



the army

LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

Department of the Army Pamphlet 27-50-57
September 1977

Survivor Benefits: A Checklist

*Captain Steven F. Lancaster,
Administrative and Civil Law Division,
TJAGSA*

This article contains a listing of federal survivor benefits for military personnel, a short explanation of each, a list of the potential beneficiaries, a description of how to obtain the benefit, sample letters for making the initial application for the benefit, a list of references, and a benefit checklist (Appendix I) Also included is information on obtaining commercial insurance benefits, locating information on the number and type of government bonds owned by the deceased service member, and transferring the ownership of jointly owned corporate stock to the surviving spouse.

All sample letters are prepared for signature by the surviving spouse, but can be adapted for use by surviving children, parents, brothers and sisters, an executor, or a person who possesses an insurable interest. Some of the sample letters need to be completed by adding the local address of the named agency. At the time these letters are completed and mailed, the beneficiary involved should also obtain copies of the death certificate, marriage license (if surviving spouse), birth certificate, and other similar legal documents which will be required by the agency administering the benefit before it can make payment.

Much of the information contained in this article was obtained from U.S. Dep't of Army Pamphlet No. 608-4, *For Your Guidance* (1975) and U.S. Dep't of Army Pamphlet No. 600-5, *Handbook on Retirement Services* (1975). Both of these references and those ref-

Survivor Benefits: A Checklist	1
Administrative and Civil Law Section	29
Legal Assistance Items	34
CLE News	35
Deferment of Service of Sentence to Confinement	45
Judiciary Notes	45
JAGC Personnel Section	45
Current Materials of Interest	47
Errata	48

erences listed within the article should be consulted for particular problems not covered in the article.

Appendix I contains a schedule of survivor benefits with blanks in which the amount of the benefit may be placed. This schedule was adapted from the one found in U.S. Dep't of Army, Pamphlet No. 360-517, *Armed Forces Life Insurance Counselors' Guide* (1975).

1. PAY AND ALLOWANCES DUE.

a. *Explanation:* When a service member dies on active duty any pay and allowances, including accrued leave not in excess of sixty days, due at date of death will be paid to the beneficiaries designated by the member on DA Form 41 or, if no designation has been made, according to a set order of precedence.

All retirement pay due a retired service member at date of death will be paid to the beneficiary designated by the member on DA Form 4240 or, if no designation has been made, according to a set order of precedence.

b. *Beneficiaries:* Service members and retired service members have the right to designate the beneficiary or beneficiaries who will receive pay and allowances due the member on date of death. If the member has made no des-

ignation, the amounts due go to the following persons in the order listed:

- (1) Surviving spouse;
- (2) Children in equal shares and their descendants by representation;
- (3) parents;
- (4) legal representative of the estate;
- (5) to the person determined to be entitled to the monies under the laws of the state of the domicile of the deceased.

c. *Agency:* U.S. Army Finance and Accounting Center.

d. *How to obtain:*

(1) If a service member dies on active duty, the Commander, U.S. Army Finance and Accounting Center, will automatically forward the necessary claim forms to the designated beneficiary or, if none has been named, to the primary surviving relative as listed in (b), above. To insure the appropriate claim forms are received, see Appendix II for a sample letter requesting the needed forms.

(2) Retired pay due is obtained by applying to the Retired Pay Operations Division, U.S. Army Finance and Accounting Center. See Ap-

The Judge Advocate General
 Major General Wilton B. Persons, Jr.
 The Assistant Judge Advocate General
 Major General Lawrence H. Williams
 Commandant, Judge Advocate General's School
 Colonel Barney L. Brannen, Jr.
 Editorial Board
 Colonel David L. Minton
 Lieutenant Colonel Victor G. McBride
 Captain Percival D. Park
 Editor
 Captain Charles P. Goforth, Jr.
 Administrative Assistant
 Ms. Helena Daidone

The Army Lawyer is published monthly by The Judge Advocate General's School. Articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army.

The Army Lawyer welcomes articles on topics of interest to military lawyers. Articles should be typed double spaced and submitted to: Editor, *The Army Lawyer*, The Judge Advocate General's School, Charlottesville, Virginia, 22901. Because of space limitations, it is unlikely that articles longer than twelve typewritten pages can be published. If the article contains footnotes they should be typed on a separate sheet. Articles should follow *A Uniform System of Citation* (12th ed. 1976). Manuscripts will be returned only upon specific request. No compensation can be paid for articles.

Individual paid subscriptions are available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is \$9.00 a year, 80¢ a single copy, for domestic and APO addresses; \$11.25 a year, \$1.00 a single copy, for foreign addresses.

Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971. Issues may be cited as *The Army Lawyer*, [date], at [page number].

pendix III for a sample letter requesting the necessary forms.

e. *Tax Consequence:* Pay and allowances due are included in the decedent's estate for federal state tax purposes.

f. *References:*

(1) 10 U.S.C. § 2771 (1970).

(2) Army Reg. No. 37-104-1, Payment of Retired Pay to Members and Former Members of the Army, Chapter 8, Section II (30 July 1971).

(3) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, para. 22-1 (1975).

(4) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 26 (1975).

(5) U.S. Dep't of Defense, *Military Pay and Allowances Entitlements Manual*, Part 4, Chapter 5, Section B (C46, 24 Jan 1977).

2. DEATH GRATUITY.

a. *Explanation.* It is a lump sum payment to the survivor of a service member who dies on active duty, active duty for training, inactive duty for training (weekly drills), or within 120 days after release from active duty, or inactive duty for training if the death is due to a disease or injury incurred or aggravated while on active duty or inactive duty for training. The amount of the gratuity is determined by adding the monthly basic pay, incentive pay, and special pay the member was entitled to on date of death, together and multiplying the total by six (6). The minimum sum paid is \$800 and the maximum sum is \$3,000. If the service member is no longer on active duty, the member must have been discharged or released under conditions other than dishonorable to qualify for the death gratuity.

b. *Beneficiaries:* By statute, the death gratuity is paid:

(1) To surviving spouse, if any.

(2) If no spouse, then to children in equal shares (without regard to age or marriage).

(3) If no spouse or children, then to the deceased service member's parents (or persons in

loco parentis) brothers, or sisters as designated by the deceased service member.

(4) If no spouse, children, or designation, then to the service member's parents (or persons in loco parentis) in equal shares.

(5) If no spouse, children, designation, or partents, then to the brothers and sisters of the service member in equal shares.

c. *Agency:* Department of the Army.

d. *How to obtain:* If the surviving spouse is residing with the service member near the member's duty station at time of death, the death gratuity may be paid immediately by the local Finance and Accounting Officer. In all other cases, the payment is made by a finance officer designated for the purpose or the U.S. Army Finance and Accounting Center. An application form should be mailed to the beneficiary automatically when payment is to be paid by a finance officer designated for the purpose or the U.S. Army Finance and Accounting Center. If an application is not sent, see Appendix IV for a sample letter requesting the application form.

In the case of a retired member or veteran who dies within 120 days after retirement or release from active duty, and the death is a result of a disease or injury incurred or aggravated while on active duty, application for the gratuity should be made to the nearest Veterans Administration regional office. See Appendix V for a sample letter requesting the necessary forms.

e. *Tax Consequence:* The death gratuity is not included in the decedent's estate for federal estate tax purposes.

f. *References:*

(1) 10 U.S.C. §§ 1475-1480 (1970).

(2) Army Reg. No. 37-104-1, Payment of Retired Pay to Members and Former Members of the Army, Chapter 8, Section I (30 July 1971).

(3) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 14 (1975).

(4) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, para. 22-5 (1975).

(5) U.S. Dep't of Defense, *Military Pay and Allowances Entitlements Manual*, Part 4, Chapter 5, Section A (C46, 24 Jan 1977).

3. DEPENDENCY AND INDEMNITY COMPENSATION.

a. *Explanation.* It is a monthly payment to the eligible survivors of a service member who dies on active duty, active duty for training, inactive duty for training (weekly drills), or after release from active duty if the death is service-connected or due to a service-connected disability. The monthly payments are based on the pay grade of the deceased service member, without regard to the income from other sources available to the eligible survivors. Payments to a qualified spouse are increased if the spouse is a patient in a nursing home, blind, or helpless, and for each child of the deceased veteran who is unmarried and under the age of 18. When there is no spouse, the children of the deceased service member receive monthly payments until they marry or reach age 18. Unmarried children, age 18 and older, who are full-time students, receive monthly payments until they reach age 23 and unmarried children who become permanently incapable of self-support prior to reaching age 18 receive monthly payments for life. If not on active duty on date of death, the service member must have left the service under conditions other than dishonorable for his beneficiaries to qualify for this benefit.

b. Beneficiaries:

(1) Surviving unremarried spouse whose marriage to the service member began within 15 years after the end of the member's active duty, active duty for training, or inactive duty training in which the injury or disease causing the death was incurred or aggravated; who was married to the service member for one year or more; or who was married to the service member for any period of time if a child was born of the marriage or was born to them before the marriage.

(2) Children of the deceased service member, when there is no surviving spouse, who are unmarried and under 18 years of age.

Children of the deceased service member who are 18 years old but under 23 years of age, if full-time students. Children of the deceased service member who are over 18 years of age but became permanently incapable of self-support prior to reaching age 18. Children of the deceased service member include legitimate children, legally adopted children, stepchildren who were members of a veteran's household, and illegitimate children; but in the case of a male service member, only if the child was acknowledged in writing signed by the serviceman, or if he was judicially ordered to contribute to the child's support, or if he was judicially decreed to be the father.

(3) Surviving parents of the deceased service member based on their annual income. Eligible parents may receive compensation even though it is also being paid to a spouse or children.

c. Agency: Veterans Administration.

d. *How to obtain:* Dependency and Indemnity Compensation is not paid until application is filed with the Veterans Administration. See Appendix VI for a sample letter requesting the forms needed to make application.

e. *Tax Consequences:* Dependency and Indemnity Compensation payments are not taxable for purposes of the federal income tax.

f. References:

(1) 38 U.S.C.A. §§ 401-423 (1976).

