

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

JUDGE ADVOCATES ASSOCIATION

Officers for 1956-1957

NICHOLAS E. ALLEN, Maryland.....	<i>President</i>
THOMAS H. KING, Maryland.....	<i>First Vice President</i>
FREDERICK BERNAYS WIENER, Maryland.....	<i>Second Vice President</i>
J. FIELDING JONES, Texas.....	<i>Secretary</i>
EDWARD F. GALLAGHER, D. C.....	<i>Treasurer</i>
JOSEPH F. O'CONNELL, JR., Massachusetts.....	<i>Delegate to A. B. A.</i>

Directors

Louis F. Alyea, Va.; Joseph A. Avery, Va.; Ralph G. Boyd, Mass.; John J. Brandlin, Calif.; E. M. Brannon, D. C.; Robert G. Burke, N. Y.; Eugene M. Caffey, N. Mex.; John E. Curry, D. C.; Osmer C. Fitts, Vt.; Abe McGregor Goff, Idaho; Reginald C. Harmon, D. C.; Edward F. Huber, N. Y.; William J. Hughes, Jr., D. C.; Stanley W. Jones, Va.; Albert M. Kuhfeld, D. C.; Michael L. Looney, D. C.; William C. Mott, D. C.; Allen W. Rigsby, Nebr.; Gordon Simpson, Tex.; S. B. D. Wood, Pa.; Clarence L. Yancey, La.; Edward H. Young, D. C.

Executive Secretary and Editor

RICHARD H. LOVE
Washington, D. C.

Bulletin No. 24

March, 1957

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.

TABLE OF CONTENTS

	PAGE
Presentation of Plaque in Memory of Judge Brosman.....	1
Comparison of Safeguards in Civilian and Military Tribunals.....	5
General Caffey Retires.....	21
Incentive Pay for Lawyers in the Armed Forces?.....	22
JAA Resolution to Support Legislation for Betterment of Military Career	23
Teamwork by the Provost Marshal and the Judge Advocate.....	25
General Harmon Receives D. S. M.....	33
Recent Decisions of C. M. A.....	35
General Hickman Named TJAG-Army.....	42
General Jones Named Army Assistant TJAG.....	43
Annual Meetings, 1957—New York and London.....	46
Supreme Court Reconsiders Military Jurisdiction Over Civilians.....	47
What the Members are Doing	48
Supplement to Directory of Members.....	53

Published by the Judge Advocates Association, an affiliated organization of the American Bar Association, composed of lawyers of all components of the Army, Navy, and Air Force.

Denrike Building, Washington 5, D. C. - STerling 3-5858

Proceedings in the United States Court of Military Appeals

ON THE OCCASION OF THE PRESENTATION OF A PLAQUE IN MEMORY OF JUDGE PAUL W. BROSMAN 25 FEBRUARY 1957

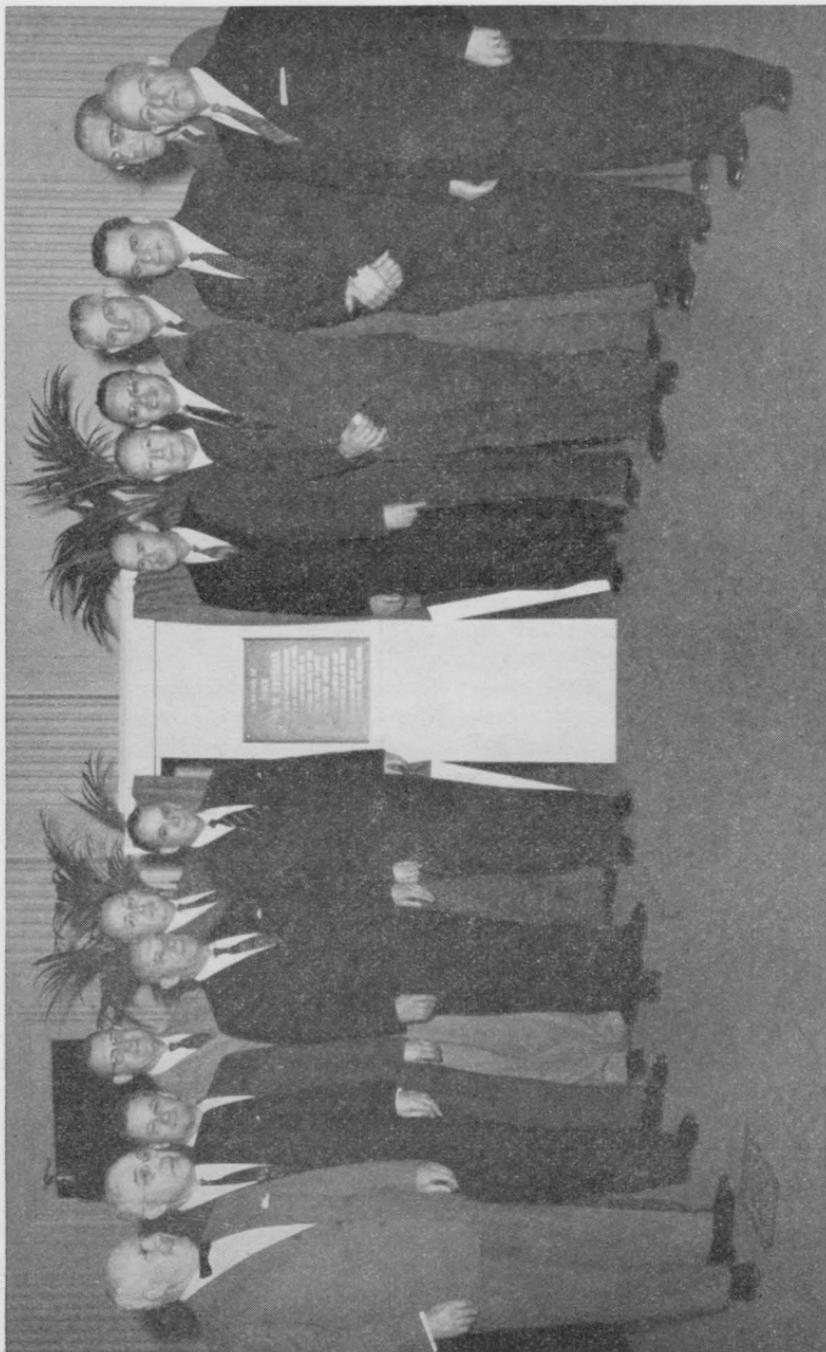
CHIEF JUDGE QUINN: The Court will recognize Colonel Nicholas E. Allen.

COL. ALLEN: Chief Judge Quinn, Judge Latimer, Judge Ferguson, judges of the Circuit Court of Appeals for the District of Columbia Circuit, judges of the United States District Court of the District of Columbia, other members of the judiciary, officials of the District of Columbia, the Government, ladies and gentlemen, the Judge Advocates Association is grateful to the United States Court of Military Appeals for the privilege which is accorded us today to present to the Court a bronze plaque in honor of our departed friend and associate Paul W. Brosman who was also one of the original members of this Court.

The presentation of the plaque is the culmination of a widespread desire on the part of our membership to do honor to Judge Brosman who was at once our dear and intimate friend and also one of our most distinguished members. One of the founders of our association, he also served as a director and officer, and he remained one of our most val-

ued counsellors and enthusiastic members. His passing has left a void in our ranks, but the inspiring influence of his presence among us remains indelibly impressed upon our minds and memories.

Our purpose in presenting this plaque in honor of Judge Brosman is to record for posterity the deep sentiments we hold for him, but it would be impossible also to engrave here the full record of his many great and brilliant accomplishments. Indeed, the achievements he attained, his contributions to the decisions and opinions of this Court during its formative years, the wisdom and ideals he imparted to students of the law while serving as teacher and dean of one of our country's great law schools, the high professional standing of Judge Advocate services to which he contributed so much in the turbulent years during and following the second World War, and last, but not least, the great host of devoted friends he left behind him and to all of whom by his contagious enthusiasm and high ideals he left something of himself—all of these are now a part of the main-



Officers of the Association at the unveiling of the plaque.

stream of our national life and history; they are surely immutable evidence of the immortality of his noble soul.

A student of law in Illinois, his native state, teacher of law at Mercer University in Georgia and at Yale Law School, and teacher and dean of the Law School at Tulane University, it can truly be said that he was dedicated to the law and to the sublime precepts of our democratic way of life. His skill in the law and his talents as an administrator, developed through these many years of service in the field of legal education, equipped him admirably to play an important role in the establishment of Judge Advocate services in the Army Air Corps and later in the Judge Advocate General's Department of the United States Air Force. His high ideals, his innate fairness, his genuine interest in his fellow man, and his fine judicial temperament, combined with his broad background and experience, qualified him exceptionally well for service on this Court. It was here that his talents flourished in their fullest measure, and that his career reached its greatest heights.

Patriot, teacher of the law, and Judge of our country's highest court of military justice—these are measures of his greatness. But it is as a friend and close associate that we who knew him well are apt to remember him best, for he was endowed to a greater degree than most men with those qualities that make for true and lasting friendship—his warmth, enthusiasm, honesty, humility, integrity, and sincerity.

It is fitting, therefore, that we, his fellow members of the Judge Advocates Association, should offer this bronze plaque to record in his honor and memory, our devotion, love and respect for Paul W. Brosman, and our gratitude for the privilege of having shared with him some of the experiences in his eventful and distinguished career.

I shall now ask the officers and directors of the Judge Advocates Association to stand with me while Mr. Richard Love, the Executive Secretary, and Colonel Thomas H. King, First Vice President of our Association and Chairman of the Committee on Arrangements for this occasion, come forward and unveil the plaque.

(Unveiling)

CHIEF JUDGE QUINN: Colonel Allen and members of the Judge Advocates Association, distinguished members of the Court of Appeals, and of the District Court for the District of Columbia, the Municipal and District Government, distinguished Generals and other friends of Judge Paul W. Brosman, the Court is very happy to welcome you here at this ceremony and to thank the Judge Advocates Association for its thoughtfulness in presenting this plaque to our Court.

Everyone in this room is aware that Judge Paul W. Brosman, one of the original members of our Court, was a keen, able, legal scholar. He was a devoted husband and father. He had a host of friends, was a fair and impartial Judge, and he generated affection among the thousands of men and

women that were privileged to call him friend.

And so we think that this afternoon, Colonel Allen and members of the Judge Advocates Association, that it is very fitting that this plaque should be presented to this Court to be here in perpetual memory of Judge Brosman where his record to a certain extent inscribed in eternal bronze will be given an appropriate spot in this Court.

Judge Latimer?

JUDGE LATIMER: Chief Judge Quinn, ladies, judges of the Court of Appeals and the District Court of the District of Columbia and members of the Judge Advocates Association. I hardly expected to be called on to make a response, but I am certainly pleased to do so.

I became acquainted with Paul Brosman when we were first appointed to this Court. We lived next door to each other, he was very close to me, and our families were intimate. In observing his work on the bench, I was impressed with the fact that he was an indefatigable worker, a stylistic writer, and a judge whose judgment was sound. He always performed his tasks in an outstanding manner, and he was a person who I believe will leave a profound mark in the halls of military justice, and in the very vital work of the Judge Advocates Association.

He left a void in my life. He was a very fine man, and he will always be remembered by his friends as such. I am sure he has left his friendly imprint on those closely associated with him, and it is my firm belief that your presence here indi-

cates your personal loss in his untimely death.

I am sure that you all join with me in thanking the Judge Advocates Association for presenting this plaque because, in addition to the words that he has written which are found in our reports, it is very nice to have this memorial in the halls of this Court.

CHIEF JUDGE QUINN: Judge Ferguson?

JUDGE FERGUSON: Chief Judge Quinn, Judge Latimer, and friends of the former Judge Brosman. I didn't have the privilege of knowing the Judge while he occupied the position on this bench, but as his successor I have had the opportunity to hear from his many friends the tributes they have paid to him as a Judge on this Court, and I have had the opportunity and privilege of reading his decisions as precedents to the decisions that we are rendering daily here in this Court.

I have the highest regard for his legal opinions and his work on the Court and I think it is very fitting for his friends, those who were associated with him, to put this plaque here as a memento of their respect to perpetuate his memory. I am sure that for those who are unfortunate enough not to have read those decisions as precedents this will be a reminder of the great work he has done.

CHIEF JUDGE QUINN: Thank you.

If there is no other business to come before the Court we will adjourn until tomorrow morning at ten o'clock.

A COMPARISON OF SAFEGUARDS IN CIVILIAN AND MILITARY TRIBUNALS*

By Lieutenant Colonel Waldemar A. Solf **

The last term of the Supreme Court opened with the opinion in *Toth v. Quarles*¹ written by Mr. Justice Black in which the provisions of Article 3a of the Code were declared unconstitutional in so far as it sought to make civilians who were former servicemen amenable to trial by court-martial for serious offenses committed while they were still in the service. This, in the judgment of the Supreme Court, was an encroachment on the jurisdiction of the Federal Courts. Mr. Justice Black said:

"Any expansion of court-martial jurisdiction necessarily encroaches on the jurisdiction of the federal courts set up under Article III of the Constitution where persons on trial are surrounded with more constitutional safeguards than in military tribunals."

The same term of the Supreme Court ended with *Kinsella v. Krueger*.² Here the majority of the court

sustained court-martial jurisdiction over civilians accompanying and serving with the armed forces outside the United States. Mr. Justice Clark, speaking for the court, characterized the Uniform Code in these words:

"In addition to the fundamentals of due process, it includes protections which this court has not required a state to provide and some procedures which would compare favorably with the most advanced criminal codes."

Our purpose here is to attempt an analysis of these two propositions and to determine whether, or to what extent, the serviceman enjoys the rights which our society has provided for its citizens. The problem has considerable impact on the nation as a whole when we reflect on the magnitude of Military Justice.

During the height of the mobilization of World War II, the armed forces handled 1/3 of the nation's

* Based on an address made at the School of Naval Justice, Newport, Rhode Island, in August 1956. The views contained herein are those of the writer and do not necessarily represent the opinion or doctrine of the Department of the Army or any other governmental agency.

** Director, Academic Department, The Judge Advocate General's School, U. S. Army.

¹ *Toth v. Quarles*, 350 U.S. 11 (1955).

² *Kinsella v. Krueger*, 351 U.S. 470 (1956); rehearing granted, 352 U.S. 901 (5 Nov. 1956).

crime potential and they tried 1/3 of all criminal cases involving United States nationals. The remaining 2/3 were divided among the several states and the Federal Government.³

Having on our hands 1/3 of the nation's criminal potential created vast problems of command. But what servicemen, their parents and families, and their representatives in Congress want to know is whether there is any truth in the statement that "when a person enters the military service, he gives up many of his constitutional rights."

As military lawyers, we know that there is a fundamental difference between an armed force and a civilian society. This difference is reflected in the law governing them.

