

The Judge Advocate JOURNAL



Published By

JUDGE ADVOCATES ASSOCIATION

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

Denrike Building

Washington 5, D. C.

PROPERTY OF U.S. ARMY

**THE JUDGE ADVOCATE GENERAL'S SCHOOL
LIBRARY**

JUDGE ADVOCATES ASSOCIATION

Officers for 1963-64

ALLEN G. MILLER, New Jersey.....	<i>President</i>
JOHN H. FINGER, California.....	<i>First Vice President</i>
PENROSE L. ALBRIGHT, District of Columbia.....	<i>Second Vice President</i>
ZEIGEL W. NEFF, Maryland.....	<i>Secretary</i>
CLIFFORD A. SHELDON, District of Columbia.....	<i>Treasurer</i>
JOHN RITCHIE, III, Illinois.....	<i>Delegate to ABA</i>

Directors

Daniel J. Andersen, District of Columbia; Glenn E. Baird, Illinois; Franklin H. Berry, New Jersey; Frederick R. Bolton, Michigan; E. M. Brannon, District of Columbia; Robert G. Burke, New York; Charles L. Decker, Illinois; Sheldon D. Elliott, New York; Osmer C. Fitts, Vermont; Morton J. Gold, Ohio; Mack K. Greenberg, District of Columbia; Reginald C. Harmon, Virginia; Kenneth J. Hodson, Maryland; Herbert M. Kidner, Virginia; Thomas H. King, Maryland; Albert M. Kuhfeld, Virginia; Robert W. Manss, Virginia; Martin Menter, District of Columbia; Frank E. Moss, Utah; William C. Mott, Maryland; Joseph F. O'Connell, Massachusetts; Alexander Pirnie, New York; Ralph W. Yarborough, Texas.

Executive Secretary and Editor

RICHARD H. LOVE
Washington, D. C.

Bulletin No. 37

June, 1964

Publication Notice

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

TABLE OF CONTENTS

	PAGE
Report of Nominating Committee—1964.....	1
Professional Pay and the Military Lawyer.....	4
Report of the Legislative Committee of the Judge Advocates Association.....	18
In Memoriam.....	23
What the Members Are Doing.....	25
1964 Annual Meeting.....	27
The Role of the Judge Advocate in New Missions of the Army....	28
World's Fair Spurs Interest in ABA's Annual Meeting in New York.....	41

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

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

REPORT OF NOMINATING COMMITTEE — 1964

In accordance with the provisions of Section 1, Article IX of the By-laws of the Association, the following members in good standing were appointed to serve as the 1964 Nominating Committee:

Lt. Col. William E. O'Donovan, USA, Chairman
Capt. R. H. Keehn, USN
Col. Gilbert E. Montour, USAF
Lt. Col. Edward Gallagher, USAR (Hon. Ret.)
Lt. Patrick J. Attridge, USAR-Ret.
Cdr. J. Kenton Chapman, USNR
Capt. Douglas W. Metz, USAFR

The By-laws provide that the Board of Directors shall be composed of twenty members, all subject to annual election. It is provided that there be a minimum representation on the Board of Directors of three members for each of the Armed Services: Army, Navy and Air Force. For this purpose, the Navy includes the Marine Corps and the Coast Guard. Accordingly, the slate of nominees for the Board of Directors is divided into three sections; and, the three nominees from each section who receive the highest plurality of votes within the section shall be considered elected at the annual election as the minimum representation on the Board of that Armed Service. The remaining eleven positions on the Board will be filled from the nominees receiving the highest number of votes irrespective of their arm of service.

Members of the Board not subject to annual election are the three most recent past presidents. After the 1964 election, these will be: Col. Allen G. Miller, USAFR; Cdr. Frederick R. Bolton, USNR-Ret. and Maj. Gen. E. M. Brannon, USA-Ret.

The Nominating Committee has met and has filed with the Secretary the following report as provided by Section 2, Article VI of the By-laws:

SLATE OF NOMINEES FOR OFFICES

President: Col. John H. Finger, USAR, Calif. (1)
First Vice President: Cdr. Penrose L. Albright, USNR,
Va. (1)
Second Vice President: Col. Daniel J. Andersen, USAFR,
D. C. (1)
Secretary: Capt. Zeigel W. Neff, USNR, Md. (5)
Treasurer: Col. Clifford A. Sheldon, USAF-Ret., D. C. (1)
ABA Delegate: Col. John Ritchie, III, USAR-Ret., Ill. (2)

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

Army Nominees:

Col. John F. Aiso, USAR, Calif. (4)
Lt. Patrick J. Attridge, USAR-Ret., Md. (1)
Col. Glenn E. Baird, USAR, Ill. (1)
Col. Franklin H. Berry, USAR-Ret., N. J. (1)
Lt. Col. James A. Bistline, USAR, Va. (8)
Col. Charles Frank Brockus, USAR, Mo. (1)
Maj. Gen. Charles L. Decker, USA-Ret., Ill. (9)
Brig. Gen. Sheldon D. Elliott, USAR-Ret., N. Y. (2)
Lt. Col. Morton A. Elsner, USAR, Conn. (1)
Lt. Col. Osmer C. Fitts, USAR-Hon. Ret., Vt. (1)
Lt. Col. Edward Gallagher, USAR-Hon. Ret., D. C. (1)
Col. Paul J. Hebert, USAR, La. (2)
Brig. Gen. Kenneth J. Hodson, USA, Md. (3)
Maj. Gen. Robert H. McCaw, USA, Va. (3a)
Col. Joseph F. O'Connell, Jr., USAR, Mass. (1)
Col. Harry V. Osborne, Jr., USAR, N. J. (1)
Col. Alexander Pirnie, USAR-Ret., N. Y. (6)
Col. Ralph W. Yarborough, USAR-Ret., Tex. (7)

Navy Nominees:

Capt. Paul F. Borden, USN, Md. (3)
Capt. Robert G. Burke, USNR, N. Y. (1)
Cdr. J. Kenton Chapman, USNR, D. C. (1)
Capt. Donald L. Garver, USN, D. C. (3)
Capt. Mack K. Greenberg, USN, Mass. (3)
Rear Adm. Wilfred Hearn, USN, D. C. (3a)
Cdr. Milton S. Kronheim, Jr., USNR, D. C. (4)
Capt. Merlin H. Staring, USN, D. C. (3)

Air Force Nominees:

Col. Clayton A. Dietrich, USAFR, Md. (1)
Col. Edward R. Finch, Jr., USAFR, N. Y. (1)
Brig. Gen. Richard C. Hagan, USAFR, Va. (5)
Maj. Gen. Reginald C. Harmon, USAF-Ret., Va. (11)
Lt. Col. Frank O. House, USAF, D. C. (3)
Brig. Gen. Herbert M. Kidner, USAF-Ret., Va. (1)
Brig. Gen. Thomas H. King, USAFR-Ret., Md. (1)
Maj. Gen. Albert M. Kuhfeld, USAF, Va. (3a)
Col. William H. Lumpkin, USAF, Ala. (3)
Brig. Gen. Robert W. Manss, USAF, Va. (3)

Brig. Gen. Martin Menter, USAF, Md. (3)
Capt. Douglas W. Metz, USAFR, Md. (11)
Col. Frank E. Moss, USAFR, Utah (7)
Lt. Col. Edward D. Re, USAFR, N. Y. (10)
Maj. Gen. Moody R. Tidwell, USAF-Ret., D.C. (11)

Under provisions of Section 2, Article VI of the By-laws, members in good standing other than those proposed by the Nominating Committee shall be eligible for election and will have their names included on the printed ballot to be distributed by mail to the membership on or about 10 July 1964, provided they are nominated on written petition endorsed by twenty-five, or more, members of the Association in good standing; provided, however, that such petition be filed with the Secretary at the offices of the Association on or before 1 July 1964.

Balloting will be by mail upon official printed ballots. Ballots will be counted through noon, 10 August 1964. Only ballots submitted by members in good standing will be counted.

NOTE: Number in parenthesis following name of nominee indicates professional engagement of nominee at this time as follows: (1) private law practice; (2) full time member of law school faculty; (3) active military or naval service as judge advocate or legal specialist; (3a) The Judge Advocate General; (4) trial judge; (5) lawyer engaged in federal government service; (6) U. S. Congressman; (7) U. S. Senator; (8) general counsel of corporation; (9) executive of national activity of the bar; (10) Commissioner, federal agency; (11) business executive.



PROFESSIONAL PAY AND THE MILITARY LAWYER

By J. F. Rydstrom*

On the same day, six young men enter upon tours of active duty as Reserve officers in one of the armed forces. All are subject by law to being drafted involuntarily for military service because all are normally healthy, and all have been previously deferred from the draft while they were attending college and obtaining advanced degrees.

One young man has a Master's in nuclear physics. Another is a man of God, having a degree from a Divinity College. A third can call himself a lawyer because he is entitled to put "LLB" after his name. The other three are addressed as "doctor" because they can practice the healing arts on people, teeth, and horses, respectively.

The young physicist comes on active duty with his year or more of post-graduate schooling in the grade of Second Lieutenant or Ensign, draws the pay of that grade, and in the prescribed time is eligible to compete for promotion with those of his age who graduated

with a Bachelor of Science degree a year or more after him from a Service Academy. More fortunate are the young minister, lawyer, and veterinarian, for they can come on active duty in the grade of First Lieutenant (or Lieutenant, Junior Grade, in the Navy), being given credit in "promotion list service" for their advanced schooling.

In addition, the young veterinarian immediately starts drawing special pay as a professional man: \$100 extra each month. The dentist and the doctor also receive special pay as professional men; in addition, they begin their military service as Captains (Lieutenants, Senior Grade), with credit for their medical training both in "promotion list service" and for pay purposes.

