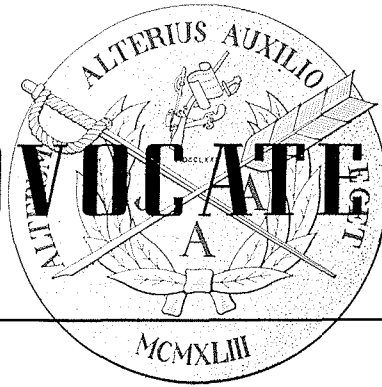


The

JUDGE ADVOCATE JOURNAL

Published Quarterly by

Judge Advocates Association



VOL. I, NO. 2

15 SEPTEMBER 1944



HENRY LEWIS STIMSON

Photo by Signal Corps, U. S. Army

Man of War and Peace

TABLE OF CONTENTS

THE GENERAL'S PAGE	3
THE PRESIDENT SAYS	4
MAN OF WAR AND PEACE, Henry L. Stimson	5
MILITARY LAW AND THE ADMINISTRATION OF MILITARY JUSTICE,	7
<i>Brigadier General James E. Morrisette</i>	
CONTRACT SETTLEMENT ACT OF 1944	11
<i>1st Lieut. Norman Roth, JAGD</i>	
THE CRIME OF TREASON	17
<i>Captain Joseph S. Robinson, JAGD</i>	
MILITARY TRIALS OF PRISONERS OF WAR	21
<i>Lieut. Colonel Leon Jaworski, JAGD</i>	
MANEUVERS WITH A STOCKADE	25
<i>Colonel Robert V. Laughlin JAGD</i>	
AMG MILITARY COURTS	28
<i>Major William F. Waugh, JAGD</i>	
AIR FORCE JUSTICE	30
<i>Colonel Thomas H. Goodman, JAGD</i>	
MARINE CLAIMS AT THE NEW YORK PORT OF EMBARKATION	31
<i>Colonel Arthur Levitt, JAGD</i>	
THE JUDGE ADVOCATE GENERAL'S SCHOOL	36
<i>Captain George P. Forbes, Jr., JAGD</i>	
THE JAG SCHOOL BANQUET SKIT	40
<i>1st Lieut. Edward F. Huber, JAGD</i>	
"FIRSTS" IN THE DEPARTMENT	45
EXPERIENCES OF AN AIR TRAVELING GCM REPORTER	46
NOTES	46
THE BRANCH OFFICES	54
WASHINGTON NEWS AND VIEWS	57
HONOR ROLL	59
OUR MAIL POUCH	61
LIST OF PROMOTIONS	63

THE JUDGE ADVOCATE JOURNAL
Published quarterly by Judge Advocates Association
 1225 New York Ave., N. W., Washington 5, D. C.
 Subscription price \$4 per annum; \$1.00 per number.

EDITORIAL BOARD

Major Clarence L. Yancey, JAGD, *Editor*
 Milton I. Baldinger, *Managing Editor*

Correspondents*

Major Alfred Thomas	First Service Command
Lt. Robert L. Strong	Second Service Command
Lt. Joseph S. Needle	Third Service Command
Lt. George W. Smith	Fourth Service Command
Lt. Melvin S. Katz	Fifth Service Command
Capt. Francis J. Gifford	Sixth Service Command
Capt. Marvin G. Schmid	Seventh Service Command
Lt. Colonel Leon Jaworski	Eighth Service Command
Lt. Victor D. Lawrence	Ninth Service Command
Lt. Col. Harold T. Patterson	Second Army
Major Ralph E. Langdell	Fourth Army
Capt. Herbert E. Wenig	Western Defense Command
Lt. John B. Coman	AAF Materiel Command
Capt. George P. Forbes, Jr.	The Judge Advocate General's School
Capt. Robert B. Buckley	New York Port of Embarkation
Capt. Thomas G. Jones	U. S. Army Forces China, Burma, India
Capt. David H. Gill	U. S. Army Forces in the Far East
Major Theo. F. Cangelosi	European Theater of Operations

* Ed. NOTE: Other correspondents will be announced in the next issue.

JUDGE ADVOCATES ASSOCIATION

Officers

Major General Myron C. Cramer, The Judge Advocate General	Honorary President
Lt. Col. Howard A. Brundage, JAGD	President
Colonel Herbert M. Kidner, JAGD	1st Vice President
Major John Lewis Smith, Jr., JAGD	2nd Vice President
Colonel Robert M. Springer, JAGD	Treasurer
Major George W. Tackabury, JAGD	Secretary
Milton I. Baldinger	Executive Secretary

Directors

Brig. Gen. Thomas H. Green	Major Edward F. Gallagher, JAGD
Brig. Gen. John M. Weir	Major Willard B. Cowles, JAGD
Colonel William C. Rigby, Retired	Major Charles B. Warren, JAGD
Colonel Franklin P. Shaw, JAGD	Major Osmer C. Fitts, JAGD
Colonel Edward H. Young, JAGD	Major J. J. O'Connor, JAGD
Colonel Ralph G. Boyd, JAGD	Major Henry C. Clausen, JAGD
Colonel Charles P. Burnett, JAGD	Major Paul A. Rose, JAGD
Colonel Abner E. Lipscomb, JAGD	Major Clarence L. Yancey, JAGD
Lt. Col. Fletcher R. Andrews, JAGD	Major Samuel F. Beach, JAGD
Lt. Col. Frederick F. Greenman, JAGD	Captain Littleton Fox, JAGD

The Judge Advocate Journal is not an organ of the War Department. The views expressed in the Journal are those of the author of each article primarily. It is the policy of the Journal to print articles on subjects of interest to officers in the Judge Advocate General's Department in order to stimulate thought and promote discussion; this policy will be carried out even though some of the opinions advanced may be at variance with those held by the Officers and Direc-

tors of the Judge Advocates Association and the Editors. The Judge Advocate Journal is published quarterly by the Judge Advocates Association, 1225 New York Avenue, N.W., Washington 5, D. C. Entry as Second Class Matter applied for at the post office at Washington, D. C., under the Act of March 3rd, 1879.

Subscription \$4.00 a year.

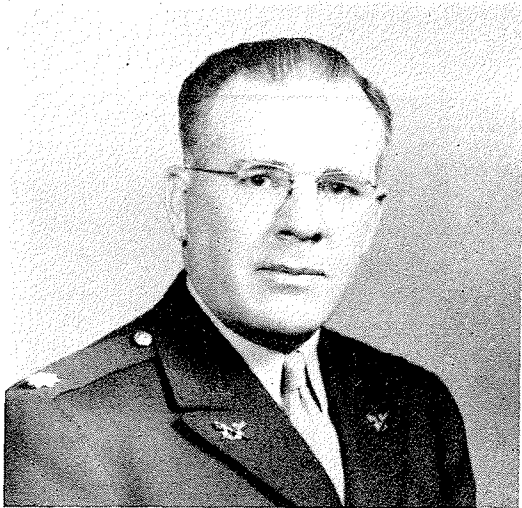
THE *General's* PAGE



THE reception given the first issue of the Judge Advocate Journal was gratifying. Each of us must consider it his Journal if it is to fulfill its purpose. The editorial staff is small and the work must be done in off-duty hours, so it is up to the members of the Corps to send in their contributions. Articles on legal subjects, organizational functions, or any other topic of general interest and letters from Judge Advocates about their problems, solutions, experiences, and observations will be welcomed by the magazine.

By the time this issue of the Journal goes to press the department will have over 2,000 members. Four years ago 95 per cent of these officers were lawyers practicing their profession in civil life. The successful transition to military life is a tribute to the personnel selected to be our officers. The ultimate test of the staff officer is the opinion his commander has of him. Efficiency reports and other sources of information coming over my desk go to prove the wisdom of our selections. By and large, the officers of our Corps have been acquitting themselves admirably and in many cases with distinction. They have made difficult adjustments to strange surroundings and under abnormal conditions. Reports on their soldierly conduct are naturally most satisfying to me. I have the advantage of knowing personally practically every officer of the Department and it is my conviction that no other branch of the service enjoys a more wholesome morale than the one in which we have chosen to serve. Our Journal and our Association can do much toward keeping that spirit at its high level.

MYRON C. CRAMER,
Major General,
The Judge Advocate General.



THE *President* SAYS —

THE members of our editorial staff are pleased with the many letters of commendation received on the first issue of the Journal. It is timely that public acknowledgment of our debt of gratitude be here made to these men for their zeal and enthusiasm and for the many hours, outside of duty hours, devoted to the work of compiling our first issue. It is my guess that no other publication of this character ever achieved such sudden world-wide acclaim. Our authors can now be thrilled at the thought that their contributions receive global distribution.

This leads up to a plea for articles, news items, stories, photographs, and any other brain-child that might be instructive, interesting, or amusing. Our editorial staff is very selective so if there is a rejection do not be discouraged, keep on trying. It is a worthwhile distinction to be included in the list of contributors.

A very large majority of our judge advocates are now enrolled as members of the Association. It has not been possible to reach everybody and it is believed that those who have not yet joined have not been informed of the fact that Judge Advocates have joined together for the laudable purposes set forth in our charter. Please note below the remarks on the time limitation for obtaining a charter membership.

Because of the constant shifting of military personnel our greatest difficulty is to keep current our mailing list. We are now giving attention to perfecting a system designed to keep this list up-to-date. It will be very much appreciated if members will cooperate by sending in promptly their new address on each change of station.

At the last meeting of the Board of Directors, the following action was taken which will be of interest to the members.

1. The annual subscription rate for the Journal was fixed at \$4.00 and the price per copy at \$1.00. The payment of the annual dues of \$5.00 includes a paid subscription to the Journal.

Members who apply for membership during the first quarter of the year shall pay the full annual dues and for those applying later, the dues shall be reduced by one-fifth for each quarter succeeding and such dues will include the amount of a paid subscription for the Journal for the period covered thereby. A member may be dropped from the membership roll if he fails to pay his annual dues within 90 days after 1 January.

2. Qualifications for regular membership now read as follows:

"Any officer who has been commissioned, detailed or assigned by War Department orders to duty with or in the Judge Advocate General's Department, including officers in the active service, in an inactive status, retired, or honorably discharged, also including those officers assigned or detailed to the department prior to 6 May 1943 by a commander having assignment jurisdiction, may, upon approval of the Board of Directors, become a member of the Association."

3. The next annual meeting of the members for the purpose of the annual election of officers and directors will be held in December, 1944.

4. The directors shall be divided into three classes, equal in number; directors of the first class shall be elected for a term of three years, directors of the second class for a term of two years, and the directors of the third class for a term of one year; at each annual election successors to the directors of the classes whose terms shall expire in that year shall be elected to hold office for a term of three years so that the term of directors of one class shall expire in each year. No director shall hold office for more than six consecutive years.

5. Provision is made for the appointment of seven members, none of whom shall be officers or directors, to constitute a nominating committee. This committee shall submit to the secretary a list of nominees for the election of officers and directors. It is also provided that any member may be named for any office in the Association by written nominations of 100 or more members made individually or otherwise to the secretary of the Association and received by him no later than 60 days prior to the annual meeting. The Secretary shall mail every member in good standing at least 45 days prior to any annual meeting a printed ballot containing all the names of the nominees, alphabetically listed, for each office. The voting shall be by secret ballot.

6. Charter members shall be those regular members who are accepted for membership on application made prior to 1 January 1945 and thereafter officers who are accepted for membership in the Association upon application made within 90 days after graduation from the JAG OCS or within 90 days after commission, assignment, or detail by War Department orders in The Judge Advocate General's Department.

The provisions in paragraphs 4 and 5 above are in line with the desire of the directors to insure against any small group getting and perpetuating control of the affairs of the Association. The 45 days notice is to provide sufficient time for all members overseas to participate in voting for the nominees on the ballot.

I am especially pleased to report that the Association has secured the right to permanent possession of all non-Government-owned movie films, pictures, files of the "Advocate" and other items of interest to Judge Advocates, which have been acquired by the members

(Continued on Page 6)

Man of War and Peace

NEXT week when Henry Lewis Stimson turns the calendar to 21 September he may reflect on the 77 years since his birth in New York City; on more than half a century of vigor as a lawyer, soldier, statesman, and public servant; on a career unique in U. S. History. The Secretary of War today is as vigilant as the driving U. S. District Attorney appointed by Theodore Roosevelt in 1906, the Secretary of War under William Howard Taft, the World War I Judge Advocate and Field Artillery Colonel, or Herbert Hoover's Secretary of State. Tanned and robust, he likes nothing better than a visit to the battle zones to see at first hand how the war is going.

The vigorous spirit of the Secretary of War in this greatest of all wars stems from a hardy line of New Englanders, commencing with George Stimson, who stepped from a British ship onto a bleak Massachusetts shore one day in 1635 to found the line in this country.

Man of War

Though best known as "Colonel Stimson" as military titles go, the Secretary holds the rank of brigadier general in the Officers' Reserve Corps. He has been on military status of one sort or another for a total of nearly 40 years since he first joined the New York National Guard in 1898. As Taft's Secretary of War he might have drifted along in the peaceful tenor of the times (1911 to 1913), but instead, set about reorganizing the War Department along the lines commenced by his great predecessor, Elihu Root, and saw the project to completion before his term's end. War clouds soon gathered over the scarred horizon of Europe and the U. S. Man of War had the house in order.

Returning to his law practice with the potent New York firm of Winthrop & Stimson, he took time out as a civilian to attend the Plattsburg Camp in the summer of 1916 when Woodrow Wilson was tugging at the reins to steer the country clear of war as the clouds inexorably grew nearer. In February, 1917, he notified Secretary of War Newton D. Baker and Brigadier General Enoch H. Crowder, The Judge Advocate General, of "my single desire to be of service wherever most useful." On General Crowder's recommendation he was appointed a Major and Judge Advocate in the Officers' Reserve Corps. Called to active duty as a Judge Advocate, he was assigned to the Intelligence Section, Army War College, General Staff, for a course of instruction in Intelligence duties. By August, 1917, the Army had found in him an "excellent officer, unusually keen and zealous in perfecting himself in his duties, anxious to learn all and everything pertaining to military affairs."

He was commissioned a lieutenant-colonel, Field Artillery of the National Army on 27 August 1917 and assigned to the 305th Field Artillery, 77th Division at Camp Upton, New York. He later attended the Yale Artillery School and in December, 1917, sailed for France on detached service in order to receive General Staff instruction with the AEF. He was assigned to the Intelligence Section, Headquarters, 51st Division, British Expeditionary Forces at Fremicourt, Station Bapaume, in the Picardy defensive sector. He later attended the Army General Staff College at Langres from 25 February 1918

to 31 May 1918* and was then sent to the 26th Division Headquarters at Toul-Boucq, Lorraine. The Director of the School at Langres found him to be a "very able officer. Will adjust himself to any military duty and do efficient service."

On 1 June 1918, he was made Summary Court Officer of the 305th Field Artillery Regiment and served as a member of a Special Court-martial. He was on temporary duty the first part of July 1918 at his Division Headquarters until relieved 2 August 1918 for return to the United States, having been selected to assist in the training of new Artillery units which were then being organized. His Division Commander stated that he "was very much pleased with the attention to duty . . . and the many plans for development and improvement originating with Colonel Stimson." He added, "I regret very much losing Colonel Stimson from the division and would unhesitatingly entrust a regiment of Field Artillery to his command. If by any good fortune Colonel Stimson should return to France, I should be glad to see him given the opportunity for a regimental command with this division."

After arriving in the United States, he was promoted to Colonel of Field Artillery and commanded the 31st Field Artillery Regiment of the 11th Division until its demobilization in December, 1918. Colonel Stimson was awarded the decoration of the French Ordre de l'Etoile Noire (Officer) by Presidential decree of 24 September 1919. He was honorably discharged from military duty at Camp Meade, Maryland, on 9 December 1918, receiving a commendation from his commanding officer on the advanced state of training of his regiment and on the excellent, soldierly spirit of his troops.

In 1921 he was commissioned a colonel in the Field Artillery Officers Reserve Corps and the following year was made a brigadier general in that corps.

In 1940 when President Roosevelt chose the Secretary of War who was to bear the tremendous responsibility of preparing the nation and the Army for any emergency, he filled the position with one who had experienced the rigors of the battlefield,† yet who had wide knowledge of the highest administrative problems and solutions. The Man of War had returned to the post he had left nearly thirty years earlier.

Man of Peace

War and peace have been the warp and woof of Henry L. Stimson. Shortly after the outbreak of World War I, Woodrow Wilson named him a member of the cooperating home committee to aid the Commission for Relief in Belgium in its problems of securing supplies. This was a job for a Man of Peace. In 1927, when Nicaragua was in the throes of civil war over the presidential nomination, President Coolidge named him as peace envoy. He succeeded in effecting a peace settlement by the terms of which both sides agreed to disarm and assent to American supervision of succeeding elections. In "American Policy in Nicaragua" Secretary Stimson set out his

* A fellow student was Captain Myron C. Cramer of the Cavalry, now The Judge Advocate General—Ed.

† Reflecting on his service in France as an officer, the Secretary told his press conference following his recent visit to the Normandy battlefield that he recalled how "I groveled on my belly and wished that I was thinner than I was."

views on the duty of the United States under such circumstances.

Shortly after his return from Nicaragua he was appointed by President Coolidge to succeed General Leonard Wood as Governor General of the Philippine Islands. The period of his administration was accentuated by a freedom from insular controversies, no doubt due in large part to his sympathy with the wishes and aims of the Filipino people and his diplomatic handling of local problems. He received acclaim for impressing the people of the Philippines of the necessity for developing their economic resources, leaving the question of independence in the background.

He returned to America in 1929 to assume his duties as Secretary of State in the cabinet of President Hoover. The chairman of the American delegation to the London Naval Conference of 1930 which negotiated a treaty by the United States, Great Britain, Japan, France and Italy for the limitation of naval armaments was the Man of Peace. He was also one of the two delegates from the United States to the Seven-Power Conference in London in 1931, called to consider the financial strife in Central Europe, and was chairman of the American delegation to the Disarmament Conference at Geneva in 1932.

In 1938 he was chosen by President Roosevelt as one of the American members of the permanent court of arbitration at The Hague.

Man of War and Peace

Although he has held important appointments under every President from Roosevelt to Roosevelt there has remained in the background that lure of the active law practice, the magnetism of which is known only to attorneys, and between periods of acting as trouble-shooter on a national or international scale, he has always returned to his law office. Graduating from Phillips Academy, Andover, Massachusetts, he entered Yale University where he won the DeForest prize in oratory in his senior year and was graduated with the B. A. degree in 1888. The next two years he studied at Harvard, receiving a master's degree in 1889 and attending the law

school in 1889-1890. In 1890 he entered the law office of Root & Clark in New York City and was admitted to the New York bar in 1891. He became a member of the firm two years later. In 1897 the firm was reorganized as Root, Howard, Winthrop & Stimson and in 1901 it became Winthrop & Stimson.

His years of study and practice of the law explain in some measure the ability to grasp and solve difficult situations which has made his career distinguished. The experience gained as the District Attorney who successfully prosecuted the so-called sugar trust for customs fraud and who inflicted heavy fines on leading railroads for giving rebates, no doubt sharpened his aggressiveness.

Coming again to head the War Department, Secretary Stimson had much of the responsibility for raising and training the country's largest peace time army. He successfully urged on Congress the enactment in September 1940 of the first compulsory service law in time of peace and in collaboration with the Chief of Staff, was active in shaping and training that army. He led in the establishment of virtual autonomy for the Air Corps under the ultimate direction of the Chief of Staff in combined operations.

He has been a strong advocate of the necessity of going on the offensive with minimum delay. To carry this policy into effect, he and General George C. Marshall effected a "streamlining" of the Army Command. He has been untiring in improving our key defenses, flying to Panama on an inspection of that theater and personally pushing forward the air patrolling system of the continental defense. He has twice flown to battlefronts on tours of inspection since the beginning of our offensive operations, has taken part in numerous conferences with Allied leaders, talked with the troops and comforted sick and wounded.

Long a student of international affairs, the world security discussions at Dumbarton Oaks no doubt excite the interest of the Secretary of War. Unfolding events looking to the establishment of universal order under law may yet see the playing of trump cards by America's Man of War and Peace.

THE PRESIDENT SAYS —

(Continued from Page 4)

of the staff of The Judge Advocate General's School and of the "Advocate." Possession will be given if and when the school is deactivated. It is believed that as the years go by, these things will enhance in value historically for all JA's, particularly for the graduates of the school, and will be a fine means to help preserve memories of our war time service.

We should strive to make our Association a vital and aggressive medium for mutual assistance to all of our members in their Army work. To know our fellow members and their problems—to pass along helpful

hints to make us more efficient on the job—to maintain our pride in the Corps—to keep our good humor and maintain high morale—should be our aim. It is work beyond the call of ordinary duty but it will pay big dividends in the knowledge that we have helped to keep bright the shield of honorable service to the country that members of the legal profession and The Judge Advocate General's Department have carried in all of our wars and in every crisis when troubled times have come upon our people.

HOWARD A. BRUNDAGE,
LT. COL. J.A.G.D.

MILITARY *Law AND Administration* OF *Military Justice*

An Address by BRIGADIER GENERAL JAMES E. MORRISSETTE,* *Assistant Judge Advocate General*
Before the State Bar Association of Wisconsin,
Milwaukee, Wisconsin, 23 June, 1944.

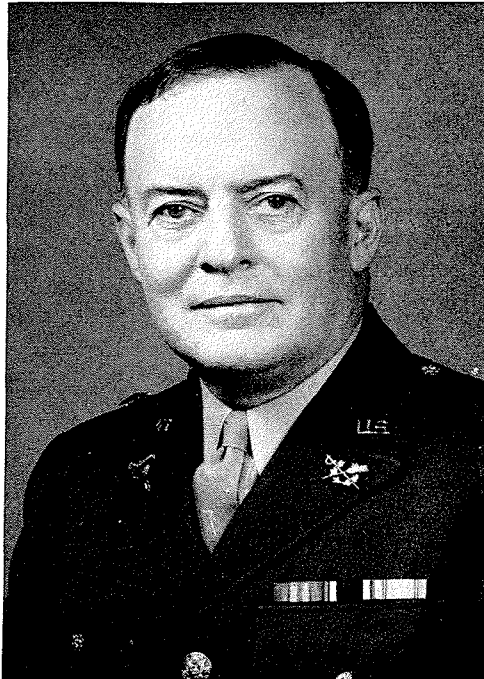
"INNOCENT, I would prefer trial by a court-martial of the United States Army than by any other tribunal in the world. Guilty, such a court is the last I would choose," an expression current for years in the small, peacetime garrison Army is heard again reflecting the same trust and confidence in our court-martial procedure by millions of officers and enlisted men in our huge, wartime Army of today composed in its overwhelming majority of individuals but recently enlisted or inducted from civil life.

A system which deserves such an encomium must necessarily possess unusual merit and at the same time it must be distinctive and different from all other systems with which it is compared. I shall endeavor to discuss first its distinctive features and the ways in which it differs so radically from the fundamental law and procedure of the Federal and civil courts of this country and secondly what I consider its merits.

Court-martial procedure prescribed by the Articles of War and the Manual for Courts-Martial is, in fact, so startlingly different from the procedure prevailing in the civil courts that I venture to say that not only laymen, but civilian lawyers as well, until they have familiarized themselves with its merits and the manner in which it is applied by the military authorities, will be surprised, and perhaps alarmed to learn of some of its provisions. I propose to demonstrate in this discussion that the differences, radical as they may first appear, are in fact superficial, and that they are all justified and required by military necessity and self-preservation. The Army is proud of its administration of military justice. Like all other humans, we make mistakes, but except where military security requires, we have no secrets from the American people.

At a time when practically every home and household is represented by one or more members in the armed forces, it is well that the American people understand the system of military justice prevailing in their Army. The excellence of our military leadership is now established and well known. Likewise it is common knowledge that the American soldier is better fed and better paid than any other soldier in the history of the world. Medical and hospital care and facilities are

the best that skill and money can provide. Little, however, is generally known concerning the military code and the administration of military justice, not only by the American people, but by the average civilian lawyer. The lack of such knowledge concerning a subject of such vital interest is not only puzzling, but it is unfortunate. It is safe to say that whatever suspicion or fear that the system is unnecessarily severe and un-American is due to unfamiliarity with it. Once understood, it is its own champion and needs no other defense.



BRIGADIER GENERAL JAMES E. MORRISSETTE

The extraordinary criminal jurisdiction exercised through courts-martial over persons subject to military law, derives its original authority, of course, from the Federal Constitution, more specifically from those provisions empowering Congress to declare war, to raise and support armies, to make rules for the Government and regulations of the land and naval forces and from the provision in the Fifth Amendment excepting from the requirement of a presentment or indictment of a grand jury in capital or otherwise infamous crimes "cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." Pursuant to such authority the Congress of the United States, following the example of the Continental Congress, enacted Articles of War establishing a system of courts-martial wholly penal in jurisdiction and with processes essentially summary in operation.

The necessary procedure is prescribed by the President in his capacity as such and pursuant to special statutory authority in a Manual for Courts-Martial.

Obviously, the system is designed primarily for the maintenance and enforcement of discipline in the armed forces and it is equally obvious that the existing procedure of the civil courts was considered inadequate for that purpose. Otherwise there would be no reason for a separate system for the military forces. It therefore follows, as a matter of course, that the two systems must differ in many important respects, but I hope to make it clear that these differences are justified and required in the interest of national defense and that they are no greater than the necessities of the situation dictate. Unless I am able to convince you that the system, in spite of its unusual features, is humane and

*A.B., University of Alabama, '06; LL.B., University of Alabama, '11.

affords the individual accused of a crime a fair trial, then I will have failed in my mission today.

As lawyers, you are no doubt accustomed to thinking of all courts as part of the Federal or State Judicial system. Although declared by the Federal Supreme Court to be courts of the United States (*Grafton v. U. S.*, 206 U. S. 333), courts-martial are a part of the Executive branch of the Government, instrumentalities and agencies of the President as Commander-in-Chief of the Army and his military subordinates for the enforcement and maintenance of discipline. The results are important and interesting.

Inasmuch as courts-martial are not a part of the judicial system of the Government, their judgments may not be reviewed, or, except for lack of jurisdiction, inquired into by civil tribunals.

In *Tarble's case* (25 Wis. 390), the Supreme Court of Wisconsin in 1870 held that a State court has power, in habeas corpus proceedings, to inquire into the validity of confinement imposed by the sentence of a court-martial, but this doctrine was promptly repudiated by the Supreme Court of the United States (13 Wall. 397). A Federal court, in habeas corpus proceedings, may inquire into the jurisdiction of a court-martial by whose sentence a prisoner is restrained of his liberty, but further it may not go. Having once determined that all jurisdictional requirements have been met, that is, that the court was legally constituted with jurisdiction over the accused and the offense and empowered to impose the sentence adjudged in the case, a Federal court may not thereafter question the validity of a sentence imposed by a court-martial (*Dynes v. Hoover*, 20 How. 79). The doctrine announced in the *Dynes* case has been consistently adhered to by the Supreme Court. The result is that a person subject to military law may be imprisoned for years, hanged or shot, without the right of what is commonly known as an appeal to a higher court. The Supreme Court, by its decision, has seen to it that there may be no unauthorized interference by Federal, civil or state courts in the administration of military justice by military tribunals constituted under the Constitution and the laws of Congress as instrumentalities for the enforcement of discipline in the land and naval forces. Likewise, in the *Milligan* case (4 Wall. 123) the Supreme Court has made it equally clear that military tribunals may not and must not usurp the functions of civil courts by the attempted exercise of jurisdiction over persons not subject to military law.

There is, of course, no such thing in military law as presentment or indictment by grand jury or trial by jury.

A court-martial is appointed by an officer so authorized by the Articles of War and known as the "Convening Authority," the officer responsible for the overall discipline of the troops under his command. The members of the court are necessarily his subordinates. In the event one or more members are successfully challenged by the prosecution or defense, the Convening Authority may replace them with others of his own choice. The court is his court composed of members picked and designated by him.

The same Convening Authority determines the form and substance of the charges and specifications against an accused and thereafter determines whether they shall be referred for trial to a court of his appointment, dismissed or otherwise disposed of.

In the event a court-martial to which charges are preferred should sustain a plea to the jurisdiction, or to some other plea in bar of trial, the reviewing authority may direct the court to reconvene, overrule the plea and proceed with the trial. The Convening Authority may likewise direct the law member of the court to change a ruling admitting or excluding evidence and to adopt instead the views of the Convening Authority on the admissibility of such evidence.

Trial by court-martial may be held behind closed doors in secret session. The findings and the sentence may be by secret, sealed verdict. After arraignment, the trial may continue during the unauthorized absence of the accused, and he may be sentenced *in absentia*. The jurisdiction of courts-martial is nonterritorial and a member of the military service may be tried in Brooklyn for an offense committed in North Africa or in New Guinea for an offense committed in Texas.

In time of war, a general court-martial has jurisdiction over all persons subject to military law, now including, besides millions of officers and enlisted men, thousands of women and civilians in all parts of the world. Its jurisdiction extends to all crimes and offenses in violation of military or civil law wherever committed, and it may impose any authorized punishment, including death by shooting or hanging. A person convicted of murder, rape, mutiny, desertion, or as a spy in an overseas theater, may be executed where convicted upon confirmation by the Commanding General of the Army in the field without referring the case to the War Department or to the President.

Under the military code, it is a military offense to lie, triable by court-martial. Imprisonment for dishonorable failure to pay established debts is authorized. Absence without leave in time of war may be punished by life imprisonment; desertion by death. Willful disobedience of a superior officer is likewise a capital offense.

At the conclusion of the trial, the Convening Authority who appoints the court and refers the charges to it for trial becomes the "Reviewing Authority." In his new capacity as Reviewing Authority, this same officer may approve, modify or disapprove the findings and sentence imposed by the court with the limitation that he may increase the punishment or change a finding of not guilty to guilty. As Reviewing Authority, he may reprimand the court for what he considers a miscarriage of justice in the form of an unwarranted acquittal or inadequate punishment.

Due to excellent pre-trial investigation, acquittals by courts-martial are comparatively rare. Trials are prompt. Punishment required by military necessity is frequently more severe than for similar offenses in civilian life.

In spite of the foregoing superficially stern and summary provisions of the military code, millions of men have, in recent years, passed from civil life to its jurisdiction without being aware of the transition, and when this war is over I predict that they will still maintain that "Innocent, I would prefer to be tried by a court-martial of the United States Army than by any other tribunal in the world." What are the merits of such a system, and why is it that the American people, jealous of their liberties, traditionally opposed to a large military establishment and suspicious of all forms of military government, have found no serious fault with the administration of military justice under the procedure which I have attempted to describe above?

In the first place, of course, as I shall point out later, the differences between the military and civil codes are more apparent than real. The system prescribed by Congress affords adequate and sufficient guarantees of a fair trial. The unusual and apparently radical provisions of the procedure are intended as emergency measures and the fact that Congress permits them to exist is ample proof that they have not been abused.

Happily, the basic reason for such a lack of abuse in the use of such great power is that the American Army, including the regular professional soldiers, has always been a democratic Army, "the Army of a democratic nation fighting for a cause which the people themselves understand and approve." The American soldier does not have to be driven, discipline is obtained by leadership and willing obedience. When trial is required, the American sense of fair play in such an Army guarantees a fair trial. The American Army today is American manhood in khaki.

In time of peace, military jurisdiction is exercised over a small peacetime garrison army; in time of war, over millions. But in time of war, as the jurisdiction expands to its huge proportions, the need for manpower and the necessity for preserving it are a constant check upon trials by courts-martial and upon the quality and quantity of punishment imposed upon convicted offenders. Thus, the conditions which expand the powers, act as an automatic check upon their exercise. Manpower is scarce, with the result that a continual effort is made to recap men, as automobile tires are recapped, and retain them in the service. The ratio of trial by general court-martial per thousand men has dropped from the high peace figure of 46 to less than 3 in 1943.

Not only are trials kept to the minimum, but scarcity of manpower has resulted in renewed efforts to rehabilitate and restore to the service all military prisoners who show any appreciable salvage value. Persons convicted of the more serious felonies and sentenced to long terms of imprisonment are ordinarily confined in a Federal penitentiary or reformatory but by far the greater number of general prisoners are sent out to disciplinary barracks or to rehabilitation centers. The more serious of this class are sent for purposes of security and discipline to a disciplinary barracks where, however, many of them are restored. Rehabilitation centers, conceived and established for the first time during the present war, are designed to rehabilitate and restore salvagable prisoners with the least possible delay. Every prisoner has a good chance for early restoration, regardless of the length of his sentence. This experiment is another democratic method of affording a man another chance and it is an almost foolproof safeguard against mistake or error in the original trial and sentence.

In time of peace, the American Army is composed almost entirely of professional soldiers. Military justice is then administered and trials conducted by professional soldiers. In time of war, the Army becomes representative of the civilian population and its ideals exactly in proportion to its increase in size and powers over newly inducted individuals. As power is extended over new millions of men it is, at the same time, correspondingly exercised by these men themselves over each other. Of the several hundred thousand commissioned officers in the Army today, only a handful, smaller than you would ever imagine, are members of the regular Army.

Courts-martial of a wartime Army are habitually composed of a majority of temporary officers recently commissioned from civilian life. The result is that a man is tried by his peers and again the conditions which extend the power and jurisdiction of the military code over greater numbers of individuals, constitute an automatic check and restraint upon its use. The larger the Army, the more democratic and representative it becomes.

Besides the automatic and self-imposed checks upon the exercise of broad powers conferred by the military code, Congress itself has prescribed a system which is sufficient in itself to guarantee a fair trial.

"The Articles of War set up, as the basic machinery for this specially ordained juristic structure for the government and regulation of the land forces, a system of courts-martial wholly penal in jurisdiction and with processes essentially summary in operation. The system is designed to ensure, by orderly and effective means, prompt and exact obedience to law and to lawful commands of constituted authority by those persons and elements which make up the military organization that by its strong arm provides for the common defense and ultimately guarantees constitutional and democratic forms of government within the nation. It finds its moral justification in the necessity of national self-preservation, for which purpose it is but one of the weapons placed in the hands of those persons who are charged with the duty of supporting by force, if need be, the integrity of established borders and institutions.

"Were the system of courts-martial molded in the common law forms of the civil courts of the land there would be, quite obviously, no need for it. It departs from those forms, nevertheless, only to the extent which, in Anglo-Saxon experience, its summary nature has appeared to require. For example, the military courts perform their functions, by Constitutional sanction, without the jury forms so indelibly written into the punitive common law, yet they retain something at least of the guiding principle of the jury system—the principle that human life and liberty should not be taken away because of infractions of the law until disputed guilt shall have been determined by a body of unbiased men chosen from the culprit's countrymen and governed by the laws which have allegedly been violated. The common law jury is composed of persons traditionally known as peers of the accused. The court-martial is composed of fellow-members of the army, subject to the same code of laws and equals thereunder. The Military responsibilities and legal powers of the officer sitting on the court-martial differ from the responsibilities and powers of the private soldier accused before the court, but the officer sitting on the court and the soldier on trial enjoy equally the fundamental rights of citizenship and are equally amenable to the processes and penalties of the military law which is being enforced.

"Although the military system differs from the common law system of civil law in some more or less superficial characteristics of the fact-finding body utilized in its criminal processes, it is designed to protect with equal fidelity the personal liberties and rights guaranteed by the Bill of Rights written into the federal Constitution by the amendments and otherwise. Such basic procedural and substantive rights as the requirement of a thorough and impartial investigation before trial, and protection from double jeopardy and from compulsory self-crimination, as well as the privileges of counsel and of speedy trial are specifically guarded by the Articles of War." (From article by Captain, now Colonel, Hubert D. Hoover, J.A.G.D., University of California Press—1935).

It would serve no good purpose to repeat in detail the provisions of the procedure so prescribed. Instead it seems preferable to illustrate it by describing the

procedural steps in a case involving a death sentence imposed by a court-martial sitting in this country:

In lieu of a presentment or indictment by grand jury, there is a charge and specification in the form prescribed by the Manual for Courts-Martial alleging the offense and sworn to by a member of the military service. At this point the charge and specification are referred to an impartial officer for investigation at which the accused must be present. He is usually, although not necessarily, permitted counsel. He may cross-examine witnesses called by the investigating officer and he may himself call other witnesses. A written report of the investigation, including the testimony of the witnesses, is forwarded by the investigating officer, through channels, with his recommendation to the officer exercising general court-martial jurisdiction over the accused. The latter officer is required to refer it to his staff judge advocate, an experienced military lawyer, for remark and recommendation. If trial is warranted, then the charges and specifications, together with the investigating officer's report and all accompanying papers are referred to the trial judge advocate of a general court appointed by the officer exercising general court-martial jurisdiction over the accused. The procedure and the rules of evidence at the trial conform, as nearly as may be, to the procedure and rules of evidence prevailing in the Federal civil courts. Accused may challenge any member of the court for cause and he has one peremptory challenge against any member of the court except the law member. He is represented by counsel appointed by the convening authority and may be represented by individual military counsel of his own choosing, provided the latter is available, and at his own expense by individual civilian counsel. After the evidence is all in and argument by counsel has been heard the court proceeds to ballot on the findings and the sentence. Voting is by secret, written ballot. Except where the death penalty is mandatory and a unanimous vote is required for conviction, the finding must be with the concurrence of at least two-thirds of the members present and participating in the trial. A unanimous vote is required for the imposition of the death sentence. A transcript of the proceedings, known as the record of trial, is prepared from the stenographer's notes by the trial judge advocate with the concurrence of the defense counsel, and thereafter authenticated by the President of the court and the trial judge advocate and submitted to the convening authority who thereupon becomes the reviewing authority. Again he is required to submit the record of trial to his staff judge advocate for the latter's advice. The staff judge advocate not only examines the record of trial for its legal sufficiency, but he weighs the evidence and submits a written review. The reviewing authority likewise weighs the evidence in order to determine whether it establishes the guilt of accused beyond a reasonable doubt. He then forwards the record and accompanying papers with his final action which must be recorded over his own signature-manual, to the office of The Judge Advocate General where it is examined by a statutory Board of Review composed of not less than three members. In this connection it is interesting to note that of the five Boards of Review now functioning in the office of The Judge Advocate General in the War Department at Washington, all but one are composed exclusively of temporary officers from civil life and that on the other there is only one regular Army officer. The reference to a Board of Review is mandatory by law and amounts to an automatic appeal on behalf of the accused at which counsel of his own choosing may appear in person or by brief. The Board not only examines the record of trial again for its legal sufficiency, but once more the evidence is weighed in order to determine whether the guilt of the accused is established by the evidence beyond a reasonable doubt and the sentence is warranted. The opinion and recommendation of the Board of Review with the record

of trial are then submitted to The Judge Advocate General for his review. If the Board of Review finds the record of trial legally insufficient and The Judge Advocate General concurs, that then amounts to a reversal of the case. If, however, The Judge Advocate General dissents from such a holding or the Board of Review finds the record of trial legally sufficient, The Judge Advocate General, who also weighs the evidence, transmits it, with his views and recommendations, either concurring in or dissenting from the Board of Review, to the Secretary of War for submission to the President of the United States as the confirming authority under Article of War 48. The Secretary of War, after familiarizing himself with the record of trial, weighing the evidence, and determining for himself whether the guilt of the accused is established beyond a reasonable doubt, submits the case to the President. There again the record of trial and accompanying papers are examined and considered. The President may disapprove a sentence or he may confirm and commute it to a lesser degree of punishment, or he may confirm and order it executed.