(2) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, para. 23-2 (1975).

(3) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 16 (1975).

4. NON-SERVICE-CONNECTED DEATH PENSION.

a. *Explanation.* It is monthly payment to the eligible spouse and children of a veteran who served on active duty during a period of war including Vietnam, for 90 or more days, or who served on active duty during a period of war and was separated from the service with a service-connected disability, was discharged under conditions other than dishonorable, and

whose death is not the result of a service-connected disability. The spouse and children of a service member who died in service not in line of duty, and who had completed two years of honorable service also qualify for this benefit. The monthly payment is based on the eligible beneficiary's gross income from other sources. Payments to a spouse are increased for each child under 18, provided the spouse's gross income from other sources does not exceed \$4,760.

The Administrator of Veterans Affairs has the authority to deny pension payments to a survivor whose estate is large enough so that it is reasonable that a part of it may be used to pay the survivor's living expenses.

b. Beneficiaries:

(1) Surviving unmarried spouse who was married to the service member for one year or more or married for any period of time if a child was born of the marriage, or to them before the marriage, and whose annual gross income from other sources is less than \$3,540 or less than \$4,760 if there are minor children; if none,

(2) Children of the deceased service member who are unmarried and under 18; or permanently incapable of self-support before reaching the age of 18; or under 23 and full-time students, and whose annual gross income from other sources, excluding earned income, does not exceed \$2,890. Children, as used here, includes legally adopted children and stepchildren who were members of the deceased service member's household.

c. Agency: Veterans Administration.

d. How to obtain: This Death Pension is not paid until application is filed with the Veterans Administration. See Appendix VII for a sample letter requesting the forms needed to make application.

e. Tax Consequences: Non-Service-Connected Death Pension payments are not taxable for purposes of the federal income tax.

f. References:

- (1) 38 U.S.C.A. §§ 532-544 (1977).
- (2) U.S. Dep't of Army, Pamphlet No.

600-5, *Handbook on Retirement Services*, para. 23-3 (1975).

5. SOCIAL SECURITY-MONTHLY PAYMENTS.

a. Explanation. It is a monthly payment to eligible spouse, children, or parents provided the service member was fully insured or currently insured at death. The amount of the payment is based on the service member's average taxable earnings prior to death. If the service member was fully insured at death, the surviving spouse who has not remarried and who has no children, can begin receiving payments at age 60. If the service member was fully insured or currently insured at death, a spouse caring for a qualified child under 18 years of age is entitled to monthly payments until the child reaches age 18 or for the child's life if the child is disabled. Children of a service member who was fully insured or currently insured at death are entitled to monthly payments until attaining age 18, or age 22 if a full-time student, or for life if disabled prior to attaining age 22. If the service member is fully insured at death, the parents of the service member are entitled to a monthly payment at age 62 if they were receiving one-half of their support from the service member at the time of the member's death. Total payments may not exceed the maximum allowable monthly family benefit. Payments may be reduced if the beneficiary's earnings from work exceed the annual allowable amount.

b. Beneficiaries:

(1) Surviving, unremarried spouse at age 60 or at any age if caring for a service member's children who are under 18 years of age or who are disabled.

(2) Surviving dependent children who are unmarried and under age 18, under age 22 if a full-time students, or disabled before age 22.

(3) Surviving dependent parents who are age 62 and received at least one-half of their support from the deceased service member.

c. Agency: Social Security Administration.

d. How to obtain: Application for social security payments must be made to the local social

security office. See Appendix VIII for a sample letter requesting the forms needed to make application.

e. *Tax Consequences:* Social security payments are not taxable for purposes of the federal income tax.

f. *References:*

(1) 42 U.S.C.A. §§ 401-429 (1977).

(2) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 18 (1975).

(3) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, para. 24-1 (1975).

6. SOCIAL SECURITY-LUMP SUM PAYMENT.

a. *Explanation.* It is a lump sum payment equal to three times the monthly social security benefit the deceased service member would have received if he had lived to retirement age or three times the monthly social security benefit being received. The maximum payable is \$255.

b. *Beneficiaries:* The service member's surviving spouse who was living in the same household with the member; or if no such spouse, to the person who paid burial expenses, or directly to the funeral home, if funeral expenses have not been paid.

c. *Agency:* Social Security Administration.

d. *How to obtain:* Must make application to local social security office for payment. See Appendix IX for a sample letter requesting the necessary forms with which to make application.

e. *Tax Consequences:* Social security payments are not taxable for purposes of the federal income tax.

f. *References:*

(1) 42 U.S.C. § 402(i) (Supp. V 1975).

(2) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 14 (1975).

7. SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE.

a. *Explanation:* All active duty service

members are automatically covered by Servicemen's Group Life Insurance (SGLI) for \$20,000 unless the member elects to reduce coverage or not to be covered. Coverage terminates on the 120th day after separation or release from active duty, unless the member is totally disabled for insurance purposes on the date of separation or release. In that case coverage terminates at the end of the last day of the year following the separation or release, whichever is earlier. Service members being released from active duty may convert their SGLI to Veterans' Group Life Insurance (VGLI) in the same amount or less as their SGLI. SGLI is term insurance. VGLI is a 5-year nonrenewable term insurance. At the end of five years, VGLI may be converted to commercial term life insurance.

b. *Beneficiaries:* For SGLI and VGLI the service member may designate as beneficiary any person, firm, corporation, or legal entity (including the insured's estate), individually or as a trustee. If no designation is made the insurance will automatically be paid to the following:

(1) Surviving spouse of the member; if none,

(2) Child or children of the member in equal shares, descendants by representation; if none,

(3) Parents in equal shares; if none,

(4) Duly appointed executor or administrator of the insured's estate; if none,

(5) Other next of kin.

c. *Agency:* Veterans Administration.

d. *How to obtain:* Insurance proceeds must be claimed. See Appendix X for sample letter requesting the forms needed to claim the benefits.

e. *Tax Consequences:* SGLI and VGLI proceeds are not included in the deceased service member's gross estate for purposes of the federal estate tax.

f. *References:*

(1) 38 U.S.C. §§ 765-776 (Supp. V 1975).

Army Reg. No. 608-2, Servicemen's Group Life Insurance (SGLI)—Veterans Group Life Insurance (VGLI) (15 February 1977).

(2) U.S. Dep't of Army, Pamphlet No. 360-517, *Armed Forces Life Insurance Counselor's Guide* (1975).

(3) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, paras. 10-15, 10-16, and 10-17 (1975).

(4) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance 23* (1975).

(5) VA Handbook No. 29-75-1, *Servicemen's and Veterans Group Life Insurance* (1975).

8. SERVICE DISABLED VETERANS' INSURANCE.

a. *Explanation.* This is a non-participating life insurance, with coverage up to \$10,000, available only to veterans separated on or after 25 April 1951, who have disabilities which the VA rates as service-connected and which would be compensable if 10 percent or more in degree. The veteran must be in good health except for the service-connected disability. This insurance may be payable to a qualified veteran who did not apply for the insurance, if the veteran became mentally incompetent from a service-connected disability and remained so until death. The death must occur before appointment of a guardian or within 1 year after appointment of the guardian.

b. *Beneficiaries:* Those designated by the service member or the following when the veteran did not apply for the insurance:

- (1) surviving unremarried spouse; if none,
- (2) surviving child or children, in equal shares; if none,
- (3) surviving parent or parents of the insured in equal shares.

c. *Agency:* Veterans Administration.

d. *How to obtain:* Application for insurance proceeds must be made to a Veterans Administration office. See Appendix XI for a sample letter requesting the forms needed to make application.

e. *Tax Consequences:* Not included in the decedent's estate for purpose of computing the federal estate tax.

f. *References:*

(1) 38 U.S.C. § 722 (1970).

(2) U.S. Dep't of Army, Pamphlet No. 360-517, *Armed Forces Life Insurance Counselor's Guide 9* (1975).

9. OTHER GOVERNMENT INSURANCE.

a. *Explanation.* In addition to SGLI, VGLI, and Service Disabled Veterans' Insurance, a service member may own United States Government Life Insurance (USGLI) or National Service Life Insurance (NSLI) policies acquired prior to 1951. These insurance programs are no longer open for current service members but the policies previously obtained are still in force.

b. *Beneficiaries:* The same as those outlined in paragraph 7, above.

c. *Agency:* Veterans Administration.

d. *How to obtain:* Insurance proceeds must be claimed. See Appendix XII for sample letter requesting forms needed to claim the benefits.

e. *References:*

(1) 38 U.S.C. §§ 701-760 (Supp V, 1975).

(2) U.S. Dep't of Army, Pamphlet No. 360-517, *Armed Forces Life Insurance Counselor's Guide 10* (1975).

(3) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, Chapter 10 (1975).

(4) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance 22* (1975).

10. COMMERCIAL INSURANCE.

Many active duty service members and veterans own commercial insurance policies of various types and amounts. In most cases, application must be made for the proceeds of these policies. See Appendix XIII for a sample letter requesting the necessary forms needed to file for insurance proceeds from a civilian insurance company.

11. SURVIVOR BENEFIT PLAN (SBP).

a. *Explanation:* This plan provides for a monthly annuity payment to the surviving spouse of an active duty service member who is eligible for retirement at date of death or to the designated survivors of a retired member who chose to participate in the plan. The monthly annuity is 55 percent of the retired member's pay or 55 percent of a lesser amount, as selected by the member. If a service member on active duty who is qualified for retirement dies, the monthly payment to the surviving spouse is 55 percent of what the member's retirement pay would have been if the member had retired on the date of death. Service members placed on the Temporary Disabled Retired List also qualify for participation in the plan. The monthly annuity payment to a surviving spouse is reduced by the amount of any dependency and indemnity compensation payments received by the spouse and by the portion of any monthly social security payments received by the spouse, based solely on the deceased service member's active federal service after 31 December 1956. If a spouse with more than one child is receiving social security payments there is no social security offset.

