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**Gifts, Coercion, and Improper
Use of Government Assets**

*A Message from The Judge Advocate General
to Staff and Command Judge Advocates*

MAJOR GENERAL ALTON H. HARVEY
*The Judge Advocate General
United States Army*

Table of Contents

| | |
|---|-----------|
| Gifts, Coercion, and Improper Use of Government Assets | 1 |
| A Properly Convened Court—the Third Leg of the Jurisdictional Tripod | 3 |
| McCarty v. McCarty: What does the Future Hold? | 12 |
| The School of the Soldier: Remedial Training or Prohibited Punishment? | 17 |
| TJAG'S Note on Enlisted Training | 21 |
| From the Desk of the Sergeant Major | 21 |
| A Matter of Record | 24 |
| Criminal Law News | 25 |
| Legal Assistance Items | 25 |
| Administrative and Civil Law Section | 27 |
| Reserve Affairs Items | 28 |
| CLE News | 30 |
| Current Materials of Interest | 34 |

1. A recent Department of the Army investigation highlighted the problems which may arise when commands fail to enforce the limitations applicable to the acceptance of gifts by superiors from subordinates and the use of Government assets for unofficial purposes. The investigation also surfaced problems arising from the use of coercive methods on behalf of fund-raising or membership campaigns of private groups. This letter provides general guidance so that future problems can be avoided.

2. Generally, Department of the Army personnel may not solicit a contribution from other DOD personnel for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift or contribution from other DOD personnel subordinate to themselves (para 2-3, AR 600-50). However, an exception to this policy permits truly voluntary gifts of nominal value or contributions of minimal value on "special occasions" such as marriage, transfer, illness, or retirement.

Any gift acquired with such contributions must not exceed a nominal value.

a. Whether a gift is truly voluntary depends upon the facts involved. Collection methods such as making individual assessments, using lists of contributors or noncontributors for purposes other than accounting for funds, and making repetitious requests for donations would all be indicative of involuntary contributions or gifts.

b. Gifts of nominal value are those of a sentimental nature, with little or no intrinsic value to anyone other than the recipient. Intrinsic value is determined by the essential nature of the gift. While inexpensive plaques or trays normally would be permissible, items such as pistols, shotguns, gun cabinets, coffee tables, or silver service sets would be improper.

3. It is improper to use or allow the use (either directly or indirectly) of Government property, facilities, or manpower in the manufacture or preparation of gifts for DOD personnel and their dependents (para 2-4, AR 600-50). This prohibition would preclude the use of the installation carpentry shop, training aids facility, or self-service supply center in the fabrication of gifts for "special

occasions." It also applied even though "scrap" material is used, or a private organization (flower and cup fund) or an individual supplies the material. On the other hand, because this prohibition is aimed at insuring that appropriated funds are used in a manner and for the purpose for which intended, there would be no objection to a skilled volunteer who is an eligible patron occasionally using off-duty time to prepare a gift such as a wood plaque while utilizing the installation Morale Support Activity craft shop.

4. Commands should ensure that Department of the Army policy is followed in supporting the activities, membership efforts, and fundraising campaigns of various private associations which are recognized as beneficial to the Department of the Army.

a. Membership in such organizations must be truly voluntary. Practices that involve or give the appearance of involving compulsion, coercion, influence, or reprisal must be avoided. This prohibition includes the following: repeated orientations, meetings, or similar methods of counseling personnel who have chosen not to join; using membership statistics in support of supervisory influence (e.g., comparing units on the basis of percentage of membership in a particular private associa-

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tion); and compilation of by-name lists of non-members.

b. Commands also must avoid all activities that involve or imply Department of the Army sponsorship of such organizations or their activities. For example, it would be improper for a commanding general to send an official letter to the command which states that he or the Army endorses a certain private association. However, commanders are permitted to use reasonable efforts to inform or encourage personnel, without coercion, regarding the benefits and worthiness of such organizations (para 5-22, AR 600-20).

c. Department of the Army policy concerning official support of fund-raising activities is specified in AR 600-29, *Fund Raising Within the Department of the Army* and AR 360-61, *Community Relations*.

5. While certain private organizations, such as wives clubs, may be authorized to operate on Department of the Army installations, official support to such organizations is generally limited to providing meeting space. AR 210-1, *Private Organizations on Department*

of the Army Installations, should be consulted before furnishing other items of logistical support. Informal unorganized groups, such as senior officers' wives coffee circles, which lack formal authorization to operate on installations, generally are not authorized to receive logistical support. Individual members of such a group may, of course, arrange for meeting space at an Army club facility.

6. Commanders recently were urged by HQDA to seek the advice and assistance of their staff judge advocates to ensure that all actions taken by them involving gifts, use of Government assets, and support to private organizations' membership campaigns and fund-raising activities are in accordance with governing policies. I am confident that all staff judge advocates will be alert for potential problems in this area and swift to provide expert guidance and assistance.

ALTON H. HARVEY
Major General, USA
The Judge Advocate General

A Properly Convened Court— the Third Leg of The Jurisdictional Tripod

by Major Jonathan P. Tomes, JAGC, Military Judge (SPCM)
1st Judicial Circuit, Fort Campbell, Kentucky

It is 1620 hours at Fort Blank, Missouri. You lean back in your chair and relax, congratulating yourself on surviving your first day as acting SJA. Suddenly, the chief of military justice appears outside your door. You bid him enter. "Sir, we have a problem," he begins, "We need to change some of the personnel for the trial of Sergeant Stonewall—the trainee abuse case—it starts at 0800 tomorrow." You realize, with a sinking feeling, that the case is a general court-martial, with a lot of command interest, and that you may have to contact Major General Hardcore, the

General Court-martial Convening Authority. "What personnel?" you demand. "Sir, we just found out that six of the nine members read the Article 32 Investigation report, the accused wants enlisted members, the trial counsel was just put on 72 hours quarters, the military judge from Fort Smith isn't coming and our judge has cancelled his leave to try the case, and the court reporter has just lost her voice and can't talk into her stenomask."

"Is that all?"

"Yes, Sir.

"Good, I was afraid we might have to change the accused," you quip while mentally cringing at hitting General Hardcore with all these changes. "Do you have suggested replacements for all these people?"

"Yes, Sir, I suggest we use the other GCM panel which is composed of eight officers, excuse Lieutenant Colonel Jones who is scheduled to depart on temporary duty, and add on five enlisted persons from the panel General Hardcore previously selected. Captain Rabid is prepared to take over the prosecution, and Specialist Motormouth can be the reporter."

"Sounds good," you reply, while dialing the General's aide. "Hello, Lieutenant Strack, this is the acting SJA. I need to have the General approve some changes for the case of Sergeant Stonewall tomorrow. He's up flying now? Well, can you contact him and get him to approve changing the court from panel A to panel B, approve the addition of five enlisted members from the EM panel he previously selected, and change the judge and trial counsel to our judge and Captain Rabid? Thank you."

An hour later you receive a message from the General, "Do it!" You notify the chief of justice and gratefully go home. Upon arriving at your quarters you remember that you forgot to ask to have LTC Jones excused. In a haze of fatigue, you decide that his command, "Do it!" is a delegation of authority to excuse members as needed to get the proper percentage of enlisted members vis-a-vis officer personnel on the panel.

Such situations, albeit not so exaggerated, were probably fairly common in busy general courts-martial jurisdiction,¹ at least before the renewed emphasis paid to this area of late by the United States Court of Military Appeals.

¹ United States v. Ryan 5 M.J. 97, 98-100 (C.M.A. 1978) (picking enlisted members from preselected list); United States v. Newcomb, 5 M.J. 4 (C.M.A. 1978) (deputy staff judge advocate and assistant adjutant general substituted counsel and military judge without personal detail by the convening authority).

As courts-martial are *ad hoc* tribunals, created by convening authorities, under authority derived from the Executive Power,² provided by Congress for the President as Commander-in-Chief,³ and not Article III Courts,⁴ they must be properly convened to have jurisdiction.⁵ Thus, for a court-martial to have jurisdiction, a proper convening authority⁶ must both *properly* constitute the court and refer the charges to it. If he does not do so the court has no jurisdiction and its proceedings are a nullity.⁷

² U.S.CONST. art. I, §8.

³ W. Winthrop, *Military Law and Precedents* 49 (2d ed. 1896 reprint). Congress has delegated its power to convene courts-martial to the President, the service secretaries and commanders, *Uniform Code of Military Justice* arts. 22-24, 10 U.S.C. § 822-824 (1976). [hereinafter cited as U.C.M.J.].

⁴ *Dynes v. Hoover*, 61 U.S. (20 How.) 65 (1850); *Ex parte Vallanighan*, 68 U.S. (1 Wall.) 243 (1864).

⁵ *Manual for Courts-Martial, United States*, 1969 (Rev. ed.), para. 8 [hereinafter cited as MCM, 1969].

⁶ U.C.M.J. arts. 22-24, 10 U.S.C. §§ 822-824 (1970).

⁷ *United States v. Bunting*, 4 C.M.A. 84, 15 C.M.R. 84 (1954); *United States v. Harnish*, 12 C.M.A. 443, 31 C.M.R. 29 (1961).

This practice of convening—causing to assemble—courts-martial is not a recent one. At least as early as 1621, Gustavus Adolphus ordained that there would be two courts, a high court for the entire army and a lower court for each regiment, and specified what officers would constitute these courts. See Articles 138-143, 147-149, and 156, *Code of Articles of King Gustavus Adolphus of Sweden* (1621), translated and printed in Ward's *Animadversions of Warre*, London, 1639, reprinted in W. Winthrop, *supra* note 3, at 907.

The American *Articles of War of 1775*, enacted June 30, 1775, reprinted W. Winthrop, *supra* note 3, at 953, speak of "assembling" members. See W. Winthrop, *supra*, at articles XXXIII, XXXIV, XXXVIII, XXXIX. The *Articles of War of 1786*, enacted May 31, 1786, contain the first American use of the word "appoint":

Art. 3. Every officer commanding a regiment or corps may appoint his own regiment or corps, courts-martial, to consist of 3 commissioned officers

Article 25, Uniform Code of Military Justice⁸ specifies that "When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty . . ." Articles 26-29, U.C.M.J. provide for detailing a military judge, counsel, reporters and for absent and additional members.⁹ This statutory mandate is amplified by paragraphs 36-49 of the Manual for Courts-Martial, United States, 1969 (Revised). Ever since the adoption of the Uniform Code of Military Justice¹⁰ appellate courts have required that courts-martial must be "convened strictly in accordance with the statute."¹¹ Thus, for a court-martial to have jurisdiction, the convening authority must properly detail all essential personnel.¹²

The requirement that the convening authority's detail be proper requires, *inter alia*, that it be personal.¹³ Thus, a convening au-

thority's power to appoint a court-martial is non-delegable.¹⁴ The convening authority must personally select all essential personnel. This does not mean, however, that he must do so unassisted. There is no prohibition against the use of staff assistance in the selection of court-martial personnel.¹⁵ But it must ultimately be the convening authority's decision, "regardless of who played what role in helping him make that decision."¹⁶

Examples of proper assistance include: Members were selected by the convening authority from lists furnished by the adjutant general. The prospective members had been chosen at random from personnel rosters;¹⁷

Reprinted in *W. Winthrop, supra* note 3, at 972.

Prior to 1969, a court was "convened" when the parties were sworn at trial. In the revised *Manual for Courts-Martial, United States, 1969*, the term "assembly" was substituted for this point in the trial (para. 61j), and the term "convene" was reserved to signify the establishment of a court-martial by the order of a convening authority. See *United States v. Saunders*, 6 M.J. 731 n. 1 (A.C.M.R. 1978).

⁸ 10 U.S.C. §825 (1970).

⁹ 10 U.S.C. §§827-29 (1970).

¹⁰ Act of May 5, 1950, 64 Stat. 108, codified at 50 U.S.C. §801 *et. seq.* (1976).

¹¹ *United States v. Emerson*, 1 C.M.A. 43, 45, 1 C.M.R. 43, 45 (1951). Thus, in *McClaghry v. Deming*, 186 U.S. 49, 62 (1902), the Court stated,

A court-martial is a creature of statute, and, as a body or tribunal, it must be convened and constituted in entire conformity with the provisions of the statute, or else it is without jurisdiction—and its verdict therefore, a nullity.

¹² *United States v. Moore*, 1 C.M.R. 456 (N.C.M. 1951) (failure to appoint defense counsel).

