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# THE ARMY'S NEW JUDGE ADVOCATE GENERAL

By Colonel Frederick Bernays Wiener, JAGC, USAR

Little did I realize, when Captain E. M. Caffey, JAGD, walked into my office in the Interior Department in the Fall of 1934 to discuss a matter relating to Puerto Rico, that I was seeing for the first time the officer who was to become the 21st Judge Advocate General of the U. S. Army.<sup>1</sup> And little did he realize, a year and a half later, when he administered to me the oath of office in connection with my first commission as Captain JAG-Res., that he was fixing the longevity-pay datum point for a future biographer.

Eugene Mead Caffey was born on 21 December 1895, in Georgia, in a modest but Southern home. One of his grandfathers was a Confederate veteran, the other had fought for the Union. His father, Lochlin W. Caffey, volunteered for service in a Georgia regiment during the Spanish-American War, served further in the ranks and as a lieutenant in the 40th U. S. Volunteer Infantry, and then was commissioned in the Regular Army in 1901, being transferred to the 15th Infantry in 1902.<sup>2</sup> When that historic body of foot went on foreign service, the dependents fol-

lowed along, and there are distinguished officers now living who still relate how young Gene learned to shoot with bows and arrows at the goats that were tethered in the vicinity of what, in those benighted days, was known as Suds Row. The difficult phase of this operation, so the young lad is quoted as having remarked contemporaneously, was pulling the arrowheads out of the targets. At any rate, while accompanying the 15th Foot, in the Philippines and in China, the prospective successor to Holt and Lieber and Crowder, so far as evidence now available indicates, did not have a legal thought in his head.

But he grew up, all in due course, and in July 1915 went to West Point, to become a member of the Class of 1919 at the famous educational institutional there located, the V. M. I. of the North, sometimes also known as Hudson Tech. Because of the accelerated courses consequent upon the first World War, he graduated on 12 June 1918, and on that day was commissioned Second Lieutenant, First Lieutenant, and Captain (temporary) in the Corps of Engineers. When the Armistice was signed he was in command of a company of the 213th Engineers of the 13th Division, in training at Camp Lewis, Washington.

Thereafter, while on foreign service, he had his first real taste of law: he was the demon TJA of the Panama Canal Department, and in that capacity contributed to sending numer-

<sup>1</sup> See Fratcher, *Notes on the History of the JAGD, 1775-1941*, 1 JAJ (15 June 1944) 5, for the listing up to 1941. Three Judge Advocates General, Colonels Tudor, Lawrance, and Edwards, served in the Revolutionary Army.

<sup>2</sup> Lochlin W. Caffey, 1868-1942. Colonel, Infantry, temporary, 1918; Colonel, Infantry, permanent, 1927; retired 1932.

ous miscreants to stockades, guardhouses, penitentiaries, and enrollment in that special Leavenworth course, the one for ex-officers at the U. S. D. B.

Then followed service in Chile, in connection with the Tacna-Arica Plebiscite Commission headed by General Pershing; and in Nicaragua, where he assisted in exploring the alternative canal route. When he returned, he applied for detail with the J. A. G. D.; enough of engineering. He was accepted, and was sent to the University of Virginia Law School. While there, he was elected to membership on the Board of the Virginia Law Review, and in his third year was the Virginia Section Editor of that periodical.

The contributions in volumes 18 and 19 Va. L. Rev. signed "E. M. C." reflect a critical outlook, a sensible approach, and a mature style;<sup>3</sup> any lawyer would be proud to have written them while still a student.

But, although he had been admitted to the Virginia bar in September 1932, and on graduation in June 1933 became an LL.B., the subject of this sketch could show little by way of tangible military advancement. His wartime captaincy had lapsed in February 1920; back he went to one bar. With the effective date of the National Defense Act of 1920, he became a Captain the second time. It

<sup>3</sup> *Equity—Effect of Declaratory Judgment Statutes on Jurisdiction*, 18 Va. L. Rev. 338; *Payee of Negotiable Instrument as Holder in Due Course*, 18 Va. L. Rev. 660; *Principal and Surety—No Limit on Hired Surety's Liability*, 18 Va. L. Rev. 690; *Mechanics' Lien—Application to Church Property*, 19 Va. L. Rev. 306.

was not for long, however. The reduction of 1922 made him a lieutenant again, and it was not until 1 July 1933 that, for the third and last time, he was promoted to Captain. (Judge advocates unhappy about their promotion prospects will therefore be well advised to seek consolation from persons other than their present chief.)

Then, after a tour of duty with the 1st Cavalry Division at Fort Bliss, Captain Caffey was ordered to The Judge Advocate General's Office for duty with the Insular Affairs Section. In this capacity he represented the Government of Philippines in the courts, the last of a long line of such representatives, among whom had been Magoon (of Magoon's Reports) and Mr. (now Mr. Justice) Frankfurter.

While in JAGO, Captain Caffey argued one Philippine case in the Supreme Court,<sup>4</sup> an unusual experience for a junior officer, though in this instance a somewhat disconcerting one, because although the judgment below was in his favor, he lost the case to a Philippine lawyer who never left Manila!<sup>5</sup> While there also, Captain Caffey participated in the litigation involving the secured deposits made by the Philippine Government in national banks that later became insolvent, in issues which were finally resolved, favorably to the Government's contentions, in the companion cases of *Inland Waterways*

<sup>4</sup> *Bengzon v. Secretary of Justice*, 299 U. S. 410.

<sup>5</sup> "Argued by Mr. Eugene M. Caffey for the respondent, and case submitted by Mr. Pedro Y. Ylagen for the petitioner." J. Sup. Ct., Oct. T. 1936, p. 98.



U. S. Army Photograph

**MAJ. GEN. EUGENE M. CAFFEY**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**

*Corp. v. Young*<sup>6</sup> and *Woodring v. Wardell*.<sup>7</sup>

In 1938, Captain Caffey was assigned as judge advocate at the Infantry School, where, in the Spring of 1940, he was finally promoted to Major. His had been the first class since the Spanish War whose members had served more than twenty years in the company grades. Later in the same year, when the 4th Division was activated at Fort Benning, he was transferred there as Division Judge Advocate.

By early 1941, however, it became obvious that war was probable. War service at the judge advocate's desk, however, did not conform to Major Caffey's notions of where his duty lay. *Inter arma silent leges* affects individuals as well as institutions. So, after learning that the lads with the *Essayons* buttons were prepared to welcome him back to the fold, he applied for and was granted a retransfer to the C. E., effective February 1941, with station still at Benning and assignment to the 20th Engineers.

At this point I must obtrude another personal note. The Base Lease Agreement had been signed, and the first Atlantic bases were about to be garrisoned. When, therefore, early in April 1941, General Gullion, TJAG, had asked me whether I would be interested in assignment there, and if so, at which base, I replied (after a night of anguished cogitation) that I was interested—on the theory that it would be my last chance for adventure—and that I would prefer Trinidad. (It was considerably larger than Bermuda and hence, or so I cal-

culated, substantially more unsinkable.)

By June 1941, in the quaint jargon of the Trinidad newspapers, I was "Judge Advocate of the American Forces", and we were all looking forward to being reinforced. Advance parties were on the way. Soon we learned that the 20th Engineers was coming, and then that its representative would be—yes, Lieutenant Colonel Caffey, C. E. Well, they cut orders announcing Lt. Col. Caffey, JAGD, as Sector Engineer. "Oh, no," I rushed to tell our Adjutant, "Colonel Caffey has gone back to the CE. He wrote me so!" But in the 1941 Army Register he was listed as "JAGD", and how could a Reserve Major be right and the Army Register wrong? Not until the new Engineer arrived in person, duly wearing castles, was the staff of the Trinidad Base Command convinced.

I shall always be grateful for the assistance, moral and otherwise, that Lt. Col. Caffey gave me during his too short stay in Trinidad. He was president and law member of the GCM, and president of the SCM. Thanks to his wise counsel, the members early learned that "I had three drinks, sir, and after that I don't remember a thing until I woke up in the guardhouse," was not necessarily a conclusively exculpatory circumstance. Thanks to the sentences his courts adjudged, also, crime became definitely less popular. And thanks to the Dig. Op. JAG citations to which he referred me, I was able on appropriate occasion to point out illegal features in proposed circulars—to no avail, of course. (This was the jurisdiction where the CG rearranged

<sup>6</sup> 309 U. S. 517.

<sup>7</sup> 309 U. S. 527.

the volumes of my law library according to size—all the tall books to the left of the shelf.)

In September 1941, Lt. Col. Caffey was recalled on emergency leave; he never returned to Trinidad, and the 20th Engineers never went there. Instead, he—by then a Colonel—and they sailed for North Africa, and in early 1943 participated in the Tunisian campaign, winding up in Bizerte. In the process, Colonel Caffey was awarded two decorations, a Silver Star for gallantry, and a Purple Heart for his jeep-driver's mistake. (The poor lad drove right over a German mine.)

Thereafter, Colonel Caffey was assigned to command of the 1st Special Engineer Brigade, and was with that unit in the Sicilian invasion and on Utah Beach at D-Day in Normandy. On the latter occasion, he was awarded the Distinguished Service Cross; here is the citation:<sup>8</sup>

For extraordinary heroism in connection with military operations against an armed enemy on 6 June 1944, in France. Colonel Caffey landed with the first wave of the forces assaulting the enemy-held beaches. Finding that the landing had been made on other than the planned beaches, he selected appropriate landing beaches, redistributed the area assigned to shore parties of the 1st Engineer Special Brigade, and set them to work to establish routes inland through the sea wall and minefields to reinsure the rapid landing and passage inshore of the following waves. He frequently went on the beaches under heavy shell fire to force incoming troops to disperse and move promptly off the shore and away from the waterside to places of concealment and greater safety further back.

<sup>8</sup> G. O. 161, Hq. Theater Service Forces, ETO, 1945.

His courage and his presence in the very front of the attack, coupled with his calm disregard of hostile fire, inspired the troops to heights of enthusiasm and self-sacrifice. Under his experienced and unflinching leadership, the initial error in landing off-course was promptly overcome, confusion was prevented, and the forces necessary to a victorious assault were successfully and expeditiously landed and cleared from the beaches with a minimum of casualties. He thus contributed, in a marked degree, to the seizing of the beachhead in France.