A service member who retired prior to 21 September 1972 may be a participant in the Retired Serviceman's Family Protection Plan (RSFPP) instead of the SBP. Benefits from this plan are obtained in the same manner as those for the SBP if the retired service member elected to participate in the plan. Only the surviving spouse and children are potential beneficiaries under this plan.

b. Beneficiaries:

(1) Surviving unremarried spouse who was married to the member on the date the member became eligible for retired pay and married to the member on the date of death; or married the member after retirement and remained married to the member for at least one year immediately before the member's death; or married the member after retirement and is the parent of living issue by that marriage.

(2) A dependent child who is unmarried and under 18, or under 22 if a full-time student,

or incapable of self-support because of a mental or physical incapacity which existed before the 18th birthday or was incurred before age 22, if a full-time student. The term "child" includes an adopted child, stepchild, foster child or recognized natural child who lived with the retiree in a regular parent-child relationship.

(3) A natural person with an insurable interest.

c. *Agency:* Department of the Army.

d. *How to obtain:* Upon notification of death, the U.S. Army Finance and Accounting Center will mail the necessary form for application for the annuity to the beneficiary of record. To insure receipt see Appendix XIV for a sample letter requesting the necessary forms.

e. *Tax Consequences:* The value of the annuity is not included in the deceased service member's estate. The cost of the annuity withheld from retirement pay is exempt from federal income tax, but the annuity payments are part of the beneficiary's gross income for purposes of the federal income tax.

f. References:

(1) 10 U.S.C.A. §§ 1447-1445 (1977).

(2) Army Reg. No. 608-9, The Survivor Benefit Plan (24 Mar. 1975).

(3) Army Reg. No. 608-30, Retired Serviceman's Family Protection Plan (3 Apr. 1969).

(4) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, paras. 22-2, 22-3, and 22-4 (1975).

(5) U.S. Dep't of Army, Pamphlet No. 608-4, *For Your Guidance* 18 (1975).

12. BURIAL ARRANGEMENTS ALLOWANCES.

a. *Explanation:* When a service member dies on active duty, the Army, at its expense, will prepare remains for burial and ship them to a designated funeral director or national cemetery, if the service member's next of kin so desire. In addition, the next of kin are authorized a maximum interment allowance of \$700 if the remains are shipped to a funeral director for burial in a civilian cemetery, or of \$450 if the

remains are shipped to a funeral director for burial in a national cemetery, or of \$75 if the remains are shipped to the superintendent of a national cemetery for burial. The interment allowance may be used to pay for hearse service, church service or clergyman's fees, obituary notice, flowers, vault, limousine for the immediate family, the services of a funeral director, including the use of his facilities and equipment, gravesite or crypt, opening and closing grave, use of cemetery equipment, and other expenses incident to burial. When a veteran dies who served in time of war, or was receiving Veterans Administration compensation at the time of death, or was retired for disability incurred in line of duty, the Veterans Administration will provide \$250 for burial expenses and an additional \$150 for a plot or interment allowance, if the veteran is not buried in a national cemetery. If a veteran dies of a service-connected disability the Veterans Administration may, at the request of the next of kin, pay up to \$800 in burial and funeral expenses in lieu of any other burial benefit.

b. *Beneficiaries:* The next of kin who arrange for the funeral and burial of the deceased servicemember.

c. *Agency:* Active duty member—
Department of the Army.
Veteran—Veterans Administration.

d. *How to obtain:* For service members dying on active duty, the interment allowance is obtained by filing DD Form 1375 with the command or installation making the shipment arrangements, if the Army arranges for the preparing and casketing of the remains; or with HQDA if the relatives make all arrangements for preparation, casketing, and shipment of remains. See Appendix XV for sample letter to be attached to DD Form 1375 to be sent to HQDA. For veterans, application for burial expenses must be made to the local Veterans Administration regional office. See Appendix XVI for a sample letter requesting the necessary forms.

e. *Tax Consequences:* Burial benefits are not

included in the decedent's gross estate for purpose of determining federal estate tax.

f. *References:*

(1) 10 U.S.C. § 1481 (1970).

(2) 38 U.S.C.A. §§ 902-905 (1977).

(3) Army Reg. No. 638-40, Care and Disposition of Remains (May 1971).

(4) U.S. Dep't of Army, Pamphlet No. 600-5, *Handbook on Retirement Services*, para. 21-1 (1975).

13. MISCELLANEOUS SURVIVOR BENEFITS.

In addition to the benefits listed above, the following benefits should be considered when reviewing survivor benefits:

a. Civil service job preference (5 U.S.C. § 3309 (1970).)

b. Continuing medical care for surviving spouse and children in military medical facilities or through CHAMPUS. (10 U.S.C. § 1076 (1970); Army Reg. No. 40-121, Medical Services Uniformed Services Health Benefits Program, para. 3-1 (15 Sept. 1970); Army Reg. No. 606-5, Identification Cards, Tags, and Badges, paras. 41 and 45 (15 Feb. 1967).)

c. Continuing use of post exchanges. (Army Reg. No. 60-20, Exchange Services, para. 3-8(5) (C2, 18 Jan. 1977).)

e. Additional educational assistance for surviving spouse and children. (War Orphans' and Widows' Education Assistance. 38 U.S.C. §§ 1700-1766 (1970).)

f. Headstone and Markers. (38 U.S.C. § 906 (Supp. V 1975).)

g. Shipment of household goods and personal effects. (10 U.S.C. § 4712 (1970); Army Reg. No. 638-1, Disposition of Personal Effects of Deceased and Missing Persons, para. 2-9 (27 Sep. 1971).)

h. VA Home Loan Guarantees for surviving spouse. (38 U.S.C.A. §§ 1801-1827 (1977).)

i. Burial in national cemetery. (Army Reg. No. 290-5, Army National Cemeteries (19 Mar.

76) and Army Reg. No. 210-190, Post Cemeteries (21 Mar. 75).)

14. ADDITIONAL AREAS OF CONCERN:

If survivors are unsure as to the number of U.S. Savings Bonds owned by the decedent at date of death, this information may be obtained by writing to the Bureau of Public Debt. See

Appendix XVII for sample letter.

If the deceased service member and spouse held jointly owned stock at date of member's death, the ownership of this stock may be transferred to the surviving spouse by notifying the corporation of the death and requesting transfer. See Appendix XVIII for a sample letter requesting such a transfer of ownership.

APPENDIX I
SURVIVOR BENEFIT CHECKLIST

BENEFIT	BENEFICIARY	ACTIVE DUTY	VETERAN RETIRED	AMOUNT	
				LUMP SUM	MONTHLY
1. Pay & Allowances Due	Spouse, Children, parents, etc.	X	X	\$_____	
2. Death Gratuity	Spouse, Children, parents, etc.	X	X	\$_____	
3. DIC	Spouse, Children, parents	X	X		\$_____
4. Non Service-Connected Pension	Spouse, Children	X	X		\$_____
5. Social Security-Monthly payments	Spouse, Children parents	X	X		\$_____
6. Social Security-Lump Sum	Spouse	X	X	\$_____	
7. SGLI and VGLI	As designated or by statute	X	X	\$_____or _____	
8. Service Disabled Veterans Insurance	As designated or by statute		X	\$_____or _____	
9. Other Government Insurance	As designated or by statute	X	X	\$_____or _____	
10. Commercial Insurance	As designated	X	X	\$_____or _____	
11. SBP	Spouse, children, insurable interest	X	X		\$_____
12. Burial Arrangements of Allowances	Next of Kin	X	X	\$_____	
TOTAL				\$_____	\$_____

APPENDIX II

(Date) _____

SUBJECT: Pay and Allowances Due

U.S. Army Finance and Accounting Center
Centralized Pay Operations
ATTN: Inquiries Division
Indianapolis, Indiana 46249

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place), while on active duty as a member

of the _____ (unit) _____ (armed service). I am _____ (deceased's name)'s surviv-

ing spouse. Please send the forms needed to claim the pay and allowances

due _____ (deceased's name), to the following address:

Sincerely,

APPENDIX III

(Date) _____

SUBJECT: Retired Pay Due

U.S. Army Finance and Accounting Center
Retired Pay Operations Division
ATTN: Termination Section, Pay
Services Division
Indianapolis, Indiana 46249

Dear Sir:

On _____ (date) _____ (name, rank, social security number),

a retired member of the _____ (armed service), died, at

_____ (place). I am _____ (deceased's name)'s surviving

spouse. Please send the forms needed to claim the Retired Pay due

_____ (deceased's name), to the following address:

Sincerely,

APPENDIX IV

(Date)

SUBJECT: Death Gratuity Application Form

U.S. Army Finance and Accounting Center
Centralized Pay Operations
ATTN: Inquiries Divisions
Indianapolis, Indiana 46249

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place), while on active duty as a member

of the _____ (armed service). I am _____ (deceased's name)'s surviv-

ing spouse. Please send the forms needed to apply for the death gratuity, to

the following address:

Sincerely,

APPENDIX V

(Date)

SUBJECT: Death Gratuity Application Form

Veterans Administration
Regional Office

(Street)

(City, State, Zip)

Dear Sir:

On (date) (name, rank, social security number)

died, at (place), a retired member of the

(armed service). I am (deceased's name)'s surviving

spouse. Please send the forms needed to apply for the death gratuity, to the following address:

Sincerely,

APPENDIX VI

(Date)

SUBJECT: Dependency and Indemnity Compensation

Veterans Administration
Regional Office

(Street)

(City, State, Zip)

Dear Sir:

