

THE ARMY LAWYER



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Making History As a Court Reporter

These remarks were delivered by Colonel Wayne E. Alley, Chief, Criminal Law Division, OTJAG, at the graduation of the First Court Reporting Course on April 21, 1976

Ladies and gentlemen, you've heard a great deal of specifics in the last few days. These remarks are in the nature of a graduation address, and consequently they'll be far more general. The title of my remarks is intended to be a pun, and I hope you all regard it in that way. As court reporters you make history in the sense of being the author of the history book, in addition to your day-to-day concerns: "How am I going to get my machine to work; how can I understand Judge So-and-So who speaks gurgling; how can I get the counsel to slow down in his arguments."

One should take time in any business or profession to detach momentarily, to wonder "What am I doing? and "Why am I doing it?" "What is my role in the scheme of things"—now that's an easy question to answer. The hard one is: "What is the scheme of things?" I'll start with a story. It's a familiar one and you've probably heard it, but it's appropos here. A passerby on a broad avenue came upon three masons, who were practicing their craft in the way of masons for thousands of years. The passerby stopped by the first one and said, "What are you making?" The mason said, "I'm making \$8.47 an hour." The passerby stopped at the next one and said, "What are you making?" and the second mason replied, "I'm making a brick wall, stupid." The passerby stopped at the third mason and said, "What are you making?" He said, "I'm making a glorious cathedral for the beautification of our community and the glory of God." Well, he got fired because they were actually making a garage.

Your function should be regarded as part of a system, so you should wonder where are

you going, and what are the limitations as well as the grandeur of it all, and where is the craft as well as the professional stimulation of it all.

If you regard yourself as people who make history, you can probably get a good perspective on what you do by comparing two kinds of history. The first is the history of the trial. That's the record of trial that you make. One can pick it up and read it, and know what was said and done there. In the words of appellate courts, that record "imports verity," and I'll discuss that in a minute. The second type of history, with which I'd like you to compare that, is the depiction at trial by the witnesses of the events that they saw or heard. In our business, if we get five witnesses who are testifying about an event or a conversation that happened a few months ago, usually under stressful circumstances and with limited opportunity for observation, those five people are going to come up with five different versions. It's the factfinder's job to select one of the versions, or maybe a composite. That reconstruction of history is done bit by bit, and usually involves evaluations, judgments, and assessing facts under the applicable burden of proof and instructions. The judge, if he's trying to case alone, or the court members, when they sort out these factors, have to evaluate a witness by asking questions about his intelligence and his perception, including the ability to perceive as well as opportunity, memory, and sincerity, the quality of telling the truth. When you're making up your record of trial, all these factors apply to the quality of the record, except your historical process is easier because you can eliminate the judgments and values and

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so on. Thus, to be a court reporter, you certainly have to be intelligent and couple that with initiative, too. Perception is an obvious qualification. I suppose if someone had a severe impairment of hearing, he or she would have limited value as a court reporter. Your senses have to absorb all that goes on. Memory is not so important for the reporter as it is for a witness, although there are intervals in which the reporter must carry over a matter in memory, and some records of trial have been very deficient in these respects. About sincerity: I'm very glad that sincerity, honesty, and professionalism were discussed in your training, because the sad public events of the past few years prove that there are more types of insidious corruption that can creep into a system than through motives of financial gain. A record must depict what happened at trial, so if pressures are brought to bear to distort that record, then the system has been corrupted and something must be done about it. The record has got to be true. It has to be true. As one who speaks to you from the perspective of having been a trial judge and an appellate judge, and now with staff responsibilities for military justice, I beg and plead that the record be true. Otherwise, we're all in terrible trouble.

There is so much confidence placed in the truth of an authenticated record that it's truth is not just a practical fact of life, it is a legal principle. I'll return to the phrase that comes out of many civilian cases and Court of Military Appeals cases, that the record "imports verity." That is a legalistic and typically obscure way of stating the simple fact that the record is, in the absence of fraud, conclusive evidence of what is in that record. If something is in that record of trial which you have prepared and which has been properly authenticated, then even if twenty bishops among the spectators swear that that record is erroneous in some respect, the record prevails. It's worthwhile, I think, for a reporter occasionally to get out Volume 26 of the Court-Martial Report and read the *Albright* case, reported in that volume at page

410. Not that this serves any practical purpose in your training, but it ought to make you feel good. There the record contained the notation that an interpreter, whose function was crucial to the trial, had been sworn, in which event of course he was competent to perform his duties. After trial, the defense counsel submitted affidavits that in fact the interpreter had not been sworn, and presented as an addendum to the affidavit a note from him to his associate, written during the course of the trial. The opinion didn't record it verbatim, but it is to the effect: "Aha! We've got him because the interpreter wasn't sworn!"

The record said he *was* sworn. As this record moved forward with contrary affidavits of officers of the court, officers of the Army, judge advocates asserting the record was inaccurate, the legal principle prevailed all the way up through the Court of Military Appeals. What was in the record was what was accepted as truth. When you write something down, and that is authenticated, it's like magic. Magically, you have created truth, and nobody legally can gainsay the truth of what you have created. What a responsibility!

Now to these qualities of perception and intelligence and memory and sincerity, in the reporter's business, you have to add a great deal of patience, and not just the kind of patience that permits you to finish a trial but patience with sometimes impatient and unreasonable people. I'm sure that you recognize in court some impatient and unreasonable people who work under conditions of great stress, as the counsel and the judge do. Witnesses, unless they're policemen, probably testify once or twice in a lifetime and can be almost in a state of panic. You have to be very patient with people. You also have to be patient in the more limited sense of being willing to just plug along, and spend long hours in court and long hours transcribing, and be diligent and attend to detail, because details constitute the law. Detail, detail it is, one detail after another.

I sat in on the last few minutes of Colonel Laray's presentation. We have had a good deal of discussion over the telephone and personally lately about problems in non-verbatim records of trial. Although I came in the middle of that portion of his talk, I take it that he had done a little evangelical presentation to the effect that a non-verbatim record is as important and must be done according to the same professional standards of quality as a verbatim record. And this is true. Many trial participants lamentably approach the case which is initially a special court without prospect of a bad conduct discharge as if somehow the standards are lesser or different. They may not realize that these cases, too, are appealable, although not in the same way as your major cases that go for an adversary review by the Court of Military Review and perhaps the Court of Military Appeals. Article 69 of the Code permits anyone who has been finally convicted, whose case has not been reviewed in the A.C.M.R., to apply to the Judge Advocate General for relief in his case. I must candidly say before taking the job that I have now I had no concept whatsoever of the large volume of business and the importance of the business in these applications for relief under Article 69. It is a big business. Dozens of cases come in with Article 69 applications. The Court of Military Review, as you know, under Article 66 has fact-finding powers and it can make a disposition of a case based upon its lack of conviction that the evidence established an offense beyond reasonable doubt. In other words, it can just re-evaluate the witnesses. The Judge Advocate General cannot do that under Article 69—he is limited to a legal review. If there is a complete omission of an element of an offense, that's a legal error; but if it's just a question of comparing witnesses' credibility, that type of thing is not done under Article 69. Consequently, in the cases that come up for the Article 69 type of review, which are almost all summarized records, the types of issues do not deal with *what* Sergeant So-and-So said, or *what* appeared in Exhibit 18, so much as legal issues: what motion was

made, what rulings ensued, what instructions were given or not given, what, if any, erroneous arguments were made, any injudicious comments from the bench, and so forth. Well, in a summarized record, these are often not there. You have to live with the limitations of time and the shortness of life; but if the summarized record were directed more toward the legal content of the case as well as the summary of testimony, we'd all be better off on review. If a motion is made, or a major objection, its nature and the ruling should be stated clearly in the record. And if the judge makes any remark from the bench that counsel takes exception to, that should certainly be in the record. A summarized record should be good reading, those that you prepare and those that the people who work for you prepare. It ought to read smoothly. A verbatim record is a play. A summarized record is a book. I should be able to read through that book and know what happened, rather than being later confronted with an Article 69 application for relief and lamenting that there's no way to find out what happened from the summarized record.

I want to make brief mention of a particular instance of making history as a court reporter, and that is the reporter's note. Here is one that might come from a record. "TC: Your honor, your honor . . . (Reporter's note—the military judge was asleep.)" Now, I don't know if he was actually asleep, and when you come right down to it, as a reporter you don't know if he was asleep. This type of reporter's note imports opinion and judgment, as will almost always be the case when you're describing a general condition or a value of some kind. How do you get around this situation, I don't always know. Occasionally in a trial, for example, the trial counsel will turn to the accused and make some comment on his reaction. You can't note: (The accused looked guilty) or (Looks like he got caught with his hand in the cookie jar) or anything like that. To avoid the difficulties of making the assessment-type reporter's note, it's far better to request the judge to

make a recital in the record. He may request the counsel to state a stipulation in the record, and that's OK because the monkey is off your back. Stick if you can to reporter's notes that are nonjudgmental, direct observations about which there can be no quarrel.