After conditions became more stabilized, Utah and Omaha Beaches were combined as Beach District, Colonel Caffey commanding.<sup>9</sup> Later, he commanded other Districts and Base Sections in Europe, and I can testify from personal observation during the Okinawa campaign, where the 1st Special Engineer Brigade had been shifted in early 1945, to participate in the initial landing, how the officers of that unit spoke nostalgically of the days when they had still been Gene Caffey's lads. (Comparisons, however invidious they may be, are none the less inevitable.)

The war over, Colonel Caffey was sent to the National War College, serving on a committee that undertook to standardize amphibious doctrine, and, on graduation, was ordered to engineer duties on the West Coast. But peace time engineer duty had as little charm as war time judge advocate duty, and in 1947 Colonel Caffey came back into the other fold, rejoining the JAGD.

<sup>9</sup> For Colonel Caffey's activities as an officer exercising GCM jurisdiction in this period, see Buck and Ford, *Military Justice in Normandy*, 2 JAJ (Summer 1945) 50.

The *Army and Navy Journal*, in a recent article, referred to the Caffey oscillations between law and engineering as the mark of a split personality. I prefer to regard them as a manifestation of the eternal struggle between things and thinking, between materialism and matters of the spirit, with, in this instance, virtue finally triumphant. After all, as I have remarked many times to the target of the present paper, "The only person dumber than a dumb lawyer is a smart engineer."

Beginning in 1947, Colonel Caffey was Administrative Officer (and *de facto* Exec.) in JAGO, primarily occupied with matters of personnel. In August 1948, he was transferred to Third Army as Army Judge Advocate, where he remained until the summer of 1953, when he was promoted to Brigadier General and assigned to JAGO as Assistant Judge Advocate General in charge of Civil Matters.

On 22 January 1954, the President nominated him to be Major General, The Judge Advocate General. While the nomination was pending, he was on 27 January, by direction of the President, designated Acting The Judge Advocate General, and on 5 February 1954, his nomination was confirmed and his promotion and permanent office took effect.

General Caffey will serve until 31 December 1957, just a month or so short of a full four year term. Those meeting him for the first time may be taken aback by his apparent outward sternness, and, seeing his combat ribbons, knowing of the many years he spent in engineering pursuits, may

suppose that he represents the traditional military "ironpants" attitude that has invited so many assaults on the law military.

They could not be more wrong. The present Judge Advocate General is a man who detests injustice. It may suffice to note that he had no hesitation in authorizing Government appellate counsel to confess error in the CMA—the first such confession in the history of that tribunal—and that, finding while serving on a screening board that an officer's record was adversely affected by an Article 69 case, he took steps to insure that case being further reviewed. Moreover, he insists that Boards of Review conduct themselves as independent judicial tribunals, standing on their own feet, carrying their own responsibilities, and not simply submitting draft opinions for approval.

General Caffey, furthermore, despises asininity. Discussion of detailed examples is unnecessary; suffice to say, however, that he has no patience with the comma-chasing excrescences that have attached themselves, barnacle-like, to so many aspects of JA work. He is an exponent of the principle that the only sure road to failure is to try to please everyone—and he has not consciously followed that road, nor has he ever suffered fools gladly, anywhere, or at any time.

Affirmatively, General Caffey is a practising exponent of the traditional military virtues—moral courage, a precise sense of honor, respect for the uniform and for the individual whom it clothes, and an abiding devotion to the notion that a military career is a

profession and not merely a salaried job with a promise of rapid advancement.

The present Judge Advocate General left the ranks of bachelordom on or shortly after his graduation from the Military Academy, and he and Mrs. Caffey have nine children, constituting a family that is remarkable in numbers—and in quality. The No. 1 boy is a doctor in Richmond, Va.; No. 2 boy is a Captain, CE (RA), in Korea; No. 3 boy is a civil engineer in Los Angeles. Girls Nos. 1 and 2

are married; and No. 3 girl, No. 4 boy, No. 4 girl, and No. 5 boy are attending schools and colleges. The last reported score on grandchildren was five.

Well, this is a biographical sketch that differs somewhat from the usual PIO handout. Perhaps it is a bit too personalized. But if it reads like an advocate's paper, that fact is a consequence of the many opportunities I have had, over so many years, to judge what manner of judge advocate Gene Caffey is.



## STATEMENT OF POLICY

The Judge Advocates Association, an affiliated organization of the American Bar Association, is composed of lawyers of all components of the Army, Navy, and Air Force. Membership is not restricted to those who are or have been serving as judge advocates or law specialists.

The Judge Advocates Association is neither a spokesman for the services nor for particular groups or proposals. It does not advocate any specific dogma or point of view. It is a group which seeks to explain to the organized bar the disciplinary needs of the armed forces, recalling, as the Supreme Court has said, that "An Army is not a deliberative body," and at the same time seeks to explain to the non-lawyers in the armed forces that the American tradition requires, for the citizen in uniform not less than for the citizen out of uniform, at least those minimal guarantees of fairness which go to make up the attainable ideal of "Equal justice under law."

If you are now a lawyer, if you have had service in the Army, Navy or Air Force or are now connected with them in any capacity, active, inactive, or retired, and if you are interested in the aims herein set forth, the Judge Advocates Association solicits your membership.

## A CLASSIC MISCONCEPTION: THE PRESUMPTION OF SANITY AS EVIDENCE

By Robert C. Taylor \*

(Prepared for the Institute of Military Law)

Although volumes have been written on the subject of mental responsibility for criminal acts, few authors have concerned themselves with the evidentiary problems that inevitably arise whenever sanity becomes an issue in a criminal case. For this reason appellate courts are prone to apply rules of criminal evidence to the issue of insanity without regard to the purposes for which those rules were formulated. Nowhere in our system of criminal jurisprudence is there a more striking example of a blind application of a legal conclusion than in the courts-martial structure of our Armed Forces, for in every court-martial in which the issue of the accused's sanity reasonably is raised, the triers of fact are instructed that they may consider all the evidence, including that supplied by the presumption of sanity.<sup>1</sup> It is this obvious misconception of the purpose of the presumption of sanity that furnishes the subject matter of this article.

Before analyzing the presumption of sanity in particular, it first is necessary to consider the general na-

ture of a presumption. Without attempting a detailed definition of the term "presumption", the better reasoned authorities maintain that presumptions are rules of law laid down by the judge as distinguished from inferences from facts, which are considered by the jury.<sup>2</sup> At all times, one must keep in mind that the peculiar effect of a presumption is to invoke the rule of law, thus compelling the jury to reach the conclusion in the absence of evidence to the contrary;<sup>3</sup> but if sufficient evidence to the contrary is offered, the presumption disappears as a rule of law, and the case goes to the jury free from any such rule.<sup>4</sup> Accordingly, the great weight of authority in the United States holds that a *presumption* (the rule of

<sup>2</sup> Wigmore, Evidence, Sec. 2490, 2491; Greenleaf, Evidence, Sec. 44; Thayer, Preliminary Treatise on Evidence, Appendix B; Wharton, Criminal Evidence, (11th ed.), Sec. 69 *et seq.*; Am. Jur., Evidence, Sec. -166; *Lincoln v. French*, 105 U. S. 614 (1881); *Mobile, etc. v. Turnipseed*, 219 U. S. 35 (1910); *Ariasi v. Orient Ins. Co.*, 50 F. 2d 548 (9th Cir., 1931); *Price v. United States*, 218 Fed. 149 (8th Cir., 1914); *Chambliss v. United States*, 218 Fed. 155 (8th Cir., 1914); Morgan, "Some Observations Concerning Presumptions," 44 Harv. L. Rev. 906 (1930-31); Fiske, "Presumptions," 11 Cornell L. Q. 20 (1925); Model Code of Evidence, Rule 704(2).

<sup>3</sup> Wigmore, *supra*, sec. 2491.

<sup>4</sup> *Ibid.*; *Lincoln v. French*, *supra*, at 617.

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<sup>1</sup> Manual for Courts-Martial, United States, 1951, par. 122a, page 202.

law) is not evidence to be weighed by the triers of fact.<sup>5</sup> Fortunately, the old, poorly reasoned decisions distin-

<sup>5</sup> Wigmore, *supra.*, sec. 2490 *et seq.*; Thayer, *supra.*, Appendix B; *Bollenbach v. United States*, 326 (U. S. 607 (1946)); *Guaranty Trust Co. v. Minn., etc.*, 36 F. 2d 747 (8th Cir., 1929); *Mullins v. Ritchie Grocer Co.*, 183 Ark. 218, 35 S. W. 2d 1010 (1931); *Jones v. Phillips Petroleum Co.*, 186 S. W. 2d 868 (1945); *Vincent v. Mutual Reserve*, 77 Conn. 281, 58 A. 963 (1904); *Wright v. Boston, etc.*, 74 N. H. 128, 65 A. 687 (1907); *Grier v. Penn. Coal Co.*, 128 Pa. 79, 18 A. 480 (1889); *Colangelo v. Colangelo*, 46 R. I. 138, 125 A. 285 (1924); *Peters v. Lohr*, 24 S. D. 605, 124 N. W. 853 (1910).

See 95 ALR 880 for similar holdings in the following states: Delaware, Indiana, Iowa, Nebraska, New Jersey, Oklahoma, Texas, Utah, Washington, and Wisconsin.

In *N. Y. Life Ins. Co. v. Gamer*, 303 U. S. 161, decided in 1938, the Supreme Court held that the presumption that death was due to accident rather than suicide is a rule of law; it is not evidence and may not be given the weight of evidence. In commenting on this, the editors of the American Law Reports in 114 ALR 1226 stated that the *Gamer* case brings the Supreme Court into accord with what is now the conventional view, namely, that a presumption is not evidence to be weighed by the triers of fact.

