



July 1976

# THE ARMY LAWYER



DA PAMPHLET 27-50-43, HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D.C.

## We Are Here To Serve

*This creed is displayed in the Office of the Staff Judge Advocate at Fort Dix. The Judge Advocate General has sent copies to all Staff Judge Advocates, noting that "This creed expresses my own personal feelings on the importance of the soldier as an individual, and our duty as Judge Advocates to help the soldier in every way we can."*

## OUR CREED

**A SOLDIER is the most important person entering our facilities.**

**A SOLDIER is not an interruption of our work, he is the purpose of it.**

**We are not doing him a favor by serving him. He is entitled to our service.**

**A SOLDIER is not a cold statistic, he is a flesh and blood human being with feelings and emotions like our own.**

**A SOLDIER is a person who brings us his wants and it is our job to handle them as expeditiously and courteously as possible.**

**Take care of the SOLDIER**

**That's WHY we are here**

## UNITED STATES V. THOMAS AND THE FUTURE OF UNIT INSPECTIONS

*By: Captain John S. Cooke, Criminal Law Division, TJAGSA*

On 23 April 1976 the United States Court of Military Appeals handed down its decision in *United States v. Thomas*,<sup>1</sup> reversing Private Thomas' conviction for possession of marijuana. A brief statement of the facts is necessary for an appreciation of the significance of the case and the problems it raises. As the result of reports indicating that marijuana was being used in the barracks, Patrice, a marijuana detection dog<sup>2</sup> was walked through the barracks. She alerted at several lockers which were marked and subsequently examined<sup>3</sup> before she and her party approached Private Thomas' cubicle. While Patrice and the party were in the barracks hallway she became excited and ran into Private Thomas' cubicle; from his open locker she pulled a bag which, upon examination by her handler, appeared to contain marijuana. The bag was replaced in the locker, and, after Private Thomas

refused to consent to a search of the locker, authorization to search was requested of the executive officer.<sup>4</sup> According to the executive officer's testimony, he was simply told that the dog "had gone to" Private Thomas' locker. On that basis the search was authorized and the marijuana in the locker was seized. No description of Patrice's behavior when she went to the locker or of prior events that day had been given to the executive officer. Although each of the judges on the Court of Military Appeals agreed that the seizure of the marijuana was illegal, their reasons for so concluding were widely divergent.

Judge Cook reasoned that whatever the legality of the initial entry into the accused's cubicle and wall locker by Patrice and her retinue,<sup>5</sup> the later seizure of the marijuana was improper because it was not based on proper authorization.

## The Army Lawyer

	Table of Contents
1	We Are Here To Serve
1	<i>United States v. Thomas</i> and the Future of Unit Inspections
8	Article 93 and Speedy Trials—A Nexus Revived?
11	Judiciary Notes
12	Monthly Average Court-Martial Rates
12	Non-Judicial Punishment Monthly Average and Quarterly Rates
12	JAG School Notes
13	CLE News
25	A Punitive Discharge—An Effective Punishment?
30	Legal Assistance Items
31	Reserve Affairs Section
31	JAGC Personnel Section
32	Current Materials of Interest

## The Judge Advocate General

Major General Wilton B. Persons, Jr.  
 The Assistant Judge Advocate General  
 Major General Lawrence H. Williams  
 Commandant, Judge Advocate General's School  
 Colonel William S. Fulton, Jr.

## Editorial Board

Colonel Barney L. Brannen, Jr.  
 Lieutenant Colonel Jack H. Williams

## Editor

Captain Charles P. Goforth, Jr.  
 Administrative Assistant  
 Mrs. Helena Daidone

The Army Lawyer is published monthly by the Judge Advocate General's School. By-lined articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army. Manuscript on topics of interest to military lawyers are invited to: Editor, The Army Lawyer, The Judge Advocate General's School, Charlottesville, Virginia 22901. Manuscripts will be returned only upon specific request. No compensation can be paid to authors for articles published. Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971.

Judge Cook held that the information conveyed to the executive officer was misleading, erroneous, and insufficient to establish probable cause for the ultimate search and seizure.<sup>6</sup> Senior Judge Ferguson considered the initial act of walking a marijuana detection dog through the barracks to be a search in itself. In the absence of preexisting probable cause Senior Judge Ferguson considered such a search unreasonable.

In the most far reaching of the three opinions, Chief Judge Fletcher expressed his view that "under existing admissibility standards"<sup>7</sup> health and welfare inspections carry with them substantial potential for abuse by commanders. Because of this potential for abuse, Chief Judge Fletcher would adopt a rule under which items seized in a health and welfare inspection "may not be used either as evidence in a criminal or quasicriminal proceeding or as a basis for establishing probable cause. . . ." <sup>8</sup> Since the activity of the marijuana detection dog in this case fell within Chief Judge Fletcher's definition of an administrative inspection, he agreed with his brethren that the marijuana that was seized should have been excluded.

The Court's failure to achieve a consensus <sup>9</sup> in *Thomas* cannot but create uncertainty in the military community concerning the commander's authority to examine his organization, the means he may choose to do so, and his options for dealing with the problems he discovers. It must be noted that only Chief Judge Fletcher treats this as an "inspection" case; <sup>10</sup> he does so despite the difference between the command's activity in *Thomas*, and the more traditional health and welfare inspection. Because of the problems Chief Judge Fletcher perceives in accommodating the commander's interest in inspecting and the judicial interest in protecting individual rights, he advocates the extreme remedy of excluding the fruits of all unit inspections, which he treats as essentially the same. Neither Judge Cook nor Senior Judge Ferguson goes so far. Judge Cook expresses disagreement with Chief Judge Fletcher's solution to the problem with inspections, but does not indicate what his own answer to it would be, nor even whether he agrees that there is such a problem.<sup>11</sup> Senior Judge Ferguson, by deciding that the use of the marijuana dog was a search, implicitly finds that

this was not an inspection at all. Of course, Senior Judge Ferguson has now been replaced by Judge Perry, injecting even more uncertainty into the situation. Because of its scope, and because of the uncertainties about the positions of the other two judges on the court on the broader inspection question, Chief Judge Fletcher's opinion warrants careful scrutiny. While the Chief Judge may not attract a majority of the court with his approach, he is bound to cause other members of the court,<sup>12</sup> and the military bar generally, to reexamine and reevaluate the law of health and welfare inspections. Given all of this, to persist with business as usual with health and welfare inspections is to step into the batter's box with one strike against the government and no "book" on what kinds of pitches the other two judges will throw. What then, should be our response to the knuckleball the Court seems to have thrown us in *Thomas*?

First we must take a look at where we are coming from, or, in other words, at the "existing admissibility standards" for administrative inspections criticized by Chief Judge Fletcher. Prior to *Thomas* the standard for determining whether the fruits of an administrative health and welfare inspection were admissible was derived largely from *United States v. Lange*.<sup>13</sup> In *Lange* the U.S.C.M.A. adopted language from the Army Board of Review's unreported opinion in the same case:

Comparing "search" with "inspection" we find that a search is made with a view toward discovering contraband or other evidence to be used in the prosecution of a criminal action. In other words, it is made in anticipation of prosecution. On the other hand, an inspection is an official examination to determine the fitness or readiness of the person, organization, or equipment, and, though criminal proceedings may result from matters uncovered thereby, it is not made with a view to any criminal action.<sup>14</sup>

Under *Lange* the analysis focused on the commander's purpose in carrying out an intrusion into an individual's living area. If the purpose was prosecutorial, then the intrusion was called a "search" and the analysis continued to the

usual examination for reasonableness, which normally demanded the presence of probable cause. On the other hand, if the commander's purpose was to examine for fitness, preparedness, and morale, then the intrusion was labeled an "inspection", and the analysis effectively ended, for health and welfare inspections were considered to be within the "inherent authority"<sup>15</sup> of the commander.

The primary difficulty with this approach was (and is) that the commander's purpose is seldom so clear cut. Rather, most health and welfare inspections contemplate dual, if not multiple, purposes. This became especially true as contraband weapons and drugs were increasingly recognized as part of the barracks milieu. Certainly the commander who wants his barracks to be free of drugs and weapons also intends to take disciplinary action against those who are discovered in disobedience of the law; indeed he has a duty to do so. Sometimes the only appropriate disciplinary measure is trial by court-martial. The fact that the commander may acknowledge this before his inspection ought not to destroy his authority to inspect, nor should his silence on the matter mean that his inspection is necessarily reasonable.

By looking to the commander's purpose or even his "primary purpose",<sup>16</sup> the judiciary was reduced to examining whether an apparently otherwise legitimate inspection was being used as a subterfuge to find evidence for use in a specific prosecution. Beyond that any attempt to ascertain a singular purpose when dual purposes existed was doomed from the beginning. In any event, the more difficult and important question whether the inspection was in fact otherwise legitimate, that is, reasonable, was usually left to the discretion of the individual commander as a matter within his inherent authority.<sup>17</sup>

It is to this apparently broad discretionary, and, under the *Lange* test, largely unreviewable authority of the commander that Chief Judge Fletcher responds in *Thomas*. Such discretion must be conceded to carry with it the potential for abuse. This potential leads Chief Judge Fletcher to conclude that in order to protect individual rights and to discourage unlawful in-

spections, the fruits of all inspections may not be used in a court-martial, nor in some other ways as well.<sup>18</sup> Yet, while he fashions this sweeping exclusionary rule, Chief Judge Fletcher recognizes that in order to fulfill his disciplinary or "command function"<sup>19</sup> the commander must be permitted to inspect the barracks for, among other things, drugs, and that such inspections may be reasonable.

Chief Judge Fletcher's rule would create more problems than it would solve. Initially it must be recognized that this rule would have the exclusionary rule tail wagging the fourth amendment dog. The Supreme Court has indicated that exclusion of evidence obtained in violation of the fourth amendment is not a personal right of the accused at trial. Instead it is a judicially created mechanism designed to deter or discourage unreasonable intrusions by government agents into areas in which the individual has a reasonable expectation of privacy.<sup>20</sup> In this sense the individual accused is simply a gratuitous beneficiary of the operation of the exclusionary rule in a given case. Chief Judge Fletcher's rule, on the other hand, places primary emphasis on the protection of a trial interest. It protects the individual's interest in avoiding conviction by excluding what is found during a health and welfare inspection. As a tool to safeguard privacy, however, Chief Judge Fletcher's rule is too blunt an instrument to make the precise calibrations necessary to balancing privacy interests and legitimate law enforcement needs. While a possible by-product of this rule may be fewer inspections, the military judiciary would retain no effective means to control the frequency of such intrusions, nor would it be able to insure that those which do occur will be reasonable.<sup>21</sup> Although Chief Judge Fletcher acknowledges that the commander must have authority to conduct "reasonable inspections,"<sup>22</sup> he would treat such inspections exactly like unreasonable ones when their fruits are offered as evidence in court-martial. Exclusion of evidence seized in all inspections, reasonable and unreasonable alike, may discourage some inspections, but it will do nothing to encourage the commander to adhere to any particular standards of reasonableness when he does inspect.

By cutting off the commander's access to the courtroom in inspection cases, Chief Judge Fletcher's rule would therefore also cut off the judiciary's access to the commander. Such a system is unhealthy in several respects. First, the commander's ability to maintain discipline will be impaired if he cannot take serious disciplinary problems, discovered through reasonable inspections, to the courts for resolution. Second, the commander is left to his own devices as to when, where, and how he may inspect; the privacy interests of the barracks occupants are protected only by the commander's discretion without judicial supervision.<sup>23</sup> Finally, to the extent that disciplinary problems cannot be brought to the courts for resolution, they may often be dealt with in other less formal ways; this poses difficulties and dangers for both the commander and the individual.

Given the reexamination of the law regarding inspections that Chief Judge Fletcher's proposal will probably create, and the concomitant likelihood of change, it is submitted that an alternative to the *Lange* "purpose" test and to Chief Judge Fletcher's automatic exclusionary rule exists. While the balancing test which I advocate has been occasionally experimented with in military cases,<sup>24</sup> it is best expressed in the District of Columbia Circuit Court of Appeals' decision in *Committee for GI Rights v. Callaway*.<sup>25</sup> In upholding the Army's extensive drug inspection program in Europe, the circuit court analyzed several factors. In essence, the court balanced the nature of the problem at which the inspection was directed, against the privacy interests of the individuals subjected to the inspections; the "fulcrum" in this balance was the nature, or scope, of the actual intrusion. In weighing the nature of the problem, the court did not simply accept an assertion that "a drug problem" justified the program. Instead the court pointed to specific ways in which the incidence of drug use impacted upon the organization's ability to perform its mission. The factors demonstrating such impact here were: reduced on the job efficiency; reduction of the pool of available manpower in the command; expenditure of supervisory resources for drug control and rehabilitation; diversion of medical resources; the health problem; and the increase in

crime connected with drug abuse.<sup>26</sup> The court itself analyzed and weighed these factors in determining the reasonableness of the inspection program; it did not defer to the command's apparent conclusion that these factors necessitated such a program.

