

The Judge Advocate JOURNAL



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JUDGE ADVOCATES ASSOCIATION

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

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RICHARD H. LOVE
Washington, D. C.

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OCTOBER, 1950

Publication Notice

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

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The Annual Meeting

The annual meeting of the Association was held during the week of the American Bar Association convention in Washington, D. C., September 19 and 20, 1950.

The annual banquet was held at the National Press Club on the evening of September 19. More than 350 members with their guests gathered in the cocktail lounge for reception and renewal of acquaintances preceding the banquet. The Honorable Frank Pace, Jr., Secretary of the Army, addressed the banquet briefly followed by Maj. Gen. Lewis B. Hershey, Director of Selective Service, who very forcibly and interestingly spoke upon selective service and deferment policies with particular praise of the legal profession and some condemnation of those professions who feel their only duty to serve their nation in time of military emergency is in accordance with capacities developed by specialized schooling. Gen. Hershey, as did Mr. Pace, emphasized the great privileges of American citizenship and the concomitant obligation to protect those privileges at the will of the nation and not only in a capacity which we as individuals think ourselves best qualified to serve.

Col. George H. Hafer, the retiring President of the Association, acted as toastmaster and handled the large gathering of 350 members and guests in his own personable manner. He called upon each of the Judge Advocates General, Gen. Brannon, Gen. Harmon, and Adm. Russell, for brief remarks, and upon Brigadier Lawson, the Judge Advocate General of the Canadian Forces, before calling upon

Mr. Pace and Gen. Hershey, the principal speakers.

Gen. Brannon, the Chairman of the Annual Meeting Committee, welcomed all present to this annual banquet and expressed his appreciation for the efforts and labors of his committee composed of Col. Thomas H. King, Col. Fred Wade, Lt. Col. Oliver Gasch, and Major Richard H. Love.

Gen. Harmon observed that some twenty-six years ago when he was an artillery recruit, the guest speaker, Gen. Hershey, was his battery commander and that he had particular recollections of the guest speaker growing out of an incident which occurred when he reported to him with a goldenrod decorating his campaign hat as a matter of a soldier's prank rather than an element of camouflage. Gen. Harmon observed that this want of decor in his uniform and the resulting colloquy between himself and the now Gen. Hershey had caused him to remember the General with a particular vividness.

Brigadier Lawson, the Judge Advocate General of the Canadian Forces, expressed his great pleasure in being in Washington and particularly having the opportunity to attend the annual banquet and meeting of the Judge Advocates Association. In passing he told the assembly something of the history of the Judge Advocate General's office in Canada and its rather far reaching steps toward unification.

At the business meeting of the Association convened at the Lee House at 4:00 p. m., September 20, Col. George H. Hafer presided. Each of

the Judge Advocate Generals advised the meeting of the plans of their respective services for the recall of legal reserve officers to active duty. These remarks were followed by an extremely interesting session of questions and answers.

At the close of the meeting, the report of the Board of Tellers was read and the following were installed in their respective offices:

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Col. Pirnie addressed the meeting

briefly and the meeting adjourned.

The following members were among those attending the various functions of the Association at its annual meeting:

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Robert E. Byrne, Arlington, Va.

John B. Calfee, Cleveland, Ohio; Lt. Col. J. C. A. Campbell, Ottawa, Ontario, Canada; Thomas E. Carney, Washington, D. C.; Robert Carey, Jr., Newark, N. J.; Col. George Cechmanek, Arlington, Va.; Donald P. Cheatham, Mexico City, Mexico; Robert E. Clapp, Jr., Frederick, Md.; Robert L. Clare, Jr., New York, N. Y.; Lt. Col. Franklin W. Clarke, Ft. Belvoir, Va.

Dr. Milton Clayton, Greensboro, N. C.; James S. Clifford, Philadelphia, Pa.; C. Warren Colgan, Baltimore, Md.; John B. Coman, New York, N. Y.; Howard H. Conaway, Baltimore, Md.; George Conger, Shreveport, La.; Col. William P. Connally, Jr., Washington, D. C.; Edward H. Cox, Washington, D. C.; Maj. Gen. Myron C. Cramer, Washington, D. C.; John D. Crocker, Albany, N. Y.

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Martin K. Elliott, Washington, D. C.; Col. Mariano A. Erana, Chevy Chase, Md.; Samuel B. Erskine, Athens, Ohio; Joe L. Evins, Washington, D. C.; Charles R. Fenwick, Washington, D. C.; Reginald Field, Falls Church, Va.; Osmer C. Fitts, Brattleboro, Vt.; John Finn, Washington, D. C.; J. F. Fowles, Washington, D. C.

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ington, D. C.; Albert G. Kulp, Tulsa, Okla.

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Harold E. MacKnight, Washington, D. C.; Martin F. Markward, Jr., Ft. Worth, Texas; Philip A. Maxeiner, St. Louis, Missouri, John C. McCall, Chanute, Kansas; Sherwin T. McDowell, Philadelphia, Pa.; Robert J. McKeever, Port Chester, N. Y.; Lt. Cdr. McKenney; Harley J. McNeal, Cleveland, Ohio; Brig. Gen. E. C. McNeil, Washington, D. C.

George H. McNeill, Morehead City, N. C.; I. G. Menikheim, Bethesda, Md.; Col. Martin Menter, Washington, D. C.; Jim Meyer; Martin W. Meyer, Washington, D. C.; Augusto P. Miceli, New Orleans, La.; Brig. Gen. Claude B. Mickelwait, Washington, D. C.; Mayne Miller, Martin K. Miller, Baltimore, Md.

Maj. Paul R. Miller, Washington, D. C.; Robert E. Mitchell, Alexandria, Va.; Joseph T. Mizell, Jr., Richmond, Va.; Earl F. Morris, Columbus, Ohio; Edward W. Moses, Silver Spring, Md.; Thomas F. Mount, Philadelphia, Pa.; Lt. Col. Edward J. Murphy, Jr., Washington, D. C.; Joseph Moss, Philadelphia, Pa.

David E. Nims, Jr., Kalamazoo, Mich.; Jack L. Oliver, Cape Girardeau, Mo.; William Oliver.

Frank Pace, Jr., Washington, D. C.;

Maj. Fred S. Perrin, New York, N. Y.; Alexander Pirnie, Utica, N. Y.; Joseph A. Ranallo, Shaker Heights, Ohio; I. J. Reese; Gen. Louis H. Renfrow, Washington, D. C.; E. Kenneth Resseger, Cleveland, Ohio; Harold A. Reuschlein, Pittsburgh, Pa.; Maj. Robert W. Reynolds, Camp Stone-man, Calif.; Gordon W. Rice, Reno, Nevada; Heber H. Rice, Chevy Chase, Md.; John Ritchie, III, Charlottesville, Va.; John Richter, Washington, D. C.; E. Earle Rives, Greensboro, N. C.; Douglas A. Robertson, Lynchburg, Va.; Capt. James J. Robinson, USNR, Washington, D. C.; R. Hoke Robinson, Columbia, S. C.; Col. A. H. Rosenfeld; Rear Adm. George L. Russell, Wash., D. C.

Col. Ellwood W. Sargent, Ft. Geo. G. Meade, Md., Col. Irvin Schindler, Washington, D. C.; Maj. Samuel A. Schreckengaust, Harrisburg, Pa.; Edmund M. Sciuillo, Washington, D. C., J. Gibson Semmes, Washington, D. C., Maj. Gen. Franklin P. Shaw, Washington, D. C.; Howard K. Shaw, Trenton, N. J.; Beverly S. Simms, Washington, D. C.; Gordon Simpson, Dallas, Texas; Col. Ray K. Smathers; Everett E. Smith, Washington, D. C.; Jack Smith; John McI. Smith, Harrisburg, Pa.

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William G. Talley, Roanoke, Va.;

Lt. Col. Alton W. Teale, Suffern, N. Y.; Richard Tedrow, Chevy Chase, Md.; Brig. Gen. William T. Thurman, Washington, D. C.; A. Martin Tollefson, Des Moines, Iowa; Orson Tolman, Washington, D. C.; Charles M. Trammell, Washington, D. C.; Wilson R. Toula, Baltimore, Md.