The law on this point had for many years in Connecticut been determined by the case of *Barber's Appeal*, 63 Conn. 393, 27 A. 973 (1893), wherein it was decided that the presumption of a testator's sanity was evidence to be weighed but the Connecticut Supreme Court adopted the majority view that presumptions are not evidence and expressly overruled *Barber's Appeal*. The rule of the *Vincent* case is now settled law in Connecticut, cf. *O'Dea v. Amodeo*, 118 Conn. 58, 170 A. 486 (1934).

guishing between "presumptions of law" and "presumptions of fact" have been discarded in the United States<sup>6</sup> and even in England.<sup>7</sup>

Although the majority of American jurisdictions now are following the better rule, there exists even today within the decisions of the Supreme Court of the United States a precedent to the effect that the presumption of innocence is evidence to be weighed by the jury. To illustrate the nature of this startling rule, a brief summary of events is necessary. In 1894, the Supreme Court decided the case of *Coffin v. United States*,<sup>8</sup> which was to become a landmark in judicial confusion.<sup>9</sup> At the trial level, the judge gave complete instructions on reasonable doubt, but no specific instruction was given as to the presumption of innocence. The Supreme Court thus was directly confronted with the issue of whether this failure to instruct was prejudicial error. In the course of the opinion the Supreme Court placed in print a statement that has caused repercussions from the moment of its presentation until the present time:

"This legal presumption of innocence is to be regarded by the jury, in every case, as matter of evidence, to the benefit of which the party is entitled."<sup>10</sup>

To support this astounding conclusion, the court cited 1 Greenleaf,

<sup>6</sup> Wigmore, *supra.*, sec. 2491; Thayer, *supra.*, Chaps. 8 and 9; Wharton, *supra.*; Morgan, *supra.*

<sup>7</sup> Denning, "Presumptions and Burdens," 61 L. Q. Rev. 379 (1945).

<sup>8</sup> 156 U. S. 432.

<sup>9</sup> Wigmore, *supra.*, sec. 2511.

<sup>10</sup> *United States v. Coffin*, p. 459.

Evidence, Sec. 34, a text offering no authority whatever for the rule announced.<sup>11</sup> Having concluded that the presumption of innocence was evidence in favor of the accused, the Court held that failure to instruct thereon was prejudicial error.

Condemnation of the *Coffin* case was almost immediate.<sup>12</sup> The most notable blast leveled at the faulty reasoning in that opinion was delivered by Professor James Bradley Thayer (who has been referred to as the master in the law of Evidence<sup>13</sup>) in a famous lecture, later reprinted as an appendix to his Preliminary Treatise

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<sup>11</sup> The following cases were cited by Greenleaf to support the proposition: *Edwards v. State*, 21 Ark. 512 (1860), which held only that a person charged in an indictment is a white person, in the absence of a showing to the contrary. *Case v. Case*, 17 Cal. 598 (1861), discusses only the inference of marriage drawn from cohabitation as a defense in a prosecution for bigamy.

*Goggans v. Monroe*, 31 Ga. 331 (1860), held that it was error to fail to charge that the plaintiff's character is presumed good until proved bad.

*McEwen v. Portland*, 1 Ore. 300 (1860), contains a discussion of the hearsay rule.

Professor Wigmore, who edited the last edition of Greenleaf's work, pointed out at the time the text was published that there was no authority whatever to support the cited proposition. In his own work, published in 1940, Wigmore dissects the erroneous theory expounded by Greenleaf and gives a detailed analysis of the harmful effect it produced upon our jurisprudence. See Wigmore, *Evidence*, sec. 2511.

<sup>12</sup> Wigmore, *supra*.

<sup>13</sup> *Id.*

on Evidence.<sup>14</sup> Thayer points out that the presumption of innocence is independent of evidence, being the same in all cases; and in all cases operating indiscriminately, in the same way, and with equal force.<sup>15</sup> He then concludes that the presumption itself, the legal rule, conclusion, or position, cannot be evidence.<sup>16</sup> Thayer turns also to Greenleaf's sentence, pointing out that Wigmore condemned it; *Taylor on Evidence*, the English handbook, omitted it; Chamberlayne, the editor of *Best and Taylor on Evidence*, denied it; and it does not even appear in Volume III of Greenleaf's own work dealing specifically with criminal cases.<sup>17</sup> So effective was Thayer's attack on the *Coffin* case that the decision was rejected in at least one state court<sup>18</sup>

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<sup>14</sup> The lecture was delivered at Yale University in 1896, one year after the *Coffin* case was published. His final words on the subject are worthy of note: "It is easy to say that legal presumptions are evidence. But as one who has long and attentively studied the subject of presumptions, I can only say that I know of nothing to support it in any sense which tends to sustain the reasoning of the opinion." Thayer, *Evidence*, Appendix B.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Supreme Court of Vermont overruled all prior precedents to the contrary in favor of Thayer's reasoning. Speaking in *Tyrell v. Prudential Ins. Co. of America*, 109 Vt. 6, 192 A. 184 (1937), that court noted the change from the *Coffin* case, praised Professor Thayer, and said: "Upon a careful reconsideration of the whole subject, and with a keen appreciation of the wide spread effect it will have upon our jurisprudence, but with a

and finally in the Court of its origin.<sup>19</sup> It now is the federal rule that the presumption of innocence is not evidence to be weighed by the triers of fact.<sup>20</sup>

The dangerous reasoning of the *Coffin* case nevertheless found its way into the leading decision of the United

<sup>18</sup> Continued.

firm conviction that a false doctrine has dominated the subject and persisted in our law too long already, we have now reached the following conclusion: A presumption, of itself alone, contributes no evidence, and has no probative quality."

<sup>19</sup> *Coffin v. United States*, 162 U. S. 664 (1896) (second appeal); *Agnew v. United States*, 165 U. S. 36 (1897); *United States v. Holt*, 218 U. S. 245 (1910); *Wilson v. United States*, 232 U. S. 563 (1914); *Casey v. United States*, 276 U. S. 413 (1928). Although *Coffin* has been cited many times, no later Supreme Court case has cited it for the rule under attack. In *Agnew* and *Holt*, the defendant expressly requested an instruction that the presumption of innocence was evidence in his favor; held, denial of such instruction was not error.

<sup>20</sup> In *United States v. Nimerick*, 118 F. 2d 464 (1941), the Court of Appeals, Second Circuit, said: "The presumption of innocence is not evidence. Later Supreme Court cases have modified, and perhaps even nullified, the views about the presumption of innocence expressed in *Coffin v. United States*."

And in *United States v. Schneiderman*, 102 F. Supp. 52 (1951), it was stated in effect that: The presumption of innocence is but the reverse side of the talisman which lays upon the prosecutor the burden of proof of guilt beyond a reasonable doubt before conviction. To ascribe greater weight or wider scope to the presumption of innocence would be to fall into the error of *Coffin v. United States*, which was corrected in *Agnew v. United States*.

States Supreme Court on the issue of insanity.<sup>21</sup> In *United States v. Davis*,<sup>22</sup> the Court announced the federal rule as to burden of proof in all cases wherein the sanity of an accused is raised; an accused is entitled to an acquittal of the specific crime charged if, upon all the evidence, there is reasonable doubt whether he was capable in law of committing crime.<sup>23</sup> In the course of the opinion, however, the court cites the *Coffin* case for the proposition that the presumption of innocence is evidence in favor of the accused; then, as if to balance the scales, the opinion states the phrase which today corrupts one of our military rules of criminal evidence:

"If the whole evidence, including that supplied by the presumption of sanity, does not exclude beyond reasonable doubt the hypothesis of insanity, of which some proof is adduced, the accused is entitled to an acquittal of the specific offense charged."<sup>24</sup> (Emphasis supplied).

Those eight words italicized are not a correct statement of the law! The presumption of sanity is a rule of law founded on the fact that men in general are sane.<sup>25</sup> It serves a specific purpose—it relieves the prosecution of the useless burden of proving san-

<sup>21</sup> Thayer, *supra*.

<sup>22</sup> 160 U. S. 469 (1895).

<sup>23</sup> *Leland v. Oregon*, 343 U. S. 790 (1952); *Matheson v. United States*, 227 U. S. 540 (1913); *Hotema v. United States*, 186 U. S. 413 (1902); *Holloway v. United States*, 148 F. 2d 665 (App. D. C. 1945); *Tatum v. United States*, 190 F. 2d 612 (App. D. C. 1951); *United States v. Gundelfinger*, 102 F. Supp. 177 (D. C., Pa. 1952).

<sup>24</sup> *Supra.*, note 22.

<sup>25</sup> Thayer, *supra*.

ity in every case, and thus supplies in the first instance the required proof of capacity to commit crime.<sup>26</sup> BUT THE RULE ITSELF IS NOT EVIDENCE AND CANNOT BE EVIDENCE!

Numerous state courts have recognized the distinction and have placed the presumption of sanity in its proper setting.<sup>27</sup> Nowhere is the rule better stated than in the case of *State v. Green*,<sup>28</sup> decided by the Supreme Court of Utah in 1931. In disposing of an instruction which allowed the jury to consider the presumption of sanity as evidence, that Court said:

"The presumption of sanity is not evidence and may not be so considered by the jury where there is evidence before the jury tending to show that the accused was insane at the time charged."<sup>29</sup>

To hold otherwise is to allow the triers of fact to weigh a rule of law on the one hand against facts in evidence on the other.<sup>30</sup> The difficulties arising from such a situation are so obvious that not one federal case sub-

sequent to *Davis* has suggested that the presumption of sanity is evidence.<sup>31</sup>

Insofar as the Armed Forces are concerned, the United States Court of Military Appeals has held that the rule of the *Davis* case requires the government, when insanity is placed in issue, to prove sanity beyond a rea-

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one side of the scale and the evidence tending to show insanity on the other side of the scale and thus determine the relative weight of the presumption of sanity as compared with the evidence of insanity. If by this process of comparison the jury should determine that the presumption of sanity was equal to or outweighed the evidence of insanity, then they must find the defendant sane. If, however, the evidence tending to show that the defendant was insane at the time of the alleged crime outweighed the presumption of sanity, then and not until then, was the jury at liberty to weigh the evidence bearing on the question of insanity. \* \* \* It [the weighing of evidence against a presumption] requires the jury to compare and determine the relative weight of evidence on the one hand with the presumption on the other hand. Such a task is fraught with so many difficulties as to render it well nigh impossible of intelligent solution, and is calculated to mislead and confuse the jury, especially in the absence of some rule of law whereby the weight of the presumption may be determined.

<sup>26</sup> *Supra.*, note 22.

<sup>27</sup> *State v. Gargano*, 99 Conn. 103, 121 A. 657 (1923); *Albman v. Malsbury*, 224 Ind. 177, 61 N. E. 2d 189 (1945); *State v. Jones*, 64 Iowa, 349, 17 N. W. 911 (1883), followed in *State v. Thiele*, 119 Io. 659, 94 N. W. 256 (1903); *People v. Cochran*, 313 Ill. 508, 145 N. E. 207 (1924); Wharton's Criminal Evidence, Sec. 78.

<sup>28</sup> 78 Utah 580, 6 P. 2d 177 (1931), cited with approval in; *State v. Pretymian*, 191 P. 2d 142 (1948).

<sup>29</sup> *State v. Green*, *supra.*, at 182.