Viewing this disparity in professional recognition between doctors and lawyers in the armed forces, young attorneys coming on active duty have frequently asked me, "How come?" and then, "What

* Col. Jean F. Rydstrom retired from U. S. Air Force on 31 January 1964. His last assignment was as Staff Judge Advocate of the 8th Air Force at Westover Air Force Base, Massachusetts. He is presently an Assistant Editor of the Lawyers Cooperative Publishing Company of Rochester, New York. Colonel Rydstrom, a lawyer, graduated from Western Reserve Law School and was admitted to the bar of the State of Ohio. His military career began in February of 1941 when he entered into the Army Air Corps Aviation Cadet Program. He was a flying officer before becoming a Judge Advocate.

chance have military lawyers now of receiving professional pay?"

Both questions deserve an answer, but mine must be given from the restricted experience of an Air Force judge advocate. It undoubtedly has parallels in the experience of lawyers in the other services, and of chaplains, missile experts, and engineers, but this is for others to record.

To consider the history of how it came about that military lawyers are not financially recognized as professional men, we might choose as a starting point the National Security Act of 1947.¹ That law established a Defense Department and set up the air forces of the Army as a separate and autonomous service, thereby creating a requirement for lawyers in the newly formed Department of The Air Force. Colonel Desmond D. O'Keefe, was "Air Judge Advocate" at the time, having served as chief legal adviser to General H. H. Arnold and his Army Air Corps during a large part of World War II, but under him he had no "Judge Advocate General's Corps" to serve the Air Force as required by the National Security Act.

By 1947, the WWII draft law had expired. The armed forces remained substantial in size, however, and there was soon found to be an acute shortage of doctors on active duty. Hence, ten days after

the Air Force was conceived in the National Security Act, a little-noted law entitled Army-Navy-Public Health Service Medical Officer Procurement Act² was passed by Congress. It was temporary legislation authorizing payment of \$100.00 per month extra for medical and dental officers during periods of volunteer service. At the time, the President had no authority to order members of the Reserve components to active duty with the armed forces, and it was believed that special pay would induce sufficient numbers of doctors and dentists to serve voluntarily.

Needed also was a law "to provide for the administration of military justice within the United States Air Force, and for other purposes," and such a law was passed the following year.³ It established the office of The Judge Advocate General, United States Air Force, and charged him with supervising the administration of military justice in the Air Force. It also made the Articles of War, and all other laws relating to The Judge Advocate General of the Army, applicable to the Air Force, authorizing the Chief of Staff, USAF, to designate officers as "judge advocates" with relatively the same status as members of the Army's JAG Corps. He was prompt to do so, and the first order included virtually all officers doing

¹ Act of July 26, 1947, ch. 343, sec. 207 (61 Stat. 495).

² Act of Aug. 5, 1947, ch. 494, sec. 1 (61 Stat. 777). History may be found in 1947 U.S.C. Cong. Svc. 1599.

³ Act of June 25, 1948, ch. 648, sec. 1 (62 Stat. 1014).

any sort of legal work in the Air Force.⁴

At the same time, President Truman found it necessary to call on Congress to promptly enact "universal training legislation,"⁵ and the Selective Service Act of 1948⁶ became law, reestablishing the draft and making liable for 21 months military service all males 19 to 26 years of age. The Senate had considered that "in order to meet the health needs of the services, authorization was needed for special registration of doctors and dentists who are not yet 45 years old."⁷ However, the House bill did not contain such a provision and the final conference report reflected Congressional agreement to eliminate, for the time being, consideration of a doctor's draft.⁸

It was during this period that the "Command Judge Advocate" reported to the Personnel Officer at each level of command. The same subordinate position was observed in Headquarters, USAF, where the Air Judge Advocate was under the Deputy Chief of Staff, Personnel. This situation actually continued well into 1949, when it was eventually discontinued as being a violation of Article of War 47(a) requiring that commanders "at all

times communicate directly with their staff judge advocates."⁹

Added to the Selective Service Act of 1948 was the "Elston Act" making substantial changes in the Articles of War which had governed the administration of military justice in the Army and in the Army Air Forces during World War II. These Elston Act amendments were to become effective in February 1949, and the now-separate Air Force was required to have its own Judge Advocate General to take action on courts-martial. Selected was Colonel Reginald C. Harmon, Command Judge Advocate of the Air Materiel Command at "Wright Field," and on September 12th, 1948, he officially assumed his duties as The Judge Advocate General, USAF, with permanent rank of Major General.

As the armed forces began to build up generally in response to the new draft law of 1948, there was created a greater demand for professionally skilled personnel in all categories, and the Air Force was seeking lawyers to fill its new legal department. Many of those available were originally commissioned in the Army JAG Corps but had been detached for duty in the Army Air Corps. Most of these

⁴ DAF General Orders #28, 8 July 1948.

⁵ 94 Cong. Rec. 3083 (1948).

⁶ Act of June 24, 1948, ch. 625, sec. 246 (62 Stat. 643).

⁷ S. Rept. No. 1268, 80th Cong., 2d Sess. (1948).

⁸ Reported in 1948 U.S.C. Cong. Svc. 2013.

⁹ See ACM 2771, Austin (BR), 4 CMR (AF) 978, 1003.

stayed on in the new Air Force, and The Judge Advocate General of the Army permitted a few of his other senior people to transfer to the Air Force. Thus, the top personnel were former members of the Army JAG Corps, establishing the temperament and viewpoint of the new department, while the bulk of the lawyers needed had to be drawn from untapped resources of lawyers performing non-legal and quasi-legal duties in the Air Force.

Among these were a number of flying personnel who were drawing flight pay, but in 1948-49 General Harmon was eager to accept any lawyer for duty as a judge advocate without regard to aeronautical rating. Officers who had been rated during World War II—many with outstanding combat records—were encouraged to join the new department while retaining their flying status, and large numbers did so. Some had been lawyers before they became pilots, navigators, bombardiers, or observers in World War II; others had finished law school after the War while remaining active in flying.

Ultimately, there were almost 300 rated judge advocates who maintained their flying status and proficiency while performing legal duties for the Air Force.

The armed forces continued to expand from 1.5 million to more than 3 million men at the beginning of the Korean emergency in

June 1950, and other officers who had been pilots during World War II began to be recalled to active duty. Some returned involuntarily because of commitments as Reserve officers, others voluntarily, but those who were lawyers usually wanted to come back on duty as judge advocates. The rules had changed, however, by 1950. They were not restored to flying status, but were clearly told that if they came on active duty as Air Force lawyers they would no longer be permitted to participate in regular and frequent aerial flights.

During this period, there was no shortage of lawyers in the Air Force because the draft law made no exception for young attorneys. Many doctors, however, were already past draft age and could not be lured into military service by the special pay of \$100 extra per month. This situation was met in the Doctors Draft Act of 1950,¹⁰ when doctors, dentists, and allied specialists were added to the Selective Service Act. The purpose of this law was to require military service of 5613 physicians and 3002 dentists who had received their training at government expense under the Army Specialized Training Program and the Navy V-12 Program during World War II, but who were disinclined toward active duty. They became a special category subject to twenty-one months' service up to the age of 50.¹¹

¹⁰ Act. of Sep. 9, 1950, ch. 939 (64 Stat. 826; 50 U.S.C. App. 454(i) (1)).

¹¹ See 1953 U.S.C. Cong. & Adm. News 1697. The Career Compensation Act of 1949 (Act of Oct. 12, 1949, ch. 681 (63 Stat. 809; 37 U.S.C. 234)), had

Thus, in both pay status and draft status, a clear distinction had by now developed between medical personnel and all other draft-eligible citizens, including scientists, engineers, lawyers, and others with advanced degrees and specialized training.

With this trend before them—culminating in 1950 in special pay for a specially treated group of professional men—how did lawyers in and out of the service react?

First there was the Uniform Code of Military Justice¹² enacted in May 1950, requiring an absolute minimum of four professionally qualified lawyers for each general court-martial: law officer or judge, trial counsel or prosecutor, defense counsel, and staff judge advocate (or legal officer in the Navy) to consider the case before trial and review it for legal sufficiency afterward.¹³ At the time, general courts-martial were being held at the rate of many thousands each year in the armed forces, yet nowhere in the extensive hearings on the Uniform Code of Military Justice can there be found a suggestion

that Congress might consider special pay to attract lawyers for implementation of the new Code, and to encourage them to make military law a career. Not one statement among the three Judge Advocates General, the spokesmen for the American Bar Association and other legal groups, the representatives of the American Legion and similar veterans' organizations, and all the others who testified. True, the hearings were on the substantive provisions of the new criminal law to be provided, but this was a chance for lawyers to speak up at a time when Congress saw a critical need for more lawyers and legal services in the armed forces.

The serious shortage of lawyers in the Navy to implement the provisions of the Uniform Code was briefly mentioned by Rear Admiral George L. Russell, TJAG, USN. General Harmon expressed the opinion the Air Force was "going to have trouble in getting enough lawyers" to serve in all the capacities required of them on general courts-martial. Mr. Eugene M. Zuckert, then Assistant Secretary of the

¹¹ (Footnote continued.)

earlier extended \$100 per month as "special pay" to physicians and dentists ordered to active duty *with their own consent*. (S. Rept. No. 733, 1949 U.S.C. Cong. Svc. 2096).

Section 202 of the Doctors Draft Act then amended the Career Compensation Act to require at least Reserve officer status for doctors and dentists to qualify for this special pay; but as Reserve officers they could be ordered to active duty, without their consent, and still qualify for it

¹² Act of May 5, 1950, ch. 169, sec. 1 (64 Stat. 108; 10 U.S.C. 801).

¹³ See UCMJ, Art. 26 (law officers of general courts-martial); Art. 27 (trial and defense counsel); Arts. 34 and 61 (staff judge advocates' advice and review); Art. 66 (Boards of Review); Art. 67 (Court of Military Appeals); and Sec. 13, Act of May 5, 1950 (The Judge Advocates General). 10 U.S.C. 826, 827, 834, 861, 866, 867; and 8072, resp.

Air Force, pointed out his department had had to offer inducements to obtain lawyers, but said that proper administrative action could give "recognition to the professional standing and professional requirements of the lawyers."¹⁴ No one urged financial recognition of professional status as an inducement to retain the quality of lawyer all agreed was needed.

