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IMPACT OF RECENT SUPREME COURT CASES UPON THE MILITARY JUSTICE SYSTEM

By: Cpt. Stanley Millan, Military Justice Division, OTJAG

The purpose of this article is to articulate the impact of several recent Supreme Court cases upon the military. The areas that will be touched upon are capital punishment, the right to counsel, and the right to a hearing for the vacation of a suspended sentence.

In a *per curiam opinion,* the United States Supreme Court held in *Furman v. Georgia,* 408 U.S. 238 (1972), that, in the cases before it, the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Five justices wrote concurring opinions and four wrote dissents.

Concurring were Justices Brennan, Marshall, Stewart, White and Douglas. Only Justices Brennan and Marshall were of the opinion that capital punishment was unconstitutional *per se.* Justice Stewart noted that it was unconstitutional because it was imposed under legal systems in an arbitrary manner. Justice White opined that it was unconstitutional because the death penalty is so rarely imposed. Finally, Justice Douglas stated that the statutes in question were violative of the Equal Protection Clause of the Fourteenth Amendment, not because the statutes were unconstitutional on their face, but because of their arbitrary application. He bottomed his view upon the fact that only minorities and people of lower caste received the death penalty. Neither Justices White, Stewart, nor Douglas ruled that the imposition of the death penalty was unconstitutional in all cases. Justices Stewart and White indicated that mandatory death sentences would be constitutional.

Chief Justice Burger, and Justices Blackmun, Powell, and Rehnquist dissented and wrote separate opinions. All agreed that the imposition of the death penalty was not unconstitutional *per se.* Justice Blackmun and Powell believed that the holding placed capital punishment under Federal laws, including the Uniform Code of Military Justice, in jeopardy.

The question of the impact of the *Furman* case upon the military was posed to the Office of The Judge Advocate General in a request for an opinion about a murder case which had been referred as capital. The Judge Advocate General opined that a case involving charges of premeditated murder may be referred to a general court-martial for trial as a capital case, because the *Furman* case only announced a rule regarding the imposition of capital punishment and did not bar trial under procedural rules designed to insure additional protection for an accused who faces trial for an offense for which Congress has authorized the death penalty. The applicability of the *Furman* holding to courts-martial is still an open question.[1] Of course, defense counsel should raise the issue of the unconstitutionality of the death penalty through appropriate motion.

The United States Supreme Court held in *Argersinger v. Hamlin,* 407 U.S. 25 (1972), that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense, unless he was represented by counsel.

Army Lawyer **Now DA Pam**

With this issue *The Army Lawyer* becomes a DA pamphlet. The series will be 27-50-( ). The first in the series will be 27-50-3, March 1973, which follows Vol 3, Nos 1 and 2. The content of *The Army Lawyer* will continue as before.

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It was obvious that this case impacted upon the military, because there is no requirement for counsel before summary courts-martial. In fact, the United States District Court of Hawaii has held that *Argersinger* does apply to summary courts.[2] The Judge Advocate General was confronted with several issues in deciding the manner of implementing this decision.[3] For instance, should the decision apply to all deprivations of liberty, including restriction, or only to confinement? Or, should the decision apply to summary courts-martial only if confinement is imposed? After careful analysis of the case, it was decided that the letter and spirit of *Argersinger* could be accurately implemented if sentences to confinement by courts-martial were prohibited, unless the accused is represented by lawyer counsel or unless the accused makes a knowing and intelligent waiver of such counsel.

The ramifications of *Argersinger* are still with us. The Joint Service Committee on Military Justice has this case on their agenda for further consideration with a view to amending the *Manual* and the Uniform Code of Military Justice. The report of the Task Force on the Administration of Military Justice in the Armed Forces also reflects the impact of this case. One of the recommendations of the Task Force is that an accused should be entitled to a representative, although he need not be a lawyer, during an Article 15 proceeding.[4] Obviously, the joint impact of the *Argersinger* case and the Task Force's recommendations will create a more demanding role for judge advocates.

The second Supreme Court case which affects an accused's right to counsel is *Kirby v. Illinois*, 406 U.S. 682 (1972). The Court held that an accused does have a right to counsel at a lineup or other confrontation before he has been indicted or otherwise formally charged with a criminal offense.

Paragraph 153 *a* of the *Manual*, in effect, gives an accused a right to be represented by counsel at a lineup. That paragraph was drafted to follow what was conceived to be the rule of *U. S. v. Wade*, 388 U.S. 218 (1967), and *Gilbert v. California*, 388 U.S. 263 (1967).[5] Under consideration is a proposed amendment to the *Manual* which would incorporate the ruling of the *Kirby* case and ease

the restrictions imposed by *Wade* and *Gilbert*.[6] This proposal would limit an accused's right to counsel to those lineups, confrontations, or other viewings of the accused for the purpose of identification held after charges have been formally preferred. Any such identification of an accused without the presence of his counsel is proposed to be inadmissible against him if he did not knowingly and intelligently waive his right to the presence of counsel.

The Supreme Court case of *Morrissey v. Brewer*, 408 U.S. 471 (1972), affected revocation of parole proceedings and impacted on the vacation of suspended sentences. The Court held that due process requires an informal hearing to assure that the findings of a parole violation are substantiated. The Court observed that there are two important stages in the typical revocation of parole: the arrest at the discretion of the parole officer and the actual revocation of the parole by a parole board. The Court held that, as soon as practicable after an arrest, there must be a preliminary hearing to establish reasonable grounds to arrest in anticipation of the proposed revocation. The Court also held that, before the parole board actually revokes the parole, another hearing must be held which shouid include the following procedural safeguards: written notice of the claimed violation, disclosure to the parolee of the evidence against him, an opportunity to be heard and present matters in defense, the right to cross-examine and confront adverse witnesses, a neutral and detached hearing body, and a written statement by the fact finder as to the evidence relied upon and the reasons for the revocation.

Since Article 72 of the Code requires a hearing only for the revocation of a suspended sentence in general courts-martial and in special courts-martial which adjudge a bad conduct discharge, it was evident that *Morrissey* would impact upon the military procedures in vacating the suspension of sentences adjudged by inferior courts-martial. This is particularly true in light of the fact that there are many similarities between the vacation of a sentence to confinement and the revocation of a parole.[7] An issue that had to be addressed was whether *Morrissey* applied to the vacation of other forms of punishment that did not affect liberty. Since the Court stressed the seriousness of depriving a parolee of his liberty when he is returned to confinement status, it was determined appropriate to restrict *Morrissey* to its facts, that is, revocation of military parole, and to extend it to the vacation of suspended sentences to confinement. The case has been implemented by requiring a hearing, similar to that required by Article 72 of the Code, in all cases in which a suspended sentence to confinement is to be vacated.

Footnotes

1. DAJA-MJ 1972/12913.
2. Daigle v. Warner, Civil No. 72-3603 (Aug. 21, 1972).
3. DAJA-MJ 1972/12338.
4. Report of the Task Force on the Administration of Military Justice in the Armed Forces, Vol. I, pp. 120-21 (1972).
5. These cases held that an accused was entitled to counsel at "critical stages or confrontations" by the prosecution prior to trial.
6. See DAJA-MJ 72/12811, and p. 20 of the Report of the Working Group of the Joint Service Committee on Military Justice (1972).
7. See U. S. v. May, 10 U.S.C.M.A. 358, 27 C.M.R. 432 (1959).
8. DAJA-MJ 1972/12689.

REORGANIZATION 1973

From: PP&TO, OTJAG

By now most of you have been informed through official channels and the media that CONUS and DA Staff reorganization plans will be implemented during calendar year 1973. This article will highlight significant changes in the overall CONUS and DA staff structures, especially those of primary interest to judge advocates.

Continental Army Command (CONARC), Combat Developments Command (CDC) and the 3d US Army will be eliminated.

