsel. After hearing evidence on a defense motion to disqualify CPT *O* as trial counsel because he had previously acted as counsel for the accused in the same case, and hearing CPT *O* state that no evidence against the accused was obtained as a result of the interrogation, the trial judge denied the motion.

Despite CPT *O*'s explanation to the accused of his function as a trial counsel, the OTJAG Ethics Committee concluded that his conduct in advising the accused constituted a violation of DR 7-104(A)(2). The Committee concluded that the formal inquiry into CPT *O*'s conduct was sufficient to emphasize the impropriety of his conduct and that no further action by TJAG was required.

Policy for Providing Assistance to Staff Judge Advocates

The Office of The Judge Advocate General

1. The following research and support may be provided by OTJAG to Staff Judge Advocates and military and civilian legal officers assigned to CONUS and oversea commands and installations:

a. Written legal opinions of The Judge Advocate General.

b. On an emergency basis, oral advice, research, and reference to pertinent statutes, legislative history, directives, instructions, regulations, and other printed material, usually in response to telephone requests. In such circumstances the requester will be advised that the information provided does not constitute an opinion of The Judge Advocate General regarding the issues presented.

2. As The Judge Advocate General is the legal advisor to the Secretary of the Army and the Army Staff, extreme care must be exercised to insure that, in providing assistance to individual service members and military lawyers, an opinion is not given by the Office of The Judge Advocate General to an interested party in a matter which may come before The Judge Advocate General in his official capacity. The appearance or existence of conflicts of interest must be avoided.

3. The following guidance is provided in submitting requests for OTJAG assistance.

a. All requests should emanate from, or be approved by, the Staff or Command Judge Advocate. Response will not ordinarily be made to requests from trial counsel. If a request is received from a trial counsel, and reply is considered appropriate, the response will be provided to the Staff Judge Advocate. Responses to requests received from defense counsel will depend upon the nature of the request, but normally any response will be by the Chief, Defense Appellate Division.

b. Except in emergencies, requests will be in writing, signed by the Staff or Command

Judge Advocate, and forwarded through technical channels (e.g., SJA of intermediate higher headquarters). "For the Commander" signatures are inappropriate.

c. The attorney requesting assistance must have exhausted all research facilities reasonably available to him. The product of such research, and conclusions based thereon, should be submitted as an inclosure to the request for assistance.

d. Unnecessarily multiple and unduly complex questions should be avoided. Questions involving DA policy determinations beyond the purview of OTJAG should not be forwarded through technical channels. Hypothetical questions will not be answered.

4. The following exceptions to the above apply:

a. Direct communication between Staff Judge Advocates and The Judge Advocate General is authorized pursuant to Article 6*b*, UCMJ, as appropriate.

b. Correspondence to the International Affairs Division may be forwarded directly to OTJAG; however, an information copy should be provided the SJA of intermediate higher headquarters.

c. In matters pertaining to civil litigation (AR 27-40), direct contact between judge advocates and action attorneys in the Litigation Division, OTJAG, is encouraged on all matters before State and Federal Courts in which the Army has an official interest.

d. In matters pertaining to the settlement of administrative claims, direct contact between military and civilian legal officers at commands and installations and action attorneys at the U.S. Army Claims Service is encouraged (see para. 1-8, AR 27-20).

e. Direct communication is authorized between Staff Judge Advocates and the Legal Assistance Office, OTJAG, for assistance in obtaining information which is not available from local sources.

f. Defense Counsel in the field are authorized to communicate directly with members of the Field Defense Services Branch, Defense Appellate Division, U.S. Army Legal Services Agency.

Judiciary Notes

U.S. Army Judiciary

RECURRING ERRORS AND IRREGULARITIES

1. Convening Authority's Action. In the examination of cases under Article 69, UCMJ, the following errors in the ACTION have been noted.

a. If the sentence has been properly ordered into execution, the ACTION should *not* state that "The forfeitures shall apply to pay becoming due on and after the date of this action".

b. When a place of confinement is designated, the language prescribed in paragraph 4-2*d*, AR 27-10, should be used. Thus, when a sentence to confinement is approved and ordered executed, the following words should be used: "The accused will be confined in (name of facility) and the confinement will be served therein or elsewhere as competent authority may direct".

2. Supervisory Review. Review of records of trial pursuant to Article 65(c), UCMJ, paragraph 94, MCM 1969 (Rev.), and paragraph 2-24*b* (4), AR 27-10, is the responsibility of a judge advocate. Accordingly, a commissioned officer who is attending the Funded Legal Education Program or the Excess Leave Program is not empowered to sign the stamped notation on the record and the promulgating court-martial order to show that

review has been complete and that the case is final in law. A judge advocate who has acted as trial counsel in the case is likewise disqualified. *See* Article 6(a), UCMJ.

3. Administrative Notes from Clerk of Court. In order to provide the original convening authority with the results of appellate review, and to allow staff judge advocate offices of these commands to close out their files, the general court-martial jurisdiction responsible for publishing final orders should forward a copy to the command which convened the Court.

Convention on the Extradition of Terrorists

International Affairs Division, OTJAG

The European Convention on the Suppression of Terrorism[1] was opened for signatures on January 27, 1977. The Convention was signed on that day by seventeen of the nineteen Council of Europe Member States, Ireland and Malta being the only two refusing to sign. However, before the Convention enters into force, it must be ratified by at least three signatory states. The Convention was the result of a joint idea presented to the Council of Europe by the Federal Republic of Germany and France and is reportedly designed to close loopholes in international law such as the one originally resorted to recently when an Athens court of first instance turned down a West German extradition request for the fugitive terrorist Rolf Phole.[2]

In article 1, the Convention lists six categories of offenses that might have formerly been considered political offenses in extradition cases under customary international law but which shall no longer be so regarded between the parties. Specifically, article 1 states as follows:

> *Art. 1.* For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:
>
> a. an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
>
> b. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
>
> c. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
>
> d. an offence involving kidnapping, the taking of a hostage or serious unlawful detention;
>
> e. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;
>
> f. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

This article runs contrary to the traditional treatment of extradition requests in which political crimes have been involved. In the past, states fell into three groups according to their policy in such matters. The first group recognized as political only "absolute," "complex" and "connex" political offences (*e.g.*, West Germany, Austria, and Greece under the Code of Penal Procedure of Greece of August 17, 1970). "Absolute" political offenses involve direct attacks on the existence of a state, such as treason or espionage. "Complex" political offenses are a combination of absolute political offenses and ordinary crimes that are made special by some states because of

their interrelation with absolute political offenses (*e.g.*, Italy follows this approach). A "connex" political offense would be an attempt on the life of a chief of state.

