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Measure Of Qualitative Changes In Commander Use Of Nonjudicial Punishment and Courts-Martial

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One of the great "givens" in Army management lore is that the court-martial rate per thousand is an indicator of the state of unit discipline. This monograph will be cast in the same terms, but it must be recognized that expression of the numbers of courts-martial and nonjudicial punishments per 1000 troops measures *official action* and not the real quantity of unacceptable behavior. Further, a negative indicator of discipline is not consistent with the recent emphasis on the *positive* or non-punitive content of the state of discipline, as exemplified in FM 22-100, *Leadership*.

Other difficulties with the rate per thousand formulation are the absence of a "zero point" for comparison purposes and the existence of dimensions of the rate expressed. A commander may properly ask the size of his "discipline" problem; he also needs to know how it is changing and where it stands relative to other units. These reasonable demands raise requirements for an indicator of "normalcy," a bench-mark against which change can be measured and for a way to compare general court-martial "apples" with special court-martial "oranges."

We know that the total number of troops in a command affects the number of responses, i.e., the Army-wide totals increase with troop strength, although not proportionately, and they increase somewhat differently for each type of response. Thus, a 3% increase in general courts does not reflect the same phenomenon as a 3% increase in specials or Article 15's. Also, the rates are expressed in and create an image of blocks of 1000 troops. These circumstances constitute the "dimensions" referred to above which reduce the comparability of the rate figures.

The objective, then, is to find a way to measure changes in response rates which tells the commander how much of the change is attributable to a qualitative change in conditions affecting his command, and how much is simply created by changes in troop strength. These characterizations are essential to a determination of "acceptable" or "unacceptable" changes and to the identification of appropriate areas for the application of management or leadership tools.

The method chosen was to use index numbers, similar to those frequently seen to measure prices of goods in terms of buying power in a by-gone era. For example, if the 1967 dollar was worth 100 cents, and the 1970 dollar was worth 95.4 cents, the price of 1970 goods in terms of 1967 dollars will be higher. The drop from 100 to 95.4 is a depreciation of 4.6%. Army response rates are a measure similar to prices, and in terms of a base period, a percentage can be obtained. This number is easily interpreted and is *dimensionless*. Thus the index numbers derived in this way for each type of response can be easily compared. Furthermore, the percentage change in a form of reaction—say article 15's—can be parsed into two components: that which is attributable solely to changes in the number of troops, and that which is attributable to *something else*. The base period must

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be taken to be normal in some sense, for it will generate the "zero-line" against which subsequent changes are measured. For our first set of data, the first quarter in the 1970's was chosen, simply because it was the first such period for which we had reports. From that point, quarterly data are available from the JAG-2 reports filed with the U.S. Army Legal Services Agency (formerly U.S. Army Judiciary) in accordance with AR 27-10. The Department of Developments, Doctrine & Literature, TJAGSA, has computerized these reports for the period since FQ 703 (January through March 1970) for each of approximately 60 General Courts-Martial Jurisdictions (GCMJ). Because troop strengths were available for the Army as a whole (they are not automatically available for any given GCMJ), and because of the more universal interest in the aggregate data, the jurisdiction used for this first analysis is the whole Army.

The results are displayed in figures 1 through 4. Each is a separate type of official reaction to troop conduct. Each starts out at 0% for the qualitative or "Q"-line. The horizontal axis measures time in fiscal quarters. The "Q"-line shows that portion of the change which is *not* attributable to a change in troop strength, but must be explained on some other ground. If the "Q"-line drops below the "zero"-line, it means that the change in responses has dropped more sharply (or increased less sharply) than a change in the number of troops. Interpreted, this means that officers are either more tolerant of troop behavior, troops are better behaved, or the process simply is not churning responses out with the same efficiency. The areas above the "zero"-line measures a stiffening of command attitudes, deterioration of behavior levels or increases in system efficiency.

Obviously this division is still not as fine a cut as might be desired; efforts to increase precision will continue. This presentation at least permits statements such as: The X% increase in the special court-martial rate per thousand during the last year is attributable to: [matters within the control of this command; there was no change in troopstrength

to account for it.] [a Y% increase in troopstrength] or [in some degree to a slight increase in troopstrength, but largely to other causes. During the same period the command was at full strength of company officers and NCO's for the first time in 4 years.]

One additional comment must be made concerning the relation between troopstrength and response rates. It is clear that a change in troopstrength results in a change in responses, but the same quarter which witnessed a change in troops may not yet reflect the concommitant change in JA workload. Processing times in excess of 60 days reinforce this lagging phenomenon. Thus, correlations of troopstrength and response rates, particularly for general and summary courts, must be performed to compare one quarter's responses with the strength of an earlier quarter. Which quarter to choose is determined empirically; it is sufficient to note here that the Army-wide charts that follow have been so adjusted.