On _____ (date) _____ (name, rank, social security number),

a retired member of the _____ (armed service), died, at

_____ (place), while on active duty as a member of the

_____ (armed service). I am _____ (deceased's name)'s surviving

spouse. Please send the application forms needed to apply for dependency

and indemnity compensation, to the following address:

Sincerely,

APPENDIX VII

(Date)

SUBJECT: Non-Service-Connected Death Pension

Veterans Administration
Regional Office

(Street)

(City, State, Zip)

Dear Sir:

On (date) (name, social security number)

died, at (place). From (period of service) to

(he/she) served as a member of the

(armed service). I am (deceased's name)'s surviving spouse. Please send the application forms needed to claim the Non-Service-

Connected Death Pension, to the following address:

Sincerely,

APPENDIX VIII

(Date)

SUBJECT: Monthly Social Security Payments

**Social Security Administration
District Office**

(Street)

(City, State, Zip)

Dear Sir:

On _____ (date) _____ (name, social security number)

died, at _____ (place). I am _____ (deceased's name)'s

surviving spouse. Please send the forms needed to apply for monthly social security payments, to the following address:

Sincerely,

APPENDIX IX

(Date)

SUBJECT: Lump-Sum Death Payment

Social Security Administration
District Office

(Street)

(City, state, zip)

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died at _____ (place). I am _____ (deceased's name)'s

surviving spouse. Please send the forms needed to apply for the lump-sum death payment, to the following address:

Sincerely,

APPENDIX X

(Date)

SUBJECT: Death Benefit Payment

OSGLI
212 Washington Street
Newark, New Jersey 07102

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place), (while on active duty as a member

of the _____ (unit) _____ (armed service). I am _____ (deceased's name)'s surviv-

ing spouse. Please send the forms needed to claim the death benefits under his insurance policy, to the following address:

Sincerely,

APPENDIX XI

(Date)

SUBJECT: Service Disabled Veteran's Insurance

Veterans Administration
Regional Office

(Street)

(City, state, zip)

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place) . From _____ (period of service) to

_____ (name of deceased) served on active duty

as a member of the _____ (armed service) . I am

_____ (deceased's name) 's surviving spouse. Please send the forms needed

to claim the death benefits under his (her) service disabled veteran's insurance, to the following address:

Sincerely,

APPENDIX XII

(Date)

SUBJECT: Death Benefit Payment

Commanding General
U.S. Army Finance and Comptroller Information
Systems Command
ATTN: Finance Policy Division
Washington, D.C. 20315

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place). I am _____ (deceased's name)'s sur-
viving spouse. Please send the needed forms to claim the death benefits
under (his/her) _____ (type of policy) insurance policy, to the fol-
lowing address:

Sincerely,

APPENDIX XIII

(Date)

SUBJECT: Death Benefit Payment

Insurance Company's Name

No. and Street

City, state, zip

Dear Sir:

On _____ (date) _____ (name, social security number)

died, at _____ (place). At date of death (he/she) carried

the following insurance policies with your company:

I am _____ (deceased's name) 's surviving spouse. Please send the forms needed to claim the death benefits under the above described insurance policies, to the following address:

Sincerely,

APPENDIX XIV

(Date) _____

SUBJECT: Payment of Survivor Benefit Plan Annuity

Commander
U.S. Army Finance and Accounting
Center
ATTN: FINCM
Indianapolis, Indiana 46249

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place). I am _____ (deceased's name)'s surviving spouse. Please send the forms needed to apply for my monthly annuity payments under the Survivor Benefit Plan, to the following address:

Sincerely,

APPENDIX XV

(Date) _____

SUBJECT: Interment Allowance

HQDA (DAAG-MED)
Washington, D.C. 20314

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place), while on active duty as a member

of the _____ (unit) _____ (armed service). I am _____ (deceased's name)'s surviv-

ing spouse. Please send the forms needed to apply for the interment allowance to which I am entitled, to the following address:

Sincerely,

APPENDIX XVI

(Date)

SUBJECT: Burial Expenses and Interment Allowance

Veterans Administration
Regional Office

(Street)

(City, State, Zip)

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died, at _____ (place) . From _____ (period of service) to

_____ (he/she) served on active duty as a member of the

_____ (unit) (armed service) . I am _____ (deceased's name) 's surviving spouse.

Please send the forms needed to apply for the Burial and Interment Allowance to which I am entitled, to the following address:

Sincerely,

APPENDIX XVII

(Date)

SUBJECT: Ownership of Bonds

Bureau of the Public Debt
"Safekeeping"
Washington, D.C. 20226

Dear Sir:

On _____ (date) _____ (name, rank, social security number)

died. I am _____ (deceased's name)'s surviving spouse. Please send an ac-

counting of the U.S. Savings Bonds owned by _____ (deceased's name) as

of _____ (date of death), to the following address:

Sincerely,

APPENDIX XVIII

(Date) _____

SUBJECT: Transfer of Stock Ownership

(Name of Corporation)

(Address)

(City, State, Zip)

Dear Sir:

On _____ (date) _____ (name, social security number)

my _____ (husband/wife) died. At the time of _____ (his/her)

death we owned jointly _____ (number) shares of stock in your corporation. Please transfer ownership of these stocks to me and notify me of the transfer at the following address:

Sincerely,

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

1. (Nonappropriated Fund Instrumentalities, Operational Principles) **Non-appropriated Funds May Not Be Used To Reimburse Military Members For The Cost of Commercial Parking Near Their Duty Stations.** DAJA-AL 1976/5546, 14 Oct. 1976. Many Armed Forces Examining and Entrance Stations (AFEES) are located in the middle of large cities and consequently parking for military and civilian personnel assigned to the stations is generally not available or very expensive. The Judge Advocate General was asked if AFEES nonappropriated fund instrumentalities, which are funded by the income from vending machines operated in the stations, could use their funds to reimburse military members for the cost of commercial parking near their duty stations. The Judge Advocate General advised that nonappropriated funds may not be used in such a manner because such payments would conflict with the congressional intent expressed in Section 5536, Title 5, United States Code, and Section 209, Title 18, United States Code, prohibiting receipt of additional compensation for the performance of official duty.

2. (Information and Records, Release and Access) **Posting Of An Occupant's Name Outside His Assigned Government Quarters Is Not an Unwarranted Invasion Of Personal Privacy.** DAJA-AL 1976/6260, 7 Jan. 1977. An opinion was requested of The Judge Advocate General whether the requirement of posting name identification signs, consisting of name and grade, on government quarters violates the Privacy Act. The Judge Advocate General noted that the purpose of the Privacy Act was to regulate the collection, maintenance, use and dissemination of personal information by federal agencies. On this basis, it was decided that the posting of an occupant's name outside his assigned government quarters does not constitute the type of unwarranted invasion of personal privacy that the Privacy Act (5 U.S.C. § 552a) and AR 340-21 protect against.

3. (Federal Labor Relations, Employee Discipline; Information and Records, Release and Access; Military Installations, Law Enforcement, Report of Professional Misconduct) **No Legal Objection To Releasing Report Of Nurse's Professional Misconduct To A State Licensing Agency.** DAJA-AL 1976/6320, 11 Jan. 1977. A SJA requested an opinion from The Judge Advocate General whether professional misconduct of a DA civilian nurse may be reported to the appropriate state licensing agency. The nurse had been apprehended for larceny of medications and falsification of hospital records. The FBI declined jurisdiction over the matter and adverse action proceedings under Civilian Personnel Regulation/Federal Personnel Manual (CPR/FPM) were initiated. The nurse subsequently entered the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) and adverse action was postponed pursuant to AR 600-85.

The right of the public to be protected from professionals who have engaged in misconduct outweighs the individual's privacy interest; *i.e.*, release of information regarding the larceny and falsification of records would not constitute a clearly unwarranted invasion of personal privacy, particularly in light of the ethical responsibility of nurses to report professional misconduct of their colleagues (5 U.S.C. § 552(b)(6)). The Privacy Act, accordingly, permits disclosure under 5 U.S.C. § 552a(b)(2) as disclosure to a state licensing agency would be required by the Freedom of Information Act. The information would also be releasable under 5 U.S.C. 552(b)(3) and the routine use established in para. B-4a, Appendix B, AR 340-21—the "law enforcement" routine use.

The opinion notes that the state licensing agency may not be advised of the nurse's enrollment or participation in the ADAPCP (21 U.S.C. § 1175 and para. 1-28, AR 600-85). This is the case even though such information is obtained from personal knowledge of the person who would make a report, rather than from in-

spection of written records (para. 1-26, AR 600-85).

The opinion further notes the policy established in para. 7-18, AR 600-85, that persons who are enrolled in ADAPCP and who are satisfactorily progressing in the program should be free from adverse actions by postponement thereof. Release of information to a license revoking authority, however, is not an adverse action precluded by para. 7-18, AR 600-85, even though such action could result in loss of the individual's license to practice nursing, thereby resulting in suspension from duties. The intent of the provision is to postpone official CPO adverse actions, and not to prevent another employee from fulfilling an ethical responsibility.

4. (Information and Records, Release and Access) **Completed Article 138 Complaint Not Releasable To Respondent For His Personal Use.** DAJA-AL 1977/3433, 3 Feb. 1977. The respondent of an Article 138 complaint requested a copy of the complaint under the Freedom of Information Act. The request was denied because disclosure would constitute a clearly unwarranted invasion of the complainant's personal privacy. The Judge Advocate General observed that the complaint contained substantial amounts of personal information pertaining to the complainant and other individuals. While the requestor probably was aware of much of the information and may even have had access to the requested record in the course of his duties, the issue is whether access to a record in one's official capacity is a factor to be considered in applying the balancing test used in making determinations under exemption six of the Freedom of Information Act. It was decided that prior access to a record in one's official capacity should not be a factor in responding to a Freedom of Information Act request. Because the complaint is contained in a "system of records" within the meaning of the Privacy Act, unauthorized disclosure could result in criminal penalties. There are no restrictions, however, on the use of a record by an individual who acquires it pursuant to the Freedom of Information Act. To provide an in-

dividual a record pursuant to the Freedom of Information Act because he had access to the record in his official capacity would tend to circumvent congressional intent to restrict officers and employees of agencies from any use of a record other than that which is necessary for the performance of duties. The respondent of an Article 138 complaint may obtain a copy of the complaint if he has a need for it in the performance of his official duties. If the complaint is furnished to him on that basis, however, he remains subject to the restrictions contained in the Privacy Act.