I want to conclude by briefly alluding to a function of the court reporter which is not an historical function. It's one of the most important things a reporter does. If the reporter didn't do this, our system would suffer. And that is that the reporter keeps the military justice function *honest*, in the same sense although not in the same way as a public trial keeps the system honest. You imagine a trial where a person is brought into a secret proceeding with no record kept, and the only announcement of what happened there was that the person was convicted of murder and was duly executed. Period. Now I don't care how well trained and how honorable and how conscientious all the participants in that trial are going to be, in this life illumination of events is necessary. The mushrooms grow in the dark. As a court reporter, by preparing that record which is available for the world to see, you provide the necessary illumination in that trial. There aren't too many cases that attract a lot of the public. There are some dramatic cases where people in the neighborhood might come in to be entertained, and some commands have the excellent program where the officers and NCO's of the command must come in and observe a trial as part of their military justice training. But most of the time, at least in my experience as trial judge, you sit there in what's essentially an empty courtroom, and there's one guy back there, the bailiff, who will run out and get the witnesses when required. Public trials in theory keep the system honest, but the court reporter in fact keeps the system honest by providing the public its only view of the trial. This will make the witnesses more careful. Everybody is far more apprehensive about committing himself to a false statement because of public scrutiny than because of the abstract sanction of an oath. They don't

believe they're going to go to hell anymore if they lie under oath. You show me somebody who believes that, that's one in a million. What counts is the consequences in this life when somebody contradicts him because they know what he said, and they can contradict him because it's in the record. That's what makes the witness tell the truth. And that's what makes the counsel fair, and that's what makes the judge judicious, and that's what makes the members conscientious. If you weren't there reporting, we wouldn't have any public view of the proceedings and it would be far different, far different. This ought to make you proud.

Pride has several definitions. One is, it's one of the seven deadly sins, one of the lesser ones I guess. A better definition of it is that it's a reasonable or justifiable self-respect. That ought to follow the knowledge that one is performing an essential function. You know

your function is essential, and having that inner knowledge you are situated to take pride in your work. If you have the inner knowledge that your function is essential, it shouldn't be necessary that this be constantly confirmed by commendation. It shouldn't be necessary that this require the fortification of boasting about it. If you know that you're essential, you don't need anybody to keep telling you that. Take the unhappy instance when a reporter gets seriously ill after a four-week case, or drops dead because of the stress of it all. Everybody back at the office will be standing around the grave saying, "Gee, how are we ever going to get along without him?" It's just human nature to say that when the person is gone. The truth of the matter is that you should be aware of that every day.

When you make history in the future, I hope you'll have a strong inner sense of the importance of the history that you're making.

Criminal Law Section

From: Criminal Law Division, OTJAG

Accountability And Control Of Physical Evidence. During the past 15 months there have been instances where physical evidence received from law enforcement evidence custodians have been lost while in the possession of judge advocates. This includes loss of heroin and other drugs. SJA's must establish procedures to insure against such losses in the future. Law enforcement personnel are extremely sensitive to evidence accountability. SJA's must assure that trial and defense counsel understand their responsibilities when they or their assistants are in custody of physical evidence. As a minimum, it is suggested that the following procedures be locally implemented to safeguard physical evidence while in possession of JA personnel:

1. Permit only judge advocates to sign vouchers for receipt of physical evidence.
2. Insure that physical evidence is secured in a container suitable for storing classified

documents when not personally possessed by the officer who signed for it.

3. Brief judge advocates on responsibility for physical evidence they have signed for. It should be made clear that they and not the judge, court members or court reporter, are responsible for the security of physical evidence during progress of a court-martial.

4. Require all personnel concerned to become familiar with these procedures before signing for or handling physical evidence.

5. Emphasize the need to return physical evidence to the appropriate custodian when it is no longer required.

SJA's should implement whatever additional procedures are believed necessary to prevent future losses of physical evidence. [See AR 195-5, Evidence Procedures, dated 20 Sep 74, and DA Pam 27-50-12, item 3, page 25, Dec. 73.]

JUDICIARY NOTES

From: U. S. Army Judiciary

1. RECURRING ERRORS AND IRREGULARITIES.

a. July 1976 Corrections by the A.C.M.R. of Initial Promulgating Orders:

(1) Failure to *set forth the proper words or figures in the specification* of a charge—two cases.

(2) Failure to *indicate in the sentence paragraph the number of previous corrections considered, that trial was by military judge alone, and the date the sentence was adjudged*—one case each.

b. *Convening Authority's Action.* Before submitting an Action to his commander for approval and signature, the staff judge advocate should review it personally to assure its accuracy in all respects. In a recent case reviewed under Article 69, UCMJ, the following errors were noted in the Action:

(1) The sentence "to be reduced to the grade of E1; to forfeit \$200.00 a month for eight months; and to be confined at hard labor for eight months" was *not* ordered into execution. Thus, the approved sentence could not become effective on the date of the convening authority's action.

(2) It contained the language, "The forfeitures shall apply to pay becoming due on and after the date of this action." When a sentence is properly ordered into execution (as it should have been in this case), a clause purporting to apply forfeitures is unnecessary.

(3) It contained language forwarding the record "for review by a Court of Military Review." The action should have stated, "The record of trial is forwarded to The Judge Advocate General of the Army for examination under the provisions of Article 69, Uniform Code of Military Justice."

c. *Court-Martial Orders.* The authority paragraph of a court-martial order promulgating the results of trial should reflect all the court-martial convening orders which involve proceedings. For example, if Article 39(a) sessions in one case are held before different military judges, all "vicing" orders should be shown. Note the following situation: three accused are tried in common; several Article 39(a) sessions on all kinds of motions are held; then a severance is granted and the charges against one accused are re-referred to another court-martial. As to that accused, the promulgating order should cite *all* the court-martial convening orders involving him, including those issued prior to the re-referral.

d. *Supervisory Review—Article 65(c).* In reviewing applications for relief, submitted pursuant to Article 69, UCMJ, it has been noted that a number of the rubber stamp impressions on the records of trial and promulgating orders are obsolete. For example, if the general court-martial jurisdiction is "United States Army Infantry Center and Fort Benning", the designation should not read "US Army Infantry Center," especially when that designation has not been used since 13 December 1967.

2. SELECTIONS OF MILITARY JUDGES.

a. To be a military judge, a JAGC officer must have a broad background of military criminal law experience. He must have impeccable moral character, an even temperament, good judgment, common sense, learning, sound reasoning ability, patience, integrity, courage, a nonabrasive personality and a high degree of maturity. He must be able to express himself, orally and in writing, in a clear, concise manner. It is also important for him to have an understanding of, and experience in, the principles and problems of leadership and exhibit a neat and military appearance.

b. Application procedures are prescribed by the Chief Trial Judge, U.S. Army Judiciary, who makes a comparative evaluation of applicants' qualifications. The Judge Advocate General then personally selects and certifies the officers to be trained or assigned as military judges. The number and type of selections will be upon consideration of individual qualifications and world-wide requirements.

c. (1) Special Court-Martial military judges to be assigned to the Trial Judiciary and other officers authorized to attend the Military Judge Course are selected from applicants experienced in military criminal law who are majors, promotable captains, captains who have completed their obligated tours of service and are in a Regular Army or voluntary-indefinite status, or other highly-qualified company grade officers who have at least two and one-half years of JAGC service and more than one year's service obligation remaining.

(2) General Court-Martial military judges are selected from field grade officers who have at least eight years' active judge advocate service. Officers may be selected for GCM certification by three processes:

(a) The Judge Advocate General may directly select field grade judge advocates not then assigned in the Trial Judiciary who possess exceptional qualifications and competence in military criminal law.

(b) Colonels or Lieutenant Colonels not assigned to the Trial Judiciary may apply for selection by letter through the Chief Trial Judge, and Chief U.S. Army Judiciary, to The Judge Advocate General.

(c) Majors not currently assigned to the Trial Judiciary but certified as special court-martial military judges and with at least two years full-time duty as a military judge upon application will also be considered for GCM certification and assignment to the Trial Judiciary as general court-martial judges. Selection will be made only of those who have demonstrated the personal qualities and professional competence expected of judges who preside

over the most complex and important trials. Officers in the grades of major and captain who are currently assigned to the Trial Judiciary as special court-martial judges will not be considered for certification and assignment as general court-martial judges without an intervening assignment other than for schooling outside the Trial Judiciary.

d. Officers selected for assignment to the Trial Judiciary will be sent to the Military Judge Course if they have not previously completed it. Applicants who are not selected for assignment to the Trial Judiciary may be authorized with the use of local command funds to attend the Military Judge Course for certification upon completion and possible future assignment to the Trial Judiciary. No officer who fails to complete successfully the Military Judge Course or its equivalent will be certified.

e. Officers interested in applying for certification or assignment as military judges should make their desires known to the Chief Trial Judge (HQDA (DAAJ-TJ)), Nassif Building, Falls Church, Va. 22041, and the Chief, Personnel, Plans and Training Office, Office of The Judge Advocate General.