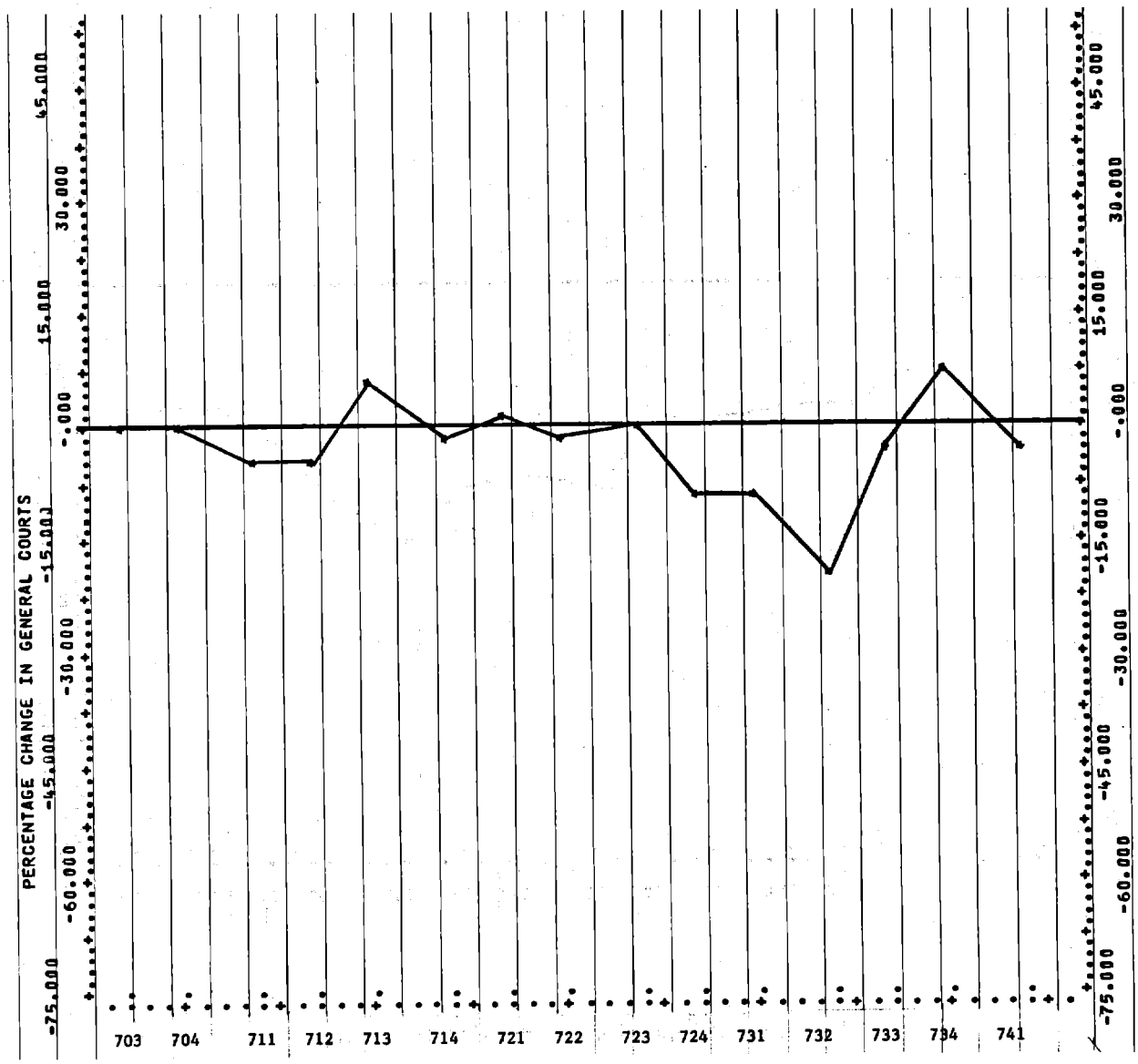

Figure I: Q-Index for General Courts-Martial

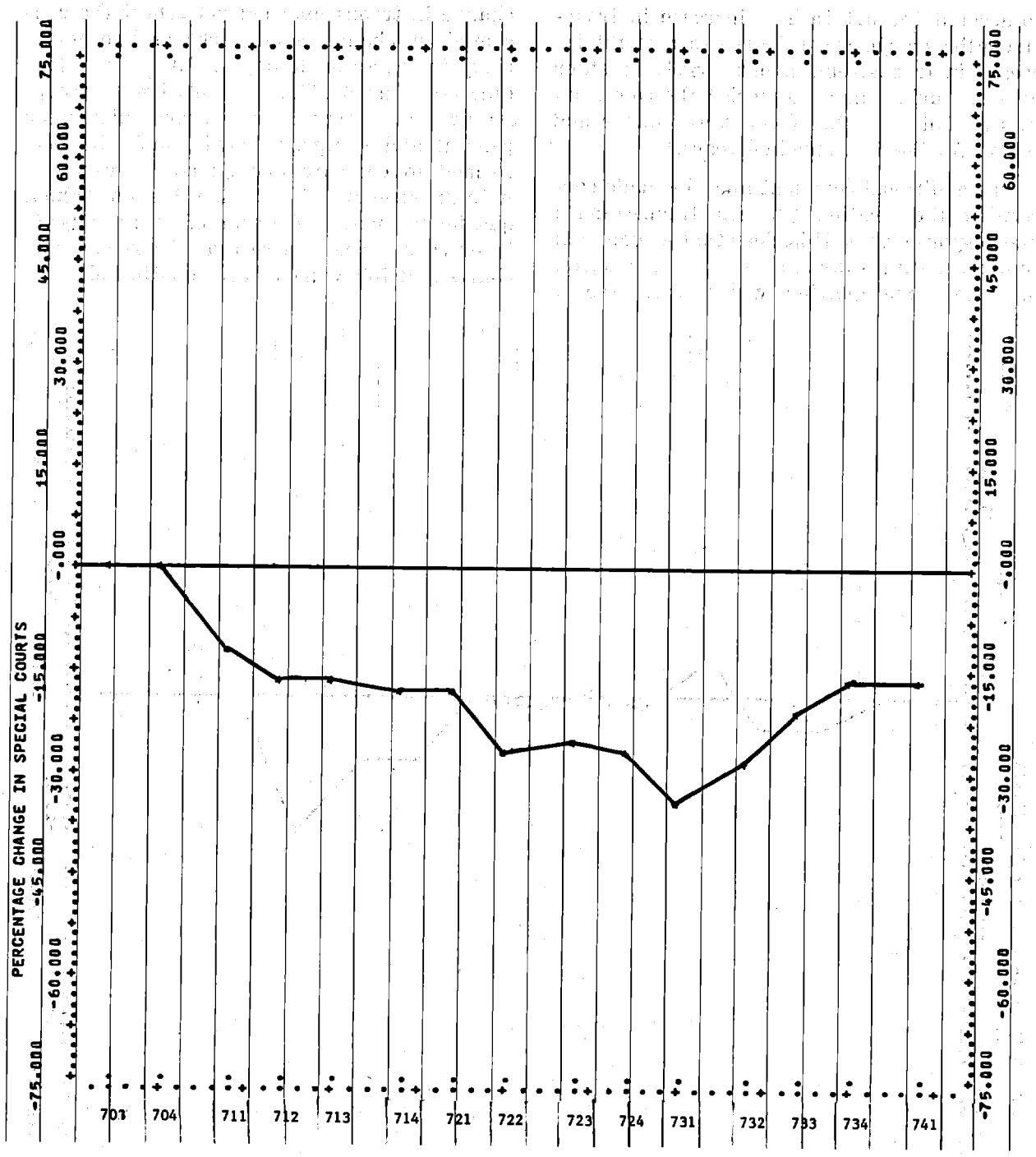

Figure II: Q-Index for Special Courts-Martial

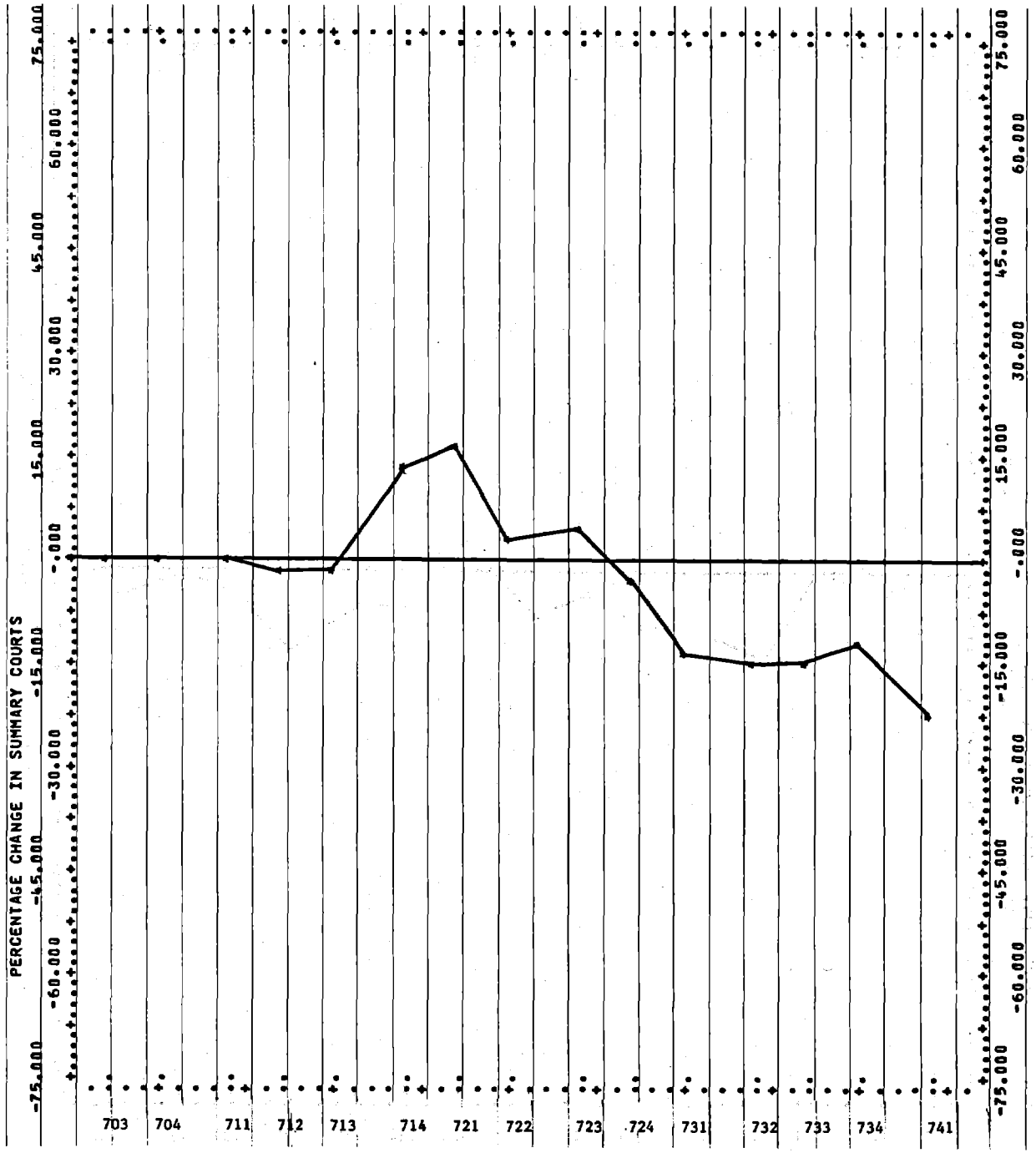

Figure III: Q-Index for Summary Courts-Martial

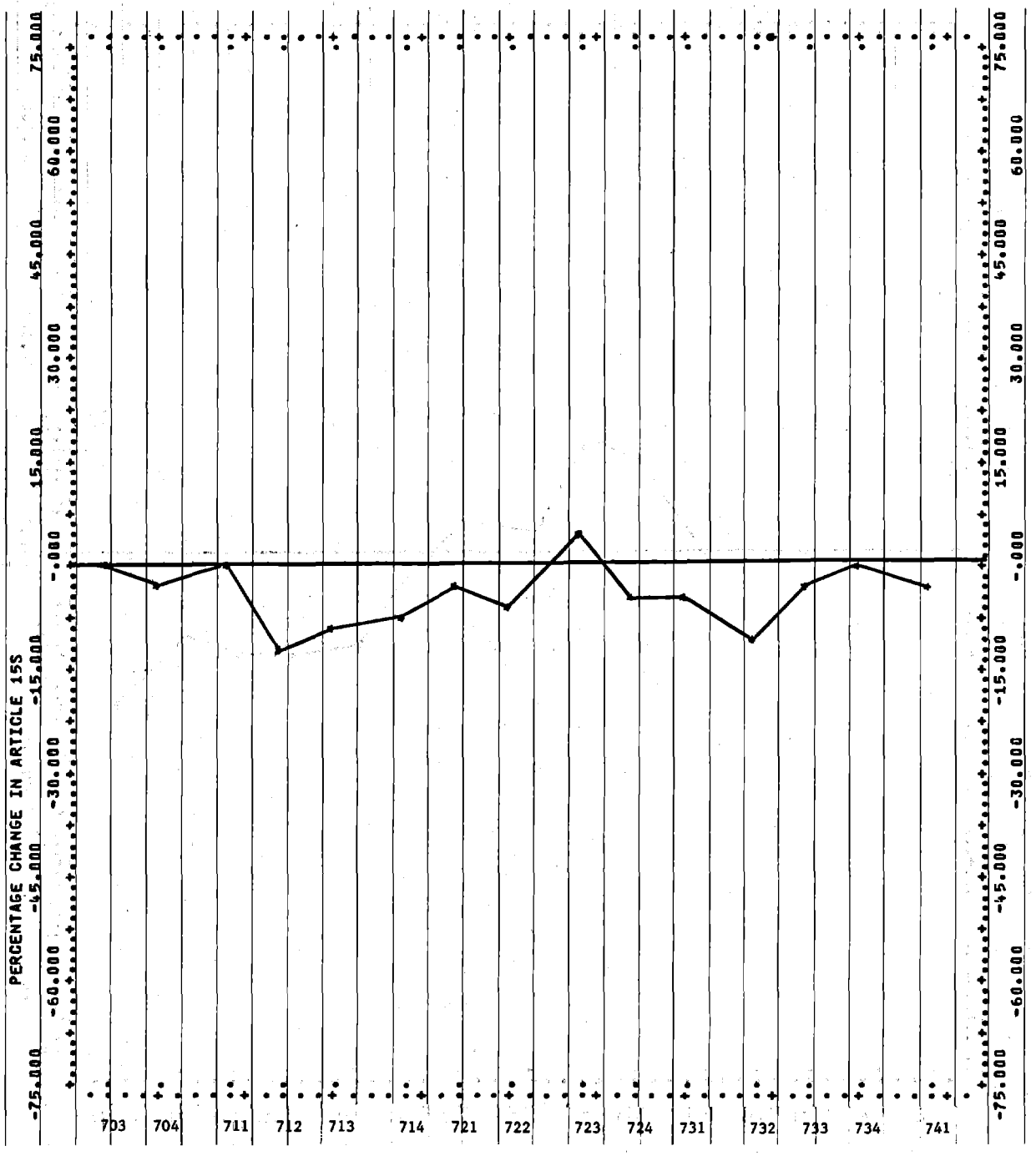

Figure IV: Q-Index for Article Fifteens

The following lists shows the number of responses greater than (or less than) the number which would have occurred if imposed as intensely as in the base year (average: 1962-1963)

	Generals	Specials	Summaries
1952	5166.203	12528.404	32393.148
1953	8406.858	26156.731	44560.822
1954	7493.917	16266.768	25301.162
1955	7167.798	7102.848	7209.491
1956	5803.179	8677.783	10991.874
1957	3781.191	9013.715	15159.550
1958	2079.036	4044.620	10725.891
1959	867.798	—1228.909	5460.569
1960	403.027	—3214.265	884.026
1961	238.309	—220.298	4175.199
1962	—18.162	—414.981	4905.991
1963	18.162	414.981	—4905.991
1964	39.901	—1709.737	—20301.308
1965	—274.876	—1263.358	—20193.958
1966	—495.634	—5006.191	—26200.237
1967	—668.611	—1937.161	—39127.829
1968	—343.316	4989.690	—43905.629
1969	—266.032	20393.757	—41811.767
1970	—20.236	3568.449	—38994.174
1971	450.305	—4827.557	—31937.238
1972	260.909	—8867.247	—23504.639
1973	117.479	—7598.130	—23341.950

FIGURE 5

Comment On The Charts.

The general court-martial index (Fig. 1) shows a slight tendency to try fewer persons than the level of troopstrength would suggest, relative to the base quarter. This result is significant because the number of general courts tried in the Army in the last 15 years has been only 25% of the post-World War II levels. A continuous negative "Q"-index suggests that the pressures for further reduction persist. This short-term analysis must, however, be examined against the long-term picture. The "Q"-index for FY 1952-1973 summarized below (Fig. 5) in actual numbers of cases (rather than in percentage points) shows substantial positive numbers in the last three years, relative to a 1962-63 base. These "overages" of 450, 260 and 117 probably reflect a post-Vietnam clean-up; their downward trend is consistent with the short-term indication of the persistence of pressures to reduce the intensity of GCM's even further.

The special court chart (Fig. 2) shows clearly that the incidence of SPCM's has declined much faster than troopstrength, relative to FQ 703. This is remarkable in the short term, in that during FY 69 more SPCM's were tried than in any other year between 1952 and 1973 except 1953. Correlation coefficients show the incidence of SPCM's to be more closely related to troopstrength than that of the other two types of courts. Despite that close relationship, commanders turn to the SPCM less frequently than in the past. The 1972 and 1973 totals of 16,000 and 13,000 SPCM were both lower than any other years in the period 52-73 by more than 20%. The long-range "Q"-index in Figure 5 shows that 1973 was 7600 cases below the 62-63 level and that the preceding two years were similar. The down trend in the incidence of courts-martial is indicated more strongly here than in the GCM discussion above. Where the GCM indicators were based on ratios such as 40 of 1600, here the negative indicators are 50% of the total cases.

The total numbers of summary courts-martial in the Army have declined from 100,000 in 1953 to 7,000 in 1973. In terms of the 62-63 base in Figure 5, a strong negative trend remains. However, the short-term chart (Fig. 3) suggests a levelling-off. The summary court column in Figure 5 shows dramatically how the "Q"-index will reflect changes such as the 1962 revisions to Article 15, UCMJ. Since 1963, the total numbers of summary courts imposed have been less than half the expected rate, reflecting clearly the decision-maker's turn toward the more flexible Article 15.

Article 15's "track" the troopstrength more closely than any of the kinds of courts-martial, but the same general down-trends are reflected in Figure 4. Available records on Article 15's Army-wide provide totals only since FY 65, and consequently no long term "Q"-index has been constructed. The absolute figures show recent rates in excess of 200 per thousand per year, although the absolute numbers have declined from 301,000 in 1970 to 190,000 in 1973.

Application.

At TJAGSA these methods and findings will be used in further research and in the preparation of management data for TJAG.

The SJA of any GCM can use the foregoing methods and ideas as follows:

1. Pick a base year; compute percentage changes in troopstrength and in each response with respect to the base year. (Divide the number for each year by the number for the base year and multiply by 100)

2. Compute the difference between the percent change in troopstrength and the percent change in each response to reach the "Q"-index.

3. Plot on a "zero"-line as in Figure 1-4.

The "Q"-index measures the size and the nature of any pattern of change which might exist. The size is reached by applying the net percentage computed in 2 above to the total for each response. The "nature" is suggested by the sign, positive or negative.

An explanation of the "Q"-index may lie in one or more of these considerations:

* a change in the ability of commanders to use the formal techniques of military leadership instead of formal sanctions. This might be called an experience factor;

* a change in the quality of the leaders in general: more motivated, more intelligent, better trained, *etc.*;

* a change in the relative efficiency of the law enforcement system—from MP arrest, through JAG trial, to confinement or rehabilitation—so that commanders might think other ways more expensive, less expensive, or more effective or less so;

* a change in the unit's mission;

* a change in the mental and physical potential of the troops;

* a change in the attitudes towards authority which the soldier brings from civilian life and which is conditioned by his experience before coming to the unit;

* a change in the physical surroundings of the soldier and the conditions under which he trains or fights, relaxes, eats, sleeps, etc. This factor was tested extensively under VOLAR, and many data are available;

* a change in the benefits paid or given by the Government to the soldier;

* a change in the general level of crime, education, employment and other factors in the civilian community;

* a change in the *history of discipline* for this soldier or his unit. The cyclical trends in article 15 data and summary court data suggest a strong effect of the immediate past upon the decision to use a particular remedy.

From this list it can be seen that more work remains than has been yet accomplished. Some of the above factors might well be isolated, while others may remain as an intractible, unmeasured residual. The qualitative change data have been created, and work will progress to explain the "Q"-index further. SJA's are encouraged to consult informally with TJAGSA (DDL) and, especially, to share the product of any analysis prompted by this article. General comments and criticisms are equally encouraged.

