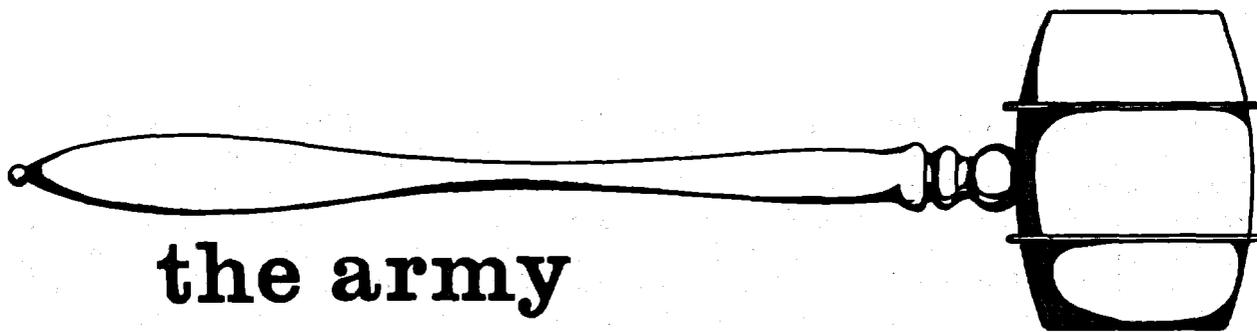


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**The Pretrial Agreement
Misconduct Provision:
*United States v. Dawson***

*MAJ Sanford W. Faulkner, Senior Instructor,
International Law Division,
The Judge Advocate General's School.
This article was prepared while MAJ Faulkner
was a member of the 29th Graduate Course,
The Judge Advocate General's School.*

Introduction

Plea bargaining in the military justice system is accomplished by dependent promises between the accused and the convening authority. Typically, the accused promises to plead guilty in exchange for the convening authority's promise to limit the accused's sentence to a specified quantum. While the negotiation process may focus on the exchange of plea for sentence limitation, other conditions on the accused may have been incorporated as a prerequisite to obligating the convening authority. The Court of Military Appeals has reviewed the propriety of such clauses which require the accused to do more than plead guilty.¹ The Court has held pretrial agreement provisions void when such promises interfere with the trial process² or require the accused

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¹See *United States v. Lallande*, 22 C.M.A. 170, 46 C.M.R. 170 (1973).

²See *United States v. Cummings*, 17 C.M.A. 376, 38 C.M.R. 174 (1968) (accused agreed to limit his right to present certain trial motions).

to limit or waive a fundamental right.³ In *United States v. Dawson*,⁴ The Court of Military Appeals declined to enforce a pretrial agreement "misconduct" provision in which the accused promised not to violate the Uniform Code of Military Justice (UCMJ) between the time of his trial and the date the convening authority took action on the case.⁵

This article examines the appellate history of the "misconduct" provision prior to the decision in *Dawson*, the Court's opinion in the *Dawson* case, and the advisability of continued use of such clauses. Several questions will be addressed. Is the provision needed to allow the convening authority's consideration of post-trial/pre-action misconduct? Will the Court sanction any "misconduct" provision? If so, how must the clause be altered to withstand appellate scrutiny?

The "Misconduct" Provision—Pre-*Dawson*

The impact of an accused's post-trial/pre-action misconduct on a pretrial agreement sur-

³ See *United States v. Holland*, 1 M.J. 58 (C.M.A. 1975) (accused agreed to waive, at trial, any issue of due process or speedy trial).

⁴ *United States v. Dawson*, 10 M.J. 142 (C.M.A. 1981).

⁵ *Id.*

faced at the Court of Military Appeals in 1972. The Court held that a pretrial agreement does not contain an implied condition that the convening authority will be bound only if the accused commits no misconduct between the date of his trial and the convening authority's action on the case.⁶ A few months later, in *United States v. Lallande*,⁷ the Court confronted an agreement in which the convening authority agreed to suspend execution of certain portions of the accused's sentence, if the accused complied with specific conditions in the agreement. One condition was that the accused "conduct himself in all respects as a reputable and law abiding citizen."⁸ In speaking for the Court, Judge Quinn found only two provisions of the UCMJ which related to probation. He opined that in a broad grant, Article 71 empowers the convening authority to grant probation⁹ while Article 72 requires a hearing before vacation of probation.¹⁰ The Manual for Courts-Martial (MCM) only restricts the length of the

⁶ *United States v. Cox*, 22 C.M.A. 69, 46 C.M.R. 69 (C.M.A. 1972).

⁷ *United States v. Lallande*, *supra*.

⁸ *Id.* at 46 C.M.R. 173.

⁹ *Id.* at 46 C.M.R. 170.

¹⁰ *Id.*

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suspension period.¹¹ Although the Court expressed concern regarding the vague character of the "misconduct" provision, its inclusion was upheld with an accompanying statement that the convening authority could impose "at least the same conditions allowable to a judge in a federal civilian criminal court."¹²

During the several years which elapsed between the decision in *Lallande* and the *Dawson* opinion, the Court did not directly address the "misconduct" clause. In *United States v. Goode*,¹³ the Army Court of Military Review found no public policy objections to a "misconduct" provision contained in the accused's pretrial agreement. The Court of Review held that neither the UCMJ Code nor the MCM mandate a hearing regarding the accused's misconduct should the convening authority contemplate voiding the agreement.¹⁴ While the Court of Review decision in *Goode* was reversed on other grounds, the Court of Military Appeals affirmed, by implication, the validity of the "misconduct" clause.¹⁵ In 1977, the Court of Military Appeals seemed to reserve explicit decision as to whether inclusion of a "misconduct" clause was contrary to public policy.¹⁶

¹¹*Id.* (citing para. 88e(1), MCM (1969 Rev. ed)).

¹²*Id.* at 46 C.M.R. 173.

¹³*United States v. Goode*, 49 C.M.R. 292 (A.C.M.R. 1974).

¹⁴*Id.* The accused agreed that he would not commit "any act of "misconduct" between the date of trial and the convening authority's action. Such "misconduct" would permit the convening authority to void the agreement and approve the accused's sentence as adjudged. In contrast to *Lallande*, *supra*, the *Goode* "misconduct" provision specifically related to post-trial/pre-action "misconduct" rather than post-action infractions.

¹⁵*See United States v. Goode*, 1 M.J. 3 (C.M.A. 1975). The decision in *Goode* was based on certified question concerning whether the accused was entitled to a hearing prior to the convening authority's action on sentence. The question was not specifically related to the permissibility of inclusion of a "misconduct" provision in the agreement.

¹⁶*See United States v. Lanzer*, 3 M.J. 60,62 (C.M.A. 1977) where at footnote 4 the Court stated that "[p]re-

The Courts of Military Review have considered a substantial number of pretrial agreement "misconduct" provisions which applied to the accused's conduct after trial but prior to the convening authority's action. Generally, the clauses relieved the convening authority of the obligation to limit the sentence where the accused committed misconduct amounting to a violation of the UCMJ.¹⁷ Other provisions additionally required the accused to conform to federal or state law.¹⁸ Some clauses conditioned the agreement upon the accused's conduct as a law abiding and well disciplined soldier.¹⁹

With a single exception, the Army and Navy Courts of Military Review have consistently sanctioned inclusion of the "misconduct" provision in pretrial agreements.²⁰ In marked contrast to his colleagues, one appellate judge has repeatedly opined that it is contrary to public policy for the convening authority to avoid a promised sentence limitation based upon activation of the misconduct provision.²¹ However,

sumably the convening authority could require such a ["misconduct"] provision unless it was contrary to public policy."

¹⁷*See, e.g.*, 3 M.J. 1043 (N.C.M.R. 1977); *United States v. Pryor*, 3 M.J. 737 (N.C.M.R. 1977), *pet. denied*, 4 M.J. 50 (C.M.A. 1977); *United States v. Bigler*, 50 C.M.R. 818 (N.C.M.R. 1975).

¹⁸*See United States v. Johnson*, 2 M.J. 600 (N.C.M.R. 1976).

¹⁹*See United States v. Smith*, 5 M.J. 857 (A.C.M.R. 1978), *pet. denied*, 6 M.J. 132 (C.M.A. 1978); *United States v. Kidd*, SPCM 13215 (A.C.M.R. 10 May 1978), *pet. denied*, 5 M.J. 366 (C.M.A. 1978).

²⁰*United States v. Thomas*, 6 M.J. 573 (A.C.M.R. 1978), *aff'd*, 8 M.J. 216 (C.M.A. 1980); *United States v. Alvarez*, 5 M.J. 762 (A.C.M.R. 1978), *pet. denied*, 5 M.J. 369 (C.M.A. 1978); *United States v. French*, 5 M.J. 655 (N.C.M.R. 1978); *United States v. Jacox*, 5 M.J. 537 (N.C.M.R. 1978), *pet. denied*, 5 M.J. 308 (C.M.A. 1978); *United States v. Smith*, 5 M.J. 857 (A.C.M.R. 1978), *pet. denied*, 6 M.J. 132 (C.M.A. 1978); *United States v. Bloom*, 4 M.J. 794 (N.C.M.R. 1978); *United States v. Rankin*, 3 M.J. 1043 (N.C.M.R. 1977); *United States v. Dugger*, 1 M.J. 1069 (N.C.M.R. 1976). *Contra*, *United States v. Johnson*, 2 M.J. 600 (N.C.M.R. 1976).

