

## HUMAN RIGHTS, HUMAN RELATIONS AND OVERSEAS COMMAND

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### I. The Law and Relevant SJA Problems.

A body of law of great significance to the military lawyer overseas is the international law of human rights. Human rights law is not only important for those concerned with race or human relations, but is of particular relevance and utility for the military lawyer concerned with foreign trials of U.S. servicemen or civilians, treatment of U.S. nationals by foreign governments and foreign citizens, rights and privileges of U.S. nationals in the overseas social context, and general problems of armed conflict, violence and social tension.

Article VI, Section 2 of the United States Constitution has made international law a part of the supreme law of the land. Further, the United States is bound by the United Nations Charter (preamble, articles 1(3), 55(c) and 56)<sup>1</sup> to take action in order to assure the "universal respect for, and observance of," international human rights. This national obligation coupled with the Constitutional declaration of supremacy makes it incumbent upon the Staff Advocate to become familiar with the general content of human rights law and the procedures for implementation—especially in the overseas command.

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Documented principles of human rights law include the 1948 Universal Declaration of Human Rights<sup>2</sup> and, in the European context, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its five Protocols.<sup>3</sup> The 1948 Universal Declaration is not directly binding as treaty law, but has been widely accepted as an authoritative instrument containing much of the general content of the human rights which fall within the mantle of protection and state obligation articulated in the United Nations Charter.<sup>4</sup> The wide acceptance of the document demonstrates a shared expectation and general content of juridical utility. Also, it has been accepted as an authoritative interpretation of the U.N. Charter and as a document which partially evinces certain general principles of law recognized by civilized nations and certain general content of a customary international character.<sup>5</sup> The 1950 European Convention on Human Rights is treaty law binding upon all signators. Although the U.S. is not a party to the European Convention, that treaty is directly relevant to the SJA operating in Europe for three reasons. First, in the context of the European legal process, the European Convention takes on significant utility as a guide to the regional interpretation of the U.N. Charter. Second, the European Convention's human rights protections apply to U.S. servicemen and civilians since article 1 states: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention." Article 14 adds: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as

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sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Third, article 2 of NATO SOFA imposes an obligation on the U.S. force, civilian component and members thereof, as well as their dependents "to respect the law of the receiving State."<sup>6</sup> It is also "the duty of the sending State to take necessary measures to that end."<sup>7</sup> Since human rights law is part of the total legal process of the receiving state in most European nations by operation of treaty and local law, the United States force and members (plus others listed above) are bound by the treaty law of this nation to respect human rights, leaving aside our obligations under the United Nations Charter.<sup>8</sup> The above is particularly true in the Federal Republic of Germany where human rights law is incorporated directly into the federal law of Germany by their Constitution (Article 25) and such human rights even "take precedence over the laws and directly create rights and duties for the inhabitants. . ."<sup>9</sup>

How does this relate to the responsibilities of the American SJA in Europe? It relates to "fair trial" determinations in every case where U.S. citizens are tried by a court of a nation that is party to the European Convention on Human Rights. The European convention contains a "due process" content which applies to all persons tried by a signator state. The Convention's "due process" standard goes beyond that of the 1948 Universal Declaration and also the minimum "fair trial" guarantees of article VII, 9 of NATO SOFA, and provides new and individual remedies for rights deprivations (such as the individual right of petition from a person denied these rights to the European Commission under article 25 of the Convention). This example of an interdependence of legal norms of "due process" contained in three different documents points out the need for an integrated approach to the legal problem.

In the overseas command, legal advice to military personnel on such matters as family relations, educational privileges, social and cultural relations and related matters which some of us have simplistically lumped together into the category of "legal assistance" on posts at home, actually involves a web of normative precepts categorized for law training purposes as problems of international law,

comparative law, constitutional law and the law of human rights. Each of these matters can involve general values or specified rights contained in the international human rights instruments such as the 1950 European Convention.<sup>10</sup> An example would be foreign governmental tolerance of racial discrimination which deprives the serviceman of the human rights of respect for his family and the means of ensuring an adequate and normal family existence, growth and enjoyment.<sup>11</sup> Another case might involve a deprivation of the educational rights of a serviceman's dependents through a practice of discrimination or exclusion, or an infringement upon parental religious or philosophical convictions by local educational practices.<sup>12</sup> Perhaps a serviceman and his wife are being denied a chance to freely participate in public cultural, artistic or other functions on the basis of race, nationality or military status. The military lawyer might begin his review of the relevant local and international law and remedies with a reading of the applicable human rights guarantees for free participation in the community social services and events.<sup>13</sup> Another example might involve discrimination practices of local employers against U.S. service wives due to nationality, sex, race or military status; if so, there are relevant international norms to guide the military lawyer here as well.<sup>14</sup>

The instances of human rights relevance can be nearly as numerous as case occurrences in the overseas military law practice. Certainly the military lawyer who is concerned with a preventive law approach (or a command legal maintenance program) to race relations among U.S. troops or between U.S. personnel and foreign nationals will increasingly involve himself with the problems of international human relations and underlying factors which contribute to human discord and rights deprivations. Indeed, the lawyer that is thorough in his quest to meet the challenge of human relations in the overseas context cannot ignore the applicability of human rights law to enforce race relations, for just as there are guarantees contained within the human rights instruments concerning deprivations by foreign nationals, there are prohibitions against deprivation by any governmental entity as long as Convention articles attach to the particular individual. On this last point many would contend that under U.S. Constitutional law it would

not matter that a particular human rights convention applied—the U.S. Constitution applies to all U.S. citizens overseas and would protect them from governmental infringement.<sup>15</sup>

Areas of concern to the military lawyer interested in military justice which are beyond the matter of "due process" guarantees explored above, would include defenses to crime, procedural standards of U.S. trials (which should have no difficulty meeting international standards) and the prevention of crime through human rights implementation. An example might include the combating of a high crime rate that is related to racially discriminatory practices by local nationals through a program involving implementation of human rights law. Training exercises provide the SJA with an opportunity for effective human rights training. Where improper treatment of individuals occurs during an exercise, correction can take place if the military lawyer gets involved. Training exercises can also result in crimes or defenses directly involving the international law of human rights as in a recent case in Europe which has resulted in allegations of human rights deprivations during a NATO training exercise.<sup>16</sup> In the event of armed hostilities the international law of human rights as in a recent case in significant role as a body of law of concern to the military lawyer.

## II. Available Remedies

The Staff Judge Advocate can utilize all legal techniques of advice, example and persuasion normally functional within the command. Also available are the invaluable contacts with local authorities to assure mutual understanding of problems, and effective cooperative human rights implementation. In some cases the SJA may wish to participate in the effectuation of these rights through the local court or administrative structure as authorized in local areas. Examples of such participation can include aid in an appeal for a foreign criminal conviction in conjunction with local civilian counsel, or an appeal by the person deprived of his rights for relief or compensation through the foreign court or administrative structure.<sup>17</sup> Furthermore, the SJA can be of assistance, in the context of a European command, through advice to U.S. soldiers and civilians on the remedy of an individual petition for relief to be filed with the European Com-

mission of Human Rights within six months from the completion of final domestic legal remedies within the foreign legal process.<sup>18</sup> This remedy will become increasingly important for the Staff Advocate to utilize in gaining viable legal guarantees for members of the command and dependents since the European Commission and Court seem on the verge of expanding its usage. In all cases, however, the SJA should coordinate his activities with appropriate U.S. diplomatic agencies. Where individuals avail themselves of the right to file a petition and the matter comes to the attention of the local SJA, coordination of information should also be made. Coordination might be achieved through contact with the Judge Advocate General and the Chief of the Diplomatic Mission of the country concerned.<sup>19</sup> If it is undesirable to support an individual petition, no pressure can be placed on the individual to coerce him from his remedy. Indeed in view of the U.S. obligation under the United Nations Charter to take affirmative action to assure respect for and observance of human rights, it may be incumbent upon the Army SJA to promote rights of servicemen through such action where the remedy would be appropriate. It is probable that the SJA will increasingly utilize human rights remedies and the right of individual petition in the next few years.

The SJA has another avenue for effective implementation of these rights of man in the "table" conference established in NATO SOFA, article XVI. Finally, the SJA has available the use of special race relations teams for troubleshooting in concert with command legal maintenance programs and commander's sanctions.

