

Important:

Nominating Committee Report at p. 1

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May, 1970

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The Judge Advocate JOURNAL



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JUDGE ADVOCATES ASSOCIATION

An affiliated organization of the American Bar Association, composed
of lawyers of all components of the Army, Navy, and Air Force

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JUDGE ADVOCATE JOURNAL

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Publication Notice

The views expressed in articles printed herein are not to be regarded as those of the Judge Advocates Association or its officers and directors or of the editor unless expressly so stated.

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Published by the Judge Advocates Association, an affiliated organization of the American Bar Association, composed of lawyers of all components of the Army, Navy, and Air Force.

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REPORT OF NOMINATING COMMITTEE — 1970

In accordance with the provisions of Section 1, Article IX of the By-laws of the Association, seven members in good standing were appointed by the President to serve as the 1970 Nominating Committee.

The By-laws provide that the Board of Directors shall have twenty members subject to annual election. It is provided that there be a minimum representation of three members for each of the Armed Services: Army, Navy and Air Force, including not less than one from each service in grade not higher than Captain in the Army and Air Force, or Lieutenant Senior Grade in the Navy. The Marine Corps and Coast Guard are included in the Navy representation. For the purpose of determining service minimum representation, the slate of nominees for the Board of Directors is divided into three sections; and, upon the balloting, the two nominees from each section who receive the highest plurality of votes within the section together with the junior officer representative of each service, shall be considered elected at the annual election as the minimum representation on the Board of that Armed Service. The remaining eleven elected members of the Board will be the nominees receiving the highest number of votes irrespective of their armed service.

Members of the Board not subject to annual election are The Judge Advocates General of each of the services, all former TJAG's and all past presidents of the Association. The names of these members of the Board are listed on the inside of the back cover of this issue of the Journal and none of these are listed in the following slate of nominees.

The Nominating Committee met and has filed with the Secretary the following report as required by Section 2, Article VI of the By-laws.

Slate of Nominees for Offices

President:	Lt. Col. Osmer C. Fitts, AUS-Ret., Vt. (2)
First Vice President:	Cdr. Richard A. Buddeke, USNR, Va. (4)
Second Vice President:	Col. Edward R. Finch, USAFR, N.Y. (2)
Secretary:	Capt. Zeigel W. Neff, USNR,* Md. (4)
Treasurer:	Col. Clifford A. Sheldon, USAF-Ret.* D.C. (2)
Delegate, ABA	Col. John Ritchie III, USAR-Ret.* Ill. (3)

**Slate of Nominees for the Twenty Positions
on the Board of Directors**

Navy Nominees:

- Capt. Anthony J. Caliendo, USCG-Ret.* D.C. (4)
- Capt. Martin E. Carlson, USNR-Ret.* Md. (2)
- Lt. Cdr. Donald H. Dalton, USNR-Ret., Md. (2)
- Lt. Anthon A. Derezinski, USNR,* Va. (1)
- Brig. Gen. Duane L. Faw, USMC, Va. (1)
- Capt. Louis J. Poisson, Jr., USNR, N.C. (2)
- Capt. Richard J. Selman, USN, D.C. (1)

Army Nominees:

- Col. Gilbert G. Ackroyd, USA-Ret.,* Pa. (7)
- Col. James A. Bistline, USAR,* Va. (6)
- Col. James A. Gleason, USAR-Ret.,* Ohio (2)
- Col. William W. Kramer, USA, Va. (1)
- Capt. John T. Lenga, USA, Va. (1)
- Col. Charles P. Light, Jr., USAR-Ret., Va. (3)
- Lt. Col. David I. Lippert, USAR-Ret., Cal. (2)
- Capt. Wiley F. Mitchell, Jr., USAR, Va. (6)
- Lt. Col. Lenahan O'Connell, USAR-Ret.,* Mass. (2)
- Lt. Col. Daniel M. O'Donoghue, USAR, Va. (4)
- Brig. Gen. Harold E. Parker, USA, Va. (1)
- Col. Albert S. Rakas, USA, Va. (1)
- Col. William L. Shaw, ARNG,* Calif. (5)
- Col. Waldemar A. Solf, USA-Ret.,* Va. (3)
- Col. Ralph W. Yarborough, USAR-Ret.,* Tex. (8)

Air Force Nominees:

- Maj. Maurice E. Bone, USAFR, Ill. (2)
- Col. James M. Bumgarner, USAF, D.C. (1)
- Capt. James G. Boyer, USAFR, La. (2)
- Col. William W. Dalton, USAFR-Ret., Mo. (6)
- Lt. Col. Robinson O. Everett, USAFR,* No. Car. (2)
- Maj. Arthur Gerwin, USAFR, N.Y. (2)
- Col. Kelly Jacobs, USAFR, Tex. (2)
- Col. William R. Kenney, USAF,* Md. (1)
- Brig. Gen. William H. Lumpkin, USAF-Ret.,* Ala. (2)
- Maj. Walter B. Raushenbush, USAFR, Wisc. (3)
- Capt. John W. Matthews, USAFR, Va. (1)

Under provisions of Section 2, Article VI of the By-laws, members in good standing other than those proposed by the Nominat-

ing Committee may be nominated and will have their names included in the printed ballot to be distributed by mail to the membership on or about 8 July 1970, provided they are nominated on written petition endorsed by twenty-five, or more, members of the Association in good standing; provided, however, that such petition be filed with the Secretary at the office of the Association on or before 3 July 1970.

Balloting will be by mail upon official printed ballots. Ballots will be counted through Noon 10 August, 1970. Only ballots submitted by members in good standing will be counted.

ZEIGEL W. NEFF
Captain, USNR
Secretary

NOTE: The asterick following the name of a nominee indicates that he is an incumbent; the number in parenthesis indicates professional engagement of the nominee at this time as follows: (1) active military or naval service as judge advocate or legal specialist; (2) private law practice; (3) law school faculty member; (4) lawyer in federal government service; (5) lawyer in state government service; (6) corporate counsel; (7) executive of a state bar association activity; (8) U. S. Senator.

1970 ANNUAL MEETING IN ST. LOUIS

The twenty-seventh Annual Meeting of the Judge Advocates Association will be held in St. Louis on 10 August 1970 during the week of the American Bar Association meeting. Major Philip Maxeiner of the St. Louis Bar is Chairman of the Arrangements Committee.

The Annual Meeting will be held at 3:00 p.m. in the Riviera Room in the Holiday Inn Midtown.

Major Maxeiner has made reservations for the annual dinner at The Cheshire Inn & Lodge, 6306 Clayton Road at Skinker. Festivities will start with reception and cocktails at seven and dinner at eight. Reserve the date: Monday, 10 August. Major Maxeiner served as Chairman of the Host Committee for the JAA's meetings in St. Louis in 1949 and again in 1961. The JAA party at the ABA convention will certainly be an outstanding event.

REPORT OF TJAG — ARMY

Major General Kenneth J. Hodson, The Judge Advocate General of the Army, in his annual report to the members of the Judge Advocates Association at its Annual Meeting in Dallas on 11 August 1969, stated that three important matters had occurred in the preceding year which would provide the outline for his report. These, he said, were: first: The Congress had enacted the Military Justice Act of 1968; second: The Supreme Court of the United States had decided **O'Callahan v. Parker** on 2 June 1969; and, third: The Department of Defense had finally concluded its career military lawyer retention study, and had reported favorably on H.R. 4296, the so-called Pirnie Bill.

Under the Military Justice Act of 1968, the accused is entitled to have a qualified lawyer represent him in all special and general courts martial trials, unless he specifically waives the right; and, no accused may be tried by a summary court if he doesn't wish to be. These provisions greatly increase the need for lawyers in the Armed Services. The Act provides for the re-designation of the law officer as military trial judge, and states he shall be the presiding officer of the court; and, it permits the accused to be tried by the military trial judge sitting alone, if

he requests such a trial, without the usual panel of court members. Boards of Review are re-designated as Courts of Military Review. The immediate impact of the Act means that the Army will need about 400 more Judge Advocates. The increase from 1,450 Judge Advocates at the time the Act was enacted, to 1,850 by 1 February 1970 is to be accomplished in increments. As of the day of the General's report, there were, he said, 1,700 Judge Advocates in the Army. The increased strength has required extra courses to be taught at The Judge Advocate General's School and the creation of new courses, such as, the course for military judges. Colonel Crawford, the Commandant of the School, and Colonel Westerman, the Chief Judicial Officer of the Army, collaborated in the preparation of the new courses, and these courses and the basic courses are being offered at Charlottesville to Judge Advocates of the Navy, Marine Corps and Coast Guard, as well as of the Army. An additional new course in sentencing procedures is also being formulated. There is not only a need for more Judge Advocates, but also for additional clerical assistants and court reporters. To encourage court reporting as a career, the rank of Warrant Officer has been estab-

lished for court reporters. The Army is well on its way to implementing the Military Justice Act of 1968, which went into effect on 1 August 1969. General Hodson stated that the Commanders in the field have supported the implementation of the Act in a magnificent way, and he expressed his pleasure in reporting that there will be no lack of legal support to the Commanders and their personnel. He observed, however, that the total strength of the Army's Judge Advocate Generals Corps to be reached in February 1970 will consist of 1,350 Captains with less than three years' service.

The Department of Defense Personnel and Pay Study, which has been conducted for several years, has revealed something which has been known for some time: that is, that the shortage of legal experience in the Army is caused by the fact that the military cannot compete with the civilian community for the services of lawyers. It is for that reason, the Pirnie Bill was introduced providing some incentive pay in the nature of \$50 a month for Captains, \$150 a month for Majors and Lieutenant Colonels and \$200 a month for Colonels; and two bonus payments, first, at the end of the four-year obligated tour, and second, at the end of 20 years' service, amounting to a \$200 bonus for each year extended service and payable either in a lump sum or pro rated monthly over

the period of extended service. The Department of Defense has reported favorably on this legislation, except with regard to the second bonus payment; and, of course, Department of Defense support is essential to enactment. In connection with the Department of Defense pay study, General Hodson stated that he briefed the Army Chief of Staff for Personnel and convinced him that incentive pay was necessary to maintain sufficient numbers of Judge Advocates on active duty. Accordingly, The Judge Advocate General was able to go to the Department of Defense with Army support. The facts merit this support. The fact that the Army will have 1,850 Judge Advocates in February 1970, of whom 1,350 will be Captains speaks for itself; but on looking further, one can show that, at Fort Sill, for example, the legal staff composed of one Colonel and 25 Captains, which is not too bad, will in five years be probably 26 Captains and no Colonels. The Judge Advocate General, in further support of his position, made a head count of every Judge Advocate who had served since 1954 to determine the retention rate. Six percent of the officers coming to duty in that period stayed on active duty for ten years; twelve percent stayed for five years; the other eighty-four percent remained on active duty for four years, or less. In the face of this briefing and Army support,

the Department of Defense reported on the Pirnie Bill favorably.*

The O'Callahan decision arose out of an Army case in which an enlisted man was tried in 1966 by the Army for attempted rape and housebreaking. The victim was a civilian tourist. The civilian authorities turned O'Callahan over to the Army for trial. The Army anticipating an attack would be made upon its constitutional authority to try military personnel for civilian-type crimes, accepted this case as a test case: it was a good case, the record of trial was clean and the facts were good. All the Services worked together and an excellent brief was filed in the Supreme Court, aided by such outstanding authorities as Colonel Frederick Bernays Wiener. However, there were some factors against the Army position; first, there was the rising anti-Vietnam war sentiment and the anti-war and anti-military attitude reflected in the news media. At the time of argument in the Supreme Court, an Army Staff Judge Advocate unhappily was engaged in a stockade mutiny case in Oakland. All of these factors were part of the environment at the time of the argument. Some highly qualified practitioners of the Supreme Court bar have expressed the opinion that the case was not

well presented at oral argument. In any event, the Army was not in a good position to ask for a rehearing, so the decision stands that the Army has no constitutional authority to try military personnel by Courts Martial for civilian-type criminal offenses. There are at least three similar cases pending which may give the Supreme Court, with new members, a chance to clarify, if not modify, the O'Callahan decision. Generally speaking, the result of the O'Callahan decision is the Army has jurisdiction of only service-connected offenses. The O'Callahan decision could not have come at a worst time. For the first time, the legislative concept of incentive pay for lawyers in the Armed Forces has won DOD support. Antagonists of that legislation will now contend that the Army does not need so many lawyers because it has lost jurisdiction over all civilian-type crimes of servicemen. This is not a correct appraisal, according to General Hodson, because for the next five years more lawyers, not less, will be required to untangle the mess in military jurisprudence which has been caused by the O'Callahan decision.

