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ROBERT PORTER PATTERSON
Under Secretary of War

Photo by Signal Corps, U. S. Army

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tors of the Judge Advocates Association and the Editors.

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THE *General's* PAGE



WE are fortunate to have in this issue of the Journal an excellent article by Brigadier Reginald J. Orde, Judge Advocate-General of the Naval, Military and Air Forces of Canada. The article gives us a clear picture of Canadian Service Law and the functions of the Judge Advocate-General's office in Canada. We are honored that Brigadier Orde has taken the time to write this article for us. In addition to the heavy responsibility of his position, he was recently appointed deputy to Sir Henry MacGeagh, the Judge Advocate-General of the British Army, to handle matters affecting British forces in the Americas.

The close cooperation between Brigadier Orde and his staff and our office has been noteworthy. Because of the cordial relations, both official and personal, that have existed between us, many extremely difficult problems of mutual concern have been solved. Brigadier Orde and members of his staff have visited and worked with us in Washington and members of our Department have met with them in Ottawa. The spirit of understanding and friendship that characterizes our relations is a constant source of satisfaction.

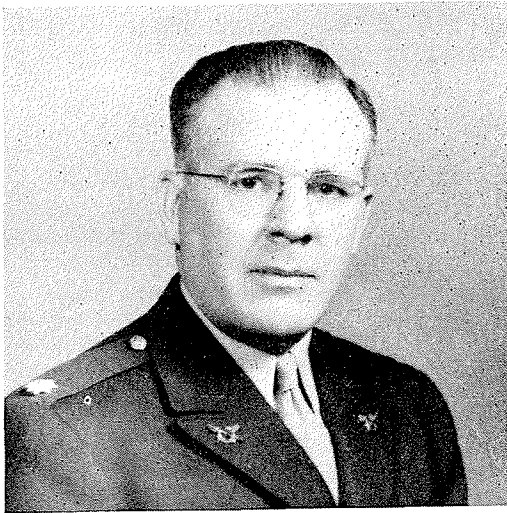
The Judge Advocates Association pays tribute in this issue to Honorable Robert P. Patterson, Under Secretary of War, with whom my office is privileged to have many dealings. We are familiar with his fine record as a soldier, lawyer, and jurist. His sense of justice and fair play, manifested in many court-martial matters handled over a period of time, has inspired deep respect and admiration.

I only wish that I could extend individual greetings to all the officers of the Corps at this time of the year. Due to the great expansion of our Department and wartime conditions, I take this means to extend to each of you my best wishes of the season. I am proud of what the officers of this Department have done during the past year. You have done a hard job in a superior manner. I am confident that you will continue your good work.

MYRON C. CRAMER,

Major General,

The Judge Advocate General.



THE *President* SAYS—

OUR Association has passed its first birthday. It has shed its swaddling clothes, suffered the usual growing pains, and now stands on firm ground, confident and prepared to meet the test of the future.

The successful beginning and growth of our Association has been due in large measure to the individual efforts of General Cramer, of every member of the first Board of Directors and the Staff and Faculty at The Judge Advocate General's School, and others too numerous to mention. Lt. Colonel Miller and Captain Forbes at the School, Major Yancey, Captain Bialla, and Mr. Baldinger are deserving of special mention. We are deeply indebted to each of them for their enthusiasm and sacrifice. They have given unstintingly of their talents and of their time outside of duty hours. We also make grateful expression of our appreciation and thanks to those who have contributed material for the Journal.

Colonel Terry A. Lyon, Chairman of the Nominating Committee, announced that for practical reasons due to war-time restrictions on travel, the Committee's choice of candidates, with few exceptions, are officers who are presently stationed in Washington. A majority of directors is required in order to constitute a quorum, so the Committee wanted directors who would be present at meetings and would be able to assist in the work of administering the affairs of the Association. It is to be hoped that it was because of war-time conditions, and not because of any lack of interest on the part of the members, that the only candidates appearing on the ballot were those selected by the Nominating Committee. Next year whenever an officer or director is assigned to a permanent station outside of Washington he should be replaced. This year there were many vacancies on the Board due to the necessities of the service.

The new administration will need the help of every member. This help can be given in three ways. First, we should pay our dues promptly. Our only source of revenue comes from the dues of our members so it is

vital to our continued progress that dues be paid promptly. Secondly, if you have had a service experience or know anything which you think will be of interest to your fellow members, write it up in letter or article form and send it in for publication. Thirdly, constitute yourself a committee of one on membership and secure the application of any qualified judge advocate you meet who has not yet been contacted.

One of the objectives of the Association is to assist its members who return to civilian life to rehabilitate themselves in their law practice. Another is to preserve the memories of our war-time service. The suggestion has been offered that both of these objectives may be implemented by the printing annually of a book which would list all members by states and cities, including pictures and brief biographies. The book would also carry articles of general interest, such as historical notes on the Department, activities of our branch of the Army during the war, and personal items as well as pictures. It is believed that it would not only be of interest in the future but also of great benefit. A response of our members to this idea would be appreciated.

We are closing out the year of 1944. The purposes of our Association will reach their full fruition in the years to come. We do not expect anything for professional men similar to the GI Bill of Rights. We know that a law practice cannot be legislated into existence for the returning lawyer. We would be the first to condemn a law that would force a former client into our offices. As we strive now to exchange ideas to help each other to be more efficient as judge advocates, it is hoped that following our return to peaceful pursuits we can maintain an active interest in the maintenance of the present high ideals of our Corps and at the same time ways and means can be devised to bring to our members many mutual advantages which, except for our Association, would not be possible otherwise. If we remain united and strong, we can hope to preserve all of our general and specialized skills and keep intact the close and friendly contacts we now enjoy as members of the largest law firm in the world. No member should feel alone no matter where his practice may lead him.

To all we express the fervent hope that the new year will see our foes vanquished and our young men restored to the American way of life under a just and lasting peace for all peoples of the earth.

HOWARD A. BRUNDAGE,
Lt. Col. JAGD,
President

Robert Porter Patterson

UNDER SECRETARY OF *War*

ON HIS office wall hangs the original painting by Norman Rockwell of the dogged, begrimed G. I. seated behind a steaming machine gun, familiar to all Americans as the war poster bearing the legend, "Let's Give Him Enough and On Time." Robert Porter Patterson, ex-doughboy, Under Secretary of War, knows the meaning of those words and probably spends as much time and energy doing something about it as any other man in the country. For, among other jobs ranging all the way from looking after national cemeteries to considering what rights dependent husbands of WACs should have, he is charged with the duty of supplying the best-equipped Army in the world's history with all the tools it needs to kill Germans and Japs. He is the War Department's business man, and his greatest satisfaction comes from getting to the fighting men those things they need for a speedy victory.

As one of his close associates puts it, Judge Patterson realizes that this is a war of materials. In the World War, he was in the Infantry, he knows all about fighting and thinks that all the rest of the people ought to be on their toes, working for those who are doing the fighting. To him, patriotism means something more than undergoing inconveniences and generally being in favor of winning the war. He has a passion for physically destroying the enemy, and the more the better. He came out of the World War as a Major of Infantry with the Distinguished Service Cross, the Silver Star, the Purple Heart, and an extra citation in General Orders for gallantry in action for good measure. So when this war was threatening the nation he doffed his judicial robes and headed for the nearest training camp once more to qualify himself for combat duty. It was there, while on K.P., that he received word of his appointment as Assistant Secretary of War in July 1940. After the creation of the office of Under Secretary he was chosen for that position and was confirmed on 19 December 1940.

A native New Yorker, Judge Patterson attended Union College, Schenectady, New York, and graduated with a Bachelor of Arts degree in 1912. (He is now Honorary Chancellor of the College.) He later went to Harvard Law School, where he was president of the Law Review, received the Bachelor of Laws degree in 1915 and the same year was admitted to the bar of the State of New York. Except for time out in the Army, he practiced in New York City until he was appointed by President Hoover as Judge of the United States District Court, Southern District of New York, in 1930. He was elevated by President Roosevelt to the United States Circuit Court of Appeals for the Second Circuit in 1939, where he served until he came with the War Department.

The pace Judge Patterson sets for himself is equaled by few in Washington. Arriving at his desk at eight in the morning he ploughs untiringly through a twelve hour day unless he is away on one of his frequent trips to munitions plants or training camps. Even the pause for lunch is just another business conference with Secretary of War Henry L. Stimson, Assistant Secretary John J. McCloy, Assistant Secretary for Air Robert A. Lovett,

Lieutenant General Brehon Somervell, Commanding General of Army Service Forces, or other close associates. Sunday just happens to be the seventh work day of the week.

Second only to his love for the fighting soldier is his fondness for the soldier's battle equipment. Deposited on the floor of his office are samples of American ingenuity—a Garand rifle, a machine gun, a mortar, an artillery shell case, a bazooka, and so on. In front of him on a table are models of the latest tanks and armored vehicles. An expert shot, he has a boy's passion for firearms and is not content until he has personally fired each new type of weapon and watched them being used by the soldiers. Whenever his frequent visits to war plants will allow, he takes a detour to inspect a combat outfit in training. His aides are not surprised to find him having a fling at the obstacle course, squeezing the trigger of a Browning automatic, or launching a rocket with a bazooka. "Bob" Patterson has inspected every combat outfit that has gone overseas, talked with their generals, the junior officers, the non-coms, and the boys in the ranks.

He likes to get down to the companies and talk things over—not down to them as the Under Secretary, but as one doughboy to another. He looks over their equipment, samples their chow and visits in the day rooms. As he puts it, fundamentally, the Allies will owe their victory to the common soldier. To a graduating class at The Judge Advocate General's School at Ann Arbor he stated that Judge Advocates should maintain their sense of fair treatment, which is essential to soldier morale. He is proud of the low court-martial rate on serious offenses in this war and is particularly pleased with the Army's record on restoring to honorable duty thousands of soldiers who have made good under the rigorous program of rehabilitation centers.

It is fitting that the Under Secretary should be a lawyer. His work is largely legal and his relations with the Judge Advocate General's Department are many. His office works in a cordial spirit with the Office of The Judge Advocate General on matters involving claims against the Government arising out of activities of the Army, legal questions about Government contracts, military justice and the review of court-martial cases, Army correctional institutions, and taxation by states and their subdivisions. Chairman of the Under Secretary's Board of Contract Appeals is Colonel Hugh C. Smith, JAGD, and Government counsel appearing before the Board are officers of The Judge Advocate General's Office. Judge Patterson's staff is composed almost entirely of lawyers. His executive, Brigadier General Edward S. Greenbaum of New York was a Judge Advocate in the World War. Colonel Marion Rushton, JAGD, of Alabama, was his Administrative Officer and is now chief of the Correction Division, A.G.O. Other lawyers on his staff include Mr. H. C. Peterson of New York, Executive Assistant, Lt. Colonel H. A. Friedlich, JAGD, of Chicago, Lt. Colonel Miles H. Knowles, JAGD, of Detroit, and Major Edward F. Gallagher, JAGD, of Washington, D. C. Judge Patterson's

class mate, Mr. Julius H. Amberg of Grand Rapids, Michigan, is assistant to Secretary Stimson but does most of his work in connection with the Under Secretary's office.

Around the corridor in the Pentagon Building is the office of another New York lawyer, Secretary of War Henry L. Stimson, in whose absence or disability Judge Patterson is by statute successor. These fellow members of the bar, both of whom can look back on selfless service to country, both in uniform and in mufti, speak the language of the attorney and are on a "Colonel" and "Bob" relationship.

Judge Patterson has the supply man's interest in seeing how arms and equipment are used up front. In September, 1943, Judge Patterson completed a 30,000 mile air trip to Hawaii and through the South Pacific and Southwest Pacific, where he inspected U. S. troops in those areas. In August, 1944, he made a similar inspection of the European Theater, including North Africa, England and the battle fronts of Italy and France. Standing on a ship off the shore of Southern France on 15 August, he watched while American soldiers waded ashore on the second big D-Day of American operations in France this year.

Although he works unceasingly for victory, a battle won by our arms is almost certain to bring trouble for him in its wake, for with victory in the wind he knows that plant production will lag and as head of the Army's procurement system, he must always be prepared for a long war.

As each new problem of procurement looms, the Under Secretary tackles it on the fly, puts his relentless enthusiasm into the solution until it is licked. When he visited the Italian front he saw gun crews idle in spite of available targets, merely because they had shot their ration of ammunition for the day. On his return Judge Patterson outlined a vigorous schedule of visits to shell plants. He observed the production lines, chatting with the workmen. He conferred with management. He addressed employees in mass meetings and their representatives in joint conferences with employers. Tirelessly, he toured factory after factory, encouraging, warning, speeding up, ironing out personnel troubles, spiking talk that the war is about over, impressing all with his plain sincerity.

In the brief vacations he allows himself, he likes to visit his farm opposite West Point, on the Hudson, where he may be found mending fences, repairing the barn or going for a tramp in the woods with Mrs. Patterson and their three daughters, pausing for picnic lunch. His son, First Lieutenant Robert P. Patterson, Jr., had his schooling at Harvard interrupted by the war and is now in Europe where he is assigned as navigator of a flying fortress. Following the pattern of his father's distinguished war record, young Bob last month was awarded the Distinguished Flying Cross for his part in aerial combat.

Judge Patterson has the combat soldier's fearlessness at his work and obstacles in the path he has surveyed for himself are met head-on, be they other war agencies, labor, management or public apathy. To management and labor he advises, "Our troops are closing in for the

death struggle with our German enemy. Only one thing can save the Nazis now—a falling off in the life blood of supply on which our offensive depends. Any failure to keep abreast of our combat requirements will give the enemy a new opportunity to prolong the war and kill more American soldiers.

"General Eisenhower has an imperative need for much more artillery ammunition than we are now producing. Although our production of artillery ammunition has tripled since the beginning of this year the needs of our armed forces have gone up even faster. Any failure on our part to produce at home the munitions our commanders call for means the war will be lengthened just that much."

Spreading before the Senate Military Affairs Committee a group of pictures showing dead and wounded American soldiers, he said, "These are genuine pictures. They're not faked and they're very common." He added that if management and labor could "go overseas and see what's going on, we would have no more trouble." Sometimes called "the toughest man in Washington" he has had his skirmishes—with Comptroller General Lindsay C. Warren over the Army's method of handling Government contract accounts, with the Truman Committee and others. Yet he gets into no protracted campaigns or personal feuds as he is willing to assume that the other officials in Washington are also out to lick Germany and Japan and that's his single objective.

His friends will tell you that ego and personal ambition are not a part of the Patterson makeup. The people with whom he deals are unfailingly impressed with his consuming sincerity about his job. This explains how he could lock horns with Rubber Administrator William Jeffers over the allocation of plant equipment vital both to the synthetic rubber industry and to the aviation gasoline program and yet arrive at a mutually satisfactory arrangement on friendly personal terms. Speculators had the stage all set for a knockdown, dragout that would send one or the other back home until Judge Patterson abruptly rang down the curtain with the simple explanation that "Jeff and I" had had an understanding. Furthermore, they were forthwith going on a joint tour of the country to break bottlenecks instead of each other's.

A Big-Army man, he plumps for universal military training in post-war America. "Until a better age arrives let us never forget that it is military power, or the lack of it, that decides whether a free nation is to live or is to perish," he says. The post-war military establishment must be maintained on the assumption that the United States will not again be given "such a period of grace between the start of war and the necessity for full-scale military effort as was provided by France, England and Russia in the present war."

This, together with phases of reconversion and contract termination, is about the extent of his post-war planning. At present he's engaged in the matter of supplying materials to the larger part of what Mr. Churchill calls the "greatest military, naval and air power" in history.

SOME *Aspects* OF CANADIAN SERVICE *Law* AND OF THE OFFICE OF THE JUDGE ADVOCATE-GENERAL IN CANADA

By BRIGADIER R. J. ORDE, *Judge Advocate-General of the Naval, Military and Air Forces of Canada*

MY VERY good friend and colleague, Major-General Myron C. Cramer, the Judge Advocate-General, was kind enough to ask me to contribute an article to the Judge Advocate Journal. General Cramer suggested that this article might deal with certain aspects of Canadian Service law and with the organization and functions of the Office of the Judge Advocate-General of the Canadian Forces.

That I should be invited to contribute an article to the Journal is a singular honour not only for myself but for the office which I hold as well as for those with whom I am associated and in accepting this invitation I do so in order further to indicate my appreciation of the cordial and useful relationship which has been established between our respective offices in the present conflict and which I hope will continue for many years to come.

Space will not permit me to deal with the Naval, Military and Air Force law of Canada in all its aspects, nor will it permit me to deal in any great detail with the organization and functions of the Office of the Judge Advocate-General. I shall, however, attempt to deal with the matter in such a fashion as will by means of what might be termed a bird's eye view indicate some of the instances wherein our respective Service laws differ in principle and rest on a different legislative basis, and those wherein uniformity in principle exists. I am approaching the matter in this way because I felt that some readers of the Journal might find it of interest to compare our respective Service codes, the manner in which they were enacted and the procedure which is followed in their practical application.

The Constitution of Canada is to be found in the British North America Act, which is an Act of the Parliament of the United Kingdom. It apportions legislative powers between the Dominion and the Provincial Parliaments and, while it sets out at large the several matters wherein the Dominion and the Provincial Parliaments may exercise legislative authority and it gives to the several Provinces exclusive legislative authority in certain matters, it reserves to the Dominion Parliament legislative authority with respect to those matters not exclusively reserved to the Provinces and, above all, contains a provision that the Dominion Parlia-

ment may enact any laws necessary for the peace, order and good government of Canada.

The British North America Act expressly provides that the exclusive legislative authority of the Parliament of Canada shall inter alia extend to the Militia, Military and Naval Services and Defence. All the laws relating to the Naval, Military and Air Forces of Canada flow from that Parliament in the sense that they are either enacted by statute or by regulation made under authority derived from Parliament. For purposes of convenience

I shall refer to this as "military legislation," that expression being used in the broad sense and not in reference only to the Army.

In addition to the Naval Service Act, the Militia Act and The Royal Canadian Air Force Act, each of which is an Act of the Parliament of Canada relating solely to the particular branch of the Armed Forces concerned and which might be regarded as being the charter for that particular branch, we have on our statute books an Act known as the War Measures Act which was passed by the Parliament of Canada shortly after the outbreak of the war in 1914 and has remained in force ever since. The purpose of this Act is to confer certain powers upon the Governor-in-Council in the event of war, invasion or insurrection and it provides, in brief, that the Governor-in-Council may do and authorize such Acts and things and make from time to time such orders and regulations as he may, by reason of the existence of real or appre-

hended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada. The Act goes on to specify, but without restricting the generality of its terms, certain classes of matter to which the powers thus vested in the Governor-in-Council shall extend. It also provides that all orders and regulations made by the Governor-in-Council, in pursuance of the Act, shall have the force of law and shall be enforced in such manner and by such Courts, officers and authorities as the Governor-in-Council may prescribe. As proof that a state of war, real or apprehended, exists, the Act provides that the issue of a Proclamation by His Majesty, or under the authority of the Governor-in-Council, shall be conclusive evidence that war, invasion or insurrection, real or apprehended, exists and has existed for any period of time therein



Canadian Army Photo

BRIGADIER REGINALD J. ORDE
Judge Advocate-General of Canada

stated and of its continuation until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists.

Thus it will be noted that we have in time of war two separate law making bodies (apart from the Provincial Legislatures), namely, the Parliament of Canada and the Governor-in-Council acting under the War Measures Act. The closest analogy that I think of to orders or regulations made by the Governor-in-Council under the War Measures Act, are orders and regulations made or issued by your President or the Executive in pursuance of powers conferred by the Constitution or by Congress, but, generally speaking, the powers of the Governor-in-Council under the War Measures Act are in matters directly relating to the prosecution of the war unlimited, unrestricted and they have been frequently invoked in connection with the government and administration of the Canadian Forces.

The foregoing sets out in very general terms the general underlying legislative basis, but before dealing in greater detail with some of the aspects thereof, it would at this stage, be suitable to indicate the method by which provision is made for the government and administration of the Forces.

In 1923 the Parliament of Canada passed a statute entitled the "Department of National Defence Act." This provided for the creation of a Department of the Government of Canada to be called the Department of National Defence over which a Minister of the Crown shall preside who shall be the Minister of National Defence. By this Act the Minister was charged with all matters relating to Defence, including the Militia, the Military, Naval and Air Services of Canada. The effect of this was to merge in one department under one minister of the Crown the powers, duties and functions relating to the Naval, Army and Air Forces, which heretofore had been vested in and were exercised by three separate departments or organs of Government. In 1941, due to the large expansion of the Canadian Forces and their activities, Parliament passed an amendment to the Act mentioned, which made provision that, during the present emergency, in addition to the Minister of National Defence, for whom the original Act provided, there would be three additional Ministers of National Defence, namely, an Associate Minister of National Defence, a Minister of National Defence for Naval Services and a Minister of National Defence for Air. The Associate Minister is, by that Act, entitled to exercise all the powers of the Minister of National Defence unless the Governor-in-Council otherwise directs. The Minister of National Defence for Naval Services and for Air are, respectively, entitled to exercise all the powers of the Minister of National Defence in respect of any matter relating exclusively to the Naval Service or to the Air Service, as the case may be. Further, in matters affecting both the Naval Service and any other service, the powers of the Minister of National Defence shall be exercisable by him in consultation with the Minister of National Defence for Naval Services and like provision is made whereby, in matters affecting Air Service and any other service, such powers shall be exercisable by the Minister of National Defence in consultation with the Minister of National Defence for Air.

It will thus be noted that, by Parliamentary enactment, provision is made for complete co-ordination between the three Services.

I shall now attempt to deal in more detail with some of the aspects of Canadian Service law, particularly with respect to that pertaining to the maintenance of discipline in the Forces and as the three basic acts, namely, the Naval Service Act, the Militia Act and The Royal Canadian Air Force Act, are in this respect identical in principle, I shall confine myself to the Militia Act bearing in mind that the other two Acts adopt the same means whereby in respect of the maintenance of discipline in the two Forces concerned legislation of another legislative body is applied by reference.

The Militia Act does not in itself set out in detail, by way of a code, any list of offences against military law. This is equally so with respect to the Acts relating to the Navy and the Air Force. On the contrary it provides that the Army Act for the time being in force in the United Kingdom, to the extent that that Statute is not inconsistent with the provisions of the Militia Act or the regulations made thereunder, shall have the same force and effect as if it had been enacted by the Parliament of Canada for the government of the Militia. Corresponding provision is made in the Naval Service Act for the application of the Naval Discipline Act of the United Kingdom to the Naval Forces of Canada, and under The Royal Canadian Air Force Act, for the application of the Air Force Act of the United Kingdom for the government of the Royal Canadian Air Force. This, as you will doubtless realize, is legislation by reference in the broadest possible sense.

The Army Act is what might be termed the offspring of the first Mutiny Act, which was passed in 1689 in the first year of the reign of William and Mary and, in its present day form, the Army Act corresponds very largely to your Articles of War, which, so I am given to understand, are based on more or less the same foundation. The Army Act has of itself no force but requires to be brought into operation annually by another Act of the Parliament of the United Kingdom, now called the Army and Air Force (Annual) Act, thus securing the constitutional principle of the control of Parliament over the discipline, without which a standing army and air force cannot be maintained. These annual Acts also serve as a means of amending the basic Acts as occasion demands. As I have already mentioned it is the Army Act for the time being in force in the United Kingdom which in the manner mentioned applies to Canada except to the extent that it is inconsistent with Canadian Legislation.

The Army Act is a complete Code in itself, it prescribes what are offences against military law and a scale of punishments which may be awarded on conviction for each type or class of offence. It also prescribes who shall convene general and district courts-martial, who may confirm the findings and sentences thereof and who may mitigate, commute or remit sentences or suspend the operation thereof. It also deals with other related matters, such as the manner in which sentences shall be carried into execution, the attendance of witnesses, contempt of court by witnesses, counsel or spectators, and so on.

As an integral part of the legal disciplinary machinery are what is known as the Rules of Procedure, which are somewhat similar to what might be termed Rules of Practise in criminal matters, but they are somewhat wider in their scope. These are rules made pursuant to an enabling provision contained in the Army Act.

Thus you will note that we have through legislation by reference compiled a definite disciplinary code for the government of our Forces. But, you may well ask, how can such a code operate in its entirety for the government of the Armed Forces of a self governing part of the Commonwealth other than the one for the government of whose Forces the Act was primarily designed. There is no great magic in this, nor is there any necessity to rely on doubtful interpretation or any species of legal witchcraft or sorcery. Our Forces are organized to a very great extent along the same lines as are the United Kingdom's Forces and the system of government, administration and interior economy is almost identical. There are, however, certain minor differences pertaining mainly to matters of procedure and it is accordingly necessary by regulation to make certain modifications and adaptations in respect of the application of the Army Act of the United Kingdom so as to meet the particular circumstances of the Canadian Army. By way of example, the Army Act vests in the Army Council of the United Kingdom certain powers, duties and functions in matters such as the appointment of competent authorities to deal summarily with charges against officers and warrant officers and the appointment of superior authorities having power to suspend sentences. Obviously the Army Council of the United Kingdom has no jurisdiction in respect of the Canadian Army. Hence orders have been made by the Governor-in-Council, in pursuance of the Militia Act, vesting in the Minister of National Defence all the powers, duties and functions which by the Army Act are vested in or exercisable by the Army Council. Similar modifications and adaptations have also been made in the matter of documentary evidence which the Army Act makes admissible at a trial by court-martial; in particular, the certificates of arrest, apprehension and surrender in the case of deserters and absentees without leave. The Act specifies the persons who may sign such certificates and provides that such certificates shall be admissible as evidence of the facts therein stated. In certain instances we have not in Canada persons holding appointments identical with those specified in the Act. Therefore, we have by appropriate regulations specified the corresponding Canadian authorities whose certificates will be admissible for the purposes mentioned in the Army Act.

Another instance wherein we have made certain modifications and adaptations may be of interest to you because this will illustrate the type of case for which during the war it was expedient to invoke the powers of the Governor-in-Council under the War Measures Act. Under English jurisprudence an order to a soldier to submit to surgical operation or to inoculation, vaccination or blood test or treatment in respect of a communicable disease is not a lawful order in the sense that refusal to comply with such an order is disobedience of a lawful order given by a superior officer. We were in Canada faced with a situation which made it necessary for members of the Forces to be vaccinated, inoculated or have blood tests or treatment against communicable diseases and while they could not be forcibly compelled to submit to these the Governor-in-Council, under the War Measures Act, made a regulation, the effect of which was to make non-compliance with an order to submit to vaccination and the treatment mentioned a disobedience of a lawful order punishable under the appropriate section of the Army Act. The result is that

while a soldier cannot be inoculated or vaccinated against his will, nevertheless, if he refused to comply with an order in that regard he would be liable to the severe penalties which can be awarded on conviction for disobeying a lawful order.

Another phase of the law which is closely integrated with that relating to the internal government of the Canadian Forces is of some interest particularly because of its novelty and to the fact that, so far as I am aware, it was put to the test for the first time early in the present war and such test related to the position of the Canadian troops.

In 1931 the Parliament of the United Kingdom passed an Act of great importance and of far reaching effect. This Act is known as the Statute of Westminster 1931 and its purpose is well set out in its preamble, a portion of which reads as follows:

"And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom;

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:"

The Act among other things provides that no Act of Parliament of the United Kingdom passed after the commencement of the Statute of Westminster shall extend or be deemed to extend to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof. This provision has, as I shall point out in a moment, had a profound effect upon the position and legal status of the Forces of one Dominion when present in another Dominion or serving with the Forces of another Dominion.

For convenience I will call the Force of a particular Dominion which is present in another Dominion a Visiting Force and the Forces of the Dominion in which such Visiting Force is present I shall call the Home Force.

Prior to the enactment of the Statute of Westminster, a Visiting Force was entitled to maintain discipline by virtue of the provisions of the Army Act or the Air Force Act. In the case of the Navy other legislation was in force and its operation is not in these matters affected by the Statute of Westminster. Time does not permit me to go into any detail on this point, except to state that such legislation provided generally for complete integration of the various Dominion Naval forces and the members thereof when serving with each other. Returning now to the Army and Air Force Acts; both of these have of themselves no force but require to be brought into operation annually by another Act of Parliament of the United Kingdom styled "The Army and Air Force Annual Act" which provides for the basic Acts continuing in force for the year to which the Annual Act relates. Any such Annual Act, however, passed

subsequent to the coming into force of the Statute of Westminster has, as I have indicated, no longer the force of law in Canada and it was necessary to base the discipline and internal administration of Forces when present in Canada on Canadian legislation. For the same reason it is necessary to provide for the relation of Visiting Forces to the civil power and to civilians, for attachment of personnel, for the exercise of mutual powers of command and also to provide temporary measures for the continuance of existing arrangements with regard to naval discipline and co-operation in naval matters.

Accordingly in 1933 the Parliament of the United Kingdom and the Parliament of Canada each passed an Act known as the Visiting Forces (British Commonwealth) Act 1933, each of said Acts being in effect complementary. Since then the other self-governing Dominions have enacted similar legislation.

Space does not permit me to deal in any great detail with what the Visiting Forces Acts intended to accomplish, but taking the Canadian Statute as an illustration and bearing in mind that those of the United Kingdom and the other self-governing dominions are similar in principle, provision is made for the following matters:

The presence of a Force of one dominion in another dominion (the Force of the first mentioned dominion being referred to as a visiting force and that of the other dominion being referred to as a home force).

The vesting in the Service courts and Service authorities of the Visiting Force in relation to members of that Force of all the powers which under the law of that part of the Commonwealth to which the Visiting Force belongs, are exercisable in matters concerning discipline and the administration of that Force; the power to award punishment and to have such punishment carried out in the dominion in which such Visiting Force is present; the arrest of personnel of the Visiting Force by personnel of the Home Force; the temporary custody in prisons and detention barracks in the Home Forces of members of the Force, upon whom sentence of imprisonment or detention has been passed by Service courts of that Force. In this regard it will be noted that, under the legislation recently passed by the United Kingdom, the United States and Canada, provision has been made with respect to some of the matters mentioned above, particularly those relating to the jurisdiction of Service courts.

In addition to the foregoing, the Visiting Forces Acts also make provision governing the relationship of the Forces of two or more parts of the Commonwealth when present in some place either within or without the Commonwealth. This, in brief, pertains to the individual relationship of members of one Force with those of another Force, the power of command when two or more Forces are acting in combination in a combined Force and for the attachment of individual members of the one Force to another Force. In respect of this last mentioned matter, it may be of interest to know that, except as otherwise provided by order-in-council of the Dominion concerned, when there is attached to the Forces of that Dominion a member of the Forces of another Dominion, that member becomes subject to the laws applicable to the Force to which he is attached in like manner as if he were a member of that Force.

It will readily be appreciated that as in the present war Canadian Forces have been serving with those of the other dominions and that many individuals are attached to the Forces of other dominions a number of novel and unique legal problems have arisen by reason of the legislation mentioned, the solution of which is

not always as simple as might be desired; however, so far, they have all been satisfactorily solved.

The administrative co-ordination which is effected through the provisions of the Department of National Defence Act, to which reference has already been made, is in respect of legal matters relating to the three Services likewise effected in the Office of the Judge Advocate-General. The Judge Advocate-General of the Naval, Military and Air Forces of Canada is an appointment established by order-in-council enacted pursuant to the pertinent statutes and by that Order-in-Council the Judge Advocate-General is among other things charged with the superintendence of Naval, Military and Air Force law; the review of courts-martial; the proffering of advice in connection with the legality thereof, and with such matters and duties as may be assigned to him.