R. C. Van Kirk; Col. Fred Wade, Wash., D. C.; Jesse H. Warren, Jr. Tallahassee, Fla.; Raymond Wearing, Chicago, Ill.; Charles F. Welch, Washington, D. C.; Herbert E. Wenig, San Francisco, Calif.; Gerritt W. Wesselink, Washington, D. C.; Col. Charles W. West, West Point, N. Y.; Frederick B. Wiener, Washington, D. C.; Mastin G. White, Washington, D. C.; Maj. Philip M. Wilson, Washington, D. C.; Col. Robert W. Wilson,

Chevy Chase, Md.; Col. Claudius O. Wolfe, Washington, D. C.

Capt. S. B. D. Wood, USN, Washington, D. C.; Capt. John A. Wright, Chicago, Ill.; Richard R. Wolfrom, Shippensburg, Pa.

Philip W. Yager, Washington, D. C.; Clarence L. Yancey, Shreveport, La.; Paul J. Yeager, Baltimore, Md.; Col. E. H. Young, Washington, D. C.

The annual meeting of the Association was an outstanding social and business event in the history of the Association and the Association expresses its appreciation and thanks to its committee on arrangements and to each and every one of our members and guests who contributed so largely to its success.

The Address of the Honorable Frank Pace, Jr., Secretary of the Army

The Association was proud to have among its honored guests the Honorable Frank Pace, Jr., Secretary of the Army, who attended the annual banquet of the Association on September 19 with Mrs. Pace. After introduction by Col. Hafer, Mr. Pace addressed the gathering as follows:

Mr. Chairman, General Hershey, members of the Judge Advocates Corps, and their wives.

I have not had too many opportunities to come out lately to meet with the various graduates and members of the armed forces. During the period beginning June 25 of this year my responsibilities have kept me pretty steadily at the Pentagon. I choose to come out tonight because the law has been pretty deeply ingrained in my background, being a

practicing lawyer myself in Arkansas. I had a father who had a long and distinguished career as a lawyer and advocate in my state, and before him my grandfather was likewise a lawyer. So, I have not only practiced law, but I have been steeped in the law for some time.

Not wishing to trespass on the time of the very, very competent and excellent speaker who will make the main address of the evening, I thought I would like to say a few things to you not necessarily as Judge Advocates, but as Americans. These are not things that I have prepared or rehearsed, but things that come to my mind as a private citizen.

I don't know how often you stop to think how fortunate you are to be in America, in a world where

other people are not quite so fortunate. I don't know how carefully you thought about how that good fortune carries with it major responsibilities. Major responsibilities that I hope you will be able to shoulder in the days ahead, because they are clearly and obviously going to be necessary. Major responsibilities in terms of making sacrifices that we as Americans have been willing to make in the past and have done so ungrudgingly.

Secondly, I don't know whether you realize how proud you should be. I was particularly proud to be in America about the 26th of June, 1950. On that day a democracy, moving quickly and insistently, made a decision that will be historic. It made a decision to go to the aid of a country 15,000 miles away, with people that we scarcely knew or heard about, where there was no economic benefit, no political benefit and no social benefit to our country. It is not the sort of thing that has been normal practice in international operations among nations, but it is the sort of thing that we as members of the United Nations felt was imperative and we moved quickly and swiftly toward the accomplishment of what needed to be done.

I think we should be proud that our allies, not only our Canadian friends who are here tonight, but our friends in New Zealand, Great Britain, France, Australia, the Philippines, countries like Pakistan, who have rallied to this great moral cause; not a cause where men fight for aggrandizement, not a cause where men fight for power, but a cause where men fight for something that is bigger than anything else—a moral right to help a smaller nation de-

fend itself against aggression.

I think I am particularly proud to be an American when I think of that great 24th Division that went into Korea with just a handful of men and fought in the rice paddies. The first two companies that went over and faced overwhelming odds and stayed there until their ammunition ran out, until they could fight no more. When they retreated, they retreated with courage. They retreated with the kind of bravery that all of us have come to accept.

I have been particularly proud of the Air Force, the Navy, and the Marine Corps, who have moved in with the Army into Korea to fight as we have learned we must fight in the years since we found we could no longer enjoy the pleasures of isolationists.

I think I am particularly proud to be an American when I see men, who only five years ago came back from the greatest conflict ever known on the face of the earth, who were again called on to leave wives and families, reserve officers, men who are subject to the draft, who are called upon to give up businesses that they have just started, who have been called upon to leave homes that they have just organized and children who have just come to them, they have gone forth to this particular assignment not complaining, not griping, but recognizing that it was necessary to go and exhibiting a willingness to do so.

There have been occasions from time to time, when in the newspapers of our land we have read articles that might have caused you to wonder about the courage of the men who fight for America. I can tell you that

we can all be very, very proud of the men who have fought in Korea, one of the greatest acts of courage on the part of an individual group of men that has been exhibited in my time of history.

It is very difficult during this time of half peace and half war, yet I think that so long as this country

recognizes that we are moving toward something that is bigger and more important than ourselves, something that is not material, but something that is moral, toward a peace that we will inevitably win, and toward a life of happiness for all men. When that opportunity arises, then I think you will realize what you owe to your heritage as Americans.

Maj. Gen. Lewis B. Hershey Addresses the Association at its Annual Banquet

Maj. Gen. Lewis B. Hershey, Director of the Selective Service System, attended with Mrs. Hershey, the annual banquet of the Association on September 19. Col. Hafer, the retiring President, and toastmaster for the evening, served as Legal Advisor to Gen. Hershey during World War II and by reason of the close association with our guest speaker, was able to introduce him to the Association in a very personable manner. Following his introduction, Gen. Hershey spoke as follows:

Mr. President, ladies and gentlemen. My being here tonight proves that it is not important what you know, but who you know. The only excuse I know of for my being present is because I know the president you still have tonight.

I am embarrassed to have it made public here tonight that about 26 years ago some 8 or 10 grades separated General Harmon and myself. What a change 25 years can make.

I am going to say something about the law profession tonight, not because I was found incapable of being in it, but because it represents something in American life that I imagine

you are coming to before the season is over. However, your profession did not bother me too much in the last ten years and for the same reason I hope you will not in the future. The law profession is one of the few professions that I know of that doesn't expect in times of stress to either work at that profession or have some reservation about serving at all.

I don't want to have any attitude except of optimism, especially after the things the Secretary of the Army has said, because I am very proud that I can say that I am an American, because it is my country, and because I am proud of it and because I think it has had a very great past and can have an even greater future.

One of the dangers this country is up against is the fact that we have developed groups who believe because by attending some school or participating in something, they, as individuals, have become something different. There is no difference in the responsibility to defend this Nation regardless of occupation. The sooner we in this country realize that fact the better off the country is going to be. The fact that a man has the

privilege of going beyond high school doesn't mean that in times of stress he can demand the right to serve only in one way or not at all. I have criticized the Army many times because I felt they did not utilize some of the people they could have. But they must have sufficient high quality men.

You cannot raise fighters from the unemployed, the stupid and every other sort of thing that we have tried to cull out. If we had peace, then everybody could be that which they had gone to college to be. But it gives me a great deal of anxiety when I see people who have had the privilege of going beyond high school and then feel that they should serve their country in their professions or skills or not at all.

We have got to get from our younger groups men who can fight, and those men must come from those who have been privileged in this country, as well as everybody else. In the not too distant future we are going to need 3,000,000 men, and I believe they can be raised from the 8,000,000 men in the age group 19 to 28, but that will depend on whether we use them or whether we permit ourselves to make privileged people of those who may have had the opportunity to be in school.

There is no question in my mind but that the leaders of this country will come from college, but at the same time survival has got to come first, and you know as well as I that we are not going to find survival by permitting ourselves to consider some people privileged.

There are lots of us my age who can't fight, but we do have advice. We've got plenty of advice, some of which we have never used success-

fully, and we shall pass this advice on to the succeeding generations, but that isn't the thing that keeps the enemy away from our shores. Now, that doesn't mean that we are going to take everyone regardless and to defer no one but we must be careful.

I am going to make a confession—and I don't want you to tell anybody—I have a son-in-law who is a lawyer. Our family had hopes, like every other family, but we eventually ended up with a lawyer in the family. He has called my attention to the fact that we didn't defer anybody because he became a lawyer the last time.

