

The Judge Advocate JOURNAL



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Publication Notice

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

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IMPORTANT NOTICE
DIRECTORY OF MEMBERS

A NEW ISSUE OF the "Directory of Members" will go to press during April, 1950. You will be listed as your name and address appear on the envelope bearing this issue of the Journal. Make certain that we are carrying your name and address correctly and as you wish to be listed in the Directory. If there is any error, or change desired, advise the Executive Secretary immediately. March 15th will be the deadline for the 1950 issue of the "Directory of Members."

The Board of Directors has determined that the Directory shall list alphabetically and geographically all members of the Association who are in good standing for the year 1950 as of the deadline date of March 15th. Make sure your dues are paid on or before the deadline. To be sure you are listed in the Directory, check now to see if you have paid your 1950 dues to the Judge Advocates Association. A good Directory requires an accurate listing for each of all our members. Its success depends on you.

General Brannon Named T.J.A.G.

The Presidential appointment of General Ernest M. Brannon as The Judge Advocate General was confirmed by the Senate on January 26th, and on January 27th, 1950, Mr. Gray, the Secretary of the Army, administered the oath of office to the new Chief of the Army's Legal Corps at a ceremony in the Pentagon. General Brannon has long been an active and interested member of the Judge Advocates Association and has served for several years as a member of its Board of Directors. The Association is proud indeed to announce General Brannon's appointment and promotion to Major General, and wishes him every happiness and success in his new office.

General Brannon was born in Ocoee, Florida, on 21 December 1895. He attended Marion Institute, Marion, Alabama, and the University of Florida, Gainesville, Florida, and entered the Military Academy 14 June 1917. He was graduated on 1 November 1918, and commissioned a second lieutenant. Following the Armistice he returned to West Point as a student officer with his class and remained until June 1919 when he was commissioned in the Infantry. Following completion of studies at West Point in June 1919, he made a tour of the European battlefields and entered the Infantry School, Fort Benning, in September 1919, graduating in June 1920.

He was detailed to Columbia University, New York, in September 1925 and pursued a course of instruction in the Law School. In September 1926 he was detailed as an instructor

in the Law Department of the Military Academy, where he served until June 1930. He was detailed to the Judge Advocate General's Department 18 June 1930, and again sent to Columbia University where he was graduated in June 1931 with the degree of LL.B. He was assigned to the office of the Judge Advocate General in August 1931 and was on duty with the Contracts Section until September 1933, when he entered the Army Industrial College, graduating in June 1934.

He spent one year as legal adviser in the Planning Branch, Office of The Assistant Secretary of the Army. In August 1935 he was assigned to duty as Assistant Staff Judge Advocate, Second Corps Area, Governors Island, New York. He returned to duty in the Office of The Judge Advocate General in August 1938 and early in 1942 was made Chief of the Contracts Division. In December 1942 he was also made Chief of the Tax Division. In September 1943 he was assigned Judge Advocate of the First Army. He served with the First Army in England from October 1943 to June 1944, during all combat operations on the Continent of Europe until V-E Day 1945 and at Fort Jackson, South Carolina, and Fort Bragg, North Carolina, until October 1945. He returned to Washington in October 1945 as Procurement Judge Advocate, Headquarters, Army Service Forces.

In 1946, the Office of Procurement Judge Advocate was made a part of the Services, Supply and Procurement Division, War Department General

Staff. In 1947 the Office was made a part of The Judge Advocate General's Department and he was designated Assistant Judge Advocate General (Procurement).

General Brannon has been awarded the Bronze Star Medal, Legion of Merit with one Oak Leaf Cluster, and the French Croix de Guerre with Palm.



General Promotions--JAG--Army

The Presidential nominations of Gen. Franklin P. Shaw to the rank of Major General, Col. Claude B. Mickelwait to the rank of Brigadier General and Col. Robert W. Brown to the rank of Brigadier General were confirmed by the Senate on January 26, 1950, and the Generals were administered the oath of office by Gen. Ernest M. Brannon in the Office of The Judge Advocate General on January 27th.

Gen. Shaw is The Assistant Judge Advocate General and Generals Mickelwait and Brown join Brig. Gen. James L. Harbaugh on Gen. Brannon's Staff of Assistant Judge Advocate Generals.

To acquaint you with the newly appointed General Officers of the Office of The Judge Advocate General, there follow brief biographical statements concerning these officers.

MAJOR GENERAL FRANKLIN P. SHAW

Major General Franklin P. Shaw, LL.M., Georgetown, 1924, was born in Newport, Kentucky, 31 December 1891. He attended public schools in Fort Thomas, Kentucky, and was graduated from the McDonald Educational Institute, Cincinnati, Ohio (LL.B 1914). He was admitted to the bar of Kentucky in 1913 and of Ohio in 1914. From the time of his admission to the bar until October, 1920 he was engaged in the private practice of law in Newport, Kentucky, and Cincinnati, Ohio, also serving for a period as Law Clerk to the late Judge Ernest S. Clarke of the Court of Appeals of Kentucky. His practice was interrupted by service as an Infantry officer during World War I, with assignments to the 10th and 42d Infantry Regiments. After the Armistice he was detailed to the Judge Advocate General's Department and

assigned to the Special Clemency Board in the Office of The Judge Advocate General. In October 1920 he was recommissioned a Captain, JAGD, Regular Army, and has served continuously as a Judge Advocate since that time, including tours of duty in the Office of The Judge Advocate General, as Judge Advocate, The Cavalry School, and Judge Advocate, Headquarters U. S. Army Troops in China (Tientsin), and assignments as a student in post graduate courses at George Washington and Georgetown Universities and the Army Industrial College, and as a member of the War Department General Staff.

Graduating from the Army Industrial College in 1939, he was assigned as Judge Advocate of the Air Materiel Command, Wright Field, Dayton, Ohio, serving in that capacity until 1945, being responsible for the

legal work pertaining to that command, particularly that relating to the procurement of aircraft and aeronautical material during World War II. In 1945 he was assigned as Judge Advocate, U. S. Army Strategic Air Force in Guam, and thereafter successively as Judge Advocate, Pacific Air Command (Manila, P. I. and later Tokyo, Japan) and as Judge Advocate, General Headquarters, U. S. Army Pacific, and Far East Command (Tokyo, Japan).

On 24 January 1948 he was appointed Brigadier General, AUS, and in 1949 assigned to the Office of The Judge Advocate General of the Army as Assistant Judge Advocate General

and member of the Judicial Council. On 27 January 1950 he was promoted to Major General and appointed The Assistant Judge Advocate General.

He has recently been elected a Life Member of the American Law Institute. He is an active member of the Judge Advocate Association, and a member of the Board of Directors of that association. Among his military decorations are the Legion of Merit, for his service as Staff Judge Advocate, Air Materiel Command, and the Army Commendation Ribbon for distinctive meritorious service in the same capacity and particularly the authorship of the Royalty Adjustment Act and work pertaining to patents and royalties.

BRIGADIER GENERAL CLAUDE B. MICKELWAIT

Brigadier General Claude B. Mickelwait was born in Iowa and attended high school and college in Idaho. He was commissioned in the Officer's Reserve Corps on 27 November 1917, entering upon active duty immediately with the 21st Infantry. He served in this regiment throughout World War I and in 1920 was transferred to the command of a Guard Company at the United States Disciplinary Barracks at Alcatraz, remaining there until 1923 when he was transferred to the 19th Infantry in Hawaii. After three years' service in Hawaii, he commanded a company of the 29th Infantry at Fort Benning and later attended the Infantry School from which he graduated in 1928. Thereafter, he served with the 30th Infantry at the Presidio of San Francisco, commanding Headquarters Company and was subsequently transferred to the 20th Infantry at Fort Francis E. Warren.

In 1935 he was transferred to the Judge Advocate General's Department and assigned to the Office of the Corps Area Judge Advocate, Headquarters, Ninth Corps Area, Presidio of San Francisco. After three years' service at that station, he was transferred to the Office of The Judge Advocate General in Washington, D. C. where he served until he entered the Army Industrial College in 1940. After graduating from that institution he returned to the Office of The Judge Advocate General, becoming Chief of the Military Affairs Division. He continued in that capacity until the fall of 1942 when he was assigned to the Western Task Force, reaching Casablanca in December of that year. On 5 January 1943, he was assigned as Judge Advocate of the Fifth U. S. Army which was activated at Oujda, French Morocco, on that date.