<sup>30</sup> *Id.* at 183; after quoting the instruction given, the Utah court went on to say: "The clear meaning of the language just quoted is that it became the duty of the jury at the outset to place the presumption of sanity on

<sup>31</sup> Even the one or two state cases decided since *Davis* and favoring the view that the presumption of sanity is evidence are careful to use qualifying language. Cf. *Clifford v. Taylor*, 204 Mass. 358, 90 N. E. 862 (1910), explained in *Commonwealth v. Clark*, 198 N. E. 641 (Mass., 1935). And in California presumptions are treated as evidence by statute (Code of Civ. Proc., Sec. 1957) which explains the language in decisions such as *People v. Chamberlain*, 7 Cal. 2d 257, 60 P. 2d 299 (1936).

sonable doubt as well as the elements of the crime charged.<sup>32</sup> Thus, the *ratio decidendi* of the *Davis* decision has been correctly made a part of military criminal law.

Cases now pending before the Court of Military Appeals have squarely raised the issue under discussion.<sup>33</sup> Since the Manual for Courts-Martial specifically allows a court-martial to

<sup>32</sup> *United States v. Burns* (No. 847), 2 USCMA 400, 9 CMR 30.

<sup>33</sup> After the final draft of this article was prepared, the United States Court of Military Appeals handed down its opinions in the three cases involving the questioned instruction. In *United States v. Biesak* (No. 2676), decided 12 February 1954, although affirming the conviction, the Court discussed at length the argument presented on behalf of the defense. Judge Brosman, for the Court, then discussed in detail the problem involved. Although conceding that the "words of the Manual might properly be clarified," in the absence of a request for elaboration the opinion finds no prejudicial error in the instruction. It is the Court's view that the law officer in his use of the term "presumption of sanity" referred to a permissive, rather than a mandatory, inference, thus informing the court-martial that, apart from the existence of the presumption of sanity, they are free to consider through the lens of general human experience the "rational probability" that most men are sane. Further, the opinion holds that the instruction would be sustainable even if the word "presumption" had been used to connote a rule of law. Adopting a pragmatic approach, the Court reasons that the presumption of sanity would not vanish as a mandatory inference until the accused presented evidence that the triers of fact believed because (1) evidence bearing on sanity is peculiarly within the control of the accused, (2) insanity is easily feigned, and (3) if the presumption of sanity is easily

consider the presumption of sanity as evidence in favor of the government merely because this identical phrase was unfortunately uttered in the *Davis* case,<sup>34</sup> instructions to a court-martial on the issue of insanity inevitably include the phrase under attack.<sup>35</sup> Consequently, a decision by the Court of Military Appeals striking down as error such an instruction would remove an anomaly which has existed in military jurisprudence too long already.

It seems that such a clearly erroneous proposition can be justified only by arguing that this Manual provision does not conflict with any provision of the Uniform Code of Military Justice.<sup>36</sup> True, the President is empowered by Congress to prescribe modes of proof in cases before courts-martial<sup>37</sup> and he has done so by promulgating the Manual for Courts-Martial. In the absence of a conflicting Code provision, the argument runs, the Manual provision must pre-

rebuttable, an accused may escape conviction yet may avoid medical commitment because of the unavailability of evidence sufficient for an adjudication of insanity. See also *United States v. Johnson* (No. 2588) and *United States v. Walters* (No. 3449), decided by the Court of Military Appeals on the same day, and reaching the same conclusion on the instructional question, as the *Biesak* case.

<sup>34</sup> Legal and Legislative Basis, Manual for Courts-Martial, 1951, page 168.

<sup>35</sup> For example, the instructional guide published by the Department of the Army (DA Pamphlet 27-9) repeats the Manual provision verbatim in the sample instruction on sanity.

<sup>36</sup> 50 U. S. C. Secs. 551-736.

<sup>37</sup> Article 36(a), Uniform Code of Military Justice.

vail. Careful analysis, however, discloses two possible conflicts between the Manual statement that the presumption of sanity may be considered as evidence and the Uniform Code of Military Justice.

(1) Article 36(a) of the Uniform Code of Military Justice provides that the President, in prescribing modes of proof, *shall apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States District Courts.* (Emphasis supplied). It is submitted that the Manual provision under consideration is *not* the law today and never was the law in the federal courts! Eight words, taken out of context from *dictum* in the *Davis* case, have been molded into a rule of criminal evidence in spite of the fact that no federal case has expressly *held* that the presumption of sanity is evidence and in the face of recent federal decisions that the presumption of innocence is *not* evidence.

(2) Article 51(c)(1) of the Uniform Code of Military Justice provides that the accused must be presumed to be innocent until his guilt is established by legal and competent *evidence* beyond reasonable doubt. But if the members of the court-martial may weigh the presumption of sanity with the evidence introduced on that issue, then this *rule of law, of itself*, may be sufficient to tip the scales of doubt against the accused. In every case where the presumption is weighed as evidence, there is the danger that the triers of fact will be convinced that the accused is sane, whereas if that rule of law were removed from consideration, the fact finders would entertain a reasonable

doubt as to sanity. Until the provision here condemned is erased from the Manual, the purpose of Article 51(c)(1) will have been completely disregarded.

The steps here urged will have no drastic effect upon the outcome of trials by courts-martial. Removal of the offending phrase from the Manual will merely place upon trial counsel the burden that the government should have had in all cases wherein the issue of insanity reasonably was raised, *i.e.*, proving the sanity of the accused beyond reasonable doubt by legal and competent EVIDENCE! More psychiatric examinations, more testimony from friends and associates of the accused, more evidence of past medical history, will be required of the government in building its case for sanity.\* But is not this the duty of the government in *every* case and on *every* issue, to destroy reasonable doubt by overwhelming *evidence* from which the jury may infer guilt? Obviously, the government should not be allowed the benefit of a rule of law such as the presumption of sanity when at the same time the accused is denied an instruction that the presumption of innocence is evidence weighing in his favor. By placing the presumption of sanity in its proper setting, the administrators of military justice will leave every court-martial free to weigh fact against fact, testimony against testimony, unencumbered by a rule of law which has no place in the jury room. When this is done, the instruction of sanity now given in our court-martial system will completely *protect* rather than prejudice the substantial rights of every accused.

## THE FRENCH CODE OF MILITARY JUSTICE

By Lt. Col. James K. Gaynor, JAGC-USA \*

(Condensed from the *George Washington Law Review*, Vol. 22, No. 3, pp. 318-336, January 1954)

Napoleon in 1806 instituted many changes in the administration of military justice in France, designed to strengthen discipline. After his death, seven different legislative commissions functioned between 1814 and 1829 to revise the then-existing code of military law, but it was not until 1857 that a comprehensive military code was enacted. The present *Code de justice militaire pour l'armee de terre*—Code of Military Justice for the Land Army—was enacted March 9, 1928, was revised in 1932, and was further revised following World War II, although the latter was in minor respects.

There is but one type of court-martial under the French system, the *tribunaux militaire*. Military personnel may be tried by such military tribunal for offenses committed in the service, or on a military establishment, or involving the external security of the state. In time of war, the military court may try any person, military or civilian, in an active theater of operations, except that a person under eighteen years of age cannot be tried by the military court unless he is in the military service, and residents of enemy or occupied territory cannot be tried by the military tribunal unless they are prisoners of war, or are involved in criminal offenses in conjunction with French soldiers.

The French soldier who commits a purely military offense, such as insubordination or desertion, will be tried by the military tribunal, whether the offense is committed in time of war or peace. But if he is charged with an offense which is not purely military in character, such as murder or robbery, the prohibitory statute is found in the civil code rather than in the military code, and if the offense is committed in time of peace in France or in overseas French territory where local French courts are available, the accused will be tried by a civilian tribunal.

The French code describes a number of strictly military offenses of which counterparts are found in our Uniform Code of Military Justice, such as insubordination, desertion, mutiny, sleeping on post by a sentry, and running away from the enemy. Other offenses are described in the French code which, although punishable under our law, are not specifically spelled out in the Uniform Code of Military Justice. Among these are voluntary mutilation, insulting an inferior without provocation, and abuse of authority.

Desertion from the service, as a graver offense than unauthorized absence, is determined under French military law from the length of the absence. The French soldier who is absent more than six days, or who overstays his leave more than fifteen days, may be charged with desertion,

\* Executive Secretary, Institute of Military Law.

except that the soldier with less than three months of service will not be classed as a deserter until he has been absent a month or more.

The French code provides that punishment for crime, in general, shall be as provided by the *Code Penal*. The military code sets maximum, and in most cases minimum, sentences for specified military offenses, and it is provided that loss of grade may be adjudged as an accessory to punishment specified by the *Code Penal*. However, loss of grade does not automatically become a part of the sentence; this must be specified by the court, if it is to be applicable. Furthermore, loss of grade may or may not mean loss of right to pension or retirement pay. The code uses *destitution* as an all-inclusive term which results in loss of both grade and pension or retirement pay.

An example of a period of confinement specified by the French code is that provided for a conviction of desertion. For peace-time desertion within France, the punishment is not less than three months nor more than six years of confinement; but if the accused absents himself with military equipment, or if he is a second offender, the minimum sentence is a year of confinement.

A conviction by French court-martial results in a judgment for the costs of the action, to be assessed against the accused; a requirement that things wrongfully taken by the accused, in committing the offense, shall be seized; and a right of restitution to the state or to the owners of property taken by the convicted.

In the administering of non-judicial punishment, the French commander

is given considerably more power than that possessed by his American counterpart. The French commander may impose confinement of fifteen days, at company level, and higher commanders may impose longer periods of confinement, so that a division commander may impose a maximum of sixty days of confinement without resort to trial by a judicial body.

The French court-martial trial is preceded by a pre-trial investigation, and this results in the beginning of the *dossier* or file which finally is presented to the trial court; the members of the court-martial read and consider the entire file. French military law follows the civil law system; rules of evidence, as we know them, are not found, and the court may consider anything which it believes is of probative value, and such weight may be given as the circumstances indicate is merited.

*Le tribunal militaire permanent*, the trial court, consists of a civil magistrate as president, and six military judges. The presiding officer is a civilian judge, but not necessarily the chief judge, of the regional court of that geographical area. France is divided into military regions, and a permanent military court sits for each region. The soldier accused of a military offense, in time of peace, will be tried by the regional court rather than by a court appointed by a military commander.