¹³ *United States v. Newcomb*, 5 M.J. 4 (C.M.A. 1978); *United States v. Ryan*, 5 M.J. 97 (C.M.A. 1978). Of course, even a personal detail may be improper if an improper selection procedure is used in violation of

Article 25, U.C.M.J. For example, the convening authority cannot detail witnesses for the prosecution, accusers, investigating officers or counsel to the court, art. 25(d)(2), U.C.M.J. See also MCM, 1969, para 4b. In addition while Article 25, U.C.M.J. gives the convening authority broad discretion in selecting members who are best qualified, it does not contemplate the blanket exclusion of qualified, it does not contemplate the blanket exclusion of qualified court members based on rank or other criteria unrelated to the statutory qualifications (*e.g.*, sex, race, *etc.*) *United States v. Crawford*, 15 C.M.A. 31, 35 C.M.R. 3 (1964); *United States v. Daigle*, 23 C.M.A. 516, 50 C.M.R. 655 (1975). In *United States v. Hedges*, 11 C.M.A. 642, 29 C.M.R. 458 (1960), the Court found a court improperly constituted when it was composed of law enforcement officers. While an accused had no right to be tried by a particular court, the selection process cannot be unfairly weighed against him. See Hansen, *Judicial Functions for the Commander*, 41 MIL. L. REV. 1, 20-35 (1968); Brookshire, *Juror Selection under the Uniform Code of Military Justice: Fact and Fiction*. 58 MIL. L. REV. 71 (1972).

¹⁴ MCM, 1969, para. 5a(5); Army Reg. No. 27-10, Legal Services: Military Justice, paras. 12-2, 12-4c(1) (C3, 1 Aug. 1969) [hereinafter cited as AR 27-10]; *United States v. Bunting*, 4 C.M.A. 84, 15 C.M.R. 84 (1954); *United States v. Allen*, 5 C.M.A. 626, 18 C.M.R. 250 (1955); *United States v. Newcomb, supra* note 1; *United States v. Ryan, supra* note 1; *W. Winthrop, supra* note 3 at 67.

¹⁵ *United States v. Kemp*, 22 C.M.A. 52, 46 C.M.R. 152 (1973); *United States v. Newcomb, supra* note 1.

¹⁶ *United States v. Newcomb, supra* note 1.

¹⁷ *United States v. Allen*, 5 C.M.A. 626, 18 C.M.R. 250 (1955).

nominees from various commands were divided into two panels by the staff judge advocate and submitted to the convening authority;¹⁸ assistant chief of staff for personnel furnished, pursuant to instructions, a randomly selected list consisting of two lieutenant colonels, three majors and two company grade officers. The convening authority personally selected all seven officers submitted.¹⁹ In this case, the defense urged that in reality the staff member selected the court without any guidance as to the standards enunciated by Article 25, U.C.M.J.²⁰ and the convening authority merely ratified that selection. The Court of Military Appeals relied on indications that the convening authority followed the mandate of Article 25 in approving the panel in holding that it was properly and personally selected by the convening authority. It would be prudent, therefore, for staff judge advocates to have some indicia that the standards of Article 25, U.C.M.J. were followed by the convening authority on the documents by him or her to select a court.

The recent case of *United States v. Ryan*²¹ tells us that it is not enough for the Convening Authority personally to select the members. He must determine the precise membership of the court by specifically referring an accused's case to a specific court-martial convening order, which, of course, would have the members listed thereon. Of special import here is the Court of Military Appeals' ruling that the fact that the accused was tried by military judge alone could not cure this defect in convening the court:

... [T]he proper inquiry is whether the jurisdiction of the court survived the defect in the appointment of the members so as to have permitted the judge to proceed alone. We think not.²²

¹⁸ *United States v. Rice*, 3 M.J. 1094 (N.C.M.R. 1977).

¹⁹ *United States v. Kemp*, *supra* note 19.

²⁰ See n. 12, *supra*, and accompanying text.

²¹ 5 M.J. 97 (C.M.A. 1978).

²² *Id.*, at 101.

The court concluded that as a court-martial is a creature of the order which convenes it, it cannot exist where that order is negated by a fundamental defect. Although the Court noted that a convening order could properly create a court consisting of a judge alone if the procedural requirements of Article 16(1)(B), U.C.M.J. were met,²³ the fact that the accused was tried by judge alone could not cure this failure of the convening authority. Although one may agree with Chief Judge Fletcher's dissent in *Ryan*,²⁴ that the convening authority is only required to personally select the most eligible prospective jurors by the language of Article 25(d)(2), U.C.M.J.,²⁵ not to determine the precise membership of the court, it appears that the convening authority cannot delegate his authority to personally determine the composition of the court that will try the accused.

Thus, the convening authority must not only personally make the initial selection of court members, he must also refer each accused's case to a specific court-martial convening order which would, of necessity, contain the names of the members detailed to the court convened thereby. And, if the composition of the court must be changed, as where the accused requests enlisted personnel on

²³ 10 U.S.C. § 816(1)(B) (1976). The statute requires that the accused, knowing of the identity of the military judge, and after consultation with his counsel, may request trial by judge alone, in writing, before the court is assembled. If the military judge, after assuring himself that the request was "understandingly" made by the accused, MCM, 1969, para. 53d(2)(b) (C1, Jan. 27, 1975), approves the request, the court may consist of the military judge alone.

But see *United States v. Sayers*, 20 C.M.A. 462, 43 C.M.R. 302 (1971) which states that as trial by military judge alone is an option only open to the accused, and is an option with which the convening authority cannot interfere, a court cannot be convened consisting of a judge alone. When the accused so chooses he consents to the absence of members, but they must have been appointed.

²⁴ *Supra* note 1, at 102.

²⁵ See n. 12 and accompanying text.

the court,²⁶ the convening authority must again personally detail the additional members. Thus, in our hypothetical situation, Major General Hardcore's order to "Do it!" would result in an improper delegation of his duty to personally determine the exact membership of the court. Although he had properly preselected a panel of enlisted persons to be utilized when requested by enlisted accuseds he must personally select those to be added to the officer panel detailed by the convening order to which the particular case was referred.²⁷ Thus, the court-martial of Sergeant Stonewall was jurisdictionally defective.

Obviously, then, the convening authority has to personally select the precise members of an accused's court. Does he have to personally excuse members? Since, as we have seen, the composition of a court-martial must be determined by the convening authority to avoid jurisdictional error, one would expect the same result when someone else excuses members. Paragraph 37b, MCM, mandates that no member of a court-martial may be absent or excused after assembly except for physical disability, if challenged, or by order of the convening authority for good cause.²⁸ Before assembly, the decision to excuse members rests solely within the sound discretion of the convening authority.²⁹

²⁶ U.C.M.J. art. 25(c)(1), 10 U.S.C. § 825(c)(1) (1976).

²⁷ It does appear, however, that when the convening authority properly convenes a court-martial "to try such persons as may properly be brought before it." (See MCM, 1969, appendix 4, at A4-1), a successor convening authority may refer an accused's case to the court-martial appointed thereby. In *U.S. v. Richardson*, 5 M.J. 627 (A.C.M.R. 1978), the U.S. Army Court of Military Review found that the successor convening authority's acts of endorsing the charge sheet and ordering amendment of the court-martial convening order amounted to a ratification of the initial selection of the members and consequently was a personal adoption thereof.

²⁸ See also MCM, 1969, *supra* note 3, para. 41c and d.

²⁹ MCM, 1969, paras. 4d, 41d(3). See *United States v. Cross*, 50 C.M.R. 501, 502 (A.C.M.R. 1975).

In *United States v. Vault*,³⁰ the United States Air Force Court of Military Review noted that the military judge's act of excusing a court member (prior to assembly) was error since he had no authority to do so, but held that if the judge assumes the authority of the convening authority and does so, the error is not jurisdictional. The court-martial may proceed so long as quorum is present,³¹ and the accused does not object.³² The error is to be tested for prejudice.³³ Where he does object he preserves his right to be tried by a court composed of members appointed by the convening authority not properly absent or excused.³⁴

Although the error is not jurisdictional in nature, apparently it can result in a denial of due process. In *United States v. Colon*,³⁵ only six of the ten members detailed by the convening authority were present for the trial. The military judge proceeded with the trial without notifying the convening authority of the absent members. Although the accused did not object at trial, the U.S. Court of Military Appeals reversed his conviction, finding that proceeding with the trial without the presence of 40% of the detailed members who had not been properly relieved constituted a denial of military due process. Prejudice to the accused was also found inherent in so substantial a reduction in the membership of the court so as not to represent the type of court contemplated by the convening authority.

The Court of Military Appeals refused to apply to waiver doctrine in *Colon* even though there was no objection to proceeding

³⁰ 5 M.J. 810 (A.F.C.M.R. 1978), *pet. denied*, 6 M.J. 156 (C.M.A. 1978).

³¹ MCM, 1969, para. 41d(3).

³² See also *United States v. Cross*, *supra* note 33; *United States v. Allen*, 5 C.M.A. 626, 18 C.M.R. 250 (1955).

³³ *United States v. Cross*, *supra* note 33.

³⁴ *United States v. Allen*, *supra* note 36, 18 C.M.R. at 264-65.

³⁵ 6 M.J. 73 (C.M.A. 1978).

at trial. The Court felt that an intelligent, voluntary waiver could not be made unless the military judge delineated to the accused his derivative rights under Article 29(a), U.C.M.J.³⁶ In dissent, Judge Cook indicated that he would find waiver where no objection was made at trial.³⁷

In *United States v. Flowers*,³⁸ the U.S. Army Court of Military Review found no prejudice where the convening authority had delegated the power to excuse court members (prior to assembly) to the staff judge advocate where the latter had excused only one of seven detailed members. The Court felt that this reduction, of less than 15%, did not change the basic composition of the court as selected by the convening authority.

Thus, it appears that an unauthorized excusal of a court member, by someone other than the convening authority, is not a jurisdictional error even though it may result in a composition of the court not contemplated by the convening authority. Unless the accused objects, the trial can proceed, unless the improper excusal results in such a gross change in the membership of the court as to constitute a denial of due process. It appears that when the change results in a court that is *per se* not the type of court contemplated by the convening authority, such as where only 60% of the original members remain, a denial of due process will be found. Even this situation can be waived by the accused, but it must be a knowing, conscious waiver following a complete explanation of his rights by the trial judge.

Strangely enough, an excused member who nevertheless sits is not an interloper and no error is committed if the trial proceeds in the absence of any challenge. Although one might argue that this results in a court composition other than that contemplated by the conven-

ing authority, no affirmative action by the convening authority to reappoint the member is necessary.³⁹ The situation is different, however, if the member was detailed to a court other than the one to which the accused's case is currently referred.⁴⁰

Unlike the selection of court members, the convening authority does not really personally choose a military judge, but rather details a judge furnished by the Trial Judiciary. Consequently, one might expect that it would not be fatal to jurisdiction if someone else detailed the military judge. In *United States v. Newcomb*,⁴¹ the government made this argument in a case in which the convening authority delegated to the staff judge advocate the authority to amend convening orders to include the trial judge and counsel when identified for a specific case. He did not personally detail the judge or counsel to any specific case. The government argued that an "official appointment"—a ministerial act which may be delegated—is all that Articles 26⁴² and 27⁴³ require instead of the "personal selection" contemplated by Article 25.⁴⁴

The Court of Military Appeals did not agree. After noting that the language of Articles 26 and 27 was prescriptive, "shall . . . detail . . .", the Court found that as Congress did not specifically provide for the delegation of these duties, only the convening authority could exercise them.⁴⁵ The failure to properly detail the military judge was fatal to jurisdiction. Again, the Court noted that the convening authority could receive staff assistance in

³⁶ 10 U.S.C. § 829(a) (1976).

³⁷ 6 M.J. at 75, 76.

³⁸ 7 M.J. 659 (A.C.M.R. 1979).

³⁹ *United States v. Herrington*, 8 M.J. 194 (C.M.A. 1980).

⁴⁰ See *United States v. Harnish*, 12 C.M.A. 443, 31 C.M.R. 29 (1961).

⁴¹ 5 M.J. 4 (C.M.A. 1978).

⁴² 10 U.S.C. § 826 (1976).

⁴³ 10 U.S.C. § 827 (1976).

⁴⁴ See note 12 and accompanying text.

