



the army

LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

Department of the Army Pamphlet
27-50-84
December 1979

A Speech by BG Victor A. De Fiori
Given on 13 July 1979 Upon the
Occasion of His Retirement

Today I believe I'm allowed to reflect and philosophize. I ask you to bear with me for a few minutes while I do that.

There are some special challenges for us today. For me, to be proud, yet humble and to be glad, yet sad. For you—to be interested in what I say or at least appear so, and for me, not to repeat what I said two days ago at my luncheon.

One hundred fifty years ago, Joseph Story said, "The law is a jealous mistress." I'm sure you have all heard that, but you may not know there is a second part to the quotation. "The law is a jealous mistress and requires a long and constant courtship." Dode and my family have had to meet that competition throughout the last 27 years. I want to thank them publicly again for their support during these many years.

As I reflect on my military service, I admit that when I stepped forward and was sworn in as an enlisted man 27 years ago, I never dreamed that I would stand here today with a star on my shoulder, with JAG insignia on my lapel, with airborne wings on my chest, with an airborne patch on my right sleeve, and with this magnificent award today.

If I sound proud, I am proud. But this is a shared pride—a pride I share with all the men

Table of Contents

A Speech by BG Victor A. De Fiori	1
Personal Jurisdiction Under Article 2, UCMJ	
<i>Whither Russo, Catlow, and Brown?</i>	3
Packaging the Lawyer's Product	15
A Matter of Record	18
Judiciary Notes	19
Delegation of Nonjudicial Punishment Filing	
Determination Authority	21
Reserve Affairs Items	22
Administrative and Civil Law Section	26
Regulatory Law Item	29
CLE News	29
Videocassettes Available from TJAGSA	32
JAGC Personnel Section	35
Current Materials of Interest	36
Army Lawyer Cumulative Index	36
ABA Military Law Section Questionnaire	48

and women I have known and served with in the Judge Advocate General's Corps.

Today, I view you as representatives of the Judge Advocate General's Corps—men and women, military and civilian. I publicly salute you and all the fine men and women in the Corps and the fine Army it serves. I salute your patriotism which is a word we don't hear often enough today, your service to the country and to the Army, and your dedication to the legal profession. I defy anyone to find a better group of people than the JAG family to do the job and do it quickly and efficiently.

My family and I look forward to the future. We have had 27 wonderful years with the JAG Corps with wonderful people in wonderful places.

In one sense, I envy your exciting future with new opportunities in JAG, with new professional challenges and with opportunities to meet new people in new places. At the same time, I charge you:

To continue to provide total legal *service* to the soldier. To paraphrase a commercial, service is our most important product.

The Judge Advocate General
 Major General Alton H. Harvey
The Assistant Judge Advocate General
 Major General Hugh J. Clausen
Commandant, Judge Advocate General's School
 Colonel David L. Minton
Editorial Board
 Lieutenant Colonel Robert M. Nutt
 Lieutenant Colonel Victor G. McBride
 Major Percival D. Park
Editor
 Captain Frank G. Brunson, Jr.
Administrative Assistant
 Ms. Eva F. Skinner

The Army Lawyer (ISSN 034-1287)

The Army Lawyer is published monthly by the Judge Advocate General's School. Articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army. Masculine or feminine pronouns appearing in this pamphlet refer to both genders unless the context indicates another use.

To continue to maintain the highest standards of legal, military and personal excellence. There's another ad that reads, "Defy mediocrity." It's an ad for scotch whiskey but I suggest the ad as a standard for you. Not being a scotch drinker, I can't recommend the scotch itself.

To continue to give selflessly to the Army and the Corps. Only through your efforts will the Army and The Judge Advocate General's Corps continue to flourish.

To support General Harvey. In his days ahead, he must rely heavily on your continued support.

To take the time to have fun. It is equally important as everything else.

In a word, be true to our Nation, be true to our Army, be true to our Corps, and be true to ourselves. Then, our success and prosperity as a nation, an Army, a Corps, and as a people will be assured.

Finally, I bid farewell, all good wishes for health and happiness, and Godspeed to each and all of you.

The Army Lawyer welcomes articles on topics of interest to military lawyers. Articles should be typed double spaced and submitted to: Editor, *The Army Lawyer*, The Judge Advocate General's School, Charlottesville, Virginia, 22901. Because of space limitations, it is unlikely that articles longer than twelve typewritten pages including footnotes can be published. If the article contains footnotes they should be typed on a separate sheet. Articles should follow *A Uniform System of Citation* (12th ed. 1976). Manuscripts will be returned only upon specific request. No compensation can be paid for articles.

Individual paid subscriptions are available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is \$9.00 a year, 80¢ a single copy, for domestic and APO addresses; \$11.25 a year, \$1.00 a single copy, for foreign addresses.

Issues may be cited as *The Army Lawyer*, [date], at [page number].

Personal Jurisdiction Under Article 2, UCMJ Whither Russo, Catlow, and Brown?

Cpt(P) David A. Schlueter, JAGC

“ . . . Congress has a constitutional duty to protect military personnel from quasi-civilians moving among them with a known license to commit service-connected crimes without fear of court-martial punishment.”¹

In October 1979, Congress exercised its “constitutional duty”—its long-recognized powers of control of the armed forces.² It amended Article 2 the Uniform Code of Military Justice to provide for court-martial jurisdiction over a wide range of individuals who might not have otherwise been considered service members for purposes of personal jurisdiction. The amendment cuts to the heart of a number of controversial Court of Military Appeals decisions which had voided enlistments on a variety of grounds.³

Although the amendment appears to settle some jurisdictional issues, it also raises a number of new legal issues and practical problems. Some of these issues have been raised and decided before under other jurisdictional arguments. Others remain untested. Before addressing a variety of issues which counsel may expect to see litigated, we turn first to the statute itself.

The Amendment⁴

Article 2, U.C.M.J. was amended as follows:

(1) by inserting “(a)” before “The” at the beginning of such section; and

(2) by adding at the end thereof the following new subsections:

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) of this section, and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties; is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.⁵

The changes resulted from hearings conducted in 1978 and 1979 by the Senate Armed Services Committee on the continuing problem of recruiter misconduct. During its inquiry, the committee learned of the Court of Military Appeals' position on fraudulent enlistments. In the committee's report on the proposed amendments, the “serious” problem created for the military by those decisions was addressed. In language which clearly indicates the tenor of its intent, the committee stated:

Several instances came to the committee's attention where accused military members raised the issue of recruiter malpractice after commission of an offense, succeeded in obtaining a ruling of no jurisdiction, and were thereupon returned to duty for a time (before administrative separation could be effected) completely immune from military discipline. This situ-

ation is made intolerable in the case of alleged recruiter malpractice by the fact that the burden of proof on the jurisdictional issue shifts to the government after being raised by the accused, forcing the government to prove that there was no recruiter malpractice many months or years after the fact, with the recruiter miles away or out of the service. The committee learned that in many instances accused military members were simply discharged after raising the defense because of the difficulty of affirmatively proving that the enlistment was valid, thereby escaping just punishment for their offenses.⁶

The proposed changes may be best characterized, as did the committee, as the *Grimley* provision (Subsection (b)) and the constructive enlistment provision (Subsection (c)).

Subsection (b) establishes criteria for a "valid" enlistment under Subsection (a) of Article 2.⁷ If the individual possesses the "capacity to understand the significance of enlistment in the armed forces" and voluntarily enlists, that individual is considered amenable to jurisdiction. In proposing this amendment the committee intended to overrule the rule in *United States v. Russo*,⁸ that an enlistment could be voided if a recruiter had intentionally effected a fraudulent enlistment. The amendment is not intended to condone recruiter misfeasance or malfeasance⁹ but rather to reaffirm the Supreme Court's decision in *In re Grimley*.¹⁰

Subsection (c) codifies the doctrine of constructive enlistment: If for any reason there is an "invalid" enlistment the individual effects a constructive enlistment at the time the four criteria are satisfied—notwithstanding any statutory or regulatory disqualification.¹¹ According to the committee, this section overrules the "estoppel" theory which had in the past prevented the Government from relying on a constructive enlistment rationale when showing personal jurisdiction.¹² It also overrules those decisions which held that an uncured regulatory disqualification could prevent a constructive enlistment.¹³

Issues

The statutory changes to the litigation of personal jurisdiction will surely raise a multitude of questions and interpretations in the coming years—a bold challenge for the litigator. Some of the questions are predictable. Others are more subtle and may, as often happens in the area of personal jurisdiction, be absorbed by larger issues. What follows is a brief discussion of a variety of issues that counsel will probably see raised in personal jurisdiction litigation under the new amendment.

A. Retroactive Application.

One of the first questions which must be addressed is the possible retroactive effect of the amendment. There is no specific guidance on this point in the amendment itself or the published legislative history. Absent such specific intent, the law generally presumes only prospective application. The statute may nonetheless be applied retroactively if it is not *ex post facto*. Here, the amendment was intended to change jurisdictional rather than substantive law; it does not now make criminal what was once lawful. Another point is that the amendment was intended to codify long-standing principles of enlistment law.⁴

Although the discussion here does not address the myriad permutations of the retroactively question some general points for analysis purposes can be made. First, in analyzing the retroactively question three dates should be considered:

Effective date of amendment—9 November 1979;

Date of enlistment (subsection (b));

Date of constructive enlistment (subsection (c)).

If the amendment is considered wholly retroactive and applicable to all persons now on active duty, then the dates are of little, if any, import. However, a more conservative approach might be to address the retroactivity issue only after first determining whether the enlistment, before 9 November, was in fact void under the

Russo-Catlow rules. If it was merely voidable, then jurisdiction may still be based on recent case law predating the amendment and finding that voidable enlistments may serve as a valid jurisdictional base.

Assuming that the enlistment was void and consummated prior to 9 November, jurisdiction may possibly be based upon a finding of constructive enlistment after 9 November—the estoppel argument no longer being valid. To be on the safe side all other alternatives should be examined before relying upon retroactive effect to provide jurisdiction over a clearly void enlistment or constructive enlistment occurring prior to 9 November 1979.⁵

B. Does the Amendment Vest Jurisdiction Over Civilians?

The committee specifically stated that the new amendment was not intended to affect civilians or reservists not on active duty.¹⁶ Rather, it was designed to reach “those persons whose intent it is to perform as members of the active armed forces and who meet the four statutory requirements.”¹⁷ Any attempts to read the amendment as applying to “civilians” would fly in the face of Supreme Court decisions which have severely limited court-martial jurisdiction over civilians.¹⁸ Of interest, however, is the statement in the committee’s report that Subsection (c) overrules *United States v. King*.¹⁹ You will recall that King was considered by a majority of the members of the Court of Military Appeals to be an interloper not subject to court-martial jurisdiction. King had not executed an enlistment contract nor had he taken any oaths. He simply obtained forged travel orders, donned a uniform, and served for several months with a unit in Germany before the Government discovered his charade and court-martialed him.²⁰ The amendment then arguably touches those individuals who for one reason or another have not executed a formal agreement or oath to serve with the armed forces.²¹

This broad application need not necessarily lead to the conclusion that Congress intends the amendment to include civilians. As already

noted, the Committee Report specifically exempts civilians.²² And the wording of Subsection (c) includes only persons “serving” with the armed forces. The provision turns on “actual service” or “de facto status”—the two terms sometimes used interchangeably with “constructive enlistment” by the courts as a basis for jurisdiction.²³ Practically, the *King* scenario occurs only rarely but points counsel to the intent of Congress in those situations where an enlistment agreement cannot be found or there is no proof that an oath was given; jurisdiction may still vest when Subsection (c)’s criteria can be shown.

C. Competency to Enlist: Statutory and Regulatory Disqualifications.

Has Congress in amending Article 2 indicated that it will accept a lower standard or quality for competency to enlist? Is a service member under 17 years of age at time of trial now amenable to jurisdiction? What about Felons? Aliens? Can a service member who suffers from dyslexia or drug addiction be subject to court-martial jurisdiction under the amendment?

Congress could certainly exercise its powers and indicate that no longer would there be any statutory qualifications to enlist.²⁴ But it did not do so in the amendment and there is nothing in the legislative history to indicate that Congress was willing to completely abandon a minimum standard of competency or capacity to enlist.²⁵ What then of those not statutorily competent to enlist? Although statutory criteria are only specifically addressed in Subsection (c), it seems safe to assume that jurisdiction under either (b) or (c) will vest only over those individuals statutorily “competent” to enlist. If a statutory defect affecting capacity exists at the time of trial then jurisdiction will not vest under either Subsection (b) or (c).²⁶ Thus, a sixteen-year old service member is not amenable to trial until reaching the magic age of seventeen. Statutory restrictions on felons, deserters, and those not U.S. citizens do not touch “competency” or “capacity” to enlist and thus would not invalidate jurisdiction under either (b) or (c).²⁷ The amendment, however, does vest jurisdiction over enlistments where the individual lacked

capacity at the inception but the defect was cured before trial; there is really nothing new here. Absent estoppel, the Government has generally been allowed to show a subsequent change of status under the theory of constructive enlistment.²⁸

What about those service members serving with a regulatory disqualification? The amendment does make some changes here. Under either Subsection (b) or (c) regulatory defects not affecting capacity do not void jurisdiction.²⁹ The enlistment may of course be voided by the government because of the defect but that option is not available to the service member still on active duty at the time of trial (more on this later). If the regulatory defect touches "capacity" or "voluntariness" then arguably it may be treated in the same manner as a statutory defect amounting to a lack of capacity—both with regard to Subsection (b) and (c).³⁰ A service member with dyslexia or drug addiction could be amenable to jurisdiction under Subsection (b) and certainly amenable under Subsection (c).³¹ An enlistment resulting from the "go to Army or go to jail" routine may be involuntary under Subsection (b) but later sufficient for court-martial jurisdiction under Subsection (c).³²

D. Recruiter Misconduct.

The statutory change was intended to overrule *Russo* and its progeny.³³ Recruiter misconduct—even an intentional violation of Article 84, UCMJ—will not in itself void an enlistment. But recruiter misconduct which affects either the individual's "capacity to understand the significance of enlisting" or "submit voluntarily to military authority" may still initially (and indirectly) void an enlistment.

For example, where a recruiter successfully and intentionally paints a false picture of military service for the easily deceived recruit, the Government's ability to rely on Subsection (b) for jurisdiction may be limited. Whether that recruit continued to be deceived would then raise additional questions regarding the voluntary submission requirement of Subsection (c). An accused's statement that he was misled by a fast-talking recruiter will no doubt continue

to be raised. But, whether after actually serving on active duty the accused can raise serious questions about his "involuntary" service is a different matter.³⁴ Continued *Catlow*-type protestations by a recruit may still defeat jurisdiction under both Subsections (b) and (c).³⁵

Although emphasis is usually placed upon "recruiter" misconduct, litigation has sometimes centered on "government" misconduct.³⁶ The government will probably still be precluded from establishing jurisdiction where the facts support the conclusion that the individual, because of Government actions or inactions, never voluntarily submitted to military authority. What of the deterrent effect of *Russo*? Whether the *Russo* decision had the desired "salutory" effect³⁷ of reducing recruiter misconduct is debatable.³⁸ The decision certainly served as a potential club to be used by recruiting officials; yet continued recruiting pressures reduced its effectiveness. The risk of an enlistment later being voided and the defect traced to a specific recruiter was simply not sufficient as a deterrent. Important to note here is that Congress by providing jurisdiction over fraudulent enlistees is not condoning recruiter malpractice.³⁹

E. Public Policy.

The amendments to Article 2 represent Congress' position on public policy. The committee was disturbed by the doctrines and problems spawned by the *Catlow-Russo* decisions and so stated:

The committee strongly believes that these doctrines serve no useful purpose, and severely undermine discipline and command authority. No military member who voluntarily enters the service and serves routinely for a time should be allowed to raise for the first time after committing an offense defects in his or her enlistment, totally escaping punishment for offenses as a result. That policy makes a mockery of the military justice system in the eyes of those who serve in the military services.⁴⁰

Ironically, the same theme was expressed by Judge Cook in *United States v. Torres*.⁴¹ Judge

Cook concurred in the conclusion that Torres was not subject to court-martial jurisdiction because of intentional recruiter misconduct but noted that he could no longer support the *Russo* public policy argument:

Plainly, the *Russo* doctrine has been used to destroy the public policy it was designed to promote. As the public policy considerations perceived in *Russo* have been perverted, not promoted by its sanction, I believe the rule it imposed must be abandoned.⁴²

Is public policy still a consideration in litigating personal jurisdiction questions? Yes, but not in the image of *Russo*. The amendment now expresses the public policy that individuals may not escape punishment because of the misconduct of a recruiter. But that policy exists only where the service member is competent and voluntarily serves. The amendment should not serve as a signal to recruiters that anything goes.

F. Effect of Notice to Government of Defective Enlistment.

One of the points made in the Court of Military Appeals decisions of *United States v. Valadez*⁴³ and *United States v. Wagner*⁴⁴ was that notice to the Government of a defective enlistment could operate on behalf of an accused to void jurisdiction. The amendment includes language in Subsection (c) which provides that jurisdiction under that provision continues until the period of service has been "terminated in accordance with law or regulations promulgated by the Secretary concerned."⁴⁵ This is consistent with existing law which indicates that status continues until discharge.⁴⁶ But, it goes further. It in effect negates any language in *Valadez* and *Wagner* which would defeat personal jurisdiction once an individual has given notice to the Government prior to the commission of an offense. In theory this provision provides jurisdiction over those persons who are in the process of being discharged for any variety of reasons, including a defective enlistment, when they commit an offense.⁴⁷

G. Establishing Jurisdiction.

The amendment changes little for the government's overall burden of establishing that an accused is subject to court-martial jurisdiction.⁴⁸ The *Alef*⁴⁹ pleading burden remains. And it is safe to say that the requisite quantum of proof will remain the same.⁵⁰ However, some of the practical problems normally associated with litigating the issue should vanish. In the large majority of the cases, the recruiter will not be called; whether the recruiter assisted the recruit in concealing a defect or passing a test will be irrelevant.

When the defense raises the spectre of a defective enlistment the Government may meet that challenge in several ways. First, the Government could establish a prima facie case by introducing the enlistment contract itself which evidences directly or indirectly the elements of Subsection (b). Although the contractual aspects of the enlistment appear to be neutralized by the amendment, the agreement and oath establish a voluntary change of status.⁵¹

Secondly, the Government could of course establish jurisdiction under Subsection (b) with live witnesses but that would probably require the presence of the recruiter or other parties who were present when the enlistment was entered—a practice now fraught with problems.⁵²

A more desirable course might be to simply assume for the sake of argument that the accused's enlistment was initially invalid (for any reason) and proceed with proof under the constructive enlistment provision of Subsection (c). Local witnesses and unit records would normally suffice to show that the accused is now subject to court-martial jurisdiction.⁵³ It is here that the constructive enlistment decisions serve as a necessary reference for counsel. In the past few years counsel were often not concerned with establishing constructive enlistments. Most personal jurisdiction cases involved some form of recruiter misconduct which either voided the enlistment under *Russo* or estopped the government from arguing constructive enlistments under *United States v. Brown*.⁵⁴ Consequently, the large body of law on constructive

enlistments often remained dormant.⁵⁵ The amendment will certainly change that.

V. Conclusion.

At first blush, the amendments to Article 2 moot most of the personal jurisdiction issues raised by the *Catlow*,⁵⁶ *Russo*,⁵⁷ and *Brown*⁵⁸ decisions. Closer analysis, however, leads to the safer conclusion that some issues remain and newer, perhaps more perplexing, questions are raised. Another conservative conclusion is that the foregoing issues only scratch the surface. The Committee's report—the legislative intent if you will—is instructive.⁵⁹ But the actual, practical, effect of the amendments will be determined in the future as the statute is litigated and tested on appeal. In summary, it might be helpful to set out a two-step approach to analyzing personal jurisdiction questions under the recent amendment:

Was the enlistment invalid at its inception? If the accused lacked "capacity" to enlist or if the enlistment was involuntary then jurisdiction may not be based on Subsection (b). Recruiter or government misconduct in itself will not void the enlistment. Nor will statutory or regulatory defects not affecting the accused's "capacity" invalidate jurisdiction.

