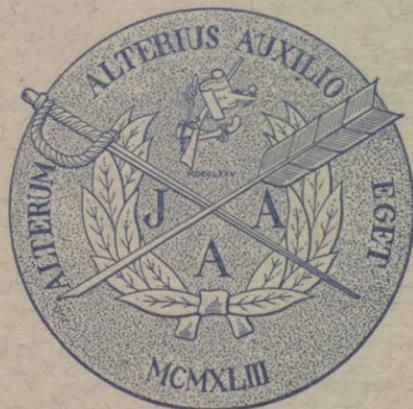


The Judge Advocate JOURNAL



Published By

JUDGE ADVOCATES ASSOCIATION

An affiliated organization of the American Bar Association, composed of
lawyers of all components of the Army, Navy, and Air Force

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RICHARD H. LOVE
Washington, D. C.

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Publication Notice

The views expressed in articles printed herein are not to be regarded as those of the Judge Advocates Association or its officers and directors or of the editor unless expressly so stated.

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Report of The Nominating Committee — 1952

Pursuant to the provisions of Section 1, Article IX of the By-laws of the Association, the following members in good standing appointed to serve upon the 1952 Nominating Committee:

Lt. Col. Gerritt W. Wesselink, USAFR, Washington, D. C., Chairman
Col. Osmer C. Fitts, JAGC-USAR, Brattleboro, Vermont
Capt. James J. Robinson, USNR, Washington, D. C.
Col. Arthur F. Hurley, USAF, Arlington, Virginia
Col. John P. Oliver, JAGC-USAR, Los Angeles, California
Lt. Col. Clarence L. Yancey, JAGC-USAR, Shreveport, Louisiana
Maj. James A. Bistline, JAGC-USAR, Arlington, Virginia

The By-laws provide that the Board of Directors shall be composed of twenty members, all subject to annual election. It is also provided that there be a minimum representation on the Board of Directors of three members for each of the Armed Forces: Navy, Army, and Air Force. Accordingly, the slate of nominees for membership on the Board of Directors is divided into three sections; and, the three nominees from each section with the highest plurality of vote within the section shall be considered elected upon the annual election as the representation on the Board of that Armed Force; the remaining eleven positions on the Board will be filled from the nominees receiving the highest number of votes irrespective of their arm of service.

The Nominating Committee conferred and has submitted the following report which has been filed with the Secretary of the Association as provided in Section 2, Article VI of the By-laws.

SLATE OF NOMINEES FOR OFFICES OF THE ASSOCIATION

Col. Oliver P. Bennett, JAGC-NG, Iowa - President (1)
Col. Joseph F. O'Connell, Jr., JAGC-USAR, Massachusetts - 1st Vice President (2)
Col. Paul W. Brosman, USAFR, Louisiana - 2nd Vice President (2) (5)
Col. Thomas H. King, USAFR, Maryland - Secretary (3)
Col. Edward B. Beale, JAGC-USAR, Maryland - Treasurer (3)
Col. John Ritchie, III, JAGC-USAR, Missouri - A.B.A. Delegate (4)

Note: (1) Presently serving as 1st Vice President.
(2) Presently a member of the Board of Directors.
(3) Incumbent.
(4) Presently serving as President of the Association.
(5) Presently on duty in Washington, D. C. as Associate Judge, United States Court of Military Appeals.

**SLATE OF NOMINEES FOR TWENTY POSITIONS ON THE
BOARD OF DIRECTORS**

Navy nominees:

Capt. George Bains, USN, Alabama
 Cmdr. Frederick R. Bolton, USNR, Michigan
 Capt. Robert G. Burke, USNR, New York
 Cmdr. J. Kenton Chapman, USNR, District of Columbia
 Cmdr. Milton S. Kronheim, Jr., USNR, District of Columbia
 Lt. Cmdr. Charles B. Seton, USNR, New York
 Capt. S. B. D. Wood, USN, Hawaii

Note: Captains Wood and Bains are presently on duty in the Office of The Judge Advocate General of the Navy in Washington, D. C.; both are presently serving on the Board of Directors of the Association, as is also Capt. Burke.

Army nominees:

Col. Leslie L. Anderson, JAGC-USAR, Minnesota
 Col. Joseph A. Avery, JAGC-USAR, Virginia (1)
 Capt. Glenn E. Baird, JAGC-USAR, Illinois
 Brig. Gen. Ralph G. Boyd, JAGC-USAR, Massachusetts (1)
 Maj. Gen. E. M. Brannon, JAGC-USAR, District of Columbia (1) (2)
 Lt. Col. James P. Brice, JAGC-USAR, California
 Maj. William E. Davis, JAGC-USAR, Alabama
 Lt. Col. Reginald C. Field, JAGC-USAR, Virginia (1)
 Lt. Col. Edward F. Gallagher, JAGC-USAR, District of Columbia
 Col. Earle Hepburn, JAGC-USAR, Pennsylvania
 Col. J. Alton Hosch, JAGC-USAR, Georgia
 Capt. Edward F. Huber, JAGC-USAR, New York (1)
 Col. William J. Hughes, Jr., JAGC-USAR, District of Columbia
 Col. Donald M. Keith, JAGC-USAR, California
 Lt. Col. Albert G. Kulp, JAGC-USAR, Oklahoma
 Col. Arthur Levitt, JAGC-USAR, New York (1)
 Capt. Gordon W. Rice, JAGC-USAR, Nevada
 Brig. Gen. Franklin Riter, JAGC-USAR, Utah
 Lt. Col. Vern Ruble, JAGC-USAR, Indiana
 Col. Victor A. Sachse, JAGC-USAR, Louisiana
 Col. Albert M. Sheets, JAGC-USAR, California
 Col. Gordon Simpson, JAGC-USAR, Texas
 Lt. Col. Francis C. Sullivan, JAGC-USAR, Minnesota
 Lt. Col. R. C. Van Kirk, JAGC-USAR, Kansas
 Capt. John M. Wiegel, JAGC-USAR, California
 Col. Frederick B. Wiener, JAGC-USAR, District of Columbia (1)

Note: (1) Incumbent.

- (2) Presently serving as Delegate to the House of Delegates of the American Bar Association; serving as The Judge Advocate General of the Army, Washington, D. C.

Air Force nominees::

Lt. Col. Louis F. Alyea, USAF, Illinois (1)
Capt. Marion T. Bennett, USAFR, Maryland
Col. Francis X. Daly, USAFR, District of Columbia
Col. Hereford T. Fitch, USAFR, Washington
Maj. Gen. Reginald C. Harmon, USAF, Illinois (1) (2)
Lt. Col. Warren C. Jaycox, USAFR, Virginia
Maj. Edward W. Krentzman, USAFR, Connecticut
Capt. E. Holman Marsh, USAFR, Tennessee
Capt. Robert B. Meigs, USAFR, New York
Lt. Col. Donald I. Mitchell, USAFR, Kansas
Maj. Harley J. McNeal, USAFR, Ohio
Capt. Hugo Sonnenschein, USAFR, Illinois
Col. Fred Wade, USAFR, Maryland

Note: (1) Incumbents.

- (2) Serving as The Judge Advocate General of the Air Force, Washington, D. C.

Under provisions of Section 2, Article VI of the By-laws, regular members other than those proposed by the Nominating Committee shall be eligible for election and will have their names included on the printed ballot to be distributed by mail to the membership on or about August 22, 1952, provided they are nominated on written endorsement of twenty-five, or more, members of the Association in good standing; provided, further, that such nomination be filed with the Secretary at the Association's offices on or before August 12, 1952.

Balloting will be by mail upon official printed ballots. Ballots will be counted through September 17, 1952. Only ballots submitted by members in good standing as of September 17, 1952, will be counted.

Please advise the headquarters of the Association of any changes in your address so that the records of the Association may be kept in order and so that you will receive all distributions promptly.

THE ORGANIZATION AND FUNCTION OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

By Roswell M. Austin*

The Board of Contract Appeals in the Department of Defense has had an interesting history. Those who do not know about it may perhaps be interested in a sketch of the background out of which has grown this tribunal which, for the last ten years, has been building up a sizeable body of administrative decisions.

Government military contracts, in spite of the meticulous care with which they are drawn, have a way of getting into trouble between the parties thereto, in much the same manner, and perhaps to much the same extent, as do contracts between private parties.

THE PATTERN OF GOVERNMENT CONTRACTS

Since there has been a certain continuity of officers within the procurement agencies of the military establishment, military contracts have come to the point where they follow certain patterns, the patterns being prescribed in procurement regulations. Thus, you will find in every Government contract (when the term "Government contract," is used in this article, reference is usually to Military Contracts), articles which have

*Editor's Note: The author is a member of the bar of the State of Vermont where he engaged in private practice from 1912-1942. A former officer of the J.A.G.D., he is now a Colonel—Honorary Reserve. Presently he is Chairman, Air Force Panel, Armed Services Board of Contract Appeals.

come to be known as "boiler-plate." Those articles read substantially the same in all the contracts, and their inclusion within the provisions of the contracts is a "must" for every contracting officer. They may not be omitted without special permission by authority higher than the contracting officer, even though the prospective contractor may complain very bitterly about their inclusion.

THE DISPUTES ARTICLE

One of the so-called boiler-plate articles is the DISPUTES article. Though that article has experienced several changes in wording, over the years, for a great number of years it has provided that when a dispute concerning a question of fact under the contract arises between the contractor and the contracting officer, it is the duty of the contracting officer to decide that dispute, insofar as is humanly possible, in an impartial manner; to reduce his decision to writing and supply the contractor with a copy of it. If the contractor is not satisfied to accept that decision, he may, within 30 days after the mailing of the decision, appeal therefrom to the "head of the department" whose decision, or that of his duly authorized representative, is agreed to be final and conclusive upon the parties.

