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THE NEW FEDERAL RULES OF EVIDENCE—PART III

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This is the third in a series of four articles on the Federal Rules of Evidence. In the first two articles, the author described the Rules' background and compared Articles I through VII of the Rules with the Manual rules. In this article, the author completes the comparison. In the last article the author will assess the effect which the Rules' adoption would have on military evidence law.

ARTICLE VIII: HEARSAY

The traditional hearsay doctrine consists of a general exclusionary rule with numerous exceptions. The Introductory Note to Article VIII evidences the Advisory Committee's dissatisfaction with the traditional doctrine. The Note states that:

> Criticisms of this scheme are that it is bulky and complex, fails to screen good from bad hearsay realistically, and inhibits the growth of the law of evidence.[1]

The Committee seriously considered but finally rejected proposals for the outright abolition of the hearsay rule.[2] The Committee decided to content itself with a revision of the list of exceptions. Given the Committee's sympathy with the hearsay rule's critics, the Committee's revision understandably resulted in a dramatic liberalization of the exceptions.

The Definition of Hearsay

The Manual and Federal Rule 801 contain strikingly similar definitions of hearsay. Both take the position that a hearsay declaration is an assertive statement or conduct by an out-of-court declarant, offered to prove the assertion's truth. Both reject the Morgan view that non-assertive, non-verbal conduct constitutes hearsay if the evidence of the conduct is offered to prove the truth of the belief which actuated the conduct.[3] The Manual and Federal Rules differ in only one important respect. The Manual view is that an extra-judicial statement remains incompetent hearsay even if the declarant subsequently appears to testify and subjects himself to cross-examination. Most modern commentators are in agreement that the main justification for the hearsay rule is the lack of an opportunity to cross-examine. For that reason, some commentators have suggested that the rule should not apply where the declarant becomes a witness and available for cross-examination.[4] The Committee adopted this suggestion to a limited extent. For example, Rule 801 provides that if a declaration is admissible as a prior consistent or inconsistent statement, the statement is also admissible as substantive evidence. The Manual follows the contra, orthodox view that prior consistent and inconsistent statements are admissible solely for rehabilitation or impeachment.

The Listing of the Exceptions

Under some of the exceptions to the hearsay rule, the declarant's unavailability is a condition precedent to the statement's admissibility. Since the exceptions evolved individually, the common law did not develop a single test for unavailability. Thus, some of the common-law exceptions require greater showings of unavailability than others.[5] The Manual follows this traditional scheme. The Manual lists the

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exceptions separately, and each exception which requires a showing of unavailability contains its own discussion of the requisite showing.

Federal Rules 803 and 804 list the hearsay exceptions which the Committee decided to recognize. Rule 804 lists all the exceptions which require a showing of the declarant's unavailability. The Note accompanying Rule 804 points out that the development of different showings of unavailability was a historical accident.[6] The Note asserts that:

> (N)o reason is apparent for making distinctions as to what satisfies unavailability for the different exceptions.[7]

Rule 804 applies a single definition of unavailability to all the listed exceptions.

The adoption of a single definition of unavailability would undoubtedly simplify the administration of the hearsay rule in the Federal courts. However, the Committee's stated reason for adopting a single definition is an over-simplification of the relationship between the factors underlying the hearsay exceptions. Each exception is generally based on the concurrence of two conditions; a necessity for resorting to the hearsay declaration and a circumstantial guarantee of trustworthiness.[8] The circumstantial guarantee serves as a substitute for the opportunity to confront and cross-examine the witness.[9] For the exceptions requiring a showing of the declarant's unavailability, the declarant's unavailability supplies the necessity for using the hearsay evidence. If the declarant is truly unavailable, the stark choice is between using the hearsay evidence and completely foregoing the valuable information in the declarant's possession. However, just as there are degrees of necessity, the circumstantial guarantees of trustworthiness in the individual exceptions vary greatly in their strength. The Committee's analysis of the concurrence of the conditions is rather mechanical. In effect, the Committee takes the position that as long as there is necessity, the necessity's concurrence with any circumstantial guarantee of trustworthiness justifies admission. In principle, it would seem

that where the circumstantial guarantee is particularly strong, the proponent should not be required to make as strong a showing of necessity as where the guarantee is weak. Increased administrative convenience perhaps justifies Rule 804's uniform treatment of unavailability, but the accompanying Note overlooks the importance of the varying strength of the different circumstantial guarantees of trustworthiness.

Exceptions Recognized in Both the Manual and the Federal Rules

Most of the exceptions listed in the Manual have counter-parts in the Federal Rules.

The Manual and the Federal Rules recognize the exception for declarations of state of body and mind. The only significant difference between the provisions is that while the Manual exception is limited to statements of a then existing state of mind or body, Rule 803 extends the exception to statements of past condition if the declarant made the statement for purposes of diagnosis or treatment. The rationale for the extension is that if the declarant is consulting a physician for diagnosis or treatment, he is just as likely to truthfully describe his past symptoms as he is to truthfully describe his present condition.

Like the Manual, Federal Rule 803 recognizes the business entry exception. The Rule uses a more generic phrase, "records of regularly conducted activity." [10] The Manual provision is patterned after the Model Act for Proof of Business Transactions; [11] and the proponent need prove only that the record is a routine entry, made in the regular course of business at or near the time of the fact or event recorded. The Manual explicitly states that:

> All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but these circumstances will not affect its admissibility.[12]

On its face, Rule 803 is more restrictive. The Rule requires that the entry be made "by or from information transmitted by a person with knowledge . . ." [13] It would certainly be reasonable to construe this language to mean that as part of his foundation for a business record, the proponent must make an affirmative showing that the entrant or one of his informants had personal knowledge of the fact or event. If the courts adopt this construction, the proponent of a business entry would have to lay a more extensive foundation under Rule 803 than he would under the Manual.

The Federal Rule for dying declarations is more liberal than the Manual rule. Rule 804 requires simply that the declarant have believed that death was imminent and that the statement relate to the cause or the circumstances of the impending death. Rule 804 differs from the Manual provision in two important respects. First, while Rule 804 applies the unavailability requirement to dying declarations, the declarant need not be dead; "unavailability is not limited to death." [14] The Manual incorporates the accepted view that the declarant must be dead at the time the proponent offers his declaration in evidence. Second, the Rule does not limit the type of case in which the exception can be invoked. The Manual provides that dying declarations are admissible only in prosecutions for homicide or an offense resulting in death. While the Manual provision is restrictive, it is more liberal than the common-law view, limiting dying declarations to homicide prosecutions.

There is a vast difference between the Manual and Federal Rule treatment of former testimony. The Manual rule is that the testimony is admissible against the accused only if he was a party to the prior hearing or action. Rule 804 permits the use of former testimony if at the prior hearing, the testimony was offered "at the insistance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those" of the party the testimony is now offered against.[15] This language permits the "substitution of one with the right and opportunity to develop the testimony with similar motive and interest." [16]

The accused's right to confrontation presently has much greater protection in courts-martial than it will have in Federal civilian cases if the Rule is adopted.

Rule 803 formulates the official records exception in the following fashion:

> Records, reports, statements, or data compilations, in any form, or public offices or agencies setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law, or (C) in civil cases and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.[17]

While subdivisions (B) and (C) mention a duty requiring or an authority permitting the report, subdivision (A) omits any such reference. It is, therefore, arguable that under subdivision (A), the proponent need prove only that the report relates to the office's or agency's activities; he would not be required to make an affirmative showing that the official was required or authorized to prepare the report. The Federal Rule seems to be more liberal than the Manual rule. The Manual requires that the proponent of any official record establish that the record was made

> within the scope of his (the official's) official duties and (that) those duties included a duty to know, or to ascertain through appropriate channels of information, the truth of the fact or event, and to record such fact or event.[18]

The difference will probably prove to be slight. Officials have implied authority to maintain registers of transactions which occur on their business premises,[19] and the military judge could judicially notice a statute or regulation which expressly required or authorized preparation of the record.[20] In one respect, however, the Federal Rule is clearly more liberal than the Manual. In the military, as in most civilian jurisdictions, the courts have difficulty deciding whether reports of investigation, based upon third party statements, qualify as official records. Rule 803 aids the civilian defendant by providing that such reports are admissible against the Government.

The Manual's and Federal Rules' provisions concerning excited utterances, past recollection recorded, and reputation are substantially similar.

Exceptions Which Only the Federal Rules Recognize

The Federal Rules recognize numerous exceptions which the Manual does not mention. For example, Federal Rule 803 recognizes an exception for declarations of present sense impression. The Rule reads that:

> A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter (is admissible).[21]

Several common-law decisions have recognized this exception. The theory underlying the exception is that "substantial contemporaneity of event and statement negative the likelihood of deliberate or conscious misrepresentation." [22]

Rule 803 also permits the admission of learned treatises as substantive evidence of the truth of statements contained in the treatises. The Manual allows counsel to use such treatises only to cross-examine expert witnesses.

Rule 804 provides that when the declarant is unavailable statements of recent perception are admissible:

> A statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which he was interested, and while his recollection was clear (is admissible).[23]

To invoke this exception, the proponent must show that: the declarant recently perceived the event or condition; the declarant made the statement while his recollection was clear; affirmatively, he made the statement in good

faith; and negatively, he did not make the statement in contemplation of any litigation which he was interested in. Although this provision is quite liberal, it is not as advanced as the Model Code provision, authorizing the admission of any hearsay declaration of an unavailable declarant.

Finally, it is important to note that both Rule 803 and 804 conclude with a provision that the judge may admit hearsay declarations which do not fall within the listed exceptions of he determines that there are "comparable circumstantial guarantees of trustworthiness." [24] Judges have occasionally asserted their common-law power to refuse to exclude technical hearsay when they were convinced that the reason for the rule did not apply in the particular case [25] but rarely has a proposed rule or statute purported to broaden the admissibility of hearsay in such a sweeping fashion.

ARTICLE IX: AUTHENTICATION

Article IX contains two basic rules. Rule 901 deals with the ordinary authentication of evidence, and Rule 902 deals with self-authenticating evidence.

There are few differences between the Manual and Rule 901. Both treat authentication as the process of proving that an item of evidence is what its proponent claims it to be. Nine of the ten specific examples of authentication which Rule 901 lists can be found in the Manual. The Manual and the Rules differ with respect to one example and the procedure for determining whether evidence has been sufficiently authenticated. As one of the specific examples of authentication, Rule 901 mentions the ancient document doctrine; the proponent can authenticate a document by proving that the document is 20 years' old, has an unsuspicious appearance, and was obtained from a place of custody natural for such documents.[26] The Manual makes no reference to the ancient document doctrine. Just as it applied the conditional relevance concept to witness' competency, the Federal Rules apply the concept to authentication:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.[27]

Rule 902 lists the types of evidence which are self-authenticating, that is, which are admissible without extrinsic evidence of their genuineness. As previously mentioned, the Manual treats many of the matters listed in Rule 902 as the subjects of judicial notice. The Rule is somewhat broader than the Manual provision; it treats such items as trade inscriptions, acknowledged documents, and commerical paper as self-authenticating while the Manual makes no mention of these items.

ARTICLE X: CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Article X deals with the best evidence rule. Rule 1001 applies the best evidence rule to writings, recordings, and photographs. The Rule's inclusion of photographs might at first seem extraordinary. Yet it is arguable that the Manual also applies the best evidence rule to photographs. Paragraph 143a of the Manual states that the rule applies when the proponent attempts to prove the "contents of a writing."[28] Paragraph 143d adds that for purposes of Chapter XXVII, the word, "writing," includes "photographic . . . representations of facts, events, transactions, . . . places, ideas, or other occurrences of things . . ." [29] Thus, it appears that under the Manual and Rule 1001, if counsel asks the witness to testify about a photograph's contents, opposing counsel can object upon the ground that the witness has not produced or accounted for the negative or print.

The Manual and Rule also agree that the rule applies only when the document's terms are in issue, that is, when the nature of the fact to be proved or the terms of the offer of proof place the document's terms in issue. Rule 1004 expressly recognizes the collateral issue exception to the best evidence rule: the rule is inapplicable if the writing is "not closely related to a controlling issue.[30] In the

absence of an express Manual provision, the Court of Military Appeals has nevertheless recognized the exception.

