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MAJOR GENERAL THOMAS HENRY GREEN
The Judge Advocate General

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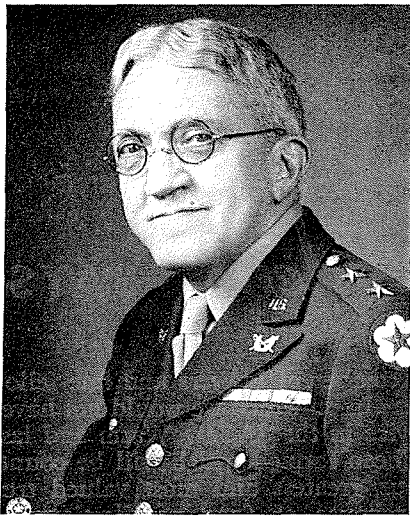
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THE *General's* PAGE



THIS IS THE LAST opportunity I shall have to address you as The Judge Advocate General. Our associations during the War years have been such that I find this prospect not untinged with sadness. However, I like to think that the friendships we have formed are personal as well as official and will not cease upon my retirement.

I am happy to have this opportunity to thank sincerely all judge advocates for their patriotic service to this Department and their country during World War II. Demands have been and are still being made upon the Judge Advocate General's Department on a scale hitherto unknown in the history of the Department. Our activities had to be geared to a global war. The professional skill, the energy and the loyalty of over twenty-nine hundred judge advocates have combined to make it possible for our Department to meet those demands and, in my opinion, meet them well.

You represent a cross section of the finest of the bar in the United States so it is small wonder that, with men of your caliber in our Corps, the Department has been able to render this service to the country.

Although hostilities have ceased, service continues as the watchword of the Department. I am confident that General Green will have your continued loyalty. With that, both he and the Department can look to the future with confidence.

In the coming months many of you will be returning to private practice, in nearly every instance to take up careers interrupted by your war service. The task of reestablishing your practice will not always be easy but, knowing you as I do, I am confident that you have the ability to meet the problem. I hope that your task of reconversion will not be too difficult and that you will enjoy every success in your practice. You will find that your experience in this Department will prove of value to you in civilian life. I hope, too, that you will always maintain your interest in our Corps so that, should the need ever again arise, we shall have a strong group both willing and capable of serving.

One of my most pleasant reflections as I am about to terminate my service is the thought that you share my pride in being a member of our Corps which, as I have said many times before, I believe to be the finest body of professional men in the Army.

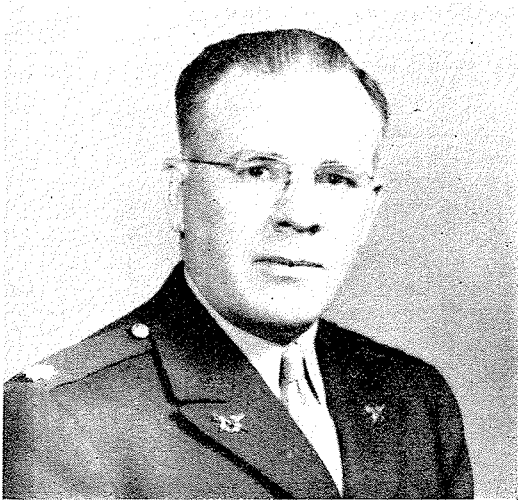
I shall always retain an interest in and affection for you personally and individually. I trust that in the future we may meet many times. Until then, good bye and good luck.

MYRON C. CRAMER

Major General

The Judge Advocate General

30 November 1945



THE *President* SAYS—

WAS IT WORTHWHILE? That is a question that many of us will ask of ourselves as we return to civilian life.

In our day to day existence during the war, our contribution to the war effort as lawyers and as Judge Advocates seemed so insignificant and unimportant that without any hesitation the answer then would have been in the negative most emphatically and sometimes almost tearfully. That was understandable because we were classed as Service of Supply. We were a part of the overhead. We were far down the line from the man who pulled the trigger. There was no excitement, fame or glory to be expected, but only the daily grind and drudgery that falls to the lot of the professional worker in a specialized branch of a large organization. Right or wrong we all subscribed to the theory of soldiers first and lawyers second and we got some measure of consolation when we cheerfully exercised our soldier's prerogative to gripe about everything and everybody whether justified or not.

In addition to this, there was the frustration due to red tape, the necessary regimentation, and the subordination of will and action to rank. It is one of the unnoticed phenomena of our citizen's army that so many lawyers, by nature contentious and independent in thought and action, buckled down and played the game in accordance to the rules made by professional soldiers.

There were many times when we could have predicted with certainty that we would close out our Army careers thoroughly disillusioned, discredited and disgruntled, bankrupt in originality and imagination, and void of initiative and confidence. In civilian life, lawyers as a class are the most abused but the most trusted and so it is in the military. The tough old line officers, the ones we had to deal with, at first had little respect for the Judge Advocate. Those were dark and troubled days. We were unsure of ourselves, uncertain and anxious about the future and impatient to finish the job and rejoin our families.

Now, for the most of us, the game is over. Have we a profit? Let's count the chips.

We find we were provided with a wise, patient, and kindly but firm leadership in the person of General Cramer. His immediate assistants, Regular Army Officers, were extraordinarily industrious and capable, and enthusiastically carried out his sound policies and administered his affairs loyally, faithfully, and unselfishly with great credit to themselves and to the Corps. We find that we have become intimately acquainted with a large

number of competent lawyers and fine fellows from all States of the Union which we would not have met except for our service in the JAGD. Warm and lasting friendships have been formed which will be counted, in later years, as our greatest and most valued treasures. We find a storehouse of fond recollections of the kind thoughtfulness, the willing and generous help, the wise counsel, the warm hospitality, and the happy associations of our friends. Therein is the tie that binds us together. Lastly, we leave with the knowledge and the inner satisfaction of duty performed and the job finished. That there are few among us who do not proudly wear the crossed sword and quill gives ample testimony to the fact that the job was well done.

Now to the business of the Judge Advocates Association. Never can the President of this Association speak without reminding the members that the dues for 1945 became due on January 1st and the dues for 1946 are now due. You who have not paid your dues can now take time off without losing the war. It is urgently requested that you attend to this piece of business without delay. Our good Treasurer, Lt. Col. Cope, has done an outstanding job and I know he would be pleased if he could report the membership paid up 100 percent.

This is my swan song as your President. Nothing could be more appropriate than to sing a swan song in Nurnburg in the heart of Germany along with the once haughty leaders of the mighty Deutschland. Theirs it attuned to the utter destruction, desolation, fear and misery that surrounds them. Mine is on a grateful note of appreciation to all the Officers and Directors of the Association for their wholehearted and unselfish support. We all worked in the hope that the members would find some benefit in their association and we like to think that this Journal contributed in a small way as one of the millions of other small efforts which brought about our victory over our vanquished foes. Especially do we thank those who, at great personal sacrifice, contributed articles for publication in the Journal. At the risk of offending others, I want to acknowledge publicly, my sincere thanks to Major Clarence L. Yancey and Captain Sherwin T. McDowell, Editor and Associate Editor of the Journal, for their industry and faithfulness to duty, their loyalty and enthusiasm, and their painstaking and intelligent work in preparing and editing this Journal. For the excellence of this publication the major part of the credit is theirs. Every member owes them a debt of gratitude for their fine work.

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MEET *General Green*

A DISARMING candor characterizes the man who became The Judge Advocate General on 1 December 1945. He, like his predecessor, has risen from the grade of private in the Cavalry to the post of chief legal officer of the War Department and the Army with the rank of Major General.

General Green is the kind of a fellow you enjoy meeting in the hallways. As he strides along, boyishly swinging his arms, he tosses his head to one side and gives you a friendly grin and a hale "Good morning" which has a crisp New England quality. A man utterly without pretense, you are convinced that there is not an egotistical molecule in his makeup. As an individual he is unusually wholesome and agreeable, but get him riled and he can be as tough as a barnacled Maine lobster. His leathery, deeply furrowed face bespeaks years spent in the open air and sunshine. A full suit of brown hair, flavored with gray, is neatly trimmed and cleanly parted on the side. The long, straight nose and piercing blue eyes through gold rimmed specs, if complemented with a wig and the use of slight imagination, would round out a picture of a severe English barrister.

He is as much at home in a sailboat as astride a Cavalry mount, thanks to his Massachusetts boyhood and years of Army service in Hawaii. He is at ease in the better salons of Washington but prefers small gatherings of old service friends. Especially does he enjoy the folksy kind of evenings when he can accompany wholesome singing with his accordion. Friends will tell you he can play all the well known tunes and follow while they sing the unfamiliar ones. This he does as he prods the group into more volume and harmony. His friendships are genuine and mellow with time, so that a reunion with old cronies after a period of years apart may result in a vigorous round of good natured handwringing and backslapping resembling something slightly less than mayhem to the neophyte on the sidelines.

On entering General Green's office one is struck with the absence of papers lying around on his desk. If something is sent to him for notation it comes back by return messenger with the characteristic "THG" neatly inscribed. No dust gathers on papers in Tom Green's office. After mature thought and discussion he reaches decisions quickly. His assistants well know that they are in for a thorough quizzing when they lay a case on his desk—each question a well-aimed dart at the center of the target. If it is an Army policy matter, his judgment is well tempered by long service and thorough knowledge of the soldier's point of view. That he has a friend in the Army's highest court, the G.I. may rest assured. In moments of relaxation The Judge Advocate General can recall to you endless cases where, as Cavalry Troop Commander, Trial Judge Advocate, or Staff Judge Advocate, he has given the soldier that other chance that meant a respite from certain court-martial conviction and probable disgrace. In a percentage of cases sufficient to justify pride, the offenders have made good. But the hardened rulebreaker gets no favor and scant sympathy.

His love for the service and its traditions is marked. Although for some years now he has been an "arm chair"

officer, he likes assistants with troop and field experience. On coming to Washington as Assistant Judge Advocate General in 1943 he immediately decreed that since every Army Officer worth his salt should be a good marksman, all those on duty in JAGO should report to Fort Myer for pistol practice. He was privately pleased at the high percentage of experts and sharpshooters that were revealed. Carrying it a bit further, all officers were next required to fire the carbine at a range set up in Rock Creek Park. The final scores on this firing were also unusually satisfactory and about this time there was speculation in the corridors of the Munitions Building that the "Old Man" was about to send the office force out for an hour of close order drill each morning up and down Constitution Avenue.

The arrival of General Green at the office did more than impress the officers that they were first of all soldiers and not just lawyers in uniform. He also demonstrated that he knew about running a legal organization. He proceeded upon the assumption that when other War Department agencies asked for a legal opinion they should have it in a hurry and with no bickering and sidestepping the answer should be promptly and simply stated and to the point. He insists that The Judge Advocate General must stand by to render a real service. He liberalized the scope of the office's work and accepted and answered many a query which might have been sent back with the terse notation that under the regulations The Judge Advocate General would not be required to answer that one.

General Green was born in Cambridge, Massachusetts, on 22 April 1889, and graduated from Boston University in 1915 with a degree of Bachelor of Laws. He was admitted to the bar of Massachusetts and practiced law in Boston until he was called into Federal Service with the Massachusetts National Guard in 1916 for border patrol service. He was commissioned a second lieutenant in the Regular Army and assigned to duty with the 2nd Cavalry on 24 October 1917 at Fort Ethan Allen, Vermont. He later transferred to the 15th Cavalry at Douglas, Arizona and went to France with that regiment in March 1918. He served at various places in France and participated in the Meuse-Argonne Offensive. He attained the temporary rank of major while overseas and served as commanding officer of his regiment in bringing it back to this country. Thereafter he held numerous assignments and manifested a renewed interest in the law by pursuing studies at George Washington University which culminated in his receiving the degree of Master of Laws in 1923. On 22 December 1924 he transferred from the Cavalry to the Judge Advocate General's Department.

In his tours of duty thereafter he served in the Civil Affairs Section of the Judge Advocate General's Office in Washington, as Assistant Judge Advocate of the Second Corps Area at Governor's Island, New York, followed by a further tour of duty in the Judge Advocate General's Office where he was assigned to the Military Affairs Section and later as Chief of the Patents Section of that office until June 1939. During this period he was also detailed to take a special field officer course at Chemical Warfare School, Edgewood Arsenal, and he

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The Judge Advocate General

PEARL HARBOR TO V-J DAY

RUSH HOUR traffic has subsided on the broad sweep of Constitution Avenue and the noise of day gives way to the quiet of evening. Most office windows are darkened, but the light still burns in the Munitions Building office of The Judge Advocate General. Finally, at 6:30, having cleared away the work that was heaped high in his "In" basket at 5 o'clock, the General looks up, smiles without evident trace of weariness, and says, "I guess I'll call it a day." Those who stay until the General leaves greet this announcement with barely concealed joy.

Not just once in a while when there happened to be an extra rush of work, but day in and day out was the above scene reenacted. Sometimes it was earlier, sometimes later than the General left, but always long after the rest of the office had gone. It is this fact that perhaps most impresses one about General Cramer, his devotion to duty and his capacity for hard work.

He assumed personal responsibility for a great volume of court-martial work that many tried to get him to turn over to others. He consistently refused, saying that if the Secretary and Under Secretary of War each personally concerned himself with the matters he took up with them, it was likewise his duty personally to look after them.

Many demands were made upon him and after a day filled with conferences that left no time to take care of the paper work on his desk, the General stayed after hours to do the work which had been left standing undone at the close of the normal work day. He might have saved himself some of this by closing the door to his office. But it was his standing instruction that his door should never be closed. Members of his staff felt free to discuss matters with him, seek his advice, and were never turned away. This at the expense of longer hours for the General himself. In another way, this "open door" policy also typifies the way in which the General approached each problem. He took hold of each one with refreshing openmindedness.

His eye for errors is legendary. One evening while working over the last roughs remaining in the "In" basket, the General stopped, muttered to himself, "That can't be," slipped back to the record, checked it for a moment and then changed a date in the carrying papers. These had stated that the accused had been tried in May of 1944 for bigamy committed in June of 1944. The General corrected the latter date to 1943, with the remark that people should not let mistakes like that get by. Somehow, however, one got the impression that the General was glad they did now and then; he could prove to himself that his eye was just as keen as ever.

This story is about the man and not about the accomplishments of the office under his direction. That has been told elsewhere. But it must be said that if General Cramer were called upon to state the motto of the Department in one word, that word would be "Service." He strove not only in all that he did personally, but in all that the Department did to achieve the ideal of service. That his efforts bore fruit is attested by the cordial relations that exist both in the field and in Washington between this Department and other agencies.

He was sparing in the use of words not only in what

he wrote but in what he said. His penciled notations on memoranda crossing his desk are masterpieces of lucid brevity. A job that merited special commendation was usually returned to the author with the cryptic notation, "Fine business. MCC". Knowing General Cramer, the writer usually considered this the equivalent of about a half page of praise. This economy of words carried over into his conversation. Much time could have been wasted in idle talk with the many persons who called upon him but the General always talked with one eye on the work on his desk so that conversations were not uneconomically prolonged.

Another well-known trait of General Cramer's is his habit of letting the other fellow do the talking. Sometimes people jumped to the conclusion that his silence imported a failure to comprehend the problem. A pointed question here and there quickly dispelled this conclusion and frequently left the caller discomfited at his lack of ready answer to an incisive query. Then he went back for more research, resolved not to return without all possible inquiries covered.

Nor is the General without a quiet sense of humor. An incident that occurred at the JAG School is still recalled with a smile. The General was reviewing the troops at one of the graduation parades. The loud speaker sounded Ruffles and Flourishes and all rendered the hand salute. Then, unfortunately, the needle stuck on the record. Colonel Young, whose passion for precision is well known to his graduates, endeavored to apologize to General Cramer. "Forget it," replied the General, "Keep it going. In another 30 seconds I'll be a Field Marshal."

Although he held office during the most trying times, the General never, to the knowledge of his staff, lost his temper—that is, about matters of business. One office gadget was very dear to his heart and thereby hangs a story of lost temper. Beside the General's desk was an imposing interoffice communication piece, known on the office inventory as "Dictagraph, Model 22-220," but known to all who worried with it as the "mechanical rat trap." When working smoothly it put the General in instant touch with his division chiefs. When not working smoothly it caused a veritable avalanche of difficulty. On one of the frequent days when it was out of repair (it limped along for the greater part of a year on second hand batteries) harried assistants informed the General that no repairmen were available to look after its misfortunes for two or three days. A stony silence greeted this information. But it may now be recorded that the General thereupon made a personal telephone call to the Pentagon. In a matter of minutes a repairman with full repair kit arrived. It is believed that this is the only known instance of General Cramer's reliance on the doctrine of RHIP.

Thumbnail sketches require that certain vital statistics be mentioned. Let it be recorded that General Cramer was born Myron Cady Cramer November 6, 1881 of New England stock in Portland, Connecticut, then and now a sleepy village off the beaten track. In his early youth General Cramer moved to Oneida, New York, where his boyhood days were spent. As befitted a New Englander, he attended Wesleyan University,

from which he took his A.B. degree in 1904. He then went on to Harvard Law School, receiving his LL.B. degree in 1907. The lure of the big city called and he practiced in New York for three years, serving part of the time on the legal staff of a large insurance company. The starting salary for young attorneys in the New York firms those days was \$50.00 a month. General Cramer's salary with the insurance company was paid on a per diem basis and worked out to \$55.00 a month. The General recalls with a smile that he was the highest paid member of his class—except for one whose father set him up in the business of serving on the board of directors of his various enterprises.

After three years in New York the General shook free his eastern ties and removed to Tacoma, Washington, where he engaged in general practice. In January 1911 he joined the Washington State National Guard as a private and was commissioned a second lieutenant of cavalry in November of that year. While serving as deputy prosecuting attorney for Pierce county Washington in 1916 he was called into active service on

Mexican border duty. This service concluded, General Cramer returned to the prosecuting attorney's office for a brief period before the Guard was again federalized for World War I. First stationed at Camp Greene, N.C., he went overseas in January 1918 as a captain with the 41st Division. While overseas he attended the General Staff College at Langres, France. Upon his graduation in June 1918 he rejoined the 41st Division as Assistant Chief of Staff. Awarded the Ordre de l'Etoile Noir of France for his World War service, General Cramer returned to the United States in July 1919 with the rank of lieutenant colonel.

He resumed his practice in Tacoma for about a year but withdrew from it in July 1920 to accept a commission as a major in the Judge Advocate General's Department of the Regular Army. As a member of the Regular Army he first served as judge advocate of the 3rd and later the 4th Division at Fort Lewis, Washington. Other assignments took him to West Point as assistant professor of military law at the United States Military Academy and

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GENERAL CRAMER AND SOME OF HIS PRINCIPAL ASSISTANTS

First Row: Major General Myron C. Cramer, The Retiring Judge Advocate General; Major General Thomas H. Green, The Judge Advocate General; Brigadier General John M. Weir, Assistant Judge Advocate General. Second Row: Col. William D. Parlow, Chairman Board of Review No. 4; Colonel Thomas E. Sands, Jr., Chief Litigation Division; Colonel William A. Rounds, Assistant Judge Advocate General; Colonel Archibald King, Chief International Law Division; Colonel Terry A. Lyon, Chairman, Board of Review No. 5; Colonel Thomas N. Tappy, Chairman Board of Review No. 1; Colonel Philip J. McCook, Special Assignments; Colonel Hubert D. Hoover, Assistant Judge Advocate General. Third Row: Captain Sherwin T. McDowell, Executive Division; Colonel William H. Beck, Jr., Chief Control Branch; Colonel Rudolph E. Kunkel, Chief Military Justice Division; Colonel John W. Huyssoon, Chief Military

Affairs Division; Colonel Mastin G. White, Chief Special Clemency Branch; Lt. Col. Felix Atwood, Acting Chief Contracts Division; Lt. Col. Milton J. Blake, Chief Legal Assistance Branch; Colonel Albert N. Hickey, Chief Special Planning Branch; Colonel Joseph H. Davis, Chief Military Reservations Division. Fourth Row: Lt. Col. Lewis W. Morse, Director of Libraries; Mr. George S. Holmes, Chief Office of Technical Information; Colonel Berryman Green, Chief Tax Division; Lt. Colonel James L. Brewerink, Patents Division; Major John W. Thomas, Acting Chief Publications Branch; Lt. Col. Charles A. Luckie, Member Board of Review No. 2; Lt. Col. Robert J. O'Connor, Member Board of Review No. 3; Lt. Col. Anthony Kane, Chief Military Personnel and Training Division; Colonel William J. Hughes, Jr., Assistant Chief Military Justice Division; Colonel Ralph G. Boyd, Chief Claims Division.

THE RULE AGAINST *Ex Post Facto* LAWS AND THE PROSECUTION OF THE AXIS WAR CRIMINALS

By HANS KELSEN*

I

THE original meaning of the term "*ex post facto* law" as used in the Constitution of the United States was "retroactive law" and not, as it is interpreted nowadays, only retroactive *criminal* law. Blackstone,¹ speaking



HANS KELSEN

of "unreasonable method" of lawmaking refers to "laws *ex post facto*, when after an action (indifferent in itself) is committed, the legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it." This is a retroactive criminal law, but Blackstone refers to it only as an example, for he concludes: "All laws should be, therefore, made to commence *in futuro* and be notified before their commencement, which is implied in the term 'prescribed'."

The opinion that the term *ex post facto* law as used by the Constitution of the United States originally referred to all retroactive laws has been expressed by Colonel Mason² in the debates on the adoption of the Federal Constitution in 1787, and with great emphasis by Justice Johnson of the Supreme Court in the case *Satterlee vs. Muthewson*.³ There can be no doubt, however, that the restrictive interpretation of the constitutional rule against *ex post facto* legislation very soon became predominant and is today generally accepted.

This is quite understandable. For an unrestricted constitutional prohibition of retroactive legislation would lead to unbearable consequences. The rule against retroactive legislation, though a basic principle of jurisprudence, was never recognized without the admission of important exceptions. It is worthy to note that in England the rule on *ex post facto* law, though in principle accepted by the common law, was never interpreted as a limitation of the sovereign legislative power of

Parliament. The opinion prevails that Parliament always can pass a retroactive statute.

II

The rule first established by Roman jurisprudence has been taken over by the natural law doctrine. Here it has been deduced from the nature of the law as a rule prescribing future conduct of man. To regulate human conduct which has taken place in the past is impossible. If a retroactive law means a law prescribing a certain conduct of man for the past, the rule against retroactive legislation expresses a logical necessity.

This was probably the idea underlying the natural law doctrine of the inadmissibility of *ex post facto* laws. To understand it, we must take into regard that according to the natural law doctrine the rule of law is a norm prescribing directly the desirable conduct of the subjects, regardless of sanctions attached to the contrary conduct. Sanctions are not essential to the law since its rules are derivable from nature or reason and evident to man as a being endowed with reason. A rule stating that men ought to behave in a certain way is meaningless if it refers to the past and not to the future.

In opposition to the natural law doctrine, legal positivism considers sanctions as an essential element of the law, and consequently formulates the rule of law as a norm by which sanctions are prescribed to be executed by specific organs of the community against subjects whose conduct is undesirable. It is by attaching sanctions to an undesirable conduct that the latter is made illegal. It is by prescribing sanctions to be executed by organs against subjects that the conduct of the subjects is regulated. It is an indirect regulation of the conduct of the subjects. Hence the rule of law as formulated by legal positivism refers to the conduct of, at least, two individuals: the organ authorized to execute a sanction, and the subject against whom, on behalf of his illegal conduct, the sanction is directed. The rule of law as formulated by the natural law doctrine refers only to one individual: to the subject whose legal conduct is prescribed by the rule. This rule of law cannot be retroactive; but the rule of law providing sanctions can; not, of course, with respect to the action of the organ, the execution of the sanction; this action can be prescribed only for the future; but with respect to the conduct of the subject which is the condition of the sanction. A rule of law can attach a sanction to be executed in the future, that is to say after the rule has been enacted, to human conduct which has been performed in the past, that is to say before the rule has been enacted. Such retroactivity is legally possible, but may not be morally or politically desirable. The postulate not to enact retroactive laws cannot be derived from the nature of law in the sense of legal positivism, as it can be derived from the nature of law in the sense of the natural law doctrine. Within the system of legal positivism the rule against retroactive legislation is not an absolute principle as the corresponding rule of the natural law doctrine is, expressing a logical

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1. Blackstone, Commentaries 16.
2. Jonathan Elliot, The Debates, Resolutions, and Other Proceedings in Convention on the Adoption of the Federal Constitution, as Recommended by the General Convention in Philadelphia on the 17th of September 1787, Vol. II, page 353.
3. 2 Peters 416, and Note 681 ff.

necessity. Its value is highly relative and the sphere of its validity restricted.

III

Retroactive laws are held to be unjust because it hurts our feelings of justice to inflict upon an individual a sanction which he did not foresee, since it was not yet attached to his conduct, and consequently this conduct was not yet illegal, at the moment he committed the action or omission for which he is subjected to the sanction. It is, however, not against our feeling of justice to refrain from applying a law which has been repealed by another law, to a subject who has committed an act to which the repealed law attaches a sanction. If the law by which the previous law is repealed refers to cases which occur prior to the enactment of the repealing law, the latter is retroactive. Since it is advantageous to the subject, it is not considered to be unjust. On the contrary, it is considered to be unjust if such a law is not retroactive. The same is true with respect to a retroactive law by which the sanction provided by a previous law is softened. Hence it is not exactly the retroactivity of the law which is felt objectionable. It is the fact that the individual had no chance to avoid a sanction or a more severe sanction provided by a subsequent law. If he had known that his conduct would entail a sanction, or a more severe sanction than that he had to expect at the moment his conduct took place, he would perhaps have conducted himself in another way; he would perhaps have chosen a conduct by which the sanction was avoided.

The idea underlying this principle of justice is probably the doctrine of contract in a somewhat modified form: the law is binding upon an individual and therefore, applicable to him only if it is recognized, and if not recognized, at least known by him. It is very significant that Blackstone deals with *ex post facto* laws in connection with the problem of notification of laws. He says: Law "is likewise 'a rule prescribed' because a bare resolution confined in the breast of the legislator without manifesting itself by some external sign, can never be properly a law. It is requisite that the resolution be notified to the people who are to observe it. But the manner in which this notification is made is a matter of very great difference . . . whatever way is made use of, it is incumbent on the promulgator to do it in the most public and propitious manner; not like Caligula, who (according to Dio Cassius) wrote his laws in a very small character and hung them upon high pillars, the more effectively to ensnare the people." There follows the passage concerning *ex post facto* legislation. The reason why it is called an "unreasonable method" is: "Here it is impossible that the party could foresee that the action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had, therefore, no cause to abstain from it. . . ."

The principle of justice which is the basis of the rule against retroactive legislation, is: that the law must be known in order to be applicable. This principle is not without a counter-principle, not less generally recognized than the former: that ignorance of law is no excuse. And it is significant again that Blackstone refers to this rule immediately after having expounded the rule against *ex post facto* laws. He says: "But when this rule [that is, the law] is in the usual manner notified, or prescribed, it is then the subject's business to be thoroughly acquainted therewith; for if ignorance of what he *might* know were

admitted as a legitimate excuse, the laws would be of no effect, but might always be eluded with impunity." Since it is practically impossible to maintain the principle that the law has to be known by an individual in order to be applicable to him, the principle must be modified. Not actual knowledge, only the possibility to be known, is required. Consequently, the law must exist, and if possible be notified, at the moment the conduct takes place to which the law attaches a sanction. This is the point where the question of retroactivity comes in. The rule against retroactive legislation is the result of the necessary restriction of the rule against the application of laws unknown to the subject.

IV

If two principles of law are not compatible with each other, the one must be restricted by the other. The relationship between the rule against the application of unknown law and the rule that ignorance of the law is no excuse is typical. The former rule, however, is in conflict not only with the latter. If it is unjust not to attach to a certain act a sanction, if, for instance, a legislator has omitted to provide punishment for the theft of electricity because he did not foresee the possibility of such an act, it is certainly just to enact a law providing such a sanction, even with retroactive force, especially if the act or its omission is generally considered as a violation of morality or another higher rule, although not illegal. If a retroactive law, which attaches a sanction to a conduct generally considered to be immoral or in conflict with another norm superior to the law, is rejected because of its retroactive force, the rule against the application of unknown law is recognized as more important than the principle whose violation is made illegal. But there exists a clear difference between a retroactive law by which an act "indifferent" in itself or "innocent" when it was done, is connected with a punishment, and a retroactive law by which an act which was immoral or otherwise in conflict with a higher norm is made illegal.

V

Even in its restricted form as prohibition of retroactive law, the rule against the application of unknown law is not without exceptions. The rule is effective only with respect to legislation, not against the creation of law by custom or judicial decisions. Any rule of customary law is retroactive in the first case in which it is applied as a rule of law. Any rule of law created by a precedent is retroactive in the case in which it is first applied. The doctrine that custom is not a creation of law but merely evidence of a pre-existing law is the same fiction as the doctrine that tries to hide the retroactive character of a precedent by presenting the judicial decision as an interpretation rather than a creation of law.

A law may be retroactive not only by providing sanctions to be inflicted upon subjects on behalf of actions performed by them before the law has been enacted. A law may be retroactive by abolishing or changing rights and freedoms acquired before the law has been enacted. In this sense any law is retroactive since it changes a legal situation established under a previous law. If the concept of retroactive law is taken in its broad sense, the rule against retroactive law prevents any change of law. This rule has an extremely conservative character. Without restricting the scope of this rule, no reform is possible, especially in the field of civil and administrative

law. The protection of vested rights, the exclusion of expropriation laws, has frequently been based on the rule against retroactive legislation. A law by which vested rights are abolished is certainly a retroactive law. But if such law is considered to be unjust, it is not because of its retroactivity; it is unjust from the point of view of the natural law doctrine that rights, especially property rights, are prior to the law of the State, and that the law, by its very nature, has to protect the rights. It is from the nature of law that the illegality of a statute is derived that abolishes vested rights. It is, therefore, quite justifiable to confine the rule against *ex post facto* laws to criminal law which operates to the detriment of the accused person, and to base the protection of vested rights, if such protection is desired, on another principle, as stipulated expressly in the Constitution (such as the contract clause in the Constitution of the United States) or advocated by the natural law doctrine.