I want to say to you lawyers that you have set an example in doing whatever had to be done in times of stress. Some of you led infantry units, and some led artillery units, and it will be the same way next time.

I have on my desk a book which was put out after a study that was made by the Department of the Army. It was made by sending questionnaires to 134,000 people who had joined any one of several scientific societies. Now you know that isn't necessarily setting a very high standard for the personnel so selected. Each one was asked whether he had been used properly in accordance with his professional and scientific qualifications during the last war, and just over half of them answered—which would indicate that just under half of them didn't and were not too concerned about utilization. It is a reasonable assumption that most of them were not in the service. Of those answering the questionnaire, 15,000 out of 69,000 were in the service. Not a large percentage of 69,000 and about one-half as large a percentage

as compared with the 169,000 who were required. 75 percent of the 15,000 entered the service by commission already held, by acceptance of commission or by enlistment. 26 percent of the 15,000 and 48 percent of the 3,800 drafted personally believed that their scientific utilization was less than satisfactory.

It is a fact to consider just how valid were the judgments of the members of this group. What weighing factor would be used by a scientist in determining the validity of this information. The breakdown on the basis of their prior preparation is interesting. 5,400 believe they were used less than satisfactorily. Of these 570 had degrees as doctors in their particular fields. The remaining 4,932 covered those from no college to a master's degree. Nearly 4,000 had no more than a bachelor's degree and almost 1,000 had no degree.

5,000 dissatisfied customers out of a possible 134,000 seems small. One of ten, or 500 plus out of 134,000 seems to be the number whose qualifications indicate they might be scientists. When you remember that thousands were deferred because they were considered necessary the value of those who were not deferred is materially lessened.

We stand in jeopardy of pressure groups whose selfish demands obscure the national interest. Whatever our other classifications we must be Americans always.

I can't say some of the things I would like to because the Secretary of the Army has said them for me. He has said only too well the things we all must appreciate about this country of ours. None of us, regardless of our profession, ever get high enough to even compare with being an American.

Col. Howard A. Brundage and Col. William J. Hughes, Jr., Presented With the Association's Award of Merit

The Board of Directors of the Association, upon the advice of Brig. Gen. Franklin Riter of Salt Lake City, Utah, Chairman of the Committee on Awards, directed the presentation of the Judge Advocates Association's Award of Merit to Col. Howard A. Brundage of Chicago, Illinois, one of the founders of our organization and its first president, and to Col. William J. Hughes, Jr., of Washington, D. C., a past president of the Association, and one of the outstanding authorities upon military justice.

The award is granted annually for outstanding and constructive work in the development of military and naval law and the improvement of the Armed Forces judicial systems. The contributions of both Col. Brundage and Col. Hughes to the development of this organization and their tireless efforts toward the sound development of the law relating to the Armed Forces have been immeasurable.

Col. Brundage engages in the active practice of law in Chicago, Illinois, and Col. Hughes is in active private practice in Washington, D.C.

The Judge Advocate General of the Canadian Forces Addresses the Association

It was indeed a happy arrangement that the American Bar Association and Canadian Bar Association were able to have their annual meetings jointly in Washington, D. C. this year. This joint meeting made it possible to give an international note to the meeting of our own Association for as a guest of Gen. Brannon, Brigadier W. J. Lawson, the Judge Advocate General of the Canadian Forces, with Mrs. Lawson, and Lieutenant Colonel J. C. A. Campbell, the General's aide, and Mrs. Campbell, of Ottawa, Ontario, Canada, attended the annual banquet. During the proceedings Col. Hafer called upon Brigadier Lawson for a few remarks at which time he addressed the assembly as follows:

Mr. Chairman, Mr. Secretary, ladies and gentlemen. I assure you that it is a very great pleasure for me to be here this evening and to have the opportunity of meeting and speaking to so many officers of the offices of the Judge Advocates General of the United States services, both active and reserve, and their charming ladies.

I have only held the appointment of Judge Advocate General of the Canadian Forces for a few months and I have welcomed this opportunity to come to Washington, primarily to attend the joint meeting of the Canadian and American Bar Associations, General of the United States Army, Navy and Air Force.

Americans and Canadians have been comrades in arms in the last

two great wars, and if you haven't cleaned up the Korean situation before we get there, we probably will be comrades in arms soon again. It is therefore essential that there should be the closest possible cooperation and liaison between the legal as well as the other services of our forces. This cooperation, I hope, may be furthered by the present visit of Colonel Campbell and myself to Washington.

I wish to extend to the Judge Advocates General of the Armed Forces and all of their officers a very sincere invitation to come and visit us in Ottawa whenever they can possibly do so. We would be very happy to see them there at any time.

There is a great deal of talk these days, both in your country and in mine, about unification of the forces. I thought it might be of some interest to you if I were to tell you about what we have been trying to do in Canada to unify the legal services of our forces.

We have in Canada only one Judge Advocate General. He may be a member of the Navy, Army or Air Force or a civilian. He has three deputies, one from the Navy, one from the Army and one from the Air Force and a staff composed of officers of the three services. The work of the office is divided on a purely functional and not service basis. For example, the review of courts martial is carried out under the supervision of an Army officer, and all claims are dealt with under the supervision of an Air Force officer. I may say that we have found this system works very well.

We have taken a further step recently. At the last session of Parliament there was enacted an act known as the National Defence Act. Under that act we have one code of discipline for the three services and identical systems of disciplinary administration. All courts will follow the same procedure from now on and they will apply the same law.

This, we think, is a major step forward toward service unification. We have felt that it is not fair that a naval rating who might commit an offence should be subject to any different punishment than an airman who commits the same offence. All the provisions of the new code have not as yet gone into effect. However, the part that has is working out very satisfactorily.

Now, Mr. Chairman, I have mentioned briefly the legal aspects of the efforts we in Canada are making to achieve some measure of unification in our armed forces. May I suggest, however, that unification of the services of one nation is not enough. Today we are faced with ever present danger. We must not only unify our own national services, but we must also unify our national services with those of our allies so that we are ready and able to meet any threat from whatever source it may come with the full strength of our united forces. That, I think, ladies and gentlemen, is all important.

Brigadier Lawson and Lieutenant Colonel Campbell also attended the business meeting of the Association at the Lee House on September 20 at which time Brigadier Lawson very interestingly developed the history of the Judge Advocate General's office in the British and Canadian

Forces and gave some insight into the functioning of his own office as the unified law division for all the Armed Forces of Canada. The address of Brigadier Lawson at the annual meeting is set forth below:

Mr. Chairman, gentlemen. May I take this opportunity to thank you for permitting Colonel Campbell and me to attend your most interesting meeting this afternoon.

I assure you that the information we have obtained here in Washington during these past few days will be extremely helpful and will prove to be of great value to us in our work when we return to Ottawa.

I thought this afternoon I might say something very briefly about the organization of the office of the Judge Advocate General in Canada. To do that intelligently, perhaps I should refer briefly to its history. Although most of you are no doubt familiar with the history of the office of the Judge Advocate General in the British Forces, some of you may not be. Originally the power to convene courts martial was given to individual commanders as the need for it arose. These commanders, of course, would employ members of the Bar to assist them in carrying out the legal aspects of their duties. Such members of the Bar were employed temporarily for a particular campaign or war.

Early in the nineteenth century the office of the Judge Advocate General was created. Oddly enough, this was a purely political office. The Judge Advocate General was a minister of the Crown, holding a position similar to your Secretary of War or your Secretary of the Navy. The Judge Advocate General was, as you would

call it in the United States, a secretary. He was appointed as a member of the government, and when the government was defeated, he went out with the rest of the cabinet. This had many advantages, and gave the Judge Advocate General a great deal of influence. But, on the other hand, it had very obvious disadvantages. So, late in the nineteenth century this system was done away with and the President of the Probate, Divorce and Admiralty Division was appointed Judge Advocate General on a part-time basis. It became obvious the job was too big to be handled in that way, so a Judge Advocate General of the Forces was appointed. In England the Judge Advocate General has always been a civilian with a staff made up of members of the Army and the Air Force. The Navy has an entirely different disciplinary system, and the chief legal advisor in the Navy is the Judge Advocate of the Fleet. Recently, England has made a very material change in this set-up. All the general work of the Judge Advocate General, such as claims and patents, has been taken away and is looked after by the legal branches of the various services. There is a legal branch in the Army and one in the Air Force. These legal branches advise on all pretrial matters, doing everything up to and including prosecuting. The Judge Advocate General is now known as the Chief Judge Marshal. He is a purely judicial officer. He has a staff, the members of which sit on courts martial like your law members, but they differ from the law member or judge advocate, as we have always called him, in that they are, in essence, judges and the members of the court.