While the magnitude of the problem and the inspection program in *GI Rights* differs considerably from the normal unit health and welfare inspection, there is no reason why a similar kind of analysis cannot be applied in the latter situation. Thus, in order for a health and welfare inspection to be reasonable, and for its fruits to be admissible in a court-martial, the commander would have to show a need for the intrusion, that is military necessity.<sup>27</sup> The commander's "inherent authority" would not suffice.<sup>28</sup> This need could be demonstrated in a number of ways, such as by a showing that the inspection was ordered in response to a particular documented problem affecting mission performance, or in accordance with specific command responsibilities (e.g. property accountability), or due to the mere passage of time.<sup>29</sup> The commander would also have to show that he considered the privacy interests of those subject to the inspection, and that he chose the least intrusive means reasonably available to fulfill his goal. Depending upon the specific nature of the basis underlying the inspection, the permissible scope of it might differ. For example, if an inspection were legitimately for drugs, an intensive examination of individual areas, including careful scrutiny of personal property, might be necessary. If, however, the purpose of the inspection were to check the serviceability of government property, its scope would be more limited. Of course, items in plain view during an otherwise reasonable inspection would be admissible.

Two additional steps are proposed as part of this approach to health and welfare inspections. First, it is submitted that regulatory authority for health and welfare inspections, which authority included general guidelines for when, where, and how such inspections could be conducted, be established. Preferably this should be done at the Department of the Army level,<sup>30</sup> and implemented at lower commands, although in the absence of an Army regulation, there is no

reason why lower commands could not create their own regulations. With or without such higher regulations, local commands should implement their own, tailoring them to their own specific needs. Such regulatory authority would, much like the statutory warrantless inspection scheme approved by the Supreme Court in *United States v. Biswell*,<sup>31</sup> establish authority to inspect and limitations to it. Furthermore, it would create definite standards more quickly, and with greater direct input from the command, than judicial decisions could do. Such a regulation ought to define permissible purposes of inspections, types of problems at which inspections may be directed, and the manner in which inspections are to be conducted.

The second step, which could most easily be carried out by implementing the first, would be to require the commander authorizing the inspection to do so in writing. Such authorization would include a statement of the purpose(s) of the inspection, a statement of the specific reason(s) for it, and would contain instructions for the inspecting party as to what they are to look at and for, and how they are to go about it.<sup>32</sup> This procedure would demonstrate that the commander's decision to inspect was not an arbitrary one, and would provide the military judge, in the event that evidence is discovered which leads to a court-martial, with an accurate description, unclouded by lapses of memory or testimonial inconsistency, of the basis for the inspection. Moreover, the authorization would provide clear guidance for those who will actually do the inspecting as to what they are to examine and how they are to do it.

Implementation of the proposals advanced herein would, it is submitted, go a long way toward solving many of the problems in the present system. While the commander understandably does not relish any encroachment on his authority, nor having additional requirements attached to it, these proposals really require only that the commander formalize and articulate the reasoning that he ought to be engaging in anyway. Further, it must be recognized that the alternative to placing these or other requirements on the commander may be the closing of the courtroom door to the fruits of such inspections

altogether, as advocated by Chief Judge Fletcher in *Thomas*. While that alternative offers a beguilingly simple cure to the headaches we as lawyers have suffered in trying to balance individual rights and legitimate command needs with the unworkable *Lange* scales, it carries with it, as discussed above, undesirable side effects. As attorneys we owe it to our clients, the entire military community, from the private who lives in the barracks through all the levels of command responsible for those barracks and their occupants, to attempt the more difficult job of balancing the legitimate interests of all, and of formulating realistic standards by which those interests can be effectively weighed.

### Notes

1. *United States v. Thomas*, No. 29,934 (U.S.C.M.A. 23 April 1976).
2. While Patrice was trained to detect marihuana, she was not trained in obedience, and, in fact, had a history of destructive behavior. These facts took on importance in Judge Cook's opinion.
3. These examinations were pursuant to consent of the individuals in each case. Two of these lockers on which Patrice had alerted turned out not to contain marijuana. Apparently this occurred before the encounter at Private Thomas' locker.
4. Authority to supervise the entire operation had been delegated to the executive officer by the commander. See the Navy Court of Military Review's decision. *United States v. Thomas*, 50 C.M.R. 114, 115, (N.C.M.R. 1975).
5. Judge Cook found that the government's action in walking the dog down the hallway was legal since the individual barracks occupant has no expectation of privacy in the hallway. The olfactory powers of the dog are, in Judge Cook's view, approximated to human senses, rather than to the electronic surveillance device (i.e., a listening "bug") deemed to be a search *per se* in *Katz v. United States*, 389 U.S. 349 (1967). Judge Cook expressly avoided passing on the legality of the initial physical entry into the cube by the "inspecting" party.
6. Of critical importance to Judge Cook were the facts that the accused's locker, unlike others in the barracks, was open; and Patrice's lack of obedience training. These facts together, had they been reported to the executive officer, might have indicated that Patrice's movement to the locker was not an alert, but only an attempt to be destructive. Additionally, the failure to precisely describe Patrice's other behavior, including her two apparently incorrect alerts that day, was deemed misleading by Judge Cook.
7. *United States v. Thomas*, No. 29,934, — U.S.C.M.A. —, — C.M.R. —, slip opinion p. 17 (23 April 1976).
8. *Id.* at 18.
9. It must be acknowledged that, read together, the opinions of Chief Judge Fletcher and Senior Judge Ferguson leave the use of marihuana detection dogs in barracks a very dubious enterprise at best. While it is possible that Senior Judge Ferguson's opinion could be distinguished in a situation where the dog was part of an otherwise valid health and welfare inspection, the more prudent course seems to be for commanders to do their inspecting without canine assistance.
10. In this regard it should be noted that the Navy Court of Military Review upheld the seizure in this case on the ground that it occurred as part of a legitimate unit inspection. *United States v. Thomas*, 50 C.M.R. 114 (N.C.M.R. 1975).
11. Judge Cook in *Thomas* and elsewhere (see *United States v. Miller*, No. 30,158, — U.S.C.M.A. —, — C.M.R. —, slip opinion pp 2-11 (26 March 1976) Cook, J. dissenting); *United States v. Carter*, 24 U.S.C.M.A. 129, 131, 51 C.M.R. 319, 321 (1976) (Cook, J. dissenting) ) indicates his belief that the government has broad, if not unlimited authority to examine its own property not issued for personal use. While he hints, both in *Thomas* and in *Carter*, *supra*, that the government may inspect personal property or government property issued for personal use under at least some circumstances, he has yet to indicate with any clarity what those circumstances might be.
12. Indeed, it is possible that the Chief Judge's opinion does not constitute his final word on the subject. It may be that if a system can be devised to substantially reduce the potential for the abuses seen by Chief Judge Fletcher he will accept it as an alternative to the one he proposes.
13. *United States v. Lange*, 15 U.S.C.M.A. 486, 35 C.M.R. 458 (1965).
14. *Id.*, at 489, 35 C.M.R. at 461 (1965).
15. See *United States v. Gebhart*, 10 U.S.C.M.A. 606, 610 n. 2, 28 C.M.R. 172, 176 n. 2 (1959). See also *United States v. Harman*, 12 U.S.C.M.A. 180, 30 C.M.R. 180 (1961); *United States v. Doyle*, 1 U.S.C.M.A. 545, 4 C.M.R. 137 (1952); *United States v. Brashears*, 45 C.M.R. 438, 442 (A.C.M.R. 1972).
16. See *United States v. Ramirez*, 50 C.M.R. 68 (N.C.M.R. 1974); *United States v. Tates*, 50 C.M.R. 504 (A.C.M.R. 1975).
17. *But see United States v. Roberts*, 50 C.M.R. 699 (A.F.C.M.R. 1975) wherein the court examined the reasonableness of the commander's determination to inspect. Although the court did not go as far as it might have in weighing the factors, it did not resolve the question solely on a finding of inherent authority. See also *United States v. Unrue*, 22 U.S.C.M.A. 467, 47 C.M.R. 556 (1973) discussed at note 24 *infra*.
18. Exactly what Chief Judge Fletcher means by "quasi-judicial proceedings" is not clear. Presumably the term refers to Article 15 proceedings, administrative board hear-

ings, or both. It is noted that in a recent address by Chief Judge Fletcher he said that nonjudicial punishment "... is a provision affecting discipline." Fletcher, *The Continuing Jurisdiction Trial Court*, THE ARMY LAWYER, Jan. 1976, at 6. This may imply that he would not apply his rule to Article 15 proceedings. (Even if that were true, however, it would be a rare individual who would accept nonjudicial punishment when the crucial evidence against him would be excluded at trial). Whence the U.S.C.M.A. derives the power to prescribe rules of evidence for board proceedings is certainly debatable.

19. United States v. Thomas, No. 29,934, — U.S.C.M.A. —, — C.M.R. —, slip opinion p. 17 (23 April 1976).

20. See United States v. Calandra, 414 U.S. 338 (1974); United States v. Peltier, — U.S. —, 45 L.Ed.2d. 374 (1975).

21. Cf. United States v. Doyle, 1 U.S.C.M.A. 545, 548, 4 C.M.R. 137, 140 (1952). While alternatives to the exclusionary rule for dealing with fourth amendment violations exist (see *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971); Gilligan, *The Federal Tort Claims Act—An Alternative to the Exclusionary Rule?* 66 J. CRIM. L. & C. 1 (1975); see also Note, *The Fourth Amendment Exclusionary Rule: Past, Present, No Future*, 12 AM. CRIMJ. L. REV. 507 (1975)), the effectiveness of these alternatives has been questioned by the rule's supporters (see Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974)) and its critics (see Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970)). Indeed at least two members of the Supreme Court who dislike the exclusionary rule have expressed unwillingness to abolish it in the absence of a more acceptable alternative than presently exists. See *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 420 (1971) (Burger C.J. dissenting); *Schneekloth v. Bustamonte*, 412 U.S. 218, 267, n. 25 (1973) (Powell, J. concurring). Moreover, what other tools as are available to protect fourth amendment interests do not afford the military judiciary the means to safeguard individual rights.

22. United States v. Thomas, No. 29,934, — U.S.C.M.A. —, — C.M.R. —; slip opinion p. 15 (23 April 1976) (emphasis in original).

23. To the extent that a commander intentionally or recklessly violates constitutional rights other remedies may be available (see n. 21 *supra*). However, withdrawal of the exclusionary rule as a case by case tool would leave a broad range of command behavior effectively without review, even though some of it may violate individual rights, that is, be unreasonable.

24. E.g. United States v. Roberts, 50 C.M.R. 699 (A.F.C.M.R. 1975); United States v. Unrue, 22 U.S.C.M.A. 467, 47 C.M.R. 556 (1973). Unrue involved "inspections" by a marijuana detection dog of vehicles entering a brigade area. The majority upheld the roadblock scheme, holding that the drug problem and the limited "means

selected to effectuate the program" *Id.*, at 467, 46 C.M.R. at 557, outweighed the minimal expectation of privacy which it found to exist in odors emanating from the car. While the Unrue majority used a scale that looks much like the one used in *GI Rights* (see *text below*) its analysis of the factors, and hence the weight it accorded to them was by no means as complete. Basically the majority's shortcoming stemmed, as the dissent pointed out, from its failure to fully analyze how this drug problem (30 cases per quarter in a 5,000 man brigade) actually impacted on the organization's ability to perform its mission. Except for the mention of a larceny problem, the discussion of which was not fully developed, this impact was not demonstrated. Compare this to the factors discussed in *GI Rights*. See *text accompanying n. 26 infra*.

25. Committee for *GI Rights v. Callaway*, 518 F.2d 466 (D.C. Cir. 1975). It is noted that Chief Judge Fletcher describes the "efficacy" of the *GI Rights* decision as "dubious, at best" in light of *Schlesinger v. Councilman*, 420 U.S. 738 (1975). United States v. Thomas, No. 29,934, — U.S.C.M.A. —, — C.M.R. —, slip opinion p. 13, n. 2 (23 April 1976).

26. Committee for *GI Rights v. Callaway*, 518 F.2d 466, 476-7 (D.C. Cir. 1975).

27. While various appellations may be given to the standard, such as "reasonableness", "probable cause" or "diminished probable cause" I prefer to use "military necessity" because it is essentially factors peculiar to the military which justify an intrusion which would not be permissible except under a much more compelling showing in the civilian community. The Supreme Court seemingly stretched the concept of probable cause in *Camara v. Municipal Court*, 387 U.S. 523, 538-9 (1967) to cover the issuance of warrants for building inspections. Because this probable cause is so different from that which is normally used to justify fourth amendment intrusions, and which normally implies far greater specificity as to the place to be examined and the information supporting it, I prefer the term military necessity to either a "probable cause" or a "diminished probable cause" label. The term is not what is important, however, the analysis is.

28. Note that I would not require the commander to seek prior judicial approval for an inspection as is required in the normal civilian setting under *Camara v. Municipal Court*, 387 U.S. 523 (1967). The commander's unique position ought to relieve him of that requirement, so long as the other standards are met. The *GI Rights* type of showing, however, is not inconsistent with that required to be made in *Camara*.

29. See *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).

30. This would avoid possible equal protection objections. See Judge Duncan's dissenting opinion in *United States v. Unrue*, 22 U.S.C.M.A. 466, 472, 47 C.M.R. 556, 562 (1973).