HEAD OF THE DEPARTMENT

The "head of the department" is the Secretary of the Department within which the contract has been made. In

other words, if the contract is between the contractor and some agency of the Army, the appeal is to the Secretary of the Army. If the contract is made with one of the bureaus of the Navy, the appeal is to the Secretary of the Navy. Similarly, if the contract is with the Air Force, the appeal is to the Secretary of the Air Force.

DELEGATIONS

Never has the "head of the department" been able, personally, to devote his time and energies to the consideration and determination of appeals taken to him under the Disputes Articles of military contracts. Under authority granted to him, he has delegated that function of his office to various persons, among them being the Under Secretary of the department. Up until 1942, it was customary, however, for the Secretary to delegate that authority to the Chiefs of the branches within his department. That meant, for instance, that if the contract was with the Army Engineers, an appeal taken under that contract went to the Chief of Engineers who was the Secretary's duly authorized representative to make final and conclusive determination of the disputes of fact for, and in the place of the Secretary.

SYSTEM OF DELEGATIONS NOT SATISFACTORY

That system of handling appeals was not universally successful. From the standpoint of the contractors, complaints were loud and bitter. Their complaints ran along these lines:

"Look, I get into a dispute with the contracting officer over some performance under the contract. Who, in the

first instance, decides that dispute? Why, the very man who made that adverse ruling against me! What man in his right senses thinks that the contracting officer, as judge, is going to overrule himself as the administrator of the contract?

"But, you say, I have a right of appeal to the head of the Department. What good does that do me? I don't get a decision from him. My decision comes from the Chief of the Branch, the superior of the contracting officer, just one step above him. Do you think I can get an unbiased decision out of him?

"The trouble is, two parties to the contract get into a dispute, and the Disputes Clause makes one of the parties the prosecutor, the trier and the judge. And worst of all, unless the record clearly demonstrates that the contracting officer and his superior, the Chief of the Branch, were so arbitrary, or so capricious, or so grossly in error that their conduct amounted to bad faith (and remember, that record was made up by those officers), then that decision becomes final and conclusive against me."

The system of handling appeals which I have been describing was not satisfactory to Government executives either. The principal trouble was this: Assume that an appeal involving a set of circumstances was decided by the Chief of Ordnance. Then assume that another appeal, involving circumstances not radically different from those involved in the appeal decided by the Chief of Ordnance, and under contract provisions practically the same, went to the Chief of Transportation. Now the Chief of Transportation had no method of coordinating

his decision with that of the Chief of Ordnance, with the result that there appeared two decisions of similar disputes which were possibly diverse, even in conflict, or, at best, lacking in uniformity. Neither the Government nor the contractor had any way of forecasting what its or his rights under their contracts were.

NEED TO CORRECT CONDITIONS

In 1941 and 1942, when the military establishment was facing up to a tremendous procurement program, and above all needed the enthusiastic good will of producers, possible contractors with the Government, to carry out that program, Secretary Stimson and Under Secretary Patterson sensed that the unhappy results of handling disputes between contractors and the Government were of sufficient moment to warrant a study of the problem and, if possible, a correction of the conditions. A committee, including representatives of industry as well as military procurement officers and JAG officers was appointed, and tackled the problem. As a result of their study and recommendations, the first War Department Board of Contract Appeals was established in August 1942.

THE WBCA ESTABLISHED

The formal delegation of authority to the War Department Board of Contract Appeals, consisting of three members, was contained in these words:

"The board created by paragraph 1 of this memorandum is hereby designated as the duly authorized representative of the Secretary of War to hear, consider and decide as fully and finally as the Secretary

of War might do, appeals to the Secretary of War under contracts which contain provisions authorizing the Secretary of War to designate a board as his duly authorized representative to determine appeals."

The informal delegation and directives to the members of that original board, not contained in any writings, but the result of the committee recommendations, and which constituted the meat of the corrective measures instituted, may be summarized as follows:

That the members of the board were to be chosen not from any of the contracting agencies of the War Department;

That they were to be responsible only to the Secretary of War through the Office of the Under Secretary of War; That they were to accord to contractors before them on appeals prompt and full hearings; That though hearings should be conducted along the lines of court hearings, the procedures were to be as informal as possible with due regard to proper conduct;

That though the rules of evidence were to be generally followed, they should not be applied with the strictness enforced by courts.

PURPOSE TO ENGENDER CONFIDENCE

By this new organization, though the Board members were, indeed, still employees of one of the parties to the contract, namely, the War Department, nevertheless, it was hoped that the fact that they were in no sense connected with the procurement agencies, in fact were separated from them

as far as possible and still be connected with the War Department, would engender confidence in the contractors that their appeals would receive impartial and unbiased consideration.

In a further effort to engender that confidence, great care and thought went into the selection of the three members of that original Board. For the first member, and to be president of it, Secretary Stimson, upon the recommendation and nomination of Under Secretary Patterson, chose a mature JAG officer, on extended active duty, who was experienced in contract appeals procedures. Not only had he previously served the Under Secretary as counsel in appeal matters, at a time when appeals were not numerous, but he had even been a member of the War Department Board of Contract Adjustment, a board established immediately after World War I to determine appeals under the Dent Act. The appointee was Col. Hugh C. Smith, and in him the Secretary offered to contractors, a lawyer of high repute and ability, a man with experience in the very same type of work to which he was being assigned.

With a geographical distribution somewhat in mind, the Secretary went into the West to find the second member of the Board. Serving on the Supreme Court of the State of Utah was a retired JAG officer, Major Eugene E. Pratt, who was highly recommended to Under Secretary Patterson for this post. Arrangements were made with the State of Utah to give Justice Pratt a leave of absence from his duties on the Supreme Court, and he was ordered to active duty and assigned to the Board. Here, then, was a

jurist, thoroughly trained in the functions of considering and passing upon appeals. His judicial experience was well calculated to arouse in the minds of contractors confidence that their appeals would receive the highest degree of judicial consideration.

With regard to the third member of that Board the author must write with a degree of modesty for he was the one chosen for that position. To serve as the third member, it was determined to select a mature lawyer who was in no way connected with the military and never had been. Furthermore, they wanted a lawyer whose practice had been closely associated with industry - with producers. And again, with some idea of a geographical distribution, they desired someone from the northeastern section of the country. In the belief that he fitted those qualifications, the appointment fell to him, and for the first time in his life, he donned the uniform of the Army of the United States. In him presumably, was being offered a lawyer who understood the problems of producers and commercial business in general.

The final act designed to engender confidence on the part of the prospective contractors was the careful and thoughtful selection of attorneys who would represent the Government in appeals before the Board. The memorandum which established the Board empowered the Judge Advocate General to assign to the the combined membership was split up into three panels, namely, the Army Panel with 9 members, the Navy Panel with 3 members - the same three who had served as the Navy Board - and the Air Force Panel

Board one or more judge advocates as trial attorneys or examiners. The Judge Advocate General assigned Colonel Joseph A. Avery, as the first Chief Trial Attorney. Colonel Avery had had experience in his State of Indiana as a prosecuting officer and as a city court judge. Under his able direction and control a staff of trial attorneys consisting of young but very able lawyers was built up, and the wheels of justice, so to speak, began to turn.

TRANSITION TO PRESENT BOARD

There we have the background of the tribunal which functioned in Army appeals (and then, of course, the Army included the Air Corps), and soon, there was established the Navy Board of Contract Appeals, with the same kind of structure, which handled appeals taken under Navy contracts. When the Air Force was established, the Secretary of the Air Force delegated his authority to determine appeals under Air Force contracts to the same Army Board which had previously been determining Air Corps contracts. Finally, came the period of unification, and the three Secretaries decided to unify their appeal boards into one board which received the name Armed Services Board of Contract Appeals. Each of the three Secretaries designated this Board as his duly authorized representative to determine appeals taken under all military contracts. And that is the appeals tribunal which has been operating for all three departments since May 1, 1949.

GROWTH OF WDBCA

The original War Department Board of Contract Appeals, consisting of three members, soon found itself swamped with appeals. To meet the situation, new members were added to the Board. One of the first to be added was Colonel Avery, who, later, upon the retirement of Colonel Hugh Smith, became the President of the Board. Membership increased eventually to twelve, and among those members were lawyers of the highest ability and standing in the country. The opinion is ventured that upon that Board were lawyers as well informed and trained in the law of Government contracts as can be found in this age of law practice. Changes in personnel, of course, took place when some of these outstanding men felt that they had given a full quota of their services to the country, and returned to their private practice. But in their replacements the Office of the Secretary maintained the same meticulous care in their selection, always refraining from choosing men connected with the procurement agencies, and always having in mind a geographical representation on the Board.

MEMBERSHIP OF ASBCA

When the unified Armed Services Board was established there were 12 members on the Army Board and 3 members on the Navy Board. The Charter folded them all in, and then with 3 members, those three being transferred from the Army Board. The Navy and Air Force Panels have operated as units, but the Army Panel was split up into Divisions. How those units operated to turn out the official

decisions of the Board will be described further in this Article.

PROCESSING OF APPEALS

The business of taking an appeal is not a complicated operation and the first stages of the operation are the same now as they always have been. Let us assume that a contracting officer informs a contractor, either orally or in writing, that he expects the contractor to perform certain acts under the contract that the contractor is not doing. The contractor responds with the remark - "That's no obligation of mine under the contract." The contracting officer says, "Oh, yes it is." Whereupon, the contractor says either to the contracting officer, or to himself, "Well, I'll follow those orders, but I shall expect to be paid extra for performing them." Eventually, after he has completed, or during performance, the contractor sends a bill to the contracting officer for additional compensation for that work which he thinks he was not obligated under the contract to perform. And now we've got a well developed dispute under the contract. The Disputes Article was designed and written into the contract to meet just that situation. It becomes a guide for their conduct. The contracting officer's duty is to decide that dispute and to reduce his findings of fact and conclusion to writing and deliver a copy thereof to the contractor. Whereupon the appeal procedure commences.