3. NOTES FROM GOVERNMENT APPELLATE DIVISION.

An important, but sometimes neglected, requirement in the pretrial processing of charges preferred against an accused who is in the status of arrest or in pretrial confinement awaiting trial by general court-martial is set forth in Article 33, Uniform Code of Military Justice. Stated concisely and in its entirety, it provides:

When a person is held for trial by general court-martial the commanding officer shall within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

The terms of Article 33 unambiguously delineate its limited applicability. Its provisions do not apply in the case of an accused pending trial by special court-martial or an accused who is not ordered into arrest, confinement, or other equivalent form of restraint.¹ Importantly, in applicable cases, its provisions contemplate that the charges and allied papers as well as the report of the Article 32 investigation will be forwarded by the accused's commanding officer within eight days only if practicable. When exigencies render compliance with this requirement impracticable, a written report explaining the reasons for the delay must be forwarded to the general court-martial convening authority. This report should be forwarded within eight days to fully implement the legislative intent to assure speedy processing of the case.² Such a report is normally a letter, thus commonly known as an eight day letter. The accused's unit commander should originate and sign this eight day letter unless the special court-martial convening authority has received the case and elects himself to originate and sign the letter.³ A sample format for such an eight day letter is set forth in the Appendix. A commendable practice would be for both the accused's unit commander and the Article 32 investigating officer to report in writing to the general court-martial convening authority a full explanation of the reasons for delay in forwarding the case to him.⁴

The ultimate responsibility for assuring implementation of the mandate of Article 33 rests squarely with the Staff Judge Advocate. Too often commanders are genuinely unaware of the actions they must take and the problems which can prospectively arise from their inaction. Devising a system to provide sound and timely legal advice to the commander is essential to monitoring compliance with the Code at each step in the pretrial processing of cases.⁵ Since it is a rare instance when the report of the Article 32 investigation is completed within the time allowable under Article 33, the provision for forwarding an eight day letter will normally be triggered. Thus, com-

manders should be attuned to the legal and practical importance of this step in the pretrial processing of applicable cases. Once commanders realize that such action is expected of them by the Commanding General, ready compliance with this requirement will be easier to assure.

Noncompliance with Article 33 legally impacts on the issue of whether the accused has been afforded the right to a speedy trial. Arguably, absent a showing of prejudice to the substantial rights of the accused, automatic dismissal of the charges is not the appropriate judicial remedy for the failure to strictly comply with its terms. The issue of whether a violation of Article 33 warrants reversal and dismissal of the charges, when the accused alleges neither prejudice nor a violation of Article 10, is currently pending before the Court of Military Appeals in *United States v. Paige*, Docket No. 31,634, argued on 11 May 1976. Prior to *Paige*, the Court has considered the effect of noncompliance with Article 33 as one, non-determinative, aspect of the right to a speedy trial guaranteed by Article 10 of the Code. However, unlike the provisions of Article 10, Article 33 does not set forth dismissal or any specific remedy for noncompliance or untimely compliance.⁶ Notably, dismissal has been fashioned as a judicial remedy only upon a finding of a denial of the right to a speedy trial.⁷ In the absence of an Article 10 violation, failure to strictly comply with Article 33 has not been sufficient, by itself, to warrant reversal and dismissal of the charges.⁸ In the latter cases, the Court found no prejudice to the accused emanating from such noncompliance.⁹ Noting that Article 33 has been observed more often in the breach than in following its clear terms, the Court has emphasized that compliance with its requirements is mandatory.¹⁰ Wise discretion would dictate that, in applicable cases, the judge advocate legal advisor affirmatively act to assure that commanders adhere to the mandate of Article 33 as part of the Government's reasonable diligence in promptly resolving the charges against an accused.

APPENDIX

(OFFICE HEADING)

(DATE)

SUBJECT: Delay in Forwarding Charges

THRU:

TO: Commanding General

ATTN:

Pursuant to the provisions of Article 33, UCMJ, this letter is forwarded to explain reasons for delay in the case of *United States v.* _____ [He is charged with]

[It is alleged that] _____

He was placed in pretrial confinement on _____. The reasons for delay in the above styled case are as follows:

(SIGNATURE BLOCK)

Notes

1. The Court of Military Appeals has equated some forms of restriction with the status of arrest for purposes of the application of Articles 10 and 33 of the Code. See *United States v. Weisenmuller*, 17 U.S.C.M.A. 636, 38 C.M.R. 434 (1968) and *United States v. Williams*, 16 U.S.C.M.A. 589, 37 C.M.R. 209 (1967).

2. A survey of the legislative history underlying enactment of this provision of the Code reflects a Congressional intent to keep the general court-martial convening authority fully informed of the progress of these cases as a mechanism for guaranteeing speedy pretrial processing. See Hearings before Subcommittee of House Armed Services Committee, 81st Congress, 1st Session on H.R. 2498, p. 905-909 (1949).

3. See, *United States v. Lucero*, 39 C.M.R. 520, 524 (A.B.R. 1968).

4. *Id* at 524. This practice would implement the mandate of Article 33 and would fully document the reasons for periods of pretrial delay.

5. A legal advisor system whereby each trial counsel acts as a mini-SJA for one or more special court-martial convening authorities has proven to be an effective scheme for disseminating advice to the command.

6. The Court of Military Appeals has noted the absence of such a specific provision for dismissal. See, *United States v. Hawes*, 18 U.S.C.M.A. 464, 40 C.M.R. 176, 179 (1969); *United States v. Callahan*, 10 U.S.C.M.A. 156, 27 C.M.R. 230 (1959).

7. See, *United States v. Marshall*, 22 U.S.C.M.A. 431, 47 C.M.R. 409 (1973); *United States v. Mason*, 21 U.S.C.M.A. 389, 45 C.M.R. 163; *United States v. Weisenmuller*, 17 U.S.C.M.A. 636, 38 C.M.R. 434 (1968).

8. See, *United States v. Przybycien*, 19 U.S.C.M.A. 120, 41 C.M.R. 120 (1969); *United States v. Hawes*, supra; *United States v. Tibbs*, 15 U.S.C.M.A. 350, 35 C.M.R. 322 (1965); *United States v. McKenzie*, 14 U.S.C.M.A. 361, 34 C.M.R. 141 (1964).

9. See, n. 8 supra.

10. See, *United States v. Mason*, supra, n. 7.

MONTHLY AVERAGE COURT-MARTIAL
RATES PER 1000 AVERAGE STRENGTH
APRIL-JUNE 1976

	General		Special	Summary
	CM	CM	CM	CM
		Non-BCD		
ARMY-WIDE	.16	.10	.57	.15
CONUS Army commands	.13	.11	.59	.16
OVERSEAS				
Army commands	.20	.06	.53	.14
USAREUR and Seventh				
Army commands	.23	.05	.47	.14
Eighth US Army	.12	.14	.81	.14
US Army Japan	.07	—	.07	.07
Units in Hawaii	.02	.05	.43	.04
Units in Thailand	—	—	—	—
Units in Alaska	.49	.11	.84	—
Units in Panama/ Canal Zone	.05	—	1.08	.42

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
APRIL-JUNE 1976

	Monthly	Quarterly
	Average Rates	Rates
ARMY-Wide	17.68	53.05
CONUS Army commands	18.93	56.78
OVERSEAS Army commands	15.27	45.82
USAREUR and Seventh		
Army commands	14.55	43.65
Eighth US Army	20.62	61.85
US Army Japan	2.56	7.69
Units in Hawaii	18.95	56.86
Units in Thailand	—	—
Units in Alaska	12.38	37.15
Units in Panama/ Canal Zone	17.93	53.80

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.

THREE IS NOT ENOUGH

Some Tentative Thoughts on the Number of Judges on the United States Court of Military Appeals

By: Captain Joel D. Miller, Commissioner, Panel 3, A.C.M.R.

In the seminal case of *United States v. Johnson*, 18 U.S.C.M.A. 436, 40 C.M.R. 148 (1969), the Court of Military Appeals addressed the issue of whether the law officer's failure to instruct on the order of voting on proposed sentences as required by the *Manual for Courts-Martial* was error. Judge Ferguson, writing for the court, found a violation of military due process. He said, "Since we have no way of ascertaining what took place, the voting having been conducted in secret, and inasmuch as, in our opinion, the matter concerned a substantial right of the accused, the doctrine of plain error may be properly invoked" *United States v. Johnson*, 18 U.S.C.M.A. 436, 437, 40 C.M.R. 148, 149 (1969). Judge Darden concurred in the opinion Chief Judge Quinn dissented, noting that failure to instruct even when required by the

Uniform Code of Military Justice does not have the consequence of automatic reversal.

Following its decision in *Johnson*, the Court authorized sentence rehearings in *United States v. Dues*, 19 U.S.C.M.A. 130, 41 C.M.R. 130 (1969); *United States v. Conner*, 19 U.S.C.M.A. 74, 41 C.M.R. 74 (1969); and *United States v. Newton*, 18 U.S.C.M.A. 562, 40 C.M.R. 274 (1969). In *Conner*, Judge Ferguson wrote the opinion which was concurred in by both Chief Judge Quinn and Judge Darden; both *Dues* and *Newton* were per curiam opinions by the same judges. All three cases cited *Johnson* and applied the plain error doctrine.