He participated in the D-Day landing of the Fifth Army at Salerno,

Italy and remained in Italy with the Fifth Army during the Salerno and Anzio Campaigns until March 1944. At that time he returned to Algiers as Acting Theater Judge Advocate. He was transferred in May 1944 to England on temporary duty and thereafter was assigned as Judge Advocate, First U. S. Army Group, which subsequently became the 12th U. S. Army Group. He served as Judge Advocate, 12th Army Group until its deactivation at the end of July 1945 when he became Deputy Theater Judge Advocate, European Theater. In May 1946, he was assigned as Theater Judge Advocate, European Theater, which position he held until his return to the United States in April 1947 when he was assigned to the Office of The Judge Advocate General, serving in the position of Assistant Judge Advocate General in charge of Civil Law and as a member of the Judicial Council.

BRIGADIER GENERAL ROBERT W. BROWN

Brigadier General Robert W. Brown was born near Adona, Arkansas, on June 6, 1893. He was commissioned from civil life on November 30, 1916. He served for approximately 12 years in various Infantry regiments of the Regular Army where he gained extensive experience in courts-martial procedure and military administration. Upon transfer to the Judge Advocate General's Department, he served in all sections of the Department, except the Patent Section, and as Division Judge Advocate in the field. From 1935 to 1939 he was Executive of the Judge Advocate General's Office under Major General

General Mickelwait holds the Degree of Bachelor of Science from the University of Idaho and Bachelor of Laws from the School of Jurisprudence, University of California, Berkeley, California. He is admitted to practice before the bar of the Supreme Court of the United States and the State of California. He is an active member of the Judge Advocates Association.

He has been awarded the Distinguished Service Medal, the Legion of Merit with Oak Leaf Cluster, the Bronze Star Medal and is entitled to wear the Bronze Star for seven major campaigns. He has also been awarded the Order of The British Empire, the Legion of Honor, the French Croix de Guerre with Palm, the Order of the White Lion of Czechoslovakia, the Military Valor Cross of Italy, the Order of Polonia Restituta of Poland, the Order of Leopold of Belgium, and the Couronne de Chene and the Croix de Guerre of Luxembourg.

Arthur W. Brown and Major General Allen W. Gullion. Upon completion of such duty he was assigned to the Army Industrial College where he familiarized himself with the problems of industrial mobilization. While a student he was assigned, in addition to his other duties, to the Legal Section of the Planning Branch of the Office of the Assistant Secretary of War. Upon graduation he was assigned as an instructor in the Contract Section, and shortly thereafter was assigned as Assistant Commandant charged with the duty of formulating and supervising the courses of instruction in accordance with the policies of superior authority. He

remained on such duty until 31 December 1941 when the courses at the Army Industrial College were suspended because of the outbreak of war. He was then assigned to the Judge Advocate Section, GHQ (Lt. General Leslie J. McNair), with a view to becoming the Judge Advocate General of GHQ. He became the Acting Judge Advocate General, GHQ. GHQ was abolished on 11 March 1942 and General Brown was assigned as Judge Advocate of the Second Army (Lt. General Ben Lear) and remained on such duty until 19 November 1942, when he proceeded to the Office of the Judge Advocate General and organized the Branch Office of The Judge Advocate General, a War Department installation for the China-Burma-India Theater under the direction of The Judge Advocate General (Major General Myron C. Cramer). This Branch Office was established at New Delhi, India, on 27 December 1942, and General Brown remained on duty with it as Assistant Judge Advocate General until 2 January 1944 when he again reported in Washington, D. C., as Assistant Commandant of the Army Industrial College and assisted in reopening that institution. He remained on duty as Assistant Commandant of the Army Industrial College until 2 September 1946 and participated in the training of some 5,000 officers and civilian employees in Contract Termination and Settlement Procedures. On 2 September 1946 he reported for duty with the War Department Board of Contract Appeals and remained on such duty until 1 January 1947, when he was assigned President of the War Contract Hardship Claims Board in the Office of the Assistant Secretary of the Army.

General Brown is a member of the Arkansas Bar and the Bar of the District of Columbia, and has been admitted to practice before the United States Supreme Court. He holds these degrees: AB, University of Arkansas 1916; LLB, George Washington University 1931, and LLM 1938 and SJD Georgetown University 1939.

In 1915, Gen. Brown demonstrated his ability in the field of International Law by winning the Pugsley Prize in competition with undergraduate students from 64 universities in the United States and Canada for the best paper on the subject of "International Arbitration Looking Toward a World State" and has maintained his interest in this field of study.

In 1938 he was selected by the International Law Division of the Carnegie Endowment for International Peace as one of ten outstanding scholars in the United States to whom Summer Fellowships were awarded for study at the Academy of International Law, The Hague. He received a Certificate from the Academy of International Law, The Hague, Netherlands, 1938.

General Brown was awarded the Legion of Merit for organizing and administering the Branch Office of The Judge Advocate General, CBI. He was also awarded the Secretary of War's Certificate of Commendation for work with the Army Industrial College from 1944 until 1946. He is an active member of the Judge Advocates Association.

At present he is an Assistant Judge Advocate General, assigned as a member of the Judicial Council and to the supervision of matters for The Judge Advocate General pertaining to Patents, Lands and Contracts.

The First Year of the Judicial Council

By MAJOR GENERAL E. M. BRANNON
The Judge Advocate General of the Army

Article 50 of the revised Articles of War which became effective on 1 February 1949 created a Judicial Council to be composed of three general officers of The Judge Advocate General's Corps, with the provision that, under exigent circumstances, The Judge Advocate General may detail as members of the Council officers of the Corps of grades below that of general officer for periods not in excess of sixty days.

The Judicial Council is primarily a confirming authority with limited powers although it also exercises appellate review functions in regard to cases which must be confirmed by the President pursuant to Article 48—that is cases involving a sentence to death or those in which the accused is a general officer.

Under the 1920 Articles the confirming authority was exercised by the President or by a commanding general of the Army in the field in time of war. In 1945, under the First War Powers Act, the authority of the President to confirm cases other than death cases and cases involving general officers was conferred upon the Secretary of War or the Under Secretary of War during the duration of the war.

The necessity for relieving the President of the burden of considering the record of trial in every case requiring confirming action may readily be appreciated when one considers the magnitude and complexity of the Presidency and the relatively greater volume of court-martial cases

arising from the expansion of the Army as contrasted with the strength of the prewar Army.

In the early years of the United States when the officers corps was small it was not an undue burden upon the President to devote his personal attention to an occasional record of trial involving the dismissal of an officer. As late as the administration of Theodore Roosevelt, the President could devote his personal attention to most executive functions—and there was so little activity in The White House that the press did not deem it essential to provide for permanent White House coverage by the newspapers. Prior to Theodore Roosevelt's administration it was customary for the President to request the insertion of statements in the Congressional Record if he wished to get newspaper coverage for one of his acts. It is unnecessary to elaborate on how complicated the Presidency has become in this century.

The Judicial Council was created by Title II of the Selective Service Act of 1948. Among its purposes was the necessary relief of the President from a substantial time-consuming burden. It substituted, with the few exceptions noted herein, a body consisting of officers qualified and experienced both as soldiers and lawyers, who could devote to each case a detailed personal examination.

Cases Requiring Confirmation

Under the old Article 48 sentences respecting general officers, or sentences extending to dismissal of an

officer or cadet or suspension of a cadet, and cases in which a death sentence was adjudged required confirmation before they could be ordered into execution.

Under the revised Articles of War cases involving imprisonment for life have been added to those which may not be carried into execution without confirmation.

The President is still the only confirming authority in cases involving a sentence to death or in which a general officer is the accused. In such cases the Judicial Council examines the record of trial as an advisory body in addition to the examination by the Board of Review. In the event the Judicial Council, with the concurrence of The Judge Advocate General, holds the record of trial legally insufficient to support the findings of guilty and the entire sentence, the sentence is thereby vacated and no action by the President is required.

In all other cases in which a sentence requiring confirming action has been adjudged and approved—i. e. sentences to life imprisonment, dismissal of an officer or a cadet, or suspension of a cadet—confirming action is normally taken by the Judicial Council acting in conjunction with The Judge Advocate General. In case of disagreement between The Judge Advocate General and the Judicial Council, the Secretary of the Army becomes the confirming authority.