Changes in Processing Article 138 Complaints

By: Major Joseph C. Malinoski, Jr., Administrative Law Division, OTJAG

The Administrative Law Division, Office of The Judge Advocate General, has recently completed a revision of Army Regulation 27-14, *Receipt and Processing of Complaints Under Article 138, UCMJ*. The new regulation is dated 10 December 1973 and becomes effective on 1 February 1974. For uniformity in processing, any complaint which has not been acted upon by the commander exercising general court-martial jurisdiction prior to 1 February 1974, should be processed under the new regulation.

Article 138 has proven to be a valuable tool for the resolution of problems and righting of wrongs within the Army, without the necessity for complaints to Congress or other agencies outside the Army. Appropriate redress and relief is normally granted by commanders within the chain of command before arrival at Department of the Army. The new regulation sets forth guidelines for the handling of complaints; while the changes are primarily procedural in nature, they may in certain cases significantly affect the manner in which a complaint is processed. The new changes in procedure are intended to accomplish the following goals:

a. Provide greater latitude to commanders in the disposition of complaints.

b. Standardize and streamline the processing of complaints.

c. To the extent possible, insure that meritorious grievances are settled fairly and expeditiously.

The purpose of this article is to explain the more significant changes, and to suggest certain practical policies for Staff Judge Advocates to consider in implementing the new regulation. The changes will be discussed generally in the order in which they appear in the new regulation.

The initial change to be noted is in the definition of "His commanding officer", in paragraph 2, tying the definition to that contained in Army Regulation 27-10. While it has never been considered that a complaint would lie against a platoon leader, supervisor, noncommissioned officer, or others in similar positions, this definition clearly excludes them. Research into the history of Article 138, and its precursors, clearly indicates a Congressional intent to limit the article to commanders—in the strict sense of the word—rather than to provide an avenue for extraordinary relief from any and all possible grievances at any level within the chain of command.

Within the same paragraph, the limiting language previously contained in the definition of "wrong" has been removed so that the definition more closely coincides with the statute. Thus, judicial attacks upon this paragraph (and the definition of "wrong") by reason of its limitations upon the statutory language should be largely eliminated. Now, virtually any "wrong" by a commander may be complained of. As will be noted, however, the commander exercising general court-martial convening authority may, in his discretion, narrow considerably the scope of complaints cognizable under the statute and new regulation.

One of the significant changes from the standpoint of a Staff Judge Advocate is contained in paragraph 5 (Scope) which provides that, if the complaint, on its face, or after investigation or informal inquiry, is not directed against a commander, or there has been no written request for redress and denial thereof, the general court-martial convening authority may, upon advice of his Staff Judge Advocate, return the complaint without action. The file in such a case need not be forwarded to The Judge Advocate General. Both the requirement for written request for redress and the previously contained 90-day period for submission may be waived by the officer exercising general court-marital jurisdiction. There is no provision for waiver of the requirement that the complaint be against a commander as defined in the new regulation. Obviously, however, if a legitimate grievance exists, it is expected that corrective action will be taken under other authority. If the general court-martial convening authority acts on the merits of the complaint, whether favorably or unfavorably, such action constitutes waiver of the 90-day limitation or the lack of written request for redress. While this provision is new, it reflects the position previously taken by the Office of The Judge Advocate General. It should be noted that the inquiry or investigation contemplated is preliminary in nature, and may involve nothing more than a reading of the file.

Subparagraph 5d discusses an area not previously considered—i.e., what constitutes "proper measures for redressing the wrong complained of". Article 138 makes it clear that principal responsibility for resolution of complaints lies with the "officer exercising general court-martial jurisdiction" over the respondent. In many cases, these are other, regularly established channels, in which resolution of the complaint would be possible and appropriate. In many cases, the subject of the complaint is already under consideration in such channels. If preliminary inquiry establishes either of the above, the commander exercising general court-martial jurisdiction may—but is not required to—refer the complainant to those channels, and such action will constitute "proper measures for redressing the wrong complained of." Thus, the scope or reach of the Article may be considerably curtailed. Again, it is contemplated that the inquiry will be informal and will extend only to a determination of whether such

other channels exist, and whether the complainant should be referred to them. Examples of areas in which other channels for redress are considered to exist are contained in subparagraph 5d. This list is not exclusive. While a decision to refer the complaint to another channel for resolution is sufficient redress for Article 138 purposes, the file must, of course, be forwarded to the "Secretary concerned" in accordance with the Article's mandate. [Due to a printing error, the second and following sentences of subpara 5d(8) appear to be limited to clause (8). This was not intended. The second and following sentences were, in fact, intended to be a continuation of subpara 5d (rather than clause (8)), and thus should be interpreted to refer to or modify clauses (1) through (7), as well as (8).]

Paragraph 9 sets forth the actions to be taken by the officer exercising general court-martial jurisdiction over the respondent. With respect to an informal inquiry, a new provision has been added. The requirement that the officer conducting the informal inquiry be senior to the respondent may now be waived for good cause provided, of course, that the officer conducting the inquiry is not under the respondent in the chain of command. Again, it is intended that the inquiry be tailored to the case under consideration. Most cases can be resolved through informal inquiry, without an investigation under Army Regulation 15-6, and this procedure is recommended except in complex cases. After inquiry or investigation, the commander exercising general court-martial jurisdiction must do one of fixe things before forwarding the complaint to the Secretary. He must: (1) grant or deny the redress requested; (2) return the complaint as not cognizable under subparagraph 5a; (3) if he lacks authority to grant redress, forward the complaint to the jurisdiction which has such authority; (4) if there are other channels more suitable for resolution of the alleged wrong, advise the complainant and the methods by which to proceed; or (5) if the complaint is already under consideration in other channels, so advise the complainant.

Except for cases which are forwarded to another jurisdiction (subpara 9b(3)) and those returned to the complainant as not cognizable (subparas 5a and 9b(2)), all files must be forwarded to The Judge Advocate General for review. In those cases in which the commander exercising general court-martial jurisdiction has referred the complainant to other channels for resolution, review by The Judge Advocate General will normally be limited to a review of that determination.

Paragraph 10 sets forth with greater specificity those matters which must be forwarded. Included are the complaint, the original request for redress and denial, the results of the investigation or informal inquiry, the commander's action thereon and a statement of the reasons for such action, and a copy of the notification to the complainant. The file will reflect that the action on the complaint was personally taken by the officer exercising general court-martial jurisdiction, and the forwarding correspondence will be signed by that officer.

The Judge Advocate General, as the designee of the Secretary of the Army, personally reviews each complaint, and directs final disposition. The complainant and the officer exercising general court-martial jurisdiction are informed of the final disposition. Staff Judge Advocates are also provided a copy of the opinion, and are encouraged to establish a policy of notification to the officer complained against.

In its totality, the new regulation offers no substantial departure from previous philosophy. It remains the Army position that grievances should be resolved at the lowest possible level, while insuring that the soldier's rights under Article 138 are preserved. In clarifying existing procedures and strengthening the Article 138 program, the new regulation should prove more useful to both commanders and soldiers.

Inter-Corps Relationships for JAG Defense Counsel

The following is taken from an OTJAG paper entitled "Defense Counsel." It is an articulation of the relationships between the Assistant Judge Advocate General for Civil Law, defense counsel and the Chief, Defense Appellate Division. The scheme described will eventually be refined and incorporated into an appropriate Army regulation as an expression of doctrine and policy.

"1. *General:* The Judge Advocate General supervises and assists all Judge Advocates in connection with professional matters. The responsibilities described below will be performed on behalf of The Judge Advocate General by the persons indicated. Staff Judge Advocate offices at intermediate levels of command will designate a Senior Defense Counsel who will advise and assist JAGC Defense Counsel in subordinate commands. Use of this channel and the levels of supervisory responsibility is encouraged, but not required; direct communication with the Assistant Judge Advocate General for Civil Law or any intermediate level is authorized. The Staff Judge Advocate remains responsible in the traditional manner for local command, control, supervision, support and assistance of all Judge Advocates assigned to his office.

"2. *Assistant Judge Advocate General for Civil Law:* Reviews, evaluates, and initiates appropriate action, including advising The Judge Advocate General, as to inquiries, complaints and requests for assistance from JAGC defense counsel. Examples of matters to be considered include improper command influence, improper attempts to influence future conduct of defense counsel, unfair treatment, conflicts of interest, and inadequate administrative or logistical support. Advises The Judge Advocate General as to general policy matters involving the defense counsel functions.

"3. *Chief, Defense Appellate Division:* As Senior Army Defense Counsel, advises the Assistant Judge Advocate General for Civil Law on defense counsel functions. Upon request provides advice and assistance to JAG defense counsel in the field as to past, present, or future cases in litigation, including trial tactics and pertinent precedents. Raises on appeal issues relating to current litigation. Advises the Assistant Judge Advocate General for Civil Law of issues which come to his attention through records of trials or otherwise."

Professional Developments

By: Captain John D. Horne, Developments, Doctrine & Literature Department, TJAGSA

A recent analysis of the role of the Advanced Course in the projected career development of a Judge Advocate officer has indicated that the Advanced Course is preparing its graduates for advanced assignments within the Corps. In undertaking its study, the Developments, Doctrine and Literature Department of TJAGSA chose three prior Advanced Classes—the 14th, 15th and 16th—whose graduates would presently be eligible for either intermediate or advanced development assignments. The present job assignment of each officer in the selected classes was identified as was each officer's actual time in service. These two factors were then compared to the projected career development for the Judge Advocate officer as set forth in *Your JAGC Career*, a September 1973 publication of PPTO, OTJAG.

Comparison of the actual career development of the selected Advanced Classes to the career development projected by PPTO indicated that 71% of those officers examined were presently assigned to a job within the selection projected for them. Even more note-

worthy was the finding that 22.5% of those officers examined were in a present assignment ahead of the projection for an officer with a similar amount of actual time in service. In only 6.5% of the present assignments examined was an officer assigned to a job behind that projected for an officer with a similar amount of actual time in service. Personal requests for assignments, however, may account for part of this percentage. It, therefore, may be concluded from these statistics that completion of the Advanced Course enables the Judge Advocate officer to be prepared to undertake an assignment in the area of intermediate or advanced professional development when he becomes eligible or perhaps sooner.

The following chart represents a summary of the statistics examined.

COMPARISON OF JOB ZONES

Adv. Class	Job in Proper Time Zone	Job Ahead of Proper Time Zone	Job Behind Proper Time Zone
14th	10	6	3
15th	16	5	1
16th	18	3	0
	44 (71%)	14 (22.5%)	4 (6.5%)

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Suggested Addition to Post-Trial Reviews. The failure of staff judge advocates to include in the post-trial review prior favorable recommendations of commanders forwarding charges continues to result in the setting aside of a substantial number of convening authorities' actions and the ordering of new reviews and actions by appellate courts. The typical situation is that favorable recommendations, particularly concerning whether the accused should be discharged, are included in the advice but not in the post-trial review, and there has been a change in the person of the convening authority.

In order to alleviate this type of error, which occurs with a fair degree of regularity, SJA's should consider the inclusion of a new paragraph in every post-trial review to include a restatement of appropriate recommendations of every commander, court and/or military judge who made a recommendation favorable to the accused in forwarding, or otherwise dealing with, the charges against the accused. In today's environment, we can ill afford to spend time on errors of this nature.

2. New Sources of "Conduct" and Efficiency". Two DA messages (301345Z Aug 73 and 101200Z Sep 73) eliminated the conduct and efficiency ratings system. The basis for this change was a determination by the Enlisted Personnel Directorate, MILPERCEN, that conduct and efficiency ratings did not accurately reflect an individual's conduct or job performance. However, prior ratings will not be deleted from the DA Form 20 and will be available for continued use so long as they are of value. (It should be noted that DA Form 20 will be replaced by DA Form 2-1 which will not contain conduct and efficiency rating data. According to a representative of MILPERCEN, the final disposition instructions for the change will require a copy of item 38 of DA Form 20, which contains the conduct and efficiency ratings, to be attached to the Form 2-1 by personnel offices in the field.)

The Enlisted Efficiency Report (DA Form 2166-1, 1 July 1970) will take the place of efficiency ratings. Such reports are intended solely to reflect job performance and related character traits, and do not cover conduct. Although the reports will not be filed locally, they may be obtained by the accused, the military judge, or the prosecution. However, the field 201 file will contain a USA-EEC Form

10, Enlisted Evaluation Data Report. This is an annual report which, among other things, states the average cumulative efficiency scores of the individual concerned and compares that with the overall Army average score. Specifically, section II.a. of this form indicates the individual's composite rating for both job performance and related character traits. For additional information regarding conduct, reliance will have to be placed upon other documents in the file, such as letters of commendation and/or reprimand, certificates of achievement, awards received, and records of nonjudicial punishment.