The purpose of law in a civilian society is to insure that people live together in peace and reasonable happiness consistent with the safety of all. The object of an armed force is to fight and win wars. The object of its law is to insure that it operates as a team under the command of its leader. Thus the law of the armed forces must further discipline in a positive sense, whereas basically the criminal law of a civilian society is intended to prevent the members of the society from injuring each other. Discipline means that certain rights are given up when a person becomes a soldier, sailor, or airman. Some acts which

are not offenses in a civilian society become serious offenses in military law. Take the business of telling off the boss. It is an inalienable right of any American civilian—subject of course to becoming unemployed. In military law, this becomes an offense with much more painful consequences. A civilian has the right to quit his job. In the armed forces such conduct is desertion. A civilian who does not like his pay or working conditions may join with others and go on strike. In the armed forces this kind of action is mutiny.

Such rights involving individual freedom of choice are given up by a person when he takes the oath of enlistment. But when he falls into the toils of the court-martial system, does he lose any of his rights to due process or any of the traditional Anglo-American procedural safeguards?

At the outset, let me say that there is no need to dwell long on the argument which has enriched military legal literature as to whether the safeguards guaranteed by the Bill of Rights, *as such*, are applicable to courts-martial. Certainly the older Supreme Court cases: *Dynes v. Hoover*,⁴ *Ex parte Milligan*,⁵ and *Carter v. McClaghry*⁶ were unequivocal in stating that the power conferred on Congress to make rules for the Government and

³ Karlen and Pepper, *The Scope of Military Justice*, 43 *The Journal of Criminal Law, Criminology, and Police Science* 285 (1952).

⁴ *Dynes v. Hoover*, 20 How (61 U.S.) 65 (1858).

⁵ *Ex parte Milligan*, 4 Wall (71 U.S.) 2 (1867).

⁶ *Carter v. McClaghry*, 183 U.S. 365 (1902).

regulations of the land and Naval forces was not limited by the Fifth and Sixth, or any other, Amendment. The more modern view expressed by all but one judge in *Burns v. Wilson*⁷ is that the constitutional guarantee of due process is meaningful and sufficiently adaptable to protect servicemen as well as civilians.

This question, generally speaking, is moot or at least academic for as the Supreme Court pointed out in *Burns v. Wilson* and in its most recent case, *Kinsella v. Krueger*, Congress has not been remiss in exercising its power to establish a military legal system, to provide not only for the fundamentals of due process, but to include protections which the Supreme Court has not required a state to provide, and some procedures which would compare favorably with most advanced criminal codes.

In other words, the issue as to whether most constitutional safeguards are applicable to courts-martial under the constitution itself cannot be reached by the courts because Congress, in the Uniform Code, has provided at least an equivalent which must be considered before any Constitutional issue can be considered.⁸

Let us analyze this proposition so far as time permits:

Searches & Seizures

The Fourth Amendment provides that the people shall be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.

Congress has not legislated directly in this respect, but in Article 36 it has laid down the general policy that the President's regulations governing courts-martial shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the U. S. District courts provided, of course, that these regulations are not contrary to, or inconsistent with, the Code.

In Federal courts, the provisions of the Fourth Amendment relative to unlawful searches are enforced by the simple expedient of excluding any evidence which is obtained as a result of an illegal search.

The same general procedure is prescribed by the President in Par. 152 of the Manual. Although a warrant is not a prerequisite to a lawful search, the President has prescribed procedures looking to reasonableness of searches. Under most circumstances, the order of a commanding officer for a search is a prerequisite to a legal search. The exclusion of evidence obtained as a result of an unlawful search, pro-

⁷ *Burns v. Wilson*, 346 U.S. 137 and 844 (1953).

⁸ For an excellent analysis of Service Safeguards see Edwards and Decker, *The Service Man and the Law*, The Military Service Publishing Co., Chapter 5. For a comparison of Federal Civilian and Military Procedure, see Latimer, *A Comparative Analysis of Federal and Military Criminal Procedure*, 29 Temple Law Quarterly 1, (1955).

vided by the President, places the person subject to military law on the same footing as the civilian tried in a Federal court. He is much better protected than the civilian tried in many state courts for the Supreme court has held that state courts are not required by the 14th Amendment to exclude evidence obtained as a result of an illegal search.⁹

Right To Indictment

Let us turn our attention to the Fifth Amendment. First of all, the Fifth Amendment provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger."

The historical basis behind this safeguard was to protect individuals against harassment by the government and trial on mere suspicion of wrongdoing. It insures that the accusation leading to trial must be founded on reasonable cause by members of the community where the crime took place exercising the value judgment prevailing in the community within the framework of the penal law.

Of course we do not have a grand jury in military law, because the Fifth Amendment has specifically excluded military cases from this requirement. The framers of the Con-

stitution realized that convening grand juries consisting of 24 members of a military force to investigate serious offenses would unduly interfere with military operations. Congress, however, has provided for, and required, an impartial pretrial investigation as a prerequisite to trial of any offense tried by general court-martial. The incidents of the military pretrial investigation accord the military accused considerably more safeguards and privileges than his civilian counterpart enjoys.

As a general rule, the scope of a grand jury's inquiry is limited to the inquiry whether there is prima facie evidence that a crime has been committed and whether the defendant is the person who has committed the crime. On the other hand, the investigating officer is charged with conducting an inquiry not only "as to the truth of the matters set forth in the charges," but also as "to the disposition which should be made of the case in the interest of justice and discipline."¹⁰ To this end, the investigating officer, in connection with his recommendations, considers both defense and prosecution evidence, the accused's age and character of service, and the factors in mitigation or extenuation associated with the case. His report includes recommendations as to whether the accused should be tried at all, and, if so, what class of court should try him.

The proceedings of a grand jury are conducted in secret session and

⁹ *Wolf v. Colorado*, 338 U.S. 25 (1949).

¹⁰ UCMJ, Art 32; 10 USC 832.

the defendant is seldom present. Indeed, sometimes his first knowledge of the proceedings is when he is arraigned on the indictment found by the grand jury. In contrast with this secrecy—the military accused is permitted to be present at the investigation and is given a full opportunity to cross-examine witnesses against him and to present any matter he desires—either in defense or mitigation. Unlike his civilian counterpart, he has a right to be represented at the investigation by counsel. Such counsel may be a civilian attorney if provided by the accused at his own expense, or by military counsel of his own selection if reasonably available, or military counsel appointed by the officer exercising general court-martial jurisdiction. If military counsel is used by the accused such representation is without cost to him.

Under Federal procedure a grand jury investigation is required only in cases of felonies; that is an offense for which the law provides imprisonment for one year or more. Again, the military accused has a more substantial safeguard since a formal investigation is required in any case where the court-martial has jurisdiction to impose a sentence involving confinement in excess of six months.

Lastly, the military accused not only has the privilege of observing the whole proceedings, examining the evidence, and cross-examining the witnesses, but he also is furnished a copy of the statement of witnesses

and the evidence considered by the investigating officer.

Compare this with the secret proceedings of a grand jury. The only information the defendant gets concerning that proceeding is the bare, cold indictment.

In making this invidious comparison, it would be unfair of me to neglect to mention one area where civilian procedure appears to be approaching that of the military.

In *U. S. v. Grunstein*,¹¹ the U. S. District Court for the District of New Jersey took a small step toward equalizing the right of the civilian with those of the military accused by permitting discovery of the minutes of the grand jury. But this right of discovery was limited to the testimony of those witnesses only who would definitely testify at a trial of a *civil* suit arising out of the same transaction as that which gave rise to the grand jury proceedings. Please note that this right of discovery was expressly limited to civil actions. The criminal defendant is still in the dark as to what happened in the grand jury room.

Double Jeopardy

The Fifth Amendment provides that no person shall twice be put in jeopardy for the same offense. Article 44 gives persons subject to the Code the same right, but with additional safeguards. Take for example the sad case of one Green. He was indicted in the District of Columbia of first degree murder but he was convicted of second degree murder

¹¹ *U.S. v. Ben Grunstein & Co.*, 137 Fed Sup 197 (1955).

only. He appealed and was fortunate enough to obtain a reversal. But upon a new trial he was less fortunate. He was found guilty of first degree murder and was sentenced to be hanged. In effect, the Court of Appeals of the District of Columbia said that he had asked for it.¹² On his way to the gallows, Green can reflect on the glories of the system of justice which will not permit him to serve a term of years because of procedural errors, but which has no objections to his hanging as a result of a fair trial. Green is not the first person who received a more severe sentence on a second trial.¹³

One Frank Palko, who was tried by Connecticut was even less fortunate because he didn't ask for it. In his case, it was the state which appealed from a finding of second degree murder and a life sentence pursuant to a Connecticut statute which authorizes the state to appeal in criminal cases. The state appealed on the ground that the trial court erroneously excluded a confession and limited the state with respect to certain impeaching testimony. On the new trial Palko was found guilty of first degree murder and sentenced to death. The United States Supreme Court found that there was no deprivation of due process even though the statute might enable Connecticut to appeal from an acquittal.¹⁴

The military accused risks no such hazards. Under Article 63 he cannot be tried again for any offense or part of any offense of which he was found not guilty, and no sentence more severe than that imposed at the first trial may be adjudged on a rehearing. In neither a military court nor in a Federal court can the Government appeal from the findings and sentence of a trial court.

The military accused enjoys one other right which his civilian counterpart does not. A sentence to confinement adjudged by a court-martial begins to run on the date adjudged—and on a rehearing he receives credit for those portions of the sentence previously served under the original sentence.¹⁵ Not so in the case of the defendant in the Federal court. He receives no credit on the service of the sentence until the gates of the penitentiary clank shut behind him as he enters to serve the particular sentence adjudged.

Certainly in the matter of the incidents flowing from the former jeopardy prohibition, the military accused is much better off than his civilian counterpart.

Self-Incrimination

The right against self-incrimination enshrined in the Fifth Amendment is equally protected by Article 31 of the Code, again with additional safeguards. If you watch

¹² *Green v. U.S.*, CA DC 236 F. 2d 708, 98 U.S. App. D.C. 413.

¹³ *Trono v. U.S.*, 199 U.S. 521 (1905).

¹⁴ *Palko v. Connecticut*, 302 U.S. 319 (1937).

¹⁵ UCMJ, Art 57; 10 USC Sect. 857; MCM 1951, par 89c.

"Your FBI" or "Dragnet" on your TV sets, you may have to wait a long time before you notice the hero advising a suspect of his right to remain silent concerning the offense of which he is suspected. There is no civilian requirement for such a warning, but—if a military investigator fails to warn a suspect, the resulting statement is just simply not admissible in a military court irrespective whether the suspect's statement is otherwise free from coercion or illegal inducement.

A striking illustration arose in the recent case of *Commonwealth v. Beaulieu*.¹⁶ In that case a marine was tried for murder by the Massachusetts authorities. The Commonwealth introduced a confession obtained from Beaulieu in part under the questioning of a Naval officer. Beaulieu contended that the investigators neglected to advise him of his rights. The Supreme Judicial court held that even if the statement had been obtained in violation of UCMJ, Article 31, it would still be admissible in Massachusetts courts because there is no requirement that an accused be aware of his rights under Massachusetts law. The court went further and said:

"Due process as used in the Fourteenth Amendment does not require that a defendant be exempted from compulsory self-incrimination in the courts of a State."

Adamson v. California,¹⁷ illustrates another facet of this safeguard. Here the Supreme Court held that comment by a California prosecutor relative to the defendant's silence at the trial does not violate due process. Of course, such comment is not permitted either by Federal prosecutor or the trial counsel of a court-martial.

Until January 1957, the Court of Military Appeals, in common with the Federal courts, had held that oral compulsion to provide urine samples for chemical analysis to be used as evidence, did not violate the right against self-incrimination.¹⁸ On 4 January 1957, this line of decision was expressly overruled by the Court of Military Appeals. In *U.S. v. Jordan*, the Court of Military Appeals held that the order of an officer to an airman to give a urine sample for the purpose of chemical analysis for narcotics content amounted to an illegal order. Judge Ferguson, in a concurring opinion, distinguished this departure from usual civilian practice by pointing out that the protection afforded by Article 31a, "No person subject to the Code may compel any person to incriminate himself * * *," is much broader than the language of the Fifth Amendment which merely provides that "No person * * * shall be compelled in any criminal case to be a witness against himself, * * *." In Judge Ferguson's opinion protection in

¹⁶ *Commonwealth v. Beaulieu* (Mass), 133 NE 226 (1956).

¹⁷ *Adamson v. California*, 332 U.S. 46 (1947).

¹⁸ *U.S. v. Williamson*, 15 CMR 320 (1954); *U.S. v. Barnaby*, 17 CMR 63 (1954).

military law is against the use of compulsion to gain from the accused any form of incriminating evidence, whereas the Fifth Amendment protects citizens against the use of compulsion to obtain self-incriminating communications only.¹⁹

Due Process

We now come to due process. The Fifth Amendment, of course, forbids the Federal Government to deprive any person of life, liberty, or property without due process of law. The 14th Amendment imposes the same limitation on the powers of the States.

We have seen that the due process clause has been held by the Supreme Court to apply to courts-martial, but the Supreme Court has also indicated that military due process is not necessarily the same thing as civilian due process. Thus, Mr. Justice Frankfurter, in a separate opinion in *Burns v. Wilson* said:

"Congress in the exercise of its war power * * * is * * * not freed from the requirements of due process of the Fifth Amendment. But there is no table of weights and measures for ascertaining what is due process."

In an earlier case, *Reaves v. Ainsworth*,²⁰ the Supreme Court said:

"To those in the military or naval service of the United States, the military law is due process."

In *U. S. v. Clay*,²¹ one of the earliest cases decided by the Court of Military Appeals, the court catalogued and enumerated some of the rights and safeguards which make up military due process:

- (1) To be informed of the charges against him.
- (2) To be confronted by witnesses testifying against him.
- (3) To cross-examine witnesses for the Government.
- (4) To challenge members of the court for cause or peremptorily.
- (5) To have a specified number of members compose general and special courts-martial.
- (6) To be represented by counsel.
- (7) Not to be compelled to incriminate himself.
- (8) To have involuntary confessions excluded from consideration.
- (9) To have the court instructed on the elements of offenses, the presumption of innocence, and the burden of proof.
- (10) To be found guilty of an offense only when a designated number of members concur in the finding.
- (11) To be sentenced only when a certain number of members vote in the affirmative.
- (12) To have an appellate review.

¹⁹ *U.S. v. Jordan*, 7 USCMA 452, 4 Jan. 1957.

²⁰ *Reaves v. Ainsworth*, 219 U.S. 296 (1911).

²¹ *U.S. v. Clay*, 1 CMR 75 (1951).

