



THE ARMY LAWYER

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1973 JAG Conference

The annual world-wide Judge Advocate General's Conference gathered at Charlottesville, Virginia on 16 September 1973. Following registration and the traditional icebreaker on the 16th, the conference began its business meetings the next morning with The Judge Advocate General's address and report to the Corps. General Prugh's remarks are reproduced in this issue of *The Army Lawyer*. General Hodson lead a committee report on the Legal Services Agency. Mr. George Van Hoomissen, Director, Department of Justice Services, Multnomah County, Oregon, addressed the conferees on the ABA Standards on Criminal Justice: The Prosecution and Defense Functions. Finally, the highlight of the morning was an address by Dean Erwin N. Griswold former Solicitor General of the United States, on Appellate Advocacy. Dean Griswold's remarks are reproduced herein.

In the afternoon, the conferees attended one of five available workshops: Professional Responsibility, chaired by Mr. Van Hoomissen; Installation Legal Problems, chaired by Major Paul J. Rice; Selected Recommendations of the Government Commission on Procurement, chaired by Major Terrence E. Devlin; Pretrial Advice and Post-Trial Review, chaired by Captain Jan Horbaly; and the Military Judges Meeting, chaired by General Hodson. That evening the conference banquet was held, with the Honorable Howard H. Callaway, Secretary of the Army, as the keynote speaker. Secretary Callaway's remarks are reproduced herein.

On Tuesday, 18 September 1973, Brigadier General Lawrence H. Williams opened the morning seminar, followed by the report of Personnel, Plans and Training from Colonel

Richard Bednar and Lieutenant Colonel Hugh Overholt. Their report on the current manpower status of the Corps will be included in the next *Army Lawyer*. The conference was then addressed by Mr. H. Lynn Edwards, Staff Director, Section of Criminal Justice, ABA, on "The Greening of Criminal Justice." The morning was closed with an address on the new club management agency by Brigadier General J. T. Peterson, Commanding General, U.S. Army Club Management Agency. General Peterson's remarks are reproduced in this issue of *The Army Lawyer*.

Workshops on Tuesday were: Pretrial Agreements, *Argersinger*, and *Morrissey*, chaired by Major Nancy Hunter and Major Francis Gilligan; Overseas Staff Judge Advocate Problems, chaired by Major Charles A. White; Claims: Changes in Procedure, chaired by Colonel Germain P. Boyle; Use of UCMJ in Hostilities, chaired by Major James McGowan, Major Hays Parks, Colonel John R. De Barr and Colonel Hugh J. Clausen; and the Legal Clerks Meeting, chaired by Lieutenant Colonel Robert Smith.

Brigadier General Wilton Persons opened the Wednesday meeting, followed by Colonel William Carne's report on current cases in litigation. Lieutenant Colonel David Fontanella reported on civilian personnel litigation. Environmental litigation was addressed by Mr. James Kramon, Assistant United States Attorney, Baltimore, Maryland. The Judge Advocate General's Conference was privileged to close the morning with an address by General Creighton W. Abrams, Chief of Staff.

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In the afternoon, the consumer credit program was covered by Captain Mark E. Sullivan and a panel made up of Brigadier General Robert D. Upp, Brigadier General Edmund W. Montgomery, II, and Lieutenant Colonel Keith Wagner reported on the Utilization of the JAG Reserves. Workshops were: Article 133 and 134, chaired by Captains Edward Imwinkelried and Fredric Lederer; Minority Problems, chaired by Captains Ronald Griffin and David Graham; Environmental Problems, chaired by Captain Bernard Adams and Lieutenant Commander Bartlett; and a Critique of Draft SJA Handbook, chaired by Lieutenant Colonel John Costello.

The conference closed on Thursday morning. Brigadier General Bruce T. Coggins opened the last seminar, followed by a report by Lieutenant Colonel Conboy on Trial in the Magistrates Court. Major Charles White reported on the Military Lawyer and his Participation in Professional Organizations, and Captain Kenneth Gray reported on the Expanded Legal Assistance Program. Closing remarks were made by Major General Harold E. Parker.

JAG Conference Tapes

The following video tapes of the 1973 JAG Conference are available from the School. Approximate playing times in minutes are indicated.

1. Keynote Address and Report to the Corps/MG George S. Prugh (45:00).
2. The United States Army Judiciary in Action/MG Kenneth J. Hodson, LTC Ronald Holdaway. COL Arnold Melnick (50:00).
3. Appellate Advocacy/Dean Erwin N. Griswold (50:00).
4. Trial and Defense Functions/Mr. George Van Hoomissen (40:00).
5. Personnel, Plans, and Training Report/COL Bednar, LTC Hugh R. Overholt (50:00).
6. A New Concept in Nonappropriated Funds Management and Procurement/BG J. T. Peterson (50:00).

7. Current Cases in Litigation/COL William B. Carne (30:00).
8. Civilian Personnel Litigation/LTC David A. Fontanella (30:00).
9. Environmental Litigation/Mr. James Kramon (50:00).
10. Trial in the Magistrate's Court/LTC Joseph R. Conboy (45:00).
11. The Military Lawyer and His Participation in Professional Organizations/MAJ Charles A. White (30:00).
12. The Expanded Legal Assistance Program/CPT Kenneth Gray (55:00).
13. Address by the U.S. Army Chief of Staff/GEN Creighton Abrams (60:00).
14. Closing Remarks/MG Harold E. Parker (35:00).

Type of Player Required. The material is recorded on three-quarter (3/4) inch video cassettes. The equipment used to produce the

tapes was manufactured by Sony, Inc. Playback can be accomplished using a Sony VP 1000 Video Cassette Player or any other equipment utilizing 3/4 inch video cassettes.

Address for Requesting:

Educational Television

Academic Department

The Judge Advocate General's School, U. S. Army

Charlottesville, Virginia 22901

Loan Period. These tapes, when available, may be borrowed by a maximum period of 22 days. However, if blank video cassette stock is forwarded to this office with a request for material, dubs will be provided. In this manner, the requesting office will have the tape on hand for future use. Please keep in mind that these tapes can be reused, and are relatively inexpensive.

Secretary of the Army Address

These remarks were made by The Honorable Howard H. Callaway, Secretary of the Army, to the 1973 World-Wide Judge Advocate General's Conference.

It is indeed a pleasure for me to be with you tonight, and to share in this highlight of your Conference. I think it is very healthy for officers in your specialized profession to have an opportunity to come together from time to time to consider the direction of your effort, to seek ways to make the Army's legal system a more responsive and valuable one, and to share professional experience and judgment in a wide variety of areas.

I am also pleased to be able to address you ladies tonight, for you are truly an important part of the Army. Your sacrifices and efforts are often more onerous, often more trying than those of your spouses. I know that, and I appreciate it. For your strength and your support are reflected in the tremendous tasks which the Army is called upon

to undertake, and certainly in all the Army's accomplishments. I'll bet you don't get nearly the thanks you deserve, and I guess I am as guilty of that as the rest of the men in the room. But, gentlemen, I think we should all resolve to do a little better, to recognize the great contribution our ladies make to the country in putting up with the likes of you and me, and with the many sacrifices that our country's needs command.

As you know, I am not a lawyer, but let me assure you that no man in the position of Secretary of the Army can afford to keep legal concerns very far in the background, or his legal advisors very distant, lest he find himself in very hot water. Fortunately, I enjoy the happy circumstance of having fine legal support, and I know that most senior

commanders feel that way about you, their legal advisors, and practitioners of the law.

I am very much impressed with this group, having had an opportunity to talk individually with some of you. Your forthrightness, your obvious integrity and your clear sense of mission are certain measures of your dedication and your great worth to the Army and to its people.

I am also impressed by your Conference program. The range of your concerns, from appellate procedures to consumer credit, gives lie to the old canard that the Army's lawyers are retained to keep the soldier down, or that military justice is drumhead justice. I am also pleased to note the attention you have given to the professional aspects of your dual status as lawyers and as Army officers. The ethical and practical difficulties imposed by this dual status are well-known, and the determination of what comprises appropriate professional behavior for an Army officer who is also a lawyer or a lawyer who is also an Army Officer is not settled by application of some obvious and universal principle. For that matter, the determination of appropriate behavior for even one of the two professional identities is not entirely undisputed.

But I am not here tonight to provide my layman's views on legal matters, or on the legal profession in general. Rather, I would like to give you some idea of how I see the Army's legal system and the Army's legal practitioners in today's Army. I think for you, the Army's lawyers, as well as for the rest of us, this is a time of excitement and of challenge.

Obviously, today's Army is not completely different from the Army at other times, but there are some things that do make it distinctive. Foremost, of course, it is a volunteer Army. This means that the motivation of today's young soldier—and his expectations—are rather different from those of new soldiers of just a year ago. For one thing, he expects to be treated as an individual; he knows that he has an individual identity in the Army, and that he possesses individual

rights albeit they may not be identical with his civilian rights. In earlier years, a draftee could claim, perhaps justly, that as far as the country was concerned, and perhaps even as far as the Army was concerned, he represented a category, rather than an individual. He was selected by his friends and neighbors, he was told, because he met certain criteria—criteria over which he had little if any control. He was chosen because he fell into a category, not because he had the desire to serve, or even because he had special qualities or abilities. In short, his service was not associated with him personally. His expectations, then, his whole attitude and outlook on the Army, were often understandably negative, or at least passive, and his commitment to the Army, its missions and goals was usually not very high—at least at the outset of his service. Unless some excellent leadership and meaningful service turned his views around, he felt that he was just a victim of the system—or at least fuel for it—and that he had little to say about what befell him.

Fortunately, the leadership and treatment the draftee got often did turn these essentially negative views around. Our re-enlistment successes, even during the Vietnam War, testify to this. But we cannot overlook that when these draftees—or even those men who unwillingly volunteered just to avoid the draft—were pressed into service, their attitude was different from today's soldier.

Today's new soldier is a volunteer. He is not pressured into joining the Army—in fact, we are led to believe that most of the pressure, from his peers and even from respected others, operates to keep him away. So if he does join up, he feels that he has acted on his own, that he has made a contract, that he is a free agent, and that he is not just a victim of an impersonal machine. He is not likely to be a recalcitrant, and he is not likely to look for the same kinds of trouble as a reluctant draftee, who feels like a victim, powerless.

In addition, today's soldier feels that he has certain rights and privileges, and that he also has the general right to make the Army live

up to the bargain it struck when he enlisted. We certainly can't blame a man for asking us to keep our promises. So he does expect us to keep our word, and makes it quite clear that he is willing to go to bat to insure that these promises about rights and privileges are kept.

This difference in outlook and expectations means several things. First, it means that with the change in motivation, the disciplinary environment has changed. The nature of the man is different, the atmosphere of military discipline is different and the Army's leadership at all levels must be responsive to these new challenges.

We have tried to make the soldier's life more mission oriented. We have made great strides in reducing unnecessary irritation. We have cut out some of the harrassment that serves no useful purpose for the soldier, his unit, the Army as a whole or the mission. And we have taken a firm stand on improving the soldier's standard of living. This does not mean—it cannot mean—that we have allowed or will allow our high standards of performance, discipline and leadership to become lax. Our standards in these areas must always be high. Soldiers are still required to obey orders and to live within the military law. But there have been qualitative changes in the atmosphere, and we must recognize them. As our atmosphere of motivation and discipline changes, we can expect the nature of discipline to change accordingly, presenting new challenges to the Army's leaders at all levels and, to its legal system and legal practitioners as well. Thus, the volunteer Army presents special challenges to you.

There is a second factor which presents special challenges to you and me. That factor is public interest in the Army, which means public concern and public scrutiny. Today you will find more news and more opinions and more expressed concern for the Army than I can ever remember before. I'm not speaking here about war, but about the Army—and of course much of what I say is true as well of the other Services.

This increased attention comes from a variety of sources and causes. Of course, the volunteer Army is one important cause. Incidentally, I note that some people still speak and write about the volunteer Army as if it were an experiment, subject to cancellation if it doesn't work out. Well let me take just a moment to allay that impression. The volunteer Army is a mission, and it is a fact. In my judgment, we are not about to see a resumption of the draft anytime in the near future. If we fail to attract and retain enough men, we will simply be a smaller Army—or fail in our mission.

Anyway, the increased attention means that we are subject to considerable scrutiny, and rightly so. We have a relatively large number of this country's able-bodied men and women, though most of them are with us only temporarily. And we require a relatively large amount of money to operate and to provide security to the Nation. So people are concerned, and rightly so, that these resources—their people and their money—are employed properly, that they are used for the purposes for which they are provided, and that they are not wasted by carelessness or indifference. So we are under the gun to live up to the expectations of the people of this country.

At the same time, we are subject to the scrutiny and public exposure that come from irresponsible segments of our society. Let me emphasize that I am not lumping all the Army's critics into this "irresponsible" category. Many of our critics are a great help to us, reflecting justified public opinion and not infrequently helping us find ways to improve. I refer to those who equate any army with fascism, any form of service with bondage. These are people who oppose all forms of discipline, in all our great institutions, and who see the Army as a real threat to national security, ignoring the weight of our country's history and even of its recent experience. These critics, however irresponsible, seek any way possible to embarrass or discredit the Army, and to weaken the public's support for the Army.