Forces Command (FORSCOM) will be created with headquarters at Fort McPherson, Georgia. It will supervise the unit training and combat readi-

ness of all CONUS Army units and Reserve components. The FORSCOM SJA office will be composed of 10 officers, including 1 warrant officer, 2 enlisted personnel and 6 civilian employees. That office will be responsible for providing legal support to the Commanding General and staff of FORSCOM including procurement responsibilities and military justice supervision for CONUS installations commanded by FORSCOM. The new structure eliminates one management layer between DA and the major tactical units by removing the CONUS Armies from the chain of command to the active Army forces and from installation management. The three CONUS Army headquarters will concentrate on the readiness and training of Reserve forces. 1st Army headquarters, covering generally the areas presently assigned to 1st and 3d Armies, will remain at Fort Meade, Maryland. Headquarters, 5th and 6th Army will remain at their present locations. CONUS Army commanders will be supported by nine Army Readiness Region headquarters, serving as coordination points for Reserve component training and support. Each of the CONUS Army SJA offices will consist of 3 officers, 1 enlisted and 2 civilian employees. Those officers will provide legal advice to CONUS Army commanders and be responsible for coordinating the training of, and insuring the readiness of, reserve component judge advocate personnel.

Training and Doctrine Command (TRADOC) will be created with headquarters at Fort Monroe, Virginia. It will direct all Army individual training, education and the development of organizations, material requirements and doctrine and manage the ROTC program. It will command individual training schools at 22 major installations and absorb the combat development function formerly belonging to CDC and CONARC. The TRADOC SJA office will consist of 10 officers, including 1 warrant officer, 2 enlisted personnel and 10 civilian employees. The SJA office will provide legal support to the Commanding General and staff of TRADOC, including procurement responsibilities and military justice supervision for CONUS installations commanded by TRADOC. The Judge Advocate General's School will remain as a field operating agency (Class II activity) under the supervision of The Judge Advocate General. The CDC Judge Advocate Agency, presently co-located with the JAG School will be merged with the School. Other branch oriented CDC agencies presently co-located with branch schools will be similarly merged. To further join combat developments to schools, other CDC activities will be consolidated into the following combat development centers: Combined Arms Center at Fort Leavenworth, Kansas; Administration Center at Fort Benjamin Harrison, Indiana; and Logistics Center at Fort Lee, Virginia. One JAGC officer will be assigned to the Administration Center to insure judge advocate combat development interface among service schools, TRADOC and The Judge Advocate General's School.

Certain elements of the Army Materiel Command (AMC) will be consolidated in the reorganization. They include merging the Munitions Command and the Weapons Command into an Armaments Command at Rock Island, Illinois, and consolidating elements of the Electronic Command with the bulk of the headquarters at Fort Monmouth, New Jersey.

In the area of health care, a US Army Health Service Command (HSC) will be established at Fort Sam Houston, Texas, to provide a single manager for Army medical activities in CONUS. All medical service schools and the Medical Training Center will merge into an Academy of Health Sciences under the HSC.

The Military Personnel Center has been established in Alexandria, Virginia. It will combine Personnel assignment, career planning and other related functions currently fragmented in the Washington, D. C. area. Personnel management functions currently performed by the Personnel, Plans and Training Office, OTJAG, will not be affected.

Other changes include: Relocation of the Recruiting Command to Fort Sheridan, Illinois; relocation of the Intelligence Command to Fort Meade, Maryland; reduction in size of the Chemical Corps and merging it with the Ordnance Corps; and disestablishment of the Chemical School.

The following organization changes at DA are of particular interest to judge advocates. The Bonds Team of the Procurement Law Division will merge with the Contract Appeals Division and transfer with the Contract Appeals Division to the US Army Judiciary, located at The Nassif Building,

Bailey's Crossroads, Falls Church, Virginia. The Individual Legal Assistance Team of the Legal Assistance Office will be transferred to the Military District of Washington but continue to provide legal assistance in the Pentagon. The Special Actions Team of the Military Justice Division will transfer to the US Army Judiciary. The US Army Judiciary will be redesignated the US Army Legal Services Agency. This title more appropriately represents the functions performed by the activity, especially in view of the transfer to it of the Contract Appeals Division.

The settlement authority claims functions currently performed at CONUS Army headquarters will be assumed during calendar year 1973 by the US Army Claims Service. These functions will be assumed by the US Army Claims Service on a phased schedule to be announced through technical channels. Upon completion of this change in functions, installation claims offices will communicate directly with the US Army Claims Service.

The Judge Advocate General's School will be reorganized internally and will assume the function of directly supporting the new Army Readiness Regions with on-site instruction for Reserve Judge Advocate personnel.

In connection with these reorganization plans, The Judge Advocate General has been directed to study the possibility of revising the structure of the judge advocate organization to place defense counsel under his authority. This proposal requires extensive study concerning organization, staffing, support, supervision and financial management.

Additional details concerning reorganization and functions of the US Army Judiciary (US Army Legal Service Agency), US Army Claims Service and The Judge Advocate General's School will be published in a later issue.

U. S. ARMY RETRAINING BRIGADE

By: LTC Albert A. Covington, Staff Judge Advocate, USARB

On 1 November 1972, the US Army Correctional Training Facility, located at Fort Riley, Kansas, was redesignated as the United States Retraining Brigade. USARB retains the basic mission of the USACTF, namely, to return military offenders to duty as motivated and competent soldiers able to perform their duty assignments—or to eliminate from the Army those who are unable or unfit to serve.

While USARB retained the basic mission of the USACTF, the change of name came about as part of the modification of the Army Correctional System, which involved an expansion of the role of the Brigade in that system. The main purpose of this brief article is to highlight the role of USARB in the system, to emphasize certain requirements that must be met by all concerned in order that USARB's part of the system will function according to the design, and to briefly define the USARB Staff Judge Advocate's role in the system.

As announced in recent Department of the Army messages to CONUS and overseas commanders, post-trial prisoners are normally required to be transferred to the USARB or USDB within five working days susequent to their courts-martial in CONUS, or within ten working days in overseas areas. Examples of exceptional circumstances which may warrant deferring transfers of post-trial prisoners are also stated in the message as follows:

1. The prisoner's presence is required at the installation subsequent to his court-martial to complete essential judicial and administrative procedures.

2. The prisoner has submitted or is in the process of preparing a request for deferment of service of a sentence to confinement.

3. The convening authority is contemplating clemency action in the form of remitting or suspending the prisoner's sentence to confinement and /or that portion of his sentence which includes a punitive discharge.

4. The prisoner's presence is required at the installation for additional military or civil legal actions or as a witness in another judicial or administrative procedure.

5. The prisoner's transfer is prohibited for medical reasons.

Admission criteria for USARB and the USDB are contained in the messages. For USARB they are as follows: prisoners, other than officer prisoners, not sentenced to a punitive discharge, or with a suspended punitive discharge, and who will have six months or less confinement remaining to serve on their sentences, after deduction of earnable good conduct time, upon arrival at USARB.

In effect, commanders have been relieved of the responsibility to conduct highly technical correctional treatment programs, which are now consolidated at either USARB or the USDB. These correctional treatment facilities have been appropriately staffed to provide meaningful correctional treatment programs. Particularly in the case of USARB, it also relieves the commander of the responsibility of administrative elimination of those prisoners who fail to respond to correctional treatment. There is a proviso that overseas commanders have the discretion to retain prisoners in the local command to serve confinement although they meet USARB admission criteria, provided a motivational training program is conducted to prepare them for return to military duty with improved attitudes and skills.

Both messages stress that commanders are required to establish procedures to expedite completion of convening authority actions and forwarding of subsequent court-martial orders to the gaining correctional treatment facility. When the prisoner is shipped, there must be sufficient documentation to establsh his status as a prisoner: at least a signed Result of Trial form and the administrative transfer order; and other administrative documents and items, as spelled out in detail in paragraph 2-5, AR 190-4. In the event of any change in the status of a prisoner after shipment, the gaining correctional treatment facility commander certainty needs to know of this as soon as possible.

As currently organized, USARB consists of a headquarters and two battalions. The 2d Battalion (Correctional Training) initially receives the new trainee and is charged with his supervision during Phase I, or the first five modules (roughly, weeks) of training. Training during this period involves motivational classes, group counseling, and individual counseling and problem solving, in addition to a week's bivouac, physical training, and related military activities. While the trainee is given maximum personal understanding and assistance in his resolution of personal problems and adjustment to the military society, he is also expected to conduct himself in accordance with high standards of military courtesy and decorum.