To this list may be added:

- (1) To have compulsory process to obtain defense witnesses.²²
- (2) To have a speedy and public trial.²³
- (3) To have every step in the processing of the case determined by officials who enjoy the freedom to exercise their discretion without fear of outside influence.²⁴

Time does not permit us to engage in a microscopic comparison of Federal, State, and Military Due Process—but a few areas may require scrutiny.

a. Protection against obtaining of evidence from the person of the accused by brutal means.—

In *Rochin v. California*,²⁵ the Supreme Court held that applying a stomach pump to a suspect in order to force him to regurgitate narcotics he had swallowed is police brutality and amounts to a deprivation of due process under the Fourteenth Amendment. Note that the majority was most careful not to bottom this on the right against self-incrimination. The Court of Military Appeals has followed suit in

U.S. v. Jones,²⁶ in which it held that obtaining urine samples for analysis by catheterization over accused's objection amounts to police brutality and is a deprivation of due process. Again we see that the civilian's rights against police brutality and those of the serviceman are identical.

b. Right of appeal.—

The Supreme Court has held that appeals are not essential to "due process" within the meaning of the Fourteenth Amendment. There is no provision of the Constitution which forbids a State to vest in one tribunal the final judgment in criminal cases. Appellate review in criminal cases is wholly within the discretion of the State to allow or not to allow.²⁷ Nevertheless, in both Federal and State courts, the right of appeal has been accorded by statute under certain circumstances, usually upon a specific assignment of error. With certain exceptions, unless the defendant takes affirmative action to perfect an appeal, and an appeal is thereafter granted, there is no review in a criminal case. Frequently, whether a civilian case is reviewed depends on whether the defendant

²² UCMJ, Art 46; 10 USC Sect. 846.

²³ *U.S. v. Brown*, 7 USCMA 251; 22 CMR 41 (1956).

²⁴ *U.S. v. Hawthorne*, 7 USCMA 293; 22 CMR 83 (1956).

²⁵ *Rochin v. California*, 342 U.S. 165 (1952).

²⁶ *U.S. v. Jones*, 18 CMR 161 (1955); see, however, *U.S. v. Jordan*, *supra*, wherein it appears that the distinction drawn by the Supreme Court between due process and the right against self incrimination is too subtle for the Chief Judge of the Court of Military Appeals.

²⁷ *McKane v. Durston*, 153 U.S. 684 (1894); *Reetz v. Michigan*, 188 U.S. 505 (1903).

has the funds with which to defray the costs and attorneys fees. I need not tell you that appeals are costly—and this factor operates as a built-in deterrent against frivolous appeals.

The military accused, however, receives more solicitous consideration. The Uniform Code of Military Justice provides for a minimum of two automatic reviews in every case tried by general court-martial or by a special court-martial involving a sentence to bad conduct discharge. The first of these reviews is by the Staff Judge Advocate to the convening authority and the second is in the Office of The Judge Advocate General.

If the sentence extends to bad conduct discharge or dishonorable discharge, or to confinement for one year or more, automatically the record must be reviewed by a Board of Review in the Office of The Judge Advocate General. At this proceeding, as at the pretrial and trial level, the accused may be represented free of charge by counsel appointed for him by The Judge Advocate General or he may retain civilian counsel at his own expense. If the Board of Review affirms, the accused—assisted by counsel furnished by the Government—may petition the Court of Military Appeals to review any assigned error of law. If that court grants a review, the accused may again be represented, without cost, by appellate counsel furnished by the Government. Again there are no court costs, attorneys fees, printing bills, or any other expense usually associated with civilian appellate procedures.

If the military accused is sentenced to death, or if he happens to be a general or a flag officer, he gets three reviews automatically—by the convening authority, by the Board of Review, and, lastly, by the Court of Military Appeals.

The right of appeals has incidents seldom found in civilian appellate procedure. The convening authority and the Boards of Review have the power to weigh the evidence, judge the credibility of witnesses, and determine controverted issues of law. Federal appellate courts have no such power—and only a few state appellate courts have such power, and then only in capital cases. This is a tremendous advantage to the accused because a court without this power cannot reverse a judgment simply because it does not believe the witnesses. If the record presents a prima facie case and there is no prejudicial error, the civilian courts are usually powerless to reverse. On the other hand, a military board of review, like the original triers of the facts, must be convinced of the accused's guilt beyond a reasonable doubt, although it will give consideration to the fact that the trial court heard and saw the witnesses.

I'm sure I need not compare in detail the right to counsel and the right to be informed of the charges against an accused. These are matters which you have studied in detail.

Public Trial

With respect to the right to a public trial, on 17 August 1956 the Court of Military Appeals held in

*U.S. v. Brown*²⁸ that, except for security reasons perhaps, it is a deprivation of due process to exclude the public from a trial by court-martial.

Right To Confrontation

The Sixth Amendment guarantees to a defendant in all criminal cases the right to be confronted by the witnesses against him, and of course the military accused has the same right. But now we are wandering into a narrow area where the issue of the applicability of the Sixth Amendment, as such, may be litigated. Some, very few perhaps, of the incidents of the right to confrontation as practiced in Federal criminal procedure are not compatible with the mobile nature of military organizations. I refer particularly to depositions. These are not permitted at the instance of the prosecution in Federal criminal cases. The Supreme Court has said of the right of confrontation in the Sixth Amendment:

"It was intended to prevent convictions of accused upon deposition or *ex parte* affidavits, and particularly to preserve the right of accused to test the recollection of witnesses in the exercise of the right to cross-examination."²⁹

This is reasonable in view of the static nature of most civilian crim-

inal courts and of the people who appear in them. On the other hand, because of the mobility of military units and frequent movement of individuals in the military service as well as the hazard of casualties in battle, the use of depositions is an essential adjunct of the administration of military justice.

Of course, the right to confrontation is not an absolute guarantee that every item of testimony presented against a defendant will come from the mouths of live witnesses who are subject to cross-examination and who face the accused in open court. The Sixth Amendment has been construed consistently to preserve only those rights commonly recognized at the time of the adoption of the constitution—but not to create new rights. Well recognized exceptions to the right to confrontation, in existence at that time were preserved.

Thus, both military accused and civilian defendants may have used against them dying declarations,³⁰ former testimony,³¹ official records and business entries.³² These exceptions to the right of confrontation are historical and are considered to carry with them an oath substitute based on experience that they are generally trustworthy.

Well, where do we stand on depositions? Were they authorized prior

²⁸ *U.S. v. Brown, Op Cit.*

²⁹ *Dowdell v. U.S.*, 221 U.S. 325 (1911).

³⁰ *Kirby v. U.S.*, 174 U.S. 47 (1909).

³¹ *Mattox v. U.S.*, 156 U.S. 237, 240 (1895).

³² *U.S. v. Leathers*, 135 F 2d 507 (1943); 28 USC 1732, 1733.

to the adoption of the Constitution in court-martial proceedings? The answer is "Yes"—but the Articles of War of 1775, 1776, and 1806 provided for the admissibility of depositions *only* when taken in the presence of the accused. It was not until 1874 when the presence of the accused was no longer required.

The Court of Military Appeals considered this matter in *U.S. v. Sutton*,³³ and upheld the present practice on the basis of military necessity. In an earlier case, *U.S. v. Deligero*,³⁴ a board of review wrestled more deeply with this problem. The present deposition practice was sustained on the basis that the British East India Act of 1775 authorized depositions to be taken outside the presence of the accused. Considering certain activities held in Philadelphia in 1776, it is doubtful whether a 1775 act of Parliament is a good precedent. This, then, is one of the areas where the issue of whether the Sixth Amendment, as such, is applicable may some day be litigated.

If there is a moral to this story, it is this: If the accused can be

present without manifest inconvenience, don't keep him away.

Trial By An Impartial Jury

The specific exception of the Fifth Amendment relative to the requirements for grand jury indictment has been considered to apply, by implication, to the petit jury requirements of the Sixth Amendment.³⁵ Nevertheless, Congress has prescribed that the composition of special and general courts-martial include many of the incidents of the Anglo-American jury system. The impartiality and independence of court members is guaranteed by Article 37,³⁶ and rigorously enforced by the appellate agencies established under the Code.³⁷ The military accused, like his civilian counterpart, has a right to challenge for cause any number of court members, although his right to exercise peremptory challenges is limited to one such challenge.³⁸

The enlisted accused, moreover, has the right to have enlisted men participate as members of the court-martial which tries him.³⁹

The members of a court-martial, like the American jury, are the exclusive

³³ *U.S. v. Sutton*, 11 CMR 220 (1953).

³⁴ CM 329468 *Deligero*, 78 BR 43.

³⁵ *Ex parte Milligan*, (4 Wall (U.S.) 123, 138, 193 (1867)); *Ex parte Quirin*, 317 U.S. 1, 40, 45 (1942); *DeWar v. Hunter*, 170 F 2d 993, 997 (1948).

³⁶ UCMJ, Art 37; 10 USC Sect. 837.

³⁷ CM 363294 *Moses*, 11 CMR 281 (1952); *U.S. v. Allen*, 18 CMR 250 (1955); *U.S. v. Whitley*, 19 CMR 82 (1955).

³⁸ UCMJ, Art 41; 10 USC 831.

³⁹ UCMJ, Art 25; 10 USC 825.

finders of fact. The final determination of the weight of the evidence, the credibility of witnesses, and the resolution of controverted issues of fact rest solely with the court-martial. Like the jury, the court-martial undertakes its fact finding function under appropriate instructions as to the elements of the offense (including lesser included offenses), the presumption of innocence, and the burden upon the Government to establish guilt of the accused by competent evidence beyond a reasonable doubt.⁴⁰

It is clear that although the jury, as such, does not exist in military law the fundamental safeguards which are built into the jury system have been prescribed by Congress as ingredients of the court-martial system.

The Toth Case Considered

I would like now to advert to some of the areas in which military justice has been attacked recently:

In the *Toth* case,⁴¹ the Supreme Court declared Article 3a of the Code to be unconstitutional in that it deprived former servicemen charged with offenses committed prior to their separation from military service of their constitutional right to trial by Federal courts. In the course of its opinion, the Supreme court said:

“ * * * Conceding to military personnel that high degree of hon-

esty and sense of justice which nearly all of them undoubtedly have, it still remains true that military tribunals have not been and probably never can be constituted in such way that they can have the same kind of qualifications that the Constitution has deemed essential to fair trials of civilians in Federal courts. For instance, *the Constitution does not provide life tenure for those performing judicial functions in military trials. They are appointed by military commanders and may be removed at will. Nor does the Constitution protect their salaries as it does judicial salaries.* Strides have been made toward making courts-martial less subject to the will of the executive department which appoints, supervises, and ultimately controls them. But from the very nature of things, courts have more independence in passing on the life and liberty of people, than do military tribunals.

“Moreover, there is a great difference between trial by jury and trial by selected members of the military forces. It is true that military personnel because of their training and experience may be especially competent to try soldiers for infractions of military rules. Such training is no doubt particularly important where an offense charged against a soldier is purely military, such as disobedience of an order, leaving

⁴⁰ UCMJ, Art 51; 10 USC 851; *U.S. v. Clay*, 1 CMR 74 (1951); *U.S. v. Clark*, 2 CMR 107; *U.S. v. Hatchett*, 9 CMR 112 (1953).

⁴¹ *Toth v. Quarles*, Op Cit.

post, etc. But whether right or wrong, the premise underlying the constitutional method for determining guilt or innocence in federal courts is that laymen are better than specialists to perform this task. This idea is inherent in the institution of trial by jury.

"Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feeling, intuitions, and habits. Such juries may reach completely different conclusions than would be reached by specialists in any single field, including specialists in the military field. On many occasions, fully known to the founders of this country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices. The acquittal of William Penn is an illustrious example. Unfortunately, instances could also be cited where jurors have themselves betrayed the cause of justice by verdicts based on prejudice or pressures. In such circumstances, independent trial judges and independent appellate judges have a most important place under our constitutional plan since they have power to set aside convictions. * * *"

In other words, in Mr. Justice Black's view, Federal judges, Federal juries, and Federal appellate judges are superior to law officers,

courts-martial, Boards of Review, and the Court of Military Appeals because they are more independent.

It may be conceded that military personnel engaged in duties of law officer and members of boards of review do not have life tenure with respect to their judicial duties, but they do have that tenure to which their status as commissioned officers entitles them. As commissioned officers they take the same oath as do Federal judges to protect the Constitution. In their judicial capacity the law officers take an oath in each case to faithfully and impartially perform all duties incumbent upon him as law officer.⁴² It is hardly conceivable that Mr. Justice Black considers that the moral obligations represented by the oath of office of a commissioned officer, that of the military judge, or of the civilian members of the Court of Military Appeals is lightly considered by those who undertake that obligation.

Moreover, Congress has gone far to remove the suggestion of improper influence, and, from experience, I can assure you that military courts are extremely jealous of their independence. The safeguards against improper control of courts include and extend far beyond a flat prohibition against any censure or reprimand of the personnel of courts.⁴³ On the other hand, counsel who practice in Federal courts may have seen a Federal judge scold a jury for bringing in an unwarranted verdict.

⁴² MCM 1951, par 114.

⁴³ UCMJ, Art 37; 10 USC Sect. 837.

This cannot be done in a court-martial.

Be that as it may, relatively few civilians are tried in Federal courts. Most criminal law is enforced by the States, and a question raised by the *Toth* case might be, "How does the judiciary of the several states compare in independence with the military judiciary"?

In 1832, Mississippi abolished life tenure for its judges and provided for their election by popular vote for a relatively short term. In 1846, New York substituted popular election for appointment of all New York judges. Thereafter, this concept of Jacksonian Democracy has spread to most states.⁴⁴ Life tenure remains in Rhode Island, Massachusetts, and New Hampshire.⁴⁵ In some states, judges are selected for varying terms either by the Governor or the legislature. In Missouri and California, judges are initially appointed by the Governor, and later their reelection is submitted to the voters with no opponents on a separate judicial ballot, the sole question being whether their record justifies their retention in office.⁴⁶ In 36 states, however, judges are elected by popular ballot and in 22 of these

they are the nominees of political parties and run for office under the label of those parties for relatively short terms.

The independence of the judiciary in these latter states is indeed subject to doubt. Psychologically, and in some instances actually, some state and municipal judges become beholden to the leaders of the political party which provided their places on the tickets.⁴⁷

Former Governor Alfred E. Smith once said:

"In the long run [the elective system] means the selection of judges by political leaders and the ratification of their selection by an electorate who are not really in a position to pass upon the legal and other abilities of the individual."⁴⁸

The disclosures of the Seabury Investigation of the magistrate court in New York City and those of the Senate Committee to investigate crime in interstate commerce indicate the extent to which some political leaders attempt to exercise political influence on some state and municipal judges.⁴⁹

⁴⁴ Election of military officers of militia units also became the vogue of that period. However, experience in the Civil War soon indicated the fallacy of this method of selecting military officers.

⁴⁵ Vanderbilt, Arthur T., *Minimum Standards of Judicial Administration*.

⁴⁶ Harris, *The Selection of Judges; The Virtues of the Pennsylvania Plan*, 41 American Bar Association Journal 142.

⁴⁷ *Ibid.*, p. 178.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 143.

