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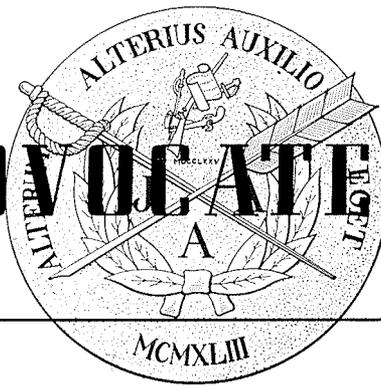
JUDGE ADVOCATE JOURNAL

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JOHN J. McCLOY
Assistant Secretary of War

Photo by Signal Corps, U. S. Army

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The Judge Advocate Journal is not an organ of the War Department. The views expressed in the Journal are those of the author of each article primarily. It is the policy of the Journal to print articles on subjects of interest to officers in the Judge Advocate General's Department in order to stimulate thought and promote discussion; this policy will be carried out even though some of the opinions advanced may be at variance with those held by the Officers and Directors of the Judge Advocates Association and the Editors.

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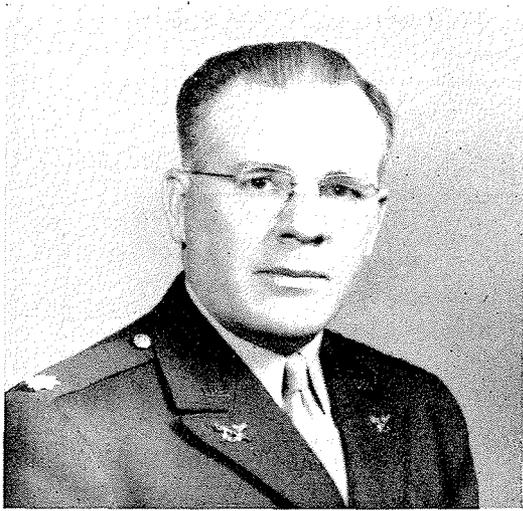


THE *General's* PAGE

I TAKE this opportunity to extend a cordial welcome to the officers from our neighboring countries to the South who will be our guests for the next several weeks. These officers come from the legal departments of the armies of their respective countries and their interests will naturally be centered on our system of military justice. We shall endeavor to give them as informative a course as possible. However, we know that we too will profit by their visit. They will bring to us information about their systems of military justice from which we may draw suggestions for our own. The exchange of ideas which will take place will be to our mutual profit. Not least of the benefits of the conference will be the increased friendship and respect which come from better knowing one's neighbor. I hope their visit with us will be most pleasant.

The Judge Advocates Association pays tribute in this issue of The JOURNAL to Honorable John J. McCloy, Assistant Secretary of War. We in The Judge Advocate General's Office have the privilege of frequent association with Mr. McCloy, particularly in connection with civil affairs and military government questions, alien exclusion and relocation cases, and war crimes matters. He is an able lawyer whose sound judgment and untiring devotion to the task at hand have won him universal respect.

MYRON C. CRAMER,
Major General,
The Judge Advocate General.



THE *President* SAYS—

THE new officers and directors have been formally installed. Col. E. H. Young and Col. Robert M. Springer are on foreign service. They were founders and two of the most enthusiastic workers for the advancement of the purpose of our Association. They have given much of their time and talents to the organization and maintenance of our Association and their earnest cooperation and whole-hearted response to every demand made upon them contributed in large measure to whatever measure of success we claim for our organization. The officers and directors will miss their genial presence and wise counsel. One of the vacancies thus created has been filled by the election of Lt. Col. Reginald C. Miller, Commandant of the Judge Advocate General's School, the successor to Col. Young. Practically every department where a large number of Judge Advocates are stationed is represented on the new board of directors. It is with pride that we announce that Col. Gordon Simpson, one of our new directors, received the high honor of being elected as an Associate Justice of the Supreme Court of Texas. He was nominated while serving overseas and his election to his present exalted position is well-deserved tribute by the great state of Texas to one of her most illustrious sons—a real gentleman, a fine officer, a student of the law and a true friend. We may be confident that he is the forerunner of a great number of our members who shall have similar honors bestowed upon them.

It is announced with pleasure that Mr. Milton I. Bal-dinger has accepted his reappointment as Executive Secretary. He has been of invaluable assistance to our editors in advising on the technicalities of the composition of the Journal and in ironing out the many difficulties that arise from time to time in its distribution to the members. His uniform courtesy, expert advice and cheerful cooperation are deeply appreciated by all who have worked with him. It should be noted that he has refused to accept any remuneration for his services.

The new administration solicits the help of every member. How can you help? Send in a serious article on a subject of general interest to our members. Write and tell us about your experiences. They may be of value to your brother J. A.'s. Anything happen that was exciting, interesting or funny? Let us all get in on it. Be sure and notify us when you are assigned to a new station. We are still having a lot of trouble making delivery of Journals to our members who are overseas. It is a small consolation to know that other professional military publications are having the same difficulties. We have consulted the postal authorities, but to no avail.

This is war time and magazines and like publications have a low priority, but your correct current address will be most helpful for us to get the Journal into your hands.

As this issue goes to press we received a letter from one of our members. He said that upon his discharge from active duty he intended to resume the practice of law, but there was some doubt in his mind that he would return to the town where he had practiced when he joined the service. He suggested that our Association might well initiate a survey of the United States to determine those localities which hold out the best promise of success for the lawyer veteran returning to civilian practice. There must be other members who would be glad to have such information and certainly it appears to be a proper function for our Association to investigate the feasibility of such a project. A progress report on this subject will be given in a subsequent issue of the Journal. It is hoped that this valued suggestion will stimulate other members to send in their ideas on how the Association can be of help to our brother officers in war time and in the peace to follow. Your letter will be gratefully received.

Let us all remember that the officers and directors who have agreed to accept the responsibility of office, have done so with the knowledge that it means work after regular duty hours. They are all busy men and whatever they do for our Association is in addition to and not at the expense of their official duties. It is their intent to hold this organization together during these difficult times so that upon complete cessation of hostilities its records and those of its members shall be intact and readily accessible for the succeeding administrations to carry on the work for which it is destined in peace-time. Whatever they do is designed for the mutual benefit of all. Mutual benefit connotes mutual responsibility. The mere payment of dues does not in all cases completely discharge the responsibility which we owe to support and work for those activities which are communal in interest and well-purposed in spirit. We must have members who shall be alert to every opportunity to help their brother officers do their war time job with the utmost competence. This is one of our principal present objectives. If each member will seriously consider what he can do to further the best interest of our Association and then take action, we shall all one day look back on the war-time record of the Association with pride and satisfaction at a job well done.

HOWARD A. BRUNDAGE,
LT. COL., J.A.G.D.,
President.

John J. McCloy

ASSISTANT SECRETARY OF WAR

IF YOU go to interview John Jay McCloy, Assistant Secretary of War, in order to write a profile about him, he will tell you there is very little to write about. He says he's unglamorous. He will probably tell you, "I practiced law up in New York for about twenty years, then Colonel Stimson asked me to come down here." That's about all there is to it, so he says.

By taking a look at Who's Who you find that he will be fifty on 31 March, and that he is a native of Philadelphia, being the son of John Jay and Anne May Snader McCloy. It says he was a student at Peddie School from 1907 to 1912 and that's all it says about Peddie. It was here at Hightstown, New Jersey that McCloy got interested in sports. In those days at Peddie, you either went out for practically all sports or you might as well have gone to some other school. And so it was basketball, tennis, football, baseball. Last year he received the award for being the outstanding Peddie alumnus.

The only thing the book says about Amherst is "AB Cum Laude 1916." After talking about it a while, the Secretary may tell you that he played on the tennis team—he was its captain. Any other sports there? Well, he went out for others and while he could play all creditably he excelled only in tennis.

Then came Harvard Law School for one year and the war. In May, 1917 he went to the Plattsburg Training Camp where he had been several times before. He had also studied military history and tactics. He could tell you about Napoleon's campaigns, and Grant's and Lee's. He had a feeling of "belonging" when he got down to Plattsburg at the First Officers' Training Camp and with mild disdain he watched the novices getting their "quickie" commissions in the emergency army. So, he tells you with a grin, he put in for the regular army and was commissioned a provisional second lieutenant of Cavalry.

He was assigned to the 19th Cavalry at Fort Ethan Allen, Vermont, which was later reorganized into the 77th Field Artillery, a component of the 4th Division. He served in France with the American Expeditionary Forces and while overseas was promoted to captain of Field Artillery. Later transferred to the 160th Field Artillery Brigade, Second Army, he was assigned as Operations Officer. He saw duty at the front with the Second Army between the Moselle and Verdun until the Armistice. He was with the Advance General Headquarters at Treves and with the Third Army at Coblenz, Germany after the Armistice, returning to the United States in the fall of 1919. He resigned his regular army commission, retaining a reserve commission, and went back to Harvard Law School that year.

Always a great believer in aerial observation for field artillery and close air-ground cooperation, McCloy recalls how, as a junior officer in France, he tried to get the fledgling Air Corps to supply a few planes for the use of the artillery but was always met with the reply that they had better use for them. U. S. field artillery outfits the world over may thank John J. McCloy that their

tables of equipment call for observation planes as the eyes of the big guns. It is an interesting coincidence that the first legal opinion signed by Major General Myron C. Cramer after being sworn in as The Judge Advocate General on 1 December 1941 is to the effect that the Air Corps can legally turn over to the Field Artillery observation planes to be flown by qualified artillery personnel. Many tales are coming out of this war about the heroism of Piper Cub pilots who sail their sputtering little unarmed craft over enemy lines to obtain essential firing data.

Graduating from Harvard Law School in 1921, McCloy was admitted to the New York bar and began the practice of law with the firm of Cadwalader, Wickersham & Taft in New York City. In 1924 he joined the staff of Cravath, de Gersdorff, Swaine & Wood and in 1929 became a member of the firm. He traveled in France, Italy and other European countries between June, 1927 and September, 1928 and in 1930 he was placed in charge of the Paris office of the law firm, where he remained a year before returning to New York. His field was finance and corporate organization. The dramatic standout in his legal career is the Black Tom case.

On the night of July 30, 1916, a violent explosion occurred on Black Tom Island in New York harbor. Over two million pounds of munitions stored in the Black Tom Arsenal were touched off with a blast that was heard as far as Philadelphia, 90 miles away. The most devastating act of sabotage ever committed in this country, it took 25 years to finally fix the responsibility. An International Commission had already found Germany not guilty when McCloy came into the case as attorney for steel interests which had borne most of the financial loss from the destruction. He helped develop a new source of proof after painstaking months of study in the case and finally proved to the mixed claims commission not only that Germany was guilty through her trained saboteurs, but that high German government officials had committed deliberate fraud in the presentation of the case. In the course of working out the case during the 1930's McCloy educated himself on the system of sabotage, espionage, intelligence and counter-intelligence employed by Germany. During this work he availed himself of an opportunity of observing various components of the German Army on maneuvers in the field. (He had already observed much about the German government and army while serving with the Army of Occupation.) Needing someone with this background in his office Secretary of War Henry L. Stimson appointed McCloy his Special Assistant on December 16, 1940. He became Assistant Secretary of War on April 22, 1941, and thereafter has been intimately associated with the Secretary in the work of the Department.

In those early days in the War Department, they called him "Blitz" McCloy. He set a brisk tempo for there was much to be done in little time. The scope of his duties were soon broadened. Vehicles and weapons on maneuvers were still being simulated. Newspapers

carried pictures of doughboys training with wooden guns. Trucks in the field were labeled with signs saying "Tank." The Assistant Secretary was concerned with the selection of weapons for standardization and mass manufacture, the arming of the Allies before Lend-lease, the organization and training of our own army. He spent much time in the field, at the new camps and airfields springing up all over the country, and at war plants, taking careful note of the development of America's new war machine, for with every unfolding day the certainty of our ultimate participation in the conflict became clearer.

Impressed with the necessity for close cooperation between air and ground forces in modern war, McCloy worked with the War Department General Staff in laying the groundwork for the training and the teaching of tactics to effectuate the teamwork. The payoff of that planning was to come later in every important engagement participated in by the United States Army.

The tasks assigned to the Assistant Secretary follow no cut and dried pattern and in dispatching the varied jobs which have fallen to his lot McCloy has earned the title of "trouble shooter." Problems of exclusion of aliens or disaffected citizens and race relations generally are his. He played an important role in connection with War Department policies affecting the Nisei and with the matter of protecting against possible subversive activity in the Hawaiian Islands. Pleasing to him is his success in getting Nisei of proven loyalty into the army. Not even the members of the Japanese-American units now fighting in Italy could be more proud of their heroic combat record than he. The 100th Battalion, a Nisei unit, is one of the most extensively decorated organizations of the United States armed forces.

His extraordinary ability to get along with people has helped draw a variety of politico-military assignments culminating in many relations with the British, the Russians, and other allies.

He has been the chief contact with the State and Navy Departments in the day to day work of coordinating the many policy matters which affect those departments and Congress. He is chairman of the Civil Affairs Committee of the Combined Chiefs of Staff and supervises the work of the Civil Affairs Division of the War Department General Staff. With that division he has explored new avenues of thinking necessitated by the liberation of extensive areas and the vast problems of administration and supply following as a natural consequence.

McCloy makes not pretense at being spectacular. He lets the results speak for themselves. Often The Judge Advocate General and his staff are close assistants in many undertakings. His was one of the guiding hands behind the military trial of the eight Nazi saboteurs, in which Major General Myron C. Cramer, The Judge Advocate General, and members of his staff were the military prosecutors; the solution of military law problems in Hawaii in which Brigadier General Thomas H. Green, formerly Executive to the Military Governor (now Deputy Judge Advocate General) and Colonel William J. Hughes, Jr., JAGD, took prominent parts; the gathering of evidence in anticipation of the future trials of war criminals which is being handled by Brigadier General John M. Weir, Assistant Judge Advocate General, under the direction of The Judge Advocate General; the handling of varied cases involving suspected

subversives in which Colonel Archibald King, Chief of the War Plans Division of the Office of The Judge Advocate General, and Lt. Colonel Abe Goff, an assistant, have advised Secretary McCloy; and many another varied question of comparable complexity.

Arriving at his office early, he puts in a long and busy day. He usually lunches at his desk and works straight through until hours after most Pentagon workers have gone home. If Mrs. McCloy happens to have a dinner party planned he leaves in time for that, usually with some prompting from an associate or from home. If nothing is planned for the evening he may be found at his desk until around midnight. Always the insatiable reader, he is frequently in his library, poring over military history, government, economics, finance or perhaps a magazine.

Walking into his spacious office on the Pentagon Building's fourth floor you find a mild-mannered, broad-shouldered man of medium height with a strong, genuine handshake, sharp brown eyes, and an air of quiet assurance. Raising his eyes as he sits at his desk he sees a large scale map of Europe. Other maps line the walls to the right and left. Turning around in his chair he may survey the green banks of the Potomac, the Jefferson Memorial, the Washington skyline with the Capitol dome dominating the horizon. You find that he comes to the point quickly, yet you feel unhurried. He speaks in a moderate, pleasing tone with clear cut phrases, well thought out.

McCloy has never lost his fondness for athletics and the out of doors. Tennis and fishing are his favorite hobbies. When residing at Forest Hills, New York, he had opportunity to study the technique of the best tennis players and has, on occasion, crossed rackets with many of the top-flight performers. For two years he was president of the Anglers Club, headquarters of which are in New York City. Although he has had less time than ever, during the war years, to indulge in sports he still plays excellent tennis.

In 1930 Secretary McCloy married Miss Ellen Zinsser of Hastings-on-Hudson, New York. They have two children, John J., Jr., seven, now attending Potomac School in Washington and Ellen, Jr., three. He makes frequent trips by air, though of late his ever increasing responsibilities have curtailed his program of visiting training camps, war plants, and theaters of operations. In 1943 he was in the Aleutians following the Attu and during the Kiska campaigns. He has made visits to Hawaii, North Africa and Italy, studying the problems of the military forces in the field in relation to the home front. His most recent trip overseas was a tour of American bases in England in 1944 where he conferred with war leaders of the two great English-speaking countries as they made preparations for D-day. His fondness for the leaders of our fighting men is attested by the autographed pictures of Allied generals on the walls of his office. Grouped with these are photographs of fighting men of other days, now in mufti—Henry L. Stimson, Secretary of War, Robert P. Patterson, Under Secretary, and Robert A. Lovett, Assistant Secretary for Air.

McCloy rounds out the trio of lawyers (Stimson, Patterson, and McCloy) in the secretarial group to whom another lawyer, Franklin D. Roosevelt, has given supreme responsibility for the War Department's contribution to the success of American arms.

Legal Aspects OF THE Determinative Review

GENERAL COURT-MARTIAL CASES UNDER ARTICLE OF WAR 50 $\frac{1}{2}$ *

By COLONEL WILLIAM M. CONNOR, U. S. ARMY, RETIRED†

ARTICLE of War 50 $\frac{1}{2}$ of our fourth Military Code¹ under the Constitution, known as the Articles of War of 1920,² provides in general substance for an *automatic determinative judicial review* by prescribed authority of all convictions and sentences, in the form in which same are approved by the reviewing authority upon the judgmental review of the trial proceedings, in all general court-martial cases of persons subject to military law who belong to the Armies of the United States. This Article 50 $\frac{1}{2}$, substantially as it stands today,³ is the principal legislative product of our experience in military justice administration during the emergency of World War I: for the then existing Articles of War of 1916,⁴ as we shall presently see, failed to provide



COLONEL WM. M. CONNOR

for any such error-eliminating review (superimposed upon the traditional judgmental review) in the overwhelming majority of cases of Articles-of-War crimes and offenses referred for trial by general court-martial in regular course of Army administration in peace and war. On its face, this Article 50 $\frac{1}{2}$ is, naturally enough, not self explanatory, but more or less enigmatic and likely to appeal more to the curiosity than to the understanding of the experienced lawyer. Its full import is elusive and lurks in the indefiniteness of its language. Its elucidation presents a problem of extraordinary legal complexity, shrouded in considerable misconception, the correct solution of which is of the utmost importance to present-day administration of justice according to law in general court-martial cases. The task of solving that problem is hopeless unless Article 50 $\frac{1}{2}$ be viewed in proper legal perspective, and then it is wholly enticing. Such a view of the same is possible only from the vantage ground of an exhaustive study of the law in action under the pre-existent Articles of War of 1916 and other provisions of statutes and regulations concerning the ultimate automatic process of adjudication of general court-martial cases. Hence, the logical and chronological starting point

of this exploratory study of the above-stated subject is the legal situation respecting such last-mentioned process produced by certain provisions of our third Military Code—the Articles of War of 1916.

I

One of such provisions of the 1916 Articles of War was Article 48, which provided for an obligatory confirming-authority review, superimposed upon the judgmental review of the trial proceedings in the following categories of very rare general court-martial cases: (a) any approved sentence adjudged against a general officer in peace and war; (b) any approved sentence of dismissal adjudged against any officer below the grade of brigadier general in peace and war; (c) any approved sentence of suspension or dismissal adjudged against a cadet of the United States Military Academy in peace and war; (d) any approved sentence of death adjudged in peace and war. Another of such provisions of the 1916 Articles of War was Article 51, which in effect provided for a final judicial review by the President of cases involving aforesaid sentences of dismissal of an officer, or death, in time of war, whenever confirmed upon aforesaid confirming-authority review by competent authority but suspended (instead of ordered into execution), at the election of the latter, for final disposition thereof by the President himself. For convenience of further reference, this special category of very rare general court-martial cases is here designated (e). In categories (a) and (c), *supra*, said Article 48 required the President to make such determinative review; in category (b), it did so in time of peace, but in time of war permitted the exercise of that power by the commanding general of the Army in the field or of the territorial department or division having court-martial jurisdiction over the convicted officer; and in category (d) Article 48 also required the President to make such determinative review, except as to wartime convictions carrying death sentences for murder, rape, mutiny, desertion, or acting as a spy, in which excepted cases it also permitted the exercise of that power by the commanding general of the Army in the field or of the territorial department or division having court-martial jurisdiction over the offender so convicted. (Such determinative review was by Article 48 expressly eliminated in any case in which by operation of law the making of the same would have devolved upon the original reviewing authority who had approved the sentence upon judgmental review of the conviction.) Upon such determinative review in categories (a), (b), (c), and (d), Article 49 ("Powers Incident to Power to Confirm") in effect obliged an evaluation of the evidence of record and of errors and irregularities in the trial proceedings. In a word: The scope of the review included questions of both fact and law raised by the record of trial. The scope of the final judicial review in category (e) under aforementioned Article 51 likewise included questions of both fact and law.⁵ Also, inasmuch as

* Reprinted from Vol. 31, No. 1 of the Virginia Law Review by special permission. This article purports to present the personal views of the author on a subject in very nature controversial.

† Sometime Professor of Law, United States Military Academy, and Judge Advocate, United States Army.

1. For a brief but comprehensive survey of the successive Military Codes (Articles of War) enacted by Congress under the Constitution, see Connor, *Hearsay in Military Law* (1944) 30 Va. L. Rev. 462-465.

2. 41 Stat. 787 *et seq.* (1920), 10 U. S. C. §§ 1471 *et seq.*

3. As amended Aug. 20, 1937, c. 716, §1, 50 Stat. 724; Aug. 1, 1942, c. 542, 56 Stat. 732.

4. 39 Stat. 650-670 (1916).

5. Winthrop, *Military Law and Precedents* (1896 ed., 1920) War Dept. Reprint, 466.

the cited Articles 48 and 51 of the Articles of War of 1916 (in general, effective as of March 1, 1917) are in substance a virtual transcript of parts of anterior Articles 108, 106, 107, 105, and 111 of the Articles of War of 1874,⁶ it is proper to affirm, for the purposes of this study, that the provisions of Articles 48 and 51, considered above, were continuously operative throughout the fiscal year ended June 30, 1917. During that year, the number of completed trials by general court-martial of officers and enlisted men amounted to 7,833.⁷ Of this total number, no one familiar with military justice administration at that time, it is safe to say, would estimate the aggregate of such trials in categories (a), (b), (c), (d), and (e), *supra*, at as much as five per cent. So that it may be confidently asserted as well within the bounds of fact that during the fiscal year ended June 30, 1917, the process of adjudication in fully 95 per cent of trials by general court-martial culminated in the judgmental review by the reviewing authority who constituted the general court, referred each case to it for trial, and passed upon the trial proceedings, assisted and advised by the Staff Judge Advocate.⁸ This judgmental review, as an organic safeguard against injustice, must not be undervalued; for its obligatory scope under Articles War 37 and 47 extended to all questions of law and fact arising from the complete record of the trial proceedings. Such was the legal situation that enveloped trials by general court-martial at the beginning of the wartime expansion of our Military Establishment during World War I, in the course of which Army general court-martial jurisdictions increased to 106.⁹

At this point, it will make for legal completeness of presentation of the subject of this study to notice briefly a statutory duty imposed upon the Judge Advocate General of the Army by Section 1199 of the United States Revised Statutes of 1874, which reads as follows:

"Sec. 1199. The Judge-Advocate-General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge-Advocate-General of the Army.

The import of the word "revise" in the context of the quoted provision is obviously indefinite and questionable, and in 1917 it evoked a conflict of opinion in the Judge Advocate General's Office to which we shall give proper consideration later in this study. Here it will suffice to note the duly acquired force and effect of the term "revise" (and of the contextual clause of Section 1199) in the regular exercise of Judge Advocate General functions as authoritatively stated by Acting Judge Advocate General Lieber in the following paragraph of a published "Report of Judge-Advocate-General" to Honorable Redfield Proctor, Secretary of War, headed "War Department, Judge-Advocate-General's Office, Washington, D. C., May 21, 1889":

"Under the foregoing provisions it falls within the jurisdiction of this office to receive, cause to be recorded, marked, and (in due course) placed on file the records of the proceedings of all military courts; to review and report upon the proceedings of all military courts requiring the action of the President or the Major-General commanding

the Army; to examine the proceedings of all other general courts-martial received at the office for review and file, with a view of determining whether the proceedings, findings, and sentences are in conformity with law, and, in cases where defects are found, either to inform the officer who approved the proceedings, with a view of having them corrected, or if necessary, to prepare a report in relation thereto for the action of the Secretary of War. Also to cause all papers subsequently received, pertaining to any record, as aforesaid, after proper action thereon, to be indexed and filed with the record to which it pertains."¹⁰

This authoritative recital of the functions and duties of the Judge Advocate General's Office in respect of court-martial proceedings, submitted by the Acting Judge Advocate General to the Secretary of War in compliance with a War Department Circular of May 14, 1889, calling upon Chiefs of Bureaus to report to the Secretary of War, *inter alia*, the nature of the duties performed in their respective establishments, is conclusive of the fact of law that nothing in R. S. 1199 or other provision of United States statutes was at that time regarded as empowering the Judge Advocate General or the "Bureau of Military Justice"¹¹ to reverse, set aside, or vacate any judgment (findings and sentence) of a court-martial as approved by the reviewing authority who constituted the court, or to do more in regard to all military court proceedings, including cases wherein finality had already attached to the adjudication process, than as expressly declared in the paragraph just quoted of the Report of Acting Judge Advocate General Lieber. This fact of law is material to the orderly development of our subject and helpful to an understanding of War Department emergency measures in the premises adopted early in 1918, next to be noticed.

II

An inevitable need of some sort of superimposed judicial review of the law and facts of the case was suddenly and acutely felt in the War Department a few months after the outbreak of war in 1917 in respect of a very considerable and important part of the aforementioned 95 per cent of general court-martial cases in which finality attached to reviewing authority action upon the judgmental review thereof under the modernized Articles of War of 1916. The case which supplied the impelling force of remedial action upon that need was the celebrated *Texas Mutiny* case¹² the component facts and administrative consequences of which are noteworthy outlined in the following statement of the case and reference to remedial General Order No. 7, W. D., 1918, by Judge Advocate General Crowder:

"In this case certain sergeants, having been ordered under arrest by a young officer, for a very minor offense, were afterwards, while still under arrest, directed to drill; but as the Army Regulations, properly construed, do not authorize noncommissioned officers to be required to attend drill formations while under arrest, the sergeants declined to drill as ordered; for this disobedience they were found guilty of mutiny, and sentenced to dishonorable discharge and imprisonment for terms of between 10 and 25 years.

"Now it may be at once and unreservedly admitted that this was a genuine case of injustice, and that the injustice was due to an over-strict attitude of military officers toward

6. Revised Statutes of 1874, § 1342.

7. Report of the Judge Advocate General U. S. Army to the Secretary of War (1918) 12.

8. This writer here assumes to speak from Judge Advocate experience dating from the close of the calendar year 1917.

9. Report of J. A. G., U. S. A. (note 7. *supra*) at p. 5.

10. List of the Records and Files of the War Department Arranged by Offices and Divisions with Names of the Clerks in Each Division (1890), at p. 35.

11. Act of June 23, 1874, 18 Stat. 244.

12. CM 106, 663, tried at Fort Bliss, Texas, in September, 1977.

discipline; for it is conceded by all that the young officer who gave the order to drill was both tactless and unjustified in his conduct, and it is conceded that the commanding officer who reviewed and approved the sentence was a Regular Army officer of long experience, who failed to appreciate the justice of the situation. That this case illustrates the occasional possibility of the military spirit of discipline overshadowing the sense of law and justice is plain enough. But that it indicates any general condition can not for a moment be asserted. Moreover, this very case serves also to illustrate the essentially law-enforcing spirit which dominates in the office of the Judge Advocate General. The impropriety and illegality of the sentence in this case was immediately recognized when the record arrived in the office for review. An opinion was prepared pointing out the irregularity and injustice, and directing that the findings be set aside. But the legality of such a direction was questioned in the face of a ruling by the Attorney General of the United States, many years ago, that a sentence of court-martial, once executed, can not be set aside even by the President himself. This raised the general question of the authority of the Judge Advocate General not merely to recommend for clemency (which would not have been an adequate redress for the convicted men in this case), but to direct the setting aside of the findings, in a judgment of a court-martial, for legal error, where the sentence had been already executed (namely, in this case, the sentence of dishonorable discharge).

"The Secretary of War having sustained the doubt as to the authority of the Judge Advocate General to take such radical action, clemency was extended by the President, releasing the men from confinement and restoring them to duty, within about three months from the date of their conviction. At the same time a new measure was adopted by the Secretary of War, in the shape of General Order No. 7, W. D., 1918, taking effect February 1, 1918, which prevented the recurrence of such instances, by directing that the commanding general, upon confirming a sentence of death or officer's dismissal or dishonorable discharge, should suspend the execution of the sentence, pending a review of the case in the office of the Judge Advocate General. Thus immediate measures were taken, to go as far as could be gone under the law as conceded on all hands, to prevent the recurrence of the situation presented in the Texas mutiny case."¹³

Judge Advocate General Crowder then proceeded to speak the definitive word with respect to the legal non-availability of R. S. 1199 as a supply source of plenary power of last-resort judicial review in military justice administration. He did so, while further pronouncing upon the previously mentioned general question of the authority of the Judge Advocate General to direct the setting aside of the findings in a judgment of a court-martial, and in the following very significant language:

"The basic statute defining the powers of the Judge Advocate General in respect to courts-martial judgments dates from 1862, and provides (U. S. Revised Statutes, section 1199) that 'the Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial,' etc. This word 'revise' was construed by the senior officer on duty under me, when dealing with the Texas mutineers' case (above cited), to signify a complete appellate authority empowering the Judge Advocate General to correct and if appropriate to set aside, reverse, and annul a court-martial judgment which involved some legal error. But this construction of the statute could not be accepted by me. One reason was that for 55 years my predecessors in office, beginning with Judge

Holt, in Lincoln's administration, had failed to advance any such construction enlarging their powers, and that a decision of a Federal court in 1882 had expressly repudiated the propriety of such construction. A second reason was that the assumption of such a power by this office under that statute would equally operate to control not only commanding generals of a division or department but also the President, as Commander in Chief, in those cases where he has the reviewing authority under the 48th article of war, and thus would render the Judge Advocate General virtually a supreme military tribunal independent of the President himself; the ultimate control of the discipline of the Army would become vested in the Judge Advocate General. A third reason was that even the President himself does not under the existing law possess such a power to set aside and annul a sentence of a court-martial, when once it has been executed; the absence of such a power in the President having been constantly maintained in a long series of opinions by the Attorneys General of the United States, beginning with Caleb Cushing in 1854. (6 Op. A. G. 514; 10 Op. A. G. 66; 15 Op. A. G. 290; 17 Op. A. G. 303.) It would thus be anomalous and extraordinary to suppose that the Congress had intended to vest the Judge Advocate General with a supreme authority which they had not seen fit to grant to the President himself; the President being the 'natural and proper depository of appellate judicial power' for the Army, as pointed out by William Wirt, when Attorney General in 1818. Such was the issue of legal theory, and such were the controlling reasons forcing me to refuse to accept the construction of Revised Statutes, section 1199, which would vest that extraordinary power in my office.

"But the lack of that power, lodged somewhere, and most preferably in the President himself, was certainly to be regretted. The General Order No. 7, effective February 1, 1918, and drafted at my instance and in my office in December, 1917, virtually prevented the recurrence of injustice in most cases by requiring the reviewing authority to suspend execution of the sentence pending the review in my office. But for cases that had occurred prior to that date, and possibly for other occasional cases, a more radical remedy was needed, for example, in the above-cited case of the Texas mutineers, for whom the record of dishonorable discharge remained perforce unrevoked, although they had been already released from confinement and restored to duty.

"I was ready and anxious to see the existing law so amended as to remedy this defect, by a grant of power from Congress to the President. Far from opposing such remedy, I took prompt measures to secure it. My only negative attitude was to oppose the assumption of that power by myself, through mere construction, sudden and revolutionary, of a statute never before deemed to bear such interpretation."¹⁴

The foregoing excerpts are from a 60-page letter of Major General E. H. Crowder, then Judge Advocate General of the Army, dated March 10, 1919, written to the Secretary of War in response to a letter of inquiry from the latter to the Judge Advocate General under date of March 1, 1919,¹⁵ concerning our system of military justice under the revised and modernized Articles of War of 1916. The War Department, upon receipt thereof, published the letter from Judge Advocate General Crowder (together with the letter of the Secretary of War to him) to allay the public apprehensions, respecting which the Secretary had avowed his deep concern,¹⁶ at a time

13. *Military Justice During the War—A letter from the Judge Advocate General of the Army to the Secretary of War in Reply to a Request for Information* (1919 War Department) 49-50.

14. *Ibid.*, n. 13, pp. 51-52. The reference to a decision of a Federal court in 1882 is that in *Ex parte Mason*, 256 Fed. 384, 387 (C. C., N. D., N. Y. 1882).

15. *Ibid.*, n. 13, pp. 3-4.

16. *Ibid.*, n. 13, p. 3.

when the irruptive and pervasive court-martial controversy of 1919 was mounting to its maximum of sensational intensity. To this controversy, upon the legal merits of which a specially constituted Committee on Military Law of the American Bar Association sat in judgment and made an elaborate report, some months later, to the President and the Executive Committee of the Association,¹⁷ the 1920 revision of the Articles of War of 1916 happily put an end. But the letter of Judge Advocate General Crowder (quite consonant with the established concept of the powers conferred upon the Judge Advocate General by R. S. 1199 at the time of the above considered report thereon of Acting Judge Advocate General Lieber almost thirty years earlier) retains its original legal value because of the flood of interpretative light which it throws upon Section 1199 of the Revised Statutes and its wartime procedural complement, namely, War Department General Orders No. 7 of 1918, in respect to a superimposed review of a very considerable and important part of the great mass of general court-martial cases and also upon Article of War 50½ of the Articles of War of 1920. For Congress, as we shall see, permanently embodied in that Article the general scheme and *modus operandi* of this wartime General Order of the War Department now to be examined.

III

War Department General Orders No. 7, dated January 17, 1918 to be effective from and after February 1, 1918,¹⁸ was framed in the Judge Advocate General's Office and published by the War Department, as an exertion of the rule-making command power of the President as Commander in Chief, to make legally possible, *inter alia*, a thorough *automatic appellate review* (as it was then called) of a very considerable and important part of the great mass of general court-martial trial proceedings (such as the celebrated *Texas Mutiny* case of 1917, *supra*) wherein the process of adjudication culminated, under the 1916 Articles of War, in reviewing authority action upon judgmental review of the complete record of the trial proceedings by the division or other commander who constituted the court and caused each case heard by it to be referred to it for trial in execution of his punitive command power. This General Order consisted of two numbered sections, the first of which contained the general scheme of the measure in six numbered paragraphs respectively reading as follows:

17. The Committee was of two minds on the vexed question of improvements in our court-martial machinery made necessary by wartime experience of 1917-1918, but spoke unanimously on the question of law of the non-availability of R. S. 1199 as a supply source of plenary power of last-resort judicial review in military justice administration. The Committee reported on the latter question as follows:

"It may hardly be necessary for the Committee to express an opinion upon this question; yet we are inclined to think, in view of the custom of the judge-advocate general for many years and of the only federal decision on the subject, the case of Mason in the Circuit Court of the Northern Division of New York, decided by Judges Wallace and Cox, that it would be rather difficult to establish as a matter of law that the use of the word 'revise' in section 1199, conferred such an extensive authority as is now asserted by some." See "General Statement" in *Report of the Committee on Military Law (Filed with the Secretary of the Executive Committee July, 1919) to the President of the American Bar Association and the Members of Its Executive Committee*, at p. 20.

18. Wigmore, *A Source-Book of Military Law and War-Time Legislation* (1919) 604-606.

"1. Whenever, in time of war, the commanding general of a territorial department or a territorial division confirms a sentence of death or one of dismissal of an officer, he will enter in the record of trial his action thereon, but will not direct the execution of the sentence. His action will conclude with a recital that the execution of the sentence will be directed in orders after the record of trial has been reviewed in the office of the Judge Advocate General, or a branch thereof, and its legality there determined, and that jurisdiction is retained to take any additional or corrective action, prior to or at the time of the publication of the general court-martial order in the case, that may be found necessary. Nothing contained in this rule is intended to apply to any action which a reviewing authority may desire to take under the 51st Article of War.

"2. Whenever, in time of peace or war, any officer having authority to review a trial by general court-martial, approves a sentence imposed by such court which includes dishonorable discharge, and such officer does not intend to suspend such dishonorable discharge until the soldier's release from confinement, as provided in the 52d Article of War, the said officer will enter in the record of trial his action thereon, but will not direct the execution of the sentence. His action will conclude with the recital specified in rule 1. This rule will not apply to a commanding general in the field, except as provided in rule 5.

"3. When a record of trial in a case covered by rules 1 or 2 is reviewed in the office of the Judge Advocate General, or any branch thereof, and is found to be legally sufficient to sustain the findings and sentence of the court, the reviewing authority will be so informed by letter, if the usual time of mail delivery between the two points does not exceed six days, otherwise, by telegram or cable, and the reviewing authority will then complete the case by publishing his orders thereon and directing the execution of the sentence. If it is found, upon review, that the record is not sufficient to sustain the findings and sentence of the court, the record of trial will be returned to the reviewing authority with a clear statement of the error, omission, or defect which has been found. If such error, omission, or defect admits of correction, the reviewing authority will be advised to reconvene the court for such correction; otherwise he will be advised of the action proper for him to take by way of approval or disapproval of the findings or sentence of the court, remission of the sentence in whole or in part, retrial of the case, or such other action as may be appropriate in the premises.

"4. Any delay in the execution of any sentence by reason of the procedure prescribed in rules 1, 2, or 3 will be credited upon any term of confinement or imprisonment imposed. The general court-martial order directing the execution of the sentence will recite that the sentence of confinement or imprisonment will commence to run for a specified date, which date, in any given case, will be the date of original action by the reviewing authority.

"5. The procedure prescribed in rules 1 and 2 shall apply to any commanding general in the field whenever the Secretary of War shall so decide and shall direct such commanding general to send records of courts-martial involving the class of cases and the character of punishment covered by the said rules, either to the office of the Judge Advocate General at Washington, D. C., or to any branch thereof which the Secretary of War may establish, for final review, before the sentence shall be finally executed.

"6. Whenever in the judgment of the Secretary of War, the expeditious review of trials by general courts-martial occurring in certain commands requires the establishment of a branch of the Judge Advocate General's Office at some convenient point near the said commands, he may establish such branch office and direct the sending of general court-martial records thereto. Such branch office, when so established, shall be wholly detached from the command of any commanding general in the field, or of any terri-

torial, department, or division commander, and shall be responsible for the performance of its duties to the Judge Advocate General."

In furtherance of the general purpose of the above quoted paragraphs included in Section I of this General Order, Section II thereof established a branch of the office of the Judge Advocate General in France; designated the officer to be detailed as head thereof the Acting Judge Advocate General of the American Expeditionary Forces in Europe (to be subject to the general control of the Judge Advocate General of the Army); and implicitly devolved upon the former the authority under Section 1199 of the Revised Statutes possessed by the latter as set forth by Acting Judge Advocate General Lieber in the paragraph of his Report of May 21, 1889, quoted *supra*. And in regard to sentences of death, dismissal, or dishonorable discharge imposed by general courts-martial in such American Expeditionary Forces, this section expressly required the transmission of the records of all such cases to such branch office for review therein, and made it "* * * the duty of the said Acting Judge Advocate General to examine and review such records, to return to the proper commanding officer for correction such as are incomplete and to report to the proper officer any defect or irregularity which renders the findings or sentence invalid or void, in whole or in part, to the end that any such sentence or any part thereof so found to be invalid or void shall not be carried into effect."

Examination of above-quoted paragraphs 1-6 of this General Order will disclose that paragraphs 2, 3, 4, 5, and 6, read together as one rule-making provision of procedural law, provided for a superimposed last-instance judicial review in the Judge Advocate General's Office, or branch thereof, before execution of the sentence, in that very considerable and important part of the great mass of general court-martial cases which was featured by approved sentences of non-suspended dishonorable discharge of enlisted men and not embraced within categories (a), (b), (c), (d), or (e), *supra*; and that paragraphs 1, 3, 4, 5 and 6, so read together, provided for a like review in that part of those general court-martial cases embraced within categories (b) and (d), *supra*, which lay within the ultimate judicial power of the commanding general of the Army in the field or that of the commanding general of the territorial department or division. For convenient reference, aforesaid cases featured by approved sentences of non-suspended dishonorable discharge, included within the scope of G. O. 7, is here designated category (f). This General Order, it may be noted parenthetically, had no application to cases within categories (a), (c), and (e), *supra*, since only the President (advised by the Judge Advocate General) was empowered to act as final reviewing authority in all such cases under the provisions of above-cited Articles of War 48 and 51.