31. United States v. Biswell, 406 U.S. 311 (1972). See also *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).

32. Such a procedure would satisfy at least some of the requirements that a warrant fulfills in the civilian situation under *Camara*. The only major distinction is that it is not

judicially authorized, but in the military such judicial authorization would be inappropriate. See note 27 *supra*.

### Article 98 And Speedy Trials—A Nexus Revived?

*By: Captain Gary F. Thorne, Government Appellate Division, U.S. Army Legal Services Agency, Falls Church, Virginia*

In recent years the military justice system has had to deal with a major problem entitled speedy trial. Despite all of the cases that have been written in this area, a recent decision by the Court of Military Appeals, *United States v. Powell*<sup>1</sup> raises a factor which has rarely received consideration. That factor is Article 98 of the Code. Article 98 provides that:

- Any person subject to this chapter who—
- (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or
  - (2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during or after trial of an accused;

shall be punished as a court-martial may direct.

The decision in *Powell* should serve as a chilling reminder to all those involved in the military criminal justice system that where speedy trial issues exist in a case, it is not only the accused who stands to suffer criminal punishment, but also any and all persons who fail to comply with the mandate of Article 98.

In *Powell* the appellant had his pass privileges revoked and the Court ruled that for speedy trial purposes this amounted to a restriction for 110 days, and 161 days had elapsed before his trial began. The Court noted that "the Article 32 investigating officer came perilously close to violating the Code, when he took 40 days to fill out the standard form and prepare a 3 page report after he had completed his investigation." Because of the intolerable delays which the Court found in this case, it determined that it was necessary to find a speedy trial violation

despite the fact no pretrial *confinement* existed. For the investigating officer in that case the decision indicates he approached the brink of being charged with having violated Article 98.

An examination of the history of Article 98 indicates that it was designed to deal with two problems. One of those problems involves a concern that arose subsequent to World War II, that persons in positions of military command were improperly attempting to influence the outcome of trials and the imposition of sentences.<sup>2</sup> Article 98 was devised as one means of punishing any person who should attempt to so unduly influence the carrying out of military justice. However, the most important part to be played by Article 98 was in conjunction with Articles 10 and 33 in insuring that an accused received a speedy trial.

The legislative history of Article 98, as cited by the Court of Military Appeals, indicates it was designed to prevent delays in bringing an accused to trial by invoking a punishment against those responsible for failing to comply with Articles 10 and 33.<sup>3</sup> "So in addition to providing that there be an immediate processing of the charges, if anybody unnecessarily delays doing it, he himself becomes liable to an offense, you see."<sup>4</sup> This reading of the purpose of Article 98 has been continually sustained by military courts who recognize two interlocking functions of the Article in providing an impetus to insure compliance with Articles 10 and 33 and the correlative function of imposing a punishment against those who would fail to comply with the mandate of those Articles.<sup>5</sup> Employing the Article to achieve these purposes has been evidenced in cases in which Article 98 has been recognized as one means of punishing those persons who keep another illegally in confinement.<sup>6</sup>

In addition to these purposes, prior to the decision in *United States v. Burton*,<sup>7</sup> the Court of Military Appeals had at one time indicated that the implementation of Article 98 might be one course of action which would remedy the failure of persons to bring an accused to a speedy trial, while not necessitating the reversal of a conviction.<sup>8</sup> The cases which support this proposition would seem to be highly irrelevant at this time in light of *Burton*, since reversal and dismissal of convictions for a speedy trial violation where confinement is imposed is now an appropriate remedy.

Despite the design behind the adoption of Article 98, the military courts have correctly noted that Article 98 "is not known for its diligent enforcement."<sup>9</sup> One judge of the Court of Military Appeals noted in a dissent, after discussing the history behind the adoption of Article 98, that Congress' implementation of that Article appears to have been an "exercise in futility" in light of the failure to implement Article 98 in conjunction with Articles 10 and 33.<sup>10</sup> Another judge noted that "Article 98, however, provides only an illusory remedy in view of the 23 years that the Code has been in operation and the absence of a single reported case involving a charge laid under Article 98 being prosecuted."<sup>11</sup> The Court of Military Appeals' continued pressure to force the military justice system to act speedily in bringing accused to trial and the citation of Article 98 in the *Powell* case serves as food for thought as to whether or not Article 98 is about to become an implemented rather than stagnant tool in securing speedy trial rights.

Because no case is reported in which Article 98 was employed, it is difficult, if not impossible, to ascertain with any certainty the problems which might result should a charge be lodged under Article 98. In dealing with the speedy trial problem, the *Manual*<sup>12</sup> notes that it is Article 98(1) which is designed to "insure expedition and the disposition of cases for persons accused of offenses under the code by providing for the punishment of those responsible for unnecessary delay in the disposition of these cases." In defining the proof that would be required to find one guilty of Article 98(1), the

*Manual* notes that the three elements are that the accused "to his knowledge" was charged with certain duties in connection with the disposition of a case against one accused under the Code; that a delay occurred in disposing of that case; and that under the circumstances of the situation the delay was both unnecessary "and that the accused was responsible therefor." It should be noted that unlike Article 98(2), section 1 does not involve the elements of "knowingly" or "intentionally" failing to take action. It would thus seem that with all of the cases which have been decided on the speedy trial issue, it would be relatively simple to show that, at least as to those in confinement, the 90-day rule is the standard by which to judge what is an unnecessary delay and that those persons charged with bringing a case to trial must meet that requirement or be subject to Article 98(1) charges.

Obviously, that standard becomes flexible when one is charged under Article 98 and the period of delay exceeds 90 days, since the cases continue to be presented to the military courts in attempting to define what is a reasonable delay beyond 90 days under *Burton*. Even where confinement is not present, the *Powell* decision makes clear that there are standards which must be met in bringing an accused to trial and those persons involved in the pretrial processing of the case must be diligent to insure that time taken to perform their duties is not "unnecessary." *Powell* sets forth a set of circumstances which the Court says is very close to constituting a violation of Article 98.

In attempting to define the standards of unnecessary delay, one case deserves particular attention. In *United States v. Armbruster*<sup>13</sup> the Court dealt with a situation in which the lower court had failed to follow a decision issued by the Court of Military Appeals, and instead followed a ruling by the comptroller general which was in conflict with the Court of Military Appeals' previous decision. The Court noted that "it is the responsibility of every person in the armed forces concerned with military justice to adhere to settled principles of law. Indeed, a knowing and intentional failure to enforce or to comply with these principles may constitute a violation of Article 98 of the Uniform Code, 10 U.S.C.

Section 898.”<sup>14</sup> This decision, by implementing the “knowing” and “intentional” language of Article 98(2), clearly dealt with this latter section of the Article. The case supports the proposition that in areas such as speedy trial where the mandate (such as *Burton*) has been laid down by the Court of Military Appeals, those persons who fail to comply with that order subject themselves to a court-martial under Article 98(1) and (2), absent justifiable reasons for extraordinary delay. One must give pause to wonder whether or not the Court in the *Powell* case, in saying that the Article 32 officer came so close to violating Article 98, was indicating to the services that they should begin to consider this Article and implement it when necessary and/or whether the Court was indicating that in future situations the Court itself may cause charges to be brought against one who has apparently failed to comply with such a mandate.

There are presently discussions taking place both within the Court of Military Appeals and elsewhere as to whether or not the Court can and should become more directly involved with the supervision of the administration of justice at its lowest levels. Recently the staff of the Court of Military Appeals presented new proposed rules for the Court’s consideration, including staff recommendations that the Court of Military Appeals form what is in essence an integrated bar; in that the Court itself will at least share with the Judge Advocates General, or perhaps exercise ultimate control over the entire military criminal justice system.<sup>15</sup> Should the Court desire to exercise such control, could it order the judge advocate general of a service, or any other court or member of the criminal justice system, or for that matter any member of the military, to bring charges or at least initiate an investigation of a possible violation of Article 98?

That may be a question which far exceeds anything contemplated by *Powell*’s reference to Article 98. Nevertheless, the Court’s insistence that the speedy trial mandate of *Burton* be complied with, and its continued agitation over the military justice system not adequately hastening to fulfill that mandate,<sup>16</sup> at least raises the question of whether the Court someday may itself act to bring Article 98 to bear. However the

case of *Powell* is viewed, it serves clear notice on the entire criminal justice system that the speedy trial requirements are perhaps the most seriously taken mandates that the U.S.C.M.A. has ever issued, and the Court believes every necessary step must be taken to insure compliance with that mandate.

### Notes

1. No. 31,088 (May 21, 1976).
2. *United States v. Liberator*, 14 U.S.C.M.A. 499, 505, 34 C.M.R. 279, 285 (1964) (Ferguson, J., concurring and dissenting in part); *United States v. Ferguson*, 11 C.M.R. 251, 256, (A.B.R. 1959).
3. *United States v. Ray*, 20 U.S.C.M.A. 331, 336, 43 C.M.R. 171, 176 (Ferguson, J., dissenting).
4. *United States v. Parish*, 17 U.S.C.M.A. 411, 415, 38 C.M.R. 209, 213 (1968).
5. *United States v. Schalek*, 14 U.S.C.M.A. 371, 34 C.M.R. 151 (1964); *United States v. Keaton*, 18 U.S.C.M.A. 500, 40 C.M.R. 212 (1969); *United States v. Jennings*, 19 U.S.C.M.A. 88, 41 C.M.R. 88 (1969); *United States v. Timmons*, 22 U.S.C.M.A. 226, 46 C.M.R. 226 (1973); *United States v. Swartz*, 44 C.M.R. 403 (A.C.M.R. 1971).
6. *United States v. Wilson*, 10 U.S.C.M.A. 337, 339, 27 C.M.R. 411, 413 (1959).
7. 21 U.S.C.M.A. 112, 44 C.M.R. 156 (1961).
8. *United States v. Gray*, 22 U.S.C.M.A. 443, 445, 47 C.M.R. 484, 487 (1973); *United States v. Jefferson*, 22 U.S.C.M.A. 554, 556, 48 C.M.R. 39, 41 (1973).
9. *United States v. Marshall*, 45 C.M.R. 802, 808 (N.C.M.R. 1972).
10. 20 U.S.C.M.A. at 336, 43 C.M.R. at 176.
11. *United States v. Ward*, 48 C.M.R. 588, 589 (C.G.C.M.R. 1974) (Lynch, J., concurring). Judge Ferguson himself remarked during oral argument in the *Powell* case that “the Pentagon has repealed Article 98” in light of the failure ever to invoke its sanctions.
12. Paragraph 177, *Manual for Courts-Martial 1969* (Rev. ed.).
13. 11 U.S.C.M.A. 596, 29 C.M.R. 412 (1960).
14. 11 U.S.C.M.A. at 598, 29 C.M.R. at 414.
15. The proposed rules were presented at the Homer Ferguson conference on appellate advocacy which was presented at Georgetown University Law Center on May 20 and 21. It must be kept in mind that the rules at the time of their presentation at the conference had not been viewed by the Court members, but were simply recommendations from the staff and were made available to the services for comment prior to the Court members’ actual consideration of the proposals.
16. See *United States v. Henderson*, No. 30,512 (U.S.C.M.A. May 21, 1976).

## JUDICIARY NOTES

*From: U.S. Army Judiciary*

### ADMINISTRATIVE NOTES

1. *Requests for Witnesses*—The Special Actions Branch, Office of the Clerk of Court, is responsible for processing requests for civilian witnesses traveling from the United States to Overseas Commands to appear at various court-martial trials. The following problems involving such requests have been noted by Special Actions personnel:

a. *Failure to provide written request for witness*—a telephone call provides insufficient authority for obtaining travel orders.

b. *Failure to allow sufficient time for processing requests or for allowing the witness time to obtain documents necessary for travel*—it takes a minimum of three weeks for an individual to obtain a passport if the required documentation is not available at the time of the request. In addition, it may be necessary to obtain advanced pay for the individual, due to his present financial situation. These matters, plus the average administrative processing time, often require several weeks to complete. Despite the time required for completion of these actions, overseas commands continue to request witnesses within a very short period prior to the date of trial. All requests for civilian witnesses should be submitted in writing by message and allow approximately *three weeks* from the time of the request until the date of trial.

c. *Treatment and care of witnesses after arrival*—after the office of the Staff Judge Advocate of the command concerned is notified of a witness' flight number, date and time of arrival, it should assure that the individual is met at the airport and, if possible, provided with adequate accommodations during the length of his stay. This not only extends a courtesy to the individual concerned, but may save the Government for the amount of expense it must incur for reimbursing a witness required to pay for a hotel room and meals on the local economy.

d. *Timely reimbursement of witnesses*—the finance office of the appropriate command making the request should process all of the necessary paperwork for compensating the individual for expenses incurred before he departs from the command. In this regard, the duties of a trial counsel include appropriate action with respect to the compensation of witnesses. See DA Pamphlet 27-10.

2. *Publication of Final Orders*—In the absence of a request for final action executed by the appellant, a final court-martial order should not be published until a full 30 days has elapsed from the date he is served with a copy of the Army Court of Military Review decision or from the date a certificate of attempted service is executed.