Instead, the cry was still of a shortage of medical and dental personnel,¹⁵ and Congress extended special pay to doctors for another year, commenting:

"... there is, in addition to the other factors involved, a marked financial discrepancy between the pay received by a career doctor and dentist, over a period of a normal career in the armed services, compared with that received by line officers. The extra pay of \$100 a month goes far toward reducing this discrepancy. . . . Doctors and dentists obviously would elect the more attractive civilian incomes to those provided by the pay scales of the Armed Forces unless the special-inducement pay is provided. While it is true that a

temporary situation can be met through the doctor-draft law, this will not provide the career physicians and dentists who must continue to serve the personnel of our Armed Forces for years to come."¹⁶ (Emphasis added).

At the same time, economy had become the keynote for internal operation of the armed forces, and in the Air Force a new entry was added to an officer's efficiency report reflecting the degree to which he exercised "economical utilization of personnel and resources." An officer whose records showed a deficiency in this area could not hope for a long or successful career in the Air Force, and it became a time of general belt-tightening.

Soon affected were those judge advocates who were still active fliers. Flight pay could not be justified for them when Article 6a of the Uniform Code of Military Justice provided that the "assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of The Judge Advocate General of the armed force of which they are members." These

¹⁴ Reported respectively in: Hearings before Senate Committee on S. 857 and H.R. 4080 (UCMJ), 81st Cong., 1st Sess. (1949) pp. 280-81, 289; and in Hearings before House Committee on H.R. 2498 (UCMJ), 81st Cong., 1st Sess. (1949), p. 1290-92.

¹⁵ In 1951, the Universal Military Training and Service Act had become law, incorporating the Selective Service Act of 1948 and the Doctors Draft Act of 1950 (Act of June 19, 1951, ch. 144 (65 Stat. 75; 50 U.S.C. App. 454(i) (1)).

¹⁶ Act of June 25, 1952, ch. 459 (66 Stat. 156), discussed in H. Rept. No. 2137, 82nd Cong., 2d Sess. (1952) (1952 U.S.C. Cong. & Adm. News 1624).

officers were thus beyond reach of the Chief of Staff for assignment to primary duties involving flying, and General Harmon made it clear he wanted all his judge advocates available for the performance of legal duties.

Consequently, action was initiated to remove these lawyers from flying status, and was completed on October 31st, 1952. They were given the choice either to accept non-legal positions and remain on flying status, or to remain in the JAG Department and stop flying. One hundred and ninety-eight rated lawyers chose the latter course, but,

"This action resulted in the loss to the Judge Advocate General's Department of a total of 98 officers, including 22 lieutenant colonels, 30 majors, 30 captains, 14 first lieutenants, and two second lieutenants. Additional procurement action was necessary to replace these losses."¹⁷

This was a small issue in itself, yet it reflected an important attitude within the Department—that judge advocates were specialists and would be confined to rendering

service within their professional capacity. Nevertheless, in the years that followed when the question arose of special pay for judge advocates similar to that received by doctors, General Harmon spoke against it not only within the Department of the Air Force itself but in resisting Congressional consideration of professional pay for judge advocates.¹⁸

General Harmon considered it uneconomical and unnecessary because procuring lawyers for the armed forces presented no problem under the stimulus of the draft laws, and he anticipated that a good proportion of the young lawyers completing draft-obligated tours would choose to continue in the service without such professional recognition.

General Harmon was reappointed TJAG in September 1952, and in the following year,¹⁹ the special pay of \$100 a month was extended to veterinarians with no more effort than the representation to Congress ". . . that since the veterinarians were subject to the Doctors Draft Act, they should also receive the extra pay which is extended to physicians and dentists."²⁰ In 1956,

¹⁷ Annual report of TJAG, USAF, for the period 1 June 1952 to 31 Dec. 1953, page 51. Those military doctors designated Flight Surgeons continue to draw, in addition to other benefits, full flying pay for occasional observation flights with crews.

¹⁸ I must rely here on memory confirmed by other judge advocates. Delving through old files in the JAG office in 1962, I found that official records of this period were not available.

¹⁹ Act of June 29, 1953, ch. 158, sec. 8 (67 Stat. 89).

²⁰ S. Rept. No. 305, 83rd Cong., 1st Sess. (1953) (1953 U.S.C. Cong. & Adm. News, 1697).

General Harmon was again appointed TJAG for a last term which would take him up to retirement, and substantial revisions were made to "career incentive" legislation for doctors. The amendments²¹ provided immediate promotion to captain; five years constructive credit for promotion and basic pay purposes; and an increase in special pay up to \$250 per month.²² The Department of Defense had earlier submitted a rather modest proposal, asking only that constructive longevity credit of five years be authorized and estimating the increased cost at \$8½ million per year. However, an increase in the rate of special pay was accepted by a House Armed Services Subcommittee,²³ and was ultimately approved by Congress for a total additional cost of \$19½ million per year.²⁴

Meanwhile, the Hoover Commission Report on Legal Services in the Defense Establishment had appeared in 1955.²⁵ In it were recommendations for "professional authority" over the legal services of the Army, Navy, and Air Force, to be vested in the general counsel of the Department of Defense with a view toward a less costly and more manageable function. The Commission also urged that the Army, Navy, and Air Force have a Judge Advocate General's Corps or Department established "on the basis of professional independence, sound promotion, and adequate compensation." Other recommendations of the Hoover Commission were to eliminate undergraduate legal training for military officers,²⁶ and to create a joint school of military justice for all services.²⁷

²¹ Act of April 30, 1956, ch. 223 (70 Stat. 119).

²² See H. Rept. No. 1806, 84th Cong., 2d Sess. (1956).

²³ The Chairman of this Subcommittee was the Honorable Paul J. Kilday (Democrat-Texas), who was appointed a judge of the United States Court of Military Appeals on 25 September 1961.

²⁴ See S. Rept. No. 1756, 84th Cong., 2d Sess. (1956), where the law and the reasons for it are fully discussed (1956 U.S.C. Cong. & Adm. News, 2448). This special pay for doctors is still temporary legislation and would have expired July 1, 1963 (Pub.L.86-4, 73 Stat. 13), but has been extended for another four years in Pub.L.88-2 of March 28, 1963.

²⁵ Published in H. Doc. 128, 84th Cong., 1st Sess. (1955).

²⁶ Each annual Department of Defense Appropriations Act has, since 1954, prohibited the use of any funds "for training in any legal profession" (see Act of June 30, 1954, ch. 432 (Pub.L. 83-458)).

²⁷ The Army had, and still has, at Charlottesville, Virginia, a JAG School, and the Navy operates a Military Justice School at Newport, Rhode Island. In the early 1950s, the Air Force also ran a JAG School at Maxwell AFB, Alabama, as part of the Air University, but it was discontinued; its cost to the Air Force was approximately \$50,000 a year, and General Harmon found it impossible to justify this expense.

The Judge Advocates Association began committee study of the Hoover Commission Report on Legal Services in the Defense Establishment early in 1955. As a result of those studies, and reports received indicating that the Services' procurement and retention of qualified uniformed lawyers was running into difficulty, that Association in June 1956 formed its committee on the Status of the Lawyer in the Armed Services chaired by Gen. E. M. Brannon, a retired former TJAG of the Army. After a thorough study, the Brannon Committee filed a well documented report with recommendations that included, among others, an urgent call for additional pay for Service lawyers and accelerated promotion.^{27a} The report and recommendations were adopted by the Association in November 1956. The position of the Brannon committee was further implemented by the Judge Advocates Association by its resolution on 23 February 1957:

"The Judge Advocates Association resolves that unless legislation is promptly enacted by the Congress which will provide a realistic, scientific pay schedule for all members of the Armed Services sufficient to provide the incentive to keep competent officers and technical enlisted men on a career basis, thus saving huge

sums now lost by the rapid turnover of highly trained and experienced personnel in all branches of the Armed Services, then this Association considers it essential to provide adequate inducements for members of the legal profession serving with the Armed Services to follow a military legal career commensurate with the special inducements now available to the other professions notably physicians and dentists."^{27b}

Later, the Cordiner Committee conducted an extensive study of military pay scales. In its special report on professional and technical compensation,²⁸ the Committee opposed differential pay for critical skills in the officer area:

"Except for the medical services, confining an officer exclusively to one activity is in conflict with the basic requirement of the Services for officers who are broadly trained leaders capable in an emergency of assuming positions of great responsibility. . . . For those who specialize, there must remain the rotation of duties among command, management, staff, and specialized assignments necessary to develop the broader qualifications for assumption of senior

^{27a} 23 The Judge Advocate Journal pp. 17-23, October 1956.

^{27b} 24 The Judge Advocate Journal p. 24, March 1957.

²⁸ A Modern Concept of Manpower Management and Compensation, Volume 1, p. 115, Military Personnel (May 1957).

responsibilities of military leadership." (Emphasis added)

Thus, there was again presented the basic problem facing military lawyers. Were they primarily Air Force officers as the Cordiner Committee thought, subject to rotation between legal and flying duties, for example; or were they indeed professional specialists, like doctors?

By 1957, it had become apparent within The Judge Advocate General's Department that the draft laws solved only part of the problem of obtaining lawyers for the Air Force. Procurement was adequate but retention of judge advocates beyond their obligated tours negligible. There were simply not enough lawyers staying in service to be promoted to the middle grades where the bulk of experienced judge advocates was needed, and this led to the first clear opposition to the Cordiner Committee philosophy which had tacitly been accepted by many in discouraging professional pay for lawyers.

In 1957, General Harmon changed his approach, and actively supported S. 1165 when it was introduced by Senator Strom Thurmond of South Carolina. In general terms, this bill provided judge advocates an additional three years' credit for pay purposes; accelerated temporary promotion to captain; and an incentive pay of \$100 to \$250 per month depending upon length of active service. A companion bill, S. 1093, provided three-star rank for The Judge Advocates General.

As is customary with such legislation, the bill was referred to the Department of Defense and by it to each of the armed services. General Harman was asked to comment, but only within the Department of Air Force, and he urged Air Staff support of the bill for five reasons:

1. That incentive pay had solved retention problems for medical and dental officers, and that an equally serious retention problem faced The Judge Advocate General's Department.

