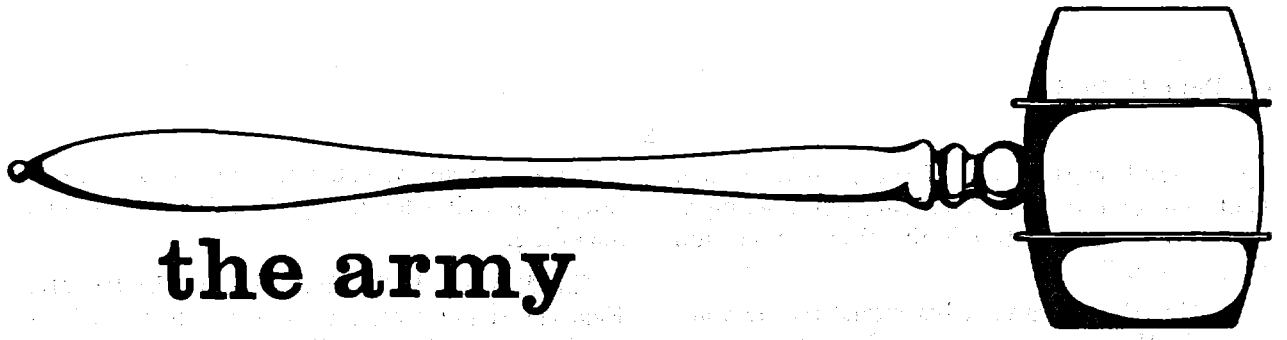

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The Case of the Missing Crime or When Is a Speed Limit Not a Speed Limit?

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"This is Uncle Brutus for Station JWMU bringing you the Townsville area morning traffic report. The Townsville police report a three-car accident on Main Street. All motorists are advised to detour by taking Kelly Avenue through Fort Big."

"Good thing I heard that report," thought Mr. Fast, as he turned onto Kelly Avenue. "Another couple of blocks and I would have run straight into that jam on Main." The speed limit sign read 45 mph. For the first time in days Fast was not going to be late for work. He figured the timely detour and the higher speed limit would permit him time for a cup of coffee before arriving at work. As the guard at the Fort Big gate waved him on, Mr. Fast began turning his radio dial, trying to tune in a local sports report.

Moments later he spotted in his rear view mirror the flashing red lights of a military police car. As Fast pulled to the side of the road and watched the military policeman approach the car, he silently mourned the loss of that cup of coffee.

"Good morning officer, something wrong?"

"I'm afraid you were speeding sir. May I see your driver's license please?"

"But officer, I could have sworn the speed limit sign I passed read 45 mph," he protested. The military policeman continued to prepare the notice of violation.

"Mr. Fast, you must have overlooked the

sign posted on this side of the gate entrance. That one read 35 mph. You were going 44 mph, 9 mph over the posted limit. Would you sign here, please?"

As Mr. Fast scrawled his signature he complained, "I don't understand. The speed limit on this road is 45 mph. Why the change to 35 mph on the base?" The officer explained. "The Post Commander has established 35 mph as the posted limit for Fort Big. While driving on the installation, you must observe the posted speed limits no matter what the state speed limit is. In the future please drive more carefully, Mr. Fast."

"Yes, officer. Goodbye."

On the appointed day Mr. Fast appeared before Mr. Rule, the U.S. Magistrate. Mr. Rule explained: "Mr. Fast, your speeding violated the state motor vehicle code which has been made applicable to Fort Big by the Assimilative Crimes Act." Mr. Fast was then informed that he must give his consent to trial by Mr. Rule; otherwise his case would be forwarded to the United States District Court for disposition.

Fast knew how poorly a case for a mere speeding violation would be received by a busy federal court judge, so he consented to have Mr. Rule hear the case. After signing the requisite consent form the trial proceeded.

Mr. Fast told the court that he did not need a lawyer and that he did not believe he had been speeding.

The Military Policeman who had issued Mr. Fast the ticket gave an accurate account of the incident. At this point Fast realized how futile it was to protest, so he did not question the officer. He was found guilty as charged and fined $30.00.

At lunch that afternoon, Mr. Fast told his business partner about the ticket. Mr. Partner, an attorney, responded: "You didn't have to pay that fine. A change in the speed limit can only be authorized by the State Roads Commissioner or a local municipal traffic authority."

"Well, I guess the Fort Big Post Commander considers himself a local municipal authority."

"That may be true, but the statutes don't consider him one. The statute does not mention the commander of a military base. Fast, you've been had."

This is the response many lawyers might give to a civilian who had been issued a notice of violation for exceeding an installation traffic speed limit. The response, however, may not be accurate. Are a post commander's speed limits, which differ from state statutory law, assimiliated and enforceable by virtue of 18 U.S.

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Code Section 13 (the so-called Assimilative Crimes Act)?

The purpose of this article is to examine available criminal sanctions against nonmilitary persons for violation of post traffic regulations. The Assimilative Crimes Act will be examined to determine if post commanders have the authority to enforce post traffic regulations with penal sanctions.

Are Post Traffic Regulations Enforceable?

The first Federal Crimes Act defined several offenses, including treason and the commission of murder on areas of federal exclusive or concurrent jurisdiction.[1] The need to deal more extensively with minor offenses on federal enclaves prompted the enactment of the Assimilative Crimes Act.[2] First enacted in 1825, it adopted as federal law, the criminal laws of the state in which the enclave is located. It expressed congressional intent to conform federal law to those state laws in effect as of the date of the congressional enactment. The statute was periodically reenacted so that state laws passed after the previous Assimilative Crimes Act could be assimilated.

The present Assimilative Crimes Act, enacted in 1948, differs significantly from its predecessors in that it provides for the assimilation of any state criminal statute in effect *at the time the offense is committed.*[3] In *United States v. Sharpnack*[4] the Supreme Court held that Congress had a constitutional basis for adopting into federal law acts or omissions yet to be made criminal by state legislation.

It should be noted, however, that all criminal statutes are not capable of assimilation. An obvious example is a statute designed to assist state government officials in the performance of their duties.[5] At one time The Judge Advocate General advised that a state statute could not be expanded by an installation commander, nor could he implement it by his regulations even though a state executive could issue criminally enforceable regulations on the same matters.[6] This included traffic codes where such codes required implementation by state or local traffic commissioners. For example, many state traffic codes permit a state traffic commissioner to set speed limits below state established limits for rural or urban areas where safety so dictates. This principle that a post commander could not stand in the shoes of a state traffic commissioner was based upon an earlier Judge Advocate General opinion, which stated:

> (T)o be within the purview of the Assimilative Crime statutes the offense in a given case must be capable of being wholly within a military reservation, and must be disconnected with administrative acts done under the jurisdiction of the state.[7]

The authority cited for the above statement was *Fort Leavenworth Railroad Co. v. Lowe.*[8] In that case, the plaintiff, a Kansas corporation and owner of rail bed situated within the confines of Fort Leavenworth, sued to recover *ad valorem* property taxes it had paid under protest to the state of Kansas. The court found that Kansas could lawfully collect taxes from the railroad since the state had validly reserved the authority to do so when it ceded jurisdiction over Fort Leavenworth to the U.S. The court noted that Kansas could tax the railroad because the railroad was not a government instrumentality and Kansas had specifically reserved the power to tax in its statute ceding jurisdiction over all other matters to the United States. It appears that reliance upon this case as authority for the proposition that statutes which require implementation may not be assimilated is strained. The case did not concern an exercise of authority by a post commander or even with the Assimilative Crimes Act or any other federal statute adopting state law applicable to the enclave.

The Judge Advocate General opined that the violation of post traffic regulations by a person not subject to military law is not a federal offense within the meaning of the Assimilative Crimes Act.[9] However, in 1969, TJAG modified his previous position. In 1969 the rule was established that whether a state statute could be assimilated depended upon the type of administrative implementation needed to make it effec-

tive.[10] A state statute which required only ministerial decision-making on the part of a state executive administrator could be assimilated where a post commander takes similar action. This type of decision making includes such matters as erection of stop signs and traffic lights. The annotated opinion, incorporated by reference in the Judge Advocate General's opinion, stated that where the state executive administrator is required to exercise discretionary or legislative decision making and a post commander takes similar action, the state statute cannot be assimilated. The annotated opinion noted as an example, the fixing of speed limits lower than state law established speed. This type of assimilation was considered unconstitutional as a double delegation of legislative authority.

The opinion cited no authority for the legislative/ministerial distinction. However, in an earlier part of the opinion the Supreme Court case of *Johnson v. Yellow Cab Transit Co.*[11] had been noted. In that case, the Court decided whether an interstate carrier, who was authorized to transport liquor from Illinois through Oklahoma to Fort Sill, a military reservation located in Oklahoma, violated a state law which specifically proscribed the sale or disposal of liquor in that state. The Court found that the state law did not proscribe the mere transportation of liquor *through* Oklahoma. It forbade the disposal of liquor *in* the state. It noted that Fort Sill was not under the legislative jurisdiction of the state because it was a federal enclave, and that state law, as such, was inapplicable on federal installations. The Court therefore held that the disposal of liquor in Fort Sill did not constitute a violation of the Oklahoma law.

The Petitioners in *Johnson* also argued that the Assimilative Crimes Act made the state statute applicable to Fort Sill as federal law. In reply to this, the Court stated that there were three questions which required affirmative answers before a state criminal statute could be assimilated.

1. Does such statute make penal the transaction alleged to have taken place?
2. Is the statute so designed that it can be adopted under the Act?
3. Is the law not in conflict with federal policies as expressed by other acts of Congress or by valid administrative regulations which have the force of law?

Drafters of annotated opinions for The Judge Advocate General have repeatedly used this case and these questions as the basis for determining that state traffic laws, which required implementation by administrative regulation, could not be assimilated. Yet, the Court in *Johnson* did not answer the questions it posed as *dicta*. Not only was the Court's decision based on grounds unrelated to the Assimilative Crimes Act, but the Court stated unequivocally that it was avoiding questions regarding the Act. It appears that the *Johnson* case standing alone is insufficient authority for the proposition that state criminal statutes may not be assimilated if they require implementation by installation commanders through administrative procedures.

In a footnote,[12] the Court queried whether, if a state criminal statute imposed a penalty for the failure to obtain a license for trafficking in liquor, a federal official might not be required to obtain such a license were the Court to rule the Assimilative Crimes Act applicable to a federal enclave. The Court stated that for Congress to permit state licensing of federal officials, a more specific statute than the Assimilative Crimes Act would be required. But it did not then rule on the issue (finding it to be too important to decide in a case where the United States was not a party). Clearly, the Court was concerned with the issue of assimilating crimes which conflict with federal policy rather than whether executive officials of the state may implement state criminal statutes and these executive regulations (not conflicting with federal policy) may be assimilated. Speed limits established by the post commander clearly do not raise the problem of conflict with federal policy.

In *United States v. Sharpnack*,[13] the Supreme Court addressed the argument used by the drafter of the annotated opinion that as-

similation of a state statute which required implementation was unconstitutional as a double delegation of congressional authority. It noted that in enacting the Assimilative Crimes Act, Congress was not delegating to the states its authority to make legislation for federal enclaves; Congress was merely adopting for federal enclaves those offenses and punishments already put in effect by the respective states. Hence a delegation of implementing authority in state criminal codes to administrative officials or bodies does not constitute a further delegation of congressional authority.[14]

So far, the courts have not ruled on the validity of the ministerial/discretionary test in determining the assimilative capabilities of a statute. The test has been labeled a strained attempt to subdivide an administrative responsibility incapable of subdivision.[15] Because state statutes provide authority to an executive to change speed limits or erect stop signs when safety requires, whether a state traffic statute can be assimilated when the same changes are made by a post commander should depend upon the "standards" used by the post commander in setting up his traffic regulation program rather than depending on an arbitrary distinction such as ministerial or discretionary decision-making. A court then would determine whether the speed limits are enforceable by testing the standards used by the post commander to see if they were the same as those in the state statute. If the post commander's standards are similar to those used by the state officials who are designated by statute to implement the state code, then the statute should be assimilated to enforce the post commanders regulations. If the standards are the same, then the will of congress, that a complete equivalent traffic code exists within enclaves, would be satisfied.

