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The Energy Problem and the Procurement Lawyer

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This article is excerpted from remarks delivered to the Procurement Conference of the Army Material Command held in Alexandria, Virginia on 20 February 1974. His text, less certain introductory matters, is reproduced below. Part VI consists of a proposed introduction to the question and answer period which was not originally delivered due to time constraints.

I.

Today we are confronted with an energy problem caused by constant increasing demands. The price of oil has skyrocketed because of these demands and by the arbitrary hiking of posted prices. The ripple effect is pushing up prices not only of oil-related items but other commodities as well, as nations strive to cope with galloping inflation and the threat of economic stagnation. Obviously, we are going to have to put a great deal of emphasis, money and time into the development of existing sources and into the search for better ways of converting energy into power for the future. This is vital for the sake of our economy as well as from the standpoint of national security. But for the short term, the dependence on imported oil does and will continue to play an important part in our lives. Speaking philosophically, perhaps it is best that we are confronted with the energy problem now, when there is still time to do something about it. However, this is of small balm to the procurement lawyer who every day must face the realities of this shortage of energy and its effect on government procurement. Appreciating that in the long term we are not here forever, let us take a look at the short term.

It seems that whenever we are confronted with a problem of any magnitude, certain words are evoked which are deemed to have magical properties and the feeling rapidly follows that if these words are used in the proper incantation, the problem will disappear in the traditional puff of smoke. Take for example, the personal services problem. The magical words that evolved were "end product." It became axiomatic that if you included these magical words in a contract a sufficient number of times the problem of personal services would disappear. Of course, nothing could have been further from the truth as many found out from the General Accounting Office. In the case of appropriation problems associated with year end funds, the magical words became "bona fide need" and many were disturbed and disconcerted when the Comptroller General looked behind this phrase of miraculous powers to the substance. The energy problem is no different and the magic phrase of the alchemist who wishes to change shortage into abundance is: "The Defense Production Act."

Let us for a moment examine the substance of these words. Title 1 of the Defense Production Act of 1950, as amended, allows the President to essentially:

1. Require acceptance and performance of contracts.

2. Require performance under contracts to take priority.

3. Allocate materials and facilities.

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However, let's not jump to any hasty conclusions as to what this means in terms of power to the Department of Defense. The only powers which the DOD has under the Act have come to it through the process of redelegation and then only in a limited area, namely, that area over which the Department of Commerce has jurisdiction. This delegation runs from the President to the Office of Civil and Defense Mobilization (later the OEP and now extinct) to the Department of Commerce, to the Bureau of Domestic Commerce within the Department of Commerce, and then to the Secretary of Defense. However, while the Department of Commerce has authority to direct producers of certain basic raw materials such as steel, copper and brass to reserve a certain proportion of their production capacity to satisfy the needs of the Department of Defense, it has no authority over fuel - that belongs to the Department of Interior. So, when it transpired last fall that the Defense Fuel Supply Center had a large short fall of 19 million barrels brought about by the sudden cutback of overseas petroleum deliveries courtesy of the OPEC, a request for an order to compel delivery of fuel had to go from Defense Fuel Supply Center, through DSA, to the Department of Defense to the Department of the Interior, which issued the necessary order.

Now, lest we become too immersed in exploring the relationship of the Defense Production Act to direct petroleum purchases by the Department of Defense, it would be well to point out that the use of the DPA was a one time thing. The Act is no longer applied to such purchases. On 27 November 1973, the Emergency Petroleum Allocation Act was passed which placed in the President specific temporary authority to deal with shortages of oil. To act within the authority of the Act the President created the Federal Energy Office pending the establishment by Congressional action of the Federal Energy Administration. The Federal Energy Office published its procedures in the Federal Register of 15 January 1974. These procedures apply to everyone, military as well as civilian. They provide for industry appeals for increased allocations, which in effect places on the industrial sector the responsibility for obtaining necessary fuel to meet its production requirements—and that includes

performance under defense contracts as well. The Department of the Interior no longer has the responsibility for fuel under the Defense Production Act and hence our future dealings in this area will be with the Federal Energy Office, and ultimately with the Federal Energy Administration.

It is important to keep this shift of emphasis and relative muscle power in perspective. Because of the dislocation that could be caused by an unrestrained use of the authority provided by the Defense Production Act, it is evident that in the absence of an on-going national military emergency the Congress and the Administration want to avoid any imbalance between the treatment of the civil and military community energy needs. Hence we are placing primary reliance on the commercial sector to find ways of alleviating energy shortages and of obtaining necessary fuel supplies to complete contract performance. This is evident from the slant of DPC 118, which requires the contractor to take certain actions before coming to us for help. We are in effect the last resort and I think that is the way it has to be.

Now you may ask if I am not being inconsistent because it is true that under a Federal Energy Office Regulation the contracting officer can step in and get an allocation for a construction contractor for a particular construction project whereas he cannot do so for a straight production project. Recognize though that the construction industry has some facets which are absent in other commercial operations. Since the construction contractor goes to the work rather than the work to him, there is less likelihood that he will have built up an allocation base in that particular area. If we hope to get the project completed, he needs help in getting the necessary fuels to even get started, much less to complete the project.

As far as the Defense Production Act is concerned, I hope that you are not disillusioned if I say that it really has no magical properties. Rather, it is a tool to be properly and judiciously used to help us in filling the requirements of the Department of the Army. The Mandatory Allocation Act is designed to assure us our fair share of the resources which our country needs to keep all its home fires burning not just those of the military campers. The FEO has allocated 637,000 barrels per day to the DOD. The Army's share is 68,676, and as far as I have been able to determine none is for procurement of materiel.

II.

The purpose of these few brief references to the law were not just to avoid coming to grips with the basic topic but to clear the air of any ambiguity as to whether there are in fact magical words in existing laws which will enable us to avoid the agony that lies ahead for the procurement lawyer. Simply stated, I do not see any.

Therefore, there is no sense in trying to minimize the magnitude of the energy shortage. However, as far as its impact on defense procurement is concerned, I believe that shortages per se will have less direct consequence than the ripple effect of this crisis. It is from this ripple effect that we get rapidly escalating prices, not only in the petroleum related products such as petrochemicals but in raw materials. If you have to pay more for oil, it stands to reason that if you want to remain solvent you must get more for your products, be it a finished end product or a basic material. This rubric applies not only to business but countries as well. Consequently, our contractors and their suppliers are faced with rising costs which not only may make a contract less profitable but may in fact turn it into a loss. If the reports I have been receiving are accurate, and I can certainly take this opportunity to verify them, our problems so far as the ripple effect are concerned fall within two areas. One, on-going contracts which include contracts with options and two, prospective contracting.

III.

Let's talk about the point one for awhile. In respect to on-going contracts, excluding the option problem, what do we do when a contractor comes in and says he has a loser, that continued performance will result in a loss. We certainly would not be human if such a confession would not strike a responsive cord; however, as difficult as it may sound, there is not much alternative but

to say in the vernacular of Third Avenue that "A deal's a deal." For not only are we precluded from giving up a right of the Government without consideration, namely, performance at the price agreed upon, but to do so even if we could, would certainly ultimately undermine the whole procurement concept of award to the low bidder. What could be the incentive for prospective contractors to bid realistic prices if it could be expected that adjustments would be made to bail a contractor out of an improvident bid? If we are challenged on the grounds of fairness and equity, would such a unilateral adjustment be fair and equitable to the unsuccessful bidder who included in his price sums for the contingency which caused his bid not to be low? If enforcement of the contract terms as written causes hardship and loss, the alternative spells disaster. Embarking on what would amount to a social program to provide relief for contractors in a loss posture would probably cause a rapid depletion of our appropriation and inequities of a magnitude which would keep all of us busy from here to premature retirement.

To sum up, I see no universal balm for the contractor who finds himself in a loss situation either because of the energy problem or its ripple effect. In selected cases where a contractor is a sole producer of a vitally needed defense commodity and enforcement of the contract as written would lead to insolvency, I can see application of amendment without consideration under Section 17 of the ASPR. However, I view such situations as the exception rather than the rule. This does not mean that an inability to obtain fuel supplies would not justify excusable delay and hence extension of the time for performance. But before I would consider such request for extension, I would want to assure myself that the contractor took the steps set forth in DPC 118 and made a conscientious effort to obtain the needed fuel. This is rather a bleak picture but my views on the realities of the situation should be more appealing than any sugar-coated placebo.

Regarding the non-exercise of an option on a current contract as distinguished from providing relief under a current contract, there exists a difference of opinion. While both concern the giving up of a right of the Government, non-exercise of an option seems to have some sanction from the Comptroller General. I am of course referring to 46 Comp Gen 874. Briefly, subsequent to the award of the initial contract, but prior to the exercise of the option, the Service Contract Act of 1965 was passed, adherence to which caused the contractor increased labor costs. After an interesting discussion of the need for consideration, the Comptroller General ruled in summary that, where the contractor furnished evidence showing that compliance with the act under the option would result in a net loss, the option need not be exercised.

I believe the hardest thing to get in Government is an unqualified answer. This is true not because of any reluctance to "stop the buck," but because very few of us ever have the complete picture and also because we like to have flexibility for future actions. So permit me to qualify my comments on 46 CG 874 by saying that I believe it would be ill-advised to apply 46 CG 874 across the board to the situation with which we are presently confronted. The commonality is the loss situation but the ripple effect cannot in most instances be directly attributable to a sovereign act. I believe if we were to present today's problem to the Comptroller General, we would not get a sweeping reaffirmation of the principle of his decision but rather a much more restricted and qualified opinion.

There have been several theories advanced on how to handle the option problem. For the purposes of discussion I will advance two of them. One: let the contractor buy out of the option but at a price somewhat less than the difference between the option price and the projected market price at the time the option was to be performed on the theory that to exercise the option would drive the contractor into bankruptcy and therefore any recovery for excess costs would be minimal. The key here, of course, is the ability to make a determination that to enforce the option would drive a contractor into insolvency which would at best be a difficult determination to make and frequently an impossible one. An extension of the same principle would be to exercise the option and enforce performance until the situation would become more clear cut. Two: consider the exercise of the option to be a new

contract and have a preaward survey conducted to see if the contractor has the capacity and credit to perform. If the preaward survey was negative declare the incumbent contractor to be nonresponsible and go out on a new solicitation. This approach certainly has a lot of charm.

I am not going to go into the question whether the exercise of an option is a new contract or simply a modification not requiring a determination of responsibility. On one hand, it could be argued that the Comptroller General has set forth special rules for the exercise of an option as distinguished from letting a new contract. On the other hand, others would point out that it is the policy of the Department of Defense to contract only with responsible contractors and that such positive determination must be made at the time the option is exercised. There is no doubt in my mind that if we get into a discussion on this point, it would not be settled either today or tomorrow, but in all probability, would only be laid to rest by a meeting in some back alley. Without addressing this question, I believe that this approach is still subject to the disadvantages of the other, namely the difficulty of determining that the contractor does not have and cannot obtain the credit to perform.

In both of these cases we need something more than the fact that the contractor would suffer a loss. In the context of question of buy-in, I believe the Comptroller General has opined that there is nothing wrong per se with a contractor taking a loss contract. The merit of these proposed solutions is that it puts the decision making at a low level. The disadvantage is of course the difficulty in supporting a decision that exercise of the option will result in something more than a simple loss contract and obtaining evenness of approach. In addition, as a practical matter in each of these cases, we may very well be confronted with the logical and reasonable result that the incumbent contractor may be successful on the resolicitation, and at a higher price than the option price. Just because the result is reasonable and logical from a procurement standpoint that will not make it easier to explain why we are paying more for a product than when we had a firm contract to obtain it for less from the same firm.

With the facts before me at this time, I believe that the proper way to forego the right to exercise an option is for the contractor to request relief under Section 17 of the ASPR.

The board has handled a few cases of this nature and I believe in all the cases where relief was granted, enforcement of the option would have had a disasterous effect on the contractor. When last I checked, the Air Force Board had one such case before it and the Navy had none. I like handling this problem by the Contract Adjustment Board because even though the board is not a slave to precedent, we do get consistency of evaluation. If the board gets inundated with such requests, that is a problem we will have to face. However, I would make it perfectly clear to any contractor requesting such relief he should have supportable documentation as to the effect the option will have on his present and future business. I personally do not think that showing a loss will be enough.

IV.

For me to attempt to tell you what will be the result of this ripple effect on current contracting might be considered by some to be presumptuous. But let me give you at least my "Estimate of the Situation." One effect, and it doesn't take one blessed with the gift of precognition, is that it will mean a great deal more work for the procurement attorney. We all know that the selection of the proper contract type is to equitably apportion the risk and rewards. Therefore we are going to have to utilize contract types which will share the risks of increasing costs if we are to avoid large and unmanageable contingencies or no bids. By that, I don't mean that the fixed price contract will fall into disrepute, but we are going to have to be more selective and in some instances we are going to have to forego ease of administration for a contract type which will provide for contingencies which cannot be determined with accuracy. Before I go further, let me categorically state that I don't have any magical words. I cannot, nor would you want me to, say that when in doubt, go with a cost reimbursement contract. That would be a simple case of the cure being worse than the disease. Instead, let me set forth a few of my thoughts on the subject.

If contingencies in the future cannot be determined with any accuracy, perhaps we should consider shorter periods of contract performance. Of course it will mean more work for contracting personnel but my question is, is it worth consideration? I have heard that material suppliers will not give contractors quotes on supplies which hold for more than three or so days. Considering we require bids to be held open for generally 60 days, perhaps we are going to have to see what we can do to cut down this time. I appreciate that the Comptroller General looks upon a qualified products list as restrictive of competition and would probably reach the same conclusion concerning a qualified bidders list. However, I feel that if we can demonstrate a need, we should try to get Comptroller General approval for use of a qualified bidders list on at least a test basis to see if this would appreciably reduce the time for award. I know of at least one instance where it is being used on a test basis although the reason for the test is not an inability to get suppliers quotes which hold for longer than three days. But we have to demonstrate a need if we hope to get approval.