Rule 1001 would bring Federal civilian practice in line with the Manual definition of duplicate original. Under the Manual, a subsequently prepared copy seems to qualify as a duplicate original if it is an identical copy, prepared by duplicating process, and to be used for the same purposes as the original.[31] Rule 1001 defines duplicate as follows:

> a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.[32]

The Rule uses the term, "counterpart"; and in some contexts, the term is used as one of art, referring to documents executed at the same time as the original. However, the Rule's use of the term, "re-recording," and the Committee Note accompanying Rule 1001 clearly suggest that the Committee intended to sanction the use of subsequently-prepared writings.[33] The Manual provides that a duplicate original is as admissible as the original. Rule 1003 adopts the same provision with two exceptions; the judge may require the original's production if

> (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.[34]

Footnotes

1. FED.R.EV. VIII, Advisory Comm. Note.
2. *Id.*
3. The classis illustration of this view is *Wright v. Tatham*, 5 Cl. § F. 670 (1838). In this case, the issue presented was whether the testator had the requisite mental capacity. The proponent of the will offered evidence that persons wrote letters to the testator. The inference was that they would not have sent the letters if they had believed he was mentally incompetent. The court held that the evidence was incompetent hearsay. Note that in Morgn hearsay, the declarant's belief is translated into action rather than a statement.
4. McCORMICK, EVIDENCE § 251 (2nd ed. 1972).
5. *Id.* at § 253.
6. FED.R.EV. 804, Advisory Comm. Note.
7. *Id.*
8. 5 WIGMORE EVIDENCE § 1420 (3rd ed. 1940).
9. *Id.* at § 1422.
10. FED.R.EV. 803(6).
11. 30 AM.JUR. 2d Evidence § 930 (1967).
12. MCM, 1969 (Rev.), para. 144c.
13. FED.R.EV. 803(6).
14. FED.R.EV. 804, Advisory Comm. Note.
15. FED.R.EV. 804(b)(1).
16. FED.R.EV. 804, Advisory Comm. Note.
17. FED.R.EV. 803(8).
18. MCM, 1969, (Rev.), para. 144b.
19. 5 WIGMORE, EVIDENCE § 1643 (3rd ed. 1940).
20. MCM, 1969, (Rev.), para. 147a.
21. FED.R.EV. 803(1).
22. FED.R.EV. 803, Advisory Comm. Note.
23. FED.R.EV. 804(b)(2).
24. FED.R.EV. 803(24) and 804(b)(6).
25. Goodale v. Murray et al., 289 N.W. 450, 227 Iowa 843, 126 A.L.R. 1121 (1940).
26. At common law, the requisite age was 30 years rather than 20 years. McCormick, Evidence § 323 (2nd ed. 1972).
27. FED.R.EV. 901(a).
28. MCM, 1969, (Rev.), para. 143a(1).
29. *Id.* at para. 143d.
30. FED.R.EV. 1004(4).
31. MCM, 1969, (Rev.), para. 143a(1).
32. FED.R.EV. 1001(4).
33. FED.R.EV. 1001, Advisory Comm. Note.
34. FED.R.EV. 1003.

ASPR COMMITTEE NOTES

By: LTC Joseph A. Dudzik, Procurement Law Division, OTJAG

In the course of my duties as Army Legal Member on the ASPR Committee I have found that, in general, our procurement operating personnel find the regulation to be a helpful and practical one. For those of you who feel that the ASPR is in some respects deficient in meeting the "real world" procurement problems faced at the contracting officer level let

me elaborate on the steps the ASPR Committee takes to keep in touch with all our readers.

In addition to sending our proposed ASPR revisions for comment from DoD purchasing, contract administration, and audit activities, the Committee has two basic policies which are designed to assure that the Committee does not lose touch with the realities of procurement on the operational level. One policy is that the Committee members must have had recent operational experience in procurement and that their terms are not less than two or more than four years. As you may be aware, each Department is represented on the Committee by a policy and a legal member with the Committee being chaired by a member who is on the staff of the Assistant Secretary of Defense (I&L). That this rotation policy is adhered to is illustrated by the fact that during the 18 months that I have been a member the Committee has had a new chairman, new legal members from the Defense Supply Agency and the Air Force and a new policy member from the Department of the Navy. All these new members including the chairman have come from operation procurement assignments.

The second policy is that once each quarter the ASPR Committee makes a field trip, of a week's duration, to procurement activities in a particular section of the country to give the users of the regulation an opportunity to question and suggest. Contrary to popular belief, the locale to be visited is not selected on the basis of climate but rather on the number of procurement activities in the immediate vicinity and the time since the Committee last paid that area a visit. The field trip for the first quarter of 1973 was to the Washington, D.C. area and was hosted by the Defense Supply Agency at Cameron Station, Virginia. Unfortunately, this meeting was poorly attended which was a disappointment to the Committee. We all value and consider not only the comments and suggestions but also the criticisms from field personnel. Hopefully the lack of response to this meeting was due to insufficient advance notice and we will do our best to remedy this. In the future I will endeavor through the medium of the Army Lawyer to announce the locale and schedule of the quarterly ASPR field visits.

Although suggestions and comments are welcomed, the Committee considers them with some measure of restraint. If there is one universal comment that I have received from people who work with ASPR on a daily basis is that it is too big and that we change it too frequently. ASPR has grown in the past years until we now find ourselves with a regulation which is 3000 pages long and twice a year changes which generally run to 800 pages each. We on the Committee are sympathetic to the complaint that ASPR is becoming increasingly difficult to keep current. Therefore, it should not come as a surprise that the Committee feels that it has an obligation to keep material out of ASPR rather than put it in. All suggestions for additions to ASPR receive an initial screening on a Departmental level and then the survivors are further screened by the Committee itself. We hope that this process keeps additions down to material which is essential and of general application. Now, 800 pages per change might not be considered a very effective screening job but what also must be considered is the number of changes which were initiated from outside DoD. For example, the recent addition of material on Cost Accounting Standards was initiated by the Cost Accounting Standards Board. In fact, more than half of the material published in recent ASPR changes had its source outside DoD. In addition to trying to limit the material in ASPR the Committee has started to broaden the scope of the notes and filing instructions which accompany each change, so that you may be selective in your reading of new changes. I would appreciate hearing any comments you have on the notes and filing instructions. However, please keep in mind that if we make them too lengthy, a point of diminishing returns is soon reached.

You may have read in a recent issue of *Federal Contracts Report* an article which quoted a comment from the audience at our recent Cameron Station meeting to the effect that

the ASPR Committee seems to take pride in taking nine months to handle a specific problem. Lest you be left with an erroneous impression let me take this opportunity to respond. The Committee is not necessarily happy about the length of time it takes to process some ASPR cases. On the other hand we are not ashamed of it. The Committee has learned from experience that it is far better to spend some extra time on a matter and to get it as accurate as possible than to be satisfied with a "good enough" job. The self-imposed reviews to which every ASPR case is subjected are by their very nature time-consuming. However, the consequences of publishing something which is misleading or incorrect has to be experienced to be believed. We believe that while thoroughness may not necessarily be a virtue in all situations, it is a necessary ingredient in the publication of ASPR. If at times we seem dilatory in getting out new coverage, just remember we want to be right the first time. As a final note to this point, we frequently find that upon more extensive review and study the problem we are trying to solve is not as substantial as originally presented and hence there need not be any change to ASPR.

One of the features of our quarterly field trips is a presentation by the ASPR Committee members of current cases. For those of you who have not had an opportunity to attend, let me describe some of our active cases which are nearing completion. Remember, the ASPR Committee initiates approximately 160 to 170 cases per year of which 60 to 70 cases are considered active and current at any one time, so you can appreciate that the following cases by no means exhausts the list. The case number indicates the year in which the case was originated and its position within that year. For example, Case Number 68-104 was the one hundred and fourth case initiated in the calendar year 1968.

68-104 *Late Bids*. The current treatment of late bids and proposals is a long-standing one and for that reason the Committee moved with a great deal of caution and not without disagreement on the various approaches. There was a time when there was some sentiment for a straight "late is late" rule engendered because its very simplicity had a certain charm. However comments from both within and without the Government caused the Committee to modify its views. In fact, the coverage on treatment of late bids/proposals due to delay in the mails which will shortly go into ASPR came as a result of a suggestion from industry. The basic reason for the change is that contracting officers have frequently been unable in recent years to ascertain whether the late bid or proposal should have arrived before the time set for receipt or opening. Generally, the new ASPR coverage will provide that if a bid or proposal is mailed by registered or certified mail prior to five days before time for receipt or opening it will be considered if it arrives before award. Recognizing the frequent instances when a short time frame is required between award and receipt of best and final offers in negotiated procurement, the Committee adopted the "late is late" rule in this instance. The rule for delay occasioned by the Government on the installation remains the same.

69-131 *Warrenties-Consequential Damages*. Initial policy in this area was established in DPC 86. This case was initiated to consider changes to that coverage as we learned by experience. The following will be covered when the material in this case is published:

1. High cost items will be defined.

2. Tech Data will be excluded from applicability of the clause.

3. A clause will be provided for use in service contracts.

4. Provision will be made for flow-down of the clause to subcontractors and direction will be given as to which clause will be flowed down.

5. The contractor will have an affirmative liability to reimburse the Government when he is covered by insurance.

6. Provision is made for action to be taken on Foreign Military Sales Contracts.

70-19 *Wage and Price Escalation.* There has been a general rewrite of the material contained in 3-404.3, 7-106 and 7-107 to add coverage for high dollar value and fixed-price contracts with extended periods of performance. Paragraph 3-404.3 has been expanded and enlarged to contain a great deal more instructional and explanatory material. In particular, uniform guidance is given on drafting economic price adjustment clauses which adjust labor or material costs based upon a predetermined mix of labor and material as well as a predetermined expenditure rate. Because of the variables involved between industries neither a universal cost index nor contract clauses could be provided. This, like many ASPR cases, does not add anything which is startling new, but rather it is an attempt to improve what we have by adding helpful guidance.

71-103 *Environmental Protection (E.O. 11602).* Everyone seems to ask when are we going to come out with coverage relating to the administration of the Clean Air Act with respect to Federal contracts. The Committee is precluded from taking action until implementing regulations under the Environmental Protection Act have been issued and accordingly this case has been suspended until these regulations are issued.

71-87 *Reissuance of ASPR.* Your new 1973 edition of ASPR is a result of this case. The printing of ASPR has been computerized which should mean more rapid implementation and publication of changes. It is anticipated that ASPR will be republished incorporating all previous changes, once every two years. A word of caution about the new edition of ASPR which you have or shortly will receive. The 1973 edition is for optional use only on or after 1 July and mandatory for use on 1 August. Therefore, until 1 July you must use your current edition with changes. Also retain both the index and Appendix O from the current edition.

70-103 *Control of Constructive Changes and Other Claims on Nonconstruction Contracts.* There are two parts to this case. The first part provides for a "Notice of Change" clause which generally requires a contractor to notify the contracting officer within a specified number of days from the date he identifies a Government action, other than an authorized change in writing as constituting a change. The purpose of this clause is to give the contracting officer an opportunity to accept or reject the change before incurred costs eliminate the freedom to make a choice and make a dispute almost inevitable. This clause appears in 7-104.86 of the 1973 ASPR. The second part of the case covers engineering change proposals and change order accounting. Briefly, the Engineering Change Proposal clause provides authority for the contracting officer to request the contractor to prepare ECP's and include the information required by MIL-STD-480. It also provides for submission of a DD Form 633-5 on ECP's of $100,000 or greater. The Change Order Accounting clause provides for recording and accounting for segregable direct costs of changed work in support of adjustment claims when the change is estimated to exceed $100,000. This coverage has been approved and should be published in the first revisions of the 1973 ASPR.

One case which, although current and active, is not near publication is the ASPR Committee's consideration of the Report of the Commission on Government Procurement. The Commission on Government Procurement was created by Public Law 91-129 in November 1969 to study and recommend to Congress methods "to promote the economy, efficiency and effectiveness" of procurement by the executive branch. The report encompasses 149 specific recommendations and is published in four volumes although a one volume summary is available. The ASPR Committee is responsible for the development of a Department of Defense position on 35 of these recommendations. The balance of the recommendations have been assigned to the various departments within the Department of Defense to act as a lead department in developing Department of Defense positions on the recommendations. As far as I have been able to determine a Department of Defense position has not yet been

taken on the report so my comments on the report must be personal and unofficial.

On the whole I think the report is a good one and in general will prove beneficial to the procurement process. The Commission has exhibited a great deal of courage in recognizing and confronting problem areas in our procurement process and suggesting viable solutions. Now I am sure you, as I, will not agree with all these solutions, but I don't believe any recommendation can be dismissed as lacking in imagination. Let me give you a sample of the recommendations which I thought were particularly interesting and thought provoking.

