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YOU'RE IN THE ARMY—NOW!

by Lawrence H. Williams¹

The moment when a civilian enters the Army not only marks the beginning of a new way of life for him, but, in addition, marks the beginning of military jurisdiction over him as a soldier.² A refusal to obey military orders prior to that moment is not a violation of military law so as to subject him to trial by court-martial,³ although a refusal to submit to induction is a violation of Federal law for which he may be tried by civil authorities.

The Universal Military Training and Service Act, as amended,⁴ provides pertinently:

"Sec. 12(a) * * * No person shall be tried by court martial in any case arising under this title unless such person has been actually inducted for the training and service prescribed under this title or

unless he is subject to trial by court martial under laws in force prior to the enactment of this title. * * *

Similar language was contained in section 11 of the Selective Training and Service Act of 1940⁵ and section 6 of the Selective Draft Act of 1917.⁶

During World War I, induction of an individual into the Army occurred at the "day and hour" he was ordered to report to his local draft board for induction, although a final physical and mental examination to determine his fitness for military service was subsequently conducted.⁷ Since 1940, however, and at the present time, induction is accomplished subsequent to an individual's final physical and mental examination for military fitness.⁸ Therefore, his mere

¹ Major, Judge Advocate General's Corps, United States Army, member of the Bar of Colorado, the United States Court of Military Appeals, and the Supreme Court of the United States. The opinions expressed in this article are those of the author and do not necessarily reflect the views of the Secretary of Defense, the Secretary of the Army, or The Judge Advocate General of the Army.

² Article 2, Uniform Code of Military Justice, 10 U.S.C. 802.

³ *Billings v. Truesdell*, 321 U. S. 542, (1944); *United States ex rel Diamond v. Smith*, 47 F. Supp. 607 (D. C. Mass. 1942); *Stone v. Christensen*, 36 F. Supp. 739 (D. C. Ore. 1940).

⁴ 62 Stat. 662; 50 U.S.C. App. 462.

⁵ 54 Stat. 885, 894.

⁶ 40 Stat. 76, 80.

⁷ *Patterson v. Lamb*, 329 U. S. 539 (1947).

⁸ Mobilization Regulations No. 1-7, October 1, 1940; Army Regulations 615-500, 1 September 1942; id. 10 August 1944, as amended; Special Regulations 615-180-1, 27 April 1950; Special Regulations 615-180-1, 10 April 1953; Army Regulations 601-270, 5 April 1956.

presence at an Army installation for the purpose of undergoing such tests does not subject him to military law and he occupies a civilian status until his actual induction.

The leading case concerning induction, and upon which almost all later cases are purportedly based, is *Billings v. Truesdell*.⁹

The Billings case concerned the trial by court-martial of one Billings in 1942 for acts occurring prior to induction while at an Army installation. The facts were stated by the Supreme Court of the United States to be as follows:

"Billings claims to be a conscientious objector. He registered under the Act with Local Board No. 1 of Ottawa County, Kansas, stating on his card at the time that he would never serve in the Army. He was given a 1-B classification because of defective eyesight but was reclassified as 1-A in January, 1942. The local board rejected his claim that he was a conscientious objector. He appealed to the board of appeal which affirmed the ruling of the local board. Though petitioner resolved never to serve in the Army, he desired to comply with all of the requirements of Selective Service short of actual induction, so that he might avoid all civil penalties possible. Accordingly, he consulted with draft officials in Texas where he taught and concluded that taking the oath was a prerequisite to induction into the armed forces. He thought he might be finally rejected by the Army on account of defective eye-

sight. But he resolved that if he was not rejected at the induction station, he would not take the oath but would turn himself over to the civil authorities. He was ordered by his local board to report on August 12, 1942 and to proceed to the induction center at Fort Leavenworth. He joined the group selected for induction and was transported to Fort Leavenworth where he and the others in his group spent the night in the barracks. The next morning after breakfast in the mess hall petitioner was given both the physical and mental examinations during which he made clear to the examining officials his purpose not to serve in the Army. He then reported to the officer who passed on the results of the examinations and who told him that he had been put in Class 1-B. He then reported to the induction office and told the officers in charge that he refused to serve in the Army and that he wanted to turn himself over to the civil authorities. They said that he was already under the jurisdiction of the military and put him under guard to prevent him from leaving the reservation. With their consent, however, he used the telephone and procured the services of an attorney whom he retained to file a petition for *habeas corpus* on his behalf. Thereupon an Army officer read petitioner the oath of induction which petitioner refused to take. He was advised that his refusal made no difference, that 'You are in the Army now.' He

⁹ See note 3, *supra*.

was then ordered to submit to fingerprinting. He refused to obey. Military charges were preferred against him for willful disobedience of that order.

"On August 14, 1942, petitioner filed this petition for a writ of *habeas corpus* alleging that he was not a member of the armed forces of the United States, that he was not subject to military jurisdiction, and that if he had violated any laws they were the civil laws of the United States. The writ issued. Respondent filed a return and a hearing was had at which petitioner testified. The District Court discharged the writ and remanded petitioner to respondent's custody, holding that petitioner was subject to military jurisdiction. 46 F. Supp. 663. The Circuit Court of Appeals affirmed, holding that 'Induction was completed when the oath was read to petitioner and he was told that he was inducted into the Army.' 135 F. 2d 505, 507. * * *

The court then went on to decide that the Selective Training and Service Act of 1940, unlike the Selective Draft Act of 1917, did not provide for the induction of an individual such as Billings upon the "day and hour" of his reporting to his induction station (which fact had been conceded by the Government); that military jurisdiction did not attach from the time of his reporting at the local draft board (which had been contended by the Government);

that the reading of the induction oath and other examinations at Fort Leavenworth did not serve to induct Billings, as induction cannot be forcibly accomplished against the will of the selectee; and that punishment of Billings must be left to the civil authorities.¹⁰ The court also stated that induction under regulations then in effect (March, 1944) took place at the time of the induction ceremony (including the taking of the true faith and allegiance oath), that an individual may not be inducted forcibly, and that the time when a selectee is inducted could be at the time "he [voluntarily] undergoes whatever ceremony or requirements of admission the War Department has prescribed".

The regulations in effect in March, 1944 (AR 615-500, 1 Sep 1942, as changed by C4, 30 Mar 1943), were substantially identical with those in effect at the time (1942) of Billings' refusal to submit to induction (Mobilization Regulations No. 1-7, Oct. 1, 1940), and provided pertinently:

"AR 615-500, September 1, 1942, is changed as follows: 13. Procedure.

* * * *

e. Induction ceremony.

- (1) The induction will be performed by an officer who, prior to administering the oath, will give the men about to be inducted a short patriotic talk. The ceremony should take place in a setting, preferably a large

¹⁰ Billings was later convicted of a violation of the Selective Training and Service Act of 1940, *supra*, on 3 October 1944 and sentenced to two years' imprisonment by a Federal court (DC Kans.).

room, made colorful by the display of flags with guard and display of suitable pictures, and made as impressive as possible. Wherever practicable, martial music will be provided either by a band or in the form of recorded music. For the benefit of any nondeclarant aliens about to be inducted the induction officer will explain the difference between the oath of allegiance and the oath of service and obedience. The oath, Article of War 109, will then be administered:

I,, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War."

Immediately following the Billings case, the Army released from confinement (resulting from convictions by courts-martial for various offenses), and restored to civilian life, several individuals who had served

in the Army but who disclaimed having submitted to the oath of induction and whose sole "evidence" that they did not take the oath of induction consisted of their statements to that effect.

Thereafter, in 1944 and 1945, the Federal courts expressed what is believed to be a more reasonable view in connection with such cases. In three decisions in which the individuals concerned claimed that they had not willingly complied with the ceremony of induction (i.e., had refused to take the oath of induction) the Federal courts refused to release the individuals, holding that as they had, after the induction ceremony, accepted their roles as soldiers for varying periods of time, they had by such conduct waived any irregularity in their induction.¹¹ It should be noted that in those cases, unlike the Billings case, the individuals had served for several months as soldiers without protest before claiming that they had not been inducted. Such cases must be distinguished from cases where the individual refused to serve, and made timely complaint, as did Billings. In that connection two decisions of the Federal courts,¹² also decided in 1944 and 1945, expressed the view that induction *could* take place without an oath of induction *even though the individual did not accept the role of a soldier for a period of time*. In the Catovolo case, the statement is dicta as the court

¹¹ *Mayborn v. Heflebower*, 145 F. 2d 864 (5th Cir. 1944); *Hibbs v. Catovolo*, 145 F. 2d 866 (5th Cir. 1944); *Sanford v. Callan*, 148 F. 2d 376 (5th Cir. 1945).

¹² *Hibbs v. Catovolo*, 145 F. 2d 866 (5th Cir. 1944); *Ex parte Kruk*, 62 F. Supp. 901 (DCND Cal. 1945).

had already stated that the individual's service waived any question of illegal induction. In the Kruk case, however, the issue was squarely joined. In that case, after completion of the induction process, during which Kruk refused to take the oath of induction, he, in the words of the court, "left for parts unknown". The decision of the court holding that Kruk *had been inducted* relied on the Mayborn and Catovolo cases, *ante*, although recognizing the factual difference existing between those cases (i.e., no service following the purported induction) and that of Kruk.

Summarizing, it may be concluded that in 1945 decisions had been reached by the Federal courts expressing, in substance, the view that an individual who refused to take the oath of induction was nevertheless in the Army by reason of his subsequent service in the Army (Mayborn, Catovolo, and Callan cases), the view that an individual who refused to take the oath of induction was inducted even in the absence of subsequent service in the Army (Kruk case), and the view that an individual who refused to take the oath of induction was not inducted, the fact of subsequent service not being present or considered (Billings case).

In 1946, subsequent to the Kruk case, a factual situation similar to that of Kruk was considered. In that case one Yost informed Army authorities, after the induction oath had been administered to his group (the oath still being a requisite part

of the ceremony of induction at that time), that he had not taken the oath and that he refused to serve in the Army.¹³ Yost immediately after the induction ceremony absented himself from the Army, returned home and "continued * * * [his] evangelistic work of Jehovah Witness". The 9th Circuit Court of Appeals rendered a decision holding Yost *not* to have been inducted, recognizing that some of the evidence of Yost (i.e., that he had not taken the oath of induction) may have been self-serving in nature. That opinion stated pertinently:

"It is not contended here that the affirmative taking of the oath is required by the statute or by the regulations under it. What is claimed is that before a registrant becomes a member of the military forces he must have submitted to such induction ceremonies as were currently held. The ceremonies practiced in the class of around seventy-five selected registrants to which Yost belonged appear to have been quite simple. The registrants were seated in a room, and an army officer gave a short talk upon the subject of soldiers being A.W.O.L., about the conduct of a soldier, and as to a citizen's duty. The members of the class of registrants were then requested to stand, raise their right hands and repeat, line by line, an oath which was read to them. (Subsequently the method of induction was changed so as to practically eliminate the possibility of doubt as to the actual induction of any

¹³ *Lawrence v. Yost*, 157 F. 2d 44 (9th Cir. 1946).

member of an induction class.) The registrant's affirmative voluntary conformance necessary under *Billings v. Truesdell*, 321 U.S. 542 at 558, 64 S. Ct. 737, 88 L. Ed. 917, to this part of the ceremony was the only part of it in which some act of acceptance of the induction by the registrant was required. It most certainly was the high light of the proceeding. Yost testified, and the trial court believed him that he stood when the class was requested to stand, that he did not conform to the request given the class that each member should raise his hand, and did not conform to a like request to repeat the oath, line after line, as it was read, and that he did not take the oath.

"Sometime after the induction ceremonies had been conducted, Yost made a written report to an agent of the Federal Bureau of Investigation, which is entirely consistent with his claim as to the happenings at the induction center. We set it out in full in the margin.

"Yost also informed his draft board in terms consistent with his claim, which we quote in the margin.

"Lieutenant Leigh, who conducted the ceremonies, in a statement admitted into evidence by stipulation, says: '* * * that he observed no unusual incident at the time and at that time when prospective inductees refused to take the oath, they were inducted nevertheless if found to be otherwise qualified.' This practice, we understand, was abandoned after

decision in *Billings v. Truesdell*, *supra*.

"While some of the evidence here related may be self-serving in nature, it was received without objection and without limitation of purpose and the court gave it credence. There is no error claimed by appellant on the score.