If one element of a contract is subject to a contingency which cannot be adequately planned for, is the fixed price contract with a portion on a cost reimbursement basis a possible solution? I would think that it was probably not as effective as a contract with an economic price adjustment provision. But then again there may be situations where it is just not possible to use what we used to know as an escalation provision, now known as an economic price adjustment.

There is also the possibility of furnishing material on which contractors cannot get firm future prices as Government Furnished Material, but such a course has perils which are almost too numerous to mention. Two which come immediately to mind are that the supplier of the raw material may very well put in his contract a contingency for possible future price rises. Then there is always the complication of arranging timely delivery of suitable material to the manufacturer.

All these possible solutions beg one question—if uncertainty of future prices is the problem, why not a contract with an escalation or economic price adjustment provision? In my limited experience the problem has been finding a good base or, when several factors are involved, a good index.

Even before the ripple effect of the energy problem, the Comptroller General had conducted studies which stress the need for increased use of economic price adjustment provisions. The ASPR Committee has completed a review of their present coverage in this area and publication of revised coverage is imminent. However, no matter how much latitude is given in the use of economic price adjustment clauses, including the authority to develop a clause to fit a particular situation, the problem seems to boil down to the availability of a base or an index which will be fair both to the Government and the contractor. Even if a good base or index is found, the problem is not removed for we have to determine what to apply the base or index against. Not all contractors will utilize the same amount of material or labor in the performance of a contract and even with an index it would be rash indeed to apply it across the board without considering what percentage of the contract work or price is subject to cost fluctuation and hence should be covered by an economic price adjustment provision. Perhaps these few thoughts on the difficulties with economic price adjustment provisions only reflect my inexperience in the practical application of such coverage, if so I would be interested in your comments.

V.

As I reflect on the content of this discussion, frankness requires me to admit that it is rather long on problems and short on solutions. This of course is not unusual for in my experience solutions have always come from the working level. To theorize without an awareness of the practicalities and realities of the situation can and often does result in a paper solution, a solution which has much to commend it except that it will not work. So it should not at all come as a surprise to find me asking you for help. As with the doctor-patient relationship, it is not sufficient for you to tell me that it hurts. I know it hurts, what we need to know is the specifics:

what remedies have you tried, what have you considered and discarded, and why. I appreciate that the energy problem has increased your workload and that therefore you have less time to develop facts supporting a particular problem, but unfortunately, if we have to make adjustments in the regulations to provide a solution, we need facts. If we have to go to the Comptroller General for approval of a new procurement technique, we need facts. Above all, if through self-help you have found something that works, we would like to hear that too. At this point, you may very well be musing about the injustice of it all, that you are being called upon to find solutions to problems not of your own making. To that I can only fall back on that ancient Armyism which is as true today as it was in the time of the Roman legions, "You never get a problem, you only get an opportunity to excel."

VI.

It should be clear to you now that there are very few answers which I can share with you for the simple reason we are all feeling our way along. As far as I have been able to ascertain all the Military Departments, which term in accordance with ASPR 1-201.5 includes the Defense Supply Agency, are relying on present ASPR coverage to take care of any current difficulties which may arise. On the whole there is a definite reluctance to take any precipitous action in changing the ASPR until there are demonstratable facts as to the exact nature and extent of the problem. I believe the ASPR Committee is now well aware of the danger of precipitous action after their current experience with Item II of DPC 117, Distribution of Procurement Documents. The change was thought to be a simple one but in practice it has caused a chain reaction which is still being felt. Appreciating the sparcity of available answers I feel that it would be more productive if I posed a few questions.

My first question is: have you noticed a reluctance of contractors to respond to solicitations because of uncertainties both as to future prices of materials and future deliveries? If that is so, the use of options to lessen workload will probably be limited, for ASPR 1-1503(b)(ii) provides "Option provisions and clauses shall not be included in contracts when the contractor would be required to incur undue risks: e.g., the price or availability of necessary materials or labor is not reasonably foreseeable." I am assuming that the contract is not suitable for one reason or another for the inclusion of an economic price adjustment provision. Therefore, we better start preparing for an increased workload due to a projected inability to utilize this labor saving device.

My second question is, do you agree with my estimation of the difficulties with economic price adjustment provisions, that is the problem of coming up with a base and an index? If we can't find the answer for contractors apprehension about future price increases in an economic price adjustment provision, has any one of you used or considered using a contract with "Prospective Price Redetermination at a Stated Time or Times During Performance"? This question indicates how far I go back in procurement. I can remember the time when price redetermination had a popularity almost equal to that of the Cost Reimbursement Contract. Looking over the ASPR coverage on this type of contract in 3-404.5 it seems to be suitable for use where there are uncertainties as to price and an economic price adjustment provision is another type of contract which cannot be utilized for one reason or another. As I envision it, the situation would probably justify a shorter time period for the initial period than the recommended 12 months in the ASPR, and then negotiate a fixed price for the subsequent periods as they occur. I believe that this type of contract would avoid the undesirable workload imposed by a series of very short term contracts. It should be fair to the contractor, I only hope not too fair. Admittedly, it is not as desirable as other contract types since your leverage in the negotiation of subsequent periods is minimal but it does seem to provide a certain flexibility at a time when we need it.

Let's take our consideration of the prospective price redetermination type of contract a step further. Let's assume that we can justify prospective price redetermination at four month intervals or perhaps we can justify and find desirable an unbalanced interval mix such as two months, five months and five months. Well, the first thing

that I believe you have to do is to get with your friendly auditor to determine if these short intervals are of sufficient length to enable him to give you guidance in the negotiation of the price for the next interval. Assuming your intervals meet audit requirements we are still faced with the workload having to develop a new solicitation every year. Are we? What about tacking an option on the initial one year period? You may at this point quite rightly respond by saying that an option on this type of contract could be construed merely as an option to negotiate and therefore at best, subject to criticism from the General Accounting Office as restrictive of competition. Suppose we meet that question with a rationalization something like this. The option gives us authority to negotiate a fixed price for the first increment of the option period. The negotiated fixed price gives a firm figure against which a test of the market is realistic and not a paper exercise. The option enables the Government to continue with a contractor with whom the Government has a proven cost history, subject of course to a favorable result from a test of the market. The requirement for a test of the market gives the Government some leverage in the negotiation for the first increment of the option period. Before we go further, let me add a qualification: these thoughts of mine on the use of prospective price redetermination type of contracts are nothing more than thoughts. I have not tested them against the realities and practicalities of procurement practice. They are posed for your consideration and to get your ideas. They are not for immediate implementation on the theory that Prospective Price Redetermination, with or without options, are new magical words.

Innovations In Court Reporting and Post-Trial Processing

By: CW2 Joseph C. Nawahine, Fort Lee, Virginia

Inside The New Court Reporting System.

Since October 1973, this office has been using a court reporting system comparable to the system being procured for Army-wide use as detailed in the February 1974 issue of *The Army Lawyer.* Consisting of a dictator, transcriber, portable unit, stenomask, open (hand) microphone, control box (for dictator and transcriber), foot pedal, earphones, and a bulk cassette eraser, the system is versatile, possesses varied optional and backup features, and leaves its maximum effective use to a reporter's imagination.

To highlight the system, it will be necessary to discuss its operation and features in two phases—the recording and transcribing. To record cases, our reporter uses the dictator, transcriber, control box and stenomask. As backup, the open microphone and portable unit are close at hand. At this juncture, it should be noted that although referred to as a dictator and transcriber (both separate units), each, in itself, has the capability to record and play back. The operation of the dictator or transcriber is similar to other types of recording machines, i.e., recording, playing back, fast forward, rewind, volume control, etc. In addition, however, (as features during the recording phase), it has warning devices to alert the reporter when (1) the cassette is not properly inserted, (2) the machine is not recording, (3) the cassette is nearing the end (approximately 30 seconds lead time) of recording space, and (4) the system is not properly connected or hooked up. The dictator and transcriber are connected to a control box which governs the operation of both units. The stenomask is plugged into the control box. Prior to recording, both the dictator and transcriber are each loaded with one cassette. As the control box is turned on, so are the dictator and transcriber. The reporter then depresses a record button (on the control box); by another switch on the control box, he activates the unit into which he will initially dictate. As the cassette in the first unit is nearing the end of recording space, he is alerted of the situation. (He can also use the index sheet on the unit as a guide for recording space on the cassette.) The switch on the control box is then flipped to activate the second unit and the reporter continues to dictate, with no interruption of proceedings. As he continues his dictation, he flips the cassette on the first unit

over for further dictation when the second unit's cassette is nearing the end of recording space. Replacement of cassettes is done in the same manner.

Should the system malfunction, the reporter will be alerted. He then has an option of resorting to a number of "backup" systems. First, he can disconnect the stenomask from the control box, connect it to the portable unit, and continue dictating. Second, he can disconnect the malfunctioning unit from the control box and continue dictating into the operable unit. Third, he can disconnect the stenomask, dictator, and transcriber from the control box, and connect the open microphone to either the dictator or transcriber, whichever is operable. As indicated, the reporter knows which unit is malfunctioning. It should be noted, however, that the open microphone can only be connected to either the dictator or transcriber—but not to the control box or portable unit. Fourth, he can use the built-in microphone which is available in the dictator, transcriber and portable unit. The portable unit has the same capabilities as either the dictator or transcriber: it can be used with the stenomask or built-in microphone. The open (hand) microphone cannot, however, be connected to the portable unit. The only disadvantage with *any* of the optional backup systems is the one- or two-second interruption of proceedings to flip over a cassette. (And a reporter can avoid this by accomplishing this task during a break of proceedings, e.g., change of witnesses, recess, when military judge is examining documents introduced as evidence, when reporter is marking evidence for identification, etc.)

An important feature during the recording phase is the reporter's ability to quickly locate any portion of the proceedings when requested to do so. This is possible because the reporter can "mark" (by depressing a button on the control box) the cassette as he wishes, e.g., each time a new witness takes the stand, arraignment, objections, pleas, findings, sentence, arguments, etc. To illustrate: if witness number four is testifying, and the military judge desires to check (or have read back) a portion of witness number one's testimony, because the reporter has premarked the cassette each time a new witness took the stand, all the reporter has to do is press the rewind button four times and the cassette will be at the beginning of witness number one's testimony. When the cassette is rewound, it will automatically stop at each "mark." This feature eliminates the "search and locate" or "index sheet reading" methods of hunting for requested material. When the check or readback is completed, the reporter has only to press the fast forward button and the unit will automatically return to the point where he left off originally. Again, no referring to an index sheet or meter is necessary.

As with other recording machines, the earphones, foot pedal, and playback unit are needed for transcription. Likewise, if the reporter does not desire to use the earphones, he can use the built-in speaker. However, when transcribing, the dictator (or transcriber) has a variable speed control which will play the cassette back, with practically no distortion, at a speed that will permit the reporter to actually transcribe as the cassette is played back with no need to back up and play over to insure that whatever was recorded has been transcribed! Another feature is the ability to back up by line, phrase, or even a word by simply presetting the unit to the reporter's desire. Whenever the reporter removes his foot from the foot pedal, the unit will automatically back up by line, phrase, or word.

In summary, the capabilities of this system are fantastic. Although this system was specifically designed for court reporting, it also possesses the capability to be used as an office dictation system. Our reporter, SP4 Stephen R. Ludwig, who uses the system, expresses this opinion:

"From my experience of using this system and comparing it with other systems that I have used and seen, I would have to say that this system is the most outstanding and the one I would choose to use if I had a choice of the equipment that the Army has available. The system uses standard cassette tapes which are easy for filing; less prone to damage than the discs or belts; have a much better sound quality than discs or belts; and are reusable. The system is more versatile than others in that it is really left up to your imagination as far as what can be accomplished with it.

"The automatic built-in search capabilities is another one of the big advantages of this system.

It saves so much time and guesswork when you are looking for something on the tape. Many times when the judge would like to hear a read-back of something, he will recess the court and everyone will sit and watch the reporter as he racks his brain trying to remember approximately where the particular phrase is that the judge would like to hear. If you get lucky, you will find it within five to ten minutes of nervous guesswork. With this system, all you have to do is push a button and the machine stops at the precise location and then it is just a simple matter of reading or playing it back. This automatic built-in search system makes this system one of the most sophisticated machines ever used in court.

"Another advantage of this system is that it has two decks connected by a switch box or control box so that the reporter will never have to stop the court just so that he can change a disc or belt. This particular feature is one which counsel for both sides and the judge really appreciate. There are no longer any untimely interruptions and the reporter no longer has to worry about where would be the best place to change the disc or belt. You record all the way to the end and then switch over; unlike other systems where you get close to the end and then you are looking frantically for a place in the proceedings where it would be best to change the disc or belt. Many times you leave gaps at the end of tapes or belts, but with this system those gaps are filled.

"When transcribing, the ability to be able to adjust the playback to your own typing speed is another advantage which very few other systems have. It eliminates the stop-and-start method of listening to a phrase, putting that phrase down, and then going on to the next phrase.Many times you forget some of the words in the phrase and you have to go back and listen all over again until you get all the words. This method is not only slower, but it is harder for the reporter to type what he remembers hearing than what he actually hears. This system has taken all the advantages of other systems, added a few of its own, and has come up with a very sophisticated system which comes closest to matching the sophisticated needs of the court reporting profession than any other system that the Army has employed so far."

Word Processing in Post-Trial Administration.

