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THE ARMED FORCES RESERVE ACT OF 1952

*By Colonel Frederick Bernays Wiener, JAGC, USAR**

The Armed Forces Reserve Act of 1952 (Act of 9 July 1952, 66 Stat. 481; Public 476, 82d Congress) completely restates—and in many significant instances completely rewrites—almost all of the existing legislation dealing with reserve components. It has been authoritatively estimated that it will take three or four months just to fit its provisions into the proposed codification of Title 10 of the U. S. Code, which has just reached the stage of a Committee Print for the use of the House Judiciary Committee. The present paper, therefore is not intended as a detailed commentary on the new Act, but will be restricted to a somewhat summary exposition of its background, and of the principal substantive changes which it effects.

It should be noted that the Act affects all of the Armed Forces—Army, Navy, Marine Corps, Air Force, and Coast Guard. But since the Army and Air Force are, together, the more numerous, and since they alone must struggle with the problems posed by the militia clause of the Constitution, what follows will concern primarily those two services.

LEGISLATIVE BACKGROUND

The Armed Forces Reserve Act of 1952 was a specific response to the demonstration, furnished by the partial mobilization which followed hostilities in Korea, that the existing reserve system was not properly organized to permit an orderly augmentation of the armed forces short of a total military effort. Thus, many individuals in the inactive reserve, who had been mere names on a list ever since their separation after V-J Day, were recalled and shipped out to Korea, while persons in the organized reserve, who had been active in reserve matters and who had regularly been drawing inactive duty pay, were not touched. In too many instances, recall was viewed as appropriate disciplinary action to be meted out to those who had not been participating in reserve affairs. A good many individuals with extensive World War II service were thus required to do double duty, while others with only minimal war-time service in substance performed hardly any. And the calls hit only company grade officers; with only a few exceptions, field grade officers were simply not wanted.

Impelled no doubt by protestations from constituents, Congress commenced an investigation. While the inquiry was pending, the Department of Defense, which through its Civilian Components Policy Board had been actively wrestling with the reserve problem and formulating workable policies, was in effect called upon to submit a bill. Hearings followed, a

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amendments galore were offered and accepted, and in October 1951, the House passed what was then labelled the Armed Forces Reserve Act of 1951. The bill had the support of both the National Guard Association and the Reserve Officers Association.

However, the measure lay dormant in the Senate until late the following spring, and at that time the National Guard Association changed its position and opposed passage, on the expressed ground that since the bill that passed the House had been tied to UMT, and since UMT had meanwhile been buried, there was no present need for such legislation. That was the expressed ground, and, in the cold print of the hearings, it is not particularly persuasive. If there was a real reason, different from the ostensible reason, it does not appear; and indeed the Guard's opposition remains a mystery. It did, however, arouse support for the bill. For the first time, certainly for the first time since the war, the ROA opposed the NGA, and strongly supported the bill before the Senate Committee. More than that, members of the House testified before the Senate Committee in support of the bill and in opposition to the NGA; that was really man-bites-dog. With such backing, the Senate took action and passed a somewhat different version, which, in conference, was substantially restored to what the House had passed. The most important modification was the imposition of a ceiling on the Ready Reserve, the effect of which is discussed below; and in that form the measure became law. The effective date of the Act is 1 January 1953, but a number of provisions became operative on the date of enactment.

BASIC CHANGES

The principal changes effected by the Armed Forces Reserve Act (hereinafter referred to as AFRA) concern categories of reserve forces, their liability for service, the nature of the commissions hereafter to be issued members of the reserve components, the authorization for active duty agreements, and the common Federal commission. This portion of the present paper will discuss those changes in detail; a later instalment will consider some of the other modifications.

RESERVE CATEGORIES AND THEIR LIABILITIES

The reserve forces are divided into the Ready Reserve, the Standby Reserve (further subdivided into Active and Inactive Status lists), and the Retired Reserve. The paragraphs that follow will set forth the composition and then the liability to service of each category.

READY RESERVE

Composition: The Ready Reserve includes the National Guard of the United States and the Air National Guard of the United States; those persons required to serve in a reserve component by law (e. g., primarily, selectees after termination of their tour of active duty); mobilization designees; members of Ready Reserve units; and, probably, members of the reserve components on active duty. The doubt in connection with the category last named arises from the circumstance that while AFRA, Sec. 208 (b), provides that "Any member of the reserve components in an active status [on 1 January 1953] may

be placed in the Ready Reserve," the Conference Report indicates that such persons *will* be counted as a part of the Ready Reserve in determining the ceiling of 1,500,000 aggregate strength fixed by Sec. 205 (b).

The Act contains provisions for effecting transfers between the Ready and the Standby Reserve, with a declared peace-time right to transfer to the latter category upon completion of stated periods of active and inactive duty. But these criteria are apt to be academic if the ceiling remains in force.

The basic liability of units or members of the Ready Reserve is that they may be ordered to duty not only in time of war, but also in time of national emergency declared by the Congress or proclaimed by the president. Sec. 205 (a). In time of war or of Congressional declaration of emergency, the tour of such duty is the duration of the war or emergency plus six months (Sec. 233(a)), while in time of Presidential proclamation of emergency, it is a flat twenty-four months. Sec. 233(b) (1). This does not mean that individuals in the Ready Reserve will be immediately subject to 24 months' active duty under the existing proclamation. First, a proviso to Sec. 233 (b) (1) expressly requires "That Congress shall determine the number of members of the reserve components necessary for the national security to be ordered to active duty, pursuant to this sub-section prior to the exercise of the authority contained in this sub-section." Second, Sec. 233 (b) (2) establishes a policy "that in the interest of fair treatment as between members in the Ready Reserve in-

voluntarily recalled for duty, attention shall be given to the duration and nature of previous service, with the objective of assuring such sharing of hazardous exposure as the national security and the military requirement will reasonably permit, to family responsibilities, and to employment found to be necessary to the maintenance of the national health, safety, or interest." The implementation of this policy will, assuredly, militate against flexibility in the event of a future partial mobilization.

The present obligation to serve for 15 days annually for training, is continued (Sec. 233 (c)), as is the provision for voluntary active duty (Sec. 233 (d)). Present policies with respect to notice and for ordering members of organized units to duty with their units are given legislative sanction (Sec. 233 (e), (g)), and one new provision with reference to the utilization of officers has been added (Sec. 233 (f)):

"(f) In any expansion of the active Armed Forces of the United States which requires the ordering into the active military service involuntarily of individual officers of the reserve components who are not members of units organized for the purpose of serving as such, it shall be the policy to utilize to the greatest practicable extent the services of qualified and available officers of the reserve components in all grades in accordance with the requirements of branch, grade, and specialty."

This means, in plain English, that field grade officers shall be recalled along with those in the company grades; it reflects the legislative reaction to the notion. (which was pre-

valent also in the Kaiser's Army) that reservists should be only captains and lieutenants, and that any higher rank is for professionals alone.

THE CEILING ON THE READY RESERVE

AFRA, Sec. 205 (b), limits the authorized aggregate strength of the Ready Reserve to 1,500,000. This figure includes all of the armed forces—Army, Navy, Marine Corps, Air Force, and Coast Guard. Now, since the NGUS and the ANGUS are, mandatorily, a part of the Ready Reserve (Sec. 208 (c)), since the Conference Report indicates that all reserve personnel on active duty shall be included in computing the Ready Reserve, and since all persons with a further period of required reserve service under the Universal Military Training and Service Act are required to be placed in the Ready Reserve upon their release from active duty, it is at once apparent, either that there will be very few Army and Air Force reservists in the Ready Reserve, or else that the released selectees must be transferred to the Standby Reserve immediately upon release. That is to say, the ceiling is far too low.

When the problem was first studied in The Pentagon last summer, it was believed that the result would be a Ready Reserve that was really ready in every respect—no mere names on lists. Now, with more study, it has become only too clear that, with the present ceiling in effect, AFRA would not be the Reserves' Charter of Liberties it was hailed as during its passage through Congress; it would in fact destroy the Reserve. Accordingly,

National Guard and Reserve organizations are now joining with the military departments in urging speedy revision of the ceiling.

STANDBY RESERVE

The Standby Reserve consists of all those not in either the Ready or the Retired Reserve (Sec. 210).

Except in time of war, and in the absence of further legislation, no member or unit of the Standby Reserve is subject to extended active duty unless it is first determined by the appropriate Secretary, with the approval of the Secretary of Defense, that adequate numbers of Ready Reserve members and units of the required category are not readily available. Sec. 206 (b). In the event of such determination, the period of duty would be the same as that of a member of the Ready Reserve under the same conditions.

Within the Standby Reserve, an inactive status list is to be maintained for those unable to participate in prescribed training; the law contemplates regulations to govern transfers to and from such list. Sec. 211 (a). Reservists in an active status are not eligible either for pay, promotion, or retirement points (Sec. 211 (b)), but have a concomitantly lesser liability to service: no involuntary duty even in time of war or Congressional declaration of emergency until it is first determined that insufficient reservists in an active status or in the inactive National Guard are available. Sec. 233 (a). The result is that inactive reservists are pretty well deferred, with a fair equalization of burdens and benefits.

RETIRED RESERVE

There is, finally, a Retired Reserve, to be composed of those who, in accordance with regulations to be prescribed, make application to be placed on a reserve retired list; this list is additional to the existing AUS retired list authorized by the legislation which authorized the award of retirement points (Title III, Public 810, 80th Cong.; Army and Air Force Vitalization and Retirement Equalization Act). Sec 207 (a), (b). Retired Reservists can be ordered to active duty involuntarily only in time of war or national emergency congressionally declared (Sec. 207 (c), and then only when it has been determined that insufficient reservists in an active status or in the inactive National Guard are available. Sec. 233(a). Presumably retired reservists would only be called after inactive reservists, though the law does not so state.

Consequently, the order of priority for involuntary recall to extended active duty is as follows:

1. Ready Reserve (subject to priority *inter sese* under Sec. 233 (b) (2));
2. Standby Reserve (active status);
3. Standby Reserve (inactive status); and, presumably,
4. Retired Reserve.

Inasmuch as these categories apply to all of the Armed Forces (Sec. 204), it is obvious that AFRA is more than organizational legislation, it represents a far-reaching Congressional plan for mobilization.

INDEFINITE TERM COMMISSIONS

Under Section 37 of the National Defense Act and cognate legislation, commissions issued to Army reservists were for a term of 5 years, plus an automatic extension for time of war. Until the signing of the Japanese peace treaty and the German peace contract, such commissions were still in force, as one officer found when he attempted to litigate the question. (*Miley v. Lovett*, 193 F. 2d 712 (C. A. 4), certiorari denied, 342 U. S. 919). Now, however, under the extension of war powers legislation and executive orders issued thereunder, all such commissions expire on midnight, 1 April 1953.

Meanwhile, all reserve commissions in the several naval services were of indefinite duration, and the same was true of commissions in the NGUS and the ANGUS. In order to equalize matters with reference to the USAR and the USAFR, therefore, Sec. 224 provides that all reserve commissions after the date of enactment shall be for an indefinite term. Under authority of that section, such indefinite term commissions are now being offered to all reservists holding 5-year commissions. If they accept, they are in the reserve until and unless eliminated; if they do not accept, they are out when and as their current commissions expire. Otherwise stated, affirmative action by the reservist is necessary before his liability to service can be extended. Inaction automatically results in elimination.