The effect of this is that the Judge Advocate-General is in the final analysis responsible to three Ministers of the Crown insofar as concerns the matters wherein they respectively have jurisdiction. In consequence the Office of the Judge Advocate-General is as such not an appendage of any one of what might be termed the military Branches of the several forces. In fact the staff comprises personnel of the Navy, Army and Air Force. Nevertheless, in practice, there is a high degree of integration and co-ordination. The Office is by way of analogy similar to that of a large legal firm which acts for a large corporation.

Having regard to the somewhat wide terms of reference in relation to the subject matter wherewith the Office of the Judge Advocate-General has to deal, space does not permit detailed enumeration in this respect. It may be of interest to point out, however, that all submissions to the Governor-in-Council, including General Orders which require His Excellency's approval and those which require ministerial approval, are referred for examination and approval as to substance and form, and frequently they are drafted in the Office. The proceedings of all courts-martial are reviewed and in the event of a quashing being indicated the requisite action is taken. All claims against the Crown in which the Armed Forces are involved and all cases wherein the Crown is acquiring temporary interest in real property by way of lease or otherwise are dealt with. All charter parties arising out of the requisitioning of ships and all claims relating to salvage and general average are the responsibility of the Office. The administration of discipline of Merchant Seamen under the several Merchant Seamen Orders falls within the jurisdiction of the Judge Advocate-General.

To enable these and other matters to be handled expeditiously and to obviate undue duplication of staff, the Office of the Judge Advocate-General is divided into sections and such division is based on a combination of Service considerations, i.e., Navy, Army and Air Force, as the case may be, and on those relating to the class of work which is required to be carried out.

The organization as it presently exists is as follows: The Judge Advocate-General has with him the Vice Judge Advocate-General, both Army officers, and four Deputy Judge Advocates-General; of whom one is a Naval officer, two are Army officers and one an Air Force officer. Flowing from what might be termed the executive side of the Office are several sections, namely, Orders-in-Council and General Affairs; Claims; Naval; Court-

(Continued on Page 18)

Colonel William Winthrop

A Biographical Sketch by

MAJOR WILLIAM F. FRATCHER, JAGD

WILLIAM WOOLSEY WINTHROP was born in New Haven, Connecticut, August 3, 1831, the youngest son of Francis Bayard Winthrop by his second wife, Elizabeth Woolsey. His father, a graduate of Yale College in the class of 1804 who had been a merchant in New York City and a lawyer in New Haven, was descended from John Winthrop, first Governor of Massachusetts. His mother, a great-grand-daughter of Jonathan Edwards, the Puritan divine, was a niece of Timothy Dwight and a sister of Timothy Dwight Woolsey, both presidents of Yale. His elder brother, Theodore, became a well-known author and their father had an extensive personal library, so the atmosphere in which William Winthrop grew up was literary indeed.

Like his father and brother, Winthrop attended Yale, taking the B.A. degree in 1851 and the LL.B. degree from the Law School in 1853. He then spent a year in graduate study at Harvard Law School and in 1855 began the practice of law in Boston with the Honorable William J. Hubbard. He practiced later in St. Anthony's, Minnesota, and, in 1860, formed a partnership for the practice of law in New York City with his Yale class-mate, Robbins Little of Boston (B.A., 1851; M.A., 1854, Yale; LL.B., 1870, Harvard), who was later an instructor in international law at the United States Naval Academy.

Fort Sumter fell on April 14, 1861. The following day President Lincoln called for 75,000 volunteers and on April 17 William Winthrop enrolled as a private in Company F, 7th Regiment, New York State Militia. He was mustered out at New York City on June 3. His elder brother, Major Theodore Winthrop, 7th New York, was killed in action while leading the advance at the battle of Big Bethel, June 10, 1861, and William Winthrop was shortly afterward offered a commission as captain in the regiment, an appointment which he declined "out of respect for the feelings of his mother." However, he soon began raising a new volunteer organization, Company H, 1st U. S. Sharpshooters, with his friend Hastings, who became its captain and accepted a commission as first lieutenant on October 1, 1861. Lieutenant Winthrop was promoted to captain on September 22, 1862, for gallant conduct in the field, and he served as aide-de-camp to Brigadier General J. J. Bartlett, commanding the 2nd Brigade, 7th Division, 6th Army Corps from March 10 to April 14, 1863 (S.O. 68, Hq. Army of the Potomac, Mar. 10, 1863).

By orders of April 14, 1863 (S.O. 171, A.G.O.), issued at the suggestion of Major General E. A. Hitchcock,

Captain William Winthrop, 1st U. S. Sharpshooters, was assigned to duty in the Judge Advocate General's Office at Washington, where he was to remain on duty for the following nineteen years. The act of July 17, 1862 (12 Stat. 597), had provided for a Judge Advocate General with the rank of colonel, "to whose office shall be returned for revision the records and proceedings of all the courts-martial and military commissions, and where a record shall be kept of all proceedings had thereupon," and authorized the appointment of a judge advocate with

rank of major for each army in the field. Joseph Holt, who had been Secretary of War during the last months of President Buchanan's administration, had become the first Judge Advocate General under this act in September 1862. During the war the office of the Judge Advocate General was staffed with seven or eight judge advocates and acting judge advocates, of whom Captain Winthrop became one. A bill introduced in Congress on December 21, 1863 (H.R. 49, 38th Congress) proposed to accord the Judge Advocate General the rank of brigadier general and to provide him with two assistants, a colonel and a major. A number of Captain Winthrop's friends urged his appointment to one of these positions but the bill was finally enacted (act of June 20, 1864; 13 Stat. 144) authorized only one Assistant Judge Advocate General, with the rank of colonel, and the appointment was given to Major William McKee Dunn, a former member of Congress from Indiana who had been



COLONEL WILLIAM WINTHROP

serving in the field as a judge advocate since March 1863. Captain Winthrop was, however, appointed major and judge advocate of Volunteers "for the Department of the Susquehanna" on September 19, 1864.

In the general brevet of March 13, 1865, Major Winthrop was brevetted Lieutenant Colonel of Volunteers for his services in the field and Colonel of Volunteers for his services in the Judge Advocate General's Office. The act of July 28, 1866 (14 Stat. 332), authorized the temporary retention in the service of not to exceed ten of the judge advocates then in office and Major Winthrop was among those retained. By the act of February 25, 1867 (14 Stat. 410) the retained judge advocates were given the status of permanent officers of the Regular Army. General Holt retired December 1, 1875, and was succeeded by Colonel Dunn, the Assistant Judge Advocate General. Because of restrictive provisions in the act of June 23, 1874 (18 Stat. 244), no Assistant Judge Advocate General was then appointed and when General Dunn retired, January 22, 1881, Major Winthrop was

the senior officer on duty in the Judge Advocate General's Office. On February 2, 1881, the Adjutant General of the Army issued an order which read:

"The President directs that Major William Winthrop, Judge Advocate, be assigned to act as Judge Advocate General, until a Judge Advocate General shall have been appointed and entered upon duty."

On February 18, 1881, President Hayes filled the vacant office of Judge Advocate General by the appointment of Major David G. Swaim of Ohio, an officer who was over five years junior to Winthrop and who had not served as a judge advocate during the war. Orders were issued in the spring of 1882 assigning Major Winthrop to Headquarters Military Division of the Pacific and Department of California, Presidio of San Francisco, California (S.O. 96, Hq. of the Army, Apr. 26, 1882). He had married Miss Alice Worthington in Washington in 1877 and, in view of her delicate state of health, requested delay until October 1 in complying with the orders, which was granted. Major General John M. Schofield, later Lieutenant General Commanding the

Army, was in command at San Francisco. General Schofield requested assignment of Winthrop to his command in 1883 and 1885, when in command of the Military Division of the Missouri with headquarters at Chicago, and again in 1886, when in command of the Military Division of the Atlantic with headquarters at Governor's Island, New York Harbor. Winthrop himself also requested duty at New York, because of Mrs. Winthrop's precarious health, but he was retained at San Francisco under Major General John Pope until August 1886. In the meantime, Guido Norman Lieber of New York, a major and judge advocate some two years senior to Winthrop, was appointed colonel and Assistant Judge Advocate General on July 5, 1884. General Schofield was president of a general court-martial which tried General Swaim in the summer of 1884 for a number of frauds and found him guilty of misconduct in a business transaction. General Swaim was sentenced to suspension from rank and duty for twelve years and Colonel Lieber was Acting Judge Advocate General from July 22, 1884 to January 11, 1895.

THE AUTHOR HAS RECEIVED THE FOLLOWING LETTER FROM MAJOR GENERAL WALTER A. BETHEL, UNITED STATES ARMY, RETIRED, WHO WAS JUDGE ADVOCATE OF THE AMERICAN EXPEDITIONARY FORCES IN FRANCE DURING WORLD WAR I AND JUDGE ADVOCATE GENERAL OF THE ARMY, 1923-24. GENERAL BETHEL ALSO SUPPLIED THE PHOTOGRAPH OF COLONEL WINTHROP REPRODUCED ON THE PRECEDING PAGE

Dear Major Fratcher:

In connection with your biographical sketch of Colonel William Winthrop you have requested me to "write a few paragraphs about Colonel Winthrop." It is right that I should do this since I am, I believe, the only living Judge Advocate who had a personal acquaintance with Colonel Winthrop. Fifty-five years ago as a cadet at West Point I took the limited course in law there under Colonel Winthrop as professor and of course saw him in the instruction room frequently. Then a few years later I met him at times at the law room of the War Department library, which was then in the S.W. and N. building now occupied by the Department of State. He had retired and was then preparing the second edition (1896) of his great work. Of course my acquaintance with him was very limited on account of the great disparity in our ages. A most modest man, Colonel Winthrop always appeared to be very diffident and seemed to shrink from conversation with others. In the instruction rooms he seldom interrupted the instructor and when he spoke he used a minimum of words.

I am particularly pleased with the evaluation you make of Military Law and Precedents in your last paragraph. Few have fully appreciated the surpassing excellence of that work. Although it deals with a special subject it is one of the best law books our country has produced. It was of inestimable value to our "old Army", and, time and again, the courts have accepted it as gospel.

There is one important feature of the book to which too little attention has been given, I think. Winthrop while on duty in the Judge Advocate General's Office over a long period of years made note of the important general court martial cases which he was thus able to cite in support of his text. Such cases frequently receive able comments by the reviewing authority which are published in the general court martial orders. And notwithstanding the lapse of time and considerable legislation, such court martial orders are the best evidence of the "common law military." They are not only valuable precedents for our guidance today but are of more value than ever now that all important cases are carefully examined by the boards of review in the Judge Advocate General's Office.

I was the Professor of Law at West Point from 1909 to 1914 and the then Judge Advocate General (Crowder) requested me to prepare to write a third edition of Military Law and Precedents. General Crowder contemplated an early revision of the Articles of War and the third edition was to conform to the new articles. In order to prepare myself as well as possible I made a close study of all cases cited by Winthrop which had been decided by a Federal Court, of the Attorney General's opinions so cited, and of many State Court cases, though by no means all of them so cited. In but one single case did I find that Winthrop had overlooked a principle announced in a decision of a Federal Court and had stated as his opinion the opposite of what was there held.

The years 1895-1916, due largely to our war with Spain, were a time of much legislation and judicial decision respecting the military, and I found it necessary to make many changes, therefore, in the original text. Congress, however, did not enact the new Articles of War until 1916, and this delay, together with the imperative requirements of duty during World War I, prevented my completion of a revision. Then as a result of the World War Congress in 1920 made many amendments to the code of 1916. These amendments were of such a nature as to make it very hazardous for an author of a treatise to interpret them before they should receive several years of judicial and administrative interpretation.

It is more than likely that the present war will, like all that have preceded it, bring about legislation affecting Army justice. Nothing could be more desirable at any time than an up-to-date Winthrop, but I doubt whether such a treatise can be written by mere revision and amendment of Winthrop's work. It is better, I think, that writers on military law use Winthrop for reference and quotation and to let the edition of 1896 stand as a most reliable authority for the law during Winthrop's time. Anything else would, I think, be an injustice to this distinguished author.

Very Sincerely,

W. A. BETHEL

Maj. Gen., U.S.A. Ret.

The act of July 5, 1884 (23 Stat. 113), reorganized the Judge Advocate General's Department and authorized three Deputy Judge Advocate Generals with the rank of lieutenant colonel. Winthrop was at once promoted to lieutenant colonel. On August 28, 1886, he reported to the United States Military Academy as Professor of Law. After a distinguished tour of duty in this capacity, Lieutenant Colonel Winthrop returned in 1890 to the Judge Advocate General's office, where he remained on duty for the rest of his active career. At the time of General Swaim's retirement (G.O. 69, Hq. of the Army, Dec. 22, 1894) Mr. Justice Morris of the District of Columbia Court of Appeals and Governor Hoadly of Connecticut tried to persuade President Cleveland to appoint Winthrop Judge Advocate General, but Colonel Lieber secured the position. However, Winthrop was promoted to colonel and Assistant Judge Advocate General on January 3, 1895. Georgetown University conferred the honorary degree of Doctor of Laws upon him in 1896. Colonel Winthrop was retired for age on August 3, 1895 (S.O. 180, Hq. of the Army) and died of heart disease at Atlantic City, New Jersey, during the night of April 8, 1899, in his 68th year.

Colonel Winthrop had many interests beyond his military duties. He was an accomplished linguist, as is amply evidenced by his translation in 1872 of the *Militar Strafgesetzbuch*, the German Military Penal Code. He was also a botanist, an interest which must have been furthered by his extensive foreign travel. He visited Europe while on leave twelve times between 1872 and 1896 and toured Canada in 1894. He was a close student of the history of the American Revolution, especially of the campaigns fought in the vicinity of the Hudson River, and a contributor to periodicals and scientific reviews. Colonel Winthrop's chief interest, however, as every judge advocate knows, was in the scientific study and exposition of military law.

Early in his career as a judge advocate Colonel Winthrop began one of the two works which constitute his great contribution to the advancement of military law. The first *Digest of Opinions of the Judge Advocate General*, a volume of 136 pages, was published by the Government Printing Office in 1865. A second edition, increased to 252 pages, was issued in 1866 and a third edition of 393 pages, the first to bear Major Winthrop's name on the title page, appeared in 1868. The first annotated edition of the *Digest* was published in 1880. It contained over 600 pages of text and a preface in which the author tells us that the notes were taken from memoranda which he had compiled for personal use over a period of 15 years. The last edition of the *Digest* to appear in Colonel Winthrop's lifetime was published in 1895 and a revised edition by Major Charles McClure was issued in 1901. The 1912 and 1912-40 *Digests* now in use are direct lineal descendants of Colonel Winthrop's work.

Colonel Winthrop's greatest work, *Military Law and Precedents*, was published in Washington in 1886, with a dedication to its author's old chief, Brevet Major General Joseph Holt. The manuscript was completed in the

summer of 1885 after ten years of laborious research and Colonel Winthrop described it in a letter of November 10, 1885, to Secretary of War Endicott, in which he said:

"No pecuniary profit is expected by me from this work—such books barely pay expenses. But, especially in view of the embarrassing, and to me humiliating, *status* of my department of the army, consequent upon the trial and sentence of its official head, my literary work is now the only means by which I can add to my reputation or record as an officer or perform satisfactory public service of a valuable and permanent character. There is no existing treatise on the science of military law in our language—no collection even of the many precedents on the subject, many of which are of great value both legally and historically. My object in the extended work prepared by me is to supply to the body of the public law of the United States a contribution never yet made. My book is a *law book*, written by me in my capacity of a lawyer even more than in that of a military officer; and the reception which my previous work [the *Digest*] has met with from the bar and the judges, encourages me to believe that my present complete treatise will be still more favorably appreciated."

A revised edition, keyed into the 1895 *Digest* and dedicated to Mr. Justice Morris, was published in 1896. The second edition was reprinted as a Government publication in 1920 and again in 1942. An abridged version entitled, *An Abridgement of Military Law*, designed and adopted as a text for use at the United States Military Academy, was published in 1887 and revised editions of this shorter work were issued in 1893, 1897 and 1899.

Military Law and Precedents was a masterpiece of painstaking scholarship, brilliant erudition and lucid prose. It collected for the first time in one work the precedents which constitute the framework of military law, gleaned from a bewildering and unusable mass of statutes, regulations, orders, and unpublished opinions and from the amorphous body of customs of the service reposing in scattered fragments in the works of military writers and the minds of military men. What Lord Chief Justice Sir Edward Coke did through his *Reports* and *Institutes* for the common law Colonel William Winthrop did through his *Digest*, and *Military Law and Precedents* for military law. The Anglo-American concept of justice demands a body of law which is fixed, ascertainable and independent of human caprice, a demand which is not met by customary rules recorded only in unpublished decisions and the fickle memories of men. That concept of justice requires also that the decisions of judicial bodies be subjected to the cold light of public scrutiny, in order that their weaknesses may be discovered, a requirement which is not satisfied by the abbreviated form and narrow distribution of general court-martial orders. For effective application under field conditions, statutes, regulations, orders and customs relating to military justice must be collected and precedents must be published in brief and usable form. Colonel Winthrop met those needs admirably. The Judge Advocate General's Department may well be proud of the learned scholar and cultured gentleman who served it faithfully for thirty-six years.

THE *Disciplinary Powers* OF ARMY COMMANDING OFFICERS

By COLONEL WILLIAM CATTRON RIGBY,

U. S. Army, Retired

SHOULD it be recommended to Congress to broaden the present powers of Army commanding officers to impose disciplinary punishment without resort to court martial?

The disciplinary punishing powers of commanding officers in our Army are set out in Article of War 104 (Chap. II, Act of June 4, 1920, amending the National Defense Act, 41 Stat. 759, 787, 808; 10 U. S. Code 1576; M. C. M., 1928, pp. 225-226). It provides:

"Art. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.—Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command may, for minor offenses impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges for not exceeding one week, extra fatigue for not exceeding one week, restriction to certain specified limits for not exceeding one week, and hard labor without confinement for not exceeding one week, but shall not include forfeiture of pay or confinement under guard; except that in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade may, under the provisions of this article also impose upon an officer of his command below the grade of major a forfeiture of not more than one-half of such officer's monthly pay for one month. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty."

The disciplinary powers thus given Army commanding officers without resort to court-martial are narrower than those of corresponding officers in the Navy, and considerably narrower than those held by commanding

officers in the British Army and in most other armies. Articles 24 and 25 of the Articles for the Government of the Navy (Rev. Stats., Sec. 1624; 34 U. S. Code 1200, Arts. 25, 26; as amended [Art. 24] February 16, 1909, c. 131, 35 Stat. 621, and [Art. 25] August 29, 1916, c. 417, 39 Stat. 586), authorize the commander of a vessel, and all officers of the Navy and of the Marine Corps authorized to convene general or summary courts martial, to impose upon any petty officer, or person of inferior rating, or marine,

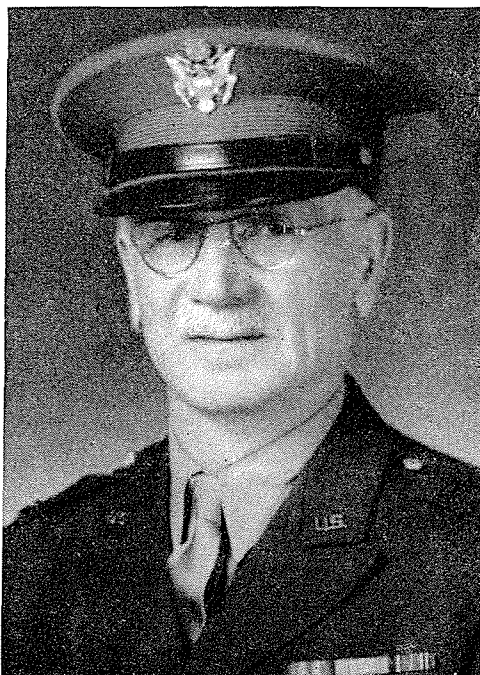
"for a single offense, or at any one time, any one of the following punishments; namely, First. Reduction of any rating established by himself. Second. Confinement not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court-martial. Third. Solitary confinement, on bread and water, not exceeding five days. Fourth. Solitary confinement not exceeding seven days. Fifth. Deprivation of liberty on shore. Sixth. Extra duties."

In the British Army a commanding officer as indicated later on in this paper, may, without resort to court martial, unless it be demanded by the accused, impose punishment including detention and forfeiture of pay up to 28 days. Likewise in the French Army during the former World War,—and it is understood that their regulations have not been substantially changed in this respect since then,—a commanding officer might impose, depending upon his rank, disciplinary punishment without

court martial including up to as much as 60 days' confinement; and similar provisions are to be found in the regulations of most of the Continental armies.

The Articles of War for the United States Army appear to have been much more conservative or hesitant than the laws and regulations governing almost all other military establishments in entrusting disciplinary punishing powers to commanding officers, despite the obvious desirability of avoiding the multiplicity of court martial trials by summary courts for minor offenses.

Prior to the 1916 Revision of the Articles of War no statutory authority existed for the exercise of such powers by Army commanding officers. Former Judge Advocate General Davis in his work in 1915, on the "Military Law of the United States," does not even mention the subject; except that in dealing with the action of the convening authority in considering whether a particular set of charges shall be referred for trial by



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court martial, General Davis quotes (p. 80 one sentence from Paragraph 930 of the Army Regulations of 1895 that:

"Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders."

Winthrop in his standard work on "Military Law and Precedents," Second Edition, November 1, 1895, expressly said in Chapter XX, Section VIII, on pages 678 to 681, (War Department Reprint of 1920, pp. 444-446), under the heading "Disciplinary Punishments" that no such power then existed in our Army; that it was "Not authorized by law." He says:

"NOT AUTHORIZED BY LAW. The different specific penalties which have been considered in this Chapter practically exhaust the power to punish conferred by our military law. We have in that law no such feature as a system of disciplinary punishments—or punishments imposable at the will of military commanders, without the intervention of courts-martial—such as is generally found in the European codes. Except so far as may be authorized for the discipline of the Cadets of the Military Academy, and in the cases mentioned in two or three unimportant and obsolete Articles of war, our law recognizes no military punishments for the Army, whether administered physically, or by deprivation of pay, or otherwise, other than such as may be duly imposed by sentence upon trial and conviction.

"NOT SANCTIONED BY USAGE. By the authorities nothing is more clearly and fully declared than that punishments cannot legally be inflicted at the will of commanders—that they can be administered only in execution of the approved sentences of military courts. Such punishments, whether ordered by way of discipline irrespective of arrest and trial, or while the party is in arrest awaiting trial, or between trial and sentence, or after sentence and while awaiting transportation to place of confinement, or while he is under sentence and in addition to the sentence,—have been repeatedly denounced in General Orders and the Opinions of the Judge Advocate General, and forbidden in practice by Department commanders." * * * * *

"The practical result is that the only discipline in the nature of punishment that, under existing law, can in general safely or legally be administered to soldiers in the absence of trial and sentence is a deprivation of privileges in the discretion of the commander to grant or withhold, (such as leaves of absence or passes), or an exclusion from promotion to the grade of non-commissioned officer, together with such discrimination against them as to selection for the more agreeable duties as may be just and proper. To vest in commanders a specific power of disciplinary punishment, express legislation would be requisite."

The grant of this power first came into our Articles of War, as above indicated, by the Revision of 1916, enacted by Congress as Section 3 of the annual Army Appropriation Act for that year, in the form of an amendment effective March 1, 1917, of Section 1342 of the Revised Statutes (Act of August 29, 1916, Sec. 3, c. 418, 39 Stat. 619, 650, 667, 670). Section 1342 of the Revised Statutes of 1874 was the section that had comprised the old Articles of War, really the old Code of 1806, with the various amendments that had been made to it from time to time.

The Revision of 1916 was drafted in the office of the Judge Advocate General of the Army under the active supervision of Judge Advocate General Enoch H.

Crowder, with the help of a distinguished staff. It is understood that the original draft had been, on General Crowder's suggestion, made by Major (afterwards himself Judge Advocate General) Edward A. Kreger, while Judge Advocate of the old Department of the Colorado from 1909 to 1911, and brought to Washington upon his detail to the Office in 1911. General Crowder first presented it to Congress as early as 1912. It bore the approval successively of Secretaries of War Stimson, Garrison, and Baker; and as above indicated was finally adopted by Congress as a rider to the annual Army Appropriation Act of 1916.

Article 104 of that Revision, in very much the same form as the present corresponding Article of the 1920 Revision, for the first time introduced into our Army express statutory authority for commanding officers to exercise disciplinary punishment powers without resort to court martial. In the 1917 Edition of the Manual for Courts Martial issued under date of November 29, 1916, effective on the same date on which the new Revision of the Articles of War was to go into effect, March 1, 1917, the order over the signature of Major General Hugh L. Scott, Chief of Staff, putting it into effect, says (M.C.M., 1917, p III) that it was "prepared by direction of the Secretary of War in the Office of The Judge Advocate General."

That Manual said (Sec. 333) that: "Legal sanction is now given to the exercise of such disciplinary power," by Article of War 104. And that (*ib.*, Sec. 333):

"333. Authority for.—While courts-martial are the judicial machinery provided by law for the trial of military offenses, the law also recognizes that the legal power of command, when wisely and justly exercised to that end, is a powerful agency for the maintenance of discipline. Courts-martial and the disciplinary powers of commanding officers have their respective fields in which they most effectually function. The tendency, however, is to resort unnecessarily to courts-martial. To invoke court-martial jurisdiction rather than to exercise this power of command in matters to which it is peculiarly applicable and effective, is to choose the wrong instrument, disturb unnecessarily military functions, injure rather than maintain discipline, and fail to exercise an authority the use of which develops and increases the capacity of command." * * * * *

"While commanding officers should always use their utmost influence to prevent breaches of discipline and compose conditions likely to give rise to such breaches, they should also impose and enforce the disciplinary punishment authorized by the above article. This authority, involving the power, judgment and discretion of the commander, can not be delegated to or in any manner participated in by others, but must be exercised by the commander upon his own judgment and in strict compliance with the article and the regulations prescribed by the President pursuant thereto. Accordingly, the commanding officer of a detachment, company, or higher command will usually dispose of, and may award disciplinary punishment for, any offense committed by any enlisted man of his command which would ordinarily be disposed of by summary court-martial, when the accused does not deny that he committed the offense and does not demand trial by court-martial before the commanding officer has made and announced his decision in the case."

Article of War 104 as it then stood in the Revision of 1916 provided that (39 Stat. at p. 667; M.C.M., 1917, p. 325):

"The disciplinary punishments authorized by this Article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain speci-

fied limits, but shall not include forfeiture of pay or confinement under guard."

Article 104 was changed to its present form by the Revision of 1920 (Act of June 4, 1920, 41 Stat., *supra*, at p. 808), expressly specifying that the periods of time for which withholding of privileges, extra fatigue, and restrictions to specified limits may be imposed shall be not more than one week, and adding an express power to impose "hard labor without confinement" for not exceeding one week, and also adding to the commanding officer's powers,

"that in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade may, under the provisions of this Article also impose upon officers of his command below the grade of major a forfeiture of not more than one-half of such officer's monthly pay for one month."

In the British service, as already observed, the disciplinary punishing powers of the commanding officer have been much more widely extended with relation to enlisted men. With relation to junior officers they are in some respects broader, but in others narrower, than those granted by our Article of War 104.

Under the British Army Act of 1881, prior to 1910, the disciplinary powers of the commanding officer were not so broad as they are now. But by the Army Annual Act of 1910, Parliament amended Section 46 of the Army Act so as to increase the detention [confinement] which might be awarded by commanding officers from 14 days in ordinary cases, and 21 days in cases of absence without leave, up to not exceeding 28 days in all cases, "with or without any deduction from his ordinary pay" [British "Manual of Military Law," Ed. of 1914, "Army Act," Sec. 46, and note 6, pp. 422, 424].

The increased disciplinary power thus given British commanding officers has remained in force ever since. [Confer British Manual of Military Law, Ed. of 1929, Reprint of 1939, "Army Act," Sec. 46, "Summary disposal of Charges," and notes, pp. 469-472]. It has thus stood in force for more than thirty years now, in peace and in war; for four years before the outbreak of World War I; throughout that war; through the twenty year interval before the present World War, and during the five years since the outbreak of the present war. Apparently it has proved its worth in the minds of British officers and of Parliament; and it may be added in the minds of officers of the forces of the Dominions as well, governed by,—or whose regulations have by their own legislative authorities been modeled upon,—the British Army Act and the King's Regulations.

At the end of World War I, in 1919, a few months after the Armistice, the British Judge Advocate General, Sir Felix Cassel, Bart., said¹ in answer to the question, "In practice, can you tell me what percentage of the cases are disposed of by the award of the commanding officer without resorting to court martial?":

"Judge Cassel: That comes back to the same question upon which I said that I had no statistics available. * * *

"But you may take it that I am satisfied that it is on the whole a very valuable and efficient procedure. It depends in a large measure on the particular commanding officer; that is to say, whether the commanding officer is a man of experience and capacity, and where he is it does work very well. * * *

¹ To the present writer, in answering questionnaire. Hearings before Senate Military Affairs Subcommittee, on S 64, "A Bill to Establish Military Justice," 66th Congress, First Session, pp. 471-472.

"These increased powers of commanding officers have had the result of practically doing away with regimental courts martial. We have, as you know a form of court martial called regimental court martial, which is convened and confirmed by the commanding officer himself, and which is composed entirely of officers under his command. The extension of the powers of the commanding officers has very largely reduced the number of regimental courts martial. Regimental courts martial are now very rare indeed, because a commanding officer's powers so nearly approximate to those of a regimental court martial. In fact, regimental courts martial are now only resorted to in special cases."

In answer to the question, "The 14 days' power was not sufficient?", Judge Advocate General Cassel said (*ib.*, p. 472):

"It was not sufficient; but on the other hand, if you go to increasing the power largely beyond what it is at present, I think the result will be that soldiers will be more frequently electing a trial by court martial, and not run the risk to be tried by commanding officer. Twenty-eight days is, I think, about a proper power of punishment for a commanding officer to possess. * * * "I do not think the powers to deal with a case summarily should be increased beyond what they are now."

The very next year, the British Parliament by the Army Annual Act for 1920, on the recommendations of Judge Advocate General Cassel and of the War Office entirely abolished the regimental court martial, which had been the court most nearly corresponding to the summary court martial in our Army.—The British regimental court was composed of three officers, and possessed punishing powers up to 42 days' confinement. Its abolition in 1920 left the commanding officer exclusively responsible for handling all minor offenses within his command which he does not consider to require reference to a general court martial or to their intermediate court, the "district court martial" corresponding roughly to our special court martial, but empowered to impose confinement up to two years.²

Placing this exclusive responsibility upon the shoulders of the commanding officer appears to have worked well in practice and to have met with substantially universal approval in the British service. It does away with the paper work and the delay of court martial proceedings in small cases. In response to inquiries about it during the present war, late in 1941, the present British Judge Advocate General Sir Henry D. F. MacGeagh, as well as the Adjutant General, Lieutenant General Sir Ronald Adam, and also the Director of Personal Services in the Adjutant General's Department, Major General C. J. Wallace, and former Judge Advocate General Cassel, now retired, all concurred that the system had "worked well;" that in practice "it does save resort to court martial in a great many cases, and throughout the Army generally is looked upon as a satisfactory plan;" and that "the disciplinary punishment by the commanding officer saves much in time and in the paper work and routine of the court martial."³ Conversational inquiries among officers and casual questioning of enlisted men failed to elicit contrary opinions. Emphasis was quite usually placed upon the accused's right to demand court martial if he so chose.