²¹*See, e.g.*, Judge Baum's dissenting opinions in *United States v. Jacox*, *supra* at 540-545; and *United States v. Rankin*, *supra* at 1045-47.

he has conceded that his views are not shared by other military appellate judges.²²

**The "Misconduct" Provision:
*United States v. Dawson***

The "misconduct" provision voided in the *Dawson* decision is typical of its predecessors. In addition to pleading guilty, the accused agreed that should he violate the UCMJ between the date of trial and the convening authority's action, the convening authority was authorized to approve any sentence adjudged by the court. The pretrial agreement was silent on what procedures would be employed should the clause be activated. In exchange, the convening authority agreed that he would approve no sentence in excess of a dishonorable discharge, confinement at hard labor for two years, total forfeitures for two years, and reduction to grade E-1. At trial, the military judge approved the agreement, accepted the accused's pleas, and sentenced him to a dishonorable discharge, confinement at hard labor for five years, total forfeitures, and reduction to grade E-1. Hours after Dawson's trial, illegal drugs were discovered during an inventory of his clothing at the confinement facility. Based on military police reports, the staff judge advocate informed the convening authority that he was no longer bound by the sentence limitation in the pretrial agreement and was free to approve all or any part of the sentence adjudged. Defense counsel responded to the post-trial review by arguing that Dawson's drug possession was not accompanied by the required criminal knowledge. The convening authority approved the entire sentence adjudged.²³

While the Court of Military Appeals found the *Dawson* "misconduct" provision to be unenforceable, the opinions of the Court reflect different attitudes concerning the clause. In the lead opinion, Judge Fletcher disfavors the clause on three grounds. First, he holds that

the terms of the provision were not sufficiently clear to allow its enforcement.²⁴ Judge Fletcher finds notably absent, agreement over who determines, as matter of fact, whether the accused has violated the Code; what procedures and standard of proof are to be employed during the factual determination; and whether the accused will be permitted to withdraw his guilty plea if the convening authority activates the "misconduct" provision.²⁵ Specifically rejected is the notion that the parties, by implication, contemplated use of the *Goode* procedures should the "misconduct" provision be exercised.²⁶ Second, Judge Fletcher observes that several putative purposes for inclusion of the "misconduct" provision are unlawful or contrary to public policy. The "misconduct" provision should not be utilized to express the convening authority's opinion that the accused, by virtue of his post-trial misconduct, has then demonstrated a lack of rehabilitative potential.²⁷ Additionally, the "misconduct" provision permits the convening authority "through contractual artifice to summarily punish servicemembers for violations of the Code,"²⁸ and thus circumvent protections afforded the accused by statute and regulation.²⁹ Moreover, Judge Fletcher opined that use of the "misconduct" provision violates the Code by creation of a suspension status which avoids the requirement of a suspension hearing under Article 72.³⁰ Finally, Judge Fletcher stated that the "misconduct"

²⁴ *Id.* at 146.

²⁵ *Id.* at 145-46.

²⁶ *Id.* at 146. Under the requirements of *Goode*, the convening authority makes findings of facts based on the post-trial review prepared by the staff judge advocate and any rebuttal to the review offered by defense counsel. *United States v. Goode, supra*.

²⁷ *Id.* at 146-147. Compare with Judge Baum's dissenting opinion in *United States v. Jacox, supra* at 540-545.

²⁸ *United States v. Dawson, supra* at 147.

²⁹ *Id.*, compare with Judge Baum's dissenting opinion in *United States v. May, supra*.

³⁰ *Id.* at 148, citing Article 72, UCMJ. Compare with Judge Baum's dissenting opinion in *United States v. Rankin, supra*.

²² *United States v. Bloom* 4 M.J. 794, 795 (N.C.M.R. 1978) (J. Baum, concurring).

²³ *United States v. Dawson, supra* at 143.

provision impacts negatively upon the entire pretrial agreement process³¹ and requires the accused to waive important due process rights regarding codal violations alleged to have occurred subsequent to trial.

Chief Judge Everett joins Judge Fletcher in the *Dawson* outcome by concurring in the result. However, in contrast to Judge Fletcher's opinion, the Chief Judge does not express dissatisfaction with the *Dawson* provision on grounds of public policy. The Chief Judge sees the *Dawson* "misconduct" clause as "too vague to be enforceable,"³² absent an agreement that the *Goode* procedures would be employed should it be activated.³³ Although the Chief Judge reserved opinion on the propriety of using the accused's post-trial "misconduct" to relieve the convening authority of his obligation of sentence limitation, it is significant that, in *dicta*, he set forth "minimal requirements for doing so."³⁴

In dissent, Judge Cook observes that the *Dawson* "misconduct" provision was sufficiently clear for enforcement as was evidenced by the lack of question or comment by the accused, defense counsel, or military judge.³⁵ Judge Cook notes that public policy considerations do not prohibit a requirement of good post-trial conduct by the accused in order for him to gain the sentence limitation set forth by the convening authority.³⁶ He finds the *Goode* procedures constitutionally sufficient in relation to activation of the "misconduct" provi-

sion, and thus a hearing is not required.³⁷ Additionally, Judge Cook related that the *Goode* requirements are afforded to the accused by operation of law and need not be specifically set forth in the pretrial agreement.³⁸

The "Misconduct" Provision—After *Dawson*

As noted by Judge Quinn in *Lallande*, the UCMJ and the MCM set forth only basic requirements concerning post-trial probation periods,³⁹ with no mention of the relation between such time spans and pretrial agreements. More importantly, the Article 71 probationary period applies to suspended sentences approved by the convening authority. Therefore, where the convening authority agrees to suspend portions of a sentence in excess of a specified quantum, the accused's preaction misconduct could not provide a basis for suspension vacation, because the misconduct is outside the Article 71 probationary period.⁴⁰ It seems likely that military lawyers recognized the limited scope of this probationary period and drafted "misconduct" provisions to cause the accused's probation to begin immediately after trial. Such practice appears consistent with the probation procedures of civilian courts and recognizes that the accused's rehabilitation should logically commence immediately after trial. Therefore, from the convening authority's view, there is legitimate need for inclusion of a "misconduct" provision.

After the *Dawson* decision, it seems clear that Judge Fletcher has strong public policy objections to inclusion of a "misconduct" provision in pretrial agreements. His opposition appears broad and deep; perhaps founded on a general belief that the military pretrial agree-

³¹ *Id.* at 148-150. Judge Fletcher observes that, among other consequences, use of the "misconduct" provision would minimize the employment of plea bargaining by the accused and convey supervision of the negotiation process from the military judge at trial to the convening authority, a party to the agreement, after trial. *Id.* at 148.

³² *Id.* at 151 (Everett, C.J., concurring in result).

³³ *Id.*, citing *United States v. Goode*, *supra*.

³⁴ See *United States v. Dawson*, *supra* at 151 (Everett, C.J. concurring in result).

³⁵ *Id.* at 151-152, citing *United States v. Goode*, *supra*.

³⁶ *Id.* at 153.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *United States v. Lallande*, *supra* at 871-872.

⁴⁰ In *United States v. Williams*, 21 C.M.A. 292, 45 C.M.R. 66 (C.M.A. 1972), a case *not* involving a pretrial agreement, the Court of Military Appeals held that misconduct occurring between the date of sentencing and that on which the probationary action is executed may be considered to revoke probation.

ment should be very limited in scope.⁴¹ The tone of his opinion additionally indicates his distaste for the clause when characterizing it as "clearly contrary to the Code"⁴² and "patiently unlawful."⁴³ Therefore, it is unlikely that Judge Fletcher would approve the inclusion of *any* misconduct provision, especially where the agreement did not pertain to a suspended sentence.⁴⁴

Chief Judge Everett's opinion falls conspicuously short of a generalized condemnation of the "misconduct" provision. The Chief Judge found fatal fault in the vague character of the *Dawson* provision and, in *dicta*, offered minimal requirements for inclusion and activation of the clause. Chief Judge Everett's requirements included:

- (a) "[A] detailed, explicit, and well-drafted misconduct provision in the pretrial agreement."⁴⁵
- (b) "[I]nquiry by the military judge to assure that the accused understood the full import of such terms in the pretrial agreement."⁴⁶
- (c) "[A] hearing on the alleged post-trial 'misconduct', which at least embodies all the procedural safeguards of a hearing for vacation of suspension pursuant

⁴¹Judge Fletcher states: "[T]his court has said that the pretrial agreement should be limited to bargaining for charges, sentence and pleas." *United States v. Dawson, supra*, at 149 (citations omitted); "This Court has taken the longstanding position of refusing to encourage expansive pretrial agreement provision making by military authorities." *Id.* (citations omitted); "[The 'misconduct' provision] exceeds the scope of plea negotiations approved by this Court." *Id.*

⁴²*Id.* at 148.

⁴³*Id.* at 149.

⁴⁴In *dicta*, Judge Fletcher finds authority to allow the accused and convening authority to agree that suspended sentence vacation could be based on post-trial/pre-action "misconduct." *Id.* at 148. The *Dawson* agreement did not involve agreement for sentence suspension. *Id.* at 143.

⁴⁵*Id.* at 151 (Everett, C.J. concurring in result).

⁴⁶*Id.*

to Article 72, Uniform Code of Military Justice." (citation omitted)⁴⁷

Based on the above requirements, it would appear prudent for "misconduct" provision drafters to clearly set forth the precise nature of the type of misconduct which would permit the convening authority to depart from the agreement's sentence limitation. Standards such as "conduct himself as a law abiding" or "well-disciplined soldier" should be avoided as too vague. Drafters should expect very close judicial scrutiny of broad conduct requirements which include federal, state, or foreign code violations. Misconduct limited to UCMJ violations would seem preferable.⁴⁸ Additionally, the "misconduct" provision should specifically set forth the inception date of the accused's "probation." Clauses, such as the *Dawson* provision, which specify a period "between the date of trial and the date of the convening authority's action"⁴⁹ should be clarified. The terms "trial" and "action" are sufficiently ambiguous to raise disagreement regarding the period to which the misconduct clause applies. Finally, the "misconduct" provision can be criticized as establishing an indefinite probation period, because, at the time of agreement, neither the convening authority nor accused can accurately predict when action will be taken in the case. Therefore, it may be advisable for drafters to specifically state a maximum time period during which the "misconduct" provision will be effective.