ACTIVE DUTY AGREEMENTS

In the past, when a reserve officer signed up for a particular category,

the obligations of his status, like those of an enlisted person, were wholly unilateral: the Government could hold him in service to the end of the category or enlistment period, and then extend that period, but the individual could be separated at any time. This was, obviously, unfair to the person whose plans were dislocated by an unexpected reduction in force, and who was returned to civilian life without any severance benefits.

Accordingly, Sec. 235 provides for active-duty agreements, for terms not to exceed five years. The individual officer is obligated to serve the full time, and the Government is required, if it releases him earlier, to pay him one month's basic pay, special pay, and allowances, for each year remaining as the unexpired period of the agreement. Portions of a year are prorated, more than 15 days are counted as one month, and periods of less than 15 days are disregarded.

There are further details, probably not of general interest, and one non-statutory feature which all but destroys the utility of the entire concept: The Bureau of the Budget has refused to authorize active-duty agreements of longer duration than two years.

* See my paper on *The Militia Clause of the Constitution*, 54 Harv. L. Rev. 181. In view of the circumstance that this article has since been reprinted, virtually *in toto*--though without quotation marks and without acknowledgement--in H. R. Rep. 1066, 82d Cong., 1st sess., I feel no hesitation in citing it as an authoritative exposition.

Except for severance pay, therefore, the individual active-duty reserve officer is no better off than he was under the category system.

COMMON FEDERAL COMMISSION

Under the National Defense Act as amended, primarily, by the Act of 15 June 1933, the National Guard's dual status was evidenced by a state commission in the National Guard of the state or territory, and a federal commission in the National Guard of the United States. When, therefore, as in World War II, it was desired to employ the National Guard beyond American territory for purposes not included in the three for which the Constitution permits the militia to be called into the service of the United States, it was necessary to order the National Guard of the United States into such service--and the NGUS was a reserve component of the Army, organized under the Army rather than the militia clause of the Constitution.* However, there was no interchangeability between NGUS and ORC commissions.

AFRA supplies the omission. Every officer who, on the date of enactment, had a commission in the NGUS or the ANGUS is considered to hold a commission as a Reserve officer in the Army or Air Force, as the case may be. Sec. 224. The NGUS is a reserve component of the Army, and all members of the NGUS are Reserve officers and Reserve enlisted members, as the case may be, of the Army. The same is true of the ANGUS and the Air Force. Secs. 601-602. And all officers and enlisted members of the Army Reserve (redesignated from the ORC) are Reserve officers

and Reserve enlisted persons of the Army. Secs. 301-302.

A Reserve officer may be appointed in the National Guard by the Governor of his State, whereupon he will automatically be extended federal recognition (if in the same grade), and, although he retains his federal Reserve commission, he ceases to be a member of the Army or Air Force Reserve, as the case may be. Sec. 705(a). Contrariwise, with the consent of the State Governor, a National Guard officer may be transferred to the Reserve in grade, in which event he ceases to be a member of the NGUS, and his federal recognition terminates. Secs. 706-707.

When, however, an individual is first appointed or enlisted in the Guard, he takes two oaths, one as a member of the National Guard of the state for his state NG commission, and the other as a member of the Reserve of the Service concerned for his reserve commission. Sec. 806, amending the sections of the National Defense Act involved.

What has happened, in substance, is this: Under the NDA as amended in 1920, a National Guard officer was also given an ORC commission. In the event of federal service beyond the militia limitations, he was ordered to duty, and the enlisted men were drafted. Sec. 111, NDA. The 1933

Act provided a new reserve status, the NGUS; the officers were commissioned in the NGUS, one dual oath sufficed, and whole units were ordered to duty in their NGUS status. Now, 1952, we are back to two oaths and a reserve commission, but the NGUS status and concept continues, and transfers from National Guard to Reserve and vice-versa are facilitated.

Moreover, although a National Guardsman on inactive duty training or on his 15-day summer training tour is still a militiaman, constitutionally speaking, AFRA Sec. 714 states that, "for the purposes of all laws *** providing benefits for members," he shall be considered as performing duties in Federal service. This ends the much litigated question whether his state remedies were to be sought under the workmen's compensation law or the state military code; Uncle Sam now protects him just as if he were a purely federal reservist untouched by militia affiliations.

MISCELLANEOUS PROVISIONS

To consider even the more important of the remaining provisions of interest to reserve officers would unduly extend this paper. Accordingly, they will be treated in a second part, which will appear in the next issue of the Judge Advocate Journal.

THE JUDGE ADVOCATES ASSOCIATION

The Judge Advocates Association is a national legal society and an affiliated organization of the American Bar Association. Members of the legal profession who are serving, or, who have honorably served in any component of the Armed Forces are eligible for membership. Annual dues are \$5.00 per year, payable January 1st, and prorated quarterly for new applicants. Applications for membership may be directed to the Association at its national headquarters, 312 Denrike Building, Washington 5, D. C.

THE ANNUAL MEETING

The annual dinner of the Association was held in San Francisco on September 16, 1952, at the University Club. The dinner was attended by 175 members of the Association and their guests. Among the distinguished guests present were Col. Robert G. Storey, President of the American Bar Association, the Judges of the United States Court of Military Appeals, and The Judge Advocates General of each of the Armed Forces. Col. John Ritchie, President of the Association, expressed his thanks to Col. Henry C. Clausen, Chairman of the committee on arrangements, and welcomed the members and their guests before turning over the speaker's gavel to Col. George Hafer of Harrisburg, Pennsylvania, who served as toastmaster. Col. Hafer introduced the distinguished guests present and then introduced the principal speaker of the evening, Col. Robert G. Storey.

Col. Storey gave an intensely interesting and informative account of his world wide tour around the Iron Curtain. He spoke of the Committee of Free Jurists which recently met in West Berlin and gave special praise to the courage of Mayor Reuther of the Island City State of Berlin now surrounded by the Soviet Zone. He described the extremely explosive situation of the Berliners and the courage and leadership of jurists and lawyers from both sides of the Iron Curtain there. He spoke briefly of the critical conditions in the Middle East and then discussed the war in Korea, making observations particularly upon the work and the caliber of the lawyers there with the Ser-

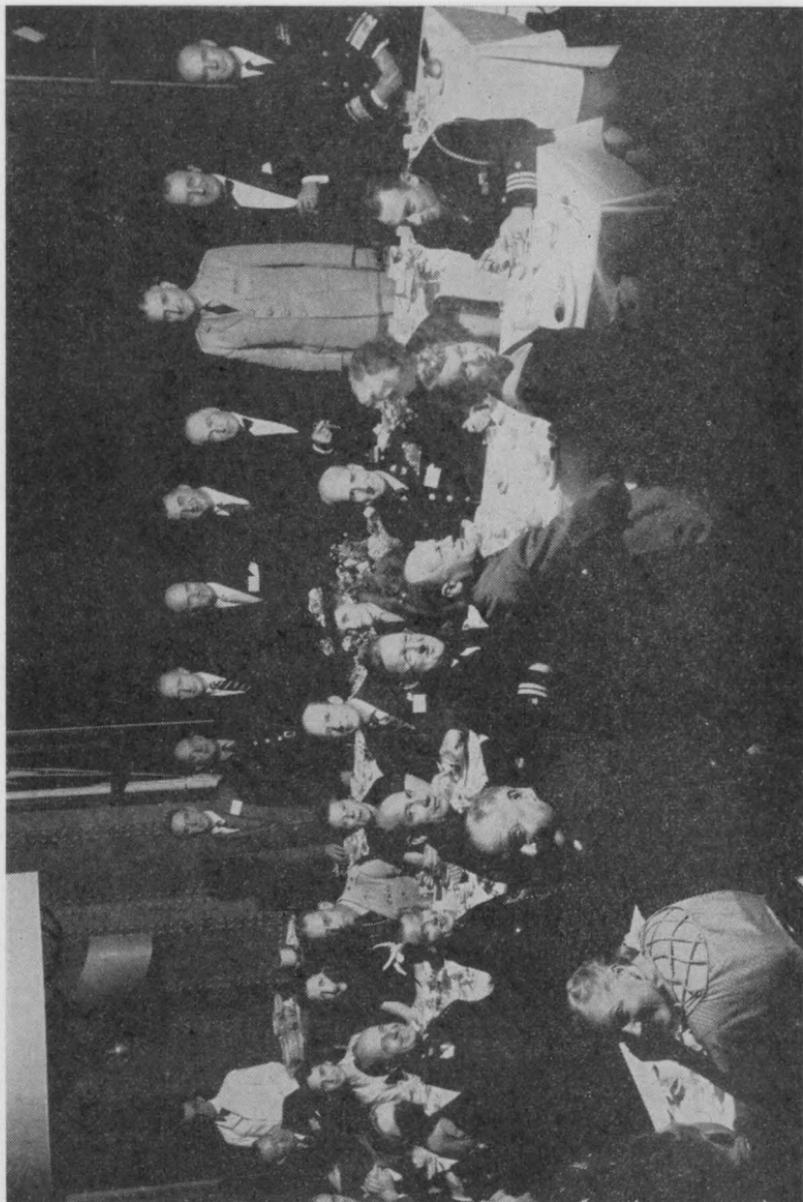
vices and their contribution to the war effort. He urged members of the legal profession and especially the members of our Association, who are not only lawyers but are, or have been members of the military profession, to ascertain the facts concerning the Korean war and to acquire an understanding of what it is all about, and then urged that they meet their obligation of leadership in the Community by participating in the molding of proper public opinion. He suggested that lawyers should certainly know the facts, and should inform and influence others of the consequences and world wide significance of the battle being fought in Korea against armed Communism.

Col. Storey invited the close cooperation of members of the Judge Advocates Association with the American Bar Association.

The annual business meeting of the Association was convened at the University Club at 4:00 p. m. on September 17th. Col. Ritchie, President, presided. Each of the Judge Advocates General reported on the work, problems, and progress of their respective offices. Judge Latimer of the United States Court of Military Appeals reported on the work and progress of the Court. The contents of these reports are set forth more fully in a later part of this issue of the Journal.

The report of the Board of Tellers was read, and the following were announced elected and installed in the offices set opposite their names:

Col. Oliver P. Bennett, *President*
Lt. Col. Joseph F. O'Connell, *1st Vice President*



At the annual dinner: Head table standing l-r Col. Ritchie, Gen. Brannon, Judge Latimer, Col. Story, Col. Hafer, Judge Quinn, Gen. Harmon, Judge Brosman Admiral Nunn.



At the annual dinner: A group picture of some of the members and guests attending.

Col. Paul W. Brosman, *2nd Vice President*

Col. Thomas H. King, *Secretary*
Lt. Col. Edward B. Beale, *Treasurer*
Col. John Ritchie, III, *Delegate to the American Bar Association*

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Lt. Col. Albert G. Kulp, *Okla.*
Lt. Col. Edward F. Gallagher, *D. C.*

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Col. Ritchie expressed his appreciation for the opportunity of having served the Association as President and offered special thanks to those who had assisted him with his tasks.

Shortly after the annual meeting, Col. Bennett as President of the Association announced the appointment of Gen. Ralph G. Boyd and Col. Joseph F. O'Connell, co-chairmen of the committee on arrangements for the 1953 annual meeting of the Association which will be conducted at Boston.