The second group of states recognized the "relative" political offense (*e.g.*, Switzerland, Sweden, Denmark, Great Britain, and Belgium). Such an offense was regarded as an ordinary crime committed under such circumstances that its political character was dominant.

States in the third category based their criteria on the motive of the criminal and held an offense to be political if the motive for the crime was a political one. (This is apparently the French view which is to some degree limited by article 3 of the European Convention on Extradition.)

Article 2 of the Convention extends the purview of offenses not to be considered political under the convention in extradition cases by giving signatory states the option of classifying traditionally political offenses other than those specifically listed in article 1 as non-political in extradition matters. Article 2 extends this non-political appellation to all acts against property if the act created a collective danger for persons. Article 2 also expands the definition of offense by including attempts and/or participation as accomplices in the commission of offenses.[3]

Article 5 of the Convention incorporated a standard principle of international law relating to asylum: the principle of *refoulement* or non-return. In so doing, article 5 negates any obligation for a signatory state to extradite if it has: "substantial grounds for believing that the request for extradition for an offense mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that the person's position may be prejudiced for any of these reasons."[4]

Article 13 of the European Convention on the Suppression of Terrorism sets forth the procedure for signatory states to specify reservations to the Convention with regard to any of the offenses listed in article 1 to the effect that the reserving state considers certain or all of the offenses specified in article 1 to be of a political nature for the purposes of extradition; thus any such state would not be required to extradite perpetrators of such offenses. Reservations are to be made at the time of signature or when depositing the instrument of accession (with the Secretary General of the Council of Europe).

According to the latest information available in the Library of Congress, at the time of the Convention, no reservations were declared. This, however, does not proclude the declaration of reservations at a later date when instruments of ratification are deposited.

Thus, in effect, article 13 appears to nullify the effects of articles 1 and 2 should, prior to their deposit of instruments of accession, signatory states seek to rely on it. Furthermore, it is impossible to predict what mandate the signatory states will receive at the time of domestic ratification, and subsequently whether or not their instruments of accession will include reservations. In the interim, absent 3 ratifications, the Convention is not in effect among signatories.

NOTES

1 *Council of Europe Press Release* B (76) 85 of November 12, 1976, or *Council of Europe Document* DPC/CEPC (76) 10.

2 Pohle was subsequently extradicted to West Germany by Greece on October 1, 1976.

3 The text of art. 2 is as follows:

Art. 2. 1. For the purpose of extradiction between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.

3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

4 Somewhat similar language is contained in art. 33 of the United Nations Convention Relating to the Status of Refugees (5 U.S.T. 6223, T.I.A.S. 6577.) However, art. 33, sec. 2, contains a limiting proviso based on a danger to the community test. The text of art. 33 is as follows:

Art. 33. 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee when there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Note further that: art. 33 does not require that the refugee's presence in the Contracting State be "lawful."

JAG School Notes

1. First Charles L. Decker Lecture. On 11 May 1977, the Charles L. Decker Chair of Administrative and Civil Law was established at The Judge Advocate General's School. Major General Charles L. Decker, USA (Ret.), the 25th Judge Advocate General of the Army, delivered the first Charles L. Decker Lecture in Administrative and Civil Law.

The first Decker Lecture, entitled "The Chair and the Challenge," discussed the Corps and the School, their past achievements and future challenges. As Major General Persons mentioned when he introduced General Decker, Charles L. Decker was the founder and first Commandant of the School in Charlottesville.

Many distinguished friends of the School and General Decker attended the lecture. The general was accompanied by his wife, Mrs. Susan Decker.

Lieutenant Colonel Peter J. Kenny, Chief of the School's Administrative and Civil Law Division, became the first occupant of the Charles L. Decker Chair of Administrative and Civil Law.

2. Defense Trial Advocacy Taught in Europe. Four members of TJAGSA's Criminal Law Division conducted a defense trial advocacy course in Frankfurt, West Germany, during 25–28 April 1977. The course was held solely for defense counsel. It was designed to insure that all European defense counsel are aware of all of the latest developments in criminal law and to provide some advanced training in trial advocacy.

3. Armed Forces Week. The School observed Armed Forces Week, 16–22 May 1977, by holding a week long open house at TJAGSA.

CLE News

1. Video and Audio Tape Catalog. Television Operations of The Judge Advocate General's School announces that the latest Video and Audio Tape Catalog is now available. If your activity has not received a copy through normal distribution, contact the JAG School, ATTN: Television Operations, Charlottesville, Virginia 22901 or call (804) 293-7945/Autovon: 274-7110 and ask for 293-7945.

The tapes listed below have been produced since the printing of the Catalog and are available to the field.

ADMINISTRATIVE AND CIVIL LAW DIVISION

15th Federal Labor Relations Course (4–8 April 1977)