VI

The result of the preceding analysis is that the rule against *ex post facto* legislation must be interpreted as restrictively as possible. This we have to bear in mind in the following examination of the role the rule in question may play in the prosecution of Axis war criminals and especially German war criminals.

The main crimes for which persons belonging to the European Axis powers shall be prosecuted, according to the Agreement signed on August 8, 1945 by the governments of the United Kingdom, the United States of America, the Soviet Union and the French Republic, are:

1. War Crimes in the narrowest sense of the term, that is to say, violations of the rules of warfare.
2. Crimes against peace, that is to say, resort to force (launching of war of aggression) in violation of the Briand-Kellogg Pact or other treaties prohibiting resort to force.
3. Crimes against humanity, that is to say, certain atrocities including persecution on political, racial or religious grounds, which do not constitute violation of International Law but of Municipal Law or morality.

Since the individual criminal responsibility for violations of the rules of warfare is established by International Law as well as Municipal Law, no difficulty will probably arise out of the rule against *ex post facto* legislation in the prosecution of persons who have violated the rules of warfare. The situation is different with respect to illegal resort to force and the atrocities which do not constitute a violation of International Law. In case the trials are to be conducted by an international court established by an international treaty, International Law is to be the basis of the prosecution. Illegal resort to force certainly constitutes a violation of International Law. It is usual to characterize an aggressive war, that is, a war resorted to in violation of International Law, as a "crime." But according to existing International Law, resorting to war in violation of the Briand-Kellogg Pact or another rule prohibiting resort to force is, although illegal, not a "crime" in the true sense of the term, since existing International Law does not establish individual criminal responsibility for illegal resort to force. If by an international treaty individuals who are morally or politically responsible for the Axis powers starting the second World War are made legally responsible for this violation of International Law and an International Tribunal is authorized to inflict punishment

upon those who have been found guilty, the treaty undoubtedly establishes a rule with retroactive force.

To conclude treaties establishing rules with retroactive force, is not forbidden by International Law unless the general principles of law recognized by civilized nations are considered to be part of International Law and if the rule against retroactive laws is such a general principle of law. Both presuppositions are doubtful. But even if we assume that the rule in question is part of International Law, it is more than doubtful whether it is applicable to the prosecution of persons for illegal resort to force, that is to say for violations of the Briand-Kellogg Pact or special non-aggression Pacts. One of the essential conditions under which a retroactive criminal law to the detriment of the accused is considered to be objectionable, is the fact that the action to which the subsequent law attaches a punishment was at the time it was performed "indifferent" or "innocent," as Blackstone says. It may be doubtful whether this means morally or legally indifferent or innocent. But even if it only means that the action was not "illegal," the rule against *ex post facto* laws is not applicable to the prosecution of illegal resort to force. For, the action was illegal at the moment it was performed, because it was a violation of International Law. The subsequent treaty does not make a legal action illegal *ex post facto*. It only adds to the collective responsibility for an illegal action established by pre-existing International Law, individual responsibility of the perpetrators.

According to Blackstone, it is not only required that the action be legal at the moment of its commission, but also that the punishment subsequently attached to the action could not be foreseen. Only if the action is not illegal when it is done, it cannot be foreseen that its evaluation will change so radically that punishment will be attached to it. But at the time the Briand-Kellogg Pact and certain non-aggression Pacts were violated by the Axis powers, the conviction that an aggressive war is a crime was so generally recognized by the public opinion of the world, that subsequent international agreements providing individual punishment for these violations of International Law were certainly not unforeseeable; and this all the more as the Treaty of Versailles had already established a precedent by authorizing an international court to punish William the Second "for a supreme offense against international morality and the sanctity of Treaties."

If it is correct, as it has been shown above, that the interpretation of the rule against *ex post facto* laws must be interpreted as restrictively as possible, its application to the prosecution for illegal resort to force is certainly excluded.

The atrocities for which persons belonging to the Axis powers, and especially the Germans, shall be prosecuted are almost all ordinary crimes according to the municipal law of the persons to be accused, valid at the moment they were committed. In respect of these crimes the main problem is not the application of the rule against *ex post facto* laws but the jurisdiction of the International Tribunal. This problem is solved by an international treaty conferring the jurisdiction for the prosecution of these crimes to the International Tribunal. Even if the atrocities are covered by municipal law, or have the character of acts of State and hence do not constitute individual criminal responsibility, they are certainly open violations of the principles of morality gen-

erally recognized by civilized peoples and hence were, at least, morally not innocent or indifferent when they were committed. Besides, in all cases where the rule against *ex post facto* laws comes into consideration in the prosecution of war criminals, we must bear in mind that this rule is to be respected as a principle of justice and that, as pointed out, this principle is frequently in competition with another principle of justice, so that the one must be restricted by the other. It stands to reason that the principle which is less important has to give way to the principle which is more important. There can be little doubt that, according to the public opinion of the civilized world, it is more important to bring the war criminals to justice than to respect, in their trial, the rule against *ex post facto* law, which has merely a relative value and consequently, was never unrestrictedly recognized.

VII

The above-mentioned international treaty by which the legal basis for the prosecution of the Axis war criminals is to be established, should be concluded by the States which intend to prosecute the war criminals, with the States whose subjects shall be prosecuted. A treaty concluded only by the victorious United Nations or some of them without the participation of the vanquished Axis powers is not "international," in relation to the latter. The rules established by such a treaty to be applied to the prosecution of subjects of the Axis powers are—in relation to the latter—equivalent to Municipal Law of the former. The Treaty of Versailles which provided for the prosecution of William the Second and other German war criminals, was signed and ratified by Germany. However, the actual international situation with respect to Germany is totally different from that which existed after the first World War. Germany's unconditional surrender, together with the abolishment of its last national government, have put an end to its existence as a sovereign State. By the Declaration made in Berlin on June 5, 1945, the four occupant Powers have established their joint sovereignty over the German territory and its population.⁴ In their capacity as sovereigns over the territory occupied by them they are the legitimate successors of the German State, and the Control Council instituted by the Declaration of Berlin is the legitimate successor of the last German government. For the time being no international treaty can be concluded with Germany as a sovereign State. An international treaty, to which the four occupant Powers in their capacity as the sovereigns over the occupied territory and its population are contracting parties, is equivalent to a treaty concluded with Germany.

To establish the legal basis for the prosecution of the German war criminals, no international treaty is necessary. General International Law obligates the States to punish their own war criminals. Since the four occupant Powers in their capacity as sovereigns over the German territory and its population are the legitimate successors of the German State, they have an unlimited legislative, judicial and administrative jurisdiction over German territory and its population. They are entitled to carry out Germany's obligation with respect to German war criminals. For this purpose they may institute a

special court and lay down the principles to be applied in the trials.

In relation to the German war criminals, the agreement for the prosecution and punishment of the major war criminals of the European Axis signed on August 8, 1945 by the four occupant Powers, may also be interpreted as a legislative act of the occupant Powers, issued by them in their capacity as sovereigns over the German territory and its population. If this interpretation is accepted, any objection against the agreement resulting from the fact that Germany is not a contracting party may be refuted. For this purpose it is advisable that the occupant Powers make a declaration to the effect that they consider themselves as exercising joint sovereignty over the German territory and its population on the basis of complete *debellatio* of Germany and that consequently, the military government established by them is to be considered as a legitimate successor to the last German government.

VIII

By Article 4 of the German Constitution of August 11, 1919, still valid under the Nazi régime, the generally recognized rules of International Law are declared to be binding parts of German Federal Law. One of these rules is the one which obligates the States to respect the treaties concluded by them, usually formulated as the rule *pacta sunt servanda*. Violation of a treaty, especially violation of the Briand-Kellogg Pact to which Germany was a contracting party and of the non-aggression Pacts Germany has concluded with other States, may therefore be considered not only as a violation of International Law but also of German municipal law. According to Article 59 of the Constitution the Reichstag had the power of impeaching the Reich President, the Reich Chancellor and the Reich Ministers before the *Staatsgerichtshof* for having violated the law. This provision, however, has ceased to be valid after the Nazi régime has been established. Hence, resort to force in disregard of an international obligation was a violation of German law still under the Nazi régime; but no sanction was provided constituting the individual responsibility of the members of government guilty of such violation. Such individual responsibility may be established by a legislative act of the occupant Powers such as the Agreement of August 9, 1945, providing adequate punishment for violation of that part of municipal law which is formed by the generally recognized rules of International Law. Even if the act refers only to treaty violations committed by the Nazi government, it does not fall under the rule against retroactive criminal laws, because it attaches sanctions to acts which were, at the time they were committed, illegal not only under international but also under the municipal law of the accused persons.

The rule against retroactive criminal legislation has been incorporated in the German Criminal Code of May 15, 1871, as paragraph 2, which ran as follows:

"For no act may punishment be imposed unless such punishment is prescribed by statute before the act has been committed."

An almost identical provision has been inserted as Article 116 into that part of the Weimar Constitution which was titled "Fundamental Rights and Duties of Germans." This part of the Weimar Constitution and with it the rule against retroactive criminal legislation as a constitutional principle has been abolished by the Nazi régime. Paragraph 2 of the Criminal Code has been

4. Cf. my article: The Legal Status of Germany according to the Declaration of Berlin, American Journal of International Law, Vol. 39, (1945), pp. 518 ff.

amended on June 28, 1935 (RGI I, 839), as follows:

"Anyone shall be punished who commits an act which is declared punishable by statute or which deserves a penalty according to the basic principles of a criminal statute and of the people's sound sense of justice."

The repeal of the rule against retroactive criminal legislation was highly praised by Nazi literature. As a matter of fact, some retroactive criminal statutes were enacted. Thus, for instance, the statute concerning the infliction and execution of capital punishment (the so-called *lex Van der Lubbe*) of March 29, 1933 (RGI I, 151), and the statute concerning kidnapping of June 22, 1936 (RGI I, 493).⁵

If German law would be applied to the German war criminals the rule against *ex post facto* laws were no obstacle. Against this view it may be objected that the repeal of the rule against *ex post facto* laws is one of the methods which made the Nazi régime so hateful in the eyes of the civilized world, and that the powers which

waged a war to destroy the Nazi régime must not apply its own detestable principles.

This is a serious objection; and it is certainly not advisable to justify the non-application of the rule against *ex post facto* laws exclusively or in the first place by a principle of Nazi law. This is not necessary since there are other better arguments to prove that the rule against *ex post facto* laws is not applicable in the prosecution of such German war criminals. But it may be not

5. Also the Criminal Codes of the Russian Socialist Federative Soviet Republic of 1922 and 1926 do not recognize the rule against *ex post facto* legislation. Art. 58 (13) of the Code of 1926 expressly provides punishments for "any act or active struggle against the working class or the revolutionary movement of which any person was guilty while in a responsible or secret post (i.e. agent) under the Czarist régime or with any counter-revolutionary government during the period of the civil war," that is to say, for acts which were performed long before the code came into force and were, at that time, no crime at all.

(Continued on Page 46)

CLOSING A *J. A. Office*

By LT. COL. CARLTON G. SCHENKEN, JAGD

THE DAY is coming when many Judge Advocates will be faced with the duty of closing their JA sections as part of the disbanding or inactivation of their general court-martial authority. The Hq to which the writer is assigned has had some experience along this line and the following suggestions are passed along for what they may be worth.

As soon as a "closing date" is announced The Judge Advocate General should be advised thereof and furnished with a complete list of all general court cases which have not received final JAGO approval. This gives the JAGO an opportunity to expedite examination and disposition of your cases, which in turn, gives you an opportunity to make any corrections or explanations, before you move on to another assignment. (In one of our closing jurisdictions, the submission of such a list resulted in the discovery of a record lost in transit—a record that might have remained lost forever if this final clearance has not been submitted.)

Having dispatched the aforementioned letter, the next step is to place your internal affairs in good order. General court cases that have been tried should be processed immediately and forwarded without delay to TJAG. (Such cases should be included on the list discussed in the preceding paragraph.) Any GCM charges which cannot be *completely* disposed of before your closing date should be forwarded to the CG who will exercise GCM authority over the accused after that date.

Check with your reviewing authority as to any remissions or suspensions that should be ordered prior to closing.

Check with your stockade to make sure that it has copies of all orders that it may need.

Clear your records of any books, classified documents, and other property that may be charged to your section.

The last big job is the preparation of files for storage. The purpose of storing records is so that they will be available if needed. It is therefore important that they be prepared so that they serve this purpose. Dumping

papers in a box and nailing on a lid does not help much. First, the files should be stripped of all unnecessary papers—duplicates (charge sheets, GCMOs, SCMOs, reviews, investigation reports, etc.), old records authorized to be destroyed, etc. It is surprising how much space can be saved by such "house-cleaning." This is not a routine job but should be closely supervised by the JA or an assistant. War Department GOs, bulletins, and circulars, and similar publications should be turned into Hq AG for disposition. If any duplicate copies of stenographic transcripts of trials are found, they should be forwarded to TJAG. If such duplicate transcripts are ever needed in the future, they will be sought in JAGO files and not in storage warehouses. Records that are to be retained must be arranged, boxed, and labeled so that they can be found when needed. (See AR 345-10, par 11b C-1 28 Jun 44.) We found it desirable to arrange these records as follows:

- (1) A single alphabetical sequence of all "201" files regardless of court and regardless of year tried. As a result, all of "John Doe's" cases are together in one place.
- (2) A complete set of GCMOs and SCMOs arranged by issuing Hq and then by numerical sequence.
- (3) A miscellaneous JA file containing the usual accumulation of odd papers that may have some future reference value.

On the final closing day, a report should be submitted to TJAG, similar to the JA annual report required by par 3 c, AR 25-5, but covering only the fiscal year to date of closing.

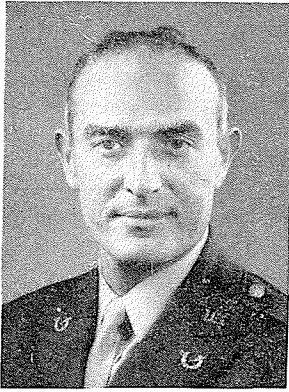
The CG who will assume GCM jurisdiction over any unfinished cases should be notified of any such cases and should be furnished the *complete file* so that proper final action may be taken thereon.

When you have finished the job, you can put on your hat and go home (maybe?) with a feeling of a job well done.

PUNISHMENT OF *War Criminals*

By MAJOR JOSEPH S. ROBINSON, JAGD

THAT RULES of conduct govern the relations between nations in both peace and war is universally recognized. These rules, commonly referred to as International Law, have evolved out of customs, agreements,



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and the experiences of nations brought on by a realization that their relations *inter se*, if not their existence, must depend upon some generally accepted principles of right and justice (Hackworth, Digest of International Law, Chapter I). No state is at liberty to "declare that it will in the future no longer submit to a certain recognized rule of the Law of Nations. The body of the rules of this law can be altered by common consent only, not by a unilateral declaration on the part of one state" (Oppenheim's International Law, 6th Ed., Lauterpacht, p. 18).

In modern times so many treaties have been broken and so many of the rules ignored that people have become profoundly skeptical as to the value, the efficiency and even the existence of International Law. But as Sir Frederick Pollock pointed out "Law does not cease to exist because it is broken, or even because for a time it may be broken on a large scale; neither does the escape of some criminals abolish penal justice" (Politis, New Aspects of Int. Law, 1928, p. 2).

Our courts have on many occasions ruled that International Law is a part of the body of the law of this Nation and as such will be recognized and enforced (The Paquete Habana, 175 U.S. 677, 700; MacLeod vs. U.S., 229 U.S. 416, 434; U.S. vs. Curtis Wright Export Corporation, 299 U.S. 304, 318). Rules governing the conduct of war are but a branch of that law (Brown vs. United States, 8 Cranch, U.S. 110, 140).

Recently the Supreme Court of the United States said, "From the very beginning of its history this Court has recognized and applied the law of war as including that part of the Law of Nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations, as well as enemy individuals" (Ex Parte Quirin 317 U.S. 1, 10). So also, have the rules of war, as a part of International Law, been recognized and applied by the courts and executive branches of other governments. (Hackworth, Vol. 1, pages 29-39.) Germany and Japan, while recognizing the existence of such law, adhered to it, only when, generally speaking, it served their own purpose (Wheaton's International Law, 7th Edition, A. B. Keith, Part 5, Chapter 2).

The German view is best expressed in Chancellor Herr von Bathmann-Hollweg's declaration of August 4, 1914: He said, "Necessity knows no law. Our troops have occupied Luxemburg, and, perhaps, have already entered Belgian territory. Gentlemen, that is a breach of international law. . . . We have been obliged to refuse to pay attention to the reasonable protests of Belgium and Luxemburg. The wrong—I speak openly—the wrong

we are thereby committing we will try to make good as soon as our military aims have been attained. He who is menaced, as we are, and is fighting for his all, can only consider how he is to hack his way through."

The principles of International Law may be found in established customs, treaties, conventions, the works of writers (Grotius, Vattel, Gentili, Garner, Moore, Oppenheim, Wheaton, Kent, Hyde, et al), court decisions, opinions, pronouncements of foreign offices and so forth. "International Law, or the law that governs between states," said Mr. Justice Cardozo in *New Jersey v. Delaware*, 291 U.S. 361, 383, "has at times, like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice, till at length the imprimatur of a court attests its jural quality."

By far the greater bulk of International Law relates to peacetime activities. Much of it is unwritten and, like the common law of England, has evolved from usage and universal acceptance. The same is true with respect to the Laws of War. Such laws accord substantially with the natural laws of morality and fairness. We do not have to examine some moth-eaten record or view with legalistic speculation the law of common decency and honor in order to determine what the rights and duties of the belligerents are. We turn therefore to a brief discussion of the Law of Nations insofar as it relates to the Rules of Warfare, since it is the breach of that law, written or unwritten, that constitutes a "War Crime."

THE HAGUE AND GENEVA CONVENTIONS: In the middle of the 19th Century, the first in the series of conventions was called for the avowed purpose of lessening the suffering and hardships of war and to establish rules for the conduct of war. There had been other meetings of Powers prior to this time convened in an attempt to formulate rules of international conduct which were to govern both peace and war-time activities. For example, there was the Vienna Congress of 1815 which laid down principles relating to slave traffic and free navigation on international rivers. There was the Congress of Aix-la-Chapelle in 1818 which added ministers to the class of diplomatic agents, the Treaty of 1831 which provided for the neutralization of Belgium and the Declaration of Paris in 1856 which laid down principles relating to blockades, contraband, neutral ships and privateering.

In 1864 the first Geneva (Red Cross) Convention was called for the specific purpose of ameliorating the condition of wounded soldiers in armies on the field. It was followed by the Declaration of St. Petersburg in 1868 which related to the use of certain types of projectiles, and in turn by the Hague Conventions of 1899 and 1907. There were other meetings: the Geneva Conventions of 1906 and 1929, the Brussels Conference of 1874, the Washington Conference of 1922, but in the main the present-day rules respecting land warfare are contained in the two Hague Conventions.

Not all the nations were represented; not all concurred; some signed with reservations; others attached conditions. The extent to which the United States formally concurred is set forth in War Department

Basic Field Manual, FM 27-10, 1 October 1940. The Rules of Land Warfare, however, did not come into being with the signing of those documents. In the main, they are but declaratory of the "Common Law of War" (Wheaton, p. 163).

"Those provisions of a convention that are declaratory of international law do not lose their binding effect by reason of the abrogation of or withdrawal from the convention by parties thereto, because they did not acquire their binding force from the terms of the convention but exist as a part of the body of the common law of nations" (Hackworth, p. 17).

THE COMMON LAW OF WAR: As early as 1863 the United States issued a field manual entitled "Instructions for the Government of the Armies of the United States in the Field." Formulated by Francis Lieber, it decried cruelty and savagery in warfare and provided among other things for the punishment of offenses against the "Common Law of War" (WD Gen Orders No. 100, 1863).

That there is a "Common Law of War" was recently reaffirmed by the United States Supreme Court in *Ex Parte Quirin* 317 U.S. 1, 11. There the Court said, "It is no objection that Congress in providing for the trial of such offenses has not itself undertaken to codify that branch of international law or to mark its precise boundaries, or to enumerate or define by statute all the acts which that law condemns . . . by the reference in the 15th Article of War to "offenders or offenses that . . . by the law of War may be triable by such military commissions," Congress has incorporated by reference, as within the jurisdiction of military commissions, all offenses which are defined as such by the law of war, . . . Congress had the choice of crystallizing in permanent form and in minute detail every offense against the law of war, or of adopting the system of common law applied by military tribunals so far as it should be recognized and deemed applicable by the courts. It chose the latter course" (italics supplied).

The right to enact such legislation is vested in Congress by Article I, Section 8 of the Constitution which reads: "The Congress shall have power . . . to define and punish . . . offenses against the law of nations," and by the other general "war power" provisions. Acting, as the Chief Justice of the United States indicated (*Ex Parte Quirin*, *Supra*), Congress has defined "offenses against the Law of Nations" (insofar as it relates to warfare) to be "the common law of war."

The punishment, except in the case of spies where death is mandatory (Article of War 82), rests within the discretion of the military tribunal (Winthrop, *Military Law and Precedents*, 2nd Ed., 1920 Reprint, p. 842). The Rules of Land Warfare, FM 27-10, par. 357, also provide that "All the war crimes are subject to the death penalty, although a lesser penalty may be imposed."

OBEDIENCE TO THE LAWS OF WAR: The rights and duties of war, do not depend upon the object sought to be attained. The Law of Nations makes no distinction between a just or an unjust war. "The Justice of War in general or of a certain war in particular, are questions of the gravest importance and of the most vital interest, but they belong to the domain of international ethics or morality rather than to that of international law" (Hershey, *Int. Law and Diplomacy of the Russo-Japanese War*, 1906, p. 67). During the struggle,

the belligerents on both sides must respect the Laws of War. The ancient principle that everything done against an enemy is lawful (see works of Bynkershoek, Grotius and others) has given way to the more enlightened principle which condemns gratuitous cruelty, savagery, and treachery (Wheaton, p. 163).

Though war is essentially a struggle between states involving the use of force, the Laws of War permit of certain types of violence only (Hague Convention, Annex, 1907, Art. 22; Rules of Land Warfare, FM 27-10, pars. 22-36). It is a basic principle that a state of war does not give the unlimited license to kill, rape, plunder, and destroy (Winthrop, p. 788). Germany, despite lip service to the generally accepted rules (German Field Manual—Kriegsbrauch im Landkriege), continued to adhere to the *necessities non habet legem* doctrine. The same is true of Japan.

The nature of the remedy available in the event of a violation of the Laws of War raises most difficult questions. The technicalities and niceties of the law have been argued pro and con (Glueck, *War Criminals*, etc., Knopf, 1944, p. 70-121). International Law itself provides, that in addition to other remedies, punishment may be inflicted upon the conquered belligerents by the terms of the peace treaty and upon the individuals responsible for the wrongs by sentence to death or imprisonment (Hague Convention, 1907, IV, Art. 3; FM 27-10, Pars. 345-357).

Whether the waging of an aggressive war constitutes a wrong, recognized as such by International Law, raises an interesting controversial question as does also the proposal to try the offenders before an international court. Much has recently been written on this subject matter. By far the largest number of offenses involve violations of the Rules of Land, Naval and Air Warfare for which the wrongdoer must stand trial before a United States Military Commission. It is with such crimes and their punishment that this article is mainly concerned.

NAVAL AND AIR WARFARE: The Hague Conventions of 1899 and 1907 sought to bring naval warfare in line with the Rules of Land Warfare. Regulations relating to hospital ships, naval bombardment, the shipwrecked and wounded, submarine mines, and many others were agreed upon, all of which rules Germany and Japan have violated in this and earlier wars.

In 1923, rules and regulations pertaining to air warfare were prepared, but they never were ratified by the nations of the world. There are, nevertheless, certain recognized restrictions on air warfare (Spaight, *Air Power and War Rights*, 1933). The aerial gunner who directs fire on non-combatants or on a disabled flyer and the submarine commander who directs fire on the shipwrecked both violate the laws of war as does the infantry officer who directs fire upon a prisoner of war. The fact that the act took place in the air or on the water instead of upon the ground is of no consequence, nor is it material that the specific wrong is not enumerated in the Hague Conventions or other treaties (Wheaton, Part 5, Chapters 3 and 4; Hackworth, Vol. 6, page 463).

WORLD WAR I AND THE PUNISHMENT OF WAR CRIMINALS: The Versailles Treaty, Articles 228-230, authorized the Allied Governments to bring before military tribunals "persons accused of having committed acts in violation of the laws and customs of war." When the time came to deliver these persons, Germany argued that grave political difficulties would ensue, and asked permission to try them by her own

courts, to which the Allies consented. The Farce—the so-called Leipzig Trials—was enacted.

Typical of the way the matter was handled was the case of Karl Neumann. He was one of the very few War Criminals who was finally brought to trial two and one-half years after the Armistice. The other thousands of War Criminals, including the Kaiser, who were on Allied lists were never tried. Neumann was a submarine commander who frankly admitted sinking the "Dover Castle," a hospital ship. The Reichgericht, acquitting him, said, "The admiralty staff was the highest service authority over the accused. He was duty bound to obey their orders in service matters. So far as he did that, he was free from criminal responsibility. Therefore he cannot be held responsible for sinking the hospital ship, 'Dover Castle' according to orders." Nor was the giver of that savage order ever brought to trial (Mullins, *The Leipzig Trials*, 1921; Gr. Br. Parliamentary Papers, 1921; Garner, *Recent Developments in International Law*, 1925, pages 455-463). The Leipzig performance soon came to an end and the War Criminals of the last war were free to indoctrinate the next generation.

Three causes seem to have contributed to that result—the failure of the Allies to occupy the territory and physically seize the War Criminals; the differences which had arisen between the Allies; and the general feeling, then prevalent, that the war was a closed incident. Prime Minister Churchill, speaking in the House of Commons, on 8 September 1942, assured the world that "those who are guilty of the Nazi crimes will have to stand up before tribunals in every land where their atrocities have been committed, in order that an indelible warning may be given to future ages and that successive generations of men may say, 'so perish all who do like again.'" Roosevelt, Churchill, and Stalin in a joint declaration, on 12 November 1943 stated ". . . most assuredly the three Allied powers will pursue them to the uttermost ends of the earth and will deliver them to their accuser in order that justice may be done."

While it is true that similar assurances were given during the last war (Trainin, *Criminal Responsibility of the Hitlerites*, Law Institute, USSR, 1944, p. 28) and nothing but the Farce of Leipzig came of such assurances, it is hoped that this time appropriate action will be taken to punish the offenders. Hereinafter is set forth a compendium of the substantive Laws of War, the violation of which constitutes a punishable offense.

THE SUBSTANTIVE LAWS OF WAR:

I. Hostile Acts Towards Non-Combatants.

"In earlier times the unarmed inhabitants of an invaded country were liable to be treated very much like the armed combatants; practices varied according as the commanders are chivalrous or ferocious and cruel. Mitigations were repeatedly urged by counsels and writers; thus it was urged that ecclesiastics, merchants, farmers, shepherds and all peaceful inhabitants should not be attacked, and that women and children of even infidel nations should not be subject to violence. . . . Thus a distinction grew up between armed forces and non-combatants; and . . . it became a generally recognized rule that the civilian sections of a country, if they did not participate in the fighting were to be exempt from deliberate attack" (Wheaton, *Supra*, p. 170).

As early as 1621, the Military Code of King Gustavus Adolphus provided (Art. 97): ". . . neither shall any tyrannize over any Churchman, or aged people, men

or women, maides or children, unless they first take arms against them, under paine of punishment at the discretion of the Judges." A similar provision was contained in the English Military Code (Articles of Charles I, Art. 5, Sec. V).

Our Supreme Court in *Ex Parte Quirin* 317, U.S. 1, 12 said: "By universal agreement and practice the law of war draws a distinction between the armed forces and the peaceful population of belligerent nations and also between those who are lawful and unlawful combatants."

Paragraph 8 of the Rules of Land Warfare (FM 27-10, p. 4) provides: "The enemy population is divided in war into two general classes, known as the *armed forces* and the *peaceful population*. Both classes have distinct rights, duties, and responsibilities, and no person can belong to both classes at one and the same time." Paragraph 19, Rules of Land Warfare (FM 27-10, p. 6) reads: "It is now universally recognized that hostilities are restricted to the armed forces of belligerents. Inhabitants who refrain from acts of hostilities and pursue their ordinary vocations must be distinguished from the armed forces of the belligerent; must be treated leniently; *must not be injured in their lives or liberty, except for cause and after due trial; and must not, as a rule, be deprived of their private property*" (italics supplied).

"Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful" (*Ex Parte Quirin*, *supra*, p. 12).

There are two recognized instances which permit the status of inhabitants to be changed from that of non-combatant to combatant. First a volunteer corps, the members of which wear distinctive emblems, carry arms openly, conduct operations in accordance with the laws and customs of war and are duly commanded (The Hague Convention 1907, Art. 1; FM 27-10, p. 4). The second recognized rule relates to inhabitants of a territory who spontaneously take up arms to forcefully resist the enemy's approach (FM 27-10, p. 4). The Law of Nations recognizes that an entire community may change its character from non-combatant to combatant without bringing upon itself punishment as lawless banditti. Such transformation is known as a *levee en masse*. The same force may be applied against a *levee en masse* or a volunteer corps as may be used against any other military unit and conversely each of these groups is entitled to the protection of the laws relating to belligerents.

Much confusion exists as to the status of so-called guerillas. Wheaton at page 175 says: "There is no rule of international law prohibiting guerilla warfare. Guerilla fighters must be regarded by the enemy as legitimate combatants if they fulfill the four conditions laid down in the first article of the Convention quoted above," i.e., wear distinctive emblems, carry arms openly, et cetera. Of course a civilian sniper, or a group of civilians who do not comply with the four requirements above set forth, are not by international law regarded as legitimate combatants.