It will be noted from the above that it is the solemn and official duty of at least eight individuals, a staff judge advocate on the staff of the Reviewing Authority, the Reviewing Authority himself, three members of a Board of Review, the Judge Advocate General, the Secretary of War and the President to examine the record of trial and weigh the evidence in every case imposing a death sentence.

The procedure is conducted on behalf of an accused without expense to him in order to insure a fair trial and a fair sentence, and I insist that under no other procedure are the rights of a person accused of crime more adequately or abundantly protected.

Exactly the same procedure prevails in overseas theaters of operations, except that the Commanding General of the Army in the field, instead of the President, may act as the Confirming Authority in certain enumerated classes of cases and the record of trial is examined by the Board of Review and an Assistant Judge Advocate General in a branch office established by The Judge Advocate General of the Army.

A somewhat similar procedure prevails in all other cases. Without describing it in detail, I am able to assure you that it is adequate.

In conclusion, I beg to add a note of reassurance, coupled with a note of warning.

The War Department is keenly aware of its responsibility to the millions of young Americans entrusted to its control. The Judge Advocate General, who in accordance with the established policy of the War Department and with the assistance of the subordinates supervises the administration of military justice is particularly aware of his responsibility. He may be described as the senior member of a law firm composed of approximately eighteen hundred military lawyers engaged in the practice of every conceivable kind of law in every part of the world. Recently, he has opened an office in Rome and he hopes soon to open one in Berlin and one in Tokyo. He and his officers are not prosecutors but they are engaged primarily in keeping the number of trials by courts-martial to a minimum and in preventing or reducing unnecessarily severe sentences.

When the size of the American Army is considered and it is remembered that it is composed of men inducted from all walks of life, included among whom are inevitably many criminals and misfits, the ratio of

(Continued on Page 54)

CONTRACT *Settlement* ACT

NORMAN ROTH, 1ST LT., JAGD*

A SIXTH and new Department has been created for conducting special four week courses in Contraction Termination. * * JAGS Text No. 12, Termination of Government Contracts, is being prepared and will supplement War Department materials on the subject.¹ In that terse announcement of the expansion of the program of instruction at the Judge Advocate General's School and advance notice of the publication of another "best-seller" among members of the Judge Advocate General's Department lies a tale.

The army lawyer is being prepared to do his part in solving the readjustment problems associated with the nation's transition from war to peace. Though the subject of contract termination has been receiving the attention of Judge Advocates since first the War Department reserved the right to require cessation of production under its contracts,² it is evident that as the war draws toward its close the services of more and more members of the department will necessarily be wholly devoted to it.

The recently enacted Contract Settlement Act of 1944,³ which is largely a codification of the legal concepts and administrative regulations previously applied by the procurement agencies,⁴ is a convenient hornbook for those unfamiliar with the subject of contract termination. Those who have occasion to wrestle with termination problems will, it is trusted, find a discursive analysis of the statute helpful as a guide to the changes effected thereby.

Basic Legal Concepts

It is fundamental in the law of contracts that the obligee is under a duty to refrain from any acts which might prevent the obligor's full performance of his covenants and thereby interfere with his earning the consideration to be paid under the agreement between them.⁵ That legal restraint applies to the government as well as to private contractors;⁶ it applies in times of war as well as in times of peace.⁷ Even before this country took up arms in the present conflict it was recognized that the operation of such a principle must be avoided to permit the procurement agencies the freedom of action made necessary by the swift movements of modern warfare. No matter what its commitments

* B.S.S. College of the City of New York 1931, J.D., New York University 1934; Member of New York bar; Instructor, Contract Termination Department, Judge Advocate General's School.

The author gratefully acknowledges the helpful suggestions of Lt. Col. Michael L. Looney and Maj. William A. Stewart.

The views expressed herein are those of the author and are not to be construed as the official views of the War Department or the Contract Termination Department of the Judge Advocate General's School.

may have been or what progress the contractor may have made, the agency must be in the position to call a halt to the production of munitions made impotent by new enemy defenses, of weapons not adaptable to new tactics and materials no longer needed, whether because of the enemy's capitulation or for any other reason.

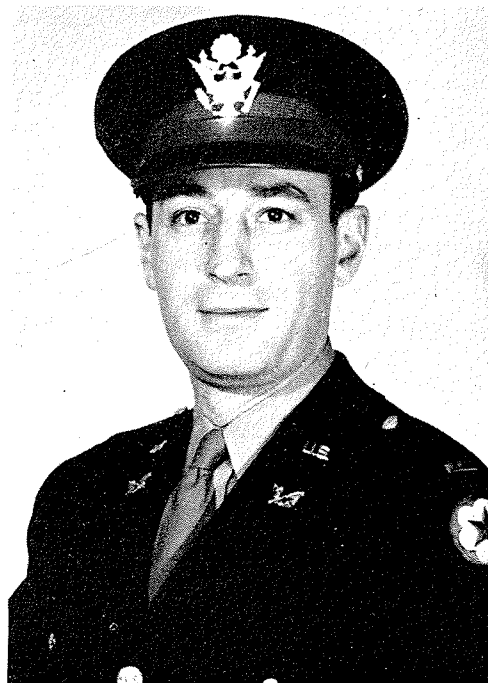
Evolution of The Termination Article

The right to prevent full performance by a contractor

has, for some time now,⁸ been reserved to the government by contractual provisions permitting "termination at the convenience or option of the government."⁹ The original form of clause provided for the reimbursement of costs incurred by the contractor in connection with the terminated portion of the contract and the payment by way of profit of such sum as equaled the anticipated profit on the uncompleted portion multiplied by the percentage of completion of said uncompleted portion.¹⁰ When, on November 19, 1942, the "Standard Termination Article" was adopted,¹¹ the sums payable to contractors upon termination at the convenience of the government were limited to reasonable compensation for liabilities incurred in connection with the uncompleted portion of the contract and such allowance for anticipated profits as the contracting officer might deem reasonable in view of all the circumstances.¹² In the event the parties could not agree as to what pay-

ments should be made, the contractor then became entitled to receive compensation fixed by a formula identical with that contained in the original form of article.

The article currently in use was approved by the Joint Contract Termination Board on 8 January 1944 for use by all procurement agencies.¹³ This provision, known as the "Uniform Termination Article" is required by the War Department to be included in all requirement contracts, and all lump sum supply contracts for more than \$50,000 entered into after 20 February 1944 except such as involve expenditures of less than \$500,000 and are to be completed within six months.¹⁴ Insofar as the clause governs payments to the terminated contractor it continues the provision for payment of costs and reasonable profit as fixed by negotiation, but alters the situation resulting from a failure of the parties to agree. In the event of an impasse, payments to contractors for anticipated profits are now calculated upon a basis of 2% of the cost of raw materials acquired for the uncompleted portion of the contract plus 8% of all other costs, with an overall limitation that the allowance for profit shall not exceed 6% of the combined material and processing costs.¹⁵



1st LT. NORMAN ROTH

Control of Termination Practices

The Readjustment Division, Army Service Forces, is the office responsible for the formulation of policies with respect to contract termination and property disposition for the guidance of the War Department.¹⁶ By virtue of his designation of special representative of the Under-Secretary of War, the jurisdiction of the Director, Readjustment Division, includes termination practices within the Army Air Forces.¹⁷ To unify policies in the several governmental procurement agencies the Joint Contract Termination Board¹⁸ and the Surplus War Property Administration¹⁹ were subsequently established.

With the growing number of terminations and the concomitant increased concern to industry occasioned thereby, it was inevitable and necessary that Congress should take action to permit more expeditious administration of terminations.²⁰ Its first major effect in that direction has been the passage of the Contract Settlement Act, which has for its primary aim the facilitation of production for war while at the same time permitting prompt return to civilian production by such plants as are no longer required for the manufacture of the materials of war.²¹ Congress proposes to achieve that purpose by assuring speedy and final termination settlements, adequate interim financing, maximum use of available materials, manpower and facilities, and prompt clearance of plants. It is also the Congressional will to establish every reasonable safeguard against the perpetration of fraud in the settlement of any claims arising out of termination of contracts.²²

The new guardian of contract termination is the Director of Contract Settlement, who is charged with the obligation of prescribing policies and procedures governing all "contracting agencies"²³ in the performance of the functions embraced by the statute. The Director is also made responsible for the establishment of policies with respect to the supervision and review of termination settlements and interim financing within the several agencies, the reporting of information concerning fraudulent practices to the Department of Justice, the securing of reports as to termination and financing activities within the agencies and the submission of quarterly progress reports to the Congress.²⁴

The Director is to be assisted by the Office of Contract Settlement and advised by the Contract Settlement Advisory Board.²⁵ The Board, of which the Director shall be chairman, is to consist of representatives of the following governmental agencies: War, Navy, and Treasury Departments, Maritime Commission, Foreign Economic Administration, Reconstruction Finance Corporation, War Production Board, Smaller War Plants Corporation and Attorney General. It will be noted that with the exception of the Comptroller General, the membership of this board is identical with that of the Joint Contract Termination Board, the body which it supersedes.²⁶

Termination Procedures

As we have seen, the circumstances that may prompt the exercise of the Government's option under the termination article are many.²⁷ Generally speaking, it may be exercised for such reasons, at such time and to such extent as the contracting officer deems for the best interests of the Government. The decision as to whether performance shall be called to a halt, rests in the contracting officer's sound discretion, free of interference

by the Director²⁸ or other control.²⁹ The determination as to when production under a contract shall be terminated, i.e., the effective date of the notice of termination, though likewise within the province of the contracting officer, has been made subject to restrictions established by the statute. It is now required that a contractor be given such advance notice of termination as is consistent with feasibility and security,³⁰ and that procedures be established for the prompt transmission of advance notice to subcontractors by the prime contractors.³¹ The right to terminate the whole or any portion of a contract is now circumscribed by the statutory requirement that work shall be carried on whenever continuation is of benefit to the government or is necessary to avoid substantial injury to the contractor's plant.³²

In the War Department contracting officers have always been permitted to arrange pre-termination conferences with contractors when termination of their contracts was contemplated and there was no compelling reason for not discussing such proposed action with the producers.³³ It would seem that the intentment of the act is that such meetings be the practically invariable rule, for from such discussions with a contractor, the contracting officer can best secure information with respect to such matters as the most propitious time to stop production machinery, the contractor's need for financing by reason of the termination, and the possible effects of the termination upon his subcontractors.

It frequently occurs that the contracting officer will require time to study the situation before deciding upon his course of action, and will be tempted to direct a temporary cessation before taking any definite steps by way of terminating the contract. Since the Government is liable for any damages sustained by a contractor by reason of delays caused by its officers within the scope of their authority,³⁴ and such stoppages cannot help but result in confusion during the period that the manufacturer is left "on the fence," contracting officers have been directed to avoid such stoppages whenever possible.³⁵ The statute now gives the contractor the right to terminate the contract whenever a suspension lasts for 30 days or more, by serving written notice of such election prior to the agency's direction to resume operations.³⁶ In the event that the contractor elects to terminate he is entitled to such payments as he would have received had the Government terminated at its election, and whether he elects to terminate or not, he receives reimbursement of costs and expenses occasioned by the cessation.³⁷

Property Disposition

Among the steps necessarily taken by a contractor after receipt of notice of termination is the preparation and submission of an inventory of materials allocable to the terminated contract, e.g., raw materials, work partially processed and equipment. The Government is obliged to pay for such items because they had been purchased for the purposes of the contract affected by the notice.³⁸ The disposition of such surplus property has become one of the most vexing problems of war production. A plant cluttered up with such materials cannot readily be adapted to the production of other munitions or converted to the manufacture of civilian goods. To alleviate such situations Congress has directed that plants be cleared of such property within 60 days of the submission of the contractor's inventory.³⁹

Such items as the producer desires to retain at cost may be omitted from the inventory, with the same effect as if they had been bought for other uses.^{39a} Inventoried items have been treated by the agencies in the following manners: (i) The contractor may effect sales subject to limitations as to maximum loss on resale;⁴⁰ (ii) the contracting officer may effect sales among other contractors contacted directly by him, or with the assistance of disposal aids maintained by the procurement agency or other governmental agencies;⁴¹ and (iii) he may require that the property be stored for future disposition.⁴²

The act specifies that property included in submitted inventories may be acquired by any of the procurement agencies except that the War and Navy Departments and Maritime Commission are to have preferential rights in the matter of acquiring such materials or effecting disposition thereof, for use in war production, among their own contractors.⁴³

Should the agency fail to remove the inventoried goods within the statutory period of 60 days, the contractor may, upon 20 days' written notice, store them at the Government's risk and expense. The notice, which may be served prior to the expiration of the 60 day period, shall apprise the contracting officer of the date specified for removal to afford him the opportunity to itemize the materials as they are removed from the plant.⁴⁴ In the event such a checkout is not made, the contractor's certificate as to the facts will constitute prima facie evidence of the fact of removal, of the quantities removed and of the condition of the materials at the time.⁴⁵ The contractor may furthermore clear his plant of the inventories at any time, i.e., prior to the expiration of the 60 day period, but he does so at his own risk.⁴⁶

The rules governing disposition of surplus materials apply as well to Government owned facilities. However, it is expressly provided that contrary arrangements may be effected by agreement.⁴⁷ Thus the standard Government Owned Facilities clause, which provides for retaining equipment in a standby condition for a period of 90 days,⁴⁸ will prevail as against the rules set forth in the act under consideration. The power of the agency to waive or release any of the Government's claims to such facilities is recognized by the statute,⁴⁹ but it must be recalled that all Emergency Plant Facilities contracts, Special Facilities contracts and contracts containing Government Owned Facilities clauses deviating from the standard form must in the first instance be approved by the Director, Purchases Division, A.S.F.⁵⁰

Negotiated Settlements

The actual termination of a contract is accomplished by the execution of an agreement, the terms of which are arrived at by negotiation, or that failing, by the unilateral determination of the contracting officer after applying the formula contained in the termination article. Assuming that the contracting officer and contractor arrive at an agreement it is final and conclusive, except for fraud, renegotiation, and such items as have been specifically excepted from the agreement or may thereafter be excepted by further agreement.⁵¹ The agreement must be approved by a Settlement Review Board⁵² if it involves gross payment to the contractor in excess of \$50,000.⁵³ In fixing such gross payment, credit for disposal of property shall not be deducted but payment for completed items shall be. The Board's

failure to act within 30 days of its submission shall constitute approval of a proposed settlement.⁵⁴ Though the Director is given the power to require that settlements involving lesser sums be similarly scrutinized,⁵⁵ the statute is mute as to the practice of requiring further review by committees in the offices of the Chiefs of the several Technical Services as at present provided.⁵⁶

The uniform article provides that the contractor and contracting officer may agree upon the "amounts to be paid to the contractor by reason of the total or partial termination of work."⁵⁷ It does not specify what costs may be reimbursed and what others may not be considered in arriving at a negotiated settlement, though certain limitations have been provided for. Thus, the total paid, exclusive of reimbursement of termination expenses may not exceed the contract price without approval,⁵⁸ and the contractor may not be paid for property damaged, lost or stolen, except for normal spoilage and to the extent that the Government shall have otherwise expressly assumed the risk of loss.⁵⁹

Formula Settlements

In the case of formula settlements, on the other hand, the article does make provision as to what amounts may be paid to the contractor. It is specified that the sums payable to the contractor pursuant to a formula settlement shall be equal to the total of the following: (i) Completed items at the contract price; (ii) cost of work terminated; (iii) profit allowance as heretofore discussed;⁶⁰ (iv) amounts due subcontractors and (v) settlement expenses.⁶¹ It will be noted that such terms as "costs" and "settlement expenses" are not defined by the article itself, but we must look to the Statement of Cost Principles incorporated into the article by reference for such information.⁶²

The mentioned statement recognizes that the contractor is entitled to reimbursement "of direct and indirect manufacturing, selling and distribution, administrative and other costs incurred which are reasonably necessary for the performance of the contract and are properly allocable or apportionable" to the terminated portion of the contract in accordance with recognized commercial accounting practices.⁶³ Inventory allocable to the contract, depreciation and obsolescence at appropriate rates, experimental and research expenses, engineering and special tooling costs, interest on borrowings and initial costs are among the chargeable costs. The Statement treats, with some particularity, the extent to which losses on facilities required solely for the purposes of the contract, and rental, alteration and restoration charges under leases entered into for the purposes of the contract are allowable under the terminated contract. Admissible "termination expenses" include legal, accounting and other costs incurred in connection with and by reason of the termination and consequent necessity of storing or disposing of termination inventories. Advertising expenses to an extent consistent with the contractor's pre-war budgets or reasonable under existing circumstances may also be charged to the Government as an item of the termination settlement.

The statute enumerates four classes of costs that may not be considered in computing a formula settlement.⁶⁴

- (1) Losses on other contracts, investments, premiums on life insurance for the benefit of the contractor, and other expenses not germane to the terminated contract;
- (2) The expense of converting the contractor's plant to other work, whether for war or civilian production, are

not allowable; (3) Costs occasioned by the contractor's negligent or willful failure to discontinue production within a reasonable time after the effective date of the termination notice, and (4) any incurred in excess of the reasonable quantitative requirements of the contract are also excluded from consideration.

The Statement of Cost Principles, in addition, provides for the exclusion of a fifth class of charges, namely those written off in renegotiation. Such costs are not treated by the statute, it being the Congressional intent to "allow for more flexible treatment of this item"⁶⁵ by the regulations to be promulgated by the Director.

Interest

In addition to the costs and expenses already discussed, the Government is obliged to pay interest to the contractor whose contract has been terminated.⁶⁶ Interest charges accrue at the rate of 2½% of the termination claim, per annum, for the period beginning 30 days after the effective date of the notice of termination and ending with final payment. However, such charges do not accrue during such periods as the contractor unreasonably delays the effecting of a settlement, nor beyond the period ending 30 days after a formula determination is made, unless the contractor appeals from such decision or institutes action as provided by the statute and is successful in securing a higher award.⁶⁷ The amount of any interest waived by the Government by reason of the termination, and applicable to the terminated contract or the terminated portion thereof, in connection with any advance payments or guaranteed loans is to be deducted from the interest accruing to the contractor.⁶⁸

Appeals Under Formula Settlements

In situations where agreements are not effected and the contracting officer must fix the amount payable, he is required to supply the contractor with a written statement of his findings, indicating the basis of his determination, within 90 days of the contractor's demand therefor.⁶⁹ After arriving at a decision, the contracting officer must take action to assure payment within 30 days of 90% of the amount found to be due, less any balance owed the Government for interim financing.⁷⁰ A contractor who feels aggrieved by a determination may either appeal therefrom or institute suit.

If he determines upon an appeal he may first exhaust the remedy within the agency as provided for in the contract, but shall resort to such procedures as are established by the Director.⁷¹ The decision of the appellate authority, when made, becomes that of the agency, and should the contractor decide to pursue the matter further, he may then elect between an appeal to the Appeal Board established by the statute or institute action.⁷² Such appeal or suit must be instituted within 90 days of the delivery of the agency's findings, or within one year of the demand for findings if none had theretofore been delivered.⁷³ If the amount in controversy, i.e., the difference between the amount claimed by the contractor and that conceded to be due by the agency, is \$25,000 or less, one person shall sit as the Appeal Board. Three persons shall constitute the Board if the dispute involves a greater sum, provided the contractor demands a hearing by the Board so constituted; unless such demand is made, the matter will be heard by a single member.⁷⁴

Even after a hearing of the matter by the Appeal Board, the contractor may institute suit provided he

initiates the action within 90 days of that body's decision.⁷⁵ At any stage of the proceedings prior to entry of judgment by the court, the agency and contractor may agree upon a negotiated settlement and effect a supplemental agreement upon that basis.⁷⁶

The contractor when before the Appeal Board or a court has the burden of proof and the onus of establishing his claim. Though the Board or a court is not bound by the findings of the agency, they are to be considered as prima facie correct.⁷⁷ The decision of either of such tribunals may direct an increase or decrease the amount previously found to be due the contractor and enter an award or judgment for such difference, or remit the matter to the agency for further action.⁷⁸

The agencies and contractor may also resort to arbitration to resolve their differences in the manner set forth in the U. S. Arbitration Act.⁷⁹ A determination by the arbitrators is final and conclusive to the same extent as executed settlement agreements and is not subject to approval.⁸⁰ Further efforts to expedite final adjustments of all controversies arising out of terminated contracts is found in provisions permitting the Appeal Board and contracting agencies to act as mediators and arbitrators in connection with disagreements between contractors and subcontractors,⁸¹ and empowering the Court of Claims to join all parties interested in a termination.⁸²

Interim Financing

A vital activity of the Government has been its extension of financial assistance to producers of war materials. This has taken a number of forms—advance payments,⁸³ partial payments,⁸⁴ Government Guaranteed loans and partial payment after termination.⁸⁵ The expeditious administration of these methods of assistance is, of course, of prime concern to terminated contractors for undue delay in the payment of their claims will hamper their reconversion activities and possibly place them in danger of insolvency. The contracting officer is under a positive obligation to advise and assist the contractor in securing financing; steps shall be taken to extend aid within 30 days of the contractor's application therefor.⁸⁶

If the contractor seeks an advance or partial payment after termination it may be made in an amount equal to the sum of (i) 100% of the contract price of completed items, (ii) 90% of the cost of raw materials allocable to the terminated portion of the contract, (iii) reasonable percentage of administrative overhead and other costs allocable to the terminated portion of the contract and (iv) such additional amounts as are deemed necessary to provide adequate financing.⁸⁷

Should the contractor overstate the amount of his prospective claim thereby securing a payment greater than the sum actually due him, he is required to repay the excess with a penalty of 6%.⁸⁸ The agencies are permitted to make advance and partial payments in connection with termination claims and may authorize same to be made by contractors to subcontractors,⁸⁹ may permit advance payments made prior to termination to be used against termination claims⁹⁰ and adjust disputes and claims arising out of or related to interim financing.⁹¹ The act also permits the War Department's participation in and guarantee of loans predicated upon terminated contracts⁹² and constitutes the Federal Reserve Banks the fiscal agents of the Government for the purpose of effecting such loans.⁹³

Subcontractors

The section of the statute treating of subcontractors' claims indicates a very real effort to protect such producers from loss in their dealings with prime contractors who would not be considered good credit risks. Settlement of subcontractors' claims may be effected by the prime contractor, with or without the review or approval of the contracting agency⁹⁴ or, in the first instance, by the contracting agency.⁹⁵ Where disposition of the claim is made without the assistance of the prime contractor, the agency may either discharge the subcontractor's claim or take an assignment thereof; in either case it is required that the prime be given notice of the action taken.⁹⁶ The agency may also assume the contractor's liability and indemnify the contractor against any claims that may be asserted by the subcontractor.⁹⁷ Moreover, in settling with subcontractors the agency need not concern itself with any limitations as to the amount payable to the prime, and may even settle such claims though

the prime contractor has theretofore been paid in full.⁹⁸

Conclusion

The foregoing discussion is not exhaustive; it is not intended to be. If it has created a clear outline of the problem of contract termination it has achieved its purpose.

It will be readily recognized that the Contract Settlement Act represents a distinct step forward in the direction of facilitating the shift in the nation's economy. Sufficient governmental aid is guaranteed to industry to guard against all reasonably anticipated risks. Contracting officers are given broad powers to deal with contractors with a minimum of retarding control. It now remains for contractors and contracting officers, by their cooperation and fair dealing,⁹⁹ to achieve desirable results in individual situations, and it remains for the Judge Advocate so to resolve the many legal questions that will arise as to give maximum effect to the remedial properties of the statute.

Notes

1. Colonel Edward H. Young, "The Judge Advocate General's School," *The Judge Advocate Journal*, June, 1944, p. 21.
2. The original form of termination article was set forth as Article 12 of War Department Supply Contract Form No. 1, approved 16 September 1941 (7 Fed. Reg. 6106).
3. Public Law 395, 78th Congress, approved 1 July 1944.
4. The administration of contract terminations in the War Department is governed by Procurement Regulation No. 15, originally issued on 14 August 1943 effective 1 September 1943. Amendments to the regulation are prepared in the office of the Readjustment Division, Hdqs., A.S.F.
5. *Lovell v. St. Louis Mutual Life Ins. Co.*, 111 U.S. 264 (1883); *Restatement of Contracts*, Section 315.
6. *United States v. Smith*, 94 U.S. 214 (1876); *United States v. Behan*, 110 U.S. 338 (1883), where the court stated: "But surely, the wilful and wrongful putting an end to a contract, and preventing the other party from carrying it out, is itself a breach of contract for which an action will lie for the recovery of all damage which the injured party has sustained."
7. *Sutherland v. Mayer*, 271 U.S. 272, 288 (1925); *Briggs v. United States*, 143 U.S. 446, 353; *Williston on Contracts (Revised Edition)* Section 1951. See also *College Point Boat Corp. v. United States*, 267 U.S. 12 (1924).
8. See note 2, ante.
9. "Strategic changes, development of new projects, invention of new items of war materiel, reallocation of scarce raw materials and other similar factors arising under the changing circumstances of modern war" (PR 15-101), are but some of the factors which may prompt the exercise of the option reserved in the termination article by the government. The Chiefs of the Technical Services may act under that article rather than the "Delays-Damages" provision in the event of the contractor's default, where they deem it fair and equitable so to do (PR 3-379). Moreover, the procedures set forth in the termination article are required to be followed in the event negotiations for readjustment or revision of prices provided for in contracts containing such articles fail. (PR 3-341.2, 361.1)
10. Assuming a contract for 3000 pairs of shoes had been terminated at a time when 2000 pairs had been delivered and only the left shoes for the balance of 1000 pairs had been manufactured, if the profit to the contractor on the 1000 pairs would have amounted to \$500, the government's liability to the contractor would then have been \$250 (five hundred multiplied by one-half completion), plus the costs incurred in producing the left shoes.
11. PR 15-901A.
12. Thus whereas the original article contemplated that the costs payable by the government be fixed by negotiation, the standard article in theory extended the scope of negotiation by removing the formula restriction in calculating the profit allowance on the uncompleted portion of the contract.
13. The Joint Contract Termination Board was established on 12 November 1943 in the office of the Director of War Mobilization, as an interdepartmental body charged with the responsibility of promulgating general principles and procedures governing contract termination and settlements. This body will be superseded by the Contract Settlement Advisory Board established by Section 5 of the Contract Settlement Act of 1944. (Hereafter sections of this statute will be referred to solely by section designation.)
14. The new article may be inserted in any lump sum supply contract (PR 3-324). A similar article is required to be included in construction contracts upon a like basis (PR 3-324.1). Contracts not containing the article are to be amended whenever possible to incorporate the new form of provision.
15. Paragraph (d). Though the overall return is fixed at 6%, the allowances of 2% and 8%, though recommended, are not mandatory. The Chiefs of the Technical Services may vary the rates of profits allowed on raw materials and other costs, subject to the limitation that the rate on raw materials may not exceed 2% (PR 3-324, notes 1 and 2).
16. Army Service Forces Manual, M 301, sec. 205.06.
17. PR 15-201.
18. See note 13, ante.
19. Organized pursuant to Directive Order No. 3, Director of War Mobilization, 2 May 1944 (C.C.H. War Law Service, par. 7807), with authority to promulgate price policies in the disposal of commodities, machinery, work in process, etc., allocable to terminated war contracts and government facilities becoming available for disposition by reason of termination of contracts.
20. "The great need for legislation in the field of contract termination has been emphasized repeatedly by the heads of the Government agencies concerned, as well as by industry and labor groups which have felt the effects of contract termination. The present procedure of contract termination is cumbersome and results in unnecessary delays injurious to our economy. In the event of wholesale termination in the course of the war, this procedure would, in the opinion of this committee, dangerously impede expeditious reconversion to a peacetime economy." Senate Committee Report No. 836, p. 1, 2 May 1944.
21. Section 1.
22. The act is based on "two fundamental principles: (1) Businessmen shall be paid speedily the fair compensation which is due them for the termination of their war contracts; and (2) the Government, when paying out such fair compensation should be carefully protected from waste and fraud." Senate Committee Report, No. 836, p. 2, 2 May 1944.
23. "Contracting Agencies" are defined by the statute (section 3 [g]) as those authorized to enter into contracts pursuant to section 201 of the First War Powers Act, as well as the Reconstruction Finance Corporation and corporations organized by it, the Smaller War Plants Corporation and the War Production Board. Under the statutory reference the President may authorize any department or agency of the government exercising functions in connections with the prosecution of the war effort to enter into contracts and amendments or modifications without regard to the provisions of law relating to the making, performance, amendment or modification of contracts whenever he deems such action would facilitate the

- prosecution of the war. It is pursuant to this authority that the President has authorized the War and Navy Departments and Maritime Commission to enter into contracts with reference to such provisions of law. (Executive Order 9001, 27 December 1941.)
24. Sections 4 (b), 7 (c) and 21.
 25. Section 5.
 26. A bill recommended by the Colmer Committee (H.R. 4789) had included the Comptroller General as a member of the Advisory Board, but he had requested that he be not included. (House of Representatives Committee Report No. 1590, 1 June 1944.) The functions of the General Accounting Office under the statute are to check settlements for fraud, and to determine whether payments are made in accordance with settlement agreements or determinations (section 16).
 27. Note 9, *supra*.
 28. "The Director shall have no authority under this Act to regulate or control the classes of contracts to be terminated by the contracting agencies" (section 11 [c]).
 29. The uniform article authorizes termination whenever the contracting officer determines such action is in the best interests of the Government (par. [a]). By PR 15-301 it is required that termination may not be ordered without approval of the chief of the technical service or his authorized representative. Cf., *Standard Dredging Co. v. United States*, 71 Ct. Cl. 218 (1930) and cases cited therein holding that where contracting officer is given power to decide certain matters, higher authority may not divest him of the discretion vested in him by ordering that he decide in a particular manner.
 30. Section 11 (a) (1).
 31. Section 11 (a) (2).
 32. Section 11 (a) (3).
 33. Whether such a conference will be held is solely in the discretion of the contracting officer. In determining whether to hold the conference he is guided by the necessity of securing information for the preparation of the termination notice, the risk of having the contractor incur additional expenses prior to the service of the termination notice and the benefit the contractor may derive from the meeting. (PR 15-312.)
 34. *Hyde v. United States*, 38 Ct. Cl. 649, (1903); see *Plumley v. United States*, 226 U.S. 545 (1913).
 35. PR 15-315.
 36. Section 11 (b).
 37. "Whether the contract is reinstated or terminated, the reasonable costs of the contractor caused by the suspension should be paid either pursuant to an appropriate supplemental agreement or as part of the termination settlement." (PR 15-315 [4].)
 38. Among the items payable by the Government are the "direct and indirect manufacturing, selling and distribution, administrative and other costs and expenses incurred by the war contractor which are reasonably necessary for the performance of the war contract and properly allocable to the terminated portion thereof under recognized commercial accounting principles." (Section 6 [d] [1].)
 39. The Act "makes it the policy of the Government, upon termination of any war contract, to assure expeditious removal from the plant of such war contractor of all materials, goods in process and after termination inventory not to be retained or sold by the war contractor." Senate Committee Report No. 836, p. 4, 2 May 1944.
 - 39a. PR 15353.
 40. Sales of property costing over \$100,000 at less than cost less freight and handling charges, or costing more than \$10,000 at more than 25% below cost are required by PR 7-208 to be approved by Disposal Board.
 41. The chief of each technical service is required to designate a Redistribution and Salvage Officer who is charged with the responsibility for coordinating salvage activities in the service (PR 7-104). The regional offices of the War Production Board assist in securing buyers (PR 7-204). Negotiated sales may be made to manufacturers and suppliers having war contracts where to do so would facilitate the prosecution of the war (PR 3-301).
 42. Property taken over from a contractor and not otherwise disposed of may be stored with the contractor pursuant to storage agreement, in Government installations, or in commercial warehouses (PR 15-854).
 43. Sections 12 (e) and (h).
 44. Section 12 (d).
 45. *Idem*.
 46. Section 12 (i).
 47. The requirements of the statute governs "unless the Government agency concerned and the war contractor, by facilities contract or otherwise, have made or make other provisions for the retention, storage, maintenance or disposition of such machinery, tools or equipment." (Section 12 [g].)
 48. PR 3-332.
 49. Section 12 (g).
 50. PR 10-1015.
 51. Section 5 (c).
 52. Settlement Review Boards, which are to be established in all district offices of the contracting agencies, shall consist of three or more members. (Section 6 [c].) It is the function of these boards to appraise the overall reasonableness of proposed settlements rather than to audit the claims and determine the reasonableness of specific items contained in a breakdown of the amount arrived at by negotiation. (See PR 15-220.)
 53. The Procurement Regulations have required approval by Review Boards of settlements where the proposed payment to a contractor was in excess of \$25,000, and where the amount exceeded \$500,000 by such higher authority as the Chief of the Technical Service established. (PR 15-220.)
 54. Section 6 (c).
 55. *Idem*.
 56. See note 53, *supra*.
 57. Paragraph (c).
 58. Paragraph (c) of the article is qualified by PR 15-441.1 in that permission to exceed the contract price is required though the article contains no such limitation.
 59. PR 15-444.2. The contracting officer may deduct from the sums due the contractor; any sums due the Government by reason of interim financing, credits for property disposition and any claim in favor of the Government arising out of the affected contract. (Paragraph [e]; PR 15-444.3.)
 60. Note 15, *supra*. The contractor is also entitled to interest as provided by the statute (see note 66, *post*).
 61. Paragraph (d).
 62. Paragraph (h). Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts approved by the Joint Contract Termination Board, 31 December 1943. The statement is set forth in full at PR 15-481 et seq.
 63. PR 15-482. The same language is employed in the statute in the enumeration of the allowable items (section 6 [d]).
 64. Section 6 (d). The failure of the statute to mention specific costs is not to be construed as an intention of Congress to include or exclude the same. The Director is authorized to interpret the items set forth in the section and to promulgate regulations for the inclusion or exclusion of other costs.
 65. Conference Report No. 1708, p. 26, 21 June 1944.
 66. Section 6 (f). Subcontractors are entitled to receive interest upon their claims upon the same basis and under the same conditions as prime contractors.
 67. If the contractor has failed to negotiate in good faith, or to furnish information reasonably requested by the contracting agency or to prosecute his appeal diligently, the Appeal Board or Court may deny interest upon the entire claim or a part thereof, for such period as is deemed proper (section 13 [c] [3]).
 68. Interest on advance payments, pursuant to paragraph (f) of the standard advance payment article, ceases to accrue upon termination of the contract (PR 3-347). In the case of V-Loans interest is suspended as to the portion of the loan based upon the terminated contract (PR 15-502).
 69. Section 13 (a).
 70. *Idem*.
 71. Section 13 (c) (1); PR 15-560.4, 561. Thus under a War Department contract the contractor may appeal to the Secretary of War as provided by the standard Disputes Article (PR 3-326).
 72. Sections 13 (b) and 13 (c) (2).
 73. Section 13 (c) (2).
 74. Section 13 (d) (2).
 75. Section 13 (d) (2).
 76. Section 13 (c) (4).
 77. Section 13 (c) (3).
 78. *Idem*. The Appeal Board or the court may refuse to receive evidence not submitted to the contracting agency and may deny interest on the claim for such period as it deems proper.
 79. Section 13 (e).
 80. *Idem*.
 81. Section 13 (f).
 82. Section 14 (b). In the event parties are joined and fail to assert their interests, judgments pro confesso shall be entered against them. All claims arising out of the terminated contract may be adjudicated in the action.
 83. Payment for services or merchandise in advance of rendition or delivery had been prohibited by R. S. 3648 (M.L. 1939, sec. 1678) from its enactment in 1823, until its repeal by the

(Continued on Page 24)

THE CRIME OF *Treason*

By CAPTAIN JOSEPH S. ROBINSON, JAGD*

THE word "treason" as commonly used means (a) the betraying of any trust or confidence, (b) the offense of attempting by overt acts to overthrow the Government of the state to which the offender owes allegiance (Webster's International Dictionary, Unabridged, 2nd Ed.). Treason as defined by the Constitution and the Federal penal statutes has a more limited technical meaning.