Secreted in the language of the above-quoted paragraphs of this G. O. 7 is to be found much of the legal difficulty that today attends the proper administration of the supervenient Article of War 50½—the main subject matter of this study. Exactly what sort of automatic appellate review did this War Department General Order authorize? General Crowder has said of it in his above-cited letter: "It may be safely asserted that in no State of the Union is any more thorough scrutiny given to the record of a criminal case than is given in my office, and that in most state supreme courts the scrutiny does not

approach in thoroughness the methods here employed."¹⁹ But apart from such a sweeping generalization, these inquiries are here in order: (1) Was such authorized review unlimited as to substantial questions of law of every kind presented by or lurking in the record of trial and subsequent proceedings in the case? (2) Did such authorized review extend to all substantial questions of fact in the case arising from the accusation, pleas, evidence of record and approved findings therein, including those produced by a conflict in the testimony of witnesses on the trial and requiring for their determination the scrutiny and evaluation of the evidence of record by the reviewing officers in the Judge Advocate General's Office or branch thereof? (3) Was such authorized review legally binding upon the reviewing authority or confirming authority required to give it his consideration or were the findings of fact, conclusions of law, opinions, and so-called rulings of the Judge Advocate General's Office, set forth therein, only advisory and recommendatory in legal effect in respect to judicial action of the reviewing authority or the confirming authority on the record of trial?

(1) As to questions of law, the intent of the measure must be extracted from certain vague words and phrases in above-quoted paragraphs 1 and 3 contained in the following passages: "* * * after the record of trial has been reviewed in the office of the Judge Advocate General, or a branch thereof, and its legality there determined, * * *;" "* * * and is found to be legally sufficient to sustain the findings and sentence of the court, * * *;" "If it is found, upon review, that the record is not sufficient to sustain the findings and sentence of the court, the record of trial will be returned to the reviewing authority with a clear statement of the error, omission, or defect which has been found." The General Order does not define what is meant by "legality" or "legally sufficient;" nor does it anywhere prescribe or refer to any criterion for determining upon such review the question of the legal sufficiency of the record of trial to sustain the findings and sentence of the court as approved by the reviewing authority. But certainly no record of trial could be held upon such review to be legally sufficient to sustain the judgment of the court if the same disclosed the erroneous decision of a pivotal question of law in the case or an invalidating error or irregularity in the trial proceedings. Hence, it is reasonably apparent that the authorized scope of the review under G. O. 7 included of necessity every discernible substantial question of law in the case—in common with the traditional advisory review of the Staff Judge Advocate of each general court-martial jurisdiction. On this subject General Crowder had the following to say in his above-cited letter, in explaining how the review in the Judge Advocate General's Office operated largely to offset the disadvantage of inexperienced defense counsel at the trial:

"Moreover, it is at this point that the military system offers a guarantee (not found in the civil system) of protection against the consequences of such inadequate defenses as may from time to time be found. The system of automatic appeals, already described, and the thorough scrutiny of the record given in the Office of the Judge Advocate General may be relied upon to supply that protection which in civil courts is usually given only by the skilled scrutiny of counsel for defense in the trial. Whatever point of law might have been made for accused's

19. *Military Justice During the War*, n. 13 *supra*, at p. 16.

benefit by counsel's objection, and has failed to be made through his ignorance, can be and is habitually detected and enforced during this appellate scrutiny. The civil doctrine of utilizing only points raised by counsel's exceptions has no place in military appellate procedure. The officers of the Judge Advocate General's Office as already shown above scrutinize the record and insure the observance of those fundamental rules of law which ordinarily are watched over by counsel for defense, and if such rules of law are found not to have been observed the record is disapproved for legal error, regardless of whether counsel for defense took notice of it or not. Virtually this appellate review performs over again the functions of counsel for the defense, and, not only in technical duty but in actual spirit, this appellate review seeks to make good those deficiencies of defense which may become obvious to the experienced scrutiny of the appellate officer. It is in this appellate review that I find the most satisfactory assurance that such deficiencies as may have from time to time occurred through the inexperience of officers assigned for the defense have been adequately cured."²⁰

In so far as the foregoing statement of Judge Advocate General Crowder indicates that any failure during trial of a case to observe any of "* * * those fundamental rules of law which ordinarily are watched over by counsel for defense, * * *" ever constituted, of itself, invalidating error of law upon so-called appellate review under G. O. 7, such statement is inadvertently erroneous. For the reviewing authority or the confirming authority of a general court-martial jurisdiction for whose benefit such a review of a case was made in the Judge Advocate General's Office (as an ultimate safeguard against possible error on the part of the Staff Judge Advocate of such jurisdiction in his traditional advisory review of the same) was expressly forbidden by Article of War 37 to ascribe invalidating effect to the proceedings, findings, or sentence in any case by reason of improper admission or rejection of evidence or any error of pleading or procedure unless the substantial rights of the accused had been injuriously affected thereby, in his opinion formed from the trial proceedings as a whole. And in matter of fact, the Judge Advocate General's Office, in making such reviews, conformed to the prevalent precept of Article of War 37 in the premises, as is well known to those Judge Advocates who functioned in military justice administration under this General Order in the years 1918 and 1919.

(2) To the significant and far-reaching question whether the review superimposed by G. O. 7 for the general guidance of the reviewing authority or the confirming authority upon that of his Staff Judge Advocate made especially to facilitate his judicial action on the record of trial did legally extend to all component questions of fact in the case arising from the accusation, pleas, evidence of record and approved findings therein, including those produced by a conflict in the testimony of witnesses on the trial and requiring for their determination the scrutiny and evaluation of the evidence of record, the answer must be sought in the very same expressions in this General Order quoted in (1) above. Flowing from the facts of law that under the then prescribed Manual for Courts-Martial²¹ (as under the current manual²²) conviction of an accusation or any part thereof could not be had unless the court were satisfied beyond a reasonable doubt of the guilt of the accused is the necessary

consequence of an ultimate showing of proof beyond reasonable doubt in a general court-martial record of trial as a requisite of its legal sufficiency to sustain the findings and sentence of the court, within the meaning of this General Order. It follows that no record of general court-martial trial proceedings could rightly be found "legally sufficient" with respect to G. O. 7, upon a review of the same for judicial use below, unless and until found to contain proof of adjudged guilt beyond reasonable doubt.²³ Which is to say that the authorized scope of such review included, in very nature, an exhaustive consideration of the probative force of the evidence as a whole in order to determine the question of proof of adjudged guilt beyond reasonable doubt whenever presented by the record of trial—making proper allowance, of course, for the fact that the court and not the reviewing officers saw as well as heard the witnesses testify. Such, it appears, was the authorized scope of the traditional Staff Judge Advocate review in Army general court-martial jurisdictions.²⁴ In any event, the correctness of the conclusion just expressed as to the authorized scope of the review under G. O. 7 in regard to the question of proof of adjudged guilt beyond reasonable doubt is clearly established by the contemporaneous interpretation of that General Order set forth by Judge Advocate General Crowder in a letter dated February 13, 1918, from the Office of the Judge Advocate General to all Department and Division Judge Advocates, having for its subject: "General Order No. 7, War Department, 1918, its purpose, Procedure thereunder, *etc.*;" suggestions as to office administration." The body of that letter, in the part here material, reads as follows:

"1. The procedure under General Order No. 7, War Department, 1918, was established to enable the War Department to do substantial justice in those cases in which it is found, on reviewing, in this office, the records of trial by general courts-martial, that persons have been *improperly or insufficiently charged with, or convicted on insufficient or illegal evidence of, serious crimes or offenses, and dishonorable discharge or dismissal has already become an accomplished fact.* Cases of this character are not numerous, but a case occasionally arises in which remedial action by way of remission of sentence with an offer of restoration to duty or reenlistment is, at best, but a futile attempt to do justice so long as a discharge or dismissal which has been finally executed cannot be reached and set aside or reversed, but must remain standing forever against the record of the accused. Cases where the death sentence is imposed also fall within this class. Great embarrassment would result if it should be held that a death sentence was illegal after the same had been executed.

"The necessity for a new procedure growing out of the circumstances indicated, it goes without saying that it was not intended by the publication of General Order No. 7 to magnify or increase the importance of this office or decrease the importance or responsibility of department or division judge advocates.

"2. In order to bring about the necessary cooperation in the enforcement of General Order No. 7, War Department, 1918, the following suggestions are made for your information and guidance:

23. As remarked by Judge Advocate General Crowder in his cited letter to the Secretary of War, *the entire testimony is reported verbatim* in every official record of trial by general court-martial (*Military Justice During the War*, n. 13, p. 25).

24. See letter from the Judge Advocate General's Office to all Department Judge Advocates bearing date of April 30, 1914, and signature of E. H. Crowder, Judge Advocate General. Also, 1917 M. C. M., par. 370, as enlarged by C. M. C. M. No. 5, July 14, 1919.

20. *Ibid.*, n. 13 *supra*, at p. 30. Cf. *ibid.*, at pp. 11, 14, 15, 16, 25, 46.

21. 1917 M. C. M., pars. 288, 296.

22. 1928 M. C. M., par. 78a.

(a) In all records of trial by general court-martial falling within the purview of General Order No. 7, War Department, 1918, to wit: cases involving a sentence of death, dismissal of an officer, or dishonorable discharge of an enlisted man, in which it is not intended to suspend the dishonorable discharge, the department or division judge advocate should prepare a review of the evidence in the case. This should be as brief and concise as possible, but should outline clearly the evidence upon which the conviction must rest. A copy of this review or summary of the evidence should be attached to the record to which it pertains and forwarded for file therewith in this office.

(b) In all cases in which the execution of the sentence is deferred until the record of trial is reviewed in this office, judge advocates, prior to forwarding the record of trial, will take the necessary data from the same, draft the general court-martial order, give it the date of action by the reviewing authority, and upon receiving notice from the office of the Judge Advocate General, or any branch thereof, that the record is legally sufficient to support the findings and sentence, cause the general court-martial order to be published in the usual form. This will make unnecessary the return of the record."²⁵ (Italics supplied.)

In fine, from the above italicized words of this letter of instructions of February 13, 1918, it clearly appears that the expressions "legality there determined," "legally sufficient to sustain the findings and sentence of the court," and "record is not sufficient to sustain the findings and sentence of the court," in their respective textual setting in the above-quoted paragraphs of G. O. 7 contemplated and authorized a so-called appellate review that dealt efficaciously with questions of law discernible in any record of trial reviewable thereunder and in like manner with questions of fact therein by application to the latter of the trial court standard of proof beyond reasonable doubt. And that the measure of proof authorized by General Order No. 7 for the process of review thereunder was that prescribed in the Manual for Courts-Martial for court members, namely, proof of guilt beyond reasonable doubt (as distinguished from any lesser or lower standard), is apparent from the presentation of the notable *Camp Gordon* case²⁶ made by Judge Advocate General Crowder in his above cited letter of March 10, 1919, to the Secretary of War. The case, it appears, was the subject of considerable adverse comment while the court-martial controversy aforementioned was running its course in Congress and in the public press, and was among the first to be reviewed in the Judge Advocate General's Office under General Order No. 7. It involved a general court-martial conviction for burglary of a soldier stationed at Camp Gordon who at the trial had testified as a witness in his own behalf and whose exculpatory statement had been rejected by the court in reaching its ultimate finding of guilty as charged. General Crowder gives the history of the case from receipt of the record trial in the Judge Advocate General's Office and lays emphasis on the matter of a review therein of such record based on the standard of proof of adjudged guilt beyond reasonable doubt in the following very illuminating statement:

"On revision of the record no legal error could be found, but this office reached the opinion that though there was sufficient evidence to sustain the finding, the evidence did not go so far as to show his guilt beyond a reasonable doubt. In such a situation no supreme court in the United States (with three or four exceptions only) would inter-

fere and set aside a jury's verdict. Nevertheless, this office recommended a reconsideration of the verdict by the reviewing authority. It was in fact reconsidered, but the reviewing authority adhered to the finding. But the feature for emphatic notice is that reconsideration was given, not by exercising the 'arbitrary discretion of a military commander,' but by referring the case to the judge advocate of the command, as legal adviser. The judge advocate wrote an elaborate review of the evidence, disagreeing with the view of this office and recommending confirmation, and the commanding general followed this opinion of his law officer.

"This case, therefore, instead of being, as the critic had been led to believe, an illustration of 'the control which the military commander exercises over the administration of civil justice,' illustrates exactly the opposite. For, in the first place, the confirmation of the sentence was made, not by the arbitrary military discretion of the commanding officer, but upon the legal opinion of his Judge Advocate; and, in the second place, the reconsideration which was actually given by the Judge Advocate, on the point of proof beyond a reasonable doubt, was a measure of protection which the law does not provide in any civil court in the United States for the control of a jury's verdict. The case is a good illustration of a feature in which the system of military justice sometimes does even more for the accused than the system of civil justice."²⁷

In explanation of the above remarked vagueness of language in G. O. 7 (found today in Article of War 501½) with respect to the authorized scope of the review for which it provided, there is one consideration to bear in mind throughout this study. As we have seen from two above noticed letters of Judge Advocate General Crowder, respectively dated February 13, 1918, and March 10, 1919, the vital purpose of this General Order that gave birth to it as an over-all exertion of rule-making command power was the staying of the judicial hand of the reviewing authority until the Judge Advocate General's Office, or branch thereof, could be heard from as to the merits of any general court-martial case within its application. Its implementing provisions, therefore, had for their general intent and aim the imposing of a new method of procedure to operate upon the numerous commands then exercising general court-martial jurisdiction in our wartime Army—namely, a precautionary suspension and submission to the Judge Advocate General of proposed reviewing authority action—and not the prescribing for the Judge Advocate General of any specified pattern or detailed scheme of case-covering review for the performance of his superimposed reviewing function in the premises. Consequently, this General Order had for its central concept by necessary inference from its text that *complete review of law and facts necessary to its purpose*, although such authorized scope was not expressly delimited or described therein. And, as such review was for reviewing-authority and confirming-authority use, in ultimate analysis its authorized scope as to questions of fact must certainly have been that of evaluation of the evidence of record by employment of the standard of proof of guilt beyond reasonable doubt—this, for the paramount reason that such was then (and is today) the standard of proof alike imposed upon the reviewing authority and the confirming authority by force and effect of the words "the evidence of record requires" in their similar textual setting in Article of War 47 ("Powers Incident to Power to Approve")²⁸ and

25. Wigmore, A Source-Book of Military Law and War-Time Legislation (1919) 808-809.

26. CM 110595 (1918).

27. Military Justice During the War; n. 13 *supra*, at p. 9.

28. 1917 M. C. M. (Appendix I—The Articles of War), p. 316; 41 Stat. 796, 10 U. S. C. § 1518.

Article of War 49 ("Powers Incident to Power to Confirm").²⁹

(3) Although not apparent on the face of General Order No. 7, the answer to the question whether or not the review therein authorized was legally binding upon the reviewing authority or confirming authority—to such extent as to make mandatory in respect to judicial action on the record of trial the findings of fact, conclusions of law, opinions and rulings of the Judge Advocate General's Office set forth in such review *in toto*—is and must be that this review was merely advisory and recommendatory in legal effect, under G. O. 7 rightly construed and applied. General Crowder himself said as much on the very point in that part of his testimony before the Senate Subcommittee on Military Affairs, on October 25, 1919, which was in response to an inquiry by Senator Lenroot in regard to the legal basis of General Order No. 7 and reads as follows:

"We deduced it out of Articles of War 37 and 38 of the existing code, and also out of the exigencies of the case as a step we must take at once awaiting the grant of appellate power from the Congress of the United States. *All we said to the lower authorities was in the nature of a rule of procedure under article 38, viz: 'Suspend your action, until we can pass upon the case.' All we did after we passed upon the case was to address their discretion. We did not ourselves exercise the appellate power.* And it seems to me that in every case where we addressed their discretion on the question of prejudicial error there was acquiescence, except in a limited number of cases to some of which I have called your attention."³⁰ (Italics supplied.)

Adverting to General Crowder's refutation, quoted *supra*, of certain criticism of the cited *Camp Gordon* case, it will also be seen that the original reviewing authority, in taking final judicial action on the record of trial, treated the review under G. O. 7 emanating from the Judge Advocate General's Office as purely advisory in legal effect, rejected the conclusion therein reached as to the insufficient probative force of the evidence of record, and accepted the considered opinion of his own Staff Judge Advocate which upheld the conviction of the accused as supported by proof beyond reasonable doubt.

Any law enacted by Congress in the exercise of its expressly conferred power to make rules for the government and regulation for the land and naval forces naturally and necessarily prevails over any rule-making exertion of command power in any wise inconsistent therewith, to the full extent of such inconsistency. Typical of such legislation are Articles of War 47 and 49 of the Code of 1916,³¹ which respectively secured to the reviewing authority and the confirming authority the *virtute officii* exercise of the judgmental function and the determinative function in military justice administration. Substantial conflict with said Articles would have nullified any attempt to read binding effect into General Order No. 7 in its operation upon the reviewing authority and the confirming authority in the adjudication of court-martial cases. This, at bottom, is the legal reason why the review for reviewing-authority and confirming-authority use under G. O. 7 was never considered

to be more than advisory and recommendatory in force and effect.³²

IV

That proposed revision of the 1916 Articles of War, which at the conclusion of the extensive hearings held in 1919 by a subcommittee of the Senate Committee on Military Affairs was prepared and submitted to that subcommittee, pursuant to its invitation, by Judge Advocate General Crowder,³³ was for certain reasons of parliamentary expediency and policy not of any legal consequence substantially incorporated in the then pending Army reorganization bill as Chapter II thereof ("Articles of War"). Such incorporation was effected on the floor of the Senate on April 19, 1920, while that body functioning as a Committee of the Whole had before it the measure known as the Army reorganization bill,³⁴ with the ultimate result that such Judge Advocate General's revision, as substantially contained in Chapter II of the Act of Congress of June 4, 1920,³⁵ known as the Army Reorganization Act, became the Articles of War of 1920—our fourth Military Code under the Constitution, and in force at the present time. New Article of War 50½ of that revision was, in general substance, framed in the Judge Advocate General's Office and may properly be termed a permanent legislative outgrowth of that wartime Army regulation styled General Orders, No. 7, War Department, 1918, whose origin, functional purpose, and operation have just been considered under III, *supra*. In the light of the foregoing discussion, the content of the provisions of new Article of War 50½³⁶

32. See, for the principle involved, *U. S. v. Symonds*, 120 U. S. 46, 7 Sup. Ct. 411, 30 L. Ed. 557 (1887).

33. Introduction, p. viii, 1921 Manual for Courts-Martial.

34. Cong. Rec., Vol. 59, pp. 5824, 5836, 5843, 5844, 5845, 5894, 5896, 5897, 5898; H. R. 13942, 66th Congress, 2d Session, and accompanying House Report No. 940, May 7, 1920; H. R. 12775, 66th Congress, 2d Session, and accompanying House Report No. 1049, p. 66, May 27, 1920; Introduction, p. viii, 1921 Manual for Courts-Martial.

35. 41 Stat. 787 *et seq.* (1920), 10 U. S. C. § 1471 *et seq.*

36. As amended to date (but without substantial alteration of the original text) this Article reads as follows:

"Art. 50½. Review: Rehearing.—The Judge Advocate General shall constitute, in his office, a board of review consisting of not less than three officers of the Judge Advocate General's Department.

"Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President under the provisions of article 46, article 48, or article 51 is submitted to the President, such record shall be examined by the board of review. The board shall submit its opinion, in writing, to the Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President.

"Except as herein provided, no authority shall order the execution of any other sentence of a general court-martial involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may upon his approval of a sentence involving dishonorable discharge or confinement in a penitentiary order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty. When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence, the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sen-

29. 1917 M. C. M. (Appendix I—The Articles of War), p. 316; 41 Stat. 797, 10 U. S. C. § 1520.

30. *Hearings, Senate and House, Amendments to Articles of War Pertaining to Military Justice, 64th, 65th and 66th Congresses*, p. 1206.

31. Act of August 29, 1916, 39 Stat. 650-670.

tence. When in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or that errors of law have been committed injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his own dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty, and may disapprove or vacate the sentence, in whole or in part. *Provided*, That the functions prescribed in this paragraph to be performed by the President may be performed by the Secretary of War or Acting Secretary of War. *Provided further*, That whenever a branch of the office of the Judge Advocate General is established, under the provisions of the last paragraph of this article, with a distant command, such functions may be performed by the commanding general of such distant command in all cases in which the board of review in such branch office is empowered to act and in which the commanding general of such distant command is not the appointing or confirming authority.

"When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not theretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers not members of the court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court, and no sentence in excess of or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding: *Provided*, That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial legally insufficient to support the findings or sentence or that errors of law have been committed injuriously affecting the substantial rights of the accused, unless, in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing had on the order of the President, the record of trial shall, after examination by the board of review, be transmitted by the Judge Advocate General, with the board's opinion and his recommendations, directly to the Secretary of War for the action of the President.

"Every record of trial by general court-martial, examination of which by the board of review is not hereinbefore in this article provided for, shall nevertheless be examined in the Judge Advocate General's Office; and if found legally insufficient to support the findings and sentence, in whole or in part, shall be examined by the board of review, and the board, if it also finds that such record is legally insufficient to support the findings and sentence, in whole or in part, shall, in writing, submit its opinion to the Judge Advocate General, who shall transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President. In any such case the President may approve, disapprove or vacate, in whole or in part any findings of guilty, or confirm, mitigate, commute, remit, or vacate any sentence, in whole or in part, and direct the execution of the sentence as confirmed or modified, and he may restore the accused to all rights affected by the findings and sentence, or part thereof, held to be invalid; and the President's necessary orders to this end shall be binding upon all departments and officers of the Government. *Provided*, That the functions prescribed in this paragraph to be performed by the President may be performed by the Secretary of War or Acting Secretary of War. *Provided further*, That whenever a branch of the office of the Judge Advocate General is established, under the provisions of the last paragraph of this article, with

a distant command, such functions may be performed by the commanding general of such distant command in all cases in which the board of review in such branch office is empowered to act and in which the commanding general of such distant command is not the appointing or confirming authority.

"Whenever necessary, the Judge Advocate General may constitute two or more boards of review in his office, with equal powers and duties.

"Whenever the President deems such action necessary, he may direct the Judge Advocate General to establish a branch of his office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office a board of review, or more than one. Such Assistant Judge Advocate General and such board or boards of review shall be empowered to perform for that command, under the general supervision of the Judge Advocate General, the duties which the Judge Advocate General and the board or boards of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or confirmation by the President." (Manual for Courts-Martial, 128 (corrected to April 20, 1943), pp. 214-216; 10 U. S. C. A. § 1522.)

will now be examined, in so far as material to our present purpose, namely, the discernment and solution, if possible, of substantial questions of law generated by application of such Article to the process of adjudication upon determinative review of general court-martial cases, as distinguished from questions of administrative procedure involving discretion or policy that are inseparable from the operation of the Article in peace and war.³⁷ For such examination, the above described categories of general court-martial cases will be useful by reason of the fact that the related Articles of War of the 1916 Code were reenacted in the Code of 1920 without change in title number or text of any such Article.

The first, sixth, and seventh³⁸ of the seven component paragraphs of new Article of War 50½, read together, in effect require the Judge Advocate General to constitute in his office as many boards of review as may be necessary, with equal powers and duties, each such board to consist of not less than three officers of the Judge Advocate General's Department (as was done in execution of G. O. 7,³⁹ *supra*), and also authorize the President to establish branches of the Judge Advocate General's Office with distant commands, each such branch to operate under an Assistant Judge Advocate General and to have a board or boards of review empowered to perform for the embraced command, subject to the general supervision of the Judge Advocate General, those functions of military justice administration in cases involving sentences not requiring approval or confirmation by the President which otherwise would belong to the Judge Advocate General and a Board of Review in his office. This, too, is the obvious legislative fruitage of above noticed Section II of wartime General Order No. 7.

Premitting cases wherein the President constitutes the court and consequently acts as the original reviewing authority pursuant to Article of War 8 and with which we are not concerned in this study of the determinative review prescribed by A. W. 50½, it may be rightly said that case categories (a), (c), (e), and (b) and (d), *supra*—in so far as cases within (b) and (d) devolve in peace and war upon the President for determination—make up the field of operation of the second paragraph⁴⁰ and cognate

37. For example, that considered and determined in memorandum to the Secretary of War from the Judge Advocate General, subject, Article of War 50½, dated April 13, 1923 (Ops. J. A. G. 250.404).

38. Quoted in note 36, *supra*.

39. Military Justice During the War, *op cit*, n. 13, *supra*, at 16.

40. Quoted in note 36, *supra*.

provision in the final sentence of the fourth paragraph⁴¹ of A. W. 50½. The traditional determinative review in such enumerated classes of general court-martial cases is made by the President, as contemplated in the notable dictum of Mr. Attorney General Wirt, in 1818, to the effect that the President, subject under the Constitution to the expressed will of Congress concerning the government of the Army, is the natural and proper depository of the final appellate power, in all judicial matters touching the police of the Army.⁴² But by the controlling terms of the last cited provisions of the Article under consideration this determinative review is made by the President in the light of an advisory opinion of the Board of Review and recommendations thereon of the Judge Advocate General prepared after examination of the record of trial in the case. Such Board of Review opinion, according to established usage in the premises dating from the enactment of said provisions, is exhaustive of all substantial questions of law (the rule of decision thereof being injury to the substantial rights of the accused as provided in A. W. 37) and questions of fact presented by the record of trial, including that of the sufficiency of the evidence to sustain the approved findings of guilty by proof beyond reasonable doubt;⁴³ and is in legal effect but so much advisory aid to the President in his determination of the case upon the legal and factual merits as a statutory military court of last resort therein.⁴⁴ Like effect is, of course, to be ascribed to the recommendations of the Judge Advocate General on such advisory opinion of the Board of Review. Prior to the enactment of this Article and the constitution thereunder of the statutory Board of Review, such advisory aid on determinative review of a case by the President was rendered by the Judge Advocate General in accordance with aforementioned Section 1199 of the Revised Statutes. And here it should be noted that since that time, under the provisions of this new Article as construed and applied, the following practice in the premises has prevailed, notwithstanding the above noted strictly advisory effect of both the opinion of the Board of Review and recommendations thereon of the Judge Advocate General in cases wherein Articles of War 48 and 51 lodge in the President the exercise of the so-called automatic appellate review function: "When both the board of review and the Judge Advocate General hold the record of trial by general court-martial to be legally insufficient to support a sentence requiring confirmation by the President before its execution, the record should not be submitted to the Secretary of War for the action of the President but should be returned to the reviewing authority in accordance with the provisions of A. W. 50½ for rehearing or such other action as may be proper. (Ops. J. A. G., December 29, 1922, approved by the Secretary of War December 30, 1922, in C. M. 154185.)"⁴⁵ And in general as to finality of such confirming-authority action under said second paragraph and related provision of the fourth paragraph of this Article, it would seem that after the adjudged sentence has been confirmed and ordered executed by the President upon the determinative review of the record of trial and such action

promulgated in general court-martial orders, no reexamination of the case on the merits is legally possible.⁴⁶ So much for the first, sixth and seventh, and second and fourth paragraphs⁴⁷ of the Article under consideration.

V

The most important and troublesome legal question that has emerged from the actual operation of this new Article of War in the 1920 revision is one concerning the authorized scope of the determinative review as to issues of fact, for which review provision is expressly made in the third and fifth paragraphs⁴⁸ of the Article, which remain for thorough consideration and will be consecutively examined herein.

The third paragraph⁴⁹ includes within its field of operation case categories (b) and (d), *supra*, substantially to the extent that cases within these two categories devolve, in time of war, for determination upon army and territorial department or division commanders under A. W. 48, and *in toto*, case category (f), *supra*. As denoted by its origin in the Judge Advocate General's Office and text similarity to the basic provisions of G. O. 7, *supra*, it is derived from that wartime measure and is featured by very much of the same vagueness of legal terms with respect to the scope and function of the automatic appellate review which it prescribes for the several categories of general court-martial cases within its compass. Briefly, in such classes of cases this third paragraph in substance forbids execution of the sentence adjudged below until after the *record of trial* in the case has been adjudged by the Board of Review and the Judge Advocate General *legally sufficient to support the sentence* (except as to sentences in judgments resting on pleas of guilty and involving certain specified penalties). If upon such determinative review by the Board of Review and the Judge Advocate General the record of trial is adjudged *legally sufficient to support the findings and sentence*, the authority below who submitted the same for such review is by virtue of such affirmance of the sentence judicially empowered to give effect thereto; but if, on the contrary, both unite in adjudging that the record of trial is *legally insufficient to support the findings or sentence*, in whole or in part, or that *errors of law have been committed injuriously affecting the substantial rights of the accused*, then (in the words of the paragraph—italics supplied) "*such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon and the record transmitted to the original reviewing authority for a rehearing or other proper action; and if the Judge Advocate General should not concur in the holding of the Board of Review, then the record of trial and all other papers in the case, including the opinion of the Board of Review and dissent of the Judge Advocate General, must be submitted to the Secretary of War for a determinative review thereof by the President, who is expressly empowered to confirm the adjudged action of functioning authority below, in whole or in part, with or without remission, mitigation, or commutation of the sentence, or to disapprove, in whole or in part, any finding of guilty as approved by functioning authority below or any sentence as so ap-*

41. Quoted in note 36, *supra*.

42. 1 Ops. Atty. Gen. 149, 150.

43. *E. g.*, CM 197011 (1931); CM 195772 (1931); CM 195322 (1931); CM 207887 (1937).

44. *E. g.*, general court-martial cases cited in note 43.

45. Manual for Courts-Martial, 1928 (corrected to April 20, 1943), text note to A. W. 50½, App. I, pp. 216-217.

46. Op. J. A. G., Apr. 24, 1933, Dig. Ops. J. A. G., 1912-1940, § 408 (1), p. 258.

47. Quoted in note 36, *supra*.

48. Quoted in note 36, *supra*.

49. Quoted in note 36, *supra*.

proved." The paragraph as a whole gives rise to the very three legal inquiries generated by and considered at length under G. O. 7, *supra*. Accordingly, these questions will next be discussed with reference to the content of this third paragraph for the purpose of ascertaining, if possible, its maximum legal value as an additional legislative device for the elimination of error, whether of law or fact, in the process of adjudication in accordance with law of general court-martial cases, in peace and war. However, for the sake of clarity, the last of these three questions will be dealt with first.

That question, with regard to this paragraph, is whether the superimposed review for which the same provides is, in the circumstances of either concurrence in or dissent from the holding of the Board of Review on the part of the Judge Advocate General, binding upon functioning authority below in each general court-martial case within its purview or only advisory in legal force and effect as was the antecedent wartime superimposed review under G. O. 7, *supra*. The answer depends, of course, upon the legislative intent in the matter, which is to be gathered exclusively from the language of the paragraph itself. In accordance with the reasonable intentment thereof, such review under said paragraph has in operative effect been considered to be always binding upon functioning authority below and itself determinative of the trial proceedings under review.⁵⁰ Consequently, the clauses therein reading, "* * * the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received who may thereupon order the execution of the sentence * * * such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon * * *," serve to preserve, at most, the outer semblance of completeness of command power in such functioning authority below, but leave the Board of Review and the Judge Advocate General invested with the power to render final judgment upon the trial proceedings whenever both concur therein. And it may be added that finality attaches to the action on such determinative review under the provisions of this paragraph when the same is had.⁵¹

Another of the aforementioned three questions to be here dealt with as respects this paragraph is that of the extensiveness of the authorized scope of such determinative review as to substantial questions of law of every kind disclosed by the record of trial and subsequent proceedings in the case. Within the first sentence of the paragraph itself is the concept of a *record of trial legally sufficient to support the sentence* as prerequisite to the execution thereof; such record to be so pronounced by the Board of Review and the Judge Advocate General. The reiteration of this very concept in the second sentence, but expanded in form to include expressly *the findings*, shows said concept, as initially phrased, to be one of a *record of trial legally sufficient to support the findings no less than the sentence*—for the determinative review purposes of the paragraph. In the third sentence we find that concept to be one based in very nature on the *quantum* of proof and there combined (for determinative review purposes of the paragraph) with another, namely, that of a record of trial showing *errors*

of law the commission whereof has injuriously affected the substantial rights of the accused. It is the latter concept with which the question under consideration is concerned. The language employed ("or that errors of law have been committed injuriously affecting the substantial rights of the accused") to express that concept is essentially that of the standard prescribed for the reiving authority and the confirming authority by Article of War 37 and clearly works an adoption of the same for determinative review purposes of the paragraph.⁵² The content and legal effect of A. W. 37 have already been noticed in the study made of G. O. 7, *supra*. Procedural errors of law in the trial of general court-martial cases require in general a thorough consideration of the evidence of record, including a careful weighing of conflicting testimony, on determinative review, in order to adjudge the pivotal question whether the same have injuriously affected the substantial rights of the accused within the meaning of A. W. 37 and this third paragraph of A. W. 501½. The most common form of such errors of law encountered on such determinative review consists of outcropping hearsay in the record of trial admitted without objection by the defense, for one reason or another, but incompetent as evidence in existing military law, notwithstanding defense failure to object thereto.⁵³ The power of the Board of Review and the Judge Advocate General evoked by error of law on the trial to review exhaustively the legally proper evidence of record in order to decide the thereby raised question whether the probative force of such evidence is so great as to compel a finding of guilty below is incontestable in actual practice under the provisions of this paragraph.⁵⁴ Another so-called question of law—frequently encountered upon such determinative review and treated as contemplated by the errors-of-law clause of this paragraph—concerns the proof in circumstantial-evidence cases and centers in the oftentimes delicate and difficult question whether the circumstantial facts established by the evidence of record constitute proof of adjudged guilt beyond reasonable doubt. That the Board of Review and the Judge Advocate General are empowered by this paragraph to examine exhaustively the evidence which the trial court had before it and to pass upon this sort of question of fact in the guise of a question of law is likewise incontestable in actual practice.⁵⁵ The foregoing discussion touching errors of law is highly important in that it makes indubitably clear the recognized judicial power of the Board of Review and the Judge Advocate General in administering the provisions of this paragraph to determine substantial questions of fact on the evidence of record that are involved in questions of law presented by the record of trial under review. In the enveloping conditions of military justice administration, the exercise of this power becomes necessary in a very considerable proportion of extraordinary and intricate cases.

Enveloped in the remaining question under this paragraph is the crux of the outstanding legal question in-

50. *E. g.*, CM 194171 (1931); CM 194359 (1931); Dig. Ops. J. A. G. 1923, p. 52.

51. *See* CM 196526 (1931).

52. *See* CM 192609 (1930).

53. *E. g.*, CM 238557 (1943); CM 211829 (1939); CM 187252 (1929); CM 178446 (1927); CM 160186 (1924); CM 161013 (1924); CM 161011 (1924); CM 155032 (1923).

54. *E. g.*, CM 211829 (1939); CM ET01693 (1944); CM 206090 (1937); CM 197704 (1932); CM 195687 (1931).

55. *E. g.*, CM ET01414 (1944); CM 208895 (1938); CM 207591 (1937); CM 197704 (1932); CM 197408 (1931); CM 196867 (1931); CM 196619 (1931); CM 195705 (1931); CM 195212 (1931); CM 194359 (1931).

volved in the administration of Article of War 501½, namely, whether the review superimposed by this third paragraph thereof to control the judicial action of functioning authority below the Board of Review and the Judge Advocate General does legally extend to all component questions of fact in the case arising from the accusation, pleas, evidence of record and approved findings therein, including those produced by a conflict in the testimony of witnesses on the trial and requiring for their determination the scrutiny and evaluation of the evidence of record. In order to arrive at a correct conclusion on this fundamental question, let us pursue the path of legal reason that leads through the provisions of this paragraph to an understanding of the legislative intent of the same, howsoever hidden from cursory view. As noted above and as the very language thereof indicates, the first two sentences of the paragraph⁵⁶ contain the concept of a record of trial *legally sufficient to support the findings* no less than the sentence for determinative review purposes; and the third sentence, by reason of the phrase reading "either in whole or in part" and by the reflected light of the differentiating errors-of-law clause therein, shows the embraced concept of a record of trial *legally sufficient for determinative review purposes to support the findings or sentence, either in whole or in part*, to be by irresistible inference one *wholly based on the quantum of proof* and there combined for such review purposes with another—and distinct—concept, namely, that of a record of trial showing errors of law injuriously affecting the substantial rights of the accused.

So far in the paragraph the concern of the lawmaker with proof-supported findings and sentence, to be so declared by the Board of Review and the Judge Advocate General, is manifest; but the extent to which both these reviewing agencies are implicitly empowered by the statute in question to disregard (whenever considered erroneous) the approved findings below in passing upon the probative force of the evidence of record is not so clear. However, the excepting clause in the first sentence dispensing with the determinative review where the findings upon a charge and specification are based on a plea of guilty thereto instead of proof thereof is powerful evidence of the legislative purpose to conserve in A. W. 501½ the scheme of superimposed review set up by G. O. 7, *supra*, which, as we have seen, contemplated a thorough review of facts including the weighing of conflicting testimony in order to determine, on that automatic appellate review, from the evidence of record each issue of fact made by a plea of not guilty to a charge and specification. This conclusion as to the legislative purpose in the premises is enforced by that provision in the fourth sentence of the paragraph to the effect that in the event of non-concurrence of the Judge Advocate General in the holding of the Board of Review the record of trial and subsequent proceedings in the case shall be passed upon by the President or the Secretary of War or the Acting Secretary of War whose judgmental action thereon, like (in legal effect) that of the Board of Review and the Judge Advocate General when in agreement, may take the form of *disapproving in whole or in part any finding of guilty*. The effective exercise of such statutory determinative review power by the Board of Review and the Judge Advocate General, and the President, Secretary of War or Acting Secretary of War, legally presupposes

the implied power to review thoroughly the facts and evaluate conflicting testimony *at very least to the extent of adjudging* whether the trial court, reviewing authority, and (in some cases) confirming authority below had before them when respectively functioning in a case that *quantum of proof reasonably sufficient to constitute proof beyond reasonable doubt*. Proof, legally speaking, is competent evidence compounded with reason. And the intent of the paragraph as disclosed by its language is, as to the question under discussion, none other than to buttress or supplant—as the case may be on determinative review—the reason of the trial court and functioning authority below with that of the Board of Review and the Judge Advocate General, or in the event of disagreement between these two, with that of the President or Secretary of War or Acting Secretary of War. In any event, a resort to legally proper extrinsic aid discloses that the foregoing interpretation in substance and effect has been fastened upon the third (and likewise the fifth⁵⁷) paragraph of A. W. 501½, as witness what immediately follows.

Reference has been made to that proposed revision of our third Military Code prepared in 1919 by then Judge Advocate General Crowder and submitted in December of that year upon the conclusion of its hearings on a pending military justice measure to the subcommittee of the Senate Committee on Military Affairs, pursuant to request. That proposed revision, then referred to as the "Crowder Revision,"⁵⁸ included new Article of War 501½ substantially as later enacted into law, and as already noted became eventually the Articles of War of 1920 constituting Chapter II of the Army Reorganization Act of June 4, 1920.⁵⁹ The Judge Advocate General also placed at that time in the hands of the subcommittee his elaborate exposition of the Crowder Revision consisting of fourteen paragraphs and styled "Introductory Comment," paragraph III whereof is explanatory of the function and scope of the automatic review superimposed by the third and fifth paragraphs of A. W. 501½ and reads as follows:

"The experience acquired in this war, through the execution of General Order No. 7, War Department, January 17, 1918, has shown that a right of appeal in courts-martial proceedings, heretofore not accorded by law, is practicable and advantageous in order to cure such error as the exigencies of a necessarily summary trial may have permitted; that this appeal is required not simply to prevent unjust punishment which the court-martial may have adjudged (and end heretofore attained to a very great extent through clemency and the commutation and mitigation of sentences, although that fact seems not to be adequately appreciated by the public) but also and primarily to remove the stigma of conviction from the reputation of an innocent man. Experience has also shown that it is essential, in order to enable just results to be attained to the greatest possible degree, that the appeal shall include a review and a correction of errors of fact as well as errors of law, a fact the more conspicuously true because the procedure before a court-martial renders especially difficult an exact discrimination between findings of fact and rulings upon questions of law, a discrimination which even in non-military criminal courts has presented great difficulties; but that the review upon questions of fact should, of course (as in the equity practice), be restrained by the

57. Quoted in note 36, *supra*.

58. See Rigby, *Military Penal Law: A Brief Survey of the 1920 Revision of the Articles of War* (1921) 12 *Journal of Criminal Law and Criminology* 84.