The officers who are on the court are, in essence, a jury. The Judge Marshal is in the same position as a judge trying a criminal case with a jury. He rules on the law and sums up the facts. That is the position in England.

In Canada, we had no Judge Advocate General until the first world war. Before that time, many of the senior officers in the Canadian Forces were from the United Kingdom, and referred legal matters either back to the Judge Advocate General there, or to the civilian law officers of the Crown in Canada. The work became too heavy for this system to continue, so a Judge Advocate General was appointed and given a staff. After the war, the Office was continued, but the Office, between 1919 and 1939, consisted of one officer with a couple of clerks.

In the second world war the Office, of course, increased gradually until there were over 400 officers employed in the Office of the Judge Advocate General. Following the war it was cut back again until now we have about 16 officers, 8 from the Army, 6 from the Air Force, and 2 from the Navy. That is our total staff.

My appointment is Judge Advocate General of the Canadian Forces. I am assisted by three deputy Judge Advocates General, one from the Navy, one from the Army, and one from the Air Force. They hold the rank of captain, colonel and group captain, respectively. We have 7 of our officers stationed across Canada in key centers. In Halifax we have a Naval officer, in Montreal we have an Army officer, in Trenton, which is our large air base, we have an Air Force officer, and so on across the

country. They act as advisors to all of the services within their area. They act as judge advocates on all courts, whether in the Army, Navy, or Air Force and they are not carried on the staff of the commander in the area, but on my staff and report directly to me.

The work in our central offices in Ottawa is divided much as is the work in your offices here. We have our judicial section in which courts martial are reviewed. We have our claims, patents, pensions and property sections. The only section of the work that you have to deal with that we do not is procurement. This is done by another department of the government.

Augmentation of the Army JAGC by Recall of Reserves

At the annual meeting on September 20, Maj. Gen. Ernest M. Brannon, the Judge Advocate General of the Army, spoke to the members present upon the program of his corps to expand the Army's regular branch to meet the requirements of the current Army expansion program. Because of the general interest of this subject matter to all Army JAG's, both active and reserve, the remarks of Gen. Brannon at the meeting are set forth in full.

Mr. President, members of the Judge Advocates Association and guests.

A basic military principle that has long been followed is that when you are planning, plan for the worst. In other words, if the event turns out to be less serious than you anticipated it is much easier to reduce or curtail your program than to attempt to increase it at the last minute. Conse-

There has recently been enacted by Parliament a new code of law applying to all three services which might be termed a uniform code of military justice. We have also set up a court, composed of civilian judges, to hear appeals from courts martial. I understand that the same things have been done here. This system we expect to bring into operation in about two or three months. We in Canada are therefore faced with many of the same service legal problems that confront you here in the United States and working from different approaches have apparently attempted to solve them in much the same way.

quently, in our program we are geared for an all-out military effort under total mobilization. The present emergency calls for only partial mobilization as distinguished from full mobilization. We took this in stride. However, we do not know what is going to happen next. We are called upon to meet this emergency and at the same time go forward with our program.

This afternoon I would like to discuss four factors for which we are planning at the present time: (1) The present partial mobilization (2) Our general program (3) Increase in the size of the Army as a result of what happened in Korea and (4) Very briefly the effect of the uniform code of military justice on our Judge Advocate personnel.

Now, with respect to the present emergency, we are recalling Reserve officers under two procedures. First of

all, regardless of grade, if the Reserve Unit to which you are assigned is called to duty, you are called in order to protect the integrity of the Reserve Troop Basis program. In addition, we have the individual recall quota which must be filled and so far is limited to Reserve officers in the grade of captain and lieutenant.

The Judge Advocate General's Corps allotment for the present increase is 235 additional Reserve officers divided approximately on a 60-40 basis between captains and lieutenants. The first quota was for 100 such officers and that is the one for which alert notices have already been dispatched. The second quota was allocated yesterday so that the call for that group of officers will go to the six Army areas in proportion to the total number of Reserve officers in the respective Army area.

Frankly, gentlemen, this is the situation. In this present emergency we have recently been called upon for officers to staff new units and reactivated installations. So, I have to send these officers either out of my office or from the staffs of the continental armies. This is a situation that has become very serious. We have taken a number of officers from my office and we have called upon the armies for all they can afford to lose.

As you well know, the need for officers in any form of mobilization is always apparent prior to their availability for duty. At the present time our personnel is drastically reduced and we cannot replace them until we begin to obtain the officers from this present recall program. We have asked the armies to select Reserve officers of this Corps for this first

recall quota, particularly in the captain's grade, who have sufficient experience to allow them to absorb "on the job training" and become productive in the shortest possible period of time. Two reasons exist for this request. First, because we need them and secondly, requirements have reached a point which will not allow all of the officers to be recalled in sufficient time for refresher schooling. We must put them to work immediately. Consequently, it is necessary that we obtain some captains who have had experience and have kept active in their training under the present Articles of War.

As for the lieutenants, probably most of them have had little or no experience so we plan to establish here in Washington a refresher course which will run from 5-8 weeks depending on the situation and how much time we can afford to provide for such schooling. The majority of the lieutenants and some of the captains will undoubtedly take that training course. As soon as they finish they will go out to staff judge advocate offices. We hope to give them sufficient instruction so that they can start producing as soon as they report in such assignments. We hope that many will be able to step right in and try some cases.

Recall of officers under this program are all made in your present Reserve grades. In other words, if you went on terminal leave as a captain you will be recalled in that grade. Some exceptions to the company grade limitation are permissible. If we do find that we have some requirements which can only be filled by the recall of field grade officers, we will have to recall officers in that grade.



A portion of the head table at the annual banquet

However, such recalls are being held to a minimum and so far we have not been forced to make any exceptions to the policy.

Just to give you an idea of the probabilities involved, the pool of Reserve Judge Advocates from which we have to draw has approximately 900 captains and 800 lieutenants so that the ratio will be something like one in seven whether you will be selected. Our general Reserve program must continue. We are faced with this emergency but we cannot tell what is going to happen in the future so we must plan on the continuance of our regular training program. There will be little change

except for the increased interest and the extent to which that program may be affected by the phased build-up of the Army.

You have all seen the notices in the press regarding the necessity for increasing our normal military efforts, that is, our peacetime efforts. We cannot tell at this time what effect this will have on the Judge Advocate General's Corps. If there is a substantial increase in our peacetime forces, that will be reflected in the general Reserve program and of course, in the Judge Advocate General's portion of that program.

I don't know whether any of you have seen it or not but we have

just started publication of a little bulletin from our Extension School which will be sent to all Judge Advocate General's Corps Reserve officers in an attempt to keep you up to date on what is going on in Reserve activities.