The only way we can deal with this change in the environment—the increased public attention and concern—is to do our jobs prudently, to accomplish our mission professionally, efficiently, and honestly. We must be able to answer our friends and our critics with candor and openness. We must be able to demonstrate that we are about the Nation's business, that we are ready to defend the country and its interests, that we are concerned for the men and money with which we have been entrusted, and that we are worthy representatives of American society.

As I speak to groups around the country, especially civilian groups, I find that no matter what my speech is about, the basic message is: the Army needs your help and your support. That is also my message to you this evening: the Army especially needs the help and support of its legal community.

How can you help? Well, it seems to me that the Army's legal community can hardly be accused of inadequacy or failure, so I guess I can't ask you to help by being better lawyers. Nor can I find any reason to suggest that you should help by performing your duty as officers better, for your record and reputation in that regard are excellent. Rather, I call upon you to help provide a sense of balance to the Army that you are in a unique position to offer. That balance has to do with the perspective of the civilian community, the needs of the Army, and the rights of the individual.

As members of an established profession with counterparts in the civilian professional community, you are able to exchange viewpoints by means not accessible to most of the Army. In that regard, you are in a crucial position, for you can convey some of the sense of public opinion to the Army, especially its field commanders, that is not obtainable through other means. At the same time, this unique role enables you to provide your civilian counterparts with reasoned and forthright responses to their queries about the Army, and its role and needs. In so doing, you can perform a vital service in keeping a

healthy balance of information between the Army and its civilian neighbors.

As lawyers, you can also serve the commander by providing a balanced view of what is right—on what is legal, to be sure, but also on what is even more than merely legal. You can, by your specialized training and viewpoint, help sustain a high sense of propriety, ethics and honor by your counsel to commanders. Commanders are usually pressed to act and to act quickly, even on sensitive issues. Often the sensitivity of issues is not even apparent when the decision is made. In decisions like these, your insight is usually welcome. You can thereby assist the commander provide a human, ethical, and legal balance in matters which would be misdirected if they were decided on purely military grounds.

And finally, in your relationship as legal advisors to soldiers, you can provide a sense of balance in their perceptions of the rights of the individual and the rights of the group, and of the relationship between individual rights and individual responsibility. I am not for one moment suggesting any change in interpretation of established legal rights. This is not my intention at all. Rather, I am suggesting that for some of these young men, many of whom have heard only about rights, and nothing about responsibilities, before they came into the Service, the idea of balance is a worthwhile one: the balance between their rights and the rights of others, and between their rights and their responsibilities. This is a message that will help them understand that justice and discipline go hand in hand.

And that, I guess, is my concluding thought on your role in today's Army: that proper military discipline and proper military justice are not incompatible. They are mutually supporting; in fact, in my view they are inseparable.

If you can do these things for the Army, if you can help meet the Army's needs by balancing them with appropriate measures of human concern and with protection of the

individual's rights, you will be providing today's Army with the kind of legal substance of which we can be truly proud.

This is an exciting and challenging era for all of us. The Army is embarked on a new

course at a time when our whole society is rethinking its values and institutions. The challenge is a little like the ones faced by the pioneers of a century ago and of today's pioneers. I hope you will take up that challenge.

JAG Conference Keynote Address

Opening Remarks of Major General George S. Prugh The Judge Advocate General, United States Army

Good morning. Greetings as we head toward the 199th anniversary of the military lawyer's service to the United States Army. Do you get the same thrill I do in realizing I am a part in this long line of judge advocates, sharing experiences with so many men of scholarship, integrity, courage of their convictions, and devotion to their duty? I hope you do, and that you realize that possibly our greatest rewards come not from pay or promotions, but the comprehension that we've been doing something really worthwhile for our country, our Army, and our fellow man.

The theme of the conference this year is "The Trial of a Case: Military and Civilian." That's an artful disguise for what I believe is the real theme: *Preparation and Planning for the Lawyer*. Both are essential to the trial of any case, and to anything else we military lawyers do.

Much of what I intend to cover in these opening remarks is geared to planning; planning the projects, at least prompted, if not suggested, by you who so effectively operate the branch offices of the firm. While I'm on this point, let me pay you a most sincere compliment—the law business of the Army is primarily accomplished by our captains under the professional guidance of our staff judge advocates, and as I see it, the legal business of the Army at the troop and JAG captain level has never been better accomplished.

New Year's day is a major watershed of time. It's a time for stock-taking and review on an annual basis which is a characteristic of good management. Also, it's somehow good

for the American soul to turn a page and look forward to a fresh start, to strive to do better in the forthcoming year. For those whose principal day-to-day concern is the federal budget cycle the new year begins on 1 July. Again, however, it is launched with a sense of either gratification or disappointment at the past year's accomplishments or shortcomings and with an optimism that the new budget year is better planned and more solidly destined for success.

Our JAGC planning year, it seems to me, begins with this annual conference of senior members of the firm. It is our main occasion during each year to renew friendships, meet new colleagues, share problems and innovations, assess where we stand and gain a better fix on where we are headed. These are probably the greatest gains of our conference. So this year, and possibly from here on, we will be gearing our overall strategy for preparation and planning for the Army's law business on an annual cycle linked to our conference. It is then that we should come forward with our statement of plans, and we are doing that for you at this conference. I personally regard the handout on the JAGO goals (Appendix A) as a most significant planning product of the Corps. It gives us a tangible plan of action, an opportunity to coordinate our efforts, and to synchronize our priorities. We may disagree with some specifics. So much the better! We will have the issue out for intelligent debate *before* the emergencies of the day-to-day fire fighting preempt decision making from us.

In his classic work, *An Introduction to the Philosophy of Law*, Roscoe Pound on several occasions used the expression "social engineering." He spoke for example of the lawyer's prominent role for wise social engineering in an organized society. He meant of course the business of managing and guiding affairs to build and promote human welfare. We too—those of us who have dedicated our productive years to the profession of arms as well as to the profession of law, must by necessity by "legal" engineers. We help guide and manage the Army's business through law in a way which facilitates accomplishment of all aspects of its mission, to include training, defense, security, and combat roles. We do this in a fashion agreeable with the laws of our country and consonant with applicable international law.

This includes sharing the responsibility for molding a better disciplined armed force while at the same time remaining vigilantly alert to assure just treatment of the individuals who compose that force. These two are totally compatible pursuits. We can fall into difficulty if we allow our view to become so myopic that we only see one side of this equation and forget, or do not recognize that discipline and justice to the individual are truly interdependent. Thus, in doing our version of social engineering we take this interdependence into account. We furnish a legal guide to the soldier and also to the commander. We counsel the accused and we also operate military justice offices. Finally, we consider proposed changes to the UCMJ while at the same time we study its viability in time of war or other legal turbulence. Our legal engineering for the military is indeed highly intricate and delicate. It's a complex task—one only a Corps of truly dedicated, fully prepared, and properly planned soldier/lawyers can carry on with any hope of success. Fortunately, the Army does presently have this critical resource, and under current programs this resource will be retained at about its same authorization.

Of course, for any lawyer worth his salt the amount of work to be done will never di-

minish—there is just too much that will always need to be done. So we are all constantly on the lookout for better ways to do the job. That is one of the key goals to be pursued for this year and the future.

The commander has never needed your help more than in this litigious age. Another of our goals must be to strengthen the direct support we owe him. One possibility is to insure that the staff judge advocate is like the legal counsel in a successful business organization. Typically, the legal counsel is a high-ranking official in the corporate headquarters, trusted and counted on for positive direction and guidance in all important policy and program decisions. The legal counsel in a business organization doesn't merely react to legal questions put to him. He is involved in an affirmative way as counselor and advisor on all important matters—legal or otherwise. That's the caliber of officer the military commander needs in his staff judge advocate—not merely someone to handle the technical and administrative aspects of courts-martial or chapter tens. But this presupposes not only complete professionalism in the law, it also calls upon skillful leadership and management of legal resources; upon detailed knowledge of our clients' business, mission, and method of operation; upon wisdom and judgment; clarity of thought and expression, and integrity. We need a happy mix of all these attributes—and we must plan and put ourselves in possession of them.

Clearly another goal for us must be to improve and make more responsive and more effective our Army's discipline. The Army needs its manpower on the job—not in jail. A year ago it was not unusual for the Army on any given day to have over 4,000 men in some form of confinement. That's a good sized brigade being wasted. In a 13-division force that is a significant part of the Army's strength, and if we are ever to be able to do a sizeable preventive law program we have to reduce the heavy cycle that keeps our officers involved in so many courts-martial. This means we should make greater use of those administrative and nonpunitive measures

which channel youthful energies into useful work and away from courts.

We can do much more in the area of preventive law. We've paid a lot of lip service to this before. The Army of today is a volunteer Army, which means that at some point at least the young enlisted man or woman really *wanted* to soldier. Let's make available to the good soldier the legal facilities that will help steer him away from difficulties before he becomes a problem soldier.

I am learning something I should have known long ago—that we can place more and more responsibility on our young judge advocates and they will come through for us. We can delegate more of the supervisory functions of the office traditionally reserved for the SJA or his deputy. The opinions of the captains are useful to me, and should be to you. I seek them out and I give them serious consideration and implementation when feasible. Once these young officers demonstrate their dependability, I urge you to let them sign their work product in the scope of office work for which they are responsible. If they've done the work on a complex problem take them along to brief the commander or the chief of staff. Let them learn firsthand that their work is important and relied upon. After all, our Corps' survival and growth now rests more in their hands than in ours.

In today's climate of doubt and uncertainty in the integrity of a few prominent personalities in government, it is especially heartening to think of our Corps' record. No one speaks or writes newspaper articles about the long record of faithful service, but we can be very proud that our escutcheon is unblemished. We've handled thousands of trials, thousands of claims, thousands of law suits and contract disputes, all without any whiff of corruption, shady dealing, selfish aggrandizement, or personal gain. The Army and the legal profession can be proud of that record. But having said it, it is now all the more important that we insure that our future be exemplary in both official and personal affairs. The senior officers' example of straightforwardness will

be great for the rest of the Corps to emulate. Unimpeachable behavior, recognized and respected by the civilian and military communities in which we work and live, is the hallmark of our Corps. I don't really ever expect to see it otherwise, but sometimes legal issues have special ethical considerations and problems not quickly recognized. For this we need some special attention and self-instruction.

I know I'm not the only fellow who has given real thought to closer coordination between the judge advocate personnel and facilities of the different military services. Hube Miller wrote his thesis on this subject when he was a student at the War College in 1964. More recently, Hube reminded me that our new Secretary of Defense, at his swearing-in ceremony, made a special point of observing that the time has come to discard some aspects of service parochialism and move forward toward greater unification. Is unification of legal services a good place to start? There are obvious advantages and disadvantages to the notion. I'd appreciate your own ideas on this matter. But there are steps short of unification that are even more appealing, like a service legal planning group. We should start a coordinated training base for active and reserve forces, and consider synchronized texts, professional materials and publications.

We have much to do in the next few days. We should spend some time thinking about the eventual impact of *Avrech*, *Argersinger*, and *Levy*. We will want to learn more about steadfast and the resulting new commands of TRADOC and FORSCOM. We are interested in the military magistrates program and the legal center complex approach. Lots of new things are in the works, such as the Pilot Legal Adviser Program, ICRC activities, amendments to the Federal Criminal Code, DOPMS, Paralegals, and new guidance for nonappropriated fund contracts—the list is long and could be much longer.

As we move shortly now into the substantive agenda of the conference we will again be reminded of the general direction of

military law in our nation these past years. The trend has been for greater protection of individual civil rights of soldiers, for both substantive and procedural changes to conform our system more closely with the civilian system of law, and of special importance, a gradual yet certain limitation of the Government, the Executive and the Commander's authority to use the legal process in any way, especially maintaining military discipline.

As we weave our way through the exciting agenda Colonel Douglass has put together, let's have in the back of our minds the serious question whether these trends should continue—or whether the time has come for a new tack! There are no sacred cows for us in these deliberations.

I want to say now how proud I am to be serving with you in such worthwhile endeavors. I pledge my help to you in the coming months and I wish you the very best wishes my warm friendships can provide.

Appendix A

Goals for the Judge Advocate General's Corps

1. During the past 2 years the divisions and offices of OTJAG have been submitting and updating the goals for the Judge Advocate General's Corps in their respective areas. The purpose of these goals is to be the foundation of a viable JAG basic plan. This plan will be reviewed and updated every six months. The primary objective of the basic plan is to program and coordinate the future role and function of the Judge Advocate General's Corps. This should allow judge advocates to plan for the future rather than continually and solely reacting to a current crisis.

2. The assumptions used as a basis for these goals are as follows:

- a. The strength of the Army to be approximately 800,000 men.
- b. The Army budget to remain at approximately its present level.

c. Promotions to return to a 1962 pace, i.e., 5 years promotion to captain, 6 years promotion to major, lieutenant colonel and colonel.

d. Authorized strength of the JAGC to be about 1,500.

e. The actual strength of the JAGC approximately 1,400.

f. Recruiting for OBV officers will be competitive. There will be reasonably good recruiting in the excess leave program.

g. Overseas requirements will remain firm for approximately two years.

3. Set forth below are the directional guidelines that are to be used in the basic plan. While these guidelines are in general terms, they are applicable as far across the spectrum of Judge Advocate functions as possible.

a. Improved delivery of legal services to the Army:

(1) Get a better "fix" on what we are now doing so it can be meaningfully measured.