3. Records of Court-Martial Convictions. It has been noted that many records of trial going before the U.S. Army Court of Military Review contain improperly authenticated entries on DA Form 20B, Record of Court-Martial Conviction. Item 52 of that form normally must contain *two* signatures to be properly authenticated. At the time an entry is made in Item 51 regarding an adjudged and approved sentence, the custodial officer must sign in Item 52. Thereafter, the custodial officer responsible for the subsequent entry in Item 51 as to the completion of supervisory review must also sign in Item 52. If the same officer makes both entries in Item 51, he must again sign in Item 52. Counsel should insure that the form sought to be introduced has been properly prepared.

4. Addendum. Reference is made to the note on "Grants of Immunity" published in the December 1973 issue of *The Army Lawyer*. The second sentence of paragraph 2 of the sample order on page 24 should be changed to read as follows:

> As provided in Section 6002, Title 18, U.S. Code, no testimony or other information given by Private E1 John Doe pursuant to this order (or any information directly or indirectly derived from such testimony or other information) shall be used against him in a criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this order.

Additionally, there is a printer error on page 23 of that note which may have caused some confusion to readers. The last line of the left-hand column ("partment of Justice.") should have actually been set as the final line of the preceding paragraph (three lines above).

Legal Assistance Items

From: Legal Assistance Office, OTJAG

1. Expanded Legal Assistance Program. Any Staff Judge Advocate who desires to institute an Expanded Legal Assistance Program (ELAP) so that civilian court representation may be furnished to impecunious members of the Army should so advise the Chief of Legal Assistance, OTJAG, Department of Army. In the absence of a request to start an ELAP, it will be presumed that either such a program is not desired or that present resources do not permit that activity.

2. Complaint. Recently a complaint was received that the marriage of a soldier stationed overseas was unnecessarily delayed 4 weeks because the command allegedly was not aware of the age of majority in the State of Connecticut. Such incidents can be avoided by proper liaison between the Legal Assistance Office and staff sections which handle such affairs.

3. Training Film. Training film 15-3286 entitled, *Your Legal Assistance Officer* may be a useful tool in presenting Legal Assistance lectures despite the film's age (1966).

4. Debt Collection. Department of the Army, as a matter of policy, is denying requests of congressmen to assist their constituents in collecting debts due from military personnel stationed in states where statutes prohibit creditors from contacting debtors' employers concerning obligations. The basis

of the denial is that the Army cannot be a party to the creditor violating the state law.

5. Lease Agreements. Recently, changes have occurred in certain states with regard to lease agreements. For example, a landlord in Texas is no longer allowed to retain the entire security deposit for damages to the dwelling during the lease period, but rather must set out the specific cost of repairs which he proposes to deduct from the deposit and this figure is subject to review by a court, if there is a dispute as to the validity of the landlord's claim of damages or the cost of repairs. On the other hand, the tenant can no longer refuse to pay his last month's rent (i.e. forfeit the security deposit, which normally is an amount equal to one month's rent), thereby leaving the landlord no funds to cover damage repair expenses. Either party attempting to violate these new rules will subject himself to certain monetary penalties over and above the actual loss incurred. Check with your local bar association to determine whether these rules exist in your state.

6. Nonrecognition of Gain on Sale of Residence. Recently the Navy received an informal opinion from the Internal Revenue Service concerning the nonrecognition of gain from the sale or exchange of a residence. See NAVSO-P-1983 (16th Edition) Armed Forces Federal Income Tax for 1973 Returns, which represents the results of the IRS informal position.

Section 1034 of the Internal Revenue Code provides that if property used by the taxpayer as his principal residence is sold, and if within a period beginning one year before such sale and ending one year (18 months if a new residence is constructed by the taxpayer) after such sale, new property is purchased and used by the taxpayer as his principal residence, gain on the sale of the old residence shall be recognized only to the extent that the adjusted sales price of the old residence exceeds the taxpayer's cost of purchasing a new residence. The adjusted sales price is the amount realized on the sale reduced by certain expenses for work performed on the old residence to assist in its sale. Section 1034 (H) suspends the period after the date of sale of the old residence during any time the taxpayer served on extended active duty with the armed forces, except that no period so suspended shall extend beyond four years.

It was reported earlier (see *The Army Lawyer,* July, 1973, and November, 1973) that this suspension was contingent upon there being an induction period as defined in section 112(c)(5) of the Internal Revenue Code and that when the draft expired on 30 June 1973, the suspension period of section 1034(H) terminated.

The IRS has now indicated informally that if a taxpayer on extended active duty claims the four year suspension period of section 1034(H) that such suspension *probably* would be granted. This is due to the possibility that pending legislation will be passed which would extend the suspension period.

7. State Tax News. The state sales and use tax rate. All local taxes are excluded.

State	*Current Rate*
Ala.	4%
Ariz.	3%
Ark.	3%
Calif.[1]	3.75%
Colo.	3%
Conn.	6.5%
D.C.	5%
Fla.	4%
Ga.	3%
Hawaii	4%
Ida.	3%
Ill.	4%
Ind.	4%
Ia.	3%
Kan.	3%
Ky.	5%
La.	3%
Me.	5%
Md.	4%
Mass.	3%
Mich.	4%
Minn.	4%
Miss.	5%

State	Current Rate
Mo.	3%
Neb.	2.5%
Nev.	3%
N.J.	5%
N.M.	4%
N.Y.	4%
N.C.	3%
N.D.	4%
Ohio	4%
Okla.	2%
Pa.	6%
R.I.	5%
S.C.	4%
S.D.	4%
Tenn.[2]	3.5%
Tex.	4%
Utah	4%
Vt.	3%
Va.	3%
Wash.	4.5%
W. Va.	3%
Wis.	4%
Wyo.	3%

[1] The rate returns to 4.75% on April 1, 1974, and is again decreased beginning January 1, 1975 through December 1975.

[2] The rate of tax is decreased to 3% effective July 1, 1974.

Judiciary Notes

From: U. S. Army Judiciary

1. Inadequate Trial Advocacy. While not a major problem of the military legal system, this subject is of basic importance to all members of the legal profession. Because of this rudimentary interest of lawyers it is deemed worthwhile to reprint an article from the December 28, 1973 issue of the *ALI-ABA CLE Review*, a publication of the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. The purpose of the article was to bring to the attention of the national bar a portion of a lecture delivered on November 26, 1973, by the Honorable Warren E. Burger, Chief Justice of the United States, at the Fordham University Law School, which dealt with this subject matter. The article immediately follows these notes.

2. Recurring Errors and Irregularities. December 1973 Corrections by ACOMR of Initial Promulgating Orders:

a. Failing to show a specification of a Charge as formally amended during trial—3 cases.

b. Failing to show the correct service number in the name line.

c. Failing to show that the sentence was adjudged by a Military Judge—three cases.

d. Failing to show the correct number of previous convictions considered—three cases.

e. Failing to show in the PLEAS paragraph that the pleas to a certain Charge and its specification were changed from guilty to not guilty by the military judge on defense motion.

3. 13th Military Judge's Course (10-28 June 74). Closing date for receipt of applications for the 13th Military Judge's Course has been extended through 31 March 1974. A limited number of vacancies still exist at this time. Upon successful completion of the Military Judge's Course, JAG officers will be detailed as part-time judges until vacancies occur in the U.S. Army Judiciary. Those officers desiring to attend the 13th Military Judge's Course should request an application from Chief, Trial Judge (HQDA (JAAJ-TJ)) Nassif Building, Falls Church, Virginia 22041, Autovon: 289-1795.

4. Key Personnel Changes in U.S. Army Legal Services Agency. On 1 October 1973 LTC Allen D. Adams was assigned as Director, Administrative Office, U.S. Army Legal

Services Agency, Falls Church, Virginia. He succeeded Colonel John T. Jones, who had served in that position since 3 May 1968. Colonel Jones is now serving as an Associate Justice, U.S. Army Court of Military Review.

Colonel William B. Carne has been recalled from retirement to serve as an Associate Justice of the Army Court of Military Review succeeding Colonel George O. Taylor who retired 31 January 1974 with over twenty-three years of service.

Colonel Charles C. Grimm has been assigned as a trial judge at Fort Knox, Kentucky, after two years service as an associate judge of the Army Court of Military Review.

Colonel Matthew B. O'Donnell and LTC David L. Minton have also been recently assigned as associate judges of the Army Court of Military Review.

The Special Skills of Advocacy

By the Honorable Warren E. Burger, Chief Justice of the United States

This note was Part III of a Five-Part Article, taken from the December 28, 1973 issue of the *ALI-ABA CLE Review*. It highlights the fourth John F. Sonnett Memorial Lecture, given by the Chief Justice at Fordham University Law School on November 26, 1973.

* * *

The third cause [for inadequate trial advocacy—Ed.] is the inevitable inability of prosecutor and public defender offices to provide the same kind of apprenticeships for their new lawyers as, for example, the large law firms provide. The prosecution offices and public defender facilities have neither the wealthy clients nor consequent financial resources of the large law firms to enable them to develop whatever skills they need to carry out their mission. Prosecutors and public defenders often learn advocacy skills by being thrown into trial. Valuable as this may be as a learning experience, there is a real risk that it may be at the expense of the hapless clients they represent—public or private. The trial of an important case is no place for on-the-job training of amateurs except under the guidance of a skilled advocate.

III

Time does not allow a recital of the myriad points of substantive law and procedure that an advocate in criminal cases should know in order to perform his or her task. Suffice it to say that in the past dozen or more years a whole range of new developments has drastically altered the trial of a criminal case. To give adequate representation, an advocate must be intimately familiar with these recent developments, most of them deriving from case law.

Whether we measure the recent changes in terms of one decade or three, we see that the litigation volume, particularly in criminal cases, has escalated swiftly. The Criminal Justice Act and the Bail Reform Act, the extension of new federal standards to state courts, rising population, increased crime rates, creation of new causes of action and expanded civil remedies have contributed to the literal flood of cases in state and federal courts.

Whatever the legal issues or claims, the indispensable element in the trial of a case is a minimally adequate advocate for each litigant.[10] Many judges in general jurisdiction trial courts have stated to me that fewer than 25 percent of the lawyers appearing before them are genuinely qualified; other judges go as high as 75 percent.[11] I draw this from conversations extending over the past 12 to 15 years at judicial meetings and seminars, with literally hundreds of judges and experienced lawyers.[12] It would be safer to pick a middle ground and accept as a working hypothesis that from ⅓ to ½ of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation. The trial

of a "serious" case, whether for damages or for infringement of civil rights, or for a criminal felony, calls for the kind of special skills and experience that insurance companies, for example, seek out to defend damage claims.[13]

Let me try to put some flesh on the bones of these generalizations concerning the function and quality of the advocates. I will try to do this by way of a few examples observed when I sat by assignment as a trial judge, while serving on the U. S. Court of Appeals:

1. The thousands of trial transcripts I have reviewed show that a majority of the lawyers have never learned the seemingly simple but actually difficult art of asking questions so as to develop concrete images for the fact triers and do so in conformity with rules of evidence.

2. Few lawyers have really learned the art of cross-examination, including the high art of when not to cross-examine.

3. The rules of evidence generally forbid leading questions, but when there are simple undisputed facts, the leading questions rule need not apply. Inexperienced lawyers waste time making wooden objections to simple, acceptable questions, on uncontested factual matters.

4. Inexperienced lawyers are often unaware that "inflammatory" exhibits such as weapons or bloody clothes should not be exposed to jurors' sight until they are offered in evidence.

5. An inexperienced prosecutor wasted an hour on the historical development of the fingerprint identification process discovered by the Frenchman Bertillon until it finally developed that there was no contested fingerprint issue. Such examples could be multiplied almost without limit.

Another aspect of inadequate advocacy — and one quite as important as familiarity with the rules of practice — is the failure of lawyers to observe the rules of professional manners and professional etiquette that are essential for effective trial advocacy.

Jurors who have been interviewed after jury service, and some who have written articles based on their service, express dismay at the distracting effect of personal clashes between the lawyers. There is no place in a properly run courtroom for the shouting matches and other absurd antics of lawyers sometimes seen on television shows and in the movies. From many centuries of experience, the ablest lawyers and judges have found that certain quite fixed rules of etiquette and manners are the lubricant to keep the focus of the courtroom contest on issues and facts and away from distracting personal clashes and irrelevancies.[14]

A truly qualified advocate—like every genuine professional—resembles a seamless garment in the sense that legal knowledge, forensic skills, professional ethics, courtroom etiquette and manners are blended in the total person as their use is blended in the performance of the function.

There are some few lawyers who scoff at the idea that manners and etiquette form any part of the necessary equipment of the courtroom advocate. Yet, if one were to undertake a list of the truly great advocates of the past 100 years, I suggest he would find a common denominator: they were all intensely individualistic, but each was a lawyer for whom courtroom manners were a key weapon in his arsenal. Whether engaged in the destruction of adverse witnesses or undermining damaging evidence or final argument, the performance was characterized by coolness, poise and graphic clarity, without shouting or ranting, and without baiting witnesses, opponents or the judge. We cannot all be great advocates, but as every lawyer seeks to emulate such tactics, he can approach, if not achieve, superior skill as an advocate.