59. 41 Stat. 787, *et seq.*

56. Third paragraph of A. W. 501½ quoted in note 36, *supra*.

presumption of the correctness of such findings as turn upon the credibility of witnesses who are seen and heard by the lower court, but not by the appellate court."⁶⁰

This pronouncement of Judge Advocate General Crowder in the premises (referred to hereinafter as the Crowder pronouncement) has, of course, in the matter of the interpretation of A. W. 50½, all the force and effect accorded the opinion of the Judge Advocate General by the Supreme Court of the United States in the recent *Adams* case.⁶¹ There the Court said of an opinion of the Judge Advocate General⁶² on the question of the meaning of the Act of October 9, 1940,⁶³ providing for acquisition by the United States of jurisdiction over lands acquired by it within a State, the following:

"Both the Judge Advocate General of the Army and the Solicitor of the Department of Agriculture have construed the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation."⁶⁴

The legal situation enveloping the *Adams* case is strikingly similar to that which must be considered in the interpretation of the third and fifth paragraphs of A. W. 50½ and makes the Crowder pronouncement, *supra*, the controlling factor therein. A little clarification of the last clause of that pronouncement will make apparent the fact that the conclusion herein above reached as to the statutory standard of proof evaluation on determinative review under aforesaid paragraphs (namely, that provided by the implied power to review thoroughly the facts and evaluate conflicting testimony to the extent of adjudging whether the trial court, reviewing authority, and (in some cases) confirming authority below had before them when respectively functioning in a case *that quantum of proof of guilt reasonably sufficient to constitute proof beyond reasonable doubt*) is in substance and effect that of said Crowder pronouncement. Just what Judge Advocate General Crowder intended by his reference therein to the presumption of correctness of findings (always removable by the probative force of the evidence) then obtaining in equity practice is ascertainable from the following paragraph of section 858 (p. 644) of Montgomery's Manual of Federal Jurisdiction and Procedure (third edition, 1927):

"As noted above, the case is tried de novo on appeal, in accordance with the ancient practice of chancery courts. Under the old rules, the findings of the trial court were entitled to be treated as very persuasive, and such findings were not to be disturbed, unless it appeared quite clearly that the court had either misapprehended the evidence or had gone against the clear weight thereof. In this respect, the new rules have made no change. Inasmuch, however, as cases are now heard ordinarily in open court—whereas

formerly they were referred to a master—it seems that the new practice gives added weight to the conclusions of the trial judge. If the witnesses were produced and examined, the appellate court, in considering the evidence de novo, will take account of the fact that the trial judge had an opportunity to estimate the credibility of the witnesses by their appearance and demeanor on the stand."

Unquestionably, therefore, the equity practice presumption of correctness of findings referred to in the Crowder pronouncement is one *prima facie* in kind and always removable by the probative force of the evidence. Which is to say that the examination on determinative review of the record of trial by the Board of Review and the Judge Advocate General has for its legal starting point, and proceeds upon, the assumption, always defeasible by the probative force of the evidence, that the findings of guilty, subject of judicial action below, are the product of proof beyond reasonable doubt.

At this point it should be noted that at the time of aforementioned incorporation of the Crowder Revision in the Army Reorganization bill on the Senate floor, Senator Chamberlain (former Committee Chairman), speaking at the instance of Chairman Wadsworth for the Military Affairs Committee, said of new Article of War 50½ that it was nothing less than "* * * the gist of the whole proposed amended Articles of War, because it gives to the proposed Board of Review and to the Judge Advocate General powers which the Judge Advocate General claims he has not heretofore had and which, it seemed to me and seemed to the Committee, are absolutely essential to do full justice to men convicted by court-martial."⁶⁵ And on that occasion Chairman Wadsworth prefaced his request of Senator Chamberlain to take the floor with the remark in reference to the Crowder Revision that the proposed revision as a whole "* * * accomplishes, we believe, a very healthy and much desired reform in the system of military justice."⁶⁶

65. 59 Cong. Rec. 5844.

66. 59 Cong. Rec. 5843. The printed committee reports on proposed legislation that eventually formed part of the Army Reorganization Act of June 4, 1920, do not deal with the determinative review contemplated by the third and fifth paragraphs of Article of War 50½. And the testimony in the published committee hearings concerning the general subject of a superimposed review in general court-martial cases is too irrelevant and indefinite with respect to the question here discussed to be of any value, even if legally proper for consideration, with the exception of a memorandum to the subcommittee of the Senate Committee on Military Affairs submitted by Secretary of War Baker in explanation of his testimony before such subcommittee in the course of hearings held on a bill entitled "A bill to establish military justice," one paragraph of which memorandum reads as follows:

"The emphasis laid in the discussion upon errors of law, as distinguished from errors of fact, seems to me to take too narrow a view both of the appellate power desirable and of the nature of court-martial proceedings. The appellate power should be able to reach errors of fact as well as errors of law, and the President and those delegated by him under regulations to act in his behalf, should have the power to control these proceedings for errors of fact as well as mere technical errors of law. As a matter of fact, we have had in the War Department some controversy as to what is an error of law, and sometimes palpable errors of fact have been held to be errors of law in order that a remedy might be applied. We ought, therefore, not to prescribe a narrow technical rule, but a broad and generous power which will enable the President to supply a remedy, when an error is discovered." (Hearings, Senate and House, Amendments to Articles of War pertaining to Military Justice, 64th, 65th, and 66th Congresses, pp. 1369-1370.) See in general on the subject, *id.* pp. 1134, 1136, 1229-1230, 1237-1238, 1239, 1262, 1264-1265, 1266-1267, 1272, 1346-1347, 1362-1363, 1399, 1405-1406, 1408-1409; House Reports, 66th Congress, 2nd Session, Vol. 3, pp. 1628-1630.

60. *Articles of War—Comparative Print Showing Changes Proposed by the Judge Advocate General as Compared with the Changes Proposed by the Kernan-O'Ryan-Ogden Board and with the Existing Law. Printed for the Use of the Senate Committee on Military Affairs: Senate Committee Print—66th Congress, 2d Session, at page 2.*

61. *Adams v. United States*, 319 U. S. 312, 314-315, 87 L. Ed. 1421, 1423 (1943).

62. *Ops. J. A. G.* 680.2.

63. 40 U. S. C. A. § 255.

64. Note 61, *supra*.

It results, therefore, from all the foregoing, that in the view of this writer on the fundamental question under consideration the weight of legal reason plainly turns the scale in favor of his above stated interpretation of the third and fifth paragraphs of A. W. 501½ to the effect that the same, by necessary implication, do empower the Board of Review and the Judge Advocate General and higher authority therein mentioned, in taking judicial action on a record of trial in conformity therewith, to review thoroughly the facts and evaluate conflicting testimony to the extent of adjudging whether the trial court and functioning authority below respectively had before them that *quantum of proof of guilt reasonably sufficient to constitute proof beyond reasonable doubt*.

There is nothing in the 1921 edition of the Manual for Courts-Martial inconsistent with the above stated interpretation of A. W. 501½. But in the succeeding edition of 1928, which remains in force, the following paragraph was inserted, *inter alia*, in the form of a text note to A. W. 501½ between the same and A. W. 51 in "Appendix I, The Articles of War" at page 216 of that edition of the Manual:

"Except where the President is the reviewing or confirming authority, it is not the function of the Board of Review or the Judge Advocate General, in passing upon the legal sufficiency of a record under A. W. 501½ to weigh evidence, judge of the credibility of witnesses, or determine controverted questions of fact. In such cases the law gives to the court-martial and the reviewing authority exclusively this function of weighing evidence and determining what facts are proved thereby; therefore, if the record of trial contains any evidence which, if true, is sufficient to support the findings of guilty, the Board of Review and the Judge Advocate General are not permitted by law, for the purpose of finding the record not legally sufficient to support the findings, to consider as established such facts as are inconsistent with the findings, even though there be uncontradicted evidence of such facts. C. M. 152797."

This CM 152797 pronouncement will not withstand analysis either (a) as a rule of procedure prescribed by the President under Article 38, or (b) as a purely informative text note purporting to set forth something said by the Board of Review in CM 152797 (1922). If intended to constitute (a) then the proper place for it would be in the body of the Manual for Courts-Martial, in every part of which body rules of procedure having the force of law abound, and not in one of the appendices to the Manual containing the Articles of War, albeit placed under the Article to which it relates. Certainly the Board of Review did not treat it as a prescribed regulation under A. W. 38, when in CM 192609 (1931) it appreciably relaxed its rigor in a dictum derived from the federal appellate review rule in criminal cases and cited with approval in CM 197704 (1932). Moreover, as a rule of procedure under Article 38 it is a nullity in the eye of the law as contrary to and inconsistent with what we have just ascertained to be the legislative intent of aforesaid third and fifth paragraphs of Article 501½. On the other hand, considered as a purely informative text note to Article 501½, such CM 152797 pronouncement of the Board of Review is and ever has been devoid of any doctrinal substance for two reasons. First, careful examination of the record of trial and subsequent proceedings containing this Board of Review pronouncement in CM 152797 shows the same to be merely so much defunct dictum by reason of the non-concurrence of the Judge Advocate General in the majority holding affirming the conviction of the accused and the judicial action of the President

upholding the view of the Judge Advocate General on the legal merits and setting aside the conviction in the case. Second, the pronouncement in question misconceives (as does aforementioned CM 192609) the herein ascertained legislative intent of the third and fifth paragraphs of A. W. 501½, is contrary thereto, and is consequently of no legal value. It therefore has no place anywhere in the Manual for Courts-Martial.

As to the fifth paragraph,⁶⁷ of A. W. 501½, it may be affirmed that its field of operation comprises all general court-martial cases resulting in conviction of the accused which are not embraced in categories (a), (b), (c), (d), (e), or (f), *supra*, and that finality attaches to determinative review action in the same when such action is had.⁶⁸ By reason of the provisions of this paragraph respecting legal insufficiency of the record of trial to support the findings and sentence, in whole or in part, and the judicial action to be taken by the President in such event, it is clear that the determinative review powers under the third paragraph of Article 501½ and this paragraph are essentially the same in so far as concerns the review of the facts and necessary evaluation of the evidence of record. Curiously enough and for some unknown reason, the paragraph is silent on the point of errors of law injuriously affecting the substantial rights of the accused. But the provision therefor in said third paragraph has been read into this paragraph in the administration of the same ever since A. W. 501½ took effect.⁶⁹

A last word on the above declared crucial question in the administration of A. W. 501½ may be worth notice in this study. In speaking for the Board of Review in CM 195705 (1931) this writer took occasion to say that justice according to law demands more than that accused be guilty; it demands that he be proved guilty. And he now is persuaded that any form of justice which in the adjudication of general court-martial cases stops short of that full review and evaluation of the probative force of all the competent evidence of record made legally possible by the above ascertained intendment of the third and fifth paragraphs of A. W. 501½ is something less than justice according to law.⁷⁰

67. Quoted in note 36, *supra*.

68. CM 187438 (1930).

69. *E. g.*, CM 193828 (1930); CM 195863 (1931); CM 197408 (1932); CM 211900 (1939).

70. The determinative review of questions of fact contemplated in the third and fifth paragraphs of A. W. 501½ is not without parallel in the administration of criminal justice within the United States. It is to be found in the appellate review of cases by the Court of Appeals of New York wherein the judgment is of death, as instanced by the following quotation from the opinion of that Court in the recent case of *People v. Weiss*, 200 N. Y. 160, 170, 48 N. E. (2d) 306, 311 (1943): "Although the question of credibility of witnesses is usually one for a jury, in cases of murder in the first degree it is our duty to review all questions of fact and determine whether 'the evidence is of such weight and credibility as to convince us that the jury were justified in finding the defendant guilty beyond a reasonable doubt' (*People v. Crum*, 272 N. Y. 348, 350). In this case we must conclude that the evidence is not of that character and quality." In fact, the appellate review rule in that jurisdiction seems to be much the same as that above stated in all other criminal cases, as witness the following pronouncement of the same court in *People v. Ledwon*, 153 N. Y. 10, 17-18, 46 N. E. 1046, 1048 (1897): "When this legal presumption of innocence is rebutted, or when guilt is shown beyond a reasonable doubt, must of course, in some cases at least, be a question of law. The statute has established a standard of proof in criminal cases and the proof must conform to that standard before there can be a lawful conviction. Whenever it is clear that it falls below the prescribed standard the accused is entitled as a matter of law to an acquittal." And for a virtual abandonment by the Board of Review of the principle of CM 152797, *supra*, see CM 205920 (1936) and CM CBI 253311 (1944).

Military CLEMENCY

By COLONEL MARION RUSHTON, AGD (JAGD)*

THE PROBLEM of clemency is continuous, ever present from the day a prisoner is delivered into military custody until he is released. His welfare is a responsibility which the commandants of each rehabilitation center and disciplinary barracks share in common with some 300 appointing and reviewing authorities throughout the Army, the commanding generals of Service Commands and overseas theaters, the Secretary and Under Secretary of War, and the President. While the problem concerns primarily only one quarter of 1 per cent of the soldiers in the Army (24,348 as of 1 January 1945), what is done with that small fraction is keenly watched by



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the 99.75 per cent of the Army which has not become general prisoners, by Congress, by penologists, the press, the public in general, and the mothers and fathers, wives and sweethearts of soldiers in particular. We may be quite certain that no matter how completely all matters of military justice may now be consigned to the almost uncontrolled jurisdiction of the Army, a day of accounting is sure to come. Today the Army may grant or deny clemency with few limitations on the action it takes, but one knows little of American history if he does not realize that the free exercise of uncontrolled power rarely goes long without check. Brutality or cruelty will be summarily punished at once whether the war is or is not ended. Neglect; bumbling inefficiency; capricious, unexplainable, arbitrary exercise or withholding of clemency; blind, unintelligent groping will eventually raise a storm which it will then be too late to quell. It behooves the Army, therefore, to have and to enforce a well-defined, known, and predictable system of military justice tempered by a well-defined, known, and predictable system of clemency.

The system of military justice set forth in the Articles of War as last amended by the Congress in 1921 embodies all the experience and the lessons of the last war and lends itself to the establishment of a thoroughly modern procedure of military penology well adapted to its peculiar purposes. The military code is both fixed and elastic and, properly understood and enforced, is a tremendously effective disciplinary weapon for the Army. On the whole I believe it is well understood and enforced. A tribute to it is the feeling general throughout the Army, commonly expressed in the statement, "If I am innocent, I would rather be tried by a court-martial; if I'm guilty, I'd rather take my chances to beat the rap in a civil court."

Substantive military law is set forth in the Acts of Congress and Executive Orders of the President, and the adjective or procedural law is expounded in the *Manual for Courts-Martial* and numerous court decisions; but if there is any "Manual for Military Clemency," I have

been unable to lay hands on it. The principles of military clemency, now administered so widely by so many unpublished documents. They are part of the folklore of the Army. Much has been written about the customs of the service, very little about clemency. This, it seems to me, is a real deficiency. There is nothing in the nature of clemency, now administered so widely by so many authorities through the Army, which makes its principles the private bailiwick of generals or the esoteric knowledge of the higher echelons only. It should never be. On the contrary, clemency is a sacred responsibility to be exercised according to principles of natural justice and modern knowledge of the inequalities of human personality, to make the punishment fit not only the crime but the criminal as well. It begins when the offender is first brought to the guardhouse and does not end until the soldier is finally restored to duty or discharged from the Army.

Considerations in Clemency

I am not so ambitious as to hope to lay before you a "Manual for Military Clemency," but I do hope to outline some of the methods of investigation, some of the fields of inquiry, and some of the fundamental considerations which are cogent to decisions upon applications for military clemency.

In every clemency case it is sound procedure to start with the assumption that the prisoner has been properly found guilty and that the sentence is appropriate to the crime and to the offender. Remember, the sentence is the final product of the work of many people: the officer preferring charges, the investigating officer, the appointing authority and his advisers, the trial judge advocate, the members of the court-martial, the reviewing authority and his legal staff, and, usually, the Board of Review in the Judge Advocate General's Office. These men are well instructed in their business; they know military law and the customs of the service; they have had actual contact with the witnesses, the prisoner, and the rest of the command. What they have done should be overturned only on very clear and conclusive considerations.

The next step is to secure the facts—the old facts already known and the new ones now available. These include the prisoner's family, civil, and military history; physical, psychiatric, and psychological examinations and recommendations; and the staff judge advocate's review of the evidence. Sometimes in borderline cases we call for the full record, especially if new evidence is made the basis of the application for clemency. We always find the company commander's and the prisoner's statements of great interest. One answers the question, "Was he a good soldier?"; the other, "How does he rationalize his offense and what is his present attitude toward what he has done?"

The facts established, next comes evaluation. In the order of their importance, the considerations are as follows:

1. The interest of the Army
 - a. In salvaging a soldier for active duty.
 - b. In being relieved of the burden of attempting to salvage the nonrestorable.
 - c. In the effect of clemency in the specific case on other soldiers.

* Chief, Correction Division, Adjutant General's Office.

2. The interest of the prisoner
 - a. In just and equal treatment.
 - b. In "another chance."
3. The interests of the public at large
 - a. That criminals and degenerates be not foisted upon it.
 - b. That the burden of military service be equally shared.
 - c. That its sons and daughters are treated with justice and consideration.

There is no necessary conflict between these three interests, and in the usual case an answer can be worked out which satisfies them all.

Let me elaborate. The prime duty of the Army toward its soldiers is to make of them effective fighting men. Each recruit was taken away from the normal pursuits of civil life and turned over to the Army for that single purpose. It would be very short-sighted for a modern Army, responsible to itself, the Congress and the public to adopt with reference to soldiers the 18th Century turnkey philosophy: that prisons are merely places where prisoners are locked away and kept in storage until by hook or crook, political pull, personal influence or whims in high places, clemency is granted. The Army is not primarily a teacher of morals—that is supposed to have been accomplished before we took over. The Army takes the recruit as it finds him and hopes to return him to society as shortly as possible. Of course we are interested in the soldier's morals, but that is primarily because a moral soldier is a better soldier than an immoral or an amoral one. This duty to produce trained soldiers is paramount and is to be pursued so long as there is any reasonable prospect of success and not to be abandoned even though the soldier makes it more difficult by running afoul of military or civil law.

The Purpose of Military Clemency

Consequently, the first duty of the Army toward a general prisoner is to rehabilitate him and restore him to duty. That is why the rehabilitation centers have been established, why their function is at once the most hopeful and constructive activity of the entire Army prison system. To the rehabilitation centers are assigned only those general prisoners who, for one reason or another, are thought to be salvageable for further army service. Usually the offense has been purely of a military character—absence without leave, recalcitrance, unwillingness to co-operate or assume the responsibilities of a soldier—a defect of adjustment to environment rather than a criminal act *malum in se*. While the sentence, viewed by civilian standards, is heavy, it is expected that it can be worked out in 6 to 10 months and the soldier restored to duty with an eventually clean military record. In sending a general prisoner to a rehabilitation center where he gets a relatively easy chance to win restoration rather than to a disciplinary barracks or Federal penitentiary, the reviewing authority has exercised clemency based on the hope of salvage, and in so doing has illustrated the prime purpose of military clemency; to restore a soldier to duty.

A corollary of this principle is: No prisoner who is not regarded as salvageable should be sentenced to a rehabilitation center, or to a disciplinary barracks if it can be avoided. We admit that information is not always available to reviewing authorities so they can determine the character of the prisoner who stands before them awaiting appropriate sentence. It is often more im-

portant to Army discipline to announce prompt, condign punishment of an offense than to pursue the intricacies of classification from police records, Federal Bureau of Investigation reports, or other social investigations which may or may not be available. Once it becomes clear that the prisoner is no soldier and never will be one, it is the duty of the reviewing authority not to exercise clemency, but to place him where the Army will not have to be burdened with him further—that is in a Federal penitentiary, if possible, or at least in a disciplinary barracks. And once the reviewing authority has placed a prisoner where he belongs, it is the duty of authorities exercising clemency to leave him there. Parents and others may howl, but in the long run there is no better rule than equal and exact justice for all.

There will be occasions however when, because of the requirements of speedy justice or for the morale effect on the rest of the command or from lack of opportunity and facilities for investigation, the sentence is not tailor-made nor appropriately cut to fit the individual. Usually such a situation will become evident from the review of the staff judge advocate, the report of the psychiatrist, the story of the prisoner himself, or the official record of trial. There are cases in which the prisoner has received a heavier sentence than others in like cases and he has been so far removed geographically from his command that clemency will not have a deleterious effect on his fellows. In such case clemency is in order on the second principle—justice to the man. Incidentally, such deserved clemency will go far in maintaining the morale of the rehabilitation center or disciplinary barracks and improving the morale of the prisoners generally. Prisoners communicate among themselves; and if a prisoner is smoldering under a genuine, well-founded sense of injustice, he is quite likely to be a bad influence.

Timing

Granted at the proper time, clemency gives birth to the hope of restoration or release and engenders better morale in the prisoner, strengthening his resolve to improve. Granted too early, it exposes the whole system of military justice to contempt. It is important, therefore, to give much thought to the appropriate timing of the granting of relief. In cases where the sentence is obviously out of line and no special circumstances appear to justify departure from the appropriate standard punishment, relief is granted at once, that is, upon the first clemency consideration; but, in certain special cases such as mutiny and disrespect toward military authority, when it appears that the commanding officer has approved exemplary sentences, higher authority does not act precipitously nor without full knowledge assume the prerogative and the onus of upsetting the punishment as planned. These considerations are particularly applicable to cowardice-before-the-enemy and other war offenses.

The Application of Clemency in Special Cases

So much for general principles; let us turn now to the application of clemency in special types of cases.

The AWOL or Deserter—He is most numerous. On occasion he presents complex problems, but usually the procedure is clear. The deserter, comes to us with the standard 5-year sentence, and generally the psychiatrist will find that he is a psychopath, constitutional or otherwise. The Army is patient with him for a reasonable time, giving him progressively larger doses of military

training and more and more liberty. If he runs away, it is no great loss. We find him and send him to a disciplinary barracks where we will give him one more chance. If we are sure he will never make a soldier, we send him to a Federal penitentiary if the law allows. The rehabilitation centers are designed to be current schools, going concerns, not cluttered up with permanent non-graduates. In a disciplinary barracks or a Federal penitentiary the prisoner still will be given a chance; if he continues to be recalcitrant, that is the place to lock him away until the end of his sentence, which, let us hope, will postdate the end of the war. It is true that by this process he acquires a "bullet proof vest." But, after all, the Army can't make a silk purse out of a sow's ear, and we can't afford to let a slacker go home and annoy the parents of boys who are doing their full duty on the battle line.

Soldiers who "jump Ship" just before embarkation for overseas duty present a special variety of AWOL or desertion for which the Army has developed special treatment—Court martial is not always the only disciplinary method used. Processing Centers have been established at Ft. Devens on the East Coast and Camp McQuade on the West Coast to deal with the special problems of men who have developed "gang-plankitis" on their first or subsequent scheduled trips abroad. Here their records are examined and if the excuse is "pretty good," and the record justifies the conclusion that probably the soldier will make good after all, he is put on the next ship to rejoin his unit with or without charges preferred. Such procedure is often recommended when soldiers miss their return boat after sick, rotational, or "battle fatigue" leave in this country.

It seems clear to me that there will never be any single optimum solution to the desertion problem.

The Homosexual:—This is a delicate—to some a revolting problem. Medical science distinguishes between the constitutional homosexual and the casual or curious sodomist. The War Department has recognized the distinction and since January 1944 has permitted the constitutional type whose crime is not attended by violence or contribution to the delinquency of a minor or other inferior to resign for the good of the service or to receive a blue discharge. That policy, with safeguards, is now being applied to sodomists in military custody. Thus we will rid our institutions of some utterly unsalvageable soldiers and the civil communities to which they return will be no worse off than formerly. Civil courts rarely convict for this crime even in States where under the law they may. The prisoner confined for another crime who turns out to be a sodomist presents a special problem.

The Conscientious Objector:—There are probably very few genuine conscientious objectors in rehabilitation centers. If we find one who is not faking, we recommend that he be sent to a disciplinary barracks. The War Department has recently worked out with the Selective Service System a procedure for releasing genuine conscientious objectors from the Army into Civilian Public Service camps where they will perform some useful work of national importance until the end of the war. The procedure is complicated by a recent decision of the Supreme Court and requires close cooperation with Selective Service, the Judge Advocate General, and the Adjutant General.

The Psychotic:—There is perhaps more learning and

more confusion on this subject than any other which comes before us. It will be confidently asserted by many proponents of clemency that Army court-martial and medical boards of inquiry are old fogeys bound by unrealistic precedent and that the Army's view of mental cases is old-fashioned and unscientific. On the contrary, the definition of insanity which is followed in the Army is as modern, if not more so, than that of most civil courts. The test, as laid down in paragraph 78 (a) of the Manual for Courts-Martial is as follows:

A person is not mentally responsible for an offense unless he was at the time so far free from mental defect, disease, or derangement as to be able concerning the particular acts charged both to distinguish right from wrong and to adhere to the right.

The Army recognizes that, although the accused may be able to distinguish between right and wrong, his will may nevertheless by reason of mental disease be so paralyzed that he is unable to choose the right and reject the wrong. The Surgeon General's Office is fully aware of this standard, and the officers who serve upon the boards appointed to make inquiries in mental cases are quite careful to observe it. Often commandants of rehabilitation centers and disciplinary barracks are urged to turn the prisoner over to Saint Elizabeths Hospital or to the custody of the parents rather than to a military prison. There are cases of course in which prisoners become insane after conviction and we know no better rule in these cases than to follow the recommendations of the medical boards of review and the Surgeon General.

The Psychopath:—Rehabilitation centers should be free from not only the psychotic but the psychopath as well. Whether legally insane or sane with a personality defect which justifies the classification "constitutional psychopathic inferior," the prisoner will never make a soldier. If we find that a rehabilitation center has received such a prisoner, we send him to a disciplinary barracks at once, for a genuine CPI is not curable and the rehabilitation centers are too busy to waste time with this type of prisoner.

Relation with Civil Penal Systems

The Army has no desire nor purpose to establish a prison system in rivalry or competition with State and Federal systems. It is only because of the accident of war that the Services now have in their custody a large proportion of those who, because of native criminal tendencies, would have found their way into civilian institutions in normal times. The Army does not intend to abandon its prime mission—that of winning the war—to go into the penology business. The Army may not be expected to build or staff many permanent prisons. When it finds that it cannot make a soldier out of an offender, its desire at that point is to turn the incorrigible over to the civilian arm where the responsibility for rehabilitation into society will be conducted by experts in penology. Reviewing authorities are required initially to send incorrigible prisoners to penitentiaries rather than to military prisons. At present there are about 2,000 military prisoners in Federal institutions. Some of them are undoubtedly salvageable as soldiers and a study is now being made to discover who they are and to send them to appropriate disciplinary barracks to give them their chance. The Army has had the benefit of many expert civilian penologists in establishing its present system, and it will continue to seek their advice and counsel.

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THE *War Department* BOARD OF CONTRACT Appeals ITS HISTORY AND ORGANIZATION

By COLONEL HUGH CARNES SMITH, JAGD

President of the War Department Board of Contract Appeals

PERFECTION has not been attained—and never will be—in drafting War Department contracts, nor in their administration and execution.

The present contract forms¹ are not of mushroom growth, but of gradual development induced by experience. They have been fashioned with the idea of fairness, both to the Government and to contractors.



COLONEL H. C. SMITH

A War Department contract duly signed by the parties, like any other contract, should constitute an indisputable and permanent record of the real agreement between them. Thus, the written instrument, presumed to reflect the real intention of the parties, becomes the guide by which their respective rights

are to be determined in case disputes arise.

During the period of preparation for the national defense preceding Pearl Harbor, and since that time, the War Department, in facilitating the prosecution of the war, has entered into a vast number of contracts. The subject matter of these contracts—supplies, munitions, facilities, construction, and services and the use of land and personal property—has covered a wider range than generally realized or than was known in any of our other wars.

Through the necessity for haste, specifications were hurriedly drawn and plans hastily prepared. Under the pressure of Government agents, a desire for gain, or from patriotic motives, contractors undertook enterprises with which they were unfamiliar and for which they were inadequately prepared due to inexperience, shortage of manpower, lack of facilities, or through difficulty in obtaining materials. It is not surprising therefore, that between contracting officers and contractors many disputes have arisen in the course of carrying out these contracts and in their settlement.

Creation of Board

In contemplation of the added work incident to the administrative disposition of appeals arising from these disputes, and for the purpose of establishing a more satisfactory appellate system than then existed, the Under Secretary of War, following the recommendation of a committee of officers, recommended to the Secretary that a board be constituted in the former's office to determine these appeals as the authorized representative of the Secretary of War, and that contract forms be appropriately amended in this respect.

1. Forms of contracts are set out in War Department Procurement Regulations No. 13, par. 1301, et seq.

In its report the committee said:

"It is the view of the Committee that as the final responsibility for the adjustment of War Department contracts must rest with the Secretary of War, or with the Under Secretary, that the board designated as the representative of the head of the department should be set up in the Office of the Under Secretary of War. At least three reasons seem to indicate the desirability of such a set-up. They are: (a) The desirability of having the appeals considered by officers not concerned with the negotiating or carrying out of contracts; (b) The satisfying effect on appellant contractors; and (c) The fact that the time of officers and civilian officials in the Purchase Branch of the Services of Supply is taken up with matters pertaining to the immediate and pressing needs of war preparation."

The board of Contract Appeals was accordingly set up August 8, 1942, in the Office of the Under Secretary,² and contract forms were amended to make it plain that the Secretary of War might designate a board as his representative to determine appeals.³ In many respects the board so constituted is similar to the War Department Board of Contract Adjustment, later known as the Appeals Section of the War Claims Board, created shortly prior to the Armistice which terminated World War I.⁴ Being non-statutory, each was constituted by War Department orders.

There is, however, a difference between the jurisdiction of the two boards. That of the present board, with certain exceptions hereinafter mentioned, is appellate only, while the jurisdiction of the Board of Contract Adjustment was both original and appellate.⁵ The findings and decisions of the Board of Contract Adjustment were final and conclusive, subject only to review by the Secretary of War, while the decisions of the War Department Board of Contract Appeals are not subject to such review. The present Board is fashioned after, and, in general, its rules of procedure simulate those of the earlier Board.

Jurisdiction

The source of jurisdiction of the Board of Contract Appeals with regard to appeals under a contract is the contract itself. Under contracts authorizing the appointment of a board as the representative of the Secretary of War to determine appeals, its decisions within the orbit of its contractual authority are binding on the parties. As to appeals under contracts which do not specifically authorize a board to act as the representative of the Sec-

2. W.D.P.R. No. 3, Sec. VI, par. 318-D.1.

3. W.D.P.R. No. 3, Sec. VIII, par. 326.

4. The War Department Board of Contract Adjustment was created in the Purchase, Storage and Traffic Division of the General Staff, by War Department General Orders 103, dated November 6, 1918. It was charged with the duty of hearing and determining "all claims, doubts, disputes, including all questions of performance or nonperformance which may arise under any contract made by the War Department." It became the Appeal Section, War Claims Board, by virtue of W.D. Gen. Orders No. 40, June 26, 1920, 7 B.C.A. Reports, p. IV.

5. Vol. 1, Decisions of the War Department Board of Contract Adjustment, p. XXXIV.

retary, the Board's opinions take the form of recommendations to the president of the Board, who in such cases renders the final decision as the authorized representative of the Secretary of War.

Dent Act

Since the War Department Board of Contract Adjustment functioned with respect to claims based on informal and implied contracts under the Dent Act⁶ that Board is sometimes erroneously thought of as having been established pursuant to that Act. But as has been seen, it was created nearly four months prior to that enactment, largely because of a then recent requirement for the insertion in all fixed price War Department contracts, of an article which inferentially authorized the Secretary of War to designate a board as his representative to determine appeals under such contracts.⁷

The immediate cause of the passage of the Dent Act was a decision of the Comptroller of the Treasury⁸ that War Department contracts executed for the contracting officer by another officer—known as proxy-signed contracts—did not create any binding obligation on the Government. One of the purposes of the Act, however, was to authorize the adjustment of claims under implied contracts. Up to the time of this writing no appeal under a proxy-signed contract has been brought to the attention of the War Department Board of Contract Appeals. The decision of the Comptroller of the Treasury was influenced by Section 3744 of the Revised Statutes, as amended by the Act of March 4, 1915,⁹ which required War Department contracts in excess of \$500 not to be performed within 60 days, to be in writing and signed at the end thereof by the contracting parties. That section has since been repealed.¹⁰

Before the passage of the Dent Act the courts had held that unless War Department contracts were executed in conformance with the provisions of Section 3744 of the Revised Statutes, the Government was not bound. Where informally executed or implied contracts had been fully performed and the Government had received a benefit through such performance, adjustments were made in the Department of the Treasury on the basis of *quantum meruit* or *quantum valebat*, as later they were made in the General Accounting Office. Until the Dent Act—a temporary measure affecting only contracts entered into prior to November 12, 1918, and claims filed thereunder within a limited time—was passed, there was no authority in the War Department to adjust and settle claims under such types of contracts.¹¹

Interim Appellate Procedure

After the Appeal Section of the War Department Claims Board ceased to function, about June 1921, opportunity was not always extended by the War Department to a contractor aggrieved by the ruling of a contracting officer, to have a hearing on his appeal to the Secretary of War or his authorized representative, or even

before the chief of the service concerned. Appeals were generally disposed of upon the record.¹²

However, in November 1941, the Under Secretary of War directed that in each supply service a board advisory to the chief of service should be constituted to consider appeals which the chiefs of the supply services were authorized to determine.¹³ In January 1942, each chief of a supply service was authorized as the representative of the Secretary of War to determine contract appeals to the Secretary involving not more than \$50,000.¹⁴ Simultaneously, with the establishment of the service boards, there was created in the Office of the Under Secretary a board composed of officers devoting only part time to the duty, known as the War Department Board of Contract Appeals and Adjustments, which was advisory to the Under Secretary of War as the representative of the Secretary in disposing of appeals,¹⁵ and later advisory to the Director of Purchases and Contracts, Office of the Under Secretary,¹⁶ as such representative. Upon the establishment of the Services of Supply, now Army Service Forces, that board was transferred thereto, and the Chief of the Purchase Branch, Procurement and Distribution Division, of the Services of Supply, succeeded the Director of Purchases and Contracts, as the representative of the Secretary of War.¹⁷ The Board of Contract Appeals and Adjustments ceased to exist with the creation of the War Department Board of Contract Appeals.¹⁸

The boards in the technical services have not been discontinued, but are still authorized to function in an advisory capacity to the chief of service, on appeals under contracts authorizing the final determination of appeals (generally limited to \$15,000) by the chiefs of services; or determination within the fixed limit, subject to further appeal by the contractor to the Secretary of War or his authorized representative.¹⁹ There are yet outstanding some contracts containing such provisions. Being contractual they are unaffected by the Secretary's action in creating the War Department Board of Contract Appeals, though the president of the Board acts on such further appeals to the Secretary, as his representative, after having received the recommendation of the Board.

The authority of the chiefs of services and of the Chief of the Purchase Branch, Procurement and Distribution Division, Services of Supply, to function on appeals as the representatives of the Secretary of War was terminated at the time that function passed to the War Department Board of Contract Appeals and to its president.

Finality of Decisions

Although the current disputes articles, hereinbefore referred to, make the decision of the Board or other duly authorized representative of the Secretary of War, conclusive only as to matters of fact, the specifications clause, known as the Claims, Protests and Appeals provision, in many contracts permits appeals from any ruling of a contracting officer by which the contractor feels ag-

6. Act of March 2, 1919, 40 Stat. 1272, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes."
7. W.D. Supply Circ. No. 88, September 7, 1918, also set out on p. XXXVIII of Vol. 1, Dec. W.D., B.C.A. *supra*.
8. 25 Comp. Dec. 398, 404.
9. 38 Stat. 1078.
10. Act of October 21, 1941, 55 Stat. 743.
11. *Clark v. United States*, 95 U.S. 539; *United States v. Andrews*, 207 U.S. 229; 25 Comp. Dec. 528-530.

12. *Penker Construction Co. v. United States*, 96 C. Cls. 1.
13. Purchase and Contracts Directive No. 72, Nov. 7, 1941.
14. W.D. Memo for Chiefs of Services, PC-L 167 (Appeals), dated January 6, 1942.
15. Office Memo O.U.S.W., PC-L 334 (Contract Appeals Board), dated November 7, 1941.
16. W.D. Memo, referred to in note 14.
17. W.D. Memo, subject: "Designation of Representatives to pass on Appeals," dated March 16, 1942.
18. Par. 11, Memo, Secretary of War, dated Aug. 8, 1942, creating War Department Board of Contract Appeals.
19. W.D.P.R. No. 3, Sec. VI, pars. 318-F to 318-F.5.

grieved. The Court of Claims has recognized the legality of such a provision.²⁰

In his memorandum creating the War Department Board of Contract Appeals, the Secretary directed that under contracts containing provisions authorizing the designation of a board as his representative to determine appeals, the War Department Board of Contract Appeals as his representative, should hear, consider and decide appeals as fully and finally as he himself might do. As to contracts which do not contain provisions authorizing the designation of a board, the Secretary designated like power to the president of that Board as his duly authorized representative. He also directed, however, as to appeals under contracts of the latter class, that the Board nevertheless should hear and consider them and report its views to the president of the Board, who, if not in accord therewith, should promptly submit the case for final determination upon the record to the Under Secretary of War, whom the Secretary designated as his representative for that purpose.

Organization and Membership

The Under Secretary recommends persons for membership on the Board and for recorder, and nominates the president of the Board. Appointments, however, are made by the Secretary of War.

As originally constituted, the Board consisted of three members, including the president, appointed by the Secretary's indorsement dated August 20, 1942, on the recommendation of the Under Secretary of the same date. The Board was organized September 14, and the first hearing held October 16, 1942. However, in May 1943, the Under Secretary of War having determined that due to the increase in the number of appeals, additional members were necessary in order to process appeals with reasonable dispatch, recommended that the number of members be increased from three to seven. The Secretary approved the recommendation and appointed the additional members. Two more members were added September 8, 1944, and the Board now consists of nine members, including the president.

Except the president of the Board, who was commissioned in the Regular Army following World War I, the other members of the Board, the recorder and assistant, the trial attorney and the assistant trial attorneys are reserve officers or officers appointed in the Army of the United States during the existing emergency. The membership is well distributed, geographically; the States of Missouri, Indiana, California, Oklahoma, Georgia, Utah, Vermont, South Dakota, and Michigan, being represented. Though all the members are lawyers, some have had extensive business experience.²¹

20. *Silas Mason Co. Inc. v. United States*, 90 C. Cls. 266, 271; but see *Penker Construction Co. v. United States*, 96 C. Cls. 1.

21. The members of the Board, the recorder, assistant recorder and trial attorney, on February 1, 1945, were as follows:

Members:

*Colonel Hugh C. Smith (J.A.G.D.), president, of Kansas City, Mo., was general counsel and afterwards a member of the War Department Board of Contract Adjustment (later Appeal Section of the War Claims Board) following World War I, Assistant The Judge Advocate General of the Army, 1934-37, and at times Acting The Judge Advocate General. Upon retirement he practiced law in Washington, D.C., until recalled to active duty in July, 1940, as Chief of the Legal Section in the Contract and Purchase Branch of the Office of the Under Secretary of War. He also was Assistant Counsel for Puerto Rico (1937-1940). He holds the degrees of LL.B. from the University of Michigan and LL.M. from American University.