The major carrier program is know as Performance Oriented Training. This is a system whereby the trainee earns points or fails to earn points for the various activities in which he participates; e.g., inspections, class tests, evening behavior, and general attitude. Performance standards are set and it is made clear to the trainee that it is his responsibility to meet these standards, and earn the required number of points, in order to progress to the next module of training. If he fails to do so, he repeats the module. More advanced modules involve more privileges—television, movies, consideration for suspension of forfeitures, etc., so that the usual trainee is stimulated to advance because of tangible rewards that are easy to understand.

After completion of Phase I of the training, the trainee is assigned to the 1st Battalion (Retraining) for Phase II. At this point he is moved outside the confinement area of the Brigade. If he has not reached his minimum release date, he is made a parolee, and all trainees are then treated as regular duty soldiers in a training environment. While his time is carefully managed in relation to the training programs, there is more leisure time built in whereby the trainee is permitted to go unescorted to many and varied activities and areas, including local civilian communities as he progresses into the later stages of his training program. One of the basic philosophies here is that, in addition to avoiding any illegal restraints on an unconfined trainee's free time, he is progressively given more responsibility for his own unsupervised behavior. We would rather he make mistakes here, if he is so inclined, rather than graduate him and ship him to a regular unit somewhere, and have the new commander discover that he has an irresponsible soldier on his hands. I might add here that those trainees assigned to the 2d Battalion who reach minimum release dates are segregated

in billets, mess, etc., from confined trainees, and do not thereafter reenter the confinement area.

In the 1st Battalion the training takes various forms. Those trainees who do not have an MOS go into a Basic Combat Training course, which we call "Non-MOS Training". If he has an MOS, he is either placed in the "MOS Utilization Training" program or in "Military Refresher Training." Those in MOS utilization training work in their specialities at USARB or in various shops and offices about Fort Riley, and job performance is carefully monitored and evaluated. Military Refresher Training is conducted at USARB and places emphasis on the development of individual combat skills. Another program, General Educational Development, is designed toward the earning of a GED Certificate. This is conducted along with MOS Utilization or Military Refresher. Those who are in Non-MOS training must complete that training first, and then may be enrolled in GED training.

The length of time spent in Phase II (1st Battalion) is not fixed, but averages about four weeks. A trainee may be administratively separated from the Army at any point in Phase I or II where he shows such a low success potential as to reasonably preclude future honorable service.

The legal role at USARB is principally one of individual legal assistance. This takes its many forms, but the dominant type of problem involves financial difficulties of one sort or another. These people are all E-1's or E-2's, typically serving sentences including forfeitures, and naturally are hurting for money in most cases.

The Commander, USARB, exercises general court-martial jurisdiction. This authority is seldom used to convene GCM's but it is needed to approve undesirable discharges. About fifteen per cent of the trainees received at the USARB are discharged as unfit or unsuitable, and experience so far with the modified Army Correctional System indicates that this figure is on the rise. It seems clear that because of revised prisoner transfer criteria, we are receiving more trainees now who do not have restoration potential, and the administrative elimination business has been active.

GCM jurisdiction is also needed in order to publish general (and BCD special) supplemental court-martial orders. However, the bulk of trainees have been tried by regular specials, and the USARB publishes mostly special court-martial orders. Typically, two supplemental court-martial orders are published on each trainee. The first involves suspension of forfeitures (usually until maximum release date) for deserving trainees, and is normally done after about four weeks. This is one of the rewards for the trainee to earn, and of course helps to relieve his pressing financial difficulties.

The second order is normally published concurrently with date of shipment from USARB, if he has confinement time yet to be served. Each trainee is evaluated in consideration of original sentence and performance while here, and the remaining confinement is suspended for varying periods, usually two to four months. The idea here is to strike a reasonable balance between the handicap of keeping a man in a probationary and non-promotable status for too long a time, and the realistic value of requiring him to demonstrate that he can perform in a normal duty assignment, after the highly structured and supportive training environment he has encountered at USARB. Consideration of the factor of original sentence lends respect for the court-martial system. It also reinforces the fact that a trainee doesn't just manage to get through USARB in ten weeks or so and has fulfilled all obligations toward readjustment to the Army and for his offenses, regardless how serious. Doing well here is only the first step back to full rehabilitation in the military society.

The SJA Office at USARB is also involved in other general legal services, but the nature of the USARB operation requires that the main thrust of our efforts be in legal assistance area, or as we generally term it here, individual counseling. Legal office organization and procedures are geared primarily to this end. The headquarters organization includes several staff divisions. Unique among them is the Professional Services Division, made up of the Legal Branch, Social Work Branch, and Chaplain Branch. The Chief, PSD, also has the responsibility for supervision of a group of civilian counselors from the 7th Step Foundation—a national self-help organization of ex-offenders with which USARB has a contract. The SJA doubles in brass, serving also as Chief, PSD. It was felt

at the time that USARB was first organized that there should be an integration of effort among the professional groups in the areas of counseling, personal planning, and problem solving. Experience has shown that the combination then devised, which has not basically changed, is clearly a valid concept. Certainly it makes for a unique and interesting job experience for an SJA.

THE LIEBER COLLECTION

By: Mrs. R. V. Hebert, Librarian, TJAGSA

". . . I am ambitious to leave a work behind me, be it ever so small, which will live in spite of the changes of time; . . ."[1]

Thus wrote Francis Lieber to his parents in the fall of 1829.

Thirty four years later, on April 24, 1863, General Orders No. 100 was issued by order of Secretary of War Stanton: "'Instructions for the Government of Armies of the United States in the Field,' prepared by Francis Lieber, LL.D., and revised by a Board of Officers, . . . having been approved by the President of the United States, he commands that they be published for the information of all concerned."[2]

This slim volume of fifty one pages, has lived "in spite of the changes of time." Dr. Lieber's "old hundred" as he used to call this work is the genesis of the rules of war and international law. "No work of this kind was in existence at that time in any language. It was accepted as standard by writers on military law, was adopted by Germany in conflict of 1870, and has continued to be the basis of international understanding on the conduct of war."[3] Thayer said that the code

> . . . is one of the greatest works of (Lieber's) later years. He thereby conferred not only a benefit upon his own country, but added a new chapter replete with noble and humane sentiments to the law of war. M. Laboulaye has justly described these instructions as a masterpiece, and they suggested to Bluntchli the plan of codifying the law of nations, . . .[4]

In the Spring of 1965 The Judge Advocate General's School became the repository for a part of Francis Lieber's Library, through Mrs. C. F. Stearns' gift to the Judge Advocate General's Corps. Mrs. Stearns was the the granddaughter of Francis Lieber and daughter of Brigadier General G. Norman Lieber, Judge Advocate General, 1895-1901.

Encyclopedist, educator, publicists, political scientist, philosopher, linguist, humanitarian, patriot Francis Lieber was all of these. Whence such a man? Born in Berlin, Germany on the 18th of March 1800, Francis was the tenth child of Friedrick William Lieber in a family of nine sons and three daughters. His boyhood was spent in the turmoil of the Napoleonic wars, and in an atmosphere charged with patriotic zeal. At fifteen Lieber enlisted in the Prussian Army and was seriously wounded at the Battle of Namur. He was left for dead on the battlefield.

At the close of the Waterloo campaign, and as soon as he had recovered from his wounds, Francis returned to his studies. But Lieber had been touched by the ideals of the French Revolution and Prussia was now a center of political reaction. At the age of nineteen he was imprisoned for several months because of his liberal affiliations. He was discharged from prison without a trial, then forbidden to study at any Prussian university except the University of Jena, from which he received his Ph.D. in 1820. He subsequently studied at Halle and Dresden. While living in Dresden the Greek revolution broke out. He resolved to take part in this war of independence. Shortly after he arrived in Greece his enthusiasm met with disappointment.

Lieber eventually made his way to Rome and to the Prussian Embassy. Barthold Niebuhr was at that time ambassador to Papal See. Francis spent a delightful year in Rome.