² During the present war, because the British Isles have themselves been within the theatre of active operations, their "field general court martial," with practically the same punishing powers as a general court martial, has been used in place of the district court martial, in the Army, but not in the Air Forces.

³ Report to the Secretary of War, June 10, 1942, Par. 21, pp. 17-18.

The opinions of officers of the Canadian forces serving in England at the time were along the same lines. They all favored the plan. For example, Brigadier A. W. Beament, the Director of Personal Services of the Canadian Forces in England said: "If any move were made to take away this power we would feel bound to oppose it as strongly as possible, because we feel it is essential."

One note of caution in war time was sounded by an experienced British officer, who observed that at the beginning of the present war, with the sudden influx of so many comparatively inexperienced Territorial (reserve) commanding officers into the Army, they often needed some time to acquire the necessary experience to discharge these delicate duties justly and efficiently.

An outstanding feature of the plan is, of course, that it throws the burden of the discipline of the command directly and personally upon the shoulders of the commanding officer who would formerly have been empowered to convene a regimental court martial. He, personally, must investigate the charges, and determine upon their disposition, and himself impose the punishment if it is to be disposed of in that way. The British regulations provide (Manual of Military Law, 1929, *supra*, (Reprint of 1939) Chap. IV. Secs. 21-22, pp. 35-36):

"A case left to be dealt with by a commanding officer must be investigated by the commanding officer himself. He can dismiss the charge; remand the case for trial by court martial; refer it to superior military authority; or, in the case of a private soldier, award punishment summarily, subject to the right of the soldier, in any case

where the award or finding involves forfeiture of pay, and in any other case where the commanding officer proposes to deal with the offense otherwise than by awarding a minor punishment, to elect to be tried by a District Court Martial, and subject to the limitations imposed on the discretion of commanding officers by the King's regulations." (Sec. 21) * * *

"The duty of investigation requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation usually takes place in the morning, and must be conducted in the presence of the accused; but, in the case of drunkenness, an offender should never be brought up till he is sober." [Sec. 22.]

The regulations (*ib.*, Secs. 23 *et seq.*, pp. 36 *et seq.*) prescribe the methods of conducting the investigation and imposing punishment. In practice, the whole proceeding is ordinarily carried out at a fixed hour in the morning with the promptness and precision of any other military event or ceremony of the day.

But that is another story that would run beyond the permissible limits of this article, as would also any discussion of the further provision of Section 47 of the British Army Act extending as above indicated the powers of a general officer or a brigadier authorized to convene general courts martial to deal summarily with charges against junior officers and against warrant officers and to adjudge against them forfeiture of seniority of rank as well as severe reprimand or reprimand and in the case of a warrant officer deduction of pay, or any one or more of those punishments. These provisions, also, appear to have worked well; and apparently have met substantially universal approval in the British service.

ASPECTS OF CANADIAN SERVICE LAW

(Continued from Page 11)

Martial (Army and Air Force); Administration; Dependents' Allowance Board references; Long Service Pensions. While each one of these sections deals primarily with the subject matter which normally would be assigned to it, nevertheless it frequently happens that the peculiar qualifications of some officer of a particular section are such as would enable him to deal more adequately with a matter which comes within the scope of another section. Accordingly, that other section will refer that matter to the officer best professionally qualified to deal therewith. In this regard the executive side of the Office plays a part and it is the duty of those officers on that side to determine the particular officer in the Office who is best qualified to act in such cases.

The object which it has been sought to attain is to

create an organization which will permit both an even distribution of a volume of matters which require to be dealt with and at the same time to permit there being effected a reasonable degree of elasticity in the way of being able to assign a particular task to the individual who professionally is best qualified to deal with it without at the same time throwing an undue burden on any one individual or section.

The experience of some five years of war indicates beyond peradventure that so far as concerns the administration of Service law and legal matters relating to the Armed Forces, it is possible to effect such co-ordination and integration as would closely approach complete homogenization without sacrificing the individuality of any one of the Armed Forces.

DEVELOPMENT OF CRIMINAL *Law* AND CRIMINAL *Procedure* IN MODERN JAPAN

By WILLIAM WIRT BLUME*

Introductory

The Judge Advocate General's School has for some time past given a course in the Law of Belligerent Occupation. The course is largely devoted to the legal problems arising from military occupation of enemy territory. Such legal topics as the treatment of private and public property, requisitioning of property and services, seizures and confiscation, contributions, taxation, contracts and other transactions of the occupant, local courts, lawmaking power of the occupant, jurisdiction of local courts over the occupant's forces, war crimes, military commissions and many others are dealt with. The text used in the course was prepared in the school.

The course proper is preceded by lectures on the legal system of Germany given by Professors Kraus, Pollock and Shartel, of the University of Michigan. Professor Shartel and Dr. Hans Julius Wolfe, formerly Gerichts-assessor, Berlin, prepared a text on the German Legal System especially for the school.

JAPAN'S first treaty with the United States, concluded March 31, 1854, provided that "shipwrecked persons and other citizens of the United States" should be "free as in other countries, and not subjected to confinement," but should be "amenable to just laws."¹ By freedom from confinement was meant freedom from the "restrictions and confinement" to which the Dutch and Chinese had been subjected at Nagasaki.² It did not mean, however, that American citizens were to be free to go anywhere in Japan. They were to reside only at Shimoda and at Hakodate, but might go where they pleased within seven Japanese miles (*ri*) of a point designated at the first place, and within limits to be defined at the second place.³ The meaning of the provision that they should be "amenable to just laws" is not entirely clear. Apparently, American citizens residing in Japan were to be subject to the laws of Japan, provided the laws were "just." How the justness of the laws was to be determined does not appear.

A second treaty between the United States and Japan, concluded June 17, 1857, stipulated that American citizens might reside permanently at Shimoda and at Hakodate, and that the United States might appoint a vice-consul to reside at the latter place.⁴ The treaty further provided:

"Americans committing offences in Japan shall be tried by the American Consul General or Consul, and shall be punished according to American laws.

"Japanese committing offences against Americans shall

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1. Treaty of Peace, Amity and Commerce, Art. IV (Malloy, *Treaties, Conventions, International Act, Protocols and Agreements between the United States of America and other Powers*, 1776-1909, Vol. I, p. 997).
2. *Ibid.*, Art. V.
3. *Ibid.*
4. Commercial and Consular Treaty, Art. II (Malloy) *Treaties, etc.*, I, p. 998).

Anticipating future events, the school has recently added lectures on the Japanese legal system by James Lee Kauffmann, of the New York State bar, an expert on Japanese law. Mr. Kauffmann was the Professor of Anglo-American Law at the Imperial University, Tokyo and practiced law in Japan for thirteen years.

The modern Japanese legal system, unlike other foreign systems, has received little attention from English and American scholars. William Wirt Blume, Professor of Law, University of Michigan, has written the following general article at the request of The Judge Advocate General's School as having topical interest to judge advocates whose eyes are now turned to the East.

EDWARD H. YOUNG, Colonel, JAGD,
Commandant, The Judge Advocate
General's School.

be tried by the Japanese authorities, and punished according to Japanese laws."⁵

By a third treaty, signed July 29, 1858, Kanagawa (now Yokohama), Nagasaki, Niigata, Hyogo (now Kobe), Yedo (now Tokyo), and Osaka, in addition to Shimoda and Hakodate, were opened for American trade and residence.⁶ Travel, however, was restricted to narrow areas surrounding the opened ports.⁷ Extraterritorial jurisdiction was authorized in these words:

"Americans committing offences against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law. Japanese committing offences against Americans shall be tried by the Japanese authorities and punished according to Japanese law. The consular courts shall be open to Japanese creditors, to enable them to recover their just claims against American citizens, and the Japanese courts shall in like manner be open to American citizens for the recovery of their just claims against Japanese."⁸

This provision, it will be observed, differed from that contained in the treaty of 1857 in two respects: (1) The provision of 1857 was limited to criminal cases, while that of 1858 provided an extraterritorial jurisdiction of both criminal and civil cases. (2) The provision of 1857 covered all offences committed by Americans "in Japan," while that of 1858 referred only to offences committed by Americans "against Japanese." With respect to this second difference it was generally agreed that the broader provision of 1857 was incorporated into the treaty of 1858 as the revocation of the treaty of 1857 was made "upon the assumption and declaration that all its provisions were incorporated into the treaty of 1858."⁹

In order to carry into effect the above provisions together with similar provisions contained in treaties

5. *Ibid.*, Art. IV.
6. Treaty of Commerce and Navigation, Art. III (Malloy, *Treaties, etc.*, I, p. 1001).
7. *Ibid.*, Art. VII.
8. *Ibid.*, Art. VI.
9. *In re Ross*, 140 U.S. 453, 466 (1890).

with China and Siam, the Congress of the United States by an act approved June 22, 1860, conferred on the minister and consuls of the United States to China, Japan, and Siam "all judicial authority necessary to execute the provisions of such treaties."¹⁰ The jurisdiction conferred by the act extended to all crimes committed by American citizens within the named countries, and to "all controversies between citizens of the United States, or others, provided for by such treaties, respectively."¹¹ The "laws of the United States" were "extended over all citizens of the United States in the said countries" insofar as was necessary to execute the treaties.¹² In the absence of suitable statutes, the consular courts were to apply "the common law, including equity and admiralty," which, also, was extended "in like manner over such citizens and others in the said countries."¹³

The system of consular courts and extraterritorial jurisdiction, authorized by the treaties of 1857 and 1858 and carried into effect by the act of Congress of 1860, was in operation in Japan until 1899.¹⁴

The American treaty of 1858, with its provision for extraterritorial jurisdiction of both civil and criminal cases, became the model for treaties made the same year between Japan and The Netherlands, Russia, England, and France.¹⁵ All these treaties and later treaties made by Japan with other countries, provided for extraterritoriality and fixed the duties which the Japanese might levy on imports.¹⁶ The treaties contained no termination dates, but did provide that they might be revised after July, 1872. As soon as this time arrived Japan commenced an intensive campaign to obtain revision of what came to be known as the "unequal treaties."¹⁷ In the struggle which developed the "main points at issue between Japan and the treaty powers were tariff autonomy and extraterritorial jurisdiction."¹⁸ It has been said that "the efforts of Japan to secure the revision of 'unequal treaties' constituted the most important feature of her international relations during 1872-1894."¹⁹

In the period from 1868 (the year of the Restoration) until 1899 (when the unequal treaties were superseded) the Japanese government inaugurated and put into effect law reforms of a revolutionary character. The motives for these reforms were in the main two: (1) The immediate motive, and the one foremost in the minds of the people, was to get rid of foreign courts and extraterritoriality. To do this it was necessary to satisfy the treaty powers that the Japanese laws and judicial system would afford adequate protection to the citizens of the powers. (2) A less immediate motive, but one clearly

recognized by leaders in juridical thought, was the realization that a modernized legal system was necessary to enable Japan to become a leading industrial and commercial nation. Since 1899 many of the laws hastily adopted in the first period have been revised to meet more exactly the needs of the country, and from time to time new laws have been adopted to complete the system. Any study of law reform in modern Japan must take into account the operation and interaction of these principal motives for reform.

Codes of Criminal Law

Modern Japan inherited from feudal Japan a code of laws known as the "Edict in 100 Sections."²⁰ This code, compiled in 1742 and increased to 103 sections in 1790, was, in the main, a code of criminal law. It was not published, however, and was supposed to be kept secret. The original compilation concluded: "The foregoing . . . is not to be allowed to be seen by anyone except the magistrates."²¹ The revision of 1790 concluded: "It is not to be allowed to be seen by any except the officials concerned."²² A later compilation added: "Moreover, it is forever forbidden to make extracts from this code, even of one article thereof."²³ These provisions clearly indicate that the criminal laws were not directed to the people but to magistrates and others concerned with the punishment of crimes. It has been said that "the people were merely passive objects of the law"; that "it was their part implicitly to obey the commands of officials."²⁴

The "Edict in 100 Sections" was not directly operative in all of Japan, but only in the Shogun's own domains.²⁵ Indirectly, however, it "guided judicature in the fiefs of the two hundred and sixty odd daimyos who acknowledged the suzerainty of the Tokugawa house."²⁶

Although many acts were declared to be crimes, and severe penalties prescribed, it is not to be assumed that all crimes and punishments were included in the code. The written laws served as general guides, "the duty of filling up details being left to the discretion of the various clans, which consulted local customs."²⁷ The fact that the clans filled in the "details" with local, customary law meant that much of the criminal law was unwritten; also, that it was not uniform throughout the country.

Due to the social organization of old Japan, the criminal laws did not apply equally to all the people. A distinction was made between "high" and "low." If one of low estate should kill or wound one of high estate (his lord or master, or his lord's or master's

10. An Act to carry into Effect Provisions of the Treaties between the United States, China, Japan, Siam, Persia, and other Countries (12 U.S. Statutes at Large, 72 73).

11. *Ibid.*, Secs. 2 and 3.

12. *Ibid.*, Sec. 4.

13. *Ibid.*

14. The treaty of 1858 was superseded by a treaty concluded November 22, 1894; effective July 17, 1899 (Malloy, *Treaties, etc.*, I, p. 1028). See Moore, *Digest of International Law*, II, p. 659 (abolition of extraterritoriality).

15. Gubbin, *The Progress of Japan 1853-1871*, p. 73 (1911). "The Dutch signed theirs on the 18th of August, the Russians on the 19th, the British on the 26th, and the French on the 7th of October." (*Ibid.*)

16. *Ibid.*, p. 74.

17. Takeuchi, *War and Diplomacy in the Japanese Empire*, p. 91. (1935).

18. *Ibid.*

19. *Ibid.* For a full discussion of this whole subject see Jones, *Extraterritoriality in Japan and the Diplomatic Relations Resulting in its Abolition 1853-1899* (1931).

20. A translation of this code appears in *Transactions of the Asiatic Society of Japan*, Vol. XLI, Part V, Dec. 1913, pp. 687-804. Accompanying it is a brief discussion by John Carey Hall (pp. 683-687).

21. *Ibid.*, p. 804.

22. *Ibid.*

23. Hozumi, *The New Japanese Civil Code as Material for the study of Comparative Jurisprudence* (pamphlet), p. 20 (1904).

24. *Ibid.*, p. 21. "The policy of the Tokugawa Government was based on the famous Chinese maxim 'Let the people abide by, but not be apprised of, the law' . . . The new Imperial Government took another and wiser Chinese maxim 'To kill without previous instruction is cruelty.'" (*Ibid.*)

25. *Transactions, etc.*, cited in note 20 supra, p. 687.

26. *Ibid.* Compare Okuma, *Fifty Years of New Japan*, p. 270 (1909), where it is said that the Edict in 100 Sections "is not a law in the true sense of the word, but only the house law of the Tokugawa family, which the great general drew up in the course of years and intended for his descendants only. Accordingly, instead of being published it was always carefully kept in the archives, and never read by any other persons than the Shoguns and their princes."

27. Okuma, *op. cit.* note 26 supra, p. 240.

relatives) he was to be punished most severely.²⁸ On the other hand, if one of high estate should kill or wound one of the common people, his act, in certain situations, might be overlooked. Section 71 of the Edict in part provided:

"If an infantry soldier (*ashigaru*, the lowest class of two-sworded man) is addressed in coarse and improper language by a petty towns-man or peasant, or is otherwise treated by such with insolence, so that he has no choice but to cut the aggressor down on the spot; if after careful inquiry there be no doubt as to the fact, no notice shall be taken of it."²⁹

Similar distinctions were made between "high" and "low" in the family system.³⁰

When, in 1864, a question was raised in the English House of Lords concerning extraterritoriality, Earl Russell, the Foreign Secretary, replied:

"Your lordships must bear in mind that the Japanese laws are most sanguinary. What should we say if we heard in England that a young English merchant had been brought before the Japanese tribunals, subjected to torture, put to death, being disembowelled, and, in short, suffering all the horrid tortures which the code of that country inflicts? And what would be said if we were to admit the application of the Japanese law to British offenders, that all the relations of the criminal should be put to death for his offense?"³¹

Although the Foreign Secretary was in error in thinking that disembowelment was a punishment prescribed for ordinary crime, he was fully justified in characterizing the laws as being "most sanguinary." The code prescribed death as the penalty for many crimes. Four methods of inflicting the death penalty appear in Section 103:³² (1) pulling the saw, (2) crucifixion, (3) burning, and (4) decapitation. After decapitation the criminal's head might be exposed (gibbeted) or his body thrown aside to be used as a chopping-block on which any two-sworded man might try his blade.³³ If a person accused of one of the most serious crimes should commit suicide to escape punishment, his body was to be "pickled in salt and then punished."³⁴ Other punishments were flogging, exposure in cangue, banishment, deportation, imprisonment, and fines. Some convicts were tattooed. The property of persons put to death was confiscated.

"Pulling the saw" was the most severe type of painful execution. The code provided:

"After being led around for public exposure for one day the criminal is to have sword-cuts made in both shoulders, then a bamboo saw smeared with the blood is to be placed on each side of him where he is exposed for two days to public view, and any person who, detesting his crime, is willing to pull the saw or saws is to be at liberty to do so."³⁵

Although used at one time, this form of execution was not actually employed under the code except ceremonially. After exposure for two days with the saws on either side, the criminal was crucified.³⁶

Among the first law reforms of modern Japan was the adoption, in 1870, of a criminal code entitled "Chief Points of the new Fundamental Laws."³⁷ One avowed purpose of this reform was to provide a code that would be applicable to the entire country.³⁸ It will be noted, also, that the code was published and thus made public. It is not clear, however, that the laws were intended to be binding on the people as distinguished from public officers. The Imperial Proclamation called only upon "officials to observe the rules of the code," whereas a Proclamation made two years later enjoined subjects as well as officials to observe the code.³⁹

Although it was stated by a contemporary writer that "every crime known to Japanese law, with the exception of such offences as are in contravention of the Press-Laws, Railway Regulations, etc., which are provided for in special statutes, is separately treated,"⁴⁰ it should be noted that the code, itself, provided:

"In case of the commission of any offence to which there can be found no law applicable, the degree of punishment that is to be inflicted for it is to be determined by an accurate comparison of the case with others already provided for in the laws."⁴¹

From this it would seem that customary crimes not declared in any written statute, might still be punished.

The new laws greatly reduced the number of offenses punishable with death, and abolished some of the older forms of execution.⁴² It abolished, also, some of the most severe forms of corporal punishment.⁴³ It did not, however, abolish all distinctions between "high" and "low." A person of the samurai class who should commit a crime not considered disgraceful was to be punished less severely than a common person.⁴⁴ If the crime was disgraceful, he was to be deprived of his rank and punished as a commoner.⁴⁵

The laws of 1870 were revised and supplemented in May 1873 by a set of laws called "Revised Fundamental laws and Supplementary laws."⁴⁶ These laws reduced further the number of crimes punishable by death, and went far toward abolishing corporal punishment.⁴⁷

It is generally recognized that the criminal laws of feudal Japan and the new laws of 1870 were based, in a large part, on the penal code of China.⁴⁸ The supplementary laws of 1873 were the first criminal laws to be influenced by the West.⁴⁹

Towards the end of 1873 a committee was set up in the

37. Transactions of the Asiatic Society of Japan, Vol. V, Part II, p. 1 (1877).

38. Ibid.

39. Hozumi, op. cit. note 23 supra, p. 22.

40. Transactions, etc., cited in note 37, supra, p. 3.

41. Ibid., p. 25.

42. Ibid., p. 2.

43. Ibid.

44. Ibid., pp. 6-8. For an assault on a servant, the master was not to be punished unless "cutting wounds" were inflicted, in which case he was to be punished three degrees less severely than provided for ordinary cases. p. 56.

45. Ibid.

46. Ibid., p. 1.

47. Ibid., p. 2. A description of a public execution which took place in March 1874 will be found in 16 Green Bag, 38 (1904). Decapitation was the method used. "It was a very long business, and before it had nearly finished the native spectators were laughing and joking upon the appearance of the doomed men, with that callousness to human suffering which so much blackens the otherwise amiable and pleasing character of the Japanese people." Ibid., p. 39.

48. See Hozumi, op. cit. note 23 supra, p. 17; Okuma, op. cit. note 27 supra, p. 243.

49. Ibid.

28. Edict in 100 Sections (note 20, supra) Sec. 71.

29. For "cutting at the cross roads" ("a favorite pastime of young samurai who wish to try their swords . . . by cutting down common folk") the offender was to be beheaded. Ibid.

30. Ibid.

31. Hansard, Parliamentary Debates, 3rd series, Vol. CLXXVI, p. 591.

32. Transactions, etc., cited in note 20, supra, p. 791.

33. Ibid., p. 792.

34. Ibid., p. 783 (Sec. 87).

35. Ibid., p. 791 (Sec. 103).

36. Ibid., note on Nokogiri-Biki following translation of code.

Department of Justice to compile a code of criminal law based on Western Law.⁵⁰ A French jurist by the name of Boissonade was employed to assist in this undertaking.⁵¹ The product, a criminal code based on the French criminal code, was promulgated in 1880 and became effective in January 1882.⁵² Concerning this code, Sebald (translator and annotator of the present criminal code) has written:

"M. Boissonade's code, now known as the '*Old Criminal Code*' classified crimes into three categories, namely, felonies, misdemeanors, and police offenses. It was a tremendous advance over the former laws, abolishing as it did the arbitrary sentences in which the judges' consciences were the principle guide, but it was considered by many to be too complex and difficult to understand. Undoubtedly, this criticism is the *raison d'etre* of the present code."⁵³

The present code came into force October 1, 1908.⁵⁴

The principle of codification, i.e. the scheme of having all crimes and punishments defined and prescribed in written laws, was strengthened by the Constitution, promulgated in 1889, which declared: "ARTICLE XXIII. No Japanese subject shall be arrested, detained, tried or punished, unless according to law." It should be noted, however, that the criminal code does not contain all the criminal laws. Some are contained in special criminal statutes; many will be found scattered through other codes and statutes.⁵⁵ It should be noted further that Article IX of the Constitution provides:

"The Emperor issues, or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws."

In certain emergency situations the Emperor issues "Imperial Ordinances in the place of law."⁵⁶ A violation of an Imperial Ordinance may be punished by fine not exceeding Y200 or imprisonment not exceeding one year.⁵⁷ Cabinet and departmental ordinances may provide for fines not exceeding Y100 or imprisonment not exceeding three months.⁵⁸ Governors of prefects and superintendents of metropolitan police may issue ordinances providing for fines not exceeding Y50 or detention.⁵⁹ Commenting on the delegation of power to issue police ordinances a Japanese writer has said:

"Although the principle *nulla poena sine lege* and *nullum crimen sine lege* is followed in Japan, the statutes delegating penal power to the administrative authorities have not adopted the principle of special delegation, but, following the system of former Prussia, simply limited the maximum of penal power vested in them. Moreover, the maximum fixed by the law is relatively high in comparison with systems in other countries."⁶⁰

50. Okuma, op. cit. note 27 supra, p. 243.

51. Ibid.

52. Ibid.

53. The Criminal Code of Japan, translated and annotated 1936, p. iv. See outline and description of the code of 1882 by Kikuchi, The Criminal Law of Japan, 4 Michigan Law Journal, p. 89 (March 1895).

54. Code cited in note 53, supra, p. iv.

55. Ibid., p. v; also see pp. 257-262.

56. Constitution, Art. VIII. See Fujii, The Essentials of Japanese Constitutional Law, p. 341 (1940).

57. Sebald, op. cit. note 53 supra, p. iv.

58. Ibid., p. v.

59. Ibid., p. v.; Nakano, Ordinance Power of the Japanese Emperor, p. 115, note 14 (1923).

60. Nakano, op. cit. note 59 supra, p. 114.

With respect to the *emergency* Imperial Ordinances which may be issued "in the place of law," Sebald observes: "The implied power conferred by this provision is tremendous, and, it would seem, might easily be abused by an arbitrary government to an extent where all personal liberty in Japan would disappear."⁶¹

The present criminal code (which became effective in 1908) is divided into two parts: Book I—General Provisions. Book II—Crimes. As indicated by its title, Book I contains provisions applicable to crimes in general. Book II contains definitions of crimes, and prescribes the punishments to be inflicted.

Chapter I of Book I declares that the law of the code is applicable to "every person who has committed a crime within the Empire," or "on board a Japanese ship outside the Empire."⁶² The chapter then provides that the law is applicable to "every person" who has committed "outside the Empire" any of the crimes specified in certain articles of the code.⁶³ The articles referred to are found in the following chapters of Book II:

- Ch. 1. Crimes Against the Imperial House
- Ch. 2. Crimes Relating to Civil War
- Ch. 3. Crimes Relating to (External) War
- Ch. 16. Crimes of Counterfeiting Money
- Ch. 17. Crimes of Forgery of Documents
- Ch. 18. Crimes of Forgery of Valuable Securities
- Ch. 19. Crimes of Counterfeiting Seals

Certain other crimes committed "outside the Empire" by persons who are not Japanese subjects, are punishable under the code. Article 3 declares:

"This law also applies to every alien who has committed (any of) the crimes mentioned in the preceding paragraph against a Japanese subject outside the Empire."

The crimes mentioned in the "preceding paragraph" appear in the following chapters of Book II:

- Ch. 9. Crimes of Arson and Fire by Negligence
- Ch. 10. Crimes Relating to Inundation and Water Utilization
- Ch. 17. Crimes of Forgery of Documents
- Ch. 19. Crimes of Counterfeiting Seals
- Ch. 22. Crimes of Obscenity, Adultery (Rape), and Bigamy
- Ch. 26. Crimes of Homicide
- Ch. 27. Crimes of Wounding
- Ch. 29. The Crime of Abortion
- Ch. 30. Crimes of Desertion
- Ch. 31. Crimes of (Illegal) Arrest and Imprisonment
- Ch. 33. Crimes of Kidnapping and Abduction
- Ch. 34. Crimes against Reputation
- Ch. 36. Crimes of Theft and Robbery
- Ch. 37. Crimes of Fraud and Blackmail
- Ch. 38. Crimes of Fraudulent Appropriation
- Ch. 39. Crimes Relating to Stolen Goods

Even though tried and acquitted by a court of the place of the alleged crime, an "alien" committing one of the above crimes "against a Japanese subject outside the Empire" can be tried again in Japan. Article 5 provides:

"Even though an irrevocable judgment has been rendered in a foreign country, the imposition of punishment (in Japan) for the same act shall not be barred thereby. If, however, the offender has received execution either in part or entirely of the punishment pronounced abroad, execution of the punishment (in Japan) may be mitigated or remitted."

61. Sebald, op. cit. note 53 supra, p. iv. The general provisions of the criminal code apply "to offenses (crimes) for which punishments (penalties) are provided by other laws and ordinances, except as otherwise provided by such laws and ordinances." (Code, art. 8.)

62. Art. 1.

63. Art. 2.

At the time the above provisions were adopted Charles S. Lobingier, then a judge in the Philippines, called attention to their extraterritorial character, and pointed out that Japan had adopted a doctrine which had been vigorously opposed by the United States in a dispute with Mexico.⁶⁴ Though found in the codes of several countries,⁶⁵ the doctrine of extraterritorial jurisdiction over crimes is contrary to accepted principles of Anglo-American law.⁶⁶ Whether the doctrine is in accord with international law, seems to be in doubt.⁶⁷

Chapter II of Book I of the present criminal code (1908) deals with punishments. "Principal punishments (penalties) are death, penal servitude, imprisonment, fine, detention, and minor fine; confiscation is an additional punishment."⁶⁸ The latter is limited to things connected with the crime.⁶⁹ Only one method of inflicting the death penalty is provided, viz., "hanging in (the interior of) a prison."⁷⁰

Other chapters of Book I provide for suspended sentences, paroles, increased punishment for repeated crimes, mitigation of punishment because of extenuating circumstances, etc. Referring to amendments of the code of 1882 made by the code of 1908, a Japanese writer has said:

"These mainly relate, in the case of the Penal Code, to provisions for meeting the altered conditions of international relations (for instance, provisions relating to crimes committed outside the country, or crimes against foreign dignitaries and representatives), to the expansion of the limits of punishment so as to suit the various natures of crimes, and especially to the adoption of the system of remission in the execution of punishments, so as to avoid the evil of recidivism prevalent in modern Europe."⁷¹

As stated by Sebald, "even a cursory reading of the *Criminal Code* will at once indicate it to be a remarkably liberal and modern piece of work."⁷²

Codes of Criminal Procedure

The Tokugawa "Edict in 100 Sections"⁷³ contained no systematic treatment of criminal procedure.⁷⁴ From a few scattered provisions it appears that when a complaint of crime was made the first question was whether an investigation should be instituted. In one situation, at least, an investigation was not to be made unless the informer adduced "indubitable proof of crime on the part of the other."⁷⁵

What officer was charged with the duty of conducting investigations does not appear, except as set forth in Section 17:

"The preliminary enquiries to be made by the court when accusations of robbery or theft or of arson are brought against a person must not be left in the hands of

64. The New Japanese Penal Code and its Doctrine of Extraterritorial Jurisdiction, 2 *American Journal of International Law*, p. 845 (1908).

65. *Ibid.*

66. *Ibid.* Also see Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 *Michigan Law Review*, 238 (Dec. 1931).

67. Berge, *The Case of the S.S. Lotus*, 26 *Michigan Law Review*, 361 (1928).

68. Art. 9.

69. Art. 19.

70. Art. 11.

71. Professor Masaakira Tomii in Okuma, *op. cit.* note 27 *supra*, p. 243.

72. *Op. cit.* note 53 *supra*, p. vi.

73. Note 20, *supra*.

74. Gadsby, *Some Notes on the History of the Japanese Code of Criminal Procedure*, *Law Quarterly Review*, XXX, 448 (Oct. 1914).

75. Sec. 58.

the underlings concerned with the reporting of such crimes, but shall be entrusted only to the employees of the court (its own subordinates)."

Special procedure was provided for complaints made against masters and parents.⁷⁶ If the accused master or parent was of high official status the matter had to be "thoroughly investigated." If the charge turned out to be false the accuser was to be crucified; if found to be true, the accuser was to be punished one degree less severely than the guilty master or parent.

Section 83 provided for torture in cases of murder, arson, robbery, breach of barrier-guard, and treason. In other cases torture could be applied, if thought advisable "after consultation between the judges of the court." The purpose of torture was to compel a confession. The code provided:

"In any of the above cases if the accused refuses to confess, notwithstanding the fact that there is clear proof of his guilt, or if, notwithstanding the fact that some of his accomplices have made confession, the principal accused refuses to confess, torture is to be applied.

"When torture or severe cross-examination has to be resorted to, a reporter should be sent (from the court), to take careful note of the circumstances of the enquiry, and of the statements of the accused."