What is essential is that certain standards of total advocacy performance be established and that we develop means to measure those standards to the end that important cases have advocates who can give adequate representation. Law school students are adults who can contribute once they are persuaded of the

need for training in this area. Rather than being "lectured" on ethics, they should be invited to discuss with the faculty and the best advocates the ethical element in the practice of law so as to impress them with the reality that courtroom ethics and etiquette are crucial to the lawyer's role in society—and indispensable to a rational system of justice. Woven into the seamless fabric of effective advocacy, professional ethics and professional manners are no less important than technical skills.

Lawyers are — or should be — society's peacemakers, problem solvers, and stabilizers. The English historian Plucknett suggests that England and America have been largely spared cataclysmic revolutions for two centuries, in part because the common law system lends itself to gradual evolutionary change to meet the changing needs of people. Lawyers can fulfill that high mission only if they are properly trained.

Footnotes

10—Burger, "Foreword," in L. Patterson and E. Cheatham, *The Profession of Law* (1971).

11—One former colleague of mine on the Court of Appeals, Judge Edward A. Tamm, puts the figure at 2 percent. "Advocacy Can Be Taught—The N.I.T.A. Way," 59 *A.B.A. J.* 625 (1973).

12—Burger (Judge, U.S. Court of Appeals, Washington, D. C.), "A Sick Profession," Remarks before the Winter Convention of the American College of Trial Lawyers, Diplomat Hotel, Hollywood Beach, Florida, April 11, 1967. Reprinted in 27 *Fed. B. J.* 228 (1967), 5 *Tulsa L.J.* 1 (1968), and 42 *Wis. B.B.* 7 (Oct., 1969).

13—The techniques of advocacy in appellate courts, before regulatory agencies including tax tribunals, workmen's compensation tribunals and others, present separate and distinct subjects and could not be treated in a discussion of trial advocacy, which usually involves a lay jury.

14—For 200 years in this country and in other civilized countries for much longer, all deliberative processes — the legislative in particular — have recognized that certain rules and formalities must be observed. Indeed, Thomas Jefferson, hardly one to restrain free speech, wrote the original manual of etiquette and behavior for the United States Congress, drawing on the tradition of the English Parliament. See Burger, "The Necessity for Civility," 52 F. R. D. 211, at 216-217 (1971).

From time to time a Member of the English Parliament or the House or Senate of the United States violates the rules and traditions of those bodies, and when that has happened, various sanctions can be directed against the offending Member. His colleagues may subject him to public scolding on the floor of the house in which he sits, or he may be formally censured after hearings before a committee. These things do not occur often but frequently enough to remind members that there are certain lines which may not be crossed with impunity. Unfortunately, in the courts today for the most part, lines are crossed often and with impunity except in rare instances.

JAG School Notes

1. Douglass Farewell. TJAGSA students and alumni, friends, and distinguished guests from the military and academic community joined JAG School staff and faculty at the University of Virginia School of Education auditorium to bid a fond farewell to Colonel and Mrs. John Jay Douglass on Friday, 18 January 1974. Colonel William S. Fulton, Jr., successor to Colonel Douglass' position as School Commandant, coordinated the ceremonies, which included the presentation of The Distinguished Service Medal to Colonel

Douglass by Major General George S. Prugh, The Judge Advocate General of the Army, and a farewell salute from University of Virginia President Edgar F. Shannon. Mrs. Douglass was presented with a plaque designating her as an Honorary Member of the Staff and Faculty of The Judge Advocate General's School. The farewell activities included an afternoon reception at UVA's Alumni Hall, and a dinner at The Sheraton Inn.

One of the highlights of the ceremony was the presentation of a black and gold Windsor chair to Colonel Douglass. The gift featured the JAC Corps crest and carried a plaque bearing the following inscription:

This replica of The Judge Advocate General's School's
Honorary Chair of Military Legal Education
is presented to
Colonel John J. Douglass, JAGC
Commandant, 8 June 1970-31 January 1974
With affection and esteem from the Staff and
Faculty of The Judge Advocate General's School,
United States Army
To an outstanding officer, lawyer, judge and
legal educator

2. Management For Military Lawyers (25-29 March 1974). The Judge Advocate General's School announces a new one-week management course for military lawyers. Designed especially for Deputy Division Staff Judge Advocates or equivalents with management responsibilities and for those who are being readied for such assignments, this course will cover the latest techniques in Personnel, Fiscal and Office Equipment Management. Course emphasis will be on working successfully with individuals and groups. The program will put aside the "in our office we . . ." approach to instruction, and will rely instead on the fundamentals of Communications, Organizations and Leadership as these concepts apply to government legal agencies. This new management course contains a total of 30 hours of instruction spread over a five day week. The first classes are scheduled for the week of 25 March 1974. Contact Academic Department, TJAGSA for quotas. A detailed flyer follows in the near future.

3. Courses. Last month, three Resident Continuing Legal Education courses were conducted by the staff and faculty in Charlottesville. During the week of 14-18 January, the Second Criminal Law and the Third Civil Law courses were presented for our paraprofessionals within the Corps. The Fourth Advanced Procurement Attorneys' course ended on the 18th after two weeks of classes and seminars, which featured eight distinguished guest lecturers from government and business. A schedule of our upcoming courses is set forth elsewhere in this issue of *The Army Lawyer*.

4. Double Troubles in Basic Class. The 71st Basic Class is now well into its studies. Classes began for this group in early January. Not only does the group number 77 captains; it has the faculty seeing double in other respects. The class contains two Smiths, two Wileys, two Giornos (Frank and Nancy, another married JAG couple) and two William George Fischers'. The Captains Fischer have posed the biggest problem—which has been partially solved by referring to them by their "last four," as "2847" and "4865" "respectively."

5. Dining In. Another highlight of an extremely busy January was The School Dining In, held at The Boar's Head Inn, on the evening of 9 January. In between the raising of goblets and the levy of fines, members of the staff and faculty, the 22nd Advanced Class and guests heard a keynote speech from General Bruce C. Clarke (USA, Ret.) and were entertained by The Third Infantry (Old Guard) Fife and Drum Corps, and Color Guard. Distinguished visitors included: General Robert W. Porter (USA, Ret.); Major General George S. Prugh, The Judge Advocate General of the Army; Rear Admiral Merlin H. Staring, Judge Advocate General of the Navy; and Colonel Max G. Halliday, Assistant Advocate General of the Navy (Military Law).

6. Recent Visitors. First drafts of advanced class theses were submitted last month, but members of the 22nd Advanced Class still took time to hear Rear Admiral Merlin H.

Staring, The Judge Advocate General of the Navy, and Major General Kenneth J. Hodson, Chief of the U.S. Army Legal Services Agency. Both officers spoke as guest lecturers in the General Officer Seminar Series during December and January. Major Frederick E. Moss, Legislative Liason, OTJAG and James Michael from the Political-Military Affairs Section of the Department of State also spoke as part of the Special Studies in Negotiations Program. The Third Annual Kenneth J. Hodson Lecture, entitled "The Tripod of Justice," was delivered by Justice William H. Erickson of the Colorado State Supreme Court. Special guests in attendance included General Hodson himself and Major General Harold E. Parker, the Assistant Judge Advocate General of the Army.

Criminal Law Opinions*

(Offenses—Disobedience of Superior Officer; Defenses) **A Servicemember has a duty to obey only lawful military orders.** In response to a press query, the Criminal Law Division expressed the opinion that the Information Office should answer the questions postulated on the lawfulness of orders as follows:

Q. What are the circumstances in which an officer is permitted to refuse to obey an order on the grounds of unlawfulness?

A. A member of the armed forces is required to obey only lawful orders (paragraph 169b, *Manual for Courts-Martial, United States, 1969 (Revised edition)*, hereafter cited as *MCM, 1969 (Rev.)*. A member of the armed forces has a duty to disobey an order which directs him to commit a crime if:

(a) he knows that the order is illegal, or

(b) if the order is plainly illegal in the sense that a person of ordinary sense and understanding would know the order is illegal.

Q. Has the Army ever defined unlawful in any way as to provide guidance to officers in grey areas?

A. Yes. See paragraph 509, Field Manual 27-10, *The Law of Land Warfare*. Another example appears in the "Film Reference to Training Film 21-4228," entitled: *The Geneva Conventions and the Soldier*, which contains the following:

Q. Each example of criminal orders shown in the training film is obviously an order to commit a crime. What guidance can you give us for situations that are less obvious? May subordinates question an order which might be legal in some circumstances, but illegal in others?

A. One should not presume an order to be illegal unless it is obviously illegal.

For example, it would be obviously illegal to burn down a village your unit has just taken in a raid while the inhabitants are forced to remain in their houses. You must not obey such an order.

After the inhabitants are moved to safety, military necessity, however, hight require the burning of a fortified village in order to deny its use to the enemy as a strong point. This would be lawful destruction because it would be required by military necessity.

On the other hand, it would be illegal to burn down the village merely for revenge.

Whether the order is legal or illegal may depend on whether there is a military necessity for the act. This may depend on facts which the subordinate does not know and which he cannot be expected to know.

* The headnotes conform to the Criminal Law Division internal operating procedures, "Topical Index" dated December 1973.

> In battle, military discipline requires prompt and unquestioning obedience to orders unless they are plainly and obviously illegal. In doubtful cases the responsibility rests with the superior giving the order, not with the subordinate who obeys it. If the situation does not demand immediate action, your superior may be asked to give an explanation of the facts which make the action necessary.

The United States Army Court of Military Review and the United States Court of Military Appeals recently discussed the legality of orders in the case of *U.S. v. Calley.*

Q. What penalty does an officer risk for refusing to obey an order subsequently determined to have been lawful?

A. Unless the order is plainly illegal, or is known to be illegal, a person receiving an order requiring the performance of a military duty or act disobeys such an order at his peril (paragraph 169b, *MCM, 1969, (Rev.)*). Under the present Table of Maximum Punishments in the *Manual,* the maximum penalty for willful disobedience of the lawful order of a superior is dishonorable discharge (dsimissal in the case of an officer), confinement at hard labor for five years, reduction to the lowest enlisted grade, and forfeiture of all pay and allowances.

Q. When is an officer allowed to resign, rather than face a penalty, if he regards an order as unlawful, or if he regards an order as in conflict with his conscience?

A. An officer may tender his resignation at any time. Whether the resignation shall be accepted is a matter within the discretion of the Secretary of the Army. No person in the military service has a vested right to "resign rather than face a penalty." A military member may apply for discharge as a conscientious objector to war in any form by reason of deeply held moral, ethical, or religious beliefs. See Army Regulation 635-20.

Q. Can the matter of unlawfulness apply to questions of conscience, or is a strict legal definition the only one used to determine lawfulness?

A. The lawfulness of an order is a matter of law, tested by legal processes, to include, where applicable, such a test in a court-martial. When a person is determining the order's lawfulness, the measurement is by objective consideration as given by a person of ordinary sense and understanding rather than an individual's own subjective considerations. The *MCM, 1969, (Rev.),* in paragraph 169b, states that "the fact that disobedience to a lawful command would involve a violation of the religious scruples of the accused is not a defense" to a charge of disobedience. The military appellate courts have consistently held that personal scruples or qualms, whether based upon religious conviction or personal philosophy, do not excuse the disobedience of a lawful order.

Q. How much precedent is there in the Army of officers refusing to obey orders on the grounds of unlawfulness? In what circumstances and in what ranks has this most frequently occurred?

A. The Court-Martial Reports contain references to many cases involving disobedience of orders or regulations, and innumerable defenses have been raised. The legality of orders has been attacked on the following grounds, among others:

(1) the order was issued for the attainment of private gain;

(2) the order was issued to increase the punishment of a contemporaneous offense;

(3) the order directed an accused to incriminate himself; and

(4) the order restricted an accused's constitutional freedom, e.g., *United States v. Taylor,* 37 CMR 547 (ACMR 1966); *United States v. Musquire,* 23 CMR 571 (ACMR 1957); *United States v.*

Wysong, 9 USCMA 249, 26 CMR 29 (1958). The reported cases where illegality of an order was raised as a defense involve both officers and enlisted personnel, but more frequently involve lower ranking personnel.

Q. Did any officer ever challenge the lawfulness of the commander-in-chief's order to wage war in Korea, Vietnam or elsewhere on the grounds that this is a power given in the Constitution only to Congress? What was the disposition of any such challenge(s)?

A. In a few cases, an accused has contended this. However, the United States Court of Military Appeals rejected this contention. *United States v. Johnson,* 17 USCMA 246, 38 CMR 44 (1967). That Court also has ruled that for purposes of military justice a condition of war may exist notwithstanding the lack of a formal declaration of war by Congress. See *United States v. Anderson,* 17 USCMA 588, 38 CMR 386 (1968); *United States v. Bancroft,* 3 USCMA 3, 11 CMR 3 (1953). Long ago in *Martin v. Mott,* 12 Wheat 19 (U.S. 1827), and more recently in *Johnson v. Eisentrager,* 389 US 763 (1950), the United States Supreme Court refused to question the legality, wisdom, or propriety of the President's decision to send armed forces to any particular region.

Q. Did any officers refuse to accept orders to participate in the control of civilian disorders of the past 10 years on the grounds of unlawfulness?