TAKING AN APPEAL

Within 30 days after the contracting officer mails or otherwise delivers that written decision of his to the contractor, the contractor may take an

appeal therefrom to the Secretary of the department with which he is contracting. To commence the appeal, there are two "musts". It must be in writing, and it must be taken within that 30-day period. Without compliance with those two "musts", the parties have agreed in their contract that the contracting officer's decision becomes final and conclusive, and legally, the Government may acquire vested rights growing out of that final decision which no one, not even the contracting officer or the Secretary himself, can take away from the Government. But, aside from those two "musts", the appeal need not be a complicated or technical document. It does not have to be couched in legal terms. In as simple language as he chooses to employ, all the contractor needs to say is "I appeal from a decision of the contracting officer under my contract who ruled against my claim (stating it) and I claim he was wrong."

The contractor is supposed to deliver that appeal to the contracting officer; but, if he prefers, he may send it directly to the Office of the Secretary, in Washington. In fact, if he puts it into any military channel so that it eventually reaches the Office of the Secretary, the fact that he didn't put it into the correct hands, in the first instance, will not be held against him. The appeal is taken.

MAKING UP THE "RECORD"

If the contractor delivered the appeal to the contracting officer (or if he didn't, and the appeal is rerouted back to the contracting officer) it is that officer's job to gather to-

gether into a file all the papers and documents relating to that dispute. That includes a copy of the contract, with all of its amendments, if any, all of the change orders issued, if any, all of the correspondence, any transcripts which were made of hearings, telephone calls or conferences, and, finally a copy of the contracting officer's decision and of the contractor's appeal therefrom. When that file is made up, the contracting officer forwards it, with his recommendations if he chooses, to the Recorder of the Board in Washington.

THE RECORDER'S DUTIES

The Recorder, whose functions are generally comparable to those of a Clerk of the Court, gives the appeal a number and proceeds to enter it on the docket of the Board. He acknowledges to the contractor the receipt of the appeal, and forwards a copy of the Rules of Procedure of the Board, so that, if necessary, the contractor may perfect his appeal in a more formal manner. Thereupon, the Recorder turns the file over to the Trial Attorney Section for preparation of the case for hearing, or for submission to the Board on the record, if both parties so agree.

THE PUBLIC RELATIONS BY TRIAL ATTORNEYS

Due to the high quality of the personnel in the Trial Attorney Section, and particularly to the initial high standards set by Colonel Avery, which have prevailed ever since his incumbency, it was at this stage of the appeal procedure that contractors, perhaps for the first time, came to realize that their claims against

the Government were a matter of respectful concern on the part of those representing the Government. Time and again the author has been told by appellant contractors, and their lawyers, that up until the time they came to Washington and conferred with the Trial Attorneys about their cases, they had been pushed around, sent hither and yon, either ignored or treated arbitrarily, but, when they came here, they found themselves suddenly removed from the atmosphere of a hectic field office, presided over by an overburdened, tired out, nerve-frazzled contracting officer, into an atmosphere of serious but friendly and interested attorneys, who, though they informed the contractor that they represented the Government in the appeal, were bound not to take any undue advantage of the contractor, in fact would be zealous to see that he got fair treatment.

The representations of many of these contractors as to their experiences with field representatives of the Government were doubtless overdrawn and magnified, and there is no intention to cast any aspersion upon the sincere and conscientious officials who are charged with the administration of Government contracts. Their impressions, however, must be taken as somewhat indicative of the unavoidable and inescapable difference in the atmosphere encountered in the administrative field offices as compared with that which surrounds the review of a dispute after an appeal has been taken. No philosophical analysis of the reasons for this difference is undertaken, but they must be readily apparent to the thoughtful observer.

FUNCTIONS OF THE TRIAL ATTORNEYS

The work of the Trial Attorneys was and is, to develop the issues and narrow them down for the Board to consider. They sometimes enter into stipulations which reduce the necessity of extended testimony; join in procuring depositions of witnesses difficult to bring to Washington; and finally arrange with the contractor appellant, or his attorney, for the hearing date, or, for the submission of the appeal without hearing. For this purpose, the Trial Attorney will have filed a trial memorandum which sets forth the issues, the contentions of both parties, and, frequently, citations of cases applicable or helpful in a consideration of the dispute. A copy of this will have been sent to the appellant, who may reply if he chooses.

HEARINGS

Hearings of appeals are usually conducted at the Board's Hearing Room in The Pentagon. They are sometimes held outside of Washington, under special circumstances, but for the most part, they are held in Washington. The hearing is usually presided over by one member of the Board, though, at his request, other members may sit with him. There is a Reporter present who eventually produces a transcript of the testimony. The Government is represented there by one of the Trial Attorneys, and the contractor may be his own attorney or he may have as attorney either a lawyer, a partner or even a mere lay friend to represent him.

Every appellant is in the nature of a plaintiff in a lawsuit, and there-

fore has the burden of going forward with his appeal. However, it has been frequently found to be more expeditious to first call upon the Trial Attorney to give the hearing member a brief resume of the dispute. In doing this he usually presents substantially what is in the trial memorandum already filed, except that, if the appellant or his attorney is present, he does not then attempt to set forth the appellant's contentions. He leaves that for the appellant to do, during which presentation, the appellant may point out inaccuracies or explanations of matters spoken of by the Trial Attorney. By that process, the issues become pretty well defined, and the appellant is then told that he may introduce his witnesses and proceed to take their testimony. After he rests his case, the Trial Attorney introduces the witnesses for the Government and examines them.

This aspect of the appeal procedure must reveal to the reader that the hearing is quite similar to a hearing before the Court, in a Court of Law. Objections to questions and answers are made and ruled upon by the hearing member, but, though the rules of admissibility of evidence prevail they are not adhered to strictly. Unless the evidence offered is too far afield, or, an attorney is obviously leading a witness to the point where the attorney instead of the witness is testifying, the testimony is admitted to the record. Some of it may be ruled out when the decision is being written up.

The Board does not have the power of subpoena. It is surprising however how seldom it has been deprived of

the attendance of any witness because of that fact. Of course, if the witness is still a Government employee, there is no problem, because his appearance can be directed by his superior. It is only when a witness is no longer connected with the Government, or, when the appellant desires the presence of a witness who does not wish to come voluntarily, that there is any embarrassment. Those occasions have been very rare.

After the testimony has been taken, the parties may orally sum up their contentions, and frequently they ask and are granted the privilege of filing briefs; and, then, the hearing is closed and the appeal is taken under the consideration of the Board for its decision.

HOW DECISIONS ARE RENDERED

The member of the Board who presided at the hearing, or, if the case was submitted without hearing, the member to whom the appeal is assigned by the Chairman of the Panel, has the task of taking the complete file and making a comprehensive study of it for the purpose of writing up the decision in accordance with *his* judgment. He has it typed in rough draft form and submits it to the other members of his Division, if it is an Army Panel case, or to the other members of his Panel if it is either a Navy Panel or Air Force Panel case. Those conferees may cause the decision to be corrected or rewritten in some respects, or they may adopt it as written, but when that decision comes out of that Division or Panel, though it still bears the authorship of the

member to whom it was originally assigned, it is the decision of that Division or Panel. Whereupon, the decision, as now agreed to by a Division or Panel, is submitted to the Chairmen of the other two Panels. If those two chairmen, upon a careful study of the decision, conclude that it is correct, they indicate that a review thereof by the whole Board is not required, and the decision thereupon becomes the final decision of the Board.

In the event that either one or both of the other two Panel Chairmen believes that the decision is not correct, he or they decline to waive, and the decision is thereupon submitted to every member of the Board for review. With 15 or 16 lawyers studying the issues of a case, varying opinions are natural. Sometimes the differences are threshed out in full Board meetings, but if they are not, a split decision results and, of course, the majority prevails.

RECONSIDERATIONS

Our rules provide that either party may move that the Board reconsider its decision, provided such motion is filed within 20 days after the receipt of the Board's decision. Some parties appear to construe that rule as a requirement of procedure if the party intends to take his case to court. In other words, that he runs the chance of being held not to have exhausted his administrative remedy if he doesn't avail himself of the opportunity. The author does not wish to get into the realm of giving legal advice, but, unless he has something in the nature of newly discovered evidence, which

he thinks the Board ought to hear, and certainly, if he has just afterthought a better argument, and wants another shot at it, it is the author's private opinion that, he is wasting his own and the Board's time by filing a motion for reconsideration.

RECORD OF DECISIONS

Since the Armed Services Board of Contract Appeals was established, that Board has disposed of 903 appeals. Previous to its establishment, the Army Board disposed of 1994 appeals and the Navy Board 280 appeals. Over the ten years, the results are that about 50% of the appeals have been granted or sustained, and about 50% have either been denied or dismissed.

With that ten years of experience it follows that a considerable body of administrative law has been accumulated. It is regretted that there has never been a complete publication of the decisions of the Board. For a while, Commerce Clearing House included within its publication entitled Contract Cases Federal, decisions of the Board, but the bound volumes of that publication are now out of print and are no longer available. Copies can be found in the Law Libraries at The Pentagon, and any person is welcome in the office of the Board's Recorder to see mimeographed copies of its decisions. There have been no appropriations to cover the furnishing of copies of decisions to the public.

In order, primarily, to assist the members of the Board in maintaining uniformity in decisions, the author undertook the task of keeping up a

card digest of decisions. As the number of decisions grew into such a formidable array, that digest, being the only one in existence, became more and more important until the time came when the Under Secretaries determined that it should be preserved in permanent form. They therefore caused that portion of the digest covering the period of the life of the War Department and Army Board of Contract Appeals, 1942-1950, to be printed by the Government Printing Office. It was pretty difficult to forecast what public demand there might be and the number was underestimated. From the latest report by the Superintendent of Documents, there are less than 30 copies left in stock. This digest can also be found in the Law Libraries at The Pentagon or in the offices of the Board.