In earlier times the term guerilla was applied to lawless bandits who were engaged in killing, robbing, and plundering for personal profit or revenge. When captured they were treated as outlaws and shot or imprisoned with or without trial (Winthrop, p. 783-4). During the

Civil War they were styled bushwhackers, jayhawkers or guerilla-marauders. Today the word guerilla has taken on another meaning, although the guerillas may again be regarded as lawless bandits if they continue harassing attacks after all organized resistance of the main forces of the enemy has ceased (Oppenheim, Vol. II, par. 60; Wheaton, p. 103).

2. The Nature of the Violence Which May Be Used Against Combatants.

The means of injuring the enemy is not unlimited (Hague Convention, 1907, Annex Art. 22; FM 27-10, p. 8; Winthrop, p. 784).

"International Law proclaims that the only object of war, as such, is to overcome the armed forces of the enemy. The infliction of death and agony as an end in itself, the ill treatment of combatants who have already been disarmed, are, therefore illegitimate. Similarly, the use of projectiles and arms which not only effectively disable the enemy but also entail unnecessary suffering, is contrary to war law. The fundamental principle throughout warfare is that no greater force, no greater severity should be applied than is absolutely necessary to gain ascendancy over the adversary. The plea of 'military necessity' cannot prevail over the specific prohibitions imposed by law, written or customary" (Wheaton, p. 203).

The Hague Conventions specifically forbid combatants to kill treacherously; to kill or wound an enemy, who, unarmed, surrenders; to employ arms, projectiles or material of a nature to cause superfluous injury; to use poison or poison weapons; to use expanding or dum-dum bullets; to engage in any kind of treachery such as to pretend surrender and then attack, to approach under a flag of truce and then commit a hostile act or to refuse to grant quarter (mercy) to those who offer themselves as prisoners of war (Rules of Land Warfare FM 27-10, pars. 26-44).

3. Care of the Sick and Wounded.

"It has long been an established usage of war that sick or wounded combatants should not be ill-treated by the enemy" (Wheaton, p. 189).

A number of rules have been laid down by the Hague and Geneva Conventions, many merely declaratory of the customary law, respecting the treatment of the sick and wounded; the collection of the injured on the battlefield; the protection afforded persons engaged in collecting and treating the sick; the exchange of injured persons and information concerning them; the wearing of brassards (armlets); the neutralization of medical installations, and so forth (Rules of Land Warfare, FM 27-10, p. 47-56). It is also provided that the showing of the distinctive Red Cross emblem (which was formed by reversing the colors of the Swiss Flag) renders inviolable hospitals, ambulances, physicians, medical personnel and supplies and sanitary formations (FM 27-10, p. 50-56).

4. Prisoners of War.

"According to the law of war, as still practiced by savage nations . . . , prisoners taken in war are put to death. Among the more polished nations of antiquity, this practice gradually gave way to that of making slaves of them. For this, again, was substituted that of ransoming, which continued through the feudal wars of the Middle Ages, when the practice proved a source of enrichment to doughty warriors. Those who were not ransomed were frequently subjected to dreadful treatment. Whatever mitigations were introduced were due

to the influence of chivalry, the Church, and jurists" (Wheaton, p. 177-8).

Today prisoners of war must be treated humanely. They are in the power of the hostile government and not in that of the individuals or corps capturing them. With certain exceptions all of their personal belongings remain their property. They may be interned but not confined except as an indispensable measure of safety. They "shall be treated as regards food, quarters, clothing, on the same footing as the troops of the government which has captured them." They are subject "to the laws, regulations, and orders in force in the Army of the State into whose hands they have fallen." All must be protected against violence, insults and public curiosity and are "entitled to have their persons and their honor respected" (Rules of Land Warfare, FM 27-10, Chap. 4; Wheaton, p. 177-189; Garner, Int. Law and the World War, par. 333-342; Hyde, Int. Law, par. 670; Phillipson, Int. Law and the Great War, par. 289).

At the end of the last war one Captain Emil Muller was charged before the Leipzig Court, among other things, with inflicting savage cruelty on prisoners of war. He was found guilty on sixteen specifications and sentenced to six months imprisonment. The German court said, "There has been an accumulation of offenses which show an almost habitually harsh and contemptuous, and even a frankly brutal treatment of prisoners entrusted to his care. His conduct has sometimes been unworthy of a human being." But, continued the Court, "It must be emphasized that the accused has not acted dishonorably; that is to say, his honor both as a citizen and as an officer remains untarnished" (16 Am. Int. Law, p. 674).

In addition to tacitly condoning the mistreatment of prisoners of war, the Germans have taken the position that prisoners of war may be put to death if they are dangerous to the captors. (Kriegsbrauch in Landkriege, par. 16; Bluntschli, Das Moderne Volkerrecht, par. 580). It is a known fact that a number of American soldiers who fell into enemy hands were by them put to death. Winthrop, who fifty years ago condemned such practice, said (p. 791), ". . . the status of war justifies no violence against a prisoner of war as such, and subjects him to no penal consequence of the mere fact that he is an enemy. For a commander to disembarraas his army of the presence and charge of prisoners of war by taking their lives would be a barbarity which would be denounced by all civilized nations. Where a captive entitled to be treated as a prisoner of war is put to death, or where unlawful, unreasonably harsh, or cruel, treatment of prisoners is practiced or permitted by one belligerent, the other may, as far as legally permissible, retaliate; and any individual officer resorting to or taking part in such act or treatment is guilty of a grave violation of the laws of war, for which, upon capture, he may be made criminally answerable" (italics supplied).

"It is now recognized that captivity is neither a punishment nor an act of vengeance, but "merely a temporary detention which is devoid of all penal character." Or, as Lieber states it, "a prisoner of war is no convict; his imprisonment is a simple war measure." (Winthrop, p. 788).

5. Seizure and Destruction of Enemy Property.

"The object of war is to bring about the complete submission of the enemy as soon as possible by means of regulated violence" (FM 27-10, Par. 22). To attain the object, the seizure and use of property, public or

private, and/or the destruction of property, public or private, is authorized if demanded by the necessities of war (FM 27-10, Pars. 313-334). Also authorized is the "obstruction of ways and channels of traffic, travel, or communication; and the withholding of sustenance or means of life from the enemy" and "the appropriation of whatever the enemy's country affords that is necessary for the sustenance and safety of the Army" (FM 27-10, par. 24).

True, the Hague Convention and Basic Field Manual 27-10 contain provisions to the effect that private property must be respected but read along with other provisions such property must be respected only if it is not needed by the victorious invader for a legitimate military purpose (Par. 325). Private property may be seized if necessary "for the support or other benefit of the Army or of the occupant" (Par. 330) or it may be destroyed "if it is required by the exigencies of war" (Par. 333).

Wheaton expresses the general underlying principle relating to destruction of enemy property as follows (page 213): "The same general rule, which determines how far it is lawful to destroy the persons of enemies, will serve as a guide in judging how far it is lawful to ravage or lay waste their country. If this be necessary, in order to accomplish the just ends of war, it may be lawfully done, but not otherwise. When the exigencies of offense or defense demand that certain enemy property be destroyed or damaged, such destruction or damage is considered necessary by the law of war and therefore legitimate."

6. Occupation of Enemy Territory.

"Territory is considered occupied when it is actually placed under the authority of the hostile army" (FM 27-10, Par. 271).

"Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation" (FM 27-10, par. 274).

"Military occupation in a foreign war, being based upon the fact of possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. The occupation is essentially provisional" (FM 27-10, par. 275).

"Subjugation or conquest implies a transfer of sovereignty. Ordinarily, however, such transfer is effected by a treaty of peace" (FM 27-10, par. 275).

Thus we have three forms of occupation of enemy territory; first, invasion where no effective control has been established; second, occupation where effective control has been established without change of sovereignty; and third, conquest where a change of sovereignty has been effected and the municipal laws of the conquering power applied.

"In early warfare the invasion of an army into enemy territory was frequently followed by pillage and destruction, or by appropriation of anything that could be seized. 'The troops lived on the country which they ate up like locusts.' Grotius refers to the general practice of his day, when such seizure, plunder, and confiscation on the part of an invader were considered permissible; but he points out, in reference to the mitigations of belligerent practice advocated by him and other jurists, that the conduct of the invading army should not be unrestricted, but that no more should be done or taken

than was absolutely necessary for its security" (Wheaton, p. 231).

The views of Grotius are today part of the laws of war. Military occupation gives to the occupying power the right to exercise control over the area which is usually done by the establishment of military government. The British and many continental writers usually refer to such control as martial law; but whatever it is called, the Rules of Land Warfare require that upon occupancy immediate steps be taken "to restore and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country" (FM 27-10, par. 282).

Local government may continue wholly or in part, depending on the will of the military commander (FM 27-10, par. 284). Existing laws may be suspended and new ones promulgated (FM 27-10, par. 286). As deemed advisable by the military commander, the local courts may continue to function (FM 27-10, pars. 285-289). The military occupant may regulate commerce, establish censorship, collect taxes, enforce obedience, command the services of the inhabitants, except that they should not be required to take part in military operations against their own country (FM 27-10, pars. 290-344; MacLeod vs. U.S., 229 U.S. 416). No general penalty, pecuniary or otherwise, may be inflicted on the population on account of the acts of individuals (FM 27-10, par. 343). Persons may not be compelled to give information about the army of the deposed belligerent or its means of defense (FM 27-10, par. 306). Nor may they be required to swear allegiance to the occupying power (FM 27-10, par. 298; U.S. vs. Rice 4 Wheaton 246). "*Family honor and rights, the lives of persons . . . as well as religious convictions and practice, must be respected*" (FM 27-10, par. 299; see also Technical Manual 27-250, Cases on Military Government).

7. Hostages.

"In earlier times hostages were given by one party or by both parties as a guarantee that a convention or a promise would be observed. The practice of seizing hostages has also been adopted by occupying commanders, as a guarantee that the fellow-citizens of the arrested persons would refrain from doing certain things prohibited and would carry out certain things to be done. In 1870-71 the Germans habitually seized hostages, including mayors, councillors, priests, university professors, and other leading citizens, who were to be put to death in case of disobedience on the part of their townsmen. No doubt such measures of intimidation and repression contributed much to the ultimate victory of the invaders. These proceedings were repeated in a peremptory and systematic manner, by the Germans whenever they entered into occupation of Belgian and French towns and villages during the war in 1914-15. Many hostages were shot—especially on the allegation that civilians had fired on German troops, many were held in oppressive and humiliating confinement, many were carried off to Germany. They were treated far worse than prisoners of war. The Hague Rules do not include innocent citizens among the persons liable to be captured as prisoners of war. The Hague Regulations, it is true, have no specific provision with regard to hostages; but their seizure and the presumption of vicarious responsibility as well as the principle of terrorism and application of psychological pressure are contrary to the fundamental conceptions of humanity, conscience, fairness, and justice that are frequently appealed to in the international conventions of

the Hague. The practice is akin to that of brigandage and blackmail, and is repugnant to all honourable men. International law does not sanction the abnegation of honour even in the severest warfare" (Wheaton, p. 262).

While there is much to be said for Wheaton's view, the fact remains that General Grant, commanding the Division of Mississippi, General Sullivan, commanding at Harpers Ferry, and General Rousseau, commanding in Alabama, all resorted to the seizure of hostages as a legitimate act of war (Winthrop, p. 797). While such practice is as indefensible as the using of enemy inhabitants as a shield on the firing line, it nevertheless is still regarded as a recognized act of war, not punishable as a War Crime (FM 27-10, par. 359). Of course, mistreatment of hostages raises another question. The Rules of Land Warfare require that hostages be treated as prisoners of war (par. 359).

THE ENFORCEMENT OF THE LAWS OF WAR: There are many other rules in addition to those hereinabove mentioned designed to regulate the conduct of belligerents. They relate to siege and bombardment, bombing, pillaging, marauding, spying, espionage and treason, neutrality, safe conduct passes, safeguards, parole, army followers, requisitions, reprisals, retaliatory action, capitulations, truce and armistice. Insofar as maritime warfare is concerned, there are rules relating to capture, prizes, privateering, ransom, submarine mines, merchantmen, cargo, contraband, neutral ports, zones of hostilities, blockade, visit and search, navicerts and many others.

Practically all of these rules have been violated by Germany and Japan in the current and other wars, thus demonstrating the futility of seeking to regulate the violence of war. The kid-glove rules are seldom if ever scrupulously followed by both belligerents. If and when the time comes when all belligerents feel honor bound to obey the Laws of War, war itself shall have ceased to exist as a means of settling disputes between nations. Presently we have no more effective means of compelling obedience than the prosecution of the guilty during, or at the end of, the war. Severe punishment of war criminals have a deterrent effect in the event of future wars and in that way give greater sanctity to the rules governing the conduct of belligerents. At least those were the expressed sentiments of Prime Minister Churchill who pledged that the War Criminal will be punished, "in order that an indelible warning may be given to future ages and that successive generations of men may say 'so perish all who do like again.'"

"To insure observance of the laws of war admittedly quite inadequate means in the main exist. For one field only is there something approaching adequate provision, the laws of naval warfare insofar as they deal with prize. . . . In other spheres it is nothing more satisfactory than complaints, good offices or mediation, or intervention by third parties, or measures of self-help, such as punishment of offenders when possible, the taking of hostages, or reprisals. The principle of compensation being due for international wrongdoing applies to war illegalities, but is of little practical importance historically . . . all wars, . . . have seen wholesale violation of the customary and conventional rules of warfare both by States acting deliberately, and by officers and men, acting sometimes against instructions, sometimes in the belief either that they were carrying out the wishes of their superiors, or at least that their superiors were quite willing to reap the profits of their illegal deeds, even if

pro forma they might find it necessary to disown them in words" (Wheaton, p. 582-3).

The violations of the Laws of War in the current struggle have far exceeded anything the modern world has ever seen. Mankind has in every sense of the word reverted to pre-historic barbarism. Every vestige of humanity, chivalry, and decency has been swallowed up by the German maxim "Necessity knows no law" which doctrine their ally Japan has ardently embraced. If we have learned anything from the last war, it is that the victorious Allies ought not again permit the guilty, big or small, to go unpunished. We turn therefore to a consideration of the procedure to be followed to determine guilt and impose punishment.

JURISDICTION TO TRY OFFENSES AGAINST THE LAWS OF WAR: There has been much confusion and misunderstanding as to the meaning of the terms Military Law, Martial Law, Military Government, and the Laws of War, all of which must be clarified for a better understanding of the basic concepts of jurisdiction to try and punish War Criminals. Each of the above-named fields of law functions in a separate sphere—although at times overlapping. The jurisdiction of each is derived from a different source.

"*Military law* proper is that branch of the public law which is enacted or ordained for the government exclusively of the military state, and is operative equally in peace and in war. . . . It consists of a Written and an Unwritten law" (Winthrop, p. 17). In substance, Military Law is the specific law governing the Army as a separate community. It is not inclusive of Martial Law, Military Government or the Laws of War although at times the terms have been interchanged causing much confusion (see Fairman, Law of Martial Rule, 2nd Ed., Chapter 3).

"*Martial law* (in its generally accepted sense in this country) is the temporary government of the civil population through the military forces as necessity may require in domestic territory as distinguished from occupied territory of an enemy recognized as a belligerent" (FM 27-10, p. 3). Winthrop at page 817 says, "Martial law . . . is military rule exercised by the United States (or a State) over its citizens, (not being enemies,) in an emergency justifying it. . . . The term "martial law" has indeed not unfrequently been employed indifferently to describe any form of military control whether of our own people or of enemies. But this use, while colloquially admissible, is regarded by the author as unsatisfactory and confusing as a legal designation." While it is true that the dual use of the term "Martial Law" is unsatisfactory and confusing as a legal designation, it nevertheless has been so used (Dow vs. Johnson, 100 U.S. 158; U.S. vs. Diekelman, 92 U.S. 520).

Martial Law in domestic territory is authorized by the Constitution, Article 1, Sec. 8, Clause 15, which provides for the "calling forth of the militia to execute the Laws of the Union, suppress Insurrection and repel Invasions." The circumstances under which Martial Law may be imposed in domestic territory (Ex Parte Milligan, 4 Wall. U.S. 2; Sterling v. Constantin 287 U.S. 378); the extent of its jurisdiction (Ex Parte Merryman Fed. Cases No. 9587 (1861); Kahanamoku vs. Duncan, 146 Fed. (2nd) 576); and the powers which may be exercised thereunder (Luther vs. Borden, 7 How. U.S. 1) involves a study beyond the scope of this article. See Fairman, Law of Martial Rule, 2nd Ed., (1942).

"*Military government* is that form of government

which is established and maintained by a belligerent by force of arms over occupied territory of the enemy and over the inhabitants thereof" (FM 27-10, par. 6).

"By military government is meant that dominion exercised in war by a belligerent power over territory of the enemy invaded and occupied by him over the inhabitants thereof. . . . The authority for military government is the fact of occupation. Not a mere temporary occupation of enemy's country on the march, but a settled and established one. Mere invasion, the mere presence of a hostile army in the country, is not sufficient. There must be full possession, a firm holding, a government de facto" (Winthrop, p. 799).

Before the coming into being of such de facto government proclamations and edicts may be issued by the military commander to the inhabitants of the territory through which his armies pass. Such directives constitute rules of conduct for the time being and may be regarded as provisional military government, or martial law in enemy country as distinguished from martial law in domestic territory. Military government may follow if the territory continues to be held.

Military Government, or what some Continental writers refer to as Martial Law ". . . has been defined to be, the will of the commanding officer of an armed force, or of a geographical military department, expressed in time of war within the limits of his military jurisdiction, as necessity demands and prudence dictates, restrained or enlarged by the orders of his military chief or supreme executive rules. . . . The Duke of Wellington described it in the House of Lords as being "neither more or less than the will of the general who commands the army." . . . Though the martial law of a commander is not really law at all in the ordinary sense of the term, it does not on that account justify military oppression. Its stringency will, of course, depend on the particular circumstances of each case; for example, on the amount of danger to which the military forces under the commander are exposed, and, in occupied territory, on the conduct of the local inhabitants; but in every case it should be administered in accordance with the universally recognized fundamental principles of humanity and honour, fairness and justice" (Wheaton, p. 240). Those fundamental principles to which Wheaton refers are set forth in United States Army and Navy Manual of Military Government and Civil Affairs, FM 27-5, 22 December 1943.

"By the term *Laws of War* is intended that branch of International Law which prescribed the rights and obligations of belligerents, or—more broadly—those principles and usages which, in time of war, define the status and relations not only of enemies—whether or not in arms—but also of persons under military government or martial law and persons simply resident or being upon the theater of war, and which authorizes their trial and punishment when offenders" (italics supplied; Winthrop p. 273). It is with this branch of the law and the law of Military Government or what the British refer to as martial law in enemy territory that we are here mainly concerned.

"War Crimes" is a colloquial expression relating to those offenses which the Laws of War as a distinct canon of the Law of Nations prohibits and for which offenses trial and punishment is authorized. The number is naturally indefinite and all offenses are punishable by death (Wheaton, p. 242; FM 27-10, pars. 345-357).

In the United States war criminals are generally tried by a military commission. In some instances trial by courts-martial is specifically authorized, viz., *whosoever* relieves, corresponds, or aids the enemy (Article of War 81) and *any person* caught spying (Article of War 82). This, despite the general rule that only persons subject to Military Law are triable by courts-martial (Article of War 2). Persons subject to Military Law may of course also be tried by military commission or other military tribunals for offenses against the Laws of War (Article of War 15).

Article of War 12 provides that *general courts-martial shall have power to try* "any person subject to military law for any crime or offense made punishable by these Articles and *any other person who by the Law of War is subject to trial by military tribunals.*" Pursuant to this provision (Article of War 12) "War Criminals" may be tried by general courts-martial for any and all violations of the Laws of War as well as for the offenses specifically referred to in Articles of War 81 and 82 (spying and aiding the enemy). The practice, however, has been to try violators of the Laws of War before military commissions (Winthrop, p. 796).

THE MILITARY COMMISSION

THE HISTORY OF THE MILITARY COMMISSION: The Commission came to be recognized as a regular military tribunal about one hundred years ago. Such commissions were ordered by Generals Scott, Taylor and Wool during the Mexican War—their use having been authorized by War Department General Orders No. 20, 19 February 1847. The occasion was the fact that jurisdiction of courts-martial proper was restricted almost exclusively to military personnel and to the specific offenses enumerated in the Articles of War. Courts-martial jurisdiction did not extend to the criminal acts of non-combatants in occupied territory nor did it extend to that class of crimes which today are generally referred to as "War Crimes." A separate War Court was necessary and is authorized as a proper agency of the constitutional power to wage war (Coleman vs. Tennessee, 97 U.S. 509; *The Grapeshot*, 9 Wallace U.S. 129). Such courts may have been called by any name (State ex Rel. Kain vs. Hall, 6 Baxter, Tenn. 3). In England such war courts are called courts-martial, although they are distinguishable in many particulars from their regular courts-martial. In 1780 General Washington appointed a military tribunal called a "Board of General Officers" to try Major John Andre, a British spy who was seeking to make contact with Benedict Arnold. According "to the law and usage of nations" he was ordered hanged.

The jurisdiction of the early Military Commissions, in general, extended to persons in occupied territory who committed ordinary crimes (assault, larceny, and other violations of the penal code) as distinguished from crimes in violation of the Laws of War. A separate tribunal designated "Council of War" was inaugurated by General Scott to try the latter class of offenses. The "Council of War" differed from the Military Commission only in respect to the class of cases referred to it. It was a short-lived institution and but few proceedings were brought before it, involving in the main, guerilla warfare (then regarded as illegal), and enticing soldiers to desert the service of the United States. The charges were labeled as being in "violation of the Laws of War."

During the Civil War, the jurisdiction of the Military

Commission which had in the meantime come to be recognized by statute, was extended to include offenses against the Laws of War and the "Council of War Court" passed out of existence (Winthrop, p. 831-834). About this time, also, the United States Supreme Court recognized the validity of a decision handed down by a Military Commission (Ex Parte Vallandigham, 1 Wallace 243; Coleman vs. Tennessee, 97 U.S. 509) and this military tribunal had thus grown to full legal stature.

In 1873, the Supreme Court of Tennessee said: "It is a principle quite as old as the Law of Nations that the conquering power may create tribunals, to endure during the hostile occupation, to try civil and criminal cases, . . . and it makes no difference what these tribunals are called. . . . Those tribunals have in divers ways been recognized by the court, and treated as lawfully constituted tribunals" (State Ex Rel. Kain vs. Hall, 6 Baxter 3).

In Ex Parte Quirin, supra, p. 20, the Supreme Court of the United States said: "*We hold only that those particular acts constitute an offense against the law of war which the Constitution authorizes to be tried by military commission*" (italics supplied).

THE COMPOSITION OF THE MILITARY COMMISSION: Not being a creature of statute, the military commission is not bound by formal rules of procedure as is the court-martial. Precedent alone controls. In practice the same officers who are authorized by statute to appoint general courts-martial have exercised the power to appoint military commissions. The commission may be composed of any number of persons who need not be Army Officers. It may be composed "in part of civilians or of enlisted men. . . . A commission of a single member would be as strictly legal as would be one of thirteen members" (Winthrop, p. 835).

Basic Field Manual, FM 27-5, 22 December 1943, provides that Military Commissions ". . . in general will not be circumscribed by the statutory and other rules governing courts-martial; and their number, types, jurisdiction and procedures will be determined by the Theater Commander, subject to instructions from higher authority" (Par. 38); "In providing for military commissions, which may consist of any number of officers, the commander will appoint not less than three except in extraordinary circumstances" (Par. 402); both Army and/or Navy officers may compose the personnel of the court (Par. 40d); the power to appoint may be delegated (Par. 41).

THE JURISDICTION OF MILITARY COMMISSIONS: The commission has jurisdiction of only such cases or class of cases as may be referred to it by the appointing authority or confirming authority (FM 27-5, par. 42a). As to persons: with minor exceptions, its jurisdiction extends to all persons within the occupied territory (Par. 42b). As to offenses: its jurisdiction extends to all violations of the duly issued orders of the theater commander; to all violations of the Laws of War; to all violations of the local criminal laws and at times to ordinary civil litigation (FM 27-5, par. 42c, d and e; Winthrop, p. 838-41; Dig. Op. JAG 1912, p. 1067).

It is not material that the offenses in the first two categories were committed outside the area of the military occupation. (WD General Orders No. 52, Dept. of the Pacific 1863). Although there is considerable authority to the contrary (Winthrop p. 836-7), it would appear that custody of the offender is sufficient to give the military commission jurisdiction (Fairman, Chap.

X). In this respect courts-martial jurisdiction is the same. A soldier may be tried before a general courts-martial convened in Australia for an offense committed by him in Casablanca or anywhere else (JAG Bulletin, September 1944, p. 377). So also with offenses against the Laws of War. Such offenses have no territorial status and may be tried anywhere custody of the person can be obtained—preferably at a place most convenient to the prosecution or wherever the ends of justice may best be served (Fairman, p. 265-8). The announced policy of the Allied Powers is to return war criminals to the place where the offense was committed, there to stand trial (joint statement Roosevelt, Churchill and Stalin, Nov. 12, 1943).

If the offense constitutes a violation of local laws as well as of the Laws of War, i.e., pillaging or murder, by soldiers of the invading or retreating army, no good reason exists why, in the discretion of the military commander, such offenses may not be tried by the local criminal courts if they are operating and have custody of the accused. Of course proceedings before a Military Commission are more summary in nature and will undoubtedly be resorted to in most instances.

A trial before a Military Commission after an earlier trial before a local court does not constitute double jeopardy unless the local court derived its jurisdiction from the laws of the United States (Grafton vs. U.S. 206 U.S. 333, Dig. Op. JAG 1912, p. 168; Manual for Courts-Martial, 1928, p. 53).

PROCEDURE BEFORE MILITARY COMMISSIONS: As heretofore stated there are no prescribed rules, statutory or otherwise, governing the procedure before military commissions such as exist for courts-martial. Lacking a better guide, the forms and rules of procedure governing courts-martial are, when convenient, used and applied. The failure to follow such procedure, however, does not render the proceedings illegal. For example, the failure to record the testimony, or the denial of the right of challenge or the imposition of a sentence adjudging confiscation of accused's property, have all been recognized as proper even though illegal under courts-martial procedure (Winthrop, p. 841). Basic Field Manual (FM 27-5, 22 Dec. 1943) contains several general provisions relating to procedure before military tribunals (par. 44-47).

It is customary for the Convening Authority to specify, in the order appointing the commission, the procedural rules which are to be followed. In the recent saboteur case, President Roosevelt, as the Convening Authority stated, in the order appointing the court, "The commission shall have power to and shall, as occasion requires, make such rules for the conduct of the proceedings, consistent with the powers of military commissions under the Articles of War, as it shall deem necessary for a full and fair trial of the matters before it. Such evidence shall be admitted as would, in the opinion of the president of the commission have probative value to a reasonable man. The concurrence of at least two-thirds of the members of the commission present shall be necessary for a conviction or sentence. The record of trial, including any judgment or sentence, shall be transmitted directly to me for my action thereon."

EVIDENCE ADMISSIBLE BEFORE MILITARY COMMISSIONS: "It is advisable that military courts, in the trial of offenses directly affecting military government, be directed to follow the rules of evidence for

Army or Navy courts-martial. It is not required that this be done, however, as there may be instances when it will be appropriate to disregard such rules" (FM 27-5, par. 44a).

It is noted that the words "offenses directly affecting military government" are used. A War Crime is not necessarily such an offense. Insofar as the trial of offenses against the Laws of War are concerned, no general guide is provided, and the evidence rule laid down by the President in the saboteur case may well be followed. In the prosecution of War Criminals the military tribunal ought not to be hampered by technical rules of evidence, particularly rules which the enemy Powers do not follow in their own courts. Such evidence "as would have probative value to the reasonable man" is properly admissible. Courts-Martial have come to be bound up with many technical rules—particularly rules relating to the admissibility of evidence (Manual for Courts-Martial, 1928, Chap. XXV), that were military commissions to follow those rules, few, if any, of the war criminals would ever be convicted (Glueck, p. 28, 118).

Neither courts-martial nor military commissions are courts in the true sense of the word (Winthrop p. 49). They are "instrumentalities of executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives" (Winthrop, p. 49).

Congress, pursuant to Art. I, Sec. 8 of the Constitution enacted laws controlling procedure and evidence in courts-martial cases (Articles of War, manual for Courts-Martial, 1928)—but military commissions are not so bound. In *Bene vs. Federal Trade Commission* 299 Fed. 468,471, the Circuit Court, laying down the rule as to the character of evidence admissible before administrative bodies or quasi judicial tribunals said, "We are of the opinion that evidence or testimony even though legally incompetent, if of the kind that usually affects fairminded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done." (See also *Labor Board vs. Columbian* 306 U.S. 292, 300; *Edison Co. vs. Labor Board* 305 U.S. 197, 299).

The comments of Claude Mullins who was present as an interpreter for the British Mission during the Leipzig Trials are particularly appropriate. He said: "It is exceedingly difficult, if not impossible, for Englishmen to prove the conduct of ex-enemy generals according to the standards of proof obtaining in British courts . . . the immediate result was that it was impossible to proceed against many of the worst offenders." (Mullins, Leipzig Trials, 1921, p. 29-31).

The elastic powers of the military commission should not be used to aid in the escape of war criminals. The accused is unquestionably entitled to the aid of counsel and a fair hearing. The commission and the witnesses ought to be sworn and the proceedings recorded. Prior to trial the accused ought to be served with a bill of complaint wherein the nature of the offense is specifically set forth. The charge in most instances will be "Violation of the Laws of War." In the event of conviction the accused may present any reasonable appeal to the commanding general. The sentence will be carried into execution only on order of the appointing authority and after such review by him as the circumstances

warrant (Fairman, 271-8). Legally, there is no limitation on the power of the reviewing authority to act with respect to the sentence of a military commission except that the execution of the sentence may not be ordered until after review of the record by the Staff Judge Advocate (Art. of War 46; FM 27-5 par. 47b). The action of the reviewing authority is not, as such, reviewable by a civil tribunal (Ex Parte Vallandigham, 1 Wallace 243).