Some lower federal courts have already used this approach in deciding an analogous issue. In *United States v. Barner*,[16] the court permitted the assimilation of a California statute which prohibited driving upon a highway while under the influence of alcohol. The relevant statute defined a highway as a road which was publicly maintained. The defendant argued that, as a matter of law, the roadways on McClellan Air Force Base were not highways, because they were not maintained by the state of California. The court rejected his contention that public maintenance necessarily meant maintenance by the state and held that the highways were being maintained by the sole sovereign having jurisdiction over the area, namely, the United States. Citing the intent of Congress to provide a complete traffic code to the enclave, the court rejected the technical word-smithing argument.

In effect, the court considered maintenance of the roads by the United States substantially similar to maintenance by the state. In so holding, it gave effect to the purpose behind the statute defining the offense of driving while intoxicated, which was to promote safety on highways.

A recent example of a court's use of the "equivalent standards test" may be found in a memorandum by the Honorable Paul M. Rosenberg, United States Magistrate for the District Court of Maryland.[17] The memorandum addressed two cases, *United States v. Church* and *United States v. Metcalf*. Both cases concerned traffic violations which occurred at Aberdeen Proving Ground. Church was charged under § 11–403 of the Maryland traffic code for failure to observe a stop sign. Metcalf was charged under § 11–801 for speeding. Both moved to dismiss on the ground that the statutes could not be assimilated. They based their contention upon the fact that neither the stop sign nor the speed limit sign had been erected pursuant to the state traffic code by the appropriate official. According to other sections of the code, only the State Roads Commission and local municipal authorities could erect such signs.[18] The stop sign and the speed sign in question had been erected pursuant to the regulations of the commander of Aberdeen Proving Ground. The defendants argued that because the Maryland Code did not expressly permit an Army post commander to erect such signs, the code could not be used to enforce them.

The Magistrate found that § 11–403 and § 11–801 adequately defined the offenses

charged. He held the Assimilative Crimes Act does not necessarily incorporate the whole of a state's criminal law. Thus, there was no need to dismiss the charges merely because the signs had not been erected by the State Roads Commission or a local municipal authority.

Metcalf moved, in the alternative, for acquittal on the grounds that the code authorized only the State Roads Commission or local municipal authorities to set speed limits which differed from the limits already established by statute. He argued that because the statutes did not authorize an installation commander to change speed limits, the code could not be used to enforce those limits. According to the Maryland statute, a local municipal authority is defined as a city or county or legislative body which acts under the Constitution and the laws of the state of Maryland.[19] The court found that the commanding officer of Aberdeen Proving Ground was not a local municipal authority because he did not act under the laws of the state of Maryland. It noted, however, that the substance and core of the offense set forth in § 11-801 by the Maryland legislature was that of driving vehicles on a highway at a speed in excess of authorized limits and that neither the State Roads Commission nor local authorities changed the substantive definition of that offense when they changed any speed limits. The court stated that its holding was merely giving effect to the intent of Congress in enacting the Assimilative Crimes Act to afford to people on federal enclaves the same highway safety that they would be afforded in the surrounding state.

In effect, the court analogized the authority of the installation commander to that of the State Roads Commissioner. Both have the same goal, that is, traffic safety on roads for which they are responsible. Both have the machinery to administer and enforce their laws. So long as the standards used to establish speed limits are substantially the same, each authority is essentially proscribing the substance and core of the same offense.[20] Logically then, if the Assimilative Crimes Act can be used to enforce speed limits set by the State Roads Commissioner, it should also be used to enforce any speed limit established by regulation of the installation commander. This same rationale was used to support a conviction for speeding at Fort Riley, Kansas.[21]

It might be argued that the establishment of speed limits by the post commander different from those established by state statute results in an unlawful selective incorporation of state criminal statutes. This "selective incorporation" argument was not addressed in any of the opinions of The Judge Advocate General nor in the magistrate's court in *United States v. Church* or *United States v. Metcalf.*[22] Both the Supreme Court in *Williams v. United States*[23] and the Fourth Circuit Court of Appeals in *United States v. Robinson*[24] ruled that selective incorporation of state law in federal regulations or enlargement of state criminal offenses by use of federal law, impermissably changes the quantum of punishment under the Assimilative Crimes Act.

In *Williams,* the prosecutor attempted to charge a violation of a state statutory rape statute but increased the age limit of the victim (16 in state law) by reference to the Federal Carnal Knowledge Statute (18 year age limit). The court held that the Federal Carnal Knowledge Statute preempted the state statute and had to be used to charge the offense, thereby subjecting the defendant to the lesser penalty under Federal law.[25] In *Robinson,* the FAA administrator sought to incorporate only the substantive provisions of the Virginia Criminal Code in regulations applicable to airports in Virginia. However, the regulations then established different penalties from those contained in the Virginia statutes. Citing the language of 18 U.S. Code Section 13 "subject to a like penalty" the Court reversed a conviction for violation of the Assimilative Crimes Act where the penalties imposed were those stated in the regulation. The fact that the Court suggested that the FAA Administrator could redraft his regulations to prohibit the conduct itself, without reference to the Virginia Code, and then establish appropriate penalties, indicates that, as in *Williams,* the evil of "selective incorporation" arises only when done to change the quantum of punishment. A change in speed limits with

imposition of the state maximum penalties should avoid the "selective incorporation" problem.

In light of the *Church* and *Metcalf* opinions, it is perhaps an appropriate time for The Judge Advocate General to reevaluate his opinions in this most important area. Assimilation of all state traffic laws into federal law is not only lawful, it is also the most appropriate means of promoting traffic safety. The accepted alternative, issuing bar letters to traffic violators, permanently barring them from reentering the post, is neither appropriate nor effective. This sanction, authorized under 18 U.S. Code Section 1382,[26] seems inappropriate because it is too severe to impose for many minor traffic violations. It is also entirely ineffective against the civilian motorist whose only usage of the installation roads will be at the time of the violation. So too, enforcement of bar orders is sketchy at best because gate guards and military policemen could not hope to remember every traffic violator who is barred. Finally, courts often may not enforce bar orders because the public has acquired an easement in the use of the particular highway[27] or, even if no easement exists, to require the use of an alternative route would be so unreasonable as to be arbitrary or capricious.

Should Mr. Fast have contested the validity of his speeding citation? Clearly not. As opposed to a more severe sanction, $30.00 was but a small price to pay for a federal traffic violation.

Notes

[1] Act of Apr. 30, 1790, Ch. 9, 1 Stat. 112.

[2] Act of Mar. 3, 1825, Ch. 65, 4 Stat. 115.

[3] 18 U.S.C. § 13 (1970).

[4] 355 U.S. 286 (1958).

[5] *See, e.g.*, N.Y. PENAL LAW (Console) § 195.10 (1967) (Refusing to aid a New York policeman punishable as a Class B Misdemeanor—$500.00 or one year imprisonment or both.)

[6] JAGA 1952/5531, 1 July 1952.

[7] JAGA 1950/2547, 25 May 1950, at p. 13.

[8] 114 U.S. 525 (1885).

[9] JAGA 1955/1737, 9 Mar. 1955; JAGA 1959/5081, 3 Aug. 1959; JAGA 1959/3702, 1 May 1959; JAGA 1967/4325, 29 Sept. 1967.

[10] JAGA 1969/4557, 19 Dec. 1969.

[11] 321 U.S. 383 (1944).

[12] *Id.* at 389.

[13] 355 U.S. 285 (1952).

[14] The argument that implementation by state officials is an unconstitutional double delegation of legislative authority is usually based on Mr. Justice Douglas' dissent in *Sharpnack*. While one would agree with Mr. Justice Douglas' opinion that Congress could not delegate penal rule-making power *carte blanche* to a federal executive agent or the state, even he agrees that Congress could determine a policy and have a state or a federal executive agent implement that policy by specific rules. 355 U.S. at 285–6. The thesis of this article is that Congress has enacted a traffic law policy and state officials and post commanders merely implement that policy. *See* text accompanying notes 15 through 22, *infra*.

[15] Weinberg, *Disposition of Traffic Offenses On Army Installations in The United States*. An unpublished thesis by a member of the 20th Advanced Class, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia (1972).

[16] 195 F. Supp. 103 (N.D. Cal. 1961).

[17] This memorandum has been circulated to all federal magistrates by the Administrative Office of the United States Courts as Information Memorandum No. 55 (31 October 1975).

[18] MD. ANN. CODE Art. 66 1/3, § 315–108 (1970) states that only the State Roads Commissioner and local authorities may erect stop signs or yield signs. MD. ANN. CODE Art. 66 1/3, §§ 11–802 and 803 state that only the State Roads Commissioner and local authorities may establish speed limits which vary from the statutory limits.

[19] MD. ANN. CODE Art. 66 1/3, § 1–144 (1970).

[20] *Cf.* Paul v. United States, 371 U.S. 245, 269 (1963). It should be noted that California's Minimum Milk Control Law was enforceable by injunction, assessment and penal sanctions, CAL. AGRICULTURAL CODE § 62411 (1967) (West).

[21] *United States v. Hillebrand*, Memorandum and Order No. 76-536-M5, decided December 13, 1976 (D.Kas).

[22] *See* text accompanying footnote 17, *supra*.

[23] 327 U.S. 711 (1946).

[24] 495 F. 2d 30 (4th Cir. 1974).

[25] The proof showed that the victim was between the ages of 16 and 18. Under Arizona law statutory rape carried a punishment of life or any term more than five years. Ariz. Stat. Chap. 39, § 43–4901 (1939). The federal offense of Carnal Knowledge has a maximum

punishment of imprisonment of not more than 15 years for a first offender or 30 years for a subsequent offense. 18 U.S.C. § 458 (1940).

[26] "Whoever reenters or is found within any such reservation, post, fort, arsenal, yardstation, or installation, after having been removed therefrom or ordered not to reenter by an officer or a person in command or charge thereof—shall be fined not more than $500 or imprisoned not more than 6 months or both."

[27] United States v. Watson, 80 F. Supp. 649 (E.D. Va. 1948).

Extraordinary Writs in the Military

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Since 1966 the Court of Military Appeals has recognized that it is a court empowered to issue extraordinary writs under 28 U.S.C. Section 1651(a).[1] The defining of that power has vacillated from a court desiring to exercise the writ power broadly[2] to a court evincing great restraint.[3] Whether that pendulum has swung for a final time is a matter of speculation, but there is no question it has swung back to a broad interpretation of the power. That swing is most evident in the case of *McPhail v. United States*.[4] This article seeks to examine the present status of the writ power in the military in the context of how it might be used to more effectively represent clients. As will be evident, the employment of the writ avenue, like many legal issues before the newly constituted Court of Military Appeals, is a matter open to interpretation and litigation.

The Court derives writ power from 28 U.S.C. Section 1651 (a).[5] Through this provision the Court of Military Appeals has the power to issue writs of habeas corpus, coram nobis, mandamus and prohibition.[6] The court initially viewed writs as a means of atoning for "fundamental errors" of a Constitutional nature.[7] A year later the court defined the writ power in terms of its general supervisory authority over the military justice system.[8] Within another year the power was redefined by joining the previous decisions, resulting in writ relief being a supervisory tool to correct Constitutional rights or fundamental rights unique under the Uniform Code of Military Justice.[9]

However, in 1969 the court in *United States v. Snyder* placed a roadblock in the way of would-be petitioners by limiting the power to act under Section 1651(a) to "cases properly before us or which may come here eventually."[10] The court ruled it has no authority to review a special court-martial in which the sentence as "finally adjudged and approved" would not bring the case within the statutory review mandated by Article 67 of the Uniform Code of Military Justice.[11] That decision led to numerous denials of writ petitions and a restricting in general of the court's view as to the appropriateness of writ grants. From 1965 through the *McPhail* decision, it was generally conceded that three criteria had to be met to gain writ relief.[12] First, relief would be afforded only when it was in aid of the court's jurisdiction as defined in *Snyder*. Secondly, writ relief required exceptional circumstances which could not be adequately dealt with were the issue left for normal appellate review. Finally, the court set forth exhaustion requirements before writ relief would be appropriate. These criteria remain as standards by which to judge the appropriateness of writ petitions. However, the defining of these guidelines has been materially altered as a result of *McPhail*.