⁴⁵ 5 M.J. at 7.

selecting these personnel, just as with the selection of court members.⁴⁶

It was not long before defense counsel cited *Newcomb*⁴⁷ in support of the proposition that the personal detail of the military judge that case contemplates is not satisfied by the procedure set forth in Army Regulation 27-10 pertaining to the availability of military judges for detail.⁴⁸ Although supervising military judges generally designate which judge will be available to preside over cases in a particular jurisdiction rather than the convening authority, the U.S. Army Court of Military Review upheld this procedure in *United States v. Gordon*.⁴⁹ In *Gordon*, the convening authority was advised by the staff judge advocate that he had to detail the military judge designated by the general court-martial judge who was the primary judge for the jurisdiction. The convening authority appointed the military judge so designated. The Court noted the difference between detailing "such members . . . as, in his opinion, are best qualified,"⁵⁰ and that he "detail a military judge,"⁵¹ in that the latter phrase does not suggest that the convening authority must select the military judge who is "best qualified" or for any other reason. While *Newcomb* means that the convening authority must "detail" the military judge, it does not mean that he must select him in the first place.

Although *Newcomb* specifically held that failure to properly detail the military judge was fatal to jurisdiction,⁵² it is not clear whether a failure to properly detail counsel has the same result. The convening authority

or counsel, but the Court of Military Appeals decided the case solely on the failure to properly detail the judge, although it noted that the delegation of power to detail both the trial judge and counsel was improper.⁵³ However, a number of cases have held that counsel are not an integral part of the court.⁵⁴ It would appear then, that failure by the convening authority to personally detail counsel is not fatal to jurisdiction, but rather is error to be tested for prejudice.⁵⁵

In *United States v. Mixon*,⁵⁶ the Court of Military Appeals held that the rule enunciated in *Newcomb* would be applied prospectively only, to cases convening after May 1, 1978.

Article 28, U.C.M.J.,⁵⁷ states that "... the convening authority . . . shall detail or employ qualified court reporters . . ." The failure of the convening authority to personally detail a court reporter was the subject of an assignment of error in *United States v. Dionne*.⁵⁸ Although Paragraph 7, of the Manual for Courts-Martial provides that the detail of reporters may be effected by the convening authority personally or through a staff officer, the appellant contended that as *Newcomb*⁵⁹ requires that the convening authority personally detail members of a court-martial and that as the language of Paragraph 7, permitting delegation is inconsistent with the intent of Congress as expressed in

⁴⁶ *Id.*, fn. 8.

⁴⁷ *Supra* note 45.

⁴⁸ AR 27-10, paras. 2-15b, 9-1, 9-2a, 9-2f-g, 9-4, 9-6c, 9-7b (26 Nov. 1968 with amendments through C19, 1 March 1979).

⁴⁹ 7 M.J. 869 (A.C.M.R. 1979).

⁵⁰ U.C.M.J., Art. 26, 10 U.S.C. § 825 (1976).

⁵¹ U.C.M.J., Art. 26, 10 U.S.C. § 826 (1976).

⁵² Notes 45-55, *supra*, and accompanying text.

⁵³ 5 M.J. 4 (C.M.A. 1978) at 7.

⁵⁴ See, e.g., *Wright v. United States*, 2 M.J. 9 (C.M.A. 1976); *United States v. Ryan*, 5 M.J. 97, fn. 5 (C.M.A. 1978).

⁵⁵ See *Wright v. United States*, *supra* (unqualified trial counsel); *United States v. Wilson*, 2 M.J. 683 (A.F.C.M.R. 1976) (administrative error in detail of defense counsel).

⁵⁶ 5 M.J. 237 (C.M.A. 1978). See *United States v. Saunders*, 6 M.J. 731 (A.C.M.R. 1978) for a discussion of the rule's application.

⁵⁷ 10 U.S.C. § 828 (1976).

⁵⁸ 6 M.J. 791 (A.C.M.R. 1978).

⁵⁹ *Supra*, note 45.

Article 28, U.C.M.J.⁶⁰ Paragraph 7 is of no legal effect. This assertion was unsuccessful. The Army Court of Military Review, in affirming the conviction, noted that reporters, like counsel, are not integral parts of courts-martial, and they cannot influence the outcome of the trial, and found that the Congressional intent as expressed in Article 28 permitted delegation of this ministerial act.

Returning to our fictional situation, our acting staff judge advocate made a number of errors. As previously discussed,⁶¹ Sergeant Stonewall's court-martial would be jurisdictionally defective since the convening authority did not personally detail the enlisted members to that particular court-martial. Further, the failure to personally detail the trial judge⁶² also renders this court-martial jurisdictionally defective.

The failure of the convening authority to personally detail Captain Rabid as trial counsel probably is not jurisdictional error,⁶³ but would be tested for prejudice. The same would be true of the usurpation of power to excuse LTC Jones.⁶⁴ The changing of reporters to Specialist Motormouth is a ministerial act which may be delegated.

A recent article in "The Advocate"⁶⁵ warns defense counsel to be alert to irregularities in

this area and, if appropriate, to move to dismiss the charges, even where doing so will result in a re-referral. The proper method of curing jurisdictional defects relating to court-martial personnel is issuance of orders adding and vicing personnel, after approval of the changes by the convening authority. And, since jurisdiction is never waived, and can be raised on appeal⁶⁶ staff judge advocates must insure that convening authorities personally detail all essential personnel.

Of course when the *Newcomb*, *Ware* and *Ryan* cases came out, defense counsel were quick to raise these issues. But what quantum of proof, if any, is necessary to raise these issues. But what quantum of proof, if any, is necessary to raise this issue successfully? In *United States v. Price*⁶⁷ the appellant contended that as the prosecution did not affirmatively prove that the convening authority personally detailed the court-martial personnel, the court was without jurisdiction. The Army Court of Military Review relied upon the presumption of regularity inherent in the promulgation of court-martial convening orders carrying a command line, at least in the absence of a showing that the orders were incorrect or untrue, in finding the issue without merit. In *United States v. Saunders*,⁶⁸ the government was held to have affirmatively established jurisdiction when it announced the convening of the court and reference to

⁶⁰ 10 U.S.C. § 828 (1976).

⁶¹ Notes 30-31 and accompanying text.

⁶² Even viewing the convening authority's response, "Do it." to the request to "change the judge and trial counsel," as a personal decision, it appears to be left up to the staff judge advocate to determine what judge is to be detailed. Even though, as previously discussed (notes 45-55 and accompanying text), the supervising military judge will actually decide, as he did here, who will preside, the convening authority still must personally detail the military judge.

⁶³ Notes 56-59 and accompanying text.

⁶⁴ Notes 32-42 and accompanying text.

⁶⁵ Sims, *New Vitality for the Convening Authority*, THE ADVOCATE, Vol. 10, No. 3, May-June 1978, at 117.

The article states in relevant part, "Where investigation discloses a failure properly to detail judge, coun-

sel, or members, defense counsel should move to dismiss due to a lack of jurisdiction. Although an objection will probably result in a re-referral, *thus eliminating the error*, defense counsel should not intentionally fail to raise this issue . . ." (emphasis supplied). Dismissal of the charges for lack of jurisdiction in the court-martial to try them would be similar to declaration of mistrial within the meaning of para. 56e, MCM, 1969, *supra* note 3. Re-referral would not necessarily eliminate the error, as the drastic remedy of dismissal or declaration of mistrial is to be used only under the unusual circumstances described in para. 56e, *id.*

⁶⁶ MCM, 1969, *supra* note 3, paras. 68b(1), 215a.

⁶⁷ 7 M.J. 644 (A.C.M.R. 1979).

⁶⁸ 6 M.J. 731 (A.C.M.R. 1978).

trial by the convening authority without challenge by the defense.

The author has noticed that some jurisdictions have added a statement by the trial counsel to the "script"⁶⁹ that the convening authority has personally detailed the military judge, court members and counsel. This may be unnecessary, based on *Saunders*, but is a good idea nonetheless.

Although there appears to be no requirements to affirmatively prove this leg of the jurisdictional tripod as there is with respect to jurisdiction over the person⁷⁰ and over the offense,⁷¹ beyond having proper convening orders and the standard phraseology concerning the convening of the court, the government must be able to prove that the court was properly convened if challenged by the defense, preferably without having to call the convening authority to testify.⁷² There are a number of ways to do this. In some jurisdictions the pretrial advice⁷³ now contains a section recommending the military judge, counsel and a particular panel of court members which is then signed or initialled by the convening authority. This document can be offered in court to show that the convening authority personally selected the parties.

Other jurisdictions have an unsigned copy of the convening orders prepared and attached to every packet of charges to be referred. The better practice would appear to be to use some sort of memorandum, whether it be the pretrial advice or some other document, either signed or initialled by the convening authority.

Any time there is a change in court-martial personnel a similar memorandum should be completed. For last minute telephonic changes a record must be kept. One staff judge advocate used a special notebook, kept by the telephone, in which all telephonic changes of court-martial personnel were recorded.

Whatever system is best utilized to insure and to document the personal involvement of the convening authority probably depends on the particular jurisdiction and the proclivities of the convening authority. The need for this personal involvement by the convening authority is now beyond cavail. Thus, as this leg of the jurisdictional tripod, as opposed to the *in personam* and subject-matter legs, is within the control of convening authorities and staff judge advocates, there is no reason not to have it on a firm foundation.

⁶⁹MCM, 1969, *supra* note 3, Appendixes 8a and b contain suggested procedures for the conduct of Article 39a sessions and trials. See also, *DA Pamphlet No. 27-10, MILITARY JUSTICE HANDBOOK* (Jan. 1980).

⁷⁰U.C.M.J. art. 2, 10 U.S.C. § 802 (1976); *Runkle v. United States*, 122 U.S. 543, 556 (1887); *United States v. Barrett*, 1 M.J. 75 (C.M.A. 1975).

⁷¹*O'Callahan v. Parker*, 395 U.S. 258 (1969); *Relford v. Commandant*, 401 U.S. 355 (1971); *United States v. Alef*, 3 M.J. 414 (C.M.A. 1977).

⁷²See U.C.M.J., art. 60, 10 U.S.C. § 860 (1976); MCM, 1969, *supra* note 3, para. 84. When the convening au-

thority testifies as a witness, he or she may forfeit his or her impartiality and thereby become disqualified to review the record of trial. This disqualification occurs when the convening authority has to weigh his or her testimony against other conflicting evidence. See *United States v. McClenny*, 5 C.M.A. 507, 18 C.M.R. 131 (1955) (witness for the prosecution acted later as the convening authority in approving the findings and sentence). In *United States v. Ward*, 1 M.J. 18 (C.M.A. 1975), the convening authority was disqualified after testifying about an oral modification to the court-martial convening order.

⁷³UCMJ, art. 34, 10 U.S.C. § 834 (1976); MCM, *supra* note 3, paras. 35b and c.

McCarty v. McCarty: What does the Future Hold?

by Captain Jack F. Nevin
Office of Staff Judge Advocate
Ft. Lewis, Washington

The most controversial issue of family law currently of concern to military personnel is whether military retirement benefits should be considered community property to be divided as a marital asset between spouses in the event of divorce. This issue has a direct impact on both retired military and active duty personnel. Legal Assistance Officers in community and non-community property states must be aware of this problem. Many soldiers who spend their careers overseas and in non-community property states still maintain a domicile in a community property state. Therefore, the soldier's military retirement benefits may be subject to the prevailing community property law. Almost every state court that has addressed this issue has held military retired pay to be community property divisible upon dissolution of marriage.¹ However, a definitive ruling on the matter is about to be rendered by the United States Supreme Court in the case of *McCarty v. McCarty*.² This article will discuss the appellant's theory of the case and offer a prognosis as to the pending Supreme Court decision.

The Facts

McCarty involves an Army physician who after 18 years on active duty sought to have

his 19-year marriage dissolved. In the course of the proceedings, his wife asked the court to have his military retirement pay divided as community property, seeking a one-half interest in his retirement benefits. The Superior Court decided that these benefits were community property.³ This was affirmed by the Court of Appeals.⁴ Certiorari was denied by the Supreme Court of California. Since there were very serious constitutional questions involved, however, the case was certified for certiorari by the United States Supreme Court.⁵ A number of legal issues were raised, but the one upon which the holding of this case must rest, is the issue of whether the system of military retirement benefits established by Congress preempts the State of California from treating Army retirement pay as community property divisible upon divorce. The court's holding should definitively answer this question for all community property states.