Number	*Title*	*Running Time*
JA-243-1	*Employment in the Civil Service, Part I* (MAJ M. Scott Magers)	47:00
JA-243-2	*Employment in the Civil Service, Part II* (MAJ M. Scott Magers)	54:00
JA-243-3	*Employment in the Civil Service, Part III* (MAJ M. Scott Magers)	45:00
JA-243-4	*Fundamentals of Federal Labor-Management Relations, Part I* (MAJ Dennis F. Coupe)	49:00
JA-243-5	*Fundamentals of Federal Labor-Management Relations, Part II* (MAJ Dennis F. Coupe)	51:00
JA-243-6	*Employee Discipline, Part I* (MAJ M. Scott Magers)	51:00
JA-243-7	*Employee Discipline, Part II* (MAJ M. Scott Magers)	45:00
JA-243-8	*The Representation Process, Part I* (MAJ Dennis F. Coupe)	49:00
JA-243-9	*The Representation Process, Part II* (MAJ Dennis F. Coupe)	48:00
JA-243-10	*Equal Employment Opportunity, Part I* (MAJ M. Scott Magers)	45:00
JA-243-11	*Equal Employment Opportunity, Part II* (MAJ M. Scott Magers)	49:00
JA-243-12	*The Union Viewpoint of the Federal Labor-Management Relations Program, Part I* (Guest Speaker: Mr. Robert J. Canavan, General Counsel, National Association of Government Employees)	49:00
JA-243-13	*The Union Viewpoint of the Federal Labor-Management Relations Program, Part II* (Mr. Robert J. Canavan)	23:00
JA-243-14	*Unfair Labor Practices* (MAJ Dennis F. Coupe)	54:00
JA-243-15	*Grievances and Arbitration* (MAJ Dennis F. Coupe)	44:00
JA-243-16	*The Role of the Labor and Civilian Personnel Office, OTJAG, Part I* (Guest Speaker: Colonel Robert Comeau, Chief, Labor and Civilian Personnel Law Office, OTJAG)	47:00

Number	Title	Running Time
JA-243-17	*The Role of the Labor and Civilian Personnel Office, OTJAG, Part II* (Colonel Robert Comeau)	50:00
JA-243-18	*The Role of the Civil Service Commission: Present and Future, Part I* (Guest Speaker: Mr. Louis Aronin, Deputy Director, Office of Labor-Management Relations, U.S. Civil Service Commission)	30:00
JA-243-19	*The Role of the Civil Service Commission: Present and Future, Part II* (Mr. Louis Aronin)	60:00
JA-243-20	*Federal Contractor-Employee Relations, Part I* (CPT Gary L. Hopkins, Procurement Law Division, TJAGSA)	47:00
JA-243-21	*Federal Contractor-Employee Relations, Part II* (CPT Gary L. Hopkins)	45:00
JA-243-22	*Federal Contractor-Employee Relations, Part III* (CPT Gary L. Hopkins)	37:00

ADMINISTRATIVE & CIVIL LAW DIVISION (COMMAND & MANAGEMENT)

Number	Title	Running Time
JA-525	*Transactional Analysis* (MF 16-5894) Includes the theory of transactional analysis incorporated in the writings of Eric Berne and Thomas Harris. The Parent, Adult, and Child ego states; life states of the individual; and the games people play are related to management situations; and prescriptions to correct deficient areas are included.	30:00

2. Procurement Attorneys' Two Day Workshop. The October 1977 Procurement Attorneys' Two Day Workshop mentioned in the May issue of *The Army Lawyer*, is designed to surface real problems faced by procurement counsel at post, camp, station and commodity commands. The course is designed to provide a forum where these local problems can be shared with others similarly situated who may encounter similar difficulties. For this reason, staff judge advocates and command counsels are encouraged to begin thinking about problems they want their procurement lawyers to present at the workshop. A workshop schedule and format will accompany letters to the field during the summer to facilitate planning for this October event. The structure will attempt to address problems faced at all stages of the procurement process, from formation to contract close-out with particular emphasis on problems encountered during local settlement of contract claims.

3. TJAGSA Courses.

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).

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* Tentative

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 7-9: Reserve JAG Conference.

September 12-16: 35th Senior Officer Legal Orientation Course (5F-51).

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

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

JUDGE ADVOCATE OFFICER BASIC COURSE (5-27-C20)

Length: 9 weeks.

Purpose: To provide officers newly appointed in the Judge Advocate General's Corps with the Basic orientation and training necessary to perform the duties of a judge advocate.

Prerequisites: Commissioned officer who is a lawyer and who has been appointed or anticipates appointment in the Judge Advocate General's Corps or his service's equivalent. Security clearance required: None.

Substantive Content: The course stresses military criminal law and procedure and other areas of military law which are most likely to concern a judge advocate officer in his first duty assignment.

Criminal Law: Introduction to military law, and the practical aspects of criminal procedure and practice.

Administrative and Civil Law: Introduction to personnel law (military and civilian), legal basis of command, claims, legal assistance and Army organization and management.

Procurement Law: Introduction to the law of U.S. Government contracts.

International Law: Introduction to Law of War and Status of Forces Agreements.

JUDGE ADVOCATE OFFICER ADVANCED COURSE (5-27-C22)

Length: 41 weeks.
Purpose: To provide branch training in and a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers, with emphasis on the positions of deputy staff judge advocates and staff judge advocates.

Prerequisites: Commissioned officer: Career officer of the Armed Forces whose branch is JAGC or his service's equivalent, in fourth to eighth year of active commissioned service. Army officers are selected for attendance by The Judge Advocate General.

Service Obligation: Two years.

Substantive Content: The Judge Advocate Officer Advanced Course prepares career military lawyers for future service in staff judge advocate positions. To accomplish this, the course is oriented toward graduate-level legal education comparable to the graduate programs of civilian law schools. The American Bar Association has approved the course as meeting its standards of graduate legal education. The course is conducted over a two-semester academic year totaling approximately 42 credit hours. It consists of the following curriculum elements:

1. Core Courses consisting of approximately 28 credit hours of criminal law, administrative and civil law, international law, and procurement law subjects, military subjects and communications.

2. Electives presented both by The Judge Advocate General's School and the University of Virginia School of Law totaling approximately 14 credit hours.

SENIOR OFFICERS' LEGAL ORIENTATION COURSE (5F-F1)

Length: 4½ days.

Purpose: To acquaint senior commanders with installation and unit legal problems encountered in both the criminal and civil law field.

Prerequisites: Active duty and Reserve Component commissioned officers in the grade of Colonel or Lieutenant Colonel about to be assigned as installation commander or deputy; service school commandant; principal staff officer (such as chief of staff, provost marshal, inspector general, director of personnel) at division, brigade or installation levels; or as a brigade commander. As space permits, those to be assigned as battalion commanders may attend. Security clearance required: None.

Substantive Content: Administrative and Civil Law: Judicial review of military activities, installation management, labor-management relations, military personnel law, nonappropriated funds, investigations, legal assistance, claims and litigation.