Under the decision in *United States v. Snyder*, "in aid of jurisdiction" came to be defined in the negative rather than the positive. No writ action was ever in aid of the Court of Military Appeals' jurisdiction if the case was nonreviewable under Article 67. The court denied outright petitions alleging illegal retainment in the service,[13] improper Article 15[14] and summary court actions,[15] confinement in breach of a pretrial agreement,[16] and unwarranted post-trial delay,[17] solely on the basis the

case could not be reviewed under Article 67 and, therefore, any action by the court would not aid its jurisdiction. This rationale was overturned in *McPhail*.

After citing those pre-*Snyder* cases already noted[18] and reviewing the intent of Congress in establishing the Court of Military Appeals as the "supreme court of the military justice system,"[19] the court overruled *Snyder* stating:

> . . .we are convinced that our authority to issue an appropriate writ in 'aid' of our jurisdiction is not limited to the appellate jurisdiction defined in Article 67.[20]

In aid of jurisdiction is now once again defined in terms of the court's power to supervise the military system.

There is a huge gap in *McPhail* which the court failed to address in overruling *Snyder*—a gap placing the Court of Military Appeals on a potential collision course with the Supreme Court. The decision in *Snyder* to exercise writ authority only in cases subject to review under Article 67 resulted from Supreme Court language in *Noyd v. Bond*.[21] The Supreme Court in *Noyd* acknowledged the power of the Court of Military Appeals "to issue an emergency writ of habeas corpus in cases, like the present one, which may ultimately be reviewed by that court."[22] However, the Supreme Court went on to note that a "different question" would exist "in a case which the Court of Military Appeals is not authorized to review under the governing statutes."[23] The Supreme Court gave a "*cf.*" cite to the more expansive defining of writ power in *United States v. Bevilacqua*,[24] indicating they were not in agreement with the Court of Military Appeals.[25]

Yet, in *McPhail*, the court cited to this Supreme Court language only in referring to some undefined "limits to our authority . . ."[26] They did not attempt to reconcile *McPhail* with this language in *Noyd*, probably because no such reconciliation is possible. The court silently rejected that language, hoping its analysis of Congress' intent[27] will overcome *Noyd* should the issue ever reach the Supreme Court.

Thus, *the* major impediment to filing for writ relief is gone. The Court of Military Appeals has made clear their intent to exercise writ authority broadly. They have accepted petitions from persons whose cases have not been referred to trial;[28] they have ordered a trial judge to act in a case not yet referred;[29] they have ordered the Army Court of Military Review to exercise its extraordinary writ power over a case not yet referred;[30] they have ordered The Judge Advocate General of the Army to order a military judge to preside over a hearing in a case already final under Article 76;[31] and the Court of Military Appeals itself has acted in one decision on a group of petitions composed of both referred and nonreferred cases.[32] Under *McPhail*, the parameters of "in aid of jurisdiction" are open to litigation, noting the expansive concept of writ power envisioned by the court:

> . . . we have jurisdiction to require compliance with applicable law from all courts and persons purporting to act under its [UCMJ] authority.[33]

This expansive judicial philosophy not only rewrites the "in aid of jurisdiction" concept, but affects as well the remaining two criteria—extraordinary circumstances and exhaustion of remedies.

Examination of the extraordinary circumstance criteria is really a review of what cases are subject to writ action. The court made clear early on that writ action was not a substitute for normal appellate review nor could a writ petition be employed to raise errors that could have been raised during a normal appeal.[34] Prior to *McPhail*, the petitioner bore the burden to "demonstrate that the ordinary course of the proceedings against him through trial and appellate channels is not adequate."[35] As to those cases completed when a writ petition was filed, the court was not consistent in its rulings. Relief was accorded where jurisdictional defects existed or where procedural rules were retroactively applied.[36] However, such relief was not always had, for the court rejected petitions where the case was final and the petitioner had never sought relief from the Court of Military Appeals in the course of normal review.[37]

There seems little doubt that under *McPhail* "extraordinary circumstances" will be more liberally construed, and in fact such construction is already a matter of record.[38] The court has ordered the government to show cause why relief should not be granted to a petitioner alleging a *Dunlap* post-trial delay violation.[39] When the government failed to justify the 96-day post-trial period before final action, the court dismissed the charges.[40] In the court's decision there was no discussion of whether the issue could be raised during normal appellate review[41] and should thus be left for another day. Instead, the court went directly to the merits of the petition. If a *Dunlap* violation can be alleged, an appellant need no longer wait to raise the error during the normal course of appeal, but should immediately seek coram nobis relief. If the delay goes beyond the 90th day and the government fails to at least raise a response to the claim worthy of appellate litigation, petitioner will have his relief.

In pretrial confinement cases the court has ordered a neutral magistrate to review the validity of confinement even though the case had yet to be referred to a court-martial.[42] Even where a magistrate approved confinement, the court granted a writ ordering the release of persons whose cases were not referred to trial, concluding the magistrate's decision was in error.[43] Thus, as to pretrial confinement, a petitioner can either claim a proper party has not reviewed his status or that such a party erred. As in the past, such confinement cases constitute the majority of petitions filed.[44]

A caveat must be noted in relation to writs regarding pre-trial confinement. In *McPhail* the court noted that writ relief is not available "for all of the errors that can be reviewed by way of ordinary appeal under Article 67."[45] One case cited to support this statement was *Horner v. Resor*[46]. There petitioners sought writ relief from allegedly improper pretrial confinement. The Court cited *Hallinan v. Lamont*[47] in ruling that a petitioner must demonstrate the ordinary appellate process cannot adequately respond to his allegations. The petitioners in *Hallinan* alleged the conditions of confinement deprived them of due process and the opportunity to adequately defend themselves. The court responded that:

> Harrassment or oppression of a prisoner prior to trial resulting in the denial of the right to a speedy trial, the improper procurement of a confession, the impeding of proper preparation for trial, or otherwise denying due process of law may be remedied by appropriate motions submitted at the trial level.[48]

This citation in *McPhail* indicates that where the attack on pre-trial confinement refers to a resultant denial of due process, that issue can be left for trial or appellate action. However, if the petition for writ relief alleges the confinement is illegal per se, then the court will act.[49]

Besides confinement cases, there are, however, numerous other situations where writ action might apply. A petitioner can seek a writ to order a decision be made as to whether his case will be retried after reversal if authorities are holding him in confinement and are not acting speedily.[50] Jurisdictional defects can be the subject of writ petitions at any time when the allegation, if true, automatically divests a court-martial of authority to act.[51] However, where the jurisdictional defect alleged is one subject to litigation on the facts, the writ process is inappropriate.[52]

The court has already sustained use of the writ power to attack improper referrals, preferring such action to wasting time and energy in a null and void proceeding.[53] The issue of the retroactivity of a case would similarly fit this reasoning and the writ process may be the most appropriate method of proceeding on such questions.[54] Attacks on an Article 32 investigation have been undertaken through writ petitions and granted.[55] These cases evidence the writs use to negate proceedings obviously void if carried out.

This does not mean the writ process can be used to remove an issue from the trial forum to the Court of Military Appeals whenever action adverse to the defendant occurs. The Court in *McPhail* cited *Michaud v. United States*[56] as a limitation on writ power. There the petition alleged the record was not verbatim, but the

court noted the case was before a tribunal (C.M.R.) capable of acting on this issue and denied the writ.[57] The same rationale applied to the denial of a writ seeking a venue change and/or a delay due to adverse pretrial publicity.[58] The court left those matters to the military judge.

The prior refusal of the court to deal with administrative matters through writ petitions[59] may also be open to attack. What constitutes "administrative" is in issue. Action by the Army to dismiss cadets from West Point allegedly involved in a cheating scandal was attacked by some cadets who claimed in writ petitions the action constituted criminal punishment without due process. The Army said the action was purely administrative under the honor code. The court denied immediate relief, but stated:

> On further consideration of the pleadings filed in the foregoing cases, it is ordered that the petitions are denied without prejudice to reassert any errors after the petitioners have exhausted their administrative remedies and provided the sanction of dismissal or its equivalent is imposed.[60]

Apparently, the court is willing to examine actions heretofore assumed to be administrative to access whether such actions are in fact criminal proceedings.

The final criteria employed to judge whether writ relief is appropriate is that of exhaustion of alternative remedies.[61] Previously, both confinement petitions and challenges to an Article 32 investigation were denied because petitioners had not first sought relief under Article 138.[62] That exhaustion requirement was not pressed in a recent pretrial confinement writ.[63] While it seems unlikely the present court would hold to such exhaustion requirements, they did fall back on this reasoning in denying the petitions of the cadets at West Point.[64]

One of the most intriguing issues arising from *McPhail* is whether the present court will reconsider the law governing writs alleging errors in Article 15 or summary courts-martial proceedings. In *Thomas v. United States*[65] the court ruled it could not consider a petition filed to review summary proceedings since the case would never be reviewable under Article 67. That same reasoning resulted in the court's refusal to consider a writ request arising from an Article 15 proceeding.[66] *McPhail*, of course, rejected this position as a reason for denying petitions.[67] The issue is whether summary and Article 15 proceedings fall within the "military justice system" over which the court in *McPhail* stated it has jurisdiction to supervise.[68]

The very nature of summary actions and its placement in the Code as Article 24 under "Composition of Courts-Martial" lends support to a new argument under *McPhail* that writ action is appropriate. This is particularly so in light of the cite in *McPhail* to *Virginia v. Rives*, 100 U.S. 313, 323 (1879), and the proposition that "[T]he exercise of the supervisory authority is especially useful when the matter under view is 'outside the jurisdiction of the court or officer to which or to whom the writ is addressed.' "[69] Writ action to review an Article 15 action is more tenuous, for it is defined by the Code as "nonjudicial punishment." However, does the very fact it is within the Code thus mean it is a process within the term "military justice system" over which the court has supervisory power?

While this article has dealt only with the Court of Military Appeals as a source of writ relief, it is clear the Court of Military Review and the military judge are additional avenues of approach. In *Kelly v. United States*[70] the Court of Military Appeals ordered a case back to the Army Court of Military Review to exercise its writ authority, thus answering the previous split among the Courts of Military Review as to whether such authority existed.[71] The lower court has recognized and exercised that power recently.[72] However, the Courts of Military Review's authority to act on writ petitions would seem to be limited where the case from which the writ arises is before it on remand from the Court of Military Appeals for sentencing purposes only.[73] Otherwise, the review courts are apparently justified in exercising

their writ authority precisely as the Court of Military Appeals might.

In *Bouler v. Wood*[74] the court arguably sanctioned a military judge to act on writs, commending the judge for inquiring into alleged illegal pretrial confinement *prior* to referral of the case to a court-martial. In footnote 4, the court indicated such power may have evolved from the expanding role of the trial judge in the military. Whether a military judge can be equated to a "court established by Congress" under the All Writs Act, particularly in a non-referred situation, remains to be seen. However, the *Bouler* case is fodder for arguing a judge can exercise writ power.

Thus, there is a degree of forum shopping available to a writ petitioner. Furthermore, the Court of Military Appeals has allowed petitions for review under Rule 18 of the Court's Rules of Practice and Procedure to petitioners who had writ petitions denied by the Court of Military Review,[75] granting at least one such petition and ordering briefs filed.[76] Therefore, the denial of a writ petition by a military judge or Court of Military Review does not end the hope for writ relief.

One final area of concern is who may file a writ petition. There is no question the individual petitioner may file in *propria persona*.[77] May a counsel who once represented an accused at trial or on appeal file for writ relief when the case is final under Article 76? The Army Court of Military Review divided on this issue in a group of cases decided in 1966. In *United States v. Brooks*[78] the court said appellate counsel could file the writ without evidencing the petitioner's knowledge of the action since the filing came only two months subsequent to the court's action on the appeal on the merits and representation by appellate counsel continued. In *United States v. Montcalm*[79] the filing by "former" appellate counsel was allowed since it was within a "reasonable time" following affirmance of the case on the merits by the court.[80]

In *United States v. Livingston*[81] the court acknowledged a standing problem because the petitioner had left the Army and the petition was being filed by an Army counsel. They, however, denied the petition on the merits. Conversely, in *United States v. Forworth*[82] the court panel denied the petition because the case was final under Article 76 and had been for nearly two years. That finality ended the attorney-client relationship of the petitioner and appellate defense counsel—ending that counsel's right to file for writ action.