REPORT FROM COMA

At the annual meeting, Judge George W. Latimer of the United States Court of Military Appeals made a brief report on behalf of the Court concerning its work and progress. He indicated that in the brief existence of the court (some fourteen or fifteen months) approximately 1,400 cases had been docketed and that for the month of August, 1952, alone 180 cases had been filed. It was his opinion that, as information spread within the Services of the rights to apply to the Court for review without

cost, the provision of legal services without cost, and advice that there had been a number of reversals by the Court, it could be expected that more and more accused in court-martials would be applying for review.

Judge Latimer pointed out that most of the cases come on a petition for certiorari filed by the accused and many of these are denied; but the Court gets additional cases certified by the three Judge Advocates General when they disagree with their Boards

of Review, and also has for its review cases involving death sentences and involving general and flag officers. Up through August, 1952, 73 cases had been certified by The Judge Advocates General and the General Counsel of the Treasury for the Coast Guard and 8 cases involving mandatory death sentences had been received. A great increase in the number of these death cases can be anticipated from the Korean field of operations since the number of crimes of violence will naturally increase with the length of our operations there.

148 opinions have been rendered by the Court up through September 1st, and there will probably be 20 to 25 more opinions handed down by the end of September. These opinions cover the entire field of the criminal law. At present, the opinions of the Court are printed in advance sheet form by the Government Printing Office and they are published in a new series of reports entitled "Court-Martial Reports" by the Lawyers Cooperative Publishing Company. The Clerk of the Court will, on written application, furnish interested persons with copies of opinions.

From these statistics, Judge Latimer pointed out that the Court already has a heavy burden, considering that it must review records in all cases on petition for certiorari, listen to oral arguments when review is granted and, in all cases heard, write an opinion.

He pointed out that the Court is primarily interested in improving

military justice, and expressed the opinion that the Court of Military Appeals is a necessary incident of the military judicial system. Judge Latimer expressed the thought that the Court has already caused a vast improvement in military justice, both at trial and appellate level, and has done much to remove public criticism. He said that he believed the question of command control had been greatly diluted. Judge Latimer's view was that if we raise the quality of military justice at the trial level, many prior vices will be removed. A good trial forum is necessary because (1) it determines individual rights, (2) it lightens the load of the Appellate Court, and (3) it minimizes delay. Civilian lawyers interested in military justice can help by bringing out the good points of the system for public information and can further help by service in actual trial of cases and in the aid of officers who are charged with the trial of cases. The task is one not only of dispensing justice, but of convincing the public that there is justice in the military service. He commended the study of the Uniform Code of Military Justice to members of the Association since they are not only civilian lawyers but military lawyers as well. Judge Latimer thanked the members of the Association on behalf of the Court for having them present at the annual banquet and meeting and invited the members to visit them in their new headquarters, the old Court of Appeals Building, 5th and E Streets, N. W., Washington, D. C.

COMMENTS OF NAVY JAG AT ANNUAL MEETING

Rear Admiral Ira H. Nunn, The Judge Advocate General of the Navy, addressed the annual meeting of the Association.

Adm. Nunn stated that there are two major problems in the Office of The Judge Advocate General and asked for sympathy and helpfulness in seeking their remedy. He spoke first of the gravity of the responsibilities of the Armed Forces arising out of the fact that they are engaged in a dangerous enterprise even in time of peace. Admiral Nunn stated that the primary responsibility of the Armed Forces is to preserve the security of the United States, to preserve our way of life, and to preserve our continent for ourselves. The meeting of this responsibility is a costly, wasteful, and perhaps unpleasant, actively. Also, those persons who serve or who have served in the Armed Forces whether as lawyer or not, owe a responsibility to those three and a half million now on active duty in the Services. These responsibilities are: (1) to see that they are returned to civilian life in good health not dead, injured, or diseased; (2) to see that they are returned to civilian life in good spiritual and moral condition; (3) to see that they are returned to civilian life free of restraint and with honorable discharges so that they will not be caused to suffer in the future by reason of their service. These three responsibilities are in large measure placed upon the three learned professions in the order in which they are listed: the medical, the ministerial, and the legal. Thus, the three learned professions are the cornerstone of our responsibilities to

the men in the Armed Forces.

The legal profession is endeavoring to meet its responsibilities under the Uniform Code of Military Justice. The Admiral expressed the thought that the only trouble that the Navy was having with the Code was that it was entirely new to it and was quite comprehensive legislation but, he observed that it was serving its purpose well, and that it will probably do so in time of war as it is now working out well in Korea.

Adm. Nunn pointed out two procedural defects in the Code: (1) it causes the detention and the confinement of the accused longer than is necessary, and (2) the Code, unlike civilian criminal codes, has established rights and periods of mandatory appeal during which an accused is held in confinement. The defects are primarily related to the fact that the Services are administering a code comparable to a criminal code of civil life without furnishing recourse to bail—there is no bail system and such a system would be hard to devise for the military society. Mandatory appeals within certain periods also cause accused men to be confined in the brig too long. Great effort is taken to try to shorten the period pending appeal, but the processes of lawyers, even if they are not responsible for the accused man being put in the brig, do prolong his stay there. These conditions need remedy. Admiral Nunn expressed the thought that the substantive law of the Code and the decisions of the Court of Military Appeals are sound and based on the common law and federal practices.

The other problem brought up by Adm. Nunn concerned the burdens upon the executive branch of the Government imposed by the legislative practice of enacting substantive law as riders on appropriation acts. He appealed to members of the Association to try to educate legislators against this practice. Committees of Congress have jurisdiction on certain matters that are assigned to them. After thorough-going hearings and study, the matters are reported out of committees to the floor where there is debate and the legislative results of this usual practice are good; but, when departure is made from this procedure, and regulatory legislation is enacted as part of appropriation bills, all this salutary procedure toward the end of good legislation is defeated. Of course, the President can veto regulatory legislation which is not good, but when such legislation comes late in a Congressional session in a money bill, he can't veto it. This legislative practice is in derogation of the executive power of veto given by the Constitution of the United States and is in violation of the rules of both the House and Senate; but when such

legislation is passed and signed, it is, nevertheless, the law. Regulatory legislation as riders to money bills occurs without notice and hearing by executive agencies and often interferes with the protection of the rights of the United States Government. For example: In the case of the appropriation act for the Department of Justice in the last session, by way of amendment on the floor, there was annexed a rider that no funds appropriated to the Justice Department be used for the prosecution of a suit against four public utilities companies in Southern California, in which the Government was interested in quieting title to water rights. In such a case, the legislative branch forbids the executive branch to do that which is necessary to protect the rights of the United States.

Adm. Nunn urged the members of the Association to solicit public respect for the judicial processes which must be preserved and allay suspicion that there is injustice or unfair treatment in the services. If there is mistreatment or unfairness, it must be cured; if there is not, we must prevent public misapprehension.

DIRECTORY OF MEMBERS, 1952

A new Directory of Members is in the course of preparation and will be distributed during the month of December, 1952. A pre-requisite for listing is that the member be in good standing during the year 1952. Members who have received delinquency notices are urged to restore their good standing on or before November 10th. Directory listings will be closed November 15.

Please advise the headquarters of the Association of any changes in your address so that the records of the Association may be kept in order and so that you will receive all distributions promptly.

REMARKS OF TJAG OF THE ARMY AT ANNUAL MEETING

Major General E. M. Brannon, The Judge Advocate General of the Army, made the following report at the annual meeting of the Association on September 17:

The Judge Advocate General is by statute the legal advisor to the secretary of the army and the entire army establishment. The nature of the duties of the members of the corps encompass such matters as military justice, procurement problems, litigation problems, processing of claims, patents and the rendering of legal opinions to the various commanders, and legal advice and assistance to all military personnel. The lawyers in the armed forces have performed invaluable services not only to the highest echelons in the Pentagon, but extending through the chain of command to the individual soldier in a front line unit.

At the present time there are approximately 1200 officers serving on active duty in the Judge Advocate General's Corps of the Army. Of this number, more than half are reserve officers. At the outbreak of hostilities in Korea, in 1950, we had on duty a total of about 650 judge advocates, of whom 350 were regulars and 300 were reserve officers on extended active duty. It was soon apparent that a substantial increase in the strength of the corps would be necessary and that a number of reserve officers would have to be called to active duty. We had a pool of some 3100 reserve judge advocates, of whom approximately 1000 were captains and 1000 were lieutenants.

altogether there were four involuntary recall programs. Individuals totaling 435 officers were recalled, of whom 308 actually reported. Recalls were limited to company grade officers, captains and lieutenants. In addition to the involuntary recall of individual officers, about 30 judge advocates were recalled with their units, approximately 12 of whom were national guard officers. It would be remiss of me not to mention the tremendous contribution made by all the reserve officers called into military service under the programs mentioned. The limited number of regular army officers of the corps could not have done the job alone, and reserve officers have played a most vital part in enabling the Judge Advocate General's Corps to accomplish our assigned mission. They have served and are now serving with great credit and distinction wherever our troops are stationed throughout the world.

Soon after the recall program got under way, it became obvious that some sort of school was required in order that the officers being recalled could be given a rapid indoctrination course in military law. Many of these young officers had completed their law course after World War II and had little or no judge advocate experience. Colonel Hamilton Your who was commandant of our school at Ann Arbor, Michigan, during World War II, quickly organized a school at South Post, Fort Myer, Virginia, which is adjacent to the Pentagon. The early courses were

of six week's duration and included about 50 officers each. In 1951, after careful consideration, I decided to move this school to Charlottesville, where adequate space was made available by the University of Virginia. The course at Charlottesville has been lengthened to twelve weeks and slightly more than 100 are enrolled in the present class.

I also recognized that those reserve officers who had been called to active duty should rightly be permitted to return to civilian life upon completion of their term of service. In order to maintain our required strength, but yet avoid additional involuntary recalls, I secured approval from the Assistant Chief of Staff, G-1, Department of The Army, to initiate a program providing for the direct appointment in the grade of First Lieutenant, JAGC, reserve, and concurrent call to active duty for a period of three years of 200 Reserve Officers. This program was open to properly qualified enlisted men serving in the Army, interested civilians, and JAGC reserve officers in company grades who were interested in volunteering for active duty. In the main, we have secured bright, outstanding young law school graduates who, after attending our course at Charlottesville, have taken their place in the field and are doing a superb job. We are now appointing additional officers under a second 200 quota, as approved by G-1. These programs will serve to cushion the loss to our Corps of those reserve officers who are now returning to civilian life after having served their country so well.

In addition to the increased requirements for legally trained personnel in the army imposed by the Korean

emergency and resulting mobilization (as an example, the number of commands exercising general courts-martial jurisdiction has increased from approximately 80 in June 1950 to approximately 120 at the present time), the Uniform Code of Military Justice, which became effective on 31 May 1951, has made tremendous demands upon the Judge Advocate General's Corps. Under the code, a minimum of three qualified lawyers are required for the trial of each general court-martial case; one must serve as law officer, one as defense counsel and one as trial counsel. An additional judge advocate must review the record of trial for the convening authority. The Uniform Code also necessitated the establishment of two new divisions in my office, the Defense Appellate Division and the Government Appellate Division. The officers of these divisions represent the accused and the United States before the Boards of review and, where appropriate, before the United States Court of Military Appeals we now have approximately 20 officers serving in the Defense Appellate Division and approximately 15 officers in the Government Appellate Division.

Although there has been a substantial increase in the size of the Judge Advocate General's Corps in the last two years, the Corps has not grown in proportion to the increased work-load resulting from the Korean situation and the Uniform Code. Our every effort has been to accomplish our mission with the minimum of personnel. This result has been attained by virtue of the outstanding ability of our regular and reserve officers and their willingness to work many hours overtime.