"Of course, it is logical argument to present to a fact finding court that Yost held it in his power to speak out at the time the oath was being read or otherwise to indicate his refusal to conform to the ceremony in such a manner as to make a mistake in the matter quite impossible. His burden, however, was not so great as to require him to do all in his power in that regard. He had already been outspoken that he would not take the oath and in accordance therewith he testifies that he did not take it. The slightest attention on the part of the induction officials would have revealed whether anyone of the class was disregarding the request to hold up his hand or to repeat the oath. No official intimates that he made any effort to observe the conduct of the registrants. Lieutenant Leigh's negative statement on this point is highly indicative that the induction officials did not consider that the registrants had any volition in the matter. The army was giving commands before the registrant was in the service.

"In the circumstances there appears to have been that degree of substantial evidence before the trial court which is required to

support its conclusion that Yost did not in fact submit to induction. The restraint complained of is therefore without warrant in law and the judgment must be affirmed."

It is apparent from the above opinion that Yost's refusal to take the oath of induction, which was then (1943) a portion of the ceremony of induction, was considered by the court to be a refusal to submit to induction and, accordingly, Yost was held not to have been inducted in accordance with the Billings case. His case did not involve a question of waiver of irregularity in the induction process, as he did not after the induction ceremony accept his role as a soldier and serve as such. As the Yost case carefully considered the question whether an individual, who refused to take the oath of induction and who did not serve as a soldier, was inducted and decided it in the negative, it is believed that that decision rather than the decision reached in the Kruk case controls. Further, the reasoning of the Yost case has been adopted, without mention of the Kruk case, in the Cox case¹⁴ discussed hereinafter, which, like the Yost case, was tried in the same district as, and subsequent to, the Kruk case (DCND Cal). The reasoning of the Yost case was applied by both the Federal District Court and the 9th Circuit Court of Appeals in the Cox case, although the decision in the 9th Circuit Court of Appeals reversed the lower court's

decision on the facts of the case.

The facts of the Cox case, as stated pertinently in the opinion of the Federal District Court, which were adopted by the 9th Circuit Court of Appeals, were as follows:

"* * * On June 12, 1942 the petitioner reported for induction at the induction station in San Francisco. He claims that he did not take the induction oath at this time or at any time, but that he continued on to the Presidio at Monterey with his draft group on the representation that he would there get a further hearing on his classification.

"9. While at Monterey petitioner allegedly signed a statement purportedly abandoning his claim as a conscientious objector. The petitioner claims he never signed such a statement. The validity of his signature to this document was never proved. There is no foundation for the admission of this alleged statement in evidence, therefore, it is ordered stricken from the record, and this Court disregards it.

"10. Petitioner was then sent to a basic training camp in Alabama. He refused to take part in military training and at the first opportunity boarded a train and returned to his home in San Jose, where he has resided openly ever since.

"Petitioner obtained a job with one of his former employers, thereafter changed his employment from time to time, but at all times

¹⁴ *Cox v. Fredericks*, 90 F. Supp. 55 (DCND Cal., 1950); *Cox v. Wedemeyer*, 192 F. 2d 920 (9th Cir., 1951).

remained in San Jose. He made absolutely no attempt to conceal his identity, or his address, or residence, or whereabouts. He was arrested by agents of the Federal Bureau of Investigation about May, 1949, almost seven years after he had left Camp Rucker in Alabama. During this period he has supported his wife, and so far as the record shows has been a law-abiding industrious citizen.

“* * *”

The opinion of the court went on to state pertinently:

“Petitioner’s situation is entirely different from that of the draftee in *Lawrence v. Yost*, 157 F. (2d) 44. There the draftee testified that when the oath was administered to a group of inductees he failed and refused to take it. His statement was corroborated by his acts preceding and immediately subsequent to his attempted induction. He was outspoken he would not take the oath, and had not taken it. Immediately after the induction service he told the officers that he would not report to the Army and that he had not taken the oath and he did not report to the Army. He returned to his home and reported to the Clerk of his local board that he had not taken the oath. The Clerk made a written note to that effect in his file. Sometime after he made a full written report to the Federal Bureau of Investigation to the same effect. In short, his testimony that he had not taken the oath

was supported by persuasive documentary and other evidence.

“In the case at bar the testimony of petitioner is not so supported. On the contrary many circumstances compel the conclusion that his statement is incorrect. He failed to tell his local board that he had not taken the oath. He made no written statement to that effect to any official in the Army, or connected with the local board. Instead of refusing to report to the Army as in the *Yost* case he went voluntarily from the Presidio in San Francisco to Monterey, and from there to Camp Rucker, Alabama, he designated his wife as his beneficiary, he wore the uniform of the Army, accepted a pay check and other Army benefits, including free mailing privileges accorded a soldier. In writing to his wife from Alabama he did not tell her he had not taken the oath. When he applied for positions after his return to San Jose the excuse he gave for not being in the Army was to the effect that he had received a medical discharge, and when he was apprehended and arrested, and at his first court martial, he never made any claim that he had not taken the oath. These and other circumstances compel me to find that he has not sustained the burden of proving he was not properly inducted. Moreover, it might be said also that these circumstances show that his conduct after leaving the induction center amounted to a waiver of any irregularity in his induction.

Mayborn v. Heflebower, 145 F. (2d) 864;

Sanborn [Sanford] v. Callan, 148 F. (2d) 376.”

On appeal of the Cox case, the case was reversed, the court stating:

“This brings us to the question whether the appellant’s subsequent acts, following his report for induction, operated, by way of waiver, consent, or otherwise, to subject him to the jurisdiction of the army or of a court-martial.

After referring to the taking of the induction oath (which the court held Cox did in fact take), to his proceeding from the Presidio in San Francisco to Monterey, and thence to Camp Rucker, in Alabama, to the fact that he wore the army uniform, utilized free mailing privileges, and accepted a pay check, the trial court’s opinion stated: ‘Moreover, it might be said also that these circumstances show that his conduct after leaving the induction center amount to a waiver of any irregularity in his induction’. The court thought that, appellant’s testimony that he did not take the induction oath³ was discredited because of its lack of corroboration from other sources. The court thought significant appellant’s failure to tell his local board that he had not taken the oath and his failure to make any written statement to that effect to any official in the Army.

Appellant testified that even after reporting at the Presidio in

San Francisco he was promised that he would be given a hearing on his exemption claims at Monterey and that at Monterey he was given a similar assurance as to a hearing at Camp Rucker. He testified that he advised his commander at Camp Rucker that he was a conscientious objector and had refused to take the oath, and said he was not a soldier. He refused to carry a gun and was compelled by his captain to carry 2 x 4 timbers nailed together, in place of a gun. After a period of this he rebelled and was thrown into a stockade.⁴ His captain tried to persuade him to drop his convictions but without success and as soon as appellant received his first and last pay check, which furnished him funds for a railroad ticket, he went home.

[3] In our opinion the evidence is insufficient to support a finding that appellant waived any irregularity in his induction. His acts following induction, such as wearing the uniform, were those in respect to which he had no choice. His own testimony, not contradicted by any other witness, was that he continually asserted his refusal to serve as a soldier. There is no evidence of such express or voluntary waiver as appeared in *Mayborn v. Heflebower*, 5 cir., 145 F. 2d 864 or in *Sanford v. Callan*, 5 cir., 148 F. 2d 376.”⁵

It is apparent from the foregoing that the Cox case follows the rules laid down in the *Mayborn*, *Callan*,

and Yost cases; that is, that an individual who disclaims taking the oath of induction, as required by regulations then in effect for induction, will be held to have been inducted if, by his subsequent service as a soldier, he waives the question of any irregularity in his induction. It is therefore believed the Kruk case is a legal anomaly in holding that an individual who refused to take the induction oath, *and who had not waived any irregularity in his induction proceedings by subsequent service*, was, nevertheless a member of the Army, and hence should not be followed.

Apparently because of the language of the Supreme Court in *Billings v. Truesdell* (to the effect that the Army might prescribe any type of induction ceremony it desired, and the uncertainty of the exact time of induction under the induction ceremony then prescribed in regulations), Army Regulations 615-500, 10 August 1944, were promulgated, providing for induction by an induction ceremony having as its "main attraction" the taking of a "step forward" rather than by an induction ceremony including an oath taking. Army Regulations 615-500, 10 August 1944, have been superseded but not materially altered by subsequent regulations. Those presently in effect (AR 601-270, 5 April 1956) provide pertinently:

"Induction. The following procedure will be followed in the induction of all registrants into the Armed Forces:

a. Registrants who have been determined to be fully qualified

for induction in all respects will be assembled. The inducting officer will inform them of the imminence of induction, quoting the following:

'You are about to be inducted into the Armed Services of the United States, in the Army, the Navy, the Air Force, or the Marine Corps, as indicated by the service announced following your name when called. You will take one step forward as your name and service are called and such step will constitute your induction into the Armed Service indicated.'

b. Any registrant who fails or refuses to step forward when his name is called will be removed quietly and courteously from the presence of the group about to be inducted and processed as prescribed in paragraph 28b.

c. A commissioned officer or warrant officer then will call the roll and the foregoing procedure will be carried out. All who have stepped forward will be informed that each and every one of them is a member of the armed service concerned, using the language exactly as quoted:

'You have now been inducted into the Armed Service of the United States indicated when your name was called. Each one of you is now a member of the Armed Services concerned, and amenable to the regulations and the Uniform Code of Military Justice and all other applicable laws and regulations.'

"Oath of allegiance ceremony. The oath of allegiance is not a

part of induction. Registrants who have been inducted will be informed that the taking of ceremonial oath of allegiance is not a part of induction. The oath will be administered by the service to which assigned as soon after the induction as practicable. In every instance there will be an appreciable break to insure that the taking of the ceremonial oath does not appear to be any part of the induction. The oath may be administered at any location as prescribed by the service in which inducted. If a nondeclarant alien is a member of the newly inducted group, the officer will explain the difference between the ceremonial oath of allegiance and the ceremonial oath of service and obedience.

a. The oath of allegiance reads as follows:

'I,, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.'

b. In the event a nondeclarant alien does not desire to take the oath of allegiance, he may be administered the following oath of service and obedience, which oath

will be substituted for the oath described in a above:

'I, a citizen of and without intention of surrendering such citizenship, do solemnly swear (or affirm) that I will serve the United States honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.'

c. If a person declines to subscribe to any oath or refuses to sign the various papers after the oath of service and obedience is administered, he will be advised that he is already a member of the United States Army, Navy, Air Force, or Marine Corps, whichever is appropriate, and his refusal to sign papers will in no way alter his status or disposition."

In a later Federal case¹⁵ concerning a purported induction under the "step forward" system, the petitioner, Corrigan, claimed he did not take a step nor did he raise his hand and take the oath although he made no protest at the time. The court stated as follows, in finding petitioner not to have been inducted:

"It is not contended that either the step forward or the taking or giving of the oath is required by the Selective Service Act as

¹⁵ *Corrigan v. Secretary of Army et al.*, 211 F. 2d 293 (9th Cir., 1954).

necessary to induction. As said in *Billings v. Truesdell*, 1944, 321 U.S. 542, 559, 64 S.Ct. 737, 746, 88 L.Ed. 917; 'a selectee becomes 'actually inducted' within the meaning of § 11 of the Act when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed.' Therefore, since the selectee is subject to civil authority until the moment of completion of the induction, at which moment he becomes subject to military authority, it is highly important that such moment should be marked with certainty. See *Billings v. Truesdell*, 1944, 321 U.S. 542, 64 S.Ct. 737, 88 L.Ed. 917.

For a time the oath marked the dividing line between the civilian and military status, but difficulties and uncertainties arose as to whether, in fact, the selectee had taken the oath. See our opinion in *Lawrence v. Yost*, 9 Cir., 1946, en banc, 157 F. 2d 44. Thereafter, the regulation (Army Special Regulation No. 615-180-1, paragraph 23), providing for the *step forward* was promulgated.

[1] However, one may emerge from a selectee to a soldier without taking the step forward; that is, by conduct consistent with the soldier status; but the fact of the step forward, whether or not it was taken, is of high importance in this case. As to that issue of fact, it is claimed by petitioner that it was impossible for the men, other than those in the front

row, to step forward and the physical set-up and the testimony practically demonstrate the truth of the claim. The inducting Captain testified in answer to a question as to space, 'There is space, not much.' 'Q. You mean he could shuffle? A. Correct.'