3. *Chief Trial Judge outlines the utilization of Magistrates* by local Staff Judge Advocates. On 6 May 1976 Colonel W. K. Laray sent a memorandum to all assigned magistrates and supervising judges. The Chief Trial Judge stated that:

“Statistics to date on the work of magistrates show that many assigned magistrates have substantial time available after performing magisterial duties which is not being utilized by local staff judge advocates. This may be attributable to several factors such as staff judge advocates not being made aware of the available time by magistrates or their supervising judges, reluctance on the part of SJA's to use magistrates for some duties which are compatible, or reluctance on the part of supervising judges to make magistrates available in order to maintain the independence of the magistrates. . . . Supervising judges should monitor the procedures and work time of magistrates and by coordination with local SJAs make their excess time available for compatible duties. A listing of some compatible duties appears in para 16-6b of AR 27-10.”

**MONTHLY AVERAGE COURT-MARTIAL  
RATES PER 1000 AVERAGE STRENGTH  
JANUARY-MARCH 1976**

	<i>General</i>		<i>Special</i>		<i>Summary</i>
	<i>CM</i>		<i>CM</i>		<i>CM</i>
			<i>NON-BCD</i>	<i>BCD</i>	
ARMY-WIDE	.15	.12	.61	.18	
CONUS Army commands	.13	.13	.62	.19	
OVERSEAS Army commands USAREUR and Seventh Army commands	.19	.09	.60	.16	
Eighth US Army	.21	.08	.59	.17	
US Army Japan	.11	.16	.57	.04	
* Units in Okinawa	.08	—	—	—	
Units in Hawaii	.60	—	1.81	2.42	
Units in Thailand	.04	.13	.61	.04	
Units in Alaska	.28	—	.14	—	
Units in Panama/ Canal Zone	.38	.17	.72	—	
	.05	—	1.17	.84	

\* Increase in rates, caused by phased-out troop strengths during quarter.

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

**NON-JUDICIAL PUNISHMENT  
MONTHLY AVERAGE AND QUARTERLY  
RATES PER 1000 AVERAGE STRENGTH  
JANUARY-MARCH 1976**

	<i>Monthly</i>	<i>Quarterly</i>
	<i>Average</i> <i>Rates</i>	<i>Rates</i>
ARMY-Wide	17.29	51.87
CONUS Army commands	18.41	55.22
OVERSEAS Army commands USAREUR and Seventh Army commands	15.22	45.82
Eighth US Army	15.33	45.98
US Army Japan	17.81	53.43
* Units in Okinawa	.90	2.71
Units in Hawaii	21.74	65.22
Units in Thailand	17.86	53.59
Units in Alaska	3.81	11.42
Units in Panama/ Canal Zone	10.68	32.04
	15.87	47.61

\* Increase in rates, caused by phased-out troop strengths during quarter.

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

### JAG School Notes

**1. Thai TJAG Visits School.** The Judge Advocate General's School was honored by the three day visit of Lieutenant General Sming Tailangka, The Judge Advocate General of the Royal Thai Armed Forces. LTG Sming was accompanied by his wife and LT Ataporn. LT Ataporn will be attending the 81st Basic Class at TJAGSA. The Thai TJAG's visit included a tour of the Rotunda at the University of Virginia (the Rotunda has been recently restored to Thomas Jefferson's original design) and a dinner given in honor of the LTG and his wife by MAJ and Mrs. Fred K. Green.

**2. JAG Conference in October.** The Chief of Staff of the Army has approved the holding of the Annual JAG Conference on 12-15 October (Tuesday-Friday) at The Judge Advocate General's School. Authorized attendees will receive written invitations.

**3. Military Judge Course.** The Fifteenth Military Judge Course will be held from 19 July to 6 August 1976. This course is designed to provide

the training necessary to qualify previously selected active duty officers to perform duties as military judges at courts-martial. Reserve component officers may also attend, but only if their mobilization assignment is to the United States Army Trial Judiciary. Conference, panel and seminar forums will be utilized to cover substantive military criminal law, defenses to crimes, rules and principles of evidence, trial procedure and other current legal problems. In addition, guest speakers from throughout the United States will be presented to discuss their areas of expertise.

**4. Fiscal Law and Cost Course Dates Changed.** The 3d Fiscal Law Course will be held 30 November-3 December 1976. The 4th Fiscal Law Course will follow on 7-10 March 1977. The 2d Allowability of Contract Costs Course will be held 13-17 December 1976, with the 3d Costs Course 21-25 March 1977.

**5. CPT Cooke Addresses Homer Ferguson Conference.** At the invitation of the United

States Court of Military Appeals, CPT John S. Cooke addressed The Homer Ferguson Conference on Appellate Advocacy, which was held at the Georgetown University Law Center on 20-21 May 1976. The Homer Ferguson Conference was sponsored by the U.S.C.M.A. Military Law Institute. CPT Cooke's address was titled "Recent Trends in Criminal Practice in the Court of Military Appeals: Judicializing Military Justice."

**6. TJAGSA Instructors Address NCBL.** On 21-23 May 1976 a seminar on "Defending Servicemen Before a Military Tribunal" was held in Washington, D.C. The seminar was sponsored by the National Conference of Black Lawyers, an organization composed of minority lawyers located throughout the U.S. The project was directed by Mr. J. Clay Smith, Deputy General Counsel, Federal Communications Commission,

who is also a former Army judge advocate. Four judge advocate officers, LTC Ned Felder, MAJ Norman Cooper, CPT Jan Horbaly and CPT Kenneth D. Gray assisted in this project as instructors. NCBL will hold a July seminar in Los Angeles and an October seminar in Detroit.

**7. TJAGSA Gains Bicentennial Commandant.** On July Fourth, 1976, COL Barney L. Brannen, Jr., will assume his duties as the Bicentennial Commandant at TJAGSA. COL William S. Fulton, Jr., the outgoing Commandant has been assigned to the Army Court of Military Review.

**8. TJAGSA Gives Bicentennial Flag to Charlottesville-Albermarle Airport.** To further honor America's Bicentennial, TJAGSA presented an American Revolution Bicentennial Flag to the Charlottesville-Albermarle Airport on 1 June 1976.

## CLE News

### 1. New Videotapes.

The following programs are available on ¾" videocassette tapes. To obtain copies of these programs, forward a request along with videocassettes of the appropriate lengths to: The

Judge Advocate General's School, U. S. Army, ATTN: Television Operations, Charlottesville, Virginia 22901.

<i>TAPE NUMBER</i>	<i>TITLE</i>	<i>RUNNING TIME</i>
JA-104-1	<b>FIRST FISCAL LAW COURSE (9-11 Feb 76) PROCUREMENT ACCOUNTS—OVEROBLIGATIONS AND EXPENDITURES.</b> Examples and explanation of current overobligation and overexpenditure problems with respect to procurement appropriation accounts. Speaker: Mr. Jack E. Hobbs, Principal Deputy Assistant Secretary for Financial Management, Department of the Army.	55:30
JA-104-2	<b>DoD BUDGET AND FINANCIAL SYSTEMS, PART I.</b> Guidelines, responsibilities and procedures of all elements of the department. Speaker: Mr. John F. Wallace, Deputy for Management Information and Financial Systems, Office of the Assistant Secretary of the Army (FM), Department of the Army.	40:00
JA-104-3	<b>DoD BUDGET AND FINANCIAL SYSTEMS PART II.</b> Continuation of JA-104-2	48:00

TAPE NUMBER	TITLE	RUNNING TIME
JA-104-4	TYPES OF APPROPRIATIONS AND THEIR USES, PART I. Procurement; research development, test and evaluation; military personnel; operation and maintenance; and military construction. Speaker: Miss Joyce Allen, Deputy Chief Counsel, Aviation Systems Command, Army Materiel Command.	53:30
JA-104-5	TYPES OF APPROPRIATIONS AND THEIR USES, PART II.	36:00
JA-104-6	Continuation of JA-104-4. ADMINISTRATIVE CONTROL OF APPROPRIATED FUNDS. Commitment, obligation, expenditure, needs theory, time limits on availability of funds for obligation, monetary liability of certifying officers. Speaker: Lieutenant Colonel Richard E. Mowry, Chief Procurement Law Division, TJAGSA.	51:30
JA-104-7	THE ANTI-DEFICIENCY ACT, PART I. What is a deficiency, how is it determined, who is respon- sible, punishments, etc. Speaker: Mr. Oliver Kennedy, Assistant Comptroller for Fiscal Policy, Office of the Comptroller, Department of the Army.	54:00
JA-104-8	THE ANTI-DEFICIENCY ACT, PART II. Continuation of JA-104-7.	37:00
JA-104-9	INDUSTRIAL AND STOCK FUNDS, PART I. Legal basis, purposes, obligations, etc. Speaker: Mr. Richard H. Ruhland, Deputy Comptroller, Army Materiel Command.	59:00
JA-104-10	INDUSTRIAL AND STOCK FUNDS, PART II. Continuation of JA-104-9.	19:30
JA-105-1	SECOND FISCAL LAW COURSE (10-12 May 76) INTRODUCTION TO FISCAL LAW. This tape, along with JA-105-2, JA-105-3, and JA-105-4, attempts to define a violation of the Anti-Deficiency Act (what is a deficiency), how is a violation determined, who is responsible, what reports and punishments are required, and what is the result of a violation. Speaker: Lieutenant Colonel Richard E. Mowry, Chief, Procurement Law Division, TJAGSA.	46:00
JA-105-2	THE ANTI-DEFICIENCY ACT, PART I. A continuation of JA-105-1.	49:00
JA-105-3	THE ANTI-DEFICIENCY ACT, PART II. A continuation of JA-105-1.	49:00
JA-105-4	CURRENT ANTI-DEFICIENCY ACT PROBLEMS. A continuation of JA-105-1.	39:00

TAPE NUMBER	TITLE	RUNNING TIME
JA-105-5	<b>THE ARMY BUDGET.</b> This tape discusses the procedures for preparation of the Army Budget which are used by all elements of the department. Speaker: Captain Robert A. Long, Procurement Law Division, TJAGSA.	48:00
JA-105-6	<b>TYPES OF APPROPRIATIONS AND THEIR USES, PART I.</b> This tape discusses the various appropriations (Procurement, Research and Development, Military Personnel, Operations and Maintenance, and Military Construction) and the things for which each can be obligated. Speaker: Lieutenant Colonel Richard E. Mowry, Chief, Procurement Law Division, TJAGSA	42:00
JA-105-7	<b>TYPES OF APPROPRIATIONS AND THEIR USES, PART II.</b>	43:00
JA-105-8	<b>EMERGENCIES, TRANSFERS, AND REPROGRAMMING.</b> A continuation of JA-105-6. This tape discusses the statutory and regulatory procedures by which funds can be diverted from one appropriation or appropriation sub-division to another. Speaker: Lieutenant Colonel Richard E. Mowry, Chief, Procurement Law Division, TJAGSA.	43:00
JA-105-9	<b>OBLIGATION OF APPROPRIATIONS, PART I.</b> This tape discusses the commitment, obligation and expenditure of funds. The discussion covers the bona fide need theory, time limits on availability for obligation, the funding of contracts, modifications and terminations, and M accounts. Speaker: Captain Robert A. Long, Procurement Law Division, TJAGSA.	56:00
JA-105-10	<b>OBLIGATION OF APPROPRIATIONS, PART II.</b> A continuation of JA-105-9.	48:00
JA-105-11	<b>OBLIGATION OF APPROPRIATIONS, PART III.</b> A continuation of JA/105-9.	57:00
JA-105-12	<b>MINOR CONSTRUCTION, PART I.</b> This tape discusses the Minor Construction Act and its authorization of the expenditure of Operations and Maintenance or Military Construction funds for unscheduled construction projects. Speaker: Captain Robert A. Long, Procurement Law Division, TJAGSA.	49:00
JA-105-13	<b>MINOR CONSTRUCTION, PART II.</b> A continuation of JA-105-12.	36:00
JA-240	<b>WOMEN'S RIGHTS, PART I.</b> A presentation by Ms. Barbara Greene Kilberg, Associate Counsel to President Ford, and Ms. Karen Clauss, Associate Solicitor, Department of Labor, on the subject of Women's	59:00