Shortly thereafter, the court confronted this same issue in *United States v. Pierce*, 19 U.S.C.M.A. 225, 41 C.M.R. 225 (1970). Seem-

ingly retreating from its announced position in the prior cases, the court tested the absence of the instruction for prejudice and found none. Judge Darden, author of the opinion, took great pains to establish that in *Newton*, *Conner*, *Dues* and *Johnson* the sentences were harsh enough to infer prejudice from the lack of instruction.² However, in none of those prior cases, did the sentence appear to be a factor in using the "plain error rule." Indeed, the doctrine of "plain error" as used in *Johnson* would obviate the need of testing for prejudice. Judge Ferguson, drafter of *Johnson*, dissented from that part of the *Pierce* opinion which tested the error for prejudice, maintaining that reversal as to sentence was merited.

The apparent retreat from the rule in *Johnson* was not continued in *United States v. Pryor*, 19 U.S.C.M.A. 279, 41 C.M.R. 279 (1970), where the Court again faced the issue with a slightly different fact pattern. Although a correct written advice on voting procedure had been handed to the court members at trial, oral instructions were not given. Judge Darden treated this as a case of no instruction and reversed as to sentence without any reference to *Pierce*. Judge Ferguson concurred and Chief Judge Quinn dissented, finding no prejudice. A series of cases involving the same issue followed *Pryor*. A similar result was reached in all. *United States v. Sandoval*, 19 U.S.C.M.A. 281, 41 C.M.R. 281 (1970); *United States v. Heaston*, 19 U.S.C.M.A. 281, 41 C.M.R. 281 (1970); *United States v. Matlock*, 19 U.S.C.M.A. 282, 41 C.M.R. 282 (1970); *United States v. Ortiz*, 19 U.S.C.M.A. 283, 41 C.M.R. 283 (1970); *United States v. Mora*, 19 U.S.C.M.A. 284, 41 C.M.R. 284 (1970). In each of these cases, Judge Darden wrote the opinion, Judge Ferguson concurred and Chief Judge Quinn dissented.

At first glance, the *Pryor* line of cases appears to use a prejudice test (the court speaks frequently of "prejudicial" error). However, the dispositions of those cases, the dissents of Chief Judge Quinn, and the citation to *Johnson* in the *Matlock* case indicates that the plain

error rule was consistently invoked by the majority, Judges Darden and Ferguson.

The dissents of Chief Judge Quinn were usually based on a finding of no prejudice, reached by comparing the maximum imposable sentence with that actually imposed. However, he joined the other judges in ordering a rehearing on sentence in a case where the maximum was a dishonorable discharge and seven years confinement, but the sentence imposed was only a BCD and 12 months confinement. *United States v. Wright*, 20 U.S.C.M.A. 12, 42 C.M.R. 204 (1970). All the judges relied on *Pryor*, stating only that the trial judge had failed to give oral instructions as to voting procedures on the sentence.

In *United States v. Roman*, 22 U.S.C.M.A. 78, 46 C.M.R. 78 (1972), the role played by personality emerges with clarity. Judge Ferguson, defender of the "violation of military due process approach" was no longer on the Court. His replacement, Judge Duncan, provided another, slightly different perspective on the error. Chief Judge Darden, writing for the court, tested the absence of the instruction on proper sentence voting procedure, found prejudice, and ordered a rehearing. Judge Duncan concurred; Judge Quinn dissented, citing his own dissent in *Johnson*. The majority approach to the issue represented a variation from prior cases. In tracing the nature of the error, Chief Judge Darden cited *Johnson* for the proposition that the failure to instruct was error, and cited *Pierce* for a prejudice test approach, never indicating any conflict between the two.

Most surprising, therefore, was the ultimate application in *Roman* of yet a third test—that of a risk of prejudice. As support for the risk of prejudice test approach, Chief Judge Darden cited *United States v. McDowell*, 19 U.S.C.M.A. 151, 41 C.M.R. 151 (1969) and *United States v. Dues*, 19 U.S.C.M.A. 130, 41 C.M.R. 130 (1969). The former is a short decision by Judge Ferguson with Chief Judge Quinn and Judge Darden concurring. Its main citation of authority for both error and

remedy was *Johnson* with a secondary citation to *Dues*. The latter case is a short per curiam decision citing *Johnson*. In neither case is any reference made to a risk of prejudice or to the severity of the sentence.

A close comparison between the risk of prejudice test and a violation of military due process test suggests differences, albeit subtle ones. A violation of military due process, as formulated in *Johnson*, would preclude further inquiry and dictate a rehearing on sentence. Testing for the risk of prejudice could still allow a finding of no such risk and therefore preserve the sentence. This subtlety can be traced, at least in part, to Judge Duncan's arrival and Judge Ferguson's departure, with Chief Judge Darden responding to the change in personnel.

The impact of personnel changes on the workings of the Court of Military Appeals was underscored in *United States v. Lumm*, 23 U.S.C.M.A. 415, 50 C.M.R. 297 (1975). In a short per curiam opinion, the court returned to the "plain error" doctrine with regard to the sentence instruction error. At that time, the Court was composed of Judges Cook and Ferguson, the latter serving as a senior judge pending the filling of the two vacancies. Instructive in the opinion itself is the citation to *Johnson*, the sole citation in the body of the opinion.³ Even more telling is the absence of a reference to either *Pierce* or *Roman*.

What is the meaning of this? In a period of six years, the same error has been treated as: (1) a violation of military due process requiring a reversal; (2) one that requires a test for prejudice; (3) one that requires a test for the risk of prejudice; and (4) again a violation of military due process requiring a reversal. It is suggested that the problem lies in the numerical composition of the Court of Military Appeals. Congress provided in Article 67, UCMJ, 10 U.S.C. § 867, that the court should consist of "three judges appointed from civilian life." Regardless of the reasons for the initial selection of three, it has become apparent that this number is insufficient for stability in the court.⁴ Events of recent years,

typified by the *Johnson-Lumm* line of cases, have demonstrated the need for a larger court. Since 1970, seven men have been judges of the Court of Military Appeals: Homer Ferguson, William Darden, Robert Duncan, Robert Quinn, William Cook, Albert Fletcher, Jr., and Matthew Perry.⁵ Two complete changes of personnel in such a brief period of time almost has to result in trauma to the law.

An increase in the number of judges on the Court could provide much-needed stability in the areas of both substantive law and personnel. The two are not independent, but rather are clearly interdependent. The instructional issue earlier discussed is illustrative of the present deficiencies. Although Judge Darden concurred in Judge Ferguson's opinion in *Johnson*, his shift to a prejudice test approach in *Pierce* created a new majority that significantly altered the nature of the error. With the departure of Judge Ferguson and the arrival of Judge Duncan, the Darden position seemed established. However, when Judges Darden, Duncan and Quinn left the court and Judge Ferguson returned as a senior judge, the nature of the error was once again changed. Rather than a fundamental philosophical change on the court, it is suggested that personnel turbulence created the confusion of the law.

A three judge court is just too fragile to provide the consistency of decision essential to a tribunal vested with the power to pronounce finally on issues of law for a large criminal justice system.⁶ Not only can the replacement of one judge produce major changes in the law as shown above, but a change in viewpoint by one sitting judge can have the same effect. This last observation is true even where the change is only in a way of looking at a commonly recurring set of facts. Compare the positions of judges Quinn and Lattimer on the nature of a search in *United States v. Taylor*, 5 U.S.C.M.A. 178, 17 C.M.R. 178 (1954) with their positions in *United States v. Harman*, 12 U.S.C.M.A. 180, 30 C.M.R. 180 (1961).

Finally, the three judge court is too likely to produce decisions of importance that are confusing, if not impossible to follow. Illustrative here is *United States v. Thomas*, 24 U.S.C.M.A. 228, 51 C.M.R. 607 (1976), which was an important decision because of the issue (use of marijuana dogs) and of the result (exclusion of the evidence so obtained), but whose *ratio decidendi* is difficult to identify because each judge wrote a separate opinion.

Because the Court of Military Appeals is a federal court, one might be tempted to liken its three judges to the three judge panels of some U.S. Circuit Courts of Appeal and argue that the concept of three judges is wellrecognized. This argument is somewhat specious, since the entire circuit court is larger and the decisions of other panels have a stabilizing effect. Additionally, important questions may be decided en banc. Those courts have both the tenure and status to encourage longevity.

Exactly how many more judges would solve the problem is unclear. The Supreme Court with its complement of nine justices has itself on occasion been plagued by several concurring majority opinions causing confusion in the law. What is clear is that three judges is an insufficient number to be charged with the responsibility of establishing the law for such

a large and important area of criminal jurisprudence.