"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two witnesses to the same overt Act, or on Confession in open Court." (U.S. Constitution, Art. 3, Sec. 3, Clause 1.)

The Criminal Code (18 USC 1 and 2) reads as follows:

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. (R.S. § 5331; Mar. 4, 1909, c. 321, § 1, 35 Stat. 1088.)"

"Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than \$10,000, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States. (R.S. § 5332; Mar. 4, 1909, c. 321, § 2, 35 Stat. 1088.)"

Treason is the only crime defined and made a part of the supreme law of the land. The reason being: "* * * To prevent, therefore, as far as possible every abuse by the extension of treason to offenses which in time of public agitation might, by violent or corrupt constructions, be pretended to belong to it, there was inserted in our national compact a rule which was to be binding on every department of government. To define and provide punishments for other crimes of federal cognizance is left to Congress; but with a jealousy on this subject, which a full knowledge of the excesses that had so often been committed in other countries by parties contending for dominion was well calculated to excite, no other trust was here reposed in the legislature than that of prescribing in what way treason was to be punished. For its definition resort was ever to be had to that great fundamental law, which was to be binding at all times, and was not liable to be changed on a sudden emergency so as to gratify the vengeance or promote the views of aspiring or designing men." (U. S. v. Hoxie,

*I.L.B., Fordham University, '26; LL.M., New York University, '27.

(CC Vt. 1808) 1 Paine (U. S.) 265; 26 Fed. Cases 15,407.)

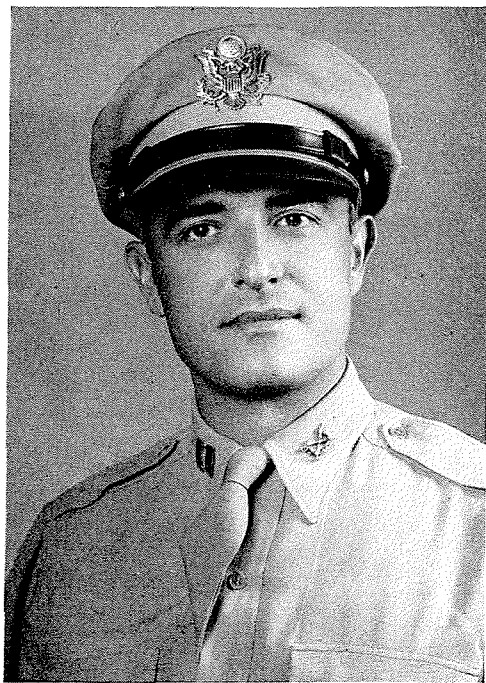
At the time the language of Article 3, Section 3, Clause 1 was introduced into the Constitution, it had acquired a settled meaning and that meaning has been adopted by the courts of the United States whenever, unfortunately, they have had occasion to interpret the words. The language was taken from the English statute commonly known as the Treason Act (25 Edw. 3, Stat. 5, c. 2) which was enacted in the year 1351 mainly for the purpose of restricting the power of the Crown to oppress the subject by arbitrary constructions of the law of treason. (30 Fed. Cases 18,269.) Prior to the passage of the 1351 statute, persons were tried and convicted of common-law treason which was indefinite and elastic enough to meet almost any purpose of the entrenched or usurping powers.

In the year 1163, Thomas Becket, the Archbishop of Canterbury, was tried for high treason because of differences which arose between him and King Henry II involving the jurisdiction of the ecclesiastical courts and the application of canon law in England. (Cobbett's State Trials, Vol. 1, p. 6.) It was this controversy which led to the publication of the famous Constitutions of Clarendon. Becket fled to France but was murdered when he returned to England several years later. This is the first of a series of reported cases wherein the common law of treason and later

the Treason Act itself were attempted to be used as a means of destroying the power of the church. Whenever it suited their purpose, the nobility likewise resorted to the treason laws in their struggle for power with the Crown. In the main, however, the Crown used these laws in its efforts to limit the power of the nobility and the clergy and to compel all subjects to bow to the will of the ruling power.

In 1307 Piers Gaveston, the Earl of Cornwall, was banished from the kingdom by direction of the barons because he, among other things, "evilly counselled the king, and had inticed him to do ill in divers manners; * * * that he (Gaveston) estranged the king's heart from his liege people, so as he despised their counsels." Gaveston was recalled by the king and falling into the hands of the Earl of Warwick, was by him put to death. (State Trials, Vol. 1, p. 22.)

Hugh and Hugh Le Despenser, father and son, gained favor with Edward II shortly after the fall of Gaveston. In 1320 the nobles united and by a document entitled "The Confederacy of earls and barons against Hugh and Hugh Le Despenser" accused them of treason and without trial directed that they be banished from the kingdom. It was alleged that both had usurped royal



CAPTAIN JOSEPH S. ROBINSON, JAGD

power over the king and his ministers; that they had contrived "to turn the heart of the king from the peers of the land that they may have sole government thereof; * * * that they (the Despensers) will not suffer the great men of the realm nor good counsellors to speak with or come near the king to advise him, nor the king to speak to them, unless in their presence and hearing, or of one of them, and when they please;" etc. This ex parte proceeding was held to be a nullity and the Despensers were restored to their former position of favor with the king. Before long they were again in difficulties. Queen Isabel assigned the alleged misconduct of the Despensers as the reason for taking up arms against her husband, King Edward II. Hugh, the father, "was drawn and hanged upon the common gallows, without hearing or trial." Hugh, the son, was taken before Sir William Trussel, "a justiciary," who, without trial, adjudicated him a traitor and directed that "he be drawn and quartered." The concluding statement of Sir William Trussel's speech of condemnation reads as follows: "and for that you abetted and procured discord between the king and queen, and others of the realm, you shall be embowelled, and your bowels burnt. Withdraw, traitor, tyrant, and so go take your judgment, attainted wicked traitor." The younger Despenser was drawn, hanged, quartered, "and his head fixed upon London-bridge." In later years the proceedings against both Despensers were by parliamentary enactment declared null and void because "they were not appealed, or called to answer, nor due process made against them according to law." (State Trials, Vol. 1, pp. 23-38.)

Common-law treason charges alleging various acts of misconduct, which in the main involved a struggle for power, were brought against Thomas, Earl of Lancaster, in 1322; Adam de Orleton, Bishop of Hereford, in 1323; Roger Mortimer, Earl of March, in 1330; John Stratford, Archbishop of Canterbury, in 1341, and several others, all of which finally led to the passage of the Treason Act during the reign of Edward III in the year 1351. Violent and corrupt constructions of the law of treason, however, did not stop with the passage of the Act. For the next several hundred years charges of high treason were brought against many persons for all types of alleged wrongs. Common-law treason, except for the punishments, was gone, but "constructive" treason grafted onto the Act of Edward III by judicial and legislative interpretation took its place.

Questions involving succession to the Throne were held by judicial construction to fall within the Act of Edward III. Lady Jane Grey, who for nine days was Queen of England after the death of Edward VI, was convicted of treason, as were many others, for asserting the title to the Crown in opposition to the claim of Queen Mary. She was executed on February 12, 1554, as were her husband and father. Also tried in the years 1553-4 for alleged violations of the Treason Act arising out of the struggle for succession to the Crown were Henry Grey, Duke of Suffolk; John Dudley, Duke of Northumberland; Thomas Cranmer, Archbishop of Canterbury; William Parr, Marquis of Northampton; John Dudley, Earl of Warwick; Lord Guilford Dudley, husband of Lady Jane Grey; Sir Thomas Wyatt, Knight at Westminster; Sir John Gates, Sir Henry Gates, Sir Andrew Dudley, Sir Thomas Palmer and others.

Twenty years earlier, in the year 1536, Henry VIII made use of the Treason Act to rid himself of the Queen Anne Boleyn when his affections turned to Jane Sey-

mour. It was charged "that she (Queen Anne) had procured her brother (Lord Viscount Rochford) and the other four (Norris, Smeton, Brereton and Weston) to lye with her, which they had done often; that she had said to them, that the king never had her heart, and had said to everyone of them by themselves, that she loved them better than any person whatsoever. Which was to the slander of the issue that was begotten between the king and her." (State Trials, Vol. 1, p. 417.) All were executed and King Henry was again freed of the bonds of matrimony to go his venturesome way. Strange indeed were the elastic interpretations of the Treason Act, and many were the varied purposes it served.

In the year 1554, Sir Nicholas Throckmorton bitterly fought the attempt on the part of the Crown to convict him of treason for acts wholly outside the statutory limitations. When the jury acquitted him, the court forthwith committed the jurors to prison and held Throckmorton to answer for other charges. "So the juries were deprived of the liberty of judging according to their consciences, and, instead of being governed by proofs, they were to examine how the court stood affected to the prisoners, and by that determine their verdicts. This rigour executed upon the jury was fatal to Sir John Throckmorton, who was found guilty upon the same evidence on which his brother had been acquitted." (State Trials, Vol. 1, p. 902.)

In 1586, Mary, Queen of Scots, was convicted of treason for "pretending title to the crown of the realm of England" and executed upon orders of Queen Elizabeth. The executioner's ax, during the reigns of Elizabeth and King James I, was seldom dry, so plentiful were the convictions for alleged violations of the statute of Edward III. Their successors likewise made good use of the treason laws to rid the country of opposition and to quell any rising power. (State Trials, Vols. 1-30.)

In 1640, Thomas, Earl of Stratford, Lord Lieutenant of Ireland, was convicted of treason, the main charge being that "he hath traitorously endeavoured to subvert the fundamental laws and government of the realms of England and Ireland, and, instead thereof, to introduce an arbitrary and tyrannical government against law;" etc. (State Trials, Vol. 3, p. 1386.) In his own defense Stratford argued at length against "constructive treason." He stated in part: "My lords, You see what may be alledged for this constructive, rather destructive Treason. For my part, I have not the judgment to conceive that such a treason is agreeable either with the fundamental grounds of reason or law: not of reason, for how can that be treason in the lump or mass, which is not so in any of the parts? Or how can that make a thing treasonable, which in itself is not so? Not of law, since neither statute, common-law, nor practice, hath from the beginning of this government ever mentioned such a thing; and where, my lords, hath this fire, without the least appearance of any smoke, lien hid so many hundred years, and now breaks forth into a violent flame to destroy me and my posterity from the earth? My lords, do we not live by laws, and must we be punished by laws before they be made? Far better were it to live by no laws at all, but to be governed by those characters of discretion and virtue that nature hath stamped in us, than to put this necessity of divination upon a man, and to accuse him of the breach of law, before it be a law at all. * * * My lords, If this crime, which they call Arbitrary Treason, had been marked by any discernor of the law, the ignorance thereof should be no

excuse for me; but if it be no law at all, how can it in rigour or strictness itself condemn me? Beware you do not awake these sleeping lions, by the searching out some neglected moth-eaten records; they may one day tear you and your posterity in pieces: it was your ancestors care to chain them up within the barricadoes of statutes; be not you ambitious to be more skilful and curious than your forefathers in the art of killing. My lords, It is my present misfortune, for ever yours; and it is not the smallest part of my grief, that not the crime of Treason, but my other sins, (which are exceeding many) have presented me before this bar; and except your lordships wisdoms provide for it, it may be, the shedding of my blood may make way for the tracing of yours: you, your estates, your posterities, lie at the stake. * * * if every word, intention or circumstance of yours, be sifted and alledged as treasonable, not because of a statute, but because of a consequence, or construction of lawyers pieced up in a high rhetorical strain and a number of supposed probabilities; I leave it to your lordships consideration, to foresee what may be the issue of such dangerous and recent Precedents. These Gentlemen tell me they speak in defense of the Commonwealth, against my Arbitrary Laws; give me leave to say it, I speak in defense of the Commonwealth, against their Arbitrary Treason." (State Trials, Vol. 3, p. 1466.)

In England the punishment for treason continued the same under the statute of Edward III as it was by common law. It was barbarous in the extreme. "The sentence in the case of a man was that the offender be drawn on a hurdle to the place of execution, that there he be hanged by the neck but not till he be dead, and that while yet alive he be disembowelled and that then his body be divided into four quarters, the head and quarters to be at the disposal of the Crown. Until 1790 at common law a woman was drawn to the place of execution and there burned. In that year hanging was substituted for burning in the case of female traitors. In 1814 the part of the sentence relating to hanging and to disembowelling was altered to hanging until death supervened. Drawing and beheading and quartering after hanging were abolished in 1870." (Encyclopedia Britannica, 14th Ed., Vol. 22, p. 438.)

In 1603, about two hundred and fifty years after the passage of the Act of Edward III, Sir Walter Raleigh was tried and convicted of treason on charges which alleged in the main that Sir Walter conspired to dispose of the king and his royal progeny and advance Arabella Stuart to the throne. The judgment carried with it the usual form of barbarous punishment. It provided: "You shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off, and thrown into the fire before your eyes; then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the king's pleasure, And God have mercy upon your soul." (State Trials, Vol 2, p. 31.)

In his last letter to his wife, Sir Walter, true to the legends about his devotion to and consideration of the female sex, wrote in part as follows: "You shall now receive, my dear wife, my last words in these my last lines. My love I send you, that you may keep it when I am dead; and my counsel, that you may remember it when I am no more. I would not by my Will present

you with sorrows, dear Besse, let them go into the grave with me, and be buried in the dust. And seeing that it is not God's will that I should see you any more in this life, bear it patiently, and with a heart like thyself. First, I send you all the thanks which my heart can conceive, or my words can rehearse, for your many travails, and care taken for me; which though they have not taken effect as you wished, yet my debt to you is not the less; but pay it I never shall in this world. Secondly, I beseech you, for the love you bare me living, do not hide yourself many days, but by your travels seek to help your miserable fortunes, and the right of your poor child. Thy mourning cannot avail me, I am but dust. * * * But take heed of the pretences of men, and their affections, for they last not but in honest and worthy men; and no greater misery can befall you in this life than to become a prey, and afterwards to be despised. I speak not this, God knows, to dissuade you from marriage, for it will be best for you both in respect of the world and of God. As for me, I am no more yours, nor you mine, death hath cut us asunder; and God hath divided me from the world, and you from me. Remember your poor child for his father's sake, who chose you, and loved you in his happiest times. * * * My dear wife, farewell." (State Trials, Vol 2, p. 39.)

Although a large number of offenses were made treasonable by the 1351 statute—such as to compass or imagine the death of the king, the queen or their eldest son and heir; to slay the chancellor, treasurer, or the king's justices, etc.—the provisions which were carried over and made a part of the United States Constitution read: "to levy war against the king in his realm, or be adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere."

This language was altered to conform to our system of government. The same two acts and those two alone were declared to constitute treason in the United States. One is levying war against the United States; the other, adhering to their enemies, giving them aid and comfort. To constitute "levying war" there must be actual assembly for the purpose of effecting a treasonable purpose (*U.S. v. Bollman*, 8 U.S. 75), i.e., "assemblage of persons to overthrow the Government or to coerce its conduct" (*U.S. v. Greathouse*, 4 Sawy. [US] 457); "There must be a present intention to proceed in the execution of the treasonable purpose by force" (30 Fed. Cases 18,275); "Force is necessary to complete the crime, but the quantum of force is immaterial" (*U.S. v. Fries*, 9 Fed. Cases 5127). (See also *U.S. v. Burr*, 25 Fed. Cases 14,693; *U.S. v. Hanway*, 26 Fed. Cases 15,299.)

Of course treason may be committed by one not personally present at the immediate scene of violence, for as was said in 30 Federal Cases 18,269: "Influential persons cannot form associations to resist the law by violence, excite the passions of ignorant and unreflecting, or desperate men, incite them to action, supply them with weapons, and then retire and await in safety the result of the violence which they themselves have caused. * * * They who have the wickedness to plan and incite and aid, and who perform any part however minute, are justly deemed guilty of this offense, though they are not present at the immediate scene of violence."

Insofar as "giving aid and comfort to the enemy" is concerned, it is necessary that a state of war with a foreign power exist, and that the enemy be a "subject" of such foreign power. (*U.S. v. Fricke*, 259 Fed. 673.) The accused, on the other hand, need not be a citizen

of the United States (*Carlisle v. U. S.*, 83 U.S. 147). There must, however, be an "intent" to give aid and comfort to the enemy (*U.S. v. Werner*, 247 Fed. 708).

Another equally stringent feature relating to this law is that no person shall be convicted of the offense except on the testimony of two witnesses to the same overt act. (30 Fed. Cases 18,271.)

"Words oral, written or printed, however treasonable, seditious or criminal of themselves, do not constitute an overt act of treason, within the definition of the crime. When spoken, written or printed in relation to an act or acts which, if committed with a treasonable design, might constitute such overt act, they are admissible as evidence tending to characterize it, and to show the intent with which the act was committed (30 Fed. Cases 18,271).

"Mere expressions of opinion indicative of sympathy with the public enemy, will not ordinarily involve the legal guilt of that crime. They may well justify a strong feeling of indignation against the individual, and the suspicion that he is, at heart, a traitor, but will not be a sufficient basis for his conviction in a court of law." (30 Fed. Cases 18,272.)

No other acts can be declared to constitute the offense. "Congress cannot extend, nor restrict, nor define the crime. Its power over the subject is limited to prescribing the punishment." (*U.S. v. Greathouse*, 26 Fed. Cases 15,254.) Thus constructive treason engrafted either by judicial decisions or by legislative enlargement is prevented. "An attempt to overthrow the government excites the deepest indignation in great numbers, especially in those who are imbued with a warm and devoted patriotism * * *. A traitorous assault upon it arouses the strongest passions, and in the keenness of their resentment, and the eager pursuit of the guilty, they are apt to break down the barriers which are essential to the protection of innocence. Our fathers, therefore, endeavored to render some of these safeguards impregnable, by embedding them in the fundamental law." (30 Fed. Cases 18,273.)

The central figure in the most celebrated treason case in American history was Aaron Burr. Burr was a distinguished Revolutionary War soldier, a United States Senator from New York, Vice President of the United States under Thomas Jefferson, and the slayer of Alexander Hamilton in a pistol duel. He was charged, among other things, with seeking to separate the Western states from the Union and set up an empire of his own, in violation of Article 3, Section 3, Clause 1, of the Constitution. After a spectacular trial, over which John Marshall presided, Burr was found not guilty. (25 Fed. Cases 14,692.)

Many years later the treason trial of John Brown of Harper's Ferry fame caused considerable popular excitement. Brown, a fanatic Abolitionist, became a conspicuous figure in the Kansas struggle between the "free state" and pro-slavery settlers. He came East for the purpose of gaining followers for his cause and carrying out a long-cherished scheme for facilitating the escape of fugitive slaves. At Chatham, Canada, he and a handful of associates adopted a "Provisional Constitution and Ordinance for the People of the United States." He removed to a farm near Harper's Ferry, the site of a Federal arsenal, which he attacked and captured on the night of October 16, 1859. On the following morning, he and his men were overpowered by a military force under the command of Colonel Robert E. Lee.

He was convicted of treason, of conspiring and advising with slaves and other rebels, and murder in the first degree, and hanged on December 2, 1859. The attack upon Harper's Ferry created widespread excitement, particularly in the Southern states. Among the Abolitionists, Brown was looked upon as a martyr to their cause. Shortly after his death the famous song was published, beginning with the words "John Brown's body lies a-mouldering in the grave, but his soul goes marching on." (*Encyclopedia Britannica*, 14th Ed., Vol. 4, p. 265.)

One of the more recent treason trials for acts originally made punishable by the statute of 1351 involved the Detroit restaurateur Max Stephan who gave aid and comfort to Oberleutnant Hans Peter Krug, an escaped prisoner of war. Stephan was sentenced to death by hanging. (*Stephan v. U.S.*, 133 Fed. 2nd 87.) A later case involved Hans Max Haupt and others who gave aid and comfort to Herbert Haupt, the Nazi saboteur who was executed on August 9, 1942 after conviction by a military tribunal and the Supreme Court's ruling in *Ex parte Quirin*, 317 U.S. 1. (*U.S. v. Haupt et al*, 136 Fed. 2nd 661.)

In England just as in this country the courts are still called upon, although fortunately in only rare instances, to invoke the now ancient statute of Edward III to punish traitors. (*The King v. Sir Roger Casement*, 1917 Law Reports; King's Bench Div., Vol 1, p. 98.)

The crime of treason as denounced by the Constitution is *as such* not triable by an Army court-martial although certain crimes specifically denounced by the Articles of War, treasonable in nature and in effect constituting treason, are triable by such courts. (Winthrop's *Military Law and Precedents*, 2nd Ed., p. 629. JAG opinions, SPJGJ 1944/2407, 19 Feb. 44; Case of Brig. Gen. Hull [1814], p. 118.)

In addition to their amenability to trial by courts-martial for a violation of Articles of War 75 and 81, military men are also triable by courts-martial under Article of War 96 for treasonable acts. This is on the theory that such conduct is to the prejudice of good order and military discipline and tends to bring discredit upon the military service. The charges, however, are not technically known as treason.

Civilians are also triable by military courts for a violation of Article of War 81 if they are persons subject to military law or if they are within a jurisdiction which is legally under martial rule. (Dig. Op. JAG, 1895, p. 40; 13 Op. Atty. Gen., p. 1472; *Ex parte Milligan*, 71 U.S. 2.) Article of War 81 (10 USC 1552) reads:

"*Relieving, Corresponding With, or Aiding the Enemy.*
—Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such other punishment as a court-martial or military commission may direct."

This statute incorporates everything that the Constitution condemns as treasonable except "levying war." For all practical purposes, therefore, military courts are not helpless to act against traitors whether they be civilians or persons in the military service, provided jurisdiction over the person of the accused is acquired. (Case of Brig. Gen. Hull [1814]; *Ex parte Milligan*, 71 U.S. 2.)

The Espionage and Sedition Laws (18 USC 9 & 10; 50 USC 33) are today generally relied upon to prosecute

(Continued on Page 24)

MILITARY *Trials* OF *Prisoners* OF *War*

By LT. COLONEL LEON JAWORSKI, JAGD*

IT WAS once said that "Primeval war, naked and unashamed, knows of no right but the right to kill." As wars have been waged on through the years in ancient, medieval and modern eras, the right to kill has remained undeniably recognized—but it can no longer be said that war knows no other right. From the experiences of war, as is true in all experiences of mankind, lessons have been learned. One of these lessons exposed the great need for the creation of certain regulations for the conduct of war. Even as strides of progress were made in the development of the machinery of war from one conflict to the next, so also were forward steps taken in the formation of a code of war. And today, in the war of all wars, despite the use of weapons of destruction and devastation hitherto unknown, there is present the influence of an humanitarian understanding, the outgrowth of Conventions, customs and usages, which may well be referred to as the "laws of war."

Although there are nations who are not signatories to the instruments that gave life to these laws of war, there is none that has been able to separate itself entirely from their effect; yes, there is none that has not in some manner rendered homage to them. So far-reaching are these laws, so deeply entrenched are they as an integral part of warfare, that no power can undertake to repudiate or circumvent them without shamefully forsaking its honor.

History records the holding of many conferences and the drafting of numerous regulations for the creation of an international understanding in the conduct of war. It is of great historical interest that in the War between the States, or Civil War as it is commonly known, both sides invoked principles of international law. At President Lincoln's direction, there was prepared a manual of "Instructions for the Government of the Armies of the United States in the Field," which has been referred to by authorities as "The first written code of land war." Students of the subject of war rights on land have given much praise to this set of regulations. One eminent authority¹ says that "its teachings throw a flood of light on the dark places of international law."

As early as 1874, representatives of European powers met at Brussels to deliberate over appropriate laws of war. A further conference was held in 1899 at The Hague, resulting in the drafting of a set of principles

*LL.B., Baylor University, '25; LL.M., George Washington University, '26.

¹Spaight, War Rights on Land, page 14.

which each power was to embody in her Army regulations. This agreement did not have the force of a convention and in some instances was loosely applied. While additional progress was made by other international agreements, notably The Hague Conventions of 1907, some questions of war law still remained undetermined.

Each of these efforts served as a stepping-stone to the formation of that great Convention entered into on July 27, 1929, at Geneva, Switzerland, known as the

Geneva Convention of 1929, which gave to the world a code of civilized principles for the guidance of warring nations. One of the Conventions entered into on this occasion pertains to the amelioration of the conditions of the wounded and sick of the Armies in the field; the other relates to the treatment of prisoners of war. This latter Convention stated in its preamble that the nations that join therein recognize that "in the extreme case of a war, it will be the duty of every power to diminish, so far as possible, the unavoidable rigors thereof and to mitigate the fate of prisoners of war." And while this benevolent document embraces many various salutary provisions pertaining to the status and rights of prisoners of war, not the least among them are the guaranties which provide them with a *right to justice!*

The United States and Great Britain are signatories to this Convention. So is the German Reich. Ratification of the Geneva Con-

vention of 1929 was advised by the Senate of the United States on January 7, 1932, and was ratified by the President on January 16, 1932. Our nation, therefore, as a party to a Convention carrying the force of a treaty, respects its provisions and applies them in the spirit of Section 2 of Article 2 of the Constitution, vesting in the Executive the power "by and with the advice or the consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," and Clause 2 of Article VI thereof which includes Treaties as a part of the Supreme Law of our Land. Although Japan failed to ratify the Convention, after her representatives had signed it, she has agreed with the United States, through the Swiss Government, to apply its provisions on a reciprocal basis. Japan is a party to The Hague Regulations.

One section of the Geneva Convention is devoted to "judicial suits." Article 63 of that section provides that "sentences may be pronounced against prisoners of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power." This is the fundamental



LT. COL. JAWORSKI

law, the organic law to which we must turn in the trial of prisoners of war who commit offenses that are violative of our laws. The soldiers of our forces have preserved to them a trial before a duly constituted court-martial for any offense with which they are charged. By virtue of the guaranties of the Geneva Convention, the prisoner of war detained by us is possessed of the same right. The rights thus accorded to these prisoners, when translated into an American court-martial trial, mean the enjoyment of great and valuable safeguards that a liberty-loving Democracy has provided for the protection of all who come under its jurisdiction.

The machinery of a court-martial moves with sureness, leaving little opportunity for a miscarriage of justice. Indeed, it has been said that the innocent would rather be tried by court-martial than any other court, whereas the guilty would rather be tried by any court than a court-martial. After the charge is filed, all cases of a serious nature warranting a recommendation for trial by general court-martial are carefully investigated pursuant to Article of War 70 by an impartial and experienced officer. In the course of investigation, he is in duty bound to call before the accused all witnesses supporting the charge so that the accused may cross-examine them, if he so desires. In other words, the Government may be called upon to disclose its full hand long prior to trial. Moreover, the accused is given the privilege of calling any witnesses he desires on his own behalf. Upon completion of the investigation, the report, together with the recommendation of the investigating officer, is submitted to the camp commander where the prisoner of war is detained. If the camp commander considers the evidence sufficient to warrant a trial by general court-martial, he forwards the charges, the investigation and the allied papers, together with his recommendation, to the officer exercising general court-martial jurisdiction over the prisoner of war. This officer's Staff Judge Advocate considers the evidence submitted and makes his recommendation as to whether the case should be referred to a court-martial for trial. If the evidence submitted is insufficient to warrant trial by either a general or an inferior court, the charges are dismissed. If the officer exercising general court-martial jurisdiction, after considering his Staff Judge Advocate's recommendation, concludes to refer it to a general court-martial for trial, a court composed of not less than five—usually as many as ten—qualified and impartial officers will sit in judgment on the charges preferred against the accused. A Trial Judge Advocate and Assistant Trial Judge Advocate are appointed to prosecute the charges in the name of the United States. While under the express provision of the Manual for Courts-Martial their "primary duty is to prosecute, any act inconsistent with a genuine desire to have the whole truth revealed is prohibited."¹ Competent Defense Counsel consisting of a Chief Defense Counsel and an Assistant Defense Counsel, both officers in the United States Army, usually of equal rank with the Trial Judge Advocate and Assistant Trial Judge Advocate, are appointed to represent the accused. In addition, the accused is permitted to have qualified counsel of his own choice. In one case tried in the Eighth Service Command, a German prisoner of war, educated in law and versed in the English language, assisted as special counsel in the defense of the accused. Over 75,000 prisoners of war detained in the Prisoner of War Camps in Texas, Oklahoma, Arkansas, Louisi-

¹ Par 41 d, MCM.

ana and New Mexico are under the general court-martial jurisdiction of the Commanding General of the Eighth Service Command, and the many valuable rights just enumerated are accorded to these prisoners in every trial that is held.

The Geneva Convention² provides that the prisoner of war in every judicial proceeding shall have recourse to the services of a competent interpreter. In every trial in this Service Command, whether requested by the accused or not, an interpreter of undoubted qualifications is provided. Not only is the testimony given by the prisoners of war interpreted for the benefit of the court, but in addition the testimony of all witnesses given in the English language is translated for the benefit of the accused, unless he expressly waives it.

Even the same maximum punishments that may be imposed on the American soldier for any particular offense are applicable to the prisoner of war. Likewise, the places of confinement are patterned after those designated for our soldiers except, of course, that none is placed in a rehabilitation center. Certain punishments, although permissible under the laws of the detaining Power, are prohibited by the Geneva Convention. Included therein are corporal punishment, imprisonment in quarters without daylight, cruelty and collective punishment for individual acts.³ These inhibitions place no additional limitation on the punishments imposed by American courts-martial, as none of these is recognized by our system of military justice. It is also interesting to note that no prisoner of war may be deprived of his rank by the detaining Power.

By Article 64 of the Convention it is provided that "Every prisoner of war shall have the right of appeal against any sentence rendered with regard to him, in the same way as individuals belonging to the armed forces of the detaining Power." When interpreted into an American court-martial proceeding, this means that every general court-martial conviction is first reviewed as to sufficiency of evidence, procedural regularities and propriety of sentence by the officer exercising general court-martial jurisdiction over the accused, and next in the office of The Judge Advocate General. Sentences involving penitentiary confinement are reviewed by a Board of Review in the office of The Judge Advocate General and require approval of The Judge Advocate General as is provided by Article of War 50½. Death sentences not only require such review and approval but also confirmation by the President of the United States under Article of War 48.

Such are the rights and benefits enjoyed by the prisoner of war who stands before the bar of an American military court, each of which stems from our system of justice. Additional protective measures are provided by the Convention regardless of the laws of the detaining Power. At least three weeks before the opening of a trial, a representative of the protecting Power of the prisoner of war charged must be advised of the name and rank of the prisoner, his place of confinement, the charges and specifications under which the accused is brought to trial, the court that will try him, and the date and place of trial.⁴ Representatives of the protecting Power, which in cases involving German prisoners of war is the Legation of Switzerland, are entitled to attend the trial, the only exception being where the trial must

² Article 62.

³ Article 46.

⁴ Article 60.

be secret in the interest of the safety of the Government.¹ Sentences pronounced against prisoners of war must be communicated to the protecting Power immediately.² If the death penalty is assessed, the protecting power must be advised in detail of the nature and circumstances of the offense for transmission to the power in whose Army the prisoner served, and the sentence may not be executed before the expiration of three months after this notice is given.³

It is not infrequent that reports of escapes of prisoners of war are carried in the press, and no doubt this has caused speculation as to what action may be taken against them. It is not considered dishonorable for a prisoner to escape. On the contrary, it is a natural act and offends neither military honor nor moral law. In authoritative writings is to be found the statement that it is the duty of a prisoner of war to escape if a likely opportunity is presented. For him to escape is not considered a serious offense and subjects him to no more than disciplinary punishment.⁴ In legal terminology, the act is not *malum in se* but only *malum prohibitum*. Such a prisoner does not "escape from confinement" within the meaning of Article of War 69 applicable to our soldiers. Actually, it is "an unsuccessful escape" or "attempt to escape" because the escape does not become complete until the prisoner rejoins his Army or at least has succeeded in leaving the territory occupied by the detaining Army. While the attempted escape is made at the risk of the prisoner's life because the guards have the right to fire upon him if necessary to prevent his flight, when he is apprehended the maximum punishment that may be imposed is limited under the terms of the Geneva Convention to thirty days' confinement.⁵ Where a prisoner had the help of fellow-prisoners as confederates or co-conspirators, only disciplinary punishment, not to exceed thirty days' confinement, may be imposed on them. Should the escaping prisoner commit some crime while in flight, the escape attempted may not be considered as an aggravating circumstance in the prosecution for his criminal act. But he may be punished for his criminal act, although committed in the furtherance of his escape. Accordingly, a prisoner of war who steals clothing to aid in his escape is guilty of larceny.

Reprisals imposed on prisoners of war for the escape of others are not permitted. In the Franco-Prussian War, the escapes of French officers became so frequent that General Vogel von Falkenstein promulgated an order that "each time an officer escaped, ten of his comrades, chosen by lot, should be confined in a fortress, deprived of their privileges as prisoners of war, and subjected to a strict surveillance until the escaped officer was recovered."⁶ This action, taken as a reprisal measure, probably could not have been justified under then-existing principles of International Law; under present rules it is definitely forbidden.

Any violation of our municipal laws committed by prisoners of war renders them subject to trial for the offense—be it murder, larceny, assault or breach of peace. News accounts have indicated the infliction of acts of violence by German prisoners of war on their fellow-prisoners in some of our camps. The alleged reasons for these assaults are not important to this discussion,

but it is interesting to observe that when charges are preferred against those responsible for these acts, the accused advance the contention that since the affair was one involving only German prisoners of war, it is not a matter within our jurisdiction but one for the courts of the German Reich to determine at the close of war. Notwithstanding the splendid knowledge German prisoners of war generally have of the Geneva Convention, in this contention they are in obvious error. No rule of land warfare is better settled than that prisoners of war must conform to the laws, regulations and orders enforced in the enemy's country.⁷ Another contention that has been asserted in cases involving assaults is that the victim was a scoundrel or stood in great disfavor with the majority of his comrades. The German prisoners are beginning to learn that in this country there is an equal justice and that protection and security from wrong are accorded to all within its boundaries, regardless of political view or factional alignment.

A recital of the facts pertaining to any specific trial of a prisoner of war must be pretermitted in this discussion. For very good reasons the War Department has not made public these proceedings. It is appropriate to state, however, that prisoner of war trials of more than passing interest have taken place in the Eighth Service Command. It is safe to predict that when the veil of secrecy is removed from these events, it will be found that there have been added to the annals of American jurisprudence some highly significant chapters.

It is ironical, indeed, that our prisoners of war, members of armies representing nations that are seeking to destroy the principles upon which American justice is founded, should reap the bountiful fruits of the judicial system of this land when before its courts. Yet it is something to which we may point with pride. To all who come before the tribunals of this land there is guaranteed the right to an equal justice. Our courts do not have one kind of justice for our people and another for those who belong to the enemy. This is not merely a trite statement; it is a living fact. In recent months, a German prisoner of war, who was charged with a serious offense and tried in the Eighth Service Command, was found "Not Guilty" by a general court-martial.

There may be those who find objection in the scrupulousness with which these trials are held. But it must be remembered that these prisoners of war are not criminals merely because they are in the service of the enemy. The prisoner's imprisonment is a war measure only, and it has long been recognized that "captivity is neither a punishment nor an act of vengeance" but "merely a temporary detention which is devoid of all penal character."⁸ As soldiers in the armies of their country, their status is the same as that of our boys who are serving our country. To use the words of an eminent writer on this subject, "they are to be treated with humanity and with the consideration befitting their public relation." Then, too, let us not forget that our great struggle today has for its purpose the preservation of rights that only free and just tribunals can protect. Ill would it become this great nation to hold proudly before the world the lustre of American justice, then shamefully prostitute it when applying it to others—yes, though, it be an enemy.

¹ Article 62.

² Article 65.

³ Article 66.

⁴ Article 50.

⁵ Article 50.

⁶ Spaight, War Rights on Land, page 289.

⁷ Winthrop's Military Law and Precedents, Second Edition, p. 792.

⁸ Winthrop's Military Law and Precedents, Second Edition, p. 788.

Nor does it appear that the attitude of fairness taken by this nation toward the legal rights of prisoners of war is of a unilateral nature. There recently appeared in one of our leading newspapers¹ an account of the trial of three British officers by a German court. It was written by a repatriated internee. The officers in question attempted to tunnel their way out of a German camp. In the furtherance of this attempt some of the electric wiring in their barracks was displaced. Their escape was unsuccessful, and upon their return they were tried by a German military court for the destruction of this electric wiring. They were acquitted because it was shown that the wiring was merely ripped down and not destroyed. The important observation to be made on this incident is not whether such charges are within the contemplation of International Law but rather the fact that the accused were acquitted on the basis of what conveniently could have been termed by an unscrupulous court as an unimportant variance in the charge and the proof.

The time must never come when we should find ourselves contributing to the breakdown of International Law. Its influence in this great conflict must be preserved. That other powers may find occasion to violate one or the other of its provisions is no justification for

¹ New Orleans Times Picayune, 5 April 1944.

its overthrow. Systems of law are not discarded merely because of violations. Neither will unauthorized retaliatory measures provide a proper end. If indiscriminate retaliation, founded in revenge, were to be resorted to, the flood gates to barbarism and counter-barbarism, to atrocities and counter-atrocities would soon be opened. The Geneva and other Conventions would become empty shells and the power most adept at savagery would profit the most. Justice to prisoners of war—men who are not criminals but merely soldiers in captivity—would be a thing of the past. Trials of offenders would become a farce, a mere formality. Our boys in the hands of the enemy would then be without judicial protection.

It is to be hoped that throughout this war our country's example of close adherence to the provisions of International Law, the promise to violators of a day of strict accounting for infractions and the resort to authorized reprisals recognized by the laws of war will bring about at least a substantial compliance by the enemy nations with the provisions of the code of war.

Truthfully can this nation proclaim that by virtue of a genuine reverence for the principles of International Law and the strict application of the laws of this land, there is extended to our prisoners of war an equal and exact justice. So long as there be war, may this status be preserved!