The composition of the French military court is provided, in detail, in the code. For the trial of enlisted personnel, the military judges shall be a colonel or lieutenant-colonel, a battalion commander or major, a cap-

tain, a lieutenant, a second lieutenant, and a non-commissioned officer above the grade of corporal. For the trial of officers, the composition of the court is modified according to the grade of the accused, so that two members of the court are of the same grade as the accused, and other members are of higher grade.

The French prosecutor, *le commissaire du gouvernement*, is charged with the conduct of the trial. At least three days prior to trial, he must serve the accused with the charge, the text of the applicable law, and a list of the witnesses who are to appear for the prosecution. He must inform the accused, under penalty of the entire proceedings being nullified, that counsel will be provided if the accused has not already obtained an attorney.

The accused must inform the prosecutor of the names of the witnesses whom he desires, and the prosecutor must subpoena them; either military personnel or the local police may be used for such process serving. The defense may even request the calling of additional witnesses during the trial.

The actual conduct of the trial is by the inquisitorial method, which is used by most civil law jurisdictions, rather than by the accusatorial method with which we are familiar. The president of the French court has discretion to control arguments of counsel and to discover the truth; he may call witness or request the production of documents, or take any other steps he considers necessary in discovering the truth.

Present at the French trial is the *greffier* or recorder; he does not make

a verbatim transcript of the testimony, but records only that which he is told to record by the presiding officer of the court.

The first witness who appears is the accused. He is questioned by the court concerning the alleged offense, and he is not clothed with a guarantee that he may not be required to present incriminating evidence. He may remain silent, and this may result in an inference against him. He first is asked whether he is guilty or not, whether there were aggravating circumstances, and whether there were excusable circumstances. After the questioning of the accused, he and his counsel "are heard." The prosecutor does not reply unless the president of the court considers such to be appropriate, but in every case the accused and his defender have the right to be heard last.

Deliberations of the French court, as to the findings, are in secret, and after the court retires to deliberate, it must not be separated until judgment is rendered. After the deliberations, there is an immediate announcement if there is an acquittal, and the accused may present matters in mitigation if there is a conviction.

The French code provides two appellate stages after a military conviction. The intermediate appellate court is the *tribunal militaire de cassation*, which is composed partly of military and partly of civilian judges. Appeal to this court is not automatic; an accused must express his intention to appeal to this court within three days after he is notified of the findings of the trial court. A further appeal to the *Cour de cassation*, the civilian tribunal comparable to the

Supreme Court of the United States, also is authorized in court-martial cases.

The sentence of a French court-martial cannot be ordered into execution until completion of action upon any appeal which is taken, but if there is no appeal, the sentence must be ordered into execution within

twenty-four hours after expiration of the three-day appeal period. If a conviction is sustained upon appeal, the sentence is ordered into execution within twenty-four hours after information of the decision of the appellate court is received. A longer period is provided, however, in the case of a death sentence.

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## ANNOUNCEMENT OF 1954 ANNUAL MEETING

The Judge Advocates Association will hold its Eighth Annual Meeting at Chicago, Illinois, August 17-18, 1954, coincident with the American Bar Association convention. Col. Howard Brundage of the Chicago bar, Chairman of the Annual Meeting Committee, is planning the finest assembly of JAG's in the Association's history.

The annual banquet will be held at the University Club on Tuesday evening, August 17th, with a reception and cocktails beginning at 6:00 p. m. Facilities provided for this affair will be excellent and ample. The planned menu is a gastronomical delight well founded on a prime quality sirloin steak. Although Col. Brundage is not prepared at this time to announce the name of the principal speaker, he assures the Association that he will present an interesting and prominent person.

The annual business meeting will be held on Wednesday, August 18th, beginning at 4:00 p. m.

The Association is endeavoring to make special arrangements with the Court of Military Appeals for an extraordinary session of that Court at Chicago on either August 17th or 18th for the purpose of entertaining motions for admissions to the bar of the Court. The Judges of the Court have already indicated that they would be willing to call a special ceremonial session in Chicago, and plans are being made for an appropriate court room and for the necessary coordination between the Association and the Clerk of the Court. Applications for admissions must be presented to the Clerk of the Court in advance and full details of these arrangements will be announced in the next issue of the Journal as well as in direct communications with the members of the Association. In the planning of this ceremony, it will be helpful if members of the Association will advise the headquarters with regard to their interest in this ceremonial session of the United States Court of Military Appeals and their tentative plans to be admitted to the bar of that Court at Chicago in August.

The tickets for the annual banquet will be \$10 each. Advance reservations or information can be obtained by letter to either Col. Howard Brundage, 111 West Washington Street, Chicago 2, Illinois, or the national offices of the Association in Washington.

## GENERAL BRANNON COMPLETES TOUR AS TJAG-ARMY

Major General Ernest M. Brannon has completed his four-year term of office as The Judge Advocate General of the Army and is now serving on the Review Board Council, Office of the Secretary of the Army. At any time within the next year he may retire. When General Brannon assumed the office of The Judge Advocate General in January 1950, the issue of the Judge Advocate Journal of that date contained a quite detailed biography of General Brannon. In summary, that biography was that he was born in Ocoee, Florida, on 21 December 1895 and sworn as The Judge Advocate General and promoted to the rank of Major General on 27 January 1950. That will do for history, this is about the man. The members of the Association now in civilian life extend an anticipatory welcome to General Brannon and we advise him now that when he joins our ranks, that will be the end of "General" Brannon. He is going to be known to us as "Mike". Brannon. All generals can be called General, but few generals can be called "Mike". When you feel that you can call him Mike, you have the sensation of having been promoted. Anything that makes you feel good will make Mike feel good too. That's the sort of a man he is.

From his rank of shave-tail to that of a two-star General, Mike has always been a soldier's soldier. From his detail to the Judge Advocate General's Department in 1930 to the end of his term as The JAG a short time

ago, he has been a lawyer's lawyer. Being a soldier, he knew every written code and, most important, those unwritten of the Army. He could safely pilot you through any channel. Being a lawyer, Mike also knew when a particular channel might not be the shortest course to the desired result. In that event, he "walked the papers over".

Mike is precise as an officer. Mike is objective as a lawyer. But, Mike never let a precise mind cut too fine the fact that the officers and men of the Army were individual personalities, each with his strength and weakness. Neither did Mike let objectivity cast into concealing shade circumstances that altered cases. The traits of character that did not permit an appreciation of precision and objectivity to exclude extenuating factors in his dealings with men and matters have enhanced his stature with all who know him. There is a kindness in the man; a promise of congeniality in his manner that you hope to have realized by closer association with him; you have a desire to be considered as a personal friend of his. In addition to knowing that he is an outstanding soldier-lawyer, you recognize that he is a man's man, precise but not complex, objective but kind, learned but a good companion.

There will be a ready welcome for you, Mike, when you join the ranks of the civilian lawyers.

Thomas G. Carney.

## JURISDICTION OVER SERVICEMEN ABROAD

The Board of Directors of the Judge Advocates Association at its winter meeting considered the effect of Status of Forces Treaties in denying American servicemen abroad the protections afforded by the Uniform Code of Military Justice in criminal cases where other than strictly military offenses are charged. Much of the background of this discussion appeared in the address of Senator John W. Bricker of Ohio before the Judge Advocates Association in Boston in August, 1953.\* After full discussion, the Board of Directors passed the following resolution:

RESOLVED: That the Judge Advocates Association exhorts and encourages responsible officials of the United States of America to make every appropriate effort within the framework of existing treaties and international agreements to provide to members of the Armed Forces of the United States serving in foreign lands the protections afforded by the Uniform Code of Military Justice.

The resolution was appropriately communicated to The President, the Secretary of Defense, the Service Secretaries, and the appropriate House and Senate Committee Chairmen. The responses to the communication, indicated complete accord with the policy set forth in the resolution and expressed assurances of all appropriate efforts toward the accomplishment of that policy.

\* The full text of this address is set forth in the Judge Advocate Journal, Bulletin No. 15, October, 1953, "Safeguarding the Rights of American Servicemen Abroad", (page 1).

The fullest reply received, and typical of the tone of the others, is the letter of the Assistant Secretary of the Army, Hugh M. Milton, II, which states:

"It is very encouraging to know that your association has given earnest consideration to this important topic, which is of major concern to the Department of the Army.

"When the Government of the United States is negotiating for military facilities in foreign countries, it is the practice of the Department of the Army to seek, under the terms of the agreement, to retain exclusive jurisdiction over offenses committed by persons subject to military law. However, foreign countries often make it a condition upon the entry of our forces that these troops be submitted to local jurisdiction, generally for off-duty offenses committed against the local population. This was essentially the jurisdictional arrangement arrived at in the Agreement between the Parties to the North Atlantic Treaty, regarding the Status of Their Forces, signed at London on 19 June 1951.

"As you are aware, the Senate, in giving its advice and consent to the ratification of the NATO Status of Forces Agreement on 15 July 1953, adopted a resolution regarding the safeguarding of the constitutional protections of American forces serving in other NATO countries. In conformity with this resolution, the Department of Defense has issued instructions requiring commanding officers in NATO countries and in Japan, where similar jurisdictional arrangements prevail, to examine the laws of each state, with particular reference to the procedural safeguards contained in the Constitution of the United States. Waivers of the jurisdiction of the foreign states are requested if there is danger that the accused will not be protected because of the absence or denial of constitu-

tional rights he would enjoy in the United States. If the waiver requested is not granted, the matter is taken up through diplomatic channels. Pursuant to the Resolution, the Army has representatives present at the trials of persons subject to foreign law, and these representatives are required to report any deprivations of the safeguards provided by paragraph 9, Article VII of the NATO Status of Forces Agreement or by the Constitution of the United States.

"Army commanders of forces stationed in countries where the local courts exercise jurisdiction over our forces normally make it a practice to request a waiver of the foreign country's jurisdiction in all cases. In the great majority of instances, the receiving state is willing to relinquish its jurisdiction to the military authorities. Those cases which are actually tried by the local courts are for the most part either those which are too trivial to warrant the taking of disciplinary action by the armed forces, such as traffic offenses, or those which involve offenses committed off duty against members of the local population. In the majority of instances in which American military personnel are tried and convicted by foreign

criminal courts, the sentences imposed on American military personnel are extremely light.

"As a result of the diligence of overseas commanders in obtaining waivers and in protecting the rights of those Americans tried in foreign courts, Army commanders report, with rare exceptions, that the subjection of persons subject to military law to foreign jurisdiction has not had an adverse effect on the morale, discipline or operation of the Armed Forces. The Department of the Army is, however, keenly aware of the necessity of protecting the constitutional safeguards of American military personnel who may find themselves stationed in foreign countries, and I can assure you that the Department makes every effort to see that persons under the jurisdiction of the Army receive a fair trial and fair treatment when they are tried by foreign courts.