Notes

1. It is beyond the scope of this inquiry to attempt to define the terms of error as used by the judge of the U.S.C.M.A. The discussion will therefore be confined to the usage in the particular case.
2. Query whether the imposition of *any* sentence (the lightest sentence being no sentence) is enough to infer prejudice. Is the court saying that it is factually and legally incomprehensible that the panel could have returned a lighter sentence than that imposed?
3. A footnote in that opinion cites to *Wright* and *Pryor*, leading one to infer that those were "plain error" cases.
4. The indication in the Hearings is that three judges would be sufficient for the caseload, but that this number would be open to revision should the facts warrant it. See H. R. REP. No. 491, 81st Cong., 1st Sess. 7 (1949).
5. A principal reason for this turbulence may be the comparatively short term for a Court of Military Appeals judgeship with respect to other federal judgeships and the concomitant lack of job security for the judges.
6. See the discussion of the need for a larger court in Willis, *The Constitution, The United States Court of Military Appeals and the Future*, 57 MIL L. REV. 27, 85 (1972). This presents a brief, cogent review of the pragmatic reasons for an increased court.

INTERNATIONAL LAW SECTION

FM 27-10, The Law of Land Warfare Revised

Change No. 1, FM 27-10, 15 July 1976, has recently been published and is in process of distribution. The revision reflects the United States accession (with a reservation) to the Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare (T.I.A.S. 8061). It also includes the substance of the renunciation by the United States (as a matter of national policy) of certain first uses in war of herbicides and riot control agents (Executive Order 11850, 8 April 1975).

The revision also clarifies some confusion arising from the effort in the present text of paragraphs 39 and 40 of FM 27-10 to combine the rule stated in Hague Regulation Article 25, prohibiting attacks against undefended places, with the principle of customary law that limits attacks to military objectives. Additionally, a more comprehensive statement of the rule of proportionality based on the work of the current Diplomatic Conference for the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict is included in the revision. Revisions were made to paragraphs 5, 37b, 38, 39, 40,

and 41. Only the substantive changes and a summary of their rationale will be discussed sequentially.

—*Paragraph 37b, page 18.* The revised text of the discussion of the rule in Hague Regulation, Art. 23, paragraph (a), contains the warning that the use in war of poison or poisoned weapons against human beings is prohibited and provides a cross-reference to paragraph 38 which has an extensive discussion (based on Executive Order No. 11850) of United States policy on chemical and bacteriological warfare. The present text of the discussion of Hague Regulation, Art. 23, paragraph (a), that concerns "measures being taken to dry up springs [and] to divert rivers and aqueducts from their courses" was deleted as a *non sequitur*. The present text of the discussion of the rule governing the use of herbicides for crop destruction was also deleted because it was superseded by policies announced in Executive Order 11850 and discussed in paragraph 38.

—*Paragraph 38, page 18.* In view of the United States accession to the Geneva Protocol of 7 June 1925 and national policy as stated in Executive Order 11850, the present text of this paragraph became outmoded. The new paragraph reflects the pertinent language of the Geneva Protocol of 1925, the United States reservation, and the Executive Order 11850 and contains a detailed discussion of these documents. Several major points are emphasized in the discussion. While the language of the Geneva Protocol of 1925 appears to ban unqualifiedly the use in war of chemical weapons, reservations made by most of the Parties to the Protocol have, in effect, reduced the prohibition to one of first use only. The United States, for example, reserves the right to use chemical weapons against a state if that state or any of its allies fails to respect the Protocol prohibitions. The United States interprets the term "chemical weapons" as including both lethal and incapacitating chemical agents but not smoke and incendiary materials and chemical herbicides or riot control agents

which are used extensively for law enforcement purposes and which produce merely transient effects. Nevertheless, the United States has unilaterally renounced the first use of chemical herbicides or riot control agents in war, except in certain situations. The United States does not reserve the right to retaliate with bacteriological methods of warfare including biological weapons and toxins.

—*Paragraph 39, page 18.* The treaty provision of Hague Regulation, Art. 25, is presently quoted in paragraph 39a., and an interpretation of the term "undefended places" within the meaning of the Article is discussed in paragraph 39b. The discussion emphasizes that "undefended places" are those places that are open for occupation by the adverse parties without resistance. A caution that the mere presence of medical units, wounded and sick, and police forces retained exclusively to maintain law and order in the places does not change their character is also contained within the discussion.

—*Paragraph 40, page 19.* The customary international law rule prohibiting the launching of attacks against civilians as a group or individually is presently stated in paragraph 25 and is repeated in new 40a. The new paragraph 40c defines military objectives and the permissible objects of attack and the circumstances under which such objects may be attacked.

—*Paragraph 41, pages 19 and 20.* A sentence was added to emphasize that those who plan or order an attack must consider not only the legitimacy of the objective but also the principle that incidental loss of civilian lives and damage to civilian property must not be disproportionate to the military advantage anticipated.

A complete revision of FM 27-10 will not be undertaken until after the conclusion of the current Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict.

NUMBER OF UNITED STATES PERSONNEL IN
POST-TRIAL CONFINEMENT IN FOREIGN PENAL
INSTITUTIONS AS OF 31 MAY 1976

Country	Army	Air Force	Navy/ Marines	Country Total
AUSTRALIA	1	0	1	2
CANADA	1	0	1	2
DENMARK	2	0	0	2
GERMANY	77	5	0	82
GREECE	4	3	5	12
ITALY	1	0	5	6
JAPAN	16	16	78	110

Country	Army	Air Force	Navy/ Marines	Country Total
KOREA	11	0	0	11
MEXICO	3	0	3	6
PANAMA	1	0	0	1
SPAIN	1	0	9	10
TAIWAN	0	5	2	7
THAILAND	3	4	0	7
TURKEY	3	2	0	5
UNITED KINGDOM	0	4	2	6
<i>Service Total</i>	124	39	106	269

LEGAL ASSISTANCE ITEMS

*By: Captain Steven F. Lancaster, Administrative and
Civil Law Division, TJAGSA*

1. ITEMS OF INTEREST.

Taxation—State And Local Income Tax. As of 1 July 1976 the state of New Jersey has a Personal Income Tax. The tax is based on gross income at the rate of 2% of taxable income under \$20,000 and \$400.00 plus 2½% of taxable income in excess of \$20,000. The taxpayer is granted a \$1,000.00 exemption for himself and an additional \$1,000.00 exemption for a spouse filing jointly and for each dependent.

The new law contains language similar to that found in the New York State Income Tax Law in defining who a resident taxpayer is:

“Resident Taxpayer” means an individual:

1. Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate no more than 30 days of the taxable year in this State; or

There is indication, at this time, if the above provision exempts military personnel whose domicile is New Jersey, but who maintain no permanent place of abode in New Jersey, maintain a permanent place of abode else-

where, and spend no more than 30 days of the taxable year in New Jersey. Compensation paid to service personnel stationed in New Jersey, but not domiciled there, is excluded from the tax. [Ref: Ch 43, DA PAM 27-12]

Taxation—Federal Income Tax—Short-Term Tax Avoiding Divorce. The Internal Revenue Service has ruled (Rev. Rul. 76-255, 7/1/76) that a couple cannot qualify as unmarried individuals, who would be eligible to file separate returns, by obtaining a divorce on 30 December 1975 and remarrying in January 1976. Since the parties intended to remarry and divorced only to avoid Federal income tax, the IRS gave the transaction no effect for Federal income tax purposes and ruled that the parties “must file either a joint Federal income tax return or separate returns using rules for married individuals filing separate returns.” for 1975. [Ref: Ch 41, DA PAM 27-12]

2. ARTICLES AND PUBLICATIONS OF INTEREST.

Commercial Affairs — Commercial Practices And Controls—Truth In Lending. Chandler and Landers, *The Truth In Lending Act and Variable-Rate Mortgages and Balloon Notes*, 1 A.B. FOUNDATION RESEARCH J. 35 (1976). [Ref: Ch 10, DA PAM 27-12]

Decedent's Estates And Survivor's Benefits—Estate Planning—Land. Browne, *Family Lands and Estate Planning*, 115 TRUSTS & ES. 238 (April 1976). [Ref: Ch 13, DA PAM 27-12]

Decedent's Estates And Survivor's Benefits—Estate Planning—Probate. Crapo, *The Uniform Probate Code—Does It Really Work?*, 1976 BRIGHAM YOUNG U.L. REV. 395 (1976). Legal Assistance Newsletter 76-4. This Newsletter, published by the Office of The Deputy Assistant Judge Advocate General (Legal Assistance and Taxes), Department of Navy, contains a compendium of requirements for testamentary fiduciaries (executor, guardian, and trustee) covering the states which have enacted the Uniform Probate Code. [Ref: Ch 13, DA PAM 27-12]

Decedent's Estates And Survivor's Benefits—Estate Planning—Marital Deduction. Minan, *A Scriveners "Delight"—The Marital Deduc-*

tion Formula Clause, 37 OHIO S.L.J. 81 (1976). [Ref: Ch 13, DA PAM 27-12]

Family Law—Domestic Relations—Property Settlement. Krauskopf, *A Theory for "Just" Division of Marital Property in Missouri*, 41 MO. L. REV. 165 (1976); Comment, *Oregon's No-Fault Divorce Law: Effect On Custody, Property Division, and Support*, 55 ORE. L. REV. 267 (1976). [Ref: Ch 20, DA PAM 27-12]

Family Law—Domestic Relations—Tax Considerations. Recent Cases, *Lodging Deemed Furnished by Divorced Parent Who Is Entitled to Exclusive Use and Occupancy*, 41 MO L. REV. 305 (1976). [Ref: Ch 20, 41 DA PAM 27-12]

Taxation—Small Tax Case Procedure. Note, *Small Tax Case Procedure: How It Works—Does It Work?*, 4 FORDHAM URBAN L.J. 385 (1976). [Ref: Ch 41, 42, 43, DA PAM 27-12]

CLAIMS ITEMS

From: U.S. Army Claims Service

Limitations on Payments (Chapter 11, AR 27-20).