Colonel Joseph A. Avery (J.A.G.D.) of South Bend, Ind., who was judge of the City Court there. Prior to his connection with the Board he was chief of the Bonds Branch of the Contracts Division, in the Office of The Judge Advocate General. He was the first trial attorney of the Board, and holds A.B. and LL.B. degrees from the University of Michigan.

**Lieutenant Colonel Donald M. Keith (J.A.G.D.) of Los Angeles, Calif., on leave from the Metropolitan Water District of Southern California, for which he is attorney. Prior to that employment he had been in the general practice of law, and has served as Deputy City Attorney of Los Angeles, handling civil matters including the trial of litigated cases involving contracts. He has acted as judge *pro tem* in a number of cases in the Superior Courts of California. He holds the degree of LL.B. from the University of Southern California.

Lieutenant Colonel Moody R. Tidwell, Jr., (F.D.), a well-known lawyer of Miami, Okla. After receiving his LL.B. degree from the University of Oklahoma he engaged in banking and general investment business for seven years. He was called to active duty in 1940 and thereafter until appointed a member of the Board, was officer in charge of the Claims Division in the Office of the Chief of Finance, War Department. He was a member of the Advisory Claims Committee in the Office of the Under Secretary of War.

***Lieutenant Colonel Robert W. Smith, Jr. (J.A.G.D.), of Gainesville, Georgia. In addition to his corporate law practice, representing various utilities, insurance, banking and bond institutions, Lieutenant Colonel Smith was United States Commissioner for the Northern District of Georgia. He was on duty in the Office of The Judge Advocate General from June 1941 until appointed a member of the Board. He attended Georgia School of Technology, and in 1928 was graduated from the University of Georgia with the degree of LL.B.

*Lieutenant Colonel Eugene E. Pratt (J.A.G.D.), of Salt Lake City, Utah. He attended the University of Utah and graduated from Leland Stanford Junior University with the degree of LL.B. He practiced law for several years, was a district judge for ten years, and since 1939 has been a justice of the Supreme Court of Utah, from which court he is on leave.

*Lieutenant Colonel Roswell M. Austin (A.U.S.), of St. Albans, Vt., was for several years Secretary-Manager of the Memorial Commission, Inc., a trade association of firms engaged in the monument industry. At the time of his appointment as a member of the Board, he was head of the legal division of the American Granite Association. Prior to his association with the Memorial Commission he was a member of the well-known law firm of C. G. Austin and Sons of St. Albans. He holds an A.B. degree from Yale University. He was speaker of the House of the Vermont Legislature in 1925.

Lieutenant Colonel Leo Albert Temmey (J.A.G.D.), of the law firm of Temmey & Lubey, Huron, South Dakota; formerly Attorney General and Industrial Commissioner of that State, and prosecuting attorney of Beadle County, South Dakota. He has been National Vice Commander, American Legion, and Department Commander, American Legion for South Dakota. He attended South Dakota State College for two years and graduated from the University of Minnesota with LL.B. degree. At the time of his appointment as a member of the Board, he was on duty in the Contracts Division of the Office of The Judge Advocate General.

Major Benjamin H. Long (J.A.G.D.), of Detroit, Michigan, is a member of the law firm of Dykema, Jones & Wheat of that city, and has specialized in corporation, estate, and trust law. At the time of his appointment as a member of the Board, he was assistant to the Counsel to the War Department Price Adjustment Board and the inter-departmental War Contracts Price Adjustment Board. Prior thereto he had been litigation officer of the First Service Command. He is a graduate of The Judge Advocate General's School; holds the degrees of A.B. from Indiana University and LL.B. from the Harvard Law School.

The recorder, Colonel Paul G. Thompson (J.A.G.D.), is from Greenville, Texas. As a reserve Judge Advocate during World War I, he was executive officer, Legal Section, Office of Director of Sales. He was called to active duty with the Legal Division, Planning Branch, Office of the Under Secretary of War, in October, 1940. At that time he was an examiner for the I.C.C. and had been for eleven years. He holds A.B. degrees from Burleson College and Baylor University, Texas, and LL.B. degree from the University of Texas, and took post-graduate legal work at George Washington University.

The assistant recorder is Captain Edgar K. Markley (J.A.G.D.) of Gettysburg, Pa., who has the degrees of B.S. from Gettysburg

College and LL.B. from Dickinson School of Law. He served as an assistant trial attorney from January to July, 1943, and was in attendance at The Judge Advocate General's School, Ann Arbor, Michigan, when appointed assistant recorder.

The trial attorney is Lieutenant Colonel Felix Atwood (J.A.G.D.), a Texas lawyer holding the degrees of A.B. from Texas Christian University and LL.B. from the University of Texas. He has been doing trial work before the Board since its organization and succeeded Colonel Avery as trial attorney when he became a member of the Board. Prior to his entry into military service in 1941, he was for three years a trial attorney in the Internal Revenue Department.

* Original member.

** Vice Col. Andrew J. Copp, Jr., who has resumed his law practice in Los Angeles, California.

*** Vice Col. John H. Tucker, Jr., who has resumed his law practice in Shreveport, Louisiana.

Divisions

The Board now functions in four divisions, each consisting of two members and the president. If a majority of the members of a division are unable to agree upon a decision, or if within 30 days after the date of a decision by a division, the Board or the president thereof directs that the decision be reviewed by the Board, it is so reviewed; otherwise the decision of the members of a division, or a majority thereof, becomes the decision of the Board. However, the effective date of a divisional decision is usually the date it bears, since there is generally filed with it a statement signed by a majority of the members, including the president, to the effect that they do not desire a review by the Board.

The procedure with regard to divisional decisions follows rather closely the procedure set up by Congress for the United States Board of Tax Appeals (now the Tax Court of the United States).²² The main difference is that a divisional decision by the Tax Court is subject to review by the court only upon direction of the presiding judge, while a decision of a division of the War Department Board of Contract Appeals is subject to review by the Board either upon the direction of the president, or a majority of the Board.

Generally, the appeals come to the Board through the chief of the service concerned, accompanied by a copy of the contract involved and the pertinent files. In case, however, the appeal is filed directly with the Board, it is necessary to refer it to the appropriate chief of service for a copy of the contract and the complete file of the case.

Upon the filing of an appeal, the recorder examines the file and if satisfied that it is reasonably complete, turns it over to the trial attorney for examination and preparation of the case for presentation to the Board. It often happens, however, the recorder finds that material papers are missing, and before turning over the file to the trial attorney, secures the missing papers through the chief of service concerned.

When the trial attorney reports to the recorder that a case is ready for hearing, the president of the Board directs its setting, and appropriate notice of the hearing is given to the parties concerned.

Preparation and Presentation of Cases

The cases are prepared for hearing and presented to the Board at hearings by the trial attorney and his assistants.

22. Secs. 1103 (c), (d), 118 (b), Title 26 U.S.C., Internal Revenue Code.

The trial attorney is also chief of the Contract Appeals Branch, the other members of which are his assistants, in the Contracts Division of the Office of The Judge Advocate General of the Army. It is upon this branch that the primary responsibility rests for the preparation of appeals for hearing and for their presentation to the Board.²³

The Board has all powers necessary and incident to the proper performance of its duties, and its rules of procedure have been approved by the Under Secretary of War.²⁴

Hearings

Any member of the Board or any examiner designated by the president of the Board for that purpose, may hold hearings, examine witnesses, receive evidence and report the evidence to the Board or to the appropriate division if the appeal is pending before a division.

During the time the Board was composed of three members only, hearings generally were held before the full Board. Since the Board begun to function by divisions, one member of a division ordinarily conducts the hearing.

The office of the Board is in the Munitions Building,²⁵ where hearings are held. The Board is, however, authorized to hold hearings at such other places as it may determine, from time to time, to be expedient or necessary for the proper performance of its duties. So far it has been found feasible in only a few instances for members of the Board to hold hearings outside of Washington, D.C. Sometimes, in order to facilitate hearings and accommodate the parties and witnesses who reside at great distances from Washington, or for other reasons, the president of the Board, with the consent of The Judge Advocate General, has designated judge advocates located in the vicinity of the residences of witnesses, as examiners to conduct hearings, take the testimony of witnesses and report the evidence to the Board.

The Board is without authority to subpoena witnesses, but may authorize depositions to be taken.

A form of appeal has been set out in the rules,²⁶ and it is highly desirable that the form be followed. However, the Board has not refused to consider any appeal because not in proper form.

At least 10 days' notice is given of the time and place of each hearing.

In order to expedite the disposition of appeals, which is deemed highly desirable both from the viewpoint of the Government and the contractor, continuances are not granted except for good cause shown. Trial attorneys

23. Major General Myron C. Cramer is The Judge Advocate General, Brigadier General Thomas H. Green is Deputy Judge Advocate General. Colonel J. Alton Hosch (J.A.G.D.), Dean of the Law School of the University of Georgia, is Chief of the Contracts Division. The assistant trial attorneys are as follows: Majors James E. Bowron, Birmingham, Alabama; Keith F. Driscoll, Syracuse, New York; John B. Dudley, Jr., Oklahoma City, Oklahoma; Clarence G. Strop, St. Joseph, Missouri; Paris T. Houston, Goin, Tennessee; Joseph A. O'Connell, Washington, D. C.; Thomas A. Banks, Garner, North Carolina; Albert B. Chipman, Plymouth, Indiana; and Francis C. Sullivan, Duluth, Minnesota; Captains Lynn C. Paulson, Washington, D. C.; Homer E. Peters, Albany, New York; Charles E. Carlsen, Minneapolis, Minnesota; 1st Lieutenant Charles Donahue, Portland, Maine; 2nd Lieutenants Ernest Hubbell, Trenton, Missouri; and William W. Brady, Elgin, Illinois.

24. W.D.P.R. No. 3, Sec. VI, pars. 318-E.1, et seq. set out the rules.

25. South Bay, third floor, seventh wing.

26. W.D.P.R. No. 3, Sec. VI, par. 318-E.13.

frequently avoid continuances by stipulating that if an absent witness were present he would testify as set out in the stipulation. It sometimes happens that the appellant and the trial attorney are able to stipulate as to the facts to be submitted to the Board, or some portion of them, thus obviating the calling of witnesses as to the facts so stipulated. If, after due notice, which is always given by registered mail unless a time of hearing has been agreed upon between appellant and the trial attorney, a party or representative does not appear at the time and place set for a hearing, the hearing nevertheless proceeds and the case is regarded as submitted on the record on the part of the absent party.

Witnesses before the Board or any division thereof or before any member or examiner, are examined orally under oath and their testimony, as well as the full proceedings at the hearing, is taken stenographically and transcribed by an official reporter. The transcript is available to the Board in considering its action, and a copy may be obtained by appellant from the reporter at the rate fixed in the reporter's contract.

An appellant may be represented before the Board by an attorney at law, admitted to practice and in good standing before the Supreme Court of the United States or before the highest court of any state, territory, possession, or the District of Columbia. The statement of the attorney is accepted as satisfying this requirement. No roster of attorneys authorized to practice before the Board is kept, and there is no other formality with regard to attorneys appearing before the Board. An individual appellant may appear for himself, a partnership by one or more partners, and a corporation may be represented by an officer of the corporation.

The appellant has the "laboring oar," so to speak; however, it is the custom for the Board to ask the trial attorney to make a statement of the facts, to explain the issues involved and then give the appellant, his attorney or other representative, opportunity to make a statement and to present any testimony or argument deemed pertinent in support of the appeal. The trial attorney cross-examines the witnesses offered by appellant and presents any further testimony that he believes material. Both sides are then allowed to make arguments in support of their respective views.

The Board is not a judicial body, but an administrative one. Though there is a degree of formality in the proceedings before the Board, they are really informal as compared to court procedure, and strict rules of evidence are not usually observed.

The Board now hears an average of about ten cases a week, the hearings being rotated among the divisions so that a division hearing cases one week has approximately three weeks thereafter to prepare its decisions before taking up hearings again. The entire file of the case is considered in evidence before the Board and no formal introduction in evidence of any paper therein contained is necessary, though frequently the appellant or the trial attorney calls the Board's attention to particular documents upon which he relies.

As of February 1, 1945, there had been filed with the Board 989 cases, an average of approximately 34 per month. Of these, 816 have been disposed of, leaving 173 on hand, 17 of which were on the suspense docket pending further efforts of the services to adjust them or being considered under the First War Powers Act. The average amount claimed in the appeals that have been disposed

of is approximately \$15,732; the total amount of claims disposed of is approximately \$14,282,642; the total amount awarded by the Board on those appeals is approximately \$1,869,398. The amounts claimed in 27 cases were not shown, and the amounts awarded in 6 cases were not given, and in others the amounts awarded are estimated.

Up to February 1, 1945, the percentage of the number of cases in which allowances were made in whole or in part, as compared with the total number disposed of, was approximately 27.5%. The total dollar value of allowances equaled approximately 13% of the total amount claimed.

At the conclusion of the hearing, the appeal, or motion to dismiss, if there is one, or both, are usually taken under advisement and an opportunity is given the parties to file briefs if they so desire.

Opinions

A written opinion is prepared and filed in each case, and ordinarily includes findings of fact, decision, and an appropriate order for the disposition of the appeal.

There has been no official publication of the opinions of the Board. However, all opinions, except such as are merely recommendations to the Secretary of War, the Under Secretary, or to the Director, Purchases Division, Headquarters, Army Service Forces, pursuant to reference for consideration and recommendation only, are published by Commerce Clearing House, Inc., in a series entitled "CCH, Contract Cases Federal." Volume 1, in bound form, contains decisions of the Board up to January 1, 1944.

Volume 2 has not been published in bound form, only the advance sheets, which include the opinions up to October 31, 1944. Volume 3, the current volume, begins with decisions of October 31, 1944, and likewise, has not been published in bound form. These volumes are cited as 1 CCF, 2 CCF, and 3 CCF. Besides the Board's opinions they contain decisions of the Federal courts, including the Court of Claims and the Tax Court, on the subject of Government contracts.

Prentice-Hall, Inc., publishes in loose-leaf form in its Government Contract Service, beginning at paragraph 45,003, a history of the Board, its organization and functions, and a digest of its opinions.

Thus contractors, their attorneys, and auditors, contracting officers, and the contracting agencies of the War Department are kept currently informed of the nature and extent of contractual disputes and of their determination. This knowledge should lead to fewer dissensions between contracting officers and contractors, better understanding between them, and to fewer appeals.

Even when an appeal has been decided adversely to the interests of the appellant, he has been fully advised by the decision of the basis on which his appeal was denied and has no ground of complaint that he has not had opportunity fully to present his case. At the conclusion of one hearing the contractor remarked that having had opportunity to "tell his story," he was satisfied, and would not complain of any decision the Board might reach.

Appeals are largely from rulings of contracting officers denying contractors' requests for extensions of time within which to complete contracts; claims for extra work; disputes as to whether equitable adjustments have or have not been made by contracting officers for changes

in drawings and specifications; claims for reimbursement under cost-plus-a-fixed-fee contracts; disputes as to charges against contractors for extra Government materials used; claims for extra compensation due to alleged changed conditions; claims of wrongful termination, involving liquidated damages and extra costs; and claims on account of increased labor costs under lump sum contracts, resulting from the action of the Department of Labor in increasing local wage rates, or caused by the action of other Government agencies, or local conditions.

A motion for rehearing or reconsideration by an appellant must be filed within 10 days from the date of service upon him of a copy of the decision of the Board. A copy of the decision is transmitted by the recorder to each appellant by registered mail. Two copies are furnished the chief of the service concerned, one of which is for transmission to the contracting officer.

Termination

Most War Department contracts now contain articles for their termination for the convenience of the Government, setting out in detail the method of settlement and providing that any disputes arising out of the termination under the article shall be decided in accordance with the disputes clause of the contract which authorizes appeals.²⁷

Up to January 1, 1945, the War Department had terminated 33,594 prime fixed-price contracts, canceling commitments amounting to \$13,845,209,000, of which 30,653 had been settled. Four hundred seventy-seven cost-plus-a-fixed-fee prime contracts were terminated, canceling commitments amounting to \$5,001,742,000, of which 314 had been settled.²⁸

The fact that prior to January 1, 1945, only five War Department termination cases had been reported to the Director of Contract Settlement,^{28a} in which contractors indicated an intent to appeal to the appeal board constituted by the Contract Settlement Act of 1944,²⁹ and the further fact that up to February 1, 1945, only 12 appeals under terminated contracts had been filed with the War Department Board of Contract Appeals, would seem to indicate that War Department contracting agencies and the contractors alike are making honest efforts to effect equitable adjustments. As a consequence, the number of appeals to either board will be very small as compared to the number of terminated contracts.

It is too early to say with any degree of certainty what effect the Contract Settlement Act of 1944 will have on the number of appeals to the War Department Board of Contract Appeals under contracts terminated for the convenience of the Government. Under that Act, if the contractor is unwilling to accept the amount offered by the contracting officer in settlement of the terminated contract, the contractor first may pursue his remedy by

appeal as provided in the contract. Then if dissatisfied with the determination of his appeal by the War Department Board of Contract Appeals, the contractor may still, by following the procedure outlined in the Act, take his case to the appeal board constituted by that Act, or may bring suit.³⁰

It is the declared policy of the Government in the Contract Settlement Act of 1944 to provide war contractors with speedy and fair compensation for the termination of any war contract, and it is the responsibility of the contracting agencies and of the Director of Contract Settlement so to provide. Even where a war contract does not provide for, or provides against such fair compensation for its termination, the contracting agency, either before or after its termination, must amend the contract by agreement with the contractor, or authorize, approve, or ratify an amendment by the parties thereto, to provide for such fair compensation.³¹

At any time during the pendency of an appeal—before decision—either before the statutory board or the War Department Board of Contract Appeals, the chief of the service concerned may negotiate a settlement of the dispute.³²

The Director of Contract Settlement is authorized by the Contract Settlement Act to prescribe policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of all Government agencies under the Act.³³

Non-Appellate Powers

In addition to the appellate powers of the War Department Board of Contract Appeals, it has certain other functions, to which brief reference will be made.

The Board has been authorized to act in an advisory capacity to the Under Secretary of War in cases referred to it in connection with the requisitioning of personal property, where: (a) The requisitioning officials are unable to determine with certainty the owner of the requisitioned property, or (b) the requisitioning officials have failed to agree with the owners upon fair and just compensation for the requisitioned property.³⁴ Although there have been many instances of requisitioning of personal property by the War Department, up to this time only two requisition cases have been referred to the Board.

First War Powers Act

There seems to be much misunderstanding among contractors, and even lawyers, as to the proper forum for relief under the First War Powers Act³⁵ and Executive Order 9001, particularly with regard to applications for the remission of liquidated damages, and the Board is often asked to grant relief under that Act, if it cannot be granted under the terms of the contract. However, no general authority under the First War Power Act has been delegated to the Board, though it has been to the Director of Purchases, Army Service Forces, and

27. See Forms of Contracts, W.D.P.R. No. 13; P.R. No. 3, pars. 324, 324.1, 350; Pars. 930-937, Joint Termination Regulations—See P.R. No. 15, for JTR.

28. Second Report by the Director of Contract Settlement to the Congress, Jan. 29, 1945, p. 50.

28a. Robert H. Hinckley, of Ogden, Utah, formerly connected with Sperry Gyroscope Corporation of America, is the Director of Contract Settlement; Robert S. Stevens, of Ithaca, New York, formerly connected with Foreign Economics Administration, has been appointed Chairman of the Appeal Board provided in the Contract Settlement Act of 1944; and George O. May, of New York City, New York, formerly connected with Price, Waterhouse & Co., has been appointed a member of that board.

29. Second Report by the Director of Contract Settlement to the Congress, Jan. 29, 1945, p. 25.

30. Secs. 6 and 13, Contract Settlement Act of 1944, approved July 1, 1944 (Pub. Law No. 395, 78th Cong., 2d Sess.)

31. Sec. 6, Contract Settlement Act of 1944, approved July 1, 1944, (Pub. Law No. 395, 78th Cong. 2d Sess.); see also par. 943.2, Sec. I, Item 4, JTR.

32. Par. 757.1, JTR.

33. Sec. 4, Contract Settlement Act of 1944.

34. W.D.P.R. No. 14, Sec. III, par. 1412.8. The proceedings before the Board are outlined in pars. 1412.9 and 1412.10. The form for submission to the Board is set out in par. 1432.

35. 55 Stat. 838, 50 U.S.C. Sec. 611.

under certain circumstances to the chiefs of services.³⁶ Recently when the contractor, in support of the same claim, has asserted dual grounds for relief, namely, contractual and under the First War Powers Act, the Board after the hearing has withheld decision, referred the claim for consideration under the First War Powers Act and placed the appeal on the suspense docket awaiting report as to the action taken.

The Director, Purchases Division, Headquarters, Army Service Forces (the term includes the Special Representative of the Under Secretary of War, see War Department Procurement Regulations, paragraphs 107.7 and 108.4, or his duly authorized representative), may refer to the Board either for investigation and recommendation or for final action, any request for relief or action pursuant to the First War Powers Act, 1941, and Executive Order No. 9001, and applicable War Department Procurement Regulations, especially paragraph 308-A or 1252, and following paragraphs.³⁷ A limited number of these cases have been referred to the Board, some for final action and others for investigation and recommendation, but without such reference the Board is without authority under that Act.

Damage Claims Against the Government

Another matter regarding which there seems to be some misunderstanding among contractors and their attorneys is with reference to claims of contractors for damages alleged to have been suffered because of some act of the Government agents in connection with the carrying out of the contract. It has been held time and time again³⁸ that in the absence of an authorizing statute, the Secretary of War is without authority to adjust and settle claims against the United States for unliquidated damages; and the Board has followed these decisions. If such authority can be found in the First War Powers Act and Executive Order 9001, it has not been delegated to the Board of Contract Appeals.

Many claims by contractors against the Government for breach of contract have been before the Board. As has been seen, the Board is powerless to grant relief in such cases. However, the Secretary of War directed the Board to find and administratively determine the facts out of which such claims arise, without expressing opinion on the question of the Government's liability for damages.³⁹

36. See P.R. No. 1, Sec. III.

37. Memo from the Secretary of War dated May 16, 1944, addressed to the Commanding General, Army Service Forces; Special Representative of the Under Secretary of War, and the President of the War Department Board of Contract Appeals.

38. *Cramp & Sons v. United States*, 216 U.S. 494; *Brannen v. United States*, 20 C. Cls. 219.

39. Memo from Secretary of War to War Department Board of Contract Appeals dated July 4, 1944.

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Colonel Marion Rushton of Alabama; Harvard Law School; formerly Assistant Attorney General of Alabama; private practice at Montgomery, Alabama; National

Eight Hour Law

The Board has also general authority to hear and consider appeals to the Secretary of War from the imposition of penalties under the Act of June 19, 1912 (37 Stat. 137; 40 U.S.C. 324), as amended, generally known as the Eight-Hour Law, and to make recommendations to the Secretary of War as to the disposition thereof. Under the statute the Secretary of War is the final arbiter of these appeals and the recommendation of the Board is merely advisory to the Secretary. Only one such reference has been made.⁴⁰

Administrative Action on Appeals

Appeals are sometimes taken from rulings of contracting officers under contracts which do not provide for appeals of the disputes involved. Nevertheless, the Board is authorized to consider and administratively pass on such appeals, if the ruling appealed from is not by the terms of the contract made final and conclusive and the appeal is taken within the time fixed in the contract for appeals.⁴¹

Contract Settlement Act

When referred to it by the Director, Purchases Division, Headquarters, Army Service Forces, or the Special Representative of the Under Secretary of War, the War Department Board of Contract Appeals is authorized to investigate and make recommendation, or if so directed, take final action regarding any claim, request for relief, or action arising under Section 17 of the Contract Settlement Act of 1944. Where the reference requests final action, the Board or any division thereof may exercise such powers under Section 17 of the Act as may be necessary and appropriate to dispose of such reference, subject to any applicable general order or general regulations issued by the Director of Contract Settlement.⁴²

The Board has general authority in connection with any appeal pending before it under the "Disputes" article of a contract, to authorize or direct the taking of any action pursuant to Section 17 of the Contract Settlement Act of 1944, which in its opinion, is required or authorized by that Section.⁴³

40. Memo from the Secretary of War to War Department Board of Contract Appeals dated May 30, 1944.

41. Memo from Secretary of War to War Department Board of Contract Appeals dated July 4, 1944.

42. Memo from the Under Secretary of War dated Sept. 14, 1944, addressed to the Commanding General, Army Service Forces, Attention: Director, Purchases Division; Brig. Gen. Albert J. Browning, GSC, Special Representative of the Under Secretary of War, and the President, War Department Board of Contract Appeals.

43. P.R. 308-H.7.

Guard Officer; formerly in Office of the Undersecretary of War; now Chief, Correction Division, Adjutant General's Office.

Lt. Colonel Thomas E. Sands, Jr.; born, St. Paul, Minnesota; Law School, University of Minnesota; private practice at Minneapolis and lecturer at Minnesota College of Law; Reserve Officer; Assignment: Litigation Division, JAGO.

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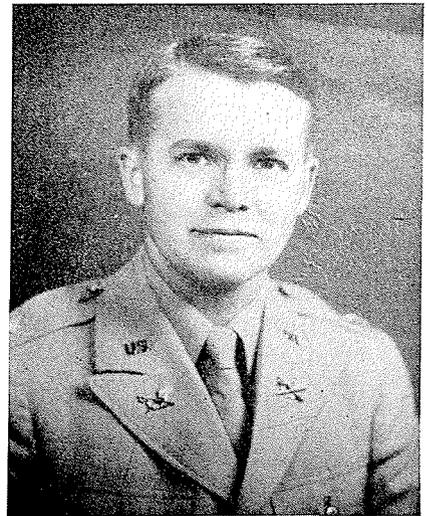
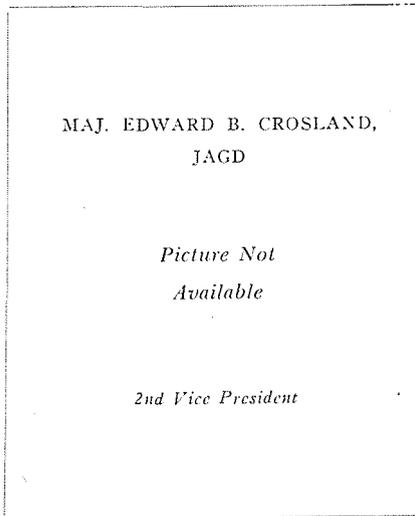
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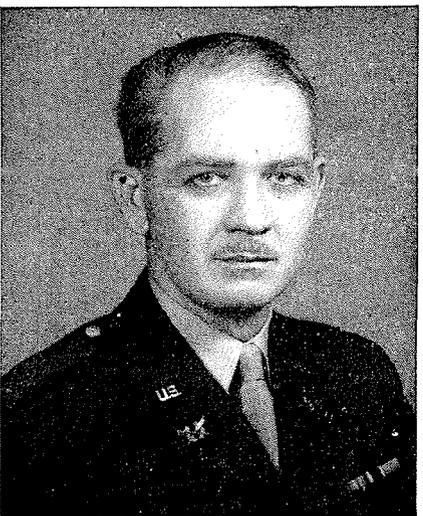
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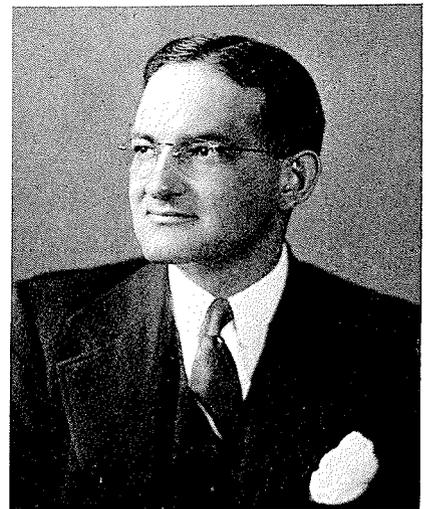
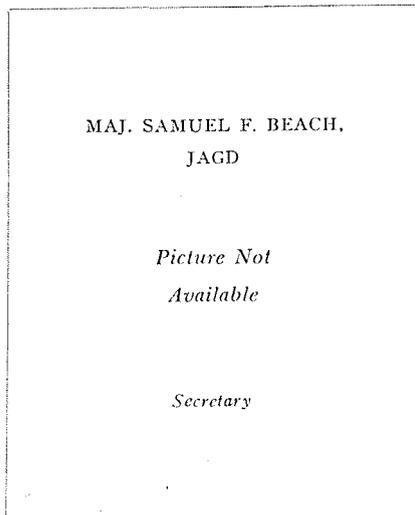
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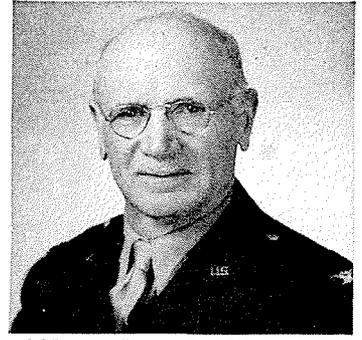
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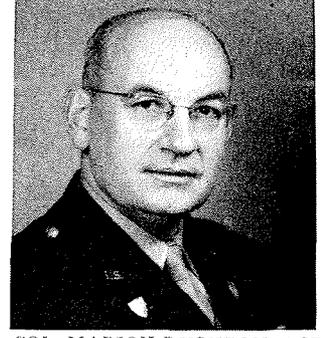
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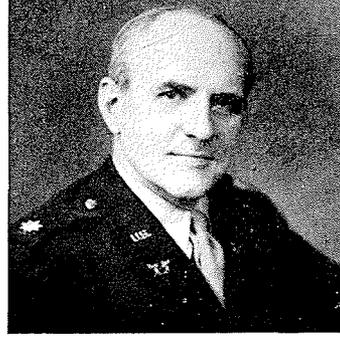
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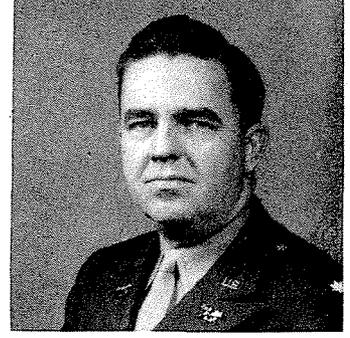
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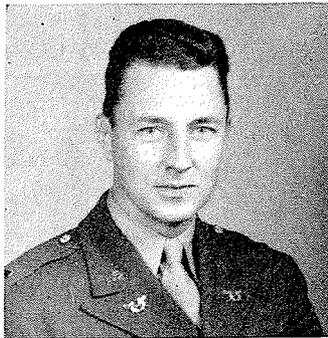
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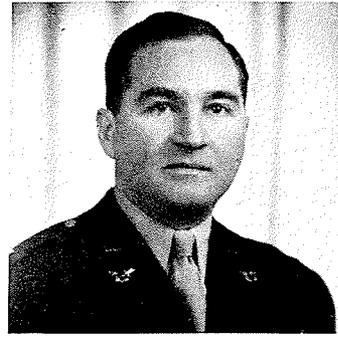
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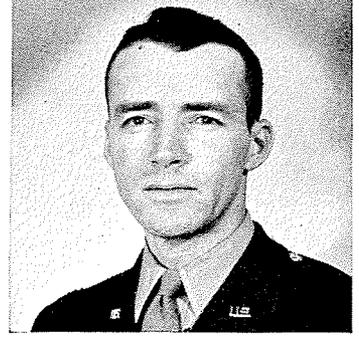
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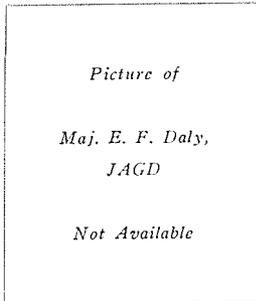
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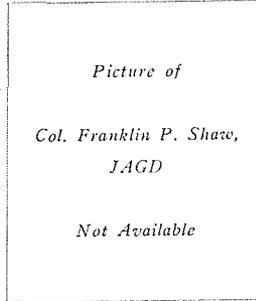
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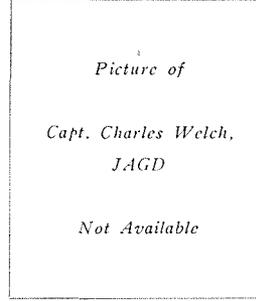
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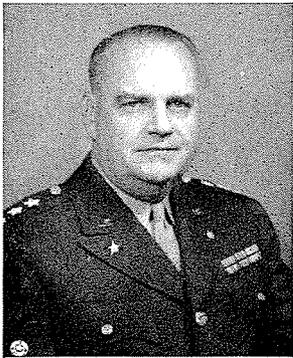


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An Address by LIEUT. GENERAL W. D. STYER, Chief of Staff, Army Service Forces*

I AM VERY glad that I could accept your kind invitation to say something this evening about the work of the Army Service Forces of which you are a vital part. In an organization of this size many of us are apt to be so concerned with the immediate problems we face that we are likely to forget the job which all of us are united to accomplish.



LIEUT. GEN. W. D. STYER

As you know, the Army Service Forces was created on 9 March 1942 with a specific purpose in mind. The mission we were assigned was to procure and distribute supplies and equipment and to operate the many administrative and technical services required by the War Department as a whole. It is sometimes said that we in the ASF are the "housekeepers" of the Army. If so, it's quite a housekeeping job we are performing. In fact, everything about the Army Service Forces is gigantic. Just to enumerate our jobs takes a good many words. We purchase or manufacture, store, and issue all of the supplies of the Ground Forces and all of the supplies which are common to the Army as a whole. We provide ground and ocean transportation. We construct all War Department facilities. We maintain those facilities. We run the communications system. We make training films for the Army. We provide medical service. We operate the Post Exchanges. We run the Army motion picture houses. We provide off-duty recreational facilities for the soldier. We are the preacher, the policeman, and the lawyer of the Army. We induct every man coming into the military service; we separate him when he leaves the army. We try to keep the soldiers informed about the world in which they live and about the progress of the war. We provide the shops in this country to repair all types of military equipment. We pay all the bills of the Army. We run the correction institutions. We publish the Army's orders and publish the Army's textbooks. We keep the personnel records and notify the next of kin of casualties. And while I have already mentioned that we are the lawyers of the Army, I would add to that this most important responsibility: we are the guardians of the system of military justice. We must make sure that the high standards of the past in the trial of military offenders are maintained today. These are a lot of jobs and ours is a big organization. I thought I might review some of our accomplishments in the past year and mention some of our problems.

*Delivered 28 February 1945, Washington, D.C. before The Judge Advocate General, members of his staff, and other legal officers of the War Department.

During 1944 we bought or manufactured about 23½ billion dollars worth of war supplies. Nearly half of this amount went for ordnance equipment—for guns, ammunition, tanks, and automotive equipment. We spent about 6 billion dollars for food, clothing, and general supplies. The third largest category is for communications equipment, and the fourth, for construction equipment. At the moment we are confronted with a number of very critical procurement programs, especially heavy artillery, heavy artillery ammunition, various types of Signal Corps wire and communications sets, and tractors. Actually, 1945 is going to require greater quantities of supplies than we have procured in any year since the war began. Today we are purchasing on the basis of our experience in actual combat. This experience has necessarily made differences in our early calculations.

For example, take the matter of heavy artillery. You can't build a 240mm. Howitzer or a 155mm. gun over night. We anticipated certain requirements for 1945, but two years ago it was decided not to build so many heavy weapons for several reasons. However, our experience in Italy and later in France, and then in the Pacific all indicated that our combat forces needed more and heavier field artillery, so today we're trying to get it to them. We have had to increase our tank program considerably in the last few months, when a year ago we were cutting down on tank production. At that time our combat commanders questioned the usefulness of tanks, particularly against fortified positions. Today they want more and heavier tanks. Here in the ASF we have to make sudden shifts as the conditions of war change. Our job is to do our utmost to meet the requirements of these changing conditions.

This war has required more trucks, particularly heavy trucks; more tractors and bulldozers; more communications equipment; more wire; more transportation equipment of all kinds than were originally anticipated. Perhaps you saw the statement the other day of the Jap prisoner who said that the Americans weren't good jungle fighters, that what the Americans did was tear down the jungle! We have remade jungle terrain in the Pacific to fit our own tactics of warfare with its preponderance of fire power. It takes a lot of equipment to do that, and we know it is going to take a lot more before the war in the Pacific comes to an end.

We could, of course, have everything we wanted if the resources of the United States were unlimited—if there were no manpower shortages and ample supplies of all kinds of raw materials. Instead, we have tried constantly to balance our needs against our resources, to make shifts wherever possible so that we would accumulate few surpluses. For this reason we have had to terminate a great many contracts. In 1944, for example, we initiated terminations amounting to over 9 billion dollars. This was three times the termination load at the end of

World War I. That word "termination" has caused us some difficulty, because many persons have felt that terminations meant an end to war procurement. What terminations actually meant in 1944 was a shift from one type of procurement to another. Most contractors who had particular contracts terminated, at the same time were receiving enlarged contracts for other items. There has been no net decline in our procurement. Indeed, in 1945 we must purchase three billion dollars more than we did in 1944. Yet these terminated contracts must be settled in accordance with contract provisions and in accordance with the new contract settlement act. Fortunately we are about current in this operation and have not permitted any sizeable backlog to develop.

Changes in types of clothing and improvements in many different items of supply create surpluses in the superseded models. The War Department in 1944 disposed of over six hundred million dollars of property, of which over four hundred million was turned over to other Government agencies to sell. We redistributed about 165 million dollars worth within the Army or to the Navy.

With a procurement program the size of ours, we must necessarily have a large storage operation. The Army is today operating more storage space in the Zone of the Interior than all the commercial storage space put together. Over 22 million tons of supplies were received in our depots during 1944 and over 20 million tons were shipped out. There were 4½ million requisitions acted upon in that one year. About 70 percent of all our supply shipments from our depots are going to ports for overseas transport. Only about 23 percent of our shipments go to camps and stations within the United States for the use of the Army in this country.

During 1944 we shipped 2½ million men overseas. This is a larger number than were sent overseas during the course of our 19 months of participation in World War I. We shipped over 48 million measurement tons of supplies overseas, the largest export in the history of this Nation. We brought 880,000 persons back from overseas to this country. Our water transportation operation is the greatest the world has ever witnessed.

Since 1940 the Corps of Engineers has constructed more than 10 billion dollars worth of facilities in this country for the War Department. While we have cut construction today to the very minimum, we are still doing a sizeable amount of building. We have had to enlarge air fields to accommodate the B-29 Bombers and today we are having to build new heavy artillery facilities and to enlarge our ammunition facilities. We have had to make many changes in order to meet the hospital requirements which we face in the near future. Today we have over 108,000 patients in our general hospitals and another 54,000 patients in station and regional hospitals. We have decided to use convalescent centers in order to get people out of general hospitals as rapidly as possible. It has been the Army policy to keep men in hospitals as long as there is any immediate benefit to be gained from medical treatment. In many cases this time is 8 and 9 months, and sometimes a year. For this reason we have found we could not count upon a turnover of three or four patients per bed per year. We are enlarging our hospital facilities mainly through conversions of existing structures to convalescent hospital purposes.

The Army Service Forces inducted nearly a million men

in 1944 and discharged over 400,000. We operated the biggest retail business in the country through the Army Exchange Service whose gross business was 750 million dollars last year. We operate the largest number of motion picture houses in the United States. Our publication, *Yank*, has a weekly circulation today of nearly a million and a half copies. We are broadcasting entertainment programs to our troops all over the world, the biggest broadcasting chain ever established. We paid out a billion dollars a week in 1944, of which two-thirds went for supplies and the other third for operating expenses and pay of the Army. The Army Service Forces itself had an average of 468,000 men throughout 1944 being trained by it to perform supply and service operations overseas. In other words, we have been training within the Army Service Forces twice the number of men contained in our whole regular Army back in 1940.

We are now guarding and working nearly 400,000 prisoners of war. With the stress we have placed upon the proper utilization of these prisoners, we are able to keep 75 percent of them on productive labor at all times. We have around 13,000 general prisoners in our rehabilitation centers and in our disciplinary barracks. We handled over 20,000 cases before general courts martial in 1944. We handled over 64,000 claims cases.