During the providency inquiry, the military judge must be fully satisfied with the accused's understanding of the "misconduct" provision and the consequences of its violation. Particular emphasis should be placed on the standard

⁴⁷*Id.*

⁴⁸Shortly after the *Dawson* decision, the U.S. Navy Court of Military Review found "misconduct" clauses which applied to violations of the UCMJ, state or federal law insufficiently clear to be enforceable. See *United States v. Thomas*, 10 M.J. 766 (N.C.M.R. 1981); and *United States v. Coleman*, NMCM 81 0366 (N.M.C.M.R. 22 May 1981).

⁴⁹*United States v. Dawson, supra* at 143.

of conduct promised by the accused and the precise time period covered by the promise. The agreement provision may require the "eagle eye" of the military judge to discover ambiguities which require a showing, on the record, of the parties' understanding and intent.

By requiring that allegations of post-trial misconduct be tested by the procedural safeguards of an Article 72 vacation hearing,⁵⁰ Chief Judge Everett has clearly stated his opinion that the *Goode*⁵¹ framework is insufficient for the post-trial "misconduct" situation.⁵² Article 72 of the UCMJ states rather general requirements for vacation of suspension taken by the convening authority. Article 72 requires that the special court-martial convening authority conduct a hearing concerning the probationer's misconduct. The probationer must be represented by counsel, if desired. The hearing record and recommendation of the special court-martial convening authority must be forwarded to the general court-martial convening authority empowered to vacate the sentence suspension, thereby revoking the probation status.⁵³ Presumably, Chief Judge Everett would additionally require compliance with the Court's amplification of the

Article 72 requirements in *United States v. Bingham*.⁵⁴

As mentioned previously, Judge Cook approved the *Dawson* "misconduct" provision and the *Goode* procedures used to activate it. It would seem to follow that Judge Cook would sanction the additional requirements set forth by Chief Judge Everett, although feeling them to be unnecessary.

Following the *Dawson* decision, the U.S. Navy-Marine Corps Court of Military Review emphasized the importance of providing the accused an opportunity to be heard should the convening authority seek activation of the "misconduct" clause. In *United States v. White*,⁵⁵ the Court enforced a "misconduct" provision which it found to be vague. The Court held that due process was afforded the accused when he was provided notice of the adverse action and an opportunity to appear at a hearing with counsel.⁵⁶

In the wake of the *Dawson* decision and the cases which have followed it, drafters of "misconduct" provisions must be particularly aware of the hearing requirement. At a minimum, the clause should specifically set forth the intent of the parties concerning who will conduct the hearing and the standard of proof to be applied, the rights of the accused regarding counsel, cross-examination of adverse witnesses, presentation of favorable evidence, and the accused's personal testimony or written statement. The provision should also reflect requirements for a written report from the

⁵⁰ See Article 72, UCMJ.

⁵¹ See *United States v. Goode*, *supra*.

⁵² The Army and the Navy Courts of Military Review have previously touched upon the application of *Goode* procedures in the post-trial/pre-action "misconduct" situation. The Navy Court of Military Review has implied that compliance with the *Goode* rules is sufficient when the "misconduct" provision is activated. See *United States v. Bigler*, 50 C.M.R. 818, 819 (N.C.M.R. 1975). On another occasion, the Navy Court of Military Review hinted that some form of hearing might be required. See *United States v. Pryor*, 3 M.J. 737, 738 (N.C.M.R. 1977), *pet. denied*, 4 M.J. 50 (C.M.A. 1977). The Army Court of Military Review has held that an accused was not denied due process when the convening authority voided the pretrial agreement without a hearing. *United States v. Scott*, 6 M.J. 608, 610 (A.C.M.R. 1978), *pet. denied*, 6 M.J. 246 (C.M.A. 1978).

⁵³ Article 72, UCMJ.

⁵⁴ The *Bingham* decision held that probation hearings are constitutionally required prior to vacation of suspension, that a preliminary probable cause hearing is needed where the probationer has been confined because of the probation violation, that the duty of the special court-martial convening authority to conduct a hearing may not be delegated, and that the general court-martial convening authority who revokes probation must complete a report detailing the evidence relied upon and the reasons for the vacation of suspension. 3 M.J. 119 (C.M.A. 1977).

⁵⁵ *United States v. White* 11 M.J. 712 (N.M.C.M.R. 1981).

⁵⁶ *Id.* at 715.

hearing officer, service of a copy of such report on the accused, and the specific time period for the accused to provide a rebuttal.

Conclusion

Following the *Dawson* decision, the advisability of using the "misconduct" provision is in serious doubt. The opinions of the case provide three different philosophies concerning inclusion of the clause. The very cautious drafter of pretrial agreements will avoid use of the "misconduct" provision and seek alternative re-

sponses to the accused's criminal conduct. As Judge Fletcher suggested in *Dawson*, such alternative measures include nonjudicial punishment, separate court-martial, or prison disciplinary hearing.⁵⁷ However, use of these tools may not be practicable. On the other hand, it is suggested that an "aggressive," but careful drafter can design a "misconduct" provision which will successfully sail the appellate straits.

⁵⁷United States v. Dawson, *supra* at 147.

National Defense Area

*CPT Steven H. Walker, Office of the Staff Judge Advocate,
White Sands Missile Range, New Mexico*

An Army Ch-47 carrying nuclear weapons and other classified components on a routine logistics move, fails to call in at the appointed time. Some time later it is learned that the helicopter has crashed. There is a fire, but the condition of the weapons is unknown. It then develops that the high explosives in one or more of the weapons have burned and that a large spread of contamination has occurred.

Because the weapons were in the custody of the Army at the time of the accident, an Army On-Scene Commander (OSC) and his staff are alerted. One of the officers on that staff is a legal officer. The OSC will rely heavily on the legal officer for advice and assistance in explaining the legal justifications for the extraordinary actions which will have to be taken to protest the classified material and clean up the contamination.

The primary legal vehicle for the protection of the classified debris is the National Defense Area. The purpose of this article is to explain the National Defense Area (NDA), its basis in law, and some of the problems surrounding it.

Definition

The National Defense Area is defined by the Joint Chiefs in JCS Pub. 1., as follows:

National Defense Area—An area established on non-Federal lands located within the United States, its possessions or territories, for the purpose of safeguarding classified defense information, or protecting Department of Defense equipment and/or material. Establishment of a National Defense Area temporarily places such non-Federal lands under the effective control of the Department of Defense and results only from an emergency event. The senior Department of Defense representative at the scene will define the boundary, mark it with a physical barrier, and post warning signs. The landowner's consent and cooperation will be obtained whenever possible; however, military necessity will dictate the final decision regarding location, shape and size of the National Defense Area, also called NDA.

Title 50, Section 797 of the United States Code, the statutory authority for creating the NDA, provides that military commanders designated by the Secretary of Defense may promulgate regulations for the protection and security of "property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, [or] any Department or agency of which said Department

consists." Regulations promulgated under this statute may address ingress to and egress from an area, removal of persons from an area, or generally safeguarding the area against loss, destruction or injury from accident or hostile activity.

Violations of regulations promulgated under this statute carry a fine of \$5,000.00 or less, and/or imprisonment for a term of one year or less.

Pursuant to 50 U.S.C. § 797, the Secretary of Defense has promulgated Department of Defense Directive 5200.8, 29 July 1980, which delegates the authority of the Secretary of Defense to issue regulations under the above cited statute to:

Commanding officers of all military reservations, posts, camps, stations, or installations subject to the jurisdiction, administration, or in the custody of the Department of the Army.

This directive also specifically states that the authority of 50 U.S.C. § 797 is extended to temporary "federal areas" established as a result of emergency situations such as accidents involving federal equipment or personnel.

Who may establish an NDA?

A military installation commander may establish an NDA, but the mere establishment of an NDA is not limited to such commander. The JCS Pub. 1 definition clearly states that the NDA will be marked and defined by the senior Department of Defense representative on the scene.

Although the controlling Army regulation, AR 50-5, does not refer specifically to NDA, it does require that the On-Scene Commander be responsible for "security, safeguarding, and disposition of all classified material involved."¹ It further provides that the Nuclear Accident and Incident Control Officer (NAICO) exercise the duties of the OSC until his or her arrival.²

¹ AR 50-5, para. 5-4a.

² *Id.* at para. 5-4b(2).

It appears that the NAICO, while acting for the OSC, has the authority to establish an NDA.

For example, the Air Force, which routinely establishes NDAs at the site where a vehicle transporting nuclear weapons breaks down (flat tires, engine malfunctions, etc.), requires that the boundaries of an NDA be defined and marked by the senior USAF officer or NCO.³

Compensating the Land Owner

Although establishment of an NDA is often short-lived, frequently at an accident site, it remains a "taking" under the fifth amendment to the Constitution. "Temporary takings are recognized in the law of federal eminent domain."⁴

Compensating the owner of property "taken" by an NDA presents special claims problems. Because of the nature of an NDA, the owner is totally excluded from the property. This is a taking under the fifth amendment, at least for the amount of time the NDA is in existence.

The Tucker Act (28 U.S.C. § 1491) provides one remedy for the land owner.

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either on the Constitution, or upon any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.⁵

For example, in the case of a nuclear accident and the subsequent establishment of an NDA, there would be three bases for a Tucker Act suit: the Constitution (fifth amendment), an Act of Congress (50 U.S.C. § 797), and regulation (DoD Directive 5200.8).

³ AFR 207-1, para. 6-5.

⁴ *R.J. Widen Company v. United States*, 357 F2d 988 (Ct. Cl. 1966).