In the Spring of 1823 Niebuhr and Lieber returned to Prussia. Shortly after Francis had arrived in Berlin he was again arrested upon the old charges of enmity to the government. This harassment continued until May of 1826 when Lieber left his homeland for London. It was a precarious existence, the hardest time of his life, teaching languages and writing for German periodicals.

In June, 1827 he arrived in Boston to take charge of a gymnasium and swimming school. He readily made friends and continued his literary work though with meager returns. It was in Boston that Lieber commenced his laborious work of editing the "Encyclopedia Americana" (13 vols., 1829-33) based on Brockhaus' "Conversations—Lexicon." The TJAGS Lieber collection has eight of these original volumes of the encyclopedia, lacking volumes I, IV, VI, VII and XIII.

Thus began Francis Lieber's most productive literary period which continued to the end of his life. He wos a prolific writer, whose interests were varied and many. He had many prominent friends both here and abroad with whom he conducted active correspondence.

Lieber's reputation grew. As a consequence of this growth, he was elected to the chair of history and political economy at South Carolina College (now University of South Carolina) in 1835. He remained at the college for twenty one years. It was during this period that Lieber published the works which eventually made him famous. These were:

(1) *Manual of Political Ethics* (2 vols., 1838-39),

(2) *Legal and Political Hermeneutics* (1838) and

(3) *On Civil Liberty and Self-Government* (2 vols., 1853).

The first and third titles are not in TJAGS Lieber collection but on our list of desiderata. The second revised edition (1893) of the *Manual* is being reprinted whereas the first edition and *On Civli Liberty* might be available at premium prices from an antiquarian bookdealer.

The *Hermeneutics* is in the Lieber collection. Because of its poor condition it has been boxed. It is the enlarged 1839 edition. Lieber, however, intended to publish a third edition—if one is to judge by the proofreader's symbols, corrections and insertions he has made in this volume. The third edition was published in 1880, eight years after Lieber's death, and edited by Professor William G. Hammond, of Iowa University, St. Louis, Missouri.

The Character of the Gentlemen, was first published in 1846, second edition—1847, and a third and enlarged edition in 1864. There are two copies of the third edition in our Lieber collection.

Lieber was also a pamphleteer. *Notes on Fallacies of American Protectionists,* fourth edition, 1870; *A Popular Essay on Subjects of Penal Law,* 1838; and *On International Copyright,* 1860; are in our collection.

In 1857 Lieber was appointed to the faculty at Columbia College, and transferred to the law school in 1865 where he remained for the rest of his life. He became more and more of a prominent figure among the political philosophers and extended his attention into international relations. It was during this period that Lieber wrote first *Guerilla Parties, considered with reference to the laws and usages of War* and his "old hundred."

The JAGS Lieber collection consists of approximately 130 items. We've already mentioned Francis Lieber's books. His son, Brigadier General G. Norman Lieber, was also a writer and translator. We have *The use of the army in aid of the civil power,* 1898 and *Remarks on the Army regulations and executive regulations in general,* 1898. We also have a translation by G. Norman of *Bluntschli on The Law of War and Neutrality, A Translation from his Code of International Law.*

This large volume consists of a copy of the typewritten manuscript along with the original handwritten manuscript. A formidable work, the son does not stand in the shadow of the father.

Francis Lieber's books, writings, papers, letters and diaries can be found at (1) Johns Hopkins University Library, (2) The Henry E. Huntington Library, San Marino, California, (3) University of California Library, at Berkeley and (4) The Library of Congress.

We have some of the volumes that Lieber collected and read. These have marginal notes in French, English, German. The subject matter is as varied as his interests. Looking over the collection one gets a kaleidoscopic view of one man's intellect.

Footnotes

1. *The Life and Letters of Francis Lieber,* ed. by Thomas Sergeant Perry (Boston, James R. Osgood & Co., 1883), p. 83.

2. *Instructions for the Government of Armies of the United States in the Field.* Prepared by Francis Leiber, LL.D. Originally Issued as General Orders No. 100, Adjutant General's Office, 1863. (Washington: Government Printing Office, 1898) p. (2).
3. *Dictionary of American Biography.* Vol. II p. 238.
4. M. Russell Thayer, The Life, Character, and Writings of Francis Lieber. A Discourse before the Historical Society of Pennsylvania, January 13, 1873. (Philadelphia: Collins, Printer, 1873), p. 35.

SJA SPOTLIGHT -- THE U. S. ARMY SAFEGUARD SYSTEM COMMAND

By: Captain Thomas A. Darner, Office of the General Counsel, USASAFSCOM

Activities at the U. S. Army SAFEGUARD System Command (USASAFSCOM) involve a wide variety of legal work, ranging from procurement law to litigation and taxation, and from normal Staff Judge Advocate functions to international law. Judge Advocates under the jurisdiction of USASAFSCOM are located primarily in Huntsville, Alabama but can also be found in northern North Dakota as well as on tropical islands in the Pacific. It is this wide range of activities and locations that makes working under the SAFEGUARD System Command such an interesting and challenging assignment.

HISTORY AND MISSIONS:

The SAFEGUARD Ballistic Missile Defense is an outgrowth of more than 15 years of ballistic missle defense research and development work by the Army and its contractors. The development program began in the mid-1950's and was known as the Army's NIKE ZEUS project. Under the NIKE ZEUS program, the Army developed a large "acquisition" radar, smaller target tracking and missile tracking radars, a "discrimination" radar to sort real warheads from decoys and the ZEUS interceptor missle. Several prototypes of the radars were built at White Sands Missle Range and the Kwajalein Missle Range in the Pacific Ocean, west of Hawaii. Also, a very large number of ZEUS test missles were launched at both ranges.

In 1963, the NIKE ZEUS program was reoriented to the NIKE-X project. Phased array radars, which are extremely fast in operation and able to handle numerous targets simultaneously, replaced the less versatile conventional radars and the SPRINT missile was added as a second interceptor. The following year, in 1964, testing began on a test model of the first phased array radar—called a Multi-function Array Radar (or MAR) at White Sands Missile Range. The two phased array radars in the SAFEGUARD System, the Missile Site Radar (MSR) and the Perimeter Acquisition Radar (PAR), are outgrowths of technology developed in the MAR.

In 1967, a deployment plan was developed using some of these components which would provide light protection for the entire United States using a small number of strategically located installations.

In September 1967, Secretary of Defense McNamara announced a decision to go ahead on this deployment known as SENTINEL Ballistic Missile Defense System. The primary purpose of the SENTINEL deployment was to provide protection against a possible attack by Red China. It was to provide, in addition, a defense against any accidental launch against the U. S. and an option to defend MINUTEMAN sites.

In February 1969, the Nixon Administration reviewed the SENTINEL deployment and, in March 1969, President Nixon announced a modified, phased deployment concept. The new deployment concept was named SAFEGUARD. The defense objectives for SAFEGUARD included:

—"Protection of our land-based retaliatory forces against a direct attack by the Soviet Union."

—"Defense of the American people against the kind of nuclear attack which Communist China is likely to be able to mount within the decade."

—"Protection against the possibility of accidental attacks from any source."

It is this system that is being deployed in North Dakota today. As a result of the Strategic Arms Limitation Talks, the scope of the SAFEGUARD deployment has been limited. USASAFSCOM still

remains very active, deploying the SAFEGUARD System as well as continuing research on new ballistic missile defense systems, such as the Site Defense Project, a project also aimed at the defense of MINUTEMAN missle fields.

The Commanding General, USASAFSCOM, MG R. C. Marshall, has, in addition to his mission surrounding the SAFEGUARD System, responsibilities as the National Range Commander for the Kwajalein Missile Range in the Marshall Islands.

ORGANIZATION:

The SAFEGUARD System Organization is headed by the SAFEGUARD System Manager, LTG Leber, who is located in Washington, D. C. and is supported by a small staff. The major field command of the SAFEGUARD System is the U. S. Army SAFEGUARD System Command located in Huntsville, Alabama. USASAFSCOM's mission includes the development, acquisition, and installation functions associated with the SAFEGUARD System. Although supported by Redstone Arsenal for housing, PX, and other support, the Command maintains its offices in a modern office building located in the Huntsville Research Park, within walking distance of the University of Alabama in Huntsville. The Commanding General, USASAFSCOM, has command jurisdiction over the U. S. Army SAFEGUARD Site Activation Command, Grand Forks, North Dakota. The Grand Forks location is the site of the nation's only anti-ballistic missile installation. This installation is presently under construction. The SAFEGUARD System weapon components are being installed and tested at the present time, with completion now scheduled for late 1974.