No statistics can convey an adequate impression of what the work of the Army Service Forces really means. Think for a moment about the jobs with which you are most familiar. The legal aid officers at our posts and our staging areas have done a great deal to assist the individual soldiers in meeting their personal problems. This is just a single example of the service we have tried to provide. We have worried about the personal allotments and family allowances of soldiers. We have worried about his mail, about his clothes, and his food. A large part of the work of the ASF finds its reward in our knowledge about what we have done to help the individual American soldier.

One reason why we must resort to statistics here in Washington is because we lack the close personal touch with the troops. That is one of the great disadvantages of staff work. But a personal touch is the essence of service and one of the things we can never forget in the ASF.

Perhaps it would be helpful if I add just a word about the organization of The Army Service Forces. Our Headquarters Organization is composed of appropriate functional staff divisions. We have divided our operating responsibilities between the administrative and technical services and nine service commands. The technical services do the procurement and distribution job. Some of them have other responsibilities such as the Transportation Corps for the movement of troops and supplies and the Corps of Engineers for construction. The Medical Department is far more concerned with watching over medical service than it is with the procurement of medical supplies. The other great job of the ASF is managing the posts where ground troops are trained. This is done through our service commands. Your office is much concerned with both of these jobs—with procurement and with the military duties which arise from our posts. As you know, the Office of The Judge Advocate General is one of the staff agencies of the Commanding General, ASF. It is also the chief legal advisor of the War Department. It is your responsibility to see that the legal and military justice responsi-

bilities of service commanders and post commanders are properly performed. At the same time your office is being constantly called upon by our technical services and by the War Department to provide legal counsel and assistance in the many different fields of present concern to the Army.

We don't have much time in the Army today to go around patting people on the back. Yet I can assure you that both General Somervell and I have a great appreciation for the work which has been done by the Office of the Judge Advocate General and by the officers of the Judge Advocate General's Department during this War. If we don't see more of you, it is because you're doing such a good job that we don't have to worry about you.

Like all other branches of the Army, The Judge Advocate General's office has expanded greatly during this War. On the first of July, 1940, I believe there were about 100 officers on duty with the Department, of whom 44 were here in the Office of the Judge Advocate General. Today I am told there are some 2,000 officers, of whom about 250 are in Washington. This great expansion has been accomplished while maintaining the quality of personnel for which the Department is justly famous. I suspect it is scarcely necessary for me to remind you of some of the names associated in the past with the Judge Advocate General's Department—names like those of John Marshall, the Great Chief Justice; Henry Wheaton; John C. Gray; William Winthrop; Enoch Crowder and John Wigmore. In the last War the roles of the Judge Advocate General's Department carried such names as Henry L. Stimson, Felix Frankfurter, Patrick J. Hurley, Charles Beecher Warren, and Nathan W. MacChesney. There are men of equal prominence in the Department today whose names will undoubtedly be long remembered in the annals of the legal profession.

The training program of the Judge Advocate General's Office has been a successful one, judged by the results which have been achieved. The lawyers who have attended the Judge Advocate General's School have received an understanding of the system of military justice and of the fundamental policies which have guided us throughout this war. Those policies, as originally recommended by The Judge Advocate General, are sound. The War Department has increasingly been convinced of this as the War has progressed. We have avoided unnecessary trials. We have made our general courts fair, prompt, and impartial. Punishments have been appropriate to the crime, and there has been considerable uniformity among sentences. Military justice has been administered in such a way as to promote the discipline of the whole Army. I think, by and large, the conviction has grown among the American people that the Army's court martial system is just and fair. Moreover, it was the Judge Advocate General's Department which helped pave the way for our modern practices in penology in which the Army takes great pride. You are continuing to advance that endeavor.

Your profession, like many others, has responded nobly to the demands of war. The legal problems confronting the War Department and the Army during this period have been just as great as any other phase of our work. You have provided the legal counsel for the greatest single effort in our Nation's history. What is more

important, that advice and assistance has been well rendered.

I have been much impressed personally by the continuing attitude of cooperation and assistance which we have at all times had from the Office of the Judge Advocate General. When we have brought a problem to your attention the attitude invariably has been one of finding the most satisfactory solution possible. You know, the professional man in a large organization has a difficult role to perform. The manager desires his best professional advice and at the same time depends upon his assistance in accomplishing the job. I know of cases where accountants, for example, have gotten into the frame of mind where they believed that a great company existed solely for the sake of keeping books in a certain way. The accountants didn't understand that the job of an accountant was to provide the type of information and records needed in the management of the enterprise. The same things sometimes happen with lawyers. You go to an attorney with a problem and he tells you all the things you can't do rather than trying to help you find the appropriate legal way to do the job in the most expeditious and efficient manner. I am glad to say there are no lawyers like that in the Office of the Judge Advocate General. You have warned us of pitfalls and at the same time found a way around them.

I should like to compliment your office in particular upon the assistance given in those difficult cases where we have been directed to seize and operate war plants by an executive order from the President. In every single case the legal work performed as a part of the plant seizure by the Army has been outstanding. We have not had a serious backfire yet, and I hope there will be none in the future. Officers from your Office have served as legal advisors to the War Department representative in each of these instances. I am sure when the war comes to an end the Army's record in the handling of plant seizures will be an outstanding one, and I want to pass a large part of the credit along to the Office of the Judge Advocate General.

Your office has made many other notable contributions to the war effort. The tax problems arising from our procurement program have been complicated ones. Co-operative negotiation with the various State Governments have solved most of these problems satisfactorily. There have been many problems in the field of patent law, all of which have been well handled. Under the present system for handling claims, we are making real progress in the prompt disposition of all claims for damages resulting from military operations. The litigation of the War Department has been successfully conducted. Our entire legal record is one in which the whole Army can take great pride.

We have a common saying in the ASF that there is very little glamour in our work. I suspect you sometimes feel that way about the work of the Office of the Judge Advocate General. But you have the satisfaction of knowing that yours is an important contribution without which the military establishment would encounter many difficulties. Legal service is one of the indispensable requirements of operating this gigantic effort dedicated to the complete defeat of our enemy. It is all of us working together, working continuously and vigorously, that will ultimately achieve victory.

DISCIPLINARY *Control* BY COMMANDING OFFICERS

From an Address by LIEUT. GENERAL ROBERT C. RICHARDSON, JR. on the Occasion of the Dedication of the Court-Martial Room, Fort Shafter, T. H.

THE maintenance of discipline is an essential incident of war. An obedient and well disciplined military force is not a matter of overnight creation. Thoroughness in technique of operation requires time and the personal effort of every man in all levels of command. If every officer exercised that degree of command attention devolving upon him as a matter of duty, resort to punitive action by courts-martial would be materially minimized.

A military command is similar in certain respects to a civil community. It will have its proportion of men who, regardless of circumstances, will run afoul of the law whether in a military or civil status. Their crimes range from larceny to murder, and for such acts they must suffer the consequences, often involving separation from the service, penal servitude, and sometimes death, depending upon the nature of their crimes. Purely military offenses, denounced by the Articles of War, comprise a great variety of acts, the commission of which adversely affects that standard of discipline required of soldiers in the military service. Disciplinary control is largely vested in the commanding officers concerned. As to this type of offenses, resort to trial by courts-martial is a final expedient to the correction of a particular delinquency. The degree of punishment is measured by the curative effect of the punishment imposed.

Some records of trial which come to me for my action as reviewing authority reflect a failure upon the part of the officer to properly exercise a duty to which the particular delinquency may be ascribed. That failure of duty is fittingly characterized as lack of command attention. Perfection in that element of military duty is not reasonably expected of a young army. Yet constant consideration and application by all concerned of elementary principles of command attention required by the circumstances would contribute materially to the accomplishment of our military missions at a tremendous saving in administrative detail.

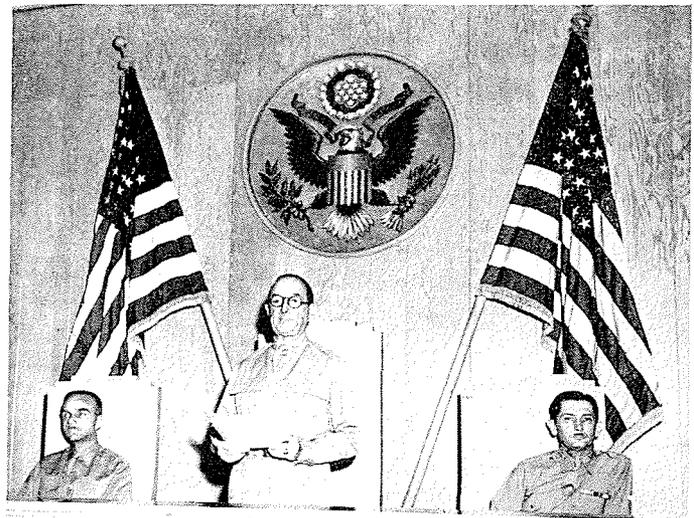
The well recognized policy of the War Department is to preserve discipline by the judicious exercise of the power conferred upon commanding officers under Article of War 104 rather than by resort to court-martial. This policy is founded upon the principle that certainty, rather than severity, of punishment is the keynote to be followed by commanding officers in administering a command. The slightest delinquency should be punished by admonition or other adequate punishment. Infraction of discipline unpunished is in effect an approval of the conduct of the guilty party and an invitation to others to do the same thing. Severe and uncertain punishment only temporarily prevents crime and offenses, and works unfair hardship upon the individual.

A punishment once awarded should be strictly enforced. Lax enforcement of the punishments awarded is productive of lax discipline and vitiates the effect of the punishment awarded. A company properly administered will seldom have occasion to resort to courts-martial, and company punishments will be greatly decreased in number. An ounce of prevention, in the form of a good company mess, spic and span clothing and equipment, good living quarters, and means of

wholesome recreation, produces a company spirit worth more than a ton of cure in the form of courts-martial and other punishments.

Notwithstanding the application of this policy, soldiers faced general courts-martial in 1940 at the rate of nine per thousand of enlisted men. The rate of special and summary courts-martial for the same period of time was twenty-one and forty-eight respectively. Current rate in this command is far below the Army rate for 1940.

Furthermore, soldiers convicted by a general court-martial of purely military offenses are not necessarily discharged from the service. Every military prisoner who is serving a sentence of confinement under a suspended dishonorable discharge is given an opportunity to rehabilitate himself, to procure restoration to duty and



Lieut. Gen. Robert C. Richardson, Jr., Commanding General, U. S. Army Forces, Pacific Ocean Area; left, Col. R. T. Heard, GSC, Asst. Chief of Staff, G-1, USAFPOA; right, Col. Edgar H. Snodgrass, JAGD, Staff Judge Advocate, USAFPOA.

eventual discharge from the service under honorable conditions. All such general prisoners are examined periodically by a special board of officers, and, if found deserving of such action, regardless of the length of the sentence involved, are processed to our rehabilitation center at Schofield where through exemplary conduct they may earn an honor status and eventual restoration to duty. Incidentally, we have restored a great many men to duty.

Every officer exercising general court-martial jurisdiction must decide what ultimate disposition must be made of a soldier sentenced to be dishonorably discharged from the service. Consideration must be given to the best interests of the service, the salvage value of the soldier, and the soldier himself. Few realize the many benefits conferred by our government upon one who as a soldier has served his country honorably and faithfully. For many of such benefits I refer you to the federal aid for the readjustment in civilian life of returning

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Allen W. Gullion MAJOR GENERAL

U. S. A. RETIRED

By 1ST LIEUT. SHERWIN T. McDOWELL, JAGD

THOUGH in multi now because of disability incident to the service, Major General Allen W. Gullion, former Judge Advocate General, has lost none of the explosive vigor and forcefulness that have been his trademark throughout a brilliant Army career. Invalided home last November from England and France, he was retired from active duty on December 31, 1944. A Regular Army Major General and a Kentucky Colonel rolled into one—he commanded the 2nd Infantry, Kentucky National Guard in World War I—General Gullion has been well known to official and social Washington for many years.

His last assignment was Chief of the Displaced Persons Branch, G-5, SHAEF, in which role he was charged with consultation and coordination with the governments in exile with respect to the rehabilitation of their nationals found in Germany upon its occupation by the Allies. General Gullion was able to complete the basic planning for this work prior to his retirement, and the plans he laid will be the framework for action that will follow upon occupation of Germany.

Immediately prior to his overseas assignment, General Gullion served as The Provost Marshal General, being appointed to that position July 31, 1941, in addition to his duties as The Judge Advocate General. Upon completion of his tour as The Judge Advocate General on December 1, 1941, he continued as The Provost Marshal General. In May of 1944, he was relieved as The Provost Marshal General at his own request in order to accept appointment as Chief of the Displaced Persons Branch on General Eisenhower's staff.

As The Provost Marshal General he re-established The Provost Marshal General's Department and for three years was responsible for its manifold activities which included everything from organizing and developing the training doctrine for military police to planning for military government of occupied territory. Under General Gullion's guidance the MP of World War II has emerged as a trained specialist equipped to handle the difficult task of military law enforcement. This is in decided contrast to the MP of World War I who had little or no special training and who, in general, succeeded in creating for himself an unenviable reputation as an unsympathetic cop.

Another of the important duties of General Gullion as The Provost Marshal General was supervision of the handling of Axis prisoners of war. It was his job to see that the rules of the Geneva Convention were followed and that the prisoners received the treatment to which they were entitled under those rules without coddling or undue favor. By an interesting coincidence General Gullion in 1929 was the senior War Department representative at the International conference at Geneva, Switzerland, to formulate a code for prisoners of war and to revise the Geneva Convention of 1906. Thus General Gullion, who was perhaps more responsible than any other American military officer for the creation of a code governing prisoners of war, was chosen to carry into effect the provisions of that code. And it was the American Prisoner of War Information Bureau, a part of The

Provost Marshal General's Office created pursuant to the international code which first reported to General Gullion the capture by the Germans of his youngest son, First Lieutenant Allen W. Gullion, Jr., an Air Corps officer.

The now famous School for Military Government at the University of Virginia in Charlottesville was created by General Gullion to provide trained military specialists to take over occupied territories under military rule. Many times he has had to correct the misapprehension that has persisted that this school is training international policemen to police the world upon the termination of the present war.

So diverse were his duties in his role as The Provost Marshal General that he had to jump from things about curriculum at Charlottesville to things about menu at a prison camp in Texas. For it was his job to see that the food of prisoners of war was the same as U. S. Army rations—with more fish and rice for the Japs. Not only did he have to worry what the prisoners had to eat but



Lt. Gen. Brehon Somervell's and Maj. Gen. Gullion receiving the "Legion of Merit" from Under Secretary of War Patterson, in Lt. Gen. Brehon Somervell's office, the Pentagon, 1944.

he also had to supervise the construction of their barracks and see that recreation facilities were provided for them. The thoroughness with which this job of handling Axis prisoners was done had a direct bearing on the treatment of our own troops who were prisoners in the hands of the enemy. For we could expect that they would do no better by our prisoners than we did by theirs.

Prior to organizing The Provost Marshal General's Office, General Gullion served as The Judge Advocate General from 1937 to 1941. His administration was marked by many notable achievements, perhaps the most outstanding of which was the reduction of the general court-marshal rate to the lowest point in the peacetime history of the Army. This was due in no small measure to his insistence upon the proper use of Article of War 104 as an effective aid to discipline. Previously, company

punishment had been insufficiently used with the result that many offenses properly cognizable under Article of War 104 were made the subject of trial by court-martial.

General Gullion took the position that trial by court-martial should not be substituted for effective leadership, that discipline is a function of command and that a high court-martial rate indicates that there is something wrong with the leadership in the unit. Under General Gullion's urging and guidance company commanders began to make proper use of the 104th Article of War. The results proved the soundness of the General's position.

During the time General Gullion was The Judge Advocate General much of the legislation transforming a peacetime Army into a wartime Army was put upon the statute books. Naturally, General Gullion in his official position had a close connection with this legislation in its formative stages. After it was enacted into law, the office which he headed was called upon numerous times for interpretation. Always a liberal himself, it was General Gullion's first rule that such legislation should be given a liberal interpretation so far as consistent with sound and vigorous administration of the law.

For his service as The Judge Advocate General, General Gullion was awarded an Oak Leaf Cluster to the Distinguished Service Medal, which he already held, with the following citation:

"For exceptionally meritorious and distinguished services as Judge Advocate General of the Army from December 1, 1937 to November 30, 1941, particularly in reducing the general court-martial rate per thousand of enlisted strength to the lowest in the peacetime history of the Army; in equalizing and harmonizing court-martial sentences throughout the then rapidly expanding Army; in urging successfully the substitution by Company and Battery Commanders of leadership for trial by courts-martial; in conceiving and drafting much of the legislation which facilitated transition from a peacetime Army to a wartime Army; and in giving sound, liberal and vigorous effect to the laws of the nation in furthering the preparation for war. The administration of his office throughout the four years of his tenure was marked by the wisdom of his counsel and the justness of his decisions. His rare powers of discernment, his tact, and sound judgment contributed materially to the success of pre-war planning."

At the same time Under Secretary of War Patterson pinned the Oak Leaf Cluster to the Distinguished Service Medal on General Gullion, he also pinned on the Legion of Merit with this citation:

"For exceptionally meritorious conduct in the performance of outstanding service in establishing the Provost Marshal General Department and in the performance of the functions of the Office of the Provost Marshal General from July 1941 to April 1944. Those functions include the supervision of matters relating to prisoners of war; the training of personnel for the Corps of Military Police, the Security Intelligence Corps and for military government; certain programs of the War Department directed toward the protection of continuity of production, including all investigative activities; and certain programs directed toward the conservation of manpower within the military establishment. He discharged his varied and important duties with loyalty and efficiency. One outstanding public benefaction was his persistent activity in carrying out War Department responsibilities in connection with the sailings of the relief ship 'Gripsholm,' which placed medical sup-

plies intended for Americans in the hands of Japan where they are available to the enemy in carrying out the provisions of international agreements."

A Kentuckian by birth—he was born at Carrollton December 14, 1880—General Gullion, though cosmopolitan, still retains the traits one always associates with a southern gentleman. He is gracious both as host and guest. Before the war many demands were made upon him for attendance at social functions ranging from intimate gatherings of close friends to large formal functions. Always the perfect host himself, General Gullion's parties were well known. Sometimes when entertaining a small party, he himself would turn out part of the meal—perhaps a special soup which he made with all the painstaking care of a connoisseur. However, with the advent of war, General Gullion went into social retirement and practically lived at his desk. He emerged from this self-imposed retirement about once a month on Sundays when he entertained a group of friends at his apartment for breakfast. He had two invariable rules, one that his guests should arrive punctually at 12 noon; the other that they must have had nothing more sustaining than coffee before their arrival. The Sunday breakfast was usually a substantial affair, at least a part of which was the product of the General's own culinary skill.

Shortly after his graduation from West Point General Gullion married Ruth Mathews of Newcastle, Kentucky, near his home town. They had six children: Edmund of the State Department, formerly *Chargé d' Affaires* at Helsinki; Phillip, associated with UNNRA; First Lieutenant Allen W., Jr., a prisoner of war in Germany; Mrs. Ruth Simpich, wife of Lieutenant Colonel Frederick E. Simpich; Mrs. Misatha Moorman, wife of Colonel Thomas S. Moorman; and Margeret, deceased. General Gullion has been a widower since August 1940.

General Gullion was graduated from Centre College, Kentucky, with an AB degree in 1901 and from the University of Kentucky with the degree of Bachelor of Laws in 1914. He was honored by the University of Hawaii in 1935 when he received the honorary degree of Doctor of Laws from that institution. His alma mater, Centre, similarly honored him in 1939 as did the University of Kentucky in 1942.

A West Pointer, General Gullion was graduated from the United States Military Academy on June 13, 1905 and commissioned a Second Lieutenant of Infantry. He served in all ranks from Second Lieutenant to Major General, being appointed to the latter rank as The Judge Advocate General of the Army on December 1, 1937; on November 30, 1941, he was appointed Major General, AUS.

General Gullion's first Army assignment took him to Fort Logan, Colorado, as a Second Lieutenant with the 2nd Infantry. He saw active service against hostile Moros in the Philippines with the Second. After service with the 2nd in Hawaii, he had a tour with the 20th Infantry, which was interrupted by a two year assignment as Professor of Military Science and Tactics, State University, Lexington, Kentucky. General Gullion rejoined the 20th for border service until July 1916 when, as a Colonel, he took over command of the 2nd Infantry, Kentucky National Guard in the Service of the U. S. at El Paso, Texas. Following a brief tour with the 35th Infantry in Arizona in 1917, he went to Washington as

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Honor Roll

LEGION OF MERIT

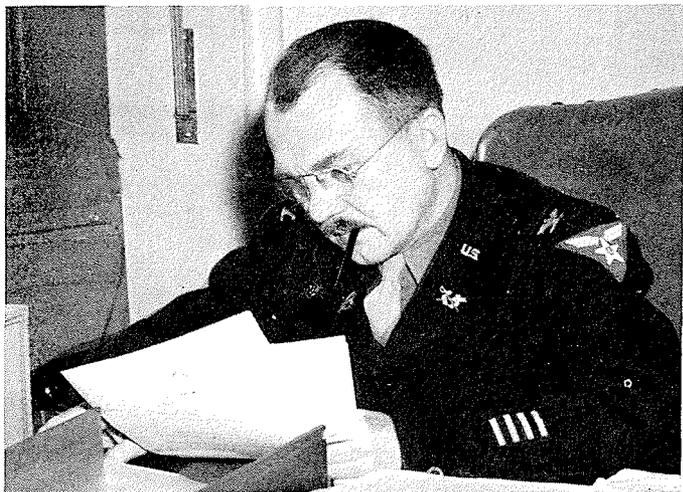
To: Samuel T. Holmgren, Colonel, J.A.G.D., Concord, New Hampshire.

For: Exceptionally meritorious conduct in the performance of outstanding services in the Mediterranean Theater of Operations from 12 April 1943 to 23 November 1944. In the exercise of his duties, Colonel Holmgren organized the work of the Board of Review when first permanently established, supervised the execution of its functions during its formative and later periods, and exercised a controlling influence on its policies throughout its operations. As senior member, he supervised all functions of the Board, which reviewed in appellate capacity, all records of trial by General Courts-Martial in the theater. By his legal skill, sound judgment, and knowledge of Military Law, he contributed in an outstanding degree to the fairness of the administration of military justice in the theater. The great energy and desire to serve displayed by Colonel Holmgren are in keeping with the highest traditions of the Armed Forces of the United States. Entered service from Concord, New Hampshire.

Colonel Holmgren was born in Mason, Minnesota and educated at George Washington University from which he received the A.B., LL.B., and LL.M. degrees. He also holds the degree of DCL received from American University. Colonel Holmgren practiced law in Concord, New Hampshire where he also served as Assistant United States District Attorney. A second lieutenant in the World War, Colonel Holmgren has served in the present war as Assistant Provost Marshal General, First Corps Area, later as Staff Judge Advocate, New England Sector, North Atlantic Coastal Frontier, and with BOJAG, MTO. At present he is on duty with the Office of the Secretary of War, assigned to the Secretary of War's Separations Board.

To: John F. McCartney, Colonel, J.A.G.D.

For: Exceptionally meritorious conduct in the performance of outstanding services in the Mediterranean Theater of Operations from 1 September 1942 to 30 June



1944. As Staff Judge Advocate for the Twelfth Air Force and Northwest African Air Forces, Colonel McCartney, working tirelessly with extraordinary professional skill to

overcome multiple obstacles, created a highly efficient system for the administration of military justice. Through his keen foresight and vigorous action in establishing an effective training program to solve an acute shortage of qualified officers, he not only staffed his own section but also was able to supply many other sections with competent personnel when such needs arose. By extending his training program to lower echelons of command, he immeasurably increased the proficiency of courts-martial throughout the Twelfth Air Force. When reorganization and constant movement of units disrupted the prevailing system of courts-martial administration, Colonel McCartney, through skillful analysis and decisive action, established an effective system to meet the new conditions. Voluntarily contributing his own time, he extended invaluable aid and advice in the formation of Staff Judge Advocate sections for the newly activated Allied Air Force, Mediterranean Theater of Operations and Fifteenth Air Force. Continually faced, during this period, with the greatest difficulties in maintaining contact with many units scattered throughout the theater, he nevertheless handled a huge volume of legal work with such professional thoroughness that all his decisions and opinions were upheld by higher headquarters. In maintaining the highest standards of military justice, Colonel McCartney contributed in a great measure to the efficiency, the esprit and the military discipline of the Twelfth Air Force.

Colonel McCartney is a graduate of United States Military Academy, class of 1929, holder of a bachelor of science degree in civil engineering which he gained at the University of California in 1933 and an LL.B., awarded at his graduation from Georgetown Law School in 1939. He has been overseas since September, 1942, serving first as Staff Judge Advocate of the Northwest African Air Forces and later in the same capacity for the 12th Air Force.

Colonel McCartney entered West Point directly from the Benton Township High School in Benton, Ill. He was commissioned in the Corps of Engineers after he was graduated, joining the Judge Advocate General's Department after finishing Georgetown Law School as top honor man in his class.

To: Daniel L. O'Donnell, Colonel, J.A.G.D., 151 Columbian Street, South Weymouth, Massachusetts.

For: Exceptionally meritorious conduct in the performance of outstanding services from 15 June 1943 to 14 January 1945.

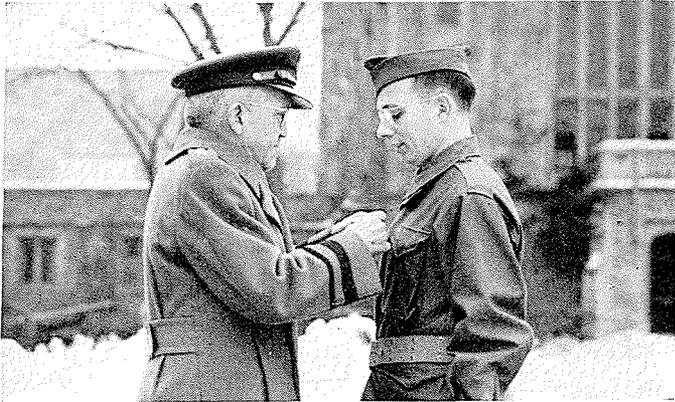
A Bostonian by birth, Colonel O'Donnell took his LL.B. degree at Boston University, engaging thereafter in general practice in Boston from 1928 until 1942. He also served for a part of this time in the Massachusetts Legislature. Appointed a Captain, AUS, in 1942, Colonel O'Donnell served continuously in the First Service Command as Judge Advocate until his recent assignment overseas.

SILVER STAR

To: James I. Hardy, First Lieutenant, J.A.G.D. (then Private), 415 North Thomas Street, Arlington, Virginia.

For: Gallantry in action on the 11th of July 1944 in Normandy, France. At about 1915 hours, this battalion

was in position in Normandy, France, in support of the 60th Infantry Regiment. Private Hardy was a member of a wire repair team composed of three men. The engineer bridge across the canal was under continuous enemy interdiction fire from 150 or 170 mm guns. This interdiction fire severed all communications to rear area, at one point when a volley landed in the field to the east of the bridge where all lines were suspended across the canal. The wire repair team of this battalion with full knowledge of this fact immediately went to the spot where the shells had been falling and found the line broken. While repairing our lines and several other lines the fire commenced again and caused five casualties



Gen. Cramer pins Silver Star on Lieut. Hardy.

among the men present at that spot. With utter disregard for his own safety, and under extremely hazardous circumstances, Private Hardy stayed exactly where he was and continued to again repair our lines to Division Artillery.

Lieutenant Hardy was born in Norfolk, Virginia and graduated from the University of Virginia Law School in 1936. He engaged in general practice in Washington, D. C., from 1936 until his induction into the Army in 1943. At present he is assigned to duty with National Headquarters, Selective Service System, Washington, D. C.

BRONZE STAR

To: Edwin R. Bentley, Lieutenant Colonel, J.A.G.D.

For: Meritorious service in connection with military activities in the European Theater of Operation from December 1943 to October 1944. As Judge Advocate of the IX Tactical Air Command, Colonel Bentley reviewed or conducted courts-martial with such legal skill and diligence that not one of his cases has been reversed or set aside by higher authority. The system set up by Lt. Col. Bentley for expeditious handling of courts-martial cases has resulted in a minimum lapse of time between date of confinement and action on all cases. His prompt and equitable actions and sound advice have been instrumental in reducing the number of courts-martial per month throughout the command to one-third the number existing at the time he assumed the responsibilities of Judge Advocate. This service reflects high credit on himself and has contributed materially to the war effort. Entered military service from Florida.

Born in Texas, Lt. Col. Bentley received his AB from Texas Christian University and his LL.B. from Cumberland University. From 1925 until 1942, when he was

commissioned a Major, JAGD and called to active duty, he engaged in general practice in Lakeland, Florida. Lt. Col. Bentley first served as Assistant Judge Advocate 4th Service Command, later as Post Judge Advocate, Camp McCane, going overseas in 1943.

To: Robert V. Laughlin, Colonel, J.A.G.D., 1716 Franklin Street, Olympia, Washington.

For: Meritorious achievement in connection with military operations against the enemy on Mindoro, Philippine Islands from 21 January 1945 to 3 February 1945.

Born in South Dakota, Colonel Laughlin has served in the Regular Army since the last War. In World War I he served as an enlisted man and later as an officer, remaining in the permanent establishment after the War as a First Lieutenant of Infantry. He received his LL.B. degree from the University of South Dakota. He entered the Department in 1925 serving in the Patents, Military Affairs and Military Justice Divisions of the Washington office at various times. Colonel Laughlin also served at Wright Field, as Judge Advocate of the 3rd Division, later in the same capacity with the IX Corps and the Second Army. He went overseas with the Eighth Army in the summer of 1944.

To: Lawrence A. Long, Major, J.A.G.D., 3903 Ostega Boulevard, Jacksonville, Florida.

For: Meritorious service as Staff Judge Advocate from 1 January 1943 to 31 July 1944. Through his deep insight in and detailed knowledge of the Service Command JAG problems which existed to a large extent because of lack of trained and experienced personnel in military justice matters, he demonstrated his profound professional knowledge, resourcefulness, and initiative, by preparing the now justly famed XV AFSC Memorandum 80-2 which concisely and lucidly included the majority of frequently used forms and information pertaining to military justice procedures. Major Long with his incisive insight and complete grasp of the situation, was responsible for instituting an educational program indoctrinating his personnel to cope with the myriad new problems arising from a growing command. The magnificent improvement in efficacy and effectiveness of lower echelon consumation of military justice matters is a tribute to his keen foresight, organizational ability, energetic action, and inspirational leadership. Entered military service from Jacksonville, Florida.

Born in Virginia, Major Long attended college and law school at the University of Alabama. He engaged in general practice for eight years in Jacksonville, Florida, prior to his entry upon active duty. He was commissioned a First Lieutenant in the Air Corps in 1942 and detailed in The Judge Advocate General's Department in 1943. After serving in the Office of the Air Judge Advocate, he was assigned to his present overseas post with the 12th Air Force Service Command.

To: Horatio N. Woodson, Captain, JAGD, 100 North Fulton Street, Salisbury, North Carolina.

For: Meritorious service in connection with military operations against the enemy on Guam, M. I., and on Leyte, P. I., from 21 July to 10 August 1944 and from 7 December to 25 December 1944. During the period when the * * * Division was engaged in combat loading assault shipping for Amphibious operations, Captain WOODSON acted as Division Regulating Officer under

(Continued on Page 62)

MILITARY LAW *Officers* FROM THIRTEEN AMERICAN COUNTRIES CONFER

LEADING military law officers of thirteen American republics will participate in a five-week conference on military law, starting March 15, at Chicago, Illinois. Twenty-two officers from Latin American countries will take part in the discussions and inspection of military installations in various parts of the United States at the invitation of Major General Myron C. Cramer, The Judge Advocate General of the Army.

Governments represented will be: Bolivia, Brazil, Chile, Colombia, Cuba, Guatemala, Mexico, Nicaragua, Paraguay, Peru, Salvador, the United States, and Uruguay. Brigadier General John M. Weir, Assistant Judge Advocate General in charge of international affairs, is in charge of all arrangements and planned the project. Officers representing the United States Army in the sessions are specialists in their fields of military law.

"This will be a two-way conference," said General Cramer in announcing that final arrangements had been completed. "We expect to learn quite as much from our visitors as they may learn from us. With this idea in mind, the first ten days of the conference will be spent in discussing and comparing the military legal systems of the nations represented and studying all phases of military justice."

The study sessions will be held at the Northwestern University Law School in Chicago following addresses of welcome by Mayor Edward J. Kelly of Chicago and Mr. Harry L. Wells, Vice President of the University. Subjects to be discussed at the meetings include the administration of military justice, organization and administration of the U. S. Army, the law of war crimes, claims by and against the government arising from operations of the army, various aspects of international law such as the treatment of prisoners of war and relations between belligerents, government contracts, military clemency, and miscellaneous military law problems.

All discussions and lectures will be conducted in the Spanish language and copies of the proceedings will be available in English, Spanish, and Portuguese to the conferees and others interested.

During the stay in Chicago the group has been invited to inspect the Great Lakes Naval Training Station, Glenview Naval Air Station, Headquarters of the Sixth Service Command, and industrial and cultural centers. Following the Chicago visit the officer guests will be taken to Fort Leavenworth, Kansas for a tour of the United States Disciplinary Barracks and the Command and General Staff School after which they depart for Ann Arbor, Michigan for visits to The Judge Advocate General's School and nearby aircraft manufacturing plants.

At Fort Benjamin Harrison, Indiana, the group will be shown the Finance School, Billings General Hospital, the Midwestern Branch of the U. S. Disciplinary Barracks, and other points of interest in and near Indianapolis which will be followed by short visits to the Army Air Forces Material Command Headquarters at Wright Field, Ohio and the Armored Center and Armored School at Fort Knox, Kentucky where special demonstrations will be staged.

Arriving at Charlottesville, Virginia, the visiting officers will be guests of the University of Virginia, where

a special lecture on the framework of the Army court-martial system will be delivered by Colonel William M. Connor, U. S. Army, retired, formerly Professor of Law at the U. S. Military Academy. Dr. J. L. Newcomb, President of the University, has invited the group to be his guests at a luncheon at the President's Mansion which will be followed by an afternoon at Monticello where United States Senator Dennis Chavez of New Mexico will discuss, in Spanish, the place in history of Thomas Jefferson, James Monroe, and James Madison, all of whom resided in or near Charlottesville.

At New York the conferees will go on a specially conducted two-day tour of the Port of Embarkation and related installations as guests of the Commanding General of the port. They will be invited to visit various military, business, cultural, and religious centers while in the city after which they will spend a day at the United States Military Academy at West Point, New York.

Leaving New York the group will visit Annapolis, Maryland as guests of the Superintendent of the United States Military Academy. Their stay in the United States will terminate with five days in Washington, D. C. where they will be invited to see various governmental headquarters including the War and Navy Departments, the Supreme Court, the Capitol, and the Department of Justice. Shortly after their arrival in the city they will be honor guests at receptions at the Pan American Union and Georgetown University. Visits to Mount Vernon and other places of interest are planned.

The War Department guests from other American countries are as follows:

Bolivia, Lt. Colonel Jose M. Villanueva and Captain Luis Ramos Arce.

Brazil, Maj. General Washington Vaz de Mello (Minister of Supreme Military Tribunal and Member Supreme Council of Military Justice of the Brazilian Expeditionary Force) and Brig. General Amilcar Sergio Verozo Pederneiras (Minister of Supreme Military Tribunal).

Chile, Brig. General Ramon Contreras Arriagada (Judge Advocate General of the Army) and Colonel Lucio Parada Pincheira (Judge Advocate of Santiago).

Colombia, Captain Jose Phillips and Captain Januario Antonio Sanchez.

Costa Rica, Colonel Gregorio Marten (Judge Advocate General of the Army and Professor of Law).

Cuba, Colonel Aristides Sosa de Quesada (Judge Advocate General of the Army and former Minister of National Defense) and Captain Armondo Nin y Rodriguez.

Guatemala, Lt. Colonel Manuel Menendez Rios.

Mexico, Brig. General Raul Fernandez and Maj. General Aristeo Barraeta.

Nicaragua, Colonel Evenor Hernandez.

Paraguay, Captain Werceslao Benitez (Navy) (Prefect, Port of Asuncion; Chief of the Military Tribunal) and Lt. Cmdr. Jesus Blanco Sanchez (Member Supreme Military Tribunal).

Peru, Brig. General Leonidas Gonzalez Honderman

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Crossed Sword AND Pen—

AND OTHER TRADE MARKS OF THE JUDGE ADVOCATE

By 1ST LIEUT. EDWARD F. HUBER, JAGD

THE recent products of the tender¹ ministrations of Staff and Faculty of The Judge Advocate General's School at Ann Arbor usually find in the course of that wonderful delay in route in the interest of the public



1ST LIEUT. HUBER

service² that their insignia comes in for some close scrutiny. The people who stop for another look are really not arrested by the newness of the lieutenantancy shining forth from the shoulders, but by the emblem below the notch in the lapel. Questions often follow, and then comes the pleased explanation that the sword and pen, crossed and wreathed, denote The Judge Advocate General's Department. A well-bred explainee responds with a respectfully intoned Ohh!³

This sort of thing continues to happen to men old and new in the Department, and usually results in the nice feeling of being part of a small but distinctive organization. If there appears to be a taint of smugness in this, let me hasten to say that any smugness is usually dissipated in the first three days of the first duty assignment, and is soon displaced by a continuing pride which the achievements of the Department, both present and past, fully justify. Certainly the insignia, or distinctive mark, fosters *esprit de corps*.⁴

Roman Sword and Balance Insignia of the JAGD which briefly displaced the Crossed Sword and Pen in 1924.



But the JA was not always a marked man, and when he was, the mark was not always the same as at present; and in this lies the tale to be told.

1. My memory is really not so short.
2. Cf. Par. 21, AR 605-115, 17 June 1944.
3. Of course, cognoscenti in fair numbers *do* properly^{3.1} recognize the insignia.
 - 3.1 Not all *properly* do. For example, one of my so-called friends recently forwarded a packing company advertisement which showed a luscious roast of beef behind a crossed sword and quill pen, and some scribbled comment that this would be appropriate for JAs if assigned to K. P. Vulgarians still abound, unfortunately.^{3.11}
 - 3.11 I have always longed to use a footnote to a footnote, or sub-footnote, and the Dewey Decimal System used elsewhere in the Army presents limitless possibilities of exploitation in this field.
4. One of the main purposes of insignia. For example, certain British regiments have adopted the coat of arms of their great leaders of earlier days. Colors and insignia have long served the same function. In addition to the morale factor, there was originally a very practical purpose as well—distinction from troops of the enemy.

For considerable periods there were no statutory Judge Advocates, nor Judge Advocate General.⁵ At other times Judge Advocates were not in uniform.⁶ The first distinguishing mark came in 1857, when the Army Regulations required that JAs sometimes wear a white pompon.⁷ But when the Regulations were revised in 1862, reference to the distinguishing pompon was omitted, and it was not until 1918 that there were again specially prescribed colors.⁸

The colors of The Judge Advocate General's Department are now dark blue piped with white.⁹ Before these were adopted, they were the colors of the Inspector General's Department, which switched with the JAGD by adopting the latter's colors, dark blue piped with light blue.¹⁰

In the period 1872-1890, although without special colors or device, officers of the Judge Advocate General's Department,¹¹ or the Bureau of Military Justice,¹² were distinguished by the letters "J A" in Old English characters embroidered on the shoulder knot.¹³

The present authorized insignia is prescribed for collar and lapel of coat, and described: "A sword and pen crossed and wreathed $\frac{1}{8}$ inch in height."¹⁴ This design was first adopted in 1890.