If the enlistment was initially invalid, did the accused at some point, prior to trial, effect a constructive enlistment? That is, notwithstanding any regulatory or statutory defect, were the four criteria of Subsection (c) met? If so, the jurisdiction exists over the accused.

For illustration, the two-step process in assessing jurisdiction under the amendment can be applied to several scenerios:

Scenerio 1: Private Jones was sixteen when he enlisted for three years; he lied about his age and presented obviously forged documents to support his sham. The recruiter noticed the fraud, joked about it with Jones and then completed the paperwork. Jones told his commanding officer of the defective enlistment but the latter ignored Jones' statements. Jones turned

seventeen three (3) weeks before committing the charged offense.

Analysis: The enlistment was invalid at its inception; Jones, age sixteen, lacked the capacity to enlist.⁶⁰ Therefore, jurisdiction should not be based on Subsection (b). The recruiter's misconduct does not void the enlistment nor does commanding officer's inaction bar jurisdiction under Subsection (c). Whether Jones in a period of three weeks established a constructive enlistment will turn on a further step by step analysis of the four criteria in Subsection (c).⁶¹

Scenerio 2: PFC Smith (age eighteen) enlisted in lieu of going to jail—on the "advice" of the presiding civilian judge. When he filled out the enlistment paperwork he lied, without the assistance of the recruiter, about prior drug use and two arrests. He served for one year, successfully completed the training cycles, received pay, promotions, and excellent performance ratings. On several occasions he mentioned to his platoon sergeant a desire to re-enlist.

Analysis: Jurisdiction should not be based on Subsection (b) due to the initial lack of voluntariness. The probable violations of recruiting criteria do not void jurisdiction. Jurisdiction may, however, be based upon Subsection (c); Smith has apparently fulfilled the four criteria.⁶²

Scenerio 3: Private Snats, a twice-convicted felon voluntarily enlisted with the assistance of recruiter misconduct. Once on active duty, however, he protested his status continuously. His company commander was in the process of administratively discharging him (defective enlistment) when Snats was caught selling heroin.

Analysis: Snats' enlistment was probably valid under Subsection (b). He voluntarily enlisted and probably understood the significance of enlisting. His post-entry protestations might negate finding jurisdiction under Subsection (c) if Subsection (b) is determined to be not applicable.⁶³ The commanding officer's decision

to administratively eliminate Snats does not bar jurisdiction; Snats' enlistment may indeed be defective under the regulation, and still serve as basis for jurisdiction under Subsection (b).⁶⁴

The foregoing scenerios present a cross-section of some of the more commonly encountered jurisdiction problems. The problems will remain but the solutions should change with the amendment to Article 2.

Whither *Russo*, *Catlow*, and *Brown*? The statutory change indicates that *Russo* and *Brown* have been neutralized. But the voluntariness implications of *Catlow* remain.⁶⁵ If the statute effects the desired changes in personal jurisdiction litigation, the military justice clock will be set back to a time when litigating jurisdiction issues was simpler—and perhaps more certain. Congress has exercised its constitutional duty. What the courts will do with the amendment is yet to be seen.

Footnotes

¹ United States v. Barraza, 5 M.J. 230, 233 (C.M.A. 1978) (Fletcher, C.J.). Chief Judge Fletcher in writing this language was not addressing the pure enlistment questions of personal jurisdiction but was rather addressing a fact situation involving an involuntary activation of a reservist—a “lazy” reservist—who had not raised deficiencies in the government's processing of his activation until after he was charged. The quote, although appropos, should not be construed as indicating Judge Fletcher's approval of the amendment to Article 2. In testimony before the House Armed Services Committee, he strongly opposed any attempts to overrule the *Russo* doctrine and its progeny. See Army Times, June 25, 1979, at 8. The amendment would in his estimation “have the effect of sweeping all fraudulent enlistments under the table.” *Id.* He was joined in opposition to the amendment by Mr. Eugene Fidell who also testified before the House Armed Services Committee. Those supporting the measure included the Service Judge Advocates General, Judge Cook, who personally offered an alternate amendment (see note 42, *infra*) and Professor Robinson Everett.

² See e.g., U.S. CONST. art. I § 8, cl 11. (power to declare war); *id.* cl. 12 (power to raise and support armies); *id.* cl. 14 (power to make rules for the government and regulation of the land and naval forces).

³ Little would be gained here by relitigating the merits of limiting personal jurisdiction over those serving under a clouded enlistment. The controversy until lately existed primarily among those concerned with the day-to-day problems caused by the decisions. But in the past year the decisions took on an added dimension as Congress and the press took a long look at the situation. The Army Times, in an editorial titled “Court Malpractice” noted, *in alia*, the following:

The Senate has passed a provision which would assure court-martial jurisdiction over [fraudulent enlistments]. But Court of Military Appeals Chief Judge Albert B. Fletcher Jr. has argued that the change would “have the effect of sweeping all fraudulent enlistments under the table.

“It would seem to me that an innocent victim trapped by the government should not fall under the jurisdiction of a military court-martial,” he said. But another member of the three-judge court broke ranks in testimony before the subcommittee. Judge William H. Cook said he supported efforts to nullify the *Catlow-Russo* precedent.

So do we, provided that the final provision overturning the *Russo* rule is drafted in such a way as to protect people who are actually the victims of recruiter malpractice. A soldier, for example, might have to raise the malpractice issue within a short period after entry in the service or forfeit the right to raise the argument later.

We might have thought a tad more of the CMA decision had it carried its argument to its logical, legal conclusion. That is, that because the “soldier” really wasn't in the service, the Army had no authority to pay, feed, quarter or clothe him. Maybe that's silly, but so is *Catlow-Russo*.

Army Times, July 23, 1979.

⁴ The amendment was passed as a part of the Defense Authorization Act for FY 1980 (S. 428). Pub. L. No. 96-107 (9 Nov 1979) Additional amendments were made to Article 36, U.C.M.J. to clarify the President's authority to promulgate rules of practice and procedure before courts-martial.

⁵ The amendment's language represents the Senate's original version. See *Congressional Record*, S. 428, 96th Cong, 1st Sess., 125 CONG. REC. S 7272 (1979). The House receded during conference to the Senate's language. See *Congressional Record*, 96th Cong, 1st Session, 125 CONG. REC. H 9319 (1979). See note 6 *supra*.

⁶ Senate Report 96-197 Defense Authorization Act, 1980 (S. 428) at 121 [hereinafter cited as Report]. The pertinent portions of the Report are included as an Appendix to this article. In commenting on S. 428, Senator Nunn noted:

On [the subject of military discipline] the committee approved an amendment which we feel will improve military discipline.

The Court of Military Appeals has ruled, under the so-called "Catlow-Russo" decisions, that where there is a defect in the service member's enlistment, resulting from recruiter misconduct or some other factor, that defect deprives the court-martial of jurisdiction to try the accused for offenses committed in the military. The effect is to allow persons who commit offenses in the military to go without punishment. This problem has been highlighted by all four service chiefs. The committee amendment provides that a person becomes subject to military justice by taking the Oath of Enlistment or by voluntarily accepting military duties and military pay. This is not a provision to condone recruiter malpractice but simply provides that those who commit crimes in the military should be subject to military justice. *Congressional Record*, 96th Cong, 1st Session, 125 CONG REC, S 7290 (1979).

And in its report to the House, the Conference Committee on S. 428 stated:

The Senate bill contained a provision (sec. 801) intended to improve military discipline by limiting the right of an accused to raise defects in the enlistment process to defeat court-martial jurisdiction, and to clarify the President's authority to issue a manual of procedure not only for trial procedures, but pre-trial and post-trial procedures as well.

The House amendment has no similar provision.

The House recedes.

The House conferees were reluctant to take a step which might be misinterpreted as providing further encouragement to an already serious recruiting malpractice problem. However, it is inappropriate to address the issue of malpractice in a court-martial proceeding.

The conferees agree that the current management technique of using recruiting quotas has increased the likelihood of recruiting malpractice. The Secretary of Defense is urged to review the management of recruiting in the military services and to consider an alternative approach to the current quota system.

The conferees have also agreed that a more effective administrative process to permit enlistees to raise questions of the validity of their enlistment is necessary. The conferees expect the Secretaries of each of the services to establish an administrative process that will provide each enlistee a voluntary opportunity to raise any improper matters in his or her enlistment, as well as permit service management to uncover recruiting malpractice. The general framework of this process shall permit an enlistee at the end of his basic training period, or at a similarly appropriate point, the opportunity to raise such matters.

The service secretaries shall report back to each of the Committees on Armed Services by December 31, 1979 on the process that will be established to uncover recruiting malpractice.

Congressional Record, 96th Cong, 1st Session, 125, CONG. REC. M. 9319 (1979).

⁷ See note 4 *supra*.

⁸ 1 M.J. 134 (C.M.A. 1975).

⁹ The committee specifically noted that the amendment was not intended to "suggest that recruiter malpractice be tolerated, but reliance should be placed on prosecution under Article 83 and 84, and on administrative reforms to solve [the problem of recruiter malpractice]." Report *supra* note 6 at 122.

¹⁰ 137 U.S. 147 (1890).

¹¹ See notes 25-29 *infra* and accompanying text.

¹² The estoppel theory found its genesis in *United States v. Brown*, 23 C.M.A. 162, 48 C.M.R. 778 (1974), gained momentum in *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975) and peaked in *United States v. Harrison*, 5 M.J. 476 (C.M.A. 1978). The estoppel doctrine prevented the Government from relying on a constructive enlistment where it had acted unfairly in enlisting an individual. The committee intended to overrule those portions of *Brown*, *Harrison*, and *Russo* which acted to estop the Government. See Report *supra* note 6 at 122.

¹³ The amendment was also intended to "overrule that portion of *United States v. Valadez*, 5 M.J. 470 (C.M.A. 1978) which stated that an uncured regulatory defect not amounting to a lack of capacity or voluntariness prevented application of the doctrine of constructive enlistment." Report *supra* note 6 at 122.

¹⁴ Report *supra* note 6 at 122. See also Schlueter, *The Enlistment Contract: A Uniform Approach*, 77 MIL. L. REV 1, 56-60 (1977). In *Post v. United States*, 161 U.S. 583 (1896), the Supreme Court distinguished between statutes affecting substantive law, procedure, and jurisdiction, the latter two not considered under

the *ex post facto* proscription. Cf. *Putty v. United States*, 220 F.2d 473 (9th Cir. 1955) cert. den. 350 U.S. 821 (1955) (change in court's jurisdiction was *ex post facto* as a defendant).

¹⁵ With just a pinch of imagination one can readily see the potential for, at least in theory, a whole host of new issues in litigating personal jurisdiction issues. The Department of the Army position is that the amendment is permissibly retroactive to all persons now on active duty. DA message 131800Z (13 Nov. 1979). Preliminary indications are that the Navy will take the same position. Any attempts of course to "retry" or relitigate an earlier finding of no jurisdiction over an individual who is awaiting a discharge would be barred by either law of the case or *res judicata* principles. See O'Donnell, *Public Policy and Private Peace—The Finality of a Judicial Determination*, 22 MIL. L. REV. 57 (1963).

¹⁶ Report *supra* note 6 at 122.

¹⁷ *Id.*

¹⁸ See e.g., *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955) (no jurisdiction over discharged soldier); *Reid v. Covert*, 354 U.S. 1 (1957) (no jurisdiction over civilian dependents accompanying armed forces overseas during peacetime); and *Grisham v. Hagan*, 361 U.S. 278 (1960) (no jurisdiction over civilian employees in peacetime).

¹⁹ 11 C.M.A. 19, 28 C.M.R. 243 (1959).

²⁰ King, an E-1, had received an undesirable discharge in February 1958. Only three days later he obtained forged orders at Fort Ord authorizing shipment to Europe via Fort Dix. He received pay and allowances from March 1958 to July 1958. He was charged with fraudulent enlistment, absence without leave, failure to obey a lawful order, resisting apprehension, forgery, and possession of a false pass. The majority said that the Army was "just the victim of a crime committed by a civilian," 28 C.M.R. at 249. Judge Quinn dissented and noted that more than a "mere passing masquerade by the accused" had occurred. He felt that King had procured an *actual entry* into the service.

²² Report *supra* note 6 at 122.

²³ For example, in *In re McVey* the court noted that the petitioner was a *de facto* soldier because he had voluntarily assumed obligations and had attempted to secure the rights of a serviceman. And in *United States v. Julian*, 45 C.M.R. 876 (N.C.M.R. 1971) the court rejected the argument that the accused was not subject to court-martial jurisdiction because he had been intoxicated when he enlisted. The accused was subject to jurisdiction because he was in "actual" service. Neither decision however, discussed "constructive enlistment" which has normally been asso-

ciated with implied contracts. See *King*, *supra* note 20 and accompanying text.

²⁴ See e.g., *United States v. Williams*, 302 U.S. 46 (1937) where the Supreme Court recognized the authority of Congress to determine who was eligible to enlist.

²⁵ 10 U.S.C. § 504 (1970) provides:

No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the secretary concerned may authorize exceptions, in meretorious cases for enlistment of deserters and persons convicted of felonies.

Failure to meet all statutory qualifications does not necessarily render one incompetent to enlist. It would be safe to say that Congress intended to provide for jurisdiction over those meeting the age and mental requirements—those requirements mentioned in *Grimley*. See also *United States v. Wagner*, 5 M.J. 461 (C.M.A. 1978). Note that Subsection (b) only requires a voluntary enlistment by "any person who has the capacity to understand the significance of enlisting. . . ." Therefore, a felon who enlists could be subject to jurisdiction under Subsection (b) and subsection (c). And although 10 U.S.C. § 3253 (1970) requires that only U.S. citizens (or those lawfully admitted to the United States for permanent residence) may enlist, an alien could be subject to jurisdiction under both subsections (b) and (c). Part of problem in analyzing the effect of the amendment is adjusting to the proposition that jurisdiction under the new Article 2, UCMJ is not always linked with what in the past was considered to be a valid enlistment.

²⁶ This conclusion is supported by the Committee's Report which specifically mentions the situation involving an individual not meeting the minimum age requirements at the time of enlistment but who later successfully enters into a constructive enlistment. Report *supra* note 6 at 123.

²⁷ *Id.* Apparently those under the current statutory age of seventeen do not possess the capacity to "understand" the significance of enlisting in the armed forces under Subsection (b). Arguably felons, deserters and those not U.S. citizens can understand the significance of enlisting. Historically, for example, lack of citizenship did not always defeat jurisdiction. See e.g., *Ex parte Beaver*, 271 F. 493 (N.D. Ohio 1921); *Ex parte Dostal*, 243 F. 664 (N.D. Ohio 1917).

²⁸ See e.g., *United States v. Harrison*, 5 M.J. 476 (C.M.A. 1978).

²⁹ As with the statutory defects, the *Grimley* rationale adopted by Congress seems to apply only to those

regulatory controls which touch the individuals "capacity" and render the individual *non sui generis*. See also *United States v. Wagner*, 5 M.J. 461 (C.M.A. 1978). The Report mentions only two requirements for a valid enlistment under Subsection (b): capacity and voluntariness. The criteria of Subsection (c) do not mention regulatory qualifications. Report *supra* note 6 at 122.

³⁰ *Id.*

³¹ Dyslexia and/or drug addiction could conceivably defeat jurisdiction under either Subsection (b) or (c) if such defects continually rendered the individual *non sui generis* or prevented formation of a voluntary enlistment. As a practical matter in only a rare case would either of those regulatory defects prevent a constructive enlistment under Subsection (c).

³² This hypothetical is specifically mentioned in the Report *supra* note 6 at 123. But note that if the choice of "army or jail" was prompted by the accused, his family, or counsel then the resulting enlistment will not necessarily be "involuntary." See *United States v. Lightfoot*, 4 M.J. 262 (CMA 1978); *United States v. Wagner*, 5 M.J. 461 (CMA 1978).

³³ See note 8 *supra* and accompanying text.

³⁴ In the past if the Government could not satisfactorily establish the absence of recruiter misconduct, it failed on two counts: The enlistment was usually considered void *ab initio* under *Russo* and the Government could not show formation of a constructive enlistment. Now, recruiter misconduct is, in itself, a neutral factor. Assuming that the Government cannot successfully rebut allegations of the deceived, innocent recruit, in all likelihood the Government will be able to show that at some point before trial, the accused voluntarily served and thus is subject to jurisdiction under Subsection (c). A recent Navy Court of Military Review decision emphasizes the potential problems. In *United States v. Hurd*, M.J. — (N.C.M.R. 25 Sep 1979) the accused was deceived; he unsuccessfully protested, and then served for one and one-half years. The court held the enlistment "involuntary" and estopped the Government from arguing constructive enlistment because of its inaction in correcting a recruiting abuse. See also notes 51 and 63 *infra*. Under the amendment, jurisdiction could be established over *Hurd*-like cases under subsection (c).

³⁵ The "continued—protestation" point was specifically made in the Report *supra* note 6 at 123. Note that in *Catlow*, the accused registered his protests through, among other methods, repeated AWOL's. Will a one-time verbal protest work? Probably not—especially if the length of service covers an extended period of time.

³⁶ See *e.g.*, *United States v. Marshal*, 3 M.J. 612 (N.C.M.R. 1977), where the actions/inactions of a clerk in a Recruit Training Regiment were the equivalent of Government misconduct. See also *United States v. Brown*, 23 C.M.A. 162, 48 C.M.R. 778 (1974) where company commander had not acted properly after notice that accused was underaged.

³⁷ *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975) at 136.

³⁸ See note 42, *infra* and accompanying text. The amendment was passed by Congress amidst wide-spread recruiter misconduct investigations, which has resulted in almost three hundred individuals being relieved from recruiting duty.

³⁹ Report *supra* note 6 at 122. See also the Conference Committee Report and Senator Nunn's remarks at note 6 *supra*.

⁴⁰ Report *supra* note 6 at 121. The Conference Committee Report, also note 6 *supra*, was to same effect. Historically, public policy considerations generally weighed in favor of the Government. See *Enlistment Contract*, *supra* note 14 at 46-49.

⁴¹ 7 M.J. 102 (C.M.A. 1979).

⁴² 7 M.J. at 107. Judge Cook's position was based on his "personal" observations of the *Russo*-related problems. He further noted that his observations have been confirmed by the "Army Chief of Staff and other senior officials before the Subcommittee on Manpower and Personnel, Senate Armed Services Committee." *Id.*

⁴³ 5 M.J. 470 (C.M.A. 1978).

⁴⁴ 5 M.J. 461 (C.M.A. 1978). Both *Valadez* and *Wagner* were discussed in *Wagner, Valadez, and Harrison: A Definitive Enlistment Trilogy?*, *The Army Lawyer*, Jan. 1979 at 4.

⁴⁵ Article 2(c), U.C.M.J.

⁴⁶ See *United States v. Hutchins*, 4 M.J. 190 (C.M.A. 1978).

⁴⁷ Recall that the Congressional intent was to avoid the situations where individuals could be immune from prosecution before a discharge would be executed. See note 6, *supra* and accompanying text.

⁴⁸ See *e.g.*, *Runkle v. United States*, 122 U.S. 543 (1887); *United States v. Barrett*, 1 M.J. 74 (C.M.A. 1977).

⁴⁹ See *United States v. Alef*, 3 M.J. 414 (C.M.A. 1977).

⁵⁰ See *United States v. Bailey*, 6 M.J. 965 (N.C.M.R. 1979) where the Navy Court of Military Review in an *en banc* decision addressed procedure and burden

of proof questions. If the accused's status is not an underlying element of the charged offense (e.g. AWOL, desertion) then the question of personal jurisdiction is decided by the military judge, as an interlocutory matter, applying a standard of preponderance of the evidence. However, if status is an underlying element, the issue is decided first by the judge using a preponderance of the evidence standard and then by the members using a beyond a reasonable doubt standard.