The author has continued to digest the decisions of the present Board right down to date, but that portion is not in publication and, so far as is known, there is no present plan for its publication.

QUESTIONS OF LAW AND FINALITY OF DECISIONS

Where does this Board derive its authority to hear disputes and render decisions upon them that can have any binding effect upon anybody?

The answer to that question is that the authority stems from the contracts between the contractors involved, and the Government represented by some department of the military establishment. Specifically, the authority rests in the head of the departments, which authority they have delegated to this Board.

The article of the contract which creates that authority, as has been mentioned before, is the DISPUTES article. The uniform DISPUTES article now in effect reads as follows:

"Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall be final and conclusive; *provided* that, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision."

It will be noted that the authority granted by the DISPUTES article refers only to "any dispute concerning a question of fact arising under this contract," and makes no mention whatever of disputes concerning questions of law arising under the contract. However, it would be pretty difficult to find a dispute of fact

under a contract that does not include also some question of law.

What does the Board do when faced with a question of law?

The charter under which the Armed Services Board is presently operating contains these provisions bearing upon the subject.

"When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue."

"It shall be the bounden duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals to the best of their knowledge and ability in accordance with applicable contract provisions, and in accordance with the law pertinent thereto."

It is seldom, if ever, that a contractor, at the time he takes his appeal, knows that when the issues between him and the contracting officer are finally stripped to their essentials, there will be no dispute of fact involved. It is safe to say, therefore, that for all practical purposes every appeal which reaches the Board is taken "pursuant to a disputes clause in a contract." For practical reasons, and in order that the controversy may be finally disposed of so far as the Department of Defense is concerned, it usually passes upon all issues, both of law and fact, which are fairly presented by the record; but, in the pursuit of that course of conduct, members of the Board have never entertained a doubt that their decisions upon questions of law

were reviewable by courts of law unless the contract should specify otherwise.

The practice in this respect was made the subject of comment with apparent approval by the Court of Claims in *McWilliams Dredging Co. v. U.S.*, 118 C. Cls. 1.,

"It is evident the Secretary was authorizing the Board to act for him in the way that any owner would act if a contractor was dissatisfied with the way he was treated by the owner's representative in charge. He would listen to the contractor's story, and if he thought that his representative had been unfair, he would reverse him. He would do this, not because the contract gave him any authority to make a final decision (on a question of law) which would bar the contractor from relief in the courts for breach of contract, but because it would be the natural and fair way for an owner to act."

The Supreme Court of the United States in the *Moorman Case** held that decisions of the administrative agency, even upon pure questions of law were final and conclusive. The contract involved in the *Moorman* case contained an article usually called "The Claims, Protests and Appeals" clause, an article which used to be employed a great deal more frequently than it is now. That, too, was a "boiler-plate" article which was inserted, usually among the specifications clauses of the contract, in addition to the DISPUTES article. It provided, in general, that if any action or ruling of the contracting officer was unfair, the contractor could protest in writing to the contracting officer, whereupon, it was

that officer's duty to investigate and furnish the contractor with his written decision, from which the contractor could appeal to the Secretary. It further provided that the Secretary's decision would be final and binding upon the parties to the contract.

Whenever a contract before the Board upon appeal contained the "Claims, Protests and Appeals" clause, the members never had any doubt that they had authority to pass upon questions of law; but, even with the provision that the decision would be final and binding upon the parties, there was still entertained some doubt that the Supreme Court would hold that such a clause would have binding effect. But it did. Quoting from the *Moorman* decision, the Court stated:

"**** It is true that the intention of the parties to submit their contractual disputes to final determination outside the courts should be made manifest by plain language. *Mercantile Trust Co. v. Hensey*, 205 US 298, 309. But this does not mean that hostility to such provisions can justify blindness to a plain intent of parties to adopt this method for settlement of their disputes. Nor should such an agreement of parties be frustrated by judicial 'interpretation' of contracts. If parties competent to decide for themselves are to be deprived of the privilege of making such anticipatory provisions for settlement of disputes, this deprivation should come from the legislative branch of government."

The effect of that decision is that

* *Moorman v. U.S.* 338 U.S. 457

**U.S. v. Martin Wunderlich et al*, 342 U.S. 98

the Supreme Court has sanctioned the right of contracting parties by their contracts to oust the jurisdiction of the courts to determine questions of law arising under contracts. It would not have been surprising if, after publication of the Moorman decision, an uproar of disapproval had arisen sufficient to attract the attention of Congress. Strangely enough any such uproar did not become vocal until after the Court, in the Wunderlich* case reaffirmed a long-standing principle that administrative decisions upon questions of fact are final and conclusive upon the parties.

For years, the Comptroller General and the Courts have refused to review administrative decisions upon questions of fact. The only exceptions to that rule have occurred when the Courts, under proper allegations, have found that the administrative decision was unsupported by any substantial evidence, or was so arbitrary or capricious as to amount to bad faith or fraud. Under such conditions the courts have reviewed administrative decisions upon questions of fact.

The thought has been sometimes expressed, when reversals of administrative decisions upon questions of fact have been made, that the Courts simply didn't like the decision rendered by the administrative agency, and that they were motivated by their desire to substitute their opinion for that of the administrative agency. In order to do that, however, they had to find that the administrative agency's decision came within that exception of being unsupported by any substantial evidence or was arbitrary or capricious to the extent

that it amounted to bad faith or fraud. It is interesting to observe the extent to which Courts have stretched their findings, even to infer fraud in the administrative agency's decision.

But, in the Wunderlich decision the Supreme Court has told the lower Courts that it isn't enough that the Courts believe that the administrative agency's decision on questions of fact was shockingly wrong. It has told them that, basically, fraud is the only reason for reviewing a decision of fact by an administrative agency, and that fraud is something that may not be inferred - it must be alleged and proved.

It was this declaration of the principle of finality of administrative decisions that aroused Congress into a belief that the functions of the Courts were being encroached upon. And, as so often happens, extremes of thought found expression in illy-thought-out legislative bills which, if adopted, would completely destroy a method of settling of disputes built up over the years which, if not abused, relieves the Courts of excessive cases, and provides contractors and Government procurement agencies with expeditious disposition of their disputes.

Surely, no member of the Armed Services Board of Contract Appeals, and probably no member of any other Government appeal board, has any desire to oust the jurisdiction of the Courts. As a matter of fact, the members of the Board will feel much more comfortable in their work if they have the assurance that their decisions, especially upon questions of law, are subject to review by the Courts.

NON—RESIDENT SCHOOLS DIVISION OF
THE ARMY JUDGE ADVOCATE GENERAL'S SCHOOL

By: *Lt. Col. Gilbert G. Ackroyd, J. A. G. C.O*

When the Army Judge Advocate General's School moved to its present location on the grounds of the University of Virginia in August of 1951, it was decided that the School would be responsible for the preparation of Reserve training literature and the administration of extension courses, so that the benefit of the research and instructional planning of the School would be made available to the Reserve components of The Judge Advocate General's Corps. To accomplish this mission effectively, there was created as part of the organizational structure of the School a Non-Resident Schools Division. The purpose of this article is to acquaint Reserve members of The Judge Advocate General's Corps with the functions and operations of this Division.

The Non-Resident Schools Division consists of the Office of the Chief of the Division and two branches - the Text Preparation Branch and the Extension and ORC School Operating Branch. The Text Preparation Branch was formerly the Text Preparation Branch (for extension courses) of the Special Projects Division of the Office of The Judge Advocate General in Washington. The Extension and ORC School Operating Branch was formerly the Extension School Section of the Administrative Division of the Office of The Judge Advocate General.

The Chief of the Non-Resident Schools Division exercises general supervision over the work of the two branches of the Division. He is responsible for constant examination

of the training needs of Reserve judge advocates, for making studies of training programs presently in effect, and for formulating new programs. He also is responsible for field liaison between The Judge Advocate General's School and the ORC schools and has recently made visits to a number of these schools. These field visits are of great assistance to the Division in carrying out its work, for they bring to light many problems which do not appear in official correspondence. There are presently 37 ORC schools throughout the country having JAGC departments.

The Text Preparation Branch of the Division prepares the instructional material for both extension courses and ORC schools. It has already completely revised the 30 and 40 series military justice extension courses and has written one new military justice extension course. This new course, 40-5, deals with the punitive articles under the Uniform Code of Military Justice. The Branch has written a new common subcourse on the Geneva Convention of 1949 and has just completed Subcourse, 50-13, a new course on international law other than the law of war. This last course is now in the hands of the printer and will shortly be available to the field. The Text Preparation Branch is now busily engaged in revising the

*Chief, Non-resident Schools Division.
The Judge Advocate General's School.

whole ORC School training program. The new program will closely approximate the instruction given in the resident school, both with respect to number of hours and instructional content. This new program will go into effect next January and will provide instruction for the summer training period as well as for the winter conferences.

The Extension and ORC School Operating Branch processes applications for enrollment in subcourses, grades extension school lessons, handles correspondence pertaining to Extension School and ORC matters, and maintains a large stock of instructional material. It maintains all records pertaining to Extension and ORC School activities and is responsible for procuring the printing and distribution of Reserve training literature. In grading extension course lessons, the policy of this Branch is to grade all lessons the day they are received and to mail the graded lessons to the student the next day, so that the student will not be delayed in completing his course and earning his points. Also, particularly with respect to essay type questions, the student is given guidance in his work by means of pertinent suggestions and comments; he is not given a "goose egg" merely because he does not agree with the approved solution. At the present time there are 521 students enrolled in extension courses administered by this Branch, and it is expected that the enrollment will increase sharply in the near future. An average of about 160 extension course lessons are graded each week. The Extension and ORC School Operating Branch also prepares and

edits the ORC Training Bulletin, a publication which keeps Reserve judge advocates abreast of current events in the military legal field and digests pending legislation relating to Reserve affairs.