The Judicial Council may act as the confirming authority in other cases examined by the Board of Review under Article 50e. Such cases are those in which a sentence to dishonorable or bad conduct discharge or confinement in a penitentiary has

been adjudged. These cases require confirming action when The Judge Advocate General disagrees with the holding by the Board of Review or where either the Board of Review or The Judge Advocate General deem that the findings of guilty or the sentence—although legally sufficient—require modification in the interest of justice. The Judge Advocate General participates in the confirming action of these cases either when he directs that his participation is required or when the action of the Judicial Council is not unanimous.

Some lawyers have expressed difficulty in understanding the provisions requiring confirming action in Article of War 50e cases, held legally sufficient by the Board of Review but in which "modification of the findings of guilty or the sentence is by The Judge Advocate General or the Board deemed necessary to the ends of justice" (AW 50e(2)). The doubts so expressed are engendered by the fact that the Judicial Council is not among the authorities authorized under Article 51 to exercise the power to mitigate, remit or suspend. It has also been asked why the Board of Review would hold a record of trial legally sufficient to support a finding of guilty if it deems modification of the findings necessary to the ends of justice.

These difficulties are easily resolved when it is remembered that a confirming authority has wide discretionary powers and is not restricted in his action to a consideration of the record of trial proper as is a Board of Review. It sometimes happens that matters *de hors* the record of trial indicate that an injustice has been done. For example it may appear outside

the record that important witnesses have perjured themselves or that the accused was not mentally responsible at the time of his alleged offense. In such a case, the Board of Review has no alternative but to hold the record of trial legally sufficient, but it may invite the attention of the confirming authority to the matters which the Board could not legally consider in its holding. The Judicial Council may then properly consider the record of trial and all other pertinent matters in its consideration of the case.

Similarly it may sometimes happen that a sentence although legal, is too severe under all the circumstances of the case. Occasionally such a sentence cannot be corrected without commutation—that is a change in the nature of the sentence. For example a heavy fine might have been adjudged whereas a forfeiture would be more appropriate. Since changing a fine to a forfeiture involves a change in the nature of the punishment—such a change cannot be effected by the reviewing authority and requires the action of a confirming authority who has the power to commute. Perhaps a court has adjudged bad conduct discharge alone and the reviewing authority believes that such a sentence is disproportionate to the offense although some punishment is indicated. Since a sentence to a bad conduct discharge cannot be mitigated (changed to a lesser punishment of like nature), the reviewing authority may recommend that the sentence be commuted to a reprimand and a forfeiture. Only a confirming authority has the power to effect such a change. Article 50e(2) was intended to provide a convenient and regular way to cope with such extraordinary circum-

stances.

Confirmation in Overseas Theaters

Under the old Article 48 the commanding general of the Army in the field and certain other commanders had the power, in time of war, to confirm sentences to dismissal of officers below the grade of brigadier general and also certain death sentences subject to the provisions of Article of War 50½. Under the revised articles these commanding generals may no longer exercise the powers of confirmation. Even in time of war, death sentences and sentences involving general officers must be confirmed by the President. Other sentences may be confirmed in a Branch Office of The Judge Advocate General's Office—if one is established—by the Assistant Judge Advocate General in charge of the Branch Office and the Judicial Council therein.

Confirming Powers

Colonel Winthrop compared confirmation to "the judgment of a court of last resort." In reality the confirming power, partakes not only of judicial power but also of executive discretion. It involves a discretionary power in addition to the exercise of purely legal judgment. In short a confirming authority has the power to do with a sentence what he thinks ought to be done to effect a just and proper result under all the circumstances of the case. Thus it may either order a sentence as adjudged and approved into execution, or it may ameliorate it without regard to statutory minima and other restrictions which control the actions of civilian appellate courts.

Although a court-martial's discretion may be limited in adjudging a sentence upon conviction of the few

offenses for which a mandatory sentence is provided, there is no such limitation upon the confirming power. Similarly the limitations on the power to commute which restrict the action of reviewing authorities, do not affect a confirming authority.

Article 49 enumerates the powers incident to the powers to confirm. These include the power to approve, confirm or disapprove a finding of guilty or to confirm only so much of a finding of guilty as involves a finding of guilty of a lesser included offense; the power to confirm, disapprove, vacate, commute or reduce to legal limits the whole or any part of the sentence; the power to restore all rights, privileges and property affected by any finding or sentence disapproved or vacated; the power to order the sentence to be carried into execution; and the power to remand a case for rehearing.

It is to be noted that the power to mitigate, remit, or suspend a sentence is not among the powers incident to the power to confirm. These powers of clemency are reserved under Article 51 to the President, the Secretary of the Army, and any reviewing authority incidental to their power to order a sentence into execution. The Judge Advocate General may also remit, mitigate, or suspend a sentence in any case requiring appellate review except those requiring the confirmation or approval of the President. These powers are exercised by The Judge Advocate General under the direction of the Secretary of the Army.

Power to Weigh Evidence

Article of War 50g extended to all the appellate agencies in The Judge Advocate General's office the power

to weigh evidence, determine controverted issues of fact, and adjudge the credibility of witnesses. Such sweeping powers are not exercised by any civilian appellate court except that in a few states the appellate courts may weigh evidence in capital cases. When it is remembered that most appellate courts must sustain a finding of guilty or a sentence if there is sufficient legal evidence to support it and if there is no prejudicial error, regardless of the fact that the judges may not believe the evidence to be credible, it is readily apparent that this unique feature of military law is of great advantage to accused persons.

The Boards of Review and the Judicial Council realize, of course, that the court had an opportunity to hear and see the witnesses and is therefore in a better position to weigh evidence than those who examine the cold record. Nevertheless, it sometimes appears that an important witness has been impeached or relates such an improbable story, that even the cold record compels the appellate agency to reach a different result from all the evidence than did the court. On several occasions, during the first year of the revised Articles, the power to weigh evidence has been exercised in order to correct what appeared to have been an injustice.

Procedures of the Judicial Council

Until my appointment as The Judge Advocate General, I was the Chairman of the Judicial Council. The other members at various times were: Major General Franklin P. Shaw, Brigadier Generals James L. Harbaugh, Jr., and Claude B. Mickelwait, Colonels Edward H. Young and William P. Connally, Jr. At least one

member has been able to devote his full time to the work of the Council and the others have had ample time to study each record of trial. The present Council consists of Brigadier Generals Harbaugh, Robert W. Brown and Mickelwait.

Every record of trial referred to the Council is studied by each member and is discussed at a meeting of the Council. If the accused desires, his counsel may file a brief or appear before the Council to argue the case. Whether or not the accused is represented before the Council, every record is carefully studied and weighed for legal sufficiency and all possible errors are considered to determine whether they prejudicially affect the substantial rights of the accused regardless of whether the error was noted at the trial or assigned as error by counsel upon appellate review. If the Council finds that a record of trial is legally sufficient to support the findings of guilty and the sentence, it examines the allied papers and 201 file of the accused in connection with its determination of the propriety of the sentence. The Council does not write an opinion, except in a case requiring the confirmation of the President, if it is in substantial agreement with the opinion of the Board of Review. If the Council is not in agreement with the opinion of the Board of Review, it writes an opinion to accompany its confirming action indicating the reasons for its disagreement. Recommendations for clemency on the part of the Council are made directly to The Judge Advocate General.

Since 1 February 1949, when the revised Articles went into effect there have been referred to the Council 79

general court-martial cases and two special court-martial cases. Of these six were cases in which the death penalty had been adjudged, 61 were officers dismissal cases, nine were life imprisonment cases and five were cases involving dishonorable or bad conduct discharge wherein The Judge Advocate General withheld his concurrence from the action of the Board of Review. During its first year all of the Council's actions have been unanimous.

In the few cases in which The Judge Advocate General withheld his concurrence from the holding by the Board of Review, his reference of the case to the Judicial Council did not necessarily indicate a definite disagreement with the holding, but rather a desire that a novel proposition of law or case of first impression receive further consideration or that cases involving a diversity of views among the Boards of Review be resolved by the Council. The problem as to whether a special court-martial had jurisdiction to adjudge a bad conduct discharge for an offense committed before 1 February 1949, the effective date of the new Articles, was one of the problems in which the conflicting views of various Boards required reference to the Council in order to settle the law. Similarly, The Judge Advocate General has occasionally referred very close cases to the Judicial Council in order to insure that the interests of both the accused and the Government might be more carefully protected by additional appellate review.