⁵¹ The enlistment contract normally includes a statement of understanding between the parties: recruit and Government. The actual contractual facets of the enlistment are not essential to determining jurisdiction. Military courts have traditionally emphasized that jurisdiction is based on status, not contract. In recent years more "contractual" language found its way into enlistment decisions. See e.g., *United States v. Russo*, 1 M.J. 134, 137 (C.M.A. 1975) (common law contract principles applied).

Will a breach of contract by the Government defeat jurisdiction? No. Applying the *Grimley* rationale, now codified, a breach of contract will not relieve the accused from court-martial jurisdiction. See *United States v. Bell*, 48 C.M.R. 572 (A.F.C.M.R. 1974) (breach of contract argument rejected as defense to AWOL). See also *Dickenson v. Davis*, 245 F.2d 317 (10th Cir. 1957) The accused's charge of breach of contract may impact, however, on the issue of "voluntariness," essential to finding jurisdiction under either Subsection (b) or (c). See e.g., *United States v. Hurd*, — M.J. — (N.C.M.R. 25 Sep 79) where the court found no jurisdiction over service member whose enlistment contract had been changed, without his knowledge, to reflect a different training specialty. He came on active duty after officially and unsuccessfully protesting several times. The Court said that his enlistment was involuntary and that Government inaction estopped it from showing that he had entered a constructive enlistment in one and one-half years of service. Under the amendment the Government would not be estopped. This case clearly points out that strong equities often exist in favor of the accused and that the Government must continue to ferret out irregular enlistment practices. See note 6 *supra* for Conference Committee Report to that effect. Defense counsel faced with this problem should urge that simply accepting pay, performing duties, etc., does not establish voluntary service. The longer the period of service, the tougher the task of showing involuntary service.

⁵² See note 6 *supra* and accompanying text.

⁵³ If jurisdiction is to be grounded on Subsection (c) under a constructive enlistment, then the validity of the enlistment, *ab initio* is of secondary concern. Using local resources, i.e., the accused's commander,

NCO's, and Military Personnel Records Jacket (MPRJ) should simplify matters for the Government.

⁵⁴ 23 C.M.A. 162, 48 C.M.R. 778 (1974).

⁵⁵ See e.g., *United States v. Wagner*, 3 M.J. 898 (A.C.M.R. 1977) *aff'd* 5 M.J. 461 (C.M.A. 1978) (discussion of constructive enlistment); See also *Constructive Enlistments: Alive and Well*, *The Army Lawyer*, Nov. 19767 at 6.

⁵⁶ 23 C.M.A. 142, 48 C.M.R. 758 (1974).

⁵⁷ 1 M.J. 134 (C.M.A. 1975).

⁵⁸ 23 C.M.A. 162, 48 C.M.R. 778 (1974).

⁵⁹ See *Appendix* (Extract of Senate Report 96-197) and note 6 *supra* (Conference Committee Report).

⁶⁰ See notes 26, 27 *supra* and accompanying text.

⁶¹ The problem is close. Whether three weeks is sufficient to establish a constructive enlistment could go either way. Five (5) days service was held to be insufficient in *United States v. Williams*, 39 C.M.R. 471 (A.B.R. 1968).

⁶² This scenario presents elements of probably the most common enlistment problem—a regulatory deficiency coupled with recruiter misconduct followed by a constructive enlistment.

⁶³ This scenario might arise in situations approximating those of the recent decision in *Hurd*, *supra* notes, 34, 51. Special care must be given to these types of not cases. Although recruiter misconduct may no longer be the key issue in litigating jurisdiction, the related problems of changed training requirements, assignments, and other enlistment promises should be expected. The mere breach of the enlistment contract should not defeat jurisdiction. However, where the Government has obviously deceived the recruit, as in *Hurd*, jurisdiction will probably rest on subsection (c) only if the servicemember actually served voluntarily after discovering the deceit. Note that in *Hurd* it was apparent that the designated training blank on the enlistment form had been changed from hospitalman (H—) to mess management (MS). To reach its result, the Court in effect held that *Hurd's* oath and entry into the delayed entry program was voided by the discovery, 1 month later, that something was amiss.

Note that if the enlistment is valid under subsection (b), that is, it was voluntary and the individual had the capacity to enlist, then subsequent "involuntary" service will *not* defeat jurisdiction. Superficially, however, involuntary service casts questions on the voluntariness of the initial entry onto active duty.

⁶⁴ See notes 6, 46 *supra*.

⁶⁵ See note 32, *supra* and accompanying text.

Appendix

Extract of Senate Report 96-197

Title VIII—General Provisions

Sec. 801. Amendments to the Uniform Code of Military Justice to Improve Military Discipline

The committee has expressed great concern in the last two years over the state of military discipline. As a result of its hearings on the fiscal year 1980 authorization request, the committee has identified two issues involving the military justice system where it can make legislative changes that will contribute to an improvement of military discipline. The first relates to the so-called *Catlow-Russo* problem, and the second involves the authoritativeness of the *Manual for Courts-Martial*, the extremely important guidebook for operation of the military justice system.

Subsection (a) of Section 801 deals with the so-called *Catlow-Russo* problem. During its extensive inquiry into recruiter malpractice over the last two years, the committee learned that recent decisions of the Court of Military Appeals has created a serious problem in the military services by holding that defects in the enlistment of the military member, including recruiter malpractice, could be raised by an accused after the commission of an offense and could defeat court-martial jurisdiction. Several instances came to the committee's attention where accused military members raised the issue of recruiter malpractice after commission of an offense, succeeded in obtaining a ruling of no jurisdiction, and were thereupon returned to duty for a time (before administrative separation could be effected) completely immune from military discipline. This situation is made intolerable in the case of alleged recruiter malpractice by the fact that the burden of proof on the jurisdictional issue shifts to the government after being raised by the accused, forcing the government to prove that there was no recruiter malpractice many months or years after the fact, with the recruiter miles away or out of the service. The committee learned that in

many instances accused military members were simply discharged after raising the defense because of the difficulty of affirmatively proving that the enlistment was valid, thereby escaping just punishment for their offense.

The committee strongly believes that these doctrines serve no useful purpose, and severely undermine discipline and command authority. No military member who voluntarily enters the service and serves routinely for a time should be allowed to raise for the first time after committing an offense defects in his or her enlistment, totally escaping punishment for offenses as a result. That policy makes a mockery of the military justice system in the eyes of those who serve in the military services.

Subsection (a) of Section 801, therefore, amends Article 2 of the UCMJ to affirm the law and public policy of the United States dealing with the commencement of *in personam* jurisdiction for purposes of the Code. The amendment is expressly intended to [122] overrule *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975), in which the Court of Military Appeals held that an otherwise valid enlistment was void for purposes of UCMJ jurisdiction due to recruiter misconduct in the enlistment process and that this recruiter misconduct estopped the armed forces from relying upon the doctrine of constructive enlistment. This amendment adds two new subsections to Article 2 of the Code to resolve these related yet distinct jurisdictional problems. It is not intended to affect any administrative matter relating to fraudulent enlistment.

The first portion of the amendment (new Subsection (b) of Article 2) overrules that portion of *United States v. Russo*, which invalidated for jurisdictional purposes an otherwise valid enlistment because of recruiter miscon-

duct in the enlistment process. It does so by reaffirming the law as set forth by the Supreme Court in *In re Grimley*, 137 U.S. 147 (1890), and requiring compliance with only two factors before an enlistment will be considered valid: capacity to understand the significance of enlistment in the armed forces and the voluntary taking of the oath of enlistment. By recommending these amendments, the committee does not suggest that recruiter malpractice be tolerated, but reliance should be placed on prosecution under Articles 83 and 84, and on administrative reforms, to solve this problem.

The second portion of the amendment (new Subsection (c) of Article 2) Provides for jurisdiction based upon a constructive enlistment. A constructive enlistment arises at the time an individual submits voluntarily to military authority, meets the mental competency and minimum age qualifications contained in Sections 504 and 505 of Title 10, United States Code, receives military pay or allowances and performs military duties. This doctrine is applicable when there is not an otherwise valid enlistment. An individual who meets the four-part tests for constructive enlistment will be amendable to UCMJ jurisdiction even if the initial entry of the individual into the armed forces was invalid for any reason, including recruiter misconduct or other improper Government participation in the enlistment process. This amendment thus overrules those portions of *United States v. Brown*, 23 C.M.A. 162, 165, 48 C.M.R. 778, 781 (1974). *United States v. Barrett*, 1 M.J. 74 (C.M.A. 1975). *United States v. Harrison*, 5 M.J. 476, 481 (C.M.A. 1978),

and *United States v. Russo*, which held that improper Government participation in the enlistment process estops the Government from constructive enlistment. It also overrules that portion of *United States v. Valadez*, 5 M.J. 470, 473 (C.M.A. 1978) which stated that an uncured regulatory enlistment disqualification, not amounting to a lack of capacity or voluntariness, prevented application of the doctrine of constructive enlistment. The new subsection is not intended to affect reservists not performing active service or civilians. It is intended only to reach those persons who intent it is to perform as members of the active armed forces and who met the four statutory requirements. It thus overrules such cases as *United States v. King*, 11 C.M.A. 19, C.M.R. 243 (1959). An individual comes within new Subsection (c) whenever he meets the requisite four-part test regardless of other regulatory or statutory disqualification. [123]. A person who initially does not voluntarily submit to military authority or who lacks the capacity to do so may do so successfully at a later time and jurisdiction shall attach at that moment. As a result, an individual who fails to meet the minimum age requirements set forth by statute, 17 years of age at present, may form a constructive enlistment upon reaching that age. Similarly, an individual who initially submits to military authority because he or she is given a choice between jail or military service and who subsequently does not protest the enlistment, make any effort to secure his or her release, and accepts pay or allowances may effect a constructive enlistment of jurisdictional purposes.

Packaging the Lawyer's Product

by

Lieutenant Colonel H. Jere Armstrong
Executive Officer, USA Trial Defense Service, USALSA

Manufacturers of items ranging from automobiles to zippers spend millions of dollars every year perfecting their products. They do that in order to be able to proclaim to the world

that theirs is indisputably the best one made. Having made the "best one," they then spend millions of dollars for advertising to let the consuming public know that it exists.

Despite those expended millions, the manufacturer has failed if the consumer won't pick his product off the shelf. To insure his product's appeal to consumers, the manufacturer spends even more money *packaging* his product to make it recognizable. Think of your act of buying a tube of toothpaste—are you really even conscious of the name on the box, or is it the design of the package that prompts your subconscious self to pick the “best” brand?

So it is with practicing law—in or out of the Army. We are advocates; yet we are salesmen. Our product may be an affirmative defense that we ask a judge or jury to “buy,” or it may be an idea that we present to a client/decision-maker in writing. In many cases, whether the “buyer” is willing to buy what we are trying to “sell” depends on the seller. The old adage about “Would you buy a used car from this man?” carries a lot of truth. How much does the “buyer” know about you? Does he/she see you involved in activities in the military community? Has he/she seen you participating in sports, church groups, or whatever your preferred leisure time activity may be? If so, was your appearance one that would have left a favorable impression on him or her? We owe it to ourselves, our clients, and our profession to make our product appear as attractive to others as it is to us. During the past few years, I have made some observations (none of which is novel) about how that can be accomplished, and I would like to share some of them with you.

The Successful Appearance

Have you ever seen F. Lee Bailey in person, or in a photograph? Most of you have, and more importantly, you *remember* having seen him. You remember him because he appears clean, well-groomed, and . . . *successful*. As an advocate, he knows full well the importance of having jurors regard him as successful. After all, who in his or her right mind would vote for an obvious loser?

In the Army, Judge Advocates involved in the trial of criminal cases are asking the court members or the military judge to decide in

their favor. The military judge and the court members are soldiers. To varying degrees, they are successful soldiers. Judge Advocates striving to impress those soldiers should mirror their image of a successful soldier—neat haircut; clean, neat uniform; well-shined insignia, properly placed on the uniform; clean shave; and well-shined shoes.

Too often I have heard line officers say, as you may have, “Look at that brass (or hair, or shoes, or uniform)—he must be a doctor or a lawyer!” Young Judge Advocates often advance the argument that “getting my hair cut doesn't make me a better lawyer.” That may be true, but let me hasten to assure you that it may well make you a more *successful* lawyer. Look at your colleagues whom you regard as successful counsel in the Army. Note that in virtually every case they project the image of a successful Army lawyer. They look like winners, they act like winners, and they are winners—they are winners because they know that the target of their suasive skills, and therefore the man or woman to whom they try to relate, is the successful member of the military community. In cases where the representation of an accused is involved, every effort should be made to have the accused/client conform his appearance with his military attorney's—not the other way around. The majority of your colleagues in the Corps have worked diligently to convince their military professional colleagues that we want to be a part of the military community. As a result, the Pavlovian reaction of “long hair—lawyer” has come to be a thing of the past. For the sake of the lawyer *and* the client, it should be kept a thing of the past.

Looking “successful” should not begin and end in court. Those cases which are most successfully concluded are generally regarded as those which do not go to court. For that reason, the successful advocate should do everything possible to enhance his credibility with the decision-makers with power to keep, or help keep, his or her case out of court. One of the best ways to enhance credibility with a commander is to strive to look and act like a soldier—in or out of uniform. Make every effort to do what

soldiers do, and *let the soldiers see you* doing that. Go on road marches with your unit. Run with your unit. When the unit is in the field, you go to the field, even if only to visit. Your participation in their activities will manifest your interest in what those soldiers are doing. It will pay dividends beyond your imagination.

Those of you fortunate enough to serve as defense counsel should bear in mind that you will have some cases that are better than others. Some of your clients will be guilty and there is no way, short of a miracle, that you can save them from conviction and its consequences. You are ethically bound to represent all of your clients competently and "zealously within the bounds of the law." You are not required to treat every case exactly alike. Within the framework of your practice, you must plan for and preserve the common weal of all your clients. Your success in doing that will depend in some cases, on your reserve of credibility. In some cases, for example, a request for the deferment of a sentence to confinement would be a frivolous exercise for a defense counsel. In other cases, it may be an appropriate request. The balance maintained in your credibility account may well depend on your ability to distinguish between the frivolous and the meritorious. Without credibility, special consideration for a client's request is hard to come by.

Successful Writing

Lawyers, as a class, regard themselves as being above any requirement to perform tasks as menial as proofreading, checking for punctuation errors, spelling errors, or assembling a file for dispatch to a decision-maker. Those tasks are reserved, in the eyes of some young lawyers, (we old ones have learned better!), for secretaries and clerks.

How many secretaries or clerks do you know whose name and/or signature appears on a file regarding which a commander or senior officer is going to make a decision? The answer is obviously "none." My point is that although someone else may do most of the administrative work, the responsibility for the substantive and

administrative quality of the paper or file rests with the individual whose name is on the "blame line." For that reason, the lawyer must read and edit every paper submitted to insure its grammatical and factual accuracy. Some of the more common writing pitfalls are discussed in the following paragraphs.

Spelling and Punctuation Errors. As a general rule, the world expects lawyers to be able to spell and to punctuate correctly. By virtue of our education and the fact that the English language is the basic "tool" of our profession, that expectation is warranted. When we submit pleadings, motions, letters, etc, with misspelled words, the reader's initial perception of the writer is that he is inept or careless. The next logical perception is "if he's careless in his writing, he's probably careless in his thinking." In short, one spelling error may have made it more difficult for the decision-maker to decide in your favor. Every act you, as an attorney, make in behalf of a client should be designed to make it *easy* for someone to decide in your favor. Look at Perry Mason—he not only told the juries his client was innocent; he showed them, in court, who was guilty! It is easy to listen to a grammatically correct argument or to read a grammatically correct paper. First impressions *are* important, and your signature and name on a document should be construed by you (and the readers) as your certificate that "This is my best effort."

Assembling Papers for Convenience. When advocacy takes the form of a written file, with numerous multicolored tabs, the writer acquires the additional responsibility of insuring that the file is assembled logically. In the usual case, items referred to in the paper should be tabbed *seriatim*, in the order they are referred to in the text. If the purpose of the correspondence is to obtain the signature of a decision-maker on a letter or other action paper, the paper to be signed should be the first tab. Additionally, you should take the time to insure that the document your paper says is at "Tab J" is *in fact* at "Tab J." If it isn't, you run the risk of making your reader unhappy. Make it easy for

the decision-maker and you make it easy for yourself.

Successful appearance and successful writing are but two ways to enhance the "saleability" of our product. Other ways are limited only by your imagination. Many may seem mundane (i.e., keeping your desk organized), but *never* think that they are beneath you. When your boss sees your desk looking like a herd of elephants ran over it, his mind does not automatically focus on criticism of the custodial staff. In his mind, it's your office, your desk, your mess, and your responsibility. Similarly, if your papers are not satisfactory, he or she will not harbor bad thoughts against an errant typist. As far as he or she is concerned, it's your paper, for better or for worse. It is your uniform, for "neater or sloppier"—the dry

cleaner owes your boss no responsibility for your appearance.

When you are perceived as successful, you'll know it. You will experience that satisfaction that comes only from knowing that you've done a job well. Your reputation will spread and you'll be sought after. There is a well-known chocolate candy bar made in the town of Hershey, Pennsylvania. Without any printing on its familiar brown label, most people in America would recognize it and accept it as a quality product because of the color of the wrapper and the shape of the candy bar. When your product is that consistently "well-made," you will have built your reputation and you will be proud of it. Remember—when a quality product is placed in a quality package, the word spreads quickly. As long as the quality remains high, the "word" will be remembered.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Impeachment & Rebuttal:

Accused made an unsworn statement during the presentencing phase of trial. This statement was limited to a discussion of his military and civilian background. He also expressed some remorse over his sale of marihuana. Trial counsel produced the accused's first sergeant, who testified as to the appellant's bad reputation in the unit for truth and veracity. This raises an appellate issue as an unsworn statement does not place the accused's truth and veracity in issue. Trial counsel is limited to contradicting statements of fact in the unsworn statement. Paragraph 75c(2), MCM, 1969 (Rev.).

2. Motions:

The trial counsel should make a full record in support of the Government's position on all motions. In a recent case, the victim reported a robbery of a pizza and gave the military

police a full description of his assailants. A short time thereafter the military police stopped individuals matching the description of the assailants. The victim, who happened to be driving by, yelled out the window "you've got the right people". Though several MP patrols were in the area, the Government neglected to establish to whom the statement was directed. There is now an appellate issue as to whether the military police ever had probable cause to apprehend the accused.

3. Providence:

The trial counsel can take steps to build a record which will favor the Government on appeal. The accused was charged with a transfer of heroin and attempted to plead guilty. During providence there arose some possibility of an entrapment defense. The military judge inquired of both the defense counsel and the accused whether they had considered this de-

fense. The defense counsel answered that he could produce no evidence to rebut the accused's predisposition to commit the offense. The care of the military judge during the providence hearing prevented a claim on appeal of an improvident plea. The trial counsel can also protect the record by building a clear case of the guilt of the accused. One means of doing this is to modify the pretrial agreement form allowing the stipulation of fact to be used by the military judge in conducting the providence inquiry. The trial counsel may then include within that stipulation facts helpful to the Government in a resolution of the case. Trial counsel may also use the Court of Military Appeals decision in *United States v. Hedlund*, 7 M.J. 271, to his advantage. If there is any question as to the maximum imposable sentence, either by the classification of the offense, motions regarding jurisdiction, multiplicity etc., trial counsel should request the military judge to inquire of the accused whether he would continue in his plea even if during appeal these matters were resolved in the accused's favor.