Finally, gentlemen, we come to the new uniform code of Military Justice

and its effect upon the Corps. It is obvious to all of us that that code will require a substantial increase in Judge Advocate officer personnel. We cannot know exactly what its effect will be. In some fields it is very difficult to anticipate because we have no experience upon which to rely. We have been given new mis-



Group Picture of a section of the annual banquet: Seated at the head table are Mr. and Mrs. Frank Pace, Jr.; Maj. Gen. and Mrs. Hershey; Maj. Gen. and Mrs. Brannon; Rear Adm. and Mrs. Russell; Maj. Gen. and Mrs. Harmon; Maj. Gen. and Mrs. Shaw; Maj. Gen. Hoover; Maj. Gen. and Mrs. Cramer; Brigadier and

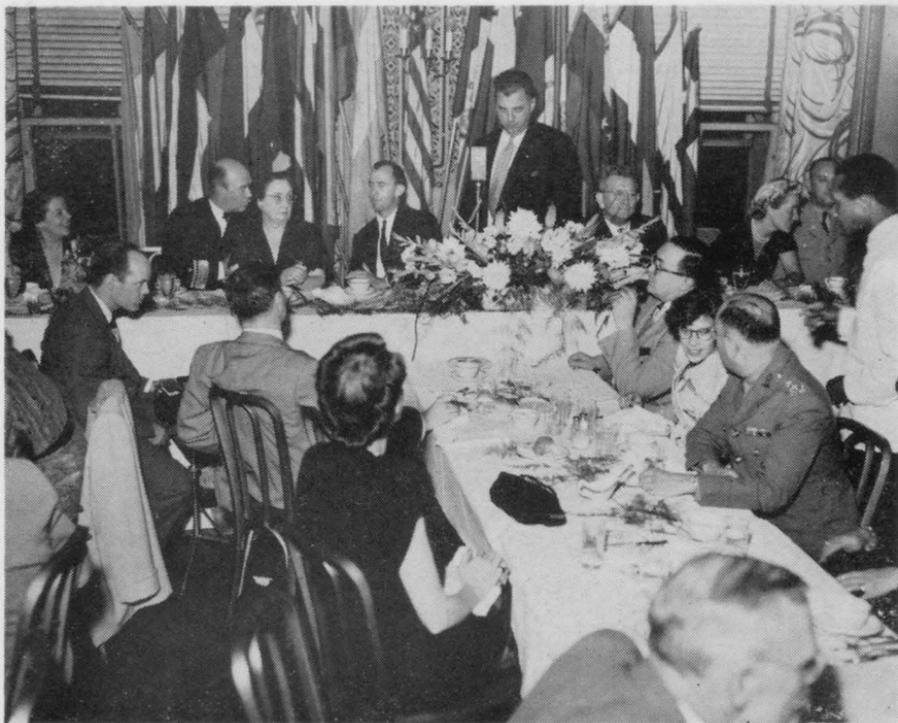
sions and activities and we will have to make the best estimate we can under the circumstances. We were at the point of trying to crystallize this requirement last June but the Korean situation arose and of course, it had to be deferred. Probably in the next few months we will present that question again with an idea of

determining the requirements under the uniform code.

We are going ahead with our program for increasing the number of regular officers but we have been slow in that program and deliberately so. We desire to use the utmost selectivity in the procurement of these officers and take in approximately 50-60



Mrs. Lawson; Brig. Gen. Kuhfeld; Brig. Gen. Harbaugh, Brig. Gen. and Mrs. Mickelwait; Brig. Gen. and Mrs. Renfrow; Brig. Gen. McNeil; Brig. Gen. and Mrs. Thurman; Brig. Gen. and Mrs. Boyd; Col. and Mrs. Brundage; Col. Hughes; Col. and Mrs. Kidner; Col. and Mrs. Hafer.



Center of head table showing Col. Hafer flanked by Mr. Pace and Gen. Hershey

per year. It seems more desirable to build up the Corps in that manner instead of sacrificing quality for quantity.

Our experience in connection with the utilization of the qualified line officer as law member has shown us that we cannot depend on their avail-

ability. They have their primary mission to perform and are all too often in key positions so that their services cannot be profitably spared for this specialized duty. We will have to plan to have sufficient Judge Advocate personnel to operate under the new system.

Plans for the Air Force JAG Reserve

Gen. Reginald C. Harmon, the Judge Advocate General of the Air Force, attended the annual meeting of the Association on September 20, and spoke to the members present upon the Air Force plan with regard to training and extended active duty for legal officers of the Air Force

reserve. He spoke also upon the growing unity between the legal departments of the Department of Defense, particularly as an outgrowth of the Uniform Code of Military Justice and the common Manual for Courts Martial and the common reporting system of opinions of the



A portion of the head table at the annual banquet

Boards of Review and Court of Military Appeals which are in the preparation and planning stages. Gen. Harmon's remarks were succinctly made and of great interest to Air Force legal officers. His remarks are set forth below:

Mr. Chairman, and gentlemen. I would like to discuss briefly three closely related subjects in connection with the legal department of the Air Force. The first one is the training program for Reserve officers. During your meeting last year in St. Louis, I described to you the various types of training which were available generally for Reserve officers of the Air Force. We selected three of those

types which we thought would be most suitable for the training of lawyers, one as the principal method and the other two as supplements to it.

This principal method is the Volunteer Air Reserve Training Program. That means simply that at least ten lawyers, who are Reserve officers in the Air Force and happen to live in the same community, can meet regularly and study military law together. Their meetings are once a week and for their efforts, they get points for promotion and retirement.

Now, you are going to ask, what do they study? That is a question we have to answer here at this Head-

quarters. We have to provide them with material to study so that is where the Mobilization Assignment Program comes in as one of the supplements to our principal method. Mobilization assignees receive inactive duty pay and it is against my sense of Scotch thrift to allow them to get paid without doing some work. They have been working on manuscripts to be used for the training of Reserve officers in the Volunteer Air Reserve Training Program.

A man is assigned to the branch in which he has had the most experience and he develops manuscripts on that subject to be used for teaching these training units throughout the country. These manuscripts are also used for the other supplemental method of training, the Extension Course program.

As I mentioned, the two supplemental methods of training, supplementing the Volunteer Air Reserve Training Program, are the Mobilization Assignment Program and the Extension Course Program.

The Mobilization Assignment Program is available to Air Force Reserve officers who live in the vicinity of Air Force installations to which they are able to obtain mobilization assignments. Those who receive such assignments receive their training with the installation to which they are assigned and are somewhat in a position of an inactive member of one of the activities of that installation. For example, if an officer is a mobilization assignee of the Air Materiel Command, he would receive his training with that command and be assigned to a specific job which he would fill in the event of mobilization. Such assignees receive inactive

duty training pay and are eligible for tours of active duty. The greatest disadvantage of this method of training is that it is only available to those who live in the vicinity of an Air Force installation which has activities within the field of the training and experience of the officer concerned. In the case of a lawyer, he must live near an Air Force installation which has legal work to do.

The Extension Course Program is similar to the extension course program in existence before the war, in which you simply enroll in a given course and study the lessons submitted along with the material included with them and finally solve the problems as a test to determine whether you have assimilated the instruction and received the training from the course you were supposed to receive.

We found that a combination of the three programs provided the best method for training Reserve officer-lawyers. The Volunteer Air Reserve Training Program is the principal one, supplemented by the Mobilization Assignment Program to prepare training materials and take care of those officers who reside near Air Force installations with activities within the field of their training and experience. The Extension Course Program is a by-product of the other two and takes care of those who reside neither near an Air Force installation nor a community large enough for a Volunteer Air Reserve Training Unit.

Our experience has proven that the volunteer training method, as supplemented by the other two methods of training, has the characteristics which have always seemed essential.

a. It is inexpensive and a good investment for the Government.

b. It is interesting as is demonstrated by the fact that the Reserve officers everywhere seem to enjoy studying and discussing legal matters together.

c. It is simple and easy to understand so that time does not have to be consumed in the interpretation of complicated rules.

d. It is useful and constructive because there is no better way of bringing out the weaknesses of any philosophy than that of having a group of lawyers discuss it.

The second subject I wish to discuss is what we are going to do in the Air Force with reference to calling Reserve officer-lawyers to extended active duty. I believe the recall program is governed by three main principles.

a. I do not believe anyone should be called to extended active duty unless he is qualified professionally to carry the responsibilities of his rank. If a man is only qualified to be a lieutenant and he is a lieutenant colonel, we just can't use him. If an officer does not pass these professional standards, he should not be in the legal department reserve anyway and most certainly he should not be called to active duty.

b. It is my duty, if a man is capable of handling the duties of his rank, not to call him for duty on the second team or let him sit on the bench. If I do not have a place on the varsity, I should let him remain in civilian life until such time as I do have such a vacancy.

d. Volunteers should be utilized first. At the present time, we are trying to fill our vacancies from vol-

unteers, starting with company grade officers, and we may be able to do it. If volunteers are inadequate to fill the vacancies, we are going to call mobilization assignees next. I believe the man who is getting inactive duty pay should be the first to be called involuntarily. The third group to be called will be all others.

These are the principles, as it looks now, which will be followed in recalling members of the legal department of the Air Force, in the absence of a major war.