Several methods of transcribing were tested to increase the productivity of the court reporter and reduce the processing times from start of transcription to forwarding the record of trial to the military judge for authentication.

The first method employed involved the typing of each page with carbons, and then correcting any errors noted. Upon completion of the entire case, the typed original was given to the trial counsel for examination prior to forwarding to the military judge. This procedure was not only time-consuming but cumbersome for both the reporter and trial counsel in that (1) the use of carbons made the reporter's typing more deliberate, and therefore reduced his speed, (2) when further corrections (per trial counsel or military judge) were required the reporter had to align and adjust all copies prior to making corrections, and (3) when an entire record of trial was transcribed and given to trial counsel for examination, the "examination period" was extremely long. Counsel's other pressing responsibilities and the length of the record increased chances of overlooking or not noting errors. Delay was further aggravated because the reporter normally started transcribing another case once the completed record was given to the trial counsel. When trial counsel completed his examination and had corrections to be made, the reporter had to set aside the new case he had started transcribing in order to make the corrections.

The second method tested involved the reporter typing an original only, and after examination by trial counsel, photocopying as necessary. This method is not only expensive ($.03 per page of copy), but adds more time that the reporter must spend in copying the pages.

The third method involved the use of a magnetic card typewriter. In this case, the reporter typed an original only, but at the same time the material was permanently programmed on magnetic cards. The reporter would give the programmed transcript to the trial counsel on a daily "piece-meal" basis, i.e., pages transcribed during the work day were given to the trial counsel who examined the pages on that day or the follow-

ing morning. The reporter would then play back the material in final with carbons (five copies), making corrections as necessary. Because of the high-speed playback, accuracy and minimal time required in making corrections, the total time for transcription and examination by trial counsel times was substantially reduced. Not only was court reporter output increased, but the system produced much neater and cleaner records of trial—with minimal errors noted by the military judge. Notable results in actual transcription were an average savings of seven minutes (35%) transcription time per page for the record of examination of witnesses, and four minutes (25%) per page for instructions by the military judge—or a net savings of three hours and forty minutes transcription for those two portions of the record of trial in a particular case. It should be noted that with use of magnetic cards the trial counsel may determine one of two methods for examination of the record of trial—by piece-meal or the completed record. Regardless of which variation employed, the reporter typing output will be extremely high.

In the post-trial processing of court-martial cases, there are admittedly numerous factors involved in establishing the most efficient, economical and expedient method of accomplishing the transcription and examination by trial counsel. No "model" way can be established for use by all reporters or SJA offices. However, this office has determined that the best method for accomplishing this portion of the post-trial administration is through word processing.

1974 National Guard JAG Conference

With more than one hundred in attendance, Army and Air National Guard Judge Advocates gathered for their annual conference in Charlottesville, Virginia, on 3 March. Following registration and the traditional icebreaker, the conference began its business meetings the next morning with an address by Major General H. R. Vague, The Judge Advocate General of the Air Force. Later in the week conferees heard from Major General Harold E. Parker, Acting The Judge Advocate General of the Army. The keynote speaker at the annual banquet was Major General Francis S. Greenlief, Chief of the National Guard Bureau.

One of the more significant items on the agenda was the review and evaluation of a proposed Federal Code of Military Justice for the State Military Forces, presented in two afternoon sessions by Lieutenant Colonel Frank W. Elliott, The Judge Advocate General's School's visiting professor from the University of Texas. This draft code was developed by a task force composed of National Guard Judge Advocates with assistance from the JAG School.

The first day of sessions included a presentation on claims administration, by Colonel Germain P. Boyle, Chief of the Army Claims Service; and a discussion of current legislation and legal problems pertaining to the National Guard Bureau from its Legal Advisor, Colonel James Hise. Lieutenant Colonel Hugh R. Overholt, Chief of Personnel, Plans and Training, OTJAG, gave a rundown on the problems, plans and policies of JAG personnel. Special afternoon interest seminars on the proposed Federal Code of Military Justice for the State Military Forces were conducted by: Colonel Bernard T. Chupka, Colonel Lawrence H. Miller, Lieutenant Colonel Morton H. Zucker, Major Richard R. Boller, Major Nancy A. Hunter, Major Federick P. Rothman and Captain Edward J. Imwinkelried.

The Tuesday meetings began with an update on criminal law from Lieutenant Colonel George C. Russell, Jr., Chief of TJAGSA's Criminal Law Division. Major Dulaney L. O'Roark, Jr., Chief of the School's Civil Law Division gave a similar update on developments in his area of responsibility. Brigadier General Robert D. Upp, JAGC, USAR, concluded the morning session with a number of his observations on the status of reserve affairs. The afternoon sessions were begun with a highlight of current Army litigation

from Colonel William H. Neinast, Chief of OTJAG's Litigation Division. Thereafter, Lieutenant Colonel Keith A. Wagner, Assistant Commandant for Reserve Affairs and Special Projects, monitored activities as TJAGSA faculty members conducted four special workshops for conference participants: Major O'Roark led the discussion on military assistance to civil authorities by the National Guard; Major Jack F. Lane, Jr., spoke on unsatisfactory participation and sanctions; Captain R. Carl Cannon talked on practical JA problems stemming from organization of and negotiations with federal employee unions; Captains David E. Graham and Ronald C. Griffin headed a program on equal opportunity, considering the ongoing defense and Army programs to improve race relations and the employment of minority groups. Tuesday's activities ended with Major General Greenlief's evening address at the traditional conference banquet.

The final day's agenda began with additional remarks on Guard developments from Major General Greenlief. His discussion was followed by an overview of current developments at Legal Information Through Electronics, given by LITE Chief, Lieutenant Colonel Rose L. Volino, USAF. Colonel Emory M. Sneeden of XVIII Airborne Corps, Fort Bragg then discussed SJA office management activities at the corps level. After Major General Parker's afternoon address, a roundtable discussion on career problems of the National Guard was conducted by Lieutenant Colonel James N. McCune, Captain Eldon D. Roberts and Captain James M. Harris, of Reserve Affairs and Special Projects, TJAGSA.

Administrative Law Opinions*

(Absence Without Leave; Separation From the Service - General) **AWOL Interrupts Running of Probation Period for a Suspended Administrative Discharge.** An opinion was sought whether a service member's absence without leave had the effect of tolling the period of suspension of an approved discharge UP paragraph 1-15, AR 635-200, 15 Jul 1966, as changed. Although no controlling precedent could be found on this issue, a previous Military Justice Division opinion relating to suspended sentences was considered persuasive (JAGJ 1958/1755, 4 Feb 1958).

With respect to administrative discharges, the intent of paragraph 1-15, AR 635-200, is to permit one to demonstrate his rehabilitative potential and to afford commanders a flexible means of identifying those who possess the potential to become good soldiers despite hitherto unsatisfactory performance. Any practice contrary to this procedure was described as one which would generally compel the commander to vacate the suspended discharge without waiting for the member's return to military control. This lack of flexibility was considered as contrary to the best interests of the Army and the member. Accordingly, the question was answered in the affirmative. (DAJA-AL 1973/4650, 14 Sep 1973).

(UCMJ)—Article 138) **Action Upon "Conditional" Request for Discharge and Issuance of UD Was Actionable "Wrong".** An EM requested discharge for the Good of the Service pursuant to Chapter 10, AR 635-200, 15 Jul 1966, as changed, on condition that he be awarded an honorable or general discharge. The Post Commander approved issuance of an undesirable discharge on 7 June; the EM was not advised of this fact until 10 July; his counsel learned of the action from an officer at the officers' club the day before. On 11 July the member submitted a written document which purported to be both a confirmation of an oral request for redress and an Article 138 complaint to the command CG if the prior oral request for redress was denied. Complainant was discharged with an undesirable discharge later that same day. No written request for redress was submitted by the member, or denied by the commander—however, the complainant's assertion that he had previously been denied relief was not disputed in the commander's response (*cf.* Article 138, UCMJ and paragraphs 5a and 7, AR 27-14, 15 Feb 1972). Action was not ta-

*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).

ken on the EM's letter until 20 July, when the request for redress was denied by the Post Commander, who noted that he was powerless to act due to the complainant's discharged status. The request was forwarded to the major command Staff Judge Advocate, apparently on the theory that the complaint was mooted under the attendant facts. The major command's Staff Judge Advocate thereafter forwarded the complaint to the Administrative Law Division, OTJAG, recommending referral to the Army Discharge Review Board.

The opinion noted that, under the unique facts of this case, the complainant acted in as timely a manner as circumstances would permit. Standing to file an Article 138 complaint and jurisdiction to resolve it were found to exist. It was observed that any other conclusion would result in fundamental unfairness when a commander could wrong a soldier and then deprive him of his right to relief by concealing the wrong or refusing to act on a request for redress until the soldier was separated from the service. It was additionally noted that, although the Post Commander denied the requested relief in writing, he did not forward the complaint to the officer exercising GCM convening authority over him, as required by statute; nor was any action taken pursuant to paragraphs 9 and 10, AR 27-14. As the complaint was properly and timely filed while the complainant was on active duty, it was found to have procedural viability after the complainant's separation from the service: *see* DAJA-AL 1973/4216, 20 Jun 1973. It was reasoned that although the issuance of the discharge was valid and irrevocable, its characterization as undesirable was erroneous and a nullity. If the convening authority accepts a request for discharge, he is bound to act on the request only as conditionally submitted and not beyond. In such an instance of error and excessiveness The Judge Advocate General, as designee of the Secretary of the the Army, may correct the impropriety and order substitution of a discharge under honorable conditions. (DAJA-AL 1973/4503, 29 Aug 1973—previously digested in part at page 35 of the October 1973 issue of *The Army Lawyer.*)

(Allowances - General; Dependent - Medical Care) **Medical Benefits While in Desertion Status are Clarified.** The Surgeon General requested an opinion as to the effective date of official placement in desertion status, and its effect on eligibility for medical care of a member and his dependents. It was noted that 10 USC §§1161 and 1163 provide that commissioned officers and any reserve of the Army may be dropped from the rolls of the Army on account of absence without authority for three months or more, or on account of sentence to confinement in certain circumstances. One in DFR status under these circumstances is separated from the Army with a complete severance of military connection. He and his dependents are divested of all military status and privileges, to include medical care UP 10 USC §§ 1074 and 1076. However, mere absence of three months or more without authority does not necessarily result in being dropped from the rolls of the Army.

On the other hand, it was observed that one who is still on active duty, but who has been administratively determined to be in a desertion status (dropped from the rolls of the organization) pursuant to chapter 3, AR 630-10, 23 Apr 1971, has a continuing entitlement to medical care at Army Medical Treatment Facilities pursuant to 10 USC §1074 and paragraph 7, AR 40-3, 26 Mar 1962, as changed. However, as a person so situated would be absent without authority, the expenditure of Army funds for civilian medical care during his absence would be governed by paragraph 85, AR 40-3, as amended by C27, 18 Aug 1972. If the member is determined to be in a desertion status pursuant to chapter 3 of AR 630-10, his dependents would lose entitlement to medical care in uniformed service facilities and under CHAMPUS until the member's return to military control (paragraph 3-3*a*(1), AR 40-121, 15 Sep 1970, as changed). It was reiterated that the dependents' loss of entitlements is not contingent upon the member having been dropped from the rolls of the Army, pursuant to the United States Code, but merely upon his having been administratively determined to be in a desertion status under AR 630-10. (DAJA-AL 1973/4944, 25 Oct 1973).

(Separation from the Service - Discharge Characterization) **Chapter 13, AR 635-200 Forbids Recommendations As to Character of Dis-**

charge From All Officers in the Chain of Command—But Not From Staff Officers of the Convening Authority Who Takes Final Action. Guidance was requested in interpreting certain provisions of Chapter 13, AR 635-200, 15 Jul 1966, as changed, as pertain to recommendation of character of discharge to be awarded when a board of officers has been waived. While paragraph 13-12*b* disallows a recommendation as to the character of discharge by the respondent's immediate commander, the request observed that paragraph 13-16 contains no similar provision in setting out the duties of intermediate commanders.

The opinion noted that the policy behind paragraph 13-12*b* is that no recommendation as to character of discharge to be awarded would be made by the unit commander or others in the chain of command in the processing of the recommendation for discharge. This was intended to preclude a commander from promising to recommend a certain type of discharge as a means of inducing the respondent to waive any of his rights. A board of officers, if convened, makes a specific recommendation in such cases. The opinion recognized that staff officers may make recommendations to their commander concerning the character of discharge to be awarded. (DAJA-AL 1973/4584, 7 Sep 1973).

(Separation From the Service - General) **206 Discharge for Foreign Conviction Requires DA Approval—But Can Be Suspended by Convening Authority Thereafter.** An EM convicted by a foreign court was recommended for elimination based on the conviction UP AR 635-206. The convening authority approved the recommendation for discharge, and forwarded the proceedings to DA for approval as required by paragraph 39, AR 635-206. DA approved discharge of the EM upon his release from confinement. After receipt of DA approval, the convening authority suspended execution of the discharge. MILPERCEN requested an opinion as to the propriety of the convening authority's action.

While a DA approval requirement is imposed by 635-206 before a GCM convening authority can exercise his discharge authority in the case of foreign convictions, it was observed that such DA approval is merely an intervening action. The GCM convening authority still retains his power to take final action under paragraph 13 of that regulation with respect to the discharge. This power of the convening authority additionally satisfies the requirement of DoD Dir. 1332.14, 20 Dec 1965, as changed, that only a "discharge authority" can suspend. However, the opinion noted, suspension may be authorized only after the recommendation for discharge has been initially approved by HQDA. Furthermore, should the member be transferred, the GCM convening authority of his new organization would have authority to revoke the suspension. (DAJA-AL 1973/4521, 30 Aug 1973).