4. Search:

Another example of building a record was brought out in recent search and seizure litigation. The case involved an *Ezell* (6 M.J. 307) issue, as the unit commander who had authorized the search was present at the search. In ruling on the motion to suppress, the military judge, pursuant to a request by trial counsel, made specific findings of fact. These included a finding that the commander had probable cause to authorize the search, and at the time of authorization he was acting as a neutral and detached magistrate. These specific findings of fact will be very helpful to the Government in resolution of the search issue. Trial counsel can facilitate this by requesting special findings of the military judge on such issues. Article 51(d), UCMJ; paragraph 74i, MCM, 1969 (Rev.). The request for special findings should include the specific questions which the trial counsel desires answered by the military judge. Submission of proposed findings of fact should be considered whenever trial counsel contemplates making such a request.

Judiciary Notes

U.S. Army Judiciary

Digests—Article 69, UCMJ, Applications

1. In the case of *Chapel*, SUMCM 1979/4439, the applicant contended, *inter alia*, that he was prejudiced by the summary court officer's discussion of his case with the convening authority before the accused was sentenced. The accused had pled guilty at a summary court-martial to the alleged black marketing offenses. After the accused presented matters in extenuation and mitigation, the summary court officer, MAJ H, closed the proceedings to deliberate on the sentence. While the court was in recess, MAJ H conferred with COL P, the convening authority. Because no record of the summary court-martial proceedings was going to be kept, MAJ H used the opportunity to explain the previously unblemished record of the accused to the conven-

ing authority so that COL P would be aware of this information when he took action on the case. MAJ H thereafter reopened the court-martial proceedings, announced the sentence, and attempted to explain the reasons for it.

The Judge Advocate General granted partial relief, setting aside the sentence. The summary court officer's *ex parte* conversation with the convening authority violated Standard A(4) of Canon 3 of the ABA Code of Judicial Conduct and Standard 1.6 of the ABA Standards Relating to the Function of the Trial Judge. Such a communication is presumed prejudicial until the Government clearly and positively shows that it had no possible influence on the decision of the court. *See US v. Rosser*, 6 MJ 267, 272 (CMA 1979). The Judge Advocate General found that the presumption of prejudice had not been over-

come by MAJ H's explanation of the reasons for his consultation with the convening authority.

2. In *Ward*, SPCM 1979/4498, the accused contended that the DA Form 4187's establishing the inception and termination dates of his unauthorized absence were improperly admitted into evidence. The DA Form 4187's had originally been verified by SSG F, the adjutant of the Personnel Administration Center (PAC). Procedure 5-27a(6)(b), DA Pam 600-8, requires that an enlisted verifier be in the grade of E-7 or above. In light of this requirement and a discussion with the military judge, the trial counsel had the PAC prepare new DA Form 4187's covering the accused's absence.

According to his testimony at trial, MAJ G, the assistant PAC adjutant, verified the new DA Form 4187's. He made no attempt to verify the details related on the new forms by making inquiries of either the PAC or the accused's company. MAJ G simply compared the new forms with the old forms signed by SSG F to see that the information was the same. On the basis of this comparison alone, MAJ G verified the new DA Form 4187's.

The Judge Advocate General granted relief, setting aside the findings and sentence. Paragraph 144d, MCM 1969 (Rev.), provides that a writing made as a record of a fact or event is admissible as evidence of the fact or event if it was made by any person within the scope of his official duties and "those duties included a duty to know, or to ascertain through appropriate and trustworthy channels of communication, the truth of the fact or event, and to record such fact or event." While MAJ G perhaps had the duty to ascertain the truth of the facts contained in the DA Form 4187's, he in fact took no steps to verify the accuracy of the facts contained in the document, as required by the official records exception to the hearsay rule. MAJ G's trial testimony defeated the presumption of regularity and caused the DA Form 4187's to fail the test of officiality; the DA Form 4187's were therefore inadmissible hearsay.

3. In *Wilkerson*, SPCM 1979/4528, the accused

was charged with the wrongful possession and sale of .017 grams of cocaine. He objected at trial to the admissibility of the laboratory report on two separate grounds. First, the accused claimed that the failure to produce a sample of the alleged cocaine upon timely notice for independent analysis deprived him of a fair trial and effectively denied him the right to confront and cross-examine the Government chemist. Second, the accused claimed that the Government had not met its burden of explaining the reason for the destruction of the evidence, that is, the cocaine sample.

Mrs. C, was the forensic chemist at the US Army Criminal Investigation Laboratory—CONUS, Fort Gordon, Georgia. She received the laboratory request from the Fort Ord CID to analyze the powder which was the subject of a controlled buy. Based on this request, she performed a qualitative analysis which identified the powder to be cocaine and a quantitative analysis which determined the white powder to be 32% cocaine. Because of the small amount of powder, the last analysis consumed the remaining cocaine.

The Fort Gordon laboratory does not require a quantitative analysis, but instead leaves the decision whether to conduct this test to the judgment of the individual chemist. Mrs. C conducted the test because the laboratory request was based on identifying how close the investigators were to the large seller of cocaine. A greater percentage of the drug indicated a major source.

In his brief, the accused relied on the case of *People v. Taylor*, 54 Ill. App. 3d 454, 369 N.E., 2d 573 (1977), which found that an unnecessary quantitative test denied the defendant due process and disallowed into evidence the results of the laboratory test. As the *Taylor* court itself recognized, this holding is contrary to the majority position which holds that destructive testing is not a denial of due process if done in accordance with ordinary operating procedures and not with malice or in bad faith. See *US v. Augenblick*, 393 US 348 (1969); *US v. Sewar*, 468 F. 2d 236 (9th Cir. 1972); *US v.*

Adelman, 107 F. 2d 497 (2d Cir 1939); US v. Barr, 1 MJ 1015 (NCOMR 1976).

The neutral and detached independent analysis requested by the accused to verify the substance did in fact occur at the Fort Gordon laboratory. See US v. Strangstalien, 7 MJ 225 (CMA 1979). The practical necessities of crime prevention required a quantitative analysis. All the evidence was consumed in ordinary operating procedures and not with malice or in bad faith. Relief was denied.

4. The case of *Haynes*, SPCM 1979/4529, presented the interesting question of whether attempted solicitation was an offense under the Uniform Code of Military Justice. The accused was charged, *inter alia*, with wrongful solicitation of Warrant Officer I, a physician's assistant, to make a false official statement that he had given the accused an inside duty profile on DD Form 689. The military judge found that the conduct of the accused fell short of amounting to an actual serious request that Mr. I commit the offense. He did find that the accused approached Mr. I with the requisite intent to have Mr. I make a false official statement and that the accused made statements that were a direct movement toward the making of the actual solicitation. Accordingly, the military judge found the accused guilty, by exceptions and substitutions, of attempted solicitation.

Solicitation to give a false official statement

is an offense under Article 134, UCMJ. Paragraph 161, MCM 1969 (Rev.); US v. Isbell, 1 USCMA 131, 2 CMR 37 (1952); US v. Zimmek, 23 CMR 714 (AFBR 1956); US v. Lang, 21 CMR 425 (ABR 1956), *pet. denied*, 21 CMR 390 (1956). It is also an offense under Article 134, UCMJ, to wrongfully communicate language that requests another to commit an offense. Such an offense is a lesser included offense of solicitation, but requires a finding that the accused made a serious request. US v. Benton, 7 MJ 606 (NCOMR 1979).

Article 80, UCMJ, must be read with due regard to the general principles of criminal law that an attempt to commit an offense, which is itself in the nature of an attempt, cannot constitute a crime. See 1 Wharton's Criminal Law and Procedure (12th ed. 1957) 154; W. L. Clark and W. L. Marshall, A Treatise on the Law of Crimes (6th ed. 1958) 218; 22 C.J.S. *Criminal Law* 74 (1961). Solicitation is such an offense. It is closely related to that of a criminal attempt. US v. Zimmek, *supra*, at 718 n.2. Generally, it involves less criminal conduct than that sufficient to constitute an attempt. US v. Isbell, *supra*; US v. Jackson, 5 MJ 765 (ACMR 1978); R. Perkins, Perkins on Criminal Law (1957) 509. Thus, there can be no offense of attempted solicitation.

Relief was granted setting aside the conviction of attempted solicitation.

Delegation of Nonjudicial Punishment Filing Determination Authority

Criminal Law Division, OTJAG

The authority to delegate the filing determinations required by paragraph 3-15b(1), Immediate Action Interim Change No. 102, AR 27-10, 22 August 1979, is clarified as follows:

1. Commanders who are authorized to delegate their Article 15 authority under paragraph 3-2b, AR 27-10, may also delegate their filing

determination authority under paragraph 3-15b(1), Immediate Action Interim Change No. 102, AR 27-10, 22 August 1979, without regard to whether they elect to delegate their authority to impose punishment. If a commander who has delegated his filing determination authority imposes minor punishment, he may also make the filing determination for that record of pun-

ishment provided he is the appropriate level court-martial convening authority.

2. Other commanders may not delegate their filing authority. A change to AR 27-10 is not

required for delegation of filing determination authority to be made; however, clarifying language will be inserted into the next published change to AR 27-10.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. General Officer Promotion. Brigadier General Roy R. Moscato, USAR, was promoted to his present grade on 16 July 1979. In April, General Moscato was appointed as Deputy Assistant Judge Advocate General for Reserve Affairs (MOB DES), succeeding Brigadier General Edward D. Clapp of Minneapolis, Minnesota.

General Moscato is a 55-year old native of Chicago, Illinois, where he maintains an active law practice. He served on active duty for three years with the United States Army during World War II, and saw action with the 811th Tank Destroyer Battalion in Europe. After he was honorably discharged from the Army, General Moscato matriculated at DePaul University, earning a Bachelor of Philosophy degree in 1950. He received his Juris Doctor degree from DePaul in 1954, and has been a practicing attorney since that time.

Following his direct appointment as a first lieutenant, Civil Affairs Branch, USAR, General Moscato served with a number of units in a variety of positions, including civil affairs officer, legal officer, legal team chief, labor relations officer, public law officer, chief of governmental operations, executive officer and assistant staff judge advocate. He transferred to the JAGC, USAR in 1963. His most recent assignment was as the Staff Judge Advocate, 86th U.S. Army Reserve Command, from July 1976 to April 1979.

General Moscato is a graduate of the Civil Affairs Officer Basic Course, the Judge Advocate Officer Advanced Correspondence Course,

the Judge Advocate Reserve Components General Staff Course, and the Industrial College of the Armed Forces. His awards and decorations include the Armed Forces Reserve Components Achievement Medal, the Army Reserve Medal, the Army of Occupation Medal, the EAME Theater Medal, the American Campaign Medal, the World War II Victory Medal, the Good Conduct Medal, the Army Commendation Medal, and the Meritorious Service Medal.

2. Reserve Vacancies.

The 411th Engineer Brigade based at Floyd Bennett Field, Brooklyn, has two captain positions open. These positions are paid slots. If interested please call Major Edward Raskin at the following number: (516) 224-5550 or at his residence (516) 567-2025. Major Raskin may be contacted by letter at the following address: Major Edward Raskin, HQS, 411th Engineer Brigade, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, New York 11234.

3. On-Site Location Change.

The location of the technical (on-site) training for Arizona has been changed from Phoenix to Tucson. The new location is the Tucson USAR Center, 1750 South 29th Street, Tucson, Arizona. The training will be conducted from 0930-1500 on 15 December 1979.

4. Mobilization Designee Vacancies.

A number of installations have recently had new mobilization designee positions approved

and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mobilization Designation Assignment (DA Form

2976) to The Judge Advocate General's School, ATTN: Colonel William L. Carew, Reserve Affairs Department, Charlottesville, Virginia 22901.

Current positions available are as follows:

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
MAJ	08	05	03	Judge Advocate	USALSA	Falls Church
LTC	09	04	01	Judge Advocate	USALSA	Falls Church
MAJ	09	06	03	Judge Advocate	USALSA	Falls Church
CPT	09	08	02	Judge Advocate	USALSA	Falls Church
LTC	05B	03	02	Clms JA	USA Clms Svc	Ft. Meade
MAJ	26C	01A	01	Legal Advr	USA TSARCOM	St. Louis
LTC	04H	02	01	Dep SJA	USA CERCOM	Ft. Monmouth
CPT	57	02A	01	Asst SJA	172d Inf Bde	Ft. Richardson
MAJ	03	04	01	Asst SJA	USA Garrison	Ft. Ord
CPT	03A	04	01	Defense Counsel	USA Garrison	Ft. Ord
CPT	03A	04	02	Defense Counsel	USA Garrison	Ft. Ord
CPT	03B	02	02	Asst SJA	USA Garrison	Ft. Ord
LTC	05B	03	03	Sen Instr	TJAGSA	Charlottesville
LTC	03	01	01	SJA	101st ABN Div	Ft. Campbell
CPT	03A	02	04	Trial Counsel	101st ABN Div	Ft. Campbell
MAJ	03B	01	01	Ch, Def Counsel	101st ABN Div	Ft. Campbell
CPT	03B	02	01	Defense Counsel	101st ABN Div	Ft. Campbell
CPT	03B	02	02	Defense Counsel	101st ABN Div	Ft. Campbell
CPT	03B	02	03	Defense Counsel	101st ABN Div	Ft. Campbell
CPT	03B	02	04	Defense Counsel	101st ABN Div	Ft. Campbell
MAJ	03C	01	01	Ch, Admin Law Br	101st ABN Div	Ft. Campbell
CPT	03C	02	01	Asst SJA	101st ABN Div	Ft. Campbell
CPT	03D	05	01	Asst SJA-DC	USA Garrison	Ft. Stewart
CPT	03D	05	02	Asst SJA-DC	USA Garrison	Ft. Stewart
MAJ	03E	01	01	Chief	USA Garrison	Ft. Stewart
CPT	03E	03	01	Asst SJA	USA Garrison	Ft. Stewart
CPT	52B	03	01	Asst SJA-DC	USA Garrison	Ft. Stewart
CPT	52C	01	01	Asst SJA	USA Garrison	Ft. Stewart
CPT	52C	01	02	Asst SJA	USA Garrison	Ft. Stewart
MAJ	03B	02	01	Trial Counsel	USA Garrison	Ft. Hood
MAJ	03B	01	01	Ch, Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	01	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	03	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	04	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	02	Trial Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	03	Trial Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	04	Trial Counsel	5th Inf Div	Ft. Polk
MAJ	02A	02	01	Ch, Def Counsel	1st Inf Div	Ft. Riley
MAJ	02B	03	01	Ch, Legal Asst	1st Inf Div	Ft. Riley
CPT	02B	04	01	Asst JA	1st Inf Div	Ft. Riley

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
CPT	02C	02	01	Asst JA	1st Inf Div	Ft. Riley
LTC	03	02	01	Asst SJA	USA Garrison	Ft. Carson
MAJ	03B	03	01	Trial Counsel	USA Garrison	Ft. Carson
MAJ	03B	04	01	Ch, Def Counsel	USA Garrison	Ft. Carson
CPT	03B	06	01	Defense Counsel	USA Garrison	Ft. Carson
CPT	03B	06	02	Defense Counsel	USA Garrison	Ft. Carson
CPT	03B	06	03	Defense Counsel	USA Garrison	Ft. Carson
CPT	03B	06	04	Defense Counsel	USA Garrison	Ft. Carson
CPT	03B	07	01	Trial Counsel	USA Garrison	Ft. Carson
CPT	03B	07	02	Trial Counsel	USA Garrison	Ft. Carson
CPT	03B	07	03	Trial Counsel	USA Garrison	Ft. Carson
CPT	03B	07	04	Trial Counsel	USA Garrison	Ft. Carson
MAJ	03C	01	01	Asst SJA	USA Garrison	Ft. Carson
MAJ	03C	01	02	Asst SJA	USA Garrison	Ft. Carson
MAJ	03C	02	01	Asst SJA	USA Garrison	Ft. Carson
CPT	03D	04	01	Asst SJA	USA Garrison	Ft. Carson
CPT	03D	04	02	Asst SJA	USA Garrison	Ft. Carson
CPT	01H	02A	01	JA	Cdr, Ft McCoy	Sparta, WI
CPT	01H	02A	02	JA	Cdr, Ft McCoy	Sparta, WI
CPT	01H	02A	03	JA	Cdr, Ft McCoy	Sparta, WI
CPT	01H	02A	04	JA	Cdr, Ft McCoy	Sparta, WI
MAJ	01I	01	01	Mil Af Leg Ast Off	Cdr, Ft McCoy	Sparta, WI
CPT	01I	02	01	Mil Af Leg Ast Off	Cdr, Ft McCoy	Sparta, WI
CPT	01I	02	02	Mil Af Leg Ast Off	Cdr, Ft McCoy	Sparta, WI
CPT	03D	02	01	Asst SJA	9th Inf Div	Ft. Lewis
CPT	03D	03	01	Asst SJA	9th Inf Div	Ft. Lewis
MAJ	03E	01	01	Ch, Leg Asst Br	9th Inf Div	Ft. Lewis
CPT	03E	03	01	Legal Asst Off	9th Inf Div	Ft. Lewis
CPT	03E	03	02	Legal Asst Off	9th Inf Div	Ft. Lewis
CPT	21J	01	01	Judge Advocate	9th Inf Div	Ft. Lewis
CPT	03B	03	01	Asst JA Instr	USA Transportation Center	Ft. Eustis
MAJ	05F	02	01	Mil Affrs Off	USA Armor Cen	Ft. Knox
MAJ	04A	03	01	Sr Def Counsel	USA Inf Cen	Ft. Benning
CPT	04A	05	01	Defense Counsel	USA Inf Cen	Ft. Benning
LTC	04B	02	01	Asst Ch, MALAC	USA Inf Cen	Ft. Benning
CPT	04B	04	01	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	05	01	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	05	02	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	07	03	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	08	01	Clms Off	USA Inf Cen	Ft. Benning
MAJ	09A	02	01	Asst SJA	USA Signal Cen	Ft. Gordon
MAJ	09B	02	02	Asst SJA	USA Signal Cen	Ft. Gordon
CPT	22D	22	01	Instr OCS Tng DI	USA Signal Cen	Ft. Gordon
CPT	22D	22	02	Instr OCS Tng DI	USA Signal Cen	Ft. Gordon
CPT	07A	03	01	Judge Advocate	AVN Center	Ft. Rucker
CPT	07A	03	02	Judge Advocate	AVN Center	Ft. Rucker
CPT	07A	04	01	Judge Advocate	AVN Center	Ft. Rucker

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
MAJ	38A	01	01	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	01	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	02	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	03	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	04	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	05	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	06	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38A	03	07	Asst SJA	USA Garrison	Ft. Chaffee
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft. Chaffee
MAJ	38B	02	02	Admin Law Off	USA Garrison	Ft. Chaffee
CPT	38B	03	01	Proc Fscel Law Off	USA Garrison	Ft. Chaffee
CPT	38B	04	01	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38B	04	02	Asst SJA	USA Garrison	Ft. Chaffee
CPT	38B	04	03	Asst SJA	USA Garrison	Ft. Chaffee
CPT	05A	04	01	Trial Counsel	USA FA Cen	Ft. Sill
CPT	05A	04	02	Trial Counsel	USA FA Cen	Ft. Sill
CPT	05A	07	01	Defense Counsel	USA FA Cen	Ft. Sill
CPT	05A	07	02	Defense Counsel	USA FA Cen	Ft. Sill
CPT	05A	07	03	Defense Counsel	USA FA Cen	Ft. Sill
MAJ	05B	03	01	Admin Law Off	USA FA Cen	Ft. Sill
MAJ	05B	03	02	Admin Law Off	USA FA Cen	Ft. Sill
CPT	05B	05	01	Proc Fis Law Off	USA FA Cen	Ft. Sill
CPT	05B	07	01	Legal Asst Off	USA FA Cen	Ft. Sill
CPT	05B	07	02	Legal Asst Off	USA FA Cen	Ft. Sill
CPT	05B	07	03	Legal Asst Off	USA FA Cen	Ft. Sill
MAJ	28B	02	01	Mil Just Off	USA AD Cen	Ft. Bliss
MAJ	28B	04	01	Trial Counsel	USA AD Cen	Ft. Bliss
CPT	28C	03	01	Defense	USA AD Cen	Ft. Bliss
MAJ	05	01A	01	Dep SJA	USA Admin Cen	Ft. B Harrison
CPT	05	03A	01	Asst JA	USA Admin Cen	Ft. B Harrison
MAJ	04A	05	01	Instr Mid East	USAIMA CA Satl School E	Ft. Bragg
MAJ	12	02	01	Asst JA	ARNG TSA CP Atterbury	Edinburg, IN
MAJ	12	02	02	Asst JA	ARNG TSA CP Atterbury	Edinburg, IN

5. First Annual 120th U.S. ARCOM/12th Military Law Center Judge Advocate Training Conference and Continuing Legal Education Seminar, Columbia, South Carolina.