General Hodson mentioned that the American Bar Association had recommended legislation in connection with administrative discharge procedures. He stated that the Army has had legisla-

* The Armed Services Committee of the House reported the Pirnie Bill out favorably and the Bill has passed the House of Representatives.

tion introduced in conformity with the ABA recommendation, but little progress can be reported. He stated also that the Army is seeking legislation to give the military judge exclusive power over sentencing and also legislation to make a sixty-day AWOL, desertion without proof of intent. Finally, General Hodson announced that a new concept of reserve training had been initiated in the summer of 1969. 500 Judge Advocates from the JAG detachments were given two weeks of instruction by the faculty of the JAG school on the campus of Southern Mississippi University. He observed that the training was highly effective and

he opined that more and more JAG reserve training would be handled by this type of activity in the future.

General Hodson thanked the Judge Advocates Association, the American Bar Association and the Federal Bar Association for their efforts to improve the lot of military lawyers and to enhance military law. He stated that he consistently tells his people that the Regular Army cannot accomplish much in the way of legislation, but must rely on its friends in such associations as the Judge Advocates Association to present its needs and to obtain legislative remedies.



REPORT OF TJAG—AIR FORCE

Brigadier General James S. Cheney,* The Assistant Judge Advocate General of the Air Force, reported at the annual meeting of the Association in Dallas on 11 August, 1969 as follows:

Personnel

As of 30 June 1969, the number of Judge Advocates assigned to the Department was 1,178. Of the total assigned, approximately 52% are regular officers, 25% are career reservists (14% came on active duty in career status), and the remainder of 23% are the younger captains serving with an established date of separation.

Officer Procurement

Because of reduced authorizations resulting from the civilianization of former military spaces, the closure of CONUS bases and the phase out of U.S. bases in France, the direct appointment program was terminated on 30 September 1966. For FY 1969, our total requirements for new officers will continue to be met by the use of AFROTC graduates whose call to active duty had been delayed to permit them to complete their law school studies and be admitted to practice, in addition to a few voluntary re-

caltees and graduates from the excess leave program. With the advent of the Military Justice Act of 1968 which boosts Judge Advocate requirements over and above those which can be met from present input resources, an opportunity will be offered to reserve officers on active duty in the grade of captain and below who are lawyers but not Judge Advocates, to compete for selection into The Judge Advocate General's Department. If the additional requirements cannot be fulfilled completely from this source, it will be necessary to activate a limited direct appointment program.

Retention

Notwithstanding the fact that we are able to meet our procurement quotas without difficulty, the retention of officers beyond their obligated tour remains our most critical problem. It is still running at approximately 14.5%. We are still engaged in self-help methods in an attempt to improve this rate. Examples of this are the distinctive insignia which is now worn by all Judge Advocates. Another is our continuing efforts in Career Management to provide as attractive career patterns as possible, which in-

* General Cheney subsequent to this report was named The Judge Advocate General of the Air Force and promoted to the rank of Major General.

cludes consideration of assignment preferences, and professional and military education. I am pleased to report that as a result of changes in the promotion points for line officers, we are now able to promote Judge Advocates to captain immediately upon their entering active duty. We have continued our practice of screening the records of reserve officers during their initial tour and of tendering regular appointments to the best qualified. Although we experience only a one-third acceptance rate from such tenders, I am convinced that we have picked up some career officers we would not otherwise have obtained.

Clearly, the pay differential between military and civilian lawyers continues to be the biggest obstacle to significantly improving our retention figures. Although the difference in pay is only \$1,200 or so in the age 25-34 bracket, it rapidly increases until at age 60 the civilian lawyer is making \$17,000 a year more than his military counterpart, or expressed another way, he is making double the salary of the military lawyer. Currently a legislative pay proposal which embraces professional pay and continuation bonus is being studied and probably will be considered by the 92d Congress.

I am convinced that retention will remain a serious and increasingly critical problem until such time as legislative relief is obtained in the area of the com-

parability of military and civilian pay for professionals.

Reserve Program

As of 31 March 1969, the Ready Reserve of the Department consisted of 533 Mobilization Augmentees; 374 Reinforcement Personnel, 230 of whom are JAG-ARs; 40 unit members assigned to Air Force reserve units; and 108 unit members assigned to the Air National Guard.

The Judge Advocate General's Area Representative Program continued to be a productive part of our reserve training. During the period 1 July 1968-30 June 1969, they gave lectures and moot court presentations and approximately 17,000 hours of legal assistance.

In order to urge company grade judge advocates to remain active in the Reserve, we sent letters to all Judge Advocates who were leaving active duty. These letters were signed by General Manss, The Judge Advocate General and this will be a continuing program.

A TJAG number letter, 69-1, Judge Advocate General's Department Reserve was distributed. This letter explains a new concept for assigning spaces to legal offices nearest to the home of the reservist who wishes to participate, provided the legal office can accept additional reservists for training. This policy will reduce cost and travel and will make the training program more convenient to those involved. The

letter also contains a ready reference to reserve publications for the local judge advocates use.

Colonel James M. Bumgarner replaced Lt Col John J. McCarthy as Assistant Executive for Reserve Affairs upon Col McCarthy's retirement from active duty.

Colonel Bumgarner participated as a member of the Functional Survey Committee to establish the office of AFRes at the seat of the government pursuant to a mandate of the Congress. The reorganization included changing CAC to AFRes and making AFRes an extension of AFTOR as a separate operating agency with the attributes of a major command. The reorganization also established the Air Reserve Personnel Center as a separate operating agency under AFTOR. As a member of the Committee, Col Bumgarner attended at Robins AFB, Georgia, the change of command ceremony at which many dignitaries, including General McConnell, Chief of Staff, were present. This same TDY included a week's study of the previous functions of CAC.

During the period the Judge Advocate General Area Representative roster was updated and will be published as JAGAR Pamphlet 110-5 rather than as an Air Force letter.

USAF Judiciary

At our meeting last year I started out by telling you that we in the Air Force continue to have no major problems in the

area of military justice, despite the increase in our operations in Southeast Asia. I wish I could start out the same way this year.

I may not be completely accurate in terming the developments I am going to discuss as "problems". I do believe, however, that the term is fairly accurate and for want of a better word I am going to use the term "problems" in discussing the actions we have been required to take and will be faced with because of recent developments in military justice.

First of all, let me tell you what recent developments I am talking about and then I will point out briefly the problems resulting therefrom.

As you may recall, at last years meeting I told you that the new Manual for Courts-Martial had gone to press and that it was planned to become effective 1 January 1969, as MCM, 1969. The Executive Order promulgating that Manual was signed on 11 September 1968. The first development I am going to tell you about was placed in a motion a little more than a month later, on 24 October 1968, when the President signed the Military Justice Act of 1968. While we were, rather frantically at times, trying to complete revisions to Air Force manuals, regulations and other directives required by the new MCM, 1969, this new law came into being, making it necessary to start all over again on the same manuals, regulations

and directives. The result was that we had to rush into print with our changes caused by MCM, 1969, and at the same time start revising them even more extensively because of the Military Justice Act of 1968, which was to become effective 1 August 1969. I am not going into detail as to the extensive changes in military justice resulting from this new law. It is now in effect and we met our deadline in getting our required changes to the field in almost all instances. That, of course, does not end our problems. It is a new law, it makes some rather sweeping changes in military justice and we are going to continue to experience some "growing pains" for some time to come in the implementation of the changes.

The second major development was the decision of the Supreme Court on 2 June 1969, in the O'Callahan case. The Supreme Court has stated in this case that a person cannot be tried by courts-martial unless the crime is "service-connected". The Court, in its decision, gave so few guidelines that we do not know with any preciseness what is meant by that term. Consequently, the full impact of the decision is unknown and we expect it will remain in this state for some time pending court decisions interpreting the decision. We know that a serviceman who is off-duty and out of uniform who attempts to rape a civilian woman off-base in the United States or its territories is

not amenable to courts-martial jurisdiction.

Pending clarification, it is our intention to give the decision a strict interpretation. We construe the opinion as having no extra-territorial effect and that courts-martial jurisdiction can attach if one of six factors are present. They are:

1. When the offense is committed on a military installation.
2. When the offense is committed against a military person or government property.
3. When the offender is in a duty status at the time of the offense.
4. When the offense is purely military in nature.
5. When the offender is in uniform when the offense is committed.
6. When the offense is committed outside the territorial jurisdiction of the United States.

In addition, we have had for consideration whether to treat the decision as being retroactive or prospective in effect. After much study it has been determined to treat the decision as being prospective in effect from the date of the decision, 2 June 1969. This determination, as all others we have made might, of course, be changed by later court decision.

There are other problems generated by this O'Callahan decision, but the foregoing are suf-

ficient to show that its effects are far-reaching and, depending on future court decisions, can be even more so.

As of now, our court-martial rate remains quite near to that I reported to you last year. Our 1968 rate per thousand for all courts-martial was 3.3. That converts to 320 general courts-martial, 1888 special courts-martial and 847 summary courts-martial. In 1968, we also had 29,672 Article 15 actions. We anticipate some significant changes in these actions after the Military Justice Act of 1968 is in effect for awhile. For instance, a person now can object to trial by summary court-martial even though he has first been offered and has objected to Article 15 punishment. We believe this will perhaps reduce the number of trials by summary courts and increase the number of trials by special courts.

The Retraining Group at Lowry Air Force Base continues to be an asset. As of 31 March 1969, 28 per cent of all Air Force prisoners were confined at the Retraining Group. We are still experiencing a high success rate. Among those returned to duty, our success rate is 89 per cent. That is the same success rate I was able to report to you last year. To the extent that the retraining program prevents further offenses by its "alumni", it serves to reduce our court-martial rate.

My concluding remarks on military justice must be that we

are in a state of flux to such an extent that I cannot, with any degree of certainty, tell you what the outcomes will be. Hopefully, next year I will be able to be more explicit in this area.

Civil Law

I will now discuss the activities of each of our Civil Law divisions in detail.

Military Affairs Division

The Military Affairs Division renders opinions and gives advice on legal matters to the Air Staff, the Commands and their Staff Judge Advocates, and to various individuals in their official, professional, or private capacity. Additionally, membership on nine permanently constituted boards and committees continues to occupy considerable time of this Division. These activities are the Central Clearance Group, Military Personnel Security Board, Physical Review Council, DOD Military Pay and Allowance Committee, Armed Services Individual Income Tax Council, Attorney Qualifying Committee, Grievance Appeal Board, Incentive Awards Committee, and the Welfare and Recreation Committee.

During FY 1969 this Division rendered approximately 48,000 opinions. This figure is about the same as last year. Of the opinions rendered, more than 25,000 were in the nature of legal assistance, 10,000 were informal opinions, and the balance, in

descending order, involved review of Physical Evaluation Board Proceedings, security review, incentive awards and some 3,200 formal opinions on a variety of subjects. This latter category, which requires the most time, is up over 400 cases from the previous year.

Although statistics from Judge Advocates in the field are not available for this activity, it is the consensus that it parallels the trend experienced by this Division in the Office of The Judge Advocate General.

Litigation Division

The number of new cases in which the Air Force is involved showed a small increase during the past fiscal year over that of the previous fiscal year, but still continues to be well below figures of past years. During the past fiscal year, 284 new cases were received in the Division and 332 cases were closed. The comparable figures for the previous fiscal year were 254 and 361, respectively. As of 1 July 1969, we had 530 cases on hand as compared to 578 cases on hand a year ago. As a result of a vigorous program for the collection of debts owed to the Government and its instrumentalities, the Division collected \$1,946,075.82 during the past fiscal year, an increase of almost one million dollars over the total collections for previous fiscal year.

In the area of general litigation, resort to injunctive relief

continues to be a problem although we have been generally successful in obtaining dismissal of these actions. A new problem is the decision in **Kauffman v. Secretary of the Air Force**, Court of Appeals for the District of Columbia, No. 21,227, which was decided on 26 June 1969. The Court held that the Federal District Court for the District of Columbia had jurisdiction to entertain a collateral attack on a court-martial even though not presented in a petition for writ of habeas corpus. The Court's ruling apparently will allow its District Court to conduct more exhaustive reviews of Court of Military Appeals decisions on any constitutional issue, thus expanding the narrow concept of civilian review of courts-martial as previously interpreted under **Burns v. Wilson**, 346 U.S. 137 (1953). A potential new problem concerns the first suit against the Government involving the Air Force and the Freedom of Information Act, 5 U.S.C. 552. In this action, the plaintiff is seeking the release of a safety investigation report of an aircraft accident. A decision adverse to the Government would seriously affect the Air Force's flying safety program.

Personnel from the Division continue to represent the Air Force in labor arbitration hearings concerning labor unions seeking unit determinations and in utility rate hearings before state regulatory bodies.