(Separation from the Service - General; Absence Without Leave). **Individual's Characterization of Departure from Service as AWOL Precluded Finding of Constructive Discharge.** MILPERCEN requested an opinion whether an individual could be considered as constructively discharged on his ETS. The member had an adjusted ETS date of 27 Feb 1971. He was assigned to a transfer station, where he signed out of his unit, cleared post and departed without completing his out-processing. He had no further contact with military authorities until his civilian employer attempted to assist him in enrolling in a VA training program in the summer of 1973. When it became apparent that the individual had no DD Form 214, he voluntarily returned to his last duty station. A search of Army records failed to show he had been carried as AWOL by any unit, although it appeared that the individual considered himself AWOL during the time.

The opinion noted that a constructive discharge may arise when, for a substantial period of time, the conduct of both the Army and the member by affirmative act or inactivity is such that it is clear that both parties acquiesced in the discharged status. In the instant case, although the Army's inactivity clearly indicated acquiescence in the member's discharged status, his own attitude regarding the issue was found too ambiguous to indicate the mutuality needed for a constructive discharge upon ETS. The opinion observed that he could, however, now be

discharged based on the expiration of his term of service. (DAJA-AL 1973/5296, 19 Dec 1973).

(Line of Duty - General) **Evidence Supported Finding of Injuries Not in Line of Duty, Notwithstanding Contrary VA Determination and Acquittal on Related Criminal Charges.** On the day of his REFRAD, but prior to the effective time of separation, an EM sustained an enucleated eye from injuries received during a bus station affray. The EM was apparently en route to his home of record when he was denied bus service due to a ticket problem. He became loud and boisterous; fought with a private security guard who tried to quiet him; and eventually broke the nose of a police officer who joined in the efforts to subdue the member. Several other police officers arrived, and the EM was apparently struck either while still offering physical resistance against the authorities or shortly thereafter. Later he was tried for various offenses arising out of the incident but was acquitted of all charges. The member thereafter applied for a disability rating, and the VA Board awarded him a 40% rating. Guidance was sought after the EM applied to the ABCMR to have his records corrected to grant him disability retirement.

The opinion acknowledged that although injuries are presumed to be incurred in line of duty, the presumption can be overcome by substantial evidence of intentional misconduct or willful gross neglect of the member. In the instant situation it appears that the EM was injured incident to, and as a proximate result of, his own misconduct (resisting arrest) or pursuant to his voluntary act in engaging in the affray. The existence of an acquittal in a related criminal trial, while an equitable matter to be considered, was noted as not dispositive of the LOD determination. Likewise, a VA determination that the injury was incurred in LOD was not considered binding on DA. The proper determination was opined to be that made by the report of investigation: not in line of duty - due to own misconduct. (DAJA-AL 1973/4707, 19 Sep 1973).

Judiciary Notes

From: U.S. Army Judiciary

1. Recurring Errors and Irregularities.

a. Convening Authority's Action. Many errors have been noted by the Army Court of Military Review resulting from the action of the convening authority pertaining to forfeitures of "pay" or "pay and allowances." See MCM, ¶ 88*d*(3). Note the following:

(1). If the sentence includes forfeitures and is ordered into execution, properly, there is no need for a provision in the action applying the forfeitures from the date of the convening authority's action. When it is legally permissible, a sentence should be ordered into execution, as, in such case, a supplementary court-martial order will not be required upon completion of appellate review unless the findings of guilty or the sentence has been modified during that review.

(2). If the sentence does not include confinement or the entire period of confinement is suspended, and the sentence is not executed, the action should defer the application of forfeitures until the sentence is ordered into execution. Likewise, that portion of the sentence pertaining to "forfeiture of all pay and allowances" should be deferred if, on the date of the convening authority's action, the period of confinement has run.

(3). Approved forfeitures may not be applied during any period in which the service to confinement is deferred. In such instance, the action should expressly defer the application of forfeitures until the sentence is ordered into execution unless the deferment of confinement is sooner rescinded.

b. Supplementary Court-Martial Orders. The following errors have been noted in a number of

instances requiring the issuance of corrected final court-martial orders:

(1). Failure to show that "forfeitures shall apply to (pay) (pay and allowances) becoming due on and after the date of the convening authority's action."

(2). Failure to show that "Pursuant to _____ Order Number_____, Headquarters U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, dated _____, the accused was restored to duty with forfeitures not to apply to pay becoming due on and after the date of that order."

(3). Incorrectly stating that the sentence will be duly executed when the sentence had been ordered into execution in the initial court-martial order.

(4). Incorrectly showing that the sentence was affirmed pursuant to Article 67. If the U.S. Court of Military Appeals denies an accused's petition for grant of review, the final court-martial order should show that the sentence was affirmed pursuant to Article 66.

(5). When the Court of Military Review has modified a convening authority's action, failure to show that the sentence has been affirmed pursuant to Article 66, "with (the application of forfeitures deferred, effective_____, until the sentence is ordered executed) (forfeitures applying only to *pay* from the date of the convening authority's action) (so much of the convening authority's action as states 'will be duly executed' set aside)."

c. February 1974 Corrections by ACOMR of Initial Promulgating Orders.

(1). Showing, incorrectly, in the FINDINGS paragraph that the accused was found guilty of a certain specification rather than not guilty.

(2). Failing to show that a Specification and Charge were formally amended during trial to allege absence without authority in violation of Article 86 rather than desertion under Article 85.

(3). Failing to show in the PLEAS paragraph that a plea of guilty to a certain specification was changed by the military judge to one of not guilty.

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

(5). Failing to show the date that the sentence was adjudged.

(6). Failing to show that certain specifications were formally amended before or during trial—two cases.

(7). Failing to show in the authority paragraph the correct court-martial convening orders.

2. Note From Government Appellate Division. Attention is invited to "Stipulations of Facts—The Potential for Error" which immediately follows these notes.

Stipulations of Facts—The Potential For Error

By: Captain Gary F. Thorne, Government Appellate Division, USALSA

Records containing questionably worded stipulations as to facts have recently been brought to the attention of the Government Appellate Division of the Army Judiciary by the Court of Military Review. The primary problem with such stipulations is that they are often worded to reflect guilt. In an effort to assist JAG officers entering into such stipulations, the following brief history of their use and the military law regarding them is offered, with particular emphasis on when a stipulation can properly admit elements of the alleged crime without amounting to a stipulation of guilt.

Stipulations are referred to in paragraph 154*b*, *Manual for Courts-Martial, United States, 1969*

(Rev.) and include both stipulations as to facts and stipulations as to testimony. The United States Court of Military Appeals has recognized the material difference between these two types of stipulations in the developing case law. A stipulation as to testimony does not admit the truth of the testimony, but amounts to an agreement between counsel and the defendant indicating that were the witness available to testify, this would be the substance of his testimony. [1] As such, stipulations of testimony may be "attacked, contradicted or explained in the same way as though the witness had actually so testified in person." [2] Stipulations as to facts, however, are conclusive in nature and need not be proven and may not be rebutted. [3] The distinction between stipulations as to facts in the civilian and military courts is that a military court is not bound to believe such facts. [4]

The present problem being noted in appeals cases concerns stipulations as to facts that "practically amount(s) to a confession." [5] Where such a stipulation is offered, the rule is to find it inadmissable since it relieves the Government of its burden of proof and is grossly inconsistent with a plea of not guilty. [6] Perhaps the most inconsistent stipulation possible is one that simply recites the specifications the defendant is charged with. Such a stipulation not only approaches the realm of a confession, but in fact is a stipulation of guilt. However, such stipulations have been part of appellate records recently before the Court of Military Review. This does not mean that all stipulations containing elements of the crime a defendant is charged with are inadmissible.

The import of a stipulation is judged "not just from specific facts, but with due consideration to the reasonable inferences that can be drawn from those facts." [7] In a desertion case, the admissibility of a stipulation that admits of every element save the intent to remain permanently away will be judged not only as to the language on its face, but also in light of its effect on proving that intent which is often inferred from other evidence. [8] Therefore, upon entering into a stipulation, one must be cognizant of both the language used and what inferences may reasonably be drawn therefrom, since both matters will affect a determination as to whether or not the stipulation practically amounts to a confession. [9]

Some specific instances are presently recognized where the elements of a crime, in whole or in part, may be properly included in a stipulation as to facts. Where potential inferences relating to the elements of an alleged crime may be drawn from a stipulation, the stipulation will be admissable if it clearly shows the defendant and his counsel considered such inferences highly tenable in light of the defendant's testimony denying the substance of the inference. [10] Stipulation that contain legal conclusions which are not in conflict with the defense being presented are also admissible. [11]

Another area where stipulations admitting elements of the alleged crime are admissible is where the stipulation is to a defendant's benefit. Where a defense counsel's tactic is to admit to certain elements of a crime in order to pinpoint the one issue that is to be raised in defense, the stipulation will be admitted since it obviously does not amount to a confession. [12] An analogous, but more general allowance, is to admit a stipulation that recites elements of a crime when the stipulation is not inconsistent with the defense being put forward. [13] Finally, a stipulation admitting the prosecutor's case will be admissable where the prosecution has in hand clear evidence of the defendant's guilt and other evidence damaging to the defendant; provided that the stipulation is entered into to prevent this other evidence from being introduced and is an obvious tactic by the defense to put the defendant in the best light possible.[14]

These cases give some leeway to those entering into stipulations to include elements of the alleged crime. A defendant cannot be compromised by such stipulations as to facts, but he may obviously use them to benefit his own case in specific circumstances. Even then, however, the recitation of a specification under the heading of a stipulation is hardly justifiable.

Footnotes

1. United States v. Gerlach, 16 USCMA 383, 37 CMR 3 (1966).

2. Paragraph 154*b*(2), MCM (1969) (Rev.).

3. Paragraph 154*b*(1), MCM (1969) (Rev.).

4. United States v. Gerlach, *supra* note 1; United States v. Johnson, 40 CMR 451 (ABR 1968).

5. Paragraph 154*b*(1), MCM (1969) (Rev.).

6. United States v Wilson, 20 USCMA 71, 42 CMR 263 (1970); United States v. Wilson, 43 CMR 737 (ACMR 1971).

7. United States v. Wilson, 20 USCMA 71, 72, 42 CMR 263, 264 (1970).

8. *Id.*

9. *See* United States v. Wilson, 20 USCMA 71, 74, 42 CMR 263, 266 (1970) (Ferguson, J., dissenting).

10. *Id.* at 265. In this case, the inference of an intent to remain permanently away that might be drawn from a stipulation that admitted the defendant had gone AWOL was rebutted by the defendant's testimony that he never entertained such an intent. *But see* Judge Ferguson's dissent.

11. United States v. Shackleford, 43 CMR 986 (ACMR 1971). The stipulation of facts stated that the article the defendant was accused of stealing was in fact stolen. However, since the defense offered was one of insufficient evidence to show that the defendant stole the article, no conflict between the stipulation and the defendant's position existed.

12. United States v. Johnson, 37 CMR 698 (ABR 1966).

13. United States v. Aponte, 45 CMR 522 (ACMR 1972).

14. United States v. Swigert, 8 USCMA 468, 24 CMR 278 (1957). One should be extremely careful in applying this reasoning. Such a stipulation is really a confession and is admissible solely because not to do so would be even more damaging to the defendant in terms of the sentence to be imposed in a case that the prosecution can clearly prove. Straying from the facts of Swigert when applying its reasoning brings one close to the inadmissible stipulation as to facts.

Criminal Law Items

From: Criminal Law Division, OTJAG

1. Public Demonstrations After Alexander. In *United States v. Alexander,* 22 USCMA 485, 47 CMR 786 (1973), the United States Court of Military Appeals declared that paragraph 46, Army Regulation 600-20, 31 January 1967 (presently, paragraph 5-16, Army Regulation 600-20, 28 April 1971, as changed by Change 2, 23 March 1973), is not applicable to demonstrations and other public gatherings by Army personnel to express opposition to alleged Army practices and policies. The court noted that the reason for prohibiting Army personnel from participating in picket lines or other public demonstrations was that such participation "may imply Army sanction of the cause for which the demonstration is conducted." The court concluded that the intent of the regulation was to prohibit participation by Army personnel in group action on issues external to military administration, and that it did not reach disorders and demonstrations by Army personnel concerning internal Army practices. In view of its decision, the Court did not address the defense's constitutional arguments on the regulation.

In demonstration or unauthorized public gathering incidents, specific factual situations should be examined to determine whether other offenses have been committed by individuals within the demonstrating group. The most common offenses generally present in such cases are disrespect and willful disobedience of, or failure to obey, an order to disperse. However, under particular factual situations, other offenses may be present, such as use of provoking speech or gestures, breach of the peace, resisting apprehension, and riot. Mutiny would be the most serious of such possible offenses.

2. Policy Change. Current Departmental Regulations no longer require distribution to DAJA of General Orders announcing the attachment of subordinate units for administration of military justice within a single general court-martial jurisdiction. Only in extraordinary cases, such as the attachment of a unit to a command outside the jurisdiction of the general court-martial authority which normally exercises jurisdiction over that unit, should orders be dis-

tributed to DA. In those cases only, request two copies of the orders be forwarded to "HQDA (JAAJ-CC) Nassif Bldg, Falls Church, Va. 22041."

3. Applications for Relief Under Article 69. Paragraph 13-4*b*, Army Regulation 27-10, 26 November 1968, as changed by Change 10, 23 February 1973, provides that, except under certain specified circumstances, an application for relief under Article 69 must be signed by the individual convicted by court-martial.

It is the opinion of the Criminal Law Division that an attorney-in-fact may sign the application on behalf of the convicted individual pursuant to a power of attorney executed by the convicted individual. In cases where the application is signed by an individual utilizing a power of attorney, a copy of that document should be attached to the application.