Colonel William H. Gibbes, Staff Judge Advocate, 120th U.S. ARCOM and Colonel H. Hugh Rogers, Commander, 12th Military Law Center, recently hosted the First Annual 120th U.S. ARCOM/12th Military Law Center Judge Ad-

vocate Training Conference and Continuing Legal Education Seminar. The conference, held on 3 and 4 November 1979, began with the Saturday morning sessions at the Carolina Inn, with the Saturday afternoon and Sunday sessions held in the auditorium of the University of South Carolina Law Center. The Continuing Legal Education Seminar portion of the conference included an update in Criminal Law by Major Owen Basham, Senior Instructor, Crimi-

nal Law Division, TJAGSA, and an update in Administrative and Civil Law by LTC Thomas M. Crean, Chief, Administrative and Civil Law Division, TJAGSA. The conference also included remarks by Colonel Gibbes on the role of the Reserve judge advocate in the 120th U.S. ARCOM and the importance of continuing legal education to the mutual support program and to mobilization preparedness by insuring a high quality of legal services. Mr. Joseph R. Cross, Reader Services, University of South Carolina Law Library discussed the Alexis Computer Assisted Research System, while Brigadier General Thomas M. Moore, Commander, 120th U.S. ARCOM and a federal bankruptcy judge in North Carolina, explained the new federal bankruptcy act with particular emphasis on how the provisions of the new law can impact on debt counseling for legal assistance clients.

A mutual support panel symposium was conducted by Colonel Rogers and the three active Army Staff Judge Advocates who receive mutual support from the 12th Military Law Center. Colonel Terry W. Brown, SJA, XVIII Airborne Corps and Fort Bragg; Colonel George W. Harrell, SJA, Fort Gordon; and LTC Barrett S. Haight, SJA, Fort Jackson, were all unanimous in praise of the support rendered to their installations by subordinate units of the 12th Military Law Center, or judge advocate sections of subordinate units of the 120th ARCOM. One point stressed by each staff judge advocate was that the Reserve unit members receive meaningful training in addition to the post receiving a benefit from the support rendered. A one hour panel discussion on the status of the Army Reserve and the Judge Advocate General's

Corps Reserve was presented by Brigadier General Roy R. Moscato, Deputy Assistant Judge Advocate General for Reserve Affairs; LTC John A. McHardy, Deputy Staff Judge Advocate, First U.S. Army; and Captain James E. McMennis, Chief, Unit Liaison and Training Office, Reserve Affairs Department, TJAGSA.

The luncheon speaker was Federal District Judge Matthew J. Perry (U.S. District of South Carolina). Judge Perry, formerly one of three judges on the Court of Military Appeals, discussed the workings of that court and some of the rationale for the recent decisions of the court. Judge Perry provided some insight into the decision making process of the court, in particular the independence of the individual chambers of the court.

A total of 62 judge advocate officers attended the conference which has been approved as an Army-wide school for future funding purposes. This approval was granted in accordance with provisions of AR 135-316, AR 351-2, and Appendix I, FORSCOM Regulation 350-2. Other regional conferences scheduled for this academic year include the Fifth Annual 86th ARCOM/7th Military Law Center mutual support and technical training conference on 17 and 18 November at the Great Lakes Naval Facility, Illinois, the 90th ARCOM/1st Military Law Center regional conference on 3 February 1980 and the 81st U.S. ARCOM/213th Military Law Center regional conference on 23-24 February 1980. For academic year 1980/81, other ARCOM staff judge Advocates and military law centers are encouraged to consider utilization of the regional training format.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

(Pay, Basic and Special) Bankruptcy court may require Department of the Army to pay all or any part of a Department of Army employee's income to a Chapter 13 trustee. DAJA-AL

1979/2568, 31 May 1979. On 1 October 1979, the new Bankruptcy Act [11 U.S.C. 100 *et. seq.*] became effective. Under the old Bankruptcy Act, a United States Bankruptcy Court could not require Department of the Army to pay wages of its employees to a Bankruptcy Court trustee.

The new Act authorizes Bankruptcy Courts, in a Chapter XIII proceeding (wage earner's plan), to require "governmental units" to include the United States and any of its departments, agencies, or instrumentalities to pay all or any part of an employee's income to the trustee [11 U.S.C. § 1325(b)]. Accordingly, the Department of the Army must pay its employee's wages to a Chapter XIII trustee when so directed by a Bankruptcy Court order. The DOD Pay and Allowance Entitlements Manual and applicable Army regulations will be changed to reflect this new provision.

(Prohibited Activities and Standards of Conduct—Gifts) **A member of the Army may not be paid travel or other expenses by the publisher of a civilian enterprise publication for a visit to the publisher's plant on public business.** DAJA-AL 1979/2362 (24 Apr 79). A legal opinion was requested from The Judge Advocate General concerning the propriety of a servicemember's accepting reimbursement for travel and related expenses from a publishing company which arranges for the publication of a "civilian enterprise publication" as that term is defined in para. 2-2b, AR 360-81. For purposes of the opinion, it was assumed that TDY had been authorized for the visit in accordance with the Joint Travel Regulations. The opinion points out that para. 2-2b, AR 600-50, generally prohibits acceptance of gratuities by DA personnel from sources engaged in business relations with any DOD component, unless a specific exception in para. 2-2c, AR 600-50, applies. The definition of "gratuity" contained in para. 1-4d, AR 600-50, specifically includes transportation and other tangible items. Because military publishers appear to be included within the meaning of "source" as defined in para. 2-2b, AR 600-50, and because para. 2-2d, (2), 600-50, generally prohibits DA personnel from accepting personal reimbursement from any source for expenses incident to official travel, The Judge Advocate General concludes that no authority has been identified as an exception to para. 2-2d, AR 600-50, which would authorize personal reimbursement from a military publisher for expenses incident to official travel.

Consequently, the acceptance of personal reimbursement by DA personnel for transportation or other travel expenses would violate AR 600-50.

(Nonappropriated Fund Instrumentalities—Private Organizations) **Official Army participation in or support of fund raising events for a single cause is prohibited by Army regulations.** DAJA-AL 1979/2899 (6 July 1979). A nonprofit corporation desired to create a memorial to veterans who served in Southeast Asia. The corporation inquired into the possibility of obtaining an exception to any fund raising prohibitions, requested a military representative for its board of directors and expressed a desire for input from the armed services on decisions about memorials to be built. The Judge Advocate General considered these inquiries and rendered an opinion on the propriety of official Army participation in the fund raising activities of the nonprofit corporation.

The Judge Advocate General first considered the question of armed forces support for fund raising projects for a single cause and determined that both a DOD Directive and applicable Army regulations preclude such support. Although individuals may (at no cost to the government) support charities of their choice, para. V.C., DOD Directive 5410.18, indicates that armed forces support of single cause fund raising is inconsistent with the basic policy of supporting federated and joint campaigns.

Official Army participation in support of fund raising is governed by Army Regulations 360-61 and 600-29, which implement DOD Directives. Para. 4-17a(1), AR 360-61, specifically prohibits official fund raising for a single cause; and para. 2-2a, AR 360-61, also restricts official assistance, including publicity, for these activities. Consequently, both DOD and Army policy preclude official participation in or support of the single cause fund raising contemplated in this case.

The Judge Advocate General then considered the legality of providing a representative to

serve on the board of directors of the nonprofit corporation and concluded that such participation would violate not only the restriction on single cause fund raising but also the rules governing official participation by DA personnel in the activities of private organizations. Official participation in the activities of private organizations is governed by DOD Directive 5500.2 and AR 1-210. The DOD Directive prohibits participation in an official capacity in a private organization if it results in favoring one organization over another, accepting unauthorized membership by the United States in the organization, using the Government's name to imply sponsorship without express congressional authorization, or participating in the management or control of the organization without congressional assent. Paragraph 3, AR 1-210, contains similar although not identical prohibitions. The prohibitions in both the DOD Directive and AR 1-210 do not apply to otherwise lawful participation in private organizations by military personnel as individuals. In this case, however, official participation was requested; and The Judge Advocate General concluded that providing an official representative to the nonprofit corporation would violate one or more of the prohibitions in DOD Directive 5500.2 and AR 1-210.

The applicability of AR 600-29 was also considered, but the nonprofit corporation in this case was neither a "recognized" volunteer organization under para. 3.43 nor an organization approved for participation in joint or independent campaigns in the federal sector. Consequently, official participation on the board could not be justified on this basis and was determined to be contrary to policy, regulation, and DOD Directive.

The Judge Advocate General also concluded that providing official input into the decision-making process of the corporation could be construed as participation in the management or control of the organization and would appear to violate both the control and fund raising prohibitions.

(Prohibited Activities and Standards of Conduct—General) **Appropriated funds may not be used to purchase organizational memberships in private associations for purposes of obtaining exercise facilities for recruiting personnel who do not have access to military exercise facilities.** DAJA-AL 1979/3117 (9 August 1979). A question concerning the propriety of using appropriated funds to obtain YMCA memberships for recruiting personnel who do not have access to military exercise facilities resulted in an advisory opinion by The Judge Advocate General. The question arose because of a commander's concern that he was not able to provide proper resources to enable his soldiers on recruiting duty to maintain the level of physical fitness required by AR 600-9.

The Judge Advocate General concluded that the use of appropriated funds in this situation was legally objectionable. The position taken in an earlier opinion containing almost identical facts, DAJA-AL 1977/5251 (6 Sep 77), was reaffirmed. This earlier opinion stated that acquisition of "no name" memberships in a YMCA would constitute unauthorized acceptance by the United States of membership in a private organization in violation of 5 U.S.C. § 5946 and para. 3a(1), AR 1-210. This same view was considered equally applicable to the question presented in this case. In addition, The Judge Advocate General determined that the acquisition of YMCA memberships for the purpose of obtaining important community contacts was also legally objectionable. Because the primary benefit derived from such a membership was good will, the benefit to the agency was only indirect or incidental to its ability to carry out its activities. Consequently, 5 U.S.C. § 5946 also precluded the use of appropriated funds for membership fees for this purpose, unless Congress expressly permitted it. The opinion also notes that it is advisory only, because definitive opinions involving the expenditure of appropriated funds must be rendered by the Comptroller General of the United States.

Regulatory Law Item

Regulatory Law Office, OTJAG

Reports to Regulatory Law Office. In accordance with AR 27-40, all judge advocates and legal advisors are reminded to continue to report to Regulatory Law Office (JALS-RL) the existence of any action or proceeding involving communications, transportation, or utility services and environmental matters

which affect the Army.

Address for Regulatory Law Office is USALSA, ATTN: JALS-RL, Falls Church, VA 22041. Current commercial telephone number is area code 202-756-2015, AUTOVON 289-2015.

CLE News

1. TJAGSA Course Notes.

Prerequisite for Military Lawyer's Assistant Course: The Military Lawyer's Assistant Course will be offered at the JAG School 7-16 May 1980. Students who wish to attend must first satisfactorily complete the Law for Legal Clerks Correspondence Course. Refer to the School's Annual Bulletin for a description of the course and enrollment procedures. Individuals who are to attend the resident Military Lawyer's Assistant Course must have the correspondence course completed before their names are submitted. Course quota offices at the major commands will not accept nominations unless students have completed the correspondence program.

Criminal Law New Developments Course. Although the 4th Criminal Law New Developments Course (5F-F35) does not appear in the TJAGSA Annual Bulletin, it has been scheduled to be taught 25-27 August 1980.

Length: 3 days.

Purpose: To provide counsel and criminal law administrators with information regarding recent developments and trends in military criminal law. This course is revised annually.

Prerequisites: This course is limited to active duty judge advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Stu-

dents must not have attended TJAGSA resident criminal law CLE, Basic or Graduate courses, within the 12-month period immediately preceding the date of the course.

Substantive Content: Government/defense counsel post trial duties; speedy trial; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; search and seizure; recent trends in the United States Court of Military Appeals; jurisdiction; witness production; mental responsibility; military corrections; pleadings; developments in substantive law; topical aspects of current military law. **This course will deal extensively with the new Military Rules of Evidence.**

2. TJAGSA CLE Courses.

January 7-11: 10th Contract Attorneys' Advanced (5F-F11).

January 7-11: 13th Law of War Workshop (5F-F42).

January 14-18: 1st Negotiations, Changes & Terminations (5F-F14).

January 21-24: 9th Environmental Law (5F-F27).

January 28-February 1: 8th Defense Trial Advocacy (5F-F34).

February 4-8: 51st Senior Officer Legal Orientation (5F-F1).

February 11-15: 6th Criminal Trial Advocacy (5F-F32).

February 25-29: 19th Federal Labor Relations (5F-F22).

March 3-14: 83d Contract Attorneys' (5F-F10).
 March 10-14: 14th Law of War Workshop (5F-F42).
 March 17-20: 7th Legal Assistance (5F-F23).
 March 31-April 4: 52d Senior Officer Legal Orientation (5F-F1).
 April 8-9: 2d U.S. Magistrate's Workshop (5F-53).
 April 9-11: 1st Contract, Claims, Litigation & Remedies (5F-F13).
 April 21-25: 10th Staff Judge Advocate Orientation (5F-F52).
 April 21-May 2: 84th Contract Attorneys' Course (5F-F10).
 April 28-May 1: 53d Senior Officer Legal Orientation (War College) (5F-F1).
 May 5-16: 2d International Law II (5F-F41).
 May 7-16: 2d Military Lawyer's Assistant (512-71D20/50).
 May 19-June 6: 20th Military Judge (5F-F33).
 May 20-23: 11th Fiscal Law (5F-F12).
 May 28-30: 1st SJA Responsibilities Under New Geneva Protocols (5F-F44).
 June 9-13: 54th Senior Officer Legal Orientation (5F-F1).
 June 16-27: JAGSO.
 June 16-27: 2d Civil Law (5F-F21).
 July 7-18: USAR SCH BOAC/JARC C&GSC.
 July 14-August 1: 21st Military Judge (5F-F33).
 July 21-August 1: 85th Contract Attorneys' (5F-F10).
 August 4-8: 10th Law Officer Management (7A-713A).
 August 4-8: 55th Senior Officer Legal Orientation (5F-F1).
 August 25-27: 4th Criminal Law New Developments (5F-F35).
 September 10-12: 2d Legal Aspects of Terrorism (5F-F43).
 September 22-26: 56th Senior Officer Legal Orientation (5F-F1).

3. Civilian Sponsored CLE Courses.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAJE: American Academy of Judicial Education, Suite 539, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ALI-ABA: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 243-1630.

ATLA: The Association of Trial Lawyers of America, Education Department, P.O. Box 3717, 1050 31st St. NW Washington, DC 20007. Phone: (202) 965-3500.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA (FBA-BNA): Conference Secretary, Federal Bar Association, Suite 420, 1815 H Street NW, Washington, DC 20006. Phone: (202) 638-0252.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GCP: Government Contracts Program, George Washington University Law Center, Washington, DC.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GWU: Government Contracts Program, George Washington University, 2000 H Street NW, Rm. 303 D2, Washington DC 20052. Phone: (202) 676-6815.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

NCAJ: National Center for Administration of Justice, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NDCLE: North Dakota Continuing Legal Education.

NJC: National Judicial College, Reno, NV 89507. Phone: (702) 784-6747.

NPI: National Practice Institute, 861 West Butler Square, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

- PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.
- SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.
- SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.
- SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.
- UDCL: University of Denver College of Law, 200 West 14th Avenue, Denver, CO 80204.
- UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.
- UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.
- UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.
- VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

January

- 6-11: NCDA, Prosecutor's Office Administrator Course, Part I, Houston, TX.
- 7-11: UMLC, Estate Planning, Miami Beach, FL
- 8: OLCI, Basic Tax, Cleveland, OH
- 9-12: ICLEF, Trial Advocacy, Indianapolis, IN
- 11: OLCI, Basic Tax, Cincinnati, OH
- 14-15: PLI, Land Use Planning & Litigation, Atlanta, GA
- 14-15: PLI, Income Taxation of Estates and Trusts, The Biltmore Hotel, New York City, NY. Cost: \$225.
- 15: UDCL, Evidence III—Hearsay, Denver, CO
- 17-18: PLI, Consumer Credit 1980, Waldorf-Astoria, New York City, NY. Cost: \$210.
- 17-18: PLI, Criminal Trial Tactics for Prosecution and Defense: The Constitution and the Criminal Lawyer, Barbizon Plaza Hotel, New York City, NY. Cost: \$200.
- 20-23: NCDA, Prosecution of Arson, Atlanta, GA.
- 24-25: PLI, Manufacturer's Product Liability, San Francisco, CA
- 24-26: ALI-ABA, The New Federal Bankruptcy Code, New Orleans, LA
- 25: UTLC, Part II—Medicine for Lawyers, Psychology, Psychiatry), Knoxville, TN.
- 25: DLS, Family Law, Wilmington, DE
- 31-2/1: PLI, Consumer Credit 1980, Bel Air Hilton Hotel, St. Louis, MO. Cost: \$210.

February

- 1-2: PLI, Medical Malpractice, San Francisco, CA.
- 1: OLCI: Basic Tax, Columbus, OH.
- 1-2: UDCL, Estate Planning, Denver, CO.
- 2: MCLNEL, Trial Tactics for Prosecutors, Springfield & Worcester, MA.
- 2-6: MCLNEL, Fundamental Real Estate Transactions, Danvers & Harwick, MA.
- 4-5: FBA, FBA/BNA Conference on Housing and Housing Regulations in the 1980's, Sheraton Harbor Island, San Diego, CA.
- 6: FBA: 4th Annual FBA/AAF Advertising Law Conference, Hyatt Regency Hotel, Washington, D.C.
- 7-8: PLI, Advanced Will Drafting, New York City, New York.
- 9: ABA, Care & Feeding of Jurors, San Francisco, CA.
- 10-13: NCDA, Trial Law & Evidence, Denver, CO.
- 11-15: GCP, Contracting with the Government, Washington, D.C.
- 14-16: SBM, Administrative Law, Big Sky, MT.
- 15-16: UTLC, Honing Trial Advocacy Skills, Nashville, TN.
- 15: PBI, Tax School, Philadelphia, PA.
- 21-22: Consumer Credit 1980, Little America Westgate Hotel, San Diego, CA. Cost: \$210.
- 22-23: VACLE, Criminal Law, Fredericksburg & Virginia Beach, VA.
- 24-28: NCDA, Organized Crime I, Phoenix, AZ.
- 24-29: ALI-ABA, Basic Estate & Gift Taxation, Scottsdale, AZ.
- 25-26: GWU, Labor Standards, Washington, D.C. 20052. Cost: \$325.
- 25-26: FBA, FBA/BNA Conference on Housing and Housing Regulations in the 1980's, Hyatt Regency, Houston, TX.
- 28-29: ABA, Law Office Management, Chicago, IL.
- 28-29: FBA, FBA/BNA Conference on Housing and Housing Regulations in the 1980's, Sheraton Washington, Washington, D.C.
- 29-3/1: GICLE, Estate Planning, Athens, GA.
- 29-3/1: SBT, Legal Assistant Wills & Probate, San Antonio, TX.

- 29: DLS, Probate, Wills & Administration, Wilmington, DE.
- 29: FLB, Tax Institute, Jacksonville, FL.