Notes

(Continued from Page 16)

- tary of War was authorized to make advance payments to the act of 2 July 1940 (54 Stat. 713) pursuant to which the Secret- extent of 30% of the contract price whenever he deemed it in the interest of national defense. By the First War Powers Act and Executive Order 9001, the Secretary of War was authorized to extend advance payments to the full value of a contract. By the terms of the standard advance payment article (PR 3-347) the sum is impressed with a trust for the purposes of the contract for the performance of which it is advanced.
84. Partial payments are predicated upon work done by the contractor upon goods which when completed are to be delivered under contract with the Government. PR 3-330 and PR 3-330.1 set forth alternative clauses upon which to base such payments. Though the former permits payment up to 75% of the contractor's costs and the latter 90% of direct labor and material costs, both limit the amount payable to 80% of the contract price. Where partial payments are made, title to the goods forming the basis of the payment passes to the Government.
 85. Paragraph (g) of the Uniform Article specifies that "the Government shall make partial payments and payments on account, from time to time of the amounts to which the contractor shall be entitled."
 86. Section 8 (a).
 87. Section 8 (b). Where the second and third items cannot be ascertained, 90% of the estimated costs allocable to the terminated portion of the contract may be substituted therefor.
 88. Section 8 (d). The contracting officer may rely upon certificates of the contractor in fixing the amount of interim financing. He is not personally liable for overpayments in the absence of fraud on his part (section 13).
 89. Section 9 (a).
 90. Section 8 (e).
 91. Section 8 (g).
 92. Section 10 (a). V-Loans and V-T Loans which had been available to war contractors pursuant to Executive Order 9112, 26 March 1942, were required to be processed before notice of termination. The statute now permits the guaranteeing of loans upon contracts already terminated. The War Department is empowered by the mentioned Executive Order to make direct loans but such power has never been exercised.
 93. Section 10 (c).
 94. Where the subcontractor's claim is in excess of \$50,000, settlement is subject to approval by the Settlement Review Board in the same manner as though it were a prime contractor's claim (Section 7 [a]). By PR 15-437, subcontractors' claims in excess of \$25,000 are required to be submitted for approval, and prime contractors may only be authorized to settle claims with their subs where the amount involved is not more than \$10,000 before deduction of disposal credits.
 95. Section 13 (d).
 96. Idem.
 97. This method is generally employed where settlement of a particular subcontractor's claim cannot be effected. Under such circumstances, all other claims are disposed of and a final settlement agreement is entered into with the prime contractor disposing of all claims other than that of the recalcitrant sub.
 98. Sections 13 (e) and (f).
 99. Speaking of the Army procurement program at the Judge Advocate General's School, on 11 July 1944, Hon. Robert P. Patterson, Acting Secretary of War, said: "The success of that great activity rests on the principle that the contracts made with industry will be equitable to both sides, with the Government paying fair, but no more than fair, prices and assuming the risks that fairly belong to the Government, but no more." The same philosophy should be applied to the negotiation of termination settlement agreements.

THE CRIME OF TREASON

(Continued from Page 20)

the traitorous at heart who perform an overt act to the detriment of the people of the United States. Considering the size of this nation, its mixture of peoples, its cross-currents of ideas and ambitions, its varying scales

of social and economic well-being and the possibility of abuse of its guaranties of freedom of speech, press and assembly, comparatively little resort has had to be made to the treason and allied statutes. Such has been the fortunate lot of the people of this country.

Maneuvers WITH A Stockade

By COLONEL ROBERT V. LAUGHLIN, JAGD
Judge Advocate, Second Army

AN INFANTRY division should not have an average of over 26 men in the guardhouse. This article is designed to show how the Judge Advocate can reach and maintain this low figure. During the 1943 Tennessee Maneuvers the infantry divisions reporting to that area usually arrived with 75 to 125 prisoners. By adoption of the policies and procedures hereinafter described, these numbers were immediately reduced to an average of 20 per division. All figures set forth herein are based on careful records of an average of 87,248 troops in the maneuver area over a period of nine months operation.

There were confined in the Second Army Stockade, during the nine months, an average of 1.46 men per thousand troops (Figure 1). There is an interesting contrast between this figure and that of the Tennessee Maneuvers of the preceding summer (17 September to 17 November 1942). With approximately 75,000 troops participating in that maneuver, the number of prisoners confined in the Stockade during that period reached a peak of 750. At the close, there were approximately 450 in the stockade.

The figure of 1.46 per thousand was reached and maintained by the construction of an adequate stockade, by its efficient administration, and by the adoption and enforcement of certain definite disciplinary policies.

An inspection by the Army Judge Advocate, upon the inauguration of the 1943 maneuvers, disclosed unsatisfactory conditions in the stockade. He found the prisoners housed in pyramidal tents, sleeping on wooden bunks and as many as twelve men assigned to one tent. Drainage and other sanitary conditions were unsatisfactory. A spirit of hopelessness pervaded the place. The location of the stockade was such that changes desired in the physical setup could not be accomplished economically or practicably. Accordingly, a new site was selected and a stockade constructed that would meet the requirements for proper administration, discipline and sanitation.

This stockade was constructed during May and June of 1943 and was ready for occupancy on 1 July, the beginning of the second maneuver (July-August 1943). A double wire fence was used to surround the properly partitioned rectangular inclosure; guard towers were

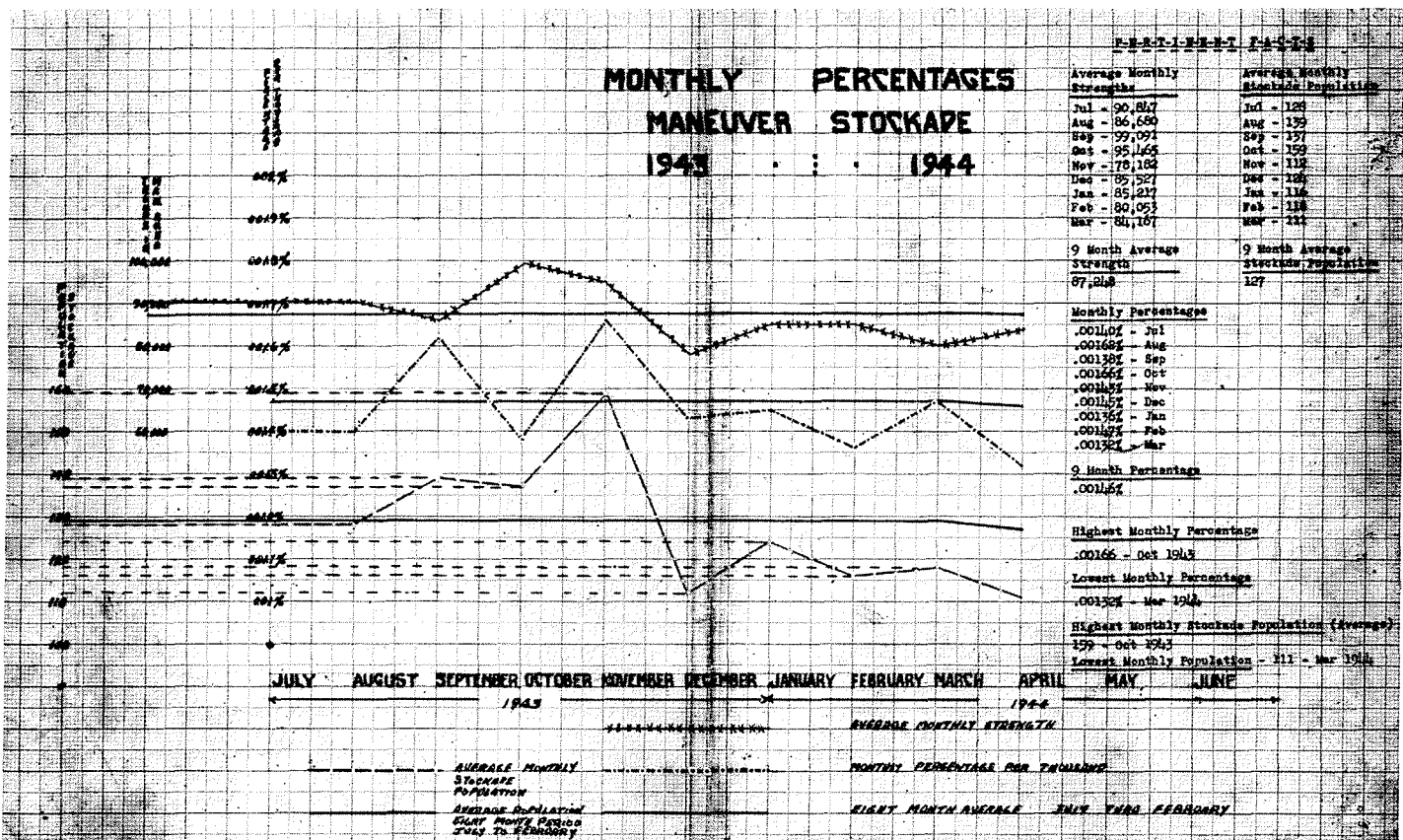


FIGURE 1.

built at the four corners and an adequate administration building was constructed (Figure 2).

It was realized that living conditions in the stockade could not be made more comfortable than those enjoyed by the troops; otherwise the stockade would be an attraction instead of a deterrent. Consequently, field conditions as nearly as possible similar to those confronting the troops were provided. Pup tents were used in all areas instead of pyramidal tents (Figure 3). Two pyramidal tents were set up for use when close confinement was deemed necessary. These two tents are shown in the immediate foreground of the stockade area in figure 2. It was necessary to use them only a few times.

A policy of strict military discipline was immediately adopted at the new stockade (Figure 4). Discipline and hard work under field conditions had a very salu-

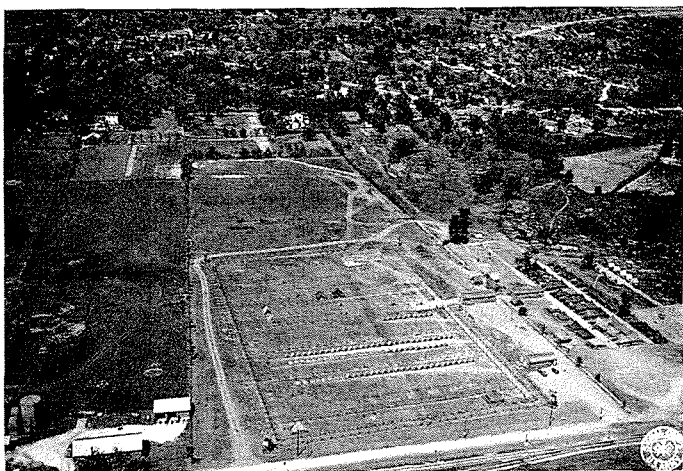


FIGURE 2

ary effect and it was interesting to see the psychology of the whole place change. Instead of the let-down, defeatist attitude which had characterized many prisoners in the former stockade, the spirit of the men seemed to resurge and instead of wanting to stay in the place, there was not a man who did not prefer his unit to the stockade.

The Army Commander was determined that every man, in so far as possible, would receive the training which the maneuvers were designed to give. The stockade would not be filled with men missing that training. It would be made available only for those prisoners for whom close confinement was considered necessary. Accordingly, the policy was adopted that punishment by either Summary or Special Courts-Martial in the nature of restriction, detention or forfeiture of pay, but *without* confinement, would be used unless the case was so aggravated that confinement was imperative; that punishment authorized under Article of War 104 was recommended whenever practicable; that soldiers voluntarily surrendering to military control from an AWOL status would not normally be committed pending charges and

trial; that, unless confinement was necessary, soldiers awaiting trial would be retained by their organizations pending such trial. When confinement was deemed necessary, the soldier would be confined upon written request which would include a statement that he would be called for within a period not to exceed eight days. If the prisoner was not called for within that time, he was returned under guard to his organization. An occasional exception had to be made to this rule, but only where written request was made to the Army Commander by the Division or Corps Judge Advocate or the commanding officer of the prisoner's organization.

The administration of the stockade was also designed to accomplish the above policies. Soldiers arrested by Military Police in Nashville and similar recreational centers for minor violations of rules governing week-end passes, AWOL not exceeding thirty days, drunk and disorderly conduct, or any offense for which the maximum punishment (Par. 104, MCM, 1928) did not permit a sentence in excess of four months confinement and forfeiture of pay for a like period, and which in the judgment of the Prison Officer was one that did not warrant confinement, were returned expeditiously to their organizations.

All prisoners received at the stockade were regarded as casuals to the Commanding Officer, Military Police Units, Maneuver Director Headquarters, who was given Special and Summary Court-Martial jurisdiction, to be exercised when deemed advisable.

An officer of the Judge Advocate Section, daily at about 1830, interviewed all prisoners committed during the previous twenty-four hours. These interviews, which were attended by the Prison Officer and the Commanding Officer, Military Police Units, resulted in the return of many prisoners to their organizations in line with the existing policies. Once each week, prisoners' records were reviewed. If the conduct of a prisoner was such that he gave promise of rehabilitation, his confinement was suspended by the Commanding Officer, Military Police Units, Maneuver Director Headquarters, and the soldier returned to his organization. During the maneuvers approximately 2500 prisoners confined in the stockade with sentences of confinement at hard labor had their sentences suspended and were returned to their organization. Of this number, during the nine months the system was in operation, only about one out of every hundred had their suspension vacated and were returned to confinement.

As an aid to rehabilitation, the Army Commander authorized his Judge Advocate to summarily effect the transfer of as many as ten men per month from their organizations to other Second Army units. This took care of the comparatively few cases of obvious mis-assignment.

A small group of bad actors committing serious crimes for which adequate punishment must be imposed can

normally be expected. Confinement must be imposed until this type can be tried and sent to a Federal Prison, Disciplinary Barracks, or Rehabilitation Center. However, about 99% of the men confined in guardhouses

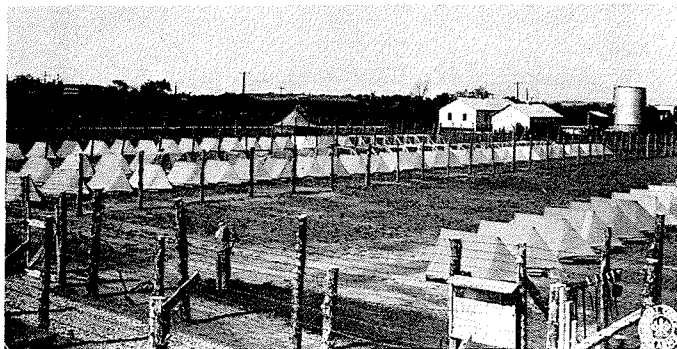


FIGURE 3

are there on charges which result from poor adjustment to Army discipline. These are generally men struggling with the problem of themselves, but they call it the Army. If the stockade is to be operated as nothing more than a confined group of men in fatigue clothing doing enforced hard labor, little rehabilitation can be expected. A guardhouse operated without foresight and constant attention will prove a constant focus of infection in the command. The guardhouse cannot be substituted for leadership.

It is recognized that this ratio of 1.46 men per thousand may be justifiably exceeded in cases of concerted actions by soldiers, as for example mutiny; however, it has been definitely adopted as a view by Second Army Headquarters that the number of men in the guardhouse is an index to the discipline of a command and the efficiency of the administration of military justice by commanding officers.

On 6 January 1944, General George C. Marshall issued a memorandum stating:

"The present manpower situation is critical. The industrial, as well as armed force requirements are pressing and must be met. We are now receiving from Selective Service men who heretofore have been deferred for dependency reasons. The country cannot afford, nor the Army tolerate, any wastage of suitable manpower. The solution lies in the proper exercise of command functions, and it is desirable that this matter be given personal and continuing attention." (Ltr AGF 320.2/7002 (12 Jan 44) GNGAP, Subject: "Utilization of Available Manpower").

It has been adopted as the view of this Headquarters that there is no more serious wastage of manpower than having an excessive number of men in the guardhouse. Attention of all Second Army units has been directed to this wastage of manpower by a personal letter of the Army Commander, in which he recited that the reduction of the excessive numbers of men in the guardhouse, and the restoration of those prisoners who merit it, is

a primary concern of command. Accordingly, the following standard was set up as a basis for appraising this important function of command in all Second Army Units:

Number of Men in Confinement per 1000	Rating
2 or less	Superior
Over 2 but not in excess of 3	Excellent
Over 3 but not in excess of 4	Very Satisfactory
Over 4 but not in excess of 5	Satisfactory

The results achieved in the Maneuver Area are attributable to the daily visits of the Army Judge Advocate to the stockade, and his personal interviews with the prisoners. With this program, the Judge Advocate serving with troops has an opportunity to give the greatest aid to his unit commanders in their disciplinary problems, particularly where the successful solution depends upon a personal appraisal of the individual offender. The company commander today is usually a youth, inexperienced in military justice and discipline. The frequent changes in his personnel, the arduous training requirements and administrative responsibilities placed upon him leave him little time to know his men. The Judge Advocate can best fill this gap of inexperience

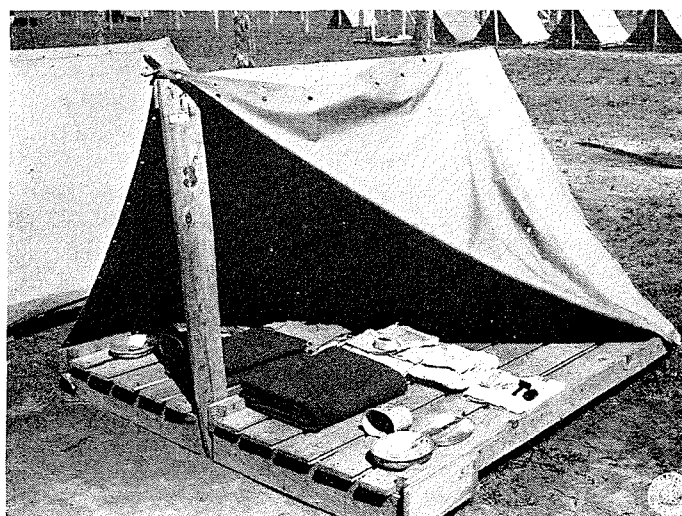


FIGURE 4

and lack of training. It is his duty to help the Company Commanders. He should seize the initiative and take proper steps to see that a program of regular visits and interviews with prisoners in confinement is made a part of his commanding officer's disciplinary policies. It is believed that such a program is the most effective means of preventing wastage of manpower in the guardhouse and keeping the number of trials by courts-martial in the organization at a minimum.

AMG *Military* COURTS

By MAJOR WILLIAM F. WAUGH, JAGD

A. M.G. Military Courts are established for the trial of civilians charged with offenses against the Law of Military Government. Specifically, the jurisdiction of every Allied Military Court extends to all persons in the Occupied Territory, except members of the Allied Forces and persons who are treated as prisoners of war under the Geneva Convention of July 27, 1929; and over all offenses against the laws and usages of war; all violations of proclamations, orders and regulations issued by the Allied Military Government; and offenses against the laws of the occupied country.

The members of all Courts are officers of the Allied Forces appointed by or on behalf of the Military Governor (the General Officer commanding a Task Force). The difference between the various Courts lies in the number of officers composing them and in their powers of punishment. There are three classes of Courts:

GENERAL COURTS of not less than three officers, at least one of whom shall be a Judicial Officer of the Allied Military Government. They are competent to impose any lawful punishment, including death.

SUPERIOR COURTS of two or more officers (at least one of whom shall be a Judicial Officer), or one Judicial Officer if he has been specially authorized to sit alone. They are empowered to impose any lawful penalty other than death or imprisonment for more than ten years.

SUMMARY COURTS of one officer, who shall be a Judicial Officer, if available. They are authorized to impose any lawful punishment except death, or imprisonment for more than one year, or fine of more than 50,000 lire, or both such fine and imprisonment.

Every officer of the Allied Military Government who is a qualified lawyer is deemed to be a Judicial Officer, and the Senior Judicial Officer present is always President of the Court.

No provision is made for the challenging of members of the Court, either peremptorily or for cause. It is provided, however, that "the following are disqualified from sitting on any Allied Military Court:

Public Safety Officers while acting as such;

Any officer who has taken part in the investigation of any case to be heard before that Court;

Any officer who may be prejudiced by personal knowledge of the facts of the case or otherwise."

All persons arrested are brought to trial before a Summary Court, unless higher authority shall have ordered that a particular case or class of cases be brought directly before a Superior or General Court for trial. If a Summary or Superior Court decides at any time during the course of a trial that it lacks power to impose adequate punishment in the case, it may refer the case to a higher court.

In addition to the imposition of fines and imprisonment the Courts are empowered, among other things, to direct that a defendant establish his residence within a specified area; forfeit property wrongfully used; padlock premises; and suspend sentences during good behavior. They may also grant bail, punish contempts, and, generally, make such orders and do all acts and things as may be requisite for the due administration of justice.

Every defendant is entitled to have a copy of the charges upon which he is to be tried, in advance of trial; to be represented by counsel; to apply for time in which to prepare his defense; to have witnesses summoned; to testify in his own behalf (but he may not be compelled to do so); and to have the proceedings translated for his benefit. Every accused person is presumed to be innocent until he is proved guilty, and Military Courts will not convict unless they are satisfied, *beyond a reasonable doubt*, of the guilt of the accused. In every case in which the accused may be condemned to death, he must be represented either by a civilian lawyer or by an officer who is a qualified lawyer. In every such case the Court is required to enter a plea of "not guilty" on behalf of the accused. All witnesses are required to give their evidence under oath, and all (including Allied Officers) are excluded from the Court during the opening statement by the Prosecutor and until they have given their testimony.

All questions are determined by a majority of the members of the Court, and include findings of guilty and the imposition of punishments. The Judicial Officer serves in an advisory capacity, and does not rule upon interlocutory questions as does the Law Member of a General Court-Martial. At the conclusion of the evidence the accused or his counsel sums up and is *followed* by the Prosecutor. There are no limitations upon the lawful punishment which a General Court may impose, except that the death penalty may be inflicted only in cases in which it is specifically authorized by the Proclamation. Proceedings are public, except when otherwise ordered. Espionage and sabotage cases are usually heard in camera for reasons of military security.

A complete record is kept in every case in a General or Superior Court, and it includes all the material evidence of every witness. The evidence is recorded in narrative form by a member of the Court, except when a stenographer is present. No stenographer or court reporter has been available for service in any A.M.G. Court to date.

Any person may, within thirty days after the imposition of sentence, file a petition for review. The record

of every case in which the sentence exceeds two years imprisonment or a fine of 50,000 lire (five hundred dollars) is reviewed whether a petition for review is filed or not. The reviewing authority has the power to set aside the conviction; suspend, reduce or commute the sentence; or to order a new trial. No sentence of death may be executed unless and until it has been confirmed in writing by the Military Governor, or by a specified officer, not below the rank of Brigadier General or Brigadier, to whom he may have delegated such power in writing.

The rules of evidence before A.M.G. Courts are somewhat relaxed. It is provided that "An Allied Military Court shall admit such evidence as in its opinion is relevant and material to the charges before it and shall, in deliberating on the judgment in each charge, take into consideration the nature of the evidence produced and the degree of reliance which can reasonably be placed upon it."

It is further provided that, under the preceding rule, "when evidence is tendered to an Allied Military Court and such evidence might normally in a Criminal Court of the United States or Great Britain be objected to on the ground of hearsay or for any other reason, the Allied Military Court need not reject such evidence, provided it is relevant and material to the charges before the Court, but will in considering its judgment take into consideration the nature of the evidence and the degree of reliance which can reasonably be placed upon it, and will reach a conclusion accordingly."

The purpose of these rules of evidence is to meet the unusual conditions which are often encountered in occupied territory in time of war. Ordinarily the Courts are scrupulous in their enforcement of the best evidence rule and the rule against hearsay.

It is to be noted that the A.M.G. rule regarding hearsay provides that the Court "*need not reject such evidence.*" In practice hearsay evidence is admitted only where the absent witness has died, or has been severely wounded, or has been transferred to another theater of operations, or is unavailable for some other similar reason. In situations of that character the hearsay evidence admitted is usually limited to written statements made by the witness at or about the time of the occurrences mentioned therein. In determining "the degree of reliance which can reasonably be placed upon such evidence" the Court always considers the fact that the author of the statement was not under oath, and was not subject to cross-examination, and that the Court had no opportunity of observing his demeanor while upon the witness stand.

The broad rule above stated also permits the receipt in evidence of confessions which were not made voluntarily, and, contrary to the usual rule, A.M.G. Courts may convict upon the unsupported confession of the accused. However, the Courts receive confessions with extreme caution and make careful inquiry into the cir-

cumstances under which they were made or obtained. Where it appears that the confession was induced by hope of benefit, or fear of punishment or injury, those matters are considered by the Court in determining its value as evidence. Where it appears that the confession was obtained by force, corroboration is required. A distinction is made between the testimony of an accomplice given in open court, and a confession by an accomplice which implicates the accused. The former, uncorroborated, may support a conviction, while the latter must be amply corroborated.

Arrests on suspicion are authorized and the prohibitions against unreasonable searches and seizures are relaxed. It is provided that any authorized member of the Allied Forces may: (a) arrest or search any persons suspected of having committed or being about to commit offenses under any proclamation or order; and (b) enter and search any place and seize and take away any property for the purpose of investigating any such offense or arresting the offender, or preventing any such offense, where there are grounds for believing that it is intended to be committed.

An A.M.G. Court may, where no procedure has been directed in any matter which arises, adopt such procedure as it thinks fit, provided no injustice is thereby done to the accused.

A.M.G. General Courts are usually composed of officers of America and the United Kingdom. The Court of which the writer is President, which has been engaged continuously for months in the trial of alleged spies and saboteurs, consists of a Major in the Army of the United States, a Squadron Leader of the R.A.F. (equivalent to Major), and a Major of the Canadian Army, all of whom are Judicial Officers. In two instances, where the accused were charged with the murder of French soldiers, the Courts consisted of an American, a British and a French officer.

Notwithstanding the differences in the systems of jurisprudence in the countries comprising the Allied Nations, the Courts have encountered no conflicts of legal principles or viewpoints of individuals which have proved to be irreconcilable.

Persons arrested are brought to trial as soon as practicable and are accorded a fair and impartial trial. Sentences are imposed which not only serve to punish the offenders, but which will also serve as a deterrent to others and thereby safeguard the fighting forces and their lines of communication.

A.M.G. Military Courts are empowered to and do occasionally try offenders against the laws of the Occupied Country, where civilian courts are not functioning or where it is believed to be undesirable to allow any case or class of cases to be brought before the native courts. Persons, so tried, on conviction are punished as provided by such laws. This power is exercised only when absolutely necessary.

AIR FORCE *Justice*

By COLONEL THOMAS H. GOODMAN, JAGD, 15th AAF

15TH AAF IN ITALY—Military justice procedures and office organization devised for the needs of massed ground troops, require some revision to be suited to the modern air force. As the second largest Air Force in the world, the 15th AAF has furnished an excellent proving ground for these revisions. While the fundamental principles enunciated for the guidance of Judge Advocates in the field in general have been found adequate and effective, the wide dispersion of component organizations and the decentralization of command functions in the air forces have given rise to exigencies which in turn require an improvisation of technique.

Naturally the principal problem is the speedy disposition of charges—so that the accused shall have ready recourse to the place of his judgment, and that offenders shall be speedily punished. Two obstacles to this end were found in the air force. First, there is a shortage of trained personnel. War experience has long since demonstrated the value and economy of utilizing legally trained officers as trial judge advocates and defense counsel—on a full time basis. This has been found to eliminate errors and reduce delays. However, the stream-



Col. T. H. Goodman, of Knoxville, Tenn., Staff Judge Advocate of the 15th Air Force, confers with his associates: (Left to right): Major George O. Hanford of Hardwick, Vt., Defense Counsel, 1st Lt. James C. Galloway of Memphis, Tenn., assistant Trial Judge Advocate, Major Lawrence A. Long of Jacksonville, Fla., Staff Judge Advocate of the Service Command, Col. Goodman, Major Richard B. McDermott of Tulsa, Okla., Military Justice Section head, Major Walter A. Edmiston of Chicago, Ill., executive officer.

lined manning tables of a strategic combat air force includes few men with legal training, and these few usually have exacting and paramount duties to discharge, which prevent any specific organization of legal functions in subordinate units.

The second obstacle is the physical dispersion of bases and personnel resulting from tactical considerations. Not only are the 15th AAF bomber and fighter bases scattered over southern Italy, but personnel of the court, prosecution and defense, are likely to be found high over enemy territory on the intended date of the trial—dispensing justice of another sort!—if officers of tactical organizations are relied upon to discharge these duties. Should charges be delayed for any appreciable length of

time, frequent movement of personnel and battle casualties threaten to make essential witnesses unavailable. The pilot you talk to in the morning, may be thousands of miles away by evening.

In the 15th AAF, the problem has been solved by centralization of the trial functions in Air Force Headquarters itself. Recognizing the necessity of legally trained officers in trial roles, a few well qualified officers have been selected to do the work on a full time basis. A separate trial section has been established in the office of the Staff Judge Advocate, which provides all general courts-martial of the command with personnel of the prosecution and defense.

The trial section consists of two trial judge advocates, an experienced defense counsel, and two court reporters. Of necessity these positions are absorbed in the manning tables of the Judge Advocate Section, 15th AAF Headquarters; which limits the personnel available for other sections of the office. However, reduction in delays and procedural errors has more than justified the sacrifice of position vacancies normally due other sections. In this manner the trial function is brought under the direct supervision of the Staff Judge Advocate, and at the same time is independent of, and dissociated from, the function of review, which is discharged by the Military Justice Section of the office.

The trial section operates much in the manner of the circuit courts of the past, when the judge and clerk would travel from court to court to fill docket engagements. General courts-martial are appointed at convenient locations, from officers of nearby air bases, and cases are then referred to the nearest court. The trial personnel in each instance are furnished by the trial section of Headquarters. Moving from place to place—"flying circuit riders"—they attend the several courts as cases are reached for trial.

The work of the trial section is supplemented by designation of another member of the Judge Advocate Staff, who, upon request from subordinate commanders, is made available to assist in the investigation and preparation of more difficult cases.

The Staff Judge Advocate Section is headed by Colonel Thomas H. Goodman, JAGD, of Knoxville, Tennessee. Other members of his office include Major Walter A. Edmiston, JAGD, Executive Officer from Chicago, Ill.; Major Richard B. McDermott, JAGD, Tulsa, Okla., and Capt. Charles T. Smith, JAGD, of Rockford, Ill., who are responsible for the Military Justice Section. Claims and Boards proceedings as well as special investigations fall to the lot of Capt. Jacob W. Durham, AC, of Lufkin, Texas. The trial section consists of Major George O. Hanford, AC, Hardwick, Vt., defense counsel; Capt. B. Burton Gullett, AC, of Nashville, Tenn., trial judge advocate; and 1st Lt. Jim C. Galloway, AC, of Memphis, Tenn., assistant trial judge advocate. Each of the above officers is a member of the Bar of his home state.

In the Air Force everything is accelerated; your way of living is speeded up. This system of using a trial section has resulted in a minimum consumption of the time of combat personnel by military justice duties, and at the same time gives the accused the right to a prompt trial of his charges.

Air Force justice is fair—and it's fast.

Marine Claims AT NEW YORK PORT

By COLONEL ARTHUR LEVITT, JAGD, *Port Judge Advocate*

THE large volume of shipping conducted at the New York Port of Embarkation via lighter to shipside and pier, resulting in considerable congestion in the pier slips, inevitably gives rise to an increasing number of maritime accidents and incidents occurring in and about the Port waters. When such incidents involve Army-owned or bare-boat chartered vessels, cargo, waterfront facilities under the jurisdiction of the Transportation Corps, damage caused to vessels or cargo by War Department or contract stevedores (all of which are specifically defined in Par. 2 b, AR 55-500) they are considered marine casualties and are investigated under the procedure set forth in AR 55-500, 3 July 1943. The extent and variety of such casualties are indicated in the following summary of incidents reported during the period commencing on 22 November 1943 and terminating on 1 July 1944:

<i>Type</i>	<i>No. of Incidents</i>
a. Collision between vessels	139
b. Damage during towage	22
c. Damage to piers caused by vessels, Army-owned and others	37
d. Damage to vessels by stevedoring operations.	77
e. Damage caused by heavy weather to vessels at piers	17
f. Grounding	1
g. Cause unknown	34
TOTAL.....	327

The above recapitulation has not taken into account incidents resulting in damage to Army cargo occurring during the course of loading or discharge of such cargo by contract stevedores, which average approximately 45 a month, and equals in volume the entire load per month of non-cargo incidents. The extent of damage in non-cargo incidents ranges from small claims resulting from light collisions between barges in the congested slips to instances of extensive damage caused, for example, when a flotilla of 16 barges broke loose from an Army stakeboat during a violent storm, were buffeted about the harbor and sustained damage estimated to exceed \$50,000. Noteworthy also is the series of incidents growing out of the return to this Port of vast amounts of salvaged war material from the battle fronts. This scrap material, heavy and unwieldy, was transferred from ocean-going vessels to a salvage collection center by barge and then unloaded at the center by means of a land-based clam-shell bucket or magnet type crane. In a single week eight incidents involving damage totalling approximately \$30,000 were reported. In all such cases it was alleged that the damage resulted from the negligent loading of and/or discharge of lighters by Army stevedores operating the cranes. The average marine casualty has resulted in damage of approximately \$1500.

I now consider the methods adopted at the Port to dispose of marine claims both against and in favor of the Government, and some significant features of investigative technique used which have resulted in substantial monetary savings to the Government.

A claim against the Government arising out of a marine casualty not in excess of \$1000 is payable under the terms of the Act of 3 July 1943. The delegation of authority to the Chief of Claims Branch discussed earlier has been utilized to dispose of this type of claim, as the delegation under Par. 22 e, AR 25-25, embraces "all acts and incidents occurring within the geographical limits of the Service Command." (In connection with marine casualties, it is interesting to note that Par. 22 b, AR 55-500 confers the authority to pay or disapprove marine claims within the coverage of the Act upon the Commanding Officer of any port of embarkation or upon any officers on his staff designated by him.) The delegated authority has not been exercised in all marine claims, however, because the War Department has entered into an agreement with the War Shipping Administration whereby the latter has assumed the responsibility of paying many of the liabilities of the War Department to third parties arising from marine casualties occurring on or after 24 March 1943. The insurance coverage provided by the War Shipping Administration is furnished under a Master Policy A-H which has been endorsed to include named risks, which in commercial practice would be included in various clauses of Hull and P & I (Protection and Indemnity) policies. Since the coverage offered may be subject to court and administrative decisions from time to time, a categorical list of losses coming within the purview of the policy is impractical. However, the War Shipping Administration has indicated examples of liabilities intended to be covered by the policy. Typical of those arising from incidents occurring at the Port frequently are the following:

- (1) Liabilities for damage to a privately-owned vessel or other privately-owned property arising out of a collision between such vessel or property and an Army-owned or bare-boat chartered vessel;
- (2) Liabilities arising out of a towage operation performed by an Army tug;
- (3) Total loss and/or constructive total loss and/or agreed total loss of vessels owned by or chartered to the War Department or the Army to the extent that the War Department may be liable under the charter to the vessel owner for damage sustained during the period of charter. In connection with this item, there have been forwarded to the War Shipping Administration all claims for damage alleged to have been sustained by Army bare-boat chartered vessels during the period of charter;
- (4) Liability, if any, for damage to privately-owned cargo or other privately-owned property aboard an Army vessel or while being loaded thereon. The wide coverage furnished by WSA has, in practice, restricted the field of administrative settlement of marine claims by the Port to those claims relating to vessel damage caused by Army stevedores during the course of loading and/or discharging lighters and to claims for damage to privately-owned docks and other structures caused by Army-owned or bare-boat chartered vessels.

Pursuant to the agreement between the War Department and War Shipping Administration, investigation

of all cases falling within the insurance program are made by a Marine Casualty Investigating Officer, appointed under Par. 6, AR 55-500, by the Port Commander, whose qualifications, however, are required to be approved by the War Shipping Administration before the appointment is made. In all WSA cases, however, the Army is relieved of the burden and responsibility of negotiating the claim and of actually making payment.

The Marine Casualty Investigating Officer must be experienced in the conduct of investigations and preferably trained in maritime law (Par. 6 *a*, AR 55-500). The latter qualification is, of course, necessary to insure that the investigator's report will contain all the facts necessary to determine the question of liability. Since the solution to questions of liability in admiralty cases frequently depend on interpretation of rules peculiar to admiralty law, the requirement of training in maritime law is basic.

Due to the large volume of maritime incidents occurring at NYPE, it was found advisable to establish within the Judge Advocate & Claims Division a section devoted exclusively to marine investigations. The primary objective of the section has been to effect a full and speedy investigation as soon as possible after the occurrence so as to achieve the following three purposes:

(1) Prevent payment of unjust or excessive claims and expedite assertion of meritorious claims in favor of the Government;

(2) Compile a known record sufficiently comprehensive to provide a sufficient basis for all official action required by the circumstances;

(3) Eliminate conditions or practices which cause or contribute to marine damage. The section is manned by two Marine Casualty Investigating Officers, two Assistant Investigating Officers and several enlisted men. One officer and an Assistant Marine Casualty Investigating Officer devote their attention to the investigation of and preparation of reports on collision, stevedoring and dock damage incidents. The other Marine Casualty Investigating Officer and an Assistant Investigating Officer investigate and prepare reports on cargo incidents.