The Effect of *Hisquierdo*

Any discussion of this area of the law must include a discussion of the landmark decision of *Hisquierdo v. Hisquierdo*⁶, which resolved the question of whether railroad retirement benefits were divisible as community property upon divorce. In *Hisquierdo*, the United States Supreme Court found that these benefits were the separate property of the retiree. In part, the Court based this decision on the antiassignment clause, which insures that Railroad Retirement Act benefits reach the entitled workers.

¹ California: In re marriage of Milhan 27 Cal 3d 765 (1980); in re Marriage of Fithian 10 Cal 3d 592 (1974), cert. denied 421 U.S. 976. Idaho: Ramsey v. Ramsey, 535 P.2d 53 (Idaho S. Ct. 1975). Louisiana: Moon v. Moon, 345 So.2d 168 (Ct. App. 1977). Washington: Morris v. Morris, 419 P.2d 129 (Wash. S. Ct. 1975). Arizona: Czarnecki v. Czarnecki, 123 Ariz. 466, 600 P.2d 1098 (1979). New Mexico: Stephens v. Stephens, 595 P.2d 1196 (N.M. S. Ct. 1979). Texas: Busby v. Busby, 457 S.W.2d 551 (Texas 1970). cf. Cose v. Cose, 582 P.2d 1230 (Alaska 1979).

² *McCarty v. McCarty*, No. 80-5 (Sup.Ct. Nov. 10, 1980).

³ Brief for Appellant (Sup.Ct. 4 Dec. 1980).

⁴ *Id.*

⁵ *McCarty v. McCarty*, No. 80-5 (Sup.Ct. Nov. 10, 1980).

⁶ 439 U.S. 572 (1979).

The source of railroad benefits, like military retirement benefits, is public funds. This differs from most civilian deferred compensation plans which are characterized by employer and employee contributions. In addition, the railroad benefits include a separate plan for the benefit of the surviving spouse. The test used in *Hisquierdo* was whether the divorce court apportionment of retirement pay does "major damage to clear and substantial federal interests."⁸ The Court concluded that there is a need for federal uniformity in application of federal railroad retirement benefits. The court further held that when federal law conflicts with awards by California divorce courts of railroad retirement benefits, under the supremacy clause, state law is preempted. Appellant in *McCarty* asserted that a similar analysis should be applied to military retirement benefits.

Appellant's Argument

Appellant's primary argument is preemption. However, to fully explore this issue the appellant's argument must be broken down into its component parts. A substantial portion of the *Hisquierdo* decision was based on an antiassignment clause contained in 45 U.S.C. § 231m. The thrust of this clause was that railroad retirement entitlements were personal to the recipients and consequently should not be apportioned at the time of marriage dissolution.

"Section 231m plays a most important role in the statutory scheme. Like anti-attachment provisions generally, it insures that the benefits actually reach the beneficiary. It preempts all state law that stands in the way. It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of Congressional policy."⁹

⁷ 45 U.S.C. § 231m.

⁸ 439 U.S. at 581.

⁹ *Id.* at 583-84.

37 U.S. Code Section 701

Just as an antiassignment clause is relied upon in *Hisquierdo*, a similar statutory provision plays a major role in *McCarty*. Title 37 U.S.C. § 701(c) provides that a commissioned officer of the Army may assign pay when due and payable, if allowed by regulation prescribed by the Secretary of the Army, but an assignment of pay by an enlisted member is void. Although Section 701 refers only to "pay," the sections apply to both active and retired pay.¹⁰ By enacting these provisions, it can be argued that Congress has attempted to protect both enlisted members and officers from their own financial errors by precluding the claims of others. Possibly the sentiment behind this was to protect the morale of the American fighting man. "When due and payable" could be considered alternate phrasing for the prohibition against "anticipation" considered in *Hisquierdo*.¹¹ An additional argument is that federal antiassignment statutes serve a need for uniformity among the states. This allows a soldier to choose his state of domicile without concern as to its effect upon his retirement benefits.

Awarding Retirement Pay as Part of a Community Property Award Interferes with Certain Federal Programs

In *Hisquierdo*, the Court noted that the Railroad Retirement Act of Congress provides

¹⁰ Paragraph 1-17, Army Regulation No. 37-104-1 (1 July 1977), issued by Headquarters, Department of the Army, Washington, D.C., and pertaining to "financial administration, payment of retired pay to members and former members of the Army," provides:

a. Commissioned Officers—A retired officer may transfer or assign retired pay *when due and payable* (emphasis added) 37 U.S.C. § 701(a).

b. Enlisted Members—An enlisted member is not authorized to assign retired pay and, if done, the assignment is void 37 U.S.C. § 701(c).

See Brief for Appellant at 26 (Sup.Ct. 4 Dec. 1980).

¹¹ See *United States v. Smith*, 393 F.3d 318, 321 (5th Cir. 1968); *Smith v. Commanding Officer Air Force Accounting*, 552 F.2d 234 (9th Cir. 1979); *In re Mar-*

benefits to a worker's spouse. However, the nature of these benefits were such that they terminated absolutely upon divorce. The Court took notice of what they perceived as a deliberate Congressional decision to cut off a spouse after divorce.¹²

Unlike the ex-spouse of a railroad retiree, the ex-spouse of a military retiree may still receive social security benefits.¹³ Appellant in *McCarty*, therefore, argued that the ex-spouse has already been provided for by Congress through the social security system.¹⁴ However, it is uncontroverted that, all things considered, the widow/widower is given a favored status over the ex-spouse by Congress. In both the Survivor Benefit plan and the Retired Serviceman's Family Protection Plan, Congress has chosen to protect only the surviving spouse.¹⁵ It is argued that this action was deliberate on the part of Congress. Clearly, Congress had the opportunity to provide differently. The 1968 amendment to the Retired Serviceman's Family Protection Plan,¹⁶ bars further deductions from retired pay when the spouse can no longer be a beneficiary. This was done to safeguard the participant's future retired pay when a divorce occurs.¹⁷ Provisions for protection of ex-spouses were stricken by the Senate after the House had initially adopted them.¹⁸ Clearly, it can be argued that this series of legislative maneuvers leads to the inescapable conclusion that it was not intended that ex-spouses

share in their former spouse's military retirement benefits. It is incongruous to believe that a military member should be required to share with an ex-spouse that which has been deliberately excluded by Congress. To decide to the contrary would appear to contradict legislative intent. Also, accrued but unpaid arrearages in Army retired pay pass by a mode of testamentary disposition allowed by federal law.¹⁹ This provision provides a priority order of who will receive the unpaid retirement of any deceased individual retiree. It explicitly states that priority will be given to any beneficiary named by the deceased.²⁰ This may be someone other than a surviving spouse.

These factors taken together appear to clearly indicate legislative intent that federal law should have priority over state disposition of military retirement benefits.

Hasn't Congress Really "Opened the Door" by Allowing Garnishment of Military Retired Pay for Support Awards?

Proponents of the argument that military retirement benefits should be divided as community property are quick to point out that Congress has already recognized the right of the spouse to invade military retirement for a delinquent child support award. This is, in part, correct. In 1975, pursuant to the social security amendments of 42 U.S.C. § 659(a), Congress adopted a policy preference for "enforcing support obligations created by state court awards." This provisions, however, accorded no special status to community property awards. Invading military retired pay for delinquent support provides only a temporary invasion of the retired pay of the individual. Pursuant to these 1975 amendments, Congress consented to suits against the United States to enforce state support awards.²¹ In 1977 a further amendment, the

riage of Ellis, 36 Colo. App. 234, 538 P.2d 1347. See also Brief for Appellant at 27 (Sup. Ct. 4 Dec. 1980).

¹² 439 U.S. at 590.

¹³ See 42 U.S.C. § 402(b).

¹⁴ 42 U.S.C. § 410(a)(6)(A). See Brief for Appellant at 41 (Sup. Ct. 4 Dec. 1980).

¹⁵ 10 U.S.C. § 1434 (a) and (d).

¹⁶ *Id.* § 1434(c).

¹⁷ S. Rep. No. 1480, 90th Cong., 2 Sess. (1968), reprinted in [1968] U.S. Code. Cong. & Ad. News 3294, 3300. See Brief for Appellant at 41 (Sup.Ct. 4 Dec. 1980).

¹⁸ 118 Cong. Rec. H-8255.

¹⁹ 10 U.S.C. § 2771.

²⁰ *Id.*

²¹ 42 U.S.C. § 659(a).

Tax Reduction and Simplification Act of 1977,²² limited this consent to support payments. Property awards were expressly excluded at that time. At present, support orders can be enforced easily against the United States, community property awards cannot.²³

In 1978 Congress amended legislation governing the retirement program for the Federal Civil Service by modifying antiassignment and sovereign immunity restrictions to allow garnishment of benefits to enforce community property awards.²⁴ Also, similar action was initiated to reach the same result for Foreign Service employees. However, a bill which would have modified legislation governing military retirement benefits by giving effect to state community property awards died in committee.²⁵ The Social Security Act amendments of 1975 and 1977²⁶ reflect specific changes affecting only the Civil Service and the Foreign Service.²⁷ Appellant argued that if express amendments to these two retirement programs were necessary to subject two kinds of federal retirement programs to community property awards, than an express statutory scheme is necessary to bring about the same result for Army retired pay.

Historically, military retired pay has been a personal entitlement payable to the member as long as he or she lives.²⁸ Given the

series of statutory provisions reflecting this sentiment, it is unlikely that this position will be adequately rebutted.

Army Retired Pay does not have the same Characteristics as Divisible Property

Typically, deferred compensation plans are built around contributions by the employee. But military retired pay has none of those properties. Military pay, unlike divisible property, has no loan or redemption value and cannot be passed on by means of testamentary disposition.²⁹ Whereas pensions typically represent a gratuity for past services performed,³⁰ Army retired pay has been such that compensation is continued at a reduced rate, and the connection is continued with the retirement from active service only.³¹ Therefore, military pay can more accurately be described as reduced pay for reduced services predicated on the retirees vulnerability to recall to active duty.³² In addition, an officer is still "in the service of his country even though [he or she is] on the retired list."³³ They are subject to the Uniform Code of Military Justice.³⁴ They may sit as members of Courts-martial.³⁵ They may lose part of their retired pay if they take a Federal Civil Serv-

²² *Id.* § 662(c).

²³ 57 Comp. Gen. 420 (1978); 44 Comp. Gen. 86 (1964); *Marin v. Hatfield*, 546 F.2d 1230 (5th Cir. 1977).

²⁴ 5 U.S.C. § 8345 (j)(1).

²⁵ May 1980 hearings before the House Armed Services Committee on H.R. 2817. See Brief for Appellant at 25 (Sup.Ct. 4 Dec. 1980).

²⁶ 42 U.S.C. §§ 659 & 662(c).

²⁷ 5 U.S.C. § 8345 (j)(1) (supp. 1980): Foreign Service Act of 1950, September 29, 1980, Pub. L. No. 96-465 820(b).

²⁸ S. Rep. No. 1840, 90th Congress 2d Sess. (1968), reprinted in [1968] U.S. Code Cong. & Ad. News 3294, 3300. See Brief for Appellant at 36 (Sup.Ct. 4 Dec. 1980).

²⁹ *Id.*

³⁰ *Fithian v. Fithian*, 10 Cal 3d. 592, 111 Cal. Rptr. 369 (1974) cert. denied 419 U.S. 829 (1974); *In re Marriage of Milhan*, 27 Cal 3d. 965 (1980).

³¹ *U.S. v. Tyler*, 105 U.S. 244, (1881); *Costello v. United States*, 587 F.2d 424, 427 (9th Cir. 1978), cert. denied, 442 U.S. 929 (1979). See Brief for Appellant at 37 (Sup.Ct. 4 Dec. 1980). See also *U.S. v. Williams*, 279 Md. App. 673, 370 A.3d 1134 (1977); *Savage v. Savage*, 374 N.E. 2d 536 (Ind. 1978); *Baker v. Baker*, 546 P.2d 1325 (Okla. 1976).

³² 10 U.S.C. § 3504(a).

³³ *Lemly v. United States* 75 F. Supp. 248, 249 (Ct. Cl. 1948); See also *Kahn v. Anderson*, 255 U.S. 5 (1920); *Puglisi v. United States*, 565 F.2d 403 (Ct. Cl. 1977), cert. denied, 435 U.S. 968 (1978).

³⁴ 10 U.S.C. § 802(4).

³⁵ *Hooper v. Hartman*, 153 F. Supp. 437, 442, (S.D. Cal. 1958), *aff'd* 274 F.2d 429 (9th Cir. 1959).

ice job.³⁶ If they take on employment by a foreign government³⁷ or perform certain proscribed activities during their retired status,³⁸ they may also lose their right to retired pay.