The Commission recommends that an Office of Federal Procurement Policy be established by law and placed in the Executive Branch at a level where it can oversee the development and application of procurement policy. The Commission is careful to say that they are not suggesting that there should be centralized Federal buying for all agencies, or a central group involved in agency business decisions or that there be a huge policy-making bureaucracy issuing all procurement regulations. The major attributes of the office are identified in the report and may be summarized as follows:

1. Be independent of any agency having procurement responsibility.

2. Operate on a level above the procurement agencies and have directive rather than merely advisory authority.

3. Be responsive to Congress.

4. Consist of a small, highly competent cadre of seasoned procurement experts.

It seems to me that on the basis of this and other recommendations the Commission has recognized a need for greater uniformity in our procurement process and has concluded that the establishment of an Office of Federal Procurement Policy is one way to achieve this objective. It is difficult to argue against greater uniformity in our procurement process without appearing to be provincial. However, one must recognize the problems which are attendent when authority is separated from responsibility. In any event, subsequent treatment of this recommendation should prove of interest to those having aspirations of becoming a member of a small, highly competent cadre of seasoned procurement experts.

To those of us who feel that there is need for some official recognition that the lot of the procurement lawyer is not an easy one, comfort can be taken from the Commission's observation that there are approximately 4,000 procurement-related statutes and that these statutes, some permanent and some temporary, contain a welter of disparate and confusing restrictions and grants of limited authority to avoid restrictions. The report concludes that the uncoordinated distribution of the procurement statutes throughout the United States Code together with nonprocurement laws is detrimental as it impedes economy, efficiency, and effectiveness in the application of the procurement statutes. The recommendation is to establish a program for developing the technical and formal changes needed to organize and consolidate the procurement statutes to the extent appropriate in Title 41, Public Contracts, of the United States Code. This is another recommendation which I am sure one could not find much to quarrel with, however, the magnitude of the task is somewhat intimidating.

I have enumerated two of what can be categorized as recommendations which apply generally to the procurement process, now I will go into a few of the recommendations which relate directly to contract actions.

If there is one recommendation which has been suggested more than once by procurement personnel within the Department of Defense it is the Commission's recommendation to raise the statutory limit for small purchases. The Commission has recommended in their report that the ceiling for small purchase actions be raised from $2,500 to $10,000. The commission, recognizing the savings potential of multi-year service and ADPE con-

tracts has also recommended that there be enacted statutory authorization to enter into multi-year service contracts with annual appropriations.

In my review of the report I have noted with some degree of satisfaction how many of the recommendations have already been implemented at least to some degree in ASPR. For example, in regard to review of contractor procurement systems, the Commission recognizes that both the ASPR and the FPR provide for review and approval of contractor purchasing systems as a substitute for review and approval of individual transactions, and acknowledges that ASPR provides specific criteria and guidance concerning the method and extent of such reviews and the effects of an approved system on the treatment of individual transactions. Notwithstanding the fine words by the Commission concerning the Department of Defense's review and approval of cost-type prime contractor procurement systems and transactions, the ASPR Committee has a continuing interest in the contractor procurement system review (CPSR) concept not only to make it more efficient but also to make it more effective.

Another recommendation by the Commission is that the Government, with appropriate exceptions, generally acts as a self-insurer for the loss of or damage to Government property resulting from any defect in items supplied by a contractor and finally accepted by the Government. This recommendation appears to be an adoption of current DoD policy. In addition, the Commission's recommendation that the Government apply the policy of self-insurance to subcontractors on the same basis as to prime contractors should be met by the new coverage under case 69-131 discussed above.

As an illustration of the fact that the Commission faced up to what many consider real problem areas in the procurement process, consider some of their comments concerning Major Systems acquisitions and Socio/Economic programs. The Commission recognized in the area of Major Systems acquisition that contracting methods and procedures have been used as remedies for acquisition problems found in past programs, but that problems in contract performance cannot be corrected by contract procedures for they are rooted in the actions or inactions in earlier phases of the acquisition process. The Commission's recommends the use of contracting as an important tool of system acquisition, not as a substitute for management of acquisition programs. In discussing Socio/Economic programs the Commission was careful to state that they were not suggesting the elimination of any substantive benefits provided by the various social and economic programs implemented through the procurement process, or that the procurement process should be disengaged from such objectives. However, the Commission recognized that while the magnitude of the Government's outlays for procurement and grants creates opportunities for implementing selected national goals, the pursuit of such opportunities is not without problems. The report states,

> The enormity of the dollar figure involved makes the procurement process appear an attractive vehicle for the achievement of social and economic goals. Its effectiveness in accomplishing such goals is perhaps overrated. The problems engendered by the utilization of the procurement process in the implementation of national goals are that the procurement process becomes more costly and time-consuming with the addition of each new social and economic program.

However, the report is not against socio/economic programs or even against their implementation through the procurement process, but rather that the implementation of these programs be reviewed to determine if they are cost effective and achieving the results desired.

If my comments on the Report of the Commission on Government Procurement seem rather bland, it is because positions within the departments have not solidified at the time I am writing. However, no matter how you may feel about the Commission's recommendations, the report itself is a very worthwhile and interesting document. The report deals not only

in conclusions but also provides a substantive basis for these conclusions. The wealth of information and background material supporting each recommendation can be of very immediate and practical benefit to the procurement lawyer. I therefore can recommend that you obtain a copy of the report and look through it. Copies of the report can be obtained from The Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402 and the postpaid charge is as follows:

Volume 1 Stock No. 5255-0002 $2.60
Volume 2 Stock No. 5255-0003 $2.60
Volume 3 Stock No. 5255-0004 $2.60
Volume 4 Stock No. 5255-0005 $2.85

As Army Legal Member on the ASPR Committee I am of course interested in your comments and suggestions relating to ASPR. Unfortunately, I am not in a position to offer you an ASPR research service but I will do my best to respond to your inquiries. My address is: LTC Joseph A. Dudzik, Jr., Army Legal Member, ASPR Committee, Pentagon, Room 2C 440, Washington, D. C. 20310, Telephone: OX 72938.

LEGAL ASSISTANCE UPDATE

By: Major Nancy Hunter, Civil Law Division, TJAGSA

By letter dated 26 February 1973 (see *The Army Lawyer*, April 1973), The Judge Advocate General rescinded the "McCaw letter" [1] and made major changes in the traditional legal assistance program. Chapter One of the Legal Assistance Handbook [2] and AR 608-50 [3] technically remain in effect, but many of the provisions have been modified to more closely approach the goal of "total legal service to the military family." A quick over-view of the old and new policies follows:

USE OF RESERVE JAGC OFFICERS.[4] The supervised use of Reserve JAGC officers in legal assistance offices continues to be strongly recommended. Many posts have found that reservists who are members of the local bar can be of great assistance in advising military clients during duty or non-duty hours, providing information on local practice to military attorneys, and assisting in obtaining greater acceptance by the local bar of pilot program type activities.

OFFICE ADMINISTRATION.[5] While the Legal Assistance Officer and Staff Judge Advocate remain responsible for overall administration of their command legal assistance program, General Prugh's letter reemphasized the need for physical facilities which insure complete privacy for attorney-client consultations in accord with the attorney's professional status. Unfortunately, fund cites are not available for use in procuring the suggested rugs, drapes, soundproofing, etc.; rather it is suggested that commanders be invited to inspect legal assistance facilities on a regular basis. Those visits, along with a real selling job by the LAO/SJA and some scrounging talent, can result in present offices being renovated to insure adequate privacy without, of course, giving up the battle for adequate funding in the command budget meetings.

The Annual Report of Legal Assistance Activities [6] is no longer required. As a practical matter, LAOs should maintain some sort of work measurement system—perhaps even the same report—in order to be able to respond to inquiries from the budget shop and OTJAG who ask for justification for retaining or increasing the number of attorneys working in legal assistance.

RESTRICTIONS ON ACTIVITIES.[7] It is in this area that major changes have been made. The new policy provides that a Legal Assistance Officer, within the bounds of the Code of Professional Responsibility:

> . . . is authorized to sign letters written on behalf of his client; to negotiate with adverse parties; and to perform all professional functions, short of actual court appearance unless authorized to do so by

The Judge Advocate General, to secure an appropriate resolution of his client's problem.

This policy affects the following areas:

Legal Advice on Criminal Actions: Before the change, specific TJAG approval was required before an LAO could render legal advice or services to a defendant in a criminal action brought by the United States. Now the LAO can inform the defendant of the nature of possible court proceedings, assist in obtaining the services of civilian counsel if the client so requests, refer him to a pilot program if one is established in the jurisdiction involved, or take other legal action short of becoming the attorney of record.

Negotiation with Adverse Parties: Although TJAG approval is still required before a military attorney can become attorney of record or appear in a civilian court, he can now negotiate with adverse parties, sign letters in his client's behalf, and perform "all other professional functions." Thus, a LAO can negotiate a settlement with an insurance company, an opposing attorney or party, and take any other legal action necessary to settle a case short of actually instituting suit.

Drafting Instruments.[8] Assuming that time, manpower and facilities are available, LAOs are now free to examine and/or draft documents such as separation agreements, easy or complex wills, and assist clients with their *pro se* proceedings.

Signing Letters.[9] Probably the most annoying restriction on legal assistance activities—not being allowed to sign letters on behalf of clients without the express permission of the supervisory SJA—has been lifted. The 26 Feb letter does contain a suggested disclaimer clause:

> This letter is written in my capacity as a legal assistance officer of the armed forces acting on behalf of my client, ————. As such, it reflects my personal, considered judgment as an individual member of the legal profession. It is not to be construed as an official view of this headquarters, the United States Army, or the United States Government.

However, use of a non-command letterhead (e.g., Fort Blank Legal Service Office, Headquarters, Ninth Army, Fort Blank), plain bond paper, or a signature block indicating the military rank and Legal Assistance Officer status of the writer will achieve the same result. Using a rubber stamp reproduction of the suggested disclaimer clause is another possible approach.

Official Correspondence.[10] The requirement that legal assistance officers "perform all professional function . . . to secure an appropriate resolution of his client's problem" by inference lifts the restrictions on LAOs corresponding directly with Federal or State agencies. The new policy also specifically permits direct communications between Legal Assistance Officers on any and all levels. Thus, if you have a client with a problem involving the law of state X and Martindale-Hubbell doesn't have the answer, you can call or write one of the legal assistance offices (regardless of service) and/or the state attorney general in state X for assistance. It would be much appreciated if rulings/interpretations obtained which might interest other military members would be forwarded to TJAGSA for publication in *The Army Lawyer.*

Suggestions for further improvements in the traditional legal assistance program are also welcome—the Chief, Legal Assistance Office, OTJAG, is the man to write.

PILOT LEGAL ASSISTANCE PROGRAM.

The pilot program, which affords legal representation by military or civilian-employee attorneys in civilian courts (civil, criminal, trial and appellate) to military families unable to afford legal fees without substantial financial hardship, is being continued on a pilot basis. The current status of the pilot program DoD wide follows:

APPROVALS

Arizona

California (in-state lawyers)

Colorado (in-state lawyers)

Florida (in-state lawyers)

Hawaii (in-state lawyers)

Illinois (in-state lawyers)

Iowa

Louisiana (in-state lawyers)

Maine (misdemeanor cases)

Maryland (in-state supervision)

Masachusetts

Minnesota

Missouri

New Hampshire

New Jersey (in-state supervision)

New York

Rhode Island

South Carolina

Texas

*States having active Army populations exceeding 1,000 members in the grades of E-4—E-1.

NEGOTIATIONS IN PROGRESS

Connecticut (Navy)

District of Columbia (Navy)

North Carolina (Marine Corps)

Oregon (Army Reserve)

Pennsylvania (Navy)

Virginia (Navy)

Washington (Navy)

NEGOTIATIONS INACTIVE

Kansas

Although the program utilizing out of state lawyers was authorized by the Kansas Bar Association in June 1971, the local county bar associations have refused implementation. Negotiations have been suspended.

DISAPPROVALS FOR OUT OF STATE LAWYERS

Alaska

Kentucky

The state bar associations of Alaska and Kentucky refused to authorize military lawyers admitted to the bars of other states to practice in their courts on behalf of indigent armed forces clients.

NO INFORMATION

Alabama*

Arkansas

Delaware

Georgia*

Idaho

Indiana*

Michigan

Mississippi

Montana

Nebraska

Nevada

New Mexico*

North Dakota

Ohio

Oklahoma*

South Dakota

Tennessee

Utah

Vermont

West Virginia

Wisconsin

Wyoming

The Army currently has programs in operation at:

Arizona	—Fort Huachuca
Colorado	—Fitzsimmons General Hospital, Fort Carson
Iowa	—Hq., USA Weapons Command, Rock Island
Maryland	—Aberdeen Proving Ground Edgewood Arsenal, Fort George G. Meade
Massachusetts	—Fort Devens
Missouri	—Fort Leonard Wood
New Jersey	—Fort Dix Fort Monmouth

The Secretary of the Army has recommended continuation of the expanded legal assistance program on a permanent basis within available Army resources. It is expected that a decision on continuation of the program and further guidance will be given by the Secretary of Defense by June, 1973. The ABA continues to fully support the concept, but it is on a local basis that the program can be best implemented. Thus, participation by military attorneys in local and national bar organizations can assist immeasurably in gaining support for expanded legal services for the military client, who has been told that one of his fringe benefits is "free legal service." Convincing the local bar that legal representation of financially limited military clients by military attorneys will not deprive civilian practitioners of legal fees and will in fact relieve local legal aid or public defender offices of some of their heavy workload, is a first step in selling the program.