In the torts area, court decisions have continued to reaffirm the rule that suits may not be brought against the Government under the Federal Tort Claims Act as a result of death or injury to certain categories of personnel. These categories include servicemen killed or injured incident to their military service; Civil Air Patrol members who are entitled to other Government statutory benefits as a result of their injuries; and Government civilian employees injured while acting within the scope of their employment.

Claims Division

The Air Force Claims Division of the Office of The Judge Advocate General runs a \$13 million claims operation and has claims officers throughout the United States and in many foreign countries. The primary function of the Air Force Claims Division is to settle claims against the Air Force and to assert claims in favor of the Air Force. The authority for the settlement and assertion of claims is derived from some 15 claims statutes and delegation by the Secretary of the Air Force.

The Air Force Claims Division in Washington, D.C. is responsible for the supervision of the Air Force world-wide claims organization. In order to supervise the Air Force world-wide claims operation, the Division publishes a claims manual, arranges claims conferences with the major air

commands, conducts staff visits and maintains almost daily correspondence with claims personnel in the field. The Division also has at its disposal a computerized Claims Data Management System which continues to be a useful tool in managing the claims operation. In order to promote the uniformity in the processing of claims, the Division periodically participates in claims conferences with the sister services.

During FY 1969 we paid out over \$9 million in claims and collected over \$4 million. The primary source of our collections is hospital recovery and carrier recovery claims. Hospital recovery claims, which accounted for over \$1 million, are claims in which the Air Force attempts to recoup the hospital and medical expenses incurred in treating service members and their dependents who are injured through the negligence of third parties. Through carrier recovery claims, the Air Force asserts subrogated claims against carriers and warehousemen for damages to household goods that occur during the shipment or storage of household goods which belong to members of the Air Force. During FY 1969, carrier recoveries amounted to over \$2.7 million.

Claims against the Air Force originate in a variety of ways. One peculiar aspect of our claims operation is that we do, occasionally, in accordance with the Foreign Claims Act, make *ex gratia*

payments on claims in which there is no legal liability attributable to the Air Force. The legislation providing for ex gratia payments was intended to promote and maintain friendly relations with the inhabitants of foreign countries. Air Force generated sonic booms are still a source of considerable claims. Moreover, the processing of sonic boom claims has required extensive liaison between the Claims Division and personnel of both Government and private industry who are engaged in the development and testing of the supersonic transport. The Division has developed a "boom bin," a data repository of Air Force supersonic flight activity, which has proven useful in adjudicating sonic boom claims.

We believe that Air Force claims settlement authorities have adjudicated claims for and against the Air Force in an impartial manner, consistent with the letter and spirit of the laws and regulations governing such claims. The excellent manner in which our Air Force base staff judge advocates have handled their claims responsibilities has prompted our recommending increasing their settlement authority from \$500 to \$1,000. The successful processing of vast numbers of claims inevitably requires close and regular contacts between Air Force claims personnel and the moving, warehouse and insurance industries, as well as with private attorneys represent-

ing claimants. Through these associations Air Force claims personnel have contributed and learned much that will promote the prompt, equitable and uniform settlement of claims.

International Law Division

The International Law Division is responsible for advising the Air Staff on questions of international and foreign law, the international legal aspects of Air Force programs and, in conjunction with the Air Force General Counsel's Office, the drafting and negotiation of international agreements.

The Division monitors all civil suits filed in foreign countries and keeps the field advised of actions taken by Department of Justice and other responsible agencies. These civil cases against the Air Force include a wide range of litigation, including labor disputes, tort cases and real property matters. Close cooperation with the Departments of State and Justice is required in suits against the U.S. Air Force in foreign countries. This area of activity is assuming more importance with the trend towards the restrictive theory of sovereign immunity.

The International Law Division receives reports of all criminal proceedings by foreign countries against Air Force personnel assigned overseas. The action taken by Air Force units in the field to protect the rights of military personnel charged by for-

oreign authorities is closely reviewed to insure that every effort is made to provide assistance, including counsel fees and bail money, if appropriate, and to insure that in these cases where the alleged offense arose out of the performance of official duty, proper documentation is prepared withdrawing the case from the jurisdiction of local authorities. In the event a trial is considered unfair, recommendations are made through channels to the Department of State that appropriate representations be made to that country to correct the injustice. As of 31 May 1969, 14 Air Force personnel were serving sentences of confinement in foreign penal institutions.

Legal advice on the negotiation of military base rights, status of forces and other bilateral agreements is a major activity of the Division. Included among the numerous draft proposals and agreements considered during the last fiscal year were agreements being negotiated with the Governments of Canada, Spain, Thailand, Turkey, Germany, and the Philippines.

The conflict in Vietnam continued to raise many questions concerning the laws of war, including the treatment of prisoners of war. The Division works closely with the other services and the Department of Defense in developing the U.S. position on these questions.

The Division assists in the evaluation by the Government of

various proposals for international agreements. During the fiscal year just ended, multilateral agreements were considered which have great effect on the international law of the sea (various proposals for use of deep ocean floors, and width of the territorial sea), of the airspace (crimes committed aboard aircraft), and of outer space (assistance and return of Astronauts and liability treaties).

Legislative Division

Career Personnel System for Attorneys

Last year we reported to you that the Civil Service Commission had proposed an Executive order which would create a Career Personnel System for Attorneys. This proposal would establish a centrally coordinated Government-wide career system covering attorneys presently in Schedule A of the excepted service. Appointment, promotion, transfer, and other personnel actions would be on the basis of merit and fitness. Channels would be opened up for freer movement of attorneys across occupational and agency lines, and provisions would be made for training, continuing legal education, and professional activities. The services favor the proposal in principle, but object to external interferences with their management of individual lawyer personnel actions. Also, the services favor

a provision for the assimilation of former military lawyers into the civilian program after termination of their active military service as judge advocates. This provision would give former military judge advocates credit for their military service in qualifying them for a position in the competitive service, thus placing them on a par with civil service employees with at least three years in the Career Personnel System for Attorneys. These and some minor comments have been submitted to the Civil Service Commission for their consideration. The proposal is still in interdepartmental coordination and there has been no action during the past year.

Legal Personnel, Administrative Conference

Recently, the Committee on Personnel, Administrative Conference of the United States, submitted five tentative proposals on legal personnel, developed during five days of hearings in April of this year, to the departments and agencies for comment. The proposals would (1) change the title of Hearing Examiner (e.g., Administrative Trial Officer, Administrative Trial Judge, Administrative Chancellor, etc.); (2) enlarge the number of qualified candidates for appointment as examiners; (3) provide a Continuing Legal Training Program for Government Attorneys and Examiners through intra- and inter-departmental and other

means (e.g., Federal Trial Examiners' Conference, bar associations, foundations, Civil Service Commission, law schools); (4) create Federal Attorney Professional Development Boards composed of senior and junior attorneys of each agency to monitor recruitment, evaluation, promotion, assignment, training, retraining and supervision of attorneys; and (5) create a "Center for Continuing Legal Education in Government" in the Civil Service Commission, the Administrative Conference of the United States, or as an independent agency, to keep Government and private attorneys practicing before departments and agencies, current; this would be in addition to proposal (3). Since these proposals are under study interdepartmentally, and within OSD, we have only the Air Force reaction at this time which we assume will be typical of the Services.

The Air Staff pointed out that the proposals relate specifically to Government attorneys and examiners and presupposed that they related exclusively to civil service employees, and ignored the military lawyer, and his service on active duty. Accordingly, the Air Staff recommended that, since judge advocates serve in the same legal fields in the military departments as civilian lawyers, in addition to other purely military justice fields, the proposals should be expanded to cover them, as well as to provide

for their assimilation into, and the recognition of their legal experience in, the civilian legal program after the termination of their active military service. It also recommended, with respect to proposal (2), that in evaluating the experience necessary to qualify as a hearing examiner, suitable military legal experience be accepted as meeting experience requirements for appointment as an examiner. Examples of such military legal experience might include service as a military judge, an appellate military judge, a member of the Armed Services Board of Contract Appeals, or a civilian disciplinary, unfair labor practices, or equal employment and discrimination complaint, hearing examiner.

With respect to proposal (3), the Air Staff invited attention to a limitation placed on the military departments by a recurring provision of the DoD appropriation act which prohibits training in any legal profession, or the payment of tuition for such training, but permits payment of fees for civilian attorneys to participate in abbreviated types of instruction, lectures, or seminars in topics related to their official duties. Furthermore, budget and manpower problems would surely complicate the execution of an attorney training program in the Judge Advocate General's offices of the military departments due to the existing severe personnel retention problem and the curtailment of funds.

Although this proposal appears generally appropriate for the purpose of improving the professional training and experience of Government attorneys, if the civilian agencies establish such programs on a wide scale, and military lawyers are excluded from participation, the additional educational opportunities may tend to encourage judge advocates to seek civil service legal positions. Such a result would aggravate the existing critical retention problem of military departments. Amendment to allow judge advocate participation in the over-all program would appear appropriate.

Finally, in the administration of military justice, as well as in other fields of legal specialty, it may be practicable to use short term exchanges of attorneys with the Department of Justice. Generally, the proposed programs, if adopted within the military departments, should provide additional manning and funding to permit continued mission accomplishment during the continuing absence of personnel selected for participation in the proposed programs.

If the Professional Development Boards, proposed in proposal (4), are created, there should be broad and active judge advocate participation in the Boards established for the military departments. However, since the proposals presuppose that the attorneys are civil service employees, they appear to be unwork-

able in their application to the military departments.

It appears that the program contemplated in proposal (5), for the proposed Center for Continuing Legal Education, may be useful in providing judge advocates with a broader view of the professional problems of Government attorneys. However, concurrence in this proposal is also subject to the availability of money and manpower.

Attorney Fees

In the previous Congress, the Senate passed a bill (S. 1073) eliminating those provisions of law, rules, or regulations which attempted to impose a limitation on attorney's fees as a result of an award made in any administrative proceeding, which bill died in the House. Several similar and related bills have been introduced in this 91st Congress but no action has been taken on any of them to date.

Pay

The Administration's desire to increase active duty pay has been implemented. The three consecutive raises for both civilian and military personnel, intended to place members on a par with their civilian counterparts, was completed when the third and last raise was authorized in July. As you recall, the basic pay act (P.L. 90-207) included authorization to adjust retired and retiree pay when the Consumer Price Index has shown an increase of

at least 3 percent for three consecutive months over the base index.

Pay—"Hubbell"

The most important news in the pay area concerns the so-called "Hubbell Pay Bill" the latest version of which has been resting inactively, but comfortably, at the BoB since early January. The Logistics Management Institute (LMI) which has been studying the pay package, under contract with DoD, to test its soundness preliminary to renewed activity in this fiscal year, has submitted its report. Although we don't know the recommendations in detail, we understand that, broadly speaking, DoD has been advised to (1) retain the proposed salary system; (2) defer changing the retirement system until the proposed 2-step system can be further reviewed; (3) stop trying to use the "comparability" method in adjusting military pay to civilian pay since it cannot be done; and (4) cease trying to make exchanges and commissaries more self-sustaining than they are already.

Patents Division

The Patents Division controls and coordinates all patent, copyright, and trademark activities of the Air Force, and also acts as liaison with other Government departments and agencies in such matters. In the former, representative activities include the handling of various legal, techni-

cal and administrative matters, among which are the investigation of claims for compensation for the alleged unauthorized use by the Air Force of patented inventions, the prosecution of patent applications, the recording of assignments and licenses, the making of patentability and validity searches, and advising Air Force personnel in patent matters. In the latter, the activities include assisting the Department of Justice in the defense of suits against the Government for alleged infringement of patents by or for the Air Force, advising other agencies of the Government

in patent, copyright, trademark and procurement matters, and serving on various committees, subcommittees, and panels involved in some aspect or problem of patent law.

During the past fiscal year the Patents Division conducted 380 searches, filed 324 new patent applications, conducted the prosecution of approximately 700 pending applications before the United States Patent Office, disposed of about 80 infringement claims, assisted the Department of Justice in approximately 75 suits and handled approximately 1500 new invention disclosures.



REPORT OF TJAG — NAVY

The Judge Advocate General of the Navy, Rear Admiral Joseph B. McDevitt, reported to the members of the Association at the Annual Meeting in Dallas on 11 August 1969 as follows:

Personnel Retention

The retention of judge advocates beyond the expiration of initial obligated service continues to be the most acute personnel problem in the Navy Judge Advocate General's Corps. The percentage of career officers continues to decline. In 1968, forty percent of the total strength of the Navy Judge Advocate General's Corps were career officers. Today, the figure has diminished to twenty-eight percent. This stark reality bespeaks the seriousness of the problem. Each year-group moving up the ranks is short of the required number of officers essential to a healthy lawyer community, and each increases the deficiency in experienced officers. During the last year, as a result of the passage of the Military Justice Act of 1968, the authorized strength of the Navy Judge Advocate General's Corps was increased by 148 officers to a total of 746. This increase in authorized strength accentuated the already grave shortage in the career officer category.