In a note on torture Hall has said:

"Under the criminal procedure of the Tokugawa tribunals the only valid proof of guilt was the accused's own confession, taken down in writing and formally sealed by him. Not till that was done could sentence of punishment be passed. When brow-beating and intimidation failed to obtain this indisputable proof of guilt, torture was the only resource; and it was much more extensively practiced in the later than in the earlier half of the Yedo Shogunate."⁷⁷

According to Hall there were ordinarily, four degrees or stages of torture: (1) Scourging, (2) hugging the stone, (3) the lobster, and (4) suspension.⁷⁸ In the first stage the accused was flogged with a scourge made of split bamboo. In the second, he was made to kneel on three-cornered strips of wood, and sit back on his heels. Slabs of stone each weighing 107 pounds were, one at a time, placed on his lap until he confessed or collapsed. If further torture was found necessary, the accused was so tied that his arms were across the back of his shoulders and his legs under his chin. In the final stage, the accused was suspended by a rope tied to his wrists behind his back. Where the purpose of torture was to obtain a confession it was rarely necessary to proceed beyond the first stage.⁷⁹

Turning next to the criminal laws adopted in 1870 and 1873 we find that these laws, like the feudal code, contained no systematic treatment of criminal procedure.

In a chapter dealing with complaints,⁸⁰ various punishments were provided for false and malicious complaints, failure to act promptly on complaints, etc. "A person who lays an information against a parent, paternal grandparent, husband, husband's parent or grandparent, shall in all cases be punished by penal servitude for 2½ years, and by penal servitude for life if the information be false and malicious."⁸¹ The provisions concerning false

76. Sec. 65.

77. *Op. cit.* note 20 *supra*, opposite p. 804.

78. *Ibid.* Hall's notes are accompanied by realistic drawings showing the methods of punishment and torture.

79. Notes 37 and 46, *supra*.

80. *Ibid.*, p. 70.

81. *Ibid.*, p. 76.

and malicious complaints were, according to Longford, of "extreme importance owing to the system of Japanese criminal procedure in which . . . the prisoner is always to be the first witness examined, and is liable not only to a severe cross-examination, but even to torture in case he may deny the charge preferred against him."⁸²

In a chapter entitled "Judgment and Imprisonment"⁸³ punishments were prescribed for wrongful imprisonment of innocent persons, pronouncing unjust sentences, improper use of torture, and other matters connected with procedure. The use of torture was limited as follows:

"All offences charged against persons above the age of 70 or under that of 15 years, as well as against those who are either maimed or deformed, are to be determined upon the evidence of circumstances and witness, and any officer who puts to the torture persons of any of the above classes, shall be liable to the same punishment as if he had wilfully and designedly pronounced an unjust sentence upon them. No relative within the degree of relationship that would justify him in cloaking the guilt of the accused, no person over 80 or under 10 years of age, and no one who is deformed can be admitted or called upon as a witness."⁸⁴

"Pregnant women whom it may be necessary to torture are to be given into the custody of their husbands, and the torture is not to be inflicted until the lapse of 100 days after delivery. An officer violating this law shall be punished by penal servitude for 90 days, for 1½ years if the infliction of the torture produces a miscarriage, and for 10 years if the woman dies under it."⁸⁵

In a note preceding his summary of the last-mentioned chapter Longford wrote (in 1877):

"In the trials of persons for criminal offences the following routine is observed)

"As soon as the arrest has been effected a formal charge is drawn up by the public prosecutor, or, in the absence of such an officer, by the chief local authority, based upon the written information of the offence that has been given by the police authorities by whom the arrest has been made. This charge is laid before a magisterial officer, who then proceeds with the investigation, commencing by subjecting the prisoner himself to a severe examination. If during this examination an admission of his guilt can be obtained from the prisoner no witnesses are called, but, if not, the prosecutor is ordered to produce such evidence as he may be prepared with, the witnesses being always examined by the presiding officer and their depositions drawn up by him. On the conclusion of the investigation the prisoner may, if sufficient evidence to warrant a presumption of his guilt has not been obtained, be released from custody, or he may, if his offence has been of a very trivial nature, be punished for it forthwith, or he may be committed for trial. In the latter case he is forwarded to the principal local court of the prefecture within the jurisdiction of which his arrest has been made, the charge laid by the public prosecutor and the record of the preliminary examination being sent along with him. The Court consists of president, judge, examining officer, and clerk, though the duties of two of these officer(s) may occasionally be discharged by one person. At the second trial the prisoner is submitted to a more searching examination than that which he underwent in the first instance, and, as before, if a full acknowledgment of the crime with which he is charged can be extorted from him no witnesses are called. When, however, the prisoner refuses to admit the charge, and, at the same (time) fails to adduce in his defence such proof, circumstantial or otherwise, as may

satisfy the examining officer of his innocence of that which he refuses to confess, then witnesses are called and confronted with him. If their testimony is such as to establish his guilt, he may be condemned even though he still persistently asserts his innocence. Where, however, the evidence is only sufficient to raise a very strong suspicion against him, an attempt is made to elicit the truth by subjecting him to a further examination, and, though it is now generally admitted that the use of torture has been practically abolished in the Japanese Courts, so far as there being any law absolutely forbidding its use during this examination, the right of resorting to it would seem to be still recognized by the retention in the codes of a section in the preliminary matter minutely describing the implement that is to be used in examination by torture (called in the code the 'Investigation whip'), and of sections in the present chapter which provide punishments for an officer who causes the torture of a person whom he knows to be innocent, or of persons of advanced or tender years, or of pregnant women. When the examining officer is satisfied that he has ascertained the whole truth of the case, he causes the clerk, who besides the prisoner, jailers, and witnesses while actually giving evidence has been the only person present in court during the trial, to draw up a full statement of it, which he submits to the judge. The judge after due consideration pronounces the crime of which the prisoner is guilty, decides whether any of the special provisions contained in the General Laws apply to it, and also whether the crime has been committed under the influence of such extenuating circumstances as provocation, necessity, or temptation that he is justified in exercising his right of mitigating the punishment provided in the statute applicable to the case. The sentence having been drawn up by the judge and approved by the president is read to the prisoner, and immediately put into execution unless the offence has been a capital one, when the sentence must be submitted to the Emperor and his approval of it obtained before it is pronounced."⁸⁶

To persons accustomed to the safeguards placed around an accused by Anglo-American law, the above procedure was wholly unsatisfactory. In the place of a presumption of innocence there was what amounted to a presumption of guilt safeguarded only by severe punishments for persons guilty of false accusations. In the place of trial by jury in open court there was a secret investigation in which the guilt or innocence of the accused was virtually determined. Not only was the accused not protected against self-incrimination, he was forced to testify against himself, and, in some situations, could be tortured if he did not do so. There was no provision for bail; no right to the aid of counsel; no right to summon witnesses in behalf of the accused. Investigations might be carried on interminably, there being no provision for speedy trial. And, it seems, a person once acquitted might be tried "for the same offence over and over again."⁸⁷

The section of the laws of 1780 which provided that "the evidence of circumstances and witness" should be used in the place of torture in certain cases, was a first step toward reform. Other steps, taken in close succession, have been described by Gadsby:

"In February of the 6th year (1873), Rules concerning the Decision of Criminal Cases (Dangoku Sokurei) were promulgated; and their spirit was embodied in the following preface. 'Cases should be decided with the utmost care. But since there are many people and many cases, judges, if they act alone, may fall into error. Therefore, it is laid down that there shall be associate judges and public trials so that all men may know that Justice is

82. *Ibid.*, p. 72.

83. *Ibid.*, p. 104.

84. *Ibid.*, p. 109.

85. *Ibid.*, p. 111.

86. *Ibid.*, pp. 104-106.

87. Jones, *op. cit.* note 19 supra, p. 105.

administered without favour and in accordance with reason."

"Thus, at one blow, and with a courage that even the most prejudiced critic of Japan must admire, the old doctrine of secrecy was swept away for ever and the principle of public trial was established in its stead. This was a remarkable improvement, but improvement did not end here. In January of the 7th year (1874), Provisional Regulations concerning Judicial Police were laid down, and Rules for the control of the Courts of Justice were promulgated in May of the same year. April of the 8th year (1875) saw the establishment of the Court of Cassation, together with the determination of Rules concerning Appeals for Revision. And April of the 9th year (1876) witnessed perhaps the greatest reform of all—namely the definite abolition of the system which made the confession of the accused himself necessary to his conviction, for the Provisional Rules concerning Examining Judges ordered that the question of the guilt or innocence of all *prévenus* should be decided by evidence. . . .

"In February of the 10th year (1877), Regulations for Release on Bail (*Hoshaku Jōrei*) were promulgated, and in October of the 12th year (1879), as a logical sequel to the Provisional Rules concerning Examining Judges, torture was finally and definitely abolished. It is submitted that the extraordinary activity displayed during these years (1868-79) has no counterpart in the history of the world. . . ."88

The reforms just described marked the beginning of a transition from an Oriental procedure, borrowed largely from China, to a system based on ideas imported from the West. The change-over was complete, at least on paper, by the promulgation in 1880 of a code of criminal procedure based on the laws of France.⁸⁹ This code went into effect in 1882 along with the criminal code drafted by Boissonade. It seems, however, that this code was not enforced in its entirety as it contained provisions which "were not immediately suitable to the then conditions of Japanese society."⁹⁰ It was replaced in 1890⁹¹ by a code which continued in effect until 1922.⁹²

Writing in 1914 Gadsby undertook to defend the code of 1890 from charges, made "in the language of embittered prejudice," that the code was "barbarous."⁹³ After comparing the code of 1890 with that of 1880, the defender of the code of 1890 said:

"The objections most commonly urged against the Code are concentrated upon the system of preliminary examination, which is conducted in secret. And it is further urged that the accused should not be denied the benefit of counsel during its progress, which may take some considerable time. But it should be emphasized that with the exception of the second, these objections are voiced largely by a certain section of the foreign press in Japan. . . . The combination of secrecy and the absence of counsel is, naturally, open to abuse, and, obviously, much depends upon the character of the official conducting such examination. But both judges and procurators are men of education—nearly all are graduates of the Imperial University—men of wide and humane views, who are little prone to take advantage of the occasion offered for browbeating or even more serious forms of intimidation. Occasionally complaints upon this score are ventilated, but upon investigation they are, almost without exception, found to be devoid of any basis in fact. . . .

"I do not think that preliminary examinations are unduly prolonged, and I am speaking from a knowledge of a number of singularly involved cases. But the general refusal of the examining judge to grant bail, at least until the practical completion of the examination, may, in rare cases, inflict some measure of hardship."⁹⁴

In contrast with Gadsby's favorable report is a statement made by Sebald in 1936:

"Many criticisms have been leveled against the present *Criminal Code*. . . . But the criticisms might better be directed where they are most needed; at the methods only too often adopted by those responsible for carrying out the provisions of the substantive law. These methods still savor of the Tokugawa era in that they are often brutal, unreasonable, short-sighted, and generally senseless. As a shadow of the procedure followed in feudal times, prosecution more often than not, is primarily based upon confessions wrung from the unfortunate accused by means of irresponsible detention and severe grilling often lasting for months or even years. Occasionally, instances of torture are brought to light, but in almost every case strong denials are made by the authorities concerned, thus ending the matter. That such methods beget crime rather than prevent it, is partially illustrated by the fact that there have been more than 1,600,000 criminal violations in 1934 as compared with 700,000 in 1926—an increase of almost 130% in eight years!"⁹⁵

The criminal code of old China provided that magistrates should first investigate, and then try, charges of crime.⁹⁶ The purpose of a *trial*, as distinguished from an *investigation*, was not to determine the guilt or innocence of the accused, but to determine the nature of the crime and the punishment to be inflicted.⁹⁷ The accused was brought before the court to hear its sentence. The procedure of old Japan followed much the same pattern. Whatever evidence of guilt was required was produced in the investigation stage. The criminal procedure of France, at the time of its importation into Japan also consisted of two stages. First came the instruction (*investigation*) and then the trial.⁹⁸ The first stage has been described in these words:

"Down to recent years (1898) this stage of the criminal action was an unfair secret process deserving of all the harsh things that were said of it. The accused was entirely at the jure d'instruction's mercy without even the salutary restraint which publicity of the proceedings would have given. He could be arrested and placed in solitary confinement for days and weeks while the jure d'instruction got up the case, made perquisitions and searches, collected evidence and depositions from witnesses who were not cross-examined. Even when at last he was brought before the jure to be examined, he was not allowed legal aid, and was not entitled to know the evidence against him. . . . The worst possible feature of the system was that the local jure d'instruction was merely one of the judges of the local Tribunal which had to try the accused, and was competent to sit with his colleagues at the trial. His mind was of course made up by the 'instruction' he had carried out. . . ."99

In adopting this first stage of the French procedure the Japanese adopted a remnant of the inquisitions and tortures of medieval Europe.¹⁰⁰ In doing so they did not

88. Op. cit. note 74 supra, p. 453.

89. Ibid. Okuma, op. cit. note 26 supra, p. 243.

90. Gadsby, op. cit. note 74 supra, p. 453.

91. Ibid., p. 454.

92. Oda, Sources du droit positif actuel du Japon, Studies of the International Academy of Comparative Law, Series I, F. 1, Orient, published by Elemér Balough, p. 130 (1929).

93. Op. cit. note 74 supra.

94. Ibid., pp. 461-2.

95. Op. cit. note 53 supra, p. v.

96. Ta Tsing Leu Lee translated by Staunton, Sec. 334, p. 363.

97. Jernigan, China in Law and Commerce, p. 189 (1905).

98. Wright, French Criminal Procedure, 44 Law Quarterly Review, p. 324 at p. 334 (July 1928).

99. Ibid., pp. 334-5.

100. Ibid., pp. 329, 335.

depart far from the Oriental procedure long in use. It should be noted, also, that in France this part of the French procedure was substantially reformed in 1898.¹⁰¹

In adopting the second, or trial, stage of the French procedure the Japanese attempted a real reform. If the accused survived the rigors of the preliminary examination he was to be given an opportunity to demonstrate his innocence with the aid of counsel in open court.

The latest important reform of Japanese criminal procedure was the adoption in 1923 of a jury system which went into operation in 1928. According to a writer in the *Bombay Law Journal*:

"Trial by jury is compulsory when the offence charged is punishable by death or imprisonment or penal servitude for life. The jury is composed of 12 persons selected by lot from men over 30 years of age who have been living for two consecutive years in one commune, pay more than 3 yen of a national tax and can read and write. In a trial by jury, an appeal is not permitted against the decision but a revision on the question of law may be asked for. Accused persons are known to decline to be tried by jury in cases where jury is not compulsory, owing to their fear of losing the advantage of appeal to the court of second instance."¹⁰²

The constitutionality of this law was being questioned in Japan when Shinichi Fujii published his work on constitutional law in 1940.¹⁰³ The sections of the constitution involved were those providing that "The judicature shall be exercised by the Courts of Law,"¹⁰⁴ "No judge shall be deprived of his position,"¹⁰⁵ and "No Japanese subject shall be deprived of his right of being tried by the judges determined by law."¹⁰⁶ In support of an opinion to the effect that the jury law is constitutional, Fujii said:

"The jury system of Japan, unlike that of other countries, operates within a narrow scope, the jury simply submitting to the court its opinion on fact, and having no part in the actual trial. Not only that, the court is under no restraint from its jury, and so whenever it considers the report of the jury is not satisfactory, it has power to appoint another jury. . . ."¹⁰⁷

A vivid description of present-day police methods and criminal procedure will be found in *Traveler from*

Tokyo by John Morris published in 1944.¹⁰⁸ Mr. Morris was in Tokyo when war was declared in 1941, and remained there until July 29, 1942. During and after this period he was able to learn from foreigners charged with offenses against Japanese law how the various procedural steps were actually carried out. Without attempting to compare the Japanese Code of Criminal Procedure with the procedure codes of other countries, Mr. Morris concludes "the dice are so heavily loaded" against any person whose conviction is sought by the police that "the question of his innocence does not even arise."

According to Mr. Morris, a person may be arrested and held incommunicado for months while the charge against him is being investigated. During this period of "Prohibition of Intercourse" he does not have the aid of counsel, is often ignorant of the charge against him, and, while being questioned, may be subjected to torture associated with the third degree. He is required to sign written records of his examination without knowing whether the records are true or false. He can ask no questions; can call no witnesses.

After the various secret examinations have been concluded and a trial recommended, the accused is supposed to have the aid of counsel, but, due to the lack of a sufficient number of consultation rooms, he can see his attorney only three or four times before trial. Consultations with counsel are in the presence of a police officer who records the conversations and reports them to the judge.

On the trial, usually before the court without a jury,¹⁰⁹ the defendant's attorney "is not permitted to dispute the prisoner's guilt," but may set forth "extenuating circumstances." He cannot call witnesses if the court decides that it is not in the interest of the state to permit him to do so. He may not cross-examine. Trials which are supposed to be public are often held in camera.

From the foregoing account, it appears that the guilt or innocence of a person accused of crime may still be determined by secret investigation, instead of by trial in open court. If this is true, it means that the procedural reform attempted by adopting the second or trial stage from the West has largely failed.

ERRATUM

On line 45, second column, page 8 of Volume I, No. 2 of *The Judge Advocate Journal*, 15 September 1944 the word "not" should be inserted after the word "may" and before the word "increase" so that the line will read, "he may not increase the punishment or change a finding of."

101. *Ibid.*, p. 336.

102. *The Japanese Judiciary*, 13 *Bombay Law Journal*, p. 17 (June 1935). A German translation of the jury law will be found in *Japanische Strafgesetze* (Schwurgerichtsordnung vom 18 April 1923) Walter de Gruyter & Co. (1927).

103. Fujii, *op. cit.* note 56 *supra*, p. 316.

104. Art. LVII.

105. Art. LVIII.

106. Art. XXIV.

107. *Op. cit.* note 56 *supra*, p. 316.

108. *Traveler from Tokyo*, Sheridan House Publishers, pp. 164-183.

109. With respect to trial by jury Mr. Morris states: "Incidentally, it is of interest to note that the only persons to be tried by a jury are those who deny all the evidence against them. In actual practice, however, Japanese juries are completely subservient to the judge. This means that it is not to the prisoner's advantage to be tried by jury." (pp. 178-179).

Reemployment Rights OF MEMBERS OF THE ARMED FORCES

MILTON I. BALDINGER*

Any person entering the armed forces¹ subsequent to May 1, 1940 has the benefit of getting his job back.²

The reemployment benefits for men and women³ leaving jobs to enter the armed forces stem primarily from section 8 of the Selective Training and Service Act of 1940, as amended.⁴

Constitutionality

The question will be raised as to the power of Congress to provide for the reemployment of these men in the jobs they held in private employment.

In *Hall v. Union Light, Heat and Power Co.*,⁵ a Federal District court sustained the constitutionality of section 8(b). The employer argued that the section was unconstitutional on the ground of vagueness and uncertainty of terminology. The court points out that the purpose of the statute is for the general welfare of the people and is entitled to a liberal construction. In addition, the court cites the fact that the section is presumed to be constitutional and that it would be a usurpation of the legislative function of providing for the common defense for the court to strike down the section because it necessarily employs language of a "more or less indefinite and negative meaning."

There are additional arguments in favor of the power of Congress to give reemployment benefits to veterans. These include:

(1) The power to raise and support armies carries with it the power to provide for the reinstatement of men to their jobs after they have rendered their patriotic service—argumentatively analogous to ordering the "reinstatement of employees with or without back pay" under the National Labor Relations Act;⁶

(2) The aggregate of the powers of the Federal Gov-

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¹ Reemployment rights for persons who leave their positions to serve in the merchant marine are similar in nature to those who enter the armed forces. Public Law 87, 78th Cong., 23 June 1943; and the discussion herein is applicable in most respects to these persons.

² The Service Extension Act of 1941, P.L. 213, 77th Cong., 18 Aug. 1941.

³ The Women's Army Corps receives the benefits of reemployment rights by interpretation of section 2, P.L. 110, 78th Cong., 1 July 1943. The benefits are not available to members of the Coast Guard Auxiliary.

⁴ P.L. 783, 76th Cong., 16 Sept. 1940, as amended by P.L. 360, 77th Cong., 20 Dec. 1941, P.L. 772, 77th Cong., 13 Nov. 1942, and P.L. 197, 78th Cong., 5 Dec. 1943. The Army Reserve and Retired Personnel Service Law of 1940, Pub. Res. 96, 76th Cong., 27 Aug. 1940, as amended by section 8(d) and 8(f) gives similar protection to the members of reserve components and retired personnel of the Regular Army ordered to active military service by the President.

⁵ 53 F. Supp. 817 (1944).

⁶ *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

ernment, particularly those relating to prosecution of war and preservation of sovereignty; and

(3) The power to order reemployment of these men is necessary and proper to effectuate the complete defense of the nation.

The chief argument against the power of Congress will probably be centered on the Tenth Amendment to the Federal Constitution which reserves to the several states and the people all powers not specifically granted to the Federal Government. This will be especially used where the business is intrastate.

In the Congressional debates on the bill which became the Selective Training and Service Act some doubt was expressed on the power of Congress to provide for the restoration of the jobs to the men. Senator Barkley, in response to Senator Norris, said:⁷ "I doubt very much whether it could have any legal effect, especially in those industries and occupations that have no relationship to interstate commerce. . . ."

Senator Norris said:⁸ "If there is any way to remedy that state of affairs, I should like to do it; but it seems to me it is beyond the power of anybody, any government or any Congress, to remedy; and I am very doubtful whether we ought to put in any condition to bring about a deception of some of our people on that account."

In the first World War, patriotism and cooperation were relied on to handle the situation.

State Employees

As to persons who were in the employ of a State or political subdivision thereof, there is no mandatory provision for rehiring. Many States and cities have taken steps to protect the jobs of workers who have entered the armed forces. The Act merely says that it is the "sense of the Congress" that such person be restored to his position or to a position with like seniority, status and pay. In localities where political allegiance plays a part it seems that such will have great influence on the result.

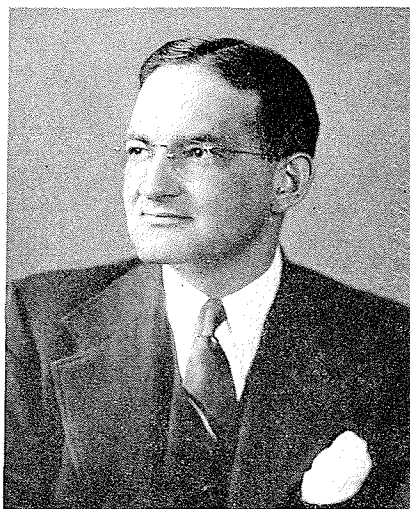
Selective Service will assist these veterans to get their jobs back.

Federal Employees

Federal employees have the best protection under the Act. Persons in the employ of the United States, its territories or possessions or the District of Columbia are to be restored to their positions or to positions of like seniority, status and pay.

⁷ 86 Cong. Rec., 9 Aug. 1940, at 10108.

⁸ *Ibid.*



MILTON I. BALDINGER

Private Employment

Section 8 (b) (B) of the law is applicable to those who were in private employment. The private employer will not have to reemploy if his "circumstances have so changed as to make it impossible or unreasonable to do so." Thus it appears that employers who are forced to reduce employment or have discontinued business will not have to reemploy the returning soldier.

Crux questions which will have to be faced in many instances are: Have the circumstances of the employer changed? Is it impossible to reemploy the soldier? What is meant by "unreasonable" to reemploy?

In Congressional debate on this provision, Senator Norris pointed out that there might be honest differences of opinion on whether or not an "employer's conditions have changed."⁹

Difficult problems also will arise where the business has been kept going as a concern but ownership has changed hands. Partnerships, for example, are dissolved as a matter of law by death, bankruptcy or otherwise or by agreement of the partners. Often the business continues with a new group as partners. Will the new partnership be considered the employer of the returning soldier who never worked for it because he happened to have worked for the old firm whose business is now in the hands of a new group?

The convenience of an employer must be distinguished from "impossible" or "unreasonable." The Third Circuit Court of Appeals in *Kay v. General Cable Corp.*¹⁰ gives judicial backing to the position taken by Selective Service System. The Court States: "'Unreasonable' means more than inconvenient or undesirable."

The fact that a non-veteran to be replaced is receiving less pay than the employer would be required to pay the veteran is not to be considered as a condition "unreasonable or impossible," according to Selective Service Local Board Memorandum No. 190-A.

Temporary Position Not Covered

Before the section comes into play one important condition must be met and that is the job which the veteran left must have been "other than a temporary" one.

What is meant by "other than a temporary" position? Are the precedents of construction of the term "temporary" under workmen's compensation statutes and other laws to be used and will they be helpful? The line between a "temporary" and "permanent" job is hard to draw. Many jobs are seasonal and yet regular—are these temporary or should they be classed as permanent? Many workers are employed from "day to day." Are these workers "temporary" employees even though they may work year in and year out under such an arrangement? Many jobs depend upon markets, technological changes, seasonal fluctuations or the whim and caprice of an employer. Are these temporary?

There are no set standards available for determining the problem of "temporary" employment. Each case will depend on its own facts. But it is clear that the obligation of the employer is only to one man for one job. Also where expansion has taken place merely to meet temporarily increased business the job will be considered "temporary," but if the expansion was in the normal growth of the company the job will not be considered "temporary."

⁹ 86 Cong. Rec., 9 Aug. 1940, at 10109.

¹⁰ 144 F. 2d 653 (C.C.A. 3, 1944).

Selective Service takes the position that every case must be determined on the facts and circumstances in the particular case. They say:

"Generally speaking, one who is employed to fill the place made vacant by a person entering service occupies a temporary status and has no reemployment rights even though he subsequently enters service. There may be exceptions to this, however. For example, suppose that 'A,' a permanent employee, enters service and 'B,' also a permanent employee, is upgraded or transferred into 'A's' place and then enters service; if they return, they are entitled to reinstatement in their original permanent positions. It is the character of relationship between the employer and employee, whether 'temporary or permanent,' that should govern rather than the particular assignment being carried out at the time of entry into service."

In the case of jobs created by war expansion, the facts and circumstances in each case will determine whether the job was "permanent" or "temporary."

The Attorney General, in an opinion concerning the reinstatement of Federal employees under the Act, had occasion to say that the word "temporary" is a relative one, "and in determining its meaning in a particular statute consideration must be given to the purpose of the statute." The Attorney General points out that the purpose of section 8 is to take care of those who leave positions under permanent or indefinite appointments.¹¹

Civil Service Regulations allow a war-service appointee of the Federal Government who is later honorably discharged from active military or naval service to have reemployment benefits as if he were a permanent employee. But his reemployment will be under the time limitation of his original appointment—usually for the duration and six months thereafter.

The National United Automobile Workers (CIO) War Veterans' Committee has recommended that "probationary" employees should be allowed to credit their period of military service toward completion of their probationary period of seniority while they are in the military service.

Eligibility

The veteran, to be eligible for the benefits provided in section 8(b) must (1) receive a certificate from those in authority over him that he has satisfactorily completed his period of service; (2) be "still qualified to perform the duties of such position"; and (3) make "application for reemployment within ninety days after he is relieved from such" service.

Reemployment rights and benefits are also conferred on veterans who are hospitalized for not more than one year following discharge from the armed forces and such veteran may apply to his former employer for employment within 90 days following release from hospitalization subsequent to discharge.

The application for reemployment must be made within the statutory time limit and compliance is essential.

The Act does not require a written application for reemployment but no doubt it will be the best procedure to follow from an evidentiary point of view. Of course, if an employer induces the belief that an application would be futile then it seems that none need be made, although the safe way for the returning soldier will be to make it in writing. If hiring and oral application at

¹¹ 40 Op. A. G. No. 66, 31 May 1943.

the plant gates is the custom then the condition precedent will have been met.

Shopping around for a job during the 90-day period is not precluded nor does accepting a job during the period prevent a veteran from exercising his privilege of seeking his old job provided he makes his application within the 90-day period.

Holders of Army Form No. 55, Navy Forms Nos. 660 and 661, Marine Forms Nos. 257, 257a, 258 and 258a, and Coast Guard Forms No. 2510 and 2510 A are entitled to reemployment benefits. Under the Servicemen's Readjustment Act of 1944 (G. I. Bill of Rights) only holders of the "yellow" discharge form are excluded from the benefits of the law.

In *Kay v. General Cable Corporation*, supra, the Third Circuit Court of Appeals, in reversing the District Court, granted the employment benefits to a doctor who, prior to entering the armed forces, was employed for three hours a day by the defendant-corporation and was subject to 24-hour call to attend injured employees of the defendant-corporation.

The lower court had dismissed the petition for the benefits of the law filed by the plaintiff-doctor on the ground that he did not hold a position "in the employ" of the defendant.

Plaintiff had no contract for a definite period and his compensation of \$55 a week was subject to deductions for social security and unemployment compensation.

The defendant contended that plaintiff was an independent contractor as defendant could not exercise any control over the details of the plaintiff's work as a physician but the court counterbalanced this argument with the following facts to show the "employee status": defendant owned the premises where plaintiff performed his duties; plaintiff punched a time clock and received an employee's ten-year service button; plaintiff received the Army and Navy E certificates and the employee's bonus for enlistment.

The defendant also argued without avail that the circumstances had changed during the absence of plaintiff and so it was excused from rehiring plaintiff. Both the District and Circuit Court of Appeals saw no direct connection between the refusal of an employees' Health Association which had also employed plaintiff as its doctor to reengage the plaintiff and the refusal to reemploy by the defendant-company. The company maintained that it makes for greater efficiency and avoids some loss of the workers' time to have the same physician for both the Company and the Health Association and therefore contended that the circumstances had changed from the time when plaintiff went into the armed forces. The Court felt that more than this was needed to justify refusal to reinstate a person within the protection of the Act and that it would not be unreasonable for the defendant to reengage the plaintiff. The court states: "Unreasonable" means more than inconvenient or undesirable."

Qualified to Perform Duties

Another difficult question which will, perforce, be faced—what is meant by "still qualified to perform the duties of such position?"

The employer cannot set up arbitrary or unreasonable standards.

Absence from work for a year or more must of necessity in many occupations make one less qualified to do

one's job. It would appear that if the techniques of the job remain the same the test might be whether the worker retains the techniques and can with little practice qualify for the job. In the case of a worker in an industry requiring the use of precision instruments or in the case of a highly-skilled worker, it will be more difficult to show that he is still qualified to perform the duties of the position.

Upon whom is the burden of showing that the worker is "still qualified to perform the duties of such position?" Is the burden on the employer to show a negative—that the worker is not qualified? Or is the burden on the worker to show that he is still qualified?

Basically, the question will be: "Can the veteran do his job in the manner in which he did it before he left?" The doubt will be resolved in his favor.

Some firms are giving extended leaves of absence to any veteran who is eligible for reemployment who is unable to qualify as a result of a disability connected with his military service.

A veteran will not be expected to meet higher standards for his job than existed at the time it was vacated by him, nor will he be required to meet standards which the employer has set for others with no reemployment rights. If the job has been upgraded and is beyond the veteran's skill then he is entitled to a job requiring comparable skill and equal in seniority status and pay to that which he vacated.

Employment Contracts

In *Wright v. Weaver Bros., Inc., of Maryland*,¹² the Federal District Court of Maryland sustains the position of the employer who exercised his right to terminate plaintiff's employment under an employment contract which provided that the agreement would continue "until the expiration of a period of six months after delivery by either party" to the other of a "written notice of termination."

Plaintiff, a reserve officer, claimed the benefits of Section 403 Army Reserve and Retired Personnel Service Law of 1940 which has reemployment provisions similar to Section 8 of the Selective Training and Service Act of 1940 and requires that the reemployed veteran not be discharged from such position without cause within one year after such restoration.

Plaintiff sought a declaratory judgment that the defendant-employer could not invoke the termination provision of the employment contract.