OJT Policy Changes for Excess Leave Officers

Effective 8 March 1974, participants in The Judge Advocate General's Excess Leave Program are authorized to perform OJT for periods of two consecutive days or more (*e.g.*, weekends). Paragraph 6a, AR 601-114, has been amended to permit two-day OJT periods when authorized by the staff judge advocate or senior judge advocate of the OJT site.

Shortened OJT periods are being permitted to increase judge advocate manpower assets and productivity and make the Excess Leave Program more attractive.

Except for summer vacation periods, OJT periods are performed only when authorized by the OJT site staff judge advocate. It is the policy of The Judge Advocate General, however, to have OJT performed as frequently as possible, consistent with operational requirements.

The following guidelines concerning OJT apply:

(1) OJT should be performed at a judge advocate office. However, there may be some exceptions, such as reviewing claims investigations, writing reports and performing on-call SJA duty officer functions, which can be performed outside a judge advocate office.

(2) Excess leave officers may not be used to perform functions that require a lawyer.

(3) In instances where there is insufficient suitable work for all excess leave officers, staff judge advocates should rotate OJT periods among officers on an equitable basis.

(4) Caution must be exercised to insure that work is actually performed during OJT periods. Weekend OJT periods are not authorized merely to provide pay and allowances for officer-students; meaningful work must be performed.

Judge Advocates will notify excess leave officers who perform OJT in their office of the contents of this notice immediately. Questions concerning policies announced herein should be directed to HQDA (DAJA-PT).

Interim Changes to AR 601-114.

To reflect the alteration of OJT policy, the following changes to AR 601-114, The Judge Advocate General's Excess Leave Program, are noted.

Paragraph 6a, AR 601-114, dated 22 November 1972, is changed as follows:

A. Delete the third sentence and substitute therefor the following: This training is mandatory during the summer vacation period and, upon approval of the Staff Judge Advocate or Senior Judge Advocate of the OJT site, is authorized for periods of two consecutive days or more on days when no class is scheduled. For example, on-the-job training can be performed on weekends when authorized.

B. Delete the fourth sentence and substitute therefor the following: All participants will

provide the OJT site Staff Judge Advocate or Senior Judge Advocate with a statement, in writing, of exact duration of each period of training. Payment for OJT periods will be made once each month only.

This interim change is made pending revision of AR 601-114 and is effective 8 March 1974. Additional guidance to Staff Judge Advocates will be provided by this Headquarters.

The contents of this message will be brought to the attention of all officers attending law school in an excess leave status by OJT site Judge Advocates or Senior Judge Advocates.

Claims Items

From: U.S. Army Claims Service, OTJAG

1. Substantiation of Facts States in Seven-Paragraph Memorandums. Claims recently received by the U.S. Army Claims Service from various installations have included seven-paragraph memorandums containing divers facts which have no substantiation in the file. It then becomes necessary for the Claims Service to request that the required evidence be forwarded, usually resulting in a minimum of a one-week delay in the processing of the claim. To avoid these delays, all claims officers must, upon completion of the seven-paragraph memorandum, verify that substantiation of any facts stated in the memorandum not only exists, but is contained in the claims file.

2. Lists of Responsible Repairmen. Claims authorities are urged to establish an SOP whereby lists of reputable repairmen who render timely and reasonable estimates are made available to claimants who are in need of such information. Such lists should contain, if possible, a minimum of three repairmen. Claimants receiving such lists should be advised that the lists are not an all-inclusive list of responsible repair facilities. However, before the claimant engages a repairman not included on the list, the claimant should advise the responsible claims officer.

JAG School Notes

1. Effective 1 May 1974 AUTOVON access to TJAGSA will be through the Army Foreign Science Technology Center at Charlottesville rather than through Ft. Bragg, North Carolina. Dial AUTOVON 274-7110 (FSTC), the answering operator will provide assistance and connecting service to TJAGSA commercial numbers. Some of these numbers are:

Commandant	293-3936
Director, Academic Department	293-9298
Information and Quotas	293-7475
Director, Reserve Affairs	293-7469
Director, Development Doctrine & Literature Department	296-4668
School Secretary	293-4732
Adjutant and Non-duty hours	293-4047

2. National Guard JA Conference. Activities of the Third Annual National Guard Judge Advocate Conference are reported elsewhere in this issue. The Office of the Assistant Commandant for Reserve Affairs, headed by Lieutenant Colonel Keith A. Wagner, received high praise for the manner in which the conference was conducted and administered. We share these praises with you for we know that all Active Army judge advocates play an important role in fostering an *es-*

prit d' (JAG) Corps among the judge advocates in the Reserve Components.

3. Visitors to the School. Space never permits mention of each of the School's many visitors and guest speakers, notwithstanding that they perform an outstanding service to the School and the Corps. We expect that you may be especially interested in those with whom you may be acquainted or who had unusual missions to perform. March brought Colonel Lloyd K. Rector's turn to conduct a round-table with Advanced Course students on current staff judge advocate operations. Major Michael H. Clarke, a member of the British Army of the Rhine attending the 72d Basic Course, spoke to the Advanced Course about military legal services in the UK armed forces. Major C. W. Gibson, USMC, from Quantico, visited the School to develop improved course content for teaching the law of war to Marine officers attending courses at the Marine Corps Development and Education Center. Mr. Ferdi Schneider of the Federal Republic of Germany, Office for Language, visited the School to discuss having German translators observe our international law courses to improve their knowledge of relevant terminology. The General Counsel of the U.S. Civil Service Commission, Mr. Anthony L. Mondello, again honored us with a presentation to a Law of Federal Employment Course. At press time, two former members of the Corps were among the speakers slated to appear. UVA Law Professor Richard E. Speidel, returning from Geneva where he represented the United States in a United Nations Conference on International Law of Sale of Goods is to speak on Government Contracts and the UCC. Professor Howard Levie (COL. JAGC, Ret.) of the University of St. Louis Law School is to speak on PW's and International Law.

4. Basic Courses. Phase I of the School's 73d Basic Course opened with 18 officers at the U.S. Army Military Police School on 18 March. When Phase II opens in Charlottesville on 16 April, we expect that the USAMPS graduates will be joined by an additional 20 or more new members of the Corps. For planning purposes, readers may wish to note the following tentative schedule for next year's classes:

Class No.	*USAMPS Phase*	*TJAGSA Phase*
74	11 Jul – 8 Aug 74	13 Aug –11 Oct 74
75	None	22 Oct – 18 Dec 74
76	9 Jan – 6 Feb 75	11 Feb – 9 Apr 75
77	20 Mar – 17 Apr 75	22 Apr – 18 Jun 75

The question is: Which of these classes will be conducted in the School's new building? That is a matter of conjecture. The contractor is experiencing delays in the delivery of material. It appears quite likely that the 76th may be the first class in the new building.

5. 10 May 1974. This is the day by which Law Day Chairmen are to submit after-action reports on their local observances to: Commandant, TJAGSA (ATTN: DDL), Charlottesville, Virginia 22901.

Legal Assistance Items

From: Legal Assistance Office, OTJAG

1. Medical Expenses. An item of medical expense which is often overlooked is the charge for medical care that many schools and colleges include in their tuition fee — even though it may not be set out as such. If the bill does include a breakdown of the charges, or if the school will furnish the information, the part of the tuition fee that is attributable to the medical care charge is deductible as a medical expense.

The only time the full cost of attending school is deductible as a medical expense is if the school is a special school designed to compensate for or overcome a physical or mental handicap.

2. Change in Louisiana Income Tax Law. On 8 December 1973, the governor of Louisiana signed into law a measure which allows individuals to claim as a deduction the federal income taxes on the state returns. The 1973 law is now effective for all taxable years beginning after 31 December 1972. Taxpayers who use the standard deduction for state income tax purposes may claim the federal income taxes as an additional deduction.

3. Change in Missouri Income Tax Law. The State of Missouri has, as of 1 January 1973, amended its tax laws concerning military personnel. No longer is there a military exemption of the first $3,000 of active duty pay. Under the new law all active pay is taxable. If a military person's home of record is Missouri, then he will be presumed to be domiciled in Missouri and thus, subject to taxation. However, under Missouri law if the individual files a sworn statement that (a) he maintained no permanent place of abode in Missouri during the year, (b) he did maintain a permanent place of abode elsewhere; and (c) he did not spend more than thirty (30) days of the year in Missouri, then such a Missouri-domiciled individual will be considered as a nonresident and as such not subject to the Missouri income tax on his military pay nor on interest and dividend income from personal investments. (NOTE: Living in government quarters outside of the State of Missouri will be considered as maintaining a permanent place of abode elsewhere.)

All Missouri-domiciled military personnel who wish to claim "nonresident" status must nevertheless file an income tax return for each year and attach to that return the sworn statement of "nonresident status". Form 40 should be filled out in its entirety as a combined return, showing income of husband and wife or individual up to and including line 16(a) and (b), just as though the taxpayer is living in Missouri. Line 17 through 25 should read zero (0). The return must be signed by both husband and wife or individual. The affidavit should be signed and attached to the front of Form 40 and mailed to the Department of Revenue P.O. Box 329, Jefferson City, Missouri.

4. Residency Requirements for Divorce in Hawaii. Correction to the January 1974 issue of *The Army Lawyer*: the cite for the *Mon Chi Heung v. Lum* case should be DC, Hawaii, 360 F. Supp. 219, (1973).

It should also be noted that the above case is being appealed and that the one year residency requirement is still in effect, until the appeal is decided.

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

Number	*Title*	*Dates*	*Length*
	Second NCO Advanced Course	1 Apr– 12 Apr 74	2 wks
5F–F11	58th Procurement Attorneys	8 Apr – 19 Apr 74	2 wks
5F–F8*	15th Senior Officer Legal Orientation	29 Apr – 3 May 74	4 days
5F–F13***	First Environmental Law	6 May – 9 May 74	3½ days
5F–F6	Fourth Staff Judge Advocate Orientation	6 May – 10 May 74	1 wk
5F–F9	13th Military Judge	10 Jun– 28 Jun 74	3 wks
5F–F14**,***	Third Judge Advocate Overseas Operations	17 Jun – 21 Jun 74	1 wk
5F–F8	16th 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–F1***	16th Military Justice	29 Jul – 9 Aug 74	2 wks
5F–F1	Administration Phase	29 Jul – 2 Aug 74	1 wk
5F–F1	Trial Advocacy Phase	5 Aug – 9 Aug 74	1 wk
5F–F11	59th Procurement Attorneys	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

*For students at Army War College only.
**For Active Army under orders to foreign areas.
***Reflects Schedule Change since previous listing in *The Army Lawyer*.

The Judge Advocate General's Funded Legal Education Program

On 12 March 1974, the Office of The Judge Advocate General, Personnel, Plans and Training Office, heralded the beginning of The Judge Advocate General's Funded Legal Education Program. The text of that Corps-wide letter follows:

Commencement of The Judge Advocate General's Funded Legal Education Program was announced by DA Message 111330Z Mar 74 (reproduced below). All judge advocates should be familiar with the program. An Army Regulation will be published to replace the message.

The funded program permits twenty-five active duty commissioned officers to commence attendance at law school each year at Government expense (tuition and military pay and allowances). To be eligible, an officer must hold a baccalaureate degree, have not less than two years nor more than six years of active duty (commissioned and enlisted) and be serving in the grade of 0-3 or below. These requirements are not waivable.

Officers now participating in the JAG Excess Leave Program are eligible to apply for the funded program. Periods spent on excess leave are not credited towards the minimum two-year active duty requirement but are counted towards the maximum six-year active duty requirement. All addressees will notify excess leave officers who perform OJT in their offices of the contents of the inclosed message immediately. In addition, addressees will take action to publicize the contents of the inclosed message in local military publications.

The funded Legal Education Program does not replace the Excess Leave Program, but the latter program will be limited to an input of not more than thirty-five officers each year.

All Judge Advocates are encouraged to answer questions locally concerning the funded program and refer individuals to OTJAG only in those instances when unique questions arise.

DA Message 111330Z Mar 74.

1. *Announcement is made of the commencement of a Funded Legal Education Program as authorized by Section 2004 of Title 10 United States Code.* Under this program not more than twenty-five Army commissioned officers can be selected each year to enter a regular course of instruction at Government expense (tuition and military pay and allowances) leading to a law degree at an approved civilian law school. Upon completion of the program and admission to the bar of a state or federal court, officers will be appointed in or detailed to The Judge Advocate General's Corps.

2. *The Funded Legal Education Program does not replace the Judge Advocate General's Excess Leave Program (AR 601-114).* Both programs exist to provide sources of career JAGC officers. Not more than thirty-five commissioned officers will be selected to enter the Excess Leave Program in CY 1974.

3. *Funded Legal Education Program Non-waivable Eligibility Requirements.*

A. To be eligible, a candidate must, at the commencement of his study, be a citizen of the United States as a commissioned officer on active duty who:

(1) has graduated from an accredited college or university with a baccalaureate degree or equivalent.

(2) has not less than two years nor more than six years of active duty and is serving in the grade of CPT (0-3) or below.

(3) if not Regular Army, is serving in a Voluntary Indefinite status or is willing to accept such status.

B. Officers now participating in the JAG Excess Leave Program are eligible to apply for the Funded Legal Education Program. Periods spent on excess leave are not credited towards the

minimum two-year active duty requirement of para 3A(2) above. Periods spent on excess leave are credited towards the maximum six-year active duty requirement of para 3A(2) above.

4. *Legal Aptitude Test.* All applicants must take the Law School Admission Test (LSAT) administered by Educational Testing Service, Box 94, Princeton, New Jersey 08540. Each applicant is responsible for taking the LSAT at his own expense. The Educational Testing Service will not forward test scores to DA. Applicants must forward scores to HQDA (DAJA-PT), Wash DC, 20310. No application will be considered by the DA Selection Board unless an LSAT score is available. Applicants now in the JAG Excess Leave Program are not required to submit a new LSAT score.