As a result of current draft pressures, the recruitment of

lawyers in adequate numbers has presented no problem, and continuing efforts to improve retention of these well-qualified officers are being made. Personnel policies have been specially tailored and directed toward achievement of this primary goal. Recruiting methods which achieve credit for law school attendance by commissioning college graduates and deferring active service pending completion of law school have been proposed, approved, and implemented. The activation of twenty-eight new law centers throughout the world is expected to provide a more tightly knit community of judge advocates and to enhance professional recognition. The heart of the retention problem, lack of competitive compensation, is, however, beyond the power of the armed services to solve. Fortunately, a growing number of Senators and Congressmen have recognized the problem and have proposed remedial legislation which will materially assist in providing uniformed lawyers with financial incentives competitive with those of the civilian attorney employment market. Enactment of such legislation would be an invaluable tool in reversing the unacceptable attrition in the career strength of the Judge Advocate General's Corps.

Naval Reserve Law Program

The Naval Reserve Law Program continues to grow. The number of law companies has increased by one to forty-two. Approximately fifty retiring captains and commanders were replaced during the last year by some 100 young men in the ranks of lieutenant and lieutenant commander. Ninety-five percent of these new officers were obtained through the Direct Commissioning Program. The primary accomplishment of the Reserve program during the last year has been the completion of a comprehensive training curriculum begun in 1968 for the Inactive Reserve members of the Judge Advocate General's Corps. An indoctrination curriculum designed specifically for the inexperienced, newly commissioned judge advocate has been prepared. This curriculum, which is the most up-to-date Navy course of its kind, is being used extensively to train other categories of officers in addition to judge advocates. Training courses for use in conjunction with the Manual for Courts-Martial, United States, 1969, and the Manual of the Judge Advocate General, have also been completed, and a course which will introduce the young officer to the complexities of the administration of military discipline will soon be distributed. It is considered that Naval Reserve Law Companies now possess a challenging, up-to-date, viable training program,

worthy of the considerable legal talent which they comprehend.

The most serious problem facing the Naval Reserve Law Program is the current restriction on active-duty-for-training funds, which threatens to stultify this program. Every effort is being made to remove this stricture, and immediate restoration of previously existing active-duty-for-training billets is considered absolutely essential if the momentum of the Inactive Reserve program for judge advocates is to be maintained.

International Law

There continues to be rapid development in the international law of the sea, which has resulted in a sharp increase in Navy involvement on both the national and international levels. The Judge Advocate General continues to serve as Department of Defense Representative in Law of the Sea Matters.

Within the past year, members of the International Law Division, Office of the Judge Advocate General, have assisted in the formulation of the draft treaty on seabed disarmament tabled by the United States at Geneva, Switzerland, in May 1969. The development of the United States positions on the complex legal problems presently being considered by the United Nations Ad Hoc Committee on the Seabeds with regard to the usage and regimes of deep ocean areas remains a major project. Advice and support are being given in

the areas of strategic arms limitations, the fixing of an internationally agreed territorial sea limit, and the development of international law for the utilization of the ocean for scientific purposes. Assistance has been rendered to the Secretary, Under Secretary, and Assistant Secretary of the Navy (Research and Development) in their respective roles on the National Marine Council and its subordinate committees. Efforts have been intensified to aid in the formulation of Navy programs aimed at resolving present and future conflicts between military and non-military use of domestic offshore sea areas.

In the area of international negotiations, extensive assistance was given in the preparation of the United States positions employed during the negotiations for extension of two significant bilateral agreements: the United States-Spanish Defense Agreement and the United States-Turkish Defense Cooperation Agreement. In addition, the Judge Advocate General participated in preparation of the United States position for use in the current discussions with Chile, Ecuador, and Peru, and has personally participated in the multilateral negotiations now in progress in Buenos Aires, Argentina.

Military Law

Legislation: The Military Justice Act of 1968, which became effective on 1 August 1969, is the most important legislation to be

enacted in the field of military law since the Uniform Code of Military Justice became effective in 1951. It is designed to ensure that the men and women of our Armed Forces are afforded first-class legal services. Just as the Uniform Code of Military Justice was a model criminal law, so now does the Military Justice Act of 1968 embody the latest concepts of legal jurisprudence.

The Act requires increased participation by certified military lawyers in special courts-martial and precludes a sentence with a punitive discharge unless the accused has a certified lawyer as his defense counsel. The Act creates by statute an independent judiciary for each of the armed services, transforms boards of review into courts of military review, permits trial by a military judge sitting without court members, authorizes a military form of release on bail pending appeal, and modernizes court-martial procedures to conform more closely with Federal court practices.

Law Centers: Upon recommendation of the Judge Advocate General, the Chief of Naval Operations directed the establishment of thirty law centers throughout the world in order to implement the Military Justice Act of 1968. These law centers have been staffed by redistribution of existing judge advocate, court reporter, and legal clerk resources, augmented by an additional 148 Navy judge advocates.

The law centers have been established in locations where they can best serve the needs of fleet and shore commands on a global basis.

The sponsor of each law center is an officer with general court-martial jurisdiction. Law center personnel are integral and functional parts of the staff of the sponsoring commander, who has been tasked with the responsibility for providing all necessary legal services and support to all commands located permanently or temporarily within his geographical area of cognizance.

Military Judges: The U. S. Navy-Marine Corps Judiciary Activity, which has been in operation since 1962, has been expanded from its former membership of 12 officers to 20 officers located at 17 branch offices throughout the world. The military judges of the Navy-Marine Corps Judiciary Activity will henceforth preside over all general and many special courts-martial, giving primary priority to generals and secondary priority to specials. In addition to the military judges who are members of the Judiciary Activity, some 300 additional judge advocates of the Navy and Marine Corps have been certified by the Judge Advocate General as military judges for special courts-martial only.

U. S. Navy Court of Military Review: The Judge Advocate General has established, effective 1 August 1969, a U. S. Navy Court of Military Review to replace

Navy boards of review. The new court is comprised of seven Navy, two Marine Corps, and three civilian judges who are graduates of ten different law schools, are members of nine different State and Federal bars, and amalgamate a total of 320 years of collective legal experience.

Manual of the Judge Advocate General: Enactment of the Military Justice Act of 1968 has required substantial revision of those portions of the Manual of the Judge Advocate General which deal with military justice. These revisions, coupled with considerations of up-dating and simplification, have led to the complete revision of the Manual. Indexing of the new Manual will be accomplished by use of the Legal Information Through Electronics (LITE) system. Complete distribution of the new Manual is expected prior to 1 January 1970.

Restriction of Court-Martial Jurisdiction: On 2 June 1969, the U. S. Supreme Court held in the case of *O'Callahan v. Parker* that a court-martial does not have the power under the Constitution to try a serviceman in peacetime for a crime committed off base which is not service-connected. This decision has resulted in a spate of petitions filed by accused servicemen seeking relief in Federal district courts and in the U. S. Court of Military Appeals. It is expected that the *O'Callahan* decision will cause an increase in the number of administrative dis-

charge proceedings commensurate with the number of courts-martial which it precludes, and that there will be an increased need for lawyers to represent parties in the resultant proceedings. The increased workload caused by the O'Callahan case is already evident at the local command level, as well as in the appellate review and military justice sections of the Office of the Judge Advocate General.

Civil Law

Admiralty. The admiralty decision, reported in 1968, which held that the NATO Status of Forces Agreement provides personal injury and death claimants their exclusive remedy and that they, therefore, have no right to bring suit under the Public Vessels Act (*Shafter v. United States*, 273 F.Supp. 152, 1967 AMC 1337) has been affirmed *per curiam* by the U. S. Court of Appeals for the Second Circuit [400 F.2d 584 (1968)] and certiorari has been denied by the U. S. Supreme Court [393 U.S. 1086 (1969)].

Claims. During the past year, the Navy completed its assistance to the Department of State in preparing claims against the Government of Israel for death and injury to the crew of USS LIBERTY and for the loss or damage of personal property sustained as a result of the attack on USS LIBERTY by Israeli armed forces on 7 June 1967. All such claims have now been paid.

The Navy has decentralized its

system for paying military and civilian personnel claims arising from the loss or damage to personal property incident to service. The adjudication of such claims in the field is expected to expedite payment appreciably.

Federal Income Taxes. During the past year the Internal Revenue Service handed down six rulings favorable to servicemen in response to questions and issues initiated by the Judge Advocate General. These rulings involved the "sick pay" exclusion for officers hospitalized as a result of combat zone service; abatement of all income taxes of servicemen killed in a combat zone even though one-half was the share of the widow under community property laws; combat zone benefits for service members detailed to the Agency for International Development and receiving civil service pay; extension, for combat zone service, of the four-year period in which to replace homes; abatement of taxes for all intervening years of a member who served in Korea and died in Vietnam, subject to the statute of limitations; and deductions for off-duty education expenses incurred by a Navy officer.

Sales and Use Taxes. In 1968, the U. S. Court of Appeals for the Second Circuit [*Sullivan v. United States*, 398 F.2d 672 (1968)] unanimously affirmed a Connecticut U. S. District Court decision holding that section 514

of the Soldiers' and Sailors' Civil Relief Act exempts nonresident servicemen from liability for Connecticut's sales and use taxes. On 26 May 1969, the Supreme Court reversed the Second Circuit and unanimously held that the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from sales and use taxes imposed

by states in which such servicemen are stationed solely by reason of their military orders. [*Sullivan v. United States*, 395 U.S. 169 (1969).] State and Federal legislation is being prepared by the Judge Advocate General to ensure that servicemen are fully protected from the possibility of double taxation.



PROGRESS REPORT—LEGISLATION

The Pirnie Bill, H.R. 4296, was heard in September 1969 and reported out favorably by a Subcommittee and subsequently by the full Armed Services Committee of the House. It was passed by the House of Representatives at the end of the last Session.

H.R. 4296 will give special pay of \$50 per month to judge advocates up to the rank of Captain or Lieutenant Senior Grade, \$150 per month to Majors and Lieutenant Colonels, Lieutenant Commanders and Commanders and \$200 per month to Colonels and Captains and above. In addition it provides for a continuation bonus to be paid to JAs who, having completed obligated service, agree to remain on extended active duty for additional periods of three to six years. The bonus will equal two months' basic pay for each year of extended duty and can be prorated monthly over the period of the extended service or taken in a lump sum. The Subcommittee limited payment of the bonus to once only and only to JAs having less than ten years active duty. At the hearings Congressman Pirnie, Assistant Secretary of Defense, Roger Kelly and the TJAG of each of the services and ranking judge advocates from the Marine Corps and Coast Guard testified in favor of the bill. The JAA submitted a statement strongly supporting the bill. The statement pointed out that the bill provides the only proposed solution

of the personnel retention problem which seems to have a realistic chance of adoption but that it is not overly liberal and may not prove sufficient, although it will undoubtedly help. Most JAA State Chairman and JAA officers and directors, who were able to do so, emphasized by letter, and otherwise, to their Congressmen and to DOD officials, the seriousness of the JA retention problem and the need for legislation. Congressman Pirnie, of course, is a past president of the JAA and a present director. Col. William L. Shaw, USAR-Ret. of Sacramento was particularly helpful. He was instrumental in obtaining an Assembly Joint Resolution from the California Legislature urging the early enactment of H.R. 4296. The effort in the House has paid off by passage of the bill by that body.

Similar proposed legislation (S. 2674) was introduced by Senator Inouye in the Senate. This bill has been co-sponsored by Senators Ervin, Javits, Goodell, Stevens, Holland, Pell, Hatfield, Metcalf, Jackson, Dodd, Eagleton, Bible, Thurman, Miller and Dole. Senator Yarborough has introduced also a similar bill on the Senate side. Senate hearings have not yet been scheduled but the commitment of Senator Stennis to schedule hearings in sufficient time for action by the Senate this Session has been obtained.



Major General James S. Cheney
The Judge Advocate General of the Air Force

GENERAL CHENEY BECOMES TJAG—AIR FORCE

General James S. Cheney was nominated by the President on 15 September 1969 for appointment to the permanent rank of Major General and assignment as The Judge Advocate General, United States Air Force, effective 30 September 1969 for a period of four years, and his appointment has been confirmed by the Senate. He replaces Major General Robert W. Manss who retired on that date.

General Cheney, a native of Tucson, Arizona, is 51 years of age. He received his law degree from Atlanta Law School in 1950 after a nine year interruption in his law studies by military service. His military career began as an aviation cadet at Kelly Field in October 1941 where he received his wings as a rated navigator in January 1942. From March 1943 until the end of World War II he served as navigator in combat operations in the ETO. From 1946 he served as legal officer for several Air Force commands in Europe and the United States. In 1950, he was assigned to the Far East and flew on missions as navigator with the Third Bombardment Group in the Korean War for about six months

and then was reassigned duties as legal officer. From July 1951 he served successively as Deputy Staff Judge Advocate of an Air Proving Ground Command, as a member and later chairman of a Board of Review in the Office of The Judge Advocate General and as Executive Officer to The Judge Advocate General.