The court decided that it had jurisdiction despite the argument of defendant that the suit was prematurely brought as plaintiff was still in the armed forces; and that the contract was supplemented after Section 403 was enacted and, therefore, the contract provision would be binding on the plaintiff.

The court takes the position that the plaintiff was a free agent and that the Act did not take away the capacity of a soldier or sailor to act freely.

The right of reemployment, the court points out, is in derogation of the common law and therefore must be strictly construed and not extended by implication or by liberal interpretation.

The court also takes the position that the integrity of contracts should be guarded and that the termination clause in the contract could properly be invoked by the defendant-employer.

¹² 56 F. Supp. 595 (1944).

Selective Service in Local Board Memorandum No. 190-A recognizes that a veteran may waive his reemployment rights but warns that it must be proved by the employer by clear and positive evidence.

Benefits on Reemployment

Restoration to employment with all of the benefits of the job is intended by the Congress.

Seniority rights accumulate while the person is in the armed forces.

If the job is rated higher for pay purposes the returning veteran is entitled to the increased pay. Whatever emoluments accrued to the job while the man was in the service carry over to his benefit when he returns to the job.

If a veteran returns to the company and would have been entitled by virtue of seniority to a promoted job on "a promotion from within" policy, then he is entitled to such better job.

Selective Service takes the position that "A returning veteran is entitled to reinstatement in his former position or one of like seniority, status and pay even though such reinstatement necessitates the discharge of a non-veteran with greater seniority."

This position has been criticized by some lawyers who maintain that Congress intended to safeguard the rights of the men going into the armed forces but that Congress did not intend to enlarge the employment benefits of those leaving civilian employment to enter the armed forces.

The returning soldier need not join a union in order to get his old job back, if he does not desire to do so, even if the employer has signed a closed-shop contract while the man was in the armed forces.

Further, if a union-membership-retention clause is inserted in the collective bargaining contract while the worker is in the armed forces, he will not be bound by such clause when reinstated to his old job if he is inclined to raise the question.

Continuance of Employment

Furthermore, a reemployed person is not to be discharged without cause within one year after his restoration to his job.

A man may always be fired for cause but Selective Service officials point out that in the case of a reemployed veteran the cause will have to be valid and may require more explanation than would an ordinary reason for discharge.

Selective Service recently allowed a firm to discharge a veteran who was slowing up the job. The firm submitted clear evidence that the veteran was dilly-dallying and thus proved proper cause for dismissal of the worker.

Enforcement Provisions

Jurisdiction is conferred upon the District Court of the United States for the district in which the private employer maintains a place of business to require private employers to comply with the provisions of law applicable to reemployment. The person entitled to the benefits of the law may file a motion, petition or other appropriate pleading with the court requesting the protection of the law. No technical procedural problems are involved as Congress has made its intent very clear by including a catch-all in the words "or other appropriate pleading."

Incident to the power to order compliance with the

reemployment provisions of the law, the court is empowered to order the employer to compensate the soldier for any loss of wages or benefits suffered by reason of the employer's unlawful action.

This phase has already been tested in court.

In *Hall v. Union Light, Heat and Power Co.*, supra, the United States District Court for the Eastern District of Kentucky held that a reinstated soldier could recover wages where the employer had delayed the job restoration from June 7, 1942, the time of application for reemployment, to September 28, 1942.

The employer contended the court had no jurisdiction to entertain an independent action to recover wages or salary as such recovery could only be "incident to the recovery of the employment or position" and the plaintiff had been reemployed. The court refused to adopt a narrow construction and a technical definition of the word "incident" although it agreed that "it may be accepted as a fact that the word 'incident' when used in its ordinary and reasonable sense implies that it is related to some major thing," and that to recover wages "would usually be in connection with and incidental to an action brought to recover the position or employment."

A speedy hearing is required and the case is to be advanced on the calendar; thus it will not be necessary to wait for the clearance of the docket which in many instances are months late.

The plaintiff may (1) act as his own lawyer, (2) hire a lawyer or (3) apply to the United States District Attorney for the district in which the employer maintains a place of business to act as his attorney. In the latter instance, the United States Attorney is charged with the duty of representing the claimant if he is reasonably satisfied that the person applying for his assistance is entitled to the benefits of the law. The U. S. Attorney is not to charge claimants any fees for the service.

No fees or court costs are to be charged the person applying for the benefits of the law, whether he wins or loses the case. There will be an argument as to whether or not court costs should be charged a claimant who loses his case where he has been represented by counsel other than the District Attorney and more especially where the District Attorney had refused to handle the case on the ground that the claimant is not entitled to the benefits of the provisions. Perhaps a liberal construction will be given in favor of the claimant seeking redress in court whether the District Attorney is his counsel or not.

Penalty Provisions

Whether or not the general penalty section of the Selective Service Law will be invoked to assist these men in getting back their old jobs is a question which the Department of Justice will probably have to answer at some future time. Section 11 provides a penalty of imprisonment of not more than five years or a fine of not more than \$10,000 or both if one knowingly fails or neglects "to perform any duty required of him under or in the execution of this Act."

Selective Service has cautioned that in no case should a State Director, local board, or reemployment committeeman send a case to the United States District Attorney for prosecution under the Act. Where the need for legal proceedings is indicated, Local Board Memorandum No. 190-A requires that the file should be sent to National Headquarters for review and for forwarding to the Department of Justice for proper action.

THE NEED FOR AND ADMINISTRATION OF THE

Renegotiation Act

By CAPTAIN JOSEPH SACHTER, JAGD*

THE purpose of renegotiation, that of eliminating that portion of the profits derived from war contracts which is found to be excessive, is now well known. Many articles both of a general and technical nature have already been written on this subject. This one is intended to deal primarily with the need for and administration of renegotiation.

The theory of renegotiation is an innovation in our concept of the law of contracts, because, in the absence of statute or, in effect, provision for arbitration, a stipulated price or amount will not be increased or decreased by courts even though the contract provides that a court may do so upon application of either party in case of a change of circumstances.

In *Stoddard v. Stoddard*,¹ for example, the parties agreed that in the event of a material change in circumstances, either party had the right to apply to any court of competent jurisdiction for a modification of the provisions regarding the specified amounts agreed to be paid under the agreement. In denying application for such relief to one of the parties to the agreement, the court concluded:

"It is to be noted that the plaintiff does not, for any recognized reason, in any manner directly or indirectly assail the agreement as a whole or ask that it be set aside. He simply asks that the court shall fix a new amount which shall be inserted in certain provisions of the agreement as the amount thenceforth to be paid—, and in that respect make a new agreement for the parties."

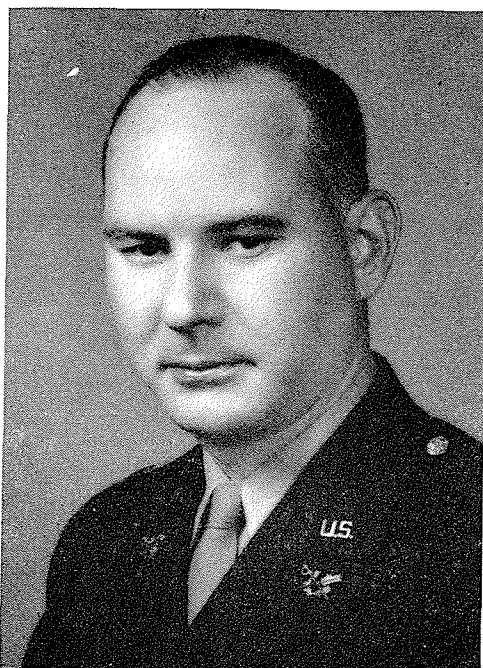
"We know of no principle, and we have been cited to no authority, which authorizes the court in this way, in effect, to write a clause in the contract for the parties."

Similarly, in the absence of statute, full payment of a purportedly high contract price has been enforced against the Government despite the claim that no other adequate facilities were available in time of war, and therefore agreement as to price and terms had been reached under compulsion;² nor was relief accorded simply because the contract price was in excess of the market price.³ Courts have denied full recovery to a contractor only when the price was so unconscionable as to be tantamount to fraud.⁴

In renegotiation reliance is not placed alone upon contractual provisions made part of certain war contracts by statutory direction,⁵ but upon the law itself⁶ which says that after a contract has been entered into, the Government may require the contractor to disclose his costs and profits so that if any amounts received or accrued reflect excessive profits the portions thereof shall be eliminated through renegotiation with Government representatives, and if the parties fail to agree, the amount of excessive profits shall be determined by order,⁷ which determination, upon application of an aggrieved contractor is subject to review by the Tax Court of the United States.⁸

There were many reasons that prompted Congress to pass the Act. Aside from the abstract justice of not permitting one portion of the public to become rich, while others were obliged to serve in the armed forces for nominal compensation, there was the recognized need to keep prices in line through the pressure of a device which would not permit contractors to continue prices which later experience proved to be exorbitant, or to persist in maintaining unreasonable profits. Such control, and resultant limitation on profits, would have the added benefits of acting as a brake on inflation and of minimizing the economic burdens created by increased production for war requirements. It was especially necessary to provide machinery for later adjustment of prices, both retroactively and prospectively, because neither contractor nor Gov-

ernment could know in advance what prices ought to be for new and technical equipment, or to what extent vastly expanded volume of production or acquisition of better techniques or skills, would decrease costs of manufacture. Some means had to be adopted which would allow the ventured prices to be reviewed periodically and then, based upon actual cost experiences, to adjust and relate such prices back to what they should have been initially. Excess profits taxes alone were insufficient to meet these requirements because they could only operate retroactively and were based upon absolute uniformity of treatment. Renegotiation contemplates not only the removal of excessive profits earned



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1. 227 New York 13.

2. *U.S. v. Bethlehem Steel Corp.*, 315 U.S. 289.

3. *Garrison v. U.S.*, 7 Wall. 688.

4. *Hume v. U.S.*, 132 U.S. 406.

5. Renegotiation Act as amended Feb. 25, 1944, Sec. 701 (b) of the Revenue Act of 1943 (Public Law 235, 78th Congress. 50 U.S.C.A. Appendix 1191.) Sec. 403 (b).

6. Renegotiation Act (See note 5, supra).

7. Sec. 403 (c) (1).

8. Sec. 403 (e) (1).

during a past period, but, in principle, at least, is intended to keep future prices and profits at proper and reasonable levels. Fixed tax rates or rigid profit limitations alone, could not accomplish the plicity intended by the Renegotiation Act, namely, that, among others, of according more favorable consideration to the low-cost producers, or of placing a premium on efficiency, and contribution to the war effort. Because of the enormous demand for war materials, the manufacturing facilities of the entire Nation had to be utilized on virtually a non-competitive basis. A law which could give recognition and "plus" consideration to the efficient and low-cost producer by allowing retention of larger profits and thereby stimulating incentive, was evidently more desirable than a rigid tax or fixed profit law that treated all manufacturers alike.

It may fairly be said that experience has demonstrated the wisdom of such a law in time of war. Quite apart from the direct benefits of permitting prices to be adjusted, and such excessive profits to be eliminated, the law has had the additional salutary effect, though intangible, of enabling the Government to place contracts at reasonable prices, because contractors, who are subject to renegotiation, realize that excessive profits are bound to be eliminated and that the temporary accumulation of unconscionable profits will result in less considerate treatment when such contracts are renegotiated.

Business has also benefited greatly by the Act. With the human devastation wrought by this war it is natural to assume that there would be even less patience with those who, through exploitation and greed became rich, while others suffered anguish and losses which could not be compensated for. The significant infrequency during this war of complaints or resentful accusations by the public of profiteering, leaves business in a healthier moral position than it has occupied during any war in the past. In spite of all previous attempts to control prices and profits, renegotiation is the first satisfactory response to the urgent public demand to take profits out of the war, that does not injure the Nation's economic stability or impair the incentive essential to business vitality.

Administration of the law has had its normal complement of attendant difficulties. First administrative,⁹ and

then statutory factors,¹⁰ were established to serve as guides by which equitable results could be reached. According to them, as mentioned earlier, the efficient and low-cost producer, quite properly, is allowed greater profit considerations than his inefficient and high-cost competitor. Similarly, the contractor who maintains reasonable profit margins is given a clearance, or if the facts indicate a refund, is accorded more liberal recognition than others who maintain inordinately high profit margins without consequent risk of loss.

In the main, a conscientious effort has been made to weigh these and other factors such as complexity of operation, close pricing, investment, turnover of capital, ballooning of sales over peacetime levels, extent of Government financial assistance, relationship of executive salaries to sales, comparison with peacetime profits, and like considerations, all with a view to achieving fair results. Although that objective may not have been wholly realized, because men differ in the interpretation and application of any set of principles or guides, nevertheless, the same deficiency is found in any system of administration which depends upon human evaluation and judgment. Courts and juries have often reached different results on similar or identical facts. The test, it would appear, is not so much whether these factors were finely balanced or precision achieved in every case, but whether any serious injustices have resulted. It may safely be said that with rare exceptions, business engaged in war production is earning as much or more money after renegotiation, than it did on peacetime operations. Many whose non-war business and profits were curtailed, or who were compelled to discontinue operations entirely because of the war, would willingly accept profits left after renegotiation, as an alternative.

The evidence to date points to the wisdom and efficacy of the law, as a war measure. It seems likely to retain the support of both business and the general public so long as the Act is administered by men of proven capacity and a high sense of responsibility.

9. *Joint Renegotiation Manual*, effective prior to amendment of Act (See note 5, supra), par. 403.4.

10. Sec. 403 (a) (4) (A) as set forth and commented upon in *Renegotiation Regulations*, effective after amendment of Act (See note 5, supra), pars. 408-416.

ON *Marital Problems* ARISING IN ODB*

By LT. COL. DELL KING STEUART, JAGD*

MANY and varied are the questions presented to the Legal Branch, Office of Dependency Benefits, located at Newark, New Jersey. This organization administers principally the Servicemen's Dependents Allowance Act of 1942, as amended, (Public Laws 625, 77th Congress and 174, 78th Congress); the law pertaining to allotments of persons who are missing, missing in action, interned or beleaguered, or captured by an enemy, as amended, (Public Laws 490, 77th Congress and 848, 78th Congress), and the law pertaining to the making of Class E allotments-of-pay, (Section 16, act of March 2, 1899, 30 Stat. 981, as amended by act of October 6, 1917, 40 Stat. 385, and act of May 16, 1938, 52 Stat. 354; 10 U.S.C. 894).

Many of our citizens involve themselves in endless marital entanglements and situations and these very often spring to the surface immediately upon entry into the armed forces of the United States. Applications for family allowances and other assistance are received stating that the applicant is a dependent of the man in the service and often the situations presented are bizarre.

These domestic entanglements take countless forms, such as having purported to marry four or five wives in as many different states and forgetting to divorce some or any of them. These present the "multiple marriage" questions which can sometimes be solved by indulging in the rebuttable presumption as to the validity of the latest marriage. As this is rebuttable, however, it does not always afford the answer.

Other situations arise also such as where one soldier married his mother-in-law in Iowa; another claimed he could not legally marry the second wife, with whom he went through a marriage ceremony in Florida, because it was within the two year prohibitory period contained in a Vermont divorce decree; one woman claimed to be the soldier's wife by reason of a marriage contracted in Italy (it developed that she had married him all right, but that she was his aunt, so reference as to the legality of this marriage was made to the King's Statutes of Italy); others claimed all forms of so-called "proxy" marriages.

One soldier radioed to his sweetheart from Ireland, stating, in part, "I do thee wed," and the little lady procured a Justice of the Peace (reason unknown, except it was an attempt to inject some legality into it) and took him along while she wired her acceptance. Of course these acts are all followed by the filing of an application for a family allowance.

Applications on behalf of dependents of soldiers who are tribal Indians also often present difficult legal questions. They are not governed in their domestic relationships by our ordinary laws, but by tribal laws and custom. Their marriages, divorces, etc., are all rather informal according to our concepts. One soldier (a tribal Indian) made out an application for a family allowance and sent in a sheet of paper on which was scrawled, inter alia, "I divorce my wife, I give her the children and ten cows and \$20 a month." This bore a marginal initialing by the superintendent of the reservation and constituted a valid tribal divorce and a family allowance was payable, as the law provides for such an

allowance "to a former wife divorced to whom alimony has been decreed and is still payable."

There is also the problem of granting alimony in New York State where the marriage is "annulled." The law states that a family allowance is payable to a former wife divorced to whom alimony is payable. Hence, the question arose as to whether the so-called former wife, in case of annulment, was a former wife divorced—could it mean a former wife annulled?

Many Mexican "mail-order" divorces are presented and often present a serious problem in cases where either one or both of the parties have remarried. One woman who had been the moving party in procuring such a "mail-order" divorce and who had remarried, nevertheless filed an application for family allowance claiming as the "lawful wife" of the soldier, whom she had so divorced, for the reason that the "mail-order" divorce was void and of no effect, hence, she could not legally remarry, hence, she was still the "lawful wife" of the soldier.

Other legally novel claims are also made, such as where one soldier claimed he had secured a "common-law divorce" from his wife in Newfoundland. Others claimed to have contracted common-law marriages in Mexico, Jamaica, Bermuda and even China. In briefing the question relative to common-law marriage in Jamaica, one writer stated that, while common-law marriages were not recognized there as legal, the participants did usually live together thereafter in a kind of "faithful concubinage."

Another novel case was presented where a woman from New York had gone to Florida before the war (and the passage of the Servicemen's Dependents Allowance Act of 1942) and there procured a divorce. Upon the entry of her former husband into the armed forces she immediately applied for a family allowance. She was informed that application was denied on the ground that she was divorced and no alimony had been awarded to her. She replied that she had secured a divorce all right but it wasn't any good because she had falsified therein, by stating that she was a resident of that State for a sufficient length of time and that she was, therefore, still entitled to a family allowance as his "lawful wife."

Owing to the diversity of law relative to marriage and divorce, it often happens that a man may be legally married and a law-abiding citizen in one State, but a bigamist in another and, hence, that his children may be legitimate in one State but illegitimate in another. A man may be legally married and living with his wife in one State and yet ordered to support a wife in another State. There may be an extant decree of divorce and yet a man is still married in some other State. It is all extremely confusing and presents a serious problem for the legal profession.

These are but a few of the countless interesting questions presented for solution. They must all be determined before legal dependency can be established. Such an opportunity for studying the various and varying domestic relations laws throughout the United States has seldom, if ever, been offered before. It would appear that the Bar might well increase its exceedingly worthy efforts to establish a more uniform system of laws pertaining to marriage and divorce throughout the United States.

* Reprinted from the "Hennepin Lawyer."

† Chief, Legal Branch, Office of Dependency Benefits, Newark, N. J.

THE DEPARTMENT OF *Law* AT THE UNITED STATES MILITARY ACADEMY

By COLONEL CHARLES W. WEST, JAGD

TO PARAPHRASE a familiar maxim it might well be remarked that the cadets of today will be the trial judge advocates, defense counsel, and members of courts-martial of tomorrow. Looking still further ahead it requires no great exercise of the imagination to visualize that among them may even be many of our confirming authorities of the next war, which duties such former cadets as Generals Eisenhower, MacArthur, Stilwell, Devers and Richardson have performed during World War II. For these, in addition to many other reasons, it is manifestly important that there be imparted to the cadets of the United States Military Academy as a part of their basic training a knowledge of certain of the more fundamental principles of law, and particularly those which govern or are related to the operation of and administration of justice within the military establishment.

Under the command of Major General Francis B. Wilby as Superintendent and Brigadier General George Honnen as Commandant of Cadets, the Corps of Cadets today numbers over 2500. Of these, 861 are in the First (senior) Class and receive instruction in Law. This course is conducted by officers of the Department of Law which is almost as old as the Academy itself, having had its origin over a century ago when by the Act of Congress of April 14, 1818, there was provided "one chaplain stationed at the Military Academy at West Point, who shall be Professor of Geography, History, and Ethics." Although the regulations in effect at that time prescribed that the "course of ethics shall include natural and political law," there is no record that any law subject was given before 1821 when Vattel's Law of Nations was adopted as a textbook in International Law. Constitutional Law was also first taught at about the same time.

A separate department for instruction in Law was created by the Act of June 6, 1874, and the instruction in Law which had previously constituted a part of the course of study in the Department of Geography, History, and Ethics was taken from that department. The Chaplain remained Professor of Geography, History, and Ethics and an officer of The Judge Advocate General's Department was detailed as Professor of Law. Except for the period 1896-1910 during which the Departments of History and Law were reunited, the latter has, since its creation seventy years ago, functioned as a separate department and although at present provided by statute

(10 U.S.C. 1074) that the Secretary of War may, in his discretion, assign any officer of the Army as Professor of Law, a member of The Judge Advocate General's Department has habitually been so assigned. Many Assistant Professors and Instructors of the Department have also been or later became Judge Advocates.

The names of such distinguished former Professors as Lieber, Winthrop, Davis, Bethel, and Kreger are too well known to Judge Advocates and students of military law generally to require further comment. Others of more recent years who have subsequently retired include Strong, White, Halliday and William M. Connor, the latter being the only officer who has twice been the Professor of Law, i.e. from 1934 to 1938 and again from 1942 to 1944. And an enumeration of former Professors or members of the staff and faculty of the Department of Law who are still in active service includes the following Judge Advocates—a veritable roster of many of the key personnel of The Judge Advocate General's Department of today:

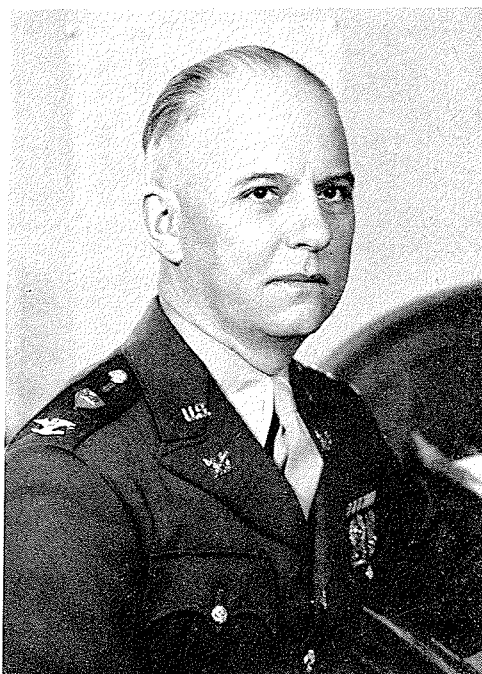


Photo by White Studio, New York
COLONEL CHARLES W. WEST, JAGD
Professor of Law, U.S.M.A.

Major General Myron C. Cramer, The Judge Advocate General.

Brigadier General Edwin C. McNeil, Assistant Judge Advocate General, in charge of Branch Office of The Judge Advocate General, European Theater of Operations.
Brigadier General Ernest H. Burt, Assistant Judge Advocate General, in charge of Branch Office of The Judge Advocate General, Southwest Pacific Area.

Brigadier General Joseph V. de P. Dillon, Provost Marshal General, North African Theater of Operations.

Brigadier General Edward C. Betts, Staff Judge Advocate, European Theater of Operations.

Brigadier General John M. Weir, Assistant Judge Advocate General in charge of International Affairs.

Brigadier General James E. Morrisette, Assistant Judge Advocate General, in charge of Branch Office of The Judge Advocate General, Pacific Ocean Areas.

Colonel Hubert D. Hoover, Assistant Judge Advocate General, in charge of Branch Office of The Judge Advocate General, North African Theater of Operations.

Colonel Ernest M. Brannon, Staff Judge Advocate, First Army, European Theater of Operations.

Colonel Edward H. Young, Commanding Army Units and PMS&T, University of Michigan, and

Commandant, The Judge Advocate General's School.

Colonel David S. McLean, Staff Judge Advocate, Fifth Army, Italy.

Colonel Edgar H. Snodgrass, Staff Judge Advocate, Pacific Ocean Areas.

Colonel Charles E. Cheever, Staff Judge Advocate, Third Army, France.

Colonel Charles L. Decker, Staff Judge Advocate, XIII Corps, European Theater of Operations.

The Military Academy law course has for its unique aim *the equipping of the cadet to perform law-connected duties of Regular Army officers of the combatant arms* in military justice administration, in organizational and post administration, and also when functioning as ex-officio legal next friend to enlisted men of their commands. Its purpose is *not* to make staff judge advocates of the cadets, few of whom will ever serve as members of The Judge Advocate General's Department. Provision is made in the normal four-year course of instruction at the Academy for a total of 91 hours classroom instruction in Law, a minimum of one hour's preparation being required for each hour in class.

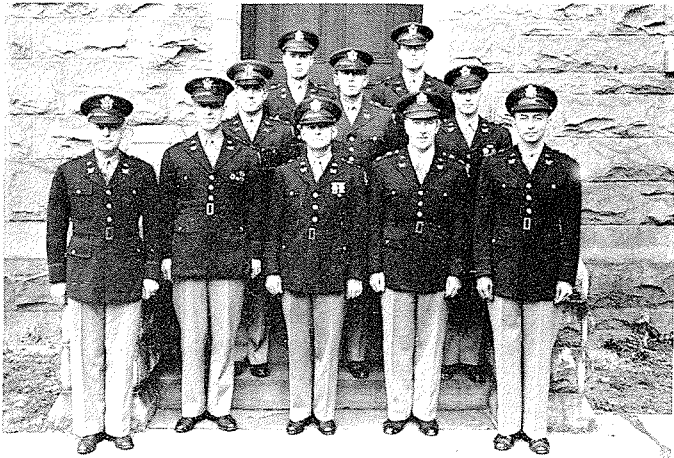


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Officers on duty with the Department of Law, U.S.M.A. Front Row: Lt. Col. Hastings, Lt. Col. Levings, Colonel West, Lt. Col. Finnegan, Major Denson. Second Row: Major Thompson, Captain Denney, Captain Lindsay. Rear Row: Lieut. Moser, Captain Smoak.

Because of the war-time reduction in the course to three years and extensive Air Corps training now being given, the present course in Law consists of 46 hours for "Ground" cadets and only 31 hours for "Air" cadets. However, plans currently under consideration contemplate a return to the full 91 hours instruction in Law when the four-year course is resumed.

The present course is divided into the major sub-courses of Elementary Law, Constitutional Law, and Military Law, the latter including the additional peacetime sub-courses in Evidence and Criminal Law. Although the usual text-book and selected case methods of instruction are used for Elementary and Constitutional Law, the study of the Manual for Courts-Martial is largely practical. Except on rare occasions, the cadets are permitted to use the MCM in connection with the solution of problems in class, thus gradually familiarizing themselves with its contents and leading up to the Moot Court work at the end of the sub-course. The currently available War Department training films (TF 11-235, TF 15-992) have also been used quite effectively

in giving the students a "bird's eye view" of the punitive Articles of War and courts-martial procedure. In addition further opportunity is afforded them to become familiar with such procedure by encouraging their attendance as spectators at actual trials of military personnel. The large number of cadets who voluntarily attend these trials during their off duty hours evinces their keen interest in this subject.

Closely integrated with the purely academic instruction in Law given at the Military Academy is the work of the Staff Judge Advocate, who in addition to exercising general supervision over the administration of military justice in the general court-martial jurisdiction which includes both West Point and Stewart Field, also performs the duty of Legal Assistance Officer. Although reporting directly to the Superintendent with respect to such matters, both the personnel and other facilities of the Department of Law are made available to and utilized by him to a considerable extent in the performance of these functions. The instructional staff of the Department not only performs the duties of the usual key positions in connection with the administration of military justice such as investigating officer, trial judge advocate, defense counsel, law member, and summary court but also renders assistance where general legal research is involved and in such matters as preparation of individual income tax returns, wills, and powers of attorney. The availability of personnel for the performance of these duties, without interference with academic work, is coordinated through the Assistant Professor of Law.

The members of the present staff and faculty of the Department of Law have been drawn from all of the four components of the Army, i.e. Regular Army, National Guard, Officers' Reserve Corps and Army of the United States. Eight of the ten commissioned officers now on duty with the Department are members of The Judge Advocate General's Department, which constitutes the largest number of Judge Advocates ever serving at the Academy at one time. Some of them are graduates of West Point who have returned from the practice of law in civil life to practice military law for the duration. Others have been commissioned through Officer Candidate Schools of line branches and sub-



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MAJOR GENERAL
FRANCIS B. WILBY
Superintendent of the Military Academy

sequently attended officer courses at the Judge Advocate General's School at Ann Arbor, Michigan.



The following personnel is now on duty with the Department:

Commissioned

Colonel Charles W. West, J.A.G.D., Professor of Law
 Lt. Col. George E. Levings, J.A.G.D., Asst. Professor of Law
 Lt. Col. George B. Finnegan, Jr., J.A.G.D., Staff Judge Advocate
 Lt. Col. Howard Hastings, J.A.G.D., Instructor
 Major Horace B. Thompson, F.A., Instructor
 Major William D. Denson, J.A.G.D., Instructor
 Captain Clark Denney, J.A.G.D., Instructor
 Captain Marion H. Smoak, C.A.C., Instructor
 Captain Alexander H. Lindsay, J.A.D.G., Instructor
 First Lt. Frank S. Moser, J.A.D.G., Instructor.

Enlisted

Corporal Arnold E. Feldman, Assistant to Legal Assistance Officer
 Tech. 5th Grade Edward M. Salter, Court Reporter.

Civilian

Mr. Nicholas Farina, Chief Clerk and Notary Public
 Miss Ruth E. Dougan, Secretary
 Mr. Edward F. Seibert, Clerk.

The Department of Law at the Academy has what is probably the best equipped Law Library in the Army other than that in the office of The Judge Advocate General. There are over 7,000 books on its shelves which are available for reference at all times to the personnel of the post, including cadets.

One of the outstanding accomplishments of the Department or members thereof is the preparation of various texts, pamphlets, and legal forms, many of which are now in widespread use throughout the Army. Among those which are worthy of particular mention are "Constitutional Powers and Limitations" by Edward H. Young, "The Soldier and the Law" by John A. McComsey and Morris O. Edwards, and an "Outline of Procedure for Trials Before Courts-Martial, U. S. Army," compiled by John A. McComsey.

In 1941 the American Bar Association set aside a fund "not exceeding \$25 per year for a set of books, to be awarded annually, to the cadet of each year's graduating class standing highest in his law studies at the United States Military Academy at West Point, New York." Because of war conditions the Association in 1943 decided to change the award to a "Series E" War Bond for the duration of the war. The 1944 award of a \$25 bond was accordingly made to Cadet James F. Scoggin,

Jr., of Mississippi, who not only led the Class in Law with a 2.8 (93%) average but also graduated No. 1 man in his Class for the entire course.

No narrative concerning the Department of Law would be complete without special mention of Mr. Nicholas Farina, chief clerk and notary public. A veteran of the First World War, he was cited in War Department orders for gallantry in action while leading his squad in the advance against the enemy trenches of the Hindenburg Line in France, the citation stating that his great courage, devotion to his comrades, and high sense of duty greatly inspired the men of his company. Since 1924 he has daily negotiated the Storm King Highway from his home in Newburgh to West Point through fair weather and foul in order to assist generally and particularly to unravel some of the mysteries of the unique "Farina" system of filing.