Criminal Law: Survey of legal principles relating to search and seizure, confessions, and nonjudicial punishment. Emphasis is placed on the options and responsibilities of convening authorities before and after trial in military justice matters, including the theories and practicabilities of sentencing.

International Law: Survey of Status of Forces Agreements and Law of War.

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 Advancd Course (BOAC) ADT Phase VI.

Prerequisites: Active duty or Reserve Component military attorneys or appropriate civilian attorneys employed by the U.S. Government, with six 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.

ALLOWABILITY OF CONTRACT COSTS COURSE (5F-F13)

Length: 2½ days.

Purpose: The Allowability of Contract Costs Course is a basic course designed to develop an understanding of the nature and means by which the Government compensates contractors for their costs. The course focuses on three main areas: (1) basic accounting for contract costs; (2) the Cost Principles of ASPR § 15; and (3) the Cost Accounting Standards Board and the Costs Accounting Standards. The course is a mixture of lectures and panel discussions aimed at covering substantive and practical issues of contract costs. This course is not recommended for attorneys who are experienced in application of cost principles.

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one year of procurement experience. Applicants must have success-

fully completed the Procurement Attorney's Course (5F-F10) or equivalent.

Substantive Content: This introductory course will focus on three main areas: functional cost accounting terms and application, the Cost Principles, and Cost Accounting Standards.

CIVIL LAW COURSE (5F-F21)

Length: 2 weeks.

Purpose: To provide a working knowledge in legal assistance and claims. (Students may attend either the week of claims instruction or the week of legal assistance instruction or both.) This course is specifically designed to fulfill one-half of the requirements of Phase IV of the nonresident/resident Judge Advocate Officer Advanced Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase IV.

Prerequisites: Active duty or Reserve Component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. 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: Legal Assistance: statutes, regulations, and court decisions which affect members of a military community, including personal finances, consumer protection, family law, taxation, survivor benefits, civil rights, and state small claims procedures.

Claims: Statutes, regulations and court decisions relating to the Military Personnel and Civilian Employees Claims Act, Military Claims Act, Army National Guard Claims Act, Tort Claims Act and claims in favor of the Government.

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 U.S. Government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, 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 or have attended the Basic or Advanced 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.

MILITARY JUDGE COURSE (5F-F33)

Length: 3 weeks.

Purpose: To provide military attorneys advance schooling to qualify them to perform duties as full-time military judges at courts-martial.

Prerequisites: Active duty or Reserve Component military attorneys. Security clearance required: None. Army officers are selected for attendance by The Judge Advocate General.

Substantive Content: Conference, panel, and seminar forums cover substantive military

criminal law, defenses, instructions, evidence, trial procedure, current military legal problems, and professional responsibility.

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 U.S. 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 in or about to assume a supervisory position in a judge advocate office. 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.

LAW OFFICE MANAGEMENT COURSE (7A-713A)

Length: 4½ days.

Purpose: To provide a working knowledge of the administrative operation of a staff judge advocate office and principles involved in managing its resources.

Prerequisites: Active duty or Reserve Component warrant officer or senior enlisted personnel in grade E-8/E-9 of an armed force. Security clearance required: None.

Substantive Content: Office management; management of military and civilian personnel; criminal law administrative procedures, administrative law procedures, Army management system; office management of a law office, and fundamentals of management theory.

NONCOMMISSIONED OFFICERS ADVANCED COURSE, PHASE II (71D50)

Length: 2 weeks.

Purpose: To prepare enlisted personnel in grades E-6 through E-8, who have completed Phase I administrative training at The Adjutant General's School, to perform duties in grades E-6 through E-9 as chief legal clerks in staff judge advocate offices.

Prerequisites: Noncommissioned officers and specialists in grades E-6 through E-8, selected by Department of the Army. Applicants must have successfully completed Phase I administrative training at The Adjutant General's School. Security clearance required: None.

Substantive Content: SJA office operations and administration; administrative legal procedure; military criminal law procedures; and claims and litigation administration.

5. Civilian Sponsored CLE Courses.

JULY

5-8: LEI, Institute for Legal Counsels, TJAGSA, Charlottesville, VA. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $350.

10-15: American Academy of Judicial Education, A Judge Trial—Problems and Answers; and A Jury Trial—Problems and Answers, Stanford Univ., Stanford, CA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

10-16: NCDA, Executive Prosecutor Course, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-1571.

11-15: Federal Publications, Government Construction Contracting, Anaheim, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: $550.

13-14: LEI, Seminar for Attorneys on the Freedom of Information and Privacy Acts, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $150.

16-23: CPI, Trial Advocacy Seminar, Chicago, IL. Contact: Mrs. A. Brueck, Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone: 312-725-0166.

17-22: ALI-ABA-Univ. of Colorado School of Law, Environmental Litigation, Boulder, CO. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: 215-387-3000.

17-22: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

17-29: American Academy of Judicial Education, Trial Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

19-21: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $200.

24-29: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

26-28: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $200.

27-29: Federal Publication, Construction Contract Modifications, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-7000. Cost: $425.

31-5 Aug.: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

31-12 Aug.: American Academy of Judicial Education, Trial Judges Academy, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

AUGUST

1-5: George Washington Univ.—Federal Publications, Government Contract Claims, Los Angeles, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-7000. Cost: $550.

4-11: American Bar Association, Annual Meeting, Chicago, IL. Contact: American Bar Association, 1155 E. 60th St., Chicago, IL. 60637.

7-12: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

8: FBA-ABA Special Committee on Lawyers in Government, Annual Breakfast at ABA Convention, Chicago, IL.

14-17: American Academy of Judicial Education, Evidence II: Opinion, Competency, Privileges and Best Evidence, New England Center for Continuing Education, Durham, NH. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

18-20: American Academy of Judicial Education, Criminal Law II: Pretrial Procedures, Confessions and Identification, New England Center for Continuing Education, Durham, NH. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

19-4 Sept.: INFORM, Medical Legal Symposium in Japan. Contact: Peggy Mikuni, Yamato Travel Bureau, 312 E. First St., Los Angeles, CA 90012.

20-27: CPI, Trial Advocacy Seminar, Chicago, IL. Contact: Mrs. A. Brueck, Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone: 312-725-0166.