Conclusion

A survey of the first year's operation of the Council demonstrates its usefulness. The attention which these

senior officers of The Judge Advocate General's Corps have been able to give each record affords the most thorough safeguards to the rights of the accused and to the Government and insures to an accused soldier or

officer that his case will be considered by military men fully qualified in the law, thoroughly cognizant of their military and judicial responsibilities, and who by reason of their training, are familiar with the cause and effect of military offenses.



D. C. Members Honor General Brannon

Members of the Judge Advocates Association of the Metropolitan area of Washington, D. C. met at the Continental Hotel on January 30, 1950 in

a testimonial dinner in honor of Major General Ernest M. Brannon. Regular and Reserve Officers of all Services totaling about 150 attended the



The Judge Advocates General on the occasion of the Association's Dinner in honor of General Brannon in Washington on January 30th. Left to right: Admiral George L. Russell, USN, General Ernest M. Brannon, USA, and General Reginald C. Harmon, USAF.

—Signal Corps Photo.



The Head Table: Left to right: Brigadier General James L. Harbaugh, Brigadier General Claude B. Mickelwait, Mr. Clayton L. Burwell, Assistant Undersecretary of the Navy, Rear Admiral George L. Russell and Major General Ernest M. Brannon.

—Signal Corps Photo.

dinner. Major General Reginald C. Harmon, The Judge Advocate General of the Air Force, was present with his Staff, including General Bert E. Johnson and General Albert M. Kuhfeld. Rear Admiral George L. Russell, The Judge Advocate General of the Navy, and Mr. Clayton L. Burwell, Assistant to the Under Secretary of the Navy were present.

General Brannon was accompanied by his entire Staff of General Officers, Major General Franklin P. Shaw and Brigadier Generals James L. Harbaugh, Claude B. Mickelwait and Robert W. Brown. Major General My-

ron C. Cramer and Brigadier General Edwin C. McNeil were also present.

The meeting was presided over by Lieutenant Colonel Oliver Gasch, local Chairman of the Judge Advocates Association, who introduced the distinguished guests and called on Senator Lester C. Hunt of Wyoming, a member of the Senate Armed Services Committee, for a few remarks. Senator Hunt, after extending felicitations to the new Chief of the Army's Legal Corps, expressed Congressional concern upon the problem confronting career Military and Naval personnel who, when called to testify before Congressional

committees, express honest and sincere opinions upon problems of national defense at the request of the committees but out of harmony with the policy and opinions of their superiors. Senator Hunt did not indicate that the Congress knew exactly what to do in those cases, especially when the witness is later subject to reprimand or disciplinary action by superior authority for their testimony before the Congressional committees, but rather suggested that an audience so filled with legal talent and familiar with Military and Naval procedures

might be of assistance to Congress in finding the correct attitude.

General Brannon stated in his remarks that the policy of his administration of the Office of the Judge Advocate General will be that he and his office are counsel to the Army and its Commanders all over the world, endeavoring to serve them as if the office were a law firm on a retainer basis rather than a group of mere salaried employees.

Members of the Board of Officers and Directors of the Association who were present at this meeting included



The Head Table: Left to right: Mr. Clayton L. Burwell, Admiral George L. Russell, General Ernest M. Brannon, Lt. Col. Oliver Gasch, Senator Lester C. Hunt, Major General Reginald C. Harmon, Major General Franklin P. Shaw, Brigadier General Robert W. Brown and Major General Myron C. Cramer, USA Ret.

—Signal Corps Photo.



Officers and Directors of the Association who attended the Dinner in honor of General Brannon: Left to right: Lt. Col. Edward F. Gallagher, Brig. Gen. Albert M. Kuhfeld, Maj. Gen. Ernest M. Brannon, Lt. Col. Robert R. Dickey, Jr., Col. George H. Hafer, Lt. Col. Edward B. Beale, Maj. Gen. Franklin P. Shaw, Col. William J. Hughes, Jr., Col. John Ritchie III, Lt. Col. John W. Ahern, Col. Joseph F. O'Connell, Jr. Brig. Gen. Ralph G. Boyd and Major Samuel F. Beach also attended but apparently did not join the group in time for the photographer.

—Signal Corps Photo.

Colonel George H. Hafer of Harrisburg, Pa., President; Colonel William J. Hughes, Jr., of Washington, D. C., Past President; Brigadier General Ralph G. Boyd, the Association's Delegate to the American Bar Association; Major Samuel F. Beach, Secretary; Lieutenant Colonel Edward B. Beale, Treasurer; and the following Directors: Major Generals Ernest M. Brannon and Franklin P. Shaw, Brigadier General Albert M. Kuhfeld,

Lieutenant Colonel Edward F. Gallagher, Colonel Joseph F. O'Connell, Jr., Colonel John Ritchie, III, Lieutenant Colonel John W. Ahern, Lieutenant Colonel Robert R. Dickey, Jr. Major Love, Executive Secretary, was in charge of arrangements.

The group reflected the enthusiasm of the entire Corps, Active and Reserve, and of the entire Membership of the Judge Advocates Association in the appointment of General Brannon as The Judge Advocate General.

Nuremberg Trials: *Partisans, Hostages and Reprisals*

By H. W. WILLIAM CAMING*

Introduction

One of the gravest charges leveled against those high-ranking military leaders of the Third Reich tried at Nuremberg was their alleged participation in the unlawful killing of hostages, reprisal prisoners and partisans in the territories occupied by Germany during World War II. In an order issued on September 16, 1941 to the Wehrmacht, Field Marshal Keitel, Chief of the High Command of the Armed Forces, decreed the ruthless pattern of the German occupation when he counseled that "it should be remembered that a human

life in unsettled countries frequently counts for nothing, and a deterrent effect can be obtained only by unusual severity."¹

The Nuremberg trials clearly established that the taking and executing of guerillas, hostages and reprisal victims was carried out by the German Armed Forces in close cooperation with other Nazi agencies, including the police. However, within the scope of this brief article only the role of the military will be reviewed.

Three of the thirteen International Tribunals convened at Nuremberg dealt squarely with the questions under discussion and resolved many of the thorny legal problems attendant to them. The International Military Tribunal in the so-called IMT Case (United States et al v. Herman Goering et al) derived its jurisdiction over these war crimes and crimes against humanity from Articles 6(b) and 6(c) of the Charter annexed to the London Agreement of August 8, 1945.² Two subsequent proceedings, the so-called Southeast Case (United States v. List et al, Case No. 7) and the so-called High Command Case (United States v. Leeb et al, Case No. 12), which were devoted exclusively to charges against high-ranking military leaders, derived their jurisdiction for these crimes from Article II, Sections 1(b) and 1(c) of Control Council Law No. 10, promulgated on December 20, 1945 by the Allied Control Council for Germany.³ All of the

*EDITOR'S NOTE: The author was formerly Chief Prosecutor and Deputy Director of the Office of Chief of Counsel for War Crimes at Nuremberg. Prior to the war, he served as general counsel with the British Ministry of Supply Mission. During the war, he spent two years in the CBI as a combat officer in Air Forces and as a Judge Advocate Officer. He has travelled in over sixty countries on five continents in the past fourteen years. He is an expert in foreign policy, international law and military law. He has written extensively, including a weekly column on global affairs. He is in the active Reserve and holds the rank of Captain, JAGC-ORC.

¹Trial of the Major War Criminals, Vol. I, p. 234.

²U. S. Department of State, Executive Agreement Series 472.

³Official Gazette of the Control Council for Germany, No. 3, 31 January 1946 (Berlin, Allied Secretariat), pp. 50-55.

defendants were senior officers in the German Armed Forces.