⁵ 28 U.S.C. § 1491

Army regulation provides an additional method of compensating the land owner.⁶ The regulation does require that the claim be founded upon a contract.⁷ If the written consent of the land owner can be obtained for the intended occupation, for a consideration to be determined at a later time, the claim can be paid without resort to a Tucker Act suit.⁸

In the example above, the claim would not be cognizable under Chapter 3, AR 27-20 (Incident to Noncombat Activities), because the regulation specifically excludes fifth amendment claims.⁹ Chapter 3 would, however, be the primary vehicle for the payment of all *other* claims arising as a result of the accident, including damage to the land, even though it does not cover the occupation of the land during the existence of the NDA.

Regulating the NDA

Under 50 U.S.C. § 797 commanders may promulgate regulations governing the NDA. The basic regulation, common to all NDA situations, is that access to the area is prohibited without the consent of the commander. This must be done to exclude all personnel not having a reason to be in the limits of the NDA.

To apply the sanction available under the statute for violations of the regulations, the regulations must be issued in accordance with 5 U.S.C. § 552. "Each agency shall separately state and currently publish in the Federal Register for the guidance of the public . . . substantive rules of general applicability adopted or authorized by law."¹⁰ Military departments are specifically included in the term "agency."¹¹ The problem with this statute is readily apparent. In a nuclear weapons accident the

need for speed is paramount. By the time the regulations are published in the Federal Register, the emergency is over.

A possible solution is to post notices of the regulation to give actual notice to potential violators. In *United States v. Aarons*,¹² the court held that failure of an agency to publish a regulation in the Federal Register is not a bar to conviction under 50 U.S.C. § 797, if the violator has actual knowledge of the regulation. The defendant was specifically given notice of regulations surrounding the launch of the Polaris submarine. The substance of regulations could also be disseminated by a press release to local media.

An Air Force regulation sets out the procedure for issuing regulations under 50 U.S.C. § 797:

Any regulation that implements 50 U.S.C. § 797 and DoD Directive 5200.8 must:

- (1) Be promulgated by commanders designated by the Secretary of Defense in paragraph III. C, DoD Directive 5200.8;
- (2) State specifically that the directive be issued pursuant to the Internal Security Act of 1950 (50 U.S.C. § 797) and pertains to one of the subjects listed in that act;
- (3) Clearly describe, locate and identify the controlled area(s) or property, and state that entrance into that area or property without the installation commander's consent is prohibited.¹³

Following these guidelines, the regulations promulgated under 50 U.S.C. § 797 should be effective. Of course, as there are no court cases involving off-installation NDAs, this cannot be said with certainty. It might be noted, however, that the restricted area in *Aarons* was a portion of the Thames River at New London,

⁶AR 405-15.

⁷*Id.* at para. 2.

⁸The Corps of Engineers has several types of "Right of Entry" forms which can be adapted for this use.

⁹AR 27-20, para. 3-5.

¹⁰5 U.S.C. §552(a)(1).

¹¹5 U.S.C. §552(e).

¹²*United States v. Aarons*, 310 F2d 341 (CCA 2d Cir. 1962).

¹³AFR 125-37, para. 1-5.

Connecticut which, although a navigable stream and subject to federal control, was not on a military reservation.

Use of Force

The use of force in protecting the classified material located inside the NDA is not surprisingly, the area most likely to give rise to law suits.

Regulation provides certain principles to be followed by security personnel in the use of force. AR 190-28 states:

Law enforcement and security personnel will use force only when they cannot fulfill their duties without it. They will use the minimum force needed; only as a last resort will they use deadly force.¹⁴

Deadly force may be used to prevent threatened theft, damage or espionage aimed at property vital to national security; actual theft, damage or espionage of property substantially important to national security; the escape of an individual whose unauthorized presence near property vital to national security is a reasonable threat of theft, damage or espionage; of theft or sabotage of property which could cause deadly harm to others.¹⁵ A commander or other competent authority shall make the determination of whether property is vital or substantially important to national security.¹⁶

In *United States v. Lee*,¹⁷ the Court of Military Appeals addressed the issue of whether the defense of government property is a justification for homicide. The defendant allegedly shot two Korean nationals in order to prevent the theft of two jeep-mounted radios. The Court stated:

[There are] at least two factors which must be considered in connection with the de-

fense to a killing in the protection of property. The first is that the crime be of a forceful, aggravated, or serious nature. The second requires that the homicide must be committed in an honest belief that it is necessary to prevent the loss of the property.¹⁸

The Court based its holding on two authorities: *Warren on Homicide*, paragraphs 137 and 197b; and *Manual for Courts-Martial, United States, 1951*.

The *Manual for Courts-Martial, United States (1969 Rev. ed.)* states:

Justification. A death, injury or other act caused or done in the proper performance of a legal duty is justified and not unlawful. The duty may be imposed by statute, regulation or orders. Thus, the use of force by a policeman in the proper execution of a lawful apprehension, when reasonably necessary, is justified because the duty to apprehend is imposed by lawful authority.¹⁹

In *United States v. Gordon*,²⁰ the Army Court of Military Review discussed the use of force in the protection of property. The court approved an instruction to the members which stated in part:

To justify a resort to force in defense of property, the danger should be such as to induce one exercising reasonable and honest judgment to interfere to prevent taking of his property. The mere suspicion or fear of encroachment is not justification for the use of force. The necessity, however need not be real. It need only be *reasonably apparent* to the one using the force and the resistance offered be in good faith (emphasis supplied by ACMR.).²¹

¹⁴AR 190-28, para. 3.

¹⁵*Id.* at para. 4a. Also see AR 50-5-1(e), para. 3-3(U) which essentially states the same rules as AR 190-28.

¹⁶*Id.* at para. 4b.

¹⁷*United States v. Lee*, 3 CMA 501, 13 CMR 57 (1957).

¹⁸*Id.* at 13 CMR at 63.

¹⁹*Manual for Courts Martial, United States, (1969 Rev. ed.)* para. 216a.

²⁰*United States v. Gordon*, 33 CMR 489 (ACMR 1963), *reversed on other grounds*, 34 CMR 94 (ACMR 1963).

²¹*Id.* at 500.

Security personnel must be absolutely certain intruders to the NDA reasonably appear to be there to accomplish the mischief contemplated by the applicable regulations and that deadly force is the only action possible.

Military Arrest and Detention Authority

Another area fraught with hazard is that of the arrest and detention of civilians suspected of violating the regulations promulgated by the On-Scene Commander. The initial hurdle in the Posse Comitatus Act:

Whoever, except in cases and under circumstances expressly authorized by the Construction or Act of Congress, wilfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisonment not more than two years, or both.²²

At first it would appear that military personnel cannot be used to enforce the boundary and regulations of the NDA. This does not appear to be the case. Pursuant to 50 U.S.C. § 797, the commander may promulgate regulations "providing for safeguarding (Department of Defense property) against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions."²³

It can be inferred that Congress, in granting the authority to create regulations, intended to include the authority to enforce them. This result was also reached by the Department of Defense.²⁴

In 1956, The Judge Advocate General of the Army opined that an exception to the Posse Comitatus Act exists to allow the military to turn a civilian caught stealing government property over to civilian law enforcement authorities.²⁵

²² 18 U.S.C. § 1385.

²³ 50 U.S.C. § 797.

²⁴ DoD Directive 5200.8(E) states that commanders shall enforce the regulations promulgated.

²⁵ JAGA 1956/8555, 26 Nov 56.

It is believed that this opinion would also apply to government property located within the NDA because of the nature of NDA's as "temporarily established 'federal areas' under emergency situations."²⁶

Finally, a recent case held that the Posse Comitatus Act "does not prohibit military personnel from acting upon on-base violations committed by civilians."²⁷ Again, because of the nature of the NDA as a temporary "federal area," it appears that police power is extended to an area otherwise outside the limits of a military reservation.

Conclusion

The scenario at the beginning of this article was used at a recent exercise conducted by Field Command of the Defense Nuclear Agency, NUWAX-81. As the legal officer for the Primary Response Force On-Scene Commander at that exercise, the author found that a thorough understanding of the problems associated with a National Defense Area is critical. Both the player local populace and player press were very much concerned with the legal justifications for the extraordinary actions being taken. In addition, the OSC required advice to insure that he did not over-step his bounds and expose the Army and himself to substantial liability.

Any legal officer who is appointed to an On-Scene Commander's staff must become familiar with the NDA concept and with the other legal problems associated with a nuclear weapons accident. This can be done by attending the Senior Officers Nuclear Accident Course at the Interservice Nuclear Weapons School and by obtaining a copy of the Nuclear Weapons Accident Response Procedure Manual (still in draft stage) from Field Command, Defense Nuclear Agency. Both INWS and FC, DNA are located at Kirtland Air Force Base, Albuquerque, New Mexico 87115.

²⁶ DoD Directive 5200.8(c).

²⁷ United States v. Banks, 539 F2d 14 (CCA, 9th Cir. 1976).

As a final comment, it should be noted that an important weakness of the National Defense Area is that it has no basis for existing after the classified material has been removed. Unfortunately, this will occur long before the contamination has been removed and the land re-

stored. At present, there is no firm ground allowing the military to exclude the public from the contamination area. Whether or not this problem will be corrected in the future by Congress remains to be seen.

Criminal Law News

Recent Message

DA Msg 261400Z Aug 81
DAJA-CL 1981/8559
SUBJECT: Grants of Immunity

A. DA Msg 301700Z Jun 81

B. DOD Directive Number 1355.1, 21 Jul 81, Subj: Relationships with the Department of Justice on grants of immunity and the investigation and prosecution of certain crimes.