As indicated earlier, the federal scheme for Army retired pay is a creation of Congress. There is no contractual relationship, and the individual makes no contribution. Through this program, young men and women are attracted to the military. Subjecting this benefit to division as property in a dissolution undermines the incentive for remaining on active duty that Congress created through the retirement statutes. In *Hisquierdo* the Court stated that the community property interests sought by Respondent conflicted with the antiassignment provision of the Railroad Retirement Act.³⁹ The Court went on to say that Respondent's position "promised to diminish that portion of the benefit that Congress should go to the retired worker alone and it threatens to penalize one who Congress has sought to protect."⁴⁰ Lastly, the Court said that the Respondent's position was "injurious to federal interests which the supremacy clause forbids."⁴¹ Just as Respondent's position in *Hisquierdo* conflicted with the antiassignment provision, so does Appellee's position in *McCarty* conflict with 37 U.S.C. § 701. In the present case, the Supreme Court of California has arguably diminished that portion of the military retirement pay that Congress said should go to the retired servicemember. It would appear that the U.S. Supreme Court should find *McCarty* analogous to *Hisquierdo* and rule accordingly.

³⁶ 5 U.S.C. § 5531.

³⁷ U.S. Const. Art. I, § 9 cl. 8; *Watson v. Watson*, 424 F. Supp. 866 (E.D.N.C. 1976).

³⁸ *Chambers v. Russell*, 192 F. Supp. 425, 427 (N.D. Cal. 1961). Brief for Appellant at 20 (Sup.Ct. 4 Dec. 1980).

³⁹ 439 U.S. at 590.

⁴⁰ *Id.*

⁴¹ *Id.*

Prognosis

The Court will hold that California may not divide military retired pay as community property in a dissolution action for the following reasons:

1. 37 U.S.C. § 701(a) and (c) bar the anticipation of Army retired pay through state community property awards. Although the United States has allowed itself to be garnished for child support and alimony awards, it has not extended this consent to state community property awards.

2. Congress has developed a scheme of benefits through the survivor benefit plan and other statutory schemes that purposely exclude the ex-spouse. Congress has sought in one specific area to recognize the marital community by allocating a portion of a spouse's social security benefits to the ex-spouse. The establishment of a statutory scheme that in one way recognizes the ex-spouse, but excludes him or her in other areas shows a knowing inclusion and exclusion which should not be contradicted by the states.

3. Army retirement pay is neither a pension given as a gratuity, nor a form of deferred compensation for past services. In this regard, a retired military person differs from a retiree in the Foreign Service or Civil Service. Congress has recognized this difference and treated it accordingly. Additionally, it is compensation that has traditionally been characterized as "personal" to the individual.

4. Army retired pay is an inducement for young men and women to make the military a career. However, it also represents pay for current service because the retired military person is still subject to recall and subject to the UCMJ.

To allow military retirement benefits to be divided as community property would do "major damage to clear and substantial federal interests" within the meaning of *Hisquierdo*.

The School of the Soldier:

Remedial Training or Prohibited Punishment?

*Captain Stephen J. Kaczynski, JAGC, Office of
the Staff Judge Advocate, 25th Infantry Division,
Schofield Barracks, Hawaii*

In the over two hundred years since the establishment of the republic, millions of servicemembers have promptly and proficiently responded to the commands of their superiors in both war and peace. This commendable history has been the result of the intensive inculcation into the soldier of the basic requirements of military skills and discipline. When a servicemember proves himself deficient in either or both of these areas, the commander may, if so desired, resort to administrative,¹ nonjudicial², or judicial³ punishment to right the perceived wrong. Alternatively, a commander may instead opt to order extra training for the soldier as a remedy for the military deficiency. As such a course of conduct constitutes training, a legitimate command goal, and not punishment, resort to formal action is not required and no permanent record is to be made of the episode.⁴

Perhaps the most popular yet controversial form of "additional training" is commonly

known as the "school of the soldier." Typically, the school of the soldier held on a non-duty day, most frequently weekends, and consists of a scheduled program of instruction and training in basic military skills, *e.g.*, in ranks uniform and equipment inspections, drill and ceremonies, physical training, and military courtesy.⁵ To the extent that such activity requires an intrusion upon the otherwise free time of the servicemember, it certainly must seem to the soldier to constitute punishment. From the viewpoint of the command, however, the school of the soldier is seen as a simple military remedy for simple military problems diagnosed in the soldier. It is the purpose of this article to discuss the legality of an order that a servicemember attend the school of the soldier.

I. The Problem

Article 13 of the Uniform Code of Military Justice (UCMJ) provides that "no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him. . ."⁶ If an individual is to be punished, he must first be afforded the rights and safeguards provided by the process attending the imposition of nonjudicial punishment⁷ or trial by court-

¹ See generally, AR 635-200, Personnel Separations—Enlisted Personnel, chs. 5-14 (21 November 1977); AR 600-37, Personnel—General—Unfavorable Information, ch. 2 (15 November 1980).

² See Uniform Code of Military Justice art. 15, 10 U.S.C. §815 (1970) [hereinafter cited as UCMJ].

³ See, *e.g.*, Art. 89, UCMJ (disrespect toward superior commissioned officer); Art. 90, UCMJ (willful disobedience of superior commissioned officer); Art. 91, UCMJ (insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer); Art. 92, UCMJ (failure to obey general or other order or regulation, dereliction of duty).

⁴ FM 27-1, Legal Guide for Commanders, para. 8-7 (20 September 1974) [hereinafter cited as FM 27-1] dictates that no record of satisfactorily remedied deficiencies shall be maintained in the files of the individual concerned.

⁵ A typical school of the soldier program of instruction within the 25th Infantry Division is attached at the Appendix to this article.

⁶ Art. 13, UCMJ.

⁷ Under the procedures of Art. 15, UCMJ, and Manual for Courts-Martial, United States, 1969 (Rev. ed.), para. 133a [hereinafter cited as MCM] the individual concerned is entitled to be notified of the nature of the offense alleged against him, to an open hearing, to present matters in defense and extenuation and mitigation, to consult with counsel, and to demand trial by court-martial.

martial.⁸ Thus, an order by a commander to a servicemember to perform punishment prior to a proper adjudication of his case is illegal and need not be obeyed.⁹ If, however, the order is construed as one to perform a legitimate form of extra training, then it will be deemed to "relate to military duty" and disobedience of it will be punishable under the UCMJ.¹⁰ The issue is therefore narrowed as to whether a direction to a servicemember to attend the school of the soldier constitutes an illegal order to perform punishment or a legal order to perform remedial training.

II. What is Training

The seminal case involving remedial training is *United States v. Trani*.¹¹ In *Trani*, a 1952 decision, a confined prisoner intentionally destroyed certain prison records. The prison officer thereupon directed the prisoner to perform close order drill during normal duty hours until he "shaped up and got a little better discipline, better control of himself."¹² The accused declined to obey the order and was tried and convicted for his disobedience.¹³

The Court of Military Appeals sustained the conviction. In addressing the issue of the

⁸ The rights afforded an accused in a court-martial proceeding are detailed in Art. 16, UCMJ (right to trial before military judge alone); Art. 25, UCMJ (right to trial by court including enlisted members); Art. 31, UCMJ (prohibition of compulsory self-incrimination); Art. 32, UCMJ (pretrial investigation); Art. 37, UCMJ (protection against unlawful command influence); Art. 44, UCMJ (protection against double jeopardy); Art. 46, UCMJ (right to equal access to witnesses and evidence); Arts. 66, 67, and 69, UCMJ (review and appeals).

⁹ *United States v. Bayhand*, 6 C.M.A. 762, 21 C.M.R. 84 (1956).

¹⁰ *United States v. Trani*, 1 C.M.A. 293, 3 C.M.R. 27 (1952).

¹¹ *Id.*

¹² *Id.* at 295, 3 C.M.R. at 29.

¹³ The court characterized the disobedience as "respectful regret" ("I'm sorry, Sir"). *Id.* The conviction was affirmed by a board of review.

validity of the order, the court explained that "the command of a superior officer is clothed with a presumption of legality, and that the burden of establishing the converse devolves upon the defense."¹⁴ With the burden of proof thus stated, the court determined that the defense failed to meet it. Recognizing that a commander should be permitted "generous latitude in diagnosing ills and prescribing remedies,"¹⁵ the panel could not find a lack of "colorable relationship" between the perceived shortcoming of the accused, *i.e.*, absence of discipline and self control, and the cure selected, *i.e.*, a traditional form of military training which the commander credibly and sincerely believed to constitute training and not punishment. Absent a *clear showing* of unlawfulness, the order to perform this type of activity was found to be valid.

III. What is Punishment

The courts have provided more guidance concerning what is *not* remedial training. If the assigned "training" is in fact detail-type work such as might be imposed by nonjudicial punishment or court-martial, then there is little doubt that it will be labelled as punishment. In *United States v. Reeves*,¹⁶ for example, the accused was "gigged" in morning formation and instructed by his first sergeant to mow the lawn as "extra instruction." The court readily found that this duty was an illegally imposed punishment.¹⁷ Similarly, an after-hours barracks cleanup detail¹⁸ and a

¹⁴ *Id.* at 297, 3 C.M.R. at 30. The current MCM reflects this burden of proof by providing that "an order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate." MCM, para. 169b.

¹⁵ 1 C.M.A. at 298, 3 C.M.R. at 31.

¹⁶ 1 C.M.R. 619 (A.F.B.R. 1951).

¹⁷ The court noted that this detail was indistinguishable from "fatigue duty" such as might be imposed as company punishment by the commander under then Article of War 104. *Id.* at 620.

¹⁸ *United States v. Robertson*, 17 C.M.R. 684 (A.F.B.R. 1954). In *Robertson*, the officer ordering the "additional training" related that he "felt that to have

kitchen police detail¹⁹ were also deemed to be punishment rather than training.

Orders designed to humiliate the "trainee" bear the earmarks of punishment as well. In *United States v. Raneri*,²⁰ the accused deposited two parachutes on the floor of a parachute loft in a manner deemed improper by the parachute rigger. The accused was then instructed to pick up the parachutes and proceed from shop to shop in the hangar. At each location, he was to properly lay the parachutes down and announce to all present that "this was the correct way to handle and carry parachutes."²¹ The accused was court-martialed for his refusal. On appeal, the court determined that the order was designed to serve no purpose other than the "direct and immediate punishment" of the accused.²² The seeming humiliation of the accused which would have resulted from his obedience of this order amply rebutted the presumption of legality.

Finally, the integration of the "trainee" with those undergoing judicially or non-judicially imposed punishment will serve to invalidate the order. In *United States v. Bayhand*,²³ the accused, a prisoner awaiting trial, was assigned to the same work details,

(the accused) report at regular duty hours would be normal and that he should be punished and should be given an odd hour for cleaning." *Id.* at 685.

¹⁹ *United States v. Wilkinson*, 4 C.M.R. 602, 615 (A.F.B.R. 1951) (Piscotta, J. A., concurring).

²⁰ 22 C.M.R. 694 (A.F.B.R. 1956).

²¹ *Id.* at 695.

²² *Id.* In Hawaii, perhaps due to the pleasing climate, several commanders have fashioned a curious method of "remedial training." Servicemembers who, upon inspection, were found to have dirty billets rooms were instructed to pitch and tent in grassy areas immediately adjacent to the billets. Living in the tent was deemed to be "remedial training" for failure to properly maintain their rooms. Under the teaching of the *Raneri* case, however, it would appear that the camper is being subjected to a humiliating form of prohibited punishment.

²³ 6 C.M.A. 762, 21 C.M.R. 84 (1956).

while working the same hours, subject to the same instructions, and wearing the same garb as sentenced prisoners undergoing punishment.²⁴ That the accused was also being punished was the inescapable conclusion.

IV. "School of the Soldier": Some Guidelines

The Department of the Army has issued some suggested guidelines for properly applied corrective training:

a. An individual appearing in improper uniform may be required to attend special instruction in correct wearing of the uniform.

b. An individual in poor physical shape may be required to take additional conditioning drills and participate in extra field and road march exercises.

c. An individual who has unclean personal or work equipment may be required to devote additional time and effort to clean the equipment and be given special instruction in its maintenance.

d. An individual who executes drills poorly may be given additional practice drill.

e. An individual who fails to maintain his housing or work areas in proper condition or who abuses property may be required to perform additional maintenance leading to a correction of his shortcoming.

f. An individual who fails to perform properly in his assigned duty may be given special formal instruction or additional on-the-job training in those duties or skills relating to them to correct his performance.

g. An individual who is deficient in responding to orders may be required to participate in additional drills and exercises to develop his responsiveness to the prompt execution of orders.²⁵

From the foregoing, it is apparent that a relationship should exist between the ailment and the cure. It is submitted, however, that these guidelines are more restrictive than the contours of the law. The *Trani* case clearly affords the commander a considerable discre-

²⁴ *Id.* at 770, 21 C.M.R. at 92-94.