2. That the lawyer is behind his contemporaries in longevity pay credit and in over-all pay throughout his military career because of his postgraduate professional training.

3. That the experience level of The Judge Advocate General's Department was falling drastically because of inability to retain younger officers beyond their initial tour of duty, and because of the retirement of older officers.

4. That the lowered experience level and constant rotation of young officers resulted in a serious fiscal loss to the Air Force.

5. That deterioration of professional competence (due to lowering of experience level) would result in a serious problem of morale.

Within the Air Force, however, there was strong opposition to this special pay for judge advocates, based on several arguments: The Air Force had experienced no difficulty in procuring lawyers, and legally-trained people not assigned

to JAG duties would be discriminated against; special pay for doctors was enacted because a doctor draft law had been required to meet medical manning requirements; educational requirements for a law degree were not as exacting as for a medical degree, and the average annual civilian pay of lawyers was \$3,000 less than for doctors; judge advocate officers were not a "critical" specialty (with regard to available resources); retention problems of lawyers were no greater than in certain other career fields where advanced schooling was a prerequisite; and the Cordiner committee had not recommended additional pay for judge advocates.

The Chief of Staff resolved the differences within the Air Force against The Judge Advocate General, and the official recommendation of the Air Force (like that of the Army and Navy) was against special pay for lawyers. Consequently, the Department of Defense submitted its statement opposing enactment of Senator Thurmond's bill, and it was never reported out of Committee.

Powerful voices outside the Air Force, however, had begun to be heard for the first time in favor of such special pay: the American Bar Association had interested itself in the affairs of the military lawyer and a speech by the President-elect of the ABA was placed

in the Congressional Record of 29 March 1957 by Senator Thurmond.^{28a} In 1958, the efforts of the Cordiner Committee reached Congress in the form of the Cordiner Pay Bill.²⁹ Senator Thurmond offered an amendment for judge advocates similar to his earlier unsuccessful effort and this gave The Judge Advocates General of the armed services their only opportunity to go before Congress in person. Each appeared before the Military Pay Subcommittee of the Committee on Armed Services of the Senate, and testified vigorously in support of incentive pay for military lawyers. General Harmon said:

"Between 95 and 100 per cent of all of our lieutenants on duty today will return to civilian life as soon as their obligated tours are completed . . . our experience of the past shows . . . and a poll conducted by the American Bar Association indicates that about 99.1 per cent of those now on duty expect to return to civilian life when their obligated tours are over. . . . Our turnover last fiscal year was nearly a third of our department, meaning that our level of inexperience is very high . . ."³⁰

In addition, Mr. Charles S. Rhyne, President of the American

^{28a} See: 26 The Judge Advocate Journal, May 1958, pp. 1-6, 7-10.

²⁹ Pub.L. 85-422 (72 Stat. 122; 37 U.S.C. 232).

³⁰ Hearings before a Subcommittee of the Committee on Armed Services, United States Senate, 85th Cong., 1st and 2d Sess. (1958), p. 808.

Bar Association, and Mr. Thomas H. King, President of the Judge Advocates Association, also presented to the Subcommittee their indorsement of this amendment. Nevertheless, when the bill was considered by the full Senate, the Thurmond amendment was presented by Senator Yarborough of Texas, and Senator Stennis, Committee Chairman, made the following observation:

"The position of the committee has already been stated and is in the record. The Defense Department pointed out that there was no greater shortage in the lawyer field than there was in any other specialist field."³¹

The Thurmond amendment was thereupon rejected.

The need for special pay to procure and retain military lawyers has never achieved unanimity of support among lawyers themselves, not all of whom can agree at one time that professional pay is desirable. As an example, in 1958, the President-elect of the Judge

Advocates Association, Colonel Frederick Bernays Wiener,³² addressed the annual banquet of the Association on the "somewhat delicate subject of the lawyers' pay bill."³³ Noting that Congress had not accepted the Thurmond amendment, he called special pay for judge advocates indefensible because it proposed to give a judge advocate sitting safely behind the lines more than a soldier getting shot at up front. Asserting that special pay did not get to the heart of the problem, he maintained it would not ensure retention of lawyers any more than special pay had brought about retention of doctors. He proposed the law be changed to permit young Regular officers with 3 to 8 years' service, who had already decided they liked service life, to be sent to law school at government expense; "they are certain to want to continue to be officers."

In October of the same year, however, the Judge Advocates Association again went on record with a resolution in favor of incentive pay for service lawyers.³⁴ Immediately thereafter, Colonel Wiener re-

³¹ Congressional Record, 29 April 1958, p. 7622. "Responsibility pay" for officers was authorized in the bill as passed, and Congress suggested military lawyers might be eligible for it (see 1958 U.S.C Cong. & Adm. News 2475), but this provision has never been implemented.

³² Colonel Wiener, JAGC-USAR, Ret., is widely recognized as an authority on military law. The author of legal articles too numerous to cite, he has frequently appeared before Congressional Committees to testify on military law matters.

³³ Reported in 27 The Judge Advocate Journal, Oct. 1958, p. 16-21.

³⁴ Adopted at the meeting of the Board of Directors, 1 Nov. 1958. 27 The Judge Advocate Journal, p. 36.

signed as president of the Association.³⁵

In 1959 and 1960,³⁶ other bills were introduced in Congress proposing professional pay for judge advocates, but the legislative history of each was the same as for Senator Thurmond's original bill: none was ever reported out of Committee. On each, General Harmon's views were reiterated within the Department of the Air Force and Air Staff support requested, but the official Air Force position was invariably to the contrary.

In 1960, General Harmon reached the age of mandatory retirement and, on 1 April 1960, Major General Albert M. Kuhfeld (who had been Assistant Judge Advocate General since 1953) became The Judge Advocate General, United States Air Force. The high turnover rate among young judge advocates continued,³⁷ as might this history, but General Harmon's de-

parture marks a convenient stopping point.

This is a long answer to the young lawyer's question, "How come?" To summarize the reasons why doctors, dentists, and veterinarians receive special pay as professional men, I would say: good fortune; military need; a strong and vocal union.

Was there not the same initial need for military lawyers in the years after WWII? I think so, but a diffuse approach was taken to the problem. Crediting lawyers with bad luck, I would summarize the reasons they did not gain professional recognition with doctors at the time, as: ill fortune; short-sighted leadership; disunity and not a sufficiently strong union. Perhaps the union was not strong enough because the military lawyers themselves did not give it the support that they should have.^{37a}

These summaries suggest the

³⁵ The dispute goes on. Hearings before a House Appropriations Subcommittee in June 1963 resulted in (a) An Army proposal to let the services send line officers to law school without a pay increase; (b) A Department of Defense cost-estimate sharply contradicted by Navy and Air Force estimates; (c) General Harmon's proposal to equate lawyers pay, promotion, and retirement benefits to those of doctors instead of sending line officers to school; and (d) ABA's support of his views with a request for a "slight salary increase" for service lawyers. ("Pay Increase Called Way To Keep Lawyers," AF Times, June 26, 1963, p. 6).

³⁶ H.R. 885, 86th Cong., 1st Sess.; H.R. 10193, 86th Cong., 2d Sess.

³⁷ History of OTJAG, USAF, 1 Jan.-30 June 1960.

^{37a} The Judge Advocates Association has never had as many as 1600 members in good standing since the end of World War II and less than a third of this membership has been active duty personnel. In recent years, service lawyers have begun to participate more actively in the ABA than ever before, and as members of the legal profession, they should. They have not, however, joined JAA in appreciable numbers notwithstanding it is the only real military lawyers bar association. The "union" would be stronger if it had wider support.

answer to the young lawyer's second question, "What chance have military lawyers now of receiving professional pay?" The answer to this one can be short: as lawyers, none! By joining with other officers similarly situated, a good chance.

The basic problem is to give a man full credit when he becomes an officer for the years he devoted, on his own time and at his own expense, to gaining a professional skill needed by the armed forces which he could not otherwise perform. This applies equally to chaplains, scientists, engineers, lawyers, and all others with advanced degrees, and is the only way to give them equal status and opportunity with their college contemporaries who came on active duty with only a BS degree several years earlier.

Solutions to this problem have already been proposed. Within the Defense Department, the Military Pay Study Group recommended that men who have spent three

years gaining a postgraduate degree be given that much credit for appointment, pay and promotion purposes. In 1963 during the first session of the 88th Congress, the House Armed Services Committee considered H.R. 5555 giving credit *for pay purposes* for those years an officer spent acquiring a postgraduate degree. However, this proposal was not in the bill finally passed by the House.

What will happen to such proposals in the immediate future is conjectural, but what lawyers must do, in and out of the service, is to withdraw their claim to special consideration as lawyers and support all legislation which seeks adequately to recognize and compensate advanced-degree holders. Perhaps success cannot be soon achieved, but if a goal of fair and equal treatment for all professional men is pursued with single-minded determination, it may not be too many years away.



REPORT OF THE LEGISLATIVE COMMITTEE OF THE JUDGE ADVOCATES ASSOCIATION

The Legislative Committee of the Judge Advocates Association comprises Lt. Cdr. Penrose Lucas Albright, USNR, Col. John C. Herberg, USAR, Retired, Col. Daniel J. Andersen, USAFR, Capt. Zeigel W. Neff, USNR, Maj. Gen. E. M. Brannon, USA-Ret., and Brig. Gen. Thomas H. King, USAFR, Retired, as voting members, and Brig. Gen. Kenneth J. Hodson, USA, Capt. Mack Greenberg, USN, Brig. Gen. Robert W. Manss, USAF, Alexander Pirnie, MC, and Senators Frank E. Moss and Ralph Yarborough as non-voting advisory members.

The Committee met on February 27, 1964, to take up pending legislation of interest to the Judge Advocates Association. Present were: Lt. Cdr. Penrose L. Albright, Col. John C. Herberg, Col. Daniel J. Andersen, Capt. Zeigel W. Neff, Brig. Gen. Kenneth J. Hodson, and Capt. Mack Greenberg. The voting members Maj. Gen. E. M. Brannon and Brig. Gen. Thomas H. King, were not present but had previously expressed their views to the chairman of the committee concerning the various aspects of pending legislation.

