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1976 JAG Conference

The 1976 Judge Advocate General's Worldwide Conference was held at The Judge Advocate General's School during 11–15 October 1976. On 12 October, the conferees were welcomed to the School by Colonel Barney L. Brannen, Jr., the Commandant. Colonel Robert B. Clarke and Lieutenant Colonel Ronald M. Holdaway delivered the OTJAG Personnel Report and Colonel Alton H. Harvey delivered a report on Task Force West Point. The principal address of the day was given by Mr. Rex Lee, Assistant Attorney General, Civil Division, U.S. Department of Justice. In the afternoon, the School's faculty offered a series of seminars and lectures designed to apprise the conferees of the latest developments in military law. This series continued during the entire conference.

The conference opened on 13 October with Brigadier General Hugh J. Clausen's USALSA Report. Colonels Wayne E. Alley, Thomas H. Davis and William K. Laray formed a panel on Professional Responsibility. Captain Michael P. McGory, representing the Office of the General Counsel at Department of the Army gave a report on Environmental Impact Assessments. The principal address was delivered by Major General Paul F. Gorman, Deputy Chief of Staff for Training at TRADOC.

The 14 October session opened with Colonel Darrell L. Peck's address on Drug and Alcohol Abuse. Colonel Cecil T. Lakes and Mr. Thomas J. Duffy, OTJAG, Department of the Army, spoke on the Anti-Deficiency Act Violations. A panel composed of Colonels Daniel A. Lennon, Jr., Gerald W. Davis, Joseph B. Conboy, Hugh R. Overholt and Major LeRoy F. Foreman spoke on the Improvement of Legal Facilities. The principal address was delivered by the Honorable Richard A. Wiley, General Counsel, Department of Defense.

Friday, 15 October began with Brigadier General Victor A. De Fiori's USAREUR Report. Colonels Alton H. Harvey and Thomas H. Davis delivered the reports of the Defense Appellate and Government Appellate Divisions. Major General Lawrence H. Williams addressed the Conference and then joined the JAG General Officer Panel. The general officers fielded questions from the conferees on a wide variety of topics. Major General Wilton B. Person, Jr., The Judge Advocate General, closed the Conference.

Among the other distinguished guests at the JAG Conference were Rear Admiral William O. (Dusty) Miller, The Judge Advocate General, Department of the Navy, Brigadier General Robert J. Chadwick, Director, Judge Advocate Division, United States Marine Corps and Colonel Walter L. Lewis, representing Major General Harold R. Vague, The Judge Advocate General, Department of the Air Force.

OFFICIAL RECORDS IN AWOL CASES DOES THE EXCEPTION DESTROY THE RULE?

By: Captain Richard M. O'Meara, Office of the Staff Judge Advocate, Fort Dix, New Jersey

When first approached with a case involving absence without leave, the new military trial attorney is confronted with a multitude of problems rarely covered in prior experience.

The Army Lawyer

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Substantively he learns that unlike most criminal offenses, the crime in question is more an act of omission on the part of the accused, a failure in essence to go to some appointed place, or to stay at some appointed place. Procedurally, he learns that more often than not the place the accused was supposed to have been is located at some other post miles across country; and the time the accused was supposed to be there months or even years before the accused is to be tried. Even if members of the accused's unit could be found and the funds marshalled to transport them to the location of the court-martial, it is often impossible to find anyone who remembers him, remembers that he had a duty to be at that all important place at a specific time on that all important date, and that without any legal excuse, he failed to be there. The attorney seizes upon the official records of the accused and utilizing a familiar exception to the hearsay rule attempts to bolster his case. For the trial counsel, the use of these records can provide prima facia evidence of the offense and, if the records are admitted into evidence, prove his case beyond a reasonable doubt.[1] For the defense counsel, the records are more often than not a yoke under which he is forced to work, a series of unanswerable ghosts that he cannot cross examine or impeach. The case is transformed into a paper confrontation with the outcome hinging on the admissibility of the documents.

The rule is at once simple and complex. "*Manual for Courts-Martial* defines hearsay as an assertive statement, or conduct, which is offered in evidence to prove the truth of the assertion, but which was not made by the declarant while a witness before the court in the hearing in which it is offered.[2] The spirit of the Manual is to guard against hearsay. Thus, hearsay is generally incompetent and inadmissible; findings based solely upon hearsay may not be sustained; and lack of objection does not cure hearsay which is otherwise objectionable.[3] Traditionally, the chief reasons for excluding hearsay evidence are said to be three: (1) the statements are not made under oath; (2) there is no opportunity to cross-

examine the speaker; and (3) the trier of fact cannot see the speaker's demeanor while making the statements.[4] An important exception to the rule, of course, is that dealing with official documents. The Manual provides that a writing, properly prepared by an official with a duty to prepare the record and a duty to know or ascertain, through trustworthy channels, the truth of the facts recorded, is admissible as an official record.[5] The exception contains within it an important assumption. If the record is prepared in accordance with the requisite qualifications, it is the type of hearsay that is most probably reliable and therefore probative enough to support a conviction. The Manual goes one step further, however, by providing an inference with which to work. Given a duly authenticated document, or admissable copy thereof, which on its face appears to be regular, it will be inferred that the record was made by an authorized person and that such person performed his duty properly. Two inferences are really involved. First, that the document was prepared in accordance with the regulations, and second, that the individual who prepared the document knew or had a duty to know or ascertain the truth of the facts or events recorded.[7] Within the framework of these two inferences a tapestry of litigation exists which attempts to define and categorize the miriad situations which tend to arise. While the new SIDPERS system utilizes new forms and procedures for the preparation of the documents, it appears that the courts will incorporate where possible the same logic and parameters now defined in Morning Reports litigation. For this reason, and the fact that very few SIDPERS cases have yet to be reported, much of the case law cited herein deals with Morning Reports and their admissability under the exception.

By far the easiest of the two inferences to define is the first. A document which is regular on its face; that is, a document which appears on its face to have been filled out in substantial conformity with the appropriate regulation, is inferred, in the absence of contrary evidence, to have been filled out properly and thus to satisfy one qualification of the exception. Initially, it is important to note that in a context of an adversary proceeding, both parties have an equal ability to present evidence on this question. Army Regulation 680-1, Personal Information Systems Morning Report, Reports Control Symbol AG 140(R5), the regulation which prescribes the proper format for preparation of morning reports and the SIDPERS forms, for example, is available to each counsel no matter where the form was filled out. All counsel has to do is secure the regulation and he is capable of arguing the issue of compliance with the regulation.

While the courts are fond of stating the rule,[8] it is in the area of "substantial conformity" that counsel may become confused. It is often stated that mere irregularity in the preparation of a document does not deter its admissability under the exception, but merely affects the weight which the fact finder may give the document when rendering his verdict.[9] In *United States v. Bowman,*[10] for example, the Court of Military Appeals concurred in the admission of a morning report that listed the reporting unit in the wrong space according to regulation. The failure to adhere to the form as distinguished from the substance of a procedural regulation or law, the court opined, does not affect the validity of an otherwise legal act. On the other hand, larger errors in the preparation of documents have prevented their admission. A morning report with a torn signature block has been held inadmissible and initials where the unit commander's signature should be are fatal. In *United States v. Truitt,*[11] the Court of Military Review found that failure to list the parent unit on a morning report extract was merely an inaccurate entry which affected the weight to be given the exhibit. The court in that case summarized the rule by stating, "where the failure goes to the very heart of the document's officiality such as where the morning report (DA Form 1) is not signed (United States v. Teal, 3 USCMA 404, 12 CMR 160 (1953) or just initialed United States v. Henry, 7 USCMA 663, 23 CMR 127 (1957)), the purported, extract is deprived of that de-

gree of officiality considered a necessary ingredient to the hearsay exception." [12] Analysis of the case law dealing with the admission of morning reports (DA Forms 1) and their extracts (DA Forms 188) leads one to the conclusion that of the many mistakes which are potentially possible, very few strike "at the heart of the document's officiality." Thus even where it can be proven that the individual who signed the morning report was not the commander, the court may infer that the officer signing the document had in fact been authorized to do so by the commanding officer and may require the accused to introduce evidence to the contrary in order to defeat the official record.[13] Following the logic of *Bowman,* most typographical errors not corrected in compliance with regulation fall into the category of mere irregularities as well. In *United States v. Drake,*[14] the court recognized that a prosecution exhibit which incorrectly reflected the accused's grade and middle initial in violation of the pertinent regulation was error, but on the basis of the correct social security account number found that the exhibit referred to the accused and was only "clerical error." [15]

Irregularities which result in conflicting information on various documents also do not deter their admissability. In *United States v. Anderten,*[16] to establish the inception of the accused's absence, the prosecution introduced a morning report entry for 16 June 1952 showing the accused's status changed from duty to absence without leave on 9 June 1952. A second morning report entry of 7 July 1952 showed the change of status as of 31 May 1952. A third morning report entry dated 10 October 1952 showed the accused going from duty to absence without leave effective 6 June 1952. Conceding that irregularities in violation of the pertinent regulation existed, the court opined that all three documents were admissible under the exception and that the obvious variance was a question for the fact finder. Recognizing that the last two morning reports were probably corrected copies, the court was not deterred by the omission of "corrected copy" from those documents as prescribed by the regulation. "Concededly, official documents should be prepared in accordance with law but every omission does not destroy their admissability. Only those material to the execution of the documents could have that affect." [17]

Those SIDPERS cases which have been reported make no distinction between the new forms and their predecessors, the Morning Report. In *United States v. Rodriguez,*[18] for example, the accused appealed a ruling by a military judge which allowed the admission of two DA Form 4187's on the ground that since they were improperly filled out, they were not prepared in substantial compliance with the appropriate regulation and therefore fell without the exception. TJAG noted that illustrations in DA Pamphlet 600-8 gave examples of proper entries and that according to these examples the term "AWOL-Confined in hands of civil authorities" was used instead of "AWOL Confined Civil Authorities," and the term "Confined in hands military authorities" instead of "Confined Military Authorities." Pursuant to Article 69, UCMJ, TJAG denied relief noting that minor irregularities in the preparation of the forms, which do not affect the materiality of the entries, will not destroy the admissibility of the document. See also *United States v. Beaver,* SPCM 1975/3132, a failure to convert the memonic data from Part II, DA Form 2475-2 into normal English in Section II, DA Form 4187, a harmless defect; and *United States v. Lee,* SPCM 1975/3076, TJAG denied a request for relief under Article 69 UCMJ which was based on the fact that the date of a DA Form 4187 was typed, whereas instructions on the form called for the data to be entered by hand when the form is signed. Relying on *United States v. Anderten,* TJAG held that the typewritten date was a mere irregularity and did not deprive the document of its officiality; hence weight, but not admissability was affected.