A JAG officer admitted to practice in the state makes it easier to assure the local courts and/or state bars that military clients will be adequately represented. Use of JAGC reservists as instructors, or self-initiated programs to familiarize LAOs with local law and procedures can aid in showing the courts that out-of-state military lawyers are able to competently represent their military clients. Other methods of gaining favorable exposure are to work closely with local civilian attorneys representing military clients, publishing articles in local newspapers and legal publications, and speaking engagements before civilian organizations.

LEGAL ASSISTANCE HANDBOOK. DA Pam 27-12 is currently under revision by TJAGSA and should be published in the fall of 1973. Suggestions for changes should be directed to Major Nancy Hunter, TJAGSA, Charlottesville, VA 22901; (tel (804) 293-4095).

CONCLUSIONS: Legal assistance is probably the best public relations program in which the JAG officer can participate, whether traditional or pilot. Your continued support and suggestions are appreciated.

Footnotes

1. JAGAA Bulletin 1965-3A, subj.: Administering the Army Legal Assistance Program, 4 March 1965.
2. DA Pamphlet 27-12.
3. Legal Assistance, 28 April 1965.
4. Para. B.2, DA Pam 27-12.
5. Para. H.2, DA Pam 27-12; para. 3*c*, AR 608-50.
6. Para. D, DA Pam 27-12; para. 8, AR 608-50.
7. Para. E, DA Pam 27-12.
8. Para. E.7 and E.13, DA Pam 27-12.
9. Para. E.8, DA Pam 27-12.
10. Para. E.10, DA Pam 27-12.

ATTORNEY-CLIENT GUIDELINES

The following guidelines were prepared by a committee chaired by the Assistant Judge Advocate General for Military Law and composed of two captains from the Defense Appellate Division, two other captains whose sole duties are in the military justice area, a distinguished professor of law who works in the civilian legal aid program, the Chiefs of

both appellate divisions, the Chief of the Trial Judiciary, an experienced staff judge advocate, and a retired military lawyer who has extensive experience in the military justice field. These guidelines have been coordinated with and approved by The Judge Advocate General.

Military personnel who act in courts-martial, including all Army attorneys, will apply these principles insofar as practicable. However, the guidelines do not purport to encompass all matters of concern to defense counsel, either trial or appellate. As more problem areas are identified, the committee and The Judge Advocate General will develop a common position and policies for the guidance of all concerned.

ATTORNEY-CLIENT GUIDELINES

A. Problem Areas in General

1. Applicability of the attorney-client relationship rules to military criminal practice generally.

Military attorneys and counsel are bound by the law, rules of ethics, and the highest recognized standards of professional conduct. The Department of the Army has made the Code of Professional Responsibility and the Code of Judicial Conduct of the American Bar Association applicable to all attorneys who appear in courts-martial. Whenever recognized civilian counterparts of professional conduct can be used as a guide, consistent with military law, the military practice should conform.

2. Attorney-client relationship in the military criminal practice.

a. Establishment

When an officer holds himself out as an attorney or is designated on orders as a detailed defense counsel, he is regarded, for the purposes of these guidelines, as an attorney and is expected to adhere to the same standards of professional conduct. Any authorized contact with a service member seeking his services as a defense counsel or as an attorney for himself results in at least a colorable attorney-client relationship, although the relationship may be for a limited time and purpose. Where an attorney's assigned or reasonably anticipated military duties indicate that the relationship is for a limited time and purpose, he must inform the prospective client of these limitations. There is no service obligation to appoint an attorney as detailed counsel merely because an attorney-client relationship has been established. However, an attorney will not later place himself in the position of acting adversely to the client on the same matter.

b. Dissolution

An attorney should not normally be assigned as a counsel to a case unless he can be expected to remain for the trial. If it appears that he will not be available for the trial, the client must be notified at the inception of the relationship. Military requirements or orders to move the attorney as proper personnel management requires will be respected. An attorney will not, without his own agreement, be retained on duty beyond his service appointment merely to maintain an existing relationship with respect to a particular case or client. Since there is no authority to hire a civilian attorney at Government expense to represent a serviceman in a court-martial, no former officer should expect to be retained by the Government to represent a serviceman with whom that officer had developed an attorney-client relationship. It is regarded as unethical for an attorney to arrange that only he could continue in any particular case.

c. Content

The attorney should represent his serviceman client to the fullest extent possible within the limits of the law and as outlined in pertinent policies and regulations. No information obtained in an attorney-client relationship may be used against the interests of the client except in accordance with the Code of Professional Responsibility.

3. Restrictions in exhausting legal and administrative remedies.

Military attorneys will normally confine their activities to proceedings provided for in the Uniform Code of Military Justice and Army regulations. (See B3 below.) They will be guided by local policies as to the extent that a military defense counsel is allowed to handle other matters, e.g., general legal assistance.

B. Problems Associated with Trials

1. Steps to insure that conflicts of attorney's or counsel's duty do not arise because of multiple clients.

Ordinarily, attorneys should represent only one client where there are multiple accused. Where the conflict is apparent from the offenses, the staff judge advocate should insure that the attorney is not put in a position where he represents clients with conflicting interests. However, it is the duty of the trial defense counsel to recognize when a conflict of interest will prevent his properly representing multiple clients and to bring it to the attention of his clients, the staff judge advocate, and the military judge, where appropriate.

2. Relationship between military and civilian defense counsel.

a. Propriety of steps taken by the military counsel in assisting the accused in obtaining civilian defense counsel.

Military counsel will not recommend any specific civilian counsel. The best method is to show the accused a list of local attorneys. This list should be compiled by personnel in the staff judge advocate's office and representatives of the local bar association. This would insure that local attorneys, who would have no interest in such referrals, would not appear on the list. The accused must be told that the list is not exclusive and that he is not limited to the services of a local attorney. The listing of an attorney is not necessarily an indorsement of his capability or character and the accused should be told that. The choice and responsibility for that choice are solely his.

b. Working relationship

The civilian counsel is expected to treat his associated military attorney as a professional equal. The military attorney does not by being associated become the clerk of the civilian counsel.

c. Resolution of conflicts between civilian and military counsel.

Where the conflict concerns defense tactics, the military counsel must defer to the civilian counsel if the accused has made the civilian counsel chief counsel. If counsel are co-counsel, the client should be consulted as to any conflicts between counsel. Where the military counsel determines that the civilian counsel is conducting himself contrary to the Code of Professional Responsibility or violating the law, he should first discuss the problem with the civilian counsel. If the matter cannot be resolved, it is the duty of the military counsel to inform the accused of the civilian counsel's actions. The military counsel should inform the civilian counsel of his intention to discuss the matter with the accused. If the accused approves of the civilian counsel's conduct, the military counsel must inform the accused that he will have to inform the convening authority or request an Article 39(a) session, whichever is appropriate, and ask to be relieved of his responsibilities as counsel. The military counsel must also inform the accused that, as an officer of the court, he has a duty to report any unethical behavior, fraud on the court, or any other impropriety affecting the integrity of the proceedings.

3. Collateral civil court proceedings.

a. Extent of military counsel's ability to initiate and prosecute such proceedings.

Military defense counsel's ability to act in such matters is regulated by Army policy in para 1-4, AR 27-40.

b. Responsibility with respect to habeas corpus petition under 28 USC 2242.

There is no responsibility for military defense counsel to prepare a habeas corpus petition pursuant to 28 USC 2242 and he is prohibited from doing so unless he follows the provisions of AR 27-40. However, nothing pro-

hibits his explaining a *pro se* petition to the accused. This would entail the accused's writing to the Federal District Court Judge requesting a writ of habeas corpus or other relief. Also, nothing prohibits the military defense counsel's explaining to the accused his right to retain civilian counsel in the matter.

c. Extent of participation when civilian counsel has initiated such proceedings.

Military counsel would be acting contrary to the spirit of AR 27-40 if he acted through civilian counsel to perform a service for his client that he could not perform on his own (e.g., preparation of pleadings in habeas corpus proceedings), and he should not do so.

4. Scope of trial defense counsel's responsibility after appellate defense counsel has been appointed.

After appellate defense counsel has been appointed, trial defense counsel should assist the appellate defense counsel where such assistance does not interfere with his regularly assigned duties. Trial defense counsel has an obligation to answer pertinent questions posed by appellate defense counsel. Trial defense counsel has no right or obligation to assist in preparation of briefs for anyone other than appellate defense counsel after appellate defense counsel has been appointed.

5. Ability of trial defense counsel to provide otherwise privileged information when his conduct at trial has been attacked on appeal.

When the issue of trial defense counsel's conduct at trial has been raised on appeal, any privilege has been waived to the extent necessary to meet the challenge when the accused has argued through his appellate defense counsel that he was inadequately represented at trial. Trial defense counsel must be allowed to protect his professional integrity. In protecting his professional integrity against such a challenge, he may reveal, to the extent necessary, otherwise privileged matter.

C. Problems Associated with Appeals

1. Appellate defense attorney-client relationship.

a. Creation

The attorney-client relationship exists between the accused and counsel designated to represent the accused as authorized by Article 70 of the Uniform Code of Military Justice. Generally, The Judge Advocate General initially directs the Chief, Defense Appellate Division, to represent an accused, and the Chief, Defense Appellate Division, as Chief Appellate Defense Counsel, designates other appellate counsel assigned to the Defense Appellate Division to assist him as appellate defense counsel. The duty of representation is established at the time of the appointment for the purpose of the appointment and the relationship remains in effect until the accused terminates it, the counsel is relieved from active duty or duly assigned to other duties, or the representation ceases upon termination of the appellate processes under the Uniform Code of Military Justice.

b. Termination.

There is less objection to the administrative termination of an appellate defense attorney-client relationship than one at the trial level. The client has no right to select specific military appellate defense counsel. When the purpose for which the designation is made has been accomplished, the relationship terminates. The designation may be terminated earlier for administrative purposes.

c. Relationship

Generally, there appears to be no necessity for face-to-face interviews in an appellate defense attorney-client relationship. Telephonic facilities are available at no cost to the client for communication between the appellant and his counsel. If the Chief Appellate Defense Counsel determines that a face-to-face interview is essential between either himself or a military associate and the appellant, necessary travel funds will be provided, if available. General legal assistance is provided at the installation to which the appellant is assigned.

2. Extent of attorney's duties.

a. Collateral attacks in civilian courts

Article 70 mandates appellate counsel to represent the accused before the military appellate courts and to "perform such other functions in connection with the review of court-martial cases as the Judge Advocate General directs." The proper review of a court-martial is set out in the Uniform Code of Military Justice and full representation of the accused does not include collateral attacks in the Federal Courts except as permitted pursuant to AR 27-40. (See B3 above).

b. Clemency petitions

At the request of the accused, appellate defense counsel may submit clemency petitions to the proper Army authority.

c. Administrative proceedings in confinement facilities

Military attorneys, assigned to the installations containing confinement facilities, have the responsibility to provide counsel to the confined accused when he is entitled to such counsel.

3. Conflict between appellate attorneys.

Divergent views between military appellate defense counsel and retained civilian counsel must be worked out in the same manner as at trial (see B2c above). Military counsel assisting the chief appellate military defense counsel must defer to the experience and professional views of the Chief Appellate Defense Counsel as an associate in a civilian law firm would defer to the senior partner. If irreconcilable differences appear, the assisting military counsel should ask to be relieved from the case. The Chief Appellate Defense Counsel has the discretion to grant this request.

REORGANIZATION OF THE JUDGE ADVOCATE GENERAL'S RESERVE PROGRAM

On January 11th of this year, the Secretary of the Army Robert F. Froehlke and General Creighton W. Abrams, Army Chief of Staff, announced a series of major reorganizational actions to be implemented during calendar year 1973. These changes are to be the framework for an extensive plan to modernize, reorient, and streamline the organization of the Army within the Continental United States (CONUS). Secretary Froehlke noted that "Our smaller Army of the 1970's depends on the Reserves for responsive support" and that we must "make drastic changes—if they will help the Reserve components." As a direct response to Secretary Froehlke's invocation, significant changes have been made in the organization and training patterns of the Army National Guard and Army Reserve Components. The plans of The Judge Advocate General to revitalize the Reserve Component Judge Advocate program are the subject of this article.