A. A review of records readily available at Department of the Army level fails to reveal any such court-martial case (one involving an Army officer who refused to obey orders to participate in the control of civilian disorders, in the past ten years, on the grounds of unlawfulness). However, the very short time limits imposed by you in asking for this material do not permit research in the depth necessary to answer the question fully.

The above answers were drafted with a view towards publication by news media for compensation of laymen and are not intended to address a specific factual situation. The tenor of the responses conforms to current policy and published case law. DAJA-MJ 1973/12292, 4 January 1974.

Administrative Law Opinions*

(Commissioned Officers—General) **AR 27-1 Gives The Commander Final Judgment In The Utilization Of Judge Advocates For Nonlegal Duties.** It was opined that, as a matter of law, paragraph 12, AR 27-1, 19 Jan 1968, as changed by C4, 5 Mar 1971, does not preclude a commander from determining that the effective functioning of his unit or installation requires the utilization of judge advocates in connection with particular duties, to include staff duty officer or assistant staff duty officer. The opinion noted that the JAG Corps wants no special conditions or favors, and that military lawyers must carry their fair share of duties. However, since major headquarters have more legal work than their lawyer resources can handle and there is a critical shortage of military lawyers, it was suggested that such use of JAG Officers "be limited to cases of actual necessity, where overriding command requirements dictate, and where no other feasible solution is apparent." The intent of the questioned provision is merely to emphasize that, from the standpoint of efficient management, officers with particular skills are usually most effectively used in performing duties involving those skills. Moreover, use of JAG Officers to perform other than legal duties will ultimately be considered in determining the num-

* The headnotes for these opinions conform to the list of topic headings found at Appendix 8-A to DA Pamphlet No. 27-21, Military Administrative Law Handbook (1973).

ber of judge advocates that can be assigned to a particular installation. However, the provision was drafted to give the commander final judgment in these cases. (DAJA-AL 1973/4608, 22 Aug 1973)

(Dependents—General) **Transsexual Marriage Recognized By State Of Celebration Should Be Accepted As Valid And Dependent Benefits Accorded To Wife.** A male with prior military service underwent sex change surgery by a medical doctor in Colorado. The operation was successful, and a subsequent marriage to a male PFC, performed by a member of the Alaska State District Court, followed. An inquiry was made whether the two were entitled to receive all dependent benefits. It was opined that as Alaska recognizes the marriage, full faith and credit dictates that the Department of the Army also accept it. Language in the Servicemen's Dependent's Allowance Act of 1942 supports the argument by stating that "Class A dependents of any such enlisted man shall include any person who is the wife . . . of any such enlisted man." 37 U.S.C. §401 defines "dependent" with respect to a member of a uniformed service as "his spouse," and 10 U.S.C. §1072 renders "the wife" eligible for medical care. The opinion added, however, that since an expenditure of public funds is involved, a definitive opinion on the issue could only be obtained from the Comptroller General. (DAJA-AL 1973/4491, 8 Aug 1973)

(Separation From The Service—General) **Case Is Final For Purposes Of Chapter 10 Discharge Upon Completion Of Sentence Or Appellate Review, Whichever Is Later.** An EM had sought discharge UP Chapter 10, AR 635-200. His request for discharge had been made one day before his non-BCD special court-martial was scheduled to convene. The special court-martial convening authority had directed that trial proceed. After trial, the special court-martial convening authority approved the sentence and ordered it executed, forwarding accused's request for discharge to the general court-martial convening authority that same day. An opinion was sought as to disposition of accused's request for discharge in view of the fact that he did not desire to withdraw his request even though sentence had been fully executed.

It was noted that the primary thrust of a Chapter 10 discharge is in its reciprocal benefits: administrative and correctional burdens are reduced for the Government, while an accused has his punishment reduced or otherwise escapes the stigma of criminal conviction. When a sentence has become fully executed and appellate review completed, a subsequent discharge is of no further benefit to the accused. Although requests for discharge may be approved after trial, when done, the unexecuted portion of a sentence should not be approved (paragraph 10-1*c*, AR 635-200, 15 Jul 1966, as changed by C36, 19 Apr 1972). Therefore, for purposes of a Chapter 10 discharge, a case becomes final upon full execution of the sentence or completion of appellate review, whichever is later. Until that time, the general court-martial convening authority may accept a request for discharge. However, if the decision to accept a discharge is made at a time substantially after trial, the requestor, with the advice of counsel, should be offered the opportunity to withdraw his request for discharge. (DAJA-AL 1973/4302, 1 Aug 1973)

(Absence Without Leave; States and State Laws) **Time Lost For Purposes Of 10 U.S.C. §972.** An SJA requested an opinion as to whether time spent by a soldier in civilian confinement awaiting trial could be charged as "time lost" under 10 U.S.C. §972 when the individual is initially confined while in a leave status, and is subsequently acquitted or a "no bill" is returned or a *nolle prosequi* is entered.

It was observed that an acquittal on the merits by civilian authorities is normally viewed as establishing a conclusive presumption of no misconduct. On the other hand, in a "no bill" situation, grand and petit juries are concerned with questions of criminal culpability rather than an individual's misconduct for the administrative purpose of determinations of time lost UP 10 U.S.C. §972. In

construing "avoidability" for pay purposes under 37 U.S.C. §503, it has long been recognized that one's misconduct may have resulted in his detention and concomitant inability to return to military control on schedule, even though his actions did not rise to a level of a criminal act. The "no bill" does not create a conclusive presumption of unavoidability and absence of misconduct—an independent determination of misconduct is necessary. Under this approach, an individual who is arrested and confined while on leave would be AWOL for administrative purposes when his leave has expired, but is subject to excusal UP paragraph 4-32(c), AR 630-10, 23 Apr 1971, where the absence is unavoidable both as far as the Government and individual are concerned.

In the *nolle prosequi* situation, it was observed that this voluntary withdrawal by a prosecutor neither frees one from further prosecution for the charged offense nor a second indictment covering the same matter. The opinion could cite no reasonable basis for an administrative extension of a questionable presumption of no misconduct in this instance. (DAJA-AL 1973/4458, 20 Aug 1973)

(Separation From The Service—General) **Member In State Mental Hospital Due To Civilian Court Action May Be Discharged *In Absentia* For The Convenience Of The Government.** An individual reenlisted in the Army on 21 Jan 1969 for a period of six years. Following an unrelated court-martial conviction for AWOL, he was released to civil authorities under a fugitive warrant for robbery and conspiracy to commit robbery, allegedly committed on 17 Mar 1969. The state court found him not guilty of the offenses by reason of insanity, and committed him to a state mental hospital. On 16 Jan 1973, a military medical board diagnosed the individual's condition as a severe antisocial personality but found him medically fit for further military service. The board recommended that the individual be administratively discharged. An opinion was requested in this case due to the fact that the member was still a patient in the state mental hospital with no scheduled release date.

The instant situation was found similar to previous cases where, prior to trial, enlisted members were ordered committed to state institutions as either legally insane or mentally incompetent to stand trial, yet had been found medically fit for service in subsequent Army medical boards. In those instances, a discharge for the convenience of the Government UP paragraph 5-3, AR 635-200, 15 Jul 1966, as changed, was given. Paragraph V.A.2. DOD Dir. 1332.14, 20 Dec 1965, as changed, does not afford a member the right to present his case before an administrative discharge board if he is discharged under honorable conditions. Therefore, it was opined that the individual could be discharged *in absentia* UP paragraph 5-3, AR 635-200, *supra*. (DAJA-AL 1973/4239, 24 Jul 1973)

(Prohibited Activities—General) **31 U.S.C. §679 Bars Payment Of Telephone Installation Charges In A Change Of Government Quarters.** An SJA inquired whether the United States could pay the telephone installation charge for 175 military families being moved to new Government housing while their former Government quarters were being renovated. The Army was providing reimbursable Class B-1 telephone service to the families pursuant to paragraphs 4-16 and 7-3b, AR 105-23, 15 March 1967, as changed.

The opinion noted that 31 U.S.C. §679 prohibits the expenditure of appropriated funds for telephone service installed in any private residence, except for toll calls required strictly for the public business, and except as otherwise provided by law. Since the statute had been consistently construed to prohibit payment of such charges in similar cases, it was opined that the payments would be improper in the absence of additional enabling legislation. Furthermore, since appropriated funds would be involved, it was considered that 31 U.S.C. §679 would also bar a claim against the Government under the provisions of AR 27-20, 1 Jan 1971, as changed, for these charges. (DAJA-AL 1973/4459, 21 Aug 1973)

(Army Reserve—General; Posts, Camps and Stations—General) **Individual Assigned Or Attached To Unit For Annual Training May Not Be Assessed Service Charge For**

Government Quarters. An opinion was sought as to the propriety of an installation billeting practice which apparently included a service charge for occupancy of Government quarters, assessed against officers and enlisted personnel assigned or attached to a unit for their annual reserve training.

Citing an identical response in DAJA-AL 1973/3634, 15 Mar 1973, the opinion stated that under the controlling provisions of subparagraph 4-8*c*, AR 37-106, 9 May 1958, as changed by C51, 31 Oct 1972, such service charges should not be assessed. Subparagraph 4-8*a*(1) of the regulation states that a reserve component officer on active duty for training (excluding annual training) for less than 20 weeks will be assessed for occupancy of Government quarters a service charge the same as that for officers occupying Government quarters on temporary duty. Subparagraph 4-8*a*(2) says that an officer or enlisted member of the reserve components on active duty for training of 20 weeks or more, and who occupies bachelor officer's quarters or senior enlisted bachelor quarters, will be assessed the service charge established for permanent party personnel occupying like quarters. Finally, it was pointed out that subparagraph 4-8*c* states that an officer not assigned or attached to a unit for annual training will be assessed the service charge established for a permanently assigned officer at his permanent duty station. (DAJA-AL 1973/4337, 31 Jul 1973)

(Posts, Camps and Stations—General; Efficiency Reports) **Error Or Injustice Stemming From Military Record References To Officer's Refusal Of Vehicle Search Is Matter For ABCMR.** The ABCMR requested an opinion on the legal issues raised by an officer applicant seeking expunction of all record references to an MP report stemming from an allegedly illegal on-post search of his POV which ultimately resulted in the loss of his installation driving privileges. By authority of the post commander, the provost marshal was conducting random "spot check" searches of POV's. The searches had been precipitated by recent and extensive losses of Government property. On 17 Mar 1970, after being stopped for such a check, the subject officer permitted the MP's to conduct a safety inspection of his car, but denied them access to the trunk and glove compartment. His denial was grounded upon a concern for his fourth amendment rights. This officer remained adamant in his refusal, and consequently had his post driving privileges revoked. No disciplinary action was taken against the officer because of this incident. Aside from an MP Report (DA Form 19-32), the only other reference to it in Army records appeared in the reviewer's comment on the officer's OER (DA Form 67-6) for 7 July 1969—29 May 1970. In this remark, the reviewer expressed the opinion that the incident cast doubt on the individual's "sense of responsibility as an officer and his loyalty to the service and command."

Both contested documents herein were noted to be "military records" within the meaning of 10 U.S.C. §1552. As implemented by AR 15-185, 28 Aug 1970, this legislation authorizes the ABCMR to act if it finds error or injustice present. In the instant case the military police report entry was a proper police function, and the form appears to have been prepared in accordance with the guidelines of paragraph 6*c*, AR 190-45, 6 Sep 1960, as changed. The officer's constitutional objections were not addressed, as no search was conducted—however, the base commander had authority to order such a search based on "military necessity" (paragraph 1-15*a*, AR 210-10, 30 Sep 1968, as changed). As to the OER notation, Chapter 5, AR 623-105, 16 Oct 1972, as changed, outlined the duties of an OER reviewer at that time. It is not unreasonable to conclude that the reviewer added his personal comments with a desire "to protect the interests of the Government" as had been provided in paragraph 5-2*h* of the regulation. No legal error was found in either record entry. However, the opinion ended with the observation that the ABCMR makes the final determination as to whether error or injustice exists—and they can be present notwithstanding the lack of legal objection. (DAJA-AL 1973/4257, 24 Jul 1973)

Status Report on Procurement of New Court Reporting Equipment

From: Developments, Doctrine & Literature Department, TJAGSA

The new closed microphone court reporting equipment system is close to reality. On 24 Oct 73, HQDA approved the Required Operational Capability (ROC) statement initiated by the Judge Advocate Agency, CDC, in July 1972. HQ TRADOC directed implementation by AMC on 12 Nov 73 and, on 14 Dec 73, HQ AMC ordered HQ USAECOM to submit "milestone" schedules for the procurement. Spokesmen anticipate completion before the end of FY 74.

Essential features of the commercially available system are: two recorder-transcribers connected through a switch which permits continuous closed microphone reporting by alternating recorders and reversing cassettes on the idle machine. Familiar stenomasks, foot pedals and other auxiliary equipment are used. There is also a hand-held, battery/AC operated back-up.