If you have any questions concerning the content of human rights, the measures of implementation, available human rights materials, or information on recent developments you can contact the International Law Section of: (1) Office of The Judge Advocate General, Washington, D. C. 20310, (2) TJAG School, Charlottesville, Virginia 22901, or, in Europe, (3) Office of the Judge Advocate, HQ USAREUR, APO New York 09403.

#### FOOTNOTES

1. Reprinted in DA Pam 27-161-1, I INTERNATIONAL LAW 175-197, (1964).
2. U.N. G.A. Res. 217, 3 GAOR, U.N. Doc. A/810, at 71 (1948), reprinted in I Brownlie, BASIC DOCUMENTS ON HUMAN RIGHTS 106-112 (Oxford 1971).

3. Reprinted in I. Brownlie, *supra* note 2 at 338-365; partially reprinted in U.S. TJAG School, I. DOCUMENTS ON INTERNATIONAL LAW FOR MILITARY LAWYERS: GENERAL INTERNATIONAL RELATIONS 54-60 (1969). Note that in some European areas another treaty may apply: the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, U.K. Treaty Series, Misc. No. 77, 1969, Cmd. 4108. The U.S. has signed but has not ratified this convention.

4. See J. Carey, UN PROTECTION OF CIVIL AND POLITICAL RIGHTS 9-16 (1970), and references cited. The Declaration maps out much of the general content which amplifies the shared meaning of the U.N. treaty phrase "human rights and fundamental freedoms."

5. See *id.*; I. Brownlie, *supra* note 2 at 106; and references cited. Note that the U.N. Statute of the International Court of Justice, article 38, obligates the Court to apply not only treaties but also customary international law and the general principles of law recognized by civilized nations.

6. Reprinted in DA Pam 27-161-1, I INTERNATIONAL LAW 211 (1964). See also NATO SOFA, art. 2 and 1950 European Convention, art. 16, concerning limitations on "political" activity.

7. The foreign state is the "receiving" state and the U.S. is the "sending" state in overseas commands.

8. This by operation of three treaties: the U.N. Charter, NATO SOFA, article 2, and the European Convention.

9. German Constitution, art. 25. See also, 1950 European Convention, arts. 13 and 14.

10. See 1948 Universal Declaration, arts. 2, 16, 22, and 25-28; and 1950 European Convention, arts. 1 and 8-12 plus Protocol No. 1, art. 2 and Protocol No. 4, arts. 1 and 2.

11. See 1948 Universal Declaration, arts. 7, 16, 18, 25 and 28; and compare 1950 European Convention, arts. 8(1), 12 and 14 with 8(2).

12. See 1948 Universal Declaration, arts. 7, 18-19 and 26; and 1950 European Convention, arts. 9-11 and Protocol No. 1, art. 2.

13. See 1948 Universal Declaration, arts. 25 and 27-28; and 1950 European Convention, arts. 9-11 and 14.

14. See 1948 Universal Declaration, arts. 22-25 and 28; and 1950 European Convention, arts. 11 and 14. See also 1966 Covenant on Civil and Political Rights, arts.

15. See *Reid v. Covert*, 354 U.S. 1 (1957); and Paust, *My Lai and Vietnam: Norms, Myths and Leader Responsibility*, 57 MIL. L. REV. 99, 107 n. 27 (1972).

16. See "Torture Case in NATO Weighed," N.Y. Times, Nov. 5, 1972, at 4. See also, 1948 Universal Declaration, arts. 2 and 5; and 1950 European Convention, arts. 1, 3 and 15(2). This last right and freedom from cruel, inhuman or degrading treatment and conditions in all circumstances is a basic and well documented one applicable in all contexts from peace to war. See also 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 3 and 27-34; 1966 Covenant on

Civil and Political Rights, art. 7; and 1969 American Convention on Human Rights, art. 5(2).

17. See also, 1948 Universal Declaration, arts. 2 and 8; and 1950 European Convention, arts. 1, 5(3)-5(5), 6 and 13. The SJA should also consult AR 27-50, Status of Forces Policies, Procedures and Information (1967) in the case of criminal appeals within the foreign legal process, and should consult local Country Law Studies concerning available civil remedies for damages, relief and protection. See also local regulations, e.g., USAREUR Regs. 550-50 and 550-56.

18. See 1950 European Convention, arts. 25-27; and J. Carey, *supra* note 4 at 135-138, and references cited. Individual petitions under the European Convention, article 25, have numbered in the thousands to date and are a

viable remedy for individual redress in many cases. Besides injunctive relief, protection from criminal process, political relief in response to court decision, and other forms of rights guarantee there has been recognized recently a right to compensation or "just satisfaction" for a rights deprivation—this under the judicial powers recognized in article 50 of the European Convention (see also arts. 5(5) and 13). See the Ringeisen Case (May 1972), reprinted in 11 (ASIL) INT'L L. MATERIALS 1062 (1972). For a brief notation of the concrete results achieved under the European Convention see Council of Europe, "Stock-taking on the European Convention on Human Rights," Doc. 25-130-06.2 (Feb. 1972).

19. The Department of State may also wish to pursue remedies through U.N. agencies or other means available to it and the President.

## DUTY TO DISCLOSE KEY GOVERNMENT WITNESS' GRANT OF IMMUNITY

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In *Giglio v. U.S.*, 405 U.S. 150 (1972), the Supreme Court held that due process is violated if the Government fails to disclose an alleged promise of leniency made to a key prosecution witness in return for his testimony. The controversy in the case centered about the testimony of an alleged co-conspirator in a scheme involving forged money orders. Taliento, the co-conspirator, supplied Giglio, the accused and a former bank teller, with a customer signature card. This card was used by Giglio to forge \$2,300 in money orders. Taliento processed these forged money orders through regular channels of the bank. After the bank officials discovered that Taliento had forged several money orders, he was questioned by the FBI. Taliento confessed and related the story to the grand jury. Giglio, but not Taliento, was indicted.

During the trial, Taliento was vigorously cross-examined by the defense in regard to the existence of a "deal." Taliento stated that a promise in the nature of a grant of immunity was never made to him. In summation, the Government stated that a promise of immunity was never made to Taliento. It is important to note that Taliento was the only witness connecting the accused with the crime. After the trial, it was discovered that DiPaola, the Assistant U.S. Attorney who presented the Government's case to the grand jury, did promise Taliento that there would be no prosecution if he testified

against Giglio. This discovery formed the basis of a petition for new trial. However, the Government contended that Golden, the Assistant who tried the case on the merits, did not know of any promises made by DiPaola; that if any promises had been made, they were invalid; and that the U.S. Attorney informed Taliento, after the grand jury proceedings against Giglio, that he too would be indicted.<sup>1</sup> The Court held that the statements of DiPaola notwithstanding his authority or failure to inform his superiors, must be imputed to the Government. The Court stated that it is the duty of the prosecutor to disclose all material evidence favorable to the accused. Neglect or design is irrelevant, if, in fact, suppression occurs.

The Court emphasized the importance of Taliento's role in the case in finding a violation of due process and in ordering a new trial because there would have been no indictment and no evidence to convict without Taliento's testimony. This factor made Taliento's credibility as a witness an important issue, and the Court determined that evidence of any understanding or agreement as to future prosecution would be relevant to his credibility and the jury was entitled to know about it.

The Court's holding was based upon a number of cases which placed an affirmative obligation upon the Government to disclose all evidence favorable

to an accused. The leading case on this issue is *Brady v. Maryland*, 373 U.S. 83, 87 (1963), which dealt with a suppressed confession by an accomplice. Brady and Bobbit were involved in a joint misadventure and were tried separately for murder. Brady was tried first. At his trial, he admitted participating in the crime, but claimed that Bobbit did the actual killing. Bobbit had made several statements which Brady requested to examine. All but one statement were shown to Brady. The one that was suppressed was Bobbit's admission of the actual homicide. Brady's counsel conceded his guilt of first degree murder and pleaded for mercy. Brady was convicted as charged. Upon discovering the suppressed evidence Brady petitioned for a new trial. The Supreme Court held that suppression of evidence favorable to the accused violated the due process clause of the Fourteenth Amendment where the evidence is material to either guilt or innocence, irrespective of the good faith or bad faith of the prosecution.

The *Brady* doctrine is incorporated in paragraph 44g of the *Manual for Courts-Martial, United States, 1969 (Revised edition)*. That paragraph provides, in pertinent part, the following:

"Although his (trial counsel's) primary duty is to prosecute, any act, such as the conscious suppression of evidence favorable to the defense, inconsistent with a genuine desire to have the whole truth revealed is prohibited." (Emphasis added.)