As National Range Commander, the Commanding General is responsible for operation of the Kwajalein Missile Range, located in the Marshall Islands. He reports to the Chief of Research and Development on national range matters. The national range provides support not only to the Army and its SAFEGUARD project, but also to other government agencies, including the Air Force. Located on the Kwajalein Atoll some 1,400 miles southwest of Hawaii, the Range enjoys balmy, tropical weather.

Office of the General Counsel—USASAFSCOM

The Office of the General Counsel has the responsibility for providing legal advice and legal policy guidance to the Commanding General, USASAFSCOM, as well as the Director of the Huntsville Office of the Advanced Ballistic Missile Development Agency; (ABMDAH). ABMDAH is co-located with USASAFSCOM in the Huntsville Research Park. The legal advice covers such areas as procurement law, patents, labor relations, litigation-taxation as well as normal Staff Judge Advocate support.

The office is headed by Colonel Roy Brown, the General Counsel. Colonel Brown has the services of three military and seven civilian attorneys.

Procurement Law Division

The Procurement Law Division is the largest division within the office. It provides legal support not only to the SAFEGUARD Command and ABMDAH but also procurement legal advice to the SAFEGUARD Communications Agency and the SAFEGUARD Evaluation Agency located at Fort Huachuca and White Sands Missile Range respectively. Procurements range from research and development to large scale weapons system production. The partial termination of SAFEGUARD production contracts is one of the most interesting current activities. The limitations of the SALT agreement with Russia have created numerous legal problems. Advising on the procurement of the new Site Defense project is also most challenging. The Procurement Law Division is headed by Mr. Hardy B. Jackson, a GS-15. He has four civilian attorneys and one military attorney in his division. At this time, the military position, a LTC position, is being filled by Major George Dygert.

Military and General Law Division

This division handles all normal Staff Judge Advocate functions including claims, legal assistance and advice on military justice matters. The SAFEGUARD System Command military strength is made up of mostly officers with fewer than two dozen enlisted personnel. Thus, military justice activities are almost nonexistent. USASAFSCOM has never had a court-martial since its beginning. All SJA activities are handled by one captain assigned to this division. The bulk of the activities of this division centers around the day-to-day legal problems associated with the Kwajalein Missile Range

and the Site Activation Command in North Dakota.

Current legal problems of major note include the State of North Dakota's attempt to tax SAFEGUARD contractor activities in their state. Efforts are underway to minimize a potential 15 million dollar sales and use tax liability. Considerable activity surrounds the status of the emerging nation of Micronesia in the Pacific. It is within Micronesia that the Kwajalein Missile Range is located. Relations with the local government involve many legal problems, including land leases, environmental matters, and compliance with a miriad of Micronecian laws. Assistance in the preparation of a SOFA agreement with the new nation is a current and future activity.

One other area of activity is handled by this division. That area covers litigation, protests to the GAO, appeals to the ASBCA and other adversary proceedings. In addition to the captain who works primarily on SJA activities, one captain is assigned to help with the other legal matters handled by the division. The division is headed by Mr. Ernest A. Moran, Jr., GS-14. Captains Cliff Brashier and Tom Darner serve under him.

Patents and Labor Relations

Patent suppor is provided by the U. S. Army Missile Command at nearby Redstone Arsenal, although a small patent staff is maintained in the General Counsel's Office. USASAFSCOM Patent Counsel is Mr. Leonard Flank, GS-14. Because of the unusual labor problems associated with the construction and installation of a major weapons system, the office has a contractor industrial relations officer on its staff, Mr. Ralph Thayer, a GS-14. In addition to contractor labor matters, Mr. Thayer acts on matters involving the American Federation of Government Employees who represents a portion of the SAFEGUARD civilian workforce. There are no military positions in the patents and labor relations areas.

Command Judge Advocate—Kwajalein Missile Range (KMR)

The Kwajalein Missile Range has one Judge Advocate captain on its staff. Captain Jay Manning is the current Command Judge Advocate. His duties are wide and varied. He is directly involved in relations with the local Micronesian people. The daily problems associated with dealing with an emerging nation are significant. Presently, the area is part of the Trust Territory of the Pacific, a UN trust territory administered by the United States. Knowledge of international law and diplomacy are an absolute necessity. The Kwajalein community is made up of approximately 5,000 people, mostly contractor personnel. Captain Manning provides legal assistance to the total community. As the only attorney on the Atoll, he provides legal advice an criminal matters to the local community court. Being relatively isolated on the island, the people of Kwajalein and the KMR Commander and staff draw heavily on the services of the judge advocate.

Command Judge Advocate—SAFEGUARD Site Activation Command, Grand Forks

At the present time, one captain is assigned to the Grand Forks site to provide legal advice on matters surrounding the installation and testing of the SAFEGUARD System. CPT Stephen Currie is the current judge advocate. CPT Currie handles normal SJA functions while spending most of his time addressing the many problems associated with the construction and opening of a new installation. These problems include advice to the Contracting Officer's Representative on site, and the organization of nonappropriated fund activities. Special funds have been authorized by Congress to relieve any adverse impact of SAFEGUARD on local communities. The local judge advocate makes recommendations to USASAFSCOM on projects which should be funded with these resources. Projects range from new schools to roads and new water and sewer systems. The legal problems are unique and require imaginative answers.

CONCLUSION:

As can be seen from this brief outline, SAFEGUARD is an Army activity filled with many unusual and challenging legal problems. We take great pride in the part we play in the defense of our country and its retaliatory missile force.

MANPOWER UTILIZATION SURVEY REPORTS

The following is a letter sent by Colonel Warren L. Taylor, Fifth Army Staff Judge Advocate to all of his SJA's concerning Manpower Utilization Survey Reports, which has proved most useful in the Fifth Army area.

References:

a. AP 570-4, "Manpower Management Policies, Procedures, and Responsibilities."

b. DA Pam 570-4, "Manpower Procedures Handbook."

c. DA Pam 570-551, "Staffing Guide for US Army Garrisons."

d. DA Form 140-4, Schedule X.

The following comments are based upon my observations in reviewing Manpower Utilization Survey Reports—Schedule X—DA Form 140-4, submitted by installation staff judge advocates in the Fifth Army area.

Current manpower and budgetary limitations make it essential that all SJA's see to it that their present positions are properly authorized and that justifications for new or additional positions are properly submitted. Requests for additional spaces for your office must normally be accompanied by either a favorable manpower survey or by manpower survey report forms completed as though a survey had been conducted but without the recommendation of a survey team. The general rule is that manpower requirements established by survey will not be changed except when new missions are directed by higher headquarters or as a result of an increased workload occasioned by a change in law, regulation, or the troop strength of the installation. Requests for increased manpower requirements under these criteria are normally submitted quarterly unless they are of an emergency nature. In such cases, they may be submitted as soon as the manpower requirements can be identified.