At no time does the inducting Captain claim that he saw petitioner take the step forward. As to the procedure, he testified on direct examination that when he calls a name at induction ceremonies, 'I wait for a response, * * * or if they are near the front of the room where I can see them, I see if they step forward.' Afterward, he would call the next name. 'Q. Did you at any time look to see if a man had taken a step forward? A. I look up each time I call a name. Q. What do you look for when you look up? A. For movement, for a man stepping forward. * * * Q. On that day did you see any man fail to step forward after his name was called by you? A. No.' On re-cross-examination, Captain Beydler was asked, 'Can you tell us that you recall whether or not you saw this petitioner move forward on April 15—after you called his name?' The Captain answered, 'No, I cannot.' * * *

Petitioner on cross-examination was asked, 'When was the first time that you advised anybody in the Army that you were a conscientious objector?' * * * A. 'After the ceremony.' The Court: 'What do you mean "after the ceremony?"' The Witness: 'Well, after the ceremony was over, I

thought—well, there isn't much use in making a scene, and I just walked outside and told the Captain in charge. * * * I told him I did not take [the] oath or step forward. * * * He says, 'No. You are in the Army.' * * * Q. Isn't it a fact that when you saw Captain Beydler, after leaving the induction room that you told him you had changed your mind, that you were now a conscientious objector? A. I didn't say 'I changed my mind', No, sir. * * * I said 'I am'. * * *

After that, according to petitioner's testimony, he made three telephone calls and then told a Sergeant, 'I am going home'. Petitioner further testified, 'I had some friends and I went over to see and talked with them. * * * I went over to another friend's and stayed all night. * * * I stayed another day and then I went on home.' * * *

[2,3] We are of the opinion that the unnecessarily crowded set-up in the induction room made it physically impossible for the inducting officer to have seen whether petitioner took the step forward and that it was in fact impossible for petitioner to take a step forward. Therefore, we think, the court's finding on this factual issue was in error. The evidence reveals no act after the induction ceremonies from which it could be found that petitioner had in fact acquiesced in induction, but on the contrary his conduct is entirely consistent with his claim that he did not submit

to induction, and is not consistent with any theory of acquiescence. However, the court made no finding on the subject of acquiescence.

[4] We hold that the evidence does not support the conclusion of the trial court that petitioner was inducted into the Armed Services of the United States."

Summarizing, it may be seen that the Army may prescribe any form of ceremony for induction it chooses, that it may not forcibly induct an individual, that under implementing regulations prior to 10 August 1944 an individual was inducted by a ceremony including an oath taking, and that subsequent to that time Army regulations prescribe that an individual is inducted at the moment he takes the required step forward.

The courts have been unusually lenient in their treatment of individuals claiming involuntary military servitude insofar as the Army's claim to jurisdiction over them is concerned. It seems fair to state that individuals who have not acquiesced in their induction as evidenced by their subsequent conduct have an excellent chance to claim, and secure, their freedom from the Army on the basis that they were not properly inducted. Lest the foregoing tempt an individual to evade induction by a refusal to submit thereto, attention is invited to subsection 12(a) of the Universal Military Training and Service Act, *supra*, which provides, *inter alia*, a maximum penalty of not more than five years or a fine of not more than \$10,000, or both, for persons refusing service under that Act.



Annual Dinner at the Dorchester Hotel, London. At the head table (left to right): Gen. Hickman, Mrs. Halse, Gen. Harmon, Lady Gentle, Judge Quinn, Mrs. Ferguson, Master Montagu, Col. King, Sir Frederick Gentle, Mrs. Quinn, Brigadier Halse, Mrs. Montagu, Mrs. Harmon, Judge Ferguson, Mrs. Hickman, Admiral Ward.

THE ANNUAL MEETING

The annual meetings of the Association this year held in New York and London were outstanding events in the history of the Association. Nearly 100 of our members met at the Columbia University Club on the afternoon of 15 July for the first session. Col. Nicholas E. Allen presided. Particular emphasis of the meeting was laid on the work of two committees, both headed by General E. M. Brannon. The first committee, which has done outstanding work and has filed its report, is the committee studying the Hoover Commission Recommendations with regard to legal services in the military establishment. The report of that committee is included in this issue of the Journal at page 23. The other committee of significant interest is the committee on the Status of the Lawyer in the Armed Forces. The report of this committee was published in 23 JAJ at page 17.

With reference to the report of the Committee on the Status of the Lawyer in the Armed Forces, Col. King reported as chairman of the Legislative Committee on two pending legislative matters: First, he spoke on the bill which would increase the rank of The Judge Advocates General and the Surgeons General to Lieutenant General or Vice Admiral. It was pointed out that although this legislation would affect directly and personally only a few officers, the Association was

interested in it because it would have the effect of enhancing the prestige of the legal profession by matching the rank of The Judge Advocates General with that of the chiefs of personnel and other officers with whom The Judge Advocates General must deal. Col. King expressed the view that the prospects for the enactment of this legislation are good because it does not have serious budgetary implications and is strongly sponsored by the American Medical Association and the American Bar Association. The other legislative matter mentioned by Col. King was the Thurmond Bill introduced in the Senate by Senator Strom Thurmond and in the House of Representatives by Congressmen Hyde and Multer. It was explained that this legislation would do three things: (1) establish the initial rank of Judge Advocates and Legal Specialists as First Lieutenant with automatic promotion to the rank of Captain for officers who have been at the bar one year; (2) the granting of three years' constructive service for promotion purposes for the time spent in securing professional education; and, (3) the establishment of a graduated scale of incentive payments for lawyers in line with those incentive payments now made to medical and dental officers. The Department of Defense has not yet reported on this legislation to the Congressional Committees. Col. King stated that



Another view of the Annual Dinner at the Dorchester Hotel, London.

he had had conferences with members of the Congressional committees concerned, and that he had been assured that the Thurmond Bill would be considered with the Cordiner report and that the Departments have been requested to submit a report on the proposed legislation at an early date. Col. King stated that he did not anticipate favorable reports from the military establishment. If, however, the matter was brought on for consideration at Congressional hearings, he was satisfied that a good case could be made in favor of the legislation and had reason to believe, that if not the whole, at least substantial parts of the bill would be enacted. Col. King mentioned the strong support given the legislation by the American Medical Association, the American Bar Association, and many local bar associations and he took the opportunity to commend particularly Mr. Charles Rhyne, President of the American Bar Association, in his appointment of Col. Osmer Fitts, a member of the board of directors of the Judge Advocates Association, as chairman of the American Bar Association's Committee on the Status of the Lawyer in the Armed Forces.

General George W. Hickman, The Judge Advocate General of the Army, General Albert M. Kuhfeld, The Deputy Judge Advocate General of the Air Force and Captain Philip Walker, Deputy Judge Advocate General of the Navy, attended the meeting in New York as spokesmen for their respective offices.

General Hickman underscored the

need for some program to encourage young lawyers to follow a military career and suggested that the Thurmond Bill outlined by Col. King should be considered on its merits and not as a high pressure lobbying activity because he felt that on the merits, a good case could be made for that type legislation. General Hickman mentioned several regulatory changes made in his office to help secure and retain lawyers in the services: first of all, a reduction in tour of duty from three to two years in the case of law graduates who already hold commissions obtained through ROTC; secondly, allowing students in the last year of law school to apply for active duty in JAGC prior to graduation and bar examination; and, third, allowing ROTC students to be deferred from active duty sufficient time to complete three years of law school education. General Hickman also announced the appointment in his office of an executive assistant for reserve matters. Some of the work of this assistant will be to plan and establish, if possible, a mobilization troop basis for JAG's so that more lawyers will be able to take their inactive duty training with units instead of the present ORC school establishment. In this way, JAG officers organized in trial teams, claims teams, branch offices and augmentation teams for various technical services would become entitled to a more realistic program, a pay basis for inactive duty training, and would at the same time receive better training more suitable for immediate service upon mobilization.

General Kuhfeld, in speaking for the Air Force, indicated that one of the main problems of The Judge Advocate General of the Air Force is the retention of qualified officers. He pointed out that over half of the strength of the Air JAGD is made up of First Lieutenants, whereas only 10% of the overall strength should be in that grade. He observed that as the Air Force loses its Lieutenant Colonels and Colonels by retirement, their places are filled by First Lieutenants who do not stay on duty long enough to become Captains. General Kuhfeld recognized that the personnel retention problem is service-wide, but he expressed the opinion that it is more acute in the legal departments than anywhere else. As an example, he pointed out that there are two applicants for each three vacancies in The Judge Advocate General's Department, whereas there are three applicants for each Air Force commission vacancy.

General Kuhfeld, after reviewing the statistics relating to courts-martial and the Air Force experience on rehabilitation of convicted accused, again urged that the fifteen changes in the Uniform Code of Military Justice advocated by the Judges of the Court of Military Appeals and The Judge Advocates General should be adopted and would be of material assistance in the proper administration of justice in the Services.

Captain Walker reported that during the past year Admiral Ward, in the interest of providing good legal services to the Navy, had re-

organized the Office of The Judge Advocate General of the Navy by setting up a five man top management team composed of the Judge Advocate General, a Deputy and three Assistants. The Assistants were placed in charge of military law, personnel and reserve matters and administrative and international law matters, respectively. Captain Walker expressed the view that there has been great improvement in the quality of legal services in the Navy. As far as military justice is concerned, there has been a tendency to reduce charges and to adopt the Army's policy of accepting negotiated pleas in appropriate cases. As far as the personnel and reserve management branch is concerned, their primary function has been to obtain a better lot for the law specialists and increased professional prestige. He announced that 75 new legal billets had been obtained from the Bureau of Naval Personnel, and that there has been a revitalization of the program for recruiting new JAG's.

Judge Latimer reported for the Court of Military Appeals. He announced that his colleagues on the Court were en route to London to attend the American Bar Association's sessions there. Judge Latimer stated that in recent months the Court has been granting more petitions for review, and, that accordingly, it would seem that the case load of each judge was going to be materially increased. He expressed the fear that if the work load becomes too heavy, the quality of work of each judge in each case is going

to be limited. He announced his own policy with regard to the grant of reviews to be guided by two things: first, review must be of some benefit to the accused, or second, review must establish guiding principles of law which will be of benefit to the system of military justice operating under the Uniform Code and to the practitioners participating in the system. He pointed out that many of the cases before the Court involve very difficult Constitutional law questions, such as, for example, those involved in the Smith and Covert cases. These, he observed, require considerable time, research and thoughtful work.

Judge Latimer made a few personal observations. First, he pointed out that the representation of accused by the young Service lawyer is as good as that provided the defense in civilian criminal courts. This, he pointed out, was extremely commendatory in view of the fact that the military services have a constant personnel turnover and, further, in view of the fact that in the military services there is a chain of command in which the lawyer is located; and, generally speaking, the commander has little regard for lawyers. Secondly, Judge Latimer observed that in the six or seven years of the Court's existence not a single command school had been called anywhere where a judge of the Court had been invited to speak and enlighten commanders upon the operations of the Uniform Code of Military Justice. He advanced the view that we must educate commanders to appreciate the Uniform

Code of Military Justice and the value of lawyers in rendering a necessary service to persons in the Armed Forces. Judge Latimer expressed the opinion that he did not feel that pay and rank are the only matters necessary to improve the morale of the profession in the Armed Forces. He said that he felt what is most needed by the lawyer in uniform is a sympathetic boss. Thirdly, the Judge pointed out that the judicial system of the Armed Forces has been changed from a paternalistic one to a system of advocacy. Therefore, he urged that it is the duty of defenders in all military cases to fight vigorously for the rights of the accused and even in negotiated plea cases, to fight for a minimum sentence. He also suggested that The Judge Advocates General should send their more experienced officers to the appellate court in more cases because they, with greater military experience than the younger JA lieutenants, could better answer the questions raised by a civilian minded judge. Judge Latimer finally urged that the amendments to the Uniform Code recommended by The Judge Advocates General and the Court a few years ago are necessary in the interest of economy of time and money and the improvement of justice and he urged that those proposed amendments be supported.

Capt. Robert G. Burke, USNR, president of the Association in the year 1955-56, was then awarded the Association's past president's award by Col. Allen.

The report of the Board of Tellers was then made and the following were announced elected and installed in their respective offices:

Col. Thomas H. King, USAFR,
District of Columbia—President

Col. Frederick Bernays Wiener,
JAGC-USAR, Maryland—First
Vice President

Capt. Philip A. Walker, USN,
Hawaii—Second Vice President
Col. J. Fielding Jones, USMCR,
Virginia—Secretary

Lt. Col. Edward F. Gallagher,
JAGC-USAR, District of Colum-
bia—Treasurer

Col. Sheldon D. Elliott, JAGC-
USAR, New York—Delegate to
the American Bar Association

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braska

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trict of Columbia

Maj. Marion T. Bennett, Maryland

Lt. Col. Louis F. Alyea, Virginia

Col. King then assumed the chair and after a few remarks, the meet-
ing was recessed to reconvene in
the United States Information Ser-
vice's Conference Room at the Amer-
ican Embassy, Grosvenor Square,
London, at 2:30 p.m. on 25 July
1957. At the appointed time and
place in London, the meeting of the
Association was resumed. Over a
hundred of the members of the As-
sociation and interested military
lawyers attended the recessed meet-
ing. A good many of these were
members of the Association cur-
rently on active duty in Europe.
There was a resume of the business
conducted in New York, including
the full report by Col. King on
legislative matters.