Investigating Officers have attempted scrupulously to follow the requirements of Par. 11, AR 55-500, which specify the points with respect to which information must be obtained and included in the report. The procedure recommended by WSA is so similar to that prescribed in AR 55-500 that in practice all investigations whether WSA destined or not, proceed in identically the same manner and are conducted by the same officers. A thorough investigation of the facts in admiralty claims against the United States is particularly important, because the United States has waived its right to sovereign immunity from suit and has consented specifically to be sued in the Federal Courts for damages caused by a public vessel of the United States under the Public Vessels Act (46 USCA Sec. 788). It is, therefore, likely that in the event the claimant feels that the War Department or the War Shipping Administration has improperly disallowed a particular claim, a suit against the United States will eventually result. The Investigating Officer's report will under such circumstances be of assistance to the Office of the United States District Attorney engaged in preparing a defense to the claim.

It has been found that the battle of securing the evidence is half-won, if the marine casualty is reported to the Marine Casualty Investigative Section as soon as it occurs. Every employee at the Port engaged in marine operations has, therefore, been instructed to report directly to the Marine Casualty Investigative Section every marine accident or incident regardless of the extent of damage caused thereby. The cooperation of all marine operating agencies at the Port has been secured so as to achieve this end. The investigation begins immediately after the receipt of the report of the incident. If the incident comes within the scope of the WSA policy, the Investigating Officer forwards a brief report of the incident to the Office of the Chief Adjuster, WSA, and advises the latter that the complete report of investigation will follow in due course. If the incident has resulted in damage apparently exceeding \$500.00, the Investigating Officer makes an immediate radio report direct to the Chief of Transportation on behalf of the Port Commander, as provided in Par. 3 *b* (1), AR 55-500. The wheels of investigative procedure are then set in motion as follows:

a. An officer attached to the Marine Casualty Investigative Section and trained in the technique of ship construction makes a preliminary inspection of the damaged property, secures photographs if warranted and then the process of discovering and interviewing witnesses is begun. Witnesses are interrogated in an effort to determine all the facts relating to the occurrence rather than those facts favoring the Government. The investigators do not wait for witnesses to come to the office, but secure the evidence they need by interviewing employees while the latter are engaged in their usual work. In this manner important operations of the Port are not subjected to more interruptions than are absolutely necessary.

b. Whenever the evidence reveals some questions as to the propriety of a particular marine practice involved in the incident, a statement from a competent expert preferably a mariner with long experience, is generally secured so that the record indicates the prudent course that should have been followed in the circumstances disclosed by the case under investigation.

c. The Investigating Officer always attempts to procure a weather report covering the area in which the incident occurred and any notice of storm warnings published by the Weather Bureau prior to the time of the occurrence in those cases where the condition of the weather before and after the time of the incident is important to the determination of liability.

The importance of having a trained surveyor available for instantaneous duty at the call of the Investigative Branch has been demonstrated in a number of cases, where prompt inspection of damage by the surveyor has resulted in substantial monetary savings to the Government. Several such instances come to mind:

a. On 26 March 1944, a privately-owned tug under charter to the Army was lying at the end of Pier 13, Staten Island Terminal. At approximately 1130 on that day an Army tug boat approached Pier 13 and in attempting to reverse her engines an air-lock developed so as to delay the backward movement intended. The Army tug thereupon struck the privately-owned tug and crushed it against the concrete front of the pier. At the hour in question one of the Marine Casualty Investigating Officers from the Investigative Section, as well as

one of the Marine Superintendents attached to the Water Division, were engaged in another investigation at Staten Island Terminal. Within less than one-half hour after the incident occurred, the Investigating Officer and the Marine Superintendent had boarded the privately-owned tug and were engaged in conducting a complete investigation of all possible appearances of damage. At a formal survey held approximately three weeks later while the privately-owned tug was in dry dock, the owner's representatives demanded large and substantial damages, claiming that the basic structural condition of the tug had been impaired by reason of the collision and that the Government was liable for damages in the sum of \$6,000.00. When the owner and his surveyors were confronted with the detailed record of damage observed on the day of the accident, the owner's representatives abandoned their original contention and agreed to compromise the damage for the sum of \$1,000.00.

b. On 8 February 1944, a deck scow was chartered to the Army and was towed by an Army-owned tug to the Port Johnston Terminal for loading. Within a very few minutes after the arrival of the scow at the dock, she began to settle into the water and in a short time had almost completely sunk. The tugmaster reported the incident and was then ordered to remove the scow to a dockyard which was immediately done. Report of the incident was then made to the Investigative Section. Investigation by the Army surveyor disclosed that one of the port planks had practically dropped out. When the scow owner was advised of the condition of the port plank and upon realizing that the Army had discovered the true cause of the sinking, he agreed not to file any claim against the Army, even though the charter relationship had commenced.

On still other occasions expert knowledge of ship repairs and ship construction by the surveying officers has been instrumental in greatly reducing the size of claims. In October 1943, a privately-owned scow was seriously damaged while moored at Port Johnston Terminal, NYPE. Certain cables on an Army crane used to load the vessel slipped and permitted a 19-ton Osgood crane, then, being transferred to the vessel, to drop a considerable distance to the deck of the barge and to damage the latter. At the survey it was discovered that the damage sustained by the barge was very serious because five intermediate deck beams on the barge were so badly broken that they could not be repaired. It was also found that 37 foot lengths of deck planking had been completely shattered. It was contended by the owner that the cost of repairing the damage sustained by the intermediate deck beams would run into approximately \$10,000.00, as it would be necessary to disassemble many of the parts of the scow to effect the required repairs. However, the technical representatives of the Water Division and of the Investigative Section succeeded in convincing the owner it was practical to reinsert the deck beams by a much simpler method and at a cost of approximately \$3,300.00. The owner thereupon filed a claim in the reduced amount.

It is sometimes necessary for the Investigating Officers to keep a watchful eye open for the detection of attempts to assert exaggerated claims based upon collusion between the claimant and the shipyard at which the repairs are made. In this type of situation, too, the skilled technique of the trained surveyor has been of much assis-

stance in ascertaining the fair cost of making repairs and in obtaining a modification of claim to the reduced amount. I am reminded of an interesting occurrence illustrating this point. At a survey of damage sustained by a scow held some time in April 1944, there was a great difference in the cost of making repairs estimated by the representative of the scow owner and the shipyard's surveyor and the figure estimated by the Army surveyor. The former maintained that the damages could be repaired in the sum of \$2,510.00, while the latter insisted that the fair price for the entire work would be approximately \$1,250.00. The adverse interests offered to reduce their claim to \$2,000.00. The Army surveyor, however, refused to sign the survey and maintained steadfastly that the lower figure of \$1,250.00 was the correct amount. The Investigative Section soon determined, however, that the owner of the shipyard, at which the scow was repaired, was a part-owner of the corporation owning the scow. It was obvious, therefore, that the shipyard's estimate was biased and intended to exaggerate the cost of repairs. Ultimately the scow owner agreed to accept the cost of repairs indicated by the Army surveyor.

The surveyor also performs a valuable service in inspecting and noting the condition of scows about to be bare-boat chartered to the Army. A vessel is said to be bare-boat chartered "when the vessel is turned over completely to the charterer who mans her and operates her throughout the period of the hire." (*Robinson on Admiralty*, p. 594). Most scows chartered to the Water Division, N.Y.P.E., are delivered under an informal, oral bare-boat charter which requires the Army to return the scow to the owner at the expiration of the charter period in as good condition as when received, less reasonable wear and tear. The charter hire is generally set at a stipulated sum per day and includes the services of a scowman who is paid by the scow owner. The pre-charter inspection made by the Army Surveyor fixes the extent of damage existing at the inception of the charter and precludes successful assertion of claim by the scow owner, when the scow is redelivered at the expiration of the charter, that such damage was caused by the negligence of the charterer during the period of the charter. Pre-charter inspection is important because the scow owner is entitled in law to the benefit of a presumption that damage not existing at the inception of the charter was caused by the negligence of the charterer during the charter period. The burden is always upon the charterer to overcome this presumption by presenting affirmative proof indicating how the barge was damaged or that however that was, it was not due to the negligence of the charterer (*Alpine Forwarding Co. v. Penn. RR*, 60 F (2d) 734, cert. den. 287 U.S. 647). Moreover, under the Act of 3 July 1943, as interpreted by Army Regulations (Par. 6, AR 25-25), if the claimant indicates that the damage occurred while the scow was "bailed to the Government," his claim would have to be allowed. In the absence of a pre-charter survey, it is evident that it would be difficult for the Army to refute the contention of the scow owner that at the inception of the charter, the scow did not contain the damage alleged to have been caused during the period of charter.

It should be observed that where the evidence discloses that a meritorious claim exists, the Investigating Officer determines whether the claimant intends to assert a claim against the Government. If the claimant there-

upon makes inquiry as to the procedure whereby a claim may be filed, the injured party is advised of his rights and instructed in the rules covering filing of claims (Par. 11 *i*, AR 55-500).

Marine casualties resulting in claims in favor of the Government are investigated under the provisions of Par. 27, AR 55-500. Claims in favor of the Government include damage to Government property occurring as a result of a marine casualty as well as the expense or loss sustained by the Government incident to injury or death of military personnel in a marine casualty (Par. 27 *b*, AR 55-500). Investigation in these cases, however, need not and is not undertaken unless the damage sustained by the Government is in excess of \$100.00 (Par. 8, AR 55-500).

The chief type of claim in favor of the Government processed at the New York Port is that arising out of damage to Army cargo occasioned by the negligence of stevedores engaged in loading or unloading lighters. Such work is performed by contract stevedoring concerns under a contract which provides that the contract stevedore shall be responsible for damage caused to cargo, vessels, piers, barges, etc., arising through the negligence or fault of the contractor, its employees, gear or equipment. During the past two months, 90 incidents involving cargo damage have been reported and investigated and claims in excess of \$6,000.00 have been asserted on behalf of the Government against contract stevedores. Approximately one-third of the amount claimed or the sum of \$2000 has already been collected.

Investigation of a cargo claim requires the closest possible coordination of effort between the Investigative Section, pier officers and the supply officers. As soon as an incident occurs resulting in the loss of cargo, the pier officer prepares and forwards to the Investigative Section a report inclosing statements of all available witnesses to the occurrence. An investigator immediately contacts the supply service involved, ascertains the value of the damaged cargo and its ultimate disposition and files a claim with the contract stevedore for the value of the damaged articles together with freight costs to shipside. Prompt action in such matters not only serves to reimburse the Government in substantial amounts but also reduces pilferage, always a major loading problem, and to a considerable extent eliminates careless and inefficient handling of Army freight by longshoremen employed by the contract stevedore.

When the investigation is completed, the Investigating Officer makes his report consisting of findings of fact, conclusions and recommendations together with all supporting documents, such as sworn statements from witnesses, diagrams, photographs, weather reports and other evidence upon which the report is based. Recommendations made are generally of a remedial nature designed to prevent recurrence of the incident investigated. The complete report is then forwarded to the Claims Judge Advocate for review, whether a formal claim has or has not been made. Should the reviewing officer require additional information, a request for the specific information required is made to the Investigating Officer who then obtains the additional information and files it in the form of a supplement to his report. The Claims Judge Advocate, who generally has seen the file for the

first time, reviews the accumulated evidence and makes an independent finding based on all the evidence, as well as the report of the Investigating Officer, and, if claim is filed, makes a recommendation with respect thereto. The Claims Judge Advocate also refers any remedial recommendations to the Port Judge Advocate, who in turn invites the attention of the operating agency concerned to the report and recommendations made. If the case is within the scope of the War Shipping Administration policy, the report is forwarded by the Claims Judge Advocate with a copy of his legal review to the WSA Adjuster for final processing and payment. Simultaneously therewith a copy of the report is forwarded to the Chief of Transportation pursuant to the provisions of Par. 12 *b* (4), AR 55-500. If the report does not come within the scope of WSA policy and is accompanied by a claim, the claim is administratively disposed of by the approving authority. However, if the latter type of report is not accompanied by a claim, the report is reviewed and if legally sufficient, approved and then retained at the office of the approving authority for a period of 90 days after the occurrence to await filing of claim. Simultaneous with the approval of the report, a copy thereof is also forwarded to the Office of the Chief of Transportation, pursuant to the provisions of Par. 12 *b* (4), AR 55-500. If, however, no claim is filed within the period of 90 days from the date of the occurrence, the report is then forwarded to the Commanding General, Second Service Command, pursuant to the provisions of Par. 12 *b* (4), AR 55-500. Usually, if no claim has been filed with the approving authority during the 90-day period, it may fairly be assumed that no claim will be filed.

Under the provisions of Par. 25, AR 55-500, The Chief of Transportation has been made responsible for coordinating the activities of the War Department agencies and the WSA in connection "with liabilities of the War Department or of the Army insured against by the War Shipping Administration." The New York Port has, therefore, forwarded to the COT information with respect to the status of all claims processed at the Port or forwarded to the WSA for disposition by that agency.

The procedure here outlined has, we believe, been justified by the results that have been attained. The concentration of the Marine Investigatory function in a single unit comprised of trained investigators and technicians has resulted in speedy and impartial investigations.

The provisions for an independent review of the Report of Investigation and findings by the Claims Judge Advocate insures against error or too hasty or ill-advised conclusions. Between 22 November 1943 and 1 July 1944, a period of approximately 7 $\frac{1}{3}$ months, the section undertook 327 investigations of vessel incidents of which all but 25 were completed or brought to a point where they await action by third parties for final disposition. In practically every case, the Investigating Officer's report was in the hands of the Claims Judge Advocate before claim was filed.

The close liaison between the Claims Judge Advocate and the Investigating Officer, who are members of the same division, permits the rapid exchange of information and eliminates delay. The total effect is prompt, efficient and accurate adjustment of marine claims.



THE JUDGE ADVOCATE GENERAL'S *School*

By CAPTAIN GEORGE P. FORBES, JR., JAGD

11 JULY will be long remembered as one of the gala days in the history of the Judge Advocate General's Department, and it unquestionably overshadowed all previous events at the Judge Advocate General's School. Not only were the 168 graduates, 34 officers and 134 candidates, the greatest number to conclude their training at one time, but most important of all, the ceremonies were graced by the presence of Mr. Robert P. Patterson, Acting Secretary of War. In view of the fact that the busy Under Secretary was charged with additional heavy duties while Secretary of War Henry L. Stimson was absent on a tour of the European battle front, the School and the Department were particularly honored by Mr. Patterson's participation in the commencement program as the principal speaker.

Adding to what in theatrical parlance was a parade of stars were Maj. Gen. Myron C. Cramer, The Judge Advocate General of the Army, and Maj. Gen. Henry S. Aurand, Commanding General, Sixth Service Command, who also addressed the graduates, their friends and relatives, and military and University personnel of the Ann Arbor area. The beautiful Rackham Building auditorium of the University of Michigan was filled to capacity, it being estimated that 2000 were in attendance.

Col. Young, School Commandant, introduced the speakers, and spoke briefly, emphasizing that graduations were no longer notable events in the life of the school, with Contract Termination Classes finishing monthly, Officer Training Classes every two months and Officer Candidates every four months. What made the occasion memorable, he said, was the presence of Mr. Patterson along with his executive assistants at the ceremonies during such a busy period.

Dr. Alexander G. Ruthven, President of the University of Michigan, reviewed the services rendered by the University in training Army, Navy and Marines for definite parts in the world conflict, and expressed a desire to continue cooperation until the emergency period was crowned with a successful peace. The invocation and benediction were given by Rev. Frank J. McPhillips, pastor of St. Mary's Student Chapel and Catholic Chaplain on the campus.

The Acting Secretary reviewed the progress of the world wide conflict with especial reference to the global situation at the time, mentioning among other things that the Allies had secured a four to one advantage in fire power in contrast to the advantage held by the Axis when the United States entered the struggle. He warned that unless unconditional surrender is exacted from the foe that the Nazis would be ready to return to the field of battle in another 10, 20 or 50 years. To prevent such a situation from occurring is what we are fighting for, he declared.

Specifically referring to the need for judge advocates in the modern Army, Mr. Patterson linked their proper performance of duty with high morale among the troops, saying that the morale of the soldier is affected for better or worse by his feeling about the fairness of treatment he receives. "There is nothing more important to morale than that the innocent shall be declared not guilty on court-martial and that the culprit shall be found guilty and treated according to his offense and to his chance of

redemption." Secretary Patterson disagreed with the sometimes repeated characterization of GI justice as unduly severe, stating that his experience was to the contrary, "when the cases have received thorough review and when the exigencies of military service are understood."



The Army's six Rehabilitation Centers have "graduated" and returned to military service more than a third of the 19,000 general prisoners entrusted to them for rehabilitation, Mr. Patterson said, revealing that only 350 of the "graduates" have failed on their second chance and again been in trouble.

Alluding to contract termination, Mr. Patterson stated that "we have the same need for fairness in the Army program for munitions, planes, guns, tanks, and the thousands of other items that go to supply the Army. The success of that great activity rests on the principle that the contracts made with industry will be equitable to both sides, with the Government paying fair, but no more than fair, prices, and assuming the risks that fairly belong to the Government, but no more."

Gen. Cramer welcomed the graduates to membership in the largest law firm in the world, and revealed that counting their numbers, there were now almost 2000 judge advocates in the Army. "As you join the Judge Advocate General's department you must realize that although your work may not always have the glamor of battle, it is highly important and contributes its essential part to the sum total of success. The answers to your legal problems will not always be found in established precedent. You may be called upon to give legal advice quickly in fields where there is no exact precedent. Your advice will govern the acts of others. You have the sound training of capable lawyers and soldiers. You must rely on that general background. You must have courage, exercise your judgment to the best of your ability, and act decisively. On the strength of your character and training I am confident that you

will respond to your duties with that high degree of initiative which has brought success and honor to those who have passed these portals before you and to our Department."

Gen. Aurand cited as an example of teamwork in the Army, the consent of Gen. Cramer for Col. Young to take over the duties of Commandant of the other Army Forces in Ann Arbor in addition to his duties as Commandant of the School, and praised Col. Young's work in his new position.



Left to right: Dr. Ruthven, Mr. Patterson, General Cramer, General Aurand.

After the speeches were concluded each of the graduates had the unusual honor of receiving his diploma from the hands of the Acting Secretary of War.

Upon the conclusion of the ceremonies Mr. Patterson was escorted on a whirlwind tour of the University Campus and returned to the Lawyers Club for luncheon. Mr. Patterson and his party then visited classes briefly before winding up his activities in Ann Arbor with an informal press conference in which he condemned the spread of unjustified optimism which he called "the peace jitters." During the conference he willingly posed for photographers.

The Secretary and his party left by plane for Washington early in the afternoon. In his party were his special civilian assistants, Mr. Julius H. Amberg and Mr. Howard C. Petersen; his military aide, Maj. Munro Leaf, and the following members of the Judge Advocate General's Department: Col. Philip J. McCook, Col. Hugh C. Smith, President of the War Department Board of Contract Appeals; Maj. Randolph Karr, Classification Officer, Maj. Anthony Kane, Liaison Officer, and Maj. Clarence L. Yancey, Public Relations Officer, all of the Judge Advocate General's office.

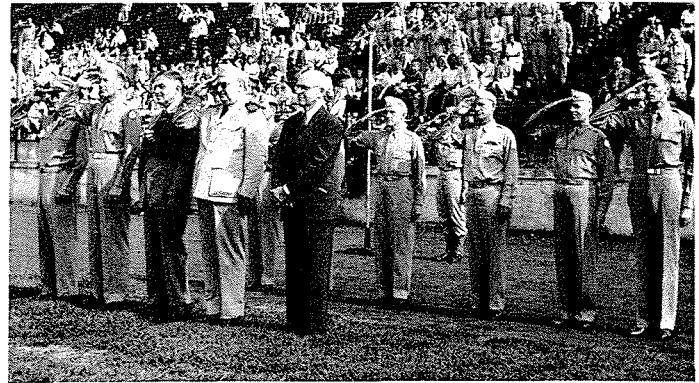
All the ceremonies did not occur on the day of the Acting Secretary's visit. On the preceding day, 10 July, Gen. Cramer and Col. Young reviewed the graduation parade on Ferry Field, Ann Arbor. In addition to the graduating officers and candidates, the 7th OC Class also was in the parade together with about 750 ASTP students and the Navy band of 40 musicians. All told, about 1000 men took part in the retreat parade and review.

For the first time in the memory of those attending similar parades at the School, formal presentation of a Soldier's Medal was made by Gen. Cramer, and Cand. Buster Cole (now Lieutenant) of the 6th Officer Candidate Class was the recipient. The medal was awarded for the then Sergeant Cole's conduct while he was the lone American passenger on a foreign vessel attacked by a German bomber as it was travelling the high seas

between two Icelandic ports in June 1943. The citation referred to Lt. Cole's "courage, presence of mind, and high degree of leadership" which aided in saving the lives of the many civilians on board.

Most impressive was the taking of the oath by the 134 newly commissioned members of the 6th OC, survivors of the 17 week intensive training course out of an original group of 149. After the letter of appointment was read by Maj. Jeremiah J. O'Connor, Executive Officer, the new officers were sworn in by Col. Young as they repeated the oath solemnly and phrase by phrase. The class which had marched front and center for the oath-taking then returned to its place in line and the entire unit passed in review.

In the reviewing stand were Gen. Cramer, Col. Young, Dr. Alexander G. Ruthven, President of the University of Michigan; Capt. Richard E. Cassidy, USN, Commandant of the Naval units in Ann Arbor; Col. J. Alton Hosch, Chief of Contracts Division, JAGO; Dean Clarence S. Yoakum, Dean of the Graduate School, University of Michigan; and the following members of the Staff and Faculty: Lt. Col. Reginald C. Miller, Chief of the Military Affairs Department; Lt. Col. Michael L. Looney, Chief of the Contract Termination Department; Maj. Justin McElroy, Chief of the Military Science and Training Department, and Maj. O'Connor, Executive Officer.



Concluding the day's festivities was the usual farewell dinner of the graduating classes, the scene of which was transferred from its customary locale at the Allene Hotel to the mess hall in the Lawyers Club, because of the unprecedented number of graduates. A specially constructed dais for the guests of honor was erected in the west end of the hall and a platform for the actors in the skit was erected in the middle. The skit was under the supervision and direction of Lt. Adolph Reel, and was written by the following members of the 6th OC, all of whom depicted personalities on the Staff and Faculty: Lieutenants Anthony Appel, Harold Chase, Wright Conrad, Bernard Dick, Edward Doering, Harryman Dorsey, Robert Dwyer, Gordon Fogg, Albert Gerstein, William Hart, Donald Hays, David Hecht, Lawrence Houston, Edward Huber, William Miley, John Morse, Robert Pendergast, Norman Stoll, Mark Taliaferro, Stanley Waxberg, and John Whelan. Lieutenants William Alsup, Bernard Dick, and Stanley Waxberg were in charge of the banquet, refreshments and the program design respectively. Maj. Thomas Carney of the 17th Officer Class was the toastmaster.

Additional Duties for Col. Young

Colonel Young, Commandant of the Judge Advocate General's School, now has the rare distinction of being the only officer in the Department to exercise command functions over a military installation and over troops other than members of the Department. On 1 July 1944 he was named by Major General Henry S. Aurand, Commanding General, Sixth Service Command, with approval of Major General Myron C. Cramer, to command the Army units in Ann Arbor, succeeding Colonel Frederick C. Rogers, Inf., who retired.

On assuming his new duties, Colonel Young was appointed by the Board of Regents of the University of Michigan as Professor of Military Science and Tactics and Chairman of that Department. The unit over which he assumed command includes a Civil Affairs Training School for officers slated for Far Eastern duty, a Military Intelligence school of 50 officers and 250 enlisted men who will be commissioned on completion of course, together with about 1000 enlisted men and reservists assigned to engineering, medical, dental, and area and language studies in the AST and ASTR Programs. With station complement and JAG School personnel, the command totals over 1400 officers and men.

Amberg Praises Army Officers

The amount of fraud by Army officers is astonishingly small in war procurement, according to Julius H. Amberg, Special Assistant to the Secretary of War, speaking at the Judge Advocate General's School, Ann Arbor, Michigan, on 31 July. "As there are bad actors in every profession it is natural to expect some to go wrong, especially in fields of rapid expansion such as the war procurement program, yet Army officers as a whole are more dependable for honesty and truthfulness than any other profession." Therefore, Mr. Amberg concluded, a case of "war fraud" is a most exceptional case.

When investigations are called for, he stated, the Inspector General will make special probes on request. Undercover investigations may be carried on by the FBI, he said. Mr. Amberg also referred to Congressional investigations, in a two hour lecture to 275 students at the School, including officers and officer candidates.

Mr. Amberg, a native of Michigan, is a member of a prominent Grand Rapids Law firm and a former president of the Michigan State Bar Association.

Recent Graduates FROM THE JAG SCHOOL

SEVENTEENTH OFFICER CLASS

Graduated 11 July 1944

Banyon, Willard J., 1st Lt., AC
 Boyle, Russell T., Major, JAGD
 Brown, Grant A., Capt., JAGD
 Carney, Thomas G., Major, JAGD
 Craighill James B., 1st Lt., JAGD
 Dillemoth, George F., 1st Lt., AC
 Dwyer, Thomas P., 1st Lt., AC
 Edwards, Douglas L., 1st Lt., AC
 Fellows, Charles R., 2d Lt., JAGD
 Gillespie, Campbell H. Jr., Capt., QMC
 Hasting, Howard H., Major, FA
 Henderson, Handley L., Capt., AC
 Hendrie, Jonathan A., Capt., JAGD
 Hodson, Kenneth J., Capt., JAGD
 Jaycox, Warren C., Major, AC
 Jones, Elbert S., 1st Lt., AC
 Jones, George R., Major, JAGD
 Klute, Harold F., 2d Lt., JAGD
 Koller, John R., 1st Lt., AC
 Leasure, Russell E., 2d Lt., JAGD
 Lourie, George B., Major, AC
 Nagle, George E., 1st Lt., AC
 Pepper, Harry L., 1st Lt., JAGD
 Preston, John M., 2d Lt., JAGD
 Rainold, Alexander E., Capt., JAGD
 Ritchie, Horace B. Jr., Capt., AC
 Saunders, Angus G., 2d Lt., JAGD
 Schoonmaker, John H., Capt., AC
 Sklenicka, Edward, 1st Lt., JAGD
 Smoak, Marion H., Capt., CAC
 Stevens, Henry S., Major, AC

Warsoff Louis A., 1st Lt., AC
 Weaver, John H., 2d Lt., JAGD
 Wright, John A., 2d Lt., JAGD

EIGHTEENTH OFFICER CLASS

Graduated 9 September 1944

Angland, Stephen J., Capt., JAGD
 Archer, Hugh B., Capt., JAGD
 Asch, Wm. W., Capt., JAGD
 Avery, John C., Major, JAGD
 Black, Clarence J., Major, JAGD
 Bowron, James E., Major, JAGD
 Brion, J. D., 1st Lt., AC
 Brown, Edward H., Capt., AC
 Brown, James L., 1st Lt., JAGD
 Cammack, E. H., Capt., JAGD
 Cowen, John J., Jr., 2nd Lt., JAGD
 Crowley, Cale J., 2d Lt., JAGD
 Cutting, John S., 2d Lt., JAGD
 Donn, Arthur, 2d Lt., JAGD
 Eley, L. D., 2d Lt., AC
 Elliott, Lloyd E., Capt., JAGD
 Feigelson, R. R., 2d Lt., JAGD
 Fisher, Frank, Jr., 1st Lt., AC
 Hay, L. L., Capt., AC
 Hickman, Donald D., Capt., JAGD
 Hood, John T., Jr., Capt., JAGD
 Jacques, Bryan H., 1st Lt., JAGD
 Johnston, David W., 1st Lt., JAGD
 Johnston, James L., Capt., JAGD
 Keller, Michael, Capt., JAGD
 Kemp, Wallace B., 2nd Lt., JAGD
 Lampe, Stuart E., 1st Lt., JAGD

MacArthur, Kenneth R., Capt., JAGD
 Macfarlane, Harper, K., Maj., AC
 Marsi, Frederick V., 1st Lt., JAGD
 Mathis, Charles C., Jr., Capt., JAGD
 McDermon, Richard, 1st Lt., JAGD
 McDowell, Sherwin T., 2nd Lt., JAGD
 McKeown, M. J., Major, AC
 Melby, L. A., 1st Lt., AC
 Merrill, P. J., Capt., AC
 Paton, John F., Capt., JAGD
 Rinehart, Theo., Major, JAGD
 Romond, Huyler E., 2nd Lt., JAGD
 Rose, Paul A., Major, JAGD
 Schmitt, L. F., 1st Lt., JAGD
 Sessions, Cicero C., Major, JAGD
 Shepherd, Walton S., Maj., JAGD
 Stern, David B., Jr., 1st Lt., JAGD
 Swanson, Carl A., 2nd Lt., JAGD
 Watt, Lloyd A., Capt., JAGD

SIXTH OFFICER CANDIDATE CLASS

Graduated 11 July 1944

Agnor, William H.
 Alsup, William W.
 Anderson, David F.
 Appel, Anthony R.
 Auchincloss, John W.
 Bancroft, Harold W.
 Bascom, Robert W.
 Beckmire, Louis E.
 Berry, John A.
 Blackwell, William M.
 Brodsky, Benjamin

THE JUDGE ADVOCATE JOURNAL

Browder, John B.	McGlone, Paul A.	SEVENTH OFFICER CANDIDATE CLASS
Brown, Herbert S.	McGuigan, George E.	Graduated 9 September 1944
Brown, Medford J.	McRae, Duncan L.	Ackerman, William J.
Bumgardner, Howard M.	Manning, Charles W.	Arenson, Ellis L.
Burford, Albert L.	Marcellino, Frank	Bailey, George E.
Burkhalter, Fred O.	Marold, Carl J.	Barlow, John S., Jr.
Buswell, Arthur J.	Marsh, Matthew E.	Blakely, George K., Jr.
Chace, Charles E.	Martin, Richard N.	Brady, William W.
Chatlas, Nicholas G.	Matthews, Thomas A.	Callahan, Carroll B.
Chase, Harold H.	Merrell, Herman S.	Carroll, Charles J., Jr.
Cline, Charles T.	Miley, William H.	Carter, Oliver
Cole, Buster	Mole, A. Chalmers	Cawse, Alfred J., Jr.
Combs, James C.	Moncure, William A.	Cederborg, Samuel L.
Conrad, Wright	Morony, Jean	Chace, Charles E.
Cook, Joel W.	Morse, John H.	Cooper, Ben T.
Curran, Charles P.	Murphy, James D.	Desmond, James R.
Daniel, Marion P.	Murphy, Norman B.	Deutsch, Richard H.
Dick, Bernard R.	Nolan, Robert J.	Diehl, Russell B.
Ditchie, George J.	Nurick, Lester	Eblen, Amos H.
Doering, Edward A.	Pangrace, Andrew	Fetterman, Paul W.
Dorsey, Harryman	Palmer, Everett E.	Fieland, Louis C.
Dull, William B.	Parkhurst, George V.	Graf, Kenneth F.
Dwyer, Robert T.	Patterson, T. Glover	Hart, Charles A., Jr.
Elliott, James F.	Pendergast, Robert L.	Hillyer, Fred F.
English, John E.	Phelps, Robert O.	Howland, John L.
Finkbeiner, James V.	Pinkowski, William J.	Hunter, Richard N.
Firestone, Richard L.	Reel, Adolph F.	Kinder, Dwight R.
Flanagan, John H.	Reeves, Houston W.	Kopperud, Alvin H.
Fogg, Gordon	Rice, Gordon W.	Kramer, Charles R.
Folsom, Fred G.	Rooney, Fred R.	Maggi, Edgar B.
Frey, John H.	Rosenthal, Milton F.	Mayfield, Robert G.
Gamble, William P.	Ruddy, John J.	McClain, William A.
Garnier, George W.	Sands, Joseph W.	McCormick, Donald G.
Gerstein, Albert S.	Schaberg, John C.	McFate, William J.
Gillihan, Louis O.	Schneider, Albert W.	Metcalf, Aldeverd J.
Gregory, Cleburne	Schakleford, Samuel D.	Ming, William R., Jr.
Griffith, Lynn B.	Sims, Walter H.	Miller, Arno J.
Hart, William L.	Snider, Maxwell I.	Murphy, Thomas J.
Hays, Donald C.	Somsen, Henry N.	Newman, Louis
Hecht, David S.	Stephens, Harry S.	Parks, Lewis H.
Henneberg, Carroll G.	Steyer, Murray	Paul, Eris F.
Hooper, Walter E.	Stoll, Norman A.	Perry, Thomas E.
Houston, Lawrence R.	Stroud, James S.	Pitcher, David E., Jr.
Huber, Edward F.	Taliaferro, Mark L.	Pizey, John B.
Hutchinson, Charles W.	Vogelhut, Milton I.	Polikoff, Harry
Hurley, Arthur F.	Wadlington, Benjamin C.	Ray, George K.
Johnson, Preston W.	Waldrep, Burnell	Red, George P.
Jones, Abbott H.	Walsh, Joseph A.	Reed, Warren G.
Jones, Arthur D.	Ward, Thomas C.	Robb, Arvin O.
Jones, Preston W.	Waxberg, Stanley D.	Robertson, Frank F.
Jones, Robert R.	Weintraud, Joseph	Rodman, Leroy E.
Kaylor, Hugh W.	Whalen, William L.	Sigler, Lewis A.
Keeland, Robert L.	Whelan, John M.	Siverling, Alan R.
Kennedy, Asa D.	White, Lewis A.	Simms, Richard E.
Kennelly, Arthur W.	Whitsett, Emmett L.	Skroch, Everett P.
Knipmeyer, Lowell L.	Williams, Wayne D.	Smith, Robert T.
Lanning, Harley A.	Winger, Charles J.	Spinelli, Charles J.
Leavy, Charles W.	Wolff, Jesse D.	Stahle, Keith A.
Leen, Maurice J.	Worrell, Beverley R.	Steiner, Harold W.
Levy, Leonard B.	Wrightson, James O.	Taylor, Charles H.
Lynton, Harold S.	Yeakley, Taylor B.	Teters, Henry T.
McDonald, Henry J.	Yost, William K.	Walker, Charles G.
		Walstead, Jerome R.
		Wells, Wm. C., Jr.
		Wentz, Peter L.

THE *Jag* SCHOOL BANQUET SKIT

SLY BARB OR BROAD SLAPSTICK, BUT ITS ALL IN FUN, AND FUN FOR ALL.

By 1ST LIEUT. EDWARD F. HUBER, JAGD

PROBABLY the best known of gatherings where hair is let down, and no holds barred, and all is strictly off the record, is the Washington correspondents' Gridiron Dinner. There the so-called fourth estate lets fly with a lampoon of the people who conduct the nation's business and a burlesque of how they do it. Occasional minor leaks indicate that now and again the harpoon is sunk in tender flesh, but its all in fun, or supposed to be, and there is no pity for those who take it otherwise. The induction of prominent politicians and others into membership in the Circus Saints and Sinners is in the gridiron tradition on a personalized basis, and if the inductee can't smilingly tolerate an exaggerated display of his foibles and quirks, he becomes neither Saint nor Sinner, but just another Sad Sack. The annual Gambol of the Lambs Club of New York is another such event, and other examples might be cited, but to no particular purpose.

The general idea of all these things is to let off steam, to level the great and the lowly, but principally to have fun. Just how salutary such objects can be at the right time did not long escape those who had endured the rigors, terrors and subtle cruelties (whether actually real or merely apparent makes not the slightest difference at the time) of the JAG School. Thus the manifestation of the let-down that inevitably accompanies the end of the course grew from a sigh of relief, and regret too, into the Graduation Banquet, which carries on the banquet tradition of conviviality, and along with it the gridiron tradition—in "The Skit."

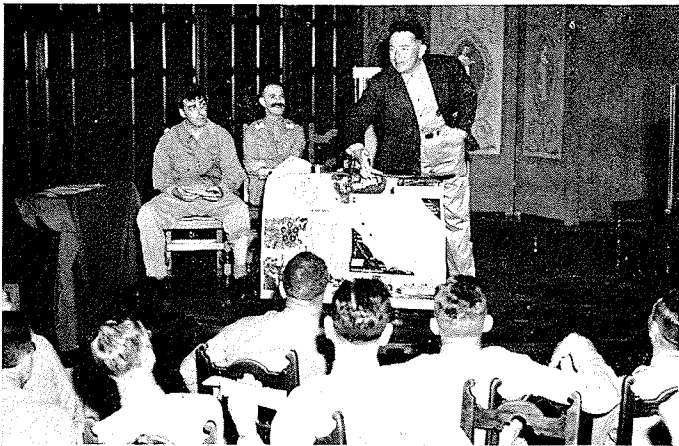


Photo by Ech Stanger, Ann Arbor
Lts. Dwyer (Prof. Pollock), Miley (Capt. Stephenson), and Whelan (GI Joe), in the orientation-lecture scene from the 6th OC's Banquet Skit.

The Skit is a product of Ann Arbor—at least it had its origin there with the 5th Officers Class. It is natural that it didn't develop before, when JAG School was in cramped Washington quarters. The first two classes were really refreshers for Reserve officers. The 3rd Class, with about half AUS officers, had the germ of the idea, and marked the completion of their course with a luncheon at the Cosmos Club. The 4th Class was larger,

and suffered from the growing pains that preceded the expansion of the School from small quarters, small faculty, and four electric fans, to the ideal accommodations of the Law Quad at Ann Arbor, and all that goes with it. The 4th Class did inaugurate the Graduation Banquet, held at the Army and Navy Club. But there was no skit. For this a combination of reasons is advanced—it was Washington in the summer, and the faculty was small. Finishing an intensive course in a hot Washington summer leaves most people glad to be alive, but with little energy to cheer about it; and a small faculty affords little to work on (and I do mean on)! And it is reported that the efforts of the class to disport themselves on a third floor fire-escape campus, which would hold barely half of the members, was a daily skit in itself.