<i>TAPE NUMBER</i>	<i>TITLE</i>	<i>RUNNING TIME</i>
	Rights. The program contains material on the general nature of the women's movement today, the role of women in government and politics, and problems evolving from the Equal Rights Amendment. Discussion is also presented in the area of Equal Employment Opportunity to include federal policies, the Equal Pay Act, and Title VII of the 1964 Civil Rights Act.	
JA-241	WOMEN'S RIGHTS, PART II. A continuation of JA-240. <i>EXCERPTS FROM THE 13TH FEDERAL LABOR RELATIONS COURSE (24-28 May 76).</i>	60:00
JA-242	THE ROLE OF THE CIVIL SERVICE COMMISSION: PRESENT AND FUTURE, PART I. Speaker: Mr. Arthur Burnett, Assistant General Counsel, US Civil Service Commission	53:00
JA-243	THE ROLE OF THE CIVIL SERVICE COMMISSION: PRESENT AND FUTURE, PART II. A continuation of JA-242.	56:00
JA-244	THE UNION VIEWPOINT OF THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM, PART I. Speaker: Dr. Nathan T. Wolkomir, President, National Federal of Federal Employees.	53:00
JA-245	THE UNION VIEWPOINT OF THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM, PART II. A continuation of JA-244.	43:00
JA-246	SELECTED PROBLEMS IN FEDERAL CONTRACTOR-EMPLOYEE RELATIONS, PART I. Speaker: Major William M. Whitten, III, JAGC, Labor and Civilian Personnel Law Office, OTJAG.	45:00
JA-247	SELECTED PROBLEMS IN FEDERAL CONTRACTOR-EMPLOYEE RELATIONS, PART II. A continuation of JA-246.	46:00
JA-248	SELECTED PROBLEMS IN FEDERAL CONTRACTOR-EMPLOYEE RELATIONS, PART III. A continuation of JA-246 and JA-247.	32:00
	<i>4th ENVIRONMENTAL LAW COURSE (1-4 Jun 76)</i>	
JA-249-1	OPENING EXERCISES; THE STATE OF THE ENVIRONMENT, PART I. Speakers: Colonel William S. Fulton, Jr., JAGC, Commandant, The Judge Advocate General's School, U.S. Army; Professor Dennis W. Barnes, Associate Provost for Research and Associate Professor of Environmental Sciences, University of Virginia.	41:00
JA-249-2	THE STATE OF THE ENVIRONMENT, PART II. A continuation of JA-249-1.	42:00
JA-249-3	THE NATIONAL ENVIRONMENTAL POLICY ACT: The Environmental Consideration Process, Part I. Speaker: Captain Stephan K. Todd, JAGC, Administrative and Civil Law Division, TJAGSA.	39:00

TAPE NUMBER	TITLE	RUNNING TIME
JA-249-4	THE NATIONAL ENVIRONMENTAL POLICY ACT: The Environmental Consideration Process, Part II. A continuation of JA-249-3.	26:00
JA-249-5	POLLUTION ABATEMENT: The Clean Air Act and the Federal Water Pollution Control Act, Part I. Speaker: Major Thomas M. Strassburg, JAGC, Adminis- trative and Civil Law Division, TJAGSA.	45:00
JA-249-6	POLLUTION ABATEMENT: The Clean Air Act and the Federal Water Pollution Control Act, Part II. A continuation of JA-249-5.	47:00
JA-249-7	THE NATIONAL ENVIRONMENTAL POLICY ACT: Environmental Impact Statements, Part I. Speaker: Captain Stephan K. Todd, JAGC, Adminis- trative and Civil Law Division, TJAGSA.	47:00
JA-249-8	THE NATIONAL ENVIRONMENTAL POLICY ACT: Environmental Impact Statements, Part II. A continuation of JA-249-7.	44:00
JA-249-9	POLLUTION ABATEMENT: The Effect of Pollution Abatement Laws on Federal Facilities, Part I. Speaker: Major Thomas M. Strassburg, JAGC, Adminis- trative and Civil Law Division, TJAGSA.	45:00
JA-249-10	POLLUTION ABATEMENT: The Effect of Pollution Abatement Laws on Federal Facilities, Part II. A continuation of JA-249-9.	47:00
JA-249-11	MISCELLANEOUS ENVIRONMENTAL LAWS AND REGULATIONS, PART I. Speaker: Mr. William L. Robertson, Office of the General Counsel, Department of Defense.	58:00
JA-249-12	MISCELLANEOUS ENVIRONMENTAL LAWS AND REGULATIONS, PART II. A continuation of JA-249-11.	48:00
JA-249-13	THE ENVIRONMENTAL PROTECTION AGENCY AND THE REGULATION OF FEDERAL FACILITIES, PART I. Speaker: Mr. George Marienthal, Deputy Assistant Sec- retary of Defense for Environment and Safety.	53:00
JA-249-14	THE ENVIRONMENTAL PROTECTION AGENCY AND THE REGULATION OF FEDERAL FACILITIES, PART II. A continuation of JA-249-13.	48:00
JA-249-15	THE NATIONAL ENVIRONMENTAL POLICY ACT: Socioeconomic Considerations in Environmental Analysis and Environmental Considerations in Land Acquisition, Part I. Speaker: Mr. Brian B. O'Neill, Office of the General Counsel, HQDA.	43:00
JA-249-16	THE NATIONAL ENVIRONMENTAL POLICY ACT: Socioeconomic Considerations in Environmental Analysis	56:00

TAPE NUMBER	TITLE	RUNNING TIME
	and Environmental Considerations in Land Acquisition, Part II.	
	A continuation of JA-249-15.	
JA-249-17	THE CORPS OF ENGINEERS AND ENVIRONMENTAL REGULATION, PART I. Speaker: Mr. William N. Hedeman, Jr., Assistant General Counsel for Regulatory Functions, Office of the Chief of Engineers.	47:00
JA-249-18	THE CORPS OF ENGINEERS AND ENVIRONMENTAL REGULATIONS, PART II.	46:00
	A continuation of JA-249-17.	
JA-249-19	ROUNDTABLE DISCUSSION. Speakers: Mr. Hedeman, Mr. O'Neill, Major Strassburg, Captain Todd.	47:00
JA-249-20	THE INTERACTION OF FEDERAL PROCUREMENT AND ENVIRONMENTAL REGULATION. Speaker: Captain King Culp, JAGC, Procurement Law Division, TJAGSA.	48:00
JA-319	TRIAL BY MILITARY JUDGE ALONE. This program depicts the larceny trial of a serviceman before a military judge sitting alone. It is designed to familiarize the viewer with the procedural format utilized by the typical trial practitioner in the U. S. Army.	21:00
JA-320	THE PRINCIPLES OF CROSS-EXAMINATION. F. Lee Bailey discusses the rules and principles of the art of cross-examination. He stresses the adversarial relationship existing between attorney and witness and suggests ways to overcome many of the hurdles in cross-examination. Much of his emphasis is on the subtleties available to an attorney in "controlling" the potential adverse witness. He also stresses techniques such as knowing when to stop cross-examination, how to phrase certain questions, and how to lay the ground-work for subsequent impeachment of a witness' testimony.	47:00
JA-518	BEYOND BLACK AND WHITE, PART I. The Psycho/Social Origins of Prejudice (AFIF 266, Part I). COLOR.	24:00
JA-518	BEYOND BLACK AND WHITE, PART II. Positive Behavior Models (AFIF 266, Part II). COLOR.	30:00
JA-519	PERCEPTIONS OF PREJUDICE. This program is designed to help one recognize his own prejudices (AFIF 251). COLOR.	26:00
JA-520	WE HAVE AN ADDICT IN THE HOUSE. A first-hand account of the experiences of young addicts, exploring the reasons why many of them take drugs and their encounters and confrontations with their peers and parents (AFIF 270). COLOR.	29:00
JA-521	NEW PULSE OF LIFE. This program introduces the latest techniques of basic	29:00

TAPE NUMBER	TITLE	RUNNING TIME
	life support stressing the "A" (Airway Open), "B" (Breathing Restored), and "C" (Circulation Restored) principles of cardiopulmonary resuscitation (AFIF 276). COLOR.	
JA-522	THE PREJUDICE FILM. This program illustrates historical origins and contemporary forms of prejudice through a series of vignettes; emphasizes the individual's role in adding to or lessening prejudice (AFIF 240). COLOR.	28:00
JA-523	ENLISTED PERSONNEL MANAGEMENT SYSTEM. A discussion of the new Army Enlisted Personnel Management System (EPMS) with emphasis on Enlisted Promotions, Training and Assignment Criteria. The tape provides guidance as to Department of the Army and TRADOC responsibilities in developing the EPMS program.	22:00
JA-524	WORD PROCESSING SYSTEMS, PART I. This program is a presentation by an IBM representative. It includes techniques used in evaluating the application and use of existing equipment; current status and types of dictating, memory typing and copying equipment; and a demonstration of selected equipment.	39:00
JA-525	WORD PROCESSING SYSTEMS, PART II. A continuation of JA-524.	45:00
JA-621-1	1st COURT REPORTER COURSE (19-21 Apr 76) OPENING EXERCISES AND INTRODUCTION TO THE SONY COURT REPORTING SYSTEM (AN/TH 23). Speakers: Major Paul H. Ray, Personnel, Plans and Training Office, OTJAG; Mr. Rosen, President, Business Equipment Center, Ltd.	24:00
JA-621-2	EXPLANATION OF THE SONY COURT REPORTING SYSTEM. Speaker: Mr. Peter Paul, Vice-President, Business Equipment Center, Ltd.	58:00
JA-621-3	EQUIPMENT PACKING; PRACTICAL APPLICATION AND OPERATION OF THE SONY COURT REPORTING SYSTEM, PART I. Speakers: Mr. Paul; SP6 Rod Hudson, Office of the Staff Judge Advocate, HQ USAQMC, Fort Lee, Virginia.	
JA-621-4	PRACTICAL APPLICATION AND OPERATION OF THE SONY COURT REPORTER SYSTEM, PART II. A continuation of JA-621-3.	10:00
JA-621-5	MAINTENANCE OF THE SONY COURT REPORTER SYSTEM. Speaker: Mr. Johnson, Service Manager, Business Equipment Center, Ltd.	33:00
JA-621-6	ROUNDTABLE DISCUSSION. Mr. Rosen, Mr. Paul, Mr. Johnson, WO1 Gillis, Office	50:00

TAPE NUMBER	TITLE	RUNNING TIME
JA-621-7	<p>of the Staff Judge Advocate, HQ USAQMC, Fort Lee, Virginia.</p> <p>INTRODUCTION: LEGAL CONSEQUENCES TO THE GOVERNMENT ARISING FROM ERRORS AND IRREGULARITIES IN RECORDS OF TRIAL: REPEATED ERRORS IN RECORDS OF TRIAL, PART I.</p> <p>Speakers: Major John T. Sherwood, Jr., Executive Officer, Government Appellate Division, U. S. Army Legal Services Agency; Mr. Abraham Nemrow, Chief, Examination and New Trials Division, U. S. Army Judiciary, U. S. Army Legal Services Agency.</p>	45:00
JA-621-8	<p>REPEATED ERRORS IN RECORDS OF TRIAL, PART II.</p> <p>A continuation of JA-621-7.</p>	45:00
JA-621-9	<p>MAKING THE RECORD.</p> <p>Speaker: Major John T. Sherwood, Jr., Executive Officer, Government Appellate Division, U. S. Army Legal Services Agency.</p>	41:00
JA-621-10	<p>TEACHING LAWYERS HOW TO HELP YOU PREPARE A PERFECT RECORD OF TRIAL; ROUND-TABLE DISCUSSION AND CLOSING REMARKS.</p> <p>Speakers: Captain Nicholas P. Retson, Action Attorney, Defense Appellate Division, U. S. Army Legal Services Agency; Major John T. Sherwood, Jr., Executive Officer, Government Appellate Division, U. S. Army Legal Services Agency; Mr. Abraham Nemrow, Chief, Examination and New Trials Division, U. S. Army Judiciary, U.S. Army Legal Services Agency.</p>	45:00
JA-621-11	<p>REVIEW OF FORMAT OF RECORDS OF TRIAL.</p> <p>Speaker: Master Sergeant May, U. S. Army Representative/Court Reporter Instructor, U. S. Naval School of Justice.</p>	46:00
JA-621-12	<p>STANDARDIZATION OF RECORDS OF TRIAL.</p> <p>Speaker: Master Sergeant May, U. S. Army Representative/Court Reporter Instructor, U. S. Naval School of Justice.</p>	60:00
JA-621-13	<p>SUPERVISION OF COURT REPORTERS.</p> <p>Speaker: CW2 Larry L. Turner, Director of Legal Clerk Division (MOS 71D), U. S. Army Institute of Administration, Fort Benjamin Harrison, Indiana.</p>	60:00
JA-621-14	<p>WHAT THE STAFF JUDGE ADVOCATE EXPECTS FROM COURT REPORTERS, PART I.</p> <p>Speaker: Lieutenant Colonel James A. Mundt, Staff Judge Advocate, Fort Carson, Colorado.</p>	46:00
JA-621-15	<p>WHAT THE STAFF JUDGE ADVOCATE EXPECTS FROM COURT REPORTERS, PART II.</p> <p>A continuation of JA-621-14.</p>	17:00

TAPE NUMBER	TITLE	RUNNING TIME
JA-621-16	WHAT THE TRIAL JUDGE EXPECTS FROM COURT REPORTERS. Speaker: Colonel William K. Laray, Chief Trial Judge, Trial Judiciary, U. S. Army Legal Services Agency.	53:00
JA-621-17	CAREER BRANCH PRESENTATION. Speaker: SGT McDowell, Career Advisor, Enlisted Personnel Management Directorate, MILPERCEN.	47:00
JA-621-18	CLOSING REMARKS: MAKING HISTORY AS A COURT REPORTER. Speaker: Colonel Wayne E. Alley, Chief, Criminal Law Division, OTJAG.	29:00
JA-622	TEACHING BY TELEVISION Answers the question, "Why use television?" by: demonstrating some of the techniques and major advantages of the medium, showing the instructor how to make maximum use of the advantages, and showing specific examples where television has been effectively used at the Air University, Maxwell Air Force Base (Air University TV Production). COLOR.	26:00