- 13: FLB, Government Agency Law, Tallahassee, FL.
- 14: SBT, Taxation, San Antonio, TX.
- 14: FLB, Government Agency Law, Tampa, FL.
- 17: SBT, Practice Skills, San Antonio, TX.
- 19-23: FLB, Advanced Trial Advocacy, Gainesville, FL.
- 19-4/17: UHCL, Consumer Transactions, Houston, TX.
- 20-21: PLI, Advanced Will Drafting, San Diego, CA.
- 20: FLB, Government Agency Law, Orlando, FL.
- 21: UTCLE, Taxes for the General Practitioner, Salt Lake City, UT.
- 21: FLB, Government Agency Law, Miami, FL.
- 27-29: UMLC, Medical Institute for Attorneys, Miami Beach, FL.
- 27-29: PLI, Pre-Trial Tactics & Techniques in Personal Injury Litigation, New York City, NY.
- 27-28: PLI, Medical Evidence, New York City, NY.
- 28: SBT, Real Estate, Houston, TX.
- 28: SBT, Taxation, Dallas, TX.
- 28-29: FLB, Technical Aspects of Environmental Law, Tampa, FL.

March

- 3-4: SLF, Law Enforcement Problems, Richardson, TX.
- 5: PBI, Tax School, Pittsburgh, PA.
- 6-7: UTCLE, Making Computers Work for You, Salt Lake City, UT.
- 6-22: MCLNEL, Practical Skills, Boston, MA.
- 7-8: FLB, Probate & Will Drafting, Tampa, FL.
- 9-12: NCDA, Prosecuting Business Crimes, San Diego, CA.
- 10-14: NCDA, Applied Trial Techniques, Houston, TX.
- 10: FBA, 3d Annual Copyright Law Conference, Hyatt Regency Hotel, Washington, D.C.
- 10-11: FBA/BNA, Annual Briefing Conference on Government Contracts, Barclay Hotel, Philadelphia, Pennsylvania.
- 10-11: PLI, Usury Laws & Modern Business Transactions, Dallas, TX.

Videocassettes Available from TJAGSA

Television Operations of The Judge Advocate General's School announces that videocassettes of the 1979 Army Judge Advocate General's Conference, held 9 through 12 October 1979, are available, in color, to the field. Listed below are titles, running times and guest speakers.

If you desire any of these programs, please send a blank 3/4 inch videocassette of the appropriate length to The Judge Advocate General's School, U.S. Army, ATTN: Television Operations, Charlottesville, Virginia 22901.

Tape #	Title	Running Time
1	<p><i>WELCOME/TJAGSA REPORT</i> Speaker: Colonel David L. Minton, Commandant, TJAGSA.</p> <p>TAJAG REMARKS SPEAKER: Major General Hugh J. Clausen, The Assistant Judge Advocate General.</p>	8:00
2	<p><i>GUEST SPEAKER: Lieutenant General Richard G. Trefry, The Inspector General, Department of the Army. Part I.</i></p>	60:00
3	<p>Lieutenant General Richard G. Trefry, Part II.</p>	18:00

Tape #	Title	Running Time
4	<i>PERSONNEL, PLANS AND TRAINING OFFICE REPORT</i> Speakers: Colonel (P) Lloyd K. Rector, Executive, Office of The Judge Advocate General and Colonel Dulaney L. O'Roark, Jr., Chief, Personnel, Plans & Training Office, OTJAG.	60:00
5	<i>CLAIMS SERVICE REPORT</i> Speaker: Colonel James A. Mounts, Jr., U.S. Army Claims Service, OTJAG, Fort Meade, Maryland.	10:00
6	<i>THE COURT OF MILITARY APPEALS</i> This tape highlights recent developments and foreseeable trends in the decision of the United States Court of Military Appeals. Speaker: Major John K. Wallace III, Deputy Director, Academic Department, TJAGSA.	50:00
7	<i>ETHICS IN GOVERNMENT</i> This seminar will survey the Ethics in Government Act of 1978 and AR 600-50, focusing primarily on the requirements to report financial holdings. Speaker: Major Steven F. Lancaster, Instructor, Administrative and Civil Law Division, TJAGSA.	48:00
8	<i>THE CUCKOO'S NEST</i> A seminar tracing the evolution of the legal standard for determining mental responsibility with emphasis on the preparation for and litigation of an insanity defense at a court-martial. Speaker: Major Vaughan E. Taylor, Instructor, Criminal Law Division, TJAGSA.	54:00
9	<i>NCO PANEL</i> Speaker: Sergeant Major Charles E. Cornelison, Office of the SJA, HQ, FORSCOM, Fort McPherson, Georgia.	14:00
10	<i>ADMINISTRATIVE LAW</i> Speaker: Colonel Thomas H. Davis, Chief Administrative Law Division, OTJAG.	19:00
11	<i>CRIMINAL LAW</i> Speaker: Colonel Donald W. Hansen, Chief, Criminal Law Division, OTJAG.	21:00
12	<i>GOVERNMENT APPELLATE DIVISION REPORT</i> Speaker: Lieutenant Colonel Richard R. Boller, Government Appellate Division, U.S. Army Legal Services Agency.	15:00
13	<i>USAREUR REPORT</i> Speaker: Brigadier General Wayne E. Alley, The Judge Advocate, U.S. Army Europe and Seventh Army.	33:00
14	<i>KOREA UPDATE</i> Speaker: Colonel James A. Mundt, The Judge Advocate, Eighth U.S. Army.	16:00

Tape #	Title	Running Time
15	<i>TDS REPORT</i> Speaker: Colonel Robert B. Clarke, U.S. Army Trial Defense Service, U.S. Army Legal Services Agency.	26:00
16	<i>INTERNATIONAL AFFAIRS REPORT</i> Speakers: Colonel Richard K. McNealy, Chief International Affairs Division, OTJAG and Mr. W. Hays Parks, International Affairs Division, OTJAG.	20:00
17	<i>LITIGATION PERSPECTIVES</i> Speaker: Colonel Arnold I. Melnick, Chief, Litigation Division, OTJAG.	24:00
18	<i>MILITARY RULES OF EVIDENCE</i> This seminar reviews the new Military Rules of Evidence and will analyze their probable impact on military criminal law. The review will highlight those aspects of the Rules which will substantially change current practice and will emphasize those rules which codify the law and eyewitness identification. Speaker: Major Fredric I. Lederer, Criminal Law Division, OTJAG.	50:00
19	<i>MANPOWER MANAGEMENT IN SJA OFFICE: SPACES, FACES, AND DESKS</i> This seminar covers the practical aspects of SJA manpower management. The process will be examined from the preparation for a manpower survey to include maintenance of statistical records and analysis of office requirements, through actual conduct of the survey to include survey team tactics, to the survey results including reclaims and manpower vouchers. The effect of survey results on the actual assignment of judge advocates and other legal personnel will also be discussed. Speakers: Lieutenant Colonel Thomas M. Crean, Chief, Administrative and Civil Law Division, TJAGSA and Major Steven F. Lancaster, Instructor, Administrative and Civil Law Division, TJAGSA.	56:00
20	<i>CONTRACT LAW REPORT</i> Speaker: Colonel Joseph A. Dudzik, Jr., Chief, Contract Law Division, OTJAG.	30:00
21	<i>LABOR AND CIVILIAN PERSONNEL LAW REPORT</i> Speaker: Lieutenant Colonel Francis D. O'Brien, Chief & Civilian Personnel Law Office, OTJAG.	20:00
22	<i>DEFENSE APPELLATE DIVISION</i> Speaker: Colonel Edward S. Adamkewicz, Defense Appellate Division, U.S. Army Legal Services.	25:00
23	<i>USAR AND MOBILIZATION UPDATE</i> Speakers: Lieutenant Colonel Jack H. Williams, Director, Reserve Affairs Department, TJAGSA and Lieutenant Colonel William L. Carew, Deputy Director, Reserve Affairs Department, TJAGSA.	28:00
24	<i>TJAG's CLOSING REMARKS</i> Speaker: Major General Alton H. Harvey, The Judge Advocate General.	12:00

JAGC Personnel Section*PPTO, OTJAG***Reassignments***LIEUTENANT COLONEL*

GILLEY, Dewey C.

KILE, Daniel A.

MAJOR

BEST, Sharon E.

FULBRUGE, Charles

GODWIN, Fitzhugh

LEHMAN, William

CAPTAIN

AGUIRRE, Jose

EDWARDS, James

GREEN, Brent P.

HARRIS, Jeffrey

MILLER, James M.

NEVEU, Michael

PEARSON, Ernest

SMITH, Derek L.

STOKER, Eugene

VALENTA, Ignatius

REVOCATION OF ORDERS

MORGAN, Michael

FROM

OTJAG, WASH DC

Europe

Canal Zone

Korea

TJAGSA

OTJAG, WASH DC

Ft. Bliss, TX

Europe

Europe

Korea

Aberdeen Proving Ground, MD

Europe

Europe

Europe

Europe

Europe

Europe

TO

AFSC, Norfolk, VA

TJAGSA S and F

OTJAG, WASH DC

AFSC, Norfolk, VA

AFSC, Norfolk, VA

AFSC, Norfolk, VA

Europe

Ft. Sheridan, IL

OTJAG, WASH DC

Ft. Bragg, NC

Europe

Ft. Devens, MA

USALSA

TJAGSA

Ft. Jackson, SC

Ft. Hood, TX

Ft. Ord, CA

RA Promotions*MAJOR*

CATHEY, Theodore F.M.

FONTENOT, Russell J.

GARRETSON, Peter W.

JABLONSKI, Robert C.

MILLER, Joe D.

SCHWABE, Charles L.

SIMS, Benjamin A.

WILLIAMS, Robert P.

CW-3

COLEMAN, Sidney L.

HALL, Jackie E.

HALL, William T.

HERTLI, Peter

24 Nov 79

1 Oct 79

1 Oct 79

1 Oct 79

4 Oct 79

29 Oct 79

5 Nov 79

4 Oct 79

12 Nov 79

15 May 79

12 Nov 79

8 Jun 79

AUS PROMOTIONS*BG*

BEDNAR, Richard J.

22 Sep 79

MAJOR

MOSIER, Jerome M.

9 Oct 79

CAPTAIN

KILLHAM, Michael A.

18 Nov 79

LOWE, Craig W.

19 Nov 79

MC FARLAND, John M.

18 Nov 79

POINTER, David L.

18 Nov 79

TRIMBLE, Dan

18 Nov 79

VENEMA, William H.

18 Nov 79

Current Materials of Interest

1. Articles

Anderson, W. T., and N. K. Clark, *Inventory Searches: A Reappraisal*, 30 JAG J. 181 (Winter 1978).

From Feres to Stencel: Should Military Personnel Have Access to FTCA Recovery? Note, 77 No. 4, Mich. L. Rev. 1099 (Apr. 1979).

Gerken, R. T., and P. Schultz, *Garnishment: 42 U.S.C. § 659: The United States Cannot Be Made Party to a Texas Garnishment Proceeding to Enforce a Divorce Decree Which Divided Military Retired Pay as Community Property Between Spouses*, 30 JAG J. 221 (Winter 1978).

Legal Obligations to Extend Health Care to Members Who Have Been Treated by Private Physicians and Developed Complications Therefrom, Department of Transportation, Coast Guard, Law Bulletin, Issue No. 422, pp. 1, (Oct 1979).

Persons, W. B., *Military Justice: No Laughing Matter*, 42 Tex. B. J. 297 (Apr. 1979).

Green, L. C., *Status of Mercenaries in International Law*, 9 Man. L. J. 201 (1979).

2. Change.

Change to CTA 50-909: Headquarters Department of the Army recently approved a request that judge advocate and staff judge advocate offices be allowed larger and more versatile office bookcases. A change to CTA 50-909 will reflect a modification at page 14-003, LIN CO1687 or CO1892 authorizing a wood bookcase with double doors and three

shelves 38 inches wide, 15 inches deep and 49 inches high. It will accommodate 105 inches of publications up to 12³/₄ inches high. The dimensions should take care of all materials stored in an attorney's office including compression binders. However, two of the shelves are adjustable so that taller publications can be handled.

3. Pending Rules.

The American Bar Association, through its Standing Committee on Legal Assistance for Military Personnel, has urged the Congress to enact pending legislation to statutorily assure the continuation of existing armed forces programs of legal assistance to military personnel.

Legislation to accomplish this goal was introduced in the House of Representatives May 8, 1979 by Rep. Schroeder (D-Colorado). The House version, H.R. 4001, was referred to the Committee on Armed Services. Identical legislation, S. 1130, was sponsored by Senators Bayh (D-Indiana), Thurmond (R-South Carolina), McGovern (D-South Dakota), Jackson (D-Washington), Javits (R-New York), and Matsunaga (D-Hawaii). Finally, a Position Paper, which includes a section-by-section analysis of the legislation, was prepared by the Standing Committee.

Questions about this legislation may be directed to any member of the Association's committee, including Chairman Edward H. Bonekemper III (202/673-5943) and legislative liaison Craig H. Baab (202/331-2213) of the Association's Governmental Relations Office. Copies of the above bills and position paper are available upon request.

Army Lawyer Cumulative Index

This edition of The Army Lawyer contains an author, subject, and title index of all issues of The Army Lawyer from November 1978 through November 1979. References to The

Army Lawyer (AL) are by month and page. A cumulative index of all issues prior to November 1978 appears in the October 1978 issue (DA Pam 27-50-70).

I. Author Index

A

Alexander, Clifford L., Jr., *Remarks of the Honorable Clifford L. Alexander, Jr.*, AL, Nov. 1978, at 1.

B

Basham, Owen, *General Deterrence Arguments*, AL, Apr. 1979, at 5.

Borek, Ted B., *ABA Young Lawyers Division Annual Meeting*, AL, Nov. 1978, at 24.

Borek, Ted B., *ABA Young Lawyers Division Programs*, AL, July 1979, at 20.

Borek, Theodore B., *Property Accountability: Revised AR 735-11*, AL, Mar. 1979, at 1.

Bosworth, Michael J., *Role of the Military Lawyer in the Risk Management of Patients, The*, AL, Aug. 1979, at 25.

Brannen, Barney L., Jr., *A Personal Management Philosophy*, AL, July 1979, at 15.

Brick, Samuel T., Jr., *Army Regulation 27-14, Revised*, AL, Apr. 1979, at 1.

Brown, Bruce A., *First Amendment Rights in the Military*, AL, Sep. 1979, at 19.

Brunson, Frank G., Jr., *Military Correspondence: The Young Lawyer vs. The Beastie*, AL, Dec. 1978, at 10.

Burger, James A., *Report from San Remo*, AL, Apr. 1979, at 9.

Bush, Brian X., *Eyewitness Identification: Expert Psychological Testimony in Courts-Martial*, AL, July 1979, at 10.

C

Cooke, John S., *Recent Developments in the Wake of United States v. Booker*, AL, Nov. 1978, at 4.

Cooke, John S., *United States v. Ezell: Is the Commander a Magistrate? Maybe*, AL, Aug. 1979, at 9.

Cooper, Norman G., *COMA, Cops and Subject Matter Jurisdiction: Whatley to Saulter to Conn*, AL, June 1979, at 22.

Cundick, Ronald P., *CITA Program—Its Implication for Army Lawyers, The*, AL, Sep. 1979, at 1.

E

Eisenberg, Stephen A. J. and Lawrence P. Levine, *Gate Search: Breaches in the Castle's Fortifications?*, *The*, AL, Sep. 1979, at 5.

Eisenberg, Stephen A. J., *Hell Hath No Fury Like . . . A Hostile Third Party Granting Consent to Search*, AL, May 1979, at 1.

Eisenberg, Stephen, *Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction*, AL, Nov. 1978, at 18.

Eisenberg, Stephen A. J., *What's Good for the Goose is Good for the Gander—Court-Martial Procedure in Light of Franks v. Delaware*, AL, Dec. 1978, at 1.

Estey, Richard S., *State Jurisdiction in Child Abuse Cases*, AL, Feb. 1979, at 11.

F

Finn, Melvin H., *"SQT"—Is It for Real?*, AL, July 1979, at 18.

Foster, Henry H., Jr., and Doris Jonas Freed, *Divorce in the Fifty States: An Overview as of August 1, 1978*, AL, Feb. 1979, at 25.

Freed, Doris Jonas, and Henry H. Foster, Jr., *Divorce in the Fifty States: An Overview as of August 1 1978*, AL, Feb. 1979, at 25.

G

Gilligan, Francis A., *Standing Revisited*, AL, Aug. 1979, at 20.

Gravelle, Adrian J., *Some Goode News and Some Bad News*, AL, Feb. 1979, at 1.

Grendell, Timothy J., *Stop Look and Arrest 'Em*, AL, Sep. 1979, at 15.

H

Higginbotham, Robert D., *Confessions and Corroboration: Don't Let the "Corps Delicti" Climb Out of the Coffin*, AL, Nov. 1979, at 6.

K

Key, William S., *Unabsorbed Overhead in Government Contracts*, AL, Sep. 1979, at 29.

Kile, Daniel A., *A Look at the Army Contract Adjustment Board*, AL, Jan. 1979, at 15.

L

- Lane, Jack F., Jr., *Discharge Clemency After Appellate Review*, AL, Dec. 1978, at 5.
- Lause, Glen D., *Crowley: The Green Inquiry Lost in Appellate Limbo*, AL, May 1979, at 10.
- Levine, Lawrence P., and Stephen A. J. Eisenberg, *Gate Search: Breaches in the Castle's Fortifications?*, The, AL, Sep. 1979, at 5.

M

- Millan, Stanley A., *Trends in Water Resource Preservation Law of DOD Concern*, AL, Nov. 1979, at 1.

N

- Nagle, James F., *Education of Legal Assistance Clients*, AL, Oct. 1979, at 1.
- Nagle, James F., *Personal Office Management*, AL, Aug. 1979, at 28.
- Nutt, Robert M., *An Even Funnier Thing Happened at the Forum*, AL, Dec. 1978, at 8.

P

- Pollack, Samuel, *Only In Korea*, AL, May 1979, at 16.

R

- Retson, Nicholas P., *JAG-2, YOU and ARTOO DEETOO (R2D2)*, AL, Feb. 1979, at 15.
- Ross, John L., and Charles A. Zimmerman, *U.S. Army Retraining Brigade: A New Look, The*, AL, June 1979, at 24.

S

- Schlueter, David A., *Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?*, AL, Jan. 1979, at 4.

- Schwabe, Charles L., *Guilty Pleas in the Absence of Jurisdiction—An Unanswered Question*, AL, Apr. 1979, at 12.

T

- Taylor, Vaughan E., *Using the Cuckoo's Nest*, AL, July 1979, at 1.

V

- Varo, Gregory O., *Reductions for Inefficiency: An Overlooked Tool*, AL, Jan. 1979, at 14.

W

- Wagner, F. John, Jr., *Commanders' Actions Upon Receipt of Communications from Debt Collectors*, AL, Nov. 1978, at 26.
- Wagner, F. John, Jr., *Standard Army Automated Support Systems/Judge Advocate General's Corps*, AL, June 1979, at 31.
- Wallace, John K., III, *Recent Developments in the United States Court of Military Appeals 1978-1979*, AL, June 1979, at 1.
- Williams, Robert L., *ANCOES Selection and Board Reflections*, AL, Aug. 1979, at 31.

Y

- Youmans, Robert W., *Unchanged Misconduct: Dangerous Waters*, AL, Aug. 1979, at 1.

Z

- Zimmerman, Charles A., and John L. Ross, *U.S. Army Retraining Brigade: A New Look, The*, AL, June 1979, at 24.

II. Subject Index

A

- ABA, *see* AMERICAN BAR ASSOCIATION
- ABUSE, CHILD, *see* CHILD ABUSE
- ADMINISTRATIVE REDUCTIONS
- Reductions for Inefficiency: An Overlooked Tool, *by* Gregory O. Varo, AL, Jan. 1979, at 14.
- ADVANCED NON-COMMISSIONED OFFICER EDUCATION SYSTEM, *see* ANCOES

ALEXANDER, CLIFFORD L., JR.