²⁵ FM 27-1, para. 8-7 (20 September 1974).

tion in fashioning a "colorable relationship" between the deficiency and the corrective training.²⁶ Thus, insofar as the commander determines that the appearance of a soldier in improper uniform, or in poor physical condition, or with unclean equipment may be indicative of a lack of self-discipline, motivation, or attentiveness to the basic requirements of military life, the soldier may be required to attend the full gamut of school of the soldier instruction. Similarly, the soldier deficient in basic military skills may be deemed to require a re-introduction to those skills in which he is weak as well as the fortification of those areas in which he is strong.

The restrictions of such a program are obvious. The schedule activities should involve traditional forms of military training in basic military traits and skills; detail-type work is to be avoided. The trainees should perform their training as a group and apart from soldiers undergoing punishment. The training should be highly motivated and, above all,

conducted in a professional manner. Care should be taken by commanders to select for the school of the soldier only those servicemembers who are deficient in motivation, discipline, or military skills and knowledge. Thus, while the disrespectful, disobedient, sloppy, or careless soldier might qualify for inclusion in the program, the "colorable relationship" dims when soldiers who are suspected of common law crimes, *e.g.*, assault, or larceny, or drug offenses are included. It can easily be imagined that a court might conclude that, traditionally, deficient soldiers are trained; criminal ones are punished.

Properly utilized, the school of the soldier would permit the commander to take full advantage of the discretion afforded him by law in exercising that degree of leadership necessary to make good soldiers from seemingly bad ones. Once remedied, the shortcoming of the soldier would be forgotten, not memorialized. Abused, such a program would keep the inspectors general burning the midnight oil. As always, it is the responsibility of the local judge advocates to constantly review the operation of the school of the soldier in those jurisdictions in which it has been established.

²⁶ See notes 10-15 and accompanying text *supra*.

DISCOM SCHOOL OF THE SOLDIER PROGRAM OF INSTRUCTION

| Time | Subject | Uniforms | Instructor | Reference | Location | Remarks |
|-----------|--|------------------|------------|-----------------------|----------|----------|
| 0645-0700 | Roll Call (Muster) | Class A | Sr Cadre | Instru Notes | TBA | |
| 0700-0750 | SOS Brief/Inspection in Ranks | Class A | Cadre | AR 670-1 FM lm22-5 | TBA | |
| 0750-0815 | Break & Change Uniforms | Duty | Cadre | Div Policy | | |
| 0815-0900 | Inspection/Proper Wear of Uniforms | Duty | Cadre | Div Policy | | |
| 0900-0950 | Breakfast | Duty | Cadre | Div Policy | | |
| 0950-1000 | Break | Duty | Cadre | Div Policy | | |
| 1000-1050 | Drill and Ceremony | Duty | Cadre | FM 22-5 | | |
| 1050-1100 | Break | Duty | Cadre | Div Policy | | |
| 1100-1150 | Donning, Wear of (MOPP Gear) | Duty w/Mask | Cadre | FM 21-40 FM 21-41 | | |
| | Wear of Indiv NBC Protective Clothing, Masking Drill | | | | | |
| 1150-1250 | Break/Lunch | Duty | Cadre | Div Policy | | Minus |
| 1250-1300 | Formation w/TA 50 | Steel Pot/LBE | Cadre | Instru Notes | | Weapons, |

| | | | | | |
|-----------|--|----------------------|--------------------|------------------------------------|-------------------|
| 1300-1315 | Enroute TA 50 Lay Out Area | Steel Pot/LBE | Cadre | Instru Notes | Bayonets |
| 1315-1445 | Preparation & Inspection of Full Field Lay Out | Duty Duty | Cadre Cadre | Fig 22-5 Page 51, Fig 32 | |
| 1445-1515 | Secure/Recover TA 50 and Enroute to Unit Area | Steel Pot/ LBE | Cadre | Instru Notes | |
| 1515-1530 | Preparation for PT/Secure TA 50 | PT | Cadre | | |
| 1530-1630 | Physical Training & Retreat | PT | Cadre | | |
| 1630-1650 | Counselling/Indiv Critique | Duty | Cadre | FM 21-20/ FM 22-5 | T & 2 Mile Run |
| 1650-1700 | Secure TA 50 & Release to Parent Unit Control | | Cadre Notes | | |

TJAG'S Note On Enlisted Training

On 9 and 10 April 1981, a Legal Clerk/Court Reporter Workshop was conducted at Fort Carson, Colorado, for our junior enlisted personnel. After reading the critique sheets submitted by attendees, I am convinced that this training provided valuable instruction which will well serve the interests of our field offices. I was particularly impressed by the enthusiastic response to the sessions offered and the desire for similar "how to" workshops in the same and other subject areas in the future. I hope that all our junior enlisted per-

sonnel will be considered for attendance at future workshops as they are splendid training vehicles. In the following article, SGM Nolan lists various training sessions for enlisted personnel during FY 1982. I encourage all Staff and Command Judge Advocates to review that list and to develop their FY 1982 training budgets accordingly.

ALTON H. HARVEY
Major General, USA
The Judge Advocate General

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan



1. SENIOR ENLISTED EVALUATION REPORT (SEER). I have received numerous complaints from the field regarding preparation of the SEER (DA Form 2166-5A) for pay grades E-5 and above. As provided in AR 623-205, dated 15 January 1980, the SEER is designed to support the Army's Personnel Management Programs and the career development of individual soldiers. It influences the soldier's career objectives, measures the quality of the NCO Corps, and largely determines the senior enlisted leadership of the

Army. Therefore, this report should be important to all of us. The SEER is used by MILPERCEN as a basis for personnel actions such as promotion, school selection, assignment, and military occupational specialty (MOS) classification, among others.

a. The most common complaint involves *Rater* and *Indorser* responsibilities. Chapter 3, AR 623-205, emphasizes that rating officials directly affect a rated soldier's performance and professional development. Thus, these officials must insure that the rated sol-

dier thoroughly understands the organization, its mission, his role in support of the mission, and all of the standards by which his performance will be judge. Chapter 3 also provides that, to render an objective evaluation, rating officials must use all opportunities to observe and gather information on the rated soldier's performance. Rating officials must prepare complete, accurate, and fully considered evaluation reports.

b. Based upon my review of SEER's on file at MILPERCEN, it appears that a large number of our personnel are getting the maximum numerical score of 125, but very little if anything is said in the narrative section—or the narrative comments or not consistent with the numerical ratings. Each rater/indorser should make an honest and fair evaluation of the person being rated.

c. Another problem occurs when a rater/indorser given an individual a rating of 125 prior to the rated individual's departure for another assignment, but later, when that same individual requests to be, or is, assigned back to that same installation, the rater/indorser does not want the individual back in his or her office. When questioned regarding the inconsistency, the rating official says that the individual was not a good legal clerk or court reporter, that the rating was given with the hope that someone else would straighten the person out, or that the rater/indorser simply did not want to "hurt" the person. This type of rating is unfair to both the soldier and the gaining command.

d. In summary, performance evaluations are judgments on how well the rated soldier met his or her duty requirements and adhered to the professional standards expected of senior enlisted soldiers. I encourage rating officials to rate their subordinates fairly and to take the time necessary to prepare an accurate and well thought out rating. If an individual is doing a good job and has been doing one, make sure it is reflected. On the other hand, if performance is not up to standards, particularly after appropriate counseling and remedial training, that should be reflected as well.

2. CONTINUING EDUCATION PROGRAM FOR FY 1982. To assist in planning and budget preparation for enlisted personnel training in FY 1982, following is a list of courses, conferences, and workshops that are projected for next fiscal year.

a. *Courses at TJAGASA, Charlottesville, VA:*

(1) Military Lawyer's Assistant Course: 12-16 July 1982.

(2) Law Office Management Course: 2-6 August 1982.

b. *Workshops/Seminars; locations to be announced at a later date:*

(1) Legal Clerk and Court Reporter Workshop: March 1982 (3 days).

(2) Chief Legal Clerk Conference: July 1982 (3 days).

c. *Annual JAG Conference (for selected personnel), at TJAGSA, 11-16 October 1981.*

d. *Air Force Legal Service Advanced Course (for selected personnel), at Maxwell Air Force Base, Alabama: March 1982 (2 weeks).*

e. *The Advanced NCO Course (ANCOC) and US Army Sergeants Major Academy (USASMA) may be attended by legal clerks and court reporters. However, attendance requires selection and funding by MILPERCEN.*

3. WORKSHOP VIDEO TAPES AVAILABLE: The Legal Clerk/Court Reporter Workshop which was held at Fort Carson, Colorado, 9-10 April 1981 was videotaped. Personnel desiring copies of any session should contact MSG Davis at the Fort Carson SJA Office. Following is a list of the session topics and instructors for use in requesting copies.

| <i>Topic</i> | <i>Instructor</i> |
|--|-----------------------------------|
| Opening Remarks | SGM Nolan |
| Personnel Management | SFC Meehan |
| Establishment of a Legal Center | COL Thornock |
| Concept and Operations of a Legal Center | MAJ Zeigler, MAJ Cramer, SFC Case |
| Criminal Law Activities; New AR 27-10 | COL Hansen |
| US Army Judiciary Activities | Mr. Placzkowski |
| US Army Judiciary Activities | Mr. Placzkowski |

| <i>Topic</i> | <i>Instructor</i> |
|-------------------------------------|-------------------|
| Judiciary Errors and Irregularities | Mr. Placzkowski |
| Training of Legal Clerks | SFC Durden |
| Law Library Operations | CW4 Gaffney |
| Retraining Brigade Operations | SFC Tomlinson |
| Open Discussion | SGM Nolan |
| Closing Remarks | COL Thornock |

4. AR 27-10 (MILITARY JUSTICE) REVISION. During his presentation at the Fort Carson workshop, COL Hansen, Chief of the Criminal Law Division, OTJAG, discussed his division's current efforts toward revising AR 27-10 and requested comments from attendees. Because of the many useful suggestions made at the workshop, he has asked me to solicit suggestions from all legal clerks and court reporters. If you think portions of AR 27-10 need clarification, current provisions are unworkable at the operating level, or if you would like to see new matters covered, this is an opportunity to have your voice heard. Comments or suggestions should be sent to: HQDA (DAJA-CL), WASH DC 20310.

5. COURT REPORTER SELECTION AND TRAINING. I recently asked SFC Robert C. Rogers, our Army instructor at the Naval Justice School in Newport, Rhode Island, if he had any ideas on improving the selection, training, and management of our court reporters. In response, he provided a very comprehensive and ambitious plan for the long-term. I will discuss some facets of that plan in future articles. However, some of his recommendations can and should be implemented immediately to improve the quality of accessions into the MOS. [If implemented at the local level, I am confident that they will have an immediate and lasting impact on the quality of our military court reporters.] [The following suggestions, therefore, are provided for your consideration.]

Personnel wishing to attend the NJS at Newport should be screened to a greater extent, to preclude "washout" both at the school and, later, in the field. Basically, closer attention should be given to the following course requirements:

1) *Typing skill of no less than 40 wpm.* This particular requirement seems to have been "overlooked" in too many screening processes. This skill is very critical in the field where students must have typing skills which will allow them to produce a minimum of 30 to 40 pages of transcript a day.

2) *71D qualified before coming to the NJS.* Another course requirement that appears to have been frequently overlooked. Many of the ground rules for court reporting stem from the basics of "legal clerking." The field reporter must have some knowledge of how a pretrial packet or file looks and where basic information relevant to the case can be found. The school does not have the time to teach this.

3) *Qualified in general verbal skills.* The candidate should be qualified in general verbal skills such as grammar, punctuation and spelling. In the future more emphasis will be placed on this at the school, but a candidate cannot be taught all necessary verbal skills in six weeks. Judges in the field continually complain that many reporters do not punctuate so that the transcripts read clearly.