The bills considered were S.2002-S. 2019, S. 2313, H.R. 6108, H.R. 8067, H.R. 8130, H.R. 8460, and H.R. 10048-10050.

Taking the foregoing bills in order, the recommendations of the Committee are as follows:

S. 2002 (H.R. 8573). This bill would expand Article 37 of the Uniform Code of Military Justice concerning unlawfully influencing the action of any court-martial or military boards. The Committee approves in principle the concept that military courts and boards should in no way be influenced insofar as their judicial decisions are concerned by the convening authorities or by any other person except as may be proper in the presentation of the case before the court or board in much the same sense that a civilian jury or judge should not be influenced. However, it is doubted if further statutory authority is required. Also it is to be noted that certain wording in S. 2002 might be difficult to define. For example, it is forbidden to "lecture" any member, legal advisor, recorder, or counsel of the board with respect to the findings and recommendations made by the board. Also no member of the armed forces is to be given a less favorable report because of the "zeal" with which he is represented and accused. One wonders whether the term "lecture" would include a written communication or whether a less favorable report might be given to defense counsel who exhibits a *lack* of zeal in the representation of his clients.

S. 2003 (H.R. 8569). This bill requires the opportunity for every member of the armed forces to have representation by qualified counsel

or at least the opportunity for such representation before he is given a BCD by any court-martial or a less than honorable discharge by any board. The committee approves this proposed legislation. However, the committee has serious reservations as to whether the services should have the power to issue involuntary undesirable discharges in any event. But if the undesirable discharge is to be continued as a method for the involuntary severance of members of the armed services, then most certainly such discharge should not be issued except in accordance with definite standards and with due process of law.

S. 2004 (H.R. 8574). This bill would merely extend the period of time within which an accused may petition for a new trial on the grounds of newly discovered evidence, or fraud on the court, from one year to two years. It has been found from experience that one year is frequently insufficient and the committee approves this bill. However, it is to be noted that such a provision is also contained in H.R. 10050 and, in the judgment of the committee, H.R. 10050 is a technically more correct bill.

S. 2005 (H.R. 5877). This bill would eliminate the summary court-martial. The committee opposes this bill on the grounds that there are instances where the summary court-martial may perform an invaluable function, as, for example, where for a very minor offense an accused demands trial by court-martial. However, since the com-

mittee also feels that the extended non-judicial powers were granted by Congress on a tacit understanding that it was better to use such punishment rather than punishment through a summary court-martial which would be considered a federal conviction, the summary court-martial should be restricted to only those cases where a court-martial is demanded by an accused for a minor offense. It is to be noted that H.R. 10048 provides for a summary court-martial. These comments also pertain to such bill.

S. 2006 (H.R. 8568). This bill would give an individual faced with a board proceeding wherein he might receive an undesirable discharge, the right to demand a trial by court-martial provided, however, that he waive the statute of limitations and any immunities which he might otherwise have. The committee opposes this bill. The bill is felt to be dangerous in that it might give convening authorities undue pressure to circumvent the legal rights of the accused. Also, if an accused is in fact given by the other bills real due process of law in administrative proceedings, then no need is seen for this bill. It is further to be noted that the bill provides that a member may be discharged on the basis of a criminal offense in a state or federal court of competent jurisdiction. On this, the bill should be more explicit that the conviction involved is not subject to appeal.

S. 2007 (H.R. 8566). The purpose of this bill is to prevent double jeopardy as between military

boards and military courts-martial. The committee approves the bill providing it is clarified to indicate that it will not abridge the Services' right to give a straight discharge. Consideration should also be given as to whether the bill should not properly consider a prohibition against dual punishment.

S. 2008 (H.R. 8567). This bill provides for a pretrial conference. Much the same power is provided in H.R. 10048. From the committee's study of the bill, it was determined that numerous technical errors exist in the bill and that if the items cognizable at a pretrial conference are to be enumerated they should be fully enumerated. For example, the power of the law officer to take up the admissibility of confessions should probably be set forth. The committee approves the bill in principle but feels that H.R. 10048 is preferable.

S. 2009 (H.R. 8876). This bill set forth the duties of law officers and permits the utilization of a one-man law officer in general and special courts-martial with the consent of all concerned. The same matter is covered in H.R. 10048. The committee approves the bill but considers that H.R. 10048 is preferable.

S. 2010 (H.R. 8572). This bill would set up the Court of Military Appeals as having appellate jurisdiction over the issuance of undesirable discharge. The committee opposes this bill on the grounds that this would be an improper mixing of the functions of an administrative board with those of

courts-martial. However, the committee feels that there should be some type of appellate review under the supervision of the Judge Advocates General on matters of law for administrative boards. Such review would be of an appellate nature and would determine whether the administrative board was conducted in accordance with administrative due process and whether its findings are supported by competent evidence.

S. 2011 (H.R. 8565). This bill requires a hearing for undesirable discharges or at least opportunity for same and a recommendation on the basis of testimony and evidence by the board for the separation. Section (b) of the bill requires the utilization of a law officer to instruct the board. Section (c) requires that the member be notified of his right to be represented by qualified counsel. The committee approves the bill in principle but feels that the detailing of the law officer on such board should be permissive rather than mandatory.

S. 2012 (H.R. 8580). This bill would give subpoena power to courts-martial, military commissions, courts of inquiry, investigating officers under Article 32, military boards, correction boards and discharge review boards, and any other military courts or boards when authorized by the President, all such power to be subject to rules and regulations as the President may prescribe. The committee opposes this suggested legislation as too broad. However, it is recognized that there are many instances

where subpoena power would be helpful in the procurement of reluctant witnesses both for the accused and the government. In such instances, it is felt that it should be given only at the hearing level and probably should be subject to the control of a qualified law officer.

S. 2013 (H.R. 8582). This bill would prohibit one member of a board of review from making reports on other members of the board of review. The committee opposes this as unnecessary. Consultation with advisory members and members of boards of review, indicates that the best procedure is probably for the reports to be made by the Judge Advocate General. But no matter how made, it is felt that there is no need for legislation in this area.

S. 2014 (H.R. 8582), and S. 2015 (H.R. 8581). These bills relate to criminal jurisdiction to try individuals who are civilians by the United States District Court for the commission of offenses punishable by the Uniform Code of Military Justice. S. 2014 relates to individuals no longer subject to trial by court-martial who committed an offense while subject to court-martial. S. 2015 relates to individuals who accompany armed forces outside the country. The committee approves in principle the concept that a happenstance in status should not change a person's liability for punishment for criminal offenses—at least, criminal offenses of a serious nature. However, it is considered questionable whether it would be constitutional

to try any person not in the armed forces for offenses committed outside the venue of the United States, or to try persons no longer in the armed forces for offenses purely of a disciplinary nature.

S. 2016. This bill would establish a Judge Advocate General's Corps for the Navy. This action is sorely needed and has long been endorsed and advocated by this Association. The committee again strongly urges the passage of this bill. However, in a review of the bill it is noted that there is no requirement that the Judge Advocate General be appointed from the Judge Advocate General's Corps. It is submitted that provision to this effect should be included in the bill.

S. 2017 (H.R. 8579). This bill would unify the various boards for correction of military records and consolidate them under the Department of Defense. The committee believes that this is unnecessary and would adversely affect the present effectiveness of such boards. Accordingly, the bill is opposed.

S. 2018 (H.R. 8571). This bill would change the name of law officer to "military judge" and would permit the utilization of civilians as law officers in courts-martial. Except for the authorization of civilian military judges, much the same matter in the bill is covered by H.R. 10049. The committee endorses the latter bill in preference to S. 2018. However, with respect to the latter bill, that is, H.R. 10049, it is felt that paragraph (f), which prescribes any consultation with members of the court except in the

presence of the accused, trial counsel and defense counsel, is probably not necessary and in any event too broad, since such consultation should be limited only to matters concerning the case at hand.

S. 2019 (H.R. 8570). This bill relates to Boards of Review. It would change the names to Courts of Military Review, require a civilian on such courts, and provide for *en banc* hearings, there being one court of military review for each service, with panels as needed. Each such court of military review will have a civilian chief judge. The committee recommends that the requirement that the chief judge be a civilian, and that each panel have at least one civilian, be eliminated. The committee, however, concurs that there should be one court of military review for each service, with panels as needed and with a provision whereby the court may be set *en banc*. Such reforms would improve the appellate posture of the present Boards of Review in accordance with procedures presently employed by U.S. Circuit Courts of Appeal.

S. 2313. This bill would require an opportunity for a hearing in all cases before a correction board and would give optional authority to the correction board to require members of the armed forces having personal knowledge of facts relevant to the decision of the board, to testify before the board. The United States Court of Claims is given jurisdiction to review on questions of law all decisions of

the correction boards. The committee approves the principle of the bill that the Court of Claims should have direct appellate jurisdiction over the correction boards, except that such authority be only to review decisions by the boards for corrections of records insofar as monetary claims are concerned. That is to say, the Court of Claims should not have the authority to change a grade or rank, or to place an individual back on active duty, or take other actions of this nature.

H.R. 6108. This is a bill which pertains to the dual compensation status of members of the uniformed services retired for physical disability. The matter covering the bill has subsequently been superseded in a further bill passed by the House. But in any event the committee believes that the matter is not of the type on which the Judge Advocates Association should take a position.

H.R. 8067. This bill has to do with readjustment pay and it is recommended that the Association take no position relative to this bill.

H.R. 8130. This bill pertains to Reserve Officers Training Corps programs. It does not involve the training for law except insofar as where a member has been accepted for graduate or professional study, the Secretary of the military department concerned may delay the commencement of the obligated period of active duty until the member has completed that study. The committee considers that the

bill is not one in which it would prove of any value for the Association to present a position.

H.R. 8460 is a bill introduced by Congressman Vinson to prohibit persons subject to the Uniform

Code of Military Justice from interfering in civilian off-base activities of any consideration of race, color, or religion. The committee recommends no action with respect to this bill.