To recite for the court a string of administrative errors, then, will not carry the day for the counsel who wishes to block the admissability of a document urged under this exception. A thorough knowledge of the pertinent regulation and a complete analysis of the relation between the particular defect and the

fact the document purports to prove is required before a determination as to materiality can be reached. In the absence of such a showing, the document will be inferred to be prepared in conformity with the appropriate regulation, and thus to satisfy the first qualification under the exception.

For the document to be deemed reliable enough to fall within the exception, it is necessary to show not only that it was prepared in substantial conformity with the regulation but also that the person who prepared the document had a duty to know or ascertain the truth of the facts stated herein. The assumption here, of course, is that a person with such a duty is performing a ministerial act and therefore has no reason to lie about what he records. The second inference that if the document is regular on its fact and properly authenticated, the person signing it is presumed to have had such a duty and to have performed it properly, covers this problem of proof. Early on the courts counselled that if it can be shown that the data reported are inaccurate, or even that the source of the reporting officer's information is not 'reliable,' these are matters for opposing counsel to bring forward.[19] If such matters are brought forward, the defense can rebut the presumption of regularity.

Methods for shifting the burden, however, are few in light of the pertinent case law and it is in this area that the greatest amount of controversy and frustration exist. It should be noted at the outset that in the context of an adversary proceeding, the counsel who seeks to block admission of the document is at a decided disadvantage. Faced with the necessity of presenting evidence that the official required to record the particular data received it from an unreliable source, counsel must track down the parties involved, extract from them details which may have taken place months or years before, and within the confines of the rules of evidence place this information before the court. Considering the fluidity of military life, this is often an impossible task.

It appears that the inference is strong enough to withstand many attacks which come from the data contained on the documents themselves as well. Where the inception data of an AWOL is proved by a delayed entry made months or even years after the event, the courts will still infer that the individual charged with the responsibility of recording the date received the information through trustworthy sources and accurately recorded it. In *United States v. Wilson,*[20] for example, in ruling on the admissibility of a corrected morning report entry made nineteen months after the inception date of an AWOL, the Court relied heavily on the obligation of the recorder to report the pertinent data in determining reliability. "We are aware of no limitation of the time governing the making of a corrective entry" the court opined. "In fact, the necessity for such a correction would seem properly to bring it within the popular precept 'better late than never.' It must not be overlooked that morning reports serve numerous purposes in the military services. . . . Accordingly, we must reject any defense assertion that because of the time factor, no official duty prompted the preparation of the entries now before us, or that they were not made in accordance with regulation." [21]

The inference may fail where the counsel can show that the source of the recorder's information is unreliable, but more than mere hearsay is necessary to establish unreliability.[22] In *United States v. Coates,*[23] for example, a 'circumstances of return' entry in the accused's service jacket, which was required to be made by regulation, recounted numerous events which took place at many posts on a number of occasions. Overturning the Navy Board of Review, the Court of Military Appeals held that the fact that the events were not within the firsthand knowledge of the recording officer or preserved in official documents themselves did not deter the entry admissability. Since the recording officer is presumed to have a duty to garner his information from reliable sources, in the absence of contrary evidence, there is no reason to assume that his information was unreliable.

Where it is possible to show that the recorder had no duty to record a particular

entry, however, the inference cannot stand. Thus a signature of an unauthorized person, or a morning report listing an inception date from a unit not required by regulation to list the individual on its rolls is fatal[24] and information on an otherwise official document which is not required by regulation to be recorded also lacks the benefit of any inference of reliability.[25] It is the duty to record coupled with the apparent correct exercise of that duty which at least theoretically creates the judicial confidence necessary to admit the documents.

While it is important not to overgeneralize, it is a fair conclusion that use of official documents, especially in AWOL cases, can lead to a great deal of 'semireliable' information being placed before the finder of fact. Yet, faced with the obligation of proving the offense, in what other fashion can the crime be proved? Certainly, copies of morning reports, SIDPERS forms, and other documents required to be prepared when an individual departs his unit without authority are somewhat reliable and useful in determining the truth of counsel's allegations; but is it fair to say that despite the administrative errors, the variances, the time lags and the often total lack of knowledge surrounding their preparation that these documents are per se 'reliable' and therefore admissable? Rather than create more loopholes, then, the answer may lie in statutory acceptance of secondary evidence, evidence that is admitted with the explicit understanding that it is only circumstantially reliable and therefore not entitled to any particular weight merely because it has been admitted.

The case for admission of secondary evidence into criminal cases is the subject of treatises too numerous to mention here.[26] Until some alternative is created, however, counsel should approach official documents, especially in AWOL cases, with a sophisticated knowledge of pertinent regulations, their applicability to the entry which is sought to be admitted, and a thorough understanding of prior case law.

Notes

1. *See, e.g.*, United States v. McNamara, 7 U.S.C.M.A. 575, 23 C.M.R. 39 (1957). AWOL is a surprisingly complex offense. *See generally* Lederer, *Absence Without Leave—The Nature of the Offense*, THE ARMY LAWYER, May 1973, at 1.

2. MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1969 (Rev. ed.), para. 139*a* [hereinafter cited as MCM, 1969].

3. United States v. Murray, 15 U.S.C.M.A. 183, 35 C.M.R. 97 (1957); United States v. Carrier, 7 U.S.C.M.A. 633, 23 C.M.R. 97 (1957); United States v. Fowler, 48 C.M.R. 94 (ACMR 1973).

4. *See generally* MCCORMICK, EVIDENCE, § 245 (2d ed. 1972).

5. WIGMORE, EVIDENCE, § 1633 (3d ed. 1940); United States v. Prott, 20 U.S.C.M.A. 350, 43 C.M.R. 190 (1971). Where morning report documents fail to satisfy the official record exception to the hearsay rule, they may comply with the business record exception.

6. United States v. Menard, 39 C.M.R. 575 (1968), MCM, 1969, para. 144*b*; U.S. DEP'T OF ARMY, PAMPHLET NO. 27-2, ANALYSIS OF CONTENTS MANUAL FOR COURTS-MARTIAL, UNITED STATES 1969, REVISED EDITION 27-23 1970).

7. United States v. Menard, *supra*, note 6, at 575.

8. *See, e.g.*, United States v. Anderten, 4 U.S.C.M.A. 354, 15 C.M.R. 354 (1954); United States v. Troeppl, 43 C.M.R. 752 (ACMR 1971); United States v. Jewell, 46 C.M.R. 577 (ACMR 1972).

9. United States v. Wilson, 4 U.S.C.M.A. 3, 15 C.M.R. 3 (1954); United States v. Parlier, 1 U.S.C.M.A. 433, 4 C.M.R. 25 (1952); United States v. Riggs, 22 C.M.R. 598 (ABR 1956); United States v. Brooks, 1 U.S.C.M.A. 88, 1 C.M.R. 88 (1954).

10. 21 U.S.C.M.A. 48, 44 C.M.R. 102 (1971).

11 43 C.M.R. 835 (ACMR 1971).

12. *Id.* at 826.

13. United States v. Jackling, 42 C.M.R. 778 (ACMR 1970).

14. 45 C.M.R. 738 (ACMR 1972).

15. *See also*, United States v. Riggs, 22 C.M.R. 598 (ABR 1956), misspelling of name; and United States v. Brooks, 1 U.S.C.M.A. 88, 1 C.M.R. 88 (1951), omission of name. *See generally*, United States v. Slabonek, 21 C.M.R. 374 (ABR 1956).

16. United States v. Anderten, *supra*, note 8.

17. *Id.* at 359.

18. Rodriguez, SPCM 1975/3303, *as digested in* 75-8 JUDGE ADVOCATE LEGAL SERVICE 30 (1975).

19. United States v. Coates, 2 U.S.C.M.A. 625, 10 C.M.R. 39 (1957).

20. 4 U.S.C.M.A. 3, 15 C.M.R. 3 (1954).

21. *Id.* at 5. United States v. Hagan, 2 U.S.C.M.A. 324, 8 C.M.R. 124 (1958), a service record was admissible to establish an inception date despite the fact that the entry was made 89 days thereafter and 27 days after the absence terminated. In United States v. De Viteri, 39 C.M.R. 960 (AFBR 1968), the fact that

entries were not made until three years after the event in question did not cause the document to be inadmissible. *See also* United States v. Marshall, 18 U.S.C.M.A. 426, 40 C.M.R. 138 (1969).

22. *See, e.g.*, United States v. Anderten, *supra*, note 8.

23. *Supra*, note 19. *See* United States v. McNamara, 7 U.S.C.M.A. 575, 23 C.M.R. 39 (1957), official record compiled from a morning report entry which, due to its being unsigned, could not itself qualify as an official record is admissible.

24. United States v. Ortiz, 39 C.M.R. 591 (ABR 1968).

25. United States v. Shalk, 43 C.M.R. 729 (ACMR 1971).

26. *See generally, The Case for Secondary Evidence*, CASE AND COMMENT, Vol. 81, Jan.-Feb. 1976, at 46.

Third Party Liability in Household Good Shipments

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The purpose of this paper is to provide the knowledge of third party liability to the Government in its legal facet. The scope is limited to household goods shipments which have an origin and termination point within the adjacent 48 states of the Union and have moved in interstate commerce. The shipments will have been transported either by Code 1 or Code 2 under a Government Bill of Lading (hereafter GBL).

I. PRIMARY AND SECONDARY SOURCES

A. INTERSTATE SHIPMENTS BY MOTOR CARRIER

The source of liability for a shipment which has moved through interstate commerce is the pertinent provisions of the Interstate Commerce Act.[1] The basis for liability of common carriers is the Carmack Amendment [2] of that act which provides that an initial and/or delivering carrier subject to the provisions of the Interstate Commerce Act is liable to the lawful holder of a Bill of Lading for loss, damage, or injury to property caused by it or by any such transportation company to which such property may be delivered when transported on a through bill of lading.

The carrier named on the GBL who is entitled to remuneration for the services performed is the carrier most often liable under the Carmack Amendment. The initial and delivering carriers are usually acting as agents of the main carrier under a through Government Bill of Lading. Therefore the main carrier is the principal and hence liable for the acts of the initial and delivering carriers if there is an agency relationship.[3]

The Amendment contains two important provisos. The first allows the carrier to limit liability to less than actual damages by the use of a released valuation or declaration of value by the shipper. This provision is the basis for the 60 cents per pound per article carrier liability under a GBL. The second provides that the carrier cannot provide by rule, regulation, or contract for a period of less than nine months for the filing of claims or les than two years for the institution of suit. The time for filing a claim in favor of the United States is 6 years.[4] It should be noted that there is no limitation as to the time required for notice of loss or damage to be given. The question of written notice of loss or damage will be discussed in detail in a later section.