I want to emphasize that we are not wasting lawyers. To illustrate, under the provisions of Section 308 of the Army Organization Act of 1950, the strength of the Judge Advocate General's Corps, Regular Army, is to be prescribed by the Secretary of the Army, and the authorized number of Judge Advocate officers shall not be less than one and one-half per cent of the authorized number of commissioned officers on the active list of the Regular Army. The Congress considered one and one-half per cent to be the minimum strength under which the Corps could operate under normal conditions. While our regular JAGC strength is slightly above one and one-half per cent of the regular officer strength of the Army is considered, we are not so fortunate. Notwithstanding our increased work load, the Corps has operated effectively with a total officer strength, regular and reserve, of slightly less than one per cent of the total active duty

commissioned officer strength of the Army.

Our ability to get the work done with so few officers has been due largely to the efficiency of the experienced reserve officers who were recalled to active duty. These able and mature lawyers are now returning to civilian life. They are being replaced by young and inexperienced law school graduates. Until the young lawyers gain experience our task will be most difficult. I am confident, however, that this bright and highly selective group of newly commissioned officers will measure up to our expectations.

In closing, let me say that it is my firm belief that the bulwark of our strength lies in an active, well-trained and ready reserve. Our Corps has such a reserve at the present time, a reserve that made a splendid record in World War II and again during the Korean emergency, a reserve of which we are justly proud.

The Journal is your magazine. If you have any suggestions for its improvement or for future articles, please bring them to the attention of the Editor. We invite members of the Association to make contributions of articles for publication in the Journal. Publishability of any article submitted will be determined by the Editor with the advice of a committee of the Board of Directors composed of Lt. Col. Reginald Field, Col. William J. Hughes, Jr., Col. Charles L. Decker, USA, Capt. George Bains, USN, and Brig. General Herbert M. Kidner, USAF.

REPORT OF THE AIR JAG AT ANNUAL MEETING

Major General Reginald C. Harmon, The Judge Advocate General of the Air Force, spoke to the members of the Association at their annual meeting in San Francisco on September 17th. His report is set forth in full:

When I spoke to you last year at your annual meeting in New York, I fully expected to file my final report as Judge Advocate General of the Air Force on the 8th of this month, the end of my four-year term, and present my oral argument in support of that report in the form of a swan song on this occasion. However, since I didn't graduate a week ago last Monday but instead was appointed for a second four-year term as Judge Advocate General, I shall have to file and argue a current report rather than a final one. I don't know how this happened except that the President, the Secretary, and the Chief of Staff may have thought that I should be appointed to a second term, in order that I might have an opportunity to clean up the mess I made during the first one.

Four years ago, we started with 72 Regular officers who had transferred to the Air Force from the Army a few months before and a few Reserve officers who had remained on extended active duty. To date, we have 1234 lawyers who are members of The Judge Advocate General's Department and are performing strictly legal duties in the Air Force. In addition, there are approximately 750 legally trained people, some of whom are admitted to the bar, who are performing various types of duties, semi-legal and otherwise, in the Air Force.

No person appreciates more fully than a practicing or former practicing lawyer that not all, who have professional law degrees and who are admitted to the bar, are lawyers in the realistic sense of the term. Therefore, during the past four years, a constant, diligent and persistent effort has been made to build The Judge Advocate General's Department of the Air Force with professional people, all of whom would be recognized as able lawyers among the members of their own profession anywhere. This policy constitutes an important reason why there is that large number of lawyers or people with legal training in the Air Force who are not members of The Judge Advocate General's Department.

As to the future, it is anticipated that there will be approximately 290 officer vacancies in the Air Force during the next few months. There are three reasons for these vacancies:

1. The Air Force is gradually getting larger.
2. Several Reserve officers are being separated from the service at their own request and because they have completed their tours.
3. It is now the policy of the Air Force not to pay flying pay to members of The Judge Advocate General's Department. As a result, about 100 out of the 273 rated officers in the Department have elected to go to rated assignments and retain their flying pay, rather than remain on non-rated assignments in The

Judge Advocate General's Department and lose it.

It is my plan to fill these vacancies from three sources:

1. Reserve officers who wish to volunteer for extended active duty.

2. Enlisted men and women in the Air Force who are lawyers and who are able to qualify for a Reserve commission for duty in the legal department.

3. Recent graduates of law schools and young lawyers who now wish to apply for Reserve commissions as First Lieutenants and who desire to come on extended active duty (the competition is very severe among those in this classification and only the outstanding ones are accepted).

For all young Reserve officers on active duty, there is a chance for a career in the Regular Air Force, if they can pass the very strict and highly competitive examination, and if they have not reached their 32d birthday (between now and next July 1st, the age requirement will be waived in cases of outstanding applicants between the ages of 32 and 37).

For those who fail to qualify for commissioned service in The Judge Advocate General's Department, but who are lawyers or have legal training, there are many interesting assignments of a semi-legal nature available; such as some types of procurement work, special investigations, and legislative liaison. In addition to the commissioned service in legal or semi-legal fields, there are a few civilian positions available from time to time; however, these are quite limited in number.

I would like to stress the fact that,

while the number of lawyers needed in the Air Force is large, as long as I have anything to do with it, the professional standards will always be kept high, and an applicant need not expect success unless he can meet those strict requirements. I would much prefer to suffer a great shortage of legal personnel than to lower those standards in any way whatsoever, because I believe that a small group of qualified lawyers will do better work than a larger number which includes some who are not qualified.

During the past four years, we have endeavored to build a Reserve Training Program for Reserve officer-lawyers of the Air Force. As you know, that program has consisted of:

1. The Mobilization Assignee and Designee Program, under which the officer trains for a specific position in which it is anticipated he will serve if recalled to active duty in the event of mobilization.

2. The Volunteer Air Reserve Training Unit Program, under which Reserve officer-lawyers in the same community meet together regularly for the purpose of study and the improvement of their military and professional proficiency.

3. The Extension Course Program, under which officers may enroll in correspondence courses and study the materials furnished by The Judge Advocate General's Department. Some of the courses are prepared by my office at Headquarters USAF in Washington, some by the JAG Training School at the Air University, and some on procurement by the Office of the Staff Judge Advocate of the Air Materiel Command at

Wright-Patterson Air Force Base, Ohio.

This Reserve Training Program has made great advancement during the past year. Many new volunteer training units have been organized; the extension courses are being prepared and are coming out in increased numbers; and the mobilization assignees and designees are taking a more active part in assisting in the training of the Volunteer Air Reserve Training Units and in the preparation of extension courses.

The three phases of our JAG reserve training program will remain basically unchanged under the 1952 Armed Forces Reserve Act. However, under proposed Air Force regulations promulgating the Act, it appears that more categories of reservists will qualify duty training pay. Eligibility for this type of pay will depend largely upon such factors as the availability of the reservists for active duty and the extent of his participation in the reserve training program.

I hope that in the future we may continue to simplify our training program rather than to complicate it, and that we may ever keep in mind that the very simple objective of any reserve training program for lawyers is to afford the reserve lawyer with a practical means of maintaining his legal proficiency in military law, so that in the event of an emergency he will be better qualified to render effective service without prolonged training after he reports for active duty. His personal compensation from such a program is that he is able to qualify for inactive duty pay, acquire necessary points for retire-

ment purposes, and qualify himself for promotion. This whole problem of reserve training is just that simple, and all complexities and complications should and can be avoided.

During the past four years, I have had an opportunity to see the Military Justice system of the armed forces and the administration of it undergo some revolutionary changes. The question of whether all of these changes have been wise, only the experience of the future can answer.

I for one have always felt that certain reforms were needed both in the law itself and in the administration of it. However, as in every other reform, we should take great care lest we go too far and make unwise changes.

The other day, I saw the engineer of a large locomotive pulling a heavy freight train trying to move his train from a standing position to a spot 50 yards forward, in order that he might be in a position to take on water. He had to open the throttle and use a great deal of power in order to get the train started, and as he approached the stopping place, he had to utilize another kind of energy in applying sufficient brake pressure to stop it in the right place. He went a few feet too far, and in order to back up it required even greater force.

The reforms which we have all witnessed in the past four years took much greater power to get started than has been needed to keep them going since. Again greater power is needed in order to get the revolutionary reforms stopped in the right place. If we are not careful, we will have the same experiences the engineer had. The train of reform will move too

far, and much energy will be required to enable us to back up. It takes great courage and power to start necessary reforms and an equal amount of the same commodities to stop. Let us be cautious and apply the brakes at the right time.

Throughout the history of the civilization of mankind everywhere, the status of society in each period has always been lingering somewhere between the natural resistance to change on the one hand and the pulling forces of reform on the other. The success of our system of Government and of our civilization has been due primarily to the ability of our people to keep those two forces in proper balance.

For the relatively long period from shortly after World War I to immediately after World War II, we made no major changes in the Military Justice system. At the end of this period, responding to the forces of reform, the train started, and we adopted the Elston Bill, a worthy reform and a good law which was capable of efficient administration at low additional costs. With the train moving down the track, it was no time to stop, so we used this new system for only a little over two years when we adopted a newer one, the Uniform Code of Military Justice, which, if properly administered, while more costly to the American people will still be capable of enforcing discipline in the military service and at the same time preserving the rights of the individual in accordance with our principles of Government.

However, the momentum of a moving object is still pulling us along the track and unless we are very cautious, in my opinion, we will find ourselves,

as did the locomotive engineer find himself, pulled beyond our goal; and I firmly believe we should stop long enough at least to take a good look at what we have and where we are. To illustrate the resistance of the status quo, as well as the momentum of the moving object, there is the old story of the old farmer who saw the locomotive, for the first time, sitting on the track, and he said, "Well, it's a beautiful piece of machinery, but they'll never get her started." Pretty soon it started rolling down the track, and he said, "They got her started all right, but they'll never get her stopped." When I told you that we should avoid being pulled too far by the momentum of the forces of reform, I did not mean to imply that we should not be equally cautious in avoiding the lethargic resistance to any movement at all.

Many years ago, I knew an old shoe cobbler affectionately known in the community in which I lived as Uncle Ed. He lived until he was up in the 90's and one time I said to him, "Uncle Ed, the period of your recollection extends more than three quarters of a century and certainly you have witnessed many changes in our civilization during that time?" He said, "Yes, and I've voted against every damned one of'em."

In closing, I should like to thank you, the members of this organization, for the kind support you have given me as The Judge Advocate General of the United States Air Force during the past four years. The performance of the duties of any public job in a democracy includes not only doing the work connected with it but taking the people, who are the stockholders of Government, along with

you. You have been of great assistance in helping me in my feeble effort to try to earn and retain the confidence and respect of the American people in accomplishing the mission of my assignment during these four years.

You may rest assured that any honor which may be connected with the opportunity to serve a second term in

this office, while greatly appreciated, is clouded by the shadow of the accompanying responsibility which involves the lives and liberties of the men and women in the Air Force. I am inspired to greater effort in the discharge of that responsibility, and I humbly solicit your continued support.

RECENT DECISIONS OF THE UNITED STATES COURT OF MILITARY APPEALS

*John H. Bolgiano**

Since the last issue of the Journal, the Court of Military Appeals has handed down a number of important and interesting opinions. Following the past policy of the Journal, some of the more important of these decisions are noted here for the interest of the members of the Association.