The military also recognizes that a grant of immunity to an accomplice in return for his testimony for the prosecution may effect his credibility. For instance, paragraph 148e of the *Manual* provides that a grant or promise of immunity does not make a witness to whom it is granted incompetent. See *U.S. v. Thibeault*, 43 CMR 707 (1971), and *U.S. v. Stoltz*, 14 USCMA 461, 34 CMR 241 (1964). However, it has also been recognized that a grant of immunity relates directly to an alleged co-conspirator's credibility. See *U.S. v. Perdelwitz*, 14 CMR 421 (1954), and paragraph 153 b of the *Manual*.

The U.S. Court of Military Appeals and a Navy Court of Military Review have previously considered the issue presented in the *Giglio* case. In *U.S. v. Maxfield*, 20 USCMA 496, 43 CMR 336 (1971), the contention was made that due process was violated because the trial counsel did not disclose to

the court-martial that a key Government witness had been obtained by means of a grant of immunity. The Court of Military Appeals determined that the issue was not meritorious because the defense counsel knew of the grant. Judge Ferguson dissented in part. His argument was bottomed on the view that since the fact of immunity was not brought to the attention of the court-martial, the witness' credibility could not properly be appraised. Judge Ferguson noted that the defense counsel did not cross-examine or attack the credibility of the witness in question with vigor. He would require the Government to disclose the fact of a grant of immunity at trial. In *U.S. v. Killen*, 43 CMR 865 (1971) the Navy Court of Military Review held that the Government was under a duty to inform the defense of its bargaining for testimony of two witnesses whose testimony was critical to the case, where the witnesses were informed that a grant of immunity was possible and led to believe that immunity had been granted, even though it was not granted. The court found that due process was violated.

One implication of the *Giglio* case is that the Government is now under a duty to disclose not only to defense counsel, but also to the court, a grant or promise of immunity given to a key witness. The court in *Giglio* stated that "the jury was entitled to know of it (promise of immunity)" in evaluating the credibility of the witness.<sup>2</sup> The rules set forth in *U.S. v. Maxfield, supra*, should, therefore, be expanded as Judge Ferguson suggested. This could be accomplished by reading paragraph 44g, requiring the trial counsel to disclose evidence favorable to the defense, and 155b, providing that a promise or grant of immunity to an alleged accomplice is relevant to his credibility as a witness, together. This interpretation would give full effect to *Giglio*.

A second implication of the *Giglio* case is that the trial counsel now has an affirmative duty to determine if someone other than he has made a promise or grant of immunity to a witness. In the *Giglio* case, suppression was held to justify a new trial notwithstanding the fact that the prosecution did not know of the promise of immunity. Hence, the trial counsel must determine whether personnel, such as Army criminal investigators or a company commander, who are in a position to offer an

accused a "deal" have made any promises or suggestions of immunity to the Government's witnesses. If such promises are discovered, the trial counsel should take corrective action by informing the witness concerned that the promise in and of itself is without legal effect.<sup>3</sup> Also it appears appropriate to advise the convening authority in the pre-trial advice and post-trial review of the effect these promises may have on the co-conspirator's credibility. If the trial counsel has not conducted an investigation to determine if a witness has been prom-

ised immunity, subsequent revelation of a promise may justify a new trial.

#### Footnotes

1. See 405 U.S. 150, 153, N.A. (1972). The statement by the U.S. Attorney to Taliento actually indicated that the Government would grant him a "favor" if he testified. This fact would distinguish any case in which the Government attorney discover a promise and takes immediate steps to negate it.
2. 405 U.S. 150, 155 (1972).
3. See footnote 1, *supra*.

## SJA SPOTLIGHT

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USMACTHAI/JUSMAGTHAI*

The Kingdom of Thailand, which is popularly known as the "Land of Smiles," is usually remembered fondly by the U.S. Army personnel as an intriguing and enjoyable land with pleasant people where that precious one week of "Rest and Recreation" was spent away from the conflict in Vietnam. The Thais are a genuinely friendly people, and their hospitality is such that Thailand is fast becoming a popular tourist spot, especially for Europeans.

The government is a constitutional monarchy. However, since November 1971, the Kingdom has been under martial law under the control of a National Executive Council comprised of members of the Royal Thai Armed Forces.

### HISTORY OF USMACTHAI/JUSMAGTHAI

In 1950, an agreement concerning military assistance was signed between the United States and Thailand and led to the first U.S. military advisors in Thailand. In 1953, the Army, Navy and Air Force advisors were combined into a joint U.S. Military Advisory Group.

The Southeast Asia Treaty Organization headquarters is located in Bangkok. During SEATO exercises in 1962 in Thailand, logistical problems were discovered in the deployment of troops which led to the creation of a U.S. Military Assistance Command. In 1965, the Military Assistance Com-

mand and the Joint Advisory Group were combined into one headquarters to form the current USMACTHAI/JUSMAGTHAI.

Currently, this organization operates under Army Regulations, is funded and supported by the Navy, and is commanded by an Air Force Major General.

### COMMAND RELATIONSHIPS

The Commander, USMACTHAI/JUSMAGTHAI, as senior military representative acts as coordinating authority over all military and Department of Defense civilian personnel in country. Additionally, he is responsible for the Military Assistance Program and has operational control over Army units located in Thailand. He is also the CINCPAC Designated Commanding Officer to insure protection of the fair trial rights of U.S. military personnel tried by Thai courts.

During the 1960's two major commands developed in support of the Vietnam conflict, namely, 7/13th U.S. Air Force and United States Army Support Thailand (USARSUPTHAI). The 7th Air Force in Saigon has operational control of Thai based aircraft, and the 13th Air Force in the Philippines provides logistical and administrative support. USARSUPTHAI provides logistical and administrative support to Army units in Thailand and, in large measure, to Air Force units.

In addition, there are Navy organizations, Coast Guard units, a Marine tactical air wing, and Department of Defense organizations. This diversity of units provides for an Army JAG the rare opportunity of working with and advising our sister services.

### OFFICE FUNCTIONS

a. *Personnel.* The authorized JTD calls for an Army Colonel, an Air Force Lieutenant Colonel, and an Army Major. Additionally, there is one Army and one Air Force enlisted slot, a Thai legal advisor, and clerical personnel.

b. *Administrative Law.* The Staff Judge Advocate must render advice on numerous legal problems to the Commander and the various staff sections and advisory groups. Also, due to the fact that all bases in Thailand are commanded by the Royal Thai Armed Forces, the Staff Judge Advocate must also help resolve problems of the organizations tenanted at the bases.

Since USMACTHAI/JUSMAGTHAI operates as part of the Diplomatic Mission, the Staff Judge Advocate must continually coordinate legal problems between the different military organizations and the Politico-Military section of the U.S. Embassy. Also, advice concerning Thai Law is provided to the Embassy and military commands by the Thai Legal Advisor.

The Staff Judge Advocate also has an advisory function to his Thai counterpart; that is, the Thai Judge Advocate General as well as frequent coordination with other departments of the Royal Thai Government.

c. *International Law.* This field is perhaps second to Administrative Law in man hours for the office. Opinions regarding interpretations of the agreements and understandings between the U.S. and Thailand are continually being rendered by the office, especially in the fields of taxation and Customs.

Additionally, due to unfavorable historical experience with consular courts, the Thais are very conscious of their jurisdiction in criminal cases. The 1950 agreement extended diplomatic immunity

to members of JUSMAGTHAI. Other military personnel come under the jurisdiction of Thai authorities. Although there is no status of forces agreement, the Thai Government has indicated that the fair trial guarantees normally associated with a SOFA will be adhered to. An Allied Coordinating Committee has been established in order to resolve jurisdiction in favor of the U.S. for duty cases and those strictly limited to U.S. personnel and property. However, this is sometimes a difficult distinction to convey to the Thai Police investigator.

The net result of this situation is that the Thais will exercise jurisdiction in practically all cases. However, the number of cases that actually are tried remains relatively low. The over-all responsibility for resolution of all criminal cases rests with MACTHAI SJA, but the Judge Advocates in the field must spend countless hours coordinating with authorities in order to resolve the cases at the local level.