THE SENTENCE WHICH MAY BE IMPOSED BY A MILITARY COMMISSION: "Except in the case of spies, the existing law makes no provision whatever in regard to the quality or quantity of the punishment to be adjudged by the military commission. The power of such court to award sentence is thus practically without restriction. It is not limited to the penalties known to the practice of courts-martial nor indeed are the strictly military penalties such as dismissal, dishonorable discharge, suspension, etc. in general appropriate to it. The punishments more usually employed have been death, imprisonment and fine. Death has commonly been by hanging. Imprisonment, (ordinarily with hard labor) has been imposed for a term of months or years, . . . the place designated for the imprisonment has usually been a penitentiary or a fort. . . . In a few cases the fines have been directed in the sentence to be paid to individuals by way of indemnification for the money or property stolen or injuries suffered. In some other cases the accused has been required by the sentence to restore the specific money, or property, stolen" (Winthrop, p. 842-3). "A further distinct penalty not unfrequently adjudged by military commissions was confiscation of property. . . . Another specie of punishment often imposed has been banishment or expulsion beyond military lines . . . or from or without the state, etc." (Winthrop, p. 844-5).

COMPLIANCE WITH THE MILITARY ORDERS AS A DEFENSE: It is anticipated that the accused, as was done at the Leipzig Trials, will plead that his act was in compliance with a military order which he was duty bound to obey. It will be argued that he had no choice, for to have disobeyed would have subjected him to the severest punishment, even death (See AW 64).

"Obedience to orders is the vital principle of the military life—the fundamental rule, in peace and in war, for all inferiors through all the grades from the general of the Army to the newest recruit" (Winthrop, p. 571-2). This well-recognized principle of military law, however, presupposes that the order is a legal one—or as Winthrop stated it (page 296), ". . . it must command a thing not in itself unlawful or prohibited by law."

Does this mean that the inferior may assume to determine the question of the lawfulness of the order and would not such an assumption on his part subvert military discipline? Winthrop gave the answer as follows (pages 296-7): "Where the order is apparently regular and lawful on its face, he is not to go behind it to satisfy himself that his superior has proceeded with authority, but is to obey it according to its terms, the only exceptions recognized to the rule of obedience being cases of orders so manifestly beyond the legal power or discretion of the commander as to admit of no rational doubt of their unlawfulness. Such would be a command to violate a specific law of the land or an established custom or written law of his military service or an arbitrary command imposing an obligation not justified by law or usage, or a command to do a thing wholly irregular and

improper. . . . Except in such instances of palpable illegality, which must be of rare occurrence, the inferior should presume that the order was lawful and authorized and obey it accordingly, and in obeying it he can scarcely fail to be held justified by a military court."

In *United States vs. Carr*, 1 Woods 480, Fed. Cases No. 14, 732, a sergeant was prosecuted for having shot to death a soldier who had used disrespectful language. The accused pleaded in defense that he was acting upon the orders of his military superior. The defense was held to be without merit. The court in charging the jury stated in substance that a soldier is duty bound to obey only lawful commands and that an order to shoot for the use of disrespectful language would, if executed, be murder on both the part of the giver of the order and the one who executes it.

There are many cases on this subject matter, the underlying principle being that obedience of a palpably unlawful order is no defense to a criminal prosecution except that it may be considered in mitigation (*Bates v. Clark*, 95 U.S. 204, 209; *Little v. Barreme*, 2 Cranch U. S. 179; *Manley v. State*, 137 S.W. 1137; *McCall v. McDowell*, Fed. Cases No. 8, 673; *United States v. Bevans*, Fed. Cases No. 14, 589 (rev. on other grounds, 3 Wheaton 336); *United States v. Bright*, 24 Fed. Cases 1232; *Mitchell v. Harmony*, 13 Howard 115, 137; *U.S. v. Jones*, 26 Fed. Cases 653; *Winthrop*, p. 887, Glueck, chapter 8; *Board of Review Opinions JAG*, Vol. 36, 105-115). The rule is the same in other countries (*Regina v. State*, 17 Cape Reports 56; *De la Sanction des Infractions au Droit des Gens*, XXIV Rev. Gen. de Droit Internat. Public (1917), 5, 53).

A German court stated the rule as follows: "However, the subordinate obeying such an order is liable to punishment if it was known to him that the order of the superior involved the infringement of civil or military

law. This applies to the case of the accused. Military subordinates are under no obligation to question the order of their superior officers and they can count upon its legality. But no such confidence can be held to exist if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. . . . They should, therefore, have refused to obey. As they did not do so, they must be punished" (16 Am J. Int. Law 674, 708, 721). Compare this with the case of *Karl Neumann, Leipzig Trials*, supra.

The defense of acting on superior orders was interposed by the defendants in the recent Kharkov trials. The court, finding the accused guilty, apparently agreed with the argument of the prosecuting attorney which was as follows: "A member of the German Army who sets fire to peaceful cities and villages, kills the civilian population and forces women, children and old men into burning houses knows perfectly well that such acts constitute a violation of international law and of the laws prevailing in all civilized countries. . . . Criminal responsibility must be borne by the instigators and the perpetrators of the crimes for otherwise the majority of the monstrous crimes perpetrated by the fascist criminals would remain unpunished inasmuch as the perpetrators would be allowed to cover themselves by the defense of superior orders" (*Izvestia*, 21 Dec. 1943 No. 300).

The task of doing justice in the matter of War Crimes is tremendous. The gathering of evidence and the identification of the perpetrators is but the beginning of a very tortuous road. It has been promised by the three big Allied Powers that those who have "imbrued their hands with innocent blood" will be pursued "to the uttermost ends of the earth." There must be just retribution and the task which has been undertaken must be done.

MEET GENERAL GREEN

(Continued from Page 5)

received further specialized military instruction in a course at the Army Industrial College, from which he graduated in June 1938.

In August 1940 he was assigned for duty as Judge Advocate of the Hawaiian Department and in December 1941 he was made Executive to the Military Governor of the Hawaiian Department. For his work in the latter assignment he received the Distinguished Service Medal. He was largely responsible for the military government of the Islands during the critical period immediately following the Japanese attack on Pearl Harbor and for a year and a half thereafter. Under his administration the health, morale and financial condition of the territory were greatly improved. The procedures of military government worked out and placed in operation at that time have become the model for modern legal thinking on this subject. In recognition of the part General Green played during this period the Hawaiian legislature passed a special resolution commending him for his outstanding work. It is known that he received hundreds of letters from people of all walks of life in Hawaii praising his administration. While occupying the position of Executive to the Military Governor he was promoted to Brigadier General on 24 May 1942.

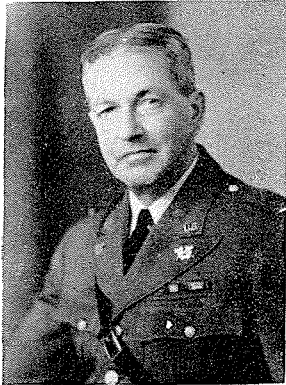
He returned to the United States in April 1943 and was assigned to the Office of The Judge Advocate General, first as Assistant Judge Advocate General in charge of Military Justice matters and later in charge of Civil Matters. In September 1944 he was made Deputy Judge Advocate General. He was awarded an Oak Leaf Cluster to the Distinguished Service Medal for his work in the office after his return from Hawaii. The citation accompanying this award gives special recognition to the important part played by General Green in determining the legal policies to be followed in the unprecedented field of Army operation of industrial plants arising from labor disputes.

In taking over the office of The Judge Advocate General, which had its origin in 1775, General Green has assumed the labyrinthine assignment of winding up the legal affairs of the world's greatest fighting force, the heartbreaking task of presiding over the liquidation of the greatest corps of Judge Advocates in the history of the Army, and the inspiring job of rebuilding in the regular establishment a strong, fresh coterie of crossed-sword-and-quillmen.

JOHN ANDRÉ—Officer and Gentleman

By COLONEL W. A. GRAHAM, U.S.A. Retired*

TREASON OF THE BLACKEST DYE WAS YESTERDAY DISCOVERED. Major General Nathanael Greene, of the Continental Army, though a foundryman before he became a soldier, had the instincts and inspirations of a modern journalist. He appreciated the value of startling headlines. And so his announcement in general orders on the morning of September 26, 1780, must have given to the sleepy army of Washington, lying in and about the reaches of the Hudson river, a thrill like that which shocks the public now when some dark plot against the common weal is found and foiled.



COLONEL GRAHAM

“GENL. ARNOLD, WHO COMMANDED AT WEST POINT,” so the sensational order continued, **“LOST TO EVERY SENTIMENT OF HONOUR, OF PRIVATE AND PUBLIC OBLIGATIONS, WAS ABOUT TO DELIVER UP THE IMPORTANT POST INTO THE HANDS OF THE ENEMY.”**

“Such an event must have given the American Cause a Deadly Wound, if not a Fatal Stabb. Happily the Treason has been timely discovered to prevent the Fatal Misfortune.

“The Providential Train of Circumstances which led to it affords the Most Convincing Prooffs that the Liberties of America are the object of Divine Protection.

“At the same time that the Treason is to be regretted, the Genl. cannot help congratulating the Army on the happy discovery.

“Our Enemies, despairing of carrying their point by force, are practising every base art to affect by Bribery and Corruption, what they cannot accomplish in a manly way.

“Great Honour is due to the American Army that this is the first instance of Treason of the kind where many were to be suspected from the nature of the Dispute, and nothing is so bright an ornament in character of an American soldier, as their having been proof against all the Arts and Seditious of an Invidious Enemy.

“ARNOLD HAS MADE HIS ESCAPE TO THE ENEMY, BUT Mr. ANDREE, THE ADJUTANT GENL. OF THE BRITISH ARMY, WHO CAME OUT AS A SPY TO NEGOTIATE THE BUSINESS, IS OUR PRISONER.

“His Excellency the Commander in Chief has arrived at West Point from Hartford and is no doubt taking the proper measures to unravel fully the SO HELLISH A PLOT.”

Startling news, indeed! Consternation reigned; and well it might.

General Arnold a traitor! It was unbelievable. Arnold, the “fighting general,” beloved of his men; the dashing, intrepid assailant of Quebec; the fearless, invincible hero of Saratoga; the comrade and favorite of Washington—gone to the enemy after an act of basest treachery! It was unthinkable—impossible. Yet it was true. Small wonder the plaints of distress, the agonies of apprehension, that swept the Army. Small wonder the sad cry of Washington: “Whom can we trust now.” It came from a broken heart.

The war for independence had been dragging out, both to the disgust of the British Government and to the dismay of the revolting colonies; the patience of the Parliament was near to exhaustion upon the one hand; and upon the other, the vaunted French alliance had as yet borne little fruit. Military progress on either side was at a standstill, and the armies of Washington and Clinton lay glaring at each other, only a few miles apart, the British at New York; the Americans along the Hudson and in the Jerseys. And so it had been for months. Affairs had gone badly in the South. Gates had been routed at Camden; Charleston was lost; the states were not coming through either with men or with supplies. Prospects were far from roseate for Washington; but Clinton, also, seemed unready for campaign.

Almost the only activity was that of the “Cowboys” and “Skinners,” partisan bushwhackers who infested the neutral ground—the “No-Mans-Land” between—who raided the country and stole from either side with the utmost informality and impartiality. The “Cowboys” professed pro-British sympathies, while the “Skinners” claimed to be the good friends of America; but sympathies had little in common with their operations, nor did Cowboy or Skinner hold his hand when opportunity to loot and steal appeared, whether the victim chanced to be a loyal adherent of his Majesty King George, or one of his rebellious subjects.

But it was a lucky thing for the cause of American independence that a party of these gentlemen of the road were on the job at 9 o'clock on the morning of September 23rd. Had they been as nearly asleep as were some officers of the Continental Army, these United States would, very likely, still enjoy the status of British colonies; and West Point, the nursing ground of military genius in America, might be known as the ancestral estate of the Arnold-Arnolds.

During June, 1780, it became known to Sir Henry Clinton that some one, high in authority in the American Army, was ready, if properly approached, to sell out the American cause, and gain for British gold a victory that British arms had as yet been powerless to achieve. The unknown styled himself “Mr. Gustavus.” A disguised correspondence was opened with him, which dealt in vague allusions to risks and profits and co-partnerships; and in other mercantile forms and phrases which gave it a commercial color, in case a letter should go astray. “Mr. Gustavus” proved to be Major General Benedict Arnold, a man who, while his only military

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training had been acquired as a runaway recruit of fourteen during the French and Indian War, had nonetheless shown himself to be one of the most brilliant and efficient leaders developed by the Revolution; but withal a man of haughty disposition, arrogant in manner and of implacable temper, whose pride had been wounded and his heart embittered by what he regarded as petty persecution and rank injustice and ingratitude at the hands of his countrymen.

Notwithstanding his distinguished services—and they had been distinguished—Arnold had been oversloughed by Congress in the promotion over him of his juniors. He had been tried the year before by a general court-martial upon petty charges inspired and urged against him by the Executive Council of Pennsylvania; and this soon after his gallant work at Saratoga, when he pulled Gates out of a hole and did more than any other to force Burgoyne's surrender. And while the result of this trial had entailed no more than reprimand, Arnold had been stung to the quick and left in an ugly and resentful frame of mind. While in command at Philadelphia in '78, he had chosen as his intimates the Loyalists rather than the Revolutionists; he had married into a prominent Loyalist family, and had, perhaps, been impressed with Loyalist views. In any event, whatever the elements and causes that had combined to produce his condition of mind, Arnold was ripe for intrigue and for treason. His soul was bitter; his heart was wrong; and there is little doubt that deliberately abusing Washington's great confidence in him, he sought and obtained the command of West Point, then the key fortress to America, that he might use it as a means to satisfy his cravings for vengeance. A brilliant, dashing officer, courageous and fearless to the point of temerity, a wily and cunning strategist and an inspiring leader, the very talents and temperament which had made him so valuable to the patriot cause, made him all the more a dangerous and deadly enemy, when in secret he turned upon it, planning and waiting the time to strike a fatal blow.

The other party to this clandestine correspondence was Major John André, Sir Henry Clinton's Adjutant General, a young gentleman of French descent, frank, open-hearted and honest as the day, and very much the dilettante and beau ideal of the fairer sex. He was a man of gentle birth and liberal education; an artist, a musician and a poet; a polished gentleman of most pleasing address and ingratiating manner; a social asset in high degree. But he was also a most efficient officer, who had risen rapidly in the esteem and confidence of his General, and had received rewards almost beyond precedent. Fortunately for America, though most unfortunately for him, André was utterly unsuited for plotting and intrigue. He was incapable of falsehood, holding personal honor higher than he held life itself; and exquisite though he was, subsequent events proved him to be imbued with that highest quality of courage, the courage of adversity, possessed alone by men of the most exalted character. Such was the man who, as "John Anderson, merchant," masqueraded to his death in the tragic and sinister plot which Arnold had devised to revenge himself against America.

Letters passed to and fro between John Anderson, merchant, and Mr. Gustavus, until in August of 1780 an understanding apparently was reached. It remained only to meet and settle the final terms; and the disguised André, hot with impatience to conclude the deal, pro-

posed a meeting on the lines, under a flag of truce, some time that month. But this plan fell through from some cause unknown, and the interview did not take place.

Nothing daunted, however, by this preliminary check to his "great and terrible enterprise," his vision no doubt blinded to the dangers he incurred and dazzled by the glare of glory that would be his when through his efforts the stronghold of America should be in British hands, André "carried on"; and upon the 20th of September he sailed up the Hudson in the British sloop of war "Vulture," to be nearer the objective of his plans. With him came Colonel Beverly Robinson, an American loyalist of prominence, whose home on the banks of the river Arnold then occupied as his headquarters.

Through Robinson, who had acted as an intermediary throughout the correspondence, two letters were sent ashore under a flag of truce, each asking an interview for the merchant Anderson, to adjust some private business. One of these letters was addressed to General Arnold; and the other, designed as a blind, to General Putnam, requesting his attention to the matter in case Arnold should be absent. And here by strange fatality, that Providence so earnestly apostrophized by Greene in his startling order of the 26th, intervened to protect America; and even as "the best laid plans of mice and men gang aft a-glee," so did circumstances luckily combine to confound the plotters and to prevent successful consummation of the plot.

It so happened that Washington himself, then on his way to Hartford on a visit of inspection, crossed the river that day, and was in Arnold's company when Robinson's letters were delivered. Sensing that the Commander in Chief would hear that they had come in under a flag, and perhaps with some idea of diverting possible suspicion by an appearance of frankness and candor, Arnold boldly submitted Robinson's letter to him, confident no doubt, that Washington would tell him to use his own judgment as to granting the supposed merchant's request. But to his chagrin and disappointment, Washington, with his customary caution, advised against it, suggesting that Arnold reply to Robinson that since private matters must needs be of a civil nature, Mr. Anderson's requests should be made to the civil authorities. And so the plan for an interview under a flag was again perforce abandoned.

André, chafing under the delay; anxious to get back to Clinton with the prize in his pocket, and hungered perhaps for the flesh-pots of New York, waited in vain for a boat to fetch him on the 21st. It crossed his mind that Arnold might be ignorant that he was aboard the "Vulture," ready and waiting to close the deal between them. He must let him know in some way, and without delay.

Luck played into his hands for once, though to his ultimate undoing, when a party of misguided militiamen, hoping to pot a Britisher by fair means or foul, displayed a white flag at the river bank. A boat was sent out immediately from the sloop, and André impatiently paced the deck, expecting it to return with Arnold's message fixing the time and place of rendezvous. But the militiamen were acting on their own; in defiance of the rules of war, violated their flag of truce by firing on the British boat as it approached the shore. Captain Sutherland of the "Vulture," his feelings outraged by this breach of faith, proposed to complain of

such unheard of conduct and at once set about to inscribe a protest to the American general in command. André interposed; and drafting the letter in his own hand, saw it sent ashore under a flag of truce, addressed to "Major General Arnold." While the letter was signed "A. Sutherland," André had countersigned it "J. Anderson, Secry.," by this means informing Arnold of his presence on the British sloop.

All day long André waited without word, but when night fell on the 21st a boat pulled out to the "Vulture." Mr. Joshua Smith and two men had come to bring John Anderson, the merchant, ashore. And "Mr. Gustavus" sent word by Smith that if their business should continue so long as to prevent Mr. Anderson's return that night, he would be safely lodged ashore until he might return in safety. André, who was in full uniform, threw an overcoat over his scarlet tunic, and went ashore. There, upon the silent river bank, where the shadows of the Haverstraw mountain overcast the waters, he found "Mr. Gustavus," waiting.

And now again his plans went wrong. André had no intention of going within American lines. Sir Henry Clinton had explicitly directed him not to do so, and had earnestly warned him under any circumstances neither to disguise nor quit his uniform, and above all to have nothing to do with incriminating papers. But there was much to be discussed—details and signals to be arranged; many facts and figures to be learned. It was evident that this business could not be concluded among the thickets that lined the river bank; they must seek the cover of a friendly roof. Arnold had horses in waiting, and together he and the unsuspecting André set off for Smith's house. Not until he passed the pickets did André learn that Arnold, unwittingly, had led him into a trap; that he was within American lines; his life at stake. But, he reflected, he was in the uniform of a British officer, and could not, even if discovered, be treated as a spy. In any event, he could not turn back now.

The interview lasted long into the night. In his own hand Arnold made copies of reports and tabulations that showed the strength and weaknesses of West Point; he described the various redoubts; the numbers and dispositions of the garrison, the amount and quality of the armament, giving the papers to André as he completed them.

On the 22nd, the negotiations were resumed and not until late morning was the conference completed. Then the two conspirators learned to their dismay that Fate once more had intervened to disarrange their plans. The "Vulture," which had been lying in the stream near King's Ferry, was no longer there. Livingston, the enterprising American commander at the ferry, had, without Arnold's knowledge or authority, at daybreak moved a battery to the banks of the river and opened fire upon the sloop, and the "Vulture," thus forced from her anchorage, had dropped down stream.

It had been agreed that when all matters were arranged, André was to return to the "Vulture" in the same manner he had come ashore; but the boatmen had learned of the events of the morning, and now refused to go. They declined to risk their skins in trying to pass the guns at the ferry. The officer commanding there was too alert and watchful: they would not take the chance. And obviously, Arnold could not order Livingston to

cease surveillance of the river, nor could he impress the boatmen by a show of force. Either act would instantly arouse suspicion.

But something must be done, and quickly. Every hour, indeed every minute that André now remained was fraught with increasing danger of discovery. Arnold insisted that André must discard his uniform, and return to New York by land. André remonstrated warmly against so dangerous a course. Not only did he remonstrate; he refused. Arnold persisted; it *must* be done; there was nothing else to do. And André, overcome by Arnold's domination, at length consented. The plans had again gone wrong; and this time the disarrangement was fatal.

Smith was called upon to furnish a change of clothing, and André, now thoroughly alive to his danger, cast discretion to the winds. When Arnold had given him the packet of papers relating to West Point, he had intended to tie them in a bundle and attach a stone, that he might toss the package overboard and sink the papers in the swift waters of the Hudson should the boat be intercepted upon his return down stream. But now, instead of destroying the papers, and carrying in his mind the fatal information they contained, which he might easily have done after an hour of study, he folded them together and having placed them inside his stockings, drew on his high-top boots. A safe hiding place for the papers, indeed; but a most unsafe one for him, since should he be captured and searched, by no possibility could he destroy or otherwise dispose of them. Strange it is that the shrewd and calculating Arnold should have permitted this proceeding, since the documents were all in his well known handwriting, and his own fate was sealed should André blunder. But he, too, seems to have lost his head at this juncture, and to have suggested and even insisted upon this hazardous expedient.

On the evening of the 22nd André, leaving his British uniform at Joshua Smith's house, started on horseback for New York, Smith accompanying him to guide him on his way. John Anderson, merchant, had closed his deal, and was now returning to his place of business; and General Arnold had obligingly given him a pass, in his own handwriting. It read as follows:

"Head Quarters, Robinsons
House, Sept. 22d, 1780

"Permit Mr. John Anderson to pass the Guards to the
White Plains, or below if he chooses, he being on Public
Business by my direction.

B. Arnold, M. Genl."

Smith, also, held Arnold's pass, and the two rode safely thru the lines, passed King's Ferry and came to Crompond, where an officer of militia stopped them. Friendly, he advised them to stay overnight, because the road beyond was dangerous; the Cowboys and Skinners were fast and willing workers when darkness cloaked the roads. Smith, alarmed for his own safety, wanted to turn back; André for the same reason desired to go on; and they compromised by accepting the militiaman's invitation to spend the night.

In the morning Smith had sufficiently recovered from his fears to proceed, and rode with Mr. Anderson, merchant, to within two miles of Pines Bridge. Here his courage again failed him, and he turned back, leaving André to negotiate the rest of the journey alone. This should be easy, since he was now only thirty miles from Kings Bridge, and close to the British outposts. So far things

had gone smoothly, despite the annoying checks and delays. Success was within his grasp. Not quite!

Close to Tarrytown the road forked. Either route led to New York; both to British posts. He chose one at random and rode on. What if he had chosen the other! The destinies of nations hang sometimes on slender threads!

It was nine o'clock in the morning of September 23rd. Three "Skinners," Paulding, Van Wart and Williams, were whiling away the time playing cards while waiting for business to turn up. The Cowboys and Skinners, when they prayed at all, altered the usual supplication. Their customary petition was, "Give us this day our daily stranger." And here he came. Informal and hurried inventory disclosed that he wore good boots, rode a fine horse, had a watch and chain, and looked prosperous. Worth stopping. They stopped him.

Ah! here was the occasion,—now was the time for John Anderson, merchant, to summon all his wile and wit. But the thought of those fatal papers in his stockings may have disconcerted him. Arnold's pass was forgotten for the moment, the safe conduct that would have taken him past an American party without question and could have given him no possible embarrassment if stopped by adherents of the King. True, either might have taken his watch and money, and perhaps his horse, because they were poor men—these "Cowboys" and "Skinners,"—and needy; but they would have passed him on; and only a league away was a British outpost.

But André, over eager, failed in caution. One of the party wore the uniform of a Hessian Yager; the three must be pro-British. He would chance it. The three had rushed from the woods with leveled muskets. They had seized his bridle and he could not ride them down.

Smiling, he spoke to them in his winning way. "My lads," said he, "why do you stop me? Surely you belong to our party?"

"And which party is that," came the non-committal answer.

"The lower party." André spoke quickly.

The leader of the trio glanced at his companions. "Well, that's our party," he drawled.

"Then don't detain me. I am a British officer on most urgent business. I must get on to New York at once," André replied. His manner was sharp. He spoke with the air of authority.

"Get down from that horse. You're our prisoner," was the astounding rejoinder. "We fooled you; we're of the upper party."

And then the pseudo-merchant did what he should have done at the beginning. He produced Arnold's pass. "God bless my soul," said he, "a body must do anything to get along these days." But it was too late. Nothing he could say or do now could convince these stubborn fellows that they were making a mistake. And noting his evident anxiety, all three were convinced that he had something more of value than they had been able to find in his pockets. They ripped open the saddle. Nothing there. Where could it be hidden?

"Take off your boots," came the terse command, André objected.

"For God's sake, men, take anything I've got. Take my horse; my watch, my furnishings; anything; but I must get on," he exclaimed.

"No; off with those boots" the three rejoined. And off they came.

"Here's something," cried one—"he carries money in his stockings." André struggled; he tried to break away. The papers were pulled out.

"West Point," they read; "redoubts, ordnance, garrison." "By heaven! This man is a spy," exclaimed the leader of the party.

"I am not a spy. I have shown you General Arnold's pass. You are interfering with his business." The trio hesitated. "What will you give us to let you go?" "A thousand guineas; and hold me if you wish until the money is paid." André was desperate. The men bargained. He raised the offer. They talked the matter over.

"No, by G-d," cried Paulding, who seemed to be the leader, "not for ten thousand guineas; there's too much chance. They'd send out troopers to take us; we can't risk it. We'll take him to the nearest American post."

Escorted by the party, who had looted everything he had of value, André was taken to an outpost at Old Salem, commanded by Lieut.-Col. Jameson. The papers found upon his person were dispatched to Washington, and André, upon his own insistence, was started off to Arnold. Half way there, however, his guard was overtaken and ordered back. Major Talmadge of the Intelligence had arrived and had scrutinized the papers. He had exclaimed that General Arnold was a traitor; that the prisoner must not be sent on to him. But Jameson, while he brought André back to Old Salem, considered that he owed it to General Arnold as his immediate superior, to report the capture; and he therefore sent a note by mounted messenger, to inform Arnold that he had in his hands a person who claimed to be John Anderson, a merchant, and who, when taken, had in his possession important papers relating to West Point. The message reached him just as he was sitting down to breakfast, a scant hour before Washington, returning from Hartford, arrived at Arnold's quarters. The traitor read the message, calmly excused himself from his guests, and going to his wife's apartment he quickly told her that events had so shaped themselves that he must stand not on the order of his going, but must go at once. He dashed to the river, leaped from his horse, and pistols in hand, ordered the crew of his barge to row him swiftly to the "Vulture." Arrived there, he and Robinson at once engaged in writing letters to Washington in an effort to clear the unlucky André.

But it was not to be. André, poor devil, was caught fast in the net, and when the terror of his situation had passed and he was himself again, he wrote a straightforward, manly letter to Washington. He avowed his own identity, plainly stated the purpose of his visit, and asked only, whatever might be his fate, since he "against his intention and without his knowledge beforehand" had been betrayed into "the vile condition" of an imposter and a disguised enemy, that "a decency of conduct toward me may mark that, tho' unfortunate, I am branded with nothing dishonorable, as no motive could be mine but the Service of my King."

"Having avowed myself a British officer," he wrote, "I have nothing to reveal but what relates to myself, which is true on the honour of an Officer and a Gentleman."

That sentence was the keynote of André's character. Washington acted instantly. He ordered pursuit for Arnold, and the utmost precautions for the security of

André. But Arnold was safe on board the "Vulture" and could not be apprehended. The villain of the play had escaped!

That there might be neither cavil nor criticism, no time was lost in bringing André to his trial before a board of general officers—(we would call it now, a Military Commission)—which sat at Tappan on September 28th. Never was there assembled a more distinguished body. It was composed of men whose names have come down to us as foremost among the champions of liberty and independence. Nathanael Greene sat as presiding officer; Stirling, the hero of Long Island; La Fayette, a name dear to all Americans; Von Steuben, pupil of Frederick the Great of Prussia, "drillmaster of the Revolution"; St. Clair and Howe; Major Generals all, were the Senior members; and Brigadiers Clinton, Glover, Hand, Parsons, Patterson and Huntington sat below them at the table. Knox of the Artillery, later first Secretary of War, was there; and likewise John Stark, whose words at Bennington every schoolchild knows: "Soldiers—there are the red-coats. We must beat them, or Molly Stark will be a widow tonight." John Laurence, Judge Advocate General of the Army, was the prosecuting officer.

Washington sent André before this distinguished tribunal by means of a dignified letter, prepared by his aide, Colonel Alexander Hamilton, which stated simply and clearly the circumstances under which the prisoner had fallen into American hands. And with his letter, he transmitted André's own letter to him; the papers in Arnold's handwriting found upon his person; and the pass to "Mr. John Anderson." And he sent, too, letters he had received from Arnold and Robinson and Sir Henry Clinton, which protested against holding André prisoner; averring that he was not a spy, and setting forward an insistent claim that he had gone to Arnold under the sanction and protection of a flag of truce. Addressed simply to "the Board of General Officers—convened at Tappan," the letter read:

"Gentlemen,

Major André, Adjutant General to the British army will be brought before you for your examination. He came within our lines in the night on an interview with Major General Arnold, and in an assumed character; and was taken within our lines, in a disguised habit, with a pass under a feigned name, and with the inclosed papers concealed upon him. After a careful examination, you will be pleased, as speedily as possible, to report a precise state of his case, together with your opinion of the light, in which he ought to be considered, and the punishment, that ought to be inflicted. The Judge Advocate will attend to assist in the examination, who has sundry other papers, relative to this matter, which he will lay before the Board.