5. E.g., 1802-1812; 1821-1849.
6. Although there were then no statutory Judge Advocates, both the General Regulations of 1821 and of 1825 included among those to be attached to general headquarters "the superior judge advocate." But par. 865 of the 1825 Regulations stated: "Chaplains, judge advocates, commissaries of purchases, and store keepers, have no uniform." The duties of judge advocates were prescribed in the General Regulations of 1841, although no judge advocate was included in the staff corps. General Holt, Judge Advocate General from 1862 to 1875, is always pictured in civilian clothes.
7. Par. 1433, Army Regulations of 1857. Par. 1430 provided: "The pompon will be worn by all officers whenever the epaulettes are worn." The pompon was a tuft of cloth material which looked like an undersized tennis ball and protruded from the hat.
8. Distinctive colors antedate distinctive insignia in American military history. The oldest insignia is the flaming bomb of the Ordnance Department, adopted in 1832. But the Corps of Artillery formed during the Revolution by the Continental Congress was both the first "regular" (as distinguished from sectional, or militia) army group, and the first to have a designated color, scarlet—for a coat lining. The skirt of the coat was hooked back so that the lining would show. Scarlet is still the Artillery color.
9. Par. 87n, AR 600-35, 31 March 1944; par. 63m, AR 600-35, 10 Nov 1941; par. 3k, AR 600-38, 17 Aug 1938. Most appropriate of all are the colors of the Finance Department—gold and silver.
10. Sec. II, Cir. 70, 1936; par. 49-o, AR 600-35, 31 Dec 1926; par. 48-o, AR 600-35, 25 Nov 1924; par. 45-o, AR 600-35, 14 Oct 1921; S. R. 42, 15 Aug 1917. Par. 49½, C. 5, 17 July 1918, S. R. 42, provided for piping on the overseas cap in "dark blue with light blue threads."
11. Par. 1779, Army Regulations, 8 Feb. 1889.
12. Par. 2646, Army Regulations, 17 Feb 1881. G. O. 29, 1888; G. O. 92, 1872; G. O. 76, 1872.
13. The Cavalry can claim the most unique identification, other than colors or insignia. For a considerable period (1841-1857) Army Regulations provided that "mustaches," or "moustaches," would not be worn, *except by cavalry regiments*, "on any pretense whatever." (A. R., 1841; A. R., 1847).
14. Par. 26b (2) (c), AR 600-35, 31 Mar 1944.

Its original execution was rather fancy. General Order 53, 23 May 1890,¹⁵ provided that the insignia for officers in The Judge Advocate General's Department should be worn on shoulder knots, and should be

"... of gold cord, one-fourth of an inch in diameter, Russian pattern, on dark blue cloth ground; insignia of rank embroidered on the cloth ground of the pad... with sword and pen crossed and wreathed, according to pattern, embroidered in silver on the cloth ground of the pad (except for a colonel and assistant judge advocate general,¹⁶ who will wear the device made of solid silver on the knot midway between the upper fastening of the pad)."¹⁷

The Heraldic Section of the Quartermaster Corps, which is charged with knowing about such things, is authority for the explanation of the significance of the design: the pen is to denote the recording of testimony; the sword, the military character of the Department's mission; and the wreath, the traditional symbol of accomplishment.¹⁸

In 1894 the JAG insignia was required to be embroidered in gold on "undress coats."¹⁹ In 1899 silver insignia were prescribed for the Judge Advocate General, to be worn on epaulettes.²⁰ In 1902 there was a return to the gold standard, but gilt was an authorized substitute for the royal metal.²¹ In 1907 there was a complete revision of the Uniform Regulations, which, so far as the JA insignia was concerned, related to position, and not design. Insignia were prescribed to be worn on the sleeves of the full dress coat and overcoat, and on the collar of the dress, service, and white coat; gold or gilt embroidery or metal for the full dress coat; gold or gilt metal for the dress and white coats; and dull finish bronze metal for the service coat and overcoat.²²

Thus matters continued until World War I, when the size of the insignia was prescribed as one inch in height. It was worn on the collar of the uniform coat. It could be of gold, or gilt, or bronze metal.²³

15. This was an amendment to the Uniform Regulations then in force, as promulgated in the Army Regulations of 1889.

16. The absence of a prescribed device for the Judge Advocate General is probably explained by the fact that at the time the incumbent was suspended from rank (GCMO 19, Hq. of the Army, 24 Feb 1885) and the only Assistant Judge Advocate General was Acting Judge Advocate General. Cf. Fratcher, Notes on the History of the JAGD, 1 JA Journ. 10.

17. At this point it is appropriate to note a curious parallel in the development of the insignia of the Inspector General's Department and the JAGD. The design of the present insignia of both Departments was authorized in the same year, 1890, by the same General Order. Both insignia were wreathed, which resulted in some similarity of appearance. Whether the IG insignia was equally appropriate will be left for personal deduction, but there is no dispute about its inclusion of the faces, or bundle of sticks and an axe, which at that time at least must have been thought to have some significance. No provision was made for the wearing of the JA insignia, as there was for that of the IG, on the forage cap badge. Forage is defined by Webster both as "to search for provisions," and "to ravage." Obviously JAs would have no need for a forage cap.

18. There are noteworthy examples of perhaps more appropriate army insignia. Consider that of Chemical Warfare Service, with its chemical retorts held together by organic chemistry's basic hexagon, the benzene ring; and music's traditional lyre, for the army band; and the Medical Corp's mythological caduceus, or snake-twined staff of Aesculapius, the Greek god of medicine. But of all, the writer personally liked best the down to earth World War I insignia for cooks—a pot.

19. Cir. 7, 1894.

20. G. O. 144, 1899.

21. G. O. 81, 1902, as amended by par. 53(b), G. O. 132, 1902.

22. Par. 57(b), G. O. 169, 1907.

23. Paragraphs 34 and 36, Uniform Specifications, 1917, as published in Special Regulations 42, 15 Aug 1917.

When the current series of Army Regulations was promulgated in 1921, the previously existing provisions of the old Regulations relating to JA insignia were adopted without change and included in AR 600-35, 14 October 1921.²⁴ But the period of post war unrest was having its effect. Another revision of the uniform was agitated. This time it affected not only uniform design, but JA insignia design as well! Some may consider this merely as an interesting aberration; for it was obscurely documented, promptly repented, and largely forgotten.²⁵

The complete revision of AR 600-35, 14 October 1921, was undertaken in 1923. Now the revision of Army Regulations is no light matter, particularly when they relate to the uniform, where opinions and tastes may differ widely, and at a time when there are no urgencies of war to restrict a natural desire for latitude of expression.²⁶ Army channels were busy thoroughfares of memoranda, concurrences, counter proposals and indorsements. Added to this stream was a proposal to change the JA insignia which had been basically the same since 1890.

In the files of the National Archives²⁷ there is a page proof of a revision of AR 600-35 proposed to be promulgated 7 June 1924, which provided that, effective 1 July 1924, the JA insignia should be: "A balance upheld by a Roman sword and ribbon blindfold, 1 inch in height. Scales and sword hilt to be gold, blade of sword and ribbon silver." Accompanying the page proof is an unauthenticated check list purporting to show the authority for all changes. This states uninformatively, relative to the above, "Approved by Staff." Voluminous as was the discussion of other changes, for whatever reason this change has no discussion or comment officially preserved.

The actual publication of the revision of AR 600-35 was delayed until 1925, although it appeared under date of 25 November 1924. In paragraph 15(b)(2)(q) the changed JA insignia was described as above quoted. The picture at the beginning of this article shows what it looked like.

It is a strange thing that the official records of JAGD should be so meager on the subject; but they disclose nothing as to the origin of the change; or who proposed it; or why; or who designed the new insignia. The Quartermaster Corps Heraldic Section, which had no trouble furnishing information about the 1890 design, could throw no light on a change thirty-four years later. Colonel Henry Harmeling, now Judge Advocate at Mitchel Field, New York, and Major G. M. Chandler, of the Army War College Historical Section, have kindly provided the explanation.

If you have been following the footnotes carefully up to this point, you will recall that in note 17 reference was made to the IGs. They are in again. It seems that in the last war the JAGD was very small,²⁸ and greatly outnumbered by the IGD. The latter's insignia naturally became better known. But because there was the com-

24. Par. 13(b)(2)(q).

25. In fact, the writer hopes the following disclosures will be generally a surprise.

26. As a matter of bibliographical interest, the pertinent files at the National Archives fully bear this out.

27. National Archives' file, A. G. 300.33 (5-8-24).

28. Seventeen officers at the beginning of the war, 426 just after the armistice. Cf. Fratcher, Notes on the History of the JAGD, 1 JA Journ. 11.

mon element of the wreath in both,²⁹ occasionally confusion of the two occurred. It was all right in some cases, but not when a JA was mistaken for an Inspector. This evidently happened too frequently for too many JAs.³⁰ However, changes come slowly, for it was more than five brooding years after the armistice that anything was done to remedy the situation.³¹

In addition to the confusion of IG and JAG insignia, a more fundamental reason for the change was held in some quarters. A few officers of the Department considered the crossed sword and pen not sufficiently symbolic of the JA'S functions, and hoped for a more appropriate replacement. Among them was General Walter A. Bethel, then The Judge Advocate General. Major Chandler, at that time with G-4 and in charge of the army's heraldry, was consulted. It was he who designed the Roman sword and balance insignia.

The sword again indicated the military character of the Department. It was a Roman sword, because Romans were great law-givers. The balance,³² or scales, has its origin as a symbol of justice in antiquity.

The change was not popular. A few officers procured the new insignia; most did not. Shortly upon the retirement of General Bethel on 15 November 1924 the JAs were canvassed for their views on the new insignia.³³ Most of them wanted the crossed sword and pen.

29. The Interpreters Corps also had a wreathed insignia, but the letters INT, which the wreath surrounded, apparently looked like neither axe nor sword nor pen, and no confusion is reported.

30. Col. Harmeling states: "It entailed a lot of explanation."

31. Col. Harmeling puts it, "to avoid this *embarrassment*."

32. The design of the balance is interesting. It is taken from one of the magnificent bronze zodiac signs which ornament the floor of the main reading room of the Library of Congress.

33. According to Col. Harmeling: "Some took no stock in the inability to distinguish between the old insignia and the Inspector General's Department; others thought The Inspector General should have been the one to do the changing." Bravo! At any rate, it was peace-time, officers were customarily not in uniform, thus insignia were so rarely worn that confusion was virtually impossible.

One of the first acts of General John E. Hull, as new TJAG, was to procure the rescission of the change. Exactly when this was effected is not clear, except that it was some time between 15 November and 29 December 1924. On the latter date a letter went forward "To: All Judge Advocates (Regular Army, National Guard, Reserve Corps)" announcing that AR 600-35, 25 November 1924, was soon to be issued; that it promulgated a change in JA insignia from sword and pen to Roman sword and balance; that the change had been authorized since 1 July 1924, but had not theretofore been published; that subsequent to the printing of AR 600-35, 25 November 1924, but prior to its promulgation, ". . . the order for the change in insignia was revoked by the War Department³⁴ and the old insignia restored at the request of this office."

And so, quietly, before the change from the time-honored sword and pen was even officially published, it was rescinded. Here was a case of Army Regulations repudiated first and promulgated later. But then many another paradox, before and since, has given the JAGD but little difficulty.

AR 600-35, 24 November 1924, was superseded by AR 600-35, 31 December 1926. The sword and pen crossed and wreathed again became publicly, as well as officially, the insignia of the Judge Advocate General's Department.³⁵ It has so remained ever since, and is proudly worn by officers in every theater of operations and in every part of the globe where American troops are stationed—the respected trade-mark of the JA.

34. The War Department General Orders, Bulletins and Circulars for 1924 are stonily silent on the matter.

35. Par. 16 2 q, AR 600-35, 31 Dec. 1926. Two sizes of the device were authorized, one $1\frac{1}{16}$ inch in height for "lapel collar coat and olive drab shirt," and the other one inch in height for the "standing collar coat." When the "standing collar coat" was abolished, the one inch insignia went too. The $1\frac{1}{16}$ inch device has been the only one authorized since just before Pearl Harbor. Par. 24 2 n, AR 600-35, 10 Nov 1941. However, a few old-timers are still displayed.

ALLEN W. GULLION, MAJOR GENERAL, U.S.A. RETIRED *(Continued from Page 39)*

assistant executive officer and Chief of the Mobilization Division in The Provost Marshal General's Office in connection with the administration of the Selective Service law.

General Gullion saw overseas service in 1918 as a judge advocate; then returned to Washington where he was assigned to the Operations Division, War Department General Staff.

For his World War I service General Gullion received the Distinguished Service Medal, the citation to which read as follows:

"For exceptionally meritorious and distinguished services in the national administration of the Selective Service Law from May 4, 1917, to March 26, 1918. As chief of publicity and information under the Provost Marshal General he successfully conducted the campaign to popularize selective service. Later as acting executive officer to the Provost Marshal General he solved many intricate problems with firmness, promptness, and common sense. Finally, as the first Chief of the Mobilization Division of the Provost Marshal General's Office, he supervised all matters relating to making and filling of calls and the accomplishment of individual inductions. To each of his varied and important duties he brought a high order of ability and remarkable powers of application. His services were of great value in raising our National Army."

After a tour in the Office of The Judge Advocate General, he went to the Command and General Staff School at Fort Leavenworth, returned to JAGO for two years and then went to the Army War College and the Naval War College. From the Spring of 1932 until December 1933, he served as Judge Advocate of the Hawaiian Department and then took over as Administrator for the NRA in Hawaii until July of 1935. He then returned to the United States and was designated Chief of the Military Affairs Division of The Judge Advocate General's Office, later Assistant Judge Advocate General and in 1937, The Judge Advocate General of the Army. During his term as The Judge Advocate General, General Gullion represented the United States at a conference of juridical experts at Luxembourg and the War Department and the American Federal Bar Association at the first convention of the Inter-American Bar Associations in Havana.

The well-stocked bookcases that line the walls of General Gullion's Washington apartment suggest that at least a good portion of the time freed to the General by his retirement is devoted to reading and study. The General confirms this, adding that he is now engaged in catching up on a lot of reading that he never could get

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The Branch Offices

TWO YEARS OF ACHIEVEMENT IN MTO

By MAJOR CICERO C. SESSIONS, JAGD

AS THE SECOND year of its existence draws to a climax in the swift and tumultuous European War, it is not inappropriate to note briefly the principal events in the life of BOJAG—MTOUSA (Branch Office of The Judge Advocate General, Mediterranean Theater of Operations, United States Army, originally North African Theater of Operations).

The North African Theater of Operations, United States Army, was established on 4 February 1943. Command was assumed by General (then Lieutenant General) Dwight D. Eisenhower. Shortly thereafter, on 10 February 1943, General Eisenhower requested the War Department to establish in the theater, pursuant to Article of War 50½, a branch of the Office of The Judge Advocate General and a Board of Review. On 22 Feb-



The original Board of Review BOJAG—NATOUA. Col. O. Z. Ide, Col. Samuel T. Holmgren, Lt. Col. Gordon Simpson.

ruary 1943, the President, in a letter to the Secretary of War, directed The Judge Advocate General to comply with General Eisenhower's request. After this short period of gestation, BOJAG was born, a Branch Office and a Board of Review being established in the North African Theater by an order of 8 March 1943.

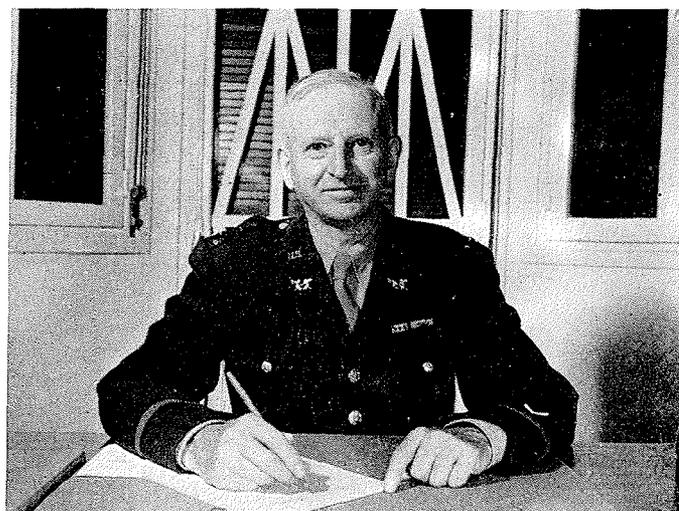
Brigadier General (then Colonel) Adam Richmond, J.A.G.D., who was General Eisenhower's staff judge advocate, was detailed as Assistant Judge Advocate General in charge of the new Branch Office.

From its inception the new organization was a lusty infant. General Richmond and Lieutenant Colonel G. B. Chapman III were already in the Theater, but before the remainder of the officer complement and the enlisted personnel could arrive from other assignments, the press of work required the prompt, though temporary, establishment of a Board of Review, composed of officers immediately available.

By 24 April 1943 the entire commissioned complement had arrived, but the enlisted personnel, consisting of ten WAC's, were still en route. Pending their arrival reliance was had upon the Judge Advocate Section of the Theater Headquarters for clerical and stenographic services. Procurement of the supplies needed by the Branch Office presented no small problem, and necessity dictated a development of technique, not entirely un-

necessary even today, which would have done credit to a front line outfit. Typewriters formed the scarcest item of indispensable supply. There did not appear to be any available, and all usual methods of procurement failed. Finally, in a subtly worded memorandum, General Richmond pointed out to the lords of supply, "It so happens that it is the mission of this office to fight the war with typewriters. Our enlisted personnel, consisting of ten WAC's, will arrive in a few days. If the requested typewriters are not furnished, the WAC's will be without arms or ammunition." Where all else had failed this appeal produced results. Their arms and ammunition were delivered the day before the WAC's arrived. The WAC's have used them well.

The life of the Branch Office during its entire tenure in North Africa was replete with incidents, both serious and amusing, which will furnish meat for its personnel to rend at veterans' conventions for decades after the war. At an early date the office was supplied with local transportation in the form of a broken down, dispirited, exceptionally noisy French Hotchkiss sedan of uncertain vintage. This venerable vehicle, which had the appearance of a small black bathtub on wheels, was complete with Mohammed ben Aboub, its Arab driver. Despite the rigors of his religion, Mohammed was not abstemious, to say the least. He could neither speak nor understand English, and professed an unusually astringent view toward the rules, traffic and otherwise, enforced by benevolent American military authorities. Mohammed proudly claimed to have driven a taxicab in Algiers for eighteen years without killing anyone, or hardly anyone. Inevitably and characteristically he went too far in his pride. One night, while in a questionable state of grace but undoubted condition of artificially induced exhilaration, Mohammed disputed the authority of an



Col. Hubert D. Hoover, JAGD

air-raid warden. Mohammed lost, and reported the next day with black eye, revoked driver's license and a greatly chastened spirit. In due time the license was restored and, to the satisfaction of all concerned, transportation

thereafter was relatively safe and commonplace. Better means of transportation have since been provided.

In order to appreciate the achievements of the Branch Office, its mission must be stated. It is a branch of the Washington Office of The Judge Advocate General, operates under the direct supervision of Major General Myron C. Cramer, The Judge Advocate General, and is not under the control of the Commanding General of The Theater. In practice the Branch Office operates as an autonomous War Department unit. The Board of Review functions as prescribed by Article of War 50½, and the Military Justice Division examines general court-martial records not required to be examined by the Board of Review. The relationship between the Assistant Judge Advocate General in charge and the Branch Office on the one hand and the Commanding General of the Theater and Theater installations and units on the other is analagous to the relationship The Judge Advocate General bears to the President, the War Department and the Army in general in military justice matters.

Because of the legal relationship between the Branch Office and the Theater Commander General Richmond shortly reverted to his former assignment as General Eisenhower's staff judge advocate. On 18 July 1943 Colonel Hubert D. Hoover arrived in the theater and on 20 July assumed the duties of Assistant Judge Advocate General in charge of the Branch Office. Colonel Hoover still occupies that post. His Board of Review presently consists of Lieutenant Colonel Mortimer R. Irion, Major George O. Wilson and Captain Henry C. Remick; his Military Justice Division of Lieutenant Colonel John H. McGehee, Jr., Chief, Lieutenant Colonel Howard K. Shaw, Major Cicero C. Sessions and First Lieutenant Harold V. Hughston.

Although in point of time some other Branch Offices were activated prior to that of NATOUSA, it remained for BOJAG-NATOUSA to blaze new trails and pioneer the way in many types of cases induced by or incidental to major combat. At the time of the activation of the Branch Office the new American Army was in the midst of the Tunisian Campaign, and following the capitulation of the Afrika Korps in May of 1943, there has not been a time during which American infantry divisions of the Theater have not been in combat or intense preparation for imminent combat with the enemy. Occupation of nominally friendly as well as hostile territory has been continuous. Under these conditions, crimes of violence—murder, rape, robbery, assaults—were inevitable and not infrequent. Desertions to avoid hazardous duty, acts of misbehavior before the enemy, mutinies and riots occurred and were punished by courts-martial. In the rush and violence of actual war, the rules of the Manual for Courts-Martial were oftentimes honored only in the breach. The Branch Office asserts with some pride that in exigencies such as these it did its bit to make the Articles of War work, that is, to insure fair trials and to support the troop commanders in their efforts to maintain discipline worthy of American arms.

All general court-martial records in which action was taken on or after 14 March 1943 were forwarded to the new Branch Office from the commanders exercising general court-martial jurisdiction in the Theater. During the ensuing three months 191 records of trial were received, 20 of which required action in the first instance by the Board of Review. Of the 171 of the records ex-

amined in the Military Justice Division, 7 were also examined by the Board of Review. Some 300 records had been disposed of when Colonel Hoover assumed charge.

With the passage of time and huge increases of combat and service personnel the volume of work increased. At the end of its first year the Branch Office had received a total of 1753 general court-martial records, of which 275 were Board of Review cases and 1478 were Military Justice cases. By January 10, 1945, that is, during the first ten months of the second year, a total of 4771 records of trial had been received. At no time has the backlog of unprocessed cases been permitted to assume undue proportions. Weekly reports to The Judge Advocate General reflect that numerically the list of cases disposed of in each period reported was seldom below the number received, and in most periods the business of the office was relatively current. For example, while receiving 1753 records in the first year, BOJAG disposed of 263 Board of Review cases and 1468 Military Justice cases, a total of 1731, leaving a backlog of only 12 Board of Review and 10 Military Justice cases. On 31 December 1944, 55 cases were pending, of which 28 were of the Military Justice category.

The continuing successes of our arms required the transfer of the Branch Office from Algeria in North Africa to the Italian mainland in the early summer of 1944. The movement was accomplished without undue incident and with relatively little disruption of business. In their new location the personnel of the office soon learned that helmets and other military impedimenta could not yet be dispensed with, as their agility in responding to air raid warnings acquired in North Africa received immediate and extensive refinement. In truth, the prowess and speed of some of them in reaching the air raid shelter, regardless of time, temperature, vestiture, location, or occupation at the moment, have become legendary, and on wintry evenings many sagas about these paladins are told to awe-struck and envious rookies of the office. Upon their arrival at their new location, it took but a second to ascertain that numerous signs bearing the Italian legend "Al Ricovero" meant "To the Air-Raid Shelter". It has been widely suspected, but never proved, that shortly thereafter the addition to some of the signs of the words "For Mayor" was the inspired work of a BOJAG Judge Advocate.

Toward the end of 1944, the designation of the North African Theater of Operations was changed to Mediterranean Theater of Operations, and coincident therewith BOJAG-NATOUSA was redesignated BOJAG-MTOUSA, without change in functions or relationship.

With its movement to Italy, BOJAG entered the period of its greatest activity. During the six months following the movement, by the end of December 1944, the record of its labors, though bleakly and only partially revealed through the medium of mute figures, stands as follows:

	Board of Review	Military Justice Division	Total
General Court Martial Records Received	219	1715	1934

The overall average was 327 cases per month.

Judging by the total number of cases disposed of in the period, it is noteworthy that from the time of its activation to date the overall activity of this Branch Office has not been exceeded by any other Branch Office. Al-

(Continued on Page 61)

THE JUDGE ADVOCATE GENERAL'S *School*

By CAPTAIN GEORGE P. FORBES JR., JAGD

TRANSITION has been the keynote in individual assignments for numerous members of the Staff and Faculty at The Judge Advocate General's School since November 1944 to the date of this report, more so than during any similar period in memory.

Most important, of course, is the change in command. For the first time since the activation of the school in February 1942 a change in command took place on 19 December 1944 when Col. Edward H. Young, JAGD, was relieved of his duties as Commandant of the school as well as of his duties as Commandant of all Army forces in Ann Arbor and as Professor of Military Science and Tactics at the University of Michigan in order to accept an overseas assignment. Col. Young had held the two last named posts since June 1944. As Commandant of all Army forces here he enjoyed the distinction of being one of the few officers in the Judge Advocate General's Department to exercise functions of command over troops other than those of the Department.

Lt. Col. Reginald C. Miller, Assistant Commandant for several months and Director of the Military Affairs Department of the school for almost two years, was chosen as Col. Young's successor in all three posts by order of the War Department upon the recommendation of Maj. Gen. Myron C. Cramer, The Judge Advocate General of the Army, Maj. Gen. Russel B. Reynolds, Commanding General, Sixth Service Command, and action of the University of Michigan Board of Regents, respectively.

Although the change was made known and in effect some time previously, official notice of it was taken by Gen. Cramer in the graduation address to members of the 20th Officer and 9th Officer Candidate Classes here in Hutchins Hall on 10 January. Gen. Cramer complimented both officers for the roles they had played in bringing the school to its high plane of military efficiency. He said in part: "The reputation of The Judge Advocate General's School for its military atmosphere has long since attracted official attention in Washington. The fact that it has been especially commended for this feature by Maj. Gen. Weible, Director of Military Training for the Army Service Forces, as well as the Director of Military Training for the Sixth Service Command, is a well-deserved tribute to the thorough manner in which your retiring Commandant, Col. Edward H. Young, has created here the military spirit which has caused press observers to refer to The Judge Advocate General's School as the 'Lawyers' West Point.'

"I am sorry that Col. Young cannot be here today to participate in the commencement exercises of the last group trained under his direction. This school is in no small measure a living monument to his pronounced organizing and executive abilities and his unremitting devotion to its development. He served as its director from its birth in Washington in February 1942 until his recent transfer to an important Judge Advocate General post overseas and the impress of his soldierly qualities and fine character are evident not only in the Law Quadrangle, but throughout this community. We all wish him Godspeed and the best of luck in his new assignment.

"No recognition of the fine job Col. Young has done at this school is complete, however, without including in its scope at the same time, his successor, Lt. Col. Reginald C. Miller, your new Commandant. Col. Miller is not only exceptionally well qualified to administer the affairs of the school but has been Col. Young's right hand man for the past two years and has shared responsibility for its growth and success. He has the respect and confidence of both the faculty and student classes and I consider ourselves fortunate in having him here to take over the administration of the school with no interruptions either in policies or operations. We in Washington know that it will continue to go forward under his command."

Col. Young is a graduate of the United States Military Academy, Class of 1918, receiving his commission as second lieutenant of Infantry. Going overseas immediately after graduation, he was on duty with the Army of Occupation in Germany and later in the Philippines, also with the Infantry. While assigned to the Army War College he became White House aide during the Coolidge and Hoover administrations, leaving to take an assignment on the staff of the Commanding General, Second Corps Area, Governor's Island, N.Y. While in New York he attended New York University Law School from which he received his JD degree. After a tour of duty as Assistant Professor of Law at West Point he was Chief of Branch, Military Affairs Division, in the Office of The Judge Advocate General until selected to organize and command the school in February 1942. From that moment he devoted all his time and energies to a single purpose: that of making The Judge Advocate General's School the finest service school in the Army. How well Col. Young succeeded is evidenced not only by the quoted remarks of Gen. Cramer as well as other remarks by him published in the Army and Navy Journal (special supplement, "United States at War," December 1944, p. 20) and the esteem in which he is held by officers in and out of the Department for his achievements here, but also by the actual performances of school graduates in the field in carrying out their regularly assigned duties, which performances reflect no little credit upon their manner of training. In February 1944 the University of Miami (Fla.) conferred upon him the honorary degree of Doctor of Laws, adverting to Col. Young's contributions to the field of legal literature and to his accomplishments as head of the school.

As has already been observed, Col. Miller, the new Commandant, is not entirely a stranger to his duties, having been Assistant Commandant for several months, President of the Academic Board and Director of the Military Affairs Department. He is a former reserve Infantry officer who came on his present tour of duty in 1940, serving at Jefferson Barracks, Mo., and in the War Department where he was in the office of the Assistant Chief of Staff, G-2, and in the Military Affairs Division of The Judge Advocate General's Office. In the last few months of his tour in the latter office he was executive of the Division. He is commissioned in the Regular Army, having received his commission during the present war. Prior to his assignment as a member of the Staff and Faculty he was graduated from Command and General Staff School, Fort Leavenworth,

Kans. Col. Miller is a graduate of the University of Nebraska from which he holds AB and LLB degrees and where he was a member of the staff of the Law Review and a member of Coif, legal honorary society. Before the war he engaged in the practice of law in Omaha, Neb., as a partner in a firm specializing in corporation, insurance and tax law.

Change in leadership was not the only change affecting personnel of the Staff and Faculty during the period covered by this report. 1st Lt. James E. Atkins (4th OC) of Knoxville, Tenn., one of the pioneer members of the Contracts and Readjustment Department when it was organized in April 1944, was transferred in December to the Office of the Director of Material, ASF, The Pentagon, where he is continuing to specialize in that field. At the time of writing it has just become known that 1st Lt. Paul J. Driscoll, Norwich, Conn. (4th OC), who has been a member of the Staff and Faculty assigned to the Military Science and Tactics Department since graduation in March 1944, will leave Ann Arbor for an overseas post.

Now that departures have been mentioned, transition would not be complete without mention of the additions to the Staff occurring recently. They are Maj. Bernhard W. Alden, Kansas City, Kans., 1st Lt. Adolph F. Reel, Cambridge, Mass., 1st Lt. Owen F. Walker, Cleveland Heights, O., 1st Lt. Robert H. Marquis, Knoxville, Tenn., and 1st Lt. Hugh M. Lindsey, Santa Barbara, Calif. A member of the 19th Officer Class, Maj. Alden was first assigned in November as research assistant to the Military Affairs Department and later became Director of that Department upon the accession of Col. Miller to command. He has been on active duty since March 1941 and has seen extensive service with the Air Corps and Coast Artillery Corps, as well as with the Judge Advocate General's Department at home and abroad, earning the Sicilian campaign battle star while on duty with the Coast Artillery Corps. Included in his service is a tour of duty in the office of the Theatre Judge Advocate for the North African Theatre of Operations, Brig. Gen. Adam Richmond. The last four months of his assignment there he was Chief of the Military Justice Section.

Lt. Reel, a member of the 6th Officer Candidate Class, returned to Ann Arbor after six months with the Claims Division of The Judge Advocate General's Office and is assigned to the Civil Affairs Department where he specializes in instruction in Claims. The other three officers are all graduates of the 8th Officer Candidate Class and of the 6th Contracts and Readjustment Class as well, and are serving in the Contracts and Readjustment Department as instructors. Lt. Lindsey, like Maj. Alden, has had overseas experience, having been in the office of the Staff Judge Advocate of the India-China Wing, Air Transport Command, under Lt. Col. James E. Spier (9th Officer Class), for 14 months. Completing the changes on the Staff was the interdepartmental transfer of Capt. Leslie L. Anderson to the Contracts and Readjustment Department from the Civil Affairs Department to which he had been assigned since completing the officer candidate course as a member of the 1st OC.

Certificates of Merit and Appreciation

An event without precedent in the history of the school took place in January when Certificates of Merit and Appreciation of The Judge Advocate General's



School were presented to seven patriotic civilians for their unselfish assistance in the development and expansion of the school training program. Those honored included men who aided the school while it was in its infancy in Washington and others who lent their good offices following the transfer to Ann Arbor. On the roll of honorees are Mr. Leslie C. Garnet, who was Chancellor of the National University Law School, Washington, at the time when that institution was the home of the school from February through August 1942, during which period the first four officers' classes were trained; Prof. Milton I. Baldinger of that University who continues as periodic lecturer on the Soldiers and Sailors Civil Relief Act, and Rev. Edmund A. Walsh, S.J., Regent of the School of Foreign Service, Georgetown University, noted authority on geopolitics, who has lectured regularly at the school. Three University of Michigan faculty members and a New York attorney complete the roll of honor: Prof. Albert L. Niehuss, vice president of the University and coordinator of the university training program with the Army; E. Blythe Stason, Dean of the University of Michigan Law School; Prof. James K. Pollock of the Political Science Department, lecturer on German law and international current events, and Mr. James L. Kauffman who travels from New York at regular intervals to give lectures on Japanese life and law, drawing upon experience gained while actively practicing law in Japan for many years, part of which time he was also Professor of American and British Law at the Imperial University, Tokyo.

Graduation 10 January

Graduation exercises for the 20th Officer Class and the 9th Officer Candidate Class at which Gen. Cramer was the principal speaker have already been mentioned. Because of the accumulated winter snow in the Law Quadrangle, it was impossible to hold the graduation parade in the usual style. Instead, the school battalion, consisting of the 10th Officer Candidate Class and the

8th Contracts and Readjustment Class in addition to the graduation groups, formed on the north walk of the Quadrangle, and at the conclusion of the ceremonies passed in review down the middle walk in a column of twos. In the reviewing stand with Gen. Cramer were Col. William H. McCarty, Commanding Officer, District No. 1, Sixth Service Command, who was making his first visit to the school; Col. George H. Hafer (15th Officer Class), general counsel to the Director of Selective Service; Col. Terry A. Lyon, Chairman, Board of Review No. 2, The Judge Advocate General's Office; Col. Miller; Major Jeremiah J. O'Connor, Executive, and 1st Lt. Sherwin T. McDowell (18th Officer Class) of The Judge Advocate General's Office. The letter of appointment was read by Major O'Connor and the oath of office for the new officers of the 9th OC was administered by Col. Miller.

The exercises in the Quadrangle were marked by an unusual event, recalling the presentation of the Soldier's Medal to Lt. Buster Cole (6th OC) last July. In the first ceremony at which such an award has been bestowed here, Lt. James I. Hardy of Arlington, Va. (9th OC), received the Silver Star Medal, the Army's third highest combat honor, from the hands of Gen. Cramer. Lt. Hardy exhibited gallantry in action in France in June 1944 while a member of a wire repair team under heavy enemy artillery fire. With "utter disregard for his own



Col. Edward H. Young, JAGD Lt. Col. Reginald C. Miller, JAGD

safety, and under extremely hazardous circumstances, Private Hardy stayed exactly where he was and continued to repair our lines to Division Artillery," the citation reads in part.

In the evening members of the 9th OC by way of entertainment presented a gridiron club playlet entitled "Charges and Confessions of 1944, or Through M.C.M. With Gun and Camera." Members of the Staff and Faculty and school rules and regulations were targets for good natured joshing.

While writing of the graduating classes, it does not seem fitting to let it go unnoted that included on the roster of the 20th Officer Class was one officer who undoubtedly holds more combat decorations than any other officer ever to attend the school. He is Capt. Donald E. Grant, Oneonta, N.Y., who is entitled to wear the Distinguished Service Cross, the Silver Star with cluster, and the Purple Heart, all for extraordinary achievements in action in France in World War I. Another officer in the class, 2nd Lt. Charles W. Colgan, Baltimore, Md., wears the Purple Heart with cluster for wounds received in France during this war.

Contacts and Readjustment Classes

Since the last writing two more classes in Contracts and Readjustment, the 7th and 8th, have come here for a month's training. In order to meet changing requirements in the general war picture, emphasis is being placed on matters of production changes, partial terminations due to alterations in design, renegotiation and repricing, as well as termination of Government war contracts. At present the 9th Contracts and Readjustment Class is engaged in the first week of the course.

A number of officers of the Judge Advocate General's Department, most of them graduates of officer courses or officer candidate courses; have been in attendance for specialized training in that field. In the 7th Class were eight officers of the Department: Capt. W. Palmer Van Arsdale (14th Officer Cl.), 1st Lt. William J. Koen (2nd OC), 1st Lt. Bernard J. Duffy, Jr. (4th OC), 1st Lt. Charles T. Cline (6th OC), 1st Lt. Carroll B. Callahan (7th OC), 2nd Lt. Edward H. Best (4th OC), 2nd Lt. William B. Dull (6th OC), and 2nd Lt. William W. Brady (7th OC). The group of seven in the 8th Class included Capt. Stephen J. Angland (18th Officer Cl.), Capt. Dyvart G. Rognlien (13th Officer Cl.), 1st Lt. Joseph Hoffman (4th OC), 1st Lt. Frank W. Williams (5th OC), 1st Lt. Harley A. Lanning (6th OC), 1st Lt. Murray Steyer (6th OC), and 2nd Lt. Robert C. Bell (8th OC). In the 9th Class are 1st Lt. Lawrence W. Thayer (3rd OC) and 2nd Lt. Maxwell I. Snider (6th OC).

School Has Third Anniversary

Almost forgotten in the hustle and bustle of the regular training routine, the third anniversary of the activation of the school at Washington on 9 February 1942 went by unnoticed except for passing mention in the school bulletin, THE ADVOCATE. It was there mentioned that over 2,000 officers have been students of the school in officer training, officer candidate, and contracts and readjustment courses plus a special claims course in April 1943. The original teaching staff, which also attended to administration matters, was comprised of a versatile trio of officers, Col. Young (then lieutenant colonel), Col. Herbert M. Kidner (then major), and Lt. Col. Clark Y. Gunderson (then captain), as compared to the staff of 32 now on duty here.

As a piece of incidental intelligence, it might be said that a history of training at the school, prepared pursuant to a directive of the War Department, has been completed by Maj. Jeremiah J. O'Connor, Executive Officer, and filed in Washington as a guide for the future should there be another war and should need for training judge advocates arise.

ALLEN W. GULLION (Continued from Page 45)

around to before. Current events, current best sellers, an occasional autobiography are on his reading bill of fare. But more than these the General likes poetry—all kinds—but particularly Browning's. And when these pall, there is always an ode by Horace to be translated for the General is, among other things, a Latin scholar for whom the old masters hold real delight. "I have always maintained that retirement wouldn't irk me and it hasn't," the General says. "If one must have a routine job to escape boredom, then he has no inner resources."

WASHINGTON *News AND Views*

Hodgson on War Crimes Commission

Lt. Col. Joseph V. Hodgson is acting United States Commissioner on the United Nations War Crimes Commission, replacing Mr. Herbert C. Pell whose resignation was compelled when Congress failed to appropriate funds to continue his representation on the Commission. Recently in Washington for a period of temporary duty with the War Crimes Division, Colonel Hodgson has returned to London to take up his duties with the Commission. While in this country, he lectured at The Judge Advocate General's School on certain aspects of international law.

Colonel Hodgson was Attorney General for the Territory of Hawaii before the Pearl Harbor attack. Thereafter he served as Assistant Staff Judge Advocate for the Hawaiian Department before attending the 12th Officer Class at JAGS.

* * *

Board of Review 5 Reactivated

Board of Review No. 5 was reactivated in the Office of The Judge Advocate General 1 February 1945. The new board is headed by Col. Herman J. Seman as Chairman with Col. Augusto P. Miceli and Lt. Col. Grenville Beardsley as members. For the past 5 months there have been only 4 Boards of Review in the office, former Board 5 having been deactivated in September 1944. The present work load, however, makes the reactivation of Board 5 necessary.

All members of the Board have just returned from oversea assignments. Prior to taking up his duties as Chairman, Col. Seman was Acting Assistant Judge Advocate General in charge of the Branch Office of The Judge Advocate General in CBI. Col. Miceli was previously Assistant Staff JA, Twelfth Army Group, ETO, and Col. Beardsley served as senior member of the Board of Review of BOJAG CBI.

* * *

Hickey Heads New Branch, JAGO

Colonel Albert N. Hickey has been assigned as Chief, Planning Branch, J.A.G.O. Prior to his assignment in Washington, Colonel Hickey was Staff Judge Advocate of the Sixth Army, SWPA. The new branch is under the supervision of Brigadier General Thomas H. Green, Deputy Judge Advocate General and is charged with coordination and development of all plans for readjustment, redeployment and demobilization operations that fall within the staff functions of The Judge Advocate General.