Mr. Robert Deckert, General
Counsel of the Department of De-
fense, was present and addressed
the meeting. Mr. Deckert stated
that the Cordiner committee's report

had been favorably received by the Department of Defense since it realizes that it must keep its trained personnel in the active service as a matter of economy. Although legislation effectuating the present report would require increased expenditures, he expressed the view that there would be a net saving of money by reducing the expensive results of continuing high personnel turnover and retraining. Some items from the Cordiner report, he stated, have been submitted to the Congress as legislative requests. Although a report by the Department of Defense on the Thurmond Bill had not yet been made, Mr. Deckert said that it would be done promptly. He stated that he personally favors the objectives of the Thurmond Bill and could see no reason why lawyers should not be as well remunerated as doctors.

Mr. Deckert also spoke of the Status of Forces Agreements and decried the public criticism of these agreements such as has arisen out of the Girard case. He called for a greater effort on the part of those who understand the Status of Forces Agreements and the jurisdictional necessity of them, to educate the public into understanding that they are an integral part of a joint operation of self-defense between us and our allies.

General Hickman personally gave his report for the Army as he had done in New York and then Col. King called upon Admiral Chester Ward, The Judge Advocate General of the Navy. Admiral Ward observed that a year earlier it had been easy for him to report to the

Association because then he was announcing hopes and expectations. After one year in office, he said he found it more embarrassing, because now he would have to report what he had done. The Admiral stated that some changes in the organization of the office which could be effectuated by regulation had been accomplished, but he was sorry to report that those changes requiring legislation were coming about much more slowly. He pointed out that he had set up a top management team of a Deputy Judge Advocate General and three Assistant Judge Advocates General to increase career possibilities of the office; but, of course, legislation would be required to increase rank and compensation. He pointed out that the Navy has only one flag rank in the Office of The Judge Advocate General, and that legislation had been introduced in the Congress to extend flag rank to the Deputy Judge Advocate General. Admiral Ward stated that almost all of the senior officers in the Judge Advocate business of the Navy were former reservists who came on duty about the same time seventeen or eighteen year ago and that accordingly unless there are some very interesting career incentives offered the lawyer in the Navy, that Service will lose all of its senior legal talent in about two or three years when they become eligible for retirement. He stated that the lowest rank of lawyers in the Navy now is Lieutenant, Junior Grade, and that a new recruitment program in the nature of an officer candidate school conducted at Newport, Rhode Island offers hopes of

providing new young lawyers for his Service. Admiral Ward stated that he believed that during the past year, the myth that every lawyer in the Naval service means one less fighting man had been killed. Even the Marine Corps is now establishing law specialist billets, because the experience of the Marine Corps has been that a man can't do two jobs equally well. The Marine Corps has come to the conclusion that the lawyer is doing an essential job and that it is no longer practical to ruin the career of a fighting man by forcing upon him the job of a lawyer.

Admiral Ward stated that the Secretary of the Navy, Mr. Thomas Gates, has expressed great concern about the effect of too many men in the brigs upon the manpower of the Navy. He stated that to make better use of these men he is using some of the experience of the Army and Air Force. By the use of the Army's practice of negotiated pleas, pre-trial confinement time and time of trial and review have been cut. By use of the Air Force post trial investigation procedure, more men are being restored to duty at the convening authority level before the mechanics of post trial review are initiated. Admiral Ward expressed the belief that he has a better law office than he did last year.

General Harmon was then asked to report for the Air Force. General Harmon stated that his office is conducting more business of greater complexity with no increase in manpower and actually a loss of experience level. He said his office is not merely concerned with the legal

business of the Air Force, but also many policies of legal administration and personnel management which are often the most complex. He expressed the fear that in ten or fifteen years, unless some changes are made in the field of personnel management, there will be no uniformed legal departments in the Services. General Harmon spoke specifically of some of his primary concerns. First, for a good many years, the rights of the accused have been greatly amplified and there has been improvement in this direction. At the same time, however, there has not been expressed the same concern with the rights of society nor has there been equal zeal exhibited in the matter of the rehabilitation of the accused. General Harmon expressed the view that rehabilitation is not only a matter of concern of the individual, but is a social necessity in the light of the manpower situation and the good of civilian society when the accused is returned to it. General Harmon noted that one-half of those given the opportunity of rehabilitation are successfully restored permanently, but he expressed concern about the other half who do not successfully complete rehabilitation and the even greater number who never have the opportunity. He suggested that if a person properly rehabilitates himself in the civilian society over a period of years, it would seem that we owe him a chance of rehabilitation too and this is not only an obligation to him but also to society.

The second matter of concern which General Harmon spoke about

was the problem relating to the retention and acquisition of people to render legal services in the Armed Forces. He observed that in the Air Force where 10% of his officers should be in the grade of Lieutenant, actually half are in that grade. Because the Lieutenants do not continue on active duty until they are promoted to Captain and then to Major, there is a gap between the Colonels, who will soon be leaving the Services by retirement, and the Lieutenants, who are filling their offices temporarily. General Harmon stated very clearly and precisely that he personally favors the Thurmond Bill, although he realizes that the Department of the Air Force does not. He stated that orally and in writing he has supported the proposed legislation and will continue to do so. In the beginning when the doctors sought their first bonus payment, General Harmon stated that he had announced that he was against any incentive pay to any professions, but that when the doctors came up for their second increase, he had stated that he was not in favor of an increase in pay for doctors unless a similar incentive pay was given to all other professions too. The reason that he was opposed to bonus payments on a class by class basis was that it would set up a sort of wage spiral which would result in each individual group making its individual request; but, now that the doctors have received two bonus payments, he feels that there should be a raise given all who require the same amount of education to pursue their respective professions.

His recommendation that there be no increase in pay for doctors but an overall system of pay commensurate with professional capacity having been rejected by the Department of the Air Force in favor of a piece meal measure of increase in pay leaves him now in the position, General Harmon said, where he must say that if professional people are going to be retained by piece meal legislation rather than an overall pay system, legislation of the Thurmond Bill type must be enacted if we are going to have legal services in the Armed Forces.

Chief Judge Quinn reported for the Court of Military Appeals. After reviewing briefly a few figures pointing out the work load of the Court, he observed that it is the duty of the Court to hear any case if there is any reason for hearing it. Since justice is the Court's only product, it will have to hear as many cases as necessary to attain that goal. Judge Ferguson too made a few remarks. He stated that the Court is looking for a real difference in its cases between those that amount to criminal cases and those that amount to nothing more than disciplinary problems. He expressed the hope that military commanders will make this differentiation in the cases that come before them, thereby saving much effort and time in trials and review processes.

The Honorable Frank Millard, General Counsel of the Army, was asked to speak to the meeting. Mr. Millard expressed the view that the civilian branch of the legal profession in the Armed Forces has a great deal of solicitude and respect

for the uniformed lawyer. He stated that he is familiar with the value of the uniformed lawyer to the Services and the problem of retaining the services of these lawyers. He observed that the civilian legal services have a similar problem and, therefore, want to assure the members of this Association that the civilian branches of the legal services in the Armed Forces favor the purposes of the Thurmond Bill.

Col. King then introduced Col. Osmer Fitts as the member of the House of Delegates of the American Bar Association and Director of this Association who was largely responsible for the A.B.A. resolution designed to help the Services retain their uniformed lawyers. It was announced that Mr. Rhyne, President of the American Bar Association, had appointed Col. Fitts as chairman of its special committee on the status of lawyers in the Armed Forces.

The meeting was then adjourned.

On the evening of the 25th of July, members of the Association and their guests met at the Dorchester Hotel for a reception and cocktails. Among the distinguished persons present were the Association's British guests, Sir Frederick Gentle, Judge Advocate of Her Majesty's Forces, and Lady Gentle,

Master Ewen Montagu, Judge Advocate of Her Majesty's Fleet, and Mrs. Montagu, and Brigadier R. C. Halse, Director of Legal Services, and Mrs. Halse, and our own Chief Judge Robert E. Quinn and Mrs. Quinn and Associate Judge Homer Ferguson and Mrs. Ferguson, Major General and Mrs. Reginald C. Harmon, Major General and Mrs. George W. Hickman, and Rear Admiral Chester Ward. About 150 persons attended the reception and to list all the distinguished persons would encompass a list of all those attending and be too long for this article. Following the reception, the guests retired to the dining room where a fine supper was served.

Master Montagu, the guest of the evening, spoke most interestingly about the subject of his book, "The Man Who Never Was". It was an engaging and exciting account of British Intelligence in World War II and thoroughly appreciated and enjoyed by all present. After the supper, the party adjourned to the cabaret for post-prandial refreshment, floor show and dancing.

The annual meetings of the Association in 1957 were indeed memorable occasions and an appropriate part of the memorable 1957 meetings of the American Bar Association.



REPORT OF THE COMMITTEE ON THE HOOVER COMMISSION RECOMMENDATIONS*

Appointed pursuant to action of the Board of Directors of the Judge Advocates Association at a special meeting on June 2nd, 1956, this committee has thoroughly studied the proposals of the Hoover Commission dealing with legal services in the Government, considering particularly the four recommendations in Part II on legal reorganization of the Department of Defense and the three recommendations in Part IV on military attorneys. (Rec. 7, 8, 9, 10, Part II; Rec. 18, 19, 20, Part IV)

This committee would initially like to acknowledge the impressive authorship of the Hoover Commission report. While the outstanding legal ability of the distinguished members of the Commission naturally lends great weight to the recommendations, it seems that lack of real experience with the actual operation of the legal organizations of the Department of Defense may have, in some measure, contributed to proposals that are not only unworkable, but harmful to the agencies concerned. Additionally, greater weight has been given these pro-

posals by their almost unanimous acceptance by the House of Delegates of the American Bar Association, and the submission of legislation promulgating these proposals.

On the other hand, many eminent lawyers and teachers have dissented strongly from these recommendations. Of particular interest is an article presently appearing in the Journal of Public Law written by Prof. Robert S. Pasley of the Cornell Law School, a member of this Committee. Presented after an exhaustive study of the proposals and the organization of the Department of Defense, both historically and contemporarily, Prof. Pasley offers one of the more sensible approaches to the problem. Although brevity permits no inclusion of this article in the body of this report, it should be required reading for anyone concerned officially with the Hoover Commission recommendations.

Attached to the original copy of this Report there is set out the material which provided the working basis for this Committee. This material outlines the position of each agency directly concerned with the

* This report is currently receiving the consideration of the Board of Directors of the Association and does not represent the official view of the Association at this time. It does represent the view of the majority of the Association's Committee composed of Maj. Gen. E. M. Brannon, Gen. Edwin C. McNeil, Lt. Col. Robert S. Palsey, Cdr. Milton S. Kronheim, Jr., Gen. Herbert M. Kidner, Lt. Col. Allen G. Miller, and Cdr. J. Kenton Chapman, and is a matter of primary concern to military lawyers.

implementation of the Hoover Commission recommendations. It is interesting to note that all agencies are in direct opposition, including the General Counsels, and all consider the recommendations as unworkable, undesirable, and uneconomical.

Although this committee in majority is opposed to the recommendations contained in Parts II and IV of the Hoover Commission Report, it is considered apropos at this time to deal solely with those recommendations which form the basis for Resolution No. 6 of the Special Committee on Legal Services and Procedures to the 1956 Midyear Meeting of the House of Delegates of the American Bar Association, which resolution formed the basis for Secs. 302(d); 303(c)(1) and 501 of H.R. 3350, 85th Congress, 1st Session. Enactment of this legislation will have the effect of subordinating the Judge Advocates General of the Services to the appropriate General Counsel.

The initial Hoover Commission recommendation providing the impetus is recommendation No. 7, Part II of the report.

"Within the Department of Defense and its constituent military departments professional authority over the entire legal force and all legal services should be vested in a General Counsel retaining the present rank of Assistant Secretary of Defense. Legal advice and services to the Secretary, Deputy Secretary, and Assistant Secretary of Defense should be furnished solely by a staff in the

office of the Secretary of Defense under the direction of the General Counsel."

Recommendation No. 9, Part II, provides for the same type of legal responsibility for each of the three military departments.

The House of Delegates of the American Bar Association following a study of the desirability of implementing this recommended organization, adopted the following resolution:

"Resolution 6.