In large part, the defendants based their defense on the fact that they were soldiers and as such, were acting pursuant to "superior orders" despite the fact that Article 8 of the IMT Charter and Article II, Section 4(b) of Control Council Law No. 10 excluded such a defense, although providing that such orders might be considered in mitigation. They argued that since this doctrine had not been stricken from the British Manual of Military Law and the U. S. Rules of Land Warfare until late in the war, it constituted a valid and complete defense. The Tribunal in the Southeast Case dismissed this contention on the basis of the aforesaid prohibition in Control Council Law No. 10 and further held that Army Regulations, which are neither legislative nor judicial pronouncements, are not a competent source of international law for the determination of whether a fundamental principle of justice has been accepted by civilized nations generally. In rejecting Field Marshal Keitel's defense of "superior orders," the IMT stated that such orders cannot even be considered in mitigation of punishment "where crimes as shocking and extensive have been committed consciously, ruthlessly and without military excuse or justification."⁴

The killing of partisans, hostages and reprisal prisoners occurred in the occupied territories; and it, thus, de-

volved upon the tribunals to define the responsibilities and duties under international law of the commanding generals, several of whom were defendants, of these areas. It was held that they are charged with the responsibility of preserving order, punishing crime and protecting lives and property within their commands. These duties could not be set aside or ignored by reason of the criminal and murderous activities of agencies of their own country, like the SS, operating within their areas. A commanding general of occupied territory is also accountable for failure to take effective measures to prevent the execution or recurrence of criminal acts, for "by doing nothing, he cannot wash his hands of international responsibility."⁵

In the High Command Case, the Tribunal declared that to hold a field commander responsible for the transmittal of a criminal order from higher authority, it must be proven that he passed the order on in the chain of command and, further, this order must be criminal on its face, or one which he knew was criminal. The Tribunal also emphatically stated that international law imposes upon high commanding officers the obligation that when they are directed to violate international law by committing murder or other heinous crimes, they must have the courage to act in definite and unmistakable terms, so as to indicate to all their repudiation of the order.⁶

Partisan Warfare

In almost all the occupied territories, resistance against the Nazi overlords flared up. In Yugoslavia, Greece and Russia, large-scale guerrilla operations took place. In the

⁴Trials of the Major War Criminals, Vol. I, p. 291.

⁵U. S. v. Leeb et al, Transcript, p. 10065.

⁶Ibid, p. 10180.

ensuing, ruthless reign of terror imposed by the German occupation authorities, thousands of innocent civilians were arbitrarily classified as partisans or guerillas and summarily executed. The "Fuehrer" frequently seized the opportunity to use partisan warfare as a pretext for the mass extermination of "inferior peoples" in accordance with his calculated plans of genocide.

Therefore, the Tribunals in the Southeast and High Command Cases were required to make an evidentiary finding as to whether the persons slain were "lawful belligerents" or "franc-tireurs." The legal yardstick prescribed in the Hague Regulations of 1907 was applied. Article I, Chapter I of said Regulations provides that members of militia or a volunteer corps, even though they are not part of the regular army, are lawful combatants, if (a) they are commanded by a responsible person, (b) if they possess some distinctive insignia which can be observed at a distance, (c) if they carry arms openly, and (d) if they observe the laws and customs of war.

The Tribunal in the Southeast Case held that if partisan troops do not fully comply with the aforesaid requirements, they cannot be technically categorized as lawful belligerents and upon capture, are not entitled to the protection accorded prisoners of war. Upon careful evaluation of the evidence, the Tribunal found that neither the Greek nor Yugoslav partisans could be classified as lawful belliger-

ents and when captured, could with impunity be executed as franc-tireurs.⁷ Parenthetically, it may be noted that this decision was vigorously criticized in many European countries, particularly among former Resistance circles. It is safe to predict that strenuous efforts will be made to revise the international conventions on this controversial issue in order to afford protection to those heroes of the Underground who take up arms against the aggressor.

Upon the surrender of Italy to the Allies in 1943, the Italian Commanding General on the Yugoslav front was induced to surrender his forces to the Germans. However, the Bergamo Division refused to capitulate and only after severe fighting was their resistance broken. The German authorities, under the command of the defendant General Rendulic, then speedily executed the high-ranking officers of this division as "partisans." The Southeast Judgment held that these resisting Italian troops met all the requirements of the Hague Regulations and that the execution of their officers was unlawful.⁸

In the occupied territories of the U.S.S.R., the wholesale liquidation of alleged partisans was tantamount to slaughter and in flagrant contravention of international law. Shortly after the aggression was launched, Field Marshal Keitel on 23 July 1941 announced the purpose of military occupation. He ordered all resistance crushed by use of the iron fist and further directed the military commanders to apply "suitable Draconian measures."⁹

The High Command Judgment condemned as criminal the Wehrmacht order which branded as guerillas all

⁷Transcript, p. 10439.

⁸Transcript, pp. 10508-509.

⁹Trial of the Major War Criminals, Vol. I, p. 236.

Russian soldiers who did not turn themselves over to the Nazis and also found that the executions carried out thereunder were unlawful.¹⁰ This Judgment referred to the infamous Barbarossa Jurisdiction Order which was issued by Keitel on 13 May 1941, over a month prior to the aggression. This order suspended court martial jurisdiction over the Russian population, directed the ruthless liquidation of franc-tireurs by combat troops, and further directed that "partisan suspects" be brought before an officer who will determine whether they would be shot. The Tribunal found that this order was patently criminal, in that it permitted the immediate killing of alleged partisans and "partisan suspects" without investigation and at the discretion of a junior officer.¹¹

The evidence in the High Command Case was replete with instances where civilians in the Russian occupied territories were classified as partisans, subjected during interrogation to third-degree tortures of unbelievable brutality and then executed. Countless numbers were murdered by units of the Wehrmacht, and police agencies operating within their area of command, on mere suspicion of partisan activity. For example, the Partisan Hunting Group of the defendant Hoth's 17th Army shot civilians for improper identification, for anti-German sentiments, for communist membership, and for being Jews.¹²

Hostages and Reprisals

The Southeast Judgment dealt so extensively with the question of hostages and reprisals that it is frequently referred to as the "Hostage Case." This Judgment was drawn with painstaking deliberation, and despite its exhaustive survey of the legal precedents, the Tribunal was compelled to reach certain conclusions with which it did not personally sympathize. The Tribunal expressed its reluctance by declaring that "the failure of the nations of the world to deal specifically with the problem of hostages and reprisals by convention, treaty or otherwise, after the close of World War I, creates a situation that mitigates to some extent the seriousness of the offense. These facts may not be employed, however, to free the defendants from responsibility for crimes committed."¹³

The Tribunal emphasized the grave need for international agreement on this subject and held that until then, it was compelled to apply the customary law as it now exists. It did recommend strongly that international law on this point be revised, by stating that "no conventional prohibitions have been invoked to outlaw this barbarous practice."¹⁴

The Southeast Judgment defined the term "hostages" as those civilians who were taken into custody to guarantee with their lives the future good conduct of the population of the community from which they were taken. The term "reprisal prisoners" was defined as those persons taken from the civilian population to be killed in retaliation for offenses committed by unknown persons within the occupied areas.

¹⁰Transcript, pp. 10106-107.

¹¹Ibid, pp. 10078-83.

¹²Ibid, p. 10172.

¹³Transcript, p. 10481.

¹⁴Ibid, p. 10449.

This Judgment held that under certain very restrictive conditions and subject to extensive safeguards, hostages may be taken, and after a judicial inquiry of strict compliance with all pre-conditions and as a last desperate resort, hostages may even be sentenced to death.¹⁵

The taking of hostages is predicated on the theory of collective responsibility. The inhabitants of occupied territories are under a duty to carry on their peaceful pursuits and to refrain from acts injurious to the military. However, every available method, including the following, of securing order and tranquility must be adopted by the occupant before hostages may be lawfully taken: the adoption of curfew regulations, registration of inhabitants, requirement of passes, limitation of populace's movements, detention of suspects, prohibition of assembly, restriction of food supplies, evacuation, fines, destruction of property in proximity to the place of crime, and all other regulations that would contribute to restoration of peace and not be contrary to international law. Only after such precautionary measures have been employed and attacks on the military continue to occur, can hostages be taken from the population to deter similar acts in the future, "provided that it can be shown that the population generally is a party to the offense, actively or passively."¹⁶

If hostages are lawfully taken, proclamations must be immediately

issued warning the population that the hostages named therein will be executed if similar attacks occur in the future. Should the attacks still continue, the military commander can only order the execution of the hostages after a finding by a competent court martial that the necessary conditions exist and that all preliminary steps have been taken. Lastly, the number of hostages killed must not exceed, in severity, the offense which the execution is designed to deter.¹⁷

The Southeast Tribunal also held that similar drastic safeguards, restrictions and judicial pre-conditions apply before reprisal prisoners can be lawfully executed. Only one exception is permitted, where it appears that immediate reprisal action is required to accomplish the desired deterrent which would otherwise be defeated by the delay of judicial inquiry. However, unless this military necessity is affirmatively and clearly shown by the defense, the execution of hostages or reprisal prisoners without a judicial hearing is unlawful.¹⁸

In discussing the personal responsibility of the defendant Lieutenant General Lanz, the Southeast Judgment reviewed the brutal record of the German military forces in Yugoslavia and Greece. Reprisals were taken in the first instance, rather than as a last resort. Court martial proceedings were never held, and frequently neither the reprisal prisoner nor the community had any connection with the crimes committed. Villages and towns were wantonly destroyed by units of the Army, the SS and native auxiliaries. The Tribunal held that reprisals were taken more to wreak vengeance upon the population generally than to deter

¹⁵Ibid, p. 10446.