## 2. Tentative TJAGSA Course Calendar (6 August 1976-30 September 1977).

Number	Title	Dates	Length
7A-713A	6th Law Office Management Course	9 Aug 76-13 Aug 76	4½ days
5-27-C20	81st Judge Advocate Officer Basic Course	9 Aug 76-8 Oct 76	9 wks
5-27-C22	25th Judge Advocate Officer Advanced Crs	23 Aug 76-May 77	40 wks
5F-F22	14th Federal Labor Relations Course	30 Aug 76-3 Sep 76	5 days
	JAG Reserve Training Workshop	9 Sep 76-11 Sep 76	3 days
5F-F1	28th Senior Officer Legal Orientation Crs	13 Sep 76-17 Sep 76	4½ days
5F-F10	67th Procurement Attorneys' Course	20 Sep 76-1 Oct 76	2 wks
	JAG Conference	12 Oct 76-15 Oct 76	3 days
5-27-C20	82d Judge Advocate Officer Basic Course	18 Oct 76-17 Dec 76	9 wks
5F-F1	29th Senior Officer Legal Orientation Crs	1 Nov 76-5 Nov 76	4½ days
5F-F10	68th Procurement Attorneys' Course	8 Nov 76-19 Nov 76	2 wks
5F-F12	3d Fiscal Law Course	30 Nov 76-3 Dec 76	2½ days
5F-F25	3d Military Administrative Law Developments Course	6 Dec 76-9 Dec 76	3½ days
5F-F13	2d Contract Cost Course	13 Dec 76-17 Dec 76	2½ days
*512-71D 20/50	5th Military Lawyer's Assistance Course (Criminal Law)	3 Jan 77-7 Jan 77	4½ days
*512-71D 20/50	6th Military Lawyer's Assistant Course (Legal Assistance)	3 Jan 77-7 Jan 77	4½ days
5F-F11	7th Procurement Attorneys' Advanced Crs	3 Jan 77-14 Jan 77	2 wks
5F-F23	4th Legal Assistance Course	10 Jan 77-13 Jan 77	4 days
5F-F27	5th Environmental Law Course	17 Jan 77-20 Jan 77	3½ days
5F-F26	1st Claims Course	17 Jan 77-20 Jan 77	3½ days

<i>Number</i>	<i>Title</i>	<i>Dates</i>	<i>Length</i>
5F-F1	31st Senior Officer Legal Orientation Crs	24 Jan 77-28 Jan 77	4½ days
5-27-C20	83d Judge Advocate Officer Basic Course	31 Jan 77-1 Apr 77	9 wks
5F-F10	69th Procurement Attorneys' Course	7 Feb 77-18 Feb 77	2 wks
5F-F12	4th Fiscal Law Course	7 Mar 77-10 Mar 77	2½ days
5F-F13	3d Contract Cost Course	21 Mar 77-25 Mar 77	2½ days
5F-F22	15th Federal Labor Relations Course	4 Apr 77-8 Apr 77	5 days
*	JAG National Guard Training Workshop	6 Apr 77-8 Apr 77	3 days
5F-F1	32d Senior Officer Legal Orientation Crs	11 Apr 77-15 Apr 77	4½ days
5F-F10	70th Procurement Attorneys' Course	11 Apr 77-22 Apr 77	2 wks
5F-F12	4th Fiscal Law Course	25 Apr 77-27 Apr 77	2½ days
5F-F13	3d Contract Cost Course	27 Apr 77-29 Apr 77	2½ days
5F-F52	7th Staff Judge Advocate Orientation Crs (By invitation only)	2 May 77-6 May 77	4½ days
5F-F51	4th Management for Military Lawyers Crs	9 May 77-13 May 77	4½ days
5F-F31	1st Military Justice I Course	9 May 77-20 May 77	2 wks
5F-F32	3d Criminal Trial Advocacy Course	16 May 77-20 May 77	1 wk
5F-F40	1st International Law II Course (SECRET clearance required)	16 May 77-27 May 77	2 wks
5F-F27	6th Environmental Law Course	31 May 77-3 Jun 77	3½ days
*	Military Law Instructors Seminar	6 Jun 77-10 Jun 77	5 days
71D50	NCO Advanced Phase II	6 Jun 77-17 Jun 77	2 wks
5F-F1	33d Senior Officer Legal Orientation Crs	13 Jun 77-17 Jun 77	4½ days
5-27-C23	USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction)	20 Jun 77-1 Jul 77	2 wks
5F-F21	12th Civil Law Course	11 Jul 77-22 Jul 77	2 wks
5F-F33	16th Military Judge Course	11 Jul 77-29 Jul 77	3 wks
5F-F10	71st Procurement Attorneys' Course	25 Jul 77-5 Aug 77	2 wks
5F-F1	34th Senior Officer Legal Orientation Crs	1 Aug 77-5 Aug 77	4½ days
7A-713A	7th Law Office Management Course	8 Aug 77-12 Aug 77	4½ days
5-27-C20	84th Judge Advocate Officer Basic Crs	8 Aug 77-7 Oct 77	9 wks
5-27-C22	26th Judge Advocate Officer Advanced Crs	22 Aug 77-May 78	40 wks
5F-F22	16th Federal Labor Relations Course	29 Aug 77-2 Sep 77	5 days
5F-F1	35th Senior Officer Legal Orientation Crs	12 Sep 77-16 Sep 77	4½ days
5F-F10	72d Procurement Attorneys' Course	19 Sep 77-30 Sep 77	2 wks

### 3. Selected Civilian Sponsored CLE Programs.

#### AUGUST

1-13: National College of the State Judiciary, Regular Two Week Residence Session [Adult

\* TENTATIVE

Misdemeanor Cases, Evidence, Criminal Law, Sentencing, Search and Seizure], Judicial College Bldg., University of Nevada, Reno, NV. Contact: Judge Ernest John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., University of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$525.

2-4: Univ. of Denver College of Law—

Federal Publications, Construction Contract Modifications, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

5-8: National Association of Women Lawyers, Annual Meeting, Atlanta, GA.

5-12: ABA, Annual Meeting, Atlanta, GA.

8-11: American Academy of Judicial Education, Criminal Law III [Right to Counsel, Effective Assistance of Counsel, Speedy and Public Trial, Insanity Defense and Competency to Stand Trial, Double Jeopardy, Law and Psychology], New England Center for Continuing Education, Durham, NH. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151. Cost: \$215.

8-13: Institute for Court Management, Case-flow Management & Juror Utilization, Wildwood Inn, Snowmass, CO.

8-20: American Academy of Judicial Education, Trial Judges Academy [The Judicial Function and the Judge's Role, How to Move the Cases, Search and Seizure, Inherent Powers, Pretrial Identification, Standards of Indigency, Confessions, Problem Cases, Community Relations, Judicial Ethics, Bail, How to Conduct a Preliminary Hearing, Plea Taking, Plea Bargaining, Scientific Evidence in Traffic Cases, Laws of Evidence, How to "Find the Facts," Contempt and Disruptive Tactics, Sentencing, Body Language, Videotaped Mock Trials], University of Virginia, Charlottesville, VA. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St., NW, Washington, DC 20005. Phone: 202-783-5151. Cost: \$540.

9-11: PLI, Advanced Public Defender's Workshop [Recent Supreme Court Decisions, Gag Rules, Press Reporting, Psychiatric Experts, Jury Profiling, Women Defendants, Voiceprinting], Waldorf Astoria Hotel, New York, NY. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: 212-765-5700.

11-14: American Academy of Judicial Education, Evidence III [Relevancy, Authentication, Judicial Notice], New England Center for Continuing Education, Durham, NH. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151. Cost: \$215.

12-13: PLI, 14th Annual Defending Criminal Cases [Voir Dire, Demonstrative Evidence, Trial Tactics, Opening & Closing Statements, Contempt], New York Sheraton Hotel, New York, NY. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: 212-765-5700.

15-21: International Bar Association, Biennial Conference, Stockholm, Sweden.

15-22: Association of Trial Lawyers of America, National College of Advocacy [Getting the Facts, the Jury, The Opening Statement, Pot Pourri, Psychology in the Courtroom, The Art of Persuasion], Suffolk Law School, Boston, MA. Contact: Director of CLE, The Association of Trial Lawyers of America, 20 Garden St., Cambridge, MA 02138. Phone: 617-868-6900.

16-20: George Washington Univ.—Federal Publications, Government Contract Claims, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$525.

26-27: PLI, 14th Annual Defending Criminal Cases [Voir Dire, Demonstrative Evidence, Trial Tactics, Opening & Closing Statements, Contempt], Sir Francis Drake Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: 212-765-5700.

30-1 Sept.: Univ. of Denver College of Law—Federal Publications, Construction Contract Modifications, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

### SEPTEMBER

7-11: NCDCA, Trial Techniques Seminar, Philadelphia, PA. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004.

9-10: Federal Publications, Labor Relations, Chicago, IL. Cost: \$325.

12: ABA-AMA, National Conference on Representatives, Chicago, IL.

12-17: International Academy of Legal Medicine and Social Medicine, 10th International Congress. Contact: Prof. W. Spann, Institut fur Rechtsmedizin of University of Munich, Frauenlobstrasse 7a, 8 Munich, 15 West Germany.

13-15: ABA Center for Administrative Justice, Legal Drafting Techniques [A Seminar for the Environmental Protection Agency], Washington, DC.

14-18: FBA, Annual Convention, The Mayflower Hotel, Washington, DC.

15-17: Federal Publications, George Washington Univ. 23d Annual Institute on Government Contracts, Washington, DC. Cost: \$400.

16-19: NCCDLPD, Advanced Evidence [Northern Half, 9th US Judicial Circuit], Seattle, WA. Contact: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-2283. Cost: \$50.

19-24: National College of the State Judiciary, Evidence in Special Courts, Univ. of Nevada, Reno Campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$345.

19-24: Institute for Court Management, Technology Workshop: Personnel Administration, Executive Tower Inn, Denver, CO.

20-21: FBA-BNA, Briefing Conference on Food and Drug Law, Stouffers International Inn, Arlington, VA.

20-21: Federal Publications, Labor Relations, Las Vegas, NV. Cost: \$325.

21-23: LEI, Law of Federal Employment Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$225.

26-1 Oct.: National College of the State Judiciary, Search and Seizure, Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$345.

26-1 Oct: National College of the State Judiciary, Evidence, Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$345.

28-29: FBA, Federal Energy Law Conference, Hyatt Regency, Washington, DC.

28-30: LEI, Institute for New Government Attorneys, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Cost: \$175.

### OCTOBER

10-29: National College of the State Judiciary, Regular Four Week Session [Court Administration, Civil Proceedings Before Trial, Judicial Discretion, Family Law, Evidence, Judicial Problems, Jury Courts and the Community, Sentencing, Criminal Law, Civil Law, Inherent Court Powers & Communication], Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$705.

11-13: Federal Publications, Changes in Government Contracts, Seattle, WA. Cost: \$400.

11-14: Federal Publications, Fundamentals of Government Contracting, New Orleans, LA. Cost: \$475.

13-15: FBA-BNA, Briefing Conference on Federal Contracts, Hyatt on Union Square, San Francisco, CA.

13-15: Federal Publications, Small Purchasing, Los Angeles, CA. Cost: \$400.

13-? [10-week course]: ABA Center for Administrative Justice, Legal Drafting Techniques, Brookings Institution, Washington, DC.

15-16: ALI-ABA, Federal Criminal Practice and Procedure, Seattle, WA. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

15-16: ALI/ABA, Practice Under the New Federal Rules of Evidence, Seattle, WA. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

18-20: Federal Publications, Small Purchasing, Denver, CO. Cost: \$400.

18-22: Univ. of Santa Clara School of Law—Federal Publications, Contract Administration

Course [Law, Accounting, Communication, Engineering, Negotiation, Money, Statutes, Regulations, Administration] Aladdin Hotel, Las Vegas, NV. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$525.

19-22: NCDA, Institute on Prosecution of Drug Cases, Kansas City, KS. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004.

21-22: ALI-ABA—Columbus School of Law of the Catholic Univ. of America, Federal Criminal Practice and Procedure, The Mayflower, Washington, DC. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

27-29: Federal Publications, Practical Negotiation of Government Contracts, Washington, DC. Cost: \$400.

### **A Punitive Discharge—An Effective Punishment?**

*By: Captain Charles E. Lance,  
US Army Trial Judiciary, 5th Judicial Circuit, Stuttgart Trial Center*

This article is a summary of a thesis written by Captain Lance while he was a member of the 24th Judge Advocate Advanced Course. The

charts reprinted are also a summary of Captain Lance's extensive research.