(2) Determine what our "clients" need most from us.

(3) Design & continually improve machinery for delivering our service.

(4) Determine what literature and training materials and aids are necessary for our "client." Develop these materials and aids, and update them.

(5) Review what we are doing on a periodic basis in order to discard what is no longer necessary and change where required.

(6) Upgrade the training and quality of our lawyers.

b. Improved career for the military and DA civilian lawyers:

c. Foster inter-service actions wherever practicable.

Move in the direction of coordinated legal service, single source of training, and literature.

- d. Foster change within the system rather than through legislation.
- e. Improve capability for emergency and war-time functioning of all aspects of the legal services.
- f. Make contributions to professional thought and progress of the law in the military.
- g. Insure professional independence of Judiciary and Defense counsel.
- h. Eliminate any actual or apparent improper command influence from the Military Justice System.
- i. Insure rapid response of military justice and administrative elimination proceedings consistent with standards of fairness and justice and the needs of the service.
- j. Provide maximum feasible degree of legal service to eligible servicemen and dependents, to include court appearances.
- k. Provide quick and complete research and law library materials throughout the Corps as needed.
- l. Provide for rapid dissemination of legal news to all DA civilian and military attorneys.
- m. Insure effective liaison with all necessary professional associations.
- n. Reduce claims losses, expedite settlement of meritorious claims and recovery due U.S.
- o. Insure timely and effective response by legal representative where the US Army is sued in the areas of litigation, contract disputes, or regulatory law.
- p. Provide Staff Judge Advocate type of advice to lowest practicable level in the service.
- q. Foster strengthening of Code and Manual Committee as vehicle for change and forum for consideration of proposals.
- r. Develop an improved sentencing and probation system.
- s. Take maximum advantage of electronic devices to provide fast, clear, and useful records of trial and other records of proceedings necessary to the service.
- t. Provide for ready access to a military judge empowered to act on search warrant requests, habeas corpus, Article 32's, and Summary Courts.

Appellate Advocacy

*Remarks of Erwin N. Griswold, former
Solicitor General of the United
States, at the 1973 Judge Ad-
vocate General's Conference*

Though I have long heard of the Judge Advocate General's School at Charlottesville, this is the first time that I have visited it. I have had close and good relations with various members of the Judge Advocate General's department, and when Colonel Douglass' invitation came, I was glad to accept. He has asked me to speak on Appellate Advocacy, and that is the subject of my remarks today.

Before I go further, perhaps I should say that my contacts with the Judge Advocates

General, in Washington, of all the services, and their staffs, have been an exceptionally satisfying part of my experience in government service. The Solicitor General deals with nearly all the various legal staffs in Washington, and he and his staff soon get a feel for the caliber of the various legal offices of the government. Most of our contacts were with the office of the Judge Advocate General of the Army, and we quickly came to have great respect for the two Judge Advocates

General with whom we worked, and the members of their staff.

I must confess that this took me somewhat by surprise. I am not a military man. Like all of us, I suppose, I would like to see a world in which there are no military men, though I recognize the need for them in the world we have. I had some contacts with the Judge Advocate General's Office some forty years ago, when I was a junior in the Solicitor General's office.

I watched military law and military justice through World War II, and after the war I was quite familiar with the work which Professor Edmund M. Morgan did on the Code of Military Justice, and I understood that that was a great improvement. However, I heard various things about command influence, and some suggestions that the personnel involved were not always all that they might be.

After returning to Washington, however, my eyes were opened to the fact that great changes had occurred. I well remember a call I once made on Justice Marshall of the Supreme Court. I referred to the fact that I had had great help from General Hodson and his staff. To which Justice Marshall said, "Why that man Hodson really believes in fair trial." I have no doubt that the same can be said of General Prugh and the other JAG officers here. But I have always regarded that remark of Justice Marshall's as significant. This was exemplified by the change in title a few years ago, from "law officer," to "Military Judge." Simple as it is, it may well be the most important development in military law since World War II. And it could not have been accomplished if members of the JAG Corps had not already set a very high standard.

In talking about Appellate Advocacy, I would like to emphasize today the importance, in many cases, of what not to advocate. Of course there are many situations where you have no choice. But often you do. In the Solicitor General's office it has long been recognized that it is unwise to risk an im-

portant legal issue on a case with poor facts, and that it is often wise to let a poor case go, and wait for a case to come along with better facts.

One of my first contacts with the JAG Corps in Washington was in connection with a "long hair" case. The Second Circuit had affirmed an order to a reservist to report for active duty because he had missed a certain number of drills, though he had actually been present at each occasion. He had been marked "not in uniform" on each occasion because his hair length did not meet regulations.

Several things were clear to me about this case:

1. The Supreme Court would grant certiorari, and reverse. We were just inviting disaster by fighting the case.
2. The resulting publicity would not do the army any good, at a time when the army needed public relations.

And finally, 3, this case had the worst possible facts. If it had been a man in the regular army, we would have had a chance. If he were full time a soldier, the army would surely have considerable authority about his appearance. If he were a draftee, not voluntarily there, it would be harder. But this man was a reservist, appearing with the army only occasionally, and making his living in civilian life. But worse than that, it appeared that his civilian job was selling appearances of rock bands. He was quite good at this, and his employer said that his long hair was essential in his work.

Rightly or wrongly, I felt that the case was hopeless, and that, if the army really wanted to hold the line on hair somewhere, this was not the case where the stand should be made. So I called General Hodson on the telephone, somewhat fearing that his response would be to the effect that I just did not understand the needs of the army for discipline, and that everything essential to the army would be destroyed if we did not fight this case. But that was not his response. What he said was: "Let me see what I can

do." I can still hear his voice as it came over the telephone. Some three weeks later I got the word that we could dispose of the case by consent. The man had been discharged from the reserve. So we did not lose that long-hair case, in court, at any rate.

Undoubtedly the most important case I had with the JAG Corps was *O'Callahan v. Parker*, 395 U.S. 258 (1969), and its sequels. *O'Callahan* was the case in which — as I am sure you all know — the Supreme Court held that an off-duty serviceman in Hawaii in peace time had been improperly convicted when he was tried by a court-martial for the civilian crime of rape, committed on civilian premises. This raised immediate and massive problems for the military lawyers—on the one hand, as to its retroactive effect on convictions already obtained, and, on the other, as to its scope and application with respect to future trials.

I really do not think that there was anything that I could have done to change the result reached in *O'Callahan*; but I also think that I did not handle it very well. When the case arose there was a conflict of decisions, so it did not seem very surprising that the Supreme Court granted certiorari. For better or for worse, I was very much worried about the case. It had long been the clearly understood rule that courts martial could try any one in the service for any offense. We had learned that courts-martial could not try persons who were not in the service, and we also knew that there was concurrent jurisdiction to try what might be called "ordinary civilian offenses" committed by service men. I knew of a number of situations where the military had acted promptly to take custody of a service man so that the civilian authority could not prosecute him, usually for the protection of the service man.

I do not want to suggest that we were careless about the case, but I do think that we regarded *O'Callahan* as really a rather routine case. I assigned it to one of my younger staff members for oral argument. He had a rather hard time with adverse questions from the

Court, but I still did not anticipate any real trouble. There was no doubt that *O'Callahan* was in the army, and there were lots of cases that said the army could try him.

You know the outcome. An opinion by Justice Douglass made some new law, in rather general and sweeping terms. There was a strong dissent by Justice Harlan, concurred in by Justices Stewart and White, but that still left five votes against us — Justice Fortas had resigned by that time, and he would very likely have made a sixth adverse vote.

As I have indicated, the decision took me by surprise. But, of course, it was a bombshell for all the military services. The decision as written left nearly everything uncertain. Was it retroactive? What offenses were service connected? Were there any offenses committed abroad that could not be tried by court martial? If the offense was committed in the United States, was it enough that it was committed on a military reservation? And so on.

At any rate, I soon had a very large delegation of military legal officers in my office, quite insistent that I should file a petition for rehearing. I could understand the desire for this. But I was convinced that it was futile. The opinion did not evidence any hesitation. It was rendered in the face of a strong dissent which said everything we could possibly say. It seemed fairly clear to me that the only effect of filing a petition for rehearing would be to annoy the Court, and perhaps to jeopardize our chances to salvage something from the situation. For example, the Court might have denied the petition for rehearing saying that they intended the opinion to be retroactive, when our best chance of getting a decision to the contrary would be to present it in an actual case which for one reason or another had appealing facts. So I decided not to file a petition for rehearing, with my military friends still dismayed. I can only say that I was very glad indeed that I did not have to wrestle with the immediate problems which they could not escape.

It is now four years later, and a good deal of the difficulty, though not all, has been

worked out. We sought to raise the unresolved questions before the Supreme Court, but to do so, as far as possible, in cases where the facts were helpful, or did not present special obstacles. Only a year later, the case of *Relford v. Commandant*, came to the Supreme Court and it was decided in 1971, 401 U.S. 355. The offense was again rape: It was committed by a serviceman, this time on a military reservation, in New Jersey. It was committed in peace time, and against a civilian woman, who was, however, a relative of of a service man, and rightfully on the military base.

The grant of certiorari in *Relford* was limited to the scope of the *O'Callahan* decision, and to the question of its retroactivity. We argued both questions vigorously. The Court decided that an offense of this sort which was committed by a service man on a military reservation was "service connected" within the meaning of the *O'Callahan* case, even though the offense was committed in peace time, and the victim was a civilian woman. Since that was enough to dispose of the case, the question of retroactivity was not decided.

That question was presented and decided by the closest possible vote, in one of two cases which came to the Court in 1972, and were decided on the last opinion day in June, 1973. Both decisions go under the title of *Gosa v. Mayden*, 411 U.S. —. The first case, involving *Gosa*, was much like *O'Callahan*. The crime was rape. It was committed by a serviceman against a civilian woman, in the City of Cheyenne, Wyoming, and not on a military reservation. The offense was committed, and the trial was held before *O'Callahan* was decided, and no question as to jurisdiction was raised at the court martial trial. The offense was not committed in a time of declared war. Thus the question of retroactivity was directly presented, and on facts which had nothing especially adverse about them.

As you know, the decision was that *O'Callahan* should not be applied retroactively, but you have read rather closely to find that out. There was a plurality opinion by Justice Blackmun, in which Chief Justice Burger, and Jus-

tices White and Powell concurred. But that was just four votes out of nine. The fifth vote came from Justice Rehnquist. He could not agree that *O'Callahan*, if it stood, should not be applied retroactively. But he thought that *O'Callahan* had been wrongly decided, so he voted to affirm the judgment against *Gosa*. Thus we do not have a majority against the retroactive application of *O'Callahan*, but we do have a majority against *O'Callahan*, retroactively. That is what I meant when I said that the question was decided by the closest possible vote. It should be noted, for whatever significance it has, that four of the five votes came from recent appointees to the Court, who were not members of the Court when *O'Callahan* was decided. Justice Stewart had dissented in *O'Callahan*, but he dissented in *Gosa* because he felt bound by the *O'Callahan* decision. Justices Marshall and Brennan, who had joined in the *O'Callahan* opinion, also dissented. Justice Douglas felt that the case should be set down for reargument on questions of res judicata which might be applied to the judgment reached in the court martial proceedings. It was really a squeaker.

We were fortunate I think that the case of *Warner v. Flemings*, on the government's petition, was argued and decided at the same time as *Gosa*, for it showed clearly the possible ramifications of a decision supporting retroactivity. *Flemings* went back twenty-nine years, to 1944, during World War II. *Flemings* was an enlisted man in the Navy, stationed in New Jersey. He became absent without leave, and was apprehended several days later in Pennsylvania in a stolen automobile. A court-martial was convened in Brooklyn. *Flemings*, represented by a reserve lieutenant, pleaded guilty to the two charges of being absent without leave and of the theft of an automobile. He was sentenced, and was discharged from confinement, and from the Navy, in 1946, twenty-seven years ago.

The proceedings which came to the Supreme Court began in 1970, after the *O'Callahan* decision, when *Flemings* filed a proceeding in the District Court seeking to compel the Secretary of the Navy to overturn his 1944

conviction for auto theft, and to correct his military record with respect to his dishonorable discharge. Of course, if this could be done as to Flemings, it is hard to see why it would not be applicable, even at this late date, to all other court martial convictions, whenever rendered, at least when the offense was committed in the United States, not on a military reservation, and was not itself directly a military crime. At any rate, a majority of the Supreme Court decided against Flemings, holding that his offense, having been committed in time of declared war, was service connected within the meaning of *O'Callahan*. This conclusion was reached not only by Justice Blackmun, in his opinion concurred in by the Chief Justice, and Justices White and Powell, but also by Justices Douglas, Stewart and Rehnquist, making seven in all. Justices Marshall and Brennan would have applied the retroactive rule in *Flemings*.

Whether it helped to have *Flemings* taken up and argued at the same time as *Gosa* cannot be known. There is no doubt, though, that the important *Gosa* decision was as close and narrow in margin as any decision that can be found in the books. It is also clear, I think, that the result was achieved only by allowing an appreciable period of time to pass after *O'Callahan* was decided. Any effort to obtain a favorable decision on retroactivity in 1969 or 1970 would, beyond doubt, have been unsuccessful.