1. This msg supersedes Ref A.

2. Ref B contains DOD guidance concerning grants of immunity in cases in which DOJ and DOD have concurrent jurisdiction.

3. Para E2 of Ref B states that in order to insure that actions under the UCMJ do not preclude appropriate actions by federal civilian authorities in cases likely to be prosecuted in the US District Courts, court-martial convening authorities shall ensure that appropriate consultation under the 1955 Memorandum of Understanding between DOD and DOJ (Chapter 7, AR 27-10) has taken place prior to taking any action with a view to trial by court-martial.

4. Para E3 of Reference B requires that a

proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. Proposed grants will be forwarded through HQDA (DAJA-CL), Wash DC 20310.

5. Para G of Ref B states that the directive is effective immediately.

6. A change to chapter 7, AR 27-10, to reflect this new policy will be published in the future.

New Videotapes Available

Television Operations of the Judge Advocate General's School announces the following videotape programs are available. If you desire any of these programs, please send a blank ¾ inch videocassette of the appropriate length to the Judge Advocate General's School, U.S. Army, ATTN: Television Operations, Charlottesville, Virginia 22901.

5TH CRIMINAL LAW DEVELOPMENTS COURSE (24-26 August 1981)

NUMBER	TITLE/SPEAKER	RUNNING TIME
JA-358-1	C.O.M.A. WATCH Speaker: Major Glen D. Lause Instructor, Criminal Law Division TJAGSA	51:00
JA-358-2	JURISDICTION Speaker: Captain Joseph E. Ross Instructor, Criminal Law Division TJAGSA	46:00

<i>NUMBER</i>	<i>TITLE/SPEAKER</i>	<i>RUNNING TIME</i>
JA-358-3	<i>FOURTH AMENDMENT</i> Speaker: Captain Stephen D. Smith Instructor, Criminal Law Division TJAGSA	52:00
JA-358-4	<i>POTPOURRI, PART I</i> (Criminal Law Faculty) ARTICLE 32—Major Glen D. Lause SUBSTANTIVE CRIMES—Major Richard H. Gasperini ARGUMENTS—Major Owen D. Basham	53:00
JA-358-5	<i>POTPOURRI, PART II</i> (Criminal Law Faculty) NONJUDICIAL PUNISHMENT—Captain Joseph E. Ross CIVILIAN CONVICTIONS—Major Larry R. Dean MILITARY MAGISTRATE—Major Craig S. Schwender	44:00
JA-358-6	<i>POTPOURRI, PART III</i> (Criminal Law Faculty) RELIABILITY—Captain Stephen D. Smith CORRECTIONS—Major Lee D. Schinasi DEFENSE IMMUNITY—Lieutenant Colonel Herbert Green	51:00
JA-358-7	<i>INSANITY</i> Speaker: Captain Joseph E. Ross Instructor, Criminal Law Division TJAGSA	49:00
JA-358-8	<i>MILITARY RULES OF EVIDENCE, PART I</i> Speaker: Major Lee D. Schinasi Instructor, Criminal Law Division TJAGSA	53:00
JA-358-9	<i>MILITARY RULES OF EVIDENCE, PART II</i> A continuation of JA-358-8.	40:00
JA-358-10	<i>GUEST SPEAKER</i> Honorable Robinson O. Everett Chief Judge U.S. Court of Military Appeals	51:00
JA-358-11	<i>ETHICS</i> Speaker: Major Larry R. Dean Instructor, Criminal Law Division TJAGSA	39:00
JA-358-12	<i>PRETRIAL AGREEMENTS</i> Speaker: Lieutenant Colonel Herbert Green Chief, Criminal Law Division TJAGSA	47:00
JA-358-13	<i>SIXTH AMENDMENT</i> Speaker: Major Richard H. Gasperini Instructor, Criminal Law Division TJAGSA	50:00
JA-358-14	<i>FIFTH AMENDMENT</i> Speaker: Major Glen D. Lause Instructor, Criminal Law Division TJAGSA	49:00

NUMBER	TITLE/SPEAKER	RUNNING TIME
JA-358-15	MOTIONS Speaker: Major Owen D. Basham Senior Instructor, Criminal Law Division TJAGSA	26:00
JA-358-16	POST-TRIAL ACTIONS Speaker: Captain Joseph E. Ross Instructor, Criminal Law Division TJAGSA	20:00
JA-358-17	WRITS Speaker: Major Glen D. Lause Instructor, Criminal Law Division TJAGSA	23:00

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Guilty Pleas.

a. Trial counsel must remain vigilant during a guilty plea case, both during the plea inquiry and sentencing. Accused attempting to minimize their culpability while pleading guilty may thereby improvidence their pleas. In a recent larceny case, an accused stated that he stole his roommate's wallet because he wanted to teach the roommate a lesson on security. This resulted in an improvident plea. See *United States v. Roark*, 12 USCMA 478, 31 CMR 64 (1961). In a marijuana possession case, the accused impeached his guilty plea during sentencing when he stated that he knowingly possessed the marijuana only for the purpose of returning it to the owner. This raised the issue of innocent possession. See *United States v. Rowe*, 11 M.J. 11 (CMA 1981). Trial counsel should listen to the plea inquiry and the accused's statements during sentencing and if any matters inconsistent with the plea are noted, call such to the attention of the military judge.

b. The accused's interpretation of the sentence limitation provisions of a pretrial agreement has resulted in appellate error in several recent cases. If the accused's interpretation of the effect of the limitation provisions differs from that of the Government, the trial counsel should request a recess and discuss this differ-

ence with the staff judge advocate and the convening authority. If after this discussion, a difference still exists, the trial counsel should so inform the military judge. If the accused persists in his interpretation, the trial counsel may request that the military judge declare the pretrial agreement void and that appropriate action be taken. The accused may persist in his pleas (without any pretrial agreement sentence limit) or the trial will begin anew with a not guilty plea.

2. Records of Trial.

The Government is charged with the responsibility of preparing a verbatim record of trial in appropriate cases. Article 19, Uniform Code of Military Justice; paragraph 82, Manual for Courts-Martial, United States, 1969 (Revised edition). If there is an omission, a presumption of prejudice arises and the Government must rebut the presumption. *United States v. Boxdale*, 22 USCMA 414, 47 CMR 351 (1973). If the omission is discovered during trial, it may be possible to go back to the point that the omission occurred and rehear the omitted testimony or matter. If the omission is discovered after completion of trial, the trial counsel should attempt to reconstruct the omitted portion. This reconstruction can be done in a number of ways. If the omitted portion deals

with the testimony of only a single witness, a sworn statement from that witness covering the trial testimony may be helpful. If the omitted portion is "boiler plate", the military judge may furnish an affidavit. In any attempt to reconstruct a missing portion of the record, the trial counsel should seek the assistance of the court reporter, the military judge, any witnesses whose testimony was omitted, and the defense counsel. If this cannot be done, a rehearing may be ordered or the sentence can be reduced to a level not requiring a verbatim record. *United States v. Thompson*, 22 USCMA 448, 47 CMR 489 (1973).

3. GAD Publications.

The Government Appellate Division sends several publications to staff judge advocates every month. These publications are intended to assist trial counsel in the prosecution of courts-martial. If trial counsel are not receiving or seeing the monthly *Recent CMR Opinions* and *Current Issues Index* please check with your staff judge advocate. If the staff judge advocate is not receiving these publications, call the Government Appellate Division (CPT Gillett) at autovon 289-1271/1272/1273/1274.

Judiciary Notes

US Army Legal Services Agency

Digests—Article 69, UCMJ, Applications

In *Smith*, SPCM 1981/5016, the accused was a member of the National Guard who had been ordered to active duty for training for "completion of MOS [Military Occupational Specialty] training, but not less than twelve weeks." The orders transferring her from the site of her basic combat training to the location of the advanced individual training did not specify a date for completion of the MOS training. During the MOS training cycle, orders were issued relieving the accused from active duty for training, effective 31 Jan 81, and returning her to National Guard control. She was to proceed to her home on 30 Jan 81. The MOS training was completed on 28 Jan 81. During the evening of 29-30 Jan 81, the accused was apprehended for allegedly assaulting another soldier in the barracks by stabbing her in the stomach with a knife. The accused's company commander initiated flagging action on 30 Jan 81, restricted the accused, and the process of preferring charges was begun. The orders relieving the accused from active duty for training were rescinded, on 24 Feb 81, without obtaining the approval of the Governor of the State.

The issue raised in this case was whether there was *in personam* jurisdiction over the

accused because the orders bringing her on active duty for training specified a time period until "the completion of MOS training." Military status does not ordinarily terminate automatically at the instant of expiration of a period of prescribed active duty. *US v. Hutchins*, 4 MJ 190 (CMA 1978). A "self-executing" order, however, effects a change of status at the exact time provided in the order. *US v. Smith*, 4 MJ 265, 266 (CMA 1978). But, even such an order does not free the individual from military jurisdiction, if, before the prescribed time, action on a court-martial charge against her had been taken with a view to trial. *US v. Hudson*, 5 MJ 413 (CMA 1978). This same rule applies even though permission of the Governor of the State to retain the accused on active duty after completion of her training was neither sought nor given. *US v. Gonzalez*, 5 MJ 770 (ACMR 1978), *pet. denied*, 6 MJ 14 (CMA 1978).

In this case, the accused had not been properly released from active duty even though her classroom requirements had been completed. Prior to her date of release, military authorities had commenced action with a view to trial (paragraph 11d, MCM 1969 (Rev.)) by apprehending her for committing an offense under the Uniform Code of Military Justice, restricted her movements, flagged her records, and

started the preferral of charges. Therefore, jurisdiction had attached and continued for pur-

poses of trial, sentence and punishment. Relief was denied.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

1. (Prohibited Activities and Standards of Conduct, General) *Military Personnel Are Prohibited From Using Their Military Title or Position In Connection With The Endorsement Of Any Commercial Product. DAJA-AL 1980/1978, 11 June 1980.*

The Judge Advocate General was notified of an alleged violation of paragraph 5-2a(5), AR 600-50, which prohibits military personnel from using their military title or position in connection with any commercial enterprises or in endorsing any commercial product. The alleged violation involved the endorsement of an advertisement for precut homes by a servicemember who subscribed his name and rank thereto. The Judge Advocate General determined that the servicemember may have violated established standards of conduct by permitting the use of his name and rank in the manner described and forwarded the matter to the servicemember's commanding officer for appropriate action.