5. (Article 138, UCMJ; Enlistment and Induction, Enlistment; Separation from the Service) **Power To Void Enlistments For Recruiter Connivance UP Paragraph 14-4b, AR 635-200, Applies Only To Current Enlistment.** DAJA-AL 1977/3317, 7 Feb. 1977. An EM filed an Article 138, UCMJ, complaint based on the following factual situation. The member enlisted in the RA for three years in February 1973. His enlistment documents reflect no arrest/conviction record. In January 1975, he reenlisted for six years and his paperwork again reflected no arrest/conviction record. While being processed for a security clearance in 1976, it was learned that he was convicted of second degree murder in 1969 (age 16), for which he served one year in jail, received five years probation and "a full pardon the end of August 1976." When questioned, the EM (upon advice of counsel) admitted to the conviction, but stated he enlisted in 1973 after advising a recruiter of the conviction and parole. He also claimed he was told by the judge that if he went in service, the judge "would drop all charges against him and that if he got into any more trouble he would be brought back before the judge." He claimed he did not disclose the charges at the time of his reenlistment because he thought all charges were dropped.

Upon learning this information, the post commander directed (1) the EM's retention on the reenlistment, and (2) that his first enlistment be voided. The EM filed his Article 138 complaint, but the GCMCA denied relief on

grounds that recruiter connivance made voidance mandatory (para. 14-4d, AR 635-200).

On review, The Judge Advocate General granted redress after obtaining an opinion from ODCSPER, as proponent of the regulation, that paragraph 14-4d, AR 635-200, only delegated to a GCMCA the authority to void a member's *present* enlistment. The rationale underlying this delegation was based on the need to separate members from active duty quickly if the possibility exists that the Army lacks jurisdiction over them. That policy consideration is not present, however, where only a member's *prior* enlistment is in question. Recommendations regarding the disposition of prior fraudulent enlistments must be forwarded to MILPERCEN. MILPERCEN will not direct the voidance of prior fraudulent enlistments, however, where recruiter connivance in such an enlistment is merely alleged and has not been established.

6. (Separation from the Service, Grounds) Indebtedness Need Not Be Reduced To Judgment For Use In Bars To Enlistment Or Elimination Proceedings. DAJA-AL 1977/3530, 24 Feb. 1977. In response to an inquiry from MILPERCEN, The Judge Advocate General expressed the opinion that letters of indebtedness received by commanders concerning members assigned at installations in states which prohibit creditors from contacting employers of debtors unless the debt is reduced to a judgment, may nevertheless, be considered in military administrative actions such as bars to enlistment and elimination proceedings. The protections of AR 600-15 do not preclude the Army from taking independent administrative or disciplinary actions based upon these letters.

7. (Enlistment and Induction, Enlistment; Separation from the Service, Discharge) No Constructive Enlistment Of Minor Who Was AWOL When He Reached Age 17 And Until He Was Involuntarily Returned To Military Authority. DAJA-AL 1977/3736, 14 Mar. 1977. MILPERCEN requested an opinion whether the Army had acquired jurisdiction over a named minor. The facts indicated the EM en-

listed at age sixteen in August 1971, but listed his age as eighteen. Thereafter, he was AWOL from September 1971 until August 1976, when he was returned to military control involuntarily after a civil arrest.

The Judge Advocate General expressed the opinion that the EM did not acquire military status when he enlisted while below the minimum age, in contravention of governing statutes and regulations (10 U.S.C. § 505 and Rule A, Table 2-1, AR 601-210). Further, there were no facts to justify a finding of constructive enlistment after attaining age 17, *i.e.*, no "meeting of the minds" for an implied contract. The EM was AWOL at the time of his 17th birthday and there was no subsequent voluntary submission to military control, performance of duty, acceptance of services by the government, receipt of pay and allowances, or any other factor indicating an intent to consummate an enlistment. The opinion emphasized, however, that the four elements mentioned, even when present, do not necessarily result in a constructive enlistment. Rather, they are factors indicating the requisite intent to consummate an enlistment, the essential element being the "meeting of the minds." Release from the custody and control of the Army UP Paragraph 5-12, AR 635-200, was recommended.

8. (Information and Records, Release and Access) Disclosure of Religious Preference May Be A Clearly Unwarranted Invasion Of Personal Privacy. DAJA-AL 1977/3913, 22 Mar. 1977. In forwarding a Freedom of Information Act request to the appropriate initial denial authority (MILPERCEN), The Judge Advocate General noted that supplying names and either home or unit addresses to a religious organization which had requested the names and addresses of personnel with a particular religious preference may constitute a clearly unwarranted invasion of personal privacy. It was pointed out that while the purpose of the request was ostensibly to confer a benefit on the servicemembers concerned, not all members may want their religious preference disclosed even to an organization associated with their stated religious preference.

9. (Marriage) A **“Convenience Marriage” Between Military Members Is Not Illegal.** DAJA-AL 1977/3854, 23 Mar. 1977. In response to an inquiry from The Office of the Deputy Chief of Staff for Personnel concerning the Department of Army IG observations regarding “convenience marriages” The Judge Advocate General expressed the opinion that “convenience marriages” are not necessarily illegal. The Army follows the general rule that marriages considered valid by the state in which contracted are accepted as valid elsewhere. If the marriages in question are valid under the law of the state in which they occurred, spouses are entitled to the same benefits and privileges as the spouses of any other valid marriages, regardless of whether the Army considers them marriages of convenience. It is not illegal to enter into a marriage for economic rather than romantic reasons.

10. (Duty Status, Relief from Duty, Grounds; Enlisted Personnel, General, Article 138 Complaint; Administrative Finality, Exhaustion of Administrative Remedies; Appeal of Relief from Duty SEER) **Article 138 Relief Denied To SGM Relieved From Duties In Staff Section Resulting In Loss Of Special Duty Assignment Pay.** DAJA-AL 1977/3936, 18 Apr. 1977. A SGM who had been relieved from duties as NCOIC, Recruiting and Retention Division (RRD), of a division G-1 section, filed an Article 138 complaint seeking to be reinstated to his former duties, reinstatement of the special duty assignment pay and withdrawal of an adverse “Relief SEER” from his records. Named as respondent in the complaint was the division headquarters commandant. The SGM had made allegations to the post CSGM that there had been a misutilization of funds and excessive officer personnel turbulence within RRD. These allegations were reported to both the chief of staff and the division commander who directed the G-1 to look into the matter. When the G-1 confronted both the RRD division chief and complainant, the complainant refused to discuss the matter with the G-1 unless in the presence of the division commander or the chief of staff. The G-1 immediately relieved the complainant on the

ground that no “subordinate would work with him who would not talk to him.” A subsequent IG investigation revealed that there had been no misutilization of funds, but that there had been excessive turmoil in officer personnel in the RRD resulting in lack of officer-NCO communication. As a result, the IG concluded “all NCO’s . . . [showed] total loyalty to [complainant] and . . . lost their loyalty to the officers.” The IG found that complainant had aggravated the problem by his failure to support the OIC and to perform his duties as a middle manager correctly. The IG stated that the relief of the complainant was a “judgment call” but that relief was warranted. The division commander approved the IG report and directed that complainant be transferred from the post. Complainant sought written redress from the headquarters commandant, his immediate commander, who denied relief. Complainant then forwarded the Article 138 complaint to the division commander, who appointed an investigating officer. The investigating officer’s conclusion that the relief was proper was approved by a new division commander who denied relief.

The Judge Advocate General, as designee of the Secretary of the Army, found the GCMCA’s resolution of the SGM’s complaint proper. The test for granting Article 138 redress in relief from duty cases was stated as: “Absent a clear cut showing that relief of a subordinate by a Commander was arbitrary, capricious, involved an abuse of discretion or was unauthorized, relief UP Art. 138 will not be granted and the presumption of administrative regularity will not be overcome.” The principle implicit in this test is that a commander has the inherent authority to remove one of his subordinates when he believes the subordinate is unable to fulfill his mission. The opinion concludes that the problems revealed in the various investigations were such that there was no abuse of discretion by the G-1 in relieving the complainant, his subordinate NCO. Further, the action of TJAG approved the direction of the GCMCA to the complainant that the appropriate remedy for withdrawal of a “Relief SEER” is an appeal IAW para. 8-19, AR 600-200.

11. (Boards and Investigations) Department Of The Army Civilians (DACs) Cannot Be Members Of Administrative Discharge Board. DAJA-AL 1977/4061, 20 Apr. 1977. Inquiry was directed to The Judge Advocate General regarding the legality of DAC's serving as non-voting recorders of administrative discharge boards convened UP AR 635-200. Interpreting the language of paragraph V.A., DoD Directive 1332.14, 29 Dec. 1976, ("the . . . board shall be comprised of . . . commissioned officers . . . and may include a nonvoting recorder"), TJAG expressed the opinion that the language may not be construed so broadly as to permit DAC's to be appointed recorders for enlisted administrative elimination boards. TJAG noted, however, that this provision has been construed in the past to permit the use of a warrant officer, but only when a commissioned officer is not available.