4) *Local SJA interview.* This requirement is extremely important so that the student knows what he's getting into and the local office knows what caliber of student might be attending. Many times the school is blamed for poor training when in actuality, if time had been taken at the local level to determine the caliber of the student, many problems could be "nipped in the bud". It is strongly recommended that the senior reporter at the command be included in the interview. In the future, upon arrival at NJS, students will be asked the name and position of the person conducting the interview. This is necessary to answer inquiries from personnel wanting to know, "Who interviewed this person? He/she doesn't know what he/she is doing."

5) *Command need for court reporter.* Commands sending personnel to NJS for training and return to the local command should also assure that they need and can properly use

another court reporter. It is not uncommon for a command to have excess reporters and then not know what they were going to do with yet another one.

6. E7 OVERSTRENGTH. At the grade of E7, we have 219 legal clerks against an authorized strength for this grade of 132, and 25 court reporters against 9 authorizations. Our overstrength problem at the E7 level will worsen significantly with the promotion of legal clerks and court reporters on the April 1981 promotion lists. As a result, for the next several years many of our E7 personnel will be assigned against E6 positions. This situation results from the grade restructuring done in conjunction with the implementation of the Enlisted Personnel Management System (EPMS) several years ago. It is also expected to impact eventually at the E8 and E9 level when our present E7's become eligible for promotion to those grades. Although

losses due to retirement and other reasons and our current effort to upgrade brigade legal clerk positions to E7 may help alleviate the situation, they will not totally resolve the imbalance. I want to assure you that currently there are no plans being considered involving involuntary reclassification. Absent such drastic remedy, though, we will have to continue, however reluctantly, to assign our E7 personnel to lower graded positions. I ask both Staff Judge Advocates and our E7's to realize that there is no quick or easy solution to the problem, and to bear with it, as we did when it existed at the E6 level.

7. SELECTIONS FOR PROMOTION TO E7: The recent sergeant first class selection board results were published on 15 April 1981. Our selection rates were 57.1% of eligible 71D legal clerks (104 out of 185) and 42.3% of our 71E court reporters (11 out of 26).

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Charges and Specifications

a. Trial counsel must review the charges and specifications prior to trial to insure that the specifications are formally correct and conform with the expected evidence. Several recent cases are illustrative of the many problems which could be prevented by careful pretrial scrutiny. A marijuana sale specification failed to allege that the sale was wrongful. A willful disobedience specification alleged that SSG A gave the order while the evidence showed that SSG B gave the order. Failures to repair must allege a specific place of duty (e.g., Supply Room, C Company, 1/77 Armor) rather than duty at an identified unit.

b. Although impersonation offenses are not commonplace, the Court of Military Appeals in *United States v. Yum*, 10 M.J. 1 (CMA 1980), found that sample specification 155, Appendix 6c, Manual for Courts-Martial,

United States, 1969 (Revised edition), is insufficient to allege an offense under Article 134, UCMJ. Relying upon *United States v. Rosser*, 528 F.2d 652 (D.C. Cir. 1976), the Court held that there must be an allegation of "more than merely an act in keeping with the falsely assumed character." Thus, in drafting a specification of false impersonation, judge advocates should include an allegation of an overt act which involves an assertion of the claimed authority derived from the office.

2. Guilty Pleas and Pretrial Agreements

a. Stipulations of fact required by pretrial agreements can be used effectively to prevent post-trial attacks upon the providence of the pleas. Trial counsel should utilize the stipulation of fact to establish the elements of the offenses and negate possible defenses.

b. If, after trial, a deficiency is noted in the

providence inquiry required by *United States v. King*, 3 M.J. 458 (CMA 1977), *United States v. Green*, 1 M.J. 453 (CMA 1973), and *United States v. Care*, 18 USCMA 535, 40 CMR 247 (1969), or in the right to counsel advisement required by *United States v. Donohew*, 18 USCMA 149, 39 CMR 149 (1969), a proceeding in revision or a post-trial Article

39(a) session should be considered as an immediate remedial measure. See *United States v. Steck*, 10 M.J. 412 (CMA 1981); *United States v. Anderson*, ____ M.J. ____ (ACMR 2 April 1981); Article 62(b), Uniform Code of Military Justice; paragraph 80, Manual for Courts-Martial, United States, 1969 (Revised edition).

Criminal Law News

1. Recent Criminal Law Decision *United States v. Breese*

In *United States v. Breese*, 11 MJ 17 (CMA 1981), dealing with defense counsel representing multiple defendants, the United States Court of Military Appeals held that in cases tried after 27 April 1981: "We shall presume—albeit subject to rebuttal—that the activity of defense counsel exhibits a conflict of interest in any case of multiple representation wherein the military judge has not conducted a suitable inquiry into a possible conflict."

2. Recent Criminal Law Message

271500ZAPR81

DAJA-CL 1981/8246

FOR SJA

SUBJECT: Racial/Ethnic Identifiers on Military Justice Records Reference:

A. DA Pam 600-26 (Oct 78), DA Affirmative Actions Plan

B. MSG, HQDA (DAJA-CL) 301400ZMAR81, SUBJ: Computerized Military Justice Management Information System

1. The Army's Equal Opportunity Program has matured to the point that the value of timely and accurate disciplinary data as a management tool to aid in identifying institutional or personal discrimination requires the reporting of racial identifiers on military justice documents. Therefore, the policy of excluding racial identifiers on military justice documents has been rescinded.

2. Collection of the data to meet the reporting requirements contained in references A and B above will be accomplished by placing the appropriate racial/ethnic identifiers as set forth in reference B on military justice documents as follows:

a. DD Form 458—Above the block entitled "Date."

b. DA Form 2627—Part II—Attachments and/or Comments.

Legal Assistance Items

*Major Joel R. Alvarey, Major Walter B. Huffman, Captain John F. Joyce, Captain Timothy J. Grendell, and Captain Harlan M. Heffelfinger
Administrative and Civil Law Division, TJAGSA*

Legal Assistance Resource Materials

Every Legal Assistance Office library should include all of the source material available. Periodically, the Legal Assistance Section of *The Army Lawyer* will provide in-

formation concerning publications which are available to aid legal assistance attorneys. The following publications can be obtained at minimal or no expense:

Digest of Motor Laws (1980)

Description: Contains summaries of state vehicle registration and driver's license laws. (Published annually.)

Write to: Credit and Order Department
American Automobile
Association
811 Gatehouse Road
Falls Church, VA 22047

Cost: \$2.00

Where to Write for Marriage Records (1980)

Where to Write for Divorce Records (1980)

Where to Write for Birth and Death Records (1980)

Where to Write for Birth and Death Records of U.S. Citizens Who Were Born or Died Outside the U.S.

Description: Four booklets containing the addresses, costs, and pertinent information necessary to secure personal records.

Write to: Superintendent of Documents
US Government Printing Office
Washington, DC 20402

Cost: \$1.25 each

Consumer Resource Handbook

Description: Contains addresses of places to send state and federal consumer complaints.

Write to: Consumer Information Center
Department 532G
Pueblo, Colorado 81009

Cost: Free

Consumer Problems with Auto Repairs

Description: Contains a chart of auto repair legislation by state as well as a list of organizations and publications which are helpful in the resolution of auto repair problems.

Write to: Consumer Information Center
Department 532G
Pueblo, Colorado 81009

Cost: Free

Interstate Custody Litigation: A Guide to Use and Court Interpretation of the Uniform Child Custody Jurisdiction Act

Description: Contains full text of UCCJA, official commentary, and discussion of court interpretations of the UCCJA. It also includes a full bibliography of articles on the subject and a state-by-state table of state code citations to variations of the UCCJA.

Write to: The Bureau of National Affairs,
Inc.
1231 25th Street, N.W.
Washington, DC 20037

Cost: \$9.50

The Legal Assistance Branch of the Administrative and Civil Law Division welcomes submissions of suggested publications for general use from legal assistance attorneys for inclusion in this section of *The Army Lawyer*.

FAIR DEBT COLLECTION—Collection Agency Harassed Debtor In Violation Of The Fair Debt Collection Practices Act. *Bingham v. Collection Bureau, Inc.*, 505 F. Supp. 864 (D.N.D. 1981).

Plaintiffs were a married couple who owed Mercy Hospital, Devils Lake, North Dakota for services rendered during the birth of their only child. Mercy Hospital turned the account over to defendant debt collection agency when they failed to pay the bill when due. In attempting to effect payment, the defendant violated the general statutory prohibition against harrassment. Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

The debt collector called the plaintiffs fourteen different times identifying himself by giving his name (alias), the name of his employer (Credit Bureau, Inc.) and the name of the account (Mercy Hospital). The Court concluded the use of an alias by a telephonic collector is conduct "the natural consequences of which is to harrass, oppress, or abuse the debtor." However, the debt collector was held not liable because the violation was not intentional, and resulted from a bona fide error as to what the law prohibited. 15 U.S.C. § 1692k(c).

During one telephone call the debt collector told Mrs. Bingham she should not have children if she could not afford them. That remark was held to be harassment.

During another telephone call he asked Mrs. Bingham about deposits, land, stock, inheritance, jewelry and whether she had a wedding ring. The Court held that the inquiry about

personal jewelry which included reference to highly personal items such as a wedding ring, had a natural consequence to harassment.

Damages were awarded in the amount of \$1500 for actual damages (actual injury and loss of consortium), court costs and reasonable attorney's fees.

Administrative and Civil Law Section

Administrative and Civil Law Division. TJAGSA

The Judge Advocate General's Opinions

(Enlisted Personnel—MOS Reclassification)
Membership in an extremist organization may provide a basis for reclassification action under AR 600-200, if it is demonstrated that it is a clear danger to loyalty, discipline, or morale. DAJA-AL 1980/3294, 18 December 1980.

Five military policemen were identified as being members of the Ku Klux Klan. Two of the five were active organizers in the state organization, and all had received publicity for their affiliation. ODCSPER requested an opinion from The Judge Advocate General as to whether military policemen, who are members of, as well as active participants in, the Ku Klux Klan, may be reclassified pursuant to paragraph 2-31d(4), AR 600-200.

The Judge Advocate General pointed out that membership in an extremist organization, such as the Ku Klux Klan, does not, in and of itself, provide a basis for reclassification action under AR 600-200. The First Amendment of the Constitution protects the rights of association of all Americans, including those serving in the Army. However, active participation of servicemembers in such organiza-

tions is limited to those activities which do not violate existing statutory or regulatory authority which are designed, in part, to insure there is no clear danger to loyalty, discipline, or morale within the Army.

It was further noted that, pursuant to paragraph 2-31d(4), AR 600-200, reclassification action would be appropriate if the command can demonstrate that the activities of the soldiers present a clear danger to the loyalty, discipline, or morale of the command which relates to the soldiers' qualifications to effectively perform their duties. For example, conditions necessary to permit reclassification of a military policeman would occur when an individual's "leadership ability for obtaining respect and obedience of law violators and prisoners" (see paragraph b, CMF 95, AR 611-201) is compromised as a result of the individual's Klan activities, or when an individual cannot maintain the "high personal and professional standards and example normally expected of law enforcement personnel" (see paragraph b, CMF 95, AR 611-201) as a result of his disregard for lawful regulatory authority (i.e., the Army's equal opportunity program as set forth in AR 600-21 and 600-50).

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. Annual JAG Reserve Workshop

For planning purposes, the JAG Reserve Workshop for ARCOM SJAs, MLC Commanders and GOCOM Staff Judge Advocates will be held at The Judge Advocate General's School, Charlottesville, Virginia from 20-23 January 1982.

2. Judge Advocate Reserve Components General Staff Course.

For Officers Enrolled with TJAGSA.

Reminder. All correspondence subcourse materials for the Judge Advocate Reserve Components General Staff Course have been mailed to students. Completion of all correspondence subcourses is a prerequisite to attendance at the resident phase. All correspondence course enrollments will be terminated on 6 July 1981. No extensions of enrollment or waivers of the prerequisite will be granted. If you have not received your ma-

terials or are having difficulties, contact the Reserve Affairs Department.

For Officers Transferring to JARCGSC.

Transfer to JARCGSC must be completed before a quota or orders can be obtained for the resident phase.

3. Mobilization Designee Vacancies

Non-MOBDES control judge advocates who desire to apply for one or more of the many vacant MOB DES positions are encouraged to review the list of vacant positions printed below. Such officers should complete the Application for Mobilization Designation (DA Form 2976) and forward it to The Judge Advocate General's School, ATTN: JAGS-RA (Colonel Carew), Charlottesville, Virginia 22901. Interested officers are reminded that mobilization designees are normally guaranteed a minimum of two weeks training with their mobilization agency.