### **A Punitive Discharge—An Effective Punishment?**

At Adobe Wells, Texas in 1876, on a typically hot dry day the garrison troops at this tiny western cavalry post are assembled to witness what any man "with honor" prays will never happen to him. The men of the troop stand rigid in a solemn formation while a "dirt devil" whirls dust on their freshly polished boots and the noonday sun continues to beat down upon them. Sweat beads begin to pop out from underneath their wide brimmed hats before the post commander briskly steps into the center of their vision and calls for attention to orders. The accused, under guard, is marched into his place of infamy as all eyes first center upon him and then upon the Colonel as his words cut through the

hush. Private Doake has been found guilty by a court-martial and has been sentenced to be discharged from the Army with a Dishonorable Discharge. Everyone at the formation knows it but nonetheless strains to capture every word as the Colonel reads the general court-martial order which recapitulates the crimes of the accused and his ignominious conduct. As the commander virtually spits out the words "dishonorable discharge" the Sergeant Major steps forward and strips off Doake's buttons, facings, ribbons, and all other distinctions and identifying insignia from his now shabby clothing. His coat is taken from him and is torn in two and deposited at his feet. An aide brings Doake's en-

listment and it is torn into pieces in his face and is left to be blown to the ground and trampled into the dirt. The Sergeant Major then grasps Doake's sword in both hands, raises it high above his head for all to see, and in one swift deliberate motion breaks it over Doake's head. The now humbled renegade is marched past his former comrades-in-arms as the drums beat out the "rogues march" and the little procession heads inevitably toward the main gate where representatives of his troop, unable to conceal their contempt, physically eject him from the stockade. The Colonel then steps forward and orders Doake never to return to the post upon penalty of death and issues a somber order to those assembled to have no future contact with him upon fear of court-martial.<sup>1</sup>

Contrast the above scene with a letter received from a Dean of Admissions at a major university who states, "I am pleased to say that we do not discriminate against a person formerly mistreated by the military," when replying to a questionnaire concerning the effects of a criminal punitive discharge upon educational opportunities.<sup>2</sup>

Clearly times have changed greatly. However despite the passage of an entire century punitive discharges remain in general military use. The punitive discharge is maintained probably because most military officers, including senior Judge Advocates, believe that such discharges are major deterrents to criminal misconduct. It is likely that the basis of such belief is the widely held view that punitive discharges carry with them grave economic consequences. Indeed, this opinion finds ample support from contemporary court opinions<sup>3</sup> and from our national leaders.<sup>4</sup> The simple truth is however that no one really knows (including the Judge Advocate defense attorney counseling a criminal accused on the subject) what the economic effects of a punitive discharge really are.

In order to discover what effect a punitive discharge has on contemporary economic opportunities, and thereby measure the discharges' utility as a punishment, two thousand and thirty two questionnaires were mailed to various groups in the civilian economic sector. The issues that were of primary interest were

whether the respondents to the questionnaires cared if an applicant had a punitive discharge, to what extent they cared, and if the conviction itself or type of crime for which convicted was the discriminating factor, if any, rather than the sentence, i.e., the punitive discharge. A thousand questionnaires were sent to businesses that are located throughout the United States. The businesses were selected at random but care was taken to assure that all geographic regions, town and city sizes were fairly represented according to their proportional representation in the population and that virtually all types of business concerns were included. Nine hundred (900) of the thousand (1,000) questionnaires were sent to large businesses and one hundred (100) were sent to small businesses. Large businesses were defined as those with incomes in excess of one million dollars per year and having more than one thousand employees. The greater number of questionnaires were sent to the large business concerns in order to maximize the number of employees touched by the sample. The nine hundred employers selected employ a total of 22,043,320 employees. The small businesses selected had one hundred or fewer employees each and had incomes less than one million dollars each. The small businesses concerned were from all over the United States and in towns or cities of greatly varied size. The small businesses contacted employed a total of 4,611 persons for an average of 46 employees per firm. Three hundred questionnaires were sent to colleges and universities in every state in the United States. Two hundred of the questionnaires were sent to private institutions and one hundred were sent to state supported institutions of higher learning. In addition, fifty-one questionnaires were sent to each state's<sup>5</sup> college and university coordinating system to balance out the number of questionnaires sent to each type of college or university and to provide a check or control on the responses received from each state institution. The colleges and universities were further sub-categorized by size. The large colleges were defined as those enrolling five thousand or more students and the small colleges were, of course, defined as those having from one to 4,999 students enrolled. One hundred and fifty question-

naires were sent to unions—both large and small, independent, and affiliated with the AFL-CIO. Care was taken to include virtually every trade, skill or job type that is unionized and once again effort was made to insure that all geographic regions were surveyed. Quite naturally, however, the largest number of unions are located in the more heavily industrialized areas of the country. A total of 18,793,557 union members are represented by those unions surveyed. Physicians, attorneys, and teachers were selected to represent the professional areas for licensing or certification requirements and each state board or agency concerned was surveyed. Barbers, plumbers, and retail liquor vendors were selected to represent the occupational fields for state licensing requirements and each state board or agency concerned received a questionnaire. Thus 306 questionnaires were sent directly to the licensing boards themselves. Another 51 questionnaires were sent to the states' composite coordinating boards for licenses to get a "feel" of each state's over-all license/certification policy and to have a control to compare results from the separate boards or agencies. Fifty-one questionnaires were used by sending each state personnel agency a copy to check on employment practices by the states as employers. The states' employment agencies (or employment security officers) were surveyed to ascertain what effect a punitive discharge had upon an applicant for securing employment services from that state agency. The attorney-general's office of each state was surveyed to see if state law limited a punitively discharged person's ability to secure a license or employment in their state. Because a fidelity bond is frequently required as a prerequisite to obtaining employment, an additional 21 questionnaires were sent to all "directory listed" national companies that issue surety or fidelity bonds to see what effect a punitive discharge has upon a person's ability to be bonded. Of the 2,032 questionnaires sent out, 1,339 questionnaires or letters were received in usable form. Forty-three questionnaires were returned unanswered with letters of explanation and the remaining 652 addresses did not reply. Five hundred and twenty-six large companies and 46 small businesses responded to the survey. A total of 196

colleges and universities returned the questionnaire. Seventy unions participated by returning the questionnaires and the state agencies were almost unanimous in their assistance. Nine of the twenty-one bonding firms replied.

A portion of the results of the survey are set forth in summarized form in the following charts. It is interesting to note that 84% of all respondents felt that there would be no difference in their opinion concerning an application from a person with a court-martial conviction based upon whether or not a punitive discharge was adjudged by the court. By far the most serious discriminating factor appeared to be the type of crime the person was convicted of rather than whether or not he received a punitive discharge as a part of his sentence. Seventy-three percent of all businesses made distinctions in their hiring practice based upon the type and seriousness of the offense rather than the discharge type. Nineteen percent of the businesses stated that a court-martial conviction could result in a denial of employment, particularly if a felony, as compared to the 7% that would automatically deny employment due to a punitive discharge. Only 9% of the businesses stated that a punitive discharge would have any influence over and above a conviction itself when deciding whether or not to offer employment.

Several thought provoking opinions and misconceptions flowed from the survey responses. Many employers believe that DoD contractors cannot hire ex-offenders or persons with punitive discharges because of the security aspects of the work. Such is not the case according to Joseph L. Liebling, Deputy Assistant Secretary of Defense for Security Policy. A clearance is denied only when all of the circumstances in a particular case, in the judgment of DoD, warrant such a conclusion. Due process procedures are observed and the applicant has a right to appeal any adverse decision. Had the DoD position been more widely disseminated nearly 6% of the employers surveyed would change their position on whether or not to hire a person with a court-martial conviction and punitive discharge.

Many opinions received appended to the returned questionnaires were emotional responses stemming from the Viet Nam conflict or an at-

QUESTION	COMMON QUESTIONS DEPENDS ON VARIOUS FACTORS			UNIVERSITIES NOT ANSWERED			BUSINESSES DEPENDS ON CLEARANCE OR JOB			NOT ANSWERED
	YES	NO		YES	NO		YES	NO		
1. When dealing with an ex-service-member do you inquire into the type of discharge he received?	42%	54%	4%	34%	66%		64%	33%	2%	1%
2. Do you require proof of the type of discharge?	24%	72%	4%	22%	77%	1%	31%	67%	.3%	2%
3. Do you automatically reject an applicant with a punitive discharge?	5%	91%	4%	2%	96%	2%	7%	89%		4%
4. Do you make a distinction in your acceptance practice based upon the type of crime the former service-member was convicted of rather than the fact that he has a punitive discharge?	52%	42%	6%	31%	66%	3%	73%	22%		5%
5. Does a court-martial conviction result in a denial (of employment, services, enrollment, etc.) to an applicant?	11%	78%	11%	7%	91%	2%	5%	76%	14%	5%
6. Is there any difference in your response to question five (above) based upon whether a punitive discharge is adjudged?	8%	84%	8%	9%	87%	4%	9%	81%	1%	8%
7. Does a military court-martial conviction equate to a federal or state conviction for the purposes of your acceptance determinations?	30%	47%	23%	28%	66%	6%	40%	44%	2%	14%

TEACHING CERTIFICATE    PLUMBER'S LICENSE    LABOR UNIONS  
DEPENDS ON VARIOUS FACTORS

QUESTION	NOT ANSWERED			NOT ANSWERED			NOT ANSWERED		
	YES	NO		YES	NO		YES	NO	
1. When dealing with an ex-service-member do you inquire into the type of discharge he received?	15%	85%		0%	100%		8%	93%	
2. Do you require proof of the type of discharge?	9%	91%		0%	100%		5%	95%	
3. Do you automatically reject an applicant with a punitive discharge?	3%	91%	6%	0%	100%		0%	98%	2%
4. Do you make a distinction in your acceptance practice based upon the type of crime the former service-member was convicted of rather than the fact that he has a punitive discharge?	41%	52%	7%	9%	82%	9%	5%	95%	
5. Does a court-martial conviction result in a denial (of employment, services, enrollment, etc.) to an applicant?	15%	47%	38%	5%	86%	9%	0%	98%	2%
6. Is there any difference in your response to question five (above) based upon whether a punitive discharge is adjudged?	0%	79%	21%	0%	95%	5%	5%	90%	5%
7. Does a military court-martial conviction equate to a federal or state conviction for the purposes of your acceptance determinations?	18%	41%	41%	5%	86%	9%	8%	75%	17%

STATE PERSONNEL AGENCIES					STATE EMPLOYMENT SERVICES			LAW LICENSES			MEDICAL LICENSES			
		ONLY IF					ONLY							
		DEPENDS	SEEKING	NOT			FOR	NOT						
		ON	VET.	ANSWERED	YES	NO	VET.	ANSWERED	YES	NO	ANSWERED	YES	NO	ANSWERED
YES	NO	JOB	PREF.				PREF.							
13%	10%		77%		4%	4%	91%		82%	18%		42%	58%	
—	—	—	—	—	2%	9%	89%		50%	50%		32%	68%	
0%	80%			20%	.196%	99.8%			0%	100%		2%	92%	6%
47%	17%	30%		6%	0%	100%			86%	7%	7%	70%	22%	8%
0%	67%	20%		13%	0%	100%			64%	25%	11%	20%	38%	42%
0%	90%			10%	0%	100%			0%	93%	7%	14%	70%	16%
27%	3%			70%	4%	7%		89%	32%	36%	32%	32%	34%	34%

titude about the military in general. Other responses concerning military justice seemed to be derived from personal experiences while in the armed forces. Many civilians seemed unaware that the system of military justice has changed since World War II, expressed a dim view of court-martial proceedings, and had doubts about their fundamental fairness. That may explain why forty-seven percent of those surveyed did not feel that a court-martial conviction equated to either a federal or state conviction. Surprisingly, 36% of the bar examiners from all fifty states also do not bestow the military courts' determinations the status of either a federal or state conviction.

Drawing judgment from the reported statistical base it is apparent that the effects of a punitive discharge, while not nearly as serious as perhaps many people had envisioned, can vary radically from one recipient to another. The economic sanctions imposed by our society are unequally applied and the actual effect a puni-

tive discharge has on a particular individual depends in large measure upon happenstance. The unpredictability of the effects of a punitive discharge would seem to severely hamper its utility as a force of deterrence and makes escape from its retributive effects possible, if not likely.

Notes

1. S. BENIT, A TREATIS ON MILITARY LAW AND THE PRACTICE OF COURTS-MARTIAL 200 (5th ed. 1866).
2. Letter from Richard L. Davison to CPT Charles Lance, March 4, 1975.
3. Stepp v. Resor, 314 F. Supp. 475 (S.D.N.Y. 1970) accord, United States *ex rel* Roberson v. Keating, 121 F. Supp. 477, 479 (N.D. Ill. 1949).
4. U.S. DEPT OF DEFENSE, REPORT OF THE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES 119 (1972).
5. Puerto Rico was treated as a "State" for the purposes of the survey.

## LEGAL ASSISTANCE ITEMS

*By: Captain Mack Borgen, Instructor, Administrative and Civil Law Division, TJAGSA*

### Items of Interest.

**Family Law — CHAMPUS — Pastoral Counselors, Family and Marital Counselors.** As reported in the FAMILY LAW REPORTER, the U.S. District Court for the District of Columbia has approved a consent decree between the American Association of Marriage and Family Counselors, Inc. and the Department of Defense. The Association had filed a complaint against DOD for cutting off therapy benefits for active and retired armed services personnel and their dependents under CHAMPUS. See, Borgen, "Legal Assistance Items," THE ARMY LAWYER, August 1975, at 35.