In July 1962, General Cheney was assigned as SJA to the Third Air Force in England. In July 1963 he served as Deputy SJA, USAF, Europe and in July 1964 he returned to Headquarters USAF, OTJAG, as Director of Military Justice. From July 1967 to February 1969 he served as SJA, Hq. Pacific Air Forces and then returned to Washington as Assistant Judge Advocate General.

A member of the bar of the State of Georgia, General Cheney is a member of the American Bar Association. He has been a member of the Judge Advocates Association since 1954 and has served as a member of its Board of Directors since 1966.

General Cheney, his wife, Yvonne, and their two sons, James and Frederick, reside in Arlington, Virginia.

THE MILITARY JUSTICE ACT

by Kenneth J. Hodson *

On 1 August 1969 the Military Justice Act of 1968 became fully effective.¹ On that date also, the Manual for Courts-Martial, United States, 1969 (Revised edition) and the service regulations implementing the Manual and the Act took effect. The Military Justice Act of 1968 makes the first major change in the administration of military justice since the Uniform Code of Military Justice was enacted in 1950.² It brings added benefits to the military accused, surpassing civilian criminal justice systems in some areas. At the same time it increases military efficiency by speeding the procedures of court-martial and by releasing line officers from some of their military justice duties.

The Act makes changes in the Uniform Code of Military Justice long advocated by the United States Court of Military Appeals,

legal associations, the armed services, and members of Congress.³ A tri-service committee of judge advocates under my direction revised the Manual for Courts-Martial to implement the Military Justice Act. Other changes to the Manual were made by the Standing Committee to update the Manual for Courts-Martial. These changes implemented decisions of the United States Supreme Court and the Court of Military Appeals and improve court-martial procedures.

The Act makes extensive changes in military justice in five areas: use and authority of military judges (formerly called law officers); court-martial procedures; accused's right to legally qualified counsel; deferment of service of sentence to confinement pending review (sometimes erroneously called military "bail" since

* Major General, United States Army. The Judge Advocate General of the Army.

¹ 82 Stat. 1335 (1968), PL 90-632. Provisions dealing with Articles 69 and 73 took effect on 24 October 1968.

² 64 Stat. 107 (1950) as codified and revised in 70A Stat. 1956 as amended.

³ The Act passed the House and Senate as HR 15971, 90th Congress, 2d Session. It was originally introduced in the House of Representatives by Representative Charles E. Bennett of Florida. The Senate amendments were sponsored by Senator Sam Ervin, Jr. of North Carolina. The substance of the Act is drawn in large measure from a series of Department of Defense proposals.

there is no monetary deposit); and appellate review.

Military Judges

The military judge is now the presiding officer of the court-martial.⁴ Military judges of general courts-martial must be part of an independent judiciary.⁵ Army military judges were made part of an independent judiciary prior to the passage of the Act,⁶ but the independent field judiciary is new to the Air Force and the Navy.

The independent judiciary concept makes the judges of general courts-martial responsible only to The Judge Advocate General, or his designee, for direction and for efficiency reports. They are not responsible to the commanders convening courts-martial. The independent judiciary prevents commanders from exercising any influence over the procedures and results of cases.

The Uniform Code now provides for trial by military judge without court members.⁷ The accused has the right, knowing the identity of the military judge and

after consultation with defense counsel, in all general courts-martial, except in capital cases, to request trial by a military judge alone. This is similar to the right to waive trial by jury in a civilian court. The only condition on an accused's request for trial by judge alone is that the military judge approve. Both sides are permitted to argue the appropriateness of the accused's request.⁸

The Military Justice Act permits a court-martial convening authority to detail a military judge to a special court-martial.⁹ If a military judge is so detailed, the accused will have the same right as exists at general courts-martial to request trial by the military judge alone. Army regulations require a convening authority to detail a military judge whenever a judge is available¹⁰ and specify that judges will be detailed first to those cases involving complicated issues of law or fact.¹¹ Because of fewer cases, the Air Force, for example, can detail military judges to all spe-

⁴ Article 26 (a), UCMJ.

⁵ Article 26 (c), UCMJ.

⁶ AR 22-8, 14 October 1964 (superseded).

⁷ Article 16, UCMJ.

⁸ See, e.g., paragraph 9-5c, AR 27-10, 26 November 1968, as changed by Change 3, 27 May 1969, hereafter cited AR 27-10, Change 3, 27 May 1969.

⁹ Article 26 (a), UCMJ.

¹⁰ Paragraph 2-15b, AR 27-10, Change 3, 27 May 1969.

¹¹ Id.

cial courts-martial. This is the ultimate goal of the Army.

The addition of military judges to special courts-martial and the option for trial by military judge alone at both general and special courts-martial has initially proved very successful and has improved the overall efficiency of the Army by speeding courts-martial and by releasing many line officers from court-martial duty. In the first nine weeks' operation of the Act in the Army military judges were detailed to 58% of the special courts-martial. In 97% of these cases the accused requested and was granted trial by military judge alone. In 72% of the general courts-martial the accused was tried by the military judge alone. Projected over a full year at the current court-martial rate these figures would result in many hundreds of thousands of man-hours being saved.

There are two types of military judges in the Army: military judges of general court-martial who can act as military judges at both general and special courts-martial and military judges of special courts-martial who can act as judges only at special courts-martial. Some military judges of special courts-martial are assigned to the U. S. Army

Judiciary the same as military judges of general courts-martial.¹² They are supervised and rated as directed by The Judge Advocate General.¹³ Other military judges of special courts-martial are certified for duty as judges by The Judge Advocate General but are assigned to commands in other judge advocate roles.¹⁴ They will serve as military judges as an additional duty. In order to make absolutely sure that their performance of duty as military judges is unaffected by command pressures, their performance of duty as military judges is unaffected by command pressures, their performance of duty as military judges is rated by a member of the U. S. Army Judiciary as directed by The Judge Advocate General.¹⁵ The Military Justice Act does not require that military judges of special courts-martial be part of an independent judiciary. This was a realization on the part of the Act's drafters that the services simply could not provide enough trained personnel to meet such a requirement. Our ultimate goal is to have sufficient personnel assigned to the U. S. Army Judiciary to be able to detail military judges to special court-martial in the same manner that they are detailed to general court-martial.

¹² Paragraph 9-2d(1), AR 27-10, Change 3, 27 May 1969.

¹³ Paragraph 1-4i, AR 623-105 (Draft).

¹⁴ Paragraph 9-2d(2), AR 27-10, Change 3, 27 May 1969.

¹⁵ Paragraph 4-2a(8), AR 623-105 (Draft).

Powers of Military Judges

The Act makes procedural changes in the Code designed to allow the military judge to assume a true judicial role, to save the time of court members and to improve the internal efficiency and fairness of the military system of criminal justice. The role of a military judge and of a federal district court judge are now similar, and a court-martial closely resembles a federal criminal trial. The military judge is authorized to hold sessions, known as Article 39(a) sessions before, during, and after the trial, without assembling the court-martial members.¹⁶ At this session, the judge may rule on interlocutory questions and motions raising defenses and objections. He may hold the arraignment and take the pleas of the accused.¹⁷ He may also act on remands of appellate agencies. Under prior practice the court-martial had to be formally assembled and the members present for these strictly legal procedures. During many of the procedures, however, the members were excused from the court room. This inefficient

practice has been eliminated by the provision for Article 39(a) sessions.

The new law changes the authority of the military judge to make final rulings and the way in which many rulings are made at special courts-martial. The military judge will rule finally (the court members may not overrule his decision) on challenges to court members,¹⁸ on requests for continuances,¹⁹ and on all questions of law and all interlocutory questions other than the factual issue of the accused's mental responsibility for the offense.²⁰ The military judge will also rule finally on motions for findings of not guilty and on the accused's mental capacity to stand trial.²¹ The president of a special court-martial without a military judge will now have the power to rule finally on all questions of law except a motion for a finding of not guilty.²² He will not rule finally, however, on any questions of fact. When the military judge sits without court members, he decides all questions of law and fact and, if the accused is found guilty, ad-

¹⁶ Article 39(a), UCMJ.

¹⁷ Article 39(a) (3), UCMJ and paragraph 2-18, AR 27-10, Change 3, 27 May 1969.

¹⁸ Article 41, UCMJ.

¹⁹ Article 51, UCMJ.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

judges an appropriate sentence. The judge will make a general finding and in addition will make special findings of fact upon request.²³

Court-Martial Procedures

The new law, the Manual and its implementing regulations streamline court-martial procedures in many ways. The services have implemented the provision for "one time" oaths.²⁴ In the Army all counsel who are members of the Judge Advocate General's Corps and all military judges will take oaths to serve faithfully in all cases to which they are detailed.²⁵ They will not be sworn again when they are detailed to a particular court-martial. Except in capital cases, the military judge or president of a court-martial without a military judge may enter findings of guilty without vote of the court members when the accused pleads guilty²⁶ and such plea is determined to be provident. This procedure will also save time without sacrificing any rights of the accused.

Qualified Counsel

The most significant changes in military justice involve the special court-martial. The provision for detailing military judges to special courts-martial has already been discussed. An accused at special court-martial must now be afforded the opportunity to be defended by legally qualified counsel, certified by The Judge Advocate General, unless physical conditions or military exigencies prevent such counsel from being obtained.²⁷ This procedure should be contrasted with the procedure in a general court-martial where the accused is provided with qualified counsel without a request.²⁸ In general, an accused will be defended at a special court-martial by a member of the Judge Advocate General's Corps, if he so requests. Provisions have been made in the Army, however, for the use of lawyers who are members of other branches²⁹ and for judge advocates of other services, should the need arise.

The "military exigency" and "physical condition" exceptions in

²³ Article 51(d), UCMJ.

²⁴ Article 42, UCMJ.

²⁵ Paragraphs 5-3 and 5-4, AR 27-10, Change 3, 27 May 1969.

²⁶ Article 45(b), UCMJ and paragraph 2-19, AR 27-10, Change 3, 27 May 1969.

²⁷ Article 27(c), UCMJ.

²⁸ Article 27(a), UCMJ.

²⁹ Paragraph 2-26, AR 27-10, Change 3, 27 May 1969.

the Code have been narrowed to the accused's benefit in the Army. Within the United States, excluding Alaska and Hawaii, there are no exceptions to the requirement for counsel; if the accused requests a certified lawyer counsel and none is provided, the court-martial may not proceed.³⁰ Outside these areas if an accused requests lawyer counsel, and none can be provided, the convening authority, prior to the assembly of the court, must prepare a certificate of non-obtainability which will be presented to the court-martial, before the trial may proceed.³¹ Army regulations require extensive efforts to obtain counsel before a certificate of non-obtainability may be filed with the court-martial.³²

It is contemplated that there will be few situations where certificates of non-obtainability will be issued. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to extend to an accused the right to qualified counsel. Compelling reasons must be given why trial must be held without lawyer counsel at that time and at that place.³³

Special Court-Martial— Bad Conduct Discharge

In order for a special court-martial to adjudge a bad conduct discharge the Code now requires the following: a verbatim record of trial must be prepared; the accused must have been represented by qualified legal counsel; a military judge must have been detailed to the court, unless such judge could not have been obtained because of physical conditions or military exigencies.³⁴ The requirements for defense counsel are, thus, the same as at a general court-martial. In the Army there are additional requirements. The "military exigency" and "physical condition" exceptions do not apply; a military judge must be detailed to the court-martial. Additionally, the court-martial must be convened by a general court-martial convening authority. Although the other services have generally allowed special courts-martial to adjudge bad conduct discharges prior to the enactment of the Military Justice Act, as a practical matter the Army has not. Authorization for a bad conduct discharge special court-martial should provide another useful al-

³⁰ Paragraph 2-14d, AR 27-10, Change 3, 27 May 1969.

³¹ Paragraph 6c, MCM, 1969 (Rev.).

³² Paragraph 2-14, AR 27-10, Change 3, 27 May 1969.

³³ Paragraph 2-14b, AR 27-10, Change 3, 27 May 1969.

³⁴ Article 19, UCMJ.

ternative for the convening authority and will also present a forum for the trial of those individuals who are not felt to deserve the possible greater punishment of a general court-martial.³⁵

Summary Courts-Martial

The Military Justice Act made significant changes affecting the summary court-martial. An accused may now object to trial by summary court-martial even if he has previously refused punishment under Article 15,³⁶ in which event the convening authority may refer the case to a special court-martial where the accused will be afforded the opportunity to request qualified counsel or to a general court-martial where the accused will be detailed a qualified counsel. It should be noted that the accused runs the risk of a greater punishment by refusing nonjudicial punishment and trial by summary court-martial.