¹⁶Ibid, p. 10447.

¹⁷Ibid, p. 10448.

¹⁸Ibid, p. 10451.

future attacks.¹⁹

In its discussion of the law relating to hostage and reprisal questions, the High Command Judgment referred to the holding in the Southeast Judgment and expressed grave doubt as to its wisdom. The Tribunal declined to state whether "so inhumane a measure as the killing of innocent hostages for offenses of others," even when subject to extensive safeguards, is ever permissible under any theory of international law.²⁰

The High Command Judgment declared "it unnecessary to approve or disapprove the conclusions of law announced in said (Southeast) Judgment as to the permissibility of such killings." Their decision was based on the fact that the defendants in the High Command Case made no attempt to comply with the pre-conditions and safeguards required by the Southeast Judgment; their hostage and reprisal killings were "merely terror murder."²¹

All three military cases mentioned the Keitel order of September 16, 1941 which directed the German military commanders in occupied areas to execute 100 hostages or reprisal prisoners for each German soldier killed and 50 for each wounded. The Southeast Judgment held that this military order to take reprisals at an arbitrarily-fixed ratio was under all circumstances criminal. Such excessive reprisals appear to have been for the purpose of revenge rather than to serve as a deterrent. Moreover, this

order provided neither for judicial proceedings nor for the selection of victims from the community where the attack occurred.²²

Conclusion

The countless documents, orders, directives and witnesses introduced at the Nuremberg trials disclosed for all time the shameful and criminal role that the German military caste played under the Third Reich. The International Military Tribunal in recapitulating the sordid activities of the General Staff and High Command found, "The truth is they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know."²³ This is a black page for the military leaders of all nations to read and ponder over.

The aforementioned three trials of Germany's top militarists also made a singular contribution to the advancement of international law and the promotion of more humane conduct toward enemy troops and the civilian populations of occupied areas in the eventuality of future conflicts. It is true that the Southeast Judgment evoked storms of criticism by holding that under the present state of international law, hostages and reprisal prisoners may be executed under certain circumstances, and partisans not complying with the rigid requirements of the Hague Regulations may be lawfully killed as franc-tireurs. However, this able Tribunal did point out that it was only empowered to apply the law as it then existed, not to create new law.

It may be noted that, based upon disclosures and findings made at the

¹⁹Ibid, p. 10447.

²⁰Transcript, p. 10087.

²¹Ibid.

²²Transcript, pp. 10474-76.

²³Trials of the Major War Criminals, Vol. I, p. 279.

Nuremberg trials, the United Nations recently adopted a convention outlawing genocide, i. e., the mass extermination of races or peoples, as an instrument of national policy. Similar action should now be taken to revise the antiquated international con-

ventions pertaining to the rights of partisans, hostages and reprisal prisoners. The Southeast Judgment so recommended. Only in this way can the barbarities of the recent past be said to be of some small value to future generations.



H. R. 4080 Passed By Senate

On February 3, 1950, the United States Senate passed H. R. 4080, The Uniform Code of Military Justice. This legislation will be referred to a Conference Committee to compromise slight differences between the House version of the law and the bill as passed by the Senate. The bill should in normal course be presented to the President for signature in the very near future.

This statute will make uniform the code of laws and procedure relating to Military and Naval justice in each of the Armed Services. Most of the essential differences between The Elston Act, now applicable to the Army and Air Force, and the prior Articles of War familiar to all of us, have been preserved. Among the innovations of the new law are provisions that:

The law member shall not sit as a member of the court in closed session to determine guilt or sentence.

There are strict requirements that trial counsel on both sides of each case be graduates of accredited law schools or members of the bar of some state and that they be certified by The Judge Advocate General of their respective Service as competent to act as trial counsel. This provision will doubtless require great expansion of the legal Corps and Departments of the Services.

A Court of Military Appeals composed of three civilian judges to be appointed by the President subject to Senatorial confirmation, is provided for in lieu of the Judicial Council created by The Elston Act. Under certain circumstances Reservists are made subject to the Articles of War.

The law will become effective one year from the date of its enactment except that the Court of Military Appeals will be organized nine months from the date of enactment and the new trial provisions will become effective upon the signing of the bill by the President. The Court of Military Appeals will establish its own rules of procedure upon its organization. It will appear that new Manuals for Courts-Martial will have to be prepared for each of the Services.

The price of uniformity in Military Justice law and procedure must necessarily be some compromise and some divergence from individual feelings as to what the law and procedure should be in the individual Services; but, of course, it is within the power and prerogative of the Congress to enact the "rules for the government and regulation of the Land and Naval Forces" and the duty of citizens and officers to try to make them effective and efficient in application.

Book Review

TAX PLANNING FOR ESTATES, by PROFESSOR WILLIAM J. BOWE
(Vanderbilt University Press, Nashville, Tenn., 93 pp. Price \$2.10 postpaid)

Few of our number have the persistence to specialize in a field where the law so readily and unpredictably changes as it does in taxation—even though the rewards for proficiency are correspondingly enhanced. In the more highly specialized branch of the general subject devoted to gift, death, inheritance and estate taxes, there are, of course, still fewer experts. But it is not to these specialists primarily that the compact little volume just published is addressed. Written in clear, simple, non-technical terms, with well selected illustrative examples, it is obviously presented to the wider audience of accountants, trust officers, investment specialists and other laymen, as well as the members of the legal profession. Each of these groups will profit greatly from the fresh, useful views so handily presented.

The author, our own Bill Bowe, widely known among the officers who served in the Office of The Judge Advocate General during the War, now on the staff of Vanderbilt University Law School, has had precisely the practical experience necessary properly to supplement his professional research. Before entering the service he had for several years acted as general counsel for one of the leading estate-planning organizations in the country. In that capacity he has formulated tax saving estate plans for some of the most prominent and wealthiest American families. His own ideas were further developed by

conference and discussion with the tax experts and attorneys of the men and women whose affairs he had under consideration. From this active professional experience he turned, after the War, to legal research and teaching, first at the Harvard Law School and now at Vanderbilt. Both aspects of Professor Bowe's background are revealed and unified in the effective consideration of highly practical problems from the standpoint of solid learning.

While there is a modest disclaimer that no effort has been made to cover the whole field of death taxes, the subjects covered are those the active practitioner or accountant will find most valuable—the Federal estate tax and the gift tax, as they interact upon a proposed plan, *inter vivos* gifts, gifts in contemplation of death, the reasons for gifts and their limiting effects, the forms of gifts and the choice between trusts and outright gifts, and the characteristics of different forms of personalty affecting the choice of property to be given. In stressing the need for competent advice well selected and highly ingenious illustrations point out the disastrous effects of ill-considered transfers, recalling the facts in *Spiegel's Estate v. Commissioner*, 69 Sup. Ct. 301 (1949), where the failure to dispose of a contingent remainder worth some \$70 caused the imposition of additional taxes in the amount of \$450,000.