It has often been said that the proof of the pudding is in the eating thereof. It may likewise be argued that the best appraisal as to the benefit derived from the

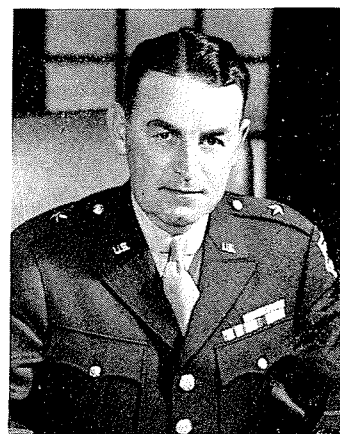


Photo by White Studio, New York
 BRIG. GEN. GEORGE HONNEN
 Commandant of Cadets

instruction in Law at the Military Academy comes from those who have completed the course and later put what they learned into practice. The considerable number of letters from recent graduates which the Department annually receives attests fully the fact that the combined efforts of instructor and cadet pay large dividends in the future, so far as the administration of military justice in the Army is concerned. This conclusion is well epitomized in The 1944 Howitzer, cadet year book, wherein the following appears:

"The popularity of a course of study may be quite divorced from its utility, but in the case of Law the two are coequal. For years cadets have looked forward to Law classes as refreshing respites from the grim exactitude of the ubiquitous slide rule. Untangling the involvements of Sgt. Hothead, Lt. Jergue, Miss Lewd, Pvt. A. W. Oler has considerable more attraction than the integral of $\sin x \, dx$.

"Besides the human interest of the subject, the course in Law has another high recommendation. And this is the realization of the recurring use of the instruction after graduation. Every officer can attest to the necessity of familiarity with the AW and with courts-martial procedure. June first won't find us counsellors of Philadelphia variety, but rather as fairly competent interpreters of military justice."

TEMPORARY *Duty* IN A *Flying Fortress*

(ANONYMOUS)

o pity the fate of the judge advocate
he never has no fun
he never squints thru a B C scope
and never fires a gun
while others fly thru the flak filled sky
or prowl in an armored car
he must sit sedate and meditate
on how evil his comrades are
he must carefully read of each foul deed
the soldiery committeth
and plot some way to see that they
get punishment that fitteth
o pity the doom of this man of gloom
whose life's a thing to mourn
let's all agree with him that he
had better not been born

(line once found behind the
doors of a small but important
building on the norwegian
coast)

THE Manual of Courts-Martial is surely a sterling and meritorious work, worthy of unstinted admiration and deep study, and the army couldn't get along at all without it; but it's not exactly lurid literature, and it's doubtful if many have been lost in ecstasy while perusing its succinct and scholarly pages. Similarly the routine labors of a judge advocate can hardly be classed as among the most romantic or exciting parts of wartime life. Maybe if the astute and foxy Ephraim Tutt were to mix up in military justice he'd twist the tail thereof in fashion to form a gay story, but most judge advocates just plow their furrow through the problems of discipline and army law and learn that their jobs, per se, aren't ordinarily calculated to include or create much martial fervor. On the other hand we must remember that in these days people do have to get around, and many of the brethren of the sword and quill have followed their fellows into far places and encountered in those places and along the roads there things to cause legal knees to knock and legal hearts to pound against legal tonsils; so we can say that that bookish department has had its share of thrills and chills and no doubt many of its representatives are going to be able to hold our attention for long when we congregate after this business is over and they start relating their tales.

Whatever conception may be stated of his task, ultimately it must be conceded that in fact the judge advocate of a combat organization is the staff officer whose main concern in life is discipline. The view of the officer herein concerned is that he needs experience in combat, as much as he can get, in order to solve the problems posed to him touching the uses and application of discipline. One experience has attracted some attention because of an official report of observations as to that subject; therefore this. On the basis stated, that officer was ordered to fly over Europe so that he might see at first hand how order and precision appeared in that quite intricate instrument, the heavy bomber. What he saw confirmed his belief that discipline is the best protection a government can give its soldiers, that we need it, and that for its lack we're paying in life and suffering and effectiveness; that unless and until national feeling about and against complete, perfect discipline is

changed, the will of commanders who wish it is thwarted to our needlessly heavy cost.

So the judge showed up at a Fortress station to carry out his orders. There were many preliminaries, for then he'd not been thru a combat crew school and had to be taught numerous things before he could go along; also there was the ponderous matter of much personal equipment. He tried on all sort of suits and doings; the only normal-sized item that fitted was a may west, and he was more than a peck of nuisance. Then he hung around the headquarters until the operation orders began coming in, and before he went off for a nap he had the general picture of the plan for the next day. They hoisted him out of bed at a deplorably early hour and took him to the general briefing where various specialists disclosed the matters the crews needed to know. He wasn't cheered a bit by the groan that went up when they learned that a headwind of bitter velocity would face them on the bombing run; nothing could be done about that, for the paths of other units on the day's work prevented. Then he heard the pilots briefed; a senior officer took the floor and voiced acid comment on the didoes of certain rugged individualists he'd watched on the last previous foray; the officer was very unhappy about those matters, and very much against innovations it seemed; he appeared to desire only that his lads be so kind as to keep formation, do the other things they'd been told, and get back safely. Next, technical matters beyond the ken of the judge were taken up, and he wandered around, being warned to avoid drinking much water, coffee, or anything else. He found a friend who was going along, and they convened in a cold hallway, discussing their prospects brightly and lightly, as boys whistling by a cemetery. Then along came a lad with a map of the judge's home state pictured on his jacket; he was hailed and they talked about that far, great commonwealth for some time; finally the judge was corralled, his tremendous outfit of flying duds and such was produced, and a weary sergeant shepherded him to the tent of the crew beside the ship in which he was to fly. That tent was small and the crewmen were all over it, resting as best they could and chewing over the trip. It was cold that morning, and the judge noticed he was shivering slightly. Presently he found himself clambering into the nose; the hatch closed, the motors started, and there he was, all hooked up to the machine and it about to take off. The government, obsessed with other considerations, has overlooked placing chairs around inside for the benefit of legal observers, but he made himself as comfortable as a sedentary individual can behind a machine gun in such a conveyance and tried to look nonchalant, which isn't an easy job when you're wearing more overstuffing than Admiral Peary in his most fervid moments and also have to keep yourself from messing up the nearest of the devices they've crowded into those ships. Down the runway they rumbled, into the lineup, and waited their turn to take off. The judge started timing the intervals between takeoff of ships ahead, and observed that if he didn't dismount he'd be airborne very soon indeed; so he was. There wasn't any prospect after that of just calling the whole thing off; it seems the flying folk don't consider it a good

idea to turn back at that stage, even if an individual does happen suddenly to remember something mighty important he needs to attend to on the ground immediately.

Up they went over England; all about were their fellows, the planes climbing, forming; he thought that if there be a more beautiful plane than a Fortress in the air, he'd not seen it. Down below the land fell away, became a mosaic; the horizon expanded. Presently they were over London, and he could make out its streets and parks and buildings; he knew people there were looking up at the formation, cheering them on their way. Beside his ship, and above and below and ahead and behind, others were soaring majestically on toward the channel and the enemy; this was it. Then they were over the sea, and he knew that the coast of Europe with its far-too-damnably efficient flak artists was just ahead—here it comes—of course he was as right as a fox—it was just as advertised. Jerry greeted the formation with vigor if not with cordiality, and the reception got very personal indeed. Looking across the space between his and the adjacent planes, the judge solemnly noted that they were in very tight formation, hugging each other as closely as possible, just as directed; the fact became more arresting when he further noted that great beautiful flowers with dull red centers and smoky black leaves were blossoming in the air between him and those other planes. It's odd how a change in point of observation can make a difference in the view one takes of flak. The judge had seen a lot of it at various times being flung up against hun planes; he'd always taken the stand that accuracy was very desirable on those occasions, and in fact admired accuracy as something most praiseworthy; now, on the receiving end, he found he didn't give a hoot for accuracy, opposed it in principal, and if the hun would get something wrong with his guns, his eyesight, his calculations, the judge would be just as happy as a young bug in a warm bed.

Most of the planes in his formation were hit, several of them many times; there was loss and hurt; but on they went, dodging, turning, twisting; with brief intervals it was that way in varying intensity through their path over the enemy.

Now all the time he kept, or tried to keep, his professional mission in mind. So when he heard over the phones the quiet voices reporting damage, and the pilot quietly and calmly giving orders to remedy things, he remembered it all. A part of the oxygen system was knocked out; that was serious; the tailgunner using that bank took care of himself temporarily and stuck to his post, and another went to his aid and fixed things up for him. The wings were hit many times; there wasn't a thing to do about that but worry. An engine was smoking; calm consideration was given, the pilot said he thought it would hold and it did. One of the instruments was reported to have suffered a direct hit; the judge didn't know where it was and so wasn't impressed much at that time. Chunks of flak struck the nose and one made a hole in the plexiglass up front, spraying tiny particles all over and dashing them in the legal face; his helmet came loose and fell over his eyes and he banged his head against the breech of his gun in the course of regaining his vision and aplomb. The engines seemed suddenly to stall and he poised himself for departure therefrom, with quick thoughts of all he'd been told about parachute detail, but luckily he didn't get going before they roared again. A burning piece of an exploded

plane was hurled forward past the window; there was angry talk about another pilot who wasn't keeping formation and was profanely charged with trying to win himself another medal; enemy fighters were sighted, apart; and so it went. The places over which they flew can't be stated now, but that judge advocate won't forget them ever. Of all those things he kept mental note, later to weave them into his report on discipline; he couldn't have forgotten any of them if he'd tried; for long he was burdened by cold, gnawing, anxious fear that couldn't be disregarded or shrugged away, until suddenly he found, to his mild surprise, that he wasn't longer either anxious or afraid; he didn't know why exactly but thought it was because he was getting used to what he was doing.

Bomb bay doors were open; they were on the bomb run; no enemy fighters were very near, flak wasn't stopping them; so he watched the bombardier just in front of him. A hand reached for the switch; straight and steady they flew on the course; the switch was pushed and there was the climax—"bombs away"—that's what they'd come for. On the target below bombs from others before were bursting; theirs were on the way; now they'd done their job and all that remained was to get away and go home. But the way home was just about as exciting, just about as intensely personal; jerry kept up his interest in the proceedings to the last. Even when they were approaching the coast on the way out it seemed things weren't pleasing everyone; they were being led, voices said, much too near to a very well known, even notorious, flak area, and the commentators were sad and depressed at the prospect. Me, too, he thought; it seemed like a dirty trick to do after they'd made it through all that stuff behind. But the leader veered a bit and in time, and the formation followed; things weren't particularly nice, but though there was more flak than he liked—he didn't actually feel affection for any part of it—they got through safely and were presently over the water. Down below a convoy of vessels was plowing steadily through the sea, and soon there ahead were the welcome shores of England. They dropped down and headed for the home plate; off came oxygen masks and flak suits and helmets, out came cigarettes and the heavily sweet candy that boosts one's lagging strength, there was a relaxing of the strain, and they talked. He remembers expressing his wonder at the amount of bookkeeping the navigator had to do, and the navigator spoke of how tired he was. Then the navigator started fiddling with a dial on a device right by the judge's left foot; had to move the foot a bit to get at it. Plainly the thing was out of kilter, and the judge sagely said so. The navigator glanced at him queerly and asked if he knew what it was; he admitted ignorance and the navigator named it. It was the one that had had the direct hit back there. The judge yanked his foot away as though he'd just stepped on a hot stone.

Then the almost endless circling over the base, waiting turn to land. Around, and around, and around, as though never to get down. Some ships had wounded aboard and of course got the call to land first; it seemed this one was to be forgotten to the last. But after an age they dropped down and onto the runway; back to earth he was, and didn't give a continental right then if he never left it again. Once more a rumbling journey, and they were back on their own standing; wearily, but totally happy, he clambered through the hatch to the

welcome given by the waiting ground crew. He recalls and always will the way they treated him, the ready, cordial grins on the faces of the crew of the ship—his crew, his ship—that was heady wine. A piece of flak was picked out of the nose, from the hide near his position, and handed to him for a souvenir; someone slapped him on the shoulder. Then it was he planned to see if he couldn't get a picture of that ship and its crew with him alongside; that he didn't will ever be a real regret, for his ship and his comrades went down on the next mission.

Next out of his burden of airman's duds and paraphernalia, and over to the headquarters. First into the mess hall, where was waiting a royal meal, of fruit juice, meat and eggs, coffee—all he wanted, and he wanted a lot. The young crew waited for him and when he reached the interrogation table the intelligence officer started questioning; that meal inside took off the load of strain and weariness and everyone seemed cheerful and anxious to tell what he'd seen.

Then over to the office of the commanding general of that outfit, to confess how scared he'd been and how happy he was about the whole works. The general's

bluff, hearty greeting was a joy. And it was over; he was a groundling again.

So there's one way to see a part of this ruckus; he liked it. What good did that voyage do? Was it worth the trouble he added to the work of busy men? The answer, surely, is yes. Any student of discipline should be able to get value out of it, did he see it all; that's a subject of vital import to modern, even more so than past, warfare; and everyone who believes in it and is charged with doing something about it is better armed if he knows personally how it works at the point to which it, with all things entering into military action, is directed finally. This, however, isn't written as a study of order and precision; that was part of another paper and is mentioned here only in explanation of cause.

Now if every judge advocate of a combat unit should convince his commander that a front seat at the performance is of worth in his, the judge advocate's, business, he'd find his efforts well repaid. The one here written about has been repaid, over and over; he knows more about what he has to do; and he has memories beyond price.

THE *Branch* OFFICES

A FIFTH branch office of The Judge Advocate General was established 25 September 1944 with the activation of the Branch Office of The Judge Advocate General with the United States Army Forces in the Pacific Ocean Areas. Brigadier General James E. Morrisette heads the new office which is located in Hawaii. Lieutenant General Robert C. Richardson, Jr., is the Commanding General of the United States Army Forces in the area.

General Morrisette was born in Alabama and educated at the University of Alabama from which he received his A.B. degree in 1906 and his LL.B. degree in 1911. He taught in the Law School of the University of Alabama from 1911 to 1918 and also engaged in the general practice of law. A member of the Regular Army, General Morrisette saw oversea service in the last war with the AEF and with the Army of Occupation in Germany. He also served a two year tour of duty in Hawaii from 1938 to 1940. Prior to receiving his present assignment, General Morrisette was Assistant Judge Advocate General in Charge of Military Justice Matters.

A board of Review has been established in the new branch office headed by Lieutenant Colonel Samuel M. Driver as Chairman, with Lieutenant Colonel Frederick J. Lotterhos and Major Charles S. Sykes as members.

Major Judson I. Clements has been appointed Executive of the office and Major Addison P. Drummond has been designated Chief of the Military Justice Division. Captain Joseph S. Robinson and Captain Samuel Sonenfield have been assigned to the Military Justice Division.

Four other branch offices have previously been activated, one in the European Theater of Operation, one in the Southwest Pacific Area, one in the India-Burma Theater and one in the Mediterranean Theater of Operations. Earliest activated was that in the European

Theater of Operations which was established in May, 1942. Brigadier General Lawrence H. Hedrick was the first Assistant Judge Advocate General with this branch office, being succeeded by Brigadier General Edwin C. McNeil, presently in charge of the office.

The branch office in SWPA was next activated the following month, June 1942, and the IB office was activated in October of the same year. SWPA has been headed by Brigadier General Ernest H. Burt, as Assistant Judge Advocate General since its activation. IB, known as CBI until the recent reorganization of command in the Pacific, was first headed by Colonel Robert W. Brown as Assistant Judge Advocate General. Colonel Brown was succeeded by Colonel Herman J. Seman as Acting Assistant Judge Advocate General, the latter having in turn been succeeded by Colonel William J. Bacon as Assistant Judge Advocate General.

The branch office in MTO, originally known as North African Theater of Operations, was activated in April, 1943. First headed by Brigadier General Adam Richmond, MTO is now under the direction of Colonel Hubert D. Hoover.

The branch offices are designed to speed up the administration of military justice in oversea commands as well as to insure expeditious handling of the numerous other legal matters which come within their jurisdiction. Pursuant to Article of War 50½ the branch offices are under the general supervision and control of The Judge Advocate General and occupy the status of independent installations not a part of the command of the theater. They examine or review all records of trial not requiring approval or confirmation by the President in the area concerned, acting in this respect in the place of The Judge Advocate General and the Boards of Review in Washington.

IN *Memoriam*

Colonel Charles P. Burnett, Jr.

Charles P. Burnett, Jr. was born in Seattle, Washington, on 14 August 1904 and attended the University of Washington from which he received the degree of Bachelor of Laws in 1927. He was admitted to the Bar of the State of Washington and engaged in general practice from 1927 until he entered on extended active duty in the Army on 29 May 1941.

He was commissioned a Captain in the Judge Advocate General-Officers Reserve Corps on 14 March 1933 and at the end of six months of active duty was promoted to Major while serving in the Military Affairs Division of The Judge Advocate General's Office in Washington. He was placed on special duty in connection with Army operation of strike-bound plants and was co-author of a manual adopted by the War Department for use in such work.

On 19 September 1942 he was promoted to the grade of Lieutenant Colonel and before being assigned to the Office of the Chief of Staff, U. S. Army on 24 August 1943, he served as Chief of the Officers Branch of the Military Affairs Division. He supervised the preparation of numerous directives and pamphlets dealing with the civil affairs and military government of occupied territories. As a pioneer in two essential fields of Army activities he has received wide acclaim from those who observed his work. (See Honor Roll, this issue.)

He was promoted to Colonel, General Staff Corps, on 25 February 1944 and while on a special mission in the Pacific area was declared missing on 26 July 1944. His death was announced later by the War Department.

Colonel Burnett is survived by his widow and three children, who reside at 1220 Federal Avenue, Seattle.

Lieutenant Colonel Victor Jenkins Rogers

Born in Wichita, Kansas on 24 October 1898, Victor J. Rogers attended the University of Kansas and received the Bachelor of Laws degree from George Washington University, Washington, D.C. in 1921. He became a member of the Kansas bar in 1922 and practiced law at Wichita until he entered on extended active duty in the Judge Advocate General's Department of the Army on 14 July 1941.

He was appointed a Captain in the Officers Reserve Corps on 31 December 1935 and was promoted to the grade of Major on 14 May 1941. His first post of extended active duty was the Office of The Judge Advocate General in Washington, where he was assigned to the Military Justice Section. In April, 1942 he was assigned to the Panama Canal Department where he served for the remainder of the period of his active duty. He was promoted to Lieutenant Colonel on 14 September 1942.

Colonel Rogers died on 9 October 1944 at Wichita after an extended illness which had caused his release from the Army. He was unmarried.

Second Lieutenant Edward L. Chatlos

Edward L. Chatlos was born in New York City on 6 February 1912, received the Bachelor of Arts degree from Fordham University in 1933 and the Bachelor of Laws degree from the same university in 1936. Prior to his entry in the Army as a private in March, 1942, he was engaged in the practice of law in New York City.

He was appointed a Second Lieutenant in the Army of the United States on 9 April 1943 and graduated from The Judge Advocate General's School on 17 July 1943. He was assigned to the Office of The Judge Advocate General for a short period prior to his departure for duty with the Foreign Claims Service in the North African Theater of Operations. He died as a result of injuries received in an automobile accident in Sicily on 25 July 1944.



THE JUDGE ADVOCATE GENERAL'S *School*

By CAPTAIN GEORGE P. FORBES JR., JAGD

SINCE the last appearance of *The Journal* the 8th OC Class of 73 members and the 19th Officer Class of 29 officers, 102 in all, have completed regular courses of training and graduated on 10 November. The names of the graduates are published elsewhere in this issue. The 7th OC Class of 64 and the 18th Officer Class of 43 officers, a total of 107, finished their courses on 8 September. The membership of these classes was published in the last issue of *The Journal*.

Major General Myron C. Cramer, The Judge Advocate General, attended and was the principal speaker at the September graduation ceremonies at which he was accompanied by Brigadier General Thomas H. Green, Deputy Judge Advocate General, and by Major Charles B. Warren, Jr. General Green represented General Cramer at the November graduation when urgent duties required a last minute change of plans, and read General Cramer's greetings and address. First Lieutenant Sherwin T. McDowell (18th Officer Class) and Mr. George S. Holmes, Chief of Technical Information, JAGO, were visitors at the same time. For the first time in the history of the School at Ann Arbor the graduation parade fell victim to the weather. Commissioning of the candidate class was carried on in Hutchins Hall in lieu of the traditional Quadrangle site.

Since our last report three more Contract Termination Classes (4th, 5th and 6th) have come and gone after a month's training in contracts and the readjustment of war contracts. These classes numbered 293 officers ranging in grade from lieutenant colonel to second lieutenant from fifteen different branches of the Army. Included were several officers of our department: Lieutenant Colonel Earl B. Craig (3rd Officer Cl.), Lieutenant Colonel John C. Gung'l, Major Ernest W. Biron, Major John J. Hynes (5th Officer Cl.), Captain Edgar W. Krentzman, Second Lieutenant Francis W. McGinley (4th OC) and Second Lieutenant John M. Whelan (6th OC).

In anticipation of future personnel requirements Colonel Edward H. Young, Commandant, and the Academic Board have modified the School curriculum, applicable to the officer candidate and officer classes entering on and after 20 November, to include additional training in contract termination as part of the regular courses. Under the change, instruction in Government contracts and readjustment procedures is combined in one course taught by the Contract and Readjustment Department. The purpose of the revision is to give future school graduates added training as a matter of general education so that they may be assigned, when the need arises, to act as legal members or negotiators of contract termination teams without the necessity of returning to the school for the special one month's course.

The School has been cooperating with the University of Michigan in a special three-day course in contract termination which the University offers weekly to civilians, principally contractors, at the Rackham Building, Detroit. Lieutenant Colonel Michael L. Looney, Director of the Contract and Readjustment Department, participates in the instruction, lecturing weekly on the legal aspects of the subject. Many of the large Government war contractors have been represented at the lectures, including General Motors, Ford, Packard, Bendix, Briggs, Budd Wheel and Fruehauf Trailer.

Because of the dual responsibility discharged by Colonel Young as Commandant of all Army Forces in Ann Arbor and Commandant of the School, Lieutenant Colonel Reginald C. Miller has been appointed Assistant Commandant. Colonel Miller continues as Director of the Military Affairs Department and in his new position assists Colonel Young in matters of policy and administration.

One unusual event in which the School battalion participated together with other Army troops and Navy trainees was the presentation of the Ordnance Department Distinguished Merit Award to the University of Michigan on 7 October. The presentation was made by Brigadier General A. B. Quinton, Jr., Commanding General of the Detroit Ordnance District, to Dr. Alexander G. Ruthven, President of the University, in recognition of wartime services rendered by the University. After the presentation General Quinton, Dr. Ruthven and Colonel Young reviewed the parade of 1000 marchers.

For the second successive year the School has been rated superior by Major General William L. Weible, GSC, Director of Military Training, ASF, following an inspection on 28-30 August. The report read in part: "The military atmosphere of the school and the cordial relationship between instructors and students is especially noticeable. As a result of previous inspections the Commandant of the school was commended for the manner in which the personnel, facilities and material available to him have been organized for effective instruction. This school continues to operate on the same level of efficiency."

General Cramer in commenting on the report said that he "noted with pleasure that the school is fulfilling its mission in accordance with War Department and Army Service Forces doctrine and principles and is functioning on a high level of efficiency." A similar complimentary report was received from the Director of Military Training of the Sixth Service Command in which it was stated: "Instruction, housing facilities and military atmosphere considered superior. Motto seems to be: 'Make them soldiers, then lawyers.' *** Attended a field exercise in which students located objective by use of compass across rugged country, given azimuths and distances. Well done."

It is of interest that Mr. James L. Kauffmann, New York attorney with many years experience as the only American lawyer in Tokyo, Japan, is now a regular lecturer in the course on the law of belligerent occupation, traveling from New York to give each class the benefit of his knowledge of Japanese life and the legal and economic system as a background for more detailed study in the regular course.

Beginning in November 1943 and including all classes graduated since that time a total of 672 paid applications for membership in the Association have been obtained. This activity was commenced by Colonel Herbert M. Kidner, former Director of the Military Justice Department, and following his transfer from the School last January has been continued by Lieutenant Colonel Reginald C. Miller, Captain John E. Park and before his transfer to Headquarters, Second Army, by Captain Robert L. Clare, Jr.

Recent Graduates FROM THE JAG SCHOOL

NINETEENTH OFFICER CLASS

Graduated 10 November 1944

Alden, Bernhard W., Major, JAGD
Allen, Charles W., Major, JAGD
Beard, Edward K., 2nd Lt., JAGD
Bomberger, Charles G., 2d Lt., JAGD
Burns, Jr., Luke A., 1st Lt., JAGD
Cosson, Clarence, Major, JAGD
Dolan, W. Stanley, Major, AC
DuFlocq, Eugene W., 1st Lt., JAGD
Gill, David H., Capt., JAGD
Hoffman, Robert A., 1st Lt., JAGD
Kelley, Ward W., Capt., JAGD
Kessenich, Gregory J., Lt. Col., JAGD
Knight, Jr., William B., Capt., JAGD
Lupton, Perley T., 1st Lt., JAGD
Mauch, Ralph E., 1st Lt., JAGD
Meyer, Martin A., Capt., JAGD
Morrell, Edwin J., 2nd Lt., JAGD
Nixon, Gwinn H., Capt., JAGD
Patrick, Thomas M., 1st Lt., AC
Peck, Bernard S., 1st Lt., JAGD
Pyle, Luther A., 2nd Lt., JAGD
Ryan, Elmer James, Capt., JAGD
Timberlake, William E., 1st Lt., JAGD
Tracy, Philip A., 1st Lt., AC
Velikanje, Stanley P., Capt., JAGD
Vivas, Jose Guillermo, Major, JAGD
Weiner, Leonard J., 1st Lt., JAGD
Williams, Jr., Robert H., Capt., JAGD
Wingo, Earl W., 2nd Lt., JAGD

EIGHTH OFFICER CANDIDATE CLASS

Graduated 10 November 1944

Adamowski, Benjamin S.
Adams, John J.

Aggeler, Mervyn A.
Arthur, Jr., William R.
Barry, Edmond H.
Basch, Curtis
Bell, Jr., Robert C.
Berman, Morris
Blaine, Jack L.
Boedeker, Edgar G.
Bour, John W.
Brown, Matthew M.
Brown, Richard T.
Buder, William E.
Carson, Lorton R.
Case, T. Jackson
Caudill, William C.
Connolly, Jr., Edward J.
Cooney, Milton F.
Couper, Jr., Fred T.
Diehl, John N.
Donahue, Charles
Durkee, Jr., John W.
Fortuna, Roger A.
Freeman, Sylvan D.
Gabell, Gordon W.
Greenough, Tallant
Herbruck, Henry A.
Hubbard, Chester R.
Hubbell, Ernest
Hughes, Robert B.
Johns, Courtney R.
Jones, Harold C.
Kennelly, Martin J.
Klyde, Charles J.
Koplow, George A.
LaRoque, George P.
Lightfoot, Sr., Benjamin H.

Lindsey, Hugh M.
Mapes, Robert W.
March, Arthur E.
Marquis, Robert H.
Mino, Raymond J.
Moats, Benjamin
Murphy, Jr., Edward J.
Neaton, Frank P.
Needle, Ralph P.
Norseng, Marshall N.
O'Hare, Edmund
Perry, Arthur E.
Pierson, Dalton T.
Powell, Newton B.
Richard, Graddy C.
Ridgeway, Jack F.
Roberts, Charles S.
Rosenberg, Milton L.
Rosenberg, Morris
Ruppar, Albert H.
Sams, Gerald A.
Schmidt, Harold R.
Shortridge, Alfred L.
Sledge, Sr., George E.
Smith, Philip L.
Sutherland, Kenneth E.
Townsend, James W.
Tremayne, Jr., Bertram W.
Viering, Russell W.
Wagner, Jr., William
Walker, Owen F.
Watson, Frederick E.
Williams, William C.
Woodson, Blake B.
Young, John B.

Honor Roll

LEGION OF MERIT

To: Clair S. Beebe, Lt. Colonel, J.A.G.D., 1907 Oakland Drive, Kalamazoo, Michigan.

For: Exceptionally meritorious conduct in the performance of outstanding services from 16 January 1942 to 30 June 1943. Upon the establishment of Forces Aruba and Curacao in the Netherlands West Indies in February, 1942, Major Beebe was assigned as liaison officer with the local Netherlands colonial authorities in addition to his duties as Staff Judge Advocate. He was instrumental, through exercise of understanding, intelligence, and tact, in the solution of many complex problems peculiar to the initial establishment of these forces, and in the maintenance of proper relationships with the local government. As Chairman of the Foreign Claims Commission, his thorough, prompt and impartial conduct and review of all cases resulted in maintaining relations of a high order with the local civilian population.

Colonel Beebe was born in Michigan and received his professional education at LaSalle Extension University, obtaining his LL.B. from that institution in 1924. He engaged in the general practice of law in Kalamazoo from 1922 until 1941. Colonel Beebe served as an enlisted man in the first world war and held a Reserve commission as captain from 1943. He was called to extended active duty 27 October 1941. Colonel Beebe is at present assigned as judge advocate of the 78th Division.

To: Edward C. Betts, Brigadier General, U.S. Army, 3107 Garfield Street, N.W., Washington, D. C.

For: Exceptionally meritorious conduct in the performance of outstanding services from 4 April 1942 to 24 May 1943. The award was made in the European Theater of Operations.

Born in Alabama, General Betts was educated at the University of Alabama, receiving his LL.B. degree from that institution in 1911. A member of the Regular Army in the Infantry, General Betts attended the Infantry School. He was transferred to the Judge Advocate General's Department in 1929 and served both in the Washington office and as post judge advocate at Fort Benning, Georgia. He was Chief of the Contracts Division of the Washington office before going overseas to serve as the judge advocate for the European Theater of Operations.

To: Charles P. Burnett, Jr., Colonel G.S.C. (J.A.G.D.). Posthumous. Next of kin: Mrs. Charles P. Burnett, Jr., widow, 1224 Minor Avenue, Seattle, Washington.

For: Service from May 1941, to July, 1944, while serving in the Military Affairs Division, Office of the Judge Advocate General, and as Chief of the Government Branch of the Civil Affairs Division, Office of the Chief of Staff. He supervised and directed the preparation of a confidential manual "Military Operation of Industrial Plants" which was a major factor contributing to the success of subsequent military operation of such plants. Later he represented the director of the Civil Affairs Division in important negotiations with a num-

ber of the United Nations, successfully handling matters of high military policy affecting the United States Government. As acting Chief Planner of the Civil Affairs Division he was instrumental in furthering the arrangements for the administration of civil affairs in the countries of Europe to be liberated from enemy occupation. His services were of particular value in drafting the charter for the combined Civil Affairs Committee of the Combined Chiefs of Staff.

Colonel Burnett was born in Seattle, Washington. He received his LL.B. degree from the University of Washington in 1927, and engaged in the general practice of law from that time until 1941. He was commissioned in the Reserve in 1933 and called to extended active duty in 1941. He served in the Military Affairs Division in the Office of the Judge Advocate General, Washington, D. C., was later detailed in the General Staff Corps and served in the Office of the Chief of Staff. Colonel Burnett was killed in an airplane accident while on an overseas mission in July.

To: Robert McDonald Gray, Colonel, J.A.G.D., 1752 Troy Street, Arlington, Virginia.

For: As Chief of the Administrative Division, Assistant Executive Officer, and Executive Officer of The Provost Marshal General's Office, from December, 1941, to December, 1943, he developed and maintained efficient personnel and procedures; stimulated and fostered wholesome and lively morale among military and civilian personnel; transformed policies into action and maintained diplomatic and tactful dealings with other services and civilians. By reason of his comprehensive grasp of governmental activities, rare organizational skill, his initiative and resourcefulness in attacking problems of difficulty and solving them, he has contributed much to the Army Service Forces and to the country.