JOINT TRIAL—SEVERANCE

SEPARATE COUNSEL

In *U. S. v. Evans and Parker* (Case No. 457, decided 8 August 1952), the accused men were tried in a joint trial for rape. The evidence showed that Evans committed the rape and that Parker aided and abetted him in such a manner as would make him liable to the same extent as Evans. The questions raised were whether the two should have had separate trial and whether separate defense counsel should have been assigned each accused. The basis for the motion for

severance was the general claim of "antagonistic defenses" of the accused men. The Court of Military Appeals held that although this statement amounted to an averment of good cause, there was a failure to support the motion. Good cause must be *shown* and mere assertion is not sufficient. With respect to separate counsel, the Court stated that defense counsel and the accused agreed that if there were not a separate trial, separate defense counsel was not desired. The Court, therefore, went on to hold that there was no showing from the record that either accused was embarrassed by having been represented by the same defense counsel and affirmed the Air Force board of review.

SELF-INCRIMINATION

In *U. S. v. Collier* (Case No. 467, decided 12 August 1952), the accused on trial for desertion was questioned by the law officer as to the truth of matters set forth in a proposed stipulation concerning the termination of an absence without leave. The ques-

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tions went not only to the understanding and agreeableness of the stipulation, but to the truth of the matter as set forth in the stipulation concerning the expected testimony of an absent witness. Accordingly, affirmative answers of the accused thus solicited tended to prove an essential element of the offense. The defense counsel was present and made no objection to the stipulation going into evidence. The Army board of review reversed the court-martial on the ground that there was a violation of the accused's privilege against self-incrimination. The Court of Appeals said the essence of the privilege is protection from giving compulsory testimony and there was no showing in the record that compulsion was exercised in obtaining the incriminating evidence. In a concurring opinion, Judge Brosman held that there was a violation of the privilege, even though not gross, and that it was an error but he concurred with the majority because the privilege was waived by the accused voluntarily taking the stand in his own behalf.

In *U. S. v. Welch* (Case No. 196, decided 27 May 1952), the petitioner, an officer, was tried and convicted for a violation of AW 95 in that he cheated in a written examination. It was shown that in a preliminary investigation the accused was subject to interrogation by an investigating officer at which examination he was compelled to make answers without having been advised as to the nature of the investigation or his rights with respect to possible self-incrimination. At the trial the investigating officer testified. An Army board of review affirmed the Trial Court's finding of

guilty. The Court of Appeals reversed the board of review stating that although the privilege against self-incrimination may be waived, the waiver must be an informed and intelligent waiver. The Court found that the petitioner in this case was not informed concerning his rights and that there was no effective waiver of his privilege against self-incrimination, and that, therefore, statements given at pretrial investigation were not properly admitted into evidence.

VARIANCE—DOUBLE JEOPARDY

The accused in *U. S. v. Hopf* (Case No. 372, decided 14 August 1952) was tried upon a specification alleging assault with intent to do bodily harm with a dangerous weapon to Han Sun U, a Korean male on a day certain. The court-martial found the accused guilty of the specific assault described in the specification upon "an unknown" Korean male. An Army board of review upheld the findings and on petition to the Court of Appeals, the Court reversed the case for inadequacies in the instructions of the law officer but with respect to the finding of the Court and its variance with the specification, said that there was no fatal variance and no prejudice to the accused in that connection since there was no chance of double jeopardy because the specific crime alleged had been proved and was sufficiently identified. The prosecution had not been able to prove the name of the victim although it had proved the happening of the assault at the time and place and in the manner alleged.

ADMISSIBILITY OF EXTRACT COPIES OF MORNING REPORTS

The case of *U. S. v. Parlier* (Case No. 347, decided 13 June 1952) involves the admissibility in evidence in a trial for desertion of an extract copy of a morning report in which there was no notation of the signature of the officer authenticating the original morning report entry. The court-martial in that case accepted the copy of the morning report entry in evidence and convicted the accused, which conviction was sustained by the board of review. This Court reversed the Army board of review on the ground that the extract copy attempted to be introduced did not show that the original from which it came was authenticated by an officer duly qualified to make the report in the first instance. The Court said that it is well settled that reports made in the course of official business are admissible in evidence, but the absence of an indication that the original report was signed by an officer failed to show that the original was an official report and, therefore, the copy could not be admitted. The Court in *U. S. v. Collier* (Case No. 367, decided 13 June 1952) reached the same conclusion.

PRIOR CONVICTIONS

In *U. S. v. Valencia* (Case No. 308, decided 3 June 1952), petitioner was convicted by general court-martial of embezzlement, which conviction was upheld by the Army board of review. On petition to the Court of Appeals, the accused raised the question of sufficiency of evidence and also questioned improprieties on the part of trial counsel to his alleged prejudice.

Trial counsel attempted to elicit from witnesses testimony concerning other offenses committed by the accused. Defense counsel objected to the questions and was sustained and accordingly, no such evidence was received, but it was contended that the statements contained in trial counsel's questions tended to prejudice the Court against the accused in that they made reference to prior offenses. The Court of Appeals, held, in affirming the board of review, that although the indiscreet references made by trial counsel may have thrown a bad light upon the character of the accused, there was no prejudicial error because there was substantial evidence in the record showing that the accused had committed the crime with which he was charged.

In *U. S. v. Walker* (Case No. 523, decided 13 August 1952), the accused having been found guilty by an Army court-martial of disobedience of a lawful order, was sentenced to a bad conduct discharge among other things, a sentence dependent upon a record of previous convictions. After announcement of the findings, the trial counsel read into the record evidence of four previous convictions during the current enlistment to which the defense had no objections, but failed to introduce the record of previous convictions into evidence. However, the record of convictions was attached to the record that went forward for review. On petition of the accused, the question before the Court of Appeals was whether or not this procedure of proving prior convictions amounted to prejudicial error. The Court affirmed the Army board of review holding that it was more than a statement of unsworn conclusion by

the trial counsel where there was a reading into the record of a verbatim recitation of the relevant contents of an amply identified document recognized for what it was by all concerned. The Court stated that to hold otherwise would be "to engraft on the administration of courts-martial an empty ritual".

Again in *U. S. v. Tiedemann* (Case No. 615, decided 15 August 1952), upon trial by special court-martial, a sentence of bad conduct discharge dependent upon prior convictions was imposed and approved by a Navy board of review. On certification to the Court of Military Appeals, the question presented was whether or not the prior convictions were final so as to constitute evidence of prior convictions. The extracts from the service record did not show that the convictions were reviewed and approved, but there was proof of publication of the orders setting forth the result of trial and ordering the sentences executed. The Court affirmed the Navy Board of Review holding that there was at least prima facie evidence of finality in the convictions and that the evidence was sufficient to warrant the sentence of the special court-martial.

USE OF PRIOR CONSISTENT STATEMENTS OF A WITNESS

In *U. S. v. Kellum* (Case No. 408, decided 25 July 1952), the accused was tried by summary court for unauthorized possession of dope. The prosecution presented testimony of a witness who testified to certain dealings with the accused, all of which were denied by the accused, when he took the stand in his own behalf.

The prosecution, however, attempted to build up the Government's case by introducing evidence to show that witness had consistently told the same incriminatory story of the accused on other occasions. The witness had not been seriously impeached. Upon conviction, the convening authority approved the findings and the Navy board of review affirmed. On petition of the accused, this Court reversed the board of review holding that the admission into evidence of third party statements was a prejudicial error where the underlying issue was the creditability of the accused as compared with that witness and to allow a witness to accuse another and to bolster his accusation by showing that he had previously told the same story to other witnesses would permit confirmation of condemning testimony by unsworn statements.

RULINGS OF THE LAW OFFICER

On a trial for rape, the accused in *U.S. v. Browning* (Case No. 348, decided 15 August 1952) sought to introduce evidence of good character and soldierly efficiency. After several character witnesses had testified, the law officer interrupted the testimony of the third such witness called and announced that matters in mitigation, extenuation, and as to character should come in after the Court had reached its findings. The accused was convicted and an Army board of review affirmed the findings. On petition of the accused, the Court of Appeals reversed the board of review stating that the law officer's ruling was palpable error and the exclusion of character evidence from consideration on the issue of guilt or innocence required reversal. The

Court stated that evidence of good character may be the only evidence available to oppose a prima facie case of guilt and the ruling of the law officer would leave the members of the Court with the erroneous notion that character evidence could not properly be considered on the issue of guilt or innocence.

In *U. S. v. Ginn* (Case No. 263, decided 10 July 1952), accused, on a charge of first degree murder, was found guilty of voluntary manslaughter. Error assigned in the Court of Appeals was that the law officer failed to instruct on the law of self-defense and on the elements of voluntary manslaughter, the lesser included offense of which the accused was found guilty. The Court in affirming the Army board of review on these issues stated that in a proper case it is necessary to instruct on circumstances which will reduce murder to excusable homicide, but found that there was no predicate whatsoever in the evidence for an inference of self-defense. Likewise on the evidence, the Court found no necessity for an instruction on voluntary manslaughter and following the Bartholomew case, stated that the petitioner was in no position to complain since he was found guilty of a lesser offense where the evidence would have supported the same finding of the greater offense charged.

In a trial on a charge of misbehavior before the enemy, the law officer followed precisely the elements listed in the Manual in discussing the offense, but the instruction contained no legal standard of misbehavior. The Court of Appeals in *U. S. v. Gilberton* (Case No. 318, decided 22 July 1952), held the instruction

erroneous pointing out that the responsibility of the law officer cannot be fulfilled by a summary reference to a Manual discussion, and the law officer's referring the Court to the Manual did not cure the otherwise inadequate instruction.

The law officer in *U. S. v. Drew* (Case No. 422, 23 July 1952) failed to instruct the Court on the effect of intoxication in relation to the crime of assault with intent to commit voluntary manslaughter and upon the possibility of findings on lesser included offenses. The law officer also failed to provide the Court with a definition of voluntary manslaughter. The Court of Appeals reversed an Air Force board of review, which had affirmed the Court's findings of guilty, stating that the failure of the law officer to define voluntary manslaughter, to indicate the legal effect of proof of intoxication, and to define the applicable lesser included offenses raised as alternatives by the evidence constituted error.

U. S. v. Goddard (Case No. 331, decided 24 July 1952) presented to the Court a case in which the law officer's instructions concerning the elements of the offense of desertion were phrased in the alternative so that the Court could have found the accused guilty of desertion solely because of his absence rather than with a finding of intention to permanently absent himself. The error in the instruction might very possibly have resulted from an inadvertent use of the disjunctive "or" rather than the conjunctive "and", but the Court, however, held that the instruction constituted prejudicial error in that it permitted the Court to find the accused guilty of a greater offense based on

the elements of a lesser.

In *U. S. v. Cooke* (Case No. 307, decided 3 June 1952) on a trial for desertion with intent to avoid hazardous duty, the law officer in his instructions set forth an alternative standard of conviction based on an intent to remain absent permanently. The Court reiterated its holdings that the crime of desertion is limited to the particular intent charged and that failure to tailor the instruction to fit the intent charged constitutes error, but after reviewing the evidence, the Court concluded that the only evidence before the court-martial concerned intent to avoid hazardous duty and that there was no evidence upon which to predicate any other intent. It, therefore, affirmed the Army board of review, holding, that the accused was not prejudiced by the error in the instruction.

However, in *U. S. v. Johnson* (Case No. 498, decided 7 August 1952) where the evidence might well have sustained the conclusion that the accused had intent to avoid hazardous duty or to shirk important service, the law officer's multiple charge on intent was held to be prejudicial error.