Finally, I would like to turn to one other matter, which did not—fortunately, I think—result in a decision by the Supreme Court. This is the case of an Air Force nurse, Lt. Susan Struck. In the Supreme Court reports you will find that her petition for certiorari was granted, 409 U.S. 947 (1973). Lt. Struck was not married, but she became pregnant. Acting under the then regulation of the Air Force, Lt. Struck was listed for discharge. Before this was carried out, she brought suit to enjoin the discharge, and this was heard in the district court and in the Ninth Circuit Court of Appeals, where the result was adverse to Lt. Struck. In the meantime, the Air Force regulations had been changed, and it

had been provided that in such cases a waiver might be obtained, in appropriate cases, on application from the officer involved. Lt. Struck filed such an application, and it was denied by Air Force authorities on the ground that the new regulation did not apply in her case, since she became pregnant while the old regulation was in force, and that regulation made no provision for waiver.

Lt. Struck filed a petition for certiorari in the Supreme Court. After a good deal of thought and consideration, I filed a brief opposing the petition. I did not think much of the case, but the Air Force seemed to feel strongly. I felt that something could be said for their position, and I tried to say it. But it was not enough. Certiorari was granted, and we were then faced with handling the case on the merits before the Supreme Court.

At this point I came to the conclusion that, in this day and age, our position was hopeless. I wrote a letter to the Secretary of the Air Force advising him that I thought we were going to lose the case, and that it seemed advisable to me to withdraw the discharge, and dispose of the case, without incurring the publicity and harm which would come from presenting the case to the Supreme Court and receiving an adverse decision. For, one thing you learn about appellate advocacy in government cases is that when you invoke a court decision in a bad case, you not only lose the case, but cause an opinion which will be cited widely against the government in lower courts, and will do far more harm in the long run to the government's interests than the mere disposition of the case itself.

Shortly after I wrote the letter to the Secretary of the Air Force, I was advised that a conference was desired. That was expected, and was entirely agreeable to me. But when I saw the list of those who were coming to the conference, I was troubled, for it included a number of near-top civilian officials of Defense and the military Departments, but also a large array of Army, Air Force, and Navy officers. The meeting assembled, and crowded my office. I wondered what was going to hap-

pen. One of the civilian officials spoke up. He said: "The Secretary agrees with you, and would like to have your advice as to what is the easiest way to dispose of the case with a minimum of adverse publicity." Well, that was easy, and we soon worked the problem out. My suggestion was simply that they grant a waiver to Lt. Struck, and withdraw the threat of discharge. When that was done, they should advise us, and we would file a motion in the Supreme Court to dismiss the petition on the ground that the case was now moot. In due course, this was done, and the Court dismissed the petition.

I will add only one observation. As the group was leaving my office, I turned to one of the Air Force officers there, and thanked him for his cooperation. I said that I was sorry that I had caused some trouble for them, as I supposed that there was probably some reason why it was administratively desirable to separate this nurse from the Air Force. To which he replied: "Oh, no. We are glad to have her. She is a fine nurse, and there is a great shortage of nurses in the Air Force." Which only led me to think a thought which I want to pass on to you in closing.

The Air Force had fought this nurse, according to the book, for several years. The Department of Justice had joined in the fight, in the district court and in the court of appeals. Though the regulation was changed to provide for waivers—a change which was almost certainly induced by this case—a waiver was denied to Lt. Struck, on what seem to me to be purely technical grounds, possi-

bly induced by a military desire not to surrender. It was only when we got to the last ditch that the light dawned on the government side. It seems to me, though, that this is a case where some one down the line could and should have seen that light sooner, and should have recommended that a waiver be granted to Lt. Struck, and should have followed through to some extent to see that that recommendation was accepted. As things have developed in our society, the case was a poor one to litigate. After the regulations were changed to provide for waivers, it was a hopeless one to litigate. It was bad in law, and it was bad in public relations. Too often, it seems to me, government lawyers, when assigned a case, do everything they can to win the case. That is understandable, and to a considerable degree, commendable. But there are some government cases that should not be won. And one of the functions of the government lawyer is to spot those cases, and then see that they are reviewed by whatever authority is high enough to exercise the judgment and discretion which should be applied. It was said long ago that the government wins every case that is decided right, and one of the functions of the government appellate lawyer is to take an overall view and to decide whether the government's case in court is one that should be pressed.

Government appellate advocacy is a fascinating field. I hope you all have interesting and professionally rewarding experiences in it.

A New Concept in Nonappropriated Fund Management and Procurement

This article is taken from an address by Brigadier General J. T. Peterson, Commanding General, U.S. Army Club Management Agency, before the 1973 Judge Advocate General's Conference.

I consider it a distinct honor to be able to speak to you this morning about our agency, specifically what we are doing, why we are doing it, why it is of interest to you, and how you can assist us in our efforts.

As many of you are aware, the Army club system has been under close scrutiny for the past several years. Efforts to rectify the problems of mismanagement and malfeasance have culminated in the creation of a new De-

partment of the Army Agency, The United States Army Club Management Agency.

The evolution of the agency began as far back as 1969 when the first congressional investigation was conducted by the Ribicoff Committee. This served as a catalyst and the wheels of progress began to turn. Additional investigations followed with the Philbin Committee in 1970 and the Nichols Committee in 1971. These investigations, coupled with and engendered by unfavorable reports by the news media were instrumental in focusing sufficient attention on Army clubs that action had to be taken. This "sleeping giant" which represented one of the largest food and beverage operations in the world had been awakened. In reflection, I believe that these club scandals were a blessing in disguise. The Army club system may well have collapsed had it been allowed to amble along smitten by mismanagement. The scandals surfaced the problem and precipitated the changes so necessary to revitalize the club system and insure its continuing viability.

Until recently, Army clubs were a collection of individual facilities, each operating in accordance with a set of very broad regulations from the DA level. Each club was operated in accordance with the desires of the local commander and each had a separate set of standards. The local staff determined whether or not the standards were satisfactory. Of course, some of the clubs operated under professional management or in a professional manner and made a reasonable profit. Others, without qualified personnel and lacking good effective management were not only unprofitable, but did not provide the services the membership expected. Unfortunately, too many of our clubs fell into this latter category.

It became obvious that action had to be taken to rectify the problem areas which were revealed. In October 1970, the Department of the Army contracted a civilian management consultant firm to evaluate and make recommendations on the management of Army non-appropriated fund activities to include the

clubs. Representatives from the firm of Booz, Allen and Hamilton traveled worldwide surveying NAP activities and conferring with commanders, managers, and the membership. This study was completed in July 1971 and was reviewed by an Army planning committee appointed to evaluate the recommendations and to identify the most effective organizational structure to properly manage Army clubs. The committee was composed of representatives of all Department of the Army staff agencies with an interest in club operations. The Secretary of the Army and the Chief of Staff were briefed on the committee recommendations, and on 22 December 1971 approved the establishment of an open mess staff element within the Office of the Deputy Chief of Staff for Personnel. In addition, approval was granted to realign the Army clubs, employing a regional command structure with the stipulation that concurrent with realignment, a separate club command concept would be tested in one CONUS Army. It was directed that a comparison of the two concepts be made and a recommended course of action be developed by 1 July 1972.

This action by the Secretary of the Army set the machinery in operation. On 3 January 1972 the Directorate of Nonappropriated Funds, Clubs and Open Messes was activated. I was named Director and tasked with the supervision and control of all phases of policy and operations for all nonappropriated fund activities worldwide.

My guidelines were to:

1. Achieve centralized management and control of nonappropriated funds.
2. Improve management practices.
3. Promote professionalism in Army clubs.

The next item on the agenda was the testing of the two organizational concepts. Sixth Army was selected as the test site for the club command concept. The regional command organizational realignment was implemented worldwide, with Fifth Army chosen as a controlled area to obtain comparable data to reflect against the test data developed in

Sixth Army. The results were analyzed by a special evaluation committee during the latter part of June 1972.

The committee findings revealed that both Army areas showed improvement in club operations and an ability to detect poor performance and mismanagement due to the increased emphasis of centralized direction. Additionally, features of both concepts were found to be feasible and either could be adopted to better the club system. The major conclusion was that organizational realignment was considered secondary in importance to the need for qualified trained personnel at all levels of management. The requirement for a dynamic training program and viable career development was considered to be foremost. The problem has been defined as two-fold, a lack of authorized spaces and the inability to fill the existing spaces with trained personnel. In other words, the Army somehow thought that we could get something for nothing. Now, we must face up to the need to pay the price for effective management.

The findings also showed the need for centralization of club activities. At the installation level, operation under the installation club manager (ICM) concept was well received and proved beneficial. Additionally, the standardized reports used for the test proved to be an excellent management tool and with modification and improvements became the basis for our current management information system. Most important, the need for centralized direction was recognized and accepted as long overdue.

Commanders, of course, favored the regional command concept and were concerned about the possibility of having clubs removed from their supervision. In addition, club members tended to believe that placing the clubs in a separate club command would result in "absentee management" with the ills that are normally associated with such an arrangement. Conversely the club managers favored the separate club command, assuming that it would benefit their career because their su-

pervisors would be professional club managers and perhaps better understand their problems.

Based on these findings, the evaluation committee determined that it was possible to combine the best of the two concepts. Test conclusions demanded centralized technical direction by professionally oriented club management personnel while retaining installation ownership and operation of the individual clubs. The hospitality industry has long and successfully used this popular technique known as franchising. When applied to the Army club system, franchising can be defined as local operation and support of the club by the installation commander and his staff, with centralized technical direction and assistance from an Army Club Management Agency. This is the approach we chose.

On 13 July 1972, the Secretary of the Army was briefed and approved the activation of the U.S. Army Club Management Agency. Basically, we will operate an Army club franchise system. Clubs are owned, operated and supported by the installation commander under a franchise charter subject to compliance with policies and direction from our agency. This innovation establishes a vertical chain of professionalism from the DA agency to the club manager—while retaining the installation commander and the membership interest in "their" club to include the necessary support from the installation. This, of course, is a must for successful operation of the club.

Based on this background, it was recognized that the realignment would take time to develop and a transition period would be required to go forward. We developed a four phase schedule with a 1 July 1973 target date for full implementation.

Under the first phase, the agency was activated, mission and functional statements completed and the FY 73 budget firmed along with region organization alignment. There will be five regional offices; three in CONUS and two overseas. The first regional office was activated 1 February 1973 at Fort Meade and

the fifth was activated in the European region on 1 June 1973.

On 1 July 1973 the agency broke away from the Directorate of Nonappropriated Funds, Clubs and Open Messes, relocated at Fort Meade, Maryland, and became a field operating agency under the DCSPER. The residual DNAFCOM became a separate NAF directorate under the newly organized TAGCENTER Commanded by the Adjutant General. The NAP Personnel Division became part of the civilian personnel directorate of the DCSPER.

Also, during this period we have given prime attention to revising AR 230-60. The revised edition, including the franchise charter, will be sent to the field for comment within the next 60 days.

At present, the agency has many improvement actions underway, but none are receiving as much attention and emphasis as are our training programs. First, we recognize that a successful system is directly related to the training program. Trained personnel make any system a good system. Who must be trained? What level of training? How can we train?

Initially new people entering the club system receive training at the Open Mess Management School at Fort Lee, Virginia. This is a seven week course covering basic accounting, food cost control, and club management techniques. Completion of the course leads to the award of MOS 4112, 021A, or 00J50 as appropriate. During FY 1973 we graduated 182 club managers from Fort Lee. Additionally, we conducted two short open mess courses in the field during FY 1973—one in Europe where we graduated 56 managers and one in Pacific with 29 graduates.

Our Installation Club Managers course is conducted as a joint exercise between the Agency and the American Hotel and Motel Association. When we established the ICM position we levied a new manpower requirement on a field that was already critically short of trained club managers. This being

the case, many officers assigned to the ICM position were experiencing their first exposure to club management. The ICM course then was conceived to give the inexperienced individual a quick orientation in the many facets of club management. Once we input more trained club managers into the system we will revise our ICM course and gear it more towards preparing the experienced man for executive management. Our course at Fort Lee will continue to be for the new man. To date we have conducted four ICM courses—two in San Francisco and two in Miami. We have graduated 123 ICM's. We are now preparing for our second annual DA Seminar, 23-27 September, at Cornell University. Last year we had over 100 managers attend our four day seminar and this year we expect the same turnout. The idea here is to expose our managers to some of the leading educators in the food service industry.

Regional workshops are another vehicle by which we hope to keep our people abreast of innovations in the hospitality industry. The eastern region held their first regional workshop at Fort Rucker in August. Also, we have made arrangements with the various industry associations such as the Club Managers Association of America for our managers to attend their workshops.

We have two correspondence course programs available to club managers. Fort Lee offers one course and the other is offered by the American Hotel and Motel Association. Completion of the American Hotel and Motel Association's course leads to a certificate in food and beverage management. During FY 1973 we had 15 people complete the Fort Lee course and 106 participate in the American Hotel and Motel Association program. Currently we are working on a program to send some of our leading NCO's to the culinary institute for schooling.

We have identified 10 positions within the agency headquarters and regional which will require advanced degrees, and the Army has recently validated these requirements. I feel

this will offer our club managers tremendous educational opportunities.