6. Resolved, That, in order to accomplish desired improvements in the organization and legal services within the Department of Defense, the American Bar Association recommends:

a. That, within the Department of Defense and its constituent military departments, professional responsibility over the entire legal staff, and for all legal services, should be vested in a General Counsel retaining the present rank of Assistant Secretary of Defense.

b. That a career service for civilian legal personnel should be developed and supervised by a civilian Legal Personnel Committee within the Department of Defense.

c. That professional responsibility over the entire legal staff, and for all legal services, in the three military legal departments, subject to the professional supervision of the Department of Defense General Counsel, should be vested in the General Counsel of the Army, the Navy, and the Air

Force, each to have the rank of Assistant Secretary.

d. That the Army, the Navy, and the Air Force should each have a Judge Advocate General's Corps or Department, under the direction of a Judge Advocate General with the rank of Lieutenant General or Vice Admiral."

This Committee in majority opposes the Hoover Commission recommendations Nos. 7 and 9, and that portion of the resolution of the House of Delegates set out above that pertains to these recommendations. It is therefore recommended that the Judge Advocates Association oppose these proposals. The following reasons are advanced:

(1) The General Counsel of the Department of Defense is *presently* the "Chief Legal Officer of that Department." Consequently, the proposal could only contemplate that the General Counsel of the Department of Defense exercise detailed day to day supervision of the 4300 lawyers in the Department, lawyers performing so many different and varied functions that the General Counsel's staff would have to be increased many fold to provide the necessary organization for such a project. This necessity for expansion would be also reflected in the military departments if this proposal were accepted. This is administratively unworkable.

(2) The recommendations being discussed, in conjunction with recommendation No. 20, would have the effect of limiting the scope of activity of the military lawyer to military justice and military affairs.

Lawyers in uniform are now performing duties in the fields of contracts, tax, litigation, international law, patents, procurement, and legal assistance to servicemen and their dependents. These services are essential. At each military installation, civilian counsel must be employed to take over a portion of the work now being capably handled by the military lawyer while the military lawyer's activities become strictly limited. Such a proposal is in complete opposition to the purpose of the Hoover Commission.

(3) The Commission recommends a strict limitation upon the authority of The Judge Advocate General and the interposition of an intermediate higher authority on one hand, and in the same breath recommends an elevation in rank, an anomalous situation even at first glance. This factor, considered with the present extreme difficulty in retaining experienced military attorneys, seems to be calculated to destroy the very morale which the Commission hopes to build up among military lawyers. No young attorney will be interested in a military legal career which has been severely limited to the extent recommended, when his training has been as complete and thorough and he has been required to pass the same examinations as his civilian counterpart who is allowed to act in a more unlimited field. With the procurement of young lawyers for even a short tour of active duty dependent almost entirely upon their vulnerability to selective service, this action would be disastrous to the legal organizations of the military departments.

(4) Borrowing the thoughts of Prof. Pasley—as a member of this Committee, the Commission seems to suffer from at least two major defects: (a) an urge to impose uniformity at all costs; and (b) a deep seated distrust of lawyers in uniform. Although the Commission's proposals envision uniformity, the imposition upon a department of such size could result in nothing but duplication, inflated staffs beyond all imaginable bounds, and additional expense to the Government and the taxpayer. Insofar as military lawyers are concerned, an examination of the qualifications and experience of those lawyers presently serving on active duty with the military services will show a favorable comparison with the qualifications and experience level of the civilian attorneys employed by the Department of Defense.

This Committee in this brief report does not pretend to do other than mention the above as major reasons for its recommendation that the Hoover Commission proposals under study be opposed by the Judge Advocates Association. A more comprehensive and detailed analysis is contained in the appendices of this report as filed with the Secretary of the Association. It should also be mentioned that a committee of the Federal Bar Association, after a thorough study, has recommended opposition to the Hoover Commission recommendations concerned, although they recommended equivalent status for the General Counsels and the Judge Advocates General of the military services. This Committee at this time reserves comment upon this proposal.

Judge Milton S. Kronheim, Jr., dissents and indicates that he favors the proposed legislation.

STATEMENT OF POLICY

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

The Judge Advocates Association 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." The Association is devoted to the development of military law and an efficient military legal and judicial system. It is vitally concerned with the prestige of the legal profession in the Armed Forces.

If you are now a lawyer, if you have had service in any of the Armed Forces 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.

THE PRESIDENT'S REPORT:

I want to take this opportunity to thank the members of the Association for having elected me to the office of president and for having complemented my election with as fine a group of officers and directors as we have ever had.

The Association is making progress toward the goal of advancing the prestige of the uniformed lawyers in the legal departments of the military services.

Notwithstanding the unfavorable report of the Department of Defense on legislation dealing with the elevation of the Surgeons General and The Judge Advocates General to three star rank, it is my opinion that that legislation will be favorably considered in the next session.

As you know, in the last session of Congress, Senator Thurmond, in the Senate, and Congressmen Hyde and Multer, in the House of Representatives, introduced 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 propose for lawyer-officers a minimum rank of Captain for those who have been at the bar more than one year, three years' constructive service for promotion purposes, and increased pay graduated on length of service. Although these bills may not be perfect legislation, it is my opinion that such legislation is necessary and that substantial progress in the

direction set by S. 1165 will be made in the next session of Congress.

It has been my pleasure to talk with officials in the Department of Defense who are charged with personnel and manpower problems. They are now fully appreciative of the problem confronting the Services in retaining their legal personnel. Their position is that the Cordiner bill would do substantially all that the administration can afford from a financial point of view. As a matter of fact, however, the administration has not supported the Cordiner Report. The only current legislative consideration being given the Cordiner Report is the product of bills introduced by Senators Symington and Goldwater based on parts of that report. It is my opinion that legislation recommended by the Cordiner Committee would not do what is necessary to be done to keep lawyers in the military services.

The augmentation program of the regular services is a good base from which to make some appraisal. This program generally provides that 50% of the officers on extended active duty will be regular officers. For each of the positions available under the augmentation program, almost every position vacancy, other than legal, has three applications made for it, whereas there are only two applications for each three vacancies in legal positions. There must be some selectivity in choosing legal officers, and the experience of

the augmentation program certainly affords no real selectivity in the filling of the vacancies. It can be clearly seen that the Services are not having as much difficulty in securing physicians, dentists, pilots, engineers, and others to fill the permanent positions in the regular services as they are having in getting lawyers to make the military a permanent career. It is estimated that in five years there will be only a small number of senior officers on duty as lawyers. If the Selective Service law is not continued in effect, there will not be many young lawyers taking commissions in the military services. With the draft being substantially reduced and many persons only required to take six months' active duty to satisfy their draft obligation, it is found that many young lawyers prefer six months' enlisted duty to three years active duty as first lieutenant lawyers. It becomes apparent that in the light of present retention experience, there won't be many junior officer lawyers on duty either.

The resolutions passed by the American Bar Association and the Judge Advocates Association in February 1957 called for legislation providing realistic, scientific pay schedules for all members of the Armed Services so as to provide the incentive necessary to keep professional officers and technical personnel in the Services on a career basis. There seems to be little prospect of that being accomplished. Therefore, the alternative of our resolution must be our goal. We do consider additional compensation essential for members of the legal profession

servicing with the Armed Services commensurate with the special professional pay schedules now available to the other learned professions. This can be accomplished by the enactment of Senate Bill 1165.

To accomplish the enactment of this legislation, it will be necessary to rally the active help and support of the entire organized bar. I, therefore, recommend that you request your state and local bar associations to adopt a resolution supporting S. 1165. Many state and local bar associations have already taken such action in the following form:

WHEREAS, there has been introduced in the Congress of the United States Senate Bill 1165, which provides for additional pay and promotion for members of the legal profession serving with the armed services in a legal capacity, bringing the pay and promotion status of military lawyers to a level commensurate with the special professional pay and promotion schedule now available to members of the medical and other learned professions serving with the military; and

WHEREAS, it is the sense of this Association that lawyers should receive such commensurate compensation and rank, for their professional training and skill are certainly as valuable to the armed forces as those of the other learned professions; that the armed services are having great difficulty in procuring and retaining even a minimum of military lawyers, and that if they are unable to do so, it will be impossible to administer properly the

present Uniform Code of Military Justice; that said Code was made the basis of military justice largely through the efforts of civilian lawyers, and that we therefore have a responsibility to ensure its successful operation; and that, finally, this Bar has a peculiar interest in and knowledge of the needs and problems of the armed services;

THEREFORE, BE IT RESOLVED, that this Bar Association

endorses Senate Bill 1165, and urges upon the Congress of the United States its passage, and the Secretary be and he is directed to send copies of this Resolution to the members of the United States House of Representatives and the United States Senate from this state, and to the American Bar Association and the Judge Advocates Association.

We hope that you will use your best effort in securing a resolution from your own organization.



In Memoriam

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

- Col. Benjamin A. Ayars of Arlington, Virginia
 - Lt. Col. George J. Banigan of Chicago, Illinois
 - Col. Edward J. Kotrich of Washington, D. C.
 - Col. Louis Rex Shaffer of Malden, Massachusetts
 - Col. Charles T. Shanner of Chicago, Illinois
-

SUPREME COURT REVERSES SELF IN SMITH AND COVERT CASES

The 1956 opinions of the Supreme Court holding that civilian dependents of American military personnel stationed abroad are subject to trial by court-martial¹ were reversed and withdrawn 364 days later, after rehearing. *Reid v. Covert* and *Kinsella v. Krueger*, 354 U.S. 1, decided 10 June 1957.²

Mrs. Covert had been convicted by an Air Force court-martial in England for the murder of her husband, an enlisted airman; and, Mrs. Smith, wife of an Army officer, had been convicted by an Army court-martial in Japan for the murder of her husband. Military appellate reviews had resulted in the affirmation of the Smith conviction.³ The Court of Military Appeals had ordered a rehearing in the Covert case on technical grounds arising out of the defense of insanity⁴; but pending the rehearing, a successful application for the writ of habeas corpus was made on the constitutional ground that the civilian wife of a member of the military establishment could not be tried by court-martial.⁵ Habeas corpus was sought also in

the Smith case, but was denied.⁶ Without intermediate appeals, the Supreme Court heard both cases and handed down its short-lived holding that courts-martial may constitutionally exercise jurisdiction over the civilian dependents of servicemen in overseas areas. The Court then rested its decision on the ground that "the Constitution does not require trial before an Article III court in a foreign country for offenses committed there by an American citizen", relying on *In re Ross*, 140 U.S. 453, and on certain of the so-called Insular Cases, *Hawaii v. Mankichi*, 190 U.S. 197; *Dorr v. United States*, 195 U.S. 138; *Balzac v. Porto Rico*, 258 U.S. 298.

The 1956 opinion in the *Smith* and *Covert* cases was written for the Court by Mr. Justice Clark with the concurrences of Justices Reed, Burton, Minton and Harlan. Chief Justice Warren and Justices Black and Douglas dissented and Mr. Justice Frankfurter reserved his opinion. Colonel Frederick Bernays Wiener, attorney for the accused women, filed a petition for rehearing. The

¹ *Kinsella v. Krueger*, 351 U. S. 470; *Reid v. Covert*, 351 U. S. 487.

² According to the headnote in the official reports, 354 U.S. at 1, the earlier opinions were "withdrawn."

³ 5 USCMA 314.

⁴ 6 USCMA 48.

⁵ *U. S. ex rel. Covert v. Reid*, D.D.C., 42 A.B.A.J. 162.

⁶ *United States v. Kinsella*, 137 F. Supp. 806 (S.D.W.Va.)

petition was granted⁷—the first such petition granted by the Court after the filing of an opinion in seven years.⁸ The new decision represents the first time in fifteen years that the Supreme Court has reached a different result on a rehearing following a published opinion.⁹ On that occasion, the difference in result followed a change in the composition of the Court.¹⁰ The last time that the Court reversed itself on rehearing following a published opinion without a change in membership was in the Income Tax Case in 1894,¹¹ sixty-three years ago.

On rehearing in the present cases, the three prior dissenters adhered to their position; the new judge, Mr. Justice Brennan, joined them, as did Mr. Justice Frankfurter, who had previously reserved his vote; and so did Mr. Justice Harlan, who changed his view. Thus on rehearing, Colonel Wiener, now First Vice-President of the Judge Advocates Association, turned a 5-3-1 defeat into a 6-2 victory for his clients.