In *U. S. v. Shepard* (Case No. 343, decided 25 July 1952) accused was charged with desertion, robbery, theft and sale of a government vehicle, impersonation of an officer and a number of other offenses growing out of an unauthorized absence of ninety days and the criminal activities of the accused during that period. The instruction of the law officer on desertion placed before the Court alternative intentions for its consideration. While there was no evidence of intent to avoid hazardous duty, there

was evidence of possible intent to shirk important service and/or to permanently absent himself. The equivocal instruction on the intention necessary to constitute the offense charged was held to be prejudicial error. On the charge of stealing and selling Government property, the law officer gave instructions on theft but none on sale and the Court of Appeals held it prejudicial error to have omitted an essential element of the offense charged. Other instructions of the Court, though not commended as models of clarity, were approved.

The failure of the law officer to instruct on the offense of assault with intent to commit voluntary manslaughter is a case where the charge was assault with intent to commit murder was presented to the Court in *U. S. v. Banks* (Case No. 382, 24 July 1952). The Court, after reviewing the evidence, held that the evidence afforded no basis for any lesser offense, but then observed that the law officer did fail to set out the elements of murder although he had defined assault. The Court held that it was necessary, for the Trial Court to have before it the elements of murder and that, therefore, the instructions of the law officer were inadequate requiring a reversal of the Army board of review, which had affirmed conviction of the charge. A similar case and holding are found in *U. S. v. Avery* (Case No. 809, decided 6 August 1952).

In *U. S. v. Cromartie* (Case No. 374, decided 6 August 1952), among other charges, the accused was charged with assault to do bodily harm with a dangerous weapon. The law officer failed to instruct the Court on the specific intent necessary to

constitute the offense but attempted to instruct the Court by reading from the Court-Martial Manual. The Court in reversing the Army board of review held that a specific intent was an essential element of the offense charged and that the law officer had an obligation to instruct the Court as to the elements of the offense and that the reading from the Manual constituted an inadequate instruction.

A Navy board of review was reversed in *U. S. v. Sheehan* (Case No. 776, decided 6 August 1952), a case in which the president of a special court failed to instruct upon the lesser included offenses or to properly cover the elements of the offenses.

On a charge of misbehavior before the enemy, the law officer in *U. S. v. Tubbs* (Case No. 428, decided 14 August 1952) instructed the Court that there was no lesser included offense in the case and advised the Court that they could not alter the specification. Reversing the Army board of review that affirmed the conviction, the Court of Appeals held the law officer erred in instructing the court that they did not have the right to find the accused guilty of a lesser included offense.

The question presented in *U. S. v. Keith* (Case No. 503, decided 30 July 1952) was whether there was prejudicial error in the law officer's holding a closed session with the members of the Court outside the presence of the defense counsel or the accused on two occasions: one, where the Court desired advice on the wordings for its finding by exceptions and substitutions, and secondly, after the findings had been announced, the Court sought

the advice of the law officer on matters affecting the sentence. The Court of Appeals held that the first consultation with respect to the matter of form of the findings was proper under Article 39, but that the second consultation with respect to matters pertaining to the sentence was in violation of Articles 26 (b) and 39 and constituted error. The Court held as a matter of policy that the error thus committed was prejudicial since it was clearly contrary to the Congressional intention to remove the law officer from participation in the determination of finding and sentence. Similar questions were raised and decided by the Court in *U. S. v. McConnell* (Case No. 596, decided 31 July 1952), *U. S. v. Smith* (Case No. 512, decided 6 August 1952), *U. S. v. Cadena* (Case No. 713, decided 6 August 1952), and *U. S. v. Wingert* (Case No. 785, decided 8 August 1952).

DUTY OF TRIAL COUNSEL

In *U. S. v. Nash* (Case No. 447, decided 7 August 1952), the accused was charged with desertion based upon an unauthorized absence of about two months. The trial was conducted under the Articles for the Government of the Navy. The trial judge advocate in his closing argument in commenting upon the evidence told the Court that it is impossible to leave the Marine Corps for forty days and not intend to desert and said that the absence here was with intention to desert and there was no question about it. The Court in reversing a Navy board of review which had affirmed the conviction, reviewed the duties of the trial judge advocate, not only as prosecutor but as advisor to the

Court and the accused, asserting that he was required to maintain on issues of law an impartiality based on accurate knowledge. The Court held that the closing argument of the trial judge advocate amounted to an instruction for a finding of guilty of desertion and that the argument constituted a violation of his duty.

CONDONATION OF OFFENSES BY RESTORATION TO DUTY

In *U. S. v. Miner* (Case No. 315, decided 30 July 1952), the accused, for the first time on petition for review by the Court of Appeals, asserted the defense of condonation of his absence without leave on the ground that after the termination of his absence and return to his unit, he continued to perform his usual duties. Without deciding the question, the Court stated that the doctrine of constructive condonation is limited by the Manual to the offense of desertion and had never been extended to other offenses. It affirmed the Army board of review which had approved the conviction on the ground that the defense had not been raised during the trial and that there was no evidence to establish that the restoration to duty was by an officer exercising general courts-martial jurisdiction with knowledge of the pending charges. On appeal also, the defense of condonation was raised in *U. S. v. Walker* (Case No. 352, decided 30 July 1952), a case where the charge was cowardly conduct. The Court held that the defense could not be a plea in bar to the offense of misbehavior before the enemy and re-affirmed the rules that condonation can be established only by restoration to duty by

an officer exercising general courts-martial jurisdiction with knowledge of the charges and that the defense would have to be raised by appropriate motion at the trial.

In a desertion case, the defense of constructive condonation raised on appeal was rejected on the same grounds in *U. S. v. Perkins* (Case No. 478, decided 30 July 1952).

JURISDICTION OVER CIVILIANS

In *U. S. v. Marker* (Case No. 281, 19 May 1952), the accused, a Department of the Army employee, held the position of production superintendent in a tire plant in Tokyo. The plant was being operated under contract with a Japanese corporation for the Army and under the supervision of occupation personnel. Through his official connection with the operation, he caused to be given him by the Japanese corporation a number of gifts and required expenditures for his personal use and pleasure. Upon charges under AW 96, the accused was convicted and the Army reviewing authorities upheld the conviction. Among the questions before the Court was the question of jurisdiction over a civilian. The Court held that he was "accompanying or serving with the Armies of the United States" under Article of War 2 and was, therefore subject to military law.

In *U. S. v. Schultz* (Case No. 394, decided 5 August 1952), a civilian was tried by general court-martial on charges alleging involuntary manslaughter and drunken driving in Japan. The accused was found guilty of negligent homicide in violation of Article of War 96. The principal question raised was jurisdiction of the court over a civilian. The ac-

cused was not employed by the Armed Forces, but had been a manager of a non-appropriated fund club. After the facts giving rise to the charges, the accused reverted to a status of commercial entrant thus beoming the same as any other member of the civilian population of Japan. The Court of Appeals concluded that the court-martial did not acquire jurisdiction over the accused as a person subject to military law under Article of War 2, but that it did have jurisdiction over him as a person subject to the law of war under Article of War 12.

SEARCH AND SEIZURE

In U. S. v. Doyle (Case No. 265, decided 20 May 1952), the accused was tried and convicted of larceny. Clothing belonging to others found in the accused's locker in an inspection conducted by a non-commissioned officer was introduced as evidence at the trial. It was contended that this evidence was inadmissible as having

been obtained by an unlawful search of the accused's locker. The Court affirmed the conviction stating that the military commander had the power to search military property within his jurisdiction and necessarily the right to delegate this power. It found that complaint made to the NCO concerning the loss of this property and its having been seen in the possession of the accused was reasonable and probable cause for the NCO to believe that an offense had been committed by the accused, and, therefore, justified the search. In another charge against the same accused, a civilian search warrant had been secured for the search of accused's automobile to determine whether or not he had stolen accessories in it. During the search, a Naval NCO present discovered an item of Government property which was the basis of another charge of theft against the accused. The Court held that this evidence was legally seized and properly used at the trial.

Your professional successes, important cases, new appointments, political successes, office removals, and new partnerships are all matters of interest to the other members of the Association who want to know "What The Members Are Doing." Use the Journal to make your announcements and disseminate news concerning yourself. Send to the Editor any such information that you wish to have published.

A strong Association can serve you better. Pay your annual dues. If you are uncertain as to your dues status, write to the offices of the Association for a statement. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

WHAT THE MEMBERS ARE DOING

CALIFORNIA

Col. John P. Oliver, Van Nuys, recently attended the instructors conference of the JAG School at Charlottesville, Virginia. While in the East, he stopped in Washington, D. C., and visited his many friends who knew him there when he was Legislative Counsel of ROA. He was admitted on motion of Col. Thomas H. King to the bar of the United States Court of Military Appeals. Col. Oliver has his offices for the general practice of law at 229 North Broadway, Los Angeles. During World War II, he was Staff Judge Advocate of the 7th Armored Division in the ETO.

DISTRICT OF COLUMBIA

Captain Sherman S. Cohen, USAFR, has recently established offices in Washington, D. C., for the general practice of law at 1010 Vermont Avenue, N. W.

Major Richard H. Love announces that John H. Bolgiano is associated with him in the practice of law with offices in the Denrike Building.

FLORIDA

Lt. Col. John Dickinson of St. Petersburg is serving as Circuit Judge in the Sixth Judicial Circuit of Florida sitting at St. Petersburg.

Col. Robert W. Wilson retired recently from his position as Patent Counsel with the Reconstruction Finance Corporation in Washington,

D. C. He is now living in Tampa. Col. Wilson is a past president of the Cleveland Patent Law Association.

GEORGIA

Maj. Edward B. Liles of Brunswick has just completed an extended tour of active duty and has resumed private practice of law at Brunswick.

ILLINOIS

Capt. Hugo Sonnenschein, Jr. of Chicago was recently elected to membership in the National Academy of Arbitrators.

MARYLAND

Lt. Weldon L. Maddox has recently completed a tour of extended active duty with the Army and has resumed general practice of law in the firm of Tingley & Maddox with offices in the Munsey Building, Baltimore.

MICHIGAN

Capt. Kenneth T. Hayes of Grand Rapids has announced the formation of the firm of Hayes and Davis for the general practice of law with offices in the Grand Rapids Bank Building at Grand Rapids.

OREGON

Col. Ben G. Fleischman of Portland is serving on the Annual Armed Forces Ball Committee, which event

is to be held in that city on Friday, December 5th at the Shrine Auditorium. He invites members of the Association in that area at the time to attend the party.

TEXAS

Capt. Riley E. Fletcher of Corsicana, formerly Assistant County Attorney of Navarro County, was recently appointed to fill the unexpired term of Maj. Hal H. Bookout, County Attorney, upon Maj. Bookout's resignation to enter on extended active duty with the Judge Advocate General's Corps of the Army. Capt. Fletcher was also elected County Attorney of Navarro County in the Demoratic primary.

UTAH

Col. Raymond R. Brady recently removed his office to the Brockbank Professional Building, Salt Lake City.

Brig. Gen. Franklin Riter, member of the Board of Directors of the Association, has been elected by Utah members of the American Bar Associ-

ation as a member of the House of Delegates of the A.B.A.

VIRGINIA

The Richmond ORC School, JAG Branch, under the direction of Maj. William G. Purcell as Director and Maj. Roswell P. Snead, Assistant Director, now has fourteen students, among whom, in addition to Majors Purcell and Snead, are the following members of the Association: Col. Edgar Allan, III, Col. Edward M. Hudgins, Col. Joe T. Mizell, Jr., Lt. Col. David G. Tyler, Jr., and WOJG Walter W. Regirer. Col. Tyler is the Division Judge Advocate of the 80th Infantry Division.