The purpose of the Interstate Commerce Act was the regulation of railroad transportation and the Carmack Amendment was added to the act in 1906. Because motor carriers did not obtain a significant portion of interstate business until the early 1930's, the question of the applicability of the Carmack Amendment to motor carriers was only answered by an Act of Congress in 1935. The Amendment is made applicable by Section 19 of the Motor Carriers Act,[5] and it is also made applicable to freight forwarders by Section 413 of the Interstate Commerce Act.[6]

The Carmack Amendment provides only the general basis of carrier liability. The specific provisions which delineate the carrier's liability are determined by the contract the carrier negotiates with the shipper. That contract is the Bill of Lading.[7] The GBL contains four provisions found on the reverse side of the original copy of the GBI, which discuss the liability of the carriers for loss or damage to property.

The first provision is Condition #2, which declares that unless otherwise stated on the GBL, the same rules and conditions as govern commercial shipments under the respective carrier's bill of lading will govern the shipment under the GBL. The terms of the commercial bill of lading which are of importance are the exclusion of liability for certain types of property and the exclusion of liability for damage caused by well recognized causes absent negligence on the part of the carrier. A partial list of the property usually excluded is currency, money, notes, securities, stamps, coins, passports, jewelry, and watches. It should be noted that many of these items are also non-payable under the provisions of Army Regulation 27–20.[8] The causes of loss or damage excluded are acts of God or the public enemy, war, strikes, insurrection, labor troubles, riots, earthquake, defect or inherent vice of the property, moths, termites, vermin, rodents, leakage, and heat.

The second provision is Condition #6, which makes the receipt of shipment subject to the "Report of Loss, Damage, or Shrinkage" noted on the GBL. Under this condition the shipper establishes a *prima facie* case of carrier liability when written exceptions are taken at delivery.

The third provision is Condition #7, which states that the time limitations for notice of loss or damage, filing of the claim, or institution of suit as stated on the carrier's commercial bill of lading will not be applicable when the shipment has moved under a GBL.

The final provision concerning claims is Instruction #6, which provides that loss or damage will be noted on the GBL before it is accomplished. If loss or damage is discovered after the GBL is accomplished, the carrier will be notified as soon as possible and extended the privilege of inspection. This clause allows the carrier the opportunity to inspect damage or trace a loss in order to determine if the loss or damage is attributable to transit.

The action of the carrier upon discovery of loss or damage is governed by the Tender of Service which is submitted to the United States Government when the carrier applies to transport Government household good shipments. A copy of the Tender of Service is located at DoD Dir. 4500.34R, Appendix A (C3, 1 Feb. 1972), and the pertinent provision is Section II, paragraphs 44 and 45.

Paragraph 44 provides that a member may waive the unpacking of the household goods, but such waiver will not relieve the carrier from liability for any concealed damage which may be discovered within 30 days after the date of delivery.

Paragraph 45 provides that the carrier's agent will record any damage or loss discovered at delivery. The loss or damage will be recorded on the delivery receipt, the reverse side of the GBL, or on DD Form 619. A copy of the exceptions will be given to the member. In case of missing items, tracer action will be initiated and the member will be advised of the results within 30 days.

B. WAREHOUSE LIABILITY

The source of the Nontemporary Storage (hereafter NTS) facility liability is the Basic Agreement for Storage of Household Goods and Related Services, located at DoD Dir. 4500.34R, Appendix M (C1, 19 Aug. 1971).

Under Part I, paragraph 7, the contractor is not liable in an amount exceeding $50.00 per article or package listed on the warehouse receipt or inventory. The standard of care is that which a reasonably careful owner of similar goods would exercise, which in practical terms means the contractor is held to a standard of ordinary negligence.[9] It should be noted that in order to place liability upon the NTS warehouse, the shipper does not have the benefit of the Carmack Amendment.

II. SHIPMENT BY MOTOR CARRIERS, ESTABLISHMENT OF LIABILITY

A. WRITTEN NOTICE OF LOSS OR DAMAGE

The vast majority of recovery actions concern a motor carrier who has received the household goods at the member's prior residence and delivered them directly to the new residence. In this instance the carrier named as Transportation Company on the GBL will be the subject of the recovery action unless the shipment was packed under a separate Packing and Crating contract. The carrier's liability must be established by written notification to the carrier of the specific loss or damage, oral notice will not suffice.[10]

The Tender of Service provides that the carrier may be held liable for concealed damage found within 30 days of delivery when the member has waived the unpacking. Paragraph 44 of the Tender of Service and Instruction #6 on the GBL have been used to produce the unwritten rule that a carrier must be notified in writing within 30 days from the date of delivery in order to be held liable. The underlying rationale is that the carrier should be informed of the specific loss or damage in order to conduct an inspection to determine whether the damage or loss occurred in transit.

Any written notice transmitted to the carrier within 30 days of delivery should suffice.[11] In the commercial world of household good shipments, the procedural rule is that the carrier must be notified of concealed loss or damage within 15 days of delivery. The purpose of the rule is only to state a notification time within which the carrier will usually accept the damage or loss as stated by the claimant and voluntarily settle. If an investigation determines the loss or damage occurred with the carrier, the 15 day rule will not be invoked.

The usual notification is by the taking of written exceptions at the time of delivery. This type of written notification should be considered valid only for the specific damage or loss listed. Exceptions taken at delivery allow the carrier or his agent to make an inspection immediately to determine if the damage was caused in transit and to initiate trace action for missing items as required by Paragraph 45 of the Tender of Service.

The carrier is required under Paragraph 45 of the Tender of Service to give the member a copy of the exceptions. Violations of this provision should be reported to the Installation Transportation Officer (hereafter ITO). Violations the writer has encountered include the member being directed to write the exceptions on his inventory and the delivering agent leaving with a "clean" inventory or the member taking exceptions on the DD Form 619 or on the carrier's inventory and not receiving a copy.

If written exceptions on certain items are taken at delivery and damage to others is discovered after the delivering agent has departed, additional written notification of the afterfound damage should be given to the carrier. Again, this is to allow the carrier the privilege of inspection. A failure to notify the carrier of this additional damage within 30 days of delivery is presently being used as a basis for denial of liability.

The denial is not based on a substantive rule of law. The carrier is stating that liability will no longer be voluntarily assumed. Though carrier may still be held liable, the proof will have to be presented in a court of law. The burden placed upon the shipper when alleging liability for afterfound damage is indeed a heavy one.[12]

Written notice may be given by the use of DD Form 1840 (Notice of Loss or Damage). The form must be dispatched by the ITO within 24 hours after receipt by him of notice of loss, damage or destruction from the property owner.[13] If the ITO does not comply with the requirement, the Claims Office should dispatch the form and coordinate with the ITO to prevent recurrence of this dereliction.

DD Form 1840 presents a problem concerning exactly what damage and loss is covered. The form notifies the carrier that loss or

damage has been incurred, the owner intends to file a claim, the carrier may conduct an inspection, the estimated amount of the claim is or is not over $100, the estimated number of items involved, and requests tracer action on missing items. The question is whether the form constitutes written notification for all damage or loss, including damage or loss discovered after dispatch of the DD Form 1840.

The agreements between the military and the carriers do not discuss the problem. The position taken by many carriers is that it does not, and the reason is clear. If the ITO states the number of items to be 10 and the claim is under $100, the carrier may forego an inspection. Understandably, they balk at paying when the claim is received, for example, listing 25 items in excess of $500 damage.

The writer believes the soundest position is that DD Form 1840 is written notice only for the specific items listed thereon. In addition to the missing items, the ITO should be requested to list specific damage. By following this procedure, disputes with the carrier's representatives can be avoided.

Upon receipt of notice from the ITO, depending upon the situation, the Claims Office should insure that an inspection is performed by the ITO. The ITO is not required to dispatch a Government Inspection Report (hereafter GIR) to the carrier. The problem will often arise where a GIR is made but the prospective claimant does not file the claim for three or more months after the date of delivery. In such a situation, the groundwork has been laid for a dispute over pre-existing damage and afterfound concealed damage or loss. To avoid this problem, it is suggested the GIR be sent to the carrier within 30 days of delivery if possible with the notation that the GIR is being sent in advance of the formal filing of the claim.

DD Forms 1843 and 1845 will also suffice as written notice if dispatched within 30 days of delivery, even though these forms are the actual claim.

Under the Centralized Recovery Program, instituted by the US Army Claims Service, effective 1 May 1976, the DD Forms 1843 and 1845 are not to be dispatched to the carrier until the entire file is complete and ready for forwarding. If written notice has not been given to the carrier to cover all loss or damage, and it appears that the dispatch of DD Forms 1843 and 1845 will not reach the respective carrier within 30 days of delivery, the Claims Office should dispatch a DD Form 1840 and attach a copy of DD Form 1845 to meet the written notice requirement.

SUMMARY

The foregoing discussion is intended to provide an insight into the sources of carrier liability and the notice requirement to enforce that liability. A person responsible for the determination of carrier liability and the monetary amount should have a firm understanding of the principles discussed. As in any cause of action, liability must first be found before the amount of damages need be determined.

Notes

1. 49 U.S.C. §§ 1 *et seq.* (1970).
2. *Id.* § 20(11).
3. Cutten v. Allied Van Lines, Inc., 349 F. Supp. 907 (C.D. Cal. 1972), *aff'd* 514 F.2d 1196 (9th Cir. 1975).
4. 28 U.S.C. § 2415 (1970).
5. 49 U.S.C. § 319 (1970).
6. Id. § 1013.
7. United States v. Mississippi Valley Barge Line Co., 285 F.2d 381, 391 (8th Cir. 1960), Pilgrim Distributing Corp. v. Terminal Transport Co., 384 F. Supp. 204, 208 (S.D. Ohio 1974).
8. Army Reg. No. 27-20, Lessons in Military Law, para. 11-6j (C6, 25 Aug. 1975) [hereinafter cited as AR 27-20].
9. *Pilgrim Distributing Corp., supra,* n. 7.
10. East Texas Motor Freight Lines v. United States, 239 F.2d 417 (5th Cir. 1956).
11. AR 27-20, para. 11-34 (C4, 1 June 1973), AR 27-20, Appendix E, para. E-15 (C3, 24 Apr. 1972).
12. *See* SIGMON, MILLER'S LAW OF FREIGHT LOSS AND DAMAGE CLAIMS 140 (4th ed. 1974).
13. DoD Dir. 4500.34R, para. 13002 (C8, 1 June 1974).