There was no opinion of the Court. Mr. Justice Black announced

the judgment of the Court, and an opinion in which the Chief Justice and Justices Douglas and Brennan concurred; that opinion was to the effect that military courts-martial have no jurisdiction to try civilians beyond that set forth in Article 2(10), UCMJ. After concluding that *Toth v. Quarles*, 350 U.S. 11, was not distinguishable from the present case, the opinion stated its agreement with Winthrop [reprint, p. 107] that "a statute cannot be framed by which a civilian can lawfully be made amenable to the military jurisdiction in time of peace". These four justices rejected the Government's contention that the constitutional requirements of Article III, section 2, and the Fifth and Sixth Amendments did not apply in United States trials in foreign lands, saying that "when the United States acts against citizens abroad it can (not) do so free of the Bill of Rights". They limited *In re Ross* to the peculiar setting and time of its decision and distinguished the *Insular Cases* on the ground that they did not concern military jurisdiction

⁷ 352 U.S. 901.

⁸ *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, rehearing granted, 337 U.S. 910; second opinion reaching same conclusion, 339 U.S. 605.

⁹ *Jones v. Opelika*, 316 U.S. 584, affirming judgment below; rehearing granted, 318 U.S. 797; prior judgment vacated, and judgment below reversed, 319 U.S. 103.

¹⁰ In the interim, Mr. Justice Byrnes resigned, and Mr. Justice Rutledge was appointed to the vacancy. The former voted to sustain the ordinance, the latter to hold it invalid.

¹¹ *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, court equally divided on constitutionality of income tax; rehearing granted, and tax held unconstitutional, 158 U.S. 601. Mr. Justice H. E. Jackson who had been absent because of illness the first time, dissented on the rehearing, which was a 5-4 decision. One judge, therefore, changed his vote; his identity has never been disclosed.

over civilians. In answer to the Government's contention that the constitutionality of Article 2(11) of UCMJ should be upheld as necessary and proper legislation to meet the obligation of the United States under international agreements governing the status of forces, the opinion stated that "no agreement with a foreign nation can confer power on the Congress or on another branch of Government which is free from the restraint of the Constitution". The opinion could not find in the natural meaning or historical background of Article I, section 8, clause 14, any power in Congress to extend the jurisdiction of military courts to civilians, even those living on military bases.

Mr. Justice Frankfurter concurred in the result, but limited the holding to the particular cases. Mr. Justice Harlan also concurred in the result "on the narrow ground that where the offense is capital, Article 2(11) cannot constitutionally be applied to the trial of civilian dependents of members of the Armed Forces overseas in time of peace".

Mr. Justice Clark joined by Mr. Justice Burton dissented, finding an historical basis for the exercise of military jurisdiction over civilians accompanying the armies in time of war and the conclusion that dependents of servicemen are part of the military community overseas. The two dissenters said the only alternative to the exercise of court-martial jurisdiction would be the

trial of dependents in foreign courts which they characterized as an unhappy prospect.

The opinion of Mr. Justice Black is copiously documented with legal and historical materials. How far that opinion reflects either the quantity or the quality of the research present in Colonel Wiener's nearly 300 pages of printed briefs filed in the original argument and on the rehearing may properly be left to those students interested enough to make the comparison. In any event, the majority of the Court was ultimately persuaded by his arguments.

The lack of an opinion of the Court save in the narrow instance of civilian dependents tried for capital offenses has naturally produced uncertainty. What is now the position of civilian employees serving with the forces abroad, or of dependents convicted of non-capital offenses?

As to the latter group, it may well be that none in that category can hereafter be tried by court-martial except within the narrow limitations of Art. 2(10), UCMJ. Thus, in one case, involving a dependent convicted of premeditated murder in a case declared non-capital in order to enable the prosecution to use depositions, and serving a life sentence, the Army remitted the unexecuted portion, and turned the lady loose. The press release cited "mitigating circumstances,"¹² which however were in-

¹² This was Mrs. Eunice M. Brillhart, the British wife of an American soldier, who was tried by court-martial in Eritrea. CM 376967, review denied, 6 USCMA 808 (No. 6774).

sufficient to warrant release until after 10 June 1957.

More recently, there was released on habeas corpus a dependent wife serving a three year sentence imposed by an army court-martial for unpremeditated murder¹³—and the Government did not appeal.

So far as is known, there have been no decided cases in the civil courts since June 1957 involving convictions by court-martial of civilian employees. There are several such individuals still in confinement, but up to now they seem not to have bestirred themselves.

RICHARD H. LOVE.

¹³ *Louise E. C. Smith v. Kinsella*, H.C. No. 1963, S.D.W.Va. The ruling was by Judge Moore, who earlier, see note 6 *supra*, had refused to release the other Mrs. Smith.



Career Opportunities—The Judge Advocate General's Corps, United States Army

It is news when the nation's—and probably the world's—largest law firm announces that it has career opportunities available under circumstances assuring a good income and stimulating cases of the first magnitude to be handled throughout the world, from Honolulu to Paris, from Fairbanks to Rio de Janeiro, and from New York to Manila and Istanbul. Yes, travel expenses paid for the family too, as well as reasonably early retirement on pay which permits of dignified leisure or of the pursuit of hobbies and special personal projects.

The foregoing is not a flight of fancy, but a succinct and reasonably accurate description of the career opportunities in The Judge Advocate General's Corps, United States Army. There are merged in

that Corps two of the oldest and most honored professions, the law and the profession of arms.

As to the types of law, the judge advocate, even aside from advising as to the private and personal legal problems of the members of the service, works in virtually every known field of law, including but not limited to real property, personal property, patents, trade-marks and copyrights, negligence, corporations, insurance, banking, criminal law, taxes, international law, and contracts. For many millions of dollars to be involved in non-criminal cases is commonplace. A vast amount of trial work is available, for those who like it, in cases before courts-martial, Boards of Review, the United States Court of Military Appeals, and Federal and



U.S. Army Photograph

General Hickman gives General McCaw his flag of office in the ceremony at the Pentagon. Mrs. McCaw and the little McCaws very proudly look on.

State regulatory bodies. In addition to the stimulating work, advanced schooling is available in various fields in the nation's best educational institutions. Thus, it is self-evident that, for one really interested in the law, The Judge Advocate General's Corps affords great opportunities, as well as stirring challenges, for self-development and self-realization.

Many fine young lawyers are dedicating their lives and their talents to The Judge Advocate General's Corps of the Regular Army. However, more such lawyers are needed from time to time to meet the losses by attrition. Some decide upon a career in the Corps prior to graduation from law school and others after a few years of active practice. Others do so as distinguished military students, with the result that their active service in the Army is postponed until after completion of their legal training.

Also, there is a continuing need for clearly qualified applicants for appointment in The Judge Advocate General's Corps Reserve, with concurrent call to active duty. In these days when virtually all are subject to call for military duty, service in the Corps is considered by lawyers a most profitable and advantageous method of performing the required duty. Senior law students, desiring to meet their military obligations in this fashion, should file their applications promptly and in advance of graduation and admission to the bar.

Further information on appointments in The Judge Advocate General's Corps of the Regular Army or in The Judge Advocate General's Corps Reserve is readily available upon request directed to the Military Personnel Division, Office of The Judge Advocate General, Department of the Army, Washington 25, D. C.

McCaw Gets A Star

Robert H. McCaw of Boone, Iowa, was promoted to the rank of Brigadier General on 1 June 1957. General McCaw served as Staff Judge Advocate of the 78th Infantry Division and the 1st Airborne Task Force, ETO, during World War II. He accepted a commission in the regular Army in 1946 and after tours of duty in the Canal Zone and the Far East, is now back in Washington as the Assistant Judge Advocate General for Civil Law. General McCaw graduated from Creighton University Law School in 1931 and

practiced in Omaha, Nebraska, until 1942. He is a member of the Nebraska State Bar Association, the California State Bar Association and the American Bar Association. Having been a military lawyer for many years, he naturally belongs to the bar association of military lawyers, the Judge Advocates Association.

General and Mrs. McCaw live at 425 Argyle Drive, Alexandria, Virginia, with their two children, Robert and Martha.

Recent Decisions

of the Court of Military Appeals

Right to Counsel at Pretrial Investigation

U.S. v. Nichols (Army), 12 July 1957, 8 USCMA 119

The accused, a CIC agent, was found guilty of a number of offenses relating to his relations with subordinates and misuse of his office. The preliminary investigation and the charges were classified "Confidential". On this basis, the convening authority denied the accused's civilian lawyer the right to attend the Article 32 investigation because he did not have the requisite security clearance. The convening authority refused to initiate action to obtain the security clearance and even after civilian counsel applied for the clearance, he was refused permission to attend the investigation. Accordingly, the accused was represented by military counsel at the investigation. At the trial, motion was made to dismiss the charge on the ground that the accused was denied his right to civilian counsel during the investigation. After intermediate appellate agencies had affirmed the findings, CMA reversed the board of review and ordered a new pretrial investigation and appropriate subsequent proceedings. The Court said the accused was prejudicially deprived of a substantial right, a proper pretrial investigation, when he was denied the services of his civilian counsel. The accused's right to a civilian attorney

of his own choice at pretrial investigation could not be limited by a service imposed obligation to obtain clearance for access to service classified matter.

U.S. v. Gunnells (Air Force), 19 July 1957, 8 USCMA 130

The accused was found guilty of making a false official statement. During the investigation after accused was informed of the charges against him and of his rights under Article 31, he went to the office of the SJA seeking counsel, but was advised that he could receive no advice from anyone in the office of the SJA. During subsequent investigations at which the accused was not represented by counsel, he made the statement which was later charged as a false official statement. The conviction was affirmed by intermediate appellate agencies and reversed by CMA. The Court said the suspect at a preliminary investigation has no right to the appointment of military counsel, but he does have a right to consult with a lawyer of his own choice. The failure of the SJA to inform him of his right to counsel amounted to a denial of the accused's right. Judge Latimer dissented.

Qualification of Court Members

U.S. v. Mansell (Air Force), 19 July 1957, 8 USCMA 153

After a finding of guilty by a special court martial, the trial coun-

sel offered in evidence a record of previous convictions certified by one of the members of the court. That certifying member of the court was challenged and excused. The proceedings continued and sentence was adjudged. A motion for mistrial was denied. The board of review set aside the conviction and ordered a rehearing. On certification by TJAG, CMA reversed the board and ordered the record returned for reconsideration. The Court said court personnel become ineligible for further service as court members when they become witnesses for the prosecution but such ineligibility vitiates only that part of the proceedings during which the member remains in the court after having become a prosecution witness. Prior participation as a member of the court did not vitiate the findings of guilty since the challenged member participated in no further proceedings when he became a witness for the prosecution.

U.S. v. Fry (Army), 5 April 1957, 7 USCMA 682

In preparation for the trial of accused, the law officer read the investigating officer's report and copies of the summaries of expected testimony. At the trial the defense challenged the law officer for cause because of this preparation. The law officer indicated that he had formed no opinion concerning the accused's guilt or innocence. The challenge was not sustained and the proceedings continued to the conviction of accused. The board of review affirmed the findings and sentence. CMA affirmed, holding that although

the law officer's review of the investigating officer's report and expected testimony was not good practice, the record indicated that the accused was not harmed. The Court said that the ineligibility of a law officer is based not on mere knowledge of the evidence but the effect which it produces upon him. Judge Latimer concurred in the affirmance, but expressed the belief that it is desirable for the law officer to familiarize himself with the case in advance of trial.

U.S. v. Wilson (Air Force), 15 March 1957, 7 USCMA 656

The accused pleaded guilty to larceny and housebreaking. After findings of guilty were made, the prosecution offered in evidence a special court martial order establishing the accused's prior conviction of two offenses. This order bore a statement by the sitting law officer indicating that he had examined the record of prior trial pursuant to Article 65c and found it legally sufficient. No challenge or protest was made at the trial. The findings and sentence were approved by intermediate appellate agencies and on appeal, the accused urged that the law officer's participation was prejudicial error. CMA reversed the board, holding that the receipt in evidence of the special court martial order made the law officer a witness for the prosecution and disqualified him from acting further in the proceedings. Therefore, the court was without a proper law officer from that time on and ceased to be a court martial for any purpose except for its own reconstitution.

Multiplicity of Charges

U.S. v. Brown (Air Force), 17 May 1957, 8 USCMA 18

The accused was found guilty of larceny and wrongful disposition of an Air Force parka. Both specifications related to the same incident and alleged that the parka was military property of the United States. Intermediate appellate agencies affirmed the findings and sentence. On appeal, on accused's contention that the charges were multiplicitous, the Court reversed the board of review and ordered the record returned for reconsideration of the sentence. The Court said that although cursory examination would indicate that each of the mentioned offenses required proof of an element not involved in the other, critical analysis of the specifications as framed revealed the differences to be illusory since in the circumstances of this case there was but one act by the accused. Judge Latimer dissented on the basis that Articles 108 and 121 were intended to create separate offenses.