Due to logistical problems, the different services have cooperated in lending Judge Advocate assistance in this area. The Air Force has handled numerous Army cases, whereas the Army has handled some Navy, Marine, and Coast Guard cases.

d. *Claims.* There is no single service claims responsibility, although this area is under study. As a result, all services ultimately process their own foreign claims. However, informal inter-service assistance is rendered in processing settlement and payment.

This procedure is crucial to handling foreign jurisdiction since the Thai Police investigator has authority to settle under the Thai Criminal Procedure Code many offenses through administrative fines, assuming all parties are satisfied. Thus, claims and foreign jurisdiction go hand-in-hand.

Additionally, personnel claims of U.S. Army members of MACTHAI are processed and approved by this office.

e. *Military Justice.* Although USMACTHAI/JUSMAGTHAI has court-martial jurisdiction, it is rarely exercised due to the high caliber of personnel assigned and the nature of the mission of this command.

USARSUPTHAI is the General Court authority for Army personnel with Special Court authorities in Bangkok and Udorn.

13th Air Force in the Philippines is the General Court authority for Air Force personnel with Special Court authority located at the major air bases. Special Court authority for the bulk of the Marines is located at Nam Phong Air Base. General Court-Martial jurisdiction for Marines and Naval personnel is headquartered in Hawaii.

Due to the tendency of Thai authorities to exercise jurisdiction, court-martial activity is generally limited to military offenses and those strictly involving U.S. personnel or property.

Disciplinary action may not be taken for those cases in which there is an active Thai interest or investigation without the approval of MACTHAI SJA. This office oftentimes finds itself embroiled in the disciplinary actions of all the services. By necessity, this situation requires close coordination with the U.S. Embassy due to the international sensitivity of certain incidents. Also, it is not unusual for Army JAG's in the field to find themselves advising Army, Air Force, Navy, Marine or Coast Guard personnel on military justice matters.

f. *Procurement Law.* Both the Army and Air Force have centralized procurement offices located in Bangkok and under their respective commands. Navy contracting is done through the Officer in Charge of Construction which is a separate Navy organization in Bangkok. Although the Staff Judge Advocate office does not get involved in the actual contracting process, many disputes arising from these contracts and Thai authorities or individuals must oftentimes be resolved by the MACTHAI SJA.

g. *Legal Assistance.* Each command generally handles its legal assistance problems which are similar to other short-tour areas with the exception of Bangkok which is an accompanied area and has a large amount of landlord-tenant disputes.

### CONCLUSION

An excellent spirit of cooperation exists among the U.S. Armed Forces Judge Advocates in Thailand. A tour at USMACTHAI/JUSMAGTHAI can be a very challenging, interesting, and frustrating experience. It offers many unique career developing aspects. Although many complaints may be heard throughout the tour, it is rare, indeed, when a person does not seriously consider an extension of his tour.

## REPORT FROM THE U. S. ARMY JUDICIARY

### ADMINISTRATIVE NOTES

*United States v. Calley.* The hearing in the case of *United States v. Calley* was held on Monday, 4 December 1972, before Panel 2 (Judges Vinet, Clause, and Alley), United States Army Court of Military Review. Arguing for the appellant were Mr. George Latimer and Captain J. Houston Gordon; also appearing on the brief for appellant, though not making an oral presentation, was Captain Richard M. Evans. Representing the United States during the oral arguments were Captains M. Douglas Deitchler, Robert C. Roth, Jr., and Merle F. Wilberding; Lieutenant Colonel Ronald M. Holdaway also appeared on the Government's brief and made a few introductory remarks. The Court has taken the case under advisement.

### RECURRING ERRORS AND IRREGULARITIES

a. *Advice as to Appellate Defense Counsel.* Some trial defense counsel are failing to properly advise accused persons of their appellate rights. Instances have come to the attention of the Court of Military Review where an accused did not request appellate counsel because he received no advice, but was merely told to sign a form. In other instances, advice was given but was inadequate because it failed to advise the accused that the Army Court of Military Review has the power to evaluate sentence appropriateness. All staff judge advocates and defense counsel should take appropriate steps to assure that accused persons are given adequate advice as to their appellate rights.

b. *Conflicting Capacities of Counsel.* The Army Court of Military Review continues to receive records of trial containing procedural errors that could easily be avoided. One type of avoidable error is caused when a set of charges is referred to trial by a particular court-martial, upon which counsel A is designated as Trial Counsel and counsel B is designated Defense Counsel. Thereafter, for some generally valid reason, the original order is amended or the charges are re-referred to another court-martial. This amendment or new referral causes A to become the appointed Defense Counsel (or he acts as individual counsel) or, in the alternative, B becomes the Trial Counsel. Another variation is where an attorney represents an accused at some pretrial proceeding, such as an Article 32 Investigation or the taking of a deposition, and thereafter, because of continuing amendments, appears for a time as Trial Counsel even though he may not actively participate in the case.

The usual record of trial reflects only the standard disclaimer that "no member of the prosecution has acted for the defense" or *vice versa*. Standing alone, this disclaimer is hardly sufficient to overcome the presumption of disqualification (*U.S. v. Paroz*, 43 CMR 685 (1971)). Accordingly, the Army Judiciary has directed all military judges to require the Trial Counsel in each trial by court-martial to present to the military judge at or before the beginning of such trial a copy of the third indorsement of each charge sheet pertaining to the particular trial, together with any amendments thereto, as well as a copy of each court-martial convening order, with amendments, listed in those third indorsements. It will be the joint responsibility of each of the counsel and of the military judge to clarify *on the record* of trial any ambiguity caused by the several amendments. This requirement is an express holding in *Paroz*, *supra*, at 688.

c. *Careless Errors Contained in DD Form 494.* The Army Court of Military Review continues to be plagued by records of trial containing carelessly and poorly prepared DD Forms 494, Court-Martial Data Sheet. The forms in question simply involve basic factual misstatements which even a casual perusal of the record would reveal to be incorrect. While these errors may not amount to false official statements, they do constitute serious dereliction of duty and, where there are so many misstatements

with respect to such uncomplicated issues, some doubt is cast upon the accuracy and regularity of the record as a whole. Trial counsel, staff judge advocates, and convening authorities are urged to check and insure the accuracy of the completion of this form.

d. *Service of COMR Decisions.* "Request for Final Action" forms should not be used in cases involving officers who have an approved sentence to dismissal. In such cases, HQDA (JAAJ-CC) will be advised, in writing, by the general court-martial authority when 30 days have elapsed from the date of service of the ACOMR decision without receipt of a petition for grant of review. In this connection, staff judge advocates are reminded that a sentence to a dismissal may not be ordered into execution until it has been approved by the Under Secretary of the Army. Final supplementary court-martial orders in these cases will be prepared and published by HQDA.

e. *Petitions for Grant of Review.* An accused has 30 days from the date that he receives the ACOMR decision within which to petition the United States Court of Military Appeals for a grant of review. If he is not timely, the petition may be dismissed upon motion by the Government. Hence it is essential that the date that the petition is received by the general court-martial authority be stamped on the petition. The designation of the command should also be shown.

f. *November 1972 Corrections by ACOMR of Initial Promulgating Orders:*

(1) Showing, incorrectly, that the sentence was adjudged by a Military Judge.

(2) Showing, incorrectly, charges and specifications that were not in fact referred to the court-martial for trial.

(3) Showing, incorrectly, that the accused was charged with desertion under Article 85 rather than an unauthorized absence in violation of Article 86.

(4) Failure to show that the sentence was adjudged by a Military Judge—three cases.

(5) Failure to show in the PLEA Paragraph that a plea of guilty to a specification had been withdrawn and a plea of not guilty entered.

**MONTHLY AVERAGE COURT-MARTIAL  
RATES PER 1000 AVERAGE STRENGTH  
JULY—SEPTEMBER 1972**

	<i>General CM</i>	<i>Special CM</i>		<i>Summary CM</i>
		<i>BCD</i>	<i>NON-BCD</i>	
ARMY-WIDE	.15	.06	1.00	.74
CONUS (incl ARADCOM)	.18	.08	1.18	.84
MDW	-	-	.10	.03
First US Army	.36	.13	1.50	.87
Third US Army	.12	.04	1.49	.54
Fifth US Army	.13	.09	1.10	1.31
Sixth US Army	.16	.05	.75	.60
USARADCOM	-	-	.69	-
OVERSEAS	.08	.04	.67	.58
USA Alaska	.13	.10	1.04	.47
USA Forces So. Cmd	-	-	.63	1.74
USAREUR	.06	.04	.54	.56
Pacific Area	.13	.04	.90	.51

Note: Above figures represent geographical areas under the jurisdictions of the commands and are based on average number of personnel on duty within those areas, excepting ARADCOM personnel.