Conclusion

From the foregoing comparison it may be concluded that the present court-martial system affords the accused safeguards which are certainly equivalent to those enjoyed in Federal courts and considerably superior to those afforded in many state and municipal courts. The periodic revisions of the military justice system have provided, in the words of Mr. Justice Clark, "procedures which would compare favorably with the most advanced criminal codes."⁵⁰

Among the reasons why military codes have been revised and improved, both with the view of increasing efficiency and safeguarding human rights, are the wholehearted dedication of the military lawyer and the cooperative assistance of influential members of the bar. Some of the nations foremost lawyers and legal scholars, including Dean Wigmore, Mr. Justice Frankfurter, and Professor Edmund Morgan, were in uniform during the two world wars. The study, ideas, and recommendations of such men—and that of civilian lawyers such as Chief Justice Arthur T. Vanderbilt of New Jersey—gave impetus and inspiration to the actions which led to the revision of the Articles of War in 1920 and 1948, and the enactment of the Uniform Code of Military Justice in 1950.

The military lawyer is grateful for the interest in military justice displayed by the leaders of the bar, many of whom have had first-hand

experience with military justice while in uniform. Perhaps, these same leaders of the bar are less familiar with the system of criminal justice in their own communities than they are in the system of criminal justice in the armed forces.

In a recent letter to the Commandant of The Judge Advocate General's School, a well known writer in the practice of criminal law and crime detection⁵¹ wrote:

"In civilian life, the administration of justice is something of a compromise. I have frequently contended that the influential members of the bar whose practice is largely devoted to the representation of corporate clients, handling business and probate law, etc., must devote more time and effort to a consideration of criminal law. Otherwise, the administration of justice in the criminal courts will be left to district attorneys on the one hand, who are inclined to become prosecution minded and in time look on our constitutional guarantees as a legal loophole, and to professional defense attorneys on the other, who are apt to be interested only in securing verdicts of acquittal.

"The armed forces are in a position to blaze the trail in the administration of criminal justice by avoiding the pitfalls of legal technicalities as such, yet insisting upon proper safeguards and the correct interpretation of evidence."

⁵⁰ *Kinsella v. Krueger*, Op Cit.

⁵¹ Erle Stanley Gardner.

The armed forces are aware of their opportunity to blaze the trail and have accepted the challenge. Much that has been developed by

the armed forces and its courts can be adapted to civilian practice with salutary results.⁵²

⁵² In *Courts of Injustice* (Twayne Publishers, N.Y.), 1956, p. 182, I. P. Callison quotes Dean Wigmore as declaring:

"I am not here to defend military justice. It is civilian justice that is on the defensive. It has been on the defensive for a generation past. It has done very little in that generation to take up that defensive. It is doing very little now. Criminal justice does not even know what it wants, much less does it resolutely go in and get anything.

"It maintains a substantive law which is a hodgepodge of inadequate and illogical definitions. It maintains a procedure which has not been revised for a century. It maintains a prosecuting personnel which is in large proportion crude and untrained and narrow-minded, and a defense personnel which is usually skilled only in evading the law. It maintains a judiciary personnel which seldom studies its larger problems and which seldom understands more than the elementary features of its duty. It maintains a police which in rural jurisdictions is often a match for Dogberry, the ancient Watchman, and in city jurisdictions is frequently undermined by politics and petty intrigue. And it organizes all this personnel in a shiftless manner which would break down the efficiency of the ordinary business house in thirty days."

General Caffey Retires

Major General Eugene M. Caffey * retired as The Judge Advocate General of the Army on 30 December 1956 after a distinguished military career that extended over a period of more than 38 years. General and Mrs. Caffey have taken up residence at Las Cruces, New Mexico, where the General will hang out his shingle as attorney at law.

Notable among the accomplishments of General Caffey's tenure as chief legal officer of the Army has been the development of The Judge Advocate General's School at Charlottesville, Virginia. The courses of

study at the school make it not only one of the finest service schools, but have earned for it as well the accreditation of the American Bar Association's Committee on Legal Education. The school is conducted in a new building designed and built for the purpose on the University of Virginia grounds adjacent to the Law School. General Caffey's keen interest in the school has been a prime mover in its development.

The Caffey's are assured of the good wishes of their many friends in the Judge Advocates Association.

* For a full and interesting account of General Caffey's military career, see the informal biography "The Army's New Judge Advocate General" by Frederick Bernays Wiener in 16 JAJ 1.

Incentive Pay For Lawyers in the Armed Forces?

In the present Congress, Senator Strom Thurmond of South Carolina and Honorable DeWitt Hyde, Congressman of the Sixth District of Maryland, have introduced companion bills designed to help the Services secure and retain the required number of fully qualified lawyers to provide necessary legal services in the military establishment. These bills are designated as S. 1165 and HR 4786.

The effect of the proposed legislation would be to place lawyers in the same category of treatment accorded other professions, such as, medical doctors, dentists and veterinarians presently serving in the Armed Forces. The bills provide that the lawyer-officer would have three years service credit for pay and promotion purposes to adjust for the three years delay in the start of his military career occasioned by the time necessary to complete law school education provided, of course, the legal education was obtained before entry into the military service. They would also provide for an accelerated promotion to the grade of Captain, or equivalent, after the first anniversary of the date of admission to the bar. The most far-reaching proposal is a provision for special or incentive pay for lawyer-officers. The pay provisions would provide that a judge advocate or legal specialist officer with less than two years service would receive incentive pay of \$100 per month; law-

yers with two to six years service would receive \$150 per month; between six and ten years service, \$200 per month, and for those lawyer-officers with more than ten years service, the incentive pay would be \$250 per month.

Some indication of the need for legislation to enable the Services to secure and retain in active duty, qualified lawyers, was set forth in the report of the Committee on the Status of the Lawyer in the Armed Forces published in the October issue of *The Judge Advocate Journal* (23 JAJ 17). There it was observed that although the implementation of the Uniform Code of Military Justice and other legal requirements had substantially increased the need for qualified lawyers in the Armed Services, the Services have been able to meet the need only by the use of young law school graduates commissioned in the reserve as lawyers on condition of an obligated tour of active duty. This source of young lawyers has been kept productive only because of the general vulnerability of lawyers to the Selective Service Law. The Committee pointed out the result has been that the strength of the uniformed law departments of the Services has been maintained by a fine group of young lawyers holding the rank of Lieutenant, or equivalent; but, none of these young officers continue a military career beyond the duration of their obligated

tours. With the older legal officers retiring and the younger lawyers leaving the military service after only two or three years of duty, the level of professional experience has declined in the face of expanding requirements.

Since the Judge Advocates Asso-

ciation will be represented at hearings on this legislation, it will be extremely helpful if members of the Association and others interested will write to the national headquarters expressing their views as a guide to the Association's Legislative Committee.



JOIN A.B.A.

The Judge Advocates Association became an affiliated organization of the American Bar Association in September 1948. To preserve this status, it has been necessary that at least 25% of Judge Advocates Association members have membership in the American Bar Association. Actually, more than 40% of J.A.A. members belong to the A.B.A. There is however a proposal being considered that would increase the prerequisite of common membership to 50% to maintain affiliated status. We have never inferred that J.A.A. members must belong to A.B.A. or that membership in A.B.A. should be a prerequisite of joining the J.A.A. We do feel, however, that the A.B.A. has much to sell itself to every lawyer and we, therefore, urge all military lawyers, and particularly those who belong to the J.A.A., to consider the advantages of joining

A.B.A. now.*

It was the opinion of the governing body of the Judge Advocates Association in 1947, and that opinion still obtains, that the Judge Advocates Association as a national legal society of military lawyers can best attain its purposes by its affiliation with the American Bar Association and by working from within that organization's framework.

You may make application for membership in the A.B.A. by addressing your communication to the American Bar Association, American Bar Center, 1155 East 60th Street, Chicago 37, Illinois. Annual dues are \$16, but for those who have been at the bar less than two years, \$4 and if admitted to the bar more than two and less than five years, \$8. If you will send your application through this office, we will be happy to endorse it as your sponsor.

* For an article setting forth the achievements, activities, services and objectives of the American Bar Association, see "The American Bar Association", 16 JAJ 22.

JAA Passes Resolution To Support Legislation For Betterment of Military Career

At the meeting of the Board of Directors of Judge Advocates Association on 23 February 1957, the following resolution was passed:

The Judge Advocates Association resolves that *unless* legislation is promptly enacted by the Congress which will provide a realistic, scientific pay schedule for all members of the armed services sufficient to provide the incentive to keep competent officers and technical enlisted men on a career basis, thus saving huge sums now lost by the rapid turnover of highly trained and experienced personnel in all branches of the armed services, *then* this Association considers it essential to provide adequate inducements for

members of the legal profession serving with the armed services to follow a military legal career commensurate with the special inducements now available to the other professions, notably physicians and dentists.

At the close of the mid-winter meeting of the House of Delegates of the American Bar Association held at Chicago, a similar resolution was offered and approved without a dissenting vote.

The Association's Legislative Committee, headed by Col. Thomas H. King, has been instructed to support this position in Congressional hearings when scheduled on S1165 and HR 4786.



Lt. Gittinger Receives JAA Award

First Lieutenant Leonard J. Gittinger, Jr., has received the Judge Advocates Association's Award for scholarly attainments in the study of military justice while a student in the 24th Special Class at The

Judge Advocate General's School. The award was made by Major General Stanley W. Jones at graduation ceremonies on 15 February 1957, held in the School at Charlottesville, Virginia.

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.

TEAMWORK BY THE PROVOST MARSHAL AND THE JUDGE ADVOCATE IN MAINTAINING DISCIPLINE, LAW, AND ORDER*

By Colonel Nathaniel B. Rieger **

General Holland, members of the staff and faculty, and students of The Provost Marshal General's School. It is a real pleasure for me to be here, to enjoy your hospitality, to visit your fine School, and to have the opportunity to address you as brothers-in-arms in the fields of our common interests. While the Infantry, Artillery, and Armor are inseparable on the field of battle, few special staff sections are by mission and operation so closely interdependent as the Military Police Corps and the Judge Advocate General's Corps. The Provost Marshal and the Staff Judge Advocate are the Damon and Pythias of the Special Staff. They must work closely and harmoniously together if the program of law enforcement and the administration of justice in the command is to succeed. Each has a specialized part to perform. In fact, if there are failures by either of us, we may both be blamed.

It follows that the more each knows of the functions and responsibilities of the other, the greater will be the operational efficiency of this staff team. That is the basic reason for my being here with you this morning. We are anticipating General Holland's visit to our Judge

Advocate General's School in Charlottesville. We hope to arrange for further exchange of guest instructors between our two schools.

I am aware that the Military Police Corps has many missions and responsibilities not immediately or directly connected with JAG functions, and in turn the JAG has a number of responsibilities not directly connected with the Military Police Corps.

An erroneous impression exists in the minds of many that The Judge Advocate General of the Army is almost exclusively concerned with Military Justice matters, that is, court-martial and their related problems. Actually, The Judge Advocate General is by statute the legal adviser to the Secretary of the Army and to all officials and agencies of the Army, wherever located. The duties of The Judge Advocate General encompass a great deal more than just Military Justice. In fact, these duties are so far-reaching that the largest law firm in the world is required to accomplish them. This firm, at the moment, consists of about 1200 Judge Advocate officers and 900 civilian attorneys. The members of this firm are scattered all over the world wherever there is a sizable command

* An address delivered 26 November 1956 at The Provost Marshal General's School, Fort Gordon, Georgia.

** Commandant, The Judge Advocate General's School, Charlottesville, Virginia.

of American troops or more than minor American military interests.

As might be expected, the largest concentration of lawyers, approximately 200, is in the Office of The Judge Advocate General in Washington. In addition, legal advisers are distributed through the headquarters of the Department of the Army in the offices of the Chiefs of the Technical Services and elsewhere. A mere listing of the major subdivisions of The Judge Advocate General's Office will give you an idea of the legal functions performed. These subdivisions are:

1. Procurement Law Division
2. Patents Division
3. Claims Division
4. Military Affairs Division
5. Litigation Division
6. International Law Division
7. Legal Assistance Division
8. Lands Division
9. Military Justice Division
10. Boards of Review
11. Defense Appellate Division
12. Government Appellate Division

The last four deal with Military Justice. I will not detail their scope of responsibility or operations. In passing, I might add that less than 50 per cent of the total man hours of Judge Advocate time is devoted to Military Justice matters.

While you may have legal problems and have occasion to work with the Judge Advocate in any of the fields of law which I have enumerated, I would like to make some personal observations in the areas where we are the most closely associated.

The first is claims for damages

for and against the United States. In 1946, the Congress passed the Federal Tort Claims Act. By that Act, the Congress waived its sovereign immunity—in other words, permitted itself to be sued for damages. Prior to the passage of the Federal Tort Claims Act, the only suits that could be filed against the United States were in the Court of Claims and limited suits under the Lucas Act. Jurisdiction was limited to suits sounding in contract, or contracts implied in law—the just compensation cases arising from a taking by the Government. The Federal Tort Claims Act gives Federal District Courts jurisdiction of civil actions on claims for damages for personal injury or death or loss or damage to property, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred, with certain exceptions.

While the claims arising under the Act involve every conceivable occurrence from malpractice of Army doctors to cases like Texas City, a case where a whole ship being loaded with ammonium nitrate blew up, actually most of the cases involve traffic accidents.

I am aware that Army Regulations require a Driver's Accident Report of traffic accidents, and Regulations (AR 15-6) provide for investigating officers to investigate such occurrences. But in many cases the

first knowledge of an accident comes from the MP. Frequently, the ultimate successful defense of such cases will depend upon the accuracy and thoroughness of the observations of an MP, his measurements of tire marks, identification of persons and vehicles, or his knowledge of vehicles, their velocity, and their characteristics. Frequently, the accident could have been avoided by the proper actions of an MP in the management of a convoy or proper traffic control. A whole host of legal problems arise when an emergency vehicle violates traffic controls and as a result is involved in a collision. Often in the guidance of the investigation of accidents by the JA, he sorely needs the skill and special training of the MP to assist in the investigation.

I remember reviewing a litigation report of a serious accident which occurred on US #1 near the main gate of Fort Belvoir where a guard was stationed. It happened at noon hour, yet only two witnesses were listed on the accident report, and their correct addresses were not given. These cases cost millions of dollars annually, and in all cases settled, the money comes from funds appropriated for the operation of the Army.

The Provost Marshal and the Judge Advocate are immediately and jointly concerned with the state of discipline in a command or units of a command. While the commander bears the responsibility, the Provost Marshall and the Judge Advocate are the staff officers who frequently have the earliest opportunity to recognize the symptoms of poor dis-

cipline. The flow of delinquency reports, complaints, charges, and records of trial, if analyzed intelligently and candidly, reveals the state of discipline of units and of the command as a whole, and frequently reveals the cause. If we recognize our responsibility in this respect and exercise our coordinated imagination, we can report to our commander not only where the trouble spots are but what their cause is—and of course we can, and should, recommend a cure.