Recently, the non-Resident Schools Division has completely revised the extension course program of The Judge Advocate General's School. A perusal of the new prospectus (a copy of which can be obtained by writing to the School) will show that many of the non-legal military subjects have been deleted from the program, their places having been taken by subjects which are of more interest to lawyer students. The new extension course program contains five courses based on the 1951 Manual for Courts-Martial, all of which courses are now available. Courses on the duties of the trial and defense counsel, the law officer, and the convening authority will complete the military justice part of the new program. These courses will be based on pamphlets which are now being written by the Research and Planning Division of The Judge Advocate General's School. Courses on the Office of The Judge Advocate General, on Criminal Investigation, and on the Investigation of Claims shortly will be available. As has previously been mentioned, courses on the Geneva Conventions of 1949 and on international law have already been prepared. The School considers that extension courses provide an excellent method of instruction for Reserve judge advocates. Indeed, courses are available through correspondence work which are not obtainable through

resident instruction. These courses are prepared in such manner that they can be taken in conjunction with ORC School work without duplication of effort on the part of the student, the method of instruction being completely different from that used in the ORC School.

Since its organization in August of 1951, the Non-Resident Schools Division has received many helpful

comments and suggestions from Reserve judge advocates. These comments and suggestions have proved to be of great value, and it is hoped that Reserve judge advocates will continue to take an active interest in the work of the Division. It is in a sense their Division and will function best when the Reserve members of The Judge Advocate General's Corps make the fullest use of the services it offers.

The Journal is your magazine. If you have any suggestions for its improvement or for future articles, please bring them to the attention of the Editor. We invite members of the Association to make contributions of articles for publication in the Journal. Publishability of any article submitted will be determined by the Editor with the advice of a committee of the Board of Directors composed of Lt. Col. Reginald Field, Col. William J. Hughes, Jr., Col. Charles L. Decker, USA, Capt. George Bains, USN, and Brig. General Herbert M. Kidner, USAF.

The annual banquet of the Association will be held on Tuesday, September 16, 1952, at the University Club, San Francisco, California. The dress for the banquet will be informal. The annual business meeting of the Association will be held at 4:00 p. m., Wednesday, September 17, 1952, also at the University Club. Advance reservations may be placed now by application to Col. Henry C. Clausen, 315 Montgomery Street, San Francisco 4, California.

Your professional successes, important cases, new appointments, political successes, office removals, and new partnerships are all matters of interest to the other members of the Association who want to know "What The Memebrs Are Doing." Use the Journal to make your announcements and disseminate news concerning yourself. Send to the Editor any such information that you wish to have published.



REAR ADMIRAL IRA H. NUNN

ADMIRAL NUNN APPOINTED TJAG FOR THE NAVY

Rear Admiral Ira H. Nunn, U.S.N. was appointed The Judge Advocate General of the Navy on June 18, 1952 for a term of four years.

The new Judge Advocate General of the Navy, was born in Camden, Arkansas, in 1901. He graduated from the U. S. Naval Academy in 1924 and served at sea in battleships and destroyers until 1931. In June 1934, he was graduated from the Harvard Law School with the degree of Bachelor of Laws, whereupon he served on the Asiatic Station in the Yangtze Patrol and in the Flagship of the Commander in Chief, Asiatic Fleet, as legal officer of that Fleet. From 1937 to 1939, Rear Admiral Nunn was stationed in the office of the Judge Advocate General of the Navy in Washington as Legislative Counsel.

At the commencement of World War II, he was serving as Flag Secretary and Legal Officer to Commander Cruiser's Scouting Force whose flag, at that time, was in the U.S.S. Yorktown. Subsequent to that assignment he commanded Destroyer Division TWO and later Destroyer Squadron FORTY-SEVEN in the Pacific during the remainder of the war.

Following World War II, Admiral Nunn served for three years in the

Office of the Judge Advocate General of the Navy in Washington again as Legislative Counsel. For this duty, he was commended by Mr. John L. Sullivan, Secretary of the Navy. He then commanded the light cruiser, U.S.S. MANCHESTER, from August 1948 to September 1949. He has, since leaving the MANCHESTER, served in Washington as Executive Assistant and Aide to the Chief of Naval Operations, having served both Admiral Forrest Sherman and Admiral William M. Fechteler in that capacity.

Admiral Nunn has been awarded the Navy Cross, the Bronze Star Medal with a gold star in lieu of a second Bronze Star Medal, the Navy Commendation Ribbon, the Pacific Area Campaign Medal with stars for twelve battles, the American Defense Medal, the American Area Campaign Medal, the World War II Victory Medal, the Philippine Liberation Medal with two stars, the Occupation Medal, and the China Service Medal.

Admiral Nunn is a member of the Bar of the Commonwealth of Massachusetts and a member of the Judge Advocates Association. He received his B. S. degree from the U. S. Naval Academy and an LL.B. from Harvard Law School.

Captain S. B. D. Wood, U.S.N., until recently Director of Military Justice of the Navy, was appointed Assistant Judge Advocate General of the Navy on June 18, 1952. He was born in Honolulu, Hawaii, in 1899 and makes that city his permanent home. Captain Wood was com-

missioned in the Navy Reserve in 1931 and has been on active duty since January of 1941. He is a member of the Bar of the Territory of Hawaii and is a member of the Board of Directors of the Judge Advocates Association.

ANNOUNCEMENT OF 1952 ANNUAL MEETING

The annual banquet of the Association will be held Tuesday, September 16, 1952, at the University Club, San Francisco, California. Col. Henry C. Clausen of San Francisco is the Chairman of the committee on arrangements. The principal speaker will be Dean Robert Storey of Dallas, Texas, the President-elect of the American Bar Association. Among the honored guests invited to attend the function are Secretary of Defense, Robert A. Lovett; Secretary of Army, Frank Pace, Jr.; Secretary of the Air Force, Thomas K. Finletter; Secretary of Navy, Dan A. Kimball; Chairman of the House Armed Forces Committee, Carl Vinson; Chairman of the Senate Armed Forces Committee, Richard B. Russell; The Judge Advocate General of the Navy, Rear Admiral Ira H. Nunn; The Judge Advocate General of the Army, Maj. Gen. E. M. Brannon; The Judge

Advocate General of the Air Force, Maj. Gen. Reginald C. Harmon; The Judge Advocate General of the Canadian Forces, Brigadier W. J. Lawson; the Judges of the United States Court of Military Appeals, Chief Judge Robert E. Quinn, Judge George W. Latimer, Judge Paul W. Brosman. Col. George Hafer of Harrisburg, Pennsylvania, past President of the Association, will be toastmaster.

An excellent menu has been arranged by the committee and the cost of the banquet will be \$7.50 a place. Reservations should be made as soon as practicable by application to Col. Henry C. Clausen, 315 Montgomery Street, San Francisco 4, California, or at the offices of Association in Washington.

The annual business meeting of the Association will be held at 4:00 P.M., Wednesday, September 17, 1952, also at the University Club.

A strong Association can serve you better. Pay your annual dues. If you are uncertain as to your dues status, write to the offices of the Association for a statement. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

Use the Directory of Members when you wish local counsel in other jurisdictions. The use of the Directory in this way helps the Association perform one of its functions to its membership and will help you. You can be sure of getting reputable and capable counsel when you use the Directory of Members.

Be sure to read the Nominating Committee's Report in this issue.

Recent Decisions of the U. S. Court of Military Appeals

INSTRUCTIONS TO COURTS MARTIAL BY LAW OFFICERS

Interpreting Article 51(c) of the Uniform Code of Military Justice which provides that the law officer of a general court, or the President of a special court, shall instruct the Court as to the elements of the offense, the presumption of innocence, reasonable doubt, and burden of proof, the Court of Military Appeals in *U.S. v. Rhoden* (#153, decided February 26, 1952, commented upon in JAJ #10, Page 27) stated "The Uniform Code of Military Justice has forced military courts to adopt, in part, the civilian practice of instructing on criminal cases, and this opens up an extremely important, but difficult, field of law". In that case, the Court held that a failure to instruct as to an essential element of an offense charged constituted reversible error. There the instructions covered the elements of lesser included offenses, but failed to include all the elements of the greater offense charged and the accused was found guilty of the offense charged. See also *U.S. v. McRory* (#433, decided March 24, 1952) to the same effect. That case also held that the accused does not waive his right to instructions by failing to object. Since the decision of the *Rhoden* case, approximately one-third of the written opinions of the Court have dealt with the question of adequacy of instructions given by law officers to Trial Courts.

In *U.S. v. Clark* (#190, decided February 29, 1952), the petitioner

was tried on a charge of voluntary manslaughter and found guilty of negligent homicide. The sentence of confinement for one year, total forfeitures, and bad conduct discharge was approved by the convening authority and affirmed by the Army Board of Review. Review was granted upon the question of whether or not the law officer's failure to instruct on the elements of the lesser included offenses was prejudicial error. The Court, Judge Quinn dissenting, held that it was. The law officer in his instructions to the Trial Court named the lesser included offenses in his charge, thereby establishing that in his opinion the evidence might permit a finding of guilty of an included offense and the Court's finding verified that conclusion; but the law officer in his charge failed to set any standards to guide them as to the elements of the lesser included offenses. The Court said, "Correct procedure under military law requires that, unless the evidence excludes any reasonable inference that a lesser crime was committed, the duty of the law officer is to carve out instructions covering the offense. He is the judge in the military system and he must furnish the Court the legal framework of all offenses which the evidence tends to establish. Unless he does so, the accused has been denied a right which we conclude was granted by Congress and error as a matter of law follows." The Court concluded that to allow the Court to speculate and to guess as to the boundaries of the lesser included offenses was

prejudicial. The dissent contended that the accused was not prejudiced by a failure to instruct on the considerably less serious offense of which he was found guilty in view of the weight of the evidence which would have supported a finding of guilty of the greater offense charged.