The 5th Officer Class, the first to complete its course in Ann Arbor's academic atmosphere, feasted at the end of the course, and "entertained" at the end of the feast. The entertainment marked the birth of the JAG School Graduation Banquet Skit, and succeeding classes have taken up where the 5th Class left off. The opening of an Officer Candidate School enlarged the ranks still further, and naturally made for more, if not better, Skits. (Each class thinks its skit is the best.) The graduation of 11 July of the combined 16th Officer and 6th Officer Candidate classes, the largest group by far to receive JAG School Certificates of Completion, was preceded by the biggest Graduation Banquet yet, and the Skit was in keeping with the occasion.

What goes into a Skit? What makes it tick? Well, a lot of things. By special permission of the copyright owners, illustrative excerpts from the 6th OC Skit are quoted.

Letting Off Steam

Let's see about this letting off steam. What were the main "beefs" for the eight or seventeen weeks? What were the things that kept everyone a little edgy all the time? The Skit parades those things out in the open.

Military Justice writs were violent offenders against peace of mind, full of people with funny names, in odd mixed-up circumstances (Major Farr must have been heartbroken when Army Nurses were embraced officially, if not literally, by the AUS). These people always did the most amazing things. In the 6th OC Skit, a bewildered Joe who had wandered into JAG School, is being given a personally conducted tour by a rough (if you don't think so, look at the picture) impersonation of Captain Stephenson, and finds out about Military Justice thus:

Joe picks up a newspaper.

Capt. S: What are you reading?

Joe: The racing form.

Capt. S: Do you pick them pretty well?

Joe: Yeah.

Capt. S: You're just the man for one of Major Farr's justice writs.

Then enter Major Farr, who sings: (Tune—"Solomon Levi")

I am Major Warren Farr
The father of Carsey Tapps
I give Military Justice. That's
A course on booby traps.
I distinguish any day
In accents sharp and terse
Between a Warrant Officer
And the usual Army Nurse.

Chorus:
Military Justice—oh what a helluva course
Military Justice—the manual is our source

I live in a quite fantastic world
Of assorted dopes and fools
Where Sundry Major Generals
Ride forth on Army mules
Where WAC's and nurses fight and bite
And battle Wave and Spar
Not in Colonel Miller's club
But in the Astor bar.

(Chorus)

Now Private Tittlemouse, one night
And Captain Helen Pash
Forged a couple TS slips
To get some ready cash.
The drug clerk said: "We trust GIs"
Gave a cut of plug to each.
There's no answer to the thing
Its just the rot I teach.

(Chorus)

This song at last comes to an end,
Its a lot of silly drool.
But it's no worse, you must admit
Than what I teach in school.
Don't tell General Morrisette
About what I teach or sing
If you should, I simply would
Deny the whole damn thing.

The great difficulty with just reading something like that, and with Skit material in general, is that the humor and bite of the spoken word as colored by the exaggerated mimicry, are dulled by the printed page, and are liable to be lost on all but the cognoscenti—the victims who were subjected to the writs "all covered in the fine print and between the parentheses in the Manual," as it was explained to Joe. Joe fainted, but was revived in time to find out something about Military Affairs. The bibliography exercises, which uniformly produce terror and sweat to accompany the fast turning of pages of the assembled authorities, was explained in song by "Col. Miller" and "student" for Joe's edification:

(Enter Col. Miller and a student with his arms full of books, papers etc. They sing duet.) M—Col. Miller, S—Student.

THE RAT RACE

(To tune—"Breathless")

S. Grab your books, rush in a hurry,
For there is no time to tarry,
Paper, pencils all a flurry,
And your brain is all a'worry—
For each Army Regulation
That is published in the Nation
Has become a battle-station—
Its a Rat Race.

M. Take your time, there's plenty of it,
This is simple; you will love it,
If you flunk it, we will shove it
In your box; a "U" above it
Its a sort of tutti-frutti,
Status, Pay and line-a-duty.
I wrote it. Its a beauty.

S. Its a Rat Race.

M. Please call it an "exercise." That word it story tells.

S. O.K., but Shakespeare said—its not the rose's name that smells.
The bell will ring before you're half through
Close your books, you know you'll have to
You might as well break down and laugh, you
Flunked the course,—the thing is snafu.

M. Now just calm yourself and keep cool
For we set upon a golden rule
We never flunk the entire school.

M.&S. In a Rat Race.

"Col. Miller" also takes Joe through a Military Affairs Session; and the JAG School's system of demonstrating the snarls to be unravelled by the Affairs Department by the use of actual, but usually maddening, cases, was portrayed this way:

COL. M: I'll act as a proctor in the seminar today gentlemen, and I may say, in looking over the problems, and the approved solutions, that things are getting tougher in Washington judging by the number of commas left out of the problems these days. I suppose it's part of the conservation program but it should be called to the attention of the Procurement Division. Of course, cutting the streamliners down to five words was a good idea, but limiting the rest to "mentioned" and three "pertinent parts" indicates a lack of Regular Army officers on duty. Pretty soon they'll be construing the statutes and regulations to mean what they say, and if that happens, the whole department will be shot to . . . But let's get on with the first problem . . . Candidate Joe?

JOE: (With paper in his hand) I can read it but it don't make no sense.

COL. M: This is your first seminar. You ain't seen nothin' yet, Bud.

JOE: (Reads) Private Bailorjail was constructively inducted with the aid of handcuffs and 6 MP's on Feb. 29, 1944. He was formerly on the inactive list of the National Naval Volunteers Reserve. He was taken to Fort Fluff and ordered to complete a course in the Half-master OCS. The school was on a skeleton basis, and he was detailed as a token student. After being recommended for a commission, Section VIII proceedings were started to discharge him for bedwetting. One day later, an old parrot kept by the commandant of the school addressed him as a shavetail, from which he inferred that his commission had been issued. Requirement: Your Opinion: Is Bailorjail entitled to use the officer's latrine?

JOE: Youse got me wrong. I ain't a quiz kid, I'm a soldier.

The inevitable Saturday inspections, with trousers creased knife-sharp, "skins," and the suggestion that wives and the demands of the school are best satisfied by leaving the wives at home, are all duly noted in this bit:

CAPT. S: Just sit back and imagine you are a new candidate.

JOE: I don't wanta be a candidate. Look what happened to Willkie.

CAPT. S: And we'll go over a few of the high spots. First you get oriented.

(Enter Col. Young, Lt. Col. Looney, Capt Richling)

COL. YOUNG: } (In chorus) We'll take care
COL. LOONEY: } of that.

CAPT. RICHLING: }

CAPT. R: (High voice) Ding. (Low voice) Dong.

COL. L: (appraisingly) Better than average looking class.

JOE: (aside) What's he grinning at?

CAPT. S: (aside) He's thinking about skinning you.

JOE: (aside) That ain't legal.

CAPT. S: (aside) Shhh! . . . We come to that in Rules of Land Warfare.

JOE: What's he reading? (pointing to Col. Y.)

CAPT. S: Oh he's studying Japanese. He's been put in charge of the ASTP and he's got to inspect the Japanese students. He's studying how to say, "Are those your best pants?" in Japanese.

COL. Y: Much prettier than the 6th OC. In conclusion, Joe, by mid-terms you'll be the worst class I have ever seen. But remember, don't worry, just study in the time allotted and all other times. And don't worry . . . and don't worry.

By the way, who was that lady I seen you with last night? Your wife? You know, we don't like your having your wife here.

JOE: That was no lady. That was just a babe I picked up in town. I'm living with her.

COL. Y: Oh, that's all right, then. There's no rule about that.

Of all the things to make a Candidate squirm on the edge of his chair, mention of the Academic Board was practically sure fire. Just how their fateful workings were accomplished was cloaked in mystery to most; but the Skit revealed all. Two Candidates were directed to report to the Moot Court Room, well known as the Academic Board's lair. Then:

Joe looks on in amazement.

From offstage comes sound of a pistol shot, followed by a scream.

JOE: What's that?

CAPT. S: (jauntily)—Oh, that's just the Academic Board in session.

(Another shot and another scream)

JOE: Sounds like a massacre. I'd love to see it.

CAPT. S: Granted! They're going to meet in here—right now. Over you.

What part of Sir Arthur Sullivan's Mikado music was borrowed for the Board's entrance chorus? Right! "Behold the Lord High Executioner."

Chorus:

The academic Board's in session

Investigating how the class is standing

Our men are lawyers by profession

But soldiers are what we are now demanding.

Procure, procure, the most unwary candidate,

Procure, procure, one that's sure to mind if we're very unkind

Which we hope to be as we announce his fate.

But the Board wasn't unkind to Joe, for they pinned gold bars on him. This surprised him no little, for after

all, he had just dropped around to turn himself in as AWOL.

JAG School does not neglect the military side of the lawyer-soldier's development, so why should the Skit? All through it Capt. Richling's voice and command exercises were intruded at inopportune times by his impersonator. Major McElroy's Staff Functions break-down of the infantry division to the last squad headquarters, and it seemed the last hand grenade, looked like this, and delivered in a broad burlesque of the best McElroy manner, sounded better:

JOE: (hopefully) I used to shoot a machine gun.

MAJ. Mc: Machine gun squad of the weapons platoon of the rifle company of the infantry battalion of the infantry regiment of the infantry division, or machine gun squad of the machine gun platoon of the heavy weapons company of the infantry battalion of the infantry division?

JOE: Mostly I just druv a truck.

MAJ. Mc: Oh! Transportation section from the transportation platoon of the service company of the infantry regiment of the infantry division. Armed with 13 bazookas, 2 60mm mortars, 5 water pistols, a slingshot and two booby-traps. . . .

JOE: Once in the barracks we had booby-traps. . . .

LT.C.: He's had experience with booby traps. Put him on the bugle detail.

MAJ. Mc: Headquarters consisting of two grease monkeys and left-handed T-5. Of course under the latest revised T/O from Leavenworth red hair is indicated. But under field conditions . . .

The "Military Science and Tactics Department" decided Joe wasn't ready for field conditions without the benefit of its fine courses, including, naturally, Military Sanitation and First Aid, to keep him in fighting trim under all conditions. That serious deficiency was at once remedied:

(At this point, the Mil. Science and Tactics Department range themselves in line and sing in unison—to the tune of The Surry with the Fringe on Top.)

M S & T Dept: (sing)

Give us health, first aid and sanitation
Check bath towels and water chlorination
Don't include WAC's with cubicalization
And avoid all lice
Native huts have poor refrigeration
Germs like to spring from the native population
A kick in the snoot will cause sharks consternation
But *don't* try it twice.
Don't eat doughnuts on the march;
Avoid the bug and beetle.
Leggings nets and stinky stuff
Will foil the Anopheles Moskeetle!
Ticks and snakes are waiting to get you
Don't let chills and fever upset you
Even the lowly snail* won't let you
Off the straight and narrell
So let's roll out the pills and the Serbian Barrel.

A Skit can point its finger at other than local matters. Take this business of Claims:

A man comes on stage tossing dollar bills out of a bushel basket. He's followed by another man who patiently picks up the money. A third plays with a pile of pennies.

* Ed. Note: Honest, the Italian snails are very treacherous. Parasites. And you can imagine how low a snail parasite would be!!

JOE: What's that guy doin' throwin' all the dough around? Is he nuts?

CAPT. S: Shhh. That's the Foreign Claims Department, spreading good will.

JOE: Geez. Why, in my last pay—

CAPT. S: Shhh.

JOE: That little beaver with the basket—he don't seem so happy.

CAPT. S: That's the Comptroller General.

JOE: Who's the guy nursing them nickels?

CAPT. S: Oh, he takes care of the claims of the military personnel. You see, this is the Washington Office. Its broken up into divisions.

A loud report is heard off-stage.

JOE: (Leaping up.) What was that?

CAPT. S: Don't be alarmed. Guess Capt. Richling dropped in the Justice Division and busted another case.

Leveling the Great and the Lowly

You can see from all this how the letting-off-steam angle of the Skit works out. As a leveler of the great and the lowly—the harassed students, particularly the Candidates—the Skit becomes personal. The great? Why not start at the top, with The Judge Advocate General, and cover the whole JAG Department? A prancing "General Cramer" and pony-ballet chorus gave out with gusto, vocal and otherwise, on this:

Give Me a JAG Who Can Cite and Salute.

From my CP in Washington, quiet and cool,
I've come to Ann Arbor to look at your school.
Don't stand on formality, you all know me
I'm known to the Army as TJAG.

Chorus:

TJAG, TJAG, he's known to the Army as TJAG.
My troops are not many; they're really quite bright,
But, frankly, as soldiers, a helluva sight.
The seats of their pants sag as if filled with sand;
No wonder they're known as the chairborne command.

Chorus:

Chairborne command, etc.

We've put soldier suits on civilians galore
And tried to tell them they ain't lawyers no more
But they slouch around like a sad bunch of sacks,
They look like a lot of old ladies in slacks.

Chorus:

Ladies in Slacks, etc.

So here at Ann Arbor we'll try a new plan
You will pay more attention to the outer man
I don't give a damn for an Elihu Root
Just give me some JAGs who can cite and salute.

Chorus:

Cite and salute, etc.

For knowledge of law you will not have much need
FM 23 dash 5 is all you will read
Just get daily haircuts and wear your best suit
And spend all your time learning how to salute.

Chorus:

How to salute, etc.

If advice is requested by TAGO

The answer won't matter; here's all you must know.
Tho I'm not presumptuous and don't like to brag
You can say anything if you just cite Bull Jag.

Chorus:

Just cite Bull Jag, etc.

So dismiss from your minds any thoughts about books;
Just practice saluting and think of your looks.
Just learn to keep step and at all times look neat.
What I want is JAGs to parade at retreat.

Chorus:

Parade at retreat, etc.

Remember to keep your appearance smart
And learn the short forms of citations by heart
For learned opinions I don't give a hoot
I just want some JAGs who can cite and salute.

Chorus:

Cite and salute, etc.

Civilian instructors as well as military were included in the ribbing. For example, the Saturday morning lecture on the week's doings throughout the world, ably delivered by Professor Pollock of the University of Michigan faculty, was not quite the same article as that produced by "Prof Pollock" in the Skit; but as usual, it had lots of maps, and as usual also, it was drowned out at the end by the same otherwise stirring march that was played each Saturday by a very loud band outside the lecture hall. The picture indicates some of the variances from the customary lecture hall presentation.

The ever-meticulous grooming of Major O'Connor, the School's Executive Officer, was a highly personal matter, but more than the Skit could overlook; and the following is part of the commentary:

Enter Major O'Connor

MAJ. O'C:

I'm the much beleaguered Exec,
When needed I'm always on deck
To lend an ear sympathetic,
Sound a warning prophetic,
Or even make a bed check.

I have many burdensome woes
But my greatest worry is clothes.
Oh, the sales I have boosted
Of tropical worsted!
Much more than anyone knows.

But the night's when I really shine.
I'm called the bachelor divine.
More hearts have I busted
Than Gulden has mustard;
But no one has even nicked mine.

JAG's who are restive, and long for the smell of powder other than that to be found in milady's boudoir, may find themselves in sympathy with the notice taken by the Skit of the transfer of Col. Looney from Chief of the Military Science and Tactics Department to head the new Contract Termination course. It was this way:

JOE: Who's that guy with the axe?

CAPT. S: Oh, that's Col. Looney.

JOE: What's Col. Looney got that axe for?

CAPT. S: He's found a new way to terminate contracts.

Lt. Col. Looney then speaks the following:

With corners square
And a jaunty air
The Law Quad I parade.

Since Boston town
I've got around
The circuit I have made.

I did all right
As a legal light
On the Justice staff, with taxes.

But when war broke out
I did avow
That sort of life, too lax is.

Like the minstrel bard
I girt my sword
And off I went to fight.

But I hit a snag
I was made a JAG
And again a legal light.

Yet now and then
I could march my men
Shouting orders military.

And with a winning grin
I learned to skin
Recalcitrants contrary.

Of sad cruel fate
I got the gate
As a military tactician.

And now I'm stuck
With a Contracts book
What a horrible condition.

Ere we lick the Huns
I'll play with guns
I'll forsake the swivel chair.

For I'm a soldier man
I wear the tan
And on my chest is hair.

So with corners square
And a jaunty air
Again I'll march my men.

For a JAG's reward
Is the pen and sword
And not alone the pen.

The point of view of Regular Army, and temporary officers, for the present and the future was contrasted—but it might be well to keep in mind that the Skit was written, produced and played by temporary officers whose date of rank and the date of the production were the same:

Tune: "San Fernando Valley"

COL. MILLER:

I'm through with courts and books and briefs,
Boards of all sorts—what a relief!
I've got a perm'nent rank in JAGD
It's gonna be the life of Riley for me.

Won't practice law. In Washington
I'll live at ease—when the war is done.
I'll spend my life in view of Capitol Dome
And make the J-A-G Department my home.

The others: (Broken lines—as indicated by numbers)

1. Gonna Pack my bag
2. Fill it with ARs
3. And My Dig Op JAG
4. And my new gold bars
5. I'm off to Timbuctoo or far away Nome

Wherever Colonel Springer says is my home.

1. When war is done
2. And I'm free to go
3. In Washington
4. I will not show

I'm going to practice law and nevermore roam
And make

1. Dallas
2. New York
3. Memphis
4. Pittsburgh
5. Boston
6. Oshkosh
7. Detroit
8. Podunk

ALL: my home.

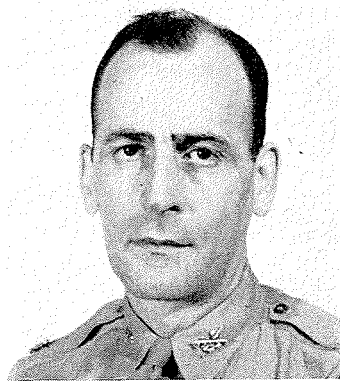
It's All in Fun

But for all of its irreverence, cracks, pointed comment, etc., the Skit of the 6th OC, like those that preceded it, was the outpouring of high spirits, another example of the irrepressible American custom of good-natured joshing. With the JAG School skits it's hard to tell whether it is more blessed to give than receive—or more fun. That is why the Graduation Banquet Skit becomes a more deeply-rooted tradition with each succeeding class. May it continue—till the war is won, and the need for more JAGs and for the JAG School has ended with it.

"Firsts" IN THE DEPARTMENT

FIRST JAGD officer to be commissioned direct from civilian life during the present war was Lieutenant

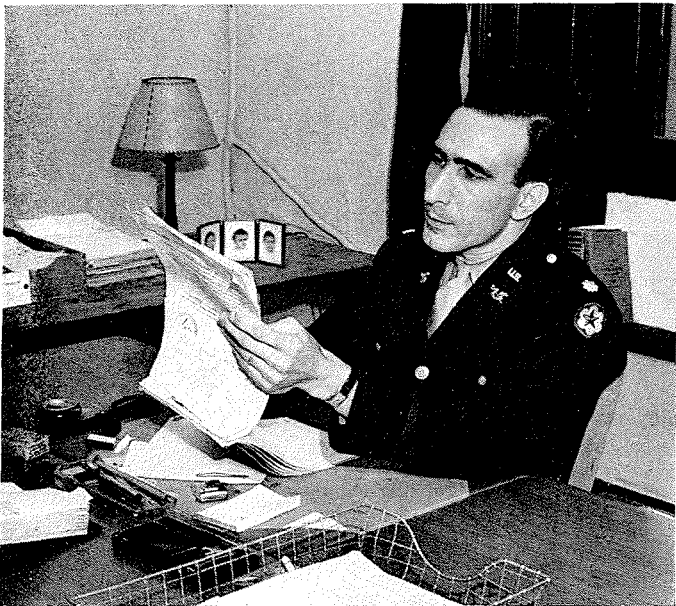
Colonel Berryman Green, Chief of the Tax Division, Office of The Judge Advocate General. A native Virginian, Colonel Green attended the University of Virginia and began the practice of law in 1921. He was Commonwealth Attorney at Norfolk from 1929 to 1933 and the following year he became Special Assistant to the Attorney General of the United States.



When he was commissioned a major on 27 February 1942 he was assigned to the Office of The Judge Advocate General where he has been engaged in the handling of taxation problems since that time. He was promoted to lieutenant colonel on 26 April 1943 and became Chief of the Tax Division on 16 September 1943.

Colonel Green saw service in World War I in the Coast Artillery Corps.

FIRST officer commissioned from the enlisted ranks was Major Theodore F. Cangelosi, who was appointed First Lieutenant on 27 July 1942 while serving at Camp Beauregard, Louisiana. A native of Baton Rouge, Louisiana, Major Cangelosi received the degree of Bachelor of Arts from Louisiana State University in 1932 and the degree of Bachelor of Laws from the same University in 1934. A member of the Louisiana Bar since 1934, Major Cangelosi served as a member of the State Legislature from 1940 to 1944.

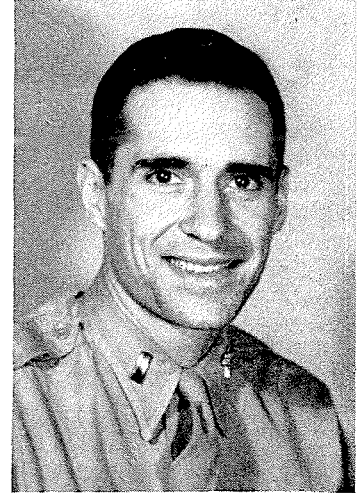


He is a graduate of The Judge Advocate General's School and from 23 November 1942 to 2 September 1943 he was on duty in the Personnel Division, Office of The Judge Advocate General. He is now Executive of the Branch Office of The Judge Advocate General in the European Theater of Operations and was promoted to

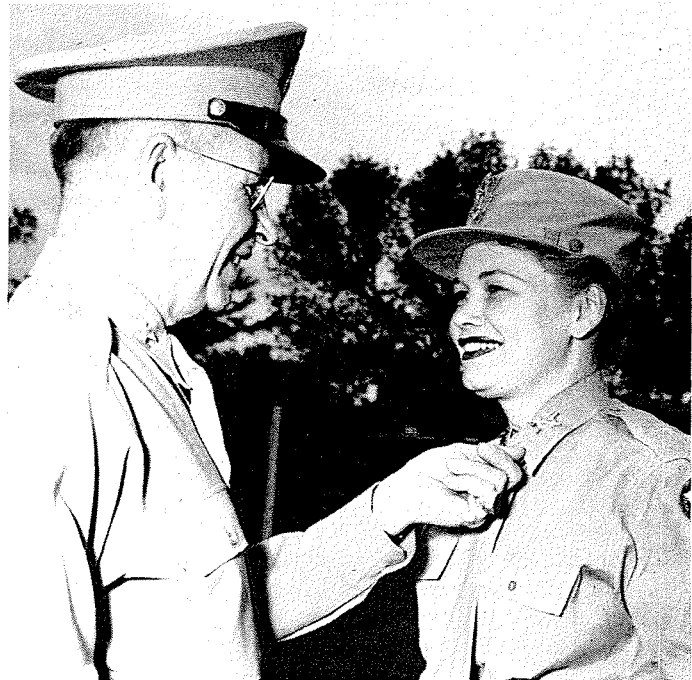
his present grade on 16 June 1944.

FIRST enlisted man selected for The Judge Advocate General Officer Candidate School was Captain John E. Park, now a member of the Staff and Faculty of the school. He was also the first applicant for the OCS. Captain Park was born in Salina, Kansas, received his law degree from Georgetown University, Washington, D. C., in 1938, and was admitted to the District of Columbia Bar the same year. In 1939 he was admitted to practice in Missouri.

He served in the army as an enlisted man from 24 July 1942 until graduation from OCS with the First Class on 28 August 1943. He was promoted to Captain on 22 May 1944 and has been a member of the Staff and Faculty of the School since 31 May 1944.



FIRST member of the Women's Army Corps to become a Judge Advocate was Captain Phyllis L. Propp of Waterloo, Iowa. Captain Propp received the degree of



Bachelor of Arts from the University of Iowa in 1930 and on receiving her law degree from the same university, became a member of the bar of that state, where she practiced law until appointed a Second Lieutenant on 3 October 1942.

She was promoted to First Lieutenant on 13 April 1943 and received her captaincy on 30 October 1943. As the first female J.A. she was detailed in the Department on 3 May 1944 at Fort Des Moines, Iowa, where she is assigned as Staff Judge Advocate.

Experiences OF AN AIR TRAVELING GCM REPORTER

SOUTHWEST PACIFIC—Mention the Air Force and you think inevitably of thousands of pilots and gunners and bombardiers throwing tons of lead and TNT on the enemy from the skies. But it takes a lot of other specialists to run an Air Force, too—a lot that have nothing to do with airplanes except, perhaps, to use them as a means of travel.

Such a specialist, for instance, is WOJG Arthur S. Conner, former Oklahoma A. & M. student, who is the fastest shorthand reporter among Air Force personnel in the southwest Pacific and an expert in the reporting of general court-martial proceedings throughout the theater.

Until a short time ago he was the only official general courts-martial reporter in the entire Fifth Air Force—a tribute both to Conner's skill and to the behavior of the Fifth's personnel, only a small fraction of which becomes involved in serious breaches of Army Law.



He is now doing similar work as a member of the staff judge advocate's department in the Far East Air Service

Command. The Far East Air Forces were formed recently by a combination of the Fifth and Thirteenth Air Forces.

Operating from a rear base headquarters, W/O Conner flies to various parts of Australia and New Guinea as his services are needed. He has flown an estimated 30,000 miles to and from the scenes of different courts-martial. The number of words of testimony he has recorded and transcribed is almost beyond calculation.

He has taken notes in rain-drenched grass huts in New Guinea and in wind-threatened tents in Australian bush country. He has transcribed those notes by candle light in the jungle and in crowded transport planes 10,000 feet above the Coral Sea and the Australian desert.

Bombs from Jap raiders have threatened his equipment and sent him scurrying to slit trenches, but he has never lost a note. Only once in all his travels has he had real cause for alarm. That was when a storm forced the transport in which he was a passenger to turn back to Port Moresby to await better flying weather for crossing the Owen Stanley Mountains. The wheels locked on landing and the plane skidded off the runway, but no one was injured.

A native Oklahoman, Conner attended Oklahoma A. & M. at Stillwater from 1936 to 1940, majoring in secretarial administration. On leaving college he served as secretary to an oil company executive in southern Illinois before entering Army service in April, 1942. He has been in the Southwest Pacific since July of that year.

Conner was a private first class in Australia when he won first place among 20,000 entrants in the 1943 contest of the Order of Gregg Shorthand Artists for the "most beautiful specimen of shorthand" submitted. He had placed fifth in the 1942 contest, and had won the Gold Seal Certificate of Superior Merit for Gregg writers in 1939.

In Army court rooms today—even when the court rooms are crudely-built affairs in the jungles where facilities are few and conveniences are far between—he takes 220 words of testimony a minute, or 180 words of solid literary matter. Shorthand writers will agree that that's pretty fast, even for the Air Force.

Notes

The Editorial Board of the Judge Advocate Journal invite our readers to submit articles for publication.

The Executive Secretary of the Association requests that all members inform him of any change of home address and/or mailing address.

Any member of The Judge Advocate General's Department who has not yet joined the Judge Advocates Association is invited to join. A letter of application addressed to the Executive Secretary, Judge Advocates Association, 1225 New York Avenue, N. W., Washington 5, D. C., will bring immediate attention.

★ ★ ★

The following is a collection of notes culled from the columns of THE ADVOCATE, bulletin of The Judge Advocate General's School, concerning the activities of members of the Department who are alumni at the school.

1ST OFFICER CLASS

Maj. Charles B. Paine has been transferred from Hq. AAATC at Camp Edwards, Mass. to JAGRP, Hq. Seventh Service Command.

2ND OFFICER CLASS

Lt. Col. Vincent A. Miller is Staff JA, Headquarters, Central Base Section, in England. Since leaving Ann Arbor he served at Boston, Mass. and after a lapse of months arrived in the United Kingdom to become Staff JA of the London Base Command. Two members of the 6th OC Class, Lt. Charles W. Manning and Lt. James D. Murphy were formerly under Col. Miller in the same command, and at the present time 1st Lt. Cornelius Wiarda and 1st Lt. Charles B. McCann, Jr. (1st OC) are both serving with him. Lt. McCann recently received his silver bar.

Col. Miller also reports that a classmate, Arthur Green has been promoted to lieutenant colonel and is Staff JA of the Southern Base Section.

3RD OFFICER CLASS

Lt. Col. Edgar P. Allen, GSC, is now assigned to Office of the Chief of Staff, Civil Affairs Division, The Pentagon, Washington, D. C.

4TH OFFICER CLASS

Lt. Col. George H. Wilson is the Post JA at Fort Sill, Okla.

Maj. Irvin Schlesinger has been transferred from the Ninth Service Command to Hq. Seventh Service Command.

5TH OFFICER CLASS

Lt. Col. John H. Awtry is assigned to a G-5 section with an Army Group "somewhere in France." He finds pleasure in reading about activities of alumni as well as of the school generally.

John Ritchie III, now a major, is Staff JA of the 65th Inf. Div. which post he has held since June 1943. Upon graduation here in November 1942, he attended Command and General Staff School staff course and later the new divisions course there prior to the activation of his division.

Lt. Colonel Mariano A. Erana, lately of the Military Justice Division, JAGO, is among the graduates who receive their diplomas from the School of Military Government, University of Virginia, Charlottesville, Va., 22 July 1944.

Maj. Marvin W. Ludington served as Brigade JA of an Antiaircraft Artillery Brigade, San Francisco, Calif. from the time of his graduation here in December 1942 until February 1944. His present assignment is with Headquarters, Fourth Army.

Maj. Willard B. Cowles is the author of an article in the June issue of the American Bar Association Journal, "Trial of War Criminals by Military Tribunals." The article is a summary of an address delivered by him before the Section of International and Comparative Law of the American Bar Association, meeting at the Pan American Union 28 January 1944.

Capt. Theodore F. Cangelosi, Executive Officer of the Office of the Judge Advocate of the European Theatre writes from England that "instead of tapering off, it appears that the activities are larger than ever and that you have more to contend with than ever before. THE ADVOCATE is being received regularly here and is read with real interest by the entire staff and certainly by me. I think it is a fine publication and it is especially interesting to those of us who are away from the school and on foreign duty."

Capt. Cangelosi hopes that he and his wife are able to visit a short time in Ann Arbor upon his return from foreign duty "because it has for us memories that will always be pleasant and of a kind one does not easily forget."

Maj. Willard B. Cowles, War Plans Division, JAGO, is the father of an eight pound baby girl, Nancy, who arrived upon this worldly scene on 1 June. Major Cowles is now in England.

6TH OFFICER CLASS

Since last December Major David Lynn has been Sector Judge Advocate, Northern California Sector, Western Defense Command, Presidio of San Francisco, Calif.

Capt. Robert L. Clare, Jr., member of the Staff and Faculty since December 1942, when he completed the school course as a member of the 6th Officer Class, has been transferred to an undisclosed assignment.

Inducted in February 1941, Capt. Clare served with the 4th Motorized Division, was appointed warrant officer in August 1942, and commissioned second lieutenant three months later. At the time of his departure from the school he was an instructor in the Military Justice Department.

Capt. Clare is a graduate of Holy Cross College and Harvard Law School, and in civilian life practiced law in New York, N. Y., with the firm of Shearman and Sterling.

Maj. Clel E. Georgetta, who was forced to return to the United States from his Alaskan tour of duty some time ago on account of illness, is head of the Military Personnel Claims Branch, Claims Division, JAGO.

Ben M. Ayars is now a major and Staff JA of a mobile port somewhere overseas. He writes that he expects to be on the move again soon.

Maj. Everett A. Bogue has been transferred to JAGRP, Baltimore, Md.

7TH OFFICER CLASS

Capt. Lorenza H. Calhoun, formerly litigation officer of the staff JA's office, Eight Service Command, and the "Mr. Alexander" on the legal assistance radio program there, is now said to be in the Southwest Pacific. What doin'? Why betting on "hoss races" of course!

Maj. Smith Troy, former attorney general of the state of Washington, is Staff JA with an infantry division in England.

Striking proof of the school's teaching that ordinary JA duties must be set aside while an outfit is in combat is furnished by a letter of Maj. John P. King, (7th Officer Cl.) Staffe JA of an infantry division in Dutch New Guinea, Milne Bay, Papua Territory. His assistant is Capt. William J. Millard, Jr. (10th Officer Cl.).

The division was in a fierce and bloody battle with the Japs at the time the letter was written near the end of June. "In proof that we lead a rugged existence," Maj. King says, "I was bombed from the air, sniped at from trees, and to add insult to injury had a hand grenade explode a few feet away from me. With it all, I sleep well even though it be a slit trench, enjoy C rations, and have suffered no injury save insect bites. One of our boys won a one round battle in a machete to coil fight against a 19 foot python."

Speaking of military justice, Maj. King states that his office has had one general court-martial so far this year and very few specials. "Boys in combat have very little time for infraction of military rules. Right now we are engaged in a bloody struggle with well-fed, well-trained, excellently equipped Jap troops."

"Our duties are by no means confined to the administration of military law. For example, I supervise the loading of divisional equipment and unloading upon reaching our objective. I climb a Jacob's ladder or cargo net with fear and misgiving, but so far I haven't missed a rung. We do not have a rear echelon in this division; so far I have been to the fighting front each day, and actually watched the progress of the battle."

Maj. King lauds the work of the chaplains, medics and first aid men. He says that they have been "wonderful and no greater heroes can arise out of this war when its history is written. I've seen the medics perform deli-

cate operations in portable hospitals while under fire."

Maj. King declares that his division is the "best-disciplined in the entire United States Army," attributing this to two factors: Regular Army personnel and its Commanding Officer, whose name is not published for reasons of security.

A few days later word also came from Capt. Millard. He, too, finds that JA duties while his division is in combat are practically nil. "We have had only one GCM this year and I'll give ten to one we have no more."

8TH OFFICER CLASS

First Lieutenant Carl D. Levy, Hq., Air Force Service Command writes that he is very comfortably situated in Italy with modern conveniences. "Many of us in these 'comfortable' spots aren't too many miles behind the front lines either. . . . There are quite a few of the 8th Officer Class serving in the vicinity. The Staff JA of my headquarters is Maj. Barnett Nova (7th Officer Cl.), I am one of his assistants. Col. Clarence W. Miles is head of the Claims Commission for Italy and nearby. Capt. John J. Rigney and Capt. Stanley Timmins of our class are close by and we get to see each other quite often. Lt. Morris L. Bradford and Lt. John K. Goff (7th Officer Cl.) are also not too far away and are still classed as 'friendly troops.' It isn't hard to see, knowing a few of the propensities of this group, that we are fighting a strictly legal war over here in Italy.

"Our court rooms are a thing of beauty, located in former princes' palaces in some cases, or where Il Duce handed out his particular brand of justice. Our quarters are in the form of private apartments graciously furnished us by our Uncle. They compare favorably with Section J of the Quad. Our mess . . . well, comparisons are odious."

Lt. Levy suggests that AW 75 is worth studying as it has been the subject of several cases. He states that the material from the school has been most helpful, and "in many cases we couldn't have made the apparently rapid-fire legal decisions that have been necessary without the aid of our binders."

Capt. David S. Meredith, Jr., writes from Headquarters, Central Pacific Area that there are now 10 graduates in the office of the Staff JA there. Capt. Meredith says that the alumni recall their days at the school with pleasure.

Major Frank McNamee received a bullet wound in the hand in France last month.

Maj. Roger D. Branigin is the chief legal officer of a field group of the Office of the Chief of Transportation, working out of Cincinnati, Ohio.

Capt. John Fontron recently completed the special 10 day course here preparing for Command and General Staff School, having returned from a tour of duty in the South Pacific.

Capt. Lester Danielson and Capt. Charles Shanner are in England.

Maj. Richard Whitker whose home is in Ann Arbor dropped in at the school while on leave from Alaskan duty. He also visited his classmate Maj. Richard Gandy, staff JA of the Central Air Procurement District, AAF, at Detroit.

9TH OFFICER CLASS

Maj. Gerald J. McMahon is now assigned to the 9th Armored Division.

Maj. Harold L. Westin is assigned to Second Army, devoting much of his time to reviewing Reclassification

Board proceedings, and Section VIII Board cases in addition to military justice matters. After graduation from the school in April 1943 he served in the JAGO and spent the summer with an Infantry Division in Tennessee on maneuvers. Later he attended the Command and General Staff School, Fort Leavenworth, Kan., and upon completing his work there was assigned to the XII Corps for about a month prior to being reassigned to his present post.

Maj. George O. Wilson writes from a JA section "somewhere in North Africa" that he runs across graduates of the school nearly every day, and that they all "speak highly" of the school and the training received here for their present duties.

Maj. Sidney A. Wolff is in receipt of a commendation from his commanding officer for successfully defending a member of the armed forces in a civilian trial for rape of a 14 year old girl. Maj. Wolff is assistant camp JA at Camp Miles Standish, Mass.

The commendation stated that "an acquittal such as this can only serve to reassure the members of this command of the protection and guarantee of their interests, which is afforded them as soldiers of the Army of the United States."

Capt. Josiah T. Herbert has been transferred to the JAGO from Morale Service Division, Army Educational Branch, Hq. ASF.

10TH OFFICER CLASS

Arch E. Ekdale, now a major, is assigned to admiralty law duties in San Francisco, Calif., with the War Shipping Administration.

Pacific air waves carry word that Capt. Thomas G. Jones and Maj. Itimous T. Valentine are somewhere in China Burma India.

Capt. Seymour M. Peyser, former member of the Staff and Faculty here, is assigned now to Industrial Personnel Division, ASF. Capt. Peyser writes that he has been riding the rails almost continuously the past month back and forth from Washington, to Chicago, Cleveland, Philadelphia, and New York.

Capt. James A. Lee is on duty at Cincinnati, O., with the Ferrying Command, ATC.