Let us consider briefly how we can recognize, diagnose, and cure these basic causes of crime. We sometimes call this field "preventive discipline."

The Provost Marshal, from his experience and training, his frequent inspections on the ground, his many contacts, and his study of reports submitted by his men, often is in a position to know how, when, and where soldiers are getting into trouble or into situations where criminal activity or trouble is likely to develop. The Staff Judge Advocate, from his experience and training, his careful review of all of the investigations, board proceedings, and records of trial, and his post trial interviews with prisoners, is also in a position to work with the Provost Marshal in this important field and to make a real contribution to the commander.

In many commands, the Judge Advocate is required to monitor the action taken by the various subordinate commands on delinquency reports and to report to the commander instances of failure to take action or the taking of inadequate

action. The Staff Judge Advocate normally keeps charts and statistics of the trials conducted by the various special and summary court-martial jurisdictions. Such conclusions and recommendations to be of greatest value should be the product of teamwork between the Staff Judge Advocate and the Provost Marshal.

I remember reading the investigation of a fight between two soldiers in a detached Engineer company stationed at the time near Pusan, Korea. Examination of the witnesses, as reflected in the report, disclosed that all of the company officers except one who was very junior were absent from the company on special assignments and that the young officer could not maintain discipline. The company had not been out on a work project in a number of days, and the men were spending their time as you would expect. The fight grew out of a Faro game. A disclosure of the situation to the Chief of Staff brought prompt action and I am sure prevented a repetition in that and perhaps other dispersed companies.

I remember another instance where it was brought out in a record of trial that a laundry platoon officer—I suppose in a misguided effort to gain platoon unity—was advising his men not to “squeal” on each other. There had been excessive shortages of clothing handled by the platoon, and yet little could be developed as to the cause or the persons responsible. A change of commanders permitted the breaking of a well-established black market operation. There had been very close cooperation in the case between the Provost Mar-

shal and the Judge Advocate—a recommendation followed by command action.

At times, the solution of problems of preventive discipline requires the participation of additional agencies.

In the fall or early winter of 1950, after the fighting in Korea had stabilized somewhat, the effects of narcotic addiction by military personnel became more and more apparent. In fact, it had reached substantial proportions. Addicted persons naturally gravitate toward a theatre where morphine and heroin can readily be procured, and I suspect that units in Japan, Okinawa, Hawaii, etc., did not in every instance send their very best men as replacements to the units in Korea. The Provost Marshal and the Judge Advocate made studies which resulted in bringing in an expert on loan from the Federal Narcotics Bureau of the Treasury Department. The Troop Information Officer, the Chaplain, the Medics, and selected commanders were called in. As a result, an intensive educational program for officers and men was developed and conducted. Pamphlets were prepared and moving pictures secured. The men were taught the insidious effects of this deleterious drug. The officers were taught the habits peculiar to addicted persons and how to identify addicted persons so they could be caught. The doctors set up observation so that persons arrested could be observed as to withdrawal symptoms. But to the Provost Marshal and the Judge Advocate fell the responsibility of eliminating from the command those persons already addicted. Orders from the major over-

seas command prohibiting the unauthorized possession of needles, spoons, and other paraphernalia of the drug user were published in order to gain the presumption of knowledge and thus to authorize the greater punishment for violation thereof. It was thought that a convicted addict should receive a sentence of more than one year's confinement so that he would be eligible for incarceration in one of the Federal drug addiction facilities. The situation, in time, was brought under control.

Another instance of cooperative action which resulted in the solution of a serious disciplinary problem occurred in Italy during World War II. One particular division, in common with many others, was afflicted with a tremendous incidence of combat offenses. General courts-martial were in constant session, trying from 45 to 60 cases per month of disobedience, AWOL, misbehavior, and desertion. Sentences adjudged ran from 50 years to life—yet the court-martial rate continued. About this time, the Provost Marshal and the Judge Advocate put their heads together and discovered that convicted prisoners were more than happy to go to the Pisa Disciplinary Training Center where life may have been rough, but it wasn't as rough as combat. The solution was to stop trying the shirkers by general courts-martial. Instead they were tried by special courts-martial and sentenced to confinement at hard labor in the division area. The hard labor consisted of such hazardous tasks as clearing mine fields and working on bridges and roads very close to the front line under the

guardianship of combat Engineers. The program was well advertised within the division, and the AWOL and delinquency rate dropped to a new low.

The annals of both our Corps are replete with examples of imaginative and successful means of preventive discipline. In the field of neutralizing potential trouble spots or conditions conducive to crime, I can think of several.

In one large post, some 30 or 40 miles from a large metropolitan area, over one of the most dangerous highways in the nation, drunken driving led to an inordinate number of casualties. The Provost Marshal instituted a courtesy service whereby any soldier who had had too much to drink could call the MP station and get a military policeman to drive him to his billets in his own car. This may have been a lot of trouble, but it reduced drunken driving and consequent casualties materially.

Your Commandant recalls vividly the situation which developed in connection with procurement frauds while he was the USAREUR Provost Marshal. War and the aftermath of war always furnishes an opportunity to operators. The occupation of Germany was no exception to this axiom. The economic disorganization of Germany inevitably led to black marketing and corruption among many persons engaged in procurement of supplies and services from the local economy. German business practices, in common with those of many countries, contemplate gratuities and kickbacks to those in a position to award requisition

demands or contracts. Such practices became prevalent and were aggravated by a general and cynical relaxation of ethical standards. Some looseness in procedures and practices made fraud and bribery easy, and of course the temptations were too great for many of our people. Extensive procurement frauds in connection with routine, as well as crash, programs became obvious.

In conjunction with the USAR-EUR G4, SJA, and IG, General Maglin began a series of extensive investigations, and General Holland carried on. This is a type of work usually conducted by the FBI in this country, but over there it became necessary for MPCIA investigators to undertake investigations which assumed the magnitude of anti-trust suits. The Judge Advocate Division went to work and rendered detailed day-by-day advice and guidance. One Judge Advocate and one civilian attorney devoted their full time to these projects. The cooperation and invaluable assistance of the GAO, Army Audit Agency, and the German authorities were obtained. The results were the conviction of many operators engaged in corrupt practices, the debarment and suspensions of venal suppliers, and the recovery of very substantial sums in overpayments.

The preventive effects were even more beneficial. The investigations resulted in a general tightening of controls and procedures, thus making procurement fraud less attractive. Best of all, it resulted in a marked and apparent improvement in the standards of procurement personnel and in the morale of the

great majority of honest military personnel and civilian employees. All who were engaged in this arduous, painstaking, and difficult enterprise may well be proud.

I'm delighted to notice that a considerable portion of the Program of Instruction of the Criminal Investigation Course is devoted to the investigation of procurement fraud. The investigation of frauds in the securing of Class Q allotments in Puerto Rico is another clinical example of this close cooperation.

It is recognized, of course, that any system of crime prevention will not eliminate all crime. It is to that crime which is not prevented that I direct my next remarks. Here is the opportunity, the necessity, for the Provost Marshal and the Judge Advocate to work very closely together in improving the efficiency of investigating and processing charges against offenders and in the subsequent trial.

We recognize the necessity for an immediate and proper investigation of an alleged offense and the prompt processing of charges. The liaison and assistance rendered between the Provost Marshal and the Judge Advocate should reach that level of teamwork demanded by the Infantry and Artillery.

Through liaison with the Provost Marshal, the Judge Advocate should keep informed as to the occurrence of serious offenses and incidents and the status of investigations thereof, to the end that he can render technical legal assistance where needed. He should keep informed as to the status of charges against personnel in confinement in order that he may

render necessary advice in the procurement of evidence and expediting the processing of charges.

Many of you are thinking that the Judge Advocate is quick to point out that certain facts can't be shown in court because of some exclusionary rule of evidence, and you are inclined to think that too often the lawyer takes a negative approach to criminal investigation.

It is true that our rules of evidence are such that much information upon which ordinary men base the decisions of their business and day-to-day affairs cannot be considered by a court. This, of course, is based on the experience of English and American courts over the centuries and is a guarantee that no man shall be deprived of life or liberty on the basis of suspicion, rumor, or hearsay. Moreover, some items of evidence, such as those which result from an illegal search, or coerced confessions, are excluded in order to preserve those personal rights of individuals which our system considers fundamental.

But the ramifications of the rules of evidence are very complicated, and it is in this field where a little knowledge is a dangerous thing—from the standpoint of law enforcement.

Just about every criminal investigator knows that as a general rule evidence obtained as a result of a wire tap is a violation of the Federal Communications Act, and as such is inadmissible. However, there are exceptions. For example, an exclusive military line within a military installation is not protected by

the Federal Communications Act, and in foreign countries the Federal Communications Act is not applicable. Thus, the MP criminal investigator would be well advised to check with the Judge Advocate as to whether a wire tap can be used and not to give up too quickly because he believes that generally such evidence is excluded.

In the matter of the investigation of narcotic cases, the legal questions of entrapment frequently come into play. The average layman has a preconceived notion that if a law enforcement officer solicits criminal goods, the defense of entrapment is available to the supplier of the criminal goods. But the Judge Advocate can chart a course for the investigator which does not run afoul of the law. If the investigator has good reason to believe that a suspect is engaged in criminal activity, then it is not an entrapment to provide the suspect with the opportunity to ply his trade. The defense of entrapment is available only to the suspect who is induced to commit a crime by law enforcement agents when he would otherwise not have committed the crime.

So you will find that the Judge Advocate is more than willing to accent the positive if there is any way of doing it. If a proposed action is illegal or dangerous, the Judge Advocate will advise you; but on the other hand, he will seek a legal way to accomplish the result you want.

During this brief period, I have discussed the necessity of teamwork by the Provost Marshal and the Judge Advocate in the maintenance of discipline, law, and order. This

included an analysis of the principle of good leadership in the prevention of crime and demonstrated some ways in which we can work together to improve our efficiency in investigating and processing charges where offenses are committed.

You should note that my remarks have been limited to certain aspects of the maintenance of discipline, law, and order. Time has not permitted me to cover many other phases of the relationships between the Provost Marshal and the Judge Advocate.

However, I can demonstrate the variety of these common problems by referring you to LOGEX. In that exercise which involves the support of a field type Army under assumed combat conditions, through

the outstanding cooperation of your school representatives, we have been able to inject more problems which require coordinated action with the Provost Marshal than with any other service.

I hope that I have been able to give you some idea of the scope of the legal services provided for the Army by the Judge Advocate. Total legal service is as near as your telephone. I trust that you will use the legal services available to you to the fullest possible extent.

In conclusion, I again express my appreciation for the opportunity to address this School. It is a pleasure to work with you. We are looking forward to your Commandant's visit to The Judge Advocate General's School.

The opinions, doctrines, and conclusions expressed herein are those of the individual author and do not necessarily represent the opinion or doctrine of The Judge Advocate General's School, the Judge Advocate General's Corps, the Department of the Army, or any other governmental agency.



The Judge Advocates Association is a national legal society and an affiliated organization of the American Bar Association. Members of the legal profession who are serving, or, who have honorably served in any component of the Armed Forces are eligible for membership. Annual dues are \$6.00 per year, payable January 1st, and prorated quarterly for new applicants. Applications for membership may be directed to the Association at its national headquarters, Denrike Building, Washington 5, D. C.

The back pages of this issue contain a supplement to the Directory of Members, December, 1955.

General Harmon Receives Distinguished Service Medal

Major General Reginald C. Harmon, who was reappointed for a third term as The Judge Advocate General of the Air Force on 5 November 1956, was presented the Distinguished Service Medal by General Nathan F. Twining, Chief of Staff of the Air Force on 17 December 1956. The citation reads as follows:

"Major General Reginald C. Harmon distinguished himself by exceptionally meritorious service to the United States in a position of great responsibility from 8 September 1948 to 8 September 1956 as the first Judge Advocate General of the United States Air Force. In this important and highly specialized assignment, the extraordinary leadership, initiative and foresight of General Harmon were significant factors in the establishment of a legal department for the United States Air Force. Two drastic Congressional

changes in military law were implemented in a highly efficient manner during this period. He personally devised systems of education and indoctrination for officers of his department which insured the administration of Air Force military justice on a consistently high plane. Under his direction procedures were developed whereby persons sentenced to punitive discharges who are capable of rehabilitation are afforded opportunities to be restored to honorable duty and to earn discharges under honorable conditions. His actions and services have contributed immeasurably to public confidence in the military lawyer and in the administration of justice in the Armed Forces. The singularly distinctive services of General Harmon are worthy of emulation by his countrymen and reflect the highest credit upon himself and the United States Air Force."



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 the 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.



Official U.S. Air Force Photo.

General Twining presents DSM to General Harmon at Pentagon ceremony.

Recent Decisions

of the Court of Military Appeals

Command Influence by Policy Directive

U.S. v. Hawthorne (Army)
24 August 56, 7 USCMA 293

The accused, a regular Army soldier, was convicted of misappropriating a Government vehicle. There was evidence of three previous convictions by summary and special courts-martial for drunkenness and related offenses. The accused was sentenced to dishonorable discharge, total forfeitures and confinement at hard labor for one year. A few months prior to trial, the convening authority had promulgated a policy directive concerning the elimination from the Service of regular Army repeated offenders providing that as a general rule any charge against a regular Army soldier with two prior convictions should be referred to a general court-martial so that elimination by a punitive discharge could be effected under the provisions of MCM 1951, Paragraph 127, Section B. On petition of the accused, the Court held that the policy directive directly tended to control the judicial processes rather than merely attempt to improve the discipline of the command and, therefore, was illegal. There seemed to be no exception to the directive requiring trial by general court-martial of regular enlisted men with two previous convictions within two years. The officer exercising sum-

mary court-martial jurisdiction over the accused is given discretion to determine whether the charges should be disposed of administratively or by courts-martial under UCMJ and the commanding officer is required to make a specific recommendation as to disposition when charges are submitted for trial by special court-martial or general court-martial. In addition, charges should be tried by the lowest court that has power to adjudge an appropriate punishment. The policy directive required that the charges be referred to a general court-martial and thereby deprived the accused's commander of any discretion except to refer the matter for general court-martial. In addition, the policy directive in this case provided that it be brought to the attention of every member of every general courts-martial and therefore it deprived the accused of a right to be tried by an impartial court.

U.S. v. Fowle (Navy)
31 August 56, 7 USCMA 349

The accused was convicted by a special court of larceny and sentenced to a BCD, partial forfeitures, reduction and confinement at hard labor for three months. The trial counsel brought to the attention of the court a policy directive of the Secretary of the Navy that all persons convicted of larceny and other crimes involving moral turpitude should be separated from the Serv-

ice. The defense counsel argued that this policy did not deprive the court of its discretion in the matter of sentencing and urged leniency, but the trial counsel in his argument insisted that this was a case for the application of the policy announced by the Secretary of the Navy. CMA held that there was prejudicial error as to the punitive discharge, finding that the policy directive acted as a leverage to compel a certain result in the trial itself.