Justification for personnel employed or for increases for activities organized under tables of distribution and allowances (TDA's) is prepared on a Schedule X, DA Form 140-4, in accordance with DA Pam 570-4. It is imperative that every SJA office know how to prepare a Schedule X correctly, understand the provisions of Sec IV of Chapter 2 of DA Pam 570-551, and maintain the statistics to support the statements in the Schedule X.

a. When making an entry in the "Description of Work Performed" block of Schedule X, a yardstick number must be used from DA Pam 570-551. All work performed for those within the categories checked below Tables 551-42, 551-43.1, 551-43.2 and 551-44 must be fitted into the staffing guide. A statement should be added to show how work performed for those people is covered by the staffing guide. The fit can then be developed into a justification for additional spaces. Work authorized to be and performed for categories other than those so "checked" should be noted and quantified.

b. "Section D—Specific Remarks" on the back of Schedule X is important in that it provides you with a space for specific justification of your personnel needs. It is up to you to justify the personnel authorized and the personnel used or recommended within the yardstick allowance and in excess of it because not considered in the personnel covered by the yardstick. Your comments should include local factors that affect personnel needs, adequacy of the yardstick for the local situation, and any other information required to justify and measure manpower needs. Quoting precise workload and performance data is the best way to set out requirements for support of personnel not "checked" in yardstick tables, as for example, legal assistance to military retirees/dependents in the local community. Only *you* can provide the necessary data to support *your* manpower needs. You should keep running workload and job performance statistics on all positions within your office. These figures can then be used at the time of your next manpower survey or, without waiting for a formal survey, to submit a TDA change.

c. In many cases, because no official requirement exists to do so, the necessary supporting statistics and workload are not being maintained and hence not submitted. Recently, this office had occasion to comment on a request for a staffing increase from an installation JA office that had

insufficient data to justify the current authorizations. As a result, the manpower people wanted to recommend that the office strength be decreased! We were able to convince the manpower people that no action should be taken pending a formal manpower survey because the data submitted may not have been accurate or complete. In another case where the installation military population had been reduced 25% in the past two years, we were able to use courts-martial statistics in our files reflecting a substantial annual increase in courts-martial for the past four years, which the requesting SJA failed to include to justify the latter's request for additional spaces. It worked because of Note 1 to Table 551-42, but the better approach, "equivalent troop strength" is set out below.

A working knowledge of the principles of the staffing guide, DA Pam 570-551, and how to use them, is equally essential. Though all installations and JA shops differ from others in some ways, the staffing guide is the measure and it is best to interpret your requirements within it. Variations from the personnel allowance standards presented in the staffing guide should be explained and justified in your Schedule X. Special attention should be paid to the footnotes. In this regard, I am enclosing for your use a copy of the correspondence recently received from Colonel Slade, CONARC SJA, reflecting his successful efforts to have inserted under Military Justice yardstick Table 551-42, a footnote stating that an increase over the yardstick at garrisons with Personnel Control Facilities. It should be noted that 50% of the CONARC approved reclama spaces for the entire installation went to the Military Justice Division of the SJA office.

The following are some helpful suggestions regarding use of the staffing tables which have been utilized in manpower surveys of SJA offices in Fifth Army:

a. Manpower teams do not always recognize that the spaces in yardstick code 551-41.1: SJA Office, are in addition to those under yardstick code 551-41.2: SJA Administration, and vice versa, and that both codes are predicated, in part, upon manpower requirements of each other. This anomalism is more imaginary than real; cross-computation and use of the interval rate will disclose that it is highly unlikely that there will be real conflict. If there is, take it in your favor. (See attached example.)

b. Manpower requirements caused by Article 15 counseling requirements and military judge duties may properly be charged under Footnote 2 to Tables 551-42 and 551-44, because required by Military Justice Act of 1968 and AR 27-10.

c. Workload generated by a Personnel Control Facility (PCF) for your Military Justice Branch, and the impact of PCF, dependents, and military retired on Legal Assistance will support increased spaces by being converted by statistical computation to "equivalent troop strength" based on accurate emperical data. This *must* be recognized to reach fair staffing of a JA Office. The troop strength bases in the tables which produce the manpower requirements recognized in the tables do not contemplate units in which every man is an actual disciplinary problem, as is true, in the PCF's. A formula which has been successfully applied for court-martial workload is:

$$\frac{\text{Rate/Thousand PCF Strength}}{\text{Rate/Thousand Non-PCF Strength}} \times \text{PCF Strength} = \text{Equivalent Troop Strength of PCF}$$

The equivalent troop strength is then added to installation non-PCF strength to reach a true representation of the work producing troop strength. The same approach will work with other work produced from PCF and applies to "cases" that do not come to trial, Chapter 10, 212 discharges, etc.

d. Table 551-43.1 does not recognize the private client legal assistance rendered to dependents and retired military. However, the table lists AR 608-50 as the pertinent publication and paragraph 5b, AR 608-50 states the requirement to furnish legal assistance to retired personnel and paragraph 5a provides for legal assistance to dependents. This function is recognized in the preamble paragraph of Code Series 551-40 and the "work performed" paragraph of Table 551-41.1 (. . . legal assistance and advice to . . . dependents and other authorized persons . . .). Figures on local dependent and retired population should be available from the Directorate of Personnel and Community Activities (DPCA). The survey team utilized an equivalent troop strength approach at Fort Sam

Houston and applied a factor of about 2.3 to military population to achieve a sort of "equivalent troop strength" for dependents. The legal assistance mission must then be prorated with the military affairs mission under Table 551-43.1 to derive the equivalent troop strength for that table and the required manpower strength. The PCF population can be treated in a similar fashion.

e. The pertinent publications listing for claims, Table 551-43.2, is not complete. The listing should also include AR 27-20, 27-24, and 27-38. Each of the different categories is a separate and distinct claim and may be treated accordingly.

The idea of all the above is to disclose the true workload. This office, and the CONARC SJA, will continue to battle for your manpower needs. However, it is up to you to provide the necessary ammunition.

CORPS POLICY FOR SJA's REAFFIRMED

At the Annual Conference in 1971, The Judge Advocate General approved a policy of having staff judge advocates arrange a special command familiarization program for basic course graduates reporting to their offices. A part of the "Crisis in Credibility" project, the purpose of the policy is to assure that new judge advocates rapidly attain a fuller understanding of the mission, functions, problems and state of discipline in the commands in which they serve. The results have been observable and gratifying. Both the image and the effectiveness of the Corps have benefitted.

The Judge Advocate General has directed, therefore, that the program be continued on a permanent basis. No longer, however, does it seem necessary to send an individual letter to each staff judge advocate whose office is receiving a basic course graduate or to require an after-action report (unless the officer involved or his SJA has some particular observations to bring to TJAG's attention). There is no intent, however, to de-emphasize the importance of the program. Each new officer to the Corps must have a preplanned, scheduled and highly visible opportunity to observe, work with and know leaders and their men before undertaking his important responsibilities in your staff judge advocate office.

MILITARY JUSTICE ITEMS

From: Military Justice Division, OTJAG

LETTER OF TRANSMITTAL OF COURT-MARTIAL CHARGES. The form of the Letter of Transmittal of Court-Martial Charges, found on page 214, appendix VI, *Staff Judge Advocate Handbook,* DA Pam 27-5, July 1963, is changed as indicated below. The reason for this change is to prevent the recurring errors in the pretrial advice and posttrial review where the staff judge advocate neglects to mention the recommendation of the unit commander. Additionally, many junior commanders think that if they recommend that the accused be eliminated from the service, he will receive a Chapter 10 discharge in lieu of court-martial. While this change will not prohibit a commander's making a recommendation concerning elimination, it will prevent him from having to make one. Any local forms currently in use should be changed immediately to conform.

HEADQUARTERS

.....

.....

.....
Date

SUBJECT: Court-Martial Charges

TO: Commanding Officer
(Organization)

1. In compliance with paragraph 32f, Manual for Courts-Martial, United States, 1969 (Revised edition), there are forwarded herewith court-martial charges against:

.....

(Last Name) (First Name and Middle Initial) (SSAN) (Grade) (Organization)

2. Summaries of expected testimony upon which the charges are based are attached.

3. The following documentary evidence and exhibits upon which the charges are based are attached: (List Extracts of Morning Reports, MP Reports and other paper.)

4. There is attached evidence of ..... previous convictions of accused.

5. A biographical information sheet is enclosed which pertains to civilian offenses, character, occupation, and other information on accused before entrance into the Army.

6. I recommend trial by (*special court-martial*) (*special court-martial empowered to adjudge a bad conduct discharge*) (*general court-martial*).

5 Incl (See note below)

1. Charge Sheet (in trip)
2. Summaries of expected testimony (in trip)
3. Document listed in par 3 (in trip)
4. Evidence of previous convictions (in trip)
5. Biographical information sheet (in trip)

.....
(Signature)

.....
(Name typed)

.....
(Grade & Organization)

Note. If special court-martial is recommended, it goes forward in triplicate. If general court-martial is recommended, this letter and enclosures are forwarded in quintuplicate with an extra copy for each additional accused if there are more than one accused.