- Remarks of the Honorable Clifford L. Alexander, Jr., AL, Nov. 1978, at 1.

AMERICAN BAR ASSOCIATION

- ABA Backs Training and Aid to Reserve and National Guard Judge Advocates, AL, Oct. 1979, at 7.
- ABA Young Lawyers Division Annual Meeting, *by* Ted B. Borek, AL, Nov. 1978, at 24.

ABA Young Lawyers Division Programs, *by Ted B. Borek*, AL, July 1979, at 20.
 American Bar Association Supports Career Program for Judge Advocates, AL, Dec. 1978, at 12.

ANCOES (ADVANCED NON-COMMISSIONED OFFICER EDUCATION SYSTEM)

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

APPELLATE REVIEW

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

ARGUMENT OF COUNSEL, see also MISCONDUCT

General Deterrence Argument, *by Owen Basham*, AL, Apr. 1979, at 5.

ARMED SERVICES BOARD OF CONTRACT APPEALS (A.S.B.C.A.)

An Even Funnier Thing Happened at the Forum, *by Robert M. Nutt*, AL, Dec. 1978, at 8.

Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction, *by Stephen Eisenberg*, AL, Nov. 1978, at 18.

ARMED SERVICES PROCUREMENT REGULATION, see, DEFENSE ACQUISITION REGULATION

ARMY CONTRACT ADJUSTMENT BOARD
 A Look at the Army Contract Adjustment Board, *by Daniel A. Kile*, AL, Jan. 1979, at 15.

ARMY PAY, see PAY AND ALLOWANCES

ARMY REGULATION NO. 27-14

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

ARTICLE 65(c), UCMJ

Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

ARTICLE 138

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

ASSISTANCE, LEGAL, see LEGAL ASSISTANCE

AUTOMATIC DATA PROCESSING
 JAG-2, YOU and ARTOO DEETOO (R2D2), *by Nicholas P. Retson*, AL, Feb. 1979, at 15.

B

BOOKER, UNITED STATES V.

Recent Developments in the Wake of United States v. Booker, *by John S. Cooke*, AL, Nov. 1978, at 4.

C

CHILD ABUSE

State Jurisdiction in Child Abuse Cases, *by Richard S. Estey*, AL, Feb. 1979, at 11.

CITA

CITA Program—Its Implication for Army Lawyers, The, *by Ronald P. Cundick*, AL, Sep. 1979, at 1.

CLEMENCY

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

CLERKS, LEGAL

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

COMMANDERS

Commanders' Actions Upon Receipt of Communications from Debt Collectors, *by F. John Wagner, Jr.*, AL, Nov. 1978, at 26.

United States v. Ezell: Is the Commander A Magistrate? Maybe, *by John S. Cooke*, AL, Aug. 1979, at 9.

COMPLAINTS

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

CONFESSIONS AND ADMISSIONS

Confessions and Corroboration: Don't Let the "Corpus Delicti" Climb Out of the Coffin, *by Robert D. Higginbotham*, AL, Nov. 1979, at 6.

CONSUMER PROTECTION

Commanders' Actions Upon Receipt of Communications from Debt Collectors, *by F. John Wagner, Jr.*, AL, Nov. 1978, at 26.

CONTRACT DISPUTES

An Even Funnier Thing Happened at the Forum, *by Robert M. Nutt*, AL, Dec. 1978, at 8.

CONTRACTS, GOVERNMENT

A Look at the Army Contract Adjustment Board, *by Daniel A. Kile*, AL, Jan. 1979, at 15.

An Even Funnier Thing Happened at the Forum, *by Robert M. Nutt*, AL, Dec. 1978, at 8.

CITA Program—Its Implication for Army Lawyers, *by Ronald P. Cundick*, AL, Sep. 1979, at 1.

Federal Retailers Excise Tax on Diesel Fuel, Contract Law Div., OTJAG, AL, Oct. 1979, at 6.

Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction, *by Stephen Eisenberg*, AL, Nov. 1978, at 18.

Unabsorbed Overhead in Government Contracts, *by William S. Key*, AL, Sep. 1979, at 29.

CONTRACTING OUT, see CITA**CORPS OF ENGINEERS, U.S. ARMY**

Trends in Water Resources Preservation Law of DOD Concern, *by Stanley A. Millan*, AL, Nov. 1979, at 1.

CORPUS DELICTI RULE

Confessions and Corroboration: Don't Let the "Corpus Delicti" Climb Out of the Coffin, *by Robert D. Higginbotham*, AL, Nov. 1979, at 6.

CORRESPONDENCE

Military Correspondence: The Young Lawyer vs. The Beastie, *by Frank G. Brunson, Jr.*, AL, Dec. 1978, at 10.

COSTS, CONTRACT

Unabsorbed Overhead in Government Contracts, *by William S. Key*, AL, Sep. 1979, at 29.

COURT OF MILITARY APPEALS, UNITED STATES

COMA, Cops and Subject Matter Jurisdiction:

Whatley to Saulter to Conn, *by Norman G. Cooper*, AL, June 1979, at 22.

Minor Symposium on Enlistment Procedure and Personal Jurisdiction: Introduction, AL, Jan. 1979, at 1.

Recent Developments in the United States Court of Military Appeals 1978-1979, *by John K. Wallace III*, AL, June 1979, at 1.

Recent Developments in the Wake of United States v. Booker, *by John S. Cooke*, AL, Nov. 1978, at 4.

Some Goode News and Some Bad News, *by Adrian J. Gravelle*, AL, Feb. 1979, at 1.

United States v. Ezell: Is the Commander A Magistrate? Maybe, *by John S. Cooke*, AL, Aug. 1979, at 9.

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, *by David A. Schlueter*, AL, Jan. 1979, at 4.

COURT-MARTIAL, JURISDICTION

COMA, Cops and Subject Matter Jurisdiction: *Whatley to Saulter to Conn*, *by Norman G. Cooper*, AL, June 1979, at 22.

Recent Developments in the United States Court of Military Appeals 1978-1979, *by John K. Wallace III*, AL, June 1979, at 1.

COURT-MARTIAL PROCEDURE

Crowley: The Green Inquiry Lost in Appellate Limbo, *by Glen D. Lause*, AL, May 1979, at 10.

General Deterrence Arguments, *by Owen Basham*, AL, Apr. 1979, at 5.

What's Good for the Goose is Good for the Gander—Court-Martial Procedure in Light of *Franks v. Delaware*, *by Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.

COURTS-MARTIAL

Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, *by Brian X. Bush*, AL, July 1979, at 10.

Some Goode News and Some Bad News, *by Adrian J. Gravelle*, AL, Feb. 1979, at 1.

Vacation of Suspended Sentences in Regular Special Courts-Martial, *Criminal Law Division*, OTJAG, AL, Sep. 1979, at 38.

**CRIMINAL INVESTIGATION COMMAND,
US ARMY (CID)**

CID and the JA in the Field, *US Army Criminal Investigation Command*, AL, Nov. 1978, at 14.

CRIMINAL LAW

General Deterrence Arguments, *by Owen Basham*, AL, Apr. 1979, at 5.

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

D**DEBT COLLECTORS**

Commanders' Actions Upon Receipt of Communciations from Debt Collectors, *by John F. Wagner, Jr.*, AL, Nov. 1978, at 26.

DEFENSE ACQUISITION REGULATION

Unabsorbed Overhead in Government Contracts, *by William S. Key*, AL, Sep. 1979, at 29.

DEFENSE COUNSEL

Exercise of Independent Professional Judgment by Defense Counsel, US Army Trial Defense Service, AL, Sep. 1979, at 39.

DELAWARE, FRANKS V.

What's Good for the Goose is Good for the Gander—Court-Martial Procedure in Light of *Franks v. Delaware*, *by Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.

DETERRENCE ARGUMENTS

General Deterrence Arguments, *by Owen Basham*, AL, Apr. 1979, at 5.

DISCHARGE

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

DISPUTES, CONTRACT

An Even Funnier Thing Happened at the Forum, *by Robert M. Nutt*, AL, Dec. 1978, at 8.

Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction, *by Stephen Eisenberg*, AL, Nov. 1978, at 18.

DIVORCE

Divorce in the Fifty States: An Overview as of August 1, 1978, *by Doris Jonas Freed and Henry H. Foster, Jr.*, AL, Feb. 1979, at 25.

E**EDUCATION, MILITARY LEGAL**

American Bar Association Supports Career Program for Judge Advocates, AL, Dec. 1978, at 12.

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

Education of Legal Assistance Clients, *by James F. Nagle*, AL, Oct. 1979, at 1.

"SQT"—Is It for Real?, *by Melvin H. Finn*, July 1979, at 18.

U.S. Army Retraining Brigade: A New Look, The, *by John L. Ross and Charles A. Zimmerman*, AL, June 1979, at 24.

ENLISTED PERSONNEL

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

ENLISTMENT

Minor Symposium on Enlistment Procedure and Personal Jurisdiction: Introduction, AL, Jan. 1979, at 1.

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, *by David A. Schlueter*, AL, Jan. 1979, at 4.

ENVIRONMENTAL LAW

Trends in Water Resources Preservation Law of DOD Concern, *by Stanley A. Millan*, AL, Nov. 1979, at 1.

ETHICS

Exercise of Independent Professional Judgment by Defense Counsel, US Army Trial Defense Service, AL, Sep. 1979, at 39.

EXCISE TAX

Federal Retailers Excise Tax on Diesel Fuel, Contract Law Division, OTJAG, AL, Oct. 1979, at 6.

EYEWITNESS IDENTIFICATION

Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, *by Brian X. Bush*, AL, July 1979, at 10.

EZELL, UNITED STATES V., see UNITED STATES V. EZELL

F

FIRST AMENDMENT

First Amendment Rights in the Military, *by Bruce A. Brown*, AL, Sep. 1979, at 19.

FOURTH AMENDMENT

Standing Revisited, *by Francis A. Gilligan*, Aug. 1979, at 20.

FRANKS V. DELAWARE

What's Good for the Goose is Good for the Gander—Court-Martial Procedure in Light of *Franks v. Delaware*, *by Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.

FUEL, DIESEL, PROCUREMENT OF

Federal Retailers Excise Tax on Diesel Fuel, Contract Law Div., OTJAG, AL, Oct. 1979, at 6.

G

GARNISHMENT OF PAY, see PAY AND ALLOWANCES

GERMAN LAW, ARMY PAY, see PAY AND ALLOWANCES

GRIEVANCES OF MILITARY PERSONNEL

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

GUILTY PLEAS

Guilty Pleas in the Absence of Jurisdiction—An Unanswered Question, *by Charles L. Schwabe*, AL, Apr. 1979, at 12.

H

HARRISON, UNITED STATES V.

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, *by David A. Schlueter*, AL, Jan. 1979, at 4.

I

IDENTIFICATION, EYEWITNESS

Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, *by Brian X. Bush*, AL, July 1979, at 10.

INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

Report from San Remo, *by James A. Burger*, AL, Apr. 1979, at 9.

J

JAG CONFERENCE—1978

Remarks of the Honorable Clifford L. Alexander, Jr., AL, Nov. 1978, at 1.

JAG Conference Meets at Charlottesville, AL, Nov. 1978, at 23.

JAG-2 FORM

JAG-2 YOU and ARTOO DEETOO (R2D2), *by Nicholas P. Retson*, AL, Feb. 1979, at 15.

JURISDICTION, COURT-MARTIAL

COMA, Cops and Subject Matter Jurisdiction: *Whatley to Saulter to Conn*, *by Norman G. Cooper*, AL, June 1979, at 22.

Guilty Pleas in the Absence of Jurisdiction—An Unanswered Question, *by Charles L. Schwabe*, AL, Apr. 1979, at 12.

Minor Symposium on Enlistment Procedure and Personal Jurisdiction: Introduction, AL, Jan. 1979, at 1.

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, *by David A. Schlueter*, AL, Jan. 1979, at 4.

JURISDICTION, STATE

State Jurisdiction in Child Abuse Cases *by Richard S. Estey*, AL, Feb. 1979, at 11.

K

KOREA

Only In Korea, *by Samuel Pollack*, AL, May 1979, at 16.

L

LAW DAY

Law Day 1979, AL, Mar. 1979, at 7.

Law Day Observances, 1979, AL, Aug. 1979, at 34.

LAW OF WAR

Report from San Remo, *by James A. Burger*, AL, Apr. 1979, at 9.

LAW OFFICE MANAGEMENT

A Personal Management Philosophy, *by Barney L. Brannen, Jr.*, AL, July 1979, at 15.

JAG-2, YOU and ARTOO DEETOO (R2D2), *by Nicholas P. Retson*, AL, Feb. 1979, at 15.

Personal Office Management, *by James F. Nagle*, AL, Aug. 1979, at 28.

LEGAL ASSISTANCE

Commanders' Actions Upon Receipt of Communications from Debt Collectors, *by F. John Wagner, Jr.*, AL, Nov. 1978, at 26.

Education of Legal Assistance Clients, *by James F. Nagle*, AL, Oct. 1979, at 1.

LEGAL CLERKS

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

M**MAGISTRATE, COMMANDER AS**

United States v. Ezell: Is the Commander a Magistrate? Maybe, *by John S. Cooke*, AL, Aug. 1979, at 9.

MALPRACTICE

Role of the Military Lawyer in the Risk Management of Patients, The, *by Michael J. Bosworth*, AL, Aug. 1979, at 25.

MANAGEMENT, LAW OFFICE

A Personal Management Philosophy, *by Barney L. Brannen, Jr.*, AL, July 1979, at 15.

Personal Office Management, *by James F. Nagle*, AL, Aug. 1979, at 28.

MEDICAL MALPRACTICE

Role of the Military Lawyer in the Risk Management of Patients, The, *by Michael J. Bosworth*, AL, Aug. 1979, at 25.

MENTAL ILLNESS

Using the Cuckoo's Nest, *by Vaughan E. Taylor*, AL, July 1979, at 1.

MILITARY JUSTICE

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

General Deterrence Arguments, *by Owen Bas-ham*, AL, Apr. 1979, at 5.

Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

MISCONDUCT

Uncharged Misconduct: Dangerous Waters, *by Robert W. Youmans*, AL, Aug. 1979, at 1.

N**NATIONAL GUARD**

ABA Backs Training and Aid to Reserve and National Guard Judge Advocates AL, Oct. 1979, at 7.

NAVIGABLE WATERS

Trends in Water Resources Preservation Law of DOD Concern, *by Stanley A. Millan*, AL, Nov. 1979, at 1.

NON-COMMISSIONED OFFICERS

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

**NONJUDICIAL PUNISHMENT, see
BOOKER, UNITED STATES V.****P****PAY AND ALLOWANCES**

Garnishment of Army Pay Pursuant to German Court Orders, Office of the Judge Advocate, USAREUR, AL, July 1979, at 23.

PERSONNEL MANAGEMENT

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

PLEAS, GUILTY

Guilty Pleas in the Absence of Jurisdiction—An Unanswered Question, *by Charles L. Schwabe*, AL, Apr. 1979, at 12.

POST TRIAL REVIEW

Some Good News and Some Bad News, *by Adrian J. Gravelle*, AL, Feb. 1979, at 1.

PRETRIAL AGREEMENTS

Crowley: The Green Inquiry Lost in Appellate Limbo, *by Glen D. Lause*, AL, May 1979, at 10.

PROCEDURE, CRIMINAL

General Deterrence Arguments, *by Owen Bas-ham*, AL, Apr. 1979, at 5.

What's Good for the Goose is Good for the Gander—Court-Marital Procedure in Light of *Franks v. Delaware*, *by Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.

PROCUREMENT LAW

A Look at the Army Contract Adjustment Board, *by Daniel A. Kile*, AL, Jan. 1979, at 15.

An Even Funnier Thing Happened at the Forum, *by Robert M. Nutt*, AL, Dec. 1978, at 8.

CITA Program—Its Implication for Army Lawyers, *by Ronald P. Cundick*, AL, Sep. 1979, at 1.

Federal Retailers Excise Tax on Diesel Fuel, Contract Law Div., OTJAG, AL, Oct. 1979, at 6.

Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction, *by Stephen Eisenberg*, AL, Nov. 1978, at 18.

Unabsorbed Overhead in Government Contracts, *by William S. Key*, AL, Sep. 1979, at 29.

PROFESSIONAL ETHICS

Exercise of Independent Professional Judgment by Defense Counsel, US Army Trial Defense Service, AL, Sep. 1979, at 39.

PROPERTY ACCOUNTABILITY

Property Accountability: Revised AR 735-11, *by Theodore B. Borek*, AL, Mar. 1979, at 1.

PROSECUTION ARGUMENTS

General Deterrence Arguments, *by Owen Bas-ham*, AL, Apr. 1979, at 5.

PSYCHIATRIST AND MILITARY JUSTICE

Using the Cuckoo's Nest, *by Vaughan E. Taylor*, AL, July 1979, at 1.

PSYCHOLOGICAL TESTIMONY

Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, *by Brian X. Bush*, AL, July 1979, at 10.

Q**QUOTA SYSTEM, TJAGSA**

Operation of the "Quota System" for JAG School Resident Courses, AL, Dec. 1978, at 22.

R**REDRESS OF GRIEVANCES**

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

REDUCTION FOR INEFFICIENCY

Reductions for Inefficiency: An Overlooked Tool, *by Gregory O. Varo*, AL, Jan. 1979, at 14.

RESERVES

ABA Backs Training and Aid to Reserve and National Guard Judge Advocates AL, Oct. 1979, at 7.

RESIDENT INSTRUCTION, TJAGSA

Operation of the "Quota System" for JAG School Resident Courses, AL, Dec. 1978, at 22.

RETRAINING BRIGADE

U.S. Army Retraining Brigade: A New Look, The, *by John L. Ross and Charles A. Zimmerman*, AL June 1979, at 24.

REVIEW, APPELLATE

Discharge Clemency After Appellate Review, *by Jack F. Lane, Jr.*, AL, Dec. 1978, at 5.

REVIEW, SUPERVISORY

Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

S**SEARCH AND SEIZURE**

Gate Search: Breaches in the Castle's Fortifications?, The, *by Stephen A. J. Eisenberg, and Lawrence P. Levine*, AL, Sep. 1979, at 5.

Hell Hath No Fury Like . . . A Hostile Third Party Granting Consent to Search, *by Stephen A. J. Eisenberg*, AL, May 1979, at 1.

Standing Revisited, *by Francis A. Gilligan*, AL, Aug. 1979, at 20.

Stop Look and Arrest 'Em, *by Timothy J. Grendell*, AL, Sep. 1979, at 15.

United States v. Ezell: Is the Commander a Magistrate? Maybe, *by John S. Cooke*, AL, Aug. 1979, at 9.

What's Good for the Goose is Good for the Gander—Court Martial Procedure in Light of *Franks v. Delaware*, *by Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.

SECRETARY OF THE ARMY

Remarks of the Honorable Clifford L. Alexander, AL, Nov. 1978, at 1.

SELECTION BOARD

ANCOES Selection and Board Reflections, *by Robert L. Williams*, AL, Aug. 1979, at 31.

SENTENCE AND PUNISHMENT

Vacation of Suspended Sentences in Regular Special Courts—Martial, Criminal Law Division, OTJAG, AL, Sep. 1979, at 38.

SKILL QUALIFICATION TEST (SQT)

“SQT”—Is It for Real?, *by Melvin H. Finn*, AL, July 1979, at 18.

SPECIAL COURTS-MARTIAL

Vacation of Suspended Sentences in Regular Special Courts-Martial, Criminal Law Division, OTJAG, AL, Sep. 1979, at 38.

SPEECH, FREEDOM OF

First Amendment Rights in the Military, *by Bruce A. Brown*, AL, Sep. 1979, at 19.