When the trial counsel insisted that the policy be applied in the case even an instruction of the president or law officer that the members of the court were not bound by the policy could not remove the prejudice, for "reasonable men must conclude that once the Secretary of a Service enters into the restricted arena of the court room, whether the members of the court are conscious thereof or not, he is bound to exert some influence over them. A trial must be kept free from substantial doubt with respect to fairness and impartiality."

Improper Delegation of Authority

U.S. v. Roberts (Army)

31 August 56, 7 USCMA 322

Desertion charges in this case were investigated by order of a convening authority on the advice of his SJA and referred for trial by GCM. After a continuance of the trial, a successor command re-referred the case for trial by GCM, but apparently this reference to trial was made by a new SJA under delegation from the new convening authority. The old SJA who had advised

the former commanding officer was designated as law officer. After conviction, the accused petitioned CMA for review which was granted. The Court held that the power to refer charges for trial is non-delegable and since the SJA in this case had referred the case for trial under delegated authority from the convening authority, there was prejudicial error. Further, the Court said that the law officer having advised the earlier command concerning the charges was disqualified to serve as law officer since the defense was not put on notice as to the law officer's prior advice on the charges.

Excusing Challenged Member

U.S. v. Jones (Army)

24 August 56, 7 USCMA 283

The accused soldier was convicted of wrongful use of narcotics. During the trial while one of the prosecution witnesses was on the stand, a court member revealed that he had served as member of a court that had tried the witness for the same offense on the same occasion as that alleged against the accused. The law officer then excused the member subject to objection by any member of the court, and over defense objection, no member of the court objecting, the challenged member withdrew. On petition of the accused, CMA held that there was no prejudicial error and pointed out that Article 29 (a) UCMJ provides that a court member shall not be excused after arraignment except as a result of a challenge. The member in this case was excused by the law officer, obviously on the basis of a challenge

for cause. The Court observed that a challenged member should be excused only after a vote in accordance with the procedure in Articles 51 and 52, but that any error in the procedure followed in this case was not prejudicial.

Staying Appellate Review Because of Insanity of Accused

U.S. v. Korzeniewski (Army)
31 August 56, 7 USCMA 314

The accused under a pre-trial agreement pleaded guilty to desertion. The court had determined that the accused was mentally responsible at the time of his offense and during the period of his absence and further that he was mentally capable to stand trial. However, at the time the case came before the board of review, the accused had become mentally incompetent. CMA on petition of accused held that a board of review with its fact finding powers cannot proceed with the review of a case of an insane accused, but that appellate review of the case is tolled until sanity is subsequently restored.

Effective Date of Sentence of Forfeiture

U.S. v. Ray (Army)
19 October 56, 7 USCMA 378

The accused on conviction of desertion in violation of Article of War 58 was sentenced to DD, TF and CHL for 20 years. The desertion began 11 April 1951 and the absence continued until apprehension on 2 August 1955. The convening authority approved the sentence and directed that the forfeitures should apply to pay and allowances becoming due on and after the date of his

action. CMA held that the forfeitures could not be applied to any pay or allowances which accrued prior to the completion of appellate review. The Court said that desertion is not a continuing offense, but is committed on the date when the accused absents himself without authority intending not to return. Accordingly, the 1949 Manual (Ellston Act) was in effect when this offense was committed and under that law, the forfeiture of the accused's pay and allowances could not be effective until after completion of appellate review. Under Article 57 (a), UCMJ, the forfeiture could be made applicable on and after the date sentence is approved by the convening authority but that article did not govern this case.

Burden of Proof on Defense of Mistake of Fact

U.S. v. Noe (Navy)
2 November 56, 7 USCMA 408

The accused was convicted of bigamy. The defense introduced evidence tending to establish that the accused was under the impression that he was divorced from his first wife at the time of his second marriage. The law officer instructed the court that a person who at the time of his alleged wrongful and bigamous marriage had an honest and reasonable belief that his prior marriage had ceased to exist cannot be found guilty of bigamy even though he may have been mistaken in that belief. He then went on to instruct the court "if you believe from the evidence beyond a reasonable doubt that the accused had been informed that his first wife had divorced him

***, you should find him not guilty". CMA held the law officer's instructions improperly shifted the burden of proof. The accused having raised the issue of mistake of fact, the Government had the burden to prove beyond reasonable doubt that his theory was not correct. The instruction was improper in part, and the fact that it was correct in other parts does not remove the prejudice of the error. The board of review having affirmed the conviction was reversed and a rehearing was ordered.

Power of Board of Review to Refer Case to Another Convening Authority

U.S. v. Papacik (Army)
9 November 56, 7 USCMA 412

The board of review in reviewing a conviction of desertion concluded that the SJA's review was prejudicially deficient and directed that the record of trial be referred to another convening authority for review and action. TJAG certified the question of the propriety of a board of review directing the record of trial to be referred to another convening authority for review and action. CMA held the board did not abuse its discretion since it is conceivable that it would be difficult for an accused to receive an objective and unbiased review if his case was referred to the same legal authority and staff. The Court specifically said, however, that it did not hold that a case should never be returned to the same convening authority to either correct its action or for additional review.

Defense Counsel Challenged as a Subordinate of the Trial Counsel

U.S. v. Hayes, (Air Force)
4 January 57, 7 USCMA 477

The convening authority of a GCM appointed the SJA of a subordinate command as trial counsel and one of that SJA's subordinate officers as defense counsel. It appeared that the trial counsel in his capacity as SJA had advised accused's commanding officer as to the formulation and disposition of charges and had participated in the pre-trial investigation. The defense of the case was conducted by civilian counsel who objected to the trial counsel because he was the superior of the regularly appointed defense counsel. The board of review affirmed the conviction and CMA, on petition, affirmed, stating that of course in certain circumstances the appointment of a superior and a subordinate as trial and defense counsel, respectively, may affect the freedom of action of the subordinate, but since civilian counsel carried the burden of the defense in this case, there was no probability of improper influence of the trial counsel over the conduct of the defense. The Court found also that the trial counsel was not disqualified as such because he had advised accused's commanding officer concerning these charges.

Delegation of Power over Suspension of Punitive Discharge

U.S. v. Butts (Navy)
4 January 57, 7 USCMA 472

In this case, the accused received a sentence by special court-martial which included a bad conduct discharge. The convening authority re-

duced the confinement to thirty days and suspended the execution of the BCD until release from confinement or the completion of appellate review. The supervisory authority approved the sentence directing that execution of the BCD be suspended for six months at which time unless suspension is sooner vacated, the BCD will be remitted, but added a proviso that the suspension will not become effective unless the conduct of the accused has been satisfactory to his commanding officer between the date of trial and the date of this action. The board of review held that the supervisory authority's action was void as an illegal delegation of authority. This question was certified to CMA, which affirmed the board of review, holding that the supervisory authority's action added conditions to the suspension which did not exist in the convening authority's action and being more severe than those in the latter's action were illegal. Further, the Court said that the convening authority must personally exercise his powers when he reviews the record of trial. The supervisory authority must also take personal action. The condition here imposed by the supervisory authority granted the accused's commanding officer the power to determine the effectiveness of the suspension and is, therefore, an illegal delegation of power and accordingly void.

Insufficiency of Proof of Continuing AWOL

U.S. v. Lovell (Air Force)
21 December 56, 7 USCMA 445

The accused was found guilty of AWOL from 28 October 55 to 20

December 55. Evidence established the beginning of the accused's absence on the 28th of October but established no date for its termination. The Board of review affirmed the finding of guilty and on petition of the accused, CMA reversed holding that the evidence established only an absence without leave on October 28th. Where only the inception of the unauthorized absence is shown, presumptions cannot serve to establish the length of the absence.

Self-incrimination

U.S. v. Jordan (Air Force)
4 January 57, 7 USCMA 452

The accused was found guilty of willful disobedience of an order to furnish a urine specimen to military police agents, at a time when he was suspected of using narcotics. The board of review affirmed the conviction and on petition of the accused, CMA reversed and ordered the charges dismissed. The Court held that the order to furnish a specimen violated Article 31 as compliance therewith would compel the accused to produce evidence against himself for use in a criminal proceeding. Judge Latimer dissented on the basis that Article 31 (a) prevents the accused from being compelled to perform acts which require active participation and affirmative conduct in producing incriminating evidence.

Double Jeopardy—Self incrimination

U.S. v. Schilling (Army)
4 January 57, 7 USCMA 482

The accused was found guilty of larceny. At the first trial during final argument by the trial counsel,

the defense moved for a mistrial on the basis of improper comments by the trial counsel. It was then discovered that the court reporter's recording machine had not been operating properly and a great deal of the proceedings had gone unrecorded. Upon this latter basis, the law officer declared a mistrial. The accused was again tried on the same charges without objection and found guilty. The evidence developed that the victim of the theft reported the matter to the battery duty officer who called the accused to the office, offered to explain to him his rights under Article 31, but the accused refused to make a statement, but then proceeded to discuss the matter with the victim in the presence of the duty officer. At the trial the duty officer, over defense objections, testified as to incriminatory remarks made by the accused in the conversation. The board of review affirmed the conviction. CMA on petition of the accused affirmed the board of review, holding (1) A claim of former jeopardy is waived by the failure to object at the time of the second trial. Further the absence of a full and accurate record of trial caused by the breakdown of the recording machine fully justified the law officer in declaring a mistrial to prevent a failure of public justice; and, (2) The accused's oral statement as testified to by the battery duty officer was properly admitted in evidence, since the battery duty officer had no official connection with the case and the entire conversation was entirely personal and outside the reach of Article 31.

Jurisdiction over Offenses Committed During Prior Enlistment

U.S. v. Gallagher (Army)
18 January 57, 7 USCMA 506

The accused was captured by the enemy in Korea on 2 November 1950. While a prisoner of war, it was alleged that the accused committed certain offenses against his fellow prisoners and in collaboration with the enemy. On 27 August 1953, he was returned to the American Forces and granted leave in the U. S. until October 1953 when he re-enlisted in the Army for a period of three years. The accused's prior enlistment as extended by executive order expired on 12 October 1951. His re-enlistment began 27 October 1953 and he was furnished an honorable discharge on that date from his first enlistment. Upon being charged and tried for the above mentioned offenses while a prisoner of war, the accused contended that, there was a hiatus between his discharge and re-enlistment which prevented the exercise of court-martial jurisdiction over him for offenses committed during his prior enlistment. He was found guilty by the court-martial, but the board of review ordered the charges dismissed on the ground of lack of jurisdiction. This issue was certified to CMA, which reversed the board of review, holding that the court-martial possessed jurisdiction to try the accused for the offenses which were committed during his prior enlistment. CMA referred to U. S. ex rel Hirshberg v. Cook, 336 U.S. 210, saying that the basis of the decision in that case was that Congress had not authorized the exercise of such

jurisdiction upon a re-entry in the Service after a hiatus had occurred, but the Supreme Court had indicated that such legislation would be constitutional. CMA stated that Article 3 (a) UCMJ was enacted by the Congress for the express purpose of eliminating the Hirshberg rule and although the Supreme Court had held Article 3 (a) unconstitutional in *U.S. ex rel Toth v. Quarles*, 350 U.S. 11, it did so only with respect to persons like Toth who are civilians at the time of the attempted exercise of court-martial jurisdiction. CMA, therefore, decided that Article 3 (a) is constitutional when applied so as to preserve jurisdiction over discharged Servicemen who have re-enlisted.

Court-martial Jurisdiction over Civilians

U.S. v. Rubinstein (Air Force)
25 January 57, 7 USCMA

The accused was a civilian employed as an Air Force club manager (a non-appropriated fund activity) in Japan. His activities as club manager, coupled with certain black market transactions, brought him under interrogation by military police agents on 12 April 1952. His contract of employment, which provided that he was subject to military jurisdiction, expired on 15 April 1952 and he advised the military police agents of his intention to return to the United States by ship on 22

April. He was then placed under informal restriction and directed to report to the director's office daily after 15 April, but instead, he flew to the United States at his own expense on 17 April 1952. About fourteen months later, the accused entered Korea as a commercial entrant and was apprehended by the Air Force authorities and taken to Japan where his trial was held and he was convicted. The board of review held that the court-martial had jurisdiction over the accused. This decision was affirmed by CMA. CMA stated that the accused was a person accompanying the Armed Forces at the time of his offenses and at the time of his return to the United States, under Article 2 (11) UCMJ. His flight from Japan while under an informal type of restriction was obviously to avoid criminal prosecution. The investigation of the accused's conduct was the first step in the prosecution and jurisdiction to try the accused had vested and was not lost by his wrongful departure from Japan. The Government by its acts may lose the power to try an accused by court-martial, but the accused cannot by his unilateral action take that authority away. It would seem that this opinion reflects a broader concept of the vesting of jurisdiction to try a person subject to military law than contemplated by the Manual, Paragraph 11 (d) MCM.



General Hickman Named TJAG of the Army

Major General George W. Hickman, Jr.*, took the oath of his office as The Judge Advocate General of the Army on 2 January 1957. The oath was administered by the Honorable Wilber M. Brucker, Secretary of the Army, in a double ceremony held in the Secretary's Office at which Major General Herbert M.

Jones was also sworn in as The Adjutant General of the Army.** The elevation could not have come to a finer gentleman; and, the members of the Judge Advocates Association wish for General Hickman a happy and successful tenure as chief legal officer of the Army.

* See 23 JAJ 24, "General Hickman Adds a Second Star" for a biographical statement of the new TJAG and a photograph of the ladies in the General's life.

** See cut.



Statement of Policy

The Judge Advocates Association, an affiliated organization of the American Bar Association, is composed of lawyers of all components of the Army, Navy, and Air Force. Membership is not restricted to those who are or have been serving as judge advocates or law specialists.

The Judge Advocates Association is neither a spokesman for the services nor for particular groups or proposals. It does not advocate any specific dogma or point of view. It is a group which seeks to explain to the organized bar the disciplinary needs of the armed forces, recalling, as the Supreme Court has said, that "An Army is not a deliberative body," and at the same time seeks to explain to the non-lawyers in the armed forces that the American tradition requires, for the citizen in uniform not less than for the citizen out of uniform, at least those minimal guarantees of fairness which go to make up the attainable ideal of "Equal justice under law."

If you are now a lawyer, if you have had service in the Army, Navy or Air Force or are now connected with them in any capacity, active, inactive, or retired, and if you are interested in the aims herein set forth, the Judge Advocates Association solicits your membership.



U.S. Army Photograph

TJAG and TAG TAKE OATH OF OFFICE
(Left to right) Mr. Brucker, General Jones and General Hickman

General Jones Named Army Assistant TJAG

On 1 January 1957, General Stanley W. Jones* was promoted to Major General, Regular Army, and designated The Assistant Judge Advocate General of the Army.

General Jones is a native of New York; he graduated from the Military Academy in 1929 and from the University of Virginia, School of

Law, in 1942. He has had wide legal experience throughout all levels of the Army.