As part of our continuing educational program, arrangements have been made for club managers to participate in an OJT exercise with industry. Two managers from each CONUS region will be selected for training. The individuals will take a sabbatical from their military duties and work with industry. The pilot to this program was conducted at the Greenbrier Country Club in White Sulphur Springs, West Virginia, earlier this year.

One other area that we are currently finalizing is our geographical club courses. Here we propose to contract with leading educators in the industry to come to individual clubs and conduct one or two day training exercises for supervisory as well as operational personnel.

Regardless of our massive effort, training programs will be to no avail unless we can retain the individual once we have him trained. In this respect, we have turned our attention to developing bona fide career programs for military as well as civilian managers. In the past, a club assignment was generally considered the kiss of death for an officer. We now recognize the importance and necessity of assigning officers to positions in club management. If this is the case, then we must guarantee that the individual's career is not jeopardized and provide programs so that he can advance on a par with his peers. Action is currently underway to establish such a program.

On 13 November 1972, the Officer Personnel Management System (OPMS) recommended to the COSA that club management be established as a specialty within the personnel career field. The program will be managed by the Adjutant General's Branch and will be open to officers of all branches. By recognizing club management as a specialty field, an officer will be able to choose this as a primary or secondary skill area and not be concerned that such an assignment will jeopardize his career progression.

Over 260 positions for officers have been identified at installation level and agency level and the specialty program is viable to the O6 level. The program is scheduled to be implemented FY 1974. We have prepared career patterns and a general description of the specialty for inclusion into the revised DA Pam 600-3, Career Planning for Army Commissioned Officers. As a prerequisite for entry into the specialty, all personnel will be required to undergo a CID and background check.

Attention has also been focused on revitalizing our existing warrant officer and enlisted career programs and developing sound career programs for our civilian managers.

Another important step the agency has taken is to direct the centralization of all clubs on an installation, or in a geographical area, under the supervision of one individual, the installation club manager. We feel this position is the key to our future operations. Historically, Army clubs have operated independently of one another with each club having its separate accounting office, purchasing office, and warehousing section. This has caused operating costs to skyrocket and many administrative blunders. We have repeatedly found instances where officer and NCO clubs were procuring the same item from the same vendor but paying different prices. It is only prudent that we centralize our operations to eliminate the constant duplication of administrative functions and at the same time take advantage of our vast purchasing power. The organization at the installation level, or in some cases geographic area, that we are striving for in the future has the officer and NCO clubs operating as branches of the installation or regional club system. The installation club manager will head up the system with an administrative support branch that provides the accounting and administrative support for all the clubs in the system.

As you can see, the plans and programs for the Army club system are far reaching and their implementation will not be an easy task. However, with the continuation of the

high level of interest in improving club operations, and with the support generated by the Secretary of the Army, the CSA, as well as other DA staff elements, I feel assured that clubs can meet their problems and work towards meaningful solutions.

A prime example of the outstanding support we have received from the DA staff is the new pamphlet 27-154 concerning club procurement. This pamphlet was developed by TJAG and represents a progressive step towards minimizing the occurrences of mismanagement and malfeasance in the various aspects of procurement. If there is any area in which we need sound legal advice it is in the critical area of procurement and contract negotiation. This is true particularly when the negotiation concerns construction or renovation. It is perhaps a little known fact, but annually the nonappropriated funds expense for new construction and renovation run in the millions of dollars. For example, currently the Army central mess fund is paying off or has obligated 18.5 million dollars to 34 clubs for construction purposes. This is big business and the ramifications involved in negotiating contracts of this nature demand that we are provided technical and legal advice of the highest quality. In the past, mistakes in negotiating construction or renovation contracts have cost the club system a considerable amount of money. Generally there was no impropriety on the part of the individuals involved, but rather a lack of knowledge of the ins and outs of negotiation. In many instances the club managers either by choice or necessity operated independently and committed the club to a contract that would not have withstood the test of close legal review. Somehow the cost overrides incurred by mistakes of this type were absorbed by the membership in terms of higher prices or reduced services. In this respect you have an opportunity to make a material contribution to the club system and your fellow club

members by judiciously exercising your responsibilities in reviewing contracts and contract procedures. The agency will look to you as the first line of defense against mismanagement in our contract negotiations.

I am sure by now all of you are familiar with the provisions of the new pamphlet, 27-154. Some of these provisions obviously represent certain compromises of views and therefore it is imperative that those areas that may need improvement are properly identified. I ask each of you as you exercise your review responsibility to make a concentrated effort to initiate changes as appropriate.

In the near future, I foresee the agency turning to TJAG for assistance in the areas of labor negotiations and centralized procurement. Labor unions are beginning to make inroads into our clubs and it is imperative we insure that the interests of the employee as well as the club are protected. Presently, we are considering the central procurement by the agency of alcoholic beverages, supplies and equipment as a means of cutting our operating costs. This type of centralized procurement is new for the club system and raises legal questions as to what degree we may get involved in this. We can expect congressional interest as well as opposition from the private sector which necessitates that we be on solid legal grounds.

In conclusion, I would like to state that in all-over planning, reorganizing and zeal to improve club operations, we have tried not to lose sight of the fact that the end result of all-over efforts must ultimately be passed on to the club membership in the form of better services, better activities, or better facilities. Granted, we have reduced the occurrence of mismanagement and malfeasance, but if in the end result we cannot offer a better club to the military man and his family, our efforts will be for naught.

A Civilian Lawyer's Perspective of the Legal Assistance Program

*By: Mr. Joseph Grause, Past-President
N.J. State Bar Assn.*

This address was given at the recent Annual Meeting of the ABA in Washington, D.C.

In order to comment on the Legal Assistance Program from the civilian lawyer's perspective, it would be helpful to review the manner in which the Department of Defense instituted the Pilot Legal Assistance Program at Fort Monmouth, in Monmouth County, New Jersey, and at Fort Dix, in Mercer County, New Jersey. Prior to the institution of the Pilot Program, indigent military personnel were being provided legal services in New Jersey through Community Action Legal Programs in each County and in some Cities. The legal services furnished through these programs were heavily burdened with indigent matrimonial problems and were generally understaffed. Additionally, offices experienced a high rate of personnel turnover, so that, in fact, indigent military personnel were receiving inferior legal assistance.

When the Department of Defense determined to establish an Army Pilot Legal Assistance Program, it initially sought the cooperation of the local Bar and, thereafter, the endorsement of the New Jersey State Bar Association. When the scope of the program was presented to the Monmouth Bar Association in late 1969, I was serving on its Board of Trustees. Subsequent to receiving approval of the Monmouth Bar Association, the program was fully presented to the Trustees of the New Jersey State Bar Association, and received enthusiastic endorsement from that body. Following this response, the military obtained approval from the New Jersey Supreme Court under a rule allowing out of state lawyers to appear in the New Jersey Courts under an approved Legal Services Program. Final State approval was obtained, and the program began on January 4, 1971.

The New Jersey pilot project was fortunate in having at least four lawyers within

the Staff Judge Advocate's Office licensed to practice in that state. In organizing the program, the Staff Judge Advocates acquainted themselves with the administrative personnel of the Courts and the Sheriff's office, receiving complete cooperation from all affiliated agencies. The Staff Judge Advocate's Office was organized into two separate sections: one dealing with the military duties of the Staff Judge Advocate; and one concerned with the servicing of the indigent military personnel. Office procedures were well defined. Particular emphasis was placed on the evaluation of indigency, with a questionnaire designed to determine such status and the nature of the legal problem. Each application was screened thoroughly—in fact, the screening of the pilot project was far superior to the screening of indigent clients being given in the Community Legal Services Projects.

Close project support was given by the local bar and detailed monthly and quarterly reports were submitted to the local and State Bar Associations. These reports included a summary of cases opened or closed, those rejected and those active cases within the Legal Services Office. Reports reflected the nature of the cases and summarized the manhour totals of attorneys and supporting personnel. Through this report the local and State Bars could see that the Legal Services project was rendering an invaluable aid to the military, yet was not interfering with the private practice of the civilian lawyers in the Community.

During the year February 1, 1971 to January 31, 1972, of the 13,805 legal assistance clients seen at Fort Monmouth, 1,026 were within the ambit of the cases eligible under the Legal Assistance Program. 411 of these 1,026 cases were rejected; 237 for reason of financial ineligibility; 44 because they were fee generating; and, 130 due to lack of merit. Of the 615 cases accepted, 32 were small claims actions; 86 landlord-tenant matters;

138 Domestic Relations problems; and, 233 were criminal offenses. These figures indicate that the Legal Assistance Program was not treading upon the civilian lawyer's practice. In point of fact, the lawyers have come to accept this program with great delight, as it removes from them matters which they could not economically afford to take on.

I have had the happy opportunity to observe the program in the Fort Monmouth

area. The program has been excellently disciplined. The military lawyer is a part and parcel of the Monmouth Bar Association, both socially and legally. These individuals are respected in their profession and the Bar Association has cooperated with them without hesitation. The Legal Assistance Program is operating at a high level of success, and I would expect it to continue to do so throughout its promising future.

A New Pretrial Agreement

*By: Major Nancy Hunter, Instructor,
Criminal Law Division, TJAGSA*

During a workshop conducted at the recent JAG Conference, a proposed new pretrial agreement was discussed with interested SJA's. The proposed agreement departs substantially from the old format contained in the Staff Judge Advocate Handbook (DA Pam 27-5, July 1963) and incorporates recent developments in such areas as probation and discretionary timing of rulings on evidentiary motions. Because of the expansion in possible coverage of such agreements, the agreement had been redesignated as an "Of-

fer of a Pretrial Agreement" vice the old "Offer to Plead Guilty." Not all of the terms in the sample offer will be applicable in every case, and counsel should exercise discretion in determining what portions will be utilized. A copy of the sample agreement follows.

Your comments and suggestions are welcomed, and should be addressed to The Judge Advocate General's School, Criminal Law Division, ATTN: Major N. Hunter, JAGC, Charlottesville, Virginia 22901

Date
To:, Convening Authority ¹
From:, Accused ¹
(Name, grade/rank, organization)
SUBJ: Offer of Pretrial Agreement in the case of United States v.

I,, the accused in a court-martial now pending, have had an opportunity to examine the charges now pending against me, to wit:

Charges	Charges (specifications)	Maximum permissible punishment ² (para. 127b, MCM)
.....
.....
.....
.....

Maximum Punishment for which the (*General, BCD Special, Special*) court to which said charges have been preferred could impose a maximum permissible sentence of³

Evidence Examined I have had an opportunity to examine (the investigating officer's report and all statements of witnesses and other documentary evidence attached thereto) ⁴ (all the statements of witnesses and documentary evidence available to the government). After consulting with my defense counsel, and understanding that I have a legal and moral right to plead not guilty to the Charge(s) and Specification(s) under which I am about to be tried and to leave the burden upon the prosecution of proving my guilt beyond reasonable doubt by clear and competent evidence, I offer to plead Guilty to (all) the Charge(s) and Specification(s), to wit:

Consultation with Counsel

Understanding of Right to Plead Not Guilty

Offer to Plead Guilty

.....

Stipulation of Fact This plea will be entered by me or my counsel prior to presentation of any evidence on the merits and/or presentation of motions going to matters other than jurisdiction.⁵ I have entered into a written stipulation of facts with the trial counsel as to the circumstances of offense(s) to which I propose to plead guilty. This stipulation is to be used only to inform the court of matters pertinent to an appropriate sentence⁶ and in determining the providency of my plea of Guilty,⁷ provided that this agreement is accepted by the convening authority and my plea of Guilty is accepted by the military judge.

Misconduct Between Trial and Convening Authority Action I understand that should I commit any acts of misconduct cognizable under the Uniform Code of Military Justice or in any way not conduct myself as a law-abiding citizen and well-disciplined soldier⁸ between the time of entry of findings and the time the convening authority takes action on the record of trial in the above-captioned case, the convening authority may consider this agreement to be null and void.⁹

Agree to Testify in Related Case I further agree to testify to the truth as I know it for the government in the case(s) of United States v.¹⁰

Terms of Probation I will abide by the following terms of probation¹¹ after trial and during the period of suspension agreed to by the convening authority:

.....

Violation of Probation Terms and Misconduct I agree that failure to comply with any of the above conditions of probation is misconduct which may result in vacation of the suspended portions of the sentence.¹² I also understand that other acts of misconduct may also result in vacation action.

Accused's Understanding of Agreement In offering the above agreement, I hereby state that:
 I am satisfied with the Defense Counsel who has been appointed to represent me;

This offer to plead guilty originated with me and no person or persons have made any attempt to force or coerce me into making this offer or to plead guilty;

Can Withdraw Plea

My Defense Counsel has advised me of the meaning and effect of my guilty plea and I understand the meaning and effect thereof.