2. (Prohibited Activities And Standards of Conduct, General) *Summary of Restrictions Relating to DOD Cooperation with Industrial Association Symposia. DAJA-AL 1980/3446, 13 Jan 1981.* The Judge Advocate General has prepared a summary of restrictions applicable to cooperation with industrial associations because of several recent symposia which appeared to conflict with various DOD policies embodied in DODI 5410.20. See DAJA-AL 1980/3219, 28 Nov 1980. The summary is designed to provide general guidance concerning the restrictions which apply when cooperating with associations in presenting and attending symposia.

As a general rule, DOD components are encouraged to cooperate with organizations rep-

resenting DOD contractors in disseminating information about policies, plans, programs and budgets. However, the Judge Advocate General stated that the following limitations must be strictly observed. In the absence of DOD approval, cooperation with associations may not extend to co-sponsorship of events, programs or other activities. Additionally, any involvement in an industry sponsored symposium should not extend beyond that considered essential for governmental purposes (i.e., providing a secure meeting place, coordinating security control, providing speakers and copies of papers and speeches). Cooperation should not include activities which appear to selectively benefit the competitive position of the association's defense industry members. Therefore, attendees should receive only that Army procurement information generally available to the industry. The Judge Advocate General stressed that symposia should not provide or even give the appearance of providing "inside information" to association members.

The opinion also addresses limitations upon the acceptance of speaking engagements at DOD contractor association symposia. DA personnel may not speak in an official representative capacity at a symposium which benefits a commercial venture. Official speaking engagements may not be accepted for a meeting where attendance fees are not in line with actual costs incurred by the sponsor or for a seminar for which the public is charged admission specifically to hear Army participants. Furthermore, attendance of DA personnel at symposia should be limited to the minimum necessary to accomplish the mission. DA participation should be carefully scrutinized to limit costs to the Government and must be in accordance with AR 1-210 and AR 1-211.

The Judge Advocate General also noted that Honoraria may not be accepted for an official

presentation nor may a charitable contribution be suggested in lieu of acceptance. However, DA speakers, panelists and other bona fide participants may accept benefits in kind from an association, e.g., costs of travel, meals, and accommodations provided they are not extravagant or excessive and such benefits are not received from individual DOD contractors.

3. (Nonappropriate Fund Instrumentalities, Operational Principles) *A Commercial Carnival Conducted As A Fund-Raising Source For Morale Support Activities Is Not A Leasing Activity Which Requires The Deposit Of Receipts Into The Treasury. DAJA-AL 1981/2748, 14 May 1981.*

The Judge Advocate General was asked if fees collected from a carnival contractor by Morale Support Activities (MSA) pursuant to paragraph 3-7, AR 28-1 constitute rental receipts which must be deposited into the Treasury under leasing statutes 10 U.S.C. § 2667 or 40 U.S.C. § 403. The Judge Advocate General determined that no lease existed because the carnival contractor acquired no real property interest in Government lands. Therefore, fees collected from the carnival contractor are not within the purview of the leasing statutes requiring rental fees to be deposited into the Treasury. The Judge Advocate General noted that similar situations arise with respect to PX concessionaires, GOCO facilities and CITA contractors.

The Judge Advocate General further stated that revenues generated by such a commercial carnival may be retained by the MSA as locally generated income without violating the provisions of 31 U.S.C. § 484. As a general proposi-

tion, 31 U.S.C. § 484 requires that funds generated "for the use of the United States" be deposited into the Treasury. In determining whether an activity may retain income generated in addition to appropriated funds, The Judge Advocate General analyzed a series of opinions by the Comptroller General.

In those cases where an activity generated income and the activity was permitted to retain that income, in addition to appropriated funds, the following factors were present;

(1) The activity was funded from sources wholly separate from, or in addition to, appropriated funds;

(2) Congress intended that the activity's funds be augmented by other than appropriated funds;

(3) The activity was authorized to engage in the venture which generated the income and such venture was consistent with the purpose for which the activity was created;

(4) The activity performed some service related to the generation of income; and

(5) The income was received and accounted for by the Government or its instrumentalities and used in furtherance of an authorized Government purpose.

The Judge Advocate General determined that all of the above factors were clearly met by the MSA. Consequently, the revenues generated by the fund-raising event may be retained by the MSA to provide additional nonappropriated fund support to their programs, rather than be deposited in the Treasury under 31 U.S.C. § 484.

Legal Assistance Items

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

Legal Assistance Legislation

Legislation to provide statutory recognition and authorization for military legal assistance

programs has recently been submitted before both Houses of Congress. H.R. 4405 was introduced by Representative Patricia Schroeder

and S. 1590 was sponsored by Senator Strom Thurmond.

Similar bills were introduced in 1975, 1977, and 1979. An amended version of H.R. 4001 and S. 1130, 96th Congress, was passed by the Senate as an amendment to the DOD Authorization Act of 1981; however, the legal assistance language was deleted by the Conference Committee before passage of that Act.

Until a statutory basis exists, legal assistance programs will continue to be operated solely under military service directives. As a result, the military services are unable to request specific budgetary authorizations for legal assistance services and must give all other statutorily required services priority with regard to personnel and resources.

The language of the current proposals is as follows:

A BILL

To amend title 10, United States Code, to provide for legal assistance to members of the Armed Forces and their dependents, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the intent of the Congress that Armed Forces personnel have legal assistance made available to them in connection with their personal legal affairs.

Sec. 2. (a) Chapter 53 of title 10, United States Code, is amended by adding at the end of such chapter the following new section:

"§ 1041. Legal assistance

"(a) Under such regulations as may be prescribed by the Secretary concerned, members of the armed forces on active duty shall be provided legal assistance in connection with their personal affairs and, subject to the availability of resources, legal assistance may be provided to dependents of active duty members and to mem-

bers entitled to retired or retainer pay, and their dependents.

"(b) The Judge Advocate Generals, as defined in section 801(1) of this title, are responsible for the establishment and supervision of legal assistance programs under such regulations as may be prescribed by the Secretary concerned.

"(c) Nothing contained in this section shall be construed as authority for the representation in court of armed forces personnel or their dependents who can otherwise afford legal fees for such representation without undue hardship."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1041. Legal assistance."

Information on the Duties of a Notary Public

Submitted by CPT Etzion Brand, Legal Assistance Officer, US Army Intelligence and Security Command, CONUS Military Intelligence Group (Provisional), Fort Mead, Maryland

There is a common misunderstanding as to the authority of a Notary Public. While laws regarding the authority of a Notary Public may vary from state to state, a Notary Public is generally empowered to administer oaths, take sworn instruments, and receive acknowledgments of certain written instruments.

A Notary Public has *no* authority to authenticate a document—that is, he/she cannot put his/her seal on a copy of a birth certificate, for example, and make it "genuine." However, a person may make a statement under oath, in writing, that a certain document is a true and accurate copy of the original. In that case, the Notary may take the oath, write the prescribed words below the statement, and, thereby, attest to the fact that an oath was administered. The Notary may then put his/her seal to that statement. The Notary *does not* vouch for the authenticity of the copy, but rather is attesting to the fact that the person is declaring that such copy is a true copy of the original and that

the declaration was made under oath. In many instances, the organization requesting such documents requires an original or certified copy. If so, the "oath" procedure will not be satisfactory, and an authenticated copy must be requested from the issuing authority. (See DA Pam 27-50-68 for states and type of record requested. See also the *Army Legal Assistance Information Directory* for a list of addresses to write to for these documents.)

Notaries should be aware of the difference between sworn instruments (requiring an oath) and acknowledgments (see AR 600-11). A sworn instrument is a written declaration, signed by a person who declares under oath, before a properly authorized official (Notary Public or other) that the facts set forth are true and accurate to the best of his or her knowledge and belief. Examples of sworn instruments are affidavits, sworn statements, and depositions. An acknowledgment, however, is merely a formal declaration or admission before a properly authorized official (Notary Public or other), by a person who has executed an instrument, that such instrument is his act and deed—that he executed the document of his own free will. While most documents already have the prepared paragraph for the Notary to fill in, one should be sure that if the document

is one which requires an oath, that the oath is actually administered.

While certain U.S. Armed Forces officers are authorized to administer oaths and receive acknowledgment for Federal purposes, such as military administration (10 U.S.C. §936, Art. 136 U.C.M.J.), every state has its own laws regarding notarial acts of an Armed Forces officer for state purposes. Some states allow officers to administer *oaths* only for servicemembers (and *not* their dependents), while at the same time allow officers to receive *acknowledgments* for both servicemembers and their dependents. Thus, the nature of the notarial act (oath or acknowledgment) may be crucial in determining whether or not the act of an Armed Forces officer is legally effective in any particular state. Of course, to avoid problems it is suggested that one use a Notary Public rather than an Armed Forces officer.

A thorough understanding of the authority of a Notary Public and state laws concerning notary powers is essential to prevent any misunderstandings which may occur at Legal Assistance offices or other on-post offices offering notarial services. The job of a Notary Public is not merely to put a seal on anything that is put in front of him or her.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan



1. ASSIGNMENT ROTATION. Although some may be organized differently, most of our staff judge advocate offices contain the following functional areas: Administration; Administrative Law; Claims; Legal Assistance; Military Justice; and Trial Defense Service, which is supported with enlisted personnel from the local staff judge advocate office. At our first Chief Legal Clerks Conference, a key issue discussed was office organization procedures and rotation of personnel. Conferees agreed that

personnel should be moved among various positions to prevent stagnation and to familiarize personnel with all aspect of what goes on in a typical staff judge advocate office. It will also assist in preparing personnel for SQT testing, as well as improving qualifications toward attainment of chief legal clerk status. Although some problems may be experienced in rotating personnel, I encourage all chief legal clerks to try to do so.