12. (Information and Records, Release and Access) Portions Of Correctional Treatment Files May Be Exempt From Access By Present And Former Military Prisoners. DAJA-AL 1977/4029, 21 Apr. 1977. In response to the question whether records maintained in individual correctional treatment files may be withheld from present or former military prisoners who request copies or access under the Freedom of Information Act or the Privacy Act, The Judge Advocate General advised that the answer will depend on the facts of each particular case. It was noted that the three systems of records for individual correctional treatment files have been exempted from the access provisions of the Privacy Act. Prisoners may be denied access to their records to the extent that one or more of the reasons for exemption apply if the record is also exempt from disclosure under the Freedom of Information Act and AR 340-17. Records maintained in individual correctional treatment files generally will be investigatory records compiled for law enforcement purposes and hence exempt from mandatory disclosure under the Freedom of Information Act to the extent that release would have one or more of the effects set forth in paragraphs 2-12g(1) through (7), AR 340-17. The FOIA "internal communications" exemp-

tion also may be applicable in certain instances, *i.e.*, to portions of documents which reflect advice, opinions, evaluations or recommendations. Finally, the opinion noted that the exemptions of the FOIA and the reasons for claiming exemption from access under the Privacy Act are primarily intended to protect records from prisoners in actual confinement. It is doubtful that a significant and legitimate governmental purpose would exist for withholding records from a prisoner once he or she has completed his or her sentence.

13. (Enlistment and Induction, Enlistment) Actual Or Constructive Notice Required For Valid Involuntary Orders To Initial Active Duty Training. DAJA-AL 1977/4112, 2 May 1977. An EM enlisted in the Illinois National Guard in April 1976 for six years. On 19 July 1976, the Illinois State Adjutant General issued orders ordering him to report NLT 5 August 1976 to Fort Leonard Wood for initial active duty training (IADT) for not less than twelve weeks. The EM did not report; was reported AWOL on 12 August; DFR'd on 12 September; and processed as a deserter UP AR 630-10. In the meantime, he was discharged from the Illinois National Guard effective 11 August. He surrendered to military authorities in October 1976 after receiving a letter from Fort Leonard Wood. The EM claimed he was never contacted by letter or verbally concerning his enlistment and did not receive any orders. The commander advised that the Illinois unit contacted EM's HOR and spoke to his parents and brother on several occasions and advised them of his reporting date for training.

The Judge Advocate General expressed the opinion that there was insufficient evidence in the file to document actual or constructive notice of the orders to IADT or of the EM's right to appeal the orders as a unsatisfactory participant (UP AR 135-91) until about six weeks after the required reporting date. Phone calls to the EM's immediate family did not suffice as notice to him personally. Thus, the orders to IADT were not effective and the subsequent orders to active duty were void. Further, when discharged from the Illinois National Guard, the orders to IADT were voided.

Release of the EM from AD UP para. 5-12c, AR 635-200, was deemed appropriate. However, this release would not affect his Reserve

status or the six-year obligation and there would be no objection to requiring the EM to complete his Reserve component training.

Legal Assistance Items

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

1. ITEMS OF INTEREST

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth-in-Lending Act. The Board of Governors of the Federal Reserve System has amended its Truth-in-Lending Regulation Z to clarify provisions that permit discounts for cash customers.

The amendments are effective 21 July 1977. They carry out provisions of Public Law 94-222 specifying that merchants may give discounts to customers who pay in cash (or by check or similar means) rather than by using a credit card. Such discounts need not be disclosed as a finance charge to those using credit cards. Discounts may not exceed 5 per cent of the credit card price.

The amendments adopted by the Board were substantially the same as amendments proposed for public comment in December. The amendments allow merchants to use either a discount or a "two-tag" pricing system to indicate discounts for cash. Examples of pricing systems that may be used without being disclosed as a finance charge include:

1. A discount pricing system: the merchant posts or tags goods with a single price—the price charged if a credit card is used—and offers a 5 per cent (or less) discount off this price to cash customers.
2. A "two-tag" system: the merchant posts or tags goods with both a credit card and a cash price.

3. Another "two-tag" system: the merchant neither tags nor posts prices, but offers to accept from customers paying cash a price 5 per cent (or less) lower than the price charged to customers using credit cards.

The amendments adopted also include a provision that the amount of any discount for cash is not, in the case of credit card users, a charge for credit under any state law, such as a usury or credit disclosure law.

Family Law—Domestic Relations—Alimony, Child Support, Custody and Property Settlement. The New York Supreme Court issued a decree of divorce ordering that the children not be permanently removed from the state without its permission or mutual consent of the parties, and that any application for change in the decree be made through it. The petitioning ex-wife seeks an order compelling the respondent father to contribute to children of the marriage living with petitioner in Texas. Respondent disclaims liability for support because petitioner removed the children from New York to Texas without permission of the New York Supreme Court or himself. The Family Court of the State of New York, wherein the ex-wife has filed the petition for support, holds that the father's right to foster a parental relationship and to visit with his children are equally as important as the children's right to support, and that petitioner cannot enlist its aid in continuing such a violation of the order of the Supreme Court. Consequently, the Family Court dismissed the petition without prejudice. *C.J.S. v. E.K.*, No. ____ (N.Y. Fam. Ct.—Queens County, May 3, 1977). [Ref: Ch 20, DA PAM 27-12]

CLE News

1. TJAGSA CLE Courses.

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 New Developments Course (5F-35).

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

October 31-November 11: 73d Procurement Attorney's 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 (5F-F1).

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 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: 7th Fiscal Law Course (5F-F12).

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

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

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

Length: 4-1/2 days.

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

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

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

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

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

PROCUREMENT ATTORNEYS' COURSE (5F-F10)

Length: 2 weeks.

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

Prerequisites: Active duty or Reserve Component military attorneys or appropriate civilian attorneys employed by the U.S. Government, with six months' or less procurement experience. Security clearance required: None.

Substantive Content: Basic legal concepts regarding the authority of the Government and

its personnel to enter into contracts; contract formation (formal advertising and negotiation), including appropriations, basic contract types, service contracts, and socio-economic policies; contract performance, including modifications; disputes, including remedies and appeals.

PROCUREMENT ATTORNEYS' ADVANCED COURSE (5F-F11)

Length: 1 week.

Purpose: To provide continuing legal education and advanced expertise in the statutes and regulations governing government procurement. To provide information on changes at the policy level.

Prerequisites: Active duty or Reserve Component military attorneys or appropriate civilian attorneys employed by the U.S. Government. Applicants must have successfully completed the Procurement Attorneys' Course (5F-10), or equivalent training, or have at least one year's experience as a procurement attorney. Security clearance required: None.

Substantive Content: Advanced legal concepts arising in connection with the practical aspects of incentive contracting, funding, competitive negotiation, socio-economic policies, government assistance, state and local taxation, modifications, weapons system acquisition, truth in negotiations, terminations, labor relations problems, contract claims, and litigation. Course will normally be theme oriented to focus on a major area of procurement law. Intensive instruction will include current changes in the laws, regulations and decisions of courts and boards.

FISCAL LAW COURSE (5F-F12)

Length: 3-1/2 days.

Purpose: To provide a basic knowledge of the laws and regulations governing the obligation and expenditure of appropriated funds and an insight into current fiscal issues within the De-

partment of the Army. The course covers basic statutory constraints and administrative procedures involved in the system of appropriation control and obligation of funds within the Department of Defense. This course emphasizes the methods contracting officers and legal and financial personnel working together can utilize to avoid over-obligations.

Prerequisites: Active duty commissioned officer of an armed force, or appropriate civilian employee of the U.S. Government actively engaged in procurement law, contracting or administering funds available for obligation on procurement contracts. Must be an attorney, contracting officer, comptroller, Finance & Accounting Officer, Budget Analyst or equivalent. Attendees should have completed TJAGSA Procurement Attorney's Course, a financial manager's course, a comptrollership course or equivalent.

Substantive Content: Practical legal and administrative problems in connection with the funding of government contracts. Basic aspects of the appropriations process, administrative control of appropriated funds, the Anti-Deficiency Act, Industrial and Stock Funds, and the Minor Construction Act will be covered.

ALLOWABILITY OF CONTRACT COSTS COURSE (5F-F13)

Length: 2-1/2 days.

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

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one year of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent.

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

NEGOTIATIONS COURSE (5F-F14)

Length: 2-1/2 days.

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

Prerequisites: Active duty or Reserve Component military attorney, or appropriate civilian attorney employed by the U.S. Government, with at least one, but not more than five years of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent. Security clearance required: None.

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

PROCUREMENT LAW WORKSHOP (5F-F15)

Purpose: The workshop provides an opportunity to examine in the light of recent developments in the law and discuss in depth current procurement problems encountered in installa-

tion SJA offices. Attorneys will be asked to submit problems in advance of attendance. These will be collected, researched and arranged for seminar discussion under the direction of the procurement law faculty.

Prerequisites: Active duty or Reserve Component military attorneys or appropriate civilian attorneys employed by the U.S. Government with not less than 12 months' procurement experience who are currently engaged in the practice of procurement law at installation level. Security clearance required: None.

Substantive Content: Discussion of current developments in procurement law and their application to the problems currently experienced in installation level procurement.

FEDERAL LABOR RELATIONS COURSE (5F-F22)

Length: 4-1/2 days.

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

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Advanced Course. Security clearance required: None.

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

Federal Labor-management Relations: Rights and duties of management and labor under Executive Order 11491, as amended, and

DOD Directive 1426.1; representation activities; negotiation of labor contracts; unfair labor practice complaints; administration of labor contracts and procedures for arbitration of grievances.

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

LEGAL ASSISTANCE COURSE (5F-F23)

Length: 3-1/2 days.

Purpose: A survey of current problems in Army legal assistance providing knowledge of important legal trends and recent developments involved in areas of legal assistance rendered to service members.

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Advanced Course. Security clearance required: None.

Substantive Content: New developments in the areas of legal assistance rendered military personnel including consumer protection, family law, state and federal taxation, civil rights, survivor benefits, bankruptcy, and small claims. The instruction is presented with the assumption that students already have a fundamental knowledge of legal assistance.