Deferment of Confinement

The new law provides the convening authority or other authority having jurisdiction over an accused with discretionary authority to defer service of a sentence to

confinement pending review, if the accused so requests.³⁷ No bond or monetary deposit is required. When review is completed and, if the sentence to confinement is ordered executed, the accused will be required to serve his sentence. No credit against the confinement portion of the sentence will be given for the time during which the sentence was deferred.

Appellate Review

The Military Justice Act makes important changes in appellate procedures in the services. It constitutes a Court of Military Review in each service in place of the previously existing boards of review.³⁹ The Act amends Articles 69 and 73 of the Uniform Code of Military Justice by broadening the scope of The Judge Advocate General's power to grant new trials and by empowering him to review cases not otherwise reviewed by the Court of Military Review. These provisions of the Act became effective on 24 October 1968. Prior to that date the only provision for review of cases not required to be reviewed by the then boards of review appeared in Article 69. General

³⁵ The consequences of a bad conduct discharge adjudged by a special court-martial are somewhat less severe than the consequences of one adjudged by a general court.

³⁶ Articles 15 and 20, UCMJ. A service member attached to or embarked in a vessel, however, may not demand trial by court-martial in lieu of nonjudicial punishment under Article 15. Article 15(a), UCMJ.

³⁷ Article 57(d), UCMJ.

³⁹ Article 66, UCMJ.

court-martial convictions where no punitive discharge was adjudged, which did not involve a general or flag officer, and where the sentence to confinement was for less than one year were examined in the Office of The Judge Advocate General. If any part of the findings or sentence was found unsupported in law or if The Judge Advocate General so directed, the case was reviewed by a board of review.

These provisions have been retained. In addition, any court-martial conviction, including those by special and summary court-martial, which has been finally reviewed but has not been reviewed by a Court of Military Review, may now be reviewed by The Judge Advocate General.⁴⁰ The Judge Advocate General may vacate or modify in whole or in part the findings or sentence, or both, in any court-martial which he reviews under Article 69. The time for filing petitions for new trials is enlarged from one to two years and the category of cases in which petitions may be filed has been broadened.⁴¹ Applications for review under Article 69 must be based on grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over

the accused or the offense, or error prejudicial to the substantial rights of the accused.

Other Changes

The new law and regulations also provide for summarized records of trial in certain cases⁴² and set forth new provisions for authentication of court-martial records.⁴³ If an accused receives punishment of a minor nature at a general court-martial, the record may be summarized, as may the record of trial of an acquittal.

The Standing Committee's additions to the Manual for Courts-Martial are also significant. The most important is the change to paragraph 75 of the Manual. Paragraph 75d permits the members of a court-martial, when a military judge is detailed thereto, to receive additional information relevant to the sentence to be imposed. This additional information is limited in the Army to that contained in DA Form 20 for enlisted accused and DA Form 66 for officer accused and in records of punishment under Article 15 required by regulation to be retained in the accused's Military Personnel Records Jacket (DA Form 201).⁴⁴ This regulation will thus limit consideration of Article

⁴⁰ Article 69, UCMJ.

⁴¹ Article 73, UCMJ.

⁴² Article 54, UCMJ and paragraph 2-17, AR 27-10, Change 3, 27 May 1969.

⁴³ Article 54, UCMJ and paragraphs 39f and 40c, MCM, 1969 (Rev.).

⁴⁴ Paragraph 2-20, AR 27-10, Change 3, 27 May 1969.

15 punishments to those received within a reasonable period of time.⁴⁵ Additional changes made by the Standing Committee include changes to the rules of evidence⁴⁶ required by recent court decisions, a change to instructions to court members on punishment,⁴⁷ and one change to the table of maximum punishments.⁴⁸ The continued existence of the Standing Committee will aid in keeping the Manual for Courts-Martial accurate and up to date.

The Military Justice Act of 1968 places the judicial system of the Armed Forces ahead of most civilian systems in terms of ju-

dicial procedures and concepts of due process. In addition, the Manual for Courts-Martial and the regulatory implementation provide a framework which equals or surpasses most of the minimum standards for criminal justice proposed by the American Bar Association.⁴⁹ The enactment of the Military Justice Act after many long years of effort emphasizes the continued need for change and reform in any criminal justice system. It is my belief that it is another significant step toward a process of continual improvement in the administration of military justice.

⁴⁵ Paragraph 3-15*d*, AR 27-10, Change 3, 27 May 1969, hereto the period during which records can be maintained.

⁴⁶ Paragraphs 140*b*, 144*d*, 145*b*, 145*c*, 149*b* (1), 153*b* (1), MCM, 1969 (Rev.).

⁴⁷ Paragraph 76*b* (1), MCM, 1969 (Rev.).

⁴⁸ Paragraph 127(c), MCM, 1969 (Rev.) The maximum punishment for theft of a motor vehicle, aircraft or vessel has been increased.

⁴⁹ The President of the ABA has appointed a "Special Committee on Minimum Standards for the Administration of Criminal Justice." This Committee has produced several drafts of standards which relate to various areas of judicial process. Ten of the drafts have been approved by the House of Delegates and a few remain to be approved.

MILITARY LITIGATION INVOLVING PERSONAL CONVENIENCE OF THE SERVICEMAN

by William L. Shaw *

I. Introduction

The years 1967-1969 have witnessed an increase in federal district court decisions which essentially involve issues related to personal convenience of a particular serviceman who seeks early release from the military. The convenience of the government is secondary to the desire of the serviceman to terminate his duty status or to avoid the performance of hazardous duty in certain critical areas, such as Viet Nam. This writing will consider the trend of such cases.

II. Unsatisfactory Ready Reserve Participation

A 1961 statutory amendment¹ empowered the President to pro-

vide by regulation that any person enlisted after October 4, 1961 in the Ready Reserve might be selected for priority induction.²

The 1967 amendment provided that the President may order to active duty any member of the Ready Reserve who "(1) is not assigned to, or participating satisfactorily in a unit of the Ready Reserve; (2) has not fulfilled his statutory reserve obligation; and (3) has not served on active duty for a total of 24 months."³

In *United States ex rel. Sanders vs. Yancey*,⁴ petitioner Sanders was inducted through Selective Service on May 11, 1966, and the next day sought a writ of habeas corpus directed to the Commanding General, Fort Hamilton. The

* Colonel, JAGC, CAL ARNG (Ret.). The Judge Advocate, National Guard Association of California.

¹ 75 Stat. 807 (1961), 50 U.S.C. App. # 456(c) (2) (D) (1961).

² 32 C.F.R. 1631.8, Exec. Or. 10659, 21 F.R. 1103 (1956) amended by Exec. Or. 11188, 29 F.R. 15563 (1964), Exec. Or. 11360, 32 F.R. 9794 (1967) define Sel. Serv. Registrants who shall be inducted without calls

³ 10 U.S.C. # 673(a) (1967): upheld and applied in *Weber vs. United States*, 288 F.Supp. 491 (D. Pa. 1968) involving a Marine Corps reservist who refused to make up 4 unexcused absences and was then ordered to 1½ years of active duty.

⁴ 368 F.2d 816 (2d Cir. 1966)

lower court denied the writ.⁵ Classified I-A in June 1965, the petitioner enlisted in the National Guard (NG) in September 1965, but did not inform his local board. Unaware of the reserve affiliation, the board in October 1965 ordered the petitioner to report for induction on November 17th. The Notice to Report for Induction stated: "if you . . . are now a member of the NG . . . bring evidence with you . . ." The petitioner made no attempt to notify his board. On November 18th, petitioner was discharged from the NG after failing to attend drills. In March 1966, the petitioner requested the board to reopen his I-A classification, and alleged that he was still a member of the NG as his discharge was allegedly improper. In affirming the lower court, Second Circuit pointed out that the petitioner had failed to advise his local board of his reserve affiliation and disregarded the notice to this

effect on his draft card (Selective Service System Form 110) and later did not heed the instruction on his Notice to Report (Selective Service Form 252) to present evidence of membership in the NG.

A reservist called to active duty because of unsatisfactory performance of reserve duty, was not entitled to have his annual two weeks' active duty training period credited against his extended active duty. He was allowed credit for active duty for basic training (ACDUTRA).⁶

Habeas corpus was denied to effect petitioner's release from military service on the ground that he was physically unfit. The court held that a determination of an Army Physical Evaluation Board that petitioner was fit was final. Courts do not have discretion to discharge Army personnel as this discretion rests with the Secretary of Army or his delegated representatives.⁷

⁵ 260 F. Supp. 855 (E. D. N. Y. 1966); *accord*, United States v. Lonstein, 370 F.2d 318 (2d Cir. 1966) involving repeated absences from ordered drills with the Army Reserve in disregard of warnings.

⁶ Fox vs. Brown, Secretary of USAF, 402 F. 2d 837 (2d Cir. 1968); under the facts, from the 2 years ordered active duty, there were subtracted 131 days ACDUTRA in 1962, plus 45 days active duty in 1965, or a total 176 days. He was denied credit for 10 weeks annual duty over 5 years from 1962. The situation arose after 19 unexcused absences and 12 excused absences in 1966-67. Fox was represented by both military and civilian counsel at a hearing he requested before the SJA of the Air National Guard.

⁷ See 10 U.S.C. 3811(b); Rank vs. Gleszer, 288 F.Supp. 174 (D. Colo. 1968); in accord, Re Bank, 290 F. Supp. 120 (D. Calif. 1968) as to asserted psychiatric disorder in petitioner-soldier.

In *United States vs. Quaid*,⁸ a delinquent reservist was convicted of refusing to submit to induction into the armed forces. He had made a CO claim to his local board which had declined to consider the claim. On appeal, the Tenth Circuit reversed the conviction and remanded the case with instructions to consider the statute as affecting the defendant's claim. The appellate court took cognizance of the CO claim although the same item had not been brought to the attention of the district court at trial. The court stated: "Although a claim to be a CO does not set well with most Americans, particularly because it may so easily be used as a fraudulent device to avoid service in the Armed Forces, Congress has recognized that the true CO is entitled to exemption from combatant service."⁹

III. Opposition to Overseas Duty Because of Personal Convenience

In *Luftig vs. McNamara*,¹⁰ an army private sought a declaratory judgment and injunctive relief to enjoin the Secretary of Defense from ordering him to active duty in Vietnam. The proceeding was dismissed in the lower court¹¹ for lack of jurisdiction. The dismissal was affirmed in the appellate court as the suit sought to achieve what amounted to a judicial review of congressional political determinations. The United States has never consented to be sued in this type of proceeding. The courts cannot oversee the conduct of foreign policy or control the disposition of the military forces as this is a matter within the exclusive province of Congress and the Executive.

Judicial review was declined whether by habeas corpus, injunc-

⁸ 386 F.2d 25 (10th Cir. 1967) rehearing denied Jan. 18, 1968. As to court-martial jurisdiction over a reservist during his active duty for training (ACDUTRA) which may extend up to six months or more, see *Le Ballister v. Warden, Disciplinary Barracks*, 247 F. Supp. 349 (D. Kans. 1965) where as a defense to court-martial, the accused first asserted that his acts were a part of his rebellion against the taking of human life! The court-martial rejected such a defense. See *Re Taylor*, 160 F.Supp. 932 (W.D. Mo. 1958) where the accused was apprehended, and *there was a continuing court-martial jurisdiction after a six months ACDUTRA had terminated.*

⁹ *Id.* at 27. The court noted that Sec. 6(c)(2)(d) provided that an unsatisfactory reservist "may be selected for training and service". The implementing Sel. Serv. Regulation, 32 C.F.R. # 1631.8 went beyond the statute in setting forth that the registrant "shall be ordered to report for induction". The word 'shall' has improperly been substituted for 'may', and, accordingly, the court held the regulation to be invalid insofar as the term 'shall' has been used to replace the word 'may'.

¹⁰ 373 F.2d 664 (D.C. Cir. 1967) *cert. denied*, 387 U.S. 945 (1967).