Capt. William J. Millard, Jr., is Assistant JA of an infantry division in New Guinea. He finds the country "a bit of a bore . . . either hotter than hell or raining harder than a shower bath." He reports going on a reconnaissance trip for a week through more or less untouched places, covering eight miles a day and rendezvousing at night with a boat carrying rations.

"We saw the natives in a primitive state where they will do any work or provide oranges, bananas or pineapples for a cigarette (to them the greatest delicacy), and then we contacted others that have already been spoiled by troops and want at least two bob or a pack of cigarettes for anything." Capt. Millard swears by the tropical hammock the Army has invented that "keeps you off the ground and has a built-in mosquito bar and rubber roof. All you do is zip it up at night."

Capt. Scott Jordan may be leaving the Military District of Washington for foreign shores soon.

Maj. George McLain reports his safe arrival in the European Theatre where he is assigned to foreign claims duty.

Capt. T. K. Irwin, the man from the South, is acting Staff JA at Headquarters, AAATC, Camp Stewart, Ga.

Capt. George S. Bradley, AAF Base Unit, Hq., ATC, Washington, D. C., he says:

"I may shortly be pulling up the tap roots of 13 months and wend my weary way to a new and more exciting assignment. In this event is it possible for me to continue to receive copies of "The Advocate" which is as refreshing as a piping hot cup of coffee on a cold morning?"

Capt. Martin K. Elliott is another of the alumni to report from a French address, and he wonders if he were in the same country (England) in pre-invasion days as were those JAs stationed in London and with the Air Force. Apparently his reaction to the British Isles was not as warm as that of the boys in the British capital.

He keeps busy, and has acquired a few extra jobs, TJA for GCM as well as all division special courts and a few others. Tried five GCMs last week and have several more pending.

He adds: "Took a little trip last week and got lost—but brother I hurried back when I found out where I was. It was no place for me and my little carbine. This business of ferreting out civilian witnesses is not all that it is cracked up to be, even if you do have as good an interpreter as I have had."

Rumor says that Maj. Julian Weisler, that big man from Texas, is now in England. After completing the course here, Maj. Weisler was assigned to study in military government.

James DeMartini, who moved to Alaska not so long ago, has been promoted to the rank of captain.

Maj. Clarence L. Yancey is Assistant Executive Officer, JAGO, as well as Public Relations Officer.

Since graduation Capt. Francis J. Gafford, has been assigned to Headquarters, Sixth Service Command, as assistant staff JA engaged in Military Justice matters. At the time of writing he expected a transfer to Fort Sheridan, Ill. as assistant Post JA.

1st Lt. Morris Weller has been assistant JA, Headquarters, Eighth Service Command since October 1943, and prior to that was assistant post JA at Fort Sill, Okla.

11TH OFFICER CLASS

Capt. Henry C. Todd, Assistant Staff JA of an infantry division at Fort Dix praises the layout for courts-martial there. "It was a joy to hit this place. They have one room which is assigned for CMs and they have tables and chairs and everything else you can imagine (papers, ballots, etc.) for the court."

"A nuisance has been the administrative inspection. I think it might be well for the boys to be advised to check the company punishment books very regularly, every three or four months or so until they are sure that the company commanders are on the ball. Also check page 8 of the service record to make sure that they are on the ball for entering the CM convictions. That can get to be a nuisance if you wait too long."

Capt. Henry C. Todd writes again, this time from England. He speaks highly of two of the school texts: "Our JAGS texts No. 4 and No. 7 are looked upon with great jealousy by our Civil Affairs Section. They would give their eye teeth for them . . . the more you read of these two the more aid they are in problems that come up.

"Military Justice in SCM and Summary CM matters keeps up but no GCMs yet. The BOJAG has revised a number of things and has a great string of policies and SOP on a number of things which is very good.

Warn the boys always to check security on their CM orders.

"More and more I can see why the SJA has an assistant and it is more important than ever in overseas operation to have enough qualified personnel to run your GCM actually within the section. Most important of all is an enlisted reporter."

Maj. Edwin E. Rives writes from England that he is now a Foreign Claims Commissioner on a Claims Commission with two other officers with jurisdiction in the United Kingdom. Prior to that he had a very interesting assignment for Gen. Eisenhower, "working directly under Gen. John C. H. Lee which led to conferences with our Ambassador, Mr. Winant, Sir John Anderson and many other distinguished persons. During the period of this assignment, I worked with some fine British people in the marshalling area, and had a grandstand seat in watching final preparations for the big invasion."

Maj. Rives reports seeing Capt. Ford Sargent, Capt. Robert McKeever and Maj. Frank Mizell of his class in his immediate vicinity. He finds good use for subjects studied and training received here. "You can well imagine that strenuous problem of the school was pretty hard on an old slow Southern Judge but the fine instruction, and the friendships made there have meant a lot to me."

Maj. Andrew G. C. Bierer is to attend the Conference section on Legal Education and Admissions to the Bar and National Conference of Bar Examiners at the Annual Meeting of American Bar Association in Chicago, Ill. next month.

12TH OFFICER CLASS

Maj. Cedric W. Clark is Staff JA at Hq. FARTC, Camp Roberts, Calif.

Capt. Raymond H. Wright is Camp JA at Camp Bowie, Texas.

Frank J. Mizell, Jr. is now a major, assigned to a JA section in the European Theatre of operations.

Maj. Henry V. Broady, now has an APO number, and is somewhere in North Africa, where "the scenic beauty would be difficult to improve upon." He finds school texts very useful, and that "they help to make up for the deficiencies of a limited library." He has been detailed into the Judge Advocate General's Department from the Air Corps. He also reports that his former roommate at school, Lt. Col. John B. Hill, is now Staff JA, Kelly Field Air Service Command, San Antonio, Texas.

Lt. Col. Joseph V. Hodgson is somewhere in England.

13TH OFFICER CLASS

1st Lt. A. Y. Holesapple is located at the Office of the Judge Advocate, Hq., AAF, Materiel Command, Wright Field, O.

14TH OFFICER CLASS

Capt. Axel R. Ernberg has been transferred from Fort Hayes, O. to Fort Benjamin Harrison, Ind. where he is now the Post JA. He replaces Lt. Col. Winfield S. Slocum.

15TH OFFICER CLASS

1st Lt. Edward J. Ryan has had three assignments since graduating in March 1944; JAGO, 2nd Army Headquarters, and his present station at 4th Army Headquarters, where he is assistant Army JA handling military justice matters.

1st Lt. J. T. L. O'Connell now has an APO number out of San Francisco, Calif.

Maj. David G. Tyler, now assigned to Headquarters, San Bernardino Air Service Command, Calif. finds that the school course was a very practical one upon the basis of his experience since graduation. All of the material and information received here has been of benefit, he says, and "in fact, only the other day we used the Carsey P. Tapps record to present a mock trial at a Military Justice Class for company grade officers."

Maj. Tyler reports that Lt. Robert E. Michalski (4th OC Cl.) is also assigned to the same office.

17TH OFFICER CLASS

Capt. George E. Nagle, AC, is now stationed at Keesler Field, Miss.

Lt. John H. Weaver is assigned to JAGRP, Hq., Ninth Service Command, Fort Douglas, Utah.

Maj. Russell T. Boyle, AC, is at Hq. Southern Defense Command, Fort Sam Houston, Tex.

Maj. George R. Jones and Maj. Thomas G. Carney are at work in the JAGO assigned to the Patents and Taxation Divisions respectively.

1ST OFFICER CANDIDATE CLASS

Capt. Paul Boucher, assigned to a Troop Carrier Wing, "somewhere in New Guinea midst coconut groves and palm trees" finds the scenery beautiful, the weather hot and the mosquitoes just as big as the B-29s." Nevertheless, he adds, "I like my work and I like it here."

1st Lt. Ralph E. Becker, Assistant Staff JA of an infantry division is fast becoming our European correspondent. He writes that he has met Capt. Charles F. Brockus, Capt. Thomas L. Archibald, and Capt. John P. Nash and that Abraham Pinsky is now a captain. All are "somewhere in England." He also says that he talked with 1st Lt. Charlie Allen on the phone.

Lt. Becker waxes enthusiastic about the beauties of the English countryside, finding it the "most attractive in the world, notwithstanding the fact that I come from Westchester, 'the Garden Spot of Creation.'"

Lt. Edmund Revercomb is with a JA section in England also.

Lt. Ernest Raba who was Camp JA at Camp Claiborne, La. from November 1943 to March 1944 is now acting in the same capacity at Camp Polk, La.

Lt. Baker Adams who was reported sick at a "P.O.E." is now apparently en route.

It is reported by his proud father, Capt. John H. Haley, Jr., that Philip H. (the little Irishman) Haley was born in December 1943. Lt. Haley is in the "kid raising business" according to his chief, Col. Julien H. Hyer, Staff JA, Eighth Service Command who says that "sergeants and JAs keep the population from becoming static."

Capt. Henry G. Norris, writes from Headquarters, 85th Infantry Division, "somewhere in Italy" where he is assistant division JA that he has met Lt. Floyd D. Osborne, assistant division JA with the 88th Infantry Division. These divisions were recently revealed to be in the thick of things in the push on Rome and are referred to as the first all-inductee divisions to go into action.

Capt. Norris says: "Our problem here is quite different from what it was in the States. The nature of the offenses are somewhat different, and I might add the numbers are much smaller. I believe, however, that the

severity of the sentences is correspondingly higher, which is as it should be. The conduct, the discipline, and the general morale of the men of the division is undoubtedly among the best and highest of any infantry division, and this accounts for the fact that less than one per cent of our cases go to general court."

1st Lt. Floyd D. Osborne pens that he has been busy lately with his division which has been on the front before Cassino. One thing the department of Military Science and Tactics omitted to teach him, he says, was how a fellow his size could get into a small fox hole. "It takes too darned long to dig one big enough for me."

He adds: "I feel the school has done a splendid job for the lawyers in the Army who've had the opportunity to attend it. The lawyer in the Army has been a sadly neglected individual and our profession, unlike the medical profession, has apparently done nothing whatever to help him. I have seen in my organization mediocre men as adjutants handling claims, section VIIIs, etc. unqualified as you please; inexperienced laymen representing accuseds in courts and fine lawyers in line companies sweating out their lives trying to adjust themselves there while some fellow not so well trained was doing TJA, defense, adjutant and personnel work. It is organizations like the school which can continue to put lawyers into places in the Army where they really belong."

William V. Ross, recently promoted to captain, and assistant Port JA at New Orleans where he has served since graduation, writes of an amusing case involving a prisoner who ate all the light bulbs out of a stockade and was just starting on the window panes when the Provost Marshal clamped him in a straight jacket. The prisoner testified that he had always had an irresistible urge to eat glass—to him it was just like candy, only better. And if he were hard pressed he would take razor blades or iron bolts as substitutes. He stated his desire to remain in the Army if he could be furnished a little glass now and then for a midnight snack. Capt. Ross expects that as the Section VIII Board recommended the man's retention in the service that sooner or later "we will be forced to try him for destruction of government property, unless some other means can be found of alleviating his hunger."

Military Justice, Military Affairs and Claims comprise most of the work at the Port, Capt. Ross says. He examines records of summary, special and general courts, and prepares reviews on the latter; he examines and reviews records of Board of Officer proceedings, reports of investigations (line of duty and death), and examines all contracts processed through the command. Preparation of numerous opinions relating to interpretation of ARs, Federal statutes and contracts also come within his province. In addition to the usual run of claims, admiralty claims require attention occasionally.

Capt. Ross finds that all his courses here were invaluable, adding "even Military Science and Tactics . . . although I never thought I would live to see the day that I would admit this. I have been called upon to serve as Assistant Officer of the Day on several occasions and have spent a good many nights climbing in and out of holds of PT boats, landing craft, tramp steamers, and liberty ships to check the military guard."

1st Lt. Leo Bruck is now at Headquarters, Persian Gulf Command. Very pleased with his assignment, he says: "The JA setup is peculiar with JAGS spread all

over the command. There are seven of us in all over here, a colonel, five majors and yours truly. It is the first time that anyone has seen a JAG 1st Lt. . . . Within two days after my arrival I was made law member of every general court in the Command except the one operating in Teheran."

1st Lt. Richard J. Kent from a fighter command in England writes that his experiences there have been worth while, to see and learn something of England and her people . . . "and I look forward to seeing a few more countries before the finis. I also find my work as assistant staff JA of this Command most interesting. Aside from a little legal assistance, military justice is the bread and meat of my work; and at various times and in different cases, I perform all the functions of a JA—reviewing charges and referring them to the proper court, trial judge advocate, law member, and reviewing the record of trial. I enjoy especially acting as law member, since so many of our stations furnish excellent lawyers for TJA and defense counsel with the result that cases are well contested."

1st Lt. Harry A. Baldwin is now assistant staff JA, Hq. Ninth Service Command.

2ND OFFICER CANDIDATE CLASS

From "somewhere in France" Lt. Ben Smith writes: "Don't ever let anyone tell you a rear echelon stays far, far behind. I was sung to sleep last night by German artillery shells whooshing over my head, and am just living from apple orchard to apple orchard. I am damned tired of pitching a pup tent under an apple tree (after carefully removing the ever present manure). Have spent most of my time in France digging foxholes. Whatta life! I eat from a mess kit, wash in water in my steel helmet, sleep on the ground, and NEVER change clothes. I am filthy. Since I've been writing I've heard artillery shells, machine gun fire and a ping from a lone rifle. Either a German or a French collaborationist must be about somewhere."

Captains Joseph H. Edgar, Gerret W. Wesselink, Samuel Sonnenfeld, and Abe J. Garland are assigned to the JAGO.

Capt. Edgar not only has taken on a new bar but also has taken on a spouse at Fort Meyer, Va.

1st Lt. William D. Sporborg writes that he is assistant staff JA with an infantry division in New Guinea. "Upon my landing in this tropical isle I spent some time on temporary duty at a base with Lt. Albert Cole (11th Officer Cl.). After my assignment came through, I did some extensive travelling along the island and have run into numerous JAs, including Herb Hart and Julian O'Malley (1st OC Cl.)."

Lt. Sporborg has become division claims officer and expects to be assigned as law member of a GCM. Although the work is varied in nature it principally consists of military justice. He adds: "I am in what is euphemistically called the combat area but must admit that I have seen no Japs, dead or alive, nor have I heard any shots or bombs dropped 'for keeps.'"

Capt. Bob Zwebell (promoted in June) reports hearing from Don Graham who left the Second Air Force recently and is now in the JA Section of the ETOUSA Headquarters in the International Law Department. Apparently Graham has had some experience dodging "doodle bombs."

Capt. Zwebell has as his bosses Lt. Col. H. T. Fitch and Maj. Martin Mentor (7th Officer Cl.) at the XXI

Bomber Command. He says that a recent visit by Senator Tom Connally (Tex.) to see his son Maj. Ben Connally was the occasion of a party by the JA group, including Lt. Col. William J. Wilkins, Lt. Col. Fitch, Capt James Rood (12th Officer Cl.), Capt. Sidney Wickenhaver (14th Officer Cl.), Capt. Frederick Francis (16th Officer Cl.), Capt. Herbert H. Davis (10th Officer Cl.) and Lt. Dorsey Hardeman (1st OC). The latter, former mayor of San Angelo, Tex., "favored us with a brief (40 minutes) talk on the merits of Senator Connally and the Republic of Texas."

3RD OFFICER CANDIDATE CLASS

Lt. John M. Wall, writes from Hawaii that he is getting amphibious training and also jungle training so that "we are not sure whether we are seamen's classmates or monkeys. I have spoken for an assignment on the first boat in the first wave of the assault on San Francisco." He finds that Hawaii is pleasant.

Lt. Col. Joseph J. Cariotto (1st Officer Cl.) is Staff JA of the division to which Lt. Wall has been assigned and 1st Lt. Lewis R. Ricketts of the Staff and Faculty was assistant Staff JA of the same division prior to coming to school.

1st Lt. Richard A. Funk is now assistant Staff JA with an infantry division in Italy. He advises anyone assigned to a combat unit in that theatre to leave behind suntans, pinks, greens, and all other "service command regalia." Sufficient will be two sets of ODs, leggins or combat boots, helmet and carbine, shovel and "all the soap you can carry." According to Lt. Funk suntans can be worn in some rest camps, but that is purely hearsay to him.

He has met a JAGD officer who previously served with Capt. John Finger of the Staff and Faculty when they were enlisted men at the Presidio, Calif. in the office of Col. Joel F. Watson, Staff JA of the Western Defense Command. His name is Lindsey and "was sporting three bronze stars, the purple heart and a combat infantryman's badge. All that with the insignia of the JAGD. I asked him what went on and was advised that he had been recently transferred from the line. To say he was elated about the transfer would be a gross understatement."

Capt. Finger recalls that Lt. Lindsey applied unsuccessfully for a commission in the JAGD, and later went through OCS at Benning. Recently San Francisco newspapers carried accounts of the heroic conduct of Lt. Lindsey in battle.

Upon the basis of his experience in the field Lt. Funk observes that Military Justice takes most of his time, "Legal Assistance second, Claims and L.D. determinations third, and Military Affairs never. I have always been the TJA of the General Court since my assignment and occasionally I am permitted to defend someone in another unit. Therefore I never write reviews, which are pretty much stream-lined over here anyway because of the number and the limited time available."

1st Lt. George J. Bailey is Camp JA at Camp Plauche, La. a Transportation Corps center, where he performs the dual function of Camp JA and assistant Port JA (New Orleans Port). As to his work he says: "A very substantial part of my work has consisted of giving advice on a great variety of legal questions which have covered everything in and out of the books. I am happy to state though, that I found myself well prepared to fill my job by the course at the school. Most of my work is with military justice and military affairs, and the

textbooks and related matter which were issued to me at school have been invaluable to me here."

Lt. Bailey says that he has been through the infiltration course "with all the decorations, including land mines."

1st Lt. Richard O. Jones is assistant staff JA of an Inf. Div. Camp Shelby, Miss. where he has been assigned since graduation.

He writes: "The instruction which I received at the school has stood me in good stead in all of the problems which I have encountered here. Our work is quite varied, dealing of course primarily with military justice, but involving considerable work in the fields of reclassification of officers, line of duty matters, and other subjects covered in the course in military affairs."

Capt. Richard D. Kearney is on duty in the JAGO.

Lt. H. Byron Mock reports that he has made an ocean crossing and now is located at Headquarters, Adriatic Depot, which corresponds roughly to a division as to problems. Even with "the thorough cramming of the goose during school days" he finds it difficult "to handle the work from my head—a library is unknown to me since arriving here."

He describes his job as "that of a staff judge advocate and since I am the staff I have the pleasure of getting my nose into every type of problem a JA must face. It is a fine setup and coupled with the peaceful Italian nights and blue sea nearby I sometimes wonder what part of the United States I am in!"

4TH OFFICER CANDIDATE CLASS

Lt. Philip B. Matthews is at a replacement pool in New Guinea, "pretty well inland, but hotter than Hades, and I am sure a very less desirable place." He takes issue with a description of New Guinea by Lt. Herbert L. Hart (1st OC) recently printed in these columns, remarking that while Hart's shore may be some improvement over his own inland site, "it is not a paradise."

Lt. Matthews' quarters are tents and foot lockers. He sleeps on a cot encased with a mosquito bar, and eats out of his mess kit in a broiling line. "Every time you go to eat you get up a terrific sweat and try to down some impalatable food. It rains every night which is a help, and by rain, my boy, I mean rain." The island is under Australian control, and Australian currency and traffic regulations are in vogue. For relaxation Lt. Matthews has discovered a "beautiful palm-studded beach."

Lt. Jean deBertolet writes that he is now assigned to the Eastern Signal Corps Training Center, Fort Monmouth, N.J. He says: "I've got an air conditioned office all equipped with a pretty and efficient stenographer, and two fine enlisted assistants, both lawyers. The work is varied and never dull."

Lt. Thomas A. Wheat, is Camp JA, at Fort Clark, Texas. Prior to that assignment he was assigned to JAGRP, Headquarters, Eighth Service Command, where he operated under the supervision of Maj. Ardell M. Young and 1st Lt. John M. Haley (1st OC).

1st Lt. Paul S. Daspit is assistant staff JA with an Infantry Division.

1st Lt. John E. Buehler was recently transferred from JAGRP, Headquarters, Seventh Service Command, Omaha, Neb. to the Office of the Staff JA there.

At Fort Dupont, Del., Lt. Peter Flanagan writes:

"I have gone through the POM orientation but there have no chance of going overseas as I am a man without an outfit. Have had a thorough course in maps.

I have been fortunate enough to go out in the field, yes, tent, typewriter, bed roll, etc., and work on the problem, which incidentally was over the terrain of Louisiana and Texas.

Lt. Flanagan finds himself up to his neck with court-martial work, having eight GCM courts going full blast at as many different camps; and passing daily on 40 to 60 SCMs records and as many summary court records. In addition, miscellaneous matters pertaining to personnel of the command detained in the hands of the civilian authorities, naturalization proceedings, wills, powers of attorney also come to his desk.

Lt. Valentine J. Sacco is now assigned to the office of the Staff JA, Second Service Command, Governors Island N.Y.

He says: "I have had line of duty cases to review and they are intensely interesting and diversified. Many and diverse are the ways that EMs—and officers—find to get injured or killed. Usually it's line of duty unless gross negligence is present. I have also reviewed summary and special court-martial records and have sent out the usual 'skin' letters. On GCM cases I have drawn up letters of advice for the C.G. and have written some reviews. In addition I have done some claims work, but find that field less interesting."

"Bob Schermerhorn is overseas somewhere. Bill Wolff is assistant JA with an Inf. Div., Camp Swift, Tex."

From Brazil comes the following note dated 13 May. "Two months ago today Lieutenants Francis C. Quilty, George E. Carmody, Willard L. Phillips, Clifford W. Peickert and Seely P. Forbes graduated from the JAGS as members of the 4th OC Class, and on the same date Lt. Richard R. Hanna completed his course with the 14th Officer Class. Last evening all of those named sat down with other officers for dinner at an officers club somewhere in Brazil, as the guest of a Major Scott, and Maj. John C. McCall, (5th Officer Cl.). Delicious refreshments, including native Brazilian cheese were served. Those of us who had been at Ann Arbor could not help but remember the prevalent view that no one would go overseas for four months after graduation.

Censorship prevents our mentioning the countries we have already visited. Perhaps we did not contribute sufficiently to Col. Miller's various charities and funds, but we are all well and anticipate many interesting experiences in many places more distant."

Flash! A more recent letter from Lt. Quilty informs us that the travelers have reached India."

In the two and one half months since he has finished school as a member of the 4th OC Class, 1st Lt. Clifford W. Peickert has traveled over 15,000 miles and he has seen Brazil, Africa and most of India. Assigned as a traveling TJA, he expects to travel another 2500 miles by air before returning to his headquarters early in July. In two weeks he will try four general courts-martial, all involving officers under AW 95.

All is not attendance to paper work where he is stationed in the jungle. He says, "Yesterday I hit the bottom of a slit trench as the Nips came over, and I sure dropped my books and grabbed something more useful when the alert sounded."

Lt. Peickert says the heat is terrific and the place is unhealthy but that he is enjoying the experience a lot as he finds his work interesting. He tells of one night when he and Lt. George Carmody (4th OC Cl.) were sitting in a tent, "dead tired, dirty, and putting powder

on our itches, and I said, 'George, it could be worse, though.' He was sweating and disgusted and looked up and said: 'You mean, yeah, we could be sick already.'

Available stationery and other weapons of a JA are below the minimum in the jungle bases. Lt. Peickert says that he hasn't even got a tablet. "We get loose paper and staple them together. I can't find 10 pencils for the court to use in the case I am to try Thursday. I'm not complaining, but when you get near the end of the line, it's different than what the book says."

5TH OC

2nd Lt. Paul F. Wanless writes from Omaha, Neb., where he is assigned to the JAGRP, Office of the Staff JA, Seventh Service Command, that a weekly JAG dinner for all officers of the department on duty in Omaha including the office of the Staff JA, office of the division engineer and Air Corps is held Thursday evenings at the Hill Hotel. With guests, usually 20 officers are present at the gathering which has been dubbed "The Knitting and Tatting Club."

1st Lt. Louis M. Fribourg (4th OC) and 2nd Lt. William C. Green are assigned to the office of the Division Engineer, Omaha.

2nd Lt. Tyrus R. Williams is now assigned to the office of the Division Engineer, Denver, Colo.

1st Lt. Samuel W. Block writes from Headquarters, AAF Materiel Command, Wright Field, O., that his classmates Eno, Ansnes, and Jenkins, "all sporting silver bars, turned up at Wright Field." Lt. Eno is assigned to the Patent and Royalties Office, and Lts. Ansnes and Jenkins are in the Contract Law Branch, where also is Lt. Frank Simpson (4th OC). Lt. Block observes that "Wright Field is rapidly becoming a suburb of Ann Arbor," and that "it is a real tribute to the school to hear it spoken of by all with real affection."

1st Lt. John P. Stafford, Jr. writes that he is assigned to the Military Justice Division of the JAGO. With him are Lt. Arthur W. Sinclair and Lt. Hugh D. Rodgers of his class as well as Capt. James F. Dreher and 2nd Lt. Harold V. Hughston, both of the 16th Officer Class.

Lt. John P. Lomenzo is now assigned to the office of the Pittsburgh Ordnance District, Pittsburgh, Pa.

1st Lt. Lawrence M. Kearns is assigned to Industrial Personnel Division, Headquarters, ASF, Washington, D. C. When last heard from he was in Springfield, Ill., as an assistant labor relations officer at the Hummer Manufacturing Company, recently taken over by the Army.

He says that he is working with several officers who are graduates of the school: Major John J. Farrell (12th Officer Cl.), Maj. George W. Tackabury (6th Officer Cl.) and a Maj. Shannon (presumably George I. of the 10th Officer Cl.).

1st Lt. Robert A. Hovis writes that he lost no time in having a change of address as did six of the nine members of the class assigned to the Engineers. He is now assigned to the Contracts and Claims Board, Office of the Chief of Engineers, Washington, D. C.

2nd Lt. Ben A. Engel writes from the U. S. Engineer Office, Fort Norfolk, Va., that he is assigned to the post formerly held by 1st Lt. Harry Pasternak, recently assigned to the Staff and Faculty. Lt. Robert A. Hovis, who was originally slated to replace Lt. Pasternak, remained in the JAGO for the time being.

Lt. Engel says: "All the fellows' assignments were changed and consequently we have landed practically

all over the country; Louis Leftwich in Los Angeles, George C. Butler in Seattle, William C. Green and T. Williams in Omaha, and Frank Williams was sent to Boston."

1st Lt. Robert J. Harding is making use of Capt. Farr's gems in the JA office of the Sixth Service Command, Chicago, Ill.

1st Lt. Ralph J. McCarthy, now at Camp Haan, Calif., where he served as an enlisted man, is getting set for overseas duty, he hopes. Infiltration course, firing the pistol, carbine and tommy-gun, going through a gas chamber, have been keeping him pretty busy. He writes that Lt. Walden Stout is at Fort Douglas, Utah.

Lt. Gordon B. Gray is assigned to the Cincinnati Ordnance District, Cincinnati, O.

6TH OC

1st Lt. Fred O. Burkhalter is assigned to the Office of the Air Judge Advocate, the Pentagon.

1st Lt. P. W. Johnson is now in the JAGRP, Ninth Service Command.

2nd Lt. Charles J. Winger is in the Office of the Chief of Engineers, Washington, D. C.

Lt. Albert S. Gerstein is assigned to the Claims Division, JAGO, and 1st Lt. Matthew E. Marsh, to AAF, Pacific Division, ATC. Station No. 11, Hamilton Field, Calif.

1st Lt. L. E. Beckmire is in the Contract Appeal Branch, JAGO.

2nd Lt. George V. Parkhurst is assigned to Special Services Division, ASF, at 25 W. 43rd St., New York, N. Y.

1st Lt. Robert G. Phelps may be reached at Hq. First Service Command, Boston, Mass.

1st Lt. Edward F. Huber is assigned to Litigation Division, JAGO.

1st Lt. Walter E. Hooper, Jr. has been assigned to JAGRP, Hq. 13th Airborne Division, Camp Mackall, N. C. Other assignments are: 2nd Lt. Robert W. Bascom to the Armored Command, Fort Knox, Ky.; 1st Lt. James O. Wrightson to the Office of the Air Judge Advocate; and 1st Lt. Willard K. Yost, Jr. to JAGRP, Hq. 2nd Army, Memphis, Tenn.

2nd Lt. A. Chalmers Mole writes from San Francisco (Calif.) Port of Embarkation, that the "6th OC in force, namely Lts. Morony, Marold, Murphy, Gamble and myself all dropped in on the Port Judge Advocate, Col. Zeigler, on 24 July, the first two being advised to don silver bars, the next two being assigned for duty at Camp Stoneman which rates it a normal month when there are slightly over three hundred (300) courts-martial, and I am on "Lend-Lease" to the Port Marine Casualty Investigation Branch, a mighty interesting assignment."

Lt. Gordon W. Rice reports that he is assigned to 1st Headquarters, Special Troops, III Corps, Fort Ord, Calif., where his duties are "quite varied. I am on 30 days temporary duty down at Camp Cooke, Calif., with the 11th Armored Division at present. Lt. Col. Palmer McGrew (2nd Officer Cl.) is the Staff JA. I'm reviewing GCM records with both hands with an occasional claims matter to check over."

1st Lt. Murray Steyer has been transferred from Governors Island (New York Port of Embarkation) to Watervliet Arsenal Watervliet, N. Y., and 2nd Lt. John M. Whelan from Governors Island to Springfield Armory, Springfield, Mass.

MILITARY LAW

(Continued from Page 10)

trials is remarkably small. Trials, except in those rare cases when military necessity and national security require secrecy, are openly conducted and the finding and sentences are announced in open court. Cruel and unusual punishments are prohibited. Prisoners are treated humanely and given every possible opportunity to rehabilitate themselves and earn honorable restoration to the service.

With twenty-five years' experience as a judge advocate, I may be presumed from experience to possess some special knowledge of court-martial procedure. During those twenty-five years, I have never participated in a secret trial or a trial in which there was a sealed verdict. I am able to state with authority that every such trial for the last twenty-five years was conducted behind closed doors in secret session either on account of military necessity or because the evidence was too scandalous for publication. The same is true of secret sealed verdicts, except in those cases where the sentence is kept secret for the protection or benefit of the accused himself. I have never known of a packed court. I have never known of a case in which it was established that the Reviewing Authority attempted to coerce the court in finding an accused guilty against its own convictions or imposing a sentence which it did not believe justice and/or military necessity warranted. The greater portion of my time during these twenty-five years has been devoted to the prevention of unnecessary trials and to seeing that individuals accused of crime have a fair and impartial trial. Never have judge advocates considered themselves mere prosecutors. I am now one of several hundred engaged in the same endeavor. When this war is over, I am confident that the administration of military justice in the Army will be vindicated by the judgment of the millions of men who will have served in it and by all others who are familiar with the system. In any event, I know that whatever else is said, it must be conceded that we have tried, and if there is any just criticism it will be that we have been too lenient and not too severe.

In spite of these circumstances the system which I have described above inevitably meets with criticism either by those who do not understand it, or by those who have been justly punished by it. Already such criticism has begun to appear, with the usual unfamiliarity of its authors with their subject as well as with the facts of the specific cases discussed as illustrations.

I say to you today, with all the seriousness of which I am capable, that the system in its present integrity is necessary and indispensable for the maintenance of discipline in the Army. The American Army is for the most part a self-disciplined army, where leadership takes the place of punishment. But in every army there are men who cannot be led. Leadership must be accompanied and supported by power of prompt, sure and adequate punishment. Officers responsible for discipline must have authority commensurate with their responsibility. The substitution of civil courts or civil procedure for the existing court-martial procedure under the Articles of War, would be fatal to discipline. Court-martial procedure has kept pace with the progress of civil courts. It is now modern, humane and adapted to a democratic American Army, and, although like any other system, it is capable of improvement, in principle it is sound and should, if we are to continue to have well-trained, disciplined armies, capable of winning victories wherever we are forced to fight, then this system must be preserved in all its integral parts.

Members of the Bar have played a great part in the framing of our Constitution and they have continued to play a major role in the enactment and enforcement of the system of laws under which we live. They have been supporters of the good and critical of the bad. It is, therefore, a privilege to meet with you today in an effort to acquaint you with the fundamental principles of court-martial procedure and to incite in you a greater interest in it, because I am convinced that if you really know and understand it, finding it good, you will constitute yourselves its champions.

THE *Branch* OFFICES

India Reports

By CAPTAIN THOMAS G. JONES, JAGD

In response to a request of Lieutenant General Joseph Stilwell, the Judge Advocate General's Branch Office, including a Board of Review, was established for China, Burma, India under the authority of AW 50½, by direction of the President, in his letter to the Secretary of War, dated 19 June 1942. The Judge Advocate General, pursuant to the instructions of the Secretary of War, activated the office 27 October 1942.

All except one of the original personnel were in the United States when the office was activated and began

operation on 27 October 1942 in Washington, D. C. Colonel Robert W. Brown was assigned as Assistant Judge Advocate General, in charge of the office. He reported in Washington for such duty on Friday, 13 November 1942 and, with the personnel of the newly organized office, departed from Washington, D. C., for India on 10 December 1942. The group arrived in India on 23 December 1942, and the office was opened at New Delhi on 27 December 1942 at Headquarters USAF in CBI.

Personnel

The Judge Advocate General assigned the following commissioned personnel to the Branch Office, all of whom were present upon the opening of the office at New Delhi on 27 December 1942:

Assistant Judge Advocate General:

Colonel Robert W. Brown, JAGD.

Executive Officer and Chief, Military Justice Division:

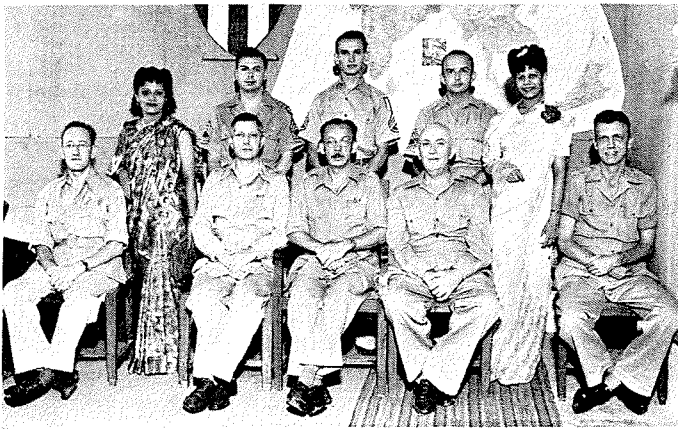
Major Grenville Beardsley, JAGD.

Board of Review:

Colonel Thomas N. Tappy, JAGD.

Major Arthur I. Burgess, JAGD.

Major Claire W. Hardy, JAGD.



PERSONNEL ON DUTY WITH BRANCH OFFICE
JUDGE ADOCAE GENERAL CBI

Seated, left to right: Capt. Thomas G. Jones, Lt. Col. Grenville Beardsley, Colonel H. J. Seman, Major Itimous T. Valentine, Capt. Robert C. Van Ness; standing, left to right: Mrs. Ann Tanken, M/Sgt. James J. Farlow, Tech. 3rd Kenneth F. Ruhnke, Tech/Sgt. James A. Blalock and Miss Dee Atkinson.

On 26 December 1943 Col. Robert W. Brown was relieved by the War Department from duty with the office and assigned to duty in Washington, D. C., as Assistant Commandant, Army Industrial College, and Col. H. J. Seman became Acting Assistant Judge Advocate General.

Col. Seman has continued to head the office throughout the first quarter of 1944, with Captain Jones as his Executive. Captain Jones has served during this period as Chief, Military Justice Division, in addition to his other duties, and Captain Van Ness has served in that division since reporting for duty in the office, with one assignment (5 January to 15 January 1944) as temporary member of the Board of Review. Master Sergeant James J. Farlow, Technical Sergeant Matthew M. Brown, T/3 James A. Blalock and T/4 Kenneth F. Ruhnke have been on duty in the Executive and Military Justice Division of the office continuously since their arrival processing GCM records. Major Beardsley was promoted to Lt. Colonel in December 1943, 1st Lt. Kirkwood to Captain in January 1944, and 1st Lt. Van Ness to Captain in March 1944.

Since 15 January 1944 the Board of Review has con-

sisted of Lt. Col. Grenville Beardsley, Chairman, Major Itimous T. Valentine, and Captain Joseph A. Kirkwood.

Projects in Operation

This office was (letter of the President, 19 June 1942): ". . . empowered to perform for the United States Army Forces in China, India and Burma . . . and for such other . . . Forces in foreign countries as you (i.e. Secretary of War) may . . . specify . . . the duties which The Judge Advocate General and the Board or Boards of Review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or confirmation by the President." So far, the activities of this office have been confined to cases arising in CBI Theater.

Review of General Court-Martial Cases

Upon the opening of this office, there were only three general court-martial jurisdictions in the CBI Theater, which number has now increased to eight.

The first case processed by this office (CBI No. 1) was received on 30 December 1942; and by 31 December 1943 a total of 63 GCM cases had been received. Of these first 63 cases, 9 were matters requiring opinions by the Board of Review, while the remainder (54) were disposed of by the Military Justice Division of the office. Advance opinions were rendered in connection with four of the latter cases and in one Board of Review case.

During the first four months of 1944 (January-April) a total of 56 cases were processed, 10 of these cases requiring opinions by the Board of Review and the other 46 being disposed of by the Military Justice Division.

JAGBO Publications

Issuance of mimeographed publications for information and guidance of staff judge advocates and other officers handling legal matters was begun with Military Justice Memorandum No. 1 on 14 January 1944; and by the end of April a total of ten memoranda, dealing with errors discovered in review of GCM records, had been issued.