MILITARY ADMINISTRATIVE LAW DEVELOPMENTS COURSE (5F-F25)

Length: 3-1/2 days.

Purpose: To provide knowledge of important legal trends and recent developments in mili-

tary administrative law, judicial review of military actions, and decisions relating to the operation of military installations.

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Security clearance required: None.

Substantive Content: New developments in the areas of military administrative law including military personnel, civilian personnel, military assistance to civil authority, legal basis of command (military installation law) and nonappropriated funds, with particular emphasis on developing case law in the areas of administrative due process, vagueness, and constitutionality of regulations, including first and fourteenth amendment considerations. Developments in the area of judicial review of military activities, including procedures for control and management of litigation involving the Army as required by AR 27-40. The instruction is presented with the assumption that students already have a fundamental knowledge of the areas covered.

CLAIMS COURSE (5F-F26)

Length: 3-1/2 days.

Purpose: To provide advanced continuing legal education in claims and instruction in recent judicial decisions, statutory changes and regulatory changes affecting claims.

Prerequisites: U.S. Army active duty or Reserve Component attorney or appropriate civilian attorney employed by the Department of the Army. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the

course. The student is expected to have experience in the subject area. Security clearance required: None.

Substantive Content: Claims against the government. Analysis of claims relating to Military Personnel and Civilian Employees Claims Act, Federal Tort Claims Act, National Guard Claims Act, Foreign Claims Act, and Nonscope Claims Act. Recent developments in foregoing areas will be emphasized. Claims in favor of the Government. Analysis of Federal Claims Collection Act and Federal Medical Care Recovery Act with emphasis on recent developments.

ENVIRONMENTAL LAW COURSE (5F-F27)

Length: 3-1/2 days.

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

Prerequisites: Active duty or Reserve Component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

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

GOVERNMENT INFORMATION PRACTICES COURSE (5F-F28)

Length: 2-1/2 days.

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

Prerequisites: Active duty or Reserve Component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

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

LITIGATION COURSE (5F-F29)

Length: 3-1/2 days.

Purpose: To provide basic knowledge and skill in handling litigation against the United States and officials of the Department of Defense in both their official and private capacities.

Prerequisites: Active duty military lawyer or civilian attorney employed by the U.S. Government. Enrollment is not recommended unless the individual is responsible for monitoring, assisting or handling civil litigation at his or her installation. Anyone who has completed the Army Judge Advocate Officer Advanced Course (resident) within two years of the date of this CLE course is ineligible to attend. Security clearance required: None.

Substantive Content: The following areas will be covered: Reviewability and justifiability, federal jurisdiction and remedies, scope of review of military activities, exhaustion of military remedies, Federal Rules of Civil Procedure, civil rights litigation, FTCA litigation, and official immunity. There will be a practical exercise in the preparation of litigation reports and pleadings.

MILITARY JUSTICE II COURSE (5F-F31)

Length: 2 weeks.

Purpose: To provide a working knowledge of

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

Prerequisites: Active duty or Reserve Component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Advanced course by correspondence. Security clearance required: None.

Substantive Content: Pretrial procedure, trial procedure, post trial procedures and review, appellate review.

CRIMINAL TRIAL ADVOCACY COURSE (5F-F32)

Length: 4-1/2 days.

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

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with at least six months' experience as a trial attorney.

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

MILITARY JUDGE COURSE (5F-F33)

Length: 3 weeks.

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

Prerequisite: Active duty or Reserve Component military attorneys. Security clearance re-

quired: None. Army officers are selected for attendance by The Judge Advocate General.

Substantive Content: Conference, panel, and seminar forums cover substantive military criminal law, defenses instructions, evidence, trial procedure, current military legal problems, and professional responsibility.

DEFENSE TRIAL ADVOCACY COURSE (5F-F34)

Length: 4-1/2 days.

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

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with 6-12 months' experience as a trial attorney and with present or prospective immediate assignment as a defense counsel at the trial level. Security clearance required: None.

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

CRIMINAL LAW NEW DEVELOPMENTS (5F-F35)

Length: 2 days (15 hours).

Purpose: To provide counsel and criminal law administrators with information regarding recent developments and trends in military criminal law. This course is revised annually.

Prerequisites: This course is limited to active duty Judge Advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Students must not have attended TJAGSA resident criminal law CLE, Basic or Advanced courses within the twelve month period immediately preceding the date of the course.

Substantive Content: Government/defense counsel post trial duties; speedy trial; SID-

PERS; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; applications of the privilege against self incrimination and issues in self incrimination; search and seizure; recent trends in the United States Court of Military Appeals; subject matter jurisdiction; witness production; mental responsibility; military corrections.

INTERNATIONAL LAW I COURSE (5F-F40)

Length: 2 weeks.

Purpose: To provide knowledge of the sources, interpretation and application of international law. This course fulfills approximately one-third of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Advanced Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase II.

Prerequisites: Active duty or Reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Advanced Course by correspondence. Security clearance required: None.

Substantive Content: The International Legal System: nature, sources and evidences of international law; state rights and responsibilities; recognition; nationality; the United Nations and the International Court of Justice; international rules of jurisdiction; status of forces agreements, policies, practices and current developments; foreign claims operations; overseas procurement operations; and private aspects of international law.

LAW OF WAR INSTRUCTOR COURSE (5F-F42)

Length: 4-1/2 days.

Purpose: To prepare officers to present Law of War instruction by providing basic knowledge

of the law of war and working knowledge of the method of instruction skills necessary for the presentation of effective instruction.

Prerequisites: Active duty or Reserve Component military attorney or appropriate civilian attorney employed by the Department of Defense, and officers with command experience who are assigned the responsibility of presenting formal instruction in the Geneva Conventions of 1949 and Hague Convention No. IV of 1907. The attorney and the officer with command experience must attend the course as a teaching team. Security clearance required: None.

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

This course is designed to fulfill the requirement of AR 350-216 that commanders assure that formal law of war instruction at their unit/installation be conducted by a qualified team consisting of a judge advocate officer and an officer with command experience, preferably in combat.

Graduates of the four prior Law of War Instructor Courses have reported from the field that the technique, substance and innovation gained through this course have been well received by trainee audiences, and that the course materials and the training aids and plans developed by them during the course have substantially professionalized the training efforts of both JAG and non-lawyer instructors. Most conspicuously valued by attendees is the opportunity of teaching teams jointly to discuss and resolve difficult law of war teaching questions. Non-lawyer officers are especially affirmative

on these points, suggesting the real value to the sponsoring command of designating to their teaching team and sending to this course, along with a judge advocate, a retainable non-lawyer whose continued utilization in law of war instruction can be projected.

Unit/installation SJA's should coordinate with the appropriate local commander or training officer for the qualification of law of war teaching teams adequate to local training demands.

MANAGEMENT FOR MILITARY LAWYERS COURSE (5F-F51)

Length: 4-1/2 days.

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

Prerequisites: Active duty military attorney in or about to assume a supervisory position in a judge advocate office. Security clearance required: None.

Substantive Content: Army management principles and policies, management theory and practice, formal and informal organizations, motivational management styles, communication, and civilian law office management techniques. A review of JAGC personnel management.

STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F-F52)

Length: 4-1/2 days.

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

Prerequisites: Active duty field grade Army judge advocate whose actual or anticipated assignment is as a staff judge advocate or deputy staff judge advocate of a command with general court-martial jurisdiction. Security clearance required: None.

Selection for attendance is by The Judge Advocate General.

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

LAW OFFICE MANAGEMENT COURSE (7A-713A)

Length: 4-1/2 days.

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

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

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

NONCOMMISSIONED OFFICERS ADVANCED COURSE, PHASE II (71D50)

Length: 2 weeks.

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

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

Substantive Content: SJA office operations and administration; administrative legal procedure;

military criminal law procedures; and claims and litigation administration.

4. Civilian Sponsored CLE Courses.

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.

NOVEMBER

2-4: Federal Publications, Practical Labor Law, Seattle, WA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

2-4: Federal Publications, Competing for Contracts, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

6-11: NCSJ, Evidence (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.

6-11: NCSJ, Sentencing Misdemeanors (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.

7-9: Federal Publications, Government Contract Costs, San Diego, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

7-9: Federal Publications, Government Architect-Engineer Contracting, Sea Island, GA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

9-10: ABA National Institute, Current Legal Aspects of Doing Business in European Common Market Countries (Section of International Law). Contact: American Bar Association National Institutes, American Bar Association, 1155 E. 60th St., Chicago, IL 60637. Phone (312) 947-3950.

9-11: Federal Publications, Negotiated Procurement, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

13-16: NCDA, Law Office Management, San Francisco, CA. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

14-16: George Washington Univ.—Federal Publications, Cost Accounting Standards, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$450.

14-16: Federal Publications, Practical Negotiation of Government Contracts, Los Angeles, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

14-18: George Washington Univ., Cost Reimbursement Contracting, George Washington Univ., Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone (202) 676-6815. Cost: \$450.

16-17: LEI, Application of the Administrative Procedure Act to Regulatory Proceedings Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone (202) 254-3483.

16-19: NCDA, Trial of a Drug Case, El Paso, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

21-23: Federal Publications, Cost Estimating for Government Contracts, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

28-30: Federal Publications, Procurement for Lawyers, Williamsburg, VA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

28-30: Federal Publications, Competing for Contracts, Los Angeles, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

30-2 Dec.: Federal Publications, Government Contract Costs, Williamsburg, VA. Contact: Seminar Division,

Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: \$425.

Deferment of Service of Sentence to Confinement

Criminal Law Division, OTJAG

When an application for deferment of sentence to confinement is denied, the applicant may request review by the next superior convening authority unless the record of trial is subject to review pursuant to Article 66, UCMJ. When the record is subject to such review, The Judge Advocate General is designated by the Secretary of the Army to act on

the request. The decision to deny deferment may be overturned if shown to be arbitrary and capricious. See paragraph 2-30, AR 27-10.