COMMAND ORGANIZATION Echoing Secretary Froehlke's emphasis upon Reserve dependence, the new CONUS structure attempts to integrate the heretofore bifurcated chain of command which characterized the previous Reserve-Active Army relationship. The Continental Army Command (CONARC) and several specialized, independent commands such as the Combat Developments Command (CDC) have been dissolved. Their responsibilities and missions have been functionally regrouped into two Major Army Commands: the Forces Command (FORSCOM) and the Training and Doctrine Command (TRADOC).

FORSCOM FORSCOM will be a single field headquarters located at Fort McPherson, Georgia, and given the mission to supervise the unit training and combat readiness of all Army units, including the Army Reserve and the Army National Guard. Under a policy of decentralization, the Major Army Sub-Commands (CONUS Armies) will be removed from the chain of command between the installation commanders of the active Army and FORSCOM. Installation commanders will be given greater authority in order to facilitate

the accomplishment of their unit training missions and will now report directly to FORSCOM.

The number of CONUS Armies will be reduced from four to three: First U. S. Army at Fort Meade, Maryland; Fifth U. S. Army at Fort Sam Houston, Texas; and Sixth U. S. Army at the Presidio of San Francisco, California. These active Army CONUSA Headquarters are responsible for ensuring the readiness of the Army Reserve and Army National Guard by close supervision of and assistance with the training of the Reserve components within their assigned geographical areas. To help accomplish this mission nine Army Readiness Regions (ARRs) are to be established as an extension of the CONUS Armies (in some places these Regions are further subdivided into groups). Within the ARR's command will be a number of traveling, functional assistance teams. These teams will contain small elements from each service branch along with other specialists who understand the readiness requirements of each Army Reserve or Army National Guard component within that ARR. An assistance team will visit every Army Reserve component regularly to lend their expertise to solving unit problems, instruct on new concepts, and monitor the developing readiness capability of each component.

In total, FORSCOM will command approximately 225,000 active military personnel and 37,000 civilians. In addition, it has the responsibility through the CONUS Armies to train and control approximately 660,000 Army Reserve and Army National Guard Personnel.

TRADOC TRADOC will be a single field headquarters located at Fort Monroe, Virginia and given the mission to direct all Army individual training and education which includes the development of better organization, materiel requirements, and doctrine. Its primary function is to concentrate on the training and education of the individual soldier, beginning with an overhauled ROTC program and carrying through almost all active Army Schools. In total, TRADOC will command a manpower source of 180,000 military personnel and 49,000 civilians.

JAG RESERVE PROGRAM In any Army organizational structure, the Judge Advocate General's Corps has always presented a special problem. Although The Judge Advocate General has always sought to establish a close professional relationship between the Corps and other Army branches, the unique training requirements of the JAG Corps has produced a necessary division. The educational needs of a Judge Advocate are so specialized that the JAG Corps has been authorized to plan and direct its own training program. For this reason, The Judge Advocate General's School which provides essentially a TRADOC function has remained outside the TRADOC chain of command and continues to be under the direct supervision of The Office of The Judge Advocate General.

Having assigned the Reserve-National Guard training mission to FORSCOM, the Army originally considered placing one or more active duty Judge Advocate officers in each ARR to be employed as members of the functional assistance teams. However, careful examination of this proposal revealed certain problems which led the Army to seek another alternative. Including both Army Reservists and Army National Guardsmen, a recent survey counted only 1842 Reserve Judge Advocate officers. Compared with the total Reserve-National Guard strength of 660,000, it became apparent that the JAG member of the travel group often would only be dealing with non-JAG officers. Secondly, due to certain peculiarities of the JAG Reserve program, many Judge Advocate Reserve officers are located in isolated Judge Advocate units. For example, 923 JAG Reservists are members of Judge Advocate General Service Organization Detachments. These detachments are functionally structured to provide expertise in a particular area of military law and are totally independent of other FORSCOM units. Not only would the ARR's Judge Advocate be required to visit these units alone, he would be given the impossible task of learning six areas of

legal expertise. And third, although physically grouped in a unit, the Judge Advocate's training needs are still more individual in nature than they are unit oriented skills. Thus the Army would be trying to supply a TRADOC service through the FORSCOM structure.

A second alternative considered was to place the JAG Reserve training mission under TRADOC, but this solution was disregarded for several reasons. Although individual education is the focal point of JAG training requirements, some instruction and assistance must be given in unit participation and administration. In addition, the Corps does not have the manpower resources to staff TJAGSA and a viable mini-school at another location with the sole function of training Reserve Judge Advocates.

The last alternative and logical choice was to give the mission of JAG Reserve training to the same installation which was responsible for the continued training of active duty Judge Advocates, The Judge Advocate General's School.

ASSISTANT COMMANDANT FOR RESERVE AFFAIRS The aforementioned factors culminated in a reorganization of The Judge Advocate General's School and the creation of the Office of the Assistant Commandant for Reserve Affairs. The Assistant Commandant, currently Lieutenant Colonel Keith A. Wagner (Phone: 804-293-7469), received the overall mission to develop and provide for a program to improve the readiness capability of the Army Reserve Component Judge Advocate General's Corps personnel. This mission has been broken down more specifically: to provide for the career management of all JAGC Reserve officers which includes providing liaison with the United States Army Reserve Component Personnel and Administration Center; to develop and administer a program of technical training; and to maintain liaison with the individual Reserve or National Guard components, the Army Readiness Region Commanders, and the CONUS Armies. To accomplish these functions, the Office has been subdivided into the Career Management Division and the Reserve Training Division.

CAREER MANAGEMENT DIVISION The Career Management Division carries forward most of the same type operations which characterized Reserve Affairs before the reorganization; its current chief is Captain Eldon D. Roberts (Phone: 804-293-7808). Principally the Division assists Army Reserve and Army National Guard Judge Advocates in the completion of branch training and meeting the other requirements for promotion and retired pay. This requires the Division to review and evaluate applications requesting the award of constructive credit in accordance with the provisions of AR 135-316. In the event of a favorable recommendation, the action paper awarding the credit is signed by the Assistant Commandant for Reserve Affairs for The Judge Advocate General.

In addition, this Division considers and acts upon the applications for appointments and transfers of those persons seeking to become Reserve component Judge Advocate officers without concurrent call to active duty. These applications include individuals desiring federal recognition in the ARNG. In the first quarter of calendar year 1973, 32 appointment and 20 branch transfer applications were processed for persons applying to the Reserve component of the Judge Advocate General's Corps and action was taken on 19 applications for federal recognition within the ARNG.

A large portion of the Division's work is generated by its responsibility for managing the Office of The Judge Advocate General, Department of the Army, mobilization designee program. This function entails processing assignment and AT orders for mobilization designees to the Office of The Judge Advocate General, The Judge Advocate General's School, the U. S. Army Judiciary, and the U. S. Army Claims Service. In total, there are 223 MOB DES Reserve positions authorized for Judge Advocate General's Corps officers within the program managed by this Division. These positions account for more than three-fourths

of the total number of MOB DES slots available to members of Judge Advocate General's Corps Reserve Components. Although the Division has no authority over the other one-quarter, it does attempt to monitor their availability.

Among the less heralded but, nonetheless, essential activities of the Division, are the filing and record maintenance responsibilities. These records inventory all Reserve component Judge Advocates describing them by name, grade, vocation, status, availability, assignment, civilian occupation, professional experience, level of training, and degree of current participation in Reserve training activities. These files are required in order to provide periodic status reports on the program for the Assistant Commandant for Reserve Affairs.

Probably the most time consuming function of this Division is to respond, on a day-to-day basis, to the steady stream of inquiries and requests for assistance from Reserve personnel throughout the country. These range from such divergent tasks as assisting a Reservist or civilian in finding a unit vacancy in a particular locale to making referrals of applications for correspondence course material and enrollment to the Division of Nonresident Training, a part of the Academic Department, which is currently headed by Colonel William S. Fulton.

RESERVE TRAINING DIVISION The Reserve Training Division of the Office of the Assistant Commandant for Reserve Affairs will assume the transferred FORSCOM mission; Lieutenant Colonel James N. McCune will serve as Division chief (Phone: 804-293-2028). The Reserve Training mission falls basically into two interrelated functional areas: providing technical instruction to all Army Reserve and Army National Guardsmen; and maintaining liaison between the Reserve Forces, the controlling ARR, and CONUS Armies.

The primary mission of this Division is to administer, as well as help the Academic Department formulate, both resident and nonresident legal training programs for Reserve component JAG officers not on active duty. Although some resident short course work has been offered in the past, the reorganization calls for more resident training and a heretofore untried program of on-site instruction. There are 366 Reserve component units and 50 state National Guard headquarters which have organic JAG personnel, but fortunately these are geographically located in 145 different cities. Two day on-site teaching programs by TJAGSA faculty members are presently scheduled to begin this fall at all 145 locations (Schedules are to be distributed as soon as available). Seventy percent of these on-site teaching locations will be visited more than twice by experts in several fields of military law.

To facilitate coordination of the different Reserve Training programs, i.e. on-site instruction, inactive duty training for JAGSO Detachments (such as working in the legal assistance office of a neighboring active installations), the USAR Schools, annual two week active duty training, and conference work; this Division will advise individual components and isolated personnel of what instruction is planned for them or available to them during the year. In this manner, it is hoped that the continuing education from TJAGSA personnel can be effectively integrated with the unit or individuals own program of self-instruction. The Division will review and consolidate after action reports from the visiting TJAGSA faculty and staff members; these will be used to prepare suggestions for improved local as well as overall Reserve readiness.

In addition to administering the teaching program, the Division is responsible for making staff liaison visits to the U. S. Army Reserve Schools, training sites, and Reserve units to help solve local administrative programs as well as to monitor the effectiveness of the ongoing educational programs and instructional material prepared by TJAGSA. Liaison visits will also be made to the CONUS Armies, the ARR's and Major Reserve Commands to give

status reports on the readiness capability of individual Reserve and National Guard components.

As a corollary to developing an overall program of JAG Reserve instruction, the Division will continue to be responsible for the development and administration of the Judge Advocate General's Reserve Component General Staff Course. This course is considered an equivalent to the Command and General Staff Course for JAG promotion purposes.

To supply the large increase in personnel required to sustain such a teaching and liaison program, The Judge Advocate General's School will be authorized six new faculty officers, two staff officers, and three civilians. These personnel are a direct transfer from the positions proposed for the functional assistance teams of the FORSCOM ARRs. One new officer will be assigned to the Division to help with staff work and one civilian will be a television technician, who will be in charge of developing new training materials to augment and replace many of the now obsolete films being used.

In summary, The Judge Advocate General through the reorganization of the Army Reserve and Army National Guard training program has attempted to establish a closer and more beneficial relationship between the Active Army Judge Advocate and his counterpart in the Reserve.

INTELLECTUAL & INDUSTRIAL PROPERTY – PATENTS

By: LTC James E. Noble, Chief, Patents Division, OTJAG

Significant events occurred in the field of industrial and intellectual property law during the past year. This short article spotlights the major events in the patents area.

One event was spiced with humor when Senator Hart on 22 March 1973 introduced S. 1321 [1] for the general reform and revision of the Patent Laws, Title 35 of the United States Code, with the following statement:

> "[I]f we were measuring the 'potential boredom rate' of various topics for conversation on a scale of 1 to 100, patents would probably get a 99."

After Senator Hart provoked industrial property lawyers and patent attorneys into wondering which subject he rated 100, and caused them to chafe at being merely 99, he salved the wound by noting that the dull and essential business at hand was a matter not only of life style and comfort for each of us, but of health, employment, and maintenance of our technical superiority. This is so because industry uses patents to protect a headstart in marketing inventions, to raise capital and to exploit inventions through patent licensing programs. The Department of the Army obtains patents for defensive purposes and to recognize employee inventors. Trademarks and copyrights may be similarly exploited.