Col. John Alvin Croghan has established offices for the practice of law at 109 South Fairfax Street, Alexandria.

MEXICO

A. J. du Bouchet, Jr., resident at Mexico City, at the 30th Annual Convention of the Department of Mexico of the American Legion was elected National Executive Committeeman from the Department.

Use the Directory of Members when you wish local counsel in other jurisdictions. The use of the Directory in this way helps the Association perform one of its functions to its membership and will help you. You can be sure of getting reputable and capable counsel when you use the Directory of Members.

D. C. MEMBERS HONOR GENERAL HARMON ON REAPPOINTMENT AS TJAG - AIR

Major General Reginald C. Harmon, recently re-appointed for a four year term as Judge Advocate General of the Air Force, was honored by the Washington members of the Judge Advocates Association at a reception and supper held at the Naval Gun Factory, Officers Club, on October 27th. General Harmon's opposite numbers in the Army and Navy were present as were also Judges of the Court of Military Appeals. Two hundred members of the Association and their guests attended the affair.

The Honorable Paul W. Brosman, Associate Judge of the United States Court of Military Appeals made the principal address of the evening. His remarks are set forth here in full:

Mr. President, General Harmon, fellow members, and guests:

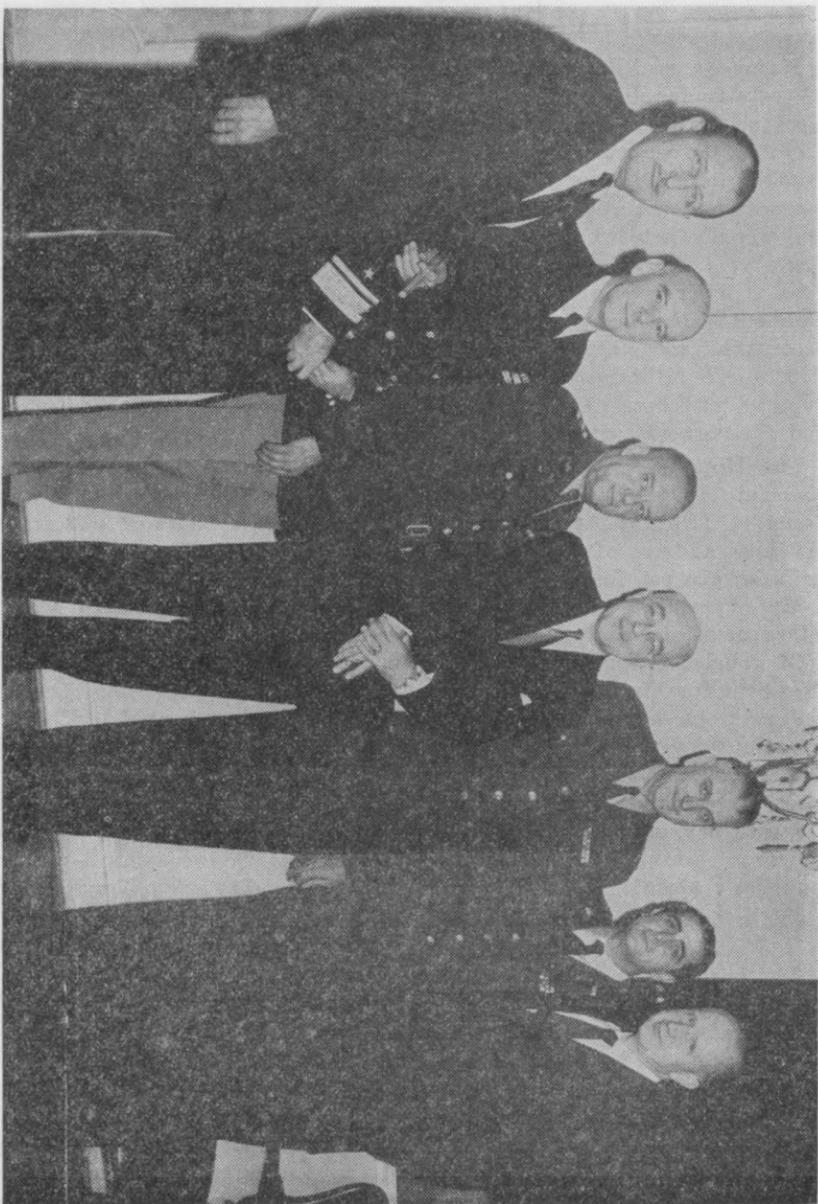
Of course, I must first thank our President for his very friendly not to say generous, introduction. While his remarks do not perhaps, strictly speaking, constitute moonlight and roses, they do distinctly fall within the category of unearned increment. However -- or perhaps, therefore -- I am most grateful to him.

There is an apocryphal anecdote in the writing profession which has to do with the neophyte who once asked a veteran literary hack how to open a short story. The youngster was advised to be certain that his initial sentence captured the attention of the reader by including at least hints of romance, of religion, of high fashion, of sex, and of mysteries to come. The beginner thereupon sat at his typewriter and hammered out

this unbeatable line: "My God, said the duchess, that handsome young man has run off with my garters."

I shall not, of course, attempt to include in my remarks this evening all of the elements mentioned by the journalistic mentor of the story. However, what I shall have to say to you will, I am afraid, consist of diverse ingredients, and will somewhat resemble a mixed grill, which may not be your favorite restaurant order. Actually, what began in the plans of Colonel Wade and our arrangements committee for this dinner as the presentation by me of the warm greetings of the Court of Military Appeals to General Harmon, our guest of honor tonight, has, by a very gradual-almost sly -- process of accretion acquired two further ingredients, and has been otherwise elevated to the point that it has reached the flattering status of principal address -- and I place the term in quotes. I refer to this perhaps unnatural growth solely for the purpose of setting your minds at rest. There is a principal address this evening -- you will be reassured to know -- and I am charged with the duty of delivering it. Indeed, the committee seemed to feel that some such fancy article -- whatever its quality -- should be included within the program represented by a four dollar ticket.

You must be told, of course, of the nature of the two additional ingredients. In the first place, I am especially requested to tell you something of judge advocate activities at and news from the recent meeting of the Ameri-



At dinner honoring General Harmon, left to right, Judge Brosman, Admiral Nunn, General Brannon, Colonel Avery, Chairman, District of Columbia JAA, General Harmon, Colonel Wade, in charge of arrangements, Judge Latimer.



A group picture of some of the guests at the Gen. Harmon dinner.

can Bar Association in San Francisco, and in the second I have been asked to report to you briefly on the state of the work of the Court of Military Appeals. I shall attend to these two latter matters within as short a time as possible, for I assure you that I propose to take full advantage of this coveted opportunity to felicitate for our Court the new -- perhaps I should say the only slightly used -- Judge Advocate General of the Air Force. This is really the most important job I have to perform.

Two principal military-legal gatherings were held during the San Francisco meeting of the Bar Association. The first of these in point of time was the annual dinner of the Judge Advocates Association, at which happily a large number of ladies were present. And the second was the same body's annual membership meeting. Both were held at the University Club there, and the former -- in keeping with ancient ritual -- was preceded by a certain amount of polite whiskey drinking. Colonel George Hafer of Pennsylvania, well, if not favorably, known to most of us here, served as toastmaster at the dinner, and -- also in keeping with historic form -- did a bang-up job. The principal address was delivered by Colonel Robert G. Storey, of Texas, new President of the American Bar Association. Colonel Storey had returned only shortly before the meeting from an air trip which virtually encircled the globe, during which he visited principal American military and naval installations throughout the world -- with particular attention to those scattered over Germany and in Japan and Korea. We simply could not have found a more interesting speaker nor

heard a more informing and timely talk. Not suprisingly, some of the things he had to tell us were disturbing -- not to say menacing. However -- and unfortunately -- when one considers the world scene today, one cannot avoid disquiet. Naturally too, Colonel Storey visited with judge advocate officers everywhere, and everywhere sought to inform himself concerning military law administration under the Uniform Code. As an old friend of his, I had a number of talks with him on this subject while in California, and on the basis of these, as well as his address at the dinner, I came away with a picture which is distinctly encouraging. Certainly the major reaction of judge advocates in the field to the changes embodied in the Code is both enlightened and healthy.

The Army, the Navy, and the Air Force were represented at the dinner by their Judge Advocates General, and all three members of the Court of Military Appeals were present.

On Wednesday afternoon of the Bar Association week the Judge Advocates Association held its annual meeting presided over by its retiring president, Colonel Jack Ritchie, lately of Virginia, and now of Missouri. In addition to the transaction of routine business, talks were made by General Brannon, Admiral Nunn, and General Harmon. Judge Latimer represented the Court of Military Appeals. General Brannon gave us a number of court-martial statistics of significance as reflected in the records of his office; Admiral Nunn discussed some of the current law administrative problems of concern to the Navy; and General Harmon dealt principally with the Air Force's

Reserve judge advocate training program. Judge Latimer spoke briefly of the work of the Court and some of the difficulties its people are having to meet.

Colonel Oliver P. Bennett, of Iowa, was elected President of the Association for the ensuing year, and of course our own Major Dick Love continues as Executive Secretary. Other officers were chosen as follows: Secretary, Colonel Thomas H. King, of the District; Treasurer, Lt. Col. Edward B. Beale, also of the District; 1st Vice President, Lt. Col. Joseph F. O'Connell, of Massachusetts; and 2d Vice President, your speaker. Colonel John Ritchie III, last past President of the body, was named as House of Delegates Representative.

Now a word about some of the doings of the American Bar Association, as distinguished from those of the Judge Advocates group. As most of you know, three agencies of the Bar Association of special interest to this audience have functioned during the past several years. The Section of Criminal Law has had its own Committee on Military Justice. In addition the Section of International and Comparative Law has included within its program an excellent Committee on Military, Naval, and Air Law. And finally, there has existed as an agency of the Association itself a body known as the Special Committee on Military Justice. It is my understanding that each of these groups will continue in its present status during the coming year. The first of them is headed by Colonel Edward F. Shattuck, of California, and the second by Brigadier General Robert W. Brown, with Lieutenant Colonel James K. Gaynor, as

Vice Chairman. Both of these gentlemen are presently on duty in the Office of The Judge Advocate General of the Army. Because the third body -- the Special Committee -- has been something of a storm center of late, and because it is an Association agency rather than that of one of the Association's subdivisinal Sections, you will perhaps be interested in a somewhat more complete report on its new membership. The new Chairman is Judge James M. Douglas, of Missouri, and the following persons constitute the Committee's roster: Ralph G. Poyd, of Massachusetts; Stephen F. Chadwick, of Washington; Oswald S. Colclough, of the District of Columbia; Harry W. Colmery, of Kansas, William H. King, of Illinois, and George A. Spiegelberg, of New York.

I suspect that most of us here know the bulk of the new membership by reputation, if not personally, and I shall not identify them further. Judge Douglas, the new Chairman, however, has not earlier been active in Judge Advocate affairs, and I must tell you something of him. A former Chief Justice of the Supreme Court of Missouri, he recently resigned from that Court to re-enter the practice of law in St. Louis. Active in bar organization work for many years, he has been especially interested of late in the program of the American Bar Association's Section of Judicial Administration. Although he was not on military duty during World War II -- like another eminent Missourian -- he served overseas as a Field Artillery officer during the First World War, and was thereafter a member of the Army of Occupation. He also saw service on the Mexican Border in 1916. He is 56 years old. I have known

Judge Douglas for a long time and assure you that he is a distinguished citizen, lawyer, judge, and soldier. He will contribute much, I know, to the work of this important Bar Association agency.