LEGAL ASSISTANCE ITEMS

By: Captain F. John Wagner, Jr. and Captain Steven F. Lancaster,
Administrative and Civil Law Division, TJAGSA

1. ITEMS OF INTEREST.

COMMERCIAL PRACTICES AND CONTROLS.

On 28 September 1976 the Board of Governors of the Federal Reserve System published its procedures for handling complaints by consumers alleging unfair or deceptive practices by banks.

The Board embodied its consumer complaint procedures in a new Regulation AA, effective October 29, 1976. The regulation formalizes procedures for handling consumer complaints, in use since early this year, under statutes for which Congress has given the Board implementing responsibilities.

The announcement emphasized that any consumer having a complaint regarding an unfair or deceptive practice by a bank, or a violation of law or regulation, can get the complaint investigated by submitting it, preferably in writing, to the Director of the Office of Saver and Consumer Affairs at the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Complaints may also be registered at the Federal Reserve Bank for the District in which the bank is located.

The Board said the complaint should describe the bank practice or action objected to, give the name and address of the bank concerned and the name and address of the person complaining.

The Board will attempt to make a substantive reply within 15 days, or if that is not possible, will acknowledge the complaint within 15 days and set a reasonable time within which a substantive reply will be made.

The Board will receive complaints regarding any bank. For banks other than State chartered banks that are members of the Federal Reserve System, complaints will be referred to the relevant Federal bank regulator (Comptroller of the Currency for national banks and Federal Deposit Insurance Corporation for State chartered banks that are not members of the Federal Reserve System).

The Board noted that more than two years ago it established a separate Office of Saver and Consumer Affairs to administer consumer legislation for which the Board writes regulations or has other responsibilities. These laws now include the Truth in Lending Act, the Fair Credit Billing Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Consumer Leasing Act, the Fair Credit Reporting Act and the provisions against unfair and deceptive practices by banks in recent amendments to the Federal Trade Commission Act.

The Board said its procedures for dealing with consumer complaints are designed to:

1. Assure consumers of prompt and responsive action on complaints involving State member banks, and prompt referral of complaints involving other banks.

2. Through records kept of complaints, and of findings concerning them, provide the means to single out banking practices or acts that are widespread or frequent enough to require possible regulatory action by the Board.

The Board is receiving quarterly reports from the FDIC and the Comptroller on the number and nature of complaints they receive.

In announcing procedures by which consumers can get the assistance of the Federal Reserve in investigating complaints alleging unfair or deceptive practices by banks the Board said:

"The Board's complaint procedure is not limited to those persons who are customers of the State member bank in question, nor to those acts or practices which

are already the subject of Federal regulation. Any person with knowledge of an act or practice which that person considers unfair or deceptive may utilize the complaint procedure."

"Similarly, while a consumer complaint may arise under an existing Federal statute or Board regulation, a complaint may also be directed at an act or practice which is either expressly authorized, or not prohibited, by current Federal or State laws or regulation."

"However, the complaint procedure does not apply to requests for general information or publications such as statistical data. Nor does it apply to complaints regarding such matters as monetary policy, fiscal policy or Treasury issues." [Ref: Ch. 9, DA PAM 27-12]

Family Law.

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50-STATE REPORT ON CHANGING LAW DELIVERED TO ABA FAMILY LAW SECTION

Statutory and case-law trends summarized at ABA annual meeting.

A very popular presentation at the American Bar Association's annual meeting in Atlanta last month was the Section Council's report on "Family Law In the 50 States." Dr. Doris Jonas Freed, a much-published author in the field and a New York practitioner, conducted the three-hour panel on the subject, which opened the Section's 1976 meeting. Professor Maxine T. McConnell of Southern Methodist Law School in Dallas, and Judge Theo Bedard, also of Dallas, served as co-moderators of the panel discussion, which included reports by various state bar family law section chairpersons and delegates on recent developments.

SUMMARY OF STATE DIVORCE LAWS

As of August 1, 1976, Dr. Freed announced, only three states—Illinois, Pennsylvania, and South Dakota—retain the old "fault only" grounds for divorce. Mississippi, she added, has just joined the ranks of non-fault states. Effective July 1, 1976, where parties file a joint bill alleging "irreconcilable differences" accompanied by a separation agreement covering property rights, custody and child maintenance a Mississippi divorce may be granted.

Hearings are scheduled this month in the Judiciary Committee of the Pennsylvania Senate on a proposed new marriage and divorce law. The proposal provides: "whenever it shall clearly appear that the disruption of the marriage is irreparable, or there is no reasonable prospect of reconciliation," a divorce may be granted for marital misconduct—desertion for one or more years, adultery, cruel and barbarous treatment, bigamy, imprisonment and indignities—or for insanity or two years separation. Dr. Freed suggested that the proposal has a good chance of passage.

Illinois recently rejected a compromise no-fault divorce bill and the current prospect, Freed said, are that if the state bar committees can reconcile their differences a revised bill will be enacted during the next session of the Illinois legislature.

By Freed's count there are currently 28 jurisdictions that provide for "breakdown of the marriage" as a ground for dissolution. It is the sole ground for divorce in 15 jurisdictions including: Arizona, California (except for insanity), Colorado, Delaware, Florida (except for insanity), Iowa, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Oregon, Virgin Islands and Washington. The remaining 13 states have added irretrievable breakdown to existing grounds for divorce. Also, Freed noted that 22 states make separation or living separate and apart for a stipulated period of time a ground for divorce.

Incompatibility is a ground for divorce in eight jurisdictions. They are: Alabama,

Alaska, Connecticut (plus living apart for 18 months), Kansas, Nevada, New Mexico, Oklahoma and Puerto Rico. And, ten states permit the conversion of legal separation or bed and board divorce into absolute divorce.

Freed also noted a trend toward shortening the specified period of separation under "living separate and apart" grounds to make that ground more useful. She found effort currently underway in Massachusetts to lower the separation period so that fault grounds will be used less often. Vermont has the shortest specified period with six months. Also, pending legislation in the District of Columbia would reduce its one-year period to six months in cases of voluntary separation.

DEFENSES TO DIVORCE

Freed noted that practically every state has abolished some defenses though some states have abolished only certain defenses to certain grounds. Those jurisdictions that have abolished all defenses to divorce are: Arizona, California, (misconduct bears on child custody), Colorado, Delaware, District of Columbia (none by statute), Indiana, Kentucky, Minnesota (none except by case law), Missouri, Ohio (defenses only by case law, recrimination, reconciliation and res judicata are defenses) Oregon, Utah (none except by case law) and the Virgin Islands, Also, a number of states now expressly provide that a divorce may be granted to both parties. Freed observed that such authority may be a "salutary substitute" for the old bar of recrimination. She added however, that in New York it may have the deleterious consequence of barring a wife from alimony if she is guilty of such misconduct as constitutes a ground for divorce. Courts are reluctant, she added, to find an otherwise deserving wife guilty of a fault ground for divorce or to award a divorce to both parties.

PROPERTY DISTRIBUTION

There are about 34 common-law property states where courts have equitable jurisdiction to distribute property, Freed stated. She noted that in Alabama and Georgia this power is limited to alimony only. And, in Florida lump sum alimony is used for this purpose. In some states only marital property accumulated during the marriage can be distributed while other states permit separate as well as commonly-held property to be distributed. Some states' laws have elaborated specific standards for equitable distribution while other states distribute property according to "equity and justice"—the laws contain no specified statutory criteria.

One of the most commonly found criteria for distributing property is the contribution of each spouse to the marriage and the marital assets. Also, Freed noted an increasing trend towards recognition of the role of a spouse as a homemaker, parent, and contributor to the career of the other. Such standards are recognized in Colorado, Indiana, Kentucky, Maine, Michigan, Mississippi (case law), Missouri, Montana, Nebraska, New Hampshire and Ohio.

When courts are given discretion to distribute property regardless of title and according to equity and circumstances of the case and of the parties some of the often specified criteria are: respective ages; health; ability to be self-supporting; ability of spouse to pay; length of marriage; potential earning capacity of each; economic circumstances of each (spouse having child custody, desirability of working); and, assets and liabilities. The common law states that list specified criteria are: Colorado, Delaware, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska and Oregon.

Freed found a trend away from taking marital misconduct into consideration when distributing property. Nine jurisdictions—Arizona, Colorado, Delaware, Kentucky, Montana, Oregon, Virgin Islands and Washington—specifically exclude it from consideration. Alabama, Arkansas, Massachusetts, Michigan, Florida, Missouri, Nebraska, Nevada, New Jersey, South Dakota and Wyoming say that it is material, according to Freed. She also noted that economic misconduct is expressly a factor in dividing property in Dela

Indiana, and Montana but is deleted in New York's proposed law.

In the nine community property jurisdictions—Puerto Rico, Arizona, California, New Mexico, Nevada, Idaho, Louisiana, Texas and Washington—fault has been important as to the amount of distribution or as a bar to distribution of property, Freed Stated. Except in California, Arizona and Washington, and in some cases Louisiana, marital misconduct may decrease or eliminate the guilty party's share of community property distribution.

ALIMONY

Freed found that the concept of alimony has changed in many states to the point that it is now often called maintenance and is increasingly no-fault oriented. The trend is to downgrade marital fault by either specifically excluding it (as in Alaska, Arizona, Colorado, Delaware, Montana, Oregon, Virgin Islands and Washington) or eliminating it from the criteria by not mentioning it. She also noted that it has been "desexed" and is available to either party in 30 or more jurisdictions. Alimony is increasingly based more on actual need and ability to pay and is often awarded for a limited time to allow the other party to become self-supporting, Freed stated. Criteria such as age, health, length of marriage, ability of party as to pay, are relevant. She added that before 1970 adultery was an automatic bar to a wife's receiving alimony in many states but that now only Louisiana, New York, and Wisconsin retain such a rule. (Note: But see FLR RF 447:0004. Ed.)

DURATIONAL RESIDENCY REQUIREMENTS

Freed observed that there is a trend towards cutting down the period of residency prior to filing for a divorce. She also noted that an increasing number of states are adopting statutes that permit members of the armed services stationed in a state to file for a divorce. Some states, she added, have eliminated durational residency requirements and only a bona fide residency or domicile is needed. Arizona, Colorado, Missouri, Delaware and Montana require 90 days residence. Kansas requires 60 days and Kentucky and Michigan require 180 days. Utah requires residency in the state, as does Washington, but there a court cannot act for 90 days after the petition is filed. Wyoming requires only 60 days by the plaintiff unless the parties were married in the state and the petitioner is a resident at the time of filing, in which case there is no durational residency requirement.