"I am grateful to the Judge Advocates Association for its observations on this topic, and I hope that the above information may serve to assure you that serious attention is being paid to this problem by the Department of the Army."



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.

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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.

## THE AMERICAN BAR ASSOCIATION

The Judge Advocates Association, pursuant to a resolution passed by the membership at large at the annual meeting in Cleveland in September, 1947, became an affiliated organization of the American Bar Association by action of the House of Delegates passed at the annual meeting of the American Bar Association at Seattle in September, 1948. One of the requisites of affiliation is that 25% of the members of the affiliated organization be, from time to time, also members in good standing of the American Bar Association. Since 1947, about 40% of the members of the Judge Advocates Association have also been members of the American Bar Association. Affiliation with the American Bar Association was an important step forward toward the Judge Advocates Association's aim to secure professional recognition of the military lawyer.

It is the purpose of this brief article to acquaint those members of the Association who do not belong to the American Bar Association with the achievements, activities, services, and objectives of the American Bar Association.

The American Bar Association has been the sponsor and supporter of the National Conference of Commissioners on Uniform State Laws, which in turn has drafted, promulgated, and assisted in enactment of more than 50 Uniform Acts and 20 Model Acts. The Canons of Legal Ethics which have been universally recognized for almost a half century as the standard code of professional conduct for lawyers was formulated and promulgated by the American Bar Association,

which also took the leadership in the formulation of the Code of Judicial Ethics. The Association has been a tremendous force for the advancement of legal education and for the standardization and elevation of the requirements for admission to the bar. The Bankruptcy Act is largely the work of the American Bar Association. In the last decade particularly, the aggressive leadership of this organization has contributed greatly to the cause of making legal services available to all citizens regardless of their economic status through Legal Aid, Lawyer Referral Service, and Legal Assistance to Servicemen programs. Many inequities in federal tax laws have been eliminated through the work of the Committee of the Section of Taxation of the American Bar Association. The independence of the American judiciary in large measure has been protected by the work of the Association. The work of the American Bar Association and its sections have been largely instrumental in the formulation and promulgation of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Administrative Procedure Act.

The American Bar Association continues to engage in a broad program demonstrated by the scope and variety of problems to which its committees direct their activity. For example, there are now committees on the Federal Judiciary; American Citizenship; Communist Tactics, Strategy and Objectives; Individual Rights as Affected by National Security; Lawyer Referral; Legal Aid; Legal Assistance to Servicemen; Divorce, Marriage Laws

and Family Courts; Professional Ethics and Grievances; Peace and Law through United Nations; Co-ordination of Bar Activities; Public Relations; Traffic Court Program; Lawyers in the Armed Forces; Military Justice; Civil Service; Jurisprudence and Law Reform; Judicial Selection, Tenure and Compensation; Unemployment and Social Security; and many others.

The Association not only brings about the concerted participation by lawyers in activities for the benefit of the public generally, but also meets a responsibility of assisting its members and all lawyers. This responsibility is met largely through the activities of its sections in the specialized fields of law. For example, there are sections on Administrative Law, Antitrust Law, Corporation, Banking and Business Law, Criminal Law, Insurance Law, International and Comparative Law, Judicial Administration, Labor Relations Law, Legal Education and Admissions to the Bar, Mineral Law, Municipal Law, Patent, Trade-mark and Copyright Law, Public Utility Law, Real Property, Probate and Trust Law, and Taxation. There are standing and special committees relating to other special fields of the law and also additional activities in connection with the Unauthorized Practice of the Law, Law Lists, Retirement Benefits, Continuing Legal Education, the Junior Bar Conference, and the American Law Student Association. The Association publishes and distributes to its entire membership an outstanding legal periodical, The American Bar Association Journal. It conducts annual meetings at which members, through

the general assemblies and section meetings, participate toward their manifold advantage. It is now in the process of establishing the American Bar Center in Chicago, which will include among its facilities a research library, a clearing house for research projects, and a center of study for the American lawyer and lawyers from other lands.

The Association is dedicated to the attainment of the following objectives:

- (1) The preservation of representative government in the United States through a program of public education and understanding of the privileges and responsibilities of American citizenship.

- (2) The promotion and establishment within the legal profession of organized facilities for the furnishing of legal services to all citizens at a cost within their means.

- (3) The improvement of the administration of justice through the selection of qualified judges and adherence to effective standards of judicial administration and administrative procedure.

- (4) The maintenance of high standards of legal education and professional conduct to the end that only those properly qualified so to do shall undertake to perform legal service.

- (5) The promotion of peace through the development of a system of international law consistent with the rights and liberties of American citizens under the Constitution of the United States.

- (6) The coordination and correlation of the activities of the entire organized bar in the United States.

Since the American Bar Association is the national representative of the legal profession, the constant advocate of improvement in the administration of justice, the defender of high professional standards, and the servant of the public interest, it is the Association of all members of the legal profession whether they be dues paying members of the American Bar Association or not. It was the opinion of the governing body of the Judge Advocates Association in 1947, and that opinion still obtains, that the Judge Advocates Association as a national legal society of military lawyers can best obtain its purposes by its affiliation with the American Bar Association and its work from within that organization's framework. The stated policy of the Judge Advocates Association "to explain to the organized bar the disciplinary needs of the Armed Forces, recalling as the

Supreme Court has said that 'An Army is not a deliberative body', and at the same time to explain to the non-lawyers in the Armed Forces that the American tradition requires for the citizen in uniform not less than the citizen out of uniform those minimal guarantees of fairness which go to make up the attainable ideal of 'Equal justice under law'" is in some measure alone accomplished by the Judge Advocates Association's position as an affiliated organization of the American Bar Association.

The American Bar Association is commended to those members of the Judge Advocates Association who do not now actively participate in that organization. Membership in the American Bar Association is a good investment for any lawyer. Members of the Judge Advocates Association should look into it.

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Your professional success, 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.

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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 the 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 Col. Louis F. Alyea, USAF.

## COMA HELD NOT TO BE ADMINISTRATIVE AGENCY

The Circuit Court of Appeals for the District of Columbia Circuit in decisions handed down on January 21, 1954, held that the United States Court of Military Appeals is a court and not an administrative agency.\* Petitioners, Begalke, Yeoman Second Class, and Commander Shaw were each tried on distinct and independent charges by Naval general courts-martial and convicted, and each, after unfavorable board of review action, petitioned and repeteditioned the Court of Military Appeals for review without success. Each then petitioned the United States Circuit Court of Appeals for the District of Columbia Circuit for review of the determination made in his case by the United States Court of Military Appeals. The government contended that the Circuit Court of Appeals has no jurisdiction and moved that the proceedings be dismissed.

The petitioners argued that the Court of Military Appeals is an administrative agency and that its orders were subject to review by the Circuit Court of Appeals. They pointed to the Circuit Court's General Rule 38 relating to the review of orders of administrative agencies, boards, commissions, and officers.

In holding that the Circuit Court of Appeals was without jurisdiction, the Court stated it had only those powers conferred by statute and no statute

authorized its review of the determinations of the Court of Military Appeals. The Rule referred to prescribed the procedure only for those cases involving administrative decisions made subject to review by statute.

The Court observed that the Court of Military Appeals was established by the Uniform Code of Military Justice and that it is the highest court in the military judicial system. It pointed out that the Code in Article 76 provides for the finality of court-martial proceedings and judgments, subject only to a petition for writ of habeas corpus and possibly other methods of collateral attack; but, that there is certainly no provision for a direct review by the Circuit Court of Appeals of the District of Columbia Circuit.

Circuit Judge Washington concluded the opinion by stating "The Court of Military Appeals, with the entire hierarchy of tribunals which it heads, may perhaps be considered as being within the military establishment; perhaps, whether or not that is so, it is properly to be viewed as a specialized legislative court, comparable to the United States Court of Customs and Patent Appeals. But, in any view, the Court of Military Appeals appears to us to be a court in every significant respect, rather than an administrative agency. Certainly Congress intended that in its dignity and in its standards of administering justice the Court of Military Appeals should be assimilated to and equated with the established courts of the Federal system."

\* *Royal Barry Shaw v. U. S.*, Misc. 397; and *Robert H. Begalke v. U. S.*, Misc. 389, both decided CCA DC 21 Jan 1954, opinion by Circuit Judge Washington, Chief Judge Stephens and Circuit Judge Edgerton concurring.

## THE ASSISTANT JAG OF THE ARMY RETIRES

"I Frank P. Shaw do solemnly swear that I will support the Constitution of the United States and the Constitution of this Commonwealth and be faithful and true to the Commonwealth of Kentucky so long as I continue a resident thereof and that I will faithfully execute to the best of my ability the office of Attorney at Law according to Law; and I do further solemnly swear that since the Adoption of the present Constitution, I being A Citizen of this state have not fought A duel with deadly weapons within this state nor out of it nor have I sent or Accepted A challenge to fight A duel with deadly Weapons nor have I acted As second in carrying A challenge nor aided or assisted any person thus offending So help me God. I further solemnly swear that I will faithfully demean myself in my practice As An Attorney at Law to the best of my knowledge and ability."

The foregoing oath was taken by Franklin Prague Shaw on July 8, 1913. With it began a long and distinguished career as a member of the bar of the Commonwealth of Kentucky, later as a member of the bar of Ohio, and for more than three decades as a Judge Advocate of the United States Army.

Although admitted to the bar before receiving a law degree, Franklin P. Shaw received the degree of Bachelor of Laws in 1914, and continued in the practice of law until our entry into World War I.

Within a few months after Congress' declaration of war, he became Second Lieutenant Shaw, assigned to the 42nd Infantry; a month later, the gold bar on his shoulder changed to the silver bar of a first lieutenant. The year following the Armistice, Lieutenant Shaw transferred to the

Judge Advocate General's Department, and although he was out of the Army for a few months in 1920, his service thereafter was continuous until the last day of 1953. On that day, he celebrated his sixty-second birthday, and was retired from the Army with a review in his honor at Fort Myer, which was attended by General Ridgway.

A promotion to captain came in 1920. In 1924, he received the degree of LL.M. from Georgetown. By the end of 1941, he had received the eagles of a colonel. Then for three and a half years, beginning in January 1942, he served as Judge Advocate of the Air Technical Command, and it is estimated that he or his subordinates were responsible for the approval of contracts aggregating \$65 billion.