Several additional limitations on maximum payments authorized under the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 240-243), have been agreed to by all elements of DoD. The changes will apply to loss/damage that occurs on or after 1 January 1977. The new maximums are:

a. A \$1,000.00 maximum for loss or damage to privately-owned vehicles (automobiles and motorcycles), except when the loss or damage occurs incident to shipment of a vehicle under Government orders.

b. A \$1,000.00 maximum for a single item of furniture which is not covered by any other maximum in Table 11-2. The maximum for a multi-unit piece, i.e., a sectional sofa is \$1,500.00

c. Reference Item 3, Table 11-2, AR 27-20. The maximum amount payable for antiques

remains at \$3,000.00 per claim. However, the maximum payment for any specific antique item will be \$500.00.

Claims supervisory and approving authorities are cautioned that an exception to the above limits is authorized only under the procedures provided in paragraph 11-16c, AR 27-20.

All field claims authorities are requested to make widest dissemination of the new claims limitation on vehicles so members and employees may take action to protect their financial interests, i.e., to purchase insurance, etc. The implementation date of 1 January 1977 was selected to permit such actions.

Citizens Band (CB) Radios.

In *USARCS Claims Bulletin No. 1-76* (February 1976) it was announced that CB radios were not considered to be reasonable, useful or proper in vehicles under most circumstances

for purposes of payment of claims UP of Chapter 11, AR 27-20. Exceptions were authorized if such radios were used in the performance of military duties. This policy remains in effect. However, claims for loss or damage of CB radios from a locked, secured area in a vehicle, i.e., a locked truck or vehicle, may be paid provided the loss or damage is based upon an incident that occurs on or before 31 December 1976. This exception is granted because of a misunderstanding between certain commands and this Service. Payment made under this exception will be limited to \$200.00. Similarly, claims for CB radios, based upon incidents occurring on or after 1 January 1977, will not be allowable in amounts in excess of \$200.00 under Chapter 11, AR 27-20, and then in very limited situations. If the loss was from a motor vehicle, the CB's use must have been

incident to the performance of official duties. CB radios shipped with household goods will not be barred from payment. Claims for CB radios lost, damaged or stolen from authorized quarters will continue to be payable. However, a claim could be paid under Chapter 3 or 4, AR 27-20, if meritorious, i.e., the damage or loss resulted from the negligent or wrongful act of a Government employee acting in the scope of his employment. It is suggested also that the Army CB radio policy be given wide publicity by local commands. This is especially true since many insurance companies do not provide protection against theft or damage to CB radios under automobile insurance policies unless special coverage is purchased. For example, USAA quotes rates from \$20.00 to \$190.00 per year for such coverage, depending upon the value of the equipment covered.

RESERVE AFFAIRS SECTION

From: Reserve Affairs, TJAGSA

1. Procurement Law and War Crimes Detachment Training. JAGSO Procurement and War Crimes Detachments quadriennial training at TJAGSA was conducted during the first two weeks of June. Each detachment was brought up to date in the current law in Procurement and International Law. The administrative support and enlisted MOS training were provided by the 1034th USAR School from Manchester, New Hampshire. Through the able leadership of Colonel Ledo Lospennato and Lieutenant Colonel Robert Heald, the training was carried out in an outstanding manner.

2. BOAC Phase VI and the Reserve Component General Staff Course. TJAGSA was also the site for the BOAC Phase VI (Procurement and International Law) and the Judge Advocate General's Reserve Component General Staff Course in July. The 1035th USAR School of Burlington, Vermont, under the command of Colonel Lawrence Wright, provided the instruction for the General Staff Course and portions of the BOAC Course. One

hundred officers attended the BOAC course and 47 field grade officers were in attendance at the General Staff Course. The Director of Instruction for the General Staff Course was Colonel Willis A. Spaulding. The Director of Instruction for the BOAC was Lieutenant Colonel Phillip Bradley.

3. The JAG Reserve Training Workshop. 9-11 September 1976 has been scheduled for the Annual Judge Advocate General's Reserve Training Workshop for Senior Reserve Judge Advocates. Many organizational changes and new policies and programs will be discussed at this workshop.

4. Mobilization Designee Tenure Change. A recent message change to AR 140-10 will have a major impact on MOB DES officers in the grade of colonel. The change (para 2-16i) provides that "officers in the grade of colonel will not be assigned to colonel MOB DES positions in the same agency or command for an aggregate of more than four years". This

change has a retroactive effect for colonels presently holding colonel MOB DES positions. Affected officers will be notified by RCPAC through their proponent agency at least 180

days prior to termination date. A proponent agency which cannot find a qualified replacement can request a one-year waiver for the present incumbent.

JAG School Notes

1. 15th Military Judge Course. The Fifteenth Military Judge Course was held at the School from 19 July to 6 August. Guest speakers at the course included: Major General Wilton B. Persons, Jr., The Judge Advocate General; Judge Matthew J. Perry, Jr., United States Court of Military Appeals; Brigadier General Hugh J. Clausen, Chief Judge, Army Court of Military Review; Judge Charles E. Moylan, Jr., Associate Judge, Court of Special Appeals of Maryland; Mr. James B. Zagel, Chief, Criminal Justice Division, State of Illinois; Captain H. H. Morgan, United States Navy; Colonel James E. King, United States Marine Corps; Colonel Donald Smith, United States Marine Corps; Colonel William K. Laray; Commander Norman Lynch, United States Coast Guard; and Professor Charles Whitebread, University of Virginia School of Law. Brigadier General Robert J. Chadwick, United States Marine Corps, attended the graduation. Captain Keith T. Sefton, United States Marine Corps, was the Honor Graduate.

2. More New Faces at TJAGSA. Lieutenant Colonel G. H. Dygert, formerly the Deputy Director for Nonresident Instruction is now Deputy Director of the Academic Department. Major Charlie Bush is the new Operations Officer in the Academic Department. Lieutenant Colonel Robert M. Nutt is the new Chief of the Procurement Law Division. Captain

Gary L. Hopkins is the new Senior Instructor in Procurement Law; Captain Gene Fryer has joined International Law; Captain Adrian J. Gravelle has joined Criminal Law. The new Post Judge Advocate is Captain John Beeson.

3. Administrative & Civil Law Expands. The Command and Management Division is now merged in the Administrative & Civil Law Division. Major John M. Harris is now Deputy Chief for Command and Management. Major Roy Whitehead, Jr., will serve as an instructor in Administrative & Civil Law in addition to United States Marine Corps Liaison Officer. Also joining Administrative & Civil Law is Captain Stephen F. Lancaster. He and Captain Frank J. Wagner will be the authors of *The Army Lawyer's* "Legal Assistance Items" column.

4. Nonresident Instruction Reorganized. The Office of the Deputy Director for Nonresident Instruction has changed to the Nonresident Instruction Division. Major Peter Plaut is the chief of the new division and Captain Joseph Rehyansky is the Audio-Video Project Officer.

5. Malpractice Survey. On 12 August, Colonel Edward L. Magill, MOB DES in the Criminal Law Division, presented a survey of medical malpractice litigation which highlighted insurance problems, legislative developments, and possible analogies to legal malpractice litigation.

CLE News

1. 1st Defense Trial Advocacy Course. The 1st Defense Trial Advocacy Course will be offered from 26 to 29 October 1976. The 2d such course will be offered from 18 to 21 April 1977. This

3½ day course is open to active duty counsel with 6 to 12 months of trial experience who are or expect to be assigned to trial defense duties. The course focuses on the distinctive

role of the defense counsel; addressing such matters as pretrial activities, admission of evidence, professional responsibility, judiciary rules of procedures, extraordinary writs, and post-trial responsibility. The course will provide an opportunity for experienced counsel to polish their defense skills through an interchange of ideas and experience pertaining to the tactics of trial preparation, the use of arguments, objections, witnesses, and negotiation.

2. Law of War Instructor Course. This new course will offer team teaching instruction in the Hague and Geneva Conventions to judge advocate officers and officers with command experience. The officers taking the course will afterwards give instruction on teams in fulfillment of the requirements under AR 350-216. During the course the students will study both the law of war and methods of instruction. Practical application will include the filming of instruction given by the students and playback for critique and improvement. Course dates are: 1st Course—8-12 November; 2d Course—28 February 1977-2 March 1977; 3d Course—4-8 April 1977.