21-26: Eighth World Conference of World Peace Through Law Center, Manila, Philippines. Contact: Charles S. Rhyne, 400 Hill Bldg., Washington, DC 20006.

22-26: Univ. of San Francisco School of Law—Federal Publications, Concentrated Course in Government Contracts, Marriott Inn, Berkeley, CA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-7000. Cost: $550.

26-28: National College of Criminal Defense Lawyers and Public Defenders, Forensic Science, Minneapolis, MN. Contact: Registrar, NCCDLPD, Bates College of Law, Univ. of Houston, 4800 Calhoun Blvd., Houston, TX 77004. Phone: 713-749-2283.

28-4 Sept.: International Congress on Civil Procedure "Toward Law Courts With a Human Face," Ghent, Belgium. Contact: Int'l Congress, Coupure 3, B-9000 Ghent, Belgium.

29-31: Federal Publications, Construction Contract Modifications, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-7000. Cost: $425.

Legal Assistance Items

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

1. ITEMS OF INTEREST

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections. On 6 April 1977, President Carter transmitted a message to the Congress proposing that measures be taken to enhance the movement in the Congress and among the people to create a strong consumer voice within government. The measure proposed was the creation of an Agency for Consumer Advocacy (ACA), a small agency mostly made up of resources already scattered throughout the government. The purpose of the ACA would be six-fold: First, it would plead consumer cases within the government. Second, it would improve the way rules, regulations, and decisions are made and carried out. Third, it would help Congress and the President search out obsolete and inefficient programs now in existence. Fourth, it would help Congress and the President correct inequities in programs and procedures which are supposed to protect consumers. Fifth, it would monitor governmental actions that unnecessarily raise cost for consumers. Lastly, the ACA would keep costs down through its intervention in government activities and by information collection, analysis and dissemination.

The President expressed a desire that certain principles be reflected in a bill creating the agency. He suggested that the bill make provisions to consolidate most governmental consumer functions in the Agency. The ACA administrator should be a presidential appointee serving at the President's pleasure. The Agency should also be able to intervene or otherwise participate in proceedings before federal agencies when necessary to insure adequate representation of consumer interest, and in judicial proceedings involving agency actions.

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regula-

tory Consumer Protections—Truth in Lending Act. On 12 April 1977 the Board of Governors of the Federal Reserve System amended its Regulation *Z* (Truth in Lending) to require advanced disclosure of any variable rate clause in a credit contract that may result in an increase in the cost of the credit to the customer.

The new rule will become effective 10 October 1977.

The amendment adopted was substantially similar to a proposal issued by the Board for public comment last October.

The main requirements of the new rule include disclosure of:

—The fact that the annual percentage rate on the transaction is subject to increase. (The October proposal would have applied to all situations in which the annual percentage rate was subject either to an increase or decrease.)

—The conditions under which the rate may increase, including identification of any index to which the rate is tied, and any limitation on the increase.

—The manner in which an increase may be effected, including an increase in payment amounts, a change in the number of scheduled payments, or an increase in the amount due at maturity.

—Numerical examples—in the case of home mortgage transactions only—based on a hypothetical immediate increase of one quarter of a percentage point in the annual percentage rate, effected through a change in the number of scheduled payments, or an increase in the amount of those payments.

The requirement for numerical examples for residential mortgages applies to transactions in which a security interest is taken in real property used or expected to be used as the customer's dwelling and need not be made in transactions primarily for agricultural purposes.

[Ref: Ch 10, DA PAM 27-12.]

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth in Lending Act. On 12 April 1977 the Board of Governors of the Federal Reserve System amended its Regulation *Z* (Truth in Lending) to permit—but not require—disclosures called for by the Truth in Lending Act and Regulation *Z* to be made in Spanish in Puerto Rico.

At the customer's request disclosures must be provided in English. [Ref: Ch 10, DA PAM 27-12.]

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth-in-Lending Act. The Board of Governors of the Federal Reserve System recently adopted an interpretation of its Truth-in-Lending Regulation *Z* which states that the amount of a dealer's participation in the finance charge on the credit purchase of an automobile or other durable goods need not be disclosed as a separate part of the finance charge. At the same time the Board withdrew a proposal that would have required disclosure of the fact but not the amount of a dealer's participation. [Ref: Ch 10, DA PAM 27-12.]

Family Law—Domestic Relations. On March 9, 1977, The Texas Court of Civil Appeals sitting in Austin ruled on a case of first impression. In the instant case there was a premarital contract between the surviving spouse and the deceased husband wherein she relinquished her right as the surviving spouse to occupy the homestead, use its furnishings, and use the family car. The court ruled that the premarital contract had no force and effect on her constitutional and statutory rights in the properties. By way of explanation, the court admitted that Texas law permits certain premarital agreements, but that in order to waive a right by a premarital agreement, such right or privilege must exist at the time of the waiver. Since the homestead right of a surviving spouse does not exist until the death of the other spouse, the right did not exist at the

time the premarital contract was executed. Consequently, the premarital contract in question is unenforceable since it purports to waive rights which were then not in existence. *Williams v. Estate of Williams,* No. 12,511 (Tex. Civ. App. Mar. 9, 1977). [Ref: Ch 34, DA PAM 27-12.]

The ACA should be represented by its own lawyers and the administrator will be instructed to establish responsible priorities. The Agency should have its own information gathering authority, to include appropriate access held by other governmental agencies and private concerns. Small businesses should be exempt from the Agency's direct information gathering authority. Measures should be incorporated to insure that needless burdens are not imposed on business or other governmental agencies.

The Agency's participation in large administrative proceedings is but one of a number of steps which would protect the consumer. Some of these steps mentioned by the President are legislation which would allow consumer groups to represent themselves in agency and judicial proceedings and would give federal courts more discretion to reimburse litigation costs for successful plaintiffs in cases of public importance; legislation which would give citizens broader standing to initiate appropriate suits against the government; and legislation to expand the opportunities for responsible class actions, starting with violations of consumer's rights. [Ref: Ch 10, DA PAM 27-12.]