¹¹ 252 F. Sup. 819 (D.D.C. 1966).

tion, mandamus or under the Administrative Procedure Act where there was sought a review of a refusal to grant a family hardship exemption to a ready reservist who had been ordered to active duty.¹² The court stated:

"The very purpose of a 'ready reserve' is that the reserve shall be ready: Under the regulations, delay or exemption from active duty in hardship cases is authorized but not required. . . . A good deal is necessarily left to the judgment of the commanding officer." (p. 374)

Dismissal was granted in a proceeding by a 19 year old soldier, with a history of rheumatic fever, to set aside a military order designating him for service in Vietnam and seeking in effect limited service for the plaintiff.¹³ The court quoted *Orloff vs. Wiloughby*:¹⁴

"But judges are not given the task of running the Army. . . . The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary

be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

IV. Conscientious Objection (CO) Scruples After Entering The Military

A leading case is *Noyd vs. McNamara, et al.*,¹⁵ which involved a CO claim made by an Air Force officer of 11 years active duty. Declaratory and injunctive relief or mandamus or habeas corpus were sought to establish the petitioner's status as a CO and to require the Air Force to assign him to duty consistent with his subjective conscience or to accept his resignation. The petitioner was particularly opposed to the Vietnam conflict. Relief was denied in the lower court.¹⁶ The Tenth Circuit held that the district court lacked jurisdiction to grant relief in view of the failure of the petitioner to exhaust available military process, and the court could not heed a contention that applicable Air Force regulations which had not been previously invoked, did not accord with due process. A reviewing court would

¹² *United States ex rel Schonbrun v. Commanding Officer*, 403 F.2d 371, 374 (2d Cir. 1968).

¹³ *Weber vs. Clifford*, 289 F. Supp. 960 (D. Md. 1968).

¹⁴ 345 U. S. 83, 93-94 (1953).

¹⁵ 378 F.2d 538 (10th Cir. 1967) *cert. denied*, 389 U.S. 1022 (1967). Mr. Justice Douglas would have granted certiorari.

¹⁶ 267 F.Supp. 701 (D. Colo. 1967).

not anticipate that the petitioner might be denied a full consideration of his constitutional rights within the scope of military process. Although the plaintiff's sincerity was not questioned, the federal judiciary could not review the validity of military assignments to duty. The court saw that wide discretion existed in the Executive Department, both in the formation and in the application of regulations and their interpretation in such matters as what constituted "for the good of the service".

Brown vs. McNamara, et al.,¹⁷ involved a petition in habeas corpus seeking a discharge of an Army serviceman on the ground he became a CO after entering the Army. The lower court denied relief.¹⁸ Under the facts, the petitioner voluntarily enlisted, and it was alleged that two weeks after beginning his basic

training, his religious beliefs "crystallized", and he then refused to proceed further with combat training. He sought discharge from the Army under the available procedure¹⁹ but was unsuccessful. On referral to the Director of Selective Service for an advisory opinion, a negative recommendation was received. The petitioner had contact with pacifist organizations and persons.²⁰ The petitioner's Commanding Officer concluded that the beliefs were based on outside contacts rather than upon religious convictions. Subsequently, Brown refused an order to draw combat-training equipment, went to a Special Court-Martial, and received a suspended sentence from the court reviewing officer. Thereafter, he had a second infraction, and was ordered into confinement for three months. After serving the sentence, a third dis-

¹⁷ 387 F.2d 150 (3d Cir. 1967); *accord*, Chavez v. Ferguson, 266 F.Supp. 879 (N.D. Calif. 1967).

¹⁸ 263 F.Supp. 686 (D.N.J. 1967).

¹⁹ AR 305-20: Dept. Defense Circ. # 1300.6. Inquiry to Fort Ord, California, on Aug. 27, 1968, developed the information from Personnel Affairs Division by 1st Lt. John C. Gage, AGC, that since Jan. 1967, army personnel at Fort Ord in the number of 50 men have sought to establish CO status and thus gain discharge from the army, while 78 men have sought reassignment within the army to non-combatant duty from a duty status. Of the 50 alleged COs, 7 have been approved, 37 disapproved, and 6 are pending. Of the 78 requests for non-combatant reclassification, 45 have been approved for reclassification (often to the Medical Corps), 25 have been disapproved, and 8 are pending. Of the total of claimants disapproved, only one man has thereafter refused to obey orders.

²⁰ These included literature from SANE and the World Federalists, Peace groups at YALE, including "Alternative" and "Americans for Reappraisal of Far Eastern Policy".

obedience occurred, leading to a sentence of 18 months at hard labor at Fort Leavenworth.

The court in *Brown* held that the military administrative scheme did not result in any constitutional violation affecting the petitioner. Federal courts may review completed military proceedings had with regard to Army Regulations. The court did not decide whether the "basis in fact test"²¹ applied or whether complete exhaustion of administrative remedies was indispensable to court jurisdiction.²² The court held that the record contained sufficient evidence to show that the Adjutant General's denial of a discharge to the petitioner for reasons of conscientious objection was not arbitrary, capricious, or irrational.

In *Hammond vs. Lenfest*,²³ habeas corpus was granted to review the status of a Naval reservist who claimed CO scruples as a defense to failure to report when called to active duty. After the petitioner had been re-

fused a discharge, the Navy adopted regulations pertaining to the administrative discharge of COs. The appellate court held that the interests of justice favored a remand of the case back to the Navy with directions that the reservist's application be processed under the new regulations.

In a recent decision, habeas corpus was granted by a district court on the ground that denial of discharge to a soldier claiming CO scruples rested on no basis in fact. The court saw a denial of due process to the petitioner.²⁴ The case illustrates that the court disagreed with the Army administrative decision and accordingly proceeded to reweigh the evidence and apply the court's concept of what proves conscientious objection.

The role of Selective Service ends when a registrant is enlisted in the reserves. Release from the military because of alleged conscientious objection scruples is free of Selective Service participation.²⁵

²¹ *Estep v. United States*, 327 U.S. 114 (1946).

²² See *Guslick v. Schilder*, 340 U.S. 128 (1950). In a concurring opinion, Chief Justice Staley agreed with the district court that federal courts should refuse jurisdiction to pass on the factual adequacy of any army decision. Mr. Justice Maris dissented in part on the ground that pacifist contacts might have influenced the defendant to follow his course of conduct.

²³ 398 F.2d 705 (2d Cir. 1968): In accord, *United States vs. Mankiewicz*, 399 F.2d 900 (2d Cir. 1968).

²⁴ *Gann v. Wilson*, 289 F.Supp. 191 (D. Calif. 1968).

²⁵ *Even v. Clifford*, 287 F.Supp. 334 (D. Calif. 1968).

In *Lurie vs. United States*,²⁶ the defendant while an enlistee in the Texas Army National Guard was classed I-D as an active reservist. He applied for discharge from the Guard as a CO, but his application was rejected by the military. He then applied to his local board for reclassification as a CO. Four days later, he was certified by the Board for priority induction²⁷ and without a hearing by the Board on his CO claim. Subsequently, the defendant rejected induction and was convicted of refusal to submit to induction.²⁸

The 5th Circuit Court of Appeals reversed and remanded, citing *Quaid vs. United States*²⁹ which had held that a mandatory priority induction was improper before there had been held a hearing on the CO claim³⁰ which could not be disregarded in order to hasten priority induction. The case stands that a possibly active guardsman who claims CO status, is entitled to a hearing as to the merits of his claim before induction.

In *Barr vs. Weise*,³¹ habeas corpus was granted to release an Army reservist on the basis that

the petitioner was a full-time student of the ministry in the "Church of Scientology". The court held that the Department of Army had no basis in fact to deny release from the military to the petitioner. The Army's own regulations nor the Selective Service law did not require that a divinity school be "recognized" in order to authorize discharge of a full-time student at the school. Judicial review was restricted to ascertain whether or not there was "any basis in fact" for the Army's denial of the petitioner's application. The circumstance that the school was not listed in the Education Directory published by the federal Department of Health, Education and Welfare, was not decisive as the directory use to the exclusion of other proof would have been an arbitrary standard.

An injunction was refused to a 1st Lieutenant in the Army reserve who sought discharge as a CO on the ground that the Army's denial of discharge was supported in fact in the record. In seeking discharge, the plaintiff first stressed philosophy only as the basis of his CO principles and

²⁶ 402 F.2d 297 (5th Cir. 1968).

²⁷ See note 2, *supra*, Reg. 1631.8 32 C.F.R.

²⁸ See 50 App. U.S.C.A. # 462.

²⁹ 386 F.2d 25 (10th Cir. 1967).

³⁰ See 50 App. U.S.C.A. # 456(j).

³¹ 293 F. Supp. 7 (D.N.Y. 1968).

only later did he stress alleged religious beliefs. The record showed that for almost two years, the plaintiff had sought postponement of his call to active duty in order to obtain further graduate study and when active duty drew near, he perceived that he had conscientious scruples. The court saw a lack of jurisdiction in that the United States had not consented to the herein proceeding which would have enjoined the Army from enforcing orders calling the plaintiff to active duty.

In *United States vs. Valentine*,³³ the issue posed to the court was alleged CO scruples in the defendant who expressed opposition to participation in the military activity directed against Vietnam. Apparently his CO scruples did not apply to all war, but were concerned only with a particular war. The case arose in a motion by the defense to dismiss the indictment which charged refusal to submit to induction. The motion was denied as the court held that the nature and legality of United States military activity in Vietnam is irrelevant to the issues raised in the indictment. The court cited *Luftig vs. McNamara*³⁴ to the effect that the courts do not oversee the conduct of national foreign policy or the use of federal military power in any portion of the world. In result, the court rejected the CO restriction of the defendant's scruples to extend only to a particular war. The court cited *United States vs. Spiro*³⁵ to this end. The court noted that the defendant had made no showing that he had ever claimed an exemption because of conscience with his local board and was thus precluded from raising such an issue for the first time at the trial court level.

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V. Miscellaneous Cases

1. No Declaratory Relief as to Removal From Command

In *Arnheiter vs. Ignatius*,³⁶ the court was concerned with a proceeding by a Lt. Commander in the United States Navy against the Secretary of the Navy for a declaratory judgment and for further relief in the nature of mandamus. A defense motion for summary judgment was granted. Under the facts the plaintiff had

³² *Morbeto vs. Clifford*, 293 F. Supp. 313 (D. Calif. 1968).

³³ 288 F.Supp. 957 (D. Puerto Rico 1968).

³⁴ *Luftig v. McNamara*, 373 F.2d 664 (D.C. Cir. 1967) *cert. denied*, 387 U.S. 945 (1967).

³⁵ *United States v. Spiro*, 384 F.2d 159, 160-61, (3d Cir. 1967) *cert. denied*, 390 U.S. 956 (1968).

³⁶ 292 F.Supp. 911 (D. Calif. 1968).

been removed from his command of the "U.S.S. Vance" which was a destroyer escort in the Vietnam war theater.

Among other allegations, the plaintiff asserted that the admiral commanding the cruiser-destroyer task force did not comply with certain provisions of the Navy Personnel Manual C-7801 (4)(c), 1, 2, 3, and 4. The court held that the plaintiff as a member of the Armed Forces had no property right in any particular command or duty assignment. The merit of military decisions concerning duty assignments is not reviewable by the courts and final determination rests in the military chain of command. The circumstance that the admiral convened a one-officer investigation board to make findings concerning the plaintiff was purely discretionary in the admiral and not subject to court interference.

2. Correction of Courts-Martial Records

A Court of Military Appeals (CMA) decision was submitted to the district court in **Davies vs. Clifford, Secretary of Defense**.³⁷ This was a petition for a declaratory judgment that a court-martial conviction was void. The lower court then dismissed the

petition,³⁸ and the First Circuit affirmed. The petitioner, while an army private, was convicted in 1952 of arson and was released with a bad-conduct discharge. In 1961, the Army Board for the Correction of Military Records entered an order altering the records and granting an honorable discharge to the petitioner. Thereafter, he sought to have the original conviction vacated, but the CMA denied his petition. The First Circuit concluded that it lacked any jurisdiction to review a determination of the CMA. Although the petitioner names the Secretary of Defense as a respondent, the petitioner is actually seeking to gain direct judicial review of what is in essence an Army administrative act.

A petition in mandamus to compel the Secretary of Defense to remove from the records data concerning dishonorable discharges from courts-martial convictions in 1945 and 1948 was presented in **Smith vs. McNamara**.³⁹ The petitioner claimed that he was denied a right to counsel. Jurisdiction was assumed by the lower court.⁴⁰ Smith in 1945 was convicted under Articles 61 and 93 for AWOL and was given a dishonorable discharge and a term

³⁷ 393 F.2d 496 (1st Cir. 1968).

³⁸ 275 F.Supp. 278 (D.N.H. 1967).

³⁹ 395 F.2d 896 (10th Cir. 1968).