The Court of Military Appeals has not addressed this issue directly, but in *United States v. Larneard*[83] it ruled that a petition for review of a case on the merits could be signed and filed by the defense attorney only where so authorized by the petitioner. This decision would indicate a writ petition may not be filed by defense counsel without direct authorization or a prior grant of power to counsel to "take such action as may be necessary to protect his interest. . ."[84] However, a defense counsel would be on thin ice if he bases his authority to file a writ on his client's desire to proceed through normal appellate channels without ever having discussed with the client the avenue of writ action.

In conclusion, the *McPhail* decision has rejuvenated the process of extraordinary writ applications in the military. The field is open to litigation as to who may file on what issues and before whom. The extraordinary writ is a tool defense counsel should not hesitate to implement, for the limitations on its use are open for defining.

Notes

[1] United States v. Frishchholz, 16 C.M.A. 150, 36 C.M.R. 306 (1966). *See also* MOYER, JUSTICE AND THE MILITARY 644 (1972) [herinafter cited as MOYER.].

[2] United States v. Bevilacqua, 18 C.M.A. 10, 39 C.M.R. 10 (1968).

[3] United States v. Snyder, 18 C.M.A. 480, 40 C.M.R. 192 (1969).

[4] 24 C.M.A. 304, 52 C.M.R. 15 (1976).

[5] That section of the Code reads:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principles of law.

[6] MOYER, *supra* note 1, at 644.

[7] United States v. Frischholz, 16 C.M.A. 150, 151–52, 36 C.M.R. 306, 307–08 (1966).

[8] Gale v. United States, 17 C.M.A. 40, 37 C.M.R. 304 (1967).

[9] United States v. Bevilacqua, 18 C.M.A. 10, 39 C.M.R. 10 (1968).

[10] 18 C.M.A. at 483, 40 C.M.R. at 195.

[11] *Id.*

[12] MOYER, *supra* note 1, at 645.

[13] Patnode v. Laird, 18 C.M.A. 654 (1969).

[14] Whalen v. Stokes, 19 C.M.A. 636 (1970).

[15] Thomas v. United States, 19 C.M.A. 639 (1970).

[16] Robison v. Abbott, 23 C.M.A. 219, 49 C.M.R. 8 (1974).

[17] Williams v. United States, 23 C.M.A. 224, 49 C.M.R. 143 (1974).

[18] *See* notes 1 and 2, *supra*.

[19] 24 C.M.A. at 308, 52 C.M.R. at 19.

[20] 24 C.M.A. at 310, 52 C.M.R. at 21.

[21] 395 U.S. 683 (1969).

[22] *Id.* at 695 n.7.

[23] *Id.*

[24] *See* note 2, *supra*.

[25] 395 U.S. at 695 n.7.

[26] 24 C.M.A. at 310, 52 C.M.R. at 21.

[27] 24 C.M.A. at 308–09, 52 C.M.R. 19–20.

[28] Bouler v. Wood, 23 C.M.A. 589, 50 C.M.R. 854 (1975).

[29] Phillippy v. McLucas, 23 C.M.A. 709 (1975). *See also* Porter v. Richardson, 23 C.M.A. 704 (1975).

[30] Kelly v. United States, 23 C.M.A. 567, 50 C.M.R. 786 (1975).

[31] United States v. Martin, 23 C.M.A. 714 (1975).

[32] Fletcher v. United States, Misc. Docket No. 76–103 (18 Feb. 77).

[33] 24 C.M.A. at 310, 52 C.M.R. at 21.

[34] Gale v. United States, 17 C.M.A. 40, 43, 37 C.M.R. 304, 307 (1967); United States v. Frischholz, 16 C.M.A. 150, 36 C.M.R. 306 (1966).

[35] Font v. Seaman, 20 C.M.A. 387, 390, 43 C.M.R. 227, 230 (1971).

[36] MOYER *supra* note 1, at 652.

[37] *Id.* at 653. *Compare* Hendrix v. Warden, 23 C.M.A. 227, 49 C.M.R. 146 (1974) *with* Del Prado v. United States, 23 C.M.A. 132, 48 C.M.R. 749 (1974).

[38] United States v. Martin, 23 C.M.A. 714 (1975).

[39] Bouler v. United States, 24 C.M.A. 152, 51 C.M.R. 342 (1976).

[40] *Id.*

[41] *Compare with* Webb v. United States, 23 C.M.A. 420, 50 C.M.R. 324 (1975).

[42] Phillippy v. McLucas, 23 C.M.A. 709 (1975).

[43] *See* note 32, *supra*.

[44] MOYER, *supra* note 1, at 651.

[45] 24 C.M.A. at 310, 52 C.M.R. at 21.

[46] 19 C.M.A. 285, 41 C.M.R. 285 (1970).

[47] 18 C.M.A. 652 (1968).

[48] *Id.* at 653.

[49] *See* Bouler v. United States, 24 C.M.A. 152, 51 C.M.R. 342 (1976).

[50] Kelly v. United States, 23 C.M.A. 567, 50 C.M.R. 786 (1975); Thomas v. United States, 23 C.M.A. 570, 50 C.M.R. 789 (1975).

[51] United States v. Martin, 23 C.M.A. 714 (1975); Fliener v. Kach, 19 C.M.A. 630 (1969).

[52] Latney v. Ignatius, 17 C.M.A. 677 (1967).

[53] Brookins v. Cullins, 23 C.M.A. 216, 49 C.M.R. 5 (1974).

[54] United States v. Rodick, 23 C.M.A. 713 (1974); Del Prado v. United States, 23 C.M.A. 132, 48 C.M.R. 749 (1974).

[55] Petty v. Moriarty, 20 C.M.A. 438, 43 C.M.R. 278 (1971).

[56] 23 C.M.A. 684 (1974).

[57] *See also* Hallinan v. Lamont, 18 C.M.A. 652 (1968).

[58] Herrod v. Widdecke, 19 C.M.A. 574, 42 C.M.R. 176 (1970).

[59] Thompson v. Chaffe, 19 C.M.A. 631 (1970); Hurt v. Cooksey, 19 C.M.A. 584, 42 C.M.R. 186 (1970); Guadalupe v. United States, 18 C.M.A. 649 (1969); Mueller v. Brown, 18 C.M.A. 534, 40 C.M.R. 246 (1969).

[60] *See* note 32, *supra*.

[61] MOYER, *supra* note 1, at 655.

[62] Font v. Seaman, 20 C.M.A. 387, 43 C.M.R. 227 (1971); Catlow v. Cooksey, 21 C.M.A. 106, 44 C.M.R. 160 (1971); Tuttle v. Commanding Officer, 21 C.M.A. 299, 45 C.M.R. 3 (1972).

[63] Portor v. Richardson, 23 C.M.A. 704 (1975). Judge Cook in his dissent specifically noted the Court was overruling *Tuttle* and *Cooksey*.

[64] *See* note 32, *supra*.

[65] 19 C.M.A. 639 (1970).

[66] 19 C.M.A. 636 (1970).

[67] 24 C.M.A. at 310, 52 C.M.R. at 21.

[68] *Id.*

[69] *Id.*

[70] 23 C.M.A. 567, 50 C.M.R. 786 (1975).

[71] MOYER, *supra* note 1, at 656–58. *Compare* United States v. Draughton, 42 C.M.R. 447 (A.C.M.R. 1970) *with* Combest v. Bender, 43 C.M.R. 899 (C.G.C.M.R. 1971).

[72] Pettus v. United States, ___ C.M.R. ___ (A.C.M.R. 30 Sept. 1976); United States v. Montcalm, CM 431335 (A.C.M.R. 17 Mar. 1976); Brooks v. United States, 52 C.M.R. 44 (A.C.M.R. 1976).

[73] United States v. Armes, 42 C.M.R. 438 (A.C.M.R. 1970).

[74] 23 C.M.A. 589, 50 C.M.R. 854 (1975).

[75] *See* Green v. United States, No. 33,816 (C.M.A. action pending).

[76] United States v. Condon, CM 420455, No. 32,461 (C.M.A.). This case was returned to the Army Court of Military Review for further action in light of additional affidavits filed before the Court of Military Appeals, not previously considered by the Court of Military Review.

[77] Kelly v. United States, 23 C.M.A. at 567, 50 C.M.R. at 786.

[78] 52 C.M.R. 44 (1976). The government argued in this case that the appellate defense counsel who filed this writ had no standing to do so since the case was final under Article 76 and the military appellate attorney no longer represented the petitioner. Furthermore, the government argued there must be evidence of record that the accused desired to file such action. These positions were rejected.

[79] 43 C.M.R. at 335.

[80] *See also* Pettus v. United States, SPCM 9435 (A.C.M.R. 30 Sept. 1976).

[81] CM 434170 (A.C.M.R. 22 Sept. 1976), *pet. denied*, 30 Nov. 1976.

[82] CM 430728 (A.C.M.R. 10 Feb. 1977).

[83] 3 M.J. 76, 82 (C.M.A. 1977).

[84] *Id.*

Judiciary Notes

U.S. Army Judiciary

Administrative Notes

Staff Judge Advocates should insure that the following matters are properly completed:

a. Each entry on the Chronology Sheet (DD Form 490) should be completed.

b. Copies of requests for final action forms should not be sent directly to the accused. (*See The Army Lawyer*, December 1976).

c. When an accused has received no confinement, or the period of confinement has been disapproved or suspended, the application of any adjudged forfeitures should be deferred until the sentence is ordered into execution. (*See* para. 88*d*(3), MCM, 1969 (Rev.)).

d. The effective date of forfeitures should be stated on all supplementary orders. (*See* para. 12–4*b*(4), AR 27–10).

Current FLITE Searchable Data Base

The information in this article is digested from the FLITE Newsletter, *Vol. X, No. 1, Jan.–Mar. 1977.*

The following data is currently searchable in FLITE's batch processing system. Data bases on which FLITE has a dual capacity of batch or on-line retrieval are indicated by asterisks.

* United States Code	Titles 1 Thru 50, Appx 1970 Ed (Thru Supp 111, Jan. 1974)
* United States Reports (Sup Ct)	Vols 189 Thru 419 (Oct. 1902–Jan. 1974)

* Federal Reporter 2d Series	Vols 408 Thru 507 (Feb. 1969–Dec. 1974)
* Federal Supplement	Vols 330 Thru 369 (Jun. 1971–Jan. 1974)
* United States Court of Claims Reports	Vols 134 Thru 202 (Jan. 1956–Oct. 1973)
Board of Contract Appeals Decisions	Vols 56–2 Thru 75–2 (Jul. 1956–Dec. 1975)
* Court-Martial Reports	Vols 1 thru 51 and Vol 52 Thru Issue 21 of Advanced Sheets (Dec. 1951 to Present)
Decisions of the Comptroller General	Vols 1 Thru 54
Published	(Jun. 1921–Jun. 1975)
Unpublished	(Jun. 1955–Dec. 1975)
Armed Services Procurement Regulation	1975 Ed (1 Oct. 1975)
Air Force Regulations	AFR 1–2 Thru 900–47
Manual for Courts-Martial	1969 Rev Ed
International Law Agreements of Special Interest to DoD	
Published	Jun. 1949–Dec. 1974
Unpublished	Jun. 1947–May 1975

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Legal Assistance Items

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

1. ITEMS OF INTEREST

Family Law—Support of Dependents—Judicial Enforcement of Support Obligations. The Tax Reduction and Simplification Act of 1977, in Title 5, of Public Law 95–30, contained certain Social Security Act amendments directly affecting the federal Garnishment Act, 42 U.S.C. § 659; added sections 661 and 662 to Title 42; and amended the Restrictions on Garnishment provisions of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)). Substantively, the amendment to § 659 specifically included the District of Columbia as being subject to the same waiver of sovereign immunity as the United States. Further, § 659 was amended to include provisions for service of process. Service of process shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the appropriate agency designated to receive such service of process. Federal em-

ployees whose duties include responding to interrogatories pursuant to the requirements imposed by 42 U.S.C. § 661 (one of the new sections) are not subject to any disciplinary action, liability or penalty for any disclosure of information made by such employees in connection with their duties which pertain to the answering of any such interrogatories. Persons designated by law to accept service of process to which the United States is subject under this section must respond within 30 days after the date of service, and shall, as soon as possible, but not later than 15 days after the date of effective service, send written notice that such process has been served (together with a copy of the process) to the individual whose monies are affected, at his duty station or last-known address. Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from monies due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with law and regulation.