I am not in a position to go into strength figures, because those facts are classified.

The third subject I would like to discuss briefly is the subject of Unity. There are two different parts to that subject. I want to talk first about unity between the three services. There have been several acts passed since the war, the spirit of which has been to provide unity and uniformity between the military services. The Unification Act, the Uniform Code and other acts provide for those two concepts. I can tell you gentlemen that I believe we have unification between the legal departments of the three services right now, and from the spot where I sit, I believe unification is working. I think the lawyers of the services are following the high standards of their profession and showing every willingness to help each other as is best demonstrated by the common projects they are working on together.

The first common project, of course, is the Manual for Courts-Martial which is being prepared by the three services for use by all of them. The second is the single Reporting System to publish the Court-Martial Re-

ports and the Digest. We will have a set of volumes which will contain verbatim reports of all of the opinions of the boards of review of the three services and probably the opinions of the Court of Military Appeals all properly indexed and provided with headnotes, and another set of volumes which will contain a digest of all of the opinions of the three legal departments. This reporting system will be similar to the present Air Force System and will be accomplished by the Lawyers Co-Operative Publishing Company of Rochester, New York, under a contract with the Government. It contains citators, cross references and indexing systems generally recognized by standard civilian legal publications.

The other part of this general subject of unity is one about which I have felt very strongly for a long time. That is the unity of purpose of all government departments and agencies. I think one of the weaknesses of government employees, and that extends to government lawyers, is the fact that many times we are so bent on representing our own individual service that we forget about

the effect it may have on the United States Government. Each check I have ever received for military service has been from the Treasury of the United States and not from any subdivision of the Government. I am not minimizing the importance of loyalty to one's own branch of the service, but I do not believe I am doing a very good job of representing the government if I save the Air Force a million dollars and at the same time cause tax losses to the Treasury in the sum of a million and a quarter. I think many times we become so involved in our own narrow task that we forget about our broader mission, that of representing the interests of the American people.

General Brannon and Admiral Russell and I and our respective staffs are doing our very best to build and maintain strong legal departments for the three services. You gentlemen, who are members of the Reserve components of those services, can do a great deal in helping us to discharge our responsibilities, both in your civilian status and your military status. I earnestly solicit your support in helping us do our job.

Navy JAG Expansion

The members of the Association who attended the annual meeting on September 20 listened with interest to the statement of Rear Admiral George L. Russell, the Judge Advocate General of the Navy, with regard to the Navy's plans for expansion of its legal department in the current military and naval expansion program. Adm. Russell told the meeting something about the organization

of his department, the nature of its reserve strength and the plans that the Navy has for keeping its legal department adequate for the Navy's growing strength.

Adm. Russell's remarks were extremely timely and interesting, not only to the Naval Reserve members of the Association, but to all those present. Adm. Russell's expression of interest in the Association and his

attending both our annual banquet and meeting were very helpful signs toward the growth of our Association.

Since the Association was created at the time when the Army and Air Force had a common Judge Advocate General's department, it has been too generally assumed that it is an Army organization, whereas in fact, it is a society of lawyers of all the components of all the Armed Forces. The Association is interested in the problems of the Navy legal officer as well as those of the Army and Air Force and through this interest wishes to more fully represent the Navy legal specialists. For the information of the members of the Association, we publish below the full text of Adm. Russell's remarks:

Our organization is comparatively young, when you compare it to the Army, and consequently, we don't have the wealth of background and experience that the Army has, particularly since they are organized the way they are.

Our situation has demanded that we proceed along two lines. First, what would we do in the case of total mobilization; second, what are we doing right now. We came up with some mobilization figures three or four years ago, as soon as we got our feet on the ground, and proceeded to designate certain officers of the Naval Reserve as "SL's."

Now, in doing our planning, I took this position, and I was backed up by the Bureau of Personnel, that as between a young fellow who can see all right and doesn't get seasick, and has no three-dollar reason why he shouldn't go to sea in a ship, and perhaps hasn't had too much ex-

perience in law anyway, and the older person who does have experience and might have something wrong with his eyesight or be otherwise disqualified for sea duty, I thought the preference in handing out these designations should be given to the older person. It seems to me an intelligent use of manpower. If you put the young fellow to work at a desk, you can't use the older man. As a result of that, the Bureau of Personnel has established a policy—this is just one of many—with a minimum age limit of 35 and a minimum of five years law practice as a requirement for the designation SL.

While we are a comparatively new organization with respect to lawyers in the Navy, we do have a pretty good sized pool of them, between 12,000 and 15,000 lawyer in the Naval Reserve. We can't begin to employ that many in law billets. I know a great many of you heard what General Hershey had to say last night about people who wanted to continue doing in the service what they have been doing in civilian life. I think his experience along those lines has been a little rosier than mine. I have found a great number who would like nothing better than to continue to practice law in uniform, but I will say, however, a lot are ready for anything.

We designated 1,000 naval reserve officers as SL's, and in so doing we screened about 6,000 officers. That leaves about 6,000 more who have not been screened, and whose legal background and reputation and capabilities and so forth we know nothing about, certainly on a comparative basis.

Now, to come to the present situation, in the first place we are not

calling anyone back for active duty unless he volunteers. A number of people have asked me this question: Suppose I do come back, how long will I be back? The answer to that is, they are guaranteed 12 months and under the Selective Service law may be retained 21 months. Strangely enough, to me, the great majority of the volunteers are people who do not have the SL designation. I have been told I shouldn't have any trouble understanding that, because we deliberately passed out these designations to the older people and they are too well established to drop whatever they are doing and come back into uniform unless we have a full-blown war on our hands. I have to admit that makes a lot of sense, but SL designation or no SL designation, if any of those folks are particularly well qualified in a given field where there is a shortage, like electronics or something else, that is where he is going to go, and we can find another lawyer to take his place out of the pool I have been telling you about.

I don't feel at liberty to give you the figures on how many are to be called to active duty because they are classified and form a part of a larger plan which is classified. I can tell you this, however, as a thumb rule, we figure an increase of 45 lawyers for every 50,000 increase in the Navy. You can make your own estimate from there.

As General Brannon said, we were just getting lined up and organized to get staffed to take care of the code of justice when along came the Korean war. One ran into the other pretty much.

To give you some idea of what we are doing to get ready for the

code of justice, I can say this: that in the first place, this is a more radical change for the Navy system than it is for the Army or Air Force. We have never had anything that approached this. The Army had their Board of Review set up, whereas we have to start from scratch.

General Brannon mentioned a course of instruction for the Army here in Washington, and we have what we call a School of Justice at Newport that just moved there from the west coast. We have a seven-week course for people on active duty and we run a two-week course along with it for reserve officers on inactive duty. We have estimated that if you balance the 7 weeks instruction with what you get in law school for these given subjects that it comes pretty close to being a full law school course.

As of now, of course, we have not completed the Naval Law Manual, but we estimate that by the time these reserve officers who are going to school finish up their course that the law manual will be in such shape that we can teach that right here and then send them on out wherever they are needed—and I don't know where that will be.

With the review procedure, we estimate we are going to need about six boards of review, and about 30 lawyers in the Appellant branch. It is only human nature to take a free appeal when it is offered to you, and we figure those boys will get a lot of them.

A strong Association can serve you better. Pay your annual dues. Stay active. Recommend new members. Remember, the Association represents the lawyers of all Armed Forces components.

The Zimmerman Martial Law Case in Hawaii

By Col. Wm. J. Hughes, Jr., JAGC-USAR
Washington, D. C.