I have the honor to be, Gentlemen

Your most Obed. and humble Servant,

Geo. Washington."

Brought before the Board, André freely and candidly disavowed any claim that he had visited Arnold under the protection of a flag. He stated frankly that the boat in which he came on shore "carried no flag"; and upon being interrogated especially upon this point, he declared "that it was impossible for him to suppose that he came on shore under that sanction"; adding "that if he came on shore under that sanction, he certainly might have returned under it." A written narrative had been prepared by the prisoner during his incarceration. This he presented to his judges. It read as follows:

"On the 20th of Sept. I left New York to get on board the Vulture in order (as I thought) to meet General Arnold there in the night. No boat however came off and I waited on board until the night of the 21st. During the day a Flag of Truce was sent from the Vulture to complain of the Violation of a military rule in the Instance of a boat having been decoyed on Shore by a Flag and fired upon. The Letter was address'd to General Arnold signed by Captain Sutherland, but written in my hand and countersigned 'J. Anderson, Secry': its intent was to indicate my presence on board the Vulture.

"In the night of the 21st a boat with Mr. _____ and two hands came on board in Order to fetch Mr. Anderson on Shore, & if too late to bring me back to lodge me until the next night in a place of Safety. I went into the boat, landed and spoke with Arnold, I got on horseback with him to proceed to _____ house and on the way passed a Guard I did not expect to see, having Sir H. Clinton's direction, not to go within an Enemy post or to quit my own dress.

In the morning A quitted me, having himself made me put the papers I bore between my Stockings and Feet; whilst he did it he expressed a wish in case of any Accident befalling me, that they should be destroyed which I said of course would be the case, as when I went into the boat I should have them tied about with a String and a Stone. Before we parted some mention had been made of my crossing the River and going by another route, but I objected much against it and thought it was settled that in the way I came I was also to return. _____ to my great mortification persisted in his determination of carrying me by the other route, and at the decline of the Sun I set out on horseback, passed King's Ferry & came to Crompond, where a party of militia stopped us and advised we should remain.

In the morning I came with _____ as far as within two miles and a half of Pines-Bridge, where he said he must part with me as the CowBoys infested the road thenceforward. I was now near 30 miles from King's Bridge and left to the Chance of passing that Space undiscovered. I got to the neighbourhood of Tarry Town, which was far beyond the points described as dangerous, when I was taken by three Volunteers who, not satisfied with my pass, rifled me and finding papers, made me a prisoner.

I have omitted mentioning that when I found myself within an Enemy post, I chang'd my dress."

No witnesses were called; André's honesty and candor had made it quite unnecessary. There was but one conclusion to which it was possible to come. He was a spy.

The report to Washington immediately followed. The original of this interesting document may be seen among the Washington papers in the Library of Congress. All in the handwriting of John Laurance, and signed by every member of the historic body which tried him, André's fate was sealed in the following solemn words:

"The Board having considered the letter from his Excellency General Washington respecting Major André, Adjutant General of the British Army, the confession of Major André and the papers produced to them, report to his Excellency, the Commander in Chief, the following facts, which appear to them relative to Major André.

"First, that he came on shore from the Vulture sloop of war in the night of the 21st of September instant, on an interview with General Arnold, in a private and secret manner.

"Secondly, that he changed his dress within our lines; and under a feigned name, and in a disguised habit, passed our works at Stoney and Verplanck's Points, the evening of September 22nd instant, and was taken the morning of the 23rd of September instant, at Tarry Town, in a disguised habit, being then on his way to New York; and

when taken he had in his possession several papers, which contained intelligence for the enemy.

"The Board having maturely considered these facts, do also report to his Excellency General Washington, that Major André, Adjutant General of the British Army, ought to be considered as a spy from the enemy, and that, agreeable to the law and usage of nations, it is their opinion, he ought to suffer death."

Desperate effort was made by Sir Henry Clinton to save him, but without success. Washington could not be swayed; and neither humble request of personal favor to the British commander, nor threat of retaliation upon the part of Arnold, affected his grim determination. Clinton sent a deputation headed by Lieut. General Robertson, in company with the Lieutenant Governor and the Chief Justice of New York to plead for André; but Washington declined to see them. Robertson alone was permitted to land; and he conferred with Greene, but to no avail. Stern policy demanded that André's life be forfeited as a warning to others.

During his short confinement, the man most with the prisoner was Colonel Alexander Hamilton, Washington's favorite aide. He, more than any other, was permitted to see the glory of André's character. During one of his visits the doomed man begged Hamilton to bear his request to Washington for permission to send an open letter to his General.

"I foresee my fate," he said, "and though I pretend not to play the hero, or to be indifferent about life, yet I am reconciled to whatever may happen, conscious that misfortune, not guilt, will have brought it upon me. There is only one thing that disturbs my tranquility. Sir Henry Clinton has been too good to me; he has been lavish of his kindness. I am bound to him by too many obligations and love him too well to bear the thought that he should reproach himself, or that others should reproach him, on a supposition that I had conceived myself obliged by his instructions to run the risk I did. I would not for the world leave a sting in his mind that should embitter his days."

"He could scarce finish the sentence," wrote Hamilton to his friend, Laurens; "bursting into tears in spite of his efforts to suppress them, and with difficulty collected himself enough afterwards to add, "I wish to be permitted to assure him I did not act under this impression, but submitted to a necessity imposed upon me, as contrary to my own inclination as to his orders."

It is gratifying to know that Washington, his great heart touched by this pathetic appeal, gave the necessary permission, and the letter to Clinton was written and despatched.

Arrangements for André's execution were immediately made. On October 1st Greene's orderly book contains the entry: "The Commander in Chief directs the execution of the above sentence in the usuall way this afternoon at five o'clock precisely." Short shrift indeed. The military justice of revolutionary days was swift; and sure.

Realizing that he must die, André addressed one more request to Washington. No plea for mercy; no prayer for pardon; no petition for the commutation of his sentence, but a touching, manly, wonderful appeal that the manner of his death should be not ignoble. It is one of the finest, most remarkable papers ever written. Simple

with the grandeur of quiet dignity, it displays the character and soul of a hero. Here it is:

"Tappan, October 1, 1780.

"Sir:

"Buoy'd above the terror of death by the consciousness of a life devoted to honourable pursuits, and stained with no action that can give me remorse, I trust that the request I make to your Excellency at this serious period, and which is to soften my last moments, will not be rejected.

"Sympathy towards a soldier will surely induce your Excellency and a military tribunal to adapt the mode of my death to the feelings of a man of honour.

"Let me hope, Sir, that if ought in my character impresses you with esteem towards me, if ought in my misfortunes marks me as the victim of policy and not of resentment, I shall experience the operation of these feelings in your breast by being informed that I am not to die on a gibbet.

"I have the honour to be,

Your Excellency's most obedient and
most humble Servant,

John André, Adj. Gen.
to the British Army."

"His Excellency
General Washington."

Washington, deeply affected by this soldierly appeal, but feeling that to grant the request was impossible, as incompatible with the custom of war, returned no answer. With the fine delicacy of a great gentleman, he desired to spare the feelings of the condemned man even to the last moment. And so until the gallows actually loomed before him, André remained ignorant of the method by which his life should pay the forfeit.

The execution, postponed by the Commander in Chief until noon of October 2nd, that Clinton's deputation might be heard, is pathetically described by Hamilton:

"When he was led to the place of execution, as he went along he bowed familiarly to all those with whom he had been acquainted in his confinement. A smile of complacency expressed the serene fortitude of his mind. Arrived at the fatal spot he asked, with some emotion, "Must I then die in this manner." He was told it had been unavoidable. "I am reconciled to my fate," said he, "but not to the mode." Soon, however, recollecting himself, he added "It will be but a momentary pang"; and springing upon the cart, performed the last offices to himself with a composure that excited the admiration and melted the hearts of the beholders. Upon being told that the final moment was at hand, and asked if he had anything to say, he answered, "Nothing, but to request you will witness to the world that I die like a brave man." Among the extraordinary circumstances that attended him in the midst of his enemies, he died universally esteemed and universally regretted."

The whole American Army lamented André even as it execrated Arnold. Great Washington himself, bowed down by a profound and sincere grief, shut himself alone in his quarters, and no order issued from him the day that André died.

"Never, perhaps, did a man suffer death with more justice, or deserve it less." These words of Hamilton might well be André's epitaph. As for old England, no event of the war for Independence so stirred the depths of her sorrow; she mourned him then, she has mourned him ever since.

In Westminster Abbey, among the tombs and sepulchres of England's greatest and best, is a monument which depicts Britannia in tears. It is sacred to the memory of John André, Officer and Gentleman.

WORK OF THE *Boards of Review*

By COLONEL WILLIAM A. ROUNDS, JAGD*

THE decisions rendered by a Board of Review in the Office of The Judge Advocate General are divided into three classes, Opinions, Reviews and Holdings (long and short) determined by the type of case involved and the action required thereon by the reviewing or confirming authority (Articles of War 46 to 53 inclusive).

1. OPINIONS are written in two types of cases, confirmation and legally insufficient published order cases.

a. *Confirmation cases*—In addition to the approval by the reviewing authority required by Article of War 46, an action of confirmation by the President is also required by Article of War 48 as to,

- (1) Any sentence respecting a general officer
- (2) The dismissal of an officer
- (3) The suspension or dismissal of a cadet (USMA)
- (4) Death sentences

before the sentence of a court-martial may be carried into execution.

The President of the United States personally retains and exercises his statutory confirming authority in all cases (except as to the five offenses explained below) where a sentence of death is imposed. In all other cases requiring confirmation by the President, the Secretary of War and the Under Secretary of War have been delegated (by Executive Order No. 9556, dated May 26, 1945) the power to confirm and to order execution thereof *excepting* death sentences and sentences authorized to be acted upon by a confirming authority overseas.

In time of war the Commanding General of the Army in the Field is given authority by Sections (b) and (d) of the 48th Article of War, if so empowered by the President, to confirm and order executed:

(a) Dismissal of an officer *below* the grade of Brigadier General (AW 48b).

(b) Any sentence of death imposed on persons convicted of murder (AW 92), rape (AW 93), mutiny (AW 66), spies (AW 82) and desertion (AW 58). (See AW 48d).

b. There are numerous cases wherein the dishonorable discharge contained in the approved sentence has been suspended by the reviewing authority and the general court-martial order published before the record is sent to The Judge Advocate General's Office (termed a "Published Order Case"). If after examination for legal sufficiency by examiners in the Military Justice Division of The Judge Advocate General's Office (required by paragraph 5 of AW 50½) it is found that such record is *legally insufficient*, in whole or in part, to support the sentence and that decision is supported after review of the record by a Board of Review, the Board's written decision vacating the findings and sentence is termed an opinion. Final action on this type of case is taken by the Secretary or Acting Secretary of War (par. 5 AW 50½), but by Executive Order No. 9556, May 26, 1945, the Under Secretary of War is also authorized to take final action.

2. REVIEWS—A policy, established by The Judge

Advocate General in 1944, requires that, in all cases wherein the sentence, as approved by the reviewing authority, includes a period of confinement exceeding twenty-five years and the dishonorable discharge is not suspended, a review be prepared by a Board of Review containing a summary of the facts and a statement of the law governing the case. This is signed by the Board of Review and approved by The Judge Advocate General. It is then fastened to the record of trial and sent with the record to the Court-Martial Record Room in The Judge Advocate General's Office to be filed. This is not a statutory, but an office administrative requirement.

3. HOLDINGS—two types.

a. *Short Holdings*—the form most frequently used.

In all records of trial by general court-martial of enlisted men wherein the accused has pleaded "not guilty" and the approved sentence involves dishonorable discharge not suspended, or confinement in a penitentiary, no reviewing or confirming authority may order the execution of the dishonorable discharge until the Board of Review, with the approval of The Judge Advocate General, has held the record of trial upon which such sentence is based, legally sufficient to support the sentence (par. 3 AW 50½). A short and simple statement by the Board of Review constitutes the formal short holding. A first indorsement thereto tells the reviewing authority that he is now authorized to publish a general court-martial order directing the execution of the sentence. This indorsement is signed by the Assistant Judge Advocate General In Charge of Military Justice Matters who functions under the provisions of Executive Order No. 9363 dated 23 July 1943 which empowers him to exercise and perform all functions, duties and powers conferred upon The Judge Advocate General by AW 46 and by the second to the fifth paragraphs (inclusive) of AW 50½. In such cases if the honorable discharge or penitentiary confinement is based *solely* upon findings of guilty of the Charge or Charges and Specification or Specifications to which the accused *pleaded guilty*, the proper reviewing authority or confirming authority *may*, upon his approval of the sentence, order its execution without first obtaining the decision of the Board of Review as to legal sufficiency and the approval of The Judge Advocate General. (Par. 3 of AW 50½.) Such action is optional and not compulsory. Reviewing authorities frequently treat 50½ cases wherein the accused has pleaded guilty in the same manner as those in which he has pleaded not guilty.

b. *Long Holdings*. This is the same type of case as covered above in short holding (enlisted men who plead not guilty, or carrying sentence of dishonorable discharge to be executed, or penitentiary confinement) but where the examination by the Board of Review discloses that the record is *legally insufficient in whole or in part to support the sentence*. In such cases the first indorsement addressed to the reviewing authority invites attention to the holding, advises approval thereof and recommends action in accordance therewith. The facts pertinent to the Charge and Specification found to be legally insufficient are set forth at such reasonably necessary length as required to sustain the adverse legal ruling.

* LL.B., University of Pennsylvania; LL.M. and M.P.L., Georgetown University; Staff Judge Advocate, Headquarters, Third Service Command, Baltimore, Md.; formerly Assistant Judge Advocate General in charge of Military Justice Matters.

Honor Roll

DISTINGUISHED SERVICE CROSS

To: St. Julien P. Rosemond, Major, JAGD (then Captain, FA), 2127 Brickell Ave., Miami, Florida.

For: "Extraordinary heroism in action against the enemy on 11 June 1944, in France. In the assault upon *****, the infantry battalion was pinned down by the intense enemy machine gun and rifle fire. Capt. Rosemond as artillery liaison officer, in spite of this heavy enemy fire, moved to a forward position and directed artillery fire upon the enemy. He, though exposed to direct enemy fire, remained at his position until he accomplished his mission. Capt. Rosemond, on the occasions of enemy counterattacks, repeatedly moved to a forward position in the face of heavy fire to direct artillery fire. The personal bravery, initiative and devotion to duty exhibited by Capt. Rosemond reflects great credit on himself and is in keeping with the highest traditions of the Armed Forces.

DISTINGUISHED SERVICE MEDAL

To: Myron C. Cramer, Major General, The Judge Advocate General, 3717 Fordham Road, N. W., Washington, D. C.

For: "Major General Myron C. Cramer, the Judge Advocate General of the Army, discharged his heavy responsibilities in an exemplary manner from December, 1941, to October, 1945. Beginning his task at the critical time when the Nation and the Army were undergoing the transition from peace to war, he was immediately confronted with difficult, complex, and unprecedented legal problems incident to the unparalleled expansion of the Army. By virtue of his comprehensive legal background, he accomplished his assignment with exceptional distinction. His aggressive leadership and astute judgment were reflected in the formulation of the Army's legal policy in respect to the acquisition of military reservations and foreign bases and airfields, contracts covering a tremendous procurement program, and the selection and training of additional personnel for the Judge Advocate General's Department including the plans and procedures necessary for choosing and training lawyers for the Army. He made substantial contributions to the revision of policy concerning habitual offenders in view of the critical need for salvaging and rehabilitating all available manpower, made provision for adequate legal assistance to all Army personnel in the conduct of their personal affairs, and provided for the prompt punishment of all violators of military law while simultaneously assuring protection of the soldier's rights before a military court. General Cramer's services were accomplished with a constant and zealous regard for the best interests of the Government and reflect great credit upon himself and the military service."

To: Thomas H. Green, Brigadier General, United States Army, 2229 Bancroft Place, N. W., Washington, D. C.

For: Exceptionally meritorious service in a position of great responsibility. As Executive to the Military Governor of the Territory of Hawaii from December, 1941, to March, 1943, Brigadier General Green was largely responsible for the promulgation and issuance

of general orders and other measures to effect the transition from civil government to military government on December 7, 1941. In most cases these orders and measures were without precedent and required the broadest legal knowledge in order to make them properly effective. Brigadier General Green has been largely responsible for the operation of the military government under conditions unprecedented in the history of this country.

To: David Marcus, Colonel, J.A.G.D.

For: Colonel David Marcus, serving successively as Chief of the Government Branch and Chief Planner in the Civil Affairs Division, War Department, from April 1943 to May 1945, represented the Director of the Division in the negotiation of important international agreements and, with representatives of civilian agencies, in the formulation of basic United States policy with respect to civil affairs and military government. As a result of the firsthand experience gained by him in carrying out an important mission in Sicily and Italy, and through that acquired in accompanying the 101st Airborne Division in the invasion of Normandy, he was able to recommend and to see instituted important modifications of policies and procedures concerning military government in the occupied areas and basic improvements in administration in civil affairs in France. He assisted in the negotiation and drafting of the Italian Surrender Instrument, The Instrument of Unconditional Surrender of Germany and the international agreement concerning the machinery to be used for the control of Germany after her total defeat. His efforts in every case contributed to the successes attained by the Civil Affairs Division.

DISTINGUISHED SERVICE MEDAL (OAK LEAF CLUSTER)

To: Thomas H. Green, Brigadier General, United States Army, 2229 Bancroft Place, N. W., Washington, D. C.

For: As Deputy Judge Advocate General of the Army from October 1944 to September 1945 he made an outstanding contribution to the war effort and the defeat of the enemy. His tremendous force and drive and his consummate skill and legal ability were major factors in expediting the multiple activities of the Judge Advocate General's Office. Besides discharging with remarkable swiftness the many duties and responsibilities normally falling upon him as Deputy he directed the formulations of legal procedures for the War Department operation of strike-bound industrial facilities, selected personnel for assignment as legal advisers to the War Department representatives in such cases and contributed by his leadership and sound judgment to the saving of millions of man-hours in essential war production. His direction of the operation of the Branch Offices of The Judge Advocate General in the various theaters of operations greatly facilitated the processing of thousands of records of trial by general courts-martial insuring the maintenance of strict military discipline and guaranteeing to each soldier throughout the same fundamental protection provided by the American legal system. Under his direction, legislation was prepared

and sponsored broadening the basis for the recognition and payment of personnel claims to all military and civilian personnel of the War Department, and thousands of these claims were speedily settled. In addition, a vast program of legal assistance was administered. All of this contributed much to the morale of our armed forces. The outstanding manner in which General Green performed these distinguished services reflects great credit upon himself and the military service.

LEGION OF MERIT

For: Exceptionally meritorious conduct in the performance of outstanding services.

Myron C. Cramer, Major General, The Judge Advocate General, United States Army, 3717 Fordham Road, N. W., Washington, D. C.

Edwin C. McNeil, Brigadier General, United States Army, 2728 34th St., N. W., Washington, D. C.

Arthur I. Burgess, Colonel, J.A.G.D., 14 Marion St., Quincy, Mass.

Herbert A. Friedlich, Colonel, J.A.G.D., 2206 Wyoming Ave., Washington, D. C.

Hubert D. Hoover, Colonel, J.A.G.D., 2229 Bancroft Place, N. W., Washington, D. C.

Edward A. Levy, Colonel, J.A.G.D., 77 Pennington Ave., Passaic, N. J.

Earl S. Patterson, Colonel, J.A.G.D., 411 W. 5th St., Los Angeles, Calif.

Oscar R. Rand, Colonel, J.A.G.D.

B. Franklin Riter, Colonel, J.A.G.D., 95 East 1st North St., Salt Lake City, Utah.

Eugene Ferry Smith, Colonel, J.A.G.D.

Hugh C. Smith, Colonel, J.A.G.D., 4343 Cathedral Ave, N. W., Washington, D. C.

Charles M. Van Benschoten, Colonel, J.A.G.D., 124 W. Water St., Flint, Mich.

George C. Van Nostrand, Colonel, J.A.G.D., 505 W. Broadway, Fairfield, Iowa.

John W. Bonner, Lieutenant Colonel, J.A.G.D., 1132 Breckenridge St., Helena, Mont.

Robert R. Bowie, Lieutenant Colonel, J.A.G.D., 3503 Rodman St., N. W., Washington, D. C.

Edgard F. Gallagher, Lieutenant Colonel, J.A.G.D., 2901 Legation St., N. W., Washington, D. C.

Aldo H. Loos, Lieutenant Colonel, J.A.G.D., 5248 Olive St., Kansas City, Mo.

Wallace W. Orr, Lieutenant Colonel, J.A.G.D., 425 Surf St., Chicago, Ill.

Victor A. Sachse, Lieutenant Colonel, J.A.G.D., 2050 Terrace Ave., Baton Rouge, La.

BRONZE STAR

For: Meritorious service in connection with military operations.

Edwin C. McNeil, Brigadier General, United States Army, 2728 34th St., NW, Washington, D. C.

William H. Beck, Jr., Colonel, J.A.G.D., 217 S. 11th St., Griffin, Ga.

Ernest W. Jones, Colonel, J.A.G.D., San Antonio, Texas.

Doane F. Kiechel, Colonel, J.A.G.D., Nelson, Nebraska.

Ellwood W. Sargent, Colonel, J.A.G.D., 208 Edgehill Rd., Milton, Mass.

John W. Awtry, Lieutenant Colonel, J.A.G.D., Scarsdale Chateau, Scarsdale, N. Y.

George B. Chapman, III, Lieutenant Colonel, J.A.G.D., 617 S. Linden Ave., Highland Park, Ill.

Rupert R. Harkrider, Lieutenant Colonel, J.A.G.D., 1201 North St., Beaumont, Texas.

Charles B. Paine, Lieutenant Colonel, J.A.G.D., 1842 Pepper Ave., Lincoln, Nebraska.

Wallace W. Orr, Lieutenant Colonel, J.A.G.D., 303 W. Court St., Paragould, Arkansas.

Harold T. Patterson, Lieutenant Colonel, J.A.G.D., 245 Nacooche Drive Northwest, Atlanta, Georgia.

Theodore F. Cangelosi, Major, J.A.G.D., 2511 Magazine St., New Orleans, La.

Burton F. Ellis, Major, J.A.G.D., 141-25 Northern Blvd., Flushing, New York.

Francis J. Gafford, Major, J.A.G.D., 1504 Ferry St., Easton, Pa.

Jonathan A. Hendric, Major, J.A.G.D., 111 Hospital Pl., Sayre, Pa.

David S. Meredith, Jr., J.A.G.D., 822 Charlotte Drive, Longview, Texas.

Harold F. McDonnell, Major, J.A.G.D., 9 Wave St., Cambridge, Mass.

Frank McNamee, Jr., Major, J.A.G.D., Box 472, Las Vegas, Nevada.

Charles E. Shaver, Major, J.A.G.D., 808 W. 22½ St., Austin, Texas.

Benjamin R. Sleeper, Major, J.A.G.D., 810 North 12th St., Waco, Texas.

Edward L. Stevens, Jr., Major, J.A.G.D., N. Court St., Delhi, N. Y.

Harold J. Sullivan, Major, J.A.G.D., 1815 Northwest Third Ave., Mineral Wells, Texas.

Marion B. Trembley, Major, J.A.G.D., Flint, Mich.

Guy E. Ward, Major, J.A.G.D., Belleville, Kansas.

Frank R. Bolte, Captain, J.A.G.D., Box 443, Library, Pa.

Harold H. Emmons, Jr., Captain, J.A.G.D., 1130 Holcomb Ave., Detroit, Michigan.

Charles Sapp, Captain, J.A.G.D., 4509 San Jacinto, Houston, Texas.

William D. Sporborg, Jr., Captain, J.A.G.D., 8 Hawthorne Ave., Port Chester, N. Y.

John Wiegel, Captain, J.A.G.D., 600 Jean St., Oakland, Calif.

THE END OF THE *Bojag-Mto Trail*

By MAJOR CICERO C. SESSIONS, JAGD.

THE FIRST period of the life of BOJAG-MTOUSA (as reported in "The Judge Advocate Journal" Vol. II, No. 1, March, 1945, page 46, "Two Years of Achievement in MTO"), did not include the time of its greatest activity. The month of January 1945 saw the peak of its incoming cases. In that month 869 records of trial by general court-martial were received of which 149 were Board of Review cases and 720 of the Military Justice category. Carried over from 1944 were 23 Board of Review and 28 Military Justice cases. Pending at the close of January were only 80 Board of Review and 132 Military Justice records. Cleared during that month were 92 Board of Review cases and 616 Military Justice records—the largest month, in all respects, in the history of the office.

February 1945 also saw an extraordinarily large amount of work received and disposed of, with 72 Board of Review and 470 Military Justice cases received. At the close of that month, there were only 70 records pending before the Board of Review, and 46 carried over in the Military Justice Division. Thereafter the incoming work gradually declined month by month.

During this period of greatest activity the assigned personnel remained at about the same level. In January 1945, by some legerdemain never fully disclosed to others in the organization, Colonel Hubert D. Hoover, JAGD, the Assistant Judge Advocate General in charge of the Branch Office and his executive officer, Lieutenant Colonel Mortimer R. Irion, JAGD, obtained more commodious and comfortable quarters in a modern bank building. These facilities greatly expedited the work of the office. Another factor contributing largely to the efficiency of the personnel was their general disinterest in the City of Naples which caused all hands to devote their first and best interests to their work.

The first six months of 1945 saw the trend of cases continue the same as to type. Offenses of purely a military nature as well as crimes of violence—murder, rape, robbery, assaults—continued to furnish the majority of cases received. The cessation of combat and V-E day presaged, it was hoped, the early closing of the office. Colonel Hoover departed the Theater on 15 May 1945 for the United States expecting to return. Colonel Ellwood W. Sargent, JAGD, was relieved as Chairman of the Board and assumed the functions of Acting Assistant Judge Advocate General. During the subsequent period the Board of Review consisted of Lieutenant Colonel Irion, Major Cicero C. Sessions, JAGD and Major Henry C. Remick JAGD. In June, 1945, Lieutenant Colonel John H. McGehee, Jr., JAGD, Chief Military Justice Division, and Lieutenant Colonel Irion received the Bronze Star decoration for their outstanding work in the Branch Office.

It was also learned in June that Colonel Hoover had been given an important assignment in JAGO and would not return to Italy. Orders were received indicating that upon deactivation of BOJAG-USAFPOA, Brigadier General James E. Morrisette, USA, would become Assistant Judge Advocate General in charge of BOJAG-MTOUSA. General Morrisette arrived and assumed his new duties on 13 July 1945. On that date Colonel Sargent

resumed his former post as Chairman of the Board of Review.

It was also learned about this time that the Theater Commander had directed that Colonel Hoover be decorated with the Legion of Merit. The citation, which is an integral and important part of BOJAG-MTOUSA history, reads as follows:

"HUBERT D. HOOVER, 07924, Colonel, Judge Advocate General's Department, Branch Office Judge Advocate General's Section, Mediterranean Theater of Operations for exceptionally meritorious conduct in the performance of outstanding services in the Mediterranean Theater of Operations from 20 July 1943 to 16 June 1945. As Assistant Judge Advocate General in charge of the Branch Office of The Judge Advocate General with the Mediterranean Theater of Operations, Colonel Hoover demonstrated outstanding efficiency in the direction and formation of policies, and supervision of the rendition of opinions in the Branch Office of the Judge Advocate General. Colonel Hoover's legal skill, great energy, sound judgment, avoidance of immaterial technical considerations, and knowledge of military law and disciplinary problems in the field contributed in an exceptional and outstanding degree to the efficiency and fairness of the administration of military justice in the Mediterranean Theater and to the prompt and effective punishment of crime. Entered service from California."

During August 1945, Master Sergeants Olive A. Helber and Mary J. Livingston, WAC, also received the Bronze Star for their work in BOJAG. In September the last of the original WAC detachment left for home on the first voyage made by the Italian SS *Vulcania* as a troopship carrying American troops.

During General Morrisette's tenure, the work continued to diminish in direct proportion to the speed of re-deployment and departure and inactivation of general court-martial jurisdictions. Type of offenses commonplace during the months of combat, such as misbehavior before the enemy, disobedience and desertion to avoid hazardous duty, became rarities on the docket. Cases involving absence without leave and crimes of violence continued to furnish a large part of the work which also included numerous cases involving black market activities of military personnel. Only 79 cases were received in September 1945, 17 for the Board of Review and 62 for Military Justice Division. The end inevitably was near. The greatest subject of conversation during this last, or "dehydrating" period, was the well-known "point" system, as affecting all ranks.

During the summer commissioned and enlisted personnel availed themselves fully of the numerous trips afforded for "rest and recreation." Cairo and the Holy Land received their quota of peripatetic JA's. The sands of the Lido of Venice supported recumbent figures of warriors of the quill and sword. Many followed the footsteps of Hannibal and Napoleon in the Swiss Alps. Milan, Florence, Rome, Capri, Sorrento, Pompeii, all received their quota. The wrapping and mailing of packages to loved ones at home also reached unprecedented heights. Finally, early in October came the long awaited news. BOJAG would inactivate at 2400 Z, 31

October 1945, its work and jurisdiction to be absorbed by BOJAG-USFET.