Authorization to units is one per court reported authorized by TD/TOE plus one for each active legal office (Cite: Ltr, ATCD-DI-E, HQ TRADOC, 12 Nov 73, subject: Required Operational Capability (ROC) for Court Reporting System, CARDS Reference Number 1442). Since this is a new authorization-basis, units should renew outstanding requisitions.

Free Local Telephone Service in Barracks is Legal

The Comptroller General has ruled that 31 U.S.C. 679 does not prohibit the Army from providing *local* telephone service in barracks at Government expense where the service is for both official and personal use. Ms. Comp. Gen. B-175732, 1 October 1973.

In construing 31 U.S.C. 679—which prohibits the expenditure of appropriated funds for telephone service installed in a "private residence or apartment"—this decision [first] held that Army barracks are not private residences or apartments within the meaning of the statutory provision. Reasoning that an enlisted man living in Army barracks has none of the prerogatives of choosing his own quarters, determining who else will live with him and controlling who will or will not be permitted to enter the premises, the Comptroller General found that such a living style would not comport with prior decision definitions that a "private residence or apartment" is a facility, whether publicly or privately owned, set apart for the exclusive personal use of one person or family.

Secondly, the Comptroller General explained that, although 31 U.S.C. 679 reflects a general policy against the provision at Government expense of telephone service for the personal benefit of employees, some flexibility is afforded where the residence is Government owned and not set aside for exclusive personal use and sufficient official need for telephone service exists. The Comptroller General decided that barracks telephones would serve an official purpose in terms of direct official use and the fact that such telephones would also be available for personal use would not diminish that determination. An incidental official benefit given recognition in this decision was that free barracks local telephone service would materially enhance the Modern Voluntary Army concept by improving the soldier's morale and efficiency and enhancing the Army's efforts to attract personnel. The Comptroller General concluded that, moreover, the Army operation and maintenance appropriation is available for the welfare and recreation of military personnel.

TJAGSA – Schedule of Resident Continuing Legal Education Courses Through 30 August 1974

Number	*Title*	*Dates*	*Length*
5F-F2*	12th Civil Law II	4 Feb - 15 Feb 74	2 wks
5F-F2*	Personnel and Admin Law Phase	4 Feb - 8 Feb 74	1 wk
5F-F2*	Legal Assistance Phase	11 Feb - 15 Feb 74	1 wk
7A-713A	4th Law Office Management	4 Mar - 8 Mar 74	1 wk
5F-F10	10th Law of Federal Employment	11 Mar - 15 Mar 74	1 wk
5F-F3	18th International Law	11 Mar - 22 Mar 74	2 wks
5F-F8	14th Senior Officer Legal Orientation	25 Mar - 28 Mar 74**	3½ days
	Management for Military Lawyers	25 Mar - 29 Mar 74	5 days
5F-F11	58th Procurement Attorney	8 Apr - 19 Apr 74	2 wks
5F-F13	5th Litigation and Environmental Law	29 Apr - 3 May 74	1 wk
5F-F6	4th Staff Judge Advocate Orientation	6 May - 10 May 74	1 wk
5F-F1	16th Military Justice	13 May - 24 May 74	2 wks
5F-F1	Administration Phase	13 May - 17 May 74	1 wk
5F-F1	Trial Advocacy Phase	20 May - 24 May 74	1 wk
5F-F9	13th Military Judge	10 Jun - 28 Jun 74	3 wks
5F-F14***	3d Judge Advocate Overseas Operations	17 Jun - 21 Jun 74	1 wk
5F-F8	15th Senior Officer Legal Orientation	22 Jul - 25 Jul 74**	3½ days
5F-F4	11th The Law of War and Civil-Military Operations	22 Jul - 2 Aug 74	2 wks
5F-F11	59th Procurement Attorney	29 Jul - 9 Aug 74	2 wks
5F-F5	14th Civil Law I	5 Aug - 16 Aug 74	2 wks
5F-F5	Law of Military Installations	5 Aug - 9 Aug 74	1 wk
5F-F5	Claims	12 Aug - 16 Aug 74	1 wk

* Cancelled 25 Jan 74 due to lack of sufficient enrollment.
** Course extended one half day since previous listing in August 1973 issue of *The Army Lawyer*.
*** For Active Army under orders to foreign areas.

Reserve Points For Pilot Legal Assistance Program: An Update

The Special Legal Assistance Officer program announced in the January 1973 issue of *The Army Lawyer* has attracted response from Reserve lawyers in all parts of the country. Additional announcements are currently being sent to all JAG reserve units encouraging participation by interested individuals. Printed below is a listing by state and city of the reserve officers currently designated on orders as Special Legal Assistance Officers. These attorneys are authorized to represent members of the active Army and their dependents in accordance with paragraph (4)b, AR 608-50 to wit:

b. JAGC Reserve Officers

A reserve officer of the Judge Advocate General's Corps who is not on active duty may under the provision of paragraphs 34 and 43, AR 140-305, if he volunteers, be designated "special legal assistance officer" in appropriate orders for the primary purpose of rendering legal assistance to members of the active Army, and their dependents, assigned to units not having reasonable access to a legal assistance office of the Army, Navy, Air Force or Coast Guard.

Officers so designated receive no military pay and will not be able to accept any fee for their services. They are, however, entitled to receive points creditable towards their reserve requirement. Staff Judge Advocates and Legal Assistance Officers are encouraged to detach and save this roster for use by their legal assistance offices. Future additions and deletions from the roster will be circulated by use of *The Army Lawyer*. Any questions, problems or suggestions concerning this program should be directed to the Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia.

Roster of Reserve Judge Advocates Designated as Special Legal Assistance Officers Pursuant to Paragraph 4(b), AR 608-50

State and City	*Name*	*Business Address*	*Telephone Number*
Arizona			
Sierra Vista	Shull, Charles J., MAJ, USAR RCPAC Control Gp (MOB DES) (SO #115, 18 Dec 73)	11 North Canyon Drive Sierra Vista, AZ 85635	(602) 458-8070
California			
	Verzyl, Edwin, LTC, ARNG HQ 79th Support Center, CA NG (SO #56, 18 Jun 73)	2667 El Paseo Lane Sacramento, CA 95821	483-3202
Illinois			
Moline	Fackel, Joseph F., CPT, USAR RCPAC Control Gp. (SO #56, 18 Jun 73)	1st National Bank Bldg. Moline, Illinois 61265	(309) 762-0736
Maryland			
Denton	Kent, Roland C., MAJ, USAR RCPAC Control Gp (MOB DES) (SO #56, 18 Jun 73)	118 Market Street Denton, MD 21629	(301) 479-2570
Massachusetts			
Boston	Rogers, Herbert, LTC, USAR 43d JAG Detachment (SO #56, 18 Jun 73)	1 State Street Boston, MA 02109	742-0080
Mississippi			
Jackson	Montgomery, Edmund W. II, BG USAR, RCPAC Contr Gp (MOB DES) (SO #56, 18 June 73)	P. O. Box 724 Jackson, MS 39205	(601) 948-6321
New Mexico			
Albuquerque	Boyd, David F., Jr., COL, USAR 210th JAG Detachment (SO #205, 23 Oct 73)	Suite 504 400 Gold Avenue S.W. New Mexico 87101	(505) 842-8287
Pennsylvania			
Philadelphia	Cohen, Gene D., CPT, USAR 153d JAG Detachment (SO #115, 18 Dec 73)	3604 Weightman Street Philadelphia, PA 19129	
	Jaffee, Jerome, LTC, USAR	1201 Chestnut Street 7th Floor Philadelphia, PA 19107	735-0490
Tennessee			
Union City	Warner, John L., Jr., CPT, USAR RCPAC Control Gp (Standby) (SO #56, 18 Jun 73)	P. O. Box 6 Union City, TN 38261	885-2424
Vermont			
South Royalton	Burstein, Richard I., CPT, USAR RCPAC Control Gp (Reinf) (SO #115, 18 Dec 73)	Box 131 E. RFD #2 Vermont 05068	295-3040
Virginia			
Norfolk	Cloud, John M., MAJ, USAR 300th Support Group (SO #56, 18 Jun 73)	108 The Mall Janaf Shopping Center Norfolk, VA 23502	853-2316
	Furr, Carter, B. S., MAJ, USAR 300th Support Group (SO #56, 18 Jun 73)	801 Bank of Virginia Norfolk, VA 23510	622-3239

State and City	*Name*	*Business Address*	*Telephone Number*
Washington			
Redmond	Diensen, Charles F., CPT, USAR 226th JAG Detachment (SO #56, 18 Jun 73)	7969 Gilman Street Redmond, WA 98052	885-1227
Wisconsin			
Milwaukee	Burroughs, Charles C., CPT, USAR RCPAC Control Group (SO #56, 18 Jun 73)	1902 Marine Plaza Milwaukee, WI 53202	272-8550

Judge Advocate General's Corps Reserve Component Technical Training (On-Site) April – June 1974

The Reserve Component Technical Training Schedule (On-Site) for April through June is set forth on the following pages. Action officers should insure integration of the listed dates in appropriate local training schedules. As in previous months, coordination should be initiated with the "units other than JAGSO" listed to provide maximum opportunity for these JAG officers to plan to take advantage of this training. Questions concerning the on-site instruction by local Reserve Component officers should be directed to the appropriate Action Officer. Problems encountered by Action Officers or Unit Commanders should be directed to Assistant Commandant for Reserve Affairs, TJAGSA, Charlottesville, Virginia 22901, telephone 804-293-7469.

Planning is currently underway for the on-site instruction schedule for FY 75. Comments or suggestions concerning changes or improvements in the program should be forwarded to the address listed above.

TJAGSA-RESERVE COMPONENT TECHNICAL TRAINING SCHEDULE (ON-SITE) APRIL-JUNE 1974

ACADEMIC DIVISION	DATE	TIME	CITY STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Proc	1-2 Apr	1900-23	St Louis, MO	Training Center #1	102d ARCOM 35th ENG BDE (NG) 307th CA GROUP HQ 3d TC BDE (RAILWAY)	CPT Robert E. Ritter	314-241-5620
	3-4 Apr	1900-23	Hattiesburg, MS	National Guard Armory	412th ENG CMD	LTC Dorrance Aultman	601-583-2671
	6 Apr	0800-15	New Orleans, LA	U.S. Army Reserve Center 5010 Leroy Johnson Dr.	377th SPT BDE	1LT Donald Mintz	504-586-1200
ICL	1-2 Apr	1900-23	Austin, TX	USAR Center	71st SEP ABN BDE (NG) STATE AG	MAJ Charles W. Richards	512-477-9623
	3-4 Apr	1900-23	Lubbock, TX	USAR Training Center	413th CA Co	CPT David C. Cummins	806-742-6273
	6 Apr	0800-15	Dallas, TX	Muchert Reserve Center	36th SEP IN BDE 362d CA AREA B 490th CA Co 4013th USAG	MAJ Virgil A. Lowrie	817-387-3731
Civil (LegAst)	1-2 Apr	1900-23	Los Angeles, CA	#850, Ft MacArthur, CA	63d ARCOM 301st CA GP 311th SPT BDE 40th SEP IN BDE (NG) 40th SEP ARMD BDE (NG) 426th CA Co 425th CA Co	CPT John J. Wittorff	213-485-3640
	3-4 Apr	1900-23	Sacramento, CA	555 Capitol Mall (2nd Floor)	STATE AG	COL Willard A. Shank	916-445-2326
	6 Apr	0800-15	Boise, ID	USAR Center	STATE AG STATE NG	MAJ Robert M. Southcomb	208-344-7811
Crim	1-2 Apr	1900-23	Richmond, VA	Michelli USARC	2174th USAG 80th TNG DIV 300th SPT GP STATE AG	LTC Robert L. Masden	804-770-2293
	3-4 Apr	1900-23	Greensboro, NC	USAR Training Center	422d CA Co	MAJ Dan Fouts	719-275-5314
	6 Apr	0800-15	Columbia, SC	Forest Drive Armory	120th ARCOM 360th CA HQ AREA B 1182d ARMY TERMINAL CMD	LTC H. Hugh Rogers	359-2599
ICL	6-7 May	1900-23	Portland, OR	Vancouver Barracks	451st CA GP 364th CA AREA B 41st SEP IN BDE (NG) 104th TNG DIV STATE AG	CPT Jeffrey T. Noles	503-221-0111
	8-9 May	1900-23	Los Angeles, CA	#850, Ft MacArthur, CA	63d ARCOM 301st CA GP 311th SPT BDE 40th SEP IN BDE (NG) 40th SEP ARMD BDE (NG) 426th CA Co 425th CA Co	CPT John J. Wittorff	213-485-3640
	11 May	0800-15	San Francisco, CA	Harmon Hall - Presidio of San Francisco	6211th USAG 91st TNG DIV 445th CA Co	1LT Lionel M. Allan	408-286-9800