In *U.S. v. Williams* (#251, decided March 14, 1952), the accused was charged with assault with intent to commit murder upon an officer and upon a non-commissioned officer. Upon a plea of not guilty, he was found guilty and sentenced to be dishonorably discharged, total forfeitures, and 15 years at hard labor. The findings and sentence were approved by the convening authority and affirmed by an Army Board of Review. Review was granted on the issue of whether or not the failure of the law officer in his instructions, in which he mentioned the crime of assault with intent to commit murder, but failed to define for the Court the crime of murder, was error. The Court held that when the crime charged is an assault with a specific intent to commit an aggravated offense, the latter offense must be properly defined. After discussing the evidence and eliminating other possible lesser included offenses which may have required instruction, the Court concluded that from the evidence there should have been an instruction with respect to assault with a dangerous weapon, a lesser included offense, and that the failure in this regard was prejudicial for the Court not having been told that there was a crime less serious than the one charged which might be considered within the evidence, was not afforded the in-

clination to deliberate on the possibility of returning a verdict other than the one it did.

In *U.S. v. Berry* (#69, decided March 18, 1952), the accused was convicted of involuntary manslaughter and assault with a dangerous weapon and sentenced to a dishonorable discharge, total forfeitures, and 3 years confinement. The convening authority approved. The Board of Review approved the sentence but set aside the finding of guilty with respect to the assault. Review was granted upon the question of whether or not the record disclosed prejudicial error in the failure by the law member at the trial to perform the duties imposed on him under the Articles of War. The case presents a situation where the President of the Court usurped almost all of the prerogatives, duties, and obligations of the law member. The Court held in reversing the Board of Review that the repeated denial to the accused of the right of having the court-martial's counterpart of the judge rule on issues properly raised by his counsel and presenting substantial questions of law, disclosed an inherently and generally prejudicial disregard for an important segment of the procedures deemed necessary by Congress in the establishment of a scheme of military law administration more nearly in accord with the American system of criminal justice.

In *U.S. v. Roman* (#191, decided March 19, 1952), the accused was convicted of unpremeditated murder and sentenced to dishonorable discharge, total forfeitures, and 15 years confinement. The findings and sentence were approved by the convening

authority and affirmed by the Board of Review. The evidence established that the accused entered a building in an intoxicated condition, carrying an M-1 rifle, fired one shot into the ceiling, and later fired a second shot at a Korean standing near the doorway of the room. He was taken to the hospital unconscious and bleeding profusely and the next day he died. The law officer read from the Manual the elements of the offense of unpremeditated murder and the discussion of the word "malice". The Court said that it did not commend the reading of extended discussions from the Manual; but, with respect to the contentions of the petitioner that the evidence of intoxication required an instruction on manslaughter and that instruction should have been given, including instructions on the offenses of voluntary manslaughter, involuntary manslaughter, and negligent homicide, COMA proceeded to affirm the Board of Review, saying that because the alleged crime was unpremeditated murder, no instruction on intoxication was required. The law officer in his charge to the Court indicated that among the lesser offenses which may be included were voluntary and involuntary manslaughter, attempt to commit murder and certain forms of assault. He did not instruct as to the elements of those offenses. Upon the facts of the case, the Court determined that the law officer erred in naming those included offenses, but held that the error was beneficial, not prejudicial to the accused. The Court then proceeded to demonstrate that the facts did not bring the case within the necessity for in-

struction on voluntary manslaughter, involuntary manslaughter, or negligent homicide, and said, "In dealing with the necessity of giving instructions on included offenses -- the law officer makes the preliminary decision and if there is no testimony to reduce the offense below the degree charged, there is no obligation to give any instructions."

In *U.S. v. Hemp* (#290, decided April 8, 1952), the accused was tried under a charge for violation of AW 58, alleging that while en route from Westover Air Force Base to Newfoundland, he deserted the service of the United States and remained in desertion until apprehended. Upon a plea of not guilty, he was found guilty and sentenced to a dishonorable discharge, total forfeitures, and one year at hard labor. The sentence was approved by the convening authority and affirmed by the Board of Review. The law officer in charging the Court upon the elements of proof set forth with respect to the prerequisite of proof of intent three distinct types of intention to establish each of three distinct types of desertion so that the Court could conclude that the proof of either intent would be sufficient to establish the others. The Court in reversing the Board of Review held that the law officer by this instruction materially prejudiced the accused by putting the Court in a position where it could find him guilty of an offense involving an intent not alleged. The Court said, "The instruction should have been tailored to the specification and by broadening the issues beyond the pleadings, the law officer committed error which may have affected the findings."

In *U.S. v. Jones* (#79, decided April 14, 1952), upon a trial for AWOL the TJA introduced evidence of two previous convictions, one of which the law member erroneously ruled was inadmissible. Notwithstanding the fact that rulings upon interlocutory questions are solely for the law member, the President closed the Court and upon re-opening, announced that the Court disagreed with the law member and against the ruling of the law member, allowed to be introduced in evidence the two previous convictions. Upon a finding of guilty, the Court sentenced the accused to a dishonorable discharge and 25 years at hard labor. The SJA noticed the error in procedure and the convening authority upon the recommendation of the SJA reduced the sentence to 12 years. The Board of Review further considered the case and reduced the confinement to 10 years. COMA held that the failure of the Court to follow the ruling of the law member, even though erroneous, was error and then posed the question that if that error was prejudicial, could it be purged by the subsequent reductions in the period of confinement by the convening and reviewing authority. The Court held that the statutory authority of boards of review to reduce sentences determined to be erroneous or excessive gave statutory sanction to the reviewing authority's correction of prejudicial error and that in view of the substantial reduction of the sentence, any prejudicial error influencing the length of the sentence had been corrected by the subsequent action of the reviewing authorities.

In *U.S. v. Jones* (#426, decided April 4, 1952) in a case where the

accused entered a plea of guilty to negligently missing movement, COMA held that the failure of the President to instruct the court-martial concerning the necessity for knowledge of movement, actual or constructive, on the part of the accused, although error, was not prejudicial. The Court referred to the Lucas case, decided November 8, 1951, where the President wholly failed to instruct as to the elements of the offense in the case where a plea of guilty had been entered and the Court there held that this was error but in view of the plea was not prejudicial.

In *U.S. v. Downard* (#266, decided April 28, 1952), an officer was charged with conduct unbecoming an officer and a gentleman for having committed an assault upon his wife and using obscene language toward her in front of an officer's club. The offense occurred prior to May 31, 1951, the effective date of UCMJ, and the trial was held after that date. Article 133 covering the offense under UCMJ left the matter of punishment to the discretion of the court-martial, whereas AW 95 made dismissal mandatory. Defense counsel requested an instruction to the effect that if the accused be found guilty, sentence of dismissal was not mandatory. The law officer, over objection, refused this request and instructed the Court that dismissal was mandatory. COMA held that the accused should have been given the benefit of the possibly lesser sentence allowed by UCMJ and that the law officer should have instructed the Court that they might assess punishment at their discretion not in excess of dismissal. The instruction

was held to be prejudicial error.

In a case where the accused was charged with desertion with intent to avoid hazardous duty, the law officer in instructing the Court on the elements of the offense, read from the Manual, 1949, with respect to the intention necessary to constitute the crime, both intention to remain away permanently or to avoid hazardous duty. In this case, *U.S. v. Jenkins* (#238, decided April 21, 1952), COMA held that both types of desertion are on the same level of gravity and that where one particular intention has been alleged in a desertion case, that element of the crime is limited by the particular intention charged and the instructions must be narrowed to meet the allegation. In view of the facts of this case, however, which indicated only an intention to avoid hazardous duty and in no way related to an intention to be permanently absent, the Court held that the error of the instructions did not materially affect the substantial rights of the accused. The same question was raised in *U.S. v. Moynihan* (#278, decided April 21, 1952) and the Court decided the question upon the authority of the *Jenkins* case.

In *U.S. v. Plummer* (#235, decided May 7, 1952) the petitioner was charged with the rape of a Korean woman and an assault with a dangerous weapon upon her. Upon conviction, he was sentenced to a dishonorable discharge, total forfeitures, and life imprisonment. The Board of Review reduced the sentence to 25 years. The prosecution's case was based almost entirely upon the testimony of the victim. The law officer excluded testimony of an American

officer who interrogated the woman through an interpreter to the effect that no complaint of rape had been made. The question raised was whether a witness may testify to knowledge obtained by him from another through an interpreter. When this evidence was excluded by the law officer, the defense on the grounds of surprise asked for a one night's continuance to obtain the interpreter as a witness to the fact that the Korean woman had failed to complain of rape, which the law officer denied. COMA held that the refusal to grant the continuance was an abuse of discretion substantially prejudicing the accused, and, therefore, reversed the Board of Review with respect to the charge of rape. Judge Lattimer dissented, taking the view that the desired testimony was offered for impeachment only and there was sufficient evidence in the prosecutrix' testimony to justify the lower court's finding of guilty.