Brisk domestic and international commerce exists in industrial property, especially in patents. Technical data (and know-how) is generally necessary to practice a patent to the best advantage and it also is valuable. The United States Government negotiates numerous cooperative research and development agreements with other countries and foreign firms. Contractor and government employee inventions are often patented and our government now owns approximately 24,000 unexpired patents. Department of the Army owns approximately 4,200 of those patents; Department of the Navy, 8,400 and Department of the Air Force, 1,800.[2]

For the above reasons, Senator Hart's bill has drawn government and industry attention. Senate 1321, if enacted into law, will substantially revise our patent system and change proceedings in the United States Patent Office by introducing a procedure for the deferred examination of patent applications, and a public counsel to participate and to argue for the public interest in what is now an *ex parte* patent application procedure. The reader

should remember that President Johnson also sent a sweeping Patent Reform Act to Congress in 1967.[3] The Reform Act led to S. 643[4] which eventually bogged down during 1971-72 when the ever present patent-antitrust controversy focused on "Federal patent law preemption" and the antitrust aspects of "patent licensing."[5]

Another concern to industrial property lawyers is the recently promulgated General Services Administration Patent Licensing Regulations.[6] Those regulations go into effect on 7 May 1973 and implement President Nixon's 1971 Patent Policy Statement. Historically, the Department of Defense military departments have granted free, nonexclusive licenses to make, use and sell their patented inventions, as have other government agencies. Following President Nixon's policy, as implemented by the GSA Regulations, exclusive licenses will be available to enhance commercial utilization of Government-owned inventions and patents. Significantly, the Regulations state "granting of nonexclusive licenses is preferable."

The rules for obtaining an exclusive license to a government patent are not complex: they provide that certain patents may be designated for exclusive licensing; that notifications of these patents be published and that the public be informed of prospective exclusive licensees. A Department of Defense Directive[7] will implement the GSA Regulations and that Directive will be further amplified in AR 27-60. Lists of Department of the Army-owned patents are being prepared for early publication in the Federal Register, Patent Office Official Gazette and in other publications.

The Patents Division in the Office of The Judge Advocate General is the agency through which the patent activities of the Department of the Army are regulated. The Patents Division is also the office of liaison with other governmental activities and departments in patent, copyright, trademark and related matters.

Inquiries about obtaining a license on Department of the Army owned patents should be directed to HQDA (DAJA-PA), Washington, D. C. 20310.

Footnotes

1. 119 CONG. REC. S. 5378 (daily ed. March 22, 1973).
2. Unpublished statistics from the Committee on Government Patent Policy.
3. S. 1042, 90th Cong., 1st Sess. (1967) and H.R. 5924, 90th Cong., 1st Sess. (1967).
4. S. 643, 92d Cong., 1st Sess. (1971).
5. The controversy centered on the Scott Amendments introduced on April 8, 1970 as Amendment No. 578 to S. 2756, 91st Cong., 2d Sess. and reintroduced as Amendment No. 23 and 24 to S. 643 on March 19, 1971.
6. Federal Property Management Regulations (Patents) 41 C.F.R. § 101-4 (1973).
7. The Directive has not been published.

SJA SPOTLIGHT – U. S. ARMY EUROPE

By: Jim Hergen, CPT, OJA, HQ USAREUR & 7th Army

The purpose of the SJA Spotlight should not be, in my opinion at least, to pat ourselves on the collective back by informing you of the good job we have been doing "over here." After all, who really cares what great things we accomplished last year or the year before? Neither should it be the purpose of these articles to emphasize those areas of our work in USAREUR which are basically the same as a Judge Advocate would perform anywhere else in the world. Therefore, I would like to devote the brief time which I am permitted to underscoring what is different about legal work in USAREUR; I would also like to look toward the future in an attempt to discern some of the trends which are likely to develop in USAREUR in the years to come. Perhaps this article will give you some insight into a few of the

novel legal problems which you might encounter when you come here on an assignment a year or two hence.

Much of the everyday work performed in the areas of Military Justice, Legal Assistance and Administrative Law is basically the same type of work you would encounter in similar jobs in CONUS, Korea or Turkey. In these areas of expertise the military legal system operate largely in a vacuum, the same basic problems arising and being disposed of in due course of business without recourse to alien influences. Peculiarities and difficulties which do arise result primarily from problems of geography or communications. What really distinguishes the functions of the USAREUR Judge Advocate from those of Judge Advocate Officers anywhere else in the world is the unique situation which results from our presence in the Federal Republic of Germany under the terms of the NATO Status of Forces Agreement (NATO SOFA) and the Supplementary Agreement thereto. Although USAREUR Judge Advocates are stationed in other NATO countries (e.g. France, Belgium, Italy, etc.) the posture of the U. S. Army in the FRG is so unique, and in such a state of continual flux, that I will direct my remarks to that country only.

Nazi Germany surrendered to the Allies on 8 May 1945. The unconditional nature of the surrender effectively terminated German sovereignty. Under these circumstances the rights of the U. S. forces were based on conquest and the terms of the surrender agreement. The Occupation Regime ended officially on 5 May 1955 with the coming into effect of the Bonn Conventions (when the NATO SOFA was signed by the original 12 members in London on 19 June 1951, Germany was still occupied and therefore was not a party). The Bonn Conventions remained in effect until 1 July 1963, at which time the NATO SOFA and the Supplementary Agreement became effective in the FRG. Today all of the rights and obligations of the U. S. Forces in the FRG are governed by the terms of these two documents together with the various Protocols and Administrative Agreements thereto. How do these 1963 Agreements work today? On balance, pretty well. Nevertheless, trying to solve a 1973 problem with a 1963 Agreement is often like trying to get into an old high school suit; you can wear it, but it looks a little funny and is strained in places.

The NATO SOFA Supplementary Agreement applies only in the FRG and is an attempt on the part of its framers to provide for the continued presence of substantial U. S. (as well as British and French) forces in the FRG while at the same time attempting to reconcile this presence with the growing independence and stability of the FRG itself. The long term continued presence of even the most friendly foreign forces can lead to friction, misunderstanding and a certain degree of outright hostility between guest and host. In this respect we have been most fortunate in maintaining generally good relations with the German people. Nevertheless, tremendous shifts in world politics, economics, ideology, communications, and emphasis have not gone unfelt by the U. S. forces in Germany. The Dollar Crisis, Chancellor Brandt's Ost Politik, MBFR, the current "belt tightening" at the White House and the views of Senators Mansfield, Proxmire and Fullbright, add a certain degree of excitement to our lives and careers here in the FRG.

The single most significant factor affecting the work of the Judge Advocate in the FRG is the extent of the physical presence of the U. S. forces. Well over a third of a million U. S.-affiliated people occupy approximately 800 installations in the FRG. This is quite a sizeable minority when you consider that the total population of the FRG is something on the order of sixty million, and that the FRG herself is only as large as the state of Oregon! Where do we train our troops? Where do we test our big weapons? Our noisy weapons? What about pollution control and conservation efforts of the FRG? How do the U. S. forces get the hugh amounts of food, clothing and equipment required for so many people? What are some of the legal problems that arise in

the areas of drug control, housing and race relations when German and U. S. interests come into conflict?

From a purely legal and financial point of view the biggest headaches that we have in the FRG at the present time are those involving real estate. When I say real estate I mean it in the broadest possible sense. After WW II the armed forces took the land and facilities which were desired. For the most part such facilities were on the outskirts of the larger German cities. Also in the days right after WW II, a not excessive number of military units were mobile—and of course the jet plane and the helicopter were not yet off the ground. As the FRG gradually recovered land values went sky high, farmers sold out to industry, and cities and "industrial parks" swallowed up military casernes. A good example of this problem is Frankfurt, headquarters for V Corps. After WW II the V Corps headquarters were well outside the main city; today, however, a German citizen is likely to have a tank or a noisy generator right next door. Local German conservation groups are pressing to prevent U. S. troops and vehicles from damaging forest and recreational areas and are fighting to keep us from increasing our demands for training areas, extensions on existing aiport runways, etc.

One of the other major problem areas involves questions of international criminal jurisdiction. When a U. S. serviceman commits a crime which is punishable both under U. S. military law and German law (a "concurrent jurisdiction" offense) and the Germans have the "primary right" to exercise jurisdiction (i.e., generally where the crime is against a German national or German property), the U. S. military authorities may dispose of the case unless the Germans demand ("recall") jurisdiction within 21 days. In the past the FRG has been very good about letting us take care of trying our own soldiers, even where the crime has been perpetrated against a German national. Recently, however, there has been evidence of an increase in the number of cases which the German prosecutors have "recalled." This trend means that increasing numbers of "our boys" are appearing before German courts; and historically the American public and the American Congress have been reluctant in the extreme to sanction widespread trials of U. S. soldiers in foreign courts. Therefore, one of the biggest single jobs which confronts USAREUR judge advocates today is to convince the German public and prosecutors that we can and will bring our U. S. soldier wrongdoers to justice. Since, in the words of Lord Macmillan, ". . . in almost every case except the very plainest, it would be possible to decide the issue either way with reasonable legal justification . . .", there are bound to be problems. If and when you get to Germany, you can be assured this will still be a hot item. If nothing else, this problem will encourage you to more carefully examine your own ideas concerning the administration of criminal justice.

NEW LITIGATION REGULATION

From: Litigation Division, OTJAG

AR 27-40, *Litigation,* and five other regulations concerning civil litigation will be published as a consolidated regulation in the near future. Its nomenclature and title will be AR 27-40, *Litigation.* The regulation consolidates AR 27-37, *Claims in Favor of the United States For Damage to or Loss or Destruction of Army Property;* AR 27-38, *Claims in Favor of the United States for the Reasonable Value of Medical Care Furnished by The Army;* AR 27-40, *Litigation—General Provisions;* AR 27-41, *Avoiding Unnecessary Litigation—Administrative Collection;* AR 27-44, *Minor Offenses Committed on Federal Reservations;* and AR 27-45, *Release of Information and Appearance of Witnesses.*

The first four chapters of the seven chapter regulation are essentially the same as Chapter 1-4 of the present AR 27-40. Chapter 5, Affirm-

ative Claims, has three Sections dealing with property claims, medical care claims, and the affirmative claims report. Chapters 6 and 7 are essentially unchanged in content from AR 27-44 and AR 27-45.

Major statements of policy resulting from reorganization of the Army and changes in existing guidelines effective 1 July 1973 are as follows:

1. When requested by the Chief, Litigation Division, OTJAG, and with the concurrence of the Department of Justice, the General Counsel, Staff Judge Advocate, or Judge Advocate of an Army activity or command, or attorneys assigned to that activity or command, are authorized to represent the Army in matters of representation of Army employees in early stages of case litigation where no United States Attorney is immediately available for such representation. Such representation is generally necessary where no United States Attorney or Assistant U. S. Attorney is available to represent an Army employee on short notice and/or the office requested is in close proximity to the tribunal concerned.

2. Chief, Regulatory Law Division, OTJAG and attorneys assigned to that division are designated to represent the Army in all regulatory matters relating to environmental controls.

3. Assertion of medical care claims based on the Federal Claims Collection Act, State workmen's compensation laws, State hospital lien laws, and control rights under terms of insurance policies, as well as the Federal Medical Care Recovery Act, are authorized.

4. Claims for property damage and medical care arising from the same incident may be investigated together but are to be asserted separately. The reason for this procedure is that the procedure for asserting property damage claims requires compliance with the Joint Claims Collection Standards of the Attorney General and the Comptroller General, 4 C.F.R. § 101, whereas medical care claims may be asserted without reference to regulations of other agencies.

5. Judge Advocates asserting property damage claims are authorized to compromise claims provided that the compromise does not reduce the claim by more than $1,000. They are also authorized to terminate collection action provided the uncollected amount of the claim does not exceed $1,000. Staff Judge Advocates have similar authority except that the jurisdictional amount is $5.000. Similar jurisdictional amounts of Staff Judge Advocates of major overseas commands remain at $10,000.

6. Recovery Judge Advocates compromise and waiver (but not on account of undue hardship) authority is increased to $5,000. Compromise and waiver authority of Staff Judge Advocates of major overseas command remains at $10,000.

7. Affirmative claims reports for medical recoveries are required on an annual basis. Reports for property claim recoveries are no longer required. The necessity of maintaining records of assertions and collections of property claims remains in effect. Requests for data from such records will be made periodically as required.

8. Area Claims authorities as set forth in proposed Appendix F, AR 27-20, are designated Recovery Judge Advocates. Area claims authorities are authorized to designate additional recovery judge advocates from Claims Processing Authorities or any other office with JAGC personnel within their area of claims responsibility. Exceptions to the area of jurisdicted will be considered when requested from HQDA (DA-JA-LT).