The decree bars the Department of Defense from cutting off payments to beneficiaries for services by qualified marriage, family and pastoral counselors. It further requires DOD to conduct a survey to determine the availability of qualified mental health professionals capable of performing such counseling at medical facilities of the uniformed services. Further required is that the Association and the DOD develop guidelines and procedures to ensure the continued availability of marriage and family counseling services to all CHAMPUS beneficiaries and to establish a peer-review panel of mental health professionals including a qualified marriage or pastoral counselor. See, 2 FAMILY L. REP. 2385 (13 April 1976). [Ref: Chs. 20, 29, DA Pam 27-120.]

**State Income Taxation — Compendium Regarding Delinquent State Tax Returns.** The Office of The Deputy Assistant Judge Advocate General (Legal Assistance and Taxes), Department of Navy with the assistance of the Legal Assistance Office, Office of The Judge Advocate General, Department of Army, has compiled a chart setting forth the policies of State income tax departments with regard to the filing of delinquent State tax returns by military members. A limited number of copies may be obtained by writing the Legal Assistance Office, OTJAG,

DA, Washington, D.C. 20310. [Ref: Ch.43, DA Pam 27-12].

**Family Law — Division of Community Property Pursuant to a Divorce Settlement — Tax Consequences.** According to a recent Internal Revenue Service Revenue Ruling, no gain or loss will be recognized from the approximately equal division of the fair market value of community property in a community property state under a divorce settlement which provides for the transfer of some assets in their entirety to one spouse or the other. This applies if neither taxpayer owns any separate property. The assets each spouse receives retain their community basis. Rev. Rul. 76-83, 1976 IRB 10,13. [Ref: Ch. 20, DA Pam 27-12].

### Articles and Publications of Interest.

**Family Law — Intercountry Adoptions.** Note, "International Adoptions — U.S. Adoption of Vietnamese Children: Vital Considerations For The Courts," 52 DENVER L.J. 771 (1975). [Ref: Ch. 21, DA Pam 27-12].

**Real Property — DOD Homeowners Assistance Program.** Dep't of Defense Information Guidance Series (DIGS) No. 8A-33 (Rev. 1), "DOD Homeowners Assistance Program," May 1976 (Pursuant to this program the Secretary of Defense is authorized to make partial reimbursement to eligible military members and Federal civilian employees for losses sustained on the sale of their home when such personnel are forced to relocate following base closure or reduction actions). See also, Dep't of Defense Inst. 4165.50, "Administration and Operation of the Homeowners Assistance Program," 11 February 1972. [Ref: Ch. 34, DA Pam 27-12].

**Survivor's Benefits — Social Security and Government Retirement and Annuity Plan.** Clinebell, "Dependents of Public Pensioners: The Forgotten Spouse," 9 CLEARINGHOUSE REV. 694 (1976). This article analyses the

statutory protections afforded to widows of active duty or retired members of the Armed Forces and of federal civil service employees. The analysis focuses upon the relevant provisions of two public retirement Plans: The Armed Forces Retirement System (Particularly the Retired Serviceman's Family Protection Plan, 10 U.S.C. §1431, *et seq.*, and the Survivor Benefit Plan, 10 U.S.C. §1447, *et seq.*) and the Federal Civil Service Retirement Laws. [Ref: Chs. 13, 15, 39, DA Pam 27-12].

**Taxation — Domicile and Residence — Non-resident Aliens.** Langer, "When Does A Non-resident Alien Become A Resident For U.S. Tax

Purposes?," 44 J. TAXATION 220 (1976). [Ref: Chs. 41, 42, DA Pam 27-12].

**Veteran's Benefits — GI Education and Training.** Dep't of Defense Information Guidance Series (DIGS) No. 8B-6 (Rev. 2), "GI Education and Training," May 1976. This DIGS publication outlines GI Bill educational benefits available to service members (on active duty for more than 180 days) and veterans (who served on active duty for more than 180 days and were released under conditions other than dishonorable or were discharged for a service-connected disability). [Ref: Ch. 44, DA Pam 27-12].

## RESERVE AFFAIRS SECTION

**1. Reservist Re-enacts Historic Jump.** Lieutenant Colonel Robert M. Murphy, JAGC, USAR, a Boston attorney and the first American to parachute into Normandy on D-Day, re-enacted his jump on the 32d anniversary of the allied invasion. On June 6, 1976, Murphy, along with French Army paratroopers and civilian skydivers, parachuted into Ste. Mere Eglise, France, the first town in occupied Europe that was captured by his unit, the 505th Parachute Infantry Regiment of the famed 82d Airborne. Lieutenant Colonel Murphy, 50, re-enacted his historic jump over the green fields that surround the Normandy village where, during the night of June 6, 1944, his Special Pathfinder unit spearheaded the American and British invasion of Nazi-held Europe.

Lieutenant Colonel Murphy is a licensed skydiver and has been parachuting since age 17. He had combat jumps in Sicily, Italy, Normandy

and Holland. After France, Lieutenant Colonel Murphy will also travel to Holland and will parachute with Dutch skydivers over the same drop zone he used as a Pathfinder in September 1944 in the Holland invasion.

Lieutenant Colonel Murphy resides in Westwood, Massachusetts, and is an executive officer of the 1223d JAG Detachment (RTU).

**2. 8th JAG Detachment Gives Prisoners Legal Assistance.** The 8th JAG Detachment and its subordinate units located in Kansas City, Missouri have serviced Fort Leavenworth in its legal assistance program for many years. Recently, however, they have taken on another mutual support program of some interest. They are now rendering legal assistance at the U.S. Disciplinary Barracks at Fort Leavenworth, as well as the Post. The prisoners and their dependents constitute a rather substantial clientele.

## JAGC Personnel Section

*From: PP&TO, OTJAG*

**1. Selections for JAGC Regular Army and Voluntary-Indefinite Status.** The following JAGC officers were selected for a regular Army commission by a Selection board which convened on 21 May 1976.

Behuniak, Thomas E.  
Cairns, Richard W.  
Cranmer, Sheridan M.  
Edwards, John T.  
Gallivan, Richard A.

Gravelle, James F.  
 Haggard, Albert L.  
 Livingston, David J.  
 Long, James D.  
 Luedtke, Paul J.  
 McManus, James D.  
 McMennis, James E.  
 Moore, Joseph W.  
 Stogner, William W.  
 Taylor, Daniel E.  
 Taylor, Thomas W.  
 Wing, Dennis J.

The following JAGC officers were selected for voluntary-indefinite status under the provisions of AR 135-215 by the same selection board.

Caulking, John E.  
 Cooke, John S.  
 Fievet, Harold E.  
 Gliden, Jonathan D.  
 Hightower, James A.

Lamb, Harry L.  
 Long, Clarence D.  
 Retson, Nicholas P.  
 Stephens, Frederic S.

**2. Military Enlistment Processing Command.** Effective 1 July 1976, the United States Military Enlistment Processing Command (Provisional), Fort Sheridan, Illinois 60037, will be a separate command under Headquarters, Department of the Army. The Command will supervise the operation of the Armed Forces Examining and Entrance Stations (AFEES). The incumbent Command Judge Advocate is Major Michael A. Burke, United States Army, who was assigned on 30 April 1976. The Assistant Command Judge Advocate is Lieutenant Dan E. Babarik, United States Navy, who was assigned on 27 May 1976. The office telephone numbers are AUTOVON 459-2383/2404 or commercial 312-926-2383/2404.

## Current Materials Of Interest

### Articles

Hooks, *Taxation of Federal Instrumentalities Incident to State Regulation of Intoxicants: The Mississippi Tax Case*, AIR FORCE L.

REV., Spring 1976, at 1. By Captain Edward C. Hooks, USAF.

Rhodes, *The Feres Doctrine After Twenty-Five Years*, AIR FORCE L. REV., Spring 1976, at 24. By Captain Robert L. Rhodes, USAF.

Hilliard, *The Waiver Doctrine: Is It Still Viable?* AIR FORCE L. REV., Spring 1976, at 45. By Major John E. Hilliard, USAF.

Ingrao, *Types of Government Contracts*, AIR FORCE L. REV., Spring, 1976, at 63. By Lieutenant Colonel Anthony P. Ingrao, USAF.

Note, *Videotape and the Courtroom Process*, AIR FORCE L. REV., Spring 1976, at 87. By Captain William S. Nieuhaus, USAF.

Comment, *The Voiceprint Dilemma: Should Voices Be Seen and Not Heard?* 35 MD. L. REV. 267 (1975), L. REV. DIGEST, September-October 1975, at 20.

Sbarboro, *Illinois Military Justice and Discrimination*, THE JUSTINIAN J., Feb. 1976, at 38. By Lieutenant Colonel Gerald L. Sbarboro of the Illinois National Guard.

Schneyer, *Informed Consent and the Danger of Bias in the Formation of Medical Disclosure Practices*, 1976 WIS. L. REV. 124 (1976).

Legislative Developments, *The Foreign Assistance Act of 1974*, 7 LAW & POL. INT'L BUS. 1305 (1975).

Frug, *Does the Constitution Prevent the Discharge of Civil Service Employees?* 124 U. PA. L. REV. 942 (1976).

### Book Reviews

Arrowood, *Federal Trial Handbook*. By Robert S. Hunter, AIR FORCE L. REV., Spring 1976, at 96. By Lieutenant Colonel William D. Arrowood, USAF.

Nott, Etzold, Gaddis & Stephens, *Can America Win the Next War?* By Drew Middleton, NAVAL WAR COLLEGE REV., Spring 1976, at 91.

Long, *The Soviet Soldier: Soviet Military Management at the Troop Level*. By Herbert Goldhamer, NAVAL WAR COLLEGE REV., Spring 1976, at 101. By Colonel William F. Long, Jr., U.S. Army (Ret.).

Goodman, *Neither Peace nor Honor: The Politics of American Military Policy in Vietnam*. By Robert L. Gallucci, NAVAL WAR COLLEGE REV., Spring 1976, at 100.

Hicks, *The American Soldier in Fiction, 1880-1963: A History of Attitudes Toward Warfare and the Military Establishment*. By Peter Aichinger, NAVAL WAR COLLEGE REV., Spring 1976, at 96.

Jarvis, *Wills That Made History*, By Rene A. Wormser, AIR FORCE L. REV., Spring 1976, at 100. By Sergeant Arthur Jarvis, Jr., USAF.

#### Mailing Classified Documents

The Directorate For Development and Engineering (DARCOM) reports that classified documents are being mailed to it which are not required. Even the required documents often have too many copies attached. The Directorate urges that only "those documents considered mission essential" be forwarded to it. All questions should be directed to Miss Lucy Jones, AUTOVON 284-8537. The details of this policy were distributed on 27 May 76, in Message 271320Z May 76 FM CDRDARCOM ALEX VA//DRCDE-AT TO AIG 865.

#### Changes to AR 27-10.

Paragraph 1-7, AR 310-10, Military Orders, 3 November 1975, effective 1 July 1976, eliminates the use of orders to announce duty appointments. Paragraph 3-2b(3), AR 27-10, is being changed to provide that "Delegations of authority to exercise Article 15 powers will be made in writing, *e.g.*, a disposition form or letter, and will designate the officer upon whom the powers are conferred by name and position."

Affected commands should insure that delegations are announced in the proper format. The restrictions on issuing orders to announce Article 15 actions in paragraph 1-7g, AR 310-10, affects all commands. Commencing 1 July 1976, DA Form 2627 will be used as the source document for all punishments imposed under Article 15, UCMJ, paragraph 3-15b. AR 27-10 is being changed to require preparation of an original and five copies of DA Form 2627, with two copies being forwarded to the MILPO for further transmittal to the appropriate FAO. These copies are to be clearly marked by the person making initial distribution as intended for distribution to Finance. Pending revision of DA Form 2627, additional copies may be obtained by photocopying or by initially preparing the required copies. Paragraphs 3-8e(3), f(4), g and 3-10b, AR 27-10, are being rescinded. However, the time for initial distribution of DA Form 2627 will remain as currently prescribed in paragraph 3-15c, AR 27-10.

Several administrative changes to chapter 12, Court-Martial Orders, AR 27-10, are also required. In paragraph 14-4a, the reference to paragraph 10a, AR 310-10, is changed to paragraph 2-4, AR 310-10. In paragraph 12-4c, AR 27-10, the references to paragraph 1-24c, AR 310-10, are changed to paragraph 1-15, AR 310-10. Paragraph 1-15, AR 310-10, eliminates the "official" section from the authentication portion of orders and paragraph 1-16a, AR 310-10, provides for placing the word "distribution" opposite the signature block. Paragraph 12-4d, AR 27-10, is being changed to reflect these new procedures. It is important during the implementation period that staff judge advocates insure that court-martial orders, especially those prepared by subordinate jurisdictions, are properly authenticated. The implementing change being distributed through the pinpoint distribution system is dated 011000Z June 1976, Subject: Interim Change to Chapters 3 and 12, AR 27-10.

By Order of the Secretary of the Army:

Official:

PAUL T. SMITH  
*Major General, United States Army*  
*The Adjutant General*

FRED WEYAND  
*General, United States Army*  
*Chief of Staff*