STANDARD ARMY AUTOMATED SUPPORT SYSTEMS (SAASS)

Standard Army Automated Support Systems/Judge Advocate General's Corps, *by F. John Wagner*, AL, June 1979, at 31.

Word Processing Equipment, AL, Dec. 1978, at 13.

STANDING

Standing Revisited, *by Francis A. Gilligan*, AL, Aug. 1979, at 20.

STATE LAW

State Jurisdiction in Child Abuse Cases, *by Richard S. Estey*, AL, Feb. 1979, at 11.

Trends in Water Resources Preservation Law of DOD Concern, *by Stanley A. Millan*, AL, Nov. 1979, at 1.

SUMMARY COURT-MARTIAL, see UNITED STATES V. BOOKER**T****TAXES**

Federal Retailers Excise Tax on Diesel Fuel, Contract Law Division, OTJAG, AL, Oct. 1979, at 6.

TESTIMONY, EXPERT

Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, *by Brian X. Bush*, AL, July 1979, at 10.

Using the Cuckoo's Nest, *by Vaughan E. Taylor*, AL, July 1979, at 1.

TRAINING

ABA Backs Training and Aid to Reserve and National Guard Judge Advocates, AL, Oct. 1979, at 7.

American Bar Association Supports Career Program for Judge Advocates, AL, Dec. 1978, at 12.

“SQT”—Is It for Real?, *by Melvin H. Finn*, AL, July 1979, at 18.

U.S. Army Retraining Brigade: A New Look, The, *by John L. Ross and Charles A. Zimmerman*, AL, June 1979, at 24.

TRIAL COUNSEL, ARGUMENT OF

General Deterrence Arguments, *by Owen Basham*, AL, Apr. 1979, at 5.

U**UNCHARGED MISCONDUCT, see MISCONDUCT****UNIFORM CODE OF MILITARY JUSTICE, see also MILITARY JUSTICE**

Army Regulation 27-14, Revised, *by Samuel T. Brick, Jr.*, AL, Apr. 1979, at 1.

Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

UNITED STATES V. BOOKER

Recent Developments in the Wake of United States v. Booker, *by John S. Cooke*, AL, Nov. 1978, at 4.

UNITED STATES V. EZELL

United States v. Ezell: Is the Commander a Magistrate? Maybe, *by John S. Cooke*, AL, Aug. 1979, at 9.

V**VACATION OF SUSPENDED SENTENCE**

Vacation of Suspended Sentences in Regular Special Courts-Martial, Criminal Law Division, OTJAG, AL, Sep. 1979, at 38.

VALADEZ, UNITED STATES V.

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, *by David A. Schlueter*, AL, Jan. 1979, at 4.

VIDEOCASSETTES

- TJAGSA Video and Audio Catalogue, AL, Mar. 1979, at 8.
 Videocassettes Available from TJAGSA, AL, Apr. 1979, at 24.

W

WAGNER, UNITED STATES V.

- Wagner, Valadez, and Harrison: Definitive En-

- listment Trilogy?, by David A. Schlueter, AL, Jan. 1979, at 4.

WATERS, see NAVIGABLE WATERS

WORD PROCESSING EQUIPMENT

- Standard Army Automated Support Systems/ Judge Advocate General's Corps, by F. John Wagner, AL, June 1979, at 31.
 Word Processing Equipment, AL, Dec. 1978, at 13.

III. Title Index

A

- A Look at the Army Contract Adjustment Board, by Daniel A. Kile, AL, Jan. 1979, at 15.
 A Personal Management Philosophy, by Barney L. Brannen, Jr., AL, July 1979, at 15.
 ABA Backs Training and Aid to Reserve and National Guard Judge Advocates, AL, Oct. 1979, at 7.
 ABA Young Lawyers Division Annual Meeting, by Ted B. Borek, AL, Nov. 1978, at 24.
 ABA Young Lawyers Division Programs, by Ted B. Borek, AL, July 1979, at 20.
 American Bar Association Supports Career Program for Judge Advocates, AL, Dec. 1978, at 12.
 An Even Funnier Thing Happened at the Forum, by Robert M. Nutt, AL, Dec. 1978, at 8.
 ANCOES Selection and Board Reflections, by Robert L. Williams, AL, Aug. 1979, at 31.
 Army Regulation 27-14, Revised, by Samuel T. Brick, Jr., AL, Apr. 1979, at 1.

C

- CID and the JA in the Field, US Army Criminal Investigation Command, AL, Nov. 1978, at 14.
 CITA Program—Its Implication for Army Lawyers, The, by Ronald P. Cundick, AL, Sep. 1979, at 1.
 Claims Item, US Army Claims Service, AL, Oct. 1979, at 8.

- COMA, Cops and Subject Matter Jurisdiction: Whatley to Saultter to Conn, by Norman G. Cooper, AL, June 1979, at 22.
 Commanders' Actions Upon Receipt of Communications from Debt Collectors, by F. John Wagner, Jr., AL, Nov. 1978, at 26.
 Confessions and Corroboration: Don't Let the 'Corpus Delicti' Climb Out of the Coffin, by Robert D. Higginbotham, AL, Nov. 1979, at 6.
 Crowley: The Green Inquiry Lost in Appellate Limbo, by Glen D. Lause, AL, May 1979, at 10.

D

- Discharge Clemency After Appellate Review, by Jack F. Lane, Jr., AL, Dec. 1978, at 5.
 Divorce in the Fifty States: An Overview as of August 1, 1978, by Doris Jonas Freed and Harry H. Foster, Jr., AL, Feb. 1979, at 25.

E

- Education of Legal Assistance Clients, by James F. Nagle, AL, Oct. 1979, at 1.
 Exercise of Independent Professional Judgment by Defense Counsel, US Army Trial Defense Service, AL, Sep. 1979, at 39.
 Eyewitness Identification: Expert Psychological Testimony in Courts-Martial, by Brian X. Bush, AL, July 1979, at 10.

F

- Federal Retailers Excise Tax on Diesel Fuel, Contract Law Division, OTJAG, AL, Oct. 1979, at 6.

First Amendment Rights in the Military, *by Bruce A. Brown*, AL, Sep. 1979, at 19.

G

Garnishment of Army Pay Pursuant to German Court Orders, Office of the Judge Advocate, USAREUR, AL, July 1979, at 23.

Gate Search: Breaches in the Castle's Fortifications?, *The*, *by Stephen A. J. Eisenberg, and Lawrence P. Levine*, AL, Sep. 1979, at 5.

General Deterrence Arguments, *by Owen Basham*, AL, Apr. 1979, at 5.

Guilty Pleas in the Absence of Jurisdiction—An Unanswered Question, *by Charles L. Schwabe*, AL, Apr. 1979, at 12.

H

Hell Hath No Fury Like . . . A Hostile Third Party Granting Consent to Search, *by Stephen A. J. Eisenberg*, AL, May 1979, at 1.

I

Improving Quality Control of Enlistment Processing Since *U.S. v. Russo*, United States Military Enlistment Processing Command (MEPCOM), AL, Jan. 1979, at 2.

J

JAG Conference Meets at Charlottesville, AL, Nov. 1978, at 23.

JAG-2, YOU and ARTOO DEETOO (R2D2), *by Nicholas P. Retson*, AL, Feb. 1979, at 15.

L

Law Day 1979, AL, Mar. 1979, at 7.

Law Day Observances, 1979, AL, Aug. 1979, at 34.

M

Military Correspondence: The Young Lawyer vs. The Beastie *by Frank G. Brunson, Jr.*, AL, Dec. 1978, at 10.

Minor Symposium on Enlistment Procedure and Personal Jurisdiction: Introduction, AL, Jan. 1979, at 1.

O

Only In Korea, *by Samuel Pollack*, AL, May 1979, at 16.

Operation of the "Quota System" for JAG School Resident Courses, AL, Dec 1978, at 22.

P

Personal Office Management, *by James F. Nagle*, AL, Aug. 1979, at 28.

Property Accountability: Revised AR 735-11, *by Theodore B. Borek*, AL, Mar. 1979, at 1.

R

Recent Developments in the United States Court of Military Appeals 1978-1979, *by John K. Wallace III*, AL, June 1979, at 1.

Recent Developments in the Wake of *United States v. Booker*, *by John S. Cooke*, AL, Nov. 1978, at 4.

Reductions for Inefficiency: An Overlooked Tool, *by Gregory O. Varo*, AL, Jan. 1979, at 14.

Remarks of the Honorable Clifford L. Alexander, Jr., AL, Nov. 1978, at 1.

Report from San Remo, *by James A. Burger*, AL, Apr. 1979, at 9.

Role of the Military Lawyer in the Risk Management of Patients, *The*, *by Michael J. Bosworth*, AL, Aug. 1979, at 25.

S

Some Goode News and Some Bad News, *by Adrian J. Gravelle*, AL, Feb. 1979, at 1.

Spinning Straw from Gold—The A.S.B.C.A. Expands Jurisdiction, *by Stephen Eisenberg*, AL, Nov. 1978, at 18.

"SQT"—Is It for Real?, *by Melvin H. Finn*, July 1979, at 18.

Standard Army Automated Support Systems/Judge Advocate General's Corps, *by F. John Wagner, Jr.*, AL, June 1979, at 31.

Standing Revisited, *by Francis A. Gilligan*, Aug. 1979, at 20.

State Jurisdiction in Child Abuse Cases, *by Richard S. Estey*, AL, Feb. 1979, at 11.

Stop Look and Arrest 'Em, by *Timothy J. Grendell*, AL, Sep. 1979, at 15.
Supervisory Reviews Under Article 65(c), UCMJ, AL, June 1979, at 30.

T

TJAGSA Video and Audio Catalogue, AL, Mar. 1979, at 8.
Trends in Water Resource Preservation Law of DOD Concern, by *Stanley A. Millan*, AL, Nov. 1979, at 1.

U

Unabsorbed Overhead in Government Contracts, by *William S. Key*, AL, Sep. 1979, at 29.
Uncharged Misconduct: Dangerous Waters, by *Robert W. Youmans*, AL, Aug. 1979, at 1.
United States v. Ezell: Is the Commander a Magistrate? Maybe, by *John S. Cooke*, AL, Aug. 1979, at 9.
U.S. Army Retraining Brigade: A New Look,

The, by *John L. Ross and Charles A. Zimmerman*, AL, June 1979, at 24.
Using the Cuckoo's Nest, by *Vaughan E. Taylor*, AL, July 1979, at 1.

V

Vacation of Suspended Sentences in Regular Special Courts-Martial, Criminal Law Division, OTJAG, AL, Sep. 1979, at 38.
Videocassettes Available from TJAGSA, AL, Apr. 1979, at 24.

W

Wagner, Valadez, and Harrison: Definitive Enlistment Trilogy?, by *David A. Schlueter*, AL, Jan. 1979, at 4.
What's Good for the Goose is Good for the Gander—Court-Martial Procedure in Light of *Franks v. Delaware*, by *Stephen A. J. Eisenberg*, AL, Dec. 1978, at 1.
Word Processing Equipment, AL, Dec. 1978, at 13.

ABA Military Law Section Questionnaire

In order to determine the feasibility of establishing a Military Law Section in the American Bar Association (ABA), active duty and reserve judge advocates, in addition to other interested attorneys, are requested to complete the attached questionnaire and return it not later than 1 February 1980 to the American Bar Association, ATTN: Ms. Connie Berg, 1155 60th Street, Chicago, IL 60637.

Completion and return of the questionnaire is voluntary and anonymous. Responses will be provided to The Judge Advocate General for use in determining whether establishment of a military law section in the ABA is feasible.

Neither the following background material about the ABA nor the questionnaire should be considered to be an official endorsement of the ABA. Questions about the questionnaire may be addressed to Major Ted B. Borek, Administrative Law Division, OTJAG, Pentagon, Washington, DC 20310 (AV 227-1371).

The American Bar Association is composed of Standing and Special Committees, whose members and chairpersons are appointed by the President of the ABA, and Sections, whose officers are elected by each Section's members and whose Committees are appointed by the Chairperson of each Section. There are a number of these entities that deal with military lawyers and/or military law.

Three Standard Committees deal with military lawyers and/or military law. These are the Standing Committee on Lawyers in the Armed Forces (LAF), the Standing Committee on Legal Assistance for Military Personnel (LAMP), and the Standing Committee on Military Law. Each of these Committees has seven members appointed by the ABA president-elect. The LAMP Committee deals with all legal assistance aspects of military law and military lawyers. The Military Law Committee deals with the military justice and administrative discharge aspects of military law and military

lawyers. The LAF Committee deals primarily with the personnel concerns of military lawyers and secondarily with those items dealing with military law and military lawyers not covered by the other two Standing Committees.

The twenty-four ABA Sections include a number of committees that deal with military law and military lawyers. These include the following Committees that have specialized jurisdictions:

- (1) Administrative Law Section, Military Law Committee.
- (2) Criminal Justice Section, Military Law Committee.
- (3) General Practice Section, Military Lawyers Committee.
- (4) International Law Section, Military Law Committee.
- (5) Judicial Administrative Section, Special Court Judges.
- (6) Young Lawyers Division, Military Service Lawyers Committee.

In addition to these ABA entities, the Judge Advocates Association, originally established following World War II, is an affiliate organization of the ABA and as such elects a delegate to the ABA House of Delegates.

During the summer of 1978 the ABA Standing Committee on the Scope and Correlation of Work began a study of whether the three Standing Committees noted above should be continued within the ABA structure. That study resulted in an initial recommendation by the Scope Committee that the Standing Committees on Lawyers in the Armed Forces and on Military Law be merged into one Committee and that consideration be given to merging the LAMP Committee into either the Standing Committee on Legal Aid and Indigent Defendants or the Special Committee on Delivery of Legal Services. After a joint presentation by the three Committees (and considerable support from the Judge Advocates General) at the ABA Midyear Meeting in February, 1979, however, the Scope Committee abandoned its initial recommendations. At the same time,

however, the Scope Committee requested that the concept of a Military Law Section be explored and that the Standing Committees report back to the Scope Committee on the results of the exploration.

The attached questionnaire is an attempt to determine the wishes and views of military judge advocates with regard to the possible creation of a Military Law Section to replace the current Standing and Section Committees.

Some additional information may be helpful to you in reaching your own conclusion. The ABA annual dues structure is as follows:

<i>Amount</i>	<i>Admitted to the Bar:</i>
\$ 10	less than 2 years
20	two years but less than 5 years
40	five years but less than 10 years
80	ten years but less than 15 years
100	fifteen years or more

The Standing Committees are funded out of those dues. The budgets of these three Committees currently total approximately \$22,000. The dues of the current 24 Sections of the ABA range from \$10 to \$24 per year. No dues are charged for the Young Lawyers Division; all lawyers 36 years of age and under are automatically members of the Division. The creation of a Military Law Section would probably require dues of at least \$15 per year with a membership of at least 2,000 members in order to match the current activities and funding of the ABA entities now dealing with military law and military lawyers. The maximum potential pool of individuals who might be interested in joining such a Section would include approximately 3,500 active duty military lawyers, about 3,900 reservists and 1,500 Government civilian attorneys, and an unknown number of retired personnel. The current membership of the ABA is approximately 250,000.

Proponents of a Military Law Section believe that such a Section would allow military law activities of the ABA to be more organized in one place with less duplication and more coordination of effort than is currently the case. In addition, military lawyers would have a direct voice and vote in the ABA House of

Delegates. None of the Standing Committees of the ABA has a vote in the House of Delegates.

Opponents of a Military Law Section believe that such a Section would considerably lessen or even eliminate the continuing involvement of military law and military lawyers with civilian members of the bar, in effect leaving military lawyers to "talk to themselves." In

so doing, the civilian bar would have fewer opportunities to understand the operation and unique aspects of military law and military lawyers. Additionally, military lawyers would have to pay an additional amount (probably \$15) beyond the annual ABA dues to belong to the Section in order to participate actively in the military law activities of the ABA.

ABA Military Law Section Questionnaire
Survey Control Number DAPC-MSF-S-79-32

1. Personal Information:

- | | | |
|-----------------------|--------------------------|--------------------------|
| a. Current Grade | b. Years admitted to Bar | c. Service |
| (11/1) _____ 0-1 | (12/1) _____ 0-5 | (13/1) _____ Air Force |
| (11/2) _____ 0-2 | (12/1) _____ 6-10 | (13/2) _____ Army |
| (11/3) _____ 0-3 | (12/3) _____ 11-15 | (13/3) _____ Coast Guard |
| (11/4) _____ 0-4 | (12/4) _____ 16-20 | (13/4) _____ Marines |
| (11/5) _____ 0-5 | (12/5) _____ 21-25 | (13/5) _____ Navy |
| (11/6) _____ 0-6 | (12/6) _____ 26-30 | |
| (11/7) _____ 0-7 | (12/7) _____ 31-35 | |
| (11/8) _____ 0-8 | (12/8) _____ 36 & over | |
| (11/9) _____ 0-9 | | |
| (14/1) _____ Civilian | | |
- d. Check all items that apply to you:
- | | |
|---|--------------------------------------|
| (15/1) _____ Regular | (18/1) _____ Retired |
| (16/1) _____ Reservist | (19/1) _____ Active duty (full time) |
| (17/1) _____ Civilian government attorney (DOD or USCG) | |

2. Are you now a member of the American Bar Association?

_____ Yes _____ No (if no, proceed to Question 3)
 (20/1) (20/2)

a. If yes, to what Sections do you currently belong? _____ None
(21/1)

_____ Administrative (22/1) Law	_____ Individual Rights (30/1) & Responsibilities	_____ Natural Resources (38/1) Law
_____ Antitrust Law (23/1)	_____ Insurance, Negligence (31/1) & Compensation Law	_____ Patent, Trademark (39/1) & Copyright Law
_____ Bar Activities (24/1)	_____ International Law (32/1)	_____ Public Contract (40/1) Law
_____ Corporation, (25/1) Banking & Business Law	_____ Judicial Administration (33/1) Division	_____ Public Utility (41/1) Law
_____ Criminal Justice (26/1)	_____ Labor Relations Law (34/1)	_____ Real Property, (42/1) Probate and Trust Law
_____ Economics of Law (27/1) Practice	_____ Legal Education and (35/1) Admissions to the Bar	_____ Science and (43/1) Technology
_____ Family Law (28/1)	_____ Litigation (36/1)	_____ Taxation (44/1)
_____ General Practice (29/1)	_____ Local Government (37/1)	_____ Young Lawyers (45/1) Division

b. Are you currently a member of any of the following committees?

- (46/1) _____ Standing Committee on Lawyers in the Armed Forces
- (47/1) _____ Standing Committee on Legal Assistance for Military Personnel
- (48/1) _____ Standing Committee on Military Law
- (49/1) _____ Military Lawyers Committee of the General Practice Section
- (50/1) _____ Military Law Committee of the Administrative Law Section
- (51/1) _____ Military Law Committee of the Criminal Law Section
- (52/1) _____ Military Law Committee of the International Law Section
- (53/1) _____ Military Service Lawyers Committee of the Young Lawyers Division
- (54/1) _____ Other ABA Military-Related Committees (please specify):

- (55/1) _____ Judge Advocates Association
- (56/1) _____ Im am not a member of any of the above committees.

3. If you are not a member of the ABA, would you join the ABA and a Military Law Section if such a section were created

_____ Yes _____ No _____ N/A (I am an ABA Member)

(57/1) (57/2) (57/3)

4. If you are now a member of the ABA, would you join a Military Law Section if one were created?

_____ Yes _____ No _____ N/A (I am not an ABA member)

(58/1) (58/2) (58/3)

5. What structure of the ABA do you most prefer?

- _____ a. Establishing a Military Law Section in lieu of the current committee structure.
(59/1)
- _____ b. Retaining the current structure of the military-related committees of the ABA.
(59/2)
- _____ c. Other (please specify): _____
(59/3)

6. a. If you are not currently a member of the ABA, in what ways might the ABA be made more attractive to you?

(60/1) _____

b. If you are currently a member of the ABA, in what ways might the ABA be made more attractive to you?

(61/1) _____