* * *

Kane, New Executive Officer, JAGO

In February Major Anthony Kane was assigned as Chief of the Military Personnel and Training Division, Judge Advocate General's Office and designated Executive Officer to succeed Colonel Robert M. Springer who left for an overseas assignment. On duty in the Military Personnel and Training Division, JAGO, ever since graduating from 2nd Officers Class, Major Kane was first assigned to the Classification Branch of that Division and later as Chief of the Planning and Training Branch and Assistant Executive.

ATC JA Conference

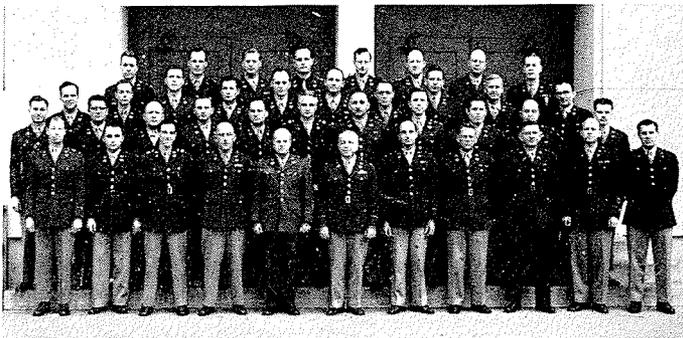
Drawing participants from all corners of the world, the Air Transport Command held a three day conference of Judge Advocates and Legal Officers at Command Headquarters, Gravelly Point, Washington, D. C. 18 through 20 January 1945. Forty-seven judge advocates and legal officers attended the conference which was conducted under the auspices of the Office of the Staff Judge Advocate of the Air Transport Command, Colonel Rowland W. Fixel.

Highlight of the conference was an informal talk by Major General Myron C. Cramer, The Judge Advocate General, on military justice matters.

Major General Harold L. George, Commanding General, Air Transport Command, delivered an address of welcome at the opening session of the conference followed by an explanation of the scope of the conference by Colonel Fixel. Brigadier General Lawrence H. Hedrick, the Air Judge Advocate, discussed military justice in the AAF and Major General Archer L. Lerch, The Provost Marshal General, spoke on problems involving prisoners of war.

The conference was conducted on an informal round table basis, full opportunity being afforded for thorough discussion of each topic by the conferees at the conclusion of each speaker's principal remarks. Although the emphasis was on military justice matters, a wide variety of subjects was covered including not only problems peculiar to the Air Transport Command but also general legal problems such as procurement, and claims.

A banquet was held Friday evening at Bolling Field Officers' Club. The conference was closed on Saturday afternoon, 20 January with a round table discussion of problems presented by the conferees.



FRONT ROW (Left to right): Maj. John R. Thompson, AC; Capt. Frederick W. Marsi, JAGD; Lt. Bernard I. Snierson, AC; Maj. Chalmer C. Taylor, AC; Maj. Michael A. O'Tara, JAGD; Col. Rowland W. Fixel, JAGD; Lt. Col. Sidney J. Berger, AC; Maj. Roland A. Kuckuk, JAGD; Capt. John L. Musmaker, AC; Lt. Col. Henry I. Fillman, AC; Capt. Charles A. Karowsky, AC;

SECOND ROW: Lt. Oliver Carter, JAGD; Lt. Col. Thomas L. Hall, JAGD; Capt. John R. Koller, AC; Lt. Walter Muller, AC; Capt. Edward Kramer, AC; Maj. George W. Mead, AC; Capt. Edward S. Feinstein, JAGD; Lt. Col. Darrell M. Hanna, JAGD; Capt. Samuel M. Passman, AC; Maj. Henry B. Brennan, JAGD; Maj. Richard Ober, AC.

THIRD ROW: Lt. William Guild, JAGD; W/O Ralph E. Llewellyn; Capt. William W. Asch, JAGD; Capt. Simon Miller, AC; Lt. Harold W. Steiner, JAGD; Capt. Jarrell Garonzik, AC; Capt. James A. Lee, JAGD; Capt. Clare J. Hoyt, AC; Maj. Shelby Winstead, AC; Capt. Joseph J. Wolf, AC.

FOURTH ROW: Maj. Herbert J. McCampbell, Jr., JAGD; Lt. Bruce P. Henderson, AC; Maj. Daniel J. Andersen, JAGD; Maj. Kenneth R. McDougall, JAGD; Lt. Cecil F. Rowe, JAGD; Lt. George W. Garnier, JAGD; Capt. Joe O. Sams, AC; Lt. Col. A. Karl Heyner, AC.

Colonel Gordon Simpson Becomes Associate Justice of Texas Supreme Court

Gordon Simpson until recently a Lieutenant Colonel in the Judge Advocate General's Department, was sworn in as an Associate Justice of the Supreme Court of Texas at ceremonies held in Austin on 1 January 1945.

Commissioned a major in the Department on 1 June 1942, Colonel Simpson served in the Military Justice Division of The Judge Advocate General's Office and on the Board of Review before going overseas in April, 1943. He was assigned to the Branch Office of The Judge Advocate General in the North African Theater of Operations and a member of the Board of Review. He returned to Washington in September, 1944, and was on duty of the Office of The Judge Advocate General until his release from the Army.



Justice Simpson

Colonel Simpson was born in Gilmer, Texas, on 30 October 1894 and attended Baylor University from 1911 to 1913. He received the degree of Bachelor of Arts from the University of Texas in 1915 and attended the School of Law until 1917. He served as a lieutenant in the Army in the World War and later returned to the University of Texas where he received the Bachelor of Laws degree in 1919. He began the practice of law at Tyler, Texas, was elected as a member of the Texas House of Representatives and served two terms, 1923 to 1927. Later he became District Judge for the Seventh Judicial District of Texas and in June 1941 was elected President of the State Bar of Texas.

While on military duty overseas, his name was placed on the ballot in the Democratic primaries by his friends, resulting in his nomination and later election as Associate Justice in the November general election.

JAGO Commended by Members of House Military Affairs Committee

Congressman John Edward Sheridan, member of the Military Affairs Committee of the House of Representatives, recently commended the Office of The Judge Advocate General for the prompt and courteous consideration given Congressional inquiries. The following is a copy of Congressman Sheridan's letter to General Cramer:

Committees: Military Affairs

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

Washington, D. C.

235 House Office Building

February 19, 1945

Major General Myron C. Cramer,
The Judge Advocate General,
Headquarters Army Service Forces,
Washington, D. C.

My dear General Cramer:

May I take this occasion to express to you my sincere appreciation for the efficient and considerate manner in which you reviewed the conviction of Private * * *

I want you to know that I express the consensus of opinion up here on the Hill that we can always anticipate prompt and courteous consideration of any matter we send to the Judge Advocate General. May I again extend my deep appreciation.

Sincerely yours,
(Sgd.) John Edward Sheridan.

Secretary of War Commends Department

At a special meeting 9 March 1945 commemorating the third anniversary of the founding of the Army Service Forces, attended by directors of staff divisions and chiefs of technical services, the Honorable Henry L. Stimson, Secretary of War, paid tribute to The Judge Advocate General's Department by singling it out for special mention in his remarks at the meeting. Secretary Stimson said:

"In these few brief remarks it is impossible for me to do justice to all the many services with which you are charged. I should like to mention two matters, however, which have been called to my attention many times favorably—the exemplary record of the Army in handling disciplinary cases through the Judge Advocate General's Department, and the expeditious way in which discharges from the Army are being processed."

Whereabouts

Colonel ROBERT M. SPRINGER is in Paris. Well known to the Washington office, Colonel Springer was variously Assistant JAG, Executive and Chief of the Military Personnel and Training Division. His new assignment takes him to BOJAG ETO. * * * Colonel MARIANO A. ERANA made a flying trip from the Philippines to Washington. In JAGO only long enough to say hello, he did not stop to explain why he fell down as a prophet (he promised in the last issue of The JOURNAL to send New Year's greetings from Manila. Withal, he did not miss it by much.) * * * Colonel A. WOOD RIGSBY, formerly Assistant Chief, Military Personnel and Training Division, JAGO, is now Staff Judge Advocate, Army Air Forces Distribution Command at Atlantic City, N. J. * * * Captain HUGH B. ARCHER has been on TD in Ohio long enough to retire comfortably. * * * Colonel PHILIP J. McCOOK is on a jaunt the nature of which must remain undisclosed for the present except to say that it is more than a take-your-toothbrush-in-your-pocket trip. * * * Lt. Col. DONALD K. MACKAY is back in JAGO from BOJAG MTO. * * * Lt. Col. JOHN H. AWTRY, formerly Assistant Staff JA, First Army Group, is in Washington. * * * Lt. Col. WILLIAM T. THURMAN is now Staff JA, Fifth Army. Formerly he was Assistant Chief, Military Affairs Division, JAGO. * * * Major WILLIAM F. FRATCHER, periodic contributor to The JOURNAL in addition to his other duties, is with BOJAG ETO. * * * Lt. Col. JOHN F. RICHTER in from Recife, Brazil, where he was Staff JA, US Army Forces in the South Atlantic has been assigned to War Crimes Division. * * * Likewise Major JAMES M. SCOTT, whose previous station was in the ATC, South Atlantic Division, Natal. * * * Colonel JOHN W. HUYSSOON, Staff Judge Advocate, Allied Force HQ MTO has returned to JAGO. * * * As has Lt. Col. HENRY L. GRAY who came from MTO where he was Staff JA, Fifth Army. * * * Lt. Col. CHARLES P. MULDOON, formerly Assistant Staff JA, The Antilles Department, has been assigned to the Office of the Secretary of War for duty with the Secretary of War's Separations Board. * * *

"Knitters AND Tatters"

By CAPTAIN MARVIN G. SCHMID, JAGD

COLONEL Frank E. Shaw, Seventh Service Command Judge Advocate, has a vehicle that has brought him an unmatched esprit de corps among the personnel of his staff and is rapidly bringing to this headquarters international fame. The vehicle is his "Knitters and Tatters," which is an unorganized organization meeting once each week in the blue and green rooms of the Hill Hotel, Omaha, Nebraska.

Each Thursday, at the close of the work day, the Judge Advocate "battalion" leaves its offices in the Federal Building and reports at the hotel. Like Caesar's Gaul, Colonel Shaw's "K & T" is divided into three major (and many minor) parts.

The first part is the period from five o'clock P.M. until six thirty o'clock, and the ritual is wine (6 year old Beam) and song (no age limit).

Three or four Judge Advocates leave the office a few minutes before the others as an advance party and prepare the preliminaries. They purchase the popcorn, peanuts, pickled-herring, smoked cheese, crackers, and cigarettes, arrange the snack bar, and await the main body. The hosts are selected by rotation and the number depends on the number of guests. The hosts pour the first pickled-herring sandwich and after that it's strictly a



"Knitters and Tatters" at work; Col. Shaw standing.

matter of honor, tempered by appetite, capacity, and questionable judgment. Song is an inescapable concomitant of this peculiar diet and everyone sings. Some are good, some bad, and all loud. Singing is a cappella (has been ever since Captain Don Knapp, Military Affairs, Washington, left.) Almost everyone has his own school song, fraternity song, or his innocuous "siren" song that he wants to lead and sing.

Few evenings pass without the rendition by Lt. Colonel Harold H. Schaaf, Lt. Colonel Carl D. Ganz, Major Robert D. Flory, Major Jackson Chase, Captain Marvin G. Schmid, and Lt. Arthur E. Perry (all of Nebraska) of "There is No Place Like Nebraska" and "We Don't Give a Damn for the Whole State of Iowa," with Majors Charles F. Stilwill, Irvin Schlesinger, and Clarence Cosson (Iowa) protesting with quasi-melodic tenors. Colonel Shaw and Lt. Wright Conrad demand priority place for "Victors Valiant" by virtue of (1) its being their Alma Mater and (2) the JAG School's locale. (Often they'll settle for "Never Trust a Michigan Man*****"). Major

Samuel Goldberg admits that Denver University has a good school song, but he doesn't warble with the "hoi polloi," because he is of Paul Whiteman's band (high-school days). Major William Nutting, Lieutenants John E. Buehler, William Wagner, Jr., Robert R. Jones, and Robert Y. Jones (Kansas) pirate Cornell's "High Above Cayuga's Waters," put Jayhawk words to it, and sing louder than those to whom it legitimately belongs. Likewise there is a suggestion of infringement when Lt. Colonel Henry C. Chiles, Lieutenants James C. Combs, Henry T. Teters, Robert G. Mayfield and Alfred L. Shortridge flat "Old Mizzou." Major Josh Groce, Texas, Captains Elmer J. Ryan, Minnesota and Ralph Mauch, South Dakota, and Lieutenants William R. Arthur, Jr., Colorado, Charles Roberts, Illinois, and Albert H. Rupp, New York, constitute a vigorous minority, and spare no one with their musical lampoons.

With these songs and a few others that have been given inter-vivos to "K & T" such as "Bell Bottom Trousers" by Captain Kenneth Hodson, Wyoming, and "Hail Massachusetts" by Lt. Lenahan O'Connell, the first part of the meeting shades into the second, which is dinner from six thirty o'clock P.M. until eight o'clock P.M.

The hosts (with ample suggestions from the side line a couple of noons before at the same hotel, where the whole battalion takes lunch together at one long table in the main dining room with very special service at no extra cost) select the dinner, but each man pays for his own.

Lt. Colonel Harold H. Schaaf, Military Affairs Chief, is master of ceremonies. Something special and constructive is planned for each dinner program. New men coming to the pool from most parts of the world afford a symposium of speakers that dwarfs Rotary's "Institute of International Understanding." Lt. Colonel John Kaster, Topeka, Kansas, showed movies of Dutch Harbor and other parts of the Aleutians; Lt. Colonel Arnold Van Borkum, Beatrice, Nebraska, told tales of Australia; Major Dwight Perkins, Lincoln, Nebraska, related the wonders of and misadventures in Ireland and England; Lt. Charles Roberts, Bloomington, Illinois, recited the glories of being home after being in the India theatre too long. Toasts are offered, experiences are recited, digs are dug. . . BUT NO STORIES (A cardinal rule is that no stories of any kind are tolerated; more than once have members and guests abandoned the room and left speakers standing alone while telling a story).

With the prediction by the Master of Ceremonies that "everyone is losing money every minute," the doors swing open and the third and final part of the evening's program comes into view. Here there is no "hurrying to wait." Hosts are good hosts. Poker tables have been arranged; the chips are down. On the average, there are four tables of six men (and sometimes a WAVE).

Three games are permitted; six card stud, high-low split; five card straight stud; and "Nebraska" (five card draw, opening first for high if possible, and not, then for low, and low hand wins). Any win or loss over twenty-five chips is phenomenal, except with Chief Warrant Officer Louis R. Hoyle, expert in Army Regulations and high-low-split-friend and foe respectively. The tables close at 10:30, and the room is cleared within a matter

of minutes. Until recently, a lunch was served at 10 o'clock, but that has been discontinued because of rationing of foods and attrition of stomachs.

The only irregularities that occur with regularity are at Lt. Colonel Henry C. Chiles' (Lexington, Mo.) table. He has a fancy cut and shuffle in rhythm and those who fail to follow him in boogie-woogie fashion are fined no less than one chip (of doubtful value and legality). Seats at tables were almost as well defined as those on the "Big Board" until the Engineers interloped. (They are: Major Clark Murdock, Omaha, Nebraska; Major William Nutting, New Mexico; Lt. William C. Green, Miami, Florida; Lt. Louis Fribourg, New York, New York; Lt. William Pinkowski, Chicago, Illinois; Lt. William Dull, LeMars, Iowa; Lt. John Schaberg, Kalamazoo, Michigan; Lt. Everett Palmer, Williston, North Dakota.) Lt. Colonel Ganz, the banker of Alvo, Nebraska, continued to bank (and to recoup his losses) until others thought he should not have all the business. Now Lt. Wanless, Springfield, Illinois, is juggling figures and suffering less.

This unorganized organization has a present membership of approximately 300. Every Judge Advocate who has spent time here, either on the Staff or in the pool, is a member, and they are scattered over the entire globe. When a member leaves, he takes with him a card of bon voyage signed by the group, and the sentiments of a toast hoisted to his "pleasant assignment and early return." Not a week passes without a letter from one or more of them. No one, no matter how long gone, or how far away, forgets Colonel Shaw. Neither does he forget them. The Judge Advocate Staff has already sent its Christmas Greeting to all those outside the continental limits of the United States.

Once each month a "K & T" table is set at the formal dinner dance of Fort Omaha, Nebraska. It is an occasion, so festive and gay that but few Judge Advocates are absent. This is in high place on the social calendar of the wives, for here they enjoy with their poker playing, pickled-herring eating, Mexican settling husbands that feeling of friendliness and fellowship that may be found only in lawyers turned soldiers.

Statement by General Cramer on Department Activities

The following is the text of a statement on the activities of the Judge Advocate General's Department prepared by Maj. Gen. Myron C. Cramer, The Judge Advocate General of the Army, which appears in "United States at War, Dec. 7, 1943-Dec. 7, 1944," published by the Army and Navy Journal.

The work of the Judge Advocate General's Department may conveniently be divided into two major categories. In his capacity as chief legal advisor to the Secretary of War and the entire military establishment, The Judge Advocate General has supervision over a wide variety of legal matters which relate to the orderly conduct of the War Department and the United States Army. The scope of this work extends from matters of procurement through all phases of legal problems, including international law. It embraces almost every conceivable type of legal question which a lawyer would be called upon to answer in the capacity of chief counsel for such a gigantic enterprise as the Army. A second major category is the supervision and administration of the system of military justice throughout the Army—a statutory responsibility vested in The Judge Advocate General by the Articles of War.

From the pre-Pearl Harbor strength of 105 commissioned regular officers the Department has been expanded to the present total of 2128 officers. Practically all of these officers have been trained at The Judge Advocate General's School, now located at the University of Michigan. The school has been characterized as one of the finest service and training schools in the Army. Lawyers from every State in the Union attend the school and are carefully selected solely on the basis of professional standing and attainments. They represent the bench, the bar, the teaching profession and the leading Law Schools of America.

In a spirit of keen competition they are given an

intense training in military law and related subjects which qualifies them for the varied legal assignments as officers of the Judge Advocate General's Department.

Administration of the system of military justice in an Army of eight million men and women has expanded the court-martial reviews and related work to an unprecedented volume. In the main office of The Judge Advocate General and in branch offices established in France, Italy, Australia, India, and Hawaii, the Boards of Review and Military Justice divisions are engaged in the important work of examining records of trials by general courts-martial for legal sufficiency and for conformity to the provisions of the basic military code—the Articles of War.

Members of the Judge Advocate General's Office and judge advocates in other legal offices have had a major part in delineating the powers of Government representatives to make, amend, and modify Government contracts and to requisition and issue compulsory orders. The termination of contracts and disposition of surplus property were becoming increasingly important topics for legal study even before enactment of the Contract Settlement Act of 1944 and the Surplus Property Act of 1944 which present new questions of interpretation.

Legal advice has been given on problems arising out of our custody of many thousands of enemy prisoners, and it is also a part of the duty of the Judge Advocate General's office, in collaboration with the Department of State and the Navy, to draw up plans for the punishment of those war criminals who have violated the laws of war by acts of atrocity or oppression against members of our armed forces or other Americans, including the people of any dependencies of the United States, such as the Philippines. After proper investigation and trial, due punishment will be imposed.

JAGS Alumni NOTES

The Editorial Board of the Judge Advocate Journal invite our readers to submit articles for publication.

The Executive Secretary of the Association requests that all members inform him of any change of home address and/or mailing address.

Any member of The Judge Advocate General's Department who has not yet joined the Judge Advocates Association is invited to join. A letter of application addressed to the Executive Secretary, Judge Advocates Association, 1225 New York Avenue, N. W., Washington 5, D. C., will bring immediate attention.

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The following is a collection of notes culled from the columns of THE ADVOCATE, bulletin of The Judge Advocate General's School, concerning the activities of members of the Department who are alumni at the school.

2nd OFFICER CLASS

Lt. Col. O. Z. Ide after more than two years service in England, Africa, and Italy arrived home to Detroit, Mich., by plane from overseas for a two-week leave over the holidays. Col. Ide is a former judge in Detroit.

Henry T. Dorrance is now sporting eagles. Col. Dorrance is Chief, Military and Civil Affairs Section, Office of the Judge Advocate, ATSC, Wright Field, Ohio.

Lt. Col. Jesse Johnson, whose presence in Ann Arbor at the Civil Affairs Training School was made known in the last issue of THE ADVOCATE, left suddenly last week, having received orders for an undisclosed assignment. Col. Johnson was president of his C.A.T.S. class and missed the graduation exercises by a few days.

Lt. Col. Morris Lieberman is Staff JA of a Port with an overseas APO.

3rd OFFICER CLASS

Maj. Eli T. Conner III has been relieved from detail as a member of Board of Review No. 6 and assigned to the Military Justice Division, JAGO.

Lt. Col. Jesse M. Johnson is in Ann Arbor attending the Civil Affairs Training School, at the University.

4th OFFICER CLASS

Lt. Col. Earl B. Craig is now on duty at the Office of the Judge Advocate, ATSC, Wright Field, Ohio. He was formerly Staff JA for the Ninth Air Force, and served two years overseas in England and Egypt. After his return to this country he attended the 6th Contracts and Readjustment Class here.

George N. Guttman, in charge of personnel claims in the United Kingdom, has been promoted to the grade of lieutenant colonel.

5th OFFICER CLASS

Maj. John Ritchie, Staff JA with an infantry division, is now overseas in the European Theatre.

Lt. Col. John Ritchie III is Staff JA for an infantry division overseas in the European Theatre.

Lt. Col. James Rodney Stone, Staff JA with an armored division in the First Army, writes from Belgium. He ventures his opinion that from a divisional level the system of Military Justice has been quite successful in this war, that enlisted men recognize that it does have teeth and feel that it is necessary. They also feel that it is just, as long as officers and men are treated equally in the matter of references to trial.

6th OFFICER CLASS

Capt. Wendell T. Edson is reported to be with the JA Section at Fifth Army Headquarters in Italy.

Capt. Arkley W. Frieze is on temporary duty at the JA Section at Headquarters, Antiaircraft Command.

Capt. Martin H. Tobin writes from Burma where he is JA of a Combat Command with forces in the field. Capt. Tobin has been on duty in India and Burma for over two years, since graduation from the school.

7th OFFICER CLASS

Maj. John P. King, Staff JA with an infantry division in the Pacific, has been appointed Chief, Civil Affairs Section of the divi-

sion, in addition to his JA duties. He says: "You can imagine how much spare time I have."

8th OFFICER CLASS

Capt. Lloyd A. Ray, who previously served at Headquarters, Americal Division, somewhere in the Pacific, is now stationed at the Air Technical Service Command, Southeastern Procurement District, Atlanta, Ga.

Maj. Richard F. Ober, AC, has had a change of station from Base Legal Office, New Castle Army Air Base, Wilmington, Del., to Legal Office at Mather Field, Sacramento, Calif.

10th OFFICER CLASS

George I. Shannon has been promoted to the grade of lieutenant colonel. Col. Shannon is Chief, Administration Branch, Contract Section, Office of the Judge Advocate, ATSC, Wright Field, Ohio. He has been law member of the general court-martial there for more than a year, and as an indication of the "brass" on the court, during most of the time he was junior member thereof.

Maj. Walter T. Tsukamoto, formerly stationed at Camp Savage, Minn., is now assigned to Fort Snelling, Minn.

Capt. Francis J. Gafford sends a Christmas card from Paris where he is assigned to Headquarters, ETO in the JA Section. Before going overseas Capt. Gafford served at Sixth Service Command Headquarters and at Fort Sheridan, Ill.

In the same mail comes news of two members of the class many miles apart, Maj. Bill Carney and Maj. Harold W. Sullivan. Maj. Carney reports a change of address, but since he retains a Seattle APO, it appears unlikely that he has changed climates. Maj. Sullivan has been attending school in England and is preparing to undertake a new assignment. Among officers in the class he has met are Maj. Gus Rinehart and Capt. Lansing L. Mitchell, and Capt. Ted. Irwin.

Maj. Sullivan writes that graduates of the school are in demand and are held in esteem. He reports that a colonel in charge of a JA section made a 100-mile trip to a replacement depot to see if there were any JAGs. Three recent graduates who turned up were given a rousing welcome at Capt. Mitchell's office. Maj. Sullivan adds that when "they come down to the boat to look over the passengers for JAG talent, the reputation of the school is what Col. Young wants it to be. I might add for good measure 'body snatching' of JAGs is getting to be a problem. It might wind up with a black market for JAGs—they are scarce and in demand."

Harrison T. Watson has been promoted to the grade of lieutenant colonel in the AAF Air Technical Service Command. Col. Watson has been in charge of the readjustment division of the southeastern district, ATSC, since passage of the Contract Settlement Act last July. His office is responsible for contract terminations and property disposal in 10 southeastern states.

Charles D. Smith has been promoted to major. Maj. Smith has been serving in deah ole England for many months with the Eighth Air Force and is assigned to the 2nd Bombardment Division thereof.

Maj. Richard B. Foster reports from Headquarters, AAF Eastern Technical Training Command, 455 Lake Avenue, St. Louis 8, Mo. He has been a major since last May, and was detailed in the JAGD in July. He was transferred to his present station in March 1944 from Greensboro (N.C.) Air Base.

Capt. Herbert H. Davis writes that he is still on duty at Headquarters, Second Air Force, and sends along some notes about the personnel of the JA office there which are published elsewhere in this issue. He reports receiving a Christmas card from Maj. Buck Wooten who seems to have become part of the New Guinea soil.

Lt. Col. Al Kuhfeld, Staff JA for the 5th Air Force somewhere in the South Pacific, writes that Blake Metheny (13th Officer Cl.) is now a captain. In Col. Kuhfeld's section there are now two majors, two captains, and a first lieutenant. Three of the officers are Air Corps officers sent over by the Air Judge Advocate.

Col. Kuhfeld says that it rains heavily all the time, and that nightly alerts are still the usual thing "although the Nips are getting quite feeble on our island."

In far distant New Delhi, Lt. Col. Itimous T. Valentine is assigned to the Branch Office of The Judge Advocate General for the China-Burma Theatre of Operations. Lt. Col. Harold D. Beatty continues on duty in the JAGO.

Capt. William J. Millard, Jr., writes from the Philippines where he is assistant staff JA with an infantry division, having arrived there with the invasion force. He says that the shelling of the beach prior to landing was tremendous. "I've had several combat experiences and lots of fun, getting out of New Guinea after a year has made us all happy. The people here treat us as liberators and are a fine citizenry—most speak English."

11th OFFICER CLASS

Capt. Joseph S. Robinson, formerly assigned to duty in Washington, D. C., writes that he is now assigned to the branch office of the Judge Advocate General for the USAF Pacific Ocean Area.

Maj. James H. Rexroad is now stationed at Headquarters, Boston Port of Embarkation.

Word has been received that Capt. Bob McKeever has been actively engaged in interesting work near the German border in forward areas. He reports having seen Capt. Ralph Becker (1st OC).

Winfield K. Denton is receiving congratulations on his promotion to the grade of lieutenant colonel. Col. Denton is Chief, Claims and Civil Affairs Branch, Military and Civil Affairs Section, Office of the Judge Advocate, ATSC, Wright Field, O.

Maj. Arthur J. Shaw, AC, is now stationed at the Army Air Base, Langley Field, Va., where he is Base JA.

Capt. John B. Coman is editor of the Law Library Bulletin, Office of the Judge Advocate, ATSC, Wright Field, O., and recently has been engaged in research work on legislative history and background of the Air Corps Act, Vinson-Trammel Act and allied legislation.

12th OFFICER CLASS

Capt. Gerald P. Rosen is Staff JA with an infantry division in Belgium.

13th OFFICER CLASS

Maj. Robert E. Kommers reports an overseas APO with an assignment to Headquarters Army Ground Forces somewhere in the Pacific.

Capt. Frank F. Eckdall has a new APO, still in the European Theatre. He is now assigned to headquarters of an Engineer Command.

1st Lt. John J. Dreyer is overseas at an undisclosed destination. He was formerly on duty at Wright Field, O.

14th OFFICER CLASS

Capt. William H. McElwee is now in France, assigned to the Claims Section, Headquarters, Channel Base Section, Communications Zone. He writes that Lt. Col. Winfield S. Slocum is at the same address.

Capt. W. Palmer Van Arsdale, formerly assigned to the office of the United States Engineer, Great Lakes District, Chicago, Ill., now has an APO address out of San Francisco.

15th OFFICER CLASS

Capt. Albert Houck has been transferred from Camp Myles Standish, Mass., to JAGRP, Headquarters, Eighth Service Command, with station at the Infantry Advanced Replacement Training Centre, Camp Maxey, Tex.

Capt. Joseph B. McFeely has been transferred from Second Service Command Headquarters to Headquarters, North Atlantic Division of the Air Transport Command, Manchester, N. H., where he is Assistant Staff JA. Capt. McFeely received his promotion after finishing the course here.

16th OFFICER CLASS

1st Lt. James H. Russell sends news of his classmates from the JAGO. "Hughston is in the Branch Office in the Mediterranean Theatre, Dreher is out strike-settling, Askow is in Military Affairs, McCaghren in Patents, Crim (now married) in Litigation, and Bialla in the Recreation Room, known more formally as the Examination Branch of Justice. As for me, I spend my time writing for Bull. JAG, the little Current Legal Bulletin, and indexing everything except the Bible."

Lt. Col. William A. Dominick is head of a base claims section in France.

17th OFFICER CLASS

Maj. George B. Lourie, AC, has been transferred from Dale Mabry Field, Tallahassee, Fla., to SMG School, University of Virginia, Charlottesville, Va.

Maj. Russell T. Boyle has a new assignment, going from Headquarters, Southern Defense Command to Camp Chaffee, Ark.

Maj. Henry S. Stevens has been transferred from the Office of the Air Judge Advocate to Base Headquarters, Bolling Field, D. C., where he is the Staff JA.

Kenneth J. Hodson, now a major, is Staff JA for a medium port in the European Theatre.

Capt. George E. Nagle, AC, has left his old station at Keesler Field, Miss., for strange shores and has an APO address.

Maj. Russell T. Boyle reports an APO number. He is Staff JA for an armored division.

18th OFFICER CLASS

1st Lt. David W. Johnston, formerly assigned to JAGRP, Headquarters, Eighth Service Command, is now stationed at the IRTC, Camp Wolters, Tex.

Maj. Charles P. Henderson has been relieved from duty at JAGRP, Headquarters, Fourth Army, and given an assignment in Washington, D. C.

Capt. Leonard F. Schmitt has been transferred from the Office of Chief of Staff where he was on duty with the Civil Affairs Division, to JAGRP, Sixth Service Command.

Capt. Lloyd E. Elliot has been transferred from Eighth Service Command.

1st Lt. James L. Brown is assigned to Headquarters, WRATSC, Robins Field, Ga.

Capt. John T. Hood, Jr., writes that he is in Liberia at Headquarters of U. S. Army forces there, serving as Staff JA.

Maj. James E. Bowron has been assigned to the Board of Contract Appeals, Washington, D. C.

The class president, Maj. James E. Bowron, forwards the following note in regard to class members on duty in Washington, D. C.: "Ten members of the class met for dinner at the Martinique Hotel on Tuesday, 30 January. Present were: Majors Bowron, Rose, Henderson and McArthur; Captains Marsi, Asch and Hickman; Lieutenants Lampe, Cowen and McDowell. Three others, also stationed in Washington, were unable to attend because of TD or overtime. Capt. Brees was working in Claims; Capt. Archer was absent on duty in Sandusky, O., at a government seized plant, and Capt. Angland at Contracts and Readjustment school at Ann Arbor. Reports were given of the location and the activities of most of the class. Marsi, who was recently promoted, was our honor guest. One of the officers brought his wife (misunderstanding the nature of the function). It was suggested that he be reclassified. Next meeting will be held first week in March. Lt. McDowell gave a report on recent activities at the School."

Capt. Marsi and Capt. Asch are assigned to JA Office of the Air Transport Command, Gravelly Point.

19th OFFICER CLASS

Maj. C. Wylie Allen writes that he has been assigned as Staff Judge Advocate, Headquarters, Infantry Advanced Replacement Training Center, Camp Gordon, Ga. He has general court martial jurisdiction and handles all types of cases. He says that he was able to use knowledge acquired at school in six new matters his first day on the job.

Capt. Robert H. Williams, Jr., is assigned to JAGRP, Headquarters, Ninth Service Command, with station at San Francisco Port of Embarkation, Fort Mason, Calif.

Capt. Elmer J. Ryan is assigned to Headquarters, Seventh Service Command.

Capt. David H. Gill is on duty as assistant staff JA at Headquarters, Ninth Service Command, Fort Douglas, Utah.

Capt. Elmer J. Ryan writes that he is now in Washington as head of the Selective Service Bureau in the Labor Branch of the Industrial Personnel Division, ASF, the Pentagon.

20th OFFICER CLASS

2nd Lt. John V. Kean is assigned to the Military Justice Division, JAGO.

1st OFFICER CANDIDATE CLASS

Capt. Theodore N. Richling writes that he is now defense counsel on the GCM at Fort Sheridan, Ill. Other officers attached to what Capt. Richling calls "an annex to the JAG School" are Lt. William W. Brady (7th OC), who is assistant TJA, Lt. Arthur W. Kennelly (6th OC), who is assistant defense counsel, and Lt. Donald F. Schumacher (5th OC), who is assistant Post JA. Capt. Richling recently completed a course at Command and General Staff School.

Ralph E. Becker, believed to be the first JA to enter Germany in this war, was recently promoted to captain. He is assistant staff JA with an infantry division.

Capt. E. John Abdo has a new address. It is Headquarters, Seventh Service Command, POW Branch. Capt. Abdo for some time was judge advocate at a prisoner of war camp located in that service command.

One of the latest additions to the ranks of infants in the Judge Advocate General's Department is that of Theodore L. Richling, Jr., son of Capt. and Mrs. Theodore L. Richling. The date of birth was 12 December.

Capt. John J. McKasy is now Chief of the Planning Branch, Military Affairs Division, JAGO, relieving Maj. John C. Herberg.

Richard U. Geib, Jr., is now a captain. He is on duty in the JAGO.

Capt. Leo Bruck sends a Christmas greeting with the notation of his change of address to the JA Section at Headquarters Persian Gulf Command.

Capt. R. F. Deacon Arledge has been transferred from an infantry division in the Philippines to another in Dutch New Guinea. He says that he has crossed the Equator so many times that "Neptunus Rex" has issued him a permanent Class A pass. He has foot lockers, bed rolls and law books spread all over the Southern Pacific and all that remains of a once full store of equipment is his MCM and one uniform, "nothing else."

He ran into Capt. Paul Boucher, who is Staff JA with an Air Force outfit on "one of these beautiful islands, also Capt. Herbert L. Hart somewhere in New Guinea. Spent a night at an airfield in the Philippines. When I got 1500 or more miles away I found out that I had just missed Capt. George Widemann." Capt. Arledge has found that "a lot of JAGs like Capt. Harold Emmons (4th OC) in the Philippines are busy on Civil Affairs."

He describes the laundry facilities in this fashion. "When you have time you can get a native to wash a uniform for 30 centavos (15 cents). If you're moved when the laundry gets back (delivery day is always 'the next day it doesn't rain' and such days are often a week or more apart), then the native keeps the uniform and everyone is happy, the usual case. If you do get it back, it's nice and clean. They beat it with sticks, and also beat all the buttons to a pulp. Yes, it's clean and pressed. You sew on the buttons. Then it's all of 15 minutes before the mud and rain have you looking natural again. I put on a clean uniform to meet a visiting JAG colonel and had to hit a fox hole full of mud. Somehow I managed to come up after the raid with a still clean shirt. You don't have that kind of luck often, however."

Capt. Herbert L. Hart writes from New Guinea that he got a laugh out of "Vote Against New Guinea" in THE ADVOCATE for 20 October, in which Lt. Theodore N. Calhoun's favorable comments on New Guinea were differed with. Capt. Hart states that the Calhoun judgment is sound, in his opinion.

2nd OC

1st Lt. John G. Starr is Staff JA for the Fifth Air Force Service Command, having been transferred from Headquarters of the Fifth Air Force. Lt. Starr is in the Philippines.

Willis A. Brown has been promoted to first lieutenant. He is stationed at Camp Edwards, Mass., where he is Assistant Camp JA, Claims Officer, and Legal Assistance Officer.

Capt. Frank R. Bolte writes that he is in Belgium with an infantry division as assistant staff JA. He has not had much JA business over there, but he adds that he is keeping busy. "Am attached to G-2 Section as Historical Officer and Public Relations Officer. I find it interesting and I can get up where it happens."

1st Lt. James J. Bruin has reported at Wright Field, O., for duty in the office of the judge advocate. He is assigned to the Contracts and Licenses Branch, Patents and Royalties Section. His chief is Maj. Charles F. Babbs (11th Officer Cl.) and other alumni in the section are Capt. John F. Kerkam (14th Officer Cl.), 1st Lt. Lawrence R. Eno (3th OC) and 1st Lt. Robert Pendergast (6th OC).

3rd OC

Bernard T. Caine has been promoted to the grade of captain and from last reports was near the thick of things in the vicinity of Metz.

Capt. Richard O. Jones, Assistant Staff JA with an infantry division, is now overseas in the European Theatre.

Capt. William C. Stephens, former reporter for THE ADVOCATE, writes that he has given up his association with the 13th Airborne Division and now can be located in the Military Affairs Division, JAGO. There are only a few members of the class left in Washington, he observes, listing Bill Bowe, Lee Burns, Eddie Aranow and Sam Morgan in addition to himself. "Of course there are numerous other graduates of the school here, and almost any luncheon engagement is apt to turn into a JAG School Alumni meeting."

He sounds a note of warning as to a problem which personnel of the Enlisted Men's Branch of the Division have been puzzling over—on their own time. It pertains to the meaning of the phrase "wars in which the United States is presently engaged" and whether the phrase includes the one with the Seminole Indians which has never been concluded. He adds: "If it does, we're afraid that some of the laws on the statute books are going to be in force for a long time—have you read the Joint Resolution of 13 December 1941 extending your term of service recently? You might ask Capt. Brooks to put it on a final exam and get us an authoritative answer."

Lt. Richard P. Smith, assistant staff JA with an infantry division formerly in Georgia, now has an APO number.

4th OC

1st Lt. Jack Rogers writes from "one of the Marianas" that military justice problems are somewhat different there than in the States.

Lt. Willard Phillips is assigned to Headquarters, Central African Division, ATC, and reports that he recently returned to headquarters from a 5,000-mile jaunt in three weeks during which he tried three officer cases. He claims that he is now known as "Hanging Phillips."

1st Lt. Elmer J. Stephens is now Camp Judge Advocate at Camp Cooke, Calif. He is also Mess Officer. Although he has had no GCMs, special and summary courts have kept him busy. 1st Lt. Howard Conaway, assistant staff JA of an infantry division stationed there also, has lunched with him occasionally. Very few problems that arise in the practice of military justice in the field are not covered by the school course Lt. Stephens reports.

Captains Martin W. Meyer, Martin Schenck, Gleason B. Speenburgh, and Robert E. Trevelyan are assigned to the JAGO as are 1st Lts. Harold E. MacKnight and Edwin L. Robinson. Capt. Schenck completed the ground force course at the Command and General Staff School during the summer and then went to his present assignment in the Military Affairs Division.

1st Lt. Lyman H. Brownfield, formerly assigned to the Surgeon General's Office in Washington, D. C., is now many miles away in New Guinea, "still that orphan of orphans, a casual officer." He says that he has done some censorship work with a little Justice thrown in.

Lt. Benjamin D. Frantz writes from Headquarters, Ninth Service Command, where he is assigned to the Military Affairs Branch. He says that he has been specializing in ARs 210-50, 210-60, 210-65, and reviewing board of officer proceedings under AR 420-5. "The work has been tremendously interesting and the time has passed unbelievably fast. It's hard to realize that it was a year ago that I was just in the middle of the JAG School course."

1st Lt. Frank Simpson was passing out cigars at Wright Field, O., on 5 February in celebration of the arrival of a daughter the day before.

Lts. Howard H. Moss and George K. Blakely (7th OC) are now on duty at the United States Engineer Office, Federal Building, Milwaukee, Wis.