⁴⁰ 28 U.S.C. # 1361, 1391(e), Pub. L. 87-748 (1962).

of imprisonment. He was represented at trial by a non-lawyer and the TJA was also not a lawyer. On review, the term of confinement was reduced and the dishonorable discharge was suspended. Smith later escaped from confinement and was recaptured five years later. The court saw review jurisdiction in the trial court over the "final" court-martial decision⁴¹ citing *Ashe vs. McNamara*.⁴² As to the counsel feature, the court quoted from *United States vs. Culp*:⁴³

"It would be fallacious to assume that a service member appears before a court-martial in the identical position as a defendant before a civil court.... No serviceman appears before a court-martial alone." (p. 900)

VI. Civilian Demonstrations Upon a Military Reservation

What may become a leading case is *Weissman & Martin vs. United States*.⁴⁴ The issue involved civilians going upon a military reservation to participate in demonstrations against the conduct of a court-martial in progress upon the reservation. The defendants were convicted, follow-

ing jury trial, of reentering a military reservation after first being ordered to stay away.⁴⁵ At Fort Sill, Oklahoma, in June 1967, defendant Weissman attended a court-martial being held there and demonstrated by "chanting, making noises and singing certain phrases" to the disruption of the court. The Commandant ordered the two defendants not to reenter Fort Sill, and they were personally served on July 29 with a written notice of the order. On July 31, the two defendants, following earlier statements to the press by them, were stopped, identified, and arrested at a traffic control point within the reservation. The defendants claimed to be freelance journalists and that the exclusion order violated First Amendment freedom of the press and Sixth Amendment right to a public trial. Neither defendant testified at the trial, but put in his case by way of memoranda after trial into the court records.

The Tenth Circuit held that there was no violation of the First Amendment or the Sixth Amendment. The court stated: "We doubt that their belated self-serving declarations entitle them to be heard on the point. . . [I]f

⁴¹ 10 U.S.C. # 1552.

⁴² 355 F.2d 277 (1 Cir. 1965).

⁴³ 14 U.S.C. M.A. 199, 202.

⁴⁴ 387 F.2d 271 (10th Cir. 1967).

⁴⁵ The reentering on the military reservation after warning was in violation of 18 U.S.C. # 1382 (1948) 62 Stat. 765, ch. 645.

it be assumed that a defendant in a court-martial has the right to a public trial, there is grave doubt whether members of the press have standing to invoke that right. Even if they have, they may be ordered to conform to standards of conduct and may be excluded if necessary to maintain orderly proceedings. . . . We believe that the order [excluding the defendants] was reasonable. Even if we did not so believe, the order was within the discretionary power of the commandant and not reviewable by the courts."⁴⁶

The court approved the sentences imposed of six months imprisonment plus \$500.00 fine.

It will be recalled that in the military system, an appeal may be taken from a court-martial conviction to:

1. Board of Review.⁴⁷
2. Court of Military Appeals.⁴⁸
3. Secretary of Army.⁴⁹
4. Petition for a new trial by court-martial.⁵⁰

VII. Conclusion

The trend is to an increase in litigation involving servicemen seeking discharge because of al-

leged conscientious scruples against war developed after entry into the military. This is a matter of internal administrative regulation within the particular service involved. After the administrative procedure within a service has been completed in full, the courts will entertain jurisdiction to consider whether or not there is a basis in fact for the final determination of the service.

The courts have upheld the induction into the Army for a period of at least 21 months of a reservist whose performance in the active reserve has been unsatisfactory. Credit will be allowed to the inductee for periods of ACDUTRA actually performed at his home station in the reserves.

The Weissman case⁵¹ showed the concern of the courts to control civilian demonstrators who go upon military reservations and there obstruct traffic or interfere with military functions. Neither the First Amendment nor the Sixth Amendment are involved. We may anticipate further litigation in this area of dissent by dissidents who are not members of the military establishment.

⁴⁶ 387 F. 2d at 273-74.

⁴⁷ 10 U.S.C. 866, 70A. Stat. 59 ch. 1041 (1956), now Court of Military Review.

⁴⁸ 10 U.S.C. 867, 70A. Stat. 60, ch. 1041 (1956).

⁴⁹ 10 U.S.C. 867, 70A. Stat. 63, ch. 1041 (1956).

⁵⁰ 10 U.S.C. 873 70A. Stat. 63 ch. 1041 (1956).

⁵¹ See note 44, supra.

In Memoriam

Since the last publication of the Journal, the Association has been advised of the death of the following members:

Capt. M. Francis Bravman, USAR, New York, N.Y.

Lt. Col. William F. Butters, USA-Ret., Topeka, Kan.

Col. Guy S. Claire, USAR-Ret., Souderton, Pa.

Col. Warren F. Farr, USAR-Ret., Boston, Mass.

Col. Lewis H. Jones, USAR-Ret., Brigham, Utah

Col. Marion Rushton, USAR-Ret., Montgomery, Ala.

The members of the Judge Advocates Association profoundly regret the passing of their fellow members and extend to their surviving families, relatives and friends, deepest sympathy.

What The Members Are Doing . . .

CALIFORNIA:

The John P. Oliver Chapter of the Judge Advocates Association in Southern California held a joint meeting with the Los Angeles Criminal Courts Bar Association on March 10, 1970. Lt. Col. David I. Lippert, President of the group, presided. Col. John F. Aiso, a Justice of the Court of Appeals, a member of the Executive Board of the local group, introduced Col. Albert S. Rakas, the Director of the Academic Department of the Judge Advocate Generals School, who spoke on "Military Justice in Action". This active group had another interesting and well attended program. Col. Mitchell Zitlin, Secretary of the group, announced that they will soon have their Annual Dinner-Dance.

Col. Henry C. Clausen (4th Off.), a practicing attorney in San Francisco, has been installed as sovereign grand commander of the Scottish Rite of Freemasonry for the Southern Jurisdiction of the United States.

On 13 November 1969, some thirty members of the Association met at the Presidio Officers Club in San Francisco to form a Northern California Chapter of the Judge Advocates Association. Colonel William L. Shaw of Sacramento was named Chairman of the group. It is anticipated that

the Chapter's roll will include some 70 to 75 members. Among those attending the organizational luncheon meeting were Col. James Garnet, Col. Harold Martin, Col. John Finger, Col. L. W. Hobson, Brig. Gen. Marvin Taylor and Maj. Gen. Glenn C. Ames.

COLORADO:

Lt. Col. Howard J. Otis, USAF-Ret of Aurora, following his retirement, served as Assistant Attorney General in Colorado. He is now Deputy District Attorney of the 18th Judicial District, comprising the counties of Arapahoe, Elbert, Douglas and Lincoln.

Brig. Gen. Lewis F. Shull, USA-Ret. announces the formation of a firm of Sutton Shull & O'Rourke for the practice of law with offices in Colorado Springs and in Washington, D.C.

DISTRICT OF COLUMBIA:

Capt. Gerald C. Baker, USAFR, announces the formation of a partnership for the general practice of law under the style of Brickle & Baker with offices at 1835 K Street N.W.

Lt. J. Gibson Semmes recently announced the dissolution of the firm of Semmes & Semmes and the continuation of his patent and trademark practice with new of-

ices at 3524 K Street N.W., Washington.

Col. Andrew B. Beveridge (8th Off) is Chairman elect of the ABA Section on Patent, Trademark and Copyright Law.

Maj. Gen. Kenneth J. Hodson, USA (17th Off), The Judge Advocate General of the Army, was recently elected as an officer of the ABA Section on Criminal Law.

FLORIDA:

Lt. Col. Herman Saltzman, USAF-Ret. of Jacksonville, has entered the general practice of law with offices at Jacksonville Beach.

GEORGIA:

Capt. Hugh H. Howell, USNR, formerly President of the Judge Advocates Association, was recently elected Vice President of the Federal Bar Association Chapter for the Fifth U.S. Circuit.

Capt. Howell will also serve on the ABA Special Committee on Military Justice. The Committee is chaired by Col. Geo. W. Latimer of Salt Lake City.

ILLINOIS:

Maj. James M. Spiro, USAR, formerly Assistant to the President of the American Bar Asso-

ciation has returned to private practice as counsel with the firm of Dale, Haffner, Grow and Overgaard with offices in Chicago. Major Spiro also recently announced the formation of Spiro, Kane & Fee, Inc., an organization to provide a nationwide, confidential placement service exclusively for qualified attorneys, law firms and corporations. Major Spiro is a candidate for Assembly Delegate to the ABA House of Delegates.

Capt. John B. Coman, AUS, has moved his office for the general practice of law to 120 South Riverside Plaza, Chicago.

Capt. William W. Brady, AUS (7th OC, 7th CT) announces the addition of new members to the firm of Kirkland, Brady, McQueen, Martin & Callahan. The firm continues to practice in Elgin at 80 South Grove Avenue.

Lt. Elliott M. Simon, USAR-Ret. announces the formation of a new partnership for the practice of law under the style of Simon & Weaver with offices at 33 N. Dearborn, Chicago.

Capt. Gerald L. Sbarboro, ARNG, was recently appointed as legal advisor to the Lieutenant Governor of the State of Illinois and as parliamentarian to the Illinois State Senate. Capt. Sbarboro is Judge Advocate of the Illinois National Guard.

LOUISIANA:

Lt. Col. Victor A. Sachse, AUS, recently presided at a meeting of the Baton Rouge Chapter of the National Conference of Christians and Jews at which Colonel Paul M. Hebert was particularly honored.

MASSACHUSETTS:

Lt. Colonel Lenahan O'Connell, USAR-Ret., of Boston, presided at the Military Justice panel discussion held by the Massachusetts Trial Lawyers Association. The principal speaker of the panel discussion was Lt. Col. Paul A. Carbone, USAR.

Capt. Winthrop S. Dakin, AUS-Ret. (2nd OC) of North Hampton was recently elected Chairman of the Board of Trustees of Clarke School for the Deaf. He has served on the Clarke School board since 1961. As Chairman of the school's development program and centennial fund drive, he has supervised the raising of almost \$2.5 million in contributions.

MISSOURI:

Col. William F. Fratcher, USAR-Ret., of Columbia, Professor of Law at the University of Missouri—Columbia, has been a member of the ABA's Special Committee on Military Justice for a decade. He represented the ABA at the National Conference on Human Rights of the Man in

Uniform recently held in Washington, D.C.

Capt. Reece A. Gardner, AUS (5th OC) recently announced that his firm, Stinson, Mag, Thomson, McEvers & Fizzell have relocated their offices at TenMain Center, Kansas City.

NEW JERSEY:

Col. Harry V. Osborne, Jr., USAF-Ret. of Dartmouth was recently confirmed as a Superior Court Judge and will be assigned to the Superior Court in Elizabeth.

Col. Isidore Hornstein, USAR-Ret., President of Hudson County Bar Association, was recently elected a Fellow of the American Bar Foundation. Colonel Hornstein's son, J. Leonard Hornstein, was recently promoted to the rank of Lt. Col. Young Hornstein is Staff Judge Advocate of the 78th Division.

NEW YORK:

Maj. Edward Ross Aranow, USAR-Ret. (3rd OC) recently announced the addition of several new partners to his firm which practices under the style of Aranow, Brodsky, Bohlinger, Einhorn & Dann. The firm has new offices at 469 Fifth Avenue, New York City.

Capt. Edward F. Huber, USAR-Ret. (6th OC) of the firm of Naylon, Huber, Magill, Lawrence & Farrell recently announced the

addition of new members to the firm. The firm continues to practice at 61 Broadway, New York City.

OHIO:

Col. Ralph G. Smith, ARNG (9th OC) will soon retire as Staff Judge Advocate of the Ohio National Guard. Colonel Smith practices under the style of Addison & Smith with offices in Columbus.

Lt. Louis H. Artuso, AUS-Ret. (12th OC) of Pittsburgh is President of the Allegheny Bar Association. He has been a member of the Allegheny Bar Association Lawyer Referral Service since 1965. Artuso has actively promoted and publicized lawyer referral services in his County.

PENNSYLVANIA:

Col. Harold G. Reuschlein, USAR (11th OFF), Dean of Villanova Law School, is Chairman of the ABA Section of Legal Education and Admissions to the Bar.

TEXAS:

Col. Leon Jaworski, USAR-Ret. of Houston, formerly a member

of the President's Commission on the Causes and Prevention of Violence has been selected president-elect nominee of the American Bar Association. Col Jaworski will become the 95th President at the close of the annual meeting in London in August 1971.

VIRGINIA:

Col. Kenneth C. Crawford, USA, has retired from active duty and as the Commandant of the Judge Advocates General School at Charlottesville as of 31 May will receive the honorary degree of Doctor of Laws from Illinois College on June 7th. He will become Associate Director of Education for the Southeastern Legal Foundation, a continuing legal education institution at Dallas, Texas.

WASHINGTON:

Col. Eugene A. Wright, USAR-Ret. was recently named Judge of the U.S. Circuit Court of Appeals for the Ninth Circuit at Seattle. Judge Wright was formerly Judge of the Superior Court for King County, Washington, and more recently was Vice President and Trust Officer of the Pacific National Bank.



JUDGE ADVOCATES ASSOCIATION

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Executive Secretary and Editor

RICHARD H. LOVE
Washington, D. C.