CHILD CUSTODY AND SUPPORT

Since 1970 many state laws have been passed that make child support the obligation of both parents rather than primarily the obligation of the father. The courts now consider the respective financial condition of the father and the mother. Custody too has been desexed in a majority of states, Freed observed. Many states for a long time have provided equal rights of custody in both parents but, Freed stated, courts for the most part ignored this and the mother prevailed in at least 90 percent of all contested custody cases. Since 1970, Colorado, Florida, Indiana, Oregon, Wisconsin and a growing number of other states have provided that there shall be no presumption favoring either parent because of sex.

Typical standards for custody in a majority of new statutes are: age and sex of child; wishes of child and parent; interaction and interrelationship of child with parents and siblings; child's adjustment to home, school and community; mental and physical health of both parties. Freed opined that the best criteria are found in Michigan which places emphasis on factors furthering the child's welfare, such as the emotional and psychological factors that go into meaningful parent-child relationship. Also, many new statutes provide for appointment of a guardian ad litem or attorney to represent the child in marital dissolution proceedings where custody is at issue. Also, elaborate investigations and reports are provided. She queried, however: "Should not all settlement agreements be scrutinized as to adequate protection for the child?

BETTER ENFORCEMENT TECHNIQUES

Seventeen states, Freed observed, now have a long-arm statute available in marital actions. She also noted the adoption of the Uniform Support of Dependent Act in New York and the availability of the Uniform Reciprocal Enforcement of Support Act in many other states as aids to enforcement of support orders. She added, however, that New York must change its Support Act to include ex-wives and that 20 other states do include ex-wives under the Act. Finally, Freed found the Federal Child Support Act to be a great aid in enforcement of support obligations. Many millions of dollars in arrearages have been collected under this Act, she observed. [Ref: Part 9, DA PAM 27-12]

FAMILY LAW—DOMESTIC RELATIONS—DIVISION OF PROPERTY OF THE SPOUSES.

The San Antonio Texas Court of Civil Appeals denied an incarcerated husband's writ's habeas corpus on the grounds that the husband was not in prison for failure to pay a debt, but was justifiably held in contempt of court when he failed to exercise his duties as trustee by not paying $105.00 per month from his military retirement directly to his wife. The trial court found that the husband was in arrears almost $4,000 and had him committed to jail until he purged himself of the contempt by paying the arrearage. The Appeals Court said that in remitting the wife's share of the retirement pay, the husband is not paying a debt but is merely surrendering the wife's legally entitled share to her. *Ex parte Anderson.* [Ref: Ch. 20, DA PAM 27-12]

FAMILY LAW—DOMESTIC RELATIONS—DIVISION OF PROPERTY OF THE SPOUSES.

When a divorce decree does not partition community property in being at the time of divorce, regardless that there existed an approved agreement wherein the parties stated that they intended to forever settle the property rights, the former spouses become tenants in common and either spouse may, at a later time, sue for partition of such property. *Taggert v. Taggert,* Texas Court of Civil Appeals, 13th District, August 30, 1976. [Ref: Ch. 20, DA PAM 27-12]

TAXATION—TAX REFORM ACT OF 1976.

On 4 October 1976 President Ford signed into law the Tax Reform Act of 1976. This law makes major changes in our tax system which impact directly in the areas of federal income tax, gift tax, and estate tax.

These changes will be reviewed in detail in future articles, but the following is a short list of the important changes as reported in P-H FEDERAL TAXES, REPORT BULLETIN 42, CONCISE EXPLANATION OF THE TAX REFORM ACT OF 1976 (24 September 1976):

1. The higher standard deduction introduced in 1975 has been made permanent.

2. Beginning in 1977 alimony will be a deduction from gross income instead of an itemized deduction.

3. The holding period for long term capital gains treatment is increased from more than six months to more than nine months for 1977 and to more than one year for the years following 1977.

4. The structure for estate and gift taxes are merged into one unified structure.

5. The $60,000 estate-tax exemption is replaced with a $30,000 tax credit for 1977 which will increase to $47,000 by 1981.

6. The marital deduction will be the larger of $250,000 or half of the estate.

One other major impact on legal assistance offices is the fact that the Internal Revenue Service has indicated that Federal tax forms and publications will not be available until late January 1977 due to revisions required by the Tax Reform Act. However, legal as-

sistance offices should place their orders for these forms early. In order to provide Legal Assistance Offices with the earliest possible guidance in advising clients on tax matters affected by the new law, copies of the Prentice-Hall pamphlet cited above have been ordered by OTJAG for distribution to all Army Legal Assistance Officers. Hopefully, this pamphlet can be distributed in early November.

2. ARTICLES AND PUBLICATIONS OF INTEREST.

DECEDENT'S ESTATES AND SURVIVOR'S BENEFITS—ESTATE PLANNING—TAX REFORM BILL OF 1976.

Payne and Ritch, *The Estate and Gift Tax Reform Bill of 1976: The Unified Rate Schedule, Credits and Appreciation Tax*, 7 CUMBERLAND L. R. 1 (1976). [Ref: Ch 13, DA PAM 27-12]

Name Change and Correction Procedures

Captain Randall E. Pretzer, Legal Assistance Officer for the Grafenwoehr Branch of the 1st Armored Division Law Center, has compiled a four volume set of materials containing information regarding name change and name correction procedures for the various states and territories of the United States. Chief of Legal Assistance in Washington, D.C. and at Headquarters, USAREUR, have a complete set of these materials. This information should be very useful since correction of minor errors in vital statistic documents generally can be accomplished simply by affidavit with little or no expense to the client. Legal assistance personnel in OTJAG, DA, and Headquarters, USAREUR, have this material on hand as an aid for advising you.

JAG SCHOOL NOTES

1. Back Issues of The Army Lawyer, JALS, and the Military Law Review.

The Doctrine & Literature Division of TJAGSA still has a limited supply of certain back issues of *The Army Lawyer*, JALS, and the *Military Law Review* which are available for distribution. Surplus supplies of *The Army Lawyer* are: August 1973; October-November 1973; February-December 1974; February-May 1975; July-October 1975; April-August 1976. Surplus supplies of JALS are: 75-1 through 75-8; 76-1; 76-4 through 76-7. Surplus copies of the *Military Law Review* are volumes: 1; 3-7; 9-17; 20; 22-25; 27; 29-38; 41-42; 44-47; 49-72.

Persons desiring to obtain back copies of these publications should inclose in their request a stamped self-addressed mailing envelope which is large enough to receive the publication without folding. These requests should be addressed to: Doctrine & Literature Division. ATTN: LTC McBride, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901.

2. Colonel Volino Addresses Advanced Course.

On 19 October, Lieutenant Colonel Rose L. Volino addressed the Advanced Course on what the FLITE (Federal Legal Information Through Electronics) system is and how it should be used. Colonel Volino has served since March 1973 as Chief of FLITE, a staff function of the Judge Advocate General of the United States Air Force, designated as Executive Agent for this function for the Department of Defense.

3. 81st Basic Class Graduates.

Commencement Exercises for the 81st Basic Class were held at the JAG School on 8 October. Brigadier General Victor A. De Fiori

gave the address and presented the diplomas. Captain C. Michael Weldon received the American Bar Association Award for Professional Merit for the highest overall class standing. Major Robert H. Berry, Jr., received the Judge Advocate General's School Award for Distinguished Accomplishment for the highest standing in international law. Captain Weldon and Major Berry were both awarded the United States Court of Military Appeals Judge Paul W. Brosman Award for the highest standing in criminal law. Captain Craig V. Gabbert, Jr., received the Judge Advocates Association Award for Achievement for the highest standing in administrative and civil law. First Lieutenant James N. Hatten received The Foundation of the Federal Bar Association Award for Distinguished Accomplishment for the highest standing in procurement law.

CLE News

1. Advanced Procurement Attorney's Course. The Advanced Procurement Attorneys' Course, 3–14 January 1977, will address the theme: The Office of Federal Procurement Policy and New Developments in Federal Contract Law. This course is intended for government attorneys actively engaged in duties requiring a knowledge of procurement law. Guest speakers currently scheduled to speak to the Course attendees are:

The Honorable Mr. Hugh E. Witt, Administrator for Federal Procurement Policy, Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

Mr. Gilbert Cuneo, Executive Partner, Sellers, Conners and Cuneo, Washington, D.C.

Professor Ralph Nash, Professor of Law, The George Washington National Law Center.

Mr. Eldon Crowell, Partner, Reavis, Pogue, Neal and Rose, Washington, D.C.

Judge Richard C. Solibakke, Chairman, Armed Services Board of Contract Appeals.

Trial Judge David Schwartz, Court of Claims, Washington, D.C.

Mr. Charles Goodwin, Assistant Administrator for Procurement Law, OFPP, OMB.

Mr. Daniel S. Wilson, Special Assistant to Administrator for Federal Procurement Policy, OFPP, OMB.

Brigadier General Samuel L. Cockerham, Deputy Director for Logistics (Strategic Mobility), Department of the Army.

Lieutenant Colonel Daniel Unruh, Air Force Policy Member of the ASPR Committee.

Mr. Morris Amchan, Navy Trial Attorney, Armed Services Board of Contract Appeals.

Major William Whitten, Labor Advisor, of Assistant Secretary of the Army, (I&L).

Major Rollin Van Brockhoven, ASPR Committee Legal Member, Army, Office of the General Counsel, Washington, D.C.

Mr. Robert Worthing, ASPR Committee Legal Member, Air Force, Office of General Counsel, Washington, D.C.

Additional quotas for the course are available. Requests for quotas should be made to Major Commands.

2. Law of War Instructor Course. This new course will offer team teaching instruction in the Hague and Geneva Conventions to judge advocate officers and officers with command experience. The officers taking the course will afterwards give instruction on teams in fulfillment of the requirements under AR 350–216. During the course the students will study both the law of war and methods of instruction. Practical application will include the filming of instruction given by the students and playback for critique and improvement. Course dates are: 1st Course—8–12 November; 2d Course—28 February 1977–2 March 1977; 3d Course—4–8 April 1977; 4th Course—6–10 June 1977.

3. Military Administrative Law Developments Course. Military Administrative Law Developments Course: The 3d Military Administrative Law Developments Course will be offered at the School from 6 Dec–9 Dec 76. The course is designed to provide attorneys with knowledge of recent developments in Military Administrative Law. Attendees are presumed to have fundamental working knowledge of the areas studied. The enrollment of 40 students will be instructed by the faculty of the Administrative and Civil Law Division, TJAGSA.

4. Claims Course. The 1st Claims Course will be offered at the School from 17–20 Jan 77. The course is designed to provide attorneys working in the claims field with knowledge of recent developments of military claims. The enrollment of 40 students will be instructed by the faculty of the Administrative and Civil Law Division, TJAGSA. Guest speakers from the U.S. Army Claims Service and the Tort Branch of the Litigation Division, The Judge Advocate General will also participate in the course.