**NON-JUDICIAL PUNISHMENT  
MONTHLY AVERAGE AND QUARTERLY  
RATES PER 1000 AVERAGE STRENGTH  
JULY—SEPTEMBER 1972**

	<i>Monthly Average Rates</i>	<i>Quarterly Rates</i>
ARMY-WIDE	19.26	57.78
CONUS (incl ARADCOM)	18.99	56.98
MDW	4.23	12.69
First US Army	17.32	51.95
Third US Army	22.52	67.56
Fifth US Army	21.49	64.48
Sixth US Army	15.85	47.54
USARADCOM	10.48	31.45
OVERSEAS	19.72	59.16
USA Alaska	15.60	46.81
USA Forces So. Cmd	16.43	49.28
USAREUR	21.14	63.43
Pacific Area	17.82	53.45

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas, excepting ARADCOM personnel.

## CLAIMS ITEMS

*From: U.S. Army Claims Service, OTJAG*

### 1. Evidence to Substantiate Cost of Repairs.

This Service has received numerous complaints from claimants in regard to the need for them to supply an estimate of repair even for slight damages. They also allege that little or no aid can be obtained from certain claims offices in regard to where estimates of repair can be secured. This problem seems to be particularly aggravating to claimants who have just arrived in an overseas assignment.

Claims officers are strongly urged to make liberal use of the authority granted under paragraph 11-1d(1), AR 27-20, to reach an "agreed cost of repairs" with the claimant. Where the amount claimed for repair of any item is less than \$100, the "agreed cost of repairs" method will quite often be the most economical and practical means of measuring the claimant's loss. A more extended reliance on the "agreed cost of repairs" method should greatly aid in reducing the aggravation usually associated with locating reputable merchants and repairmen to make estimates in a location which is entirely new to the claimant. In addition, where estimates are necessary, the claims officer should establish a local standing operating procedure to inform and aid claimants in locating reputable merchants who will provide timely estimates upon request.

### 2. Damage or Loss of Motor Vehicles Incident to Service—On the Installation.

Several situations of general application concerning claims cognizable under paragraph 11-4f(4) of AR 27-20 have recently arisen that warrant further guidance to claims approving and settlement authorities.

a. The first situation involves the question of whether collision damage is covered by paragraph 11-4f(4). The paragraph applies to members whose vehicles are parked on an installation and are damaged as a result of a hit-and-run incident. Collision damage, however, when the vehicle is being operated on the installation at the time of the incident is not covered. When the vehicle is moving, this Serv-

ice does not consider the damage caused by the collision as recoverable within paragraph 11-4f(4) of AR 27-20 because it does not constitute an "unusual occurrence." When the vehicle is parked and damaged by a hit-and-run driver, this type of incident may be considered an "unusual occurrence" and should be approved as a payable claim, provided the damage resulting from the hit-and-run incident is extensive damage and more than crumpled fenders, minor dents, nicks and scratches. Extensive damage would include damage to the extent that the vehicle cannot be moved under its own power or where the damage exceeds \$100.00 to \$200.00 as a general rule, depending upon the charges for repair costs in a particular geographic area. If hit-and-run damage is caused by a Government vehicle while being used for official purposes, the claim should be processed as a tort claim under Chapter 3 or Chapter 4, AR 27-20. If the Government vehicle was not being used for official purposes, and the military driver is identified, possible use of Article 139, UCMJ, and Chapter 9, AR 27-20 should be considered.

b. Where the member parks his vehicle at a parking place provided by the Officers' Open Mess or an NCO club at night and it is damaged or stolen, the fact that the vehicle was parked on the installation is *not* in and of itself justification for paying the claim. The parking of the vehicle must be in a place which is authorized and a place which is reasonable under the circumstances. In addition, the parking of the vehicle must be for a purpose which is incident to the claimant's service, which may not be the case where the vehicle is parked outside a mess or club at night. In addition, parking of a vehicle on a post incident to hunting or fishing on the installation would normally not be considered a purpose which is incident to the claimant's service. Where a vehicle is parked outside of a mess at night while the claimant is attending a mandatory command function, however, such a purpose would be considered incident to service.

c. This Service has received several inquiries concerning the coverage of paragraph 11-4f(4) where the commander does not have sufficient security resources to properly provide security for

boats and house trailers which are within the installation. Under these circumstances, the commander should require, as a prerequisite to permitting the boat or house trailer on the installation, that the service member state that he has insurance, which at a minimum covers all risks as provided for in paragraph 11-4f(4). This Service has received several inquiries concerning various aspects of what constitutes an "unusual occurrence" under paragraph 11-4f(4) of AR 27-20. This Service will publish periodically in *The Army Lawyer* the guidelines developed for certain situations in order to assure a degree of uniformity. It should be noted, however, that no attempt has ever been made to

completely define the term "unusual occurrence" since an all-inclusive definition is not possible.

### 3. National Guard Claims.

The National Guard Claims Act (32 U.S.C. 715) was amended by Public Law 92-445, 29 September 1972, to permit the law of the situs to be applied in determining the effect of any negligence of the claimant, his agent, or his employee on claimant's right to recover damages. Paragraph 6-4u, AR 27-20, will be changed when the next change to AR 27-20 is published. This change in the law is applicable to pending claims without regard to date of accrual.

## HEARING REQUIRED FOR VACATION OF SUSPENDED SENTENCES TO CONFINEMENT

The following is a reprint of DA message 1972/12992 concerning vacation of suspended sentences to confinement.

1. On 29 Jun. 72, in the case of *Morrissey v. Brewer*, 40 LW 5016, the United States Supreme Court held that due process requires an administrative hearing structured to assure that the findings of a parole violation will be based on verified facts.
2. Hearings pursuant to Article 72, UCMJ, are considered to provide due process to the probationer. To insure service members receive due process in other cases, effective upon receipt of this message, a hearing is required prior to the vacation of any suspended sentence to confinement regardless of the type court imposing the sentence.
3. The appropriate convening authority competent to convene, for the command in which the probationer is serving or assigned, a court of the kind that imposed the sentence, will cause a hearing to be conducted. The hearing may be conducted by a hearing officer or the convening authority that will take action on the suspended sentence. The probationer is entitled to military counsel at the hearing.
4. The hearing is to determine the facts concerning the alleged violation(s) of probation. The probationer will be given written notice of the hearing and of the alleged violations. All evidence pertaining to the alleged violations will be made available to the probationer, and he will be given the opportunity to confront and cross-examine adverse witnesses (unless good cause is shown). He will

be given the opportunity to be heard in person and to present witnesses and documentary evidence in his behalf.

5. The hearing officer will make a report of findings of fact and make recommendations. The report will include a statement of the alleged violations of probation and a short summary of the evidence in support of the allegations and any evidence submitted by the probationer.
6. Petitioner may make a knowing and intelligent waiver of counsel. Such a waiver is permissible only after consultation with lawyer counsel, or, after the probationer affirmatively declines such consultation. The hearing officer will verify whether the accused has consulted with lawyer counsel or affirmatively declines such consultation. He will then ascertain whether the accused waives representation by lawyer counsel; and, if applicable, will indicate such waiver in his report.
7. The probationer may make a knowing and intelligent waiver of the actual hearing. This will not be done until the decision concerning representation by counsel has been made. If the probationer waives the hearing, the hearing officer will indicate this in his report but will, nevertheless, make findings of fact and recommendations.
8. As an interim guide, DD Form 455 may be used to prepare the report. However, the use of this form is optional.
9. Convening authorities may utilize military judges as hearing officers when they are available.

## RELEASE OF SERVICEMEN TO CIVILIANS

*From: Military Justice Division, OTJAG*

It is the policy of the Army to deny a serviceman a shield from a just civilian prosecution. Paragraph 6, AR 600-40, is the source of authority for release of servicemen to civilian authorities for prosecution of civilian offenses. It gives the commander a means of insuring that there is reasonable cause to believe that the offense charged was committed by the person sought for delivery. Paragraph 6(c) sets out the requirements which civilian authorities must comply with before a commanding officer will authorize delivery.