In Memoriam

Since the last issue of the Journal, the Association has been advised of the death of the following members:

Benjamin G. Fleischman of Portland, Oregon; William S. Hope of Charleston, South Carolina; Jeremiah J. O'Connor of Washington, D. C.; George B. Springston of Bethesda, Maryland; Charles H. Woodard of Colorado Springs, Colorado.

The members of the Judge Advocates Association profoundly regret the passing of their fellow members, and extend to their surviving families, relatives and friends, deepest sympathy.

GENERAL DECKER RETIRES TO NEW DUTIES

Major General Charles L. Decker retired as The Judge Advocate General of the Army on 31 December 1963. Immediately upon his retirement, it was announced that he had been named Director of the Defender Project of the National Legal Aid and Defenders Association. The Project is aimed at securing more effective legal counsel for those defendants unable to pay for it. The Project is financed over a five year period by a 2.3 million dollar grant from the Ford Foundation. The purpose of the Project is to improve the public defender system already in operation in some cities and states and to establish

model systems in other places where indigents have been aided in a sort of hit-and-miss basis.

General Decker was educated at the University of Kansas, West Point, and Georgetown Law School. He has been a Judge Advocate at almost every level of command in the Army.

At the close of his 32 years of Service, General Decker received the Distinguished Service Medal in particular recognition of his having established the United States Army Judiciary, the first independent, military judiciary in the history of the country.



What The Members Are Doing . . .

District of Columbia

Lt. Col. James A. Bistline, JAGC-USAR, was recently promoted in the Law Department of the Southern Railway System. Col. Bistline, formerly Commerce Counsel, has been appointed Senior General Attorney in Charge of Commerce Work.

Washington area members of the Judge Advocates Association held a dinner meeting at the Army and Navy Club on 25 May 1964 in honor of the more recently appointed General and Flag Officers in the Army, Navy and Air Force Judge Advocate General Offices.

Illinois

William W. Brady recently announced the reorganization of his law firm. Mr. Brady's firm is now known as Kirkland, Brady, McQueen, Martin and Schnell. The firm has offices at 80 South Grove Avenue, Elgin.

Missouri

Lowell R. McCuskey of Linn recently announced his entry into the general practice of law with offices in the Linn State Bank Building.

New Jersey

Charles M. James recently announced the formation of a partnership for the practice of law under the style of James & Addas. The

new firm's offices will be at 26 Journal Square, Jersey City.

New York

Benjamin Burstein recently announced the removal of his law offices to 56 Grand Street, White Plains.

Lt. Col. John T. Stuart, JAGC-USAR, civilian attorney in the Military Justice Division, Office of the 1st United States Army, Staff Judge Advocate, Governor's Island, was recently awarded his fourth consecutive sustained superior performance award since 1961. Col. Claude E. Fernandez, 1st Army SJA presented the award.

Louis Alfred Schwartz recently announced the removal of his law offices to Suite 1604, 274 Madison Avenue, New York City.

Edward F. Huber recently announced change of the name of his law firm to Naylon, Aronson, Huber & Magill. The firm's offices remain at 61 Broadway, New York City.

Texas

Col. Leon Jaworski of Houston acted as Special Counsel for the Court of Inquiry formed by the State of Texas to make inquiry into the assassination of President Kennedy. Col. Jaworski, a practicing lawyer for 37 years in Houston, as a Judge Advocate officer during

World War II, handled the first mass war crimes trial to be held in Germany—the Dormstadt trial of 11 Germans accused of slaying 6 American airmen.

Virginia

Col. Charles Vaill Laughlin of Lexington is a Fulbright Lecturer in Law during 1964 at Helsinki, Finland.



GENERAL TIDWELL TAKES CIVILIAN POSITION

Major General Moody R. Tidwell, Jr., USAF, Retired, formerly The Assistant Judge Advocate General of the Air Force, has been named a vice president of Malaker Laboratories, Inc., a design manufacturer

of cryogenic equipment for commercial and military use. General Tidwell will manage the firm's Washington office at 1625 Eye Street, N. W., Washington, D. C.

GENERAL HICKMAN NAMED TO NEW ABA POST

General George W. Hickman, Jr., USA-Retired, formerly The Judge Advocate General of the Army, has been named manager of Committee Services, a new post created by the American Bar Association to improve and expand the professional

and public service activities of that Association's 70 standing and special committees. General Hickman has until recently been serving as Acting Dean of the University of San Diego Law School.

1964 ANNUAL MEETING

The Annual Meeting of the Judge Advocates Association will be held in New York City at 3:00 p.m. on Monday, August 10, 1964, at The Harvard Club, 27 West 44th Street, New York City. Colonel Allen G. Miller, our president, has taken personal charge of the arrangements for this meeting.

The Eighteenth Annual Dinner of the Association will be held also at The Harvard Club on August 10th. The reception and cocktail hour will begin at 6:30 p.m., and the dinner will be served at 7:30 p.m.

The guest speaker for the Annual Dinner will be Dr. Roger Hilsman, former Assistant Secretary of State for Far Eastern Affairs, and presently Research As-

sociate and Lecturer of the Foreign Policy Research Center and the School of Advanced International Studies of The Johns Hopkins University. Dr. Hilsman served with Merrill's Marauders in Burma and was the commanding officer of the OSS guerrilla group in Burma during World War II. He is an articulate speaker with a wealth of experience and knowledge on the subject of Current American Policy in the Far East upon which he will address the members attending the Annual Dinner.

You are urged to reserve this date on your calendar. Reservations blanks will be distributed shortly to the membership with the formal announcement of the Annual Meeting.



THE ROLE OF THE JUDGE ADVOCATE IN NEW MISSIONS OF THE ARMY

By Lt. Colonel Irvin M. Kent, JAGC*

In recent years a great deal of attention has been paid to the question of providing Judge Advocate support for Civil Affairs units. This has included rather detailed analysis of the organizational structure required for optimum performance which inquiry and examination is still in progress. Both the United States Army Combat Developments Command and The Judge Advocate General are concerned with this matter and it is hoped that the near future will see resolution of these problem areas.

The question of providing legal support in civil affairs units is, however, the beginning rather than the end of the discussion of the place of The Judge Advocate in civil affairs matters, for, as we shall see, he has a much broader, more significant contribution to make in the present and future context of civil affairs operations.

The civil affairs crest carries the words "Seal The Victory." These words have about as much application to current civil affairs operations as does the quill on the insignia of our corps to current JA of-

fice operations. It is true that within the memory of most of us, civil affairs organizations were primarily designed to provide the Army with a military government capability and therefore did properly act to "Seal The Victory." Today, however, the primary mission of civil affairs personnel is far removed from this concept.

In a military government situation, civil affairs personnel accompany the combat troops and discharge for the commander his responsibility for caring for local populations. At the same time these civil affairs personnel must insure that the maximum use is made of local resources for assistance in the prosecution of the war effort of the United States and of preventing interference by the local population with current and projected military operations.

Of course civil affairs personnel and units retain this capability. It is taught at the civil affairs school, and at this school, among other concepts, and is reflected in the field manuals produced for civil affairs use. But these efforts do not repre-

* Colonel Kent is presently assigned to the Civil Affairs Agency at Ft. Gordon, Georgia. This article is based on an address made by Colonel Kent to The Judge Advocate General's Conference at The Judge Advocate General's School in September 1963. The views expressed are those of the author and do not necessarily represent those of the Department of Defense, the Department of the Army or those of any of its subordinate offices, agencies or organizations.

sent the current primary mission of civil affairs.

Today civil affairs personnel, rather than accompanying the combat troops, may very well be the first, if not indeed the only, U.S. military forces committed for a cold war mission. The Army's role in the cold war is now and will in the future to an increasing extent be a civil affairs type mission. May I refer the reader to the approved definitions for civil affairs and for military civic action.

Within the context of the cold war the role of the Army in preventing as well as defeating subversive insurgency falls to a very large extent upon the shoulders of civil affairs personnel. This current civil affairs mission is based upon doctrine enunciated and approved at the very highest levels of our government.

The cold war generally, and that portion of it devoted to the prevention and defeat of subversion, is the Army's business as well as the business of many other military and civilian agencies of our government. By its very nature this cold war is largely political-economic warfare although other military activities such as show of force and active counter-insurgency missions play an important part therein. However, "primary interest" in this area, as defined in JCS Pub 1, locates this portion of the commander's responsibility within the functional area known as civil affairs. The truth of this becomes apparent from close analysis of terms such as "Military Civic Action", "Civil

Defense", "Community Relations" and "Martial Law" among others, which in reality represent the Army's portion of the political-economic warfare posture of the nation in cold, limited or general war.

Thus we have a duality of roles and missions for civil affairs. In a period of limited or general war, civil affairs operations are part of combat support assisting the tactical units in the performance of their mission. Within the context of the cold war, however, civil affairs operations in many instances become the primary means or principal coordinate activity to which the rest of the Army provides support for the accomplishment of its mission.

Within the scope of this mission The Combat Developments Command has the job of development of concepts, doctrine, and organization for the time frame starting from the present to a period of approximately 20 years in the future.

A Judge Advocate assigned to civil affairs activities has a significant opportunity to bring the lawyer's skill, the mental processes, and the habits of a lifetime of analysis of mixed questions of law and fact to the application of his client's business. In my opinion there can be no greater challenge for a Judge Advocate.

It is in this area that our corps can render the greatest service to civil affairs today. That is the provision of judge advocates with their professional skills which must be added to sound military backgrounds and wedded to a high de-

gree of enthusiasm and imagination. The Judge Advocate assigned now to civil affairs operations must be an individual of broad military and legal skills, not only willing but anxious to devote himself, heart and soul, to the active business of the Army's role in the cold war.