Title 42, U.S.C. § 661 gave the various branches of government authority to promulgate regulations for the implementation of the provisions of § 659, and require that the head of each executive agency cause to be published in the appendix of the regulations so promulgated his designation of an agent or agents to accept service of process, to include the title of the position, the mailing address, and the telephone number, and an indication of the data reasonably required in order for the agency promptly to identify the individual to be garnished. Further, in the case of regulations promulgated by the executive branch of the government, each head of a governmental entity or his designee shall respond to relevant interrogatories, if authorized by the law of the state in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments. Under § 661, where an agency is served with more than one legal process with respect to the same monies due or payable to any individual, then such monies shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such monies as remain after the satisfaction of all such processes which have been previously served. Section 661 further defined terms used in § 659, to include "United States," "child support," "alimony," "private person," "legal process," and "based on remuneration for employment"; and set out amounts which are to be excluded from garnishment.

Section 661 also amended the Restrictions on Garnishment provisions of the Consumer Credit Protection Act by placing a maximum of weekly disposable earnings which can be garnished at 50% (if the individual to be garnished is supporting a spouse or another child) or 60% (where such individual is not supporting a new spouse or another dependent child); and allows those percentages to be increased 5% each if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the 12-week period which ends with the beginning of such work week.

The garnishment provisions of the Tax Reduction and Simplification Act of May 1977 were effective 1 June 1977.

Taxation—Federal Income Tax. On 9 May 1977 the U.S. Court of Appeals for the Second Circuit in *Turecamo v. Commissioner*, 554 F.2d 564, ruled that the basic Medicare hospitalization benefits paid pursuant to Part A of Subchapter XVIII of the Social Security Act are not to be considered support provided by the Medicare beneficiary for the purpose of determining whether a related taxpayer can claim the beneficiary as a dependent. Section 151(e) of the Internal Revenue Code permits a taxpayer to claim an additional personal exemption for each individual who qualifies as a dependent. A taxpayer must furnish more than half of an individual's support during the taxable year before claiming him or her as a dependent. In this case the taxpayers, a married couple, claimed the wife's 81 year old mother, who lived with them, as a dependent. During the tax year the mother spent about two months in the hospital and most of these expenses were

paid by Medicare pursuant to the provisions of Part A, Subchapter XVIII of the Social Security Act. Not counting the Part A Medicare benefits, the taxpayers provided more than one half the support the mother received during the tax year. When the cost of medical care is covered by privately obtained health or hospitalization insurance the cost of the premiums paid to obtain the insurance is considered support but not the medical expenses paid for by the proceeds of the policy. The Commissioner of Internal Revenue had disallowed the additional personal exemption arguing that Part A Basic Medicare payments are not in the nature of medical insurance proceeds but are social insurance or welfare payments and, as such, must be included in the support furnished by the beneficiary. The Second Circuit affirmed the Tax Court seeing no difference between part A benefits and benefits obtained under private insurance policies as far as the dependency support test is concerned. [Ref: Ch. 41, DA PAM 27-12.]

Taxation—Tax Reduction and Simplification Act of 1977. The Tax Reduction and Simplification Act of 1977 (Pub. L. No. 95-30) was signed into law by the President on 23 May 1977. The effect on garnishment of this Act is discussed in another part of this article. The following is a short summary of the parts of the Act effecting military personnel:

1. It repeals the standard deduction and ends the distinction between the minimum standard deduction and the maximum standard deduction based on a percentage of income. In effect it creates a fixed standard deduction which is the zero bracket amount in the new tax tables. This amount is $3,200 for married people filing joint returns and $2,200 for single taxpayers and heads of household.

2. The sick pay exclusion of up to $100 per week which was amended by the 1976 Tax Reform Act is reinstated for tax year 1976.

3. It defers until 31 December 1976 the reduction from $20,000 to $15,000 of the exclusion for income earned abroad.

4. It eliminates the exclusive use requirement for deducting business expenses attributable to the business use of a personal residence in the case of a residence used to provide day care services to children, handicapped individuals, or the elderly.

5. It permits elderly persons to compute their retirement tax credit using the 1975 or 1976 law, whichever gives the best benefit.

[Ref: Ch. 41, DA PAM 27-12.].

2. ARTICLES AND PUBLICATIONS OF INTEREST

Taxation—Federal Income Tax.

Garbis, *New Rules Regulating Income Tax Return Preparers Affect All Tax Practitioners*, *46* J. TAXATION 152 (1976).

Lee, *Tax Shelters Under the Tax Reform Act of 1976*, 22 VILL. L. REV. 223 (1977).

[Ref: Ch. 41, DA PAM 27-12.]

Taxation—Federal Estate Tax and Gift Tax.

Case, *Death and Taxes—The 1976 Estate and Gift Tax Changes*, 1 ARIZ. ST. L.J. 321 (1976).

Johnson, *Effect of the 1976 Federal Estate and Gift Tax Changes on Estate Planning Objectives*, 1 SO. ILL. U.L.J. 299 (1976).

Surrey, *Reflections on the Tax Reform Act of 1976*, 25 CLEV. ST. L.R. 303 (1976).

[Ref: Ch. 13 and 42, DA PAM 27-12.]

Pragmatic Proposals for the Environmental Law Specialist

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With the advent of numerous environmental quality laws and regulations since the passage of the National Environmental Policy Act [1] [hereinafter NEPA] in 1970, it has become in-

cumbent for the Department of the Army to insure that Army installations comply with all applicable environmental quality regulations. This is especially the case in light of the two executive orders [2] which were addressed specifically at federal agencies and were meant to insure their compliance with and leadership of environmental quality efforts. Department of the Army responsibility for environmental quality control protection and regulation has been further clarified recently by the United States Supreme Court in *Hancock v. Train.*[3] This case discusses the difference between Army compliance with state agency procedural and substantive permit requirements, and held that the Army must comply with the substantive (but not procedural) state environmental quality standards in the operations of its military installations. However, U.S. Army installations located within those states wherein the Environmental Protection Agency administers the Federal Water Pollution Control Act discharge permits must comply with federal permit requirements, whether procedural or substantive.

Moreover, several recent cases such as *Breckinridge v. Rumsfeld* [4] have attempted to extend the liability potential for the Army in that they have proposed an expansion of the scope of NEPA to cover various social and economic consequences of Army activities such as installation closures, civilian workforce reductions, and activity transfers. However, it appears that most courts will restrict this expansive attempt in light of the very clear legislative history of NEPA, which indicates coverage of the Act should apply only to physical impacts of the environment. Several recent attempts have been made to extend the liability potential of the Army. An expansion of NEPA's scope has been proposed to include social and economic consequences of Army activities such as installation closures, civilian workforce reductions and activity transfers. However, as in the case of *Breckinridge v. Rumsfeld,* it now appears that the courts will restrict this expansive attempt in light of NEPA's very clear legislative history which indicates coverage of the Act is applicable to only physical impacts on the environment.

In light of the responsibility of the Army for environmental quality control and in light of the Army's record of compliance in this area, the following proposals are submitted for consideration by the Army JAG officer who finds himself appointed as the Environmental Law Specialist at the installation level. Present DA policy requires that an Army JAG officer be on orders as the Environmental Law Specialist [hereinafter ELS] at the installation level. This policy was initiated by letter from the Acting TJAG to major command staff judge advocates on 17 September 1975. It is felt that the adoption of the following proposals (*not* listed by order of priority) will, to a large degree, insure compliance with environmental regulations and will reduce the liability of the installation commander for violation of such laws and regulations.

1. The ELS should endeavor to obtain an installation supplement to Army Regulation 200–1.[5] This supplement should require the monitoring of all actions proposed or being considered by all installation staff agencies which may impact on the environment. The supplement should require submission to the ELS of such proposed actions along with an accompanying indication of whether an environmental impact assessment [hereinafter EIA] or statement [hereinafter EIS] was prepared or is being prepared for each action. If no assessment was deemed necessary by the staff agency, the ELS should still require that a "negative EIA" be written for the file to justify why an EIA was not necessary. With the submission of such a list of proposed actions periodically, the Environmental Law Specialist will have the opportunity to insure compliance with NEPA.

2. The ELS should be a member of and advisor to the Environmental Quality Control Committee at his installation. The Environmental Quality Control Committee should be established at each installation pursuant to the general requirements of Army Regulation

200–1 and specific requirements of the Commands.[6] This regulation requires that the Environmental Quality Control Committee be the overall committee responsible for environmental quality compliance for the entire installation. Other members of this committee should be the staff agency heads of all agencies with any potential for physical projects at the installation.

3. The ELS should urge and insure the implementation of an installation-wide Environmental Impact Statement which would cover the routine and standard activities of the installation. Thus, this "umbrella" EIS could be updated in the future with supplements as to any nonroutine projects which are proposed to be performed at the installation. Pursuant to Army Regulation 200–1, para. 2.4(d) each installation should have such an installation-wide EIS.

4. The ELS should attempt to establish training sessions for engineers and other staff agency middle managers as to the proper writing of EIAs and EISs. These training sessions should involve comparable facsimiles of projects which the installation may undertake in the future or has undertaken in the past. Army Regulation 200–1 should be used as a guide for such training efforts.

5. The ELS should create an inventory of all the potential environmentally vulnerable areas within the installation's jurisdiction. This inventory should cover not only air, water, and land use problems, but should also cover areas of potential controversial interest such as any rare or endangered species of fauna or flora as well as any preservation or historical interest area. This inventory of vulnerable environmental areas should also contain some type of compliance status with the applicable state or federal law or regulation for that subject.

6. It is important that the ELS be allowed to review all draft EIAs and EISs written at the installation or written by a contractor for the installation. Usually the draft environmental impact assessments and statements are form types which do not track the requirements of Army Regulation 200–1 and consequently are inadequate. If the ELS does not review these draft EIAs and EISs for adequacy and compliance with NEPA, the commander of the installation will continue to be subjected to liability in the form of injunctive relief should someone sue to enjoin the action, and the EIA or EIS is found to be inadequate. It is important to note that the EIA or EIS with its integrated supportive documents forms the heart of an administrative record by which the installation commander's decision to approve a project is supported. In the absence of an EIA or EIS, or if an inadequate EIA or EIS is written and approved, the very foundation for the action will be susceptible to legal challenge. Subsequent Army action will then be viewed as being only a *post hoc* justification for the action.

7. The ELS should require that he be notified of and receive copies of all correspondence received by any installation staff agency from local, county, state and federal environmental agencies. Furthermore, the ELS should review all drafts of correspondence from the installation to local, county, state, and federal environmental agencies. This will allow a coordinated approach to managing the numerous environmental activities and their respective compliance status. This proposal will also prevent unnecessary applications for procedural state environmental permits or the provision of irrelevant information to interested agencies.

8. The ELS, accompanied by the staff judge advocate, should periodically brief the installation commander as to the environmental quality compliance status of his installation. This periodic briefing should cover such matters as possible future problem areas, and the possible solutions to rectify such problem areas. The briefing should also provide a synopsis of the current litigation and law involving other military installations or federal agencies so as to insure the commander's awareness of his liability in this area.

9. The ELS should insure that his installation does not export pollution outside the installation and therefore circumvent the respon-

sibility for that pollution. An example of this exportation can be found in the removal of hazardous asbestos fibers produced from the demolition of buildings on the installation. If a contractor has been contracted to remove such material, the ELS should insure that the contract requires the contractor to comply with environmental regulations as to the disposal of that hazardous substance.

10. The ELS should create a working liaison with the command level environmental law specialist. This liaison will be invaluable in terms of information and guidance as well as support for any environmental matter which will arise at the installation level.