Family Law—Domestic Relations—Marriage —Overseas Marriages. A new AR 600-40 was issued on 15 March 1977, superseding the old AR 600-240 which was dated 17 December 1965. This revision changes the term "quota" to "numerical limitation" and "nonquota" to "immediate relative" with regard to the classification of certain aliens for entry into the United States; eliminates blanket requirement for notarized permission from parent or legal guardian in all cases in which the applicant is under 21 years of age; establishes requirement for written notarized permission of parent or legal guardian of the applicant and the intended spouse if he or she is under the legal age for marriage established by the law of the State, territory, or country in which the marriage is to take place; provides that only United States citizens may petition for entrance of alien spouses into the United States for permanent residence without numerical limitation; provides guidance on the procedures for United States military personnel petitioning for entry of alien fiancee or fiance into the United States to conclude a valid marriage within a period of ninety days after entry; and provides a new listing of "dangerous contagious diseases" in conformance with the official definition of the term. Local supplementation of this regulation is prohibited, except upon approval of HQDA (DAPC-EPA-P), 2461 Eisenhower Avenue, Alexandria, VA 22331. [Ref: Ch 20, DA PAM 27-12.]

Legal Assistance—Resource Materials. Various agencies of the Federal government are responsible for promulgating regulations designed to implement legislation. For example, the Federal Reserve System, through its Board of Governors, is responsible for Regulation *Z*, the implementing regulation of the Truth-in-Lending Act. Another prominent agency in the field of consumer affairs is the Federal Trade Commission. These agencies will provide, at the Legal Assistance Officer's request, copies of the regulations which come under their purview, interpretations to those regulations, formal and informal opinions regarding those regulations, and a wealth of other materials associated with the agencies' responsibilities. For example, by corresponding with the nearest Federal Reserve Bank and getting the name of your organization (mailable to the Legal Assistance Officer) on their mailing list, you will receive the latest version of Regulation *Z*, news releases pertaining to activity in the Regulation *Z* area, staff interpretations of Regulation *Z* and formal and informal opinions rendered by the staff concerning Regulation *Z*. Information such as this will keep the

Legal Assistance Officer informed in a timely manner about the laws and regulations in specific areas of interest, and will allow him to carry on a better preventive law program in those areas. [Ref: Ch 10, DA PAM 27-12.]

Real Property—Leasing Real Property. The Court of Civil Appeals sitting in Tyler, Texas, held in the instant case that delivery is essential in order for a written lease to be binding and enforceable, and that the same rules which are applicable in determining whether a deed was delivered are applicable in the determination of whether a lease was delivered. *Scroggins v. Roper,* No. 993 (Tex. Civ. App. Mar. 3, 1977), [Ref: Ch 34, DA PAM 27-12.]

Taxation—Federal Estate Tax and Gift Tax—Interest Free Loans. In *Crown v. Commissioner,* decided 31 March 1977, the U.S. Tax Court ruled that the lending of money interest-free, even to a relative, is not a gift for purposes of the gift tax. The Tax Court concurred in an earlier District Court decision (*Johnson v. United States,* 254 F. Supp. 73 (1966)) which held that such loans did not enable the lender to avoid future estate taxes since the loan principal was still part of his estate. The Tax Court also concluded that the multitude of situations involving free use or sharing of property among relatives would make the gift tax procedure unmanageable if such loans or use were treated as gifts. [Ref: Ch 42, DA PAM 27-12.]

Taxation—Federal Income Tax—Business Expenses. The United States Tax Court in a Memorandum Decision, *Hatch,* 1976—384, once again reviewed the deductibility for income tax purposes of the cost of military uniforms and officers' club dues. The petitioner, a Major in the United States Army, had deducted from his income, as a business expense, the cost of his dress blue uniform, his officers' club dues, and expenses he incurred for entertainment at military functions. These deductions were not permitted by the Internal Revenue Service.

The Tax Court, in disallowing the claimed deductions for cost of the dress blues, reviewed its prior decisions and stated:

> On numerous occasions, this court has held that uniform expenses are personal in nature and therefore nondeductible except where the particular item of clothing (1) is required or essential to the taxpayer's employment, (2) is not suitable for general or personal wear, and (3) is not so worn.

In this case the court concluded that dress blues were suitable to be worn while off duty for general or personal wear. This decision does not change the deductibiilty of the cost of rank and branch insignia or the cost of uniforms which the servicemember is prohibited by regulation from wearing for general or personal wear (*i.e.,* where a local regulation prohibits the wear of fatigues off post.)

The court disallowed the deductions for officers' club dues and the expenses incurred for entertainment at military functions on the basis that the military functions were primarily social in nature and that the officers' club was not used primarily for business purposes. It concluded that without a clear showing of the business purpose of the expense, such expenditures for entertainment did not meet the business purpose test required by Section 274(d) of the Internal Revenue Code. [Ref: Ch 41, DA PAM 27-12.]

Taxation—State and Local Income Tax—New Jersey. In response to an inquiry from a New Jersey attorney, the Division of Taxation, Department of the Treasury, State of New Jersey, stated, in a letter opinion, that military housing and subsistence allowances will not be considered income for New Jersey Gross Income Tax Purposes. It further advised in the same letter that it deemed the tenant tax credit, as applied to the New Jersey Gross Income Tax, to be applicable only with respect to a dwelling which was rented during the taxable year within the State of New Jersey. [Ref: Ch 43, DA PAM 27-12 and *The Army Lawyer,* Sept. 1976, at 16, Dec. 1976, at 25, and Apr. 1977, at 29.]

2. PENDING LEGISLATION

Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Fair Credit Reporting Act. H.R. 3875, 95th Cong., 1st Sess. (1977). A bill to amend the Fair Credit Reporting Act of 1977. Referred to the Committee on Banking, Finance and Urban Affairs. [Ref: Ch 10, DA PAM 27-12.]

Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Consumer Credit Protection Act. H.R. 5294, 95th Cong., 1st Sess. (1977). A bill to amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors. The Debt Collection Practices Act reported from Banking, Finance and Urban Affairs 29 March 1977; Report No. 95-131. Union Calendar. Passed House 4 April 1977. In Senate, referred to Banking, Housing and Urban Affairs 6 April (legislative date of 21 February) 1977. [Ref: Ch 10, DA PAM 27-12.]

Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Consumer Credit Protection Act. S. 918, 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, Housing and Urban Affairs. [Ref: Ch 10, DA PAM 27-12.]

3. ARTICLES AND PUBLICATIONS OF INTEREST

Taxation—Federal Estate Tax and Gift Tax. Johnson, *Effect of the 1976 Federal Estate and Gift Tax Changes on Estate Planning Objective,* 1 So ILL. U.L.J. 299 (1976). [Ref: Ch 13 and 42, DA PAM 27-12.]

Meldman and Weine, *Federal Tax Consequences of Ordinary Transactions in Real Estate,* 60 MARQ. L. REV. 61 (1976). [Ref: Ch 13 and 42, DA PAM 27-12.]

JAGC Personnel Section

PP&TO, OTJAG

1. Assignments

NAME	*FROM*	*TO*	*APPROX DATE*
		LIEUTENANT COLONELS	
COKER, James R.	SETAF APO 09168	USATC Ft Dix NJ	Aug 77
GREEN, James L. (Diverted)	OTJAG	7th Inf Div Ft Ord CA	Aug 77
KUCERA, James	Stu Det/Geo Wash Univ	OTJAG	Jul 77
MORROW, Cecil R.	Ballistic Msl Cmd Arl VA	National Guard Bureau	May 77
RUNKE, Richard P., Jr.	32d AD Cmd APO 09227	QM Ctr Ft Lee VA	Aug 77
		MAJORS	
ARNESS, Franklin D. (Diverted)	USAREUR	USA AF Exc Svc Dallas TX	Aug 77
BATTS, William M., III	Stu Det Ft Ben	USAG Ft Meade MD	Oct 77
NICHOLS, John J. (Diverted)	I Corps APO 96358	OTJAG	Aug 77
		CAPTAINS	
BARNES, Joseph R.	Stu Det Ft Ben	24th Inf Div Ft Stewart GA	Oct 77
BEAVERS, Graten D.	3d Armd Div APO 09039	USALSA	Oct 77

NAME	*FROM*	*TO*	*APPROX DATE*
BEARDSLEY, Anthony W.	3d Armd Div APO 09039	USALSA	Oct 77
BELT, Juia A.	Stu Det Ft Ben	USAG Ft Sam Houston TX	Oct 77
BLAKELY, Richard S.	USA Japan	26th Adv Cls TJAGSA	Aug 77
BOYD, James M.	USATC Ft Ord, CA	USMA West Point NY	Jun 77
BROWNBACK, Peter E., III	Stu Det Ft Ben	82d ABN Div Ft Bragg NC	Out 77
CARON, William J.	3 Inf Div APO 09036	26th Adv Cls TJAGSA	Aug 77
CARTER, James H.	Stu Det Ft Ben	USATC Ft Polk LA	Oct 77
CASEY, William M.	Stu Det Ft Ben	9th Inf Div Ft Lewis WA	Oct 77
COX, Robert A.	Stu Det Ft Ben	172d Inf Bde APO 08749	Oct 77
CREA, Dominick A.	Stu Det Ft Ben	193d Inf Bde APO 09832	Oct 77
CURTIS, Howard G.	Stu Det Ft Ben	Fld Arty Ctr Ft Sill OK	Oct 77
DE NOOYER, Leroy L.	USMA West Point NY	21st Sup Cmd APO 09325	Jul 77
GEOFFREY, Russell J.	USAG Ft Devens MA	USMA West Point NY	Jun 77
GONZALES, Joseph A.	USMA West Point NY	US Eng Dist Mobile AL	Aug 77
GOO, Lester M. (Diverted)	USACC Taiwan	26th Adv Cls TJAGSA	Aug 77
GRANT, Artis C.	USAG Pres of SF	USA Phy Dis Agcy/w dty PEB Pres of SF	May 77
GUILFORD, Jeffrey S.	Stu Det Ft Ben	Armor Ctr Ft Knox KY	Oct 77
HANN, James F.	Stu Det Ft Ben	Admin Ctr Ft Ben	Oct 77
HARING, John G.	Stu Det Ft Ben	USACC Ft Huachuca AZ	Oct 77
HARRIS, Jeffrey L.	Stu Det Ft Ben	2d Armd Div Ft Hood TX	Oct 77
HEFFELFINGER, Harlan M.	Stu Det Ft Ben	9th Inf Div Ft Lewis WA	Oct 77
HEMINGWAY, Charles W.	Stu Det Ft Ben	Fld Arty Ctr Ft Sill OK	Oct 77
HOLLAND, Robert F.	Stu Det Ft Ben	101st ABN Div Ft Campbell KY	Oct 77
HOUGH, Richard J.	OTJAG	OTIG WASH DC	Jun 77
HUFFMAN, Walter B.	Stu Det Ft Ben	7th Inf Div Ft Ord CA	Oct 77
ISAACSON, Scott P.	Stu Det Ft Ben	USAG Pres of SF	Oct 77
JACKSON, Robert T., Jr.	3d Inf Div APO 09036	26th Adx Cls TJAGSA	Aug 77
JENNINGS, James W., Jr.	Stu Det Ft Ben	USAREUR	Oct 77
JOHNSON, Jon K.	USAG IGMR Annville PA	USA Eng Div Pac APO 96558	Aug 77
JOYCE, John F.	Stu Det Ft Ben	4th Inf Div Ft Carson CO	Oct 77
KARJALA, John G.	Stu Det Ft Ben	OTJAG	Jul 77
KELLER, Thomas R.	Stu Det Ft Ben	25th Inf Div APO 96225	Oct 77
KINDER, Larry E.	Stu Det Ft Ben	USATC Ft Leonard Wood MO	Oct 77
KING, Ward D.	Stu Det Ft Ben	JFK Ctr Ft Bragg NC	Oct 77
LITTLEWOOD, Theodore P., Jr.	Stu Det Ft Ben	USAREUR	Oct 77