That the treatise is thoroughly

abreast of the newest devices proposed to reduce or avoid estate taxation, is shown by the sections devoted to charitable trusts and bequests of an interest to be determined by formula from tax calculations, estate liquidity from the standpoint of owners of small closely held corporations and the effect of the new marital deductions in income taxation, gifts and estate taxes. All of these are well integrated with the older concepts of insurance and *inter vivos* gifts. Estate planning has come a long way and developed its own jargon and technique, strange indeed to the uninitiated.

How thought provoking are the new ideas here introduced could perhaps be illustrated by the surprising thought that in certain circumstances a gift deliberately made in contemplation of death may nevertheless achieve a saving in taxes, or that a

charitable bequest may result in so reducing the estate tax that a forced sale of unmarketable securities could be avoided.

Consideration is also given to the trends of proposed legislation. The study jointly made by an advisory committee to the Treasury Department and by the office of the Tax Legislative Counsel for introduction at the present session of the Congress is analyzed and discussed, with recommendations based on probable new enactments.

We are fortunate that Professor Bowe has found time from his other professional activities and the heavy demands of teaching to prepare this closely knit presentation of his favorite specialty. The active practitioner and the estate planning expert alike will find it a most valuable adjunct to their working libraries.

—REGINALD FIELD.



IN MEMORIAM

Major Edgar K. Markley of Gettysburg, Pennsylvania, a charter member of the Association, died suddenly November 28, 1949, of a coronary thrombosis while on a hunting trip in Clinton County, Pennsylvania. Major Markley was a member of the law firm of Keith, Bigham, and Markley and President of the Adams County Bar Association. He was born July 12, 1906, at Gettysburg, a graduate of Gettysburg College and of Dickinson Law School. He received the degree of L.L.B. in 1932.

Major Markley was inducted into the Service April 15, 1941, and commissioned First Lieutenant CMP in January, 1943. He was later transferred to the Judge Advocate General's Department and promoted to the rank of Captain. He served on the Staff of the Under Secretary of War. Many of our members will recall that Major Markley attended the 12th Officer Class at Ann Arbor. He is survived by his widow and two children, Edgar and Susan.

It is with great sorrow that the Association announces the passing of Major Markley who was a fine Officer and lawyer and a close friend to many of us.

What The Members Are Doing . . .

ALABAMA

Lt. Col. Henry C. Urquhart recently returned from a three year tour of duty in Japan. He is now Assistant Judge Advocate, Third Army, Atlanta.

Robert K. (Buster) Bell, 14th Off., is a candidate for Governor of Alabama.

George S. Brown is a member of the firm of Gordon & Brown, Massey Building, Birmingham.

Leigh M. Clark, 11 Off., is Judge of the Circuit Court, 10th Circuit, 10th Division, at Birmingham.

CALIFORNIA

Everett E. Palmer of Williston, North Dakota reports that Charles S. Buck, 1st O. C., formerly of Jamestown, North Dakota is now engaged in private practice of law in California. The Association has lost contact with Maj. Buck and calls on the California members to send out a posse and advise the National Offices of his present whereabouts.

CONNECTICUT

Joseph P. McNamara, of Bridgeport, is Assistant General Counsel of the Bridgeport Brass Company and President of the Bridgeport Tax Forum.

Robert E. Trevethan, 4 O. C., has recently been appointed U. S. Referee in Bankruptcy at Bridgeport.

Aaron Levine of Bridgeport is Chief of the Judge Advocate Section of 1106th Logistical Division.

DISTRICT OF COLUMBIA

Upon the announced retirement of Maj. Gen. Thomas H. Green, the former Judge Advocate General of the Army, the members of the Asso-

ciation in the Washington area held a testimonial dinner in his honor at the Continental Hotel on November 28, 1949. The dinner was attended by more than 100 of our members and friends of Gen. Green. Col. Gasch, the local Chairman of our Association in the District, presided at the meeting and presented Gen. Green with a farewell gift in behalf of his friends. Gen. Green is presently enjoying a well earned vacation in Florida and expects to return to Washington to take up his residence and possibly engage in the private practice of law.

Lt. Col. Thomas H. King has been transferred to the Judge Advocate General's Department of the United States Air Force Reserve. He has recently served a two week tour of active duty for the purpose of making plans and training for the Air Force lawyers in the District of Columbia area.

The 2913th JAG Unit (Tng), commanded by Col. Frederick B. Wiener, will present a moot court drama to an audience composed of all the Army Reserve Officers in the Military District of Washington at the Departmental Auditorium March 20, 1950. The production is under the direction of Colonel Joseph A. Avery and is entitled "The Trial and Tribulations of Major Philander I. Lovelott." The scenario was prepared by Majors Richard H. Love, Paul S. Davis and James A. Bistline. Maj. Lovelott will be portrayed by Lt. Col. Reginald Field whose legal difficulties in the presentation result from an overactive libido and too many wives. The production dramatically demon-

strates General Court-Martial practice under The Manual for Courts-Martial, 1949, and while not neglecting the instructional purpose of its presentation, it is filled with great Thespian opportunity and considerable humor. The play is very well cast with Col. Paul H. McMurray as President, Lt. Col. Joseph J. Malloy as Law Member, Maj. Joseph W. Bishop as Trial Judge Advocate, Maj. John Wolff as Appointed Defense Counsel and Lt. Col. Oliver Gasch as Individual Defense Counsel. The 2913th's JAG Gp's last year's production of "Murder on the Yukon" was presented to an audience of over 1700.

FLORIDA

Capt. Louis A. Sabatino of Miami, Florida, advised that the Judge Advocates in the Greater Miami Area are contributing greatly to the need of having a well trained team of Judge Advocate Officers—this is being accomplished mainly by the efforts and ability of Col. R. E. Kunkel (formerly Chief of Military Justice) to overcome what is sometimes classified as "red tape." The Judge Advocate Officers in this area are coordinated, through their Reserve Unit, with the Third Army Judge Advocate Training Annex and, further, so as to insure more complete training on points and matters not usually found in books and pamphlets but learned by actual experience, supplemental training is offered by Col. Kunkel once a week, at regular scheduled meetings held in his home, which meetings are most enjoyable from the standpoint of actual learning and developing a stronger tie among these officers.

FRANCE

Harold W. Sullivan, 10th Off., is presently located for the practice of

law at 52, Avenue Des Champs-Elysees, Paris 8. When in Paris, look up Harold by calling Balzac 44-74.

INDIANA

Vern W. Ruble, 12 Off., reports from Bloomington that members of the Judge Advocates Association from Indiana met for a breakfast meeting during the Winter Session of the Indiana State Bar Association at Indianapolis, Indiana, on January 21, 1950. Maj. Philip T. Lyons of the Benjamin Harrison Air Force Base spoke to the fifteen members present at the meeting on changes in the administration of Military Justice. Col. Joseph H. Davis, Judge of the Circuit Court of Delaware County at Muncie, Indiana, was unanimously elected by the group as State Chairman for the Association for the current year. Col. Hafer, President of the Association, has confirmed Col. Davis' appointment with great pleasure and congratulations to the Indiana JAGs on their successful reunion at Indianapolis.

IDAHO

Col. Abe McGregor Goff has returned to active practice of the law at Moscow, Idaho. Col. Goff served with the Army Forces from June, 1941 and was recently on a six months tour in the OJAG as Chairman of a Board of Review. Col. Goff was a member of the 80th Congress and an active supporter of legislation of interest and concern to our members.

ILLINOIS

William J. Colohan, 1st O. C., recently resigned as Assistant Attorney General of the State of Illinois and has resumed private practice of the law at 134 North LaSalle Street, Chicago.

Col. Howard A. Brundage, 4th Off., of Chicago, was recently designated by the President of the Association as Chairman for the arrangements for the Annual Meeting of the Association, to be held in Washington during September, 1950.

MINNESOTA

Col. Thomas E. Sands is the Commanding Officer of the Judge Advocate General Training Unit at Minneapolis.

NEW JERSEY

Col. Frank A. Verga of Jersey City reports the organization of the 1388th JAG Training Group, commanded by Col. Edward A. Levy of Passaic. The Unit meets at Kearny, New Jersey once a week. Some of the members of the Association assigned to the Unit are Sol J. Chasnoff, John M. Fasoli, Isidore Hornstein, Joseph B. McFeely, Julius R. Pollatschek, Baruch S. Seidman and Frank A. Verga.