11. The ELS should establish an environmental law library. The *Environment Reporter* [7] and the *Environmental Law Reporter* [8] are very good reference works, and at least one of them should be obtained. Importantly, copies of all federal environmental laws, as well as the state and federal regulations promulgated thereunder, should be available to the ELS.

12. The ELS should contact all local, state, county, and federal environmental agencies in whose jurisdiction his installation is located and request that the installation and his office be placed on their mailing list. This placement will insure that all proposals for regulation changes as well as requirements of these agencies will be brought to his attention promptly.

13. To insure adequate environmental impact assessments and statements, the ELS should establish contact with each state and federal expertise agency in whose jurisdiction his installation lies. For example, the Bureau of Land Management or the U.S. Soil Conservation Service should be contacted for their expertise as to land impacts whenever a proposed environmental impact statement or assessment deals with land use. These expertise agencies should be relied on for data and review of potential impacts of and alternatives to proposed installation activities. Army Regulation 200-1, C1, contains an exhaustive inventory of these agencies by subject area. It is strongly suggested that the ELS at each installation review consider the implementation of any and all of the above proposals. Only if Environmental Law Specialists actively assert their roles at the installation level will the Army as a whole achieve the level of compliance with federal and state environmental quality standards which other agencies have achieved.

Notes

[1] 42 U.S.C. §§ 4321 *et seq.* (1970), *as amended* by Pub. L. No. 94-83, 89 Stat. 424 (9 Aug. 1975).

[2] Exec. Order No. 11507, Subject: Protection, Control and Abatement of Air and Water Pollution at Federal Facilities, § 1, 3 C.F.R. 524 (1970), *reprinted in* 42 U.S.C. § 4331 (1970), superceded by Exec. Order No. 11752, Subject: Prevention, Control and Abatement of Environmental Pollution at Federal Facilities, 38 Fed. Reg. 34793 (1973); Exec. Order No. 11514, Subject: Protection and Enhancement of Environmental Quality, § 1, 3 C.F.R. 531 (1970) *reprinted in* 42 U.S.C. § 4321 (1970).

[3] ___ U.S. ___, 48 L. Ed. 2d 555, 96 S. Ct. ___ (June 1976).

[4] 537 F.2d 864 (6th Cir. 1976).

[5] Published in 40 Fed. Reg. 55,962 (1975).

[6] For example, *see* FORSCOM Regulation 420-5, para. 2.2 (10 Aug. 1973).

[7] Bureau of National Affairs, Washington, D.C. (1970).

[8] Environmental Law Institute, Washington, D.C. (1971).

CLE News

1. FDS Approved For Minnesota CLE. The Minnesota Board of Continuing Legal Education has approved the Field Defense Services Defense Counsel Seminars for use towards Minnesota mandatory continuing legal education requirement. Up to 6.5 hours may be earned through attendance at the seminars. Actual attendance by the individual lawyer is the determinative factor.

2. TJAGSA Approved For Washington CLE. The Judge Advocate General's School has been

approved as an accredited sponsor of continuing legal education activities for the State of Washington which now has a mandatory continuing legal education requirement for its attorneys.

3. Available Videotape Programs. The following videotape programs are available for distribution to the field in accordance with provisions set forth in the TJAGSA Video and Audio Tape Catalog.

PROCUREMENT LAW DIVISION

Number	*Title*	*Running Time*
JA–111	*Spending Government Funds Wisely* This program is designed to familiarize non-lawyers with some of the ways in which the inadvertently improper expenditure of small amounts of government money can result in serious statutory violations. The program content: provides an introduction to the body of law commonly referred to as "anti-deficiency;" outlines and discusses the provisions of 31 U.S.C.§ 665, The Anti-Deficiency Act; discusses Army regulatory implementation of the Anti-Deficiency Act; portrays, by way of a short scenario, violations of both the Anti-Deficiency Act and the Minor Construction Act (10 U.S.C. § 2674); and discusses the scenario and the link between Minor Construction violations and the Anti-Deficiency Act.	26:00

ADMINISTRATIVE AND CIVIL LAW DIVISION

JA–244	*Board of Officers Demonstration* A new videotape on enlisted administrative eliminations which depicts an enlisted elimination board proceeding convened under the provisions of Chapter 13, AR 635–200. The tape is designed to be viewed by students who have completed a block of instruction on enlisted eliminations or as a review of board proceedings for the field.	51:00

CRIMINAL LAW DIVISION

JA–322	*Trial Advocacy: A Judge's Perception, Part I* Honorable William A. Ingram, United States District Judge, Northern District of California, presents his views on the trial tactics of lawyers and several practical suggestions on how to improve their advocacy skills through the use of charts, maps, photographs, etc.	42:00
JA–323	*Trial Advocacy: A Judge's Perception, Part II* A continuation of JA–322.	48:00
JA–324	*Trial Tactics in a Criminal Case, Part I* Mr. Patrick A. Williams, Attorney at Law, Tulsa, Oklahoma, presents a prosecutor's view of how to handle complicated criminal cases from the pretrial stage through the conclusion of trial.	52:00
JA–325	*Trial Tactics in a Criminal Case, Part II* A continuation of JA–324.	61:00
JA–326	*Trial by Court-Martial with Members* This program depicts a complete contested general court-martial of a serviceperson before a court with members. It includes the Article 39(a) session with arraignment, the swearing of members and voir dire procedure, and the procedure for presentation of evidence, argument, instruc-	62:00

tions by the military judge, findings, extenuation and mitigation, and sentencing. The tape is designed to familiarize the viewer with the procedure used in a typical contested general court-martial with members.

4. TJAGSA CLE Courses. Information on the prerequisites and content of TJAGSA courses is printed in CLE News, *The Army Lawyer*, June 1977, at 24.

August 29–September 2: 16th Federal Labor Relations Course (5F–22)

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

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

October 3–5: 2d Government Information Practices Course (5F–F28).

October 3–7: 5th Law of War Instructor Course (5F–F42).

October 17–20: 5th Legal Assistance Course (5F–F23).

October 17–21: 3d Defense Trial Advocacy Course (5F–F34).

October 25–26: 1st Criminal Law Developments Course (5F–F35).

October 26–27: 1st Procurement Law Workshop (5F–F15).

October 31–November 11: 73d Procurement Attorneys' Course (5F–F10).

November 14–18: 36th Senior Officer Legal Orientation Course (5F–F1).

November 28–December 1: 5th Fiscal Law Course (5F–F12).

December 5–8: 4th Military Administrative Law Developments Course (5F–F25).

December 12–15: 5th Military Administrative Law Developments Course (5F–F25).

January 3–6: 2d Claims Course (5F–F26).

January 9–13: 8th Procurement Attorneys' Advanced Course (5F–F11).

January 9–13: 6th Law of War Instructor Course (5F–F42).

January 16–18: 4th Allowability of Contract Costs Course (5F–F13).

January 16–19: 1st Litigation Course (5F–F29).

January 23–27: 37th Senior Officer Legal Orientation Course

February 6–9: 6th Fiscal Law Course (5F–F12).

February 6–10: 38th Senior Officer Legal Orientation Course (5F–F1).

February 13–17: 4th Criminal Trial Advocacy Course (5F–F32).

February 21–24: 39th Senior Officer Legal Orientation (War College) Course (5F–F1).

February 27–March 10: 74th Procurement Attorneys' Course (5F–F10).

March 13–17: 7th Law of War Instructor Course (5F–F42).

April 3–7: 17th Federal Labor Relations Course (5F–F22).

April 3–7: 4th Defense Trial Advocacy Course (5F–F34).

April 10–14: 40th Senior Officer Legal Orientation Course (5F–F1).

April 17–21: 8th Staff Judge Advocate Orientation Course (5F–F52).

April 17–28: 1st International Law I Course (5F–F40).

April 24–28: 5th Management for Military Lawyers Course (5F–F51).

May 1–12: 7th Procurement Attorneys' Course (5F–F10).

May 8–11: 7th Environmental Law Course (5F–F27).

May 15–17: 2d Negotiations Course (5F–F14).

May 15–19: 8th Law of War Instructor Course (5F–F42).

May 22–June 9: 17th Military Judge Course (5F–F33).

June 12–16: 41st Senior Officer Legal Orientation Course (5F–F1).

June 19–30: Noncommissioned Officers Advanced Course Phase II (71D50).

July 24–August 4: 76th Procurement Attorneys' Course (5F–F10).

August 7–11: 7th Law Office Management Course (7A–173A).

August 7–18: 2d Military Justice II Course (5F–F31).

August 21–25: 42d Senior Officer Legal Orientation Course (5F–F1).

August 28–31: 75th Fiscal Law Course (5F–F12).

September 18–29: 77th Procurement Attorneys' Course (5F–F10).

5. Civilian Sponsored CLE Courses.

September

8–9: Federal Publications, Labor Relations, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337–7000. Cost: $350.

8–10: NCDA, Prosecutor's Education Institute, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749–1571.

16–17: PLI, 15th Annual Defending Criminal Cases, Waldorf Astoria Hotel, New York, NY. Contact: Nancy B. Hinman, Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone (212) 765–5700. Cost: $160.

20–22: LEI, Institute for New Government Attorneys, 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.

21–26: World Peace Through Law Center, Washington, DC, Eighth World Peace Through Law Conference, Manila, Philippines. Contact: World Peace Through Law Center, Washington, DC.

23–25: National College of Criminal Defense Lawyers and Public Defenders, The Trial Jury, Jackson Hole, WY. Contact: Registrar, NCCDLPD, Bates College of Law, Univ. of Houston, 4800 Calhoun Blvd., Houston, TX 77004. Phone (713) 749–2283.

25–29: Appellate Judges Conference, Judicial Education Seminar, Traverse City, MI. Contact: Appellate Judges Seminars, Howard S. Primer, American Bar Association, 1155 E. 60th St., Chicago, IL 60637.

25–30: NCSJ, Sentencing Felons (Graduate), Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784–6747.

25–30: NCDA, Prosecutor's Investigators School, FBI Academy, Quantico, VA. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749–1571.

25–14 Oct.: NCSJ, Regular Session, Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784–6747.

26–1 Oct.: FBA, Annual Convention, [31 seminars including veteran affairs, ethics, international law, government information and privacy. and government contracts], Caribe Hilton Hotel, San Juan, Puerto Rico. Contact: FBA, 1815 H St. NW, Suite 420, Washington, DC 20006. Phone (202) 638–0252. Cost: $35, $45 for nonmembers.

27–29: LEI, Law of Federal Employment Seminar, 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: $250.

27–1 Oct.: CAJ, Legal Drafting Techniques, Gramercy Inn, Washington, DC. Contact: ABA Center for Administrative Justice, 1785 Massachusetts Ave. NW, Washington, DC 20036. Phone (202) 797–7050.

29: FBA Energy Law Committee, Seminar "Meeting [U.S.] Energy Needs in the 1980's: Conservation, Coal and Nuclear," Caribe Hilton, San Juan, Puerto Rico. Contact: Leonard M. Trosten, Chairman, FBA Federal Energy Law Committee, 1757 N St. NW, Washington, DC 20036. Phone (202) 457–7531. Cost: $35; $45 for nonmembers.

October

2–5: NCDA, Crime and the Elderly, Tampa, FL. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749–1571.

2–7: NCSJ, Civil Litigation (Graduate), Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784–6747.

3–4: Federal Publications, Labor Relations, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington DC 20006. Phone (202) 337–7000. Cost: $350.

4–6: NYU School of Continuing Education, Managerial Skills for the Developing Manager, Houston, TX. Contact: SCENYU Registrations, New York Conference, Management Center, 360 Lexington Ave., New York, NY 10017. Phone (800) 223–7450. Cost: $445 for the first person and $395 for each additional person.

6-7: ALI-ABA-Environmental Law Institute, Water and Air Pollution, Washington, DC. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone (215) 387-3000.

9-14: NCSJ, Criminal Evidence (Specialty), Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784-6747.

10-14: Federal Publications, The Skills of Contract Administration, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: $550.

11-15: NCDA, Organized Crime, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

17-21: George Washington Univ., Contact Formation [concentrates on the latest developments in government procurement], George Washington Univ., Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone (202) 676-6815. Cost: $450.

18-21: Federal Publications, Fundamentals of Government Contracts, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: $500.