3. Other Courses. The 68th Procurement Attorney's Course will be offered from 8-19 November. The 29th Senior Officer Legal Orientation [SOLO] Course will be offered from 1-5 November.

4. TJAGSA Courses.

October 12-15: JAG Conference

October 18-December 17: 82d Judge Advocate Officer Basic Course (5-27-C20).

October 26-29: 1st Defense Trial Advocacy Course (5F-F34).

November 1-5: 29th Senior Officer Legal Orientation Course (5F-F1).

November 8-19: 68th Procurement Attorneys' Course (5F-F10).

November 8-12: 1st Law of War Instructor Course (5F-F42).

November 30-December 3: 3d Fiscal Law Course (5F-F12).

December 6-9: 3d Military Administrative Law Developments Course (5F-F25).

December 13-17: 2d Allowability of Contract Costs Course (5F-F18).

January 3-7: 5th Military Lawyer's Assistant Course (Criminal Law) (512-71D20/50).

January 3-7: 6th Military Lawyer's Assistant Course (Legal Assistance) (512-71D20/50).

January 3-14: 7th Procurement Attorneys' Advanced Course (5F-F11).

January 10-13: 4th Legal Assistance Course (5F-F23).

January 17-20: 5th Environmental Law Course (5F-F27).

January 17-20: 1st Claims Course (5F-F26).

January 24-28: 31st Senior Officer Legal Orientation Course (5F-F1).

January 31-April 1: 83d Judge Advocate Officer Basic Course (5-27-C20).

February 7-18: 69th Procurement Attorneys' Course (5F-F10).

February 28-March 4: 2d Law of War Instructor Course (5F-F42).

March 7-10: 4th Fiscal Law Course (5F-F12).

March 14-18: 2d Civil Rights Course (5F-F24).

March 21-25: 3d Allowability of Contract Costs Course (5F-F13).

April 4-8: 15th Federal Labor Relations Course (5F-F22).

April 4-8: 3d Law of War Instructor Course (5F-F42).

April 6-8: JAG National Guard Training Workshop.

April 11-15: 32d Senior Officer Legal Orientation Course (5F-F1).

April 11-22: 70th Procurement Attorneys' Course (5F-F10).

April 18-20: 1st Government Information Practices (5F-F28).

April 18-21: 2d Defense Trial Advocacy Course (5F-F34).

May 2-4: 1st Negotiations (tentative title) (5F-F14).

May 2-6: 7th Staff Judge Advocate Orientation Course (by invitation only) (5F-F52).

May 9-13: 4th Management for Military Lawyers Course (5F-F51).

May 9-20: 2d Military Justice I Course (5F-F30).

May 16-20: 3d Criminal Trial Advocacy Course (5F-F32).

May 16-27: 1st International Law II Course (SECRET clearance required) (5F-F40).

May 31-June 3: 6th Environmental Law Course (5F-F27).

June 6-10: Military Law Instructors Seminar.

June 6-10: 4th Law of War Instructors Course (5F-F42).

June 6-17: NCO Advanced Phase II (71D50).

June 13-17: 33d Senior Officer Legal Orientation Course (5F-F1).

June 20-July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5-27-C23).

July 11-22: 12th Civil Law Course (5F-F21).

July 11-29: 16th Military Judge Course (5F-F33).

July 25-August 5: 71st Procurement Attorneys' Course (5F-F10).

August 1-5: 34th Senior Officer Legal Orientation Course (5F-F1).

August 8-12: 7th Law Office Management Course (7A-713A).

August 8-October 7: 84th Judge Advocate Officer Basic Course (5-27-C20).

August 22-May 1978: 26th Judge Advocate Officer Advanced Course [40 weeks] (5-27-C22).

August 29-September 2: 16th Federal Labor Relations Course (5F-F22).

September 12-16: 35th Senior Officer Legal Orientation Course (5F-F1).

September 19-30: 72d Procurement Attorneys' Course (5F-F10).

5. Civilian Sponsored CLE Courses.

OCTOBER

6-7: LEI, Seminar for Attorneys on FOI/Privacy Acts, 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: \$150.

7-9: ABA National Institute, Law Office Economics and Management, Chicago, IL.

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: University of San Francisco School of Law—Federal Publications, Changes in Government Contracts, Olympic Hotel, Seattle, WA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washing-

ton, DC 20006. Phone: 202-337-8200. 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: University of Baltimore School of Business—Federal Publications, Small Purchasing [Small Purchase Procurement], Americana Hotel, Los Angeles, CA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. 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: University of Baltimore School of Business—Federal Publications, Small Purchasing [Small Purchase Procurement], Sheraton Denver Airport, Denver, CO. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. 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.

19-21: LEI Trial Practice 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: \$250.

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.

26-28: LEI, Paralegal Workshop, 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: \$200.

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

NOVEMBER

1-2: Federal Publications, Defective Pricing, Washington, DC. Cost: \$325.

1-3: Federal Publications, Government Architect-Engineer Contracting, Miami, FL. Cost: \$400.

1-3: Federal Publications, Competing for Contracts, Washington, DC. Cost: \$400.

1-3: Federal Publications, Small Purchasing, Washington, DC. Cost: \$400.

1-5: LEI, Administrative Law Judges and the Regulatory Process Seminar, Skyline Inn, Skyline Drive, Leesburg, VA. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$450.

3-5: Federal Publications, Negotiated Procurement, Las Vegas, NV. Cost: \$400.

5-7: ABA, 7th National Conference on Law Office Economics Management, Crown Center Hotel, Kansas City, MO.

7-10: NCDA, Management in the Prosecutor's Office, Charleston, SC. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004.

7-12: American Judges Association, Annual Meeting, Las Vegas, NV.

7-12: National College of the State Judiciary, Civil Law Proceedings [State Civil Litigation, Privacy, Class Actions, Student & Faculty Rights, Adhesion Contracts, UCC, Malpractice, Comparative Negligence & Conflicts of Law], 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.

9-11: LEI, Program Development and Legal Controls 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: \$325.

10-12: Federal Publications, Practical Negotiation of Government & Contracts, Los Angeles, CA. Cost: \$400.

11-12: FBA-BNA-NYSBA, 3d Annual Labor Law Institute, The Plaza, New York, NY. Contact: BNA.

11-12: ABA National Institute, Current Legal Aspects of Doing Business in the Middle East, Mayflower Hotel, Washington, DC.

11-13: ABA National Institute, The Federal Rules of Evidence and RESPA, Stanford Court, San Francisco, CA.

14-17: Institute for Court Management, Computerized Information Systems Project Management, Dallas, TX.

14-19: National College of the State Judiciary, Sentencing [includes the ABA Minimum Standards on Sentencing], 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.

15-16: Federal Publications, Cuneo on Government Contracts, Boston, MA. Cost: \$325.

17-18: LEI, Application of the APA to Regulatory Proceedings Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3482. Cost: \$200.

17-19: University of San Francisco School of Law—Federal Publications, Changes in Government Contracts, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

17-19: University of Baltimore School of Business—Federal Publications, Small Purchasing [Small Purchase Procurement], Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

17-19: Federal Publications, Competing for Contracts, Los Angeles, CA. Cost: \$400.

18-19: FBA, Administrative Law Conference, Mayflower Hotel, Washington, DC.

22-23: LEI, Preparation of Litigation Reports 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: \$200.

22-23: Federal Publications, Cuneo on Government Contracts, Santa Barbara, CA. Cost: \$325.

22-23: Federal Publications, Defective Pricing, San Francisco, CA. Cost: \$325.

28-3 Dec.: American Judges Association, 1976 National Convention, Aladdin Hotel, Las Vegas, NV.

29-10 Dec.: LEI, Procurement Law Course, 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: \$400.

DECEMBER

1-3: Federal Publications, Contracting for Services, Washington, DC. Cost: \$400.

5-9: NCDA, Career Refresher Course (East), Atlanta, GA. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004.

5-10: National College of the State Judiciary, Court Administration [Designed for small to medium multi-judge 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.

5-17: National College of the State Judiciary, The Judge and the Trial, 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: \$525.

6-8: Federal Publications, Government Contract Costs, San Francisco, CA. Cost: \$400.

11-18: Court Practice Institute, Morrill's Trial Residency Training, O'Hare Inn, Chicago, IL. Contact: Court Practice Institute, 127 N. Dearborn St., Chicago, IL 60602. Phone: 312-263-0202.

13-15: Federal Publications, Government Contract Costs, Williamsburg, VA. Cost: \$400.

13-17: Federal Publications, The Masters Institute in Government Contracting, Williamsburg, VA. Cost: \$600.

14-16: LEI, Environmental Law 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: \$250.

16-17: Federal Publications, Cost Estimating For Government Contracts, San Diego, CA. Cost: \$325.