ACADEMIC DIVISION	DATE	TIME	CITY STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Proc	6-7 May	1900-23	Seattle, WA	Harvey Hall, Ft Lawton	124th ARCOM USA TERMINAL UNIT (1395) 81st SEP IN BDE (NG) 365th CA AREA B 448th CA Co	MAJ John P. Cook	624-7990
	8-9 May	1900-23	Anchorage, AK			MAJ John Spencer	907-333-4810
	11 May	0800-15	Honolulu, HI	Bruyeres Quadrangle	STATE AG 29th SEP IN BDE 322d CA GROUP	LTC Donald C. Machado	808-86-2681
ICL	13-14May	1900-23	Boston, MA	Boston USAR Center	94th ARCOM 187th IN BDE 357th CA AREA B 1169th USA OUTPORT 26th IN DIV (NG) STATE AG	MAJ Peter F. MacDonald	617-727-2257
	15-16May	1900-23	Providence, RI	Cooper USAR Center	STATE AG 443d CA Co	CPT Gerard Cobleigh	401-277-2154
	18 May	0800-15	Hartford, CT	Berry-Rosenblat Tng Ctr	STATE AG 76th TNG DIV 411th CA Co 399th CA GP	LTC Mark Wise Levy	203-522-2201
Proc	13-14May	1900-23	Washington, D.C.	Theater #3, Ft. Meade	220th MP BDE 310th FASCOM 97th ARCOM DC NG HQ's STATE AG for MD	MAJ Russell M. King, Jr.	202-525-9400
	15-16May	1900-23	Philadelphia, PA	Philadelphia Mem. AFRC	79th ARCOM 304th CA AREA B 358th CA AREA B 416th CA Co 404th CA Co STATE AG for NG	CPT Joseph S. Berarducci	215-968-7666
	18 May	0800-15	Baltimore, MD	Sherdian USAR Center	450th CA Co 354th CA AREA B 510th CBT SPT DEP 300th CA GP 2122d USAG	LTC John Faulk	202-382-6123
Crim	13-14May	1900-23	Salt Lake City, UT	Bldg #107, Fort Douglas, UT	96th ARCOM 6214th USAG STATE AG	MAJ Gail G. Weggeland	524-5796
	15-16May	1900-23	Denver, CO	I-332 Fitsimmons Gen Hosp	STATE AG	LTC Bernard Thorn	303-244-3357
	18 May	0800-15	Minneapolis, MN	Bldg 501, Ft Snelling	88th ARCOM 205th IN BDE 205th SPT BN Co A (ADMIN) 47th IN DIV (NG) STATE AG 407th CA Co	MAJ Terry C. Klas	612-377-5511

ACADEMIC DIVISION	DATE	TIME	CITY STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Civil (Claims)	20-21May	1900-23	Dallas, TX	Muchert Reserve Center	4013d USAG 36th SEP IN BDE (NG) 362d CA AREA B 490th CA Co	MAJ Virgil A. Lowrie	817-387-3831
	22-23May	1900-23	Houston, TX	Annex Bldg	75th MANEUVER AREA COMMAND	MAJ Donald M. Bishop	224-9811
	25 May	0800-15	New Orleans, LA	U.S. Army Reserve Center 5010 Leroy Johnson Drive	377th SPT BDE	1LT Donald Mintz	504-586-1200
Proc	20-21May	1900-23	Harrisburg, PA	Bldg # 442, New Cumberland Army Depot	STATE AG 28th IN DIV (NG)	LTC Harvey S. Leedom	717-782-6310
	22-23May	1900-23	Pittsburgh, PA	GEN Malcom Hay Armory	99th ARCOM 443d Field Dep	CPT James A. Lynn	412-434-3709
	25 May	0800-15	Fairmont, WV	Colborn USAR Center		LTC Gary K. Rymer	304-366-0551
Crim	20-21May	1900-23	Chicago, IL	Cornell USAR Center	86th ARCOM 416th ENG CMD 85th TNG DIV 308th CA GROUP 363d CA Co 425th TRANS BDE	CPT Allan B. Miller	312-282-6200
	22-23May	1900-23	St. Louis, MO	Training Center # 1	102d ARCOM 35th ENG BDE(NG) 307th CA GROUP HQ 3d TC BDE(RF)	CPT Robert E. Ritter	314-241-5620
	25 May	0800-15	Omaha, NB	USAR Center	67th SEP IN BDE (NG)	MAJ John Churchman	712-322-4965
Proc	29-30 May	1900-23	Detroit, MI	Raymond Zussinon USARC	70th TNG DIV 300th MP POW COMMAND 309th CA GROUP	LTC Cay Newhouse, Jr.	313-264-1100
	1 Jun	0800-15	Indianapolis, IN	Boros Hall	STATE AG 451st COMBAT SPT FLD DEPOT 38th IN DIV(NG) 123d ARCOM	LTC T. D. Wilson	317-923-4573
Crim	29-30May	1900-23	San Diego, CA	Miramar Naval Air Station	6215th USAG	LTC David Gill	714-238-1355
	1 Jun	0800-15	Albuquerque, NM	Bldg #327, Kirtland AFB	156th SPT GROUP (AREA)	COL David F. Boyd, Jr.	505-247-2271

Personnel Section

From: PP&TO

1. Orders Requested As Indicated.

Name	*From*	*To*
	COLONELS	
GRIMM, Charles	USA Leg Svc Falls Church	USA Leg Svc w/sta Ft Knox
	LIEUTENANT COLONELS	
MOONEYHAM, John	USA MP Sch Ft Gordon	USAADC Ent EFB, Colorado
	MAJORS	
WATSON, Kermith	Sch Tng Ctr Ft Gordon	USA MP Sch Ft Gordon
	CAPTAINS	
GENDRY, Thomas	USAG Ft Carson, CO	4th RECTG Dist San Antonio
SETTLE, Benjamin	HQ HHC Ft Brag, NC	9th Inf Div Ft Lewis, WA
SMITH, Daniel A.	Tng Ctr Ft Pork, LA	USA Leg Svc Agy Falls Church

2. Awards. Congratulations to the following officers who received awards as indicated:

MAJ Raymond C. McRorie	Meritorious Service Medal	Jun 67-Jun 70
CPT John E. Caulking	Army Commendation Medal	Jan 73-Jan 74
CPT Kevin J. O'Dea	Army Commendation Medal	Apr 70-Nov 73
CPT Alfred M. Finklea	Army Commendation Medal	7 Aug 71-17 Aug 73
CPT Morris J. Lent, Jr.	Meritorious Service Medal	26 May 71-21 Jul 73

3. Officer Record Brief (ORB). The Military Personnel Center (MILPERCEN) reports that only about half of the ORB's sent to the field for audit are being returned. The ORB is an important document. All personnel are encouraged to audit their ORB's when your local personnel officers receive them from MILPERCEN. The Officer Record Brief (ORB) has replaced the DA Form 66 that was previously kept in your branch file at PP&TO. A DA Form 66 is still kept by your local unit personnel officer. The Military Personnel Center forwards your ORB to the field each year during your month of birth for audit. This audit must be accomplished in coordination with your unit personnel officer. PP&TO cannot change your ORB.

4. Officer Evaluation Report (OER).

The "new" OER (DA Form 67-7) has now been in use for over one year. Some of the most common errors made in completing OERs are:

a. Gaps (or overlaps) in "from" or "thru" dates in consecutive reports in Part IIa.

b. Failure of reviewer to add written comments on "special" OERs as required by para 5-2k, AR 623-105.

c. Failure to provide rated officer with copy of OER.

d. Failure to properly indicate codes in Part Ih.

All personnel are encouraged to complete OERs with the utmost of care.

5. Certificates for Staff Judge Advocates. It is now the policy of the Judge Advocate General to issue to newly-appointed Staff Judge Advocates, certificates commemorating that appointment. These certificates will be issued not only to those officers serving as Staff Judge Advocates as defined by AR 27-1, but to senior judge advocates of headquarters superior to GCM jurisdictions, which do not themselves have GCM jurisdiction.

6. Enlisted Stenotype Training Program. DA Message 141945Z Dec 73, subject: "Enlisted Education Program for Court Reporters," announced the commencement of a program for the training of five to ten legal

clerks and court reporters in fiscal year 1975 at civilian stenotype institutions on a fully funded basis. Additional details are contained in DAJA-PT letter to Staff Judge Advocates/ Judge Advocates, subject: "Enlisted Training Program in Stenotype Court Reporting," dated 28 December 1973. All personnel are encouraged to become familiar with this vital program. Careful attention to the details contained in the cited DA message and letter must be taken by those submitting applications. In addition, Staff Judge Advocates must be particularly aware of the importance of the "Judge Advocate Evaluation" that must accompany each application.

7. Law Office Management Course. The Judge Advocate General's School announces the 4th Law Office Management Course designed to update managerial skills in a judge advocate office. The course will be conducted 4-8 March 1974 and is open to JAGC Warrant Officers, Chief Legal Clerks and U.S. Civilians occupying Chief Legal Clerk positions. Requests for information on the course should be directed to CW2 Charles L. West, The Judge Advocate General's School, U.S. Army, telephone (804) 293-7475. Quotas are available through FORSCOM, TRADOC and AMC.

Current Materials of Interest

Articles.

Gerwig, "The Expanding Military Docket," 32 FED.B.J. 142 (Spring—Summer 1973). Catalogs a representative selection of federal court decisions reflecting the current inroads into areas of military concern formerly insulated from civil court review.

Endicott, "Decision Making and the Court-Martial Cases," 45 JUDGE ADVOCATE J. 33 (November 1973). An analysis of the U.S. Supreme Court decision process, as seen through some post-World War II cases.

Lewis, "Government Lawyers and Conscience," 59 A.B.A.J. 1420 (December 1973).

Munnecke, "Problems in Bar Admission on Motion," 32 FED.B.J. 170 (Spring—Summer 1973).

Siegrist, "Probation for the AWOL Offender: A Correctional Alternative to Incarceration," I MIL. POLICE L. ENFORCEMENT J. 34 (Winter 1974).

Symposium, "A Model Act for the Protection of Rights of Prisoners," 1973 WASH. U. L.Q. 551 (Summer 1973).

Note, "The Right of Nonrepatriation of Prisoners of War Captured By the United States," 83 YALE L.J. 358 (December 1973).

Aitken, "Vacation Benefits for Returning Veterans," 32 FED.B.J. 160 (Spring—Summer 1973).

Note, "The United States Courts of Appeals: 1972-1973 Term, Criminal Law and Procedure," 62 GEO. L.J. 401 (November 1973).

Government Pamphlets and Manuals.

Several new publications of interest to Judge Advocates should soon be making their way to the field through normal distribution channels:

DA Pam 27-21, *Military Administrative Law Handbook* (October 1973). Supersedes DA Pams: 27-6, *Principles Governing Line of Duty and Misconduct Determinations in the Army* (1968); 27-11 *Military Assistance to Civil Authorities* (1966); 27-164, *Military Reservations* (1965); and 27-187, *Military Affairs* (1966). Covers such new areas as: conflicts of interest; civilian personnel law, and labor-management relations; environmental law; administrative law opinions; and Article 138, UCMJ.

DA Pam 27-173, *Military Justice: Trial Procedure* (October 1973). This pamphlet supersedes the previous trial procedure manual, DA Pam 27-173 (30 June 1964).

DA Pam 27-22/AFP 111-8, *Military Criminal Law: Evidence* (November 1973). Replaces the old evidence pamphlet, DA Pam 27-172 (25 June 1962) and original draft, which was a JAG School text dated January 1973.

DA Pam 27-13, *Manual For Courts-Martial Annotation, Third Edition* (1 June 1973). This pamphlet, printed on distinctive green paper supersedes DA Pam 27-13, Second Edition (1 April 1972) which had been on yellow stock.

DA Pam 27-162, *Claims*. Supersedes the old claims pamphlet, DA Pam 27-162 (January 1968).

FM 55-62, *Inspection of Household Goods And Personal Property For Shipment, Storage, Or Damage and Loss Claims* (October 1973).

Law Day Speech Award.

An award of $500 will be presented next fall to the winner of the Seventh Annual Judge Edward R. Finch Law Day Speech Award. Objectives of this speech award are to foster a deeper appreciation and understanding of the place of law in American life and to accord national recognition to the address chosen from among those entered in the competition as the most outstanding in content and effectiveness in furthering the purposes of Law Day. Entries must be submitted no later than June 15, 1974.

Speeches submitted in the competition must be keyed to the goals of this year's observance of Law Day, whose theme is—*YOUNG AMERICA, LEAD THE WAY, Help Preserve Good Laws, Help Change Bad Laws, Help Make Better Laws,* or to any of the stated objectives of Law Day 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.

The award is open to any lawyer or layman who addresses a Law Day observance in the United States, or similar event abroad on behalf of servicemen stationed overseas. Entries must be limited to 4000 words and submitted in triplicate, typewritten, double-spaced, on one side of 8 1/2 x 11 white paper. Each entry must have a title page bearing the words: "Judge Edward R. Finch Law Day USA Speech Award." In addition, the title page should contain the title of the address, the name and address of the person delivering the speech, and the occasion and date at which it was delivered. An original and two carbon copies should be sent to: Law Day USA Speech Award, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

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