23-27: Appellate Judges Conference, Judicial Education Seminar, San Francisco, CA. Contact: Appellate Judges Seminars, Howard S. Primer, American Bar Association, 1155 E. 60th St., Chicago, IL 60637.

23-28: NCSJ, Evidence (Specialty), Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784-6747.

23-4 Nov.: NCSJ, Special Court, Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784-6747.

25-27: LEI, Trial Practice Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone (202) 254-3483.

25-29: NCDA, Trial Techniques, Chicago, IL. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

30-4 Nov.: NCSJ, Search and Seizure (Specialty), Judicial College Bldg., Univ. of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone (702) 784-6747.

31-4 Nov.: George Washington Univ., Contract Administration [problems which arise during performance of government contracts], George Washington Univ., Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone (202) 676-6815. Cost: $450.

Revision of the Copyright Law, Title 17

Captain Joseph R. Faraguna, MTMC, Eastern Area, MOT, Bayonne, N.J.

The Senate and House of Representatives recently combined their forces as the 94th Congress to enact Public Law 94-553. This statute, signed into law by President Ford on October 19, 1976, will become effective January 1, 1978, and it represents the first major revision of the Copyright Law, Title 17 of the United States Code, since 1909.

Copyright protection as well as patent protection finds its origin in the United States in Article 1, § 8 of the Constitution:

> "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

A significant dichotomy has, however, evolved over the years between copyright and patent. Whereas a patent requires a high degree of uniqueness and novelty and proffers to its holder an extensive, almost monopoly like protection, the copyright requires only limited originality and creativity and offers its holder a correspondingly decreased amount of protection (see *e.g. Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99 (1951).

A major change with the new copyright statute involves jurisdiction. Under § 10 of the prior Title 17, federal statutory protection was extended only to work published with the ap-

propriate copyright notice. All unpublished works or works published with inadequate copyright notice were governed by state common law or were cast into the "public domain."

Section 104 of the new Title 17 now extends federal copyright protection to both published and unpublished works. In fact, the new law specifically preempts state and common law and all works which are proper copyright subject matter will now be governed exclusively by Title 17.

The new statute has also revised the standards used to determine whether a work is a proper subject matter and whether a work is copyrightable. Former § 4 allowed a copyright to be secured for "all the writings of an author." New § 102 extends copyright protection to "original works of authorship fixed in any tangible medium of expression." A work must now be "fixed" or embodied in a material object or phonorecord and have sufficient permanency and stability in order to be copyrightable. § 102, although employing a different standard from old § 4, reflects a theme that has long permeated the copyright field. Copyright protection is afforded to an author's physical expression of a work. The author's underlying idea, concept, method or system is not protected. To be copyrightable the idea must be reduced to an expression. § 102 provides examples of such protected expression to include, *inter alia*, literary works, musical works, dramatic works, pantomimes, pictorial, graphic and sculptural works, motion pictures and sound recordings.

Another important change provided by the new Title 17 is the reduced emphasis on publication and the birth of the notion of "creation." Under prior law, works enjoyed copyright protection from their date of first publication for a duration of 28 years. An additional 28 year period of protection could be claimed under a renewal term. New § 302 provides commencement of copyright protection from the time a work is "created" rather than first published. This in effect makes a work almost automatically protected from the time it is "created" or fixed in a material object or phonorecord. The author no longer has to come forward and affirmatively establish his copyright through publication with appropriate notice and registration.

And the duration of protection of works created under the new copyright statute no longer hinges on the old 28 year duration provision. A work will now enjoy protection from its creation for a duration of the life of the author plus 50 years. For joint works prepared by two or more authors the copyright endures for a term measured by the life of the surviving author.

Other modifications produced by PL 94–553 are the liberalized notice and registration provisions. Works must still possess a proper copyright notice (*e.g.* "(c), year of publication, name of owner") but omission of notice or improper notice can under certain circumstances be cured without loss of copyright protection. The omission of notice does not, for example, invalidate the copyright if (1) the notice has been omitted from only a small number of copies or (2) registration is made within five years after publication and a reasonable effort is made to add notice to all copies distributed to the public in the United States or (3) the notice has been omitted in violation of an express requirement by the owner.

Under prior law, failure to use proper notice on each published copy of a work could result in entry of the work into the "public domain." In the public domain a work would be entitled to no copyright protection.

Registration of a work with the Copyright Office, although beneficial, is now no longer a pre-condition to receipt of copyright protection under the new law. Registration is now permissive and can be accomplished at any time during the subsistence of the copyright. An author nevertheless is induced to register his work. Registration is a prerequisite to institution of an infringement action and to receipt of statutory damages. Furthermore, in any judicial proceeding, the certificate of registration constitutes prima facie evidence of the validity of the copyright and of the facts stated therein.

Compulsory licensing, which was available

under prior law for phonograph records, is extended under the new statute to cover cable TV, public broadcasting and jukeboxes. Under the compulsory licensing scheme, whenever a work has been distributed to the public in the United States under the authority of the copyright owner, any other person may, by complying with the provisions of the new statute obtain a compulsory license to make, transmit or distribute copies of the original work. The new statute also provides rate schedules for payment of royalties by anyone receiving a compulsory license. For example, with respect to each work embodied in the phonorecord, the royalty shall be either two or three-fourths cents or one-half of one cent per minute of playing time or fraction thereof whichever amount is larger.

Copyright protection under the new statute is not available for any work of the United States government.[1] This work is one prepared by an officer or employee of the United States government as part of that person's "official duties." This is consistent with the basic premise of old § 8 and prior caselaw. In *Scherr v. Universal Match Corporation* 297 F. Supp 107, *aff'd* 417 F.2d 497, for example, the plaintiffs, two soldiers, were stationed at Fort Dix as illustrators for preparation of visual aids. They were relieved of their regular duties in order to devote all of their duty hours and some of their leisure time to design and construct "The Ultimate Weapon"—a statue of an infantryman in full battle dress which was to serve as the symbol of Fort Dix. The cost of the project was borne exclusively by the United States Army and the plantiffs were at all times accountable to their military superiors to whom progress reports were submitted. The plaintiffs did, however, affix a copyright notice at the top of the statue on the infantryman's backpack and they subsequently registered their claim of copyright in "The Ultimate Weapon" with the Copyright Office.

Thereafter the United States consented to the Universal Match Corporation's manufacture and sale of match books which bore a picture of a statue entitled "The Ultimate Weapon." The plaintiffs, no longer on active duty, brought an action for copyright infringement against Universal seeking an injunction and statutory damages. The United States government intervened as a defendant and interposed an answer denying the plaintiff's copyright.

The Second Circuit Court of Appeals rejected the plaintiff's contention that they had been employed with an MOS as illustrators and had never been reclassified as sculptors, so that their work as sculptors was outside their regular course of employment. Also rejected was the contention that they had not been voluntarily employed but had either enlisted to avoid induction or had been drafted. For no where had Congress given any indication that it desired to exclude from the coverage of the Copyright Law works created by military personnel while fulfilling their obligation to serve their country. And here, where the Army had contributed considerable funds, time and facilities to the project, where the project was a formally commissioned one undertaken at almost complete government expense during regular duty hours and where the Army had enjoyed and exercised supervisory control over the plantiffs, "The Ultimate Weapon" was a proper work of the United States Government and was not, according to the Second Circuit Court of Appeals, copyrightable by the plaintiff employees.[2]

Another important feature of new Public Law 94–553 is termination of transfers and licenses. For a copyright subsisting in either its first or renewal term on January 1, 1978, a grant of a transfer or license of copyright executed by the author, his widow, children, executors or next of kin before January 1, 1978, may be terminated by the author, his widow, children executors or next of kin by serving at least two years advance written notice of termination and by complying with the remaining statutory requirements of § 304. For a grant of a transfer or license of copyright ownership executed by the author (but not his beneficiaries) on or after January 1, 1978, termination may be effected by the author, his widow, children, executors or next of kin by two years advance written notice and by complying with the

remaining requirements of § 203. These termination provisions reflect a concern for the unequal bargaining position of authors and the impossibility of determining a work's value until it has been subsequently exploited. The commercial exploitation can occur well after a grant of transfer or license. And the grant is likely to have been made for a disproportionately low consideration.

The new copyright law further protects the author and his beneficiaries by making the right to terminate non-alienable. Any attempt to bargain away or waive the right to terminate is void.

One final change created by the new Copyright Statute concerns the "manufacturing clause." First appearing in the 1891 Copyright Law, this clause represented an attempt to protect or reconcile the interests of the American printing industry with the interests of authors and owners. It generally required a book or periodical in the English language to be manufactured in the United States in order to receive full copyright protection. This manufacturing clause has been considerably curtailed under the new statute and will be totally phased out of the copyright law by 1982.

Notes

[1] *See generally* Price, *Copyright in Government Publications: Historical Background, Judicial Interpretation, and Legislative Clarification*, 74 MIL. L. REV. 19 (1976) [hereinafter cited as *Copyright in Government Publications*].

[2] The Second Circuit Court of Appeals did not decide "whether the district court was correct in ruling that the statue was not a 'Government publication' and that the notice of copyright was inadequate." 417 F.2d at 500. For the distinction between "publication" and "works for hire," *see generally Copyright in Government Publications* at 39–40.

Reserve Affairs Section

Reserve Affairs, TJAGSA

Reserve Training Workshop. The Judge Advocate General's Reserve Training Workshop will be held at TJAGSA on 7, 8, and 9 September 1977. This year the workshop will be devoted to the Pre-mobilization Legal Counseling Program, the 1978 Annual Training Schedule, and Troop Program Unit Assignment Policies. Attendance by JAG reservists is limited to the commanders of JAGSO Military Law Centers and the Staff Judge Advocates of the ARCOM's and General Officer Commands.

BOAC Phase II and Reserve Component Staff Course. The Judge Advocate General's School was the site for the BOAC Phase II (Criminal Law) and the Judge Advocate General Reserve Component General Staff Course 20 June–1 July 1977. The 1035th USAR School, Winooski, Vermont, under the command of Colonel Lawrence Wright, provided the instruction for the General Staff Course and portions of the BOAC course. One hundred and one officers attended the BOAC course and 48 field grade officers were in attendance at the General Staff Course. The Director of Instruction for the General Staff Course was Colonel Willis A. Spaulding. The Director of Instruction for the BOAC was Lieutenant Colonel Robert F. Greene.

1977 Law Day Observances

The 20th annual observance of Law Day U.S.A. was celebrated throughout the United States Army not only on Sunday, 1 May 1977, but during the preceding and following weeks as well. Considerable planning and extensive effort on the part of Army judge advocate offices went into the Law Day programs which were held at 58 Army installations in 23 states, five foreign countries and Kwajalein Atoll.

Through the use of Law Day proclamations,

various types of displays, extensive media coverage, elementary, junior high and high school class presentations, essay and poster contests, and a wide variety of social events, thousands of Army personnel and their families were made aware of Law Day 1977 and its meaning.

Highlights of some installation Law Day programs included the following: the simultaneously staged mock trial under the German Code of Criminal Procedure and UCMJ at 1st Armored Division's Old Ironsides Law Center; a Law Day telephone spot was used in connection with the local "time service" at Fort Campbell, Kentucky; on 27 April 1977, in ceremonies at Kwajalein Atoll, Marshall Islands, five local attorneys, including the Staff Judge Advocate and Assistant Staff Judge Advocate, were admitted to practice in the Trust Territory of the Pacific Islands by the Honorable Arven H. Brown, Associate Justice, Trial Division of the High Court, Trust Territory of the Pacific Islands; at Fort Jackson, South Carolina, two judge advocates appeared on a local radio talk show to discuss the meaning of Law Day; in Augsburg, Germany, the entire Staff Judge Advocate office entered a German-American Wandertag, or wandering hike, as an office, to celebrate Law Day; and three U.S. Army installations sent representatives to the 2d Annual Law Day Seminar held at Camp LeJeune, North Carolina, 28–30 April 1977. In addition to the above, Liberty Bell award ceremonies took place at several installations in the United States and in Germany.

As a result of efforts by the staff judge advocates and Law Day chairpersons, numerous installations presented religious ceremonies in support of the 1977 theme. These observances took the form of prayer breakfasts and Law Day messages delivered by U.S. Army chaplains on Sunday, 1 May 1977.