I understand that I may request withdrawal of the plea of guilty at any time before sentence is adjudged, subject to the military judges' determination that such request made after entry of findings is made for any sound reason.¹³

Agreement Complete in Itself

I understand this offer and agreement and agree that this agreement incorporates all portions of the agreement between myself and the convening authority. No inducements, other than those contained herein, have been made by the convening authority or any other person which affect my decision to plead Guilty.¹⁴

This agreement is conditioned upon the convening authority's agreement to take the action(s) set forth in Appendix A, which is attached hereto and specifically incorporated herein.¹⁵

I further understand that this agreement will be automatically cancelled upon the happening of any of the following events:

1. Modification or withdrawal at any time of the agreed stipulation of facts without the consent of trial counsel and myself;
2. Withdrawal by either party from this agreement prior to acceptance of my plea;
3. My failure to enter a plea of Guilty prior to presentation of evidence on the merits and/or presentation of non-judicial motions.
4. The changing of my plea by myself or on my behalf during trial from Guilty to Not Guilty;
5. The refusal of the court to accept my plea of Guilty.

(Signature of Accused)

.....
Name, Grade/Rank, Organization

I have advised the accused of the meaning and effect of his plea of Guilty and I am satisfied that he understands its meaning and effect.

I have explained to the accused the meaning and effect of this agreement and am satisfied that he understands its meaning and effect.

In addition, I have advised the accused that should he voluntarily absent himself after arraignment, trial may proceed in his absence if the government chooses to proceed.

(Signature of Defense Counsel)

.....
Name, Rank, Branch, and indication of whether certified pursuant to Art. 27, UCMJ.

Recommend approval/disapproval.

(Signature of Trial Counsel)

Name, Rank, Branch

HEADQUARTERS (etc. of Convening Authority)

Date

The foregoing offer is accepted/rejected.

(Signature of Convening Authority)

Date

APPENDIX A to the Pretrial Agreement Offer made by

(Name, Grade,

for the case of U.S. v.

and Organization of Accused)

I, , hereby agree

(Name Grade and Title of the convening Authority)

to take the following action(s) in return for the above-named accused's compliance with the terms of his offer of pretrial agreement:¹⁶

Limit on Sentence to be Approved

To approve no sentence adjudged greater than those checked below:

- Dishonorable Discharge.
- Bad Conduct Discharge.
- Confinement at hard labor for years/months.
- Hard labor without confinement for months.
- Forfeiture of dollars per month for a period of months.
- Total forfeiture of all pay and allowances for a period of months/years.
- Detention of dollars per month for a period of months/years.
- Reduction to the grade of, pay grade E-.....

Suspension

To suspend that portion of the adjudged sentence, as approved, which provides for for a period of with provision for automatic remission at the expiration of the period of suspension, unless the suspension is sooner vacated.¹⁷

Dismiss greater Charge if Plea to lesser included Offense

To direct that the trial counsel not present evidence on the merits concerning the specification(s) and/or charge(s) of upon acceptance by the court of the accused's plea of Guilty to the lesser included offense(s)¹⁸

Dismiss Charges

To authorize the trial counsel to dismiss, with prejudice to the government, in my behalf the specification(s) and charge(s) of upon acceptance by the court of the accused's plea of guilty to the (remaining offenses) offenses of¹⁸

Immunity

To obtain for the accused a grant of immunity from (further) ¹⁹ prosecution (of possible charges other than those currently preferred against him) for his involvement in the offense(s) of

Referral to Court of Limited Sentencing Jurisdiction

To withdraw the charges currently referred for trial to a (*General Court-Martial/Special Court-Martial authorized to adjudge a Bad Conduct Discharge*) and to refer them to a (*Special Court-Martial authorized to adjudge a Bad Conduct Discharge/Special Court-Martial/Summary Court-Martial*) for trial.²⁰

Other

Other:

(Convening Authority's Signature)

Name, Rank, Title

Footnotes

1. The agreement is between the accused and the convening authority; it is not between the SJA and accused and/or defense counsel. *Machibroda v. U.S.*, 368 U.S. 487 (1962); *U.S. v. Troglin*, 44 CMR 237 (1972).

The Coast Guard requires that the convening authority consult with trial counsel before taking action on a pretrial agreement; Rule 13, Court Rules of Practice and Procedure for Coast Guard General and Special Courts-Martial, App. I to the Coast Guard Supplement to the MCM, 1969 (Rev)—CG 241.

The Air Force prohibits the use of pretrial agreements; para. 4-8, Military Justice Guide (AFM 111-1).

2. DC's misinforming the accused of the maximum permissible punishment did not make the guilty plea, pursuant to a pretrial agreement, improvident where the military judge correctly stated the maximum sentence during the *Care* inquiry (error considered in reassessing sentence); *U.S. v. Falabella*, 44 CMR 399 (ACMR 1971). But see *U.S. v. Correa*, CM 429343 (ACMR 20 July 1973), in which the guilty plea was improvident where the accused, DC, TC, and MJ all mistakenly believed the maximum imposable confinement was as stated in the pretrial agreement (15 years) vice the correct maximum of 3 years.

3. May vary from the total maximum punishment based on all offenses charged due to punishment limit of the court, prior convictions, and/or counsel's determination that certain charges are multiplicitous for sentencing purposes.*

4. Will generally be applicable only where an Article 32 investigation has been made pursuant to para. 34, MCM, 1969 (Rev).*

5. The accused cannot be required as part of the consideration for a pretrial agreement to waive any constitutional rights; *see, e. g.*

U.S. v. Callahan, 22 CMR 443 (ACMR 1956) — agree not to present evidence in extenuation mitigation.

U.S. v. Troglin, 44 CMR 237 (1972)—waiver of former jeopardy.

U.S. v. Cummings, 38 CMR 174 (1968)—waiver of speedy trial.

U.S. v. Banner, 22 CMR 510 (ACMR 1956) — agree not to contest jurisdiction.

However, the government can request that a plea be entered prior to presenting evidence on the merits, as for example admissibility of evidence obtained as the results of a search which might be subject to objection on fourth amendment grounds (See *U.S. v. Patton*, NCMR 72-2055, 22 Jan 73; *pet. den.* 46 CMR — (1973), holding the accused has no absolute right to have the military judge rule on admissibility of evidence prior to entry of plea. Such evidentiary objections are waived by a guilty plea; *U.S. v. Hamil*, 35 CMR 82 (1964).

6. A stipulation in support of a guilty plea at a prior trial is not admissible to impeach the accused who pleads not guilty at rehearing (*U.S. v. Daniels*, 28 CMR 276 (ACMR 1959)); nor is former testimony given during a providency inquiry at earlier trial, (terminated by mistrial due to inconsistent statements) admissible in cross-examination of accused at subsequent retrial (*U.S. v. Barben*, 33 CMR 410 (1963)).

7. This provision is included for three reasons:

a. to insure that the accused and trial counsel do in fact enter into the stipulation, thus providing the military judge and/or court members with the sort of additional information needed to arrive at an appropriate sentence, so often not presented by trial counsel;

b. to preclude cancellation of the agreement due to events beyond the convening authority's control, such as failure of the accused and trial counsel to arrive at a satisfactory stipulation after the agreement offer has been accepted; and

c. to avoid the questions raised in such cases as *US v. Luebs*, 43 CMR 315 (1971) where a stipulation of fact is considered in determining provi- dency of the plea (see particularly Judge Fer- guson's dissent at pp. 317-18).

8. *U.S. v. Lallande*, 46 CMR 170 (1973) approved terms of probation including, *inter alia*, "conducts him- self in all respects as a reputable and law-abiding citizen" (at p. 173).

9. *U.S. v. Correa*, CM 429343, ACMR 20 July 1973, approved a similar provision in a pretrial agree- ment but struck down the portion thereof which provided that misconduct between date of sentencing and *execution* of the sentence by the convening authority (emphasis added) would nullify the agree- ment. A pretrial agreement for a suspended sentence does not *per se* imply the accused's agreement to re- frain from misconduct after trial and before the convening authority's action on the record; see, *e.g.*, *U.S. v. Conway*, 43 CMR 512 (ACMR 1970); *U.S. v. Clay*, 42 CMR 397 (1970); *U.S. v. Ferguson*, 45 CMR 478 (ACMR), *pet. den.* 45 CMR 928 (1972); *cf. U.S. v. Williams*, 45 CMR 66 (1972). Acts of misconduct after findings and before action should be discussed in the post-trial review and an opportunity given the defense to examine and rebut the review.

10. A witness is not rendered incompetent merely because he testifies pursuant to grant of immunity or pretrial agreement; *U.S. v. Moffett*, 27 CMR 243 (1959). However, the convening authority is disquali- fied from reviewing and acting on the record if he entered into a pretrial agreement to obtain testimony; *U.S. v. Gilliland*, 27 CMR 417 (1959); *U.S. v. Win- born*, 34 CMR 57 (1963).

A copy of the immunity document must be fur- nished to the defense; *U.S. v. Taylor*, SPCM 7976, 46 CMR — (ACMR 1972).

Agreements to testify are fraught with possible error. See, *e.g.*, the agreements held improper in the following:

U.S. v. Stoltz, 34 CMR 241 (1964) — testimony to include matters in written statement incor- porated in the pretrial agreement.

U.S. v. Conway, 42 CMR 291 (1970) — witness believed he was required to testify in accordance with previous statement.

U.S. v. Scoles, 33 CMR 226 (1963) — one year reduction in sentence for each occasion on which convicted witness testified against co-participants "repugnant to civilized sensibilities".

U.S. v. Gilliam, CM 427808, ACMR 18 June 1973 — "I also offer to render testimony... which would establish conspiracy and premed- itation..."

The test appears to be whether the immunized wit- ness believes he is bound by the agreement to testify in a specific manner. Trial counsel should establish affirmatively on the record that the witness is testi- fying pursuant to an agreement with the convening authority and understands he is to testify truthfully, not solely in accordance with a pretrial statement.

11. Delete if the convening authority is not being requested to suspend some portion of the adjudged sentence. Probation terms must be carefully tailored to fit the circumstances, particularly since ambiguities in a pretrial agreement will be resolved in favor of the accused, *U.S. v. Franklin*, 41 CMR 431 (ACMR 1969).

Possible conditions of probation include the following:

a. A requirement that the accused report to an appointed parole officer was approved as an "eminently fair and reasonable condition..." in an AWOL case. *U.S. v. Figuero*, 47 CMR 212 (NCOMR 1973).

b. Accused's person, storage areas on military property, and vehicle subject to search and seizure at any time, with or without a search warrant or command authorization, when re- quested by his Commanding Officer or authorized representative thereof. *U.S. v. Lallande*, *supra*, n. 8, and *U.S. v. Joyce* 46 CMR 180 (1973).

c. Not associate with known users of, or traf- fickers in, dangerous drugs or narcotics, or marijuana. *Lallande* and *Joyce*, *supra*. But see, *Arciniega v. Freeman*, 404 U.S. 4 (1971) in which a parole condition that the parolee "not associate with ex-convicts" was held not violated by working in a legitimate job with known ex- convicts. Similar situations are foreseeable in Army units containing known or suspected drug abusers, so that an addition to the *Lallande* provision, providing that associations "in other than a duty related capacity" are prohibited would be advised.

d. Not drink alcoholic beverages to excess., *U.S. ex rel Sperling v. Fitzpatrick*, 426 F2d 1161 (2d Cir. 1970). Similar terms, prohibiting use of drugs other than pursuant to a physician's pre- scription would appear feasible, as well as re- quiring that the parolee participate in a Drug Exemption or Alcohol Abuse program.

e. Support legal dependents to the best of his ability; *Sperling*, *supra*.

f. Conduct himself in all respects as a reputable and law-abiding citizen. (*Lallande* held this term could have been more specific but not overly broad). To avoid questions about whether or not *O'Callahan* jurisdiction over the misconduct exists, however, a term requiring that the probationer conduct himself as a law-abiding and well-disciplined soldier might be utilized in lieu of the *Lallande* language.*

12. Of course, a vacation proceeding pursuant to Article 72, UCMJ, para 97b, MCM, 1969 (Rev) and DA Msg 1972/12992 will still be required.* However, delineating in the agreement certain normally legal acts (e.g., refusal to consent to a search) which the accused agrees will constitute "misconduct" makes proving that acts of misconduct have been committed during the period of suspension easier.

13. The language contained on p. 3-6, DA Pam 27-9, Military Judges' Guide has been incorporated in lieu of the usual "I understand that I may withdraw the plea of guilty at any time before sentence is adjudged." (Annex K, Appendix I, DA Pam 27-5, Staff Judge Advocate Handbook, July 1963) in order to insure conformity between the pretrial agreement and the military judges's inquiry into providency.

14. "Gentlemen's agreements" not incorporated in the pretrial agreement have been condemned. See, e.g., *Santobello v. N.Y.*, 404 U.S. 257 (1971) and *U.S. v. Troglin*, supra n. 1).

15. Use of an appendix to set forth the convening authority's consideration for the offer is strongly recommended. Although the military judge is required to inquire during the providency inquiry as to the existence, terms, legality, and accused's understanding of a pretrial agreement (para 3-1, DA Pam 27-9), and does not commit error by examining the entire agreement (*U.S. v. Villa*, 42 CMR 166 (1970)), including the quantum portion thereof (*U.S. v. Razor*, 42 CMR 170 (1972)), the Military Judges' Guide suggests that in bench trials, he defer consideration of the quantum portion until after announcing the sentence (para 3-1, n. 3, DA Pam 27-9).

Also, since proffered agreements are often not agreed to by the convening authority as initially offered, use of an appendix makes it less of an administrative burden upon the defense to redraft terms and submit another offer should they wish to do so.