General Morrisette departed the Theater on 23 October 1945. Upon deactivation, the personnel of the office and their assignments were as follows:

Colonel Ellwood W. Sargent, JAGD, Acting
Assistant Judge Advocate General.
Lieutenant Colonel Mortimer R. Irion, JAGD,
Executive Officer.
WO (jg) Paul Gorin, AUS, Administrative
Officer.

Board of Review
Major Cicero C. Sessions, JAGD
Major Henry C. Remick, JAGD
Captain Harold V. Hughston, JAGD
Military Justice Division
Major Clarence W. Hall, JAGD, Chief.
Major Arkley W. Frieze, JAGD
CWO Vincent Dargen, R.A.

Colonel Sargent, Lieutenant Colonel Irion, Major Remick and Mr. Gorin were slated for passage home and termination of their military careers. The remainder of the personnel were still available, due to insufficient points, for other assignments overseas.

Thus ends the story—one of hard unremitting work for long years. During its existence, from 8 March 1943 to 31 October 1945, BOJAG received a grand total of 7,678 records of trial, of which 1,165 were for the Board of Review and 6,513 for the Military Justice Division. As his final act, the last chairman of the Board prepared for transmission to the chairman of the senior Board of Review in BOJAG-USFET, with appropriate comments, the spirit of the Board, a grimacing mask of plaster, which, legend has it, smiles when a case is "busted." Its docket cleared, BOJAG expired with the belief entertained by all who have served in it that its job was well done—its mission accomplished.

OUR Mail Pouch

If you wish to write to a friend in the Judge Advocate General's Department and do not know the address of your friend then do not hesitate to address the mail to him in care of Milton I. Baldinger, Executive Secretary, The Judge Advocates Association, National University Law School, Washington 5, D. C., and it will be promptly forwarded to him.



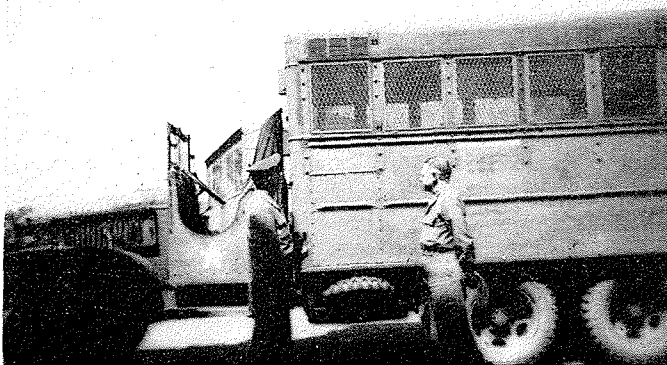
CORPUS DELICTI

Sirs:

I thought you might be interested in the inclosed picture of "Corpus Delicti," the M-7 van used by the Staff Judge Advocate of this command since shortly after D-Day in Normandy. In addition to the van, we used a storage tent for the balance of the office force of four officers and seven enlisted men.

The van accommodated two officers and would haul all of our supplies and office equipment on moves. It was equipped with electric lights and had its own heating and air-conditioning systems.

ED. R. BENTLEY
Lt. Colonel, JAGD
Staff Judge Advocate
Hq IX Tactical Air Command



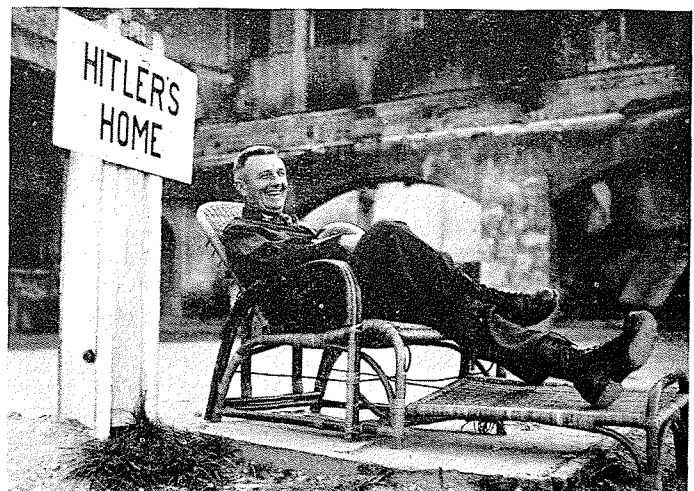
HOME AT LAST—Sirs:

On a recent visit to Berchtesgaden with Colonel Charles E. Cheever, Judge Advocate of the Third Army, several interesting pictures were taken. One of these was a picture of Colonel Cheever in front of Hitler's home and I am enclosing a copy of it with the thought that it would be an interesting shot to publish in the Journal.

Colonel Cheever served as General Patton's Judge Advocate throughout the European operations.

LEON JAWORSKI
Colonel, JAGD

War Crimes Branch
U. S. Army, APO 633



Judge Advocate Rescues Son from German Prison Camp

WORD FROM the Branch Office of The Judge Advocate General, European Theater, tells how Lieut. Colonel Edwin R. Bentley, JAGD, Staff Judge Advocate, IX Air Tactical Command, personally rescued his son, 1st Lieut. Edwin R. Bentley, Jr., from a German Prisoner of War Camp at Moosburg, Germany. The story follows, in Colonel Bentley's words:

"My son, 1st Lieut. Edwin R. Bentley, Squadron Navigator with the 2nd Bomb Group, Fifteenth Air Force, flying out of Italy, was shot down on 6 May 1944. His squadron had been on a raid to Brasov, Roumania. Two engines were shot out and it was necessary for the crew to bail out. Three members of the crew, including my son, were captured by Mihalovitch's men and sold to the Germans for \$30.00 each. The other seven were captured by Marshal Tito's men and returned to the Allies. After being taken to various places my son was finally imprisoned at Stalag Luft at Sagan, Germany. The last communication I had from him he was at this station but I had learned from the Red Cross and from escaped prisoners whom I had interrogated that when the German army approached Sagan the American Air Force prisoners were marched out, some of them being sent to Luckenwalde, some to Nurnberg, and others to Moosburg.

"When the Seventh Army reached Nurnberg I went in with them and skirted the city and reached the prisoner camp south of Nurnberg something like a week before the city was actually captured. When I reached the camp I found that all Air Force prisoners able to walk had been marched south. From interrogation I was convinced that these prisoners were taken to Moosburg. While I had no direct evidence that my son was in this group there was certain circumstantial evidence that pointed to that as a fact. The A-2 of my outfit, the IX TAC, and the G-2 of the Army kept me posted as to the relative position of the armies both as to Lucken-

walde and Moosburg. When our spearhead reached Moosburg I flew over the mountains some 200 miles to the prisoner camp and, finding no airport or landing strip, set down in a clover field something like a half mile from the camp entrance. The evening before the army had cleared the camp and the Germans were about a half mile away on the other side of the river. After getting into the camp I made contact with my son in about fifteen minutes. It was a dark, stormy day and the three of us, my pilot, my son, and I, wedged into a little L-5 aircraft and flew back across the mountains to my own organization.

"The Ninth Army was approaching Luckenwalde about the same time. Not being sure that my son was in Moosburg I made arrangements before leaving to go through the Russian lines with the Ninth Army the following day to see if he was in Luckenwalde in the event I did not find him at Moosburg."



COL. BENTLEY AND SON IN PARIS
AFTER RESCUE.

THE JUDGE ADVOCATE GENERAL

(Continued from Page 7)

to Manila as judge advocate of the Philippine Department. Returning from Manila to the States, General Cramer became chief of the Contracts Division, JAGO, which office he held when he became The Judge Advocate General on December 1, 1941.

One of the personal highlights of General Cramer's career as The Judge Advocate General was his participation in the now famous saboteur trial in the summer of 1942. Picked up by the FBI, the Nazi spies were tried before a military commission, with the Army and the Department of Justice joining in the prosecution. General Cramer handled the prosecution for the Army and the Honorable Francis Biddle, now United States' representative on the United Nations Tribunal, handled it for the Justice Department. The trial was paramount in the public interest at the time and those engaged in the prosecution worked over much new legal ground in connection with the presentation of their case and the ultimate conviction of the accused.

With the advent of war required courtesy calls went out the window along with other social functions shelved for the duration. However, General and Mrs. Cramer were always at home on Sunday afternoon to the officers of the Corps. Calls were most informal and there was

no requirement of courtesy that they be made. Yet everybody called and Sunday afternoons at 3717 Fordham Road were always pleasant. The conversation was lively and many an officer was guilty of overstaying the maximum limit prescribed by Emily Post for such calls.

Great as is General Cramer's interest in the Corps, it does not surpass Mrs. Cramer's. Her ability to remember the names and faces of members of the Department always amazes everyone. She organized a Judge Advocate Ladies Table at the Red Cross and there on Friday mornings the ladies of the Corps gathered not only for useful service but for a social meeting filling in some measure the gap created by the war-enforced curtailment of social activities.

Born of her interest in the Corps is Mrs. Cramer's Jaglette collection, an album in which she keeps a picture of each new baby born into the Corps. At this writing the latest addition to the album is a special one, Thomas O'Bryon II, General and Mrs. Cramer's first grandson, son of Ensign Thomas O'Bryon and Mary Cramer O'Bryon. Since young Thomas II was born of a Navy father, some have questioned his right to admission in the Jaglette album. Mrs. Cramer, however, is firm in her stand, on the ground that, laying aside any other considerations, he is at least a judge advocate once removed.

(Continued on Page 46)

WASHINGTON *News AND Views*

General Cramer Honored at Banquet

Over three hundred Judge Advocates and honor guests attended a dinner at the Mayflower Hotel in Washington on the evening of 6 November, honoring Major General Myron C. Cramer, retiring Judge Advocate General. Seated at the speakers' table were Honorable Robert P. Patterson, Secretary of War, Honorable Tom C. Clark, Attorney General, Honorable Kenneth C. Royall, Under Secretary of War, Major General Lewis B. Hershey, Director of Selective Service, Rear Admiral Thomas L. Gatch, Judge Advocate General of the Navy, Brigadier General Thomas H. Green, Deputy Judge Advocate General, who succeeds General Cramer as The Judge Advocate General, and Brigadier General John M. Weir, Assistant Judge Advocate General, toastmaster.

The date was the birthday of General Cramer, who retires from the Army on 30 November. The committee on arrangements for the occasion included General Weir, Chairman, Colonel Abner E. Lipscomb, Colonel William H. Beck, Jr., Colonel Thomas E. Sands, and Major Clarence L. Yancey.

Directory of Members of J.A. Association Planned

Plans are under way for the publication and distribution of a directory of members of the Judge Advocates Association and membership in the Association will entitle each Judge Advocate to a copy. Tentative arrangements are for listings of individuals by States and Cities, giving date of birth, date of graduation from law school or admission to the bar, business address, name of law firm, if any, and data as to service in the Judge Advocate General's Department. Plans call for a revision of the directory from time to time in order to keep it current. The assembling of the data has been undertaken by the Editors of the Judge Advocate Journal. The directory will list only those Judge Advocates who are members of the Association in good standing.

Colonel Kidner is Acting President, Lt. Colonel Cope, Treasurer, of Judge Advocates Association

During the absence of Colonel Howard A. Brundage, President of the Judge Advocates Association, who is in Germany on the staff of Mr. Justice Robert H. Jackson, Colonel Herbert M. Kidner, Assistant Air Judge Advocate and senior Vice President of the Association is the Acting President of the Association. Under the supervision of Colonel Kidner, ballots for the election of officers and certain directors of the Association have been mailed to members. Space is provided for the writing in of names of additional candidates. The annual membership meeting will be held in Washington, D. C. on Friday 28 December 1945, at which time the ballots will be counted. An additional thirty days will be allowed members overseas in which to submit their ballots and the results of the election will not be announced until 28 January 1946.

Lt. Colonel Lee H. Cope, who succeeded Colonel Robert M. Springer as Treasurer of the Association, is on duty in the Military Justice Division, Office of The Judge Advocate General, Washington 25, D.C. Colonel

Cope announces that membership dues for 1946 were payable 1 December 1945. Members may be dropped from the rolls of the Association after ninety days from that date for nonpayment of dues.

Colonel Avery Named President of Contract Appeals Board

The Secretary of War on 22 September 1945 named Colonel Joseph A. Avery, JAGD, President of the War Department Board of Contract Appeals, succeeding Colonel Hugh C. Smith, JAGD, who is on terminal leave. Colonel Avery, a native of South Bend, Indiana, is a graduate of the University of Michigan Law School and prior to entering on active duty was the City Judge of South Bend. He has been a member of the Board of Contract Appeals since 26 May 1943. He is a member of the Board of Directors of the Judge Advocates Association.

Colonel Smith, a Regular Army officer, was retired on 30 April 1937 but was called to active duty on 18 July 1940 for assignment to the Office of the Under Secretary of War. For his outstanding work as President of the Board of Contract Appeals Colonel Smith was awarded the Legion of Merit by Secretary Robert P. Patterson. A native of Missouri, Colonel Smith is a graduate of the University of Michigan and the American University, Washington, D.C. He advanced through the different grades to colonel in the Judge Advocate General's Department on 1 May 1931.



BOARD OF CONTRACT APPEALS

FRONT ROW (Left to right): Lt. Col. Leo A. Temmey; Lt. Col. Roswell M. Austin; Lt. Col. R. W. Smith, Jr.; Lt. Col. Donald M. Keith; Col. Paul G. Thompson; Col. Hugh C. Smith; Col. Joseph A. Avery; Lt. Col. M. R. Tidwell, Jr.; Lt. Col. E. E. Pratt; Maj. Benjamin H. Long; 1st Lt. Robert C. Bell, Jr.

2ND ROW: Margaret T. Kelly; Faye Hutton; Agnes Franklin; Beverly Witten; 1st Lt. Gordon B. Gray; Capt. Laurens L. Henderson; Maj. Joseph A. O'Connell; Lt. Col. Felix Atwood; Maj. Albert B. Chipman; Capt. Charles M. Carlsen; Alice Skolmutch; Stella M. Bassford; W. Love Conrad; Sadie Moore.

3RD ROW: Gladys S. Crist; Jane Wjocik; Jayne Harrington; 1st Lt. Ernest Hubbell; 1st Lt. Mauley B. Strayer; 1st Lt. Charles Donahue; 1st Lt. Frederick A. Clanton; 1st Lt. Thomas A. Robinson; Jean M. Dugan; Olga Schwartz; Tina Costantino; Salisbury Duffins.

Maj. Keith F. Driscoll was absent—sick; Maj. Homer E. Peters was absent on leave, and 1st Lt. William W. Brady, absent on official business.

(Continued on Page 37)

THE JUDGE ADVOCATE GENERAL'S *School*

By CAPTAIN GEORGE P. FORBES, JAGD

THIS report of activities at the Judge Advocate General's School covers the period from 19 May to 30 November, a longer period than any of our previous reports and consequently some of the events referred to may be somewhat akin to ancient history to those who have been in close touch with the School.

During the time under discussion, 306 officers have been graduated from the School as follows: On 21 July, 55 in the 23rd Officer Class and 43 in the 12th Officer Candidate Class; on 22 September, 47 in the 24th Officer Class and 53 in the 13th Officer Candidate Class; on 20 November, 73 in the 25th Officer Class and 35 in the 14th Officer Candidate Class.

Because of the fact that it marked the occasion of Gen. Cramer's last official visit before his retirement on 30 November, we turn first to a discussion of the most recent graduation on 20 November. As has been traditional, graduation speakers were Gen. Cramer and E. Blythe Stason, Dean of the Law School of the University of Michigan. After Gen. Cramer, as has been his custom, personally bestowed certificates on each graduate at the end of the scheduled ceremonies, Col. Reginald C. Miller, School Commandant, presented the retiring Judge Advocate General with an honorary certificate of graduation 20 inches by 14 inches, hand drawn in blue and gold color with the School seal thereon. Mrs. Cramer was on hand to see the presentation which had been planned unknown to the recipient. The printed banquet program of the graduation classes was dedicated to Gen. Cramer and contained his latest photographic portrait as well as Law Quadrangle scenes. The remaining and successful members of the 14th Officer Candidate Class were sworn in as second lieutenants by Col. Miller at the graduation parade on 19 November. Lt. Col. Richard B. Tibbs was Battalion Commander for the parade and 1st Lt. Robert B. Guerriero was Battalion Adjutant.

Changes in the personnel of the School staff and faculty continued to occur during the period of this report. Lt. Col. Jeremiah J. O'Connor was relieved of his assignment as Executive Officer at the end of August so that he might accept a position on the staff of Col. Edward H. Young, former Commandant who is now Judge Advocate for the China Theater, and at last report Col. O'Connor was in Shanghai, China. Col. O'Connor had been a member of the staff from the time of his graduation with the 8th Officer Class in February 1943, serving first in the Military Affairs Department, of which he was assistant director until appointed Executive in January 1944. His successor is Lt. Col. John H. Derrick of Minneapolis, Minn., a graduate of the Command and General Staff School and instructor on the staff of that school for more than a year. Col. Derrick served in North Ireland, North Africa and Italy with the 34th Infantry Division as assistant staff judge advocate and assistant G-3. He also was battalion executive and battalion commander of Field Artillery units in the Division. He is a graduate of the University of Minnesota Law School.

Six other members of the staff were transferred to new assignments: Maj. Bernhard W. Alden, Maj. John H. Finger, Capt. Harry J. Pasternak, Capt. Bernard Verney, Capt. Alfred A. Wood, and Capt. (then lieutenant) Norman Roth. Maj. Alden, Director of the Military Affairs

Department from the time of his graduation with the 19th Officer Class in November 1944, was transferred in September to the Office of the Under Secretary of War for duty in clemency matters. Maj. Alden was called to active duty in March 1941 and served with the Air Corps as a judge advocate, with the Coast Artillery Corps as battalion adjutant and battery commander, and over 15 months with the Judge Advocate General's Department, including a tour of duty in the office of the Judge Advocate for the Mediterranean Theater of Operations, part of which time he was chief of the Military Justice Section. He is a partner in the firm of McAnney, Alden and Van Clevé, Kansas City, Kans. Capt. Wright W. Brooks, assistant director of the Military Affairs Department, was named Director upon the departure of Maj. Alden.

Maj. Finger, one of the oldest members of the staff and faculty in point of service here, was retained on the staff after completing the course with the 5th Officer Class in November 1942 and he became Director of the Military Justice Department in May 1945. Maj. Finger has been assigned to the office of Col. Clifford M. Olivetti, Judge Advocate for Gen. MacArthur, and will be stationed somewhere in Japan. In civilian life he practices law in Oakland, Calif.

Capt. Pasternak is a graduate of the 2nd Officer Candidate Class and later attended the Army Finance School at Duke University. He was on duty with the Norfolk (Va.) Engineer District when he was assigned to the Contracts and Readjustment Department here in April 1944. Capt. Pasternak was transferred to the Renegotiation Division at Headquarters, ASF, and in civilian life practices law in New York City.

Capt. Verney, Acting Director of the Contracts and Readjustment Department, went to the office of the Army-Navy Liquidation Commission in Washington. Since that time Capt. Verney was relieved from active duty upon the ground of hardship. Before coming to Ann Arbor as a student in the 3rd Contract Termination Class, Capt. Verney was Chief Purchasing and Contracting Officer at ASFTC, Camp Gordon Johnston, Fla. He engages in the practice of law in Newark, N. J.

Capt. Wood, a Finance Department officer, had previously served as a member of the staff and faculty of the Army Finance School prior to his tour of duty in Ann Arbor where he reported in August 1944. He was assigned to the Philadelphia Depot to assist in the fiscal aspects in the termination of contracts and other problems of readjustment. In civilian life he is a certified public accountant with the firm of Price, Waterhouse Co. in New York City.

Upon graduation with the 4th Officer Candidate Class in March 1944, Capt. Roth was retained on the staff and faculty for duty with the Contracts and Readjustment Department. He was transferred to the Renegotiation Division, ASF, and since that time moved again, this time to the Office of the Procurement Judge Advocate. In civilian life he practices law in New York City.

Additions to the staff during the period under discussion were two. Lt. Col. John Ritchie III, Staff Judge Advocate for the 65th Infantry Division, with service in

this country and in France and Germany, was named Director of the Military Justice Department to replace Maj. Finger. A graduate of the 5th Officer Class here, Col. Ritchie is a professor of law at the University of Virginia and assistant dean of the Law School. He has also been an instructor at the Law Schools of Furman University, the University of Washington and the University of Maryland, and prior to entering the Army he was principal attorney for the Board of Economic Warfare. He is a graduate of the University of Virginia Law School and has a JS degree from Yale Law School.

To assist in instruction in the Department of International Law, 1st Lt. John S. Rhoda, a graduate of the 12th Officer Candidate Class, was assigned to the staff and faculty late in October from the International Law Division of the Judge Advocate General's office where he had been on duty since graduation. A graduate of Muhlenberg College and the University of Pennsylvania Law School, Lt. Rhoda practices law in Reading, Penna. From 1934 to 1938 he was a special deputy attorney general for the Commonwealth of Pennsylvania. As an enlisted man, Lt. Rhoda served seven months in the office of the Staff Judge Advocate in the South Atlantic.

The third annual Judge Advocates Conference which was held here in the latter part of May has already been described in the previous issue of the Journal so that this mention will suffice. As an historical item, it should be noted that the School publication, THE ADVOCATE, began its third year in June.

Civilian personnel of the School were cited in July by the Secretary of War for their purchase of war bonds through the Army Pay Reservation Plan. Minimum requirements for the award are a percentage of 95 per cent of civilian employees at an installation investing at least 15 per cent of the total monthly payroll. The record of Judge Advocate General's School employees was a 100 per cent participation and a total monthly payroll contribution of 17.38 per cent. In recognition of this achievement the Secretary of War's War Bond Flag was presented at a formal ceremony on 11 August and displayed thereafter on the School flag pole.

Of course, the news of the surrender of the Japanese forces was noisily greeted here on 14 August and a special salute was fired by "Old Hateful," the School cannon, with students and civilians looking on in the Law Quadrangle. As all classes were cancelled by the University Board of Regents on 15 August, the School followed suit by suspending all Army training schedules for that day.

The second of September was the third anniversary of the School in the Law Quadrangle. A day or two before, the School was honored by a visit from Col. Clifford M. Olivetti, Judge Advocate for Gen. MacArthur, who inspected the School, chatted informally with members of the staff and faculty and reviewed the School battalion.

When it became evident that the special courses in Contracts and Readjustment, which were suspended in March with the graduation of the 9th class, would not be resumed, School departments were reorganized so as to combine claims and contracts in a department known as the Claims and Contracts Department headed by Lt. Col. William A. Stewart who had been Director of the Civil Affairs Department. At the same time a new department known as the International Law Department was organized with Maj. Morris Zimmerman as Director. The International Law Department is responsible for

instruction in the subjects of the law of land warfare and the law of belligerent occupation.

It was announced by Col. Miller in September that the training program of the Judge Advocate General's School at the University of Michigan would cease at the end of January when the 15th Officer Candidate Class and the 26th Officer Class were scheduled to graduate. Later, a non-scheduled class of officers was detailed for instruction on 3 November and will graduate on 22 December. This class has become known as the 26th Officer Class so that the last officer class to be trained here and which will report on 3 December will be known as the 27th Officer Class and will graduate with the 15th Officer Candidate Class.

Since this was written, orders have been received directing your correspondent to proceed to a Separation Center, arriving on 3 December. Accordingly, it is fitting to use this space to say farewell to our readers, and to note that the practice of law at White Plains, N. Y., will henceforth occupy our time.



Branch Office of The Judge Advocate General, Manila, November, 1945. Left to right, seated: Lt. Col. Paul W. Dudley, Colonel John A. Stagg, Brigadier General Ernest H. Burt, Colonel Nathan J. Roberts, Lt. Col. Samuel M. Driver. Standing: CWO Jim O. Bowman, Major Joseph S. Robinson, Lt. Col. James B. Murphy, Major Judson I. Clements, CWO Stanley R. Strauss.

WASHINGTON NEWS AND VIEWS

(Continued from Page 35)

Colonel Brannon Named Procurement Judge Advocate

Announcement has been made of the appointment of Colonel Ernest M. Brannon, JAGD, as the Procurement Judge Advocate effective as of 17 November 1945. Until recently, Colonel Brannon was the Judge Advocate of the First Army in Europe and prior to that assignment was the Contracts Coordinator and Chief of the Contract Division, Office of The Judge Advocate General. The office of the Procurement Judge Advocate was recently created in Headquarters, Army Service Forces to handle legal matters in connection with procurement and related activities.

JAGS *Alumni* NOTES

The following is a collection of notes culled from the columns of THE ADVOCATE, bulletin of The Judge Advocate General's School, concerning the activities of members of the Department who are alumni at the school.

2d OFFICER CLASS

Appearing in civilian clothes at the Michigan-Michigan State football game recently was discharged Col. O. Z. Ide of Detroit. Col. Ide was staff JA in Italy and served on Boards of Review in Washington, Italy and Africa.

3d OFFICER CLASS

Lt. Col. Jesse H. Johnson has moved again, this time it looks as if he will land in Tokyo as he has been assigned as Division JA of the 27th Infantry Division. He was formerly on duty with the Tenth Army.

Lt. Col. Edward S. Hemphill has been relieved from active duty. Col. Lyle D. Keith notifies us of a change of address from Headquarters, AAFCTC, Randolph Field, Tex., where he was staff JA after a lengthy tour of duty in the Pacific. His new address is that of a civilian at Roosevelt Apartments, Spokane, Wash.

4th OFFICER CLASS

Col. Howard A. Brundage is one of the many JAGs engaged in war crimes work at Nurnberg, Germany. He revealed that no two of the major defendants are in adjoining cells. They are spaced almost out of shouting distance of one another, he said, to guard against attempts at collusion in preparing defenses.

Lt. Col. Byrne A. Bowman has been relieved from active duty. Col. Bowman was staff JA with the 106th Infantry Division through the campaigns in Europe.

Lt. Col. Earl Craig has been assigned to Headquarters, Continental Air Force. He was formerly at Wright Field, Ohio.

5th OFFICER CLASS

Col. Ralph G. Boyd, Chief of Claims Division, JAGO, is author of an article, "War Department Claims," in the Federal Bar Journal for July 1945. The article deals generally with the administrative settlements of claims of a tort nature against the Government and for non-combat activities of the WD or the Army.

Lt. Col. Kenneth C. Schwartz writes that he is acting executive officer for the War Crimes branch in the JA Section for General Headquarters in the Pacific.

Lt. Col. Charles A. Weaver writes from Europe where he is JA for the 4th Armored Division on permanent occupational duty.

Lt. Col. Isaac K. Hay has been relieved from JAGRP, San Francisco Port of Embarkation and transferred to Fourth Headquarters and Headquarters Detachment, Special Troops, Second Army, Memphis, Tenn.

Lt. Col. Andrew D. Kane has been transferred from the JAGO to an assignment with the Military District of Washington.

6th OFFICER CLASS

Lt. Col. Clarence O. Tormoen has an overseas APO.

Col. Josef Diamond has been relieved from active duty.

Lt. Col. Marvin W. Ludington is Staff JA at the IRTC, Camp Robinson, Ark. His assistant is Capt. Duncan L. McRae (6th OC).

7th OFFICER CLASS

Maj. James I. McCain is in the Ryukyus assigned to Army Service Command I in the JA Section.

Maj. Robert W. Anderson is now on duty at Los Angeles Port of Embarkation.

Maj. Nicholas R. Voorhis is Staff JA for the 86th Infantry Division which is headed for the far Pacific. The 86th was one of the divisions requested by Gen. Douglas MacArthur for occupational duties. Assistant Staff JA is Capt. Warren G. Reed (7th OC).

Lt. Col. William B. Kuder has been relieved from assignment and duty overseas and is now on duty in JAGO with a Board of Review.

8th OFFICER CLASS

Lt. Col. Richard K. Gandy is on duty at the Central Procurement District, Detroit, Mich.

Capt. Gerald L. Stotzer reports that he has moved from the Paris office of the Theater JA, USFET, to Frankfurt on Main, Germany,

where he continues to be busy as assistant Staff JA on General Eisenhower's staff.

Maj. Robert Pastner has been named chief of the facilities contracts unit, industrial facilities section, procurement division, ATSC, Wright Field, Ohio.

Col. William L. Doolan has been relieved from duty at the office of the JA at ATSC, Wright Field, Ohio, and has been assigned to United States Forces in the Burma-India Theater for duty with the AAF Burma.

9th OFFICER CLASS

Capt. Henry A. Federa is on duty at the Clearance Branch, Army and Navy Munitions Board, Washington, D.C.

Capt. Bernard S. Barr has been relieved from active duty.

Maj. John N. Calhoun, assigned to the legal department of ANLC for AMET-PGC at Cairo, Egypt, writes from Ankara, Turkey, where he is at present doing some liquidating of surplus property.

"Ankara is a very nice place to be stationed, but there are no Army installations here—not even a PX nor an APO so everything is 'on your own' except for such aid as the Embassy is able to furnish. Everything is frightfully high—55 cents for toast and coffee and \$1.50 to \$4.00 for an ordinary-to-good meal."

Col. Frederick F. Greenman was recently appointed general counsel to the Army-Navy Liquidation Commissioner.

Col. James E. Spier has been relieved from active duty as of 15 September. Col. Spier served more than two years as Staff JA for the Air Transport Command in India and was awarded the Bronze Star Medal for his service. He is a Michigan circuit court judge.

10th OFFICER CLASS

Maj. William J. Carney has been transferred from JAGRP, Second Service Command, to Office of Chief of Engineers, Washington, D.C. He recently returned from a lengthy tour of duty in the Aleutians.

Maj. Carl J. Otto is Staff JA at IRTC, Camp Fannin, Tex.

Maj. James A. Lee is on duty at the JA office, Ferrying Division, ATC, Cincinnati, Ohio.

Maj. Denio J. Fairgrave is JA at Base "M" in the Philippines. He has been overseas almost two years.

Capt. William J. Millard writes that he is Staff JA for the 37th Infantry Division, having been transferred from the assistant's post for the 6th Infantry Division. He believes that he will go on to Japan for a few months.