Seeking to repeat the successes enjoyed in previous years, the JAG Corps has entered the American Bar Association Award of Merit Competition for Law Day 1977.

Adoption of Protocols Updating International Humanitarian Law Applicable in Armed Conflict

International Affairs Division, OTJAG

On 10 June 1977, the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict, convened by the Swiss Federal Council, concluded its four year effort to update the law of war with the consensus adoption of two protocols to the four Geneva Conventions of 12 August 1949. Protocol I supplements the Geneva Conventions and the 1907 Hague Regulations with respect to international armed conflicts. Protocol II provides elaborations of basic protections for victims of non-international armed conflicts.

The two protocols will be open for formal signature from 11 December 1977 for one year. The delay in opening the instruments for signature is necessary to provide the Secretariat of the Conference an opportunity to ensure editorial and substantive correctness of the texts in each of the official languages, *i.e.*, Arabic, Chinese, English, French, Russian and Spanish. It will also allow governments an opportunity to study the protocols as a whole prior to signature. Although the protocols become effective six months after two instruments of ratification are deposited with the Swiss Federal Council, it may be several years before most of the 140 Parties to the Geneva Conventions become Parties to the Protocols.

The United States Delegation to the Conference consisted of representatives from the Department of State, the Arms Control and Dis-

armament Agency, the Department of Defense, and the military departments. United States military lawyers played a leading role in the negotiations during the four sessions of the Diplomatic Conference. Among the Army members of the United States Delegation since 1974 were MG George S. Prugh, formerly The Judge Advocate General; MG Lawrence H. Williams, The Assistant Judge Advocate General; Mr. Waldemar A. Solf, Chief, International Affairs Division; Captain George W. Grandison, JAGC, and Captain Edward R. Cummings, JAGC, International Affairs Division. Navy lawyers included Rear Admiral Merlin Staring, former Judge Advocate General of the Navy and Captain Richard H. Fruchterman, JAGC–USN. Air Force lawyers included Major General Harold R. Vague, Judge Advocate General of the Air Force; Brigadier General Walter D. Reed, Assistant Judge Advocate General; Colonel James D. Mazza, JAGC–USAF; and Lieutenant Colonel James R. Miles, JAGC–USAF.

Following is the closing statement made, on 9 June 1977, by Ambassador George H. Aldrich, Chief of the United States Delegation, in explanation of the United States participation in the consensus adoption of the two protocols:

"The United States welcomes the adoption of Protocol I. We are satisfied that this Protocol represents a major advance in international humanitarian law, an advance of which this Conference can be proud. We hope that it will be signed and ratified by all the States represented in this Conference.

"The Delegation of the United States is particularly happy to welcome the inclusion in the Protocol of the provisions on the protection of medical aircraft, which will for the first time give such aircraft significant immunity from attack. We also welcome the articles designed to ensure accounting for those who are missing in action and the protection of the remains of the dead.

"We believe the provisions on protecting powers, although they fall short of our desires, represent an improvement over the Geneva Conventions and will, at least, make it more difficult and embarrassing in the future for a State to refuse to permit external observation of how it treats its prisoners. In this connection, we welcome the clear statement in the preamble that no person protected by the Conventions or the Protocol can be denied these protections through charges of aggression and the statement in Article 44 that a soldier cannot be deprived of his status as a prisoner of war by allegations of war crimes. History has shown, unfortunately, that protections such as these are needed.

"The Delegation of the United States looks with satisfaction on a number of other important advances in the law made by this Protocol. In particular, we note the prohibition of indiscriminate attacks, including target area bombardment in cities, the clear and helpful definition of military objectives, the prohibition of starvation of civilians as a method of warfare and of destruction of crops and food supplies, and the special protection, with reasonable exceptions, accorded dams, dikes, and nuclear power stations. My Delegation believes the Conference can take satisfaction in having achieved the first codification of the customary law rule of proportionality, in having worked out a good definition of mercenaries that should not be open to abuse, and in setting minimum, humanitarian standards that must be accorded to anyone who is not entitled to better treatment.

"During these plenary sessions we have already commented on a number of articles which, because of compromise or vague language required clarification. I shall not repeat those previous statements, but there are a few remaining questions on which I wish to comment.

"The problem of assuring compliance with the Conventions and the Protocol, not only by individuals, but also by governments is extraordinarily difficult. In addition to the provision on protecting powers, we welcome the emphasis placed on dissemination, on the provision for legal advisors to the military forces, and on the responsibility of commanders and others in authority to take steps to prevent

violations. These provisions will promote increased training for both civilians and the armed forces, and such training is necessary to improve compliance with the law. The structure of "grave breaches" established in the Conventions was taken over by the Protocol and enlarged upon. We welcome the provision on grave breaches, but in order to avoid possible misunderstanding, we would emphasize that to constitute a "grave breach" an act must violate one or more substantive rules of the Protocol or the Conventions.

"The provisions on responsibility and cooperation of governments are important for the reaffirmation of existing law. However, as between adversaries reciprocity and mutuality of interest remain perhaps the most powerful pressures for compliance. The Protocol has gone far to remove the deterrent of reprisals. This has been done for understandable and commendable reasons in view of past abuses. However, in the event of massive and continuing violations of the Conventions and the Protocol, this series of prohibitions on reprisals may prove unworkable. Massive and continuing attacks directed against a nation's civilian population could not be absorbed without a response in kind. By denying the possibility of such a response and not offering any workable substitute, the Protocol is unrealistic and, in that respect, cannot be expected to withstand the test of future armed conflicts.

"As I mentioned earlier, the Government of the United States considers that the Protocol is designed to afford the greatest possible protection to civilians and other victims of war during international armed conflict. To that end it imposes a number of significant restraints on the use of means and methods of warfare. From the outset of the Conference, it has been our understanding that the rules to be developed have been designed with a view to conventional weapons. During the course of the Conference we did not discuss the use of nuclear weapons in warfare. We recognize that nuclear weapons are the subject of separate negotiations and agreements, and further that their use in warfare is governed by the present principles of international law. It is the understanding of the United States that the rules established by this Protocol were not intended to have any effect on and do not regulate or prohibit the use of nuclear weapons. We further believe that the problem of regulation of nuclear weapons remains an urgent challenge to all nations which must be dealt with in other forums and by other agreements.

"With respect to Protocol II, we were happy to join in the consensus and we shall encourage the successful application of the Protocol. My Government supports the position that international concern for humanitarianism in armed conflict cannot be limited to international conflicts. However, we recognize that the extent of international regulation in conflicts not of an international character must be considerably narrower, to take account of the sovereign responsibility of the government concerned. The fact that States have often been unwilling to acknowledge the applicability of Article 3 common to the Conventions, should have been a stern warning to the Conference to temper overly ambitious goals and to avoid even the suggestion of interference with the sovereign authority of states beyond that minimum required to mandate humanitarian treatment for all persons affected by the conflict. Ultimately, the Conference came to share this view, and the Protocol we have just adopted should, upon careful study, prove acceptable to most governments. In this connection, I would like to express our deep appreciation to the representative of Canada, Mr. Miller, and to the representative of Pakistan, Judge Hussain. Without their vision and untiring efforts, we would not have a Protocol II.

"It was with a full appreciation of the practical problems created by attempts to develop regulations for internal conflicts and with the practice of States with respect to common Article 3 behind us, that my Government sought a Protocol II with a low threshold of violence required to bring it into effect. We are disappointed that the Conference adopted a Protocol II with a relatively high threshold. We fear that, while the Protocol should not in any significant way infringe upon the sovereignty of any state, and therefore should be widely ac-

cepted, the high threshold of violence required by Article 1 will serve as a convenient excuse to refuse to admit its applicability except in very limited situations. Accordingly, while welcoming Protocol II, we are forced to question the extent to which it advances the cause of humanitarianism in non-international armed conflicts beyond that already embodied in Article 3 common to the Geneva Conventions of 1949.

"Nevertheless, we can hope that Protocol II will prove to be a significant force for greater humanity in civil wars. Only time will tell. My Government, in any event, will support this Protocol and hopes that it will be broadly supported by the nations of the world."

JAGC Personnel Section

PP&TO, OTJAG

1. Assignments

LIEUTENANT COLONEL

NAME	*FROM*	*TO*	*APPROX DATE*
ENDICOTT, James A., Jr.	JFK Mil. Asst., Ft. Bragg, NC	III Corps, Ft. Hood, TX	Aug 77
	MAJOR		
ARNESS, Franklin D.	USAREUR	USA Med. R&D Cmd., Washington, DC	Aug 77
	CAPTAINS		
AVERY, Bruce E.	USAARMC, Ft. Knox, KY	US Army Japan	Aug 77
BUTLER, James L.	25th Inf. Div., HI	1st Crim. Inv. Cmd., Ft. Meade, MD	Sep 77
DEBERNARDO, Anthony W.	25th Inf. Div., HI	USALSA w/dy OTJAG	Aug 77
DUKE, Charles L.	USA Trans. Ctr., Ft. Eustis, VA	EUCOM Sup. Acty., Iran	Aug 77
FRANCONE, Bruce E.	3d Armd. Div., Germany	USALSA	Sep 77
FUGELSO, William P.	USAARMC, Ft. Knox, KY	USA RCPAC, St. Louis, MO	Aug 77
GABBERT, Craig V.	2d Inf. Div., Korea	MTMC, Bailey Cross Roads, VA	Nov 77
GROTTENDIECK, William J.	32d AD Cmd., Europe	USAG, Indiantown Gap, Annville, PA	Aug 77
JIMENEZ, Ryan E.	1st Armd. Div., Germany	USA Sup. Cmd. Hawaii	Nov 77
LANCE, Alan G.	172d Inf. Bde., AK	USAD, Corpus Christi, TX	Nov 77
MACKEY, Patrick J.	7th Inf. Div., Ft. Ord, CA	OTJAG	Oct 77
MERRITT, Timothy E.	USAG, Camp Humphree, Korea	7th Inf. Div., Ft. Ord, CA	Nov 77
MILITELLO, Samuel P.	USA Trans. Ctr., Ft. Eustis, VA	USAG, Ft. Drum, NY	Oct 77

NAME	*FROM*	*TO*	*APPROX DATE*
PROUDFIT, Larry J.	USAIC, Ft. Benning, GA	USMA, West Point, NY	Aug 77
ROBERTS, Raymond L.	USA Scty. Agcy., Ft. Devens, MA	26th Adv. Crs., TJAGSA	Aug 77
WRIGHT, Richard W.	USAG, Ft. Wainwright, AK	OTJAG	Oct 77
	WARRANT OFFICERS		
PERKINS, Andrew J.	2d Inf. Div., Korea	21st Sup. Cmd., Germany	Sep 77
LANOUE, Michael	9th Inf. Div., Ft. Lewis, WA	7th Inf. Div., Ft. Ord, CA	Jul 77

2. Promotions

CAPTAIN—RA

David B. Craig	9 Jul 77
David J. Deka	28 Jul 77
Mitchell D. Franks	26 Jul 77
Eugene J. Monahan	6 Jun 77

BRIGADIER GENERAL—AUS

Alton H. Harvey	18 Jun 77

MAJOR—AUS

Paul E. Artzer	2 Jun 77
Bernie L. Bates	7 May 77
Charles E. Bonney	6 Jun 77
Ross W. Branstetter	6 Jul 77
Michael D. Clark	5 Jun 77
John P. Collins	12 Jun 77
John C. Cruden	10 Jun 77
David E. Davenport	2 Jun 77
Peter W. Garretson	3 Jun 77
Jonathan C. Gordon	4 Jun 77
Joseph L. Graves	13 Jun 77
John R. Howell	3 Jun 77
James L. Linebarger	3 Jun 77
Matt Reres, Jr.	2 Jun 77
David A. Sklar	3 Jun 77
John E. Spiller	2 Jun 77
Daniel E. Taylor	2 Jun 77
Thomas W. Taylor	5 Jun 77
John K. Wallace	9 Jun 77
Robert C. Wert	2 Jun 77

Current Materials of Interest

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By Order of the Secretary of the Army:

BERNARD W. ROGERS
General United States Army
Chief of Staff

Official:

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

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