NAME	*FROM*	*TO*	*APPROX DATE*
MC CONNELL, Robert M., III	Stu Det Ft Ben	4th Inf Div Ft Carson CO	Oct 77
MC DONALD, Peter A.	Stu Det Ft Ben	24th Inf Div Ft Stewart GA	Oct 77
MC GORY, Michael P.	OTJAG	USALSA	Jul 77
MC KAY, Bernard J.	Stu Det Ft Ben	USAREUR	Oct 77
MC QUEEN, Jay D.	Stu Det Ft Ben	Armor Ctr Ft Knox KY	Oct 77
MIRAKIAN, Stephen G.	Stu Det Ft Ben	USATC Ft Dix NJ	Oct 77
MORA, Raul E. (Diverted)	Ofc of US CMDR APO 09742	USACC Taiwan	Aug 77
MURRELL, James O.	Stu Det Ft Ben	USATC Ft Dix NJ	Oct 77
MUSE, Stephen H.	Stu Det Ft Ben	Fld Arty Ctr Ft Sill OK	Oct 77
NACCARATO, Timothy E.	Stu Det Ft Ben	1st Inf Div Ft Riley KS	Oct 77
O'DOWD, John H.	Stu Det Ft Ben	USAREUR	Oct 77
OLENSLAGER, Delbert S.	9th Inf Div Ft Lewis WA	Elec Cmd Ft Monmouth NJ	Sep 77
PEDERSEN, Walton E.	Stu Det Ft Ben	USAG APG MD	Oct 77
POLLEY, James D.	Stu Det Ft Ben	USAREUR	Oct 77
PRICE, Wayne H.	USA CAC Ft Leavenworth KS	USMA West Point NY	Jun 77
RENTON, Richard F.	82d ABN Div Ft Bragg	USALSA	Jul 77
RICE, Francis P.	Stu Det Ft Ben	III Corps Ft Hood TX	Oct 77
RUDD, Michael T.	Phy Eval Ft Gordon GA	USASTC Ft Gordon GA	May 77
SCHMALZ, Henry E.	8th Inf Div APO 09111	USALSA	Oct 77
SCHNEIDER, Michael E.	Stu Det Ft Ben	25th Inf Div APO 96225	Oct 77
SHACKELFORD, William H., Jr.	Stu Det Ft Ben	1st Inf Div Ft Riley KS	Oct 77
SOLOW, Shelley M.	Phy Eval Pres of SF	Letterman AMC Letterman CA	May 77
SPITZ, Terry L.	8th Inf Div APO 09111	USALSA	Oct 77
STAIHAR, Nich J.	9th Inf Div Ft Lewis WA	Armament Cmd Rock Island IL	Aug 77
ST AMAND, Gerard A.	USATC Ft Leonard Wood MO	USMA West Point NY	Sep 77
STUDER, Eugene A.	Stu Det Ft Ben	Msl Cmd Redstone AL	Oct 77
THOMAS, John G.	Stu Det Ft Ben	USAG APG MD	Oct 77
TORRES, Juan H.	Health Svcs Cmd Ft Sam Houston, TX	Phys Dis Agcy w/sta Ft Sam Houston TX	Jul 77
TUCKER, Jeffrey T.	Stu Det Ft Ben	USATC Ft Dix NJ	Oct 77
VALLECILLO, Carlos A.	USAG Ft Stewart GA	USALSA	Jul 77
WINGATE, Thomas P.	25th Inf Div APO 96225	Avn Sys Cmd St Louis MO	Oct 77
WITTMAYER, Chris G.	Stu Det Ft Ben	1st Inf Div Ft Riley KS	Oct 77
	2nd LIEUTENANT		
RIDDLE, David A.	Stu Det Ft Ben	USAREUR	Oct 77

REVOCATIONS—CAPTAINS

NAME	*FROM*	*TO*	*APPROX DATE*
JONES, Robert D.	USALSA	26th Adv Cls TJAGSA	Aug 77
MARSHALL, Frank C.	USAREUR	26th Adv Cls TJAGSA	Aug 77
MELBARDIS, Wolfgang A.	USMA West Point NY	26th Adv Cls TJAGSA	Aug 77
WAPLE, Mark L.	XVIII ABN Corps Ft Bragg NC	26th Adv Cls TJAGSA	Aug 77

2. Promotions

LIEUTENANT COLONEL—AUS

COHEN, Robert E.	1 May 77
COLEMAN, Gerald C.	1 May 77
DAVIS, Ronald W.	1 May 77
FOREMAN, LeRoy F.	1 May 77
FORYS, Conrad W.	1 May 77
ISKRA, Wayne R.	1 May 77
PIOTROWSKI, Leonard R.	1 May 77
ROSE, Lewis J.	1 May 77
SHERWOOD, John T.	1 May 77
WHITTEN, William M.	1 May 77
WOODWARD, Joe L.	1 May 77

CAPTAIN—AUS

CARLSON, Louis D.	18 May 77

LIEUTENANT COLONEL—RA

MC NEALY, Richard K.	28 May 77

MAJOR—RA

WERNER, Steven M.	27 May 77

FIRST LIEUTENANT—RA

GRANT, Artis C.	4 Apr 77

Current Materials of Interest

Articles

Stone, *Hopes and Loopholes in the 1974 Definition of Aggression,* 71 AM. J. INT'L L. 224 (1977).

Oxman, *The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions,* 71 AM. J. INT'L L. 247 (1977).

McDowell, *Contemporary Practice of the United States Relating to International Law,* 71 AM. J. INT'L L. 337 (1977). [At 346 the article summarizes Public Law 94-390, which provides for settlement under international agreements of certain claims incident to the noncombat activities of the armed forces.]

Official Documents, *United States—Mexico: Treaty on the Execution of Penal Sentences,* 71 AM. J. INT'L L. 393 (1977).

Nash & Love, *Innovations in Federal Construction Contracting,* 45 GEO. WASH. L. REV. 309 (1977).

Case

Case Developments, *Criminal Procedure: Doorway of a Private Residence Defined as a Public Place for Purposes of a Warrantless Arrest—United States v. Santana,* [96 S. Ct. 2406 (1976),] 20 How. L.J. 222 (1977).

DA Circular

DA Circular No. 310-95, 1 April 1977, deals with Pinpoint Distribution of the *Military Law Review* (DA Pam 27-100 Series).

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

☆ U.S. GOVERNMENT PRINTING OFFICE: 1977 720-191/6 1-3