5. New Videotapes—1976 JAG Conference. The following videotapes of the 1976 JAG Conference are available on ¾" videocassettes. To obtain copies of these programs, forward a request along with videocassettes of the appropriate lengths to: The Judge Advocate General's School, U.S. Army, ATTN: Television Operations, Charlottesville, Virginia 22901.

TAPE NUMBER	*TITLE*	*RUNNING TIME*
76 JAG Conf #1	WELCOME AND TJAGSA REPORT COL Barney L. Brannen, Jr., Commandant, and LTC James N. McCune, Assistant Commandant for Reserve Affairs and Special Projects.	22:00
76 JAG Conf #2	KOREA—THE JOINT SECURITY AREA COL Zane E. Finkelstein	23:00
76 JAG Conf #3	OTJAG PERSONNEL REPORT COL Robert B. Clarke and LTC(P) Ronald M. Holdaway	35:00
76 JAG Conf #4	TASK FORCE WEST POINT COL Alton H. Harvey	19:00
76 JAG Conf #5	ADDRESS Mr. Rex Lee, Assistant Attorney General, Civil Division, Department of Justice	40:00
76 JAG Conf #6	USALSA REPORT BG Hugh J. Clausen	26:00
76 JAG Conf #7	PROFESSIONAL RESPONSIBILITY Panel: COL Wayne E. Alley (Chairman), COL Thomas H. Davis, COL William K. Laray	38:00
76 JAG Conf #8	ENVIRONMENTAL IMPACT ASSESSMENTS CPT Michael McGory, Mr. Brian O'Neill, Representative of Office of the General Counsel, DA	28:00
76 JAG Conf #9	ADDRESS, Pt. 1 MG Paul F. Gorman, Deputy Chief of Staff for Training, USA TRADOC	60:00

TAPE NUMBER	*TITLE*	*RUNNING TIME*
76 JAG Conf #10	ADDRESS, Pt. 2 A continuation of tape #9	7:30
76 JAG Conf #11	DRUG AND ALCOHOL ABUSE COL Darrell L. Peck	24:00
76 JAG Conf #12	ANTI-DEFICIENCY ACT VIOLATIONS COL Cecil T. Lakes, Mr. Thomas J. Duffy, Representative of Office of the General Counsel, DA	36:00
76 JAG Conf #13	IMPROVEMENT OF LEGAL FACILITIES Panel: COL Daniel A. Lennon, Jr. (Chairman), COL Thomas H. Davis, COL Joseph B. Conboy, COL Hugh R. Overholt, MAJ LeRoy F. Foreman	28:30
76 JAG Conf #14	CURRENT DEVELOPMENTS IN STANDARDS OF CONDUCT Honorable Richard A. Wiley, General Counsel, Department of Defense	57:00
76 JAG Conf #15	USAREUR REPORT BG Victor A. DeFiori	28:00
76 JAG Conf #16	DEFENSE APPELLATE DIVISION REPORT COL Alton H. Harvey	31:00
76 JAG Conf #17	GOVERNMENT APPELLATE DIVISION REPORT COL Thomas H. Davis	26:00
76 JAG Conf #18	TAJAG REMARKS MG Lawrence H. Williams	18:00
76 JAG Conf #19	JAG GENERAL OFFICER PANEL MG Wilton B. Persons, Jr., TJAG MG Lawrence H. Williams, TAJAG BG Victor A. DeFiori BG Hugh J. Clausen	37:00
76 JAG Conf #20	CLOSING REMARKS, TJAG MG Wilton B. Persons, Jr.	25:00

6. TJAGSA Courses.

November 30–December 3: 3d Fiscal Law Course (5F–F12).

December 6–9: 3d Military Administrative Law Developments Course (5F–F25).

December 13–17: 2d Allowability of Contract Costs Course (5F–F13).

January 3–7: 5th Military Lawyer's Assistant Course (Criminal Law) (512–71D20/50).

January 3–7: 6th Military Lawyer's Assistant Course (Legal Assistance) (512–71D20/50).

January 3–14: 7th Procurement Attorneys' Advanced Course (5F–F11).

January 10–13: 4th Legal Assistance Course (5F–F23).

January 17–20: 5th Environmental Law Course (5F–F27).

January 17–20: 1st Claims Course (5F–F26).

January 24–28: 31st Senior Officer Legal Orientation Course (5F–F1).

January 31–April 1: 83d Judge Advocate Officer Basic Course (5–27–C20).

February 7–18: 69th Procurement Attorneys' Course (5F–F10).

February 28–March 4: 2d Law of War Instructor Course (5F–F42).

March 7–10: 4th Fiscal Law Course (5F–F12).

March 14–18: 2d Civil Rights Course (5F–F24).

March 21–25: 3d Allowability of Contract Costs Course (5F–F13).

April 4–8: 15th Federal Labor Relations Course (5F–F22).

April 4–8: 3d Law of War Instructor Course (5F–F42).

April 6–8: JAG National Guard Training Workshop.

April 11–15: 32d Senior Officer Legal Orientation Course (5F–F1).

April 11–22: 70th Procurement Attorneys' Course (5F–F10).

April 18–20: 1st Government Information Practices (5F–F28).

April 18–21: 2d Defense Trial Advocacy Course (5F–F34).

May 2–4: 1st Negotiations (tentative title) (5F–F14).

May 2–6: 7th Staff Judge Advocate Orientation Course (by invitation only) (5F–F52).

May 9–13: 4th Management for Military Lawyers Course (5F–F51).

May 9–20: 2d Military Justice I Course (5F–F30).

May 16–20: 3d Criminal Trial Advocacy Course (5F–F32).

May 16–27: 1st International Law II Course (SECRET clearance required) (5F–F40).

May 31–June 3: 6th Environmental Law Course (5F–F27).

June 6–10: Military Law Instructors Seminar.

June 6–10: 4th Law of War Instructors Course (5F–F42).

June 6–17: NCO Advanced Phase II (71D50).

June 13–17: 33d Senior Officer Legal Orientation Course (5F–F1).

June 20–July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5–27–C23).

July 11–22: 12th Civil Law Course (5F–F21).

July 11–29: 16th Military Judge Course (5F–F33).

July 25–August 5: 71st Procurement Attorneys' Course (5F–F10).

August 1–5: 34th Senior Officer Legal Orientation Course (5F–F1).

August 8–12: 7th Law Office Management Course (7A–713A).

August 8–October 7: 84th Judge Advocate Officer Basic Course (5–27–C20).

August 22–May 1978: 26th Judge Advocate Officer Advanced Course [40 weeks] (5–27–C22).

August 29–September 2: 16th Federal Labor Relations Course (5F–F22).

September 12–16: 35th Senior Officer Legal Orientation Course (5F–F1).

September 19–30: 72d Procurement Attorneys' Course (5F–F10).

7. Civilian Sponsored CLE Courses.

December

1–3: Loyola Univ. School of Law—Federal

Publications, Contracting for Services [the contracting for and performance of services for the federal government], Washington, DC. Approved: For 18.75 hours of credit by the Minnesota and Iowa CLE authorities and by the California and Ohio Boards of Accountancy. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–8200. Cost $400.

2: Virginia State Bar, Virginia Separation and Divorce, Richmond, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

2–4: Aspen Systems Corporation, Seminar on Health Planning and Public Accountability, Caesar's Palace, Las Vegas, NV. Contact: Mrs. Shirley Worthy, Aspen Systems Corp., 20010 Century Blvd., Germantown, MD 20767.

3: Virginia State Bar, Virginia Separation and Divorce, Norfolk, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

5–10: National College of the State Judiciary, Court Administration [Designed for small to medium multi-judge courts], Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702–784–6747. Cost: $345.

5–17: National College of the State Judiciary, The Judge and the Trial, Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702–784–6747. Cost: $525.

6–8: Aspen Systems Corporation, Seminar on Medical Staff Law and Bylaws, Caesar's Palace, Las Vegas, NV. Contact: Mrs. Shirley Worthy, Aspen Systems Corp., 20010 Century Blvd., Germantown, MD 20767.

6–8: Federal Publications, Government Contract Costs, San Francisco, CA. Cost: $400.

11–18: Court Practice Institute, Morrill's Trial Residency Training, O'Hare Inn, Chicago, IL. Contact: Court Practice Institute, 127 N. Dearborn St., Chicago, IL 60602. Phone: 312–263–0202.

13–15: Univ. of Santa Clara School of Law —Federal Publications, Government Contract Costs, Hospitality House, Williamsburg, VA. Approved: For 16.5 hours of credit by the Minnesota and Iowa CLE authorities and by the California and Ohio Boards of Accountancy. Contact: Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: 202–337–8200. Cost: $400.

13–17: Federal Publications, The Masters Institute in Government Contracting, Williamsburg, VA. Cost: $600.

14–16: LEI, Environmental Law Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St., NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $250.

16–17: Federal Publications Cost Estimating For Government Contracts, San Diego, CA. Cost: $325.

January

4–6: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

7–8: Pittsburgh Institute of Legal Medicine —Los Angeles County Medical Examiner/Coroner's Office, Medical-Legal/Forensic Science Seminar, Los Angeles, CA. Contact: Pittsburgh Institute of Legal Medicine, 1519 Frick Bldg., Pittsburgh, PA 15219.

9–14: NCDA, Prosecutor Office Administrators Course, Univ. of Houston, Houston, TX. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TB 77004. Phone: 713–749–1571.

11–13: LEI, Seminar For Attorney-Managers, Washington, DC. Contact: Legal Educa-

tion Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $250.

24-28: LEI, Trial Techniques in Administrative Proceedings Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $400.

30-4 Feb: NCDA, Prosecutors Investigators School, Detroit, MI. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-1571.

February

1-3: LEI, Institute for New Government Attorneys, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $200.

9-15: ABA, American Bar Association Mid-year Meeting, Seattle, WA.

10-11: ABA Center for Administrative Justice, Symposium on "Conflict of Interest in the Regulatory Process," Twin Bridges Marriott, Washington, DC.

10-12: American Law Institute-ABA Environmental Law Institute-The Smithsonian Institution, Environmental Law, Washington, DC. Contact: Director, Courses of Study, ALI-ABA Committee on CLE, 4025 Chestnut St., Philadelphia, PA 19104.

13-17: NCDA, Trial Techniques Seminar, Salt Lake City, UT. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-1571.

20-24: NCDA, Newly Elected Prosecutors Institute, Houston, TX. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-1571.

22-23: LEI, Seminar for Attorneys on FOI/Privacy Acts, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $150.