Members of the Association may be interested in the forthcoming trial of the Zimmerman case in Honolulu December 6th next. The case is the outgrowth of martial law in the Islands declared on Pearl Harbor day, December 7, 1941, and lasting until October 25, 1944. On the afternoon of Pearl Harbor day, Dr. Hans Zimmerman, a naturopathic physician, was arrested along with several hundred other suspects and held in detention until March 15, 1943, at which time he was released and departed to the mainland. When he got back to Hawaii in 1946 he filed suit for \$550,000 damages against former Governor Joseph B. Poin Dexter, Lt. General Delos C. Emmons, Commanding General of the Hawaiian Department and Military Governor of Hawaii under martial law; Major General Thomas H. Green (later the Judge Advocate General), his Executive for martial law, Robert L. Shivers, head of the FBI in Hawaii, Col. George W. Bicknell, head of Army G-2; Vice Admiral I. H. Mayfield, head of Naval Intelligence, and Joseph J. Kelley, a member of the hearing board which recommended Zimmerman's internment. The basis of the suit by Dr. Zimmerman, a former German subject naturalized in 1938, was that he was a loyal American citizen and that he was falsely arrested and imprisoned in violation of his constitutional rights under the Fourth and Fifth Amendments. In addition to the pain and suffering, and injury to his reputation, the doctor claims substantial property losses,

destruction of his earning power for a number of years, etc. The suit was filed in the United States District Court for Hawaii. Of technical interest to lawyers is the fact that there being no diversity of citizenship, the jurisdiction of the Court was invoked on the ground that it was a case arising under the Constitution and laws of the United States, invoking the doctrine of *Bell v. Hood* 327 U. S. 678 wherein the Supreme Court sustained jurisdiction on this ground in a damage suit against FBI agents in California. The technical point is that these officers being sued in their *individual* capacities (otherwise, it would be a non-consented suit against the U. S.), how can a mere personal tort be said to arise under the Constitution and laws of the United States?

The broad aspect of the case of interest to officers of the Department of Defense is whether a Commanding General, acting in good faith without malice, under martial law in a time of great public emergency, may be held responsible in damages if it should turn out later either that martial law was itself invalid or that he made a mistake in interning the particular person. Is the question the fact that the person is potentially dangerous, on reasonable grounds, or any grounds, for suspicion? Also involved is whether everyone else connected with the case may likewise be held in damages. In the case of Dr. Zimmerman the order interning him was signed by General Green "by order of the Military Governor" (Lt. Gen. Emmons). The head of the FBI, of G-2

and of ONI are involved on the theory that they furnished the allegedly erroneous information to the Commanding General. The member of the Hearing Board is brought in on the basis that he participated in a series of alleged illegal acts. The Governor is sued apparently on the theory of the famous "Squib Case," namely that by declaring Martial Law (illegally as alleged), he set in train a succession of circumstances resulting in damages to plaintiff.

The case is of extreme interest at this time in view of Atomic Defense. During the Atomic Age it seems reasonable to suppose that the occasions calling for the exercise of martial law powers will be more, rather than less frequent. The gigantic problems of atomic defense will necessitate the making of quick decisions by political authorities and military commanders as to invocation of martial law. If these authorities may later be held responsible in damages for mistakes either as to the necessity of declaring martial law in the first place, or mistakes in carrying it out through the arrest of persons allegedly without probable cause (as found later), then it is obvious there is a substantial deterrent to their taking proper action in the public interest. Such a state of the law favors inaction, or indecisive action, at a time when instant action and decision is of the essence. Also, if persons injured in the process may go into the hinterland of the case and hold in damages aides and assistants, members of hearing boards and officers of investigating agencies, it is clear that the concept of individual liberty, a concept worthy in itself and deserving of the greatest

possible practical protection, will be carried into new areas. If all other points should be proved and the result of the present case is to hold that the responsibility of all concerned stretches this far, it is probable that immunizing or indemnifying legislation is the only solution. The British have for centuries had a state policy which favors the easy and quick declaration of martial law and drastic exercise of its unusual powers. However, they meet the problem of individual liberty and protection of the citizen's rights by passing legislation permitting early payment of claims for misuse of martial law powers, or injuries resulting from its valid use but oppressive upon individual citizens. This country has adopted this approach in the case of Japanese excluded from West Coast areas during the war, who are now enabled to file claims for damages.

Another interesting aspect of the present case involves the protection of the Writ of Habeas Corpus, the privilege of which was suspended by the Governor, approved by President Roosevelt, on Pearl Harbor day. This action is a necessary concomitant of martial law, it being obvious that if persons taken into custody during martial law could immediately assail their detention in court, martial law activities would be seriously hampered and the validity of its invocation might be challenged at a time when its *de facto* existence might be of paramount importance. Hence the suspension of the privilege of the Writ of Habeas Corpus is a practical necessity to the operation of martial law. This being so, and the privilege of the Writ having been suspended

in the present case by proper action of the chiefs of state, does such suspension of itself immunize acts which the Writ is thus powerless to assail? In other words, the argument is, it does no good to tell a Military Commander, in effect, "you can hold this man now, if you wish, but beware of the damage suit when he gets out." Hence it is argued that the public policy which is back of

the suspension of the privilege of the Writ and which prevents the person in custody from securing his immediate release, is broad enough to clothe with immunity from civil damage suits the acts of the military commander, done in good faith, without malice, in confining a suspicious person. This question has so far never been squarely passed on in English or American law.

-: Book Reviews -:

The Uniform Code of Military Justice, by Frederick Bernays Wiener (Combat Forces Press, Washington, 6, D. C., 275 pp., price \$3.50).

Colonel "Fritz" Wiener has again demonstrated his interest and learning in the field of military law and his kindly willingness to share the product of his thought and energies upon the subject with the rest of us by his new book on the "Uniform Code of Military Justice".

Under the Act of May 5, 1950, the present Articles of War governing the Army and Air Force (Act of June 24, 1948) and the Articles for the Government of the United States Navy, 1862, as amended, will be discarded as of May 31, 1951, and the Army, Navy, and Air Force will be governed by a completely rewritten code of military law, the Uniform Code of Military Justice. The author explains what the new law means to every person in the military and naval service; and therefore, every officer, active, reserve and retired of the Army, Navy, Marine Corps, Coast Guard, and Air Force, every person subject to military and naval law, and especially Judge Advocates,

naval law specialists, and lawyers interested in military and naval law and justice have a real need for this book. The author has divided this work into three main sections, all of which serve as helpful guides through the labyrinth of the new law, by setting forth its correlation with the present law, and providing an invaluable introduction to the forthcoming Manual of Courts Martial for the Services. Its usefulness, however, will by no means end with the Services' publication of the Manual, for it is a book which will find frequent use in the library of the military and naval lawyer. In part one, the author makes a brief explanation of the uniform code, and in the opinion of this reviewer, nowhere will one be able to obtain a better hawk's eye view of the principal innovations of the new code and a general understanding of it as an entirety. Col. Wiener in twenty-four pages has succinctly and with expository clearness explained the salient points which Judge Advocates, legal eagles, and seagoing law specialists will have to inquire into in the few months ahead in preparation

for that last day of May and the thereafter, pending further statutory change in the law of military and naval justice (as to which, Heaven forbid!).

In the second part of the book, Col. Wiener sets forth the complete text of the new code showing the comparative text of the present Articles of War and related legislation, followed by an extremely valuable commentary on the differences, setting forth pertinent portions of the Congressional Committee Reports on the new Code and comments of the Secretary of Defense's Drafting Committee. References are made to the legislative history showing the development of many of the provisions, together with comments of the author gathered from all those sources and experiences which have gone together to make him a recognized authority in the field of military justice.

The third section of the book contains cross-reference tables which lend facility for immediate comparison between the old Articles of War and the new Uniform Code of Military Justice. This is no small contribution among aids to those who must know the law; for, although Army and Air Force lawyers will not have to completely relearn the substantive and procedural law of military justice as will their naval brothers (assuming they know the present law) there have been some slight changes, and nothing will be found in the new code under the same numerical designation, or in hardly the same language.

For those of us who have used the author's *Practical Manual of Martial Law*, 1940, *Military Justice for the*

Field Soldier, 1943, and *The New Articles of War*, 1948, this current and timely work will be welcomed as a valuable addition to our libraries of military law. Perhaps some may suspect that the reviewer's acquisition of a free reviewer's copy together with his association with the author as a member of his reserve training command may have somewhat induced his enthusiasm for this work. May it be suggested that those who cry "bias," secure a copy, by any means, for their own perusal. Then this favorable impression will undoubtedly be their own.—Richard H. Love, Major, JAGC, USAR.

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The Epic of Korea, by A. Wigfall Green (Public Affairs Press, Washington, D. C., 136 pp., \$2.50).