Processing Time For Inferior Courts-Martial Data. All staff judge advocates are reminded to comply with The Judge Advocate General's 22 September 1972 field letter (DAJA-MJ 1972/12489) concerning the processing time for inferior courts-martial. Paragraph 1*a-d* of this letter require the remarks section of the JAG-2 (R8) report to include the following data for summary courts-martial and for special courts-martial not forwarded for review by a Court of Military Review under the provisions of Article 65(b) of the Uniform Code of Military Justice: (a) number of cases tried, (b) average number of days from restraint or charges to trial, (c) average number of days from trial to action by convening authority, and (d) average number of days from convening authority's action to completion of review. Several questions have arisen concerning the implementation of this letter. In order to clarify and facilitate the reporting of the data requested by this letter, the following guidance is offered. The data will be based on records of trial by summary and special courts-martial received in the office of the preparing agency during the calendar quarter. The data for summary and special courts-martial should be reported separately. The processing time reported should be obtained from the back of the front cover of DD Form 490. In addition, the reporting requirement of paragraph 1*d* is changed as follows: delete "completion of review" and add "receipt in the office of the staff judge advocate" in lieu thereof. DA Form 3169-R, "Report on Nonjudicial Punishments, Summary, Special and General Court Martial Cases, and disposition of Drug Abuse Offenders," is presently being revised, and it will include a section requesting inferior court-martial processing time.

Request for Trial by Military Judge Form. It has been noted in several cases that the form requesting trial by military judge alone was dated before the court-martial convening order was promulgated. Article 16 of the Uniform Code of Military Justice and paragraph 53*d*(2) of the *Manual for Courts-Martial, United States, 1969, (Revised edition),* provide that an accused, before he makes such an election, is entitled to know the identity of the military judge who will try the case. The fact that the accused requests to be tried by military judge alone before the military judge is appointed to the case may suggest that the accused was not properly informed of his rights. Judge Advocates are advised that oversights, such as this, frequently cause unnecessary litigation at the appellate level.

Witnesses. It would save the time of all persons involved in the post-trial process if the names of witnesses were typed on the bottom of every page in the record of trial where their testimony appears. This would simplify the location of a particular witness' testimony. It is recommended that this procedure be used by all court reporters.

COLLECTION PURSUANT TO AR 27-38 (MEDICAL CARE RECOVERY PROGRAM)

	4th Quarter 1 Oct—31 Dec	*Grand Total CY 1972*
All Activities	$729,378.93	$2,728,478.98
CONUS		
First United States Army	128,110.59	594,379.61
Third United States Army	119,135.65	548,064.68
Fifth United States Army	114,001.58	483,793.88
Sixth United States Army	81,683.31	389,806.69
MDW	17,150.21	94,070.05
DA	11,928.00	61,256.00
OVERSEAS		
U.S. Army Alaska	1,485.00	6,707.00
U.S. Army Europe	225,595.47	468,226.93
U.S. Army Pacific	30,289.12	82,174.14
U.S. Army Forces Southern Command	xxxxxx	xxxxxx

Collection pursuant to AR 27-37
(Damage to Government Property)
CY 1972

ALL ARMY AREAS:		
Number of Claims asserted	1,476	
Total dollar amount of claims asserted		$1,074,770.01
Number of claims collected	1,461	
Total dollar amount of claims collected		512,003.23

REPORT FROM U. S. ARMY JUDICIARY

ADMINISTRATIVE NOTES

JAG-2 Reports. Staff Judge Advocates of each command having general court-martial jurisdiction are reminded that the JAG-2(R8) report for the period 1 Jan—31 Mar 73 should be forwarded, airmail, to HQDA(JAAJ-CC) not later than 11 April 1973. In this connection, attention is invited to DAJA-MJ letter 72/12489, OTJAG, dated 22 Sep 72. The directive requires that data as to processing times for summary and special (non-BCD) courts-martial be entered in the remarks section of the report.

RECURRING ERRORS AND IRREGULARITIES

January 1973 Corrections by ACOMR of Initial Promulgating Orders:

(1) Failure to show amended specifications—six cases.

(2) Failure to show verbatim the "ACTION" of the convening authority—two cases.

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

(4) Failure to show the correct number of previous court-martial convictions considered.

(5) Failure to date correctly the initial promulgating court-martial order and to show the correct date of the "ACTION."

(6) Failure to show findings as to certain Charges and specifications thereof.

(7) Failure to show that the pleas to certain Charges and specifications were changed during

the trial—two cases.

(8) Failure to show that a certain Charge and its specifications were dismissed on motion of defense, prior to arraignment, for failure to allege an offense.

(9) Failure to show the correct service number in the name paragraph.

(10) Failure to show in the authority paragraph the correct Court-Martial Convening Orders —two cases.

IMPOUNDING OF MPC's

Paragraph 12-41, Army Regulation 37-103, 6 Decmeber 1956, as changed by Change 62, 31 January 1968, establishes procedures for the impounding or confiscation of Military Payment Certificates (MPC's). Overseas commands have generally promulgated directives establishing the maximum amount of MPC's which may be in an individual's possession. If MPC's are impounded because the individual has in his possession an amount in excess of the maximum authorized, *if the facts so warrant,* the entire amount may be impounded and subsequently confiscated. There is no absolute requirement that the amount equal to the authorized maximum be returned to the individual. (See subparagraph 12-41c, Army Regulation 37-103, *supra).*

LEGAL SERVICES IN EUROPE

The following is a letter to USAREUR commanders from General Davidson, Commander-in-Chief, USAREUR which emphasizes legal services to all USAREUR soldiers and their families.

1. One of the important benefits of the Modern Professional Army is free legal aid. Military justice administration has necessarily but unfortunately diverted our available legal assets from helping the good soldier with his personal problems. As the Army's manpower needs are met increasingly with motivated, well-paid volunteers, I believe that the current heavy accent on disciplinary law will become less pronounced. Our goal now is to make a wider range of better legal services available to all our soldiers and their families, and I solicit the support of Major Commanders in implementing the following steps immediately.

a. *Step One:* Make the lawyer accessible to the soldier. Area jurisdiction has increased the available JA assets by consolidation of functions and by reducing travel time, thus permitting the opening of eleven new legal branch offices. These offices were added in cities of troops concentration such as Schweinfurt, Aschaffenburg, Neu Ulm, Gelnhausen, Butzbach and Karlsruhe. We have moved the lawyer to the soldiers who need him most; there are now 39 Legal Assistance Offices in Germany. Commanders should insure that adequate and convenient legal assistance hours are scheduled and that enough lawyers are on duty so that soldiers can be helped promptly and returned to work.

b. *Step Two:* Provide adequate facilities for legal assistance. Especially in the newer branches, some lawyers do not have private offices. In September, 1971, I requested that Major Commanders insure that attorneys have offices for private consultation with their clients, but this matter has evidently not received sufficient emphasis. A soldier is entitled to discuess his personal legal affairs in private, and I have requested the Inspector General add this item as a special subject in 1973. Major Commanders will insure that his attorneys' offices are adequate for conducting confidential interviews. Your help is also needed to improve waiting room facilities, office furnishings, telephone service, and publications.

c. *Step Three:* Protect the soldier. Many of you have had personal experience with unsophisticated, often young servicemen whose gullibility was considerably greater than their financial ability. We have tried to increase consumer awareness by AFN announcements, *The Stars and Stripes,* preventive law program speeches to military and community organizations, and—the best means—lawyer to client. One German firm, variously calling itself Horst Thiel, Organa Watch Administration, Inca

Handels GMBH and Luxor Diamant, has secured court payment orders over a three-year period against 10,000 servicemen in USAREUR for failure to pay for shoddy watches and jewelry. The firm is off-limits; the solicitation was usually done in the barracks and housing areas. I ask you to increase command vigilance to prevent such abuses and insure the provision of preventive law lectures to your soldiers.

d. *Step Four:* Pay proper claims promptly. An insurance company advertises its claims settlement policy as "fast, fair and friendly"; in taking care of our own meritorious claims, this command should meet or beat that slogan. Most JA Branch Offices have been delegated the authority to settle routine claims not exceeding $500.00; my goal is to have each branch capable of approving claims and a normal processing time after submission of a complete claim of 48 hours. I ask for your cooperation in assuring that unit claims offices and finance offices work together with your claims Judge Advocates in the expeditious settlement of claims.