Most states have adopted the Uniform Criminal Extradition law, which authorizes civil authorities who are in possession of a fugitive warrant, signed by the governor of that state, to arrest the accused. A warrant may also be issued by a judge or an arrest may be made without a warrant. AR 600-40 authorizes the surrender of a serviceman only upon presentment of an indictment, presentment, information, or warrant together with sufficient

information to identify the person sought as the person who allegedly committed the offense charged. Thus a serviceman is protected from apprehension which has not been authorized by the governor or judicial authority.

It has come to the attention of the Office of The Judge Advocate General that some states require that the serviceman be taken into custody by local authorities in order for the requesting state to begin extradition procedures. There is nothing in the regulation which prohibits an authorized commander from surrendering a serviceman to local authorities for delivery to the requesting state as long as the authorities, to whom the commander delivers the serviceman, comply with the requirements of paragraph 6(c) at the time the serviceman is turned over to them. Generally, the requirements of the Uniform Criminal Extradition Law meet these requirements.

## ARTICLE 138 CHANGE

The Judge Advocate General recently initiated a message change to Army Regulation 27-14,

This change excludes from the scope of complaints UP Article 138, USMJ, appeals from adverse OER's. In order that judge advocates may fully advise personnel seeking guidance, the rationale for the change was as follows:

a. In view of the far-reaching impact of such appeals, not only on the individual but on his contemporaries as well, the best interests of the Army

would be served by having such appeals finally adjudicated by a single agency.

b. The appeal procedure set forth in Chapter 8, Army Regulation 623-105, 16 October 1972, affords to the officer desiring to appeal an adverse OER a thorough review of his alleged grievances.

c. As Article 138, UCMJ, is by its express terms limited to wrongs alleged to have been committed by an individual's commanding officer, the remedy is not available to officers rated, indorsed, and reviewed in the staff chain.

## RESERVE POINTS FOR PILOT LEGAL ASSISTANCE PROGRAM

Reserve JAGC officers may earn retirement points by participating in the Pilot Legal Assistance program. Under this program, the Reserve JAGC officer will become the attorney of record for qualified servicemen who have cases in which a legal assistance officer is authorized to participate.

Interested officers should write to Deputy Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901. Prior to assuming any duties as a special legal assistance officer it will be necessary to be certified. Requests for certification will be examined and

necessary orders will be published on qualified Reserve officers.

Referral of cases will be accomplished by the local installation's Pilot Legal Assistance Program supervisor who will retain responsibility for the screening of clients and cases to determine whether they qualify under the Program.

The basic criterion of eligibility for assistance under the program is economic hardship. Members in the grade of E-4 and below, and their dependents, may generally be accepted as clients. However, even in this category of persons, those who are, without economic distress, able to pay legal fees will be required to retain civilian counsel at their own expense. Members above the grade of E-4

and their dependents may also be eligible provided they meet this basic standard. The staff judge advocate supervising the legal assistance office will request a financial statement from the latter category of individuals in order to justify providing such assistance.

Reserve officers serving as special legal assistance officers will be awarded retirement points only. They will receive no military pay and will not be able to accept any fees for their services. Under the provisions of AR 140-185, retirement points will be authorized at the rate of one retirement point for each two hours devoted to such duties including participation in cases requiring appearance in local courts.

## LEGAL ASSISTANCE ITEMS

*From: Legal Assistance Office, OTJAG*

### POW/MIA AFFAIRS—SGLI INSURANCE

A directive from the Administrator of Veterans Affairs announced on November 30, 1972 makes possible the payment of as much as \$5,000 to \$10,000 additional in life insurance to families of some servicemen listed as missing in action in Southeast Asia who are later determined to have died.

Affected are servicemen placed on the missing in action list prior to September 29, 1965, when Servicemen's Group Life Insurance (SGLI) first became available, and those reported missing before June 25, 1970, when the amount of insurance was increased from \$10,000 to \$15,000.

Donald E. Johnson, Administrator of Veterans Affairs, approved a new VA regulation under which SGLI coverage will be deemed to have continued until the Department of Defense officially terminates the "missing" status.

Under normal insurance practices no insurance would be payable where death occurred before the insurance went into effect and only the lower amount would be paid where death occurred before the insurance was increased.

Under the new rule insurance will be provided if the member was "missing" when the policy became effective and the increased amount will be

payable if the "missing" status continued through June 25, 1970 even though it may develop that death occurred at an earlier date.

Mr. Johnson explained that the new rule is limited to Servicemen's Group Life Insurance. That Program is unique in that the coverage and increased coverage were provided automatically based on the missing serviceman's continuing pay status.

In any other situation life insurance would have been in effect when the missing status commenced, the amount would be the same when death actually occurred and premiums paid after death would be returned. However, that approach in the SGLI Program would lead to survivors receiving no insurance or a lesser amount of insurance when they had been led to believe the full amount was in force, and premiums had been deducted from service pay on that basis. Such a result would be inequitable Mr. Johnson said.

Mr. Johnson explained that when the hostilities cease it will no doubt be established that some members who have been listed as missing in action were in fact dead before the insurance went into effect or before it was increased to \$15,000.

In dealing with all veterans benefits for POW's, MIA's and their families Mr. Johnson said "this same compassionate approach will be used to the maximum extent possible under the law."

**POW/MIA AFFAIRS—FEDERAL INCOME TAX**

The following IRS News Release clarifies the income tax status of military pay of a serviceman listed as a POW/MIA who is later found to have been dead during this time (IR-1270, December 5, 1972):

Washington, D. C.—Military pay of a serviceman listed as missing in action or as a prisoner of war in Vietnam remains exempt from Federal income tax even where the serviceman is later found to have been dead during this time, Commissioner of Internal Revenue Johnnie M. Walters said today.

Mr. Walters said that contrary to a recent news story, the IRS had no intention of collecting back income taxes on the serviceman's compensation from his widow or relatives.

The Commissioner pointed out that a law enacted by Congress on April 26, 1972 (Public Law 92,279) amended the Internal Revenue Code to provide that the gross income of a member of the armed forces does not include compensation paid during any month the serviceman is officially listed as missing in action or a prisoner of war.

The IRS announcement was prompted by a news service story that a naval officer who returned last September after 49 months as a POW brought said news for the wife of another POW. According to the article, the wife believed her husband was a POW, and so did the Navy, which had continued paying her his salary for the past four years. But the returning naval officer reported that her husband had died 11 days after his plane was shot down on June 11, 1968. On the basis of the returning officer's report, the Navy removed the POW's name from the missing list and placed it on the list of those dead.

The news story said that on the basis of IRS Revenue Ruling 75-53 the widow would be liable for back income taxes on the Navy salary she received for the four years her husband was dead. However, the IRS said that it has not sought to collect taxes, and explained that the Revenue Ruling does not mean that the military pay of a serviceman whose status changes from missing to deceased is ineligible for tax exemption. The IRS

also said it will amplify the Revenue Ruling to make clear that it does not apply to such a situation.

**Bar Association Support of the Pilot Legal Assistance Program**

Following the resolution of the Federal Bar Association supporting the pilot legal assistance program, which was adopted last spring, the American Bar Association House of Delegates, adopted the following resolution concerning the pilot program.

**RECOMMENDATION**

Submitted by the Standing Committee on Legal Assistance for Servicemen.

*Whereas*, The Honorable Melvin R. Laird, Secretary of Defense, in a letter dated August 1, 1970 to the President of the American Bar Association requested the aid of the American Bar Association in a Pilot Project of expanded legal assistance for military personnel and their dependents who are unable to pay legal fees; and

*Whereas*, The Board of Governors on August 13, 1970, adopted a resolution supporting the expansion of the then existing military legal assistance program through the establishment of a Pilot Program; and

*Whereas*, The Secretary of Defense requested an evaluation of the Pilot Project by the American Bar Association; and

*Whereas*, The American Bar Association Standing Committee on Legal Assistance for Servicemen has reviewed the Pilot Project as it has operated to date and has found the continuance of the program as expanded to be in the public interest.

*Resolved*, That the American Bar Association supports the legal assistance program of the Armed Forces, including representation of military personnel and their dependents, who are unable to pay legal fees, in civil and criminal matters, before Federal, State, and local courts and administrative agencies; and

*Further Resolved*, That the American Bar Association recommends that the Department of Defense and the Department of Transportation continue such expanded legal assistance program.