In September 1945, Colonel Shaw went to Japan for a tour which lasted more than three years; most of this tour saw him as Judge Advocate of General MacArthur's command. While in Japan, he received the star of a brigadier general, and in 1949 he became a major general. In January 1950, he was appointed by the President as The Assistant Judge Advocate General of the Army, and he continued as such until his retirement.

A capable lawyer, a student of the law, one of the initial directors of the Judge Advocates Association, an aggressive defender of the military system of administering justice, and one who always was willing to lend a helping hand to a young attorney, General Shaw will be missed by those who knew him in the service and who served with him. Although

his Army career has terminated, he has not retired; in the years to come, when one seeks sound legal advice or an able defender, he will be able to find one by passing through the door of an office somewhere in the East or

Middle West which bears the legend: FRANKLIN P. SHAW, ATTORNEY-AT-LAW.

James K. Gaynor,  
Lt. Col. JAGC.



## JAA LUNCHEON AT A. B. A. REGIONAL MEETING

The Judge Advocates Association held one of the most successful luncheon meetings in the history of the Association in Atlanta, Georgia, March 5, 1954, in connection with the Southern Regional meeting of the American Bar Association. The meeting was attended by ninety members of the Association and Judge Advocates, both Reserve and Regular, of the Armed Forces.

Honor guests included Major General Eugene M. Caffey, The Judge Advocate General of the Army; Major General Reginald C. Harmon, The Judge Advocate General of The Air Force; Captain S. B. D. Wood, Assistant The Judge Advocate General of The Navy; Colonel John A. Hall, Staff Judge Advocate Third Army; and Colonel Charles L. Decker, Commandant of The Judge Advocate General's School.

Honorable Ed Dutton, President of the Georgia Bar Association, presented Major General Caffey a Georgia state flag. In presenting the flag to General Caffey, Mr. Dutton said that he was presenting the flag to a distinguished Georgian on behalf of the Bar and Bench of the State of

Georgia. Just as Mr. Dutton presented the flag the Third Army band played Dixie.

General Caffey was introduced by Colonel William H. Beck, Jr., JAGC-USAR. General Caffey then addressed the meeting. He outlined the work of his office and called on all Reserve Judge Advocates to keep themselves prepared for active duty. General Caffey's address was enthusiastically received and he was given a standing ovation. In presenting General Caffey, Colonel Beck said that General Caffey had done more for Reserve Judge Advocates than any other officer of the Corps. He organized and conducted the first Army Area school for Reserve Judge Advocates. Other Army Judge Advocates adopted General Caffey's program for training Reserve Judge Advocates.

General Harmon and Captain Wood made short talks when presented.

Assisting Colonel Beck in making arrangements for the luncheon meeting were Colonel Seymour W. Wurfel, Colonel Hugh Head, and Colonel Willis Everett.

## BOOK ANNOUNCEMENTS

*Government Contracts Simplified* by George William Lupton, Jr. (The William Byrd Press, Inc., Richmond, Virginia, 579 pp. with supplement, price \$10)

The laws and regulations covering the procurement procedures of the many agencies of the United States Government have undergone fundamental changes since World War II. New contract clauses have been prescribed. These laws, regulations and contract clauses have been interpreted and construed in thousands of disputes between the Government and its contractors. The purchasing organizations and procedures of many of the Government agencies have been changed, and new buying agencies and Boards of Appeal have been established.

For the first time "Government Contracts Simplified" untangles this maze of red tape in an understandable and easy-to-use fashion. Any manufacturer, supplier, construction company, or research and development organization, will find this book a ready guide to the solution of the problems that arise in dealing with the Government and each of its major agencies. Both defense and other types of contracts are fully covered.

Each major branch of the Government that purchases or contracts in any large degree, and its purchasing set-up, is described. The practical steps necessary to get on bid lists, to make a bid, and to negotiate a contract, are explained in full.

The various types of contracts used by the Government are described and the practical and legal implications

of each clause are made clear. The Government's bonding and insurance requirements are described and the several ways to get financial assistance from the Government are outlined.

Subcontracting problems are the subject of a separate chapter.

During performance difficulties often arise. Some of these can be foreseen, others cannot. The contractor should know both his and the Government's rights and obligations. This book explains in simple language what is required from both parties by each of the clauses common to Government contracts, and how the contractor can protect his rights.

Getting paid in full for work done under a contract, or if the Government terminates before completion, is frequently a difficult accomplishment. This book tells the contractor how to protect himself from the beginning so that losses, or delays in payment, may be avoided.

Citations to the significant statutes, regulations, decisions of the Courts and Appeal Boards, and rulings of Government officials, are given, and such authorities quoted or explained.

This book has four special features. There is a Checklist for Prime Contractors describing step by step how to get a prime contract, how to comply with its provisions, how to avoid trouble, and how to get paid in full for all the work done. There is a Checklist for Subcontractors outlining step by step how to avoid losses and trouble with the prime contractor and explaining the subcontractor's legal rights. All of the Government

agencies which buy in substantial quantity are briefly described and there are lists of classes of items that each department buys. There is also a monthly cumulative supplement available at a cost of \$5.00 per six months of subscription. The current supplement is included in the purchase price of the book.

*Digest of Decisions of the Armed Services Board of Contract Ap-*

*peals, 1950-1953, by Roswell M. Austin. (\$1.50 per copy)*

A new digest of decisions of the Armed Services Board of Contract Appeals covering the years 1950-1953 prepared by Roswell M. Austin is now available in limited numbers to the public. This work should be ordered from the Superintendent of Documents, Government Printing Office, Washington 25, D. C.



## IN MEMORIAM

The members of the Judge Advocates Association profoundly regret the passing of the following members whose deaths are here reported and extend to their surviving families and relatives deepest sympathy:

Paul R. Byrum of Kansas City, Missouri, died July 21, 1953.

Henry C. Remick of Philadelphia, Pennsylvania, died December 18, 1953.

John F. Richter of Chevy Chase, Maryland, died January 25, 1954.

E. Earle Rives of Greensboro, North Carolina, died December 12, 1953.

Archie L. Tower of Long Beach, California, died August 19, 1953.

Richard R. Wolfrom of Shippensburg, Pennsylvania, died June 2, 1953.

Philip Yonge of Sweetwater, Texas, died November 13, 1953.

## WHAT THE MEMBERS ARE DOING

### Alabama

Lt. Col. Erle Pettus, Jr., is a member of the law firm of Jackson, Rives, Pettus & Peterson, with offices in the Massey Building in Birmingham. Col. Pettus is Director of the JAGC Branch of the U. S. Army Reserve School at Birmingham.

Capt. Joseph T. Limbaugh is Assistant SJA for the 3007th Station Complement, USAR, at Birmingham. Capt. Limbaugh is claims adjustor for the Employers Insurance Company of Birmingham.

### California

Maj. Edward W. Moses, after more than a decade of service as a lawyer in the Federal government in Washington, D. C., has returned to Los Angeles where he has resumed the private practice of law with offices in the Rowan Building.

Julius S. Austero, formerly of New York, after completing a tour of active duty, was admitted to the California bar and is now Assistant District Attorney for the County of Orange in California. Mr. Austero now resides at Garden Grove.

### Colorado

Col. Royal R. Irwin, who practices law in the University Building, Denver, is the Director of the JAGC Section of the 5901st USAR School in Denver.

### District of Columbia

John C. Herberg was recently promoted to the rank of Colonel.

Harryman Dorsey and Beverly S. Simms were promoted to the rank of Major. Paul S. Davis and John Wolff

were promoted to the rank of Lieutenant Colonel. All of these members received their promotions in JAGC-USAR.

Col. William J. Hughes, Jr., recently retired under Public Law 810. Col. Hughes engages in the practice of law with offices in the Bowen Building.

### Michigan

Kenneth T. Hayes of Grand Rapids reports that Cornelius Wiarda (1st O. C.) was recently promoted to Lieutenant Colonel and that John G. Starr (2nd O. C.) was recently promoted to the rank of Major. David E. Nims, Jr., of Kalamazoo was promoted to Lieutenant Colonel.

Capt. Glenn S. Allen, Jr. (2nd O. C.) was recently re-elected Mayor of Kalamazoo.

Col. James E. Spier (9th Off.) of Mt. Clemens is the Circuit Judge, Macomb County. Judge Spier was a member of the staff and faculty at the summer school for reserve active duty training conducted at Camp Carson, Colorado.

Lt. Col. Wiarda, Maj. Starr, Lt. Col. John A. DeJong (3rd Off.) and Capt. Kenneth T. Hayes (13th O. C.) all participated in active duty training at Camp Carson during the summer of 1953. Capt. Hayes also attended a summer conference at The Judge Advocate General School at Charlottesville, Virginia.

### Missouri

Lt. Col. Paul R. Miller, who has spent the past ten years in the Far East, has now returned to his home at Kirkwood, St. Louis County, where

he is assigned to the Missouri Military District and is instructor in the Judge Advocate course there.

### **Nevada**

Eli Grubic, who was formerly engaged in the private practice of law in Washington, D. C., recently announced the formation of the firm of Bradley and Grubic with offices in the Professional Building at Reno.

### **New Jersey**

Francis C. Foley, Jr., was recently separated from active duty in the U. S. Marine Corps and has returned to the general practice of law with offices in the Raymond Commerce Building in Newark.

### **New York**

Harold V. Dempsey announces the removal of his office for the general practice of law to 95 Liberty Street, New York City.

T. Kayler Jenkins (5th O. C.) recently announced the removal of his office for the general practice of law to 1700 Rand Building, Buffalo. Mr. Jenkins is associated with the firm of Daetsch, Pfeiffer, Ryan, Daetsch & Leshner.

William J. Horrigan recently withdrew as a member of the firm of Dean, Magill, Huber & Horrigan to become Counsel for World Commerce Corporation. Edward F. Huber (6th O. C.) announces that the firm will continue in the general practice of law under the firm name of Dean, Magill & Huber.

Edward Ross Aranow (3rd O. C.) of New York City, represented bondholders in an action against the Hudson & Manhattan Railroad Company in the Supreme Court of the State of

New York. The action was brought in behalf of bondholders to require the Railroad to carry out certain of its obligations with regard to the maintenance and repair of the Railroad and to enjoin its purchase of its own junior securities prior to its meeting other obligations. "Justice prevailed" as Mr. Aranow saw it, and the Court stated that "the efforts of plaintiffs and their counsel have produced results of a far reaching nature and to all intents and purposes rescued the railroad from its inept operation and management which was leading to disaster before the commencement of this action". The decision was affirmed by the Appellate Division and is now pending before the Court of Appeals.