2. We can make better soldiers by eliminating legal hardships and by compensating our people for their losses. I need your help in bettering our performance.

PERSONNEL SECTION

From: PP&TO, OTJAG

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

Colonel Harry Salisbury, 31 January 1973
Colonel Robert Thorniley, 31 January 1973
Colonel Edward Turrou, 31 January 1973

2. ORDERS REQUESTED AS INDICATED:

NAME	*FROM*	*TO*	*APPROX DATE*
		COLONELS	
TENHET, Joseph N. Jr.	MACV	OTJAG, Pentagon	May 73
		LIEUTENANT COLONELS	
COSTELLO. John L.	USACDC, C'ville, VA	TJAGSA, C'ville, VA	Mar 73
DEFRANCESCO, Joseph	USARSO, APO NY 09834	USATECOM, Aberdeen Proving Gd, MD	Jun 73
FONTANELLA, David	TJAGSA, C'ville, VA	OTJAG, Pentagon	Jun 73
LOFTUS, Martin R.	TJAGSA, C'ville, VA	USATC Inf. Ft Ord, CA	Jul 73
OVERHOLT, Hugh R.	TJAGSA, C'ville, VA	OTJAG, Pentagon	Jun 73
PASSAMANECK, David	USASA, Arlington Hall, VA	USA Phy Dis Agy, WASH DC	Jan 73
PIERCE, Donald L.	Phy Dis Walter Reed, WASH, DC	USA Jud, Falls Ch, VA	Feb 73
RUSSELL, George G.	Ft Leavenworth, KS	TJAGSA, C'ville, VA	Jun 73
		MAJORS	
ALDINGER, Robert R.	USARV	USATC, Ft Leonard Wood, MO	May 73
BOLLER, Richard R.	HHC DI, APO SF 96224	TJAGSA, C'ville, VA	Aug 73
COLE, Raymond D.	USARPAC, RVN	USAG, Ft Lvnwth, KS	May 73
DOMMER, Paul P.	HQ, MACV	USA Jud, Falls Church, VA	May 73
HAIGHT, Barrett S.	USMA, West Point, NY	Europe	Jun 73
HAMEL, Robert D.	USA Tng Ctr, Ft Leonard Wood, MO	Korea	Jun 73
McBRIDE, Victor G.	MACV	USAAGS, Ft Ben Harrison	May 73

MAJORS (continued)

NAME	*FROM*	*TO*	*APPROX DATE*
MURPHY, James A.	Claims Div, USARV	TJAGSA, C'ville, VA	May 73
MURRAY, Charles R.	MACV	USA Jud, Falls Church, VA	Jul 73
MURRAY, Robert E.	MACV	USAG, Ft Lvnwth, KS	May 73
MUSIL, Louis F.	MTMTS, Oakland, CA	Korea	Jul 73
RICE, Leonard E. J.	OTJAG, Pentagon	USAECFB, Ft Belvoir, VA	Aug 73
ROSE, Lewis J.	OTJAG, Pentagon	USAG, Ft Carson, CO	Jun 73
SMITH, Robert B.	CGSC, Ft Lvnwth, KS	OTJAG, Pentagon	Jun 73
WICKER, Raymond K.	USA Security Agency, Fld Sta	USARSO, Ft Amador	Jun 73

CAPTAINS

CORRIGAN, Dennis M.	USARPAC, RVN	USATCI, Ft Dix, NJ	May 73
CUNNINGHAM, William H.	MACV	Korea	May 73
FIEVET, Harold E.	USARV	3d USA, Ft McPherson, GA	May 73
GAMBOA, Anthony H.	1st USA, Ft Meade, MD	USAG, Ft Meade, MD	Sep 73
GLIAUDYS, George J.	MACV	USAG, Ft Carson, CO	May 73
KARJALA, John G.	MACV	Germany	May 73
KEOUGH, James E.	MACV	USATC, Ft Ord, CA	May 73
KEOUGH, Nancy G.	USARV	CDC, Ft Ord, CA	May 73
LINCOLN, Arthur F. Jr.	MACV	S-F USMA, West Point, NY	May 73
MECONI, Rocco F. J.	82d Ft Bragg, NC	6th HHD P & A Bn, Korea	Feb 73
MOUSHEGIAN, Vahan Jr.	MACV	Frankfurt, Germany	May 73
MUELLER, Patrick A.	MACV	USATC, Ft Leonard Wood, MO	May 73
SANDELL, Lawrence J.	MACV	USA Jud, w/dy Ft Hood, TX	May 73
TAYLOR, Warren P.	VN	USARSUPTHAI	May 73
WHITEMAN, Steven	Taiwan	USA Jud, Falls Ch, VA	Jan 73
WORTHING, Robert	MACV	USA Jud, Falls Ch, VA	May 73

WARRANT OFFICERS

MARSH, Robert F.	Europe	USATC Inf. Ft Ord, CA	Jul 73
McINTYRE, John L.	Europe	3d USA, Ft McPherson, GA	Jun 73
RAMSEY, Azie E. J.	Ft Meade, MD	Europe	Aug 73
SMITH, Raymond J.	MACV	USAG, Ft Meade, MD	May 73

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

MAJ Charles S. Babcock	Bronze Star Medal	Jun 71 - Dec 71
CPT Alfred F. Arquilla	Army Commendation Medal	Oct 71 - Nov 72
CPT George H. Brandt	Army Commendation Medal	Jul 69 - Jan 73
CPT Henry D. De Berry	Meritorious Service Medal	Jun 69 - Dec 72
CPT Richard W. Dyas	Army Commendation Medal	Oct 71 - Nov 72
CPT Howard M. Spizer	Meritorious Service Medal	Jun 71 - Feb 73
CPT Benjamin G. Wells	Meritorious Service Medal	Apr 69 - Dec 72
CPT Steven H. Whiteman	Joint Service Commendation Medal	Sep 71 - Jan 73

4. **DA Civilian Attorney Position**

TITLE AND GRADE	*LOCATION*
General Attorney GS-905-11	Office of the Staff Judge Advocate HQ, USA Garrison Fort Benjamin Harrison, Indiana

Anyone interested in above Position, or any other Attorney Positions that may open in the future, please submit a Standard Form 171 to The Personnel, Plans and Training Office (DAJA-PT) Office of the Judge Advocate General, Washington, D.C. 20310.

5. Environmental Expert. Carlisle C. Taylor, Chief, Lands Office, OTJAG, recently attended the Third Conference on Environmental Law held at the Smithsonian Institution.

6. Military Judge Applications. It is possible that the next Military Judge Course, now scheduled to begin on 9 July, will be rescheduled to an earlier date. It is imperative, therefore, that judge advocate officers wishing to be selected to attend the course write **immediately** to the Judiciary for application forms. Correspondence should be addressed as follows:

HQDA (JAAJ-TJ)
Nassif Building
Falls Church, Va. 22041

Criteria for selection of military judges were published in 3-1 Army Lawyer, January 1973, at pages 20-21.

Successful completion of the Military Judge Course is one of the prerequisites for certification as a full- or part-time military judge.

CURRENT MATERIALS OF INTEREST

Articles

Bigelow, "Help for Lawyers: The Non-Lawyer Assistant," Case & Comment, July-August 1972 at 40.

Green, "On the Unconstitutionality of Involuntary Military Service," Case & Comment, Jan-Feb 1973, at 14.

Courses

Procurement Course, the dates for the 56th Procurement Attorney's Course given at the Judge Advocate General's School have been changed from 13-24 August 1973 to 6-17 August 1973.

VIth International Congress, and the International Society for Military Law and the Law of War, 22-25 May 1973 at The Hague. For information write to the Treasurer of the International Congress 'Military Law and Law of War' Johan van Oldenbarneveltlaan 3 The Hague.

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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