2. SQT. Early returns indicate that we are off

to a very good start in comparison to last year's returns, as indicated below.

71D	1981	1980
Skill Level 1 (E1-E4)	77.5%	64.89%
Skill Level 2 (E-5)	83.4%	70.31%
Skill Level 3 (E-6)	77.1%	78.0%

If we continue with scores such as these, I am sure we will surpass last year's results. Our general officers are impressed by this improvement, which I attribute to improved training programs, heightened concern about job performance and responsibility, and the outstanding qualifications of our personnel. However, there are still some training areas which require attention, specifically those unit training subjects such as weapons qualification, CBR, and physical training. We must remember that we are soldiers first, and legal clerks or court reporters second. Basic soldiering will be with us throughout our military career, and unit training is therefore not to be taken lightly. Cooperation with the local unit is very important in this regard.

3. LETTERS OF RECOMMENDATION FOR PROMOTION TO E7-E9. The US Army Enlisted Records and Evaluation Center continues to receive unauthorized letters of recommendation for promotion from commanders and supervisors. The provision which authorized the submission of such letters was rescinded, effective 1 April 1979. A soldier in the primary zone of consideration may write directly to the president of a promotion selection board, bringing to the attention of the Board any matter he/she feels is of importance concerning the review of his/her record and manner of performance. But *third party* letters of reference or recommendation for promotion **ARE NOT PERMITTED**. Any such letter, whether received directly or as an inclosure to a personal letter to the board, *will not be referred to the Board*.

4. WEIGHT CONTROL PROGRAM. The Army Physical Fitness and Weight Control Program is outlined in Ar 600-9. It applies to all components and provides specific weight

standards for retention and reenlistment of personnel.

5. SHOULDER MARKS. When buying the new black NCO shoulder marks, you should check the size of the marks. The embroidered marks come in two different sizes. The large size is designed to fit the epaulets of green shirts size 15 ½ and above. The small size is for wear with shirts size 15 and below. Soldiers are not required to buy the new NCO marks. They may continue to wear the metal rank insignia now worn on the collar of the green shirt until the marks are issued at promotion or until 30 September 1983, whichever comes first. Junior enlisted soldiers not authorized to wear the shoulder marks will continue to wear their insignia pinned to the shirt collar.

6. EDUCATION CODES. Your military education is important, especially when you are being considered for promotion, reassignment, or a special job or school. But your educational accomplishments will not do you any good unless they are properly recorded and coded on your qualification record (DA Form 2). It is the records' clerk's job to make sure your personnel records are correct, *but it is your career that will suffer if they are wrong*. Check especially Item 42 of your DA Form 2. This block indicates your highest military education level with one of the following code letters:

Course Completed	Code
SMA Course Grad	D
Advanced NCO Course (ANCOC) Grad	S
Basic Technical Course	W
Basic NCO Course (BNCOC) Grad	W
Primary Technical Course	Y
Primary NCO Course (PNCOC) Grad	Z

7. CORD UNIFORMS DISCONTINUED. The cord uniform for women will not be authorized after September 30. It was dropped from the enlisted women's clothing, effective 1 Oct 1979, but soldiers who owned cords were permitted to wear them until the end of FY81. The mint-green uniform, which was issued in November 1977, or gray-green service shirts worn with green uniform slacks or skirts, replace the cord uniform.

Reserve Affairs Items

*Reserve Affairs Department, TJAGSA***1. Mobilization Designee Vacancies**

There are a large number of mobilization designee positions now vacant. Judge advocates who desire to apply for one or more of the many vacant MOB DES positions are encouraged to review the list of vacant positions printed below. Such officers should complete the Application for Mobilization Designation.

(DA Form 2976) and forward it to The Judge Advocate General's School, ATTN: JAGS-RA (Lieutenant Colonel Smith) Charlottesville, Virginia 22901. Interested officers are reminded that mobilization designees are normally guaranteed a minimum of two weeks training with their mobilization agency.

Current positions available are as follows:

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	36C	04	01	Legal Off	Ofc DCS Opns Plans	Washington, DC
MAJ	01K	01A	02	Judge Advocate	Fitzsimons AMC	Aurora, CO
MAJ	02C	01A	01	Judge Advocate	Wm Beaumont AMC	El Paso, TX
MAJ	04	01A	02	Judge Advocate	Letterman AMC	Presidio SF, CA
CPT	02	01A	01	Judge Advocate	USA Garrison	Ft Detrick, MD
MAJ	06	03A	02	Asst SJA	USA Health Svcs Cmd	Ft S Houston, TX
CPT	06	03A	03	Asst SJA	USA Health Svcs Cmd	Ft S Houston, TX
MAJ	03	04A	01	Legal Officer	Ofc Gen Counsel	Washington, DC
MAJ	05	07	10	Military Judge	USA Legal Svcs Agency	Falls Church, VA
MAJ	05	07	11	Military Judge	USA Legal Svcs Agency	Falls Church, VA
CPT	06	06	01	Judge Advocate	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	03	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	08	08	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	02	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	03	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	10	01	Sp Project Off	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	01	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	02	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	03	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	04	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	05	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	03	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	04	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	05	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	06	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	07	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	08	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	09	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	10	Trial DC	USA Legal Svcs Agency	Falls Church, VA
LTC	05C	02	01	Deputy Chief	USA Clms Service	Ft Meade, MD
LTC	05	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	05	02A	01	Plans Officer	Ofc Judge Advocate General	Washington, DC
MAJ	05	03A	03	Staff Officer	Ofc Judge Advocate General	Washington, DC
LTC	09	01A	01	Dep Ch DA Adv	Ofc Judge Advocate General	Washington, DC
CPT	10A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10B	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	10C	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	03	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10D	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10E	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
CPT	10E	02A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10F	01	01	Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10F	02	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10G	01	01	Chief	Ofc Judge Advocate General	Washington, DC
LTC	12A	01A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	12A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	13	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	13C	01A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	14B	01	01	Chief	Ofc Judge Advocate General	Washington, DC
LTC	14D	02	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	04	04	02	Asst SJA	MTMC Eastern Area	Bayonne, NJ
CPT	07E	02	01	Clms O Tfc B	Gulf Outport	New Orleans, LA
MAJ	20I	02	01	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	02	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	03	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
MAJ	75	01A	01	Judge Advocate	USA Dep Newcumberland	Newcumberland, PA
CPT	75	01A	01	Leg/Clms Off	USA Dep Sharpe	Lathrop, CA
CPT	75	02	01	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA
CPT	75	02	02	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA
MAJ	75	01A	01	Post JA	USA Depot Tooele	Tooele, UT
MAJ	07	02	01	Judge Advocate	USARSCH Technology Sch	Moffet Field, CA
MAJ	26D	01A	01	Legal Advisor	USA TSARCOM	St. Louis, MO
CPT	04H	04B	01	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	02	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	03	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	04	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	05	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	06	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	07	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	08	Asst SJA	USA CERCOM	Ft Monmouth, NJ
MAJ	11C	01A	01	Proc Attorney	USA ARRCOM	Rock Island, IL
MAJ	11C	01A	02	Proc Attorney	USA ARRCOM	Rock Island, IL

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	02	01A	01	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	01	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	02	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	03	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	04	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	05	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
LTC	46B	02	01	Legal Off	USA Corps of Engrs	Washington, DC
MAJ	48C	03	01	Legal Off	USA Corps of Engrs	Washington, DC
CPT	57	03	02	Asst SJA	172d Inf Bde	Ft. Richardson, AK
CPT	10A	03	01	Asst SJA	Sixth US Army	Presidio SF, CA
LTC	05A	01	01	Ch Mil Affairs	USA Garrison	Ft. Bragg, NC
MAJ	05B	02	01	Defense Counsel	USA Garrison	Ft. Bragg, NC
MAJ	05B	03	01	Trial Counsel	USA Garrison	Ft. Bragg, NC
CPT	05B	07	01	Defense Counsel	USA Garrison	Ft. Bragg, NC
CPT	05B	08	01	Trial Counsel	USA Garrison	Ft. Bragg, NC
CPT	03A	02	04	Trial Counsel	101st ABN Division	Ft. Campbell, KY
CPT	03B	02	01	Defense Counsel	101st ABN Division	Ft. Campbell, KY
MAJ	03D	01	01	Asst SJA	USA Garrison	Ft. Stewart, GA
CPT	03D	06	02	Asst SJA-DC	USA Garrison	Ft. Stewart, GA
CPT	03E	02	01	Asst SJA	USA Garrison	Ft. Stewart, GA
CPT	102	B02	01	Asst SJA-TC	USA Garrison	Ft. Stewart, GA
CPT	52C	02	02	Asst SJA	USA Garrison	Ft. Stewart, GA
MAJ	03D	02	02	Asst Judge Advocate	USA Garrison	Ft. Hood, TX
MAJ	03F	01	01	Claims Off	USA Garrison	Ft. Hood, TX
CPT	03F	03	01	Asst Claims Off	USA Garrison	Ft. Hood, TX
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft. Polk, LA
MAJ	03B	01	01	Chief	USA Garrison	Ft. Sheridan, IL
MAJ	02A	02	01	Ch Def Counsel	USA Garrison	Ft. Riley, KS
CPT	03B	07	01	Trial Counsel	USA Garrison	Ft. Carson, CO
CPT	03B	04	02	Judge Advocate	USA Garrison	Ft. Drum, NY
CPT	03D	01	01	Judge Advocate	USA Garrison	Ft. Drum, NY
CPT	03B	03	02	Judge Advocate	USA Garrison	Annville, PA
CPT	03B	03	03	Judge Advocate	USA Garrison	Annville, PA
CPT	03B	03	02	Judge Advocate	USA Garrison	Sparta, WI
CPT	03B	03	04	Judge Advocate	USA Garrison	Sparta, WI
MAJ	03D	01	01	Ch Admin Law Br	USA Garrison	Ft. Lewis, WA
MAJ	62C	03	01	Asst Crim Law Off	USA Forces Cmd	Ft. McPherson, GA
CPT	03D	02	01	JA	USA Garrison	Ft. Buchanan, PR
CPT	31I	04	01	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	02	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	03	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	04	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	05	Instr	USA EN Center	Ft. Belvoir, VA
MAJ	05	03B	01	Asst SJA	QMC Ft Lee	Ft. Lee, VA
MAJ	04A	02A	01	Sr Def Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04A	04A	01	Trial Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04B	03	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	04	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	07A	01	Claims Off	USA Inf Cen	Ft. Benning, GA
MAJ	14B	02	02	Asst SJA	USA Signal Cen	Ft. Gordon, GA
MAJ	02A	01A	01	Asst C Crim Law	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	01	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	02	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	03	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	01	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	02	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	03	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	01A	01	Asst C Adm Civ Law	USATC & Ft Jackson	Ft. Jackson, SC