*Further resolved*, That the American Bar Association recommends that the Department of Defense and the Department of Transportation provide the personnel, logistical and budgetary support necessary for such expanded legal assistance

program; and

*Further Resolved*, That the American Bar Association recommends that consideration be given to the creation of a specific legislative basis for the legal assistance program.

## SCHEDULE OF COURSES

The following is the schedule of short courses offered by The Judge Advocate General's School through August 1973:

5F-F12	3d Advanced Procurement Attorneys'	8 Jan-19 Jan 73	2 wks
	9th Senior Officer Legal Orientation	22 Jan-24 Jan 73	3 days
	2d Civil Law Paraprofessional	5 Feb-9 Feb 73	1 wk
	10th Senior Officer Legal Orientation	19 Mar-21 Mar 73	3 days
5F-F10	8th Law of Federal Employment	26 Mar-30 Mar 73	1 wk
	*3d Staff Judge Advocate Orientation	7 May-11 May 73	1 wk
	*3d Staff Judge Advocate Orientation	7 May-11 May 73	1 wk
5F-F13	3d Litigation	14 May-18 May 73	1 wk
5F-F5	13th Civil Law I	4 Jun-15 Jun 73	2 wks
5F-F5	Law of Military Installations Phase	4 Jun-8 Jun 73	1 wk
5F-F5	Claims Phase	11 Jun-15 Jun 73	1 wk
	**2d Judge Advocate Operations Overseas	4 Jun-8 Jun 73	1 wk
5F-F9	12th Military Judge	9 Jul-27 Jul 73	3 wks
5F-F3	17th International Law	9 Jul-20 Jul 73	2 wks
5F-F2	11th Civil Law II	23 Jul-3 Aug 73	2 wks
5F-F2	Personnel & Administrative Law Phase	23 Jul-27 Jul 73	1 wk
5F-F2	Legal Assistance Phase	30 Jul-3 Aug 73	1 wk
5F-F1	15th Military Justice	13 Aug-24 Aug 73	2 wks
5F-F1	Administration of Military Justice Phase	13 Aug-17 Aug 73	1 wk
5F-F1	Trial Advocacy Phase	20 Aug-24 Aug 73	1 wk
5F-F11	56th Procurement Attorneys'	13 Aug-24 Aug 73	2 wks

\* By Invitation Only

\*\* For Active Army Under Orders to Foreign Areas

## PERSONNEL SECTION

From: PP&amp;TO, OTJAG

1. **RETIREMENTS.** On behalf of the Corps, we offer our best wishes to the future to the following personnel who retired.

Colonel Edward V. Haughney, 30 November 1972.

2. **ORDERS REQUESTED AS INDICATED:**

## COLONELS

NAME	FROM	TO	APPROX DATE
SENECHAL, James F	USARV	USA Jud, Wash DC	Jan 73

## LIEUTENANT COLONELS

PASSAMANECK, David	USA Judiciary	Arl Hall Sta. Wash DC	Dec 72
RYKER, George C	OCLL, Wash DC	Stu Det AFSC	Jan 73

## CAPTAINS

ARMSTRONG, Thomas	USA Gar, Ft Riley, Ks	USA Gar, Cp McCoy	Jan 73
BRAWLEY, Michael	Korea	USATC, Ft Ord, Ca	Mar 73
BRUMMETT, William	USA Judiciary, Wash DC	Korea	Feb 73
CARTE, Gene Jr.	USAIC, Ft Benning, Ga	Korea	Feb 73
CHANDLER, Ray E	USA Gar, Ft Leavenworth, Ka	USAREUR	Jan 73
CRAMER, William B	4th Inf Div, Ft Carson, Colo	USA Scty Agcy, Ft Geo. G. Meade	Jan 73
CULP, King K	66th Basic Class	Avn Sys Comd, St. Louis, Mo.	Jan 73
DENT, Danny V	USA Armd Center, Ft Knox, Ky	USA FA Center, Ft Sill, Okla	Jan 73
DOUGHERTY, John A	USAREUR	Letterman G.H. Presidio of S.F. Ca.	Jan 73
GLASS, Glen A	USATC, Inf, Ft Dix, N.J.	Korea	Feb 73
HART, John M. Jr.	USA Gar, Ft Meade, Md	Korea	Feb 73
HERBERT, Ted B	66th Basic Class	USARBCA, Okinawa	Jan 73
MILLIGAN, Michael	USAREUR	III Corps, Ft Hood, Tx	Feb 73
MOUL, John F	FA Center, Ft Sill, Okla	Armor Cen, Ft Knox, Ky	Jan 73
OLIVE, Robert S	JFK Center, Ft Bragg, NC	Korea	Feb 73
PONZIO, James T	US Armd Center, Ft Knox, Ky	USASTRATCOM, Ft Huachuca, Ariz	Feb 73
ROSE, Albert S., Jr.	Korea	USASA, Arl Hall, Va	Feb 73
SCULLY, Francis J	Fitzsimons G.H. Colo.	USARSUPCOM Thailand	Feb 73
SWINDLE, Arthur J	USA Gar & III Corps, Ft Hood	OTJAG, Wash DC	Jan 73
WHITFIELD, Leonard	USAADC, Ft Bliss, Texas	Korea	Feb 73

3. **Congratulations to the following officers who received awards as indicated:**

LTC Taylor, Arthur H	Meritorious Service Medal	Jul 71 - Aug 72
MAJ Rankin, Thomas M	Meritorious Service Medal	May 70 - Aug 72
CPT Ashburn, James P	Army Commendation Medal	Jun 71 - Dec 72
CPT Finnegan, Richard N	Army Commendation Medal	Jan 72 - Aug 72
CPT Lang, Neil S	Army Commendation Medal (2d OLC)	Sep 71 - Nov 72
CPT Murdoch, James W	Army Commendation Medal	Oct 70 - Dec 72
CPT Richards, Edwin	Joint Service Commendation Medal	Nov 71 - Nov 72

4. The following officers have been selected for advanced schooling as indicated:

Armed Forces Staff College  
Major Frank R. Stone, Jr.  
Command & General Staff College  
LTC Hugh E. Hensen  
Major Raymond A. Cole  
Major Raymond C. McRorie  
Major James A. Endicott, Jr.  
Major James R. Coker  
Major Paul H. Ray  
Major Robert E. Murray  
Major Frances D. O'Brien  
Major Daniel W. Shimek

#### 5. Advanced Degree Recipients

Officers completing requirements for advanced degrees should notify PP&TO when the degree is awarded. In some cases, special assignments may be available for officers with advanced degrees. Please include in your letter the exact nature of the degree, date, school, and the title of thesis, dissertation, or other writing done while in pursuit of the degree. Your cooperation will aid us in pursuing the most efficient and mutually satisfactory personnel placement policies.

#### 6. Legal Clerks and Court Reporter Personnel Roster.

A Legal Clerks and Court Reporter Personnel Roster was recently distributed to major staff judge advocate offices. If enlisted personnel find errors as to status or unit of assignment they should report such errors to their personnel officers so that the master enlisted personnel list can be corrected.

7. **Court Reporter.** A certified shorthand court reporter is looking for an overseas European court reporter civil service position. Write to: Mrs. Sandra J. Palmer, Rt. 5, Box 568-B, Little Rock, Ark. 72207.

8. **In memorium:** Mrs. Alice F. Schaefer, long time employee of the Department of the Army in the Chicago area died on 2 December 1972.

9. **201 Files.** Is your "201 File" photo up to date? School Selection Boards and Promotion Boards consider a current photo important!

#### 10. Association of Trial Lawyers Membership.

The Board of Governors of The Association of Trial Lawyers of America (formerly known as the

American Trial Lawyers Association) recently approved a special class of membership for judge advocates on active duty in the Armed Forces. Membership dues for this new class of membership is \$8.00 per year as opposed to the normal dues of \$20.00 per year for those admitted to practice for less than 5 years and \$55.00 per year for those admitted to practice for more than 5 years. Members of The Association of Trial Lawyers of America will receive the Association's newsletter, the ATL Law Journal and TRIAL, a national legal news magazine. If you are interested in taking advantage of this new class of membership in The Association of Trial Lawyers of America you should write to Professor William Schwartz, General Director, The Association of Trial Lawyers of America, 20 Garden Street, Cambridge, Massachusetts 02138.