It will be of interest to you to learn that in the contingency plans of one active Army unit, which may require the dispatch of a 42 man detachment, the senior Judge Advocate assigned is the operations officer. Another 8101 is slated to go as the legal officer. This for the very good reason that the unit commander, who is also part of the detachment, wants this man on his personal staff and wants him to oversee all of the unit's operations, because of his particular qualifications and abilities. This Judge Advocate has, and other Judge Advocates assigned to civil affairs activities must have, an appreciation of the difficulties and special problems arising out of the work in the underdeveloped nations, both those in which subversive insurgency has already reared its head, and where the guns are far from silent, as well as in those nations where this insurgency is still incipient. In the latter situation if we in civil affairs operations are successful, we will remain unheard of and the remainder of the Army is likely to remain uncommitted. In other areas where perhaps we have been committed too little or too late, other U.S. Forces will be required to join in the struggle.

In many of the newly develop-

ing nations of the world there do exist incompetent administrators, corrupt policemen, unprincipled officials, and selfish landlords. We must understand that these conditions do exist, particularly on the lower levels, and whether or not the national leadership is making honest efforts to improve its image or is lounging indolently on its powder-keg, voiceless masses of the world have discovered a means to act and are beginning to stir. A spirit of "not tomorrow but now; not only for my children, but for me, too," has ignited the imagination of people who have waited too long and their frustration is easily molded by the Reds.

The task for the agitator is simple; he has only to ask the villager "why," and when no answer is forthcoming, he fills in one which suits the occasion. The communist demagogue does not have to build schools, find ten thousand honest administrators, train engineers, equip hospitals, construct housing, or import food. On the other hand his tactic of discrediting the free world is simplified every time a villager must bow to an arrogant official or suffers false arrest by a passing patrol. Every time a child dies without medical care or when bureaucratic bungling deprives a village of essentials, the people remember the guerrilla propaganda. The legend grows that the guerrilla fights in the name of the people, and while most of the people may be hesitant to take up arms or even to declare themselves, they are not insensible to his cause.

This is the kind of a struggle where guerrilla forces avoid combat with the regular forces, where neither sides uses more than a minimal number of battalion size units, where military supremacy is usually decided by continuing raids, ambushes, and denial operations stretched out over an almost undeterminable time frame. In this type war final victory goes not to the side with the biggest battalions, but to the side which wins the hearts and minds of the population of the area. Guerrillas on the ground can be beaten by regular forces without necessarily assuring victory to the side which has won militarily. If this seems questionable, may I refer to recent history in North Africa? No guerrilla force in history has succeeded without mass population support and almost none has ever been defeated finally which had such support. Thus at the same time that our special forces, rangers, and tactical unit advisors are busily engaged in creating, training, advising local forces against the guerrilla, this work and sacrifice may be in vain if we do not concurrently undertake those nation building programs which will give the people a recognizable stake in the survival of their legitimate government. If we leave the people with nothing to lose but their chains, we have lost them and we have lost the war. This, no matter how many guerrillas are killed. The local inhabitants must see an end to marginal conditions of life. Without improvements in educa-

tion, in political and economic conditions, we have nothing to offer which will serve as a counterweight to the blandishments, accomplishments, or terror of our opponents. In all of this, the Judge Advocate has his contribution to make as a staff planner and executor. He must participate from the outset to final execution. In this work he may even have occasion to refer to his law books. His contribution in terms of establishment of a rule of law is important and his contribution in the over-all effort, bringing to it as he does his professional skills, can be a vital one.

The role of our Corps is to provide part of the doctrine, some of the governmental theory, and a great deal of the day to day persuasion of both local officials and military commanders. This is a task for the Judge Advocate who can work far from the confines of a peaceful law library or the civilized forum of well established courts. It is one for the affirmative Judge Advocate who can tell his commander how to do what must be done—without running too great a risk of winding up on the wrong side of the Leavenworth campus—rather than why he can't do it. Properly selected, properly trained, properly motivated Judge Advocates can make no greater contribution to the security of our nation and the successful fulfillment of the Army's part therein, than by participation in the current and projected civil affairs role and mission.



Maj. Gen. Robert H. McCaw, USA

GENERAL McCRAW APPOINTED JUDGE ADVOCATE GENERAL OF THE ARMY

Major General Robert H. McCraw was named The Judge Advocate General of the Army on January 22, 1964. The appointment was confirmed by the Senate on February 27th. Before his appointment, he had served as The Assistant Judge Advocate General since January 1, 1961.

General McCraw, a native of Iowa, took his law degree from Creighton University at Omaha, Nebraska, in 1931. He engaged in the practice of law from 1931 to 1942 in Omaha, Nebraska, and later at Los Angeles, California. General McCraw began his military career as a Second Lieutenant of Infantry in the Army Reserve in 1928. He was appointed a Captain of the Judge Advocate General's Department, Reserve in 1935. He was called to active duty in 1942 and thereafter successively served in the Litigation Division of JAGO, Staff Judge Advocate of the 78th Infantry Division, Judge Advocate of the 1st Airborne Task Force, Assistant Army Group Judge Advo-

cate of the 6th Army Group and as Army Judge Advocate of the 1st Allied Airborne Army. Right after World War II, General McCraw was the Army Staff Judge Advocate of the 1st Airborne Army and Staff Judge Advocate of the Berlin District. He was relieved from active duty in February 1946.

In August 1946, he accepted a Regular Army commission in the Judge Advocate General's Department and thereafter served in the Office of The Judge Advocate General, in the Caribbean and in the Far East. In March of 1957, he became a Brigadier General and was designated as an Assistant Judge Advocate General. Immediately before his appointment as The Assistant Judge Advocate General, he served as the Judge Advocate of the U.S. Army, Europe.

General McCraw is married to the former Patricia Louise McKean of Council Bluffs, Iowa. His son, Robert, is a student at Georgetown University and his daughter, Martha, is a high school student.





Rear Adm. Wilfred A. Hearn, USN

ADMIRAL HEARN NAMED NAVY TJAG

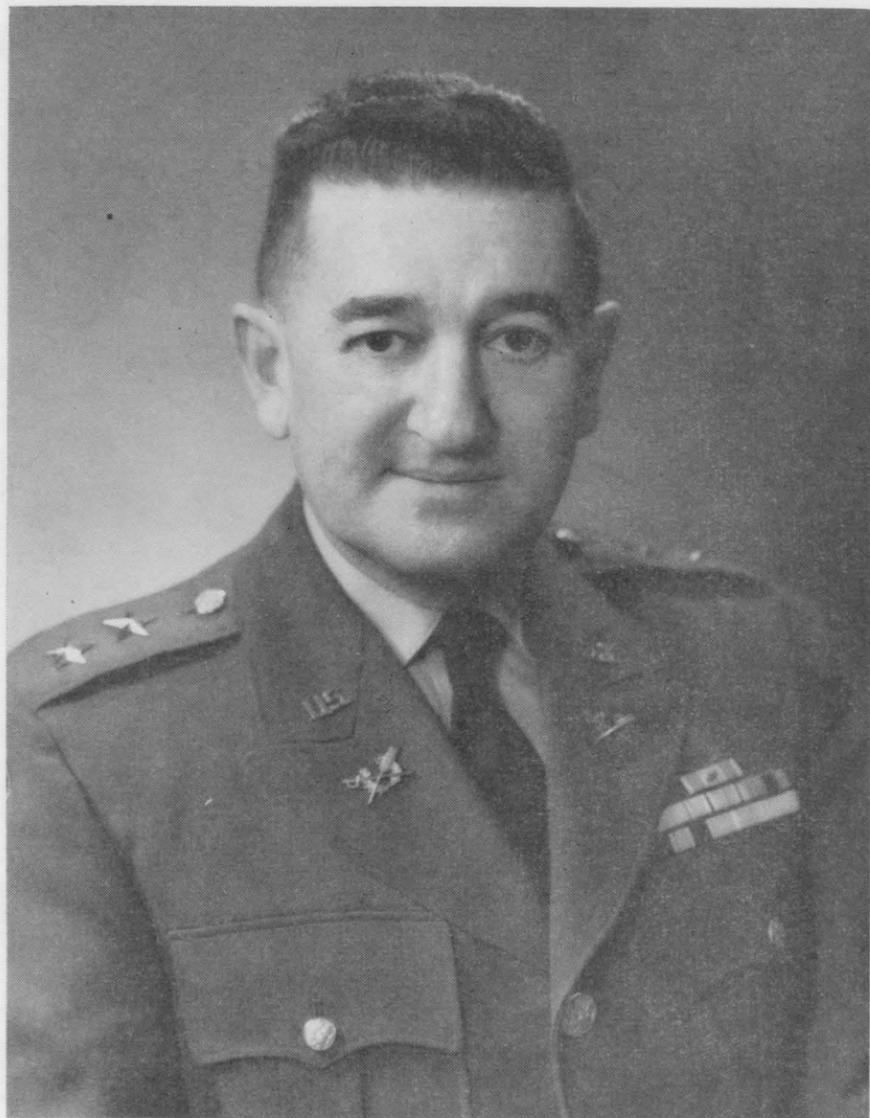
Rear Admiral Wilfred A. Hearn became The Judge Advocate General of the Navy on April 1, 1964. A native of Tennessee, Admiral Hearn nevertheless received his education in the public schools of the District of Columbia, the University of Maryland and George Washington University Law School. Upon graduation from law school in 1931, he was admitted to practice in the District of Columbia and in the State of Tennessee.

After a brief period of Government service, Admiral Hearn entered the private practice of law in Memphis, Tennessee, until he was called to duty as a Naval Reserve Officer in April 1942. After World War II, Admiral Hearn began full time legal duties in the

Navy and was selected for a commission in the Regular Navy as a law specialist in 1946. As legal specialist, he has served as Chief Tax Officer for the Navy, District Legal Officer for the 14th Naval District, Director of the General Law Division, Director of the Administrative Division and Director of the International Law Division, all in the Office of The Judge Advocate General, as Assistant Judge Advocate General of the Navy and as Commanding Officer of the United States Naval Justice School.

Admiral Hearn is married to the former Katherine Roller of Staunton, Virginia. His son, Wilfred, Jr., is a student at Colgate University.