Maj. Lansing L. Mitchell's address has been changed again and now he is at the JA Section, Seine Section, Hq. USFET.

Luke T. Flood sends word from Ie Shima that he is a major as of 29 August and has been Staff JA since 22 August. During the last few weeks of the war Ie Shima was really on the front lines, he says, as it was the nearest Army base to Japan. "It seemed that Jap bombers desired to bomb this place instead of Okinawa," he relates. "A fourth of July every night. Very few Jap planes returned to their bases as our Air Corps and antiaircraft really knocked them down."

Since hostilities ceased work has increased somewhat in the disciplinary department, Maj. Flood says, and more so in the legal assistance field.

11th OFFICER CLASS

Maj. Adron A. Beene, AC, is Legal Officer at March Field, Calif.

Maj. Richard H. Porter is Staff JA at Fort Knox, Ky.

12th OFFICER CLASS

Lt. Col. Paul W. Brosman has been relieved from active duty and has returned to his civilian post as professor of law and dean of the law school at Tulane University.

Lt. Col. Gentry Lee writes that he is a civilian returned to the practice of law in Tulsa, Okla., with his firm, Kirk, Lee, Phipps, Campbell and Latting. He was separated from the service on 27 July.

Maj. Louis F. Alyea, returned from a tour of duty in the ETO, writes as follows: "After a year and a half of dodging buzz bombs and V-2's in England and about a three-month stop-over in Saint Louveciennes, near Paris, France, I returned to the States with the air echelon of IX Troop Carrier Command and have settled down with the I Troop Carrier Command, which absorbed the air echelon personnel of the IX Troop Carrier Command, at Stout Field, Indianapolis 6, Indiana.

"While with the IX Troop Carrier Command in England and France, I was an Assistant Staff Judge Advocate, along with Captains Tom Archibald and Charley Allen (both 1st OC), under Lt. Col. David D. Porter. The squadrons, groups, and wings in the command,

which had a total strength of about 45,000 military and civilian personnel, were widely scattered over England and France, which entailed considerable traveling to assist wing and group commanders in a myriad of matters pertaining to claims, military justice, miscellaneous military affairs, and legal assistance, when we could be spared from the command headquarters.

"I contemplate being discharged from the service around Christmas or as soon as Colonel Porter can obtain judge advocate replacements at this headquarters. The I Troop Carrier Command has general court-martial jurisdiction over thirteen Army Air Force stations ranging from Austin, Texas, up to Alliance, Nebraska, and as far south as Fort Bragg, N. C."

Maj. Albert B. Chipman has been transferred from the JAGO to the Office of the Under Secretary of War.

13th OFFICER CLASS

Maj. Robert B. Harbison has been transferred from AAF Replacement Depot, Office of the Post JA, Kearns, Utah, to Claims Service, USAFFE.

Capt. Charles P. Gotwals, Jr., is assigned to the JA Section at Headquarters, United States European Theater.

1st Lt. John J. Dreyer reports that he no longer will receive mail at Headquarters, Eighth Air Force. He has been transferred to Headquarters, Eighth Fighter Command.

Maj. Thomas A. Brennan is on duty with the Air Force JA at Headquarters of the Eighth Air Force in the Pacific.

Maj. Leonard W. M. Zingler writes that he has been assigned as Staff JA of the 47th Bombardment Wing, Army Air Base, Sioux City, Iowa, which will be part of the 8th Air Force occupation troops in the Pacific. Maj. Zingler was formerly executive officer to the JA of the 2nd Air Force at Colorado Springs, Colo.

It is not Capt. Charles T. Bloodworth any more, just plain "Mr." Bloodworth. He was "demobilized" from Wright Field, Ohio, to return to his law practice at Poplar Bluff, Mo.

Maj. William B. Kerkam, Jr., commenced terminal leave on 9 October.

Maj. R. F. Hoke Pollock reports that he is assigned to Headquarters, USFFT, JA Section (Rear). Maj. Pollock was formerly Staff JA for the 13th Airborne Division.

15th OFFICER CLASS

Maj. Jack D. Eades is assistant staff JA, Headquarters, Third Air Force, Tampa, Fla. Among his other duties, he has for the past three months served as TJA of the GCM specially appointed to try flying personnel who have committed serious violations of flying regulations.

Maj. Lewis M. Dickson writes that he has been appointed Staff JA for the 28th Infantry Division. Prior to this new assignment he was acting Army Group JA, Sixth Army Group, in the absence of the JA who was called to the Theater Office to head the trial section of war crimes. For several months Maj. Dickson was assistant G-2 of the 103rd Infantry Division, later assistant JA, and then was transferred to the 6th Army Group to assist in the organization of a war crimes branch. Later he was shifted to the JA section as executive and first assistant JA.

Maj. Frank F. Eckdall is command JA at Headquarters, XXIX Tactical Air command, with an overseas APO out of New York. Since leaving Ann Arbor, Maj. Eckdall has served as staff JA for five generals, including an assignment as assistant theater JA for Gen. Eisenhower, and JA to Gen. William Weaver, deputy field commander in England, France and Belgium. His duties have taken him to England, Scotland, France, Belgium, Holland, Germany, Luxembourg and Austria.

Maj. Henry G. Connor III has been relieved from active duty and has returned to civilian practice at Wilson, N.C.

16th OFFICER CLASS

Lt. Col. Robert W. Wilson writes from Austria that he has been assigned in the shadow of the sphinx in Cairo, Egypt. He is now with the legal division of the United States element of the Allied Control Commission for Austria.

17th OFFICER CLASS

Maj. Henry S. Stevens is on duty at Headquarters, 1st Army Air Forces Base Unit, Bolling Field, D.C.

Lt. Col. Russell T. Boyle is with the 16th Armored Division, of which he is the division JA, at Marianske Lazne, Czechoslovakia. He reports that Col. Edward J. Burke, former executive officer of the JAG School, and Maj. Gus Reinhardt (10th Officer Cl.) are nearby with XXII Corps. Their headquarters is at Pilsen.

18th OFFICER CLASS

Capt. John T. Hood, Jr., sends pictures from Liberia where he is staff JA, showing his meeting with a Town Master (mayor), The Country Devil and the Village Jailor.

Capt. Eugene W. Brees is on duty at the Branch Office, Theater Claims Service, in the India-Burma Theater. Capt. Brees was formerly stationed in Washington.

Maj. James E. Bowron has been relieved from active duty. He was assigned to the JAGO.

Capt. James L. Brown is on duty at Provisional Headquarters, AAF, Middle Pacific.

19th OFFICER CLASS

Maj. W. Stanley Dolan is executive of the JA Section of the Ninth Air Force now at Bad Kissigen, Germany. The JA is Col. Guy Kinman, formerly JA of the Sixth Service Command.

1st Lt. Luther A. Pyle reports a change of station from Kennedy General Hospital to Northington General Hospital at Tuscaloosa, Ala., where he is Staff JA.

Maj. Clarence Cosson is assigned to Headquarters, FARTC, at Fort Bragg, N.C.

20th OFFICER CLASS

Capt. Frederick V. Smith, AC, writes that he has changed stations again, moving from India to Okinawa. He flew the Hump from India to China, to the Philippines and on to Okinawa where he is assistant Staff JA at Headquarters, Eighth Air Force.

Capt. Patrick J. Fisher has been transferred to Separation Center, Fort Monmouth, New Jersey for duty.

Capt. Clarence M. Warren has been relieved from active duty in Washington, D.C., and assigned to the Separation Center, Camp Chaffee, Ark.

21st OFFICER CLASS

Capt. Robert G. Polack has been transferred from Headquarters, Tank Destroyer Center, Camp Hood, Tex., to JAGO.

Maj. Robert R. Renfro, AC, is stationed at Pendleton Field, Ore. Maj. William S. Myers writes that he is assistant staff JA at IARTC, Camp Rucker, Ala.

From the office of the Air JA Capt. Robert L. McCloskey has arrived at Provisional Headquarters, AAF, Middle Pacific.

22d OFFICER CLASS

Capt. Greek P. Rice has been transferred to Camp McCain, Miss. Maj. Edwin B. Tetlow writes that he is staff JA at IRTC, Fort McClellan, Ala., having been transferred from First Service Command.

Maj. Wesley A. Smith, AC, is on duty in the office of the Post Legal Officer, AAF Overseas Replacement Depot, Greensboro, N.C.

Capt. A. B. Teton reports his presence at Headquarters, Pacific Division, ATC, "somewhere in the Pacific."

Capt. William G. Vogt reports a change of station from the Northern Defense Sector, Western Defense Command, to Litigation Branch, JA Division, Sixth Service Command.

Lt. John W. Hutton writes that he is assistant Staff JA at Camp Stoneman, Calif., a staging area for a port of embarkation.

Capt. Parker D. Hancock is in the office of Col. Edward H. Young, Theater JA for the China Theater, Chungking.

23d OFFICER CLASS

Lt. Col. Stokes V. Robertson writes that he is Staff JA for 31st Headquarters and Headquarters Detachment, Special Troops, Fourth Army, Camp Van Dom, Miss.

Lt. Joe L. Johnson writes that he is at Fort Lewis Washington in the Legal Section, ETS.

Lt. John W. Peck is on duty in BOTJAG at St. Cloud, France.

1st Lt. Leonard B. Rosenthal, AC, writes that he returned to Gowen Field, Boise Ida., his permanent station, after completing the School course, only to be summoned shortly thereafter to Headquarters, Fourth Air Force, Office of the Staff JA, San Francisco, Calif.

1st Lt. Caruthers Ewing, Jr., has been transferred from JAGRP, Fourth Service Command, to Camp Sibert, Ala.

Capt. Richard Hudson and Lt. Thomas Glassmoyer are on duty in the Military Affairs Division, Munitions Building, JAGO.

Lt. Col. Hibbard Richter is staff JA at the IARTC, Camp Rucker, Ala.

Lt. Col. Laurance S. Carlson has been transferred from Headquarters, Second Air Force, to the JA Section at Headquarters, Alaskan Department.

Maj. Walter J. Robinson, Jr., has moved across the ocean from Fort Douglas, Utah, to BOJAG for the European Theater.

1st Lt. Walter E. Ackerman has been transferred to Camp Ellis, Illinois.

Maj. George L. Hibbard is now Division Judge Advocate for the 5th Infantry Division at Camp Campbell, Kentucky.

Lt. R. L. Kaskell is assigned to the JAGRP at Headquarters, Second Service Command.

Maj. St. Julien P. Rosemond writes that he is assigned to Legislative and Liaison Division, JAGO.

24th OFFICER CLASS

Maj. Richard C. Hagan has been transferred from JAGRP, Sixth Service Command, to AGF Replacement Depot No. 4, Camp Adair, Oregon.

Maj. William F. Schulz has been transferred from JAGRP, Eighth Service Command, and assigned to 25th Headquarters and Headquarters Detachment, Special Troops, Fourth Army, Camp Gruber, Oklahoma.

Maj. Clyde E. Donaldson has been transferred from JAGRP, Fifth Service Command, to JAGO.

1st OC

Maj. Leo Bruck is on duty at the JA Section, Headquarters, Persian Gulf Command, Teheran, Iran, where he has been stationed for almost two years.

Capt. Henry G. Norris has been transferred from his post as assistant Staff JA with the 85th Infantry Division, with which he served many months in the Italian campaign, to the JA Section, Headquarters, IV Corps. He is located at the point where Lakes Como and Lecco join, "enjoying all of the comforts of a section of Italy hardly touched by war."

Capt. R. F. Deacon Arledge, Staff JA for the 41st Infantry Division, writes from Pettit Barracks, Zamboanga, on the island of Mindanao. He has served with the division on Biak and on five of the Philippine Islands since February. He says: "This is a very pleasant spot with a fine beach but our JA work is heavy. This was Gen. Pershing's headquarters in his campaign against the Moros. His old home which was destroyed in the fighting here, now contains the kitchen for the staff officers' mess. We have built a thatch roof club nearby which we, of course, call 'The Pershing Club.' By begging, borrowing, and stealing we have managed to rebuild our library to a satisfactory condition despite some serious losses on the beaches in the Philippine campaign."

Capt. Edward L. Metzler is now in the office of the Theater Judge Advocate in the Pacific.

Capt. Ralph Becker, Staff JA of the 30th Infantry Division, is enjoying the last few days of a leave on his return from Germany and will report to Fort Jackson, S.C., shortly. He was the first JA to land on the continent after D-Day, and has served in England, France, Belgium, Holland, and Germany.

1st Lt. Theodore N. Calhoun is now on duty at JAGO.

2d OC

1st Lt. Charles B. Bayly, Jr., writes that after a tour of duty in Washington he is at the AAF Overseas Replacement Depot at Kearns, Utah, on his way to the Pacific.

Capt. John G. Starr is in the JA Section of the Fifth Air Force and is stationed on Okinawa.

Donald C. Rogers has been relieved from active duty at Headquarters, Ninth Service Command, Fort Douglas, Utah, and has returned to the practice of law in Minneapolis, Minn.

Capt. Laurence S. Schwing has been transferred from the Miami (Fla.) Engineer District to JAGRP, Fourth Service Command. Capt. Tudor W. Hampton has also been assigned there.

With the closing of the Beach District, Normandy Base Section, Capt. Herman S. Buck has taken over new duties at Camp Twenty Grand, a redeployment area.

News has been received that Maj. Robert S. Pasley, assistant Staff JA with the XIII Corps, has returned from Europe, and after a welcome leave is on his way to a new station in California by way of redeployment.

Capt. Ben A. Smith is assigned to the JA Section, Headquarters, Seventh U.S. Army in Europe.

3d OC

2nd Lt. Ebb J. Ford, Jr., has been transferred from 482nd Base Unit, Merced (Calif.) Army Air Field, to JAGRP, Fort Mason, Calif.

4th OC

Capt. Howard H. Conaway registers a change of address. He is assistant Staff JA with the 97th Infantry Division somewhere in the Pacific.

1st Lt. Thomas A. Wheat and 1st Lt. Louis C. Fieland (7th OC) are in the office of the Staff JA at Headquarters, IX Engineer Command, with an APO out of New York.

Capt. John J. Ruddy, Jr., has been transferred from JAGO to JAGRP, Fort Sam Houston, Tex.

No decrease in the volume of work has followed the cessation of hostilities at Headquarters, Eastern District, ATSC, according to Capt. Theodore B. Durfee, Assistant JA. The emphasis is on readjustment but some procurement continues.

Capt. Valentine J. Sacco is assistant Staff JA at Second Service Command, Governors Island, N.Y.

1st Lt. William F. Thiel is with the Boston Ordnance District and living at Wellesley Hills, Mass.

Capt. Mayer F. Bravman is on duty at the Cleveland Ordnance District.

Capt. Norman Roth has been assigned to the Office of the Procurement Judge Advocate.

Lyman H. Brownfield is in the Philippines with the JA Section on war war crimes duties.

Capt. Willard Phillips has been relieved from active duty at the Separation Center, Fort Leavenworth, Kans. Capt. Phillips was stationed at the Central African Division of the ATC, 1200th AAF Base Unit.

5th OC

1st Lt. Donald F. Schumacher writes from Headquarters, Base X, USAFWP, Purchasing and Contracting Branch in Manila, P.I., where he is assigned to the Procurement and Property Disposal Division. He reports that the JAGD insignia is more common in Manila than any other insignia, there being many JAs working in war crimes and claims, as well as there being numerous others assigned to the various headquarters located there. Capt. John McCrohan and 1st Lt. William C. Green are classmates on duty in the city.

Capt. Lawrence R. Eno is on an overseas assignment on temporary duty from Wright Field, Ohio.

1st Lt. William C. Green has returned from the Pacific to the Separation Center at Camp Blanding, Fla., where he will be relieved from active duty.

Capt. Roland Poulin is Assistant Division Judge Advocate for the 5th Infantry Division at Camp Campbell, Ky. He just recently returned from the ETO with the division, having been with it all through Luxembourg and Germany.

Capt. Patrick H. Ford has returned from his overseas assignment for special duty in the zone of the interior.

1st Lt. Bert B. Barefoot, Jr., has been transferred from an AAF base unit at Santa Monica, Calif., to the 3097 AAF Base Unit at the Douglas Aircraft Factory in the same city.

Capt. Carl G. Nystrom writes that his division has been returned to this country from Europe and is in training at Camp Shelby, Miss. He is assistant Staff JA for the 95th Infantry Division.

6th OC

Capt. A. Frank Reel has prepared his own report and forwarded it from the Philippines to the following effect: "Capt. A. Frank Reel, recent arrival in Manila, reports that a trip to that overheated rubble heap is like a 6th OC reunion. En route, at San Francisco Port of Embarkation, he found Capt. Jean Morony and Lt. H. Chalmers Mole, at Hawaii were Lt. Bernie Dick and Lt. Carl Marold, at a tropical spot in the Marianas was Lt. Reginald Marsh. In Manila are Capt. Walter Sims, Capt. Robert Phelps, Capt. William Yost, and Lt. Beverley Worrell, all in Claims, and Capt. Clebourne Gregory and Lt. Abbott Jones are with the Staff JA. Capt. Emmett Whitsett and Lt. Harley Lanning are reported nearby."

1st Lt. Thomas A. Matthews is Claims JA for the Military District of Washington.

1st Lt. Carrol G. Henneberg writes that he is in the JA Office of the Spokane ATSC where he is serving as Claims JA and Assistant JA.

1st Lt. Robert J. Nolan writes that he is stationed at Augsburg, Germany, with the war crimes division of the JA of the Seventh Army.

Capt. Harold S. Lynton is assistant Staff JA at Headquarters, Atlantic Overseas, ATSC, at Newark, N.J.

Lt. Arthur J. Buswell has received orders to report at Camp Kearns, Utah, preparatory to assignment overseas. Lt. Buswell's last station was ATSC, Wright Field, Ohio.

Capt. Medford J. Brown is on duty at ATSC, Wright Field.

1st Lt. Robert W. Bascom is assigned to the JA Section at GHQ, Army Forces in the Pacific.

1st Lt. Leonard Levy has been transferred from Stout Field, Ind., to Camp Sibert, Ala.

Capt. Jean Morony has departed on a special overseas assignment from Fort Mason, Calif.

Lt. Charles W. Leavy has returned to the Office of the JA at ATSC, Wright Field, Ohio, after nine months at Western District ATSC, Los Angeles, Calif.

1st Lt. Gordon F. Rice who served in the BOJAG in the ETO has been relieved from active duty to accept public office.

Capt. John J. Ruddy has been transferred from JAGRP, Headquarters, Fourth Army, to Headquarters, AAA Training Center, Fort Bliss, Tex.

2nd Lt. George J. Ditchie has been transferred from San Francisco Engineering District to Headquarters, Eighth Service Command.

Capt. Robert T. Dwyer, former member of the Staff and Faculty here, reports from Chungking, China, that he has been temporarily at Headquarters in the office of Col. Edward H. Young, Theater JA, for the purpose of observing the workings of the office.

Capt. Dwyer's permanent station is at Kunming with Headquarters, Fourteenth Air Force. Lt. Charles R. Fellowes (17th Officer Cl.) is with Air Service Command, Lts. Edward J. Murphy, Jr., (8th OC) and Lynn J. Gillard (10th OC) are with SOS, and Lt. John V. Kean (20th Officer Cl.) is with Air Transport Command, all at Kunming.

1st Lt. A. Chalmers Mole is assistant Staff JA at the San Francisco Port of Embarkation.

Capt. David S. Hecht writes that he has just returned from a tour of duty in Australia and the Philippines. While in Manila he attended what amounted to a class reunion. In Guam Capt. Hecht visited with Lt. Matthew Marsh as well as Capt. Thomas Ryan (16th Officer Cl.), and in Hawaii at Fort Ruger he exchanged gossip with Lts. Marold and Dick. In Brisbane, Australia late one evening at Lennons Hotel where he was quartered there was a knock on the door and Lt. Col. Morris (3rd Officer Cl.) was at the door with full gear en route from New Caledonia to Manila to do claims work. Capt. Hecht is on duty in the International Division, Headquarters, ASF, Washington, D.C.

7th OC

Lt. Arvin O. Robb, formerly at Headquarters, Second Army, now has an APO out of San Francisco.

1st Lt. Dwight R. Kinder has been transferred from the legal office at Godman Field, Ky., to the Courts and Claims Office, Base Headquarters, Mitchel Field, N.Y.

Capt. Leroy E. Rodman writes that in addition to his duties in the Military Justice and Affairs Section of the JA Office, ATSC, Wright Field, Ohio, he is serving as defense counsel of the GCM for Wright and Patterson Fields.

Capt. William R. Ming has been transferred from Industrial Personnel Division, Headquarters, ASF, to 118th AAF Base Unit, Godman Field, Ky.

Capt. Warren G. Reed has been transferred from JAGO to Headquarters, 86th Infantry Division, on the way to the Pacific.

Selection as JA for the newly organized Shanghai Base in China has been accorded to 1st Lt. Edward J. Murphy. Eventually all JAs now at SOS Headquarters at Kunming will be moved to Shanghai, if present plans come true. Lt. Murphy says that Maj. James W. Innes (15th Officer Cl.) and Lt. Lynn Gillard will remain at Kunming until the work there is cleaned up.

2nd Lt. Harry Polikoff has been transferred from Chicago Ordnance Procurement District to Headquarters, Eighth Service Command.

Lt. David E. Pitcher writes from Weisbaden, Germany:

"Weisbaden is now the center of all War Crimes work. There are plenty of OCS men here as well as many officers who stayed at Ann Arbor in either CT courses or the officer classes. Hal Taylor (7th OC) is in the Trial Section along with Capt. Vance (1st OC). Bob Mapes, Ray Mino and Mike Lane (8th OC) are all in the Examination Section. Don Murphy (6th OC) is in the Post Trial Section. "Capt. Abe Levine (6th CT) is an investigator-examiner. There are many other JAG officers here as well as lawyers from other branches of the Army.

"Ben Cooper (7th OC) is still with the Assembly Area Command in Rheims and Al Cawse (7th OC) is now pushing out those Affairs opinions at Frankfurt with USFET Hq. I met Frank Robertson (7th OC) in Paris a few weeks ago. He was down on TD helping with Justice work. Frank is with Chanor Base in Brussels. Lt. William E. Buder (8th OC) was in Weisbaden when we first arrived but has since been transferred to Gen. Clark's Control Commission in Austria.

8th OC

1st Lt. Russell W. Viering is an instructor on the staff and faculty of the Chaplains' School, Fort Oglethorpe, Ga.

1st Lt. Robert C. Bell has been transferred from JAGO to the office of the Under Secretary of War.

1st Lt. Sylvan D. Freeman is assistant JA to Lt. Col. Byrne A. Bowman (4th Officer Cl.), Staff JA of the 106th Infantry Division. He writes that the work is "voluminous and interesting. Military Justice occupies about ninety percent of the time."

1st Lt. George A. Koplrow writes that his assignment in the Labor Branch of the Industrial Personnel Division in ASF Headquarters is most interesting. He acts as labor officer in Army seizures of war plants, and at present is helping to run a little textile mill in Georgia.

1st Lt. Jack Ridgeway is now in the JA Section, Headquarters, Chanor Base Section, Brussels, Belgium.

1st Lt. Charles J. Klyde writes from Manila where he has been stationed since the end of April at headquarters of the Claims Service, AFWESPAC. As to his own classmates he makes the following report: "Ran into John Bour who is doing GCMs at a fearful daily rate as TJA. Ben Moats is in the vicinity, although I haven't been able to see him. Al Shortridge hopped in from Leyte a while back. In our own office Red Powell and I are in Manila. John Durkee at the moment is out on lend-lease to a branch in the provinces.

"V-J Day hasn't made too much difference in our work as we are still hard at it. Bob Phelps of the 6th OC who was a non-com with me in an armored division when we came into the Army about three years ago is my right hand neighbor and Bill Ackerman of the 7th OC is on my left."

9th OC

1st Lts. Thomas Clydesdale, Thomas Mays and Gerald O'Hara arrived in Paris on 21 June and have been on duty at BOTJAG since.

Lt. Robert J. Stanton is assigned to Requirements and Stock Control Division, Headquarters, ASF, The Pentagon.

1st Lt. Merl A. Barns has been transferred from the JAGO to Headquarters, Fourth Service Command.

Lt. Ralph G. Smith is assistant Staff JA at Provisional Headquarters, Army Air Force in the Middle Pacific.

From Rheims, France, 2nd Lt. Jack Wilson writes that he has been transferred from Headquarters, Assembly Area Command, JA Section, to Headquarters, Oise Intermediate Section, JA Section. While awaiting orders in Paris last month he attended a JAG party at the Hotel Napoleon Bonaparte.

10th OC

1st Lt. Charles N. Nisen writes that he is assigned to the Foreign Claims Branch, Claims Division, JAGO. He has acted as legal reviewer, reviewing foreign claims, and done research on special Philippine problems. Recently he was made chief, "also cook and bottle washer," of the newly designated Philippines branch in which, as the only officer, he runs a "one-horse show." Matters dealt with include factual and legal research in procurement and requisition claims where government records are lacking or are incomplete.

1st Lt. Edward H. Kenyon reports a change of assignment from Second Service Command to The Pentagon.

2nd Lt. Charles M. Menapace is on duty at Claims Service, American Forces in the Western Pacific Area, Philippine Islands.

Lt. Lynn Gillard is on duty at SOS Headquarters, Kunming, China.

Lt. Pierson R. Hildreth says that since March he has been at Headquarters, Third Service Command, where he is assistant claims JA.

2nd Lt. Roger Q. Keith is assistant staff JA for the 25th Infantry Division in the Pacific.

11th OC

Lt. Joseph Carmody is assigned to Headquarters, First Service Command, Boston, Mass.

Lt. Clinton D. Van Valkenburgh writes that he is assigned to Renegotiation Division, Headquarters, ASF, as legal reviewer, War Department Price Adjustment Board, renegotiating contracts.

2nd Lt. Chester E. Bielby has been assigned to duty at McGuire General Hospital, Richmond, Va.

2nd Lt. Preston K. Johnson has been transferred to the Armored Center, Fort Knox, Ky.

1st Lt. Clayton L. Nelson has been transferred from War Crimes Division, JAGO, to Headquarters, JA Section, Army Forces in the Pacific.

1st Lt. Henry McLane is Staff JA at Fort Knox, Ky., having succeeded 1st Lt. Bert T. Combs (3rd OC) who is now in Manila with Lts. Nelson and Shepherd. McLane reports that his work never lacks variety, ranging from GCMs to treatment of prisoners of war under the Geneva Convention.

1st Lt. Walter W. Davis writes that he arrived in Paris on 21 June and has been on duty at the Branch Office there.

2nd Lt. Hayden H. Dadd reports that his new address is Headquarters, IRTC, office of the staff JA, Camp Fannin, Tex., where he is assistant staff JA. He says that "the duties include TJA of the GCM with an average of two trials per week, review of all special court cases prior to approval and review of all discharge proceedings. Considerable time is spent on matters of advice to the commanding general. Camp Fannin is a refreshing contrast to most training centers. It is in the heart of the commercial rose growing area in beautiful, wooded country on the edge of the East Texas oil fields. It is located about eight miles from Tyler, Tex.

Lt. James M. Shull is assigned to the G-4 Section, Central Pacific Base Command Section.

Lt. James R. Fitzharris, formerly on duty at Camp Edwards, Mass., has proceeded to Camp Beale, Calif., and points west en route for Pacific duty.

Lt. Boynton Kamb writes from the Philippines that "sometimes the Army moves fast. I was commissioned on 18 May, had 10 days leave, four days' travel time, and was en route overseas on 10 June and on 15 June was in Manila."

1st Lt. Masaji Marumoto is at Military Government Headquarters somewhere in the Pacific, having been rushed out there after less than a month's duty at Omaha. He covers anywhere from 50 to 70 miles a day driving a jeep unaccompanied. As he moves about he wonders how the property rights of civilians can ever be adjusted as there is hardly any record of any sort left. After the main concern of natives as to food and shelter are satisfied, the property consciousness of the natives is beginning to assert itself, he says. Such questions as "Can we ever get back our farms?" and "Will our bank deposits be good?" are constantly asked.

12th OC

Lt. Gregory G. Lagakos is assigned to JAGRP, Headquarters, Third Service Command, Baltimore, Md.

Lt. Henry Ottesen writes that he has been at Camp Cooke since he reported to Fort Lewis, Wash., upon the completion of his post graduation leave. Lt. Henry J. Schmandt who was also assigned to Fort Lewis was transferred to Headquarters, Ninth Service Command, Military Justice Division, Office of the JA. Lt. Edward A. Nelson was assigned to the Military Affairs Division of the same office. Lt. Louis H. Artuso's original assignment to Camp Haan was unchanged but he was sent to Post Headquarters there instead of the USDB.

Lt. Walter Lindsley writes that he is assigned to Headquarters, Military District of Washington as assistant staff JA.

Lt. Earl C. Fishbaugh, Jr., writes from Wright Field, Ohio, that he is assigned to the Legal Branch, Production Section, Procurement Division, ATSC. Lts. Louis W. Bookheim, Jr., and Edwin W. Jones are assigned there also as well as Lt. Roderick Jones (11th OC). Lt. Eugene Hansen is on duty at the Commercial Airlines Office there.

Lt. Jerome Goubeaux (11th OC) is in the Miscellaneous Projects Section and Lt. Elmer J. Redmond is assigned to the Claims Office of Budget and Fiscal.

1st Lt. Owen W. Crumpacker is one of the JAGs on duty at the Manhattan Engineering District, Oak Ridge, Tenn., now revealed as one of the sites designed for the manufacture of the atom bomb.

Lt. John T. Garey has been transferred from JAGRP, Sixth Service Command to AGF Replacement Depot No. 2, Fort Ord, Calif.

Lt. Francis P. Hargett has been transferred from JAGRP, Fifth Service Command, to AGF Replacement Depot No. 2, Fort Ord, Calif.