Justice Maurice Wahl of the Municipal Court of the City of New York was recently promoted to the rank of Lieutenant Colonel, JAGC-USAR.

### **Ohio**

Col. Harold K. Parsons of Cincinnati, Vice President of the Cincinnati Patent Law Association, was recently elected Vice President for Army of the Department of Ohio Reserve Officers Association.

### **Oregon**

Col. Benjamin G. Fleischman (3rd Off.) of Portland, having reached the statutory age, was retired under Public Law 810 on October 30, 1953.

### **Pennsylvania**

Max Rosenn (10th O. C.) recently announced the formation of a partnership for the general practice of law under the firm name of Rosenn, Jenkins, Greenwald & Cardoni, with of-

ices in the Second National Bank Building, Wilkes Barre.

### Virginia

Major General Franklin P. Shaw, having retired from the active military service on December 31, 1953, has taken up his residence at 1714 North Huntington Street, Arlington.

### Wisconsin

Lt. Col. John H. Sweberg (4th C. T.) of Rhinelander, after sixteen years of active duty and thirty-six years as reserve officer, was retired in December, 1953, under Public Law 810. Col. Sweberg will resume the private practice of law in Rhinelander.

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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.

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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.

**SUPPLEMENT TO DIRECTORY OF MEMBERS  
JULY, 1953****NEW MEMBERS**

Col. Ernest G. Abdalah  
505 Lariat Lane  
Bethpage, New York

Maj. John B. Abernathy  
Route A, Box 253  
APO 953, c/o Postmaster  
San Francisco, California

Capt. Seymour Abrams  
1401st Air Base Wing  
Andrews Air Force Base  
Washington 25, D. C.

Lt. Col. Ralph W. Adams  
SJA 1503 ATW (Tokyo Intl. Airport)  
APO 226, c/o Postmaster  
San Francisco, California

Lt. Ricardo R. Alvarado  
9407 Warren Street  
Silver Spring, Maryland

Lt. Col. Harold Anderson  
2003 5th Street, So.  
Arlington, Virginia

Lt. William B. Anderson  
Hq., 2274th Air Base Group  
Walters Air Force Base, Texas

Lt. Bruce B. Bair, Jr.  
Hq., Ogden Air Materiel Area  
Hill Air Force Base, Utah

Capt. Donald V. Bakeman  
36 Melwood Avenue  
Dayton, Ohio

Maj. Marvin Balch  
P. O. Box 187  
Griffis AFB, Rome, N. Y.

Lt. Robert L. Balyeat  
935 Elm Street  
Van Wert, Ohio

Lt. Col. Arthur R. Barry  
JA Section, Hq., AFFE  
APO 343, c/o Postmaster  
San Francisco, California

William H. Beck, Jr.  
Masonic Building  
Griffin, Georgia

Lt. Col. Morrie Benson  
Wing Staff Judge Advocate  
1500th Air Base Wing  
APO 953, c/o Postmaster  
San Francisco, California

Lt. Col. James F. Bishop  
Field Command  
Armed Forces Spec. Weapons Proj.  
Sandia Base,  
Albuquerque, New Mexico

Capt. Rufus C. Boutwell, Jr.  
Office of the SJA  
Hq., Northeast Air Command  
APO 862, c/o Postmaster  
New York, New York

John P. Bradshaw  
1740 K Street, N. W.  
Washington, D. C.

Capt. Joseph C. Brady  
11448 Rose Hedge Drive  
Whittier, California

Capt. Virginia Brennan  
434 Grand Avenue, Apt. 23 A  
Dayton, Ohio

Lt. LeRoy C. Brown  
1349 Belmont Avenue  
South Bend 15, Indiana

Lt. Walter Frederick Brown  
Legal Office  
Hq., Ninth Naval District  
Great Lakes, Illinois

Lt. Lawrence J. Burns  
2500th Air Base Wing  
Mitchel Air Force Base, New York

Lt. Robert Burns  
152 Cal. Hall, So. Area, Ft. Myer  
Arlington 8, Virginia

Maj. Norman F. Carroll  
962 Radcliff Drive  
Alexandria, Virginia

Maj. Clifford R. Carver  
c/o Staff Judge Advocate  
Hq., Continental Air Command  
Mitchel AFB, New York

Charles B. Cash  
Court House  
415 E. 12th Street  
Kansas City 6, Missouri

Maj. William G. Catts  
503 Valley Avenue, S. E.  
Washington 20, D. C.

Lt. Col. James S. Cheney  
Hq., Air Proving Ground Command  
Eglin Air Force Base, Florida

Lt. Raymond R. Childers  
1125 11th Loop, Sandia Base  
Albuquerque, New Mexico

Mark B. Clark  
P. O. Box 87  
Pocatello, Idaho

Lt. Herbert W. Coffman  
105 Samoset Avenue  
Quincy, Massachusetts

Lt. Col. Warren W. Connor  
Hq., ARDC, Box 1395  
Baltimore, Maryland

Harold B. Crosby  
700 Brent Annex  
Pensacola, Florida

Lt. Robert L. Derrick  
Staff Judge Advocate  
2275th AB Group  
Beale AFB, California

Ernest H. Dervishian  
Travelers Building  
Richmond 19, Virginia

Capt. Jack C. Dixon, Jr.  
Office of SJA  
Hq., 1401st Air Base Wing  
Andrews Air Force Base  
Washington 25, D. C.

Col. William L. Doolan, Jr.  
Staff Judge Advocate  
Hq., Tenth Air Force  
Selfridge Air Force Base, Michigan

Lt. Nicholas W. Douvres  
2041 Westchester Avenue  
Bronx 61, New York

Maj. Meyer H. Dreety  
1266 Wilson Drive  
Dayton, Ohio

Maj. Harry Ehrlich  
Hq., IADF, MATS  
APO 81, c/o Postmaster  
New York, New York

Maj. John J. Ensley  
3212 Whitcomb Place  
Falls Church, Virginia

Maj. Herman C. Estes  
Hq., Continental Division, MATS  
Kelly Air Force Base, Texas

Lt. Hugh C. Evans  
311 Franklin Boulevard  
Long Beach, New York

Joseph F. Falco  
342 Wadsworth Street  
Syracuse, New York

Lt. Edward A. Farnsworth  
297 Mitchel Ave., E.  
Meadow, New York

Capt. Thomas D. Farrell  
Hq., First Air Force  
Mitchel Air Force Base, New York

Maj. Carl J. Felth  
2500 Wisconsin Avenue, N. W.  
Washington 7, D. C.

Lt. Col. Elmer P. Fizer  
Hq., Arnold Engineering  
Development Center  
Tullahoma, Tennessee

Lt. Col. John M. Flatten  
Box 114, Hq., USAF Security Service  
San Antonio, Texas

Lt. James H. Fletcher  
11 Dennis Lane  
Bethpage, New York

Maj. Jack W. Fox  
502 East 26th Street  
Paterson, New Jersey

Maj. John R. Frazier  
Box 99  
Kelly AFB, Texas

Capt. Edith R. Gardner  
Hq., IADF, MATS  
APO 81, c/o Postmaster  
New York, New York

Philip Gensler  
413 National Bank of Commerce Bldg.  
New Orleans, Louisiana

Lt. Robert K. German  
Base Legal Office  
Offutt Air Force Base, Nebraska

Capt. Robert G. Gilchrist  
1843 Cadwell Avenue  
Cleveland Heights 18, Ohio

Lt. Robert R. Gooch  
P. O. Box 88, Hq., USAFSS  
San Antonio, Texas

I. Harry Goodley  
6416 Lindenhurst Avenue  
Los Angeles 48, California

Col. Marvin W. Goodwyn  
SJA, WRAMA  
Robins AFB, Georgia

Lt. William T. Griffith  
Hq., Ogden Air Materiel Area  
Hill Air Force Base, Utah

Lt. Rupert P. Hall  
3424 Anderson Ave., S. E.  
Albuquerque, New Mexico

Maj. Raphael J. Hogan  
Hq., ATLD, MATS  
Westover AFB, Massachusetts

Lt. Norman K. Hogue  
5508 Arvilla Avenue, N. E.  
Albuquerque, New Mexico

Lt. Helen F. Hughes  
Office of Staff Judge Advocate  
Sandia Base,  
Albuquerque, New Mexico

Lt. Col. Guy T. Huthnance  
439 Fairview Place  
Falls Church, Virginia

Lt. Jonathan D. Hyams  
6621st Air Base Squadron  
APO 121, c/o Postmaster  
New York, New York

Maj. John R. James  
Hq., 1703rd ATG  
Brookley AFB, Alabama

Lt. Frank W. Jargo  
807 Fidelity Building  
Cleveland, Ohio

Edward H. Jones  
1204 Equitable Building  
Des Moines 9, Iowa

Ross F. Jones  
8445 No. 15th Street  
Phoenix, Arizona

Lt. Col. Alfred Kandel  
432 Leesburg Pike  
Falls Church, Virginia

Maj. Edward L. Kelly  
Box 40, Griffiss AFB  
Rome, New York

Maj. Marcos E. Kinevan  
Hq., 1705th Air Transport Group  
McChord Air Force Base, Washington

Lt. David B. Kirschstein  
322 Central Park West  
New York, New York

Lt. Col. Raymond C. Kissack  
P. O. Box 721  
Langley AFB, Virginia

Capt. Bertram L. Kraus, Jr.  
1706th Air Transport Group  
Brooks AFB, Texas

Maj. James G. Lambert  
Topeka Air Force Depot  
Topeka, Kansas

Col. Arnold LeBell  
OJAG, U. S. Air Force  
The Pentagon  
Washington 25, D. C.

Lt. Col. Alfred K. Lee  
P. O. Box 15  
Kelly Air Force Base, Texas

McAfee Lee  
1411 Bank of Knoxville Building  
Knoxville, Tennessee

Lt. Col. Robert E. Lee  
Hq., Continental Division, MATS  
Kelly Air Force Base, Texas

Albert L. Levy  
51 Lexington Avenue  
Passaic, New Jersey

Joseph T. Limbaugh  
2076 Columbiana Road  
Birmingham, Alabama

Lt. Jules M. Lipton  
1470 Front Street  
East Meadow, New York

Lt. Col. Joseph F. Loftus  
1501 Jackson Street  
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