If the agreement is predicated upon action by the convening authority in areas other than, or in addition to, quantum of punishment, trial counsel should submit to the military judge suggested questions for use during the providency inquiry such as: "Have you been called upon to relinquish any constitutional rights, or rights you believe to be constitutional in order to obtain this agreement?"

"If so, do you consider anything in the agreement violative of your constitutional rights?"

An alternative approach is to include all portions of the convening authority's consideration for the offer, except for action on sentence, in this portion of the agreement.*

16. Select appropriate actions — not all will be included in each agreement.*

17. See generally, *re* suspension, para. 88e and 97a, MCM, 1969 (Rev).*

To afford the accused an opportunity to demonstrate his ability to satisfactorily perform as a duty soldier, if all confinement adjudged is not suspended, it is recommended that the suspension period include both the confinement period ordered into execution and a reasonable period thereafter.

Where an agreement to suspend all confinement has been made, confinement after trial pending the convening authority's action on the record is contrary to the agreement and a "manifest injustice." Deferment action under para. 88f, MCM, 1969 (Rev) should be taken. JAAJ-ED SPCM 1973/1255).

18. In those instances where charges are being dismissed or reduced after arraignment, trial counsel should have available flyers containing the charge, as changed, for presentation to the court members.*

19. See *supra*, n. 10, *re* testimonial immunity, and also *U.S. v. Barnhardt*, 46 CMR 134 (1973) holding that the convening authority is *Not* precluded from acting on the accused's record of trial when a grant of immunity from further prosecution is given after trial but before review, in order to obtain the accused's testimony in a related case.

20. See, *re* withdrawal of charges generally, para. 56, MCM, 1969 (Rev).*

*It is suggested that those portions of the footnote preceding the asterick be made footnotes to the actual agreement form adopted for use.

Judiciary Notes

From: U. S. Army Judiciary

REQUESTS FOR JUDGES AS COUNSEL

There have been several instances in recent months of accused persons requesting as individual defense counsel officers serving as full-time military judges. All such requests have been and will be denied, with the ex-

planation that since the ABA Code of Judicial Conduct applies to all court-martial procedures by virtue of DA Pamphlet 27-9, military judges are unavailable as counsel under Canon 5F of the Code: "A judge should not practice law."

ADMINISTRATIVE NOTE

JAG-2(R8) Quarterly Reports. The Staff Judge Advocate of each command having general court-martial jurisdiction is reminded that the JAG-2(R8) report for the period 1 July—30 September 1973 should be forwarded to HQDA (JAAJ-CC) not later than 10 October 1973.

RECURRING ERRORS AND IRREGULARITIES

a. *Irregularities in Trial Records.* Records of trial continue to be forwarded for appellate review containing the following irregularities:

1. Those persons detailed to a court-martial who are present and absent are not listed by name as they should be. See Manual for Courts-Martial (Rev. ed.), pp. A8-3 and A8-8.

2. All court-martial convening orders to which the case has been referred are not in the record of trial as they should be, yet item 3a, DD Form 494 is checked "yes" by trial counsel and by the SJA. See MCM, pp. A8-3 and A8-7.

3. Defense counsel has not signed the record of trial, as is the better practice. SJA offices are urged to insure absence of such irregularities in all trial records before forwarding them for review.

b. *Single-spaced Records of Trial.* Some general court-martial commands consistently forward for review single-spaced records of trial. Such records, especially lengthy ones in which two or more accused are tried in

common, are extremely difficult to read and work with by all appellate parties concerned. Therefore, all commands are requested to utilize double-spaced records.

c. *August 1973 Corrections by ACOMR of Initial Promulgating Orders.*

1. Failing to show the pleas verbatim—two cases.

2. Failing to set forth a specification of a Charge to which a plea had been entered.

3. Failing to show in the PLEAS paragraph that a guilty plea had been changed to "Not Guilty."

4. Failing to show that the sentence was adjudged by a Military Judge—two cases.

5. Failing to show that the findings of guilty were of all specifications, rather than "specification."

6. Failing to show that no previous convictions were considered—two cases.

7. Failing to show Charges and specifications thereof as amended after arraignment—two cases.

8. Failing to show in the FINDINGS paragraph that a certain specification of a Charge had been dismissed by the military judge on the grounds of multiplicity.

9. Failing to show in the authority paragraph the correct designation of the command that convened the court-martial.

10. Failing to show in the authority paragraph the correct date of the court-martial convening order.

**MONTHLY AVERAGE COURT-MARTIAL
RATES PER 1000 AVERAGE STRENGTH
APRIL-JUNE 1973**

	General GM	Special CM		Summary CM
		BCD	NON-BCD	
ARMY-WIDE	.20	.13	1.45	.75
CONUS Army commands	.21	.12	1.67	.78
OVERSEAS Army commands	.17	.13	1.05	.71
U.S. Army Pacific commands	.22	.09	1.02	.49
USAREUR and Seventh Army commands	.16	.16	1.02	.80
U.S. Army Alaska	.16	.06	1.61	.52
U.S. Army Forces Southern Command	.08	-	1.67	.94

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

**NON-JUDICIAL PUNISHMENT
MONTHLY AVERAGE AND QUARTERLY
RATES PER 1000 AVERAGE STRENGTH
APRIL-JUNE 1973**

	<i>Monthly Average Rates</i>	<i>Quarterly Rates</i>
ARMY WIDE	18.79	56.38
CONUS Army commands	17.96	53.88
OVERSEAS Army commands	20.37	61.11
U.S. Army Pacific commands	16.48	49.44
USAREUR and Seventh Army commands	22.29	66.86
U.S. Army Alaska	14.95	44.86
U.S. Army Forces Southern Command	14.61	43.82

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

Criminal Law Items

From: Criminal Law Division, OTJAG

1. New Staff Judge Advocate Letters. Two Staff Judge Advocate Letters were dispatched recently. DAJA-MJ 1973/11680, subject: Available Sanctions of the Commander Confronted with Instances of Racial Discrimination in the Army, dated 21 August 1973, deals with available administrative and punitive measures for a commander to use in combating illegal or impermissible discriminatory conduct within his command. DAJA-MJ 1973/12018, subject: Providing Adequate Defense Services - The Defense Counsel, dated 24 August 1973, deals generally with the subjects of a separate defense establishment and the delivery of defense services consistent with the ABA Standards on Providing Defense Services. It provides for new counsel gaining experience as assistant counsel before handling cases alone; for systematic rotation

of counsel from prosecution to defense duties; for designation of a Senior Defense Counsel in all major offices; for assuring that defense counsel have training opportunities, professional materials, equipment, and other resources on an equal basis with trial counsel; for establishing a complaint channel for defense counsel; and for publicizing defense counsel services and facilities to the military community.

2. The "New" Criminal Law Division, OTJAG. Effective 1 August 1973, the Military Justice Division, OTJAG, was redesignated the "Criminal Law Division." This change of name was basically to reflect the broad scope of the Division's activities, other than military justice functions. The office symbol for the Division will remain "DAJA-MJ."

Status Report on Acquisition of New Court Reporting Equipment

Military court reporters will soon be able to use new, tape-operated, court-reporting machines, according to action personnel in the Office of the Assistant Chief of Staff for Force Development, DA. The JAG Corps last formerly addressed this persistent need in a materiel requirements document (called a "ROC", or Required Operational Capability document) which the Judge Advocate Agency

of Combat Developments Command prepared in the late summer of 1972. After a full year, this document has been staffed through CDC and AMC, forwarded to DA for staffing, and approved. Although the document now has the full blessing of DA, it is still awaiting transmission to AMC and TRADOC for implementation. This should be "any day now", according to the representative from

OACSFOR. Because the items are "off-the-shelf", he said that procurement and delivery should not take more than six or seven months.

The basic concept of the system is continuous recording through a tandem arrangement of cartridge tape recorders adapted to stenomask and connected by a switching device. The machines themselves are to be recorder-transcribers so that maximum interchangeability and reliability can be achieved. The cassettes should be inexpensive enough to allow ample inventories at large installations, and should be compatible with portable recording equipment or other dictating equipment which a JAG shop might have or purchase.

The tape operation is more easily maintained by military maintenance personnel than was the plastic disk machine, and the reliance upon electronic components should reduce the likelihood of machine failure.

The system is promising, and while there is no guarantee that procurement will be as speedy as the staffers claim, there is light at the end of this very long tunnel. Because these packages are to be swapped on a one-for-one basis with the AN/TNH-16's, initial distribution will be made by filling requisitions for the line item number associated formerly with the AN/TNH-16. Watch the *Army Lawyer* for an announcement of the time when requisitions will no longer be returned unfilled.

JAG School Notes

1. SOLO Course. The Eleventh SOLO Course was held in September and the Twelfth is scheduled for 17 through 19 October. There are still openings for 06 commanders to attend this course which has been so well accepted throughout the Army. It was estimated by those in attendance that the effect of what we taught here was multiplied by 48,000 troops over whom those commanders had jurisdiction. The purpose of the SOLO Class is not to take the place of the staff judge advocate. Each of the officers attending is reminded that he is expected to seek his legal advice from his staff judge advocate and that we are merely pointing out to him the problem areas in which he needs advice.

2. Reserves Assist School. The School has consistently urged the use of Reserve officers as mutual support for the Active Army and practices what it preaches. We are extremely fortunate to have on board as a Visiting Professor, Lieutenant Colonel Frank W. Elliott, Professor of Law from the University of Texas who is on a one year sabbatical to teach at the JAG School. Colonel Elliott will be a full-fledged member of our faculty and be teaching in numerous short courses as well as providing electives to members of the Advanced Class. Colonel Elliott is a welcome ad-

dition to our faculty and his tour will provide a new depth to the teaching here.

Another use of Reservists by the School will be in the moot courts. Each Basic Class has one week devoted to the subject and this year we are asking the mobilization designees assigned to the U.S. Army Judiciary to come on active duty to assist as military judges. The first group of Reserve Military Judges will be utilized in the 69th Basic Class. These judges will give a realism to the moot courts and this experience should provide additional training for them.

3. Basic Class Electives. Something new has been added for the 69th Basic Class. Both the International Law Division and the Criminal Law Division are offering after-duty electives for those members of the Class who are interested. The International and Comparative Law Division is presenting special materials on SOFA, and in view of the large number of the members of the Class who are going directly overseas either to Europe, Korea, or elsewhere in the Pacific—this offering has been widely accepted. The Criminal Law Division has offered a special after-duty elective on Trial Advocacy and almost half the class signed up to attend these sessions. This is an indication of the interest of the class members in their professional de-

velopment and in their desire to prepare themselves as fully as possible for assuming the duties of their first station.

4. Reserve On-Site Training. The first on-site training of Reservists will begin on 1 October when members of the School faculty will begin trips throughout the United States giving six hour blocs of instruction to Reserve groups at 84 different locations. Members of JAGSO detachments are the nucleus of the groups to receive the training, but it will also be given for all Reservists and National Guard officers in the area. Members of the Active establishment are welcome to attend these sessions for an update on current matters of interest in their field. This is also a grand opportunity for Active duty officers to visit an armory and to become acquainted with the members of the Reserve components who are practicing lawyers in their vicinity. The program is designed so that an individual can attend one or both three-hour sessions as a part of continuing legal education. The faculty members who are on these trips have been requested by the Commandant to visit the nearest military installation to update themselves and the School on present problems that are facing judge advocates in the field so that the teaching at Charlottesville will be current as possible. The full schedule for the first three months of this program was published in the September issue of *The Army Lawyer* and should be referred to from time to time in order to take advantage of this professional development opportunity.

5. Annual Report. The School's Annual Report for fiscal year 1973 has been received

from the printers and will be sent out in the very near future. This Annual Report provides a record of the activities of the School, its personnel, and also serves as a catalog for School courses, which is of interest to members of the military law community.

6. JAG Conference. The Annual JAG Conference hosted by the School is over and already the School is beginning to look forward to the Conference for 1974. We welcome the comments of conferees and hope that they will advise the School of subjects which they wish to discuss and any changes which should be made to make the Conference a greater success. Special thanks go to Captain Bill Robie and his people for all of the administrative details and to Colonel Bill Fulton, assisted by Major Dick Mowry, for their part in developing an outstanding program for the conferees. The School now eagerly awaits the Annual Conference for Reserve officers to be held in Charlottesville in November, and the National Guard Conference scheduled for March.

7. Mug Collection. Sometime ago the School began a collection of mugs and cups from various organizations and installations. Thus far we have received cups or mugs from the following: 82d Airborne, 1st Infantry Division, Command and General Staff College, Field Artillery School, Chaplain School (coffee cup), U.S. Naval Justice School, U.S. Marine Corps, Heidelberg Officers' Open Mess and the U.S. Army War College.

Administrative Law Opinions*

Commissioned Officers - Removal) Computation Of Time In Grade Under 10 U.S.C. §3851. This case of a National Guard Colonel presented the question of his mandatory removal date under 10 U.S.C. § 3851. It was

*The headnotes for these opinions conform to The Judge Advocate General's School Text, "Effective Research Aids For The Preparation Of Military Affairs Opinions", February 1971.

stated that the removal date is the fifth anniversary of his most recent appointment to the grade of colonel. Thus, an officer who had been a colonel, appointed to a higher grade, then reappointed to the grade of colonel would have his time in grade for removal computed from the beginning of the second appointment to colonel. DAJA-AL 1973/3572, 5 Mar. 1973.