Before closing this portion of these remarks, I should tell you of two mild agitations involving this Committee which developed in San Francisco or shortly before. One had to do with elevating the group from Special Committee to Standing Committee status, and the other with broadening somewhat the scope of its interest and activity. The first of these proposals requires little explanation beyond the statement that the suggested action would elevate the body to a level of somewhat greater dignity and permanence within the American Bar Association. The second involves the notion that the Committee's jurisdiction -- and resultantly its name -- should be widened to include fields of law other than military justice that is, service criminal law. The argument here is, of course, that military justice is only one phase of the military law in which the bar -- military and civilian -- is interested, and in which its members participate professionally. The second agitation was weaker than the first, I should say, and did not reach the stage of a formal proposal. However, the first one did take such a form -- although it was opposed in some quarters, and was ultimately withdrawn. In my opinion there is much to be said for both ideas, and I earnestly hope they will be accorded full Association consideration at some later time.

To date I have been wearing the hat of a reporter on Bar Association

judge advocate affairs. Now I must don my judicial helmet -- not the hanging cap of an earlier day, but another one -- and in the little time that remains to me and pursuant to instructions tell you something of the state of the docket of the Court of Military Appeals. At the close of business last Saturday, October 25, 1689 cases had been docketed with our Clerk. It should be remembered that this is a work load which has accumulated during a period of approximately one year only. Although the Court has had a *de jure* existence spanning a somewhat longer period, actually it took some time for court-martial records to reach us. For practical purposes, therefore, we regard ourselves as having been in business since September 1951. Of these 1689 cases, 1604 came to us on petition, 85 by way of certificate, and 10 were mandatory death cases. Naturally the bulk of our case load has come from the Army. It is by far the largest force; and under combat conditions its people naturally are more often found in situations conducive to the commission of certain sorts of offenses at least. The Navy has been next most productive of records for our consideration, with the Air Force and the Coast Guard following in that order. As of last Saturday final action had been completed on 1272 of the 1689 docket items mentioned.

The first hearing session was held on 7 September 1951 and the first opinion of the Court -- the *McCrary* case of song and story -- was filed on 8 November. Since that time 161 written opinions have been published and 7 are pending from last term. It would appear, therefore, that the

past year's work when completed will include 168 written opinions. Shortly, I am sure, all 1952 pending opinions will be published. I know they are written. Some are in the Clerk's office awaiting mimeographing for service distribution, and some are knocking about the Court trying to buy concurrences. I know too that several are being held up awaiting the preparation of dissents or separate concurrences. I recall that I am the source of this last sort of delay in two cases, and I am also aware that publication of two of my own opinions is awaiting the preparation of dissents by Judge Latimer, my dearest friend and severest critic.

As you are probably aware, the new 1953 term began this month. We have sat nine days thus far in it and have heard arguments in 31 cases. Six of these 31 cases have already produced opinions. None of these has been published. Normally we will sit during only two of a month's four weeks. We have found by sad experience that if we sit more frequently, we simply do not get our opinions written. We are beginning the new term with a backlog of slightly more than 100 cases. Petitions, you will be interested to know, are coming in at the rate of approximately 200 per month. Although some may not have been able to accept all of our published product with the most complete approval, I believe you will agree that, on the basis of judicial comparisons, it has been, and bids fair to continue to be, reasonably substantial quantitatively -- given the three judge size of our bench.

In concluding what I have already somewhat insecurely told you is a principal address, it is my very pleas-

ant duty to present to General Reg Harmon my own warm greetings, and those of my colleagues on the Court, and to congratulate first, the Air Force on the sound judgment it has displayed in renaming him as its Judge Advocate General; second, military law administration in general on its good fortune in securing his services during another hitch, and finally, General Harmon, himself, on having signally demonstrated that he was able to afford complete satisfaction to his bosses during his first term of employment. I do these things with all of my heart. There will doubtless be a time when the Air Force will function with another Judge Advocate General, but I assure you General Harmon, that all of us here tonight hope that this era may be postponed for as long a time as possible.

Because I have lived almost exactly one-half of my life in the South, many friends even of long standing have come to identify me with that section, and do not know that I am a native of Illinois -- the home -- as you all know -- of beautiful women and brave men. A friend of mine in New Orleans -- a rather fancy gent in the surgery line -- has lived there for many years, but was born in South Dakota. His wife, an equally impressive person, is no more a native of the parts, but was born in Chicago. Their children, of course, had been reared in Louisiana and during their childhood were, on the one hand, immensely proud of being Southerners, and on the other, deeply ashamed of their parent's regrettable Northern origin. The eldest of these was one John at the time of this story, about a dozen years old who, to his

abiding sorrow, had been born in Madison, Wisconsin. Late one Friday afternoon -- some years ago -- John was sitting minding his own business in his school assembly-room when the teacher, understandably trying to beat in time until the dismissal bell, decided to do something outside the usual routine. "Well, children," she said, all merry and bright, "I'll tell you what we'll do. Each one of us will stand by his desk and will tell the others exactly where he was born." So up arose one after another of the little brats and proudly announced origins in New Orleans, Shreveport, Baton Rouge, or where have you. John, of course, saw what was coming and decided to do all he could to remove the curse. When his turn came, he arose and with a good deal of ducking and foot-shuffling he muttered that he was born in Madison, Wisconsin. But, he hastened to add, his parents didn't really live there at the time. As a matter of fact, he said, they were just passing through. One really got the distinct impression that John had been casually dropped in Madison as his mother was hurrying back to the South. The teacher, of course, welcomed an opportunity to stretch out the exercise, and promptly followed through. "Well, John, that's very interesting," she said. "You must now tell us just how your parents came to be in Madison at the time of your birth." "Well," said John, "I'm just not sure, but I really believe they were on their honeymoon." As John's father tells the story, he usually waits for the laughter to subside on the first branch of the story, and then supplies the kicker. "The moral of this is, you see," he frequently says, "is that John

would rather have been a bastard than a Yankee."

Now, I don't feel at all like this. And I hereby certify that I am just as proud of my Illinois birth and upbringing as I am of my later identification with Louisiana and New Orleans. Of course, one of the principal reasons for my real pride in Illinois is the fact that Reg Harmon came from there. As a matter of fact, he and I were born there at about the same time -- he's really not much older than I as he looks -- and about fifteen miles apart -- and -- unlike John's -- our parents *lived* there. Moreover, we were in college and law school together at the University of Illinois -- and it wasn't so very long ago. In addition, we served together in the old Army Air Force during the last war, and later on he became my boss. He was, I assure you, one of the very best I ever had -- and I'll be damned glad to have him as a chief again whenever he likes.

There is a distaff side to this business, you know, and it would ill become me to fail to recognize it. Someone has said that behind every successful man there is a woman who has had just about as much to do with his achievements as he has -- and General Harmon constitutes no exception to this principle. Doris Harmon is most certainly behind the General in every nice and proper way -- and if you want to know the truth, she's not very far behind him. She is a lovely, talented, and gracious person, and we all greet her with just as much sincerity and warmth as we do her distinguished husband.

Actually, there is another woman in the General's life -- but unfor-

tunately there is not a smell of scandal in this statement. I am referring to Miss Susan Harmon, who would certainly be with us tonight, if she were not so young and the hour so late. Luckily, I have met this "other woman" on several occasions, and I can assure you that she has her mother's beauty and

brains and her father's brains. Reg Harmon was just as fortunate in securing her as he was some years earlier in securing her mother.

I have trespassed on your evening much too long -- and, besides, our guest is entitled to a few moments of rebuttal. Thank you for listening to me.

NEW MEMBERS

There follows a list of members who have joined the Association since the supplement to Directory of Members published in Bulletin No. 11. Changes of address occurring during that period are not noted, but will be included in the Directory of Members, 1952, which is in the course of preparation.

Capt. C. Edwin Barnes
680 Beachview Dr., Garnier's Beach
Fort Walton, Florida

Sherman J. Bellwood
Rupert, Idaho

Jacob J. Boesel
Ohio Edison Company
47 N. Main Street
Akron, Ohio

Lt. George H. Cate, Jr.
2001 Greenwood Avenue
Memphis, Tennessee

Lt. Kenneth H. Clapper
91st Infantry Division Road
Apt. 111-K, Gaffey Heights
Fort Knox, Kentucky

John E. Coleman
801 Gas & Electric Building
Dayton 2, Ohio

Lt. Harland B. Cope
JAGO, Navy, Consultant Division
The Pentagon
Washington 25, D. C.

Charles W. Creighton, Sr.
218 N. Liberty Street
Salem, Oregon

Maj. William B. Eades, Jr.
Box 220, OMS
APO 208, % Postmaster
New York, New York

Col. Claude E. Fernandez
The Judge Advocate General's School
Charlottesville, Virginia

Wallace B. Foster
223 E. 16th
Hutchinson, Kansas

Hugh T. Fullerton
2441 Tracy Place, N. W.
Washington, D. C.

Lt. Col. Eugene M. Gant, Jr.
Apt. 27, 1420 Mt. Vernon Mem. Blvd.
Alexandria, Virginia

John E. Lappin
3511 Davenport Street, N. W.
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Recent Deaths

Col. Irvin Schindler died at his home in Arlington, Virginia, on September 23, 1952, of a heart attack. At his death Col. Schindler was Chairman of Board of Review #5, JAGO, and formerly Chief of Claims Division and a member of the Judicial

Council. Col. Schindler was 48 years of age at his death, was from Salt Lake City, Utah, and had been in the Regular Army since 1926. He graduated from the University of Virginia School of Law in 1941 and was a member of the bar of the

Commonwealth of Virginia. He was a charter member of the Association.

☆☆☆

Lt. Col. Charles B. Warren, Jr., a charter member of the Association, died in Detroit, Michigan, on September 26, 1952. Col. Warren was 46 at his death and was a member of the law firm of Hill, Essery, Lewis and Andrews. He lived at Grosse Pointe Farms, Michigan. Col. Warren received his law degree at Harvard in 1931. During World War II, he served as Chief of the Far Eastern Division of the War Crimes Office.

☆☆☆

Maj. Albert Lee May of White Stone, Virginia, died on August 20, 1952, at the age of 55. Major May was a graduate of the University of Georgia and of LaSalle University, Chicago. He was admitted to the bar of the State of Florida in 1927 where he engaged in the general practice of law at Jacksonville until 1943. Major May served with the 78th

Field Artillery during World War I and served as Judge Advocate Officer at Camp Davis, North Carolina and at Camp Croft, South Carolina during World War II. He was a charter member of the Association.

☆☆☆

Col. Reginald C. Miller died suddenly at his home in Falls Church, Virginia, on October 27, 1952. At his death, Col. Miller was the Executive to The Judge Advocate General of the Army. During World War II, Col. Miller was on the staff and faculty of the JAG School at Ann Arbor, Michigan, and he served as Staff Judge Advocate of the Panama and Caribbean Defense Areas. He was a native of Lincoln, Nebraska, and a graduate of the University of Nebraska School of Law. He was ordered to active duty as a reserve officer in 1940 and later commissioned in the regular Army. He had been a member of the Association since its founding.

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