5. *Officers who have submitted applications for the JAG Excess Leave Program (AR 601-114) to commence law school in CY 1974 and have not yet received notice of selection or non-selection will be considered, if otherwise eligible, for the Funded Program without additional application.*

6. *Officers who apply for the Funded Legal Education Program and are not selected will be considered for the Excess Leave Program.*

7. *Application Procedures.*

A. Eligible commissioned officers may initiate a request for detail to law school in accordance with this message. Application will be submitted on DA Form 2496 (Disposition Form), through command channels (with a carbon or Xerox copy forwarded directly to HQDA (DAJA-PT), Washington, D.C., 20310) to HQDA (DAPC-OPD-Appropriate Career Branch), 200 Stovall Street, Alexandria, VA, 22332 with:

(1) transcript of all education obtained at college level or higher, including class standings if available.

(2) statement as to legal study completed and legal experience, in both civilian and military life.

(3) if overseas, date of expected return to the United States.

(4) reason for applying for the program, including a need for funded detail to law school, and any other factors which should be considered by the Selection Board.

(5) statement listing the law schools to which application has been made. Application should not be delayed awaiting final acceptance by a law school (see para 10).

(6) two recent photographs, head and shoulders type, 3x5 inches, with name and Social Security number on the reverse.

(7) Law School Admission Test Score if available or date that LSAT will be taken. Application should not be delayed awaiting results, but application will not be considered by the Selection Board unless a LSAT score is available.

(8) a statement as follows:

In consideration of being detailed to law school to obtain an LL.B. or J.D. degree, I agree to complete the educational course of legal training and thereafter make prompt application for admission to practice before the highest court of a state or a District Court of the United States. I further agree, upon graduation from law school and admission to practice, to accept an appointment in The Judge Advocate General's Corps, Regular Army, if tendered, or detail to The Judge Advocate General's Corps. I further agree to serve on active duty for two years for each year or part thereof spent in law school under this program. Periods of time spent in on-the-job training will not be considered as satisfaction of this obligation or any part thereof. I understand that the service obligation incurred as a result of law school training does not begin to run until the date I am admitted to practice before the highest court of a state or District Court of the United States or, in case of termination from this detail prior to the admission to practice, the date my participation is terminated. Any other service obligation I have will begin

to run only upon completion of the service obligation incurred as a result of law school training under this program. I understand that my detail will be terminated if I am unable to maintain acceptable grades or abandon the study of law, and that in any event time spent in law school will not be considered in the satisfaction of any other period of service obligation I may have. Periods of on-the-job-training performed during the summer vacation period will count toward satisfaction of periods of obligated service other than the obligation incurred as a result of this program. I also understand that should my detail to law school be terminated for any reason (including but not limited to voluntary withdrawal or termination by The Judge Advocate General for the convenience of the Government) prior to my appointment in or detail to The Judge Advocate General's Corps, I will incur a one-year obligation in my basic branch for each year or part thereof detailed to law school or in bar examination preparatory study.

Any regulation or policy concerning service obligations inconsistent with the terms of this agreement are not applicable.

B. The OPD Career Branch will refer the application, with appropriate comments, to HQDA (DAJA-PT) recommending approval or disapproval.

C. Officers now in The Judge Advocate General's Excess Leave Program requesting a detail to law school at Government expense will submit the following information:

(1) an up-to-date transcript of all law school grades to include class standings if available.

(2) reason for applying for the program, to include a statement of need for funded detail to law school, and any other factors which should be considered by the Selection Board.

(3) a statement as follows:

In consideration of being detailed to law school to complete my legal education and obtain an LL.B or J.D. degree, I agree to complete the educational course of legal training and thereafter make prompt application for admission to practice before the highest court of a state or a District Court of the United States. I further agree, upon graduation from law school and admission to practice, to accept an appointment in The Judge Advocate General's Corps, Regular Army, if tendered, or detail to The Judge Advocate General's Corps. I further agree to serve on active duty for one year for each year or part thereof spent in The Judge Advocate General's Excess Leave Program and two years for each year or part thereof spent in law school under this program. Periods of time spent in on-the-job training will not be considered as part satisfaction of this obligation. I understand that any service obligation incurred as a result of this program or participation in The Judge Advocate General's Excess Leave Program does not begin to run until the date I am admitted to practice before the highest court of a state or District Court of the United States or, in case of termination from this detail prior to the admission to practice, the date my participation is terminated. Any other service obligation I have will begin to run only upon completion of the service obligation incurred as a result of detail to law school at Government expense. I understand that my detail will be terminated if I am unable to maintain acceptable grades or abandon the study of law, and that in any event periods spent in law school will not be considered in the satisfaction of any service obligation I may have. Periods of on-the-job training performed during the summer vacation or other periods will count toward satisfaction of periods of obligated service other than the obligation incurred as a result of law school training under this program or participation in The Judge Advocate General's Excess Leave Program. I also understand that should my detail to law school be terminated for any reason (including but not limited to voluntary withdrawal or termination by The Judge Advocate General for the convenience of the Government prior to my appointment in or detail to The Judge Advocate General's Corps, I will incur a one-year obligation in my basic branch for each year or part thereof spent in the Excess Leave Program and one year for each year or part thereof attending law school under this program. Any regulation or policy concerning ser-

vice obligations inconsistent with the terms of this agreement are not applicable.

D. Completed applications must be received at this office of The Judge Advocate General by 15 April 1974 to be processed for submission to the Selection Board which will convene on or about 15 April 1974. Applications received after the Board convenes will not be considered. Applicants will be advised of Selection Board results by individual letters subsequent to adjournment.

8. *Assignments:*

A. Assignments during the period the officer is attending law school and while awaiting appointment in or detail to The Judge Advocate General's Corps, will be as directed by The Judge Advocate General. Officers will attend law school on a non-accelerated and non-decelerated basis, unless an exception is made by The Judge Advocate General in an individual case.

B. Each officer will perform on-the-job training (OJT) with JAGC activities when school is not in session. Training is mandatory during the summer vacation period. All participants will, at the termination of each OJT period, notify Personnel, Plans and Training Office, Office of The Judge Advocate General, in writing, of the exact duration of the period of training. On-the-job training is not considered in satisfaction of any service obligation incurred as a result of participation in this program or The Judge Advocate General's Excess Leave Program. It does count toward satisfaction of other periods of obligated service. Officers will be assigned an OJT site as near to the law school he is attending as practicable. Reimbursement for travel to and from the law school he is attending and his OJT site is authorized once each fiscal year. Per diem is not authorized for periods spent performing on-the-job training.

C. Officers will be assigned to the U.S. Army Student Detachment, Fort Benjamin Harrison, Indiana, 46216. All assignment orders will state specifically the purpose of the assignment and the Army installation where the officer will perform on-the-job training.

9. *Action by Major Commanders:*

A. All Major Commanders are responsible for the implementation of this program.

B. Upon receipt of notification from Headquarters, Department of the Army, that applicant has been selected for detail to law school under the provisions of this message and detail to The Judge Advocate General's Corps, the Major Commander having jurisdiction over the applicant will issue assignment orders as directed by Headquarters, Department of the Army.

C. The files of selectees for this detail will be referred expeditiously by the losing Major Commander to the U.S. Army Student Detachment, Fort Benjamin Harrison, Indiana, 46216. Letter of transmittal will contain a summary of processing actions completed and any instructions from Headquarters, Department of the Army, as to further processing of the selectee.

D. A copy of each order will be furnished to HQDA (DAJA-PT), Washington, D.C., 20310.

10. *Selection of Law School.* Final determination of the law school to be attended will be made by The Judge Advocate General. Any law school in the continental United States accredited by the American Bar Association may be designated. The applicant has the responsibility of applying to and being accepted by a law school. Each applicant for detail must indicate which schools he has applied to in the application for detail. The Judge Advocate General may direct that the applicant make application to other law schools. The applicant must apply to at least one law school where he or she qualifies for a resident tuition fee. All expenses incurred by reason of applying to law schools will be at the applicant's expense and not at the expense of the Government. An applicant in the Excess Leave Program may resume his or her studies at the same law school previously attended, unless it is to the advantage of the service that he or she attend elsewhere.

11. *Outside Employment.* Officers detailed to law school under this program will not engage in

outside employment except as approved by The Judge Advocate General.

12. *Direct Communication.* Officers who contemplate applying for this program and those hereafter selected are authorized to correspond informally and directly with HQDA (DAJA-PT), Washington, D.C. 20310, at any time.

13. *Publicity.* The provisions of this message will be given the widest possible publicity among active duty Army officers.

Processing Times in Inferior Courts — *A Preliminary Analysis*

By: Captain Royal Daniel III and Lieutenant Colonel J. L. Costello, Jr.

Developments, Doctrine & Literature Department, TJAGSA

Since the JAG-2 report due January 10, 1973, general court-martial jurisdictions have been obliged to report in the "remarks" section a series of numbers relating to the average time it took to bring cases to trial, to convening authority action, and to "receipt by the SJA" after approval of the sentence by the convening authority. The courts involved are special and summary courts-martial, which otherwise would escape analysis by the U.S. Army Legal Services Agency because the records remained in the field. During part of February and March, the Developments, Doctrine and Literature Department, TJAGSA, has been studying this aspect of the JAG-2 report to determine how much information is contained in them and what inferences can be drawn. This article summarizes the results.

The Numbers Themselves. The five tables which follow show the average processing time in the Army and in various subdivisions of the Army. "CONUS" and "Overseas" should add up to "Army" and "CONUS" is comprised of "TRADOC" "FORSCOM" and "Other." "PCF" is an altogether different breakout. Before explaining the line entries on these tables, three observations should be made:

* This reporting requirement was established by TWX and explained in a previous notice in *The Army Lawyer.*[1] As a result, the line entries were subject to a number of interpretations in the field, especially the sixth entry, "time from convening authority action to receipt by SJA." Consequently, this figure was not investigated at any length because of uncertainties among the reporting jurisdictions.

* A commonly voiced objection to the aggregation of the processing times from the JAG-2 reports is that it leads to "an average of averages" in which relatively busy jurisdictions are not given enough weight. This problem can be overcome by weighting the report of each jurisdiction according to the size of its workload. In fact, the resulting weighted average is *precisely the same* as that obtained if the jurisdictions reported each individual case.[2]

* Not all GCM jurisdictions are reported here, and those which generate cases only sporadically are excluded, such as Kirtland AFB, HQ First Army, HQ Fifth Army, HQ Sixth Army, the Terminal Commands, MICOM, etc. Although TRADOC and FORSCOM were not in existence when these reports were started, the jurisdictions are aggregated *as if* there had already been a reorganization of CONUS.

With these rather technical matters out of the way, it is time to look at the tables. The "Number Reported" is the number of cases tried which appears initially on the JAG-2. The "Number Used" is the number of cases which were later reported as entering into the processing times averages. The "Difference" can be explained by backlog, overlap of reporting periods, and by BCD Specials which are reported as tried but not as "used." The next 4 lines show the times as reported and averaged, and a total. If no courts were

reported, this fact is noted. For example, last quarter there were 49 CONUS jurisdictions of interest, 17 of which made negative reports in summary courts-martial (49 - 17 = 32). TRADOC accounted for 4 of these, FORSCOM for 7 and "others" for 6. Anyone who remembers what he said on the last JAG-2 report can compare his jurisdiction with his "group" and with the Army to see how it is doing. It is not sensible to think of this as a "grade" or that short is good and long is bad, but one should be thinking of local peculiarities that make his place differ from the averages.

Analysis of Data After the reports of processing time in inferior courts-martial have been collected from the various posts and the appropriately weighted averages have been collected for various groupings of installations, the principal task of explaining variations in the reports remains.

As a matter of common sense, what variables would influence the processing times reported? The amount of work to be performed in the JAG Office, together with the number of persons available to do it would be the logical pair of factors for explaining most of the variation. In addition, administrative considerations such as geographic size of jurisdiction, availability of judges, managerial training of supervisors and quality of administrative support within the headquarters are all relevant factors. In general, however, many of the second group of considerations should be closely related to the size of the JAG Office in terms of workload and personnel because those factors have been considered in several recent revisions of TD's and TOE's. Consequently, it should be the first two factors taken together which go towards explaining most of the variations in the reports from post to post.

With this rough hypothesis in mind, we ran a series of statistical tests which probe the influence or significance of the named factors upon the time between conviction and convening authority action in SPCM's reported by major jurisdictions in the last quarter. The test results permit the confident rejection of any hypothesis about the relevance of the number of JAG officers in the jurisdiction or the amount of work to be done upon the time that it takes to process a SPCM after trial.[3]

Note that we included only the number of JAG officers, and not the number of court reporters and other clerical personnel, when admittedly the latter group would be expected to have a more direct impact upon processing times.[4] The primary reason for this omission is that the number of court reporters and legal clerks actually working at each place was not available to us. Furthermore, unless assignment of these personnel violates the established criteria,[5] the number of such persons at a place should bear a direct relationship to the number of judge advocates and to workload. Together, the two variables actually used should correlate very highly with the number of clerks and court reporters. Finally, the processing times which are the subject of this study are of inferior courts-martial for which court reporters (71E) are not available.

In fact, the results of statistical testing permit a rather confident assertion about workload and JAG officers: *there is no empirical basis for concluding that the size of the JA office or the amount of its work has any thing to do with the time lapse between conviction and convening authority action.* A similar conclusion can be made with respect to time from charges to trial. Although the model used in the estimations omitted some factors which are important, it is unlikely that the overall conclusions would be any different because all of these factors should bear a very close relationship to those which *were* represented in the tests.