(Duty Status - General) Commander May Order Hospitalization For Psychiatric Treatment Of Member Of His Command. A command received its medical support from a local VA Hospital. A member of the unit exhibited symptoms of irrational and uncontrollable behavior. The unit commander requested the hospital to accept the man for treatment. However, the member's next of kin were not available to sign a consent form and it was impractical to obtain a commitment order from a court. The commander asked what alternative action could be taken to commit the member.

It was stated that commitment of Army personnel for psychiatric treatment is governed by AR 600-20. Paragraph 5-32 thereof provides that a member may be required to submit to medical care for his own protection or the protection of others. Accordingly, a commanding officer may, with the concurrence of the VA, pursuant to 10 U.S.C. §1074, order the hospitalization in a VA medical facility of any member of his command. However, paragraph 5-34, AR 600-20, provides that a member must have been found incompetent by a medical board, or believed incompetent and pending medical board action, for the medical care to be performed without the member's consent. DAJA-AL 1973/3694, 4 Apr. 1973.

(Boards and Investigations - General) Privilege Of Withdrawing Waiver Of Board Of Officers Not Unlimited. In this case, The Judge Advocate General reaffirmed a policy providing that the privilege of withdrawing a waiver of a board of officers (convened under Chapter 13, AR 635-200) is no longer available after 2400 hours of the day preceding the date the discharge authority directs or approves the discharge. It was also stated that a conditional waiver of a board of officers should not be accepted. DAJA-AL, 1973/3731, 11 Apr. 1973.

(Absence Without Leave - General) Member Who Went Home To Await Orders Was AWOL For Purposes Of Making Up Time Lost UP 10 USC 972. A member received spe-

cial orders directing him from Germany to RVN with TDY in the U.S. to attend a school. The orders did not contain a PC date but did contain instructions to follow in the event PC was not timely received. By the completion of his schooling the member had not received amending orders and was told by his CO to go home and wait for these. Amending orders giving a PC were issued but the member never received them. The member returned to Illinois and changed addresses several times without notifying the Army. He did make several phone calls early in his absence to obtain orders but was told to continue waiting.

It was stated that the ROI characterization of the early portion of the absence, during which the member made efforts to ascertain his status, as authorized was warranted. His significant efforts to obtain orders were not negated by his failure to follow the instructions in the special orders. However, 30 days after the member stopped trying to ascertain his status, his absence should be characterized as AWOL. DAJA-AL 1973/3859, 8 May 1973.

(Line of Duty - Intoxication) Evidence Not Sufficient To Show Intoxication As Cause Of Injury. A member was walking from the Service Club to his company area in 1942 when he fell or jumped down an embankment, allegedly to avoid being hit by an approaching automobile. There was sufficient alcohol in his blood to qualify him as drunk. However, the Board found no direct evidence to prove that intoxication was the proximate cause of the injury and found the injury to be in the line of duty. The Adjutant General disagreed and concluded that the injuries were NLOD. The ABCMR asked for an opinion.

It was stated that the rule is that unless sufficient evidence warrants otherwise, an injury will be presumed to have been sustained in the line of duty. Mere intoxication is not sufficient to change the result. Rather, it must be shown that the intoxication was the proximate cause of the injury. This rule is

still viable. DAJA-AL 1973/3930, 21 May 1973.

(Commissioned Officers - Resignation) **Officer May Not Be Forced To Accept Separation Prior To Date Stated In Unqualified Resignation.** An RA Officer tendered his unqualified resignation UP Ch 3, AR 635-120, with a stated effective date. It was decided to accept the resignation, but his commander requested that the resignation be made effective as soon as administratively possible. It was stated that the regulation does not contain authority for forcing an individual to accept separation prior to the date requested in the letter of resignation. Accordingly, absent a change in the regulation, the commander's request could not be made effective. DAJA-AL 1973/3931; 9 May 1973.

(Allowances - Travel) **Acquisition Date Of Household Goods.** An opinion was requested regarding the time of acquisition of household goods for the purposes of entitlement to shipment at Government expense. Subparagraph M8000.2, item 9, provides that a member is not entitled to the shipment of goods acquired subsequent to the effective date of PCS orders. The question presented was the case of goods ordered prior to PCS orders but not delivered until after the effective date of PCS orders. A Comptroller General decision (MS Comp. Gen B-177875, 7 May 1973) states that passage of title is determinative of the issue. Thus, goods ordered but the manufacture of which is not complete on the effective date of PCS orders cannot be shipped at Government expense. However, goods ordered and completed but not delivered on the effective date of PCS orders may be shipped if the contract specifies that title passes at the

time of completion. DAJA-AL 1973/4197, 27 Jun. 1973.

(Separation From The Service - General) **Conditional Request For Honorable Or General Discharge For The Good Of The Service Should Be Denied.** A complaint submitted under Art. 138, UCMJ, alleged that the member was wronged by his GCM convening authority when he was ordered discharged with an undesirable discharge. The GCM convening authority accepted a request for discharge for the good of the service (Chap 10, AR 635-200), submitted on condition that a discharge under honorable conditions would be awarded.

The Judge Advocate General, as designee of the Secretary of the Army, determined that the member had been wronged under the circumstances. MILPERCEN was directed to recharacterize the discharge. DA policy is that a request for discharge must be submitted in the prescribed format. If it is not, it should not be accepted. (Note: this policy also applies to a conditional waiver of a board hearing under Chap. 13, AR 635-200.) However, as in this case, the GCM convening authority accepts the conditional request, he is bound by the condition stated therein and cannot direct an undesirable discharge. DAJA-AL 1973/4503, 29 Aug. 1973.

(Boards and Investigations - General) **Boards Convened Under The Provisions Of AR 15-6.** Recently several records of board proceedings have been received for review by OTJAG. These records indicate that some commands are still continuing to convene mass boards with no intention that all or even a majority of the appointed members actually participate in the board proceedings. This is a violation of para 3c(2), AR 15-6, and must be discontinued.

Personnel Section

FROM: DAJA-PT

1. RETIREMENTS: On behalf of the Corps, we offer our best wishes to the future to the following officers who retired after many years of faithful service to our country.

COL Lawrence J. Beltman 31 August 1973 COL George R. Robinson 31 August 1973

2. ORDERS REQUESTED AS INDICATED:

<i>NAME</i>	<i>FROM</i>	<i>TO</i>
COLONELS		
MINIS, Carol E.	OTJAG	USA Trans Ctr Ft Eustis, VA
ZALONIS, John A., Jr.	OTJAG	HQ, MDW
LIEUTENANT COLONELS		
ADAMS, Allen D.	OTJAG	USA Leg Svc Agy, Falls Church
MAJORS		
MC COLL, Archibald M. S.	HQ, WRAMC	USA Inst Admin Ft B. Harrison
WICKER, Raymond K.	USAREUR	Army Intel Ft Holabird, MD
WOSEPKA, James L.	Phy Dis, WRAMC	WRAMC
CAPTAINS		
BORCHERS, Richard M.	Korea	4th Inf Ft Carson, CO
CARPENTER, Ronald R.	Ft Huachuca	9th Inf Div Ft Lewis, WA
CARTE, Gene, Jr.	Korea	USAG Pres of SF, CA
CHEE, Herbert C.	HQ, USAG Ft Leavenworth	USAH Ft Hamilton, NY
DAVIS, Jerry A.	Hq, USAG Ft Hood, TX	USA Phy Dis Agy, Wash, DC
DENISON, Gordon R.	USAREUR	USA Leg Svc Agy, Falls Church
DIOGUARDI, John J.	Korea	Hq USATCI Ft Ord, CA
GALLANT, Ronald	HQ, USATCI Ft Ord, CA	USA Leg Svc Agy, Falls Church
GAMMON, Michael E.	USA Leg Svc Agy, Falls Church	OSAD M&RA Wash, DC
GLASS, Glen A.	Korea	USA Cmb Arm Ctr Ft Leavenworth
GOTTESMAN, Michael	USAREUR	Elect Cmd Ft Monmouth, NJ
GRAHAM, Frank P.	USA Base Cmd	Stu Co, Ft Myer, VA
HARPER, Phillip	USAG Pres of SF, CA	Hq, FORSCOM Ft McPherson, GA
HILL, Paul F.	Qtr, Ctr, Ft Lee, VA	S-F TJAGSA
HUSMAN, Stephen	Korea	USAREUR
JUNG, Keith H.	HQ, USARSUP Thai	USA Leg Svc Agy, Falls Church
LEWIS, Elvis, Jr.	USA Leg Svc Agy, Falls Church	Leg Svc Agy w/sta Kaiserlautern
LORRENCE, David	Qtr Ctr, Ft Lee, VA	USA Sup Thai
MARKHAM, Robert	HQ, 1st USA Ft Meade, MD	USAG Ft Meade, MD
MECONI, Rocco F.	Korea	4th Inf Div Ft Carson, CO
MEMORY, John M.	82d Abn Ft Bragg	USA Dis Bks, Ft Leavenworth
MOBERLEY, Kirk	Korea	USA Eng Ct, Ft Belvoir, VA
MORLOCK, Frank	Armed Forc Inst Path, WRAMC	OTJAG
ROZZELL, Steirly	Korea	USA AERO Depot, C. C., TX
STARK, Lewis	USAREUR	HQ, USAIC Ft Benning, GA

NAME	FROM	TO
<i>CAPTAINS—Continued</i>		
VARO, Gregory O.	Korea	S-F TJAGSA
WRIGHT, Francis	Korea	USA Leg Svc Agy, Falls Church

3. AWARDS: Congratulations to the following officers who received awards as indicated:

MAJ Howard M. Hougen	Meritorious Service Medal	15 Dec 70-11 Jun 73
CPT James M. Harris	Army Commendation Medal	Jun 70-Aug 73
CPT Samuel T. Wyrick, III	Army Commendation Medal	1 May 72-18 Jul 73

4. WAITING FAMILIES: At times, some of our personnel must leave their families at home while they go on TDY or an unaccompanied short tour. It is the policy of The Judge Advocate General to encourage colleagues of absent members of the firm to provide for the safety and welfare of these waiting wives and families. Persons departing on TDY or short tour should inform the JAGC office nearest to where his family will be staying of the family location and telephone number. For personnel departing on TDY while the family remains at the installation, the installation SJA is responsible for assisting the family. The Staff Judge Advocate should insure that the family knows he is available to help in any reasonable way. Dependents should be invited to JAGC social functions at the installation, especially during the holiday seasons. All members of the Corps should inform their families that, in addition to assistance at the nearest JAGC office, the family may also call PP&TO (Area Code 202-695-1353) for assistance.

Every officer should help these waiting dependents to the fullest extent possible. You never know when your family will need similar assistance.

5. OFFICER RECORD BRIEF: The Officer Record Brief (ORB) has replaced the DA Form 66 that was previously kept in your branch file at PP&TO. The original of the ORB is filed with your Official Military Personnel File at the Military Personnel Center. A DA Form 66 is still kept by your local unit personnel officer. The Military Personnel

Center forwards ORB's to officers each year during their month of birth for audit. This audit must be accomplished in coordination with your unit personnel officer. PP&TO cannot change your ORB.

6. Office Facilities and Equipment. All Staff Judge Advocates having serious problems or difficulties concerning improved facilities and equipment that cannot be handled at the local level should report the situation by letter to the Executive Office, Office of The Judge Advocate General, Washington, D. C. 20310 by 30 October 1973.

7. Warrant Officer Senior Course (WOSC). The WOSC, which was developed and tested during the past year, has now been approved for implementation. This course is the highest level of professional education available to warrant officers, and it is open to all branches and MOS. The course is six months long with two classes programmed each fiscal year beginning in July and January at Fort Rucker, Alabama. Starting in January 1974, 100 warrant officers will attend each class. Students will be selected on a best-qualified basis under a branch quota system similar to that employed for selecting commissioned officers to attend CGSC level schools. Individuals selected for the Jan 74 class will be notified by 30 Sep 73. Thereafter, students will receive their notices 6-12 months prior to class starting dates.

The Judge Advocate General's Corps has been allocated one quota for each year. Our first student will report for the class to begin in January 1974.

Current Materials of Interest

Articles

Note, "Prior Restraints In the Military," 73 Columbia L. Rev. 1089 (1973). A discussion of restrictions in freedom of speech in the military with suggested alternatives to the present system.

Darley, "Law, Discipline, and Justice," U.S. Naval Institute Proceedings (September 1973) at 37. This article outlines a corrective approach to discipline for commanders to consider under our present system of military justice.

Courses

The following is a schedule of PLI courses for this fall. Locations of the courses, dates and price are indicated. For more information write to: Practising Law Institute, 1133 Avenue of the Americas, New York, New York 10036 (212) 765-5700.

Trial Techniques Seminar: New York, October 12-13; Las Vegas, November 8-9; \$100.

Contract Litigation: Chicago, October 12-13; \$135.

Products Liability—1973: New York, October 12-13; San Francisco, October 26-27; \$125.

Liability of Hospitals and Health Care Facilities: New York, November 9-10; New Orleans, November 16-17; Los Angeles, December 7-8; \$135.

Analysis of Tax Shelter Offerings Workshop: New York, October 10-12; Murrieta, Cal., October 24-26; \$250.

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General