Denial of Motion for Continuance

U.S. v. Frye (Air Force), 19 July 1957, 8 USCMA 137

The accused was found guilty of attempted rape and attempted sodomy. Prior to trial, the accused was declared sane upon examination by an Air Force board of psychiatrists. The defense counsel requested delay in trial by the convening authority so that he could obtain an opinion as to the accused's sanity from psychiatrists from a different school of diagnosis. The request was denied.

At the trial, a motion for continuance on the same ground was denied by the law officer. The convening authority approved the findings and sentence, but the board of review set aside the conviction because of alleged error in failing to grant the motion for continuance. TJAG certified the case to CMA. The board of review was reversed. The Court held that the accused was not entitled to delay the trial to determine whether there were other doctors more sympathetic to the defense. There was no suggestion that other doctors would have disagreed with conclusions of the Air Force board or that the accused was anything but sane. Therefore, the Court said that the refusal to grant the continuance could not be said to be prejudicial to the accused. Judge Ferguson dissented saying that the denial of the continuance forced unprepared counsel to trial thereby prejudicing the accused.

Influencing Action of Court Martial

U.S. v. Schultz (Navy), 12 July 1957, 8 USCMA 129

After announcing the sentence, the president of a special court martial stated that the court felt that the sentence was in keeping with the expressed policy of the Navy as set forth in a designated Secretary of the Navy's instruction as well as an instruction of the Commander of the Naval District and of the Manual for Courts Martial. These mentioned instructions dealt with the adjudging of adequate sentences in cases involving moral turpitude. The board of review affirmed the sentence. CMA reversed the board and

ordered a rehearing as to sentence. The Court stated that consideration of the Secretary of the Navy's instruction in sentencing the accused was prejudicial error.

On the same proposition, see *U.S. v. Estrada (Navy)*, 8 March 1957, 7 USCMA 635. There the accused pleaded guilty and was found guilty of larceny. During the presentencing proceedings, the trial counsel directed the attention of the court to a Secretary of the Navy's instruction with regard to appropriate sentences of persons convicted of larceny and other offenses involving moral turpitude. The defense counsel did not object. CMA there held that the injection of Departmental policy by way of the Secretary of the Navy's instruction was prejudicial error.

To the same effect, see *U.S. v. Holmes (Navy)*, 8 March 1957, 7 USCMA 642. There in addition to the injection of the Departmental policy by trial counsel at the trial, the staff legal officer in his review of the case indicated that service policies can properly influence a court's decision as to punishment although they cannot control it. CMA there noted that the comment of the staff legal officer was incorrect and in conflict with Article 37.

U.S. v. Walinch (Navy), 3 May 1957, 8 USCMA 3

In this case the accused was charged with sodomy and was found guilty of committing an indecent, lewd and lascivious act. The case presented a number of close questions on the effect of a defense psychiatric report that the accused had

no homosexual tendencies. At the request of the president and with the law officer's approval, a copy of the Secretary of the Navy's instruction providing procedures for the administrative elimination of homosexuals from the Navy, including the provision that homosexuals confronted with court martial charges may be informed that they will be tried unless they agree to accept an undesirable discharge, was submitted to the court. Intermediate appellate agencies affirmed the findings, but CMA reversed the board of review and ordered a rehearing. The Court said that permitting the court martial to consider the Secretary of the Navy's instruction was prejudicially erroneous. It had the effect of impressing upon the court martial that the trial was a secondary means to effect the accused's discharge after the primary means had failed. It was cited as an example of forcefully introducing command control into the trial proceedings. See also *U.S. v. Fowle*, 7 USCMA 349.

Duties of Defense Counsel

U.S. v. McFarlane (Army) 28 June 1957, 8 USCMA 96

The accused pleaded not guilty to murder of one victim and guilty of assault with attempt to murder another victim. He was found guilty of both charges and given the death sentence. After entering the pleas, defense counsel said to the court: "Under the provisions of Article 45b of the Code, the accused is precluded from pleading guilty to felony murder", and the law officer so instructed the Court. The prosecu-

tion's case went on with little interruption and both counsel waived argument. There was very little offered by way of mitigation or extenuation after findings. Although the investigating officer recommended psychiatric examination of the accused, only a routine examination was made by a neuro-psychiatrist who recommended further psychiatric testing. On mandatory review, the Court directed itself to the issue of whether the accused was properly defended, reversed the conviction and ordered a rehearing. The Court said that for all practical purposes the accused pleaded guilty to a capital offense in violation of Article 45b. The defense counsel's statement indicated that the plea was merely a maneuver to avoid the death penalty, but as it developed the defense counsel had nothing of consequence to present in mitigation and extenuation. The Court indicated that more inquiry should have been made concerning the accused's mental condition and more time should have been allowed for the preparation of the defense. The Court noted with concern the obsession of Army commanders with a need for a speedy trial in capital cases, particularly where the victim is a foreign national. It admonished that opportunities to fully explore, prepare and present possible defenses should not be denied to an accused for this reason.

U.S. v. Thornton (Army), 7 June 1957, 8 USCMA 57

The accused was found guilty of unlawfully purchasing a pistol, knowing the same to be stolen. The

evidence showed that another soldier had stolen the pistol and sold it to the accused. The accused's defense counsel had represented the thief in an earlier proceeding and the thief was the prosecution's principal witness in the trial of the accused. The defense counsel did not develop the facts surrounding the original larceny and it was on re-direct examination of the thief that it was disclosed that the defense counsel had represented him at his trial. The findings and sentence were affirmed, but CMA reversed the board and ordered a rehearing. The Court said that the defense counsel's representation of the accused after having represented the prosecution's principal witness in a prior proceeding was prejudicial under the circumstances. The defense counsel was in the position of contending for the accused's innocence and at the same time under a duty to protect and safeguard the confidences derived from the attorney-client relationship formerly established and still existing between him and the prosecution witness. There was no showing that the accused knew of his counsel's conflicting interest. Judge Latimer dissented on this aspect of the case.

U.S. v. Lovett (Army), 12 April 1957, 7 USCMA 704

The accused was found guilty of an assault. Another soldier testified for the Government at the accused's trial stating that he and the accused had committed the assault. The victim was not able to identify the accused. On the same day of the trial, the witness in accordance

with a pretrial agreement had been brought to trial and pleaded guilty to the assault and was represented in that proceeding by the same defense counsel who represented the accused at the later proceeding. The board of review affirmed the finding. CMA reversed and ordered a rehearing saying that an accused in a criminal prosecution has a fundamental right to counsel and that means counsel with undivided loyalty. Counsel here had conflicting interests for while presumably attempting to establish the accused's innocence, he was at the same time under a duty to protect the witness' rights when the rights of the accused and the witness were directly opposed.

Statute of Limitations

**U.S. v. Carr (Army), 31 May 1957,
8 USCMA 49**

The accused was found guilty of desertion from 3 August 1953 until 6 December 1956. Sworn charges had been filed with the summary court martial convening authority on 6 December 1956. The defense counsel pleaded the statute of limitations and moved for dismissal. The motion was denied. CMA ordered the charge dismissed because over 40 months had elapsed between the beginning of the accused's absence and the filing of the sworn charges against him. The Court said that since the absence began in time of peace, the statute of limitations was an effective bar to prosecution.

**U.S. v. Busbin (Air Force), 15 March
1957, 7 USCMA 661**

The accused was charged with de-

sertion and on a plea of not guilty was found guilty of AWOL. The absence began 8 January 1954 and was terminated by his return to military control on 27 January 1956. Sworn charges were filed with the officer exercising summary court martial jurisdiction on 13 February 1956. After the findings, the defense urged the statute of limitations as a bar to sentencing. The law officer denied the motion. CMA held that since there was no "time of war" during the period of absence, the two year period of limitations applied and the statute had run against the offense of absence without leave. The charges were ordered dismissed.

Jurisdiction of Courts Martial

**U.S. v. Taylor (Army), 17 May 1957,
8 USCMA 24**

The accused was found guilty of desertion on a record that disclosed he enlisted in 1943 at the age of 15 years and absented himself in the same year. He was apprehended in 1956. At the trial, a motion to dismiss the charge for lack of jurisdiction was denied. CMA held that the charge should be dismissed since the accused's enlistment was void and accordingly, the court martial lacked jurisdiction over him.

**U.S. v. Blanton (Army), 15 March
1957, 7 USCMA 664**

The accused was found guilty of desertion. At the trial, it was established that the accused had enlisted in the Army in 1951 when he was 14 years of age and had absented himself in 1952. The board of review reversed the findings and sentence on the

ground that the court martial had no jurisdiction because of the age of the accused at the time of his enlistment and desertion. The question was certified by TJAG to CMA which affirmed the board of review. The Court said the accused did not acquire a military status by his enlistment and at no time was on active duty at an age when he was legally competent to serve. Not being a member of the Armed Forces, he could not have committed the offense of desertion and the court had no jurisdiction over him.

Proof of Intent to Desert

U.S. v. Cothorn (Navy), 19 July 1957, 8 USCMA 158

The accused was found guilty of desertion. The evidence established that he had been AWOL for a period of 17 days. The accused denied any intention to desert and presented evidence of family difficulties. The law officer instructed the court "if the condition of absence without proper authority is much prolonged and there is no satisfactory explanation of it, the court will be justified in inferring from that fact alone an intent to remain absent permanently". CMA held that the law officer's instruction set forth an erroneous principal of law in that it permitted the court to convict the accused of desertion without considering his intent. Length of absence is merely one fact to be considered with all other facts on the issue of intent. Judge Latimer in a concurring opinion expressed the view that the instruction might not be erroneous in cases involving longer periods of absence than the

one involved in this case. However, the Court in *U.S. v. Burgess (Army)*, 19 July 1957, 8 USCMA 163, reached the same result in a case involving a 6 months' absence. Judge Latimer dissented in the Burgess case holding that a 6 months' absence gives rise to a reasonable inference of an intent to remain away permanently.

U.S. v. Hyatt (Army), 14 June 1957, 8 USCMA 67

The accused was found guilty of desertion with intent to shirk important service. The law officer instructed the court as a matter of law that "duty beyond the continental limits of the United States is important service". With regard to this instruction, CMA held that all overseas service is not important service. The question is one of fact for decision by members of the court and the law officer's instruction in this case precluded the court from determining that issue. Earlier, the Court had held that overseas service *might* be important service only when certain other circumstances are present in *U.S. v. Boone*, 1 USCMA 381. A contrary rule had been announced by the Court in *U.S. v. Vick*, 3 USCMA 288 and *U.S. v. Deller*, 3 USCMA 409.

Mistake of Fact

U.S. v. Bateman (Army), 21 June 1957, 8 USCMA 88

The accused was found guilty of bigamy. While estranged from his wife, the accused was notified by her that she had started divorce action and that if he would sign and return a waiver of appearance,

she would obtain a decree. The accused returned a signed waiver and shortly thereafter remarried. At the trial, he contended that he believed that he had been divorced by his wife and was entitled to marry. However, there was some evidence to the effect that the accused had been planning remarriage even before he had heard from his wife and had been deterred only because he had not been able to find a house. The law officer refused a requested defense instruction on mistake of fact. The conviction was affirmed by intermediate appellate agencies and also by CMA. The Court said that the question of mistake of fact was not raised by the evidence; therefore, the refusal of the instruction was not error. The accused had plenty of time and opportunity to investigate his marital status but did not do so and received no information that his prior marriage had been dissolved. He merely assumed without inquiry or investigation of any kind that he was free to marry. Such evidence was held not to raise the issue of mistake of fact. Judge Ferguson dissented.

Bad Checks in Gambling Transaction Not an Offense

U.S. v. Walter (Air Force), 7 June 1957, 8 USCMA 50

The accused was found guilty of larceny by check. The evidence showed that while gambling, the accused placed some worthless checks in the pot and had other worthless checks cashed by other persons engaged in the game. The money obtained from the checks was used in the continuing gambling. None of

the checks were negotiated by the payees. The conviction was affirmed by intermediate appellate authorities, but CMA on petition of the accused reversed the board of review and ordered the charges dismissed. The Court said to "apply criminal sanction to the accused would be to police the conduct of persons within illegal operations that do not touch the general public." The Court refused to act as a collection scheme for gamblers within the service in order to intimidate payment by debtors of void gambling debts. Judge Latimer dissented saying that the Court was making "unique law when we say we will not countenance the conviction of a thief because he stole from a gambler".