What are the implications of these conclusions? First, the data themselves may be wrong. We have determined that there is a substantial risk of erroneous reporting on the JAG-2 reports. To maintain a sense of perspective, the statistician should keep in mind a marvelous quote by Sir Josiah Stamp, prominent banker and financial adviser to Lloyd George:

> Public agencies are very keen on amassing statistics—they collect them, add them, raise them to the nth power, take the cube root and prepare wonderful diagrams. *But what you must never*

forget is that every one of those figures comes in the first instance from the village watchman, who just puts down what he damn pleases. (emphasis added)

The "village watchmen" out in "the field" display a tendency to place various interpretations on the reporting requirements specified by Washington; furthermore, just plain arithmetic and logical errors creep in. Our estimate is that about 10% of the entries have something "wrong" with them, either important or trivial. This problem lends a further degree of approximation to our results, although it is common to assume that *unintended errors* tend to cancel each other out, so that on balance the results are reliable. We have no reason to believe that the numbers are consciously inflated or deflated.

The reliability of the data permits the next question. Why not simply reduce processing times by adding more resources (71D's)? Our answer is that such suggestions do not give effect to the impact of the analysis: there is no significant correlation between output (measured by processing times) and resources (measured by the constant ratio between officers and clerks).

Obviously, if one jurisdiction is loaded with clerks it could have low processing times, and unlimited resources would be one answer to any problem.[6] What we are saying here is that, in a context of known workload and fixed resources, output is controlled by managerial influences not disclosed by the reporting system.

The second implication, therefore, is that SJA's and their office administrators have the power to alter significantly the processing times experienced in the jurisdiction. Why? Because the major aspects which are *beyond* his control in the short term—the work to be done and the people to do it with—are unrelated to reported periods of time.

From these inferences, the conclusion follows readily that command *emphasis* on lower processing times is not what is required, but *interest* and *study* of the phenomenon, both locally in the field, and centrally for the JAG Corps as a whole are essential. We have already learned from some administrators of techniques for *managing* or *controlling* the processing workload rather than letting it "just happen."[7] We encourage those who develop any such time-saving techniques to share their insights with the rest of the Corps, as has LTC "Pitt" Scheff's office in this issue (see page 8).

Footnotes

1. *See The Army Lawyer,* March, 1973.

2. There may be a small difference created by rounding off of fractions. The demonstration of the equivalence between the weighted average of reports and the "pure" average of all cases can be explained as follows: To compute the Army-wide average processing time, we need the total time spent on cases and the number of cases. Each jurisdiction reports two numbers: average time and number of cases. By adding up the number of cases reported, the Army-wide number of cases is determined. But the total time needs to be reconstructed as well. The total time at each place is the same thing as its reported average multiplied by its reported number of cases. By performing this multiplication for each jurisdiction and by adding the results, total Army processing time is obtained.

3. The actual technique involved was ordinary least squares linear regression, the results of which can be made available on request. Of 13 possible explanatory variables, only one of them (the processing time for summary courts) was significant. Coefficients of determination were exceedingly low.

4. Judge unavailability, a common complaint in former days, is omitted because the appropriate data are difficult to obtain and because it is no longer considered a "valid" reason in light of the generous assignments policy of the U.S. Army Judiciary.

5. Similarly, the case long delayed by missing evidence or witnesses may be a random occurrence which will not distort the total picture. The unusually easy case also occurs randomly and would tend to counter-balance. At inactive jurisdictions where the impact of such a case is manifest, management has no trouble with accounting for disturbances in the patterns of its descriptors.

6. If local priorities disfavor post-conviction processing of ordinary special courts, there is no reason to think the new clerks would work in this area either. In all likelihood, their tasks would mostly be those which are favored by the office priorities.

7. *See* DA Pam 5-2 Series "MAPTOE" for one good approach.

TABLE 1

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1973.2

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Number Reported	1176	2490	511	779	622	1083	483	1103	71	304	826	1591	1687	3269
Number Used	1154	2371	431	619	609	1019	474	1042	71	310	805	1477	1585	2990
Difference	22	119	80	160	13	64	9	61	0	-6	21	114	102	279
Time from CHGS to CM	16.3	31.1	23.1	38.2	15.7	29.6	15.7	31.9	25.8	33.5	13.3	28.6	18.2	32.6
Time from CM to CA	5.8	18.1	7.2	27.9	5.0	15.5	7.0	19.0	3.8	23.6	1.8	13.8	6.2	20.1
Time from CA to SJA	16.3	16.4	23.8	29.7	14.7	14.8	18.3	18.7	17.0	13.7	13.7	15.7	18.3	19.2
Total Time	38.4	65.6	54.2	95.8	35.4	59.9	41.0	69.6	46.7	70.8	28.9	58.1	42.7	71.8
Non-Zero Entries	31	45	17	18	12	17	13	15	6	13	14	19	48	63
Number of Places		47		22		17		16		14		19		69

TABLE 2

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1973.3

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Number Reported	1261	2817	549	974	785	1315	393	1154	83	348	858	1795	1810	3791
Number Used	1269	2633	546	793	775	1292	416	1010	78	331	881	1684	1815	3426
Difference	-8	184	3	181	10	23	-23	144	5	17	-23	111	-5	365
Time from CHGS to CM	18.2	32.1	22.7	35.9	19.0	32.4	15.5	30.0	24.6	37.4	14.3	28.4	19.6	33.0

TABLE 2 (Continued)

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1973.3

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Time from CM to CA	2.5	20.4	6.4	31.2	2.0	19.1	3.1	16.9	4.1	36.3	2.1	16.2	3.7	22.9
Time from CA to SJA	12.1	13.2	24.6	25.3	13.5	14.7	9.7	10.6	11.4	15.2	10.8	11.7	15.9	16.0
Total Time	32.9	65.7	53.7	92.4	34.6	66.2	28.4	57.6	40.2	88.9	27.2	56.3	39.1	71.9
Non-Zero Entries	35	43	18	19	13	17	14	15	8	11	16	19	53	62
Number of Places		47		24		17		16		14		19		71

TABLE 3

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1973.4

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Number Reported	1326	3008	603	1023	702	1477	508	1125	116	406	915	1996	1929	4031
Number Used	1266	2943	644	804	703	1444	448	1111	115	388	852	1958	1910	3747
Difference	60	65	-41	219	-1	33	60	14	1	18	63	38	19	284
Time from CHGS to CM	17.2	30.7	20.0	34.0	17.9	31.2	15.4	30.4	19.6	29.6	14.3	29.7	18.1	31.4
Time from CM to CA	3.7	16.6	9.4	35.4	2.0	14.8	5.7	16.5	5.9	23.9	2.7	14.0	5.6	20.7
Time from CA to SJA	10.6	10.9	23.2	20.6	11.2	13.0	9.4	8.3	12.1	10.8	9.3	10.4	14.9	13.0
Total Time	31.4	58.3	52.7	90.0	31.1	59.0	30.5	55.2	37.6	64.2	26.3	54.1	38.6	65.1
Non-Zero Entries	29	40	15	18	12	15	10	14	7	11	13	18	44	58
Number of Places		47		23		17		16		14		19		70

TABLE 4

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1974.1

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Number Reported	1040	2896	441	1094	511	1491	443	1153	86	252	787	2054	1481	3990
Number Used	1063	2681	450	915	537	1375	442	1081	84	225	813	1853	1513	3596
Difference	-23	215	-9	179	-26	116	1	72	2	27	-26	201	-32	394
Time from CHGS to CM	18.6	30.3	23.5	32.4	17.0	33.3	19.8	26.4	22.3	31.2	19.4	30.8	20.1	30.8
Time from CM to CA	3.2	16.8	8.8	30.4	2.2	15.6	2.2	17.4	14.4	21.8	2.1	14.7	4.8	20.3
Time from CA to SJA	11.7	10.9	24.7	22.5	10.1	11.0	12.9	8.6	16.2	21.1	11.1	9.2	15.6	13.8
Total Time	33.5	58.0	57.0	85.3	29.3	59.8	34.9	52.4	52.8	74.1	32.6	54.7	40.5	65.0
Non-Zero Entries	31	44	15	17	12	16	11	15	8	13	13	17	46	61
Number of Places		49		20		16		18		15		17		69

TABLE 5

PROCESSING TIMES CALCULATIONS FOR THE QUARTER: 1974.2

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Number Reported	841	2812	373	1060	424	1120	324	1382	93	310	487	1864	1214	3872
Number Used	840	2643	424	868	428	1096	324	1282	88	265	491	1777	1264	3511
Difference	1	169	-51	192	-4	24	0	100	5	45	-4	87	-50	361
Time from CHGS to CM	20.4	29.8	25.1	32.2	20.0	30.9	17.5	27.5	33.1	36.7	21.2	29.1	22.0	30.4

TABLE 5 (Continued)

PROCESSING TIMES CALCULATIONS
FOR THE QUARTER: 1974.2

	CONUS		OVERSEAS		TRADOC		FORSCOM		OTHER		PCF		ARMY	
	SCM	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*	*SCM*	*SPCM*
Time from CM to CA	5.1	16.6	7.9	31.7	2.6	16.5	7.8	14.2	6.9	28.7	2.7	14.4	6.0	20.3
Time from CA to SJA	14.9	11.1	20.9	21.5	12.2	12.3	17.1	8.8	19.5	17.1	13.6	10.6	16.9	13.7
Total Time	40.4	57.6	53.8	85.4	34.8	59.7	42.5	50.5	59.5	82.5	37.5	54.0	44.9	64.4
Non-Zero Entries	32	41	14	16	12	15	11	14	9	12	13	17	46	57
Number of Places		49		21		16		18		15		17		70

Personnel Section

From: PP&TO

1. Retirements: On behalf of the Corps, we offer our best wishes for the future to Colonel Billy J. Shuman who retired 28 February 1974, after many years of faithful service to our country.

2. Orders requested as indicated;

Name	*From*	*To*
	COLONELS	
ALLEY, Wayne	Stu Det, ICAF, Ft McNair, Wa	USA Leg Svc Agy, Falls Church
DEFIORI, Victor	OSD, Wash DC	USA Leg Svc Agy, Falls Church
HARVEY, Alton H	OTJAG	Stu Det, ICAF, Ft McNair
MACKLIN, James	Ft Knox, Ky	OTJAG
MCNEALY, Richard	USAWC	Japan
RARICK, David	USAREUR	Ft Knox, Ky
TALBOT, James S	USASETAF	USA Leg Svc Agy, Falls Church
	LIEUTENANT COLONELS	
BRANNEN, Barney	USAREUR	USAWC
COKER, James R.	C&GSC	Atlantic Cmd, Norfolk, Va.
DEFORD, Maurice	OCLL, OSA	OTJAG
GARNER, James G	OTJAG	USARBCO, Okinawa
HARRINGTON, George	USARAL	Korea
HENSON, Hugh	Ft Leavenworth, Ks	OCLL, OSA
MILLER, Harold	Japan	USAWC
MITTELSTAEDT, Robert	Okinawa	USAREUR
POYDASHEFF, Robert	OCLL, OSA	Ft Belvoir, Va
RABY, Kenneth A	OTJAG	USAC&GSC
STEFFEN, William	Ft S. Houston, Texas	OTJAG
WASINGER, Edwin	Ft Leavenworth, Ks	USAC&GSC

Name	From	To
	MAJORS	
ARNESS, Franklin	USA Legal Svc Agy	USAREUR
BABCOCK, Charles	Ft Meade, Md	USAC&GSC
BARNES, Holman	TJAGSA	Iran
BEANS, Harry C	TJAGSA	Hawaii
BONFANTI, Anthony	USAREUR	Alaska
BRIGGS, David B	OSD, Wash DC	USAREUR
BUCK, Richard S	Korea	Ft Belvoir, Va
BURNS, Thomas P	TJAGSA	USAREUR
COLE, Raymond D	C&GSC	Disciplinary Bks, Ft Lvnth.
COLEMAN, Gerald	Japan	OTJAG
CORRIGAN, Dennis	TJAGSA	S&F TJAGSA
CUTHBERT, Thomas	USAREUR	S&F, USMA
CUNDICK, Ronald	OTJAG	USAREUR
DAHLINGER, Richard	Hawaii	C&GSC
DALE, Harold L	USAREUR	USASTRATCOM, Europe
DANCHECK, Leonard	Korea	USA Leg Svc Agy, Falls Church
DEKA, David J	TJAGSA	Ft Bragg, NC
DIRSKA, Alfred	TJAGSA	Ft Monroe, Va
DUNN, John P	Ft Bragg, NC	Korea
ENDICOTT, James D	C&GSC	Ft Bragg, N.C.
GENTRY, William	TJAGSA	USA Leg Svc Agy, Falls Church
GODDARD, Richard	USA Leg Svc Agy, Falls Church	Ft Bragg, N.C.
HAIGHT, Barrett	USAREUR	C&GSC
HARRIS, Harold	Ft Polk, La	Arty Sch, Ft Sill, Okla
HERKENHOFF, Walter	Ft Hood, Texas	Japan
HOUGEN, Howard M.	USA Legal Svc Agy, Falls Church	Stu, National Law Cen, Wash DC
JONES, Bradley	Ft Bragg, NC	Ft G.G. Meade, Md.
JOHNSON, Jeremy	Hq PACOM	USAC&GSC
KUCERA, James	Korea	USA Leg Svc Agy, Falls Church
LANE, Jack F Jr	S&F, TJAGSA	101st Abn Ft Campbell, Ky
LEWIS, Jerome X	S&F, USMA	USAC&GSC
McKAY, William	Ft Dix, NJ	OTJAG
McNEILL, Robert	USAREUR	OTJAG
McRORIE, Raymond	USAC&GSC	XVIII Abn, Ft Bragg, NC
MURPHY, James A	TJAGSA	S&F, USMA
MURRAY, Robert	USAC&GSC	OTJAG
MYERS, Walter K	Atlantic Cmd, Norfolk, Va	AFSC, Norfolk, Va
PIOTROWSKI, Leonard	USA Agy Legal Svc	S&F, TJAGSA
QUANN, Brendan	TJAGSA	Tng Ctr, Ft Dix, N.J.
RAY, Paul H	C&GSC	OTJAG
RICE, Paul J	S&F, TJAGSA	USAC&GSC
RUNKE, Richard	Inf Ctr, Ft Benning, Ga	USAREUR
SHERWOOD, John	USAREUR	Univ of Mich, Ann Arbor
SHIMEK, Daniel	C&GSC	S&F, USMA
SUBROWN, James	USAREUR	Inf. Ctr, Ft Benning, Ga
SUTER, William K	OJTAG	USAC&GSC
TICHENOR, Carroll J	XVIII Abn, Ft Bragg, NC	1st Cav, Ft Hood, Texas
	CAPTAINS	
ASHBY, Richard	USA Legal Svc Agy, Falls Church	USALSA, w/sta Stuttgart, Germ
BASHAM, Owen D	TJAGSA	Ft Amador, CZ
BLAKE, Faythe A	XVIII Abn Corps, Ft Bragg, NC	USAR, Ft Hamilton, NY
BLAKELY, Richard	USAREUR	Japan
BRODY, Sidney B	TJAGSA	USASE Sig Sch, Ft Gordon, Ga
BONNEY, Charles	TJAGSA	OTJAG
BOWLES, Michael	USA Sch Tng Ctr, Ft Gordon, Ga	USAMED Health Svc, Ft S. Houston, Texas