He is a member of the American Bar Association and active in that Association's Section on International and Comparative Law. He currently serves as a member of the Board of the Judge Advocates Association.

* See biographical statement in 21 JAJ 34, December 1955.

JAA Members At Work In Wisconsin

The Wisconsin Chapter of the Judge Advocates Association was organized in Milwaukee on February 17, 1956, during the Mid-Winter Meeting of the Wisconsin Bar Association. Charles A. Riedl of Milwaukee and Richard N. Hunter, Waukesha, were elected chairman and secretary of the group, respectively. The then President of the Wisconsin Bar Association, Alfred La France, spoke to the JAA members on that occasion and urged them to request the House of Governors of the Bar Association for authority to organize a military law section.

The Supreme Court of Wisconsin on June 22, 1956 (In the Matter of the Integration of the Bar, 273 Wis. 281) ordered that the bar of Wisconsin should be integrated when proper rules for the structural organization and government thereof and the definition of the rights, obligations and conditions of member-

ship therein are determined. Pursuant to this order, proposed rules for bar integration were filed with the Court in the fall of 1956 and those rules provide, among other things, for the establishment of a section on military law.

The Wisconsin members of the Judge Advocates Association have been largely responsible for this work and there is now a section on military law in the Wisconsin Bar Association. At its first meeting in June, Brig. Gen. Don E. Carleton, Director of the Milwaukee City Civil Defense Administration, spoke on "The Lawyer's Role in Civil Defense Administration".

The Judge Advocates Association's Wisconsin Chapter and the new section on military law held meetings as part of the mid-winter session of the State Bar of Wisconsin in Milwaukee in February 1957.



U.S. Army Photograph

General Hickman and Mrs. Jones pin another star on General Jones at ceremony in the Pentagon.

ANNUAL MEETINGS, 1957 - NEW YORK AND LONDON

The Judge Advocates Association will hold its annual meeting at 2:30 p.m. on Monday, 15 July 1957, at the Columbia University Club, 4 West 43rd Street, New York City. On the evening of the same day, there will be a Judge Advocates dinner-dance held at the Brooklyn Navy Yard Officers' Club. Cocktails will be served from 6:30 to 7:30 p.m. followed by supper, and dancing from 9:00 to 12:00. Of course, an excellent menu has been planned and the tariff of \$8.00 per person will cover cocktails, dinner and dancing. It is also planned that military bus transportation will be available from the Waldorf to the Navy Yard and return. Capt. Robert G. Burke is chairman in charge of the New York City portion of the annual meeting.

The Judge Advocates Association will have a recessed meeting in London. The chairman of the committee

on arrangements for the London session of Judge Advocates is Col. Carl Williamson. On 25 July 1957, there will be a dinner sponsored by the Judge Advocates Association at the Dorchester Hotel followed by a floor show. The cover charge will be £2 per person. The Judge Advocates General of each of the Services and the Judges of the Court of Military Appeals will attend both the New York and recessed sessions. In London, the British Judge Advocates will be guests and the speaker will be the Honorable Ewen Montagu, Judge Advocate General of Her Majesty's Fleet, the author of "The Man Who Never Was".

Members are requested to make their plans known for each of these meetings as early as possible so that some estimation of attendance can be made and adequate accommodations arranged.

In Memoriam

Members of the Judge Advocates Association profoundly regret the passing of the following members whose deaths are here reported:

A. G. C. Bierer, Jr., of Guthrie, Oklahoma.

Abram Nicholls Jones of Rochester, New York.

Edward A. Levy of Passaic, New Jersey.

Col. John J. O'Brien, Seattle, Washington.

Charles L. Williams of Henderson, Texas.

Supreme Court Reconsiders Military Jurisdiction Over Civilians

The Supreme Court of the United States for the first time in seven years has granted a petition for rehearing in a case after the filing of a formal opinion. In *Curtis Reid vs. Covert* and *Kinsella vs. Krueger* (352 US 901), the Court granted a petition for rehearing filed by Frederick Bernays Wiener, attorney for Covert and Krueger.

The Court invited discussion by counsel on reargument of the following matters:

1. The specific practical necessities in the government and regulation of the land and naval forces which justify court-martial jurisdiction over civilian dependents overseas; the practical alternatives to the exercise of jurisdiction by court-martial.

2. The historical evidence, so far as such evidence is available and relevant, bearing on the scope of court-martial jurisdiction authorized under Art. I, section 8, cl. 14, and the Necessary and Proper Clause,

and bearing on the relations of Article III and the Fifth and Sixth Amendments in interpreting those clauses. In particular, the question whether such historical evidence points to the conclusion that the Art. I, section 8, cl. 14 power was thought to have a fixed and rigid content or rather that this power, as modified by the Necessary and Proper Clause, was considered a broad grant susceptible of expansion under changing circumstances.

3. The relevance, for purposes of court-martial jurisdiction over civilians overseas in time of peace, of any distinctions between civilians employed by the armed forces and civilian dependents.

4. The relevance, for purposes of court-martial jurisdiction over civilian dependents overseas in time of peace, of any distinctions between major crimes and petty offenses.

Reargument of the cases was held on February 27 and 28th.



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.

What The Members Are Doing

District of Columbia

Col. Thomas H. King and Col. Edwin S. Bettelheim were recently named as members of a distinguished awards jury to select the recipients of the Freedoms Foundation's awards.

Murray A. Kivitz recently announced the removal of his law office to Suite 628, Investment Building, Washington 5, where he will continue the general practice of law.

John Gibson Semmes recently announced the establishment of new law offices in the Walker Building for the practice of patent, trademark and related causes. Mr. Semmes formerly practiced as a member of the firm of Semmes & Semmes.

Jules Fink, having recently completed a tour of extended active duty in the Office of The Judge Advocate General, Department of the Army, has resumed the general practice of law with offices in the Wender Building.

Washington area members of the Association held a dinner meeting at Bolling Air Force Base Officer Club on the evening of 27 March. The festive occasion celebrated General Hickman's appointment to TJAG of the Army and General Harmon's reappointment as TJAG of the Air Force. Additional cause of celebration was General Jones' promotion to Major General and Major General Kuhfeld's first permanent star. The speaker of the evening was Mr. Charles S. Rhyne of the District Bar. Mr. Rhyne, who is chairman of

A.B.A.'s House of Delegates and President-designate spoke on "The A.B.A. and the Military Lawyer".

Maryland

On February 8, 1957, the last Texas City disaster claim was settled by the Claims Division of the Office of The Judge Advocate General at Ft. Holabird. On the occasion, Hon. Clark Thorapson, Member of Congress from Texas, visited Col. Alfred C. Bowman, Chief of the Claims Division, to meet and express his personal thanks to the personnel who had handled the job of settling the Texas City disaster claims. Congressman Thompson said: "I speak for all those people involved when I say that this accomplishment of the personnel of the Claims Division, Office of the Judge Advocate General, has created a group of grateful citizens who have gained a clearer understanding and appreciation of the Army's effectiveness through this association. Those concerned have nothing but kind thoughts and admiration for the Army, and will entrust their sons to military service with greater alacrity and a deeper sense of confidence, as a result of this contact." These claims involved a total cost to the Government of \$16,000,000. (see cut)

Massachusetts

Ralph G. Boyd recently announced the formation of a partnership under the firm name of Boyd & MacCrellish for the practice of law at



U.S. Army Photograph

Congressman Clark Thompson of Texas visits Ft. Holabird. (Left to right) Gen. Prather, Commanding General; Col. Alfred C. Bowman, Chief of the Claims Division, and Lt. Col. Thomas C. Marmon, Chief of the Texas City Claims Branch.

75 Federal Street, Boston 10. Mr. William D. Weeks is associated with the firm.

Lt. Walter F. Brown, USNR, has been transferred from Great Lakes, Illinois, to Boston, where he is Legal Officer for the United States Naval Receiving Station.

Michigan

Benjamin H. Long of Detroit, formerly a member of the firm of Dykema, Jones & Wheat, has recently announced the opening of his offices for the general practice of law in the Penobscot Building. Col. Long will have associated with him Mr. David M. Preston.

Missouri

Bertram W. Tremayne, Jr., recently announced that Helen G. Joaquin and A. Wimmer Carr have become associated with his firm. Mr. Tremayne's firm engages in the general practice of law at 25 North Meramec Street, St. Louis 5, Missouri, under the firm name of Tremayne, Joaquin & Lay.

Nevada

Clel Georgetta of Reno has taken time from a busy law practice to become an author. His recent work entitled "Wool, Beef and Gold" is published by Pacific Books of Palo Alto, California, and sells for \$4.75. The book is a collection of thirteen stories about Sage River Valley in Nevada. The basic charm of the book is the charm of Clel Georgetta. It isn't polished or self-conscious, but an honest presentation of Sage River Valley and should prove to be thoroughly entertaining reading.

New Jersey

Harold L. Wertheimer, who was at one time the Chief Regional Trial Attorney for the Office of Rent Stabilization for the region comprising Pennsylvania, New Jersey, Delaware and Maryland and who, for the past three years, has been a member of the Legal Department of the Lawyers Title Insurance Corporation at the Camden, New Jersey, Branch Office, has resigned his position with the latter company and has just opened offices for the general practice of law in the Schwelm Building in Atlantic City.

New York

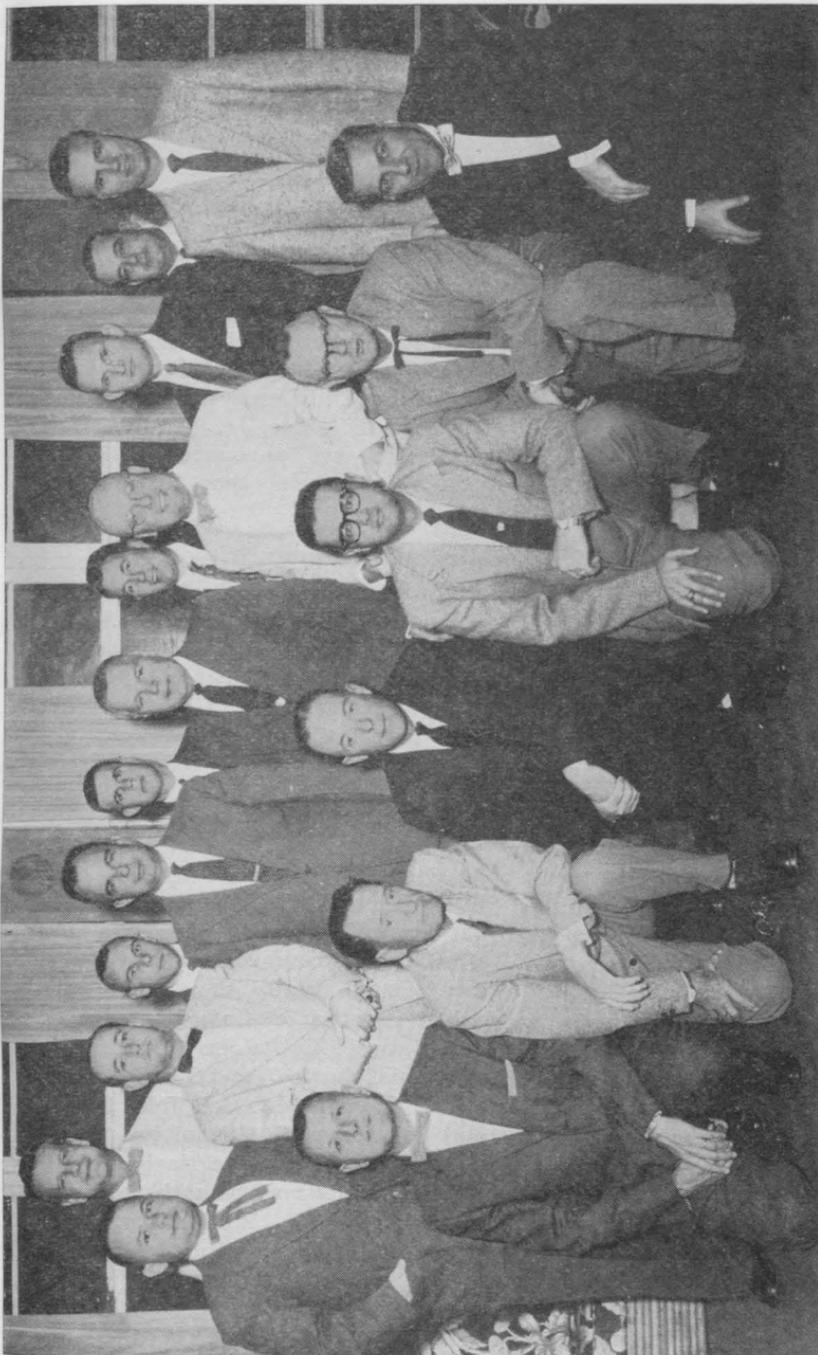
Abraham S. Robinson of New York City has been appointed Chairman of the Military Justice Committee of the Association of the Bar of the City of New York—for a fourth term.

Samuel G. Rabinor of Jamaica has been named by the Queens County Bar Association to address the round table conference of the Queens County Bar Association on the preparation for trial of a negligence case.

Robert A. Morse, having recently completed a tour of active duty in the Office of the SJA at Middletown Air Materiel Area, Olmstead AFB, has accepted an appointment as Assistant United States Attorney in Brooklyn.

Ohio

Warren M. Briggs recently announced the opening of offices for the general practice of law in the Society for Savings Building, Cleveland 14.



The MLOO's

U.S. Army Photograph

(Left to right) Front row: Col. Loy, Legal Officer, 3rd Marine Division; Col. King, Chairman, U. S. Land Acquisition Commission; Col. Gaynor, SJA, RYCOM; Col. Rollman, SJA, 313th Air Division; Col. Mac Eachern, RYCOM Provost Marshal; Capt. Amery, SJA, 51st F-I Wing. Back row: Maj. Furman; Maj. Knapp; Capt. Bagley; Lt. Blan, Jr.; Capt. Eastman; Lt. Goffey; Capt. McClellan; Capt. Talbot; Lt. Grahli; Lt. Basso; Capt. Steele; and Lt. Cameron.

Oregon

Col. Benjamin G. Fleischman (3rd Off.) has been again elected President of the Retired Officers Club of Portland.

Norman A. Stoll has been named Chairman of the Statutory Revision Committee of the Oregon State Bar Association.

Virginia

Walter W. Regirer of Richmond recently defended military justice under the Uniform Code of Military Justice by an article on the editorial page of the Richmond Times Dispatch. He stated in his article that "UCMJ—is without any doubt the finest development of military legal thinking in the world. I ought to know and be able to compare it. Before entering into the U. S. Army, I served under four foreign flags."