Maj. Gen. Harry J. Engel, USA

GENERAL ENGEL NAMED THE ASSISTANT ARMY JAG

Major General Harry J. Engel was named The Assistant Judge Advocate General of the Army on February 27, 1964. Immediately before his appointment, General Engel had served as Judge Advocate, U. S. Army, Europe.

General Engel is a native of Brooklyn, New York, and a graduate of St. John's Law School. Upon his graduation in 1930, he entered into the private practice of law in New York City.

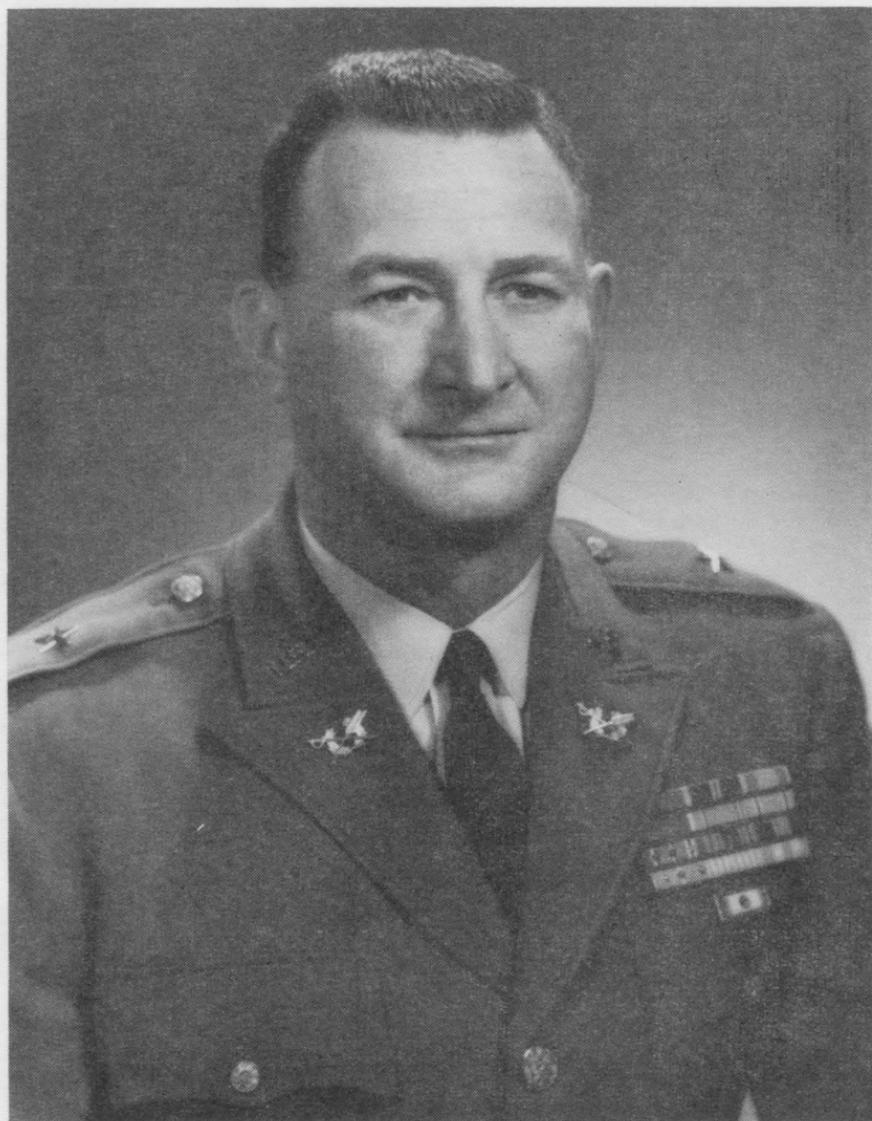
General Engel began his military career as an inductee in October 1942. He was commissioned as second lieutenant by the Infantry Officers Candidate School in June of 1943 and thereafter served as an Infantry Officer in various assignments. He was detailed to The Judge Advocate General's Department in February 1946. Thereafter, as a Judge Advocate, he served in the Pacific area. He re-

ceived a regular Army commission in March of 1947. After a number of assignments as Staff Judge Advocate at various stations, General Engel served again in the Far East, this time as Staff Judge Advocate of the 7th Infantry Division in Korea, later of the Pusan Military Post, and later of the Korean Military Advisory Group.

General Engel served at Fort Devens, Massachusetts, briefly in 1957 before his assignment as Staff Judge Advocate, U. S. Army Communications Zone, Europe. In 1960, he became Staff Judge Advocate of the U. S. Continental Army Command until February 1963, when he again returned to Europe to become Judge Advocate, U. S. Army Europe.

General Engel is married to the former Helene Delores Dando of Brooklyn, New York.





Brig. Gen. Robert M. Williams, USA

GENERAL WILLIAMS TRANSFERRED TO EUROPE

Brigadier General Robert M. Williams, who was promoted to his present rank on 11 November 1963, has been recently transferred to U. S. Army, Europe, where he will serve as Judge Advocate.

Before his reassignment, he served as Assistant Judge Advocate General for Civil Law in the Office of The Judge Advocate General and before that, for over a year, he was the Executive Officer of JAGO.

General Williams is a native of Georgia, and attended Emory Junior College and the Georgia Institute of Technology. After graduation from the United States Military Academy in 1939, he was commissioned as a Second Lieutenant in Field Artillery. During World War II, he served as Battery and Battalion Artillery Officer and finally became the Commanding Officer of the 604th Field Artillery with which unit he served in several Italian campaigns.

In April of 1945, General Williams was severely wounded in action and thereafter spent several years in various Army hospitals. Thereafter he attended the Command and General Staff College at Ft. Leavenworth and later the Law School of the University of Virginia from which he graduated in June 1951. Since that time General Williams has served in various assignments as a Judge Advocate, in the Office of The Judge Advocate General, the Far East and various military installations in the United States. Immediately before becoming the Executive of the Office of The Judge Advocate General, General Williams was the Judge Advocate of the U. S. Army Communications Zone, Europe.

General Williams is married to Dorothy Jeanne Chase of Ft. Lewis, Washington. The Williamses have two daughters.



NORTHWESTERN UNIVERSITY TO HOLD PRACTICE COURSES

Northwestern University School of Law will present its annual short courses in the field of criminal law practice again this summer. The course for Defense Lawyers in Criminal Cases will be held at the law school in Chicago from July 20 to July 25. The Prosecuting Attorneys' course will be conducted from August 3 to August 8. Both courses present timely, practical and quality instruction by leading practitioners and authorities. For further information, per-

sons interested in either or both of these courses should contact Miss Marie D. Christiansen, Executive Secretary Northwestern University School of Law, Lake Shore Drive and Chicago Avenue, Chicago, Illinois 60611.

On October 15-16, 1964, Northwestern University School of Law will hold a Corporate Counsel Institute. The institute, to be conducted by leaders of the corporate bar, will discuss topics of special interest to corporate counsel.

JAA GIVES AWARDS OF MERIT

The Association gave its Award of Merit to two students at The Judge Advocate General's School at Charlottesville on May 23, 1964. The award is granted for general scholastic excellence in the study of Military Law.

The recipients of the awards were: Captain Darrell L. Peck of the Twelfth Career Class and First

Lieutenant William J. Calise of the 40th Special Class. Captain Peck has been assigned to the Staff and Faculty of The Judge Advocate General's School and Lieutenant Calise has been assigned to the Office of the Staff Judge Advocate, 1st Armored Division at Ft. Hood, Texas.

WORLD'S FAIR SPURS INTEREST IN ABA'S ANNUAL MEETING IN NEW YORK

Advance registrations indicate a record or near record turnout for the American Bar Association's 87th annual meeting August 10-14 in New York City. With the New York World's Fair as an added attraction, attendance could top the previous high mark recorded at the San Francisco meeting in 1962.

The host committee of the New York bar is drawing special entertainment plans, geared particularly to the needs of the many lawyers who will bring their families to see the Fair. Plans call for junior tours and other programs for children aged 6 to 17 in addition to an extensive program for adults. Three days of conducted tours, of New York and the Fair, are planned for young people in various age groups. A Teen Center, with a swimming pool and other recreational facilities, will be located in St. Bartholomew church parish house near the headquarters Waldorf-Astoria hotel at stated times.

Special Events Children also are expected to accompany their parents to two special events. These are:

1—American Bar Association Day on August 8 at the World's Fair. This program will feature a special luncheon and reception for members at the Danish Pavilion and attendance at "Wonderworld," a musical spectacular to be staged in the Fair's 10,000 seat amphitheater.

Registrants and their families holding tickets for the luncheon will receive free one-way bus transportation, and free admission to the Fair.

2—Dedication ceremonies August 9 for the ABA-sponsored Bill of Rights Room in the historic Federal Hall Memorial at Wall and Nassau Streets in Manhattan. Elaborate plans are being drawn for the ceremony, scheduled on the steps of Federal Hall, site of the first seat of the U. S. government. George Washington was inaugurated there and Congress adopted the Bill of Rights there in 1789. ABA members have contributed more than \$50,000 toward establishment of the Bill of Rights memorial.

Professional Programs Sections and Committees of the Association are drawing plans for an extraordinarily wide range of professional programs. Hundreds of the nation's top lawyers and judges, in addition to business and political leaders and foreign guests, will take part in panel discussions, programs of the General Assembly, and other membership events.

The House of Delegates, top ABA policy-making body, will consider scores of proposals in its day-long sessions August 10-14.

Related Organizations More than a dozen related national legal or-

ganizations also will meet in New York in conjunction with the ABA's annual meeting. They include the Judge Advocates Association, the National Conference of Commissioners on Uniform State Laws, Conference of Chief Justices, National Association of Women Lawyers, National Conference of Bar Presidents, National Conference of State Trial Judges and the American Judicature Society.

Any lawyer, whether or not he is a member of ABA, may register and participate in the annual meeting events. An advance registration form and information about hotel accommodations is available from the Meetings Department, American Bar Association, 1155 East 60th St., Chicago, Ill. 60637. The registration charge is \$25 for senior members of the bar, and \$20 for lawyers under age 36.