Colonel Gray was born in Mecklenberg County, North Carolina, and attended the University of North Carolina, where he received both his A.B. and LL.B. degrees, the former in 1929 and the latter in 1932. He engaged in the general practice of law from 1932 until 1935. Later he served with the Department of Justice in 1940 and 1941. He is at present assigned to Supreme Headquarters, Allied Expeditionary Forces.

To: William R. C. Morrison, Brigadier General (then Colonel), 150 North Hamilton Drive, Beverly Hills, California.

For: Extraordinary fidelity and exceptionally meritorious conduct in the performance of outstanding services as Assistant Executive and later Executive to the Military Governor on and since 7 December 1941. In a position of high responsibility, Colonel Morrison has been largely responsible for the successful handling of many perplexing problems which arose in the Hawaiian Islands under martial law, a condition which was without precedent in American history. By the exercise of superior tact and diplomacy, Colonel Morrison has been largely instrumental in the avoidance of friction between the Office of the Military Governor and the civilian populace of the Islands. In the direction of the provost courts he has devised a system of military justice which has secured enforcement of and respect for the law, contributed

greatly to the security of the Islands and at the same time has been compatible with the highest principles of democracy. Entered military service from California.

Born in the state of Washington, General Morrison received his LL.B. from the University of Washington in that state in 1929. Holding a commission in the Officers' Reserve Corps, he was called to extended active duty 15 November 1940. General Morrison is at present serving as executive to the Military Governor of Hawaii.

BRONZE STAR

To: Lyle D. Keith, Colonel, J.A.G.D., 109 East 22nd Avenue, Spokane, Washington.

For: Meritorious service at New Caledonia from 22 December 1943 to 15 May 1944.

Colonel Keith attended Washington State College and the University of Virginia. He received his LL.B. degree from the University of Washington in 1932. Colonel Keith engaged in general practice in Spokane from 1932 until 1940. He was Assistant United States District Attorney from 1938 to 1940 and also served two terms in the legislature of the state of Washington. He was appointed a captain in the Army of the United States 8 April 1942, and is at present serving overseas.

To: Edwin E. Rives, Major J.A.G.D., 405 N.W. Greenway, Greensboro, N. C.

For: Meritorious services in connection with military operations as a Special Commissioner representing the Theater Commander, 22 March 1944 to 11 June 1944. To facilitate the training of United States combat troops in the United Kingdom, it was necessary and imperative that large battle training areas be requisitioned through the medium of British War Office and Admiralty authorities. Upon the request of the United States Ambassador a large area of land in southwestern England, including several towns and 30,000 acres of farm land, known as Slapton Sands, was acquired. In view of the proposed firing with live ammunition of all caliber it was necessary that many hundred local inhabitants be completely evacuated. The evictees were subjected to certain hardships and losses in their business and property for which they could not be compensated by either the British authorities or the United States Army through normal legal process under the then existing relief or claims

regulations. The Theater Commander, as a matter of policy for the furtherance of Anglo-American goodwill, charged Major Rives with the delicate and difficult duty of effecting special compensation in the hardship cases, within the limits of propriety and without the benefits of, or the power to create, precedent. In order to carry out this responsibility Major Rives obtained the cooperation and consent of the British War Office, the Admiralty, the Treasurer Solicitor and the Chancellor of the Exchequer to this project. With extreme diplomacy in avoiding all misunderstanding Major Rives formed a group of influential officials known as the Regional Commissioner's Committee and carried out his mission of goodwill compensation payments with great tact, justice, and fair dealing. It was of paramount importance that the hundreds of cases be examined, handled, and paid with a high degree of discretion that there be no admission of liability and that no precedent be created to the possible detriment of the United States. By his action and services Major Rives contributed immeasurably to the furtherance of the Allied war effort and to Anglo-American relations. Entered military service from North Carolina.

Major Rives was born in Winston-Salem, N. C., and attended the University of North Carolina where he received his LL.B. in 1922. He engaged in the general practice of law in Greensboro, N. C., from 1922 to 1929. From 1929 to 1943 he was judge of the Municipal County Court, Greensboro, N. C. Major Rives was appointed Captain in the Army of the United States and ordered to active duty in April, 1943. After a tour of duty in the Washington office, he was assigned to a Claims Commission overseas where he is now serving.

PURPLE HEART

To: Frank McNamee, Major, J.A.G.D., Las Vegas, Nevada.

For: Wound received in France 11 August 1944.

Major McNamee was born in Nevada and educated in California. He received his A.B. from Stanford University in 1927 and his J.D. from the same institution in 1929. He engaged in general practice in Las Vegas from 1929 until 1942, and also served as a municipal judge for three years.

WASHINGTON *News AND Views*

General Weir Heads New War Crimes Office

Announcement of the creation of a War Crimes Office within the Office of The Judge Advocate General at the direction of Secretary of War Henry L. Stimson, was made recently. The purpose of the office is to gather and examine evidence assembled for use in possible action against Axis war criminals. Brigadier General John M. Weir, Assistant Judge Advocate General, is the head of the new agency, the personnel of which includes Colonel Melvin Purvis, JAGD, former official of the Federal Bureau of Investigation, well known for his part in the John Dillinger case.

Until his appointment by Major General Myron C. Cramer, The Judge Advocate General, as chief of the new office, General Weir was Executive of the Judge Advocate General's Office in Washington. General Weir entered military service in 1917 as an infantry officer and transferred to the Judge Advocate General's Department in 1928.

Among other assignments, General Weir has served as Judge Advocate of the Puerto Rican Department and was twice on the Law faculty at the United States Military Academy. In 1942 he was an Assistant Trial Judge Advocate in the trial of the Nazi saboteurs who were landed on the Atlantic coast by submarine.

Colonel Purvis until recently was Assistant Provost Marshal General of the United States Army forces in the Mediterranean Theater. Subsequent to his service in the Federal Bureau of Investigation, he practiced law and was a newspaper publisher in South Carolina, his home state.

Reorganization of the JAGO

Under a recent reorganization of The Judge Advocate General's Office, Brigadier General Thomas H. Green became Deputy Judge Advocate General and Brigadier General John M. Weir, Assistant Judge Advocate General, was placed in charge of the War Crimes Office as Assistant Judge Advocate General in charge of international law matters. Colonel Robert M. Springer succeeded General Weir as Executive of the office. Colonel William A. Rounds is now Assistant Judge Advocate General in charge of military justice matters, succeeding Brigadier General James E. Morrisette, who is now head of the Branch Office in Hawaii.

George S. Holmes Joins JAGO Staff

The Judge Advocate General has announced the addition of George S. Holmes, widely known newspaperman, to the staff of his office, as head of the Office of Technical Information. Mr. Holmes was formerly editor of the Rocky Mountain News, Denver, Colorado, and later Washington correspondent for the Scripps-Howard papers. During recent years he has been engaged in public relations work within the War Department and came to the Office of The Judge Advocate General from the

Industrial Personnel Division, Headquarters, Army Service Forces.

Conference of Air Forces Legal Officers

We are informed by Colonel Herbert M. Kidner, Assistant Air Judge Advocate, that on 19, 20, 21 October a conference of a representative group of continental Army Air Forces Legal officers was held at the Pentagon. Brigadier General Lawrence H. Hedrick, Air Judge Advocate, presided over the sessions. The conferees discussed legal problems of a general nature including claims and legal assistance matters. Particular attention was devoted to administrative and disciplinary action designed to reduce violations of flying regulations and safeguard life and property. The last day of the conference was chiefly devoted to a question and answer period with full opportunity being given to all present to air their views and problems.

Those addressing the meeting in addition to personnel of the Air Judge Advocate's Office included the Honorable Robert P. Patterson, Under Secretary of War; General Henry H. Arnold, Commanding General Army Air Forces; Lt. General Barney M. Giles, Chief of the Air Staff; Major General Myron C. Cramer, The Judge Advocate General; Colonel William A. Rounds, Assistant Judge Advocate General; Colonel Ralph G. Boyd, Chief, Claims Division, JAGO; and Lt. Colonel Milton J. Blake, Chief, Legal Assistance Division, JAGO. The addresses served as an important reminder of the real and active interest taken by the higher echelons of command in disciplinary and other legal problems.

Colonel Rushton Heads New Correction Division

The War Department has announced the establishment of the Correction Division in the Office of The Adjutant General to centralize the administration and control of military prisoners and strengthen the program for the rehabilitation of many of the prisoners. Colonel Marion Rushton, JAGD, Administrative Officer to the Under Secretary of War, has been named as the head of the new office.

The Correction Division has jurisdiction over the Army's disciplinary barracks, rehabilitation centers, post stockades and guardhouses, and overseas military prisoner (not to be confused with prisoner of war) installations. In announcing the creation of the division, Honorable Robert P. Patterson said, "The mission of the detention and rehabilitation establishment is to restore to honorable status in the Army those prisoners who demonstrate their fitness for further service, and to provide those to be discharged because of unfitness a program of training which will help them to meet more successfully the duties and obligations of good citizens."

A civilian Board of Consultants has been created to act as advisers to the Correction Division.

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.



HEADQUARTERS
NINTH UNITED STATES ARMY
Office of the Army Judge Advocate
Somewhere in Holland
APO 339, c/o Postmaster,
New York, New York

Sirs:

There is not much of particular interest that has happened to the Judge Advocate Section of this headquarters since we arrived in this Theater. We have probably done our share of traveling and have had our share of new and novel problems that always wind up in the lap of a Judge Advocate. I believe, however, that the inclosed photographs might be of some interest to you because they show the way a Judge Advocate Section operates in the field.



The photographs were taken when our rear echelon was located in the vicinity of Rennes, France. One photograph shows the inside of our office tent. Reading from left to right is Captain Sidney M. Markley, Harvard LLB 1930 and 7th JAG Officer Class, yours truly, Harvard LLB 1932 and likewise of the 7th JAG Officer Class, Master Sergeant Herman G. Kreinberg, Ohio State LLB, 1926, Staff Sergeant Joseph F. Onorato, Fordham LLB 1936 and WOJG George H. Barnett, Western Reserve LLB 1939. Absent from the office when this picture was taken were Colonel Stanley W. Jones, Army Judge Advocate, Virginia LLB 1942, 1st Lieutenant James B. Craighill, North Carolina LLB 1938 and 17th JAG Officer Class, 2nd Lieutenant Robert E. Hone, Columbia LLB 1938 and 3rd Officers Candidate School

Class, T/3 Arthur C. Young, T/4 James E. Hubbard, T/5 Philip Karp, and Pfc Eugene Lundeen. The radio that can be seen in the photograph was picked up in England and kept us well supplied with war news through a portable generator, the wire to which can be seen leading to the tent at the extreme right. Fortunately we had no occasion to use the air raid alarm perched at the top of the tent pole. The sawdust on the floor was obtained from a nearby saw mill in exchange for a few captured German cigars and it proved most efficacious in keeping the dirt and dust from settling on our reviews and other learned opinions. Incidentally, the box which can be seen on my table is the only evidence of the many such packages that have allegedly been shipped to me by my family and friends from the United States.



The other photograph shows the general area occupied by our section. The double CP tent in the left foreground was used as an office. The pup tent in the immediate foreground kept our fire wood dry. The pyramidal tent in the center housed our library and the "brain trust." The CP tent on the right served as Colonel Jones' private office and quarters. The straddle trench is well concealed in the background. The conference going on in the center of the picture resulted in several cases that were recommended for general court-martial being returned for trial by inferior court.

Sincerely yours,
RALPH E. LANGDELL,
Major, J.A.G.D.
Executive Officer.

Sirs:

Inclosed find a picture of a couple of old Judge Advocates together with my just acquired wife, née Jean M. Kennett and her sister, Mrs. Jeoffrey Daman, all, at the moment that the picture was taken in front of Christ Church (of England), Melbourne, Victoria, Australia, standing in the respective capacities from right to left of matron of honor, bridegroom, bride, and best man. The best man is Colonel John A. Stagg, J.A.G.D., President of the Board of Review, stationed in the Branch Office of the Judge Advocate General, (Brigadier General Ernest H. Burt). I thought that possibly you might be interested in reprinting the picture, which unfortunately is not too good, in the Journal, the first copy of which I received a few weeks ago.

As a matter of interest, my wife is a Lieutenant in the Australian Army Medical Women's Service. While we have nothing similar to it exactly in our service, if we had a women's medical administrative corps, it would correspond to that.



The marriage took place on 25 August, 1944, at about 5:15 P.M. The Judge Advocates present, other than we two participants, included Brigadier General Burt, Lt. Colonel Murphy, and Captain George Gardner, who acted as an usher in addition to his other duties.

As a matter of further information, I am Judge Advocate of the above named headquarters which includes in its coverage as far as court-martial jurisdiction is concerned, all of Australia, Papua, and Australian and Dutch New Guinea. I arrived in this theater on 7 April, 1942, having departed San Francisco on 19 March. Colonel Stagg arrived in August of 1942. We have been here so long that we nearly voted in the last election.

Needless to state, I greatly enjoyed reading the Journal and to see a few familiar faces again was a pleasure. The publication can be of very great interest and value as we who have been in the "bondocks" for a long time best know. The notes on the History of the Department were particularly interesting to me as I had seen nothing like it except for Colonel Burdett's article of some years ago.

With very best regards from all of us in this part of the world to you all, and with best wishes for the continued success of the Journal, I am, sincerely,

HAYFORD O. ENWALL,
Colonel, JAGD
Staff Judge Advocate

Sirs:

Where we are now is no longer a secret, even in the old U.S.A. so I might just as well give you the address. The next time you hear from me will be a New Year greeting from Manila.

While we have occupied almost the entire island of Leyte, except around Ormoc, this place is still pretty hot. These Japs are in the habit of paying us unexpected visits all through the night and they seem to enjoy sniping, strafing or bombing so that we consider ourselves lucky if we find each other alive the next morning.

We landed here with the advanced echelon of the GHQ on A-Day since which date I've become a fatalist. Thought you said once that the life of a J.A. is never in danger? I'd like to trade places with you right now. There are quite a few J.A.'s here with us. Col. Young, Col. Warner of the (1st Cav., Col. Conolly, of the (6th Army), Major Finley Gibbs (3rd Class), Major Loomis Patrick (6th Class) and others. As the JAG of the Phil. Army and also Secretary of Justice, Labor and Welfare you can just imagine how busy I must be—reestablishing courts, handling labor and welfare problems and trying the so-called collaborationists, spies, etc. The Provincial Jail is full of them. It seems that when the armed forces landed, the guerillas, CIC's, CMP's, and in some cases, the Civil Affairs Officers, got busy and arrested everybody that looked suspicious. *** The administration was turned over completely to the Commonwealth Government on A+2 so that all of these are now my "babies." It wouldn't have been too bad if the Civil Courts were functioning as the writ of habeas corpus has not been suspended. On my suggestion the President created a commission to hear these cases. *** I am also one of the five members of the commission.

The people here got used to being idle as they refused to work during the Japanese occupation. *** Too, they have no appreciation for our money since they got used to Japanese currency which now proves valueless. They are without food and clothing but they appear very happy now. I'm afraid our soldiers are spoiling them by giving them whatever they have. Sunday, I saw cockfighting for the first time in 20 years.

MARIANO A. ERANA
Colonel, JAGD
Office of the Governor
Commonwealth of the Philippines

Sirs:

In looking over some old pictures, I ran across this picture of the Judge Advocate Staff of the 1st Replacement Depot, AEF, located at St. Aignan, France, in the spring and summer of 1919. I do not know where the other officers are or what has become of them, but I can give you data on three:

Lt. Col. Hubert J. Turney, who was the chief Judge Advocate and who is in the center of the picture wearing the moustache, died a few years ago.

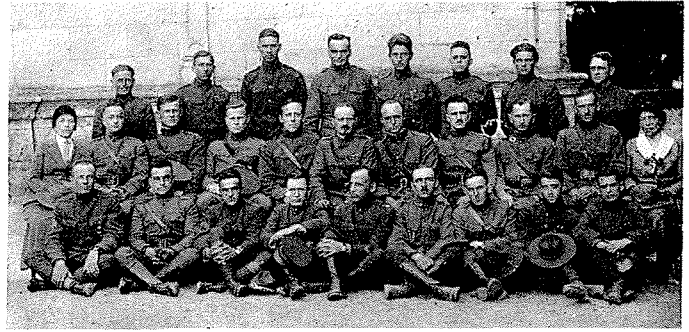
On his right, fifth from left, second row, is Captain William J. Bacon, now Colonel Bacon, the undersigned, then a captain, is the fourth from the left, second row.

This picture was taken in the old chateau grounds at St. Aignan.

Another item of interest is that Lieutenant Colonel Myron C. Cramer was then on duty at the same headquarters.

JULIEN C. HYER,
Colonel, JAGD,
Judge Advocate, Fourth Army.

(Ed. Note: Lt. Colonel Cramer was then Assistant Chief of Staff.)



This picture is of the JA Staff, 1st Repl. Depot, St. Aignan, France, Spring, 1919. 4th from left, 2nd row, Hyer; 5th from left, 2nd row, Bacon.

J. A. *Activities* - FOURTH SERVICE COMMAND

By FIRST LIEUT. GEORGE W. SMITH

THE JA "JAGUARS" will go down in the history of baseball in the goodly company of the New York Yankees, the Brooklyn Dodgers, and the St. Louis Cardinals, according to reports from Colonel E. B. Schlant, manager of the team and Service Command Judge Advocate, Fourth Service Command, during business hours. A league of softball teams was organized by the various officers in the Fourth Service Command Headquarters in Atlanta and during the season just closed, many a long hard-fought engagement took place on the battlefields of Fort McPherson and Henry Grady Field.

The JA team, coached by that peerless purveyor of peripatetic platitudes, Lieutenant Colonel Joseph E. Berman, and under the able field-generalship of Major Seybourn H. Lynne (known to some as "My Blood and Your Guts" Lynne), marshalled its forces, assembled its material and plunged fearlessly into every assault with unparalleled vigor. Such brains, brawn, and brass were never at the command of any military leader from the days of Julius Caesar and Alexander the Great to this present hour. Such courage under fire, such superb strategy, such singleness of purpose were never exemplified by any previous organization, military or civilized. Yet, through all the strife and conflict, there was never the slightest implication of any "conduct unbecoming an officer and gentleman," nor a finding of "Not in line of duty and as a result of his own misconduct," nor even a claim for damages under the Act of 3 July 1943.

The sole proximate cause of any errors injuriously affecting the substantial rights of the accused resulted directly from one unfortunate incident in which the intrepid Jaguar shortfielder, one Second Lieutenant L. P. ("Slugger") Miles was unjustly accused of provoking an affray with an opposing third baseman who was found sleeping on post. Second Lieutenant W. G. ("Slide Kelly") Espy, was also charged under appropri-

ate specification with wilfully, deliberately, and feloniously stealing one second base, of a value in excess of fifty cents, the property of the City Recreation Department, Atlanta 3, Georgia, but full settlement being accepted under the terms of AR 25-20, the charge was withdrawn by direction of the appointing authority.

The most serious blot on the JA escutcheon was occasioned by Coach Berman being found to have wilfully, intentionally, and deliberately maimed himself in the right leg, thereby unfitting himself for the full performance of military duties, by exceeding his normal range in stooping to scoop up a hot one from Pitcher "Drop Ball" (Lieutenant Colonel John J.) Jones.

Special tribute must also be paid to the splendid support of the rear echelon cheering battalion under the command of Lieutenant Colonel Cecil C. Wilson. Scarcely an enemy pitcher could survive two innings of the withering cross-fire of Colonel Wilson's deadly onslaught and many a luckless victim was withdrawn as a casualty to receive the Purple Heart and become a constitutional psychopath from that hour on, facing a fate worse than death in the United State Disciplinary Barracks, Fort Leavenworth, Kansas, after proper action pursuant to Article of War 50½ (See AR 600-375).

The players, whose heroic devotion to duty, yea, even above and beyond the call of a Reclassification Board, will long be remembered, included: Colonel E. B. Schlant, Lieutenant Colonels John J. Jones, Joseph E. Berman, David C. Byrd; Majors Seybourn H. Lynne, Reid B. Barnes, Frank J. Martin; Captains Robert T. Ashmore, George M. Hill, Jr., Winston E. Arnow; First Lieutenants Joel G. Jacob, G. A. Edson Smith; Second Lieutenants Milton J. Voglehutt, Tyler Berry, Jr., Lovick P. Miles, Jr., William G. Espy, Douglas Shackelford, Edwin J. Morrell, Beverley R. Worrell; Chief Warrant Officer William Friedman; Warrant Officers (JG) Jack M. Dunn and Arthur Schulman.

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.

2nd OFFICER CLASS

Major John F. Ellison is Post JA at the Indiantown Gap Military Reservation, Indiantown, Pa.

3rd OFFICER CLASS

Maj. Charles B. Warren, Jr., Executive of the Contracts Division, JAGO, accompanied Gen. Cramer and Gen. Green from Washington to attend the graduation ceremonies on 8 and 9 September at the JAG School.

5th OFFICER CLASS

Willard B. Cowles, lieutenant colonel, is assigned to the War Plans Division, JAGO after returning from a mission in ETO.

Maj. Osmer C. Fitts, who has taken many a shot of school activities with his moving picture camera, is still taking them in Paris where he is assigned to the Claims Section at headquarters of the communication zone. He writes: "Once in a while the paths of some of the 5th Class cross. Lt. Col. Bodovitz is in the building with me as assistant executive to Col. Pitzer and Gen. Betts. Pat Avery, still with two bars, is here too. Sam Berry is in claims but not with us here. Ran across Maj. Rhodes in London, also Maj. Cangelosi. The old movie camera is still with me. Col. Burgess sold me on the idea of lugging it across. I have had to send home for more and more film." Maj. Fitts states appreciation of JAGS and his contacts with it.

6th OFFICER CLASS

Maj. Benjamin H. Long has been appointed a member of the War Department Board of Contract Appeals in the office of the Under Secretary of War. Previously Maj. Long served as litigation Judge advocate of the First Service Command and as assistant to the counsel of the War Department price adjustment board and the war contracts price adjustment board.

7th OFFICER CLASS

Maj. Earl B. Swarmer and Capt. Jack W. Bradley are assisting Lt. Col. Jay W. Scovel, who is JA for Service of Supply with U.S. Army Forces in the China, India, Burma Theatre.

Maj. Robert W. Anderson is assigned to an SOS unit in SW Pacific.

Maj. Robert W. Anderson writes from Dutch New Guinea, "truly a tropical paradise. Here, there are foxholes de luxe—with cocoanut logs and sand filled oil drums." He contrasts his present state of luxury with that of New Guinea when he first arrived there, leaky tents with no floors, mud up to the knees, water flowing through the tents every time it rained, which was almost nightly and daily. "Our diet was bully beef—relieved once in a while by stale Australian mutton with the hair still on it. We had one to three red alerts every night about two months. We dug our own slit trenches—we dug them deep, too—and used them."

Maj. Anderson says that Maj. George B. Springston (6th Officer Cl) is located about 200 miles away and that they occasionally visit one another.

8th OFFICER CLASS

1st Lt. Gerald L. Stotzer says he is assigned to the office of the Theatre Judge Advocate in Paris, France.

Maj. Charles Richardson, Jr., is now overseas with a JA section at an SOS Headquarters.

9th OFFICER CLASS

Lt. Col. Frederick F. Greenman is in charge of the law branch in the Contracts Division, JAGO.

Maj. Ralph W. Yarborough, who is judge advocate of an infantry division states that he is now located at Camp San Luis Obispo, Calif. With him as assistant is 1st Lt. Howard H. Conaway.

Maj. Frank M. Gleason is staff JA of an Infantry Division at Camp Butner, N.C.

Maj. John Conway Cook, AC, has moved around since graduating with his class in May 1943. After graduation he returned to AAF Flexible Gunnery School for a few months and then was called up to Hq. AAFEFTC, Maxwell Field, Ala., as assistant Staff JA where he served until late in the spring of 1944. He is now assigned as AAF Contracting Officer at Buick Division General Motors Corp., Melrose Park, Ill., having completed a two months course in termination given at the Army Industrial College. He says: "I have several officers (including a legal officer!) and a force of civilian inspectors under my jurisdiction. I find the work decidedly interesting."

10th OFFICER CLASS

Maj. "Marty" Her is with an Air Force set-up "Somewhere in England."

Robert E. Farmer, serving in the Southwest Pacific area with a SOS unit, has been promoted to captain, say reports from that part of the globe.

Capt. James S. DeMartini, assistant staff JA with the 11th Air Force "somewhere in the Aleutians" reports seeing Maj. Bill Carney of his class, and Capt. Don Batt (9th Officer Cl) up there recently.

He adds: "Signs are coming of the end of summer; not, I assure you, by reason of an autumnal tint to trees heavily laden with leaves. We have our own peculiar signs up here of the turn of such event. No doubt we will soon require an extra pint of blubber to keep the internal fires burning and warming the body. The heavenly condensation is not available to us so our engines must rely on oil, not alcohol, to keep the proper temperature."

Capt. Kermit R. Mason is now in North Africa singing the praises of West (by gosh) Virginia.

Capt. Darrel L. Hodson is now somewhere in England at a Headquarters Base Section. And 1st Lt. Roscoe C. Nelson is assigned to the same headquarters. It was their first meeting since Ann Arbor school days over a year ago.

Maj. Julian E. Weisler is assistant staff JA, in France with the First Army, of which Col. Ernest J. Brannon is the Staff JA. Maj. Weisler reports seeing his classmate Capt. Martin K. Elliott who is with an infantry division somewhere in France. Maj. Weisler went overseas with Civil Affairs, but has been with the First Army since March. GCMs keep him busy.

Capt. Marion S. Francis has completed a year as assistant staff JA with an infantry division, Camp Adair, Ore. "Taken all in all," he says, "I believe that the job of division JA is about the best the Department has to offer."

Capt. Henry C. Remick contracted illness while in Italy and was hospitalized for some time. Upon his recovery he visited Rome, and other cities in Italy.

Capt. Gerald May is now assigned to the Military Affairs Division, JAGO.

Maj. Stuart B. Bradley writes that he has reached Paris where he is doing claims work.

When last heard from Capt. Ray S. Donaldson was in North Africa.

1st Lt. Quinn Dickason announces that he has been transferred from Fort Huachuca, Ariz. to Fort Sam Houston, Tex., where he is assigned to the JA Section Hq. Fourth Army.

Maj. Clarence L. Yancey reports seeing classmate Capt. William E. Pfeiffer in Washington recently. Released from the Army for physical reasons, Bill is taking a civilian part in the war effort now as assistant chief counsel for the Petroleum Administrator for War.

Maj. Larry Long who is now in Italy has been awarded the Bronze Star. Details of the award have not yet been received.

Maj. Itimous T. Valentine, reputed to be the oldest member of the JAGD while in school, but who always claimed such an allegation to be baseless rumor, writes from far away India

where he is serving in the Branch Office of the Judge Advocate General with USAF, CBI. He says that many school texts have been completed since he was a student and that they are needed very much in his work, and will need them more as time goes on. It will be recalled that Maj. Valentine took part in five major engagements in France during World War I.

Maj. Carl J. Otto, after a long tour of duty at AAB, Muroc, Calif., has moved to Camp Fannin, Tex., where he is Staff JA for the IRTC.

Capt. George S. Bradley has been transferred from Headquarters, ATC, Washington, D.C. to Headquarters, ATC, Pacific Division with a San Francisco APO.

Capt. Theodore K. Irwin, after many months in the fair state of Texas, writes that he is assigned to a JA Section with an Army and is now overseas.

11th OFFICER CLASS

Capt. Bob McKeever, after much schooling in Civil Affairs both here and in England, is now in France for the second time, assigned to the British Army there.

Capt. H. C. Todd, assistant Staff JA of an infantry division, has moved from England to France, and is busy trying cases in the field—under a tree with borrowed chairs and tables. "Strenuously advise all JAs who work in the field to get a reporter in their own section and train him, and give us a higher rating in the TO for a reporter—he could be a master sergeant and would not be too highly rated."

Although the division was in the field, it has a record of 12 days from date of commission of offense to sending the record to ETOUSA HQ. "During some of the 12 days the division was at the front and three witnesses were wounded and evacuated (stipulation on their testimony) and another was killed in action—don't stipulate on that."

Major Norman F. Lent is assigned to the Central Procurement District of the Air Service Technical Command, Detroit, Michigan.

Maj. Nick Allen is now staff JA with an airborne division somewhere in the European Theatre, having been transferred from the Branch Office of that theatre.

12th OFFICER CLASS

Maj. Raymond H. Wright is the author of "Wills in the United States" attached to the 15 August issue (vol. 2 no. 11) of the Eighth Service Command "Whizbang." Maj. Wright is Camp JA at Camp Bowie, Tex.

Maj. John Farrell is in the Contracts Section, Office of the Air Judge Advocate.

Capt. Glenn Baird is in the legislative liaison branch of the Claims Division, JAGO, and has to do with Congressional cases and special bills.

Capt. Julius Sachter is assigned to the Price Adjustment Board, Office of the Under Secretary of War.

Capt. Malcolm A. Crusius is stationed in England at Headquarters of the First Bombardment Division.

13th OFFICER CLASS

Maj. Leonard W. M. Zingler, formerly assigned to the Office of the Air Judge Advocate, The Pentagon, is now executive to the Staff Judge Advocate, Headquarters Second Air Force, Colorado Springs, Colo.

1st Lt. Charles P. Gotwals, Jr., assigned to a JA section in Brittany writes: "The people here are well-fed and some even fat. The stores are filled with plenty of food—they lack a few luxuries, like sugar, candy, and cigarettes, but they have plenty of meat, fresh vegetables, and dairy products."

"I have been in La Haye de Puits, Avranches, Coutances, Rennes, Lessay and some other small villages. The ravages of war are of course evident on almost every habitation except some of the buildings in the larger places. The mass of abandoned German stuffs is amazing. Our headquarters has indirectly benefited from some abandoned cognac which shows how fast the Germans were leaving. I came over the side of a ship onto the beaches, marched in the hot dust of Normandy and froze on the cold hard ground, in abandoned German huts and under our own pyramidal tents. Now we are housed in a building and we have real beds."

Maj. Robert B. Harbison, AC, is Legal Assistance Officer at the Overseas Replacement Depot, Kearns, Utah.

1st Lt. John J. Dreyer is located with the Air Technical Service Command, Area "B," Wright Field, Ohio.

14th OFFICER CLASS

According to the columns of the Huntsville (Ala.) newspaper Capt. Robert K. "Buster" Bell is assistant staff JA on the staff

of Gen. Eisenhower. Writing about his landing in France, Capt. Bell says that "until I hear otherwise I am the only man that ever hit beaches with a carbine in one hand, and an old-fashioned paper shopping bag in the other." It seems that the contents of the paper bag might have been extra K rations to tide him over for a few days, as at the time of writing he expected "to be eating sauerkraut and swine-knuckles in a few more days."

15th OFFICER CLASS

1st Lt. Lewis M. Dickson writes from Headquarters, 4th Army that he was immediately assigned the task of liaison officer for a group of Civil Affairs officers, and delegated to work on a problem for the section. He says that he was able to accomplish his assignment from the "many references, notes and thoughts gleaned" from classes in Military Government at JAGS.

Lt. Dan Hallahan writes that he has finally landed in Burma after a trek that started in March. Responding to a call that cut short his leave after leaving school, Lt. Hallahan waited around a POE for more than a month before getting transportation to North Africa. Then followed a succession of train rides in North Africa during which he "got stuck."