Richmond lawyers swapped roles and portrayed the accused and witnesses in a moot court-martial trial staged by Army Reserve School on March 5, 1957, at Reserve Armory. The Moot Court team was organized and rehearsed under direction of Colonel Joe T. Mizell, Jr. The prosecution was represented by Captain Edward R. Parker, Lt. Lewis I. Booker and Lt. Marion B. Morton. The imaginary PFC Harry D. Maybe played by Lt. Col. Earl M. Edwards was alleged to have stolen an automobile and having deserted the U. S. Army. Marine Major William H. Sager and Capt. Arlin F. Ruby defended the accused. Henrico County Commonwealth Attorney,

William F. Parkerson, Jr., acted as Law Officer and Col. Edward M. Hudgins presided over the court. Members of the court were Col. Charles T. Blair, Lt. Col. John W. Knowles, Major Julian E. Savage, Capt. William J. Qualls, Lt. Winfrey T. Wade and Lt. Marshall L. Lowenstein. Col. Hansell M. Pasco was the Court Reporter and the witnesses were Lt. Col. Rosswell P. Snead, Lt. Col. Lewis W. Martin and Major P. D. Muse, Jr. The result of trial was not announced, but the Editor is assured that justice prevailed.

Washington

Wheeler Grey of Seattle recently announced that his firm, Jones & Grey, has admitted to the partnership Richard A. Clark and Richard I. Sampson. Jones & Grey have offices in the Colman Building.

Okinawa

The uniformed lawyers of the military services stationed in Okinawa have organized a monthly bull session with cocktails, dinner and guest speaker. They call themselves the MLOO's (Military Lawyers of Okinawa), but actually they could pass as a chapter of Judge Advocates Association. Col. John P. King is the "chief justice" and Lt. Col. Robert O. Rollman, Lt. Col. John I. Loy and Col. James K. Gaynor are "associate justices". Some insight into their activities may be gathered from the cut which, incidentally, was taken before the meeting began and not after the cocktails.

SUPPLEMENT TO DIRECTORY OF MEMBERS, 1955*

CHANGES OF ADDRESS

Maj. LeRoy J. Abt, USAF (JAGD)
Hq., Tenth Air Force
Office of the Staff Judge Advocate
Selfridge Air Force Base, Michigan

Lt. Col. Louis F. Alyea
7723 Lakeview Drive
Falls Church, Virginia

Capt. William B. Anderson
Assistant City Counselor
234 City Hall
St. Louis 3, Missouri

Hugh B. Archer
7405 Beverly Road
Washington 14, D. C.

Capt. Donald V. Bakeman
62 Woodcock Drive
Westbury, New York

Lt. Col. Morrie Benson
Office of the Staff Judge Advocate
Hq. 2d Air Force
Barksdale Air Force Base
Shreveport, Louisiana

Lt. Col. James F. Bishop
2530 N. Kenilworth Street
Arlington, Virginia

Lt. Walter F. Brown, USNR
Legal Office
U. S. Naval Receiving Station
495 Summer Street
Boston 10, Massachusetts

Robert E. Bullard
P. O. Box 21
Rockville, Maryland

Lt. William C. Bullard
1600 Esperson Bldg.
Houston 2, Texas

George L. Burns
4966 Westwood Road
Kansas City, Missouri

Maj. Gen. Eugene M. Caffey
Route 2 — Box 216
Las Cruces, New Mexico

Lt. Col. Lucille Caldwell
Box 283, Truax Field
Madison, Wisconsin

Donald K. Carroll
P. O. Box 58
Jacksonville 1, Florida

Maj. Clifford R. Carver
Staff Judge Advocate
Parks Air Force Base
California

Sol J. Chasnoff
155 Midland Avenue
Kearny, New Jersey

John V. Connorton
3 East 54th Street
New York 22, New York

Lt. Col. Francis R. Coogan
Hqs. 5th A.F. Box 307
APO 710, San Francisco, California

Jack M. Cotton
c/o Feedback Controls
899 Main Street
Waltham, Massachusetts

* See 22 JAJ 48-53 and 23 JAJ 44-48 for changes and additions heretofore made.

Edward B. Crosland
Assistant to President
American Telephone & Telegraph Co.
195 Broadway
New York 7, New York

Capt. Victor A. De Fiori
Judge Advocate Section
Hqs., 4th Army
Fort Sam Houston
San Antonio, Texas

Col. John H. Derrick
McKnight Building
Minneapolis 1, Minnesota

Ernest H. Dervishian
516 American Building
Richmond 19, Virginia

Maj. John J. Ensley
504 Vista Drive
Falls Church, Virginia

Maj. Herman C. Estes
7506 North Street, S. W.
Tacoma 99, Washington

Oscar M. Fair, Jr.
107 Berkshire Drive
Virginia Hills
Alexandria, Virginia

Lt. Albert J. Feldman
Apt. 22-B Franklin Park
Chew Ave. & Duval St.
Philadelphia 38, Pennsylvania

Col. Claude E. Fernandez
Staff Judge Advocate
Headquarters K MAG (8202 AU)
APO 102, San Francisco, California

Albert S. Friedlander
8736 Sunset Boulevard
Los Angeles 46, California

Capt. William S. Fulton
426 Mobile Lane
Charlottesville, Virginia

Lt. Col. Eugene M. Gant, Jr.
Staff Judge Advocate
Hq. NAMAP
APO 323, San Francisco, Calif.

Delbridge L. Gibbs
1321 Florida Title Building
P. O. Box 447
Jacksonville 1, Florida

Cdr. Franklin P. Gould, USNR
Staff, Commander Amphibious Group
Two
c/o Fleet Post Office
New York, New York

Capt. Charles P. Grahl
Hq., Squadron Section (SJA)
18th Air Base Group
APO 239, San Francisco,
California

Joseph R. Gray
310 Merchandise Mart
Chicago 54, Illinois

Capt. Rupert P. Hall
Staff Judge Advocate Section
Hq., Southern Area Command
APO 407, New York, New York

Col. Tom B. Hembree
Staff Judge Advocate
Hq. I Corps
APO 358, San Francisco,
California

Milford F. Henkel
7258 Coles Avenue
Chicago 49, Illinois

Lt. Col. Robert S. Hermann
O.S.I. Procurement Division
APO 633, New York, New York

Bernard Hirschhorn
163-18 Jamaica Avenue
Jamaica, New York

William J. Horrigan
445 Park Avenue
New York 22, New York

Col. Charles S. Hoult
SJA Section, 2d Log Comd
Ft. Polk, Louisiana

Capt. Seymour Hozore
33-51 73rd Street
Jackson Heights 72, New York

Maj. Dugald W. Hudson
Office of the Staff Judge Advocate
Hqs. 7th Inf. Div.
APO 7, San Francisco, California

Maj. Robert T. Hummer
1649 E. 50th St., Apt. 10A
Chicago 15, Illinois

Philip Huss, Jr.
Lewis and Drew Law Offices
900 Farmers Bank Building
Pittsburgh 22, Pennsylvania

Lt. Col. Reginald E. Ivory
U. S. Army Claims Office, Paris
APO 163, New York, New York

Richard O. Jones
1022 Union Center Building
Wichita 2, Kansas

Maj. Gen. Stanley W. Jones
2 - 4200 Columbia Pike
Arlington, Virginia

Henry Kaiser
1701 K Street, N. W.
Washington, D. C.

Maj. Irvin M. Kent
JA Sec., Hq. 1st Army
New York 4, New York

Brig. Gen. Herbert M. Kidner
3 Fort Hunt Road
Alexandria, Virginia

Col. Doane F. Kiechel
3200 South 29th Street
Lincoln 2, Nebraska

Murray A. Kivitz
Investment Building
Washington 5, D. C.

Col. Robert L. Lancefield
OJAG, Dept. of the Army
The Pentagon
Washington 25, D. C.

Lt. Charles J. Lipton
Office of Staff Judge Advocate
Hq., Ogden A.M.A.
Hill AFB, Utah

Cdr. C. E. Lundin, USN
Legal Office
Fifth Naval District
Naval Base
Norfolk 11, Virginia

Col. John W. MacLeod
2910 Landover Street
Alexandria, Virginia

Weldon L. Maddox
20 E. Lexington Street
Baltimore 2, Maryland

Keith Masters
Prudential Plaza
Chicago 1, Illinois

Col. Robert H. McCaw
Office of TJAG
Department of the Army
Washington 25, D. C.

Maj. D. S. Meredith, Jr.
First National Bank Building
Longview, Texas

Robert O. Muller
1805 Holly Street
Anderson, South Carolina

Col. Edward J. Murphy, Jr.
Hq. USATC, INF
Fort Dix, New Jersey

Capt. Eugene J. Murphy
17 Hancock Street
Boston 14, Massachusetts

Col. James L. Nolan
Staff Judge Advocate
Fort Lee, Virginia

Joseph P. O'Gara
713 First Natl. Bank Bldg.
Lincoln, Nebraska

Louis A. Otto, Jr.
c/o Attorney General
P. O. Box 1175
Agana, Guam

David M. Owens
23 Halifax Street
Boston, Massachusetts

Lt. Charles L. Parker
Apt. 2D Holley Chambers
33 Washington Square West
New York 11, New York

George A. Pavlik
Vice Consul
United States Consulate General
Toronto, Ontario, Canada

Raymond L. Perkins, Jr.
Tel Aviv—FSO
Department of State
Washington 25, D. C.

David S. Pochis
135 S. LaSalle Street
Chicago 3, Illinois

Lt. Walter B. Raushenbush
110 E. Main Street
Madison 3, Wisconsin

Col. C. E. Reitzel
Judge Advocate Division
Hq., USAREUR
APO 403, New York, New York

Brig. Gen. Allen W. Rigsby
SAC Headquarters, Offutt Air Force
Base
Omaha, Nebraska

Norman Roth
141 Broadway
New York 6, New York

Carroll R. Runyon
702 Florida Theatre Building
St. Petersburg, Florida

Lt. Robert F. Sagle
1630 Jonquil Street, N. W.
Washington 12, D. C.

E. Bernard Schlegel
Market St. National Bank Building
Market and Juniper Streets
Philadelphia 7, Pennsylvania

Wendell D. Sellers
c/o Pickrel, Schaeffer and Ebeling
14th Floor, 3rd National Building
Dayton 2, Ohio

J. Gibson Semmes
Walker Building
Washington 5, D. C.

Col. Clifford A. Sheldon
1624 Eye Street, N. W.
Washington, D. C.

Col. Harold D. Shrader
205 Sherman Avenue
Fort Leavenworth, Kansas

Capt. Billy J. Shuman
4421 31st Street, S., Apt. 10
Arlington 6, Virginia

Capt. John A. Smith, Jr.
3118 E. Shadowlawn, N. E.
Atlanta 5, Georgia

Robert T. Smith
910 17th Street, N. W.
Washington 6, D. C.

Lt. Col. Edward L. Stevens
4906 Old Dominion Drive
Arlington, Virginia

Lt. Col. Arthur J. Sullivan
3543 A South Stafford Street
Arlington 6, Virginia

Maj. Herbert C. Swigert
Hq. 2d Air Division, USAFE
APO 616, New York, New York

Norbert A. Theodore
204 Palmetto Building
Columbia, South Carolina

Alfred Thomas
185 Devonshire Street
Boston 10, Massachusetts

Lt. Mark S. Tolle
Box 839
Ellington AFB, Texas

Benton C. Tolley, Jr.
6000 Woodacres Drive
Washington 16, D. C.

Robert E. Trevethan
Referee in Bankruptcy
Federal Building
Bridgeport, Connecticut

Harold F. Tucker
48 Cornelia Street
Plattsburg, New York

Job D. Turner, Jr.
Suite 404 First National Bank Bldg.
Lexington, Kentucky

Lt. Col. Calvin M. Vos
Hq. 7100 Support Wing
APO 633, New York, New York

Harold L. Wertheimer
312 Schwehm Building
Atlantic City, New Jersey

Thomas A. Wheat
P. O. Box 890
Liberty, Texas

Col. Howard Russell Whipple
2862 South Buchanan Street
Arlington, Virginia

NEW MEMBERS

Bruce P. Badley
Assistant Attorney General
Capitol Building
Cheyenne, Wyoming

David M. Bloomberg
740 Seybold Building
Miami, Florida

Pvt. Hillard Chapnick
1442 South 3rd Street
Louisville, Kentucky

Lt. Edward C. Cody
Box 535, Hq. Sq.
5th AB Gp.
Travis AFB, California

Robert E. Doane
Mackiernan & Doane
73 Tremont Street
Boston 8, Mass.

Blake Downie
Donaghey Building
Little Rock, Arkansas

Lt. A. Fred Freedman,
Office of the Staff Judge Advocate
Chanute AFB, Illinois

Lt. William L. Garwood
The Judge Advocate General's
School
Charlottesville, Virginia

- Robert L. Gee
718 Majestic Building
Denver, Colorado
- Maj. L. Archie Harris
Hq. Sq. Sec., 5th Air Base Gp.
Travis AFB, California
- George B. Harris, Jr.
403 Stuart Court Apts.
Richmond 20, Virginia
- Col. M. W. Hazlehurst
Hq. Bay Area Army Terminal Center
Fort Mason, San Francisco,
California
- Capt. Everett G. Hopson
Office of the Staff Judge Adv. Hq.,
Strategic Air Command
Offutt AFB, Nebraska
- Philip E. Morin
44 School Street
Boston, Massachusetts
- Marvin Henry Morse
901 Hoffman Building
Louisville 2, Kentucky
- Cecil B. Nance, Jr.
Box 626
West Memphis, Arkansas
- Alfred Olsen
421 - 99th Street
Brooklyn 9, New York
- Maj. Alexander J. Palenscar, Jr.
Office of the Staff Judge Advocate
1607th Air Transport Wing (H)
Dover AFB, Delaware
- Capt. Robert D. Powers, Jr.
3905 Vacation Lane
Arlington, Virginia
- Capt. Thomas G. Roberts
Staff Judge Advocate
3911th Air Base Group
APO 197, New York, New York
- Lt. Col. Robert O. Rollman
Hq., 313th Air Division, Box H
APO 239, San Francisco,
California
- Lt. Daniel L. Rotenberg
Hq. Sqn. Sec., 5th AB Gp.
Box 534, Travis AFB, California
- Eulan Snyder
3023 14th St., N. W., Apt. 615
Washington 9, D. C.
- Robert J. Swan
Stark Federal Building
Canton, Ohio
- Capt. James Taylor, Jr.
246 Fairchild Circle
Offutt AFB, Nebraska
- W. S. Tyson
Department of the Navy
Room 4 C 828 Pentagon
Washington 25, D. C.
- Arthur Venitt
163-18 Jamaica Avenue
Jamaica 32, New York
- Capt. Philip A. Walker
Office of JAG, Navy Department
Washington 25, D. C.
- Lt. Ralph T. Welch
Box 673
Scott Air Force Base, Illinois
- Capt. Marcus Leonard Whitford,
USN
AOSD (MP&R) Room 2A 870
The Pentagon
Washington 25, D. C.
- Lt. Joseph N. Wiltgen,
Base Legal Office
Offutt AFB, Nebraska