Name	*From*	*To*
BURKE, Michael	TJAGSA	USATC Ft L. Wood, Mo
BURNS, Stephen	USALSA, Falls Church	OCLL, Wash DC
CARPENTER, Bernard	Northfield, Vt	1st Cav, Ft Hood, Texas
CARYL, Michael	XVIII Abn Corps, Ft Bragg, NC	USALSA, Falls Church
COHEN, Michael	USAREUR	4th Inf Ft Carson, Colo.
DARLEY, Roger G	Ft Sill, Okla	Univ of Texas, Austin, Texas
DEESE, Renny W	Ft Hood, Texas	XVIII Abn Corps, Ft Bragg, NC
DEVINE, Frank E	TJAGSA	Mil Dist of Washington
DORT, Dean R II	TJAGSA	S&F TJAGSA
EGGERS, Howard	Ft Sill, Oklahoma	USALSA, w/sta Ft Sill
FRANKEL, Ronald	TJAGSA	USAREUR
GLEASON, James	TJAGSA	OTJAG
GORDON, Jonathan	TJAGSA	OTJAG
GRAY, Kenneth E	TJAGSA	4 Power Jt Mil Tm. Vn.
GREENE, William	TJAGSA	OTJAG
HAWKINS, William	Tng Ctr, Ft Polk, La	101 Abn Div, Ft Campbell, Ky
HEINTZ, Richard	TJAGSA	USALSA, Falls Church
HERBERT Ted	Okinawa	HQ FORSCOM, Ft McPherson
HILL, John R	Aberdeen PG, Md	Yuma PG, Yuma, Ariz
HORNER, Peter J	Thailand	USAG Ft Sam Houston, Texas
INGRAM, Allen R	Korea	Fitzsimons Gen Hospital
KENNETT, Michael	TJAGSA	OTJAG
KING, Winston E	USAG Ft Campbell, Ky	USA Leg Svc Agcy, Falls Church
KUELBS, John T	TJAGSA	USALSA, Falls Church
LARSON, Ralph E	Okinawa	Thailand
DEDPUX, Leslie	Ft Hood, Texas	USATC (Inf) Ft Polk, La
LEWIS, Robert E	USAREUR	USATC, Ft Ord, California
MAGERS, Malcolm	TJAGSA	S&F, TJAGSA
MADDEN, John J	XVIII Abn Corps, Ft Bragg, NC	USACDC, Ft Ord, California
MAGNESS, William	FA Ctr, Ft Sill, Okla	Hq III Corps, Ft Hood, Texas
MCMAKIN, Sue A	Ft Eustis, Va	USAREUR
MERCK, Larry	Ft Gordon, Ga	USA Tng Ctr, Ft Jackson, SC
MULDERIG, Robert	TJAGSA	USAREUR
ONEIL, Robert A	Japan	OTJAG
PROTHRO, Jerry	Ft Leonard Wood, Mo	HQ III Corps, Ft Hood, Texas
REESE, Benjamin	Korea	HQ MTMTS, Oakland, Ca.
RICE, Michael G	Ft Knox, Ky	25th Inf, Hawaii
ROGERS, Richard	1st Cav, Ft Hood, Texas	USALSA, Falls Church, Va.
SIMMON, Randall	Korea	Fitzsimons Gen Hospital
SKYLAR, David	Ft Baker, Ca.	USAG, Presidio of S.F
SCANLON, Jerome	Vietnam	Fld Arty Ctr, Ft Sill, Okla
VARGA, Stephen	Ft Polk, La	USATC, Ft Ord, Ca.
WALKER, Robert	TJAGSA	1st Cav. Ft Hood, Texas
WOODWARD, William	TJAGSA	USA Msl Cmd, Redstone Ars.
WERNER, Steven	TJAGSA	USA Leg Svc Agy, Falls Church
WERT, Robert C	Valley Forge Gen Hospital	USA Tng Cen, Ft Dix, NJ
YEAGER, Stephen	USAG Ft Stewart, Ga	USA Armor Center, Ft Knox, Ky
YEKSAVICH, Michael	TJAGSA	USAREUR

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

Cpt Frank R. Ciesla, Jr.	Meritorious Service Medal	11Jul71-18Sep73
Cpt Richard S. Hudson	Meritorious Service Medal	3Dec68-15Aug73
Cpt Thomas B. Kingham	Meritorious Service Medal	1Sep71-26Apr74
Cpt Robert B. Kirby	Meritorious Service Medal	15Jan71-28Feb74
Cpt Truman Q. McNulty	Meritorious Service Medal	27Jul70-14Jan74
Cpt Walter A. Oleniewski	Army Commendation Medal	29Sep72-28Feb74
Cpt Gilbert J. Weller	Meritorious Service Medal	12Jun72-31Mar74

OK Called in CPT Crean has all info. He will handle. Tak

4. Personnel And Activity Directory. It is requested that all offices listed in the Personnel and Activity Directory update their telephone number (both commercial and autovon) and office symbol. Updated information will be used for 1974 issue of the Directory and must be sent to PP&TO by 1 Mary 1974.

5. Northwestern CLE Courses. Northwestern University will hold its annual short course for defense lawyers from 8 July to 13 July and the annual short course for prosecuting attorneys from 29 July to 3 August. Staff Judge Advocates interested in sending their officers to this course should nominate not more than one officer for each course to PP&TO by 15 May. A determination of the officers to attend will then be made based on the funds available for civilian schooling in FY 75. Notifications will be sent directly to the officers selected with instructions to register with Northwestern. A copy of the letter will go to the SJA concerned. OTJAG will fund the $200.00 registration fee but local commands must bear the cost of travel and per diem. Other officers may be sent to the courses, but only if local funds are available. In this case, arrangements should be made directly with Northwestern University.

6. Advanced Course Attendance for Officers Commissioned Through the Excess Leave Program. Advanced course attendance is an integral part of the career development of judge advocates. Judge advocates should attend the advanced course between their fourth and eighth years of JAGC service. Officers commissioned in JAGC through the excess leave program who have six or more years of service upon completion of law school may attend the advanced course if they so desire and are selected by TJAG. Officers who have less than six years of active service upon completion of law school will attend the earliest basic course after their bar exam and be assigned to a judge advocate office. These officers will spend a minimum of two years in a JAGC office before attending the advanced course. As individual capabilities and needs differ and because the needs of the service are subject to rapid change, the above policies are subject to exceptions.

7. Enlisted Personnel News. Legal Clerk (MOS 71D) and Court Reporter (MOS 71E) assignments are made by the Personnel and Administrative Branch at MILPERCEN. The office symbol is: DAPC-EPC-GA-AM. Their complete address is:

US Army Military Personnel Center
Enlisted Personnel Directorate
General Support Division
Personnel and Administrative Branch
2461 Eisenhower Avenue
Alexandria, Virginia 22331

The Personnel and Administrative Branch personnel involved in your assignments are: MSG Worrall, Mrs. Thomas and Miss Bush. Autovon phone: 221-8300/8301/8302.

All personnel are reminded that assignments are made against requisitions. Those responsible for insuring that enlisted personnel are assigned to JA offices must coordinate with local personnel offices and make certain that requisitions are submitted to MILPERCEN. Before calls are made to MILPERCEN concerning replacements, obtain the "EPD control number" from your personnel office. This will assist MILPERCEN in helping you. In addition, arrangements should be made with your local AG to insure that all 71D and 71E personnel assigned to your installation are reported to the SJA.

8. Help Wanted: a. Positions are available for assignment to the Appellate Divisions at USA Legal Services Agency and West Point. Interested officers contact PP&TO (CPT Crean).

b. Civilian Court Reporter Vacancy (GS-8): HQ, US Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, Kansas. For more information contact Major Wilson or CW2 Idalski, (913) 684-4921 or Autovon 552-4921.

Current Materials of Interest

Articles.

Imwinkelried and Gilligan, "The Unconstitutional Burden of Article 15: A Rebuttal," 83 YALE L.J. 534 (January 1974). Edward J. Imwinkelried, CPT, JAGC and Francis A. Gilligan, MAJ, JAGC, counter recent arguments that the military's procedures for nonjudicial punishment infringe upon essential rights of service members.

Symposium (and related notes) on Government Procurement: Comments on the Procurement Commission's Disputes Remedies and Award Protest Recommendations, 42 GEO. WASH. L. REV. 222-396 (January 1974).

"Drug Dependency Programs: The Young Veteran and the Military," 4 JOURNAL OF DRUG ISSUES (Winter 1974). The theme of an eight-article edition assessing what 1974 may bring in the area of drug dependency programs, particularly as they may affect military personnel, their dependents, and the young veteran.

Ward, "TOE Organizations—How We Get What We Got!" I MIL. POLICE L. ENFORCEMENT J. 18 (Winter 1974).

Nemmers, "Enforcement of Injunctive Orders and Decrees in Patent Cases," 7 INDIANA L. REV. 287 (1973). Considers the contempt power exercised by the federal courts, particularly the enforcement of injunctive orders in patent cases.

Proceedings, of the Sixty-Seventh Annual Meeting of the American Society of International Law, 67 AM. J. INT'L L. (November 1973). A complete issue surveying the annual Society meeting, which includes the remarks of Jordan Paust, CPT, JAGC USAR, on human rights and armed conflict.

33 FED B.J. (Winter 1974) Part II of a discussion on the Proposed Federal Rules of Evidence, which includes a separate analysis of each codified article and a selected bibliography; 11 different contributors from the academic community, bench and bar.

Dershowitz, "Preventative Confinement: A Suggested Framework for Constitutional Analysis," 51 TEXAS L. REV. 1277 (November 1973).

Note, "The Pretrial Right to Counsel," 26 STAN. L. REV. 399 (January 1974).

Baade, "Illegally Obtained Evidence in Criminal and Civil Cases: A Comparative Study of a Classic Mismatch," 51 TEXAS L. REV. 1325 (November 1973).

Hassan, "The International Covenant on Civil and Political Rights: Background and Perspective on Article 9 1)," 3 DENVER J. INT'L. & POLICY 153 (Fall 1973).

ABA Changes Policy On Military Dues Exemption.

At the last meeting of the ABA Board of Governors held in Houston preceding the Midyear Meeting, the Board approved the discontinuance of the exempt dues category for members serving in the Armed Forces of the United States or as Peace Corp or Vista Volunteers, permitting exemptions currently granted to remain in effect until the members' present term of duty has expired.

This change of policy takes effect immediately With this change, the only waiver of Association dues permitted is for those persons who are on special lists.

Special Members:

a) A person who has been a member of the Association for at least twenty-five years and has reached age 70 is entitled, upon his request, to have his name placed on a list of special members.

b) A member of the Association who has become disabled is entitled, upon his request and approval by the Board of Governors, to have his name placed on a list of special members for the term of his disability.

c) A person whose name is on a list of special members under this section retains the privileges of membership but need not pay Association dues.

Two-Week Active Duty Training Tours Available for JAG Reservists.

The Assistant Commandant for Reserve Affairs has been advised by the Reserve Component Personnel and Administration Center, St. Louis, Missouri, that additional active duty training tours are occasionally available for Reserve Component Judge Advocate General Corps Officers. Requests for JAG Reserve officers have been received by RCPAC but are not able to be honored because no requests for such active duty tours are on file.

The tours are for two weeks or longer at active duty Judge Advocate offices and may be requested in addition to the regular AT or in lieu of AT. All those JAG Corps Reserve component officers interested in this type of tour should write to:

Commander
U. S. Army Reserve Component Personnel
and Administration Center
ATTN: AGUZ-CMD-OE
9700 Page Boulevard
St. Louis, Missouri 63132

Correction Notices.

It should be noted that the 16th Military Justice Course originally scheduled at TJAGSA for 13-24 May 1974 has been rescheduled for 29 July - 9 August 1974.

In the first sentence of item 7, "Legal Assistance Items—Tax Exclusion for Combat Zone Accrued Leave" (March 1974) p. 24, the word "liability" should be changed to "viability."

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