Wife of Accused as Prosecution Witness

**U.S. v. Trudeau (Army), 17 May 1957,
8 USCMA 22**

At the trial of the accused for committing indecent acts with a minor, the accused testified that the child had attempted the indecent act alleged and that he had told his wife what had occurred, suggesting that the wife advise the child's parents. Over defense objections, the prosecution called the accused's wife as a rebuttal witness and her testimony concerning the accused's conversation with her materially differed from the testimony of the accused. Before CMA the accused contended that permitting his wife to testify violated the privilege of confidential communications and the privilege of a spouse not having his spouse testify against him. CMA affirmed the conviction saying that

the accused's testimony concerning his conversation with his wife waived the privilege. Having thrown open the subject which would have otherwise been kept closed by the law, the accused could not deny the Government the opportunity to challenge his credibility on it.

Passenger of Vehicle Not Chargeable with Leaving Scene

U.S. v. Petree (Army), 10 May 1957, 8 USCMA 9

The accused pleaded guilty to fleeing the scene of an accident. The specification alleged that the accused being a passenger in a vehicle at the time of the accident wrongfully and unlawfully left the scene without making his identity known. CMA reversed the conviction and ordered the charges dismissed. The Court referred to its decision in *U.S. v. Wauliski*, 6 USCMA 724, where it was held that a passenger in a vehicle is not liable when the vehicle unlawfully flees the scene of an accident unless there is evidence that the passenger aided and abetted the driver in fleeing or evidence of the existence of a superior-subordinate relationship between the passenger and driver. The Court found neither of these theories in the specification against the accused and held that it, therefore, failed to allege an offense.

Transportation to House of Ill Fame Not Pandering

U.S. v. Gentry (Army), 10 May 1957, 8 USCMA 14

The accused was found guilty of pandering on a specification that alleged that he wrongfully and unlaw-

fully received valuable consideration on account of arranging for certain trainees to engage in sexual intercourse with a prostitute. The evidence established that the accused, a sergeant, told a trainee that he knew where they could get some women and suggested that someone else could be taken along and that the accused took the trainee and three others to the house of ill fame and was paid \$5.00 by each of the passengers and that the accused waited outside of the house while the trainees participated in their horizontal recreation and afterwards drove the soldiers back to camp. It was agreed that the accused had no arrangements with the prostitute. The board of review set the conviction aside and TJAG certified the question to CMA. The Court affirmed the board, stating that the offense of pandering requires something more than merely arranging to transport patrons to a house of ill fame.

Use of Pretrial Statements

U.S. v. Carrier (Navy), 1 March 1957, 7 USCMA 633

During a trial before a special court martial each witness for the prosecution was shown his pretrial statement and upon identifying it as the signed statement given by him to the investigating agent, it was introduced in evidence. The witnesses were then each asked whether the statement was true and were permitted to read the statement to the court. Part of the findings were affirmed by the intermediate appellate authorities. CMA stated that the proceedings followed

were most extraordinary and set aside the conviction. The Court said that pretrial statements of witnesses are inadmissible as hearsay and even if they had only been used as memorandum to refresh memory, the witness should have been called upon to testify as to the facts involved, and the memorandum should not have been admitted into evidence.

Findings and Deliberations Thereon

**U.S. v. Boswell (Army), 19 July 1957,
8 USCMA 145**

The accused was charged with desertion terminated by apprehension and found guilty of AWOL. After deliberations on the question of guilt or innocence, the president announced in open court that the accused had been found not guilty of desertion but guilty of escape from confinement. The law officer advised the court that escape from confinement was not a lesser included offense of desertion and that while the announced finding was an acquittal as to desertion, the court could close and reconsider the question of guilt or innocence of the lesser included offense of AWOL. The court closed for further deliberations and returned a finding of guilty of AWOL. The conviction was affirmed by intermediate appellate authorities but CMA reversed and ordered the charge dismissed. The Court stated that as the findings originally announced by the president were the true findings of the court martial, they were final in so far as they acquitted the accused of the offense charged and they could not be reconsidered. Acquittal of the offense charged was also an

acquittal of every lesser included offense and since AWOL is the lesser included offense of desertion, the court's announced findings amounted to an acquittal of AWOL as well. In this case, CMA disapproved the practice of providing a copy of the Manual for use in closed sessions. Judge Latimer dissented saying that the law officer had a right to advise the court when illegal findings were returned and to return the court to closed session for further deliberations on proper findings. He also failed to join in the disapproval of the practice of members' taking copies of the Manual into closed session.

Scope of Review

**U.S. v. Webb (Navy), 21 June 1957,
8 USCMA 70**

The accused was found guilty of drug offenses. During the trial, court members were permitted to examine a book entitled "Narcotics, USA". This fact was brought to the attention of the convening authority by affidavit of the defense counsel after trial. The board of review refused to consider the propriety of this procedure since there was nothing in the record of trial proper concerning it. CMA reversed the board and ordered a rehearing. The Court held that the irregularity reported by the defense counsel's affidavit was sufficiently raised before the convening authority to require consideration by the board of review.

**U.S. v. Atkins (Navy), 21 June 1957,
8 USCMA 77**

In this case the board of review affirmed a finding of guilty but dis-

approved a sentence of confinement for three months on the ground that the accused had served a substantial portion thereof prior to trial. TJAG certified the question to CMA on whether a board of review might affirm the findings of guilty and disapprove a sentence. CMA affirmed the board citing Article 66c of the Code which provides that the board of review may approve such part of the sentence as it finds correct in law and fact. The board thus has power to determine appropriateness of the sentence and its decision on this question is not subject to review.

SJA's Post Trial Review

**U.S. v. Grice (Army) 26 July 1957,
8 USCMA 166**

The SJA in a post trial review to the convening authority stated that the sole issue in the case was resolved against the accused by the court who saw and heard the witnesses and that, therefore, he could not disagree with that decision. Before CMA, it was contended that the SJA's advice amounted to prejudicial error. The Court agreed and returned the record for a new review. The Court stated that since the SJA has no command authority, his advice must use the same standards which the commander himself may use. Therefore, his statement that he could not disagree with the findings of the court martial on the question of fact was the same as telling the convening authority that it too was bound by the findings of the court martial. This advice was erroneous and de-

prived the accused of a legally correct review by the convening authority.

**U.S. v. Johnson (Army) 26 July 1957,
8 USCMA 173**

This case was a companion case to U.S. v. Grice. In the post trial review to the convening authority, the SJA stated that the conflict of evidence was for the court to resolve and since there was legally admissible evidence sufficient to support the finding, it should not be disturbed. On appeal, an affidavit of the convening authority was filed as an exhibit to the Government's appellate brief before CMA in which the convening authority described his actions and the test applied by him in arriving at his decision. CMA reversed the board of review which had affirmed the conviction, ordered the affidavit stricken from the record and the record returned to TJAG for review by another convening authority. The Court said that it would review material outside the record dealing with insanity or jurisdiction or some exhibits omitted from the record by mistake or inadvertence. The Court said it could not consider the affidavit as a part of the record in this case since it was not part of the reviewable material. Judge Latimer dissented.

**U.S. v. Plummer (Army), 1 March
1957, 7 USCMA 630**

In this case the accused had been found guilty of larceny among other offenses and adjudged a sentence including a dishonorable discharge. An assistant SJA in a post trial

review recommended suspension of the DD, but the SJA upon further review recommended approval of the sentence as adjudged and stated: "It is the custom of the Army to deal severely with a barracks thief. While this view may not be shared by civilian agencies because they do not understand the problems involved and while the theory may not be understood by our highest appellate agency, nevertheless, in this command I strongly recommend that we adhere to the elimination of all barracks thieves." The convening authority approved the sentence as adjudged and a board of review affirmed. CMA reversed the board and ordered the record of trial re-

turned to TJAG for review by a different convening authority. The Court said that a convening authority in reviewing a court martial case cannot be bound by an inflexible administrative policy. The accused is entitled as a right to a careful and individualized review of his sentence by the convening authority. There is a fair risk in this case that the convening authority was misled by the review to the prejudice of the rights of the accused. The majority opinion also expressed shock at the SJA's remarks and urged upon all military personnel their obligation to shape military law as an integral part of the American jurisprudence.



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

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What The Members Are Doing

Alabama

Frank J. Mizell, Jr., of Montgomery, was elected National Judge Advocate of the Reserve Officers Association of the United States at its annual convention in Santa Barbara, June 26-29.

District of Columbia

John Lewis Smith, Jr., was recently appointed as judge of the Municipal Court for a ten year term. Judge Smith, before his elevation, was a member of the District of Columbia Public Utility Commission.

Col. James K. Gaynor, while on duty in the Ryukyu Islands, received his degree of Doctor of Juridical Science from George Washington University. Col. Gaynor had completed his residence requirements for the degree prior to his overseas assignment but did not submit his dissertation until after several years in Okinawa—the subject, “Common Law Military Offenses”. He is now assigned to the Office of Legislative Liaison in Washington.

Florida

Ainslee R. Ferdie of Miami announces the recent removal of his law offices to 1782 West Flagler Street, Miami.

Ely R. Katz of Miami Beach recently announced the formation of a law firm under the name, Katz and Rosen. The new firm's offices will be at 940 Lincoln Road, Miami Beach.

Illinois

William W. Brady of Elgin recently announced the reorganization of his law firm under the name, Kirkland, Brady, McQueen and Churchill. The firm's new address will be at 80 South Grove Avenue, Elgin.

Maryland

William H. Adkins, II of Easton has become a member of the law firm of Henry, Henry and Adkins. The firm has offices in the Stewart Building, Easton.

Michigan

Arnold M. Gold of Detroit, a member of the law firm of Hart and Gold announced recently the removal of the firm's offices to 1470 Penobscot Building, Detroit.

John A. DeJong of Grand Rapids is now a full Colonel in the Army JAG reserve. Col. DeJong, on a recent visit to Washington, was admitted to practice before the Supreme Court of the United States.

New York

Sidney Wolff of New York City announced recently the removal of his law firm's offices to the 33rd floor of 515 Madison Avenue. The firm name is Goldstone and Wolff.

South Carolina

Robert O. Muller, 9th O.C., after 20 years of practice in New York City, has become a South Carolina lawyer with offices at 1805 Holly Street, Anderson.

Virginia

LOGEX-57, the ninth in a series of annual logistical exercises prepared by the 1st Logistical Command under the supervision of the Commanding General, U. S. Continental Army Command, was held this summer at Fort Lee, Virginia. About 6,000 military personnel participated in the exercises including about 1,600 student officers from the Army's technical and service schools as well as selected reserve officers. Among JAA members participating in the exercises were: Col. James Arthur Gleason, Cleveland, Ohio; Col. Royal R. Irwin, Denver, Colorado; Capt. Walter W. Regirer, Richmond, Virginia; Lt. Frederic R. Steele, Fairmont, West Virginia; and Lt. Col. Richard C. Cadwallader, Baton Rouge, Louisiana.

For the sixth year, the 2079th ARASU of Richmond conducted the JAG School at Ft. Meade for Second Army JAG reservists taking summer training. The 137 students enrolled at the school were from the JAG-ORC schools throughout the Second Army area. Among the instructors were Col. Charles P. Light, Jr., Lexington, Virginia; Col. G. F. Hall, Pittsburgh, Pennsylvania; Maj. Gordon W. Gabell, Springfield, Pennsylvania; Capt.

Richard D. Gibbs, Washington, D. C.; Col. Michael L. Looney, Washington, D. C.; Col. J. T. Mizell, Richmond, Virginia; Capt. Robert G. Gilchrist, Cleveland, Ohio; Capt. Walter W. Regirer, Richmond, Virginia; and Lt. Col. Manning E. Case, Shaker Heights, Ohio.

Wyoming

Bruce P. Badley, formerly Assistant Attorney General for the State of Wyoming, has entered the private practice of law with offices in the Edelman Building at Sheridan.

George F. Guy, Attorney General of the State of Wyoming, reports that the Wyoming Legislature has recently passed several statutes giving unit commanders of the Guard necessary disciplinary control to ensure the attendance of personnel at drill, summer encampments and other formations. These statutes make it a misdemeanor triable in the Justice Courts for personnel who willfully disobey orders for drill and summer encampments. Col. Guy earlier in the year was the guest of the Navy on a cruise aboard the U. S. S. Hancock, an aircraft carrier. He was thoroughly impressed with the Navy carrier pilots and the hospitality of the Navy.



SUPPLEMENT TO DIRECTORY OF MEMBERS 1955*

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* See 22 JAJ 48-53, 23 JAJ 44-48 and 24 JAJ 53-58, for changes and additions heretofore made. The additions and changes herein contained are as of September 25, 1957.

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