REPORT FROM THE U. S. ARMY JUDICIARY

ADMINISTRATIVE NOTES

a. *Reorganization of the United States Army Judiciary.* On 1 February 1973, the Contract Appeals Division, Bonds Team, and Special Actions Team from the Office of The Judge Advocate General were reassigned to the U. S. Army Judiciary, in keeping with the policy of moving "operating activities" from the Army staff to Field Operating Agencies. This move enlarged the scope of the missions and functions of the U. S. Army Judiciary and made that name inappropriate for the new organization. By General Order Number 9 from the Office of The Judge Advocate General, dated 30 March 1973, the U. S. Army Judiciary was redesignated the United States Army Legal Services Agency (USALSA). The Agency is now composed of: U. S. Army Judiciary, the elements of which are U. S. Army Court of Military Review, Office of Chief Judge, Clerk of Court (includes Special Actions Team), Trial Judiciary, and Examination and New Trials Division; Defense Appellate Division; Government Appellate Division; Contract Appeals Division; and, Administrative Office.

b. *Statistical Report of Criminal Activity and Disciplinary Infractions in the Armed Forces.* Staff Judge Advocates of commands concerned are reminded that the report (RCS DD-M(SA) 1061), for the period 1 January-30 June 1973, on the number of military personnel convicted of felonies in U. S. Federal and State courts, is due by 5 August 1973. HQDA letter, dated 30 June 1971, concerning this subject matter is under revision. It is anticipated that FORSCOM and TRADOC or the general court-martial jurisdictions will inherit the reporting responsibility of CONARC.

c. *JAG-2 (R-8) Quarterly Reports.* Staff Judge Advocates of commands having general court-martial jurisdiction should forward (via air mail) the JAG-2 Report for the period of 1 April-30 June 1973 not later than 12 July 1973, to HQDA (JAAJ-CC), Nassif Building, Falls Church, Virginia 22041. Attention is invited to the instructions set forth on page 17 of the March 1973 edition of The Army Lawyer.

RECURRING ERRORS AND IRREGULARITIES

a. *Effective Date of Deferment or Rescission of Deferment of Confinement.* The convening authority's action should include the effective date of any deferment, and rescission of the deferment, of confinement. The deferment date is essential to accurately reflect the time to be credited toward confinement served, if any, between the date of sentence and deferment. The rescission date is essential to reflect the beginning or resumption, as appropiate, of the running of the sentence to confinement. Appropriate forms and instructions may be found in Appendix 14b and c, pages A14-5 and -7, MCM, 1969 (Rev. ed.).

b. *April 1973 Corrections by ACOMR of Initial Promulgating Orders.*

(1) Failure to show a Change and its specification on which the accused had been arraigned.

(2) Failure to show amended specifications—seven cases.

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

(4) Failure to show the correct number of previous court-martial convictions that were considered—two cases.

(5) Failure to show that a plea of guilty was changed to not guilty—two cases.

(6) Failure to show the date of the ACTION—two cases.

(7) Setting forth, incorrectly, Charges and their specifications that were dismissed on motion before arraignment.

MONTHLY AVERAGE COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH JANUARY-MARCH 1973

	General CM	Special CM BCD	Special CM NON-BCD	Summary CM
ARMY-WIDE	.17	.10	1.36	.70
CONUS				
(incl ARADCOM)	.18	.10	1.56	.74
MDW	.02	.02	.07	—
First US Army	.32	.14	1.53	.91
Third US Army	.12	.08	1.81	.72
Fifth US Army	.19	.13	1.58	.98
Sixth US Army	.23	.05	1.55	.31
USARADCOM	.04	—	.76	.16
OVERSEAS	.16	.11	1.01	.63
USA Alaska	.42	.03	1.67	.42
USA Forces So. Cmd	.12	—	1.28	1.36
USAREUR	.15	.12	.99	.69
Pacific Area	.16	.10	.93	.46

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

NON-JUDICIAL PUNISHMENT MONTHLY AVERAGE AND QUARTERLY RATES PER 1000 AVERAGE STRENGTH JANUARY-FEBRUARY 1973

	Monthly Average Rates	Quarterly Rates
ARMY-WIDE	19.02	57.05
CONUS (incl ARADCOM)	19.66	58.97
MDW	3.35	10.05
First US Army	18.24	54.72
Third US Army	21.83	65.48
Fifth US Army	19.66	58.98
Sixth US Army	22.36	67.07
USARADCOM	12.46	37.37
OVERSEAS	17.91	53.72
USA Alaska	22.81	68.44
USA Forces So. Cmd	18.24	54.73
USAREUR	19.00	56.99
Pacific Area	14.64	43.92

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

MILITARY JUSTICE ITEMS

From: Military Justice Division, OTJAG

1. Article 15 Punishment — Stay Pending Appeal.

Several questions have arisen concerning the application of paragraph 3-10 of the 16 March 1973 interim message change to Army Regulation 27-10. This paragraph concerns the stay or deferment of nonjudicial punishment, other than reduction, forfeiture, or detention of pay, when a timely appeal is filed from the punishment imposed. To assist in the interpretation of this change, the following guidance is offered:

With the exception of punishments of reduction, forfeiture, or detention of pay, there is not now, nor was there before the recent change, any requirement that a member be required to start serving his punishments on the date they were imposed. A commander had discretion in this regard. However, the recent change has taken away this discretion when a timely appeal is filed. In such a case, the commander must stay the serving of any punishment, other than those mentioned above, until the appeal is completed, unless the accused requests otherwise. A commander is not required to stay the serving of any punishment until the appeal is actually filed. If part of the punishment has been served before the appeal is filed, then the remaining portion of the punishment, except those mentioned above, must be stayed until the appeal is completed, unless the accused requests otherwise. When an accused indicates a desire to appeal but needs time to prepare it, a commander may, although he is not required to, stay the serving of punishments, except those mentioned above, to allow time for preparation of the appeal. When in the interests of justice, the commander should stay the serving of such punishments for a reasonable period of time to allow the accused to prepare his appeal. In addition, a commander should not require a punishment to be served in such a way that an accused is hindered in preparing his appeal.

2. Article 137.

On 15 February 1973, the CONARC Inspector General, during the course of his inspections of schools and installations, noted

that responsible individuals were unaware of, and not complying with, Article 137 of the Uniform Code of Military Justice (10 U.S.C. 937) and paragraph 5, Army Regulation 350-212, 1 July 1972. The cited authorities require, among other things, that a course in military justice (course B) be administered "upon" or "at the time of" a serviceman's reenlistment. This clearly means that the required training must be given as close as reasonably possible to the time of reenlistment. All staff judge advocates should take appropriate action to insure compliance with this requirement.

3. Corrected Text Of Article 58a.

On the bottom line of page A2-20 of the volumes of MCM, 1969 (Revised), currently in use, quoting the text of Article 58(a), appears the phrase "in subsection (a) (1), or (3) . . . ." Read literally, this would appear to say that a sentence which as approved included confinement but not a punitive discharge or hard labor without confinement would not ultimately reduce the service member. *This is a misprint.* The official text of the statute read "in subsection (a) (1), (2), or (3), ..." Please make the correction with pen in all copies of MCM.

CLAIMS ITEMS

From: U. S. Army Claims Service, OTJAG

1. Damage or loss of motor vehicles incident to service—on the installation.

In the January 1973 issue of *The Army Lawyer* this Service attempted to formulate guidelines to aid in the adjudication of claims under paragraph 11-4*f*(4) of AR 27-20. Several questions have been raised as to how to apply the incident-to-service rule to cars which are properly parked on the installation. It was not the intent of this Service to utilize the incident-to-service rule to completely circumscribe payments under paragraph 11-4*f* (4) unless the member was performing a directly related in scope-of-service type activity. For instance, the parking of a vehicle in the PX or the other parking lot or outside of a service type function on the installation during business hours would normally be incident to the claimant's service. Where the vehicle is located, however, in a remote area of the installation or parked outside of a service type function late at night and is parked solely for the convenience of the service member, the adjudication of such a claim may, within the sound discretion of the adjudicator, be barred from payment by the incident-to-service criteria.

In summary, a car which is properly parked on the installation should be presumed to be parked incident to the claimant's service unless the application of such a presumption would be unreasonable under the particular circumstances.

2. USAREUR Claims Conference. On 5-6 April 1973 the annual USAREUR Claims Conference was held in Munich, Germany. LTC James A. Mounts presented a seminar on Adjudication and Processing of AR 27-20 Claims and Carrier Recovery. CPT Thomas DeBerry discussed NATO SOFA, Medical Care Recovery, and Property Recovery Claims. CW-2 Dieter Kohler presented a seminar on Claims Office Administration. The conference provided a forum for the sharing and solving of common problems of claims administration in Europe.

LEGAL ASSISTANCE ITEMS

From: Legal Assistance Office, OTJAG

FEDERAL INCOME TAX — COMBAT ZONE EXCLUSION FOR ACCRUED LEAVE

The Armed Forces Income Tax Council has recently received a letter ruling from the Internal Revenue Service clarifying Revenue Ruling 71-343, 1971-2 C.B. 92, on the taxability of combat zone accrued leave.

Revenue Ruling 71-343 generally provided that payments attributable to leave earned by a serviceman in a combat zone are part of compensation for active service excludable from gross income to the extent allowed by section 112 of the Code. This ruling left many issues unanswered, and accordingly, the Armed Forces Individual Income Tax Council submitted a request for clarification to IRS. In reply the Service has set forth specific guidelines to be used in implementing the original ruling. These guidelines will be incorporated in a published Revenue Ruling which is scheduled for printing and distribution on or about 23 April 1973. The content of the letter ruling dated 16 April 1973 is basically as follows:

> . . . although the use of leave by a member of the Armed Forces decreases his obligation to be present and perform services at his duty station, this does not ordinarily result in the realization of gross income to him; that is, a taxable amount in addition to his base pay or other forms of taxable compensation. The latter are affected neither by the accrual nor the use of such leave. On the other hand. the payment for accrued unused leave to a member of the Armed Forces at the time of his discharge is monetary compensation in addition to other forms of compensation . . .
>
> . . . since rights to leave accrue by reason of active service, if payments for unused accrued leave made at the time of discharge from the service are designated . . . as being attributable to unused leave accrued during a period of active service for a month or months during any part of each of which a member in the Armed Forces of the United States served in a combat zone, first, in the case of a member below the grade of commissioned officer, such *payments* are excludable from his gross income, and second, in the case of a commissioned officer, such *payments* are excludable from his gross income to the extent that the limited exclusion provided by section 112(b) of the Code has not been previously exhausted by exclusions from income under the same section relating to the same period of service. Of course, under section 112(b) of the Code, to the extent the *payment* for unused leave of an officer is attributable to leave accrued for any month during any part of which he was in a missing status during the Vietnam conflict as a result of such conflict, the exclusion is not limited. (emphasis added)

Some specific examples furnished as clarification are as follows:

a. Enlisted member *uses* combat zone leave in a month in which he does not serve in a combat zone—No exclusion.

b. Enlisted member *uses* combat zone leave in a month in which he serves in combat zone —Exclusion.

c. Enlisted member gets advance leave and then earns leave to cover it in a combat zone—see examples a and b above with respect to the exclusion or non-exclusion.

d. Enlisted member is advanced in rate between date of earning leave and being reimbursed. The exclusion is not limited to rate of pay at the date earned.

e. Enlisted member is *paid cash* for his unused combat leave at the date of separation—Exclusion.

f. Commissioned officer *uses* combat zone leave in a month in which he does not serve in a combat zone—No exclusion.

g. Commissioned officer *uses* combat zone leave in a month in which he serves in a combat zone—exclusion of $500 per month applies to the total compensation for month in which leave is utilized. Since all commissioned of-

ficers presently receive in excess of $500 per month, no additional exclusion would attach.

h. Commissioned officer is *paid* lump sum for combat zone leave at date of his separation—exclusion for the month of separation is limited to any balance of the $500 per month exclusion not previously used. Since all commissioned officers presently receive in excess of $500 per month, generally no additional exclusion would attach.

Personnel who received cash settlements for combat accrued leave in 1970 and thereafter may file amended tax returns to claim the exclusion if they have not already done so. With respect to those servicemen who have already filed an amended return and received payment for combat zone accrued leave, it should be pointed out that section 7805(b) of the Code and the regulations thereunder specifically provide that rulings are retroactively applied. Accordingly, (a) if a refund has already been based on Revenue Ruling 71-343, (b) in light of the new Revenue Ruling such refund should not have been made, and (c) the Statute of Limitations has not expired with respect to the year for which the refund has been made, then the serviceman should amend his return including as income those amounts which were previously erroneously excluded as combat zone compensation.

As this ruling obviously affects many service personnel still on active duty, it is requested that all local legal assistance officers make this information available to their command.

JAG SCHOOL NOTES

1. Basic Class Graduation. Graduation of the 68th Basic Class brought to 292 the number of newly commissioned JAGC officers who attended basic courses of instruction in FY 73. Major General Harold Parker, Assistant Judge Advocate General gave the graduation address.