Concurrently, beginning with Military Justice Circular No. 1 on 9 February 1944, monthly publication of notes on other matters relating to Military Justice was instituted, four such circulars having been issued by the end of April. Circular No. 1 presented time graphs with appropriate charts and diagrams illustrating the delay in trial and disposition of GCM cases in CBI. Circular No. 2 was an indexed list of 1942-1943 War Department circulars and bulletins that dealt with Military Justice matters. Circular No. 3, covering appropriate and inappropriate court-martial sentences for officers, discussed the effect of suspension from rank, duty or command. Circular No. 4 dealt with the distinction between joint and common offenses, and the proper allegation and trial of such cases.

At this time there are in process of publication a series of guides and primers for use in preparation and trial of all GCM cases. One guide is a memorandum on

general court-martial trials; another defines the duties of the trial judge advocate and defense counsel; and a third covers the preparation, forwarding, investigation and disposition of charges for trial by general court-martial. A digest of JAGBO opinions in the first 100 cases disposed of by the office has also been prepared and will be published in a matter of days; and a circular with charts and graphs indicating the discrepancy in sentences adjudged for identical or similar offenses in the first 100 cases in CBI has likewise been completed and will soon be ready for distribution.



Left to right: Capt. Robert C. Van Ness, Corpus Christi, Texas, Examiner, Military Justice; Capt. Joseph A. Kirkwood, St. Louis, Missouri, Member, Board of Review; Major Timous T. Valentine, Nashville, North Carolina, Member, Board of Review; Col. H. J. Seman, Philadelphia, Pennsylvania, Acting Asst. Judge Adv. Gen.; Lt. Col. Grenville Beardsley, Chicago, Illinois, Chairman, Board of Review; Capt. Thomas G. Jones, Detroit, Michigan, Executive.

LEGAL ASSISTANCE PROJECTS

Under AW.501½, the jurisdiction of the office is limited to the review of convictions by general courts-martial. From time to time, however, officers other than those assigned to the Board of Review (who are forbidden by the War Department to perform conflicting duties outside the office) have been made available for duty with various organizations that requested their services in emergent situations.

Members of the office have been asked for, and have given informal and unofficial advice and assistance to staff judge advocates and other officers in a great variety of situations involving matters ranging from contested paternity to the operation of railroads, and from the procedure necessary to procure a birth certificate to requisites for a valid will. In these cases, members of the JAGBO have merely acted in the capacity of consultants, since the duties of the office relates strictly to Military justice.

DEVELOPMENTS ANTICIPATED IN 1944

The business of the office continues steadily to increase, week by week and month by month; and indications now are that the volume of business in 1944 will

be at least four times that of the year 1943, with the possibility of an even larger increase.

Salaam Sahibs:

This Branch Office of the The Judge Advocate General established in India with the USAF in CBI is not the biggest but it is the hottest. Today it's only 120°. We won't go further and use that old chestnut that there is no shade, because there is shade and plenty of it at 110° or 112°.

Tri-bladed overhead fans are whirling 24 hours a day. Coolies wet down the khus-khus periodically. A khus-khus is a woven bamboo mat placed over open windows and arches to keep out the stifling heat. Everyone wears a "Frank Buck" sun helmet. Some wear bush shirts . . . these are pajama-coat 4 pocket affairs which are supposed to be cool. Sleeves are rolled; ties were discarded weeks ago. Everyone sleeps under a mosquito net. This is an ingenious device which keeps out mosquitoes and air.

Besides heat, India is also famous for people. There are 389 million of them in an area slightly over ½ the size of the United States. Famous among Americans is "Delhi-belly." It is an exquisite type of dysentery. (Toilet paper is 75c a roll.)

90% of Indians are farmers. They generally make about \$50 a year. There are 100 different languages spoken. Only 24 are important. On Indian bills the word "rupee" is written in Hindustani, Tamil, Urdu, Bengali, Burmese, Telegu, Kanarese and Gijerati.

In religion, 65% follow the Hindu faith, 26% are followers of Mohammed, the other 45,000,000 belong to miscellaneous faiths and cults.

Wandering about India's streets, highways and fields are 200 million cows and bullocks—approximately one for every 2 persons in this land.

Most women wear a small jewel as an ornament in the side of their nose. Some wear ankle bracelets and rings on their toes. Married women wear a red spot in the center of the forehead.

A rupee is worth about 30c. The common type is a paper bill, cigar-coupon size. There are 16 annas in a rupee. There is also a coin worth ½ cent called a pice, and one worth ¼ cent called a pie.

Haircuts cost from 12c to 16c, a shave is worth 6c. Never tell a barber you will take a massage. He rubs his knuckles into your pate for about 10 minutes and then after lulling you into a sense of security he suddenly gives a bone-cracking twist to your head. That ends the massage. It also causes a temporary cessation of ability to see straight.

The dhobie (laundryman) washes your clothes and mashes all buttons to bits for \$2.50 per month exclusive of the cost of new buttons.

WASHINGTON *News AND Views*

General Cramer at American Bar Association Meeting

Major General Myron C. Cramer, The Judge Advocate General, addressed the 67th Annual Meeting of the American Bar Association at Chicago on 14 September. Other speakers included Rear Admiral Thomas H. Gatch, The Judge Advocate General of the Navy.

The sessions of the convention were presided over by Honorable Joseph W. Henderson, President of the Association. General Cramer's address covered the various functions of the Office of The Judge Advocate General, including civil phases of its work as well as military justice.

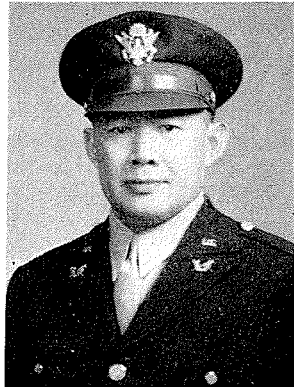
Our Executive Secretary, Milton I. Baldinger, reports that he met many JAGs at one or more of the sessions—some were on leave while others were passing through Chicago en route East or West.

Colonel Erana Made Judge Advocate General of Philippine Army

Mariano A. Erana has been commissioned a Colonel and Judge Advocate General of the Philippine Army by President Sergio Osmena of the Philippines. He was also placed in charge of the Department of Justice, Labor, and Welfare and is to serve as a member of the War Cabinet of President Osmena.

Colonel Erana was relieved from duty as a Lieutenant Colonel, Judge Advocate General's Department, Army of the United States in order to accept the appointment. A native of the Philippines, Colonel Erana received the LL.B. and LL.M. degrees from the National University, Washington, D. C. in 1919 and the degrees of Master of Patent Law and Bachelor of Science in Economics from the University of Pennsylvania in 1924.

Prior to entry on extended active duty as a Major in the Judge Advocate General's Department of the U. S. Army on 8 September 1942, he had served as Legal Consultant to the Board of Veterans Appeals, Chairman of the Adjudication Section, and Chairman of the Claims and Rating Board of the Veterans Administration. Colonel Erana is a graduate of The Judge Advocate General's School and the School of Military Government at Charlottesville, Virginia. He was on duty in the Office of The Judge Advocate General, U. S. Army from 22 November 1942 to 9 June 1944.



Lt. Wayne Williams Wins American Bar Association Essay Contest

The annual essay contest conducted by the American Bar Association pursuant to the provisions of the will of the late United States Circuit Judge Erskine M. Ross of

California, was resolved last month and 1st Lieut. Wayne DeA. Williams, JAGD was awarded the prize of \$3000.00. Lieut. Williams has been on duty in the U. S. Engineer's Office, Missouri River District, Omaha, Nebraska and is now ordered to Washington. The subject of the essays this year was, "What Instrumentality for the Administration of International Justice Will most Effectively Promote the Establishment and Maintenance of International Law and Order?"

Lieut. Williams was born in Denver, Colorado and received his A. B. degree from the University of Denver in 1935, where he majored in Political Science and Economics. He received the degree of LL. B. from Columbia University Law School in 1938 and was engaged in the practice of law in Denver from 1939 until his entry into the Army as a private in September, 1943. His prize-winning paper was written while he was an enlisted man. He attended The Judge Advocate General Officer Candidate School at Ann Arbor, Michigan and was commissioned a second lieutenant on 10 July 1944. He was promoted to first lieutenant on 19 July 1944.

Another officer of The Judge Advocate General's Department to win the Ross contest is Major Willard B. Cowles, who, as a civilian, wrote the winning essay in 1941. Major Cowles, lately on duty in the War Plans Division of the Office of The Judge Advocate General, is now stationed in the European Theater of Operations.

Colonel Charles P. Burnett, Jr. Missing In Pacific Area

Next of kin of Colonel Charles P. Burnett, JAGD have received notice from the War Department that he has been missing in the Pacific Area since 26 July 1944.

A native of Seattle, Washington, Colonel Burnett received his LL. B. degree from the University of Washington in 1927 and was engaged in the practice of law in Seattle from 1927 to 1941. He was commissioned a captain in the Judge Advocate General's Department, Reserve, on 14 March 1933 and was called to active duty on 29 May 1941, reporting for duty in the Office of The Judge Advocate General where he was assigned to the Military Affairs Division. He later became Chief of the Officers Branch of that division and in August, 1943, was assigned to the Office of the Chief of Staff and detailed in the General Staff Corps.

Colonel Archibald King Addresses Bar Meeting at Mexico City

"International Law—a Living Force" was the subject of a paper read in Spanish by Colonel Archibald King, JAGD, before the annual meeting of the Inter-American Bar Association at Mexico City last month. Colonel King, Chief of the War Plans Division, Office of The Judge Advocate General, was an official delegate of the American Bar Association to the Mexico City convention.

"It has often been said during the present war, and sometimes even by lawyers, that there is no longer any such thing as international law, that it has ceased to exist. It is true that it has been violated, frequently and seriously violated by our enemies," Colonel King pointed out. He went on to say, however, that our municipal

law and that of other nations, is often violated, yet international law, like domestic law, does not cease to exist merely because it has been breached and that even in the midst of the greatest war in history, it is a living force.

JAGD Officers Contribute to Legal Periodicals

Among articles written by officers of The Judge Advocate General's Department coming to the attention of the Journal are, "Trials of War Criminals by Military Tribunals" by Major Willard B. Cowles, appearing in the June, 1944 issue of the American Bar Association Journal; "Contracting with the United States—Fundamental Principles," by Colonel J. Alton Hosch, Chief of the Contracts Division, Office of The Judge Advocate General and former Dean of the Law School, University of Georgia, appearing in the May issue of the Georgia Bar Journal; "Hearsay in Military Law" by Colonel William M. Connor, U.S.A., Retired, in the Virginia Law Review of June, 1944; and "Experiences of a War-Time Staff Judge Advocate in the Field" by Lt. Colonel Heber H. Rice, JAGD-Reserve, in the June, 1944 issue of the Journal of the Bar Association of the District of Columbia.

160 Law Schools Represented in the Department

A recent compilation by Major Randolph Karr, Classification officer, Office of The Judge Advocate General, reveals that the officers of the Department received their legal training from 160 law schools.

The survey shows that only twenty-three officers of the department studied in law offices rather than law schools. All those attending law schools received law degrees except 82.

JAGD Observes 169th Birthday 29 July

The anniversary of the founding of the Judge Advocate General's Department of the Army by the Continental Congress on 29 July 1775 was observed by members of the corps stationed throughout the world. "Today, American Judge Advocates, all seasoned lawyers, thoroughly indoctrinated in the democratic principles for which we fight, are giving counsel to the commanders of our forces," Major General Myron C. Cramer commented. "We have made a careful selection of our officers. We have methodically trained them in military law and have assigned them to key places with confidence. That our trust has not been misplaced is almost daily affirmed by word reaching my office from the headquarters where they are on duty," General Cramer said.

Judge Advocates in and around Washington and their guests observed the event with a buffet supper and dance at the Woodmont Country Club. Ladies of the corps raffled home-baked cakes and the proceeds, amounting to \$110, went to the Red Cross.

General Officer Promotions in JAGD

The War Department announced on 21 June the temporary promotion of Brigadier General Archer L. Lerch, The Provost Marshal General, to the rank of Major General and the temporary promotion of Colonel James E. Morrisette, Assistant Judge Advocate General to the rank of Brigadier General.

General Lerch, a native of Nebraska, received his B.A. degree from the University of California and his LL.B. degree from the George Washington University Law School. He became a Regular Army officer in 1917 and advanced through the grades to Major of Infantry and transferred to the Judge Advocate General's Department in 1938. He served as Executive of the Office of The Judge Advocate General from July, 1939 to July 1941 when he became Deputy Provost Marshal General. He succeeded Major General Allen W. Gullion as The Provost Marshal General on 21 June.

General Morrisette was born in Alabama and received B.A. and LL.B. degrees from the University of Alabama, where he was later professor of law. He served as a Judge Advocate during World War I and became a captain, JAGD, Regular Army in 1920. He received the temporary grade of Colonel in 1941 and became Assistant Judge Advocate General in charge of military justice matters in October, 1943, with station in Washington, D. C. He recently received an important overseas assignment which has not been disclosed.

San Bernardino Army Air Field Bar Association Formed

Word reaches Washington of the formation of what is probably the first Bar Association of its kind at San Bernardino Army Air Field, California, when 23 officers, all of whom were practicing attorneys prior to entry in the armed forces, banded together under the sponsorship of the Staff Judge Advocate of the San Bernardino Air Service Command, Lt. Colonel Jerry A. Harn, JAGD.

The association meets monthly to discuss current legal problems and to listen to addresses by prominent members of the bench and bar. Among the members of the group are, Lt. Robert E. Michalski, JAGD, of the Wisconsin Bar, Major David G. Taylor, JAGD, of the Virginia Bar, Lt. Howard M. Bumgardner, JAGD, of the Colorado Bar, and Lt. Colonel Harn, of the Illinois Bar.

Civilian and Military Personnel of Washington Office Enjoy Picnic Outing

Civilians and officers of The Judge Advocate General's Office and their guests, about 400 strong, boarded a Potomac River steamer Sunday morning, 20 August and spent the day at Marshall Hall picnic grounds, 22 miles below Washington. A day of fun and relaxation was carefully planned by the committee and soft-ball games, horseshoe pitching, novelty races, dramatic skits, a beauty contest, and the picnic lunch all added to the enjoyment of the occasion.

Honor Roll

LEGION OF MERIT

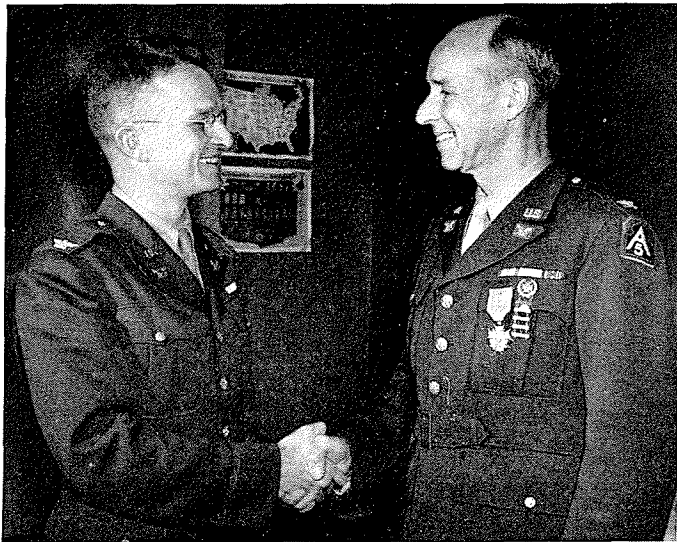
To: Justin W. Harding, Colonel, JAGD, 2341 Le-moyne Street, Los Angeles, California.

For: Exceptionally meritorious conduct in the performance of outstanding services from 15 May 1941 to 1 January 1944 in the Alaskan Department.

Colonel Harding was born in Franklin, Ohio, attended the U. S. Military Academy and Colorado School of Mines, and received the LL. B. degree from the University of Michigan in 1914. He was U. S. District Attorney in Alaska from 1926 to 1928 and U. S. Judge, First District of Alaska from 1928 to 1937. Prior to entering on extended active duty he was Assistant Attorney General of Ohio.

To: Claude B. Mickelwait, Colonel, JAGD, 4700 Cortland Road, Chevy Chase, D. C.

For: Exceptionally meritorious conduct in the performance of outstanding services from 9 January to 13 October 1943. As Judge Advocate, Fifth Army, he has displayed unusual professional skill, rare judgment and devotion to duty. In matters of military justice his faithful and untiring efforts in advising and imparting the views of the Army Commander respecting discipline and leadership to the many Fifth Army units situated in distant areas were reflected in the resulting superior degree of efficiency maintained. He coordinated the establishment of appropriate courts-martial in key geographical locations, and skillfully trained many court members, which resulted in the prompt and efficient disposition of military offenses. His reviews of general court-martial cases have been scholarly, sound, and



Col. J. M. Pitzer, left, of Nebraska City, Neb., Executive Officer, Judge Advocate Section, Hq. ETOUSA, presents the Legion of Merit to Col. Claude B. Mickelwait, right, of Chevy Chase, Md. The award was made by NATO and conferred somewhere in England.

judiciously accurate, displaying a keen insight and background of training in the field of law. His wealth of administrative ability and experience contributed invaluable to the smooth and efficient functioning of the

Fifth Army Staff. He anticipated many problems of occupation of the Fifth Army in Italy in respect to civil courts, law, and order, and phases of Allied Military Government delegated to the Commanding General, Fifth Army, thereby contributing outstandingly to the splendid results by the Fifth Army in the phases of the invasion. Entered Military service from San Francisco, California.

Colonel Mickelwait was born in Iowa and received the B.S. degree from the University of Idaho in 1916. A Regular Army officer, he was detailed in JAGD in 1930. He received his LL.B. degree from the University of California and is a graduate of the Army Industrial College. Prior to entering on overseas service, he was Chief of the Military Affairs Division, Office of The Judge Advocate General.

To: Edward J. Walsh, Colonel, JAGD, 3921 Harrison Street, N.W., Washington, D. C.

For: Service as Chief of the Legislative Branch, Legislative and Liaison Division, War Department, during the period June 25, 1942 to May 25, 1944. His duties were such as to require a high degree of individual responsibility, initiative and freedom of action in the performance of the functions of the Legislative and Liaison Division in controlling the application of War Department policies concerning legislation initiated by the War Department and legislation affecting the War Department which was initiated in the Congress; the presentation of War Department views and policies to the Congress, through legislative reports and through the appearance and testimony of War Department witnesses before Congressional Committees; and the formulation and operation of effective procedures within the War Department concerning legislative matters. By his skill, high professional attainments, technical knowledge and executive ability he has made important contributions toward securing legislation vital to the War Department in time of war. Because of his sound advice and counsel, the War Department was enabled to accomplish successfully the enactment of legislation to implement the present important and extensive program. His thorough knowledge of the technique of legislative procedures and energetic processing, his tact, loyalty and sense of duty were demonstrated in these accomplishments.

Colonel Walsh, a native of Washington, D. C., received the LL.B. degree from Georgetown University in 1914. A Regular Army officer, he was detailed in the JAGD in 1932. He is now on foreign duty.

To: George M. Welch, Colonel, JAGD, 348 E. 23 St., Brooklyn, N. Y.

For: Services from July 20, 1942, to May 10, 1944. As Staff Judge Advocate of Headquarters, U. S. Army Services of Supply, Southwest Pacific Area, and later of Headquarters, U. S. Army Forces in the Far East, he displayed unusual professional ability, discernment and sound judgment. His superior background in legal affairs, combined with sagacity and unfailing devotion to duty, enabled him to make an important contribution to the administration of military justice in the Southwest Pacific Area.

Colonel Welch received the B.A. degree from Cornell in 1903 and the LL.B. degree from New York Law School in 1905. Prior to entering on extended active duty he practiced law in New York.

SOLDIER'S MEDAL

To: *First Lieutenant (then Sergeant) Buster Cole, JAGD, 909 West 10th Street, Bonham, Texas.*

For: Heroism in aiding in saving the lives of many civilians, in evacuating the dead and wounded, and in maintaining calm and order aboard the ship on which he was a passenger when it was attacked by a German bomber on 16 June 1943.

Sergeant Cole was cool, calm, and unexcited during moments of great stress. He aided the crew in lowering the only seaworthy vessel, and when all believed the ship to be sinking, Sergeant Cole, with disregard for his own safety, assisted others in leaving, refusing to leave the ship until he was certain that all the injured had been cared for.

Upon landing Sergeant Cole's efforts aided the immediate transfer of the wounded to a hospital. The courage, presence of mind, and high degree of leadership displayed by Sergeant Cole, the only American passenger on a foreign vessel, not only reflects great credit upon himself and the military service but also upon the entire American nation.

Lieutenant Cole was graduated from Hardin-Simmons College in 1932 and was admitted to the Texas Bar in 1933.



General Cramer presents Soldiers Medal to Lt. Cole.

BRONZE STAR

To: *Vincent C. Allred, Major, JAGD, 934 Osage Street, Leavenworth, Kansas.*

For: Meritorious service at New Caledonia from 9 February 1943 to 1 December 1943. As Staff Judge Advocate, First Port of Embarkation and later of Service Command, APO 715, Major Allred contributed to the organization and development of that command as an astute counselor of sound judgment and high professional knowledge. His services were of inestimable value in instituting and correlating proper legal procedures and in meeting many delicate international situations arising from the operation of American troops on foreign soil. Ever alert to the needs and interests of United States Armed Forces, he tactfully established contracts and agreements with various civilian agencies. Throughout the period cited Major Allred has rendered invaluable service in the solution of complex problems incident to the organization and mission of that headquarters, reflecting great credit upon himself and on the military service. Major Allred entered military service from Leavenworth, Kansas.

Major Allred received the LL.B. degree from the University of Kansas in 1929 and engaged in the practice of law at Leavenworth, Kansas, prior to entry on extended active duty.

To: *Ernest M. Brannon, Colonel, JAGD, 3612 Ingot Place, N.W., Washington, D. C.*

For: Meritorious service in connection with military operations against the enemy as Judge Advocate of an Army in England from 20 October 1943 to 31 May 1944. Colonel Brannon by his sound judgment, professional skill, and able knowledge of legal matters rendered invaluable assistance in the solution of the many complex problems incident to First Army's activities in a foreign country, and contributed in an outstanding manner to the planning for the invasion of the European continent. Entered the United States Military Academy from Florida.

Prior to embarkation for overseas service in September, 1943, Colonel Brannon was Chief of the Contracts Division and Contracts Coordinator in the Office of The Judge Advocate General of the Army, in Washington. He is a graduate of the U. S. Military Academy and the Columbia University Law School.

To: *Jack L. Oliver, Captain JAGD (then Infantry), Cape Girardeau, Missouri.*

For: Meritorious service in connection with military operations against the enemy from 1 February to 8 February 1944. As adjutant of an infantry regiment, Captain Oliver landed early in the assault to establish the regimental command post. His outstanding initiative, sound judgment and devotion to duty resulted in the establishment of prompt and effective control and in the continued high order of efficiency in the Regimental Administrative Section during the remainder of the operation. During the prolonged absence of the Regimental Commanding Officer and the Regimental Executive Officer at the front lines, Captain Oliver shared with the Regimental Plans and Training Officer the responsibility of operating the command post. He handled this assignment in a superior manner and kept higher headquarters informed of the exact situation at all times. By his diligence and foresight, Captain Oliver

(Continued on Page 62)

OUR Mail Pouch

If you wish to write to a friend in the Judge Advocate General's Department and do not know the address of your friend then do not hesitate to address the mail to him in care of Milton I. Baldinger, Executive Secretary, The Judge Advocates Association, National University Law School, Washington 5, D. C., and it will be promptly forwarded to him.



Judge Advocates in Saipan—

Sirs:

I came out with the assault troops in the operations on Saipan and will remain here for some time, I suppose. It was a grand show and the conduct of the troops was according to the highest traditions of the Army, Navy, and Marine Corps.

JOHN McH. JONES,
Colonel, JAGD

North Africa—

Sirs:

After vicissitudes with which you are better acquainted than I, I finally set foot, bedding roll and duffel bag upon North Africa. So far as terrain and climate are concerned it is remarkably like California. Fogs roll in of a morning over cliffs and brown hills along the shore and moisten thriving crops of tomatoes, spinach, and beans, groves of olive trees and rich vineyards. Valleys are carpeted with grain, and hillsides are carefully terraced for orchards and gardens as they are in the Santa Clara Valley at home.

Wine is plentiful and powerful, very good, and costs about half as much as ours. I don't know whether food is cheap, but what goods there are of European or native manufacture are dear. Hemp, hides and wood, some silver, tin and brass seem to be the main materials used for shoes, wallets and pocketbooks, carved boxes, belts, trays, rings and bracelets made by the Arabs and sold for very fancy prices. These articles, a few colorful wool scarves and rugs, and perfumes distilled by the French from roses and other native flowers comprise the bulk of goods for sale in shops which usually display most of their meager stock in their windows; shelves are nearly bare. However the local economy has steadily improved since the arrival of the allied forces; people, camels, horses and dogs are fatter than they were two years ago, and the miniature donkeys are more independent and stubborn.

WILLIAM B. KUDER,
Major, JAGD

France—

Sirs:

Right now I am writing by the light of a kerosene lamp, which I am lucky to have, while seated on an Army cot within a tent somewhere in France. Col. Bauer and Col. Corridon are here, too, along with officers of the Office of the Chief of Claims.

GEORGE MacCLAIN,
Major, JAGD

Myitkyina—

Sirs:

Events as relating to the JA Section go forward in a fairly routine way with the usual assortment of humor, pathos and tragedy. Since the fall of Myitkyina we are no longer able to consider ourselves as within the class of front-line troops, and life is much the same as it is at Delhi except the scenery is much more attractive.

Speaking of Myitkyina the only thing exciting to occur of late is that I happened to be at Myitkyina the day it fell. I arrived the morning after organized resistance ceased, and by about 3:30 in the afternoon I had completed my work. I was very anxious to go through the town and Colonel Ascensio and Lt. Col Runsey were of the same mind. We took a jeep and started for the city.

In its normal existence, Myitkyina was a town of about 25,000 inhabitants. As we approached it we saw in the outskirts a piece of woodland. All of the leaves and small branches had been shot from the trees by machine gun and rifle fire. The trees were as naked as they would be at home in the winter time. We went on into the city and I think we traversed the whole town. We saw one house which seemed to be practically intact. The rest was a scene of complete devastation. Houses here principally indicate but a few upright timbers. Almost all the roofs are gone, most of the walls were down, no house had more than one complete wall, and the scenes of ruin were greater than had there been a fire which levelled everything to the ground.

All the streets were full of bomb and shell holes, and it was amazing to see our jeep laden with not only ourselves but all of the official photographers and soldiers who climbed on and off, up to a total of nine at times, going through and around these holes.

At one point the three of us were rolling down a street looking at some Chinese over in some tall grass. They started waving and yelling and making a tremendous noise. We stopped and they got the idea over to us that we had driven down to where there was a nest of snipers. I was the only one who was wearing a gun. We didn't see any snipers, and while we were debating what to do a Chinese about 100 yards back of us let off a tommy gun. We turned around and moseyed back. Colonel Ascensio said, "He never did see a jeep take so long to turn around!" At that time we thought it was nonsense, but I have been since informed the last of the snipers were killed several days later. We saw a number of dead Japanese, and were aware of others whom we could not see. I was interested in the complete detachment with which one views the body of a dead enemy.

It was quite amazing to have a Chinese soldier hop on to the hood of the jeep and start talking in perfect American. Apparently there are a good many Chinese-Americans in the Army, either in our service or the Chinese. They were laughing and yelling, and every time we met any of them they waved and yelled. "Ding How" (good stuff). I must say it was a big day for me, too!

CLAIRE W. HARDY
Lt. Col., JAGD

—*And New Guinea.*

Sirs:

The first night of our voyage was rather rough, so much so, that a number of the less robust succumbed to mal de mer. On the morning of the third day we were treated to a little excitement. It so happened that we came across a floating sea mine, one which, no doubt, had broken away from its moorings (its nativity being unknown). Our skipper, being one who favors making our world again safe for democracy and making sea lanes safe for ships, had our ship turned about for the purpose of destroying the mine.

Well, Sir, that was my first experience of being under fire in World War II. In fact, I saw to it that I *was* under fire. When the guns began pouring lead into that mine, I got underneath one of the turrets so that I could say I'd been under fire. I am of the opinion that my being under fire in that instance entitles me to a star in my ribbon. At any rate, we destroyed the mine.

After a 23-day voyage, we landed at a spot in New Guinea. And what a spot! The deepest and stickiest mud-hole in New Guinea, which, a few weeks previously, had been jungle. When we arrived at "our spot" I ran across "The Advocate" and saw 1st Lt. Herbert L. Hart's description of New Guinea wherein he mentions being in a "most beautiful spot." My first impression, gleaned from my own mud hole, was that there could be no "beautiful spot" in New Guinea. I set it down immediately that this man Hart was the biggest fabricator in the JAGD. However, I've been around a bit since my arrival and I find that Hart did hit one of the beauty spots of the Island. I called on Hart and saw there a second pentagon building—built out of twigs, saplings and brush of the jungle, but covered with good old canvas, made in the U. S. A. Concrete floors, sides of building all open, thereby providing as cool a workshop as one can find in the island. The officers' quarters are tents, with concrete floors and the inevitable cage of netting over each bed, ready to be tucked in under the mattress on all sides.

When I saw these nets demonstrated in the States I wasn't much impressed, but, O Boy! I welcome them as one of our most precious accessories. You know, Colonel,

it is demonstrated here that the female is more deadly than the male. These anopheles babies who bite one are all females. The males are more considerate and do not have biting ways.

I will now return to the mud-hole which was destined to be my home during my stay on the island. It is a new camp, and, when I arrived, there was mud everywhere. Our tents were set up in the mud, we stood or sat in the mud to eat our chow, and the nightly rains and the terrible humidity made the place seemingly uninhabitable. The officers at this Rep. Depot line up with the G.I.'s for chow and then sit in the mud to eat. No seats—no tables. The rankier officers were invited to sup with the staff officers of the Depot hence we fared a little better seated at tables.

Col. Smith, in command of the Depot, has done wonders during the past two weeks, pulling us out of the mud. Sand has been hauled in on our streets and everything is beginning to look toward a real comfortable camp. I believe they selected this spot as means of initiating new officers. My street (known as Angle-worm Alley) is now covered with sand, as is my tent floor.

This island is certainly cockeyed. It is now winter here, with the sun shining down from the North, and regardless of it being winter it is as hot as the place emphasized by our Methodist sky-pilots. It is the dry season, therefore, it rains a deluge every night.

Getting down to more personal items, this is strictly a masculine camp, with only a couple of Red Cross gals representing the gentler sex. An empty can with holes punched in the bottom, held over one's head, serves as our shower bath. I have supplemented this by what I have named by celestial shower. Have had a small platform built in front of my tent, extending out into Angle-worm Alley and when it pleases God to send a rain, one may see me venturing out to my shower.

But I'm glad to have had the opportunity of experiencing a life which I have heretofore thought could not be endured. I see wonderful opportunities on this island. The Army has cleared, leveled off and prepared for immediate cultivation literally thousands of acres of this fertile soil. It is a black, sandy loam, filled with humus and at a depth of five feet is water. It looks as though it will grow anything. What could be done with this part of the world is unpredictable.

These wild-eyed, woolly-haired natives are not the best society and hundreds of them have been employed by the Army. While they heretofore have been content wearing "G" strings, they have now gone modest and wrap a gunny sack, or any old rag, around their middles, thereby presenting the appearance of skirt-wearers.

WALKER F. HULL,
Major, JAGD

HONOR ROLL

(Continued from Page 60)

contributed materially to the regiment's success in the Kwajalein Operation.

Captain Oliver was born in Cape Girardeau, Missouri, received the A. B. degree from the University of Missouri and the LL.B. degree from the University of Virginia. He is a member of the Missouri Bar and, prior to entry in the military service, practiced law at Cape Girardeau.

LIST OF *Promotions*

IN THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

★ ★ ★

15 May to 15 August 1944

★ ★ ★

TO MAJOR GENERAL

Lerch, Archer L.

TO BRIGADIER GENERAL

Morrisette, James E.

TO COLONEL

Beck, William H., Jr.
Kidner, Herbert M.
Lipscomb, Abner E.
Hughes, William J., Jr.

TO LIEUTENANT COLONEL

Blackstock, Leo G.
Schram, Charles R.
Schweitzer, Harold W.
Smith, Joseph
Greenman, Frederick F.
Guimond, Joseph A.
Charles R. Mabee

TO MAJOR

Bradley, Stuart B.
McCampbell, Herbert H., Jr.
Woods, John F.
Jeffrey, Balfour S.
McReynolds, Robert L.
Farr, Warren F.
Zimmerman, Morris
Bailey, Frank E.
Banks, Thomas A.
Donnelly, Arthur J.
Evens, Joe L.
Graham, Nathan R.
Cangelosi, Theodore F.
McNeill, George H.
Yancey, Clarence L.
Feagin, John E.
Gosline, Robert B.
Susong, Alex E.
Wenig, Herbert E.
Gallagher, David R.
Long, Benjamin H.
Gottlieb, Ellis L.
Beach, Samuel F.
Huckabay, Jesse E.
Ball, Cable G.
Conner, Eli T., III
Kulp, Albert G.
Voorhis, Nicholas R.
Kilcoyne, John W.
Babbs, Charles F.
Clark, Leigh M.
Gibbons, Edward C.
Vinardi, Bernard E.
Wright, Raymond H.
McDonald, Douglas H.
Dickinson, John
Nailling, Myron T.

TO CAPTAIN

Haley, John H., Jr.
Connor, Henry G., III
Daly, Francis X.
Park, John E.
Richling, Theodore L.
Schreckengaust, Samuel A.
Walley, William G.
Lawson, Stanley K.
McCraney, Thomas O.

Radcliffe, William D.
Lawrence, Victor D.
Sonenfield, Samuel
Wesselink, Gerritt W.
Bialla, Rowley
Conner, Lycurgus J., Jr.
Edgar, Joseph H.
Garland, Abe J.
Johnston, James L.
McLendon, James A.
Smith, Everett E.
Boyles, Francis R.
Jordon, Scott
McElwee, William H.
Ivey, Charles M.
Miller, Reuben
Burstein, Benjamin
Cassels, Edwin H.
Daly, James J. A.
James, Charles M.
Aranow, Edward R.
Burns, George L.
Finch, Robert E.
Gaguine, Benito
Kearney, Richard D.
Segal, Irving R.
Angland, Stephen J.
Brodie, Abner I.
Herbert, Josiah T.
Francis, Marion S.
Pasley, Robert S.
Sullivan, John A.
Ransom, Willard B.
Colohan, William J.
Rudisill, Harold B.
Carter, Thaddeus R.
Donaldson, Ray S.

TO FIRST LIEUTENANT

Hughston, Harold V.
Harrel, Clyde P., Jr.
Marco, Sidney V.
Baldwin, Harry A.
Maher, James C.
Smith, Lightner
Taylor, Edward R.
Bernstein, Henry, Jr.
Crimm, Reuben G.
Lampe, Stuart E.
Danks, Raymond B.
Rooney, William J.
Marafioti, Leonard D.
Fair, Oscar M.
Walsh, John E.
Allen, Glenn S., Jr.
Lonergan, James E.
Henderson, John O.
Agnor, William H.
Alsup, William W.
Anderson, David F.
Appel, Anthony R.
Auchincloss, John W.
Bancroft, Harold W.
Beckmire, Louis E.
Blackwell, William M.
Brotsky, Benjamin M.
Browder, John B.
Brown, Medford J.
Burford, Albert L., Jr.
Burkhalter, Fred O.
Cline, Charles T.

Cole, Buster
Combs, James C.
Cook, Joel W.
Curran, Charles P.
Daniel, Marion P. Sr.
Dwyer, Robert T.
Firestone, Richard L.
Fogg, Gordon
Gerstein, Albert S.
Gillihan, Louis O.
Gregory, Cleburne E., Jr.
Griffith, Lynn B.
Hays, Donald C.
Hecht, David S.
Hooper, Walter E.
Houston, Lawrence R.
Huber, Edward F.
Johnson, Preston W.
Jones, Preston W.
Lanning, Harley A.
Leavy, Charles W.
Lynton, Harold S.
McRae, Duncan L.
Manning, Charles W.
Marcellino, Frank
Marold, Carl J.
March, Matthew E.
Merrell, Herman S.
Miley, William H.
Morony, Jean
Morse, John H.
Nurick, Lester
Patterson, T. Glover
Peck, Alvin W.
Pendergast, Robert L.
Phelps, Robert G.
Reel, Adolf F.
Rodgers, William S., Jr.
Rooney, Fred H.
Rosenthal, Milton E.
Rosentreter, Myron A.
Ruddy, John J., Jr.
Sims, Walter H.
Somsen, Henry N., Jr.
Steyer, Murray
Stoll, Norman A.
Stroud, James S.
Walsh, Joseph A.
Waxberg, Stanley D.
Weintraub, Joseph
White, Lewis A.
Whitsett, Emmett L., Jr.
Williams, Wayne D.
Wrightson, James, O., Jr.
Yeakley, Taylor B.
Yost, William K., Jr.
Carney, Daniel F.
Bayly, Charles B., Jr.
Berry, Robert L.
Strieber, Karl
Hutton, Lawrence A.
Ledwith, Charles E.
McEvoy, Jonathan C.
Pfeiger, Sydney S.
Klute, Harold F.
Sennott, John R., Jr.
Smith, Richard P.
Smith, William P.
Rowe, Cecil F.
Stewart, Malcom E.
Rogers, Donald C.
Struthers, Russell M.