He has opened his own office "with a desk" in a jungle area, and although his title is Assistant JA of a base, he is far enough away to enjoy "a little autonomy." He adds, "I am quite satisfied with my work, and I don't have to worry about promotion. There isn't any. No T/O."

1st Lt. J. T. L. O'Connell is stationed at a Headquarters Base in New Guinea as Staff JA.

16th OFFICER CLASS

Capt. Hunter L. Johnson, Jr., is Post Judge Advocate, Fort Francis Warren, Wyo.

1st Lt. Prentice Shaw is in New Hebrides as Staff JA, Claims Officer and Civil Affairs Officer. He says: "We have a Condominium Government to work with and they occasionally bring up some rather novel legal questions. Our living quarters are excellent, our mess is pretty fair; and I have two very able sergeants in my office, both lawyers. Also have good hunting and fishing nearby."

Maj. Robert W. Wilson writes that he is now permitted to say that he is in Cairo, Egypt, with the JA Section, USAFIME. To date the work has been interesting and leaves little time for sightseeing, and "every day brings up something where the school instruction comes in very useful. My chief, Col. Paul H. McMurray (8th Officer Cl) and some others in the general vicinity constitute a sort of Egyptian chapter of the JAG alumni association."

17th OFFICER CLASS

Maj. Henry S. Stevens, AC, is assigned to the Office of the Air Judge Advocate. One of his associates is Capt. John B. Tuck, Jr., AC (14th Officer Cl).

2nd Lt. John M. Preston is Assistant JA for the IRTC, Camp Fannin, Tex. Until his present assignment he was in the JAGRP, at Headquarters Eighth Service Command.

1st Lt. James B. Craighill is with the JA Section of the Ninth Army "somewhere in France." Lt. Robert E. Hone (3rd OC) is with him. Lt. Craighill says that his headquarters is living and working in tents, but "having plenty of opportunity of applying what we learned at school."

2nd Lt. Charles R. Fellows is now a Courts and Boards Officer at the FARTC, Fort Sill, Okla. Lt. Fellows was assigned to Headquarters, Eighth Service Command, after leaving Ann Arbor and also served at Camp Gruber, Okla.

Lt. John A. Wright writes that he is in the Branch Office of the Judge Advocate General for the European theatre where he finds the esprit de corps at a high pitch. He reports that Lt. Doug. Sharretts (4th OC) is now on a temporary tour of duty as liaison officer somewhere in the Mediterranean Theatre. Capt. Guy Ward (9th Officer Cl) recently returned from a similar trip to the French front.

18th OFFICER CLASS

Maj. James E. (Judge) Bowron, the genial toastmaster, writes that he has arrived in Washington, D.C. at the JAGO.

1st Lt. James L. Brown is assigned to JAGRP, Headquarters Fourth Service Command.

Maj. John C. Avery is stationed at Governor's Island, N.Y., where he is assigned to Headquarters, Second Service Command.

1st Lt. John S. Cutting writes from the Smoky Hill Army Air Field, Salina, Kan., where he is assistant courts and boards officer assigned to the Second Air Force.

1st Lt. Eugene W. Brees is assigned to the Legislative Branch, Claims Division, JAGO.

1st OFFICER CANDIDATE CLASS

Capt. Stanley K. Lawson writes from London, England saying that he has read interesting notes of the activities of some of his classmates. "I note that Henry Norris and Floyd Osborne are lading out justice in Italy with lavish hands as befits a pair of southern gentlemen; and that Vic Ross has profited by his course in Military Science and Tactics under Lt. Col. Looney to such an extent that he has qualified as assistant OD at NOPE. Emmett Willis and I were discussing these things the other day over a Scotch-and-soda at the Grosvenor House and concluded that we must have missed fire somewhere because we hadn't done anything interesting like that . . .

"After we graduated from C. & G. S. last November he went to Second Army and I to the Second Air Force. This Spring we became of the 'chosen.' We were told that General Ike wanted our services badly to help him beat the Germans. Great was our displeasure when we were informed upon arrival that only lieutenant colonels and up are 'requested,' and that the remainder just filled up a blank requisition. Gen. Betts placed Emmett with the XII Army Group and me with the SHAEF.

"I do a little sightseeing, eat good food regularly, sleep on a beauty-rest mattress, and work when I have to. Emmett hasn't been quite that busy, but now he has moved to France so maybe the Jerries will keep him occupied jumping into slit-trenches. As my boss, Maj. Warren Shaw (4th Officer Cl) says: 'War isn't even safe for JAs anymore.' Even here we have to keep an eye peeled for buzz bombs. They provide us with a lot of good clean fun."

Capt. Neil B. Hayes is in Italy, perhaps in Naples, with AAF SCMTO, and finds time to get around a bit. He records side visits to Vesuvius, Pompeii, Isle of Capri and Rome.

And those who are distressed by the employment problem at home should digest with interest this morsel about the situation in sunny Italy as found by Capt. Hayes. He has maid trouble, but his trouble consisted of having three at one and the same time, simply because his Italian wasn't sufficiently adequate to convince two of them that they were fired!

1st Lt. Robert Maysack is also in Italy but with another outfit.

1st Lt. Ed L. Metzler has been transferred from the Board of Contract Appeals, JAGO to the U.S. Engineer Office, Miami, Fla. He says: "My present assignment consists of winding up from a legal standpoint a large off-continent construction program. Also assigned here is Lt. Laurence Schwing (2nd OC) who arrived here last December. We also recently had the pleasure of meeting Maj. Bernard G. Witten (11th Officer Cl) assigned to the Miami Air Depot."

Capt. Neil B. Hayes now in the Mediterranean Theatre with an Air Service Command writes that he has seen Capt. Henry C. Remick (10th Officer Cl) often lately. He says, "It's hotter than the hinges of hell, but we are grinding out justice just the same. John Goff is with me here. Maysack is in town doing claims. John Lynch is with the AAF Engineering Command and many JAGs all around."

Capt. Kirk Jeffrey reports the birth of Kirk Jeffrey, Jr., saying that "we can't call the baby 'little Kirk' and me 'big Kirk' because no one would know which was which." Both mother and child are doing well, "especially mama and son." Capt. Jeffrey who is now assigned to G-2 in Washington was formerly a member of the school Staff and Faculty.

1st Lt. Ralph E. Becker, Assistant Staff JA with an infantry division in France, is moving forward swiftly. "The Nazis are running so fast we have to be Glenn Cunninghams which leaves little time for personal affairs."

Capt. Delmar Karlen, assistant staff JA with an infantry division in the Pacific writes that he has seen from time to time his classmates, Lts. Muller, Adney, Finnegan, and Morris—at widely scattered places.

He says: "The work in an infantry division is interesting, varied and satisfying. To those in the throes of trying to decide what kind of jobs they should ask for upon graduation, I recommend an infantry division highly. Military Justice is the most constant of our work. In this field, I have written advices and reviews, acted as investigating officer, TJA, Defense Counsel, and law member, drawn charges and specifications, and instructed courts in their duties—in other words, I have filled just about every legal job there is in the field.

"Military Justice however is only part of the work. Claims, surveys, Section VIII matters, soldier voting, advice on divorces, income taxes, wills, powers of attorney, etc. It's fairly much like having a law office, consisting of two lawyers for the community the size of a division. . . . How to keep all these clients after the war is a problem I haven't solved yet."

2nd OC

Charles B. Bayly, now a first lieutenant, is still assigned to Brookley Field, Ala., as claims officer. Lt. Bayly recently was in Washington on temporary duty in the Office of the Air Judge Advocate under a policy whereby groups of two or three claims JAs are sent from various air service commands to learn some of the problems of the "top."

1st Lt. Bill Balph is in the executive office and 1st Lt. Merle Oransky is in the claims section of the Office of the Air Judge Advocate.

Lt. Bayly tells us that Capt. Gerrit Wesselink recently married an English girl and is still rendering "scholarly opinions" in the Contracts Law Branch, JAGO.

1st Lt. William D. Sporborg, Assistant Staff JA with a veteran infantry division in New Guinea, writes that he now knows that he is in a combat zone. "The first case I tried as TJA of our general court was quite serious, involving three specifications under AW 75, one under AW 64 and two under AW 95. The CG was anxious that it be tried promptly but the witnesses were all forward, and due to the tactical situation we wanted to bring the witnesses back only for the trial itself. The mountain had to go to Mahomet so I interviewed the witnesses actually with the report of investigation in one hand and my carbine in the other. I wasn't afraid of the witnesses either. This may not establish a precedent for JAs but might help to answer the query in a recent issue of THE ADVOCATE as to what a division JA does in combat. P.S. The sentence is now awaiting confirmation."

1st Lt. Glenn S. Allen, Jr. writes that the infantry division of which he is assistant staff JA has arrived in London. He says: "A week ago Col. Pierpont (2nd Officer Cl), division JA, journeyed to the ETO Branch JAGD. We had a delightful talk with Col. Charles Van Benschoten of our state of Michigan and a long visit with Lt. Col. Burgess. We also spent about 30 minutes in conference with Gen. McNeil. The general has pictures over his mantle of all officers' classes and he underscores with blue pencil the names of those in the European Theatre. Much to my delight I found Capt. Anthony Julian (1st OC) holding down the office of Maj. Theodore Cangelosi (5th Officer Cl) who is temporarily in France." Capt. Julian is digesting all decisions of ETO to be published in a volume similar to Dig. Op. JAG.

Capt. William D. Radcliff, assistant staff JA with an Army Corps, now has an APO address.

Captain William D. Sporborg informs us from the Netherlands East Indies that he is assistant staff JA with an infantry division there. He writes that he envies Lt. Ralph Becker (1st OC) "in La Belle France. This anything but belle. We have left our private Palm Beach on the ocean and are now up in the hills inland. The ground is a bright red, apparently from a high iron content, and reminds one of the red clay of New Jersey. As it is dry and windy it is impossible to keep anything, including one's self, from being covered with red dust."

Lt. John G. Starr is now in the JA office at Headquarters of the 5th Air Force somewhere in the Southwest Pacific and has also served in New Guinea.

3rd OC

Capt. John M. Wall is still in Hawaii as Assistant Staff JA with an infantry division. As part of his duties he sits as law member on the division general court and the district general court. He has visited the new Pacific Ocean Area headquarters building, dubbed the "Pineapple Pentagon," in which there is a court room and quarters for TJA and defense counsel, "a credit to the Army." The court room is so beautiful that Capt. Wall expresses the belief that the supreme court of the territory will desire to use it.

1st Lt. Ben A. Smith, Jr. writes: "For me, all JAG work has gone by the boards. Although carried on the TO as Assistant SJA, I'm in G-3 working as a liaison officer. . . . I'm on the go every minute. Catch a few hours sleep when I can and get wedded to my jeep. It's interesting and exciting and I'll certainly have some tall tales to tell—but doing the highroads and byroads of Normandy at night, driving blacked out and occasionally hitting the ditches or hugging a hedgerow at the appropriate moment is rather trying. I got in where I am now

at 4:30 in the morning and just threw my bedroll on the ground in the motor park. . . Haven't fired my trusty carbine yet but, if this keeps up, I shall have combat fatigue. Where in hell is the JAG rest camp, anyway? . . ."

1st Lt. Thomas E. Stanton, Jr., writes from Western Procurement District, AFSC, 3636 Beverly Blvd., Los Angeles, Calif., where he has been on duty since moving from Wright Field, O., in July. His immediate supervisors in the office of the district JA are Maj. Walker Lewis and Maj. Harold Holland. Lt. Stanton observes that "I was born within less than a dozen miles of here, and I need not add (since *res ipsa loquitur*) that my assignment is a matter of personal pleasure. Among other duties I act as assistant district claims officer, and Los Angeles traffic being what it is, I sometimes have a busy time of it."

2nd Lt. H. Byron Mock writes that he is still staff JA at the Adriatic Depot, U.S. Army. He is alone and unaided "except for the able support of my school texts and the information with which the school has stuffed" him.

4th OC

1st Lt. Robert E. Michalski, is stationed at Hq. San Bernardino Air Service Command in the Office of the Staff Judge Advocate.

He says that in comparison with the accounts he's read in these pages his work is most prosaic and the accommodations luxurious, and although the temperature reaches 100 regularly the humidity is low enough to make the heat bearable. "Maj. Tyler (15th Officer Cl) is also in this office. He handles claims matters, while I am in charge of the Military Justice Branch with about 50 cases a month, and Lt. H. M. Bumgardner (6th OC) is in charge of Military Affairs. Several pre-war vacation spots, now taken over by the Army, are under our courts-martial jurisdiction, among them being Palm Springs Army Air Field, Long Beach Army Air Field and Santa Monica Redistribution Centre not to mention the First Motion Picture Unit at Culver City."

1st Lt. William H. Montjoy is with a JA Section with an ATC Wing in North Africa.

2nd Lt. John J. Flanagan, now in London, reports that the appearance of our MPs is the finest in the city. The number of JAGs he has encountered there is enough "to start a London annex to the school." He met Miss Jessie Barnett, long time civilian employee of the school in the British capital on the way to posts unknown.

1st Lt. John (Little) Wolff is stationed at the office of the military attache at the American Embassy in London, England.

Lt. Matthew G. Leary, Jr. now in the United Kingdom writes that he has seen several members of his class over there. To those who are setting out on the trip across he suggests that well-intentioned advice re clothing be disregarded. "Come as light as possible as you can get it all here."

1st Lt. Harold H. Emmons, Jr. is an assistant JA "somewhere in New Guinea." The JA section has Col. Robert V. Laughlin as Army JA, and Lt. Col. Harold T. Patterson (4th Officer Cl) is assistant.

The headquarters is located on a beautiful lake, according to Lt. Emmons, and is surrounded by mountains the tops of which are almost continuously in the clouds. "Cocoonut palms, papaya trees and assorted jungle vegetation surrounds the entire area. The birds, insects, and other wild life are extraordinary and weird to say the least, and it takes a while to get inured to the night noises. The climate has been a welcome surprise so far, except for the ever-present humidity which plays hob with arms, as well as any metal or leather office equipment and personal belongings. I am told that wool uniforms do not last long down here."

Lt. Emmons gives a few tips to junior officers, cautioning them "to be prepared when overseas to act in the capacity of claims officer, board of one officer under AW 105, investigating officer, surveying officer, assistant post exchange officer, section censor, and perhaps a few more which I have not yet run into. In short, he is a jack of all trades, and has few dull moments."

Lt. Phil Mathews has been assigned to the 1st Cavalry Division somewhere in the South Pacific. He tells of a funny incident that occurred recently. "Five enlisted men (chaplain's assistant and four clerks) walked a short distance into the jungle to take some pictures. They ran plunk into six Japs who had a white flag. Since the enlisted men were unarmed and more than somewhat scared they turned and ran at the highest speed attainable, the Japs wanting to surrender peacefully took out after them. This only increased the terror of our already

terrorized boys and tended to increase the already amazing pace. It was also much to their chagrin that the half starved Japs were gaining appreciably. Fortunately they had only a short distance to go before they burst out of the jungle and past a guard. A truck driver who happened to be there was spurred to action by the sudden change of events when he saw our boys run past him screaming "The Japs are coming!" and promptly mounted to the cabin and proceeded to strip the gears. By this time the Japs came ambling out of the woods and the guard took them in tow and they are now happily munching bully beef in the stockade. The poor enlisted men will never live down the story of how they captured six Japs bare-handed. Their CO claims they covered themselves with more than glory.

Lt. David A. Bridewell, who attended the special course on foreign claims at Lebanon, Tenn., after a tour of duty at the JAGO, reports that he is assigned to a Claims Commission stationed at headquarters of the Channel Section of the Communications Zone in France.

Lt. Douglas N. Sharretts writes that he is assigned to the Branch Office of the Judge Advocate in the European Theatre of Operations.

1st Lt. Lyman Brownfield, formerly assigned to the Surgeon General's Office in the legal division, is now in the JACRP Fifth Service Command on temporary duty preparatory to taking a long jump overseas.

5th OC

Lt. and Mrs. Robert E. Clapp, Jr. announce the recent arrival of Robert E. Clapp, III. Lt. Clapp is assigned to Headquarters, Third Service Command, and Lts. Paul A. McGlone and Charles W. Hutchinson (6th OC) are also stationed there.

6th OC

In a "report of change from officer candidate to officer" 1st Lt. John B. Browder, now assistant staff JA at Hampton Roads (Va.) Port of Embarkation, gives forth with a description of his first days there. "Reported for duty here and the first question involved jurisdiction to try a merchant seaman for manslaughter. Fancy my surprise when I, very learnedly, mentioned *McCune v. Kilpatrick* and was told that that one was old stuff around here, the respondent being none other than my commanding general!" . . .

Lt. Browder was the principal in a question of military courtesy, namely, when he and the general were waiting for the same elevator, who steps in first. "I racked my brain for an answer to whether an elevator, as well as an automobile, required my preceding the general but no answer was forthcoming and time did not permit of a communication with the MS&T Department. I was the only one in doubt, however, and followed the general in." He suggests that the point be covered in future courses, "or maybe I slept through that one."

"Yesterday when I was told that I would occasionally be needed in connection with disembarking prisoners of war I thought for a moment that I was also being given recognition as an expert on the Geneva and Hague Conventions but soon learned that I would be but one of a large detail assigned to report in fatigues and help 'frisk' the PWs as they come in. Maj. McElroy told us there'd be days like that!"

Lt. Fred H. Rooney, Office of Chief of Engineers, Washington, D.C. has a few pearls of wisdom to pass on to those who may follow him:

"Some of the boys assigned elsewhere and here for 10 days temporary duty decided to profiteer. They secured lodging at Fort Myers for 50 cents a night. However a deduction of \$4 was made from their daily per diem by the Finance Officer and you can imagine the shock."

1st Lt. Walter E. Hooper, Assistant Staff JA of the 13th Airborne Division, Camp Mackall, N.C., finds that joining an airborne division is a shock to anyone who has love for his native land (or any land) underfoot. He says: "Service with troops can be interesting, particularly when a 2 star general tries to sell you on becoming a paratrooper. Am still stoutly resisting on that score but a buck slip this AM advised me that starting Monday I would begin training to qualify for glider wings (if they get authorized) and the 50% extra pay (if that gets authorized too). Yessir, Mackall is isolated but never dull."

Lt. Hooper's boss as Staff JA is Maj. R. F. Hoke Pollock (13th Officer Cl).

1st Lt. Murray Steyer, now half of the Legal Section at Watervliet (N.Y.) Arsenal, reports that his promotion papers

reached him about six days after issuance. "It therefore seems to me that I was a *de facto* second lieutenant and a *de iure* first lieutenant. That is quite the reverse of the situation we took up in Military Affairs. I wonder if this case couldn't be used to plague future officer candidate classes."

Lt. Robert L. Keeland is now assigned to Headquarters, Eighth Service Command.

Lt. Gordon W. Rice is at present assigned to Hq. Special Troops, AGF, JA Section, Fort Ord, Calif.

1st Lt. Charles P. Curran, Wright Field, O., is in the Claims and Civil Affairs Division.

2nd Lt. Robert J. Nolan is in Chicago, Ill., where he is assigned to JACRP, Sixth Service Command.

Lt. Herbert S. Brown writes that he is assigned to the Contracts and Claims Branch, Corps of Engineers District Office, Kansas City, and is the only JAG officer there. Lts. Dull, Schaberg, Palmer and Pinkowski are at the District Office, Corps of Engineers, Omaha, Neb., and Lt. Wayne Williams, recent winner of the Ross Essay Contest of the American Bar Association, has been transferred from Denver to JAGO, Washington.

Lt. Brown also reports that Lt. Ted Cline, formerly in the JACRP Seventh Service Command, has been assigned to the Engineers, Missouri River Division, perhaps replacing Lt. Williams.

Lt. Bernard R. Dick is now stationed at Oahu, T. H., as an assistant Judge Advocate, Claims Section, CPBC.

1st Lt. Duncan L. McRae is assigned as assistant JA at the IRTC, Camp Robinson, Ark. Before reaching his present post he did much moving around, listing JACRP, Dallas, Tex., Camp Hood, Tex., and Hot Springs, Ark. as stops en route.

1st Lt. Milton F. Rosenthal writes from the Division Engineer Office, Great Lakes Division, in Chicago that the "6th OC is well represented in this busy Engineer Office in the persons of Lts. Lanning, Ditchie, and the undersigned. We juggle Procurement Regulations in lieu of the Articles of War. Our only contact with Military Affairs occurs during two brief but pleasant moments each month, the filing of our pay vouchers and receipt of salary checks. In addition to other interesting duties I am Claims Officer at this station. In case you need any bulldozers or tractors, we are at your service."

1st Lt. Donald C. Hays, former reporter for THE ADVOCATE, writes from Litigation Division, JAGO. He has moved from the contractors' defense branch where Lts. Brodsky, Gregory and Walsh are assigned, and now deals with guaranteed loans, bankruptcy, war frauds, admiralty and renegotiation in the Division.

Lt. Edward S. Huber writes from the JAGO that he has been revising the revisions made by the colonel in the revisions of the lieutenant colonel in the revisions of the major in the draft "prepared by me." As a member of the picnic committee he was embarrassed when the 5:30 boat back to Washington was able to ship only a few of the picnickers. "As the next boat was 10:30, the sailing was not accompanied by the cheers and handkerchief waving from those on the dock that might have otherwise have marked such a gala event. Before the murmurs about the committee could become loud, I quickly removed my fine badge, and with Frank Reel took to the open road. If only I had my GI shoes I wouldn't have looked quite so plaintively at the few cars there were. After a mile and a half one stopped, and after some slight negotiations were accomplished, took us all the way to Washington.

"Knipmeyer turned up here last week, and is now assigned to Legal Assistance, where Yeakley also holds forth. Knip had been over in Baltimore and was sent from there to Aberdeen Proving Ground, Md. Elliot, who was out in Columbus, reported in today for 10 days temporary duty with the Engineers, with whom he will work in the future. Joe Walsh was sent to Philadelphia on the Transit strike takeover, and we suspected that he had been impressed as a motorman. Scab Walsh he was called. Last week he received a letter of commendation from General Hays for his fine work. We still don't know what he did, and the motorman story may be right."

1st Lt. James C. Combs, writes from Headquarters, Seventh Service Command, Office of the Staff JA, that 1st Lt. Charles T. Cline, 1st Lt. Louis O. Gilliam, and 2nd Lt. Wright Conrad are in Military Justice. Lt. Combs who is in Claims finds his work very interesting.

2nd Lt. Everett E. Palmer is assigned to the United States Engineer Office, Contracts and Claims Branch, Omaha, Nebraska.

2nd Lt. Milton I. Vogelhut writes: "For the benefit of my dear friends of the Sixth Officer Candidate Class, I wish to advise that I am on detached service at Camp Davis, N.C., where I act in the following capacities: Post Judge Advocate, Personal Affairs Branch, Soldiers' Voting Officer, Legal Assistance Officer, Liaison Officer, Summary Court-Martial Officer and Trial Judge Advocate."

Lt. H. W. Bancroft who has been on duty in the JA office, ATC, Gravelly Point, Washington, D.C., for several months is now assigned to the Materiel Command, AAF, Wright Field, Ohio.

2nd Lt. Asa D. Kennedy, Jr., has recently been assigned to Headquarters, AAF, Personnel Distribution Command, Atlantic City, N.J.

2nd Lt. Henry J. McDonald writes from the Louisville Engineer District, Corps of Engineers, where he is head of the Legal, Contracts, and Claims Division. He observes that assignment to the Engineers brings a wide variety of legal subjects. "My work here on frequent occasions has taken me back to the field of real property, bailments, torts, contracts, conflicts of laws and many other old familiar legal subjects."

2nd Lt. Benjamin C. Wadlington is assigned to the Office of the Staff JA Camp Beale, Calif.

2nd Lt. William L. Whelan is now stationed at Camp Miles Standish, Mass.

2nd Lt. Harryman Dorsey has been transferred to the JAGO from JACRP, Headquarters, Third Service Command.

1st Lt. Emmett L. Whitsett, Jr., writes that he has been on the move from Headquarters, Fourth Army, to Louisiana Maneuvers Headquarters and then to the Foreign Claims Course at Lebanon, Tenn.

7th OC

1st Lt. Harold W. Steiner writes that he is looking forward to a pleasant tour of duty at First Service Command Headquarters, Boston, Mass., with friendly and helpful associates.

Lt. Charles E. Chace and Paul W. Fetterman are assigned to Headquarters, Eighth Service Command.

1st Lt. Jerome R. Walstead writes from Headquarters Second Army that Lts. Arvin Robb, Ben Cooper and himself are comfortably situated in the city of Memphis, Tenn.

1st Lt. Leroy E. Rodman is at Headquarters Fourth Service Command.

2nd Lt. William A. McLain is assigned to the Military Justice Division, JAGO.

1st Lt. Warren G. Reed is in the Office of the Surgeon General, Washington.

Lt. William W. Brady after serving as Assistant Camp JA at Camp Grant, Ill., for about ten days is now at the Finance School, Fort Benjamin Harrison, Ind., taking a four weeks' course in Officers' Termination and Accounting. Lt. Brady is a certified public accountant as well as a lawyer.

2nd Lt. Samuel L. Cederborg stationed at Fort Douglas, Utah where he is assigned to JACRP, writes that there are several officers there from earlier OC classes. "In the Claims Branch to which I have been assigned to work at present are Lieutenants Charles V. Laughlin (1st OC), Donald C. Rogers (2nd OC), William H. Wakefield (2nd OC) and George E. McGuigan (6th OC).

2nd Lt. Alfred J. Cawse, Jr. originally assigned to the First Service Command, Boston, Mass., writes that he is now in the JA Section at Camp Falmouth, Mass. along with Lt. William Ackerman of his class, where both of them are "doing quite a bit of court-martial work." Other school graduates on duty there are Lts. Willis A. Brown (2nd OC), Robert E. O'Brien (3rd OC) and Norman B. Murphy (6th OC).

1st Lt. Louis Newman, assigned to the JAGO reports that some of the class got together recently at the home of Lt. Chadwick, in Silver Spring, Md. Guests included, in addition to Lt. Newman and the host, Lts. Bailey, Carter, Desmond, Howland, Kramer, Parks, Sigler, Smith, Steiner and Wentz.

1st Lt. Lewis H. Parks is assigned to Claims Division, JAGO, and Lt. Beverley R. Worrell is in the same office. 1st Lt. George J. Bailey is in the Office of the Chief of Engineers, Washington.

Lt. Kroch has heard from Lt. A. J. Metcalf to the effect that he too has been transferred and will now receive his mail at Headquarters, 261st AAF Base Unit, Army Air Base, Abilene, Tex.

2nd Lt. Robert T. Smith is on temporary duty at Fort George Meade, Md., in the office of the Post JA, Lt. Col. John T. Thompson, and has been appointed Claims Officer.

LIST OF *Promotions*

IN THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

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15 August to 15 November 1944

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TO BRIGADIER GENERAL

William R. C. Morrison

TO COLONEL

Burke, Edward J.
Burton, Joseph C.
Byrd, David C.
Davis, Joseph H.
Garside, Charles
Hauck, Clarence J., Jr.
Jaeger, Walter H. E.
Johnson, Bertrand E.
Lancefield, Robert L.
Peyton, Hamilton M.

TO LIEUTENANT COLONEL

Beebe, Claire S.
Boland, Daniel L.
Capen, C. Alfred
Derrick, John H.
Dilks, W. Howard, Jr.
Garnett, James, Jr.
Hall, Graham R. (26 Feb. '44; published 28 Sept. '44, overseas list)
Hall, Thomas L.
Hanna, Darrell M.
Magnusen, Lewis C.
McGehee, John H., Jr.
Menter, Martin
Potter, Ernest G.
Quinn, John T.
Shippey, John H.
Temmey, Leo A.
Thistle, Thomas L.
Williamson, Blake A.

TO MAJOR

Aby, Hulette F.
Alyea, Louis F.
Andrews, James DeW.
Arick, Ned W.
Ashmore, Robert T.
Bernstein, Howard
Bowman, John R.
Brandon, Morris, Jr.
Buckley, Robert B.
Burkart, Francis J.
Clements, Judson I.
Dreher, James F.
Ensel, Lee W.
Fox, Littleton
Hackley, Roy C.
Hendrix, Walter C., Jr.
Innes, James W.
Kuckuk, Rolland A.
Lafferty, Joseph F.
Lane, William R.

Lent, Norman F.
MacArthur, Kenneth R.
Magdlen, Robert J.
Maxeiner, Philip J.
McDonnell, Harold F.
Mitchell, Robert E.
Morton, Copeland, Jr.
Pastner, Robert L.
Pirnie, Alexander
Porter, Richard H.
Rinehart, Gus
Routledge, Rodham C.
Sherman, Malcolm C.
Wright, John A.
Zopf, George E.

TO CAPTAIN

Askow, Irwin J.
Balph, William R.
Barbour, William H.
Bigel, Joseph
Bolte, Frank R.
Bowe, William J., Jr.
Brees, Eugene W.
Briscoe, Maye H.
Brown, Carl H., Jr.
Chapla, Charles A.
Cheston, Frank C., Jr.
Dickson, Lewis M.
Effe, John A.
Graham, James C.
Hanna, Richard P.
Hardeman, Dorsey B.
Heinicke, Alfred
Houck, Albert
Jones, Richard O.
Koller, James R.
McConaghy, John S.
McDearmon, Richard
Muller, John P.
Oransky, Merrill B.
Pepper, Harry L.
Porter, Dudley, Jr.
Schmitt, Leonard F.
Schwing, Lawrence S.
Willis, Benjamin C.
Wood, Theodore T.

TO FIRST LIEUTENANT

Adney, Richard W.
Bailey, George E.
Barlow, John S.
Beard, Edwin K.
Bertolet, Jean De B.
Bomberger, Charles G.
Briggs, William M.

Callahan, Carroll B.
Carroll, Donald K.
Chadwick, George A., Jr.
Claggett, John R.
Combs, Bert T.
Cowen, John J., Jr.
Crowley, Cale J.
Cunningham, William E.
Cutting, John S.
Deutsch, Richard H.
Donn, Arthur
Eblen, Amos H.
Fieland, Louis C.
Graf, Kenneth F.
Graham, William R.
Hart, Clarence A., Jr.
Hiller, Russell L.
Howland, John L.
Hunter, Richard N.
Kemp, Wallace B.
Kinder, Dwight R.
Kramer, Charles R.
Lyons, Lawrence R.
MacKnight, Harold E.
McCaghren, Hal H.
McCormick, Donald G.
McDowell, Sherwin T.
Miller, Arno J.
Ming, William R., Jr.
Morrell, Edwin J.
Murphy, Thomas J., Jr.
Newman, Louis
Parks, Lewis H.
Perry, Thomas E.
Pikkaart, John M.
Pizey, John B.
Pyle, Luther A.
Ralston, Robert A.
Ray, George K.
Reed, Warren G.
Robb, Arvin O.
Roberson, Frank F.
Robinson, Edwin L.
Rodman, Leroy E.
Sapp, Charles
Schermerhorn, Robert A.
Sharretts, Douglas N.
Sigler, Lewis A.
Sinclair, Arthur W.
Stahle, Keith L.
Steiner, Harold W.
Taylor, Charles H.
Tucker, Harold F.
Walstead, Jerome R.
Wentz, Peter L.
Williams, Charles C.
Wingo, Earl W.