2. Advanced Class Graduation. Assistant Secretary of the Army Hadiai A. Hull gave the graduation address to the 21st Advanced Class on 1 June at Newcomb Hall Auditorium. The 42 members of the class included: LTC Leon Ridao of the Philippine Army, Squadron Leader Sheikh M. Anwar of the Pakistain Air Force, Major Fereydoon Tehrani of the Iranian Army; three marines, including one lady, CPT Eileen Albertson; one Navy officer and 34 Army JAGC officers. Assisting in the graduation ceremonies were: Air Vice Marshal Eric G. Hall, S.Pk., S.J., p.s.a., COL Pedro C. Pille of the Philippines, Brigadier General Lewis Mann of the USMC and representing the U. S. Navy, Constantine A. Konopisos.

3. Departures. TJAGSA will miss the services of division chiefs, LTC Hugh Overholt, Chief of Criminal Law, LTC Dave Fontanella, Chief of Civil Law and MAJ (P) Jim Coker, Chief of International and Comparative Law, as they depart for new assignments. LTC George Russell will replace LTC Overholt. MAJ(P) Dulany O'Roark has been assigned Chief of Civil Law and MAJ Jim McGowan will step up as Chief of ICL. MAJ Jim Endicott will be replaced as Director of Nonresident Instruction by LTC(P) Darrell Peck.

4. Dining In. TJAGSA held a formal Dining In at the Boar's Head as the close of the academic year social event. Guests included General Robert Parter, Ret., MAG George Prugh, TJAG, BG Bruce Babbitt, Asst. TJAG, Col. Robert Dyer, Commander of FSTC and Col Ken Holliday representing Navy TJAG.

5. DA Pam 27-14. Legal Guide for The Soldier, DA Pam 27-14 written at TJAGSA has been printed and is ready for world-wide distribution.

PERSONNEL SECTION

From: PP&TO

1. RETIREMENTS. On behalf of the Corps, we offer our best wishes to the future to Colonel Jack Norton who retired 30 April 1973.

2. PROMOTIONS. Congratulations to the following officers who have been selected for promotion to colonel, AUS:

Alley, Wayne E.
Dribben, Charles P.
Dorsey, Frank J.
Hawley, Richard S.
McNealy, Richard K.
Noble, James E.
O'Donnell, Matthew B.
Peck, Darrell L.
Schiesser, Charles W.

To lieutenant colonel, AUS:

Coker, James R.
Hoff, Charles G.
Kenny, Peter J.
McKay, William P.
Mowry, Richard E.
Mullins, Jack
Musil, Louis F.
O'Roark, Del
Simon, Ernest A.
Suter, Bill
Witt, Jerry V.

To the following Warrant Officers selected for promotion to W-4:

Brochu, Raymond T.
Koceja, Daniel P.

and the following Warrant Officers selected for promotion to W-3:

Mannix, Richard M.
Reca, James J.
Ramsey, Alzie E. Jr.

3. ORDERS REQUESTED AS INDICATED:

COLONELS

NAME	*FROM*	*TO*
BEDNAR, Richard J.	USAWC	OTJAG Wash DC
CLAUSEN, Hugh J.	OTJAG, Wash DC	HQ III Corps, Texas
COOK, Peter H.	Sixth US Army	Germany
CULPEPPER, Vernon	Ft Lewis, Wash	First US Army, Balto, Md.
HALL, Rupert P.	Thailand	Ft Lewis, Wash
McNEIL, Darrell O.	Ft Belvoir, Va	Ft Leonard Wood, Mo
MEENGS, Philip G.	Okinawa	Oft Insp Gen, Wash DC
NEINAST, William	USAWC	OTJAG, Wash DC
WATSON, Henry Jr.	Ft Leonard Wood, Mo	MTMTS, Wash DC
ZEIGLER, William	USAWC	Okinawa

LIEUTENANT COLONELS

DORSEY, Robert G.	Europe	MTMTS, Oakland, Ca.
PECK, Darrell L.	Europe	S-F, TJAGSA, Charltsvl, Va.
KANE, Peter J.	C&GSC Ft Leavenworth, Kansas	HQ US Sup Cmd, Hawaii
KELLEY, Oliver	Korea	USA Leg Svc Agcy, w/sta Ft Hood, Texas
PIOTROWSKI, Leonard	Europe	USA Leg Svc Agcy, w/sta Kaiserlautern, Germany
SHERWOOD, John T.	Army Leg Svc Agcy, w/sta Germany	USASTRATCOM, Europe

CAPTAINS

BENDER, John F.	Ft Ord, California	Europe
BOUCHARD, Robert	Korea	Europe
BOYAKI, Walter L.	Ft Eustis, Va.	USA Air Def Center, Ft Bliss, Texas

CAPTAINS—Continued

NAME	*FROM*	*TO*
BURGEE, Michael B.	Ft Jackson, S.C.	UASA, Vint Hills, Va.
COOPER, Thomas R.	USA Phys Dis Agcy, w/sta Phys Eval Bd. Ft Gordon, Ga	Inst of Pathology, WRAMC
COPPENRATH, Gerald	Ft Monmouth, N.J.	Ft Devens, Mass
FINNEGAN, Richard	Inst of Pathology, Wash DC	Europe
MORLOCK, Frank J.	US Armed Force Inst of Pathology	OTJAG, Wash DC
HAGAN, William R.	Ft Hood, Texas	82d Abn Div, Ft Bragg, N.C.
HARGARTEN, James	Europe	Presidio of S. F. Calif
HOUSE, George W.	TJAGSA, Charltsvl, Va.	Europe
HOWAT, Bruce B., Jr.	Ammunition Proc Sup Cmd Joliet Arsenal, Ill	Recruiting Cmd, Ft Sheridan, Ill
JOHNS, Richard B.	Korea	Europe
JOHNSON, Jay S.	Fitzsimons Gen Hosp, Texas	Inst of Pathology, Wash DC
KRIEGER, Paul T.	First A, Ft G. G. Meade, Md	Ft Gordon, Ga
LEDERER, Fredrick	USA Sch & Tng Cen, Ft Gordon, Ga	S-F, TJAGSA, Charltsvl, Va.
MARTY, Kenneth	Europe	Ft Buchanan, PR
MASON, Steven A.	Europe	Ft Monmouth, N.J.
McCOMBS, Don W.	Discipl Bks, Ft Leavenworth, Kansas	USA Gar, Ft Leavenworth, Kansas
McGOWAN, William	Korea	USA Phys Dis Agcy, Fort Sam Houston, Texas
MOORE, Carl G., Jr.	Armor Ctr, Ft Knox, Ky	Europe
MUELLER, George W.	Korea	Fort Carson, Colo
PABST, John A.	Ft Belvoir, Va.	OTJAG, Wash DC
RODLI, Keith	Desert Test Center, Utah	Ft Ord, California
STRASSBURG, Thomas	Ft Lewis, Washington	Univ of Mich Law School

WARRANT OFFICERS

JUST, Dale F.	Europe	Ft Hood, Texas
KANE, Roger C.	Ft Ord, California	USAMED Health Svc Agcy, Ft Sam Houston, Texas
YOUNG, Seburn V.	Presidio of S. F. California	Stu Det 1st USA w/sta Cumberland County College, Vineland, N.J.

4. Congratulations to the following who have received rewards as indicated:

Col. Hugh J Clausen	Legion of Merit (1st OLC)	Jul 71-Jul 73
Col. Reid W. Kennedy	Legion of Merit	Jul 67-Feb 73
Maj. Howard H. Hougen	Army Comd Medal (1st OLC)	Sep 68-Feb 73
Maj. John F. Naughton	Jt Svc Comd Medal	Dec 72-Mar 73
Cpt. Joseph V. Aprile	Army Comd Medal	Aug 70-May 73
Cpt. Kenneth Bernhard	Army Comd Medal	Dec 70-Aug 72
Cpt. George Finkelstein	Army Comd Medal (2d OLC)	Dec 71-May 73
Cpt. Norman L. Goldberg	Army Comd Medal (1st OLC)	May 71-May 73
Cpt. John H. Hammond, Jr.	Army Comd Medal	Jul 69-Apr 73
Cpt. Denis F. Hynes	Army Comd Medal (2d OLC)	Sep 71-Apr 73
Cpt. Myron E. Ropella	Army Comd Medal	Apr 67-Mar 73
Cpt. Anthony Thaxton	Army Comd Medal (1st OLC)	Jan 71-Jun 73

5. Authorization for Warrant Officers, MOS 713A

a. As the active duty strength of the Army continues to decline, it is imperative that each staff judge advocate take all necessary actions to secure and retain those positions authorized for his organization.

b. Paragraph 3-3e, Ch 4, AR 570-2, dtd 24 Aug 71 is quoted: "One warrant officer legal administrative assistant position is authorized each headquarters exercising general court-martial jurisdiction."

c. There are presently 128 general court-martial jurisdictions in the Army. Of these,

only 42 are authorized a legal administrative technician; one special court-martial jurisdiction is authorized a warrant officer, MOS 713A. The Judge Advocate General's Corps over-all authorization for MOS 713A is now projected to be 54 for the end of FY 73 and is expected to decrease by the end of FY 74. This downward trend in the number of legal administrative technicians must be stopped if we are to retain a sufficient number of our highly qualified legal administrative technicians to perform our mission.

d. With the dwindling of the number of warrant officers authorized the number of warrants assigned also shrinks. Thus, those units having warrant officers presently assigned who do not have authorizations therefor, will not receive replacements when the incumbent is reassigned. Further, warrants in unassigned positions will be moved to authorized slots.

e. All general court-martial staff judge advocates are asked to insure that they do not lose their 713A authorizations and those who do not have authorizations should take necessary action to procure them for their organizations.

f. Warrant Officer Applications: OTJAG has on hand over two dozen applications for appointment as warrant officer (legal administrative technician, MOS 713A). TAG closed the 713A field. Applications submitted after 15 April 1973 will be returned without action (DA MSG dtd 161347 Apr 73). Applications which are at OTJAG will be considered by a board of officers in the near future to determine those best qualified for appointment. The top ten applicants will be placed on a waiting list and the remainder of the applications will be returned. All personnel who have applied and have not previously been notified of their status should forward any additional material they desire considered by the board.

The outlook for appointment to warrant officer MOS 713A is not favorable. The end FY 74 authorized strength is 54 but 59 warrant officers (MOS 713A) will be on active duty on 30 June 1973.

6. UNIT OF CHOICE ENLISTMENT TO BECOME A LEGAL CLERK.

Recently Dianne Wilder of Marshalltown, Iowa, was the 9,999th individual sworn in under the Fourth Infantry Division Unit of Choice Enlistment Program. This 18-year-old high school senior is the president of her chapter of the National Honor Society. She enlisted to become a legal clerk at Fort Carson.

7. ATTORNEY POSITIONS:

GS-905-13 (General Attorney (Contract))
HQ 8th US Army

Office of the General Counsel

USA Korea Procurement Agency

APO S. F. 96301

All interested persons please submit Std Form 171 to The Personnel, Plans and Training Office, Office of The Judge Advocate General, Washington, D. C. 20310

GS-12 (Attorney-General)
Corps of Engineers

Detroit, Michigan

All interested persons should contact Mr. Shapiro, 313-226-6821. This position must be filled by 1 July 1973.

8. Goldwater Bill For Law School At Government Expense. Senator Goldwater recently introduced a bill to amend Title 10, United States Code, to authorize the detail of commissioned officers of the military departments as students at law schools. Citing the critical need for career military attorneys, the bill envisions sending regular line officers, not above the grade of captain, with from 2 to 6 years of service to civilian law schools. A maximum of 25 officers from each service could enter the program each year. For each year of training, the officer would incur an additional year of obligated service.

CURRENT MATERIALS OF INTEREST

Courses

TJAGSA Courses—Corrections. The 57th Procurement Attorney Course will meet from 3-14 Dec. 1973. The 1st Reserve Senior Officers Legal Orientation Course will be held from 5-7 Dec. 1973. The Service School Legal Instructors Conference will be held 27-28 Nov. 1973 and the U.S. Army Reserve Judge Advocate Conference will be 15-17 Nov. 1973.

Articles

Grove, "Estate Work—A Happy Hunting Ground for the Paralegal," 19 The Practical Lawyer 73 (March 1973). This article discusses the role of the paralegal in estate work and will be of interest to legal assistance offices.

"Three Views—Reforming Military Justice" Army, April 1973. These three articles discuss current ideas concerning reform of the military justice system, including the task force report and Senator Bayh's proposed legislation.

"The Federal Medical Care Recovery Act: A Case Study for the Creation of Federal Common Law," 18 Villanova L. Rev. 353 (1973). This article examines the history and current operation of the FMCRA.

By Order of the Secretary of the Army:

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

Official:

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

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