QUALIFICATION OF COURTS

MARTIAL PERSONNEL

The subject of the qualification of personnel of courts-martial has been considered in seven of the published opinions of COMA since the 1st of March. In *U.S. v. Hutchinson* (#425, decided April 9, 1952), the jurisdiction of a special court-martial was attacked on the basis that assistant defense counsel was a non-commissioned warrant gunner who did not actually participate in the trial. The contention was that the appointed assistant defense counsel was not an officer. The Court held that the statute does not give an accused an

absolute right to have an assistant defense counsel appointed nor to have such counsel if appointed to be an officer, and, therefore, found no violation of the Code and no jurisdictional defect. Jurisdiction of a special court was attacked also in *U.S. v. Goodson* upon the ground that the appointed trial counsel, a non-commissioned warrant officer, was not an officer within the meaning of UCMJ. Defense counsel was commissioned. The Court held that the Code provides that an officer be trial counsel, but that although there was error, it was neither jurisdictional nor prejudicial in this case.

Disparity in qualification of trial counsel and defense counsel was one of the principal questions raised in *U.S. v. Bartholomew* (#166, decided April 16, 1952). There the accused was charged with premeditated murder and assault with intent to commit rape under the Articles of War. He was convicted of voluntary manslaughter and the assault charge, and sentenced to the usual military punishments and 25 years confinement, which findings and sentence were affirmed. The TJA was a college graduate with a law school degree and extensive military legal experience although not a member of the Judge Advocate General's Corps nor of any bar. Defense counsel was a high school graduate with no professional education and little legal experience. COMA observed that the disparity in legal qualifications of counsel was inconsistent with the spirit although not the letter of the Articles of War, but after searching the record, found nothing to indicate that the accused was not fully, fairly,

and competently represented and upon the evidence, which it felt supported the offense charge, felt that the accused was in no position to complain, having been found guilty of a considerably lesser offense. COMA, therefore, affirmed the findings and sentence. A similar question was raised in *U.S. v. Phillips* (#161, decided April 16, 1952). In that case the accused pleaded guilty and took the stand to offer mitigating circumstances. COMA there found that the petitioner was not materially prejudiced by the disparity in qualifications of counsel.

In *U.S. v. Round* (#201, decided March 13, 1952), a special court upon a plea of guilty to wrongful appropriation of an automobile found the accused guilty and sentenced him to four months hard labor and a bad conduct discharge, execution of which was suspended. The Board of Review of the Navy disapproved on the basis that a member of the court-martial had previously acted as investigating officer. This member of the Court had not been challenged although the fact that he had investigated the case was made known. COMA held that the member of the court had actually acted as investigating officer within the meaning of the Manual and that substantial rights of the accused were materially prejudiced by failure to withdraw him forthwith. In another special court-martial case upon a trial for theft, a finding of guilty and sentence was set aside by a Navy Board of Review on the theory that trial counsel had previously acted as an investigating officer within the meaning of UCMJ. The record revealed that no formal in-

vestigation was made although the trial counsel did conduct an informal investigation and signed the charges as accuser. COMA held that the trial counsel did not act as investigating officer within the meaning of Article 32 or 27 (a) of UCMJ and was, therefore, not disqualified. It found that it was permissible for one at the same time to serve as accuser and as trial counsel.

U.S. v. Gordon (#258, decided March 19, 1952) deals with the question of the disqualification of a convening and reviewing authority. The accused was initially charged with violation of AW 93 and 96 upon specifications alleging burglarization of the house of General Edwards and attempt to burglarize the house of General Lee. General Lee convened the general court-martial which heard the case and was reviewing authority and did review the record. The charge with reference to General Lee's house was dropped on the recommendation of the SJA after investigation, upon the basis that the confession of the accused with reference to that offense was not corroborated. On a plea of not guilty to the remaining charge, the accused was given a dishonorable discharge, total forfeitures, and five years confinement. General Lee as reviewing authority reduced the sentence of confinement to two years and suspended execution of the dishonorable discharge and deferred the forfeiture until such time as the sentence was ordered into execution. The findings and modified sentence were sustained by a Board of Review of the Air Force. COMA reversed the Board of Review finding. Under the circumstances of the case, General

Lee was disqualified to act as convening and reviewing authority. At the time of convening the Court, General Lee was an accuser, and at the time he reviewed the case, the whole pretrial procedure was before him including the confession. Thus any reduction in the amount of the accused's sentence was solely and exclusively in control of the person who had been offended against. With all due deference to General Lee, COMA felt that the accused's rights for impartial review might be prejudiced.

TIME LIMIT ON REQUESTING REVIEW BY COMA

The requirement of Article 67 (c), UCMJ, that the accused request review within 30 days from the time he is notified of the decision of a Board of Review was considered by COMA in U.S. v. Ponds, (#491, decided May 9, 1952). In that case the accused was notified of the decision of the Board of Review on October 22, 1951. On that date the accused executed a waiver of his right to appeal, having made the decision to pursue administrative procedures toward the end that he might be restored to duty. Failing this pursuit, on January 7, 1952, forty-six days after the expiration of the appeal period, accused filed his petition for review. The record showed that the accused had the advice of counsel and there was no showing of impropriety in connection with the waiver which he had filed. The Court held that the waiver in itself would not be sufficient reason to deny the accused his right to petition for review, but held under the cir-

cumstances that his failure to petition the Court timely as provided by the statute barred him from any relief in that Court.

VALIDITY OF SENTENCES

The validity of court-martial sentences has been considered in three recent decisions of COMA. In *U.S. v. Trani* (#106, decided April 9, 1952), a garrison prisoner was charged, convicted and sentenced for a violation of AW 64 upon a specification alleging willful disobedience of a lawful order of a superior officer. The Army board of review affirmed the finding and sentence as modified. In that case the prison officer directed the accused to engage in close order drill during normal duty hours for prisoners for an indefinite period "until he shaped up and got a little better discipline and control of himself". The accused refused to perform close order drill when ordered. The Court in affirming the board of review said that it did not condone the punitive use of close order drill under a doubtful label of training and if it were imposed as punishment it would not hesitate to characterize its command basis as unlawful; but, since the prison officer is authorized to provide both training and punishment, and since close order drill is regarded as training activity, and was so regarded according to the testimony of prosecution witnesses and so characterized by the order and there was no affirmative showing of illegality of the order, the order must be presumed legal.

The Court held in *U.S. v. Gilgallon* (#286, decided March 21, 1952) that the failure of the trial court to ex-

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press forfeiture of pay in dollars and cents does not render that part of the sentence void and of no force and effect nor are substantial rights of the accused materially prejudiced by the failure. In *U.S. v. Phillips* (#380, decided May 1, 1952) a general court-martial sentence of bad conduct discharge, reduction, total forfeitures and confinement for one year was reduced by the convening authority to confinement and forfeiture for 10 months and suspension of bad conduct discharge for 6 months after the confinement. The Navy board of review held the action of the convening authority illegal and reduced the period of confinement to 6 months and the forfeiture of pay to \$60 per month for six months on the theory that the sentence was so limited since the sentence did not as approved include a punitive discharge. COMA held the suspending of the bad conduct discharge merely postponed its execution but did not remove from the sentence a punitive discharge and, therefore, confinement and forfeiture for more than six months was not prohibited.

EVIDENCE OF PRIOR CONVICTIONS

Seven cases reviewed by the Court of Military Appeals involved the problem of introduction of proof of prior convictions into evidence. Five of these cases were reversed by the Court of Military Appeals on the basis of the Carter case, reported in the previous issue of the Journal, because prior convictions were read to the Court but no documentary evidence of these convictions was introduced into evidence. These cases

were U.S. v. Trimiar (#413, decided March 19, 1952), U.S. v. Schabel (#440, decided March 28, 1952), U.S. v. Adams, Jr. (#452, decided April 3, 1952), U.S. v. Hand (#450, decided April 14, 1952), and U.S. v. Pruchniewski (#489, decided April 18, 1952).

Another case, U.S. v. Castillo (#449, decided May 2, 1952), involves the same general problem of introducing evidence of prior convictions. This case differs, however, in that the trial counsel offered in evidence documentary proof consisting of the service record of the accused. No objection was made by the defense counsel. The Board of Review reversed on the ground that the exhibits were not introduced by a sworn witness. The Court of Military Appeals reversed this ruling saying that proof of authenticity of a document by a sworn witness can be waived by a failure of the defense to object to its admissibility. Such was the case here and the evidence of prior convictions was properly before the Court.

In the seventh case in this group, U.S. v. Yerger (#122, decided April 7, 1952), the accused was charged with certain offenses committed while he was in a restricted status as a result of prior convictions by court-martial. A prosecution witness, while testifying concerning the charged offenses, also testified concerning the prior convictions over strenuous objections of the defense. The prosecution attempted to justify this testimony on the ground that it showed the restricted status of the accused. However, such status could have been

proved without testifying to the prior convictions, and such testimony was substantially prejudicial to the accused. Also involved in this case were repeated use of leading questions on direct examination by the prosecution, and frequent reception of hearsay evidence often over objection of defense counsel. The Court said that isolated and minor errors of this type ordinarily are not prejudicial, but repeated violation of fundamental rules of evidence cannot be condoned.

CONFESSIONS

Two cases reviewed by the Court of Military Appeals involved the problem of confessions by the accused. In U.S. v. Evans (#143, decided March 10, 1952), the issue was whether there was sufficient evidence outside the confession to establish the corpus delicti of the offense charged. The offense was larceny of cigarettes from a warehouse and the independent evidence was circumstantial showing the actions of the accused. There was no evidence that the cigarettes were missing. The Court said that the corpus delicti may, and often must be proven by circumstantial evidence and the logical and reasonable inferences which may be drawn therefrom. The Court will be satisfied if, for any crime, there is substantial evidence which makes it probable that the accused did not confess to an offense which never occurred.

In U.S. v. Creamer (#179, decided April 3, 1952), the accused was convicted of desertion on the basis of a confession and morning report entries.