To facilitate review, staff judge advocates are requested to insure that convening authorities specify in their actions the reason(s) for denials of applications for deferment of confinement.

Judiciary Notes

U.S. Army Judiciary

ADMINISTRATIVE NOTES

1. Special Actions Branch, Office of the Clerk of Court, is responsible for arranging travel for civilian witnesses requested to appear at court-martial trials overseas. The experience of this office is that there has been an extensive amount of confusion relating to the type of passport that the witness should have in his possession. Often, the office requesting the particular witness has indicated that the witness should possess a NO-FEE OFFICIAL passport. In some instances, the witness has been contacted directly by the overseas office and given this information. Rarely, if ever, will a NO-FEE OFFICIAL passport be valid for a civilian witness requested to appear at a court-martial overseas. These passports are issued only to active duty military and government civilians and their dependents for perma-

nent assignment overseas. They are no longer valid and should be turned in to the passport office upon completion of the tour of duty. Thus, prospective witnesses who have recently returned to the United States from an overseas assignment *may not* continue to use the NO-FEE OFFICIAL passport still in their possession.

2. Staff judge advocates should assure that whenever more than one accused appear at a limited hearing on a particular issue, held pursuant to a decision of the Army Court of Military Review, and the same individuals were not tried in common at the original trial proceedings, a verbatim transcript of the hearing should be prepared for inclusion in each of the accused's original record of trial when returned to the Office of the Clerk of Court for further review.

JAGC Personnel Section

PP&TO, OTJAG

1. Armed Forces Institute of Pathology Forensic Science Program.

The assignment of JAG officers to participate as full time students in the Armed Forces Institute of Pathology Forensic Science Program has been discontinued. JAG officers will continue to be permitted to participate in short course training programs conducted by the

Armed Forces Institute of Pathology, on a TDY basis.

2. DARCOM Procurement Law Training Program.

There are still positions available, commencing in calendar year 1978, for JAG officers interested in participating in the DARCOM Procurement Law Training Program.

Individuals selected for the program will serve as procurement lawyers for a period of three years at major DARCOM commodity commands (Aviation Research & Development Command, Tank-Automotive Materiel Readiness Command, Electronics Command, Missile Research & Development Command, and Armament Research & Development Command).

At the conclusion of the tour, individuals will be assigned to positions which have a requirement for procurement expertise.

To be eligible for the program, a JAGC officer must have obtained career status (RA or Vol-Indef), and must have completed at least two years in the current assignment. All interested personnel should contact PP&TO.

3. Assignments

LIEUTENANT COLONEL

NAME	FROM	TO	APPROX DATE
DYGERT, George H.	TJAGSA	USAE USA AF Exc., Dallas, TX	Sep 77

CAPTAINS

ALLEN, Paul T.	USAARMC, Ft. Knox, KY	USALSA	Oct 77
ARROTTA, Richard B.	9th Inf. Div., Ft. Lewis, WA	31st ADA Bde, Homestead AFB, FL	Sep 77
BOWMAN, Thomas M.	Korea	USA Proc. Agency, APO NY 09710	Nov 77
BUSH, Brian X.	Dugway PG, UT	USALSA	Oct 77
CARROLL, Raoul L.	USAG, Ft. Meade, MD	USALSA	Nov 77
CARTER, William J.	USA Trans Ctr., Ft. Eustis, VA	USALSA	Oct 77
D'ANTONIO, Gregory D.	5th Inf. Div., Ft. Polk, LA	Korea	Oct 77
DAVIS, Ashby W.	Sig. Ctr., Ft. Gordon, GA	USALSA	Oct 77
FAULKNER, Sanford W.	Stu Det., Ft. Ben Harrison, IN	USAREUR	Jan 78
FUGELSO, William P. (Diversión)	USAARMC, Ft. Knox, KY	Admin Ctr., Ft. Ben Harrison, IN	Aug 77
GRIMM, Paul W.	USAG APG, MD	OTJAG	Oct 77
GRUCHALA, Harry J., Jr.	USA Comm Cmd., Ft. Huachuca, AZ	USALSA	Oct 77
JOHNSON, Michael R.	Recruiting Cmd., Ft. Sheridan, IL	FORSCOM, Ft. McPherson, GA	Aug 77
KENNEDY, Joseph P.	USAARMC, Ft. Knox, KY	USA Claims Svc., Ft. Meade, MD	Oct 77
LOCKEMY, James E.	XVIII ABN Corps, Ft. Bragg, NC	USALSA	Oct 77
MARON, Andrew W.	9th Inf. Div., Ft. Lewis, WA	USALSA	Oct 77

NAME	FROM	TO	APPROX DATE
READE, Robert M.	JFK, Ft. Bragg, NC	Korea	Oct 77
SMITH, Paul C.	Korea	USALSA	Feb 78
SMITH, Stephen D.	Sch. Tng. Ctr., Ft. McClellan, AL	USALSA	Oct 77
SNELL, Landon P.	USA Inf. Ctr., Ft. Benning, GA	USALSA	Oct 77

4. RA Promotions**COLONEL**

RECTOR, Lloyd K.	3 Feb 77
------------------	----------

MAJOR

STEINBERG, Barry P.	18 Aug 77
TAYLOR, Warren P.	7 Aug 77

CAPTAINS

BROWNING, Joseph W.	3 Jun 77
DICKINSON, James G.	3 Jun 77
FINCH, William L.	3 Jun 77
FUCHS, Lawrence M.	3 Jun 77
JUECHTER, Alfred H., Jr.	2 Jan 77
KETELS, Donald L., Jr.	2 Jan 77
McDADE, Lawrence G.	3 Jun 77
MEYER, Carl F., Jr.	25 Apr 77
NAGLE, James F.	3 Jun 77
RICHARDSON, Chester A., Jr.	3 Jun 77
RILEY, Dennis J.	3 Jun 77
SIMMONS, Harvey O., III	3 Jun 77
SPITZ, Terry L.	3 Jun 77
STAUFFER, Ronald E.	3 Jun 77

5. AUS Promotions**COLONEL**

TRAIL, Sebert L.	6 Jul 77
------------------	----------

LIEUTENANT COLONEL

BADAMI, James A.	10 Jul 77
BONFANTI, Anthony J.	10 Jul 77
DEGUILIO, Anthony P.	10 Jul 77
GILLIGAN, Francis A.	10 Jul 77
HANFT, John W.	10 Jul 77
HARRIS, Harold E.	10 Jul 77
HEMMER, William J.	10 Jul 77
KILE, Daniel A.	4 Jul 77
KNAPP, Thomas A.	10 Jul 77
LAGRUA, Brooks B.	10 Jul 77
LURKER, Ralph L.	8 Jul 77
MURPHY, James A.	12 Jul 77
MURRAY, Charles A.	4 Jul 77
PAULEY, Earl A.	9 Jul 77
PRICE, James F.	3 Jul 77
ROHN, Gordon F.	10 Jul 77
WOSEPKA, James L.	9 Jul 77

MAJOR

KELLY, Jerome E.	14 Jun 77
BELT, Julia A.	14 Jul 77
PHILLIPS, Stephen S.	14 Jul 77

Current Materials of Interest**Articles**

Commentary, *Once You're In: Maintaining Competence in the Bar*, 56 NEB. L. REV. 676 (1977).

Commentary, *The Disqualification Dilemma: DR 5-105 (D) of the Code of Professional Responsibility*, 56 NEB. L. REV. 692 (1977).

Editor's Note, *Raising the Adequacy of Trial Defense Counsel*, THE ADVOCATE, Vol. 9 No. 3, May-June 1977, at 1.

Editor's Note, *Rules Change in Procedure for Petitioning for Extraordinary Relief at the*

U.S. Court of Military Appeals, THE ADVOCATE, Vol. 9 No. 3, May-June 1977, at 3.

Requesting Defense Witnesses, THE ADVOCATE, Vol. 9 No. 3, May-June 1977, at 6.

Defending the Vacation of a Suspended Sentence, THE ADVOCATE, Vol. 9 No. 3, May-June 1977, at 11.

McCrystal, *The Promise of Prerecorded Videotape Trials*, 63 A.B.A.J. 977 (1977).

Laedlein, *Differing Site Conditions*, 19 A.F. L. REV. 1 (Spring 1977).

Losey, *Multiple State Taxation of Military Income*, 19 A.F. L. REV. 38 (Spring 1977).

Corcoran, Breeskin & Court, *Absence of Privileged Communications and Its Impact on Air Force Officers*, 19 A.F. L. REV. 51 (Spring 1977).

Beaty & Knapp, *Informed Consent to Medical Treatment*, 19 A.F. L. REV. 63 (Spring 1977).

Note, *The General Accounting Office and Foreign Military Sales*, 19 A.F.L. REV. 76 (Spring 1977).

Note, *Exclusions from, and Adjustments to, Gross Income*, 19 A.F. L. REV. 90 (Spring 1977).

Book Reviews

Book Review, 19 A.F. L. REV. 100 (Spring 1977). [Review of L. C. GREEN, *SUPERIOR ORDERS IN NATIONAL AND INTERNATIONAL LAW*.]

By Order of the Secretary of the Army:

Official:

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

AR

Revised Army Regulation 600-43 (Conscientious Objection) is dated 13 April 1977, with an effective date of 1 June 1977.

Current Military Justice Library

- 3 M.J. No. 3.
- 3 M.J. No. 4.
- 3 M.J. No. 5.
- 3 M.J. No. 6.

Errata

The June issue reported on page 31 that the old AR 600-240 was superseded by a new AR 600-40. This did not occur. The article should have stated the old AR 600-240 was superseded by a new AR 600-240.

BERNARD W. ROGERS
General United States Army
Chief of Staff