25: Virginia State Bar, 7th Annual Criminal Law Seminar, Fredericksburg, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

Reserve Affairs Section

1. ASSISTANT JUDGE ADVOCATE GENERAL FOR SPECIAL PROJECTS (MOB DES) SELECTED.

Colonel Edward D. Clapp, JAGC, USAR, was selected on 7 October 1976 to fill the position of Assistant Judge Advocate General for Special Projects (MOB DES). Colonel Clapp's military experience dates back to April 1945 when he entered the United States Naval Reserve as a cadet at the US Merchant Marine Academy. He spent five years in the US Naval Reserve before transferring to the United States Army Reserve in March 1951. Six months later he entered active duty undergoing Infantry Basic Training with the 86th Infantry Division. Commissioned as a 1LT in 1952, he then attended the 9th JAG Basic Class at The Judge Advocate General's School. He served briefly as instructor of Military Justice Classes and Assistant Defense Counsel of the General Courts-Martial convened at Headquarters, Fort Lewis, Washington. Colonel Clapp embarked for Korea in July 1952, where he was assigned to the office of the Staff Judge Advocate, Headquarters, 8th United States Army. During the period August 1952 through May 1953, he served as Assistant Defense Counsel, Chief Defense Counsel, and subse-

quently Trial Counsel in General Courts-Martial. He also served as Assistant Legal Assistance Officer and Assistant Claims Officer for 8th Army Headquarters. Thereafter, he became Legal Advisor to the Transportation Officer, Japan Procurement Agency, in May 1953 and served in that capacity until November 1954, at which time he returned to the United States for Terminal Leave and Separation. During August and September 1953, while serving at Japan Procurement Agency, he was assigned to one of the twelve Counter Intelligence Corps processing teams which interviewed American repatriated prisoners of war on Operation Big Switch. His reserve assignments have included instructor for the 5042 USAR School, Staff Judge Advocate of 88th Army Reserve Command, and Commander of 134th JAG Detachment and 214th JAG Detachment.

Colonel Clapp received his BSL (Law) degree in 1949, and his LLB degree in 1951 from the University of Minnesota. His military education includes the JAGC Career Course, and the JAGC Reserve Component General Staff Course. He is currently enrolled in the Army War College and will graduate with the class of 1977.

In addition to his private law practice, Colonel Clapp has been active in a wide range of professional and community activities. He was a Board Member and later Chairman of the Board of Trustees of the Beta Theta Pi Society of Minnesota from 1958 through 1962. He was a Board Member, Fund Drive Chairman and Financial Vice President for the St. Paul Council of Arts and Sciences from 1963 through 1968; a Board Member for the St. Paul Opera Association from 1960 through 1976, serving as Secretary, Financial Vice President, during this period, and President of the Association, 1968 through 1972. Other activities include Board Member Reserve Officers Association of Minnesota 1974–1975; Secretary, St. Paul Athletic Club 1976; President Twin Cities Chapter AUSA 1975–76; and Treasurer, Minnesota Chapter Federal Bar Association, 1976. He also served as Village Attorney to the Village of North Oaks, Minnesota, in 1960 and 1961.

Colonel Clapp, his wife Betty, and their three children live in St. Paul, Minnesota, where he is engaged in the practice of law as the Corporate Secretary and General Counsel for Clapp-Thomssen Company.

2. LTC GLOD RECEIVES POST AS PRESIDENTIAL ADVISOR.

Lieutenant Colonel Stanley J. Glod, JAGC, USAR, Deputy Staff Judge Advocate of the 310th TAACOM, and a practicing attorney in Washington, DC, was recently appointed by President Ford to the Presidential Advisory Committee for Trade Negotiations. Created by Public Law 93–618 in January, 1975, the Committee is composed of representatives of government, labor, industry, agriculture, small business, service industries, retailers, and consumer interests.

The Advisory Committee is responsible for monitoring the status of US Foreign trade our trade policies, and for providing overall policy advice on any trade agreement to insure the existence of positions favorable to our economic and industrial growth and development.

In White House ceremonies earlier this year, the Committee was formally installed and met with President Ford and Vice President Rockefeller, as well as Congressional leaders. The Committee will specifically be advising US negotiators currently meeting in Geneva, Switzerland, where 90 countries are participating in multi-lateral trade talks designed to negotiate the reduction or elimination of tariffs and non-tariff barriers in world trade.

3. INDIVIDUAL RETIREMENT ACCOUNT NOW AVAILABLE TO MEMBERS OF THE RESERVE COMPONENTS.

The Tax Reform Act of 1976 contains the following changes which are of interest to members of the Reserve Components.

Section 219 of Internal Revenue Code was amended to permit members of the Reserves and National Guard to make tax-deductible contributions to an individual retirement ac-

count (IRA). The deduction is limited to the lesser of $1,500 or 15% of the individual's compensation or earned income. This amendment is applicable for taxable years beginning after December 31, 1975. Under the old law, members of the Reserves or National Guard were considered to be covered by the US Military Retirement Plan. Consequently, many members of the Reserve or Guard were denied IRA deductions even though they would not be eligible for benefits under the Government plan because they were credited with less than 20 years service for retirement purposes. The amendment, however, does not affect Reserve Component members who are covered by a governmental plan, other than their Reserve retirement.

By the same act 5 U.S.C. § 5517 is amended to permit withholding of state and city income taxes from the compensation of members of the Reserve Components. This law will be effective after a proper state or city official makes a request on the Secretary of the Treasury and a withholding agreement is entered between the Secretary and the requesting jurisdiction.

4. 4TH JAG DETACHMENT EXPANDS LEGAL ASSISTANCE PROGRAM.

Members of the 4th Judge Advocate General's Detachment, US Army Reserve of Bronx, New York, commanded by Colonel Eugene Wollan, JA–USAR, recently began a new legal assistance program at the Third Coast Guard District Legal Office on Governors Island, New York. On each Saturday the officers of the detachment, all of whom are civilian attorneys, are engaged in giving legal advice to Coast Guard personnel and their dependents in connection with questions of civilian law. Where it appears that the use of civilian courts are required, clients are referred to legal aid societies or other appropriate legal services.

Members of the Detachment are already involved in similar work with active army personnel at Fort Dix, New Jersey, Fort Monmouth, New Jersey and Fort Hamilton, New York. In addition, legal assistance is rendered at the West Haven Connecticut Veterans Administration Hospital and with the Air Force at Niagara, New York.

5. RESEARCH PROJECT NEEDS VOLUNTEERS.

In the September 1975 issue of *The Army Lawyer* a project was announced in this section whereby JAG reservists could earn retirement points for their work in compiling State Laws on Garnishment.

Pursuant to a recently enacted law, the United States has waived sovereign immunity and consented to garnishment or attachment proceedings ". . . in like manner and to the same extent as if the United States were a private person . . ." for the enforcement of child support and alimony obligations of federal employees, including active duty, reserve and retired members of the military. Sec. 459, P.L. 93–647, Jan 6, 1975, 42 U.S.C. § 659. Under this statute, state law will be controlling on most questions. Since garnishment is a statutory remedy which differs widely from state to state, the military services have identified a need for a compendium of various state laws on garnishment and attachment covering such aspects as initiation of proceedings, service of process, wages subject to garnishments, responsibility of garnishee to respond, garnishee's duties to comply and sanctions for noncompliance, and discharge of garnishee.

The states listed below are the ones for which the research has not been completed. Judge Advocate Reserve Component officers who desire to participate will earn retirement points for performing this valuable research service.

Delaware
New Hampshire
Vermont
West Virginia

JAG Reserves who are interested in this research project should call or write: LTC James N. McCune, the Assistant Commandant for Reserve Affairs, TJAGSA, Charlottesville, Virginia 22901 or call Area Code 804–293–6121.

International Affairs Section

From: International Affairs Division, OTJAG

NUMBER OF UNITED STATES PERSONNEL IN POST-TRIAL CONFINEMENT IN FOREIGN PENAL INSTITUTIONS AS OF 31 AUGUST 1976

Country	Total by Service			Total by Country
	Army	Navy	Air Force	
AUSTRALIA	1	1	0	2
CANADA	1	1	0	2
DENMARK	1	0	0	1
GERMANY, FEDERAL REPUBLIC OF	64	0	4	68
GREECE	3	3	1	7
ITALY	3	5	0	8
JAPAN	10	78	16	104
KOREA, REPUBLIC OF	6	0	0	6
MEXICO	3	3	0	6
PANAMA	3	0	0	3
SPAIN	1	8	0	9
TAIWAN	0	2	4	6
THAILAND	3	0	1	4
TURKEY	3	2	2	7
UNITED KINGDOM	0	1	7	8
TOTAL BY BRANCH OF SERVICE	102	104	35	241

TOTAL CONFINED: 241

JUDICIARY NOTES

From: U.S. Army Judiciary

RECURRING ERRORS AND IRREGULARITIES

1. September 1976 Corrections by A.C.M.R. of Initial Promulgating Orders:

a. Failing to set forth the correct pleas of the accused in the order—two cases.

b. Failing to include in the order a specification of the charge alleging willful disobedience of an order of a superior commissioned officer—one case.

2. Notes from Examination and New Trials Division.

a. Records of Trial. If for any reason the commander exercising court-martial jurisdiction is changed during some portion of the court-martial process and such change calls for an assumption of command document as required or authorized by paragraphs 3–1b, 3–3b, and 3–4a, AR 600–20, a copy of that document should be included in the record of trial or its allied papers. Staff judge advocates should establish procedures to insure that applicable assumption of command documents are furnished to their office and to the persons responsible for the assembly of the record. In this connection, attention is invited to HQDA (DAAG–PEP) message, 201730Z May 76, subject: Assumption of Command.

b. Court-Martial Orders. HQDA (DAJA–

CL) message, 071515Z Jun 76, subject: Interim Changes to Chapter 3 and 12, AR 27–10, advised field judge advocates of certain changes, as a result of AR 310–10, in the publication of court-martial orders. No change was intended, however, with regard to the authority line on orders. The authority line in a convening order and in an indorsement referring charges for trial indicates that the commander has personally acted. Thus, in court-martial orders the authority line should read "BY COMMAND OF (grade and last name)" when the commander is a general officer and "BY ORDER OF (grade and last name)" when the commander is below the grade of brigadier general.

c. Distribution of Court-Martial Orders. All general court-martial records of trial forwarded to the US Army Judiciary should contain, as to each accused, ten (10) copies of the promulgating order. Item 5 on the back cover of DD Form 490 (Record of Trial), indicating that only four copies of the court-martial promulgating order should be forwarded when the record is summarized, is incorrect. *See* paragraphs 12–5b–e, AR 27–10.