Lt. Arthur Maharay is assistant staff JA at the Armored Center, Fort Knox, Ky. Another assistant is Lt. Preston K. Johnson and the boss is Lt. Henry Melane (11th OC) who according to Lt. Maharay is "our confidential advisor on all matters of practice, procedure and policy excepting, of course, the matter of getting out of the Army. Both Lt. Johnson and myself believe that problem will be solved by 1947."

Lt. Richard B. Congdon is assigned to BOJAG, Holabird Signal Depot, Baltimore, Md., where he is working on 25-100 claims.

1st Lt. Everett E. Palmer has been transferred from his assignment at Missouri River Engineer Division, Omaha, Neb., and assigned to JAGRP, Third Service Command with station at Branch Office, JAGO, Holabird, Md.

Lt. John R. Harold is on duty at the office of the Staff JA at Continental Air Forces, Bolling Field, Washington, D.C.

Lt. Robert M. Glass attended the 25th General Staff Class at Com-

mand and General Staff School, Fort Leavenworth, Kans. In the class of 1000 there were only three JAGs; in addition to himself Col. Hanley, formerly Staff JA for the Fourth Air Force, and Capt. John Stafford (5th OC) from the Military Justice Division, JAGO.

Lt. William J. Reinhart, Jr., writes from Freeman Field, Seymour, Ind., where he has been assigned, that his work there promises to be interesting. He says: "The Field itself was reopened only about a month ago and it is just in the process of organization. My duties will consist of being the base legal officer, the TJA, claims officer, voting officer, surveying officer, legal assistance officer, and probably a number of other jobs as somebody thinks of them. Therefore it appears that the work should be varied, although how extensive it will be is problematical because the intended full strength of the unit will probably not exceed from present expectations more than about 500 military personnel and about the same number of civilian employees.

Lt. Warren M. Anderson writes that he is at Headquarters 1111, Camp Edwards, Mass., and that Lt. Woodman is there on temporary duty. They started defending GCM cases the day following their arrival and last week got their baptism of fire acting as TJA. One day Lt. Anderson tried three cases. His official task is that of camp legal assistance officer, and he has regular daily hours at both the General and Convalescent Hospitals. Lost or damaged baggage and matrimonial difficulties make up the bulk of his practice, he says.

Lt. Philip D. Straffin writes from the JAGO where he has been assigned to the Claims Division. He says that Bill Fox, Higgins and Palmer are in Military Affairs; Bishop and Gray in Litigation; Hession, McCarthy and Meagher in Military Justice; Rhoda and Sawyer in International Law; Schmalzriedt in Military Personnel and Training; and Churchill in Claims. Young has been assigned to the Selective Service Headquarters.

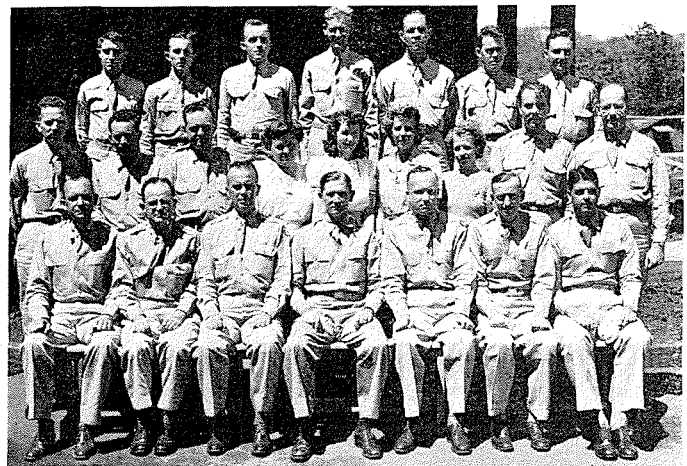
13th OC

Lt. Eugene Weaver has been assigned to Grile General Hospital at Cleveland from JAGRP, Fifth Service Command.

Lt. Frank L. Heard is on duty at Headquarters, Fourth Army, Fort Sam Houston, Tex.

Lt. Donald R. Seawell has been relieved from duty at the JAGO and assigned to Headquarters, National Selective Service System, Washington, D.C.

Lt. Thorkel E. Sondrol, Jr., has been transferred from JAGRP, Sixth Service Command, to Boston Port of Embarkation.



Personnel of the Staff Judge Advocate Section, Army Forces, Middle Pacific, Fort Shafter, T. H.

First row from left to right: Major David S. Meredith, Jr., Lt. Col. Charles B. Paine, Lt. Col. Henry T. Duncan, Colonel E. H. Snodgrass, Staff Judge Advocate; Lt. Col. John N. Hughes, Jr., Major Jonathan A. Hendrie, Major Charles E. Shaver.

Second row: T/A Joseph H. Tharratt, S/Sgt. Fred L. Hoffman, 1st Lt. Stanley J. Morris, Mary R. Clifford, Mary E. Cooke, Virginia L. Hegdal, Esther L. Hoadley, 1st Lt. George F. McGuigan, 1st Lt. Arthur G. Lyon.

Third row: Sgt. Gen. Foster, T/Sgt. Richard E. Ellison, M/Sgt. William B. Rauffer, S/Sgt. William J. Fugelsang, S/Sgt. John C. Bortz, Cpl. Thomas J. Kearns, Sgt. Elliot J. Goldman. Absent, Annie L. Naylor.

LIST OF *Promotions*

IN THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

★ ★ ★

16 August 1945 to 31 October 1945

★ ★ ★

LT. COL. TO COLONEL

Bennett, Oliver P.
Byrd, Adam M.
Carpenter, Edwin J.
Deal, Roy L.
Dollerhide, Charles L.
Eley, Frederick W.
Hazell, Joseph W.
Hodgson, Joseph V.
Jaworski, Leon
Keith, Donald M.
Park, Lee I.
Patterson, Harold T.
Potter, Willis A.
Schmidt, Paul W.
Sig'er, Phares O.
Stedeford, John D.
Wilson, George H.
Young, Charles C.

MAJOR TO LT. COLONEL

Avery, John C.
Ball, Cable G.
Barker, Owen D.
Brandon, Morris, Jr.
Brennan, Thomas R.
Butler, Ira N.
Case, Richard D.
Clark, Leigh M.
Clifford, James S., Jr.
Denson, William D.
Dickinson, John
Dolan, William S.
Donnelly, Arthur J.
Ellis, Burton F.
Fulcher, Edwin D.
Goodwin, Shields M.
Henderson, Charles P.
Hendrix, Walter C., Jr.
Houston, Paris T.
Karr, Randolph
Kennedy, Thomas J.
Linger, Roland A.
Long, Benjamin H.
MacClain, George
Markward, Martin F., Jr.
Mason, DeWitt K., Jr.
Mizell, Frank J., Jr.
McNamee, Frank, Jr.
McNeill, George H.
Osborne, Harry V., Jr.
Pinnie, Alexander
Ruddock, William M.
Schwartz, Kenneth C.
Scott, James M.
Tackabury, George W.
Tyler, David G., Jr.
Wearing, George R.
Westin, Harold L.
Young, Ardell M.
Younger, Paul C.

CAPTAIN TO MAJOR

Anderson, John R.
Aranow, Edward R.
Avirett, James A.
Bigel, Joseph
Bishop, Joseph W., Jr.
Burns, George L.
Burstein, Benjamin
Byers, Jason H.
Carter, John D.
Case, Manning E., Jr.
Chapla, Charles A.
Cole, Albert
Danahey, James A.
Davis, William K.
DeMartini, James S.
Douglass, Edward I., Jr.
Eckdall, Frank F.
Edgar, Joseph H.
Eminons, Harold H., Jr.
Fisher, George A.
Flood, Luke T.
French, David D.
Gibbs, Delbridge L.
Graham, Donald S.
Haley, John H., Jr.
Hancock, Parker D.
Hart, Herbert L.
Herbert, Josiah T.
Hood, John T., Jr.
Kohn, Francis M.
Lardner, Daniel O.
Lawson, Stanley K.
Merriam, John D.
McCann, Charles H.
Paton, John F.
Pepper, Harry L.
Porter, Dudley, Jr.
Roche, Frederick W.
Sereysky, Abraham W.
Shaver, Charles E.
Sherman, Nathan S.
Steele, Roy H.
Sullivan, John A.
Timmins, Stanley, Sr.
Treadwell, Kenneth S.
Underhay, Fulton C.
Van Arsdale, W. Palmer
Vogel, John H.
Waddill, Clifton J.
Wallace, James W.
Weisbender, Eugene R.
Williams, Robert H., Jr.
Zwebell, Robert S.

1st LT. TO CAPTAIN

Anderson, Oscar G.
Andrae, Henry P.
Bancroft, Harold W.
Beard, Edward K.
Beck, Alfred H.
Bednar, James E.
Berry, Tyler, Jr.
Blackman, Roy H., Jr.
Blaine, Jack L.
Boedeker, Edgar G.

Briggs, William M.
Brodsky, Benjamin M.
Brown, James L.
Buckley, Richard S.
Cate, Thomas M.
Claggett, John R.
Clydesdale, Thomas R.
Combs, Bert T.
Conaughy, James G.
Conkling, Samuel R.
Connolly, Edward J., Jr.
Cooper, John L.
Corbett, Stanley M.
Custer, Paul E.
Diehl, John N.
Donahue, Charles
Dorsey, Harryman
Egre, Julian S.
Farquhar, William N.
Fisher, Patrick J.
Fogg, Gordon
Folsom, Fred G., Jr.
Forbes, Seely P.
Fortuna, Roger A.
Gabell, Gordon W.
Geer, Horace G.
Gibbons, Raymond J.
Gray, Gordon B.
Griffith, Lynn B.
Haney, William Q.
Hansen, Horace R.
Hardy, James I.
Hawfield, Robert R.
Herbruck, Henry A.
Hill, Delmas C.
Hirshman, Samuel H.
Hudson, Richard S.
Huff, Eugene S.
Hunter, Richard N.
Hurley, Arthur F.
Jones, Robert R.
Jordon, Andrew D.
Kasen, Daniel G.
Kline, George B.
Knipmeyer, Lowell L.
Lawlor, John J.
Lazaretti, Raymond F.
Lindsey, Hugh M.
Lowe, Robert W.
Lowe, William A.
Maniscalco, Anthony J.
Marsh, Matthew E.
Mathias, James H.
Mays, Thomas J.
Miller, George W., Jr.
Midey, Nicholas V.
Moats, Benjamin
Mock, Henry B.
Montjoy, William H.
Morris, Earl F.
Morrison, Frank H., II
Mueller, Robert O.

Murray, Billie L. (WAC)
McCarthy, Ralph I.
Newhouse, Andrew J.
O'Brien, Robert E.
O'Gara, Joseph P.
O'Hara, Gerald T.
Peck, John W.
Perry, Thomas E.
Phelps, Calhoun W. J.
Pizey, John B.
Rahn, Kenart M.
Ralston, Robert A.
Reed, Evan J.
Resseger, Edwin K.
Roach, Asa H.
Rosenberg, Morris
Rowe, Cecil F.
Sandberg, Milton
Sanders, Joseph W.
Sanders, Richard T.
Schmidt, Harold R.
Searl, Jerome H.
Shelley, Walter A.
Simpson, Frank
Sirignano, William P.
Smith, Philip L.
Stahle, Keith L.
Stanton, Robert J.
Starr, John G.
Strayer, Manley B.
Sullivan, Jeremiah O.
Sullivan, William J.
Sylvester, Murray
Taylor, Charles E.
Tremayne, Bertram W., Jr.
Tritico, Joseph J.
Turner, Meredith B.
Webster, Manning D.
Weller, Morris
Wentz, Peter L.
Williamson, Lindsay
Winkler, Herbert L.
Winslow, Norman K.
Woodson, Blake B.
Worrell, Beverly R., Sr.
Young, John B.
Zaia, Thomas F.

2d LT. TO 1st LT.

Anderson, William O.
Bach, Arthur M.
Blalock, James A.
Bray, William J.
Breitenfield, Victor H.
Brown, Herbert S.
Cannon, Thomas A.
Carson, Lorton R.
Caviness, Robert S.
Cobourn, George H.

Combs, Clyde E.
Connelly, Austin M.
Cornish, Abram H., Jr.
Crosland, Jack W., Jr.
Gumming, Kenneth G.
Day, David L., Jr.
Desmond, James R.
Downie, Edward B., Jr.
Faherty, Philip J., Jr.
Fetterman, Paul W.
Fitzgerald, William H.
Forsythe, Carl S.
Glassmoyer, Thomas P.
Hildreth, Pierson R.
Hillyer, Frederick F.
Jones, Abbott H., Jr.
Keet, James H.
Kelly, Gerald G.
Kennelly, Martin J.
Key, Sheldon A.
King, Edward C.
Klyde, Charles J.
Lally, John J.
Lawton, Charles T.
Lowrey, Perrin H.
Marbach, John C.
Menapace, Charles M.
Morrison, Henry Y.
Morrissey, Thomas P.
McEwen, James M.
McGinley, Francis W.
McGowan, Robert J.
McKelvey, Robert F.
McMahon, James P.
McTigue, Arthur D.
O'Neal, Roger D.
Palmer, Everett E.
Polster, William A.
Reeves, Houston W.
Reinhardt, William F.
Reseburg, Walter J., Jr.
Ronin, Harold F.
Rosenn, Max
Schaberg, John C.
Schumacher, Donald F.
Seawell, Donald R.
Simes, Stephen H.
Smith, Ralph G.
Spinelli, Charles J.
Stockard, Alden A.
Sweeney, Edmund M.
Teters, Henry T.
Thomson, William M.
Tinkham, Joseph E.
Tracy, James D.
Trinkhaus, Walter R.
Watson, Alf C.
Williams, Joe B.
Winger, Charles J.
Wolff, Jesse D.
Wolfrom, Richard R.

Recent Graduates FROM THE JAG SCHOOL

TWENTY-THIRD OFFICER CLASS (Graduated 21 July 1945)

Abrams, Arthur L., Capt., JAGD
Ackermann, 1st Lt., Walter E., JAGD
Bane, Eustace H., Major, AC
Baumen, George G., 1st Lt., JAGD
Carlson, Laurance S., Lt. Col., AC
Carrigan, John A., Major, AC
Cobourn, George H., 2nd Lt., JAGD
Cooper, John L., 1st Lt., JAGD
Crom, Frank R., Lt. Col., Inf
Delaney, Robert E., Major, JAGD
Ewing, Caruthers, Jr., 1st Lt., AC
Farquhar, William N., 1st Lt., JAGD
Gilbert, Morgan P., Major, AC
Glassmoyer, Thomas P., 2nd Lt., JAGD
Groce, Josh H., Major, SigC
Grogan, John F., Capt., JAGD
Hibbard, George L., Major, JAGD
Hilgendorff, Hugo A., Jr., Capt., FA
Hoban, George S., Capt., JAGD
Howard, Frank, 1st Lt., JAGD
Hudson, Richard S., 1st Lt., JAGD
Johnson, Joe L., 1st Lt., JAGD
Jordan, Andrew D., 1st Lt., JAGD
Kaskell, Ralph L., Jr., 2nd Lt., JAGD
Kline, George B., 1st Lt., JAGD
Kotte, Frederick S., Jr., 2nd Lt., JAGD
Levings, George E., Lt. Col., JAGD
Lutz, Hugh W., Capt., TC
Lyman, Willis T., Major, JAGD
Manby, Thomas F., 2nd Lt., JAGD
Morris, Harry O., 1st Lt., JAGD
Nesmith, Vardell E., Major, JAGD
Parker, Hillyer S., 1st Lt., JAGD
Peck, John W., 1st Lt., JAGD
Potts, Thomas J., 1st Lt., Inf
Rawls, Vernon C., Lt. Col., JAGD
Rawn, Arnold E., Capt., AGD
Richter, Hibbard, Lt. Col., JAGD
Robertson, Stokes V., Jr., Lt. Col., JAGD
Robinson, Walter J., Jr., Major, JAGD
Rosemond, St. Julien P., Major, JAGD
Rosenthal, Leonard B., 1st Lt., AC
Schultz, Henry A., 1st Lt., JAGD
Spencer, Eldon J., Capt., JAGD
Strati, Gaetano V., Capt., AC
Sullivan, Jeremiah O., 1st Lt., JAGD
Turner, Meredith B., 1st Lt., JAGD
Venters, Edgar N., 1st Lt., JAGD
Wallstein, Leonard M., Jr., Major, JAGD
Weaver, William J., 1st Lt., JAGD
Wickey, Harry L., Capt., AGD
Willmott, Henry H., 1st Lt., JAGD
Winslow, Norman K., 1st Lt., JAGD
Wood, Basil A., Lt. Col., JAGD
Zaia, Thomas F., 1st Lt., JAGD

TWELFTH OFFICER CANDIDATE CLASS (Graduated 21 July 1945)

Anderson, Warren M
Artuso, Louis H.
Bishop, Richard W.
Bookheim, Louis W., Jr.
Churchill, William S.
Congdon, Richard B.
Crumpacker, Owen W.
Dennis, David W.
Eshleman, Robert T.
Fishbaugh, Earl C., Jr.

Fox, William C., Jr.
Garey, John T.
Glass, Robert M.
Gray, Joseph R.
Grover, Charles E.
Hanson, Eugene M.
Hargett, Francis P.
Harold, John R.
Hession, Thomas S.
Hibbard, Darrell O.
Higgins, Frank S.
Jones, Edwin W.
Lagakos, Gregory G.
Langtry, Virgil H.
Lassiter, William H.
Lindsley, Walter S.
McCarthy, John C., Jr.
Maharay, Arthur O., Jr.
Meagher, Frederick J.
Micali, Thomas A.
Nelson, Edward A.
Ottesen, Henry R.
Palmer, Paul C.
Redmond, Elmer J.
Reinhart, William J., Jr.
Rhoda, John S.
Sawyer, John N.
Schmalzriedt, Allan F.
Schmandt, Henry J.
Sergeant, Frank C., Jr.
Straffin, Philip D.
Woodman, Richard S.
Young, Charles H.

TWENTY-FOURTH OFFICER CLASS (Graduated 22 September 1945)

Aguila, Sabino J., Capt., JAGD
Bolles, Francis A., Major, JAGD
Boucek, George W., 2nd Lt., JAGD
Brisach, Edgar G., Capt., CE
Broker, Thomas O., 1st Lt., JAGD
Byrd, Lonnie G., Jr., 1st Lt., JAGD
Callahan, Parnell J. T., 1st Lt., JAGD
Carlos, S. J. Sixto, Capt., JAGD
Carter, John H., Jr., Major, JAGD
Craven, Alfred W., Jr., Major, AC
Crownover, Robert N. S., 1st Lt., JAGD
Cubley, William H., 2nd Lt., JAGD
Daley, Thomas F., Jr., 2nd Lt., JAGD
Donaldson, Clyde E., Major, JAGD
Draper, James W., 1st Lt., JAGD
Friedman, Saul H., 1st Lt., JAGD
Gallagher, Joseph F., 1st Lt., AC
Góff, John C., 2nd Lt., JAGD
Hagan, Richard C., Major, JAGD
Hawley, Jess B., Jr., Capt., JAGD
Heath, Morris L., 1st Lt., JAGD
Hettel, Clarence J., 1st Lt., JAGD
Hunt, William A., Jr., Major, JAGD
Inlander, Norman W., Capt., JAGD
Jackson, Harold L., 1st Lt., JAGD
Jennings, Larkin H., Jr., Major, JAGD
Kayser, Lawrence R., 2nd Lt., JAGD
Mahon, Howard F., 1st Lt., JAGD
McCormick, Alan G., 1st Lt., JAGD
McDonnell, Harold F., Major, JAGD
Mitchell, William S., Jr., Capt., JAGD
Montemayor, Mamerto R., Major, JAGD
Mullican, John A., Major, JAGD
Norvell, James W., 2nd Lt., JAGD

Ott, George W., Capt., JAGD
 Otto, Louis A., Jr., 2nd Lt., JAGD
 Roberts, Philip M., 2nd Lt., JAGD
 Rogers, Guy W., Jr., 1st Lt., JAGD
 Schulz, William F., Jr., Major, JAGD
 Smith, Hebard P., Capt., JAGD
 Sondrol, Thorkel E., Jr., 1st Lt., JAGD
 Tipps, Arthur R., 1st Lt., AC
 Treadway, William E., Major, JAGD
 Vann, Thomas H., Capt., JAGD
 Watson, Joseph A., 1st Lt., AC
 West, William H., Jr., 1st Lt., JAGD
 Wilkinson, Charles W., Capt., JAGD

THIRTEENTH OFFICER CANDIDATE CLASS
 (Graduated 22 September 1945)

Anderson, William O.
 Bach, Arthur M.
 Baker, John W.
 Baker, Robert M.
 Bergmann, Roy W.
 Blalock, James A.
 Bray, William J.
 Breitenfield, Victor H.
 Brock, Barkley M.
 Caviness, Robert S.
 Clarke, Kingsley M.
 Combs, Clyde E.
 Connelly, Austin M.
 Cornish, Abram H., Jr.
 Crosland, Jack W., Jr.
 Deason, Charles S.
 Doyle, William E.
 Flaherty, John P.
 Gibson, John F.
 Gunderman, Frank G.
 Harkins, Walter S., III
 Hayes, Kenneth T.
 Hear, Frank L., Jr.
 Horger, Charlton B.
 Keet, James H.
 Kelly, Gerald G.
 King, Edward C.
 Lawyer, Clarence M., Jr.
 McEwen, James M.
 McGowan, Robert J.
 McTighe, Arthur D.
 Maggini, Louis E.
 Morrissey, Thomas P.
 Ogsbury, James S., Jr.
 O'Neal, Roger D.
 Polster, William A.
 Porter, George M.
 Powell, Robert H., Jr.
 Reeves, William S., Sr.
 Reinhardt, William F.
 Rogol, Sam
 Seawell, Donald R.
 Simes, Stephen H.
 Thomson, William M.
 Tracy, James D.
 Trinkaus, Walter R.
 Wahler, Wilbert J. J.
 Weaver, Eugene
 Williams, Charles S., Jr.
 Wolfrom, Richard R.
 Woods, Warren
 Young, John C., Jr.

TWENTY-FIFTH OFFICER CLASS
 (Graduated 20 November 1945)

Abell, H. K., Capt., JAGD
 Ackroyd, G. G., Major, JAGD

Aranas, F., Major, JAGS (PA)
 Barnard, M. J., Capt., JAGD
 Barr, J., Capt., JAGD
 Boyland, A. G., 1st Lt., JAGD
 Byron, R. A., Major, JAGD
 Cameron, T. J., Capt., QMC
 Castro, F. R., Major, JAGS (PA)
 Chalkley, J. H., Capt., CMP
 Cuddeback, W. L., 2nd Lt., JAGD
 Davey, E. V., 2nd Lt., JAGD
 Diaz, R. V., 1st Lt., JAGS (PA)
 Dumont, W., Jr., 2nd Lt., Inf
 Eberle, C. E., 2nd Lt., Inf
 Fickes, W. H., 2nd Lt., QMC
 Fruechtenicht, A. H., Capt., JAGD
 Gamble, J. L., 1st Lt., FA
 Gavin, H. W., 1st Lt., JAGD
 Glasgow, S. M., 1st Lt., JAGD
 Gray, M. B., 1st Lt., JAGD
 Grueber, H. T., 1st Lt., QMC
 Guerriero, R. B., 1st Lt., JAGD
 Henderson, L. J., 1st Lt., Inf
 Jones, L. E., Jr., 2nd Lt., JAGD
 Kasiska, R. H., Capt., JAGD
 Kessler, J. L., 1st Lt., Sig C
 Kistle, A. C., 1st Lt., FA
 Knight, A. B., 1st Lt., JAGD
 Lafferty, J. S., Major, JAGD
 Larson, M. B., 2nd Lt., Inf
 LeFevre, W. L., 1st Lt., JAGD
 Lippert, D. I., 2nd Lt., Inf
 Lonergan, J. J., 1st Lt., Inf
 Lynch, J. J., 2nd Lt., JAGD
 Mathias, D. E., Jr., 2nd Lt., QMC
 McLaughlin, T. A., 1st Lt., MAC
 Millett, G. J., 1st Lt., Inf
 Moore, C. L., Capt., JAGD
 Moore, D. S., 1st Lt., JAGD
 Moorman, A. W., Major, JAGD
 Muir, G., Capt., JAGD
 Olney, P. L., 1st Lt., CAC
 Pfister, W. A., 1st Lt., JAGD
 Polatty, G. J., 2nd Lt., Inf
 Proctor, D. M., 1st Lt., JAGD
 Purl, R. H., Major, JAGD
 Raffaelli, J. D., Capt., JAGD
 Read, D. W., Major, JAGD
 Rideout, M. C., Jr., 1st Lt., FA
 Roberts, E., Major, JAGD
 Rozier, L. J., Major, Inf
 Ruby, D. T., 1st Lt., JAGD
 Rudser, O. J., Major, JAGD
 Salcedo, A. S., Capt., JAGS (PA)
 Sanders, V. R., Jr., 1st Lt., JAGD
 Schilling, J. N., Jr., 2nd Lt., Inf
 Skarda, L. G., Capt., JAGD
 Smith, K. R., 1st Lt., JAGD
 Sowicky, E. A., 1st Lt., CMP
 Spiers, E. Z., 1st Lt., JAGD
 Staley, G. H., Major, JAGD
 Stream, A. C., 2nd Lt., Inf
 Sutherland, J. E., 1st Lt., FA
 Swank, O. S., 2nd Lt., QMC
 Tayag, R. D., 1st Lt., JAGS (PA)
 Thurston, M. F., Jr., 2nd Lt., JAGD
 Tibbs, R. B., Lt. Col., JAGD
 Turman, J. R., Capt., JAGD
 Von Batchelder, J. L., 1st Lt., JAGD
 Whitehead, H. M., 1st Lt., MAC
 Wolf, A. M., 1st Lt., JAGD
 Wright, C. C., 1st Lt., Inf

FOURTEENTH OFFICER CANDIDATE CLASS
(Graduated 20 November 1945)

Baily, John E.
Bennett, John F.
Bourgault, Charles J.
Brady, Philip J.
Brown, Walter B.
Browning, Warren
Byrum, James A.
Carr, James D.
Crutcher, James W.
D'Amato, Domenico D.
Denman, Leroy G., Jr.
Fisk, George F., Jr.
Frost, Thomas B., Jr.
Henderson, Allen R.
Hutchins, John J.
Ibanez, Richard A.

Jackson, George E.
Jacobs, Charles S.
Kelly, Joseph P.
Kilmurry, Edward J.
Kingsley, Sidney G.
McInturff, Willard W.
Mallory, Edwin V.
Myers, Henry M.
Orchard, Kenneth M.
Pate, Henry P.
Percy, John M.
Peterson, Herbert W.
Prestwood, James M.
Shaughnessy, William J.
Thomason, Francis E.
Todd, Clarence D., Jr.
Tursone, Joseph A.
Watterson, Mark
Wood, Lawrence M.

THE PRESIDENT SAYS

(Continued from Page 4)

To General Cramer, as he enters his retirement, I wish happiness and contentment and satisfaction in the knowledge that his strenuous duties during the war were well performed. We salute his able successor, General Green, who merits and I am sure will have, the respect and full cooperation of all our officers. His task will be difficult and often thankless during the demobilization period and the rebuilding of the regular establishment.

The next administration of our Association will find it necessary to chart a course of action for the peaceful days. It will be difficult, arduous and time-consuming. If we are not to have another war joint action and vigilance in finding proper solutions to post-war problems

is necessary. No one is better qualified to undertake this monumental task than the members of this Association. I bespeak for our new Officers and Directors, your patient understanding, continued loyalty and help.

Undoubtedly many copies of this issue of the Journal will travel to many foreign places in the world and will finally come back home and be delivered to a man in civilian clothes; to them we send the sincere wishes of their brothers still in uniform, that satisfying service, success, and contentment in civilian life will be theirs for many years of progress, with peace among all nations under the leadership of men of good will.

HOWARD A. BRUNDAGE
Colonel, JAGD
President

THE JUDGE ADVOCATE GENERAL

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It is impossible to say whether General Cramer or Mrs. Cramer has the greater pride and interest in the Corps, but this much can be said; their collective pride and interest is nowhere surpassed.

Honors that have come to General Cramer in his career of public service include an honorary degree of Doctor of Laws from his alma mater, Wesleyan University, conferred in June 1943 and more recently the Distinguished Service Medal for his war service as The Judge Advocate General and the Legion of Merit for his service as Chief of Contracts during the feverish pre-Pearl Harbor days. Although forced to retire from the Army because he reached the statutory retirement age, General Cramer is not winding up his career and preparing to take his ease. In full vigor, he is preparing

to enter private practice in Washington, D.C., in association with Andrew G. Haley, Esq., Major, JAGD—Res. graduate of the 2nd officer class, Judge Advocate General's School under the firm name of Cramer & Haley. If past performance is any criterion, he will work hard and enjoy an outstandingly successful practice.

On his sixty-fourth birthday the officers on duty in the Washington area gave a birthday banquet in General Cramer's honor. Many tributes were paid to him, but, of all, the remarks of Under Secretary of War Kenneth C. Royall best epitomize the man. "His judgment is characterized by an accurate analysis of each situation—an analysis which seems to be both by reason and intuition a correct evaluation of the legal, military and public relations aspects of every problem presented to him—and a clear and incisive decision whenever the occasion requires it. I consider Myron Cramer to be a great lawyer as well as a real soldier and gentleman."

THE RULE AGAINST EX POST FACTO LAWS

(Continued from Page 12)

superfluous to use, as a supplementary argument, the idea that nobody has a right to take advantage of a principle of justice which he himself does not respect. Otherwise, a murderer could object against capital punishment the commandment "you shall not kill." Any

sanction provided by law, be it deprivation of life, freedom, or property, is, by its very nature, the infliction of an evil which, if not carried out as a sanction, that is to say, a reaction against a wrong, is a wrong itself. The non-application of the rule against *ex post facto* laws is a just sanction inflicted upon those who have violated this rule and hence have forfeited the privilege to be protected by it.