Col. A. Wigfall Green served in World War II in the European and Pacific theaters of operation. In 1945 he was assigned to the American military occupation of Korea where he served as Judge Advocate, President of the Board of Review for the trial of Koreans, and Director of the Officer Candidate School of the Korean Army. In June of 1950, he went on a tour of duty at Gen. MacArthur's headquarters in Tokyo and shortly after the outbreak of the war in Korea was reassigned to the faculty of the Command and General Staff College at Ft. Leavenworth.

Based upon observations made by the author while stationed in Korea as a Judge Advocate during American occupation, the book provides a concise overall view of Korea's past, a description of its contemporary characteristics and problems, and a detailed review of the recent events which culminated in war.

Col. Green's discussion of Korean-American relations, both before and during the occupation period, is quite revealing and significant as is also his discussion of Communist influen-

ces in Korea. The work forms a very valuable and interesting basis for understanding of current headlines and press articles concerning the activities of United Nations forces in that war-torn country.

What the Members are Doing

CALIFORNIA

Among the highlights of the recent convention of the California State Bar, held in Los Angeles, October 2 to 6, 1950, was the luncheon meeting of reserve Judge Advocates and Legal Specialists of the Army, Navy and Air Force. Nearly 170 lawyer-officers of the three services attended the meeting and heard Richard K. Gandy, Lt. Col., JAGC-USAR, discuss the new Uniform Code of Military Justice. Colonel Gandy, just returned from the meetings of the Committee on Military Justice of the American Bar Association and the Annual Meeting of the Judge Advocates Association, had many pertinent comments to make on the significance of the new legislation.

Through the courtesy of the JA Association copies of the recent issue of its Journal containing a reprint of the code were made available to the meeting and John P. Oliver, Colonel, JAGC-USAR, a member of its Board of Directors, spoke of the advantages of membership therein.

The committee calling the meeting announced that it did so in order to foster closer relations and the exchange of ideas between the members of the three services. These objectives were regarded as particularly important in view of the new basic law with which they were all to be concerned. Comprising the committee were:

Col. Andrew J. Copp, Jr., Cdr. Kenneth N. Chantry, Cdr. Milo V. Olson, Col. Donald M. Keith, Cdr. Howard W. Hart, Col. Charles Stearns, Col. John P. Oliver, Lt. Cdr. Richard K. Yeamans, Maj. Robert J. Magdlen, Maj. David I. Lippert, and Lt. Norman Pittluck.

Colonel Keith acted as the chairman of the meeting and Commander Yeamans as its master of ceremonies.

Honored guests at the luncheon included:

Capt. David W. Hardin, USN, District Legal Officer of the Eleventh Naval District; Capt. Chester Ward, USN, District Legal Officer of the Twelfth Naval District; Col. S. Maxey, USAF, Judge Advocate, Western Air Defense Force; Lt. Col. R. MacDonald Gray, JAGC, Judge Advocate, Sixth Army; Controller of the State of California, Thomas H. Kuchel, Lt. Cdr, USNR; Superior Court Judge Benjamin J. Scheinman, Lt. Col., JAGC-USAR; Col. B. B. Smith, USAF, Judge Advocate, Fifteenth Air Force; Lt. Col. Robert H. Cobb, USAF, Judge Advocate, San Bernardino Air Materiel Base; Lt. Col. H. I. Pawlowski, USAF, Assistant Judge Advocate, Fifteenth Air Force; Lt. Col. Guy Nichols, USAF, Judge Advocate, Fourth Air Force.

Drawing prolonged applause were the women lawyers present, Helen Boye, Lt., USNR, and Elvera Wolitz, Lt., USNR, of the Naval Law

Unit 12-4, and Miss Cecilia M. Thein, Legal Assistance Attorney for the Sixth Army Judge Advocate's office.

The consensus of opinion among those attending the meeting was that it was very much worth while and that a new mark in cordial relations between members of the services in California had been reached. Many felt that it represented a fine example of the value of service unification.

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David I. Lippert, formerly Chief, International Affairs Section, Office of the Judge Advocate, U. S. Forces in Germany, has announced the re-opening of offices for the practice of law at 629 South Hill Street, Los Angeles, California.

DISTRICT OF COLUMBIA

Col. Frederick Bernays Wiener recently announced the opening of offices in Suite 1009-1015 Tower Building, Washington, D. C., for the general practice of law before the courts and federal administrative agencies, specializing in appellate proceedings.

Col. Wiener was formerly Assistant to the Solicitor General of the United States. His work, *Effective Appellate Advocacy*, published by Prentice Hall, was reviewed in the last issue of the Journal by Col. William J. Hughes, Jr. Col. Wiener has recently completed a book on the Uniform Code of Military Justice which is being published by Combat Forces Press, extracts of which have been published as articles in the September and October issues of the Combat Forces Journal.

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Edward Fenig recently announced the opening of offices for the general

practice of law at the Washington Loan and Trust Building, Washington, D. C.

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Col. Charles M. Trammell, formerly of the United States Board of Tax Appeals from 1924 to 1936, and during World War II in the Judge Advocate General's department assigned to the office of the Administrator of Export Control and later to the Board of Economic Warfare, recently announced the opening of offices for the practice of law specializing in tax matters at the Denrike Building, Washington, D. C.

FLORIDA

Members of the Association from the Florida area attended the Judge Advocate General's School conducted by the Third Army at Ft. Benning, Georgia, July 1 to July 15, 1950. The instruction was conducted, for the most part, by reserve officers. Col. R. E. Kunkel, Miami; Col. R. E. Ford, Fort Pierce; Col. Harry A. Johnston, West Palm Beach; Col. Hayford A. Enwall, Tallahassee; Lt. Col. J. W. Prunty, Miami, and Lt. Col. Addison P. Drummond of Bonifay, were among the instructors at the school. Col. R. E. Kunkel acted as Commandant during the illness of the Commandant of the School, Col. William H. Beck, Jr.

KANSAS

Robert Bowland Ritchie recently announced separation from extended military service and return to the private practice of law with offices in the Bitting Building, Wichita.

MICHIGAN

It was recently announced that Gerald L. Stoetzer became a member

of the firm of Clark, Klein, Brucker & Waples in the general practice of law at 2850 Penobscot Building, Detroit, Michigan.

MINNESOTA

Goodrich M. Sullivan is Staff Judge Advocate of the State Staff, Minnesota National Guard, assigned to Selective Service. Col. Sullivan served with the 34th Division, 22nd Corps, and the Fourth Army during World War II.

NEW MEXICO

David Chavez, Jr., recently resigned as United States District Judge for Puerto Rico and has entered the general practice of law at Santa Fe, New Mexico, with offices in the Laughlin Building.

NEW YORK

Lt. Col. Joseph S. Robinson recently announced his return to general private practice with offices at 745 Fifth Avenue, New York City.

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Sidney A. Wolff is the Judge Advocate of the Tiger Post 23 of the American Legion. He served as mem-

ber of the Special Committee of the New York County Lawyers Association on Military Justice. He is serving as assistant treasurer and counsel in the New York area for the National Jewish Hospital at Denver, a non-sectarian institution devoted to the treatment of indigent tuberculosis patients.

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Stanley L. Kaufman, formerly Judge Advocate of the 8th Fighter Command, recently announced the formation of a partnership under the firm name of Kaufman, Imberman & Taylor, with offices at 511 Fifth Avenue, New York City, for the general practice of law.

OREGON

Col. Willis A. Potter of Portland, who has been engaged in the practice of law in Mill City, Oregon, has been called to active duty and is presently on duty in Japan.

Lt. Col. Ben Fleischman of Portland recently returned to practice from an extended summer tour of the States during which he dropped in JAGO at the Pentagon, Washington, D. C.

Annual Meeting, 1951

Col. Alexander Pirnie recently announced the appointment of Col. Arthur Levitt as Chairman of the Annual Meeting Committee for 1951. Members of the committee are Col. Frederick F. Greenman, Col. Robert H. Kilroe, Capt. Theodore Hetzler, Capt. Parnell J. T. Callahan, Capt. Nat H. Hentel, and Capt. Edward F. Huber.

The annual banquet will be held at the Park Lane Hotel, 299 Park Avenue, New York City, on September 18, 1951 on Tuesday evening beginning at 6:30 p.m. The business meeting of the Association will be held on September 19th between 4:00 and 6:00 p.m. also at the Park Lane Hotel.