JAGC Personnel Section

From: PP&TO, OTJAG

1. Orders Requested as Indicated:

<i>Name</i>	<i>From</i>	<i>To</i>
	<i>Colonels</i>	
William S. Fulton, Jr.	Commandant, TJAGSA	USALSA, Falls Church, VA (For duty as an appellate military judge, A.C.M.R.)
	<i>Lieutenant Colonels</i>	
Fred Bright, Jr.	USALSA w/sta Ft. Campbell, KY	USALSA w/sta Fort Shafter & Schofield Barracks, HI
Martin R. Loftus	Fort Ord, CA	NATO/SHAPE, Belgium

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<i>Name</i>	<i>From Majors</i>	<i>To</i>
Richard C. Bruning	S&F, TJAGSA	Contract Appeals, USALSA, Falls Church, VA
Edwin J. Lasner	USALSA w/sta Fort Meade, MD	US Army Claims Service, Fort Meade, MD
Martin J. Pezely	US Army Retraining Brigade, Fort Riley, KS	US Army Garrison, Fort Riley, KS
Lewis L. Thompson	Carlisle Barracks, PA	25th Advanced Course, TJAGSA
Joe L. Woodward	US Army Judiciary, Bailey Crossroads, VA	US Army C&GSC, Fort Leavenworth, KS
<i>Captains</i>		
Thomas M. Bowman	8th Army, Korea	Ballistic Missile Defense Program Office, Arlington, VA
Jack T. Brooks	Fort McPherson, GA	Fort Lewis, WA
Glenn S. Burns	Fort Riley, KS	USALSA, Falls Church, VA
Richard W. Cairns	Fort Riley, KS	S&F, West Point, NY
Griffton E. Carden	Fort Sill, OK	25th Advanced Course, TJAGSA
William L. Cheatham, Jr.	Fort Carson, CO	25th Advanced Course, TJAGSA
Claud H. Drinnen	Korea	White Sands Missile Range, NM
Jerry G. Du Terroil	1st Infantry Div (Forward), Germany	S&F, West Point, NY
Jewel E. Dycus	Fort Sill, OK	Korea
Joseph R. Faraguna	Europe	Eastern Area, Military Traffic Management & Terminal Service, Bayonne, NJ
David L. Forbes	Fort Carson, CO	USALSA w/sta Fort Carson, CO
Robert E. Hanson	Fort Hood, TX	USALSA, Falls Church, VA
James R. Hill, Jr.	Region Support Element, Europe	Fort Jackson, SC
Raymond A. Jackson	Fort Bragg, NC	TRADOC, Fort Monroe, VA
Craig C. Jacobsen	Europe	25th Advanced Course, TJAGSA
Alfred H. Juechter	Kwajalein Missile Range	Walter Reed Hospital, Washington, DC
Daniel I. Labowitz	Walter Reed Hospital, Washington, DC	S&F, Institute of Pathology, Walter Reed Hospital, Washington, DC
Donald L. Moore	Ft. McNair, Washington, DC	OTJAG, Pentagon
Robert S. Noreen	Presidio of San Francisco, CA	HQ, Sixth Army, Presidio of San Francisco, CA
Michael T. Rudd	Walter Reed Hospital, Washington, DC	Fort Gordon, GA
Larry C. Schafer	Fort Campbell, KY	USALSA, Falls Church, VA
Robert W. Schivera	Fort Dix, NJ	USALSA w/sta Fort Dix, NJ

<i>Name</i>	<i>To</i>	<i>From</i>
	<i>Captains</i>	
William D. Schneider, Jr.	38th Air Defense Artillery Brigade, Korea	Fort Carson, CO
David A. Shaw	OTJAG, Pentagon	USALSA w/sta Washington, DC
Sam W. Shelton, III	Okinawa	Fort Polk, LA
Robert W. Stillings	Fort Bragg, NC	USALSA w/sta Fort Bragg, NC
Columbus R. Swint, Jr.	Fort Leavenworth, KS	Fort Devens, MA
Kay F. Teeters	Aberdeen Proving Ground, MD	USAREUR & 7th Army, Frankfurt, Germany
Ronald A. Warner	US Army Claims Service, Europe	USALSA, Falls Church, VA
James N. Wilkerson	172d Infantry Brigade, Alaska	USALSA w/sta Fort Hood, TX
Benjamin M. Yudesis	38th Air Defense Artillery Brigade, Korea	Fort Knox, KY

2. Idaho Supreme Court Law Clerk Positions Are Available. All applications for 1977-1978 law clerk positions must be received by 3 November 1976. Employment ordinarily extends eleven months beginning 1 September 1977.

Law clerk's salaries are \$990 per month. Write: ATTN: Law Clerk Applications, Administrative Office of the Courts, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. Phone: (208) 384-2246.

Current Materials Of Interest

Articles

Ft. Carson Crime Program Produces Significant Results, LEAA NEWSLETTER, June 1976, at 1.

Craig, Fort Carson Combats Crime with Innovative Programs, MIL. POLICE LAW ENFORCEMENT J., Summer 1976, at 20. By Captain Jay A. Craig, MPC.

Fort McClellan Information Center, Is Drug Abuse Related to Other Crime? Fort McClellan Thinks So, MIL. POLICE LAW ENFORCEMENT J., Summer 1976, at 11.

Weissman, Representing the Addict Defendant, 12 CRIM. L. BULL. 389 (1976).

Morrison, Is The Military Brig A Debtors' Prison? 25 DE PAUL L. REV. 652 (1976). Captain C. H. Morrison, Jr., is a United States Marine Corps Judge Advocate.

Schiesser & Benson, A Proposal to Make Courts-Martial Courts: The Removal of Com-

manders from Military Justice, 7 TEXAS TECH L. REV. 559 (1976). Colonel Charles W. Schiesser is a military judge.

Horbaly & Mullin, Extraterritorial Jurisdiction and its Effect on the Administration of Military Criminal Justice Overseas, 71 MIL. L. REV. 1 (1976). Captain Jan Horbaly is with the Criminal Law Division at TJAGSA.

Tracy, Evidentiary Standards and the Right to Cross-Examine Witnesses in Administrative Elimination Hearings, 71 MIL. L. REV. 149 (1976). By Captain Thomas G. Tracy, JAGC, USAR.

Robblee, The Legitimacy of Modern Conventional Weaponry, 71 MIL. L. REV. 95 (1976). Captain Paul A. Robblee, Jr., is an instructor and Assistant Staff Judge Advocate at West Point.

Solf & Grandison, International Humanitarian Law Applicable in Armed Conflict, 10 J. INT'L LAW & ECON. 567 (1975). Waldemar A.

Solf is the Chief of the International Affairs Division at OTJAG. Captain W. George Grandison is also in the International Affairs Division at OTJAG.

Skoler, *World Implementation of the United Nations Standard Minimum Rules for Treatment of Prisoners*, 10 J. INT'L LAW & ECON. 453 (1975).

Grace, *Invading the Privacy of the Attorney-Client Relationship, Case & Comment*, July-August 1976, at 46.

McCrystal, *The Case for PRUTTS, TRIAL*, July 1976, at 56. The article discusses prerecorded video taped trials.

Burt, *The Case Against Courtroom TV, TRIAL*, July 1976, at 62.

Pamphlet

FREDERIC I. LEDERER, *THE ROAD TO THE MILITARY COURTHOUSE* (1976). Captain Lederer is with the Criminal Division at TJAGSA. *THE ROAD TO THE MILITARY COURTHOUSE* was published by the Section of General Practice, Military Lawyers Committee, American Bar Association, 1155 E. 60th St., Chicago, IL 60637. Cost: \$1.50.

Book

B. ANTHONY MOROSCO, *THE PROSECUTION AND DEFENSE OF SEX CRIMES* (1976). Mr. Morosco is a former editor of the *MILITARY LAW REVIEW*. *The Prosecution and Defense of Sex Crimes* was published by Matthew Bender, 235 E. 45th St., New York, NY 10017. Cost: \$38.50.

ARs

AR 210-65, *Installations: Alcoholic Beverages*, is effective 15 August 1976. This revision presents the most recent policies and procedures governing the control of alcoholic beverages on Army installations worldwide, including the implementation of consolidated package store operations as part of the Army club system.

Change 1, AR 20-3, *Inspections and Investigations: Department of the Army Special Subjects For Inspection*, is effective 15 August 1976. This change adds procurement of automatic data processing resources and the National Environmental Policy Act as special subjects for inspection.

AR 37-35, *Financial Administration: Fiscal Accounting For Permanent Change of Station Moves Chargeable To Appropriation, Military Personnel, Army*, is effective 1 October 1976. This revision updates AR 37-35 to conform to OSD budget guidance. Significant changes are the addition of two new allotment serial numbers—407 and 408.

AR 700-54, *Logistics: The US Army Logistics Intelligence File (LIF)*, is effective 15 August 1976.

Public Law

The Congress passed the Joint Resolution on the "rules and customs pertaining to the display and use of the flag of the United States of America" (Public Law 94-344, 94th Congress, S. J. Res. 49, July 7, 1976). Three sections are reprinted from the Joint Resolution:

"When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street."

"When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east."

"When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in

advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience."

By Order of the Secretary of the Army:

FRED C. WEYAND
General, United States Army
Chief of Staff

Official:

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





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