Current positions available are as follows:

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|----------------|-----------------------|------------------|
| LTC | 05 | 05 | 05 | Military Judge | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 05 | 07 | 10 | Military Judge | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 07 | 05 | 03 | App Attorney | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 07 | 08 | 02 | App Attorney | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 08 | 08 | 02 | App Attorney | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 08 | 11 | 02 | App Attorney | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 09 | 06 | 02 | Trial Attorney | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 09 | 06 | 03 | Trial Attorney | USA Legal Svcs Agency | Falls Church, VA |
| LTC | 12 | 09 | 01 | Judge Advocate | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 12 | 10 | 01 | Judge Advocate | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 12 | 10 | 02 | Judge Advocate | USA Legal Svcs Agency | Falls Church, VA |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|---|-------------------------------|------------------|
| MAJ | 13 | 10 | 01 | Sp Project Off | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 13 | 12 | 01 | Sr Def Counsel | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 13 | 12 | 02 | SR Def Counsel | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 13 | 12 | 03 | Sr Def Counsel | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 13 | 12 | 04 | Sr Def Counsel | USA Legal Svcs Agency | Falls Church, VA |
| MAJ | 13 | 12 | 05 | Sr Def Counsel | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 03 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 04 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 05 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 06 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 07 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 08 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 09 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| CPT | 13 | 18 | 10 | Trial DC | USA Legal Svcs Agency | Falls Church, VA |
| LTC | 05A | 02 | 01 | D Ch AD CG Cor B | USA Claims Svc | Ft Meade, MD |
| MAJ | 05A | 04 | 02 | Clms JA | USA Claims Svc | Ft Meade, MD |
| LTC | 05 | 01A | 01 | Asst Chief, Personnel, Plans & Tng Ofc | Ofc Judge Advocate General | Washington, DC |
| LTC | 05 | 02A | 01 | Plans Officer | Ofc Judge Advocate General | Washington, DC |
| MAJ | 05 | 03A | 03 | Staff Officer | Ofc Judge Advocate General | Washington, DC |
| LTC | 09 | 01A | 01 | Dep Ch DA Adv | Ofc Judge Advocate General | Washington, DC |
| CPT | 10A | 02A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| CPT | 10A | 02A | 02 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| LTC | 10B | 01A | 01 | Asst Chief, Lit Div | Ofc Judge Advocate General | Washington, DC |
| LTC | 10C | 01A | 01 | Asst Chief, Mil Pers | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10C | 02A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10C | 02B | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10C | 02B | 02 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10C | 02B | 03 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| CPT | 10C | 03A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| CPT | 10C | 03A | 02 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10D | 01A | 01 | Asst Chief, Sp1 Lit Br | Ofc Judge Advocate General | Washington, DC |
| CPT | 10E | 02A | 02 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|--------------------------------|-------------------------------|----------------|
| LTC | 10F | 01 | 01 | Chief, Ind Rel Br | Ofc Judge Advocate General | Washington, DC |
| MAJ | 10F | 02 | 01 | Asst Chief, Ind Rel Br | Ofc Judge Advocate General | Washington, DC |
| LTC | 10G | 01 | 01 | Chief, Deb Susp Br | Ofc Judge Advocate General | Washington, DC |
| LTC | 12A | 01A | 02 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| MAJ | 12A | 02A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| LTC | 13 | 01A | 01 | Asst Chief, Crim Law Div | Ofc Judge Advocate General | Washington, DC |
| MAJ | 13B | 02A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| LTC | 13C | 01A | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |
| LTC | 14B | 01 | 01 | Chief, Intl Affr Div | Ofc Judge Advocate General | Washington, DC |
| LTC | 14D | 02 | 01 | Judge Advocate | Ofc Judge Advocate General | Washington, DC |

CLE News

1. Resident Course Quotas

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. TJAGSA CLE Courses

July 6-17: JAGC RC CGSC.

July 6-17: JAGC BOAC (Phase IV).

July 20-31: 89th Contract Attorneys (5F-F10).

July 20-August 7: 23rd Military Judge Course (5F-F33).

July 27-October 2: 96th Basic Course (5-27-C20).

August 10-14: 62nd Senior Officer Legal Orientation (5F-F1).

August 17-May 21, 1982: 30th Graduate Course (5-27-C22).

August 24-26: 5th Criminal Law New Developments (5F-F35).

September 8-11: 13th Fiscal Law Course (5F-F12).

September 21-25: 17th Law of War Workshop (5F-F42).

September 28-October 2: 63rd Senior Officer Legal Orientation (5F-F1).

October 5-7: 3rd Legal Aspects of Terrorism (5F-F43).

October 13-16: 1981 Worldwide JAGC Conference.

October 19-December 18: 97th Basic Course (5-27-C20).

October 26-29: 4th Claims (5F-F26).

November 2-6: 10th Defense Trial Advocacy (5F-F34).
 November 16-20: 9th Legal Assistance (5F-F23).
 November 30-December 11: 90th Contract Attorneys (5F-F10).
 January 4-8: 18th Law of War Workshop (5F-F42).
 January 4-15: 2nd Administrative Law for Military Installations (5F-F24).
 January 11-15: 1982 Government Contract Law Symposium (5F-F11).
 January 21-23: JAG USAR Workshop.
 January 25-29: 64th Senior Officer Legal Orientation (5F-F1).
 January 25-April 2: 98th Basic Course (5-27-C20).
 February 8-12: 3rd Prosecution Trial Advocacy (5F-F32).
 February 22-March 5: 91st Contract Attorneys (5F-F10).
 March 8-12: 10th Legal Assistance (5F-F23).
 March 22-26: 21st Federal Labor Relations (5F-F22).
 March 29-April 9: 92nd Contract Attorneys (5F-F10).
 April 5-9: 65th Senior Officer Legal Orientation (5F-F1).
 April 20-23: 14th Fiscal Law (5F-F12).
 April 26-30: 12th Staff Judge Advocate (5F-F52).
 May 3-14: 3d Administrative Law for Military Installations (5F-F24).
 May 12-14: 4th Contract Attorneys Workshop (5F-F15).
 May 17-20: 10th Methods of Instruction.
 May 17-June 4: 24th Military Judge (5F-F33).
 May 24-28: 19th Law of War Workshop (5F-F42).
 June 7-11: 67th Senior Officer Legal Orientation (5F-F1).
 June 21-July 2: JAGSO Team Training.
 June 21-July 2: BOAC (Phase VI-Contract Law).
 July 12-16: 4th Military Lawyer's Assistant (512-71D/20/30).
 July 19-August 6: 25th Military Judge (5F-F33).

July 26-October 1: 99th Basic Course (5-27-C20).
 August 2-6: 11th Law Office Management (7A-713A).
 August 9-20: 93rd Contract Attorneys (5F-F10).
 August 16-May 20, 1983: 31st Graduate Course (5-27-C22).
 August 23-25: 6th Criminal Law New Developments (5F-F35).
 September 13-17: 20th Law of War Workshop (5F-F42).
 September 20-24: 68th Senior Officer Legal Orientation (5F-F1).
 October 12-15: 1982 Worldwide JAGC Conference.
 October 18-December 17: 100th Basic Course (5-27-C20).

3. Civilian Sponsored CLE Courses

September

2-3: NYSBA, Update '81 Syracuse, NY.
 4: GICLE, Insurance Law, Columbus, GA.
 7-11: FBA, 1981 Annual Convention, Denver, CO.
 11: OLCI, Appellate Practice, Cincinnati, OH.
 12-18: PLI, Patent Bar Review, New York City, NY.
 13-16: NCSC, Court Management, San Diego, CA.
 15-16: NYSBA, Estate Planning & Will Drafting, Albany, Buffalo, New York City and Syracuse, NY.
 16-17: NYSBA, Update '81, New York City, NY.
 16-18: PLI, Fundamental Concepts of Estate Administration, New York City, NY.
 17-18: PLI, Estate Planning Institute, St. Louis, MO.
 17-18: PLI, Real Estate Development & Construction Financing, New York City, NY.
 17-18: PLI, Secured Creditor & Lessors—Bankruptcy Reform Act, San Francisco, CA.
 18: NYSBA, Worker's Compensation, Buffalo, NY.

18-19: UHCL, Health Law Institute, Houston, TX.

OLCI: Appellate Practice, Cleveland, OH.

21-22: PLI, Computer Contracts, San Francisco, CA.

23-25: SMU, Federal Taxation, Dallas, TX.

24-25: PLI, Construction Claims Workshop, San Francisco, CA.

24-25: ALIABA, Patent Law, Washington, DC.

24-26: AAJE, Alcohol/Drug Abuse Offender, College Park, MD.

24-26: ALIABA, Atomic Energy Licensing and Regulation, Washington, DC.

25: OLCI, Appellate Practice, Toledo, OH.

25-26: PLI, Proving & Defending Against Back & Neck Injuries, New York City, NY.

26-28: PLI, Federal Estate Tax Return, San Francisco, CA.

27-10/16: NJC, General Jurisdiction—General, Reno, N.W.

27-10/2: NJC, Sentencing Felons—Graduate

30-10/4: NCDA, Trial Advocacy, Kansas City, MO.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

AICLE: Alabama Institute for Continuing Legal Education, Box CL, University, AL 36486.

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of

America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007

BCGI: Brandon Consulting Group, Inc., 1775 Broadway, New York, NY 10019.

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GCP: Government Contracts Program, George Washington University Law Center, Washington, DC.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602,

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

- IPT:** Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.
- KCLE:** University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.
- LSBA:** Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.
- MCLNEL:** Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02018, and 1387 Main Street, Springfield, MA 01103.
- MOB:** The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65101.
- NCAJ:** National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.
- NCATL:** North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.
- NCCDL:** National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004.
- NCDA:** National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.
- NCJFCJ:** National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.
- NCLE:** Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.
- NCSC:** National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203.
- NDAA:** National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.
- NITA:** National Institute for Trial Advocacy, University of Minnesota Law School, Minneapolis, MN 55455.
- NJC:** National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.
- NPI:** National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).
- NPLTC:** National Public Law Training Center, 2000 P. Street, N.W., Suite 600, Washington, D.C. 20036
- NWU:** Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611
- NYSBA:** New York State Bar Association, One Elk Street, Albany, NY 12207.
- NYSTLA:** New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.
- NYULT:** New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.
- OLCI:** Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.
- PATLA:** Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.
- PBI:** Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.
- PLI:** Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.
- SBM:** State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.
- SBT:** State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.
- SCB:** South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.
- SLF:** The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080
- SMU:** Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275
- SNFRAN:** University of San Francisco,

School of Law, Fulton at Parker Avenues,
San Francisco, CA 94117.

TBI: The Bankruptcy Institute, P.O. Box
1601, Grand Central Station, New York,
NY 10017.

UDCL: University of Denver College of Law,
200 West 14th Avenue, Denver, CO
80204.

UHCL: University of Houston, College of
Law, Central Campus, Houston, TX
77004.

UMLC: University of Miami Law Center,
P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal
Education, 425 East First South, Salt
Lake City, UT 84111.

VACLE: Joint Committee of Continuing
Legal Education of the Virginia State
Bar and The Virginia Bar Association,
School of Law, University of Virginia,
Charlottesville, VA 22901.

VUSL: Villanova University, School of Law,
Villanova, PA 19085.

Current Materials of Interest

1. Regulations

| <i>Number</i> | <i>Title</i> | <i>Change</i> | <i>Date</i> |
|---------------|--|---------------|-------------|
| AR 37-21 | Establishing and Recording of Commitments and Obligations | 902 | 28 Apr 81 |
| AR 135-155 | Promotion of Commissioned Officers and Warrant Officers Other than General Officers | 9 | 15 Apr 81 |
| AR 210-16 | Bachelor Housing Management | 903 | 24 Apr 81 |
| AR 210-65 | Alcoholic Beverages | 902 | 8 Apr 81 |
| AR 601-102 | Voluntary Duty with the Judge Advocate General's Corps | | 1 Sep 78 |
| Cir 310-80-7 | Army Micropublishing Program | | 31 Dec 80 |
| DA Pam 310-1 | Index of Administrative Publications | | 1 Mar 81 |
| DA Pam 310-2 | Index of Blank Forms | | 15 Mar 81 |

By Order of the Secretary of the Army:

E.C. MEYER
General, United States Army
Chief of Staff

Official

J.C. PENNINGTON
Major General, United States Army
The Adjutant General

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