The morning report entry showing him transferred from duty to AWOL on December 16 was deleted on the next day's report of December 17. One month later on January 17, he was transferred from AWOL to dropped from rolls. This latter date is the one stated in the specification when the desertion was alleged to have taken place. The defense counsel claims that the Jan. 17 report was erroneous because it was based on the December 16 entry which was deleted the next day. The Court of Military Appeals said, however, that there was no showing that reliance was in fact placed on the December 16 entry in making that of January 17. Also an earlier showing of AWOL status is not an indispensable prerequisite to a subsequent dropping from the rolls. Since the accused offered no affirmative proof of presence during this period, the morning reports are sufficient to establish

evidence of the corpus delicti to substantiate the confession.

SUFFICIENCY OF EVIDENCE

In the following eight cases the Court of Military Appeals merely reviewed the record to determine whether there was sufficient evidence to sustain the different verdicts. These cases, while they are important, are not deemed to be of sufficient general interest to be reported fully in this article. Therefore, they are merely listed by name and number. U.S. v. Jacobs (#152, decided March 13, 1952), U.S. v. Peterson, (#199, decided April 17, 1952), U.S. v. Ferretti (#213, decided April 18, 1952), U.S. v. Riggleman (#195, decided April 23, 1952), U.S. v. Wooten (#369, decided May 2, 1952), U.S. v. Grueschow (#294, decided May 2, 1952), U.S. v. Jarvis (#94, decided May 6, 1952), U.S. v. Webb (#370, decided March 13, 1952).

The back pages of this issue contain a supplement to the Directory of Members, November 1950, and the supplement previously published in the March and July 1951, issues of the Journal.

Please advise the headquarters of the Association of any changes in your address so that the records of the Association may be kept in order and so that you will receive all distributions promptly.

It is proposed that a new Directory of Members be prepared and printed in November, 1952. Members in good standing for the year 1952 will be included in this Directory. It is important, therefore, that you pay 1952 dues so as to be included in this Directory, and that the Association have your correct current address so that you will be properly listed.

WHAT THE MEMBERS ARE DOING

ALABAMA

Judge Robert B. Harwood, Associate Judge of the Court of Appeals of Alabama, has been re-elected without opposition. Judge James E. Bowron of Birmingham and Judge Newton B. Powell of Decatur have been re-elected Circuit Judges without opposition. They all agree that this is the best way for judges to be elected.

Herbert W. Peterson recently became a member of the firm of Jackson, Rives, Pettus & Peterson with offices in the Massey Building, Birmingham.

Aubrey Dominick is a member of the recently organized law firm of Dominick, Rosenfeld & Nicol of Tuscaloosa.

ARIZONA

Lt. Col. Henry S. Stevens of Phoenix was recently elected Secretary of the State Bar of Arizona.

DISTRICT OF COLUMBIA

On June 23, 1952, 125 members of the Association and their guests met at the Officers Club, Naval Gun Factory, for a reception and cocktail party in honor of Adm. Ira H. Nunn, the recently appointed Judge Advocate General of the Navy. The reception was followed by a supper after which Col. Avery, Chairman of the group, introduced Adm. Nunn and Capt. S. B. D. Wood, the Assistant Judge Advocate General of the Navy. Admiral Nunn briefly addressed the assembly.

Capt. A. Yates Dowell, Jr., recently relieved from active duty in the Patents Division, Office of The Judge Advocate General, Department of the Army, announced his return to the private practice of law specializing in patent and trade-mark cases with offices in the Munsey Building.

Col. Frederick Bernays Wiener recently announced the removal of his law office to Stoneleigh Court, 1025 Connecticut Avenue, N. W., Washington.

Maj. Paul R. Miller, formerly of Washington, is presently on duty in Okinawa as a civilian legal adviser. He has acted as Provost Judge, legal adviser to the Chief Executive, Commanding Officer of the Officers Reserve of Okinawa, and has had a tour of active duty with the Staff Judge Advocate there. He has been admitted as an honorary member of the Okinawa Bar.

IDAHO

John Charles Herndon, prosecuting attorney at Salmon, has extended his investments in other fields by the recent purchase of the Pixton Hotel and Auto Courts. Salmon attracts many visitors to its rodeos each year and is an access point to an outstanding hunting and fishing area.

Latest word from Idaho is that Col. Abe McGregor Goff of Moscow, is unlikely to give up a lucrative law practice to enter this year's race for Congress. He represented Idaho's First District in 1947-48 and was a candidate for the U. S. Senate in 1950. He has stated that he is not

out of politics and expects eventually to return to Washington.

INDIANA

Lt. Col. Darrel L. Hodson of Kokomo recently completed a short tour of duty in the Defense Appellate Division of the Judge Advocate General's Office in Washington, D. C.

MASSACHUSETTS

The New England members of the Association had their annual meeting at the Engineers Club in Boston on May 16th. Gen. Boyd and Col. O'Connell arranged to have Chief Judge Robert E. Quinn of the United States Court of Military Appeals as the guest speaker. Col. Thomas L. Thistle, President of the group, presided.

MICHIGAN

Commander Frederick R. Bolton recently retired from his office of principal of Gabriel Richard School to devote his entire time to the practice of law in the firm of Shock, Bolton and Graham with offices in Detroit.

MISSISSIPPI

Douglas C. Stone, of Columbus, has been appointed to The Mississippi Employment Security Commission by Governor Hugh L. White for a 4-year term. Stone is a graduate of the University of Mississippi and is engaged in the private practice of law in Columbus, where he is a member of the Lowndes County, Mississippi, and American Bar Associations.

NEBRASKA

Maj. B. Frank Watson of Lincoln, recently completed a two week Field Economic Mobilization Course of the Industrial College of the Armed Forces as a civilian student.

NEW JERSEY

At the annual meeting of the New Jersey State Bar Association, Jerome L. Kessler was appointed Public Relations Chairman of the New Jersey State Bar Association, of which he is a former chairman of the Junior Section of the New Jersey State Bar Association and former State Chairman of the Junior Bar Conference of the American Bar Association.

NEW YORK

Captain Sidney A. Wolff of New York City was recently appointed Chairman of the Special Committee on Military Justice of the New York County Lawyers Association. Captain Wolff was also recently named as permanent arbitrator of grievances under the contract of the Textile Workers Union of America, CIO, and the Fall River Textile Manufacturers Association and New Bedford Cotton Manufacturers Association, covering some 25,000 employees. He is a member of the faculty of New York University School of Retailing, where he gives a course on Management and Labor Relations.

NORTH CAROLINA

E. Earle Rives, Judge, Municipal-County Court, Greensboro, has recently been appointed by Secretary of the Army, Frank Pace, Jr., as

one of his Civilian Aides. This appointment is for a two-year period. By Presidential appointment, Judge Rives is currently serving as a Member of the Board of Directors of Federal Prison Industries, Inc., representing the Secretary of Defense.

SOUTH CAROLINA

At the meeting of the South Carolina State Bar Association held in Columbia in May, Lt. Col. Charles A. Gross and the members of his Judge Advocate Staff at Fort Jackson were invited to all of the affairs of the convention and took an active part in the social and business meetings. In attendance along with Colonel Gross, were Major Henry E. White, Capt. Walker T. Burke, Capt. Ralph A. Franco, Lt. Frank C. Decker and Lt. Phillip C. Webb. Among the civilian Ex-JAGs attending were Robert T. Ashmore of Greenville, William D. Tinsley of Greenwood, James B. Murphy, Walter H. Sims, R. Hoke Robinson, Norbert A. Theo-

dore and James F. Dreher, all of Columbia.

TENNESSEE

William J. Bowe, Jr., of Nashville, full time professor at Vanderbilt Law School and author of Tax-Planning for Estates, 1952 Revision, is teaching the law of taxation at the School of Law at the University of Mississippi this summer.

TEXAS

Leon Jaworski of Houston during the annual convention of the State Bar of Texas arranged for a breakfast meeting of Texas judge advocates on July 5th, at which Maj. Gen. E. M. Brannon was the principal speaker.

VIRGINIA

Col. John A. Croghan, USAFR, of Alexandria was recently elected President of the Reserve Officers Association, Department of Virginia, at its annual meeting in Roanoke.

The 1952 annual meeting of the Association will be held in San Francisco during the week of the A. B. A. convention. The annual dinner will be held on the 16th of September and the annual business the day following. Col. Henry Clausen is Chairman of the committee on arrangements. More details will be announced in future issues of the Journal.

SUPPLEMENT TO DIRECTORY OF MEMBERS OF NOVEMBER, 1950

Note: This is not a cumulative supplement, but is to be used with the supplement contained in Bulletin No. 7, March, 1951; Bulletin No. 8, July, 1951; Bulletin No. 9, November, 1951; and Bulletin No. 10, April, 1952, of the Judge Advocate Journal.

NEW MEMBERS AND OTHERS NOT LISTED IN DIRECTORY OF NOVEMBER, 1950

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August C. Draeb
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Col. Douglas C. France
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John C. Herberg
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Lt. James C. Hughes
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The Pentagon
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Lt. William M. King
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Charles P. Moriarty
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Adm. Ira H. Nunn
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Capt. Clifford M. Roth
Office of the SJA
Hq., Seattle Port of Embarkation
Seattle 4, Washington

Lt. Herman Saltzman
Hq. 108th Ftr. Bmbr. Wing
Goodman Air Force Base
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USAF Contracting Office
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Ft. George G. Meade, Maryland

Lt. Col. John P. King
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The Journal is your magazine, If you have any suggestions for its improvement or for future articles, please bring them to the attention of the Editor. We invite members of the Association to make contributions of articles for publication in the Journal. Publishability of any article submitted will be determined by the Editor with the advice of a committee of the Board of Directors composed of Lt. Col. Reginald Field, Col. William J. Hughes, Jr., Col. Charles L. Decker, USA, Capt. George Bains, USN, and Brig. General Herbert M. Kidner, USAF.

A strong Association can serve you better. Pay your annual dues. If you are uncertain as to your dues status, write to the offices of the Association for a statement. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