NEW YORK

Knowlton Durham has acted as Chairman of the Special Committee on Military Justice of the New York State Bar Association for the past year. This Committee made its annual report during December, and it is interesting to note that the recommendations of the Committee are in large measure found in the recent legislative enactment of the Uniform Code.

Sylvan D. Freeman has recently resigned from his office of Chief of Litigation with the Office of the Housing Expediter for the State of New York to resume private practice of law in association with the firm of Dreyer and Traub.

Bertram Schwartz, formerly of the Office of the Judge Advocate for the

First Army, announces the formation of a partnership for the general practice of law under the firm name of Katz, Block, Schwartz and Pack with offices in Jamaica, New York.

Col. Arthur Levitt is the Commanding Officer of the 1568th JAG Training Group in New York City. Col. Levitt has been recently appointed State Chairman of the Association for New York.

NEW MEXICO

Col. David Chavez, Jr., 8th Off., formerly of Santa Fe, is the United States District Judge for Puerto Rico at San Juan.

R. F. Deacon Arledge, 1st O.C., is the United States District Judge at Albuquerque. Judge Arledge has recently been promoted to the rank of Colonel in the New Mexico National Guard of which he is the Judge Advocate.

PENNSYLVANIA

Clarence M. Lawyer, Jr., of York, Pennsylvania, was recently promoted to First Lieutenant, JAG-Res. Lt. Lawyer was elected on the Democratic ticket as District Attorney of York County at the election on November 8, 1949 for a four year term.

OREGON

Lt. Col. Benjamin G. Fleischman, 3rd Off., of Portland, organized a course of instruction for JA Officers in the Portland area last May. This first course of three months duration was so successful that it has had to be repeated for those Officers who were unable to attend the first series. A new course is now set up based on the Court Martial Seminars held in Washington December 7 to 10, 1948, which will be given over a six month period. Reserve Officers in the Portland area are invited to the weekly

luncheons of the Chamber of Commerce.

SOUTH CAROLINA

James B. Murphy, Chairman for South Carolina reports that:

Maj. James F. Dreher, long associated with one of the leading firms and attorneys, Robinson & Robinson, has now been made an active member of the firm which is now known as Robinson, Robinson & Dreher. The Senior Mr. Robinson was formerly General Counsel for the Federal Power Commission in Washington.

Lt. Col. Norbert A. Theodore has been very active in the Legal Aid Clinic which the Bar of Richland County, S. C., furnishes to the personnel at Ft. Jackson. This service is a once a week visit to the Fort at which time any of the personnel having legal problems, which the JAGD cannot handle, is given services and advice by this committee. As many as twelve different legal matters have been handled on one afternoon by a member of the committee. Maj. Gen. George H. Decker has publicized this service and the Judge Advocate's Department at the Fort refers all matters which they cannot handle to this Legal Clinic. The Clinic has letters from the Fort Officials stating the value of this service and the appre-

ciation of such. Members of this committee also hold themselves ready at any time for any emergency and frequently render legal aid in their offices in Columbia. Col. Theodore is most active in this work.

VIRGINIA

Lt. Col. Franklin W. Clarke, former Chairman of the Association for Alaska where he was stationed at Ft. Richardson for two years, is presently assigned as Staff Judge Advocate at Ft. Belvoir. The Clarkes are indeed glad to be back in the States, and Col. Clarke extremely pleased and busy with his assignment. The Command at Ft. Belvoir does not exercise General Court-Martial jurisdiction but all of the deserters and other casual offenders picked up in the Military District of Washington are confined in the stockade there and many of them are tried at that post so that there is a higher court-martial rate there than might be expected for a station of its size. Lt. Frank C. Stetson is the Legal Assistance Officer at Ft. Belvoir under Col Clarke's supervision.

WASHINGTON

Dale W. Read, Vancouver, announces his resignation as Deputy Prosecuting Attorney for Clark County, Washington, and the resumption of general practice of law.



The Third Army plans another Judge Advocate's School at Ft. Benning, Georgia, to be conducted from June 4 to 18, 1950. Reserve Officers will probably participate as instructors for the School as well as students.



Remember the deadline for the "Directory of Members" is March 15, 1950. Be in good standing by that time, and make certain that the Association has your correct address.



The Annual Meeting of the Association will be held in Washington, D. C., at a date to be designated, in the latter part of September.

State Chairmen

The President, upon the advice and consent of the Board of Directors has appointed the following to serve as State Chairmen for the Association in their respective states for the current year.

Alabama

Hon. Leigh M. Clark, Birmingham

Arizona

Abbie Y. Holesapple, Tucson

Arkansas

Edwin L. McHaney, Jr., Little Rock

California

John P. Oliver, Los Angeles

Henry C. Clausen, San Francisco

Colorado

Charles H. Woodard, Colorado Springs

Connecticut

Max R. Traurig, Waterbury

Delaware

David Anderson, Wilmington

District of Columbia

Oliver Gasch, Washington, D. C.

Florida

Rudolph Kunkel, Miami

Georgia

J. Alton Hosch, Athens

Idaho

Abe McGregor Goff, Moscow

Illinois

Howard A. Brundage, Chicago

Indiana

Hon. Joseph H. Davis, Muncie

Iowa

John N. Hughes, Des Moines

Kansas

Hon. Delmas C. Hill, Wichita

Kentucky

Steuart E. Lampe, Louisville

Louisiana

Hermann Moyse, Baton Rouge

Maine

James Desmond, Portland

Maryland

Clarence W. Miles, Baltimore

Minnesota

Richard E. Kyle, St. Paul

Massachusetts

Patrick Loomis, Boston

Michigan

Charles Warren, Jr., Detroit

Mississippi

Fred J. Lotterhos, Jackson

Missouri

John H. Hendren, Jr., Jefferson City

Montana

Raymond Hildebrand, Glendive

Nebraska

Bernard E. Vinardi, Omaha

Nevada

Clel Georgetta, Reno

New Hampshire

Ralph E. Langdell, Manchester

New Jersey

Frank A. Verga, Jersey City

New Mexico

Hon. R. F. Deacon Arledge, Albuquerque

New York

Arthur Levitt, New York City

North Carolina

R. F. Hoke Pollock, Southern Pines

North Dakota

Everett E. Palmer, Williston

Ohio

George P. Bickford, Cleveland

Oklahoma

Albert G. Kulp, Tulsa

Oregon

Benjamin G. Fleischman, Portland

Pennsylvania

Sherwin T. McDowell, Philadelphia

Rhode Island

David G. Geffner, Providence

South Carolina

James B. Murphy, Columbia

South Dakota

Leo A. Temmey, Huron

Tennessee

James O. Bass, Nashville

Texas

Leon Jaworski, Houston

Utah

Franklin Riter, Salt Lake City

Vermont

Osmer C. Fitts, Brattleboro

Virginia

Douglas A. Robertson, Lynchburg

Washington

Hon. Ward W. Roney, Seattle

West Virginia

Walton Shepherd, Jr., Charleston

Wisconsin

Richard Hunter, Waukesha

Wyoming

Vincent Mulvaney, Cheyenne

Alaska

Charles T. Smith, Juneau



**GENERAL HARMON INSPECTS FAR EAST
AIR FORCE LEGAL OFFICES**

Between October 28 and November 24, 1949, Maj. Gen. Reginald C. Harmon, The Judge Advocate General of the Air Force, and his Executive Officer, Lt. Col. Arthur F. Hurley, made a 26,000 mile air inspection tour of the twenty-one branch legal offices of the Air Force in the Far East. Ports of call on the inspection tour included Hickam Air Force Base, Hawaii; Johnston Island; Kwajalein; Guam; Clark Air Force Base, Philippines; Nichols Field, Manila; Naha, Okinawa; Hong Kong; Haneda Air Force Base and other Air Force bases around Tokyo; Nagoya; Itazuke and Ashiya. The General spent approximately two weeks in Japan and had a private conference with Gen. Douglas MacArthur. Gen. Harmon, who has had recent meetings with President Truman, Chief Justice Vinson and Pope Pius XII, left his meeting with Gen. MacArthur with a firm impression that he had just left one of the world's greatest men.

Gen. Harmon's official report was made to Lt. Gen. George Stratemeyer, Commanding General of the Far East Air Forces.



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



Thomas H. King of Washington, D. C., was promoted to the rank of Colonel in The United States Air Force Reserve on February 10, 1950.