Criminal Law Section

From: Criminal Law Division, OTJAG

1. POST-TRIAL REVIEWS.

Notwithstanding the availability of several articles describing preparation of post-trial reviews, continuing guidance provided by the Office of The Judge Advocate General and military appellate courts, and the relative ease of properly preparing reviews, defective post-trial reviews continue to require remedial action by the appellate courts.

Reviews which fail to meet minimum standards or which contain errors demonstrating a lack of adequate supervision of the reviewing process may require additional action beyond the relief provided by appellate courts or appropriate supervisory authority. In several instances inexcusable errors in post-trial reviews have resulted in the dispatch of letters from OTJAG to the responsible SJA's. Below is an excerpt of a recent letter from OTJAG to a SJA whose error-ridden post-trial review was severely criticized by A.C.M.R.

> The duties of a staff judge advocate in supervising the administration of military justice are varied and complex so that close supervision of every aspect of the office's work may be difficult. However, your Codal mandate to submit your written opinion on the record of trial is a responsibility of high priority. Though it is unlikely that you will be able to author reviews personally, you are expected to participate in their preparation and you assume full responsibility for their content.
>
> The inclosed opinion suggests a necessity for the institution of controls to insure the accuracy of your reviews, especially as to the basic types of errors that occurred in this case. In this connection I commend your attention to DA Pam 27–5, Staff Judge Advocate Handbook, DA Pam 27–175–1, Military Justice Review of Courts-Martial, and the attached checklist (Inclosure 2) and outline (Inclosure 3) published by the Navy. [The cited Navy materials were transmited to all SJA's by letter dated 30 March 1976 from MG Lawrence H. Williams, Acting The Judge Advocate General (DAJA–CL 1976/1572)]. These materials contain excellent information on this subject which, if followed, should preclude recurrence of this problem in the future.

The failure of some SJA's to take advantage of available guidance in this area, or to exercise adequate control over the review process within their offices, is a matter of concern to The Advocate General.

2. Field Defense Service.

The Field Defense Service duty hours are 0745–1615 hours, Monday thru Friday. Telephone numbers are: Commercial 202–756–1390, 1391, 1392. Autovon: 289–1390, 1391, 1392. Written inquiries should be directed to:

US Army Legal Services Agency
Defense Appellate Division
ATTN: FDS
Nassif Building
Falls Church, Virginia 22401

GCM staff judge advocates are requested to provide FDS with the name, address and telephone number (Autovon and Commercial) of their chief defense counsel.

JAGC Personnel Section

From: PP&TO, OTJAG

1. COL Lakes Acting Assistant Judge Advocate General for Civil Law. COL Cecil T. Lakes has been detailed by The Judge Advocate General as Acting Assistant Judge Advocate General for Civil Law, Office of The Judge Advocate General, effective 1 October 1976.

2. Mr. Duffy Acting Chief of Procurement Law Division. Mr. Thomas J. Duffy, GS–15, has been detailed by The Judge Advocate General as Acting Chief, Procurement Law Division, Office of The Judge Advocate General, effective 1 October 1976.

3. Procurement Law Program. The Judge Advocate General has by agreement with DARCOM, secured 10 spaces for training of individuals interested in pursuing a military career in the field of procurement law.

Individuals selected for the program will serve as procurement lawyers for a period of three years at major DARCOM commodity commands (Aviation Systems Command, Tank-Automotive Command, Electronics Command, Missile Command, and Armament Command). At the conclusion of the tour, individuals will be assigned to positions which have a requirement for procurement expertise.

To be eligible for the program, a JAGC officer must have obtained career status (RA or Vol-Indef) and must have completed at least two years in the current assignment. Input to the program will be phased in over a one year period. All interested personnel should contact PP&TO.

4. Vacancies. There will be vacancies for JAG captains with procurement experience with the Corps of Engineers Divisions and Districts at the following locations:

a. USA Engr Div, Middle East (one year duty station at Berryville, Virginia and two years at Riyadh, Saudi Arabia).

b. USA Engr Div North Pacific (three years duty station at Anchorage, Alaska).

c. USA Engr Div, South Atlantic (three years duty at Mobile, Alabama).

d. USA Engr Div Pacific Ocean (three years duty station at Ft Shafter, Hawaii).

Any interested JAG officers should contact PP&TO.

5. Orders Requested as Indicated:

Name	*From*	*To*
	COLONELS	
Rupert P. Hall	Fort Lewis, WA	Fort Sam Houston, TX

Name	*From*	*To*
	LIEUTENANT COLONELS	
Charles J. Baldree	US Army Judiciary, Bailey Crossroads, VA	USALSA, Germany
	MAJORS	
David J. Deka	Fort Bragg, NC	82d Airborne, Fort Bragg, NC
Thomas A. Knapp	Fort Sam Houston, TX	Fort Monroe, VA
Warren P. Taylor	Fort Carson, CO	Washington, DC
	CAPTAINS	
David W. Boucher	Fort Dix, NJ	USALSA, Falls Church, VA
Joseph M. Burton	Korea	Fort Ord, CA
Douglas E. Canders	Fort Bragg, NC	Korea
Thomas R. Cooper, Jr.	Korea	Fort McPherson, GA
Robert P. Corbin	Fort Bragg, NC	USALSA, Falls Church, VA
Lawrence A. DeClaire	Germany	Fort Sill, OK
Stephan E. Deen	Thailand	Fort Benjamin Harrison, IN
Thomas G. Ferguson	Fort Sill, OK	Korea
William L. Finch	Germany	USALSA, Falls Church, VA
Michael E. Gersten	Korea	Fort Lee, VA
Gary B. Goodman	Germany	Fort Bragg, NC
James M. Lazarek	Fort Campbell, KY	USALSA, Falls Church, VA
Verndal C. F. Lee	Fort Lewis, WA	Korea
James D. Long, Jr.	Fort Hood, TX	Korea
William G. F. Miller	Def. Language Inst., Monterey, CA	USAREUR & 7th Army, Europe
John H. Milne	Korea	USALSA, Falls Church, VA
Michael Nardotti	Law School, Albany, NY	83d Basic Class, TJAGSA
Vincent C. Nealey	Fort Monroe, VA	Fort Jackson, SC
Barry Pittman	Law School, Albany, NY	82d Basic Class, TJAGSA
James W. Shewan	Korea	Fort Campbell, KY
David A. Shull	Vint Hill, Warrenton, VA	OTJAG, Washington, DC
Frank Sofocleous	Korea	Fort Belvoir, VA
Malcolm H. Squires, Jr.	Fort Jackson, SC	USALSA, Falls Church, VA

Name	*From*	*To*
Curtis D. Street	Fort Gordon, GA	Korea
Randall E. Wilbert	Germany	Fort Dix, NJ
	WARRANT OFFICERS	
Arthur Cross	Fort Monmouth, NJ	1st Armored Div, Germany
Arnold Winger	Germany	Fort Lewis, WA

Current Materials of Interest

Articles

Everything you always wanted to know about the military magistrate program, CDRS CALL, Sep-Oct 1976, at 4 (DA Pam 360-829). This is an excellent article.

Grayson, *Recent Developments in Court-Martial Jurisdiction: The Demise of Constructive Enlistment,* 72 MIL. L. REV. 117 (1976). By Captain Brett L. Grayson, JAGC, Chief Trial Counsel, Camp Casey, Korea.

O'Roark, *Perspective: Military Administrative Due Process of Law as Taught by the Maxfield Litigation,* 72 MIL. L. REV. 137 (1976). By Lieutenant Colonel Dulaney L. O'Roark, JAGC, SJA, 8th Infantry Division, Germany.

Note, *Requests for Trial by Military Judge Alone under Article 16(1)(B) of the Uniform Code of Military Justice,* 72 MIL. L. REV. 153 (1976). By Captain William R. Baldwin III, JAGC, Washington & Lee University Law School.

Siegel, *Cross-Examination of a "Voiceprint" Expert: A Blueprint for Trial Lawyers,* 12 CRIM. L. BULL. 509 (1976).

Lederer, *Rights Warnings in the Armed Services,* 72 MIL. L. REV. 1 (1976). By Captain Frederic I. Lederer, JAGC, Instructor, Criminal Law Division, TJAGSA.

Altieri, *Federal Enclaves: The Impact of Exclusive Legislative Jurisdiction Upon Civil Litigation,* 72 MIL. L. REV. 55 (1976). By Captain Richard T. Altieri, JAGC, Chief Defense Counsel, Fort Carson, CO.

Coleman, *Proposed Codification of Governmental Immunities and its Effect on Economic Privileges Extended United States Forces Abroad,* 72 MIL. L. REV. 93 (1976). By Major Gerald C. Coleman, JAGC, Chief, Status of Forces Team, International Affairs Division, OTJAG.

Moskowitz, *Can D.C. Lawyers Cut the Ties that Bind?,* JURIS DOCTOR, Sept. 1976, at 34. This article contains a discussion of D.R. 5-105(D) of the Code of Professional Responsibility.

Note, *The Interrelationship of the APA and the Tucker Act: The Government Contracts Example,* 64 GEORGETOWN L.J. 1083 (1976).

Comment, *Socioeconomic Impacts and the National Environmental Policy Act of 1969,* 64 GEORGETOWN L.J. 1121 (1976).

Note, *Appropriate Scope of an Environmental Impact Statement: The Interrelationship of Impacts,* 1976 DUKE L. J. 623 (1976).

Comment, *The Seizure and Recovery of the Mayaguez,* 85 YALE L.J. 774 (1976).

Recent Decisions

Due Process and Air Force Regulations Require That the Civil Service Commission Review the Air Force's Transfer for Military Reasons of a Government Employee to the

Inactive Reserve Where the Transfer Stigmatizes the Employee and Results in the Loss of his Government Job—Rolles v. Civil Service Commission, 512 F. 2d 1319 (D.C. Cir. 1975), 44 GEO. WASH. L. REV. 299 (1976).

ARs

Army Reg. No. 340-18-4, Office Management—Maintenance and Disposition of Legal and Information Functional Files, should be updated with Change No. 4 (10 September 1976) effective 1 January 1977.

Army Reg. No. 340-18-14, Office Management—Maintenance and Disposition of Logistics Functional Files, should be updated with Change No. 8 (17 September 1976) effective 1 January 1977.

Errata

In Captain Lancaster's *Legal Assistance Items* section, the last sentence in the first column on page 16 of the September 1976 issue should have read:

"There is no indication, at this time, if the above provision exempts military personnel whose domicile is New Jersey, but who maintain no permanent place of abode in New Jersey, maintain a permanent place of abode elsewhere, and spend no more than 30 days of the taxable year in New Jersey."

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:
PAUL T. SMITH
Major General, United States Army
The Adjutant General

*U.S. GOVERNMENT PRINTING OFFICE: 1976 621-817/2 1-3