#### 11. ADVANCED COURSE ATTENDANCE

a. *General.* The Judge Advocate General considers attendance at the JAGC Advanced Course essential for the full professional development of a career judge advocate and as the major basis for the training, development, and selection of officers destined to serve as Staff Judge Advocates and Deputy Judge Advocates. The course provides in-depth training and exposure in each major functional area of military law, with emphasis on the role of a senior legal adviser to an important command, and affords an officer the opportunity to exchange ideas and experiences with his colleagues in an atmosphere free from operational requirements. Upon successful completion of the course, each officer is considered fully qualified to perform all types of legal duties at all levels of command. The Advanced Course is also a pre-requisite for higher level military schooling, such as Command and General Staff College and Armed Forces Staff College.

The JAGC follows Department of the Army policy that *all qualified* officers should attend their branch Advanced Course between the fourth and eighth year of service. Because of the professional nature of the JAGC mission and the level of instruction provided at TJAGSA, officers with longer service occasionally will be selected. Judge Advocate officers should seek Advanced Course attendance at the earliest possible time in their careers.

While attendance is voluntary, declination could adversely affect both an officer's professional development and his future career opportunities. Efficiency reports and officer record briefs reflect military school development which is an important item of consideration by selection boards. Thus there is no substitute for attendance at the Advanced Course.

*b. Constructive Credit.* Constructive credit for The Judge Advocate General's Corps' Advanced Course will be awarded only where equivalent knowledge and experience is clearly demonstrated. An individual who for some reason is unable to attend the resident advanced course should pursue the non-resident course. If either of the above is impracticable, constructive credit may be awarded. The following criteria are illustrative of the standard to be considered.

1. Because of age or years of service, the officer is no longer under consideration for attendance at the C&GSC or the Armed Forces Staff College.

2. He has successfully completed short courses in several fields in residence at The Judge Advocate General's School.

3. He has prepared an article suitable for publication in the MILITARY LAW REVIEW or other law review.

4. He has demonstrated equivalent knowledge based on the following factors:

(a) Scope and variety of tasks and how well performed.

(b) Degree or level of responsibilities.

(c) Experience gained in various positions of increasing responsibility coupled with a potential for future performance.

(d) Length of service and maturity.

(e) Moral standards.

(f) Integrity and character.

(g) Military and civil education.

The total man concept will govern. No specific qualification is a pre-requisite in this area and thus no single factor will be allowed to become overriding in determining whether an officer should be selected for constructive credit.

Applications should be addressed to TJAG,

ATTN: Chief, Personnel, Plans and Training Office, Department of the Army, Washington, D. C. 20310, The Commandant, The Judge Advocate General's School, U.S. Army, may award a diploma and constructive credit to members of the staff and faculty. The Judge Advocate General's School, in accordance with the provisions of Army Regulation 351-1 and such implementing regulations as he may prescribe.

*c. Specialty Areas of the Law.* The Judge Advocate General recognizes the importance of developing officers with specialized abilities to enable the Corps to provide legal services in areas requiring technical expertise. The Corps needs both "generalists" and "specialists." However, legal specialists are most valuable after they have become thoroughly grounded through experience, schooling and training in all the principal areas of the law. The Advanced Course provides schooling and much of the training and fills in voids in an officer's professional background. For these reasons, officers who desire to specialize in a particular area of the law should normally do so following attendance at the Advanced Course.

*d. Advanced Civil Schooling.* JAGC officers are encouraged to pursue graduate legal studies at civilian educational institutions, either in their individual capacity, or as a participant in the JAGC civil schools program. It is important to realize, however, that while a graduate legal degree complements a diploma from TJAGSA, it is not a substitute for actual attendance at the Advanced Course. Preference is given to Advanced Course graduates in selecting officers to attend civil schools at Government expense.

## 12. SELECTION OF MILITARY JUDGES

1. To be a military judge, a JAGC officer must have a broad background of military justice experience. He must have impeccable moral character, an even temperament, good judgment, common sense, and sound reasoning ability, patience, integrity, courage, a non-abrasive personality, and a high degree of maturity. He must be able to express himself, orally and in writing, in a clear, concise manner. It is also important for him to have an understanding of, and experience in, the principles and problems of leadership and exhibit a neat and military appearance.

2. General Courts-Martial military judges are selected from qualified applicants in the following order:

- a. Colonels with prior experience as a military judge.
- b. Lieutenant Colonels with prior experience as a military judge.
- c. Other highly qualified colonels and lieutenant colonels.
- d. Exceptionally well qualified majors with extensive experience as a special court-martial judge.

3. Special Courts-Martial military judges are selected from qualified applicants in the following order:

- a. Majors
- b. Promotable captains.
- c. Captains who have completed their obligated tour of service and are in a Regular Army or voluntary-indefinite status in excess of one year's service remaining on an extension.
- d. Other highly qualified company grade officers who have at least two and one-half (2-½) years of JAGC service and in excess of one year's service remaining.

4. The Judge Advocate General personally selects and certifies the officers who serve as general courts-martial, special courts-martial and part-time special courts-martial military judges.

5. It is the policy of TJAG to certify only appropriately qualified colonels and lieutenant

colonels to fill authorized vacancies in the US Army Judiciary for general court-martial judges. As two exceptions to this policy, (1) a qualified major may be certified to fill an authorized space for a general court-martial judge when no qualified colonel or lieutenant colonel is available, and (2) a major occupying a special court-martial judge and authorized to preside over those specific cases designated by the Chief Judge of a circuit when, because of distance, workload, or other pertinent factors, it is impracticable to make a regular general court-martial judge available. Selection of majors for certification as a general court-martial judge will be made on a "best qualified" basis from applicants meeting the following criteria:

- a. Completion of eight (8) or more years' active service as a Judge Advocate or ten (10) or more years active duty service;
  - b. Completion of the Military Judge Course;
  - c. Performance of duties involving the active practice of military criminal law for not less than five (5) years (post graduate civilian or military schooling in criminal or military law subjects may be counted at active military law practice); or
  - d. Performance of duty as a fulltime special court-martial judge for not less than three (3) years.
6. Officers interested in applying for the full-time military judge program should make their desires known to the Chief Judge, United States Army Court of Military Review and the Chief, Personnel, Plans and Training Office, Office of The Judge Advocate General.

## CURRENT MATERIALS OF INTEREST

### Articles

Note, Taps for the Real Catch-22, 81 Yale L.J. 1518 (1972) (discusses Article 133 and 134).

Note, Judicial Review and Remedies for the Unsuccessful Bidder on Federal Government Contracts, 47 NYU L. Rev. 496 (1972).

### AR's

AR 190-14, 14 Nov. 1972, effective 15 Jan. 1972 "Carrying of Firearms." This revision changes

specific guidelines on the carrying of firearms by DA personnel.

### DA Pam

DA Pam 27-163, "Procurement Law," November 1972 has just been distributed to the field.

### Contest

An award of \$500 will be presented next fall for the best speech submitted in the 1973 Judge Edward R. Finch Law Day U.S.A. Speech Award

competition. Deadline for entries is June 15, 1973.

Entry rules for the sixth annual nationwide Law Day speech competition are now available from the American Bar Association, Special Events Department, Division of Communications.

The awards program is open to any lawyer or layman who addresses a Law Day observance in the United States or a Law Day event held abroad on or near May 1 for servicemen stationed overseas. The award is made possible by a grant made in memory of the late Judge Edward R. Finch of the New York Court of Appeals.

Addresses submitted cannot exceed 4,000 words and must be keyed to the '73 Law Day theme—**HELP YOUR COURTS—ASSURE JUSTICE**—or to any of the three stated objectives of Law Day U.S.A. which are: to advance equality and justice under law; to encourage citizen support of law observance and law enforcement; and to foster respect for law and understanding of its essential place in the life of every citizen of the United

States of America.

Entries should be submitted in triplicate, typewritten, double-spaced, on one side of plain 8½ by 11 white paper. They must be legible with one original and two carbon copies submitted. The entry should have a title page bearing the words: "Judge Edward R. Finch Law Day U.S.A. Speech Award," the title of the address, the name and address of the person delivering the talk, and the occasion and date at which it was delivered. Entries must be postmarked not later than June 15, 1973, and addressed to: Law Day U.S.A. Speech Award, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

The 1973 entries will be judged by the President of the American Bar Association with the assistance of a committee designated by him. The competition is not open to members of the American Bar Association Board of Governors or to officers or employees of the Association or the American Bar Foundation.

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