1st Lt. Elmer C. Stephens writes that he now has an APO number with three other JAG officers and will be in foreign climates soon.

5th OC

1st Lt. Arvin E. Upton writes that a reunion dinner of class members stationed in Washington, D. C., was held at the Broadmoor there on 8 December, at which 17 out of a possible 20 attended. Those present were Gardner, Graham, Fable, Hiller, Ford, Clagett, Bistline, Sinclair, Stafford and Upton, all from JAGO; Ullman and Spingarn from the Office of Chief of Ordnance; Harding from the Office of the Chief of the Chemical Warfare Service; Shook, Hovis and Whalen from the Office of the Chief of Engineers; and Kearns from Industrial Personnel Division, ASF. Those missing were Rogers and Harris of JAGO who have been ill, and Gray of the Office of Chief of Ordnance who had other commitments for the evening. Invitations for the dinner were also issued to Clapp, Assistant Post JA at Indiantown Gap, Pa., and to Sirignano who is in Headquarters, Third Service Command, but neither was able to attend.

"We had quite an evening of it and concluded by a lusty rendition of the Sixpence Song and 'Be Kind To Your Web-Footed Friends.' Of course we missed John Weidner's rousing bass on both songs," says Lt. Upton.

William C. Green has been promoted to first lieutenant. He is stationed at the Missouri River Division, U. S. Engineer Office, Omaha, Neb.

1st Lt. John R. Clagett has been assigned to the War Crimes Division, JAGO.

Lt. Carl G. Nystrom is Assistant Staff JA with the 95th Infantry Division which early in December was in the Saar sector of Germany.

1st Lt. George W. Smith writes that he has been transferred to Camp Gordon Johnston, Fla., where he assumed the duties of Post JA, relieving Maj. Ralph E. Lewis here now as a member of the 21st Officer Class. He reports that his work is most interesting and that he is having a "very fine time learning all about the trials and tribulations of the JAG officer in the field. The camp is rather large and is designed primarily to train soldiers for amphibious operations." Lt. Smith's former station was headquarters, Fourth Service Command.

6th OC

Making his fourth move since leaving Ann Arbor, 2nd Lt. Gordon W. Rice is now assigned to Headquarters, AATC, Camp Stewart, Ga., where his Staff JA is Maj. Wendell L. Garlinghouse (4th Officer Cl.).

Lt. Albert L. Burford is now at Headquarters, Second Army, Memphis, Tenn.

Lt. Charles E. Chace is now stationed at the AG and SF Redistribution Station, Hot Springs, Ark., where he is Staff JA, Naturalization Officer and Legal Assistance Officer. He says that he spent about six very pleasant weeks at Dallas, Tex., with Lts. Maggi, Simms, Red and Fetterman (7th OC) and then was sent to Camp Chaffee, Ark., as Assistant Post JA, remaining there until his new assignment came along.

1st Lt. Preston W. Johnson, who was formerly at Headquarters, Ninth Service Command, is now stationed at the JA Office, Fort Lewis, Wash.

2nd Lt. Hugh W. Kaylor, formerly assigned to the Sixth Service Command, is now stationed at the JAGO.

1st Lt. William H. Miley is assigned to Special Assignments, JAGO.

2nd Lt. John J. Dorsey, Jr., has been assigned to the Office of the Provost Marshal General, Washington, D. C.

2nd Lt. Burton S. Dull, also a member of the 7th C&R Class, is one of five brothers serving in various branches of the armed services. One is a Marine lieutenant, another lieutenant is a Navy fighter pilot, a third is a seaman first class, and the fifth a buck private in the Army.

1st Lt. Harold S. Lynton is Assistant Staff JA, Atlantic Overseas Air Technical Service Command, Newark Army Air Field, Newark, N. J., and also acts as TJA of general and special courts-martial.

Lt. Gordon W. Rice, "the movingest man" in the class, reports a new station where he has become Acting Command JA of the Antiaircraft Command, Fort Bliss, Tex. The Command has GCM jurisdiction over all antiaircraft installations but one. In the absence of the Command JA because of illness, Lt. Rice has had his hands full "without a raise in pay and no union to help me out."

One of the questions that made him pause was the question of confinement of a WAC convicted of larceny.

1st Lt. Charles A. Leavy and 2nd Lt. James V. Finkbeiner have been transferred to the Western District, ATSC, Los Angeles, Calif., from ATSC, Wright Field, O., where they had been on duty since graduation in July 1944.

1st Lt. Henry Somsen, although stationed at Wright Field, O., apparently has not forgotten his acquaintances among leading characters in Military Justice moot courts and writs, including Duice J. Clinkscales, and makes this contribution to the list. He writes: "Harboring fond memories of the immortal Duice, when I came across the name of one whom I thought a suitable companion for him, I immediately set out to forward to you some evidence of his existence. I submit the name of Queshenberry L. Goldthread (now General Prisoner Goldthread) as Duiceworthy."

Lt. Somsen trusts "that Queshenberry's monicker may some day serve to lighten the initial reading, if not the final burden, of one of those writmares."

1st Lt. Benjamin Brodsky writes from a JA Section in Southern France where he is assistant staff JA that the "hitherto orthodox tendency to tell it to the Chaplain is irresistibly changing to 'tell it to the JA.' Even the Chaplain is telling it to us these days. All of which is quite flattering, but annoying, and if the practice continues, we shall have to devise a slip of our own as a substitute for the Chaplain's well known indorsement."

Lt. Brodsky has been handicapped by a lack of texts, and suggests that, when questions are propounded, as a last resort, "when logic, ingenuity and recollected fragments of legal authority are exhausted, the sesquipedalian adjective can always be employed as an effective substitute." When dealing with the Branch Office and JAs in the field, however, that he must revert to authority for his opinions. "In short, the vicissitudes of overseas travel have irrevocably separated me from Text No. 1 (Military Justice), and when I am confronted by my Infantry, Quartermaster, Tank Corps, and Field Artillery fellow judge advocates with skeptical demands for citation of scripture, I find myself mumbling something about 'Approved School Solutions' with the wild-eyed feeling of a man going down for the third time without a straw in sight. The Non-School man is inclined to view the Old School necktie with the same jaundiced eye that the street urchin regards the Buster Brown Collared little boy from the other side of the tracks." He requests texts in order to redeem the School reputation.

Lt. Brodsky reports a seance with Lt. James E. Lonergan (2nd OC), JA with a division.

1st Lt. Ed Huber writes from the JAGO about some of his classmates: English hasn't enough ribbons and stripes so they sent him out to get more. Gregory was called to the front office one Monday and given leave and was seen no more. Sudden like. Pacific, I believe. Ruddy was in Justice for a bit and then out to some island, maybe Azores, then to come back and go with a division. Hutchison and Murphy were in Justice for a hot minute and then off to ETO. Beckmire was happy with the Board of Contract Appeals but ain't no more. ETO somewhere with Conrad. Folsom is now a first lieutenant. Garnier was around for an ATC JA conference.

1st Lt. Robert Bascom writes from Headquarters, Armored Center, Fort Knox, Ky., where he is assistant staff JA that he has been very busy with one and a half GCMs, 10 SCMs and about 30 summary courts per day in addition to Section VIII's and a few other odds and ends.

7th OC

1st Lt. Charles R. Kramer is now in the office of the Air JA assigned to the Military Justice Division, and reports that 1st Lt. George A. Chadwick of his class and 1st Lt. Stuart Lampe (18th Officer Cl.) are in the same division there.

2nd Lt. James D. Murphy writes that he is stationed at Camp Stoneman, Pittsburg, Calif., in the office of the Staff JA. Other JAGD officers there are Maj. Edwin W. Baron (1st Officer Cl.), Staff JA, and Capt. James L. Johnston (18th Officer Cl.).

Lt. Dwight R. Kinder is now assigned permanently to the Base Legal Office, Godman Field, Ky. It is the first time he has spent more than two weeks at one place since leaving school, having been at Omaha (Seventh Service Command Hq.) and then at Mitchel Field, N. Y., before reaching his present post.

Lt. Kinder states that he has the distinction of being the first JA to be on the base. Lt. Bert T. Combs (3rd OC) is Post JA at Fort Knox of which Godman Field is a physical part.

1st Lt. Leroy E. Rodman has been transferred from JAGRP, Fourth Service Command to Hq. Air Technical Service Command, TSWJA, Area B, Wright Field, O.

1st Lt. Harold W. Steiner writes that he is now assigned to Headquarters, Air Transport Command, in the Staff Judge Advocate Office, Gravelly Point, Washington, D. C. It gives him a chance to see a little of how the war is managed, and on the off duty side gives him an opportunity to see the buildings and monuments which he had heard so much about for many years. In the same office are Capt. William W. Asch (18th Officer Cl.), 1st Lt. Frederick V. Marsi (18th Officer Cl.) and Lt. Oliver Carter (7th OC).

1st Lt. Richard H. Deutsch writes that he is now detailed to the Buffalo District Office of the Corps of Engineers, this being his third "permanent" change of station since leaving Ann Arbor on 18 September. He is Chief of the Negotiation and Legal Section of the Contract Termination Branch.

2nd Lt. Ellis L. Arenson is assigned to Headquarters, Army Air Base, Walterboro Air Field, S. C., where he is assistant courts and boards officer.

2nd Lt. William J. Ackerman is now stationed at Holabird Signal Depot, Baltimore, Md.

Three members of the class have drawn assignments with the Engineers and after short tours of temporary duty at the Office of the Chief of Engineers report to their stations as follows: 2nd Lt. Richard E. Simms to U. S. District Engineer Office, Albuquerque, N. M., along with 2nd Lt. Henry T. Teters, and 2nd Lt. Robert G. Mayfield to U. S. District Engineer Office, St. Louis, Mo.

1st Lts. William Yost and Emmett Whitsett at Fourth Army Headquarters are expecting to receive word to pack up for duty in a tropical climate any day now.

2nd Lt. Alan R. Siverling reports that he is now Assistant Staff JA at Fort Knox, Ky. 1st Lt. Bert T. Combs (3rd OC) is Staff JA.

2nd Lt. Samuel L. Cederborg writes a few lines to tell of recent activities of class members, originally assigned to Fort Douglas, Ninth Service Command. As for himself, he says that after a month at Fort Douglas he was sent to the Prisoner of War Camp, Papago Park, outside Phoenix, Ariz., on temporary duty to advise and assist in investigations and other JA activities. Papago Park is the scene of the recent prison break in which officers of the Graf Spee escaped by digging a 200-foot tunnel. Over three thousand German marine and naval personnel, including officers, are confined there, he says, adding that many of the enlisted men are employed in productive labor in various agricultural enterprises in the Valley of the Sun.

1st Lt. Frank F. Roberson writes from France where he is assigned to Headquarters, Channel Base Section in the JA Section. He says: "Lt. Vogelhut (6th OC) is also at this headquarters. We all do about 99% of our work in military justice."

1st Lt. Louis Fieland, formerly stationed at Wright Field, O., has pulled up stakes and now has an APO address.

2nd Lt. William W. Brady is now assigned to the War Department Board of Contract Appeals as an assistant trial attorney.

2nd Lt. Samuel L. Cederborg, formerly on duty at the Prisoner of War Camp, Papago Park, Ariz., has returned to Headquarters, Ninth Service Command.

8th OC

Jack Blaine writes that Thanksgiving proved a bountiful day for him, as it brought news of his promotion to first lieutenant and of his assignment to The Presidio, San Francisco, Calif. He lives exactly 100 yards from the JA office.

1st Lt. Henry A. Herbruck is assigned to the JAGO.

Lts. Edmond H. Barry, Jack F. Ridgeway and Kenneth E. Sutherland are assigned to JAGRP, Headquarters, Fourth Army, Fort Sam Houston, Tex.

1st Lt. Luke A. Burns, Jr. is assigned to JAGRP, Headquarters, First Service Command, Boston, Mass.

Lts. T. Jackson Case, James W. Townsend and John B. Young are now at Headquarters, Eighth Service Command.

Lt. Bertram W. Tremayne has forwarded from Washington, D. C., to 1st Lt. Paul J. Driscoll of the MS&T Department, a newspaper clipping on the use of pigeons as Army messengers "for the edification of the 9th and 10th OC."

2nd Lt. George F. McGuigan is assigned to Headquarters, Ninth Service Command, Fort Douglas, Utah.

Lt. William C. Williams writes that he is assigned to JAGRP, Headquarters, Ninth Service Command, Fort Douglas, Utah. Other members of the class at the same station are Lts. Tallant Greenough, Dalton Pierson, Lorton R. Carson and Arthur E. March. Lt. Williams and the two first named are in the Claims Branch and the last two are in the Military Affairs Branch. Lt. Mervyn Aggeler has been reassigned to duty at San Francisco, Calif.

1st Lt. Kenneth E. Sutherland writes from Fourth Army Headquarters where he has become recorder of the Reclassification Board, that the weather is very nice in San Antonio, "almost as pleasant as Southern California." He says that Lts. Jack Ridgeway and Ed Barry have been assigned to the Military Justice Section.

1st Lt. George A. Koplou reports that he still remains in the JAGRP, Third Service Command, doing military justice work 75 per cent of the time. He is the lone survivor of five members of his class who were originally assigned there after graduation.

1st Lt. Morris Rosenberg is assigned to the Office of the Air Judge Advocate, The Pentagon.

1st Lt. Richard N. Hunter has had a change of station, but remains in Chicago. He is now assigned to the 1600th SU, Headquarters, Sixth Service Command.

2nd Lt. Matthew M. Brown has been assigned to Ohio River Division, Engineer Office, Columbus, O., where he reported after ten days temporary duty at the Office of the Chief of Engineers, Washington, D. C. A similar assignment has been made to 2nd Lt. Richard T. Brown, who goes to the Manhattan Engineering District, Oakridge, Tenn.

2nd Lt. Robert B. Hughes has been transferred in Chicago from Headquarters, Sixth Service Command to Chemical Warfare Service, Chicago Procurement District.

2nd Lt. Raymond J. Mino is assigned to the 1114th SCU, Camp Edwards, Mass. He says that 1st Lt. Willis A. Brown (2nd OC), 1st Lt. Robert E. O'Brien (3rd OC), Lt. Norman B. Murphy (6th OC) and himself are busily engaged in JA work "in and about Camp Edwards and the East Coast Processing Center also located at Camp Edwards."

1st Lt. Kenneth E. Sutherland has been on detached service of late, acting as TJA on all courts for the Fourth Army at Camp Polk, La.

9th OC

1st Lt. Robert O. Muller writes from Washington where he is on special assignment in the Military Justice Division, JAGO, as an examiner of GCM records under paragraph 5, AW 501½. As to others of the class in the Nation's Capital, he reports as follows: O'Hara and Mays are acting as clerks in two of the Boards of Review; Barns, Millikan and Sullivan in Claims; Bednar, Howe, Resseger and Stewart in Contracts; Geer and Searl in Affairs; Barrick in Personnel and Blackman in Litigation. Leary and Close were immediately sent to the Engineers and are now in Tennessee, he believes.

Lt. Muller says: "We were happy to learn that there is a National Arboretum in Washington and we look forward to a march through it 'w/packs.' It has been suggested that Lts. Collins and Dwyer work up a course at the school for 'Defense Against Washington Cafeterias' for future classes. They are very exciting and bewildering places, particularly those in the vicinity of the Munitions Building. I have fond thoughts for my school days in Ann Arbor, perhaps fonder now than while there. I have appreciation for the school and for the excellent instruction we received and so have the others, I know."

Following is a partial list of the new stations of class members who have reported their whereabouts: Lt. Ralph G. Smith, Headquarters, Eighth Service Command; Lt. Manning D. Webster, Headquarters, Second Army, Memphis, Tenn.; Lt. David F. Matchett, Jr., Headquarters, Seventh Service Command; Lt. George F. Wenger, Headquarters, Second Service Command; 1st Lt. Delmas C. Hill, Headquarters, Seventh Service Command; 1st Lt. Robert S. Eastin has been assigned from Seventh Service Command to the Office of the Chief of Ordnance, Washington, D. C.; Lt. John H. Else is on duty at the Cavalry School, Fort Riley, Kans., and 1st Lt. Joseph P. O'Gara, Headquarters, Seventh Service Command. Other assignments are 1st Lt. Arthur G. Lyon, Jr. at General Court Martial, Fort Sheridan, Ill., 2nd Lt. Sheldon A. Key has the same address, and 1st Lt. Earl F. Morris is in Claims Division, JAGO.

Recent additions to the special claims detachment at Holabird Signal Depot, Baltimore, Md., are Lts. Evan J. Reed and Nelson F. Cook.

MILITARY CLEMENCY (Continued from Page 23)

Summary

In conclusion, I invite your attention to the most important clemency hearing in history. It was held some 2,000 years ago, before Pontius Pilate, the Roman Governor of the Province of Judea. The occasion was the Feast of the Passover, when by immemorial custom, a prisoner was pardoned and released unto the people. Under this custom, there were two candidates for release: one a "notable prisoner, called Barabbas" who had been convicted of robbery and murder; the other, Jesus of Nazareth, convicted of sedition because he was alleged to have claimed to be "King of the Jews." The Roman Governor, having examined the two, said to the multitude, "Whom will ye that I release unto you? Barabbas, or Jesus which is called Christ?" and the multitude shouted for Barabbas and demanded that Christ be crucified. Then Pilate said of Jesus, "Why, what evil hath he done?" But the multitude cried out the more, "Let him be crucified." Thereupon Pilate, "seeing that he could prevail nothing but rather that a tumult was made," took water and washed his hands before the

multitude, saying "I am innocent of the blood of this just person"—as pathetic an attempt to establish an alibi as the world has ever known. Thereupon, Jesus was delivered to be crucified.

It is well for officers exercising clemency to keep this story before them; it will remind them that their responsibilities are a nondelegable duty of care, to be exercised courageously, without fear or favor; and it will also serve to remind them that quite often the multitude does not know what it really wants.

To sum up, military clemency is not a hit-or-miss affair, depending on the state of digestion of commanding generals, or "the length of the chancellor's foot." It is an endeavor requiring hard work, careful attention to detail, sound common sense, good judgment and, on occasion, high moral courage—Its principles are exercised on consideration of all the legitimate interests involved: those of the Army, those of the prisoner, those of the public at large.

We are confident that the system of military justice administered in the Army, of which clemency is an integral

(Continued on Page 60)

OUR Mail Pouch

If you wish to write to a friend in the Judge Advocate General's Department and do not know the address of your friend then do not hesitate to address the mail to him in care of Milton I. Baldinger, Executive Secretary, The Judge Advocates Association, National University Law School, Washington 5, D. C., and it will be promptly forwarded to him.



"BUFFALO BILL"—J.A.

Sirs:

I am enclosing a copy of General Orders No. 1 of the State of Wyoming, dated January 10, 1917. I thought that you would be interested to know that at the time of his death the late Buffalo Bill was one of us.

RAYMOND R. BRADY,
Lt. Colonel, JAGD, Headquarters Army
Air Forces Flying Training Command,
Maxwell Field, Alabama.

STATE OF WYOMING ADJUTANT GENERAL'S OFFICE

Cheyenne, Wyoming
January 10th, 1917.

GENERAL ORDERS

No. 1.

1. The Governor announces with sorrow the death of Colonel William F. Cody, Judge Advocate General, National Guard of Wyoming, which occurred at the home of his sister, Mrs. Decker, in Denver, Colorado, January 10, 1917. In the death of Colonel Cody the National Guard of this State loses its most distinguished officer and the State its best known citizen. His fame has circled the world as a pioneer scout and Indian fighter, and with this fame of the man has traveled the name of his chosen state—Wyoming. He was ever ready with praise and laudations of his home land, and the glories and opportunities of Wyoming were carried to the utmost corners of the world by this great man. Many members of the Guard mourn him as a dear friend, and citizens of the State, whether their acquaintance was personal or not, realize that they have lost a kind friend and noble citizen in the passing of this pioneer, scout, Indian campaigner, showman, soldier and gentleman.

2. In pursuance with the established custom the flag will be displayed at half mast from receipt of this order until interment on all State buildings; officers will wear the customary badge of mourning for a period of thirty days from the date hereof.

BY COMMAND OF THE GOVERNOR:

ARTHUR PARKER,
Acting Adjutant General.

OFFICIAL:

Burke H. Sinclair, Assistant Adjutant General.

Sirs:

Recently I received my first issue of the Judge Advocate Journal which I found quite interesting as well as informative. Especially appealing were the notes as to the tasks being performed by the members of the class in which I graduated, the first officer candidate class.

Since being overseas I have been working as a claims officer, for a time in North Africa, but most of the time

in Italy where I am now stationed. This work enables one to get a rather clear insight into the psychological make-up of the local inhabitants. When one enters their homes to take statements, sees how they live, and detects their hidden fears and troubled minds, such a result is almost inevitable.

Many novel instances arise and almost nothing surprises me. In one Italian claim the claimant's evidence was that his shop had been looted by soldiers and the total amount demanded of the United States government was in the neighborhood of 150,000 lire. In submitting proof of his claim the claimant was meticulously exact in specifying the unit responsible for the depredation—the Herman Goering Panzer Division of the German Army. While the foregoing, I believe, qualifies as the most ridiculous claim I have had, I think the most humorous is the following instance, which arose in the Salerno area shortly after American troops landed there. The Italian claimant produced a receipt for an alleged irregular requisition of two wash stands which had been taken from his plumbing shop by American soldiers. The receipt was scribbled on a small piece of paper with this writing in English which the Italian of course could not read: "Received two wash *BOWELS*—George Washington, General U. S. Army." Apparently, the little incident was funny to all involved except the Italian claimant.

ROBERT MAYSACK,
Captain JAGD
US Claims Service
PBS Southern District
APO 782, Postmaster, N. Y.

MILITARY CLEMENCY (Continued from Page 59)

part, is as good a system as human ingenuity and study has yet evolved. The defects from which it suffers are not the defects of plan, but of execution and, let us hope that these will continue to be relatively few.

One of the wisest and most virtuous of the old Romans, Seneca, wrote a paragraph about clemency which I leave with you as a final word.

*** Clemency *** must be distinguished from mere pity which is a weakness in treating criminals. Clemency is a favorable disposition of the mind in inflicting punishment.

*** I would not have it so universally granted that there is no distinction between the good and the bad; that would introduce confusion and give encouragement to wickedness. It must, therefore, have respect to the quality of the offender and separate the curable from the incurable, for it is an equal cruelty to pardon all as to pardon none."

Recent Graduates FROM THE JAG SCHOOL

TWENTIETH OFFICER CLASS

(Graduated 13 January 1945)

Anderson, Harold, 2nd Lt., AC
 Andrews, Russell H., 1st Lt., JAGD
 Atchley, Fielding H., Capt., JAGD
 Bursat, Miguel A., Lt. Col., JAGD
 Colgan, Charles W., 2nd Lt., JAGD
 Daily, John H., 2nd Lt., JAGD
 Fisher, Patrick J., 1st Lt., JAGD
 Funk, Wharton T., Lt. Col., JAGD
 Grant, Donald H., Capt., JAGD
 Hecht, Kenneth G., 1st Lt., JAGD
 Hyman, Abraham S., 1st Lt., JAGD
 Kean, John V., 2nd Lt., JAGD
 Kohn, Francis M., Capt., JAGD
 Merrill, Walter J., Major, JAGD
 Moffett, Jr., William S., 1st Lt., JAGD
 Reilly, Jr., John E., Maj., AC
 Roos, Jr., Armand W., 1st Lt., TC
 Smith, Frederick V., Capt., AC
 Snee, Thomas J., Capt., JAGD
 Wallace, James W., Capt., JAGD
 Warren, Clarence M., 1st Lt., JAGD
 Wilkerson, Jr., Thomas N., Capt., AC

NINTH OFFICER CANDIDATE CLASS (Graduated 13 January 1945)

Andrae, Henry P.	Hardy, James I.	Reseburg, Jr., Walter J.
Ashton, Clifford L.	Hill, Delmas C.	Resseger, Edwin K.
Bancroft, Mark W.	Hunt, James E.	Ripp, Joseph D.
Barns, Merl A.	Jaffe, Henry	Sandberg, Milton
Barrick, William H.	Johnson, Jr., Zebulon V.	Sapp, Jr., James E.
Baumann, John C.	Key, Sheldon A.	Scott, William E.
Bednar, James E.	Lally, John J.	Searl, Jerome H.
Bennett, Elmer J.	Leary, Joseph J.	Smith, Bruce M.
Blackman, Jr., Roy H.	Lee, John E.	Smith, Jr., Numa L.
Braham, Luther C.	Longnecker, Frank G.	Smith, Ralph G.
Calder, George T.	Lowe, William A.	Stanton, Robert J.
Clarke, Edwin M.	Lyon, Jr., Arthur G.	Stewart, Jerome T.
Close, Philip J.	MacLeod, John W.	Stine, Francis B.
Clydesdale, Thomas R.	Maniscalco, Anthony J.	Stockard, Alden A.
Colopy, Hugh M.	Marbach, John C.	Strayer, Manley B.
Cook, Nelson F.	Marsh, James E.	Sullivan, William J.
Corbett, Stanley M.	Matchett, Jr., David F.	Sweeney, Edmund M.
Downie, Jr., Edward B.	Mathias, James H.	Tinkham, Joseph E.
Eastin, Robert S.	Mays, Thomas J.	Treanor, Gerard F.
Else, John H.	Millikan, Thomas B.	Vander Vries, John N.
Feuerlicht, Maurice	Morris, Earl F.	Watson, Alf C.
Ford, Robert E.	Morrison, Henry Y.	Webster, Manning D.
Forsythe, Carl S.	Muller, Robert O.	Wenger, George F.
Fuller, Herbert F.	Newhouse, Andrew J.	Wilke, Sherman C.
Gant, Charles E.	Oechler, Henry J.	Wilson, Jack
Geer, Horace G.	O'Gara, Joseph P.	Yard, William S.
Gifford, David S.	O'Hara, Gerald T.	Young, Louis
Gunther, Preston	Orff, Richard J.	Zwerdling, Joseph
Haft, William J.	Reed, Evan J.	

More Judge Advocates Needed

Two recent War Department notices attest the need of additional Judge Advocates for the Army. Circular No. 57 dated 21 February 1945 states that qualified officers in the grades of second lieutenant to lieutenant colonel, inclusive, of the various arms and services may be detailed in the Judge Advocate General's Department upon the recommendation of The Judge Advocate General by War Department orders in accordance with paragraph 5d, AR 605-145, 6 May 1943. Procedure for making application for this detail will be found in the Circular. The minimum qualifications are: a degree from a recognized law school, admission to the bar, and

28 years of age. Four years' practice of law is desirable and ordinarily officers must not be over 40 years of age.

War Department Memorandum No. 625-44, dated 29 November 1944, encourages qualified enlisted men of all arms and services to apply for officer candidate school and negatives the idea held by some enlisted men that their chances of returning to civilian life upon partial demobilization would be impaired if they are on commissioned status. A message to all commands from the War Department dated 12 February 1945 calls for wide publicity so that qualified applicants may take advantage of the opportunity still open to apply for The Judge Advocate General's Officer Candidate School.

THE BRANCH OFFICES—TWO YEARS OF ACHIEVEMENT (Continued from Page 47)

though this accolade may now pass with the shift of ground force campaigns to other theaters, there is as yet no sign that the time has come for the folding of the Branch Office tents.

It may be borne in mind that during the entire period of its existence, although there was a steady flow of personnel through the Branch Office, rarely have there been more officers on duty in BOJAG than the original complement of eight, including the Assistant Judge Advocate General in charge. It follows that the case load per officer has been comfortably sufficient. Only one of the original contingent, Lieutenant Colonel

Irion, the present executive officer and senior member of the Board of Review, still remains on duty.

The close of 1944 marked the loss to BOJAG, through return home because of illness, of Colonel Samuel T. Holmgren, a substantial contributor to the successful accomplishment of the mission of the Branch Office. On 7 December 1944, Colonel Holmgren was presented with the Legion of Merit. (See Honor Roll, this issue.—Ed.)

1945 finds BOJAG with no diminution of activity, but with great hope that the major portion of its life is spent and that relatively soon, in conjunction with world events, it may pack up its library and records for shipment home.

HONOR ROLL (Continued from Page 41)

the Assistant Chief of Staff, G-4. Captain WOODSON worked tirelessly directing the movement of large quantities of supplies to the assault shipping, subsequently reducing the loading time to mount the Division. During the amphibious operation on Guam, M. I., Captain WOODSON regulated the movement of supplies from ship to shore, over a difficult reef and through heavy surf. Adequate stock levels in Division dumps were maintained at all times by Captain WOODSON'S efficient supervision of small boat movement. In addition to his duties as Regulating Officer, Captain WOODSON as-

sisted the G-4 section in the preparation of voluminous logistical records and administrative orders published.

Captain Woodson was born in Salisbury, North Carolina, received his AB degree from the University of North Carolina in 1929 and his LL.B from the same institution in 1932. Admitted to the bar of North Carolina in the same year, he engaged in general practice for 10 years until his entry into the service. Captain Woodson was commissioned in 1942 and after attending JAG School has served continuously with an infantry division except for the period of his attendance at the Command and General Staff School.

MILITARY LAW OFFICERS CONFER (Continued from Page 42)

(Member, Council of General Officers of the Army) and Colonel Luis Alberto Arboleda Vinas L. (Assistant Chief of Staff, G-2).

Salvador, Major Manuel Alfonso Martinez.

Uruguay, Major Artigas Plaza (Judge of Military Instruction and Professor of Military Penal Law) and Major Arturo J. Balinas (Professor of Military Law).

Officers of the United States Army who will take part in the discussions are: Maj. General Myron C. Cramer, The Judge Advocate General, Brig. General Thomas H. Green, Deputy Judge Advocate General, Brig. General John M. Weir, Assistant Judge Advocate General,

Colonel Archibald King, Colonel J. Alton Hosch, Colonel Marion Rushton, Colonel Ralph G. Boyd, Lt. Colonel Howard A. Brundage, Lt. Colonel Miguel A. Burset, Major Jose G. Vivas, Major Reginald Field, Major Clarence L. Yancey, Major Warren Farr, Major James M. Scott, Captain Wright Brooks and Captain John G. Stephenson, III.

During their visit to the various points in the itinerary the Latin American officers will be accompanied by Lt. Colonel Brundage, Lt. Colonel Burset, Major Vivas, Major Yancey, Major Scott, and Lt. Robert H. Lounsbury.

DISCIPLINARY CONTROL (Continued from Page 37)

World War veterans, as provided in the Servicemen's Readjustment Act of 1944. All such benefits are denied one who has been dishonorably discharged or dismissed by sentence of a general court-martial, or an officer whose resignation has been accepted for the good of the service.

I assure you that anyone appearing for trial by tribunal sitting in this courtroom has very much at stake. Yet our system of military justice is so organized that an alleged offender will never appear for trial without a prior determination by investigation and certificate by the Staff Judge Advocate to the convening authority that the particular case warrants trial upon the indicated

charges and specifications. Furthermore, every record of trial by general court-martial is examined for legal sufficiency through automatic and unsolicited appeal, not only to the reviewing authority, but to the President of the United States or his authorized executive agencies.

Military law must be administered strictly, impartially and uniformly. In this aspect of military duty every officer, particularly unit commanders, plays a vital part. This courtroom is hereby dedicated to the purpose announced in orders with the hope that proper administration of military justice within this command will render its use increasingly less necessary.

LIST OF *Promotions*

IN THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

★ ★ ★

16 November 1944 through 15 February 1945

★ ★ ★

TO BRIGADIER GENERAL

Fenn, Clarence C.

TO COLONEL

Bowman, Alfred C.
Burgess, Arthur I.
Chandler, Robert E.
Dickson, Charles M.
Dorrance, Henry T.
Hardy, Claire W.
Johnson, William H., Jr.
Lord, Noah L.
Moron, Edward R.
Moss, Casimir D.
O'Donnell, Daniel L.
Olmsted, Joel B.
Roberts, Nathon J.
Sargent, Ellwood W.
Smith, John L.
Traurig, Max R.
Thomas, Ray C.
Wiener, Frederick B.
Wilkins, William J.

TO LIEUTENANT COLONEL

Addison, Huber D.
Allen, Nicholas E.
Bass, James O.
Beatty, Harold D.
Booth, Edwin S.
Browne, Allon R.
Chapman, George B., III
Coyle, Wilbur F., Jr.
Denton, Winfield K.
Evetts, James K.
Foster, John S.
Gentry Thomas J., Jr.
Guttman, George N.
Hafter, Jerome S.
Harris, Carmon C.
Hull, Walker F.
Irion, Mortimer R.
Lee, Gentry
Levit, William H.
Lynch, Raymond J.
McDade, Thomas M.
McDermott, Richard B.
Mount, Thomas F.
Moyse, Hermann
Neary, Ralph L.
Nichols, Arthur G., Jr.
Ritchie, John, III
Rives, Edwin E.
Rucker, Truman
Shaw, Warren W.
Sonfield, Robert L.
Swarner, Earl B.
Thomas, Edwin M.
Valentine, Itimous J.
Verga, Frank A.
Watson, Harrison J.
Waugh, William F.
Yarborough, Ralph W.

TO MAJOR

Avery, Omer H.
Bauer, Lenhardt E.
Brockus, Charles F.
Brophy, Harold R.
Brown, Grant A.
Carmody, John J.
Chase, Jackson B.
Cotton, Jack M.
Davenport, John M.
Denney, Clark
Erskine, Samuel B.
Feickert, Carl W.
Feldhaus, James G.
Fine, Valentine L.
Gafford, Francis J.
Gullett, Charles H.
Haberle, Ernest J.
Hillis, Robert O.
Hodson, Kenneth J.
Hoffmann, Burton E. E.
Hornbostel, James L.
Johnson, Hunter L., Jr.
Jones, Thomas G.
Lynch, John W.
May, Gerald
Mayall, Edwin L.
Nolan, James L.
Ott, Richard B.
Patterson, Carl M.
Rexroad, James H.
Runyon, Carroll R.
Sargent, Ford R.
Schroeder, Walter E.
Smith, Charles D.
Stevens, Edward L., Jr.
Tolman, Orson N.
Tompkins, James H.
Weaver, Harry A.

TO CAPTAIN

Bailey, George J.
Bistline, James A.
Bogen, Edward J.
Braden, Emmitt W.
Broad, William L.
Buck, Charles S.
Buck, Herman M.
Burns, John A.
Carlsen, Charles E.
Clare, Ralph O.
Coman, John B.
Conaway, Howard H.
Conlin, Peter J.
Dakin, Winthrop S.
Dasplit, Paul S., Jr.
Dillemoth, George F.
Dugan, Frank J.
Emmons, Harold H., Jr.
Fable, Robert C., Jr.
Frazer, John F., Jr.
Freeman, Alwyn V.
Funk, Richard R.
Gardner, Reece A.
Geib, Robert U., Jr.
Gotwals, Charles P.

Hanback, William B.
Harris, Samuel
Henderson, John O.
Herndon, John Charles
Howland, John
Johnson, Victor S., Jr.
Lardner, Daniel O.
Lazarus, Herbert B.
Leasure, Russell E.
Livingston, Boynton P.
Livingston, Charles L., Jr.
Lupton, Perley T.
Marsi, Frederick V.
Mauch, Ralph E.
McFeeley, Joseph B.
McGovern, John W.
McMullin, Shirley K.
Metheny, William B.
Meyer, Martin W.
Miazza, Kalford K.
Morpach, Robert G.
Owens, Davis M.
Pasternak, Harry J.
Patrick, Thomas M.
Peck, Bernard S.
Peickert, Clifford W.
Phillips, Willard L.
Rognlien, Dyvart G.
Ryan, Edward J.
Sale, Edwin W.
Schenck, Martin
Speenburgh, Gleason B.
Stanton, Thomas E., Jr.
Stafford, John P., Jr.
Tobin, Martin H.
Trevethan, Robert E.
Tunick, Archibald H.
Upton, Arvin E.
Wells, Joe R.
Wideman, George L.
Wills, Richard B.
Wolff, John
Wolff, William M.
Ziemba, Edward J.

TO FIRST LIEUTENANT

Adamowski, Benjamin S.
Adams, John J.
Anderson, Oscar G.
Andrae, Henry P.
Barefoot, Bert B., Jr.
Bascom, Robert W. C.
Baumann, John C.
Best, Edward H.
Bednar, James E.
Blackman, Roy H., Jr.
Blaine, Jack L.
Boedeker, Edgar G.
Bour, John W.
Bridewell, David A.
Brown, Willis A.
Buder, William E.
Buswell, Arthur J.
Calder, George T.
Casey, Samuel A.
Clarke, Edwin M.

Clydesdale, Thomas R.
Colgan, Charles W.
Conrad, Wright
Corbett, Stanley M.
Couper, Fred T., Jr.
Crawford, Donald K.
Culler, John Lester
Daily, John H.
Deery, Joseph S.
DeJarnette, Henry C.
Deyrup, Thorold Johnson
Diehl, John N.
Doering, Edward A.
Donahue, Charles
Dorsey, Harryman
Eastin, Robert S.
Engel, Ben A.
English, John E.
Espy, William G.
Fellows, Charles R.
Flanagan, John H., Jr.
Flanagan, Peter J.
Folsom, Fred G., Jr.
Fortuna, Roger A.
Freeman, Sylvan D.
Fuller, Herbert F.
Gabell, Gordon W.
Geer, Horace G.
Green, William C.
Guild, William L.
Gunther, Preston W.
Haft, William J.
Hallohan, Daniel J.
Hardy, James I.
Hart, William L., Jr.
Herbruck, Henry A.
Hill, Delmas C.
Hoffman, Joseph
Horton, James E.
Hubbard, Chester R.
Huff, Eugene S.
Hummer, Edward J.
Hurley, Arthur F.
Huchinson, Charles W.
Jaffe, Henry
Jones, Robert R.
Jones, Robert Y.
Kale, Albert C.
Kaylor, Hugh W.
Keck, John A.
Keeland, Robert L.
Knipmeyer, Lowell L.
Koplow, George A.
LaRogue, George P.
Leary, Matthew G., Jr.
Leen, Maurice J., Jr.
Lindsey, Hugh M.
Lowe, William A.
Lyon, Arthur G., Jr.
MacLeod, John W.
Maniscalco, Anthony J.
Mapes, Robert W.
March, Arthur E.
Marquis, Robert H.
Mathias, James H.
Mays, Thomas J.

Moats, Benjamin
Mock, Henry B.
Morris, Earl F.
Moss, Howard H.
Muller, Robert O.
Murphy, Edward J., Jr.
Newhouse, Andrew J.
Norseng, Marshall N.
O'Brien, Robert E.
O'Gara, Joseph P.
O'Hara, Gerald T.
Pangrace, Andrew
Parkhurst, George V.
Preston, John M.
Reed, Earl E.
Reed, Evan J.
Resseger, Edwin K.
Rice, Gordon W.
Riedl, Charles A.
Rosenberg, Milton L.
Rosenberg, Morris
Sams, Gerald A.
Sapp, James E., Jr.
Sandberg, Milton
Saunders, Angus G.
Schmidt, Harold R.
Schneider, Albert W.
Seabolt, Robert H.
Searl, Jerome H.
Shelley, Walter A.
Shook, Paschal G., Jr.
Shortridge, Alfred L.
Simpson, Frank
Sirignano, William P.
Sloan, Albert W.
Smith, Numa L., Jr.
Smith, Philip L.
Stanton, Robert J.
Steffes, Richard E.
Stine, Francis B.
Stipp, Harley H., Jr.
Strayer, Manley B.
Sullivan, William J.
Sutherland, Kenneth E.
Sylvester, Murray
Thayer, Lawrence W.
Treanor, Gerard F.
Tremayne, Bertram W., Jr.
Tritico, Joseph J.
Viering, Russell W.
Walker, Owen F.
Weaver, John H.
Webster, Manning D.
Whalen, William E.
Wheat, Thomas A.
Whelan, John M.
Wilke, Sherman C.
Williams, Frank W.
Williams, Tyrus R.
Winkler, Herbert L.
Woodson, Blake B.
Worrell, Beverley R.
Yard, William S.
Young, John B.
Young, Louis
Zwerdling, Joseph