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
CPT	02B	02A	01	Asst Admin Law O	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03B	01	Civil Law Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03C	01	Legal Asst Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03C	02	Legal Asst Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	07A	03	02	Judge Advocate	AVN Center	Ft. Rucker, AL
CPT	07A	04	01	Mil Judge	AVN Center	Ft. Rucker, AL
CPT	38A	03	01	Asst SJA	USA Garrison	Ft. Chaffee, AR
CPT	38A	03	02	Asst SJA	USA Garrison	Ft. Chaffee, AR
MAJ	38B	01	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
CPT	30D	01B	01	Admin Law	USA AD Center	Ft. Bliss, TX
CPT	04	03A	01	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	02	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	03	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	04	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	05	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	06	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	07	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
MAJ	06	02	01	Dep SJA	USA Admin Center	Ft. B Harrison, IN
CPT	06	05	01	Asst JA	USA Admin Center	Ft. B Harrison, IN
CPT	10D	06	01	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
CPT	10D	06	03	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
MAJ	12	02	01	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN

The SJA office at CINCPAC, Camp Smith, Hawaii, has announced an 0-6 JAGC mobilization designee vacancy. Applicant must be resident of Hawaii and be an 04, 05 or 06. Interest-

ed applicants should submit DA Form 2976 directly to TJAGSA, Reserve Affairs Department, Lieutenant Colonel Smith.

CLE News

1. Resident Course Quotas

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

293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. TJAGSA CLE Courses

November 2-6: 10th Defense Trial Advocacy (5F-F34).

November 16-20: 9th Legal Assistance (5F-F23).

November 30-December 11: 90th Contract Attorneys (5F-F10).

January 4-8: 18th Law of War Workshop (5F-F42).

January 4-15: 2nd Administrative Law for Military Installations (5F-F24).

January 11-15: 1982 Government Contract Law Symposium (5F-F11).

January 21-23: JAG USAR Workshop.

January 25-29: 64th Senior Officer Legal Orientation (5F-F1).

January 25-April 2: 98th Basic Course (5-27-C20).

February 8-12: 3rd Prosecution Trial Advocacy (5F-F32).

February 22-March 5: 91st Contract Attorneys (5F-F10).

March 8-12: 10th Legal Assistance (5F-F23).

March 22-26: 21st Federal Labor Relations (5F-F22).

March 29-April 9: 92nd Contract Attorneys (5-F10).

April 5-9: 65th Senior Officer Legal Orientation (5F-F1).

April 20-23: 14th Fiscal Law (5F-F12).

April 26-30: 12th Staff Judge Advocate (5F-F52).

May 3-14: 3rd Administrative Law for Military Installations (5F-F24).

May 12-14: 4th Contract Attorneys Workshop (5F-F15).

May 17-20: 10th Methods of Instruction.

May 17-June 4: 24th Military Judge (5F-F33).

May 24-28: 19th Law of War Workshop (5F-F42).

June 7-11: 67th Senior Officer Legal Orientation (5F-F1).

June 21-July 2: JAGSO Team Training.

June 21-July 2: BOAC (Phase VI-Contract Law).

July 12-16: 4th Military Lawyer's Assistant (512-71D/20/30).

July 19-August 6: 25th Military Judge (5F-F33).

July 26-October 1: 99th Basic Course (5-27-C20).

August 2-6: 11th Law Office Management (7A-713A).

August 9-20: 93rd Contract Attorneys (5F-F10).

August 16-May 20, 1983: 31st Graduate Course (5-27-C22).

August 23-25: 6th Criminal Law New Developments (5F-F35).

September 13-17: 20th Law of War Workshop (5F-F42).

September 20-24: 68th Senior Officer Legal Orientation (5F-F1).

October 12-15: 1982 Worldwide JAGC Conference.

October 18-December 17: 100th Basic Course (5-27-C20).

3. Civilian Sponsored CLE Courses

JANUARY

1-15: NCDA, Prosecutor's Office, Houston, TX.

7-8: PLI, Immigration & Naturalization Institute, San Francisco, CA.

7-8: NYULT, Preparation of Forms 1040 & 1040A, New York City, NY.

8: PBI, Trial of a Commercial Case, Philadelphia, PA.

10-15: NCDA, Prosecutor's Office Administrator Course, Houston, TX.

11-15: UMLC, Estate Planning, Miami, FL.

14-15: PLI, Labor Relations, San Francisco, CA.

14-15: NYULT, Preparation of Forms 1040 & 1040-A, San Francisco, CA.

14-16: GICLE, Bridge the Gap Seminar, Atlanta, GA.

14-16: ALIABA, Civil Practice & Litigation in Federal Courts, San Diego, CA.

14-15: PLI, Current Developments in Bankruptcy and Reorganization, New York City, NY.

15: PBI, Mortgage Foreclosures & Lenders' Remedies, Philadelphia, PA.

18-19: PLI, Advanced Antitrust Seminar, San Francisco, CA.

18-19: NYULT, Preparation of Forms 1040 & 1040A, Los Angeles, CA.

18-19: PLI, Preparation of Annual Disclosure Documents, New York City, NY.

22-23: GICLE, Appellate Practice & Procedure, Columbus, GA.

22-23: KCLE, Securities Law, Lexington, KY.

28-29: PLI, Preparation of Annual Disclosure Documents, San Francisco, CA.

28-30: PLI, Current Developments in Bankruptcy and Reorganization, Houston, TX.

29-30: GICLE, Appellate Practice & Procedure, Savannah, GA.

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

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

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

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

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

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

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

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

ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007.

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

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

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

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

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

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

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

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

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

FLB: The Florida Bar, Tallahassee, FL 32304.

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

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

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

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

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

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MIC: Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCD: National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NCSC: National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203.

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104.

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.

NLADA: National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452-0620.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NPLTC: National Public Law Training Center, 2000 P. Street, N.W., Suite 600, Washington, D.C. 20036.

NWU: Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611.

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275.

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

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

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

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

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

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

Current Materials of Interest

1. Articles

Chmelik, Frank J., *The Military Justice System and the Right to Trial by Jury: Size and Voting Requirements of the General Courts-Martial for Service-Connected Civilian Offenses*, Vol. 8, No. 3 *Hastings Constitutional Law Quarterly* 617 (Spring 1981). Address: *Hastings Constitutional Law Quarterly*, 198 McAllister St., San Francisco, CA 94120.

Gitchoff, G. Thomas, *Expert Testimony at*

Sentencing, Vol. VII, No. 1 *The National Journal of Criminal Defense* (Spring 1981). Address: College for Criminal Defense, College of Law, University of Houston, Houston, Texas 77004.

Jordan, Walter E., Judge, *A Trial Judge's Observations About Voir Dire Examination*, Vol. 30, No. 3 *Defense Law Journal*. Publisher: The Allen Smith Company, 1435 North Meridian Street, Indianapolis, IN 46202.

2. Regulations.

NUMBER	TITLE	CHANGE	DATE
AR 15-180	Army Discharge Review Board	C.1	15 Oct 81
AR 28-1	Army Morale Support Activities	902	12 Aug 81
AR 37-41	Regulations Governing the Use of Project Orders		1 Aug 81
AR 135-100	Appointment of Commissioned and Warrant Officers of the Army	904	7 Sept 81
AR 135-178	Separation of Enlisted Personnel	C.4	15 Aug 81
AR 135-210	Order to Active Duty as Individuals During Peacetime	903	25 Aug 81
AR 140-158	Enlisted Personnel Classification, Promotion, and Reduction	I06	25 Aug 81
AR 190-40	Serious Incident Report		1 Sep 81

<i>NUMBER</i>	<i>TITLE</i>	<i>CHANGE</i>	<i>DATE</i>
AR 230-65	Nonappropriated Funds—Accounting and Budgeting Procedures	903	7 Sep 81
AR 550-1	Procedures for Handling Requests for Political Asylum and Temporary Refuge		1 Oct 81
AR 600-4	Remission or Cancellation of Indebtedness Enlisted Members		1 Aug 81
AR 601-280	Army Reenlistment Program	915	3 Sep 81
AR 612-10	Reassignment Processing and Army Sponsorship (And Orientation) Program		1 Aug 81
AR 630-5	Leave, Passes, Administrative Absence, and Public Holidays (Reprint Incl C 1-3)	1-3	1 Jun 75

By Order of the Secretary of the Army:

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

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

